IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

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 2 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

Docket 80576 Document 2021-29456

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Dated this 13th day 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
9/29/2020 4:49 PM
Steven D. Grierson
CLERK OF THE COURT

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: October 1, 2020 @ 10:00 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 motion 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.

Case Number: D-16-539340-C

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

1. For an Order addressing William's misconduct;
2. For an Order denying William's motion;
3. For an Order awarding Adriana compensatory time;
4. For an award of attorney's fees and costs; and
5. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: September 29, 2020.

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 from the prior litigation between the parties, they were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

This matter was most recently before this Court in relation to Grayson's afterschool care. As the Court may recall from the prior hearings, Adriana's counsel previously expressed significant concerns in relation to William's effort to ally himself with, and share information with the parent of Adriana's husband's child – Kristy.

The Initial CPS Report

While this matter was being litigated and appealed, Adriana's husband – through counsel – reached out to Kristy's counsel in an effort to re-evaluate their child support arrangement. Within weeks of that EDCR 5.501 communication, Kristy reached out to the parenting coordinator assigned to her case – Ms. Shelly Cooley – and pointed accusations of abuse and neglect toward Adriana's husband. Specifically, Kristy – who is a police officer – presented Ms. Cooley with a videotaped interview of her son in which her questioning led to questionable comments being made by the children. While Ms. Cooley has indicated that she did not believe that the

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allegations raised were credible, and has indicated that she did not believe that Kristy was being truthful with respect to such allegations, she felt obligated to report the allegations to Child Protective Services (CPS) to be investigated.

Amazingly, that report has led to a troublingly misguided investigation by CPS that has been supported by William, and has led to Adriana being wrongfully denied custodial contact with Grayson for approximately nine months. The history of the CPS case paints a very disturbing portrait of an investigation that became polluted by bad information from William, and a misguided overzealous investigator who was determined to substantiate abuse that never occurred.

The Initial Investigation by CPS

The investigation by CPS was initially prompted by an improperly conducted forensic interview of Kristy's son Gage in which Gage indicated that he was locked in a closet (at one point described as a small closet under the stairs). While Grayson denied the concerns, the interviewer disregarded his denials as "scripted or coached." Despite there never having been any allegations of any type of abuse raised by William to Adriana, or to this Court, William reported allegations of abuse to CPS in support of Kristy's claims, and expressed to CPS that he was fearful of Grayson's safety in Adriana's home.

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As a result of such interviews, a search was conducted of Adriana's home to investigate the specific allegations raised by Gage about he and Grayson being locked in a closet and questions were asked about specifically alleged injuries of alleged allegations to Gage. Despite the fact that CPS verified that there were no closets in the home fitting the description provided by the minor child, and despite Adriana providing photos of Gage that clearly demonstrated that he was not injured as claimed by Kristy, and despite CPS not identifying any present danger, the investigation continued.

The February 28, 2020, discussion with CPS that is referenced by William in his motion, was a particularly frustrating event as Adriana was advised that CPS would only formulate a safety plan that would restore regular contact with Grayson if she were to admit the allegations that had already been rebuked. Contrary to William's allegations, Adriana did not tell CPS that she did not want to work with them and only said that she would not succumb to their ongoing pressure to coerce her into admitting to false allegations so that she could spend more time with Grayson.

<u>William's Assertions Regarding Adriana's Visitations</u>

William's allegations (and CPS's complaints) regarding March 3rd and 4th are bizarre in that Adriana's efforts to seek treatment were relayed to CPS and to William throughout the time period in question and describe

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what any parent would attempt to do upon learning that their child had a fever and was acting lethargic. *See* Exhibit "A". William's (and CPS's conclusion) that Adriana lied to the doctor in reporting that Grayson was experiencing symptoms for five days is particularly disconcerting as Adriana personally observed the coughing on February 29th, and reached out to William via text and Talking Parents to ensure the accuracy of the information being relayed by Grayson. *See* Exhibit "B". The fact that William and the involved CPS case worker viewed Adriana's conduct as inappropriate and as a sign of her inability to co-parent with William should be very concerning to this Court as there would have been zero chance of Grayson being overmedicated unless William failed to share important health information to Adriana.

The descriptions of the initial supervised visit with CPS on March 9th that have been provided by William do not fairly depict what occurred. At the time, Grayson was struggling with illness, and Adriana was struggling with her recovery from heart failure and was under strict instructions from her physician not to exert herself. With both Grayson and Adriana not feeling well and in an uncomfortable environment in which Grayson was very distracted the initial visits were challenging. While Adriana acknowledges possibly "trying too hard" to make it a good experience for Grayson as she was struggling with the stress of supervision by an agency

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that was being overtly hostile toward her, the perceptions relayed by William unfairly characterize what occurred.

Similarly, William's descriptions of the uncomfortable March 16th supervised visits are being portrayed through the lens of a CPS supervisor, portraying the visit in a negative manner. While Adriana did remind Grayson that he needed to brush his teeth, they did discuss the importance of eating oranges and consuming vitamin C, and they did joke about the waking up in the morning with "bed head" there were no negative comments made about William or his home. The audio recording of the visit does not show any sign that Grayson was embarrassed or upset about any of the conversations that occurred.

Adriana's limited visitations migrated to video in late March. On May 18th, William suddenly demanded that the calls would either be by Zoom or that Adriana would be deemed to have forfeited them. While CPS falsely claimed that Adriana elected to forfeit the call and attacked her for electing to forgo visitation, the call actually occurred via FaceTime that evening. Upon answering the call William chastised Adriana in front of Grayson and unilaterally dictated that the call would be limited to 15 minutes. William clearly provided false information to CPS at the time and is relaying false information to this Court. The communications between the parties regarding that call, clearly reveal William's attitude toward co-parenting, and

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should have caused alarm to any CPS worker seeking to promote the best interest of Grayson. *See* Exhibit "C".

Contrary to William's allegations, CPS *never* advised Adriana to not bring family members to the visits once live visits resumed.

Similarly, William has *dramatically* misrepresented the communications relating to Grayson's birthday. While falsely claiming that Adriana "scoffed" at the suggestion of spending time with Grayson on his birthday, the reality is that William rescinded his offer of birthday time after admonishing Adriana for her "poor behavior" and calling her "delusional." *See* Exhibit "D".

The Dismissal of the Abuse and Neglect Case

After reviewing the case file, and having the benefit of the deposition of the investigating CPS case worker, the District Attorney dismissed the abuse and neglect case against Adriana after having expressed significant concerns about the integrity of the investigation, and determining that there were no credible safety and welfare concerns regarding Adriana's care of Grayson.

In the end, William and Kristy's pursuit of bogus abuse claims, and the conduct of a misguided and overzealousness CPS investigator (whose representations in her reports are squarely contradicted by recordings of the

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described interactions) has denied Adriana her court-ordered visitation for approximately nine months.

II.

OPPOSITION AND COUNTERMOTION

A. William Has Illegally Disseminated Confidential CPS Records

As this Court is aware, NRS 432B.280 ensures the confidentiality of CPS records as follows:

> Confidentiality of information maintained by an agency which provides child welfare services; exceptions; penalty.
>
> 1. Except as otherwise provided in NRS 239.0115, 432B.165, 432B.175 and 439.538 and except as otherwise authorized or required pursuant to NRS 432B.290, information maintained by an agency which provides child welfare services, including, without limitation, reports and investigations made pursuant to this chapter, is confidential.
>
> 2. Any person, law enforcement agency or public agency, institution or facility who willfully releases or disseminates such information, except:
>
> (a) Pursuant to a criminal prosecution relating to the abuse or neglect of a child;
>
> (b) As otherwise authorized pursuant to NRS 432B.165 and 432B.175;
>
> (c) As otherwise authorized or required pursuant to NRS 432B.290;
>
> (d) As otherwise authorized or required pursuant to NRS 439.538; or

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> (e) As otherwise required pursuant to NRS 432B.513,
>
> is guilty of a gross misdemeanor.

NRCP 12(f) states as follows:

> (f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

For reasons that are not fully understood, William has elected to disseminate confidential CPS records as an exhibit to his pending motion in violation of Nevada law, and has attempted to secondarily disseminate such information in his pending motion. As such, the Court should immediately strike William's motion along with its accompanying exhibits, and should deem William to have committed a gross misdemeanor at this time.

B. There Exists No Legitimate Basis for a Change of Custody at This Time

As set forth above, the misguided abuse and neglect case that has been fraudulently promoted by William for almost nine months, was dismissed based upon the determination of CPS and the prosecuting attorney that there are no concerns about the safety and welfare of Grayson at this time.

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As set forth above, Adriana has been the victim of a misguided CPS investigation that was initiated as a vendetta against she and her husband by Kristy with the support and encouragement of William. There has never been a legitimate basis for denying Adriana contact with Grayson, and there clearly exists no basis to change custody in favor of William at this time.

Troublingly, William has attempted to portray the misguided hearsay assertions set forth in CPS unity notes out of context that he knows are inaccurate, and attempts to portray Adriana's attempts to prove her innocence to CPS as a concerted failure to "cooperate" with the agency. Troublingly, within his best interests claims William makes numerous assertions that he knows are false, including, but not limited to the following claims:

- William is fully aware that Grayson has expressed a strong desire to spend time with Adriana.
- William knows that Adriana loves Grayson and has consistently shown him physical affection throughout his life.
- While claiming to be the parent more likely to allow Grayson to have a relationship with the other parent, William has openly taken to position that third parties should have priority over Adriana in caring for Grayson, and has supported CPS's interference with the custodial orders for approximately nine months by asserting allegations of abuse that he knows did not happen.
- William's communication with Adriana regarding the use of videoconferencing software paint a very troubling

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picture of a parent that has lost sight of their children's needs and shows William's true attitude toward co-parenting. *See* Exhibit "B"

- William continues to assert that Adriana has promoted Grayson calling William by his first name despite the fact that the records that he has presented clearly show that Adriana has instructed Grayson not to call him by his first name (and that he gets in trouble for calling his father by his first name), and that Grayson refers to his significant other as "mom".

- As set forth above, Adriana did not "orchestrate" a medical dispute, and appropriately communicated with William about Grayson's medical issues. *See* Exhibits "A" and "B".

- Further, the communications between the parties clearly show that William did not communicate to Adriana that Grayson was taking any prescription medicine at the time, and has falsely asserted that Adriana may have over-medicated Grayson in his moving paperwork.

- While online schooling has been a challenge to all parents in Clark County, Adriana disputes William's assertions that she has not done her part. Ironically, William's failure to cooperate in providing Adriana information greatly complicated online schooling efforts. *See* Exhibit "E".

- The only aspect of CPS investigation that Adriana "refused" to cooperate with was CPS's ongoing efforts to coerce Adriana into falsely admitting to abuse that did not occur to get more time with her child.

- William has deliberately misled the Court by failing to acknowledge that he rescinded his offer to allow Adriana time with Grayson on his birthday. *See* Exhibit "D".

- Adriana's medical conditions in no way impair her ability to care for Grayson. The fact that William is asserting that her taking heart medication, and having a defibrillator, should preclude her from having custody of Grayson shows the lengths that William will go to deny Adriana time with Grayson.

- As set forth above, Adriana adamantly denies William's claims of abuse that have led to her being denied time with Grayson.

- William is fully aware that Adriana has more than a superficial relationship with Grayson.

- William's allegations of abuse have been adamantly denied by Adriana and her husband Jon, and have been fully investigated by CPS for approximately nine months despite the reality that there has been no credible evidence supporting such claims. Despite William's efforts to promote the false narrative of abuse the ongoing cases against Adriana and her husband were dismissed based upon their being no threat to the safety and welfare of Grayson.

While there exists no basis to change custody in William's favor, there clearly exists a basis to give Adriana compensatory time for the time with Grayson that she has lost over the course of approximately the past nine months, and for this Court to consider a change in custody in Adriana's favor based upon William's false assertions of abuse, and overall role in coordinating with Kristy to perpetuate false CPS claims against Adriana and her husband.[1]

[1] Adriana requests that discovery be opened to determine the full extent that William coordinated with Kristy to perpetuate false claims to CPS.

Adriana requests that she receive 8 days per month of compensatory time for a period of sixteen months to restore the parties' overall custodial timeshare, and award Adriana make-up holiday time to restore the holiday time that she missed.

C. Child Support Considerations

With their being no legitimate basis for a change of custody in William's favor, there exists no basis to modify child support in his favor. Further, William's request for retroactive child support has no legitimate basis under Nevada law and should be deemed frivolous by this Court.[2]

D. Attorney's Fees Considerations

As this Court is aware, NRS 126.171 states as follows:

> Costs. The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests or tests for genetic identification, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county. In no event may the State be assessed any costs when it is a party to an action to determine parentage.

As recognized by the Nevada Supreme Court, Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005), NRS 126.171 permits this Court to order reasonable attorney's fees "in proportions and at times determined by the

[2] William has not paid the Court ordered child support to Adriana since February pending the outcome of the Abuse and Neglect case, and presently owes approximately $2,940.00 in child support at this time.

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court" and allows this Court to apportion the costs of litigation between the parties' based upon their financial means.

Further, 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.

Finally, 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

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> 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.

William has refused to engage in meaningful EDCR 5.501, has improperly disseminated CPS records, and has filed a motion plagued with false and misleading information after perpetuating CPS claims that have denied Grayson almost nine months of contact with his mother. Under such circumstances, the Court should award attorney's fees to Adriana in accordance with EDCR 5.501, EDCR 7.60(b), and NRS 18.010 at this time.

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 is reasonable, and the total amount of time outlined in the memorandum is reasonable based upon the unique circumstances of this case. Attorney Michael P. Carman, Esq., is an A/V rated attorney who has practiced since 1997, has practiced primarily in the field of family law for over fifteen (15) years, and is currently serving on the State Bar of Nevada's Family Law Executive Council. It is hopeful that the Court will recognize that counsel's work in this matter was more than adequate – both

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factually and legally – and 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 addressing William's misconduct;
2. For an Order denying William's motion;
3. For an Order awarding Adriana compensatory time;
4. For an award of attorney's fees and costs; and
5. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: September 29, 2020.

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 opposition and countermotion, 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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 29th day of September, 2020, 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

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

Melody Cooley
Employee of FINE | CARMAN | PRICE

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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: September 29, 2020

Signature of Party or Preparer Melody Tooley

TRANS

FILED
JUL 26 2021
CLERK OF COURT

COPY

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

WILLIAM EUGENE DIMONACO, Plaintiff,	
vs.	DEPT. M
ADRIANA DAVINA FERRANDO, Defendant.	APPEAL NO. 74696 & 80576
	(SEALED)

BEFORE THE HONORABLE CHARLES HOSKIN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

THURSDAY, OCTOBER 1, 2020

APPEARANCES:

The Plaintiff:	WILLIAM DIMONACO
For the Plaintiff:	MATTHEW FRIEDMAN, ESQ. 2200 Paseo Verde Pkwy., #350 Henderson, Nevada 89052 (702) 476-2400
The Defendant:	ADRIANA FERRANDO
For the Defendant:	MICHAEL CARMAN, ESQ. 8965 S. Pecos Rd., #8 Henderson, Nevada 89074 (702) 384-8900
	ELIZABETH ELLISON, ESQ. 2520 St. Rose Pkwy., #101 Henderson, Nevada 89074 (702) 602-7447

LAS VEGAS, NEVADA THURSDAY, OCTOBER 1, 2020

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:21:42)

THE COURT: All right. Let me call the case, and then we'll -- we'll deal with some -- some housekeeping issues. We're on the record, 539340. Mr. Friedman, your appearance?

MR. FRIEDMAN: Your Honor, Matthew Friedman, 11571, on behalf of Mr. William DiMonaco. Mr. DiMonaco is present in my office. He's just off camera, rather than setting up another laptop and having him be -- but he is present.

THE COURT: Perfect. Thank you, Mr. Friedman. Mr. Carman?

MR. CARMAN: Mike Carman, bar number 7639, along with Elizabeth Ellison, bar number 13683; if I'm correct?

MS. ELLISON: That is correct.

MR. CARMAN: Ms. Ellison -- Ms. Ellison is with counsel in the Child Protective Services case. I would ask for her to be allowed to appear here today with me so that if there are any questions that need to be answered about the history of that case, which I did not participate in, she can be available to answer those.

THE COURT: And that -- and -- and, Ms. Ellison,

your presence is why I haven't moved this to a breakout room yet. I wanted to see where we were on that, and whether there's concern. It's a sealed case, which puts us in a -- a different scenario, and I didn't have you as an attorney of record in this case. Mr. Friedman, issues with Ms. Ellison participating?

MR. FRIEDMAN: Broadly no, Judge. You know, as -- as you've indicated, it is a sealed case. She certainly was trial counsel in the underlying dependency matter, or at least co-counsel there. I understand Mr. Carman's position. I want to make sure this Court can get where it needs to go. I -- I'm not looking to wrangle anything unnecessarily, so certainly, no objection.

THE COURT: I -- I appreciate that. Ms. Ellison -- and who did you represent in the J case?

MS. ELLISON: I represented Adriana Ferrando and John Collingwood (ph), Your Honor.

THE COURT: Okay. All right.

MR. CARMAN: And, Your Honor, if I could, I wanted to apologize to you for getting our opposition to you late. Mr. Friedman was gracious enough to give us an extension, but I -- I know how difficult it is for the Court getting these things at the last minute. So I wanted to thank Mr. Friedman, and apologize to you. I did everything I could to get it in.

There was some question as to whether Ms. Ellison worked for Doug Crawford's office. There was some question as to whether Mr. Crawford was substituting in or not. By the time it was decided that Adriana was sticking with me, I was on a beach in Mexico, so. I apologize for that.

THE COURT: I'm not sure you had to bring that up, Counsel. I think you probably could have left that last part out. All right. Give me a minute. Give me a minute, let me move you on a break out session, because we've got a sealed case, and then we'll get going.

MR. FRIEDMAN: All right.

MR. CARMAN: Okay, Judge. Do we need to do anything, or it just moves us automatically?

THE COURT: Just -- just sit there. We'll get -- we'll take care of it.

MR. CARMAN: Understood. We're being teleported, Matthew.

MS. ELLISON: The joys of technology.

(COURT AND CLERK CONFER BRIEFLY)

THE COURT: Okay. All right. We're all back in a breakout room, because it is a sealed case. A couple of housekeeping matters; from my standpoint, I just need to put on the record, this case is on appeal, which limits the Court's jurisdiction. Certainly, I'm looking at a Huneycutt

situation to see if we need to do any inclinations at this stage, and not overcome that.

The other housekeeping matter that I had is that on September 11th, Plaintiff filed exhibits which were essentially the records from the J case. Typically, that would cause me greater concern than it does at this because it still is a sealed case. But I'm -- I'm not sure that -- that we want to leave those. I wanted to check with Counsel and see if we had concerns about striking those exhibits, notwithstanding the fact that it is a sealed case.

MR. CARMAN: I -- my position on that is I -- if -- despite the case being sealed, it's a gross misdemeanor to disseminate CPS records in any way, shape, or form. The only way they should come into this court is as a confidential exhibit.

THE COURT: And -- and I do have them, those records, as well. So based upon --

MR. FRIEDMAN: Judge, if I can address it? And if I can address, I'm happy with whatever Your Honor is inclined to do, because I know Your Honor does have all the records at this point.

THE COURT: Yeah.

MR. FRIEDMAN: I'd note that what we provided was a sampling that was considerably less than what the Court

received in its total packet.

THE COURT: That's correct.

MR. FRIEDMAN: It might be -- just to get the propers before the Court, and -- and believe me, it was because we understood it to be a sealed case, everybody who had received it were either parties or their attorneys. The dissemination, in my view, would only be dissemination to this Court, which Your Honor is entitled to the records anyway. I do get, mechanically, perhaps the proper procedure should have been to let Your Honor request them yourself, and for that, I do apologize, but I saw it as a distinction without difference. Whatever Your Honor's inclined to do, I'm fine with.

THE COURT: All right. Just -- just to stay on --

MR. CARMAN: And, Your Honor, I just want -- I just want to state for the record, to the extent the Court may have additional information, I have not been made privy to that information. I would hope that if there's going to be any ruling made upon anything that's been received by the Court, it'll be discussed so we have a chance to talk about it and potentially respond to it.

THE COURT: Yeah. Yes. And in any time, just for clarification, any time that CPS records are requested, the hope is that Counsel's notified and have the opportunity to

come in and review -- well, with Covid --

MR. FRIEDMAN: We received them.

THE COURT: -- I don't remember what the process is now. We used to --

MR. FRIEDMAN: I believe Your Honor has --

THE COURT: -- allow you to come in and review, and we may be sending them off to you at this point.

MR. FRIEDMAN: I believe that's what happened, Judge.

THE COURT: Assuming you got the -- yeah, we send them off is what it sounds like. So if there's -- to the attorneys. Okay. So what I'm going to do for -- just to make sure that we're clean on those confidential records, we'll strike the exhibits that were filed on September 11th, with the understanding that the Court has reviewed the entirety of the -- of the DFS work records that were requested and received, and certainly, if Counsel has not received those by email, simply let my department know, and we'll get those out to you under the administrative order. All right.

With regard to what is pending before me today, certainly the parties were -- were before me 10 months ago, and we rendered rulings with regard to different issues, and I think those are the ones that are on appeal. But as far as the motion that's pending before me today, I reviewed

Plaintiff's motion, the response, although it was filed a couple of days ago, I did get an opportunity to review that. Mr. Carman, just so you're aware, as well as the DAA -- or the DFS files. So, Mr. Friedman, what else do I need to know?

MR. FRIEDMAN: Judge, I would just square the debate for you in the terms that I think are most salient. To me, this isn't -- today, as Your Honor indicated, this isn't about the merits in totality. This is a jurisdictional issue. And -- and I think, I would hope, everybody would agree -- well, not perhaps agree as to the outcome.

I think everyone would agree that but for the divestiture that would occur under Huney -- that does occur under Huneycutt, were this motion presented to Your Honor simply as look at what's occurred in the last 12 months since the order on appeal -- or 10 months -- well it was 12 months, and then we did a 52, and then Your Honor rendered additional findings (indiscernible) so. But for the fact that that bore on child custody, which would divest this Court -- seemed to divest the Court of jurisdiction, I think clearly adequate cause is demonstrated under Rooney, and I think we would be entitled to proceed to an evidentiary hearing on -- on the -- on the matters raised.

And so the -- the styling of the motion is ostensibly a Huneycutt and Mack-Manley. And what we're saying

to Your Honor is, the primary thrust is what's gone on, and it's a combination of things, again, which is the substantiations by DFS, administrative substantiations, which I understand that DFS ultimately did, and Your Honor may get into this later, ultimately did dismiss. But they did so without a finding one way or another.

However, we didn't get there on accident. Right? We -- we had a -- a warrant signed by Judge Sullivan, which led to the ultimate removal of Gage (ph). Once that happens, my client's pulled into this because of the other minor child, Grayson, subject minor child here. At which point, Rincon -- Hearing Master Rincon White removes the child and places the child in my client's custodial care, protective custody.

And so the -- those are salient factual issues that need to be vetted. I would probably, as I'm sure, Your Honor, I know you well may express some chagrin with how that proceeded for as long as it did, and then resulted in this dismissal as it did. We would also shake our heads. But again, my client was sort of along for the ride on that. He had no choice. Once the Court made its orders, he was compelled to act as he did. So I think that in and of itself, but for the pending appeal, would give this Court adequate cause.

Second, and very saliently, we'd point out, too, the

child's thriving and remarkable academic progress during the time period in question, in terms of the change. What's beautiful there is that what Your Honor has is it's not picking through what custodial days were which parent's, and how did the test go on that day. You have this uninterrupted block of time wherein the child is solely in my client's, Mr. DiMonaco's, custodial care, and you have this marked turn around in terms of test scores, in terms of grades, in terms of the child's social and academic progress, and he's thriving.

Again, I -- reasonable people can disagree, but that would -- in my view, that is an adequate cause basis. That -- that is what we have evidentiary proceedings for. And then obviously, the -- the context and -- and the -- the thrust of the investigatory efforts by DFS, talk about this sort of psycho-social dynamics at play, separate and apart from whether they proceeded to an adjudicatory substantiation that I think also raised some serious questions about best interest, and I think support a finding of adequate cause here that we could move forward.

Now, again, but for the pending appeal, I think that's very simple. I think once you realize there's a divestiture, and we briefed this at some length in our moving paperwork, once that divestiture occurs under Huneycutt,

because they are bearing on custodial orders, Your Honor can't simply put it down for an evidentiary hearing. Your Honor, you know, because this is exclusively with the Supreme Court, and it's in the Appellate Court. So what we'd be seeking there is that Your Honor to say, look, you know, the wording is, you know, certify that it would -- the Court would be inclined to grant the motion. And if you certify that inclination, then our process is then we go up to the -- the -- the Supreme Court, and we apply for a remand.

Now, I think that what's important it looking at the operative word there, inclined to grant. I think that it -- it's ambiguous, and it could be read to mean, I think mistakenly so, but I think it could be read to mean, Your Honor has to say today, without looking at any evidence that you can't look at, or having any evidentiary proceedings that you don't have the jurisdiction to do, that you would agree with me in terms of granting. I don't believe that's what it means, because the same cause in Mack-Manley states later that once remand was granted, the Court would then make a determination on this motion to modify custody.

So clearly, it's not contemplated that you could be inclined to grant it in totality. Inclination there I think must be read as that but for the appeal, you would be inclined to find adequate cause and set an evidentiary hearing. I

think that's the accurate interpretation. I think clearly we have more than enough there for this Court to certify under Rooney adequate cause has been met, that but for the appeal, you would be inclined to set it down for an evidentiary hearing.

We will then follow the appropriate protocol with the Supreme Court, request remand from them. If they believe, you know, as Your Honor remembers, you -- I would say invite, but Your Honor indicated you sort of saw some of my leanings and earlier findings about the -- the Appellate Court's desire to have evidentiary hearings, and say, look, if you -- if you -- if you'd like to just let them clarify, right? If they feel it's such an important issue they may do a partial remand, or they may look at it and say, look, this is all part and parcel of custody. It's going to be remand and dismiss, and we'd be fine with either of those scenarios. And then I think Your Honor has the jurisdiction requisite to set an evidentiary proceeding, conduct discovery, so on and so forth.

I would note, just briefly, that even in the opposition, Mr. Carman's opposition, the -- the crux of what he's talking about are issues of material fact. I mean, there -- there's some real differences in how these parties view that. And again, I think but for the divestiture, you -- you would really be needing to take some evidence and know what's

going on. You've got two very different stories.

So that is the Huneycutt issue and that's where I think it squarely falls. You know, we do touch on Mack-Manley, and I want to explain why we talk about emergency, and why we address Mack-Manley. The reason being is that we wanted this Court to be aware -- well, I'm sure Your Honor is, but for the sake of being complete, that you weren't restricted only to the certification with nothing else, that if your client -- if Your Honor felt that you needed to make some short term temporary modifications or adjustments in the interim, while that remand process was proceeding, you certainly could, and those could be as -- as, you know, as significant as a -- a custod -- a temporary modification, or a time share modification, or as I've seen Your Honor do in other cases, in fact, on the same type of remand issues with my firm, where you've implemented some sort of safe guards and safety issues like therapeutic intervention, monitoring those types of things that might -- reciprocally, perhaps, but whether you felt that there were some remedial emergency measures pending the outcome of that remand process, assuming that you certify. But you could do that.

And that's the reason that we've addressed it from both factors, right? From both perspectives. But ostensibly, there's a lot of -- as Your Honor's aware, this is the -- a --

a lot of litigation history, there's a lot of conflict, there's tons of stuff. We could probably spend five hours today sussing through all that.

I don't believe that's necessary, nor do I even think that jurisdiction -- I -- I -- without resolving jurisdiction first, it's even proper. I think it's really sort of a -- at a look in, I think Your Honor's determination should be, do I have enough with peeking in under Rooney, when looking at both of these party's positions? And if so, certify the Court's inclination to grant insofar as I believe that's what grant -- you know, inclination to grant means in this context. And then we'd proceed with the substance of the matter.

And that's what we would be asking for today, that you certify under 54, Judge, and enter any, like I said, short term remedial measures you think are appropriate, pending the outcome of that remand. I hope that was -- was clear, Judge. If you have any questions for me, happy to answer them. I know Your Honor's busy. I would yield the floor with just a little bit of time for rebuttal if that's okay, and I would just make one caveat.

I'm sure Your Honor's okay with this, as well, but Mr. Carman was polite enough, and I appreciate that, to -- to indicate we did grant the extension. He -- he explained the

story to me, it made perfect sense. I had no problem there. But obviously, because of the date upon which we received the opposition and then the exhibits, it was basically a Tuesday afternoon and Wednesday evening, we would just ask that we have the ability to make any oral reply necessary. I'm sure that won't be an issue, but I just wanted to clarify.

THE COURT: Yeah. The -- the -- and I appreciate that. The -- the question that I have for you is, I wasn't really clear as to what the current status quo with regard to contact was. If you can clarify that for me?

MR. FRIEDMAN: Upon the -- upon the expiration and dismissal of the dependency action, based on the order of Hearing Master Rincon White, and obviously the understanding of the parties, it reverted to the custodial orders that were last in place.

THE COURT: And -- and so those have been --

MR. FRIEDMAN: Which is --

THE COURT: -- those have been followed --

MR. FRIEDMAN: Your Honor --

THE COURT: -- since mid-September?

MR. FRIEDMAN: That's correct.

THE COURT: Okay. And has there been issues as a result of going back to that schedule?

MR. FRIEDMAN: I mean, I -- I don't know how much

Your Honor wants me to go into that. I mean, I -- I don't think it's been perfect. I think the same issues that permeate our request and -- and the substance of our matter are there. I'm not telling you that there's -- you know, that there's been some type of an exigent circumstance that resulted in a withholding or anything like that.

THE COURT: Okay.

MR. FRIEDMAN: Is that fair, Your Honor? If you'd like more detail, I can give it to you, but --

THE COURT: All right. No, I appreciate that. All right. Thank you.

MR. FRIEDMAN: Okay.

THE COURT: Mr. Carman?

MR. CARMAN: Well, in a -- okay. I -- you know, this idea that there's adequate cause for a hearing, or there's any basis for a change of custody is really what this Court would need to certify today, and frankly, I don't understand where Dad is coming from at all, in reviewing the history of this case. And just so the Court understands, the -- the CPS action was initiated by another parent, named Christie (ph), in another case. It's a parent in a high conflict case in Judge Henderson's department that's been going on for quite some time in a high conflict fashion. There have been serial reports of abuse by Mom. They've been

found unsubstantiated since 2016.

Parenting coordinator was ordered in that case to address it. Parenting coordinator is Shelly Cooley, who ironically is the initial source of this Child Protective Services report. Normally, that would raise the credibility of the report, but for the fact that Shelly Cooley has already talked to Mr. Friedman and I, she's already been deposed, and she doesn't believe the allegations. She felt she had an obligation to report them as a mandatory reporter.

The idea that Will has been pulled into this is -- it's just impossible to believe, because if you recall, when we were arguing about the after care and the school care, we talked about Christie's trying to be involved in your case, about Will deciding to potentially use Christie as a care giver for Grayson in -- in this case, and -- and about all the reasons why we objected to it.

We, you know, again, you're not Judge Henderson, but I can tell you significant concerns about this person's mental health have been raised in that case. Mr. Friedman has defended them. There's a reason a parenting coordinator was appointed in that case. So, you know, this Will's been dragged into -- no, Will decided to align himself with Christie long before the Child Protective Services action proceeded.

We expressed concerns that they're both represented by Mr. Friedman. There's crossover with contacts between Mr. Friedman's office. Obviously, Will's significant other works for Mr. Friedman. It's -- it's this unholy alliance that has led to a lot of problems in your case, Your Honor, and it has been a persistent problem in front of the case in front of Judge Henderson. So this notion that he has been dragged in here, and he's this unwitting participant in the Child Protective Services case is just not true.

So this all came to a head last year as your case was on appeal, and as we reached out under 5501 to seek a child support modification in the case involving Christie, a report was made to Shelly Cooley. And just so you understand, Your Honor, the report was based upon a video interrogation of a child after a child custody exchange, as if that's not problematic in and of itself, plagued with leading questions by Mom trying to convince the child to report abuse, feeding into the child when the child is saying things that she wants to hear, trying to redirect the child when things are being said that she doesn't want to hear, in defense of Dad. It -- it was problematic. It's a sign of a seriously problematic parenting relationship with the child, and it was a problem.

Ms. Cooley, during the -- during the conversations with Mr. Friedman and I, and during the deposition that was

taken of her in the Child Protective Services case, expressed serious concerns about Christie's conduct and how this came about, openly acknowledged she did not believe the allegations to be true, but felt she had an obligation to report. So this is where CPS gets involved, and talk about -- again, we have the benefit of having taken the deposition of the case worker. Not me, Mr. Crawford took the deposition, but I've read the transcript. And it's disturbing.

A Child Protective Services case worker with very little training in interviewing children scheduled an interview at the child's school with Mom present at the school. So Mom brings the child to the school, Mom is outside the door while this interview occurs. For -- for what -- God can only explain why Child Protective Service apparently has a policy, according to this case worker, of not recording any interviews. Child -- but based upon the deposition testimony of this Child Protective Services employee, we now know what happened.

The testimony at the deposition is just disturbing. A sample question that she gave us that she asked the child was, tell me how great your mom is. The corollary of that was, my report says you're getting hit by Dad. Can you tell me about this? The most suggestive --

THE COURT: This is Gage? This is Gage, right?

MR. CARMAN: Huh?

THE COURT: This is Gage that's being interviewed, not Gray --

MR. CARMAN: This is of Gage at the time, yeah.

THE COURT: Okay.

MR. CARMAN: Gage is the one who was interviewed. And again, Grayson has never made reports of being locked in a closet to Dad. Will, Dad in your case, has openly said he's never heard of such a thing. So Gage is being subjected to these leading questions, and the child's not -- the child will not speak. The Child Protective Services case worker said at the time she took that as a -- as a concern that the child was fearful of Dad. When asked by Mr. Crawford, did you ever think maybe the child was uncomfortable about lying, the Child Protective Services worker says, didn't think of that.

So this starts off with the most problematic interview based upon the testimony of the Child Protective Services worker. The Child Protective Services worker openly questioned whether the child had been coached, but didn't investigate Mom in any way, shape, or form, about her potential coaching of the child. And again, there's different types of coaching. There's overt coaching, telling a child what to say. And then there's also the type of coaching that's on the videotape that was given to Ms. Cooley, in which

a child affirms to disaffirms statements by a -- a parent disaffirms or affirms statements by a child, and redirects them to -- to tell the story that they're trying to get the child to tell.

So after this interview, the Child Protective Services worker still indicates there's no danger. The specific allegation being investigated, and that was the crux of this -- this whole report is that the children were locked in a closet with a green monster, with some type of light that made noise. The report was contradicted by the physical evidence in the case. The Child Protective Services worker went through my client's house. They did a search of the house. The -- the evidence was simply contradicted. There's a closet, there's no lock on it.

The -- despite there being no evidence, despite the testimony of the child being very problematic, they decide they're going to plunge forward with the case. At that point, they restrict my client's contact with her child. By February 28th, they're already deeming it again -- Will is -- Will is presenting this to you, Your Honor, as if it's based upon his first hand knowledge, and based upon him having accurate information about what occurred.

He claims on February 28th, Adriana was uncooperative with Child Protective Services. She was

uncooperative to the extent that they told her that if she didn't admit to the allegations, they were going to continue to restrict her contact, and she would not. She wasn't going to admit to something that wasn't true. She was not uncooperative at all.

They -- they complain on March 3rd that she brought the child to the doctor. This was somehow inappropriate when she -- when the child is received by Adriana with a temperature, has been coughing for five days. The Child Protective Services report indicates Adriana lied and would have no knowledge of the child coughing and being sick for five days when it's just not true. She visited with the child on the 29th.

There was communication between she and Will about the child's illness, and she brought the child to the doctor. She called CPS repeatedly to try to coordinate with them and schedule the appointment. She reached out to Will to discuss the appointment. Child Protective Services determined that she lied.

It's not true. Will knows it's not true, and has told this Court that she lied. Child Protective Services accused her of potentially doubly medicating the child. The only way that could have possibly happened is if Will wasn't honest about when medication was being given to the child.

For Will to present that to you as if it's truthful, when he knows that it's not, is a problem. It -- it's certainly not a basis for a change of custody in his favor.

I don't know how much detail you want me to go on through this. There's the initial supervised visit which Will says Adriana said inappropriate things at. Well, unfortunately for Child Protective Services, Adriana recorded the visitations. The recordings completely belied what was placed in the Unity notes by the case worker.

Then Will has criticisms that levies toward Adriana about phone communication, and says that she was being unreasonable. He actually reports that on May 16th, she refused to speak to her child because she didn't want to do Zoom. What really happened is Will suddenly unilaterally determined we're no longer going to use Facetime, despite the fact he's under orders from Child Protective Services to facilitate the communication, he decides, we're not doing Facetime anymore. Tells her we use Zoom or Skype, or you're not going to have any call.

Rather than it being presented as Will being inappropriate, and inappropriately suddenly altering the telephone communication, Adriana is painted as being unreasonable and as forfeiting her call out of principle, rather than talking to her child. Will knows that that's not

true. Will knows, as a matter of fact, that a call occurred that day. He picked up the phone, he chastised Adriana, and the call proceeded via Facetime. He knows that, and yet is presenting it to you incorrectly, based upon Unity notes that he knows are wrong. It's a problem. It's a credibility problem. It's a truth problem.

He criticizes her for bringing family members to visits when Child Protective Services never told her she couldn't. She thought that was totally appropriate, and never realized there was a problem with it. Will then goes and attacks her for this birthday thing.

And again, Your Honor, this is not a portrait of Adriana having any problems. It's a portrait of Will having some serious issues. He offers her an hour of time, and tells her to work it out with the Child Protective Services worker. Adriana questions, can I have more than an hour, with a question mark. And we've provided the communication to the Court. Will immediately rescinds the offer of time, and chastises her for poor behavior, and accuses her of being delusional. So he does that, he rescinds the time, and he tells you, Your Honor, that she -- she was unreasonable and forfeited the time because he wouldn't give her an additional hour.

There are so many problems with the motion that's in

front of you. There are so many factual accuracies that are rebutted by the communication between the parties, between the -- by the communication between Child Protective Services and Adriana, and by everything.

So this mess of a case was presented to the DA. After a case review by the DA, the DA dismissed the case based upon a determination that there was no danger to the child. The -- the -- the DA that was involved, it's my understanding, and Ms. Ellison will have to confirm that, because I wasn't there, it's my understanding the DA apologized to Adriana for this case being perpetuated in the first place.

So there is zero basis for a change in custody right now. Will knows that Grayson was never locked in a closet. Will knows that Grayson wants to see Adriana. This idea that, you know, he doesn't know the preferences of the child, he knows that the -- Grayson right now desperately wants to see his mom.

The problems in this case are unilateral conduct by Dad. Joint legal custody has remained in effect all throughout this time period. The hearing master who's been handling the Child Protective Services case made it very clear to the parties the joint legal custody orders are still in effect. Will has dictated telephone contact. He's inappropriately communicated in front of the child about Mom.

He's told the child that Mom has done something bad, even though he wasn't supposed to talk about the Child Protective Services proceeding.

You know, even things like he criticizes Adriana for encouraging the child to -- to call him William, when the records themselves show that she has told the child that he'll be punished for calling William William. While this is all going on, the child is openly calling Tracie (ph) mom. It -- this makes no sense.

He accuse -- lies about Adriana seeking medical treatment inappropriately, falsely accuses her of endangering a child, which never heard, and could have only have happened if he hadn't been communicating appropriately. He has violated the joint legal custody orders by enrolling a child in daycare without any communication with Mom, enrolling a child in counseling without any communication from Mom.

You know the good grades that Mr. Friedman is touting as a basis for changing custody? The reason the child's getting good grades is Dad unilaterally decided to hold the child back a year. The -- the only thing that could lead to a change of custody at this time is Will's behavior and Will's conduct throughout the course of this case.

I do believe that discovery should be opened. I believe we should have a right to find out exactly what

communication has occurred. Will's communication with Christie should be preserved. We should have a right to discover it, to find out how direct his involvement has been. His communication with Child Protective Services needs to be preserved, needs to be disclosed. Any communications that Counsel has shared with Will involving Christie need to be part of the discovery orders of this Court.

Their -- again, the only change in custody case that exists at this point is whether Will's conduct justifies a change in custody. I don't know that we're there. I understand this -- this narrative that he's an unwitting participant in all this. We don't believe that it's true, and we believe that discovery will show that he has been a willing participant in it, and we know the way that he has used this process to deny Adriana her joint legal custody rights.

The -- what the Court does need to address right now, though, is compensatory time. As a result of this investigate -- again, even if Dad is not at fault, let's say Will was an unwitting participant, he didn't have an alliance with Christie, Christie and he -- he were not in communication with each other through this process and coordinating, let's say that's hypothetically true, this child has missed over 120 days of contact with Mom.

I'm not asking for compensatory time as a punishment

right now, but I'm asking for compensatory time to restore some of the time that's been lost to her so that she can rebuild this relationship. She's still bonded with the child, she still has a great relationship with her son. But it needs to be repaired. It needs to be fixed. We're asking for eight days per month for a period of 16 months as compensatory time for the time that's been lost.

And, you know, there is no basis for a change in custody to Will at this point. There may be a change of custody to Adriana. Frankly, it can be presented after the appeal is resolved. But I -- I do ask this Court to open discovery so that we can begin to get information and find out what's truly been going on behind the scenes. We know a little bit from the depositions that were taken in the CPS case, but I -- but I do believe a -- a flashlight has to be shown in that direction, so we can see what's really happened.

THE COURT: All right. Thank you.

MR. FRIEDMAN: Your Honor, if --

THE COURT: Mr. Friedman, anything else?

MR. FRIEDMAN: -- if I may? If I may, briefly. I -- I think just in hearing the depths to which Counsel has -- has delved into these allegations, one thing that is obvious is that we could not see these situations more differently. One thing I would strongly caution the Court to do is that

there are a number of things that Mr. Carman, respectfully, I think is getting third hand and he's stating to be true that are -- that are simply patently false, and belied by the records.

But that I think brings me back to my earlier point, which is clearly, you have issues of -- material factual issues that will be explored through the evidentiary process. What I think is abundantly clear, and I think to some degree, Mr. Carman glosses over, is there's a nine-month period where CPS is consistently stating that Ms. Ferrando's not complying. And in fact the communications, contrary to what Mr. Carman says, and you may want to look at this, CPS expressly states to Ms. Ferrando, her cooperation is by no means an admission of anything. It's simply a mechanism to get through the process and -- and get back to having custodial time.

Point of fact, when the -- the deprivation first occurred, my client suggested informal supervision with Ms. Ferrando's parents serving as the supervisors, and it was through Ms. Ferrando's actions towards DFS, and her lack of cooperation and failure to comply that that was ultimately restricted back to formal supervision by CPS. So again, I could go through the litany of I think -- I'm not going to say Mr. Carman's misrepresenting. I think he's been misinformed.

But I think it's very clear, and there is a plethora

of documentary information which is going to support that the vast majority of the allegations he made are just simply untrue. What is absolutely true, though, however, is irrespective of Gage and Ms. McConnell (ph), which I think is a distraction here, you had independent oversight by a state agency, by Judge Sullivan, another district court judge, who signed off on Gage's warrant, and then by Ms. Rincon White.

This was not Mr. DiMonaco driving the ship. This was a state agency, a district attorney, and a court whom my client had zero power over. So I think, again, I -- I won't waste the Court's time by refuting, although I -- trust me, I have stacks of emails, I have stacks of notes, I have stacks of correspondence that make that very, very clear, that -- that there's misrepresentation.

I still think it -- it puts it squarely in the case of you -- there is adequate cause here, even to Mr. Carman's point; if he thinks there's adequate cause, you know he believes he ought to be entitled to a modification of custody, certainly more than enough for this Court to consider. The allegations by Mr. Carman are that of a pathogenic parent and my client, which certainly could be sussed out.

I just would end, Your Honor, with the -- the notion of compensatory time, and I just think -- I -- I don't know how this Court could possibly conclude that my client's

compliance with orders from a DFS Court, his failure to comply with would have resulted in him being deemed an offending parent, could be utilized -- and Ms. Ferrando's volitional actions in her cooperation or lack thereof with DFS, which led to the amount of time that this went on, and led to the deprivation of her custodial time, could result in compensatory time. I don't think we ever see it.

I mean, certainly, if Mr. Carman goes out and we have an evidentiary proceeding and this Court determines, which you won't, because it's not there, but if this Court determines that my client was somehow acting unlawfully or with fraudulent intent, and manipulating a process, despite the ample State, district attorney, and judicial oversight of that process, then certainly at that point, you could find him a bad actor and do something like that. But at this point, I think that's so beyond the pale, Your Honor. I really do.

What we would ask the Court again is I -- we think that there's more than enough under Rooney to state that there's adequate cause to suss these issues out in evidentiary proceeding. I think Your Honor can certify that under 54. We will go up and petition for remand. The Court in its discretion can decide whether that's limited or whether it results in a dismissal before Your Honor for an evidentiary proceeding, wherein Mr. Carman's arguments, and mine, and the

evidence in support of them can be properly vetted by this Court.

THE COURT: All right. And I think --

MS. ELLISON: Well --

MR. CARMAN: Your Honor, I'm -- I'm a bit at a loss, because, you know, Mr. Friedman says I'm misrepresenting things. I'll tell you what. I spent all of the best part of the last two days reviewing deposition transcripts and reviewing communication between the parties. The findings of Child Protective Services that have been relayed to -- by Will as fact are squarely rebutted by the communications between the parents that we provided to you.

And, you know, Child Protective Services didn't tell Will to unilaterally hold the child back in school, didn't tell Will to unilaterally enroll the child in counseling, didn't tell Will to call Adriana delusional and chastise her for her poor behavior throughout this process. Those are the things that are problematic, and those are in writing. I mean, it's not like there's a material dispute. The material dispute that's trying to be created by Matt Friedman is a dispute between what CPS says and what Adriana says.

But Will knows, and we presented Will's communication that -- that the findings of CPS that she wasn't cooperating are not accurate. The finding by CPS that she

refused to talk to the child on a specific date, when Will knows she did, doesn't mean that CPS has any basis for determining her behavior was inappropriate. In fact, it kind of shows that Will perpetuated them going down these false rabbit holes in thinking that she wasn't cooperating when in fact, she was. You know, there are problems.

Whether it's deliberate on the part of Will or not, I don't know. The -- the comments, the conduct, and the behavior that he exhibited certainly raises a question of whether it was deliberate and intentional, and he was trying to deny Adriana her rights to this -- to these -- this child, and her -- and the rights that this Court afforded to her under its orders.

THE COURT: All right. As --

MS. ELLISON: And, Your Honor, just to clarify, as -- as I was the -- the Counsel, Mr. Friedman stated that there was no finding when the case was dismissed. That's inaccurate. There actually was a finding made and put on the record by the DA that there was no present danger, and that's why the adjudicatory trial was dismissed and did not go forward. So there was a finding that there was no present danger.

Additionally, as Counsel for Ms. Ferrando, I can say that CPS's claims that Ms. Ferrando were -- was uncooperative

were based on Ms. Ferrando's refusal to agree to a case plan and begin following and complying with the case plan to reunify, because she would not admit to have committed abuse. Mr. Friedman is factually inaccurate. As counsel for Ms. Ferrando, that was the process that was going on, and this is why it was dismissed at the adjudicatory trial when the DA and CPS, after a second assessment, found no present danger at that time.

THE COURT: Okay.

MR. FRIEDMAN: Your Honor, briefly, I don't know if you need it or not --

THE COURT: Just -- well, let me --

MR. FRIEDMAN: -- for the record --

THE COURT: Let me clarify what Ms. Ellison said. She said that the DA made a finding. Did the hearing master make a finding?

MS. ELLISON: The DA stated to the -- the judge that that was CPS's finding, that that is why the case was being dismissed.

THE COURT: Okay. So --

MS. ELLISON: There was no present danger. The DA is saying, CPS's finding is, there is no present danger right now.

THE COURT: Right. Which is why they dismissed --

MR. FRIEDMAN: And, Your Honor --

MS. ELLISON: And the hearing master --

THE COURT: -- the case.

MS. ELLISON: Yes. And the hearing master followed what -- what CPS and the DA were saying, that there was no present danger. So when Mr. Friedman said that there was no finding by CPS, that was inaccurate.

MR. FRIEDMAN: And, Your Honor, briefly --

THE COURT: Well, the -- the -- just -- just so we're clear, a -- a statement made by the DA's office, the DA represents DFS.

MS. ELLISON: Yes.

THE COURT: They don't get to do anything other than represent. They don't get to do the investigation. There's a delineation there that's -- that's there on purpose. All that being said, Mr. Friedman, I know you want to jump in, but I've -- I've got an 11:00 calendar I've got to get to, as well.

MR. FRIEDMAN: I -- I understand, Judge.

THE COURT: The -- the issue that's -- that's before me currently is we have a presumption that joint physical's in the best interests of this child, because that's the prior order of this Court. We look to Truax to see if we've met the standards under Truax with a Rooney analysis as to whether an evidentiary hearing should be set. Now, clearly, the -- the J

case has a different standard for making this determination than this Court does. I make a best interest determination, they make a safety determination. So that's the -- the difference between the two.

In reviewing the CPS records, it raises concerns for me with regard to what potentially could have happened in Mom's home. The fact that all of that went on for nine months, 10 months, for an extended period of time, and for them to then throw their hands in the air raises concerns for me on a number of levels. Whether those concerns have any bearing on what it is that I'm doing in this case or not probably is neither here nor there.

That, piled on top of the fact that this case is on appeal and I don't get to do much today, other than say what I'm inclined to do causes other concerns. And then I've got Mr. Carman asking for additional discovery, which I'm not sure that I get to open, unless we've got something pending, moving forward.

So Truax says, is it in the best interest of the child to make a change? That's the question that's before me today. If I -- if I simply look at what I've been told through DFS, the answer would be a yes. I have sufficient under Rooney and Truax to get to that point. But when I look at the fact that the whole thing was thrown out the window at

one point, it causes me some concerns. I've got credibility issues that are in play.

The problem that I'm running into now, in all fairness, Mr. Carman, is that I don't know where we are with all of this. Certainly I have credibility questions with regard to what's been presented as to what is contained within DFS's report, and the way that it ended, and what was determined by the DA. But I haven't taken that evidence. And -- and I -- I believe that the -- the safest form of proceeding at this point is to indicate that I would be inclined to set an evidentiary hearing on the request to modify custody, with all of those reservations that I've put on the record, as well, allow discovery to be opened, allow Mr. Friedman to go up and see if they want to remand it back.

And at that point, I can determine if setting an evidentiary hearing after we've gone forward is in the best interest of the minor child. And during this process, what I want to do is I want to be back where we were. The -- and I'm happy that that's what we've done since September 11th to get to that point, because that'll also be indicative of whether we had concerns to begin with or not, because that's what's going forward at this point in time. I've got allegations of unilateral actions pending in violation of joint legal custody, which I probably need to take evidence on, as well.

So what I'm going to indicate today under Huneycutt is that I'm inclined to set an -- hesitantly inclined to set an evidentiary hearing on the request to modify physical custody, open discovery, and allow the parties to go through that. If it -- the fear I have is this is going to incite more litigation rather than less. I'm -- I'm very concerned that the parties have a complete inability to communicate, to take actions that are in the best interests of the minor child, not only because of prior litigation in this case, but because of where we are at this point in time.

The compensatory time issue, Mr. Carman, I -- I believe that I would still need to take evidence on that to make a determination as to who's fault it was for what we did, and where we got to. And if I make a determination that -- that Dad had no control over that process, then I'm not sure I can award compensatory time. And if I find that Dad hid -- did have some control over that process, then I could. So I think that issue has to be deferred to have the Court take evidence to get me to that point. Certainly, there's no basis to modify child support at this point, and I don't have a basis to -- to award fees, at least where we are currently.

So I -- I guess that's a long answer to indicate that -- that I'm -- I believe it's -- it's best practice at this point to indicate that I have -- that I'm inclined to set

that evidentiary hearing, and let the Appellate Court decide whether they want me to take that step or not. I think --

MR. FRIEDMAN: Your Honor, I'm happy to --

THE COURT: I think that's what I had before me, unless Counsel's aware of something I've left out.

MR. FRIEDMAN: I'm not, Your Honor. I'm happy to prepare the 54 certification, the order from today, unless you have any objection. Mr. Carman, I'm assuming you'll be countersigning. Ms. Ellison, are -- are you appearing on the case? Would you want to be noticed on that and have an opportunity to countersign, as well, or were you just here for today?

MS. ELLISON: For right now, I'm just here for today.

THE COURT: Okay. Mr. Carman, anything I need to clarify?

MR. CARMAN: No, I don't think so. I mean, the -- basically, you're saying all arguments and everything in the paperwork is before the Court. You're only determining right now that you need to take evidence to find out exactly what happened, what the parties' participation is in it, and you'd be inclined to open discovery, but you can't do it because you don't have jurisdiction to do it right now.

THE COURT: That is a -- that's a fair summary, and

much shorter than what I said, so I appreciate that.

MR. CARMAN: That's funny.

MR. FRIEDMAN: We all agree for once, Judge.

THE COURT: What's that?

MR. FRIEDMAN: I think we all agree for once, Judge.

THE COURT: Well, that -- that -- well, we should write --

MR. CARMAN: We --

THE COURT: -- we should write this down then at this point. All right. I --

MR. CARMAN: No, and I -- I actually -- I actually think you're making the right -- I think Mr. Friedman and I are both in agreement. You're making the right call with the case on appeal.

THE COURT: All right. All right. I appreciate that, and I'll look forward to that order, and -- and what the Appellate Court wants me to do with this one.

MR. FRIEDMAN: Thank you, Judge. Thanks, everybody.

THE COURT: All right. Thank you.

(PROCEEDINGS CONCLUDED AT 11:08:19)

* * * * * *

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.

/s/ Nita Painter
Nita Painter

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OAH
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

ORDER AFTER OCTOBER 1, 2020 HEARING

The above-entitled matter having come before the Court on a ***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 Defendant's Opposition and Countermotion thereto***, with Plaintiff, William DiMonaco, being present and represented by and through his attorney of record, Matthew H. Friedman, Esq., of the law firm Ford & Friedman and Defendant, Adriana Ferrando, present and represented by and through her

Case Number: D-16-539340-C

attorneys of record, Michael P. Carman, Esq., of the law firm of Fine, Carman, Price and Elizabeth Ellison, Esq. of Leavitt & Flaxman, and the Court having considered all pertinent pleadings on file herein and the oral arguments presented at said Hearing.

THE COURT NOTED that the Juvenile court has a different standard in making determination relative to a child insofar as that they make a safety determination and this Court makes a best interest determination. *(Video Cite 11:02:35).*

THE COURT FURTHER NOTED that in the Court's review of the CPS records, it raised concerns regarding what could have happened in Defendant's home. *(Video Cite 11:02:49).*

THE COURT FURTHER NOTED that additional concern is raised by the extensive amount of time that the CPS investigation continued only to be abruptly dismissed without any factual findings by the Juvenile Court as to the underlying allegations. *(Video Cite 11:02:57)*

THE COURT FURTHER NOTED that given that the matter is currently on appeal, the Court is only able to state what it would be inclined to do when jurisdiction is returned. *(Video Cite 11:03:20).*

THE COURT FURTHER NOTED that Defendant's counsel has requested additional discovery which this Court cannot open unless there are evidentiary proceedings pending. *(Video Cite 11:03:26).*

Therefore,

IT IS HEREBY ORDERED that pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 81, 575 P.2d 586 (1978), this Court certifies, as a final legal analysis, its intent, pursuant to *Rooney v. Rooney*, 190 Nev. 540, 542, 853 p.2d 123, 124 (1993), is to set an evidentiary hearing on both parties' competing custody and visitation claims and reopen discovery. *(Video Cite 11:05:28)*

IT IS FURTHER ORDERED that the issues of compensatory time, child support and attorney's fees are DEFERRED. *(Video Cite 11:06:01)*

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IT IS FURTHER ORDERED that Mr. Friedman shall prepare the Order After Hearing within seven (7) days and provide the same to Mr. Carman to review and sign as to form and content. *(Video Cite 11:07:04)*

IT IS SO ORDERED.

DATED this _____ day of _____, 2020. Dated this 21st day of October, 2020

DISTRICT COURT JUDGE se

FBA 57D B29E F775
Charles J. Hoskin
District Court Judge

Respectfully submitted by:
FORD & FRIEDMAN

/s/ Matthew H. Friedman, Esq.

MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
2200 Paseo Verde Pkwy, #350
Henderson, Nevada 89052
Attorney to Plaintiff

Approved as to form and content:
FINE, CARMAN, PRICE

MICHAEL P. CARMAN, ESQ.
Nevada Bar No.: 7639
8965 S. Pecos Rd., Suite 9
Henderson, Nevada 89074
Attorney to Defendant

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

William Eugene DiMonaco, Plaintiff. vs. Adriana Davina Ferrando, Defendant.	CASE NO: D-16-539340-C DEPT. NO. Department E

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/21/2020

Michael Carman	Mike@FCPfamilylaw.com
Val Stashuk	Accounting@FCPfamilylaw.com
Matthew Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Tony Smith, Esq.	asmith@fordfriedmanlaw.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Kim Servis	LegalAssistant@FCPfamilylaw.com
Melody Tooley	Paralegal@FCPfamilylaw.com
Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com

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Steven D. Grierson
CLERK OF THE COURT

NEOJ
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

NOTICE OF ENTRY OF ORDER AFTER OCTOBER 1, 2020 HEARING

Please take notice, the following ***"Order After October 1, 2020 Hearing"*** was entered, in the instant matter, on the 21st day of October, 2020.

. . .

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. . .

A true and correct copy of said order is attached hereto as "Exhibit 1."

DATED this 21 day of October, 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 SERVICE

I hereby certify that on the 21 day of October, 2020 I caused a true and correct copy of the foregoing ***"Notice of Entry of Order After October 1, 2020 Hearing"*** 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

“EXHIBIT 1”

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OAH
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

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Case Number: D-16-539340-C

attorneys of record, Michael P. Carman, Esq., of the law firm of Fine, Carman, Price and Elizabeth Ellison, Esq. of Leavitt & Flaxman, and the Court having considered all pertinent pleadings on file herein and the oral arguments presented at said Hearing.

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Therefore,

IT IS HEREBY ORDERED that pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 81, 575 P.2d 586 (1978), this Court certifies, as a final legal analysis, its intent, pursuant to *Rooney v. Rooney*, 190 Nev. 540, 542, 853 p.2d 123, 124 (1993), is to set an evidentiary hearing on both parties' competing custody and visitation claims and reopen discovery. *(Video Cite 11:05:28)*

IT IS FURTHER ORDERED that the issues of compensatory time, child support and attorney's fees are DEFERRED. *(Video Cite 11:06:01)*

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IT IS FURTHER ORDERED that Mr. Friedman shall prepare the Order After Hearing within seven (7) days and provide the same to Mr. Carman to review and sign as to form and content. *(Video Cite 11:07:04)*

IT IS SO ORDERED.

DATED this _____ day of _____, 2020. Dated this 21st day of October, 2020

DISTRICT COURT JUDGE se

FBA 57D B29E F775
Charles J. Hoskin
District Court Judge

Respectfully submitted by:
FORD & FRIEDMAN

/s/ Matthew H. Friedman, Esq.
MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
2200 Paseo Verde Pkwy, #350
Henderson, Nevada 89052
Attorney to Plaintiff

Approved as to form and content:
FINE, CARMAN, PRICE

MICHAEL P. CARMAN, ESQ.
Nevada Bar No.: 7639
8965 S. Pecos Rd., Suite 9
Henderson, Nevada 89074
Attorney to Defendant

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

William Eugene DiMonaco, Plaintiff. vs. Adriana Davina Ferrando, Defendant.	CASE NO: D-16-539340-C DEPT. NO. Department E

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Matthew Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Tony Smith, Esq.	asmith@fordfriedmanlaw.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Kim Servis	LegalAssistant@FCPfamilylaw.com
Melody Tooley	Paralegal@FCPfamilylaw.com
Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM DIMONACO,

Appellant,

vs.

ADRIANA FERRANDO,

Respondent.

No. 80576

Electronically Filed
Nov 20 2020 03:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION FOR REMAND PURSUANT TO *HUNEYCUTT V. HUNEYCUTT*, OR IN THE ALTERNATIVE, FOR AN ORDER IDENTIFYING THE REMAINING ISSUES TO BE CONSIDERED BY THIS COURT, AND FOR AN EXTENSION OF TIME TO FILE APPELLANT'S FAST TRACK STATEMENT

COMES NOW Appellant, WILLIAM DIMONACO (hereinafter "William"), by and through his attorneys of record, Matthew H. Friedman, Esq., and Christopher B. Phillips, Esq. of the law firm of Ford & Friedman and respectfully moves this Court to remand[1] this matter to the district court for further proceedings consistent with the district court's certified intent to set an evidentiary hearing in this matter pursuant to *Rooney v.* Rooney 109 Nev. 540, 542, 853 P.2d 123, 124 (1993).

In the alternative, if this Court believes that only a limited remand is warranted in order to allow this Court to consider certain issues identified in William's docketing statement, William is happy to proceed to briefing. Should this Court

[1] As discussed below, William believes that this appeal presents important questions of law in need of review by this Court. However, in light of the district court's certification of its intent to conduct an evidentiary hearing, William defers to this Court's sound judgment on the question of whether a complete or limited remand should be granted.

Docket 80576 Document 2020-42522

determine that a limited remand is appropriate, William moves this Court for an order setting forth the specific issues sought to be adjudicated by this Court. In light of the district court's certified intent to conduct an evidentiary hearing, William seeks guidance and direction from this Court regarding what issues, if any, this Court wishes to consider at this juncture.

Should this Court determine that a limited remand is appropriate, William moves this Court for an extension of time to file his Fast Track Statement, which is currently due on November 23, 2020. Specifically, William requests that his Fast Track Statement be due not less than thirty (30) days after this Court's order setting forth what issues, if any, this Court wishes to retain for adjudication.

This Motion is made pursuant to NRAP 27 and NRAP 31(b). Although this is William's second request for an extension of time, the instant request is made in good faith and is not intended to cause unnecessary delay. William's requests for extensions of time have been necessary to allow the district court to consider the recent change in circumstances and to certify its intent to set an evidentiary hearing regarding the parties' competing custody and visitation claims. This Motion is based upon the following Points and Authorities and the included Declaration of Counsel.

BACKGROUND AND RELEVANT FACTS

This appeal revolves around post-decree custody issues relative to the subject minor child's afterschool care and the ability of William to assert his fundamental rights while being afforded procedural due process. Given that this is William's

second request for extension of time, William will not recount the entire district court procedural history herein except as is necessary for this Court's disposition of the current Motion. Instead, William incorporates the background and relevant facts set forth in his October 8, 2020 Motion herein by reference. *See Motion for an Extension of Time Within Which to File Appellant's Opening Brief,* filed October 8, 2020, at pp. 1-4.

Since the time of William's October 8, 2020 Motion, the district court's written order certifying its intent to set an evidentiary hearing and to reopen discovery has been entered in the district court. A copy of the district court's Order After October 1, 2020 Hearing along with the accompanying Notice of Entry of Order is attached hereto as *Exhibit 1.*

Accordingly, William now seeks an Order from this Court either remanding this matter in its entirety to the district court, or in the alternative, an Order setting forth the scope of the issues to be retained by this Court on appeal. At present, William is without knowledge as to what issues, if any, this Court elects to retain; and as a result, William is currently unable to proceed with the preparation of his Fast Track Statement as required by NRAP 3E(d)(1).

ARGUMENT IN SUPPORT OF REMAND

In the matter of *Huneycutt v. Huneycutt,* 94 Nev. 79, 575 P.2d 585 (1978), this Court addressed the proper procedure to be followed in a case such as this one where an appellant seeks remand in order to facilitate additional proceedings in the district

court. In this case, William seeks a remand to the district court because the district court has certified its intent to set an evidentiary hearing. See *Exhibit 1.* In deciding *Huneycutt,* this Court held that the proper procedure for requesting remand is for an appellant to first file a motion before the district court. If the district court certifies that it is inclined to grant the relief sought in the motion, the appellant should then request a remand from this Court. See *Huneycutt,* 94 Nev. at 81; see also *Mack-Manley*, cited *infra.*

In *Mack-Manley,* this Court expanded the *Huneycutt* framework and explained as follows:

> If the only issue on appeal concerned child custody and this court granted the motion for remand, then the appeal would be dismissed. **If, however, the appeal raised additional issues other than child custody, this court could order a limited remand** and direct the district court to enter an order resolving the motion to modify within a specific time period and to transmit the order to this court. On remand, once the district court entered its order concerning custody, any aggrieved party could appeal from the order by filing a timely notice of appeal.

Mack-Manley v. Manley, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006) (emphasis added). In this case, William filed his Emergency Motion before the district court. Following a hearing on the same, the district court entered an Order certifying its intent to set an evidentiary hearing on the parties' competing custody and visitation claims. Accordingly, William now seeks remand from this Court consistent with the procedure outlined in *Huneycutt* and *Mack-Manley*.

As to the scope of remand, William maintains that the instant appeal presents important questions of law beyond the parties' competing custody and visitation claims. The instant appeal also addresses the deprivation of William's fundamental right of adequate notice and procedural due process. More specifically, the district court's *sua sponte* order prohibiting him from utilizing any third-party caregiver (including relatives) during certain periods of his custodial time resulted in William being denied adequate notice that his after school custodial time had been placed at stake in the litigation.

This Court has consistently held that Due Process is guaranteed by the Fourteenth Amendment of the United States Constitution and by Article 1, Section 8(5) of the Nevada Constitution. See *Gordon v. Geiger,* 133 Nev. 542, 545, 402 P.3d 671, 674 (2017) (citing *Rico v. Rodriguez,* 121 Nev. 695, 702-03, 120 P.3d 812, 817 (2005)). This Court has also held that Due Process protects both substantial and fundamental rights, including the interest parents have regarding custody of their children. *Gordon*, 133 Nev. at 545-46 (citing *Rico,* 121 Nev. at 695, 120 P.3d at 818). Further, Due Process demands notice before such a right is affected. *Gordon,* 133 Nev. at 546 (citing *Wiese v. Granata* 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994)).

Here, the district court's *sua sponte* decision to allow Respondent to care for the parties' minor child during certain periods of William's designated custodial time to the exclusion of all other third parties, including other relatives, deprived

William of requisite due process. William was provided with no notice that his right to designate a third-party caregiver during his custodial time was at issue in the litigation. Moreover, the district court's refusal to conduct an evidentiary hearing deprived William of his procedural Due Process right to be heard and to present evidence in opposition to the district court's *sua sponte* decision to grant relief beyond what was requested in Respondent's Motion.

Although not intended, the district court's *sua sponte* decision has created an issue of great public importance that has application beyond the parties named herein. Without direction from this Court, nothing prevents district courts across the state from rendering same or similar *sua sponte* decisions without conducting an evidentiary hearing. A decision from this Court outlining the limits of the district court's authority to grant *sua sponte* relief that results in the substantive alteration of custodial orders without conducting an evidentiary hearing will fill an existing void in Nevada's family law jurisprudence.

Accordingly, it would be beneficial and reasonable for this Court to order a limited remand. This Court could retain jurisdiction over this appeal and allow William to present his arguments regarding his assignment of error to the district court's orders regarding Respondent's award of after school parenting time during William's custodial days while allowing the district court to proceed with an evidentiary hearing on the parties' remaining custody and visitation claims.

Alternatively, this Court could reasonably conclude that a complete remand would serve the best interests of the parties and the courts' resources. In either instance, some form of remand is necessary and proper at this juncture in light of the district court's certified intent to set an evidentiary hearing. William respectfully defers to this Court's sound judgment regarding the proper scope and extent of the remand to district court.

ARGUMENT IN SUPPORT OF REQUEST FOR EXTENSION OF TIME TO FILE FAST TRACK STATEMENT

NRAP Rule 31(b) concerns extension of time for filing briefs and states in pertinent part:

> **RULE 31 FILING AND SERVICE OF BRIEFS**
>
> * * *
>
> **(b) Extensions of Time for Filing Briefs.**
>
> * * *
>
> **(3) Motions for Extensions of Time.** A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27.
>
> **(A) Contents of Motion.** A motion for extension of time for filing
>
> a brief shall include the following:
>
> (i) The date when the brief is due;
>
> (ii) The number of extensions of time previously granted (including a 14-day telephonic extension), and if extensions were granted, the original date when the brief was due;

(iii) Whether any previous requests for extensions of time have been denied or denied in part;

(iv) The reasons or grounds why an extension is necessary (including demonstrating extraordinary and compelling circumstances under Rule 26(b)(1)(B), if required); and

(v) The length of the extension requested and the date on which the brief would become due.

* * *

(C) Motions in Child Custody or Visitation Cases. The court will grant a motion for extension of time for filing a brief in child custody or visitation cases only in extraordinary cases that present unforeseeable circumstances justifying an extension of time.

In accordance with the requirements of NRAP Rule 31(b)(3)(A), William states the following:

1. William's Fast Track Statement is currently due on November 23, 2020;

2. The instant request is the second request for an extension of time. The first request was necessary to allow time for the district court to enter an order certifying its intent to set an evidentiary hearing. The current request is necessary because William now requests remand to the district court consistent with the procedure set forth in *Huneycutt* and *Mack-Manley,* cited *supra.* To the extent that this Court elects to order only a limited remand, William seeks guidance from this Court regarding what issues, if any, this Court elects to retain. Without further instruction from this Court, William is unsure what issues, if any, are to be briefed on appeal and what issues need to be reserved for presentation to the district court at the district court's intended evidentiary hearing;

3. This Court granted William's prior request for an extension of time;

4. This request is made in good faith as William needs specific guidance from this Court regarding what issues, if any, this Court elects to retain in light of the foregoing request for remand; and

5. If this Court elects to order a limited remand, William requests thirty (30) days to file his Fast Track Statement regarding the issues elected to be retained by this Court. Conversely, if this Court elects to remand this case in its entirety to the district court, this instant request for an extension of time will be moot. In either instance, William cannot reasonably meet the current November 23, 2020 due date, because the procedure set forth in *Huneycutt* and *Mack-Manley* requires William to present the instant request for remand to this Court following the district court's certification of its intent to conduct additional proceedings. Unless and until this Court provides direction regarding what issues, if any, this Court elects to retain, William is unable to proceed with briefing at this time.

To the extent this Court elects to Order only a limited remand, the undersigned believes that the foregoing facts demonstrate extraordinary and compelling circumstances for granting an extension of time for Appellant to file his Fast Track Statement.

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The foregoing requests for remand are made in good faith, and not for the purpose of creating unnecessary delay.

Respectfully submitted this 20 day of November, 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, NV 89052
Attorneys for Appellant

DECLARATION OF COUNSEL FOR APPELLANT

MATTHEW H. FRIEDMAN, ESQ., being duly sworn under the penalties of perjury of the state of Nevada, deposes and says:

1. That I am a member in good standing of the State Bar of Nevada;

2. That I am counsel for Appellant, William DiMonaco, in the above-entitled matter and I submit this Declaration in Support of the foregoing Motion for Remand Pursuant to *Huneycutt v. Huneycutt*, or in the Alternative, for an Order Identifying the Remaining Issues to be Considered by this Court, and for an Extension of Time to File Appellant's Fast Track Statement;

3. That I have personal knowledge of the facts contained herein and the same are true and correct to the best of my knowledge, information, and belief, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true;

4. That I believe the facts contained herein above demonstrate extraordinary and compelling circumstances for granting a further extension of time for Appellant to file his Fast Track Statement herein;

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5. That this request for a second extension of time to is consistent with this Court's established procedures as defined in *Huneycutt v. Huneycutt,* 94 Nev. 79 (1978), and the foregoing requests are made in good faith and not to delay the proceedings herein.

Dated this 20 day of November, 2020.

MATTHEW H. FRIEDMAN, ESQ.

CERTIFICATE OF ELECTRONIC SERVICE

I the undersigned hereby certify that on the 20 day of November, 2020, I served the above and foregoing **"MOTION FOR REMAND PURSUANT TO *HUNEYCUTT V. HUNEYCUTT*, OR IN THE ALTERNATIVE, FOR AN ORDER IDENTIFYING THE REMAINING ISSUES TO BE CONSIDERED BY THIS COURT, AND FOR AN EXTENSION OF TIME TO FILE APPELLANT'S FAST TRACK STATEMENT"** by serving the following registered users for service on the Court's electronic filing and service program:

Michael P. Carman, Esq.
Attorneys for Respondent

An employee of Ford & Friedman, LLC

EXHIBIT 1

EXHIBIT 1

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Steven D. Grierson
CLERK OF THE COURT

NEOJ
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

NOTICE OF ENTRY OF ORDER AFTER OCTOBER 1, 2020 HEARING

Please take notice, the following ***"Order After October 1, 2020 Hearing"*** was entered, in the instant matter, on the 21st day of October, 2020.

. . .

. . .

. . .

A true and correct copy of said order is attached hereto as "Exhibit 1."

DATED this 21 day of October, 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 SERVICE

I hereby certify that on the 21 day of October, 2020 I caused a true and correct copy of the foregoing ***"Notice of Entry of Order After October 1, 2020 Hearing"*** 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

“EXHIBIT 1”

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CLERK OF THE COURT

OAH
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

ORDER AFTER OCTOBER 1, 2020 HEARING

The above-entitled matter having come before the Court on a ***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 Defendant's Opposition and Countermotion thereto***, with Plaintiff, William DiMonaco, being present and represented by and through his attorney of record, Matthew H. Friedman, Esq., of the law firm Ford & Friedman and Defendant, Adriana Ferrando, present and represented by and through her

Case Number: D-16-539340-C

attorneys of record, Michael P. Carman, Esq., of the law firm of Fine, Carman, Price and Elizabeth Ellison, Esq. of Leavitt & Flaxman, and the Court having considered all pertinent pleadings on file herein and the oral arguments presented at said Hearing.

THE COURT NOTED that the Juvenile court has a different standard in making determination relative to a child insofar as that they make a safety determination and this Court makes a best interest determination. *(Video Cite 11:02:35).*

THE COURT FURTHER NOTED that in the Court's review of the CPS records, it raised concerns regarding what could have happened in Defendant's home. *(Video Cite 11:02:49).*

THE COURT FURTHER NOTED that additional concern is raised by the extensive amount of time that the CPS investigation continued only to be abruptly dismissed without any factual findings by the Juvenile Court as to the underlying allegations. *(Video Cite 11:02:57)*

THE COURT FURTHER NOTED that given that the matter is currently on appeal, the Court is only able to state what it would be inclined to do when jurisdiction is returned. *(Video Cite 11:03:20).*

THE COURT FURTHER NOTED that Defendant's counsel has requested additional discovery which this Court cannot open unless there are evidentiary proceedings pending. *(Video Cite 11:03:26).*

Therefore,

IT IS HEREBY ORDERED that pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 81, 575 P.2d 586 (1978), this Court certifies, as a final legal analysis, its intent, pursuant to *Rooney v. Rooney*, 190 Nev. 540, 542, 853 p.2d 123, 124 (1993), is to set an evidentiary hearing on both parties' competing custody and visitation claims and reopen discovery. *(Video Cite 11:05:28)*

IT IS FURTHER ORDERED that the issues of compensatory time, child support and attorney's fees are DEFERRED. *(Video Cite 11:06:01)*

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IT IS FURTHER ORDERED that Mr. Friedman shall prepare the Order After Hearing within seven (7) days and provide the same to Mr. Carman to review and sign as to form and content. *(Video Cite 11:07:04)*

IT IS SO ORDERED.

DATED this _____ day of _____, 2020. Dated this 21st day of October, 2020

DISTRICT COURT JUDGE se

FBA 57D B29E F775
Charles J. Hoskin
District Court Judge

Respectfully submitted by:
FORD & FRIEDMAN

/s/ Matthew H. Friedman, Esq.
MATTHEW H. FRIEDMAN, ESQ.
Nevada Bar No.: 11571
2200 Paseo Verde Pkwy, #350
Henderson, Nevada 89052
Attorney to Plaintiff

Approved as to form and content:
FINE, CARMAN, PRICE

MICHAEL P. CARMAN, ESQ.
Nevada Bar No.: 7639
8965 S. Pecos Rd., Suite 9
Henderson, Nevada 89074
Attorney to Defendant

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EUGENE DIMONACO,
Appellant,
vs.
ADRIANA DAVINA FERRANDO,
Respondent.

No. 80576

FILED

DEC 16 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF LIMITED REMAND

This is an appeal from a district court order directing that respondent shall care for the parties' minor child over any third-party care-giver after school until appellant can pick the child up on appellant's custodial school days. Appellant has filed an unopposed motion seeking to remand this matter in its entirety to the district court to allow the district court to conduct an evidentiary hearing regarding appellant's emergency motion relating to custody.[1] Attached to the motion is a district court order certifying the district court's intent to set an evidentiary hearing on the parties' competing custody and visitation claims and reopen discovery.

[1]Appellant has not provided this court with a copy of his motion. It does not appear that the district court treated the motion as an emergency motion. However, this court notes that the district court retains jurisdiction to rule on emergency, temporary orders relating to child custody during the pendency of an appeal. *Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006) (despite the pendency of an appeal, the district court may issue "short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security").

Alternatively, appellant moves for a limited remand and an order from this court setting forth the issues to be retained on appeal.

"[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits." *Mack-Manley*, 122 Nev. at 855, 138 P.3d at 529-30. NRCP 62.1 and NRAP 12A provide a procedure to follow when a party moves for relief that the district court lacks authority to grant due to a pending appeal: the district court may defer or deny the motion or may indicate that it is inclined to grant the motion or that the motion presents substantial issues.

This court construes the district court's certification as indicating that appellant's motion raises a substantial issue, the determination of which could potentially affect the issues on appeal. Accordingly, the motion is granted to the following extent. This appeal is hereby remanded to the district court for the limited purpose of deciding appellant's motion and any related pending custody claims. As set forth in NRAP 12A, the parties must promptly notify this court when the district court has decided the motion; thus, appellant and respondent shall have 60 days from the date of this order to either (1) notify this court of the district court's decision on appellant's motion or (2) otherwise inform this court of the status of the district court proceedings. If either party is aggrieved by an order entered in the district court pursuant to this remand and wishes to challenge it on appeal, that party must thereafter file a timely notice of appeal from the district court's written order in accordance with NRAP 4(a).

In light of the limited remand, briefing of this appeal is suspended pending further order of this court. Appellant's request for an extension of time to file the fast track statement is denied as moot.

It is so ORDERED.

Pickering, C.J.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Ford & Friedman, LLC
Fine Carman Price
Eighth District Court Clerk

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Steven D. Grierson
CLERK OF THE COURT

CHLG
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.: X

PEREMPTORY CHALLENGE OF JUDGE

Defendant, Adriana Ferrando, by and through her attorney of record, Michael P. Carman, Esq., of FINE|CARMAN|PRICE, and hereby exercises her right under NSCR 48.1 to change of Judge by peremptory challenge.

///

///

Case Number: D-16-539340-C

FINE|CARMAN|PRICE
FAMILY LAW ATTORNEYS

The name of the Judge to be changed is Judge Heidi Almase. Payment of the fee in the amount of $450.00 accompanies this filing.

DATED this 15th day of January, 2021.

FINE | CARMAN | PRICE

Michael P. Carman, Esq.
Nevada Bar No. 007639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
Mike@FCPfamilylaw.com
Attorney For Petitioner
Adriana Ferrando

FINE | CARMAN | PRICE
FAMILY LAW ATTORNEYS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 15th day of January, 2021, I caused the above and foregoing document entitled, Peremptory Challenge 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 address:

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

Employee of FINE|CARMAN|PRICE

FINE|CARMAN|PRICE
FAMILY LAW ATTORNEYS

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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 M

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Amy M. Mastin.

☒ This reassignment follows the filing of Peremptory Challenge of Judge HEIDI ALMASE.

☐ This reassignment is due to the recusal of Judge AMY M. MASTIN. See minutes in file.

☐ This reassignment is due to: .

ANY TRIAL DATE IS VACATED AND WILL BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Melissa Ellis
Deputy Clerk of the Court

CERTIFICATE OF MAILING

I hereby certify that: on this the 15th day of January, 2021

☐ I mailed, via first-class mail, postage fully prepaid, the foregoing Clerk's Notice Department of Reassignment to:

Christopher B. Phillips
Ford & Friedman
Attn: Christopher Phillips, Esq
2200 Paseo Verde Parkway, Ste. 350
Henderson, NV 89052

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

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

☒ I emailed a copy of the foregoing Clerk's Notice of Department Reassignment.

Matthew H. Friedman
Michael P. Carman

/s/ Melissa Ellis
Deputy Clerk of the Court

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CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
****

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

ORDER SETTING CIVIL NON-JURY TRIAL
(Child Custody/Paternity/Visitation/Relocation)

Date of Trial: May 10, 2021
Time of Trial: 9:00 a.m.
Length of Trial: Half day
Pre Trial Memorandum: April 30, 2021
Discovery Close: April 14, 2021

EACH PARTY AND COUNSEL ARE HEREBY ON NOTICE THAT THIS DEPARTMENT'S ORDER SETTING TRIAL MAY BE DIFFERENT THAN OTHER DEPARTMENTS. THE PARTIES MAY NOT STIPULATE TO MODIFY THIS ORDER WITHOUT THE *EXPRESS WRITTEN AUTHORITY* OF THE COURT.

PLEASE TAKE NOTICE that this trial/evidentiary hearing shall be conducted by Blue Jeans video conference, as permitted by the Court's Administrative Orders. The Court will make the accommodations for those appearing by video conference, for purposes of conferring with counsel, or other breaks that are necessary, for purposes of presentation of the case. Further, if you have any witnesses that intend to appear by video-conference, please provide the Court with the proper notice, as well.

THE PARTIES ARE HEREBY ON NOTICE THAT the Court has said: "We have repeatedly stated that we ***expect all [court actions] to be pursued in a manner meeting high standards of diligence, professionalism, and competence.***" *Cuzdey v. State*, 103 Nev. 575, 578, 747 P.2d 233 (1987). Further, NRS 1.210(2)-(3) state that every court shall have power to ***enforce order in the proceedings before it*** **and** ***compel obedience to its lawful orders.*** Failure to abide by this order may result in sanctions pursuant to NRS 22.100, EDCR 5.102(l) and/or EDCR 7.60, including attorney's fees, costs, or even dismissal of this action. **THIS DOCUMENT IS AN ORDER** and simply

AMY M MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

Case Number: D-16-539340-C

notes existing laws and rules are expected to be followed. "[I]gnorance of the law...is inexcusable." *Mayenbaum v. Murphy*, 5 Nev. 383, 384 (1870). Nevada Code of Judicial Conduct 2.2[4] states, "[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard"; however, this Canon does not indicate that a judge can provide legal advice or assist any participant with litigating his or her case.

IT IS HEREBY ORDERED that this case shall be set for a **CIVIL NON-JURY TRIAL** at the aforementioned date and time. The trial will be held in Department M via Blue Jeans video conference, pursuant to the Court's Administrative Orders. **TELEPHONIC APPEARANCE AT TRIAL OR EVIDENTIARY HEARING IS PROHIBITED.**

IT IS FURTHER ORDERED that each party must ***substantially comply*** with all parts of EDCR 5.525. A party representing him or herself in proper person is hereby on notice that the forms from the Self-Help Center at Family Court may not adequately address all of the requirements of this Order. This situation will **not** be considered a basis to supersede or forego the requirements of this Order.

THE PARTIES ARE HEREBY ON NOTICE that, unless requested in writing, this Court will normally waive calendar calls for judicial economy since it does not stack trials. Despite this protocol, pursuant to EDCR 5.525(a): "the designated trial attorneys for all the parties [or a party *in proper person*] ***shall meet*** together [***at least*** **7 days** prior to the scheduled trial date] and arrive at [any] stipulations and agreements, for the purpose of simplifying the issues to be tried."

IT IS FURTHER ORDERED that the pretrial memorandum ***must be filed and served upon all the other parties by April 30, 2021***. This Court reminds the parties that document and witness list disclosures are due prior to this date pursuant to NRCP 16.2/NRCP 16.205, and that EDCR 5.525(a) clarifies that, "no new exhibits or witnesses are to be added, although previously disclosed witnesses or exhibits may be eliminated."

THE PARTIES ARE HEREBY ON NOTICE that, pursuant to the Court's Administrative Orders, the actual proposed trial exhibits need to be electronically submitted to the Court Clerk by sending an evidence submission request to FCEvidence@clarkcountycourts.us. Once the submission request is received, a reply with a link to upload evidence will be provided. Trial exhibits need to be electronically

AMY M MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

uploaded at least two (2) days before trial. Trial exhibits should not be filed. See EDCR 5.102(d). **Exhibits for Plaintiff/Petitioner should be marked *NUMERICALLY* and exhibits for Defendant/Respondent should be marked *ALPHABETICALLY.***

THE PARTIES ARE HEREBY ON NOTICE that pursuant to EDCR 5.525(b), "the pretrial memorandum must concisely state" proposed positions. Therefore, failure of a party to include arguments with legal citations regarding unusual or complex issues in their pretrial memorandum may be deemed a waiver of said claims at the time of trial. Furthermore, all factors set forth in NRS 125C.0035(4) ("Best interests of child") ***must*** be addressed in detail. Additionally, if relocation out of state with a child is an issue pursuant to NRS 125C.006 or 125C.0065, all factors set forth in NRS 125C.007 ***must*** be addressed in detail. If the case is for non-parent (*e.g.* grandparent) visitation, all factors set forth in NRS 125C.050 ***must*** be addressed in detail. If the case is for non-parent custody, all factors set forth in *Locklin v. Duka*, 112 Nev. 1489, 929 P.2d 930 (1996) ***must*** be addressed in detail. Pursuant to NRS 125C.010, the terms of any proposed custody/visitation schedule must be addressed in detail. If paternity is disputed, the parties ***must*** address in detail any *relevant* factors set forth in NRS Ch. 126 and/or NRS Ch. 125C, including the presumptions set forth therein.

IT IS FURTHER ORDERED that discovery shall close on ***April 14, 2021.*** **Time deadlines set forth in NRCP 16.2/NRCP 16.205 regarding document and witness disclosures will control. The document disclosure list, witness list, and any objections thereto must be filed with the Clerk of the Court. The opposing party shall then be served (along with all documents and witness list to be used at trial) within the timeframes set forth in NRCP 16.2 / NRCP 16.205**. Service must be made via verifiable means (electronic, receipt of copy, personal service, etc.). Service by mail will **not** be sufficient for document and witness disclosures. Pursuant to EDCR 5.205(g), exhibits attached to prior motions are **not** deemed as satisfying the NRCP 16.2/NRCP 16.205 requirements and the parties should review EDCR 5.205(f) to note which documents do not need to be made exhibits. The parties ***must*** follow EDCR 5.525(b)(8)-(9) and EDCR 5.601 regarding exhibit and witness disclosures. The pretrial memorandum may simply incorporate the above-referenced, filed NRCP 16.2/NRCP 16.205 lists of documents and witnesses.

AMY M MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

THE PARTIES ARE HEREBY ON NOTICE that pursuant to NRCP 16.2, NRCP 16.205, and EDCR 5.602(a), all discovery disputes ***must*** first be heard by the discovery hearing master.

IT IS FURTHER ORDERED that pursuant to EDCR 5.507, if any issues to be addressed at trial include a request to establish or modify child support, spousal support, or alimony, fees and allowances, or any matter involving money to be paid by a party, a Financial Disclosure Form must be filed. The Financial Disclosure Form must include the three (3) most recent paystubs. EDCR 5.507 requires if there has been any material change in a financial disclosure filed within the preceding six (6) months, an updated Financial Disclosure Form must be filed. **IT IS FURTHER ORDERED** that any updated Financial Disclosure Form must be filed and served at least fourteen (14) days prior to the aforementioned trial date. If there has been no material change in a financial disclosure filed within the last six (6) months before the aforementioned trial date, then such must be confirmed within the pretrial memorandum.

THE PARTIES ARE HEREBY ON NOTICE that pursuant to EDCR 5.057, the Court may construe the failure to timely complete an accurate Financial Disclosure Form in support of a motion, opposition, or countermotion not supported by a timely Financial Disclosure Form as admitting that the positions asserted are not meritorious and the Court may enter orders adverse to such party's positions, and the same may be a basis for imposing sanctions.

IT IS FURTHER ORDERED that any requests for attorney's fees and/or costs are **not** to be included in the pretrial memorandum per EDCR 5.525(b)(6). Any request for costs (as defined in NRS 18.005) must be filed and served in a timely manner which complies with NRS 18.110 and related case law. In accordance with NRCP 54(d)(2), any request for attorney's fees must be requested by a filed motion and served upon the opposing party in a timely manner after the entry of judgment. The request **must** address ***all*** of the factors outlined in *Brunzell v. Golden Gate,* 85 Nev. 345, 455 P.2d 31 (1969) and *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), including a detailed billing statement. Pursuant to EDCR 5.507(a) and *Miller*, a **current** Financial Disclosure Form must accompany the motion for attorney's fees unless one was already recently filed for the trial.

AMY M MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

IT IS FURTHER ORDERED that pursuant to EDCR 7.80(a), "counsel must notify the court interpreter's office of a request for interpreter not less than 48 hours before the hearing or trial is scheduled." The Court is not responsible for arranging the interpreter. Additionally, counsel or a *pro per* litigant must contact chambers at least 48 hours prior to the trial to have technical equipment set up if he or she intends on displaying video exhibits during the time of trial.

IT IS FURTHER ORDERED that pursuant to EDCR 7.30(f), the above trial setting will **not** be vacated by stipulation unless approved beforehand by the department. Any motions to continue a trial date must be in compliance with EDCR 7.30. Finally, pursuant to EDCR 7.30(g), any costs and/or attorney fees may be imposed as a condition of granting the postponement.

IT IS FINALLY NOTED THAT pursuant to EDCR 5.209(c)-(d), "except by specific order of court, no counsel in a limited or "unbundled' capacity shall be permitted to withdraw within 21 days prior to a scheduled trial or evidentiary hearing. Any notice of withdrawal that is filed without compliance with this rule shall be ineffective for any purpose."

NOTICE: The parties are hereby on notice that pursuant to EDCR 7.60(b) and EDCR 5.102(l), failure to abide by this Order may result in sanctions, including attorney's fees or even a "dismissal, default or other order."

Dated this 8th day of February, 2021

45A 012 66E5 199D
Amy M. Mastin
District Court Judge

AMY M MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

William Eugene DiMonaco, Plaintiff. vs. Adriana Davina Ferrando, Defendant.	CASE NO: D-16-539340-C DEPT. NO. Department M

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Setting Civil Non-Jury Trial was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 2/8/2021

Michael Carman	Mike@FCPfamilylaw.com
Val Stashuk	Accounting@FCPfamilylaw.com
Matthew Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Tony Smith, Esq.	asmith@fordfriedmanlaw.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Kim Servis	LegalAssistant@FCPfamilylaw.com
Melody Tooley	Paralegal@FCPfamilylaw.com
Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com

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5/10/2021 12:51 PM

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05/10/2021 12:51 PM
CLERK OF THE COURT

OCNJ

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
****

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

ORDER RESCHEDULING CIVIL NON-JURY TRIAL

Date of Trial: July 14, 2021
Time of Trial: 9:00 a.m.
Length of Trial: Full day
Pre Trial Memorandum Due: July 2, 2021

Each party and counsel are hereby on notice that this department's order setting trial may be different than other departments. The parties may not stipulate to modify this order without the *express written authority* of the court.

IT IS HEREBY ORDERED that this case shall be set for a **CIVIL NON-JURY TRIAL** on July 14, 2021 at 9:00 a.m. at Family Court, Department M, located at 601 N. Pecos, Las Vegas, Nevada 89101 in courtroom 4. Pursuant to Administrative Order 21-03, "Due to restrictions on the entrants to the Court facilities and to reduce the potential for spread of infection, appearances by alternative means are required by all lawyers and litigants, in call case types with the exceptions of bench and jury trials and in-custody defendants appearing in the Lower Level Arraignment Courtroom." Further, telephonic appearance at trial or evidentiary hearing is prohibited. **THE COURT HEREBY FINDS** that an in-person appearance is necessary. **THEREFORE, IT IS ORDERED** that the parties must appear in-person at the aforementioned hearing. Please note, all members of the public who enter court facilities must wear face coverings at all times.

THE PARTIES ARE HEREBY ON NOTICE THAT the Nevada Supreme Court has said: "We have repeatedly stated that we ***expect all [court actions] to be pursued in a manner meeting high standards of diligence, professionalism, and competence.***" *Cuzdey v. State*, 103 Nev. 575, 578, 747 P.2d 233 (1987). Further, NRS 1.210(2)-(3) state that every court shall have power to ***enforce order in the proceedings***

AMY M. MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

before it* and *compel obedience to its lawful orders. Failure to abide by this order may result in sanctions pursuant to NRS 22.100, EDCR 5.102(l) and/or EDCR 7.60, including attorney's fees, costs, or even dismissal of this action. Note the existing laws and rules are expected to be followed. "[I]gnorance of the law...is inexcusable." *Mayenbaum v. Murphy*, 5 Nev. 383, 384 (1870). Nevada Code of Judicial Conduct 2.2[4] states, "[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard"; however, this Canon does not indicate that a judge can provide legal advice or assist any participant with litigating his or her case.

IT IS FURTHER ORDERED that each party must ***substantially comply*** with all parts of EDCR 5.525. A party representing himself or herself in proper person is hereby on notice that the forms from the Self-Help Center at Family Court may not adequately address all of the requirements of this Order. This situation will **not** be considered a basis to supersede or forego the requirements of this Order.

THE PARTIES ARE HEREBY ON NOTICE that, unless requested in writing, this Court will normally waive calendar calls for judicial economy since it does not stack trials. Despite this protocol, pursuant to EDCR 5.525(a): "the designated trial attorneys for all the parties [or a party *in proper person*] ***shall meet*** together [***at least* 7 days** prior to the scheduled trial date] and arrive at [any] stipulations and agreements, for the purpose of simplifying the issues to be tried."

IT IS FURTHER ORDERED, pursuant to the Stipulation and Order to Continue Trial Related Deadlines filed May 3, 2021, that the pretrial memorandum ***must be filed and served upon all the other parties by July 2, 2021***. This Court reminds the parties that document and witness list disclosures are due prior to this date pursuant to NRCP 16.2/NRCP 16.205, and that EDCR 5.525(a) clarifies that, "no new exhibits or witnesses are to be added, although previously disclosed witnesses or exhibits may be eliminated."

THE PARTIES ARE HEREBY ON NOTICE that, pursuant to the Court's Administrative Orders, the actual proposed trial exhibits need to be electronically submitted to the Court Clerk by sending an e-mail requesting a link for uploading exhibits and/or evidence to FCEvidence@clarkcountycourts.us. Once the submission request is received, a reply with a link to upload evidence will be provided. Pursuant to

AMY M. MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

the Stipulation and Order to Continue Trial Related Deadlines filed May 3, 2021, Trial exhibits need to be electronically uploaded at least three (3) days before trial. Trial exhibits should not be filed. See EDCR 5.102(d). **Exhibits for Plaintiff/Petitioner should be marked *NUMERICALLY* and exhibits for Defendant/Respondent should be marked *ALPHABETICALLY.***

THE PARTIES ARE HEREBY ON NOTICE that pursuant to EDCR 5.525(b), "the pretrial memorandum must concisely state" proposed positions. Therefore, failure of a party to include arguments with legal citations regarding unusual or complex issues in their pretrial memorandum may be deemed a waiver of said claims at the time of trial. Furthermore, all factors set forth in NRS 125C.0035(4) ("Best interests of child") ***must*** be addressed in detail. Additionally, if relocation out of state with a child is an issue pursuant to NRS 125C.006 or 125C.0065, all factors set forth in NRS 125C.007 ***must*** be addressed in detail. If the case is for non-parent (*e.g.* grandparent) visitation, all factors set forth in NRS 125C.050 ***must*** be addressed in detail. If the case is for non-parent custody, all factors set forth in *Locklin v. Duka*, 112 Nev. 1489, 929 P.2d 930 (1996) ***must*** be addressed in detail. Pursuant to NRS 125C.010, the terms of any proposed custody/visitation schedule must be addressed in detail. If paternity is disputed, the parties ***must*** address in detail any *relevant* factors set forth in NRS Ch. 126 and/or NRS Ch. 125C, including the presumptions set forth therein.

IT IS FURTHER ORDERED that discovery closed on *April 14, 2021* per the Order Setting Civil Non-Jury Trial filed February 8, 2021. **IT IS FURTHER ORDERED** that at the April 14, 2021 hearing, Discovery was extended for the purpose of resolving outstanding issues only and not to propound new discovery. **Time deadlines set forth in NRCP 16.2/NRCP 16.205 regarding document and witness disclosures will control. The document disclosure list, witness list, and any objections thereto must be filed with the Clerk of the Court. The opposing party shall then be served (along with all documents and witness list to be used at trial) within the timeframes set forth in NRCP 16.2 / NRCP 16.205**. Service must be made via verifiable means (electronic, receipt of copy, personal service, etc.). Service by mail will **not** be sufficient for document and witness disclosures. Pursuant to EDCR 5.205(g), exhibits attached to prior motions are **not** deemed as satisfying the NRCP 16.2/NRCP 16.205 requirements

AMY M. MASTIN
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and the parties should review EDCR 5.205(f) to note which documents do not need to be made exhibits. The parties ***must*** follow EDCR 5.525(b)(8)-(9) and EDCR 5.601 regarding exhibit and witness disclosures. The pretrial memorandum may simply incorporate the above-referenced, filed NRCP 16.2/NRCP 16.205 lists of documents and witnesses.

THE PARTIES ARE HEREBY ON NOTICE that pursuant to NRCP 16.2, NRCP 16.205, and EDCR 5.602(a), all discovery disputes ***must*** first be heard by the discovery hearing master.

IT IS FURTHER ORDERED that pursuant to EDCR 5.507, if any issues to be addressed at trial include a request to establish or modify child support, spousal support, or alimony, fees and allowances, or any matter involving money to be paid by a party, a Financial Disclosure Form must be filed. The Financial Disclosure Form must include the three (3) most recent paystubs. EDCR 5.507 requires if there has been any material change in a financial disclosure filed within the preceding six (6) months, an updated Financial Disclosure Form must be filed. **IT IS FURTHER ORDERED** that any updated Financial Disclosure Form must be filed and served at least fourteen (14) days prior to the aforementioned trial date. If there has been no material change in a financial disclosure filed within the last six (6) months before the aforementioned trial date, then such must be confirmed within the pretrial memorandum.

THE PARTIES ARE HEREBY ON NOTICE that pursuant to EDCR 5.057, the Court may construe the failure to timely complete an accurate Financial Disclosure Form in support of a motion, opposition, or countermotion not supported by a timely Financial Disclosure Form as admitting that the positions asserted are not meritorious and the Court may enter orders adverse to such party's positions, and the same may be a basis for imposing sanctions.

IT IS FURTHER ORDERED that any requests for attorney's fees and/or costs are **not** to be included in the pretrial memorandum per EDCR 5.525(b)(6). Any request for costs (as defined in NRS 18.005) must be filed and served in a timely manner which complies with NRS 18.110 and related case law. In accordance with NRCP 54(d)(2), any request for attorney's fees must be requested by a filed motion and served upon the opposing party in a timely manner after the entry of judgment. The request **must** address

AMY M. MASTIN
DISTRICT JUDGE
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all of the factors outlined in *Brunzell v. Golden Gate,* 85 Nev. 345, 455 P.2d 31 (1969) and *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), including a detailed billing statement. Pursuant to EDCR 5.507(a) and *Miller*, a **current** Financial Disclosure Form must accompany the motion for attorney's fees unless one was already recently filed for the trial.

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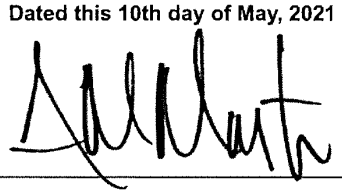
IT IS FINALLY NOTED THAT pursuant to EDCR 5.209(c)-(d), "except by specific order of court, no counsel in a limited or "unbundled' capacity shall be permitted to withdraw within 21 days prior to a scheduled trial or evidentiary hearing. Any notice of withdrawal that is filed without compliance with this rule shall be ineffective for any purpose."

NOTICE: The parties are hereby on notice that pursuant to EDCR 7.60(b) and EDCR 5.102(l), failure to abide by this Order may result in sanctions, including attorney's fees or even a "dismissal, default or other order."

Dated this 10th day of May, 2021



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Amy M. Mastin
District Court Judge

AMY M. MASTIN
DISTRICT JUDGE
FAMILY DIVISION,
DEPT. M
LAS VEGAS, NV 89101

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

William Eugene DiMonaco, Plaintiff. vs. Adriana Davina Ferrando, Defendant.	CASE NO: D-16-539340-C DEPT. NO. Department M

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 5/10/2021

Michael Carman	Mike@FCPfamilylaw.com
Val Stashuk	Accounting@FCPfamilylaw.com
Matthew Friedman, Esq.	mfriedman@fordfriedmanlaw.com
Tony Smith, Esq.	asmith@fordfriedmanlaw.com
Tracy McAuliff	tracy@fordfriedmanlaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Kim Servis	LegalAssistant@FCPfamilylaw.com
Melody Tooley	Paralegal@FCPfamilylaw.com
Christopher Phillips, Esq.	cphillips@fordfriedmanlaw.com

DISTRICT COURT
CLARK COUNTY, NEVADA

Child Custody Complaint **COURT MINUTES** July 13, 2021

D-16-539340-C William Eugene DiMonaco, Plaintiff.
vs.
Adriana Davina Ferrando, Defendant.

July 13, 2021 **1:45 PM** **Minute Order**

HEARD BY: Mastin, Amy M. **COURTROOM:** Chambers

COURT CLERK: Kendall Williams

PARTIES:

Adriana Ferrando, Defendant, Counter Claimant, not present	Michael Carman, Attorney, not present
Grayson DiMonaco-Ferrando, Subject Minor, not present	
William DiMonaco, Plaintiff, Counter Defendant, not present	Matthew Friedman, Attorney, not present

JOURNAL ENTRIES

MINUTE ORDER - NO HEARING HELD AND NO APPEARANCES

NRCP 1 and EDCR 1.10 state the procedures in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action.

COURT FINDS this matter was set for evidentiary hearing upon an Order for Limited Remand from the Supreme Court filed December 10, 2020. COURT FINDS the Order for Limited Remand was in response to certification from the district court that appellant's motion for emergency modification of custody raised a substantial issue which could potentially affect the issues on appeal. COURT FINDS at the October 1, 2020 hearing on whether to grant certification of the emergency modification of custody issue pursuant to Huneycutt v. Huneycutt, the district court expressly deferred the issues of compensatory visitation, child support, attorney's fees until after the appeal.

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

COURT FINDS the Pre-Trial Memorandum filed by Plaintiff/Appellant, William DiMonaco, reflects that he has abandoned his claim for emergency primary physical custody. COURT FINDS the subject of the limited remand is, therefore, moot.

COURT ORDERS the Evidentiary Hearing currently scheduled for July 14, 2021, 9:00 a.m. is hereby vacated.

A copy of the Court's minute order shall be provided to the parties' attorneys if an e-mail address is on record with the Court; if no e-mail address is available, the minute order shall be mailed to the physical address of record.

CLERK'S NOTE: A copy of this minute order emailed to the parties/counsel. (kw 7/13/)

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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Steven D. Grierson
CLERK OF THE COURT

MRCN
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: M **ORAL ARGUMENT REQUESTED**

PLAINTIFF'S MOTION TO RECONSIDER THE JULY 13, 2021 MINUTE ORDER VACATING TRIAL

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 Motion to Reconsider the July 13, 2021 Minute Order Vacating Trial.

This Motion is made pursuant to EDCR 5.503 and 5.513[1] and 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 16 day of July, 2021.

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

[1] EDCR 5.513 provides that a Motion for Reconsideration must be filed within fourteen (14) days of the notice of entry of the Order at issue, unless the time for seeking reconsideration is shortened or enlarged by order of the Court. Here, no notice of entry of the July 13, 2021 Minute Order has been filed, and no order has been issued regarding the time for seeking reconsideration of the same. As such, Will's time to seek reconsideration has not even began to run. Thus, the instant motion is timely.

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 _____, 2021, at the hour of ____:____ o'clock ___.m. of said day.

DATED this 26 of July, 2021.

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 Decree of Custody regarding the parties' minor child, Grayson, was entered in this Court[2] on November 9, 2017. Thereafter, the parties filed various Motions, Oppositions, and Replies regarding various post-decree issues.

On November 1, 2019, Will filed a Motion for Trial, to Amend Judgment, and for Related Relief. This 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.

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[2] For the sake of clarity, all references to "this Court" refer to the Eight Judicial District Court, Family Division, irrespective of the assigned judicial department, as this matter is currently assigned to its fourth (4th) judicial department. All prior proceedings beginning with the filing of the initial complaint on September 8, 2016 up to January 1, 2018 were heard by the Hon. Bryce Duckworth, Dept. Q. Prior proceedings from January 2, 2018 – January 3, 2021 were heard by the Hon. Charles Hoskin, Dept. E. On January 4, 2021, this matter was reassigned to the Hon. Heidi Almase, Dept. X. On January 15, 2021, Defendant filed a peremptory challenge, thereby causing this matter to again be reassigned. This matter has been assigned to this Court, Dept. M, since January 15, 2021.

In addition to the above district court 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. 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. 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.

Following the Juvenile Matter being abruptly dismissed, on September 11, 2020, Will filed his 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 ("Emergency Motion for Custody"). A copy of Will's Emergency Motion for Custody is attached hereto as *Exhibit 1*.

This Court held a hearing on Will's Emergency Motion for Custody on October 1, 2020. A copy of the transcript of the proceedings from the October 1, 2020 hearing is attached hereto as *Exhibit 2*. After considering the papers and

pleadings on file and considering the arguments of counsel, Judge Hoskin certified his intent to set an evidentiary hearing on the parties' competing custody and visitation claims and to reopen discovery. A written order certifying this Court's intent to conduct evidentiary proceedings was entered on October 21, 2020. A copy of the October 21, 2020 Order is attached hereto as *Exhibit 3*.

Following the entry of this Court's October 21, 2020 written certification of its intent to conduct evidentiary proceedings concerning the parties' competing custody and visitation claims, Will filed a Motion for Remand before the Nevada Supreme Court. Will's Motion for Remand was filed on November 20, 2020, a copy of which is attached hereto as *Exhibit 4*.

On December 10, 2020 the Nevada Supreme Court granted Will's Motion and issued an Order of Limited Remand. A copy of the Supreme Court's Order of Limited Remand is attached hereto as *Exhibit* 5.

Following receipt of the Supreme Court's Order of Limited Remand, an Evidentiary Hearing Management Order setting an evidentiary hearing for May 11, 2021 was issued on December 16, 2021, a copy of which is attached hereto as *Exhibit 6*.

On February 28, 2021, following reassignment to Dept. M, this Court issued an Order Setting Civil Non-Jury Trial changing the trial date from May 11, 2021

to May 10, 2021. A copy of the February 28, 2021 Order Setting Civil Non-Jury Trial is attached hereto as *Exhibit 7*.

At the time of the pre-trial conference in advance of the May 10, 2021 trial date, the parties agreed to continue trial in order to resolve various items of outstanding discovery. Consequently, the trial date was continued to July 14, 2021. See Order Rescheduling Civil Non-Jury Trial attached hereto as *Exhibit 8*.

Pursuant to the Court's Order Rescheduling Civil Non-Jury Trial, the parties were ordered to file Pre-trial Memorandums on or before July 2, 2021. Will filed his Pre-trial Memorandum in advanced of the July 14, 2021 trial date as required on July 2, 2021. A copy of Will's Pre-trial Memorandum is attached hereto as *Exhibit 9*. Notably, Defendant failed to file a Pre-trial Memorandum until after this court sent email correspondence inquiring about the status of the same. A copy of the Court's email is attached hereto as *Exhibit 10*. Defendant's untimely Pre-trial Memorandum was filed on July 8, 2021, six (6) days after it was due to the Court. Immediately upon receiving Defendant's untimely Pre-trial Memorandum, Will file an objection to untimeliness of the same.

On July 13, 2021, in the afternoon leading up to trial, this Court issued a Minute Order finding that this Court lacked jurisdiction to conduct evidentiary proceedings, and as a result, ordered the July 14, 2021 Evidentiary Hearing

vacated. A copy of the July 13, 2021 Minute Order is attached hereto as *Exhibit 11*, and for the reasons that follow, gives rise to the instant Motion to Reconsider.

II. ARGUMENT

A. The Nevada Supreme Court Vested this Court with Jurisdiction to Conduct Evidentiary Proceedings Regarding Custody and Visitation

Pursuant to this Court's Order After October 1, 2020 Hearing, Judge Hoskin certified this Court's intent to "set an evidentiary hearing on both parties' competing **custody and visitation claims** and reopen discovery." See *Exhibit 3*, p. 3:9-10 (emphasis added). See also Transcript of October 1, 2020 hearing, *Exhibit 2*, p. 39:24 – 40:2.

After receiving Jude Hoskin's certified intent to conduct evidentiary proceedings, the Nevada Supreme Court issued its Order of Limited Remand which states as follows:

> Attached to the motion [for remand] is a district court order certifying **the district court's intent to set an evidentiary hearing on the parties' competing custody and visitation claims** and reopen discovery.

See *Exhibit 5* at p. 1 (emphasis added).

Thus, it is clear and undisputed that Judge Hoskin and the Nevada Supreme Court intended for this Court to conduct evidentiary proceedings on the parties' competing custody and visitation claims. Neither Judge Hoskin nor the Nevada

Supreme Court intended to limit the scope of this Court's remanded jurisdiction to only a determination of emergency physical custody. Plainly stated, the issues of custody, visitation, and all related issues have always been before this Court.

B. Jurisdiction to Modify Custody Necessarily Includes Jurisdiction to Modify Visitation and Time Share

As this Court is well aware, it would be a logical fallacy for a court to have jurisdiction to modify custody and, at the same time, not have jurisdiction to enter order regarding visitation or time share that corresponds with any resulting modification of custody.

More specifically, physical time share (visitation) is a quintessential component of any custody determination. Any custody award that increases or decreased time share (or parenting time, or visitation, or any other nomenclature) will at a certain point, impact the corresponding legal custody designation. For example, a parent who exercises more than forty percent (40%) time share with a child is deemed to have joint physical custody. Conversely, a parenting who exercises more than sixty percent (60%) time share with a child is deemed to have primary physical custody. See *Rivero v. Rivero,* 125 Nev. 410, 425-26, 216 P.3d 213, 224 (2009). All of this is to say that it would be impossible for this Court to have jurisdiction to modify custody, while at the same time, not having jurisdiction to address visitation/timeshare allocation between the parents.

Consider the following. If this court were to proceed to trial based upon the understanding that the Court's jurisdiction is limited to considering a change in physical custody only, then the trial could easily lead to an absurd result. Assume that the Court found that a change in custody was warranted. In such a scenario, the Court would find itself in a position of telling the prevailing party that he/she was being awarded primary physical custody, but unfortunately, the Court lacks the jurisdiction to make any changes to the pretrial visitation schedule. Such a result would be absurd. If a court has the jurisdiction to issue orders regarding custody of a minor child, then it necessarily follows that the court also has the jurisdiction to issues orders that conform the parenting time schedule to the court's physical custody designation.

This unbreakable nexus between custody and visitation is essential to the matter at bar because Defendant, and in turn, this Court, mistakenly believe that Will's decision to not pursue his claim for primary physical custody somehow rendered the Nevada Supreme Court's Order of Limited Remand moot.

Here, Will initially sought to obtain primary physical custody of the child because of the abrupt dismissal of the Juvenile Matter that involved Grayson, the subject minor child, being removed from Defendant's home for an extended period of time. See *Exhibit 1.* Within Will's Emergency Motion for Custody, Will

specifically outlined his concerns for the child's physical safety and wellbeing. He also sought to obtain specific orders to ensure the safety of the minor child. *Id.*

However, a significant period of time (ten (10) months) has passed between the filing of Will's Emergency Motion for Custody and what would have been the July 14, 2021 Evidentiary Hearing. Moreover, as part of his initial order certifying his intent to set an evidentiary hearing, Judge Hoskin reopened discovery. See *Exhibit 6,* p. 3. As a result, the facts and circumstances that existed at the time of filing Will's Emergency Motion for Custody in September 2020 are not the same as they are now in July 2021. Considering that the very purpose of discovery is to allow a litigant to investigate the issue at bar and to appropriately tailor their presentation of evidence at the time of trial, it is not unusual that Will's current position might be different than it was previously.

In this case, Will determined through the course of reopened discovery that the remaining, unresolved issues centered around the particulars of the parties' joint legal custody and their shared weekly time share, and not necessarily the physical custody designation. As a result, Will elected to forego his claim for primary physical custody and instead focus on the joint legal and visitation related concerns.

To that end, Will explained the following in his pre-trial Memorandum.

> While some of Grayson's comments and behaviors leave Will uneasy regarding ongoing occurrences in Defendant's home, Will does not believe that Grayson has been subjected to imminent harm or physical abuse since last September, and as such, Will is no longer seeking a designation as the primary physical custodian of Grayson. Nonetheless, the parties continue to experience disputes and issues as a result of the current custodial timeshare, as the same no longer serves the best interest of the subject minor child. As such, Will is seeking a modification of the current custodial timeshare, without disturbing the existing joint legal and joint physical custodial designation.

See *Exhibit 8*, pp. 9-10.

Plainly stated, Will's desire to address the visitation and time share related concerns was squarely within this Court's jurisdiction. Judge Hoskin's Order After October 1, 2020 Hearing and the Supreme Court's Limited Order of Remand both unambiguously state that the district court was to conduct evidentiary proceedings regarding the parties' competing claims regarding custody and visitation. See *Exhibit 3* at p. 3 and *Exhibit 4*, p. 1.

C. Defendant's Pre-trial Memorandum Misstates the Scope of this Court's Jurisdiction

Defendant's argument in his untimely Pre-trial Memorandum misrepresents not only Judge Hoskin's prior order but also the Nevada Supreme Court's Order of Limited Remand. More specifically, Defendant's Pre-trial Memorandum incorrectly states as follows:

> At the October 1, 2020, Hearing, Will's counsel argued that Will should be awarded primary physical custody, and Adriana's counsel argued that the Court should deny Will's request for primary custody

> and should grant compensatory time to Adriana. At that hearing, the Court expressed skepticism in regard to the merits of Will's motion, and certified pursuant to Huneycutt that it was inclined to conduct an evidentiary hearing in relation to the parties' competing custody and visitation claims. See October 20, 2020 Order. All other issues were deferred.
>
> Pursuant to the terms of the Order of Limited Remand issued by the Nevada Supreme Court on December 10, 2020, this matter was remanded to this Court to conduct an 'evidentiary hearing on the parties' competing custody claims' in accordance with Judge Hoskin's certification.

See *Defendant's Pre-trial Memorandum* at pp. 3-4.

Defendant goes on to argue that the financial arguments raised by the parties are outside the scope of the Order of Limited Remand. See *Id.* at p. 4. Defendant further asserts that Will's Pre-trial Memorandum raises a number of new issues that were not previously briefed before this Court. Defendant incorrectly asserts the following:

> In Will's Pre-Trial Memorandum, he raises a number of new claims and arguments that have not been previously briefed before this Court as follows:
>
> - Will requests that the court adopt new joint legal custody orders;
> - Will requests a modification of the parties' holiday time share;
> - Will requests that the parties' custodial timeshare be changed to a week-to-week schedule;
> - Will requests that child support be recalculated (independent of a change in custody).

See *Id.* at pp. 4-5. Yet, in reality, all of these issues were understood by both Judge Hoskin and the Nevada Supreme Court to be at issue.

With respect to joint legal custody, Judge Hoskin specifically said, "I've got allegations of unilateral actions pending in violation of joint legal custody, which I probably need to take evidence on, as well." See *Exhibit 2*, p. 38:22-24.

Regarding physical custody, which necessarily includes holiday time share, both Judge Hoskin's Order and the Supreme Court's Order stated that the scope of the issues to be addressed at the evidentiary hearing included the parties competing custody and visitation claims. See *Exhibit* 3, p. 3 and *Exhibit* 5, p. 1 (recognizing the district court's intent to conduct evidentiary proceedings based upon the parties' competing custody and visitation claims). See also *Exhibit* 5, p. 2 (wherein the Supreme Court ordered the matter remanded for decision on Will's motion and any related pending custody claims).

As to child support, any change in physical custody would necessarily require a change in child support pursuant to NAC 425. In the same way that custody and visitation are unbreakably connected, so is custody and child support. It would be absurd for this Court to award a parent primary physical custody of a child and, at the same time, say that the Court lacks jurisdiction to award child support.

Thus, every issue that Defendant says was "new," was in fact, completely and transparently before the Court. There was nothing new. There was no surprise

that Will was looking for this Court to resolve outstanding issues regarding legal custody, time share, and child support. See *Exhibit 1, Exhibit 3,* and *Exhibit 5.*

D. The July 13, 2021 Minute Order is Factually Inaccurate

This Court's finding that Judge Hoskin deferred on the issues of compensatory visitation, child support, and attorney's fees until after the appeal is, respectfully, incorrect. See *Exhibit 11*, p. 1. Notably, the Order After October 1, 2020 Hearing says that compensatory time, child support, and attorney's fees are deferred. See *Exhibit 3*, p. 3. The Order does not say "until after the appeal."

Moreover, the transcript from the hearing makes clear that all issues – not just compensatory time, child support, and attorney's fees - were being deferred until the Supreme Court determined whether or not to remand the case for evidentiary proceedings. Judge Hoskin went to great lengths to explain that he found sufficient grounds for certifying his intent to conduct evidentiary proceedings, but that he was not going to make any decision on any issue until he could take evidence. Judge Hoskin made it crystal clear that he was certifying his intent to take evidence, but that no proceedings would occur until the Supreme Court decided whether they were going to remand the case to the district court to allow Judge Hoskin to take evidence. See *Exhibit 2* at pp. 36:19 – 40:2.

Thus, this Court's finding that issues of compensatory time, child support, and attorney's fees were deferred until "after the appeal" is factually incorrect.

Neither Judge Hoskin's order, the transcript of the proceedings, nor the Supreme Court's Order of Limited Remand support such a finding. See *Exhibit 2, Exhibit 3,* and *Exhibit 5*.

E. This Court's Refusal to Conduct an Evidentiary Hearing Constitutes Reversible Error

Following the Supreme Court's Order of Limited Remand, this Court had jurisdiction to conduct evidentiary proceedings regarding the parties competing custody claims, visitation claims, and all related issues. See *Exhibit* 5. As such, this Court's decision to vacate the July 14, 2021 Evidentiary Hearing constitutes reversible error. This Court's decision to not conduct evidentiary proceedings runs directly counter to the Supreme Court's Order remanding this case for the specific purpose of conducting an evidentiary hearing on the parties' competing custody claim, visitation claims, and all related issues.

Accordingly, this Court should reverse its July 13, 2021 Minute Order and immediately place this matter back on calendar for the first available trial setting.

With regards to resetting trial, Will's only request is that the Court provide at least fourteen (14) days' notice of the rescheduled trial date in order to allow time to issue and serve updated trial subpoenas on the witnesses designated in his Pre-trial Memorandum. Save and except for the time required to issue and serve updated

trial subpoenas, Will is ready to immediately proceed to trial without any further delay.

III. CONCLUSION

The Order After October 1, 2020 Hearing and the Supreme Court's Order of Limited Remand unambiguously state that Judge Hoskin intended for this court (prior to the matter being reassigned from his department) to conduct evidentiary proceedings on the parties' competing custody and visitation claims. The Supreme Court understood that order to encompass more than emergency physical custody. As a result, the Supreme Court remanded this matter to allow this Court to conduct evidentiary proceedings on the parties' competing custody claims, visitation claims, and all related issues. See *Exhibit 5*.

With all due respect to this Court, the Nevada Supreme Court's Order of Limited Remand is controlling. This Court must conduct evidentiary proceedings regarding custody, visitation, and all related issues. A decision by this Court to not conduct the evidentiary proceedings specifically ordered by the Nevada Supreme Court constitutes reversible error.

. . .

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. . .

Accordingly, Will respectfully moves this Court to vacate is July 13, 2021 Minute Order and to issue a new order setting this matter for the first available trial date.

Dated this 26 day of July, 2021.

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 SERVICE

Pursuant to NRCP 5(b)I hereby certify that on the 28 day of July, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO RECONSIDER THE JULY 13, 2021 MINUTE ORDER VACATING TRIAL** to be served via the Eighth Judicial District Court's electronic filing/service system, to the below registered users as follows:

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

An Employee of Ford & Friedman

Electronically Filed
8/12/2021 1:30 PM
Steven D. Grierson
CLERK OF THE COURT

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
Attorney for Defendant
Adriana Ferrando

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM EUGENE DIMONACO, Plaintiff, vs. ADRIANA DAVINA FERRANDO, Defendant.	Case No.: D-16-539340-C Dept No.: M Date and time of hearing: September 21, 2021 @ 10:00 a.m.

OPPOSITION AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS

Defendant, Adriana Ferrando ("Adriana"), by and through her attorney, Michael P. Carman, Esq., of FINE|CARMAN|PRICE, hereby submits this Opposition and Countermotion for Attorney's Fees and Costs to William DiMonaco's ("William") pending motion.

This opposition and countermotion are made and based upon the pleadings and papers on file herein, the Points and Authorities submitted

Case Number: D-16-539340-C

APPELLANT'S APPENDIX 0391

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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 herein, Adriana hereby requests the following relief from the Court at this time:

1. For an Order denying William's motion as set forth herein;

2. For an Order awarding preliminary appellate fees;

3. For an Order awarding Adriana attorney's fees and costs; and

4. For any and all additional and further relief as the Court deems just and proper by this Court.

DATED August 11, 2021.

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
Attorney for Defendant
Adriana Ferrando

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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. Pursuant to the terms of the parties' Decree of Custody dated November 9, 2017, the parties were awarded joint physical custody of Grayson with Adriana having Mondays at 8:00 a.m. through Wednesday at 8:00 a.m., with William having Wednesdays at 8:00 a.m. to Friday at 8:00 a.m., and with the parties each having alternating weekends from Friday at 8:00 a.m. until Monday at 8:00 a.m. Further, when William worked on Wednesdays, Grayson was to remain in Adriana's care Wednesday after school until such time as William left work. Unfortunately, this case has been continuously in litigation since the entry of the parties' custody decree because of William's unreasonable conduct and ongoing dissatisfaction with the orders entered by Judge Duckworth and Judge Hoskin.

With William receiving virtually free legal representation as a result of his significant other's employment with his counsel, Adriana has been forced

to incur a massive amount of attorney's fees while William has suffered no consequences for the perpetual unsuccessful litigation that he has fostered.

Orders and Findings on Appeal

From June of 2017, until such time as Judge Hoskin ordered that Grayson be enrolled in the school preferred by Adriana in 2019, Adriana served as the after-school care provider to Grayson on William's days and oversaw Grayson's homework. As William became angered over the Court's decision, he suddenly notified Adriana that he would no longer allow her to care for Grayson after school, and would be utilizing third-party care. Later William advised Adriana that he intended to enroll Grayson in Champions after school care at Grayson's school.

After accepting affidavits in lieu of testimony, Judge Hoskin ordered that it was in Grayson's best interest to be cared for by Adriana after school. *See* October 17, 2019, Order. In making its ruling, the Court rejected William's argument that he should have parental autonomy to choose his own after school care, and that the additional exchanges necessitated by such care were disruptive to Grayson.

Unsatisfied with the Court's ruling, William filed another motion on November 1, 2019, seeking a new trial. That motion ultimately resulted in the Amended Order dated January 6, 2020, in which the Court re-affirmed its prior decision. In that decision, the Court – again – rejected William's

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arguments that Adriana caring for Grayson afterschool would be disruptive and found as follows:

- The Court found that William's positions were "contrary to [promoting] frequent associations and a continuing relationship with the other parent";
- The Court found that William's positions were causing parental conflict;
- The Court specifically rejected William's argument that Adriana's after school care of Grayson would "blur the lines of custodial authority, inhibit familial cohesion in [his]household and severely confuse" Grayson;
- The Court expressed concern regarding William's ability to recognize the best interests of Grayson; and
- The Court found that William's demands demonstrated an inability to cooperate to meet the needs of Grayson.

William has appealed Judge Hoskin's decision, and his appeal is presently pending before the Nevada Supreme Court.

The Previous Remand

After the dismissal of a painfully misguided CPS investigation that was manipulated by William and caused Adriana to be denied approximately nine (9) months of custodial time. William filed an 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 on September 11, 2020.

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In that motion, William asked the Court to assume temporary emergency custody jurisdiction and award him Primary Physical Custody during the pendency of his previously-filed appeal that was pending before the Nevada Supreme Court and / or to certify its intention to entertain William's request for Primary Physical Custody of Grayson. In regard to child support, William requested that child support be awarded to him in conjunction with his request for custody, and that the Court retroactively modify its prior child support orders to insulate him from child support arrears. Finally, William sought an award of attorney's fees in conjunction with his request for Primary Physical Custody.

On September 29, 2020, Adriana filed her Opposition and Countermotion requesting that William be sanctioned for unlawfully disseminating confidential CPS records in violation of NRS 432B.280, requested that William's request for Primary Physical Custody be denied, requested that William's requested child support modification be denied, and requested attorney's fees.

At the October 1, 2020, hearing, William's counsel argued that William should be awarded Primary Physical Custody, and Adriana's counsel argued that the Court should deny William's request for Primary Physical Custody and should grant compensatory time to Adriana. At that hearing, the Court expressed skepticism in regard to the merits of William's motion,

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and certified pursuant to Huneycutt that it was inclined to conduct an evidentiary hearing in relation to both of the parties' competing custody and visitation claims. *See* October 20, 2020, Order. All other issues – including financial issues – were deferred.

Pursuant to the terms of the Order of Limited Remand issued by the Nevada Supreme Court on December 10, 2020, this matter was remanded to this Court to conduct an evidentiary hearing on the parties' competing custody claims in accordance with Judge Hoskin's certification.

William's Pretrial Memorandum

In William's Pretrial Memorandum dated July 2, 2021, William suddenly abandoned the request for Primary Physical Custody that was set forth in the September 11, 2020, motion that remained before the Court, and raised new issues that had not been previously-raised before the Court as follows:

- William requests that the court adopt new joint legal custody orders;
- William requests a modification of the parties' holiday timeshare;
- William requests that the parties' custodial timeshare be changed to a week-to-week schedule;
- William requests that child support be recalculated under NAC 425 (independent of a change in custody).

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None of the new arguments raised by William in his Pretrial Memorandum had been presented to Judge Hoskin, and clearly were not within the scope of Judge Hoskin's certification that led to the Nevada Supreme Court's remand order. As such, William's new arguments were clearly outside of the scope of the Nevada Supreme Court's Order of Limited Remand order and were not within this Court's jurisdiction.

With the new claims being asserted by William clearly not having been part of the Nevada Supreme Court's remand order, this Court appropriately acknowledged the limits of its jurisdiction and issued its July 13, 2021, Minute Order vacating the parties' scheduled trial.

II.

ARGUMENT

A. The New Arguments Raised by William Outside of his September 11th Motion are Clearly Beyond the Scope of That Motion

William is correct that Judge Hoskin certified his intent to set an evidentiary hearing to hear the parties competing custody and visitation claims. William is further correct that the Nevada Supreme Court remanded the matter based upon Judge Hoskin's intentions to hear the parties' competing custody and visitation claims.

Where William's motion is misguided is in his assertion that Judge Hoskin certified to the Nevada Supreme Court an intention to hear claims

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that had not yet been raised before the Court. Similarly, William's assertion that the Nevada Supreme Court granted broad authority to hear any custody-related issues regardless of whether or not it was pending before the District Court at the time of its remand order is misguided. To the contrary, both Judge Hoskin's certification and the Nevada Supreme Court's order clearly reference the parties' pending motions and the claims that were pending before the Court at that time.

Contrary to William's present argument, the Court's jurisdiction was limited to the custody claims that were actually presented to Judge Hoskin, and were part of Judge Hoskin's certification that he intended to conduct an evidentiary hearing to address specific issues that had been raised in the parties' papers. As clearly indicated in Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978) and, the District Court may certify its intent to grant a *motion* that is pending before it, and the Supreme Court can remand jurisdiction to the District Court to hear *such motion*. *See also* Foster v. Dingwall, 126 Nev. 49, 228 P.3d 453 (2010).

Contrary to William's present argument, caselaw clearly indicates that upon a remand, the District Court is only given a limited grant of jurisdiction to entertain the specific motion that is before it at the time of its certification. With William having abandoned such arguments prior to trial, and having attempted to assert new arguments that had not been raised before Judge

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Hoskin (or considered by the Supreme Court) and clearly were not within the scope of his certification, the Court appropriately relinquished jurisdiction back to the Nevada Supreme Court.

B. Due Process Considerations

Ignoring the reality that Judge Hoskin clearly did not certify an intention to hear claims that had not yet been raised before the Court, and the fact that the Nevada Supreme Court did not relinquish jurisdiction to hear additional claims that had not been raised in the parties' prior pleadings, William's request for relief would result in a clear deprivation of Adriana's due process rights if granted.

Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments. Matthews v. Eldridge, 424 US 319, 335 (1976). Such procedural due process considerations require the Court to ensure adequate procedures to minimize the risk of arbitrary or erroneous deprivations of liberty. Id. At a minimum, due process requires notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." Id. *citing* Armstrong v. Manzo, 380 U. S. 545, 552 (1965). Such due process includes being "given appropriate notice that a court would be considering a substantial modification of a visitation schedule. Wallace v. Wallace, 922 P.2d 541, 922 P.2d 541 (1996).

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In this particular case, William's attempts to raise new allegations and claims on the eve of a scheduled trial, without the filing of a motion that would have adequately placed Adriana on notice of them, was clearly improper. Had the Court elected to proceed, the Court clearly would have violated Adriana's due process rights in this case.

C. Adriana Requests an Award of Attorney's Fees to Assist Her in Defending William's Pending Appeal

As this Court is aware, NRS 126.171 states as follows:

> Costs. The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests or tests for genetic identification, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county. In no event may the State be assessed any costs when it is a party to an action to determine parentage.

As recognized by the Nevada Supreme Court, Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005), NRS 126.171 permits this Court to award reasonable attorney's fees "in proportions and at times determined by the court" and allows this Court to apportion the costs of litigation between the parties' based upon their financial means.

Adriana requests that this Court acknowledge and honor the principles set forth in Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (Nev. 2016) and award of $5,000.00 in preliminary appellate fees to ensure that she is

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able to defend herself from William's pending appeal and meet him in the appellate court on an equal basis without having to further destroy her financial position in this case.

To date Adriana has been forced to spend in excess of $60,000.00 in fees over the years in relation to undersigned counsel's representation as a result of William's over-litigious conduct, unreasonable legal positions, and untenable claims.[1] Since the filing of William's motion in September of 2020 alone, Adriana has incurred in excess of $33,000.00 in fees defending William's withdrawn requests for relief.[2] Based upon the limited information regarding William's attorney's fees, it appears that his counsel has been providing him virtually free representation based upon his significant other's employment. With William appearing to have only paid $950.70 since September of 2020 and receiving approximately $38,000.00 in free legal representation Adriana has been buried in fees that she cannot afford to pay.

With William receiving virtually free legal services, and Adriana – who is a stay-at-home mother with no income – having been financially

[1] To put William's over-litigious in perspective, during a far shorter period of time, William's counsel generated $98,000.00+ in billable fees and costs while only requiring William to pay approximately $2,000.00.

[2] During the same period, William's counsel generated $38,000.00+ in billable fees and costs while only requiring William to pay approximately $950.00.

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devastated by the parties' ongoing litigation, it would be manifestly unjust to not award reasonable preliminary appellate fees to allow Adriana to defend this Court's orders.

D. Attorney's Fees and Expert Fees

Further, 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.

In addition, 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

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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.

As set forth above, William's present arguments have no merit and his unreasonable vexatious efforts to undermine Judge Hoskin's prior orders have led to Adriana being forced to incur additional attorney's fees that she is not able to afford. Further, it is believed that William receiving virtually free legal representation and receiving no consequences for his tenuous legal claims, has significantly contributed toward the over-litigious tendencies that he has exhibited throughout the course of this case.

Under such circumstances, Adriana requests that the Court award appropriate attorney's fees and costs in accordance with EDCR 7.60(b) and NRS 18.010. 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

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counsel's hourly rate of $400.00 is reasonable, and the total amount of time by counsel is reasonable based upon the unique circumstances of this case.

Adriana's counsel is an A/V rated attorney who has practiced since 1997, has practiced primarily in the field of family law for over sixteen (16) years, and is currently serving on the State Bar of Nevada's Family Law Executive Council. As recognized previously by this Court, counsel's work in this matter was more than adequate, both factually and legally, and it is hopeful that the Court recognizes that counsel has diligently reviewed the applicable law, explored the relevant facts, and properly applied one to the other throughout the time periods set forth in the attached statements.

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CONCLUSION

As set forth above, Adriana hereby requests the following relief from the Court at this time:

1. For an Order denying William's motion as set forth herein;

2. For an Order awarding preliminary appellate fees;

3. For an Order awarding Adriana attorney's fees and costs; and

4. For any and all additional and further relief as the Court deems just and proper by this Court.

DATED August 11, 2021.

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
Attorney For Defendant
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 opposition and countermotion, 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 12th day of August, 2021, I caused the above and foregoing document entitled, Opposition And Countermotion for Attorney's Fees And Costs 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 address:

Matthew H. Friedman, Esq.
Christopher B. Phillips, Esq.
Tracy McAuliff
Ford & Friedman
mfriedman@fordfriedmanlaw.com
cphillips@fordfriedmanlaw.com
tracy@fordfriedmanlaw.com

Melody Tooley
Employee of FINE | CARMAN | PRICE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO, Plaintiff, v. ADRIANA DAVINA FERRANDO, Defendant.	CASE NO.: D-16-539340-C DEPT. NO.: M **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: August 12, 2021

Signature of Party or Preparer Melody Tooley

Electronically Filed
8/19/2021 5:06 PM
Steven D. Grierson
CLERK OF THE COURT

ROPP
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: M Hearing Date: September 21, 2021 Hearing Time: 10:00 a.m.

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO RECONSIDER THE JULY 13, 2021 MINUTE ORDER VACATING TRIAL AND PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS

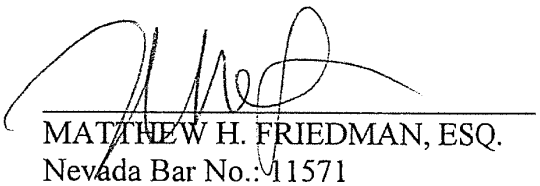
COMES NOW PLAINTIFF, WILLIAM DIMONACO (hereinafter referred to as "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., and Christopher B. Phillips, Esq., of the law firm of Ford & Friedman who hereby files the foregoing Reply to Defendant's Opposition to Plaintiff's Motion to

Reconsider the July 13, 2021 Minute Order Vacating Trial along with Plaintiff's Opposition to Defendant's Countermotion for Attorney's Fees and Costs.

This Reply and Opposition is made pursuant to EDCR 5.503 and 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 19th day of August, 2021.

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. ARGUMENT

A. Defendant's Opposition and Countermotion are Untimely

In keeping with her pattern of litigation conduct throughout this litigation, Defendant is once again untimely. As this Court will recall, Defendant filed her Pretrial Memorandum on July 8, 2021, six (6) days after it was due to the Court. Here, Defendant is once again untimely. Will's Motion for Reconsideration was served on July 28, 2021. Accordingly, Defendant's Opposition was due on or before August 11, 2021. See EDCR 5.502(c). Defendant waited until August 12, 2021 at 1:30 p.m. to file her Opposition. Thus, the same is late and should not be considered.[1]

B. Response to Defendant's Inaccurate Factual Background

In so far as the Court elects to consider Defendant's untimely Opposition and Countermotion, Will notes that the entirety of Defendant's factual background is wholly irrelevant to the actual issue at bar, to wit: whether or not this Court has the requisite jurisdiction to conduct evidentiary proceedings. Defendant's background

[1] It is also worth noting that Defendant's counsel's signature is dated August 11, 2021, and that the Defendant's Declaration in support of her Opposition is undated. Thus, there is a logical inference to be made that Defendant's Opposition was backdated in order to create an appearance that it was timely, even though the same was not filed with the Court until August 12, 2021.

narrative is nothing more than conjecture offered to present her version of events without actually coming to trial and presenting admissible evidence. Nonetheless, since Defendant has gone out of her way to offer a series of misrepresentations, Will must take the opportunity to correct the record.

Specifically, Defendant falsely asserts that "[f]rom June of 2017, until such time as Judge Hoskin ordered that Grayson be enrolled in the school preferred by Adrianna in 2019, Adriana served as the after-school care provider for Grayson on Will's days and oversaw Grayson's homework." *Defendant's Opposition* at p. 4. In reality, Adriana was serving as Grayson's after school care provider because Will agreed to allow the same, in order to further the relationship between Adriana and Grayson. However, Adriana decided to take advantage of the situation by routinely interfering with Will's ability to drop off and pick up Grayson before and after work. There were frequent instances of Will contacting Defendant advising that he was on his way to collect Grayson only to be told that Defendant was not home or that the pickup time or location would need to be changed or delayed.

As a result, Will began arranging for his own childcare in March 2018, and the same continued until August 2019 when Judge Hoskin entered his order allowing Defendant to serve as the after-school care provider for Grayson. Copies

of Bank Statements showing payments for childcare services are attached hereto as *Exhibit 12*.[2]

C. The CPS Investigation

Defendant continues to assert – without evidence – that the prior CPS investigation was misguided. Defendant also asserts – without evidence – that the CPS investigation was "manipulated by Will." *Defendant's Opposition* at p. 5. Yet, Defendant offers no evidence to support these assertions. In fact, in Defendant untimely Pretrial Memorandum, Defendant went so far as to say that no exhibits need to be presented at trial. See *Defendant's Pretrial Memorandum* at p. 6. Furthermore, Defendant also ignores the fact that despite the Juvenile Dependency matter being dismissed, an agency substantiation remains undisturbed.

At present day, all the Defendant has offered are allegations that the CPS case was somehow improper, misguided, or manipulated. The fact of the matter is the unsupported arguments of Defendant's counsel are not evidence and do not establish the facts of the case. See *Nev. Ass'n Services v. Eighth Judicial District*

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[2] In the interest of judicial economy, Will has provided a bank statement for every third (3rd) month (i.e., quarterly statements) to reduce the amount of redacted paper filed with the Court. The attached bank statements demonstrate that childcare was being provided by someone other than Defendant. In so far as Defendant continues to falsely assert otherwise, additional bank statements can be provided at the Court's request, or at the time of trial.

Court of Nev., 338 P.3d 1250, 1255-56 (2004) (citing *Jain v. McFarland*, 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993)).

Furthermore, the fact that Defendant is going to such extraordinary efforts to avoid trial cannot be overstated. If Defendant was confident in her position, and if she were not misrepresenting the facts, then it should follow that she would welcome the opportunity to present her evidence at trial. Instead, Defendant is going to extreme efforts to prevent any and all evidentiary proceedings. The complete and total lack of Defendant's credibility is overwhelming. The fact that she is going to such great lengths to avoid trial should cause this Court to want to set the matter for trial so that the issue can be resolved on the merits, and not based upon Defendant's unsupported narrative and baseless conjecture.

D. Will's Pretrial Memorandum Does not Affect this Court's Jurisdiction

With regards to Will's Pretrial Memorandum, Defendant offers no new argument. Instead, Defendant has only regurgitated her prior argument that Will's claims are not properly before this Court. Once again, Defendant is incorrect.

Defendant fails to mention that as recent as Friday, August 13, 2021, the Nevada Supreme Court issued an updated Order on the status of the pending appeal. In that August 13, 2021 Order, the Nevada Supreme Court again confirms that this matter was remanded to this Court for the purpose of "...deciding [Will's] motion

relating to custody ***and any related pending custody claims***." See *Order* attached hereto as *Exhibit 13* (emphasis added). As explained in Will's moving papers, nothing in his Pretrial Memorandum is beyond the scope of his Motion "and any related pending custody claims." *Id.*

Moreover, and most importantly, Defendant does not even attempt to engage with the substantive analysis of Will's Motion. Notably, Will went to great lengths to explain how it would be a logical fallacy for a court to have jurisdiction to modify custody and, at the same time, not have jurisdiction to enter orders regarding visitation or time share that corresponds with any resulting modification of custody.

More specifically, physical time share (visitation) is a quintessential component of any custody determination. Any custody award that increases or decreased time share (or parenting time, or visitation, or any other nomenclature) will at a certain point, impact the corresponding physical custody designation. For example, a parent who exercises more than forty percent (40%) time share with a child is deemed to have joint physical custody. Conversely, a parenting who exercises more than sixty percent (60%) time share with a child is deemed to have primary physical custody. See *Rivero v. Rivero,* 125 Nev. 410, 425-26, 216 P.3d 213, 224 (2009). All of this is to say that it would be impossible for this Court to have jurisdiction to modify custody, while at the same time, not having jurisdiction to address visitation/timeshare allocation between the parents.

Defendant makes no effort to engage with the unbreakable nexus between custody and visitation. Instead, Defendant attempts to argue the merits of her case – without evidence – and then concludes by saying that there should be no trial. Judge Hoskin's Order, and every subsequent order from the Nevada Supreme Court has been clear: this Court has jurisdiction to hear Will's Motion to change custody as well as any related custody claims. As explained above and as set forth in Will's moving papers, it would be impossible for the Court to have jurisdiction to modify custody while at the same time lacking jurisdiction to enter orders regarding time share. Plainly stated, Defendant's arguments regarding jurisdiction fail as a matter of law.

D. An Evidentiary Proceeding as Ordered by the Nevada Supreme Court will not Violate Due Process

For all the reasons set forth in Will's Motion, there are no *new* issues before the Court. On this point Defendant incorrectly asserts the following:

> In Will's Pre-Trial Memorandum, he raises a number of new claims and arguments that have not been previously briefed before this Court as follows:
>
> - Will requests that the court adopt new joint legal custody orders;
> - Will requests a modification of the parties' holiday time share;
> - Will requests that the parties' custodial timeshare be changed to a week-to-week schedule;
> - Will requests that child support be recalculated (independent of a change in custody).

See *Defendant's Pretrial Memorandum* at pp. 4-5. Yet, in reality, all of these issues were understood by both Judge Hoskin and the Nevada Supreme Court to be at issue.

With respect to joint legal custody, Judge Hoskin specifically said, "I've got allegations of unilateral actions pending in violation of joint legal custody, which I probably need to take evidence on, as well." See *Exhibit 2*, p. 38:22-24.

Regarding physical custody, which necessarily includes holiday time share, both Judge Hoskin's Order and the Supreme Court's Order stated that the scope of the issues to be addressed at the evidentiary hearing included the parties competing custody and visitation claims. See *Exhibit* 3, p. 3 and *Exhibit* 5, p. 1 (recognizing the district court's intent to conduct evidentiary proceedings based upon the parties' competing custody and visitation claims). See also *Exhibit* 5, p. 2 (wherein the Supreme Court ordered the matter remanded for decision on Will's motion and any related pending custody claims).

As to child support, any change in physical custody would necessarily require a change in child support pursuant to NAC 425. In the same way that custody and visitation are unbreakably connected, so is custody and child support. It would be absurd for this Court to award a parent primary physical custody of a child and, at the same time, say that the Court lacks jurisdiction to award child support.

Thus, every issue that Defendant says was "new," was in fact, completely and transparently before the Court. There was nothing new. There was no surprise that Will was looking for this Court to resolve outstanding issues regarding legal custody, time share, and child support. See *Exhibit 1, Exhibit 3,* and *Exhibit 5.* Thus, there is no basis for any assertion that a trial on these issues would violate Defendant's right to substantive or procedural due process. Once again, Defendant's arguments fail as a matter of law.

E. Defendant is not Entitled to an Award of Attorney's Fees

Aside from trying to plead her case without presenting evidence at trial, Defendant's most egregious argument is her request for attorney's fees. Defendant says that she should not have to "...further destroy her financial position." Once again, Defendant is hiding the truth from this Court.

Here, Defendant fails to mention that she recently traded in her sport utility vehicle (estimated value of $40,401) in favor of a brand-new pick-up truck (estimated value of $74,007). See *Kelly Blue Book Estimates* attached hereto as *Exhibit 14.* Defendant also fails to mention that she recently purchased a luxurious camper trailer valued at $34,183.31. See *Exhibit 15.*

Furthermore, Defendant has recently notified Will that she is in the process of selling her current home (estimated value of $422,900) in favor of purchasing a larger, more expensive home (estimated value of $788,500). See *Exhibit 16*

(Talking Parents messages regarding Defendant's forthcoming relocation) and *Exhibit 17* (Zillow estimates for both houses).

Plainly stated, Defendant will soon be living in a three-quarters-of-a-million-dollar home, driving a $74,000 truck, and vacationing in a $34,000 travel trailer – yet she is claiming that she is financially destitute and in need of $5,000 from Will in order to defend the pending appeal. Defendant's argument is absurd![3]

Defendant's affluent lifestyle shows that she is in a far superior financial position than will, who lives in a less expensive home and drives a much older, less expensive vehicle; and more importantly, Will's financial arrangements with his counsel are wholly irrelevant to his request for an evidentiary hearing. The issue of attorney's fees is only relevant herein, because Defendant is attempting to mislead this Court into believing that she will only be able to have her day in Court if Will pays for her cost of the litigation. It is not lost on Will that when Defendant filed motions in February 2018, July 2019, and again in August 2019, she had plenty of money to advance her claims. It is only now when she has to defend against Will's request for an evidentiary hearing – so that all of Defendant's claims and allegations can be tried on the merits – that Defendant is suddenly broke and without any financial ability to access the court or the services of counsel.

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[3] Note too that Defendant is willfully unemployed and has been so for an extended period of time.

Additionally, Defendant is procedurally barred from receiving any award of attorney's fees. Pursuant to EDCR 5.507, a party must file a Financial Disclosure Form (FDF) within three days of filing any motion or countermotion that includes a request for attorney's fees or other allowances. See EDCR 5.507(a), (d). Here, Defendant has not filed a FDF since November 2, 2016. In light of Defendant's affluent standard of living, it hardly seems coincidental that Defendant would refuse to file a FDF. Defendant's refusal to provide the Court with a FDF certainly leads to an inference that Defendant has financial resources at her disposal, that if disclosed, would jeopardize her claims for not only attorney's fees and costs, but also for child support.

Plainly stated, Defendant has failed to show how she is entitled to any award of fees or costs, and even if she had made such a showing, her refusal to file an FDF bars her from receiving any such award. Thus, her request for the same must be denied.

III. CONCLUSION

The Order After October 1, 2020 Hearing and the Supreme Court's Order of Limited Remand unambiguously state that Judge Hoskin intended for this court (prior to the matter being reassigned from his department) to conduct evidentiary proceedings on the parties' competing custody and visitation claims. The Supreme Court understood that order to encompass more than emergency physical custody.

As a result, the Supreme Court remanded this matter to allow this Court to conduct evidentiary proceedings on the parties' competing custody claims, visitation claims, and all related issues.

With all due respect to this Court, the Nevada Supreme Court's Order of Limited Remand is controlling. This Court must conduct evidentiary proceedings regarding custody, visitation, and all related issues. A decision by this Court to not conduct the evidentiary proceedings specifically ordered by the Nevada Supreme Court constitutes reversible error.

Accordingly, Will respectfully moves this Court to vacate is July 13, 2021 Minute Order and to issue a new order setting this matter for the first available trial date.

Dated this 19th day of August, 2021.

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 SERVICE

Pursuant to NRCP 5(b)I hereby certify that on the 19th day of August, 2021, I did cause a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO RECONSIDER THE JULY 13, 2021 MINUTE ORDER VACATING TRIAL AND PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS** to be served via the Eighth Judicial District Court's electronic filing/service system, to the below registered users as follows:

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

An Employee of Ford & Friedman

D-16-539340-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Child Custody Complaint | **COURT MINUTES** | **August 31, 2021**

D-16-539340-C William Eugene DiMonaco, Plaintiff.
vs.
Adriana Davina Ferrando, Defendant.

August 31, 2021 **11:00 AM** **All Pending Motions**

HEARD BY: Mastin, Amy M. **COURTROOM:** Courtroom 04

COURT CLERK: Williams, Kendall

PARTIES PRESENT:

William Eugene DiMonaco, Counter Defendant, Plaintiff, Present

Matthew H. Friedman, Attorney, Present

Adriana Davina Ferrando, Counter Claimant, Defendant, Present

Michael P. Carman, Attorney, Present

Grayson Ashton DiMonaco-Ferrando, Subject Minor, Not Present

JOURNAL ENTRIES

MOTION: PLAINTIFF'S MOTION TO RECONSIDER THE July 13, 2021 MINUTE ORDER VACATING TRIAL...HEARING: PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO RECONSIDER THE July 13, 2021 MINUTE ORDER VACATING TRIAL AND PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS...OPPOSITION & COUNTERMOTION: OPPOSITION AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS

All parties present via VIDEO CONFERENCE through the Bluejeans application.

Court reviewed the case. Court reviewed Plaintiff's Motion for reconsideration. Court further reviewed Plaintiff's appeal to the Supreme Court. Arguments by counsel regarding Plaintiff's requested relief. Court stated concerns with issues trying to be addressed, which were not before the court, at the time of trial.

Mr. Carman requested attorney's fees, including preliminary appellate fees. Court advised not in a position to address the request for preliminary fees. Further arguments by counsel regarding attorney's fees.

COURT ORDERED the following;

Request for attorney's fees, related to today's hearing, shall be DEFERRED;

Plaintiff's Motion to Reconsider shall be DENIED. The court shall CERTIFY its DECISION;

Mr. Friedman shall prepare the Order from today's hearing and Mr. Carman shall review and sign-off as to form and content.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Notice: Journal Entries are prepared by the courtroom clerk and are not the official record of the Court.

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM DIMONACO,

Appellant,

vs.

ADRIANA FERRANDO,

Respondent.

No. 80576

Electronically Filed
Sep 10 2021 04:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT WILLIAM DIMONACO'S LIMITED REMAND STATUS REPORT

COMES NOW Appellant, WILLIAM DIMONACO (hereinafter "William"), by and through his attorneys of record, Matthew H. Friedman, Esq., and Christopher B. Phillips, Esq. of the law firm of Ford & Friedman and hereby submits the foregoing Status Report regarding this Court's December 10, 2020 Order of Limited Remand. The foregoing Status Report is submitted in accordance with NRAP 12A(b).

As previously explained in Appellant's previous Status Report, following this Court's December 10, 2020 Order of Limited Remand, the district court issued a minute order on December 15, 2020 setting the matter for an Evidentiary Hearing on May 11, 2021.

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. . .

Docket 80576 Document 2021-26308

APPELLANT'S APPENDIX 0425

Thereafter, the district court's minute order was reduced to writing in the form of an Evidentiary Hearing Management Order filed in the district court on December 16, 2020. Following issuance of the district court's Evidentiary Hearing Management Order, the matter was administratively reassigned from the Honorable Charles Hoskin (Department E) to the Honorable Amy Mastin (Department M).

Following the administrative reassignment, Department M moved the Evidentiary setting forward by one (1) day, to May 10, 2021, and set the matter for Pretrial Conference on April 14, 2021. At the time of the April 14, 2021 Pretrial Conference, the Evidentiary Hearing was continued, and the matter set for a Status Check on May 10, 2021. During the May 10, 2021 Status Check Hearing, the matter was set for Evidentiary proceedings on July 14, 2021 and a new Trial Management Order was issued.

On the eve of trial, the District Court issued a minute order finding that "the subject of the limited remand is…moot." As a result, the July 14, 2021 evidentiary hearing was vacated. Appellant filed a Motion for Reconsideration, as he believes the July 13, 2021 minute order to be improper.

On August 31, 2021, the district court (Judge Amy Mastin presiding) held a hearing on Appellant's Motion for Reconsideration. Judge Mastin explained that she understood that by the time Appellant's Emergency Motion was heard by Judge Hoskin, that the emergency had passed, and that Judge Hoskin's intent to conduct

evidentiary proceedings was so that the Court could address Appellant's request for a modification of custody.

Nonetheless, Judge Mastin went on to also say that upon review of the parties' pre-trial memorandums, she did not find any issues that warranted being addressed at an evidentiary proceeding prior to resolution of the pending appeal, even though this Court's Order of Limited Remand unambiguously stated that the matter was remanded to the district court "…for the limited purpose of deciding appellant's motion **and any related pending custody claims."** Order of Limited Remand, December 10, 2020 (emphasis added). Accordingly, Judge Mastin denied Appellant's Motion for Reconsideration and has indicated that the district court will not conduct evidentiary proceedings at this time.

Finally, Appellant reports that as of the time of filing the instant Status Report, no minutes have been posted following the August 31, 2021 hearing, and the written order denying Appellant's Motion for Reconsideration is in the process of being prepared and circulated for signature.

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. . .

As such, Appellant is currently unable to provide this Court with any minute order or written order regarding the outcome of Appellant's Motion for Reconsideration as directed in this Court's August 13, 2021 Order.

Respectfully submitted this 10th day of September, 2021.

FORD & FRIEDMAN

/s/ Matthew H. Friedman

Matthew H. Friedman, Esq.
Nevada Bar No. 11571
Christopher B. Phillips, Esq.
Nevada Bar No. 14600
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
Attorneys for Appellant

CERTIFICATE OF ELECTRONIC SERVICE

I the undersigned hereby certify that on the 10th day of September, 2021, I served the above and foregoing **"Appellant William DiMonaco's Limited Remand Status Report"** by serving the following registered users for service on the Court's electronic filing and service program:

Michael P. Carman, Esq.
Attorney for Respondent

/s/ Kristi Faust

An employee of Ford & Friedman, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EUGENE DIMONACO,
Appellant,
vs.
ADRIANA DAVINA FERRANDO,
Respondent.

No. 80576

FILED

SEP 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER REINSTATING BRIEFING

This court previously remanded this matter to the district court for the limited purpose of deciding appellant's motion relating to custody. *See* NRAP 12A; NRCP 62.1. Appellant has now filed a status report in which he represents that the district court has orally denied his motion and will not be conducting an evidentiary hearing as previously indicated. Accordingly, briefing of this appeal is reinstated.

Appellant shall have 21 days from the date of this order to file and serve the fast track statement and appendix. Failure to timely file the fast track statement and appendix may result in the imposition of sanctions. NRAP 3E(i).

It is so ORDERED.

_____, C.J.

cc: Ford & Friedman, LLC
Fine Carman Price

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EUGENE DIMONACO,
Appellant,
vs.
ADRIANA DAVINA FERRANDO,
Respondent.

No. 80576

FILED

OCT 06 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING TELEPHONIC EXTENSION

Pursuant to a telephonic request received on October 6, 2021, appellant shall have until October 13, 2021, to file and serve the fast track statement and appendix. *See* NRAP 3E(f)(2).

It is so ORDERED.

CLERK OF THE SUPREME COURT
ELIZABETH A. BROWN

BY:

cc: Ford & Friedman, LLC
Fine Carman Price

21-28684