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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

FILED

JAN 24 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY: [Signature] CHIEF DEPUTY CLERK

3  
4 KYMBERLIE JOY HURD,  
5  
6 Appellant,

Supreme Court No.: 85537

District Court No.: D622669

7 vs.

8 MARIO OIPARI,  
9  
10 Respondent.

**REPLY TO RESPONDENT'S  
OPPOSITION TO APPELLANT'S  
AMENDED MOTION FOR STAY  
OF DISTRICT COURT  
PROCEEDINGS**

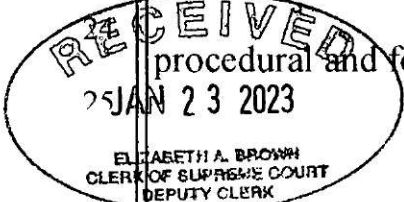
11  
12 Appellant ("Kymberlie") through self-representation, hereby submits the  
13 forgoing Reply to Respondent's ("Mario") Opposition To Appellant's Amended  
14 Motion For Stay Of District Court Proceedings.

15 This Reply is made pursuant to NRAP 27(a)(4) and is based on the  
16 following points and authorities, and all exhibits referenced and previously  
17 submitted.

18  
19 **STATEMENT OF FACTS**

20 Respondent does not refute or make a single argument denying  
21 Kymberlie's claims of significant harm, regression, and abuse the minor child is  
22 having to endure while in the custody of Mario and his significant other ("Kari").

23 In fact, Mr. Friedman's Response solely focuses on Kymberlie and her supposed  
procedural and formatting errors.



1 Mario does not refute or even argue against Kymberlie's extensive list of  
2 Department R's violations of law, an unfair trial, lack of Due Process, and the  
3 initial unlawful Pick-Up Order (1/11/2022) taking minor child away from her  
4 mother.

5  
6 Therefore, these are deemed to be admitted by Mario and as such, minor  
7 child should be returned to the custody and safety of Kymberlie.

### 8 **LEGAL ARGUMENT**

9 While Kymberlie could go line for line and point out all the flaws and  
10 violations of law and misrepresentations, Kymberlie is more focused on minor  
11 child and her best interests. Something that Mario and his attorneys have failed to  
12 do throughout the course of this litigation and appeal.

13  
14 Kymberlie will point out a few examples, and due to page limits, leave it at  
15 that. Mr. Friedman refers to case law *Nev. Ass'n Services v. Eighth Judicial*  
16 *District Court of Nev., 338 P.3d 1250, 1255-56 (2004)* as evidence that the  
17 arguments of counsel do not establish the facts of the case. Ignorantly, Mr.  
18 Friedman goes on to apply that same case law to a pro se litigant. Nevada  
19 Supreme court, nor any Supreme Court of the United States of America have found  
20 that this case law, or similar, applies to self-represented litigants. As such, this  
21 argument fails.

22  
23  
24 ///

1 Kymberlie's arguments are done not only as a pro se litigant, but as a party  
2 and witness to this case and therefore has merit.

3 While Mario and his counsel argue that there are sufficient evidence to  
4 support the findings of fact, a simple review of the Stay (with exhibits) filed  
5 1/11/2023 will demonstrate that Mario and his counsel have submitted fraudulent  
6 documentation as evidence. Again, just one example of many. Also, the register of  
7 actions, exhibit A in Mario's filing, validate Kymberlie's claims of an unfair and  
8 bias court. As no pre-trial orders or early case conference hearings were ever held.  
9

10 Kymberlie will further point out that Mario's Response improperly attaches  
11 a medical release from a person that is not subject or party to this litigation (last  
12 page of last exhibit). This is a violation of HIPPA laws.

13 Ironically, while an active Nevada Bar attorney is pointing out the  
14 procedural and formatting error(s) of a self-represented non-attorney, he himself is  
15 committing numerous violations of law, procedure, ethics, and morals. In fact, Mr.  
16 Friedman's last Motion was rejected by this court. Mr. Friedman also is arguing  
17 Kimberlie's Fast Track Statement as relevant to this Motion For Stay. For every  
18 supposed procedural error Mr. Friedman points out against Kymberlie, he is  
19 actively committing several procedural/unlawful violations himself.  
20  
21  
22

23 **Nevada Rules of Professional Conduct Rule 3.1. Meritorious Claims and**  
24 **Contentions.** A lawyer shall not bring or defend a proceeding, or assert or controvert  
25 an issue therein, unless there is a basis in law and fact for doing so that is not frivolous,  
which includes a good faith argument for an extension, modification or reversal of  
existing law.

1 The main and only priority of this case, or any custody case, is the best  
2 interest of the child. This has been and still remains a well-established law of this  
3 land. Procedural and/or formatting errors *DO NOT* supersede the Best Interest(s)  
4 of the Child.

5  
6 “(“The prime concern and controlling factor is the best interest of the child,  
7 and the court in its sound discretion will look into the peculiar circumstances of  
8 each case and act as the welfare of the child appears to require.”); *Hamby v.*  
9 *Hamby*, ” *Santo v. Santo*, 448 Md. 620, 629 (Md. 2016)

10 *In re Mary S.*, 186 Cal.App.3d 414, 230 Cal.Rptr. 726, 728 (1986) (“[T]he  
11 potential harm to children in allowing them to remain in an unhealthy  
12 environment outweighs any deterrent effect which would result from  
13 suppressing evidence unlawfully seized.” (internal quotation marks  
14 omitted)); *In re Diane P.*, 110 A.D.2d 354, 494 N.Y.S.2d 881, 884 (1985)  
15 (“[T]he State's overwhelming interest in protecting and promoting the best  
16 interests and safety of minors in a child protective proceeding far outweighs the  
17 rule's deterrent value,”); *State ex rel. A.R. v. C.R.*, 982 P.2d 73, 79 (Utah 1999)  
18 (“Whatever deterrent effect there might be is far outweighed by the need to  
19 provide for the safety and health of children in peril.”). *Abid v. Abid*, 406 P.3d  
20 476, 481 (Nev. 2017)

21 A per se rule of inadmissibility would force the district court to close its eyes to  
22 relevant evidence and possibly place or leave a child in a dangerous living  
23 situation. In this instance, the illegally acquired recordings contained no  
24 dispositive evidence—they reflected at most one parent's attempt to alienate the  
25 child from the other parent. More concerning, however, would be a scenario in  
which an illegally obtained recording contains evidence of physical or sexual  
abuse of a child. Categorically excluding such evidence would clearly be  
against the best interests of the minor and, therefore, in contravention of NRS  
125C.0045(2). *Abid v. Abid*, 406 P.3d 476, 481 (Nev. 2017)

26 In a child custody setting, the “[c]hild's best interest is paramount.”  
27 *Bluestein*, 131 Nev. at —, 345 P.3d at 1048. The court's duty to determine the  
28 best interests of a nonlitigant child must outweigh the policy interest in  
29 deterring illegal conduct between parent litigants. *Abid v. Abid*, 406 P.3d 476,  
30 481-82 (Nev. 2017)

1 In making a child custody determination, “the sole consideration of the court is  
2 the best interest of the child,” NRS 125.480(1). This is not achieved, as the  
3 district court seemed to believe, simply by processing the case through the  
4 factors that NRS 125.480(4) identifies as potentially relevant to a child's best  
5 interest and announcing a ruling. As the lead-in language to NRS  
6 125.480(4) suggests, the list of factors in NRS 125.480(4) is  
7 nonexhaustive. *See* NRS 125.480(4) (“In determining the best interest of the  
8 child, the court shall consider and set forth its specific findings  
9 concerning, *among other things* ...”) (emphasis added); *Ellis v. Carucci*, 123  
10 Nev. 145, 152, 161 P.3d 239, 243 (2007) (in determining the best interest of a  
11 child, “courts should look to the factors set forth in NRS 125.480(4) *as well as*  
12 *any other relevant considerations*”) (emphasis added). Other factors, beyond  
13 those enumerated in NRS 125.480(4), may merit consideration. *Davis v.*  
14 *Ewalefo*, 352 P.3d 1139, 1143 (Nev. 2015)

15 "the welfare of the child is superior to the claim of the parent so that the right of  
16 the natural parent must yield where it clearly appears that the child's welfare  
17 requires that custody be granted to another." *Doe v. Doe*, 399 N.Y.S.2d at 982.

18 The state's decision to take custody of a child implicates the constitutional  
19 rights of the parent and the child under the Fourteenth and Fourth Amendments,  
20 respectively. “Parents and children have a well-elaborated constitutional right to  
21 live together without governmental interference. That right is an essential  
22 liberty interest protected by the Fourteenth Amendment's guarantee that parents  
23 and children will not be separated by the state without due process of law  
24 except in an emergency.” *Wallis*, 202 F.3d at 1136. *Kirkpatrick v. Cnty. of*  
25 *Washoe*, 792 F.3d 1184, 1188 (9th Cir. 2015)

26 In *Carney* a unanimous court held that regardless of how custody was originally  
27 established, a child will not be removed from the custody of one parent and  
28 given to the other unless the noncustodial parent shows that material facts and  
29 circumstances occurring subsequently are of a kind to render a change essential  
30 or at least expedient for the welfare of the child. *In re Marriage of Carney*, 24  
31 Cal.3d 725, 157 Cal. Rptr. 383, 598 P.2d 36 (Cal. 1979)

32 While Mario states that Staying the current order would only revert back to  
33 the prior order of 5/19/2022, that is completely false. The prior Order is actually  
34 dated 5/26/2022 and Kymberlie appeals all filed orders, 10/17/2022, 5/26/2022,  
35

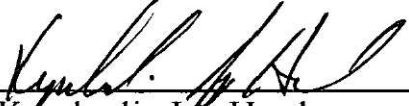
1 5/19/2022, and 1/11/2022. There are no other orders as Respondent failed to  
2 properly have those orders signed and filed.

### 3 CONCLUSION

4 Mario and his counsel argue that Kymberlie's procedural and formatting  
5 errors justify keeping minor child in an abusive, toxic, and significantly harmful  
6 custody situation. Going over ten (10) pages in a motion does not and should not  
7 justify a minor child being harmed and abused. Mario nor his counsel have ever  
8 denied or refuted the fact that Kymberlie was minor child's sole caregiver for the  
9 majority of her life, 5.5 years. Mario and his counsel do not refute or argue against  
10 the egregious violations of law, nor the abuse and harm currently being imposed  
11 upon minor child. As such, minor child should be returned to the full time care  
12 and custody of Kymberlie.  
13  
14

15 It has been over 118 days as of this filing, since Kymberlie has had ANY  
16 contact with minor child. Mario does not even permit a phone call nor has he  
17 updated Kymberlie with minor child's development, overall well-being, pictures,  
18 etc., and this is under the advice of three (3) attorneys of record in the State of  
19 Nevada.  
20

21 DATED this 20<sup>th</sup> day of January, 2023.

22  
23   
24 Kymberlie Joy Hurd  
Appellant, In Proper Person  
25


## **DECLARATION OF KYMBERLIE JOY HURD**

I, Kymberlie Joy Hurd, declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct:

1. I am the Appellant in the above-entitled action.
2. I have read the foregoing reply and know the contents thereof; that same is true of my own knowledge, except for those matters stated upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and United States, NRS 53.045 and 28 USC § 1746, that the forgoing is true and correct.


DATED this 20<sup>th</sup> day of January, 2023.

  
Kymberlie Joy Hurd  
210 Red Coral Dr.  
Henderson, NV 89002  
702-285-8149  
KymberlieJoy@gmail.com  
Appellant, In Proper Person



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DATED this 2<sup>nd</sup> day of January, 2023.

  
Kimberlie Joy Hurd  
210 Red Coral Dr.  
Henderson, NV 89002  
702-285-8149  
KimberlieJoy@gmail.com  
Appellant, In Proper Person



1 **CERTIFICATE OF SERVICE**

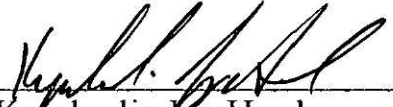
2 I hereby certify that on the 20<sup>th</sup> day of January, 2023, I served a copy of  
3 this completed Reply To Respondent's Opposition To Appellant's Amended  
4 Motion For Stay Of District Court Proceedings upon all parties to the appeal as  
5 follows:  
6

7 By mailing it first-class mail with sufficient postage prepaid to the following  
8 addresses:

9 Chaka Crome, Esq.  
10 Crome Law Firm  
11 520 S. 4th St., Suite 200  
12 Las Vegas, NV 89101

13 Matthew H. Friedman, Esq.  
14 Christopher B. Phillips, Esq.  
15 Ford & Friedman  
16 2200 Paseo Verde Pkwy., Suite 350  
17 Henderson, NV 89052

18 DATED this 20<sup>th</sup> day of January, 2023.

19   
20 Kymberlie Joy Hurd  
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25 Appellant, In Proper Person