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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAGGIE ROE, N/K/A MAGGIE
COX,

Appellant,

v.

JASON ROE,

Respondent.

Supreme Court No.: 84893

APPELLANT'S PETITION FOR REHEARING OF ISSUE AND TO STAY
REMITTITUR

ATTORNEY FOR APPELLANT
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ATTORNEY FOR RESPONDENT
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Attorney for Respondent

I. LEGAL ARGUMENT

It appears that Appellant's prior failed to adequately raise the concern that the significant change in circumstances affecting the well-being of the child was created by the district court during the period of litigation. Appellant's Motion will focus on the originating motion and countermotion, the interlocutory orders of the court, and the intervening issuance of *Romano v. Romano*, 138 Nev. Adv. Op. 1 (Nev. 2022).

A. Appellant's Petition is Timely.

This Court's Order of Affirmance was entered on May 18, 2023. This Petition for Rehearing is being filed within eighteen (18) days, pursuant to NRAP 40(a)(1), and is therefore timely.

B. Respondent failed to plead a change in circumstance affecting the well-being of the child.

Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party. *Hay v. Hay*, 100 Nev. 196, 198 (Nev. 1984). The Nevada Supreme Court issued its decision in *Romano* on January 13, 2022. Whereas the standard for change of custody changed from "best interest" to "Substantial Change in Circumstance affecting the well-being of the child," pleadings should have been modified or the

motions withdrawn. *Romano* at 7. The court will note, Appellant noticed the court of her withdrawal of motion based on the heightened standard under *Romano*.

Appellant filed her motion to modify custody and permit counseling for the minor child July 27, 2020. (ROA00001-000034). Respondent filed his untimely Opposition and Countermotion August 20, 2020. (ROA000070-000104). Respondent's Countermotion was based upon best-interest alone and never asserted a change in circumstance affecting the well-being of the child. (ROA000100). The Court should note the entire Opposition and Countermotion retells the often exaggerated or outright falsehoods from 2017. (ROA000075-000076).

The Court should note that following the initial hearing, Maureen Zelenksy was appointed as an expert for the court to complete a brief focused assessment on the family. (ROA000970-000986). The minor child reported that he liked the weekly exchanges and the week on/off schedule. (ROA000972). Ms. Zelenksy reported that Jason was potentially engaging in alienating behavior. (ROA000983). Ms. Zelenksy testified that Respondent was engaged in parental alienation. (ROA001678). Ms. Zelenksy testified that Respondent was engaged in Pathogenic Parenting. *Id.* Ms. Zelenksy testified that this conduct represented child abuse. *Id.*

NRS § 125C.0035(j) requires the court to make specific finding regarding a history of abuse and neglect. The district court's findings of facts indicated that

there is no evidence of any of the allegations rising to abuse and neglect.
(ROA001915).

The district court's holding is clearly erroneous. A court appointed expert testified that the conduct represented abuse on the part of the Respondent. The court's holding is demonstrative of this Court's finding of Judicial bias even prior to the evidentiary hearing. (Order affirming in Part, Reversing in Part, and Remanding, issued May 18, 2023, p. 17-19). This Court also noted that the district court's Order rewarded Responded for the abusive conduct. (*Id.* at p.18).

Appellant raised the lack of proper pleading and presentation of a change in circumstance affecting the well-being of the child at the close of Respondent's case in chief. (ROA001635). The court was asked to announce the change in circumstance the court was determining had been established. (*Id.*). The court announced that it was the deteriorating relationship with the minor child and the wishes of the minor child to reside with dad. (ROA001636).

The Court should note that none of this was never pled in Respondent's moving papers. The Court should note that at the onset of the present Motion and Countermotion the minor child expressed to Ms. Zelensky that he liked the week on/off schedule.

The district court's bias and interlocutory orders were the catalyst and largely caused the change in circumstances the court then used to modify custody.

The district court ignored expert testimony regarding parental alienation and abuse by the respondent. Appellant was denied her due process rights to know the change in circumstance alleged so she could call appropriate witnesses or rebuttal witnesses to address the allegations. Here, the district court's interlocutory orders and bias toward the Appellant were the cause of the deteriorated relationship between mother and child which it then used to modify custody.

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II. CONCLUSION

This Honorable Court determined that the bias of the district court was not so pervasive that a new trial was required. (See Decision at p. 19, fn 14). Appellant respectfully disagrees and asks this honorable court to rehear the limited issue of whether a new evidentiary hearing is required. Appellant believes this court should determine that the district court's bias was so pervasive that it permitted the violation of Appellant's due process rights and the district court's actions created the change in circumstance used to modify custody.

DATED this 25th day of May 2023.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This Petition has been prepared in a proportionally spaced typeface using [Word] in [Times New Roman 14]; or

This fast track response has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

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

Proportionately spaced, has a typeface of 14 points or more, and contains 1271 words; or

Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text; or

Does not exceed ___ pages.

3. Further, I hereby certify that I have read this Petition, and to the best of my knowledge, and belief, it is not frivolous or interposed for any improper purpose. The further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which

requires every assertion the Petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25th day of May 2023.

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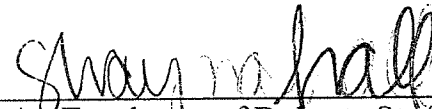
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for rehearing and to Stay the Remittitur was filed electronically with the Nevada Supreme Court in the above-entitled matter on May 26, 2023. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

Fred Page, Esq.

Email: fpage@pagelawoffices.com

Attorney for Respondent



An Employee of Roberts Stoffel Family Law Group