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IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHANIE RUBIDOUX, Appellant, vs. DANIEL RUBIDOUX, Respondent.	Nev. Sup. Ct. No.: 83628

REPLY TO FAST TRACK RESPONSE

This response is limited to Respondent's arguments contained in Section B and C of it's Fast Track Response, abbreviated as ("FTR") going forward.

Respondent claims that, in *Davis v. Ewalefo,* 131 Nev. 445 (2015),

> This Court reversed and remanded the order because the trial court failed to provide any factual basis, or specific findings connecting the child's best interests, for denying the father's request for the child's visitation in Africa or the ban on international travel. Id. The Davis

> Court noted specifically that the trial court failed to explain or make particularized findings as to why the international travel and visitation restrictions imposed were in the best interest of the child.

Fast Track Response ("FTR") at 9. Respondent further cites the Davis case as follows:

> In terms of the visitation in Africa ... I should note that the world is a dangerous place as we've learned even in the United States terrorism can occur, that the proposed countries [for visitation in Africa–Rwanda and Uganda] are not Hague signatories nor Hague compliant

FTR at 10. Respondent then states that "[t]he district court [in Davis] did not offer any findings to justify its larger prohibition on international travel for E.D.". Respondent concludes that "the FFCL could not be more different that the threadbare and conclusory order in Davis" (Id.) because:

> In the present case, the district court not only made its specific factual findings based on the substantial testimony and evidence presented at the time of trial, but it tied those findings directly to the minor child Riley's best interests.

Id.

Respondent goes on to recite the findings the district court made under NRS 125C.0035(4) et seq. FTR 10-11. Respondent then turns to the "findings" made by the district court specific to the issue of domestic violence. FTR 12. It quotes the district court as follows:

> Dan has rebutted the presumption under NRS125C.0035(5) because he has been able to parent Riley over the past 14 months, and he has demonstrated that Stephanie did not appear afraid in any of the alleged domestic violence incidents, but in fact, antagonized him by calling him

> things such as an "oversensitive bitch." Both parties have engaged in inappropriate behavior, but in the January 2019 incident, Dan's actions rose to the level of domestic violence.

To say that the findings made in the Davis case are threadbare in comparison to the above cannot be supported by reason or logic – they are as identically threadbare as twin children are identically physically. It is important to lay out the entirety of the rule at issue, NRS 125C.0035(5). That rule, in its entirety, provides as follows:

> 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:
>
> > (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
> > **(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.**

(Emphasis added).

As stated above, in *Davis*, this Court objected to the fact that the district court "failed to provide any ***factual basis, or specific findings connecting the child's best interests***, for denying the father's request for the child's visitation in

Africa or the ban on international travel". (Emphasis added) FTR at 9. Respondent claims that the orders made by the district court provide that factual basis or specific findings connecting the child's best interests for its conclusion that the presumption contained in NRS 125C.0035(5)(b) has been overcome and that the requirements of the rule have been met.

However, the orders cited in Respondent's FTR (cited at 14-15) do nothing of the sort; rather, they simply set forth a visitation schedule without providing any factual basis or specific findings that those orders "adequately protect the child and the parent" from further acts of domestic violence. Those orders cited by Respondent at page 14-15 of the FTR contain a visitation schedule without explaining how that schedule "adequately protects" Stephanie ***AND*** the child, as required by the rule.

Respondent alleges that the district court's conclusory statement that it "***can*** craft a custodial timeshare and exchange protocol that minimizes the parties' contact with each other and the chances of further inappropriate verbal arguments or physical altercations, thereby protecting Stephanie and Riley" (emphasis added) qualify as a sufficient "factual basis, or specific findings connecting the child's best interests" to the orders made. It is not.

The district court's alleged factual basis or specific findings are nothing more than a statement that it can do something, and presumably will do something,

at some point in the future. In this case, that it will provide that factual support or specific findings in its orders. Again, those orders contain no such factual basis or specific findings demonstrating that the orders that were crafted actually protect Appellant and the minor child. Those orders are merely a visitation schedule without explanation of how that schedule protects mother and child from further harm.

According to the plain meaning of the statute at issue, NRS 125C.0035(5)(b) an appropriate order would be crafted as follows: this is the order and this is why the order protects the child and mother and why the order serves the child's best interests. What the district court did was miss the explanation portion required by the rule: how does its order protect mother and child and why does the order serve the child's best interests. Again, it simply sets forth a timeshare that must be followed.

Even if this Court would entertain Respondent's argument, i.e., that the district court did (though it simply stated it can) craft an order minimizing the parties contact and the chances of further physical or verbal altercations, thereby protecting mother and child, which was the district court's statement, almost verbatim, that statement still fails to explain how its order accomplishes those goals and why those orders serve the child's best interests. It is, again, a conclusory statement with no factual support.

Respondent points to findings made pursuant to NRS 125C.0035(4) et seq. as such findings and support for the district court's conclusions (conclusory statements, rather). But there still is no explanation how those specific findings accomplish the requirements of NRS 125C.0035(5)(b). Thus, this Court, and Appellant, are left doing the work for the district court that it should have done itself – i.e., provide an adequate explanation of its reasoning such that Appellant and this Court are not left hunting for the district courts logic and reasoning like pigs hunting for truffles.

Dated this 18th day of February, 2022.

/s/ Alex Ghibaudo
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VERIFICATION

1. I hereby certify that this fast track reply complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This fast track reply has been prepared in a proportionally spaced typeface using Word 2016 in 14 point font, Times New Roman typeface;

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is: Proportionately spaced, has a typeface of 14 points or more, and contains 1541 words (out of 2333 allowed).

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

DATED this 18th day of February, 2022.

/s/ Alex Ghibaudo
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CERTIFICATE OF MAILING

I certify that on the 14th day of August, 2021, I served a copy of this CHILD CUSTODY FAST TRACK REPLY upon Respondent through the Supreme Court's efiling system to:

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Dated this 18th Day of February, 2022.

/s/ Alex Ghibaudo, Esq.

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