IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM DIMONACO, Appellant, vs. ADRIANA FERRANDO, Respondent.	Supreme Court Case No.: 80576 District Court Case No.: D-16-539340-C

Appeal from the Eighth Judicial District Court, Family Division,
Department M, Clark County, Nevada
The Honorable Charles J. Hoskin, District Court Judge

APPELLANT'S APPENDIX
VOLUME 1 OF 2

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No. 14600
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
cphillips@fordfriedmanlaw.com
Attorneys for Appellant

TABLE OF CONTENTS

Filed January 15, 2021		
Defendant's Reply and Opposition to Countermotion Filed September 19, 2019	**0049-0062**	**Vol. I**
Minute Order Vacating Trial Filed July 13, 2021	**0370-0371**	**Vol. II**
Minutes from 8/31/21 hearing on Motion for Reconsideration since the Order After Hearing has not yet been entered.[1]	**0424**	**Vol. II**
Nevada Supreme Court's Order Granting Telephonic Extension Filed October 6, 2021	**0431**	**Vol. II**
Nevada Supreme Court's Limited Order of Remand Filed December 10, 2020	**0349-0351**	**Vol. II**
Nevada Supreme Court's Order Reinstating Briefing Filed September 15, 2021	**0430**	**Vol. II**
Notice of Department Reassignment Filed January 15, 2021	**0356-0357**	**Vol. II**
Notice of Entry of Amended Order Filed January 6, 2020	**0192-0205**	**Vol. I**
Notice of Entry of Order After October 1, 2020 Hearing Filed October 21, 2020	**0318-0326**	**Vol. II**
Notice of Entry of Order After September 26, 2019 Hearing Filed October 7, 2019	**0097-0101**	**Vol. I**

[1] August 31, 2021 Hearing Minutes included because written Order After hearing has not yet been entered.

Order After October 1, 2020 Hearing Filed October 21, 2020	**0313-0317**	**Vol. II**
Order After September 26, 2019 Hearing Filed October 7, 2019	**0094-0096**	**Vol. I**
Order Rescheduling Non-Jury Trial Filed May 10, 2021	**0364-0369**	**Vol. II**
Order Setting Non-Jury Trial Filed February 8, 2021	**0358-0363**	**Vol. II**
Plaintiff's Emergency Motion for Temporary Physical Custody Pending Outcome of Appeal, et. al., and for Attorney's Fees, Costs, and Related Relief Filed September 11, 2020	**0213-0249**	**Vol. I**
Plaintiff's Motion to Reconsider Minute Order Vacating Trial Filed July 28, 2021	**0372-0390**	**Vol. II**
Plaintiff's Notice of Appeal Filed February 4, 2020	**0206-0208**	**Vol. I**
Plaintiff's Opposition to Defendant's Motion for Afterschool Care; and Countermotion for the Child to Attend Champions Afterschool Learning Program During Plaintiff's Custodial Time, and For Attorney's Fees and Costs Filed September 9, 2019	**0026-0048**	**Vol. I**
Plaintiff's Reply to Opposition and Countermotion for Attorney's Fees and Costs Filed August 19, 2021	**0410-0423**	**Vol. II**

Plaintiff's Reply to Opposition to Motion for Trial, et. al., and Opposition to Countermotion Filed December 13, 2019	**0132-0150**	**Vol. I**
Plaintiff's Motion for Trial, to Amend Judgment, and Related Relief Filed November 1, 2019	**0102-0120**	**Vol. I**
Stipulation and Order to Continue Discovery and Adjudicatory Trial Filed April 2, 2020	**0209-0212**	**Vol. I**
Transcript of December 18, 2019 Hearing	**0151-0179**	**Vol. I**
Transcript of October 1, 2020 Hearing	**0271-0312**	**Vol. II**
Transcript of September 26, 2019 Hearing	**0063-0093**	**Vol. I**

Dated this 13thday of October, 2021.

FORD & FRIEDMAN

/s/ Matthew H. Friedman
MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No. 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No.: 14600
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorneys for Appellant

CERTICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the law offices of Ford & Friedman and that on October 13, 2021, a true and correct copy of the ***Appellant's Appendix to Child Custody Fast Track***, was served on the following individuals via the Court's electronic filing and service program to the persons listed below:

Michael P. Carman, Esq.
Mike@FCPfamilylaw.com
fileclerk@fcpfamilylaw.com
LegalAssistant@FCPfamilylaw.com
Accounting@FCPfamilylaw.com
Paralegal@FCPfamilylaw.com
Attorney for Respondent

/s/ Kristi Faust
An employee of Ford & Friedman

Electronically Filed
09/08/2016 04:25:40 PM

CLERK OF THE COURT

COMC
LAW OFFICES OF F. PETER JAMES, ESQ.
F. Peter James, Esq.
Nevada Bar No. 10091
Peter@PeterJamesLaw.com
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
702-256-0087
702-256-0145 (fax)
Counsel for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, vs. ADRIANA DAVINA FERRANDO, Defendant.	CASE NO. : D-16-539340-C DEPT. NO. : Q **COMPLAINT FOR CUSTODY**

COMES NOW Plaintiff, William DiMonaco, by and through his counsel, F. Peter James, Esq., who, as and for a Complaint for Custody, hereby alleges and requests relief as follows:

1. That Plaintiff, for a period of more than six weeks immediately preceding the filing of this action, has been and now is an actual, bona fide resident of the State of Nevada, County of Clark, and has been actually physically present and domiciled in Nevada for more than six (6) weeks prior to the filing of this action.
2. That Plaintiff and Defendant were never married to each other.
3. That there is one minor child at issue, to wit: Grayson Ashton DiMonaco-Ferrando (born August 12, 2014 (hereinafter "the child"); the parties have no other minor

children together, no adopted children, and, Defendant ("Mom") is not currently pregnant with Plaintiff's child.

4. That the child has resided in the State of Nevada since his birth; thus, Nevada is the home state of the child and his state of habitual residence.

5. Plaintiff is the natural father of the child. Plaintiff signed an affidavit of paternity as to the child, the same has not been revoked, and Plaintiff is listed as the child's natural father on the child's birth certificate. The child bears Plaintiff's surname. Plaintiff has held the child out to the world as his natural child.

6. To Plaintiff's knowledge, custody of the child has not been adjudicated in any other court proceeding.

7. The parties are fit and proper persons to be awarded joint legal custody of the child, and should be awarded the same.

8. The parties are fit and proper persons to be awarded joint physical custody of the child, and should be awarded the same.

9. Defendant has unreasonably restricted Plaintiff's access to the child. Defendant has, in great part, frustrated Plaintiff's efforts to develop a meaningful relationship with the child, though Plaintiff has managed to develop a strong bond with the child nonetheless.

10. Child support should be set pursuant to Nevada law, subject to appropriate deviations under NRS 125B.080(9).

11. The Court should set a joint physical custody visitation schedule. As Plaintiff has another child from a different relationship, the visitation schedule for the present child should follow that schedule so the children can have more time with each other to bond.

12. Plaintiff should maintain the child's health insurance if the same is available through his employer at a reasonable cost.

13. The child's unreimbursed medical, dental, optical, orthodontic, and mental health expenses should be equally born by each party subject to the 30/30 rule. The 30/30 rule provides that the party paying any unreimbursed medical expenses has thirty (30) days from the date the expense is paid to forward proof of payment to the opposing party. If that party does not timely forward the proof of payment, then that party waives the right to be reimbursed for that expense. Upon receipt of a timely-forwarded proof of payment of an unreimbursed medical expense, the receiving party has thirty (30) days to reimburse the paying party one-half of the expense or to object to the expense. If the receiving party does not either object to the expense or reimburse the paying party for half of the expense, then that party is subject to sanctions for contempt of court.

14. The parties should alternate claiming the tax deduction for the child.

15. Plaintiff should be awarded attorney's fees and costs.

WHEREFORE, Plaintiff prays for a Judgment as follows:

1. That the Court grant the relief requested in this Complaint; and

2. For such other relief as the Court finds to be just and proper.

Dated this 8 day of September, 2016

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Plaintiff

VERIFICATION

William DiMonaco hereby declares and states as follows:

1. That I am the Plaintiff in the above entitled action.

2. That I have read the foregoing ***Complaint for Custody*** and know the contents thereof.

3. That the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.

4. Those factual averments contained in said document are incorporated herein as if set forth in full.

5. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

WILLIAM DIMONACO

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

C. O'BRIEN
Notary Public-State of Nevada
Appointment No. 07-4047-1
My Appointment Expires Nov. 27, 2016

Subscribed and Sworn to before me by William DiMonaco
this 8 day of September, 2016

NOTARY PUBLIC in and for said County and State

Electronically Filed
10/04/2016 08:56:30 AM

CLERK OF THE COURT

ANSC
STEVEN M. ALTIG, ESQ.
Nevada Bar No. 006879
Adras & Altig, Attorneys at Law
601 S. Seventh Street
Las Vegas, Nevada 89101
(702) 385-7227
Email: steven@adraslaw.com
Attorney for Defendant/Counterclaimant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff/Counterdefendant, vs. ADRIANA DAVINA FERRANDO, Defendant/Counterclaimant.	CASE NO. D-16-539340-C DEPT. NO. Q

ANSWER TO COMPLAINT FOR CUSTODY AND COUNTERCLAIM

COMES NOW, Defendant/Counterclaimant, ADRIANA DAVINA FERRANDO, [hereinafter, Defendant], by and through her attorney, STEVEN M. ALTIG, ESQ., and for her Answer to the Complaint for Custody on file herein, hereby admits, denies and alleges as follows:

1. Answering Paragraphs 1, 2, 3, 4, 6, 12, and 13 of the Complaint on file herein this answering Defendant hereby admits each and every allegation contained therein.

2. Answering Paragraphs 7, 8, 9, 10, 11, 14, and 15 of the Complaint on file herein this answering Defendant hereby denies each and every allegation contained therein.

3. Answering Paragraph 5 of the Complaint on file herein this answering Defendant hereby denies that the Plaintiff has held himself out to the world as the child's natural father and the Defendant hereby admits each and every other allegation contained therein.

WHEREFORE, Defendant prays Plaintiff take nothing by way of her Complaint on file herein.

COUNTERCLAIM

COMES NOW Defendant/Counterclaimant, ADRIANA DAVINA FERRANDO [hereinafter, Defendant], by and through his attorney, STEVEN M. ALTIG, ESQ., and for her Counterclaim against Plaintiff/Counterdefendant, WILLIAM DIMONACO [hereinafter, Plaintiff] alleges as follows:

1. That for more than six (6) weeks immediately preceding the commencement of this action, Defendant has been physically present and domiciled in, and an actual bona fide resident of the County of Clark, State of Nevada.

2. That Plaintiff and Defendant were never married.

3. That there is one minor child born the issue of the parties hereto, to wit: GRAYSON ASHTON DiMonaco-Ferrando born August 12, 2014.

4. That the Plaintiff is the natural father of the parties' minor child.

5. That the Plaintiff has emotionally abandoned the minor child and the Defendant hereby reserves the right to amend this court action to include an allegation for the termination of the Plaintiff's parental rights.

6. That the Defendant is a fit and proper parent to be awarded sole legal custody of the parties' minor child.

7. That the Defendant is a fit and proper parent to be awarded primary physical custody of the parties' minor child subject to the Plaintiff's right of supervised visitation.

8. That child support should be set pursuant to Nevada law.

9. That the Plaintiff should be compelled to pay child support arrears in an amount to be determined by this Court.

10. That the Plaintiff should be required to maintain health insurance coverage for the parties' minor child.

11. That the parties should share in any unreimbursed medical, dental, optical, orthodontic, and mental health expenses pursuant to the 30/30 rule.

12. That the Defendant should be awarded the tax deduction for the child in each and every year.

13. That there are expenses associated with the birth of the parties' minor child of which the Plaintiff should be compelled to pay half as well as half of other expenses associated with the child, including but not limited to a crib, clothing, car seats, and other associated expenses for which the Plaintiff agreed to pay.

14. That the Plaintiff requested that the Defendant file paperwork to terminate the Plaintiff's parental rights. That the Defendant requested assurances that the Plaintiff wished to pursue that course of action before retaining the services of an attorney. The Plaintiff assured the Defendant that he wished to pursue that course of action and again requested that the Defendant retain the services of an attorney to this end. The Defendant did in fact retain the services of an attorney to prepare the termination of parental rights paperwork. The Plaintiff then refused to sign the paperwork and initiated this legal action. The Plaintiff should be compelled to reimburse the Defendant her fees and costs for the termination action in the approximate amount of $2,500.00.

///

///

///

///

///

///

///

///

15. That the Defendant should be awarded her attorney's fees and costs in this action.

WHEREFORE, Defendant prays for judgment of this Court as follows:

1. That the Court grant the relief as set forth in the Defendant's Counterclaim; and

2. For such other and further relief as to the Court seems just and proper in the premises.

DATED this 3rd day of October, 2016.

STEVEN M. ALTIG, ESQ.
Nevada Bar No. 006879
Adras & Altig, Attorneys at Law
601 S. Seventh Street
Las Vegas, Nevada 89101
(702) 385-7227

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

ADRIANA DAVINA FERRANDO, being first duly sworn according to law, deposes and says:

That she is the Defendant/Counterclaimant in the above-entitled matter; and that she has read the foregoing Answer to Complaint and Counterclaim and knows the contents thereof, and the same is true of her own knowledge except as to those matters stated therein upon information and belief, and as to those matters she believes them to be true.

Executed this 3 day of October, 2016.

ADRIANA DAVINA FERRANDO

SUBSCRIBED AND SWORN before me
On this 3rd day of October, 2016.

SARAH HUGAR
Notary Public, State of Nevada
Appointment No. 11-4399-1
My Appt. Expires Apr 25, 2019

Notary Public in and for said County and State

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this 3rd day of October, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared, ADRIANA DAVINA FERRANDO, known to me to be the person described in and who executed the foregoing Answer to Complaint and Counterclaim and who acknowledged to me that she did so freely and voluntarily and for the uses and purposes therein stated.

WITNESS my hand and official seal.

State of Nevada, County of Clark

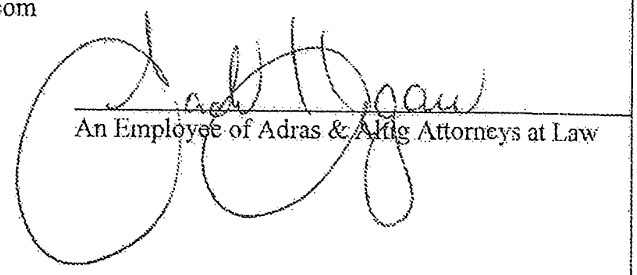
SARAH HUGAR
Notary Public, State of Nevada
Appointment No. 11-4399-1
My Appt. Expires Apr 25, 2019

Notary Public in and for said County and State

CERTIFICATE OF E-SERVICE

I hereby certify that I am an employee of Adras & Altig Attorneys at Law, and that on the 4th day of October, 2016, I elected to E-SERVE a true and correct filed stamped copy of the foregoing Answer to Complaint for Custody and Counterclaim, to the following:

F. Peter James, Esq.
Email: peter@peterjameslaw.com
Attorney for Plaintiff



An Employee of Adras & Altig Attorneys at Law

Electronically Filed
8/28/2019 10:20 AM
Steven D. Grierson
CLERK OF THE COURT

MOT
FINE | CARMAN | PRICE
Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO,

Plaintiff,

vs.

ADRIANA DAVINA FERRANDO,

Defendant.

Case No.: D-16-539340-C
Dept. No.: E

Date and time of hearing:

Oral Argument Requested:
☐ YES / ☒ NO

MOTION TO ALLOW PARENTAL AFTERSCHOOL CARE

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW, Defendant, Adriana Ferrando ("Adriana"), appearing with her counsel, Michael P. Carman, Esq., of FINE | CARMAN | PRICE, and hereby submits this Motion to Allow Parental Afterschool Care.

This motion is made and based upon the pleadings and papers on file herein, the points and authorities submitted herewith, Adriana's declaration

attached hereto, and such other evidence and argument as may be brought before the Court at the hearing of this matter.

As set forth below, Adriana hereby asks the Court grant to her the following relief:

1. For an Order permitting her to serve as Grayson's after school caregiver while Will is at work;
2. For an award of attorney's fees and costs; and
3. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: August 28, 2019.

FINE | CARMAN | PRICE

Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

POINTS AND AUTHORITIES

I.

BACKGROUND

As this Court is aware, the parties to this action were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

Relevant to this motion, Judge Duckworth previously recognized the benefits of Grayson spending time with Adriana on Wednesday afternoons when Will was unable to care for him due to work obligations in the parties' Decree of Custody dated November 9, 2017.

Subsequent to the entry of the Decree of Divorce, Adriana actually served as Grayson's afterschool caregiver on all of Will's days from June 21, 2017, until such time as his unhappiness with the Court's prior child support orders caused Will to restrict Adriana's time in March of 2018. Despite such past issues, Adriana believed that Will would be upset over the Court's child support orders and – with Grayson attending school with his brother right down the street from Adriana's home –would allow her to provide afterschool care to Grayson while he worked and allow her to supervise Grayson's homework on his days.

After the most recent Court hearing, however, things suddenly changed as Will indicated that he was considering using Adriana's

husband's ex – who has been openly hostile to Adriana for years – as an afterschool caregiver. Upon Adriana objecting to Will's selection of an openly hostile person as a caregiver for Grayson rather than his mother, Will indicated that he would be enrolling Grayson in afterschool care and would not permit him to be with Adriana and his brother after school.

With Will having voiced his objection to Grayson spending time with Adriana and his brother after school as he has allowed in the past, undersigned counsel reached out to his attorney in accordance with EDCR 5.501 on August 6, 2019. In response, Will's counsel advised as follows:

> With regard Adriana's request, my client appreciates her offer, however, he prefers to utilize his own after school care (given it should be his prerogative to administer his custodial time with Grayson as he sees fit).

In response, undersigned counsel asked Will to reconsider his position as follows:

> I cannot comprehend why your client believes that [Gray] be better off in school aftercare than with his mother. We, obviously, disagree, and believe that Adriana should have priority over third-party care (with the clear understanding that such time is still Will's custodial time of course).

Rather than explaining a basis for Will's position, his counsel asserted as follows:

> Why your client cannot "comprehend" how Will could presume such parental autonomy should continue is unclear to me. If you would like to return to court, lets do so. However, I am hoping that perhaps you can advise your

> client that a traditional joint custodial relationship wherein she enjoys, supports and nurtures Grayson during her custodial time and allows Will the independence to do the same during his.

With the parties clearly having different perspectives as to what is in Grayson's best interests, Adriana files this motion in the hope that she will be allowed to provide afterschool care for Grayson and supervise his homework afterschool.

II.

EDCR 5.501 CERTIFICATE

As set forth above, undersigned counsel reached out to Will's counsel prior to the filing of this motion in accordance with EDCR 5.501 and the parties were unable to resolve this matter.

III.

ARGUMENT

A. Adriana Requests That She Be Allowed to Care for Grayson After School Rather Than Him Being Placed in Third Party Care

NRS 125C.0045(1)(a) states as follows:

> During the pendency of the action, at the final hearing or at any time thereafter during the minority of the child, make such an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest.

The custodial preferences set forth in NRS 125C.0035 generally recognizes a public policy that – in making custody determinations – parents

should generally receive custody over third parties. The prior orders of this Court gave some deference to that policy in the parties' prior custodial orders when it awarded Adriana time after school on Wednesday afternoons.

Particularly relevant to the present dispute between the parties, is that – regardless of the timeshare set forth in the parties' Decree – Will recognized Adriana's after school care of Grayson to be in his best interests from June 21, 2017 until March of 2018 when he suddenly decided to revoke his permission because he was upset about the Court's prior child support determination in this case. Adriana asserts that Will's prior revocation of her afterschool care for Grayson was not in Grayson's best interests and was merely done out of spite.

With Will having previously suggested that a hostile party serve as Grayson's afterschool caregiver, and with Will not providing Adriana any explanation as to why he thinks that Grayson would be better off in Champions after school care than in her care, she believes that his present objection is also being made out of spite and would be detrimental to Grayson. To the extent that Will has voiced that he believes her request to have been an affront to his "parental autonomy" Adriana assures that this request is in no way being made to gain a custodial advantage in this case, and is merely being made because she genuinely believes that Grayson

should be with a parent (and with his brother) after school while Will is unavailable, and that a parent should supervise his homework rather than Champions care.

Adriana requests that this Court recognize the public policy that after school placement with a parent is preferred over a child being "parked" in third-party afterschool care, and asserts that it is in Grayson's best interests to have his homework supervised by Adriana after school, and for him to enjoy after school time with his family when Will is not available to care for him.

C. Adriana Requests that she be Awarded Attorney's Fees and Costs

NRS 18.010 states as follows:

> In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (a) When he has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for

> and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Furthermore, EDCR 7.60(b) states as follows:

> The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> (2) Fails to prepare for a presentation.
>
> (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
>
> (4) Fails or refuses to comply with these rules.
>
> (5) Fails or refuses to comply with any order of a judge of the court.

With no legitimate basis being articulated for denying Grayson the opportunity to be with his family – rather than third party care – afterschool, Adriana believes that Will's objections are being made in bad faith. Under such circumstances, Adriana requests that Will be deemed responsible for the attorney's fees that he has incurred in this action.

In regard to the factors set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), undersigned counsel's hourly rate of $400.00 and the total amount of time incurred in fees was reasonable under the circumstances of this case. Specifically, undersigned counsel is an A/V rated attorney who has practiced since 1997, has practiced primarily in the field of family law for over fourteen (14) years, and is currently serving on the State Bar of Nevada's Family Law Executive Council. It is hopeful that the Court will deem counsel's work in this matter as more than adequate, both factually and legally, and that the Court will recognize that counsel has diligently reviewed the applicable law, explored the relevant facts, and properly applied one to the other.

///

///

///

///

///

///

///

///

///

CONCLUSION

As set forth below, Adriana hereby asks the Court grant to her the following relief:

1. For an Order permitting her to serve as Grayson's after school caregiver while Will is at work;
2. For an award of attorney's fees and costs; and
3. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: August 28, 2019.

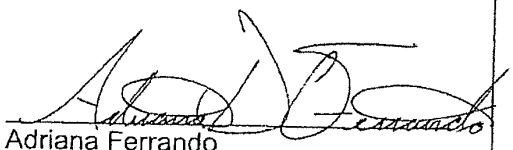
FINE | CARMAN | PRICE

Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

DECLARATION OF ADRIANA FERRANDO

STATE OF NEVADA)
) ss:
CLARK COUNTY)

I, Adriana Ferrando, pursuant to EDCR 2.21, hereby declare under penalty of perjury that I am the Plaintiff in the above-entitled action and have read the above and foregoing motion, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.



Adriana Ferrando

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 28th day of August, 2019, I caused the above and foregoing motion to be served as follows:

☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney listed below at the address, email address, and/or facsimile number indicated below:

To the following addresses:

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
mfriedman@fordfriedmanlaw.com

Tracey McAuliff
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
tracy@fordfriedmanlaw.com

///

///

///

///

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

Eddie Rueda
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
eddie@fordfriedmanlaw.com

Gary Segal, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
gsegal@fordfriedmanlaw.com

Employee of FINE | CARMAN | PRICE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William Dinonaco
Plaintiff/Petitioner

v. Adriana Davina Ferrando
Defendant/Respondent

Case No. D-16-539340-C

Dept. E

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☑ $25 The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☐ $0 The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ $0 The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ $129 The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ $57 The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☐$0 ☒$25 ☐$57 ☐$82 ☐$129 ☐$154

Party filing Motion/Opposition: Defendant, Adriana Ferrando Date 8-28-19

Signature of Party or Preparer [signature]

Electronically Filed
9/9/2019 7:28 PM
Steven D. Grierson
CLERK OF THE COURT

OPPC
MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, vs. ADRIANA FERRANDO, Defendant.	Case No.: D-16-539340-C Department: E **Oral Argument Requested: YES** Date of Hearing: September 27, 2019 Time of Hearing: 3:00 a.m.

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO ALLOW PARENTAL AFTERSCHOOL CARE; AND COUNTERMOTION FOR THE CHILD TO BE ATTEND CHAMPIONS AFTERSCHOOL LEARNING PROGRAM DURING PLAINTIFF'S CUSTODIAL TIME, AND FOR ATTORNEY'S FEES AND COSTS

COMES NOW Plaintiff, William DiMonaco (hereinafter referred to as "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., of the law firm Ford & Friedman who hereby files this Opposition To Defendant's Motion to Allow Parental Afterschool Care; And Countermotion for the Child to Attend Champions Afterschool Learning Program During Plaintiff's

Case Number: D-16-539340-C

Custodial Time, And For Attorney's Fees And Costs, and requests that this Honorable Court enter the following orders:

1. That Defendant's motion be denied in its entirety;
2. That the minor child be permitted to attend the Champions afterschool learning program during Plaintiff's custodial time;
3. That Will be awarded his attorney's fees and costs for having to oppose the instant motion; and
4. For any other relief this Court may deem necessary and proper.

This Opposition is based upon the following memorandum of points and authorities, the papers and pleadings on file in this matter, and any oral argument the Court may wish to hear.

DATED this 9 day of September, 2019.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff William DiMonaco (hereinafter referred to as "Will") and Defendant, Adriana Ferrando (hereinafter referred to as "Adriana") were never married, however, the parties have one minor child born the issue of their relationship, to wit: Grayson Ashton DiMonaco-Ferrando (hereinafter referred to as "Grayson"), born August 12, 2014, age five (5) years. As this Court is aware, Will shares joint physical custody of McKenna Rose DiMonaco, born May 24, 2011, age eight (8) years, born the issue of his previous marriage.

The motion presently before this court concerns Adriana's request to compel Will to utilize her to perform any and all afterschool care which may be required during Will's custodial days. To be clear, while on its face Adriana's request may appear to be innocuous, as will be discussed more fully herein in truth the request is merely a right of first refusal masquerading as afterschool care. Moreover, this latest motion is not the first time Adriana has sought relief from the Court on this same issue. She does, however, conveniently choose to redact this reality from her presentation of the pertinent facts at issue in her motion. At its core Adriana's motion seeks to paint Will as an unreasonable and vindictive parent. Indeed, Adriana goes as far as to egregiously misrepresent

pertinent facts so as to make it appear that Will has presented no reasonable objection to her request and moreover that his intentions are predicated upon years old financial orders.

As will be demonstrated expressly herein, Will's objection to Adriana serving as the sole afterschool provider is multifaceted, soundly grounded in both law and fact, and emanates from a holistic view of what he feels will be in Grayson's best interest. As such, Will now seeks the intervention of this Court in the hopes of stemming the flow of continued litigation by the issuance of common sense orders which allow for each custodial parent, and more importantly for Grayson, to continue to build and strengthen a cohesive home life in each party's respective care. In essence, Will asks that this Court find Grayson's best interests are served by allowing each party to exercise a traditional joint custodial relationship. That is to say that Grayson benefits most when he is afforded the love, support, and nurturing care of a cohesive familial dynamic during each parent's custodial time free from unnecessary custodial exchanges and the continued disruption of parental continuity sought by Adriana.

. . .

. . .

. . .

II.

OPPOSITION

1. ADRIANA HAS FAILED TO MEET HER BURDEN FOR A CHANGE IN THE CUSTODIAL ORDERS AND IS BARRED FROM REQUESTING THE INSTANT RELIEF UNDERTHE DOCTRINE OF *RES JUDICATA*.

NRS 125C.0045 allows for either party at any time to move for a modification of custody. When a party seeks a modification of the visitation schedule, such a request is considered to be a modification of the underlying custody order. *Wallace v. Wallace*, 112 Nev. 1015, 922 P.2d 541 (1996). Once a custody Order has been established, the moving party has the burden of proving that a requested modification is in the best interests of the child. *Truax v. Truax*, 110 Nev. 437, 438—39, 874 P.2d 10, 11 (1994); NRS 125C.0045(1)(a). Specifically, the Court requires the moving party to demonstrate a change of circumstance since the last custodial order such that the best interest of the child warrants the modification sought. *Id.* The Court has stated clearly that the doctrine of *res judicata* is still applicable to requests for a modification of a joint physical custody order. The test set forth in *Truax* and NRS 125.510(2) **should not be misconstrued as affording litigants the ability to continuously re-litigate the same issues based on a best interest standard.** The Nevada Supreme Court specifically addressed this point in

Mosley v. Figliuzzi, 113 Nev. 51, 930 P.2d 1110 (1997), wherein it was held that even in cases where a party is seeking to modify a joint custody arrangement, **some change in circumstances must have occurred since the entry of the most recent order, especially where the last order is fairly new**, based on principles of res judicata, which preclude a party from re-litigating an issue previously resolved by the court. **[Emphasis added].**

Here, during the parties June 21, 2017 hearing, upon learning that Will intended to deploy child care during his custodial time while he worked, Adriana requested from the Court that she be allowed to exercise the right of first refusal, stating that "until the child reaches school age" she would prefer he be in her care in lieu of that of a third party. (*see* June 21, 2017 hearing video at 14:45:55). Similar to the undersigned, Will's former counsel recognized Adriana's preference. However, he voiced his concerns that Adriana's proposed relief was not only "ripe for controversy" but more importantly, her request is "confusing to the child... and inhibits [Will's] time with the child and the child's ability to find a home in [Will's] household." (*see* June 21, 2017 hearing video at 14:44:30). All sentiments echoed by the undersigned in his August 14, 2019 email to Adriana's counsel. (*see* Exhibit 1).

After carefully considering the parties' respective arguments, this Court stated that it was "adverse to the right of first refusal [as] it invites too much conflict" (*see* June 21, 2017 hearing video at 14:49:19) and found that it was in Will's parental discretion to arrange care for the minor child during his custodial time[1]. Clearly then, despite the parties' hearing resolved the matter, here, Adriana again seeks to have this Court grant her the same first right of refusal she sought and was denied at the June 21, 2017 hearing. However, here, Adriana has sought to utilize the façade of "afterschool care" to gloss over her clear attempt to re-litigate and issue already decided.

It is also worth noting that at the time the issue was previously litigated, Grayson was not school age and therefore the time at issue during each of Will's custodial days was an entire work day. Currently at issue is a period of maximally two (2) hours in after school care. This Court is well aware of the enormity of custodial cases that would be impacted in the prospects of a parent utilizing safe key or similar after school care was automatically deemed contrary to the child's best interests.

---

[1] The Court was inclined to "adopt a hybrid" for Wednesdays, wherein although the day was to be designated to Will, Defendant was permitted to maintain custody of Grayson until Will was off of work.

2. ADRIANA MISLEADS THIS COURT BY ALLEDGING WILL FAILED TO EXPLAIN HIS OBJECTION TO ADRIANA PERFORMING ALL AFTER SCHOOL CARE.

Adriana has egregiously misrepresented the factual circumstances surrounding the current dispute. Indeed, even her presentation of the parties' respective communications regarding this issue, *Adriana's* "selective editing" (while creative) eschews truth in favor of base sophistry. To claim Will provided no "explanation" for his objection to Adriana providing all afterschool care flies in the face of the plain – albeit intentionally omitted - language of the undersigned's correspondence to opposing counsel. Indeed, *Adriana* asserts to this Court the communication merely stated "rather than explaining a basis for Will's position, [the undersigned] asserted 'Why your client cannot "comprehend" how Will could presume such parental autonomy should continue is unclear to me. If you would like to return to court, lets do so." – indicating that there was no substantive basis for Will's objection, the fact of the matter is, not only did the undersigned provide *Adriana* with a reasonable objection to her request, but instead he provided *Adriana* with four (4) reasonable objections. Indeed, the undersigned's correspondence concerning Adriana's request plainly stated the following:

> "With regard to the balance of your email concerning your inability to comprehend why Will would object to your client performing all the after school care for the child, I would remind you that the sort of "right

of first refusal masquerading as child care" arrangement you are demanding is often shot down by the Courts as it breeds conflict and forces parents to interact more than they ought to **(and by extension blurs the lines of custodial time/responsibility from the child's perspective).** By your logic, for the last several years, your client should have been entitled to GRAYSON each and every hour wherein Will was not physically available to be there himself. Indeed from a review of the record your client requested exactly this from Judge Duckworth. As I understand it, the Court allowed her to retain the child on Wednesdays (if Will was working) but **expressly declined the balance of the request** allowing Will to deploy child care as he saw fit. Why your client cannot "comprehend" how Will could presume such parental autonomy should continue is unclear to me. If you would like to return to court, lets do so. However, I am hoping that perhaps you can advise your client that a traditional joint custodial relationship wherein she enjoys, supports and nurtures Grayson during her custodial time and allows Will the independence to do the same during his [is in the child's best interest]." (*see* Exhibit 1).

Specifically, the undersigned advised *Adriana*, that the main reasoning for Will's objection is that such consistent custodial "ping pong" it blurs the lines of custodial time and responsibility from Grayson's perspective. Moreover, her request adds unnecessary custodial exchanges to an already high conflict relationship. Indeed, Adriana's proposal would have Grayson wake up in the morning at Will's home to be dropped off at school, to be picked up at 3:15 p.m. and walked backed to Adriana's home, only to be picked up a short while later (1.5 – 2 hours maximally) to travel back to Will's home. Adriana would have Grayson follow this "routine" each and every day of Will's custodial time. This will cause unnecessary confusion concerning

parental roles (i.e. who is in charge, who's rules and routine should he follow). Additionally it fails to allow Grayson to establish any true routine while in the DiMonaco. In essence Adriana's proposed custodial arrangement inhibits the child's ability to establish a sense of belonging and home in each of the custodial parent's residences.

Moreover, while Adriana seeks to assure this Court that this request is not her attempt to assert custodial advantage or dominance, her failure to articulate any cohesive best interest analysis speaks otherwise. It appears that rather than holistically examining all of the implications on Grayson's well-being (both positive and negative) which will likely follow from her request, her contemplation of the issue starts and ends with "will Grayson be with me?" Indeed, the very notion of parental autonomy is such that it allows the custodial parent to make decisions concerning the care of the child during their respective custodial time. By allowing custodial parents the right to arrange logistical care and parental routine within their household we recognize that parents know best how to facilitate optimal conditions for their children.

It should be noted that while Adriana seeks an order of this Court compelling Will to utilize Adriana for all afterschool care, Will has never objected to Adriana's frequent selection of the child's grandparents, other

relatives, and/or family friends to care for Grayson during her custodial time. In Will's mind these are the actions of a joint custodian and cooperative co-parent. It appears equity would dictate Will be shown the same courtesy.

While Adriana makes claims that Will, out of spite, sought to have Kristy (the mother of Grayson's stepbrother, Gage, and family friend) care for Grayson, Will assures this Court "spite" was not a factor. Instead, the option stemmed from Adriana's unwavering insistence that the time Grayson and Gage share together be maximized, as well as his conflict free relationship with Kristy. Indeed, the families regularly meet to allow the boys time together, they attend birthday parties hosted by the other, and plan to attend special events together. Contrary to what Adriana believes, Will does not involve himself in the conflict between Kristy and Adriana or her husband.

Much more important, this issue has been over exaggerated by Adriana. Will merely "suggested" the use of Kristy as caregiver in discussions with Adriana. Immediately upon receiving her objection Will promptly dropped the matter and the same was communicated to her counsel. (*see* Exhibit 1 at page PLF 0001 and page PLF 0002).

In addition to the burden Adriana's request would place on Grayson, her request will add multiple additional in person exchanges to an already (and by Adriana's own admission) high conflict relationship. Instead of

allowing Grayson to continue on in the Champions Afterschool Learning Program, which serves to benefit the child and further his education, Adriana instead proposes Grayson be subjected to additional intense interactions between the parties, while they exchange not only the child, but also clothing, shoes, and backpacks. As explained by the undersigned in his August 14, 2019 email, this approach does not seem to consider Grayson's best interest and instead, seems only to invite more conflict by causing the parties to interact more than necessary.

It is not surprising that *Adriana* chose to withhold the forgoing substantial and, more importantly, overwhelmingly reasonable objections to her request to perform all afterschool care. This is likely due to the fact that they raise substantial issues regarding the best interests of the child from a holistic perspective and seek to look beyond Adriana's presumption that this Court must place irrefutable preference upon the child being in her care. Indeed, it is hard to ignore Adriana's "cherry picking" and even harder to not infer it was done in a bad faith attempt to paint Will as a spiteful, unreasonable parent only concerned with harming Adriana at all costs. It stands to reason that *Adriana* knew that, had she presented the full context of Will's responses to this Court, it would have served to underscore the lack of merit in her request.

3. REMOVING GRAYSON FROM THE "CHAMPIONS AFTER SCHOOL LEARNING PROGRAM" TO ALLOW ADRIANA TO PROVIDE AFTER SCHOOL CARE IS NOT IN THE CHILD'S BEST INTERESTS.

Presently, Grayson is enrolled in and thoroughly enjoying Champions – the after school learning program offered at Somerset Academy. Despite Adriana's averment that Grayson is "parked" in third-party afterschool care, Champions offers Grayson a continued learning experience each and every day that he attends. By attending Champions, Grayson is able to explore his interests in areas such as Science, Creative Arts, Math and Construction, Library, and Puzzles and Game. It also helps to socialize Grayson and well as works on his character development and discipline. (*see* Exhibit 2). Indeed it is ironic that after only weeks ago extolling the quality and virtue of Somerset Academy, now when it suits her purposes, Adriana is happy to reduce the school's significant, supplemental educational program as a meritless place to "park" Grayson.

Additionally, while Champions is willing to assist with homework, at Will's request they refrain from doing so. Instead, Grayson, along with his older sister, McKenna, share a nightly routine wherein they enjoy reading together and completing assignments at home with Will and his significant other, as a family. Adriana's request essentially seeks to eviscerate this

significant family bonding time and the continued development of a strong and lasting domestic culture within the DiMonaco household. Utilizing Champions essentially maximizes the many educational tools at Grayson's disposal, and in turn places him in a position to excel in his scholastic endeavors.

4. ADRIANA FAILED TO FILE A FINANCIAL DISCLOSURE FORM WITH THE COURT, AND THEREFORE HER MOTION SHOULD BE DENIED

EDCR 5.506 provides as follows:

> "(a) Any motion for fees and allowances, temporary spousal support, child support, exclusive possession of a community residence, or any other matter involving the issue of money to be paid by a party must be accompanied by an affidavit of financial condition describing the financial condition and needs of the movant. The affidavit of financial condition must be prepared on a form approved by the court. An incomplete affidavit or the absence of the affidavit of financial condition may be construed as an admission that the motion is not meritorious and as cause for its denial. Attorney's fees and other sanctions may be awarded for an untimely, fraudulent, or incomplete filing."

EDCR 5.506 requires all parties to file a financial disclosure form with the Court *prior* to requesting any financial orders, including a request for attorney's fees or modification of child support. Where a party has failed to comply with this requirement, the entirety of the Motion may be deemed meritless. Similar to her Motion in July, Adriana's Motion once again contains a request for financial relief, yet as of the date of this filing of this opposition,

Adriana has – once again – failed to file her financial disclosure form[2]. As such, any financial relief requested in her Motion summarily must be denied. Although Will believes Adriana's Motion is utterly lacking in merit in a number of other ways, Adriana's Motion can and should be denied on this basis alone.

III.

COUNTERMOTION

1. THIS COURT HAS THE AUTHORITY TO MODIFY ORDERS TO ALLOW WILL TO DEPLOY AFTERSCHOOL CARE AS HE DEEMS APPROPRIATE DURING EACH OF HIS CUSTODIAL DAYS

As stated above, once an order establishing joint physical custody has been entered, the moving party has the burden of proving that a modification of custody is in the best interests of the child. *See Truax v. Truax*, 110 Nev. 437, 438—39, 874 P.2d 10, 11 (1994); NRS 125C.0045(1)(a). The moving party must demonstrate that there has been a change of circumstance since the last custodial order such that the best interest of the child warrants the modification sought. *Id.*

---

[2] Notably, Defendant's last (and only) financial disclosure form was filed with this Court on November 2, 2016 – nearly three (3) years ago, yet she continues to file meritless Motions containing request financial relief from this Court.

Here, since the last custodial order, Grayson has entered into a full day Kindergarten curriculum. Conversely, at the time of the Court's June 21, 2017 Orders, Grayson was approaching three (3) years old and, despite Will's best efforts, had been primarily cared for by Adriana. Upon being granted joint physical custody, Will sought to establish a set routine with the minor child, within his home. Given that Will does not have a spouse to support him and allow him the luxury of being a stay at home parent, he advised the Court of his intent to utilize third party care while he worked. While the Court noted its dislike of the "right of first refusal" (relief sought by Adriana at the time), the Court opted to give a limited "hybrid" of the same.

Under the Court's Orders, while Wednesday was designated as Will's custodial day, Adriana was permitted to maintain custody of the minor child until Will was off of work in lieu of full day attendance at daycare. While not counsel to Will at the time, it is the undersigned's belief that the Order was made with the intent to avoid Grayson being picked up from Adriana Wednesday morning only to be taken to daycare while Will was at work and to allow Grayson to be in the care of a parent given the extended amount of time he would have otherwise been at daycare. It seemed only reasonable and logical that, once Grayson entered into a more traditional school setting – especially given Adriana's previous assertions that her request was only "until the child

reached school age" (*see* June 21, 2017 hearing video at 14:45:55), this caveat would no longer be necessary and these high conflict parents would follow a schedule that permitted all exchanges to occur at the child's school – **effectively eliminating *all* personal interactions between the parties.** Unfortunately, following the start of the school year, Adriana insisted she be permitted to maintain custody of Grayson on Wednesdays after school. Given that the language in the Decree of Custody leaves room for ambiguity and, in an abundance of caution, Will has not disturbed this arrangement. Instead, the parties continue to unnecessarily exchange Grayson on Wednesdays at the conclusion of Will's work day, and Adriana now moves this Court for his Thursdays and Fridays as well. Such actions by Adriana are all relevant to consideration by the Court, as they negatively impact the best interest of the child. *See* NRS 125C.0035(4).

Indeed, on the past several Wednesdays where Adriana has performed afterschool care, Adriana has sought to ignore and override Will's role as a parent. Despite Will's simple and common sense request that Adriana leave Grayson in his school uniform and that she not remove the day's homework assignments and papers from Grayson's backpack, Adriana plainly refuses such requests. Instead, she changes Grayson into "street clothes" and removes event

notification slips/packets[3], homework, study guides, books, and artwork so that she may keep it for her home – despite her already retaining possession of all artwork done on Monday's and Tuesday's (her custodial days). This serves only to increase and prolong the parties' interactions, as they must now unnecessarily exchange clothing, shoes, and backpacks. It also deprives Grayson of the important bonding experience of watching his father review, enjoy and display the school work and artwork completed by Grayson during his custodial time, help him study sight words, and practice his letters for the week's tests. Given that this is Grayson's first year of school, there are many milestones being reached and documented through his school work and such events and years in Grayson's life are well known to be particularly impactful and informative. As a proud and devoted father, Will desires and Grayson should be afforded the benefit of such tender parental interactions which will be all but eliminated should Adriana get her way. Intentional or not, Adriana's request will clearly minimize Will's role in Grayson's life and inhibit his abilities to be an active parent concerning Grayson's school and education.

---

[3] Due to Ms. Ferrando's removing paperwork/fliers and refusing to share information with Mr. DiMonaco, to date, he has been deprived the ability to attend the August 20, 2019 "snow day" with Grayson as well as was not provided a link to the pledge page set up by Ms. Ferrando for Grayson's recent fundraiser. He instead had to request a new code and wait for the same to be provided by the school so that he was able to access the page.

For these reasons, Will would request that this Court modify the current order such that Adriana is no longer permitted to retain custody on Wednesday's until Will is off work and that all exchanges occur at the minor child's school.

2. WILL SHOULD RECEIVE A COMPREHENSIVE AWARD OF FEES RELATED TO WORK REQUIRED TO OPPOSE THE INSTANT MOTION

NRS 18.010 allows for an award of attorney's fees where:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> **(a) When the prevailing party has not recovered more than $20,000; or**
>
> **(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party.** The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

And EDCR 7.60 provides that:

b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

1) **Presents to the court a motion or an opposition to a motion, which is obviously frivolous, unnecessary or unwarranted.**
2) Fails to prepare for a presentation.
3) **So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.**
4) Fails or refuses to comply with these rules.
5) Fails or refuses to comply with any order of a judge of the court.

Adriana has filed a motion with this Court rife with lies and misrepresentations of facts concerning the parties' discussions. Specifically, she has falsely alleged Will failed to provide any reasonable objection to her request to maintain custody of Grayson while Will is at work. The instant motion is rife with false and otherwise misleading arguments aimed toward manipulating this Court into rendering a ruling inconsistent with Grayson's best interests. Once again, Adriana's false representations and actions have forced Will to incur additional attorney's fees and this Court to needlessly squander precious judicial resources. Accordingly, Will should be fully reimbursed for the attorney's fees and costs he has been forced to expend regarding the same. Will requests leave of the Court to file a memorandum of fees and costs pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349 (1969) and *Miller v. Wilfong*, 119 P.3d 727 (2005) for consideration by the Court. Will

further requests the ability to submit a proposed order awarding fees related to this motion including an empty delimiter within which the Court may enter a dollar amount for the award of any fees it deems necessary upon review of his memorandum of fees and costs.

Pursuant to EDCR 5.506(f), while a new Financial Disclosure completed by Will does not accompany his requests for attorney's fees relative to the instant Opposition and Countermotion, Will asserts and assures this Court that his Financial Disclosure filed on July 31, 2019 (just over one (1) month ago), remains a true and correct illustration of his income and financial position.

DATED this 9 day of September, 2019.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 01 day of September, 2019, I caused the above and foregoing document entitled, **"Plaintiff's Opposition To Defendant's Motion To Allow Parental Afterschool Care; And Countermotion For The Child To Be Attend Champions Afterschool Learning Program During Plaintiff's Custodial Time, And For Attorney's Fees And Costs"** to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPFamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
Attorney for Defendant	

Stacy McKellar
An Employee of Ford & Friedman

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William DiMonaco
Plaintiff/Petitioner

v.
Adriana Ferrando
Defendant/Respondent

Case No. D-16-539340-C

Dept. E

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☑ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☐ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☑ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☑ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ **$0** ☑ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: Ford & Friedman on behalf of Plaintiff Date 9/9/2019

Signature of Party or Preparer _____

OPPC
FINE|CARMAN|PRICE
Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO,

Plaintiff,

vs.

ADRIANA DAVINA FERRANDO,

Defendant.

Case No.: D-16-539340-C
Dept. No.: E

Date and Time of Hearing:

September 26, 2019 @ 11 a.m.

REPLY AND OPPOSITION

COMES NOW, Defendant, Adriana Ferrando ("Adriana"), appearing with her counsel, Michael P. Carman, Esq., of FINE|CARMAN|PRICE, and hereby submits this Reply and Opposition in relation to her Motion to Allow Parental Afterschool Care.

This motion is made and based upon the pleadings and papers on file herein, the points and authorities submitted herewith, Adriana's declaration

attached hereto, and such other evidence and argument as may be brought before the Court at the hearing of this matter.

As set forth previously, Adriana hereby asks the Court grant to her the following relief:

1. For and Order denying Will's countermotion;
2. For an Order permitting her to serve as Grayson's after school caregiver while Will is at work;
3. For an award of attorney's fees and costs; and
4. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: September 19, 2019.

FINE | CARMAN | PRICE

Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

POINTS AND AUTHORITIES

I.

REPLY AND OPPOSITION

As this Court is aware, the parties to this action were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

A. Adriana is Not Asking for a Right of First Refusal

A "Right of First Refusal" is an order in which the Court requires a parent to notify the other when they are not available to provide child care for a period of time established by the Court and requires the parent to relinquish custody of their child to the other parent if they are available to provide care. Such rights tend to be problematic for many reasons. To begin, they rely upon the honesty of the custodial parent to acknowledge their unavailability, and, otherwise, require the non-custodial parent to monitor the whereabouts of the custodial parent. As a result, such orders can foster much conflict between untrusting parents. More problematic, such orders create a significant amount of uncertainty in the lives of children who are or must be carted back and forth between parents at the whim of work schedules.

Adriana is not asking for a right of first refusal, and is, instead, asking this Court to recognize that Grayson would benefit from being in the care of

his mother after school rather than being place in third-party after school care for hours on end.

B. Will's Parental Autonomy / Parental Continuity Argument Was Previously Rejected by the Court

In his prior communication, and in his Opposition, Will advocates for his right to parental autonomy and continuity, and, somehow, advocates a belief that he should have a right to place Grayson in school aftercare based upon Judge Duckworth's prior rejection of a four-hour right of first refusal. In advocating his views of parental rights, and attempting to blur the line between Adriana's present request to be Grayson's afterschool caregiver and a general four-hour right of first refusal, Will fails to acknowledge that Judge Duckworth *soundly* rejected his parental autonomy argument at the parties' prior hearing.

While the Court did acknowledge the potential harm to a child in additional exchanges when parties are in conflict and expose a child to conflict, Judge Duckworth negatively characterized Will's parental autonomy argument as an "issue of control" and expressed concerns about Will treating Grayson as "a piece of property," and expressed concern about Will's attitude that he "get[s] to kick that toy just as [he] wants to" during his time. *See* 14:47 on the video record. The Court specifically commented that "when we start treating the child as a possession – 'this is mine, this is

my toy, and if I want the toy to be in daycare' – that's where it becomes [a problem]. *See* 14:48-14:50 on the video record.

While Judge Duckworth did reject the notion of a four-hour right of first refusal based upon the amount of conflict between the parties at the time, he specifically rejected Will's present parental autonomy argument, and soundly criticized Will for not focusing on the best interest of Grayson in his comments.

C. Will's "Logistical" Arguments are Without Merit

Will next argues that Adriana providing after school care will lead to Grayson's exposure to conflict, and will require the exchanging of clothing, shoes, and backpacks.

First, Adriana wholly disputes Will's assertion that the parties' exchanges have been at all plagued with conflict, and is shocked that Will would make such an allegations as she believes that they both have done an excellent job shielding Grayson from parental conflict and have successfully worked together to make such exchanges a happy event for Grayson.

In regard to clothing, shoes, and backpacks, Adriana does not believe that there is any material difference in the eyes of Grayson to him collecting his items from a school after-care facility or from Adriana's home.

D. Will's Request to Modify the Court Orders is Contrary to Nevada Case Law and the Best Interests of Grayson

In his Countermotion, Will seeks unfettered authority to "deploy afterschool care as he deems appropriate" and seeks to eliminate Adriana's time with Grayson on Wednesday afternoons

While Will complains about Adriana not abiding by his "simple and common sense request" to not allow Grayson to change into more comfortable clothing after school, and complains of her removing items from Grayson's backpack and deriving Grayson of the "experience of watching his father review" papers and assist him with sight words, Adriana wholly denies that she has done anything other than work with Will so that Grayson is fully able to enjoy his relationship with both of his parents.

In relation to the selection of daycare providers, the parties have joint legal custody which allows them to have equal decision-making power regarding their children. Rivero v. Rivero, 216 P. 3d 213, 125 Nev. 410 (2009). When parents with joint legal custody are unable to agree upon a decision regarding their children they must seek the intervention of the Court and appear "'on an equal footing' to have the court decide what is in the best interest of the child." Id.

Adriana believes that the selection of daycare and childcare providers fall under the umbrella of joint legal custody, and that both parties should have

a say in who cares for their child. When a parent selects a caregiver who is openly hostile toward the other parent of their child – as Will did when selecting Adriana's husband's ex-wife as a potential caregiver and adding her to Grayson's school pick-up list – Adriana should have a right to object.[1]

As Will has cited no legal authority or factual basis that would justify giving him sole legal custody in regard to the selection of child care and afterschool providers during his time, his request for unfettered decision-making authority should be denied by this Court.

E. Financial Disclosure Form

Adriana's motion clearly stated that she remains a stay-at-home mother, and her income and overall financial situation has – obviously – not materially changed since the filing of her prior FDF. In the event that the Court authorizes the submission of a Memorandum of Fees, Adriana would be happy to file a Financial Disclosure Form if the Court does not accept her representation that her financial circumstances have not materially changed, but would request that Will bear the attorney's fees and costs associated with it.

[1] Will's argument that he "does not involve himself in the conflict between Kristy and Adriana or her husband" is particularly disingenuous as Kristy has openly identified Will as a source of information that has led to conflict, and Will's significant other Tracey has been directly involved in Kristy's litigation through her employment with Mr. Friedman and has served a conduit of involvement between the parties.

F. Attorney's Fee Considerations

NRS 18.010 states as follows:

> In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (a) When he has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Furthermore, EDCR 7.60(b) states as follows:

> The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.

(2) Fails to prepare for a presentation.

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

(4) Fails or refuses to comply with these rules.

(5) Fails or refuses to comply with any order of a judge of the court.

Adriana obviously disagrees that her motion is "rife with lies and misrepresentations of fact" and she continues to believe and assert that Will's present objections are being made in bad faith. Further, Will's present request for parental autonomy and unfettered authority to "deploy afterschool care as he deems appropriate" is not well grounded in law and fact.

In regard to the factors set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), undersigned counsel's hourly rate of $400.00 and the total amount of time incurred in fees was reasonable under the circumstances of this case. Specifically, undersigned counsel is an A/V rated attorney who has practiced since 1997, has practiced primarily in the field of family law for over fourteen (14) years, and is currently serving on the State Bar of Nevada's Family Law Executive Council. It is hopeful that the Court will deem counsel's work in this matter as more than adequate, both factually and legally, and that the Court will

recognize that counsel has diligently reviewed the applicable law, explored the relevant facts, and properly applied one to the other.

CONCLUSION

As set forth above, Adriana hereby asks the Court grant to her the following relief:

1. For and Order denying Will's countermotion;
2. For an Order permitting her to serve as Grayson's after school caregiver while Will is at work;
3. For an award of attorney's fees and costs; and
4. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: September 19, 2019.

FINE | CARMAN | PRICE

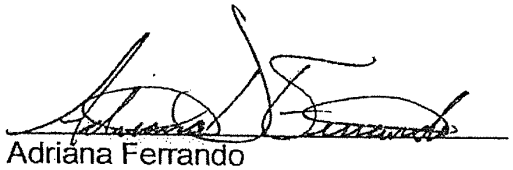
Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

DECLARATION OF ADRIANA FERRANDO

STATE OF NEVADA)
) ss:
CLARK COUNTY)

I, Adriana Ferrando, pursuant to EDCR 2.21, hereby declare under penalty of perjury that I am the Defendant in the above-entitled action and have read the above and foregoing motion, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.



Adriana Ferrando

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 19th day of September, 2019, I caused the above and foregoing motion to be served as follows:

☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney listed below at the address, email address, and/or facsimile number indicated below:

To the following addresses:

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
mfriedman@fordfriedmanlaw.com

Tracey McAuliff
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
tracy@fordfriedmanlaw.com

Eddie Rueda
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
eddie@fordfriedmanlaw.com

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

Gary Segal, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
gsegal@fordfriedmanlaw.com

Melody Cooley
Employee of FINE | CARMAN | PRICE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William Dimonaco
Plaintiff/Petitioner

v.

Adrianna Davina Ferrando
Defendant/Respondent

Case No. D-16-539340-C

Dept. E

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ $25 The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☒ $0 The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ $0 The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ $129 The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ $57 The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒$0 ☐$25 ☐$57 ☐$82 ☐$129 ☐$154

Party filing Motion/Opposition: Adriana Davina Ferrando Date 9/19/19

Signature of Party or Preparer Melody Tooley

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

WILLIAM EUGENE DIMONACO, Plaintiff, vs. ADRIANA DAVINA FERRANDO, Defendant.	CASE NO. D-16-539340-D DEPT. E APPEAL NO. 74696,80576 **(SEALED)**

BEFORE THE HONORABLE CHARLES J. HOSKIN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

THURSDAY, SEPTEMBER 26, 2019

APPEARANCES:

The Plaintiff:	WILLIAM EUGENE DIMONACO
For the Plaintiff:	MATTHEW H. FRIEDMAN, ESQ. 2200 Paseo Verde Pkwy., #350 Henderson, Nevada 89052 (702) 476-2400
The Defendant:	ADRIANA DAVINA FERRANDO
For the Defendant:	MICHAEL P. CARMAN, ESQ. 8965 S. Pecos Rd., #9 Henderson, Nevada 89075 (702) 384-8900

LAS VEGAS, NEVADA THURSDAY, SEPTEMBER 26, 2019

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 11:14:08)

MR. CARMAN: Good morning, Judge.

THE COURT: Good morning.

MR. CARMAN: How are you?

THE COURT: Yeah. We are on the record, 539340. Appearances, please.

MR. FRIEDMAN: Matthew Friedman, 11571, on behalf of the Plaintiff William DiMonaco who is present in the courtroom to my right.

THE COURT: Thank you.

MR. CARMAN: Michael Carman, bar number 7639, also present with Adriana Ferrando.

THE COURT: Thank you. We're here today on the Defendant's motion which I have reviewed. I have reviewed the response that was filed by the Plaintiff as well as the reply that was filed as well. Where are we?

MR. CARMAN: Unfortunately, we need you to make a decision on this case.

THE COURT: Okay.

MR. CARMAN: I -- I can tell you since the motion -- since the motion practice started, since this has all been

pending before the Court, Grayson has struggled in school. He needs one-on -- one-on-one attention. He needs someone who is going to really pay attention; do his homework with after school.

Champion's Care is a holding pen for children after school. I don't understand Dad's position. I don't understand why he thinks that the child would be better off in third party after-care rather than being with Mom who can provide him one-on-one attention.

The only real argument made is this notion that he's entitled to parental autonomy. But this is the same argument that was argued before Bryce Duckworth and was firmly rejected. You know, Judge Duckworth. He doesn't get fired up about things, but he got really upset at Will's position. And parental autonomy stops when the best interests of the children are affected. In this particular case, we have a child who needs help, who needs assistance with his homework who could use extra help after school who can be at Mom's house with his siblings. And Dad doesn't want him to be there without any real stated basis.

He talks about exchanges. There's going to be more exchanges and it's a high conflict case. But the parties haven't had issues with exchanges. Exchanges have been a wonderful experience. My client will give Will credit despite

the fact the parties don't see eye-to-eye. They get along for the sake of their children. And they behave like adults and they do the right things at exchanges. It's just not an issue. The other argument that he's conveyed is that the child will have to collect his belongings from Mom's house, but it's the same thing that happens at a pick up at after care.

I would like to argue more about the specifics of Champion Care and what it's providing to the child. My client doesn't have any information. Dad hasn't put her on the paperwork. She's not on the emergency contact list. She's not on the pick up list. She is not in a position where she even has access to information about the program so I could argue with you or argue with Counsel the merits of the program that he's in.

But to the extent my client knows anything about it, it is a holding pen for children after school. They're all lumped in a cafeteria, all age ranges, and they're --

THE COURT: It's Safekey.

MR. CARMAN: It's Safekey.

THE COURT: Okay.

MR. CARMAN: Yeah, it -- it was presented as something other than that in the -- in the opposition, but that's ultimately what it is.

THE COURT: Okay.

MR. CARMAN: And -- and this is a child. Again, he has -- he's struggling in school. He needs one-on-one attention. He needs help. This is an opportunity for him that costs Dad nothing. It saves him money. He doesn't have to pay for after care. And sadly, we're here in front of you having the issue decided. To the extent in their reply, they've asked for unfettered decision making power regarding after school care providers. It's contrary to Nevada law. Parties always have a say in who's watching their kids and they have a right to object if -- if a parent picks someone who's not a suitable care giver.

In this particular case, the parties have a dispute over whether Adriana 's husband's ex, who has openly espoused her hatred of Adriana would be a suitable after care -- after school care giver, my client has a right to object to that especially when it's definitely going to dramatically affect the child in a negative way.

So I hope that that argument's rejected and we do ask you to give this child the opportunity to actually be able to go to a parent's home after school and have them assist him with homework rather than being held in a holding pen at the school.

THE COURT: All right. And before I forget, where

is my order from the August 1st hearing?

MR. FRIEDMAN: Mr. --

MR. CARMAN: It's a good question. I thought we submitted it.

MR. FRIEDMAN: We -- if you recall, it took you some time to get back to us.

MR. CARMAN: Yeah.

MR. FRIEDMAN: We just got it. It should have been submitted.

MR. CARMAN: Oh, is that it? I think it --

MR. FRIEDMAN: Yeah.

MR. CARMAN: -- it's -- it's either --

THE COURT: Recently?

MR. CARMAN: -- on its way --

MR. FRIEDMAN: Yeah.

MR. CARMAN: Yeah, it was recent.

THE COURT: All right.

MR. CARMAN: We had a few changes. It went back and forth. I was definitely delayed in getting back to Mr. Friedman --

MR. FRIEDMAN: I wasn't --

MR. CARMAN: -- by a few weeks, so --

MR. FRIEDMAN: -- (indiscernible - simultaneous speech).

THE COURT: Yeah, I just -- I've got a -- I had a note that we haven't received it yet, so I just wanted to make sure.

MR. CARMAN: Yeah.

THE COURT: All right. Mr. Friedman.

MR. FRIEDMAN: So Judge, this -- this I -- I have to lay out some settling points for Your Honor, and I think it's very important. Let's start where Mr. Carman finished off and then we'll move backwards. Talking about what Champions is and that it's a -- a parking lot or a parking -- first of all, this is the program attached to the academy that he was informed of by the Defendant. We have attached in our exhibit substantive details of what this is. This isn't kids sitting around doing nothing. There's education, there's instructions, there's, you know, activities, creative arts, library, math instruction, puzzles and games, science. To say that there's nothing to value -- it's just not true. Okay.

It's also specifically attached to the school which was promoted in which my client will tell you he's been very pleased. It seems like it's -- it's working out. It's a great school (indiscernible) results. So this isn't -- it's not taking the kid and dropping the kid off at some daycare. And it's not traditional CCSD, from our understanding, traditional CCSD Safekey where kids are running around in a --

in a classroom. Okay. Or running around in -- in a lunchroom.

Coming back to in broad strokes what we're looking at. We dis -- we explained and described this as not a right of first refusal to say that's what it was, but to say that it's masquerading as such. And here's my point. The Defendant's position is my client's working; therefore, she should do all after school care, meaning Monday, Tuesday, Wednesday, Thursday, and then Friday. Right.

Now, the argument by Defendant is the reason the Court's reticent to look at those is because of the uncertainty. Right of first refusals aren't regular. Right. They're not that every single day. They're here and there and then you have this gotcha game.

Well, I propose to Your Honor, what if by the same logic that they're proposing Mr. DiMonaco had a commitment every Thursday night from 5:00 to 7:00? By their logic, it would apply the same way. He's not available. She should be there. Why should the child go to a third party when she should be there? And I think generally speaking in family courts, we have joint custodians in parents all over this valley who have to use limited -- this isn't overnight -- eight hour overnight care. It's an hour-and-15 to an hour-and-45 minutes after school.

Additionally, Defendant's argument, why shouldn't he be home with his sibling doing homework. Well, that's part of our argument. Why on my client's custodial days is he not entitled to have a family dynamic, a holistic one, wherein he picks the child up from after school programs. His daughter's in GATE. It's not -- it's not Challenger, but it's -- it's GATE and she gets off later. Right. So why can't their environment be when they're done he collects the children and they go home and then they have an after school routine and do homework? There's no showing that that's in any way in the child's best interest to be with her to do that homework as opposed to him. And in fact, in doing that he loses the opportunity.

THE COURT: But -- but the child's not with him doing homework. The child's in after school care.

MR. FRIEDMAN: But he is with him doing homework when he's -- when he's with him. Their routine is the child -- there's instruction at Challenger, additional instruction, tutoring on subjects. And then when -- when he gets the child home, they have an after school routine where they do homework. That --

THE COURT: So if she already does the homework then he doesn't get to do the homework. Is that the argument?

MR. FRIEDMAN: It's -- it's not that he doesn't get

to do the homework. It's that the child doesn't get to participate in the fami -- familial dynamic of my client, his daughter, who is Grayson's sibling, right, and that entire dynamic. So you -- you lose the immersive family dynamic because you have a child waking up in one home --

THE COURT: Okay. I'm --

MR. FRIEDMAN: -- going to another --

THE COURT: You -- you've lost me, Mr. Friedman.

MR. FRIEDMAN: I -- Judge, if I can just --

THE COURT: You're -- you're -- the -- no. No. Because I don't understand your argument. And I --

MR. FRIEDMAN: The --

THE COURT: -- need to understand your argument in order to understand what it is you would like me to do. You're talking about an immersive family situation.

MR. FRIEDMAN: Sure.

THE COURT: Okay. But I don't see that that's what Mom's talking. Mom's talking about non-family in after school care. Are -- are you talking about something different?

MR. FRIEDMAN: What I'm saying -- well, you're talking about what should we do with the child for an hour-and-45 minutes --

THE COURT: Yes.

MR. FRIEDMAN: -- after school.

THE COURT: Yes.

MR. FRIEDMAN: Okay. And what I'm suggesting to you is if it's Mom every day, not -- her day is fine, wonderful, but Mom takes the child at home --

THE COURT: And then --

MR. FRIEDMAN: -- and then --

THE COURT: -- Dad stays.

MR. FRIEDMAN: -- and then has her routine together.

THE COURT: Right.

MR. FRIEDMAN: Okay. Then that routine is absent from the home at my client's home.

THE COURT: But -- but the client -- but the child wouldn't be in your -- your client's home, would he?

MR. FRIEDMAN: But it's what's going on. So unless we're going to make rulings that's -- no, he wouldn't for an hour-and-45 minutes like so many other children are with their parents. Right.

THE COURT: I understand.

MR. FRIEDMAN: So -- okay, so what -- what goes -- it's what goes on in that hour-and-45 minutes. Right. It -- at Challenger, it's enriching programs, it's additional education, Dad picks him up, they -- they do homework, they have -- they have an entire routine. When Mom -- what Mom does, and that's her -- that's her prerogative on her days, is

they go home, they go homework, they go through the backpack, they have their whole thing, they do snacks, and then it's Dad picks the child up and that aspect of the child's day is -- is gone. Right. It -- it doesn't exist.

And -- and the exchanges is another piece. Right. Where we would be adding every single day. And then this is, you know, to some degree what I took issue with. In our response, we didn't unilaterally deny it for no reason and say it's Dad's prerogative or like it were a property issue. What we said was a much more robust response which dealt with the -- the child's ping ponging, the notion of the fact that Dad's custodial time is -- is a time for Grayson to build a bond and feel that he's in that home. Well, we -- I think we -- we generally recognize we don't necessarily want both parents' homes to be identical. It's not that parallel parenting as opposed to this, right.

So if a child's waking up in Dad's home, going to school and then going to Mom's home and then spending whatever time back in that dynamic and then coming back to Dad and that's every single day of Dad's custodial time, to me, it's self defeating for Grayson. He's never going to be fully immersed. He's constantly being going back and forth, on top of additional exchanges, on top of the fact that even if like it's in the way, it just adds unnecessary -- what if she runs

to the park and she's running late and now it's -- we're just going to have conflicts we wouldn't ordinarily have.

And I guess, Judge, you know, and two -- two more briefs points, I -- I understand why Mom would like it and I understand why it's conven -- why she would enjoy to get it. But, again, it's about best interest. And so I -- I think best interest extends beyond just is Mom better in an hour-and-45 minutes than the Challenger program. It's what accompanies those hours, what accompanies Mom's serving versus the child going in and then my client picking him up and being able to have that. And I think that those are the other factors that we've elucidated there. There is a significant difference.

Mom's argument is essentially just assumes without making any showing that it's better. It's just -- she says --

THE COURT: Well, I think that's a -- I think it's a fair assumption.

MR. FRIEDMAN: But it doesn't --

THE COURT: Well, it --

MR. FRIEDMAN: Except, I mean --

THE COURT: -- but that --

MR. FRIEDMAN: -- of its face --

THE COURT: -- but that's the first part of your argument. The second part of -- I understand your argument --

MR. FRIEDMAN: Okay.

THE COURT: -- I think. But I -- I don't know how you argue that spending -- a child spending time with a parent is less valuable than spending time in an after school care. I don't know that you -- you win on that argument. The second half of your argument, I think, is where your argument lies.

MR. FRIEDMAN: To me, they tie together and that's why.

THE COURT: Right.

MR. FRIEDMAN: It's not that I'm saying taken in a vacuum Mom versus third party, that I don't understand biological parent. What I'm saying is it's what happens in -- to that dynamic when you do that.

THE COURT: And why do you believe that that's what would occur?

MR. FRIEDMAN: I -- I mean, it's -- because I didn't want to turn this into a -- a much lar -- it was a narrowly drafted motion. I wasn't going to turn it into a very -- but there are -- there's stuff going on. There's things being removed from -- from backpacks. There's a -- attend -- or sign up sheets that were -- that my client's finding out about days later. They've -- they have despite Mr. Carman's representations, these people don't take knives to one another, but they do have conflict. So adding additional

exchanges, there have been arguments over timing of the exchanges and issues on, you know, that's been right throughout these -- these -- that's the reality.

So you're creating additional conflict. You're diminishing Grayson's ability to have homework time with my client, to have that after school time. Even if it's an hour-and-45 minutes later, it's still that -- that after school time. But it's -- if -- if it goes the other way, by the time he gets home, it's over.

THE COURT: Is there -- is there a concern that this is a time grab for --

MR. FRIEDMAN: No.

THE COURT: -- custody purposes?

MR. FRIEDMAN: No. And in fact, it's the other -- the other piece that we've -- the other point that we made and why I thought it was illustrative despite -- we were talking about an order, not what Judge Duckworth may or may not have said in trying to say what he said and, you know --

THE COURT: Yeah, because I didn't --

MR. FRIEDMAN: -- making him --

THE COURT: -- I didn't find the first right of --

MR. FRIEDMAN: -- making him a witness.

THE COURT: -- refusal order anywhere in Judge Duckworth's --

MR. FRIEDMAN: But he didn't. He didn't. And it was -- it was specifically argued and -- and he rejected that. And my point in making that was, at that time, the argument was my client worked full-time and the child was going to be in full day daycare Tuesday -- or excuse me, Thursday and Friday, Wednesday -- Wednesday, Thursday, and every other Friday.

THE COURT: Okay.

MR. FRIEDMAN: And the Judge declined it. He said no, that's his custodial time; parents do this. Now the argument would apply.

MR. CARMAN: I'm going to object because it's a mischaracterization of that video. I watched the video.

THE COURT: Well --

MR. CARMAN: That is a --

THE COURT: -- and I --

MR. CARMAN: -- mischaracterization --

THE COURT: -- I didn't --

MR. CARMAN: -- of what the --

THE COURT: -- get so far --

MR. CARMAN: -- Judge said.

THE COURT: -- as to watch the video, but --

MR. FRIEDMAN: But that's the --

THE COURT: -- I've reviewed all the minutes --

MR. FRIEDMAN: My point is --

THE COURT: -- and the orders.

MR. FRIEDMAN: I'm -- I'm not trying to argue with -- forget what he said. I'm not trying to say hearsay. The request was she serve as -- as the care giver for all those days. Judge did not grant that.

THE COURT: Okay.

MR. FRIEDMAN: Period. And said on -- you know, with the exception of the Wednesday because to him it made sense. The children woke up in her home. Why would he go to an after school care provider or an after -- excuse me, a daycare provider when the child's there. So that's the -- the point, Judge. And, again --

THE COURT: What's the -- what's the distance between -- Dad picks up from work?

MR. FRIEDMAN: Correct.

THE COURT: What's the dis -- distance between Dad's work and the school versus Dad's work and Mom's house?

MR. FRIEDMAN: Well, the school is .3 miles from --

THE COURT: Oh, so it's fairly --

MR. FRIEDMAN: -- Mom's house.

THE COURT: -- close. Okay. Okay. I'm sorry I interrupted you. Go ahead.

MR. FRIEDMAN: No. No, you're okay. So -- and,

Your Honor, and I guess I -- I would say to look at it in a vacuum just to summarize, because I know I touched on a lot of issues. I think this Court misses the larger issue by looking at it in a vacuum and saying bio parent versus third party and looking at nothing else. I think you have to look holistically at the child's best interest and you have to look at one to create and allow this child to have an immersive home life with the Plaintiff and one with the Defendant and whether doing this diminishes that.

And then I think you have to -- to topple that with -- and what is -- if you're going to do that, what is a tremendous benefit. And so is it -- is the tremendous benefit of spending that hour-and-a-half with Mom versus at the after school program at school they wanted that has a robust curriculum and seems to be a quality program? Is -- is it -- is -- is --

MR. DIMONACO: He enjoys it.

MR. FRIEDMAN: And is -- is that the lynch-pin, because I do think without a doubt this child is going to lose out if you do this -- tremendously on -- on the ability to do that. Even the argument, how -- you know, he's going to have to spend time with his -- with his half-brother. Well, then he loses, you know, the ability to have that same interaction with his sister. Right. And I don't think we can fault

Grayson or fault Mr. DiMonaco for the fact that he works til norm -- very normal hours. Again, I would understand the argument differently if he worked til 10:00 o'clock at night or 9:00 o'clock at night. I would certainly understand the argument and we wouldn't be fighting about it. But to me, it's a very de minimis amount of time. It's very common that parties do this.

And I -- I personally see this argument all the time in court that people say, well, I'm available, he has to work, I should have the time. I'm not saying it's a time grab, but I think the Court should be informed and say it's okay for people to work and use some -- some after care. Right.

And this is the last point. It's not the focus of the motion. It's not the focus of our opposition, but it's just a point to be made. My client works to support the child. Defendant is very lucky to be available to be home full-time because she's a stay-at-home mom married to somebody who obviously provides for them. I believe she has a duty to work to support the children. The prior order obviously imputed some portion of this income from her husband, but I don't believe it's anywhere near community property portion.

I'm not asking Your Honor to do any of that. I'm just simply saying she's always going to be making -- be able to make the argument that she's more available because she's

more available. But she's also not working to support the child. And so the financial orders don't reflect that. So to some degree, it's conferring this unfair advantage.

And then the last piece and it's just, you know, bookkeeping ostensibly. I do -- you know, Mr. Carman attested on his reply, but there's no financial disclosure form filed, I don't believe, simply saying nothing's changed for several years means you don't have to file a financial disclosure form, when in fact, you know, she's married, the husband makes a significant income. She was -- didn't own a home, she now owns a home, so on and so forth. So there's been substantive changes. And if nothing else, you know, I think they're barred from seeking any financial relief whatsoever, obviously, and, you know, I think it's -- it's sufficient in that regard.

THE COURT: All right. Thank you.

MR. FRIEDMAN: I'd -- I'd like to reserve a -- a little time for rebuttal because I'm sure Mr. Carman's going to --

MR. CARMAN: I actually don't have much. I -- I just -- I view this so fundamentally different than the argument of Mr. Friedman. This is an opportunity for the child. It's an opportunity to be in the care of the parent after school to assist you with your homework, to give you

one-on-one attention.

THE COURT: And -- and you -- you don't need to argue that --

MR. CARMAN: Okay.

THE COURT: -- point. That part is sold.

MR. CARMAN: I --

THE COURT: I -- I would like you to address, Mr. Carman, the argument Mr. Friedman made with regard to continuity and those kinds of situations.

MR. CARMAN: I -- con -- I -- again, I don't understand how this at all affects the continuity at Dad's house. This is a time period where the child is not going to be with him. It's a time period where the child's at school. Whether he picks up the child from Mom or from the school, it doesn't at all in any way affect the continuity in his house. This idea that he's somehow precluded from doing homework, it -- it's a false argument for numerous reasons. Number one is this is a child who desperately needs extra help. It's -- there's no reason Dad can't continue to have a routine with the child but it's doing exercises. It's doing practice. It's doing additional studying.

There's -- Mom's not trying to take away anything from Dad. This isn't about Mom versus Dad. It's about what is best for this child. And -- and it -- I -- I get

continuity as a concept, but I haven't heard an argument about how this is going to negatively affect the child.

Continuity, you know, the child not having to go to two different households. I've heard this argument made in a lot of cases. I haven't heard an argument in this courtroom as to how Mom helping the child with the homework after school instead of the child going to Champion Care is going to negatively affect the child. It may negatively affect Dad. He feels like it's his time. But that's not the standard before this Court. The standard is what's best for this child. So maybe I need help because I don't understand the argument.

Disconnects, again, exchanges, these -- these different things in custody cases, interruptions of a parent's time, exchanges, they can be terrible things when parents don't behave themselves, when parents aren't appropriate. That's not what we have here. Mr. -- Mr. Friedman is absolutely correct. There is conflict between the parents. They don't see eye-to-eye all the time as to what's best for their child.

Conflict in and of itself is not a terrible thing. Having two parents that care about their children and have different views is not a bad thing. It's a bad thing when it starts to negatively affect the children. That is not the

case here. And, again, my client will stand up and compliment Will despite the fact they don't -- don't see eye-to-eye on many things. It has never carried over to affect either parent's relationship with the children.

There have been things said in OurFamilyWizard, Talking Parents, whatever they're using these days, but it's a different ball game. It doesn't affect the child. This Court's job is to determine what's best for the child and not what's best for the parents.

And -- and, again, I would ask you to go back and look at Judge Duckworth's -- the -- we cited video references because this is the argument that was made in front of him. It was brought up as a right of first refusal. Judge Duckworth said he did not like rights of first refusal. The parties talked about the uncertainties and the problems inherent with rights of first refusal that this Court has.

The parental autonomy argument, this continuity argument, Judge Duckworth's response was maybe we should rethink the timeshare if that's such a big deal. We're not going there. We don't think that the timeshare needs to be revisited. We just want this child to be receiving one-on-one attention after school that he is not getting where he's currently placed.

THE COURT: Okay. Was there something else, Mr.

Friedman?

MR. FRIEDMAN: So the point of -- of the Duckworth reference had to do with the fact that the request was full days of -- of daycare and wanting to -- her to be the care provider there and -- and the Judge rejected that. Okay. I -- I'm -- I'm not going to try and make Judge Duckworth a -- a witness that we cross examine at some point on -- on what exactly he meant, right, how ridiculous would that be. But that's my point of the request and what the order was.

And -- and, again, doing -- you know, the -- the -- I have kids. Okay. I have a kid -- I have a -- I -- I had a kindergartner and now I have a third grader and a four-year-old. They don't love doing homework, but -- but the child benefits from doing it with both parents and the notion of Mom does it every day with the child and then Dad should then sit the child down and say okay, now we're going to do extra homework, you're now creating a negative dynamic in that home.

THE COURT: So why don't I just prohibit Mom from doing homework with the child while --

MR. FRIEDMAN: Well --

THE COURT: -- she has the child?

MR. FRIEDMAN: -- Your Honor, my thought would be -- I never -- was going to say that, Your Honor, but I thought

that seems like such a -- a copiously unnecessary like order. So I guess point is -- and -- and maybe Your Honor -- to Mr. Carman's -- maybe I need help, because my understanding is this routinely occurs. And if the argument in every courtroom is always that one parent is available and the other parent needs an hour-and-15 or an hour-and-a-half of after school care, that automatically we're going to defer to the other parent and have a child -- and to the point of consistency, waking up in one home and then going back to the dynamic of another home and then coming back to another home, every single one of my client's custodial days or in any case like that.

I do think that's a ma -- I think that social science would report that -- I -- would -- would reflect that. I don't think that that's best for a child. And, again, why? What is so necessary about it? I don't understand what's so necessary about it.

THE COURT: It's a -- it's best interest analysis.

MR. FRIEDMAN: I -- I understand, but I think --

THE COURT: It's all it is.

MR. FRIEDMAN: -- there's other -- I do, I agree, and -- and I think under Wallace (ph) it has to be, but I think there are other -- and there's -- you know, there's been no showing of what it is exactly that the child's going to get

from an hour-and-20 minutes at Mom's home allegedly doing homework versus an hour-and-20 minutes at Challenger and then having the ability to do that same process at my client's home versus losing that whole process.

In terms of the conflict, again, I'm -- I'm not trying to make this a broader point. What I will tell Your Honor candidly as an officer of the court, and -- and it's probably something that's going to be an issue, we've talked about some therapy and stuff in this case privately, but this child routinely has problems calling my client dad. Mommy tells him to call him Will. This is -- look, I -- I don't -- that's my point was that I don't want -- but to say there aren't issues and that we don't see a problem but -- and that those aren't issues that need to be addressed isn't true.

And so by adding more of that, more of this child waking up, going one place and going back, you're just feeding into that cycle. And, again, I would understand, Your Honor, if this child's best interest were not -- the child was spending some ridiculous amount of time in the third party care. But it -- that's not the reality. It's very common that we do this.

I -- I understand Mom's preference. I understand in a blanket, again, a biological parent versus an after school educational program, but what about all the other aspects that

go with that?

THE COURT: And -- and I --

MR. FRIEDMAN: And I don't know that they're remedied, Your Honor, simply -- just to -- to finish making a record, I -- I don't know that they're -- they're remedied by simply saying Mom can't do homework. I think that also creates logistical nightmares at Mom's house because Mom as she indicated has a stepchild that she brings up. And so then she's going to want to do homework with the one child, but not with the other or then she has to do homework with the other child at a different time.

To me, what would make sense is have her custodial time be her custodial time on her days. Nobody wants to interfere with what she does with both -- you know, nobody wants to -- my client's just asking for the ability to conduct -- to create and conduct a family dynamic in his own home in the same way; in a way that I don't, again, to find -- believe impedes or in any way obstructs this -- this child's best interest. In fact, I think it supports it by allowing him to have two robust fam -- familial.

THE COURT: All right. And -- and I -- I do understand Dad's argument better now than I did in reviewing the -- the paperwork with regard to that. As I indicated previously, if I'm simply doing a should we be with a parent

versus a third party care giver, the parent's always going to win. I do understand the argument. I did not review the video from Judge Duckworth. I do want to stay consistent, although, he and I certainly are different people, I do want to stay as consistent as possible.

So I'm -- I'm deferring on a ruling on this until I can do that. I can tell you that I'm not blown away by the information that was attached to your exhibits with regard to the after school program being something head and shoulders above anything else; it appeared to me that it was -- they do what most schools do after school and -- and keep the kids busy until parents come to pick them up.

But -- and just so everybody knows where I'm at, that the -- what I'm trying to wrap my head around is what is in the best interest of this child. I've told you what I believe versus third party care, but the argument with regard to continuity and conflict and those kinds of things is something I'm still considering and I do want to look at Judge Duckworth's video. So I will get you a decision as soon as I can. I do need to pull that video.

Do you recall what hearing it was or -- or what -- around what -- around what hearing?

MR. CARMAN: It's cited in our opposition with time stamps.

MR. FRIEDMAN: And we cite to the hearing.

THE COURT: In your reply?

MR. CARMAN: In the reply. I apologize.

THE COURT: Okay.

MR. CARMAN: Yeah.

MR. FRIEDMAN: And we cite to the -- the hearing as well. I believe we attached the order.

THE COURT: In your opposition?

MR. FRIEDMAN: In my opposition.

THE COURT: Okay. And you gave me time cites?

MR. FRIEDMAN: I -- I wasn't giving you time cites, Your Honor, because I wasn't trying to take Judge Duckworth's words out of context.

THE COURT: Yeah.

MR. FRIEDMAN: If you would like me to do that --

THE COURT: No. No. No. I just -- I -- I just --

MR. CARMAN: And -- and I will say the general argument starts about three minutes before the first quote that we put in our motion --

THE COURT: Okay.

MR. CARMAN: -- I think would be fair.

THE COURT: All right. I'll -- I'll review as much of it as I need to in order to at least get a handle. Certainly, Judge Duckworth's rulings are binding upon this

Court unless we've got a basis to modify. What I'm looking for is if this is an issue that's already been litigated, then we've got a res judicata and I want to make sure we're on the same page.

MR. FRIEDMAN: I -- I understand, Judge. And then the only thing -- I'm assuming you reviewed the attachments in terms of my correspondence because there was a similar issue with my response to Mr. Carman where it was summarized that we said let's go to court, it's about parental autonomy, and then we provided the entire email which gave a good faith basis.

MR. CARMAN: Yeah, and -- and just in the interest of full disclosure, I wasn't trying to misquote Mr. Friedman. I removed the references to Judge Duckworth's prior orders because I thought he was misstating them.

MR. FRIEDMAN: No. No.

MR. CARMAN: And --

MR. FRIEDMAN: I'm -- I'm referring to the litany of reasons that we gave to object beyond just parental autonomy --

MR. CARMAN: Okay.

MR. FRIEDMAN: -- at least in those, so.

MR. CARMAN: And, Your Honor, does my -- can my client have an opportunity just to deny the allegation that she has in any way coached this child not to call --

MR. FRIEDMAN: Stipulated that she --

MR. CARMAN: -- Will --

MR. FRIEDMAN: -- denies it.

MR. CARMAN: -- dad?

THE COURT: Yeah. And -- and you guys -- with some attorneys, I would need to have this conversation; I don't need with you guys. The -- we're -- we've got to focus on this child. Confusion with regard to the child is not helpful. I appreciate the fact that you guys can't get along and -- and it hasn't really spilled over to the child. That's a -- that's good on both of you to get us to that point in time. I don't want to make a decision that messes with that at all. I want to make the best decision I can, so I want all the information before I do it.

MR. FRIEDMAN: Thank you, Judge.

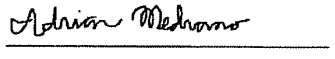
MR. CARMAN: Thank you, Judge.

THE COURT: All right. Thank you.

(PROCEEDINGS CONCLUDED AT 11:41:50)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.



Adrian N. Medrano

Electronically Filed
10/7/2019 11:41 AM
Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William DiMonaco,
Plaintiff
v.

Adriana Ferrando,
Defendant

Case No.: D-16-539340-C
Dept.: E

Date: September 26, 2019
Time: 11:00 a.m.

ORDER

The parties were last before this Court for a hearing on September 26, 2019, where this Court heard Defendant's Motion to Allow Parental Afterschool Care and Defendant's Countermotion for the Child to Attend Champions Afterschool Learning Program on September 26, 2019. This Court took the matter under advisement so the Court could review Judge Duckworth's prior decision on a similar issue, which he heard on June 21, 2017, to attempt to maintain consistent decisions between the departments relating to this family. As such, this Court reviewed the video record of Judge Duckworth's decision, which was his attempt to create a hybrid situation in a similar situation.

Non-Trial Dispositions:
☐ Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Other

Trial Dispositions:
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

This Court find's Judge Duckworth's analysis persuasive, while considering the policy that the children's best interests are better served when they spend time with their parents than in daycare or with a third party and Plaintiff's argument for consistency for the child. Additionally, Defendant's physical proximity to the school is a consideration. The information concerning the Plaintiff's proposed after-school care is not persuasive as it appears to be an afterschool day-care and not preferable to a parent. Considering all that, and making a best interest analysis, the issue shall be resolved as follows:

The child shall be cared for by Defendant, rather than any third-party care-giver, on Plaintiff's custodial school days, from afterschool until Plaintiff gets off from work.

All other aspects of existing court orders, not in conflict with this decision, shall remain in full force and effect.

The additional time allotted to Defendant as a result of this decision shall not be considered as a basis to modify custody.

As the Court understands the positions of each party, it cannot find bad faith on either side. Such eliminates a basis for attorney's fees pursuant

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT E
LAS VEGAS, NV 89101-2408

to NRS 18.010. Each side shall bear their own fees and costs for this hearing.

IT IS SO ORDERED on October 2, 2019

CHARLES J. HOSKIN
District Court Judge

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

NEO

Electronically Filed
10/7/2019 1:59 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * *

William Eugene DiMonaco, Plaintiff. vs. Adriana Davina Ferrando, Defendant.	Case No: D-16-539340-C Department E

NOTICE OF ENTRY OF ORDER

Please take notice that an ORDER FROM HEARING was entered in the foregoing action and the following is a true and correct copy thereof.

Dated: October 07, 2019

Cassie Burns
Judicial Executive Assistant
Department E

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☐ I placed a copy of the foregoing NOTICE OF ENTRY OF ORDER in the appropriate attorney folder located in the Clerk of the Court's Office of:

☒ I mailed, via first-class mail, postage fully prepaid, the foregoing NOTICE OF ENTRY OF ORDER to:

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-3408

NEO

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway Suite 350
Henderson, NV 89052

Michael P. Carman, Esq.
8965 S Pecos RD STE 9
Henderson, NV 89074

Cassie Burns
Judicial Executive Assistant
Department E

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

Electronically Filed
10/7/2019 11:41 AM
Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William DiMonaco,
Plaintiff
v.

Adriana Ferrando,
Defendant

Case No.: D-16-~~16-D~~-539340-C
Dept.: E

Date: September 26, 2019
Time: 11:00 a.m.

ORDER

The parties were last before this Court for a hearing on September 26, 2019, where this Court heard Defendant's Motion to Allow Parental Afterschool Care and Defendant's Countermotion for the Child to Attend Champions Afterschool Learning Program on September 26, 2019. This Court took the matter under advisement so the Court could review Judge Duckworth's prior decision on a similar issue, which he heard on June 21, 2017, to attempt to maintain consistent decisions between the departments relating to this family. As such, this Court reviewed the video record of Judge Duckworth's decision, which was his attempt to create a hybrid situation in a similar situation.

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred

Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR

Trial Dispositions:
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

This Court find's Judge Duckworth's analysis persuasive, while considering the policy that the children's best interests are better served when they spend time with their parents than in daycare or with a third party and Plaintiff's argument for consistency for the child. Additionally, Defendant's physical proximity to the school is a consideration. The information concerning the Plaintiff's proposed after-school care is not persuasive as it appears to be an afterschool day-care and not preferable to a parent. Considering all that, and making a best interest analysis, the issue shall be resolved as follows:

The child shall be cared for by Defendant, rather than any third-party care-giver, on Plaintiff's custodial school days, from afterschool until Plaintiff gets off from work.

All other aspects of existing court orders, not in conflict with this decision, shall remain in full force and effect.

The additional time allotted to Defendant as a result of this decision shall not be considered as a basis to modify custody.

As the Court understands the positions of each party, it cannot find bad faith on either side. Such eliminates a basis for attorney's fees pursuant

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

to NRS 18.010. Each side shall bear their own fees and costs for this hearing.

IT IS SO ORDERED on October 2, 2019

CHARLES J. HOSKIN
District Court Judge

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2418

MOT
MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, vs. ADRIANA FERRANDO, Defendant.	Case No.: D-16-539340-C Department: E **Oral Argument Requested: YES** Date of Hearing: Time of Hearing:

PLAINTIFF'S MOTION FOR A TRIAL, TO AMEND JUDGMENT AND FOR RELATED RELIEF

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION/COUNTERMOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW Plaintiff, William DiMonaco (hereinafter referred to as "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., of the law firm Ford & Friedman who hereby files this Plaintiff's Motion for a

Trial, to Amend Judgment, and for Related Relief and requests that this Honorable Court enter the following orders:

1. That this Court stay its Orders Following the September 26, 2019 Hearing, filed herein on October 7, 2019;
2. That an evidentiary hearing be set regarding the issues raised in the papers regarding the afterschool learning program and third party care of the subject minor child during Will's custodial time;
3. That, upon conducting the evidentiary hearing, this Court amend its Orders Following the September 26, 2019 Hearing, filed herein on October 7, 2019 and render specific findings and orders which comport to the evidence admitted into the record; and
4. For any other relief this Court may deem necessary and proper.

...

...

...

...

...

...

...

...

This Motion is based upon the following memorandum of points and authorities, the papers and pleadings on file in this matter, and any oral argument the Court may wish to hear.

DATED this 1 day of November, 2019.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

Plaintiff William DiMonaco (hereinafter, "Will"), and Defendant, Adriana Ferrando (hereinafter, "Defendant"), were never married, but share one minor child born the issue of their relationship, to wit: Grayson Ashton DiMonaco-Ferrando (hereinafter, "minor child"), born August 12, 2014, age five (5) years.

Despite Will's best efforts to cooperatively co-parent for Grayson's sake, he and Defendant have unfortunately wound up repeatedly resorting to this Court's intervention throughout this matter's history. Most recently, on August 28, 2019, Defendant filed a motion before the Court seeking orders compelling the minor child to remain in her care during portions of Will's custodial school days. In his opposition, Will argued against Defendant's request asserting that Defendant's requested relief would unnecessarily increase conflict between the parties by exponentially increasing their in person custodial exchanges. Moreover, Will argued that Defendant's requested relief was contrary to the child's best interest and it would blur the lines of custodial authority, inhibit familial cohesion in the DiMonaco household and severely confuse Grayson. Instead, Will proposed that the minor child attend an appropriate afterschool learning program (located within the school advocated for by Defendant) during his custodial time while he

completed his work day. Indeed, in the parties' discussions regarding school selection prior to the filing of Defendant's July 23, 2019 Motion, she expressly advertised to Will, the existence and quality of this afterschool learning program as a "selling point" of the school.

A motion hearing was held regarding Defendant's requested relief and Will's Opposition/countermotion to the same on September 26, 2019. At no time during the September 26, 2019 proceedings was sworn testimony taken nor was any evidence introduced into the record. Following the hearing, this Court took the matter under advisement stating it would render its decision upon whether the child would attend an appropriate afterschool learning program during Will's custodial time or if the minor child would instead be placed with Defendant during Will's custodial time while he is working.

On October 7, 2019, this Court entered its Order (hereinafter, "Order") requiring the minor child to be cared for by Defendant "rather than any third-party care-giver" on Will's custodial school days.[1] The substance of this Order contains several procedural and substantive irregularities which require amendment/reconsideration.[2] Accordingly, the instant motion follows.

---

[1] Order, p. 2, ll. 14-17.

[2] Will notes it would be impractical to send correspondence pursuant to EDCR 5.501 as the relief requested herein is entirely procedural, and, even if an agreement had been reached

. . .

II.

DISCUSSION

NRCP 59 provides:

> **(a) In General.**
> (1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues--and to any party--for any of the following causes or grounds materially affecting the substantial rights of the moving party:
> (A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;
> (B) misconduct of the jury or prevailing party;
> (C) accident or surprise that ordinary prudence could not have guarded against;
> (D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;
> (E) manifest disregard by the jury of the instructions of the court;
> (F) excessive damages appearing to have been given under the influence of passion or prejudice; or
> (G) error in law occurring at the trial and objected to by the party making the motion.
> (2) *Further Action After a Nonjury Trial.* On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.
> **(b) Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.

---

pursuant to EDCR 5.501 regarding the issues raised herein, the parties are without power to force this Court via stipulation to hold an evidentiary hearing.

> **(c) Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.
>
> **(d) New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later than 28 days after service of written notice of entry of judgment, the court, on its own, may issue an order to show cause why a new trial should not be granted for any reason that would justify granting one on a party's motion. After giving the parties notice and the opportunity to be heard, the court may grant a party's timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.
>
> **(e) Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.
>
> **(f) No Extensions of Time.** The 28-day time periods specified in this rule cannot be extended under Rule 6(b).

NRCP 52(b) provides:

> (b) **Amended or Additional Findings.** On a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The time for filing the motion cannot be extended under Rule 6(b). The motion may accompany a motion for a new trial under Rule 59.

A. THE COURT WAS REQUIRED TO CONDUCT AN EVIDENTIARY HEARING PRIOR TO ENTERING AN ORDER PERMENNATLY MODIFYING THE PARTIES' CUSTODIAL RIGHTS.

It is well settled that any Court ordered permanent change to a parent's custodial time or control amounts to governmental interference with the

fundamental right of parentage.[3] In recognition of the sanctity of such fundamental rights, prior to making a permanent change to a custodial schedule, the Court is required to conduct an evidentiary proceeding to afford the parties adequate due process by and through the opportunity to testify, to confront witnesses, and to present and rebut evidence.[4]

The instant Order clearly served to permanently increase the amount of custodial time allotted to Defendant.[5] In apparent recognition of the impact upon Will's custodial time resulting from the Order, this Court expressly included language providing that the additional time allotted to Defendant would not be considered in any future request to modify custody. Nonetheless, despite issuing an order resulting in a permanent increase in Defendant's custodial time, the Court ignored its duty under Nevada law to first conduct an evidentiary hearing.

The Order further runs afoul of Nevada law by prohibiting Will from utilizing **any third-party caregiver** during his custodial school days. In this way, the Court's Orders infringe upon Will's parental rights in a manner which extends

---

[3] *Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017). *See also Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 2060 (2000) ("[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.") (plurality opinion).

[4] *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (Noting that prior to modifying a custody award, a parent must be afforded a full and fair hearing with the ability to disprove evidence, and further noting a Court's modification of a custody award must be supported by factual evidence.)

[5] Order, p. 2, ll. 22-24.

well beyond the relief sought by Defendant – who merely sought custodial preference over Will's desired after school care. Such a *sua sponte* expansion of the relief sought by Defendant is severely problematic as Will was not afforded adequate notice that his rights to utilize any third-party caregiver (even a relative) were placed in jeopardy as a result of Defendant's moving paperwork.[6] As such, given that Will was not afforded adequate notice that these additional custodial rights were placed at stake in the litigation, he was deprived of the opportunity to prepare to defend the same and was consequently denied the requisite due process of law owed him.

Will clearly demonstrated adequate cause to hold an evidentiary hearing. To demonstrate such cause, a party "must show that (1) the facts .... are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching."[7] In its order issued on October 7, 2019, the Court plainly stated it "...[could not] find bad faith on either side" regarding the issues raised within the papers filed leading to the hearing held on September 26, 2019. The Court's pronouncements in this regard can only be read to confirm that Will raised relevant, good faith arguments in support of his request to maintain the minor

[6] Defendant's moving papers make it clear the choice before the Court was whether the minor child would be placed in afterschool care or be placed with Defendant during Will's custodial school days. *See* Defendant's Motion, filed August 28, 2019, p. 4, ll. 2-5; p. 6, ll. 14-16; p. 7, ll. 4-9. *See also* Defendant's Reply, filed September 19, 2019, p. 3, ll. 20 – p. 4, ll. 2; p. 6, ll. 12-15.

[7] *Bautista v. Picone,* 134 Nev. 334, 337, 419 P.3d 157, 160 (2018).

child in an appropriate afterschool learning program. Moreover, even a cursory review of Will's opposition reveals that the offers of proof and arguments contained therein were hardly cumulative, but rather touched upon the various best interest factors this Court is mandated to consider in rendering any decision on a permanent custody determination.

Pursuant to NRCP 59(a)(1)(A), a party may seek a new trial if an irregularity within an order of the Court or an abuse of discretion materially affected that party's substantial rights.[8] Here, Will's fundamental rights were materially affected by the Order as it resulted in a permanent decrease in his custodial time and a one-sided blanket prohibition on his use of any third-party care giver. Further, the Order lacked best interest findings supporting the permanent decrease in Will's custodial time and infringement upon his fundamental parental rights. Moreover, as the Court failed to hold an evidentiary hearing there is an insufficient record from which to discern the factual basis in support of the Court's best interest analysis. As a result, the Court's underlying factual analysis and reasoning is wholly concealed from Will and he is left to contend with a few short sentences of conclusory summation preceding the Court's ruling. The failure of an Order to make specific best interest findings

[8] Will alternately seeks for an evidentiary hearing to be set and the Order accordingly amended upon the taking of evidence pursuant to NRCP 59(a)(2).

when making a permanent change to a custodial schedule constitutes an abuse of discretion.[9]

Based on the foregoing, Will requests that the Order issued on October 7, 2019 be stayed[10] and that this matter be set for an evidentiary hearing. Moreover, Will requests that this Court constrain the issues to be adjudicated at the evidentiary hearing to those actually raised within the moving papers filed in relation to the Order.[11]

B. THE ORDER FAILS TO CONTAIN A PROPER APPLICATION OF THE BEST INTEREST FACTORS.

As noted, the Order served to permanently increase the amount of custodial time allotted to Defendant while limiting Will's ability to exercise custody and control during his custodial time.[12] Despite making a permanent custody modification that decreases Will's custodial time and inequitably restricts Will's fundamental parental rights, the Order failed to specifically apply relevant best interest factors explaining how this permanent custodial modification was in the

---

[9] *Lewis v. Lewis*, 132 Nev. 453, 459-60, 373 P.3d 878, 882 (2016) (Noting it is an abuse of discretion for the District Court to fail to set forth specific findings as to each best interest factor when making a custodial modification).

[10] NRCP 62(b)(2) and (3). In light of the lack of due process afforded Will, his fundamental rights will be detrimentally impacted absent a stay of the Order.

[11] *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 745-45 (1994) ("[D]ue process requires that notice be given before a party's substantial rights are affected.").

[12] Order, p. 2, ll. 22-24.

minor child's best interests.[13] Admittedly, while the Order does contain a conclusory statement that the Court engaged in a best interest analysis, it is wholly bereft of any specific findings pertaining to any of the relevant factors outlined in NRS 125C.0035(4).[14]

Accordingly, following the Court conducting an evidentiary hearing regarding the afterschool care issue, Will requests that the Order be amended pursuant to NRCP 52(b) so as to contain specific findings and an application of said findings to all relevant factors outlined in NRS 125C.0035(4).

C. THE ORDER IS UNCLEAR AS TO WHAT POLICY DEEMS IT IN A CHILD'S BEST INTERESTS TO SPEND TIME WITH A PARENT RATHER THAN ANY THIRD-PARTY CARE PROVIDER.

In its Order issued on October 7, 2019, the Court expressly states its reliance upon "the policy that the children's best interests are better served when they spend time with their parents than in daycare or with a third party..."[15]

---

[13] *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) ("Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error...")(Internal citations and quotes omitted). *See also Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016) ("[T]he district court abused its discretion by failing to set forth specific findings as to all of [the NRS 125C.0035(4)] factors in its determination of the child's best interest during a modification of custody.").

[14] Will notes the importance of providing detailed findings regarding the best interest factors when making a custodial modification was recently emphasized in a periodical widely circulated among Nevada attorneys. Hon. Charles J. Hoskin, *Big Picture Approach to Family Law Appeals*, NEVADA LAWYER, November, 2019 Issue at p. 8.

[15] Order, p. 2, ll. 1-6.

Given the paucity of much else in the way of express findings or analysis, it appears the Court relied heavily upon this undefined policy as its for the Order.

With exception of the Court's vague reference to this "policy," the Court declines to reference any applicable legal authority mandating that a child's best interest is always served by spending time with a parent over any third party. The analysis utilized within the Order is perplexing given Nevada's clearly stated legislative policy for parents to share the rights and responsibilities of child rearing as indicated in NRS 125C.001. Surely, such parental rights and responsibilities extend to a parent's ability to designate an appropriate person to care for a minor child while that parent is working during their custodial time. Unilaterally prohibiting one (and notably only one) parent from facilitating contact between the minor child and the child's relatives (potential third-party caregivers) during a parent's custodial time seems to undercut the legislative intent of ensuring children form strong parental bonds and continuing relationships.[16] Further, Nevada case law clearly contemplates, that, within the

[16] The ability of a parent to facilitate contact between a minor child and the child's relatives during that parent's custodial time also goes toward certain best interest factors (e.g., NRS 125C.0035(4)(g)), as creating strong ties between a child and his relatives can serve to positively promote the child's developmental and emotional needs. This provides additional support to Will's position that an evidentiary hearing was required prior to the Court entering an Order that severely restricts Will's ability to afford the minor child contact with relatives during Will's custodial school days.

confines of a joint physical custody arrangement a parent should be free to permit relatives or appropriate third-party caregivers to care for the minor child.[17]

Candidly, the undersigned's review of Nevada custody and support statutes reveals no stated policy of presumption the Court's should always place a child in the care of a parent over any third party without conducting a suitably thorough best interest analysis. Indeed, this notion of absolute irrefutable parental deference is directly at odds with the express terms of Nevada statutes. For example, NRS 125C.050 only exists because the Nevada Legislature determined that there are situations wherein the child's best interests dictate that a third party should have custodial time with a minor child, even over a parent's objection to the same. Similarly, the child support deviation factors implicitly provide acceptance for a parent's use of childcare services during that parent's custodial time.[18]

In sum, the best interest analysis which ought properly to have been performed and documented herein is a detailed, fact specific analysis aimed at assisting jurists to reach custodial determinations that serve the best interests of the particular child at issue.[19] The Court's blanket application of a "policy" which

---

[17] *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009) ("The district court should not focus on, for example, ***the exact number of hours the child was in the care of the parent***, whether the child was sleeping, or ***whether the child was in the care of a third-party caregiver or spent time with a friend or relative*** during the period of time in question.") (Emphasis added).

[18] *See* NRS 125B.080(9)(b).

[19] *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

makes the conclusory assumption that a biological parent is always preferred to any third-party, irrespective of the factual circumstances, makes it difficult to understand how this Court could have conducted the required individualized analysis of the best interest factors before ordering such a prohibition on Will's parental rights during his custodial time.

D. THE COURT'S ORDER FAILS TO PROVIDE A BASIS FOR ISSUING AN ORDER WHICH RESTRICTS WILL'S PARENTAL AUTONOMY WHILE PLACING NO SUCH RESTRICTION ON DEFENDANT IN THE SAME CIRCUMSTANCES.

The Order provides that the minor child will be cared for by Defendant over any other third party caregiver on Will's custodial school days, from afterschool until Will gets off from work.[20] However, the Court declined to even render this order so that Will would have additional custodial time when Defendant is unable to personally care for the minor child on her custodial school days.

The unequal application of this provision of the Order, coupled with a lack of findings providing the basis for the same, causes the order to run afoul of the mandate outlined in NRS 125C.0035(2). Here, without indicating a basis, the aforementioned provisions of the Order apply only to grant Defendant additional custodial time while failing to grant Will additional custodial time under the same circumstances. Further, as the only distinction regarding this issue apparent in the

[20] Order, p. 2, ll. 14-17.

Order is the sex of the parties, Will is left with the only logical conclusion - that the order does not grant Will additional custodial time because he is the minor child's father rather than the child's mother.

Accordingly, upon this Court conducting an evidentiary hearing regarding the afterschool issue, Will seeks amendment to the Order pursuant to NRCP 52(b) so as to clarify the basis for the unequal application of the aforementioned orders.

III.

CONCLUSION

For the foregoing reasons, Plaintiff, William DiMonaco, prays for an order commanding the following:

1. That this Court stay its Orders Following the September 26, 2019 Hearing, filed herein on October 7, 2019;
2. That an evidentiary hearing be set regarding the issues raised in the papers regarding the afterschool learning program and third party care of the subject minor child during Will's custodial time;
3. That, upon conducting the evidentiary hearing, this Court amend its Orders Following the September 26, 2019 Hearing, filed herein on October 7, 2019 and render specific findings and orders which comport to the evidence admitted into the record; and

4. For any other relief this Court may deem necessary and proper.

DATED this 1 day of November, 2019.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorney for Plaintiff

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, WILLIAM DIMONACO, being first duly sworn, deposes and says:

That I am the Plaintiff in the instant action; that I have read the foregoing "Plaintiff's Motion for a Trial, to Amend Judgment, and for Related Relief" and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief and, as to those matters, I believe them to be true.

DATED this 30 day of October, 2019.

WILLIAM DIMONACO

SUBSCRIBED and SWORN TO before me
this 30th day of October, 2019 by William DiMonaco.

NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

NOTARY PUBLIC
PAMELA M. KLAUSKY
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. FEB. 17, 2021
No: 01-66884-1

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 1 day of November, 2019, I caused the above and foregoing document entitled, **"Plaintiff's Motion for a Trial, to Amend Judgment, and for Related Relief"** to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPFamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
Attorney for Defendant	

An Employee of Ford & Friedman

OPPC
FINE | CARMAN | PRICE
Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO,

Plaintiff,

vs.

ADRIANA DAVINA FERRANDO,

Defendant.

Case No.: D-16-539340-C
Dept. No.: E

Date and time of hearing:

December 5, 2019 @ 9:00 a.m.

OPPOSITION AND COUNTERMOTION

COMES NOW, Defendant, Adriana Ferrando ("Adriana"), appearing with her counsel, Michael P. Carman, Esq., of FINE | CARMAN | PRICE, and hereby submits this Opposition and Countermotion.

This Opposition and Countermotion is made and based upon the pleadings and papers on file herein, the points and authorities submitted herewith, and such other evidence and argument as may be brought before the Court at the hearing of this matter.

As set forth below, Adriana hereby asks the Court grant to her the following relief:

1. For an Order denying Will's motion;
2. For an award of attorney's fees and costs; and
3. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: November 20, 2019.

FINE | CARMAN | PRICE

Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

POINTS AND AUTHORITIES

I.

BACKGROUND

As this Court is aware, the parties to this action were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

Relevant to this motion, Judge Duckworth previously recognized the benefits of Grayson spending time with Adriana on Wednesday afternoons when Will was unable to care for him due to work obligations in the parties' Decree of Custody dated November 9, 2017.

Subsequent to the entry of the Decree of Divorce, Adriana actually served as Grayson's afterschool caregiver on all of Will's days from June 21, 2017, until such time as his unhappiness with the Court's prior child support orders caused Will to restrict Adriana's time in March of 2018. Despite such past issues, Adriana believed that Will would be upset over the Court's child support orders and – with Grayson attending school with his brother right down the street from Adriana's home –would allow her to provide afterschool care to Grayson while he worked and allow her to supervise Grayson's homework on his days.

After the most recent Court hearing, however, things suddenly changed as Will indicated that he was considering using Adriana's

husband's ex – who has been openly hostile to Adriana for years – as an afterschool caregiver. Upon Adriana objecting to Will's selection of an openly hostile person as a caregiver for Grayson rather than his mother, Will indicated that he would be enrolling Grayson in afterschool care and would not permit him to be with Adriana and his brother after school.

With the parties clearly having different perspectives as to what is in Grayson's best interests, Adriana filed her Motion to Allow Parental Afterschool Care on August 28, 2019, and a motion hearing was conducted on September 26, 2019. The only material fact in dispute based upon the arguments of counsel at the time, was counsel's differing recitations as to what occurred at the prior hearing before Judge Duckworth.

After hearing all of the arguments set forth by Will's counsel at the hearing, the Court indicated that the Court would take the matter under advisement to review the disputed recitations as to what occurred at the parties' prior hearing and would render a decision based upon the various offers of proof set forth at the hearing after reviewing the prior proceedings before the Court. *No objection was made to the Court rendering its decision without an evidentiary hearing at that time.*

As it indicated it would, the Court rendered a written decision September 26, 2019, after its review of the video record from the parties' prior hearing before Judge Duckworth. After considering the arguments of

the parties, and after reviewing the video record from the prior hearing, the Court concluded that the minor child's best interests would be better served by spending time with a parent rather than spending time in daycare or with a third party, and determined that – in considering Will's arguments about the quality of his selected daycare facility – daycare is simply not preferable to a parent.

II.

OPPOSITON

A. Will's NRCP 59 Argument is Without Merit

In his motion, Will asserts that he should be afforded NRCP 59 relief based upon his assertion that the Court "modified" custody, "materially affected" his fundamental rights, and "permanent[ly] decrease[d]" his custodial time without a hearing.

Will's argument fails to recognize that Judge Duckworth previously recognized that parental placement is preferred over daycare and granted Adriana the right to care for Grayson after school in the past. While the amount of time in Adriana's care has changed as a result of circumstances, this Court's order maintains the custodial status quo and does not materially affect Will's rights in any way.

Contrary to Will's assertion that the court failed to make a "best interest findings", the Court specifically found that Grayson's best interests

were served by being in the care of a parent after school rather than being placed in third-party daycare. Such parental placement is consistent with the principals set forth in NRS 125C.004 which specifically favors a child being in the custodial care of a parent, and provides a parent superior rights to a third-party caregiver.

With the matter being decided largely as matter of law after viewing Will's arguments in their most favorable light and clearly determining such arguments insufficient to support the placement of Grayson in daycare rather than his mother, it is difficult to understand Will's present argument. With Will specifically indicating that he wants such an evidentiary hearing to be limited to argument "actually raised within the moving papers" – which were already considered by the Court – Will's present argument seems particularly disingenuous.

As set forth previously, Will's assertion that he has a right to select whomever he wants to care for the children is not supported by Nevada law, which – under the auspice of joint legal custody – provides that both parties have an equal right to make decisions regarding the care, custody, and control of their children. *See* Rivero v. Rivero, 216 P. 3d 213, 125 Nev. 410 (2009).

In the end, Will has not asserted any irregularity in the proceedings, any misconduct, any accident or surprise, any newly discovered evidence,

or error in the law that he objected to which would allow him to seek NRCP 59 relief, and his motion should be summarily denied by this Court. Further Adriana requests permission to seek an award of attorney's fees in accordance with NRCP 54.

CONCLUSION

As set forth above, Adriana hereby asks the Court grant to her the following relief:

1. For an Order denying Will's motion;
2. For an award of attorney's fees and costs; and
3. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: November 20, 2019.

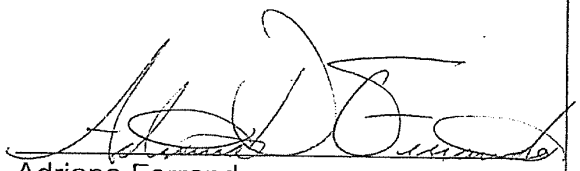
FINE | CARMAN | PRICE

Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

DECLARATION OF ADRIANA FERRANDO

STATE OF NEVADA)
) ss:
CLARK COUNTY)

I, Adriana Ferrando, pursuant to EDCR 2.21, hereby declare under penalty of perjury that I am the Defendant in the above-entitled action and have read the above and foregoing motion, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.



Adriana Ferrando

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 20th day of November, 2019, I caused the above and foregoing Opposition to be served as follows:

☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney listed below at the address, email address, and/or facsimile number indicated below:

To the following addresses:

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
mfriedman@fordfriedmanlaw.com

Tracey McAuliff
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
tracy@fordfriedmanlaw.com

///

///

///

///

Eddie Rueda
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
eddie@fordfriedmanlaw.com

Gary Segal, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
gsegal@fordfriedmanlaw.com

Melody Tooley
Employee of FINE | CARMAN | PRICE

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, v. ADRIANA DAVINA FERRANDO, Defendant.	CASE NO.: D-16-539340-C DEPT. NO.: E **MOTION/OPPOSITION FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ $25 The Motion/Opposition being filed with this form is subject to the $25 reopen fee.
-OR-
☒ $0 The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on.
- ☐ Other Excluded Motion (must specify).

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ $0 The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-
☐ $129 The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order. -OR-
☐ $57 The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒$0 ☐$25 ☐$57 ☐$82 ☐$129 ☐$154

Party filing Motion/Opposition: ADRIANA FERRANDO Date: November 20, 2019

Signature of Party or Preparer Melody Tooley

Electronically Filed
12/13/2019 6:09 PM
Steven D. Grierson
CLERK OF THE COURT

RPLY

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, vs. ADRIANA FERRANDO, Defendant.	Case No.: D-16-539340-C Department: E **Oral Argument Requested: YES** Date of Hearing: December 18, 2019 Time of Hearing: 10:00 a.m.

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR A TRIAL, TO AMEND JUDGMENT AND FOR RELATED RELIEF AND OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES

COMES NOW Plaintiff, William DiMonaco (hereinafter referred to as "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., of the law firm Ford & Friedman who hereby files this Reply to Defendant's Opposition to Plaintiff's Motion for a Trial, to Amend Judgment, and for Related Relief and Countermotion for Attorney's Fees.

Case Number: D-16-539340-C

This Reply is made and based upon the attached Points and Authorities, all pleadings and papers on file herein and is made in good faith and not for purposes of delay in resolving this matter.

DATED this 13 day of December, 2019.

FORD & FRIEDMAN

/s/ Matthew H. Friedman, Esq.

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
2200 Paseo Verde Pkwy., Ste. 350
Henderson, Nevada 89052
Attorneys for Plaintiff

I.

POINTS AND AUTHORITIES

Plaintiff William DiMonaco (hereinafter, "Will"), and Defendant, Adriana Ferrando (hereinafter, "Defendant"), were never married, but share one minor child born the issue of their relationship, to wit: Grayson Ashton DiMonaco-Ferrando (hereinafter, "minor child" or "Grayson"), born August 12, 2014, age five (5) years.

After motion practice by the parties, on October 7, 2019, this Court entered its Order (hereinafter, "Order") requiring the minor child to be cared for by Defendant "rather than any third-party care-giver" on Will's custodial school days.[1] Given that the substance of the Order contained several procedural and substantive irregularities which required amendment/reconsideration, on Will filed his timely Motion for a Trial, to Amend Judgment and for Related Relief on November 1, 2019.

Subsequently, (despite having been due on or before November 14, 2019), Defendant filed her Opposition and Countermotion on November 20, 2019 at 3:26 p.m.[2] Defendant's instant Opposition and Countermotion (hereinafter,

[1] Order, p. 2, ll. 14-17.

[2] As a result of her untimely filing, counsel for Defendant provided Will an extension of time to file this Reply. Thereafter, the undersigned agreed to Defendant's request for a brief continuance

"Opposition") fails to substantially address Will's detailed arguments demonstrating that Nevada law as well as Will's fundamental, substantive, and procedural due process rights require this Court to hold an evidentiary hearing before modifying the parties' custodial orders as it relates to Will's custodial time. Instead, Defendant merely recycles the arguments previously set forth in the underlying pleadings concerning these matters. As such, this Court should conduct an appropriate evidentiary proceeding wherein it can properly weigh evidence germane to these matters and, thereafter, craft an appropriate amended order which comports to the evidence properly before it.

For the sake of judicial economy, the facts and procedural history as detailed in Will's initial Motion are incorporated herein by reference. Accordingly, Will now addresses each averment within Defendant's Opposition.

II.

REPLY

A. CLEAR DISPUTES OF MATERIAL FACTS EXIST BETWEEN THE PARTIES REGARDING THE AFTERSCHOOL PROTOCOL THAT WILL SERVE THE MINOR CHILD'S BEST INTERESTS.

Contrary to Defendant's assertion that this Court was determining a mere legal question, this matter essentially tunes on a substantive factual dispute

---

of the December 5, 2019 hearing "due to exigent circumstances related to medical issues recently suffered by [Defendant]."

concerning each parent's preferred afterschool care protocol and ultimately a determination by this Court of which would serve the minor child's best interests. Defendant's even openly concedes that genuine issues of material fact exist between the parties concerning these matters. The presence of such genuine disputes of material facts relative to such issues and their impact on the child's best interests render an evidentiary hearing necessary so that the Court may properly make the requisite factual findings required to validate and support any orders it may issue modifying the parties' custodial agreement.

B. WILL HAS ARTICULATED THE NEED FOR A TRIAL PURSUANT TO NRCP 59.

Defendant baselessly claims that "Will has not asserted any irregularity in the proceedings, any misconduct, any accident or surprise...or any error in the law" which would allow him to obtain relief under NRCP 59.[3] Defendant seeks to qualify this statement by alleging Will failed to timely lodge his objection and seek relief under NRCP 59. However, as detailed more fully herein, this argument fails as Will was not required to lodge an objection at the time of the September 26, 2019 hearing.

In his moving paperwork Will not only asserts irregularities, surprise and error in law, but he clearly supports each such assertion. As was discussed at length in Will's initial motion, prior to the Court making a permanent change to a

[3] Defendant's Opposition, p. 6, ll. 20 – p. 7, ll. 2.

custodial schedule, it must conduct an evidentiary proceeding to afford the parties adequate due process by and through the opportunity to testify, to confront witnesses, and to present and rebut evidence.[4] The instant Order clearly made permanent changes to the parties' custodial schedule by increasing Defendant's custodial time and this Court appeared to clearly recognize this fact when it felt compelled to expressly order that the additional time allotted to Defendant would not be considered in any future request to modify custody.[5]

Additionally, the Order's blanket prohibition on Will's ability to utilize any third-party caregivers during his custodial school days is far broader and invasive than the relief sought by Defendant, who merely sought custodial preference over Will's desired afterschool care protocol. The Court's *sua sponte* expansion beyond the relief sought by Defendant is improper as Will was not afforded the requisite notice that his rights to utilize any third-party caregiver (even a relative) were in jeopardy. As such, Will's procedural due process rights were compromised as he was deprived of the opportunity to prepare to defend against the same.

Proceedings which violate a party's procedural due process rights are manifestly indicative of irregularity or surprise and such facts plainly support

[4] *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (Noting that prior to modifying a custody award, a parent must be afforded a full and fair hearing with the ability to disprove evidence, and further noting a Court's modification of a custody award must be supported by factual evidence).

[5] Order, p. 2, ll. 22-24.

Will's request for a trial pursuant to NRCP 59. Finally, the failure of the Order to appropriately delineate and identify necessary best interest findings grounded in admissible evidence constitutes an abuse of discretion. This error of law provides as additional support for Will's request for an evidentiary hearing.[6]

C. THERE WAS NO NEED FOR WILL TO OBJECT TO THE COURT'S FAILURE TO SET AN EVIDENTIARY HEARING AT THE TIME THE MATTER WAS SUBMITTED.

Defendant perplexingly argues that Will should have objected to this Court's failure to set an evidentiary proceeding at the hearing held on September 26, 2019.[7] As undersigned counsel is not clairvoyant, it was impossible to know at the time of the motion hearing that the Court's ultimate order would prove violative of Will's procedural and substantive due process rights. That is to say that given the Court's announced intent to take the matter under submission in an effort to "stay as consistent as possible" with the prior rulings of Judge Duckworth as well as to consider the various arguments presented by both parties, a request for an evidentiary hearing pursuant to rule 59 at that time would have been grossly premature. Ultimately, however, when the Court issued its order diminishing Will's custodial time and prohibiting his ability to utilize third-party care providers during his custodial afterschool time without affording Will

[6] *See Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016) ("[T]he district court abused its discretion by failing to set forth specific findings as to all of [the best interest factors] in its determination of the child's best interest during a modification of custody.").

[7] Defendant's Opposition, p. 4, ll. 17-18.

his rights to an evidentiary hearing, the infringement upon Will's due process rights became manifest and the instant motion followed.

At the time this matter was taken under submission by the Court following the motion hearing, it was equally possible the Court could determine Defendant failed to demonstrate adequate cause to proceed upon the relief requested in her Motion. It was also equally possible that the Court would set the matter for an evidentiary hearing regarding the issues raised in the moving papers. However, the Court's failure to hold an evidentiary hearing only became apparent upon entry of the Order, at which point Will filed a timely motion seeking to correct both the errors contained within the Order as well as the insufficient procedure which led to entry of the same, as detailed in his initial Motion.

C. DEFENDANT MISCHARACTERIZES JUDGE DUCKWORTH'S PRIOR ORDERS.

Defendant clings to the past orders of Judge Duckworth – which afforded her a narrow and limited ability to care for Grayson while Will was working – to buttress her instant arguments. However, Defendant misstates the process and reasoning that afforded her this limited ability.

Indeed, when discussing the issue of afterschool care, Judge Duckworth clearly stated that allowing Defendant to care for Grayson on Wednesdays – and notably *only* on Wednesdays – "did not create any additional exchanges between

the parties."[8] Moreover, when rendering the aforementioned orders, Judge Duckworth clearly stated that he was concerned with the level of conflict between the parties and how additional exchanges would serve to increase such conflict, as well as the lack of consistency for Grayson caused by increasing the amount of custodial exchanges.

It is clear that in rendering prior orders in this matter, Judge Duckworth did not proclaim a blanket policy recognizing "that parental placement is preferred over daycare."[9] Rather, Judge Duckworth carefully applied specific best interest factors, such as the need to reduce conflict between the parties and to preserve Grayson's sibling relationship, when entering prior orders regarding the afterschool care protocol.

D. THE ORDER DOES NOT MAINTAIN THE CUSTODIAL STATUS QUO.

Defendant incorrectly alleges the Court's Order maintains the custodial status quo.[10] Yet the language of Defendant's own brief belies this position as she concedes in her Opposition that Grayson's "amount of time in [Defendant's] care has changed as a result of circumstances..."[11] Further, the plain language of

---

[8] Hearing held on June 21, 2017, Video Record at 14:49:19.

[9] Defendant's Opposition, p. 5, ll. 14-16.

[10] Defendant's Opposition, p. 5, ll. 16-19.

[11] *Id.*

the Order indicates the increase in Defendant's custodial time is so significant it could result in a future motion to modify custody.[12]

The Order permanently decreased the amount of Will's custodial time as well as limiting his ability to utilize third-party caregivers during his custodial time, which impacts Will's fundamental rights in being able to care for Grayson during his custodial time.[13] Such fundamental rights cannot be impacted without first according Will procedural due process, which necessitates the holding of an evidentiary hearing wherein Will can present evidence in support of his position.

E. DEFENDANT CONCEDES A BEST INTEREST ANALYSIS IS NECESSARY.

As thoroughly detailed within Will's initial Motion, this Court was required to set forth specific findings pertaining to the best interest factors due to the Order granting a permanent decrease in the amount of Will's custodial time and limiting his ability to utilize third-party caregivers during his custodial time. In fact, Defendant also concedes in her instant Opposition that a best interest analysis was required to support the Court's orders.[14] However, Defendant

---

[12] Order, p. 2, ll. 22-24.

[13] *Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017). *See also Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 2060 (2000) ("[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.") (plurality opinion).

[14] Defendant's Opposition, p. 5, ll. 20 – p. 6, ll. 2.

incorrectly argues that the conclusory statement within the Order indicating the Court conducted a best interest analysis constitutes sufficient findings to support the Order.[15]

The conclusory statement within the Order indicating a best interest analysis had been conducted does not constitute a full and complete best interest analysis as required by NRS 125C.0035(4), which plainly states, "In determining the best interest of the child, **the court shall consider and set forth its specific findings**..." (Emphasis added). Here, as is evident by the plain contents of the Order, there are no specific findings relative to the best interest analysis which was purportedly performed.

Nevada caselaw is clear that specific best interest findings are necessary when making a custodial determination impacting a parent's rights to custody and care over the parent's child.[16] Accordingly, the foregoing supports Will's request for an evidentiary hearing wherein evidence can be taken by this Court, after which point the Order can be amended pursuant to NRCP 52 to include the required specific best interest findings based on the evidence received at trial.

---

[15] *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) ("Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error...")(Internal citations and quotes omitted).

[16] *Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016).

F. PARENTAL PREFERENCE IS INAPPLICABLE IN MAKING A CUSTODY DETERMINATION BETWEEN TWO PARENTS.

Defendant cites to NRS 125C.004[17] in an effort to shoehorn a provision intended to apply to a custody determination involving a parent and a non-parent to manufacture a non-existent policy which provides it is preferable in every circumstance for a child to be with a parent over a non-parent. The plain language of NRS 125C.004 makes it clear that this provision is only applicable if the Court is contemplating an award of custody to a person other than the child's parent. However, as this matter involves a custody dispute between two parents, NRS 125C.004 is entirely inapplicable.

In addition to Defendant' purported policy being unsupported by the plain language of NRS 125C.004, adoption of such a policy would wreak havoc on the bonds tying together families in Nevada. Specifically, adoption of Defendant's position would mean that parents are unable to leave a child in the care of a grandparent, aunt, or uncle during that parent's custodial time, which harms the ability of a child to develop healthy bonds with extended relatives. Further, the

---

[17] Will notes Defendant has previously relied upon NRS 125C.0035(3) to support the unfounded position that this statutory provision somehow creates a right-of-first-refusal when a custody determination between two parents has already been rendered. The plain language of NRS 125C.0035(3) does not indicate this preference is applicable in relation to a parent using a third-party caregiver during that parent's custodial time as the third-party caregiver in that scenario would not be a party seeking an award of physical custody. *See* Defendant's Motion filed August 28, 2019, p. 5, ll. 20 – p. 6, ll. 1.

Nevada Supreme Court recognizes the propriety of parents allowing their children to be in the care of relatives or third-party caregivers during their custodial time.[18]

Additionally, adoption of such a policy would run afoul of the need to make specific best interest determinations particularized to the minor child at issue. For example, a necessary best interest factor for this Court's consideration is the "physical, mental, and emotional needs of the child."[19] However, a blanket policy requiring children to be in the care of a parent regardless of the circumstances, even if being in the care of a relative for a period of a parent's custodial time positively promotes the minor child's development, fails to consider the particularized impact to a minor child's physical, mental, and emotional needs.

Finally, Defendant fails to rebut Will's arguments pertaining to the clear legislative policy articulated in NRS 125C.001(2), which encourages both parents to "share in the rights and responsibilities of child rearing." Surely, the ability to

---

[18] *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009) ("The district court should not focus on, for example, ***the exact number of hours the child was in the care of the parent***, whether the child was sleeping, or ***whether the child was in the care of a third-party caregiver or spent time with a friend or relative*** during the period of time in question.") (Emphasis added).

[19] NRS 125C.0035(4)(g).

utilize appropriate third-party caregivers, including relatives, constitutes one of the rights and responsibilities of child rearing.

G. DEFENDANT OFFERS NO RESPONSE TO WILL'S REQUESTED RELIEF PURSUANT TO NRCP 52.

Defendant does not oppose Will's request to amend the Order pursuant to NRCP 52 as requested in his initial Motion. The lack of opposition by Defendant should be construed by this Court that Will's position in this regard is meritorious and that he should be granted his request to amend the Order.[20]

H. DEFENDANT OFFERS NO RESPONSE TO WILL'S ARGUMENT REGARDING THE LACK OF MUTUAL APPLICATION OF THE ORDER.

Will's initial Motion noted the Order appears on its face to violate the mandate outlined in NRS 125C.0035(2) since it provides Defendant additional custodial time while failing to grant Will additional custodial time under the same circumstances. Due to the sparsity of the findings within the Order, it appears the only basis for the lack of mutual application of the Order is due to the fact Will is the father rather than the mother of the minor child.

Defendant fails to offer any rebuttal to Will's position regarding the lack of mutual application of the Order within her instant Opposition, which should be

---

[20] EDCR 5.502(d).

construed as Defendant's acknowledgment that Will's argument is meritorious in this regard.[21]

I. DEFENDANT HAS NOT SUPPORTED HER REQUEST FOR FEES WITH A FINANCIAL DISCLOSURE FORM.

Defendant's request for attorney's fees is not supported by a current Financial Disclosure Form (FDF). EDCR 5.506(a) clearly mandates that any countermotion "involving money to be paid by a party" must be supported by a FDF. Accordingly, Defendant's request for fees must be denied due to her failure to submit a current FDF in support of her instant Opposition.

III.

CONCLUSION

For all the above and foregoing reasons, Plaintiff, William DiMonaco, prays for the following relief:

1. For a complete denial of Defendant's Opposition and Countermotion filed herein;

2. For an order granting Will's underlying Motion in its entirety; and

. . .

. . .

. . .

. . .

[21] EDCR 5.502(d).

3. For any further relief that the court deems just and proper.

Dated this 13 day of December, 2019.

FORD & FRIEDMAN

/s/ Matthew H. Friedman, Esq.

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
2200 Paseo Verde Pkwy., Ste. 350
Henderson, Nevada 89052
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 13 day of December, 2019, I caused the above and foregoing document entitled, **"Plaintiff's Reply to Defendant's Opposition To Plaintiff's Motion for a Trial, for Amended Judgment, and for Related Relief and Opposition to Defendant's Countermotion for Attorney's Fees And Costs"** to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPFamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
Attorney for Defendant	

An Employee of Ford & Friedman

DECLARATION OF PLAINTIFF IN SUPPORT OF PLAINIFF'S REPLY TO DEFENDANT'S OPPOSITION AND COUNTERMOTION

I, WILLIAM DIMONACO, do hereby swear that the following is true and accurate to the best of my knowledge:

1. That I am the Plaintiff in the instant matter;
2. That I make this Declaration in accordance with:
   a. NRS 53.045 (allowing for unsworn declarations made and signed under penalty of perjury in lieu of an Affidavit); and
   b. In support of Plaintiff's Reply to Defendant's Opposition and Countermotion.
3. That I am willing and able to testify to the matters stated herein;
4. That I have personal knowledge of the matters stated herein, except as to those matters stated upon information and belief and as to such matters, I believe them to be true;
5. That in accordance with E.D.C.R. Rule 5.505, I have read Plaintiff's Reply to Defendant's Opposition and Countermotion, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

. . .

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 3rd day of December, 2019.

WILLIAM DIMONACO,
Plaintiff

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

WILLIAM EUGENE DIMONACO, Plaintiff, vs. ADRIANA DAVINA FERRANDO, Defendant.	CASE NO. D-16-539340-D DEPT. E APPEAL NO. 74696,80576 **(SEALED)**

BEFORE THE HONORABLE CHARLES J. HOSKIN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

MONDAY, DECEMBER 18, 2019

APPEARANCES:

The Plaintiff:	WILLIAM EUGENE DIMONACO
For the Plaintiff:	MATTHEW H. FRIEDMAN, ESQ. 2200 Paseo Verde Pkwy., #350 Henderson, Nevada 89052 (702) 476-2400
The Defendant:	ADRIANA DAVINA FERRANDO
For the Defendant:	MICHAEL P. CARMAN, ESQ. 8965 S. Pecos Rd., #9 Henderson, Nevada 89075 (702) 384-8900

LAS VEGAS, NEVADA MONDAY, DECEMBER 18, 2019

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:23:29)

THE MARSHAL: Page 3.

THE COURT: All right. We are on the record, 539340. Appearances, please.

MR. FRIEDMAN: Your Honor, Matthew Friedman, 11571, on behalf of the Plaintiff William DiMonaco who is present in the courtroom to my right.

THE COURT: Thank you.

MR. CARMAN: And Michael Carman, bar number 7639, here on behalf of my client, obviously. I wanted to say -- to start, Your Honor, I wanted to thank actually Mr. Friedman. My client had a health scare, had a viral infection that affected her heart and was in the hospital and he was kind enough to continue it. We got oppositions done and I think we're ready to go today, but I -- I did want to thank Mr. Friedman. It was kind of a last minute thing and I apologize to the Court for any inconvenience.

THE COURT: Not a problem. All right. We are here on Plaintiff's motion, concerns about the October 7th order. Mr. Friedman.

MR. FRIEDMAN: Judge, I -- I won't regurgitate. I'm going to try and summarize the main points. I know you'd be

here -- so I -- I think in broad strokes what -- what we believe that the Court needed to do at the last hearing was start from the premises of the last order. And I think if you had done that, you had -- the -- what we believe what would have been revealed is the issue of the delegation and care and custody of the minor child during each party's custodial time; specifically my client's custodial time, had already been dealt with by a prior order. Exception of the Wednesday transition day which was amended by Judge Duckworth.

THE COURT: Didn't we modify that prior order, though?

MR. FRIEDMAN: I'm sorry?

THE COURT: Did we modify that prior order

MR. FRIEDMAN: I mean, did your order modify the prior order?

THE COURT: Did we modify the prior order prior to me looking at that? Yeah, I thought we did.

MR. FRIEDMAN: No, I don't believe so.

THE COURT: All right.

MR. FRIEDMAN: So I -- I think if we start there, we see that the issue of the delegation of care and custody during my client's work hours on Thursday and every other Friday except through the Wednesday transition that it was already provided for; specifically a request had been made by

the Defendant and it was denied. So he could delegate. Now, it wasn't -- it wasn't a unilateral or sort of a -- an aggrandizement of his rights. It was with controls. She had an ability to object to, you know, health or safety issues, certainly have -- and exercise the right to information of who he was delegating that authority to. But the right to do so vested the -- the parental responsibility of the delegation of the care and custody within reason vested with my client. So that's where we started.

Then the Defendant filed a motion and sought to abrogate or change that, right. We oppose that motion. And so I believe, and I think that the -- the case law supports, that, at that point, if there's a requested custodial modification, specifically taking -- well, I --

THE COURT: I -- I need you to -- I need you to -- to specifically deal with that, because I didn't modify custody.

MR. FRIEDMAN: Well, Your Honor --

THE COURT: I made no change to the custody order and the -- the difference in time I specifically ordered would not affect --

MR. FRIEDMAN: I'll address -- I'll address both those points, Judge.

THE COURT: Thank you.

MR. FRIEDMAN: First and foremost, I believe the Wallace (ph) case in his progeny makes clear that any modification of time is a custodial modification, not a designation; not a custodial designation, but a modification. Okay. Now when you say you -- you did -- in fairness to Your Honor in your order, you did -- or in the minute order you did say you didn't think it should -- it should not be counted for the purpose of any modification. I don't -- I believe that would be a reversable error. I believe the Court has consistently held that the Court must do a best interest analysis before doing that. So even if a subsequent court was to review Your Honor's order, they would still have to perform a -- a best interest analysis. They couldn't simply say well, Judge Hoskin said we shouldn't count this.

And -- and I believe that Judge Hughes just had this and it was up on appeal on -- on the issue of, you know, a -- a J case coming up and saying well, if you complete certain requirements, then it will automatically go back to joint physical and I think the Court said no, I have to undertake a best interest analysis. And I think that the case law is complete in stating that we can't do those carve-outs. The Court has uniformally held -- surreptitiously obtained recordings. If best interest is in play, we have to consider best interest. So I don't know that that would be sufficient.

So I do think -- and -- and in fact, Judge, even in -- I'm sorry, if you're going to say -- even in Mr. Carman's opposition, they don't dispute the fact that there was a -- there was a -- an increase in custodial time.

THE COURT: So is -- is your argument that having the child be with a parent rather than a third party care giver not in the child's best interest?

MR. FRIEDMAN: It -- it's not that it could never be, Judge. It -- it's absolutely possible that with appropriate factual findings supported by substantial evidence, this Court could have found that. Our position is simply that, A, and this is where the motion -- the core of the motion, 52 and 59, that the findings themselves are okay. And while I'm not accusing this Court of -- of legal error, what I am saying is that the opaqueness of the findings are -- are such that it does have a propensity to obscure legal error. And the case law is very clear. You cannot make findings that have a propensity to obscure legal error. And we cannot possibly, respectfully to Your Honor, from the findings made when you say considering best interest, that there's nothing that we can do to -- to look into what was weighed.

When you say considering what Judge Duckworth does and -- and, you know, in sort of two sentences, it's very hard

for us and my client to readily understand what was -- what was found, what the findings were and de -- determine whether any legal error was -- was made. Okay. So that's the first piece. That's the 52 portion which as you know wasn't really dealt with in Mr. Carman's opposition.

As to 59, where I think we get there is once we realize or assuming that Your Honor is with us; I don't know that you are, but assuming Your Honor is with us that those findings are lacking in specificity and are so opaque that they have a tendency to obscure what perhaps may have been the Court's thinkings and -- and what the rationale was.

Then we say okay, well, we need to amend those findings. And the problem then we come to is how can we amend those findings when the Court is -- and -- and the progeny of case law supporting this, you have to support those factual findings by substantial evidence which there was none. The Court took no evidence. And so, that's where the 59 piece comes in.

THE COURT: I'm sorry, your -- your client didn't sign affidavit and she didn't sign an affidavit?

MR. FRIEDMAN: If -- if Your Honor is -- if Your Honor is of a mind that that in this courtroom should amount to substantial evidence to support the factual findings that the progeny of case law, you know, Arcella (ph), you know,

which is even legal custody, that the types of decisions that the Court -- that the body of case law moving towards what this Court is tasked with doing and be -- then -- then you may feel that way. We would disagree.

We believe that, without a doubt, in a case like this, you know, you're talking about parsing of a bundle of rights. Okay. You're talking about the -- the bundling of rights, parental rights, supported by the constitution of a parent's rights that the legislature has said, we want both parents to share equally in the care and custody and the upbringing of the child. Okay.

This is a situation where this was my client's custodial time. The Defendant sought an order reaching into his custodial time, to his home and abrogating asking this Court --

THE COURT: It wasn't his home. That's --

MR. FRIEDMAN: Hang on. But Judge, if you'll -- if you'll allow me to continue. Asking this Court to say during his custodial time, during his -- what is to -- to be -- ostensibly, Judge, and -- and I would -- I would analogize as follows. Were these parties married or living in one home and was this Court to undertake a decision to decide what two parents together could do regarding the care and custody of a minor child? We would all agree I think that the highest

scrutiny should be applied to a court -- to a public office, to -- to the government telling a parent or parents where they could place a child over an objection. Okay. And not to say that this Court can't, but to do so without offering those parents the rights to due process, to -- to witnesses, to evidence, to confront evidence against them and confront witnesses.

So in this case, why should it be any different when these parties are separated? We've already parsed the time and given them ostensibly two distinct homes. And this is during that parent's time and they have asked this Court -- now this wasn't what Your Honor wanted to do. This was brought before you candidly. And so you didn't -- you didn't decide to do this. Defendant asked you to do this. But to say during Mr. DiMonaco's time you were going to say Mom -- and -- and then I would add one other -- I would buttress this with one other piece.

Mom to the -- to the -- Mom trump any third party, and that gets into another, I think, very important constitutional position Judge which is your order doesn't say Challenger, the after school key -- after key (sic) program, right, the after school program, or Mom. Your order says any third party.

Now, my client was not on notice when he came here

today that he could never designate his significant other or his wife or his mother or his brother or a full-time live-in nanny. He was under notice that they wanted her to the exclusion of Challenger. Your Honor's order then went beyond that and said any third party. Okay. And so he didn't have adequate notice that -- that those rights could be forfeited.

THE COURT: So is he -- is -- is his argument that he could come up with a third party that would trump Mom?

MR. FRIEDMAN: Well, I'd like to address that too, Judge.

MR. CARMAN: The argument in the motion is that --

MR. FRIEDMAN: Counsel.

MR. CARMAN: -- he has a right to select whomever he wants during his timeshare.

THE COURT: Well, I need --

MR. FRIEDMAN: Counsel.

THE COURT: -- Mr. Friedman to --

MR. FRIEDMAN: Okay. So first and foremost, look at the prior order. He did. Under the prior order, he did. Under the order that was in place before Defendant moved this Court, he had the absolute right to select a daycare provider, not absolute in the sense that Defendant could never object for a reason that was reasonable, but Defendant had specifically said, me over a full day of daycare when the

child was not in school and the Court had said no. Okay. They sought to change that. So he had that right. Okay.

Now no, it's not absolute, but certainly -- Judge, and this is, again, something I think we addressed in our brief but I think that we would like to look at. Defendant cited to 125C double 035 and double 04. Okay. As a presumption that biological parent trumps. And Your Honor sort of vaguely referenced it in the minute order. At least I think that was what Your Honor was referring to.

When I look at those statutes, those statutes are looking at the vesting of rights of parentage in a third party that is not a biological parent and giving a preference therein. That wasn't at issue here. This is two biological parents and the right of one biological parent that had already been confirmed by a prior court to designate as a parental responsibility the care and custody of a minor child during working hours in his custodial time.

So I -- again, when you say -- Your Honor stated it on the hearing and then in your minute order again and -- and Counsel references it in both -- in his opposition and -- and in his original moving paperwork. I don't think the statute stands for the proposition that it's being cited to at all. And if I'm -- if there's another statute that -- that we're talking about, I -- I certainly -- I -- I couldn't find it.

So in my view, again, I think the first answer would be the order that existed prior to Defendant moving this Court provided exactly that. Right. Not without check. Not without legal custody rights. Not without the ability of Mom to say this should be otherwise --

THE COURT: Or to --

MR. FRIEDMAN: -- for -- for a --

THE COURT: Or --

MR. FRIEDMAN: -- reasonable basis.

THE COURT: Or to request a modification.

MR. FRIEDMAN: Okay. That's fine.

THE COURT: Now isn't that --

MR. FRIEDMAN: That would be a modification --

THE COURT: -- part of that argument?

MR. FRIEDMAN: -- modification of a custodial order which, again, brings me back to 52 and 59.

THE COURT: It's not a modification of a custodial order. It's --

MR. FRIEDMAN: How --

THE COURT: -- a modification of visitation time at --

MR. FRIEDMAN: Wallace --

THE COURT: -- at best.

MR. FRIEDMAN: Wallace requires substantial evidence

which -- which would require factual findings of substantial evidence. You would still have to do best interest. And I would say again, respectfully, Judge, the -- the order that we got, last specificity, the orders -- the -- the findings were opaque in such a way that I believe it masks legal error and I believe that -- were you to amend those findings to reveal that the ruminations, which I'm sure you have. I respect Your Honor immensely.

I know that you probably have your -- your feelings and -- and had looked at what you have, but I don't know given my client's position that you could have gotten there without taking actual evidence. Proffers are not evidence. They're not subject to cross examination. They're not subject to authentication. They're not subject to the Rules of Evidence.

THE COURT: No, but I had the Supreme Court Justice tell me a few weeks ago that that's what she -- she would look at, so --

MR. FRIEDMAN: Understood.

THE COURT: That's only --

MR. FRIEDMAN: And --

THE COURT: That -- that's only one of -- of the entirety --

MR. FRIEDMAN: Understood.

THE COURT: -- so --

MR. FRIEDMAN: So and -- and the -- I think Your Honor knows where I'm going. If I can reserve some time for rebuttal and I'll leave it at that.

THE COURT: I appreciate it.

MR. FRIEDMAN: Thank you.

THE COURT: Thank you. Mr. Carman.

MR. CARMAN: All right. I'm -- I'm not sure which part of that to respond to first. Substantial evidence doesn't mean you have to have a full evidentiary hearing. In this case, we had affidavits. And, you know, all the case law referenced, all the Supreme Court principles referenced, don't take away this Court's ability to render a summary judgment. If viewing his evidence in its most favorable light, you're inclined to rule against him, you can grant summary judgment.

So there is no -- you know, all these cases that deal with evidentiary hearings, deal with what should happen in a custody case, it does not -- again, if you're presented with the facts by both parties and you're viewing them in their most favorable light and you've rendered -- you -- you can make a decision based upon a legal determination, there is no reason for a full fledged evidentiary hearing.

The principle that they're fighting for is every single modification of anything in a custodial agreement no matter how minute would require -- would -- would require a

full fledged evidentiary hearing before there's a change.

I don't believe that that's what our case law stands for and I think that would be contrary -- I -- the slippery slope on that would be that this court system would be bogged down for months with a backlog of evidentiary hearings on the most minute issues even when the evidence is a hundred percent crystal clear where the cases are going to be decided. So --

THE COURT: But just -- just so you're aware; Mr. Friedman's correct. The Court of Appeals has intimated that that's what they're expecting at this point in time; although, another member of the Court of Appeals didn't really confirm that when confronted a few weeks ago.

MR. CARMAN: Well, and this has been discussed at CLEs with the Court of Appeals. And every single time that this question is brought up, if we want to talk about CLEs and about presentations by the Court of Appeals, every time it's brought up and it's questioned are you really saying that courts need to conduct full evidentiary hearings, their -- their answer is well, no, we need affidavits. No, the Court can have the parties raise their right hand at a motion hearing, if there's a material dispute of fact that's relevant to the determination before the Court. It's all -- you know, you're right. The case law is very unclear right now as to what judges are supposed to do.

I do not believe that the Court of Appeals of Nevada truly intends that in every dispute over any type of timeshare, a dispute over whether a child's hair should be cut, requires an evidentiary hearing. It certainly requires some evidence, affidavits. Offers of proof by the parties can be accepted as part of the record. If there's an in -- undisputed offer of proof, it's still evidence the Court can rely upon, and other Court of Appeals and Supreme Court decisions have made it really clear.

If you'll look at the actual decisions that they've rendered, they rely upon affidavits in the record. They rely upon the moving papers of the parties. They rely upon other evidence other than things that occur at trial. Trial is just one part of the process.

So I just don't agree. I don't believe that Wallace stands for that. I -- listen, there's a lot of case law that talks about judges making best interest determinations based upon evidence and based upon hearings. I do not believe that that is the intent of the Court. Maybe I'm wrong. But I don't -- if that were truly the case, it would render Rule 56 inoperable. There would be no summary judgment. It would be contrary to the Rules of Civil Procedure that allow you to view evidence presented in its most favorable light and make a determination without a trial. So it -- it doesn't make sense

and the Rules of Civil Procedure still do exist despite that case law.

So I do think that the Court can render a decision based upon the offers of proof. And my reading of your order is that you heard argument; you heard his argument, you've accepted them in their most favorable light. And you determined that -- and, again, going to the priority statute, we have NRS 125C.004. It creates a parental priority. I'm not saying it's directly applicable in every case and a parent automatically gets the right to care for a child over third party. But there is clearly a public policy in favor that's been recognized by the legislature and by our Supreme Court and other case law.

But, I really think a mountain is being made out of a tiny little molehill here. Judge Duckworth previously in this case addressed this issue. Under the law of this case, he put in place this hybrid system. We're not going to do a right of first refusal. One of their arguments in their papers was that this has to be mutual. It's ironic that Judge Duckworth specifically rejected it. He said I'm not going to do a mutual right -- right of first refusal because it creates too much conflict. So what I'm going to do is carve out specific times that we believe are in the best interest of the child which is -- and this Court has adopted Judge Duckworth's

order.

And the one thing that Mr. Friedman doesn't want to talk about is subsequent to Judge Duckworth's order, Dad readily allowed Mom to care for the child after school outside of the order. There was a de facto arrangement between the parties that existed for quite some time before Dad got angry at Mom and suddenly rescinded it. So there's a lot of facts that don't quite jive with that argument.

I don't know if you want me to go into the Troxel (ph) argument is just not applicable to this case. He's correct if a party -- two parents are an intact married couple making decisions on behalf of their child, the Court has no place making a decision in a case. That's not the case here. We have two parents who are divorced and we have Rivero. Rivero specifically says that both parties have a right to select who cares for their child. That is the dispute before the Court, and when the parties don't agree, the Court has to decide.

This idea that well, what about his family, what about his girlfriend or fiancee; what about if he gets married and he has a wife. First of all, I don't think we're necessarily going to be here if there is a reasonable alternative. The -- oh, the one alternative argued in court though is the one that the Court decided on. If he wants the

findings amended to say that, you know, it -- this is -- only applies to Challenger and if Dad has other care givers to propose, there could be further hearings; I'm fine with it.

We did not respond to the NRCP 52 argument. We believe that the findings of the Court are substantial. We believe that they are correct and they're upholdable in this case, but I would never begrudge you the right to clarify your orders. And to -- it -- you know, if we want to go through the specific best interest factors, they don't really apply to this case at all. Conflict between the parties doesn't really have a bearing on who helps the child with their homework after school, Mom or a third party.

None of the traditional custodial factors would really directly apply in an analysis. If we want to go through that and specifically designate -- or specifically make determinations that they don't apply and you're relying upon any other factor that is in the best interest of the child, we can do that.

But I -- I don't know what else to respond to and I'm happy to answer any question you might have, Judge.

THE COURT: All right. Thank you.

MR. FRIEDMAN: A couple points briefly, Judge, just starting with the -- the last piece. If the Counsel's argument that -- that conflict is a factor doesn't apply was

one of the fundamental arguments that we made at our original motion hearing. These are high conflict parents. And by taking away the right of after school care and vesting it in the Defendant's home, you're adding in person exchanges to each of my client's custodial days where there would otherwise be none. So to say it doesn't apply, it just haply mischaracterizes the facts in issue.

With regard to issues of -- of the Troxel at issue and saying that, you know, this isn't a -- a married couple, these parties were never married, but that's beside the point. My point wasn't, Your Honor -- and I think you understood. My point wasn't saying you should treat them as though they are. My point was saying the right is no less fundamental. And so because of that, that's where we believe this Court should err on the side of caution and certainly when -- when discussions of summary judgment are at issue.

We're talking about high scrutiny fundamental rights of parentage under the constitution. I think this Court would be very, very, very, very -- it should be very leery of even entertaining issues of summary judgment in these types of matters.

And, again, I -- I think the Court -- what I would remind the Court is -- is, you know, Counsel may and Defendant may and even Your -- Your Honor may feel that my client --

that -- that the rights of care and custody, the delegation of responsibility to a third party care giver and then obviously the loss of that time, which I talked about at the initial motion hearing, meaning the after school program proceeded as planned. My client had an ability to still conduct after school -- after school, albeit an hour-and-a-half later. But after school scheduling homework, those types of things, the way he -- he intended.

And by Your Honor's order, that -- that -- those rights were subsumed by the Defendant. And I think he's fair to -- insofar as when Defendant takes the child home, Defendant's going to empty the backpack and they're going to do homework in an after school routine. So that's going to happen every day at her home. And in the, you know, Safekey or Challenger after school program, the child is going to have extra instruction and then thereafter my client would pick the child up, meet with his other biological daughter together and they would have an after school routine. It might start at 5:00 instead of 3:30, but they would have that routine.

And by basically the Defendant having that in her home every -- every day starting immediately after school, that routine is -- is abolished. It doesn't exist. That right leaves, that bundle of rights, we've taken a stick from that bundle that existed between him and the child.

Your Honor may think that that is --

THE COURT: Is there something prohibiting him from still doing that when he picks up the children?

MR. FRIEDMAN: Not -- if it's already done? If the -- if the backpack's already empty and the homework's already done, I think yeah.

THE COURT: Well, why wouldn't he review the homework with the child?

MR. FRIEDMAN: Instead of -- it's --

THE COURT: Why wouldn't that be --

MR. FRIEDMAN: -- not there.

THE COURT: -- something that it --

MR. FRIEDMAN: It -- the -- the assignments from the prior day that -- so I get a folder. This is maybe off the legal point, but when I get a folder from my kid every day that says keep at home and it's his homework. Right. The side that says keep at home, when my kid comes home, we empty the folder and we take the keep at home.

THE COURT: Oh, I see.

MR. FRIEDMAN: That's always empty. And the homework's already done.

THE COURT: I see.

MR. FRIEDMAN: Okay. So that -- that entire routine that they would go through, okay, you understand, that's my

point. It's not that he wouldn't look through it. Of course as a diligent parent, he does, but the ability to have that routine in his home, that bun -- that stick is removed. Okay.

With regard to the 125C double 04 just to reference -- and I think Your Honor is -- I think you're on the same page as me. That's -- I -- that's talking about if the Court is going to give custody -- custody rights to a non-parent, the type of findings of essentially unfitness you have to make of a biological parent, how that applies to this case, I cannot see.

THE COURT: Well, aren't you arguing that I'm making a custody modification?

MR. FRIEDMAN: No. No. But Judge, 125C.0035 and 125C double 04, double 04 as Counsel just cited to you says if in double 035 the Court is going to give custody rights to a non --

THE COURT: I see.

MR. FRIEDMAN: -- biological parent, you must make findings of unfitness of a biological parent. I don't see how -- they cited to it. I don't see how it applies at all.

THE COURT: I see.

MR. FRIEDMAN: Okay.

MR. CARMAN: I -- by analogy we cited to it.

THE COURT: I understand.

MR. FRIEDMAN: Okay. I -- I again, I don't see -- And then -- and then finally, as to reciprocity, the reason that we referenced it was not because we think we -- if -- if it wasn't clear in our original moving paperwork and again today, what I think procedurally would have to happen is to amend the findings and -- and have an evidentiary hearing. I think that's what needs to happen under the law, but what we wanted in the original opposition that we filed was allow these parents to conduct their business during their custodial time with legal custody oversight for each of them, meaning Mom can designate third party care givers where necessary and Dad can as well. Okay. That's what we wanted.

And the reason that we brought up reciprocity and the fundamental rights is that because if we look at the terms of your order, they're not reciprocal. Very clearly, Dad is prohibited from designating any third party ever during after school care. And there's no such prohibition on Mom. And interestingly while -- I'm -- I'm very sorry Defendant's had health issues and I feel very about it, the factual issues -- what we understand to be the case is my client got no notice that Defendant had any health issues. The first notice we had of her, what I understand to be a serious health issue, was from Defendant's Counsel asking for a continuance.

My understanding, there was an extended period of

hospitalization. At no point in time the Defendant feel -- because the order doesn't make it evident that she does -- at no point in time did she feel it necessary to contact my client and say I'm in the hospital, I won't be caring for the child after school, someone else will, and I'm freely designating whomever I see fit. To this day, he still doesn't know, who did that care. And that's, I think, a factual operative issue that emerges from the order which is as to reciprocity.

I -- nobody begrudges Defendant. In fact -- and -- and I thank -- I thank Counsel for saying, you know, in fact he -- he mistakenly asked for a continuance yesterday because we thought the Defendant's health condition -- and we said absolutely because it was so severe. So nobody's faulting her. Health is what it is and we -- my client would like nothing more than to be supportive of the child during these issues, but you can see how -- even from that -- let's say -- thankfully, my understanding is Defendant has recovered, but let's say it was of such a grave nature that Defendant was incapacitated. By this order, my client ostensibly has given up what was his after -- after school care plan.

And -- and ostensibly has no recourse. So even if he wanted to be helpful, even if he said don't worry about it, we'll use my after school care plan that I was using during my

custodial time and you just worry about your days, oh, you need to use somebody an hour across town, don't worry about it. You do what you need to do during your time to be healthy and I'll do my -- he can't, because he -- he's given that up by operation of this order and it's always Mom to the detriment of any third party to Dad.

So Judge, I -- I just -- and I understand Your Honor's frustration, and -- and I would -- I would close with this. I know that it very may -- it very well may be the case that judges every day make orders whether they're legal custody orders or these type of orders. And you make them summarily and the parties abide them. I don't believe that that makes it any less the case that the law requires more. I just think it's a case that often times litigants don't object and they let them go. But in this case, my client's availing himself of the legal process I think he's entitled to.

THE COURT: Now I -- I think that last point is well taken by the Court, because when I drafted the order that was entered on October 7th, in my mind, it's a very clean, simple, clear issue. And when you brought it back up, my first thought was what are we doing. Why are you playing this game again. And then I reviewed my order and you are absolutely right. There's no law in there. There's a reference to best interest. And I believe that I drafted it that way because in

my mind I'm just solving one problem and letting the parties move on and -- and designate themselves. So part of your argument is well taken by the Court and I do believe that it's appropriate that the order be amended, that find -- specific findings be made with regard to that.

Certainly, I'm not of the opinion, notwithstanding some of the inconsistent direction that we could glean from our Appellate Courts that not every issue needs an evidentiary hearing. And I don't believe that this is an issue that needs an evidentiary hearing under my understanding of the law.

With that being said, I am not opposed to once I get this done taking it up on a writ. I would love some direction.

MR. FRIEDMAN: Understood.

THE COURT: I'm -- I'm afraid of what that direction might be --

MR. FRIEDMAN: You might say that.

THE COURT: -- for the very slippery slope argument that Mr. Carman made. But -- but certainly the Court understands the realities of the argument. It may not agree with a lot of the argument, but certainly there's a need for more support in this order and I -- I couldn't agree more that we make a lot of decisions that we don't put that much care and -- and consideration in, but certainly given where we are

in this when I think that it's appropriate.

I'm not inclined to set an evidentiary hearing or take any further evidence beyond what's already been presented. I believe the law allows me to make the kind of decision that I'm making in there. There were some other arguments that I will -- will incorporate in that the Court did not consider the reciprocity kinds of situations will be contained in that order as well. But I'm not inclined to stay that order as written, although I do believe it needs additional findings to put you in a position to do what you want to do with that order moving forward. So I will get that drafted and get that to you in the near future.

Other issues that are before the Court today?

MR. FRIEDMAN: I think that's it.

MR. CARMAN: I think attorney's fees is obviously always out there.

THE COURT: It is. And as I indicated at first blush, I was ready to award fees, but I do think there were some parts of the argument that are well taken by this Court and I've been persuaded by it. So I don't believe that I can find bad faith given the arguments that -- that have been put in place. So each side will bear their own fees.

MR. CARMAN: And -- and as I've indicated, more findings are never a bad thing.

THE COURT: No. No.

MR. CARMAN: So I -- I understand where the Court's coming from.

THE COURT: Yeah. Yeah. Well, I -- I don't think I need to ramble on about it anymore. So --

MR. FRIEDMAN: Thank you, Judge.

THE COURT: -- I appreciate it.

MR. CARMAN: All right.

THE COURT: I'll get it to you.

MR. CARMAN: Thank you.

MR. FRIEDMAN: Thank you, sir.

THE COURT: Thank you.

(PROCEEDINGS CONCLUDED AT 10:51:40)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

Electronically Filed
1/6/2020 1:47 PM
Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William DiMonaco, Plaintiff v. Adriana Ferrando, Defendant	Case No.: D-16-539340-C Dept.: E Dates: September 26, 2019 & December 18, 2019

AMENDED ORDER

The parties were before this Court for a hearing on September 26, 2019, where this Court heard Defendant's *Motion to Allow Parental Afterschool Care* (Motion) and Plaintiff's *Countermotion for the Child to be Attend [sic] Champions Afterschool Learning Program during Plaintiff's Custodial Time* (Countermotion).

This Court originally took the matter under advisement to give the Court an opportunity to review Judge Duckworth's prior decision on a similar issue, which he heard on June 21, 2017, in an attempt to maintain consistent decisions between the departments relating to this family. As such, this Court reviewed the video record of Judge Duckworth's decision,

Non-Trial Dispositions:
☐ Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR
☐ Default Judgment
☐ Transferred
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Other:

Trial Dispositions:
☐ Judgment Reached by Trial
☐ Disposed After Trial Start

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

which was his attempt to create a hybrid arrangement in a similar situation. The original Order resulting from the Motion and Countermotion was entered on October 7, 2019.

Plaintiff then filed a *Motion for a Trial, to Amend Judgment and for Related Relief* on November 1, 2019. Defendant filed an *Opposition and Countermotion* on November 20, 2019 and, after a stipulated continuance, a hearing was held on December 18, 2019. It is important to note that Plaintiff did not object to the Court making its original decision without taking further evidence until after the October 7, 2019 Order was entered. Although Plaintiff argues that the October 7, 2019 decision goes "well beyond the relief sought by Defendant," such is incorrect. No additional custodial rights were granted to Defendant.

Defendant's August 28, 2019 Motion contains a *Declaration of Andriana Ferrando*, which complies with EDCR 5.505 and testifies that the allegations and facts presented in the Motion are true. Plaintiff's September 9, 2019 Countermotion does not contain a declaration consistent with EDCR 5.505. As such, Plaintiff did not affirm the information in his Countermotion as correct. Such raises concerns as to the accuracy of the allegations contained therein. However, Plaintiff did file Exhibits to support

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

his requests on September 9, 2019. This Court reviewed all information submitted, in addition to the hearing video referenced above. Plaintiff did provide a verification for his November 1, 2019 Motion and Defendant provided a declaration for her November 20, 2019 Opposition and Countermotion. Such evidence provides the basis for the decision contained herein.

Plaintiff's request for amended or additional findings pursuant to NRCP 52(b) is granted and this Order provides those amended and additional findings.

Plaintiff now argues that this Court is "required to conduct an evidentiary hearing" prior to entering its October 7, 2019 Order, alleging a modification of custodial rights. However, no custodial rights were modified.

Plaintiff argues that *Gordon v. Geiger*, 133 Nev. 542, 402 P.3d 671 (2017) controls. However, the *Gordon* case is distinguishable as that court *sua sponte* ordered a permanent increase in one party's visitation and a reduction of the other's custodial time. *See Id.* at 545. No permanent increase in visitation, or reduction in any custodial time was ordered in the October 7, 2019 Order. This Court gave direction as to after school care

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

after considering the best interests of the child, not a modification of visitation or custody. The conclusion was that spending time with a fit parent, rather than an after school program is in the best interests of the child.

The Nevada Supreme Court gave direction as to when an evidentiary hearing is necessary in custody cases.

> "A district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates 'adequate cause.' *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993). 'Adequate cause arises where the moving party presents a prima facie case' that the requested relief is in the child's best interest. *Id.* at 543, 853 P.2d at 125 (internal quotation marks omitted). To demonstrate a prima facie case, a movant must show that '(1) the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching.' *Id.*"

Arcella v. Arcella, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017).

In this case, neither party requested a modification of the custodial orders in this case. Notwithstanding Plaintiff's attempt to redefine the issue, the conflict surrounded a few hours per week of after-school care, not custody modification. Thus, this Court did not consider any modification, but simply limited the decision to result from the relief requested. There is a best interest component in this Court's decision and in the "adequate cause" analysis. There is also a best interest component to the relief requested,

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

which may be analyzed under the provisions of NRS 125C.0035(4). However, no physical custody modification was considered.

NRS 125C.001 states:

> "The Legislature declares that it is the policy of this State:
>
> 1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have ended their relationship, become separated or dissolved their marriage;
>
> 2. To encourage such parents to share the rights and responsibilities of child rearing; and
>
> 3. To establish that such parents have an equivalent duty to provide their minor children with necessary maintenance, health care, education and financial support. As used in this subsection, "equivalent" must not be construed to mean that both parents are responsible for providing the same amount of financial support to their children."

Notable by its absence is any reference in the State Policy to third party caregivers providing care for the children.

This Court finds Judge Duckworth's analysis on June 21, 2017 persuasive, while considering the policy that the children's best interests are better served when they spend time with their parents than in daycare or with a third party (*See* NRS 125C.001). Additionally, Plaintiff's argument for consistency for the child and his ability to choose where the child is located

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

during his timeshare was considered. However, such does not overcome the policy considerations or the fact that children with being with fit parents is in their best interests. Plaintiff's argument did not provide adequate cause to consider further proceedings. Defendant's close physical proximity to the school and the minimal disruption to Plaintiff's ability to pick up the child were also considered.

The information concerning the Plaintiff's proposed afterschool care is not persuasive as it appears to be an afterschool day-care which this Court does not find to be preferable to an available fit parent.

Plaintiff's argument that he is the only one who has the ability to determine the care of the child while in his custody is not supported by law. These parties share joint legal and joint physical custody. As such, both have rights to make decisions regarding their child. *See Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009).

Although no custody modification was requested or considered, best interest of the child was considered in addition to determination whether adequate cause for further proceedings existed. In analyzing the best interest of the children, the statutory guidance for determining best interests is

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

enumerated in NRS 125C.0035(4). Those factors, as they relate to the single issue presented herein are reviewed below:

The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody. The child is five years old and not of sufficient age or capacity to form an intelligent preference. This factor is neutral.

Any nomination of a guardian for the child by a parent. No nomination occurred in this case.

Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent. This is a key factor in the current analysis and demonstrative in the best interest analysis. Plaintiff is arguing that the child should be in the care of third parties of his choosing over being in Defendant's care. Such is contrary to having frequent associations and a continuing relationship with the other parent. This factor favors Defendant.

The level of conflict between the parents. There continues to be conflict between the parents. The continuing litigation over whether the child's best interests are served by a fit parent or third parties evidences that conflict. Plaintiff asserts that the conflict is created by

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

Defendant because she argues that the child's interests are better served in her care over third parties. Plaintiff states that Defendant's argument "would blur the lines of custodial authority, inhibit familial cohesion in [his] household and severely confuse [the child]." This Court finds none of those statements to be accurate. Plaintiff also asserts that permitting the child to stay with Defendant until he picks the child up after work requires additional exchanges, and therefore interactions between the parties. While Plaintiff is correct in that assertion, it does not supersede the other considerations. This factor favors Defendant.

The ability of the parents to cooperate to meet the needs of the child. The parents' ability to cooperate is an important factor. The Court hopes that parents are able to see past their animosity towards each other and focus on what might be best for their child. Unfortunately such is not the case here. Plaintiff demands to be in total control over his "time" with the child, and apparently fails to see any good in the child spending any additional time with Defendant. Similarly, Defendant demands that the child spend time with her over third-party caregivers. Such demonstrates an inability to cooperate to meet the needs of the child and results in this factor being neutral.

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

The mental and physical health of the parents. No evidence relating to the health of the parents was presented. This factor is neutral.

The physical, developmental and emotional needs of the child. Plaintiff indicates that the child's needs are better served by remaining in day-care or in the care of others after school while he works. However, a child spending time with a fit parent better serves their needs that being in the care of a third-party. This factor favors Defendant.

The nature of the relationship of the child with each parent. Neither party provided any evidence of their relationship with the child. Ultimately, this factor is neutral.

The ability to maintain a relationship with a sibling. No evidence was presented on this factor, resulting in a neutral finding.

Any history of parental abuse or neglect of the child or a sibling of the child. No evidence was presented on this factor, resulting in a neutral finding.

Whether either parent has engaged in an act of domestic violence against the child, a parent of the child or any other person

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

residing with the child. No evidence was presented on this factor, resulting in a neutral finding.

No evidence was received concerning any abduction of the minor child which renders that factor neutral.

Considering the "other things" portion of the statute, the Court is determining that Plaintiff is working and, therefore unable to care for the child after school. Such is not a slight against Plaintiff or his need to work, simply a reality. Defendant is available and able to care for the child until Plaintiff is able to exercise his custodial time.

Considering all that, and making a best interest analysis of the NRS 125C.0035 factors, the issue of an unavailable parent after school in relation to preference between a fit parent and a third-party care giver shall be resolved as follows:

Only on Plaintiff's custodial school days, from afterschool until Plaintiff is able to pick up the child after work, the child shall be cared for by Defendant, over any third-party care-giver.

If a similar situation arises during Defendant's custodial time, as Plaintiff is also a fit parent, it is the Court's intention that he also be given preference over any third-party care-giver.

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

All other aspects of existing court orders, not in conflict with this decision, shall remain in full force and effect.

The additional time which may be exercised by either party as a result of this decision shall not be considered as a basis to modify custody.

Plaintiff argues that he is entitled to a "new trial" under NRCP 59(a)(1). As no trial was originally granted, it is interesting that a new trial would be requested. This Court presumes that Plaintiff is arguing that he was "prevented from having a fair trial." Such is not the case, as the issue of a few weekly hours of afterschool care never provided adequate cause for an evidentiary proceeding. Plaintiff alternatively (after reviewing the October 7, 2019 Order) sought an evidentiary hearing pursuant to NRCP 59(a)(2), which deals with "[m]isconduct of the jury or prevailing party." Plaintiff cites no basis for relief under NRCP 59.

Plaintiff further argues that "NRS 125C.050 only exists because the Nevada Legislature determined that there are situations wherein the child's best interests dictate that a third party should have custodial time with a minor child, even over a parent's objection to the same." While an interesting argument, NRS 125C.050 references the ability for certain relatives and other persons to petition for the right to visitation. In this case,

the afterschool care proposed by Plaintiff did not file such a petition. Even if it did, it likely could not meet the standard in NRS 125C.050(2), (3) and certainly not (6).

Finally, Plaintiff argues that the order restricts his "parental autonomy while placing no such restriction on Defendant in the same circumstances." The restriction on Plaintiff's ability to provide afterschool care was placed upon him by his employer, not this Court. This Court simply performed a best interest analysis between a fit parent and a third-party care-giver. As to the fairness in the restriction, that argument was well taken and the Order amended as a result.

As the Court understands the positions of each party, it still cannot find bad faith on either side. Such eliminates a basis for attorney's fees pursuant to NRS 18.010. Each side shall bear their own fees and costs for these hearings.

IT IS SO ORDERED on January 6, 2020

CHARLES J. HOSKIN
District Court Judge

NEO

Electronically Filed
1/6/2020 2:47 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * *

William Eugene DiMonaco, Plaintiff. vs. Adriana Davina Ferrando, Defendant.	Case No: D-16-539340-C Department E

NOTICE OF ENTRY OF AMENDED ORDER

Please take notice that an ORDER FROM AMENDED ORDER was entered in the foregoing action and the following is a true and correct copy thereof.

Dated: January 06, 2020

Cassie Burns
Judicial Executive Assistant
Department E

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☒ I emailed to the following counsel, and placed a copy of the foregoing NOTICE OF ENTRY OF AMENDED ORDER in the appropriate attorney folder located in the Clerk of the Court's Office of:

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

NEO

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway Suite 350
Henderson, NV 89052
mfriedman@fordfriedmanlaw.com

Michael P. Carman, Esq.
8965 S Pecos RD STE 9
Henderson, NV 89074
mike@fcpfamilylaw.com

Cassie Burns
Judicial Executive Assistant
Department E

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

Electronically Filed
1/6/2020 1:47 PM
Steven D. Grierson
CLERK OF THE COURT

ORD

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William DiMonaco,
Plaintiff
v.
Adriana Ferrando,
Defendant

Case No.: D-16-539340-C
Dept.: E

Dates: September 26, 2019 &
December 18, 2019

AMENDED ORDER

The parties were before this Court for a hearing on September 26, 2019, where this Court heard Defendant's *Motion to Allow Parental Afterschool Care* (Motion) and Plaintiff's *Countermotion for the Child to be Attend [sic] Champions Afterschool Learning Program during Plaintiff's Custodial Time* (Countermotion).

This Court originally took the matter under advisement to give the Court an opportunity to review Judge Duckworth's prior decision on a similar issue, which he heard on June 21, 2017, in an attempt to maintain consistent decisions between the departments relating to this family. As such, this Court reviewed the video record of Judge Duckworth's decision,

Non-Trial Dispositions:
☐ Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Other:

Trial Dispositions:
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

which was his attempt to create a hybrid arrangement in a similar situation. The original Order resulting from the Motion and Countermotion was entered on October 7, 2019.

Plaintiff then filed a *Motion for a Trial, to Amend Judgment and for Related Relief* on November 1, 2019. Defendant filed an *Opposition and Countermotion* on November 20, 2019 and, after a stipulated continuance, a hearing was held on December 18, 2019. It is important to note that Plaintiff did not object to the Court making its original decision without taking further evidence until after the October 7, 2019 Order was entered. Although Plaintiff argues that the October 7, 2019 decision goes "well beyond the relief sought by Defendant," such is incorrect. No additional custodial rights were granted to Defendant.

Defendant's August 28, 2019 Motion contains a *Declaration of Andriana Ferrando*, which complies with EDCR 5.505 and testifies that the allegations and facts presented in the Motion are true. Plaintiff's September 9, 2019 Countermotion does not contain a declaration consistent with EDCR 5.505. As such, Plaintiff did not affirm the information in his Countermotion as correct. Such raises concerns as to the accuracy of the allegations contained therein. However, Plaintiff did file Exhibits to support

CHARLES J. KOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

his requests on September 9, 2019. This Court reviewed all information submitted, in addition to the hearing video referenced above. Plaintiff did provide a verification for his November 1, 2019 Motion and Defendant provided a declaration for her November 20, 2019 Opposition and Countermotion. Such evidence provides the basis for the decision contained herein.

Plaintiff's request for amended or additional findings pursuant to NRCP 52(b) is granted and this Order provides those amended and additional findings.

Plaintiff now argues that this Court is "required to conduct an evidentiary hearing" prior to entering its October 7, 2019 Order, alleging a modification of custodial rights. However, no custodial rights were modified.

Plaintiff argues that *Gordon v. Geiger*, 133 Nev. 542, 402 P.3d 671 (2017) controls. However, the *Gordon* case is distinguishable as that court *sua sponte* ordered a permanent increase in one party's visitation and a reduction of the other's custodial time. *See Id.* at 545. No permanent increase in visitation, or reduction in any custodial time was ordered in the October 7, 2019 Order. This Court gave direction as to after school care

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

after considering the best interests of the child, not a modification of visitation or custody. The conclusion was that spending time with a fit parent, rather than an after school program is in the best interests of the child.

The Nevada Supreme Court gave direction as to when an evidentiary hearing is necessary in custody cases.

> "A district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates 'adequate cause.' *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993). 'Adequate cause arises where the moving party presents a prima facie case' that the requested relief is in the child's best interest. *Id.* at 543, 853 P.2d at 125 (internal quotation marks omitted). To demonstrate a prima facie case, a movant must show that '(1) the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching.' *Id.*"

Arcella v. Arcella, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017).

In this case, neither party requested a modification of the custodial orders in this case. Notwithstanding Plaintiff's attempt to redefine the issue, the conflict surrounded a few hours per week of after-school care, not custody modification. Thus, this Court did not consider any modification, but simply limited the decision to result from the relief requested. There is a best interest component in this Court's decision and in the "adequate cause" analysis. There is also a best interest component to the relief requested,

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-3408

which may be analyzed under the provisions of NRS 125C.0035(4). However, no physical custody modification was considered.

NRS 125C.001 states:

> "The Legislature declares that it is the policy of this State:
>
> 1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have ended their relationship, become separated or dissolved their marriage;
>
> 2. To encourage such parents to share the rights and responsibilities of child rearing; and
>
> 3. To establish that such parents have an equivalent duty to provide their minor children with necessary maintenance, health care, education and financial support. As used in this subsection, "equivalent" must not be construed to mean that both parents are responsible for providing the same amount of financial support to their children."

Notable by its absence is any reference in the State Policy to third party caregivers providing care for the children.

This Court finds Judge Duckworth's analysis on June 21, 2017 persuasive, while considering the policy that the children's best interests are better served when they spend time with their parents than in daycare or with a third party (*See* NRS 125C.001). Additionally, Plaintiff's argument for consistency for the child and his ability to choose where the child is located

during his timeshare was considered. However, such does not overcome the policy considerations or the fact that children with being with fit parents is in their best interests. Plaintiff's argument did not provide adequate cause to consider further proceedings. Defendant's close physical proximity to the school and the minimal disruption to Plaintiff's ability to pick up the child were also considered.

The information concerning the Plaintiff's proposed afterschool care is not persuasive as it appears to be an afterschool day-care which this Court does not find to be preferable to an available fit parent.

Plaintiff's argument that he is the only one who has the ability to determine the care of the child while in his custody is not supported by law. These parties share joint legal and joint physical custody. As such, both have rights to make decisions regarding their child. *See Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009).

Although no custody modification was requested or considered, best interest of the child was considered in addition to determination whether adequate cause for further proceedings existed. In analyzing the best interest of the children, the statutory guidance for determining best interests is

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

enumerated in NRS 125C.0035(4). Those factors, as they relate to the single issue presented herein are reviewed below:

The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody. The child is five years old and not of sufficient age or capacity to form an intelligent preference. This factor is neutral.

Any nomination of a guardian for the child by a parent. No nomination occurred in this case.

Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent. This is a key factor in the current analysis and demonstrative in the best interest analysis. Plaintiff is arguing that the child should be in the care of third parties of his choosing over being in Defendant's care. Such is contrary to having frequent associations and a continuing relationship with the other parent. This factor favors Defendant.

The level of conflict between the parents. There continues to be conflict between the parents. The continuing litigation over whether the child's best interests are served by a fit parent or third parties evidences that conflict. Plaintiff asserts that the conflict is created by

Defendant because she argues that the child's interests are better served in her care over third parties. Plaintiff states that Defendant's argument "would blur the lines of custodial authority, inhibit familial cohesion in [his] household and severely confuse [the child]." This Court finds none of those statements to be accurate. Plaintiff also asserts that permitting the child to stay with Defendant until he picks the child up after work requires additional exchanges, and therefore interactions between the parties. While Plaintiff is correct in that assertion, it does not supersede the other considerations. This factor favors Defendant.

The ability of the parents to cooperate to meet the needs of the child. The parents' ability to cooperate is an important factor. The Court hopes that parents are able to see past their animosity towards each other and focus on what might be best for their child. Unfortunately such is not the case here. Plaintiff demands to be in total control over his "time" with the child, and apparently fails to see any good in the child spending any additional time with Defendant. Similarly, Defendant demands that the child spend time with her over third-party caregivers. Such demonstrates an inability to cooperate to meet the needs of the child and results in this factor being neutral.

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

The mental and physical health of the parents. No evidence relating to the health of the parents was presented. This factor is neutral.

The physical, developmental and emotional needs of the child. Plaintiff indicates that the child's needs are better served by remaining in day-care or in the care of others after school while he works. However, a child spending time with a fit parent better serves their needs that being in the care of a third-party. This factor favors Defendant.

The nature of the relationship of the child with each parent. Neither party provided any evidence of their relationship with the child. Ultimately, this factor is neutral.

The ability to maintain a relationship with a sibling. No evidence was presented on this factor, resulting in a neutral finding.

Any history of parental abuse or neglect of the child or a sibling of the child. No evidence was presented on this factor, resulting in a neutral finding.

Whether either parent has engaged in an act of domestic violence against the child, a parent of the child or any other person

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

residing with the child. No evidence was presented on this factor, resulting in a neutral finding.

No evidence was received concerning any abduction of the minor child which renders that factor neutral.

Considering the "other things" portion of the statute, the Court is determining that Plaintiff is working and, therefore unable to care for the child after school. Such is not a slight against Plaintiff or his need to work, simply a reality. Defendant is available and able to care for the child until Plaintiff is able to exercise his custodial time.

Considering all that, and making a best interest analysis of the NRS 125C.0035 factors, the issue of an unavailable parent after school in relation to preference between a fit parent and a third-party care giver shall be resolved as follows:

Only on Plaintiff's custodial school days, from afterschool until Plaintiff is able to pick up the child after work, the child shall be cared for by Defendant, over any third-party care-giver.

If a similar situation arises during Defendant's custodial time, as Plaintiff is also a fit parent, it is the Court's intention that he also be given preference over any third-party care-giver.

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

All other aspects of existing court orders, not in conflict with this decision, shall remain in full force and effect.

The additional time which may be exercised by either party as a result of this decision shall not be considered as a basis to modify custody.

Plaintiff argues that he is entitled to a "new trial" under NRCP 59(a)(1). As no trial was originally granted, it is interesting that a new trial would be requested. This Court presumes that Plaintiff is arguing that he was "prevented from having a fair trial." Such is not the case, as the issue of a few weekly hours of afterschool care never provided adequate cause for an evidentiary proceeding. Plaintiff alternatively (after reviewing the October 7, 2019 Order) sought an evidentiary hearing pursuant to NRCP 59(a)(2), which deals with "[m]isconduct of the jury or prevailing party." Plaintiff cites no basis for relief under NRCP 59.

Plaintiff further argues that "NRS 125C.050 only exists because the Nevada Legislature determined that there are situations wherein the child's best interests dictate that a third party should have custodial time with a minor child, even over a parent's objection to the same." While an interesting argument, NRS 125C.050 references the ability for certain relatives and other persons to petition for the right to visitation. In this case,

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

the afterschool care proposed by Plaintiff did not file such a petition. Even if it did, it likely could not meet the standard in NRS 125C.050(2), (3) and certainly not (6).

Finally, Plaintiff argues that the order restricts his "parental autonomy while placing no such restriction on Defendant in the same circumstances." The restriction on Plaintiff's ability to provide afterschool care was placed upon him by his employer, not this Court. This Court simply performed a best interest analysis between a fit parent and a third-party care-giver. As to the fairness in the restriction, that argument was well taken and the Order amended as a result.

As the Court understands the positions of each party, it still cannot find bad faith on either side. Such eliminates a basis for attorney's fees pursuant to NRS 18.010. Each side shall bear their own fees and costs for these hearings.

IT IS SO ORDERED on January 6, 2020

CHARLES J. HOSKIN
District Court Judge

CHARLES J. HOSKIN
DISTRICT JUDGE
FAMILY DIVISION, DEPT. E
LAS VEGAS, NV 89101-2408

NOAS

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER P. FORD, ESQ.
Nevada Bar No.: 11570
TONY T. SMITH, ESQ.
Nevada Bar No.: 12096
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
cford@fordfriedmanlaw.com
asmith@fordfriedmanlaw.com
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, vs. ADRIANA FERRANDO, Defendant.	Case No.: D-16-539340-C Department: E **NOTICE OF APPEAL**

Notice is hereby given that Plaintiff William DiMonaco hereby appeals to the Supreme Court of Nevada from an order entered in a proceeding that did not arise in a juvenile court that finally establishes or alters the custody of minor children entitled "Amended Order,"

. . .

entered in this action on the 6th day of January, 2020

DATED this 4 day of February, 2020.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER P. FORD, ESQ.
Nevada Bar No.: 11570
TONY T. SMITH, ESQ.
Nevada Bar No.: 12096
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
cford@fordfriedmanlaw.com
asmith@fordfriedmanlaw.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 4 day of February, 2020, I caused the above and foregoing document entitled, **"Notice of Appeal"** to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPFamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
Attorney for Defendant	

An Employee of Ford & Friedman

4812-8234-4880, v. 1

SAO
DOUGLAS CRAWFORD, ESQ.
Nevada Bar No.: 181
doug@douglascrawfordlaw.com
ELIZABETH ELLISON, ESQ.
Nevada Bar No.: 13683
liz@douglascrawfordlaw.com
DOUGLAS CRAWFORD LAW
501 S. 7th Street
Las Vegas, Nevada 89101
Phone: (702) 383-0090; Fax: (702) 333-4667
Attorney for Jonathan Collingwood and Adriana Ferrando-Collingwood

DOUGLAS CRAWFORD LAW

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the Matter of: GAGE COLLINGWOOD, Date of Birth: 01-14-2014, A Minor. In the Matter of: GRAYSON DIMONACO-FERRANDO, Date of Birth: 06-12-2014, A Minor.	CASE NO.: J-20-350443-P1 and J-20-350444-P1 DEPT. NO.: Dependency 3 Hearing Date: Hearing Time:

STIPULATION AND ORDER TO CONTINUE DISCOVERY AND ADJUDICATORY TRIAL

IT IS HEREBY STIPULATED AND AGREED by and between all parties as follows:

IT IS HEREBY STIPULATED AND AGREED that due to COVID 19 and the current restrictions on in person depositions and hearings, discovery and the

upcoming Adjudicatory Trial currently set for May 8, 2020 at 10:00 a.m. and May 15, 2020 at 10:00 a.m. shall be continued reset for a date when the Administrative Orders restricting in person depositions and hearings have been lifted.

IT IS HEREBY STIPULATED AND AGREED that the Court shall issue new Adjudicatory Trial Dates as it suits the Court's calendar.

Dated this 2nd day of April, 2020.

Submitted by:
DOUGLAS CRAWFORD LAW

/s/ Elizabeth Ellison, Esq.
DOUGLAS C. CRAWFORD, ESQ.
Nevada State Bar Number: 181
501 S. 7th Street
Las Vegas, NV 89101
Attorney for Jonathan Collingwood and Adriana Ferrando-Collingwood

Dated this 1st day of April, 2020.

Approved as to form and content by:
Legal Aid Center of Southern Nevada

/s/ Dewey Fowler, Esq.
DEWEY FOWLER, ESQ.
Nevada State Bar Number: 14008
725 E. Charleston Blvd
Las Vegas, NV 89104
CAP Attorney for Gage Collingwood

Dated this _____ day of April, 2020.

Approved as to form and content by:
Clark County District Attorney

_____
CANDICE SAIP, ESQ.
Nevada State Bar Number: 14166
601 N. Pecos Blvd
Las Vegas, NV 89101
Deputy District Attorney – Juvenile Division

Dated this _____ day of April, 2020.

Approved as to form and content by:

_____
MATTHEW FRIEDMAN, ESQ.
Nevada State Bar Number: 11571
2200 Paseo Verde Pkwy #350
Las Vegas, NV 89052
Attorney for Kristy McConnell and William DiMonaco

upcoming Adjudicatory Trial currently set for May 8, 2020 at 10:00 a.m. and May 15, 2020 at 10:00 a.m. shall be continued reset for a date when the Administrative Orders restricting in person depositions and hearings have been lifted.

IT IS HEREBY STIPULATED AND AGREED that the Court shall issue new Adjudicatory Trial Dates as it suits the Court's calendar.

Dated this _____ day of April, 2020.

Submitted by:
DOUGLAS CRAWFORD LAW

DOUGLAS C. CRAWFORD, ESQ.
Nevada State Bar Number: 181
501 S. 7th Street
Las Vegas, NV 89101
Attorney for Jonathan Collingwood and Adriana Ferrando-Collingwood

Dated this _____ day of April, 2020.

Approved as to form and content by:
Legal Aid Center of Southern Nevada

DEWEY FOWLER, ESQ.
Nevada State Bar Number: 14008
725 E. Charleston Blvd
Las Vegas, NV 89104
CAP Attorney for Gage Collingwood

Dated this 1st day of April, 2020.

Approved as to form and content by:
Clark County District Attorney

CANDICE SAIP, ESQ.
Nevada State Bar Number: 14166
601 N. Pecos Blvd
Las Vegas, NV 89101
Deputy District Attorney – Juvenile Division

Dated this 1st day of April, 2020.

Approved as to form and content by:

/s/ Matthew H. Friedman, Esq.

MATTHEW FRIEDMAN, ESQ.
Nevada State Bar Number: 11571
2200 Paseo Verde Pkwy #350
Las Vegas, NV 89052
Attorney for Kristy McConnell and William DiMonaco

DOUGLAS CRAWFORD LAW

Stipulation and Order to Continue Discovery and Trial

J-20-350443-P1
J-20-350444-P1

ORDER

BASED UPON THE FOREGOING STIPULATION OF THE PARTIES,

IT IS HEREBY ORDERED that the Adjudicatory Trial currently set for May 8, 2020 at 10:00 a.m. and May 15, 2020 at 10:00 a.m. be continued and reset for be continued and reset when the Administrative Orders restricting in person depositions and hearings has been lifted.

Dated this 2nd day of April, 2020.

HEARING MASTER

IT IS SO ORDERED.

Dated this 2nd day of April, 2020.

DISTRICT COURT JUDGE

Electronically Filed
9/11/2020 5:20 PM
Steven D. Grierson
CLERK OF THE COURT

MOT

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No. 14600
FORD & FRIEDMAN
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
T: 702-476-2400 / F: 702-476-2333
mfriedman@fordfriedmanlaw.com
cphillips@fordfriedmanlaw.com
Attorneys for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, vs. ADRIANA FERRANDO, Defendant.	Case No.: D-16-539340-C Department: E **Oral Argument Requested: YES**

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY PRIMARY PHYSICAL CUSTODY PENDING OUTCOME OF APPEAL; FOR ORDERS TO ENSURE THE SAFETY OF THE MINOR CHILD; TO DETERMINE DEFENDANT'S CHILD SUPPORT OBLIGATION; AND FOR ATTORNEY'S FEES, COSTS, AND RELATED RELIEF

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN (14) DAYS OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT

Case Number: D-16-539340-C

OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.

COMES NOW PLAINTIFF, WILLIAM DIMONACO (hereinafter referred to as "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., and Christopher B. Phillips, Esq., of the law firm of Ford & Friedman who hereby files the foregoing Emergency Motion for Temporary Primary Physical Custody; for Orders to Ensure the Safety of the Minor Child; to Determine Defendant's Child Support Obligation; and for Attorney's Fees, Costs, and Related Relief and requests that this Honorable Court enter the following orders:

1. For an Order awarding Will temporary primary physical custody of the parties' minor child, to wit: GRAYSON DIMONACO-FERRANDO, born August 12, 2014 (hereinafter referred to as "Grayson" or "the minor child");

2. For an Order requiring DEFENDANT ADRIANA FERRANDO (hereinafter "Defendant") to participate in anger management and parenting classes so as to ensure the ongoing safety and well-being of the minor child;

3. For an Order establishing Defendant's child support obligation consistent with NAC 425.100 *et. seq.*;

4. For an award of attorney's fees and costs necessary for the prosecution of this Motion; and

5. For such other relief as this Court may deem necessary and proper.

This Motion is based upon the following memorandum of points and authorities, the papers and pleadings on file in this matter, the exhibits attached hereto, and any oral argument the Court may elect to entertain at the hearing on this matter.

DATED this 11 day of September, 2020.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No.: 14600
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorneys for Plaintiff

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the Court at the Courtroom of the above-entitled Court on the ____ day of _____, 2020, at the hour of ____:____ o'clock ___.m. of said day.

DATED this 11 of September, 2020.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No. 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No. 14600
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

A. Prior Proceedings in this Court

A Decree of Custody regarding the parties' minor child, Grayson, was entered in this Court on November 9, 2017. Thereafter, the parties filed various Motions, Oppositions, and Replies regarding various post-decree issues, most recently focused on the child's school enrollment and afterschool care. Orders regarding the same were entered in this Court on October 7, 2019.[1]

Subsequently, Will filed a Motion for Trial, to Amend Judgment, and for Related Relief on November 1, 2019. The Court heard oral argument regarding Will's Motion for Trial on December 18, 2019 and took the matter under advisement. Thereafter, this Court issued an Amended Order, which made various amendments to the Court's prior orders and included findings of fact and conclusions of law regarding Will's Motion for Trial, for Amended Judgment, and for Related Relief. This Court's Amended Order was entered on January 6, 2020, and Will timely noticed his appeal on February 4, 2020.

---

[1] Pursuant to EDCR 5.205(f)(1), copies of the aforementioned Motions, Opposition, Replies, and Orders are not attached hereto as exhibits, as the same are documents of record filed with the Clerk of this Court.

In turn, the Supreme Court of Nevada docketed Will's appeal as Case No. 80576, and pursuant to NRAP 3E(d)(1) *et seq.*, Will's Fast Track Statement is due to the Supreme Court on or before Monday, October 12, 2020.

Notwithstanding the existence of this ongoing appeal, this Court has emergency jurisdiction over this cause of action and the parties hereto because the minor child's safety and welfare remains at issue. This is discussed in considerable detail below in Section 3(A).

B. Related Proceedings in Juvenile Court

Concurrent with the above recited procedural history, a Juvenile Protection Matter was initiated in the Juvenile Division of this Court (Dependency Department 3) as Case No. J-20-350444-P1. The Juvenile Protection Matter was dismissed, without prejudice, on September 4, 2020. A copy of the Order Dismissing Petition is attached hereto as *Exhibit 4*. Of note, the Juvenile Court dismissed the Juvenile Matter without taking evidence or making any factual determinations regarding the safety and welfare allegations set forth in the Juvenile Court Petition. See *Exhibit 4* at p. 0013. Moreover, while the Juvenile Matter was dismissed, the administrative agency substantiation by DFS was not disturbed.

As such, after being substantiated on the administrative level by DFS, the factual allegations regarding the minor child's safety and welfare have never been

adjudicated by any Court. As such, Will brings the instant Motion to ensure the safety and welfare of the minor child. The relevant facts and circumstances regarding the child's safety and welfare are discussed in more detail in the following Statement of Facts.

II. STATEMENT OF FACTS

By way of background, it is necessary for this Court to understand that a Preliminary Protective Hearing Report filed in the related Juvenile Matter indicates that Grayson's stepbrother, GAGE COLLINGWOOD, born January 14, 2014 (hereinafter referred to as "Gage") disclosed being physically abused and locked in a dark closet while at his father's home, which is also the home of Defendant. A copy of the Preliminary Hearing Report is attached hereto as *Exhibit 1*.

In conjunction with Gage's disclosure, the Clark County Department of Family Services (hereinafter "DFS") began an investigation that resulted in DFS preparing a warrant to place Gage into protective custody. On January 21, 2020, the warrant application was considered by Judge Frank Sullivan, who, thereafter, issued the warrant placing Gage into protective custody on January 21, 2020. See *Exhibit 1* at p. 0006-0007.

DFS' investigation into the maltreatment of Gage naturally expanded into the Defendant's home and Gage's siblings. It was during this phase of the

investigation that DFS substantiated the maltreatment of Grayson, the subject minor child in this matter. DFS concluded that Grayson suffered the same maltreatment as Gage despite noting Grayson's discomfort disclosing his maltreatment directly to investigators. Notably, during a forensic interview, Gage disclosed that Grayson was also locked in the same dark closet as form of discipline. *Id.* at p. 0002.

Gage's disclosure of Grayson being locked in the closet coincides with Will's ongoing observations that Grayson often returned from Defendant's home with unexplained marks and bruises on his face, head, and arms. *Id.* Additionally, Will noted that Grayson would often return to Will's household with various minor marks and bruises yet upon his casual inquiry (e.g. "hey bud, how'd you get that scratch") Grayson would display reluctance to discussing the injuries. Indeed, at times Grayson even ran and hid appearing fearful of explaining the source of the mark. Will noted as much when canvassed by DFS as part of their investigation. *Id.*

These same facts were raised during a Preliminary Protective Hearing held with Hearing Master White on January 24, 2020. At the conclusion of the January 24, 2020, Hearing Master White found it contrary to Grayson's best interest to allow him to continue to reside with Defendant. A copy of the Minute Order from the January 24, 2020 Preliminary Protective Hearing is attached hereto as *Exhibit*

2. As a result, Grayson was removed from the custody and care of Defendant on January 24, 2020. DFS determined that Grayson would be placed into protective custody with his natural father, Will (Plaintiff herein), serving as the designated protective custodian, while allowing Defendant informal supervised visitation with Grayson in the community[2]. A copy of the Custody Placement Notification from DFS designating Will as the designated protective custodian of Grayson is attached hereto as *Exhibit 3*.

Subsequent to Grayson's placement into protective custody, DFS began a nearly eight (8) month long effort to work with Defendant and to ensure Grayson's safety and welfare. Throughout the entire investigation, Defendant was defiant, uncooperative, and dismissive of the Department's concerns regarding Grayson's welfare and safety. A copy of the DFS case notes evidencing DFS's interactions with Defendant are attached hereto as *Exhibit 5*. Although Will is confident that this Court will review the case notes attached hereto, some of the more egregious episodes involving Defendant's defiant, uncooperative, and dismissive conduct warrants discussion herein.

As early as the initial meeting between Defendant and DFS on February 28, 2020, Defendant was reported as having been very clear that she did not want to

---

[2] During the preliminary hearing, in an effort to facilitate familial relationships, Will suggested Defendant's parents as the Court appointed supervisors.

work with DFS. Defendant was unwilling to discuss DFS' concerns, and she stated to DFS that she had no desire to ever meet with DFS again because it would be, 'the same conversation over and over again.' See *Exhibit 5* at p. 0015.

On March 3, 2020, Defendant orchestrated a series of lies that involved multiple misrepresentations regarding Grayson's health. More specifically, in accordance with the informal supervised visitation, Defendant, along with the supervisor(s), retrieved Grayson from school at the close of the school day. Upon doing so, Defendant reported to DFS that Grayson had a fever of 102.1. Defendant told DFS that she was going to give Grayson Motrin and take him to a doctor's appointment at 6:15 p.m. See *Exhibit 5* at p. 0016. DFS learned that instead of taking Grayson to his regular pediatrician, Dr. Blank at 6:15 p.m. as reported, Defendant actually took Grayson to a Southwest Medical Facility at approximately 4:30 p.m., the very same time when she was reporting to DFS that she was taking Grayson to a 6:15 p.m. appointment. See *Exhibit 5* at p. 0017.

The next day on March 4, 2020, DFS learned that Defendant falsely reported to the Southwest Medical doctor that Grayson had been suffering from a fever and cough for five days. Notably, DFS determined that it was impossible for Defendant to have known whether or not Grayson had such a fever and cough (he did not) because she had not seen Grayson in the preceding five (5) days. Defendant's intentional misrepresentation of Grayson's medical information

resulted in a high risk of medication being incorrectly and unnecessarily prescribed and administered to Grayson. See *Exhibit 5* at p. 0018.

Relatedly, as part of their investigation into Defendant's intentional misrepresentation regarding Grayson's doctor's appointment, DFS learned that Defendant was often uncooperative when it came to coparenting and medication management, and as a result, Grayson was often given medication twice because Defendant refuses to coparent with Will. *Id.*

As a result of Defendant's continued failure to cooperate with DFS and comply with the protocols and rules put in place by the case workers, DFS required that Defendant's visits with Grayson be changed to include formal supervision by DFS. See *Exhibit 5* at p. 0017. In a follow up meeting between the assigned DFS case worker and a DFS supervisor, it was noted that DFS believed that Defendant does not appear to have the ability to control her nonverbal and verbal comments about Will. DFS also noted that Defendant often acts impulsively and without regard to Grayson's welfare. *Id.* at p. 0023. DFS noted that Defendant's contact with Grayson seems to be superficial and that she is easily frustrated when Grayson displays little interest in playing with her, which is quite often. *Id.*

Just five (5) days after orchestrating the untruthful doctor visit story, Defendant participated in her first visit supervised by DFS with Grayson on

March 9, 2020. During the March 9, 2020 visit, DFS noted that there was very little physical affection between Grayson and Defendant, and that throughout the visit, Defendant was consistently unable to engage in 'in the moment' activities. See *Exhibit 5* at p. 0022. DFS noted that Defendant appeared to be focused on portraying herself as a good parent. In other words, Defendant was trying too hard. She actually displayed little genuine interest, affection, or meaningful conversation. Instead, she was focused on the various toys she brought to the visit and not on Grayson's engagement with her and the activities during their visit. *Id.*

On March 12, 2020, DFS contacted Grayson's school, Somerset Academy. Somerset advised DFS that despite Grayson having been placed into protective custody, Defendant and Defendant's parents had contacted Somerset with the express purpose of creating confusion regarding who was allowed to pick Grayson up from school. DFS had to send a letter to Somerset clarifying that Grayson had been placed in protective custody and that only Will, or persons designated by Will, should be allowed to pick Grayson up from school. *Id.* at p. 0024.

During her supervised visit on March 16, 2020, Defendant presented as agitated and displayed harmful behavior towards Grayson. Throughout the visit, DFS heard Defendant make several remarks that were inappropriate and hurtful to Grayson. Specifically, Defendant made multiple negative comments about Grayson's teeth, the food he eats while he is with Will, and about his then most

recent haircut. DFS noted that Grayson appeared to be upset and embarrassed by Defendant's negative comments. *Id.* at p. 0026.

At the conclusion of the March 16, 2020 visit, DFS met with Grayson alone. Grayson reported that he was happy and felt safe at Will's house. *Id.* Throughout the conversation, Grayson made several references to 'mom and dad.' When asked, Grayson said his dad was Will and that his mom was Tracy. Grayson went on to explain that he believes that "William" is a bad word. This is consistent with DFS's observation during an earlier visit wherein it was noted that Grayson would refer to Will as "daddy" when at home, but in front of Defendant, Grayson refers to Will by his first name. *Id* [3]

During a home visit at Will's home on April 6, 2020, Grayson reported that he wanted to go to his "other home." When asked about what he missed about his other home, he explained that he missed his toys and his dog. Notably, Grayson made no mention of missing Defendant. In fact, he described Defendant as "mean." *Id.* at p. 0032.

Later in or about May 2020, Defendant's visits with Grayson had been converted to video visits due to the ongoing COVID-19 pandemic. For a period of

---

[3] It is also worth noting that this issue has been raised in prior hearings before this Court, and Defendant has always steadfastly opposed the allegation that Grayson is taught to refer to Will by his first name. Yet, here we are more than a year later with a DFS case report corroborating Will's prior assertion that Defendant instructs Grayson to refer to Will by first name instead of as "dad."

time, the visits had been completed via FaceTime. However, on or about May 18, 2020, Will informed Defendant that a change would need to be made regarding the technology used for the video visits. Specifically, Will explained to Defendant that he only had FaceTime on his cell phone and that he could not go for extended periods of time without access to his phone. Notably, the video visits with Defendant often lasted for up to one hour in duration. As a reasonable alternative, Will suggested that the video calls be facilitated with Zoom or Skype such that Grayson could use his Kindle for the chat. Defendant was unwilling to use either and insisted on FaceTime. Defendant elected to forego visitation time with Grayson because she refused to utilize Zoom or Skype. DFS noted Defendant's refusal to utilize Zoom or Skype as evidence of Defendant's inability to set aside her own needs in order to meet the best interest of Grayson. *Id* at p. 0040.

During a case review among DFS staff on June 2, 2020, DFS noted that Defendant lacks the capacity to accept that her behavior may contribute to an unsafe environment for Grayson. *Id.* at p. 0040.

Despite Defendant's consistently negative behavior and general refusal to be cooperative with DFS, Defendant was eventually allowed to return to in person visits. When in person visits resumed, DFS arranged for Defendant to visit with Grayson at a public park in Henderson. Despite being afforded the opportunity to visit with Grayson in person, Defendant was still unable to follow the rules set in

place by DFS. Defendant repeatedly came to the park visits with other family members despite being told to keep the visits between her and Grayson only. *Id.* at pp. 0054-55.

Finally, on July 27, 2020, Will offered Defendant to switch her August 10, 2020 visit to August 12, 2020 in order to allow Defendant to spend time with Grayson on his birthday. Instead of taking the opportunity to spend time with her son on her birthday, Defendant scoffed at the suggestion and remarked that it was too difficult to plan a birthday celebration during a one-hour visit. *Id.* at p. 0056.

Despite DFS having rendered an administrative substantiation[4] regarding the suspected abuse and neglect, the Juvenile Matter was dismissed without prejudice on September 4, 2020. Notably, the dismissal was without prejudice, and the Order Dismissing Petition expressly states that the Juvenile Court made no findings regarding the abuse or neglect allegations substantiated by DFS investigators. See *Exhibit 4* at p. 0013.

---

[4] Will is unable to obtain a copy of the administrative substantiation, because the same is protected as confidential information pursuant to NRS 432B.290(2)(p). Even if Will were to complete a records request and obtain a copy of the written substantiation, any such copy would be redacted except for information about Will. Any redacted copy obtained by Will would not show DFS' findings related to Defendants inappropriate conduct towards Grayson. Nevertheless, this Court can still take judicial notice of the same, and this Court is authorized to obtain and review the complete, unredacted version of the same as part of an *in camera* inspection pursuant to NRS 432B.290(2)(e).

As a result of the unadjudicated abuse and neglect allegations explained above, there remains unresolved, urgent, concerns regarding Grayson's safety and wellbeing. As such, the instant motion follows.

III. ARGUMENT

A. This Court has Emergency Jurisdiction to hear the Instant Motion

The question of a district court retaining jurisdiction during an appeal was addressed by the Nevada Supreme Court in *Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006). In deciding *Mack-Manley*, the Nevada Supreme Court opined as follows:

> [a]lthough the district court lacks jurisdiction to revisit a child custody order that is on appeal, the district court's jurisdiction to make short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security, is not impinged when an appeal is pending.

Mack-Manley, 122 Nev. at 856 (footnote omitted). In deciding *Mack-Manley*, the Court cited to, and relied up, *Koffley v. Koffley*, 160 Md.App. 633, 866 A.2d 161 (2005). The *Koffley* Court explained as follows:

> We are persuaded that the appeal of a custody order does not divest the circuit court of jurisdiction to decide the merits of a claim that, as a result of a *material* change in circumstances that has occurred *after* the order was entered, a change in custody is in the child's best interest.

Koffley, 160 Md.App. at 642, 866 A.2d at 167 (emphasis in original).

Together, *Mack-Manley* and *Koffley* tells us that this Court retains jurisdiction to entertain the subject motion even though Will's earlier noticed appeal remains pending before the Nevada Supreme Court. In this case, there has been a material change in circumstances that has occurred since (after) this Court's Amended Order was entered on January 6, 2020.

More specifically, when this Court's Amended Order was entered on January 6, 2020, neither Grayson nor his stepbrother had been removed from the Defendant's home. Neither child was in protective custody when this Court last considered the best interest factors under NRS 125C.0035. Grayson's removal from Defendant's home occurred thirty-eight (38) days after this Court last considered the best interests of the subject minor child. The removal and placement of the minor child into protective custody is clearly a material change in circumstances occurring after the entry of this Court's most recent Order.

As to the timing of this Motion, Will has not brought the instant Motion until now, because until September 4, 2020, Grayson's welfare and safety concerns were being addressed by the Juvenile Division of this Court as part of the Juvenile Protection Matter. However, upon the Juvenile Protection Matter being dismissed without prejudice, and without any factual findings regarding the abuse and neglect allegations against Defendant, it became necessary that this Court

reconsider the existing custodial arrangement as it relates to the safety and well-being (best interests) of Grayson.

Consistent with *Mack-Manley*, Will is not asking this Court to enter a long-term, permanent decision. Instead, this Motion seeks a temporary order vesting Will with temporary primary physical custody of Grayson until such time as the pending appeal can be finalized and this Court has an opportunity to hear evidence regarding Defendant's history of abuse and neglect towards Grayson. To that end, the pending appeal is proceeding on the Supreme Court's "Fast Track" pursuant to NRAP 3E, and as such, Will is informed and believes that the pending appeal will be resolved expeditiously and in a short enough period of time to allow this Court to exercise its emergency jurisdiction.

Alternatively, if this Court does not believe it can exercise emergency jurisdiction under *Mack-Manley*, this Court may still consider the merits of the pending motion and certify its inclination to grant the same.

In instances where the district court is inclined to grant the relief requested, it may certify its intent to do so. *Foster v. Dingwall*, 126 Nev. 49, 53, 228 P.3d 453, 455 (2010) (citing *Mack-Manley*, 122 Nev. at 855, 138 P.3d at 530). Upon this Court certifying that it would be inclined to grant the relief sought in the instant Motion, Will would then file a request for remand with the Nevada Supreme Court. See *Huneycutt v. Huneycutt*, 94 Nev. 79, 81, 575 P.2d 586 (1978).

The Nevada Supreme Court will then consider whether the request remand should be granted. See *Foster*, 126 Nev. at 53, 228 P.3d at 456 (citing *Mack-Manley*, 122 Nev. at 856, 138 P.3d at 530).

In sum, this Court may exercise emergency jurisdiction pursuant to *Mack-Manley* based upon the safety and welfare concerns of the minor child. As an alternative, this Court could find that the instant motion does not rise to the level of "emergency" in the context of *Mack-Manley,* but, even in such an instance, this Court could still certify its intention to grant relief if the pending appeal did not otherwise divest it of the jurisdiction to do so. Insofar as the Court was willing to certify its willingness to afford Will the opportunity for an evidentiary proceeding on these issues, Will would be inclined to pursue dismissing the pending appeal in order to do so.

To that end, Will respectfully submits that Grayson's removal from Defendant's home, his placement in protective custody for a period of nearly eight (8) months, coupled with DFS's administrative substantiation of Grayson's maltreatment certainly demonstrates "adequate cause" for this Court to either exercise emergency jurisdiction under *Mack-Manley* or certify its inclination to grant relief upon the case being remanded to the district court. Even if the Court is not comfortable in certifying that it is inclined to grant the relief requested, the evidence presented herein is certainly enough to warrant this Court certifying that

upon remand it would allow the matter to proceed to an evidentiary hearing pursuant to *Rooney v. Rooney*, 190 Nev. 540, 542, 853 p.2d 123, 124 (1993) (internal citations omitted). In sum, the pending appeal does not divest this court of jurisdiction such that this Court cannot consider the merits of the pending motion.

Based upon the foregoing, it is necessary that this Court conduct a renewed best interest analysis. Accordingly, a best interest analysis follows:

B. THIS COURT SHOULD AWARD WILL TEMPORARY PRIMARY PHYSICAL CUSTODY TO ENSURE THE SAFETY OF THE MINOR CHILD

Pursuant to NRS 125C.0035, the factors to be considered when evaluating the best interests of children with regard to custody include, but are not limited to:

> 1. In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court that joint physical custody would be in the best interest of the child, the court may grant physical custody to the parties jointly.
>
> * * *
>
> 4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:
> (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.
> (b) Any nomination of a guardian for the child by a parent.
> (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
> (d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.
(f) The mental and physical health of the parents.
(g) The physical, developmental and emotional needs of the child.
(h) The nature of the relationship of the child with each parent.
(i) The ability of the child to maintain a relationship with any sibling.
(j) Any history of parental abuse or neglect of the child or a sibling of the child.
(k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
(l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

NRS 125C.0035(4). Each of these factors are discussed below, in turn.

(a) The wishes of the minor child

In this case, the child is only six years old. He is not old enough to elect a preference for one parent over another. This Court should apply the remaining factors and determine custody and time share that is in the best interest of Grayson.

(b) Any nomination by a parent or guardian for the child

Neither parent has made any such nomination.

(c) Which parent is more likely to allow the child to have frequent associations with the non-custodial parent

In this case, Will is the more likely parent to allow the child to have frequent associations with the other parent. DFS has noted that there is little

physical affection between Grayson and Defendant, and that during her supervised visits with Grayson, she was consistently unable to engage in 'in the moment' activities. See *Exhibit 5* at p. 0022. DFS noted that Defendant displays little genuine interest, affection, or meaningful conversation with Grayson. Instead, she focuses on the various toys she brings as a means of "buying" Grayson's love and affection. Defendant displays little to no substantive engagement with Grayson. *Id.*

Moreover, when asked to plan to visit with Grayson via Zoom or Skype, she had no willingness to do so. She insisted on FaceTime which was no longer a suitable option and caused her to forego quality time with Grayson. DFS noted that Defendant's refusal to utilize Zoom or Skype demonstrates her inability to set aside her own needs in order to meet the best interest of Grayson. *Id* at p. 0040.

It is also worth nothing that Defendant has created an environment for Grayson where he is in trouble for referring to Will as "dad." Instead, Grayson is forced to refer to Will by his first name, and even then, Grayson reports being told that "William" is a bad word. It is hard to imagine a world where Defendant has any interest in facilitating a relationship between Grayson and Will when she seeks to discourage Grayson from even discussing his father or calling him "dad." *Id.* at p. 0026.

. . .

(d) The level of conflict between the parents

The level of conflict between the parents is high, and it is increasing. Throughout the duration of Grayson's protective custody, Defendant refused to cooperate or work with DFS. She created unnecessary conflict by orchestrating a multi-day dispute involving Grayson's doctor appointments, and she also created unnecessary conflict with Grayson's school. See *Exhibit 5* at pp. 0016-0018, 0024.

Following the unexplained dismissal of the Juvenile Protection Matter, Will and Defendant have begun exercising time share again, and as a result, the level of conflict is again increasing. Defendant fails and refuses to coparent with Will regarding Grayson's online classes and self-guided learning. Defendant often fails to have Grayson complete online lessons or complete written, hard copy homework.

(e) The ability of the parents to cooperate and meet the needs of the child

Defendant exhibits zero ability – and zero interest in – coparenting with Will. She creates conflict where none should exist, and routinely refuses to adhere to rules and procedures. Even with DFS, she was defiant and uncooperative. If she is defiant and uncooperative with DFS – the agency who placed her child into protective custody – why is there any reason to believe that she will cooperatively coparent with Will?

Conversely, Will has gone to great lengths to coparent with Defendant. During the preliminary hearing, in an effort to afford Grayson as much normalcy as possible during an uncertain time in his life, it was Will who suggested the use of Defendant's parents as informal supervisors. When FaceTime was no longer an available option for Grayson and Defendant's video visits, he suggested alternative means to ensure that Defendant still had visitation with Grayson, including an application which Grayson was familiar with so the visits maintained a similar level of productivity. Recently, when it was Grayson's birthday, Will offered to swap Defendant's visitation day so that she could spend meaningful time with Grayson on his birthday. Will had no obligation to do so, but he did, because he has a genuine interest in doing what is best for Grayson. Meanwhile, Defendant scoffed at the suggestion and complained that only a one-hour visit was inadequate. *Id.* at p. 0056

(f) Mental and physical health of the parties

Will is informed and believes that Defendant has a diagnosed heart condition that requires her to take regular medication, rest often, and use a heart defibrillator. Will is unsure to what extent this impacts Defendant's ability to care for Grayson during activities of daily living, but is informed and believes she relies heavily on her mother for assistance.

(g) Physical, developmental and emotional needs of the child

The physical, developmental, and emotional needs of the child are most certainly not met by allowing frequent contact between Defendant and Grayson. In fact, Grayson's wellbeing is negatively impacted by his interactions with Defendant.

It is not coincidental that just days before being placed into protective custody, Grayson returned to Will's house with various unexplained injuries to his face. See photos attached hereto as *Exhibit 6*. When asked about these injuries, Grayson was too scared to say what happened. See *Exhibit 1* at p. 0002.

The emotional trauma suffered by Grayson at the hands of Defendant is what lead to Grayson's placement into protective custody. Grayson has participated in therapy to assist in processing the emotional effects of Defendant's abuse as well as his overall integration into this "modern family." See *Exhibit* 5 at 0037. Grayson has also suffered academically while in Defendant's care. More specifically, Grayson's standardized test scores show a drastic improvement in his academic performance while in Will's care. For example, Grayson tested in the 36th percentile for Language Arts/Reading and 43rd percentile for Math while in Defendant's care. At his next testing interval during which he was almost exclusively in Will's care, Grayson tested in the 86th percentile for Language

Arts/Reading and 94th percentile for Math. A copy of Grayson's test score report is attached hereto as *Exhibit 7*.

(h) Nature of the relationship between child and parent

As this Court would expect, Grayson has a natural love and affection for both Will and Defendant. However, as DFS noted, Defendant has exhibited only a superficial relationship with Grayson. Additionally, investigators confirmed that Grayson has expressed that he is happy with Will. *Id.* at p. 0032.

(i) Relationship with siblings

Grayson has one half-sister, McKenna (age 9), a half-brother, Griffin (age 4), and a step-bother, Gage. Will and McKenna's mother coparent such that McKenna's mother allows Will to exercise his custodial time share with McKenna on days and times when Will has Grayson. Additionally, Grayson and McKenna both attend the same school, Somerset Academy. Given the existing time share between Gage's parents, Grayson's time share lines up such that he spends time with his stepbrother Gage on every other Sunday, and on Mondays and Tuesdays. Similarly to McKenna, when Grayson is in Defendant's care he enjoys time with his half-brother Griffin.

Clearly it is beyond the limits of this case to adjust or modify the time share scheduled between Gage's parents. However, since Will is able to coparent so well with McKenna's mom, Grayson and McKenna have a strong relationship,

and it would benefit Grayson to maintain his strong sibling relationship with McKenna. As such, Grayson would benefit from a custodial time share arrangement where he continues to spend his time with Will on days when Will exercises time share with McKenna.

(j) History of parental abuse

Grayson has reported having witnessed Defendant's husband, Jon Collingwood, yell at Defendant to the point where Defendant has hidden in a bathroom and cried while trying to avoid Mr. Collingwood. Additionally, Grayson reports having witnessed Mr. Collingwood push Defendant into a wall. As such, there is reason to believe that domestic violence has occurred in Defendant's home in the presence of the minor child.

(k) Domestic violence against the child

Will is informed and believes that based upon DFS having removed Grayson from Defendant's home, there is a high likelihood of domestic violence having been committed against Grayson. Grayson has a history of having suffered various bruises, cuts, and scrapes that are consistent with being grabbed, shook, and hit. See *Exhibits 1*, 5 and *6*.

(l) Prior acts of abduction of the child

There is no history of abduction of the child by either party.

Based upon the foregoing factors, it is clear that Grayson's safety and wellbeing in the care of Defendant is highly suspect. In order to ensure Grayson's safety and to maintain his best interest during the ongoing litigation, this Court should award Will with temporary primary physical custody of Grayson.

C. THIS COURT SHOULD IMPOSE ORDERS DESIGNED TO ENSURE THE SAFETY OF THE MINOR CHILD.

Will is uncertain whether Defendant's failure to protect the minor child is the result of untreated mental health issues, declining physical health, poor impulse control, or a combination of them all. Regardless, Will seeks orders designed to ensure the safety of the minor child. While he will defer to this Court's sound judgment regarding the specific orders to be entered, Will respectfully suggests that the orders necessary to protect the minor child are: (1) that Defendant successfully complete an intensive course of anger management therapy via a provider licensed through the State of Nevada; (2) that Defendant successfully complete the UNLV Cooperative Parenting Course to learn the skills necessary to be an effective co-parent with Will; and (3) that the parties continue to utilize Talking Parents, with this Court able to review communications between the parties, to ensure Defendant engages in civil and productive communications with Will.

. . .

D. DEFENDANT SHOULD BE ORDERED TO PAY CHILD SUPPORT

NAC 425.100 mandates this Court to consider an obligor's earnings, income, and ability to pay for the support and maintenance of the minor child. Accordingly, this Court should review Defendant's income and require that she pay child support to Will in an amount consistent with the guidelines contained in NAC 425.120. In the event that Defendant is unemployed, this Court should impute to Defendant the Nevada Average Wage and then set child support accordingly.

In addition to addressing current child support, at the time of trial this Court should also consider imposing retroactive child support and/or finding that Defendant owes child support arrears given that Grayson has spent the last seven (7) months exclusively in Will's care while Defendant paid zero dollars ($0) towards the care and support of Grayson. Notably, despite Grayson being almost exclusively in his care, Will tendered support to Defendant for the months of January and February.

E. WILL SHOULD BE AWARDED REASONABLE ATTORNEY'S FEES AND COSTS.

In *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), the Nevada Supreme Court held that it is within the trial court's discretion to determine the reasonable amount of attorney's fees under a statute or rule, and in exercising that

discretion the Court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d. 31 (1969). The *Brunzell* Court identified the following factors that the trial court may consider in awarding attorney's fees:

> 1. The qualities of the advocate: his ability, his training, education, experience, professional standing, and skill;
>
> 2. The character of the work to be done: its difficulty, its intricacy, its importance, time, and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
>
> 3. The work actually performed by the lawyer: the skill, time and attention given to the work; and,
>
> 4. The result: whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349. With respect to these factors, a separate declaration of the undersigned counsel is attached hereto as *Exhibit 8*.

Additionally, NRS 18.010 allows for an award of attorney's fees where:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (a) When the prevailing party has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate

situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Further, EDCR 7.60(b) provides:

> (b) The Court may, after notice and an opportunity to be heard, impose upon an attorney or party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> > (3) So multiples the proceedings in a case as to increase costs unreasonably and vexatiously.
> >
> > * * *
> >
> > (5) Fails or refuses to comply with any order of a judge of the court.

Finally, NRS 125C.250 provides:

> Except as otherwise provided in NRS 125C.0689, in an action to determine legal custody, physical custody or visitation with respect to a child, the court may order reasonable fees of counsel and experts and other costs of the proceeding to be paid in proportions and at times determined by the court.

Here, Will's Motion is necessitated due to Defendant's pattern and practice of not ensuring the safety and wellbeing of the minor child. While in her care, Grayson has been subjected to both physical and emotional abuse. As a result, Grayson was removed from Defendant's custody and placed into protective

custody. While in protective custody, Defendant was intentionally defiant and uncooperative with DFS. Simply stated, if it were not for Defendant's actions, the instant Motion would not be necessary. Should this Court be inclined to grant Will fees in this matter, the undersigned counsel will submit its billing statements current to the date of this hearing.

IV. CONCLUSION

For all of the foregoing reasons, this Court should award Will with temporary primary physical custody of the parties' minor child, to wit: GRAYSON DIMONACO-FERRANDO, born August 12, 2014. Given that the abuse and neglect allegations were substantiated by DFS, and never otherwise adjudicated by any court, Grayson's safety and wellbeing necessitates that Defendant be ordered to complete both anger management and co-parenting classes.

In considering an award for temporary primary physical custody, it necessarily follows that this court should also consider Defendant's child support obligation to Will. Accordingly, this Court should order Defendant to pay child support consistent with NAC 425.120.

. . .

. . .

. . .

Finally, this Court should award Will with attorney's fees and costs necessary for the prosecution of this Motion.

DATED this 11 day of September, 2020.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No.: 14600
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion complies with the formatting requirements of EDCR 5.504. The foregoing Motion is prepared in Times New Roman, size 14 font. Footnotes are also included Times New Roman, size 14 font.

Despite being thirty-four (34) pages in length, the foregoing Motion meets the page limitation set forth in EDCR 5.504(e)(2), because the foregoing Motion has a word count of 6,822 words, not including this Certificate of Compliance. Pursuant to EDCR 5.504(e)(2), a motion is acceptable if it contains no more than 14,000 words.

DATED this 11 day of September, 2020.

FORD & FRIEDMAN

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
CHRISTOPHER B. PHILLIPS, ESQ.
Nevada Bar No.: 14600
2200 Paseo Verde Parkway, Suite 350
Henderson, Nevada 89052
Attorneys for Plaintiff

DECLARATION OF WILLIAM DIMONACO

I, WILLIAM DIMONACO, do hereby swear that the following is true and accurate to the best of my knowledge:

1. That I am the Plaintiff in the instant matter;
2. That I make this Declaration in accordance with:
   a. NRS 53.045 (allowing for unsworn declarations made and signed under penalty of perjury in lieu of an Affidavit); and
   b. In support of Plaintiff's Emergency Motion for Temporary Primary Physical Custody Pending Outcome of Appeal; for Orders to Ensure the Safety of the Minor Child; to Determine Defendant's Child Support Obligation; and for Attorney's Fees, Costs and Related Relief.
3. That I am willing and able to testify to the matters stated herein;
4. That I have personal knowledge of the matters stated herein, except as to those matters stated upon information and belief and as to such matters, I believe them to be true;
5. That in accordance with E.D.C.R. Rule 5.505, I have read Plaintiff's Emergency Motion for Temporary Primary Physical Custody Pending Outcome of Appeal; for Orders to Ensure the Safety of the Minor Child; to Determine Defendant's Child Support Obligation; and for Attorney's Fees, Costs and Related Relief, and the factual averments it contains are true and

correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 10 day of September, 2020.

WILLIAM DIMONACO,
Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 11 day of September, 2020, I caused the above and foregoing document entitled, **"Plaintiff's Emergency Motion For Temporary Primary Physical Custody Pending Outcome Of Appeal; For Orders To Ensure The Safety Of The Minor Child; To Determine Defendant's Child Support Obligation; And For Attorney's Fees, Costs, And Related Relief"** to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPFamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
Attorney for Defendant	

An Employee of Ford & Friedman