NO. 84980

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

Jenniffer Figueroa, Plaintiff.	Case No: D-20-606828-C
vs.	Department N
Ronald David Harris, Defendant.	

FILED
JUL 07 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

NOTICE OF EVIDENTIARY HEARING

This matter was originally set for an evidentiary hearing on 05/31/2022. At that time, Defendant asked for a continuance indicating he had filed a Writ based on Judge Bell's denial for disqualification filed 05/13/2022. Apprehensively, this Court granted Defendant's request. The matter was set for a status check hearing today and only Plaintiff appeared. To date, no Writ is being shown as filed. This Court will not comment on the time requirements at this juncture regarding the Writ. In *Debiparshad, M.D. v. Dist. Ct. (Landess)*, 137 Nev. ___, 499 P.3d 597 (2021), the Court concluded that "once a party files a motion to disqualify a judge pursuant to the Nevada Code of Judicial Conduct, that judge can take no further action in the case until the motion to disqualify is resolved." Again, that part is done as Chief Judge Bell has made her decision. "When a Writ petition is filed, the court retains jurisdiction over the order challenged therein during the pendency of the Writ petition." *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569 (2000). Accordingly, regardless of whether Defendant files a writ between now and the hearing date below, the matter will be going forward. All of the provisions of the prior Amended Notice of Evidentiary Hearing filed 05/13/2022 are still in effect. The primary purpose of this Notice is to inform the parties of the new date and time for the evidentiary hearing, which will be held by audio/visual means July 28, 2022 from 10:00 a.m to 12:00 p.m. PST.

Emergency Motion under NRAP 27 (e) requested before above hearing date. (July 28, 2022)

HONORABLE MATHEW P. HARTER
Dated this 23rd day of June, 2022

MEF

98B D51 D007 CADC
Mathew Harter
District Court Judge

RECEIVED
JUL 07 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Mathew Harter
DISTRICT JUDGE
FAMILY DIVISION, Department N
LAS VEGAS, NV 89101-2408

22-21420

SUPREME COURT FOR THE STATE OF NEVADA

PETITION FOR WRIT OF MANDAMUS

RONALD DAVID HARRIS,
PETITIONER

v.

HONORABLE LINDA MARIE BELL, CHIEF JUDGE, HONORABLE MATHEW HARTER, DISTRICT JUDGE (DEPT. N)
RESPONDENTS,

AND JENNIFFER FIGUEROA, REAL PARTY in INTEREST

CASE NO. D-20-606828-C

EMERGENCY MOTION UNDER NRAP 27 (e) ACTION BY MAY 31, 2022 or AS SOON AS POSSIBLE July 27, 2022

THIS MATTER FALLS IN AT LEAST ONE OF THE CATAGORIES OF CASES RETAINED BY THE SUPREME COURT OF NEVADA PURSUANT TO NRAP 17 (a). THE PETITIONER BELIEVES THIS IS A CASE FOR THE COURT OF APPEALS PURSUANT TO NRAP 17 (b) or RULE 17 (a), (10), (b), (10), (12)

THE RELIEF SOUGHT IS TO DISQUALIFY JUDGE MATHEW HARTER FROM THIS CASE.
ISSUES PRESENTED IS BIASED TOWARDS THE PETITIONER (DEFENDANT IN THIS CASE)

THESE ARE THE FACTS AND THE REASON WHY THE WRIT OF MANDAMUS SHOULD BE ISSUED.

THE PETITIONER FEELS THAT JUDGE HARTER IS BIASED AND INCAPABLE OF MAKING AN UNBIASED DECISION IN THIS LEGAL CUSTODY MATTER AND THAT THE COURT HAS ALREADY SHOWN BIAS AND INABILITY TO BE FAIR TO THE PETITIONER IN THIS MATTER. NOT ONLY DID THE COURT APPEAR TO BE BIASED TOWARDS THE PETITIONER AT THE JULY 16, 2020 CONFERENCE, BUT MR. HARRIS APPEALED THE COURT'S DECISION TO THE NEVADA COURT OF APPEALS AND WAS SUCCESSFUL. HE FEARS THAT WILL ONLY ADD TO THE BIAS HE FEELS THAT JUDGE HARTER HARBORS AGAINST HIM. READING THE TRANSCRIPT FROM THE JULY 2020 CONFERENCE (A PREVIOUSLY SUBMITTED EXHIBIT) IT IS EASY TO SEE THAT JUDGE HARTER HAD A PREDTERMINED OUTCOME FOR THIS CASE. THE NEVADA COURT OF APPEALS CAME TO THE SAME CONCLUSION IT APPEARS WHEN THEY COMMENTED ON THAT ISSUE IN THEIR REVERSAL ORDER. "IN FACT, THE FIRST ACTION THE DISTRICT COURT TOOK AFTER ITS INTRODUCTORY COMMENTS WAS TO GRANT FIGUEROA SOLE LEGAL AND SOLE PHYSICAL CUSTODY. FIGUEROA HAD MADE NO ARGUMENTS REGARDING ANY SUBJECT AT THAT POINT." HARRIS v. FIGUEROA 2021 WL 5176842 *3 THE PETITIONER FEELS THAT THE COURT DID NOT WANT TO HEAR THE CASE ON THE MERITS AT ALL. LATER, WHEN THE COURT REFERRED TO THE PETITIONER'S ANSWER OR BRIEF TO FIGUEROA'S MOTION FOR CUSTODY THE COURT SAID THAT IT READ MR. HARRIS' BRIEF "VERY QUICKLY." IN THE CLOSING SECONDS OF THE SIX MINUTE HEARING THE

COURT SEEMED TO JUST TOSS OUT A RANDOM, UNAPPICABLE CASE BY THE NEVADA SUPREME COURT, ALMOST AS AN AFTERTHOUGHT TO JUSTIFY HIS PREDETERMINED DECISION. "I GUESS I SHOULD PROBABLY CITE HAYES v. GALLAGHER AS MY REASON WHY BECAUSE IT'S PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE ANY CUSTODY RIGHTS DUE TO THE FACT THAT HE IS SERVING A PRISON SENTENCE, AN EXTENDED PRISON SENTENCE IN THE STATE OF TENNESSEE." (pg 5 transcript) THE PETITIONER FINDS IT TROUBLING THAT THERE IS NOT A HAYES v. GALLAGHER CASE FROM NEVADA. THERE IS HOWEVER A HAYES v. GALLACHER 115 NEV. 1 (1999) ("C" NOT "G" IN GALLACHER). IF THIS IS THE CASE THAT JUDGE HARTER IS CITING THAT TOO IS TROUBLING. THAT CASE IS ABOUT RELOCATION. THE MOTHER PETITIONED THE COURT TO RELOCATE WITH THE CHILDREN TO JAPAN. THE HAYES COURT RECOGNIZED THAT A PARTY'S RELOCATION CAN CONSTITUTE A SUBSTANTIAL CHANGE IN CIRCUMSTANCES WARRANTING A REEXAMINATION OF CUSTODY BASED ON THE CHILD'S BEST INTEREST. IT STATED THAT A RELOCATION THAT SIGNIFICANTLY IMPAIRS THE OTHER PARENT'S ABILITY TO EXERCISE THE RESPONSIBILITIES HE HAD BEEN EXERCISING CONSTITUTES SUBSTANTIALLY CHANGED CIRCUMSTANCES. IN FACT, THE SUPREME COURT OF NEVADA SAID IN HAYES v. GALLACHER *8 "THIS COURT HAS MADE IT QUITE CLEAR THAT NEVADA COURTS MAY NOT USE CHANGES OF CUSTODY AS A SWORD TO PUNISHED PERCEIVED PARENTAL MISCONDUCT." (quoting SIMS v. SIMS, 109 NEV. 1146, 1149, 865 P.2d. 328, 330 (1993)). THE HAYES CASE HAD NOTHING TO DO WITH A PRISON SENTENCE OR IT BEING PHYSICALLY IMPOSSIBLE FOR THE FATHER TO EXERCISE HIS JOINT LEGAL CUSTODY RIGHTS. NEVADA LAW HAS NOT SAID THAT INCARCERATED PARENTS LOSE THEIR RIGHTS TO THEIR CHILDREN. THERE ARE NUMEROUS CASES THAT INCARCERATED PARENTS HAVE MAINTAINED THE JOINT LEGAL CUSTODY RIGHTS. THE PETITIONER WILL ARGUE THAT IN CASE CUSTODY HEARING WHEN THIS MATTER IS DECIDED. THE COURT APPEARS TO NOT HAVE KNOWN THE ISSUES OF THE HAYES CASE WHEN IT APPLIED IT TO THE INSTANT CASE AS ITS "REASON WHY." THE PETITIONER IS AWARE THAT UNPUBLISHED CASES CANNOT BE CITED OR USED HOWEVER TO SHOW RELEVENCE AND FOR PERSUASIVE VALUE PURPOSES HE WILL ASSERT THAT CASE IN THE MATTER OF A.M. 2020 WL 6955396, A CASE DECIDED BY THIS HONORABLE COURT AND ALSO INVOLVING THE DISQUALIFICATION OF JUDGE HARTER, WARRANTS CONSIDERATION. JUDGE HARTER WAS FOUND TO BE HOSTILE, COMBATIVE AND BIASED AGAINST THE DEFENDANT, THE FATHER, MR. AMADO. MR. AMADO FILED A MOTION TO DISQUALIFY JUDGE HARTER AND CHIEF JUDGE, LINDA MARIE BELL, DENIED THE MOTION. JUST LIKE SHE DID HERE IN THE PETITIONER'S CASE. THE COURT OF APPEALS ISSUED A WRIT OF MANDAMUS TO DISQUALIFY JUDGE HARTER. BIAS WAS CLEAR AND THE COURT OF APPEALS AGREED. MR. AMADO BELIEVED THAT JUDGE HARTER HAD A PREDETERMINED OUTCOME FOR THE TERMINATION OF THAT CASE. THE PETITIONER ARGUES THE SAME IN THIS INSTANT CASE. JUDGE HARTER RULED FOR FIGUEROA RIGHT OUT OF THE GATE AND THE COURT OF APPEALS NOTICED THAT AND NOTED IT IN THEIR DECISION HARRIS v. FIGUEROA *8. JUDGE HARTER SAID IN HIS RESPONSE TO THE PETITIONER'S MOTION TO DISQUALIFY HIM THAT HE TAKES HIS "DUTY TO SIT SERIOUSLY." SAYING THAT DOESN'T MEAN IT'S TRUE. THE PETITIONER AVERS THAT THE COURT DIDN'T APPEAR TO TAKE IT SERIOUSLY IN THE MATTER OF A.M. HE DID NOT

APPEAR TO TAKE IT SERIOUSLY IN THE INSTANT CASE WHEN HE RULED FOR FIGUEROA BEFORE SHE EVEN BASICALLY UTTERED A WORD. SHE MADE NO ARGUMENTS AND DID NOT PRESENT ANY EVIDENCE. THE COURT EVEN SAID IT READ THE PETITIONER'S 12 PAGE ANSWER "FAIRLY QUICKLY" WHICH MAKES THE PETITIONER FEELS HE'S NOT EVEN WORTH JUDGE HARTER'S TIME. THE COURT DID NOT SEEMS TO TAKE HIS "DUTY TO SIT SERIOUSLY" WHEN HE VIOLATED MR. HARRIS' DUE PROCESS RIGHTS AND ABUSED HIS DISCRETION WHICH THE COURT OF APPEALS AGREED THAT JUDGE HARTER DID. THE PETITIONER JUST NOW RECEIVED A COPY OF CHIEF JUDGE BELL'S DENIAL OF HIS MOTION TODAY, MAY 25, 2022. IT WAS POSTMARKED ON MAY 19, 2022 BUT ONLY ARRIVED TODAY. THE PETITIONER IS DOING ALL OF THIS PRO SE AND WAS UNAWARE OF HOW MUCH OF AN ARGUMENT TO MAKE IN HIS MOTION. SO HE'LL DO IT HERE. THE PETITIONER DID NOT ATTEND THE CASE MANAGEMENT HEARING BECAUSE HE DID NOT RECEIVE ANYTHING FROM THE COURT. THE PRISON KEEPS A RECORD OF ALL INCOMING AND OUTGOING LEGAL MAIL TO/FROM INMATES. THERE IS NO RECORD OF ANYTHING FROM THE COURT ARRIVING IN AND AROUND THE MAY 22, 2020 ORDER THAT WAS SENT OUT BY THE COURT'S JUDICIAL ASSISTANT. THAT IS THE ONLY REASON THE PETITIONER DID NOT PARTICIPATE. HE HAD NO KNOWLEDGE OF THE HEARING DATE. THE PETITIONER UNDERSTANDS THAT HE HAS THE BURDEN TO DEMONSTRATE THAT EXTRAORDINARY RELIEF IS WARRANTED. THAT BEING SAID PROOF OF ACTUAL BIAS IS NOT REQUIRED; "a court must objectively determine whether the probability of actual bias is too high to ensure the protection of a party's due process rights." IVEY, 129 NEV. at 159, 299 P. 3d. at 357. THE COURT OF APPEALS HAS ALREADY DECIDED THAT JUDGE HARTER DID INDEED VIOLATE MR. HARRIS' DUE PROCESS RIGHTS PREVIOUSLY. HARRIS v. FIGUEROA. THE STANDARD FOR ASSESSING BIAS IS "WHETHER A REASONABLE PERSON, KNOWING ALL OF THE FACTS, WOULD HARBOR REASONABLE DOUBTS ABOUT A JUDGE'S IMPARTIALITY." IN RE VARAIN, 114 NEV. 1271, 1278, 969 P. 2d 305, 310 (1998)). THE PETITIONER FEELS THAT ANY REASONABLE PERSON WOULD AGREE WITH HIS ASSESSMENT THAT JUDGE HARTER IS BIASED AND NOT INTERESTED IN HEARING THIS CASE ON THE MERITS. JUDGE HARTER'S COMMENTS AND ACTION IN THE INSTANT CASE SHOWS THAT HE ALREADY HAD A PREDETERMINED OUTCOME FOR THE INSTANT CASE THE VERY MINUTE THE CONFERENCE STARTED. IT WAS NOT EVEN SUPPOSED TO BE A CUSTODY DECISION CASE. JUST A CONFERENCE. HE DID NOT HEAR ANY ARGUMENTS OR EVIDENCE AND READ MR. HARRIS' BRIEF "FAIRLY QUICKLY." IN FACT, JUDGE HARTER CAME TO LEGAL CONCLUSIONS WITHOUT THE PRESENTATION OF EVIDENCE OR ARGUMENTS BY THE PARTIES. PROOF OF A PREDETERMINED OUTCOME. NOT TO MENTION HE VIOLATED MR. HARRIS' DUE PROCESS RIGHTS AND ABUSED HIS DISCRETION. FOR THESE REASONS THE PETITIONER FEELS THAT JUDGE HARTER SHOULD BE DISQUALIFIED FROM THIS CASE.

Lastly, I'm citing Wiese v. Granata 110 Nev. 1410 887 P. 2d 744 (1994) where the Nevada Supreme Court reversed the District Court's decision in a case almost identical to my successful appeal. The Nevada Supreme Court said, by their own provocation, " In the interest of justice, if any future proceedings are conducted in this case, the case should be reassigned to a Family Court Judge other than Scott Jordan," (Footnote 2) With all due respect to Judge Harter, I request the same.

R. Al Harris

Ronald David Harris

PRINTED NAME

May 25, 2022

3rd attempt

R. Al Harris

6-27-22