

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

MINH NGUYET LUONG,

Petitioner,

V.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE  
OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE DAWN THRONE,  
DISTRICT COURT JUDGE,

Respondents,

JAMES W. VAHEY,

Real Party in Interest.

)  
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**ANSWER TO EMERGENCY PETITION FOR WRIT OF MANDAMUS**  
**OR PROHIBITION PER NRAP 21(a)(6) AND NRAP 27(e)**

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### **NRAP 26.1 DISCLOSURE**

Pursuant to NRAP 26.1, Real Party in Interest states that he has no parent corporations. The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

A. MARSHAL S. WILLICK, ESQ., of WILLICK LAW GROUP, Attorney for Petitioner, MINH NGUYET LUONG.

B. FRED PAGE, ESQ., of PAGE LAW FIRM, Attorney for Petitioner, MINH NGUYET LUONG, in the Eighth Judicial District Court.

C. NEIL M. MULLINS, ESQ., of KAINEN LAW GROUP, former Attorney for Petitioner, MINH NGUYET LUONG.

D. ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP, Attorneys for Real Party in Interest, JAMES W. VAHEY.

### **NRAP 21(a)(3)(A) ROUTING STATEMENT**

The Writ Petition is being heard by the Court of Appeals pursuant to NRAP 17(b) and the Notice of Transfer to Court of Appeals filed by this Court on April 8, 2022.

**ANSWER TO EMERGENCY PETITION FOR WRIT OF MANDAMUS  
OR PROHIBITION PER NRAP 21(a)(6) AND NRAP 27(e)**

COMES NOW, Real Party in Interest, JAMES W. VAHEY (“Jim”), by and through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP, and hereby submits his Answer to Emergency Petition for Writ of Mandamus or Prohibition per NRAP 21(a)(6) and NRAP 27(e).

Petitioner, MINH NGUYET LUONG’s (“Minh”), request for emergency relief is improper as Minh failed to comply with NRAP 27(e). Minh did not serve the Emergency Petition for Writ of Mandamus or Prohibition per NRAP 21(a)(6) and NRAP 27(e) (“Petition”) at the earliest possible time as required by NRAP 27(e)(1), nor did Minh explain her efforts to first obtain relief from the District Court. Rather, Minh filed an Emergency Motion to Alter or Amend the Orders from the March 22, 2022, Hearing for Orders for the Court to Comply with the Violence Against Women Act, for Rehearing or Reconsideration of the Orders from the February 8, 2022, Hearing or in the Alternative to Alter or Amend and for Attorneys Fees and Costs Emergency Motion to Alter or Amend, for Orders for the Court to Comply with the Violence Against Women Act and for Attorney’s Fees and Costs<sup>1</sup> (“District Court

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<sup>1</sup> Although the title of the District Court Motion may appear to be incorrect given its repetitive and rambling nature, this is, in fact, the title of Minh’s motion.

Motion”) two (2) days prior to filing her Petition with the Supreme Court of Nevada and did not serve her District Court Motion on Jim until the day she filed her Petition (i.e., April 8, 2022). A hearing on Minh’s District Court Motion, which addresses the same arguments made in her Petition, is scheduled for May 17, 2022.

The order from which Minh seeks relief in both her Petition and District Court Motion is the District Court’s Order for Plaintiff to Participate in Turning Points for Families Program with Minor Children and for Defendant to Cooperate and Support the Minor Children’s Participation in the Turning Points Program with Plaintiff (“Turning Points Order”), which was entered March 22, 2022, after the Court held a hearing on March 21, 2022. Specifically, the Court ordered that Jim participate in the Turning Points for Families Program (the “Program”), a four (4) day program, in New York beginning April 7 or April 8, 2022, with the parties’ minor children, and have temporary sole legal and sole physical custody of the children for a period of ninety (90) days. Despite the District Court entering its Order on March 22, 2022, Minh waited until the day Jim was scheduled to leave with the children to New York to file an Emergency Writ requesting relief that same day. Jim and the children have already participated in the Program and returned to Nevada.

...

...

Most importantly, contrary to Minh’s dramatic characterization of the Program as meant to “break” the children, the intent of the Program is to begin the reunification process between the children and their father. Despite Minh’s misrepresentations of the facts leading to the Court’s entering the Turning Points Order, the District Court’s Order was supported by years of evidence of Minh’s repeated attempts to interfere with Jim’s relationship with the children every chance she could. In fact, the District Court only entered the Turning Points Order after giving Minh every opportunity for more than a year to change her concerning behavior. Accordingly, Minh’s Petition must be denied as the District Court did not abuse its discretion in making temporary custody orders that are in the children’s best interest.

Dated this 15<sup>th</sup> day of April, 2022.

Respectfully submitted by:

/s/ Sabrina M. Dolson

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## **I.**

### **COUNTERSTATEMENT OF ISSUES PRESENTED**

Whether the District Court manifestly abused its discretion in entering temporary custody orders that are in the children's best interest based on years of evidence of Minh's attempts to interfere with Jim's relationship with the children and Minh's refusal to change her behavior despite being given many opportunities to do so.

## **II.**

### **COUNTERSTATEMENT OF FACTS**

Jim and Minh were divorced on March 26, 2021. XIII AA 2658-83. The parties have three (3) minor children the issue of their marriage: Hannah, born March 19, 2009 (thirteen (13) years old), Matthew, born June 26, 2010 (eleven (11) years old), and Selena, born April 4, 2014 (eight (8) years old).

Jim filed his Complaint for Divorce on December 13, 2018.<sup>2</sup> I AA 1-7. In January 2019, Minh filed a Motion seeking primary physical custody and permission to relocate to California with the minor children. I AA 52-79. The Honorable Judge T. Arthur Ritchie, Jr., was assigned to the case at the time, and he held an evidentiary hearing on custody on August 8, and September 5 and 11, 2019. III AA 481-512.

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<sup>2</sup> Minh falsely states she filed for divorce in her Petition.

In support of her request to relocate to California, Minh claimed the parties agreed during the marriage that they would relocate to California. The evidence did not support Minh's contention. Rather, Judge Ritchie found that Minh's "intention to move is, in part, to deprive James Vahey of his parenting time." III AA 498. Specifically, the Court stated: "The court is concerned that Minh Luong's decision to live in California is intended to create a distance between the parties, and to create a distance between the children and their father, to avoid the sometimes tedious and inconvenient aspects of co-parenting." III AA 499.

At the evidentiary hearing, Jim testified to the co-parenting issues he was already experiencing with Minh at that time. Jim testified that during many custody exchanges, Minh refused to communicate with him verbally, even in front of the children. III AA 492. When Minh did speak to Jim during custody exchanges, she inappropriately discussed the parties' disputes in the presence of the children. Jim testified to one incident in August 2019 when Hannah was upset and crying on the first day of school and, in the presence of the children, Minh told Jim that he forced the children to go to school in Nevada instead of Irvine and misled her and the children. III AA 491. Judge Ritchie found Jim's testimony credible. *Id.* Judge Ritchie stated his "concerns that Minh Luong's negative attitude towards James Vahey that stems from his refusal to allow her to move the children to California has caused her

to negatively influence the relationship between the children and their father.” *Id.* The Court also noted that “[e]vidence was presented that supports a finding that Minh Luong encouraged Hannah and Matthew to discuss the move to California with their father.” *Id.* The Court concluded that Minh’s dialogue with the children “shows poor judgment and has the potential to alienate the children from their father.” III AA 492.

Based on the foregoing, and the very detailed findings set forth in the Findings of Fact, Conclusions of Law, Decision and Order, entered September 20, 2019, the Court denied Minh’s request to relocate to California with the children and ordered the parties to share joint legal and joint physical custody. III AA 495. However, given Minh’s representations that she intended to relocate to California with or without the children, the Court gave Minh the opportunity to decide whether she wanted to share joint physical custody in Las Vegas. *Id.* If Minh was steadfast in her decision to relocate to California without the children and chose to forego her joint physical custody rights, Jim would be awarded primary physical custody, almost in the nature of a default. *Id.* Minh ultimately decided to forego her joint custody rights, and Jim was awarded primary physical custody.

The Court’s denial of Minh’s request to relocate infuriated Minh, and she decided that if she was not successful in physically taking away the children from Jim, then she would take away their love, trust, and cooperation from him. Minh

continued to be exceptionally hostile to Jim during the custody exchanges, which has been documented over several years of litigation. In the presence of the children, Minh would tell Jim not to talk to her, refuse to answer Jim's questions regarding the children, such as whether they had eaten dinner, and make inappropriate comments such as: (1) "You are beneath me. I don't need to talk to you." (2) "You're a low life." (3) "You're selfish. You selfish SOB. I don't want to look at your face. I don't want to see you. Do you know that? You're just beneath dirt." V AA 923-24. Jim audio recorded these comments and provided the audio recordings to the Court. V AA 924.

Moreover, when Jim had primary physical custody and Minh was required to exercise her one (1) weekend per month visitation in Las Vegas, Minh refused to tell Jim if she took the children out of Las Vegas. XV AA 2915. Jim believed Minh took the children on a fishing and camping trip on February 29 and March 1, 2020. *Id.* Minh did not provide Jim any information about the trip. *Id.* When Jim asked the children about their weekend, the kids became secretive and defensive. *Id.* Jim asked Hannah how fishing was and Hannah became awkwardly defensive and stated that they did not leave the state. *Id.* On a separate occasion when Jim asked the children about their visit with Minh, Matthew told Hannah and Selena their father was trying to trick them. *Id.* When Jim asked Hannah and Selena what Matthew said to them, Matthew stated: "He's trying to get us to tell him our secret. Don't answer him. He's

trying to trick us into telling him. Do you remember what we talked about?” *Id.* Little did Jim know that these issues were just the beginning of the nightmare Minh would put the children and Jim through simply because she did not get her way.

In the presence of the children and in public areas, Minh has completely ignored Jim and physically moved away from him on multiple occasions, which Minh does not dispute. For instance, in December 2019, Selena had a Christmas performance at school. V AA 932. When Jim arrived at Selena’s school to watch her performance, he sat next to Hannah, who was sitting next to Minh. *Id.* Shortly after Jim sat down next to Hannah, Minh got up with Hannah and moved to a different part of the bleachers just so Jim could not sit with them. *Id.* Minh acted similarly during Hannah’s Christmas performance. *Id.* Minh sat far away from Jim in an area where there was no room for him to sit with her and Selena as they watched Hannah’s performance. *Id.* Similarly, in the waiting room at a doctor appointment for Hannah, Jim sat next to Hannah, and Minh moved with Hannah to the farthest corner of the waiting room from Jim. Further, during one doctor appointment where Jim and Minh were waiting with Hannah in the waiting room, Jim asked Minh if they could all go to lunch following the appointment. XIII AA 2541. Minh completely ignored Jim in front of Hannah, not having the decency to even respond. XIII AA 2541. Without . . .

saying a word, Minh has continued to demonstrate to the children their father is not worthy to be in their presence and does not deserve their respect.

Jim had primary physical custody of the children from September 2019 until March 20, 2020 when Minh falsely reported Jim for domestic violence, allowing her to take the children from Jim for five (5) consecutive weeks. XV AA 2915. On March 20, 2020, Minh picked up the children from Jim's home for a custody exchange. XV AA 2915-16. After the children were in Minh's RV, Minh walked into Jim's garage, took his ladder, and attempted to take his kitesurf board believing it to be her windsurf board. XV AA 2916. When Jim informed Minh that she could not take his property, Minh became angry and violent with Jim. *Id.* In her tirade, Minh slammed Jim's kitesurf board against the floor of Jim's garage, grabbed a U-shaped aluminum handle wrapped in foam and struck Jim's vehicle multiple times, tried to tip the ladder onto Jim's car, and, after Jim moved the ladder to the entry way of his home from the garage, struck Jim's ladder against the entry way floor and walls. *Id.* Minh was also verbally aggressive during this incident, calling Jim "the lowest scum ever" and baiting him to hit her. *Id.* Because of Minh's hostility and aggressiveness at prior custody exchanges, Jim thankfully had the foresight to audio record this exchange with his phone. *Id.* It was not until Jim took his phone out of his pocket to videotape Minh that Minh finally left Jim's garage. *Id.*

After Minh left Jim's garage, and finally his home, Minh went straight to the Henderson Police Department and reported Jim committed domestic violence against her. Minh also obtained a Temporary Protective Order ("TPO") based on her false allegations. *Id.* Jim was arrested as a result and had to spend a night in jail. *Id.* Thankfully, because of his recordings, charges were rightfully never brought against Jim and Judge Ritchie dissolved the TPO. *Id.*; VIII AA 1506.

Jim was forced to file an Emergency Motion to have the children returned to him. VIII AA 1506. Minh filed a competing motion seeking primary physical custody of the children. *Id.* The Court held a hearing on Jim's Emergency Motion on April 22, 2020. VIII AA 1499. At the hearing, the Court granted Jim's request for immediate return of the children, who had been away from him for five (5) weeks, and denied Minh's request for primary physical custody. VIII AA 1504. Instead, the Court temporarily modified the custody order to give Minh the opportunity to reconsider her decision not to share physical custody of the children. VIII AA 1504-05. The Court ordered the parties to share physical custody of the children on a week on/week off basis until the evidentiary hearing on financial matters. VIII AA 1505. Based on the events of March 20, 2020, Judge Ritchie also ordered the custody exchanges to occur at the guard gate of Jim's home, rather than at the parties' residences. *Id.* Unfortunately, Minh's keeping the children away from Jim for the five (5) weeks



before he was able to have the children returned to him did irreparable damage. Hannah has never been the same.

Hannah's behavior declined so severely Jim had to file another Emergency Motion on June 5, 2020 to get Hannah the psychological help she needed. XV AA 2917. Hannah started locking herself in her bedroom for most of the day. *Id.* Hannah would rarely speak to Jim civilly and was very angry with him. *Id.* When Jim attempted to communicate with Hannah, she yelled at him, told him he lies, everything is his fault, he ruined everything, he does not exist, he is not her daddy, she hates him, and she wishes he were dead. *Id.* Hannah ate very little each day, which caused Jim great concern for her health. *Id.* Hannah also would not complete her school work or watch her school videos. *Id.* Jim also found two (2) photographs of the family prior to the parties' separation in Hannah's room where she completely blacked out Jim from the photograph. VIII AA 1594-95. Hannah also slid two (2) letters under her door to Jim. One simply stated: "Don't ever talk to me agian [sic]." VIII AA 1597. The other stated:

Do you want me to live like this? Oh wait! Let me rephrase that since you don't care about me. Do you want to live like this? With me hating you for the rest of my life? Oh wait, YOU DON'T CARE ABOUT ME! I have a life, don't ruin it with yours. I WANT TO LIVE.

...

*Id.* The Court held a hearing on July 13, 2020, and granted Jim’s request to immediately initiate therapy for Hannah with Dr. Bree Mullin, PsyD, who co-founded the Psychology Institute of Las Vegas.<sup>3</sup> XI AA 2914. Dr. Mullin ultimately was unable to provide therapy for Hannah, but arranged to have Hannah participate in therapy with Nathaniel Minetto, LCPC (a Licensed Clinical Professional Counselor) under Dr. Mullin’s supervision. Hannah participated in therapy with Mr. Minetto following the Court’s order, and was improving.

The Court held the evidentiary hearing on financial matters on August 13 and September 4, 2020. XIII AA 2708. At the evidentiary hearing, the Court also inquired as to whether it was Minh’s intention to continue sharing joint physical custody of the children on a week on/week off basis. XIII AA 2716. Minh confirmed that it was her intention to do so. *Id.* Thus, the Court ordered the parties to share joint legal and joint physical custody of their children on a week on/week off basis. *Id.*

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<sup>3</sup> In her Petition, Minh claims that Jim asserted Dr. Michelle Gravely, Hannah’s first therapist, had been ineffective because “the children were resistant to him . . . [and] he complained that she was trying to find a way in which he would have no contact with the children.” This claim is false, and Minh fails to provide a citation to the record to support same. Rather, the record shows that Jim requested a new psychologist for Hannah because Minh refused to take Hannah to therapy appointments with Dr. Gravely or to follow her recommendations, which then led Hannah to behaving similarly. VIII AA 1529-34.

Unfortunately, Minh's attempts to interfere with Jim's custody time persisted. For instance, Minh unilaterally decided without consulting with Jim that she was going to spend an hour every single day teaching the children Vietnamese on FaceTime during Jim's custodial time. SA 14. Minh promised to buy Selena toys if she participated and promised \$1,000.00 to whomever of the children did the best in the following three (3) months. *Id.* Enticed by the promise of toys and money, the children, not Minh, informed Jim that their mother wanted to teach them Vietnamese and they needed to be able to FaceTime with her for one (1) hour every day, even on school days. *Id.* In a more than generous attempt to coparent with Minh, Jim told Minh he would cooperate with her to allow her to teach the children Vietnamese. *Id.*

Minh immediately began abusing Jim's generosity. *Id.* Not only did Minh keep the children on FaceTime over the one (1) hour, but she also encouraged the children to defy Jim when he asked them to end the call at the end of the hour. SA 14-15. It became such an issue that one night at 8:20 p.m. Jim told Selena that she had to end the FaceTime session with Minh because he had to get her ready for bed. SA 15. When Minh heard Jim telling Selena it was time to get ready for bed, Minh told Selena that her father was lying when he said her bedtime was 8:30 p.m. *Id.* Jim was forced to take away the iPad from Selena, which obviously set him up to be the bad parent. *Id.* Selena was very upset and cried. *Id.* When Jim addressed Minh's

interference with his custody time in Court, Minh had the audacity to claim that “Jim’s motivations for refusing to allow the children to learn Vietnamese appears to be racially motivated in that he does not want the children to learn culture that is a part of them.” XIII AA 2592. Such claims, as the claims in Minh’s instant Petition that Jim has filed a document “filled with racist and xenophobic innuendo regarding Minh,” are absolutely absurd and untrue.

Jim also brought to the Court’s attention the fact that Minh was scheduling times during Jim’s custody for the children to watch a movie with her while she was on FaceTime. SA 16. Minh told the children they would watch a one and a half hour movie on a Sunday at 4:45 p.m. during Jim’s custody time without first discussing same with Jim. *Id.* Jim had already scheduled a play date for Matthew and one his friends during that time. *Id.* Rather than coparent with Jim, Minh told Matthew that he needed to tell his friend and his friend’s family that they had to leave Jim’s home before 4:45 p.m. so the children could watch a movie with Minh. *Id.*

On January 31, 2021, Minh sent the following email regarding same:

Jim,

The children asked to have a movie date with me tonight at 4:45. Matthew said he will inform his friend that his play date will have to end then. Please don’t disrupt our plan. Again, the judge placed the order that you are not allowed to limit my contacts with the children. Please do no violate the judge’s direct order.

XII AA 2452. Jim responded the same day to Minh:

Nguyet,

The kids told me you wanted to do a movie. You are creating so much stress for them. Remember, parents are not supposed to schedule activities for their children while the children are in the custody of the other, especially without discussing it privately together ahead of time.

I respect your time. Please respect ours.

*Id.* In response, Minh sent an email to Nate Minetto, Hannah's therapist, imploring him to "help Jim to work on these items" because he was continuously ruining his relationship with the children. XII AA 2450-51. Minh also directly addressed Jim in her email to Nate asking him how much longer he was going to torture the children by having them spend time with him. *Id.* Minh stated Jim forced Hannah to go to therapy so he could continuously torture her.<sup>4</sup> *Id.* Minh ended the email to Jim and Nate by stating:

Do you know the children are counting till the day you die? They were so happy when they found out your actual age. How sad is that? Do you think any kids wish their parent to die if the parent were good to them? This is how much they hate being with you. I did not want to tell you these because it is hurtful but you need to know to reflect on it.

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<sup>4</sup> Minh also continuously, falsely accuses Jim of physically abusing his children. Minh has falsely accused Jim of punching Hannah, burning Hannah with a hot pan, and battering the children. Minh has called the police and CPS on Jim several times and every time, the police have not charged Jim with any crime and CPS has not substantiated Minh's claims of abuse.

*Id.*

Minh's hatred of Jim affected her judgment to the point that she thought it was a good idea to include a third party, Hannah's prior therapist, on an email in which she tells Jim that the children are counting the day until he dies. Prior to the divorce, and even during the parties' separation, Jim had a great relationship with all three children. It was not until Minh kept the children from Jim for five (5) consecutive weeks in March and April 2020 that his relationship with Hannah began to deteriorate. It also was not until Minh unilaterally enrolled the children in a new school during the 2020-2021 school year that Jim's relationship with Matthew began to deteriorate, which will be discussed below.

The Court held a hearing on Jim's February 11, 2021 Motion on March 22, 2021. XIV AA 2792. The Court found that Minh's constant telephone calls with the children, her telephonic Vietnamese lessons with the children, and her scheduling of times to watch movies with the children during Jim's time were interfering with Jim's custody time and ordered that the noncustodial parent's telephone calls with the children would be limited to ten (10) minutes per child. XIV AA 2793-96. In response to Hannah's behavioral issues, the Court found:

THE COURT FURTHER FINDS that if there continues to be issues with Hannah's behavior and relationship with her father, the Court will address the underlying issues. Video Transcript, 10:47:00.

The Court believes part of the issue with Hannah's behavior is her involvement in the parties' conflict, and Minh wanting Hannah to align with her and Minh not supporting Jim. Video Transcript, 10:47:04; 10:48:52. If the Court were to make any interim changes, it would be to have Hannah be in Jim's custody more, not less. Video Transcript, 10:48:43. The Court will not allow either party to triangulate the children to make them think that if they behave badly with one parent, they can have a say in deciding with which parent they will live. Video Transcript, 10:49:18. The Court believes there is alienation of the children occurring, and a power struggle between the parents. Video Transcript, 10:54:56.

XIV AA 2794-95. In her Petition, Minh misrepresents to this Court that "Judge Throne, without hearing any evidence, spontaneously diagnosed 'alienation.'" Rather, Judge Throne accurately identified Minh's concerning behavior, which Minh has never denied, and entered specific orders addressing same. XIV AA 2792-95.

The Court held a subsequent hearing on April 13, 2021 to address supplemental briefing on certain issues, which are not relevant to this instant Petition. At that hearing, the Court noted the parties' agreement to have Hannah evaluated by a psychiatrist. XIV AA 2806. The parties chose Dr. Michelle Fontenelle-Gilmer to complete the psychiatric evaluation. Dr. Fontenelle-Gilmer has been treating Hannah since September 2, 2021.

After the Order from the April 13, 2021 Hearing was entered, Minh filed an appeal of the Court's orders. IX AA 2823-24. The parties participated in the Supreme Court of Nevada's settlement program and were able to reach a resolution. XV AA

3036-38. The parties agreed that the Court's orders appealed by Minh would stand. The parties agreed that Hannah shall continue to receive mental health treatment from Dr. Fontenelle-Gilmer, who would be permitted to make recommendations regarding Hannah, including changes to custody, visitation, timeshare, transportation, telephone contact, etc. XV AA 3036-37. The parties also agreed Dr. Fontenelle-Gilmer may conduct or refer Hannah for a forensic evaluation to make such recommendations. XV AA 3037.

On September 27, 2021, Minh filed a Motion seeking to correct what she alleged was a clerical error in the Decree of Divorce regarding the children's 529 accounts. XIV AA 2851-64. On October 12, 2021, Jim filed his Opposition to Minh's Motion and an Emergency Countermotion seeking the Court's assistance in addressing a number of parent-child issues, including returning Hannah to Jim's custody and resolving which school Hannah and Matthew should attend. XV AA 2905-46. Minh had unilaterally, and without Jim's knowledge or consent, removed Hannah and Matthew from Challenger School on September 28, 2021, had them tour Becker Middle School, and attempted to enroll them there. XV AA 2909.

Minh enamored the children with missing school at Challenger to tour Becker's campus, meet with school counselors, and pick out classes they wanted to take. *Id.* When Jim informed Minh he did not agree with her unilateral and detrimental



decision, he became the “bad parent” in the children’s eyes. *Id.* This is a tried and true tactic of Minh’s as she previously harmed the children’s relationship with Jim by telling them he is the reason they cannot move and be happy in California. *Id.* Following Minh’s stunt on May 28, 2021, both Hannah and Matthew refused to return to Challenger and Hannah refused to return to Jim’s custody, necessitating the filing of his Emergency Countermotion. *Id.* Jim also filed an Ex Parte Motion for Order Shortening Time of the hearing, which was granted by the Court and the hearing was shortened to October 18, 2021. XV AA 2952-54.

At the October 18, 2021 hearing, the Court entered temporary orders, including that Hannah was to be delivered to Jim’s care and custody by 5:00 p.m. that day and to remain in his care for two (2) weeks. XVII AA 3377. The Court also ordered a Guardian Ad Litem shall be appointed for Hannah and Matthew. XVII AA 3378. The Court set an evidentiary hearing on the school issue and Hannah’s mental health for November 3, 2021. XVII AA 3379. A second day was subsequently scheduled for November 5, 2021. XVII AA 3423.

Following the October 18, 2021 hearing, Minh failed to comply with the Court’s orders to transfer Hannah and Matthew to Jim’s care and custody by 5:00 p.m. that day. XVI AA 3098. Instead, Hannah’s and Matthew’s behavior deteriorated even further. While Minh attempted to transfer the children to Jim, the children were

disrespectful and violent. Hannah told Jim that if she was forced to go inside his home she would ruin it, that he was not a good parent and not doing his job, and commented “if his kids don’t want to be with him that much, he must have really messed up.” XVI AA 3099-3100. Jim told Hannah she is not permitted to threaten adults. *Id.* Minh said nothing to reprimand Hannah. *Id.* Rather, Minh responded: “Hannah, he’s gonna try to work on it honey,” essentially agreeing with Hannah that Jim is to blame for the children refusing to be in his custody. XVI AA 3100.

In addition, Matthew shattered the outside pane of a double pane window on Jim’s home. XVI AA 3099. In a moment that absolutely shocked Jim because Matthew has never been so disrespectful, Matthew turned to Jim and told him “go back in the house or you’re going to look like the window.” XVI AA 3100. Minh again did not discipline Matthew for his actions or disrespectful comments, and simply stated “Matthew.” *Id.* Not surprisingly, Minh did not transfer the children to Jim as the Court ordered.

The Court held an evidentiary hearing on the school issue and Hannah’s mental health on November 3 and 5, 2021. Based on the evidence presented at the evidentiary hearing, the Court found that before even discussing the school issue with Jim so that they could try to come to a consensus regarding what school Matthew and Hannah would attend, Minh took Hannah and Matthew to tour Ernest Becker Middle

School (“Becker”), the school for which her home is zoned. XVII AA 3425. The Court found Minh allowed the children to talk to school counselors regarding the classes they could take and told them they were going to attend that school. *Id.* The Court found that Minh knew Jim was not going to agree to Hannah and Matthew attending Becker before she took them there and enrolled them. *Id.* Minh did it anyway, and when Jim objected, as she knew he would, the children were upset and thereafter refused to return to Challenger. *Id.*

The Court further found that despite Minh’s denial that she ever enrolled the children in Becker, she was “not telling the truth and her enrolling the children in Becker violates the Findings of Fact, Conclusions of Law, Decision and Order regarding custody of the children entered on September 20, 2019 . . . .” XVII AA 3425-26. By sending subpoenas to both Becker and Challenger, it was discovered that Minh submitted the Online Registration forms for Hannah and Matthew to attend Becker and signed forms, which requested Hannah and Matthew’s school records from Challenger and informed Challenger school personnel that the children had been enrolled in Becker. XVII AA 3426. Minh enrolled the children in Becker

knowing that Jim would not agree but hoping she could manipulate him into acquiescing because Hannah and Matthew already had their hearts set on attending Becker. Her words and actions made Hannah and Matthew believe that they would be able to immediately leave Challenger and attend Becker and when that could not happen, they

blamed Jim instead of Minh who actually caused the whole conflict. The result of Minh's actions, in violation of the existing orders regarding their sharing joint legal custody, is that Hannah and Matthew have been alienated from Jim.

*Id.*; see also XVII AA3429.

One of the factors the Court is to consider in determine which school is in the children's best interest is whether enrolling the children at a school is likely to alienate the children from a parent. *Arcella v. Arcella*, 133 Nev. 868, 407 P.3d 341 (2017). Based on the evidence admitted at the evidentiary hearing, the Court found that Minh has alienated the children from Jim. XVII AA 3432.

The Court considered the evidence regarding the multiple times Minh has called the police to Jim's home without first communicating with him regarding what was happening at his home, Minh's refusal to communicate with Jim in front of the children, the several instances in which Minh has moved away from Jim with their children when Jim has attempted to sit with them in public places, such as in doctor's offices. Minh's behavior toward Jim in the presence of the children demonstrates her attempts to alienate the children from Jim.<sup>5</sup> Minh's conduct demonstrates to the children how she feels about Jim and indicates to the children that they also should not like, trust, or respect

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<sup>5</sup> In Minh's Petition, she claims that "[t]he only cognizable evidence in the record on the relevant point was the testimony of the psychiatrist who met with Hannah at length and reported that Hannah was not being alienated by Minh from Jim, but Judge Throne nevertheless opined that 'this Court finds that MINH has alienated the children from Jim.'" Dr. Fontenelle-Gilmer, Hannah's psychiatrist, had only met with Hannah from September 2 to November 3, 2021 at the time she testified at the evidentiary hearing. Dr. Fontenelle-Gilmer also did not hear the testimony from the parties, from which Judge Throne was able to accurately determine that Minh was alienating the children from Jim.

their father and implies that they should in fact fear him. Minh also has proposed the children attend Sig Rogich, which is located nearly an hour away from Jim's home. Based on the foregoing, enrolling the children at Sig Rogich is likely to alienate the children from Jim.

*Id.* Based on the Court's analysis of the *Arcella* factors, the Court ordered the children to attend Bob Miller Middle School.

Given the issues with Minh's inability to transfer the children to Jim's custody, the Court ordered Minh to have her babysitter meet Jim at a Yogurtland following the November 5, 2021 evidentiary hearing so he could pick up the children. Based on the children's recent disrespectful and violent behavior, the Court and the parties knew the children would likely physically resist going to Jim's custody. Accordingly, the Court advised Jim that if the children refused to voluntarily transfer to his custody, he should "bear hug" them and place them in his vehicle.

As advised, Jim went to Yogurtland to pick up the children.<sup>6</sup> As expected, the children refused to transfer to Jim's custody. Jim followed the Court's instruction and first bear hugged Matthew and brought him to his vehicle. Matthew physically resisted Jim, and was yelling and kicking as Jim brought him to his vehicle. Once Jim got Matthew to his vehicle, Matthew continued to kick and attempt to hit Jim. Jim held Matthew until he calmed down. Jim was able to get Matthew to calm down and

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<sup>6</sup> Jim's account of what transpired on November 5, 2021 is set forth in the November 12, 2021 hearing video, beginning at 2:45:12.

put him in the back seat of his vehicle. Once Matthew was in the back seat he laid on his back and started kicking the windows of Jim's vehicle. Matthew was able to kick out one of the back windows of Jim's vehicle, causing it to shatter.

Jim then went to transfer Hannah to his vehicle. Hannah similarly refused to go with Jim and moved to the far corner of the vehicle she was in. Jim got into the vehicle and bear hugged Hannah and brought her to his vehicle. Once Jim had both children in his vehicle, he put the child locks on and started driving home. While Jim was driving, the children started to verbally berate him. The children repeatedly told Jim he was an idiot, crazy, and a bad parent. While Jim was driving the children home, Hannah was able to get a headrest off of one of the seats and Jim could hear Hannah and Matthew discussing whether to hit Jim in the head with the headrest. Jim was able to take the headrest from Hannah and put it in the front of the car, away from her reach. At one point Hannah told Jim that she was trying to decide whether to rip his head off, which would cause the vehicle to crash into the cement in the middle and all three of them would die. Fortunately, Jim was able to safely get the children home and there was no further physical violence from the children that night.

This, unfortunately, did not last the entire weekend as Hannah and Matthew became violent with Jim the following day. Jim asked Hannah to put her cell phone outside her bedroom when it was time for bed, which upset her. Hannah hit Jim in the

face, and Jim scolded her that she is not allowed to hit adults. Hannah then hit Jim in the face again. Matthew became involved and started screaming at Jim “you’re killing me, you’re killing me.” Jim was eventually able to get the children to calm down and the remainder of the night was uneventful. Jim transferred the children to Minh’s custody the following morning as ordered by the Court.

The Court had a Status Check hearing scheduled for November 12, 2021, and Jim informed the Court of everything that happened following the November 5, 2021 evidentiary hearing. Despite the fact that Jim did not physically abuse his children, Minh unreasonably believes and continues to claim despite evidence to the contrary that Jim battered Hannah and Matthew. Hannah reported to Dr. Fontenelle-Gilmer that Jim was physically abusive to her and Matthew, and Dr. Fontenelle-Gilmer reported to Child Protective Services (“CPS”) as a mandatory reporter. The CPS case was closed as the allegations were unsubstantiated.

Based on the testimony provided at the November 12, 2021 hearing by Jim and Valarie I. Fujii, Esq., Hannah’s and Matthew’s Guardian Ad Litem, the Court ordered that it is in the best interest of Matthew for Jim to have temporary sole legal and sole physical custody. XVII AA 3393. The Court ordered that Matthew shall attend Bob Miller as the Court previously determined was in his best interest, and Selena shall remain at Challenger School and continue with the 2-2-3 custody schedule. XVIII AA

3514. The Court also ordered that Hannah would be given the choice to attend Sig Rogich Middle School or Earnest Becker Middle School. *Id.* The Court ordered Hannah shall have weekly therapy appointments with Dr. Fontenelle-Gilmer and weekly appointments with Jim and Dr. Brownstein. *Id.* The Court ordered Jim to contact Dr. Sunshine Collins to work on his relationship with Matthew. *Id.* The Court set a Status Check hearing for December 16, 2021. XVIII AA 3515.

At the December 16, 2021 Status Check hearing, the Court again learned about Minh's continuing attempts to alienate the children from Jim. The Court noted its concerns that Minh placed a tracker on Matthew while he was in Jim's care and provided him with cash, essentially giving Matthew the tools to run away. XVIII AA 3612. The Court noted Minh has created a dynamic with the children where they are rewarded for acting out against their father. XVIII AA 3613. The Court stated its concerns that Minh acts as if she has to protect the children, but there is nothing from which to protect them as there is no evidence Jim is abusive or that he cannot meet the children's needs. *Id.* The Court advised Minh that she has the ability to fix the issues with the children and she is hurting the children with her pathological behavior and beliefs that Jim is a danger. *Id.* The Court found that Minh needs immediate professional help on a crisis basis to help her understand that what she is doing is causing the children harm. XVIII AA 3614. Thus, the Court ordered Minh to



participate in counseling for herself with Keisha Weiford, MFT, to address her issues with Jim, their marriage, the divorce, and their coparenting relationship. XVIII AA 3615.

The Court also modified custody of Matthew to give Minh the opportunity to demonstrate she can coparent with Jim and act in the children's best interest. The Court awarded Jim temporary primary physical custody of Matthew, with Minh to have visitation with him every other weekend from Friday to Monday. XVIII AA 3615. The Court further ordered that Matthew would spend time with both Minh and Jim during the Winter Break from school. *Id.* The Court ordered Jim shall participate in counseling with Hannah and Matthew, separately, with Dr. Sunshine Collins. XVIII AA 3615. The Court set a Status Check hearing on visitation and counseling progress for February 8, 2022. XVIII AA 3616.

On February 2, 2022, Ms. Fujii provided her Status Report. XVIII AA 3524-27. Although Minh addresses this report in her Petition, she conveniently omits any criticism of her behavior. For instance, Ms. Fujii opined that the children "believe whatever Mom believes" and "Mom believes Dad is litigating to win or for control and not doing what is truly in the children's best interest." XVIII AA 3526. Ms. Fujii reported that Minh believes Jim just wants the "time" with his children to look good. *Id.* Although Ms. Fujii explained to Minh that she believes Jim is loving and truly

worried about the welfare of the children, and continually being subjected to disrespect by the children, Ms. Fujii acknowledged that nothing she says will prove to Minh otherwise. *Id.* Ms. Fujii noted that she asked both parties to participate in a co-parenting class together, and while Jim was willing to do so, Minh was not. *Id.*

Dr. Sunshine Collins, PsyD, also issued a report dated February 7, 2022. XVIII AA 3583. Dr. Collins began treating Matthew in December 2021. XVIII AA 3583. Dr. Collins noted that although she was also supposed to begin providing sessions to Hannah, Minh had thus far been unable to make Hannah available for the three appointments Dr. Collins offered. *Id.* Based on her sessions with Matthew and Jim, Dr. Collins opined that:

Father has been exceptionally committed to the therapeutic process. . . . Father always arrives prepared, clearly having thought about how best to progress in his relationship with Matthew in between sessions. He often arrives with notes and/or his own ideas about possible approaches to use with Matthew at home. He is always willing to receive my clinical feedback and direction as to how to proceed, both in the therapeutic process but also at home.

XVIII AA 3585. With regard to Matthew, Dr. Collins noted:

[Matthew] remains adamant in his rejection of an improved relationship with his father. Matthew's rejection of father is unusual in that it is single-issue driven (i.e., resentment regarding perception of father agreeing to then revoking plan for family relocation California) and has persisted at a high degree of resentment despite a more typical trajectory for his age being gradual resolution of emotions and resigned acceptance of reality. Matthew is 11 years old in 2022. Parents separated when he

was eight years old, divorced when he was nine years old. It is extremely unlikely that an eight-year-old has so carefully nursed resentment over this single-issue disappointment of relocation that it persists at age 11 to this level of intensity without significant encouragement and stoking of negative emotions by some outside source.

At this time, Matthew is strongly committed to presenting an image of depressed mood and hopelessness for improvement while in father's care. He made it clear to me that he anticipates that this presentation will mean a change in custody status at the upcoming court date, something about which Matthew was clearly aware despite the information not being provided by me or his guardian ad litem.

XVIII AA 3586. Dr. Collins opined that "[i]f an improved relationship between Matthew and father is the goal, it is recommended that Matthew's exposure to individuals that promote resistance to an improved relationship with father be as limited as practically possible." XVIII AA 3587.

In addition to the foregoing, Jim filed a Declaration Regarding Case Status on February 5, 2022, advising the Court of Minh's ongoing alienating behaviors, including (1) providing Matthew with food while he is in Jim's custody by having Selena give the food to Matthew, (2) undermining Jim's authority by buying Matthew a Rubik's cube, which Jim had taken away as a consequence for bad behavior, (3) refusing to acknowledge Jim in any way after he said hello in front of Selena, (4) and moving away from Jim with Matthew and Selena when Jim sat next to the children at a doctor appointment on January 26, 2022. XVIII 3528-36.

At the hearing on February 8, 2022, the Court informed the parties it believed it would be in the children's best interest to participate in the Turning Points for Families Program (the "Program") in New York. XXI AA 4067. The Court advised the parties that the Program is a four (4) day, in person, intense therapy in New York and then two (2) years of follow-up with a local provider, and that the Court would send informative materials to the parties. XXI AA 4067-68. The Court's goal was for Hannah and Matthew to participate at the same time, but if this was not possible, then the Court would order Matthew to participate first and then Hannah separately. XXI AA 4067. The Court directed Jim to discuss the Program with Dr. Collins. *Id.* The Court also found based on Ms. Fujii's report and Dr. Collin's report that it is in Matthew's best interest for Minh to have zero communication with him for the following ninety (90) days unless such communication was coordinated through Dr. Collins. XXI AA 4068-69. Thus, the Court ordered Jim shall have temporary sole legal and sole physical custody of Matthew. *Id.* The Court ordered Jim to contact the Program to inquire as to whether he could participate in the Program with Hannah and Matthew. XXI AA 4069.

Following the hearing, Jim reviewed the informative materials provided by the Court, reached out to the administrator of the Program, and was impressed with the treatment offered. XIX AA 3703. Jim was informed that it is the Program's policy to

treat all children at the same time so that the children are at the same point in the reunification process. XIX AA 3703. The Program also requires that Jim have temporary sole legal and sole physical custody of the minor children for a period of at least ninety (90) days. *Id.* The therapist who runs the Program, Linda J. Gottlieb, LMFT, LCSW-R, advised that she had availability for Jim and the children to participate in the Program from April 8-12, 2022 and April 22-30, 2022. XIX AA 3710-11. To ensure he could participate as soon as possible, Jim filed an Emergency Motion requesting the Court enter an order for Jim to participate in the Program during one of the available time frames. XIX AA 3701-11.

The hearing on Jim's Emergency Motion was set for April 19, 2022 so to ensure he could participate in the Program as soon as possible, Jim filed an Ex Parte Motion for Order Shortening Time, which was granted. XIX AA 3718-19. The Court entered the Order Shortening Time on March 17, 2020, shortening the hearing to March 21, 2022. XIX AA 3718-19. Minh falsely states in her Petition that she had only two (2) days to respond to Jim's Emergency Motion; however, Minh was aware as early as February 8, 2022 that the Court believed the Program would be in the best interest of the children and ordered Jim to look into the Program to determine if he could participate with Hannah and Matthew at the same time. XXI AA 4067-68. Minh had plenty of time to similarly research the Program and file a motion

requesting the Court alter, amend, or set aside its February 8, 2022 Order if she wanted to do so. Minh did not do so.

The Court held the hearing on Jim's Emergency Motion on March 21, 2022. The Court considered the March 20, 2022 report from Dr. Collins, who stated it is her clinical opinion that the relationship of the children with their father would benefit from participating in the Program. XX AA 3920. Contrary to the misrepresentations set forth in Minh's Petition, Dr. Collins had met with Minh, Jim, Matthew, and Hannah prior to rendering her opinion. XX AA 3920-22. Minh also criticizes Dr. Collins for not having met with Dr. Fontenelle-Gilmer before making her recommendation that Hannah participate in the Program. However, Dr. Collins attempted to contact Dr. Fontenelle-Gilmer and was scheduled to conduct a collateral interview with her on March 17, 2022, but Dr. Fontenelle-Gilmer did not answer the phone at the scheduled time. XX AA 3921. Dr. Collins further advised both Minh and Jim of her clinical opinion prior to providing her report to the Court, thus, Minh's claims that she did not have the opportunity to question Dr. Collins as to the content of her report is false. XX AA 3921.

The Court entered its Order for Plaintiff to Participate in Turning Points for Families Program with Minor Children and for Defendant to Cooperate and Support the Minor Children's Participation in the Turning Points Program with Plaintiff

(“Turning Points Order”) on March 22, 2022. XXI AA 4016-34. The Court made extremely detailed findings of the history of Minh’s alienating behaviors in this case, referencing the first findings of alienation by Judge Ritchie in 2019. XXI AA 4017-18. The Court noted that Minh “has continued down the path of ‘exercising poor judgment’ aimed at undermining the children’s relationships with Jim. XXI AA 4018.

The Court stated that

[t]he actions Minh has taken to undermine Jim’s relationship with the children vary from subtle things such as keeping the children on the phone with her for hours during Jim’s custodial time to the extreme of disenrolling Hannah and Matthew from Challenger and enrolling them in [Earnest Becker] Middle School without Jim’s knowledge or consent.

XXI AA 4019. The Court stated that since the evidentiary hearing in November 2021, the goal had been to continue to try to restore the parents and children to a stable joint physical custody schedule. XXI AA 4020. The Court detailed the orders it had made since November 2021 in an attempt to improve the relationship between the parents in terms of co-parenting and the relationship of the children with both parents, including appointing a Guardian Ad Litem for Hannah and Matthew, ordering Jim to attend reunification therapy with Hannah and Matthew, and ordering Minh to attend therapy with Keisha Weiford to improve her ability to communicate and co-parent with Jim and to better support his relationship with the children. XXI AA 4021.

The Court found that the relationship that Hannah and Matthew have with Minh is unhealthy and the relationship they have with Jim is unhealthy. XXI AA 4022. “This is a family dynamic problem that requires immediate, intensive therapeutic intervention for the whole family in order to rebalance the children’s relationship with each parent.” XXI AA 4021. The Court found that both Dr. Collins and Ms. Fujii, the children’s Guardian Ad Litem, recommended the family participate in the Program. XXI AA 4022. Accordingly, the Court ordered Jim to participate in the Program, Minh to cooperate with the Program, and for Jim to have temporary sole legal and sole physical custody of the children following completion of the Program. XXI AA 4024-25.

#### IV.

#### **REASONS WHY WRIT SHOULD BE DENIED**

##### A. Standard for Issuance of Writ

“A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion.” *Int’l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of mandamus is appropriate “where there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170. A writ of mandamus constitutes extraordinary relief, and



the decision of whether to entertain a petition lies within the discretion of this Court. *August H. v. State*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989). This Court “will not disturb a decision of the district court regarding the temporary custody of children unless the decision is affected by a manifest abuse of discretion.” *Id.* at 444, 777 P.2d at 902. “An abuse of discretion occurs when a district court’s decision is not supported by substantial evidence or is clearly erroneous.” *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

A writ of mandamus is not appropriate in this case because Minh has failed to demonstrate that the District Court manifestly abused its discretion. The District Court’s Turning Points Order was based on years of findings of alienating behavior by Minh based on evidence admitted at evidentiary hearings that lasted several days, as well as the recommendations of Dr. Collins and Ms. Fujii. Minh further was not denied due process as the Court first ordered that Jim would participate in the Program with the children on February 8, 2022, providing Minh with plenty of time and opportunity to research the Program and request the Court alter, amend, or set aside its order. Minh failed to do so.

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B. The District Court Did Not Manifestly Abuse Its Discretion in Entering Temporary Custody Orders That Are in the Children’s Best Interest

1. *The District Court Was Not Required to Conduct an Evidentiary Hearing Prior to Making Temporary Custody Orders*

Minh claims that the District Court was required to conduct an evidentiary hearing prior to temporarily modifying child custody. Minh provides absolutely no legal support for her contention. Rather, Minh cites this Court’s decision in *Romano v. Romano*, 501 P.3d 980 (Nev. 2022), which does not apply here because the Court has not made a permanent change to custody. In *Romano*, this Court held that regardless of whether a movant requests to modify joint or primary physical custody, the test is the same—the movant must show that “(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child’s best interest is served by the modification.” 501 P.3d at 982 (quoting *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)).

Despite the fact the District Court only temporarily modified custody, the District Court’s orders are based on a clear substantial change in circumstances affecting the welfare of the children, namely, their mental well-being, and such orders are in the children’s best interest. The last custody order was set forth in the Decree of Divorce, entered March 26, 2021. Since that time, the children’s behavior and mental health have deteriorated, and Minh’s attempts to alienate the children from

their father have progressed. The District Court warned Minh countless times about the detrimental effect her behavior was having on the children, yet Minh refused to change her behavior. As the children's behavior worsened, the District Court entered temporary custody orders to ensure the children could get the help they need. Accordingly, the District Court did not abuse its discretion in entering temporary custody orders without an evidentiary hearing.

2. *The Turning Points for Families Program Has Been Evaluated as an Effective Treatment for Families with Severely Alienated Children*

Minh claims in her Petition that the Program is “pseudo-scientific quackery that has no scientific merit and damages children.” Minh never provided the District Court with the materials she references criticizing the Program, at or after the February 8, 2022 hearing when the District Court first ordered Jim to participate in the Program with the children. Minh waited until the day Jim was scheduled to leave to New York to participate in the Program with the children to file her “emergency” Petition citing these new references.

Despite Minh's criticisms of the Program, which are not surprising given she is the parent attempting to alienate the children, the District Court was well apprised of the treatment offered and the efficacy of the Program prior to ordering Jim's and the children's participation. The District Court determined that the children's participation with Jim in the Program would be in their best interest because Linda

J. Gottlieb, LMFT, LCSW-R, the therapist who runs the Program, specializes in reunification therapy for parental alienation or the unreasonable disruption of parent-child relationships.

The term *parental alienation* describes an observable family dynamic in which a child denigrates and rejects or resists a parent (known as the alienated parent) in the absence of a reasonable or valid reason—child abuse/neglect or a pattern of markedly deficit parenting—and justifies the rejection with weak, trivial, frivolous, or absurd reasons. . . . The phenomenon can alternatively be labeled “hostile parenting, selfish parenting, restrictive gatekeeping, or variety of other labels that are used by States throughout the country to describe this very common phenomenon that occurs in cases of parental separation or divorce.

XIX AA 3650. At the time the District Court entered its orders for Jim and the children to participate in the Program, evidence admitted at the two evidentiary hearings, as well as testimony from multiple hearings, had demonstrated Minh’s consistent history of attempting to alienate the children from their father. The Program specifically addresses the exact issues the family is facing.

Minh appears to argue in her Petition that the District Court can only order the parties’ participation in a program if such program directly treats a psychiatric disorder that is recognized by the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). This is not true. This Court has routinely recognized the district courts ability to hear evidence regarding whether parental alienation is present in a case. *See, e.g., Truax v. Truax*, 110 Nev. 437, 874 P.2d 10

(1994); *Martin v. Martin*, 120 Nev. Adv. Op. No. 38 (June 10, 2004). In fact, this Court has specifically directed district courts to determine whether alienation is an identifiable risk factor when determining which school is in a child's best interest. *See Arcella v. Arcella*, 133 Nev. 868, 407 P.3d 341, 346 (2017).

The District Court also reviewed and provided to the parties Ms. Gottlieb's resume, which demonstrates she has fifty (50) years experience working with 5,000 children and their families in multiple professional/clinical roles and settings, including working with children whose parents were undergoing divorce, but were not victimized by alienation, alienated children, alienated parents, alienating parents, children presenting with various childhood and adolescent issues, and divorcing parents who did not engage in alienation. Thus, Minh's criticisms of the Program are unwarranted given Ms. Gottlieb has experience working with families in which alienation is and is not present, and had the knowledge and expertise to address the parties' and the children's individual needs. Even in the Program Description, Ms. Gottlieb clarifies that every family is idiosyncratic and there can be minor modifications or additional requirements to the treatment protocol based on the individual needs of the family. XIX AA 3650.

The Program also was evaluated by Jennifer J. Harman and Luke Saunders, Department of Psychology, Colorado State University, and Tamara Afifi, Department

of Communications, University of California-Santa Barbara, who published *Evaluation of the Turning Points for Families (TPFF) Program for Severely Alienated Children* in the Journal of Family Therapy in 2021. The researchers evaluated the Program to determine whether it was safe, did not cause harm, and led to positive changes in the alienated parent-alienated child relationship. The researchers reviewed court orders and video recordings of the four-day intervention for indications of improvements over the course of the intervention in relational communication, social support, and communal coping, which refers to the family members jointly taking responsibility for a problem.

The researchers noted improvements in the parent-child relationships and found the Program helped improve family members' communal coping scores. The researchers further determined that the preliminary evidence indicates the Program is a safe and effective treatment option for severely alienated children. The researchers noted that success of the program is largely contingent on compliance with the treatment protocol and coordination with family courts. Thus, Minh's claim that there is a lack of reliable research behind the Program is not true.

It is interesting to note that the scientific analysis of the Program in which Minh relies upon provides that "[i]t would be advised to have each parent of the child attend individual therapy before engaging in such a program." Judge Throne, in fact,

did order Minh to participate in individual therapy with Keisha Weiford, MFT, in December 2021, to address her issues with Jim, their marriage, the divorce, and their coparenting relationship prior to ordering Jim and the children participate in the Program. XVIII AA 3615. The Court found that Minh needs immediate professional help on a crisis basis to help her understand that what she is doing is causing the children harm. XVIII AA 3614.

Further, Minh relies upon an unpublished New York decision in which the Court criticized Ms. Gottlieb’s testimony in that specific case. Minh falsely states that “the trial judge conducted an exhaustive review of the literature and testimony regarding the ‘Turning Points’ program.” This is blatantly false. Although the trial judge reviews the “law of parental alienation in New York,” the Court does not discuss the Turning Points program at all. In addition, Minh misrepresents to this Court that the trial judge “observed, correctly, that casual conclusions of ‘alienation’ cannot withstand a *Reed/Frye* expert threshold analysis.” This also is blatantly false. The trial judge merely quoted another judge, who wrote a *concurring opinion* in an *unpublished* Maryland decision, as stating:

I write separately to state my view that I consider the diagnoses of “parental alienation” or “parental alienation syndrome” (which, quite evidently, are the basis for Father’s appeal) to be based on novel scientific theories. Prior to admissibility, testimony on these subjects must be subjected to a *Reed/Frye* hearing to prove that such diagnoses

are generally accepted in the relevant scientific community, a conclusion about which I have significant doubt.

After citing the Maryland judge's commentary in his concurring opinion in an unpublished decision, the New York trial judge concluded that "[d]espite these judicial misgivings expressed by others, there is no doubt that parental alienation exists."

Minh further argues the District Court's temporary award of sole legal and sole physical custody to Jim constitutes "immersion therapy," a "variety of junk science [that] has been derided, justifiably, for many years as lacking any kind of scientific or other validity." Notably, this quote comes from Minh's undersigned counsel who has an unexplained personal vendetta against mental health professionals and is, in fact, the one who has derided them for many years in a series of articles published on the law firm's website.

Lastly, Minh cites the Violence Against Women Act ("VAWA") in support of her argument that the Program should not be followed and Jim should not have temporary sole legal and sole physical custody of the children. Although Minh acknowledges that the provisions of VAWA that she cites are not binding on this Court, she asks this Court to determine that under VAWA, the District Court should not be permitted to award Jim temporary sole legal and sole physical custody. The District Court acted within its discretion when it determined that a temporary award



of sole legal and sole physical custody of the children to Jim would aid in Jim's reunification with the children and prevent Minh from further alienating the children from Jim.

As detailed above, the Turning Points Program has been evaluated as an effective treatment for families with alienated children, and the District Court did not abuse its discretion in determining the Program could help the family.

3. *The District Court Did Not Act in Excess of Its Jurisdiction by Entering Orders Relating to Hannah Vahey Without First Obtaining Recommendations from Hannah's Psychiatrist, Dr. Michelle Fontenelle-Gilmer*

As detailed above, after the Order from the April 13, 2021 Hearing was entered, Minh filed an appeal of the Court's orders. IX AA 2823-24. The parties participated in the Supreme Court of Nevada's settlement program and were able to reach a resolution. XV AA 3036-38. The parties agreed that the Court's orders appealed by Minh would stand. The parties agreed that Hannah shall continue to receive mental health treatment from Dr. Fontenelle-Gilmer, who would be permitted to make recommendations regarding Hannah,<sup>7</sup> including changes to custody,

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<sup>7</sup> Minh blatantly misquotes to this Court the Stipulation and Order Resolving Outstanding Issues on Appeal, representing that it states: "If Dr. Michelle Fontenelle-Gilmer recommends that a change in custody, visitation, timeshare, transportation, phone calls, etc. is in **the children's** best interest, the parties shall follow the recommendation(s)." XV AA 3037. (Emphasis added). Minh is fully aware that the Stipulation and Order does not state "the children"

visitation, timeshare, transportation, telephone contact, etc. XV AA 3036-37. The parties also agreed Dr. Fontenelle-Gilmer may conduct or refer Hannah for a forensic evaluation to make such recommendations. XV AA 3037.

Minh argues that the District Court acted in its excess of its jurisdiction when it ordered Jim to participate in the Program with the children and ordered Jim shall have temporary sole legal and sole physical custody of the children for a period of ninety (90) days. This Court has previously held that “[t]he constitutional power of decision vested in a trial court in child custody cases can be exercised only by the duly constituted judge, and that power may not be delegated to a master or other subordinate official of the court.” *Bautista v. Picone*, 134 Nev. 334, 419 P.3d 157, 159 (2018) (quoting *Cosner v. Cosner*, 78 Nev. 242, 245, 371 P.2d 278, 279 (1962)). Thus, despite the parties’ stipulation to consider Dr. Fontenelle-Gilmer’s recommendations regarding Hannah, the District Court was not divested of its constitutional power to make temporary custody determinations that are in the children’s best interest.

Further, if Minh wanted to present Dr. Fontenelle-Gilmer’s recommendation regarding whether Hannah should participate in the Program to the District Court, she had **two (2) months** to do so. The District Court first determined it was in Hannah’s

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and only refers to “Hannah.” Yet, Minh knowingly attempts to mislead the Court.

best interest to participate in the Program on February 8, 2022, and clearly informed the parties she was going to order Hannah and Matthew participate in the Program. The District Court needed more information as to whether Hannah and Matthew could participate in the Program together or must do so separately, and advised Jim to research this further. Following the February 8, 2022 hearing, Minh did not obtain Dr. Fontenelle-Gilmer's recommendation regarding whether Hannah should participate in the Program.

As instructed, Jim discussed the Program with Dr. Collins, Hannah's and Matthew's therapist.<sup>8</sup> Once Jim researched the Program and discussed same with Dr. Collins, he then filed an Emergency Motion seeking the Court's assistance in entering orders to facilitate same. The hearing on Jim's Motion was held on March 21, 2022. At this hearing, the District Court entered specific orders to facilitate Jim's participation in the Program with the children. The District Court considered not only

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<sup>8</sup> Contrary to Minh's claims in her Petition, Dr. Collins had met with Minh, Jim, Matthew, and Hannah prior to recommending Jim's participation in the Program with the children to the Court. Although Dr. Collins had not met with Selena, she was able to obtain information from Minh and Jim regarding whether Selena was exhibiting behaviors indicating she was being subjected to alienating behaviors. Most importantly, the District Court did not rely solely upon Dr. Collins' recommendation in entering the Turning Points Order. The District Court also relied upon the years of evidence of alienating behaviors by Minh, Minh's refusal to change those behaviors despite being advised continually that she was hurting her children, Ms. Fujii's recommendation for the children to participate in the Program with Jim, and the credentials of the Program.

Dr. Collins' recommendation that the children participate in the Program, but also Ms. Fujii's, Hannah's and Matthew's Guardian Ad Litem, who also supported the Program. Dr. Collins informed the Court that she had a scheduled interview with Dr. Fontenelle-Gilmer to discuss the Program, but Dr. Fontenelle-Gilmer did not answer when she called at the scheduled time.

Jim and the children did not participate in the Program until April 8, 2022. However, despite having eighteen (18) days to file a motion to alter, amend, or set aside the District Court's Turning Points Order and to present Dr. Fontenelle-Gilmer's recommendation as to Hannah's participation in the Program, Minh never did so. Instead, Minh waited until the day Jim and the children were scheduled to leave for New York to participate in the Program to seek "emergency" relief from this Court. Minh also filed a motion seeking to alter or amend the District Court's Turning Points Order in the district court on April 6, 2022. The hearing on Minh's motion was scheduled for May 17, 2022, yet, Minh did not obtain an Order Shortening Time and did not serve her motion on Jim until April 8, 2022.

Accordingly, the District Court did not act in excess of its jurisdiction in entering temporary custody orders regarding Hannah without first obtaining Dr. Fontenelle-Gilmer's recommendation.

...

4. *The District Court Did Not Act in Excess of Its Jurisdiction by Finding that Minh Has Committed Parental Alienation*

Minh argues that the District Court acted in excess of its jurisdiction by finding that Minh has committed parental alienation because “[n]one of the four mental health experts in this case who have worked with this family from an MFT, to a Psy.D., to Ph.D., to a psychiatrist have actually applied legitimate diagnostic criteria within their professional capacity and made any finding of alienation by Minh.” Minh fails to apprise this Court that none of these professionals were hired to diagnose whether Minh had committed parental alienation. All mental health providers hired in this case thus far have been retained to provide treatment to the children and the parties. The only mental health professional who has ever been asked about whether she observed parental alienation is Dr. Fontenelle-Gilmer at the November 2021 evidentiary hearing. At that time, Dr. Fontenelle-Gilmer had only met with Hannah from September 2 to November 3, 2021. Dr. Fontenelle-Gilmer also did not hear the testimony from the parties, from which Judge Throne was able to accurately determine that Minh was alienating the children from Jim.

As detailed above, there have been two evidentiary hearings in this case regarding child custody issues. The Honorable Judge T. Arthur Ritchie, Jr., held an evidentiary hearing on custody and Minh’s request to relocate to California on August 8, and September 5 and 11, 2019. III AA 481-512. After the three (3) day evidentiary

hearing, which included fifteen (15) hours of testimony from six (6) witnesses, Judge Ritchie found that Minh's "intention to move is, in part, to deprive James Vahey of his parenting time." III AA 498; VIII AA 1500-01. Specifically, the Court stated: "The court is concerned that Minh Luong's decision to live in California is intended to create a distance between the parties, and to create a distance between the children and their father, to avoid the sometimes tedious and inconvenient aspects of co-parenting." III AA 499. Judge Ritchie further stated his "concerns that Minh Luong's negative attitude towards James Vahey that stems from his refusal to allow her to move the children to California has caused her to negatively influence the relationship between the children and their father." *Id.* The Court also noted that "[e]vidence was presented that supports a finding that Minh Luong encouraged Hannah and Matthew to discuss the move to California with their father." *Id.* The Court concluded that Minh's dialogue with the children "shows poor judgment and has the potential to alienate the children from their father." III AA 492.

In addition, Judge Throne held an evidentiary hearing on which school Matthew and Hannah should attend and Hannah's mental health on November 3 and 5, 2021. In determining which school the children should attend, Judge Throne was required to consider the factors set forth in *Arcella v. Arcella*, including whether enrolling the children at a school is likely to alienate the children from a parent. 133

Nev. 868, 407 P.3d 341, 346 (2017). There is no requirement that a finding of alienation must be based on expert testimony. Based on the evidence admitted at the evidentiary hearing, the Court found that Minh has alienated the children from Jim.

XVII AA 3432.

The Court considered the evidence regarding the multiple times Minh has called the police to Jim's home without first communicating with him regarding what was happening at his home, Minh's refusal to communicate with Jim in front of the children, the several instances in which Minh has moved away from Jim with their children when Jim has attempted to sit with them in public places, such as is doctor's offices. Minh's behavior toward Jim in the presence of the children demonstrates her attempts to alienate the children from Jim. Minh's conduct demonstrates to the children how she feels about Jim and indicates to the children that they also should not like, trust, or respect their father and implies that they should in fact fear him. Minh also has proposed the children attend Sig Rogich, which is located nearly an hour away from Jim's home. Based on the foregoing, enrolling the children at Sig Rogich is likely to alienate the children from Jim.

*Id.*

Following the November 2021 evidentiary hearing, the parties appeared before the District Court for Status Checks on November 12 and December 16, 2021, and February 8, 2022. At these Status Check hearings, the Court heard additional testimony from the parties regarding Minh's persistent alienating behaviors, testimony from Hannah's and Matthew's Guardian Ad Litem, and the reports of Dr. Fontenelle-Gilmer and Dr. Collins. Based on the evidence admitted at two (2) separate evidentiary hearings, and the testimony and reporting received at three Status

Check hearings over a three month period, the District Court was well within its discretion to find that Minh has committed parental alienation.

5. *The District Court Did Not Deprive Minh of Her Due Process Rights as Minh Had Sufficient Time to Contest Jim's Participation in the Turning Points for Families Program with the Children*

“Substantive due process guarantees that no person shall be deprived of life, liberty or property for arbitrary reasons.” *Arnessano v. State, Dep't Transp.*, 113 Nev. 815, 819, 942 P.2d 139, 142 (1997) (quoting *Allen v. State, Pub. Emp. Ret. Bd.*, 100 Nev. 130, 134, 676 P.2d 792, 794 (1984)). The Due Process Clause of the Fourteenth Amendment protects liberty interests that are deemed fundamental, such as parents' fundamental right to care for and control their children. *Matter of Parental Rights as to J.L.N.*, 118 Nev. 621, 625, 55 P.3d 955, 958 (2002). However, although parents have a fundamental liberty interest in the care, custody, and control of their children, that right is not absolute.” *Harrison v. Harrison*, 132 Nev. \_\_\_, 376 P.3d 173, 176 (2016) (citing *Kirkpatrick v. Eighth Judicial District Court*, 119 Nev. 66, 71, 64 P.3d 1056, 1059 (2003)). Further, “due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.” *Id.* at 179 (quoting *SFR Invs. Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 334 P.3d 408, 418 (2014)).



Minh was provided was sufficient notice and time to contest the District Court's order for the children to participate in the Program. In fact, Minh had **two (2) months** to do so. The District Court first determined it was in Hannah's and Matthew's best interest to participate in the Program on February 8, 2022, and clearly informed the parties she was going to order Hannah and Matthew participate in the Program. The District Court needed more information as to whether Hannah and Matthew could participate in the Program together or must do so separately, and advised Jim to research this further. Following the February 8, 2022 hearing, Minh did not seek to amend, alter, or set aside the District Court's order. Minh also did not obtain Dr. Fontenelle-Gilmer's recommendation regarding whether Hannah should participate in the Program. Rather, Minh did absolutely nothing for two (2) months.

By the time the Court held a hearing on Jim's Emergency Motion on March 21, 2022, Minh had been on notice that the District Court would order Hannah and Matthew to participate in the Program for nearly six (6) weeks. At the March 21, 2022 hearing, the District Court only entered specific orders regarding the parties' compliance with the Program. In entering the Turning Points Order, the District Court considered not only Dr. Collins' recommendation that the children participate in the Program, but also the Guardian Ad Litem's, who supported the Program. Dr. Collins informed the Court that she had a scheduled interview with Dr. Fontenelle-Gilmer to

discuss the Program, but Dr. Fontenelle-Gilmer did not answer when she called at the scheduled time. Contrary to Minh's misrepresentations in her Petition, the District Court entered orders directly in line with the objective evidence, which demonstrates Jim has not physically abused the children and Minh continues to alienate the children from their father.

Based on the foregoing, the District Court did not deprive Minh of her due process rights.

6. *The District Court Has Not Acted Arbitrarily or Capriciously, Nor with Impermissible Bias Against Minh*

Minh provides absolutely no legal authority or analysis to support her request that this case be remanded to another department. Judge Throne has never been openly hostile to Minh and has given her every opportunity to change her behavior to act in the children's best interest. Judge Throne also has not granted three (3) Orders Shortening Time in the last three months as Minh falsely informs this Court, a false fact which Minh contends is "per se unreasonable." Judge Throne has issued one Order Shortening Time in the last three months. Thus, Minh's claims that Judge Throne has purposefully placed burdens on her to try and "run her over" are patently false. Minh's request that this case be remanded to another department should be denied.

**V.**  
**CONCLUSION**

For the reasons set forth above, this Court should deny Minh's Petition as the District Court did not abuse its discretion in entering temporary custody orders that are in the children's best interest.

Respectfully submitted,  
THE DICKERSON KARACSONYI  
LAW GROUP

/s/ Sabrina M. Dolson  
ROBERT P. DICKERSON, ESQ.  
SABRINA M. DOLSON, ESQ.  
Attorney for Real Party in Interest

## **VERIFICATION**

Sabrina M. Dolson, Esq., hereby deposes and states under penalty of perjury:

1. I am an attorney at The Dickerson Karacsonyi Law Group, Counsel for Real Party in Interest. I am over the age of eighteen (18) years, and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those facts, I believe them to be true.

2. This Answer to Emergency Petition for Writ of Mandamus or Prohibition per NRAP 21(a)(6) and NRAP 27(e) (“Answer”) is verified by me as Real Party in Interest’s counsel because the facts set forth in the Answer are within my personal knowledge and/or are supported by citations to the district court record.

3. I have participated in the drafting and reviewing of the Answer and know the contents thereof. To the best of my knowledge, the Answer and the facts contained therein are true and correct.

Dated this 15<sup>th</sup> day of April, 2022.

/s/ Sabrina M. Dolson

Sabrina M. Dolson, Esq.

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this Answer to Emergency Petition for Writ of Mandamus or Prohibition per NRAP 21(a)(6) and NRAP 27(e) (“Answer”) 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 Answer has been prepared in a proportionally spaced typeface using WordPerfect X5 in 14 point Times New Roman type style.

2. I further certify that this Answer does not comply with the page and type-volume limitations of NRAP 32(a)(7)(A) because, excluding the parts of the Petition exempted by NRAP 32(a)(7)(C), it contains 12,521 words. This exceeds the type-volume limitations; however, a motion requesting leave to exceed the type-volume limitations is being filed contemporaneously with this Answer.

3. I further certify that I have read this Answer, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15<sup>th</sup> day of April, 2022.

THE DICKERSON KARACSONYI  
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/s/ Sabrina M. Dolson

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### **CERTIFICATE OF SERVICE**

I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 15<sup>th</sup> day of April, 2022, I filed a true and correct copy of the foregoing ANSWER TO EMERGENCY PETITION FOR WRIT OF MANDAMUS OR PROHIBITION PER NRAP 21(a)(6) AND NRAP 27(e), with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

MARSHAL S. WILLICK, ESQ.  
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Attorney for Petitioner, MINH NGUYET LUONG  
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I further certify that on this day a copy of the foregoing document will also be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage is prepaid, in Las Vegas, Nevada, addressed to the following:

HONORABLE DAWN THRONE  
Eighth Judicial District Court, Department U  
601 North Pecos Road  
Las Vegas, Nevada 89155

/s/ Sabrina M. Dolson  
An employee of The Dickerson Karacsonyi Law Group