

IN THE SUPREME COURT OF THE STATE OF NEVADA

KYMBERLIE JOY HURD,

Appellant,
vs.

MARIO OIPARI,

Respondent.

Supreme Court Case No. 85537

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District Court Case No. D-71-627869-C
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT’S OPPOSITION TO APPELLANT’S AMENDED MOTION
FOR STAY OF DISTRICT COURT PROCEEDINGS¹**

COMES NOW Respondent, MARIO OIPARI (hereinafter “Mario”), by and through his attorneys of record, Matthew H. Friedman, Esq., and Christopher B. Phillips, Esq. of the law firm Ford & Friedman who hereby submits the foregoing Opposition to Appellant KYMBERLIE JOY HURD’S (hereinafter “Kymberlie”) Amended Motion for Stay of District Court Proceedings.

This Opposition is made pursuant to NRAP 27(a)(3) and is based on the following Points and Authorities and the exhibits attached hereto.

ARGUMENT

A. Kymberlie’s Motions Violate NRAP 27

This Court will recall that Kymberlie has a pattern and practice of disregarding

¹ The undersigned was served with Appellant’s Motion to Stay District Court Proceedings, via personal service, on April 20, 2023. However, while said Motion has been received by this Court, the same remains in “pending” status and, as such, has not been filed. Notwithstanding, in an abundance of caution, Mario is filing the instant Opposition within seven (7) days of service pursuant to NRAP 27(a)(3)(A).

this Court's rules requiring filings to be concise, accurate, and logically organized. Notably, this Court issued an order on December 23, 2022 striking Kymberlie's Fast Track Statement due to her failure to comply with the page limit set forth in NRAP 3E(d)(1). This Court's December 23, 2022 Order also noted that Kymberlie's fast track statement was not double spaced pursuant to NRAP 3E(d)(1). Unfortunately, this most recent iteration of Kymberlie's Motion for Stay suffer from similar deficiencies.

Notably, motions filed in this Court are limited to ten (10) pages. *See* NRAP 27(d)(2). However, Kymberlie's (third) Motion to Stay consists of Fifty (50) pages, including the Declaration of Appellant, Certificate of Compliance, and Certificate of Service. To that end, Mario notes that Kymberlie has filed a Motion Requesting Leave to File Expanded Motion to Stay, however, to date, this Court has not granted such a request. Moreover, it is unknown to Mario why Kymberlie needs an ***additional thirty-seven (37) pages***, as her Motion has little to do with the merits of why a stay is warranted. Instead, Kymberlie is attempting to use her Motion as a further (and impermissible) opportunity to argue the merits of her appeal, even though **fast track briefing concluded eight (8) weeks ago**.

Accordingly, not only is Kymberlie's Motion without merit, but it fails to comply with this Court's rules regarding the length and format, and the same should be denied.

B. Kymberlie's Requested Relief Would Only Maintain the Status Quo as to Custody and Visitation

Notwithstanding the issues set forth above, and as Mario has stated in his response to both of Kymberlie's prior motions² filed before this Court, it must if this Court were to grant Kymberlie's requested relief, the parties would be left in the same position regarding child custody and supervised visitation.

Indeed, Kymberlie's Motions seek to stay the district court's October 17, 2022 Findings of Fact, Conclusions of Law and Order from the Evidentiary Hearing **"and all prior interlocutory filed orders that were not independently appealable (1/11/2022, 5/19/2022 & 5/26/2022)."** On this point, Mario notes that the district court's May 19, 2022 Order (which was the custody order that preceded the order being challenged in this appeal) was the subject of a prior appeal filed by Kymberlie in this Court. Notably, Kymberlie's prior appeal was dismissed due to this Court's lack of jurisdiction to review a district court's temporary custody orders. See *Order Dismissing Appeal*, filed June 10, 2022, Case No. 84784. It stands to reason that the same would also follow for the January 11, 2022 and May 26, 2022 temporary orders that Kymberlie seeks to have reviewed by this Court and, subsequently, stayed.

To that end, this Court is left to consider Kymberlie's (third) request to stay the October 17, 2022 Findings of Fact, Conclusions of Law and Order from the Evidentiary Hearing, which awarded Mario with sole legal and sole physical custody

² Appellant's first Motion to Stay was filed on December 28, 2022, and her second Motion to Stay was filed on January 11, 2023.

of the parties' minor child and limited Kymberlie's contact with the minor child to supervised visitation, pending the outcome of Kymberlie's appeal.

However, in considering this request, it should be noted that if this Court were to stay the October 17, 2022 Order, the parties would thereby revert back to the District Court's May 19, 2022 temporary custody order, wherein the District Court denied Kymberlie's Motion to Set Aside the Emergency Orders for Sole Legal Custody and Sole Physical Custody. A copy of the district court's May 19, 2022 order is attached hereto as *Exhibit A*. Thus, it follows Kymberlie's requested relief should be denied as moot, because even if this Court were to ignore the other deficiencies outlined above and grant the requested stay, such an order would leave the parties in the same position they find themselves in today. Notably, when the parties were before the District Court on March 21, 2023 for Kymberlie's Motion to Stay, the District Court echoed this very sentiment when denying her request for a stay.

Of note, assuming *arguendo* that this Court *did* have jurisdiction to review a district court's temporary custody orders, granting Kymberlie's request would subject the parties and the child to a circumstance where **no custody order would be in effect**. Such a result would be wholly unreasonable and only lead to chaos given that the parties have been litigating custody in the district court since March 2021.

In sum, Kymberlie's requested relief should be denied, because even if this Court were to ignore the other deficiencies outlined above and grant the requested stay, such an order would leave the parties in the same position, to wit: Mario would still have sole legal and sole physical custody, and Kymberlie's contact with the minor child would continue to be limited to supervised visitation pursuant to the district court's May 19, 2022 temporary custody order or, in the alternative, the parties would be living in utter chaos with no custodial orders in place whatsoever.

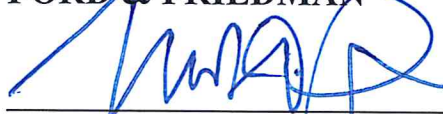
CONCLUSION

Kymberlie's (third) Motion to Stay not only lacks merit, but the same lacks legal and factual support regarding her requested relief. Instead, Kymberlie is using her April 20, 2023 "request to stay" as an opportunity to further argue the merits of her appeal, even though fast track briefing concluded on March 1, 2023. Additionally, once again, Kymberlie's Motion does not comply with NRAP 27. Finally, Kymberlie's Motion seeks a stay that would not result in any change in status with regards to child custody or visitation. Even if the district court's order that is the subject of this appeal were stayed, Kymberlie cannot avoid the fact that the district court has consistently held – in multiple orders – that it is in the children's best interest for Mario to exercise sole legal and sole physical custody of the minor child subject to Kymberlie's supervised visitation.

As such, Kymberlie's Motion for a Stay should be denied.

Respectfully submitted this 27 day of April, 2023.

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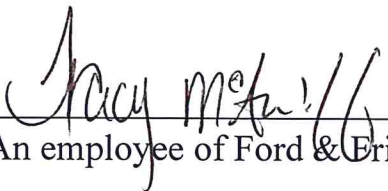
Henderson, NV 89052

Attorneys for Respondent, Mario Opipari

CERTIFICATE OF SERVICE

I the undersigned hereby certify that on the 27 day of April, 2023, I served the above and foregoing *RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS* by depositing a true and correct copy of the same in the U.S. Mail, postage prepared, addressed to Appellant as follows:

Kymberlie Joy Hurd
210 Red Coral Drive
Henderson, NV 89002


An employee of Ford & Friedman