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.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 87906

DISTRICT COURT CASE NO.
A-16-748919-C

SUPPLEMENT TO APPENDIX TO EMERGENCY PETITION FOR WRIT OF MANDAMUS
VOLUME 4 OF 4

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SUPPLEMENT TO APPENDIX TO EMERGENCY PETITION FOR WRIT OF MANDAMUS
VOLUME 4 OF 4

Date	Title	Bates Numbers
3/18/24	Notice of Entry of Findings of Fact, Conclusions of Law and Order	WRIT348-372

DATED this 20th day of March, 2024.

/s/ Felicia Galati, Esq.

_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2024, I sent via e-mail a true and correct copy of the above and foregoing **SUPPLEMENT TO 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:

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Honorable Judge Susan H. Johnson
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/s/ Lisa Rico
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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

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that FINDINGS OF FACT, CONCLUSIONS OF LAW

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AND ORDER was entered on January 15, 2024, a copy of which is attached hereto.

DATED this 18th day of March, 2024.

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CERTIFICATE OF SERVICE

On the 18th day of March, 2024, the undersigned, an employee of Olson, Cannon & Gormley, hereby served a true copy of **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** 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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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

WRIT351

Case Number: A-16-748919-C

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

[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.

[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").

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

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.

. . .

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

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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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