IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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ADAM MICHAEL SOLINGER, Appellant, vs. CHALESE MARIE SOLINGER, Respondent.	)	Docket No: 84832-COA D.C. Case No: D-19-582245-D

CHILD CUSTODY FAST TRACK STATEMENT

1. **Name of party filing this fast track statement:**

   Adam Michael Solinger, Appellant

2. **Name, law firm, address, and telephone number of attorney or proper person respondent submitting this fast track statement:**

   Vincent Mayo, Esq.
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3. **Judicial district, county, and district court docket number of lower court proceedings:**

   Eighth Judicial District Court, Family Division, Clark County, Nevada

   Case No. D-19-582245-D

4. **Name of judge issuing judgment or order appealed from:**

   Honorable Mary Perry

5. **Length of trial or evidentiary hearing. If the order appealed from was entered following a trial or evidentiary hearing, then how many days did the trial or evidentiary hearing last?**

   Five days, with said days consisting of May 10, 2021, January 21, 2022, March 1, 2022, March 2, 2022, and March 3, 2022.

6. **Written order or judgment appealed from:**

   Decree of Divorce (entered May 26, 2022).

7. **Date that written notice of the appealed written judgment or order's entry was served:**

   May 26, 2022.

8. **If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4):**

   a. Specify the type of motion, and the date and method of service of the motion, and date of filing: Not applicable.

   b. Date of entry of written order resolving tolling motion: Not applicable.

9. **Date notice of appeal was filed:**

   Appellant's *Notice of Appeal* was filed on May 27, 2022.

10. **Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other:**

    NRAP 4(a)(1).

11. Specify the statute, rule or other authority, which grants this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1).

12. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which involve the same or some of the same parties to this appeal:

Solinger v. Schneider, Esq., docket no.: 81787

Solinger v. Eighth Judicial Dist. Ct. (Solinger), docket no.: 84795-COA

13. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:

Not applicable.

14. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

The parties, Adam Solinger ("Adam") and Chalese Solinger ("Chalese"), married in May 2012 after moving to Las Vegas the prior year. Pltf. Trial Exhibit (PTE) 202 (Dr. Paglini's Custody Evaluation) at 23. A few months later, Adam enrolled in law school at UNLV while Chalese worked cutting hair. *Id*. The parties thereafter became pregnant with their first child, Michael Solinger ("Michael"), who was born on June 6, 2015. *Id*. Adam was excited to be a father but was under a substantial amount of stress at the time as he was helping Chalese on a daily basis

due to her having a difficult pregnancy while at the same time Adam prepared to graduate from law school and immediately afterwards studying for the bar exam. PTE 202 at 23-24. Chalese was at the hospital for 30 hours leading up to Michael's child and Adam was at her side several times during that period, including for Michael's actual birth, although he also studied for the bar during times Chalese was not actively in labor. *Id*.

After Michael was born, Chalese suffered from postpartum depression, which was stressful. PTE 202 at 24. Adam in fact took time off of work to stay home helping care for Michael. *Id*. Chalese, who already had a history of anxiety and trauma, had a difficult second pregnancy with Marie Solinger ("Marie") as well, creating greater strain on the marriage. *Id*. Specifically, Chalese would constantly blame Adam for her condition, give Adam the silent treatment, and seemed to regularly seek arguments with him at the worst times. *Id*.

In early 2018, the parties bought a home located at 8500 Highland View Avenue, Las Vegas, Nevada 89145 (the "Highland View residence") from Adam's father, with title held jointly. The parties were only able to afford the Highland View residence via a gift of $85,000 to Adam from his father, Michael Solinger, Sr., which was documented via a Gift Letter to escrow, as well as Mr. Solinger Sr.'s testimony. PTE 219 at 996; 19 AA 4122-23.

While the parties became more situated and Adam was doing well in his career, the parties marital difficulties continued, and they eventually separated in late 2018. PTE 202 at 25. Although Adam moved out of the Highland View residence while Chalese remained in it, Adam voluntarily continued to pay the Highland View residence monthly mortgage, electricity, gas, water, sewer, trash, homeowner's insurance, and internet from his income on until the March 2019 hearing, at which time Adam remained responsible for one-half of the mortgage and child support. 1 AA 174-84, 245-46.

Chalese soon after stated she wanted to leave Las Vegas and move with the children to Pahrump, resulting in Adam filing for divorce on January 4, 2019, and requesting primary custody of the minor children based on Chalese's wish to relocate. 1 AA 2. Chalese filed an Answer and Counterclaim on February 12, 2019. 1 AA 26-34. Chalese stated in her Counterclaim that she was pursuing primary custody due to Adam "abandoning" the marital home. 1 AA 30.

However, and upon Adam moving out of the Highland View residence, the parties commenced an unofficial timeshare with their children. PTE 202 at 25. However, problems in regard to custody soon arose. Michael had developed an ear infection, for which he was prescribed antibiotics. 21 AA 4480-81. Chalese forgot to provide the antibiotics to Adam when they exchanged Michael and upon inquiry from Adam, Chalese stated she could not give the medication to Adam as she was

out of town. *Id*. Being that Michael needed his medication, Adam, who was still on title to the home, decided to go into the Highland View residence for the sole purpose of retrieving it. *Id*. However, Adam found the residence in disarray, with dishes piled in the sink, and clothes strewn about (including the stairway where the children could trip over them). 21 AA 4480-82. When Adam went to the refrigerator where the antibiotics were kept, he found it out of food and with a shelf full of alcohol. He also discovered an empty case of beer next to kitchen trash can. PTE 202 at 25. Concerned over the state of the property, he continued to inspect the residence and came across a marijuana pipe on the ground where the children could come in contact with it. 21 AA 4481. Worried, Adam expressed his concerns over the state of the residence, the drug and alcohol use, and Chalese providing a suitable and safe environment for the children. 21 AA 4480. In response, and in a defensive manner, Chalese inappropriately demanded that Adam stipulate to never withhold the children from her for any circumstances. 21 AA 4481-82.

Adam additionally learned that Chalese had a paramour, Joshua Lloyd ("Josh"), living with her at the residence. 21 AA 4482. While Adam understood that both parties were free to move on romantically following their separation, Adam knew little of Josh and Chalese denied that she and Josh lived together even though there was evidence to the contrary in Highland View residence. 1 AA 193. Adam subsequently discovered that Josh had been previously arrested for domestic

violence in 2010, had "a bad driving record" with 11 driving citations over 10 years, was unsure if he had his driver's license previously revoked and had been driving Adam's father's truck, which was still in Chalese's possession; and had been investigated by CPS numerous times.[1] PTE 202 at 42-45; 1 AA 194; PTE 206.

Suspecting Adam would seek assistance from the court to address the custodial issues, Chalese immediately went on the offensive in the case by filing a motion on February 7, 2019, in which she requested not just primary custody of the children but also legal custody. 1 AA 68-69. Chalese did so based on the false claim that Adam had "abandoned" the children and "was missing for at least three days." 1 AA 64; PTE 205 at 33-34. Chalese later admitted during her deposition that she knew all along that Adam had not abandoned the family and had been aware that Adam had been in California all along attending his grandfather's funeral. PTE 205 at 33-34.

Adam filed a Countermotion over concerns with Chalese's and Josh's perceived excessive use of marijuana and alcohol, especially while caring for the children, in addition to Josh's driving record and criminal history. PTE 4 & 10; 1 AA 99-114, 194. At the March 19, 2019 hearing, and out of an abundance of caution,

[1] Adam later learned that Josh smoked marijuana every day upon arriving home from work and again at night and had been arrested for possession of marijuana on federal property. PTE 202 at 42-45; 1 AA 194; PTE 206.

Judge Moss ordered that neither party was to use marijuana, that neither party could consume alcohol 24 hours prior to and during the time they had the children, that Josh was not to drive the minor children nor be left alone with them, and that both parties submit to drug testing. 1 AA 236-50. Judge Moss also implemented a Behavior Order. 1 AA 220-24. Following the hearing, Adam tested negative for drugs while Chalese tested positive for marijuana. 3 AA 526.

Clearly angry over how the March 19th hearing went and looking to get back at Adam, Chalese and Josh suddenly claimed in April 2019 that Adam had thousands of child pornography videos and drawings on electronic devices. 2 AA 411. Worse, Chalese stated in writing to Adam that she would not report Adam to the FBI if he agreed to terminate her court ordered drug testing. PTE 202 at 26; 2 AA 353-57. Josh did similarly, stating that unless Adam kept him out of the divorce litigation, he would tell his significant other Jessica about Adam's alleged child pornography. PTE 202 at 26; 2 AA 358-60. Offended by such a blatant lie and unwilling to be extorted, Adam refused. 2 AA 353-57. Chalese went ahead and disseminated this lie, as confirmed via texts between Chalese and Josh's ex-wife, Ms. Carman Disaio-Watson, with Chalese stating Adam was a "pedophile" and had a "stash of child pornography." PTE 201. This was followed months later by Josh and his family then started to interfere with Adam's livelihood, making false posts on Adam's firm website. PTE 18.

Chalese claimed at the March 19th hearing that she and Josh were "just dating" and did not live together. 1 AA 194. Adam, however, learned on April 9, 2019, that Chalese and Josh both reported on social media on April 9, 2019, that they had married and that Chalese was referring to herself as "Chalese Anderson Lloyd". 2 AA 303-09.

Of greater importance was Adam's belief that Chalese was not following Judge Moss' March 19th Orders. Adam therefore hired a private investigator to verify whether Chalese was. The private investigator confirmed numerous violations Judge Moss' orders by Chalese, including leaving Josh alone with the minor children and allowing him to drive the children.[2] 2 AA 340-42, 347-50; PTE 202 at 16-17.[3] This resulted in Adam filing an emergency motion. 2 AA 269-99. In her Opposition, Chalese reluctantly admitted most of her violations but in attempt to deflect from them, Chalese brought up her allegation that Adam had child pornography. 2 AA 408-09, 411. Based on the private investigator's report and Chalese's admissions,

[2] Adam's private investigator also observed Chalese buying a case of beer during the time she had the minor children and Adam saw a photo on social media of Chalese sitting down with two beers in front of her during the time she had the children. 2 AA 470-71.

[3] On October 31, 2019, Adam's private investigator again caught Chalese allowing Josh to drive the minor children in violation of the March 19, 2022 Order and worse, Josh was observed driving the children down a one-way street. 9 AA 1937-39.

Judge Moss found Chalese had at least six violations of her March 19th Order, violations that implicated the safety of the children. 3 AA 527-28. Judge Moss therefore temporarily modified custody by awarding Adam primary physical custody of the children to ensure the children's care was being better addressed. 3 AA 529. Further, and concerned about Chalese's via text messages that Adam drop the Court ordered drug testing, Judge Moss ordered Chalese to random drug testing once a month upon notification by Adam to do so. 3 AA 528.

The parties were to also coordinate Adam going to the former marital residence to pick up a number of his items. *Id*. Upon entering the property, Adam informed Chalese that it "reeked of marijuana." PTE 205 at 93-94. Chalese did not deny Adam's statement and during her deposition, Chalese stated she did not recall whether she denied it or not. *Id*.

Despite the Behavior Order in effect, Adam continued to deal with Chalese's vitriol and disparaging statements that were made both in in-person conversations as well as their messaging app, AppClose. Chalese called Adam a "pedophile," a "vile human being", a "[L]owlife piece of shit", a "shitty person", "a self-centered asshole", and wrote to Adam: "Fuck you" (numerous times), "What the fuck is wrong with you?", "[Y]ou decided to fuck everything up", and "Are you going to complain I'm being mean to you again" (after sending an emoji of a middle finger). PTE 201. Chalese also went after Jessica Sellers ("Jessica"), Adam's significant

other, in her communications with Adam, insulting Jessica's weight by referring to Jessica as "your whale of a girlfriend" and even stooping so low as to go after a child, calling Jessica's teenage daughter "a cunt" and "Jessica's spawn". *Id*. It was aggressive and disparaging communications like these that caused Judge Moss to order Chalese to enroll in co-parenting classes and undergo an anger management assessment. 3 AA 530. It is of note that Adam remained calm and civil in these exchanges. PTE 201.

Adam had attempted to communicate with Chalese numerous times during the divorce in regard to the children's hygiene and appearance, believing doing so a normal part of co-parenting, with Chalese often being non-responsive or unreasonable. PTE 201. For example, the children would regularly come over to Adam's home with dirty fingernails, unkempt, and with Marie having diaper rash. 21 AA 4468-73; PTE 202 at 28. Chalese told Adam that she did not bath the children daily. *Id*. Chalese had Marie's ears pierced without seeking Adam's permission or even letting him know first. 21 AA 4461-62. Adam tried to speak to Chalese about not cutting the children's hair as much as she was doing so almost every time she had the children. PTE 202 at 28. Carmen Disavio-Watson ("Carmen"), Josh's ex-girlfriend who has custody of their daughter Arielle, stated during her deposition that Chalese also cuts her daughter's hair almost every time she is at Chalese's home, going so far as to take several inches off without getting Carmen's approval first.

PTE 207 at 26.[4] However, when Adam had Michael's hair cut one time, Chalese hypocritically became angry, insisting that only she could cut Michael's hair. PTE 201.

On August 6, 2019, at 2:19 p.m., Adam, who was concerned with Chalese slurring words during a call, acted in accordance with the June 17th Order by notifying Chalese that she needed to submit to drug testing within 4 hours. Chalese responded that she would do so, "As soon as I can." PTE 205 at 89. Despite the fact the June 17, 2019 Order required Chalese to test within 4 hours of being notified, Chalese did not test until 11:30 a.m. the next morning. *Id*. Adam next notified Chalese on September 4, 2022, that she needed to test within 4 hours. PTE 205 at 91. Instead of going right in, Chalese admitted that went to a smoke shop kit twice to buy at least one drug detox kits prior to going in for testing. PTE 205 at 91.[5]

As part of her Opposition filed on May 28, 2019, Chalese stated that she allowed Josh to drive the children and said it was for "safety reasons" because Chalese had to regularly take anti-anxiety medication that precluded her from driving. PTE 205 at 104-105; 2 AA 408. Despite this, Chalese wanted to drive the

[4] Evidence at trial that Chalese and Josh attempted to dissuade Carmen from testifying at trial, essentially constituting witness tampering. PTE 45.

[5] Chalese also testified that she was around so much second-hand marijuana smoke from Josh that she thought she would test positive and Judge Perry in fact reprimanded Chalese for having the children's clothes smell of marijuana. 20 AA 4286.

children on June 7, 2019, on a 17-hour round trip to northern Utah and southern Idaho. PTE 205 at 104-105; 2 AA 491. Adam had to object to same based on Chalese's statement that she could not drive. *Id*. Chalese attempted to back track her claim on May 5, 2019, stating she had been off the medications "for weeks" (though she admitted in her May 28, 2019 Motion that she was still on the medication). *Id*. Chalese disregarded Adam's concerns and stated she would be moving forward with driving the children on her planned trip. *Id*. Being proactive, Adam attempted to have the issue heard by Judge Moss via a May 5, 2019 Ex Parte motion prior to the scheduled trip and even tried to get Chalese's counsel to agree to have Chalese drug tested to show she was no longer under the effects of the medication. *Id*., 2 AA 420-29. Chalese refused. PTE 205 at 104-105. As a result, Adam had no option but to not let Chalese have the minor children for the June 7th trip.[6] *Id*.

Chalese in response filed a motion for an Order to Show Cause, presumably related to the events surrounding June 7th, and to hold Adam in contempt, seeking sanctions and fees as part of her request. 2 AA 472-84. Adam opposed same and requested an award of attorney's fees. 2 AA 485-500. However, as the factual portion of Chalese's Motion literally and nonsensically consisted of Chalese stating

[6] There were also other issues with Chalese making reckless driving decisions, such as with Chalese driving in excess of 95 miles per hour on the highway, speeding that was observed by Adam's private investigator. 19 AA 4131-33. While Chalese admitted she was the one driving, she denied speeding. 22 AA 4750-51.

"Mother refused to allow Defendant visitation with the minor children" and Chalese failed to provide an *Awad* Affidavit[7] in support, Judge Moss summarily dismissed Chalese's motion as unmeritorious. 3 AA 705. The matter of attorney's fees was deferred. 3 AA 706.

Per the Court's June 17, 2022 Order, Adam arranged to pick up his belongings at the Highland View property on July 17, 2019. PTE 52 at 1-2. As Adam was leaving with his items, Josh (who was present drinking beer), became belligerent by getting in Adam's face and telling Adam he would "kick his ass." PTE 52 at 2-10.

Soon after the June 7th hearing, Adam again encountered problems with the child exchanges and what he saw as attempts by Chalese to alienate the children from Adam. For example, the parties were supposed to exchange the children at the non-receiving parent's residence. 1 AA 239. Instead, and during one of the exchanges in July 2019, Chalese told Adam that he had to pick the children up from her friend's home which was all the way across town from the parties' homes. 21 AA 4484-85. Adam stated that was not what the Court ordered but Chalese insisted, giving Adam no alternative. 21 AA 4485. When Adam arrived, he learned the children had only been there for a short time and had just gone into the pool. *Id*. This placed Adam in the difficult position of having to tell the children they could no

[7] *Awad v. Wright*, 106 Nev. 407, 794 P.2d 713 (1990).

longer swim, which made Michael upset with Adam. *Id*. This happened again later in the month, with Chalese insisting that time that Adam pick the children up from Josh's family's home. *Id*. A number of children were having a sleep over there and Chalese made Adam the bad guy by depriving Michael of the opportunity to sleep over as well. *Id*.

Adam also became concerned over Chalese's unilateral decision making when it came to the children's health and well-being, especially Michael's speech issue. Michael had been in speech therapy prior to the commencement of the divorce. 21 AA 4486. Adam had spoken to Chalese and they agreed in January 2019 to take Michael to a different speech therapist. *Id*. Then a week before this was to occur, Chalese stated that Michael had "graduated from speech therapy" and no longer needed it. *Id*. Later that year in August 2019, Chalese asked Adam about placing Michael with a different speech therapy group. PTE 202 at 26. Adam was confused as Chalese stated in January 2019 that Michael no longer needed speech therapy. *Id*. In responding, Chalese was evasive and Adam later discovered via Michael's prior speech therapist that Chalese's prior representation was not true and that Chalese simply chose to end Michael's speech therapy without first discussing it with Adam. *Id*. The parties then discussed going with a new speech therapist and Adam enrolled Michael with one. 21 AA 4489. As Adam had primary custody, Adam asked Chalese if she wanted to take Michael on her Thursdays or wanted Adam to take him on his

Tuesdays. Chalese never responded so Adam chose to take Michael. *Id*.; PTE 202 at 26.

Chalese obtained new counsel in August 2019 who filed a motion to continue trial due to their appearance and because Chalese's prior counsel did not conduct discovery. 3 AA 571-83. While Judge Moss denied the continuance of trial, she extended the discovery deadlines. 6 AA 1223-25. Meanwhile, Chalese' prior counsel, Louis Schneider, filed a motion to adjudicate his attorney's fees. 3 AA 542-61. Chalese opposed Mr. Schneider's request for fees, stating Mr. Schneider had not provided a proper *Brunzell* Affidavit, and that Mr. Schneider's fees, which were summarized in one billing statement that had never been previously provided to Chalese, were "grossly unreasonable" and "unreliable" based on the amount of work set out in Mr. Schneider's entries in contrast to the actual work performed and results obtained. 3 AA 644-47. Over Chalese's Opposition, Mr. Schneider's fees in the amount of $10,875 were granted. 11 AA 2563.

Adam was also forced to deal with refusals by Chalese to cooperate in discovery in good faith. Adam had propounded discovery on Chalese consisting of Requests for Production of Documents and Requests for Interrogatories. 4 AA 851-68. However, after the deadline to provide same came and went and subsequent assurances by Chalese that responses would be forthcoming (but never did), Adam filed a Motion to Compel. *Id*. Chalese opposed same. 4 AA 931-39. The discovery

commissioner ruled in Adam's favor and granted Adam's motion, which included awarding Adam fees in the amount of $3,888.50. 8 AA 1792-99.

Adam then continued conducting discovery by noticing Josh's deposition. Josh opposed it and filed a Motion for Protective Order. 5 AA 1164-76. Adam filed an Opposition to same and Chalese filed a Joinder to Josh's Motion and Countermotion for fees. 5 AA 1201-12, 1281-96. At the December 6, 2019 hearing, the Discovery Commissioner denied Josh's and Chalese's motions, thereby permitting Adam to depose Josh. 7 AA 1576-80. However, due to Adam's initial notice of deposition being partially procedurally defective, Josh's deposition was renoticed and taken on May 15, 2020. PTE 206. Adam only ever tried to take Josh's deposition one time.

As for schooling, both parties initially resided in the same school zone. However, after the Highland View residence was sold, Chalese moved away while Adam remained in the original school zone and having primary custody of Michael. Adam notified Chalese in writing that he would be enrolling Michael and later Marie in his school zone unless she objected to same. 21 AA 4588-90. Chalese never did so Adam enrolled Michael, only to have Chalese protest after the fact. *Id*. Also, and in December 2019, Michael was set to undergo IEP testing, with the parties being notified of a meeting between the parties and the school. PTE 202 at 27. Adam informed Chalese of the meeting in October 2019 but she chose not to attend. *Id*.

Adam continued to experience issues with child exchanges and Josh threatening Adam. Adam was to have the children for vacation time, which Adam was entitled to under the parties' Partial Parenting Plan. PTE 202 at 27. Adam gave Chalese 90 days advance notice of same. PTE 202 at 27.[8] Said vacation was to commence on December 7, 2019. PTE 52 at 1-2. Adam went to Chalese's residence and parked down the street the day of to pick up the children. JCtran1-2. When Chalese refused to give Adam the children for his time, he called the police for a civil standby. PTE 52 at 1-2.

Josh then decided to unnecessarily involve himself in the matter by running up to Adam's vehicle and yelling obscenities at Adam, threatening to knock Adam "the fuck out!", and "kick the shit out of him". PTE 52 at 1-2; PTE 53. In the vehicle with Adam were Jessica and her 16-year-old daughter. PTE 52 at 3. Josh even attempted to enter the vehicle but Adam made sure it was locked. *Id*. Josh then left but soon returned in his truck, in so doing going the wrong way against traffic and speeding right at Adam's parked vehicle, stopping just a foot in front of it. *Id*. Josh admitted that he did so to "keep Adam there until the police arrived." PTE 52 at 3. This was followed with Josh sending Adam a text on December 11, 2019, wherein

[8] Per the Partial Parenting Plan, Adam also noticed vacation time in December 2019, 2020, and 2021. 13 AA 2923; PTE 203. Hence, Adam was legally within his rights to do so.

Josh threatened "Does your dad know he raised a pussy? Punk-ass bitch won't even be a man and talk." PTE 52 at 2. Josh admitted to most of his behavior at the January 8, 2020 Justice Court hearing. PTE 52 at 1. Judge Moss later watched a video Adam made of the incident and made findings that Josh's behavior against Adam was "threatening and inappropriate." 10 AA 2206; PTE 53.

In October 2019, the issue of support arose again when Chalese requested temporary spousal support from Adam. 3 AA 716-31. Chalese also filed a Motion on November 15, 2019, wherein she requested a custody evaluation. 5 AA 1054-72. In opposing Chalese's motion as to spousal support, Adam stated that Josh's income and contributions towards Chalese's monthly expenses should be taken into consideration. 4 AA 823-27. At the December 9, 2019 hearing on Chalese's motion, Chalese represented that Josh's contributions towards her expenses were no longer relevant as she and Josh had allegedly stopped seeing each other (which was referred to as a "final break up") and that Josh had moved out. 8 AA 1767-74. Based on the timing of Chalese's representation, Adam questioned the veracity of Chalese's claim. 7 AA 1563. Judge Moss shared Adam's concern and stated that if Chalese's representation was not true, her credibility would be at issue. *Id*.[9] Judge Moss did

[9] Judge Moss also ordered that Adam could have a private investigator, as part of his surveillance of Chalese, confirm whether Josh indeed had moved out. 10 AA 2206.

award Chalese $10,000 in attorney's fees pursuant to *Sargeant v. Sargent*.[10]

Based on the threats of harm by Josh against Adam arising from the December 7, 2019 incident, Judge Moss ordered in Adam's favor a No Contact Order against Josh. 8 AA 1758-60, 1772.[11] Low and behold, Chalese reconciled with Josh the day after the December 9, 2019 hearing and was having him live with her again. 7 AA 1557-75. Hence, Adam filed a Motion for the Court to reconsider its December 9, 2019 Order regarding spousal support. *Id*. Chalese admitted at the February 26, 2020[12] hearing to having reconciled with Josh following the December 9th hearing. 10 AA 2205. As the financial provisions in the December 9, 2019 Order were based on Chalese not cohabitating with Josh, Judge Moss granted Adam's request to modify its December 9th order. 10 AA 2207. In so doing, Judge Moss also took into consideration the fact Adam had switched jobs, leaving Las Vegas Defense Group and joining the Nevada Attorney General's Office. 10 AA 2206.

Judge Moss additionally heard Chalese's request to modify custody from Adam having temporary primary custody to joint physical custody based in large part on the prior unsubstantiated narrative that Adam was trying to replace Chalese

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[10] *Sargeant v. Sargent*, 88 Nev. 223, 496 P.2d 618 (1972).

[11] Finally, Judge Moss ordered Adam's electronic devices that Chalese claimed contained child pornography to be turned over to Adam or his agent. 8 AA 1773.

[12] On February 20, 2020, Judge Moss granted Pecos law Group's motion to withdraw as Chalese's counsel in large part over disputes as to how the case should proceed. 8 AA 1745-53, 1810-11.

with Jessica. 7 AA 1652. Judge Moss saw no merit in Chalese's position and denied her request. 10 AA 2207. Finally, Judge Moss held that as a result of Adam prevailing on his motion, the court was inclined to award fees to Adam. To address same, and as an offset, Judge Moss would instead hold in abeyance the prior December 19th award of $10,000 award to Chalese. 10 AA 2208.

Chalese's parenting issues worsened during the COVID-19 crisis, with Chalese failing to follow CDC and State of Nevada COVID protocols regarding social distancing. Adam tried to speak to Chalese in regard to the danger posed by COVID (which at the time was sweeping the nation) via AppClose but Chalese blew off Adam's concerns. PTE 201. Chalese's behavior reflected her disregard for protecting the children against COVID by taking the children to various people's houses and even throwing a party at her home while the children were present. 9 AA 1960-83.

Adam was forced to file a motion wherein he sought to modify custody. *Id*. Adam also sought through a separate motion to hold Chalese in contempt of her numerous violations of the Court's March 19, 2019 and June 17, 2019 Orders. 8 AA 1815-32. Judge Moss shared Adam's concerns in regard to Chalese's refusal to follow COVID protocols, in addition to her admitted continued violation of the Court's orders, and granted Adam's request for sole custody (based on social distancing protocol) until a return hearing. 9 AA 2077.

Following that time, Marie became very ill during Adam's time and her pediatrician, unsure whether Marie had COVID-19 or not, advised Adam to follow the CDC guidelines in quarantining Marie. 9 AA 2087-93. Adam specifically asked the pediatrician if Marie could go to Chalese's house in light of the fact Jesse, Josh's son, was present there. *Id*. The pediatrician stated no as Marie would be contagious. *Id*. When Adam conveyed this to Chalese, she refused to follow the pediatrician's advice and insisted on having Marie returned to her per their schedule. *Id*. Chalese later changed her mind and agreed but only if Chalese would get make up time. *Id*. As Adam was not keeping Marie for recreational purposes, Adam was opposed to same. *Id*. Being proactive, Adam filed a motion to hear the matter as quickly as possible. *Id*.

At the June 1, 2020 hearing on the matter, Judge Moss gave Chalese make up time but did not find Adam to have acted in bad faith in withholding Marie. 11 AA 2457-58. Judge Moss also ordered that if the children were sick, the parties shall follow the doctor's orders (which is what Adam originally did) and for the parties to continue to follow social distancing guidelines. 11 AA 2459.

After numerous continuances of trial by Chalese due to her switching counsel numerous times, Trial was finally conducted over five days by the Honorable Judge Mary Perry ("Judge Perry"). 17 AA 3814. In addition to the presentation of experts and lay witness testimony, the parties each had voluminous exhibits but stipulated

to all of their Exhibits being admitted into the record. 19 AA 4004, 4135; 20 AA 4182, 4340, 4359; 21 AA 4503. The parties also stipulated that there was no child pornography on Adam's computers as Chalese had previously alleged. 16 AA 3424-25. However, and despite the parties stipulating to all of their trial exhibits, Judge Perry later unilaterally excluded Adam's 38 video exhibits. 16 AA 3604-05.[13]

Dr. Paglini, who testified first, was originally a court appointed evaluator. 8 AA 1767-74. However, Judge Perry modified this Order just prior to trial, holding at the April 30, 2021 hearing that Dr. Paglini was not the Court's expert. 14 AA 3217. Judge Perry did state that Dr. Paglini is a certified specialist, having been certified as an expert "for years with this court" and "knows what he's talking about." 16 AA 3421. Dr. Paglini conducted a thorough and proper custody evaluation. PTE 202. This included a review of all filings and documents, interviews with the parties, the parties' significant others, the oldest child Michael, and third-party collaterals, psychometric testing, home inspections, etc. *Id*. Dr. Paglini noted both sides issues with the other and addressed their claims, often in combination with the documentation provided by the parties. *Id*. The extent of Dr. Paglini's evaluation was set forth in his 66-page custody evaluation. *Id*.

[13] Due to the nature of the case, there are numerous references to both Judge Moss and Judge Mary Perry. While the trial court the subject of the appeal is often referred to as "the district court" in appellate briefs, in order to avoid confusion, Adam refers to each judge by their actual name.

Through testing, Dr. Paglini found Adam to be somewhat guarded and to have a high opinion of himself, but still within testing limits and likely related to him being a hard-working, successful individual. 16 AA 3442-43. He additionally concluded that Chalese had a history of depression, anxiety, anger, self-doubt, and posttraumatic stress that predated the litigation. 19 AA 4038-40. He concluded that Chalese was at times guarded and not forthcoming, suffers judgment issues, problems concentrating on tasks, and getting overwhelmed when under stress. 16 AA 3437-45. He did spoke well of Chalese though, stating that she loved the children, could be passive, and exhibited emotional warmth towards them. *Id*. Dr. Paglini did have issues with unsanitary aspects of Chalese's home, including the sheer amount of dog feces in the back yard (with a massive central pile and more than 56 piles that had been there for some time in addition to the main pile), especially around the children's play areas. 16 AA 3447-39.

Dr. Paglini concluded in the end both parents loved their children, that Adam had a greater commitment to the children's academic and social development, and that while Chalese historically had been the children's initial primary caretaker, he was concerned that Chalese was not doing what she needed to in regard to following court orders in order to be in a position to exercise joint physical custody. 19 AA 4071-72; PTE 202 at 58-66. Following Dr. Paglini's testimony, Judge Perry stated that Dr. Paglini did "a really good job". 19 AA 4037.

Judge Perry temporarily modified custody at the conclusion of the first day of trial to alternating weeks temporarily and just for the summer. 14 AA 3221. Chalese opportunistically tried to argue that the modification extended beyond summer, which the Order from May 10, 2021, clearly contradicted. Further, the Court had Chalese tested for drugs, with Chalese testing positive in violation of Court orders. 15 AA 3289. At a hearing set on the matter for July 8, 2021, Judge Perry recognized that both experts testified concerns in regard to Chalese's marijuana use and inability to follow court orders, that Chalese "was not putting the children first," and rescinded its temporary joint custodial summertime order, reverting to Adam being awarded temporary primary physical custody. *Id*. Judge Perry further ordered Chalese's rebuttal expert to explain why Chalese should be awarded joint physical custody. 15 AA 3290.

At the September 27, 2021 hearing, Judge Perry stated she was ending the community as of November 10, 2021, which included a termination of spousal support. 17 AA 3819; 15 AA 3289. Neither party opposed this Order.

On March 2, 2022, Chalese's rebuttal expert. Dr. Donohue, testified. 21 AA 4424. While he attempted to rebut Dr. Paglini's report and analysis, Dr. Donohue did not testify that he watched the video from the first two days of trial when Dr. Paglini testified and alleged Dr. Paglini did not consider issues which Dr. Paglini in fact did. *Id*.

Adam testified at length at trial, and presented documentation in support, regarding the parties' history, the children's emotional, medical, educational, and developmental needs and how Adam was suited to provide for them, and issues regarding Chalese's issues that inhibited her ability to co-parent. 19 AA 4069-4130. These included Chalese's drug use while caring for the minor children, numerous violations of court orders (evidencing lack of an ability to effectively co-parent with Adam), efforts to alienate the children against him, reckless driving, judgment issues related to the children's hygiene and living environment, developmental and academic concerns, and continuing to keep Josh in her life. *Id*. Adam further testified as to Josh's numerous threats against him, including threats to extort and physically assault Adam. *Id*. Jessica testified how her role in Adam's life was to be supportive of his parenting but not to supplement Chalese as the children's mother and not to become involved in Adam's and Chalese's co-parenting (in terms of trying to directly co-parent with Chalese). 20 AA 4349-4402; 22 AA 4674-4744.

On financial issues, evidence was presented regarding how Adam's father had gifted him an interest in the Highland View property. PTE 219 at 996; 19 AA 4122-23. Adam also presented evidence regarding his income. Specifically, Adam provided his Financial Disclosure Form with attached pay stubs showing he earns $3,618.40 every two weeks, which comes out to $7,839.87 gross per month. 16 AA 3593-3603; 21 AA 4569. The parties also both presented evidence that each of their

parents paid for a majority of their fees and costs in the case, with Chalese claiming the amount was $80,000 in Financial Disclosure Forms but later her counsel claiming it was $207,000. 13 AA 2897; FDF5/3/21/6; 16 AA 3587; 17 AA 3634-3742.

The last day of trial on April 14, 2022, was set for closing arguments. However, Chalese filed a motion in regard to an incident of domestic violence by Josh against Chalese on March 14, 2022, which resulted in Josh being arrested. 16 AA 3606-15. In her motion, Chalese requested that Judge Perry extend trial to allow evidence to be taken in regard to Josh's domestic violence. *Id*. While Judge Perry heard Chalese's motion, she nevertheless refused to take evidence or set the matter for further proceedings. 22 AA 4788-90. Judge Perry further refused Adam's similar request for evidence to be taken on this issue, despite Adam arguing the issue was relevant to the children's best interests in light of Josh's history of domestic violence, Chalese's admission that domestic violence occurred on March 14, 2022, while the children were in Chalese's home, and Chalese's statements on the record that she could not preclude her and Josh from reconciling going forward. *Id*. In support of its refusal, Judge Perry claimed the matter was "something new" and that she was only going to rule on the evidence to date that was properly before it. *Id*. Adam followed the Court's April 14th ruling with a Motion to Reconsider, along with an Ex Parte Application for an Order Shortening Time, believing taking evidence on the matter

was critical to Judge Perry's custodial determination. 17 AA 3753-71. Judge Perry did not rule on Adam's Motion for Reconsideration prior to issuing her Decree.

Judge Perry additionally stated on the last day of trial that the parties could submit briefs as to their closing arguments, with the court intending to issue its Decree by no later than May 26, 2022. 22 AA 4783. Judge Perry did not reference anything about adjudicating attorney's fees in its Decree nor bypassing the requirements of NRCP 54. While Chalese's current counsel, as well as her prior counsel, both submitted Memorandum of Fees and Costs prior to Judge Perry issuing its trial Decree, Adam believed in light of NRCP 54 that current and prior counsel for Chalese were acting erroneously and Adam did not see any need to spend money to file his own Memorandum of Fees and Costs at that time.[14] 17 AA 3634-3742, 3747-52, 3772-91. Judge Perry nevertheless ruled on attorney's and expert fees, as well as costs, in her Decree. 17 AA 3859-65.

During trial, Judge Perry made numerous comments and statements that brought her impartiality and ability to reasonably adjudicate the matter into question. Judge Perry commented that she does not like "the evidentiary rules", that the parties should "speed things up by not objecting", and that she was not so concerned about

[14] Neither memorandum or brief for Chalese's prior and current counsel included a mandatory Affidavits of counsel swearing that fees were actually and necessarily incurred and were reasonable. 17 AA 3634-3742, 3747-52, 3772-91.

foundation [of exhibits]." 19 AA 4004. Judge Perry stated that she "was not concerned" about custodial issues that arose prior to the first day of trial and "only wanted to hear about the bad stuff [in regard to custody]." Such statements were confusing for Adam as they are contrary to Nevada law.

Judge Perry stated during trial that she was "in one of her moods" and made flippant comments that were unprofessional and confusing. 19 AA 4001. When Chalese's counsel brought up to Dr. Paglini a claim by Chalese that some boyfriend of hers in college raped her (implying it was Adam), Adam objected and Judge Perry sustained the objection, noting there was no evidence in support. 19 AA 4048-49. Regardless, Judge Perry stated in reference to Adam "***I will say this. If he did that, bad dog, no biscuit. Okay. I'm in one of my moods today Dr. Paglini***..." *Id*.[15] Judge Perry also stated to Adam that his behavior during the divorce had "sucked all along" and that she "like giving Adam a hard time." 19 AA 4017; 21 AA 4608.[16]

Further, and on the second day of trial on June 21, 2022, Mr. Alex Ghibaudo appeared for the sole purpose of requesting a third day of trial. In fact, and after the Court granted the third day, Mr. Ghibaudo promptly left. 19 AA 3998-99. Judge Perry stated that Mr. Ghibaudo was one of the few attorneys she allows "to give her

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[15] Emphasis added.

[16] Adam in fact so concerned that he felt compelled to file a Motion to Disqualify Judge Perry following the first day of trial. 14 AA 3163.

a hard time." 19 AA 3999. Further, and on January 21, 2022, Judge Perry commented off the record how Mr. Ghibaudo and her husband were "good friends." Judge Perry also unilaterally revoked Judge Moss' bar against the parties using marijuana, despite the fact neither party requested her to do so, based on the belief that Judge Moss' order was "illegal" and ignoring the fact it was Chalese's repeated use of marijuana in violation of the March 19, 2019 Order that evidenced Chalese's issues with marijuana. 19 AA 4104-05.

Judge Perry issued her Decree of Divorce on May 26, 2022 ("the Decree"). Judge Perry recited her procedural history of the case, stating she reviewed the filings by both sides throughout the case and that she took them into consideration in rendering her Decree. 17 AA 3816-19, 3861.

Judge Perry awarded the parties joint legal and joint physical custody of the minor children. 17 AA 3846-47, 3850.[17] However, she pronounced that her Decree was based almost entirely on Adam's alleged relentless efforts throughout the litigation to "micro-manage" Chalese and remove Chalese from the children's lives and instead replace her with Jessica. 17 AA 3825, 3831-39. Judge Perry provided no specific and substantial findings in support of this position and failed to address

[17] Further, and despite stating at trial that Adam celebrated Christmas Eve with the children, Judge Perry divided the Winter Break at the halfway point, essentially resulting in Adam never having the children for Christmas Eve or even Christmas Day. 22 AA 4719, 4731-32.

evidence by Adam showing such a determination to be contrary to the record. Further, and despite Judge Perry's statement on April 14th that she would not be adjudicating the issue of Josh's March 14, 2022 domestic violence against Chalese in terms of how it affects custody, Judge Perry nevertheless analyzed the issues and set forth findings as to same in her Decree. 17 AA 3839.

Judge Perry next based Adam's child support on an income figure she did not provide findings for and that was contrary to the evidence presented at trial; made Adam responsible for 65% of the children's medical, educational, and extracurricular costs without providing findings in support; and awarded Chalese a survivorship interest in Adam's PERS and making Adam one-half responsible for the premiums despite Adam becoming enrolled/participating in PERS during the divorce. 17 AA 3853-58.

Worse, in ruling on attorney's and expert fees and costs, Judge Perry made an emotionally charged and sweeping order, ***awarding Chalese every single fee paid by her, or on her behalf, in the case***. Judge Perry set the amount of Chalese's total fees and costs owed by Adam at $200,875. 17 AA 3863-65. Judge Perry adjudicated fees and costs without prior notice that it was not requiring post-judgement NRCP 54 motions.

15. Issues on Appeal. State concisely your response to the principal issue(s) in this appeal:

A. Judge Perry erred in granting joint physical custody of the minor children.

B. Judge Perry erred in calculating child support.

C. Judge Perry erred in ordering Adam be 65% responsible and Chalese 35% responsible for the children's medical, educational, and extracurricular costs.

D. Judge Perry erred in awarding Chalese a survivorship interest in Adam's PERS.

E. Judge Perry erred in awarding Chalese all of her attorney's fees and costs of suit and applying Adam's separate property towards same.

F. Judge Perry erred in ordering The Abrams & Mayo Law Firm to distribute funds in their client trust account to Mr. Schneider instead of Chalese.

16. Standard of Review

Errors of law are reviewed de novo.[18] However, to the extent that the question is whether an order falls within the scope of competent evidence, the review is one

[18] *Mosley v. District Ct.*, 124 Nev. 654, 188 P.3d 1136 (2008).

of error of law, which is under the same standard.[19] Substantial evidence must support a court's findings and is defined as "evidence that a reasonable person may accept as adequate to sustain a judgment."[20] Child custody matters are subject to an abuse of discretion standard.[21] Likewise, whether child support has been correctly assessed is a question of law, which is reviewed *de novo*.[22] However, the determination of the amount of child support is subject to an abuse of discretion.[23] A court abuses its discretion when it makes a factual finding that is not supported by substantial evidence and is "clearly erroneous."[24] An obvious error of law may also be an abuse of discretion.[25] As for the exercise of personal judgment by a court, a court errs in such exercise if the err rises to the level meriting reversal when no reasonable judge could reach the conclusion reached under the circumstances.[26] Property divisions in Decrees of Divorce are reviewed for an abuse of discretion.[27]

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[19] *Id.*

[20] *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239, 242 (2007).

[21] *Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004).

[22] *Vaile v. Porsboll*, 128 Nev. 27, 268 P.3d 1272 (2012).

[23] *Wallace v. Wallace*, 112 Nev. 1015, 922 P.2d 541 (1996).

[24] *Real Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982).

[25] *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979).

[26] *Id*.

[27] *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124, 1129 (2004).

Finally, an award of attorney's fees is reviewed for an abuse of discretion,[28] although when the law on which fees and costs are based is at issue, the proper review is de novo.[29]

17. Legal Argument and Authorities:

A. <u>Judge Perry Erred in Granting Joint Physical Custody of the Minor Children</u>

In any action for determining physical custody of a minor child, "the sole consideration of the court is the best interest of the child" and any custodial order "must tie the child's best interest, as informed by specific, relevant findings" on the best interest factors "to the custody determination made."[30] In the absence of such findings, the Nevada Supreme Court has stated that it cannot conclude a trial court exercised its discretion in determining custody in the case.[31]

From reviewing the Decree in this case in comparison to the record, it is obvious that Judge Perry enmeshed itself in the matter, taking the case personally and inappropriately aligning herself with Chalese by adopting the unreasonable and unsubstantiated narrative that Adam was essentially a vexatious litigator who

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[28] *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 319 P.3d 606 (2014).

[29] *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 127 P.3d 1057 (2006).

[30] *Harrison v. Harrison*, 132 Nev. 564, 568, 376 P.3d 173, 176 (2016); *Davis v. Ewalefo*, 131 Nev. 445, 352 P.3d 1139, 1143 (2015).

[31] *Id*.

unrelentingly tried to control, bully, and harass Chalese during the litigation in an attempt to remove her from the children's lives and replace her with his significant other, Jessica. 17 AA 3831-39. Judge Perry allowed this baseless belief to cloud much of her decision making in the case, especially as to the children's best interests, resulting in numerous findings that are erroneous and not supported by the evidence. Worse, Judge Perry completely ignored Chalese's parenting issues, vindictiveness (none as appalling as Chalese's unsupported claim that Adam had child pornography and tried to extort Adam with threats of revealing it) and efforts to alienate the children from Adam. Instead, Judge Perry cast Chalese as a victim and itself as Chalese's "protector", tasked with punishing Adam rather than acting as an unbiased arbiter charged with impartially adjudicating the matter based on the law and facts.

i. Judge Perry made Sweeping Claims that were Not Supported by the Record

Judge Perry's unfounded bias against Adam starts with her belief that Judge Moss treated Chalese in an "abhorrent manner" while she presided over the case without proof of same. 17 AA 3831. Judge Perry ignored the evidence that it was Chalese's violation of Judge Moss' numerous orders—orders Judge Moss held were for the temporary protection of the minor children—that resulted in a change in custody. 3 AA 525-31. These were orders neither party challenged via a Writ. Judge Perry's interjecting her belief of how Judge Moss should have ruled was also inappropriate, as was Judge Perry's statement in the Decree that had Judge Moss not

made her orders, Chalese "would be awarded had primary custody." 17 AA 3831. Even more paradoxical, Judge Perry chastised Judge Moss for changing custody related to Chalese's illicit use of drugs in violation of orders despite the fact Judge Perry herself found on July 8, 2021, that Chalese violated the order barring marijuana use and changed custody, reverting back to Adam having primary physical custody and finding that Adam's request was brought in good faith. 15 AA 3290. Further, Judge Perry admitted that in regard to Judge Moss' orders, Judge Perry "did not know all of Judge Moss' true reasonings" yet held baselessly in the Decree that Judge Moss acted in an "abhorrent manner." 21 AA 4537; 17 AA 3831. From this it is clear Judge Perry's disdain for Judge Moss's rulings affected her judgment and decision.

As for Adam, Judge Perry repeatedly took the unsubstantiated position that Adam was maliciously attempting, through motions, to remove Chalese from the children's lives and replace her with Jessica. 17 AA 3824-39. To the contrary, the record reflects Adam's motions were a direct response to serious misconduct by Chalese that were detrimental to the children's best interests, as the evidence reflects. Such a response by Adam therefore cannot be characterized having been conducted in bad faith or constituting "scorched earth litigation".

Adam and Jessica did testify that the children would be better off spending more time with them over Chalese ***if*** Chalese continued to act in a way that was

harmful to the children, but such a statement is a far cry from Judge Perry's illusory conclusion that such a position is tantamount to a plan to replace Chalese with Jessica without any further findings. Judge Perry made other findings based on her characterization of Adam's behavior that were illogical and not supported by law or the evidence:

- Characterizing any criticism by Adam in filings and at trial of Chalese's parenting during the divorce as "demeaning" and "unjustifiable" although Judge Perry did not once cite to an example of any insulting statements by Adam. 17 AA 3825, 3829.
- Characterizing Adam's having to enter the Highland View residence, which he was still on title to as a joint owner to retrieve Michael's medication due to Chalese being out of town as constituting "domestic violence" against Chalese. 17 AA 3838.
- Finding that Adam refused to provide Chalese any financial support without a court order despite the fact Adam continued to pay the mortgage and all utilities on the residence Chalese inhabited from November 2018 through March 2019 and until the property sold, all without a Court order. 1 AA 174-84.
- Characterizing Adam having a private investigator follow Chalese as "domestic violence" even though Adam doing so was legal and resulted in

Chalese being caught violating numerous court orders; 17 AA 3838; 21 AA 4630-31.

- Characterizing Adam taking vacation time pursuant to a Parenting Plan as "depriving Chalese of her time" while also commenting that Chalese's use of parenting time, even if she was not going out of town, constituted valid vacation time. 17 AA 3826; 21 AA 4493.
- Characterizing the limitations on drinking, consuming alcohol, and behavior as applying only to Chalese and not Adam when the orders were in fact reciprocal. 1 AA 220-24, 236-50; 3 AA 525-31; 19 AA 4146.
- Referring to Adam as a "good lawyer" but then stating that Adam acted vexatiously in litigating the case. 22 AA 4672; 17 AA 3826.
- Characterizing Judge Moss' bar against the parties use of marijuana as "illegal," ignoring that it was within Judge Moss' discretion to bar Chalese from using marijuana and that it was Chalese's repeated violation of the March 19, 2019 Order that concerned Judge Moss. 19 AA 4105; 17 AA 3831-39.

Unfortunately, Judge Perry made similar and erroneous rulings in other cases (wherein she took positions that were directly contradicted by the evidence in the

case or her own representations), indicating a concerning trend.[32] Judge Perry's inappropriate, derogatory, and perplexing statements at trial further evidence Judge Perry was allowing her preconceived notions and prejudices to guide her decision making.

Judge Perry also based her custodial decision on the claim that Adam was attempting to micromanage Chalese's parenting. 17 AA 3827. Judge Perry held that Adam did he believed himself "superior" to Chalese. *Id*. Judge Perry did not provide any findings or citations to the record that showed Adam micromanaging Chalese's parenting. 17 AA 3827-29. What the record does reflect is that Adam attempted to persuade Chalese to better care for the children's hygiene, follow pediatrician recommended quarantining and social distancing during the pandemic, refrain from using barred substances, etc. Such behavior, which Judge Perry characterizes as micromanagement, is nothing more than good co-parenting.

Judge Perry was also critical of Adam for "including" Josh in the litigation, claiming that Adam was upset that Chalese had moved on and sought to preclude Josh from Chalese's life out of spite. 17 AA 3828, 35. The record in fact reflected Adam sought only to protect the children from Josh' domestic violence, driving

[32] *Cass v. Classon*, 2022 Nev. App. Unpub. LEXIS, 503 P.3d 378; *Vaccarino v. The Eight Judicial Dist. Court of Nev.*, 2022 Nev. App Unpub. LEXIS 226, 509 P.3d 609.

issues, and impermissible drug use. Inexplicably, Judge Perry applauded Chalese for removing the children from the home where Josh lived due to his domestic violence on March 14, 2022, but gave no credence to the fact these were the types of situations that Adam was forced to address during the divorce and which Judge Perry chastised Adam for in the Decree. 17 AA 3820.

Judge Perry also abused her discretion in not taking into consideration Chalese's misconduct or parenting issues. 17 AA 3830-39. While there are many examples stated in the fact section, the following are of most importance: Judge Perry failed to address Chalese's violation of court orders related to drug and alcohol use, allowing Josh to care for and drive the minor children, and demeaning communications towards Adam; refusals to respond to Adam's efforts to coparent; failure to properly support Michael's speech therapy; and attempts to blackmail Adam with false claims of disclosing child pornography unless he agreed to terminate her drug testing. 3 AA 525-31; 15 AA 3288-92; 22 AA 4691-92; PTE 210.

ii. Judge Perry Erred in Making a Vague Finding that Dr. Paglini's Testimony was Incomplete

Dr. Paglini conducted a full and thorough custody evaluation of the parties as evidenced by his 66-page child custody report. PTE 202. Judge Perry, however, erred in finding that Dr. Paglini's report was supposedly "incomplete."[33] 17 AA

[33] Judge Perry also expressed its belief that Dr. Paglini was unduly biased for Adam despite complimenting Dr. Paglini for his professionalism and stating his

3821. First, Judge Perry found that Dr. Paglini's report did not address "gatekeeping" (referring to the ability of each parent to support the other parent's relationship with their children).[34] Dr. Paglini in fact did address this issue by finding that Adam's motivation in questioning Chalese's parenting was not out of malice or to alienate the children from Chalese but rather to address behavior on Chalese's part, including concerns that Chalese and Josh were using marijuana in the presence of the parties' children, that Josh had a propensity towards domestic violence, that Chalese had neglected Michael's speech therapy, reckless driving on Chalese's and Josh's part, hygiene issues when it came to her home and bathing of the children, and other violations of Court ordered made in the best interest of the minor children. PTE 202 at 49-66. Further, and while Dr. Paglini looked at each party's financial stability, he did not center on it and specifically stated it was but one factor out of

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testimony was beneficial. 16 AA 3421. The only "proof" of bias Judge Perry referenced was Adam having previously referred a case to Dr. Paglini years prior before Dr. Paglini even knew of the litigation. A singular referral is not proof of bias. It is notable Judge Perry did so again in regard to Adam telling Judge Moss he had a client who he could benefit from her gambling court, believing this statement by Adam to be inappropriate. 17 AA 3817. However, Judge Moss would not receive any compensation from such a referral as it was part of her court duties, hence there was nothing inappropriate in Adam's comment, nor did she leave the courtroom due to it.

[34] Austin, W. G., *Parental Gatekeeping in Custody Disputes*. American Journal of Family Law, 25(4), 148-153 (2011). Interestingly, Judge Perry stated Dr. Paglini did not address "gatekeeping" as ordered but then held that Dr. Paglini was not the court's expert. 14 AA 3217; 17 AA 3821.

many and that he was focusing more on the parties' abilities as parents and concerns with same. PTE 202 at 64.

In regard to Dr. O'Donohue's 8-page report and testimony, Dr. O'Donohue simply provided a rebuttal report to Dr. Paglini's report and conducted no interviews other than Chalese (and in so doing, incorporated information into his report that arose after Dr. Paglini concluded his report, resulting in Dr. Donohue exceeding the scope of his retention). Deft. Trial Exhibit (DTE) MM. Further, Judge Perry erred in concluding that Dr. O'Donohue claimed Dr. Paglini failed to cover numerous subjects and facts when in fact Dr. Paglini did. 17 AA 3821-22. Examples of this include:

- Dr. O'Donohue claiming Dr. Paglini failed to address Adam's motivation for entering into the former marital residence when in fact Dr. Paglini noted Adam reported doing so for the purpose of retrieving Michael's medicine;
- Dr. O'Donohue asserted Dr. Paglini failed to note that Chalese was the children's historical caregiver and that she cut children's hair, both of which Dr. Paglini did in fact note in his report but placed less emphasis on;
- Dr. O'Donohue claiming Dr. Paglini did not record that Adam was studying for the bar examination when Chalese was in labor with Michael even though Chalese reported this to Dr. Paglini;

- Dr. O'Donohue went on to state Dr. Paglini made assessments and observations in regard to Josh "without ever speaking with Josh" when Dr. Paglini in fact interviewed Josh; and
- Dr. O'Donohue claimed Dr. Paglini's report was full of mere statements without Dr. Paglini exploring the validity of the statements when Dr. Paglini's report evidences he consistently referred to documentation provided by both parties in supporting or contradicting the parties' representations. PTE 202 at 13-25, 40-46, 55; 17 AA 3822;

Dr. O'Donohue asserted Dr. Paglini's report failed to address how Chalese being investigated by Adam's private investigator affected her anxiety. 17 AA 3823. However, Dr. Paglini's psychometric testing indicated Chalese historically suffered from anxiety. PTE 202 at 19-20. Further, Dr. Paglini testified at trial that Chalese's anxiety could be elevated due to knowing she was being followed but did not preclude that the anxiety could also be due to Chalese having been previously caught violating court orders. 19 AA 4042.

iii. Judge Perry Erred in Failing to Address How Josh's Behavior Affected the Children's Best Interests and Erring in Not Extending Trial to Adjudicate Josh's Most Recent Act of Domestic Violence

Substantial evidence was presented related to Josh's daily use of marijuana and alcohol while in the presence of the minor children, his terrible driving record, his acts of domestic violence towards both Adam and Chalese on numerous

occasions, and at times in the presence of the minor children, and Josh's decisions to place himself in the middle of coparenting between the parties. Almost all of these issues, which were admitted to by either Josh or Chalese in depositions, at hearings or at trial, were a source of major concern for Dr. Paglini. PTE 202 at 46-66. Despite this, Judge Perry failed to evaluate any of these issues under NRS 125C.0035(4) nor make any orders limiting Josh's contact with the minor children. *Id*. Instead, Judge Perry held that "there was no reason that Josh could not be a babysitter [to the parties' children]" against the weight of the evidence and even Chalese telling Judge Perry that Josh had committed domestic violence against Chalese and the children on March 14, 2022, and was being prosecuted for same. 22 AA 4774; 17 AA 3824.

What is so concerning in the Decree is that Judge Perry took the position that because Josh was not a party to the case, his behavior did not come into consideration in adjudicating custody. 20 AA 4369-70; 17 AA 3831. While Josh is not a party to the case, it is axiomatic that the children's best interest must take into consideration the conduct and behavior of a third party who resides with children.

Worse, Judge Perry refused both parties' requests to extend trial to allow evidence to be taken in light of Josh having committed domestic violence against Chalese just a month before trial was to conclude on April 14, 2022. 22 AA 4788-91. Judge Perry based her refusal on the view that the matter was "something new" and that she was only going to rule on the evidence to date that was properly before

it. *Id*. Judge Perry then erroneously analyzed the matter without taking evidence (especially Chalese's statement on April 14, 2022 that she could reconcile with Jodh despite his domestic violence as she had done before) and setting forth findings as to same in the Decree, rescinding the Order that Josh not be around the children in the process. 22 AA 4788-90; 17 AA 3839. Child custody matters must be decided on the merits in light of the courts' mandates to serve children's best interest.[35]

B. Judge Perry Erred in Calculating Child Support

Judge Perry held that she was setting child support pursuant to the formula set out in *Wright v. Osburn*,[36] with the *Wright* Court basing its analysis on the formula set out in NRS 125B.070. Reliance on *Wright* and NRS 125B.070 was erroneous though as NRS 125B.070 was repealed in 2017 and replaced by the formula set out in NAC 425 in 2020 (specifically NAC 425.115 and 425.140). However, Judge Perry also erred setting child support under the guidelines.

Judge Perry stated she calculated Adam's income "based on either filed Financial Disclosure Forms and/or the representations of the parties..." and then found Adam's gross monthly income (GMI) to be $9,799. 17 AA 3854. However, Adam's most recent Financial Disclosure Form filed March 4, 2022, included pay

[35] *Blanco v. Blanco*, 129 Nev. 723, 311 P.3d 1170 (2013); *Price v. Dunn*, 106 Nev. 100, 787 P.2d 785 (1990).

[36] *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998).

stubs that established Adam had GMI of $7,839.40, not $9,799. 16 AA 3593-3603; 21 AA 4569. Adam's testimony was consistent with the amount specified in his pay stubs and Chalese did not refute Adam's GMI. *Id*. Further, neither party testified that Adam had income in addition to his compensation from the Nevada Attorney General's Office. Judge Perry therefore abused her discretion in stating the $9,799 figure without precisely setting forth how she came to that amount. On remand, Adam's child support should be calculated based on specific findings and consistent with NAC 425 and based on Adam being awarded primary physical custody of the minor children.

C. Judge Perry Erred in Failing to make Findings in Support of its Order that Adam be 65% Responsible and Chalese 35% Responsible for the Children's Medical, Educational, and Extracurricular Costs

NAC 425.150 sets forth several factors that Judge Perry must analysis in deviating from an order of child support set pursuant to NAC 425.115 and NAC 425.140. The payment of expenses for the benefit of minor children in excess of child support are analyzed under NAC 425.150(1)(a)-(h), with the guidelines requiring the courts to set forth specific findings.[37]

Judge Perry ordered that Adam would be responsible for 65% of the children's unreimbursed health related expenses, educational costs, and extracurricular

[37] *Malkulak v. Davis*, 138 Nev. Adv. Rep. 61, 516 P.3d 667 (2022).

activities, with Chalese responsible for 35%. 17 AA 3855-56. However, Judge Perry failed to make and set forth ***specific findings of fact*** based upon the factors set forth under NAC 425.150(1)(a)-(h) in support of her order requiring Adam to take on the majority of said expenses. *Id*.

D. Judge Perry erred in awarding Chalese Adam's separate property

Judge Perry found that $85,000 of the $92,599.99 in sales proceeds from the Highland View residence were a gift to Adam from his father, thereby constituting and recognizing them to be Adam's sole and separate property. 17 AA 3857. Despite Judge Perry's finding and order, she nevertheless awarded Chalese the $85,000 to be applied to the award of attorney's fees granted to Chalese. 17 AA 3863-65.

Property acquired by a party by gift during marriage is that party's separate property. NRS 123.130. In a divorce action, and except for the post-divorce support of a spouse or the parties' children, the trial court is devoid of jurisdiction to award one party the other's separate property. NRS 125.150(5) and 125.150(1)(b). Further, attorney's fees are community in nature and payable from community income or property. As courts interpreting Nevada law have found, "Nevada law treats debts and other obligations incurred during the term of the marriage similarly to the way

it treats property."[38] Other states have held accordingly.[39] Hence, Judge Perry's application of Adam's separate property to an award of attorney's fees to Chalese was in error.

E. Judge Perry Erred in awarding Chalese a survivorship interest in Adam's PERS and in so doing, Judge Perry failed to Make Findings Regarding the Apportionment of the Costs of the survivorship interest

In awarding Chalese a survivorship interest in Adam's PERS—PERS that Adam enrolled/commenced participating in during the divorce and just a year prior to the trial commencing—Judge Perry abused her discretion, especially in light of the financial effect on Adam by making him one-half responsible for the costs of the survivorship premium.

F. Judge Perry Erred in Awarding Chalese all of her Attorney's Fees and Costs of Suit

Judge Perry's irrational bias against Adam, and the resulting error in her Decree, is also evident in Judge Perry's Decree in ***awarding Chalese every single one of her attorney's and expert fees and costs paid or outstanding***. 17 AA 3859-66. This was clearly based on Judge Perry's belief, without actual or substantial findings, that Adam prosecuted the case in a way intended to harass Chalese and

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[38] *In re Field*, 440 B.R. 191, 195 (Bankr. D. 2009) (citing *Northwest Fin. V. Lawver*, 109 Nev. 242, 246, 849 P.2d 324, 326 (1993)) (see also *Wolff v. Wolff*, 112 Nev. 1355, 1361, 929 P.2d 916, 920 (1996).

[39] *Newman v. Newman*, 268 Cal. App. 2d 895, 74 Cal. Rptr. 444 (1969).

wrongfully deprive her of custody through his numerous motions (what Judge Perry called a "scotched earth litigation tactic"). 17 AA 3861.

i. Judge Perry Failed to Make Requests for Attorney's Fees Pursuant to NRCP 54

At no time during trial did Judge Perry exempt the parties from having to make any request for fees and costs pursuant to NRCP 54. Said rule requires a request for fees be made after Judge Perry's Decree (judgment) was issued and be accompanied by an Affidavit of counsel swearing that the fees were actually and necessarily incurred and were reasonable. NRCP 54(d)(2)(A), and (B)(i) and (v)(a). The Memorandums for Fees and Costs by Chalese's current and prior counsel Judge Perry ruled on were made prior to Judge Perry issuing her Decree and failed to include the required Affidavit of counsel with the mandatory language in NRCP 54(d)(2)(B)(v)(a). Hence, Judge Perry's erred in adjudicating and awarding fees based on procedurally defective memorandums.

ii. Judge Perry Erred in Failing to Properly Consider the *Brunzell* Factors

Pursuant to *Brunzell v. Golden Gate National Bank*,[40] a district court adjudicating an award of fees must evaluate (a) the qualifications of counsel; (b) character of work to be done; (c) actual work performed; and (d) the result. While

[40] *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

Judge Perry cited to the *Brunzell* case in its Decree, it failed to make findings supported by substantial evidence related to the fees awarded. 17 AA 3859-65. A district court must sufficiently demonstrate that it considered the required factors and that said consideration is supported by substantial evidence.[41] It is clear from a review of the record that Judge Perry did not thoroughly consider the *Brunzell* factors, especially the results achieved.

Instead, and in ruling on attorney's and expert fees and costs, Judge Perry made a broad sweeping statement that essentially ***every position taken by Adam and every motion filed by him*** in the divorce was "frivolous", "intended to cause delay", and "intended to reduce Chalese's timeshare on some false claim/complaint by Adam" and equated to "a scorched earth litigation tactic." 17 AA 3861. Judge Perry did not provide any further findings in support of its incredibly singular overstatement of the facts in the case.

In so doing, Judge Perry ignored the numerous motions filed by Adam that were found to be in good faith and granted by Judge Moss, often based in large part on Chalese's admission of wrongful conduct, nor did Judge Perry take into consideration the numerous motions filed by Chalese during the litigation wherein Chalese sought to hold Adam in contempt and to change custody that were denied

[41] *Logan v. Abe*, 131 Nev. 260, 350 P.3d 1139 (2015); *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 813, 890 P.2d 785 (1995).

and even found to be in bad faith.[42] Further, Judge Perry essentially and impermissibly disagreed with the pretrial rulings of her predecessor[43] Judge Moss based on Judge Perry "seeing matters things differently" than Judge Moss and using this as a basis to punish Adam. Judge Perry even alludes to this in the Decree. 17 AA 3831.

Judge Perry also categorized all of Chalese's attorney's fees as necessary expenses under NRCP 54 and *Brunzell* without an examination as to the necessity of the fees, who is relatively responsible for the fees, nor fail to take into consideration the result of each motion or request. 17 AA 3859-65. While it is impossible in this Fast Track Statement to set out every error in this regard, the following are a few prominent and irrefutable examples of how Judge Perry's award was erroneous:

- Judge Perry awarded Chalese attorney's fees related to proceedings on July 8, 2022, wherein Judge Perry herself found Chalese to have again violated court orders regarding prohibited drug use, resulting in Judge Perry awarding Adam primary physical custody of the minor children; 15 AA

[42] Judge Perry's review of matters previously adjudicated by Judge Moss, including fees, goes against the law of the case doctrine. *Reconstruct Co., N.A. v. Zhang*, 130 Nev. 1, 317 P.3d 814 (2014). It also violates the legal concept that to the extent neither side challenged any particular ruling of Judge Moss via a writ, Judge Perry was prohibited from doing so retroactively.

[43] And after the time for reconsideration of said rulings passed.

3288-92.

- Judge Perry awarded Chalese attorney's fees related to her Opposition of Adam's motion requesting a modification of custody based on Chalese's admitted numerous violations of the Order from the March 19, 2019 hearing and which Adam prevailed as to; 1 AA 236-50.
- Judge Perry awarded Chalese attorney's fees related to her Motion for an Order to Show Cause—a motion that Judge Moss ruled as unmeritorious as it lacked sufficient facts and was procedurally defective in failing to include a mandatory *Awad* Affidavit[44] in support; 3 AA 705
- Judge Perry ordered Adam responsible for Pecos Law Group's fees in relation to their Opposition to Adam's Motion to compel discovery responses. 4 AA 931-39. Judge Perry did so despite Adam prevailing on the issue and Adam was in fact awarded $3,888.50 in fees by the discovery commissioner. 8 AA 1792-99. Judge Perry never even took the $3,888.50 award to Adam from Chalese in considering an award of fees in its Decree; 17 AA 3856-65.
- Judge Perry ordered Adam solely responsible for Louis Schneider's attorney's fees despite the fact ***Chalese herself*** had previously argued that

[44] *Awad v. Wright*, 106 Nev. 407, 794 P.2d 713 (1990).

Mr. Schneider's fees, which were summarized in one billing statement that had never been previously provided to Chalese, were "grossly unreasonable" and "unreliable" based on the amount of work set out in Mr. Schneider's entries in contrast to the actual work performed and results obtained; 17 AA 3862-65; 3 AA 644-47.

- While Adam's request to disqualify Judge Perry was not granted at that time by Judge Linda Bell to this appeal, Chalese's request for attorney's fees was denied as Chalese was not required to oppose Adam's motion. 14 AA 3163. Judge Perry's award of attorney's fees nevertheless included these.
- Chalese filed numerous motions requesting that Adam be held in contempt of court, with the motions either being denied or deferred to trial. Judge Perry did not find Adam in contempt of any court order but nevertheless awarded Chalese fees related to these denied requests;
- Chalese took the position in filings and at trial that Josh was a good influence on the children and not a perpetrator of domestic violence, in opposition to the evidence to date, to finally admit on the last day of trial that Josh had again committed domestic violence against Chalese. 22 AA 4784-88. Judge Perry nevertheless awarded Chalese fees related to her repeated attempts to take positions and presenting evidence to the contrary;

17 AA 3859-65.

- The parties stipulated to a number of issues during the case, evidenced via stipulations and orders on the record, thereby barring either party from requesting fees related to same.[45] Judge Perry nevertheless made Adam responsible for all of Chalese's counsel's fees, which would have included work related to said stipulations; and 17 AA 3859-65.
- Chalese filed numerous motions related to her counsel withdrawing from her case and then substituting into the case again, with Judge Perry making Adam responsible for those fees as well. 17 AA 3861-65.

iii. Judge Perry's Reliance on EDCR 7.60(b) was in Error

EDCR 7.60(b) permits sanctions in the form of attorney's fees against a party who without just cause: (1) presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted; (2) fails to prepare for a presentation; (3) so multiplies the proceedings in a case as to increase costs unreasonably and vexatiously; (4) fails or refuses to comply with these rules; and/or (5) fails or refuses to comply with any order of the court. Judge Perry found that Chalese was entitled to attorney's fees based on EDCR 7.60(b) without specifying which provisions of EDCR 7.60(b) apply to the case. While Judge Perry

[45] *Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996).

did make statements that Adam's had taken frivolous positions and "unnecessarily extended litigation", she failed to provide findings in support of these overgeneralized and vague statements.

iv. Judge Perry Failed to Consider NRS 18.010 Despite Citing to the Statute in its Decree

NRS 18.010 permits a district court to award attorney's fees based on which party is the prevailing party. While Judge Perry cited to NRS 18.010 in support of her award of fees, she failed to provide findings setting forth exactly how Chalese prevailed on a majority of issues. 17 AA 3861-65. Judge Perry also failed to make findings showing how Adam's position at trial was maintained without reasonable grounds.[46] The major disputed issues at trial were child custody, Adam's separate property interest in the Highland View residence, and Chalese's request for alimony. 17 AA 3814-69. While Chalese erroneously prevailed on custody, Adam prevailed in having his separate property awarded to him, as well as denying Chalese alimony. *Id*. Clearly, if Adam prevailed on the latter two, his position as to them could not have been unreasonable. Judge Perry therefore failed to reconcile same or address how the award of fees took these points into consideration. 17 AA 3861-65.

[46] *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006) (stating that, under NRS 18.010(2)(b), a court may award attorney fees to the prevailing party if the court finds that the opposing party's claim was brought or maintained without reasonable grounds).

v. Judge Perry Erred in Not Analyzing an Award of Expert Fees Pursuant to NRS 18.005

Judge Perry did not analyze expert fees under NRS 18.005 as required. In *Frazier v. Drake*, the Court of Appeals held that any award of expert fees per expert must be supported "by an express, careful, and preferably written explanation of the court's analysis."[47] In so doing, the district court should consider the twelve factors set forth in the case.[48] Judge Perry, in awarding Chalese fees for her expert that were in excess of $1,500, failed to make findings based on the factors in *Frazier*, evidencing they were not taken into consideration.

vi. Judge Perry Erred in Awarding Fees Based on a Disparity in Income Without Making Specific Findings and in Refusing to Take into Consideration Chalese's Mother Providing Her Funds for Fees

Judge Perry also based her award of attorney's fees on a disparity in income. A disparity in income is a factor upon which fees may be based.[49] However, a disparity in income does not exist in a vacuum and an award must at least be tangentially and sufficiently connected to the disparity to ensure it is not an abuse of the court's discretion.[50] For example, Judge Perry did not make findings establishing

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47 *Frazier v. Drake*, 131 Nev. 632, 650-651, 357 P.3d 365 (2015).

48 *Id.*

49 *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

50 *Gunderson v. D.R. Horton*, 130 Nev. 67, 80, 319 P.3d 727, 730 (2005).

the effect on the disparity once Adam's child support and other monthly expenses for the children were considered.

Judge Perry also did not take into consideration the fact Chalese's mother paid all of her fees and costs. 17 AA 3861-65. Ironically, Judge Perry took into consideration the fact that Adam had most of his fees and costs paid for by his father. 17 AA 3861. It is therefore unclear how Judge Perry rationalized using Adam's father's generosity against him while remaining silent on Chalese's mother's generosity, nor how a disparity in income factors into the analysis when both parties had their families voluntarily pay for their fees.

Awards of fees and costs are intended to permit a party to have representation in litigation on equal footing with the other party without harming their financial position.[51] Here, Chalese's mother paid for Chalese to have counsel and an expert, the same as Adam's father did for him, resulting in Chalese being able to advance her case and have her day in court without hurting her financial situation. Hence, any award of fees and costs to Chalese would be the equivalent of a windfall to Chalese.

While Judge Perry does not make any findings as to these points, she briefly cites to *Logan v. Abe* for the proposition that a party can recover attorney's fees

[51] *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); NRS 125.040.

despite a third party's payment of those fees.[52] However, that case is readily distinguishable from this one in several regards. First, *Logan* involved an insurance company paying the attorney's fees for its insured which was *required* under the terms of the insurance contract and not a gesture of goodwill.[53] In this case, Chalese's mother gifted her the monies for payment of her fees and Chalese's mother had no legal obligation to pay same. Second, the Supreme Court ruled in *Logan* that payment of fees by a third-party was recoverable under NRS 17.115(4) and NRCP 68 (f)(2), which statute and rule regards offers of judgment wherein an offeree ***must*** pay the offeror's attorney's fees.[54] There was no offer of judgment in this case and *Logan* does not address recovery of fees paid by a third-party in any other type of case. Further, Judge Perry did not cite to any law permitting Chalese to recover fees on behalf of a non-party to the case nor did it find Chalese owed her mother for any funds for fees Chalese was provided.

G. Judge Perry Erred in Ordering The Abrams & Mayo Law Firm to Distribute Funds in their Client Trust Account to Mr Schneider instead of Chalese

While the arguments above should result in a reversal of Judge Perry's award of fees and costs, the Nevada Court of Appeals in its September 1, 2022 Order

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[52] *Logan v. Abe*, 131 Nev. 260, 350 P.3d 1139 (2015).

[53] *Id*. at. 263.

[54] *Id*. at 264-265.

directed the parties to brief whether Judge Perry had the authority to distribute funds in Adam's prior counsel's client trust account to Chalese's prior counsel, Mr. Louis Schneider, instead of Chalese directly. 17 AA 3863-65. Judge Perry did err in so doing as Mr. Schneider already had a judgment against the $10,875 in fees adjudicated by Judge Moss and there were no further proceedings or orders related to his prior motion to adjudicate. 11 AA 2563-65. Hence, Judge Perry exceeded her jurisdiction in the Decree in directing payment of funds to a non-party where there is no specific case or statute supporting such an order.

H. On Remand, this Case Should be Remanded to a Different Department of the Family Court

The trial judge made a number of errors. While some were inadvertent, others clear errors of fact, law, and abuses of discretion that could not have possibly been accidental. In Judge Perry's short time on the bench, Judge Perry has developed a tendency to be openly hostile during her trials and in her Decrees towards a party or attorney she has chosen to not like. Such conduct consisted of emotional outbursts, irrational rulings in favor of one party, and making sweeping overgeneralized conclusions instead of analyzing specific facts.[55] This was the case in this matter, as evidenced by her prejudging the case based on her inappropriate statements during trial, unsubstantiated claims of vexatious litigation by Adam, disproportionate

[55] See trial transcripts.

division of the costs of the children's care, and awarding of all fees to Chalese despite the substantial evidence establishing such an order was erroneous and completely inequitable. Hence, Judge Perry should have recused herself from these proceedings as her "impartiality might reasonably be questioned."[56]

On request, the Nevada Supreme Court has remanded cases with direction that they be heard by a different judge so as to avoid any appearance of impropriety or the judge being unduly prejudiced against a party.[57] It is respectfully suggested that this is such a case, and upon remand the case should be assigned to a different department of the family court.

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[56] *Ivey v. Eight Judicial Dist. Court of Nev.*, 129 Nev. 154, 299 P.3d 354, 358 (2013); Nev. Code Jud. Conduct Canon 2.11(A)(1).

[57] See, e.g., *Fisher v. Fisher*, 99 Nev. 762, 670 P.2d 572 (1983); *Willmes v. Reno Mun. Court*, 118 Nev. 831, 59 P.3d 1197 (2002.

18. **Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest? If so, explain**:

This appeal includes the question of whether a litigant can be awarded fees and costs related to a third party's voluntarily payment of same in cases distinct from the holding in *Logan v. Abe.*

DATED Monday, November 21, 2022.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast-track statement 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:

[x] It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in font-size 14 of Times New Roman; or

[ ] It has been prepared in a monospaced typeface using Microsoft Word 2010 with 10 ½ characters per inch of Courier New.

2. I further certify that this fast-track statement complies with the page-volume limitations of NRAP 3E(d)(1), or the type-volume limitations of NRAP 3E(e)(2), because it is either:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 13,958 words;[58] or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains 14,000 words or 1,300 lines of text; or

[ ] Does not exceed 30 pages.

3. Finally, I recognize that pursuant to NRAP 3E, I am responsible for filing a timely fast-track response and that this Court may sanction an attorney for

[58] Pursuant to this Court's October 19, 2022 order, the type-volume limitation of this fast-track statement was enlarged to no more than 14,000 words.

failing to file a timely fast-track response 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 response is true and complete to the best of my knowledge, information and belief.

DATED Monday, November 21, 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Child Custody Fast Track Statement* was filed electronically with the Clerk of the Court of Appeals of Nevada in the above-entitled matters on Monday, November 21, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

Alex Ghibaudo, Esq.
Michancy Cramer, Esq.
Attorneys for Respondent

/s/ David J. Schoen, IV, ACP
An employee of The Abrams & Mayo Law Firm