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

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Elizabeth A. Brown  
Clerk of Supreme Court

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5 NECHOLE GARCIA,  
Appellant,

) Supreme Court Case No. 83992  
) District Court Case No. D-20-612006-C  
)

6  
7 vs.

) Hearing Date:  
)

8 EVGENY SHAPIRO,  
Respondent.

)  
)

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10 **RESPONDENT'S OPPOSITION TO MOTION TO STAY**

11 Respondent EVGENY SHAPIRO, by and through his unbundled attorney of  
12 record, JENNIFER ISSO, ESQ. of the Law Office of Isso & Hughes Law Firm hereby  
13 submits His Opposition to Appellant's Motion to Stay and requests this Honorable  
14 Court:

- 15 1. Deny Appellant's Motion to Stay; and  
16 2. Any other relief deemed appropriate by this Honorable Court.

17 DATED this 31st day of January 2022.

18 /s/ Jennifer Isso  
19 JENNIFER ISSO, ESQ.  
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25 *Attorney for Respondent Unbundled*

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2 **I. LEGAL AUTHORITY**

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4 NRAP RULE 8. STAY OR INJUNCTION PENDING APPEAL OR RESOLUTION OF  
ORIGINAL WRIT PROCEEDINGS (in relevant part):

5 (a) Motion for Stay.

6 (1) Initial Motion in the District Court. A party must ordinarily move first in the  
district court for the following relief:

7 (A) a stay of the judgment or order of, or proceedings in, a district court  
pending appeal or resolution of a petition to the Supreme Court or Court of Appeals  
for an extraordinary writ;

8 (B) approval of a supersedeas bond; or

9 (C) an order suspending, modifying, restoring or granting an injunction while  
10 an appeal or original writ petition is pending.

11 **(2) Motion in the Court; Conditions on Relief.** A motion for the relief  
mentioned in Rule 8(a)(1) may be made to the Supreme Court or the Court of Appeals  
12 or to one of its justices or judges.

13 (A) The motion shall:

14 (i) show that moving first in the district court would be impracticable; or

15 (ii) state that, a motion having been made, the district court denied the motion  
or failed to afford the relief requested and state any reasons given by the district court  
for its action.

16 (B) The motion shall also include:

17 (i) the reasons for granting the relief requested and the facts relied on;

18 (ii) originals or copies of affidavits or other sworn statements supporting facts  
subject to dispute; and

19 (iii) relevant parts of the record.

20 (C) The moving party must give reasonable notice of the motion to all parties.

21 (D) In an exceptional case in which time constraints make consideration by a  
panel impracticable, the motion may be considered by a single justice or judge.

22 (E) The court may condition relief on a party's filing a bond or other  
appropriate security in the district court.

23 ...

24 (d) Stays in Civil Cases Involving Child Custody. In deciding whether to issue a  
stay in matters involving child custody, the Supreme Court or Court of Appeals will  
consider the following factors: (1) whether the child(ren) will suffer hardship or harm  
if the stay is either granted or denied; (2) whether the nonmoving party will suffer  
hardship or harm if the stay is granted; (3) whether movant is likely to prevail on the  
merits in the appeal; and (4) whether a determination of other existing equitable  
considerations, if any, is warranted.

25 ...

1 If this Court elects to apply the Nevada Rules of Appellate Procedure in  
2 Appellant's Motion to Stay the Custody Order entered on December 16, 2021, it is  
3 rational to apply NRAP 8(d) 1 - 4 as listed above as it is the same factors that the  
4 Nevada Supreme Court will use to consider a Stay Pending Appeal. *Hansen v. Eighth*  
5 *Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 6 P.3d 982, (2000) citing  
6 *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948).  
7

## 8 **II. BRIEF OVERVIEW**

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10 There was an Evidentiary Hearing held in this matter on November 3, 2021 and  
11 November 5, 2021. The Court after careful review of the evidence and testimony of the  
12 parties, medical professionals and experts, consideration of the custody evaluation  
13 report, and closing briefs, rendered a decision and order on December 15, 2021. The  
14 Notice of Entry of Order was filed on December 16, 2021. Appellant then filed a Notice  
15 of Appeal on December 18, 2021 and thereafter filed a motion to stay the courts recent  
16 decision and to revert back to the week 1/ week 2 schedule that was ordered as a  
17 "temporary" order during these proceedings before an evidentiary hearing. The lower  
18 court denied Appellant's request to stay.

## 19 **III. ARGUMENT**

20 Appellant cannot satisfy the four factors enumerated in  
21 NRAP 8(d) 1 – 4, therefore, his Motion for a Stay must be denied.  
22

### 23 **1. Whether the child(ren) will suffer hardship or harm if the stay is either** 24 **granted or denied**

25 First and foremost, the child in this matter will suffer a hardship or harm if the  
motion to stay is granted. Dr. Bergquist who evaluated the minor child and the parties  
recommended joint physical custody. Further, the Appellant by her own volition stated

1 during her opening argument at the evidentiary hearing that she will stipulate to joint  
2 physical custody. If the child cannot handle changes or must be in a rigid routine, then  
3 why did Appellant concede to joint physical custody? The child will be harmed if the  
4 current equal division of custodial time is not maintained. Further, the child will have  
5 less to no time with her siblings. If the court recalls, the court considered the child's  
6 step siblings when rendering its decision.

7 Appellant is attempting to convince the court that the child needs "sameness"  
8 as she was diagnosed with level 1 autism. The child is placed in a general class room at  
9 school and has an IEP. However, Expert Dr. Carter discussed and addressed this topic.  
10 During day two of the Evidentiary hearing, Dr. Carter explained that there is no need  
11 for sameness and that this is a "myth". In fact, Eva is in a mainstream general  
12 education classroom and that a child such as Eva needs to tolerate change and be  
13 flexible. As such, a 2-2-3 schedule would benefit the child. This will allow the child to  
14 have equal access to each parent and will benefit the child as it will promote bonding  
15 and consistency of that bonding.

17 Appellant seeks to restrict the child and the amount of time she spends with  
18 Eugene. However, Dr. Carter also discussed the "least restrictive environment theory".  
19 Dr. Carter explained that restricting a child overly could be detrimental to that child.  
20 That a child such as Eva does not require more restrictions or more structure that she  
21 is adapting well and restricting will only do harm. It is important to note, that  
22 Appellant called the child's therapists and not one testified that the child should be  
23 restricted or should spend more time with Appellant rather than Respondent.

25 2. Whether the nonmoving party will suffer hardship or harm if the stay is  
granted

1 Eugene will suffer an extreme hardship if the stay is granted – this will cost him  
2 significant time with his child and greatly interfere with his parental rights and the  
3 bond he has with his child. Eugene was put through the ringer during the course of  
4 this litigation and with absolutely no basis. He is an outstanding citizen in society, he  
5 has maintained the same employment as an educator for years. He has no criminal  
6 background or substance abuse issues. He is capable of taking care of his child for  
7 atleast 146 days per year. There is absolutely no basis for Eugene not to have joint  
8 physical and joint legal custody over his child. Dad wants the equal division of time  
9 maintained and the order to stay in place. Appellant is pursing this appeal in an  
10 attempt to evade or minimize her child support obligation.  
11

12 3. Whether movant is likely to prevail on the merits in the appeal

13 Appellant will not prevail on the merits and Eugene has already hired an  
14 attorney to represent him in the appeal. The court heard the evidence and considered  
15 the best interest of the child when rendering its decision. The decision was supported  
16 by evidence. Further, The Supreme Court (including the Court of Appeals) reviews  
17 child custody orders on an abuse of discretion basis. “Decisions regarding child  
18 custody rest in the district court’s sound discretion, and this court will not disturb the  
19 decision absent a clear abuse of that discretion.” *Bautista v. Picone*, 134 Nev.Adv.Op.  
20 44, 419 P.3d 157, (2018) citing *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330  
21 (1993). An abuse of discretion occurs when a district court’s decision is not supported  
22 by substantial evidence or is clearly erroneous. *Bautista* citing *Ogawa v. Ogawa*, 125  
23 Nev. 660, 668, 221 P.3d 699, 704 (2009) (providing that a district court’s factual  
24 findings regarding child custody are reviewed for an abuse of discretion).  
25 Furthermore, the court did consider other factors other than those listed in NRS 125C.

As this Court’s underlying child custody order will be reviewed on an

1 abuse of discretion basis by the appellate court, Appellant will not be able to show that  
2 the Court's decision is not supported by substantial evidence, or it is clearly erroneous.  
3 Furthermore, Appellant does not put forth any basis that a serious legal question is  
4 involved and as shown above the balance of equities certainly do not weigh in favor of  
5 granting the Motion for a Stay.

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7  
8 4. Whether a determination of other existing equitable considerations, if any,  
9 is warranted

10 There are no other equitable considerations which would rise to the level of  
11 granting a stay is present in this case.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Appellant's Motion for a Stay should be denied.

14 DATED this 31st day of January 2022.

15  
16 /s/ Jennifer Isso  
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**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 31st day of January 2022, a true and correct copy of the foregoing Opposition was served with the clerk of the Nevada Supreme Court, and electronic service was made in accordance with the master service list maintained by the Clerk of the Supreme Court, to the parties listed below:

**MOLLY ROSENBLUM, ESQ.**  
staff@rosenblumlawoffices.com  
Attorney for Appellant

\_\_\_\_\_/s/ Jennifer Isso  
An employee of  
ISSO & HUGHES