

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY JOHN BELLISARIO,

Appellant,

v.

EMILY BELLISARIO,

Respondent.

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Jun 14 2022 11:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 84128

CHILD CUSTODY FAST TRACK REPLY

1. Name of Party filing this fast track reply:

Bradley John Bellisario

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

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3. Statement of facts. Briefly set forth the facts material to the issues on appeal:

Respondent, Emily Bellisario states that she needs to address the procedural history and that the matter had been pending for 18 months when the trial was set, as if it was pending without a trial date for some reason within Appellant, Bradley

Bellisario's (Brad) control. In fact, the trial date had taken so long to set because of the retirement of the previous court and reassignment to the new court. *See* 4JA856-57, 859. Emily references the trial setting where Brad informed the Court that he may have a reason to continue the trial date, which he was letting the parties known in advance of the trial setting. This is of no relevance to the appeal, however, because Brad had no control over he was in jail, not transported to appear in person, and not allowed to be present by bluejeans during the trial.

Factually, Emily addresses the issue of domestic violence, citing different filings by Brad in the district court. Emily also addresses the temporary restraining orders, some of which were extended without Brad being present. When a temporary restraining order is initially obtained, a party can make any allegation, untested, and obtain that order. If there is no hearing when it is extended, that allegation remains untested and uncontested.

4. Issues on appeal. State concisely the principal issue(s) in this appeal:

- A. Did the district court violate Brad's due process rights by conducting his trial without him?
- B. Did the district court violate Brad's constitutional rights by not continuing his trial until after resolution of his criminal cases?
- C. Did the district court err when it declared Brad a vexatious litigation?
- D. Did the district court err in its order regarding child issues?

- E. Did the district court err in its orders regarding divorce and financial issues?
- F. Did the district court violate Brad's due process rights when it extended the TPO from the January 25, 2021, hearing when Brad was not there?
- G. Did the district court err by awarding attorney's fees to Emily for the entire case without making any findings?

5. Legal argument, including authorities:

A. The district court violated Brad's due process rights by having his custody and divorce trial without him.

Emily erroneously argues that the onus was on Brad to have requested a continuance or that he receive a new trial when he was in jail. Emily argues that Brad intended to delay the trial in September 2021, when it was set, and so it was his fault when it did not go forward in December 2021. While she acknowledges that although Brad may not have refused to come to court, there is no error by the district court because it was Brad who failed to take any steps to request that the matter be continued or request a new trial when he was in jail. Emily also argues that the outcome would have been the same because the district court took "testimony and evidence to establish a prima facie case to determine the best interest of the minor children". Fast Track Response at 8.

Emily illogically argues that there was no due process violation because she believes that the outcome of the trial will be the same if redone properly, “Brad has not established that he would have been able to present anything different at Trial then [sic] the evidence that was admitted”, or Brad’s failure to comply with discovery should allow the district court to preclude him from introducing evidence on his behalf, which shows that the district court’s decision was based on substantial evidence. Emily’s argument regarding discovery and what Brad is presenting from admitting in a child custody case is in contravention of *Blanco v. Blanco*, 129 Nev. 723, 311 P. 3d 1170 (2013) and *Ogawa v. Ogawa*, 125 Nev. 660, 221 P.3d 699 (2009). *Blanco* and *Ogawa* do not allow the district court to made a child custody determination on a prove-up basis or with establishment of a prima facie case - especially when the other party is only unavailable for trial at that particular time because of not fault of their own and the district court is aware of the reason for the other party’s absence from the trial.

Accordingly, Brad asks that the district court decision be reversed for a new trial in front of a new judge who has not demonstrated bias for Brad.

B. The district court violated Brad’s due process rights by not continuing the trial until after his criminal cases were adjudicated.

Rather than addressing Brad’s argument and the law, Emily cites to the introduction of acts that she believes amounted to domestic violence that would have

caused the district court to find that he had committed domestic violence without interfering with his constitutional rights. However, these acts are part and parcel of his criminal charges, and, by Emily attempting to separate some facts from other criminal charges, she concedes that there is a difference between uncharged criminal counts versus charged criminal conduct when a family trial is at issue. Emily necessarily acknowledges that criminal conduct that has been charged is subject to a different procedure than conduct which remains uncharged. Also, Emily necessarily relies solely on her untested trial testimony to establish domestic violence. Accordingly, Emily has not refuted Brad's argument and the district court must be reversed.

C. The district court erred in finding Brad a vexatious litigant.

Emily has not addressed the facts or the law in discussing the vexatious litigant order. She argues that the district court have used judicial notice when considering the other cases it discussed in the other. This is directly contrary to the law concerning vexatious litigant orders as discussed at length in Brad's fast track statement.

Emily also argues that Brad's argument that the order was not narrowly tailored and precluded him from filing actions was inflammatory and that he only had to show that the proposed action was not for an improper purpose. Again, Emily does not discuss the vexatious litigant case law where an order declaring a party a

vexatious litigant may only apply and preclude actions in the court where the judge sits who issued it. The vexatious litigant order issued here attempts to bind every court, regardless of jurisdiction, up to and including this Supreme Court of Nevada. Emily ignores this and says that Brad just had to show the district court that his action was not for an improper purpose. Again, the district court's order declaring Brad was incorrect and must be reversed.

D. The district court erred on its orders regarding child issues.

Emily argues that the district court could take judicial notice of Brad's income for child support and that Brad did not comply with discovery so this is permissible. However, as stated in the fast track statement, Brad filed updated financial disclosure forms with his income. The district court cannot take judicial notice of his income.

Emily also does not have any response for the argument that the district court's *sua sponte* finding of \$35.00 per hour as an earning capacity for the setting of spousal and child support was incorrect. Regarding spousal support, Emily argues that the district court was not required to go through the spousal support factors, but that the general division of property and debts in the divorce was sufficient. This is not the law on spousal support, and accordingly, the district court's decision must be reversed.

E. The district court violated Brad's due process rights when it extended the TPO from the January 25, 2021, Hearing when Brad was not present.

Emily argues that the extension occurred at the April 6, 2021, hearing, which is not true. The extension occurred at the January 2021, hearing, which is contrary to what the court stated during the hearing. The Court, however, extended the TPO by signing an order. Brad filed a motion with the district court addressing this issue below, thereby preserving the record. Accordingly, Brad's due process rights were denied, and the district court's decision must be reversed.

F. The district court erred by awarding attorney's fees to Emily for the entire case without making any findings.

Emily argues that the district court made findings during the case and ordered Brady to pay child and spousal support arrears. Therefore, Emily argues this is sufficient for an award of attorney's fees. As Brad discussed, a district court cannot award attorney's fees without giving a legal basis for that award. Emily is giving reasons that were not given by the district court and are not legal reasons. Accordingly, the district court's decision must be reversed.

VERIFICATION

1. I hereby certify that this fast track reply 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 statement has been prepared in a proportionally spaced typeface using Microsoft Word–Office 365 Business in font type Times New Roman size 14.

2. I further certify that this fast track reply complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

- ☐ Proportionately spaced, has a typeface of 14 points or more and contains 1835 words; or
- ☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or
- ☐ Does not exceed ____ pages.

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3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track reply and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track reply, or failing to raise material issues or arguments in the fast track reply. I therefore certify that the information provided in this fast track reply is true and complete to the best of my knowledge, information, and belief.

DATED this 14th day of June, 2022.

McFARLING LAW GROUP

/s/ Amy A. Porray

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CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 14th day of June, 2022, I served a true and correct copy of this Child Custody Fast Track Reply as follows:

☒ via the Supreme Court's electronic filing and service system (eFlex):

Amanda Roberts, Esq.
efile@lvfamilylaw.com

/s/ Amy A. Porray
Amy A. Porray