

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 **NECHOLE GARCIA,**

4 Appellant,

5 **vs.**

6 **EVGENY SHAPIRO**

7 Respondent.

Electronically Filed
Jan 24 2022 05:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 83992

8 **DOCKETING STATEMENT**

9 **GENERAL INFORMATION**

10 **1. Judicial District:** Eighth Judicial District Court **Department:** N
11 **County:** Clark **Judge:** Hon. Matthew Harter
12 **District Court Docket No.:** D612006

13 **2. Attorney filing this docketing statement:**

14
15 Molly S. Rosenblum, Esq.
16 Sheila Tajbakhsh, Esq.
17 Rosenblum Allen Law Firm
18 376 East Warm Springs Rd, Ste. 140
19 Las Vegas Nevada 89119
20 702-433-2889
21 702-425-9642 (fax)
22 Counsel for Appellant NECHOLE GARCIA

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

24 Jennifer Isso, Esq.

25 **4. Nature of the disposition below (list all that apply):**

- 26 a. An order regarding a custodial schedule for a child who suffers from
27 Autism Spectrum Disorder (ASD);
28 b. An order regarding a holiday and vacation schedule;

- c. An order regarding child support; and
- d. An order denying the request for a finding of willful underemployment on the parties of Plaintiff/Respondent.

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

Child Custody involving a child with significant special needs.

6. Pending and prior proceedings in this court.

N/A

7. Pending and prior proceedings in other courts.

None, other than the court listed in response to Question 1, *supra*.

8. Nature of the action:

The parties engaged in lengthy, protracted litigation regarding custody of the minor child they have in common, which ultimately resulted in the parties coming before the District Court for a two (2) day custody trial. This matter involves a minor child with an ASD diagnoses and significant medical needs. This litigation involved multiple expert witnesses and reports.

9. Issues on appeal:

- a. Whether the district court abused its discretion in failing to consider any additional factors regarding the minor child's best interest when the child has special needs;
- b. Whether the district court abused its discretion in adopting a rotating 2/2/3 custodial schedule, even after treating medical professional and retained experts testified, and, the evidence submitted demonstrated, that an inconsistent, rotating schedule would be difficult for this special needs child in light of her diagnoses;

- 1 c. Whether the district court erred in refusing to consider the entirety of
2 admitted evidence; namely, the extensive Talking Parents communications
3 between the parties;
- 4 d. Whether the district court abused its discretion by refusing to consider
5 evidence of Respondent/Plaintiff's willful underemployment; and
- 6 e. Whether the district court erred in refusing to consider admitted evidence;
7 namely, the bank statements of Respondent/Plaintiff prior to making a
8 decision on Respondent/Plaintiff's willful underemployment
- 9 f. Whether the district court erred by refusing to dispose of Defendant's claims
10 for child support arrears.

11 **10. Pending proceedings in the court raising the same or similar issue.**

12 None applicable at this time.

13 **11. Constitutional issues. If this appeal challenges the constitutionality of a**
14 **statute, and the state, any state agency, or any officer or employee**
15 **thereof is not a party to this appeal, have you notified the clerk of this**
16 **court and the attorney general in accordance with NRAP 44 and NRS**
17 **30.130?**

18 N/A.

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

- 20 • **A substantial issue of first impression**
21 • **An issue of public policy**

22 This appeal involves the following substantial issue of first impression:

- 23 1. Whether the best interest factors set forth in NRS 125C are sufficient to
24 address the custody of special needs child.

25 This appeal involves the following issue of public policy:

- 26 1. When deciding the custody of a special needs child, should additional
27 factors be considered along with those already set forth in NRS 125C?
28

1 **13. Trial. If this action proceeded to trial, how many days did the trial last?**

2 The trial lasted two (2) full days.

3 **14. Judicial disqualification. Do you intend to file a motion to disqualify or**
4 **have a justice recuse him/herself from participating in this appeal? If**
5 **so, which Justice?**

6 N/A.

7
8 **TIMELINESS OF NOTICE OF APPEAL**

9 **15. Date of entry of written judgment or order appeal from:**

10 The Decision and Order was issued on December 15, 2021 and then entered
11 December 16, 2021.

12 **16. Date written notice of entry of judgment or order served:**

13 December 16, 2021.

14 **(a) Was service by delivery or mail?**

15 The above-referenced Order was e-served.

16
17 **17. If the time for filing the notice of appeal was tolled by a post-judgment**
18 **motion (NRCP 50(b), 52(b), or 59) (Attach copies of all tolling motions)**
19 **(Motions pursuant to NRCP 60 or motions for rehearing or**
20 **reconsideration do not toll the time for filing a notice of appeal):**

21 N/A.

22
23 **18. Date notice of appeal was filed:**

24 December 18, 2021

25
26 **(a) If more than one party has appealed from the judgment or order,**
27 **list date each notice of appeal was filed and identify by name the**
28 **party filing the notice of appeal:**

Only Appellant has appealed from the order.

19. Specify statute or rule governing the time limit for filing the notice of appeal:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

NRS 2.090; NRAP 3A(b)(1)

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

NRS 2.090 provides a basis for appeal as the matter in dispute is embraced in the general jurisdiction of the Supreme Court and the orders appealed from involve the merits and they necessarily affect the judgment. The order appealed from was a final order after a bench trial.

NRAP 3A(b)(1) provides a basis for appeal as the orders appealed from are final orders which were entered in an action commenced in the court in which judgment was rendered. The order appealed from was a final order after a bench trial.

21. List all parties to the action in the district court:

Appellant / Plaintiff Nechole Garcia
Respondent / Defendant Evgeny "Eugene" Shapiro

(a) 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:

N/A.

1 **22. Give a brief description (3 to 5 words) of each party's separate claims,**
2 **counterclaim, cross claims or third-party claims, and the date of**
3 **disposition of each claim.**

4 Appellant/Defendant filed a Counterclaim for the following:

- 5 a. Joint legal and primary physical custody of the minor child
 - 6 1. Appellant/Defendant stipulated to joint physical custody during
 - 7 the pending litigation; although, no permanent stipulation and order
 - 8 was entered regarding the same, until the Decision and Order awarded
 - 9 the parties joint legal and joint physical custody on December 16,
 - 10 2021.
- 11 b. Child support
 - 12 1. Appellant/Defendant was ordered to pay Respondent/Plaintiff
 - 13 child support in the Decision and Order entered December 16, 2021
- 14 c. Underemployment of the Respondent/Plaintiff
 - 15 1. The court failed to make a finding of underemployment of
 - 16 Respondent/Plaintiff after refusing to consider evidence provided in
 - 17 the Decision and Order entered December 16, 2021.
- 18 d. Attorney's fees
 - 19 1. The parties submitted briefs for fees after the Decision and
 - 20 Order was entered; however, on December 29, 2021 the court entered
 - 21 an order deferring the issue of fees until after the disposition of the
 - 22 underlying Appeal.
- 23 e. Child Support Arrears
 - 24 1. Both parties requested child support arrears; however, the
 - 25 Decision and Order entered December 16, 2021 only addressed
 - 26 Plaintiff's request for arrears, denying the same. The Court did not
 - 27 address Defendant's request for child support arrears.
 - 28

22 Respondent/Plaintiff filed a Complaint for Custody requesting the
23 following:

- 24 a. Joint legal and joint physical custody of the minor child
 - 25 1. The Decision and Order entered December 16, 2021 prescribed
 - 26 joint legal and joint physical custody; the parties stipulated to the
 - 27 same prior to trial.
- 28 b. Child support
 - 1. Appellant/Defendant was ordered to pay Respondent/Plaintiff
 - child support in the Decision and Order entered December 16, 2021

c. Attorney's fees

1. The parties submitted briefs for fees after the Decision and Order was entered; however, on December 29, 2021 the court entered an order deferring the issue of fees until after the disposition of the underlying Appeal.

23. 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 below?

Yes.

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

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A.

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

N/A.

(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?

N/A.

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review:

N/A.

26. 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

The following are attached hereto:

- Ex. 1: Complaint for Custody
- Ex. 2: Answer and Counterclaim for Custody
- Ex. 3: Decision and Order after Trial
- Ex. 4: Notice of Entry of Decision and Order after Trial
- Ex. 5: Minute Order Regarding Attorney's Fees December 29, 2021

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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.

DATED this 24th day of January 2022



ROSENBLUM ALLEN LAW FIRM

Molly Rosenblum, Esq.

Nevada Bar No. 8242

Sheila Tajbakhsh, Esq.

Nevada Bar No. 15343

376 East Warm Springs Rd, Ste. 140

Las Vegas Nevada 89119

702-433-2889

702-425-9642 (fax)

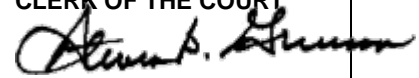
Counsel for Appellant NECHOLE GARCIA

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Jennifer Isso, Esq.
2470 Saint Rose Parkway #306F
Henderson, NV 89074
Attorney for Plaintiff/Respondent


An Employee of Rosenblum Allen Law Firm

Exhibit 1



COMC
ISSO & HUGHES LAW FIRM, LLC
JENNIFER ISSO, ESQ.
Nevada Bar No. 13157
2470 St. Rose Parkway, #306f
Henderson, NV 89074
ji@issohugheslaw.com
(702) 434-4424
Attorney for Plaintiff

CASE NO: D-20-612006-C
Department: To be determined

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

EVGENY SHAPIRO,

Plaintiff,

vs.

NECHOLE GARCIA,

Defendant.

CASE NO.:

DEPT. NO.:

COMPLAINT

COMES NOW Plaintiff, EVGENY SHAPRIO, by and through his attorney JENNIFER ISSO, ESQ. of the ISSO & HUGHES LAW FIRM, as and for a Complaint against Defendant, and alleges as follows:

1. That Plaintiff, for a period of time of more than six weeks immediately preceding the filing of this action, has been and now is an actual, bona fide resident of the State of Nevada, County of Clark, and has been actually physically present and domiciled in Nevada for more than six (6) weeks prior to filing of this action.
2. That Defendant is a resident of the State of Nevada.
3. That Plaintiff and Defendant have one child, the issue of this relationship, to wit: Ava Garcia-Shapiro, born 9/26/2018.
4. The habitual residence of the children has been the State of Nevada.

- 1 5. The Paternity of the minor child is not at issue.
- 2 6. Plaintiff is not currently pregnant.
- 3 7. That no Court has ever issued an order regarding the custody or visitation of the
- 4 minor child.
- 5 8. Plaintiff is a fit and proper person to be awarded JOINT LEGAL CUSTODY of
- 6 the minor child.
- 7 9. Plaintiff is a fit and proper person to be awarded JOINT PHYSICAL
- 8 CUSTODY of the minor child.
- 9 10. That the parties separated in July 2020.
- 10 11. That Defendant is now unreasonably withholding the child from Plaintiff.
- 11 12. That pursuant to EDCR 5.07, Plaintiff and Defendant shall each successfully
- 12 complete the Transparenting Class within 45 days of service of the initial
- 13 complaint or petition upon Defendant, and that no action shall proceed to final
- 14 hearing until a notice of completion of the class has been filed with the court,
- 15 provided that noncompliance by a parent who does not enter an appearance shall
- 16 not delay a final hearing.
- 17 13. That Plaintiff be awarded child support consistent with Nevada law.
- 18 14. That Defendant should maintain medical and dental insurance for the minor
- 19 children, if available. Any unreimbursed medical, dental optical, orthodontic or
- 20 other health related expenses incurred for the benefit of the minor children is to
- 21 be divided equally between the parties. Either party incurring an out-of-pocket
- 22 expense shall provide a copy of the invoice/receipt to the other party within
- 23 thirty (30) days of incurring such expense. If the paid invoice/receipt is not
- 24 tendered within the thirty (30) day period, the Court may consider it as a waiver
- 25 of reimbursement by the incurring party. The other party will then have thirty
- 26 (30) days within which to dispute the expenses or reimburse the incurring party
- 27 for one-half of the out-of-pocket expenses. If not disputed or paid within the
- 28

thirty (30) day period, the party may be subject to a finding of contempt and appropriate sanctions.

15. It has become necessary for Plaintiff to engage the services of Isso & Hughes Law Firm to prosecute this action; and therefore, the Plaintiff is entitled to recover reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff prays for judgement as follows:

1. That the Court grant the relief requested in this Complaint;
2. That Plaintiff is awarded joint legal custody and joint physical custody;
3. That the Plaintiff is awarded child support;
4. That Plaintiff is awarded attorney's fees and costs;
5. For such other relief as the Court finds to be just and proper.

DATED this 7th day of August, 2020

Respectfully submitted:
ISSO & HUGHES LAW FIRM, LLC
/s/ Jennifer Isso, Esq.
JENNIFER ISSO, ESQ.
Nevada Bar No. 13157
Attorney for *Plaintiff*

VERIFICATION OF EVGENY SHAPIRO

COMES NOW, EVGENY SHAPIRO, and under penalty of perjury declares as follows:

1. That I am the Plaintiff in the above-captioned matter.
2. That I have read the contents of the foregoing Complaint, and that I am competent to testify as to the matters set forth herein based on my own knowledge except to those matters stated upon information and belief.
3. That those facts as set forth in this Complaint are true and correct to the best of my knowledge and are incorporated by reference as though fully set forth herein so as not to submit duplicative content to this Court.
4. That I am requesting joint physical custody and joint legal custody of my children, and child support. Further, I am requesting attorney's fees and costs.

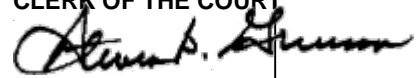
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 7th of August, 2020.

/s/ Evgeny Shapiro
EVGENY SHAPIRO

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Exhibit 2



1 ANSC

2 **ROSENBLUM LAW OFFICES**
3 **MOLLY ROSENBLUM, ESQ.**

4 Nevada Bar No. 08242

5 7375 S Pecos Rd, Ste 101

6 Las Vegas, NV 89120-3773

7 (702) 433-2889—Phone

8 (702) 425-9642—Fax

9 Email: staff@rosenblumlawlv.com

10 Attorney for Defendant

11 **DISTRICT COURT—FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 **EVGENY SHAPIRO,**

14 **Plaintiff,**

15 **vs.**

16 **NECHOLE GARCIA,**

17 **Defendant.**

Case No.: D-20-612006-C

Dept. No.: N

18 **ANSWER AND COUNTERCLAIM**

19 COMES NOW, the Defendant, **NECHOLE GARCIA**, and hereby
20 answers to Plaintiff's Complaint for Custody as follows:

21 1. Answering paragraphs 1, 2, 3, 4, 5, 6, 7, 8 of Plaintiff's Complaint
22 on file herein, Defendant admits the same.

23 2. Answering paragraphs 9, 10, 11, 12, 13, 14 and 15 of Plaintiff's
24 Complaint on file herein, Defendant denies the same.

25 **COUNTERCLAIM**

26 COMES NOW, Defendant/Counterclaimant, **NECHOLE GARCIA**, by and
27 through her counsel of record, **MOLLY ROSENBLUM, ESQ.**, and hereby
28 counterclaims as follows:

I.

For more than six (6) weeks immediately preceding the commencement of this action, Defendant/Counterclaimant has been and now is a bona fide and actual resident and domiciliary of the State of Nevada, County of Clark, and has been actually and corporeally present in said State and County for more than six (6) weeks prior to the commencement of this action.

II.

That to Defendant/Counterclaimant's knowledge Plaintiff/Counterdefendant has been and is now a bona fide and actual resident and domiciliary of the State of Nevada, County of Clark, and has been actually and corporeally present in said State and County for more than six (6) weeks prior the commencement of this action.

III.

That the parties were never married, but there is one minor child born the issue of their relationship to wit: AVA GARCIA-SHAPIRO born September 26, 2018; there are no minor adopted children the issue of the parties' relationship; and Defendant/Counterclaimant is not pregnant.

IV.

That AVA has continuously resided in the State of Nevada, County of Clark the last six (6) months prior to the filing of Plaintiff/Counterdefendant's Complaint for Custody and that pursuant to the UCCJEA, Nevada is the Home State of the minor child.

V.

That Plaintiff/Counterdefendant is identified as the Natural Father on AVA's birth certificate and therefore, paternity is conclusively established pursuant to NRS 126.

1 VI.

2 That there are no other proceedings in any other jurisdiction regarding the
3 minor child at issue in this matter.

4 VII.

5 That the parties are fit and proper persons to have joint legal custody of
6 the minor child. Joint legal custody shall be defined as:

7 a. The parents shall consult and cooperate with each other
8 in substantial questions relating to religious upbringing, educational
9 programs, significant changes in social environment and the health
10 of the children.

11 b. Each parent shall be empowered to obtain emergency
12 health care for the child without the consent of the other parent. Each
13 parent is to notify the other parent as soon as reasonably possible of
14 any illness or injury requiring medical attention or any emergency
15 involving the child.

16 c. Each parent is to provide the other parent, upon receipt,
17 information concerning the well-being of the child, including but not
18 limited to, copies of report cards; school meeting notices; vacation
19 schedules; class programs, requests for conferences, results of
20 standardized or diagnostic tests; notices of activities involving the
21 child; samples of school work; order form for school pictures; all
22 communication from health care providers; regular day care
23 providers and counselors.

24 d. Each parent is to advise the other parent of school,
25 athletic and social events in which the child participates. Both parties
26 may participate in activities for the child such as open house,
27 attendance at an athletic event, etc.

28 e. Each parent is to provide the other parent with the
telephone number and address at which the minor children may be
reached, and to notify the other parent 14 days prior to any change in
telephone number or address and provide the number as soon as is
possible.

1 f. The parents shall have access to medical and school
2 records pertaining to their children and be permitted to independently
3 consult with any and all professionals involved with them.

4 g. Each parent is to provide the other parent with a travel
5 itinerary when on vacation with the child, and whenever possible,
6 telephone numbers at which the children can be reached.

7 h. The parents agree to communicate directly regarding
8 the needs and well-being of their children and not to use the children
9 as mediators or communicators regarding parental issues.

10 VIII.

11 That the Defendant/Counterclaimant is a fit and proper person to be
12 awarded primary physical custody of the minor child at issue herein subject to
13 Plaintiff/Counterdefendant's reasonable rights of visitation.

14 IX.

15 That the Defendant/Counterclaimant should be awarded de facto primary
16 physical custody of the minor child at issue herein as the
17 Plaintiff/Counterdefendant has not participated in the day-to-day of the minor
18 child nor has Plaintiff/Counterdefendant consistently spent more than 67.5 hours
19 per week or 40% of the time since the birth of the minor child caring for the
20 minor child.

21 X.

22 That Plaintiff/Counterdefendant should be obligated to pay child support
23 to Defendant/Counterclaimant consistent with LCB File No. R183-18, which
24 states, in pertinent part:
25

26 **Sec. 15.** Except as otherwise provided in section 16 of this regulation, the base child
27 support obligation of an obligor must be determined according to the following
28 schedule: 1. For one child, the sum of: (a) For the first \$6,000 of an obligor's
monthly gross income, 16 percent of such income; (b) For any portion of an

1 obligor's monthly gross income that is greater than \$6,000 and equal to or less than
2 \$10,000, 8 percent of such a portion; and (c) For any portion of an obligor's monthly
3 gross income that is greater than \$10,000, 4 percent of such a portion. 2. For two
4 children, the sum of: --10-- LCB Draft of Proposed Regulation R183-18 (a) For the
5 first \$6,000 of an obligor's monthly gross income, 22 percent of such income; (b)
6 For any portion of an obligor's monthly gross income that is greater than \$6,000 and
7 equal to or less than \$10,000, 11 percent of such a portion; and (c) For any portion
8 of an obligor's monthly gross income that is greater than \$10,000, 6 percent of such
9 a portion. 3. For three children, the sum of: (a) For the first \$6,000 of an obligor's
10 monthly gross income, 26 percent of such income; (b) For any portion of an
11 obligor's monthly gross income that is greater than \$6,000 and equal to or less than
12 \$10,000, 13 percent of such a portion; and (c) For any portion of an obligor's
13 monthly gross income that is greater than \$10,000, 6 percent of such a portion. 4.
14 For four children, the sum of: (a) For the first \$6,000 of an obligor's monthly gross
15 income, 28 percent of such income; (b) For any portion of an obligor's monthly
16 gross income that is greater than \$6,000 and equal to or less than \$10,000, 14
17 percent of such a portion; and (c) For any portion of an obligor's monthly gross
18 income that is greater than \$10,000, 7 percent of such a portion. 5. For each
19 additional child, the sum of: (a) For the first \$6,000 of an obligor's monthly gross
20 income, an additional 2 percent of such income; (b) For any portion of an obligor's
21 monthly gross income that is greater than \$6,000 and equal to or less than \$10,000,
22 an additional 1 percent of such a portion; and --11-- LCB Draft of Proposed
23 Regulation R183-18 (c) For any portion of an obligor's monthly gross income that is
24 greater than \$10,000, an additional 0.5 percent of such a portion.

25 **Sec. 16.** 1. If the court determines that the total economic circumstances of an
26 obligor limit his or her ability to pay a child support obligation in the amount
27 determined pursuant to section 15 of this regulation, the child support obligation
28 must be established by using a low income schedule which is based on the current
federal poverty guidelines, as determined by the Secretary of Health and Human
Services, and which is published annually in the Federal Register. 2. If the monthly
gross income of an obligor is below the lowest level set forth in the low income
schedule, the court may establish an appropriate child support obligation based on
the total economic circumstances of the obligor, balancing his or her need for self-
support with the obligation to support his or her child. 3. The low-income schedule
must be published by the Administrative Office of the Courts on or before March 31
of each year.

29 **Sec. 17.** 1. Any child support obligation may be adjusted by the court in accordance
30 with the specific needs of the child and the economic circumstances of the parties
31 based upon the following factors and specific findings of fact: (a) Any special
32 educational needs of the child; (b) The legal responsibility of the parties for the
33 support of others; (c) The value of services contributed by either party; (d) Any
34 public assistance paid to support the child; (e) The cost of transportation of the child
35 to and from visitation; (f) The relative income of both households; --12-- LCB Draft
36 of Proposed Regulation R183-18 (g) Any other necessary expenses for the benefit of
37 the child; and (h) The obligor's ability to pay. 2. The court may include benefits

1 received by a child pursuant to 42 U.S.C. § 402(d) based on a parent's entitlement to
2 federal disability or old-age insurance benefits pursuant to 42 U.S.C. §§ 401 to 433,
3 inclusive, in the parent's gross income and adjust an obligor's child support
4 obligation by subtracting the amount of the child's benefit. In no case may this
adjustment require an obligee to reimburse an obligor for any portion of the child's
benefit.

5 Here, Plaintiff/Counterdefendant's gross monthly income is approximately
6 \$2,500. Therefore, Plaintiff/Counterdefendant's child support obligation to
7 Defendant/Counterclaimant shall be \$400 per month.

8 **XI.**

9 That Defendant/Counterclaimant is entitled to constructive arrears in the
10 amount of approximately \$9,543.79. Defendant/Counterclaimant reserves the
11 right to supplement as more information becomes available.

12 **IX.**

13 That both parties shall be required to carry health insurance for the minor
14 child, so long as it is reasonably available through their respective employers
15 employer or other means at a reasonable cost. That any and all unreimbursed
16 medical expenses shall be divided pursuant to the 30/30 Rule. That any
17 unreimbursed medical, dental, optical, orthodontic or other health related
18 expenses incurred for the benefit of the minor child is to be divided equally
19 between the parties. Either party incurring an out of pocket medical expense for
20 the child shall provide a copy of the paid invoice/receipt to the other party within
21 thirty (30) days of incurring said expense, and if not tendered within thirty (30)
22 days, the Court may consider it has a waive of a right to reimbursement. The other
23 party will then have thirty (30) days from receipt which to dispute the expense in
24 writing or reimburse the other party for one-half (1/2) the out of pocket expense.
25 If not disputed or paid within the thirty (30) day period, the party may be subject
26 to a finding of contempt. Further, if the payment by the payer parent is made by
27 credit card, payer parent must also provide to the other parent proof from the
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1 issuing credit card company that the particular credit card used was not a Health
2 Savings Account (HSA), otherwise, payment will be treated as though covered by
3 insurance and not considered an out of pocket expense subject to reimbursement.

4 **X.**

5 That the Defendant/Counterclaimant shall be entitled to claim the child for
6 purposes of the minor child tax deduction every year.

7 **XI.**

8 That Defendant/Counterclaimant has been required to engage the services
9 of an attorney to institute and prosecute this action against the
10 Plaintiff/Counterdefendant, and therefore reserves his right to request reasonable
11 attorney's fees from this court.

12 **WHEREFORE**, Defendant prays for judgment as follows:

- 13 1. That Defendant/Counterclaimant be awarded an absolute Decree Of
14 Custody from Plaintiff/Counterdefendant;
15 2. That the relief requested herein be granted.
16 3. For such other and further relief that the Court may deem just and
17 proper.

18 DATED this 13th day of August 2020

19
20 ROSENBLUM LAW OFFICES

21
22 
23 **MOLLY S. ROSENBLUM, ESQ.**

24 Nevada Bar No. 08242

25 7375 S Pecos Rd, Ste 101

26 Las Vegas, NV 89120-3773

27 Attorney for Defendant
28

VERIFICATION

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

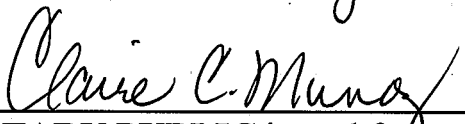
NECHOLE GARCIA, first being duly sworn, deposes and says:

That she is the Defendant in the above-entitled action; that he has read the above and foregoing "Answer and Counterclaim" and knows the contents thereof; and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes them to be true.

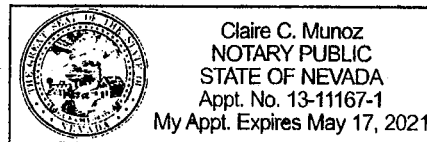


NECHOLE GARCIA

SUBSCRIBED and SWORN before
me this 13th day of August, 2020



NOTARY PUBLIC in and for
said County and State



1 was made, **Friday, August 14, 2020** by:

2
3 **E-FILE ELECTRONIC SERVICE**

4 Pursuant to NEFCR 9(d), by electronic service through the Eighth
5 Judicial District Court's e-Filing System (EFS), addressed to the
6 following registered users:

7 Jennifer Isso, Esq.
8 2470 Saint Rose Pkwy Ste 306F
9 Henderson, NV 89074
10 ji@issohugheslaw.com
11 *Attorney for Plaintiff*

12 **ELECTRONIC SERVICE**

13 Facsimile, addressed to:

14 E-Mail, addressed to:

15
16 **MAIL**

17 Depositing a copy of the same in the U.S. Mails at Las Vegas,
18 Nevada, postage prepaid, addressed to


19
20
21
22 
23 An Employee of ROSENBLUM LAW OFFICES
24
25
26
27
28

Exhibit 3

Eighth Judicial District Court

Family Court

Clark County, Nevada

EVGENYSHAPIRO,

Plaintiff,

vs.

NECHOLE GARCIA,

Defendant.

Case: D-20-612006-C

Dept: N

Trial Dates: 11/03/2021 & 11/05/2021

DECISION AND ORDER

The parties were never married, but have 1 minor child: AVA GARCIA-SHAPIRO (09/26/2018). The matter was set for a custody trial. After the first day of trial on 11/04/2021, this Court had a teleconference on the record with both counsel as the parties had stipulated on the first day of trial a few times that they would maintain joint legal custody and joint physical custody. NRS 125C.0025(1)(a) (there is a preference for joint physical custody if the parents agreed so in open court at a hearing to determine physical custody). The Court during the call noted that their time would be best spend on focusing on the *unresolved* issues (best weekly timeshare for this family, child support, *etc.*). However, to no avail, the second day of trial proceeded similar to the first day—each party *unnecessarily* attacking each other, experts, and bolstering themselves. In fact, this continued on through the Closing Briefs.

The parties submitted pre-trial memorandums. The parties and other witnesses testified and exhibits were submitted. This Court took detailed notes during the trial. At the close of trial, this Court indicated it preferred written closing briefs and requested tax returns for assistance in determining a child support obligation. The Court then took the matter under advisement. The parties extended the time to submit Closing Briefs via Stipulation and Order on 11/16/2021.

I. Custody/Visitation Schedule

The Court has held that the district court must consider *the best interest of the child* when determining custody/visitation schedules and it has “vast discretionary powers” to do so. *Prins v. Prins*, 88 Nev. 261, 263, 496 P.2d 165, 166 (1972); *See also Hern v. Erhardt*, 113 Nev. 1330, 948 P.2d 1195 (1997).

NRS 125C.0035(4) states:

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

- (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.
- (b) Any nomination of a guardian for the child by a parent.
- (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
- (d) The level of conflict between the parents.
- (e) The ability of the parents to cooperate to meet the needs of the child.
- (f) The mental and physical health of the parents.
- (g) The physical, developmental and emotional needs of the child.
- (h) The nature of the relationship of the child with each parent.
- (i) The ability of the child to maintain a relationship with any sibling.
- (j) Any history of parental abuse or neglect of the child or a sibling of the child.
- (k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
- (l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

First, the Court REMINDS the parties that the burden of proof in domestic relations cases is *the preponderance of the evidence standard* (i.e., proof by 50.00001%), which is a far lower legal standard than Defendant uses a prosecutor. Considering the following mandatory factors, this Court FINDS that:

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

Not applicable. Both parties agreed the child at issue was of insufficient age.

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

Not applicable. Both parties agreed this factor did not apply to this case.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the non-custodial parent

This factor favors Plaintiff. Until this Court became involved, evidence submitted indicated Defendant would frequently only allow Plaintiff to watch AVA at her house with cameras activated. It was rare that Defendant would allow Plaintiff unfettered access to AVA. “[T]here is a presumption that fit parents act in the best interests of their children.” *Troxel v. Granville*, 530 U.S. 57, 68, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

(d) The level of conflict between the parents

This factor has been *high* to date. It is hoped it will de-escalate over time now that the trial is complete. This is the reasoning behind this Court ORDERING that the parties enroll in the

1 Our Family Wizard (“OFW”) Website program for communication purposes. The parties are
2 ORDERED to remain enrolled and continue to use the OFW program until further order of this
3 Court. This Court is going to additionally ORDER that the parties enroll and complete the
4 UNLV Cooperative Parenting Course within 6 months. (Informational brochure can be obtained
5 from this Court’s department.) Plaintiff’s request that a Parenting Coordinator (PC) be appointed
6 is DEFERRED. Anytime after the UNLV course is completed, if the parties are still having co-
7 parenting issues, either side may submit an *ex parte* application explaining the current need(s) for
8 a PC and the Court will consider ordering it. *See Harrison v. Harrison*, 132 Nev. 564, 376 P.3d
9 173 (2016) (acknowledging the benefits of parenting coordinators in high conflict cases). IT IS
10 NOTED that if ultimately ordered, the cost of the PC will be apportioned pursuant to the parties’
11 incomes noted below. The PC will have the authority to recommend reimbursement by a party
12 from the other party if they determine one party is *clearly* was more at fault for the issue
13 necessitating the PC’s services.

14 **(e) The ability of the parents to cooperate to meet the needs of the child**

15 Related to the prior subfactor, the parents’ ability to cooperate is *low* as the level of
16 conflict is *high*. However, there was insufficient evidence that ultimately the parties did not meet
17 the specialized needs of AVA.

18 **(f) The mental and physical health of the parents**

19 No evidence was submitted on this factor regarding Plaintiff. Plaintiff obtained notes from
20 Defendant’s treating therapist (which were sealed by this Court). There is insufficient proof either
21 party’s mental or physical health effected their ability to parent AVA.

22 **(g) The physical, developmental, and emotional needs of the child**

23 A custody evaluation was ordered to be conducted by Dr. Bergquist. EDCR 5.305(b).
24 She issued her report on February 19, 2021. Dr. Bergquist recommended “the parents share legal
25 and physical custody of AVA, with Defendant receiving more time (*i.e.*, 55/45 or 60/40).”
26 Court’s Exhibit 1, p. 32: *See* 5.304(b). It is noted that Defendant’s own expert testified that he
27 had never seen a custody evaluation recommending percentages of times. *JAVS 11/03/2021 at*
28 *09:57*. AVA was subsequently assessed with having Autism Spectrum Disorder (ASD), mild to
moderate. This was confirmed by Dr. Gaspar (ASD L1, with communication/speech delays).

1 During this time period, the parties have enrolled AVA in a myriad of services (e.g. Firefly
2 Behavioral for ABA therapy) to assist her which continue to date. Defendant testified that she
3 has recently noticed some issues with AVA's gait.

4 **(h) The nature of the relationship of the child with each parent**

5 *Not applicable.* There was not sufficient evidence submitted that would insinuate the
6 child had a better or worse relationship with either parent.

7 **(i) The ability of the child to maintain a relationship with any sibling**

8 Plaintiff has 2 other children with whom he has parenting time every other weekend.
9 AVA is Defendant's only child. The schedule ordered below took this factor into consideration to
10 maximize the siblings time together.

11 **(j) Any history of parental abuse or neglect of the child or a sibling of the child**

12 *Not applicable.* No sufficient evidence was submitted on this factor.

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

15 *Not applicable.* No sufficient evidence was submitted on this factor.

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

17 *Not applicable.* No sufficient evidence was submitted on this factor.

18 **Analysis**

19 As noted above, the issue at hand is truly *not* as complex as the case was presented. Both
20 parties testified that their work week is Monday through Thursday. Each party has their mother
21 watch AVA if they are unavailable. Defendant wants the current schedule to remain in place and
22 Plaintiff wants the more common 2-2-3 schedule. Defendant's foremost reasoning in her Closing
23 Brief about Plaintiff's proposed schedule is it will require 1-2 more exchanges which may
24 exacerbate the parties' conflict. Fact is it gives Plaintiff 1 less day over a 2 week period and he
25 never has AVA on any Saturdays. This is not about giving either party the schedule they desire, it
26 is about what is in AVA's *best interest*. This Court has indicated from the day it took the bench it
27 does *not* automatically "rubber stamp" the outsourced evaluator's recommendations. This is one
28 of those cases. After going through the trial and the underlying record, this Court cannot find
why the current schedule is better for AVA than the standard 2-2-3 schedule. This is not about

1 attaining 50/50 for each parent. This is also not about child support as Defendant would be
2 obligated under a 60/40 schedule. It was simply not proven to this Court with sufficient evidence
3 that the current schedule or any 55/45 or 60/40 schedule was in AVA's best interest. Although
4 these are one of the most divergent set of parents this Court has had an in depth trial on, they are
5 both good parents actively seeking what is best for AVA. As the parties have identical workday
6 schedules, each party should share Friday, Saturday, and Sunday weekends with AVA. Further, a
7 2-2-3 schedule allows for Plaintiff's other children to bond with AVA on the limited 4 days per
8 month they are with him. NRS 125C.0035(j). Additionally, it is noted that Plaintiff has
9 graciously proposed giving Defendant any 5th weekends with AVA.

10 For these reasons and the factors above, this Court CONCLUDES that it would be *in the*
11 *best interest of the child* that the better choice of the 2 proposed options is the 2-2-3 schedule
12 (with the receiving party providing the transportation) as follows:

13 Weeks 1 & 3 and any 5th weeks:

14 Monday-Tuesday: Plaintiff picks up Ava at 7 am on Monday.

15 Wednesday-Thursday: Defendant picks up Ava at 7 am on Wednesday.

16 Friday-Saturday-Sunday: Plaintiff picks up Ava at 7 am on Friday.

17 Weeks 2 and 4:

18 Monday-Tuesday: Defendant picks up Ava at 7 am on Monday.

19 Wednesday-Thursday: Plaintiff picks up Ava at 7 am on Wednesday.

20 Friday-Saturday-Sunday: Defendant picks up Ava at 7 am on Friday.

21 The weeks are to be defined by the first week of the month with a Monday. This schedule is to
22 begin by 12/20/2021 (3rd week of schedule).

23 **II. Holiday/Vacation Schedule**

24 This Court's standard holiday/vacation schedule will take precedence over the normal
25 weekly parenting time. Plaintiff wants this Court's standard holiday/vacation implemented as is.
26 Defendant requests that the vacation period and Christmas holiday provisions be modified as the
27 period given AVA's young age and ASD. This Court agrees with Defendant's position on this
28 issue and ORDERS that the 2 provisions will be modified. As for Summer vacations, each party
is limited to 1 week (7 days). The parties are to use OFW to put the other party on notice which
week they will be exercising for Summer vacation with a minimum of 21 days prior notice. As for
Christmas, *Segment 1* will be defined as Christmas Eve (December 24th) from 12:00 p.m. until
Christmas day (December 25th) at 12:00 p.m. *Segment 2* will be defined as Christmas day at

1 12:00 p.m. until December 27th at 12:00 p.m. The reason for the additional day for *Segment 2* is
2 that *Segment 1* includes the preferential actual Christmas Eve and Christmas morning. Pursuant
3 to this Court's standard order, Plaintiff will get *Segment 1* in 2021 and every odd year thereafter;
4 Defendant will get *Segment 1* in 2022 and every even year thereafter. The request to decrease
5 Easter/Spring Break week is DENIED. The balance of this Court's Holiday/Vacation schedule is
6 attached as Exhibit 1 (with the foregoing provisions taken out).

7 III. Legal Custody

8 The parties have stipulated to joint legal custody of the minor child. NRS 125C.002. This
9 will be defined as follows:

10 Legal custody involves having basic legal responsibility for a child and making MAJOR
11 decisions regarding the child, including the child's health, education, and religious
12 upbringing. . . . [T]he parents MUST consult with each other to make MAJOR decisions
13 regarding the child's upbringing, while the parent with whom the child is residing at that
14 time usually makes minor day-to-day decisions. If the parents in a joint legal custody
15 situation reach an impasse and are unable to agree on a decision, then the parties may
16 appear before the court 'on an equal footing' to have the court decide what is in the best
17 interest of the child.

18 *Rivero v. Rivero*, 125 Nev. 410, 420-21, 216 P.3d 213 (2009) (*emphasis added*).

19 IV. Child Support

20 **NAC 425.120** (Determination of monthly gross income of each obligor; provision of
21 financial information or other records to court.)

22 1. The monthly gross income of each obligor ***must be determined by***:

23 (a) Stipulation of the parties; or

24 (b) The court, after considering all financial or other information relevant to the
25 earning capacity of the obligor.

26 2. In determining the monthly gross income of each obligor, **the court may direct** either
27 party to furnish financial information or other records, including, **without limitation, any**
28 **income tax returns**.

As in most cases, this is a sensitive and highly contested subject. Plaintiff alleged early on
in the case this was why Defendant wanted primary physical custody—to avoid having to pay child
support. Defendant submitted a Closing Brief just on child support. In it, she admits “[Plaintiff’s]
income on the other hand is extremely difficult to discern.” If Defendant believes that Plaintiff is
being fraudulent with his taxes, she can feel free to report him for investigation to the Internal
Revenue Service and/or the District Attorney’s Office, Family Support Division.

As there was a dispute as to income, this Court had the parties provide income tax returns
pursuant to NAC 425.120(2). This Court will use the parties’ most recent 2020 income tax
returns as a basis. Plaintiff’s tax return indicates a gross annual income of \$23,645.00, making his

1 gross monthly income \$1,970.42. Defendant's tax return indicates a gross annual income of
2 \$113,599.00, making her gross monthly income \$9,466.58. Using the formula in NAC 425.140,
3 the monthly amount Defendant owes to Plaintiff is \$922.06.¹ Defendant requests an adjustment
4 for half of the monthly medical premium she pays, which is \$78.78 per month. As healthcare is a
5 *necessary expense*, this adjustment is GRANTED. NAC 425.150(g). Half this amount is \$39.39.
6 Subtracting the \$39.39 from the \$922.06, Defendant's final monthly obligation is **\$882.67**. This
7 obligation will begin 01/01/2022 and is to be received by Plaintiff before the last day of the
8 month.² As for Defendant's notation of her \$1,000.00 deductible, these will accumulate in the
9 form of out-of-pocket expenses. The parties are to equally share any out-of-pocket expenses
10 using the standard Family Court 30/30 Rule and to use the OFW subprogram to submit proof of
11 payment (not bills) due from the other party.

12 Defendant testified she has dated Plaintiff since 2013. Surely, if he were willfully under-
13 employed, this Court would expect she would have presented far more viable evidence. Deposits
14 into Plaintiff's bank accounts does *not* automatically equate to free and clear income and this
15 Court cannot speculate. NAC 425.125(1) states: "If after taking evidence, the court determines
16 that an obligor is underemployed or unemployed without good cause, the court may impute
17 income to the obligor." This Court CANNOT FIND that Defendant has proven with sufficient
18 evidence Plaintiff is willfully underemployed without good cause. NAC 425.125(1); *Minnear v.*
19 *Minnear*, 107 Nev. 495, 814 P.2d 85 (1991). The factors set forth in NAC 425.125(2) do not
20 apply as this Court is not imputing income to Plaintiff.

21 Plaintiff requests almost \$14,000.00 in child support arrears from Defendant; Defendant
22 did not request any arrears. Pursuant to NRS 125B.030: "Where the parents of a child do not
23 reside together, the physical custodian of the child *may* recover from the parent without physical
24 custody a *reasonable portion* of the cost of care, support, education and maintenance provided by

26 ¹ Defendant's Gross Monthly Income: \$9,466.58; Number of Children: 1; Tier 1 (\$6,000.00 *
27 16.00% = \$960.00) + Tier 2 (\$3,466.58 * 8.00% = \$277.33); Obligation amount is \$1,237.33.
28 Defendant's Gross Monthly Income: \$1,970.42; Number of Children: 1; Tier 1 (\$1,970.42 * 16.00% =
\$315.27); Obligation amount is \$315.27. Respondent's Obligation: (\$1,237.33 - \$315.27) = **\$922.06**.

² This Court will further FIND that Defendant/obligor clearly has the *ability to pay*. NAC
150(1)(h). Her latest FDF indicates she earn \$9,358.73 monthly income - \$1,557.48 deductions -
\$4,073.32 monthly expenses - \$460.00 monthly child expenses = \$3,267.93 monthly net income.

1 the physical custodian (up to 4 years).” Thus, an award of child support arrears is *discretionary*,
2 it is *limited* to the physical custodian and is *limited* to a “reasonable portion.” Plaintiff alleged
3 Defendant would not give him joint physical custody and that is why he ended up filing this
4 action. This Court in using its best discretion given the evidence submitted cannot determine that
5 Plaintiff should be awarded any child support arrears. Thus, Plaintiff’s request for child support
6 arrears is DENIED.

7 **V. Tax Deduction**

8 Plaintiff requested the parties alternate the tax deduction for AVA; Defendant requests she
9 get every year. The district court has *broad discretion* over the child dependency exemption for
10 federal tax purposes, including allocating the right to the exemption to the non-custodial parent.
11 *Sertic v. Sertic*, 111 Nev. 1192, 901 P.2d 148 (1995). In reviewing the parties’ tax returns, it is
12 noted that Plaintiff claims his parents as dependants on his income tax returns (ILYA &
13 GALINA). Defendant only claims AVA. Further, Defendant will now have a child support
14 obligation to Plaintiff. Accordingly, as this Court has *broad discretion* over this issue, this Court
15 in its believes it *equitable* to ORDER that Defendant be allowed claim AVA every year.

16 This Court is not taking any jurisdiction over any periodic federal government benefits on
17 behalf of the child (*e.g.*, Covid related). If disputed, the parties are to addresses the issue directly
18 with the payor (federal government).

19 **VII. CONCLUSION**

20 WHEREFORE, given the findings and determinations set forth above, it is hereby
21 ORDERED, ADJUDGED and DECREED:

22 1. The parties are awarded JOINT LEGAL CUSTODY and JOINT PHYSICAL
23 CUSTODY with the weekly 2-2-3 schedule as set forth above and the minor deviations from the
24 standard vacation/holiday schedule. The parties are to enroll and complete the UNLV
25 Cooperative Parenting Course within the next 6 months and continue to use OFW until further
26 order of this Court.

27 2. Defendant’s monthly CHILD SUPPORT obligation to Plaintiff is \$882.67. This
28 obligation will begin 01/01/2022 and is to be received by Plaintiff before the last day of the month.
Plaintiff’s request for CHILD SUPPORT ARREARS is DENIED. Defendant will maintain AVA

1 on her employer's health insurance. Any out-of-pocket expenses will be equally shared pursuant
2 to the Family Court 30/30 rule.³

3 3. Defendant will be entitled to claim AVA every year as a TAX DEDUCTION on her
4 income tax return.

5 4. Prior to filing any motions to modify the foregoing custody arrangement, the parties
6 **must** attempt mediation at the Family Mediation Center (FMC). EDCR 5.303(b)(1). The
7 exception will be if it is of an emergency nature that qualifies for an order shortening time. *See*
8 EDCR 5.514.

9 5. If this Court has failed to address any other outstanding issues, within the next 14
10 days, either party may email a letter to chambers explaining the issue not addressed. The other
11 side must be copied; this Court will consider the unaddressed issue and then enter an amendment
12 if warranted. This will *not* be an opportunity for either side to re-litigate this Decision.

13 6. Finally, if either party is seeking attorney's fees/costs, they are to submit a *timely*
14 motion compliant with NRS 18.110⁴, NRCP 54(d) and *Miller v. Wilfong* and place it on this
15 Court's Chamber Calendar.

16 HONORABLE MATHEW P. HARTER

17 Dated this 15th day of December, 2021

18
19
20 MEF


21 B28 387 DCEC 4876
22 Mathew Harter
23 District Court Judge
24

25 ³ Any unreimbursed medical, dental, optical, orthodontic or other health related expense incurred
26 for the benefit of the minor child is to be divided equally between the parties. Either party incurring an
27 out-of-pocket medical expense for the child shall provide a copy of the **paid** invoice/receipt to the other
28 party within thirty days of incurring such expense, if not tendered within the thirty day period, the Court
may consider it as a waiver of reimbursement. The other party will then have thirty days from receipt
within which to dispute the expense in writing or reimburse the incurring party for one-half of the out-of-
pocket expense, if not disputed or paid within the thirty day period, the party may be subject to a finding
of contempt and appropriate sanctions.

⁴ *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015)

DEPARTMENT N DEFAULT HOLIDAY AND VACATION PLAN

THE COURT ENCOURAGES THE PARENTS TO COMMUNICATE REGARDING SHARING TIME WITH THEIR CHILD(REN) FOR HOLIDAYS AND VACATIONS; however, the parties shall abide by the following **HOLIDAY AND VACATION PLAN** when they are unable agree. The parents may draft and sign a written agreement to deviate from this schedule. Holidays shall take precedence over residential time, and neither party shall be able to take the child(ren) for vacation time during the other party's scheduled holiday time.

ODD YEAR¹

EVEN YEAR

THREE-DAY HOLIDAYS

The holiday visitation shall begin at 3:00 PM (or after-school on school days²) on the Friday prior to the holiday and conclude at 9:00 AM the day following the three-day holiday weekend. If the holiday is not attached to a three day weekend, the applicable party shall spend the holiday with the child(ren) from 9:00 AM to 9:00 PM.

MARTIN LUTHER KING DAY	MOM	DAD
PRESIDENT'S DAY	DAD	MOM
MEMORIAL DAY	MOM	DAD
INDEPENDENCE DAY	DAD	MOM
LABOR DAY	MOM	DAD
NEVADA ADMISSION DAY/HALLOWEEN	DAD	MOM
VETERANS DAY	MOM	DAD

INDIVIDUAL DAYS

The specified parent's visitation shall begin at 9:00 AM on the individual holiday (or after-school on school days), and end at 9:00 PM the same day.

MOTHER'S DAY	MOM	MOM
FATHER'S DAY	DAD	DAD
MOTHER'S BIRTHDAY	MOM	MOM
FATHER'S BIRTHDAY	DAD	DAD

¹ The year indicated is the calendar year and not the age of a child or parent.

² Unless otherwise ordered, any reference to a "school" schedule for the purpose of defining a Holiday or Special Occasion shall be defined by the Clark County School District schedule (view www.ccsd.net to obtain the schedule).

DEPARTMENT N DEFAULT HOLIDAY AND VACATION PLAN

CHILD(REN)'S BIRTHDAY

DAD

MOM

EASTER/SPRING BREAK

The holiday visitation shall begin at 9:00 AM following the last day of school and conclude at 12:00 PM the day before the child returns to school. In the event that a child will travel outside of the county for the holiday, (s)he shall be returned home by 7:00 PM the evening before school resumes. If the child is not in school, the parents shall refer to the Clark County School District calendar.

EASTER/SPRING BREAK

MOM

DAD

THANKSGIVING

The holiday visitation shall begin after-school on the Wednesday preceding Thanksgiving, or at 6:00 PM on that Wednesday if school is not in session. The Thanksgiving holiday vacation shall end at 12:00 PM the day before the child(ren) must return to school, or on the Sunday after Thanksgiving if school is not in session. In the event that the child will travel outside of the county for the holiday, (s)he shall be returned home by 7:00 PM the evening before school resumes.

THANKSGIVING

MOM

DAD

CHRISTMAS HOLIDAY & WINTER BREAK

**VIEW DECISION AND ORDER
FILED DECEMBER 15, 2021**

SUMMER/TRACK BREAK VACATIONS

**VIEW DECISION AND ORDER
FILED DECEMBER 15, 2021**

RELIGIOUS HOLIDAYS

Unless otherwise specified by the Court, each parent shall have the right to provide religious instruction to the child, even if they do not share the same religious beliefs, unless there is a child welfare or endangerment issue that the parents cannot resolve. Each parent shall have the opportunity to celebrate holidays with the child. In the event that one parent does not intend to observe a formal ceremony/holiday in his or her specified year, the parent intending to celebrate the holiday shall have the opportunity to have the child attend temple, mass, or whichever religious instruction is observed for that holiday. The parties shall abide by the exchange times as listed in the "Individual Days" section.

DEPARTMENT N DEFAULT HOLIDAY AND VACATION PLAN

Following is a non-inclusive list of other religions where parents shall alternate holidays: Buddhist, Hindu, Greek Orthodox, Eastern and Russian Orthodox, Islamic, World Wide Church of God, Protestant, Lutheran, Baha'i, Church of Latter Day Saints, Sikh, Roman Catholic, Armenian Holidays, Eid of Adha, Chinese, Korean and Vietnamese New Year, etc. Each parent shall alternate each holiday as provided in the following example for Jewish Holidays:

PASSOVER	DAD	MOM
ROSH HASHANAH	MOM	DAD
YOM KIPPUR	DAD	MOM
PURIM	MOM	DAD
SUKKOT	DAD	MOM
HANUKKAH	MOM	DAD
BAR MITZVAH ARRANGEMENTS	DAD	MOM

**NOTE: WHERE THERE IS AN OVERLAP OF CONFLICTING RELIGIOUS
HOLIDAYS, THE FOLLOWING PRIORITY SHALL PREVAIL:**

OVERLAP PRECEDENT:	MOM	DAD
---------------------------	------------	------------

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Evgeny Shapiro, Plaintiff.

CASE NO: D-20-612006-C

7 vs.

DEPT. NO. Department N

8 Nechole Garcia, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/15/2021

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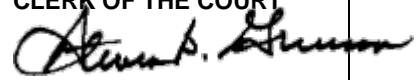
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Exhibit 4



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Attorney for Plaintiff Un-Bundled

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

EVGENY SHAPIRO,
Plaintiff,
vs.
NECHOLE GARCIA,
Defendant

CASE NO: D-20-612006-C
DEPT NO: N

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a Decision and Order was filed in the above-titled matter on the
15th day of December, 2021, a copy is attached hereto.

DATED this 16th day of December, 2021

Submitted by:

/s/ Jennifer Issso
JENNIFER ISSO, ESQ.
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 16th day of December 2021, a true and correct copy of the foregoing Notice of Entry of Order was served through Odyssey E-Service and Electronically to the following:

Rosenblum Law Offices
staff@rosenblumlawoffices.com
Attorney for Defendant

EVGENY SHAPIRO
Via E-Mail
Plaintiff

_____/s/ Jennifer Isso_____
An employee of ISSO & HUGHES

Eighth Judicial District Court

Family Court

Clark County, Nevada

EVGENYSHAPIRO,

Plaintiff,

vs.

NECHOLE GARCIA,

Defendant.

Case: D-20-612006-C

Dept: N

Trial Dates: 11/03/2021 & 11/05/2021

DECISION AND ORDER

The parties were never married, but have 1 minor child: AVA GARCIA-SHAPIRO (09/26/2018). The matter was set for a custody trial. After the first day of trial on 11/04/2021, this Court had a teleconference on the record with both counsel as the parties had stipulated on the first day of trial a few times that they would maintain joint legal custody and joint physical custody. NRS 125C.0025(1)(a) (there is a preference for joint physical custody if the parents agreed so in open court at a hearing to determine physical custody). The Court during the call noted that their time would be best spend on focusing on the *unresolved* issues (best weekly timeshare for this family, child support, *etc.*). However, to no avail, the second day of trial proceeded similar to the first day—each party *unnecessarily* attacking each other, experts, and bolstering themselves. In fact, this continued on through the Closing Briefs.

The parties submitted pre-trial memorandums. The parties and other witnesses testified and exhibits were submitted. This Court took detailed notes during the trial. At the close of trial, this Court indicated it preferred written closing briefs and requested tax returns for assistance in determining a child support obligation. The Court then took the matter under advisement. The parties extended the time to submit Closing Briefs via Stipulation and Order on 11/16/2021.

I. Custody/Visitation Schedule

The Court has held that the district court must consider *the best interest of the child* when determining custody/visitation schedules and it has “vast discretionary powers” to do so. *Prins v. Prins*, 88 Nev. 261, 263, 496 P.2d 165, 166 (1972); *See also Hern v. Erhardt*, 113 Nev. 1330, 948 P.2d 1195 (1997).

1 NRS 125C.0035(4) states:

2 ***In determining the best interest of the child, the court shall consider and set forth its***
3 ***specific findings concerning, among other things:***

- 4 (a) The wishes of the child if the child is of sufficient age and
5 capacity to form an intelligent preference as to his or her physical custody.
6 (b) Any nomination of a guardian for the child by a parent.
7 (c) Which parent is more likely to allow the child to have
8 frequent associations and a continuing relationship with the noncustodial parent.
9 (d) The level of conflict between the parents.
10 (e) The ability of the parents to cooperate to meet the needs of the child.
11 (f) The mental and physical health of the parents.
12 (g) The physical, developmental and emotional needs of the child.
13 (h) The nature of the relationship of the child with each parent.
14 (i) The ability of the child to maintain a relationship with any sibling.
15 (j) Any history of parental abuse or neglect of the child or a sibling of the child.
16 (k) Whether either parent or any other person seeking physical custody has engaged in an
17 act of domestic violence against the child, a parent of the child or any other person
18 residing with the child.
19 (l) Whether either parent or any other person seeking physical custody has committed any
20 act of abduction against the child or any other child.

21 First, the Court REMINDS the parties that the burden of proof in domestic relations cases
22 is *the preponderance of the evidence standard* (i.e., proof by 50.00001%), which is a far lower
23 legal standard than Defendant uses a prosecutor. Considering the following mandatory factors,
24 this Court FINDS that:

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

27 *Not applicable.* Both parties agreed the child at issue was of insufficient age.

28 **(b) Any nomination of a guardian for the child by a parent**

Not applicable. Both parties agreed this factor did not apply to this case.

(c) Which parent is more likely to allow the child to have frequent associations and a
 continuing relationship with the non-custodial parent

 This factor favors Plaintiff. Until this Court became involved, evidence submitted
 indicated Defendant would frequently only allow Plaintiff to watch AVA at her house with
 cameras activated. It was rare that Defendant would allow Plaintiff unfettered access to AVA.
 “[T]here is a presumption that fit parents act in the best interests of their children.” *Troxel v.*
 Granville, 530 U.S. 57, 68, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

(d) The level of conflict between the parents

 This factor has been *high* to date. It is hoped it will de-escalate over time now that the
 trial is complete. This is the reasoning behind this Court ORDERING that the parties enroll in the

1 Our Family Wizard (“OFW”) Website program for communication purposes. The parties are
2 ORDERED to remain enrolled and continue to use the OFW program until further order of this
3 Court. This Court is going to additionally ORDER that the parties enroll and complete the
4 UNLV Cooperative Parenting Course within 6 months. (Informational brochure can be obtained
5 from this Court’s department.) Plaintiff’s request that a Parenting Coordinator (PC) be appointed
6 is DEFERRED. Anytime after the UNLV course is completed, if the parties are still having co-
7 parenting issues, either side may submit an *ex parte* application explaining the current need(s) for
8 a PC and the Court will consider ordering it. *See Harrison v. Harrison*, 132 Nev. 564, 376 P.3d
9 173 (2016) (acknowledging the benefits of parenting coordinators in high conflict cases). IT IS
10 NOTED that if ultimately ordered, the cost of the PC will be apportioned pursuant to the parties’
11 incomes noted below. The PC will have the authority to recommend reimbursement by a party
12 from the other party if they determine one party is *clearly* was more at fault for the issue
13 necessitating the PC’s services.

14 **(e) The ability of the parents to cooperate to meet the needs of the child**

15 Related to the prior subfactor, the parents’ ability to cooperate is *low* as the level of
16 conflict is *high*. However, there was insufficient evidence that ultimately the parties did not meet
17 the specialized needs of AVA.

18 **(f) The mental and physical health of the parents**

19 No evidence was submitted on this factor regarding Plaintiff. Plaintiff obtained notes from
20 Defendant’s treating therapist (which were sealed by this Court). There is insufficient proof either
21 party’s mental or physical health effected their ability to parent AVA.

22 **(g) The physical, developmental, and emotional needs of the child**

23 A custody evaluation was ordered to be conducted by Dr. Bergquist. EDCR 5.305(b).
24 She issued her report on February 19, 2021. Dr. Bergquist recommended “the parents share legal
25 and physical custody of AVA, with Defendant receiving more time (*i.e.*, 55/45 or 60/40).”
26 Court’s Exhibit 1, p. 32: *See* 5.304(b). It is noted that Defendant’s own expert testified that he
27 had never seen a custody evaluation recommending percentages of times. *JAVS 11/03/2021 at*
28 *09:57*. AVA was subsequently assessed with having Autism Spectrum Disorder (ASD), mild to
moderate. This was confirmed by Dr. Gaspar (ASD L1, with communication/speech delays).

1 During this time period, the parties have enrolled AVA in a myriad of services (e.g. Firefly
2 Behavioral for ABA therapy) to assist her which continue to date. Defendant testified that she
3 has recently noticed some issues with AVA's gait.

4 **(h) The nature of the relationship of the child with each parent**

5 *Not applicable.* There was not sufficient evidence submitted that would insinuate the
6 child had a better or worse relationship with either parent.

7 **(i) The ability of the child to maintain a relationship with any sibling**

8 Plaintiff has 2 other children with whom he has parenting time every other weekend.
9 AVA is Defendant's only child. The schedule ordered below took this factor into consideration to
10 maximize the siblings time together.

11 **(j) Any history of parental abuse or neglect of the child or a sibling of the child**

12 *Not applicable.* No sufficient evidence was submitted on this factor.

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

15 *Not applicable.* No sufficient evidence was submitted on this factor.

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

17 *Not applicable.* No sufficient evidence was submitted on this factor.

18 **Analysis**

19 As noted above, the issue at hand is truly *not* as complex as the case was presented. Both
20 parties testified that their work week is Monday through Thursday. Each party has their mother
21 watch AVA if they are unavailable. Defendant wants the current schedule to remain in place and
22 Plaintiff wants the more common 2-2-3 schedule. Defendant's foremost reasoning in her Closing
23 Brief about Plaintiff's proposed schedule is it will require 1-2 more exchanges which may
24 exacerbate the parties' conflict. Fact is it gives Plaintiff 1 less day over a 2 week period and he
25 never has AVA on any Saturdays. This is not about giving either party the schedule they desire, it
26 is about what is in AVA's *best interest*. This Court has indicated from the day it took the bench it
27 does *not* automatically "rubber stamp" the outsourced evaluator's recommendations. This is one
28 of those cases. After going through the trial and the underlying record, this Court cannot find
why the current schedule is better for AVA than the standard 2-2-3 schedule. This is not about

1 attaining 50/50 for each parent. This is also not about child support as Defendant would be
2 obligated under a 60/40 schedule. It was simply not proven to this Court with sufficient evidence
3 that the current schedule or any 55/45 or 60/40 schedule was in AVA's best interest. Although
4 these are one of the most divergent set of parents this Court has had an in depth trial on, they are
5 both good parents actively seeking what is best for AVA. As the parties have identical workday
6 schedules, each party should share Friday, Saturday, and Sunday weekends with AVA. Further, a
7 2-2-3 schedule allows for Plaintiff's other children to bond with AVA on the limited 4 days per
8 month they are with him. NRS 125C.0035(j). Additionally, it is noted that Plaintiff has
9 graciously proposed giving Defendant any 5th weekends with AVA.

10 For these reasons and the factors above, this Court CONCLUDES that it would be *in the*
11 *best interest of the child* that the better choice of the 2 proposed options is the 2-2-3 schedule
12 (with the receiving party providing the transportation) as follows:

13 Weeks 1 & 3 and any 5th weeks:

14 Monday-Tuesday: Plaintiff picks up Ava at 7 am on Monday.

15 Wednesday-Thursday: Defendant picks up Ava at 7 am on Wednesday.

16 Friday-Saturday-Sunday: Plaintiff picks up Ava at 7 am on Friday.

17 Weeks 2 and 4:

18 Monday-Tuesday: Defendant picks up Ava at 7 am on Monday.

19 Wednesday-Thursday: Plaintiff picks up Ava at 7 am on Wednesday.

20 Friday-Saturday-Sunday: Defendant picks up Ava at 7 am on Friday.

21 The weeks are to be defined by the first week of the month with a Monday. This schedule is to
22 begin by 12/20/2021 (3rd week of schedule).

23 **II. Holiday/Vacation Schedule**

24 This Court's standard holiday/vacation schedule will take precedence over the normal
25 weekly parenting time. Plaintiff wants this Court's standard holiday/vacation implemented as is.
26 Defendant requests that the vacation period and Christmas holiday provisions be modified as the
27 period given AVA's young age and ASD. This Court agrees with Defendant's position on this
28 issue and ORDERS that the 2 provisions will be modified. As for Summer vacations, each party
is limited to 1 week (7 days). The parties are to use OFW to put the other party on notice which
week they will be exercising for Summer vacation with a minimum of 21 days prior notice. As for
Christmas, *Segment 1* will be defined as Christmas Eve (December 24th) from 12:00 p.m. until
Christmas day (December 25th) at 12:00 p.m. *Segment 2* will be defined as Christmas day at

1 12:00 p.m. until December 27th at 12:00 p.m. The reason for the additional day for *Segment 2* is
2 that *Segment 1* includes the preferential actual Christmas Eve and Christmas morning. Pursuant
3 to this Court's standard order, Plaintiff will get *Segment 1* in 2021 and every odd year thereafter;
4 Defendant will get *Segment 1* in 2022 and every even year thereafter. The request to decrease
5 Easter/Spring Break week is DENIED. The balance of this Court's Holiday/Vacation schedule is
6 attached as Exhibit 1 (with the foregoing provisions taken out).

7 III. Legal Custody

8 The parties have stipulated to joint legal custody of the minor child. NRS 125C.002. This
9 will be defined as follows:

10 Legal custody involves having basic legal responsibility for a child and making MAJOR
11 decisions regarding the child, including the child's health, education, and religious
12 upbringing. . . . [T]he parents MUST consult with each other to make MAJOR decisions
13 regarding the child's upbringing, while the parent with whom the child is residing at that
14 time usually makes minor day-to-day decisions. If the parents in a joint legal custody
15 situation reach an impasse and are unable to agree on a decision, then the parties may
16 appear before the court 'on an equal footing' to have the court decide what is in the best
17 interest of the child.

18 *Rivero v. Rivero*, 125 Nev. 410, 420-21, 216 P.3d 213 (2009) (*emphasis added*).

19 IV. Child Support

20 **NAC 425.120** (Determination of monthly gross income of each obligor; provision of
21 financial information or other records to court.)

22 1. The monthly gross income of each obligor ***must be determined by***:

23 (a) Stipulation of the parties; or

24 (b) The court, after considering all financial or other information relevant to the
25 earning capacity of the obligor.

26 2. In determining the monthly gross income of each obligor, **the court may direct** either
27 party to furnish financial information or other records, including, **without limitation, any**
28 **income tax returns**.

As in most cases, this is a sensitive and highly contested subject. Plaintiff alleged early on
in the case this was why Defendant wanted primary physical custody—to avoid having to pay child
support. Defendant submitted a Closing Brief just on child support. In it, she admits “[Plaintiff’s]
income on the other hand is extremely difficult to discern.” If Defendant believes that Plaintiff is
being fraudulent with his taxes, she can feel free to report him for investigation to the Internal
Revenue Service and/or the District Attorney’s Office, Family Support Division.

As there was a dispute as to income, this Court had the parties provide income tax returns
pursuant to NAC 425.120(2). This Court will use the parties’ most recent 2020 income tax
returns as a basis. Plaintiff’s tax return indicates a gross annual income of \$23,645.00, making his

gross monthly income \$1,970.42. Defendant's tax return indicates a gross annual income of \$113,599.00, making her gross monthly income \$9,466.58. Using the formula in NAC 425.140, the monthly amount Defendant owes to Plaintiff is \$922.06.¹ Defendant requests an adjustment for half of the monthly medical premium she pays, which is \$78.78 per month. As healthcare is a *necessary expense*, this adjustment is GRANTED. NAC 425.150(g). Half this amount is \$39.39. Subtracting the \$39.39 from the \$922.06, Defendant's final monthly obligation is **\$882.67**. This obligation will begin 01/01/2022 and is to be received by Plaintiff before the last day of the month.² As for Defendant's notation of her \$1,000.00 deductible, these will accumulate in the form of out-of-pocket expenses. The parties are to equally share any out-of-pocket expenses using the standard Family Court 30/30 Rule and to use the OFW subprogram to submit proof of payment (not bills) due from the other party.

Defendant testified she has dated Plaintiff since 2013. Surely, if he were willfully underemployed, this Court would expect she would have presented far more viable evidence. Deposits into Plaintiff's bank accounts does *not* automatically equate to free and clear income and this Court cannot speculate. NAC 425.125(1) states: "If after taking evidence, the court determines that an obligor is underemployed or unemployed without good cause, the court may impute income to the obligor." This Court CANNOT FIND that Defendant has proven with sufficient evidence Plaintiff is willfully underemployed without good cause. NAC 425.125(1); *Minnear v. Minnear*, 107 Nev. 495, 814 P.2d 85 (1991). The factors set forth in NAC 425.125(2) do not apply as this Court is not imputing income to Plaintiff.

Plaintiff requests almost \$14,000.00 in child support arrears from Defendant; Defendant did not request any arrears. Pursuant to NRS 125B.030: "Where the parents of a child do not reside together, the physical custodian of the child *may* recover from the parent without physical custody a *reasonable portion* of the cost of care, support, education and maintenance provided by

¹ Defendant's Gross Monthly Income: \$9,466.58; Number of Children: 1; Tier 1 (\$6,000.00 * 16.00% = \$960.00) + Tier 2 (\$3,466.58 * 8.00% = \$277.33); Obligation amount is \$1,237.33. Defendant's Gross Monthly Income: \$1,970.42; Number of Children: 1; Tier 1 (\$1,970.42 * 16.00% = \$315.27); Obligation amount is \$315.27. Respondent's Obligation: (\$1,237.33 - \$315.27) = **\$922.06**.

² This Court will further FIND that Defendant/obligor clearly has the *ability to pay*. NAC 150(1)(h). Her latest FDF indicates she earn \$9,358.73 monthly income - \$1,557.48 deductions - \$4,073.32 monthly expenses - \$460.00 monthly child expenses = \$3,267.93 monthly net income.

1 the physical custodian (up to 4 years).” Thus, an award of child support arrears is *discretionary*,
2 it is *limited* to the physical custodian and is *limited* to a “reasonable portion.” Plaintiff alleged
3 Defendant would not give him joint physical custody and that is why he ended up filing this
4 action. This Court in using its best discretion given the evidence submitted cannot determine that
5 Plaintiff should be awarded any child support arrears. Thus, Plaintiff’s request for child support
6 arrears is DENIED.

7 **V. Tax Deduction**

8 Plaintiff requested the parties alternate the tax deduction for AVA; Defendant requests she
9 get every year. The district court has *broad discretion* over the child dependency exemption for
10 federal tax purposes, including allocating the right to the exemption to the non-custodial parent.
11 *Sertic v. Sertic*, 111 Nev. 1192, 901 P.2d 148 (1995). In reviewing the parties’ tax returns, it is
12 noted that Plaintiff claims his parents as dependants on his income tax returns (ILYA &
13 GALINA). Defendant only claims AVA. Further, Defendant will now have a child support
14 obligation to Plaintiff. Accordingly, as this Court has *broad discretion* over this issue, this Court
15 in its believes it *equitable* to ORDER that Defendant be allowed claim AVA every year.

16 This Court is not taking any jurisdiction over any periodic federal government benefits on
17 behalf of the child (*e.g.*, Covid related). If disputed, the parties are to addresses the issue directly
18 with the payor (federal government).

19 **VII. CONCLUSION**

20 WHEREFORE, given the findings and determinations set forth above, it is hereby
21 ORDERED, ADJUDGED and DECREED:

22 1. The parties are awarded JOINT LEGAL CUSTODY and JOINT PHYSICAL
23 CUSTODY with the weekly 2-2-3 schedule as set forth above and the minor deviations from the
24 standard vacation/holiday schedule. The parties are to enroll and complete the UNLV
25 Cooperative Parenting Course within the next 6 months and continue to use OFW until further
26 order of this Court.

27 2. Defendant’s monthly CHILD SUPPORT obligation to Plaintiff is \$882.67. This
28 obligation will begin 01/01/2022 and is to be received by Plaintiff before the last day of the month.
Plaintiff’s request for CHILD SUPPORT ARREARS is DENIED. Defendant will maintain AVA

1 on her employer's health insurance. Any out-of-pocket expenses will be equally shared pursuant
2 to the Family Court 30/30 rule.³

3 3. Defendant will be entitled to claim AVA every year as a TAX DEDUCTION on her
4 income tax return.

5 4. Prior to filing any motions to modify the foregoing custody arrangement, the parties
6 **must** attempt mediation at the Family Mediation Center (FMC). EDCR 5.303(b)(1). The
7 exception will be if it is of an emergency nature that qualifies for an order shortening time. *See*
8 EDCR 5.514.

9 5. If this Court has failed to address any other outstanding issues, within the next 14
10 days, either party may email a letter to chambers explaining the issue not addressed. The other
11 side must be copied; this Court will consider the unaddressed issue and then enter an amendment
12 if warranted. This will *not* be an opportunity for either side to re-litigate this Decision.

13 6. Finally, if either party is seeking attorney's fees/costs, they are to submit a *timely*
14 motion compliant with NRS 18.110⁴, NRCP 54(d) and *Miller v. Wilfong* and place it on this
15 Court's Chamber Calendar.

16 HONORABLE MATHEW P. HARTER

17 Dated this 15th day of December, 2021

18
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20 MEF


21 B28 387 DCEC 4876
22 Mathew Harter
23 District Court Judge
24

25 ³ Any unreimbursed medical, dental, optical, orthodontic or other health related expense incurred
26 for the benefit of the minor child is to be divided equally between the parties. Either party incurring an
27 out-of-pocket medical expense for the child shall provide a copy of the **paid** invoice/receipt to the other
28 party within thirty days of incurring such expense, if not tendered within the thirty day period, the Court
may consider it as a waiver of reimbursement. The other party will then have thirty days from receipt
within which to dispute the expense in writing or reimburse the incurring party for one-half of the out-of-
pocket expense, if not disputed or paid within the thirty day period, the party may be subject to a finding
of contempt and appropriate sanctions.

⁴ *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015)

DEPARTMENT N DEFAULT HOLIDAY AND VACATION PLAN

THE COURT ENCOURAGES THE PARENTS TO COMMUNICATE REGARDING SHARING TIME WITH THEIR CHILD(REN) FOR HOLIDAYS AND VACATIONS; however, the parties shall abide by the following **HOLIDAY AND VACATION PLAN** when they are unable agree. The parents may draft and sign a written agreement to deviate from this schedule. Holidays shall take precedence over residential time, and neither party shall be able to take the child(ren) for vacation time during the other party's scheduled holiday time.

ODD YEAR¹

EVEN YEAR

THREE-DAY HOLIDAYS

The holiday visitation shall begin at 3:00 PM (or after-school on school days²) on the Friday prior to the holiday and conclude at 9:00 AM the day following the three-day holiday weekend. If the holiday is not attached to a three day weekend, the applicable party shall spend the holiday with the child(ren) from 9:00 AM to 9:00 PM.

MARTIN LUTHER KING DAY	MOM	DAD
PRESIDENT'S DAY	DAD	MOM
MEMORIAL DAY	MOM	DAD
INDEPENDENCE DAY	DAD	MOM
LABOR DAY	MOM	DAD
NEVADA ADMISSION DAY/HALLOWEEN	DAD	MOM
VETERANS DAY	MOM	DAD

INDIVIDUAL DAYS

The specified parent's visitation shall begin at 9:00 AM on the individual holiday (or after-school on school days), and end at 9:00 PM the same day.

MOTHER'S DAY	MOM	MOM
FATHER'S DAY	DAD	DAD
MOTHER'S BIRTHDAY	MOM	MOM
FATHER'S BIRTHDAY	DAD	DAD

¹ The year indicated is the calendar year and not the age of a child or parent.

² Unless otherwise ordered, any reference to a "school" schedule for the purpose of defining a Holiday or Special Occasion shall be defined by the Clark County School District schedule (view www.ccsd.net to obtain the schedule).

DEPARTMENT N DEFAULT HOLIDAY AND VACATION PLAN

CHILD(REN)'S BIRTHDAY

DAD

MOM

EASTER/SPRING BREAK

The holiday visitation shall begin at 9:00 AM following the last day of school and conclude at 12:00 PM the day before the child returns to school. In the event that a child will travel outside of the county for the holiday, (s)he shall be returned home by 7:00 PM the evening before school resumes. If the child is not in school, the parents shall refer to the Clark County School District calendar.

EASTER/SPRING BREAK

MOM

DAD

THANKSGIVING

The holiday visitation shall begin after-school on the Wednesday preceding Thanksgiving, or at 6:00 PM on that Wednesday if school is not in session. The Thanksgiving holiday vacation shall end at 12:00 PM the day before the child(ren) must return to school, or on the Sunday after Thanksgiving if school is not in session. In the event that the child will travel outside of the county for the holiday, (s)he shall be returned home by 7:00 PM the evening before school resumes.

THANKSGIVING

MOM

DAD

CHRISTMAS HOLIDAY & WINTER BREAK

**VIEW DECISION AND ORDER
FILED DECEMBER 15, 2021**

SUMMER/TRACK BREAK VACATIONS

**VIEW DECISION AND ORDER
FILED DECEMBER 15, 2021**

RELIGIOUS HOLIDAYS

Unless otherwise specified by the Court, each parent shall have the right to provide religious instruction to the child, even if they do not share the same religious beliefs, unless there is a child welfare or endangerment issue that the parents cannot resolve. Each parent shall have the opportunity to celebrate holidays with the child. In the event that one parent does not intend to observe a formal ceremony/holiday in his or her specified year, the parent intending to celebrate the holiday shall have the opportunity to have the child attend temple, mass, or whichever religious instruction is observed for that holiday. The parties shall abide by the exchange times as listed in the "Individual Days" section.

DEPARTMENT N DEFAULT HOLIDAY AND VACATION PLAN

Following is a non-inclusive list of other religions where parents shall alternate holidays: Buddhist, Hindu, Greek Orthodox, Eastern and Russian Orthodox, Islamic, World Wide Church of God, Protestant, Lutheran, Baha'i, Church of Latter Day Saints, Sikh, Roman Catholic, Armenian Holidays, Eid of Adha, Chinese, Korean and Vietnamese New Year, etc. Each parent shall alternate each holiday as provided in the following example for Jewish Holidays:

PASSOVER	DAD	MOM
ROSH HASHANAH	MOM	DAD
YOM KIPPUR	DAD	MOM
PURIM	MOM	DAD
SUKKOT	DAD	MOM
HANUKKAH	MOM	DAD
BAR MITZVAH ARRANGEMENTS	DAD	MOM

**NOTE: WHERE THERE IS AN OVERLAP OF CONFLICTING RELIGIOUS
HOLIDAYS, THE FOLLOWING PRIORITY SHALL PREVAIL:**

OVERLAP PRECEDENT:	MOM	DAD
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Evgeny Shapiro, Plaintiff.

CASE NO: D-20-612006-C

7 vs.

DEPT. NO. Department N

8 Nechole Garcia, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/15/2021

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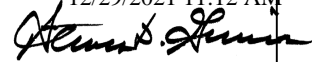
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Exhibit 5


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * *

Evgeny Shapiro, Plaintiff.

Case No: D-20-612006-C

vs.

Department N

Nechole Garcia, Defendant.

MINUTE ORDER

NRCP 1 states that the procedure in district courts “**should** be construed, administered, and employed by the Court and the parties to secure the just, *speedy, and inexpensive determinations in every action and proceeding.*”

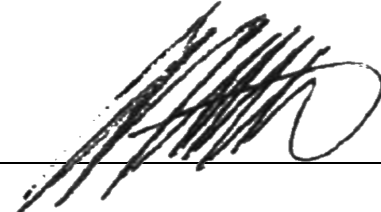
Both parties have filed post-trial motions for attorney's fees and both filed oppositions. Defendant filed a Notice of Appeal on 12/18/2021. NRCP 54(a) states: “The district court *may* decide the motion despite the existence of a pending appeal from the underlying final judgment.” Thus, it is ***discretionary*** with this Court. The Notice of Appeal has a tolling effect upon the pending motion. See *Barbara Ann Hollier Trust vs. Shack*, 131 Nev. 582, 356 P.3d 1085 (2015) (an appeal tolls the [21] day time period in NRCP 54(d)(2)(B)). This Court is using its discretion to defer the issue of attorney’s fees until the pending appeal is completed and the remittitur has been received. Accordingly, the hearings set for January 24, 2022 are hereby VACATED.

SO ORDERED.

HONORABLE MATHEW P. HARTER

Dated this 29th day of December, 2021

MEF



**028 541 31B9 7A02
Mathew Harter
District Court Judge**

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CERTIFICATE OF SERVICE

I hereby certify that on the above file stamped date I submitted this Order so that each party will be either electronically served, emailed, or mailed a copy of this Order.

/s/ Mark Fernandez
Mark Fernandez
Judicial Executive Assistant
Department N

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Evgeny Shapiro, Plaintiff.

CASE NO: D-20-612006-C

7 vs.

DEPT. NO. Department N

8 Nechole Garcia, 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: 12/29/2021

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