

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY and GEORGINA
STUART,

Petitioners,

vs.

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

Respondents,

and

STEVE EGGLESTON,

Real Party in Interest.

Electronically Filed
Jan 19 2024 02:51 PM
Elizabeth A. Brown
No. 87906 Clerk of Supreme Court

**OPPOSITION TO PETITIONERS'
EMERGENCY MOTION TO
STAY DISTRICT COURT
PROCEEDINGS PENDING
CONSIDERATION OF
EMERGENCY PETITION FOR
WRIT OF MANDAMUS**

PAOLA M. ARMENI, ESQ.
Nevada Bar No. 8357
WILLIAM D. SCHULLER, ESQ.
Nevada Bar No. 11271
CLARK HILL PLLC
1700 S. Pavilion Center Drive, Suite 500
Las Vegas, Nevada 89135
Telephone: (702) 862-8300
Facsimile: (702) 778-9709
parmeni@clarkhill.com
wschuller@clarkhill.com

Attorneys for Real Party in Interest Steve Eggleston

Real Party in Interest Steve Eggleston (“Eggleston”) hereby files his opposition to Petitioners’ Emergency Motion to Stay District Court Proceedings Pending Consideration of Emergency Petition for Writ of Mandamus (“Motion”).

I. PROCEDURAL HISTORY

A. District Court Action

On **December 30, 2016**, Eggleston filed his Complaint for Civil Rights Violations, Child Abduction, Conspiracy, Defamation against Defendants Georgina Stuart, Clark County, Lisa Callahan, and Brian Callahan (collectively “Defendants”).¹ On August 10, 2017, Eggleston filed his First Amended Complaint, which alleges civil rights - violation of 42 U.S.C. § 1983; intentional infliction of emotional distress; and defamation, libel, and slander against Defendants.² More specifically, Eggleston alleges that Stuart, who is employed by the Clark County Department of Family Services (DFS), and two police officers forced him to sign a temporary guardianship over his two minor children under threat of never seeing his children again. The papers gave temporary guardianship to the children’s maternal aunt, Lisa Callahan, who thereafter took the children to Illinois. One month after Eggleston signed the papers, DFS made a finding of child maltreatment against Eggleston, which he administratively appealed.

¹ See DOC 1, Appendix MTS 0001-23.

² See DOC 6, Appendix MTS 0094-120.

During discovery, Eggleston identified approximately 4,000 pages of documents and 88 witnesses; and Clark County and Stuart (hereinafter “Petitioners”) identified over 7,500 pages of documents and 98 witnesses. The parties also took the depositions of 12 witnesses.

Eggleston’s 42 U.S.C. § 1983 and intentional infliction of emotional distress claims survived multiple dispositive motions and appeals, including most recently, Defendants’ Motion for Summary Judgment (“MSJ”), filed September 29, 2023.³ On January 15, 2023, the District Court issued its Findings of Fact, Conclusions of Law and Order on the MSJ.⁴ On January 16, 2024, Clark County and Stuart submitted Defendants’ Motion for Emergency Stay Pending Nevada Supreme Court Decision on Defendants’ Emergency Petition for Writ of Mandamus and Request for Order Shortening Time. *See Exhibit A*, Email String re: Eggleston vs. Stuart and Clark County; MSTY; Case No. A-16-748919-C. On January 17, 2024, the law clerk to the Honorable Susan Johnson replied that “[t]he Court is declining to hear this matter on OST. The trial date is still set for Monday, January 22, 2024.” *Id.*

Notably, the jury trial date of **January 22, 2024**, is over seven years after Eggleston filed his civil action.

///

³ DOC 2, Appendix MTS 0024-54.

⁴ DOC 5, Appendix MTS 0072-93.

B. Supreme Court Action

On January 17, 2024, less than three judicial days before trial was set to begin, Petitioners filed their Emergency Petition for Writ of Mandamus (“Petition”), which requests that this Court compel the District Court: 1) to issue an order granting Defendants qualified immunity; 2) to issue an order granting Defendants summary judgment on Eggleston’s §1983 substantive due process claim alleging a violation of his parental rights; and 3) to issue an order granting Defendants discretionary act immunity on Eggleston’s intentional infliction of emotional distress claim. *Id.* at p. 1. On January 18, 2024, Petitioners filed the Motion pursuant to NRAP 8, pending this Court’s determination of Petition. *Id.* at p. 1. On January 19, 2024, the Court filed its Order Directing Answer and Imposing Temporary Stay, “temporarily stay[ing] the district court proceedings pending [its] receipt and consideration of any opposition to the stay motion and further order of this court.” *Id.* at p. 2.

II. LEGAL STANDARD

Pursuant to NRAP 8(a)(1), “[a] party must ordinarily move first in the district court for...a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ.”

In deciding whether to issues a stay in a civil case not involving child custody, this Court generally considers the following four factors: 1) whether the object of the

appeal or writ petition will be defeated if the stay or injunction is denied; 2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; 3) **whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and 4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.**

NRAP 8(c); *see also Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Although no factor carries more weight than the other factors, “if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) *citing Hansen*, 116 Nev. at 659, 6 P.3d at 987.

III. LEGAL ARGUMENT

A. Petitioners Were Required to First Seek a Stay in District Court.

As a prefatory matter, Petitioners did not first move in the District Court for a stay per NRAP 8(a)(1). Although they *submitted* a Motion for Emergency Stay on an Order Shortening Time, when the District Court declined to hear the matter on an OST, Petitioners did not proceed to *file* the Motion for Emergency Stay. *See* EDCR 2.20 (setting forth the requirements for filing a motion with the District Court). Petitioners acknowledge this requirement in the Motion for Emergency Stay submitted to the District Court:

///

A motion to stay the District Court proceeding while an appeal or original writ petition is pending must first be brought in the District Court. NRAP 8(a)(1). *See also Hansen v. Eighth Judicial Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). “This requirement is grounded in the district court’s vastly greater familiarity with the facts and circumstances of the particular case.” *Nelson v. Heer*, 121 Nev. 932, 836 [sic], 122 P.3d 1252, 1254 (2005). **Not until or unless the District Court has denied the motion may the party seeking a stay file a motion for stay with the appellate court.** *See* NRAP 8(a)(2).

See Ex. A, Motion for Emergency Stay at p. 5, ll. 14-20 (emphasis added). Thus, the District Court made no substantive ruling on Petitioners’ requested stay.

B. Eggleston Will Suffer Irreparable or Serious Injury if the Court Grants a Stay.

In discussing the irreparable or serious harm factor, the *Mikohn* Court stated “that litigation costs, even if potentially substantial, are not irreparable harm...[and] a mere delay in pursuing discovery and litigation *normally* does not constitute irreparable harm.” 120 Nev. at 253, 89 P.3d at 39 (citation omitted) (emphasis added). However, “in certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis.” *Id.*

This is such a case. Eggleston, a resident of England, flew to Las Vegas on January 18, 2024, for the duration of the jury trial, which is scheduled for January 22 and 23, and then January 30 until it concludes. Thus, in addition to litigation costs, Eggleston has expended significant travel costs, including for a round trip flight and

hotel accommodations. If the Court grants the stay, then Eggleston will have to fly back to England, an intercontinental flight of approximately 11 hours. He would then have to go through the entire process again upon the trial recommencing when the Court denies the Petition. Furthermore, this case concerns Eggleston's efforts to meaningfully reunite with his two minor sons, taken away from him back in January 2015, and is a crucial first step towards making that reunification possible.

C. Petitioners Are Not Likely to Prevail on the Merits in the Writ Petition.

Petitioners are not entitled to qualified immunity. Parents and children possess a constitutionally protected liberty interest in companionship and society with each other. *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) (en banc). This liberty interest is rooted in the Fourteenth Amendment to the United States Constitution, which states in relevant part that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1. The protected liberty interest is independently held by both parent and child. *City of Fontana*, 818 F.2d at 1418. A parent's right includes a custodial interest when the child is a minor. *Id.* at 1419.

A claim of interference with the parent/child relationship in violation of the Fourteenth Amendment may be brought as either a procedural due process claim or a substantive due process claim. *See City of Fontana*, 818 F.2d at 1419-20.

Eggleston asserted both. Procedural due process “guarantees that parents will not be separated from their children without due process of law except in emergencies.” *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007) *quoting Mabe v. San Bernardino Cnty., Dep’t of Pub. Soc. Servs.*, 237 F.3d 1101, 1107 (9th Cir. 2001). Substantive due process protects from impermissible interference with familial association when a state official harms a parent or child in a manner that shocks the conscience. *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008) *quoting Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

Qualified immunity is “an *immunity from suit* rather than a mere defense to liability” and is an appropriate basis for granting summary judgment. *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001). Where material facts are genuinely in dispute, however, a jury’s resolution of those disputes may be required before the court’s determination of the official’s entitlement to immunity. *Garver v. Washoe Cnty.*, No. 3:09-CV-00463-LRH, 2011 WL 6002969, at *6 (D. Nev. Nov. 28, 2011). The existence of reasonable cause, the sufficiency of an investigation, and the scope of an intrusion are questions of fact. *Ansara v. Maldonado*, 647 F. Supp. 3d 958, 972 (D. Nev. 2022), *appeal dismissed*, No. 23-15142, 2023 WL 3221749 (9th Cir. May 1, 2023).

In 2015, the law was clearly established in the Ninth Circuit that officials, including social workers, violate these rights if they remove a child without a warrant

absent “information at the time of the seizure that establishes ‘reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury.’” *Garver v. Washoe Cnty.*, No. 3:09-CV-00463-LRH, 2011 WL 6002969, at *6 (D. Nev. Nov. 28, 2011) citing *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1107 (9th Cir.2001).

In *Romero v. Washoe Cnty.*, No. 3:11-CV-00582-LRH, 2013 WL 5592269, at *3 (D. Nev. Oct. 9, 2013 (citations omitted), Washoe County conceded that the law was clearly established in the Ninth Circuit but argued that “reasonable cause”, “imminent danger” and “serious bodily harm” were not clearly defined. The Court rejected this argument and held that “the Ninth Circuit has stated explicitly that ‘[a] reasonable social worker would need nothing more to understand that she may not remove a child from its home [absent reasonable cause to believe the child is in imminent danger of experiencing serious bodily harm].’” *Rogers*, 487 F.3d at 1297. Thus, the Court declines to find that the law is not clearly established for purposes of Defendants’ qualified immunity defense. *Romero v. Washoe Cnty.*, No. 3:11-CV-00582-LRH, 2013 WL 5592269, at *3 (D. Nev. Oct. 9, 2013), *aff’d sub nom. Romero v. Cnty. of Washoe*, 602 F. App’x 408 (9th Cir. 2015).

In *Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1115, n. 14 (9th Cir. 2010), the Court stated: Our sister circuits have denied qualified immunity to

social workers who removed children from their families based on unreliable evidence in violation of the due process right of family integrity. *See, e.g., Croft v. Westmoreland County Children & Youth Servs.*, 103 F.3d 1123, 1127 (3d Cir.1997) (denying qualified immunity to a social worker who separated a child from her parent on the basis of an uncorroborated anonymous tip and without “objectively reasonable grounds”).

Eggleston’s constitutional rights were clearly established and thus the Petitioners are not entitled to qualified immunity of Eggleston’s substantive and procedural due process claims. Furthermore, Petitioners would not be entitled to discretionary act immunity of Eggleston’s state law claim. Acts that violate the Constitution are not discretionary, and thus, do not qualify for immunity under NRS 41.032. *See, e.g., Jones v. Las Vegas Metro. Police Dep’t*, 873 F.3d 1123, 1133 (9th Cir. 2017) (decisions made in bad faith, such as abusive conduct resulting from hostility or willful or deliberate disregard for a citizen’s rights, including constitutionally protected interest in the companionship of children, are not protected under NRS 41.032(2) even if they arise out of a discretionary function); *Koiro v. Las Vegas Metro. Police Dept.*, 69 F. Supp. 3d 1061, 1074 (D. Nev. 2014), *aff’d*, 671 Fed. Appx. 671 (9th Cir. 2016) (acts taken in violation of the Constitution cannot be considered discretionary within meaning of NRS 41.032); *Goodman v. Las Vegas Metro. Police Dept.*, 963 F. Supp. 2d 1036, 1061 (D. Nev. 2013), *aff’d in*

part, rev'd in part, dismissed in part, 613 Fed. Appx. 610 (9th Cir. 2015) (if defendants violate the Constitution, the discretionary function exception to Nevada's waiver of sovereign immunity will not shield them from state liability); and *Walker v. City of N. Las Vegas*, 394 F. Supp. 3d 1251, 1275 (D. Nev. 2019) (genuine issue of material fact as to whether police officers' actions violated the Constitution precluded summary judgment on officers' statutory immunity defense under Nevada law to plaintiff's state law claims).

IV. CONCLUSION

Based upon the foregoing, Eggleston respectfully requests that the Court deny the Motion and allow him to proceed to trial on January 22, 2024. His quest for his proverbial day in court is over seven years in the making.

DATED this 19th day of January 2024.

CLARK HILL PLLC

By /s/ Paola M. Armeni
PAOLA M. ARMENI, ESQ.
Nevada Bar No. 8357
WILLIAM D. SCHULLER, ESQ.
Nevada Bar No. 11271
Attorneys for Real Party in Interest

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on January 19, 2024, I caused the foregoing **OPPOSITION TO PETITIONERS' EMERGENCY MOTION TO STAY DISTRICT COURT PROCEEDINGS PENDING CONSIDERATION OF EMERGENCY PETITION FOR WRIT OF MANDAMUS** to be served as follows:

[X] E-Service to all registered parties:

/s/ Tanya Bain

An Employee of CLARK HILL PLLC

Exhibit A

Schuller, William D.

From: Stephanie Barker <sbarker@ocgas.com>
Sent: Wednesday, January 17, 2024 4:58 PM
To: Gray, Joshua; Lisa Rico
Cc: Armeni, Paola M.; Schuller, William D.; Bain, Tanya; Reyes, Clarissa; Felicia Galati
Subject: RE: Eggleston vs. Stuart and Clark County; MSTY; Case No. A-16-748919-C

[External Message]

Thank you for the quick response.

Stephanie A. Barker, Esq.
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Phone: 702-384-4012
Direct: 702-383-1624
sbarker@ocgas.com

Privileged and Confidential

This email, including attachments, is intended for the person(s) or company named and may contain confidential and/or legally privileged information. Unauthorized disclosure, copying or use of this information may be unlawful and is prohibited. This email and any attachments are believed to be free of any virus or other defect that might affect any computer into which it is received and opened, and it is the responsibility of the recipient to ensure it is virus free, and no responsibility is accepted by Olson Cannon Gormley & Stoberski for any loss of damage arising in any way from its use. If you have received this communication in error, please immediately notify the sender at 702-384-4012, or by electronic email.

From: Gray, Joshua <Dept22LC@clarkcountycourts.us>
Sent: Wednesday, January 17, 2024 10:58 AM
To: Lisa Rico <lrico@ocgas.com>
Cc: parmeni@clarkhill.com; wschuller@clarkhill.com; tbain@ClarkHill.com; creyes@clarkhill.com; Felicia Galati <fgalati@ocgas.com>; Stephanie Barker <sbarker@ocgas.com>
Subject: RE: Eggleston vs. Stuart and Clark County; MSTY; Case No. A-16-748919-C

Good morning,

The Court is declining to hear this matter on OST. The trial date is still set for Monday, January 22, 2024.

Thank you.

Joshua Gray
Law Clerk to the Honorable Susan Johnson
Eighth Judicial District Court – Dept. XXII
Clark County – Regional Justice Center
Tel: (702) 671-0551
Fax: (702) 671-0571

From: Lisa Rico <lrco@ocgas.com>

Sent: Tuesday, January 16, 2024 3:50 PM

To: DC22Inbox <DC22Inbox@clarkcountycourts.us>

Cc: parmeni@clarkhill.com; wschuller@clarkhill.com; tbain@ClarkHill.com; creyes@clarkhill.com; Felicia Galati <fgalati@ocgas.com>; Stephanie Barker <sbarker@ocgas.com>

Subject: Eggleston vs. Stuart and Clark County; MSTY; Case No. A-16-748919-C

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Attached is a Motion on Order Shortening Time for the Judge's review and signature. Thank you.

Lisa Rico

Paralegal & Legal Assistant to Felicia Galati, Esq.

and Legal Assistant to Alexander Adrian, Esq.

Olson, Cannon, Gormley & Stoberski

9950 W. Cheyenne Ave.

Las Vegas, NV 89129

(702) 384-4012

lrco@ocgas.com

1 **MSTY**
2 FELICIA GALATI, ESQ.
3 Nevada Bar No. 007341
4 STEPHANIE M. ZINNA, ESQ.
5 Nevada Bar No. 011488
6 STEPHANIE A. BARKER, ESQ.
7 Nevada Bar No. 003176
8 OLSON CANNON GORMLEY & STOBERSKI
9 9950 West Cheyenne Avenue
10 Las Vegas, NV 89129
11 Phone: 702-384-4012
12 Fax: 702-383-0701
13 fgalati@ocgas.com
14 Attorneys for Defendants
15 CLARK COUNTY and GEORGINA STUART

16
17
18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 STEVE EGGLESTON,

21 Plaintiff,

22 v.

23 GEORGINA STUART; CLARK COUNTY,
24 NEVADA; LISA CALLAHAN; BRIAN
25 CALLAHAN; AND DOES I THROUGH
26 100, INCLUSIVE,

27 Defendants.

CASE NO. A-16-748919-C

DEPT. NO. XXII

**HEARING REQUESTED
ON
ORDER SHORTENING TIME**

28
29 **DEFENDANTS' MOTION FOR EMERGENCY STAY PENDING**
30 **NEVADA SUPREME COURT DECISION ON**
31 **DEFENDANTS' EMERGENCY PETITION FOR WRIT OF MANDAMUS**
32 **AND**
33 **REQUEST FOR ORDER SHORTENING TIME**

34 COME NOW Defendants CLARK COUNTY and GEORGINA STUART (Stuart),
35 (collectively the County Defendants), by and through their attorney FELICIA GALATI, ESQ. of
36 the law firm OLSON CANNON GORMLEY & STOBERSKI, and hereby submit their Motion
37 for Emergency Stay Pending Supreme Court Decision on Defendants' Emergency Petition for
38 Writ of Mandamus and Request for Order Shortening Time. This Motion and Request are made
39 and based on the pleadings and papers on file herein, the Declaration of counsel set forth herein,
40 the following points and authorities, and the arguments of counsel at the time of hearing as the
41 court may entertain.

1 **EDCR 2.26 DECLARATION OF STEPHANIE A. BARKER, ESQ.**
2 **IN SUPPORT OF REQUEST FOR ORDER SHORTENING TIME**

3 STATE OF NEVADA)
4)
5 COUNTY OF CLARK) ss:

6 STEPHANIE A. BARKER, ESQ. hereby declares under penalty of perjury as follows:

7 1. Declarant is an attorney duly licensed to practice law and in good standing with
8 the State Bar of Nevada, and of counsel with the law firm of Olson Cannon Gormley & Stoberski.

9 2. Declarant is one of the attorneys representing the interests of Defendant Clark
10 County and its employee, Defendant Georgina Stuart (Defendants), in the above-captioned matter
11 of *Eggleston v. Georgina Stuart, Clark County, et al.*, EJDC Case No. A-16-748919-C,
12 Department 22.

13 3. This Declaration is made in support of Defendants' Request for an Order
14 Shortening Time as to Defendants' Motion for Emergency Stay, in accordance with EDCR 2.26.

15 4. The facts set forth in this Declaration are known to Declarant personally, or are
16 based upon Declarant's information and belief, and Declarant is competent to testify under oath
17 regarding the same.

18 5. On November 7, 2023, this court entertained oral argument regarding the CCSD
19 Defendants' NRCP 56 Motion for Summary Judgment as to all three of Plaintiff's claims –
20 Substantive Due Process Civil Rights Violation (42 U.S.C. §1983); Intentional Infliction of
21 Emotional Distress (IIED); and Defamation, Slander, and Libel.

22 6. On January 15, 2024, at 3:52 p.m. this court entered an Order granting Defendant's
23 Motion for Summary Judgment as to Plaintiff's Defamation, Slander, and Libel claim, and
24 denying the Motion in all other respects. Pertinent to this Motion and the pending Petition for an
25 Emergency Writ in the Nevada Supreme Court, at page 11, paragraph 10, lines 11-14 of the Order,
26 this court concluded that "the conflicting facts presented do not support the conclusion that MS.
27 STUART is entitled to the protection of qualified immunity as a matter of law." This court
28 further, at pp. 13-15, paras. 14-16, denied Defendant Stuart the protection of discretionary

1 immunity for her course and scope conduct as provided by NRS 41.032 and Martinez v.
2 Maruszczak, 123 Nev. 433, 444-445, 168 P.3d 720, 728-729 (2007).

3 7. Defendants respectfully believe this court's January 15, 2024, Order denying the
4 Motion for Summary Judgment in substantial reliance on the allegations of Plaintiff's Complaint,
5 and denying Defendant Stuart the protections of qualified immunity and discretionary immunity
6 from litigation, afforded by both federal and state law, is erroneous. Accordingly, Defendants are
7 preparing an Emergency Petition for Writ of Mandamus concerning the ruling, to be filed in the
8 Nevada Supreme Court within the next 24 hours.

9 8. The parties are scheduled to commence trial on January 22, 2024, and absent this
10 court's entry of an emergency stay pending the Supreme Court's decision on the Emergency
11 Petition for Writ of Mandamus, trial will necessitate litigation of claims which are barred against
12 not only as to an award of damages, but also as to defense of the trial itself.

13 9. Denial of the stay forces Defendants to trial on claims for which liability is barred,
14 and exposes Defendants to damage awards from which they are immune – immunity which will
15 be defeated if the stay is denied.

16 10. Defendants respectfully assert they are likely to prevail on the Emergency Petition
17 because: 1) Defendant Stuart is admitted to have been acting in the course and scope of her
18 employment at all times relevant; 2) there are neither facts nor allegations against Defendant
19 Stuart placing her in an individual capacity – all of her conduct was in the scope of her duties as
20 a Child Protective Services worker for Clark County; 3) all of Defendant Stuart's conduct
21 involved the exercise of her discretion as a Child Protective Services worker for Clark County,
22 which exercise necessarily includes social and economic policy as established by the facts – both
23 disputed and undisputed; 4) there was no Constitutional right violated by the County Defendants
24 either based on the facts or allegations of Plaintiff's Complaint, the Eggleston Boys were not
25 removed from the home by the County Defendants who further did not move to interfere with
26 Plaintiff's parental rights; instead, the children were removed by a family member who was not
27 an agent of the County Defendants; 5) there is no clearly established law making it a

28 ///

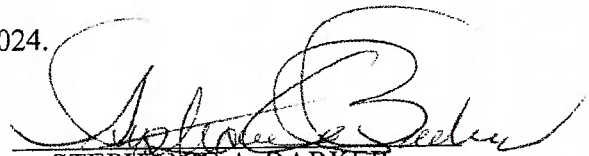
1 Constitutional violation to provide a family with options in lieu of removal of their children in
2 the course of an abuse/neglect investigation.

3 11. Based on the foregoing, Defendants request this court issue an Order staying this
4 case in its entirety pending the Supreme Court's decision on the Emergency Petition for Writ of
5 Mandamus.

6 12. The undersigned Declarant has conducted a telephonic meet and confer with
7 Plaintiff's attorneys Paola Armeni, Esq., and William Schuller, Esq., to advise that this Motion
8 for Emergency Stay would be filed. It is Declarant's understanding that Plaintiff's counsel has
9 no opposition to the Court's consideration of this Emergency Motion on an Order Shortening
10 Time.

11 13. The foregoing circumstances constitute good cause and justify shortening time for
12 hearing of this Motion for Stay in order to allow prompt procession with the Emergency Petition
13 for Writ of Mandamus without delay of the underlying proceeding beyond the time necessary to
14 obtain timely Supreme Court review of the District Court's ruling regarding immunity from trial
15 as set forth above.

16 DATED this 16th day of January, 2024.

17 
18 STEPHANIE A. BARKER

19
20 **ORDER SHORTENING TIME**

21 For good cause appearing as set forth in the foregoing Declaration of counsel, it is
22 hereby:

23 ORDERED that:

24 _____ Defendants' Request for an Order Shortening Time for hearing on
25 Defendants' Motion For Emergency Stay of this case pending the Nevada Supreme
26 Court's decision on Defendants' Emergency Petition for Writ of Mandamus, is **granted**,
27
28

1 and the Motion is set on a shortened time to be heard on the ____ day of
2 _____, 2024, at the hour of _____ a.m./p.m..

3 **OR**

4 _____ Defendants' Request for an Order Shortening Time for hearing on
5 Defendants' Motion For Emergency Stay of this case pending the Nevada Supreme
6 Court's decision on Defendants' Emergency Petition for Writ of Mandamus, is **denied**,
7 and the Motion shall be **denied**.

8 IT IS SO ORDERED.

9
10 DISTRICT COURT JUDGE

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**
13 **IN SUPPORT OF MOTION FOR EMERGENCY STAY**
14 **PENDING DECISION ON DEFENDANTS' EMERGENCY**
15 **PETITION FOR WRIT OF MANDAMUS**

16 A motion to stay the District Court proceeding while an appeal or original writ petition is
17 pending must first be brought in the District Court. NRAP 8(a)(1). *See also Hansen v. Eighth*
18 *Judicial Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). "This requirement is grounded in
19 the district court's vastly greater familiarity with the facts and circumstances of the particular
20 case." *Nelson v. Heer*, 121 Nev. 932, 836, 122 P.3d 1252, 1254 (2005). Not until or unless the
21 District Court has denied the motion may the party seeking a stay file a motion for stay with the
22 appellate court. *See NRAP8(a)(2)*.

23 In deciding whether to issue a stay, the court generally considers : "(1) whether the object
24 of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner
25 will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether
26 respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction
27 is granted; and (4) whether appellant/petitioner is likely to prevail on the merits of the appeal or
28 writ petition." NRAP 8(c). "Litigation costs, even if potentially substantial, are not irreparable
harm. Similarly, a mere delay in pursuing discovery and litigation normally does not constitute

1 irreparable harm.” Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004)
2 (citing Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000)). While
3 any one factor does not carry more weight than the others, “if one or two factors are especially
4 strong, they may counterbalance other weak factors.” Mikohn Gaming Corp., *supra* at 253, and
5 39. Notwithstanding, on appeal from an order refusing to compel arbitration, the first stay factor
6 (i.e. whether the object of the appeal or writ petition will be defeated if the stay or injunction is
7 denied) “takes on added significance and generally warrants a stay of trial court proceeding
8 pending resolution of the appeal.” *Id.*

9 Addressing the NRAP 8(c) factors, and recognizing that the litigation costs to Defendants,
10 constitute irreparable harm, nonetheless the stay is warranted because: 1) the object of the writ
11 petition will be defeated if the stay is denied; and 2) the factual record of this case as submitted
12 in support of and in opposition to Defendants’ Motion for Summary Judgment, and the law
13 granting Defendant Stuart both qualified immunity under federal law, and discretionary immunity
14 under Nevada law, render it likely Defendants will prevail on the merits of the writ petition.

15 First, Defendants are entitled to qualified immunity unless “[a] Government official’s
16 conduct violates clearly established law when, at the time of the challenged conduct, [t]he
17 contours of [a] right [are] sufficiently clear that every reasonable official would have understood
18 that what he is doing violates that right.” Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011). A
19 defendant is entitled to qualified immunity even if he was mistaken in his belief that his conduct
20 was lawful, so long as that belief was reasonable. Wilkins v. City of Oakland, 350 F.3d 949,
21 955 (9th Cir. 2003). The plaintiff bears the burden of showing the rights at issue were clearly
22 established at the time of the defendants’ actions. Robinson v. York, 566 F.3d 817, 826 (9th Cir.
23 2009). Momox-Caselis, 2018 WL 6795556, at *3–4. Plaintiff identified no clearly established
24 precedent that would place any reasonable official on notice that either the recommended
25 removal, or foregoing removal when the parents signed Temporary Guardianships, would
26 violate a Constitutional right – because it did not. To defeat qualified immunity, it is Plaintiff’s
27 obligation to identify a case where “existing precedent must have placed the statutory or
28

1 constitutional question beyond debate.” Id. Plaintiff identified none, because there are no cases
2 establishing an offer of a family care option, in lieu of removal, is a constitutional violation.
3 Ergo, 1) there was no constitutional violation, and 2) there is no law clearly establishing that
4 providing choices was a constitutional violation. Based on Plaintiff’s choices, the children were
5 not removed by the County Defendants who never took custody of any of the four children, and
6 Defendants are entitled to qualified immunity. The importance of immunity from suit is
7 demonstrated by the availability of an immediate appeal right under federal law in these
8 circumstances. Behrens v. Pelletier, 516 U.S. 299, 306 (1996).

9
10 Second, Martinez v. Marascas, 123 Nev. 433, 168 P.3d 720, 722 (Nev. 2007) governs
11 application of the NRS 41.036 discretionary-act immunity afforded to Nevada governmental
12 officials. To fall within the scope of discretionary-act immunity, a decision must: (1) involve an
13 element of individual judgment or choice; and (2) be based on considerations of social, economic,
14 or political policy. Henry A. v. Willden, 2014 WL 1809634, at *12 (D. Nev.), citing Martinez v.
15 Marascas, 123 Nev. 433, 168 P.3d 720, 722 (Nev. 2007). Under this standard, a court does not
16 ask whether the official abused his or her discretion, but only whether the acts concerned a matter
17 in which the official had discretion. Id. By law, an investigation into alleged child abuse
18 “involves ‘personal deliberation, decision and judgment’ and cannot be construed as
19 ministerial.” Johnson v. Clayton, 2009 WL 10693589, at *4 (D.Nev.). There is no dispute that
20 Defendants’ decisions regarding the child welfare investigation of the Eggleston home and the
21 options available to provide a protective environment for the children, involved elements of
22 individual judgment and were based on social and economic considerations. Also, it is undisputed
23 that decisions regarding removal from a home and the placement of wards of the state into foster
24 homes clearly involve personal deliberation and judgment, and Defendants’ choices are grounded
25 on public policy concerns as expressed in the Nevada Revised Statutes. Henry A., 2014 WL
26 1809634 at *12-14 (D.Nev.); Henry A. v. Willden, 2013 WL 759479, at *15 (D. Nev.); Nelson v
27 Willden, 2015 WL 4937939, at *6 (D. Nev.) Plaintiffs make no argument that either element one
28 or two is missing, and instead, argue the discretion was abused and the facts in the summary

1 judgment record before the court do not support Plaintiff's allegations of coercion, or "negligence
2 unrelated to any plausible policy objectives" as contemplated by Martinez, 123 Nev. at 446, 168
3 P.3d at 728, and Coulhurst v. United States, 214 F.3d 106, 111 (2nd Cir. 200).

4 Accordingly, Defendants retain discretionary immunity from Plaintiffs' suit.

5 Summary judgment is an important procedural tool by which "factually insufficient claims
6 or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted
7 consumption of public and private resources." Boesiger v. Desert Appraisals, 135 Nev. Adv. Op.
8 25, p. 4 (2019), quoting Celotex Corp v. Catrett, 477 U.S. 317, 327 (1986).

9 **CONCLUSION**

10 Based on the foregoing, these moving Defendants respectfully request this case be stayed
11 pending the Supreme Court's decision on Defendants' Emergency Petition for Writ of Mandamus
12 concerning this court's January 15, 2024, Order to the extent it denies Defendants' Motion for
13 Summary Judgment.

14 DATED this 16th day of January, 2024.

15 OLSON CANNON GORMLEY & STOBERSKI

16 
17
18

19 _____
20 FELICIA GALATI, ESQ.
21 Nevada Bar No. 007341
22 STEPHANIE M. ZINNA, ESQ.
23 Nevada Bar No. 011488
24 STEPHANIE A. BARKER, ESQ.
25 Nevada Bar No. 003176
26 9950 West Cheyenne Ave.
27 Las Vegas, NV 89129
28 Attorneys for Defendants
CLARK COUNTY and GEORGINA STUART

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Paola M. Armeni, Esq.
parmeni@ClarkHill.com
William D. Schuller, Esq.
wschuller@ClarkHill.com
CLARK HILL, LLP
1700 S. Pavilion Center Dr.
Suite 500
Las Vegas, NV 89135
Attorneys for Plaintiff

Page 9 of 9