

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY JOHN BELLISARIO,

Appellant,

v.

EMILY BELLISARIO,

Respondent.

Electronically Filed
Oct 05 2022 11:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No.: 84128

PETITION FOR REHEARING

1. Name of Party filing this petition for rehearing:

Bradley John Bellisario

2. Name, law firm, address, and telephone number of attorney submitting this petition for rehearing:

Amy A. Porray, Esq.
Nevada Bar Number 9596
LAW PRACTICE, LTD.
5516 S. Ft. Apache Road, #110
Las Vegas, NV 89148
(702) 871-6144

3. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court in and for the County of Clark
District Court No.: D-20-605263-D

4. Name of judge issuing judgment or order appealed from:

Judge Mary D. Perry

5. Length of trial or evidentiary hearing.

One day.

6. Written order or judgment appealed from:

Findings of Fact, Conclusions of Law, and Decree of Divorce. Bradley (Brad is now filing a petition for rehearing following this Court's disposition after appeal.

7. Date that written notice of the appealed written judgment or order's entry was served:

December 23, 2021 – Findings of Fact, Conclusions of Law, and Decree of Divorce.

This Court's Order Affirming in Part, Reversing in Part, and Remanding was entered and served on September 16, 2022.

8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4),

(a) specify the type of motion, and the date and method of service of the motion, and date of filing:

N/A

(b) date of entry of written order resolving tolling motion:

N/A

9. Date notice of appeal was filed:

January 20, 2022.

10. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a).

11. Specify statute or rule governing the time limit for filing the instant petition for rehearing and due date:

NRAP 40. The due date is October 4, 2022. NRAP 40(a)(1).

12. 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 involve the same or some of the same parties to this appeal:

Order Affirming in Part, Reversing in Part, and Remanding. Entered, filed, and served on September 16, 2022. This is the Order predicated the instant petition for rehearing.

13. Procedural history. Briefly describe the procedural history of the case:

This Court is well familiar with the relevant procedural history of the instant case, having decided the appeal. Other than the disposition of this Court's Order, there is no relevance to procedural history. Therefore, Brad will not burden this Court nor opposing counsel with irrelevancies. Further, Brad will only address those issues he raises on rehearing.

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14. Standard of Review and Statement of facts Briefly set forth the facts material to the issues on appeal:

As with the procedural history, this Court is well familiar with the facts. Only those facts necessary for rehearing will be presented.

A. Standard of Review.

Under NRAP (a)(2), a petition for rehearing shall briefly and

state with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. . . . Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of

law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

Further,

(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.

(2) The court may consider rehearings in the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

NRAP 40(c)(1)-(2).

B. This Court misapprehended a material mistake of fact and law regarding the district court's Failure to Secure Brad's Presence at Brad's Divorce and Custody Trial.

Despite knowing that Brad was incarcerated in the Clark County Detention Center at the time of trial, the court proceeded with his custody and divorce trial without him. Respectfully, this Court has misapprehended both fact and law in making its decision.

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This Court found that no error occurred in having Brad’s custody and divorce trial without his presence.¹ This is despite this Court’s recognition that due process requires a “party to have notice and an opportunity to be heard”.² This Court’s decision addressed only that Brad had notice of the trial date and failed to obtain a continuance.³ This Court misapprehended the law by addressing the opportunity to be heard – not mentioning it at all.

The court knew that Brad was in custody at the Clark County Detention Center (CCDC), knew that CCDC was not transporting persons in custody on that particular day, and knew that CCDC was incapable that day of allowing for remote appearances. The court made this record prior to proceeding with the trial.

Yet, rather than having the court briefly continue this matter until CCDC could transport or accommodate remote means, this Court placed the onus on Brad. Further, this Court did not remand this issue for an evidentiary hearing as to Brad’s actual availability to request a continuance – if remote means are unable to occur, the assumption cannot be made that contact to seek a continuance could occur – this Court penalized Brad.⁴ Additionally, this Court decided inconsistently with *Ogawa v. Ogawa*, 125 Nev. 660, 673, 221 P.3d 699, 707-08 (2009), because

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Emily's counsel read all discovery into the trial/evidentiary record, as with a default, which the district court relied on and *Ogawa* prohibits.

Finally, prior to trial, on July 12, 2021, the court declared Brad a vexatious litigant.⁵ The imposed conditions presented that his *only* method of attempting to seek written continuance was to email to the court's law clerk for permission to file a motion/document. The law clerk then had the discretion to determine whether the request was meritorious. Then, the court/law clerk would email Brad to file the motion, and the matter would be heard in *due course*. 14AA3299.

Based on this Court's decision, reversal and a new trial must be granted. In the alternative, based on this Court's decision concluding well outside of Brad's argument, an evidentiary hearing should be granted.

C. This Court misapprehended a material mistake of fact and law regarding the district court's failure to enter a specific visitation schedule in accordance with the statutory requirement.

Respectfully, this Court misapprehended the facts and law when it upheld the district court's visitation schedule.⁶ This Court concluded the court's "order

⁵This Court upheld the court's vexatious litigant order.

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was sufficiently specific considering the circumstances present at the time.”⁷ In doing so, this Court has misapprehended MRS 125C.010(1)(a), public policy, and Brad’s fundamental constitutional rights to parent his children.

A custodial order must define a party’s visitation rights with a minor child with “sufficient particularity”, including specific times and “other terms of the right of visitation.” NRS 125C.010(1)(a). “Sufficient particularity” is defined as “a statement of the rights in absolute terms and not by the use of the term ‘reasonable’ or other similar terms which is susceptible to different interpretations by the parties.” *Id.* at (2). Parenting time must also be tied to the best interest factors in NRS 125C.0035(4). *Davis*, 131 Nev. at 452, 352 P.3d at 1143-44. This is not fluid.

The specific language of NRS 125C.010(1)(a),

NRS 125C.010 Order awarding visitation rights must define rights with particularity and specify habitual residence of child.

1. Any order awarding a party a right of visitation of a minor child must:

(a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved; and

(b) Specify that the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

➤ The order must include all specific times and other terms of the right of visitation.

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2. As used in this section, “sufficient particularity” means a statement of the rights in absolute terms and not by the use of the term “reasonable” or other similar term which is susceptible to different interpretations by the parties.

The court’s visitation schedule for Brad is as follows:

Upon Defendant’s criminal cases being complete, he shall have four (4) hours of supervised visitation at Family First at his cost, upon requesting same from the Court. The supervision shall be closely monitored whereby someone from Family First shall be able to hear all Defendant’s conversations with the minor children. If Family First determines there are inappropriate comments or behavior, Family First may immediately cut off supervised visitation for that visitation session, and may resume at the next regularly visitation period. (Video Timestamp 3:14:12, 3:14:30)

- Defendant shall not have any visitation until all of the criminal cases are resolved. (Video Timestamp 3:14:20)

20AA4921. What NRS 125C.010(1)(a) requires is specificity and terms. It does not allow for “sufficient[] specific[ity] consider in the circumstances at the time.”⁸

The vagueness and problematic language exists where conditions precedent for visitation come with criminal cases being “complete” and “resolved”. These terms are open to interpretation by the court, opposing counsel, and Emily. This flies in the face of statutory interpretation, public policy, and the Constitution. Also, Family First is given almost sole discretion over what constitutes an appropriate

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visit with Brad and his children. This is an abrogation of the Court's visitation duties to a third party. There is no specificity as to what constitutes "an inappropriate comment[] or behavior" by Family First. And, the court ordered four hours of Family First visitation, but did not specify whether that was multiple times weekly, monthly, bimonthly, or how often Brad was entitled to that visitation.

Finally, Brad, who the court has already declared a vexatious litigant, must first move the court before he can have any visitation with his children.

Most respectfully, this Court has misapprehended the facts and law as concerns Brad's statutory and constitutional rights to visit with his children. Accordingly, this case should be remanded for a new visitation schedule in compliance with NRS 125C.010(1)(a).

D. This Court misapprehended a material mistake of fact regarding the improperly extended Temporary Protective Order (TPO).

The TPO at issue is from a January 25, 2021, hearing, where Brad was in custody for alleged domestic violence (DV) against Emily allegedly occurring June 11, 2020. 4AA862. The TPO at issue on the January 25, 2021, hearing had already been dismissed by a different court⁹. 9AA2179. Brad was not transported or

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present for the hearing, and his attorney has withdrawn. 4AA859-63. Upon learning this, the district court replied “Good.” *Id.* at 860. Emily’s counsel made all representations, asking that it be extended until May 2022. *Id.* at 862. The TPO was extended, with a written order entered on April 6, 2021. 9AA2166-69.

What this Court concluded on appeal was that Brad’s issue challenging the improper extension of the TPO had no merit because there was litigation after the extension of the TPO and before the extension. However, respectfully, what this Court has misapprehended is that when this Court subsequently discussed extension of the TPO with Brad, it would not allow him to defend himself against extension because of his pending criminal case. 9AA2187-88. Only if he was found not guilty, based solely on Emily ‘s allegations, would it revisit its rulings. *Id.* It refused to question him in his defense or otherwise allow him to defend himself. Accordingly, because the court would not allow him to defend against a TPO that had been dismissed – *but he was mistakenly arrested on* – this Court’s conclusion that there was motion practice and a hearing following the January 25, 2021, hearing and the entrance of the TPO extension is a misapprehension of the actual proceedings. The importance is far reaching, as the improper TPO affects his due process criminal case rights and prejudice to his child custody case. Accordingly, Brad respectfully requests that this Court grant rehearing.

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15. Conclusion

Based on the above and foregoing, Brad respectfully requests that this Court consider his petition for hearing and grant him relief. He requests that, where appropriate, the court's decision be reversed and otherwise the decision be remanded for an evidentiary hearing along with those ordered in this Court's original decision.

DATED this 4th day of October, 2022.

LAW PRACTICE, LTD.

/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
5516 South Ft. Apache, #110
Las Vegas, NV 89148
Telephone: (702) 871-6144
*Attorney for Appellant,
Bradley Bellisario*

VERIFICATION

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4)-(6), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition for rehearing 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 petition for rehearing 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 2732 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 petition for rehearing and that the Supreme Court of Nevada may impose sanctions for failing to timely file a petition for rehearing, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast-track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 4th day of October, 2022.

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/s/ Amy A. Porray

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Las Vegas, NV 89148
Telephone: (702) 871-6144
*Attorney for Appellant,
Bradley Bellisario*

CERTIFICATE OF SERVICE

I, an employee of LAW PRACTICE, LTD., hereby certify that on the 4th day of October, 2022, I served a true and correct copy of this Petition for Rehearing as follows:

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

Amanda Roberts, Esq.
Emily Bellisario

/s Amy A. Porray
AMY A. PORRAY

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Most respectfully, this Court has misapprehended the facts and law as concerns Brad's statutory and constitutional rights to visit with his children. Accordingly, this case should be remanded for a new visitation schedule in compliance with NRS 125C.010(1)(a).

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DATED this 4th day of October, 2022.

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*Attorney for Appellant,
Bradley Bellisario*

CERTIFICATE OF SERVICE

I, an employee of LAW PRACTICE, LTD., hereby certify that on the 4th day of October, 2022, I served a true and correct copy of this Petition for Rehearing as follows:

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

Amanda Roberts, Esq.
Emily Bellisario

/s Amy A. Porray
AMY A. PORRAY

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY JOHN BELLISARIO,

Appellant,

v.

EMILY BELLISARIO,

Respondent.

Supreme Court No.: 84128

PETITION FOR REHEARING

1. Name of Party filing this petition for rehearing:

Bradley John Bellisario

2. Name, law firm, address, and telephone number of attorney submitting this petition for rehearing:

Amy A. Porray, Esq.
Nevada Bar Number 9596
LAW PRACTICE, LTD.
5516 S. Ft. Apache Road, #110
Las Vegas, NV 89148
(702) 871-6144

3. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court in and for the County of Clark
District Court No.: D-20-605263-D

4. Name of judge issuing judgment or order appealed from:

Judge Mary D. Perry

5. Length of trial or evidentiary hearing.

One day.

6. Written order or judgment appealed from:

Findings of Fact, Conclusions of Law, and Decree of Divorce. Bradley (Brad is now filing a petition for rehearing following this Court's disposition after appeal.

7. Date that written notice of the appealed written judgment or order's entry was served:

December 23, 2021 – Findings of Fact, Conclusions of Law, and Decree of Divorce.

This Court's Order Affirming in Part, Reversing in Part, and Remanding was entered and served on September 16, 2022.

8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4),

(a) specify the type of motion, and the date and method of service of the motion, and date of filing:

N/A

(b) date of entry of written order resolving tolling motion:

N/A

9. Date notice of appeal was filed:

January 20, 2022.

10. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a).

11. Specify statute or rule governing the time limit for filing the instant petition for rehearing and due date:

NRAP 40. The due date is October 4, 2022. NRAP 40(a)(1).

12. 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 involve the same or some of the same parties to this appeal:

Order Affirming in Part, Reversing in Part, and Remanding. Entered, filed, and served on September 16, 2022. This is the Order predicated the instant petition for rehearing.

13. Procedural history. Briefly describe the procedural history of the case:

This Court is well familiar with the relevant procedural history of the instant case, having decided the appeal. Other than the disposition of this Court's Order, there is no relevance to procedural history. Therefore, Brad will not burden this Court nor opposing counsel with irrelevancies. Further, Brad will only address those issues he raises on rehearing.

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14. Standard of Review and Statement of facts Briefly set forth the facts material to the issues on appeal:

As with the procedural history, this Court is well familiar with the facts. Only those facts necessary for rehearing will be presented.

A. Standard of Review.

Under NRAP (a)(2), a petition for rehearing shall briefly and

state with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. . . . Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of

law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

Further,

(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.

(2) The court may consider rehearings in the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

NRAP 40(c)(1)-(2).

B. This Court misapprehended a material mistake of fact and law regarding the district court's Failure to Secure Brad's Presence at Brad's Divorce and Custody Trial.

Despite knowing that Brad was incarcerated in the Clark County Detention Center at the time of trial, the court proceeded with his custody and divorce trial without him. Respectfully, this Court has misapprehended both fact and law in making its decision.

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This Court found that no error occurred in having Brad’s custody and divorce trial without his presence.¹ This is despite this Court’s recognition that due process requires a “party to have notice and an opportunity to be heard”.² This Court’s decision addressed only that Brad had notice of the trial date and failed to obtain a continuance.³ This Court misapprehended the law by addressing the opportunity to be heard – not mentioning it at all.

The court knew that Brad was in custody at the Clark County Detention Center (CCDC), knew that CCDC was not transporting persons in custody on that particular day, and knew that CCDC was incapable that day of allowing for remote appearances. The court made this record prior to proceeding with the trial.

Yet, rather than having the court briefly continue this matter until CCDC could transport or accommodate remote means, this Court placed the onus on Brad. Further, this Court did not remand this issue for an evidentiary hearing as to Brad’s actual availability to request a continuance – if remote means are unable to occur, the assumption cannot be made that contact to seek a continuance could occur – this Court penalized Brad.⁴ Additionally, this Court decided inconsistently with *Ogawa v. Ogawa*, 125 Nev. 660, 673, 221 P.3d 699, 707-08 (2009), because

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Emily's counsel read all discovery into the trial/evidentiary record, as with a default, which the district court relied on and *Ogawa* prohibits.

Finally, prior to trial, on July 12, 2021, the court declared Brad a vexatious litigant.⁵ The imposed conditions presented that his *only* method of attempting to seek written continuance was to email to the court's law clerk for permission to file a motion/document. The law clerk then had the discretion to determine whether the request was meritorious. Then, the court/law clerk would email Brad to file the motion, and the matter would be heard in *due course*. 14AA3299.

Based on this Court's decision, reversal and a new trial must be granted. In the alternative, based on this Court's decision concluding well outside of Brad's argument, an evidentiary hearing should be granted.

C. This Court misapprehended a material mistake of fact and law regarding the district court's failure to enter a specific visitation schedule in accordance with the statutory requirement.

Respectfully, this Court misapprehended the facts and law when it upheld the district court's visitation schedule.⁶ This Court concluded the court's "order

⁵This Court upheld the court's vexatious litigant order.

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was sufficiently specific considering the circumstances present at the time.”⁷ In doing so, this Court has misapprehended MRS 125C.010(1)(a), public policy, and Brad’s fundamental constitutional rights to parent his children.

A custodial order must define a party’s visitation rights with a minor child with “sufficient particularity”, including specific times and “other terms of the right of visitation.” NRS 125C.010(1)(a). “Sufficient particularity” is defined as “a statement of the rights in absolute terms and not by the use of the term ‘reasonable’ or other similar terms which is susceptible to different interpretations by the parties.” *Id.* at (2). Parenting time must also be tied to the best interest factors in NRS 125C.0035(4). *Davis*, 131 Nev. at 452, 352 P.3d at 1143-44. This is not fluid.

The specific language of NRS 125C.010(1)(a),

NRS 125C.010 Order awarding visitation rights must define rights with particularity and specify habitual residence of child.

1. Any order awarding a party a right of visitation of a minor child must:

(a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved; and

(b) Specify that the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

➡ The order must include all specific times and other terms of the right of visitation.

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2. As used in this section, “sufficient particularity” means a statement of the rights in absolute terms and not by the use of the term “reasonable” or other similar term which is susceptible to different interpretations by the parties.

The court’s visitation schedule for Brad is as follows:

Upon Defendant’s criminal cases being complete, he shall have four (4) hours of supervised visitation at Family First at his cost, upon requesting same from the Court. The supervision shall be closely monitored whereby someone from Family First shall be able to hear all Defendant’s conversations with the minor children. If Family First determines there are inappropriate comments or behavior, Family First may immediately cut off supervised visitation for that visitation session, and may resume at the next regularly visitation period. (Video Timestamp 3:14:12, 3:14:30)

- Defendant shall not have any visitation until all of the criminal cases are resolved. (Video Timestamp 3:14:20)

20AA4921. What NRS 125C.010(1)(a) requires is specificity and terms. It does not allow for “sufficient[] specific[ity] consider in the circumstances at the time.”⁸

The vagueness and problematic language exists where conditions precedent for visitation come with criminal cases being “complete” and “resolved”. These terms are open to interpretation by the court, opposing counsel, and Emily. This flies in the face of statutory interpretation, public policy, and the Constitution. Also, Family First is given almost sole discretion over what constitutes an appropriate

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visit with Brad and his children. This is an abrogation of the Court's visitation duties to a third party. There is no specificity as to what constitutes "an inappropriate comment[] or behavior" by Family First. And, the court ordered four hours of Family First visitation, but did not specify whether that was multiple times weekly, monthly, bimonthly, or how often Brad was entitled to that visitation.

Finally, Brad, who the court has already declared a vexatious litigant, must first move the court before he can have any visitation with his children.

Most respectfully, this Court has misapprehended the facts and law as concerns Brad's statutory and constitutional rights to visit with his children. Accordingly, this case should be remanded for a new visitation schedule in compliance with NRS 125C.010(1)(a).

D. This Court misapprehended a material mistake of fact regarding the improperly extended Temporary Protective Order (TPO).

The TPO at issue is from a January 25, 2021, hearing, where Brad was in custody for alleged domestic violence (DV) against Emily allegedly occurring June 11, 2020. 4AA862. The TPO at issue on the January 25, 2021, hearing had already been dismissed by a different court⁹. 9AA2179. Brad was not transported or

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What this Court concluded on appeal was that Brad’s issue challenging the improper extension of the TPO had no merit because there was litigation after the extension of the TPO and before the extension. However, respectfully, what this Court has misapprehended is that when this Court subsequently discussed extension of the TPO with Brad, it would not allow him to defend himself against extension because of his pending criminal case. 9AA2187-88. Only if he was found not guilty, based solely on Emily ‘s allegations, would it revisit its rulings. *Id.* It refused to question him in his defense or otherwise allow him to defend himself. Accordingly, because the court would not allow him to defend against a TPO that had been dismissed – *but he was mistakenly arrested on* – this Court’s conclusion that there was motion practice and a hearing following the January 25, 2021, hearing and the entrance of the TPO extension is a misapprehension of the actual proceedings. The importance is far reaching, as the improper TPO affects his due process criminal case rights and prejudice to his child custody case. Accordingly, Brad respectfully requests that this Court grant rehearing.

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15. Conclusion

Based on the above and foregoing, Brad respectfully requests that this Court consider his petition for hearing and grant him relief. He requests that, where appropriate, the court's decision be reversed and otherwise the decision be remanded for an evidentiary hearing along with those ordered in this Court's original decision.

DATED this 4th day of October, 2022.

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/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
5516 South Ft. Apache, #110
Las Vegas, NV 89148
Telephone: (702) 871-6144
*Attorney for Appellant,
Bradley Bellisario*

VERIFICATION

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4)-(6), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition for rehearing 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 petition for rehearing 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 2732 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 petition for rehearing and that the Supreme Court of Nevada may impose sanctions for failing to timely file a petition for rehearing, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast-track statement is true and complete to the best of my knowledge, information, and belief.

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Nevada Bar Number 9596
5516 South Ft. Apache, #110
Las Vegas, NV 89148
Telephone: (702) 871-6144
*Attorney for Appellant,
Bradley Bellisario*

CERTIFICATE OF SERVICE

I, an employee of LAW PRACTICE, LTD., hereby certify that on the 4th day of October, 2022, I served a true and correct copy of this Petition for Rehearing as follows:

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

Amanda Roberts, Esq.
Emily Bellisario

/s Amy A. Porray
AMY A. PORRAY

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY JOHN BELLISARIO,

Appellant,

v.

EMILY BELLISARIO,

Respondent.

Supreme Court No.: 84128

PETITION FOR REHEARING

1. Name of Party filing this petition for rehearing:

Bradley John Bellisario

2. Name, law firm, address, and telephone number of attorney submitting this petition for rehearing:

Amy A. Porray, Esq.
Nevada Bar Number 9596
LAW PRACTICE, LTD.
5516 S. Ft. Apache Road, #110
Las Vegas, NV 89148
(702) 871-6144

3. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court in and for the County of Clark
District Court No.: D-20-605263-D

4. Name of judge issuing judgment or order appealed from:

Judge Mary D. Perry

5. Length of trial or evidentiary hearing.

One day.

6. Written order or judgment appealed from:

Findings of Fact, Conclusions of Law, and Decree of Divorce. Bradley (Brad is now filing a petition for rehearing following this Court's disposition after appeal.

7. Date that written notice of the appealed written judgment or order's entry was served:

December 23, 2021 – Findings of Fact, Conclusions of Law, and Decree of Divorce.

This Court's Order Affirming in Part, Reversing in Part, and Remanding was entered and served on September 16, 2022.

8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4),

(a) specify the type of motion, and the date and method of service of the motion, and date of filing:

N/A

(b) date of entry of written order resolving tolling motion:

N/A

9. Date notice of appeal was filed:

January 20, 2022.

10. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a).

11. Specify statute or rule governing the time limit for filing the instant petition for rehearing and due date:

NRAP 40. The due date is October 4, 2022. NRAP 40(a)(1).

12. 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 involve the same or some of the same parties to this appeal:

Order Affirming in Part, Reversing in Part, and Remanding. Entered, filed, and served on September 16, 2022. This is the Order predicated the instant petition for rehearing.

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This Court is well familiar with the relevant procedural history of the instant case, having decided the appeal. Other than the disposition of this Court's Order, there is no relevance to procedural history. Therefore, Brad will not burden this Court nor opposing counsel with irrelevancies. Further, Brad will only address those issues he raises on rehearing.

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14. Standard of Review and Statement of facts Briefly set forth the facts material to the issues on appeal:

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state with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. . . . Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of

law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

Further,

(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.

(2) The court may consider rehearings in the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

NRAP 40(c)(1)-(2).

B. This Court misapprehended a material mistake of fact and law regarding the district court's Failure to Secure Brad's Presence at Brad's Divorce and Custody Trial.

Despite knowing that Brad was incarcerated in the Clark County Detention Center at the time of trial, the court proceeded with his custody and divorce trial without him. Respectfully, this Court has misapprehended both fact and law in making its decision.

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This Court found that no error occurred in having Brad’s custody and divorce trial without his presence.¹ This is despite this Court’s recognition that due process requires a “party to have notice and an opportunity to be heard”.² This Court’s decision addressed only that Brad had notice of the trial date and failed to obtain a continuance.³ This Court misapprehended the law by addressing the opportunity to be heard – not mentioning it at all.

The court knew that Brad was in custody at the Clark County Detention Center (CCDC), knew that CCDC was not transporting persons in custody on that particular day, and knew that CCDC was incapable that day of allowing for remote appearances. The court made this record prior to proceeding with the trial.

Yet, rather than having the court briefly continue this matter until CCDC could transport or accommodate remote means, this Court placed the onus on Brad. Further, this Court did not remand this issue for an evidentiary hearing as to Brad’s actual availability to request a continuance – if remote means are unable to occur, the assumption cannot be made that contact to seek a continuance could occur – this Court penalized Brad.⁴ Additionally, this Court decided inconsistently with *Ogawa v. Ogawa*, 125 Nev. 660, 673, 221 P.3d 699, 707-08 (2009), because

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Emily's counsel read all discovery into the trial/evidentiary record, as with a default, which the district court relied on and *Ogawa* prohibits.

Finally, prior to trial, on July 12, 2021, the court declared Brad a vexatious litigant.⁵ The imposed conditions presented that his *only* method of attempting to seek written continuance was to email to the court's law clerk for permission to file a motion/document. The law clerk then had the discretion to determine whether the request was meritorious. Then, the court/law clerk would email Brad to file the motion, and the matter would be heard in *due course*. 14AA3299.

Based on this Court's decision, reversal and a new trial must be granted. In the alternative, based on this Court's decision concluding well outside of Brad's argument, an evidentiary hearing should be granted.

C. This Court misapprehended a material mistake of fact and law regarding the district court's failure to enter a specific visitation schedule in accordance with the statutory requirement.

Respectfully, this Court misapprehended the facts and law when it upheld the district court's visitation schedule.⁶ This Court concluded the court's "order

⁵This Court upheld the court's vexatious litigant order.

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A custodial order must define a party’s visitation rights with a minor child with “sufficient particularity”, including specific times and “other terms of the right of visitation.” NRS 125C.010(1)(a). “Sufficient particularity” is defined as “a statement of the rights in absolute terms and not by the use of the term ‘reasonable’ or other similar terms which is susceptible to different interpretations by the parties.” *Id.* at (2). Parenting time must also be tied to the best interest factors in NRS 125C.0035(4). *Davis*, 131 Nev. at 452, 352 P.3d at 1143-44. This is not fluid.

The specific language of NRS 125C.010(1)(a),

NRS 125C.010 Order awarding visitation rights must define rights with particularity and specify habitual residence of child.

1. Any order awarding a party a right of visitation of a minor child must:

(a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved; and

(b) Specify that the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

➤ The order must include all specific times and other terms of the right of visitation.

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2. As used in this section, “sufficient particularity” means a statement of the rights in absolute terms and not by the use of the term “reasonable” or other similar term which is susceptible to different interpretations by the parties.

The court’s visitation schedule for Brad is as follows:

Upon Defendant’s criminal cases being complete, he shall have four (4) hours of supervised visitation at Family First at his cost, upon requesting same from the Court. The supervision shall be closely monitored whereby someone from Family First shall be able to hear all Defendant’s conversations with the minor children. If Family First determines there are inappropriate comments or behavior, Family First may immediately cut off supervised visitation for that visitation session, and may resume at the next regularly visitation period. (Video Timestamp 3:14:12, 3:14:30)

- Defendant shall not have any visitation until all of the criminal cases are resolved. (Video Timestamp 3:14:20)

20AA4921. What NRS 125C.010(1)(a) requires is specificity and terms. It does not allow for “sufficient[] specific[ity] consider in the circumstances at the time.”⁸

The vagueness and problematic language exists where conditions precedent for visitation come with criminal cases being “complete” and “resolved”. These terms are open to interpretation by the court, opposing counsel, and Emily. This flies in the face of statutory interpretation, public policy, and the Constitution. Also, Family First is given almost sole discretion over what constitutes an appropriate

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visit with Brad and his children. This is an abrogation of the Court's visitation duties to a third party. There is no specificity as to what constitutes "an inappropriate comment[] or behavior" by Family First. And, the court ordered four hours of Family First visitation, but did not specify whether that was multiple times weekly, monthly, bimonthly, or how often Brad was entitled to that visitation.

Finally, Brad, who the court has already declared a vexatious litigant, must first move the court before he can have any visitation with his children.

Most respectfully, this Court has misapprehended the facts and law as concerns Brad's statutory and constitutional rights to visit with his children. Accordingly, this case should be remanded for a new visitation schedule in compliance with NRS 125C.010(1)(a).

D. This Court misapprehended a material mistake of fact regarding the improperly extended Temporary Protective Order (TPO).

The TPO at issue is from a January 25, 2021, hearing, where Brad was in custody for alleged domestic violence (DV) against Emily allegedly occurring June 11, 2020. 4AA862. The TPO at issue on the January 25, 2021, hearing had already been dismissed by a different court⁹. 9AA2179. Brad was not transported or

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present for the hearing, and his attorney has withdrawn. 4AA859-63. Upon learning this, the district court replied “Good.” *Id.* at 860. Emily’s counsel made all representations, asking that it be extended until May 2022. *Id.* at 862. The TPO was extended, with a written order entered on April 6, 2021. 9AA2166-69.

What this Court concluded on appeal was that Brad’s issue challenging the improper extension of the TPO had no merit because there was litigation after the extension of the TPO and before the extension. However, respectfully, what this Court has misapprehended is that when this Court subsequently discussed extension of the TPO with Brad, it would not allow him to defend himself against extension because of his pending criminal case. 9AA2187-88. Only if he was found not guilty, based solely on Emily ‘s allegations, would it revisit its rulings. *Id.* It refused to question him in his defense or otherwise allow him to defend himself. Accordingly, because the court would not allow him to defend against a TPO that had been dismissed – *but he was mistakenly arrested on* – this Court’s conclusion that there was motion practice and a hearing following the January 25, 2021, hearing and the entrance of the TPO extension is a misapprehension of the actual proceedings. The importance is far reaching, as the improper TPO affects his due process criminal case rights and prejudice to his child custody case. Accordingly, Brad respectfully requests that this Court grant rehearing.

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15. Conclusion

Based on the above and foregoing, Brad respectfully requests that this Court consider his petition for hearing and grant him relief. He requests that, where appropriate, the court's decision be reversed and otherwise the decision be remanded for an evidentiary hearing along with those ordered in this Court's original decision.

DATED this 4th day of October, 2022.

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/s/ Amy A. Porray

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5516 South Ft. Apache, #110
Las Vegas, NV 89148
Telephone: (702) 871-6144
*Attorney for Appellant,
Bradley Bellisario*

VERIFICATION

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4)-(6), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this petition for rehearing 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 petition for rehearing 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 2732 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 petition for rehearing and that the Supreme Court of Nevada may impose sanctions for failing to timely file a petition for rehearing, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast-track statement is true and complete to the best of my knowledge, information, and belief.

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Bradley John Bellisario

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

DATED this 4th day of October, 2022.

LAW PRACTICE, LTD.

/s/ Amy A. Porray

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Bradley Bellisario*

CERTIFICATE OF SERVICE

I, an employee of LAW PRACTICE, LTD., hereby certify that on the 4th day of October, 2022, I served a true and correct copy of this Petition for Rehearing as follows:

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

Amanda Roberts, Esq.
Emily Bellisario

/s Amy A. Porray
AMY A. PORRAY