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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY JOHN BELLISARIO,)	Supreme Court No: 84128
)	
Appellant,)	District Court Case No:
v.)	D-20-605263-D
)	
EMILY BELLISARIO,)	
)	
Respondent.)	
_____)

CHILD CUSTODY FAST TRACK RESPONSE

1. Name of Party filing this fast track response:

Emily Bellisario.

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

Amanda M. Roberts, Esq.
Nevada Bar No.: 9294
Roberts Stoffel Family Law Group
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3. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this

court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:

Not Applicable.

- 4. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):**

Respondent, Emily Bellisario (“Emily”), is dissatisfied with a section of the Brad’s procedural history within the Fast Track Statement related to setting the matter for Trial before the District Court Judge. As such, Emily only addresses the issue for which she is dissatisfied herein.

On September 16, 2021, the Parties appeared before the Court. 14AA3385-3394. At that time, the Court set the Trial for December 20, 2021, at 9:00 a.m. 14AA3389. As of that date, this matter had been pending for over eighteen (18) months and as of the Trial date the matter had been pending for twenty-one (21) months. During that hearing, Brad stated to the Court in regard to setting this matter for Trial, “I mean, I don’t know. I’m probably going to move to push it anyway, so.” 14AA3356. The Court responded stating, “Without good reason, I don’t -- I -- I try not to push Trial dates. You know,

this case has to come to an end.” *Id.* Brad responded stating, “I’ll – I’ll have my reasons, so. I’ll put it out there.” *Id.*

5. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

Respondent, Emily Bellisario (“Emily”), is dissatisfied with a section of the Brad’s statement of facts within the Fast Track Statement related to the record of domestic violence. As such, Emily only addresses the issue for which she is dissatisfied herein.

On April 9, 2020, Brad filed an Opposition and Countermotion. 1AA0148-0157. Therein, Brad signed an Affidavit wherein he alleged that the information contained in the Opposition and Countermotion were “true and correct to the best of my recollection.” 1AA0156. Brad indicated that the statements made within the Opposition and Countermotion were true as he believed them to be. *Id.* In that Opposition and Countermotion, Brad admitted that there was a fight and he “broke a few things in the home.” 1AA0152. That action resulted in the issuance of T-19-200404-T. Brad goes on to admit to calling Emily a “prostitute and whore[.]” *Id.*

On April 15, 2020, Brad filed a Financial Disclosure Form. 2AA0260-0267. Therein, he alleged to have gross income of \$18,000.00 per month from self-employment or business. 2AA0262. Nowhere in the Financial Disclosure Form does Brad allege his income is \$8,500.00 per month.

On February 19, 2021, Brad filed an Opposition and Countermotion. 7AA1158-1161. Therein, Brad signed a Declaration wherein that the information contained in his Opposition and Countermotion were “true and correct to the best of my knowledge and belief[.]” 7AA1583. Furthermore, Brad stated, “I declare under penalty of perjury that the foregoing is true and correct.” *Id.* In that Opposition and Countermotion, Brad admitted that he “tossed the juice boxes lightly toward the front porch, angled away from the door.” 7AA1567. Brad goes on to state that he “never contacted Emily and called her a prostitute.” *Id.* However, in the Opposition and Countermotion filed April 9, 2020, Brad admitted to calling Emily a “prostitute and whore[.]” 1AA0152. Moreover, in the Opposition and Countermotion, he again states that Emily “is indeed a prostitute[.]” 7AA1567.

On April 6, 2021, Brad was Ordered to complete a work search and apply to ten (10) jobs every two (2) weeks. 2AA2517-2527.

On December 20, 2021, Trial occurred starting at 9:24 a.m. (19AA4625) and ended at 3:24 p.m. (20AA4862).

6. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

A. Did the District Court violate Brad's due process rights by conducting his Trial without him?

Brad's due process rights were not violated he had knowledge of the date of Trial, he did not seek to have the matter continued and he did not seek to have a new Trial set in the matter. Moreover, Brad has not established that the outcome would have been different if he had been present for the Trial.

B. Did the District Court violate Brad's constitutional rights by not continuing Trial until after resolution of his criminal case?

The outcome of Brad's criminal Trial is not dispositive of the issue of custody. In fact, *NRS* § 125C.0035 (6) mandates a Trial occur regarding domestic violence and for the District Court Judge handling the divorce action to make "finding by clear and convincing evidence[.]" *Id.*

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C. Did the District Court err when it declared Brad a vexatious litigant?

The District Court did not err in determining Brad to be a vexatious litigant. The Court properly applied the law and facts to the request. Additionally, Brad did not oppose the request at the District Court level to deem him a vexatious litigant. 14AA3282.

D. Did the District Court err in its Orders regarding child issues?

The District Court did not err when it issued Orders regarding child custody. The District Court held a Trial and took substantial testimony and evidence to support the rulings reached in this matter.

E. Did the District Court err in its Orders regarding discovery and financial issues?

The District Court properly applied the law to the facts and circumstances presented at the time of the Trial and issued appropriate rulings based upon the testimony and exhibits.

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F. Did the District Court violate Brad's due process rights when it extended the TPO from January 25, 2021, hearing when Brad was not there?

On January 25, 2021, the Court did not extend the TPO. Rather on that date, the Court indicated that an Order Shortening Time could be granted on a request by Emily to extend the time for the TPO. 4AA0856-0858. As such, Brad's request is without merit and should not be considered.

G. Did the District Court err by awarding attorney's fees to Emily for the entire case without making any findings?

Although the District Court indicated attorney fees would be granted, due to the Appeal, the District Court has not ruled on the Memorandum of Fees and Costs filed on behalf of Emily and Brad's Opposition thereto. Therefore, this issue is not ripe for consideration on Appeal because there is not final Order on attorney fees.

7. Legal argument, including authorities:

A. Did the District Court violate Brad's due process rights by conducting his Trial without him?

In *Blanco v. Blanco*, 129 Nev. 723, 727, 311 P.3d 1170, 1174 (2013), it was determined that a default as a discovery sanction was not appropriate in a

child custody and child support matters. The Court indicated that there still must be a prima facie showing that the best interest of the children have been met which may require a prove-up hearing or evidentiary hearing to support the record. *Blanco*, 129 Nev. 723, 727 and 728, 311 P.3d 1170, 1174 and 1175 (2013).

The District Court did not grant a default against Brad. Brad was present when the Court set the matter for Trial on September 16, 2021 and indicated an intent to delay the proceedings. 14AA3356 and 20AA4881. Emily was entitled to a resolution in this matter and child custody was required to be resolved before a divorce could be granted. *EDCR* § 5.204. Rather, the Court held a Trial on December 20, 2021, taking testimony and evidence to establish a prima facie case to determine the best interest of the minor children. Brad may not have refused to come to Court, but Brad was well aware of the Trial date and failed to take steps to request the matter be continued or present to the Court a request for a new Trial. *NRC*P § 59 (1)(D).¹ Moreover, if the factual findings

¹ *EDCR* § 7.30 provides that "any party may, for good cause, move the court for an order continuing the day set for trial of any cause." Good cause exists when it can be established that a continuance will make a difference in the case. *Lee v. Kemna*, 534 U.S. 362, 122 S. Ct. 877 (2002). Brad has failed to establish that a different outcome would have been reached if he were present at Trial.

were supported by “substantial evidence” then the finding will not be set aside.

Ellis v. Carucci, 123 Nev. 145, 149, 161 P.3d, 242 (2007).²

At that Trial, the Court found Brad “failed to comply with discovery. As such, it was Ordered on March 17, 2021, that the Defendant be precluded from presenting and replying upon at Trial or the Evidentiary Hearing any evidence required to be produced by *NRCP* § 16.2 which was not produced within five (5) days of the hearing. (Video Timestamp 2:43:38)[.]”³ 9AA2145 and 20AA4870. Brad has not established that he would have been able to present anything different at Trial then the evidence that was admitted. *NRCP* § 61 and *Cuzze v. Univ. & Cmty. Coll. Sys. Of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). The failure to cooperate in discovery should not allow Brad to be rewarded through remand for another bite at the apple with the intent of getting a more favorable result. Therefore, it should be presumed that what Brad did

² In this matter, Brad did not dispute specific findings of the Court that were issued at the time of Trial related to domestic violence and best interest. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). As such, the findings of the District Court did not abuse its discretion. *Id.*

³ At the time of the proceedings, Brad was a licensed attorney in the State of Nevada. 20AA4869 and 20AA4903. Brad was experienced in practice and procedure of the Eighth Judicial District Court. *Id.*, *NRS* § 47.150 (1) and *NRS* § 47.130 (2). As such, Brad was in a better position than pro per litigants without knowledge and experience to represent themselves.

not produce, hurt his case on all issues in the divorce. *PETA v. Berosini, Ltd.*, 110 Nev. 78, 85, 867 P.2d 1121, 1228 (1994) *citing Isola v. Sorani*, 47 Nev. 365, 368, 222 P.3d 796, 797 (1924); *State of Nevada v. McLane*, 15 Nev. 345, 369 (1880); *see also Nev. Tax Com. v. Hicks*, 73 Nev. 115, 129, 310 P.2d 852, 859 (1957).

Brad has asked this Court to assign a new Judge to this matter. When considering Judicial bias the "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). Moreover in order to prevail, Brad must establish that the record and legal authority support his request. *Ogawa v. Ogawa*, 125 Nev. 660, 678, 221 P.3d 699, 708 (2009). Failure to establish that the record and legal authority support his request for assignment to a new department then he cannot show that reassignment "is necessary for the interest of justice." *Id. citing Wiese v. Granata*, 110 Nev. 1410, 1413 n.2, 887 P.2d 774, 746 n.2 (1994). In this matter, Brad has failed to set forth the record or authority to support his request and therefore, Brad's argument for reassignment must fail in this matter.

B. Did the District Court violate Brad's constitutional rights by not continuing Trial until after resolution of his criminal case?

Brad asserts that this Court should adopt a new law prohibiting the family division from setting Trial in custody and divorce proceedings until the conclusion of a criminal case. Brad asserts that his due process rights were violated because evidence and testimony was presented at the Trial related to factual claims in his criminal case. As cited by Brad, the Fifth Amendment cannot compel him to testify against himself. *Spevack v. Klein*, 385 U.S. 511, 514 (1967). However, there is nothing in the law that indicates in a civil matter that other testimony and evidence cannot be presented to establish factual claims related to pending criminal cases. To do so would be a miscarriage of justice and cause a possible unreasonable delay when a Party is entitled to finality. *Rennels v. Rennels*, 127 Nev. 564, 567, 257 P.3d 396, 399 (2011) and *EDCR* § 5.204. Emily had a right to finality and to be divorced, and to delay the divorce proceeding until the completion of Brad's criminal case leads to infinite possibility of continuances without recourse by Emily. Emily should not have to wait years to be divorced due to Brad's pending criminal cases and unreasonable delay. *EDCR* § 1.10 and 1.90 (5).

The District Court considered the Protection Orders in place in T-19-200404-T and T-20-206639-T from September 18, 2019 through May 10, 2022. 20AA4870. Moreover, through Emily's testimony and Exhibits, many instances of domestic violence were established by clear and convincing evidence. 22AA4875 and 4879. Some of the acts of domestic violence established by clear and convince evidence were admitted to by Brad in his own filings, either by Affidavit or Declaration, including throw juice boxes at Emily's door.⁴ 7AA1567 and 20AA4877. In addition to breaking a few things as confirmed by the Court by clear and convincing evidence including televisions, chairs, appliances, furniture, rear window, front door, and light fixtures.⁵ 1AA0152 and 20AA4878. The acts as admitted by Brad in pleadings are domestic violence pursuant to *NRS* § 33.018, and were confirmed by Emily through testimony and exhibits.

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⁴ *NRS* § 33.018 (1)(a) and (b), and (1)(e)(5).

⁵ *NRS* § 33.018 (1)(e)(5).

C. Did the District Court err when it declared Brad a vexatious litigant?

Brad claims that the District Court relied on civil action not before the Court, but fails to acknowledge the District Court may take judicial notice of facts “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned so that the fact is not subject to reasonable dispute.” *NRS* § 47.150 (1) and 47.130 (2). As the Court noted in the Order, Brad based many of the facts from the divorce to the civil law suits. 14AA3288-3300.

Brad also alleged that the Court’s Order was not narrowly tailored and precluded him from filing any actions. However, this is a misstatement of the Order meant to inflame the Court. Rather, the Order provides that Brad must demonstrate “to the court that the proposed action is not brought for an improper purpose, as it would prevent his access to the Court.” 14AA3298. As it relates to the Appeal, the record is silent whether or not Brad or his Counsel submitted the proposed Notice of Appeal for review. 14AA3299.

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D. Did the District Court err in its Orders regarding imputing income and setting child support, and in setting alimony?

Child Support

NRS § 47.130 (2)(b) provides that the Court may take judicial notice of facts “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned so that the fact is not subject to reasonable dispute.” *NRS* § 47.130. *NAC* § 425.125 (2) states the Court “must take into consideration, to the extent known[.]” Here, the record supports that Brad refused to comply with discovery. 9AA2145 and 20AA4870. Moreover, Brad failed to provide a work search as Ordered by the Court. 2AA2517-2527.⁶ So, to the extent known to the Court, the circumstances were taken into consideration when setting Brad’s income for the purpose of setting child support.

Spousal Support

Brad alleges that the District Court failed to take into consideration any factors as required by *NRS* § 125.150 (9)(a) through (k). Emily disputes this allegation. The Court found that Brad’s earning capacity was \$35.00 per hour

⁶ *NAC* § 425.125 (2)(a)(10).

(20AA4918), after having a successful law practice (AA4903) and having his license suspended (20AA4917); the Court admitted Emily's Financial Disclosure Forms and Financial Records which were Exhibits 13 through 17 (22AA4902); the Court in detail went over the lack of property compared to debt (20AA4916-4920); the Court found that Brad's education was obtained before the marriage (20AA4918); and the Court found that Brad refused to cooperate in the psychological evaluation (20AA4908-4909). The Court may not have broken out each finding related to the specific factors, but the relevant factors were outlined in findings of the Court.

E. Did the District Court violate Brad's due process rights when it extended the TPO from January 25, 2021, hearing when Brad was not there?

In this matter, Brad failed to provide relevant authority to support his position that the Court violated his due process rights. *Carson v. Sheriff*, 87 Nev. 357, 487 P.2d 334 (1971); *Nevada Employment Sec. Dep't v. Weber*, 100 Nev. 121, 123, 676 P.2d 1318, 1319 (1984); and *Stanfill v. State*, 99 Nev. 499, 665 P.2d 1146 (1983). As such, Brad's request need not be considered by the Court.

However, to protect Emily's rights she would point out that the hearing in which extension was granted was on April 6, 2021 with both Parties being present at the hearing. 11AA2517-2526. Brad did not raise issues related to the extension during the litigation and should be precluded from doing so for the first time on Appeal.

F. Did the District Court err by awarding attorney's fees to Emily for the entire case without making any finding?

As it relates to attorney fees, the Court made specific findings pertaining to increased litigation costs based upon Brad's behavior throughout the case. 20AA4918. The Court found that Brad owed child support and spousal support arrears. 20AA4919. The Court also found prior attorney fees were awarded related to the discovery matters. 20AA4919. As such, the Court Ordered that Emily's Counsel file a Memorandum of Fees (20AA4926). Emily's Counsel complied and filed same by the deadline set by the Court and Brad opposed the request. To date, no ruling has been issued on the attorney fees.

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VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This fast track response has been prepared in a proportionally spaced typeface using [*Word-Microsoft Office 365*] in [*Times New Roman in 14 point font*]; or

☐ This fast track response has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 3,511 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☐ Does not exceed _____ pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose

sanctions for failing to timely file a fast track response. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

DATED this 31st day of May, 2022.

**ROBERTS STOFFEL FAMILY
LAW GROUP**

By: /s/ Amanda M. Roberts, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of May, 2022, service of the
FAST TRACK RESPONSE was electronically served on the following:

Amy A. Porray, Esq.
McFarling Law Group
Email: amyp@mcfarlinglaw.com
Attorney for Appellant

By: /s/ Colleen O'Brien
An Employee of Roberts Stoffel Family
Law Group