

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ANDREW WARREN,
Appellant,

vs.

AIMEE JUNG AHYANG
Respondent.

No. 82909

DOCKETING
CIVIL APPEALS

Electronically Filed
Jun 11 2021 09:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department G
County Clark Judge The Honorable Rhonda Forsberg
District Ct. Case No. D-19-590407-C

2. Attorney filing this docketing statement:

Attorney Emily McFarling, Esq. Telephone 702-565-4335
Firm McFarling Law Group
Address 6230 W. Desert Inn Rd.
Las Vegas, NV 89146

Client(s) Andrew Warren

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Bruce I. Shapiro, Esq. Telephone (702) 388-1851
Firm Pecos Law Group
Address 8925 S. Pecos Rd., Suite 14A
Henderson, NV 89074

Client(s) Aimee Jung Ahyang

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Denied New Trial</u> |

5. Does this appeal raise issues concerning any of the following?

- ☒ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an appeal from the denial of reconsideration of a final decision in an initial custody case between two unmarried parties. At trial, Appellant requested primary physical custody of the parties' minor child, Roen Warren. Respondent requested joint physical custody, absent Appellant's physicians' indication of danger around the child. Otherwise, she requested primary physical custody. At trial, Respondent did not present evidence that Appellant was danger to the child. Following a bench trial, the Court entered its Finding of Facts and Conclusion of Law granting Respondent primary physical custody. Appellant filed a timely motion to reconsider or for new trial, but the Court denied it.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1) Whether the court erred in awarding Aimee primary physical custody of Roen.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be assigned to the Nevada Court of Appeals under NRAP 17(b)(10) because it is an appeal involving family law matters.

14. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from July 19, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served July 20, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion May 3, 2021

(c) Date written notice of entry of order resolving tolling motion was served May 4, 2021

Was service by:

☒ Delivery

☐ Mail

19. Date notice of appeal filed May 7, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(4)(d)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(7)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) gives this court the authority to review the Finding of Fact and Conclusion of Law granting respondent primary physical custody of subject minor as it is a final judgment. NRAP 3A(b)(2) gives this court the authority to review the order denying Appellant's motion for a new trial.

NRAP 3A(b)(7) gives this court the authority to review the order granting Respondent primary physical custody of the subject minor as it is an order establishing or altering child custody.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Andrew Warren, Plaintiff

Aimee Jung Ahyang, Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Andrew claimed he should be awarded primary physical custody and Aimee claimed the parties should get joint physical custody unless Andrew's physician's indicated Andrew was a danger around the child, then she should get primary physical custody. All claims were adjudicated on July 19, 2020.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Order is independently appealable under NRAP 3A(b)

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Andrew Warren
Name of appellant

Emily McFarling, Esq.
Name of counsel of record

06/09/2021
Date

/s/Emily McFarling
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 10th day of June, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

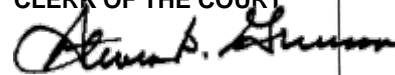
☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Bruce I. Shapiro, Esq.
8925 S. Pecos Rd., Suite 14A
Henderson, NV 89074

Israel Kunin
10161 Park Run Drive, Ste. 150
Las Vegas, Nevada 89145

Dated this 10th day of June, 2021

//Alex Aguilar//
Signature



1 **COMC**

2 Amber Robinson, Esq.

3 Nevada Bar No. 10731

4 **ROBINSON LAW GROUP**

5 1771 E. Flamingo Rd., B-120

6 Las Vegas, NV 89119

7 Telephone: 702-527-2625

8 Facsimile: 702-933-0924

9 Email: arobinson@familylawyerlasvegas.com

10 Unbundled Attorneys for Plaintiff,

11 Andrew Warren

CASE NO: D-19-590407-C

Department G

12 **DISTRICT COURT**
13 **FAMILY DIVISION**
14 **CLARK COUNTY, NEVADA**

15 ANDREW WARREN,

16 Plaintiff,

17 v.

18 AIMEE JUNG YANG,

19 Defendant.

Case No.:

Dept. No.:

20 **COMPLAINT FOR CUSTODY**

21 COMES NOW Plaintiff, ANDREW WARREN (hereinafter "Plaintiff")

22 by and through his unbundled attorney of record, AMBER ROBINSON, ESQ.

23 of the **ROBINSON LAW GROUP**, hereby complains and alleges as

24 follows:

- 25
- 26
- 27 1. That Plaintiff is now and for more than six (6) weeks prior to the
- 28 commencement of this action an actual, bona fide resident and
- domiciliary of the County of Clark, State of Nevada, actually and

1 physically residing and being domiciled therein during all of said
2 period of time;

3 2. That Plaintiff and Defendant, AIMEE JUNG-AH YANG (hereinafter
4 “Defendant”) were not married at the time of the filing of this custody
5 action;

6 3. That there is one (1) minor child who is the issue, *to wit*: ROEN
7 WARREN (hereinafter “Minor Child”) born February 13, 2017 (age 2
8 years.)

9 4. That Nevada has Home State Jurisdiction and Minor Child has resided
10 in the State of Nevada since Birth. Specifically, Minor Child has
11 resided at the following addresses:

12 **a. 9279 Sterling Hill AVE, Las Vegas, NV 89148**

13 5. There are not any other cases involving these parties to Plaintiff’s
14 knowledge;

15 6. That Plaintiff and Defendant be awarded joint legal custody;

16 7. That Plaintiff be awarded primary physical custody;

17 8. That the Court allow Defendant supervised visitations;

18 9. That child support be set pursuant NRS §125B.070 and NRS
19 §125B.080;

20 10. That Plaintiff maintains medical insurance for Minor Child so long as
21 it remains through his employer at no cost and that any unreimbursed
22 medical expenses for the Minor Child equally shared pursuant to the
23 30/30 Rule;

24 11. That Plaintiff has had to hire counsel, and as such, he should be
25 reimbursed his attorney’s fees and costs.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment as follows:

- 3 1. That the Court award Plaintiff of sole legal and primary physical custody
4 of Minor Child;
- 5 2. That the Court confirm the Defendant's supervised visitations;
- 6 3. That child support be set pursuant to NRS §125B.070 and NRS
7 §125B.080;
- 8 4. That Defendant be Ordered to pay Plaintiff his attorney's fees and costs;
- 9 5. That the Court grant any further relief requested in this Complaint; and
10 For such other and further relief as the Court may deem just and proper

11
12 DATED this 30th day of May, 2019.

13
14 ROBINSON LAW GROUP

15
16 By Amber Robinson

17 Amber Robinson, Esq.
18 Nevada Bar No. 10731
19 1771 E. Flamingo Road, Suite B-120
20 Las Vegas, NV 89119
21 Unbundled Attorney for Plaintiff,
22 Andrew Warren
23
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1
2 VERIFICATION

3 STATE OF NEVADA)
4)ss:
5 COUNTY OF CLARK)

6 ANDREW WARREN, being first duly sworn, deposes and says:

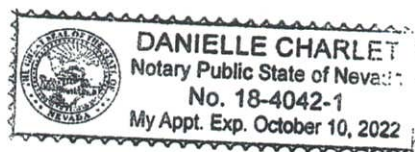
7 That I am the Plaintiff in the above-entitled action; that I have read the
8 above and foregoing Complaint for Custody and know the contents thereof; that
9 the same is true of my own knowledge, except for those matters therein stated
10 on information and belief; and as to those matters, I believe them to be true.

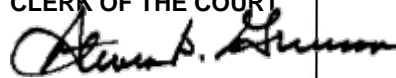
11
12
13 
14 ANDREW WARREN

15
16 On this 29th day of May, 2019, personally appeared before me a Notary
17 Public in and for said County and State, ANDREW WARREN, known (or
18 proved) to me to be the person described in and who executed the above and
19 foregoing Complaint for Custody, and who acknowledged to me that he
20 executed the same freely and voluntarily and for the uses and purposes therein
21 mentioned.

22
23
24 SUBSCRIBED and SWORN to before me
25 this 29 day of May, 2019.

26
27 
28 NOTARY PUBLIC





1 **ANS**
2 **KENNETH S. FRIEDMAN, ESQ.**
3 Nevada Bar No.: 5311
4 **WALSH & FRIEDMAN, LTD.**
5 400 S. Maryland Parkway
6 Las Vegas, NV 89101
7 (702) 474-4660
8 Email: k.friedman@hotmail.com
9 Attorney for Defendant/Counterclaimant

6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 **ANDREW WARREN,**
10
11 Plaintiff/Counterdefendant,

CASE NO.: D-19-590407-C
DEPT. NO.: G

12 vs.

13 **AIMEE JUNG YANG,**
14 Defendant/Counterclaimant

15 **ANSWER TO COMPLAINT FOR CUSTODY**

16 COMES NOW Defendant/Counterclaimant, AIMEE JUNG YANG, by and
17
18 through her attorney Kenneth S. Friedman, Esq., of WALSH & FRIEDMAN,
19 LTD., and hereby admits, denies, and alleges as follows:

20
21 1. Defendant/Counterclaimant, AIMEE JUNG YANG (hereinafter
22 “Defendant”), **admits** the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, and
23
24 10 of Plaintiff/Counterdefendant’s (hereinafter “Plaintiff”) Complaint for
25 Custody.

26
27 2. Defendant/Counterclaimant, AIMEE JUNG YANG (hereinafter
28 “Defendant”), **denies** the allegations contained in paragraphs 7, 8, 9, and 11 of

1 Plaintiff/Counterdefendant's (hereinafter "Plaintiff") Complaint for Custody.

2 **WHEREFORE**, Defendant/Counterclaimant prays for judgment as
3 follows:
4

5 1. That the parties are awarded Joint Legal Custody of the minor child
6 to-wit: ROEN WARREN, born February 13, 2017
7

8 2. That the Plaintiff has emotional instabilities. As long as the
9 Plaintiff's treating physicians state that he is not a danger to the child and he
10 continues to follow the directives of his physicians, then the parties shall be
11 awarded Joint Physical Custody of the minor child to-wit: ROEN WARREN, born
12 February 13, 2017. However, if Plaintiff's physicians do not state that he is not a
13 danger around the child or if Plaintiff is not following his physicians directives,
14 then the Defendant shall be awarded Primary Physical Custody of the minor child
15 to-wit: ROEN WARREN, born February 13, 2017, premised upon the Plaintiff's
16 emotional instability.
17

18 3. That if the Plaintiff's physicians state that Plaintiff is not a danger to
19 the minor child and Plaintiff continues to follow the directives of his physicians
20 and the parties are awarded Joint Physical Custody of the minor child, then child
21 support be governed by *Wright v. Osburn*. However, if Plaintiff's physicians do
22 not state that he is not a danger around the child or if Plaintiff is not following his
23 physicians directives, then the Defendant shall be awarded Primary Physical
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1 Custody of the minor child and Plaintiff shall remit eighteen percent (18%) of his
2 gross monthly income to the Defendant as and for the support and maintenance of
3 the minor child.
4

5 4. That each party bear their own attorney's fees.

6 5. For such other and further relief as the court may deem proper in the
7 premises.
8

9 DATED this 12th day of June, 2019.

10 WALSH & FRIEDMAN, LTD.
11

12
13
14 
Kenneth S. Friedman, Esq.

15 Nevada Bar No.: 5311

16 400 S. Maryland Parkway

17 Las Vegas, NV 89101

18 *Attorney for Defendant/Counterclaimant*
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1 STATE OF NEVADA)
2)
3 COUNTY OF CLARK)

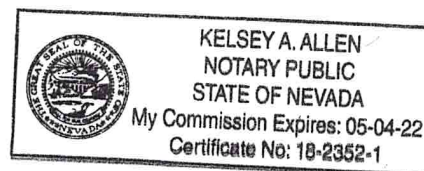
4 AIMEE JUNG YANG, under penalty of perjury, deposes and says:

5 That he is the Defendant in the above-entitled action; that she has read the
6 foregoing ANSWER TO COMPLAINT FOR CUSTODY and knows the
7 contents thereof; that the same is true of his own knowledge, except for those
8 matters therein contained stated upon information and belief, and as to those
9 matters, he believes them to be true.
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14 
AIMEE JUNG YANG

15 ACKNOWLEDGED before me,
16 this 13 day of June, 2019,
17 by AIMEE JUNG YANG.

18 
19 NOTARY PUBLIC



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of WALSH & FRIEDMAN, LTD., and on the 14 day of June, 2019, I served a true and correct copy of the above and foregoing ANSWER TO COMPLAINT FOR CUSTODY AND COUNTERCLAIM, pursuant to NRCP 5 and EDCR 8, by the method or methods indicated below:

_____ by depositing the same in the U.S. Mail, First Class Mail, with postage fully prepaid, at Las Vegas, Nevada, addressed as follows:

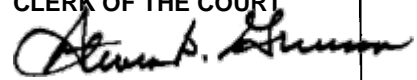
Amber Robinson, Esq.
1771 E. Flamingo Rd., B-120
Las Vegas, NV 89119
Attorney for Plaintiff

_____ by facsimile to the below listed number:

X by electronic mail to the below-listed email address:

arobinson@amilylawyerlasvegas.com


an Employee of WALSH & FRIEDMAN, LTD.



RPLY

Amber Robinson, Esq.
Nevada Bar No. 10731
ROBINSON LAW GROUP
1771 E. Flamingo Road, Suite B-120
Las Vegas, NV 89119
Telephone: 702-527-2625
Facsimile: 702-933-0924
Email: arobinson@familylawyerlasvegas.com
Unbundled Attorneys for Plaintiff,
ANDREW WARREN

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ANDREW WARREN,

Plaintiff,

v.

AIMEE JUNG YANG,

Defendant.

Case No.: D-19-590407-C

Dept. No.: G

REPLY TO DEFENDANT'S ANSWER AND COUNTERCLAIM

COMES NOW Plaintiff ANDREW WARREN (hereinafter "Andrew") by
and through his unbundled attorney of record, AMBER ROBINSON, ESQ. of
the **ROBINSON LAW GROUP**, hereby Answers Defendant's AIMEE
JUNG YANG'S (hereinafter "Aimee") Answer and Counterclaim.

I.

Andrew hereby admits the allegations in Paragraph 1 of Aimee's
Counterclaim on file herein.

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II

Andrew hereby denies the allegation in Paragraph 2, 3, 4, and 5 of
Aimee's Counterclaim on file herein.

DATED this 25th day of June, 2019.

ROBINSON LAW GROUP


By Amber Robinson

Amber Robinson, Esq.
Nevada Bar No. 10731
1771 E. Flamingo Road, Suite B-120
Las Vegas, NV 89119
Unbundled Attorneys for Plaintiff,
Andrew Warren

[illegible]

That I am the Plaintiff in the above-entitled action; that I have read the above and foregoing Reply to Answer and Counterclaim, and knows the contents thereof; that the same is true of my own knowledge, except for those matters therein stated on information and belief; and as to those matters, I believe them to be true.

On this 24th day of June, 2019 personally appeared before me a Notary Public in and for said County and State, ANDREW WARREN, known (or proved) to me to be the person described in and who executed the above and foregoing Reply to Answer and Counterclaim, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.



Page 3 of 4

1 **CERTIFICATE OF SERVICE VIA UNITED STATES MAIL, E-MAIL,**
2 **AND E-SERVICE**

3 I hereby certify that I am a citizen of the United States and am employed
4 in Clark County, where this mailing occurs. My business address is 1771 E.
5 Flamingo, Suite B-120, Las Vegas, Nevada 89119. I am over the age of 18
6 years and not a party to the within cause.

7 On June 25, 2019 following ordinary business practice, I served the
8 foregoing document(s) described as:

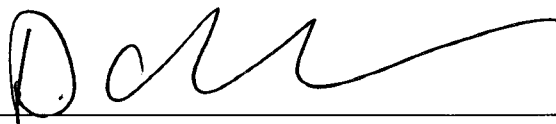
9 **REPLY TO DEFENDANT'S ANSWER AND COUNTERCLAIM**
10 in the following manner, by placing a true copy/true copies thereof in a sealed
11 envelope/sealed envelopes, addressed as follows:

12 Mr. Kenneth Friedman, Esq.
13 Walsh & Friedman, Ltd.
14 400 S. Maryland Parkway
15 Las Vegas, NV 89101

16 X **(BY U.S. MAIL)** I caused such envelope(s) with First Class
17 postage thereon fully prepaid to be placed in the U.S. Mail in Las
18 Vegas, Nevada.

19 X **(BY E-MAIL/E-SERVICE)** I caused such documents to be
20 transmitted electronically to james@claflaw.com

21 I am readily familiar with my employer's normal business practice for
22 collection and processing of correspondence and other material for mailing with
23 the United States Postal Service, and that practice is that said material is
24 deposited with the United States Postal Service the same day as the day of
25 collection the ordinary course of business.

26 
27 _____
28

 An Employee of **ROBINSON LAW GROUP**

Heather S. Smith
CLERK OF THE COURT

KENNETH S. FRIEDMAN, ESQ.
Nevada Bar No.: 5311
WALSH & FRIEDMAN, LTD.
400 S. Maryland Parkway
Las Vegas, NV 89101
(702) 474-4660
Attorney for Defendant

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ANDREW WARREN,

CASE NO.: D-19-590407-C
DEPT. NO.: G

Plaintiff/Counterdefendant,

vs.

AIMEE JUNG YANG,

Defendant/Counterclaimant

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter having come on for an Evidentiary Hearing before the Honorable Rhonda K. Forsberg, on 4th day of February, 2020, and the 4th day of March, 2020, Plaintiff, ANDREW WARREN, appearing by and through his attorney of record, AMBER ROBINSON, ESQ., of ROBINSON LAW GROUP, and Defendant, AIMEE JUNG YANG, appearing by and through her attorney of record, KENNETH S. FRIEDMAN, ESQ. of WALSH & FRIEDMAN, LTD., the Court being fully advised as to the law and facts of this case, **FINDS**

WALSH & FRIEDMAN, LTD
400 S. Maryland Parkway
Las Vegas, NV 89101
(702) 474-4660

1 That 125C.0035(4)(a): the wishes of the child if the child is of sufficient
2 age and capacity to form an intelligent preference as to his custody. The Court
3 does not find factor (a) to be applicable.
4

5 **THE COURT FURTHER FINDS** that 125C.0035(4)(b): any nomination
6 by a parent or a guardian for the child. The Court does not find factor (b) to be
7 applicable.
8

9 **THE COURT FURTHER FINDS** that 125C.0035(4)(c): which parent is
10 more likely to allow the child to have frequent associations and a continuing
11 relationship with the other parent. Mother's behavior on helping Father to have
12 visitation, even on the child's birthday is commendable. Mother is trying very
13 hard to allow the child to have frequent association with the Father. Since the
14 time of the Order, Mother has never denied Father his time; however, Father did
15 not always exercise his time and the Court finds that Father had valid reasons.
16 Mother would assist with visitation when it's needed and when it's ordered. The
17 Court Finds, that Factor (c) favors Mother.
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23 conflict between the parents. The Court finds the conflict is relatively low, other
24 than Father's previous paranoia/behavior from his mental instability that was
25 evidenced by his statements in the text messages of "I want to die". That
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6 the parents to cooperate to meet the needs of the child. The Court finds that both
7 parents have taken the child to the doctor. There was some communication
8 between the Parties and it seemed that they could work together, however, the
9 Court finds Father's statement to the Court concerning when he stated he
10 "doesn't believe the Parties can do that now". The Court can only grant joint
11 physical custody if it believes the Parents can cooperate to meet the needs of the
12 child. The Court believes that Mother has tried to meet the needs by planning a
13 birthday. Father did not meet the needs. Father did not discuss with Mother
14 regarding the drug tests he conducted on the child. Father did not discuss that he
15 was going to take the child to the hospital, he was really late, and he caused
16 Mother to worry. Additionally, Father did not meet the needs of the child when
17 he missed the visitation although he had some excuses. The Court Finds that
18 Mother has the ability to cooperate to meet the needs of the child and Father
19 does not. The Court finds that factor (e) favors Mother.
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1 **THE COURT FURTHER FINDS** that 125C.0035(4)(f): the mental and
2 physical health of the parents. The Court is very concerned as to this Factor. The
3 Court finds that Mother used to have a drug issue, but she has fixed it. The Court
4 is concerned that it was stated Father's issue is ADD; however, his behavior
5 shows some paranoia which is not really consistent with ADD. The Court is
6 concerned about Father's mental health. The Court finds that Mother has
7 improved her situation. The Court was presented with multiple drug tests for
8 Mother that were negative and that show Mother is not using any illegal drugs.
9 Mother has that issue under control. The Court is concerned that Father does not
10 have that under control; there is an incident concerning paranoia regarding the
11 neighbors. There was a police incident where Father took the child upstairs and
12 he said he took the child into the shower which is concerning to the Court.
13 Father's threats that he wants to die is extremely concerning. The Court finds that
14 Father's behavior is in opposition to the fact that Father is able to maintain a job.
15 The only testimony Father gave about his mental health is that he goes to the
16 therapist, however, he did not provide any medical records. The position is that
17 Father had to find an expert; however, that is not his burden. The Court is
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4 drugs; however, there was no evidence. Father stated the Doctor saw a drug test
5 that was positive. The Court does not believe that a Doctor would see such a drug
6 test without reporting it to CPS as a mandatory reporter. The child has no special
7 needs and he needs to not be put in harm's way by being drug tested and taken to
8 the hospital. Factor (g) slightly favors Mother.

12 **THE COURT FURTHER FINDS** that 125C.0035(4)(h): the nature of the
13 relationship of the child with each parent. The Court believes the child loves both
14 parents, most children do. The Court believes that Father has always loved and
15 cared for the child, which was also a statement made by Mother. The Court is
16 concerned about Father's relationship with the child as he only stayed for 20
17 minutes on the child's birthday even though Mother made accommodations and
18 the Father had sufficient time. The Court is concerned that Father is hurting his
19 relationship with the child, but the Court believes that the child loves both the
20 parents.

25 **THE COURT FURTHER FINDS** that 125C.0035(4)(i): the ability of the
26 child to maintain a relationship with any sibling. This would be a factor if Father
27 had any relationship with Tanner. Per Father's testimony, he sees the child 2 to 3
28

1 times per year which is really sad. The other statement made was that Father did
2 not see the other child between 2017 and 2019. The fact that Father did not see
3 Tanner means Father did not foster the relationship between Tanner and Roen.
4 The Court does not find factor (i) to be a factor in this case.
5

6 **THE COURT FURTHER FINDS** that 125C.0035(4)(j): any history of
7 parental abuse or neglect of the child or a sibling of the child. The Court does not
8 find any proven history of abuse or neglect. The Court is concerned about
9 multiple drug tests on the child and rushing the child to the emergency room.
10 Currently, factor (j) is not a factor in this case.
11

12 **THE COURT FURTHER FINDS** that 125C.0035(4)(k): whether either
13 parent or any other person seeking custody has engaged in an act of domestic
14 violence. The Court does not find that either parent did so or that there was any
15 evidence presented to that effect.
16

17 **THE COURT FURTHER FINDS** that 125C.0035(4)(l): whether either
18 parent or any other person seeking custody has engaged in an act of abduction.
19 The Court does not find that either parent did so or that there was any evidence
20 presented and the Court does not find it to be factor.
21

22 **NOW THEREFORE, THE COURT HEREBY ORDERS THAT:** the
23 Defendant shall have Primary Physical Custody of the subject minor child to-wit:
24 ROEN WARREN, born February 13, 2017.
25
26
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1 **THE COURT FURTHER ORDERS** that the parties shall share Joint
2 Legal Custody of the subject minor child to-wit: ROEN WARREN, born
3 February 13, 2017.
4

5 **THE COURT FURTHER ORDERS** that Mother shall have Primary
6 Physical Custody of the subject minor child to-wit: ROEN WARREN, born
7 February 13, 2017.
8

9 **THE COURT FURTHER ORDERS** that Plaintiff's supervised
10 visitation shall be lifted.
11

12 **THE COURT FURTHER ORDERS** that Father shall have
13 VISITATION with the subject minor child to-wit: ROEN WARREN, born
14 February 13, 2017 on Fridays at 6:00 p.m. until Sunday at 6:00 p.m. for every
15 weekend until the child starts school. Once the child starts school, Father shall
16 have visitation with the child on the first, second, and fourth weekends. Mother
17 shall have the third weekend of the month and any fifth weekend; with Father
18 having the child from Monday after school until Wednesday with drop off at
19 school during mom's weekends with the child.
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23 **THE COURT FURTHER ORDERS** that both parties had a reason to
24 appear in Court and ATTORNEY'S FEES are not granted for either parent.
25

26 **THE COURT FURTHER ORDERS** that based on Father's gross
27 monthly income of Eight Thousand Seventy Five Dollars (\$8,075.00) minus a
28

1 DEVIATION DOWNWARD of Three Hundred Dollars (\$300.00) for Father's
2 other child support obligation, Father shall pay Mother CHILD SUPPORT in the
3 amount of Eight Hundred Twenty Six Dollars (\$826.00) per month effective
4 March 1, 2020.
5

6 **THE COURT FURTHER ORDERS** that Father shall maintain the
7 child's health insurance. The parties shall split the child's health insurance
8 premium.
9

10 **THE COURT FURTHER ORDERS** that the parties shall follow
11 the 30/30 Rule that any unreimbursed medical, dental, optical, orthodontic or
12 other health related expense incurred for the benefit of the minor child are to be
13 divided equally between the parties. Either party incurring an out of pocket
14 medical expense for the child shall provide a copy of the paid invoice/receipt to
15 the other party within thirty (30) days of incurring such expense, if not tendered
16 within the thirty (30) day period; the Court may consider it as a waiver of
17 reimbursement. The other party will then have thirty (30) days from receipt
18 within which to dispute the expense in writing or reimburse the incurring party
19 for one-half of the out of pocket expense, if not disputed or paid within the thirty
20 (30) day period, the party may be subject to a finding of contempt and
21 appropriate sanctions.
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1 **THE COURT FURTHER ORDERS** that attorney Kenneth S. Friedman
2 shall prepare the Findings of Facts, Conclusions of Law, and Order of the Court;
3 Attorney Robinson shall review and countersign.
4

5 **NOTICE IS HEREBY GIVEN** of the following provision of NRS
6 125.510(6):
7

8 **PENALTY FOR VIOLATION OF ORDER: THE**
9 **ABDUCTION, CONCEALMENT OR DETENTION OF A**
10 **CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE**
11 **AS A CATEGORY D FELONY AS PROVIDED IN NRS**
12 **193.130. NRS 200.359** provides that every person having a limited
13 right of custody to a child or any parent having no right of custody to
14 the child who willfully detains, conceals or removes the child from a
15 parent, guardian or other person having lawful custody or a right of
16 visitation of the child in violation of an order of this court, removes
17 the child from the jurisdiction of the court without the consent of
18 either the court or all persons who have the right to custody or
19 visitation is subject to being punished for a category D felony as
20 provided in NRS 193.130.

21 **NOTICE IS HEREBY GIVEN** that the terms of the Hague Convention of
22 October 25, 1980, adopted by the 14th Session of the Hague Conference on
23 Private International Law apply if a parent abducts or wrongfully retains a child
24 in a foreign country. The parties are also put on notice of the following
25 provisions in NRS 125.510(8):

26 If a parent of the child lives in a foreign country or has significant
27 commitments in a foreign country:

28 (a) The parties may agree, and the court shall include in the order for
custody of the child, that the United States is the country of habitual
residence of the child for the purposes of applying the terms of the
Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to

1 post a bond if the court determines that the parent poses an imminent
2 risk of wrongfully removing or concealing the child outside the country
3 of habitual residence. The bond must be in an amount determined by
4 the court and may be used only to pay for the cost of locating the child
5 and returning him to his habitual residence if the child is wrongfully
6 removed from or concealed outside the country of habitual residence.
7 The fact that a parent has significant commitments in a foreign country
8 does not create a presumption that the parent poses an imminent risk of
9 wrongfully removing or concealing the child.

10 **NOTICE IS HEREBY GIVEN** of the following provision of NRS
11 125C.006:

- 12 1. If PRIMARY PHYSICAL CUSTODY has been established
13 pursuant to an order, judgement or decree of a court and the
14 custodial parent intends to relocate his or her residence to a place
15 outside of this State or to a place within this State that is at such a
16 distance that would substantially impair the ability of the other
17 parent to maintain a meaningful relationship with the child, and
18 the custodial parent desires to take the child with him or her, the
19 custodial parent shall before relocating:
20 (a) Attempt to obtain the written consent of the noncustodial
21 parent to relocate with the child; and
22 (b) If the noncustodial parent refuses to give that consent,
23 petition the court for permission to relocate with the child.
24 2. The court may award reasonable attorney's fees and costs to the
25 custodial parent if the court finds that the noncustodial parent
26 refused to consent to the custodial parent's relocation of the
27 child:
28 (a) Without having reasonable grounds for such refusal; or
(b) For the purpose of harassing the custodial parent.
3. A parent who relocates with a child pursuant to this section
without written consent of the noncustodial parent or the
permission of the court is subject to the provisions of NRS
200.359.

NOTICE IS HEREBY GIVEN of the following provision of NRS
125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an

1 order, judgement or decree of a court and the custodial parent intends to
2 relocate his or her residence to a place outside of this State or to a place
3 within this State that is at such a distance that would substantially
4 impair the ability of the other parent to maintain a meaningful
5 relationship with the child, and the custodial parent desires to take the
6 child with him or her, the custodial parent shall before relocating:

7 (a) Attempt to obtain the written consent of the non-relocating parent
8 to relocate with the child; and

9 (b) If the non-relocating parent refuses to give that consent, petition
10 the court for primary physical custody for the purpose of
11 relocating.

12 2. The court may award reasonable attorney's fees and costs to the
13 relocating parent if the court finds the non-relocating parent refused to
14 consent to the relocating parent's relocation with the child:

15 (a) Without having reasonable grounds for such refusal, or

16 (b) For the purpose of harassing the relocating parent.

17 3. A parent who relocates with a child pursuant to this section before the
18 court enters an order granting the parent primary physical custody of the
19 child and permission to relocate with the child is subject to the
20 provisions of NRS 200.359.

21 **NRS 125C.0035 Best interests of child: Joint physical custody;**
22 **preferences; presumptions when court determines parent or person seeking**
23 **custody is perpetrator of domestic violence or has committed act of**
24 **abduction against child or any other child.**

25 1. In any action for determining physical custody of a minor child, the sole
26 consideration of the court is the best interest of the child. If it appears to the court
27 that joint physical custody would be in the best interest of the child, the court may
28 grant physical custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the
parent is the mother or the father of the child.

3. The court shall award physical custody in the following order of
preference unless in a particular case the best interest of the child requires
otherwise:

(a) To both parents jointly pursuant to NRS 125C.0025 or to either parent
pursuant to NRS 125C.003. If the court does not enter an order awarding joint
physical custody of a child after either parent has applied for joint physical
custody, the court shall state in its decision the reason for its denial of the parent's
application.

(b) To a person or persons in whose home the child has been living and

1 where the child has had a wholesome and stable environment.

2 (c) To any person related within the fifth degree of consanguinity to the child
3 whom the court finds suitable and able to provide proper care and guidance for
4 the child, regardless of whether the relative resides within this State.

5 (d) To any other person or persons whom the court finds suitable and able to
6 provide proper care and guidance for the child.

7 4. In determining the best interest of the child, the court shall consider and
8 set forth its specific findings concerning, among other things:

9 (a) The wishes of the child if the child is of sufficient age and capacity to
10 form an intelligent preference as to his or her physical custody.

11 (b) Any nomination of a guardian for the child by a parent.

12 (c) Which parent is more likely to allow the child to have frequent
13 associations and a continuing relationship with the noncustodial parent.

14 (d) The level of conflict between the parents.

15 (e) The ability of the parents to cooperate to meet the needs of the child.

16 (f) The mental and physical health of the parents.

17 (g) The physical, developmental and emotional needs of the child.

18 (h) The nature of the relationship of the child with each parent.

19 (i) The ability of the child to maintain a relationship with any sibling.

20 (j) Any history of parental abuse or neglect of the child or a sibling of the
21 child.

22 (k) Whether either parent or any other person seeking physical custody has
23 engaged in an act of domestic violence against the child, a parent of the child or
24 any other person residing with the child.

25 (l) Whether either parent or any other person seeking physical custody has
26 committed any act of abduction against the child or any other child.

27 **NOTICE IS HEREBY GIVEN** that they are subject to the provisions of
28 NRS 31A and 125.450 regarding the collection of delinquent child support
payments.

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1 **NOTICE IS HEREBY GIVEN** that either party may request a review of
2 child support pursuant to NRS 125B.145.

3 DATED the ____ day of _____, 2020. Dated this 19th day of July, 2020


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5 


6 DISTRICT COURT JUDGE ^{ad.}
7 CCB 216 BA4F 24D4
8 Rhonda K. Forsberg
Approved District Court Judge

9 Respectfully submitted by:

10 WALSH & FRIEDMAN, LTD.

ROBINSON LAW GROUP

11 
12 Kenneth S. Friedman, Esq.
13 Nevada Bar No.: 5311
14 400 S. Maryland Pkwy.
15 Las Vegas, Nevada 89101
Attorney for Defendant

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17 
18 Amber Robinson, Esq.
19 Nevada Bar No. 10731
20 1771 E. Flamingo Road, B-114
21 Las Vegas, Nevada 89119
22 *Attorney for Plaintiff*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Andrew Warren, Plaintiff.

CASE NO: D-19-590407-C

7 vs.

DEPT. NO. Department G

8 Aimee Jung Ahyang, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/19/2020

15 Christine Moreno

cmoreno@walshandfriedman.com

16 Robert Walsh

rwalsh@walshandfriedman.com

17 Robert Walsh

staff@wf-legal.com

18 Kenneth Friedman

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19 Amber Robinson

arobinson@familylawyerlasvegas.com

20 Matthew Pawlowski

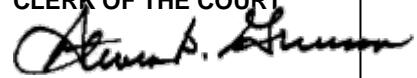
mpp@walshandfriedman.com

21 E-Filing & E-Service

efile@familylawyerlasvegas.com

22 Andrew Warren

andrewwarrenus7@gmail.com
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1 **NEO**
2 Amber Robinson, Esq.
3 Nevada Bar No. 10731
4 **ROBINSON LAW GROUP**
5 1771 E. Flamingo Road, Suite B-120
6 Las Vegas, NV 89119
7 Telephone: 702-527-2625
8 Facsimile: 702-933-0924
9 Email: arobinson@familylawyerlasvegas.com
10 Attorneys for Plaintiff
11 **ANDREW WARREN**

12 **DISTRICT COURT**
13 **FAMILY DIVISION**
14 **ANDREW COUNTY, NEVADA**

15 ANDREW WARREN,	}	CASE NO.: D-19-590407-C
16 Plaintiff,		DEPT. NO.: G
17 vs.		
18 AIMEE YANG,		
19 Defendant.		

20 **NOTICE OF FINDING OF FACTS AND CONCLUSIONS OF LAW**

21 **PLEASE TAKE NOTICE** that a Finding of Facts and Conclusions of
22 Law were filed into this matter on July 19th, 2020 a copy of which is attached
23 hereto and by reference fully incorporated herein.

24 DATED this 20th day of July, 2020.

25 Respectfully submitted by:
26 **ROBINSON LAW GROUP**

27 /s/ Amber Robinson
28 Amber Robinson, Esq.
Nevada Bar No. 10731
1771 E. Flamingo Road, Suite B-120
Las Vegas, NV 89119
Unbundled Attorney for Plaintiff,
ANDREW WARREN

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CERTIFICATE OF SERVICE VIA E-SERVICE

I hereby certify that I am a citizen of the United States and am employed in Clark County, where this mailing occurs. My business address is 1771 E. Flamingo, Suite B-120, Las Vegas, Nevada 89119. I am over the age of 18 years and not a party to the within cause.

On July 20, 2020, following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF FINDING OF FACTS AND CONCLUSIONS OF LAW
in the following manner, by placing a true copy/true copies thereof in a sealed envelope/sealed envelopes, addressed as follows:

Mr. Kenneth Friedman, Esq.
Friedman & Walsh
400 S. Maryland Pkwy
Las Vegas, NV 89101

Mr. Andrew Warren
andrewwarrenus7@gmail.com

 X (BY E-SERVICE) I caused such documents to be transmitted electronically to e-service contacts on file.

This was sent electronically via electronic service, pursuant to NEFCR 9 to the eservice contacts on file.

/S/ DANIELLE CHARLET
An Employee of *ROBINSON LAW GROUP*

Heather S. Smith
CLERK OF THE COURT

1 KENNETH S. FRIEDMAN, ESQ.
2 Nevada Bar No.: 5311
3 WALSH & FRIEDMAN, LTD.
4 400 S. Maryland Parkway
5 Las Vegas, NV 89101
6 (702) 474-4660
7 *Attorney for Defendant*

8 **DISTRICT COURT**
9 **FAMILY DIVISION**
10 **CLARK COUNTY, NEVADA**

11 ANDREW WARREN,

CASE NO.: D-19-590407-C
DEPT. NO.: G

12 Plaintiff/Counterdefendant,

13 vs.

14 AIMEE JUNG YANG,

15 Defendant/Counterclaimant

16 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

17 This matter having come on for an Evidentiary Hearing before the
18 Honorable Rhonda K. Forsberg, on 4th day of February, 2020, and the 4th day of
19 March, 2020, Plaintiff, ANDREW WARREN, appearing by and through his
20 attorney of record, AMBER ROBINSON, ESQ., of ROBINSON LAW GROUP,
21 and Defendant, AIMEE JUNG YANG, appearing by and through her attorney of
22 record, KENNETH S. FRIEDMAN, ESQ. of WALSH & FRIEDMAN, LTD.,
23 the Court being fully advised as to the law and facts of this case, **FINDS**
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28

WALSH & FRIEDMAN, LTD.
400 S. Maryland Parkway
Las Vegas, NV 89101
(702) 474-4660

1 That 125C.0035(4)(a): the wishes of the child if the child is of sufficient
2 age and capacity to form an intelligent preference as to his custody. The Court
3 does not find factor (a) to be applicable.
4

5 **THE COURT FURTHER FINDS** that 125C.0035(4)(b): any nomination
6 by a parent or a guardian for the child. The Court does not find factor (b) to be
7 applicable.
8

9 **THE COURT FURTHER FINDS** that 125C.0035(4)(c): which parent is
10 more likely to allow the child to have frequent associations and a continuing
11 relationship with the other parent. Mother's behavior on helping Father to have
12 visitation, even on the child's birthday is commendable. Mother is trying very
13 hard to allow the child to have frequent association with the Father. Since the
14 time of the Order, Mother has never denied Father his time; however, Father did
15 not always exercise his time and the Court finds that Father had valid reasons.
16 Mother would assist with visitation when it's needed and when it's ordered. The
17 Court Finds, that Factor (c) favors Mother.
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22 **THE COURT FURTHER FINDS** that 125C.0035(4)(d): the level of
23 conflict between the parents. The Court finds the conflict is relatively low, other
24 than Father's previous paranoia/behavior from his mental instability that was
25 evidenced by his statements in the text messages of "I want to die". That
26 behavior and the fact that he took the child to the hospital after he told Mother
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2 conflict is due to Father's behavior and not Mother's behavior. The Court still
3 finds that conflict relatively low.
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9 Court finds Father's statement to the Court concerning when he stated he
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1 **THE COURT FURTHER FINDS** that 125C.0035(4)(f): the mental and
2 physical health of the parents. The Court is very concerned as to this Factor. The
3 Court finds that Mother used to have a drug issue, but she has fixed it. The Court
4 is concerned that it was stated Father's issue is ADD; however, his behavior
5 shows some paranoia which is not really consistent with ADD. The Court is
6 concerned about Father's mental health. The Court finds that Mother has
7 improved her situation. The Court was presented with multiple drug tests for
8 Mother that were negative and that show Mother is not using any illegal drugs.
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11 neighbors. There was a police incident where Father took the child upstairs and
12 he said he took the child into the shower which is concerning to the Court.
13 Father's threats that he wants to die is extremely concerning. The Court finds that
14 Father's behavior is in opposition to the fact that Father is able to maintain a job.
15 The only testimony Father gave about his mental health is that he goes to the
16 therapist, however, he did not provide any medical records. The position is that
17 Father had to find an expert; however, that is not his burden. The Court is
18 concerned that Father seems to know what special plates are on a vehicle. The
19 Court finds that factor (f) favors Mother.

1 **THE COURT FURTHER FINDS** that 125C.0035(4)(g): the physical,
2 developmental and emotional needs of the child. The court finds that the child
3 does not have special needs. Father thinks the child has some delusions about
4 drugs; however, there was no evidence. Father stated the Doctor saw a drug test
5 that was positive. The Court does not believe that a Doctor would see such a drug
6 test without reporting it to CPS as a mandatory reporter. The child has no special
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8 the hospital. Factor (g) slightly favors Mother.

12 **THE COURT FURTHER FINDS** that 125C.0035(4)(h): the nature of the
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15 cared for the child, which was also a statement made by Mother. The Court is
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17 minutes on the child's birthday even though Mother made accommodations and
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19 relationship with the child, but the Court believes that the child loves both the
20 parents.

25 **THE COURT FURTHER FINDS** that 125C.0035(4)(i): the ability of the
26 child to maintain a relationship with any sibling. This would be a factor if Father
27 had any relationship with Tanner. Per Father's testimony, he sees the child 2 to 3
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1 times per year which is really sad. The other statement made was that Father did
2 not see the other child between 2017 and 2019. The fact that Father did not see
3 Tanner means Father did not foster the relationship between Tanner and Roen.
4 The Court does not find factor (i) to be a factor in this case.
5

6 **THE COURT FURTHER FINDS** that 125C.0035(4)(j): any history of
7 parental abuse or neglect of the child or a sibling of the child. The Court does not
8 find any proven history of abuse or neglect. The Court is concerned about
9 multiple drug tests on the child and rushing the child to the emergency room.
10 Currently, factor (j) is not a factor in this case.
11

12 **THE COURT FURTHER FINDS** that 125C.0035(4)(k): whether either
13 parent or any other person seeking custody has engaged in an act of domestic
14 violence. The Court does not find that either parent did so or that there was any
15 evidence presented to that effect.
16

17 **THE COURT FURTHER FINDS** that 125C.0035(4)(l): whether either
18 parent or any other person seeking custody has engaged in an act of abduction.
19 The Court does not find that either parent did so or that there was any evidence
20 presented and the Court does not find it to be factor.
21

22 **NOW THEREFORE, THE COURT HEREBY ORDERS THAT:** the
23 Defendant shall have Primary Physical Custody of the subject minor child to-wit:
24 ROEN WARREN, born February 13, 2017.
25
26
27
28

1 **THE COURT FURTHER ORDERS** that the parties shall share Joint
2 Legal Custody of the subject minor child to-wit: ROEN WARREN, born
3 February 13, 2017.
4

5 **THE COURT FURTHER ORDERS** that Mother shall have Primary
6 Physical Custody of the subject minor child to-wit: ROEN WARREN, born
7 February 13, 2017.
8

9 **THE COURT FURTHER ORDERS** that Plaintiff's supervised
10 visitation shall be lifted.
11

12 **THE COURT FURTHER ORDERS** that Father shall have
13 VISITATION with the subject minor child to-wit: ROEN WARREN, born
14 February 13, 2017 on Fridays at 6:00 p.m. until Sunday at 6:00 p.m. for every
15 weekend until the child starts school. Once the child starts school, Father shall
16 have visitation with the child on the first, second, and fourth weekends. Mother
17 shall have the third weekend of the month and any fifth weekend; with Father
18 having the child from Monday after school until Wednesday with drop off at
19 school during mom's weekends with the child.
20
21
22

23 **THE COURT FURTHER ORDERS** that both parties had a reason to
24 appear in Court and ATTORNEY'S FEES are not granted for either parent.
25

26 **THE COURT FURTHER ORDERS** that based on Father's gross
27 monthly income of Eight Thousand Seventy Five Dollars (\$8,075.00) minus a
28

1 DEVIATION DOWNWARD of Three Hundred Dollars (\$300.00) for Father's
2 other child support obligation, Father shall pay Mother CHILD SUPPORT in the
3 amount of Eight Hundred Twenty Six Dollars (\$826.00) per month effective
4 March 1, 2020.
5

6 **THE COURT FURTHER ORDERS** that Father shall maintain the
7 child's health insurance. The parties shall split the child's health insurance
8 premium.
9

10 **THE COURT FURTHER ORDERS** that the parties shall follow
11 the 30/30 Rule that any unreimbursed medical, dental, optical, orthodontic or
12 other health related expense incurred for the benefit of the minor child are to be
13 divided equally between the parties. Either party incurring an out of pocket
14 medical expense for the child shall provide a copy of the paid invoice/receipt to
15 the other party within thirty (30) days of incurring such expense, if not tendered
16 within the thirty (30) day period; the Court may consider it as a waiver of
17 reimbursement. The other party will then have thirty (30) days from receipt
18 within which to dispute the expense in writing or reimburse the incurring party
19 for one-half of the out of pocket expense, if not disputed or paid within the thirty
20 (30) day period, the party may be subject to a finding of contempt and
21 appropriate sanctions.
22
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28

1 **THE COURT FURTHER ORDERS** that attorney Kenneth S. Friedman
2 shall prepare the Findings of Facts, Conclusions of Law, and Order of the Court;
3 Attorney Robinson shall review and countersign.
4

5 **NOTICE IS HEREBY GIVEN** of the following provision of NRS
6 125.510(6):
7

8 **PENALTY FOR VIOLATION OF ORDER: THE**
9 **ABDUCTION, CONCEALMENT OR DETENTION OF A**
10 **CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE**
11 **AS A CATEGORY D FELONY AS PROVIDED IN NRS**
12 **193.130. NRS 200.359** provides that every person having a limited
13 right of custody to a child or any parent having no right of custody to
14 the child who willfully detains, conceals or removes the child from a
15 parent, guardian or other person having lawful custody or a right of
16 visitation of the child in violation of an order of this court, removes
17 the child from the jurisdiction of the court without the consent of
18 either the court or all persons who have the right to custody or
19 visitation is subject to being punished for a category D felony as
20 provided in NRS 193.130.

21 **NOTICE IS HEREBY GIVEN** that the terms of the Hague Convention of
22 October 25, 1980, adopted by the 14th Session of the Hague Conference on
23 Private International Law apply if a parent abducts or wrongfully retains a child
24 in a foreign country. The parties are also put on notice of the following
25 provisions in NRS 125.510(8):

26 If a parent of the child lives in a foreign country or has significant
27 commitments in a foreign country:

28 (a) The parties may agree, and the court shall include in the order for
custody of the child, that the United States is the country of habitual
residence of the child for the purposes of applying the terms of the
Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to

1 post a bond if the court determines that the parent poses an imminent
2 risk of wrongfully removing or concealing the child outside the country
3 of habitual residence. The bond must be in an amount determined by
4 the court and may be used only to pay for the cost of locating the child
5 and returning him to his habitual residence if the child is wrongfully
6 removed from or concealed outside the country of habitual residence.
7 The fact that a parent has significant commitments in a foreign country
8 does not create a presumption that the parent poses an imminent risk of
9 wrongfully removing or concealing the child.

10 **NOTICE IS HEREBY GIVEN** of the following provision of NRS
11 125C.006:

- 12 1. If PRIMARY PHYSICAL CUSTODY has been established
13 pursuant to an order, judgement or decree of a court and the
14 custodial parent intends to relocate his or her residence to a place
15 outside of this State or to a place within this State that is at such a
16 distance that would substantially impair the ability of the other
17 parent to maintain a meaningful relationship with the child, and
18 the custodial parent desires to take the child with him or her, the
19 custodial parent shall before relocating:
20 (a) Attempt to obtain the written consent of the noncustodial
21 parent to relocate with the child; and
22 (b) If the noncustodial parent refuses to give that consent,
23 petition the court for permission to relocate with the child.
24 2. The court may award reasonable attorney's fees and costs to the
25 custodial parent if the court finds that the noncustodial parent
26 refused to consent to the custodial parent's relocation of the
27 child:
28 (a) Without having reasonable grounds for such refusal; or
(b) For the purpose of harassing the custodial parent.
3. A parent who relocates with a child pursuant to this section
without written consent of the noncustodial parent or the
permission of the court is subject to the provisions of NRS
200.359.

NOTICE IS HEREBY GIVEN of the following provision of NRS
125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an

1 order, judgement or decree of a court and the custodial parent intends to
2 relocate his or her residence to a place outside of this State or to a place
3 within this State that is at such a distance that would substantially
4 impair the ability of the other parent to maintain a meaningful
5 relationship with the child, and the custodial parent desires to take the
6 child with him or her, the custodial parent shall before relocating:

7 (a) Attempt to obtain the written consent of the non-relocating parent
8 to relocate with the child; and

9 (b) If the non-relocating parent refuses to give that consent, petition
10 the court for primary physical custody for the purpose of
11 relocating.

12 2. The court may award reasonable attorney's fees and costs to the
13 relocating parent if the court finds the non-relocating parent refused to
14 consent to the relocating parent's relocation with the child:

15 (a) Without having reasonable grounds for such refusal, or

16 (b) For the purpose of harassing the relocating parent.

17 3. A parent who relocates with a child pursuant to this section before the
18 court enters an order granting the parent primary physical custody of the
19 child and permission to relocate with the child is subject to the
20 provisions of NRS 200.359.

21 **NRS 125C.0035 Best interests of child: Joint physical custody;**
22 **preferences; presumptions when court determines parent or person seeking**
23 **custody is perpetrator of domestic violence or has committed act of**
24 **abduction against child or any other child.**

25 1. In any action for determining physical custody of a minor child, the sole
26 consideration of the court is the best interest of the child. If it appears to the court
27 that joint physical custody would be in the best interest of the child, the court may
28 grant physical custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the
parent is the mother or the father of the child.

3. The court shall award physical custody in the following order of
preference unless in a particular case the best interest of the child requires
otherwise:

(a) To both parents jointly pursuant to NRS 125C.0025 or to either parent
pursuant to NRS 125C.003. If the court does not enter an order awarding joint
physical custody of a child after either parent has applied for joint physical
custody, the court shall state in its decision the reason for its denial of the parent's
application.

(b) To a person or persons in whose home the child has been living and

1 where the child has had a wholesome and stable environment.

2 (c) To any person related within the fifth degree of consanguinity to the child
3 whom the court finds suitable and able to provide proper care and guidance for
4 the child, regardless of whether the relative resides within this State.

5 (d) To any other person or persons whom the court finds suitable and able to
6 provide proper care and guidance for the child.

7 4. In determining the best interest of the child, the court shall consider and
8 set forth its specific findings concerning, among other things:

9 (a) The wishes of the child if the child is of sufficient age and capacity to
10 form an intelligent preference as to his or her physical custody.

11 (b) Any nomination of a guardian for the child by a parent.

12 (c) Which parent is more likely to allow the child to have frequent
13 associations and a continuing relationship with the noncustodial parent.

14 (d) The level of conflict between the parents.

15 (e) The ability of the parents to cooperate to meet the needs of the child.

16 (f) The mental and physical health of the parents.

17 (g) The physical, developmental and emotional needs of the child.

18 (h) The nature of the relationship of the child with each parent.

19 (i) The ability of the child to maintain a relationship with any sibling.

20 (j) Any history of parental abuse or neglect of the child or a sibling of the
21 child.

22 (k) Whether either parent or any other person seeking physical custody has
23 engaged in an act of domestic violence against the child, a parent of the child or
24 any other person residing with the child.

25 (l) Whether either parent or any other person seeking physical custody has
26 committed any act of abduction against the child or any other child.

27 **NOTICE IS HEREBY GIVEN** that they are subject to the provisions of
28 NRS 31A and 125.450 regarding the collection of delinquent child support
payments.

////

////

////

////

1 **NOTICE IS HEREBY GIVEN** that either party may request a review of
2 child support pursuant to NRS 125B.145.

3 DATED the ____ day of _____, 2020. Dated this 19th day of July, 2020


4
5 


6 DISTRICT COURT JUDGE ^{ad.}
7 CCB 216 BA4F 24D4
8 Rhonda K. Forsberg
Approved District Court Judge

9 Respectfully submitted by:

10 WALSH & FRIEDMAN, LTD.

ROBINSON LAW GROUP

11 
12 Kenneth S. Friedman, Esq.
13 Nevada Bar No.: 5311
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16
17 
18 Amber Robinson, Esq.
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21 Las Vegas, Nevada 89119
22 *Attorney for Plaintiff*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Andrew Warren, Plaintiff.

CASE NO: D-19-590407-C

7 vs.

DEPT. NO. Department G

8 Aimee Jung Ahyang, Defendant.
9

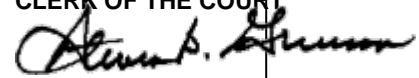
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/19/2020

15 Christine Moreno	cmoreno@walshandfriedman.com
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Attorney for Plaintiff,
Andrew Warren

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ANDREW WARREN,

Plaintiff,

vs.

AIMEE YANG,

Defendant.

Case Number: D-19-590407-C
Department: G

Oral Argument Requested: ☐ Yes ☒ No

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR NEW TRIAL
PURSUANT TO NRCP 59, AND RECONSIDERATION

TO: Defendant, Aimee Yang, and her attorney, Kenneth Friedman, Esq.

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE

1 COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING
2 DATE.

3 COMES NOW Plaintiff, Andrew Warren, by and through his attorney, Emily
4 McFarling, Esq. of McFarling Law Group, and hereby moves the Court for an Order:

- 5 1. Reconsidering the Order from the February 4 and 18 2020, hearing;
- 6 2. Granting Plaintiff's Request for a New Trial;
- 7 3. For any other relief this Court deems fair and appropriate.

8 This Motion is made and based on the Memorandum of Points and Authorities
9 set forth below, the Declaration of Andrew Warren attached hereto, all papers and
10 pleadings on file herein, and evidence presented by counsel, if any, at the hearing.

11 DATED this 3rd day of August, 2020.

12 **McFARLING LAW GROUP**

13 /s/ Emily McFarling

14 Emily McFarling, Esq.
15 Nevada Bar Number 8567
16 6230 W. Desert Inn Road
17 Las Vegas, NV 89146
18 (702) 565-4335
19 Attorney for Plaintiff,
20 Andrew Warren

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 **A. History of the Case**

4 Plaintiff, Andrew Warren (hereinafter referred to as “Andrew”) and
5 Defendant, Aimee Yang (hereinafter referred to as “Aimee”) were in a long term
6 relationship to which they had a minor child to wit: Roen Warren (hereinafter
7 referred to as “Roen”), born February 13, 2017, age 3.

8 On May 30, 2019, Andrew filed a Complaint for Custody wherein he
9 requested joint legal custody and primary physical custody.

10 On June 14, 2019, Aimee filed an Answer and Counterclaim requesting joint
11 legal custody and joint physical custody as long as the Plaintiff’s treating physicians
12 state that he is not a danger to the child and he continues to follow the directives of
13 his physicians. If Plaintiff’s physicians do not state that he is not a danger around the
14 child or if Plaintiff is not following his physician’s directives, then the Defendant
15 shall be awarded Primary Physical Custody of the minor child.

16 On July 25, 2019, Andrew was contacted by CPS regarding allegations of
17 abuse and/or neglect against Aimee.

18 On or about July 26, 2019, Aimee moved out of the parties’ residence, took
19 Roen with her and denied Andrew all contact with him.

1 On July 31, 2019, Aimee filed a Motion for Temporary Primary Physical
2 Custody of the Parties' Minor Child, for Child Support and For Attorney's Fees,
3 alleging that Andrew was diagnosed with emotional instability and that he had not
4 provided a HIPAA release to enable her counsel to obtain Andrew's mental health
5 records. Moreover, she requested that Andrew only receive supervised visitation, on
6 the basis of his alleged emotional instability and a text message saying "I don't care
7 if I die anymore."

8 On August 15, 2019, Andrew filed an Opposition and Countermotion for
9 Primary Physical Custody, Random Drug Testing and an Outsourced Evaluation, Et
10 Al. Andrew requested that Aimee be subject to random drug testing and undergo an
11 outsourced substance abuse evaluation due to her abuse of illegal drugs and
12 prescribed medications, as well as the behavior she had been displaying including
13 talking to herself, being paranoid and refusing to lock doors during dark hours.

14 Throughout the relationship Aimee has had a drug problem. The parties
15 attended couple's counseling, but Aimee refused to attend counseling to address her
16 drug problem.

17 Andrew acknowledged he has been diagnosed with ADHD and has been
18 prescribed medications to treat the ADHD. Andrew takes his medications as
19 prescribed and follows his doctor's orders.

1 On September 5, 2019, Aimee filed her Reply to her Opposition wherein she
2 acknowledged that in early 2018 she was prescribed controlled substances for a c-
3 section and on occasion instead of paying for her prescription, she would ask her
4 brother for pain medications. In support of her Reply, she provided a negative drug
5 test from ATI, which she took voluntarily on July 18, 2019.

6 On September 10, 2019, this matter came on for a hearing on all pending
7 motions and ordered as follows:

8 “Plaintiff shall immediately provide Mr. Friedman with a fully executed
9 H.I.P.A.A. Release Form. Mr. Friedman shall obtain Plaintiff's medical
10 records and provide Plaintiff's therapist with a copy of Plaintiff's text
11 messages regarding his appearance of paranoia.”

12 “A Status Check is SET for 11/19/19 at 10:00 AM. In the interim, Plaintiff
13 shall have TEMPORARY SUPERVISED VISITATION every Saturday
14 from 11:00 AM to 7:00 PM. Plaintiff's friend/roommate (Jerry) shall provide
15 line of sight supervision and shall accompany Plaintiff when he picks up the
16 child. Pending the return, if there is nothing concerning in the medical
17 records, the Court expects counsel to confer and lift the supervised visitation
18 restriction.”

19 Andrew complied with the Court's orders by providing a HIPAA release to
20 Aimee's counsel and exercised his supervised visitation as much as possible.

At the Status check on November 19, 2019, the Court inquired once again
about whether counsel had lifted Andrew's supervised visitation. However, counsel
stated that Aimee had continued to require supervision because there were no
medical records (omitting the fact that a HIPAA release had been provided).

1 The Court then set the matter for an evidentiary hearing with a calendar call
2 set for January 30, 2020, all temporary orders remained in full force and effect and
3 Plaintiff was to submit to a psychological evaluation at Aimee's expense. Aimee's
4 counsel was ordered to provide Andrew's counsel with the names of three
5 professionals.

6 Aimee did not provide the three names and did not pay for an evaluation; thus,
7 Andrew did not submit to a psychological evaluation. She also did not provide
8 Andrew's medical records and, in fact, did not provide proof that the records had
9 even been requested from the provider using the HIPAA release Andrew had
10 provided.

11 **B. Trial**

12 The trial on this matter was held on February 4 and 18, 2020, both half days.
13 During trial both parties offered evidence. Aimee did not present evidence that
14 showed Andrew was a danger to Roen or that he does not follow the directives of
15 his physicians. She further had no personal knowledge to even testify as to Andrew's
16 compliance with his doctor's orders. Andrew offered his medical records into
17 evidence; however, they were not admitted into evidence even though they were
18 highly relevant, and, upon information and belief, Aimee had not previously
19 objected to their authenticity. The parties were the only witnesses.

20 ///

1 **C. Decision**

2 On March 4, 2020 the Court issued its decision and on July 19, 2020, Findings
3 of Fact, Conclusions of Law were entered. In short, the Court found there is no
4 history of child abuse or neglect or domestic violence from either party, the level of
5 conflict between the parties is relatively low and the child loves both parents. The
6 findings as to the parties' mental and physical health are as follows:

7 “THE COURT FINDS that 125C.0035(4)(f): the mental and physical
8 health of the parents. The Court is very concerned as to this Factor. The
9 Court finds that Mother used to have a drug issue, but she has fixed it.
10 The Court is concerned that it was stated Father's issue is ADD;
11 however, his behavior shows some paranoid which is not really
12 consistent with ADD. The Court is concerned about Father's mental
13 health. The Court finds that Mother has improved her situation. The
14 Court was presented with multiple drug tests for Mother that were
15 negative and that show Mother is not using any illegal drugs. Mother
16 has that issue under control. The Court is concerned that Father does
17 not have that under control; there is an incident concerning paranoia
regarding the neighbors. There was a police incident where Father took
the child upstairs and he said he took the child into the shower which is
concerning to the Court. Father's threats that he wants to die is
extremely concerning. The court finds that Father's behavior is in
opposition to the fact that Father is able to maintain a job. The only
testimony Father gave about his mental health is that he goes to the
therapist, however, he did not provide any medical records. The
position is that Father had to find an expert; however, that is not his
burden. The Court is concerned that Father seems to know what special
plates are on a vehicle. The Court finds that factor (f) favors Mother.”

18 The Court ordered that Aimee shall have Primary Physical Custody of Roen
19 with the parties having joint legal custody.

20 *This motion follows.*

II. LEGAL ARGUMENT

A. The Court Should Reconsider Plaintiff's Request for Primary Physical Custody.

1. This Motion to Reconsider is Timely.

“A party seeking reconsideration and/or rehearing of a ruling (other than an order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60), must file a motion for such relief not later than 14 days after service of notice of entry of order.”¹

Here, the Order from the February 4 and 18, 2020 Hearing was filed July 19, 2020. The Notice of Entry of Order was subsequently filed and served on July 20, 2020. Therefore, 14 days from service of the Notice of Entry of Order is August 3, 2020 — the date on which this Motion is filed. Therefore, this Motion to Reconsider is timely.

2. Bases for Reconsideration/Rehearing

The Nevada Supreme Court has long held that “a court may, for sufficient cause shown, amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on motion in the progress in the cause or proceeding.”²

¹ EDCR 5.513(a).

² *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975).

1 Indeed, the Nevada Supreme Court stated as follows: “[U]nless and until an order is
2 appealed, the District Court retains jurisdiction to reconsider the matter.”³

3 The granting of a motion for reconsideration is a discretionary decision.⁴ Two
4 cases provide district courts with guidance in exercising this discretion. In the first
5 of these cases, the Nevada Supreme Court held that “[o]nly in very rare instances in
6 which new issues of fact or law are raised supporting a ruling contrary to the ruling
7 already reached should a motion for rehearing be granted.”⁵ The second case
8 provides that “[a] District Court may consider a previously decided issue if
9 substantially different evidence is subsequently introduced or the decision is clearly
10 erroneous.”⁶ The United States Supreme Court has defined the clearly erroneous
11 standard as follows: “A finding is ‘clearly erroneous’ when although there is
12 evidence to support it, the reviewing court on the entire evidence is left with the
13 definite and firm conviction that a mistake has been committed.”⁷

14 Here, we first argue that the decision from the trial was clearly erroneous as
15 the Court failed to consider the substantial evidence presented and legal analysis for
16 this type of matter. Specifically the Court did not consider Andrew’s medical records,
17 despite the fact that the Court voiced its concerns multiple times about his health and
18

19 ³ *Gibbs v. Giles*, 97 Nev. 243, 607 P.2d 118 (1980),

20 ⁴ *Harvey’s Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 447 (1980).

⁵ *Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244 (1976),

⁶ *Masonry Contractors v. Jolley, Urga & Worth*, 113 Nev. 737, 941 P.2d 487 (1997).

⁷ *United States v. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542 (1948).

1 issued Orders consistent with those concerns such as ordering that Aimee pay for his
2 mental health evaluation. Aimee did not follow those Orders which was the reason
3 Andrew did not submit to an evaluation. The Court acknowledged in its decision
4 that calling an expert was not Andrew's burden, therefore one can only conclude that
5 Aimee failed to meet her burden. The Court's decision rests on Aimee's allegations
6 without personal knowledge and a few text messages. Aimee did not present
7 evidence sufficient for this Court to now award joint physical custody to Andrew
8 and Andrew's evidence supported an award of joint physical custody. Aimee was
9 given a HIPAA release but either did not request Andrew's records or requested
10 them and chose not to include them as proposed exhibits due to them being beneficial
11 to Andrew. She then objected to the admission of those same records by Andrew.

12 The District Court may not enter a default judgment regarding child custody
13 because child custody must only be determined based on the best interests of the
14 child.⁸ By excluding Andrew's mental health records and relying on baseless
15 allegations with no evidence from Aimee, this Court did not make a decision based
16 upon the best interests of the child, but made a decision based upon exclusion of
17 relevant evidence that went to the exact issue that was the deciding factor in this case.

18 Based on this, the Court should reconsider its Orders granting Aimee's request
19 for primary physical custody of Roen.

20 _____
⁸ *Blanco v. Blanco*, 129 Nev. Adv. Op. 77 (Oct. 31, 2013).

1 **B. The Court Should Set a New Trial in this Matter pursuant to**

2 **NRCP 59**

3 NRCP 59(a)(1) provides:

4 (1) **Grounds for New Trial.** The court may, on motion, grant a new trial on all
5 or some of the issues — and to any party — for any of the following causes or
6 grounds materially affecting the substantial rights of the moving party:

7 (A) irregularity in the proceedings of the court, jury, master, or adverse
8 party or in any order of the court or master, or any abuse of discretion by which
9 either party was prevented from having a fair trial;

10 (B) misconduct of the jury or prevailing party;

11 (C) accident or surprise that ordinary prudence could not have guarded
12 against;

13 (D) newly discovered evidence material for the party making the
14 motion that the party could not, with reasonable diligence, have discovered and
15 produced at the trial;

16 (E) manifest disregard by the jury of the instructions of the court;

17 (F) excessive damages appearing to have been given under the
18 influence of passion or prejudice; or

19 (G) error in law occurring at the trial and objected to by the party
20 making the motion.

 The decision to grant or deny a motion for new trial under NRCP 59 rests
within the sound discretion of the trial court.⁹

3. This Motion is Timely

 A motion for a new trial must be filed no later than 28 days after service of
written notice of entry of judgment.¹⁰ Here, the written judgment was filed on July
19, 2020. The Notice of Entry of this judgment was entered and served on July 20,
2020. Therefore, 28 days from service of written notice of entry of judgment is

⁹ *Southern Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 577 P.2d 1234 (1978).

¹⁰ NRCP 59(b).

1 August 17, 2020. This Motion was filed on August 3, 2020. Therefore, this Motion
2 is timely under NRCP 59(b).

3 Andrew reiterates that the Court did not consider his medical records,
4 presumably because they were not certified by a Custodian of Records or a witness.
5 Based on Aimee's baseless allegations, the Court voiced its concerns multiple times
6 about Andrew's health and issued Orders consistent with those concerns such as
7 ordering that Aimee pay for his mental health evaluation and ordering Andrew to
8 provide a HIPAA release. Andrew followed those orders. Aimee did not follow those
9 Orders, thereby not allowing this Court to have any evidence that would be sufficient
10 to justify an award other than joint physical custody.

11 The Court acknowledged in its decision that calling an expert was not
12 Andrew's burden, therefore one can only conclude that Aimee failed to meet her
13 burden. The Court's decision rests on Aimee's allegations and some text messages.

14 Andrew was prevented from having a fair trial due to irregularity in the
15 proceedings or abuse of discretion because the Court made a decision based upon
16 allegations regarding his mental health from a person with no personal knowledge
17 on the issue and yet refused to admit his mental health records into evidence even
18 though Andrew had provided a HIPAA release to Aimee allowing her to obtain the
19 same records.

1 Andrew's was subject to accident or surprise that ordinary prudence could not
2 have guarded against. Andrew provided Aimee's counsel with a HIPAA release and
3 then also obtained those same records himself. Ordinary prudence could not have
4 guarded against his surprise at Aimee objecting to the admission of his mental health
5 records when they were the only evidence on the issue beyond his own testimony
6 and she had not previously objected to their authenticity, thereby waiving that
7 objection.

8 The Court should grant Andrew's request for a new trial to allow him to
9 properly offer his medical records, which are highly relevant in this matter.

10 **III. CONCLUSION**

11 BASED ON THE FOREGOING, Andrew Warren requests this Court issue
12 an Order:

- 13 1. Reconsidering the Order from the February 4 and 18 2020, hearing;
- 14 2. Granting Plaintiff's Request for a New Trial; and
- 15 3. For any other relief this Court deems fair and appropriate.

16 DATED this 3rd day of August, 2020.

17 **McFARLING LAW GROUP**

18 /s/ Emily McFarling

19 Emily McFarling, Esq.

20 Nevada Bar Number 8567

6230 W. Desert Inn Road

Las Vegas, NV 89146

(702) 565-4335

Attorney for Plaintiff, Andrew Warren

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2. I have read the preceding Motion, and I have personal knowledge of the facts contained therein, unless stated otherwise. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.



Andrew Warren

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ANDREW WARREN

Plaintiff/Petitioner

v.
AIMEE YANG

Defendant/Respondent

Case No. D-19-590407-C

Dept. G

**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 14 days after a final judgment or decree was entered. The final order was entered on 07/20/20.
 - ☐ 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.

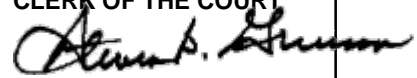
Step 3. Add the filing fees from Step 1 and Step 2.

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: Plaintiff Date 08/03/20

Signature of Party or Preparer /s/Maria Rios Landin



OPP

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Attorney for Defendant/Counterclaimant

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ANDREW WARREN,

CASE NO.: D-19-590407-C
DEPT. NO.: G

Plaintiff/Counterdefendant,

HEARING REQUESTED: NO

vs.

AIMEE JUNG YANG,

Defendant/Counterclaimant.

**OPPOSITION TO PLAINTIFF'S MOTION FOR NEW TRIAL
PURSUANT TONRCP 59, AND RECONSIDERATION**

COMES NOW DEFENDANT, AIMEE JUNG YANG, by and through her
attorney, KENNETH S. FRIEDMAN, ESQ. of WALSH & FRIEDMAN, LTD.,
and hereby submits her Opposition to Plaintiff's Motion for New Trial Pursuant
to NRCP 59, and Reconsideration.

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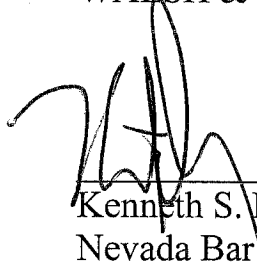
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1 This Opposition is made and based upon the papers and pleadings on file
2 herein, the Points and Authorities attached hereto.

3 DATED this 17th day of August, 2020.
4

5 WALSH & FRIEDMAN, LTD.
6

7 
8 Kenneth S. Friedman, Esq.
9 Nevada Bar No.: 5311
10 400 S. Maryland Parkway
11 Las Vegas, NV 89101
12 Attorney for Defendant

13 **POINTS AND AUTHORITIES**
14

15 **Rule 59. New Trials; Amendment of Judgments**

16 **(a) In General.**

17 **(1) Grounds for New Trial.** The court may, on motion, grant a new
18 trial on all or some of the issues — and to any party — for any of the following
19 causes or grounds materially affecting the substantial rights of the moving party:

20 (A) irregularity in the proceedings of the court, jury, master, or
21 adverse party or in any order of the court or master, or any abuse of discretion by
22 which either party was prevented from having a fair trial;

23 (B) misconduct of the jury or prevailing party;

24 (C) accident or surprise that ordinary prudence could not have
25 guarded against;

26 (D) newly discovered evidence material for the party making the
27 motion that the party could not, with reasonable diligence, have discovered and
28 produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the
influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party
making the motion.

1
2 **I.**

3 **PROCEDURAL HISTORY**
4

5 The instant matter came on for evidentiary hearing before the Honorable
6 Judge Rhonda Forsberg on February 4, 2020 and February 18, 2020. Following
7 the conclusion of the Evidentiary Hearing, Judge Forsberg entered the following
8 findings of fact:
9

- 10 A. That 125C.0035(4)(a): the wishes of the child if the child is of
11 sufficient age and capacity to form an intelligent preference as to
12 his custody. The Court does not find factor (a) to be applicable.
- 13 B. That 125C.0035(4)(b): any nomination by a parent or a guardian for
14 the child. The Court does not find factor (b) to be applicable.
- 15 C. That 125C.0035(4)(c): which parent is more likely to allow the
16 child to have frequent associations and a continuing relationship
17 with the other parent. Mother's behavior on helping Father to have
18 visitation, even on the child's birthday is commendable. Mother is
19 trying very hard to allow the child to have frequent association with
20 the Father. Since the time of the Order, Mother has never denied
21 Father his time; however, Father did not always exercise his time
22 and the Court finds that Father had valid reasons. Mother would
23 assist with visitation when it's needed and when it's ordered. The
24 Court Finds, that Factor (c) favors Mother.
- 25 D. That 125C.0035(4)(d): the level of conflict between the parents.
26 The Court finds the conflict is relatively low, other than Father's
27 previous paranoia/behavior from his mental instability that was
28 evidenced by his statements in the text messages of "I want to die".
That behavior and the fact that he took the child to the hospital after
he told Mother he was going to be a few minutes late. The Court
finds that any increase in conflict is due to Father's behavior and not
Mother's behavior. The Court still finds that conflict relatively low.

1
2 E. That 125C.0035(4)(e): the ability of the parents to cooperate to
3 meet the needs of the child. The Court finds that both parents have
4 taken the child to the doctor. There was some communication
5 between the Parties and it seemed that they could work together,
6 however, the Court finds Father's statement to the Court concerning
7 when he stated he "doesn't believe the Parties can do that now". The
8 Court can only grant joint physical custody if it believes the Parents
9 can cooperate to meet the needs of the child. The Court believes
10 that Mother has tried to meet the needs by planning a birthday.
11 Father did not meet the needs. Father did not discuss with Mother
12 regarding the drug tests he conducted on the child. Father did not
13 discuss that he was going to take the child to the hospital, he was
14 really late, and he caused Mother to worry. Additionally, Father did
15 not meet the needs of the child when he missed the visitation
16 although he had some excuses. The Court Finds that Mother has the
17 ability to cooperate to meet the needs of the child and Father does
18 not. The Court finds that factor (e) favors Mother.

19 F. That 125C.0035(4)(f): the mental and physical health of the parents.
20 The Court is very concerned as to this Factor. The Court finds that
21 Mother used to have a drug issue, but she has fixed it. The Court is
22 concerned that it was stated Father's issue is ADD; however, his
23 behavior shows some paranoia which is not really consistent with
24 ADD. The Court is concerned about Father's mental health. The
25 Court finds that Mother has improved her situation. The Court was
26 presented with multiple drug tests for Mother that were negative
27 and that show Mother is not using any illegal drugs. Mother has that
28 issue under control. The Court is concerned that Father does not
have that under control; there is an incident concerning paranoia
regarding the neighbors. There was a police incident where Father
took the child upstairs and he said he took the child into the shower
which is concerning to the Court. Father's threats that he wants to
die is extremely concerning. The Court finds that Father's behavior
is in opposition to the fact that Father is able to maintain a job. The
only testimony Father gave about his mental health is that he goes
to the therapist, however, he did not provide any medical records.
The position is that Father had to find an expert; however, that is
not his burden. The Court is concerned that Father seems to know

1 what special plates are on a vehicle. The Court finds that factor (f)
2 favors Mother.

3 G. That 125C.0035(4)(g): the physical, developmental and emotional
4 needs of the child. The court finds that the child does not have
5 special needs. Father thinks the child has some delusions about
6 drugs; however, there was no evidence. Father stated the Doctor
7 saw a drug test that was positive. The Court does not believe that a
8 Doctor would see such a drug test without reporting it to CPS as a
9 mandatory reporter. The child has no special needs and he needs to
 not be put in harm's way by being drug tested and taken to the
 hospital. Factor (g) slightly favors Mother.

10 H. That 125C.0035(4)(h): the nature of the relationship of the child
11 with each parent. The Court believes the child loves both parents,
12 most children do. The Court believes that Father has always loved
13 and cared for the child, which was also a statement made by
14 Mother. The Court is concerned about Father's relationship with the
15 child as he only stayed for 20 minutes on the child's birthday even
16 though Mother made accommodations and the Father had sufficient
17 time. The Court is concerned that Father is hurting his relationship
18 with the child, but the Court believes that the child loves both the
19 parents.

20 I. That 125C.0035(4)(i): the ability of the child to maintain a
21 relationship with any sibling. This would be a factor if Father had
22 any relationship with Tanner. Per Father's testimony, he sees the
23 child 2 to 3 times per year which is really sad. The other statement
24 made was that Father did not see the other child between 2017 and
25 2019. The fact that Father did not see Tanner means Father did not
26 foster the relationship between Tanner and Roen. The Court does
27 not find factor (i) to be a factor in this case.

28 J. That 125C.0035(4)(j): any history of parental abuse or neglect of
 the child or a sibling of the child. The Court does not find any
 proven history of abuse or neglect. The Court is concerned about
 multiple drug tests on the child and rushing the child to the
 emergency room. Currently, factor (j) is not a factor in this case.

1 K. That 125C.0035(4)(k): whether either parent or any other person
2 seeking custody has engaged in an act of domestic violence. The
3 Court does not find that either parent did so or that there was any
4 evidence presented to that effect.

5 L. That 125C.0035(4)(l): whether either parent or any other person
6 seeking custody has engaged in an act of abduction. The Court does
7 not find that either parent did so or that there was any evidence
8 presented and the Court does not find it to be factor.

9 II.

10 ARGUMENT

11 The Nevada Supreme Court has long held that “a court may, for sufficient
12 cause shown, amend, correct, resettle, modify or vacate, as the case may be, an
13 order previously made and entered on motion in the progress in the cause or
14 proceeding.”¹ Indeed, the Nevada Supreme Court, stated as follows: “[U]nless
15 and until an order is appealed, the District Court retains jurisdiction to reconsider
16 the matter.”²

17 The granting of a motion for reconsideration is discretionary decision.³
18 Two cases provide district courts with guidance in exercising this discretion. In
19 the first of these cases, the Nevada Supreme Court held that “[o]nly in very rare
20 instances in which new issues of fact or law are raised supporting a ruling
21 contrary to the ruling already reached should a motion for rehearing be
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27 ¹ *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975)

28 ² *Gibbs v. Giles*, 97 Nev. 243, 607 P.2d 118 (1980)

³ *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 447 (1980)

1 granted.”⁴ The second case provides that “[a] District Court may consider a
2 previously decided issue if substantially different evidence is subsequently
3 introduced or the decision is clearly erroneous.”⁵ The United States Supreme
4 Court has defined the clearly erroneous standard as follows: “A finding is
5 ‘clearly erroneous’ when although there is evidence to support it, the reviewing
6 court on the entire evidence is left with the definite and firm conviction that a
7 mistake has been committed.”⁶

10 Plaintiff essentially objects that the decision from the Evidentiary Hearing
11 was clearly erroneous inasmuch as the Court did not consider Andrew’s medical
12 records. Nothing could be further from the truth. First, the Court’s decision was
13 based upon all of the factors as enumerated in NRS 125C.0035(4), not just NRS
14 125C.0035(4)(f). More specifically NRS 125C.0035(4)(c), NRS
15 125C.0035(4)(e), NRS 125C.0035(4)(f), NRS 125C.0035(4)(g) all favored the
16 Defendant. Moreover, the Court did not find any factor that specifically favored
17 the Plaintiff.

18
19 Second, the Court heard detailed testimony concerning the Plaintiffs
20 emotional stability. More specifically, there was testimony by the Plaintiff where
21 he acknowledged that he took the child into the bathroom and barricaded himself

27 ⁴ *Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244 (1976)

28 ⁵ *Masonry Contractors v. Jolley, Urga & Worth*, 113 Nev. 737, 941 P.2d 487 (1997)

⁶ *United States v. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542 (1948)

1 therein and only released the child after police intervention. There was evidence
2 that Plaintiff threatened that he wanted to die, which was extremely concerning.
3 Additionally, Plaintiff testified about individuals "following him." Premised on
4 the foregoing, the Court made the determination that by the Plaintiff's own
5 actions that there was an issue with his mental health.
6

7
8 Finally, Plaintiff objects that the Court did not consider any of the
9 Plaintiff's medical records however Plaintiff's assertion is a red herring as the
10 Plaintiff failed to produce any medical records during the discovery process.
11

12 Based on the foregoing, this Court's decision on February 4, 2020 was
13 well-grounded in facts and law, thus said decision was not clearly erroneous in
14 any way, shape, or form.
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IV.

CONCLUSION

Given the foregoing, Plaintiff respectfully requests that this Honorable court deny Defendant's motion in its entirety.

Dated this 17th day of August, 2020.

WALSH & FRIEDMAN, LTD.



Kenneth S. Friedman, Esq.
Nevada Bar No.: 5311
400 S. Maryland Parkway
Las Vegas, Nevada 89101
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of WALSH & FRIEDMAN, LTD., and on the 17th day of August, 2020, I served a true and correct copy of the above and foregoing OPPOSITION TO PLAINTIFF'S MOTION FOR NEW TRIAL PURSUANT TO NRCP 59, AND RECONSIDERATION, pursuant to NRCP 5 and EDCR 8, by the method or methods indicated below:

_____ by depositing the same in the U.S. Mail, First Class Mail, with postage fully prepaid, at Las Vegas, Nevada, addressed as follows:

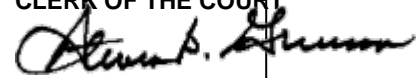
_____ by facsimile to the below listed number:

X_____ by electronic mail to the below-listed email address:

Emily McFarling, Esq.
eservice@mcfarlinglaw.com



an Employee of WALSH & FRIEDMAN, LTD.



RPLY

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Nevada Bar Number 8567
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Attorney for Plaintiff,
Andrew Warren

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ANDREW WARREN,

Plaintiff,

vs.

AIMEE YANG,

Defendant.

Case Number: D-19-590407-C

Department: G

Date of Hearing: 09/14/20

Time of Hearing: No Appearance

**PLAINTIFF'S REPLY TO OPPOSITION TO MOTION FOR NEW TRIAL
PURSUANT TO NRCP 59, AND RECONSIDERATION**

COMES NOW Plaintiff, Andrew Warren, by and through his attorney, Emily McFarling, Esq. of McFarling Law Group, and hereby submits the following reply to Defendant's Opposition requesting the Court issue an Order:

1. Reconsidering the Order from the February 4 and 18 2020 hearings;

2. Granting Plaintiff's Request for a New Trial; and

3. For any other relief this Court deems fair and appropriate.

This Reply is made and based on the Memorandum of Points and Authorities set forth below, the Declaration of Plaintiff attached hereto, all papers and pleadings on file herein, and evidence presented by counsel, if any, at the hearing.

DATED this 24th day of August, 2020.

McFARLING LAW GROUP

/s/ Emily McFarling

Emily McFarling, Esq.
Nevada Bar Number 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Plaintiff,
Andrew Warren

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 Plaintiff, Andrew Warren (hereinafter referred to as “Andrew”) reiterates
4 and incorporates herein the facts stated in his Motion.

5 **A. Trial**

6 Plaintiff, Andrew Warren (hereinafter referred to as “Andrew”) agrees with
7 the procedural history in Defendant’s Opposition and adds the following:

8 **1. Visitation pending trial**

9 The Court heard testimony regarding Andrew’s supervised visitation
10 pending trial and found that Aimee would assist with visitation when it’s needed
11 and when it’s ordered. However, on December 7, 2019, Andrew requested to see
12 Roen and Aimee denied the visit simply because Jerry, the supervisor, was not
13 available that day. She could have facilitated Andrew seeing Roen with the
14 babysitter’s presence, however, she did not¹.

15 **2. The parents’ ability to cooperate to meet the needs of the child**

16 **Andrew acknowledged he believes he can co-parent with Aimee:**

17 Ms. Robinson to Andrew: “So coparenting, do you believe you can co-
18 parent with clearly outlined orders?”

19 Andrew: “Yes².”

20

¹ See Exhibit 1 – Text messages dated December 7, 2019.

² See video time stamp 3:08:07 – 3:08:22.

1 Aimee changed Roen's doctor without first consulting with Andrew:

2 Ms. Robinson to Andrew: "How did you learn recently that Roen had
3 changed doctors?"

4 Andrew: "Aimee told me that she changed doctors³."

5 Ms. Robinson to Andrew: "And did she [Aimee] consult with you
6 before making that decision?"

7 Andrew: She did not consult with uh me about changing his doctors. I
8 didn't know she was looking for a new doctor⁴."

9 **3. Andrew's mental health**

10 **a) Andrew's mental health diagnosis and medical records**

11 The Court found that the only testimony Father gave about his mental health
12 is that he goes to the therapist, however, he did not provide any medical records.

13 However, the Court indeed heard more testimony regarding Andrew's mental
14 health and there were medical records submitted as proposed exhibits.

15 The court heard testimony that Andrew has been diagnosed with adult ADD
16 and was prescribed Adderall.

17 Moreover, Andrew testified as a child he had ADHD, so this is not something
18 new. He also testified that his Adult ADD does not impede him in any way shape or
19 form in the parenting of Roen, when he manages it with medication and he takes his
20 medication unless the pharmacy is out of his medication but that does not happen

³ See Video Time Stamp 3:08:23 - 3:08:32.

⁴ See Video Time Stamp 3:08:32 - 3:08:52.

1 often. Even when he is out of his medication, he does not feel it would impede him
2 from caring for Roen, as he is more affected if solving complex issues at work or
3 managing work and school.

4 Ms. Robinson: do you have anything that would be classified as a
mental health issue?

5 Andrew: Yes

Ms. Robinson: What is that?

6 Andrew: I have adult ADD

Ms. Robinson: What are some symptoms of adult ADD?

7 Andrew: If not medicated, lack of attention, lethargic, brain scattered
and lack of focus⁵.

8 Ms. Robinson: did you have ADHD or ADD as a child?

9 Andrew: Yes

10 Ms. Robinson: What are you currently taking to manage your adult
ADD?

11 Andrew: I'm taking Aderall...⁶

12 Ms. Robinson: Do you feel that your adult add impedes you in any way
shape or form in the parenting of Roen?

13 Andrew: Not when managed with medication, no ⁷.

14 Ms. Robinson: Do you consistently take your medication as prescribed?
Yes, but there's been a couple of issues where pharmacies have been
15 lacking just recently like 3 or 4 days they ran out and then I didn't have
medication.

Ms. Robinson: How often does that occur?

16 Andrew: More so, not not as recent so this is just the only occurrence
17 in recent memory that I can recall⁸.

18
19 ⁵ See Video at 1:59:32 – 2:01:31.

20 ⁶ See Video at 2:03:15-2:03:23.

⁷ See Video at 2:04:00 - 2:04:13

⁸ See Video at 2:04:15 -2:04:52

1 Ms. Robinson: If you are without your medication for a few days, how
do you think that affects you?

2 Andrew: I mean it usually only affects me if I have to it doesn't affect
me along the lines of caring with my son it usually affects me when I
3 have school and work because of the complex problems I solve let's
say at work⁹.

4 Aimee alleges in her Opposition that Andrew failed to produce medical
5 records during discovery. While it is true that Andrew did not produce the records
6 during discovery, the evidence showed that he attempted to obtain them and was not
7 able to do so until after discovery had closed. Specifically, the Court heard testimony
8 that not only was Mr. Friedman's office having trouble obtaining the records, but so
9 was Andrew. He attempted numerous times to get his doctor to release the records
10 to Mr. Friedman's office and it was not until February 4, 2020, the day of the trial,
11 that the records were sent to Mr. Friedman's office. In fact, Mr. Friedman
12 acknowledged having received them that day and had not reviewed them yet.

13 Andrew was testifying as to specific details regarding his mental health, but
14 the Court had that part stricken from the record because no one had reviewed the
15 medical records yet.

16 When Andrew's counsel offered the medical records as evidence, the Court
17 declined to admit them because Mr. Friedman had not had the opportunity to review
18 them and unless he was stipulating to them, the Court would not allow them. Mr.
19

20

⁹ See Video at 02:05:06.

1 Friedman did not stipulate to admit the records that day and the Court indicated the
2 medical records would be discussed on day 2 of the trial.

3 On February 18, 2020, the second day of trial, the medical records were not
4 discussed or admitted.

5 Andrew's mental health records clearly show that he is mentally and
6 emotionally stable and there is nothing in them to cause concern¹⁰. Specifically, they
7 show:

8 1) Andrew consistently saw his doctor for management of his ADHD medication
9 between 7/23/2018 and 1/22/2020 when the records end.

10 2) Andrew shows no concerns about suicide in EVERY VISIT.

11 3) Andrew is diagnosed with ADHD.

12 4) Andrew is consistently prescribed medication for his ADHD.

13 5) Andrew's issues with ADHD affect his work.

14 6) Andrew is consistently noted as being cooperative, stable, well groomed, etc.

15 7) Andrew mentions in two visits that his girlfriend (Aimee) is using drugs.

16 8) Andrew mentions that his girlfriend (Aimee) accused him of being paranoid
17 because he suspected Aimee was cheating and found out she was using drugs.

18 ///

20 ¹⁰ See Exhibit 2 – Andrew's medical records.

1 **b) Andrew’s text message about wanting to die**

2 The Court stated in its findings that “Father’s threats that he wants to die is
3 extremely concerning.” However, Andrew’s testimony indicates that 1) his text
4 message to Aimee from March 2019 “I don’t care if I die” was not a suicidal threat,
5 and 2) he discussed the issue with his psychiatrist.

6 Aimee did not present any evidence that Andrew had indeed attempted to
7 commit suicide at any given time or showed more text messages that showed a
8 continuous pattern of “wanting to die.” One text message, taken out of context and
9 blown out of proportion was all that was entered into evidence on this issue and all
10 there even exists.

11 **4. The physical, development and emotional needs of the child and the**
12 **nature of the relationship of the child with each parent**

13 **a) Andrew’s bond with Roen**

14 The Court heard testimony regarding Andrew’s bond with Roen, he described
15 in detail what he does with Roen for fun and how Roen enjoys those things.

16 Ms. Robinson: I would like you to please tell the court just about your
17 relationship with Roen. What do you guys like to do for fun?

18 Andrew: Just recently we got some coloring books and stuff like that
19 we play around; it was pretty cool the other day we were doing some
20 sit ups and we just found the fun in that, he was enjoying it. We play

1 with cars, a lot of toys, read books, this little music book that we like to
2 play and trying to teach both of us how to play the Ukulele¹¹.

3 As Andrew testified the above, he smiled and seemed like he was having a
4 conversation with a friend, rather than testifying at trial.

5 **b) Developmental needs of the child**

6 The Court heard testimony regarding Andrew's plans should he get primary
7 or joint physical custody while he is at work, as follows:

8 Ms. Robinson: What is your plan should you get primary physical
9 custody or joint physical custody, what would be your plan with Roen
10 when you are at work?

11 Andrew: So when I am at work he would go to preschool but I would
12 like to keep the same **consistency**, I would take him to the same baby
13 sitter that he's had but also a couple of days a week I would like him to
14 go to preschool¹².

15 **c) Roen's birthday**

16 The Court is concerned about Father's relationship with the child as he only
17 stayed for 20 minutes on the child's birthday even though Mother made
18 accommodations and the Father had sufficient time. Yes, Andrew saw Roen for a
19 short time on his birthday. He showed up late because he worked that day and stayed
20 for a short time because the visitation supervisor was not present and Aimee, who
was supervising at that time, kept running upstairs. When she ran upstairs Roen kept

¹¹ See Video at 2:07:11 – 2-08:06.

¹² See Video at 2:06:30 – 2:07:06.

1 wondering what she was doing; to avoid Roen from being further disturbed and
2 Andrew being left alone with him, he left. Regardless, Andrew saw Roen on his
3 birthday and Aimee agreed Roen was happy to see him.

4 Moreover, Andrew had reached out to Aimee to plan Roen's birthday but she
5 insisted that they plan it separately¹³. Andrew had a birthday party with Roen at a
6 train station on another day.

7 **II. LEGAL ARGUMENT**

8 **A. The Court Should Reconsider Plaintiff's Request for Primary** 9 **Physical Custody and/or Grant a New Trial.**

10 The evidence and testimony presented at trial warrant a reconsideration, as it
11 shows that Andrew has been in Roen's life since day one, he has taken him to the
12 doctor, cooked for him, played with him, read to him and provided for him
13 financially, all of which have contributed to the physical, developmental and
14 emotional needs of Roen.

15 Moreover, it should be considered that his plan to put Roen in preschool and
16 keep him with the same babysitter to keep consistency in his life, as it shows his goal
17 for stability.

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¹³ See video from 02/04/20 at 03:10:12.

1 Andrew's testimony shows that he is taking his prescribed medications, and
2 even when he hasn't for whatever reason, it does not impair him or prevent him from
3 properly caring for Roen.

4 Andrew took his son to the hospital because he believed he had drugs in his
5 system but did not put Roen in danger.

6 While it is concerning that Andrew sent a text message he didn't care if he
7 died, it was not a suicidal threat and Aimee did not present additional or similar
8 messages for it to be a continuing concern. It can be generalized that at some point
9 almost everyone has said in their life, without actually meaning to kill oneself, that
10 they didn't care if they died. Further, if it was such a concern, then those concerns
11 would have been allayed by admission of Andrew's mental health records. Yet, the
12 Court chose to not admit the records and instead simply rely on one out of context
13 text message.

14 Andrew's mental health records clearly show that he is mentally and
15 emotionally stable, seeks regular oversight from his ADHD doctor and monitoring
16 of his ADHD medication. They also show there is nothing concerning about Andrew
17 mental health-wise that is sufficient to warrant an award of primary physical custody
18 to mom.

19 This Court should reconsider and/or grant a new trial and award Andrew
20 primary physical custody.

1 **III. CONCLUSION**

2 BASED ON THE FOREGOING, Plaintiff requests this Court issue an Order:

- 3 1. Reconsidering the Order from the February 4 and 18, 2020 hearings;
- 4 2. Granting Plaintiff's Request for a New Trial;
- 5 3. For any other relief this Court deems fair and appropriate.

6 DATED this 24th day of August, 2020.

7 **MCFARLING LAW GROUP**

8 /s/ Emily McFarling

9 Emily McFarling, Esq.
10 Nevada Bar Number 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
11 (702) 565-4335
Attorney for Plaintiff,
12 Andrew Warren
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1 **DECLARATION OF ANDREW WARREN**

2 1. I, Andrew Warren, declare that I am competent to testify to the facts
3 contained in the preceding Reply.

4 2. I have read the preceding Reply, and I have personal knowledge of the
5 facts contained therein, unless stated otherwise. Further, the factual
6 averments contained therein are true and correct to the best of my
7 knowledge, except those matters based on information and belief, and as
8 to those matters, I believe them to be true.

9 3. The factual averments contained in the preceding Reply are incorporated
10 herein as if set forth in full.

11 I declare under penalty of perjury, under the laws of the State of Nevada and
12 the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true
13 and correct.

14 EXECUTED this 24th day of August, 2020

A handwritten signature in black ink, appearing to be 'A. Warren', written over a horizontal line.

15 Andrew Warren
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Kenneth Friedman, Esq.
k.friedman@hotmail.com

/s/ Maria Rios Landin
Maria Rios Landin

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10 Attorney for Plaintiff,
11 Andrew Warren

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **FAMILY DIVISION**

9 **CLARK COUNTY, NEVADA**

10 **ANDREW WARREN,**

11 **Plaintiff,**

12 **vs.**

13 **AIMEE JUNG AHYANG,**

14 **Defendant.**

Case Number: D-19-590407-C
Department: G

15 **ORDER FROM MARCH 18, 2021 HEARING**

16
17 THIS MATTER came before the Honorable Rhonda Forsberg, on March 18th at 10:00am
18 regarding Plaintiff's Motion For Notice Of Motion For Review Trial Pursuant To NRCP 59, And
19 Reconsideration. Present at the hearing were Plaintiff, Andrew Warren, represented by his attorney
20 of record, Emily McFarling, Esq. and Defendant, Aimee Jung Ahyang, represented by her attorney
21 of record, Kenneth Friedman, Esq.

22 The Court reviewed the case history and the pleadings on file. The Court advised Counsel
23 that the Court reviewed all pleadings and exhibits as an offer of proof.
24

1 THE COURT FINDS after reviewing Plaintiff's medical records that the previous order
2 was in the child's best interest.

3 THE COURT CONCLUDES there is no basis for a new trial or reconsideration.


4 The Court, having reviewed the papers and pleadings on file herein, and having taken
5 argument from counsel, and being duly and fully advised in the premises, issues the following
6 orders:

7 IT IS HEREBY ORDERED that Plaintiff's motion for a new trial and/or reconsideration
8 of the final custody order is denied.

9 IT IS FURTHER ORDERED that custody shall be status quo as to the court's previous
10 order.

11 IT IS FURTHER ORDERED that there shall be no award of Attorney Fees.

12 IT IS FURTHER ORDERED that Attorney McFarling shall prepare the order from today's
13 hearing. Attorney Friedman shall review and countersign. Dated this 3rd day of May, 2021



16 F4B 7B1 3FA5 1087 (ap)
Rhonda K. Forsberg
District Court Judge

17 Submitted by:
18 MCFARLING LAW GROUP

Approved as to form and content:
WALSH AND FRIEDMAN

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Attorney for Defendant,
Aimee Jung Ahyang

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Andrew Warren, Plaintiff.

CASE NO: D-19-590407-C

7 vs.

DEPT. NO. Department G

8 Aimee Jung Ahyang, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/3/2021

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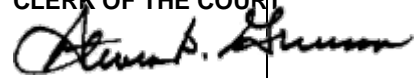
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11 Andrew Warren

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **FAMILY DIVISION**

9 **CLARK COUNTY, NEVADA**

10 ANDREW WARREN,

11 Plaintiff,

12 vs.

13 AIMEE JUNG AH YANG ,

14 Defendant.

Case Number: D-19-590407-C

Department: G

15 **NOTICE OF ENTRY OF MARCH 18, 2021 HEARING**

16 PLEASE TAKE NOTICE that on May 3, 2021, an ORDER FROM MARCH 18, 2021
17 HEARING was entered, a copy of which is attached hereto and by reference fully incorporated
18 herein.

19 DATED this 3rd day of May, 2021.

20 **McFARLING LAW GROUP**

21 /s/ Emily McFarling

22 Emily McFarling, Esq.
23 Nevada Bar Number 8567
24 6230 W. Desert Inn Road
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(702) 565-4335
Attorney for Plaintiff, Andrew Warren

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☒ via mandatory electronic service using the Eighth Judicial District Court's E-file and E-service System to the following:

/s/ Alex Aguilar
Alex Aguilar

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7 **EIGHTH JUDICIAL DISTRICT COURT**

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16 F4B 7B1 3FA5 1087 (ap)
Rhonda K. Forsberg
District Court Judge

17 Submitted by:
18 MCFARLING LAW GROUP

Approved as to form and content:
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1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Andrew Warren, Plaintiff.

CASE NO: D-19-590407-C

7 vs.

DEPT. NO. Department G

8 Aimee Jung Ahyang, Defendant.
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