IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN EGGLESTON, individually, Appellant, vs. CLARK COUNTY DEPARTMENT OF FAMILY SERVICES, Respondent.	Supreme Court No.: 87583 District Court Case No.: 20 OC 00164 1B Dept. No.: 2

Electronically Filed
Mar 28 2024 02:11 PM
Elizabeth A. Brown
Clerk of Supreme Court

On Appeal from the Order of the First Judicial District Court, Carson City, Nevada, the Honorable Judge James E. Wilson, Denying Petition for Judicial Review

APPELLANT STEVEN EGGLESTON'S OPENING BRIEF

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Docket 87583 Document 2024-11152

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. STEVEN EGGLESTON is an individual.

The above-named Appellant is represented in the district court below and in this Court by Paola M. Armeni, Esq. and William D. Schuller, Esq. of Clark Hill PLLC.

DATED this 28th day of March 2024.

CLARK HILL PLLC

By /s/ William D. Schuller, Esq.
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OPENING BRIEF

Appellant Steven Eggleston hereby files his opening brief in accordance with NRAP 28(a). This appeal concerns the First Judicial District Court, Department II (Judge James E. Wilson) ("District Court") denying a Petition for Judicial Review ("Petition") of a final administrative decision of Hearing Officer Michelle O. Tobler, Esq. ("Hearing Officer Tobler"), upholding the Clark County Department of Family Services ("DFS") substantiation of a finding of Physical Injury (Abuse) - Physical Risk against Mr. Eggleston pursuant to NRS Chapter 432B and NAC Chapter 432B.

I. JURISDICTIONAL STATEMENT

The basis for the Supreme Court's jurisdiction is NRS 233B.150,[1] which states that "[a]n aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court" and such an "appeal shall be taken as in other civil cases." The instant appeal is timely, as the Notice of Entry of Order was served on October 20, 2023, and the Notice of Appeal was filed on November 13, 2023 (i.e., within 30 days of written notice of entry of the subject order). The appeal is from a final order – i.e., the Amened Order Denying Petition for Judicial Review ("Amended Order").

[1] NRS Chapter 233B is the Nevada Administrative Procedure Act. NRS 233B.010.

II. ROUTING STATEMENT

This case is retained by the Supreme Court pursuant to NRAP 17(a)(10) – i.e., "[c]ases involving the termination of parental rights or NRS Chapter 432B.[2]"

III. STATEMENT OF THE ISSUES

The issue presented for review concerning the Amended Order is:

Was the DFS substantiation of the allegation of Physical Injury (Abuse) - Physical Risk against Mr. Eggleston clear error or an arbitrary and capricious abuse of discretion?

IV. STATEMENT OF THE CASE

A. Nature of the Case

This case concerns the district court's affirmation of an administrative finding that upheld a substantiation of physical injury (abuse) – 14A physical risk as to K.R., J.R., R.E., and H.E. (collectively, "Minor Children") by Steve Eggleston. Vol. 1, APP000015-000019. Hearing Officer Tobler issued the Appeal Hearing Decision ("Decision") on October 15, 2020. Vol. 1, APP000019. The genesis of this dispute is a Clark County Child Protective Services ("CPS") investigation in 2014 conducted by Georgina Anderson f/k/a Georgina Stuart ("Caseworker Stuart"), who at the time was a Child Development Supervisor at CPS. Vol. 1, APP000045-000063. That investigation came about due to concerns raised to CPS about Laura Rodriguez f/k/a

[2] NRS Chapter 432B governs the Protection of Children from Abuse and Neglect.

Laura Battistella, Mr. Eggleston's partner, and mother to the Minor Children.[3] Vol. 1, APP000047. More specifically, because of her alleged drug and alcohol addictions and/or untreated mental health issues, Laura was hospitalized with suicidal ideations. Vol. 1, APP000050. Mr. Eggleston was placed on the Present Danger Plan Caseworker Stuart prepared. Vol. 1, APP000085. Without any warning that CPS had concerns with Mr. Eggleston, both he and Laura were forced to sign temporary guardianship of the Minor Children, including H.E. and R.E. ("Eggleston Boys"), in favor of Lisa Callahan, Laura's sister; and Lisa's husband, Brian Callahan (collectively, "Callahans"), who reside in Illinois. Vol. 1, APP000060-000061.

B. Course of Proceedings

On November 17, 2020, Mr. Eggleston initiated the judicial review action below (District Court Case No. 20 OC 00164 1B), filing the Petition as to Hearing Officer Tobler's findings entered in the Decision. Vol. 1, APP000001-000004. On January 26, 2021, DFS filed its Statement of Intent to Participate. Vol. 1, APP000009-000010. Although not reflected on the docket, the Court granted Mr. Eggleston's Motion to Stay Proceedings Pending Resolution of Related Nevada Supreme Court Case (i.e., *Steve Eggleston v. Georgina Stuart, et al.*, Case No.

[3] Mr. Eggleston is only the biological father of R.E. and H.E.

80838[4]). On February 28, 2022, Clark Hill filed its Notice of Appearance on behalf of Mr. Eggleston, who had previously been pro se in this matter. Vol. 3, APP000652-000654. Clark Hill subsequently filed Petitioner Steve Eggleston's Motion to Lift Stay on May 23, 2022, which the Court granted. Vol. 4, APP000655-000674. The initial briefing on the Petition consisted of the following:

- Petitioner Steve Eggleston's Opening Brief, filed January 30, 2023 (Vol. 4, APP00675-000688.);
- Respondent's Answering Brief, filed March 16, 2023 (Vol. 4, APP00689-000730.); and
- Petitioner Steve Eggleston's Reply Brief filed April 17, 2023 (Vol. 4, APP000731-000752.).

[4] In the Eighth Judicial District Court, Mr. Eggleston brought claims under § 1983, for conspiracy to violate his civil rights, and for intentional infliction of emotional distress against Stuart and others, alleging that Clark County and Stuart forced him to sign, under threat of never seeing his children again, papers giving his children's maternal aunt temporary guardianship over the children. The district court granted the county's and Stuart's motion to dismiss, and Mr. Eggleston appealed. *Eggleston v. Stuart*, 137 Nev. 506, 495 P.3d 482 (2021).
On appeal, this Court held that the § 1983 claim is, at its core, one for substantive due process, and because the exception for procedural due process claims does not apply, the district court improperly dismissed Eggleston's § 1983 civil rights claim for failure to exhaust administrative remedies. Thus, the Court reversed the district court's dismissal of Eggleston's § 1983 civil rights claim, reversed the dismissal of Eggleston's state law tort claims, reversed the dismissal of punitive damages against Stuart, and remanded for further proceedings consistent with the opinion. 137 Nev. at 515, 495 P.3d at 491-92. This case is currently before this Court on a Petition for Writ of Mandamus(Nevada Supreme Court Case No. 87906).

On May 26, 2023, the Court filed its Order for Limited Remand, which remanded this matter "to the appeal hearing officer for the limited purpose of preparing an amended appeal hearing decision that includes a concise and explicit statement of the underlying facts supporting the findings that '[t]he preponderance of the evidence indicates that Mr. Eggleston allowed the minor children to be subjected to harmful behavior by the mother that resulted in a plausible risk of physical injury/harm pursuant to NRS 432B.140.'" Vol. 4, APP000755-000758 (internal quotations altered).

Through DFS, Hearing Officer Tobler submitted the Amended Appeal Hearing Decision in Response to Order of May 26, 2023 ("Amended Decision"), which was filed on July 19, 2023. Vol. 5, APP001040-001046. Given the Amended Decision, the parties prepared supplemental briefing:

- Petitioner Steve Eggleston's Supplemental Points and Authorities, filed August 28, 2023 (Vol. 5, APP001047-001055.); and
- Respondent's Supplemental Brief in Response to Order for Limited Remand Filed May 26, 2023, filed on September 15, 2023 (Vol. 5, APP001056-001068.).

C. Disposition Below

On October 13, 2023, the District Court denied the Petition via the Amended Order, with no hearing having taken place. Vol. 5, APP001160.

V. STATEMENT OF FACTS

On or about February 2, 2015, CPS sent a Substantiation Letter to Mr. Eggleston, which states that based upon its investigation, "it has been determined that there is credible evidence that Physical Injury Neglect, 14N Physical Risk as defined in NRS 432.B has occurred and has been substantiated." Vol. 1, APP000111.[5] The Substantiation Letter also states that CPS "is required to submit identifying data to the State Central Registry[6] for each investigation substantiated for abuse or neglect of a child." Vol. 1, APP000111. On or about February 12, 2015, Mr. Eggleston submitted a Request for Agency Appeal (DFS) of Substantiated Finding(s) of Abuse and/or Neglect, noting: "I understand that my children's mother may not be a fit and proper person to care for our children, however, I do not understand why your findings are against me." Vol. 1, APP000121. On August 27, 2015, after a purported examination of the case file and other pertinent documents, the DFS Appeals Unit upheld the child maltreatment finding regarding Mr. Eggleston. Vol. 1, APP000023.

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[5] Notably, the Substantiation Letter begins by incorrectly referring to Mr. Eggleston as "Mr. Rodriguez" and ends with an unexecuted signature block for Caseworker Stuart.

[6] *See* dcfs.nv.gov/Forms/CentralRegistry/ (last accessed March 28, 2024) (providing instructions on how to obtain information regarding an individual who has been found to have abused or neglected a child).

On or about September 9, 2015, Mr. Eggleston submitted a Request for Fair Hearing of Agency Decision, which the DFS Appeals Unit received on September 11, 2015. Vol. 1, APP000123. As part of his request, Mr. Eggleston submitted a substantial witness list. Vol. 1, APP000124-000125. Just four days later, on September 15, 2015,[7] Hearing Officer Tobler held a hearing in this matter via WebEx video conference. Vol. 1, APP000015; Vol. 1, APP000127-000171. Mr. Eggleston was thus unable to call any of his witnesses. Vol. 1, APP000123-000125; Vol. 1, APP000015. Hearing Officer Tobler presided over the hearing, with Amity C. Latham, Esq. f/k/a Amity Dorman, Esq., counsel for DFS; Sheri Hensel, Senior Family Services Specialist with DFS; and Supervisor Stuart appearing in person and Mr. Eggleston appearing remotely. Vol. 1, APP000127. However, at some point during the hearing, Mr. Eggleston was disconnected from the video conference, precluding his ability to cross-examine Hensel and Caseworker Stuart. Vol. 1, APP000149. Furthermore, other than Mr. Eggleston, no family members were present at the hearing. On October 15, 2020, Hearing Officer Tobler issued the Decision, which was the subject of the Petition. Vol. 1, APP000015-000019.

[7] Prior to the September 15 hearing, Mr. Eggleston submitted a Motion for Continuance and Objections given the short notice of the hearing and the hearing being conducted remotely via WebEx. Vol. 2, APP000422-000429. Mr. Eggleston also submitted a Further Objection to Hearing and Motion to Continue Under Neutral Hearing Officer in Actual Hearing Facility. Vol. 3, APP000479-000490. In addition to these formal objections, Mr. Eggleston objected to the September 15 hearing date via multiple emails. Vol. 4, APP000835-000841; Vol. 4, 000852.

As to the findings of fact set forth in the Decision, it is crucial to note that Hearing Officer Tobler focuses on Laura's lack of fitness as a parent. Indeed, Hearing Officer Tobler begins her analysis by noting that the subject allegation stems from Laura's hospitalization due to alleged mental health and substance abuse issues, which may have contributed to her threat to commit suicide. Vol. 1, APP000016. More specifically, Hearing Officer Tobler states as follows:

> I find that the preponderance of the evidence indicates that on December 22, 2014, the **mother** got into the bathtub and **made threatening statements about not wanting to live** anymore. Her adult daughter, Alexis Rodriguez, called 911. Mr. Eggleston was at the home he shared with the mother and the above-named children, who were all under the age of 12, at the time. The **mother was taken to the hospital**, and then transferred to Monte Vista Hospital on December 23, 2014, where **she was placed on a legal 2000 hold due to concerns over untreated mental health issues and possible substance abuse issues**. The **mother reported feeling overwhelmed with parenting the four children**, who are out of control, **as well as feeling depressed over other issues** surrounding the holidays.

Vol. 1, APP000016 (emphasis added). Per Caseworker Stuart's investigative notes, Laura called her older children's father to request presents or money to purchase Christmas presents and was told he was not sending anything. Vol. 1, APP000047.

Despite the sudden onset of Laura's significant issues, Mr. Eggleston readily agreed to participate in around the clock supervision of her in the presence of the Minor Children to ensure their safety.

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> I find that the preponderance of the evidence indicates that on December 24, 2014, **Mr. Eggleston**, as well as the mother's two adult daughters, Alexis and Selena Rodriguez, who were staying at the home at the time, **signed a Present Danger Plan** wherein they agreed **to maintain 24-hour supervision of the mother**, when she comes home from Monte Vista Hospital, **to protect the children from the mother**, until further contact with CCDFS.
>
> I find that the preponderance of the evidence indicates that on December 25, 2014, the mother returned home from the hospital. On December 27, 2014, the **mother checked herself back into the hospital** for two days. She had purchased a bottle of Vodka and drunk some of it. She had also filled a prescription for Xanax.

Vol. 1, APP000016 (emphasis added). Mr. Eggleston also agreed to assistance from Boys Town Nevada and/or Mojave Mental Health, but the "attempted safety service intervention was not successful" for unknown reasons. Vol. 1, APP000017; Vol. 1, APP000056-000057.

Laura's adult daughters, Alexis Rodriguez and Selena Rodriguez, repeatedly expressed their concerns regarding their siblings' safety given Laura's dependency issues. Vol. 1, APP000017. For example, Laura was so out of control on December 21, 2014, that the children had to lock themselves in the bathroom until she passed out. Vol. 1, APP000018. They also stated that Laura's daily drug use renders her unable to care for the minor children. *Id.* Hearing Officer Tobler also notes the extent of Laura's issues, including a DUI in March 2011; obtaining Xanax and Codeine during a trip to the emergency room; lying about drinking vodka; admitting

to drinking while on Zoloft and Xanax; and going missing for hours on end. Vol. 1, APP000017-000018.

As indicated in the UNITY Case Notes, Caseworker Stuart barely had contact with Mr. Eggleston. Vol. 1, APP000033-000063. Additionally, nothing in Caseworker Stuart's notes suggests that she spoke with Mr. Eggleston regarding any concerns she had. *Id*. In fact, after a call with the adult daughters wherein they discussed their concerns, Caseworker Stuart met with the family, including Mr. Eggleston on January 5, 2015. It was at this meeting that the discussion of the assistance of Boys Town and Mojave took place. As stated, Mr. Eggleston was willing to engage in those services.

On January 7, 2015, one day after the unsuccessful intervention from Boys Town Nevada and Mojave Mental Health, "**CCDFS** and Las Vegas Metropolitan Police Department **went to the home to remove the minor children from the home so that the mother can engage in substance abuse and mental health treatment** and she and Mr. Eggleston can figure out their relationship and living situation." Vol. 1, APP000017. The UNITY Case Notes are not clear as to everyone does present at the home on January 7 and are sparse as to what was discussed, including removal. Vol. 1, APP000060. However, the prior family services offered to the family were now unavailable. During the removal of the minor children, Laura and Mr. Eggleston signed the temporary guardianship of the Eggleston Boys to the

Callahans. *Id*. There appears to have been an unexplained delay in Mr. Eggleston executing the guardianship (after Laura did so). Vol. 1, APP000060-000061. The findings of fact do not indicate that Mr. Eggleston failed in any manner to cooperate during the DFS investigation.

VI. SUMMARY OF THE ARGUMENT

The Amended Decision constitutes clear error and/or an arbitrary and capricious abuse of discretion under NRS 233B.135(3)(a) (i.e., in violation of statutory provisions) and (e) (i.e., clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record). As to subsection (a), the Amended Decision violates NRS 233B.121(4) and NRS 233B.123(4), which require that a party be provided a meaningful opportunity to participate during a fair hearing. Separately, the Amended Decision violates NRS 233B.125, which requires that the contents of the decision separately set forth findings of fact and conclusions of law, in large part to ensure due process and permit for orderly judicial review. As to subsection (e), Caseworker Stuart's investigation, the testimony at the fair hearing, and Hearing Officer Tobler's findings in the Amended Decision do not support a substantiation.

Additionally, the District Court rubber-stamped the 39-page proposed order DFS submitted a day prior. Adopting an order wholesale is not improper in and of itself. However, the proposed order/Amended Order raises several red flags,

including: 1) additional pages of purported facts and conclusions not set forth in the Amended Decision; 2) statements constituting *ad hominem* attacks which have no place in a court order; and 3) a blatant contradiction of the District Court's previous Order for Limited Remand.

VII. ARGUMENT

A. Standard of Review

When reviewing a district court's order denying a petition for judicial review of an agency decision, this Court engages in the same analysis as the district court – i.e., it evaluates the agency's decision for clear error or an arbitrary and capricious abuse of discretion, defers to the agency's findings of fact and conclusions of law which are supported by substantial evidence,[8] and will not reweigh the evidence or revisit an appeals officer's credibility determination. *Associated Risk Mgmt., Inc. v. Ibanez*, 136 Nev. 762, 764, 478 P.3d 372, 374 (2020) *citing City of Las Vegas v. Lawson*, 126 Nev. 567, 571, 245 P.3d 1175, 1178 (2010) (additional citation omitted). However, questions of law are reviewed de novo. *Id*.

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[8] This Court and the Nevada Legislature define *substantial evidence* as that evidence which a reasonable mind might accept as adequate to support a conclusion. *J.D. Constr. v. IBEX Int'l Group*, 126 Nev. 366, 380, 240 P.3d 1033, 1043 (2010) (citations omitted); *King v. St. Clair*, 134 Nev. 137, 139, 414 P.3d 314, 316 (2018) (citation omitted); and NRS 233B.135(4).

B. The Amended Decision Constitutes Clear Error and/or an Arbitrary and Capricious Abuse of Discretion.

1. The District Court should have set aside the Amened Decision pursuant to NRS 233B.135(3).

Pursuant to NRS 233B.135(3), a district court may set aside a final decision when a petitioner's substantial rights have been prejudiced because the agency's decision is:

> **(a) In violation of constitutional or statutory provisions;**
>
> (b) In excess of the statutory authority of the agency;
>
> (c) Made upon unlawful procedure;
>
> (d) Affected by other error of law;
>
> **(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;** or
>
> (f) Arbitrary or capricious or characterized by abuse of discretion.

The District Court should have set aside the Amended Decision as Mr. Eggleston's substantial rights were prejudiced because Hearing Officer Tobler's decision violated statutory provisions and was clearly erroneous given the record.

a. <u>The Amended Decision Violated Statutory Provisions.</u>

Pursuant to the Nevada Administrative Procedure Act, during the adjudication of contested cases, the "opportunity must be afforded all parties to respond and present evidence and argument on all issues involved" (NRS 233B.121(4)) and "[e]ach party may call and examine witnesses, introduce exhibits, cross-examine

opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination, impeach any witness, regardless of which party first called the witness to testify, and rebut the evidence against him or her" (NRS 233B.123(4)). Here, because the September 15, 2020, hearing was scheduled on such short notice – i.e., within a week of Mr. Eggleston's request for a hearing – he did not have a meaningful opportunity to arrange for any of his 98 listed witnesses to appear. Vol. 1, APP000123-000125; Vol. 1, APP000015. Thus, Mr. Eggleston was not afforded an opportunity to present his evidence (witness testimony and 750+ pages of exhibits) and argument on all the underlying issues. Additionally, because Mr. Eggleston was disconnected from WebEx during the hearing, he was denied the ability to cross-examine Hensel and Caseworker Stuart. Vol. 1, APP000149 (Hearing Officer Tobler: "Okay and it doesn't appear that Mr. Eggleston is on, so…there won't be any…cross-examination of…Ms. Hensel."); Vol. 1, APP000168 (Hearing Officer Tobler: "So…it doesn't appear that Mr. Eggleston is present, so there won't be any cross-examination of Ms. [Stuart].").

Mr. Eggleston sent Latham an email during the hearing, indicating that he had been disconnected and "reserving his right to conduct (the hearing) at a later date." Vol. 1, APP000168. Prior to the hearing, Mr. Eggleston objected to the hearing being held via WebEx, in part because the area he lived in England had "notoriously sketchy and unreliable" broadband, rendering platforms such as WebEx "impossible

to use." Vol. 2, APP000424. Any argument that Mr. Eggleston deliberately disconnected from the hearing is merely accusatory. Conversely, it is undisputed that Mr. Eggleston was unable to introduce his voluminous exhibits, question his numerous witnesses, and cross-examine DFS' two witnesses, resulting in violations of NRS 233B.121(4) and NRS 233B.123(4).

Separately, pursuant to NRS 233B.125, a final adverse decision must separately state findings of fact and conclusions of law, the former of which "must be accompanied by a concise and explicit statement of the underlying facts supporting the findings." These requirements ensure that the decision has sufficient detail to satisfy due process and permit judicial review. *Nevada State Bd. of Architecture, Interior Design & Residential Design v. Eighth Judicial Dist. Court in & for Cnty. of Clark*, 135 Nev. 375, 377, 449 P.3d 1262, 1264 (2019) *citing State, Dept. of Commerce v. Hyt*, 96 Nev. 494, 496, 611 P.2d 1096, 1098 (1980); *see also Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 312 P.3d 479 (2013) (the statutory requirement for a hearing officer to make written, specific factual findings not only helps ensure that the administrative agency engages in reasoned decision making, but they also facilitate judicial review; factual findings enable the courts to evaluate the administrative decision without intruding on the agency's fact-finding function).

Here, the Decision does not clearly delineate between findings of fact and conclusions of law, as it only has one heading for both. Vol. 1, APP000015

("FINDINGS OF FACT AND CONCLUSIONS OF LAW"). Incredibly, despite having an opportunity to correct this statutory violation, Hearing Officer Tobler also did not separate the findings of fact and conclusions of law in the Amended Decision. Vol. 1, APP000016 (containing the same singular FINDINGS OF FACT AND CONCLUSIONS OF LAW heading, with no subheadings). The findings of fact and conclusions of law are insufficient, consisting of a mere two-and-half-pages (Vol. 1, APP000016-000019), despite an extensive record. Where the hearing officer improperly fails to provide explicit factual findings and conclusions of law, the reviewing court is unable to meaningfully address the appeal. *See*, e.g., *Poremba v. S. Nev. Paving*, 132 Nev. 288, 295, 369 P.3d 357, 361 (2016), *opinion superseded on reconsideration on other grounds sub nom. Poremba v. S. Nevada Paving*, 133 Nev. 12, 388 P.3d 232 (2017); *Dickinson v. Am. Med. Response*, 124 Nev. 460, 468-70, 186 P.3d 878, 883-84 (2008); *Revert v. Ray*, 95 Nev. 782, 787-88, 603 P.2d 262, 265 (1979); and *Pub. Serv. Comm'n v. Cont'l Tel. Co. of California*, 94 Nev. 345, 350, 580 P.2d 467, 470 (1978).

b. The Amended Decision Was Clearly Erroneous.

In relation to the applicable legal standard (i.e., substantial evidence), if the administrative agency whose decision is subject to review fails to make a necessary finding of fact, the reviewing court may imply the necessary factual finding, so long as the agency's conclusion itself provides a proper basis for the implied finding. *City*

of N. Las Vegas v. Warburton, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) (citation omitted) *citing State Dept. of Commerce, Real Estate Div. v. Soeller*, 98 Nev. 579, 586, 656 P.2d 224, 228 (1982). "An agency ruling without substantial evidentiary support is arbitrary or capricious and therefore unsustainable." *Ayala v. Caesars Palace*, 119 Nev. 232, 240, 71 P.3d 490, 495 (2003), *abrogated on other grounds by Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008) *quoting State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 88, 787 P.2d 408, 410 (1990).

During the Hearing, when directly asked why she substantiated the allegations in her investigation regarding Mr. Eggleston, the entirety of Caseworker Stuart's answer is as follows:

> So, uh, the natural mother has, um, untreated mental health and substance abuse issues, um, that **she had been admitted to Montevista**, um, on three different occa- or hospitalizations **for suicidal ideation on three different occasions during the assessment**, um, that she was released from Montevista and was attending an intensive outpatient to address for mental health issues and alcoholism. Um, this has been an ongoing issue since last summer but the parents have a strenuous relationship. They're not get along - getting along or co-parenting. The mother continues to use her prescribed medications and alcohol to deal with stress. Um, the children are not regularly being supervised by their parents as the father teaches out of the home and **the mother is rarely found in the home**, um, **to care for and supervise the children** during the day. I spoke with collateral sources as well as the children that reported that the natural mother's drinking is a regular occurrence in the home while she's attending to and caring for the children and that Mr. Eggleston is acknowledging that the mother's mental health and substance abuse issues are a threat to the children. And he continues to go to work and work long hours leaving the children in the care and supervision of their mother who is intoxicated with no intervention. Uh, **we attempted to**

> **do a present danger plan in the home with the aunt and adult siblings**, um, and provide services in the home. Um, those uh, **the in-home present danger plan was no longer viable**. **We referred for Boystown services and Mojave services and that was not successful.** Both parents indicated that they were no longer remaining together as a couple and wished to go their separate ways. They were in the process of being evicted and **the mother**, um, **is being admitted to inpatient** to address for mental health and substance abuse iss- uh, issues. And the parents have diminished protective capacities at this time and decided to sign a temporary guardianship to maternal aunt and uncle as they are - they're a little bit more stable than they are.

Vol. 1, APP000166-000167 (emphases added). Absent from Caseworker Stuart's testimony is any suggestion that physical abuse was taking place. The consumption of alcohol, in and of itself, does not mean that someone is a physical risk. Caseworker Stuart failed to acknowledge that the DFS investigation took place during Christmas break, when Mr. Eggleston, a teacher, had time off work during which he could care for and supervise the children. Furthermore, Caseworker Stuart's testimony is incomplete and contradictory in several respects.

First, the subject DFS investigation lasted only **16 days** – from December 22, 2014, when CPS received the referral (Vol. 1, APP000078) to January 7, 2015, when Mr. Eggleston was forced to sign the temporary guardianship paperwork (Vol. 1, APP000110). Per Caseworker Stuart's testimony at the Hearing, Laura was admitted to the hospital for suicidal ideations three times. Vol. 1, APP000166. And when she was not in the hospital during this time, Laura was "rarely found in the home." *Id*. These facts run directly counter to Caseworker Stuart's apparent concern

that Mr. Eggleston continued to leave the Minor Children with Laura. *Id*. Indeed, if Laura was mostly absent during the 16-day investigation, then, *a fortiori*, Mr. Eggleston could not have continually or *routinely* left the Minor Children with her.

Second, conspicuously absent from Caseworker Stuart's testimony are explanations as to *why* the present danger plan was no longer viable and *why* the in-home safety services were unsuccessful. Vol. 1, APP000166. Other than the testimony from Caseworker Stuart that Mr. Eggleston left the children with Laura (debunked *supra*), DFS proffers no explanation to support these statements. In fact, Mr. Eggleston was the only participant willing and able to continue to participate in the present danger plan and utilize the safety services. The three safety providers to the Present Danger Plan were Alexis Rodriguez (adult sister), Selena Rodriguez (adult sister), and Mr. Eggleston. Vol. 1, APP000085. Caseworker Stuart incorrectly states that the aunt, Lisa Callahan, was a provider. Vol. 1, APP000166. Both Alexis and Selena were returning to college in Illinois in January. Vol. 1, APP000160. Ms. Callahan was also only visiting from Illinois. Vol. 1, APP000163. And Laura was returning to the hospital for inpatient services to address mental health and substance abuse issues. Vol. 1, APP000166. Conversely, Mr. Eggleston was not leaving his boys.

Third, DFS characterizes the family's financial issues as a *Catch-22*. On the one hand, Mr. Eggleston is blamed for working long hours during the day. Vol. 1,

APP000166. On the other hand, the pending eviction from the family home is used against him. *Id*. Notably absent from the equation is any discussion regarding Mr. Eggleston securing daycare for the Minor Children, which countless single parents (as well as nuclear families) of all economic backgrounds utilize daily throughout the country.

Along those same lines, Laura's imminent removal from the family home (whether the current home or a new apartment) and Mr. Eggleston's separation from her (APP000166) eliminated the remaining danger she posed to the minor children (whenever she was not hospitalized or roaming the streets unaccounted for). Mr. Eggleston fully cooperated with DFS and did everything that was asked of him and more to protect his boys.

Lastly, Hearing Officer Tobler's finding that Mr. Eggleston "believed that allowing the children to live with the maternal aunt and uncle is what was needed until they could figure some things out" (Vol. 1, APP000017) lacks support. Hearing Officer Tobler states "Mr. Eggleston did so with the advice of his counsel, Emily McFarling, as described in her July 11, 2015 email." Vol. 1, APP000017-000018. Counsel for DFS referenced the July 11 email during the Hearing, which was Exhibit 36. Vol. 1, APP000169. Counsel states that "it **appears** through his own exhibits that he signed this voluntary guardianship with the advice of counsel" and "if he

were here…I would have asked him about that." *Id*. (emphasis added).[9] Notably, DFS stops short of Hearing Officer Tobler's affirmative statement regarding the advice of counsel and felt the need to question Mr. Eggleston regarding the document. Hearing Officer Tobler's reliance on a sentence fragment in the July 11 email[10] is misleading, as it lacks context on both a micro[11] and macro level. In her email, Ms. McFarling questioned the Illinois court's jurisdiction: "How does the Illinois court think it has any jurisdiction over my client's children who are only in Illinois as a result of being wrongfully removed from Nevada and retained there even after my client revoked his consent to guardianship?"[12] Ms. McFarling also stated that "guardianship cannot be granted against the objection of a fit parent."

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[9] Mr. Eggleston did not have much of a choice as he was being threatened with removal of the Eggleston Boys if he did not sign the temporary guardianship, which at least ensured the Minor Children would remain together.

[10] Per counsel for DFS: The email "says in the third paragraph the guardians have taken advantage of the very specific plan that I confirmed with the CPS caseworker prior to advising my client to sign a temporary guardianship consent."

[11] The sentence reads in full as follows: "I have been involved assisting Mr. Eggleston since prior to him signing the temporary guardianship consents and am shocked at how the guardians have taken advantage of the very specific plan that I confirmed with the CPS caseworker prior to advising my client to sign a temporary guardianship consent."

[12] The fact that the July 11 email does not appear to be a part of the Record is in and of itself improper as any evidence Hearing Officer Tobler relied on in support of her Decision should be in the Record.

These inconsistences and omissions show that Hearing Officer Tobler committed multiple errors in her Decision. Thus, the evidence is such that a reasonable person could not accept Hearing Officer Tobler's conclusions.

The operative statute, NRS 432B.140, states that "[n]egligent treatment or maltreatment of a child occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so."

Nevada civil cases considering NRS 432B.140 provide little guidance for purposes of the instant appeal. *See Matter of Guardianship of B.A.A.R.*, 136 Nev. 494, 501-02, 474 P.3d 838, 844-45 (Nev. App. 2020) (poverty of noncitizen juvenile's mother did not amount to neglect or abuse absent a showing that mother's failure to provide financially for juvenile was attributable to mother's faults or habits, or that mother was able to provide for juvenile and neglected or refused to do so); and *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 162, 87 P.3d 521, 524 (2004) ("A child is neglected if he lacks necessary medical care because of the parents' neglect or refusal to provide medical care when able to do so."). DFS did

not allege that Mr. Eggleston neglected or refused to provide financially for, or provide medical care to, the Eggleston Boys.

In several criminal cases, the Nevada Supreme Court held that the weight and sufficiency of evidence supported a finding of negligent treatment or maltreatment under NRS 432B.140. *See*, e.g., *Newson v. State*, 136 Nev. 181, 188, 462 P.3d 246, 252 (2020) (evidence that defendant discharged a firearm several times in a vehicle in which children were present and seated in close proximity to the shooting victim was sufficient to support finding that defendant exposed children to physical danger or mental suffering, as needed for convictions of child abuse, neglect, or endangerment); *Smith v. State*, 112 Nev. 1269, 1279-80, 927 P.2d 14, 20 (1996) (sufficient evidence supported defendant's conviction for neglect of child where defendant knew that her live-in boyfriend had beaten her child, following beating, child was lethargic, vomited repeatedly, did not eat or drink, and did not go to bathroom, child had temperature of 106 degrees, boyfriend suggested taking child to doctor, but defendant refused for fear that doctor would take child away from her because of bruises on child's body), *abrogated on other grounds by City of Las Vegas v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 118 Nev. 859, 59 P.3d 477 (2002); and *August H. v. State*, 105 Nev. 441, 445, 777 P.2d 901, 903 (1989) (there was evidence that parents were unable to protect children from each other and failed to teach children basic social skills or to provide any guidance about basic

toilet functions and hygiene, supporting determination that children were neglected). No such allegations of discharging a weapon, physical beating, or lack of hygiene were made against Mr. Eggleston regarding the Eggleston Boys.

2. Hearing Officer Tobler's findings of fact and conclusions of law are not supported by substantial evidence.

The Amended Decision's Findings of Fact and Conclusions of Law begins with the caveat that "[t]he substantiation of the allegation in this matter was **based on the totality of the circumstances / facts <u>over a period of time</u>**, rather than on a single incident." Vol. 5, APP001042 (emphases added). However, other than the near-drowning incident in April 2014 – which CPS itself immediately screened out as information only, determining the incident constituted "[n]o present danger, impending danger, or maltreatment" (Vol. 1, APP000075) – the facts Hearing Officer Tobler provides are limited to a 13-day time frame (i.e., December 21, 2014, through January 2, 2015). It was improper for Hearing Officer Tobler to rely on any facts not set forth in the Amended Decision. NRS 233B.125 provides that the agency's final decision must include findings of fact and conclusions of law (separately stated) based upon a preponderance of the evidence – i.e., "evidence that enables a trier of fact to determine that the existence of the contested fact is more probable than the nonexistence of the contested fact." NRS 233B.0375.

Several of the findings of fact Hearing Officer Tobler sets forth in the Decision as to Mr. Eggleston are inaccurate or contradicted by the record. For

example, Hearing Officer Tobler states that Mr. Eggleston had limited contact with H.E. while he was hospitalized for a ruptured appendix, but also notes that Mr. Eggleston went to the hospital to sign the consent paperwork for H.E.'s surgery. Vol. 1, APP000016-000018. There is no indication that Hearing Officer Tobler checked the hospital records to confirm how often Mr. Eggleston visited H.E. And Caseworker Stuart would not have known who was visiting with H.E. as she did not go to the hospital herself. Furthermore, Hearing Officer Tobler criticizes Mr. Eggleston for allegedly not visiting H.E. frequently enough while ignoring the fact that the present danger plan required him to be present with the other Minor Children whenever Laura was with them. Similarly, Hearing Officer Tobler improperly references an incident in April 2014, when H.E. nearly drowned "while in the care of the mother and Mr. Eggleston." Vol. 1, APP000017. Any inference that Mr. Eggleston had put H.E. at risk is misplaced, as the CPS Referral Summary itself states as follows:

> This report will be screened out as Information Only. **No present danger, impending danger, or maltreatment.** The child is responsive and alert at the hospital. Mother was outside in the backyard with the child when he fell into the pool. He was retrieved from the water quickly, given CPR and transported to the hospital.

Vol. 1, APP000075 (emphasis added).

Hearing Officer Tobler also includes concerns Alexis, Selena, and Lisa raised regarding "Mr. Eggleston's reluctance to intervene to protect the children."[13] Vol. 1, APP000017. However, all three accusers lived out of state, with Alexis and Selena only visiting for the holidays and Lisa having come to town on or around December 31, 2014, to help Laura out.[14] Vol. 1, APP000046,000054. As such, Alexis, Selena, and Lisa were not able to speak to the family dynamic, including Mr. Eggleston's desire and ability to protect the Eggleston Boys. Hearing Officer Tobler's findings of fact are contradictory as she indicates in the same paragraph that Alexis and Selena reported Mr. Eggleston "comes and goes from the home" but also that Steve "work[s] all day writing in his [home] office." Vol. 1, APP000018. Another example of contradictory findings, also in the same paragraph, is Hearing Officer Tobler indicating that K.R. "primarily takes care of the three minor children, even when Mr. Eggleston is home working," followed by Mr. Eggleston "admitted to leaving the majority of the parenting up to the mother as he is working all day writing in his office." *Id*. In short, both K.R. and Laura could not have been handling most of the parenting. Furthermore, as to K.R., she could not have been

[13] Hearing Officer Tobler indicates they advised DFS of their concerns on January 5, 2015. Vol. 1, APP000017. However, DFS still moved forward with the CFT meeting on January 6, 2015, during which the family agreed to support services. And there is nothing in the record to indicate that Caseworker Stuart shared these concerns with Mr. Eggleston.

[14] Lisa expressed to Caseworker Stuart her hope that Laura would allow her to take the children with her back to Illinois.

primarily taking care of the other Minor Children while she was in school (and there was no allegation that she was missing school to do so).

The findings of fact set forth in the Amended Decision are no different. The Amended Decision includes an introductory section, wherein Hearing Officer Tobler states that the District Court requested clarification in the form of "a concise and explicit statement of the underlying facts supporting" her finding that the preponderance of the evidence indicates Mr. Eggleston allowed the Minor Children to be subjected to harmful behavior by Laura. Vol. 5, APP001042. Hearing Officer Tobler then presents the following *findings of fact* regarding Mr. Eggleston

Hearing Officer Tobler states that "[o]n or about December 21, 2014, [Laura] was so out of control from mental health issues and drug and alcohol abuse that the children[15] locked themselves in a bathroom to be safe from her until she passed out." *See* Amended Decision at Vol. 1, APP001042-001043. During the September 15, 2015, hearing before Hearing Officer Tobler, Caseworker Stuart stated: "there was an incident…the night before the report was made that [Laura] was out of control…where she was…using alcohol and drugs and…the children had locked themselves into a bathroom because they were so afraid of her behavior." Vol. 1, APP000152. Finally, the Unity Notes state that "[l]ast night she was so out of control

[15] Hearing Officer Tobler does not indicate if *the children* included the Eggleston Boys.

the children locked themselves in the bathroom to be safe from her until she passed out." Vol. 1, APP000058. Notably, the three descriptions of this incident, which constitute hearsay as the sources do not state that he/she witnessed the incident, do not indicate that Mr. Eggleston was home during the relevant time. In fact, the CPS Referral Summary proves that Mr. Eggleston could not have intervened because he was not present:

> Steve wasn't there during the incident last night; but he did come home last night.
> …
> Last night the younger children were afraid of Laura because she was out of control. **Alexis**[16] locked herself in a room with the younger kids because of how Laura was behaving and the children were scared. They stayed in the room until Laura passed out."

Vol. 1, APP000080 (emphasis added).

Hearing Officer Tobler states that "[H.E.] had a near-drowning incident in April 2014, while in the care of Laura and while Mr. Eggleston was home." *See* Amended Decision at Vol. 5, APP001043. However, the CPS Referral Summary regarding this incident states that the nurse at St. Rose Siena Pediatric Emergency Room "denied any concerns regarding abuse or neglect" and per the responding Metro officers, "there were not any observed signs of drug or alcohol abuse." Vol. 1, APP000075. CPS determined that "[t]his report will be screened out as Information Only. **No present danger, impending danger, or maltreatment.**" *Id.*

[16] Laura's adult daughter.

(emphasis added). Thus, Hearing Officer Tobler improperly relied on this incident as an underlying fact in her determination.

Hearing Officer Tobler states that "Mr. Eggleston failed to maintain 24-hour supervision of Laura when she took Xanax and drank vodka on December 27, 2014, before again going to the hospital, and again when Laura went to the emergency room on January 2, 2015 to get a prescription for Xanax, which was filled the same day and then empty two days later, as well as her continued drinking of vodka." *See* Amended Decision at Vol. 1, APP001044. As a prefatory matter, Mr. Eggleston was not solely responsible for supervising Laura around the Minor Children. Rather, Mr. Eggleston, along with Alexis Rodriguez and Selena Rodriguez, agreed to provide 24-hour supervision of Laura when she was present around the Minor Children pursuant to the Present Danger Plan. Vol. 1, APP000085. Furthermore, there is no allegation that Mr. Eggleston failed to protect any of the Minor Children on these dates. Indeed, there are not even notes indicating that any of the Minor Children interacted with Laura on these dates. The purpose of the Present Danger Plan was to "further assess the mother's mental health [and] substance abuse [for] protective capacity." *Id*. Laura's relapses clearly indicate that she lacked protective capacity. They do not indicate that Mr. Eggleston did. He could not physically prevent Laura

from abusing prescription medication and alcohol, even if he had witnessed her doing so (he did not).[17]

Finally, Hearing Officer Tobler states that "[o]n December 28, 2014, [H.E.] Eggleston was taken to the hospital for a ruptured appendix by one of Laura's older daughters, Alexis" and while "Mr. Eggleston went to the hospital to sign consent for [H.E.]'s surgery, [he] then left and had limited contact with [H.E.] at the hospital." *See* Amended Decision at Vol. 5, APP001044-001405. First, there is no evidence in the record that Caseworker Stuart had even reviewed H.E.'s hospital records. Further, Hearing Officer Tobler does not specify what *limited contact* means (e.g., Did Mr. Eggleston visit H.E. once, twice, five times? How long did each visit last for?). Hearing Officer Tobler also ignores the fact that there were three other Minor Children at the home to watch over per the Present Danger Plan and that H.E. remained in the hospital after Mr. Eggleston was forced to sign over temporary guardianship to the Callahans. Regardless, H.E.'s hospitalization for appendicitis had nothing to do with any abuse or neglect at the home. Thus, Hearing Officer Tobler also improperly relied on H.E.'s hospitalization as an underlying fact in her determination.

[17] Hearing Officer Tobler notes that, on an unspecified date and time, "Laura had also gone missing for hours with no one knowing where she was." *See* Amended Decision at Vol. 5, APP001044. If Laura was not physically present in the home, then there was no plausible risk of physical injury or harm to the Minor Children at that time.

These facts, even taken collectively, are not of the type which would potentially support a finding that Mr. Eggleston subjected his sons to negligent treatment or maltreatment under NRS 432B.140. *See*, e.g., *Newson* (discharging a firearm in children's presence), *Smith* (physically beating the child), *August H.* (children lacked basic social skills and hygiene), and *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 166-67, 87 P.3d 521, 527 (2004) (refusal to consent to emergency medical care for child, including blood transfusion, which hospital deemed necessary)[18] cited *supra*.

3. In adopting the proposed order, the District Court improperly reweighed the evidence and filed an order which contradicts its prior order.

The content of the Amended Order is improper. Hearing Officer Tobler issued a four-and-a-half page Decision (Vol. 1, APP000015-000019) and a three-and-a-half page Amended Decision (Vol. 5, APP001042-001045). Despite Hearing Officer Tobler's limited findings of fact and conclusions of law, DFS submitted a 37-page proposed order on October 12, 2023. Vol. 6, APP001085-001122. The very next day, October 13, 2023, Judge Wilson submitted a 39-page order which reads verbatim as the DFS proposed order. Vol. 6, APP001123-001162.[19]

[18] The Nevada Supreme Court ultimately held that this situation was appropriately addressed under a temporary guardianship statute (i.e., NRS 159.049 (since repealed)), instead of a child neglect statute (i.e., NRS 432B.140).

[19] The difference in the number of pages between the proposed order and the Amended Order can be attributed to DFS utilizing pleading paper with 21 lines and

In addition to raising a fundamental question of how the District Court could issue such a detailed order given Hearing Officer Tobler's limited findings and conclusions, the Amended Order includes several improper, sarcastic, and unprofessional statements, such as the following:

- "…Mr. Mills [sic] office indicated they were not paid and therefore were not retained by [Mr. Eggleston]." Vol. 6, APP001124.
- "It appears his immigration issues cleared up between October 4, 2017, and July 20, 2018…" Vol. 6, APP001125.
- "Within the motion, [Mr. Eggleston] threatened to sue all parties involved in the administrative hearing, thus beginning a campaign to threaten and terrorize anyone involved with the hearing." Vol. 6, APP001128.
- "Having received what [Mr. Eggleston] perceived to be a win…" *Id*.
- "…[Mr. Eggleston] also includes a list of individuals and entities he threatens, once again, to sue, to include everyone involved in the administrative hearing." Vol. 6, APP001128.
- "Remarkably, the new hearing officer, despite being 'named in a lawsuit' in Illinois by [Mr. Eggleston], was not bullied into recusing herself." Vol. 6, APP001129 (internal quotations altered).

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the District Court utilizing pleading paper with 28 lines (and perhaps different line spacing).

- "…[Mr. Eggleston] once again emailed an Illinois complaint, threatening to sue everyone involved in the administrative hearing." Vol. 6, APP001130.
- "Remarkably, the second threat and complaint from Illinois also did not deter the second hearing officer, and she issued decisions, denying these motions." *Id*.
- "Clearly evidencing that, if his threat to sue did not work (it did not) he would not be participating in the administrative hearing anyway." Vol. 6, APP001133.
- "His behavior then devolves into accusations and cursing." *Id*.
- "He then called [*sic*] counsel for DFS 'you're such a wise ass.'" Vol. 6, APP001133-001134; Vol. 6, APP001147-001148.[20]
- "He then goes on to call counsel for DFS a liar…" Vol. 6, APP001134, Vol. 6, APP001148[21]
- "…despite his internet issues, [Mr. Eggleston] was able to send one last document…" Vol. 6, APP001138.
- "Here, [Mr. Eggleston] attempted to thwart his own right to an administrative hearing for years." Vol. 6, APP001142.

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[20] There was no legal justification or basis to support these statements being included in a proposed Order to the Court.
[21] *See* n. 16.

- "…[Mr. Eggleston] chose not to participate in the administrative hearing, and it had absolutely nothing to do with his internet." Vol. 6, APP001146.
- "[Mr. Eggleston's] internet was strong enough to participate in approximately one-half hour of the hearing, and to engage in inappropriate behavior while doing so." *Id*.
- "Certainly, [Mr. Eggleston's] pattern was to threaten to sue anyone who was involved with the administrative hearing to prevent the administrative hearing from occurring." Vol. 6, APP001147.
- "As such, it is clear [Mr. Eggleston] himself made the decision to forgo pursuing any further parenting of the children, and instead elected to sign a **temporary guardianship**." Vol. 6, APP001152 (emphasis added).
- "[Mr. Eggleston] is content to blame others for his neglect of his own children, rather than taking responsibility for his actions." Vol. 6, APP001158.
- "…is further evidence of [Mr. Eggleston's] utter failure to take responsibility for his own actions, and his own children." *Id*.
- "But again, because [Mr. Eggleston] utterly failed to participate" in the administrative hearing. Vol. 6, APP001158-001159.

Hearing Officer Tobler was tasked with making findings of facts and conclusions of law. It is not DFS' place, and by extension, the District Court's, to address any perceived deficiencies or to fill in the blanks. Indeed, pursuant to NRS

233B.135(3), "[t]he court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact." *See also* Amended Decision at Vol. 6, APP001143 *quoting* same. This is exactly what the District Court did, including legion of findings of fact which Hearing Officer Tobler did not, despite having two bites at the apple to do so (i.e., via the Decision and the Amended Decision).

The Amended Order also expressly contradicts the Order for Limited Remand. In the latter, the District Court notes that Mr. Eggleston argued in his opening brief that Hearing Officer Tobler violated NRS 233B.125, which provides in pertinent part that "a final decision must include findings of fact and conclusions of law, separately stated. … Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings." Vol. 5, APP001042. As such, the District Court found that the Decision "**violates NRS 233B.125 and prejudices [Mr. Eggleston's] substantial right to notice** of what facts the appeal hearing officer relied on in making the referenced statutory-language findings." Vol. 5, APP001043 (emphasis added). Whereas the Amended Order states in pertinent part:

> The Petitioner is upset the hearing officer did not use separate headings for findings of fact and conclusions of law, but instead used one heading. However, it is not particularly difficult to discern which are the factual findings and which are the legal findings. The legal findings are discussed above, and Petitioner doesn't seem to take much issue with those, as he failed to even address the law the hearing officer cited. However, he seems to argue the factual findings were only as to Laura. The factual findings were specific as

> to Petitioner. **Simply because Petitioner does not like how they are set up, or how they reflect on him does not make them in violation of statutory provisions.**

Vol. 6, APP001145-001146 (emphasis added). This contradiction is irreconcilable with the District Court's guidance in seeking an Amended Decision. Even more concerning is that the District Court signed off on DFS' proposed Order with no corrections after the clear lack of compliance with its original request.

VIII. CONCLUSION

Based on the foregoing, Mr. Eggleston seeks an order from the Court reversing the District Court's Amended Order and setting aside both the Decision and the Amended Decision in DFS Case No. 1362581.

DATED this 28th day of March 2024.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief 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] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman 14; or

[ ] This brief 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 brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 9,020 words; or

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

[ ] Does not exceed _____ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP(e)(1), which requires every assertion in the brief 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 sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 28th day of March 2024.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(D), I hereby certify that on March 28, 2024, I caused the foregoing **APPELLANT STEVEN EGGLESTON'S OPENING BRIEF** to be served as follows:

[X] by electronic means

/s/ Clarissa Reyes
An Employee of CLARK HILL PLLC