IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY AND GEORGINA STUART

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; THE HONORABLE SUSAN JOHNSON, DISTRICT JUDGE,

Respondent.

and

STEVE EGGLESTON, an individual,

Real Party-In-Interest.

Electronically Filed
Jan 17 2024 05:01 PM
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.

DISTRICT COURT CASE NO.

A-16-748919-C

APPENDIX TO EMERGENCY PETITION FOR WRIT OF MANDAMUS
VOLUME 2 OF 2

FELICIA GALATI, ESQ.
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Docket 87906 Document 2024-01867

APPENDIX TO EMERGENCY PETITION FOR WRIT OF MANDAMUS
VOLUME 2 OF 2

Date	Title	Bates Numbers
9/29/23	Appendix to Defendants Clark County and Georgina Stuart's Motion for Summary Judgment	WRIT059-118
9/29/23	Defendants Clark County and Georgina Stuart's Motion for Summary Judgment	WRIT028-058
10/31/23	Defendants Clark County and Georgina Stuart's Reply to Plaintiff's Opposition to Motion For Summary Judgment	WRIT155-239
1/15/24	Findings of Fact, Conclusions of Law and Order	WRIT240-261
8/10/17	First Amended Complaint for Civil Rights Violations, Child Abduction, Conspiracy, Defamation	WRIT001-027
10/17/23	Opposition to Defendants Clark County and Georgina Stuart's Motion for Summary Judgment	WRIT119-149
10/18/23	Order Granting Defendant Clark County and Georgina Stuart's Motion for Leave to File Exhibits to Motion for Summary Judgment Under Seal	WRIT150-154

DATED this 17th day of January, 2024.

/s/ Felicia Galati, Esq.

_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2024, I sent via e-mail a true and correct copy of the above and foregoing **APPENDIX TO EMERGENCY PETITION FOR WRIT OF MANDAMUS** by electronic service through the Nevada Supreme Court's website, (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

Paola M. Armeni, Esq.
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William D. Schuller, Esq.
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CLARK HILL, LLP
1700 S. Pavilion Center Dr.
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Attorneys for Plaintiff

Honorable Judge Susan H. Johnson
Eighth Judicial District Court
Department 22
200 Lewis Avenue
Las Vegas, NV 89155
Pleading sent by U.S. Mail, and
Exhibits to be hand delivered

/s/ Lisa Rico
An Employee of OLSON CANNON GORMLEY & STOBERSKI

ELECTRONICALLY SERVED
10/18/2023 4:38 PM

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVE EGGLESTON, Plaintiff, vs. GEORGINA STUART; CLARK COUNTY, NEVADA; LISA CALLAHAN; BRIAN CALLAHAN; AND DOES I THROUGH 100, INCLUSIVE, Defendants.	CASE NO. A-16-748919-C DEPT. NO. 22 **ORDER GRANTING DEFENDANT CLARK COUNTY AND GEORGINA STUART'S MOTION FOR LEAVE TO FILE EXHIBITS TO MOTION FOR SUMMARY JUDGMENT UNDER SEAL** **Date: October 17, 2023**

This matter came before the Court in Chambers on October 17, 2023, on Defendant Clark County and Georgina Stuart's Motion for Leave to File Exhibits to Motion for Summary Judgment Under Seal, filed September 29, 2023. The Court noted the Motion was served upon the parties, no Opposition was filed, and found good cause therefor:

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IT IS HEREBY ORDERED that the Motion is GRANTED pursuant to EDCR 2.20(e). The matter scheduled to be heard Tuesday, November 7, 2023 at 8:30 a.m. is VACATED pursuant to EDCR 2.23.

Dated this 18th day of October, 2023

8CE 710 BA9C DE48
Susan Johnson
District Court Judge

Respectfully Submitted By:

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Approved as to Form and Content by:

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Lisa Rico

From: Schuller, William D. <wschuller@clarkhill.com>
Sent: Wednesday, October 18, 2023 8:40 AM
To: Lisa Rico; Armeni, Paola M.
Cc: Bain, Tanya; Reyes, Clarissa; Felicia Galati
Subject: RE: Eggleston vs. Stuart; Proposed Order

Thanks Lisa. You may affix my e-signature.

William D. Schuller
Senior Attorney
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From: Lisa Rico <lrico@ocgas.com>
Sent: Tuesday, October 17, 2023 5:19 PM
To: Armeni, Paola M. <parmeni@ClarkHill.com>; Schuller, William D. <wschuller@clarkhill.com>
Cc: Bain, Tanya <tbain@ClarkHill.com>; Reyes, Clarissa <creyes@clarkhill.com>; Felicia Galati <fgalati@ocgas.com>
Subject: Eggleston vs. Stuart; Proposed Order

[External Message]

Attached is a draft Order Granting Motion for your review. Can you please let me know if I can esign your signature on the Order? Thanks!

Lisa Rico
Paralegal & Legal Assistant to Felicia Galati, Esq.
and Legal Assistant to Alexander Adrian, Esq.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Steve Eggleston, Plaintiff(s)	CASE NO: A-16-748919-C
vs.	DEPT. NO. Department 22
Georgina Stuart, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/18/2023

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVE EGGLESTON, Plaintiff, v. GEORGINA STUART; CLARK COUNTY, NEVADA; LISA CALLAHAN; BRIAN CALLAHAN; AND DOES I TH.E.OUGH 100, INCLUSIVE, Defendants.	CASE NO. A-16-748919-C DEPT. NO. 22 **Date: 11/7/23** **Time: 8:30 a.m.**

DEFENDANTS CLARK COUNTY AND GEORGINA STUART'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants CLARK COUNTY and GEORGINA STUART ("Defendants"), by and through their attorney FELICIA GALATI, ESQ. of the law firm OLSON CANNON GORMLEY & STOBERSKI, and hereby submit their Reply to Plaintiff's Opposition to Motion For Summary Judgment pursuant to NRCP 56 and for final judgment pursuant to NRCP 54(b), made and based upon all papers, pleadings and records on file, the following Memorandum of Points and Authorities, the attached Exhibits, and such oral argument, testimony and evidence as the Court may entertain.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants are entitled to summary judgment on all claims on the undisputed law and facts of this case; and they are entitled to qualified and discretionary act immunity. **Also, Plaintiff's claims are now barred by *res judicata* because on October 13, 2023, the First Judicial District Court entered a 38-page Order denying his Judicial Review Petition pertaining to the underlying DFS/CPS actions in this case.**[1] Every §1983 case against the Clark County (Department of Family Services), handled by the undersigned has resulted in summary judgment on all claims or all federal claims; findings of qualified immunity and discretionary act immunity for the County and its employees. See, p. 4, infra.

II. LEGAL STANDARD

"A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." Wood v. Safeway, Inc., 121 Nev. 724, 729, 731, 121 P.3d 1026, 1031. "The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." Plaintiff FAC allegations, conclusory statements made without evidentiary support, and misrepresentations of the law, documents and facts fail.

III. LEGAL ARGUMENT

A. Plaintiff's Claims Are Barred By Res Judicata

Plaintiff's claims are barred by *res judicata*. The three inquiries are: (1) whether the issue decided in the prior adjudication was identical to the issue presented in the action in question; (2) whether there was a final judgment on the merits; and (3) whether the party

[1] See Amended Order Denying Petition for Judicial Review, First JDC, Oct. 13, 2023 (Amended Order) (Exh. TT hereto).

against whom the judgment is asserted was a party, or in privity with a party to the prior adjudication. Britton v. City of N. Las Vegas, 106 Nev. 690, 693, 799 P.2d 568, 569–70 (1990).

Plaintiff relies on his pending Petition for Judicial Review (PJR), concerning the DFS Substantiation determination, to avoid summary judgment.[2] However, on 10/13/2023, before Plaintiff filed his Opposition, **the First Judicial District Court denied Plaintiff's PJR. The Court determined Plaintiff failed to show DFS' final substantiation decision is 1) in violation of a constitutional right or statutory provision; 2) in excess of statutory authority of the agency; 3) made upon unlawful procedure; 4) affected by other error of law; 5) clearly erroneous in view of the reliable probative and substantial evidence on the whole records; or 6) arbitrary, capricious or characterized by abuse of discretion. Based thereon, the Court upheld the hearing officer's Substantiation finding of "Physical Injury (Abuse) – Physical Risk" against Plaintiff (NRS 233B.135).**[3]

Analyzing the Britton factors here:

(1) The issues decided in the Judicial Review Petition are identical to the issues presented in this Action, i.e., including whether DFS violated Plaintiff's constitutional or statutory rights relating to the 4/ 7/14 near drowning, the 12/22/14 and 12/29/15 CPS Reports and investigation, the various case contacts including on 12/23/14, 12/24/14 and 1/5/15 and 2/2/15, Plaintiff's failure to supervise Laura, including based on her use and abuse of Xanax and Vodka during the pendency of the Present Danger Plan (PDP), the Substantiation, and the 8/27/15 Finding of Substantiation upon administrative appeal/review.[4] At the 9/15/2020

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[2] See Opposition, p. 27.
[3] See Amended Order, pp. 37-38 (Exh. TT hereto).
[4] Id. at 2, 4, 13-18, 30-35.

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administrative hearing, two CPS Investigators testified – Sherri Hensel and Georgina Stuart. Stuart testified about the 12/22/14 CPS Report and investigation, that the family was leaving Las Vegas, the 1/7/15 signing of the temporary guardianships to the Callahans, which was voluntary and with the advice of Plaintiff's counsel Emily McFarling; and her UNITY Notes, Nevada Initial Assessment (NIA), and the Present Danger Plan were admitted.[5] Police did not threaten, spit, or draw their weapons to force Plaintiff to sign.[6] "DFS put on more than sufficient evidence to establish Petitioner failed to intervene on the children's behalf, he knew Laura was an inappropriate care provider due to her mental health and drug use and that constant supervision of the children was necessary. Yet he carried on as if DFS never became involved, thus placing his children at risk."[7] Plaintiff failed to maintain 24-hour supervision resulting in Laura Rodriguez's abuse of Vodka and Xanax, thus placing the children at risk.[8] Plaintiff engaged in negligent treatment/maltreatment which indicated a plausible risk to the children and failure to protect.[9]

(2) There is a final judgment on the merits.

(3) The party against whom the judgment is asserted – Plaintiff – was the Petitioner/a party to the prior adjudication.

Therefore, all Plaintiffs' claims have been adjudicated and cannot be relitigated herein.

B. <u>Legal Argument As To Plaintiffs' Federal Claims</u>

Plaintiff's § 1983 substantive and procedural due process claims fail under Federal case law because Defendants did not remove the children or terminate his parental rights. This

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[5] Id. at 12-15.
[6] Id. at 29-30.
[7] Id. at 23 and 37.
[8] Id. at 23, 28, 30, 31, 34, 35 and 37.
[9] Id. at 32 and 36.

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pivotal fact alone entitles Defendants to Summary Judgment on Plaintiffs Federal claims. Momox-Caselis v. Donohue, 987 F.3d 835, 843–44 (9th Cir.) (affirming summary judgment on all claims), cert. denied, 142 S. Ct. 402 (2021) citing Mabe v. San Bernardino Cnty. Dep't. of Public Soc. Servs., 237 F.3d 1101, 1107 (9th Cir. 2001); Hoy v. Clark County, 2020 WL 2798017, at *1 (D. Nev.) (granting summary judgment on all claims); Hoy v. Clark County, Case No. 2:20:cv-103-CDS-VCF, ECF No. 145, pp. 15-20 (granting summary judgment on all federal claims and state law claim as to some County Defendants); Ansara v. Clark County, 647 F. Supp. 3d 969-80 (D. Nev. 2022) (granting summary judgment on all claims), appeal dismissed, 2023 WL 3221749 (9th Cir.); Burr v Clark Cnty. Dep't of Fam. Servs., 2023 WL 5940017, at *1-6 (D. Nev) (granting summary judgment on all federal claims). The Nevada Supreme Court confirmed on appeal of Defendants' Motion to Dismiss that "**[a]t no point did DFS move to terminate Eggleston's parental rights in Nevada**." Eggleston v. Stuart, 137 Nev. 506, 508 (2021) (emphasis added).

Under federal law, those are the only two means by which parental rights are impacted – termination of parental rights or removal from the home.

Plaintiff has not cited a single case establishing his rights were violated, or that Defendants' conduct could be deemed deliberately indifferent to his constitutional rights, on the facts here – where DFS presented Plaintiff with an option to avoid removal by signing temporary guardianships. Momox-Caselis, 987 F.3d at 845. That ends the inquiry.

The options DFS presented no more impaired Plaintiff's rights than a prosecutor's offer to accept a guilty plea impairs the defendant's right to trial by jury. While refusing to agree to the guardianships, a person may find himself in a worse situation than if he had accepted it. That is a dilemma implicit in any settlement process. If there weren't a downside to refusing to settle, there would be no settlements. Here, had the parents declined to grant temporary guardianships,

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DFS would have taken the children into protective custody and then constitutional rights would have attached – there would have been a protective custody hearing within 72 hours (NRS 432B.470 and 432B.480) and the District Attorney Juvenile would then have filed a Petition for Abuse/Neglect against the parents. Plaintiff and his attorney did not want that.[10] Hearings are required for deprivations, not for steps authorized by consent. The guardianships were voluntary, therefore no hearing of any kind was necessary. To say that Plaintiff did not *really* consent – that DFS "coerced/forced" his agreement by threatening to remove the child from the parents' custody unless they agreed to the guardianship is false and contrary to the findings of the First Judicial District Court. Also, i**t is not a forbidden means of "coercing" a settlement to threaten merely to enforce one's legal rights.** If you sue, and before judgment settle because the defendant is willing to settle on more favorable terms than you expect to obtain from pressing the suit to judgment, you've obtained a favorable settlement on the basis of an implicit threat to litigate to an outcome that would make the defendant worse off than if he settled; but you have not infringed any rights. Coercion is only objectionable when illegal means are used to obtain a benefit. There is no evidence of that. Plaintiff was not made worse off by being given the option of accepting guardianships and deciding who the guardians of his Boys would be, as opposed to DFS removing the children, and placing them in a foster home with strangers. Plaintiff was not disadvantaged by having more rather than fewer options. It would be in no one's interest if a defendant could not negotiate an outcome. Plaintiff could have rejected the option, but given the inherent uncertainties and his conversation with his counsel, he elected not to do that. **There is no duress where pressure is exerted to obtain a result to which the party applying the pressure has a right to pursue. A guardianship is a simple, sensible, partial solution to the agonizingly difficult problem of balancing the right of parents to the custody and control of their children with the children's right to be protected against abuse and neglect.** In the words of Emily McFarling, "one reason to have a guardianship…was to

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[10] See Motion for Summary Judgment (MSJ), at 10-11.

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get DFS out of a family's life," which is exactly what they wanted and got. If Plaintiff did not end up getting what he wanted thereafter, that is because of and/or between him, Lisa Callahan and his attorney. Lisa Callahan – the Boys' maternal aunt – offered to be H.E. and R.E.'s temporary guardians, and Plaintiff and Laura accepted her offer. Whatever Lisa did after that, does not impact the determination of the claims here. DFS did not take custody of the children.

Even if this Court is inclined to consider substance of a non-custodial claim of deprivation of Plaintiff's rights, Plaintiff's claims fail because: (1) there was no objectively substantial risk of harm; (2) DFS was not subjectively aware of facts from which an inference could be drawn that a substantial risk of serious harm existed; and (3) DFS did not draw that inference or a reasonable official would not have been compelled to draw that inference. No one could have predicted what happened months later. A reasonable jury could not find that Defendants acted with deliberate indifference to a known or obvious risk of harm, which is a much higher standard than the foreseeability standard. Past cases which found that officials were deliberately indifferent to a threat of harm share several common features. Ansara, 647 F. Supp. 3d at 975 citing Tamas, 630 F.3d at 847 (**finding deliberate indifference when the case worker was aware of three distinct "graphic allegations" of child abuse**); and Henry A., 678 F.3d at 1001 (**failing to authorize a foster child's medical treatment despite repeated requests from his physician amounted to deliberate indifference**); As in Ansara, supra, and Burr, this case contrasts sharply with those cases finding deliberate indifference on the part of public officials. 2023 WL 5940017, at *6. **The parents had the right to sign the Temporary Guardianships and once they did, that ended the DFS/CPS case.**[11] **Plaintiff's parental rights** "**are not absolute" and DFS "has an interest in the welfare of children and may limit parental authority" and can even totally deprive parents of their children forever, which did not occur here at all.** DFS "**can certainly limit some parental rights when the competing rights of the child are implicated."** Kirkpatrick v. Dist. Ct., 119 Nev. 66, 71, 64 P.3d 1056,

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[11] See L. McKay Depo. p. 127 (Exh. UU hereto).

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1059 (2003) (emphasis added). **Decisions of the guardian selected by Plaintiff – Lisa Callahan – are not the constitutional responsibility of the County Defendants.** Also, Plaintiff was fully aware of CPS Report #1643346 allegations because **Stuart "read him the whole report**."[12]

Finally, Plaintiff complains Defendants failed to do anything to reunify him with his Boys and argues "when a parent has a case plan, the primary goal is always reunification with the parent(s) and, along those lines, family preservation is an important goal."[13] That argument fails because DFS did not have custody of the children. The goal of a case plan in Permanency is to establish reunification where a child has been removed from the home and a case plan has been established to facilitate that reunification. Mary Atteberry testified the primary goal of a case plan is "assessed by the permance [sic] [(permanency)] worker." Id. at 113:1-3. Reunification with parents is a goal where a child has been removed from the home and a Case Plan is established after removal. Reunification is not a goal when the child has not been removed from the home. In this case, the children were not removed because the parents elected to give temporary guardianships of the children to a family member. Therefore, no Case Plan was established.[14]

Any failure to reunify lies with Plaintiff and/or his attorney. They filed a Paternity Action but did not request guardianship or return of the Boys, nor did they bring the guardians (the Callahans) into the Nevada case and/or seek to revoke the Illinois Court Order granting Lisa Callahan temporary custody of the Boys.[15] Plaintiff could have contacted Illinois Police and/or Illinois DFS/CPS, but did not. Nor did he immediately revoke the Temporary Guardianships, go to Illinois to get the Boys, move to Illinois to be with his Boys and/or work with his attorney to pursue legal action for their return. Instead of assuming responsibility for his guardianship

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[12] See G. Anderson Depo. p. 69 (Exh. XX hereto).
[13] See Opposition, p. 10 citing Ex. 15 at 113:1-19.
[14] See Affidavit of Crystalyn Minwegen-Johannessohn (Exh. VV hereto).
[15] See McFarling Depo., pp. 171 and 180-81 (Exh. WW hereto).

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decision, and making his own reunification efforts, Plaintiff chose to pursue this civil action seeking $70 million in damages.

C. Defendants Are Entitled To Qualified Immunity On The Federal Claims

Over the past several years, the Supreme Court has expressed "frustration with [appellate court] failures to heed its [qualified immunity] holdings." Burr, 2023 WL 5940017, at *5 citing S.B. v. Cnty. of San Diego, 864 F.3d 1010, 1015 (9th Cir. 2017). The United States Supreme Court has consistently advised lower courts construing claims of qualified immunity not to define clearly established law at a high level of generality, since doing so avoids the crucial question of whether the official acted reasonably in the particular circumstances. Id. citing Plumhoff v. Rickard, 575 U.S. 765, 778-79 (2014); see also Momox-Caselis v. Donohue, 2018 WL 6795556, at *3 and 6-8 (D. Nev.) (finding qualified immunity); Hoy v. Clark County, Case No. 2:20:cv-103-CDS-VCF, ECF No. 145, pp. 1, 15-17 and 23 (finding qualified immunity); Burr v Clark Cnty. Dep't of Fam. Servs., 2023 WL 5940017, at *5-6 (finding qualified immunity).

Here, Plaintiff avers he had a liberty interest in familial association. While this is true, Defendants' actions do not rise to the level of violating any due process, or evidence the required *deliberate indifference* to that interest, such that their actions "shock the conscience." Burr, 2023 WL 5940017, at *5 citing Tamas, 630 F.3d at 844 (emphasis added). A reasonable jury could not find that Defendants acted with deliberate indifference to a known or obvious risk of harm. See pp. 4-7, supra. The inquiry is made "in light of the specific context of the case, not as a broad general proposition." Id. citing Saucier v. Katz, 533 U.S. 194, 201 (2001). **Plaintiff bears the burden of showing the rights at issue were clearly established at the time of the Defendants' actions**. Momox-Caselis, 2018 WL 6795556, at *3 citing Robinson v. York, 566 F.3d 817, 826 (9th Cir. 2009).

Plaintiff has failed to cite any persuasive or binding authority supporting his assertion that he should have been forewarned of possible removal, and or forewarned that

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a temporary guardianship was an option to avoid that removal[16]**, or even more broadly that offering options concerning safety of the children somehow constituted a violation of constitutional rights. Thus, Plaintiff has not identified ANY "existing precedent [that] must have placed the statutory or constitutional question beyond debate."** Id.

None of the well-established Federal case law states that forewarning is required. Furthermore, removal is at DFS' discretion and does not require any advance notice to a parent. NRS 432B.340 and 432B.330.[17] **Since the State decisionmaker has discretion, there is no constitutionally protected interest.** Morimoto v. Whitley, 2018 WL 5621855, at *5–6 (D. Nev.) citing Olim v. Wakinekona, 461 U.S. 238, 249 (1983); Town of Castle Rock, Colo., 545 U.S. 748, 756 (stating **a plaintiff does not have a constitutionally protected interest in a benefit "if government officials may grant or deny it in their discretion**"). NRS 432B.340 and 432B.330 provide that DFS "may" remove the child from the home and, thus, has clear discretion to do so.

Finally, *res judicata* also requires this Court to find Defendants are entitled to qualified immunity because the First Judicial District Court has already made a finding that Plaintiff's constitutional and statutory rights were not violated by the presentation of the subject options offered to Plaintiff, or by the absence of forewarning of those options. See pp. 3-4, supra.

D. Legal Argument As To Plaintiff's State Law Claims

1. Plaintiff's IIED Claim Fails

Plaintiff misrepresents the Nevada Supreme Court's ruling concerning Defendants' Motion to Dismiss. The Nevada Supreme Court was reviewing a **12(b)(5) dismissal and**, as such, **all alleged facts in the FAC were presumed true and all inferences drawn in Plaintiff's favor**. Eggleston v. Stuart, 137 Nev. at 509, 495 P.3d at 487. Thus, contrary to Plaintiff's argument, **the Court did not "f[ind]…as alleged in the FAC, [that] Defendants'**

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[16] See Opposition, p. 2.
[17] See MSJ, p. 17.

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'actions 'shock the conscience' by removing the possibility of reunification and violate Eggleston's fundamental right to raise his children."[18]

Plaintiff's IIED claim fails because he has failed to prove his alleged physical injury was caused by Defendants – an essential element of the cause of action. Plaintiff's claimed physical injuries resulted from alleged conduct by Lisa Callahan after DFS was off the case on 1/7/15. The wrongful conduct by Lisa Callahan, occurred months to a year later when she filed a Guardianship Action in Illinois and denied Plaintiff contact with the Boys. (*Note*, that action did not terminate Plaintiff's parental rights.) Additionally, Plaintiff has not presented any medical evidence that causally links any alleged physical injury to any action by Defendants.

2. County Defendants Have Discretionary Act Immunity

Defendants are entitled to discretionary act immunity on all Plaintiff's State Law claims because their broad discretion in carrying out their duties to protect children is well established by the various NRS 432B Statutes and case law Defendants cited that is undisputed.[19] **Decisions regarding removal from a home and the placement of wards of the state into foster homes clearly involve personal deliberation and judgment, and Defendants' choices are grounded on public policy concerns as expressed in the Nevada Revised Statutes. Henry A. v. Willden, 2014 WL 1809634 at *12-14 (D. Nev); Henry A. v. Willden, 2013 WL 759479, at *15 (D. Nev.); Nelson v Willden, 2015 WL 4937939, at *6 (D. Nev.) An investigation into alleged child abuse "involves 'personal deliberation, decision and judgment' and cannot be construed as ministerial." Johnson v. Clayton, 2009 WL 10693589, at *4 (D.Nev.) The same is true as to any supervisory acts or a failure to act. Nelson, supra citing Neal-Lomax v. Las Vegas Metropolitan Police Dept., 574 F.Supp.2d 1170, 1192 (D. Nev. 2008);** see also Momox-Caselis v. Juarez-Paez, 2018 WL

[18] See Opposition, p. 21.
[19] See MSJ, p. 21-22 and pp. 9-10, supra.

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6795556, at *10 (**Decisions about how to investigate a report of child abuse and whether to recommend a child be removed from an allegedly abusive home involve individual judgment or choice and are based on considerations of social, economic, or political policy related to the care and protection of foster children**. Gonzalez v. Las Vegas Metro. Police Dep't, 2013 WL 7158415, at *2 (Nev.)

Plaintiff has not cited any contrary case law and, thus, the above case law is binding and undisputed. Plaintiff's arguments that immunity is abrogated by alleged constitutional violations and bad faith fail in the face of findings by the First Judicial Court in support of its denial of Plaintiffs' PJR. Also, the FAC does not allege "bad faith" and Plaintiff cannot establish a constitutional violation. See pp. 4-9, supra.

3. Lisa Callahan's Conduct is a Superseding Intervening Cause

Plaintiff argues this Court may not make a specific finding regarding Lisa Callahan as to any tort or her commission of an intervening/superseding crime.

First, NRCP 55(b) provides "the court may conduct hearings …when, to enter or effectuate judgment, it needs to:…(C) establish the truth of any allegation by evidence; or (D) investigate any other matter." Second, this and other Court(s) have and do make these determinations all the time as to whether a crime or tort has been committed that is a superseding intervening cause of any injury. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 491–92, 215 P.3d 709 (Nev. 2009); Wood, 121 Nev. at 741-42 and 1037-38; Momox-Caselis, 987 F.3d at 847–48; Ansara, 647 F. Supp. 3d at 983-84. Because a default was entered against Lisa Callahan, Plaintiff's allegation that she "abducted" the children is established. Plaintiff voluntarily and with the full advice of counsel signed the guardianships and gave Lisa authority over the children, including to take them out of State. Thus, Plaintiff's signing, his delay in revoking, his decisions as to what to pursue and not to pursue, including in the Paternity Action, and Lisa's subsequent actions caused any alleged harm. The alleged harm was not caused by Defendants.

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Plaintiff cannot present evidence of foreseeability. Momox-Caselis, supra. citing Bower, supra (observing that the originally negligent party is only liable for a third party's intentional tort or crime if it was foreseeable). It was not foreseeable that Lisa would "abduct," or wrongfully deny Plaintiff contact/visitation with the Boys. There is no evidence that Lisa has a criminal record, and **she initially allowed Plaintiff to speak to the Boys for the first year from the date they left Las Vegas on 1/9/15**.[20] The Temporary Guardianships did not require Lisa to stay in Nevada, and there was no legal bar to her taking the Boys to Illinois, which is confirmed by Plaintiff's failure to take action, including by contacting Illinois police and/or Illinois DFS/CPS. Plaintiff voluntarily signed the Guardianships after consultation with his own lawyer. Plaintiff did not revoke R.E.'s Guardianships until 2/18/15, long after Lisa and the Boys had left Nevada.[21] Plaintiff's conduct created the situation that allowed Lisa to leave the State with the Boys, and he was not reunified because he never sought that result through his own legal proceedings.

4. Plaintiff's Defamation, Libel and Slander Claims Fail

Plaintiff's defamation, libel and slander claims fail. First, Plaintiff relies on his pending Judicial Review Petition to establish the DFS findings and conclusions are false, including the Substantiation and Appeal Hearing decisions. **The First Judicial District Court Order denying PJR ended that inquiry when it made specific findings to uphold the substantiation on October 13, 2023 the Substantiation finding of "Physical Injury (Abuse) – Physical Risk" against Plaintiff, is true as a matter of law.**[22] Second, as to publication, **Plaintiff vaguely states without evidentiary citation, that "he will provide" evidence that Defendants did not consider all evidence when he presents his § 1983 claim in chief.**[23]

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[20] See L. Callahan Depo., p. 103 (Exh. Q).
[21] See Revocation (Exh. Z).
[22] See Opposition, p. 27; see pp. 2-4, supra; Amended Order (Exh. TT hereto).
[23] Id. at 27:14-17.

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Plaintiff has failed to cite or offer that evidence in opposition to summary judgment on this issue, and has failed to properly address why the evidence was not provided, and thus, the absence of publication is undisputed for purposes of this Motion, entitling Defendants to summary judgement. NRCP 56(e)(2) and (3). Third, Plaintiff's citation to Neason v. Clark Cnty., Nevada, 352 F. Supp. 2d 1133, 1142–43 (D. Nev. 2005) does not support Plaintiff's Opposition because the County has a statutory obligation to report a substantiation finding to the State as follows:

> **Clark County's reporting of the information to the State of Nevada was a privileged publication under the common interest privilege. The Clark County Defendants had a statutory duty to report to the State of Nevada child abuse investigations, including the demographic information on the allegedly abused or neglected child, his parents or other responsible party, the facts of the alleged abuse, and the disposition of the case. See Nev.Rev.Stat. 432B.310.**

Fourth, Plaintiff's argument that Stuart communicated with Lisa and her attorney regarding the allegations against him based on Ms. Sherese Shabazz's 6/5/15 email[24] – over 4 months after the Substantiation, and after Judge Potter had a UCCJEA conference with the Illinois Judge on 5/28/15 and Judge Potter gave the Illinois Court all the DFS documents – fails because the parties thereto were already aware of the DFS case and documents – three CPS Referral Summaries, the Nevada Initial Assessment Summaries, and UNITY Case Notes – contents, findings, etc. and none of them found he was "unfit."[25] Most importantly, as the Boys' Temporary and legal guardian, Lisa and her attorney had a right to CPS records and information regarding the outcome of the investigation. See, e.g., **NRS 432B.290 (h) The attorney and the guardian ad litem of the child, if the information is reasonably necessary to promote the safety, permanency and well-being of the child; (i) A person**

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[24] Id. p. 28.
[25] See MSJ, p. 25.

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who files or intends to file a petition for the appointment of a guardian or successor guardian of a child and the information is reasonably necessary to promote the safety, permanency and well-being of the child; (l) A federal, state or local governmental entity, or an agency of such an entity, or a juvenile court, that needs access to the information to carry out its legal responsibilities to protect children from abuse and neglect; and (q) A parent or legal guardian of the child and an attorney of a parent or legal guardian of the child, and the information is reasonably necessary to promote the safety, permanency and well-being of the child and is limited to information concerning that parent or guardian. <u>Plaintiff's Substantiation has been upheld three times now</u>. Therefore, the statements are not false. Plaintiff attempts to mislead this Court by stating that the CPS' findings of allegations of negligent treatment and/or inadequate supervision against Mr. Eggleston were "UNSUBSTANTIATED" as to all four minor children.[26] However, it is undisputed that **DFS SUBSTANTIATED the <u>Physical Injury/Neglect 14A Physical Risk</u> in CPS Report #1643346, which is at issue here**.[27]

Plaintiff's bad faith, malice argument fails because his Judicial Review Petition challenging the same was denied. Finally, Plaintiff has presented no evidence over the course of 7 years of discovery, of damage related to any alleged false or unprivileged communication. At most, the Illinois Court only entered a **temporary custody Order** in Lisa's favor **<u>after Judge Potter indicated he had no objection to the Illinois Court's</u>**

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[26] <u>See</u> Opposition, p. 8.

[27] <u>See</u> Amended Order, p. 2 and 16 (Exh. TT hereto); CPS Report # 1643759, at CC 038A (Exh. H).

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exclusive and continuing sole jurisdiction over the Eggleston Boys – it did not terminate Plaintiff's parental rights.[28]

5. Plaintiff Is Not Entitled To Punitive Damages Against Georgina Stuart

Plaintiff misrepresents the Nevada Supreme Court's ruling in Eggleston as to his punitive damages claim.[29] The Court held, in its 12(b)(5) review, **"[t]aking these allegations as true**, Eggleston could prove that Stuart violated his civil rights and, therefore, that Stuart was acting in her individual capacity rather than her official capacity." We are past that point. Now is the time for evidence, not assumptions. Most importantly, the Supreme Court did not know the details established by the evidence. It did not know that DFS Supervisors/Management determined there were only two options – removal or temporary guardianships – and Stuart was required to advise the family of that, Plaintiff spoke to his attorney, Plaintiff got and accepted his attorney's legal advice to sign the guardianships, and Plaintiff left the home and drove to UPS where he signed the guardianships in front of a Notary Public. Plaintiff's argument that Plaintiff's claim for punitive damages against Stuart must be considered in her official capacity is *res judicata* without any analysis fails, including because **the reported decision is not a final judgment on the merits**.[30]

There is no clear and convincing evidence of malice, oppression or fraud where, rather than taking Plaintiff's children and putting them in a foster home with strangers, DFS Management determined the family should be offered the guardianship option, which Plaintiff took on the advice of his counsel. DFS Management – not Stuart – made the ultimate decision regarding removal on 1/6/15 at 2:45 p.m. and Stuart carried it out as required. No advance notice

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[28] See Illinois Order (Exh. ZZ hereto).
[29] See Opposition, p. 29:4-17.
[30] Id.

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was legally required and could not be given because parents could flee with the children and/or someone might be injured.[31] Supervisor Mary Atteberry testified there were safety concerns with Stuart going to the home to remove four children with Laura's out-of-control behaviors, mental health and substance abuse. Plaintiff was very oppositional to Stuart – he just did not agree with the concerns and DFS' involvement with his family – and Attebery understood why Stuart would take police with her. Plaintiff's attorney, Ms. McFarling testified Stuart told her Plaintiff was in the home not protecting the children and that was the reason why she showed up with police on 1/7/15. Stuart also testified it's protocol to request officer's assistance to make sure that the transition is smooth and seamless.[32]

Plaintiff argues Stuart admitted to fraud because she "concealed" that they were recommending foster care or guardianships.[33] That is not true. Her last contact with Plaintiff was on 1/5/15 at 3 p.m.[34] While removal was discussed with Supervisor Mary Atteberry and Manager Lisa McKay, Stuart continued to work the case to get in home services.[35] She needed to get Management's final decision on what was to be done, which was not provided until 1/6/15 at 2:45 p.m. and in home services were not approved. Therefore, she did not conceal, make a false statement and/or engage in fraud. DFS is not legally required to provide advance notice of removal.

VI. CONCLUSION

IN ACCORDANCE WITH THE FOREGOING, Defendants respectfully request this Court enter an order granting Defendants Clark County and Georgina Stuart summary judgment

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[31] See Affidavit of Crystalyn Minwegen-Johannessohn (Exh. VV hereto).
[32] See M. Atteberry Depo., pp. 99-100 (Exh. YY hereto); E. McFarling Depo., p. 22 (Exh. V); G. Anderson, p. 121 (Exh. XX hereto).
[33] See Opposition, p. 30 citing Exh. 7, p. 123-24.
[34] See UNITY Note, at CC 011A (Exh G).
[35] See MSJ, pp. 3-8.

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on all Plaintiff' claims, pursuant to NRCP 56, and certify said Judgment as final under NRCP 54(b) because there is no just reason to delay the entry of Final Judgment for Defendants.

DATED this 31st day of October, 2023.

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CERTIFICATE OF SERVICE

On the 31st day of October, 2023 the undersigned, an employee of Olson, Cannon, Gormley & Stoberski, hereby served a true copy of **DEFENDANTS CLARK COUNTY AND GEORGINA STUART'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** to the parties listed below via **[x]** Odyssey Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [ ] mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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BY

DISTRICT COURT

CARSON CITY, NEVADA

Steven Eggleston, Petitioner, vs. Clark County Department of Family Services, Respondent.	Case No: 20 OC 00164 1B Dept.: II

AMENDED ORDER DENYING PETITION FOR JUDICIAL REVIEW

The matter, having come before the Court on a Petition for Judicial Review, and the Court, having considered the relevant briefing and legal authorities, and good cause appearing, this Court finds as follows:

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STATEMENT OF THE CASE

This is a petition for review of a final administrative decision of hearing officer Michelle Tobler rendered on October 15, 2020, upholding a substantiation by the Clark County Department of Family Services. Steven Eggleston (hereinafter Petitioner) was substantiated on a finding of Physical Injury (Abuse) Physical Risk pursuant to NRS 432B and NAC 432B.

On December 22, 2014, the Department of Family Services (hereinafter DFS) received a report at the child abuse and neglect hotline alleging negligent treatment. Georgina Stuart investigated the allegations. On January 5, 2015, an allegation was substantiated against Petitioner. On February 2, 2015, a substantiation letter was sent to Petitioner. On February 12, 2015, Petitioner requested an agency appeal, naming Emily McFarling as his legal counsel. On August 27, 2015, DFS issued a Finding of Substantiation upholding the substantiated finding. On September 9, 2015, Petitioner requested an administrative hearing. Again, at the time, he indicated his attorney was Emily McFarling.

On October 6, 2015, Gregor Mills office contacted DFS and indicated he may represent Petitioner in the substantiation matter. It wasn't until December 30, 2015, that Mr. Mills office indicated they were not paid and therefore were not retained by Petitioner. On December 26, 2016, Petitioner filed a lawsuit against

DFS.

On March 3, 2017, a letter was mailed to Petitioner giving him two dates for an administrative hearing. Petitioner chose August 1, 2017. Due to hearing officer unavailability, the hearing had to be rescheduled. Petitioner was given a multitude of dates to choose from. On June 1, 2017, Petitioner chose September 6, 2017, as his administrative hearing date.

On August 2, 2017, Petitioner requested to cancel his hearing of September 6, 2017, despite choosing this date himself. The hearing was rescheduled to October 24, 2017. On October 4, 2017, Petitioner emailed DFS citing a multitude of excuses regarding why he could not have the hearing that date, to include his Visa.

The hearing was vacated due to his immigration issues, but he was asked to provide proof of said immigration issues and when they might resolve so a firm date could be set. Petitioner never responded to the request for proof of immigration issues nor of a date for an administrative hearing. Having heard nothing for nine months, DFS reset the hearing for September 11, 2018. Petitioner made excuses as to why he could not appear on that date, notably that he would be in Washington DC. It appears his immigration issues cleared up between October 4, 2017, and July 20, 2018, when he sent the email, but he didn't notify DFS of his immigration issues being cleared up so that the hearing could go forward.

On July 31, 2018, and August 17, 2018, DFS asked Petitioner for dates he could be present for his administrative hearing. Those requests were ignored. On January 31, 2020, DFS requested Petitioner choose between two dates for his administrative hearing. On February 10, 2020, he chose June 23, 2020, for his administrative hearing.

In anticipation of the October 24, 2017, hearing date, the administrative hearing packet was mailed to Petitioner by registered mail, article #RB 571 946 793 US, on September 14, 2017. Additionally, it was emailed to Petitioner on May 27, 2020.

On April 18, 2020, Petitioner made an Application for a More Definite Statement. On May 5, 2020, DFS presented both Petitioner and the hearing officer with a Response to Application for More Definite Statement. The response was in compliance with NRS 233B.

With the administrative hearing date set as June 23, 2020, Petitioner began a barrage of emails and/or documents. On May 22, 2020, he emailed a "motion to strike and/or motion to dismiss; alternatively, application for more definitive statement[1], request for clarification of due process standards (including burden of proof), request to order witnesses present at hearing (or for issuance of subpenas (sic)), **request to present testimony by phone**, demand that proceedings be

[1] Despite having previously received the same.

reported, demand for production of evidence of collusion and conflict; motion in limine; motion for disqualification of hearing officer." Within it he accused the hearing officer of financial benefit, bias, and prejudice, all without any proof. On June 5, 2020, Petitioner sent an email to DFS stating he was buying a plane ticket, but put the DA's Office, the Fair Hearing Office and all involved that he intends to hold everyone fully accountable for any suffering or injuries he sustains in traveling to Las Vegas in these dangerous times.[2] On June 8, 2020, DFS opposed the motion.

On June 10, 2020, Petitioner emailed a notice of witness and/or expert witnesses **demand to present witnesses remotely and/or by phone** request for judicial notice of court filings. Further, on June 10, 2020, Petitioner emailed indicating he had 750+ pages of exhibits he was federal expressing to the hearing officer and the DA. That was 13 days before his administrative hearing was set to begin. On June 12, 2020, Petitioner emailed a motion to DFS which was to disqualify the hearing officer. This was based on him finding a federal lawsuit involving a pro per father (not Petitioner) who sued 24 defendants in federal court, one of which was the hearing officer because her law firm had represented his ex-wife in a family matter. Petitioner admitted to googling and finding this. The lawsuit was filed in 2012 and was dismissed against all defendants in 2019.

[2] In addition to that threat, within the previously mentioned motion, he states that DFS was forcing him to "travel at the age of 64 with respiratory issues through the toxic clouds of the COVID-19 pandemic."

However, the hearing officer was swiftly dismissed from the lawsuit in 2012. Further, it had absolutely nothing to do with the administrative hearing. Within the motion, he threatened to sue all parties involved in the administrative hearing, thus beginning a campaign to threaten and terrorize anyone involved with the hearing. DFS filed an opposition. On June 13, 2020, he emailed supplemental exhibits. He also added more witnesses he wanted to call remotely or by telephone.

Despite never conceding there was any basis for her to be disqualified, the original hearing officer recused herself. Having received what he perceived to be a win, Petitioner next filed a motion to disqualify a manager of DFS and the District Attorney's Office on June 18, 2020, five days before the hearing was set to begin. Within said motion, Petitioner takes the hearing officer recusing herself to mean that DFS and the DA knew of the conflict (despite the hearing officer specifically saying there wasn't one) and actively conspired against him, all without any proof. Within this document, he also includes a list of individuals and entities he threatens, once again, to sue, to include everyone involved in the administrative hearing. DFS opposed the motion. Additionally, on June 20, 2020, Petitioner emailed an objection to notice of administrative hearing, threat to make entry in the central registry without further notice unathorized (sic) participation of district attorney's office in judicial adjudication and further demand for fair trial. Within which he states, "Eggleston has researched Ms. Tobler online, and she seems like a

nice person; reminds him of my mother's sister 😊." On June 23, 2020, Petitioner further emailed a demand for litigation hold and production of records to hearing officer.

On June 26, 2020, Petitioner emailed a reply to the opposition to motion to disqualify DFS/DA's Office, along with a proposed federal complaint he threatened to file, inexplicably, in Illinois, naming again, everyone involved in the administrative hearing, this time to include the new hearing officer that had been assigned. Remarkably, the new hearing officer, despite being "named in a lawsuit" in Illinois by Petitioner, was not bullied into recusing herself. On July 1, 2020, she issued decisions on the motions to disqualify DFS and the DA's office, as well as to strike and/or motion to dismiss; alternatively, application for more definitive statement, request for clarification of due process standards (including burden of proof), request to order witnesses present at hearing (or for issuance of subpenas (sic)), request to present testimony by phone, demand that proceedings be reported, demand for production of evidence of collusion and conflict; motion in limine; motion for disqualification of hearing officer.

On June 29, 2020, Petitioner again emailed a third updated exhibit list. On September 5, 2020, he again emailed a third updated notice of witness/documents and/or expert witnesses **demand to present witnesses remotely and/or by phone** request for judicial notice of court filings. On September 14, 2020, one day before

the administrative hearing was to begin, Petitioner once again emailed an Illinois complaint, threatening to sue everyone involved in the administrative hearing. He further emailed a motion for continuance and objection to short notice of hearing, hearing by Webex to which eggleston has not consented, concealed entry in the capta central registry making hearing moot unauthorized participation of conflicted hearing officer and district attorney's office. He further filed a motion to disqualify the new hearing officer, and the manager of DFS, and the District Attorney's Office, again, despite both of those requests being ruled on. Remarkably, the second threat and complaint from Illinois also did not deter the second hearing officer, and she issued decisions, denying these motions.

On August 11, 2020, an email was sent to Petitioner, and attached were a letter setting the hearing for September 15, 2020, and Administrative Hearing Guidelines as the hearing was conducted via WebEx, a platform that allowed for virtual hearings during the global pandemic. (CC0615-0617). Counsel for DFS informed the Hearing Officer Petitioner was notified of the September 15, 2020, hearing on August 11, 2020. (CC0117). The petitioner does not deny this notice. CC0396 to CC0403 contain Petitioner's 10-page motion to continue, which he emailed the day before on September 14, 2020. This both indicates he is aware of the September 15, 2020, date, and objects to it, though his motion to continue was denied by the hearing officer at the outset of the administrative hearing. "I don't

believe that there is any reason to continue the hearing. Mr. Eggleston had sufficient notice of the hearing, over a month since the hearing was reset, to make sufficient accommodations to be at a location where he could conduct the hearing via WebEx, and he's made arguments that he can't come here. And also, that the hearings shouldn't proceed by WebEx. So, I believe that the hearings should go forward by WebEx and I don't believe that there is any reason to have another continuance since this case has been going on for several years now. (CC 0116). And also later in writing, wherein she states, "I found that the August 11, 2020, notice of the fair hearing scheduled for September 15, 2020 is sufficient notice." (CC 0443). Further stating, "In Mr. Eggleston's June 20, 2020, objection to the fair hearing being rescheduled from June 23, 2020, to June 30, 2020, he stated that he was ready to proceed with the fair hearing on June 23, 2020, which was being held via WebEx. Between receiving the August 11, 2020, notice of hearing and just prior to the hearing, Mr. Eggleston was sending emails regarding having his Exhibits bates-stamped prior to the scheduled hearing." (CC0444).

On September 14, 2020, Petitioner emailed a motion to disqualify, wherein he states he is attempting to enjoin and declare unconstitutional the Nevada CAPTA Registry hearing scheduled for September 15, 2020…" (CC 0408). On the same date, he emails a demand for a jury trial wherein he references the hearing date four times. (CC 0418, 0423, 0424, 0425). On September 1, 2020,

Petitioner sends an email to DFS, which stated "you have schedule a third hearing date this summer for 9/15/20…"(CC0685-CC0689).

On September 15, 2020, an administrative hearing was presided over by hearing officer Michelle Tobler, who is not employed by DFS and is an independent attorney contracted with the county to hear administrative hearings. Petitioner states, in his Opening Brief, page 4 of 14, lines 11-13 "Just four days later, on September 15, 2015, Tobler held a hearing in this matter via WebEx video conference…Mr. Eggleston was thus unable to call any of his witnesses." Petitioner did request an administrative hearing on September 9, 2015. However, his administrative hearing was held, not four days later, but five years and four days later, on September 15, 2020. Petitioner stated he submitted a witness list of over 30 individuals.[3] However, after five years, his witness list was 98 individuals. And the reason he couldn't present any witnesses is he chose not to participate in the administrative hearing. On October 15, 2020, hearing officer Tobler issued her written decision. The substantiation was upheld.

STATEMENT OF FACTS

On September 15, 2020, a hearing was held in which the Clark County Department of Family Services called investigators Sheri Hensel and Georgina Stewart as witnesses, and in which Petitioner refused to participate. The beginning of the hearing was argument on the emails Petitioner had sent on September 14,

[3] Petitioner's Opening Brief, page 4 of 14, line 10.

2020, "motion for continuance and objection to short notice of hearing, hearing by Webex to which eggleston has not consented, concealed entry in the capta central registry making hearing moot unauthorized participation of conflicted hearing officer and district attorney's office. In defending his "motions", Petitioner stated "we're in the process of filing and everybody will be served with a complaint for civil rights violations and racketeering. All-both of you are defendants in that lawsuit. No matter what she said, there's absolutely no way in the world that you can proceed with the hearing since you're a defendant in a federal lawsuit that I'm bringing against you." He further stated, "I've got to go pick up my daughter in 30 minutes." Clearly evidencing that, if his threat to sue did not work (it did not) he would not be participating in the administrative hearing anyway.

If the fact he had to pick up his daughter didn't work, then he attempted to set up a defense that his internet didn't work. Yet, when counsel for DFS was allowed to respond to him, his internet was strong enough that he could interrupt and yell (while also saying he didn't know what counsel just said). His behavior then devolves into accusations and cursing. Despite continuing to state that his internet did not work and he couldn't hear, he heard enough to interrupt every other person at the hearing. When the hearing officer ultimately rules against his motion, he says, very clearly, "I'm suing you." After hearing clearly, the ruling against him and further threatening to sue, he claims he can't hear anything. He

then called counsel for DFS "you're such a wise ass." The hearing officer then made a specific finding that it was clear Petitioner could hear the proceedings, because he kept interrupting them.

The remainder of his motions were denied. At that point, his 98-person witness list was discussed, at which point he participates fully in the discussion, and then stated, "I haven't heard anything she said for almost ten minutes." That was after he fully participated in a discussion about who was on his 98-person witness list. He then goes on to call counsel for DFS a liar, while also stating that he can't hear what's happening. When the hearing officer begins the hearing, after having denied his motion to continue, Petitioner sends an email stating he is rebooting (11:08 am) and then that he isn't participating. (11:14 am). It is evident Petitioner never, since 2015, had any intention of participating in the administrative hearing at any time, on any format.

At the hearing, Sheri Hensel testified she was a Senior Family Services Specialist with DFS and had been so employed for twelve years. She identified the report that was called in to the DFS hotline, prior to the report at issue. The concerns contained within the report were that the police were called out to the home because two children were unsupervised in the apartment complex for about an hour, running around the parking lot with no shoes on.

Sheri's Unity Notes were identified by her and admitted as DFS exhibit 5. Additionally, Sheri's Nevada Initial Assessment was identified and admitted as DFS exhibit 6. Sheri had a conversation with Laura Rodriguez, the mother of H[redacted] and R[redacted] (although the children involved were not H[redacted] and R[redacted], rather half siblings), in which she told Laura younger children should be always in line of sight if they are outside. Also present for the conversation was Petitioner, who at the time, was not living in the home. The police also responded to the unsupervised children.

Georgina Stewart testified she was a Child Development Supervisor with DFS and had been so employed for fifteen years. She identified the report that was called in to the DFS hotline that was at issue for this substantiation. The concerns contained within the report were that Laura was abusing drugs and alcohol and placing the young children at risk.

Georgina's Unity Notes were identified by her and admitted as DFS exhibit 5. Additionally, Georgina's Nevada Initial Assessment was identified and admitted as DFS exhibit 13. On December 23, 2014, Georgina responded to the family home. She found H[redacted] and R[redacted], as well as their half siblings K[redacted] and J[redacted] home, but neither parent was home. The children were being supervised by a boyfriend of an adult sibling who was visiting for the holidays. He reported the adult daughters were at the hospital with their mother Laura.

Allegedly Petitioner was at work. Georgina was not allowed into the home or to lay eyes on any of the children.

On December 24, 2014, Georgina spoke to Laura while she was at Monte Vista. Laura reported the morning of the incident she was stressed out because there were no Christmas presents under the tree (Georgina had brought Christmas presents to the family the night before-despite them not letting her in to interview the children, they did let her in to drop off Christmas presents). She asked Petitioner for money for Christmas gifts, he said the money they had was being used for bills and there would be no Christmas. She was overwhelmed and had been drinking, she got into the bathtub and filled it with water. She was making threatening statements that she no longer wanted to live. An adult daughter called 911. Law enforcement responded and Laura was placed on a Legal 2000 hold. She was transported to St. Rose hospital then to Monte Vista.

She further reported to being released from Monte Vista on Christmas, with additional mental health medications. She indicated she would be going to Monte Vista for the partial program Monday through Friday and would follow up with her psychiatrist. She admitted to drinking regularly, being stressed out with the kids, and because her and Petitioner argued a lot because he didn't help co parent the children, which caused her stress.

Also on December 24, 2014, Georgina visited the family home again wherein she spoke to Petitioner. She advised him of the allegations contained in the report. She and Petitioner formulated a present danger plan, which was identified as exhibit 10. It required Petitioner to provide 24-hour supervision of Laura with the children. Petitioner signed the plan. Laura was released from the hospital and reported to Georgina she was abiding by the safety plan. Georgina made a referral to Boys town for in home safety services and family support services.

On December 29, 2014, another report was received by the hotline. The report contained allegations that H[redacted] was admitted to Sunrise Hospital because his appendix had ruptured. Neither parent had brought H[redacted] to the hospital, rather an adult sibling had done so. She reported she brought the child to the hospital because her mother was on another legal hold and Petitioner had left the hospital to go to work.

By this time, the adult daughters had to leave the home to return to college and were concerned about the supervision their younger siblings would have. They reported that during the short time they were there, their mother had been hospitalized three times, had been drinking, had misused Xanax, and that she would go missing for hours and they wouldn't know where she was. They also reported concern about Petitioner's limited contact with H[redacted] at the hospital.

On January 5, 2015, in addition to Boys Town services, Georgina also put in place Mojave Mental Health Services for the family. On January 6, 2015, she referred H[redacted] to SNHD for aftercare assistance after he left the hospital. On January 7, 2015, Georgina again visited the home. She expressed concerns that the adult children were leaving, and that during Laura's hospitalizations, Petitioner had failed to parent the children. As such, both parents signed a temporary guardianship to the maternal aunt and uncle.

At the close of her investigation, Georgina substantiated allegations of abuse and/or neglect against Petitioner. This was based upon Petitioner acknowledging Laura's substance use and mental health concerns posed a threat to the children, but still routinely left them unsupervised with her for long hours, in violation of the present danger plan.

On September 16, 2020, despite his internet issues, Petitioner was able to send one last document entitled "further objection to the hearing and motion to continue under neutral hearing officer in actual hearing facility." This was denied. On October 15, 2020, the hearing officer issued her findings. The hearing officer specifically found "the 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. Mr. Eggleston was responsible for the welfare of the minor children and was aware

of the mother's alcohol and drug use and mental state. He could reasonably be expected to foresee that the mother's issues were adversely affecting the minor children, yet he did not intervene to protect the children from the mother. His failure to act and protect the children put them at risk of plausible harm."

STATEMENT OF THE CASE AFTER ADMINISTRATIVE HEARING

On or about November 17, 2020, Petitioner filed a Petition for Judicial Review in this Court. On or about December 17, 2020, also filed were "Motions to Seal and Remand for a Legally Compliant Fair Hearing, and Filing of Copy of Orders for Which Appellant Seeks Judicial Review." On or about December 29, 2020, Petitioner mailed to DFS (not to counsel of record) a copy of these two filings. On or about January 13, 2021, DFS filed a Motion to Dismiss Petition for Judicial Review.

On January 27, 2021, DFS filed a Statement of Intent to Participate. On January 26, 2021, DFS also filed an ERRATA to the Motion to Dismiss. On or about February 3, 2021, Petitioner filed the following documents: Opposition to Motion to Dismiss, Motion to Strike both Motions to Dismiss and to Stay Proceedings Pending Resolution of Related Nevada Supreme Court Case, and Motion to Exceed Page Limit for Motion to Strike both Motions to Dismiss and to Stay Proceedings Pending Resolution of Related Nevada Supreme Court Case. On February 9, 2021, DFS filed a Reply to Opposition to Clark County Department of

Family Services Motion to Dismiss Petition for Judicial Review. On February 11, 2021, DFS filed a seven-volume record of the administrative proceeding. On February 12, 2021, an Ex Parte Motion and Order to Seal Court Records was filed. On February 17, 2021, DFS filed an Opposition to Petitioner's Motion to Strike Both Motions to Dismiss and to Stay Proceedings Pending Resolution of the Related Nevada Supreme Court Case.

Between February 2021, and March 2022, over a year, Petitioner did not file a brief pursuant to NRS 233B. In or around February of 2022, Clark Hill filed a notice of appearance. Petitioner's counsel also filed a motion to lift stay in May of 2022. Also filed was a Motion for Access to Docket, Pleadings, Record and Transcripts. On July 8, 2022, DFS filed replies to both motions.

On or about January 30, 2023, Petitioner filed his Opening Brief. On or about March 17, 2023, Respondent filed its Response. On or about April 17, 2023, Petitioner filed his Reply. On or about May 4, 2023, Respondent filed a Request for Submission. On or about May 8, 2023, this Court sent Petitioner and Respondent an Order for Proposed Order. Each party sent their proposed order within the deadline set by the Court. On or about May 24, 2023, at 1:30 pm, both parties received an email asking to have a quick phone conference that day at 4:00 pm or on the 26th. Within the email were the following questions: "When and how the 9/15/2020 hearing was set and whether, before 9/15/2020, Mr. Eggleston

consented/objected." All parties were present at 4pm wherein this question was repeated. As such, supplemental Briefs and Exhibits were filed responsive to the questions raised sua sponte by the Court.

On May 26, 2023, this Court additionally filed an order for limited remand, allowing Petitioner to file a supplement within 40 days of service of the amended appeal hearing decision. An amended appeal hearing decision was served on or about July 17, 2023, on this Court and the Petitioner. Petitioner chose to file a Supplemental Points and Authorities and mailed the same to Respondent on August 25, 2023. The order further allowed Respondent 30 days after Petitioner served his supplement to file an answering supplement. A supplemental brief was filed responsive to the order.

ANALYSIS OF THE FACTS AND LAW

NRS 432B.317 governs fair hearings. It states:

> 1. A person to whom a written notification is sent pursuant to NRS 432B.315 may request an administrative appeal of the substantiation of the report and the agency's intention to place the person's name in the Central Registry by submitting a written request to the agency which provides child welfare services within 15 days after the date on which the agency sent the written notification as required pursuant to NRS 432B.315.
> 2. Except as otherwise provided in subsection 3, if an agency which provides child welfare services receives a request for an administrative appeal within 15 days after the agency sent the written notification pursuant to subsection 1, a hearing before a hearing officer must be held in accordance with chapter 233B of NRS.

Here, Petitioner attempted to thwart his own right to an administrative hearing for years. However, when two hearing officers required the administrative hearing proceed, he failed to participate in it. Without his participation, he leaves no arguments for this Court to review.

As a rule, issues not raised before the District Court or in the appellant's opening brief on appeal are deemed waived. *Palmieri v. Clark Cnty.*, 131 Nev. Adv. Rep. 102, 367 P.3d 442 (2015). Claims that were not raised in the lower court are waived. *Dermody v. City of Reno*, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997); *Guy v. State*, 108 Nev. 770, 780 839 P.2d 578, 584 (1992), cert. denied, 507 U.S. 1009, 113 S. Ct. 1656 (1993); *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Nor will an appellate court consider issues abandoned in district court. *Buck v. Greyhound Lines, Inc.,* 105 Nev. 756, 766, 783 P.2d 437, 443 (1989). Therefore, by failing to participate in his own administrative hearing, he is precluded from making arguments in this Judicial Review, and the Court denies the Petition. Further, by failing to raise lack of notice of the administrative hearing in either his opening or reply brief, the issue is waived. Additionally, he was present at the administrative hearing, so lack of notice would not have been an issue.

NRS 233B.135 states Judicial review of a final decision of an agency must be conducted by the court without a jury; and confined to the record…The final

decision of the agency shall be deemed *reasonable and lawful* until reversed or set aside in whole or in part by the court. The *burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.* The court *shall not substitute its judgment for that of the agency* as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion. (Emphasis added).

As such, it is Petitioner's burden to show that hearing officer Tobler's decision was invalid because it was in violation of constitutional or statutory provisions, or it was in excess of the statutory authority of DFS, or the decision was made upon unlawful procedure, there was an error of law, or that it was clearly erroneous or characterized by an abuse of discretion. Petitioner has not met this burden.

Here, the hearing officer found the following: "NRS 432B.020 defines abuse or neglect of a child as 'physical or mental injury of a non-accidental nature;…; or negligent treatment or maltreatment as set forth in NRS 432B.140… of a child

caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or **threatened with harm**.' (Emphasis added.) NAC 432B.020 interprets 'non accidental' for the purposes of NRS 432B.020 as arising from an event of effect that a person responsible for a child's welfare could reasonably be expected to foresee, regardless of whether that person did not intent to abuse or neglect a child or was ignorant of the possible consequences of his actions or failure to act. NRS 432B.140 states negligent treatment or maltreatment of a child occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic... NRS 432B.020(3) states 'allow' means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected. (Id.) The term 'nonaccidental' is interpreted in NAC 432B.020 as meaning 'arising from an event or effect that a person responsible for a child's welfare could reasonably be expected to foresee, regardless of whether that person did not intend to abuse or neglect a child or was ignorant of the possible consequences of his actions or failure to act." The hearing officer then went on to state "the 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. Mr. Eggleston was responsible

for the welfare of the minor children and was aware of the mother's alcohol and drug use and mental state. He could reasonably be expected to foresee that the mother's issues were adversely affecting the minor children, yet he did not intervene to protect the children from the mother. His failure to act and protect the children put them at risk of plausible harm."

It is clear, by the plain meaning of NRS 432B.020(1) coupled with NRS 432B.140, abuse and/or neglect can occur when a child is without proper care, control and supervision or lacks the subsistence, shelter, or other care necessary for their well-being, or is threatened with such. Here, DFS put on more than sufficient evidence to establish Petitioner failed to intervene on the children's behalf, he knew that Laura was an inappropriate care provider due to her mental health and drug use. He knew that constant supervision of the children was necessary. Yet he carried on as if DFS had never become involved, thus placing his children at risk.

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.

Petitioner also appears to take issue with his own participation in the administrative hearing. He first argues the hearing was scheduled on such short notice that he did not have a meaningful opportunity to arrange for any of his 30+ witnesses to appear. Petitioner did in fact request an administrative hearing on September 9, 2015. However, his administrative hearing was held, not four days later, but five years and four days later, on September 15, 2020. Additionally, after five years, his witness list was 98 individuals. Petitioner had five years and four days to prepare for his administrative hearing and present his 98 witnesses. Yet, he chose not to participate in the administrative hearing, and it had absolutely nothing to do with his internet.

The Hearing Officer specifically found that "Mr. Eggleston was initially present at the hearing during arguments on his motions prior to the hearing beginning, but then failed to be present for the actual hearing." Petitioner's internet was strong enough to participate in approximately one-half hour of the hearing, and to engage in inappropriate behavior while doing so. The beginning of the hearing was argument on the emails Petitioner had sent on September 14, 2020, "motion for continuance and objection to short notice of hearing, hearing by Webex to which eggleston has not consented, concealed entry in the capta central

registry making hearing moot unauthorized participation of conflicted hearing officer and district attorney's office. In defending his "motions", Petitioner stated "we're in the process of filing and everybody will be served with a complaint for civil rights violations and racketeering. All-both of you are defendants in that lawsuit. No matter what she said, there's absolutely no way in the world that you can proceed with the hearing since you're a defendant in a federal lawsuit that I'm bringing against you." Certainly, Petitioner's pattern was to threaten to sue anyone who was involved with the administrative hearing to prevent the administrative hearing from occurring. He further stated, "I've got to go pick up my daughter in 30 minutes." Clearly evidencing that, if his threat to sue did not work (it did not) he would not be participating in the administrative hearing anyway.

If the fact he had to pick up his daughter didn't work, then he attempted to set up a defense that his internet didn't work. Yet, when counsel for DFS was allowed to respond to him, his internet was strong enough that he could interrupt and yell (while also saying he didn't know what counsel just said). His behavior then devolves into accusations and cursing. Despite continuing to state his internet did not work and he couldn't hear, he heard enough to interrupt every other person at the hearing. When the hearing officer ultimately rules against his motion, he says, very clearly, "I'm suing you." After hearing clearly the ruling against him and further threatening to sue, he claims he can't hear anything. He then called

counsel for DFS "you're such a wise ass." (Id.) **The hearing officer then made a specific finding that it was clear Petitioner could hear the proceedings, because he kept interrupting them.**

Next, his 98-person witness list is discussed, at which point he participates fully in the discussion, and then stated, "I haven't heard anything she said for almost ten minutes." That was after he fully participated in a discussion about who was on his 98-person witness list. He then goes on to call counsel for DFS a liar, while also stating that he can't hear what's happening. When the hearing officer begins the hearing, after having denied his motion to continue, Petitioner sends an email stating he is rebooting (11:08 am) and then that he isn't participating. (11:14 am). It is evident Petitioner never, since 2015, had any intention of participating in the administrative hearing at any time, on any format. He was never denied the opportunity to cross examine any witnesses, he chose not to because he was not getting his way.

It is further a misstatement that Petitioner "sent Dorman an email during the hearing, indicating that he had been disconnected and 'reserving his right to conduct (the hearing) at a later date.'" Although that happened, the reason Petitioner did not participate was due to the second email he sent, the one about preferring to pick up his daughters rather than participate. This is an email Petitioner never mentions in the entirety of his Opening Brief. The hearing officer

specifically found "about one half hour into the hearing, Mr. Eggleston emailed to advise that he was leaving to pick up his daughters from school." Again, Petitioner never mentions this specific finding in the entirety of his Opening Brief. Petitioner was not denied anything, he chose not to participate when he did not get his way.

At the same time hearing officer Tobler issued her written decision, she issued written decisions on Petitioner's September 14, 2020, documents he sent the night before the hearing. Within the decision on the denial of one of the motions, she makes very specific findings as to Petitioner's internet. She states, " during arguments on the motions on September 15, 2020, Mr. Eggleston's computer 'dropped', but only when others were talking, not while he was talking. I find that the computer 'drops' were most likely intentional, and not due to any broadband issues." It was not impossible for Petitioner to utilize his internet. He had no trouble emailing thousands of pages of documents, before or after the hearing. He had no trouble participating in the hearing for approximately 30-40 minutes, but then ceasing to participate when he did not get his way. The decision was not in violation of statutory provision, nor did it exceed statutory authority.

"The standard for reviewing petitions for judicial review of administrative decisions is the same for this court as it is for the district court. Like the district court, we review an administrative appeal officer's determination of questions of law, including statutory interpretation, de novo. We review an administrative

agency's factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence." *City of North Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion. *Ayala v. Caesar's Palace*, 119 Nev. 232, 235, 71 P.3d 490, 491-492 (2014). Pursuant to *Warburton,* this Court reviews an administrative agency's factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence. Petitioner has failed to meet this burden.

Petitioner seems to argue the truncated nature of the investigation and his own actions render the hearing officer's findings about Petitioner clearly erroneous. In support of this argument, Petitioner states he was never given a choice to leave the home with the children and that he executed a present danger plan and agreed to assistance from various community providers.

What Petitioner fails to acknowledge is that 'executing' a present danger plan is wholly different than abiding by the present danger plan. Georgina Stuart specifically testified she substantiated the allegations because Petitioner acknowledged Laura's substance use and mental health concerns posed a threat to the children, but still **routinely left them unsupervised with her for long hours**, in violation of the present danger plan. This testimony is uncontroverted. Thus,

Petitioner's argument that he was present in the family home on a daily basis throughout the entire investigation is disingenuous. Perhaps he checked in at the family home daily, but he admitted to leaving the children unsupervised with Laura for long hours, despite his admission in his Opening Brief that her mental health and substance abuse issues were a threat to the children.

Further, Petitioner states he determined he would leave Laura and leave the family home. However, the hearing officer specifically found Petitioner was being evicted from the home, not that he was leaving the situation voluntarily. She also found the attempted safety services intervention was unsuccessful. It is not enough to agree to assistance from safety services providers as asserted by Petitioner, as a parent you must participate and make them work.

Finally, and most importantly, Petitioner's assertion he was not given the opportunity to leave the home with the children is belied by the record. The hearing officer specifically found "the parents both believed that allowing the children to go live with the maternal aunt and uncle is what was needed until they could figure some things out. The mother and Mr. Eggleston signed temporary guardianship of H[redacted] and R[redacted] to the maternal aunt and uncle. Mr. Eggleston did so with the advice of his counsel, Emily McFarling, as described in her July 11, 2015 email. The Las Vegas Metropolitan Police Department did not threaten, spit or draw their weapons on Mr. Eggleston to force him to sign the temporary

guardianship." As such, it is clear Petitioner himself made the decision to forgo pursuing any further parenting of the children, and instead elected to sign a temporary guardianship. Not only did he voluntarily make this decision, but he also made this decision with the advice of competent legal counsel. He should not now be heard to complain that he was not given any other options. He made his choice with the advice of counsel.

On July 14, 2023, Hearing Officer Tobler authored an amended appeal hearing decision. Within it, she states "The substantiation of the allegation in this matter was based on the totality of the circumstances/facts over a period of time, rather than on a single incident." She specifically states on December 21, 2014, Laura Rodriguez was so out of control from mental health issues and drug and alcohol abuse that the children locked themselves in a bathroom to be safe from her until she passed out. Laura was doing drugs and drinking alcohol daily and was placing the minor children at risk of her harmful behavior that was emotionally traumatic to them. Petitioner was unwilling to intervene to protect the children from Laura's drug and alcohol abuse. She further goes on to state Laura admitted to using Xanax and alcohol as a coping mechanism. Petitioner was aware of Laura's drug and alcohol problem but failed to parent the children and failed to intervene to protect them. K[redacted] primarily took care of the three minor children, even when Petitioner was home. Petitioner admitted to leaving most of the

parenting to Laura, even when he was home, and despite knowing of her drug and alcohol abuse. This was an ongoing problem. H[redacted] had a near drowning incident in April 2014 while in the care of Laura and while Petitioner was home. She further goes on to state the preponderance of the evidence indicates Laura's mental health issues and drug and alcohol abuse subjected the children to harmful behavior that was terrorizing, painful and emotionally traumatic and left the children without proper care, control, and supervision. Petitioner allowed and did nothing to prevent or stop the negligent treatment of the children by Laura in circumstances where he knew or had reason to know that the children were being neglected because he knew of Laura's drug and alcohol abuse. Petitioner refused to provide the proper care, control, and supervision necessary for the well being of the minor children when he was able to do so because he refused to parent the children. Petitioner allowed the minor children to be subjected to harmful behavior by Laura that resulted in negligent treatment/maltreatment of the children, pursuant to NRS 432B.140, under circumstances which indicated a plausible risk that the children's health or welfare was harmed or threatened with harm.

She goes on to state that Petitioner "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. Laura had also gone missing for hours with no one knowing where she was." This was after Petitioner signed a Present Danger Plan with DFS wherein he specifically agreed to maintain 24-hour supervision of Laura to protect the children from her. Finally, she states "the preponderance of the evidence indicates that Mr. Eggleson refused to provide the proper care, control, and supervision necessary for the well being of the minor children when he was able to do so because he refused to parent the children even when Laura couldn't because of her drug and alcohol abuse and related hospitalizations. Mr. Eggleston engaged in negligent treatment/maltreatment of the children, pursuant to NRS 432B.140, under circumstances which indicated a plausible risk that the children's health or welfare was harmed or threatened with harm."

The Nevada Administrative Code governs substantiations. NAC 432B.170 is clear. It states "After the investigation of a report of the abuse or neglect of a child, an agency which provides child welfare services shall determine its case findings based on whether there is **reasonable cause to believe** a child is abused or neglected, or threatened with abuse or neglect, and whether there is **credible evidence** of alleged abuse or neglect of the child. The agency shall make one of the following findings: The allegation of abuse or neglect is substantiated; or the

allegation of abuse or neglect is unsubstantiated." Here, the child welfare agency clearly made a finding of abuse or neglect, as required by NAC 432B.170.

The standard for a criminal conviction is entirely different. Obviously, a criminal conviction requires proof beyond a reasonable doubt. However, a substantiation may stand even when a criminal prosecution is dropped or never pursued. A criminal conviction is not dispositive of a substantiation decision, nor would a substantiation be dispositive of a criminal conviction. Presenting cases to this Court that analyze sufficiency of the evidence when proof beyond a reasonable doubt is required has no bearing on whether there was a preponderance of the evidence to support a substantiation. As such, it has no bearing on this Court's decision.

Petitioner states the first amended finding of the hearing officer, the night the children locked themselves in the bathroom, is objectionable because Petitioner may or may not have been present and it may or may not have contained hearsay. As a rule, issues not raised before the District Court or in the appellant's opening brief on appeal are deemed waived. *Palmieri v. Clark Cnty.*, 131 Nev. Adv. Rep. 102, 367 P.3d 442 (2015). Claims that were not raised in the lower court are waived. *Dermody v. City of Reno*, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997); *Guy v. State*, 108 Nev. 770, 780 839 P.2d 578, 584 (1992), cert. denied, 507 U.S. 1009, 113 S. Ct. 1656 (1993); *Davis v. State*, 107 Nev. 600, 606, 817

P.2d 1169, 1173 (1991). Nor will an appellate court consider issues abandoned in district court. *Buck v. Greyhound Lines, Inc.,* 105 Nev. 756, 766, 783 P.2d 437, 443 (1989). Therefore, by failing to participate in his own administrative hearing, he is precluded from now arguing that any testimony taken was hearsay. Further, he cannot present evidence that he was or was not present, as his own failure to participate in the administrative hearing precludes him from doing so.

However, Petitioner fails to address the fact that the hearing officer specifically stated the substantiation was based upon the totality of the circumstances/facts over a period, rather than on a single incident. Therefore, this was simply the start of the analysis, and certainly not the conclusion of the analysis. The hearing officer then goes on to outline after that night, Petitioner signed a present danger plan, that required 24-hour supervision of Laura around the children due to her use of Xanax, alcohol abuse, and mental health issues. She found, very specifically, that on December 27, 2014, merely three days after signing this present danger plan, Petitioner failed to maintain 24-hour supervision of the children when Laura took Xanax and drank vodka and had to be hospitalized again. She further found that Petitioner violated the present danger plan again on January 2, 2015, when Laura was hospitalized again for Xanax and vodka.

Next, Petitioner states the hearing officer improperly relied on a near drowning incident in April of 2014. However, what the hearing officer stated was "Mr.

Eggleston was aware of Laura's drug and alcohol problem but failed to parent the children and failed to intervene to protect them. The 11-year-old child, K[redacted] R[redacted], primarily took care of the three minor children, even when Mr. Eggleston was home. Mr. Eggleston admitted to leaving most of the parenting to Laura, even when he was home, and despite knowing of her drug and alcohol abuse. **This was an ongoing problem. H[redacted] E[redacted] has a near-drowning incident in April 2014, while in the care of Laura and while Mr. Eggleston was home."** Again, the hearing officer made it clear the substantiation was based on the totality of the circumstances/facts over a period, rather than on a single incident. This was simply an example of poor or absent supervision, regardless of whether there was present danger, impending danger, or maltreatment. But this was merely one example of the extensive poor or absent supervision exhibited by Petitioner.

Next Petitioner seems to indicate he cannot be substantiated because the present danger plan included individuals who were NOT responsible for the welfare of the children. NRS 432B.130 states "A person is responsible for a child's welfare under the provisions of this chapter if the person is the child's parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for

all or a portion of the day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility." Here, Petitioner was the person responsible for the welfare of his own very young and very vulnerable children. Not their barely adult half-sisters who were visiting from college. They are not responsible for the children's welfare, Petitioner is. Petitioner is content to blame others for his neglect of his own children, rather than taking responsibility for his actions.

Further, his statement that he could do nothing to prevent Laura from abusing prescription medication and alcohol is further evidence of his utter failure to take responsibility for his own actions, and his own children. The entire amended appeal hearing decision focuses on Petitioner's failure to protect H[redacted] and R[redacted], not on his failure to fix Laura.

Finally, Petitioner takes issue with the fact the hearing officer found on December 28, 2014, he went to the hospital to sign consent for H[redacted] surgery, but then left and had limited contact with H[redacted] at the hospital. He takes issue with that because there is no evidence Georgina Stuart reviewed H[redacted] hospital records and that the hearing officer does not specify what limited contact means, for example did he visit once, twice, five times? How long did each visit last for? The appropriate time to determine those answers would have been at the administrative hearing. But again, because Petitioner utterly failed to participate,

he gave up the opportunity to question the witnesses who testified. Because he did so, he cannot now be heard to complain.

Further, the hearing officer specifically states the adult sister informs the hospital she was concerned about his utter failure to intervene to protect the children. Clearly, this was the issue regarding the hospital visit. But again, this isn't an isolated incident. This was another event, in the chain of events, that led to the totality of the circumstances.

It is clear, by the plain meaning of NRS 432B.020(1) coupled with NRS 432B.140, abuse and/or neglect can occur when a child is without proper care, control and supervision or lacks the subsistence, shelter, or other care necessary for their well-being, or is threatened with such. Here, DFS put on more than sufficient evidence to establish Petitioner failed to intervene on the children's behalf, he knew that Laura was an inappropriate care provider due to her mental health and drug use. He knew that constant supervision of the children was necessary. Yet he carried on as if DFS had never become involved, thus placing his children at risk.

CONCLUSION

The burden of proof is on the party attacking or resisting the decision to show the final decision is invalid. NRS 233B.135. Here, Petitioner has failed to show either the final decision of the agency is in violation of constitutional or

statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion. Because Petitioner has the burden and has failed at proving his burden, this Court upholds the hearing officer's substantiation of the Petitioner.

ORDER

The Court, having considered the briefing on the Petition, being fully advised in the premises and good cause appearing therefor, hereby finds and orders on the pleadings (no hearing having taken place) as follows:

IT IS HEREBY ORDERED that the Petition is DENIED.

IT IS HEREBY FURTHER ORDERED that the Decision's finding – i.e, that the substantiation of the allegation of Physical Injury (Abuse) - Physical Risk as to K[redacted] R[redacted], J[redacted] R[redacted], R[redacted] E[redacted], and H[redacted] E[redacted] against Mr. Eggleston was proven by a preponderance of the evidence and upheld – is AFFIRMED.

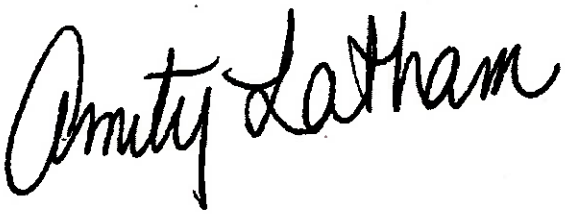
IT IS HEREBY FURTHER ORDERED that Amity C. Latham, Esq. and Felicia Quinlan, Esq. will serve a notice of entry of this Order on all other parties and file proof of such service within seven days after the date the Court sent this Order to the attorneys.

Dated this 13 day of October 2023.

DISTRICT COURT JUDGE

Respectfully submitted by:

STEVEN B. WOLFSON
DISTRICT ATTORNEY



By_____
Amity C. Latham
Chief Deputy District Attorney
Nevada State Bar No. 9316

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark County District Attorney's Office, and that on the ____ day of October 2023, I caused to be served a true and correct copy of the foregoing **AMENDED ORDER DENYING PETITION FOR JUDICIAL REVIEW** in the following manner:

(Electronic Service)

Billie Shadron (bshadron@carson.org)

(Mailing)

Paola M. Armeni, Esq.
William Schuller, Esq.
Clark Hill PLLC
1700 S. Pavilion Center Drive, Ste. 500
Las Vegas, NV 89135

James E. Wilson, Jr.
District Judge
First Judicial District Court
885 East Musser Street
Room 3057
Carson City, Nevada 89701

_____
Employee of Clark County District
Attorney's Office, Juvenile Division

EXHIBIT “UU”

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 STEVE EGGLESTON,)
)
5 Plaintiff,)
)
6 vs.) CASE NO. A-16-748919-C
) DEPT NO. 22
7 GEORGINA STUART; DEPARTMENT OF)
FAMILY SERVICES, CHILD SUPPORT)
8 SERVICES, CLARK COUNTY, NEVADA;)
LISA CALLAHAN; BRIAN CALLAHAN;)
9 AND DOES 1 THROUGH 100,)
INCLUSIVE,)
10)
Defendants.)
11 _____)

12

13

14

15

16

17

18 DEPOSITION OF LISA MCKAY

19 Taken on Friday, April 28, 2023

20 At 10:00 a.m.

21 At CLARK HILL, PLLC

22 1700 Pavilion Center Drive

23 Suite 500

24 Las Vegas, Nevada

25 REPORTED BY: SHIFRA MOSCOVITZ, CCR NO. 938

1 **assessment reports and you talked about how these**
2 **are done at various times, depending on what is**
3 **going on the case and things are changing. So in**
4 **other words, am I correct that the present danger**
5 **assessment report is an ongoing assessment report**
6 **done by the investigator at various times?**
7 A. Yes.
8 **Q. You were asked some questions about**
9 **guardianships, et cetera, you have seen the**
10 **guardianships in this case. Is it fair to say that**
11 **parents have the right to sign a guardianship over**
12 **to family members?**
13 A. Yes.
14 **Q. Okay. And if that happens, is that, if**
15 **that happens and it's agreeable with DFS or CPS, is**
16 **that the end of the DFS or CPS case?**
17 A. Yes.
18 **Q. Okay. Were you aware in this case that**
19 **Lisa Callahan, that was one of the people that got**
20 **the guardianship for the Eggleston boys also had a**
21 **prior guardianship in 2013 for one of Laura**
22 **Rodriguez's other children, Selina Rodriguez?**
23 A. I read that in the documentation provided
24 to me in March.
25 **Q. Okay. Are you able to tell us when the**

1 CERTIFICATE OF REPORTER

2

3 I, Shifra Moscovitz, Certified Court Reporter,
4 State of Nevada, do hereby certify:
5 That I reported the deposition of LISA MCKAY,
6 commencing on Friday, April 28, 2023, at 10:00 a.m.
7 That prior to being deposed, the witness was duly
8 sworn by me to testify to the truth. That I thereafter
9 transcribed my said shorthand notes into typewriting and
10 that the typewritten transcript is a complete, true and
11 accurate transcription of my said shorthand notes. That
12 prior to the conclusion of the proceedings, the reading and
13 signing was requested by the witness or a party.
14 I further certify that I am not a relative or
15 employee of counsel of any of the parties, nor a relative or
16 employee of the parties involved in said action, nor a
17 person financially interested in the action.
18 In witness whereof, I hereunto subscribe my name
19 at Las Vegas, Nevada, this 18th day of May, 2023.
20
21
22
23
24 SHIFRA MOSCOVITZ, CCR No. 938
25

EXHIBIT “VV”

AFFIDAVIT OF CRYSTALYN MINWEGEN-JOHANNESSOHN

STATE OF NEVADA)
) §
COUNTY OF CLARK)

CRYSTALYN MINWEGEN-JOHANNESSOHN being first duly sworn, deposes and states:

1. I am employed as an Assistant Manager by the Clark County Department of Family Services (DFS) Family Programs Office. I make this Affidavit in support of Defendant's Reply to Plaintiffs' Opposition to Clark County and Georgina Stuart's Motion for Summary Judgment (Reply) in Eggleston v. Stuart, Case No. A-16-748919-C.

2. That based upon my information and belief, Management made the ultimate decision regarding removal of the children from the Eggleston home on 1/6/15 at 2:45 p.m., and Georgina Stuart carried it out as required.

3. That based upon my information and belief, Georgina Stuart could not override Management's decision that the only two options available to the Eggleston parents were removal or temporary guardianships.

4. That no advance notice of the removal decision was legally required and advance notice could not be given because parents could flee with the children and/or someone might be injured.

5. That Reunification with parents is a goal where a child has been removed from the home and a Case Plan is established after removal. Reunification is not a goal when the child has not been removed from the home. In the Eggleston case, the children were not removed because the parents elected to give temporary guardianships of the children to a family member. Therefore, no Case Plan was established.

///

///

///

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Fax (702) 383-0701

6. This Affidavit is made in good faith and not for the purpose of undue advantage.

FURTHER AFFIANT SAITH NAUGHT.

CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
FAMILY PROGRAMS OFFICE

CRYSTALYN MINWEGEN-JOHANNESSOHN

SUBSCRIBED AND SWORN to before
me this 31st day of October, 2023.

AUDRIANNA CLICK
Notary Public-State of Nevada
APPT. NO. 21-8076-01
My Appt. Expires November 24, 2025

NOTARY PUBLIC in and for said
County and State

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Fax (702) 383-0701

EXHIBIT “WW”

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 STEVE EGGLESTON,)
)
5 Plaintiff,)
)
6 vs.) CASE NO. A-16-748919-C
) DEPT NO. 22
7)
GEORGINA STUART; DEPARTMENT)
8 OF FAMILY SERVICES, CHILD)
SUPPORT SERVICES, CLARK)
9 COUNTY, NEVADA; LISA)
CALLAHAN; BRIAN CALLAHAN; and)
10 DOES 1 through 100,)
inclusive,)
11)
Defendants.)
12 _____)

13

14

15 DEPOSITION OF EMILY McFARLING, ESQ.

16 VOLUME II

17 Taken on Friday, May 26, 2023

18 At 9:04 a.m.

19 By a Certified Court Reporter

20 At 1700 S. Pavilion Center Drive, Suite 500

21 Las Vegas, Nevada

22

23

24
Reported By: Shanyelle King, CCR No. 943
25 Job No. 984654

1 A. Yeah. "Order CPS case worker and resident
2 agent CPS also served renotice."
3 **Q. Okay.**
4 A. And that would mean like renotice a hearing
5 or something like that.
6 **Q. Right. And next.**
7 A. "Me: Paternity and revoke guardianship."
8 **Q. What does that mean?**
9 A. That's me asking if we could at least
10 establish paternity and revoke the guardianship in the
11 meantime.
12 **Q. So you asked the judge that?**
13 A. Yes.
14 **Q. Okay. Go ahead.**
15 A. The judge says, "There's no request
16 guardianship or return kids, just sole legal, physical,
17 and child support."
18 **Q. So in other words, you didn't ask for a**
19 **revocation -- sorry. You didn't ask for a guardianship**
20 **or a return of the kids; fair?**
21 A. In that case, but that wasn't before him that
22 day.
23 **Q. I know.**
24 A. Yeah.
25 **Q. And you just asked for sole legal and**

1 A. And then at the end it says, "If want me to
2 supersede, need pled and noticed."
3 **Q. Okay. So you need to plead more -- is that a**
4 **"more," or is that an "and"?**
5 A. "And."
6 **Q. Okay.**
7 A. Plead and noticed.
8 **Q. So did you do that? I didn't see any other**
9 **pleadings.**
10 A. No.
11 **Q. Okay.**
12 A. I cannot remember. I know we had --
13 **Q. There's no other pleadings.**
14 A. Yeah. I think this was the first hearing.
15 Is this the first hearing?
16 **Q. I don't recall.**
17 A. I believe there were two hearings, and there
18 was -- the judge's commentary was different in the
19 different hearings. I'd have to see. I'd have to see
20 the, you know, to remember more specifically.
21 **Q. Let's look at the last page. Could you read**
22 **that? We didn't cover it.**
23 A. Okay. "Want Illinois court to relinquish or
24 guardians brought into my jurisdiction."
25 **Q. So this is the judge?**

1 A. Yes. So he's -- his kind of final concluding
2 is that he either wants Illinois to relinquish
3 jurisdiction or for the guardians to be brought into his
4 jurisdiction by adding them to the case.
5 **Q. And you didn't add them to the case; right?**
6 A. No.
7 **Q. Thank you for reading that.**
8 (Exhibit 23 marked.)
9 BY MS. GALATI:
10 **Q. So this is 23. Do you recognize this**
11 **document?**
12 A. It appears to be the supplemental exhibit
13 with the work schedule and childcare.
14 **Q. Okay. So this postdates that hearing that we**
15 **saw, the prove-up hearing, 6/24/2015; correct?**
16 A. Yeah.
17 **Q. And there was a reference in there to a**
18 **supplement; right?**
19 A. Yes.
20 **Q. Okay. So when you said that, you know, once**
21 **Steve gets the kids, then he needs to supplement the**
22 **exhibit. Steve didn't get the kids by 12/22/2015;**
23 **correct?**
24 A. No, he didn't.
25 **Q. And you filed the supplement --**

1 REPORTER'S CERTIFICATE

2

STATE OF NEVADA)
3) ss.
COUNTY OF CLARK)
4

5 I, Shanyelle L. King, Nevada CCR No. 943, do
6 hereby certify: That I reported the taking of the
7 deposition of the witness, EMILY McFARLING, ESQ., at the
8 time and place aforesaid;
9 That prior to being examined, the witness was
10 by me duly sworn to testify to the truth, the whole truth
11 and nothing but the truth;
12 That I thereafter transcribed my said shorthand
13 notes into typewriting and that the typewritten
14 transcript of said deposition is a complete, true and
15 accurate transcription of said shorthand notes taken down
16 at said time to the best of my ability.
17 I further certify that I am not a relative or
18 employee of any party involved in said action, nor a
19 person financially interested in the action; and that
20 transcript review was not requested.
21 Dated at Las Vegas, Nevada, this 7th day of
22 June, 2023.
23 Shanyelle L. King
24 Shanyelle L. King, CCR No. 943, RPR
25

EXHIBIT “XX”

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 STEVE EGGLESTON,

5 Plaintiff, Case No. A-16-748919-C
Dept. No. 22

6 vs.

7 GEORGINA STUART; DEPARTMENT OF
FAMILY SERVICES, CHILD SUPPORT
8 SERVICES, CLARK COUNTY, NEVADA;
LISA CALLAHAN, BRIAN CALLAHAN;
9 AND DOES 1 THROUGH 100, INCLUSIVE,

10 Defendants.
_____/
11

12

13

14 VIDEORECORDED DEPOSITION OF GEORGINA ANDERSON

15 Taken at the Law Offices of Clark Hill PLLC

16 Taken on Friday, March 24, 2023

17 at 9:48 A.M.

18 at 1700 South Pavilion Center Drive, Suite 500
Las Vegas, Nevada
19

20

21

22

23

24 Job No.: 960371

25 Reported by: Marcia Leonard, CCR 204

11:01:42 A. Yes.

Q. So you meet with Mr. Eggleston in the family's home?

A. Yes.

11:01:47 **Q. And you advise Steven of the report allegations?**

A. Yes.

Q. Okay. What -- did you tell him specifically, did you tell him what the person reporting had said about

11:02:00 **him?**

A. I read him the whole report.

Q. Okay. Did he have anything to say?

A. I don't remember other than what's in my case note.

11:02:18 **Q. Which is -- there is nothing in there to indicate that he said anything, right?**

A. It would be in the NIA.

Q. Okay. Do you remember when you told Steve that the source made the statement that she suspected that he

11:02:35 **used drugs or alcohol, do you remember how he responded to that?**

A. I don't.

Q. Okay. So it says in the next paragraph, "Present with Steve and the mother adult children, Selena

11:02:54 **and Alexis Rodriguez."**

12:12:35 1 **Q. Did you speak to Alexis Rodriguez?**
2 A. I don't remember.
3 **Q. Did you speak to Selena Rodriguez?**
4 A. I don't remember.
12:12:42 5 **Q. Did you tell any of those three that your plan**
6 **was to come to the house to tell the parents that the**
7 **kids could no longer remain?**
8 A. I don't remember.
9 **Q. Would you have put that anywhere? In other**
12:12:54 10 **words, would you have put that in any of your notes?**
11 A. No. There is a separate screen, no.
12 **Q. Why did you call the police? You called the**
13 **police on 1/7 of '15, right, to assist at the home?**
14 A. Yes.
12:13:16 15 **Q. 1/7/15, sorry. Why did you do that?**
16 A. It's protocol sometimes that we request
17 officer's assistance just to make sure that the
18 transition is smooth and seamless.
19 **Q. Was there any interaction with Mr. Eggleston**
12:13:33 20 **prior to 1/7/15 that would cause you concern that you**
21 **would have to call the police?**
22 A. No.
23 **Q. Was it more just a situation of kids being**
24 **removed out of a house and parents being upset?**
12:13:46 25 A. That and Laura's not engagement in treatment

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)

4 I, Marcia Leonard, a duly commissioned Notary Public,
5 Clark County, State of Nevada, do hereby certify:
6 That I reported the taking of the deposition of the
7 witness, Georgina Anderson, commencing on March 24, 2023,
8 at 9:48 a.m.
9 That prior to being examined, the witness was by me
10 first duly sworn to testify to the truth, the whole
11 truth, and nothing but the truth.
12 That I thereafter transcribed my said shorthand notes
13 into typewriting and that the typewritten transcript of
14 said deposition is a complete, true and accurate
15 transcription of shorthand notes taken down at said time.
16 I further certify that I am not a relative or employee
17 of an attorney or counsel of any of the parties, nor a
18 relative or employee of any attorney or counsel involved
19 in said action, nor a person financially interested in
20 the action.
21 IN WITNESS WHEREOF, I have hereunto set my hand and
22 affixed my official seal in my office in the County of
23 Clark, State of Nevada, this 11th day of April, 2023.
24 Marcia Leonard
Marcia Leonard, CCR 204
25

EXHIBIT “YY”

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 STEVE EGGLESTON,)
)
5 Plaintiff,)
)CASE NO: A-16-748919-C
6 vs.)DEPT NO: 22
)
7 GEORGINA STUART; DEPARTMENT OF)
FAMILY SERVICES, CHILD SUPPORT)
8 SERVICES, CLARK COUNTY, NEVADA;)
LISA CALLAHAN; BRIAN CALLAHAN;)
9 AND DOES 1 THROUGH 100, INCLUSIVE,)
)
10 Defendants.)
_____)
11

12

13

14

15 DEPOSITION OF MARY ATTEBERRY

16 LAS VEGAS, NEVADA

17 FRIDAY, JANUARY 6, 2023

18

19

20

21

22

23 REPORTED BY: VANESSA LOPEZ, CCR NO. 902

24 LST JOB NO.: 946703

25

1 **Q. Was there anything that you had read that led you**
2 **to believe there would have been safety concerns with her**
3 **going to the home?**
4 A. I mean, given the mom's out-of-control behaviors
5 with her mental health and substance abuse and -- I -- I
6 could see why she would take law enforcement, yes.
7 **Q. All right. Is there anything -- I guess I didn't**
8 **ask a good question.**
9 **Was there anything about Steve that you read that**
10 **would cause safety concerns?**
11 A. We weren't only responding out to Steve.
12 **Q. Okay. But you didn't answer my question. So were**
13 **there any safety concerns as it related to Steve**
14 **specifically?**
15 A. That I read or that I staffed with her?
16 **Q. Let's start with that you staffed with her.**
17 A. The only thing that I can think -- think of is
18 that he was very oppositional to her.
19 **Q. Ma'am, you would agree if -- when you come into a**
20 **home, announce that removal is an option of the kids, that**
21 **most people aren't going to be too thrilled with that?**
22 MS. GALATI: Objection. Sorry. Go ahead.
23 THE WITNESS: I agree.
24 **Q. (By Ms. Armeni) So, I'm sorry, when you staffed**
25 **with her, you remember her telling you that he was**

1 **oppositional with her?**
2 A. Well, he just -- he didn't agree with the
3 concerns, our involvement with his family. So I don't know
4 if oppositional was the correct word, but . . .
5 **Q. And you remember that -- you -- how many times did**
6 **you staff with her?**
7 A. At least twice.
8 **Q. And are those both documented in the case notes?**
9 A. No, no.
10 **Q. One is documented?**
11 A. One is documented that I attended a meeting, but I
12 do remember her office was directly across from mine and I
13 do remember her discussing the -- her desk -- we could see
14 each other. We didn't have to be in each other's offices.
15 I can remember her telling me about the case and
16 some of the specifics of it, because I was in -- a
17 supervisor that was in the office. So I do remember vaguely
18 some of the things that she went over on the case.
19 **Q. Do you believe -- are those the only two times**
20 **that you remember?**
21 A. Yes.
22 **Q. Okay. Do you believe that this time that you are**
23 **speaking about where you were talking from desk to desk --**
24 **do you believe that happened before the CFT?**
25 A. Yes. Or before the 6th CFT, yes. What's the 6th

1 STATE OF NEVADA)
) SS:
2 COUNTY OF CLARK)

3 CERTIFICATE OF REPORTER

4 I, Vanessa Lopez, a duly commissioned and licensed
5 court reporter, Clark County, State of Nevada, do hereby
6 certify: That I reported the taking of the deposition of
7 MARY ATTEBERRY, commencing on Friday, January 6, 2023, at
8 the hour of 9:34 a.m.;
9 That the witness was, by me, duly sworn to testify
10 to the truth and that I thereafter transcribed my said
11 shorthand notes into typewriting, and that the typewritten
12 transcript of said deposition is a complete, true, and
13 accurate transcription of said shorthand notes;
14 I further certify that I am not a relative or
15 employee of any of the parties involved in said action, nor
16 a relative or employee of an attorney involved in said
17 action, nor a person financially interested in said action;
18 That the reading and signing of the transcript was
19 requested.
20 IN WITNESS WHEREOF, I have hereunto set my hand in
21 my office in the County of Clark, State of Nevada, this 11th
22 day of January, 2023.
23
24 VANESSA LOPEZ, CCR NO. 902
25

EXHIBIT “ZZ”

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

FILED
15 JUL 10 AM 10:57
JUVENILE CENTER
CIRCUIT CLERK
WILL COUNTY, ILLINOIS

IN RE THE ESTATE OF)
)
R[redacted] E[redacted] and)
H[redacted] E[redacted],) NO. 15 P 231
)
Minors.)

ORDER

This matter coming before this court on the Emergency Oral Motion of the Guardian ad Litem, the court waiving notice herein, the court having reviewed the Order of Custody and minutes entered in Case no. D508989 in the Eighth Judicial District Court, Clark County, Nevada, and being advised by the guardian ad litem, Jennifer M. Lynch, that a dispute now exists between the guardian, Lisa Callahan, and the minors' natural father, Steven Eggleston, as to the immediate implications of such Order and minutes and the Orders entered in this court, the court having conducted a judicial conference as required under 750 ILCS 36/204(d), this court finding that there is no objection to this court's exclusive and continuing sole jurisdiction over the minor children from presiding Judge Potter in Case no. D508989 in the Eighth Judicial District Court, Clark County, Nevada, this court finds as follows:

A. This court has sole and exclusive jurisdiction over the minor children, R[redacted] E[redacted] (date of birth [redacted]) and H[redacted] E[redacted] (date of birth [redacted]) under the 750 ILCS 36/202-204, the Uniform Child-Custody Jurisdiction and Enforcement Act;
B. No other court has the authority to enter any Order affecting the physical custody of the minor children herein;
C. That the continuing jurisdiction of this court is necessary to protect the minor children from mistreatment and threats of mistreatment and abuse;

This Court further Orders as follows:

1. The minor children herein shall not be removed from this court's jurisdiction without specific Order of this court;
2. The minor children shall remain in the sole physical custody of the guardian herein, Lisa Callahan;
3. The guardian ad litem shall receive five (5) certified copies of this order and shall provide the best notice of entry of this Order to the parties herein;
4. Status date of July 13, 2015 at 9:00a.m. shall stand.

ENTER: 7/10/15
JUDGE

Jennifer M. Lynch
JUNE, PRODEHL, RENZI & LYNCH, L.L.C.
1861 Black Road
Joliet, Illinois 60435
(815) 725-8000
Atty. No. 06275404

CERTIFICATION

I, PAMELA J. MCGUIRE, CLERK OF THE 12TH JUDICIAL CIRCUIT, WILL COUNTY, ILLINOIS, CERTIFY THIS TO BE A TRUE COPY OF AN ORIGINAL RECORD OF THIS CIRCUIT COURT

SIGNED: CLERK DATE 7-10-15

EXHIBIT
31
McFarling

ELECTRONICALLY SERVED
1/15/2024 3:53 PM

Electronically Filed
01/15/2024 3:52 PM
CLERK OF THE COURT

FFCO

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVE EGGLESTON, **Plaintiff,** **Vs.** **GEORGINA STUART; CLARK COUNTY, NEVADA; LISA CALLAHAN; BRIAN CALLAHAN; and DOES I through 100, inclusive,** **Defendants**	**Case No. A-16-748919-C** **Dept. No. XXII**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter concerning the Motion for Summary Judgment filed September 29, 2023 by Defendants CLARK COUNTY and GEORGINA STUART came on for hearing on the 7th day of November 2023 at 8:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN JOHNSON presiding; Plaintiff STEVE EGGLESTON appeared by and through his attorneys, PAOLA M. ARMENI, ESQ. and WILLIAM D. SCHULLER, ESQ. of the law firm, CLARK HILL; and Defendants CLARK COUNTY and GEORGINA STUART appeared by and through their attorney, FELICIA GALATI, ESQ. of the law firm, OLSON CANNON GORMLEY & STOBERSKI. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. As set forth within the First Amended Complaint filed August 10, 2017, Plaintiff STEVE EGGLESTON alleges, on or about January 6, 2015, Defendant GEORGINA STUART, an

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

employee of the Clark County Department of Family Services (also referred to as "DFS" herein), and two armed police officers came to remove his two minor sons from Plaintiff's home and forced him to sign temporary guardianship papers in favor of Defendant LISA CALLAHAN (the children's material aunt) and her husband, Defendant BRIAN CALLAHAN,[1] under threat, if he did not do so, the boys would be housed and cared for within the DFS foster care program and he would never see the children again. Upon his signing, MS. CALLAHAN took the children to live in another state. Further, approximately one month after MR. EGGLESTON and the boys' mother, LAURA RODRIGUEZ, signed the temporary guardianship papers before a Notary Public, DFS made a finding of child maltreatment. In his defense, MR. EGGLESTON alleges in this lawsuit MS. STUART issued a false report he had subjected the children to abuse or neglect by failing to protect them from their mother who was suffering from drug and alcohol addiction and experiencing suicidal thoughts. MR. EGGLESTON appealed the child maltreatment finding to the DFS Appeals Unit and the decision was upheld. MR. EGGLESTON then requested a fair hearing to administratively appeal that decision, a right provided in relevant state statutes. The instant civil action was filed over a year after MR. EGGLESTON made the initial request for a fair hearing[2] which was continued at least three times upon Plaintiff's request and due to recusal of the original hearing officer.[3] On October 15, 2020, a final administrative hearing of the hearing officer upheld DPS's substantiation of physical injury and risk pursuant to NRS Chapter 432B and Nevada

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[1]MR. CALLAHAN remained in Illinois when his wife traveled to Las Vegas, Nevada, but gave his consent to MRS. CALLAHAN placing his name as temporary co-guardian of the children in the guardianship papers. *See* Exhibit 5, Deposition of LISA CALLAHAN, pp. 179-180, Bates Nos. OPP000059-OPP000060, attached to Appendix to Motion for Summary Judgment filed October 17, 2023.

[2]The first hearing before the administrative hearing officer was scheduled August 1, 2017. *See* Eggleston v. Stuart, 137 Nev. 506, 508, 495 P.3d 482, 487 (2021). Ultimately, the hearing officer's decision upholding the substantiation by DFS Appeals Unit was rendered October 15, 2020. An Amended Order Denying Petition for Judicial Review was filed October 13, 2023. *See* Exhibit TT to Defendants' Reply to Opposition to Motion for Summary Judgment filed October 31, 2023.

[3]*See* Exhibit TT, Amended Order Denying Petition for Judicial Review, pp. 3-6, attached to Defendants' Reply to Opposition to Motion for Summary Judgment.

Administrative Code (NAC) 432B.[4] In the meantime, MR. and MS. CALLAHAN sought and obtained permanent guardianship of Plaintiff's two minor sons in their home state of Illinois. Within his First Amended Complaint, MR. EGGLESTON asserted four causes of action: (1) violation of his civil rights under Title 42 U.S.C. §1983 against Defendants CLARK COUNTY and MS. STUART, (2) Conspiracy, Aiding and Abetting to violate civil rights against all Defendants,[5] (3) intentional infliction of emotional distress against all Defendants and (4) defamation, libel and slander against all Defendants.

2. On September 29, 2023, Defendants STUART and CLARK COUNTY moved this Court for summary judgment in their favor upon the following bases:

First, the First Amended Complaint does not allege any specific constitutional amendment or statutory right that has been violated. *Second*, assuming MR. EGGLESTON is asserting a violation of his Fourteenth Amendment rights, such claim fails as these Defendants did not remove the minor children from the home, take them into protective custody and/or terminate Plaintiff's parental rights. Instead, on advice of his counsel, MR. EGGLESTON chose to sign temporary guardianship papers in favor of MR. and MRS. CALLAHAN. Once he and the children's mother did so on or about January 7, 2015, "DFS/CPS was no longer involved with the EGGLESTON family and processed closing the case as required by State law."[6] *Third*, MR. EGGLESTON was not deprived of procedural due process. He was told the findings of CPS' investigative report dated December 22, 2014 of MS. RODRIGUEZ'S alcohol and drug abuse, her physical abuse of all children living in

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[4]As set forth *supra*, after Defendants CLARK COUNTY and STUART filed their Motion for Summary Judgment, on October 13, 2023, the First Judicial District Court filed its Order denying MR. EGGLESTON'S Petition for Judicial Review and affirming the substantiation of the allegation of Physical Injury (Abuse) – Physical Risk against MR. EGGLESTON. *See* Exhibit TT attached to Defendants' Reply to Opposition to Motion for Summary Judgment.

[5]Of note, as set forth in Eggleston, 137 Nev. at 509 fn. 4, 495 P.3d at 488 fn.4 (2021), the lower court's decision was reversed in part, the dismissal of the conspiracy claim under Title 42 U.S.C. §1985 was affirmed on appeal, whereby, as set forth *infra*, this Court's focus in deciding Defendants' Motion for Summary Judgment shall be MR. EGGLESTON'S claim for violation of civil rights and state causes of action for intentional infliction of emotional distress and defamation/libel/slander.

[6]*See* Defendants' Motion for Summary Judgment filed September 29, 2023, p. 14.

the home and both parents' neglect of the youngsters. After the DFS/CPS investigation was open, there was substantial interaction for approximately two weeks between MR. EGGLESTON and MS. STUART concerning the children's safety both in electronic mail communication and in a face-to-face meeting held December 24, 2015. MR. EGGLESTON also had the opportunity to speak with his attorney while MS. STUART and the police officers were in the home on or about January 7, 2015 at which time MS. STUART told him her supervisors had not approved in-home services and recommended the children's removal. He signed the temporary guardianship papers upon advice of his counsel and notice of the allegation reports and threats. Notwithstanding that point, MR. EGGLESTON had first-hand knowledge of MS. RODRIGUEZ'S substance abuses and failed to address the associated threats to his two minor sons. Furthermore, Defendants CLARK COUNTY and STUART are not liable under federal law for the conduct of non-County actors. *Fourth,* Plaintiff's First Cause of Action for violation of civil rights fails as moving Defendants are entitled to qualified immunity. *Fifth,* Plaintiff has not demonstrated all the elements of his claim for intentional infliction of emotional distress. Notwithstanding that premise, moving Defendants are entitled to immunity for liability based upon the exercise or performance of their discretionary functions. *Sixth,* MS. CALLAHAN'S conduct is a superseding intervening cause of MR. EGGLESTON'S claimed damages and injuries. *Seventh,* with respect to the defamation claims, MR. EGGLESTON cannot establish moving Defendants made libelous statements or that such caused Plaintiff damage. *Eighth,* as MR. EGGLESTON has not sued MS. STUART in her individual capacity, there can be no entitlement to punitive damages. *Lastly,* and as pointed out for the first time within the Reply, it is moving Defendants' view, MR. EGGLESTON'S claims are barred by the doctrine of *res judicata* given the October 13, 2023 decision from the First Judicial District Court denying Plaintiff's Petition for Judicial Review.

. . .

MR. EGGLESTON opposes, arguing there remain genuine issues of material fact whereby summary judgment should not be granted. He first proposes there are discrepancies between what was discovered during MS. STUART'S investigation as reported by her and that which actually happened. For example, the December 22, 2014 CPS report indicated MS. RODRIGUEZ'S daughter, ALEXIS RODRIGUEZ, and the children locked themselves in the bathroom "on multiple occasions and with increasing frequency[] to be safe from Laura [RODRIGUEZ] who was abusing alcohol and drugs,"[7] when, in actuality, ALEXIS had recently returned to Las Vegas for the 2014 winter school break and she testified in deposition the children locked themselves in the bathroom on only one occasion.[8] While MS. STUART reported MR. EGGLESTON admitted to working at home in his office and was unaware of what was occurring, Plaintiff claims he never said he did not know what was transpiring with the children. Further, although it was reported LAURA RODRIGUEZ told Defendants Plaintiff "worked 16 hours a day, 7 days a week," the children's mother could not have personal knowledge of what she stated as, after the Present Danger Plan was put in place, she was in and out of the hospital and "MIA for hours."[9] Further, while Defendants' motion states: "On 12/24/15,[10] Stuart made face-to-face contact with Plaintiff, advised him of the reported allegations, and provided him with an agency brochure indicating his rights on removal, visitation, etc.," MR. EGGLESTON disputed that position within his First Amended Complaint, paragraph 13 when he stated "[n]o suggestion of any kind was made that any of the children were in any kind of danger, that there had been any abuse or neglect of any of the children, that Plaintiff[was] being investigated as being abusive or neglectful, or that he had been or was unfit to

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[7]*See* Opposition to Defendants CLARK COUNTY'S and STUART'S Motion for Summary Judgment filed October 17, 2023, p. 4 *quoting* Defendants' Motion for Summary Judgment, pp. 3-4.

[8]*See* Opposition to Defendants' Motion for Summary Judgment, p. 4; *also see* Exhibit 1, Deposition of ALEXIS RODRIGUEZ, p. 165, Bates No. OPP000013, attached to Appendix to Plaintiff's Opposition to Motion for Summary Judgment.

[9]*See* Opposition to Defendants' Motion for Summary Judgment, p. 4, *quoting* Defendants' Motion, p. 6.

[10]Presumably, the reference to "12/24/15" is a typographical error contained within the motion as quoted by Plaintiff in his Opposition, p. 5.

have custody over and raise his sons."[11] MR. EGGLESTON also points out there were also discrepancies between that reported in MS. STUART'S "UNITY notes" and what actually transpired.[12] In short, in MR. EGGLESTON'S view, serious allegations were made but not thoroughly investigated and corroborated to give rise to "a reasonable inference of imminent danger sufficient to justify taking children into temporary custody."[13] Notwithstanding the aforementioned, MS. STUART made misrepresentations to both MR. EGGLESTON and his attorney, EMILY MCFARLING, ESQ., regarding what would happen if Plaintiff signed the temporary guardianship papers. Specifically, according to Plaintiff, the representation was, if MR. EGGLESTON signed the guardianship papers allowing time for the children's mother to move to a resident treatment program, "the Eggleston Boys would be returned to [MR. EGGLESTON] in several days."[14]

MR. EGGLESTON further argues within his Opposition, while moving Defendants propose his First Amended Complaint fails to allege any specific constitutional Amendment or statutory right,[15] the Nevada Supreme Court in Eggleston, 137 Nev. at 511-512, 495 P.3d at 489-490, found Plaintiff's complaint presented a substantive due process claim for violation of his fundamental right to parent his children. Further, taking MR. EGGLESTON'S allegations as true, the high court stated "the State's actions 'shock the conscience' by removing the possibility of reunification and by violating Eggleston's fundamental right to raise his children. The constitutional violation was

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[11]*See* Opposition to Defendants' Motion for Summary Judgment, p. 5. This Court notes MR. EGGLESTON actually filed and signed the First Amended Complaint.

[12]*Id.*, pp. 6-7.

[13]*Id.*, pp. 13-14, *quoting* Demaree v. Pederson, 887 F.3d. 870, 879 (9th Cir. 2018).

[14]*Id.*, p. 16, *quoting* First Amended Complaint, paragraph 26(g); *also see* Exhibit 16, Deposition of EMILY MCFARLING, pp. 20-21, of Appendix to Plaintiff's Opposition to Defendants' Motion for Summary Judgment filed October 17, 2023 ("I clarified with [MS. STUART] that, you know, what happens if he does sign these guardianship papers? Number one, she confirmed to me that Lisa Callahan and Brian Callahan were not going to be taking the children outside the state of Nevada, that they were just going to stay with them in Nevada. She confirmed that it was a temporary, it was only a temporary guardianship, and it was only until Steve got his affairs in order. That it was very, very temporary. Just get childcare sorted out, get everything under control, not things that take very long to do, and then he would have the children. She also confirmed that if he signed the guardianship papers, that they would not file a petition, an abuse and neglect petition, against Steve and Laura, and the DFS case would then just be closed out.").

[15]*See* Defendants' Motion for Summary Judgment, p. 13.

complete when the State forced Eggleston to sign the temporary guardianship papers, and thus this claim is fundamentally a substantive due process one…."[16]

CONCLUSIONS OF LAW

1. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrates no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." *See* NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the non-moving party. *Id.*

2. While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party bears the burden "to do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475, 574, 586 (1986), *cited by* Wood, 121 Nev. at 732. The non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the evidence of a genuine issue for trial or have summary judgment entered against him." Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992), *cited by* Wood, 121 Nev. at 732. The non-moving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Bulbman, 108 Nev. at 110, 825 P.2d 591, *quoting* Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). As set forth *supra*, Defendants CLARK COUNTY and STUART move this Court for summary judgment upon the bases, in their view, there remain no genuine issues of material fact, and they are entitled to judgment as a matter of law.

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[16] Eggleston, 137 Nev. at 512, 495 P.2d at 489-490.

3. Moving Defendants argue MR. EGGLESTON'S claims are barred by the doctrine of *res judicata* within their Reply as the First Judicial District Court denied Plaintiff's Petition for Judicial Review by Amended Order filed October 13, 2023, and in doing so, affirmed the decision of the hearing officer that substantiation of the allegation of Physical Injury (Abuse) – Physical Risk against MR. EGGLESTON had been proven by a preponderance of the evidence.

4. As set forth in Five Star Capital Corporation v. Ruby, 124 Nev. 1048, 1051, 194 P.3d 709 (2008), "[t]he meaning of the term 'res judicata' has evolved over time in the judicial system and confusion continues among courts as to what "res judicata" encompasses. In some jurisdictions the term includes both claim and issue preclusion, while in other jurisdictions claim and issue preclusion are separated, with 'res judicata' referring to claim preclusion and 'collateral estoppel' referring to issue preclusion." To provide clarity, the high court in Five Star Capital Corporation, 124 Nev. 1048, 194 P.3d 709, separated the two legal doctrines and referred to them as claim and issue preclusion.

5. The three-part test for determining whether claim preclusion should apply is (1) the parties or their privies are the same, (2) the final judgment is valid and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case.[17] This test maintains the well-established principle claim preclusion applies to all grounds of recovery that were or could have been brought in the first case. The application of issue preclusion involves a fourth factor to those pertain to claim preclusion; the fourth factor requires the issue was actually and necessarily litigated. That is, the factors necessary for the application of issue preclusion are (1) the issue decided in the prior litigation must be identical to the issue presented in the action, (2) the initial ruling must have been on the merits and have become final, (3) the party

[17] *See* University of Nevada v. Tarkanian, 110 Nev. 581, 600, 879 P.2d 1180, 1191 (1994); Executive Management v. Tricor Title Insurance Company, 114 Nev. 823, 835, 963 P.2d 465, 473 (1998).

against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation and (4) the issue was actually and necessarily litigated. Five Star Capital Corporation, 124 Nev. at 1055.

6. Considering the factors of both claim and issue preclusion, this Court concludes issue preclusion is applicable to two of MR. EGGLESTON'S remaining causes of action and both claim and issue preclusion result in a barring of his count for defamation, slander and libel. In affirming the hearing officer's decision, the First Judicial District Court held the substantiation of Physical Injury (Abuse) – Physical Risk against MR. EGGLESTON was proven by a preponderance of the evidence. The decision was final, and clearly, MR. EGGLESTON was a party to the prior litigation. The issue was actually and necessarily litigated. However, the First Judicial District Court did not decide all the issues within MR. EGGLESTON'S claims filed here. Issue preclusion applies whereby there need be no re-litigation regarding the substantiation of the allegations of Physical Injury (Abuse) – Physical Risk within this lawsuit.

MR. EGGLESTON'S Title 42 U.S.C. §1983 Claim

7. Title 42 U.S.C. §1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

To prove a cause of action under Title 42 U.S.C. §1983, MR. EGGLESTON must prove (1) Defendants acted under color of state law and (2) they deprived him of rights secured by the United States Constitution or federal law. *See* Ortega v. Reyna, 114 Nev. 55, 58, 953 P.2d 18 , 20-21

(1998), *citing* Cummings v. Charter Hospital, 111 Nev. 238, 245, 871 P.2d 320, 324 (1994). In this case, the parties do not dispute Defendants were acting under color of state law at all times relevant to this matter. The issue to be decided with respect to the Title 42 U.S.C. §1983 cause of action is whether CLARK COUNTY and MS. STUART deprived MR. EGGLESTON of his constitutional rights.

8. As set forth by the Nevada Supreme Court in Eggleston, 137 Nev. at 511, 485 P.3d at 489, MR. EGGLESTON'S Complaint presented a substantive due process claim for violation of the fundamental right to parent children. "The fundamental right to 'bring up children' is encompassed within the right to liberty, a core guarantee protected by the Due Process Clause of the Fourteenth Amendment." *Id.*, *citing* Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). "The liberty interest…of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

9. Here, MR. EGGLESTON claims, *inter alia*, CLARK COUNTY and MS. STUART "arbitrarily and capriciously interfered with his constitutional rights when, without cause, they forced him under duress to sign temporary guardianship papers leading to the unwarranted removal of his children from his care." *Id.*,137 Nev. at 511-512, 485 P.2d at 489. These particular facts were not reviewed by the First Judicial District Court, and thus, not barred in this case under the doctrines of issue or claim preclusion. Given the evidence presented in support of the parties' papers—some of which have been discussed *supra*--this Court concludes there remain questions of material fact for the jury to answer with respect to whether CLARK COUNTY and MS. STUART violated MR. EGGLESTON'S constitutional rights, and particularly his fundamental right to parent his children, "a core guarantee protected by the Due Process Clause of the Fourteenth Amendment." Meyer, 262 U.S. at 399, 43 S.Ct. 625, 67 L.Ed. 1042.

10. Defendants propose, even if there remain genuine issues of material fact regarding whether a deprivation of civil rights occurred, CLARK COUNTY and MS. STUART are entitled to qualified immunity as a matter of law. Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the "objective reasonableness" of the action, assessed in light of the legal rules that were "clearly established" at the time the action was taken. Anderson v. Creighton, 483 U.S. 635, 635, 107 S.Ct. 3034, 3036, 97 L.Ed.2d 523 (1987), *citing* Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). In order to conclude the right which the official allegedly violated is "clearly established," the contours of the right must be sufficiently clear a reasonable official would understand what he is doing violates that right. *Id.*, 483 U.S. at 635, 107 S.Ct. at 3036-3037. In this Court's view, the conflicting facts presented do not support the conclusion MS. STUART is entitled to the protection of qualified immunity as a matter of law. While it appreciates the positions taken by CLARK COUNTY and MS. STUART, this Court cannot ignore the facts MR. EGGLESTON has presented in opposition. MR. EGGLESTON presented evidence, *inter alia*, MS. STUART (1) concealed material facts about her investigation and intentions from him, (2) misrepresented her authority to offer rental assistance and in-home services and (3) coerced MR. EGGLESTON and MS. RODRIGUEZ into executing the temporary guardianship papers under the guise he would see his minor boys in several days when, at this juncture, he has not seen his children for years. If the jury finds such actions were taken, such would not be objectively reasonable in light of the legal rules that were clearly established at the time they occurred. For the aforementioned reasons, this Court denies Defendants' Motion for Summary Judgment as it pertains to the First Cause of Action.

MR. EGGLESTON'S Intentional Infliction of Emotional Distress Claim.

11. The elements of a *prima facie* case for intentional infliction of emotional distress are (1) extreme and outrageous conduct by the defendant, (2) intent to cause emotional distress or

reckless disregard as to that probability, (3) severe emotional distress and (4) actual and proximate causation of the emotional distress. Branda v. Sanford, 97 Nev. 643, 648, 637 P.2d 1223, 1227 (1981), *citing* Star v. Rabello, 997 Nev. 124, 625 P.2d 90 (1981), *in turn, citing* Cervantes v. J.C. Penney, Inc., 24 Cal.3d 579, 156 Cal.Rptr. 198, 595 P.2d 975 (1979). Notably, a physical impact or injury, as opposed to an emotional one, has not necessarily been required to state a claim for intentional infliction of emotional distress. Sadler v. PacifiCare of Nevada, 130 Nev. 990, 997, 340 P.3d 1264, 1268 (2014), *citing* Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983). With that said, a plaintiff must set forth "objectively verifiable indicia" to establish he "actually suffered extreme or severe emotional distress." Franchise Tax Board of California v. Hyatt, 130 Nev. 662, 695, 335 P.3d 125 (2014), *vacated and remanded on other grounds,* Franchise Tax Board of California v. Hyatt, 578 U.S. 171, 136 S.Ct. 1277, 194 L.Ed.2d 431 (2016), *citing* Miller v. Jones, 114 Nev. 1291, 1299-1300, 970 P.2d 571, 577 (1998).

12. In Franchise Tax Board of California, 130 Nev. at 696-697, 335 P.3d 125, the Nevada Supreme Court specifically adopted the "sliding-scale approach" to proving a claim for intentional infliction of emotional distress, which is the increased severity of the conduct will require less in the way of proof that emotional distress was suffered. That is, under the sliding-scale approach, while medical evidence is one acceptable manner in establishing that severe emotional distress was suffered for purposes of an intentional infliction of emotional distress claim, other objectively verifiable evidence may suffice to establish the claim when the defendant's conduct is more extreme, and thus, requires less evidence of the physical injury suffered. *Also see* Restatement (Second) of Torts §46, comments j and k (1977). "The intensity and the duration of the distress are factors to be considered in determining its severity. Severe distress must be proved, but in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed." Restatement (Second) of Torts §46, comment j; *also see* comment k

(stating "if the enormity of the outrage carries conviction that there has in fact been severe emotional distress, bodily harm is not required.").

13. In this case, this Court concludes there remain genuine issues of material fact with respect to MR. EGGLESTON'S intentional infliction of emotional distress claim. While CLARK COUNTY and MS. STUART propose their actions were not extreme or outrageous, a jury could find, *inter alia,* they did coerce MR. EGGLESTON into signing the temporary guardianship papers by way of providing him misinformation and that removal of the children from the EGGLESTON home fell outside the bounds of decency and violated MR. EGGLESTON'S right to parent his sons. The jury could find such action to be so extreme and outrageous and that in itself is enough to show these Defendants at the least acted in reckless disregard or intended Plaintiff to suffer severe emotional distress. This Court also notes MR. EGGLESTON'S cause of action for intentional infliction of emotional distress was not implicated by any administrative process, and further, the issues raised in that claim were not decided on the merits in the October 13, 2023 decision rendered by the First Judicial District Court. The intentional infliction of emotional distress cause of action is not barred by the doctrine of claim or issue preclusion.

14. Moving Defendants propose they are entitled to immunity against MR. EGGLESTON'S state law claims under NRS 41.032(2). NRS 41.032 states in salient part:

> Except as provided in NRS 278.0233 no action may be brought under NRS 41.031 or against an immune contractor or an officer or employee of the State or any of its agencies or political subdivisions which is:
>
> . . .
>
> 2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or of any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused.

15. In Martinez v. Maruszczak, 123 Nev. 433, 444-445, 168 P.3d 720, 728-729 (2007), the Nevada Supreme Court noted NRS 41.032(2) mirrored the Federal Torts Claims Act (also

referred to as "FTCA" herein) and reviewed federal precedence in analyzing claims of immunity under state statute. The purpose of both the FTCA and Nevada's waiver of sovereign immunity is "to compensate victims of government negligence in circumstances like those in which victims of private negligence would be compensated." Martinez, 123 Nev. at 444,168 P.3d at 727, *citing* Harrigan v. City of Reno, 86 Nev. 678, 680, 475 P.2d 94, 95 (1970). Consistent with this purpose, the United States Supreme Court has determined discretionary act immunity under the FTCA necessarily protects only those decisions "'grounded in social, economic, and political policy.'" Berkovitz v. United States, 486 U.S. 531, 537, 108 S.Ct. 1954, 100 L.Ed.2d 531 (1988), *quoting* United States v. Varig Airlines, 467 U.S. 797, 814, 104 S.Ct. 2755, 81 L.Ed.2d 660 (1984). In United States v. Gaubert, 499 U.S. 315, 325, 111 S.Ct. 1267, 113 L.Ed.2d 335 (1991), the nation's high court clarified the scope of federal discretionary-act immunity and set forth a two-part test. Under this test, referred to as the *Berkovitz-Gaubert*, acts are entitled to discretionary-function immunity if they meet two criteria: (1) the acts alleged to be negligent must be discretionary, in that they involve an "element of judgment or choice." Berkovitz, 486 U.S. at 536, 108 S.Ct. 1954, 100 L.Ed.2d 531.[18] If the challenged conduct meets the first criterion because it involves an element of judgment or choice, the court must consider the second criterion: "'whether [the] judgment is of the kind that the discretionary-function was designed to shield.'" Gaubert, 499 U.S. at 322-323, 111 S.Ct. 1267, 113 L.Ed.2d 335, *quoting* Berkovitz, 486 U.S. at 536, 108 S.Ct. 1954, 100 L.Ed.2d 531. The focus of the second criterion's inquiry is not on the employee's "subjective intent in exercising the discretion conferred by statute or regulation, but on the nature of the actions taken and on whether they are susceptible to policy analysis." Gaubert, 499 U.S. at 325, 111 S.Ct. 1267, 113

[18]Under Nevada law, some acts that do not involve an element of judgment or choice may also be entitled to immunity. *See* NRS 41.032(1) (proving no action may be brought "[b]ased upon an act or omission of [a state] officer, employee or immune contractor, exercising that care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the statute or regulation has not been declared invalid by a court of competent jurisdiction").

L.Ed.2d 335. Thus, this Court need not determine if the government employee made a conscious decision regarding policy considerations in order to satisfy the test's second criterion. Martinez, 123 Nev. at 446, 168 P.3d at 728.

16. Given the interplay between the criteria of the *Berkovitz-Gaubert* test discussed *supra*, certain acts, although discretionary, do not fall within the discretionary-function exception's ambit because they involve "negligence unrelated to any plausible policy objectives." Martinez, 123 Nev. at 446, 168 P.3d at 728, *quoting* Coulhurst v. United States, 214 F.3d 106, 111 (2nd Cir. 2000). For example, a government employee who falls asleep while driving her car on official duty is not protected by the exception because her negligent judgment in falling asleep "cannot be said to be based on the purposes that the regulatory regime seeks to accomplish." Gaubert, 499 U.S. at 325 n.7, 111 S.Ct. 1267, 113 L.Ed.2d 335. Because the FTCA's discretionary-function exception is not a bright-line rule,[19] federal courts apply the *Berkovitz-Gaubert* test must assess cases on their facts, keeping in mind Congress' purpose in enacting the exception: "to prevent judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." Varig Airlines, 467 U.S. at 813, 104 S.Ct. 2755, 581 L.Ed.2d 660; *also see* Caban v. United States, 671 F.2d 1230, 1233 (2nd Cir. 1982) (explaining the exception "protects the principles embodied in the separation of powers doctrine by keeping the judiciary from deciding questions consigned to the executive and legislative branches of the government"). Thus, if the injury-producing conduct is an integral part of governmental policy-making or planning, if the imposition of liability might jeopardize the quality of the governmental process, or if the legislative or executive branch's power or responsibility would be usurped, immunity will likely attach under . . .

[19]*See* Varig Airlines, 467 U.S. at 814, 104 S.Ct. 275, 581 L.Ed.2d 660 (noting it is "impossible…to define with precision every contour of the discretionary function exception").

the second criterion. Martinez, 123 Nev. at 446, 168 P.3d at 729, *citing* Horta v. Sullivan, 4 F.3d, 2, 19 (1st Cir. 1993).

17. As set forth in Martinez, 123 Nev. at 446-447, 168 P.3d at 729, the Nevada Supreme Court adopted the *Berkovitz-Gaubert* approach and clarified, to fall within the scope of discretionary-act immunity, a decision must (1) involve an element of individual judgment or choice and (2) be based on considerations of social, economic or political policy.

18. Notably, the discretionary-act immunity does not apply to a government official's intentional torts. Further, if the jury finds MS. STUART did, indeed, coerce MR. EGGLESTON and the children's mother to sign the temporary guardianship papers under the guise Plaintiff would see his children again in several days, such act would not fall within the considerations of social, economic or political policy or meet the second criterion of the *Berkovitz-Gaubert* test. For these reasons, this Court does not find, at this time, Defendants CLARK COUNTY and STUART are entitled to the discretionary-act immunity set forth by NRS 41.032(2). In short, this Court denies Defendants' motion as it seek summary judgment with respect to the intentional infliction of emotional distress claim.

MR. EGGLESTON'S Claim for Defamation, Slander and Libel

19. To prevail on a defamation claim, a party must show (1) a false and defamatory statement by defendant concerning the plaintiff, (2) an unprivileged publication to a third person, (3) fault, amounting to at least negligence and (4) actual or presumed damages. Wynn v. Smith, 117 Nev. 6, 10-11, 16 P.3d 424, 427 (2001), *cited by* Neason v. Clark County, 352 F.Supp.2d 1131, 1141 (D.C. Nev. 2005); *also see* K-Mart Corp. v. Washington, 109 Nev. 1180, 1191, 866 P.2d 274, 281 (1993), *citing* Wellman v. Fox, 108 Nev. 83, 86, 825 P.2d 208, 210 (1992) ("To prevail on a defamation claim, a party must show publication of a false statement of fact.").

. . .

20. Here, MR. EGGLESTON alleged within his First Amended Complaint, p. 23, Defendants CLARK COUNTY and STUART "made verbal and written statements of and concerning Plaintiff: …he was an unfit parent; …he had neglected the Eggleston boys and other children; …he had abused the Eggleston boys and other children; and…he had failed to protect the Eggleston boys from the actions of others, including, specifically, their mother." In reviewing the evidence presented, this Court saw none to suggest these moving Defendants made the aforementioned verbal statements to any third persons, except perhaps within sworn deposition or court testimony. The written statements were contained in MS. STUART'S reporting and investigation, but there was no evidence presented moving Defendants published the information to third persons other than the Central Registry which was required under NRS 432B.310. That is, not all the elements of these torts have been shown. Further, and notwithstanding such defect, MS. STUART'S investigation and reporting was thereafter scrutinized and substantiated by the DFS Appeals Unit and the Administrative Hearing Officer. More importantly, the investigation and MS. STUART'S findings was judicially reviewed by the First Judicial District Court and the substantiation of the allegations of Physical Injury (Abuse)—Physical Risk by MR. EGGLESTON was determined proven by a preponderance of the evidence. That is, the issues relating to the falsity of MS. STUART'S reporting and statements alleged here were brought by MR. EGGLESTON in the previous action, they were decided on the merits and judicially reviewed by the district court. In short, not only does this Court conclude the elements of defamation, libel and slander were not met, the claims are barred by the doctrine of issue preclusion. This Court, therefore, grants the Motion for Summary Judgment filed by CLARK COUNTY and MS. STUART with respect to the defamation, libel and slander claims.

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MR. EGGLESTON'S Prayer for Punitive Damages against MS. STUART

21. As set forth within his First Amended Complaint, p. 24, MR. EGGLESTON seeks a recovery of $50,000,000 in punitive damages against all Defendants. NRS 42.005 addresses the award of punitive damages and states in pertinent part:

> … in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant. Except as otherwise provided in this section or by specific statute, an award of exemplary or punitive damages made pursuant to this section may not exceed:
>
> (a) Three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is $100,000 or more; or
>
> (b) Three hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than $100,000.

22. NRS 42.001 defines the particular conduct of the defendant which may subject him to the imposition of punitive damages:

> As used in this chapter, unless the context otherwise requires …:
>
> 1. "Conscious disregard" means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.
> 2. "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his or her rights or property or to otherwise injure another person.
> 3. "Malice, express or implied" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.
> 4. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.

23. While the State of Nevada has waived immunity from liability and action, and consents to liability being determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, such is limited to what is provided in NRS 41.032 through 41.038, inclusive, NRS 485.318(3) and any statute which expressly provides for governmental immunity. *See* NRS 41.031. NRS 41.035 specifically limits an award of damages sounding in tort brought under NRS 41.031 against a present or former officer or employee of the

State or any political subdivision, immune contractor or State Legislator arising out of an act or omission within the scope of the person's public duties or employment to an amount not to exceed $200,000.00, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant. Such an award may not include any amount as exemplary or punitive damages.

24. The state's limitations on its waiver of immunity, however, does not apply to claims brought under federal law, and specifically those brought for deprivation of constitutional rights under Title 42 U.S.C. §1983. *See* Eggleston, 137 Nev. at 514, 495 P.3d at 491, *quoting* N. Nevada Association of Injured Workers v. Nevada SHS, 107 Nev. 108, 115, 807 P.2d 728, 732 (1991) ("[C]ivil rights violations…are hardly descriptive of acts that may be rationally included within the prerogatives of an employee's official capacity.") The limitations of NRS 41.031 and NRS 41.035, however, do apply to MR. EGGLESTON'S remaining state law cause of action for intentional infliction of emotional distress.

25. Moving Defendants propose MR. EGGLESTON has sued MS. STUART based upon her official or governmental capacity and not her individual one, and thus, Plaintiff cannot recover punitive damages as against her. This Court disagrees. As set forth *supra*, MR. EGGLESTON'S opposing evidence shows MS. STUART arrived at his home with two armed police officers and coerced him and the children's mother to sign temporary guardianship papers under the threat he would not otherwise see his children again. If he did sign the papers, he would see his children in the next several days. If the jury were to find in favor of MR. EGGLESTON on this point, MS. STUART would be acting in her individual rather than official capacity. In that instance, MR. EGGLESTON would not be limited in his recovery for punitive damages. *See* Eggleston, 137 Nev. at 514, 495 P.3d at 491. Moving Defendants' Motion for Summary Judgment as it seeks exclusion of MR. EGGLESTON'S prayer for punitive damages.

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Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Motion for Summary Judgment filed September 29, 2023 by Defendants CLARK COUNTY and GEORGINA STUART is granted in part, denied in part. The motion is granted as it seeks dismissal of MR. EGGLESTON'S Fourth Cause of Action for Defamation, Libel and Slander. It is also granted as it seeks to bar the re-litigation of DFS's finding of MR. EGGLESTON'S maltreatment of the minor children under the issue preclusion doctrine. It is denied as it seeks dismissal of MR. EGGLETON'S remaining two causes of action for deprivation of his constitutional rights under Title 42 U.S.C. §1983 and intentional infliction of emotional distress. It is also denied as it seeks total exclusion of the recovery for punitive damages as against MS. STUART.

Dated this 15th day of January, 2024

SUSAN JOHNSON, DISTRICT COURT JUDGE

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Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Steve Eggleston, Plaintiff(s)	CASE NO: A-16-748919-C
vs.	DEPT. NO. Department 22
Georgina Stuart, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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