

IN THE SUPREME COURT OF THE STATE OF NEVADA

Desmon Brandes,

Appellant,

vs.

Lacey Pictum, n/k/a Lacey Krynzel,

Respondent.

No. 83399

Electronically Filed
Sep 10 2021 02:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attachments.

1. **Judicial District:** Eighth **Department:** E (Family Division)
 County: Clark **Judge:** Charles J. Hoskin
 District Ct. Case No.: D-10-440022-C

2. **Attorney filing this docket statement:**

Attorney: Bruce I. Shapiro, Esq. Jack W. Fleeman, Esq. Pecos Law Group 8925 S. Pecos Road, Suite 14A Henderson, Nevada 89074	Telephone: (702) 388-1851 Facsimile: (702) 388-7406 Email: email@pecoslawgroup.com
--	--

Client(s): DESMON BRANDES

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an addition sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorneys: N/A	Telephone: Facsimile: Email:
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Client(s)

4. **Nature of disposition below (check all that apply):**

- | | |
|---|---|
| <input checked="" type="checkbox"/> Judgment after bench trial
<input type="checkbox"/> Judgment after jury verdict
<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Grant/Denial of NRCP 60(b) relief
<input type="checkbox"/> Grant/Denial of injunction
<input type="checkbox"/> Grant/Denial of declaratory relief
<input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Dismissal

<input type="checkbox"/> Lack of jurisdiction
<input type="checkbox"/> Failure to state a claim
<input type="checkbox"/> Failure to prosecute
<input type="checkbox"/> Other (specify)

<input type="checkbox"/> Divorce Decree:
<input type="checkbox"/> Original <input checked="" type="checkbox"/> Modification
<input type="checkbox"/> Other disposition (specify) |
|---|---|

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

- ☒ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings):

None

8. Nature of action. Briefly describe the nature of the action and the results below:

The nature of the action appealed from is the court's award of joint physical custody to the parties, the custodial schedule set forth in the court's decision, the court's determination of child support and child support arrears, and the court's decision on the tax deduction related to the minor child.

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

A. Whether the district court abused its discretion in awarding the parties' joint physical custody.

B. Whether the district court's joint physical custody schedule is in the child's best interests in light of the evidence and the district court's own findings.

C. Whether the district court erred in its determination of child support and child support arrears.

D. Whether the district court erred in its ruling with regard to the tax deduction related to the minor child.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, have you notified the clerk of his court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain

12. Other issues. Does this appeal involve any of the following issues? No

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first-impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of the court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court.

This matter is presumptively assigned to the Court of Appeals under NRAP 17(b)(10).

14. Trial. If this action proceeded to trial, how many days did the trial last? One-half day

Was it a bench or jury trial? Bench.

15. Judicial disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:** June 7, 2021

- (a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review

17. **Date written notice of entry of judgment or order served:** June 14, 2021

Was service by:

- ☐ Delivery
☒ Mail/electronic/Fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

Yes

- (a) specify the type of motion, and the date and method of service of the motion, and the date of filing: N/A

☐ NRCP 50(b)

Date of filing _____

☒ NRCP 52(b)

Date of filing June 18, 2021

☒ NRCP 59

Date of filing June 18, 2021

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motion for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Prime Builders v. Washington, 126 Nev. ___, 245 P.3d 1190(2010).

(b) Date of entry of written order resolving tolling motion July 22, 2021

(c) Date written notice of entry of order resolving tolling motion was served August 2, 2021

Was service by:

- ☐ Delivery
☐ Mail
☒ Electronic Service

19. Date notice of appeal filed: August 17, 2021.

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

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

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other: (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order: The order entered on July 7, 2021 was a final order with respect to the issues before the court.

22. List all parties involved in the action or consolidated actions in the district court:

(a) parties: Plaintiff (Appellant) Desmon Brandes
Defendant (Respondent) Lacey Pictum, n/k/a Lacey Krynzal

(b) 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, e.g., formally dismissed, not served, or other: **N/A**

23. Give brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

Appellant:

- A. Request for Modification of Child Custody, resolved July 7, 2021.
- B. Request for Child Support, resolved July 7, 2021.
- C. Request for Finding of No Child Support Arrears, resolved July 7, 2021.
- D. Request for Attorney's fees, resolved July 7, 2021.

Respondent:

- A. Request for Contempt Finding, resolved July 7, 2021.

B. Request for Attorney's Fees and Costs, resolved July 7, 2021.

24. 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 or consolidated actions below:

- ☒ Yes
☐ No

25. If you answered "No" to question 23, complete the following: N/A

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

- ☐ Yes
☐ No

(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?

- ☐ Yes
☐ No

26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A

27. 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

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.

DESMON BRANDES

Name of appellant

JACK W. FLEEMAN, ESQ.

Name of counsel of record

September 10, 2021

Date

/s/ Jack W. Fleeman

Signature of Counsel of Record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 10th day of September, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

X by mailing it by first class mail with sufficient postage prepaid to the following address:

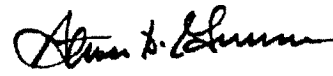
Lacey Krynzel
6530 Annie Oakley #814
Henderson, Nevada 89014

DATED this 10th day of September, 2021.

A handwritten signature in black ink, appearing to read 'Janine Shapiro', is written over a horizontal line.

Janine Shapiro
an employee of PECOS LAW GROUP

Exhibit “1”


CLERK OF THE COURT

1 DESMON BRANDES
2 4836 Milorie Court
3 Las Vegas, NV 89130
4 (702) 523-1007
5 Plaintiff in Proper Person

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 DESMON BRANDES,

9 Plaintiff,

10 vs.

11 LACEY PICTUM,

12 Defendant,
13

Case No D - 10 - 440022 - C
Dept No. J

14 **COMPLAINT TO ESTABLISH CUSTODY**

15 COMES NOW, Plaintiff, named above, in Proper Person, and for cause of action, alleges as
16 follows:

17 1. Plaintiff DESMON BRANDES is a resident of the State of Nevada and, for a period of
18 more than six weeks preceding the commencement of this action, has resided and been physically
19 domiciled in the State of Nevada, and now resides and is domiciled therein, and during said period
20 of time, Defendant has had and still has the intent to make said State of Nevada her home, residence
21 and domicile for an indefinite period of time.

22 2. Defendant LACEY PICTUM is a resident of the State of Nevada, County of Clark and
23 has resided in Nevada for in excess of the past six months.

24 3. Plaintiff is the father of the minor child, to wit: PAIGE BRANDES (DOB: 4/5/07).
25 Defendant is the mother of said minor child.

26 4. The parties are fit and proper persons to be awarded joint legal custody of the minor
27 child, with Plaintiff having primary physical custody subject to Defendant's specified supervised
28 visitation.

1 5. Defendant should be awarded supervised visitation only due to an open CPS case against
2 Defendant relating to her ongoing addiction of prescription drugs.

3 6. Plaintiff be authorized to withhold visitation if Defendant is under the influence of drugs
4 or alcohol; and that Plaintiff be authorized to request random drug tests until further order of the
5 court.

6 7. That statutory child support should be ordered under NRS 125B.070.

7 WHEREFORE, Plaintiff prays judgement as follows:

8 1. That the court establish joint legal custody of the minor child with Plaintiff having
9 primary physical custody subject to Defendant's rights of supervised visitation.

10 2. That the court establish specified visitation and a full parenting plan for visitation to
11 Defendant.

12 3. That Plaintiff be awarded statutory child support for the minor children.

13 DATED this 14 day of Dec, 2010.

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15 DESMON BRANDES
16 Plaintiff in Proper Person
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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)


That I DESMON BRANDES, being first duly sworn, depose and say:

That I am a Plaintiff in the above-entitled action; that I have read the foregoing COMPLAINT FOR CUSTODY, and know the contents thereof; that the same is true of my own knowledge and belief, and as to those matters, I believe them to be true.

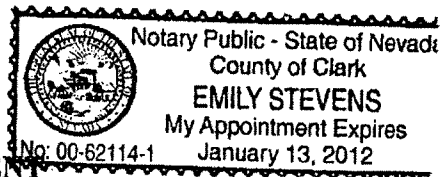


DESMON BRANDES

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 14 DAY OF DEC, 2010.



NOTARY PUBLIC

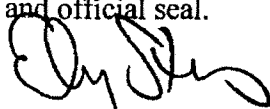


ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this 14 day of Dec, 2010, before me the undersigned Notary Public in and for said County and State, appeared DESMON BRANDES known to me to be the person described in and who executed the foregoing instrument and who acknowledged to me that she did so freely and voluntarily and for the uses and purposes mentioned therein.

WITNESSETH my hand and official seal.



NOTARY PUBLIC

Exhibit “2”


CLERK OF THE COURT

1 ANSC
2 JOHN T. KELLEHER, ESQ.
3 Nevada Bar No. 6012
4 KELLEHER & KELLEHER, LLC
5 807 South Seventh Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-7494
8 Facsimile: (702) 384-7545
9 Attorney for Defendant

10 DISTRICT COURT - FAMILY DIVISION
11 CLARK COUNTY, NEVADA

12 DESMON BRANDES,

13 Plaintiff,

14 vs.

15 LACEY PICTUM,

16 Defendant.

CASE NO. D-10-440022-C
DEPT. NO. J

17 **ANSWER TO COMPLAINT TO ESTABLISH CUSTODY AND**
18 **COUNTERCLAIM FOR PRIMARY PHYSICAL CUSTODY OF THE PARTIES'**
19 **MINOR CHILD AND CHILD SUPPORT**

20 COMES NOW Defendant, LACEY PICTUM, by and through her attorney of record, John
21 T. Kelleher, Esq., of the law firm of Kelleher and Kelleher, LLC, and Answers Plaintiff's
22 Complaint to Establish Custody as follows:

- 23 1. Answering paragraphs 1, 2, and 3 of Plaintiff's Complaint on file herein, Defendant admits the
24 allegations.
25 2. Answering paragraphs 4, 5, 6 and 7 of Plaintiff's Complaint on file herein, Defendant denies
26 the allegations.

27 WHEREFORE, the Defendant prays that Plaintiff take nothing by reason of his Complaint,
28 for reasonable attorneys' fees and costs herein, and such other relief requested and otherwise as the
Court may deem just and proper in the circumstances.

COUNTERCLAIM

COMES NOW Defendant/Counterclaimant, LACEY PICTUM, by and through her attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER LLC, and avers and alleges as follows:

I.

Defendant/Counterclaimant is and, for a period of more than six (6) weeks immediately preceding the date of the filing of this Petition has been an actual, bona fide resident of the State of Nevada and actually, physically and corporeally domiciled herein during all of said period of time.

II.

Defendant/Counterclaimant and Plaintiff/Counterdefendant were previously involved in a relationship and are not married.

III.

The parties have one child the issue of their relationship; namely, Paige Brandes, born April 5, 2007. Plaintiff/Counterdefendant's name is on the birth certificate and he has held himself out as the father of the child.

IV.

The parties reside in Las Vegas, Nevada and the state of Nevada is the habitual residence of the minor child.

V.

That Defendant/Counterclaimant is a fit and proper person to be awarded sole legal and primary physical custody of the minor child.

VI.

That Plaintiff/Counterdefendant should be order to pay Defendant/Counterclaimant child support pursuant to NRS 125B.070 et seq. including constructive arrearages going back to the birth of the minor child.

///

///

///

VII.

That it has been necessary for Defendant/Counterclaimant to engage in the services of an attorney to prosecute this action, which should be paid by Plaintiff/Counterdefendant.

WHEREFORE, Defendant/Counterclaimant prays for judgment against Plaintiff/Counterdefendant as follows:

1. That the Court enter an order establishing Plaintiff/Counterdefendant's paternity of the minor child.;
2. That Defendant/Counterclaimant be awarded sole legal and primary physical custody of the minor child;
3. That Plaintiff/Counterdefendant be ordered to pay child support to Defendant/Counterclaimant pursuant to NRS 125B.070 et seq.
4. That Defendant/Counterclaimant be awarded reasonable attorneys fees and costs;
5. For such other and further relief as the Court may deem just and proper under the circumstances.

DATED this 7 day of January, 2011.

KELLEHER & KELLEHER, LLC

By: 

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 6012
807 South Seventh Street
Las Vegas, Nevada 89101
Attorney for Defendant

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

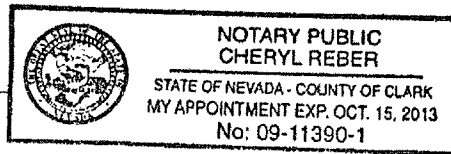
LACEY PICTUM, being first duly sworn on oath, according to law, deposes and says:

That I am the Defendant/Counterclaimant in the above-entitled action; that I have read the foregoing Answer to Complaint to Establish Paternity, Custody and Counterclaim for Primary Physical Custody and Child Support and know the contents thereof; that the same is true and correct of my own knowledge, except for those matters therein contained stated upon information and belief and, as to those matters, I believe them to be true.

Lacey Pictum
LACEY PICTUM

SUBSCRIBED and SWORN to before
me this 7th day of January 2011.

[Signature]
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of January 2011, service of the foregoing
DEFENDANT'S ANSWER AND COUNTERCLAIM was made by placing a true and correct copy
in the United States Mail, postage prepaid and addressed as follows:

Desmon Brandes
4836 Milorie Court
Las Vegas, Nevada 89130
Plaintiff in proper person


An employee of Kelleher & Kelleher, LLC

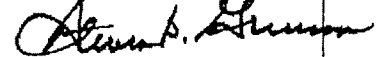
LAW OFFICES
KELLEHER & KELLEHER LLC
807 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
(702) 384-7494
Facsimile (702) 384-7545

Exhibit “3”

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Notary Public - State of Nevada
County of Clark
EMILY STEVENS
My Appointment Expires
January 13, 2012
No. GC 5.114-1

Exhibit “4”



1 **NEOJ**
2 **Bruce I. Shapiro, Esq.**
3 Nevada Bar No. 004050
4 PECOS LAW GROUP
5 8925 South Pecos Road, Suite 14A
6 Henderson, Nevada 89074
7 Telephone: (702) 388-1851
8 Facsimile: (702) 388-7406
9 Email: Bruce@pecoslawgroup.com
10 Attorneys for Respondent

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

14 NV DHHS DIV OF WELFARE &
15 SUPPORT SERVICES (LACEY
16 KRYNZEL),

17 Petitioner,

18 vs.

19 DESMON BRANDES,

20 Respondent.

Case No. **R-20-215032-R**
Dept. No. **E/Child Support**

21 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW**
22 **AND ORDER**

23 TO: NV DHHS DIV OF WELFARE & SUPPORT SERVICES (LACEY
24 KRYNZEL):

25 **PLEASE TAKE NOTICE** that a "*Findings of Fact, Conclusions of Law*
26 *and Order*" was entered in the above-captioned case on June 14, 2021, by filing
with the clerk.

...

...

1 A true and correct copy of said "*Findings of Fact, Conclusions of Law and*
2 *Order*" is attached hereto and made a part hereof.

3 DATED this 14th day of June 2021.

4 PECOS LAW GROUP

5 /s/ Bruce I. Shapiro

6 **Bruce I. Shapiro, Esq.**

7 Nevada Bar No. 004050

8 8925 South Pecos Road, Suite 14A

9 Henderson, Nevada 89074

10 Attorney for Respondent

11 **CERTIFICATE OF SERVICE**

12 Pursuant to NRCP 5(b), I hereby certify that the foregoing "*Notice of Entry*
13 *of Findings of Fact, Conclusions of Law and Order*" in the above-captioned case
14 was served this date by and through Wiz-Net Electronic Service, pursuant to
15 Clark County District Court Administrative Order 14-2 for service of documents
16 identified in Rule 9 of the N.E.F.C.R.

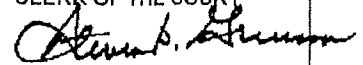
17 **CLARK COUNTY DISTRICT ATTORNEY FAMILY SUPPORT**

18 dafsefile@ClarkCountyDA.com

19 DATED this 14th day of June 2021.

20 /s/ Amy Robinson

21 an employee of PECOS LAW GROUP



1 **ORDR**

2 **Bruce I. Shapiro, Esq.**

3 Nevada Bar No. 004050

4 PECOS LAW GROUP

5 8925 South Pecos Road, Suite 14A

6 Henderson, Nevada 89074

7 Telephone: (702) 388-1851

8 Facsimile: (702) 388-7406

9 Email: Bruce@pecoslawgroup.com

10 Attorney for Respondent

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 NV DHHS DIV OF WELFARE
14 & SUPPORT SERVICES
15 (LACEY KRYNZEL),

16 Petitioner,

17 vs.

18 DESMON BRANDES,

19 Respondent.

Case No. **R-20-215032-R**
Dept. No. **E/Child Support**

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

21 Respondent, **Desmon Brandes**, through his attorney, **Bruce I. Shapiro,**
22 **Esq.**, of Pecos Law Group, hereby submits "*Findings of Fact, Conclusions of Law*
23 *and Order*" entered on June 7, 2021 in case No. D-10-440022-C, attached hereto.

24 DATED this 14th day of June 2021.

25 PECOS LAW GROUP

26 /s/ Bruce I. Shapiro

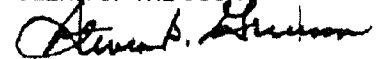
Bruce I. Shapiro, Esq.

Nevada Bar No. 004050

8925 South Pecos Road, Suite 14A

Henderson, Nevada 89074

Attorney for Respondent



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ORDR

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

BRANDES, DESMON,
Plaintiff,

Case No.: D-10-440022-C
Dept.: E

v.

PICTUM, LACEY, nka KRUNZEL
Defendant.

Date: June 1, 2021
Time: 1:30 p.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

This matter having come on for Evidentiary Hearing, via video, on the 1st day of June, 2021, for the Court to consider Plaintiff's request for modification of custody; Plaintiff, Desmon Brandes (Desmon) being present, and represented by Bruce Shaprio, Esq.; Defendant, Lacey Krunzel (Lacey) being present, and representing herself. The Court, having heard the evidence and arguments presented, taking the matter under advisement, finds and orders as follows.

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Run
☐ Non-Trial Disposition
☐ Scaled/Withdrawn:
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR
☐ Total Disposition:
☐ Judgment Reversed by Trial

CHARLES J. ROSKIN
DISTRICT JUDGE
FAMILY DIVISION DEPT. E
LAS VEGAS NV 89101-2108

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Statement of the Case

The parties' permanent custody arrangement is defined by their Stipulation and Order, filed July 5, 2011 (SAO). That SAO awards the parties joint legal custody and Lacey primary physical custody of their minor child: Page, born April 5, 2007 (child). Desmon's visitation schedule was "two (2) days on weekdays and every other weekend." Desmon's monthly child support obligation was established at \$400.00. As such, primary physical custody to Lacey is the controlling permanent custody order.

On November 18, 2020, Desmon filed his *Motion to Modify Custody to Joint Physical Custody; to Set Child Support; for Finding of No Child Support Arrears; For Attorney's Fees; and for Related Relief*. On December 7, 2020, Lacey filed her *Opposition and Countermotion to Hold Plaintiff in Contempt of Court; Referral to Mediation; for Award of Fees and Costs; for Sanctions and Related Relief*.

On November 23, 2020, in the child support case, R-20-215032-R, Desmon's child support obligation was modified to \$1,040.00 per month, effective August 2020. That Recommendation and Order was entered on December 16, 2020. The Order is unclear, however, concerning whether the child support court assessed arrears. An arrears payment is established, but no arrears are listed.

1 At the January 19, 2021 hearing, Lacey was referred for drug testing
2 and a temporary joint physical custody and visitation schedule was
3 implemented. On week one, Desmon was to have the care of the child
4 Thursday through Sunday; on week two Desmon was to have the care of the
5 child Wednesday through Friday. An Evidentiary Hearing was set on
6 Desmon's request to modify physical custody. The drug test results
7 demonstrated a very low level of THC in Lacey's urine.
8
9
10

11 At the May 18, 2021 Calendar Call, the Evidentiary Hearing was set
12 firm.
13

14 Findings of Fact

15 That this Court has personal and subject matter jurisdiction in this
16 case.
17

18 That Desmon testified in his case-in-chief. He has worked for NV
19 Energy for 23 years. He has another child, Jayden, who is 16 years old
20 whom he shares joint physical custody with that child's mother.
21

22 That, as of January 2021, the child has resided primarily with him.
23 The child came to him with a video of Lacey, which concerned her, and has
24 since been in his primary care. The child has seen Lacey a handful of times
25 since January 2020 and at the child's softball tournaments. Between January
26 2021 and the Trial, Lacey has exercised one overnight visit with the child.
27
28

1 That Desmon indicated that, following the July 2011 SAO, the parties
2 exercised joint physical custody. That situation stopped in late 2011 or early
3 2012. Desmon indicated that, with Lacey's agreement, the child then began
4 living full time with him.
5

6
7 That, when Lacey went into rehab in California, the child would
8 contact her by telephone. After Lacey's return from rehab, the child visited
9 her on weekends and during the summers. Lacey was living with her
10 parents at that point.
11

12 That Desmon indicated that the child has always attended school in
13 the zone determined from his home. During the summers the child would
14 spend every other weekend with Desmon. Between 2012 and 2016,
15 following Lacey's return from rehab, prior to exercising visits with the child,
16 Lacey would take an at-home drug test. If it was not clean, Lacey would not
17 get visitation.
18
19

20 That Lacey moved out of her parent's home in 2016. The prior
21 schedule of every-other weekend and summers with Lacey continued.
22

23 That, in March 2020, when schools closed due to Covid, Desmon
24 decided to "start the summer early" and permit the child to start the schedule
25 with Lacey, typically reserved for summer break. Desmon was then
26 exercising every other weekend through August 2020. The child then
27
28

1 followed the same schedule as Desmon's other child, visiting three days one
2 week and four days the next week.
3

4 That Desmon testified that, for the majority of the last ten years, he
5 has been the *de facto* primary physical custodian. He did not return to court
6 to confirm that because he did not see a reason to do so. Desmon told Lacey
7 that she did not need to pay him child support.
8

9 That Exhibit 3 is a video, taken by the child of Lacey, where Lacey
10 appears to be impaired. Exhibit 1 is a text exchange between the child and
11 Desmon's other child regarding the child's concerns relating to Lacey being
12 impaired. Exhibit 4 is a text exchange between Lacey and the child
13 regarding the child's concerns about Lacey's drug use and desire to remain
14 with Desmon until Lacey gets "better."
15

16 That Desmon paid his child support obligation from the July 2011
17 SAO until mid-2012. He had *de facto* primary custody at that time and
18 Lacey agreed to the support arrangement.
19

20 That, on cross-examination, Desmon agreed that, following Lacey's
21 return from rehab, her supervised visitation went to every other weekend
22 within a few months. Desmon agreed to Lacey seeing the child with her
23 parent's supervision without a court order. Lacey's weekend visits were
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1 from Friday, after school, until Monday at school. That schedule continued
2 until March 2020.
3

4 That Desmon confirmed that he has not seen Lacey on drugs since
5 2015.
6

7 That Lacey testified in Desmon's case-in-chief and then in her case-
8 in-chief. She was in in-patient rehab, in California, for 45 days. After that,
9 she always had the child during the summers in addition to the weekends.
10

11 That Lacey confirmed that, since 2011, she has not exercised primary
12 physical custody. She indicated that she is fighting to get custody back.
13 Between March 2020 and December 2020, Lacey stated that the parties had
14 "50/50" custody.
15

16 That, in January 2021, Lacey agreed that the child could remain
17 primarily with Desmon. She believed that, following the drug test, the child
18 would come back. While Lacey understands the child's concerns, she
19 believes that the child is being kept from her.
20

21 That Lacey discussed her prior employment and that she was found
22 unresponsive at her desk on two occasions. She was let go from that
23 employment for excessive absences.
24

25 That Lacey discussed her health issues. Her doctor recommended that
26 she have her appendix removed, but she refused. Lacey confirmed that she
27
28

1 refused to sign the HIPPA release and permit Desmon to review her medical
2 records. Lacey has been taking Soboxon since 2015. She does not believe it
3 is an opioid.
4

5 That Lacey agreed that Desmon could claim the child on his taxes
6 until she was better. Desmon stopped paying her child support when she
7 went to rehab. She agreed that he did not need to pay her further child
8 support until she got better. She now states that she is only asking for child
9 support from 2015 forward. Lacey admitted to not pursuing child support,
10 but she wants it now.
11
12

13 That, when the child support case was opened by the State, Lacey did
14 not tell the District Attorney, Family Support about the parties agreement
15 concerning child support.
16

17 That Lacey last worked in 2018 and earned \$15.00 per hour. Since
18 then, she has only worked in her husband's business. She is receiving
19 unemployment benefits of \$527.00 per week.
20

21 That, on cross-examination, Lacey again confirmed that, following
22 rehab, she left the child primarily with Desmon. Notwithstanding the agreed
23 *de facto* arrangement, she wants child support arrears from August 2015
24 until the present.
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1 That Lacey went through the historical custodial arrangements. Until
2
3 2013/2014, Lacey stated she had 35% of the time with the child because of
4 school. She did not object to every-other weekend contact. Lacey never
5 requested to modify the arrangement or child support. She did not come
6 after Desmon for support because he was the one caring for the child.
7

8 That Lacey has been making payments for the child's softball
9 participation.
10

11 That Desmon's January 11, 2021 Financial Disclosure Form (FDF)
12 represents a gross monthly income (GMI) of \$8,345.00. Lacey's May 10,
13 2021 FDF indicates a GMI of \$2,283.00 from unemployment.
14

15 **Conclusions of Law**

16 The controlling custody order is joint legal and primary physical
17 custody to Lacey. Shortly after that SAO was entered, the parties agreed to
18 Desmon acting as *de facto* primary custodian.
19

20 Although this Court entered a temporary joint physical custody order
21 at the January 19, 2021 hearing, the parties have not followed that order
22 either.
23

24 In this case, Desmon's Motion requested joint physical custody of the
25 child. However, he argued for primary physical custody at the Trial. Lacey
26
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1 is requesting to maintain the primary physical custody SAO, which she
2 admits the parties have not followed for almost a decade.

3
4 Regarding modifying physical custody, NRS 125C.0045 states:

5 “1. In any action for determining the custody of a minor child, the
6 court may, except as otherwise provided in this section and NRS
7 125C.0601 to 125C.0693, inclusive, and chapter 130 of NRS:

8 (a) During the pendency of the action, at the final hearing or at
9 any time thereafter during the minority of the child, make such
10 an order for the custody, care, education, maintenance and
11 support of the minor child as appears in his or her best interest;
12 and

13 (b) At any time modify or vacate its order, even if custody was
14 determined pursuant to an action for divorce and the divorce
15 was obtained by default without an appearance in the action by
16 one of the parties.

17 The party seeking such an order shall submit to the jurisdiction of the
18 court for the purposes of this subsection. The court may make such an
19 order upon the application of one of the parties or the legal guardian
20 of the minor.

21 2. Any order for joint custody may be modified or terminated by the
22 court upon the petition of one or both parents or on the court's own
23 motion if it is shown that the best interest of the child requires the
24 modification or termination. The court shall state in its decision the
25 reasons for the order of modification or termination if either parent
26 opposes it.”

27 In determining whether to modify a primary physical custodial order,
28 the movant must establish that there has been a substantial change of
circumstances, affecting the child, since the most recent custody order and

1 that the child's best interests would be served by the change. *Ellis v.*
2 *Carucci*, 123 Nev. 145, 147, 161 P.3d 239, 240 (2007). In determining
3 whether to modify a joint physical custodial order, the movant must
4 establish that the change would serve the child's best interests. *Truax v.*
5 *Truax*, 110 Nev. 437, 439, 874 P.2d 10, 11 (1994).
6

7
8 It is undisputed that Desmon maintained *de facto* primary custody for
9 the majority of the last ten years. It is also undisputed that, between March
10 2020 and August 2020, the child resided primarily with Lacey on an
11 extended "summer schedule." As the parties have essentially never followed
12 the SAO, it is necessary that this Court entertain a *Rivero* look back.
13
14

15 The Nevada Supreme Court gave direction when calculating the
16 timeshare exercised by the parties.
17

18 "The district court should calculate the time during which a party has
19 physical custody of a child over one calendar year. Each parent must
20 have physical custody of the child at least 40 percent of the time,
21 which is 146 days per year. Calculating the timeshare over a one-year
22 period allows the court to consider weekly arrangements as well as
23 any deviations from those arrangements such as emergencies,
24 holidays, and summer vacation. In calculating the time during which a
25 party has physical custody of the child, the district court should look
26 at the number of days during which a party provided supervision of
27 the child, the child resided with the party, and during which the party
28 made the day-to-day decisions regarding the child. . . .

Therefore, absent evidence that joint physical custody is not in the
best interest of the child, if each parent has physical custody of the

1 child at least 40 percent of the time, then the arrangement is one of
2 joint physical custody.”

3
4 *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009). The *Rivero*
5 court goes on to conclude that the “district court must apply Nevada's
6 physical custody definition—not the parties' definition.” *Id.* at 429.

7
8 All evidence establishes that the custody arrangement which existed
9 between 2012 and 2020 would be defined as primary physical custody to
10 Desmon; Lacey maintained primary physical custody between March 2020
11 and August 2020; the parties maintained joint physical custody between
12 August 2020 and December 2020, which was also temporarily ordered at the
13 January 2021 hearing; and primary physical custody was exercised by
14 Desmon between January 2021 through the June 1, 2020 Evidentiary
15 Hearing.
16
17
18

19 The law in this State is unclear on how to appropriately address a
20 request for modification of physical custody when a controlling order is
21 primary physical custody to one party, and the actions of the parties for a
22 decade, has been primary physical custody to the other party, who is the
23 non-custodial parent in the controlling order. The law is also unclear on
24 how to analyze a situation where, over the last 15 month, a *de facto* primary
25 custody arrangement to one party existed for five months, a *de facto* primary
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1 custody arrangement to the other party for five months and a *de facto* joint
2 physical custody for has been exercised for five months. Since it can be
3 reasonably argued that either *Ellis* or *Truax* could control depending whether
4 the *de facto* situation or permanent order is controlling, and that a best
5 interest analysis is contained in both approaches, this Court will analyze the
6 evidence presented under both scenarios prior to resolving the custody
7 modification issue.

11 Since Lacey went to California to deal with her addiction issues,
12 Desmon has acted as primary physical custodian. This Court appreciates
13 Lacey's understanding, over the last decade, that maintaining the controlling
14 order would not have been in the best interests of the child. Such indicates a
15 desire to serve the child's best interests. Similarly, this Court appreciates
16 Desmon's willingness to step in and primarily care for the child while Lacey
17 worked through her issues.

20 The parties worked together and cooperated in an effort to serve the
21 best interests of the child during Lacey's issues. The best interests of child
22 are served by parents who are able to work through situations and agree to
23 co-parent with the child's best interest as their focus. Such is what occurred
24 since shortly following the SAO. This Court will not punish a parent for
25 looking out for the best interests of the child.

1 The “*Rivero* look back” through 2012 results in a determination that
2
3 Desmon is the *de facto* primary physical custodian. *See Rivero* at 427.
4 However, over the last 15 months, Desmon has been the primary physical
5 custodian for five months; Lacey has been the primary physical custodian
6 for five months; and the parties shared joint physical custody for five
7 months. While *Rivero* defines what constitutes primary physical custody
8 and that a year is a reasonable amount of time to assess the schedule, it does
9 not indicate that demonstration of the same automatically results in a
10 substantial change of circumstance finding.
11

12
13 Desmon bore the burden of establishing the factors necessary to
14 modify custody. Parents cooperating to serve the best interests of the child
15 while one parents struggles with an addiction is what is best for child.
16 However, the ongoing and continuing maintaining of *de facto* primary
17 custody to the “non-custodial” parent for such a substantial period satisfies a
18 substantial change of circumstances affecting the child. Thus, Desmon
19 meets the first prong under *Ellis*.
20
21

22
23 The Court will also look to whether a modification would be in the
24 child’s best interests pursuant to both *Ellis* and *Truax*.
25
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28

1 In analyzing the best interest of the child, the court must analyze the
2 factors enumerated in NRS 125C.0035(4). Those factors are reviewed
3 below:
4

5 *The wishes of the child if the child is of sufficient age and*
6 *capacity to form an intelligent preference as to his or her physical*
7 *custody.* The child is 14 years old and of sufficient age and capacity
8 to form an intelligent preference. Evidence indicates that the child
9 expressed a desire to reside with Desmon until Lacey got better.
10 Given the drug test results from January 2021, it appears that drug use
11 is not a current concern. Lacey indicates that she understands the
12 child's concern. This factor favors Desmon.
13

14 *Any nomination of a guardian for the child by a parent.* No
15 nomination occurred in this case.
16

17 *Which parent is more likely to allow the child to have frequent*
18 *associations and a continuing relationship with the noncustodial*
19 *parent.* The parties worked together when Lacey went into rehab and
20 Lacey agreed to Desmon exercising primary care of the child.
21 Desmon has worked with Lacey and permitted her to maintain
22 reasonable contact following her rehab. This factor is neutral.
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1 *The level of conflict between the parents.* Minimal evidence
2
3 concerning this factor was presented. The parties have shared
4 information and been able to exchange the child throughout. They
5 have agreed upon specific duties relating to the child notwithstanding
6 minimal communication between the parties. Conflict is low. The
7 factor is neutral.
8

9 *The ability of the parents to cooperate to meet the needs of the*
10 *child.* Prior to the current litigation, the parties were able to cooperate
11 to meet the needs of the child. They were model parents in the area of
12 cooperation and permitting the other to spend time with the child.
13 Since July 2020, that circumstance has changed as a result of the
14 conflict concerning primary custody and, presumably, child support.
15 This factor is neutral.
16
17
18

19 *The mental and physical health of the parents.* Lacey has
20 demonstrated addiction issues. Such is the reason the parties changed
21 custody in 2012 and the reason the child chose to reside primarily
22 with Desmon earlier this year. No health issues relating to Desmon
23 were presented. This factor favors Desmon.
24
25

26 *The physical, developmental and emotional needs of the child.*
27 Desmon handles the physical needs of the child. For many years,
28

1 these parents have been able to work together to insure that the needs
2 of the child have been met. This factor is neutral.

3
4 *The nature of the relationship of the child with each parent.*
5 Neither party specifically discussed their relationship with the child.
6 Ultimately, this factor is neutral.

7
8 *The ability to maintain a relationship with a sibling.* Desmon
9 has another child whom he maintains joint physical custody. The
10 child has a good relationship with that sibling. Lacey did not
11 reference any siblings in her household, although the record indicates
12 other children in her home. This factor favors Desmon.

13
14
15 *Any history of parental abuse or neglect of the child or a*
16 *sibling of the child.* Although the Department of Family Services has
17 been involved with this family for many years, the only substantiated
18 finding against Lacey occurred in September 2010. No ongoing abuse
19 or neglect was demonstrated. This factor is neutral.

20
21
22 *Whether either parent has engaged in an act of domestic*
23 *violence against the child, a parent of the child or any other person*
24 *residing with the child.* No evidence was presented concerning this
25 factor.
26
27
28

1 *Whether either parent has engaged in an act of abduction.* No
2
3 evidence was presented concerning this factor.

4 Desmon bore the burden of establishing that it would be in the child's
5 best interests to modify the primary physical custodial order as the second
6 prong in *Ellis* and as the standard under *Truax*. He met that burden and
7 demonstrated that a modification to the controlling order would be in the
8 best interest of the child. Neither party established that the other is
9 incapable of adequately caring for the child for 146 days per year. As such,
10 a modification of physical custody is appropriate on this record. *See* NRS
11 125C.003. It is in the best interests of the child that the parties be awarded
12 joint physical custody. Certainly, this determination is predicated on Lacey
13 maintaining her sobriety.
14

15 The last child support order was entered by the child support court in
16 November 2020, presuming that the controlling order was still the custodial
17 situation. Given the change in the controlling order, it is appropriate that
18 child support be reviewed. Applying Desmon's GMI of \$8,345.00 to the
19 regulatory formula results in a monthly obligation of \$1,147.00; applying
20 Lacey's GMI of \$2,283.00 to the regulatory formula results in a monthly
21 obligation of \$365.00. *See* NAC 425.145. Such would bring the Desmon's
22 current calculated monthly child support obligation to \$782.00. The
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1 monthly out-of-pocket cost for insuring the child, if any, should be equally
2 divided by the parties. See NAC 425.135. No additional adjustment
3 evidence was provided pursuant to NAC 425.150.
4

5 Desmon argues for a waiver of the child support arrearages as it is
6 undisputed that he maintained *de facto* primary custody since before he
7 stopped making his child support payments to Lacey. The Nevada Supreme
8 Court determined that "equitable defenses such as estoppel or waiver may be
9 asserted by the obligor in a proceeding to enforce or modify an order for
10 child support." *Parkinson v. Parkinson*, 106 Nev. 481, 483, 796 P.2d 229,
11 231 (1990), *abrogated on other grounds by Rivero v. Rivero*, 125 Nev. 410,
12 216 P.3d 213 (2009).
13
14
15

16 Lacey admits the *de facto* change in custody. She stated that she did
17 not seek support because Desmon was caring for the child. Her request for
18 child support arrears currently, for August 2015 forward, is not supported.
19 Lacey waived her right to collect child support. The child has not
20 consistently resided with Lacey, with the exception of summers, since 2012.
21
22

23 The child support court, in November 2020, considered that Lacey
24 was the primary physical custodian and determined their modified child
25 support obligation was to begin in August 2020. However, the parties were
26 exercising *de facto* joint physical custody during that period. Beginning in
27
28

1 January 2021, the *de facto* arrangement was primary physical to Desmon.
2
3 As such, the child support court's unspecified arrears are appropriate to be
4 resolved in this Order.

5 The Court considered NRS 18.010 and the relative income of the
6 parties. With the exception of the last year, the parties have cooperated in
7 their custody of the child, presumably with the best interests of the child at
8 heart. Their cooperation should not be discouraged. As such, each side
9 shall bear their own attorney's fees and costs.
10
11

12 **Decision**

13 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that
14 Desmon's motion to modify physical custody is granted and it is in the best
15 interests of the child that the parties are awarded joint physical custody.
16 Lacey is not to partake in drugs. A relapse would be a basis for this Court to
17 revisit this decision.
18
19

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 parties shall continue to share joint legal custody.
22

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
24 given the joint physical custody determination, Desmon's monthly child
25 support obligation shall be set at \$782.00 beginning June 2021. The parties
26 are also directed to equally share in the health insurance premium out-of-
27
28

1 pocket cost for insuring the child. Such support shall continue until further
2 order of the Court, upon a three year review, or substantial change of
3 circumstances.
4

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
6 Lacey's request to receive child support arrears going back to 2015 is
7 DENIED. However, since the child support court's determination that
8 Desmon's child support obligation of \$1,040.00 begin August 2020, when
9 the parties were actually exercising joint physical custody, such necessitates
10 modification by this Court. Desmon's child support between August 2020
11 and December 2020, when the parties were exercising *de facto* joint physical
12 custody should be calculated at \$782.00 per month, for a total of \$3,910.00.
13 Lacey's child support obligation for the months of January 2021 through
14 May 2021 should have been set at \$365.00 per month because Desmon
15 maintained *de facto* primary physical custody during that time. Such totals
16 \$1,825.00. Offsetting those obligations results in the net amount of
17 Desmon's obligation to Lacey, between August 2020 and May 2021, being
18 \$2,085.00. Such amount should be reduced by payments made by Desmon
19 to Lacey during that time frame. The child support court is directed to
20 implement this revised calculation as part of its enforcement.
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that it
2
3 is in the child's best interest that the parties' custodial schedule be defined as
4 follows to permit the child and Desmon's other child to exercise their visits
5 together:
6

7 Week One: Desmon shall have custodial time with the child from
8 Wednesday through Friday.

9 Week Two: Desmon shall have custodial time with the child from
10 Thursday through Sunday

11 The balance of the custodial time shall be exercised by Lacey.
12

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
14 parties are to continue to rotate the tax deduction as stated within the SAO.
15 There is no reason to adjust prior years and the deductions taken were
16 supported by the custody arrangement.
17

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
19 each side shall bear their own attorney's fees and costs.
20

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
22 prior orders, not modified by this Order, shall remain in full force and effect.
23

24 IT IS SO ORDERED this 7th day of June, 2021

25
26
27 
28 CHARLES J. HOSKIN
District Court Judge