IN THE SUPREME COURT OF THE STATE OF NEVADA

LUBA GONZALEZ N/K/A LUBA SNOW A/K/A LUBA DACE, Appellant, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Respondent.	Supreme Court No.: 90570 District Court No.: D-18-575860-D

Electronically Filed
May 28 2025 12:46 PM
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT CIVIL APPEALS

Emily McFarling, Esq.
Nevada Bar Number 8567
McFarling Cohen Fic & Squires
[redacted]

Attorney for Appellant, Luba Dace.

Docket 90570 Document 2025-23728

1. Judicial District: **Eighth** County: **Clark**

   Judge: **Heidi Almase** District Ct. Case No. **D-18-575860-D**

   Department: **X**

2. **Person filing this docketing statement**:

   Name: **Emily McFarling, Esq**. Bar# (if applicable) **8567**

   Law Firm Name (If applicable) **McFarling, Cohen, Fic & Squires**

   [redacted]

   Clients name(s) (if represented by counsel) **Luba Dace**

   If this is a joint statement by multiple appellants, add the names and addresses of the other appellants and, if applicable, the names of their counsel and have them sign the certification below.

   None.

3. **Nature of disposition below (check all that apply):**

   ☒ Judgment after Bench trial
   ☐ Judgment after Jury verdict
   ☐ Summary Judgment
   ☐ Default Judgment
   ☐ Grant/Denial of NRCP 60(b) relief
   ☐ Grant/Denial of injunction
   ☐ Dismissal:
      ☐ Lack of Jurisdiction
      ☐ Failure to state a claim

☐ Failure to prosecute

☐ Other (Specify):

☒ Divorce Decree:

☐ Original

☒ Modification

☐ Grant/Denial of declaratory relief

☐ Review of agency determination

☒ Other disposition (specify): _____Denial of motion to reconsider_____

4. **Does this appeal raise issues concerning any of the following?**

☒ Child Custody

☐ Venue

☐ Termination of parental rights

5. **Pending any prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

84579, Gonzalez vs. Velazquez-Gonzalez

6. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g. bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

7. **Nature of the action.** Briefly describe the nature of the action and the result below:

Denial of Reconsideration of Order granting Respondent's request for Modification of Child Custody from Joint to Primary Child Custody and related relief

///

8. **Issues on Appeal:** State concisely the principal issues(s) in this appeal**:**

    1. **Whether the District Court abused its discretion in modification of the child custody from joint to primary in the best interests of the child.**
    2. **Whether the District Court erred when it found that one withholding constituted abduction as a matter of law.**
    3. **Whether the District Court erred when it found that Luba did not rebut any presumption that she should not have joint physical custody.**
    4. **Whether the District Court erred in disrupting the stability and consistency of the joint physical custody arrangement.**
    5. **Whether the District Court erred in modifying custody when Enrique did not meet the standard that modification was in the minor child's best interests.**
    6. **Whether the District Court erred in modifying custody when Enrique did not meet the standard that there was a substantial change of circumstance affecting the welfare of the child.**
    7. **Whether the District Court's order modifying custody violated Luba's constitutional right to parent.**
    8. **Whether the District Court's order modifying custody violated Luba's right to due process.**
    9. **Whether the District Court's order modifying custody was a result of the bias that was found against the prior judge assigned to the case.**
    10. **Whether the District Court abused its discretion in holding Luba in contempt for withholding the minor child and the resulting sanction.**
    11. **Whether the District Court abused its discretion in holding Luba in contempt for rescheduling a dentist appointment and the resulting sanction.**
    12. **Whether the District Court erred in its award of child support and minor tax credit order.**
    13. **Whether the District Court erred in awarding attorney's fees to Enrique and denying fees to Luba.**

9. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which

raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

10. Constitutional issues: Does this appeal challenge the constitutionality of a Nevada Statute or ordinance?

☒ No. Continue to #11

☐ Yes:

a. Identify the Nevada Statute or ordinance being challenged:

b. Is the State, any State agency, or a state office or employee a party to this appeal in an official capacity?

☐ Yes ☐ No

11. Other issues.

a. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions.

☐ A ballot question

b. If so, explain:

12. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is retained by the Supreme Court or presumptively assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the rule under which the matter falls.

The matter is presumed to be assigned to the Court of Appeals under NRAP 17(b)(10) Cases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings.

13. Trial. If this action proceeded to trial, how many days did the trial last?

Two days.

Was it a: ☒ **bench trial** ☐ **jury trial**

14. Judicial Disqualification. Do you intend to file a Motion to disqualify or have a justice/judge rescue him/herself from participation in this appeal? See NRAP 35. If so, which Justice/Judge?

☐ **Yes** ☒ **No**

15. Oral argument. Would you object to submission of this appeal for disposition without oral argument?

☐ **Yes** ☒ **No**

TIMELINESS OF NOTICE OF APPEAL

16. Date the written judgement(s) or order(s) appealed from was/were filed in the district court:

January 2, 2025 underlying order and April 11, 2025 order denying reconsideration of the underlying order.

If no written judgement or order has been filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of the judgment(s) or order(s) was/were served: January 7, 2025, and April 14, 2025.

Was service by:

☒ Electronic or personal delivery

☐ Mail

18. Were any motions seeking relief under NRCP 50(b), 52(b), or 60 or seeking rehearing or reconsideration filed in the district court either before or after the notice of appeal was filed? (attach a copy of the motion).

☐ No, continue to #19

☒ Yes:

a. Specify the type of Motion and the date the motion was filed in the district court (check all that apply)

☐ NRCP 50(b) Date filed:

☐ NRCP 52(b) Date filed:

☐ NRCP 59 Date filed:

☐ NRCP 60 Date filed:

☒ Rehearing/Reconsideration Date filed: January 21, 2025

b. Date the Motion was served: January 21, 2025

c. How was the Motion served: Electronic

☒ Electronic or personal delivery

☐ Mail

d. Date the written order resolving the motion was filed: April 11, 2025

e. Date written notice of entry of the order resolving the motion was served: April 14, 2025.

f. Was service by:

☒ Electronic or personal delivery

☐ Mail

19. Are there any motions other than those identified in #18 above still pending in the district court?

☐ **Yes. Identify the motion and date it was filed in the district court:**

☒ **No.**

20. Date the notice of appeal was filed in the district court:

April 24, 2025.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the appeal:

N/A

21. Specify the statute or rule governing the time limit for filing the notice of appeal, *e.g.,* NRAP 4(a) or other:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

22. Specify the statute or other authority granting this court jurisdiction to review the judgement or order appealed from:

a.

☐ NRAP 3(A)(b)(1)	☐ NRAP 3(A)(b)(2)
☐ NRAP 3(A)(b)(3)	☐ NRAP 3(A)(b)(4)
☐ NRAP 3(A)(b)(5)	☐ NRAP 3(A)(b)(6)
☒ NRAP 3(A)(b)(7)	☒ NRAP 3(A)(b)(8)
☐ NRAP 3(A)(b)(9)	☐ NRAP 3(A)(b)(10)

☐ NRAP 3(A)(b)(11)	☐ NRAP 3(A)(b)(12)
☐ NRS 38.205	☐ NRS 233.B150
☐ NRS 703.376	☒ Other (specify): merger doctrine

b. Explain how each authority provides a basis for appeal from the judgment or order:

Pursuant to NRAP 3A(b)(7), this appeal includes a child custody and visitation order that resolves all pending issues of child custody. Pursuant to NRAP 3A(b)(8) this is an appeal from a special order entered after final judgment as to the child support and attorney's fees issues. Under the merger doctrine, an appeal of contempt and related sanctions merge into the appealable orders and are included in this appeal.

23. List all parties involved in the action or consolidated actions in the district court:

a. Parties:

Luba Dace and Enrique Ivan Velzaquez-Gonzalez

b. If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A.

24. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Enrique requested Modification of Child Custody from Joint to Primary, child support, tax credit, attorney's fees, contempt and related sanctions. Luba opposed all of Enrique's requests and requested attorney's fees.

25. Did the judgment or order appealed from adjudicate ALL of the claims alleged below and the rights and liabilities of ALL of the parties to the action or consolidated actions below?

☒ **Yes** ☐ **No**

26. If you answered "No" to question 25, complete the following:

a. Specify the claims remaining pending below:
N/A

b. Specify the parties remaining below:

c. Did the district court certify the judgement or order appealed from as a final judgment pursuant to NRCP 54(b)? ☐ Yes ☐ No

d. Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? ☐ Yes ☐ No

27. If you answered "No" to any part of question 26, explain the basis for seeking appellate review (*e.g.,* order is independently appealable under NRAP 3A(b)):

N/A

28. Attach file stamp copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third party claims.
- Any motion(s) identified in questions 18 and the order(s) resolving the motion(s).
- Any motions identified in question 19

- Orders or NRCP 41(a)(1) dismissals that formally resolve each claim, counterclaim, cross-claim and/or third-party claim asserted in the action or consolidated action below, **even if not at issue on appeal**.
- All orders that finally disposes of nay parties in the action below, **even if not at issue on appeal**.
- Any other order challenged on appeal.
- Notices of entry for each attached order.

VERIFICATION

I declare under penalty if perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information, and belief, and that I have attached all required documents to this docketing statement.

DATED this 28th day of May, 2025.

MCFARLING COHEN FIC & SQUIRES

/s/ Emily McFarling, Esq.
Emily McFarling, Esq.
Nevada Bar Number 8567
[redacted]
Attorney for Appellant,
Luba Dace.

CERTIFICATE OF SERVICE

I, an employee of McFarling Cohen Fic & Squires, hereby certify that on the 28th day of May, 2025, I served a true and correct copy of this Docketing Statement Civil Appeals as follows:

☒ via the Supreme Court's electronic filing and service system (eFlex):

MELVIN R. GRIMES, ESQ.
Attorney for Respondent

/s/ Rebeca Renderos
Rebeca Renderos

Electronically Filed
5/5/2023 8:56 AM
Steven D. Grierson
CLERK OF THE COURT

OPPC
MELVIN R. GRIMES, ESQ.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X Hearing Date: 06/15/2023 Hearing Time:10:00 AM

ORAL ARGUMENT REQUESTED __X__ YES ____ NO

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE, AND A MOTION FOR ADDITIONAL ORDERS REGARDING TALKING PARENTS APPLICATION, TRAVEL, CHILD'S LAST NAME HYPHENATION, CHANGING MINORS SCHOOL, AND ATTORNEY'S FEES, AND DEFENDANT'S COUNTERMOTION FOR A MODIFICATION OF CUSTODY AWARDING DEFENDANT PRIMARY PHYSICAL AND SOLE LEGAL CUSTODY, SPECIFICALLY SOLE POSSESSION OF THE CHILD'S PASSPORT, OF THE MINOR CHILD AND AN AWARD OF ATTORNEY'S FEES

COMES NOW, Plaintiff, ENRIQUE IVAN VELAZQUEZ-GONZALEZ, by and through his Attorney of Record, MELVIN R. GRIMES, ESQ., of THE

ROBERTS STOFFEL LAW GROUP and submits this Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause, and a Motion for Additional Orders Regarding Talking Parents Application, Travel, Child's Last Name Hyphenation, Changing Minors School, and Attorney's Fees, and Defendant's Countermotion For A Modification of Custody Awarding Defendant Primary Physical and Sole Legal Custody, Specifically sole possession of the Child's Passport, of The Minor Child and An Award Of Attorney's Fees.

This Opposition and Countermotion is made based on the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and any oral argument that the Court may hear in this matter.

Enrique Prays this Honorable Court will grant the relief as outlined in the Motion, specifically he asks this court to enter the following orders:

1) Deny the Plaintiff's Motion
2) That Plaintiff be Sanctioned for her vexatious and improper conduct.
3) That the Court Modify Custody Awarding Enrique Primary Physical Custody and Sole Legal Custody.
4) That Luba be limited to Supervised Visitation and an appropriate facility.
5) That Enrique be Awarded Attorney's Fees and Costs

\\\

\\\

6) For Such other relief as this Honorable Court deems appropriate and just.

DATED this 5 day of May 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
[redacted]

Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. Objections

Plaintiff and Counsel have again failed to comply with the Rules of Practice for the Eighth Judicial District.

EDCR 5.503(a) requires that every motion, opposition, countermotion, and reply shall include points and authorities supporting each position asserted and an affidavit supporting all factual averments. Points and authorities lacking citation to relevant authority, or consisting of bare citations to statutes, rules, or case authority, do not comply with this rule. The absence or deficiency of points and authorities may be construed as an admission that the filing is not meritorious, or as cause for denial of all positions not supported. Plaintiff's Motion lacks a single citation to any authority granting the court authority to issue an Order to Show Cause. Plaintiff presents to the court fifteen (15) pages of self-serving, conclusory statements without a single citation to appropriate authority to ask the court for relief. Plaintiff's most disturbing conduct is the lone legal citation is to *Petit v. Adrianzen*, 392 P.3d 630 (Nev. 2017). The court is aware that *Petit* is a case involving an initial naming dispute by married parties. *Id* at 631. Plaintiff and Counsel have simply failed to provide this court with an appropriate Memorandum of Points and Authorities.

EDCR 5.504(4) mandates that Pleadings are to be double spaced, with the exceptions of real property descriptions, reference and citation material. Plaintiff's

Motion again ignores this rule.

EDCR 5.506(b) requires that Exhibits be bates stamped in the bottom right-hand corner. Plaintiff and Plaintiff's Counsel don't seem to understand the requirements and the reason for such marking.

EDCR 5.506(f) requires that Attorney's and Litigants not attach documents that are "documents of record" such as pleadings and orders with motions.

EDCR 5.509 provides specific requirements and procedures for the filing of a Motion for an Order to Show cause. Plaintiff and Plaintiff's Counsel failure to comply with this Rule denies the court jurisdiction to hear the Motion for and Order to Show Cause. The court should note that Plaintiff's motion is also violatative of NRS 22.030(2) and *Awad v. Wright*, 106 Nev. 407 (Nev. 1990).

Plaintiff's continued refusal to adhere to the Rules is unacceptable and the court should Admonish the Plaintiff and Plaintiff's Counsel to be more diligent and educated on the Rules of Practice.

II. Statement of Facts

The Parties to this action, Luba Snow ("Luba") and Enrique Ivan Velazquez-Gonzalez ("Enrique"), were granted a divorce on October 12, 2021. The Stipulated Marital Settlement Agreement and Decree of Divorce were drafted by Luba's Counsel and Notice of Entry was effectuated December 10, 2021. Luba's current Attorney Entered this Case December 21, 2021.

Since Current Counsel has entered this case, Luba has filed the following Motions with the Court:

1. Plaintiff's Motion to Amend or Make Additional Findings of Facts – Denied March 30, 2022.
2. Motion to Amend or Make Additional Findings of Facts [NRCP 52(b)] and/or for a New Trial [NRCP 59(a) and/or to Alter or Amend Judgement [NRCP 59(e)] and/or Correct Clerical Error.
3. Claim Of Exemption from Execution
4. Declaration In Lieu Of Affidavit of Prejudice – Leading to Judge Perry Recusing herself.
5. A Notice of Appeal.
6. Motion for Stay.
7. A Motion for an Order to Show Cause regarding the June 2022 vacation trip.
8. A Motion to Clarify Orders and Make Additional Orders Regarding Travel of Minor Child.
9. And finally, her current Motion for an Order to Show Cause, for additional Order regarding Talking Parents, Travel, and hyphenation of the Minor Childs name, and changing school again.

These filings are not inclusive of the attempt to take Enrique's portion of the Marital Home in a Bankruptcy proceeding where Luba claimed they were still married and that she held 100% of the marital home as separate property.

Luba has attempted to manipulate and rewrite history for the last three years of this cases existence. Luba now improperly applies the Law and the History of the Case.

Luba's self-serving and one-sided approach to parenting is clearly outlined in the present motion. Luba asserts a violation of the Order from attempted travel Summer 2022. The Court is reminded that Luba filed a Motion regarding that event, and it was denied! Luba never fails to stomp her feet and demand relitigating of matters until she gets her desired outcome. Luba additionally brings an allegation that Enrique failed to provide the complete itinerary for March 15, 2023. The comedic part of this allegation is that Luba withheld the child, denied Enrique his time, making this assertion moot.

Luba's hypocritical approach to parenting to demonstrated in her demands regarding any travel by Enrique and the standard she sets for herself. The Court will note that Luba notified Enrique that she would be traveling to "visit grandparents on the east coast"[1] August 24, 2022. Luba includes a screen shot of the confirmation containing only her name, this is something Luba complains Enrique did not provide in the current motion.[2] The court will also note Luba asserts she is

[1] See Exhibit A, DEF0106-107
[2] See Exhibit D

going to cross the border into Canada, demanding the Passport. The court will note, Luba does not provide the date or location of the border crossing as mandated by the MSA.[3] Luba then decided to extend the Thanksgiving Break by two (2) additional days without discussing such a decision with Enrique, and in direct violation of the MSA.[4] The court will further note, Luba does not provide any of the required information regarding the border crossing, yet Enrique provided the Passport. Luba's behavior and present motion regarding travel are one-way requests intended to frustrate and harass rather than to resolve real issues.

Luba continues to assert that Enrique does not provide a working phone when he requests travel. The court should note, Luba illegally stopped any travel by Enrique with the minor child. Luba's assertion is simply false. Enrique has not blocked Luba on his phone, he simply does not respond because the MSA states that all non-emergency communication shall be by Talking Parents, something Enrique has endeavored to follow even if Luba refuses.

Luba asserts that Enrique violated the Order by making hair appointments and "drastically altering her appearance."[5] Once again Luba's hypocrisy is galling. Luba has repeatedly made doctor and dental appointments without the consultation or approval of Enrique. Luba simply notices the appointments[6] and never discusses the appointments or recognizes that Enrique has the same rights as she does.

---

[3] MSA pg. 13
[4] MSA pg. 13, sect. 9.5.2.
[5] Pltf. Mot. pg. 2, lines 31-32.
[6] See Exhibit B, DEF0676-683

Luba next took the time to go through the history of Talking Parents to attempt to find every instance where Enrique failed to check and/or respond within a twenty-four (24) hour period. The court is likely aware this is little more than a childish attempt to accomplish exactly what Plaintiff's Counsel threatened at the last hearing; we will just file our own motion then. The Court should note that addressing these allegations will take time and space to address and Defendant's Counsel throw everything at the wall approach.

Luba cites 12.13.2021 and 12.20.2021 as the first two offenses; these dates pre-date the Decree of Divorce and are therefore precluded as they pre-date the Order. Luba next asserts a violation of 1.11.2022; Enrique clear reviewed and responded the same day, viewed at 6:08 PM and responded to at 6:09 PM.

Luba next asserts that Enrique failed to read and respond on 1/13/2022. This is demonstrative of the manipulative and harassing conduct Enrique endures from Luba daily. Luba's Motion directs to her Exhibit 2, pg. 153. Luba's manipulation of the fact is common. Luba asked the same question in another message strand,[7] and Enrique does answer. Luba engages in this conduct almost daily posting repetitive statements and questions in multiple strands and then accusing Enrique of violating the MSA. Luba's assertion with regard to 1/15/2022 is also tied to this conversation and even a cursory review of the communications makes it clear that Enrique tried to consolidate this topic into one strand and unless and until Enrique gives Luba the

[7] Exhibit A, DEF0161.

response she wants, she posts the same question repeatedly demanding her idea of an adequate response.

III. Argument

A. Luba's Motion for an Order to Show Cause is Fatally Deficient and Must be Denied.

Nev. Rev. Stat. § 22.030(2) states that "[i]f a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt."

Further, *Nev. R. Prac. Eighth. Judi. Dist. Ct.* § 5.510(a)[8] states:

> A motion seeking an Order to Show Cause (OSC) for contempt must be accompanied by a detailed affidavit complying with NRS 22.030(2) that identifies the specific provisions, pages and lines of the existing order(s) alleged to have been violated, the acts or omissions constituting the alleged violation, any harm suffered or anticipated, and the need for a contempt ruling, which should be filed and served as any other motion.

In *Awad v. Wright*, the Nevada Supreme Court held that courts have inherent power to protect their decree by contempt proceedings but are, nonetheless, bound by *NRS* § 22.030(2) which specifically requires that an affidavit be submitted. (*Awad v. Wright*, 106 Nev. 407, 409 (Nev. 1990)).

Luba's Motion does not contain an Affidavit. The Nevada Supreme Court held "the deficiency cannot be cured by proof at a hearing" *Awad* at 410.

Luba's decision to avoid the law and the rules has rendered her Motion for

[8] The court will note this was changed to Nev. R. Prac. Eighth. Judi. Dist. Ct. 5.509 effective June 10, 2022; but does not change the procedure or requirements.

an Order to Show Cause fatally deficient. The Court is left with no option but to deny the Motion.

B. Luba's Motion Lacks Substantive Argument and Mandatory Points and Authorities.

Nev. R. Prac. Eighth. Judi. Dist. Ct. 5.503(a) provides:

> Every motion, opposition, countermotion, and reply shall include points and authorities supporting each position asserted and an affidavit supporting all factual averments. Points and authorities lacking citation to relevant authority, or consisting of bare citations to statutes, rules, or case authority, do not comply with this rule. The absence or deficiency of points and authorities may be construed as an admission that the filing is not meritorious, or as cause for denial of all positions not supported.

EDCR 5.503(a) requires that every motion, opposition, countermotion, and reply shall include points and authorities supporting each position asserted and an affidavit supporting all factual averments. Points and authorities lacking citation to relevant authority, or consisting of bare citations to statutes, rules, or case authority, do not comply with this rule. The absence or deficiency of points and authorities may be construed as an admission that the filing is not meritorious, or as cause for denial of all positions not supported. Plaintiff's Motion lacks a single citation to any authority granting the court authority to issue an Order to Show Cause. Plaintiff presents to the court fifteen (15) pages of self-serving, conclusory statements without a single citation to appropriate authority to ask the court for relief. Plaintiff's most disturbing conduct is the lone legal citation is to *Petit v. Adrianzen*, 392 P.3d 630 (Nev. 2017). The court is aware that *Petit* is a case

involving an initial naming dispute by married parties. *Id* at 631. Plaintiff and Counsel have simply failed to provide this court with an appropriate Memorandum of Points and Authorities.

Pursuant to EDCR 5.503(a) the Court should construe this type of lackadaisical Motion Practice as "...an admission that the filing is not meritorious.[9]" The Plaintiff's Motion should be denied, and Plaintiff should be Sanctioned for wasting this Court's time.

C. Luba's Counts 1-3 are without Merit and Must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total. Luba claims a violation of the Decree of Divorce, exhibit 1, Section 9.1 legal custody by making an appointment and obtaining a haircut for the minor child.

The Decree of Divorce, exhibit 1, Section 9.1 reads in relevant part:

> Joint legal custody shall be defined as followed:
>
> The parents shall confer with each other on all important matters pertaining to the Children's Health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the children's best interest, and not to promote the personal desires of either party.
>
> The parents shall confer with each other on all matters regarding the Children's Health care, including but not limited to, medical dental orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health condition of the child except in emergency situations when prior consultations are not possible.

An order on which a judgment of contempt is based must be clear and

[9] EDCR 5.503(a)

unambiguous and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him. *Cunningham v. District Court*, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986). A contract is ambiguous when it is subject to more than one reasonable interpretation. *Anvui, Llc. v. G.L. Dragon*, 123 Nev. 212, 215 (Nev. 2007). Ambiguity should be construed against the drafter. *Mullis v. Nevada National Bank*, 98 Nev. 510, 513, 654 P.2d 533, 535 (1982).

The court can see the language of the Decree of Divorce does not address appointments for haircuts, nor does it address the altering of the child's appearance. Those matters are generally included in language regarding legal custody and expectations of co-parents. However, Luba through counsel neglected to include that language. The language is devoid of language regarding a haircut or alternatively is so ambiguous and to be unenforceable.

The court must deny the Plaintiff's Motion regarding courts 1-3.

D. Luba's Counts 4-87 are Without Merit and must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total. Luba asserts a violation of the Decree of Divorce, Exhibit 1, Section 9.8. Luba's assertion is an intentional misrepresentation to the court and represents sanctionable conduct by the Plaintiff

and Counsel.[10]

Luba and Counsel are aware this clause was amended by Stipulation filed July 26, 2022. The correct language which should have been cited is:

> All communication between the parents shall be through Talking Parents unless it is an emergency. Each parent has up to 24 hours to respond.[11]

Luba has failed to comply with EDCR 5.509, which requires that the Movant cite to the Order, the Page and the line number. Here, Luba fails to even cite the correct Order.

Enrique is not in violation of the Order correctly cited above as there is no mandate that he responds. The Order simply provides a twenty-four (24) hour period in which to respond, not a mandate that a response be given.

Luba's count 4 - 87 are improperly presented and are without merit. The Court must therefore deny Luba's Motion for an Order to Show Cause regarding counts 4 – 87.

E. Luba's Counts 88-89 are Without Merit and must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total. Luba asserts a violation of the Decree of Divorce, Exhibit 1, Section 9.8. Luba's assertion is an intentional misrepresentation to the court and represents sanctionable conduct by the Plaintiff and Counsel.

---

[10] See EDCR 5.219(a)
[11] See SAO filed July 26, 2022, Exhibit 1, lines 19-20.

Luba's assertion regarding June 2, 2022, was previously raised by Luba in her Motion filed June 20, 2022. This matter was resolved and dismissed pursuant to Stipulation filed July 26, 2022. Luba is therefore estopped from raising the issue and attempting to relitigate this same issue.

Luba and Counsel are aware this clause was amended by Stipulation filed July 26, 2022. The correct language which should have been cited is:

> When traveling for vacation which impacts the other parent's time, each parent shall provide the other parent with the address where they will be staying with the minor child at least 14 days in advance. However, if the address changes or is not provided (by example, Airbnb 's generally do not provide addresses until two days before arrival), the travelling parent shall advise the other parent of the address as soon as it becomes known. When traveling during a parent's own time, the other parent must still be provided in an itinerary as soon as known.[12]

Luba has failed to comply with EDCR 5.509, which requires that the Movant cite to the Order, the Page and the line number. Here, Luba fails to even cite the correct Order.

Enrique is not in violation of the order correctly cited as the travel anticipated March 15, 2023, was Enrique's custodial time. Enrique did provide the itinerary timely and pursuant to the current order.

The court is reminded that Luba currently faces two (2) counts of contempt with regard to the march 15, 2023 refusal to exchange the minor child at the appointed time and location.

F. Luba's Counts 90-99 are Without Merit and must be Denied.

[12] See SAO filed July 26, 2022, Exhibit , lines 13-17.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total. Luba claims a violation of the Decree of Divorce, exhibit 1, Section 9.6 refusing to pick up calls from the minor child.

The Decree of Divorce, exhibit 1, Section 9.6 reads in relevant part:

Wife shall continue to have the right to have Zoom video calls with the child while she is in the custody of the other parent on Mondays and Fridays. These shall take place at 7:15 P.M. The parties agree to give the child (and the other parent) privacy during these calls, and these calls shall not be monitored or recorded by the parent with custody of the child at the time of the call. This right shall also apply during vacation or holiday times.

Luba presents a frivolous position and asserts facts that are knowingly false as evidenced by her own words.

01/17/2022	Called made – see Exhibit A, DEF0018
03/11/2022	Call initiated at 7:15 while on vacation - see Exhibit A, DEF0026
03/14/2022	Call initiated at 7:13 PM - see Exhibit A, DEF0028
04/08/2022	Rescheduled with permission to a later time. Call initiated at 7:49 PM, Exhibit A, DEF0033
06/03/2022	Call initiated at 7:17 PM - Exhibit A, DEF0038
08/01/2022	Call initiated at 7:19 PM. Luba is complaining because the child is out and about. Exhibit A, DEF0131
08/12/2022	Call initiated at 7:00 PM, Luba is complaining because the child is at a park. Exhibit A, DEF0046-47.
08/15/2022	Call made at 7:12 PM Exhibit A, DEF0047
08/26/2022	Call moved to the following day per request of Luba. Exhibit A, DEF0048
11/07/2022	Call moved to the following day per agreement of the Parties. Exhibit A, DEF0049.

The court can see Luba is throwing everything at the wall to see what

sticks. More egregiously Luba engages in blatant perjury by asserting the above statements which she knows to be false.

Reading Luba's comments within Talking Parents it is evident Luba is a hovering, controlling, helicopter mom, who has deluded herself into believing that a six (6) year child wants to spend thirty (30) to sixty (60) minutes talking with her mother which she saw just the other day to discuss the same mundane issues that were discussed in the prior call. When the child wishes to end the call, Luba cannot believe that this child would not like to talk endlessly with her and therefore projects blame on another.

Luba's assertions regarding failure to comply with the Order of the Court regarding video calls are without merit. Further Luba engages in blatant perjury in her assertions and should be sanctioned pursuant to EDCR 5.219(a).

G. Luba's Counts 100-106 are Without Merit and must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total. Luba asserts a violation of the Decree of Divorce, Exhibit 1, Section 9.8. Luba's assertion is an intentional misrepresentation to the court and represents sanctionable conduct by the Plaintiff and Counsel.

Luba and Counsel are aware this clause was amended by Stipulation filed July 26, 2022. The correct language which should have been cited is:

> All communication between the parents shall be through Talking Parents unless it is an emergency. Each parent has up to 24 hours to

respond.[13]

Luba has failed to comply with EDCR 5.509, which requires that the Movant cite to the Order, the Page and the line number. Here, Luba fails to even cite the correct Order.

The Court must Deny Luba's Request for an Order to Show Cause regarding counts 100-106.

H. Luba's Count 107 is Without Merit and must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total.

Luba goes from Perjury to outright fiction in this allegation. Luba and her present Counsel previously brought a motion demanding family therapy.[14] Luba and her present counsel relied exclusively on dicta of the court in an attempt to modify the Decree of Divorce to mandate family counseling.[15] The matter was heard March 30, 2022, and was denied at that time.

Luba and her Counsel now attempt to raise this issue again misleading the court that this was some type of counseling for the child. The body of the message makes it clear this is family counseling related to co-parenting.[16]

Luba's request is duplicative of the prior Motion and presents a Fiction to the Court. Luba and her Counsel's conduct represents fraud on the court and is violative of EDCR 5.219(a), NRCP 11, and NRCP 3.3. Luba and Counsel should

[13] See SAO filed July 26, 2022, Exhibit 1m lines 19-20.
[14] See Motion to Amend Judgment, filed 02/09/2022.
[15] Id. at 2, lines 16-31.
[16] Def. Exhibit A, DEF0132-134.

be reprimanded, sanctioned and the Court should consider referring this matter to the Nevada Bar Association for disciplinary action.

I. Luba's Count 108-109 are Without Merit and must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total.

Luba asserts a violation of an extra-curricular activity violation because Enrique reportedly hid the minor child.[17] Luba was advised of the event, as the school sent the information to all parents, and evidenced by the fact that Luba attended the event, saw Jennifer, Enrique's wife, and ultimately accused Jennifer of lying and hiding the child. The court will note this incident was addressed in Talking Parents[18] but reference to that conversation is noticeably missing from Luba's Motion. Luba prefers to attach an email with her allegations and an acknowledgment that both parties will be permitted to attend and participate. The court will note there is no acknowledgment of wrongdoing by the school or the Principal.

Luba next asserts a violation on April 18, 2022, citing to her own exhibit 2, pages 13-14. Luba's Exhibit 2, pages 13-14 make no reference to any conversation regarding extra curriculars nor the date of April 18, 2022.

Luba fails to show any violation of the court's order and therefore the court must deny the Plaintiff's Motion for an Order to Show Cause concerning counts

[17] Pltf. Mot. p.8, lines 24-26.
[18] Def. Exhibit A, DEF0127-128

108-109.

J. Luba's Count 110 is Without Merit and must be Denied.

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total.

Luba and her Counsel are once again pushing the limits of honesty with the court on this matter. Luba raises the issue of exchanging the Passport after the last exchange of the school year. Enrique maintains possession of the Passport in even years. Enrique addressed this matter concisely and to the point. Luba then raises the issue in multiple threads.

Luba's conduct regarding the issue of the Passport is further demonstrated with her recent conduct of withholding the Passport in violation of the Orders of the Court and then withholding the child because someone disagrees with her. Enrique has not previously raised this deficiency but a Motion for an Order to Show Cause must also assert the harm. Enrique did not violate the Order, but even if he did, Luba suffered no harm.

The court should note, Luba received the Passport for her trip in November, which violated the Orders of the Court by adding two (2) days without Enrique's prior consent; however, consent was granted after the fact. The court will further note that Luba failed to return the Passport to Enrique upon return.[19]

Luba fails to show that Enrique violated the Decree by maintaining the Passport in his possession following the final exchange of the Summer 2022.

[19] Def. Exhibit A, DEF0106.

Further Luba fails to show actual harm. Luba's request for an Order to Show Cause count 110 must be denied.

K. Luba's Request to Modify the School Must be Denied

Enrique incorporates his objections stated above and incorporates them into the current sections as though they are restated in total. Specifically, Luba fails to provide Points, Authorities, or Citation to permit the present Motion.

The Court is directed to the Order after hearing filed February 8, 2023, following a prolonged *Arcella* Hearing. Luba and her counsel once again modify the Orders and the factual history of this case. The court will note the language in the Order:

2. The plaintiff shall be allowed to apply at [redacted] elementary school in February 2023.

3. The parties shall work together and research the [redacted] to decide if it is in the best interest of the minor child.

Luba and her Counsel have revised the content to state, "research a different school…" The court should be offended at the conduct of Luba and her Counsel.

The Court should be advised, Enrique did not refuse to review other schools or even [redacted] Enrique reviewed the schools proposed and the reasoning of the proposal. Enrique then was made aware that his younger daughter had been accepted to the [redacted] School program for the current school year. Further, Enrique received the academic progress reports from Roger

Bryan which demonstrate outstanding growth.[20] Enrique's position is that the child is excelling, loves the school, and is attending school with her sibling next her. Enrique has made his position clear.

Luba seems incapable of ever putting anyone else's opinions, needs, or findings above her own. Luba has filed to file an appropriate motion to seek an *Arcella* hearing and therefore the court must deny the Plaintiff's Motion.

L. Luba's Request to Change the Child's Name must be Denied.

The court is aware that *Petit* is a case involving an initial naming dispute by married parties. *Id* at 631. Plaintiff and Counsel have simply failed to provide this court with an appropriate Memorandum of Points and Authorities. When a Movant fails to provide appropriate Points and Authorities that would grant the court authority to grant relief, the Motion must be denied.

Even if Luba had cited the correct case, which is *Magiera v. Luera*, 106 Nev. 775 (Nev. 1990). The court should note that in *Magiera* the parties both signed the birth certificate and acknowledged the name of the child. *Id.* at 776. Three (3) years later Luera moved the court to modify the last name of the child. *Id.* The Hearing Master ordered the name changed and Magiera objected to the District Court. *Id.* at 776-777. The District Court upheld the recommendation and the appeal followed. *Id.* at 777.

The Nevada Supreme Court held, 1) the only factor relevant to the determination of what surname a child should bear is the best interest of the child;

[20] See Exhibit C, DEF0684-685.

2) the burden is on the party seeking the name change to prove, by clear and compelling evidence, that the substantial welfare of the child necessitates a name change. *Magiera v. Luera*, 106 Nev. 775, 777 (Nev. 1990). The Supreme Court overturned the District Court's decision and stated the name change order could not stand. The Court has further held that changing a child's name is a major decision that impacts the child's welfare. *Stinziano v. Walley*, No. 70590, at *3 (Nev. App. Mar. 30, 2017).[21]

Luba has cited to *Petit v. Adrianzan*, 133 Nev. 01, 392 P.3d 630 (2017). Luba's reliance on this case and the factors outlined are misguided.[22] Petit named the child without the consent of the Natural Father, who did not sign the Birth Certificate at the time of the child's birth. Adrianzen objected upon learning of the child's name.

Here there was no dispute about the initial naming of the child. The court is further reminded that Snow is not Luba's given name, and it is now unclear whether she is Snow or Dace. Luba must show by clear and compelling evidence, that the substantial welfare of the child necessitates a name change. Luba has failed to present even a scintilla of evidence that the child's welfare necessitates a name change.

\\\

\\\

[21] This is a Published Case from the Court of Appeals.

[22] The court and Plaintiff should be aware that Defendant's Counsel has represented Ms. Petit for many years and is very familiar with that case which is before the Honorable Judge Richie and differs from the present matter completely.

IV. Countermotion

A. The Court Should Set Aside the Monetary Portions of the Stipulation and Order filed July 26, 2022.

Enrique asks this Court to set aside the Stipulation and Order filed July 26, 2022. Specifically, Enrique asks this court to set aside the Provision of Exhibit 1, lines 11 and 22-24. Enrique granted this monetary relief as part of a settlement that included a two (2) year break from litigation and modification of the travel requirements. Luba's conduct has materially breached the agreement and she should therefore forfeit the benefit she obtained.

NRCP 60(b) Provides

> [T]he court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

The Nevada Supreme Court has held that courts may not rewrite contracts between parties. *Harrison v. Harrison*, 376 P.3d 173, 177 (Nev. 2016). Further, Contracts will be enforced as long as they are not unconscionable, illegal or in violation of public policy. *Id.* The court may also employ the doctrine of quantum

meruit, or equitable remedies when warranted by the facts of the case. *Western States Constr. v. Michoff*, 108 Nev. 931, 937-38 (Nev. 1992).

Luba was Order to pay Attorney's Fees and Cost of $1635.50 on April 27, 2022. This award was based on the unmeritorious motion filed by Luba. Luba also received an additional $15,000.00 from Enrique's proceeds of the Marital Home. Enrique agreed to these terms in exchange for an agreement that there would be modification of the travel terms and a two (2) year end of the litigation.

Luba first violated the terms of the agreement when she returned to the Federal Bankruptcy Court seeking Sanctions against Enrique and his Counsel. The court should note sanctions were awarded and this matter was turned over to outside counsel.

Luba next violated the terms of the agreement March 13, 2023, when Luba filed a Motion to Clarify Orders and Make Additional Orders. Luba sought to enforce the terms of the Decree of Divorce, despite contracting to modify those terms. Luba then proceeded to kidnap the minor child and withhold the child from attending a vacation with her father to see grandparents. The most hypocritical part of Luba's actions is that she vacationed to the same area July 2022.[23]

Luba then filed the present retaliatory motion containing 110 allegations which have now been shown to have no merit. Enrique has been forced to expend more money to research each of the 110 allegations and to detail why those allegations are without merit.

[23] See Exhibit A, DEF0068

Luba cannot be permitted to receive the benefit of her bargain while stripping Enrique of the relief he sought in the agreement. The Court should set aside the Stipulation and Order and enter judgment against Luba in the amount of $16,635.50. This amount should be reduced to judgment subject to interest retroactive to the original dates of judgment.

B. The Court Should Modify Custody Awarding Enrique Primary Physical and Sole Legal Custody

The court may modify a joint physical custody arrangement only when (1) there has been a substantial change in circumstances affecting the welfare of the child and (2) the modification would serve the child's best interest." *Romano v. Romano*, 138 Nev. Adv. Op. 1, 13 (Nev. 2022). The "changed circumstances" prong of this test serves the important purpose of guaranteeing stability unless circumstances have changed to such an extent that a modification is appropriate. *Ellis v. Carucci*, 123 Nev. 145, 151 (Nev. 2007).

The district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates 'adequate cause. *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017) (quoting Rooney v. Rooney, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993)). Repeated violation of custody terms and legal custody can constitute a change in circumstances. *Adrianzen v. Petit*, No. 78966-COA, at *8 (Nev. App. July 23, 2020).[24]

[24] This is not the same case cited by Plaintiff in her name change request. These are the same parties but a different issue that went before the appellate court. This is a published case and may be cited.

Luba has consistently made doctor and dental appointments for the minor child without consulting or obtaining the permission of Enrique.[25] Luba believes she is entitled to make the appointment without consultation, she need only notice Enrique. Enrique then must object, or Luba believes consent has been obtained. The court should be advised that during a doctor's appointment during the covid protocols Luba had the audacity to insist that her current husband be permitted to go back with the child rather than Enrique. Luba's stated reason was that "Phil is more of a father to her than you are." Enrique has simply avoided Luba and the conflict ever since.

The Most egregious change in circumstance is that Luba committed an act of Parental Kidnapping on March 15, 2023. Luba's actions are violative of NRS 200.359 which states:

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

(b) In the case of an order, judgment or decree of any court that does not specify when the right to physical custody or visitation is to be exercised, removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to

[25] See Exhibit B, DEF0678-683.

custody or visitation, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Luba knowingly and intentionally refused to exchange the minor child with Enrique at the Chevron Gas Station located at [redacted] at 9:00 AM pursuant to the Decree of Divorce.[26] Luba continued to withhold the child until Enrique retrieved the child from school on March 21, 2023. Luba's actions were in violation of a shared custody Order, and she took action to remove the child from a parent who lawful custody. Luba has therefore committed a D felony.

Luba is going to assert that her actions were taken to protect the child from potential danger. The court is reminded that Luba took the child to the same area previously and offered none of the safeguards she demanded of Enrique. Luba attempted to use this trip as a means of modifying the agreements of the parties demanding Zoom be replaced with Talking Parents video app. That the itinerary clause be expanded providing her with more detail, despite her own failure to provide what was previously required in the Decree. Luba's concerns, even if warranted which they weren't, could have been mitigated had she delivered the child and withheld the passport. Luba committed Parental Abduction.

The court is aware, Luba's action precludes her from sharing custody of the minor child at this time. NRS 125C.0035(7) provides:

> 7. A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction

[26] See Decree of Divorce filed December 8, 2021, Ex. 1, pp. 9-10.

against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

Luba's decision to abduct the child in violation of NRS 200.359 is a change in circumstance affecting the wellbeing of the child and in contravention of the child's best interest. Further, Luba's actions create a presumption that this court must strip Luba of shared custody and pursuant to the statutory language must limit her visitation to supervised visitation until Luba takes appropriate action to rebut the statutory requirement.

The Nevada Supreme Court has mandated that in all Orders regarding custody the court make findings regarding the best interest of the child. *Romano* at 7. NRS 125C (4) sets forth the factors the court must consider, which are:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.

(b) Any nomination of a guardian for the child by a parent.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.
(i) The ability of the child to maintain a relationship with any sibling.
(j) Any history of parental abuse or neglect of the child or a sibling of the child.
(k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
(l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

Any nomination of a guardian for the child by a parent.

Not a factor in the present case.

Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

The court should note the numerous lies that Luba has perpetrated to diminish the relationship between the child and Enrique. Luba asserted Enrique abandoned the family; this was proven false. Luba asserted Domestic Violence: this allegation was debunked. Luba has acted to interfere with every trip and vacation Enrique has planned and paid for.

Luba now makes absurd allegations of hiding a child during a school open house and has even attempted to place barriers on the step-mother (Jennifer) because she teaches at the child's school. The court need only review the Talking Parents transcripts to see that Luba takes any action possible to minimize contact with Enrique and interfere with the father/child relationship.

This factor strongly favors Enrique.

\ \ \

The level of conflict between the parents.

The court is likely aware that the Parties do not like each other. The acrimony in this case is almost exclusively created by Luba. Luba has attempted to steal away custody. Luba has attempted to steal away the marital home. Luba chose to move her boyfriend into the house and introduce him to the minor child as a father figure. Luba has even mandated that the minor child refer to this individual as Dad, over Enrique's objection. Enrique has responded by agreeing to give Luba more money from the sale of the marital home in hopes of purchasing some peace and healing. Luba could not even permit that peace.

This factor favors Enrique.

The physical, developmental and emotional needs of the child.

The child needs stability, consistency, and parents that do not hate each other. Luba is responsible for nearly every portion of acrimony in the present case. Luba also makes it a point to change the rules constantly thus depriving the child of stability.

This factor favors Enrique.

The nature of the relationship of the child with each parent.

The child loves and is bonded with both parents. The child has expressed anxiety and frustration with Luba due to the demand for phone calls and the intrusive and lengthy manner Luba conducts those calls. This factor is likely neutral.

The ability of the child to maintain a relationship with any sibling.

The minor child has a half-sibling with Enrique whom the child is closely bonded and highly attached. Luba is going to assert a sibling relationship with her new husband's minor child; these children are friends and are bonded. However, the statute references sibling and not stepsibling relationships.

This factor must favor Enrique.

Any history of parental abuse or neglect of the child or a sibling of the child.

This factor is neutral.

Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

This is not a factor in this case.

Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

Luba has committed the act of Parental Abduction as outlined above. This factor must highly favor Enrique.

C. The Court Must Establish Child Support

NRS 125B(1) provides:

> 1. An order for the support of a child must, upon the filing of a request for review by:
> (a) The Division of Welfare and Supportive Services of the Department of Health and Human Services, its designated representative or the district attorney, if the Division of Welfare and Supportive Services or the district attorney has jurisdiction in the case; or
> (b) A parent or legal guardian of the child,
> be reviewed by the court at least every 3 years pursuant to this section to determine whether the order should be modified or adjusted. Each review

conducted pursuant to this section must be in response to a separate request.

The court should establish child support pursuant to NAC 425. NAC 425.140 provides:

> Except as otherwise provided in NAC 425.145, the base child support obligation of an obligor must be determined according to the following schedule:
>
> 1. For one child, the sum of:
>
> (a) For the first $6,000 of an obligor's monthly gross income, 16 percent of such income;
>
> (b) For any portion of an obligor's monthly gross income that is greater than $6,000 and equal to or less than $10,000, 8 percent of such a portion; and
>
> (c) For any portion of an obligor's monthly gross income that is greater than $10,000, 4 percent of such a portion.

Luba's income, according to her paystubs attached to her FDF filed March 13, 2023, is:

Hourly rate: (15.07) (40 hours) (52 weeks)/(12 months)=	$2612.13 per month
Tips: 766.05 per 2-week period =	$1659.78 per month
Total Monthly Income =	$4271.91 per month

Luba's child support obligation should therefore be set at $683.50 per month.

D. Enrique Should Be Awarded Attorney's Fees and Costs

Nev. R. Prac. Eighth. Judi. Dist. Ct. 5.507(f) provides that an assertion that the Financial Disclosure Form filed within the last six (6) months has not materially changed satisfies the requirement of the rule. Enrique filed his last

Financial Disclosure Form March 31, 2023. There has been no material change in his financial circumstances since that filing.

Nev. Rev. Stat. § 18.010 grants courts discretion to award Attorney Fees "when the court finds that the claim...was brought or maintained without reasonable ground" and permits courts to "punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase" costs. Nev. Rev. Stat. § 18.010(2)(b). To justify an award of attorney's fees, the district court must determine whether there were reasonable grounds for the claims asserted. *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993). The proper inquiry evaluates the frivolousness of the suit at the time it was initiated. *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996).

Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct, including, but not limited to:

Nev. R. Prac. Eighth. Judi. Dist. Ct. 5.219 provides,

> Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct, including, but not limited to:
> (a) Presenting a position that is obviously frivolous, unnecessary, or unwarranted:
> (b) Multiplying the proceedings in a case so as to increase costs unreasonably and vexatiously:
> (c) Failing to prepare for a proceeding:
> (d) Failing to appear for a proceeding:

(e) Failing or refusing to comply with these rules: or
(f) Failing or refusing to comply with any order or directive of the court.

Luba's present Motion marks the sixth (6th) Pleading filed in this matter requiring a response. The present pleading fails to comply with Nev. R. Prac. Eighth. Judi. Dist. Ct. § 5.510, Nev. R. Prac. Eighth. Judi. Dist. Ct. 5.503, Nev. R. Prac. Eight Jud. Dist. Ct. 5.504 and Nev. R. Prac. Eight Jud. Dist. Ct. 5.506.

Luba's entire Motion is without merit and vexatiously wastes this Court's time and requires Enrique to further expend attorney's fees in defending his position.

The Court must intervene and stop the never-ending litigation and Motion Practice being caused by Luba.

Attorney's Fees and Costs should be awarded, and Defendant's Counsel should be directed to submit an Affidavit and Fees and Costs and a *Brunzell*[27] Affidavit. Further, Plaintiff should be Sanctioned for her ongoing conduct with such Sanction being paid to an appropriate Charity, designated by this Court.

V. Conclusion

Based on the forgoing, Defendant asks this Court to:

7) Deny the Plaintiff's Motion

8) That Plaintiff be Sanctioned for her vexatious and improper conduct.

9) That the Court Modify Custody Awarding Enrique Primary Physical Custody and Sole Legal Custody.

[27] *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345 (Nev. 1969)

10) That Luba be limited to Supervised Visitation and an appropriate facility.

11) That Enrique be Awarded Attorney's Fees and Costs

12) For Such other relief as this Honorable Court deems appropriate and just.

DATED this 5 day of May 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
[redacted]

Attorneys for Defendant

AFFIDAVIT IN SUPPORT OF MOTION

I, ENRIQUE IVAN VELAZQUEZ-GONZALEZ, under penalties of perjury, being first duly sworn, deposes and says:

That I am the Defendant in the above-entitled action; that I have read the foregoing Opposition and Countermotion and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

DATED this_____day of May 2023.

Enrique Gonzalez (May 3, 2023 16:28 PDT)

ENRIQUE IVAN VELAZQUEZ-GONZALEZ

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 5th day of May 2023, I served by and through Wiz-Net electronic service, pursuant to Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause, and a Motion for Additional Orders Regarding Talking Parents Application, Travel, Child's Last Name Hyphenation, Changing Minors School, and Attorney's Fees, and Defendant's Countermotion For A Modification of Custody Awarding Defendant Primary Physical and Sole Legal Custody, Specifically sole possession of the Child's Passport, of The Minor Child and An Award Of Attorney's Fees., to the following:

Benjamin B. Childs, ESQ.

[redacted]

Employee of Roberts Stoffel Family Law Group

OPP to Motion for OSC and CTR 05012023

Final Audit Report 2023-05-03

Created:	2023-05-03
[redacted]	
Status:	Signed
Transaction ID:	CBJCHBCAABAAAuTQh3-HAIsLI0Ni6SgoJWJkFj5HU1IV

"OPP to Motion for OSC and CTR 05012023" History

[redacted]

2023-05-03 - 9:34:03 PM GMT

[redacted]

2023-05-03 - 9:34:44 PM GMT

[redacted]

2023-05-03 - 11:28:24 PM GMT

[redacted]

Signature Date: 2023-05-03 - 11:28:33 PM GMT - Time Source: server

Agreement completed.

2023-05-03 - 11:28:33 PM GMT

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Luba Gonzalez
Plaintiff/Petitioner

vEnrique Ivan Velazquez-Gonzalez
Defendant/Respondent

Case No. D-18-575860-D

Dept. X

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☑ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☑ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☑ **$0** ☐ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: Defendant via Melvin Grimes Date 05/05/2023

Signature of Party or Preparer _____

Electronically Filed
5/31/2023 3:11 PM
Steven D. Grierson
CLERK OF THE COURT

BENJAMIN B. CHILDS, ESQ.
[redacted]

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ kna LUBA SNOW - DACE
Plaintiff

vs.

ENRIQUE IVAN VELAZQUEZ-GONZALEZ
Defendant

Case # D-18-575860-D
Dept # X

Hearing : June 15, 2022 @ 10:00 [OST]

==========

OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO ENFORCE

COUNTERMOTION FOR ORDER TO SHOW CAUSE AND AWARD OF ATTORNEY FEES AND COSTS

Defendant filed an EMERGENCY MOTION TO ENFORCE seeking an order "That Plaintiff be Ordered to Return the Minor Child to the Car and Custody of the Defendant not later than 10:00 AM Father's Day Morning." [Motion 7:1-2]

After trashing Luba, the motion misstates the controlling custody order, and then goes on to make complete false statements about Luba withholding six year old [redacted] passport, but more importantly, it raises a completely new issue about her block vacation dates.

None of the meet and confer correspondence was attached to the motion, because Enrique's false statements would be readily apparent. Exhibit 1 is Luba's attorney's response dated May 23, 2023 explaining that the parents had AGREED on this time share.

Luba will be in Mexico with [redacted] BASED ON ARRANGEMENTS MADE WITH ENRIQUE'S WRITTEN CONSENT ON DECEMBER 4, 2022. Over six months ago. Lube arranged this vacation with her parents, from Bellingham, Washington, her husband Phil and Phil's daughter [redacted] her sister Katarina and her husband Mike and their kids, Phil's brother Mike and their friend from Russia, Olya. June 13 - 20 worked for everyone and the

plans were solidified. It was a collective decision.

On May 23, 2023 Luba's attorney explained as follows :

> Enrique and Luba each get a 21 day summer vacation a year. Enrique picked his dates first for the year 2023 and Luba took what was left. It's directly stated in the exchange that "due to the dates you picked, this is the only option I have to take 3 consecutive weeks for summer vacation w[redacted] The next communication was March 7, where Enrique says that alternate choices of who has first pick for the three week vacation block will be he picks first in odd years [like 2023] and she picks first in even years. Nothing more was said until today, after all the plans have been finalized for months. Upon being contacted, Luba calmly explained.
>
> In summary, Enrique agreed in December of 2022 and Luba proceeded based on that agreement. It is now 6 months later. She is not adjusting her plans based on this last minute demand.
>
> The decree allows Luba and Enrique travel during their summer vacation with the child. The decree is silent on whether the holiday schedule or the vacation schedule trumps the other. It makes no difference in this particular instance since Enrique waived his right to object by waiting 6 months before even commenting on the timing.
>
> In the spirit of cooperation and amicable co-parenting, Luba offers to give Enrique an extra day to make up for Father's Day when she comes back from her vacation.

The situation is that there are 2 blocks of 3 week vacation (21 days for each parent) during summer. One in June and one in July. If Enrique wants every Father's Day he should pick the first block every summer and Luba will agree to taking second block in July every year. Otherwise Enrique will be interfering with Luba's vacation time every time because she'll be stuck with June and won't be able to travel.

In the instant case, Enrique said nothing until May 22, 2023. Over SIX MONTHS later, and obviously just to harass Luba given the large monetary judgment entered against both Enrique, his attorney, and his attorney's lawfirm, and the fact that Luba documented 110 violations of the custody order after Enrique filed a Motion for Order to Show Cause on March 20, 2023, which is set for evidentiary hearing on August 31, 2023.

Referring to the Talking Parents exchange in Exhibit 1, Enrique exercised his vacation July 5 - 26. So Luba had not choice but to exercise her vacation block time before that, from May 31 - June 21. Luba and her family have already booked and paid for her travel during this period, based Enrique's consent in December. She's provided her itinerary.

Luba offered to exchange a day, but she was not willing to totally interrupt her vacation time on such late notice. District courts should "be striving to impose as little change from the intant two-parent family as possible after the parents separate" *Mosley v. Figliuzzi*, 113 Nev. 51, 62, 930 P.2d 1110, 1117 (1997).

In intact families issues like this arise all the time, and days are switched, celebrations do NOT occur on the exact birthday or holiday, etc due to everyone's busy schedule.

In this case, after six months of planning and consenting to Luba's block vacation time, Enrique wants to pay "gotcha" and force Luba to spend more money on very minor issues, which arose after he selected his vacation time, and agreed to the time that Luba ws forced to select.

DECREE SPECIFICALLY PROVIDES FOR MODIFICATIONS

Keeping in mind the Decree of Divorce was entered after a trial and advance findings by an admittedly biased judge [Exhibit 2], it still contained the normal savings provision about the parents making any custody agreements between themselves.

> Section 9.7 of the Custody Order [Page 13 of Exhibit 1] filed December 8, 2021 states
>
> **Modifications**. Unless there is an emergency, any modifications to either the Regular Visitation or the Holiday Vacation Visitation Schedules must be agreed upon in advance by both parties.

///

TIMELINE

December 4, 2022

Luba explains that due to Enrique picking the first three weeks for his block vacation time, she had to pick May 31 - June 21.

May 21, 2023

Enrique acknowledged that Luba has a three week vacation and is requesting an itinerary: "…waiting on your itinerary for your three week vacation coming up"

May 22, 2023

Luba provides her itinerary (three weeks in advance, requirement is 14 days in advance)

May 22, 2023

Enrique demands Luba change plans. Instant motion follows.

WAIVER / ESTOPPEL / PROMISSORY ESTOPPEL

a. WAIVER

"A valid waiver of rights under Miranda must be voluntary, knowing, and intelligent." Mendoza v. State, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006). A waiver is voluntary if it "was the product of [*4] a free and deliberate choice rather than coercion or improper inducement." Id. at 276, 130 P.3d at 181-82 (quotation marks omitted); accord Moran v. Burbine, 475 U.S. 412, 421, [redacted] 1135, 89 L. Ed. 2d 410 (1986). A waiver is knowing and intelligent if it was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran, 475 U.S. at 421

Surely Enrique knows when Father's Day is, since he's making it out like it's the most important day of the year. He's known about Luba's block vacation time since

December 4, 2022, over six months ago. Heck, on May 21, 2023, ten days ago, he wrote and acknowledged that Luba has a three week vacation INCLUDING FATHER'S DAY, and request Luba's itinerary.

This is clear waiver of what he complains of in the motion.

b. ESTOPPEL

Nevada recognizes many forms of estoppel: judicial, collateral, equitable, and promissory to name but a few. "Equitable Estoppel operates to prevent the assertion of legal rights that in equity and good conscience should be unavailable because of a party's conduct." United Board of Carpenters & Joiners of America. Local No. 1780 v. Dahnke. 102 Nev. 20, 22, 714 P.2d 177, 178-79 (1986). To establish a claim of equitable estoppel a party must establish four basic elements: (1) the party to be estopped must be appraised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; [and] (4) he must have relied to his detriment on the conduct of the party to be estopped. In the Matter, ofthg Harrison Living Trust. 121 Nev. 217, 223, 112 P.3d 1058, 1062 (2005)(citing, Cheqer, Inc. v, Painters & Decorators. 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)). "[T]he party who claims reliance must not have closed his eyes to warnings or inconsistent circumstances." Tsouras v. Southwest Plumbing and Heating. 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978).

In this case, Enrique is estopped from the relief requested due to his own actions. He AGREED to Luba's block vacation dates. After he requested block vacation which only left Luba with the dates she picked. It wasn't until ten days ago that Enrique even raised an issue, and then it was the day AFTER he confirmed Luba's block vacation dates.

c. PROMISSORY ESTOPPEL

Cheqer, Inc. v. Painters & Decorators Joint Committee, Inc., 98 Nev. 609, 614, 655 P.2d 996, 998-999 (1982) sets forth the elements of promissory estoppel.

> To establish promissory estoppel four elements must exist: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

Is Enrique saying he didn't know when Father's Day was until May 22, 2023? After both parties had made plans? What he now says is the most important day in his entire life?

Luba is simply trying to co-parent [redacted] and offered to give Enrique a make up day when they come back. But no, Enrique has to file an emergency motion based on half truths and withholding vital information such as the timing of the scheduling of Luba's block vacation time, Section 9.7 of the Custody Order, and Enrique's admission of Luba's time on May 21, 2023, the day BEFORE the demand for Luba to change her plans.

Since district courts should "be striving to impose as little change from the intant two-parent family as possible after the parents separate" *Mosley v. Figliuzzi*, 113 Nev. 51, 62, 930 P.2d 1110, 1117 (1997) and intact families deal with issues like this all the time, the resolution that always happens is days are switched and celebrations do NOT occur on the exact birthday or holiday, etc due to everyone's busy schedule.

Enrique is making up issues to create problems, instead of working for [redacted] best interests by co-parenting and abiding by the agreements reached.

CONCLUSION OF OPPOSITION

The Motion should be summarily denied in full.

COUNTERMOTION FOR ORDER TO SHOW CAUSE AND AWARD OF ATTORNEY FEES AND COSTS

> EDCR Rule 5.219. Sanctionable conduct. Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct, including, but

not limited to:

(a) Presenting a position that is obviously frivolous, unnecessary, or unwarranted;
(b) Multiplying the proceedings in a case so as to increase costs unreasonably and vexatiously;
...
(e) Failing or refusing to comply with these rules; or
(f) Failing or refusing to comply with any order or directive of the court

a. ENRIQUE IS DISCUSSING THE CASE WITH [redacted]

Disturbingly, Luba has to deal with Enrique's and his wife Jennifer's, abusive behavior in violation of the court order. After documenting 110 violations by Enrique, on May 31, 2023 the following exchange happened.

Luba: " for some reason you think we are not going to Mexico?…"

[redacted] "Because Jennifer said… that the judge said…the judge…the lawyer… and she said you are kidnapping me"

EDCR 5.304. Minor children; exposure to court proceedings. All lawyers and litigants possessing knowledge of matters being heard by the family division are prohibited from:

(a) Discussing issues, proceedings, pleadings, or papers on file with the court with any minor child;
(b) Allowing any minor child to review any such proceedings, pleadings, or papers or the record of the proceedings before the court, whether in the form of transcripts, audio or video recordings, or otherwise;
(c) Leaving such materials in a place where it is likely or foreseeable that any minor child will access those materials; or
(d) Knowingly permitting any other person to do any of the things enumerated in this rule, without the written consent of the parties or the permission of the court.

Enrique has been directly discussing the case with [redacted] He's telling [redacted] that "the judge said…the judge…the lawyer… and [Luba is] are kidnapping me [redacted]

b. ENRIQUE ALTERING [redacted] PASSPORT TO REMOVE LUBA'S INFORMATION

Further, Enrique erased Luba's information from [redacted] passport. (See Exhibit 3, before and after pictures of [redacted] passport)

Enrique has his US address written in 2 times and his parents' address in Mexico written in [redacted] passport. NOTHING ABOUT LUBA IS ON [redacted] PASSPORT.

c. LUBA SHOULD BE AWARDED ATTORNEY FEES AND COSTS

Nev. Rev. Stat. § 18.010 grants courts discretion to award Attorney Fees "when the court finds that the claim...was brought or maintained without reasonable ground" and permits courts to "punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase" costs. Nev. Rev. Stat. § 18.010(2)(b). To justify an award of attorney's fees, the district court must determine whether there were reasonable grounds for the claims asserted. *Bergmann v. Boyce,* 109 Nev. 670, 675, 856 P.2d 560, 563 (1993). The proper inquiry evaluates the frivolousness of the suit at the time it was initiated. *Barozzi v. Benna,* 112 Nev. 635, 639, 918 P.2d 301, 303 (1996). Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct, including, but not limited to:

EDCR 5.219 is cited above, justifying imposition of sanctions against Enrique.

Because of the obviously frivolous nature of Enrique's motion, Enrique's attorney should be separately responsible for paying Luba's fees and costs pursuant to NRS 7.085. The motion was brought based on half truths and an incomplete statement of

facts. The timing is the most telling fact, on May 21 Enrique is confirming Luba's block vacation time, on May 22 his attorney is demanding that Luba change her plans that has been agreed upon for over six months, and on May 24 the instant Motion was filed.

The Motion ignores the timing set forth above, all of which is completely documented, and ignores Section 9.7 of the Custody Order [Page 13 of Exhibit 1] filed December 8, 2021.

> NRS 7.085 Payment of additional costs, expenses and attorney's fees by attorney who files, maintains or defends certain civil actions or extends civil actions in certain circumstances.
>
> 1. If a court finds that an attorney has:
> (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
> (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.
> 2. The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial

> resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Enrique's current motion solely relies on hyperbole, misinformation, omitted information, and dramatic statements, and is without merit and vexatiously wastes this Court's time and requires Luba to further expend attorney's fees in defending her position after Enrique agreed to the Luba's block vacation time six months ago.

This is a pattern of Enrique's attorney, Melvin Grimes. A year ago, after obvious bias was documented, Judge Perry herself admitted bias toward Luba, but before that Luba was coerced by Judge Perry to agree to the terms of the Divorce Decree to avoid unfavorable findings, not supported by evidence or testimony, against Luba. Judge Perry relied on Enrique's contradictory testimony to rule in his favor and against Luba. Luba was bankrupted at the end of the divorce proceedings and filed for a bankruptcy on December 15, 2021.

So Luba has admittedly been the victim of a biased the family court system. But it didn't stop there.

Once the bankruptcy was filed, the Federal Court assumed jurisdiction over the property issues in this case and an Automatic Stay pursuant to 11 USC § 362 was in effect. Enrique, by and through his attorney, Mr. Grimes, and with help of Judge Perry attempted to once again separate 4 year old [redacted] from her mother by filing, for, and obtaining, an Order to Show Cause, requesting that Luba be incarcerated for 25 days.

This was a violation of the Automatic Stay.

On March 4, 2022 an evidentiary hearing was conducted by Bankruptcy Judge Natalie Cox. Mr. Grimes and Enrique both testified. Mr. Grimes reluctantly admitted in his testimony that Enrique was paying him from the house proceeds. Since Judge Perry had no jurisdiction and could not impose 25 days of incarceration on Luba she retaliated by putting those unfavorable findings, not supported by evidence or testimony, on the record.

Exhibit 4 is the FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING MOTON FOR CONTEMPT FOR VIOLATION OF THE AUTOMATIC STAY UNDER § 362(a) AND DAMAGES AGAINST CREDITOR, ENRIQUE IVAN VELAZQUEZ-GONZALEZ, HIS COUNSEL, MELVIN R. GRIMES, ESQ. AND LAW FIRM, ROBERTS STOFFEL FAMILY LAW GROUP [ECF NO.11].

While Judge Cox' findings [Exhibit 4] should be reviewed in their entirety, below are some selected highlights.

1. "6. on December 15, 2021, at 8:34 pm, Velazquez-Gonzalez, … filed in the divorce proceedings ex parte application for an order for temporary restraining order …" (Ex. 4, 27:26-28)

2. "Grimes further testified that district court judge Mary Perry did not order the the Sunny property be sold by a certain date…" (Ex. 4, 27:25-28)

3. "on December 17, 2021, Velazquez-Gonzalez, … filed in the divorce proceeding defendant's motion for an order to show cause …" (Ex. 4, 30:21-24)

4. "...defendant (Enrique) therefore does not ask this court to impose financial penalties nor award attorney's fees ... defendant asks this court to impose the jail sentence permitted by statute, imposing 28 days of jail in the clark county detention center, such sentence to be served immediately." (Ex. 4, 32: 9-12)

5. "16. in a letter dated december 20, 2021, addressed to Grimes, Burke (Luba's bankruptcy attorney) stated, in pertinent part, the following:

"putting aside the fact that clark count[y] district court has no authority to enjoin a party from filing bankruptcy, your tro violated the automatic stay. see 11 u.s.c. § 362(a). in addition, your ex parte application for an order to show cause filed on december 17, 2021, again with knowledge of snow's bankruptcy, also violated the automatic stay. therefore, i am requesting you dismiss or withdraw the tro and osc by 5:00 p.m. today december 20,2021…" (Ex.4, 34:5-23)

6. CONCLUSIONS OF LAW

"5. it is readily apparent from the record that Grimes, and by extension Roberts Stoffel Family Law Group, knew of the existence of the bankruptcy case, and therefore the automatic stay, no later than December 16, 2021, at 8:15 AM. Despite knowledge of the bankruptcy case and automatic stay, Grimes, …, took the intentional acts of filing the TRO application … and the OSC Motion and OSC Application on December 17, 2021. Grimes even went so far as to email the TRO Order to Debtor - and not her counsel, Burke - on December 16, 2021 at 8:48

AM, well after he learned of the current bankruptcy case and was aware that Debtor was represented by counsel in the bankruptcy case."

"6. Velazquez-Gonzalez knew of the existence of the bankruptcy case, …. despite knowledge of the bankruptcy case an automatic stay, Velazquez-Gonzalez took the intentional act of encouraging and approving Grime's filing on osc motion …"

"7. by filing the tro application, OSC motion, and OSC application, Velazquez-Gonzalez, Grimes, and by extension, Roberts Stoffel Family Law Group violated section 362(a)(1), …" (Ex. 4, 36: 22-23 - 37:1-14)

7. "Grimes admitted the inappropriateness of filing and prosecuting the TRO application in December 20, 2021, …" (Ex. 4, 36:28)

8. "nothing either in the record or argued by Velazquez-Gonzalez and Grimes substantiates that Debtor's alleged behavior was criminal. On the contrary, it is apparent that the nature of the alleged contemptuous behavior was civil in nature, and the OSC motion and OSC application were designed to coerce payment from Debtor. (Ex 4, 40:18-21)

9. CONCLUSION

"for these reasons,

IT IS HEREBY ORDERED that the motion for contempt for violation of the Automatic Stay Under § 362(a) and Damages Against Creditor, Enrique Velazquez-Gonzalez, his counsel, Melvin R. Grimes, Esq. and law

firm, Roberts Stoffel Family Law Group (ECF No. 11) is granted…" (Ex.4, 43:10-16)

Thus, there's been a finding in a federal court, after a trial, that Enrique, Mr.Grimes, Roberts Stoffel Family Law Group, and Judge Perry violated the Automatic Stay under §362(a). While Judge Perry enjoys the benefits of judicial immunity, the findings clearly are that Luba has been the victim of abuse of the judicial system, specifically the District Court, Family Division in Clark County, Nevada.

Mr. Grimes continues to harass Luba, with the instant "emergency" Motion being the most recent example. This is what NRS 7.085 is designed to address, but awarding Luba attorney fees against not only Enrique, but also his attorney, Melvin Grimes.

CONCLUSION OF COUNTERMOTION

Enrique should be sanctioned for violation of EDCR 5.304(a) and (d). Melvin Grimes should be sanctioned pursuant to NRS 7.085

Plaintiff's Counsel should be directed to submit an Affidavit and Fees and Costs and a *Brunzell* Affidavit.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr. ESQ.
NEVADA BAR # 3946
Attorney for Plaintiff LUBA SNOW-DACE

DECLARATION IN SUPPORT OF OPPOSITION AND COUNTERMOTION

I, Luba Snow Dace, under penalties of perjury, being first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled action; that I have read the foregoing Plaintiff's OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO ENFORCE and COUNTERMOTION FOR ORDER TO SHOW CAUSE AND AWARD OF ATTORNEY FEES AND COSTS, and know the contents thereof and the exhibits attached thereto; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

I, Luba Snow Dace declare under penalty of perjury that the foregoing is true and correct.

/s/ Luba Snow Dace	5/312/2023
Luba Snow Dace	Date

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on May 31, 2023, I electronically filed this OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO ENFORCE and COUNTERMOTION FOR ORDER TO SHOW CAUSE AND AWARD OF ATTORNEY FEES AND COSTS, and it was e-served through the Eighth Judicial District Court electronic filing system to opposing counsel. Electronic service is in lieu of mailing.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr. ESQ.
NEVADA BAR #3946

Please sign electronically for me

[redacted]

Wed 5/31/2023 2:29 PM

[redacted]

Electronically Filed
6/5/2023 4:11 PM
Steven D. Grierson
CLERK OF THE COURT

RPLY
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE VELAZQUEZ-GONZALEZ,	Case No: D-18-575860-D Dept. No: X **Hearing Date:** 06/15/2023 **Hearing Time:** 10:00 AM

REPLY TO OPPOSITION DEFENDANT'S EMERGENCY MOTION TO ENFORCE AND OPPOSITION TO COUNTERMOTION FOR ORDER TO SHOW CAUSE AND AWARD OF ATTORNEY'S FEES

COMES NOW the Defendant, ENRIQUE VELAZQUEZ-GONZALEZ, (Enrique) by and through his Attorney of Record, Melvin R. Grimes, Esq., of Roberts Stoffel Family Law Group, and hereby submits his Reply to Opposition Defendant's Emergency Motion to Enforce and Opposition to Countermotion for Order to Show Cause and Award of Attorney's Fees:

1. Order the Plaintiff to deliver the minor child to the Defendant on

Sunday June 18, 2023, (Father's Day) no later than 10:00 AM.

2. That Plaintiff pay Defendant's Reasonable Attorney's Fees and Costs.

3. That Plaintiff's Countermotion be denied.

4. Any other relief the Court may deem just and proper.

This Reply is made and based on the attached Points and Authorities, Affidavit in Support of Motion, and all papers and Pleadings on file herein and argument of Counsel at hearing.

DATED this 5 day of June 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____

Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
[redacted]
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Statement of Facts

The Parties to this Matter are Plaintiff Luba Gonzalez (Luba) and Defendant Enrique Velazquez-Gonzalez, (Enrique). The Parties were married and subsequently divorced December 8, 2021. The Parties have one (1) minor child, [redacted] Gonzalez [redacted] born [redacted]

Luba's Opposition begins with the assertion that Enrique trashes Luba and misstates the controlling Order.[1] Luba's assertion is comical in that Enrique never asserts any of the improper conduct of Luba other than the hypocritical conduct Luba has engaged in with her kidnapping of [redacted] in March to prevent a "dangerous" trip to Mexico, while attempting to steal Father's Day from Enrique, to go to Mexico.

Luba's hypocritical conduct continues in that she spends six (6) of her fifteen (15) pages attacking and attempting to trash Enrique, Defendant's Counsel, and Judge Perry. Luba wants this court to view her as a long-term victim of the court system and the prior judge while the facts show otherwise. Luba has been a victim of her own manipulation and lies:

1. Luba asserted that Enrique abandoned her and [redacted] to run off to Mexico.

Luba's own attorney submitted a letter to the court asserting that Luba has

[1] Pltf. Opp file 05/31/2023, p.1, line 22.

lied to her.[2]

2. Dept. P, Judge Perry, found Luba to lack credibility and that she committed a fraud in the transfer of the marital property.[3]
3. Dept. P, Judge Perry stated, "after presiding over this case for almost a year and a half, and having watched the Plaintiff attempt to defraud the other Party as well as attempt to defraud another Court, the Court has now developed a personal bias against the Plaintiff and therefore should not remain on the case."[4]
4. Luba lied to this court in her Motion for an Order to Show Cause filed April 27, 2023. Luba asserts Judge Perry Ordered that the Plaintiff "...shall be allowed to apply to a different Elementary School in February 2023.[5]" The

[redacted]

Those outlined above are not every example of the lies and fraud Luba as committed before the courts. Luba is not the victim of a biased system or biased Judge. Luba is a victim of her lies and manipulation before these courts.

Luba's Opposition fails to address the language of the Marital Settlement Agreement. Luba and her counsel prefer to focus on a legal argument of Estoppel

---

[2] Exhibit
[3] Pltf. Appendix, p. 8 of 24. Minutes from May 17, 2022.
[4] Id.
[5] Pltf. Mot. for OSC filed 04272023, p.9, lines 28-29.
[6] Oder from 12/07/2021, filed 02082022, p.7 lines 19-23.

and Waiver which simply do not apply in the present case. Luba asserts she made these plans more than sex (6) months ago in coordination with her family.[7] Luba never informed Enrique of her intention to travel to Mexico until May 22,2023. Luba hid her intentions until the last moment, knowing she intended to take Father's Day and knowing that Enrique would object.

Luba continues to assert the misstatement that each party gets a twenty-one (21) day summer vacation. Luba and her counsel misstate the language of the Marital Settlement Agreement (MSA). The plain language of the MSA is as follows:

> **9.5 Vacation Time with the Child.** Husband and wife each have the right to take up to seven days of vacation time per year with the child, which must be taken in one block of no more than seven days per year if any given year husband or wife chooses to exercise a vacation block of time lasting less than seven days duration, he or she will forfeit the balance of their vacation days for that year. The vacation period may be added to normal custody time such that husband or wife may, by exercising vacation time have the child for up to three weeks total by taking the child for his or her normal one week of custody time, plus a vacation week, then continuing to have the child during the following week, which would otherwise be the vacationing parents' custody time anyway. Each party is required to give no less than 30 days' written notice of the planned vacation and in the event of a dispute wherein both parties want the same dates or overlapping dates for vacation with the child, the party who gave written notice shall be entitled to take the vacation block he or she provided in writing notice to the other.

The court can easily see that Luba is entitled to seven (7) days vacation, and

[7] Pltf. Opp. p.1, lines 28-3.

that she MAY block those to create a twenty-one (21) day block. However, there is no permissive language within the MSA regarding Father's Day, Section 9.4.4 of the MSA states:

> **Father's Day**. Each year the minor child shall reside with husband from 10:00 AM on Father's Day through 12:00 PM on the day following Father's Day.

Luba next asserts that Enrique is objecting to Luba's attempt to steal Father's Day because of a Judgment issued by the Bankruptcy Court. This court should know with absolute surety there is nothing close to that occurring here. Enrique and Defendant's Counsel are represented by outside counsel and Insurance has (or is) paying the entirety of the Judgment. If anyone should be upset about the Judgment, it is Luba; she was awarded far less than she was offered as a settlement.

The only person acting to harass and diminish is Luba. Luba's assertion that she has documented 110 violations of the custody order is false. The court is well aware that each has been addressed and shown to be untrue and retaliatory in nature. The comical part of this assertion is that Luba and her Counsel assert Enrique misstates the language of the MSA, yet in their sloppily presented Motion for an Order to Show Cause, Luba and her Counsel actual cite the wrong controlling order repeatedly.

\\\

\\\

\\\

II.

LEGAL ARGUMENT

A. Estoppel and Waiver do Not Apply

In Nevada, equitable estoppel has four elements:(1) the party to be estopped must be appraised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped. *Hermanson v. Hermanson*, 110 Nev. 1400, 1405 (Nev. 1994)

Enrique was not aware, until May 22, 2023, that Luba intended to travel out of the United States and that he would not be able to exercise his right to Father's Day. Therefore, Enrique was not apprised of all the facts.

There is nothing in Enrique's conduct that indicated Luba was permitted to withhold the child on Father's Day. Luba's conduct was such that she knew Enrique would object, she withheld the information until the last minute of the required notice period. Luba's Opposition is repeatedly dismissive of Enrique, asserting that certainly he was aware of Father's Day in December when he was notified of the dates, well certainly Luba was aware of the date as well as it is one of only seven (7) holidays placed within the MSA. The court can only imagine the travesty that Luba would be asserting if Enrique planned his trip in such a way Luba was denied Mother's Day.

Luba is not ignorant of the true state of facts. The MSA specifies that [redacted] will be with Enrique on Father's Day. Luba's initials are at the bottom of page 11 of the MSA which contains the language. Luba cannot assert that she was ignorant of the true state of facts.

Luba cannot assert detrimental reliance and she withheld the information that she intended to take the child out of the area. Luba could have asserted this if she had sent Enrique a message of the intent to travel on the date she booked the trip and Enrique had remained quiet until the last minute. Luba withheld that information until the last minute. Luba cannot assert detrimental reliance.

Estoppel and Waiver therefore do not apply to this matter.

B. Discussing the Case with the Child.

Luba presents to this court an audio recording she secretly obtained from the child. Watching the video, you see Luba hide the recording devise and commence interrogation of the child following the most recent exchange. Ignoring the fact this recording is hearsay and violative of *Gordon v. Geiger*, it is disgusting that a parent would engage in conduct of this nature. 402 P.3d 671 (Nev. 2017).

Enrique is not discussing the case with the child. Enrique simply asked [redacted] whether she wanted to go to Mexico or spend Father's Day with her father. The court should note with interest that Luba goes even further and asks about anyone monitoring the phone calls; which the child says NO, they are just making sure she is OK.

C. The Child's Passport

Luba asserts that Enrique altered the Passport. The court should note with interest how demonstrative of Luba's conduct this assertion is. Enrique ordered and paid for [redacted] Passport. When the Passport arrive Enrique placed his Name, Address, and relationship into the document. The second box was blank and available for Luba to insert her information. Luba chose to whiteout Enrique's information, which dared to be entered before her own, and wrote her name in at the top and then relegated Enrique to the bottom box. The court need only look at the first picture (page 12 of Plaintiff's Exhibits) to see the whiteout applied.

D. Discussing the Case with the Child.

Luba next asserts she is entitled to an award of Attorney's fees pursuant to NRS 18.010 and EDCR 5.219. Luba asserts the Motion to enforce is based on half-truths and incomplete statements of facts.

Luba's counsel then goes into details of the Bankruptcy Hearings and the issues in another court which have no bearing on the present matter. Plaintiff and Plaintiff's Counsel attempt to weave this finding into every possible pleading at the moment, the court should wonder why Plaintiff and Plaintiff's Counsel find any of this relevant. Luba also attempts to bring pre-litigation information before this court, having attached medical records, pleadings and other documents that related to events prior to the evidentiary hearings of October 11 and 12, 2021.

Enrique is acting in good faith and attempting to enforce his rights as a father

and under the MSA. Luba is not entitled to an award of attorney's fees.

III.
Conclusion

Defendant, Enrique Velazquez-Gonzalez, therefore, prays this Court grant the following relief:

1. Order the Plaintiff to deliver the minor child to the Defendant on Sunday June 18, 2023, (Father's Day) no later than 10:00 AM.
2. That Plaintiff pay Defendant's Reasonable Attorney's Fees and Costs.
3. That Plaintiff's Countermotion be denied.
4. Any other relief the Court may deem just and proper.

DATED this 5 day of June 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
[redacted]

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 5 day of June 2023, I served by and through Wiz-Net electronic service, pursuant to Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Defendant's Emergency Motion to Enforce, to the following:

Benjamin B. Childs, ESQ.

[redacted]

By: _____
An Employee of Roberts Stoffel Family Law Group

Electronically Filed
06/06/2023 12:31 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
4411 S. Pecos Road
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X Date of Hearing: April 6, 2023 Time of Hearing: 11:00 a.m.

ORDER AFTER APRIL 6, 2023 HEARING

THIS MATTER having come before this Court on the 6th day of April, 2023, for Motion: Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges. Plaintiff's: Opposition To Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges And Countermotion For Award Of Attorney Fees. The

BBC

Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record, Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff, Luba Gonzalez, being present and represented by and through her attorney of record, Benjamin B. Childs, Esq., of the Law Office of Benjamin B. Childs. The Parties and Counsel present and appeared in person. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby finds and Orders as follows:

THE COURT NOTES the Order to Show Cause (OSC) was signed in advance under the rule.

THE COURT ADMONISHED the parties to adhere to the custody orders. The orders are governing orders and will be adhered to by the parties to the letter.

NOW THEREFORE,

THE COURT HEREBY ORDERS that request for modification of custody is DEFERRED.

THE COURT FURTHER ORDERS that Defendant's request for Referral to the Clark County District Attorney for criminal charges against the Plaintiff for violation of NRS 200.359 is DENIED.

THE COURT FURTHER ORDERS that Attorney's Fees and Costs are DEFERRED.

///

BBC

THE COURT FURTHER ORDERS that the matter is set for Evidentiary Hearing on August 31, 2023, at 1:30 p.m. (half day setting). A Trial Management Order shall be issued by Chambers.

THE COURT FURTHER ORDERS that Attorney Grimes shall prepare the Order and send to opposing counsel to review and countersign.

IT IS SO ORDERED.

Dated this 6th day of June, 2023

ha

CB7 BAA 75D4 744D
Heidi Almase
District Court Judge

Submitted this 6 day of June, 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972

[redacted]

Attorneys for Defendant

Approved as to Content and Form:

By: Benjamin B. Childs
Benjamin B. Childs, Esq.
State of Nevada Bar No.

Attorneys for Plaintiff

BBC

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 6/6/2023

[redacted]

Electronically Filed
6/8/2023 5:03 PM
Steven D. Grierson
CLERK OF THE COURT

BENJAMIN B. CHILDS, ESQ.
[redacted]

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ kna LUBA SNOW - DACE
Plaintiff
vs.
ENRIQUE IVAN VELAZQUEZ-GONZALEZ
Defendant

Case # D-18-575860-D
Dept # X

NOTICE OF ENTRY OF ORDER

Take notice that an ORDER AFTER APRIL 6, 2023 HEARING was filed on June 6, 2023. The filed Order is attached.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr. ESQ.
NEVADA BAR #3946
Attorney for Plaintiff, Luba Snow-Dace

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on June 8, 2023, I electronically filed this NOTICE OF ENTRY OF ORDER, with attachment, and it was e-served through the Eighth Judicial District Court electronic filing system to opposing counsel. Electronic service is in lieu of mailing.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr. ESQ.
NEVADA BAR #3946

Electronically Filed
06/06/2023 12:31 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
4411 S. Pecos Road
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X Date of Hearing: April 6, 2023 Time of Hearing: 11:00 a.m.

ORDER AFTER APRIL 6, 2023 HEARING

THIS MATTER having come before this Court on the 6th day of April, 2023, for Motion: Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges. Plaintiff's: Opposition To Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges And Countermotion For Award Of Attorney Fees. The

BBC

Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record, Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff, Luba Gonzalez, being present and represented by and through her attorney of record, Benjamin B. Childs, Esq., of the Law Office of Benjamin B. Childs. The Parties and Counsel present and appeared in person. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby finds and Orders as follows:

THE COURT NOTES the Order to Show Cause (OSC) was signed in advance under the rule.

THE COURT ADMONISHED the parties to adhere to the custody orders. The orders are governing orders and will be adhered to by the parties to the letter.

NOW THEREFORE,

THE COURT HEREBY ORDERS that request for modification of custody is DEFERRED.

THE COURT FURTHER ORDERS that Defendant's request for Referral to the Clark County District Attorney for criminal charges against the Plaintiff for violation of NRS 200.359 is DENIED.

THE COURT FURTHER ORDERS that Attorney's Fees and Costs are DEFERRED.

///

BBC

THE COURT FURTHER ORDERS that the matter is set for Evidentiary Hearing on August 31, 2023, at 1:30 p.m. (half day setting). A Trial Management Order shall be issued by Chambers.

THE COURT FURTHER ORDERS that Attorney Grimes shall prepare the Order and send to opposing counsel to review and countersign.

IT IS SO ORDERED.

Dated this 6th day of June, 2023

ha

CB7 BAA 75D4 744D
Heidi Almase
District Court Judge

Submitted this 6 day of June, 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972

[redacted]

Attorneys for Defendant

Approved as to Content and Form:

By: Benjamin B. Childs
Benjamin B. Childs, Esq.
State of Nevada Bar No.

Attorneys for Plaintiff

BBC

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 6/6/2023

[redacted]

Electronically Filed
06/11/2023 11:43 AM
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELASQUEZ-GONZALEZ, Defendant.	CASE NO.: D-18-575860-D Department X

ORDER TO SHOW CAUSE

WHY A SPECIAL MASTER/PARENTING COORDINATOR SHOULD NOT BE APPOINTED TO THIS CASE AT THE PARTIES' EXPENESE PURSUANT TO NRCP 53(b)(2)

TO: LUBA GONZALEZ, Plaintiff and her attorney of record, Ben Childs

TO: ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant and his attorney of record, Melvin Grimes

YOU ARE HEREBY ORDERED to appear in the Eighth Judicial District Court, [redacted] Las Vegas, NV, Department X, Courtroom 3B, on **AUGUST 3, 2023 AT 1:30PM** to show cause why a Special Master/Parenting Coordinator should not be appointed to this case at the parties' expense pursuant to NRCP 53(b)(2).

Any response to the Order to Show Cause must be filed and served not later than **JUNE 26, 2023.** ***NO NEW REQUESTS FOR RELIEF WILL BE CONSIDERED IN A RESPONSIVE PLEADING TO THIS ORDER TO SHOW CAUSE.***

Dated this 11th day of June, 2023

[redacted]

DFE 005 1DA4 814E
Heidi Almase
District Court Judge

Heidi Almase
DISTRICT JUDGE
Department X
[redacted]

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order to Show Cause 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: 6/11/2023

[redacted]

Electronically Filed
6/11/2023 12:10 PM
Steven D. Grierson
CLERK OF THE COURT

BENJAMIN B. CHILDS, ESQ.
[redacted]

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ kna LUBA SNOW Plaintiff vs. ENRIQUE IVAN VELAZQUEZ-GONZALEZ Defendant	Case # D-18-575860-D Dept # X NOTICE OF ENTRY OF ORDER

==========

Take notice that on June 11, 2023 an ORDER TO SHOW CAUSE WHY A SPECIAL MASTER / PARENTING COORDINATOR SHOULD NOT BE APPOINTED TO THIS CASE AT THE PARTIES' EXPENSE PURSUANT TO NRCP 53(b)(2) was filed.

The filed Order is attached hereto.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr. ESQ.
NEVADA BAR # 3946
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on June 11, 2023 I electronically filed this NOTICE OF ENTRY OF ORDER, with attachment, and it was eserved through the 8th Judicial District Court electronic filing system to opposing counsel. Electronic service is in lieu of mailing.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, SR, ESQ.
Nevada Bar No.: 3946
Attorney for Plaintiff

Electronically Filed
06/11/2023 11:43 AM
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELASQUEZ-GONZALEZ, Defendant.	CASE NO.: D-18-575860-D Department X

ORDER TO SHOW CAUSE

WHY A SPECIAL MASTER/PARENTING COORDINATOR SHOULD NOT BE APPOINTED TO THIS CASE AT THE PARTIES' EXPENESE PURSUANT TO NRCP 53(b)(2)

TO: LUBA GONZALEZ, Plaintiff and her attorney of record, Ben Childs

TO: ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant and his attorney of record, Melvin Grimes

YOU ARE HEREBY ORDERED to appear in the Eighth Judicial District Court, [redacted] Las Vegas, NV, Department X, Courtroom 3B, on **AUGUST 3, 2023 AT 1:30PM** to show cause why a Special Master/Parenting Coordinator should not be appointed to this case at the parties' expense pursuant to NRCP 53(b)(2).

Any response to the Order to Show Cause must be filed and served not later than **JUNE 26, 2023.** ***NO NEW REQUESTS FOR RELIEF WILL BE CONSIDERED IN A RESPONSIVE PLEADING TO THIS ORDER TO SHOW CAUSE.***

Dated this 11th day of June, 2023

Heidi Almase

[redacted]

DFE 005 1DA4 814E
Heidi Almase
District Court Judge

Heidi Almase
DISTRICT JUDGE
[redacted]

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order to Show Cause 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: 6/11/2023

[redacted]

Electronically Filed
06/13/2023 12:18 PM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, vs. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X

ORDER RE: ALL PENDING MOTIONS

This matter is currently scheduled for June 15, 2023 hearing on the following motions/countermotions:

Luba's Moving Papers: 1) Plaintiff Luba (Luba) Gonzalez' April 27, 2023 Motion for an Order to Show Cause, for Additional Orders Regarding Talking Parents Application, Travel, Child's Last Name Hyphenation, Changing Minor Child's School and Attorney's Fee, Ex parte Application for Order to Show Cause with separately filed Exhibits (docket entries 400, 402, 403, 404 and 406); 2) Defendant' Enrique (Enrique) Ivan Velazquez-Gonzalez' May 5, 2023 Opposition and Countermotion for Modification of Custody awarding [him] Primary Physical Custody and Sole Legal Custody, Sole Possession of Child's Passport and Award for Attorney's Fees with separately filed Exhibits (docket entries 407 and 408); and 3) Luba's May 19, 2023 Opposition (Reply) to Countermotion for Modification of Custody et al. with supporting Exhibits (docket entries 412 and 413).

Enrique's Moving Papers: 1) Enrique's Emergency Motion to Enforce with supporting Exhibits (docket entries 414, 417 and 419); 2) Luba's Opposition and Countermotion for Order

to Show Cause and Award of Attorney Fees and Costs with supporting Exhibits as well as Supplemental (docket entries 420, 421 and 423); 3) Enrique's Reply with supporting Exhibits (docket entries 426 and 428).

On June 9, 2023, this Court issued Minutes striking Luba's June 8, 2023 Omnibus Reply to Opposition to Countermotion for Order to Show Cause and Award for Attorney Fees and Costs and Reply to Opposition to Plaintiff's Motion for Order to Show Cause et al. and supporting Exhibits (docket entries 431 and 433).

This Court exercises authority granted it pursuant to NRCP 1 and EDCR 1.10 which provide district court dockets shall be administered to secure speedy, efficient and inexpensive determinations in every action. The Court exercises discretion granted it pursuant to EDCR 5.702(a) to decide this matter without recourse to oral argument. Accordingly, the Court ORDERS the June 15, 2023 hearing date VACATED.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] GONZALEZ, born [redacted] (age 6 years). The parties in this case share JOINT LEGAL and JOINT PHYSICAL CUSTODY. See Stipulated Decree of Divorce at Exhibit 1 p.8-9, Article 9.1 and 9.2 (Marital Settlement Agreement (MSA))(filed December 8, 2021).

The MSA includes detailed travel provisions at Article 9.5, Vacation Time with the Child and Article 9.5.1, Itinerary. Id. at MSA Articles 9.5 and 9.5.1. In particular, the parties agreed that, if traveling outside of Nevada, the travelling party shall provide a written itinerary not later than 14 days prior to a trip to include "all flights the minor child will take, and for each night of the trip, the address where the child will be staying each night she is away from Las Vegas (and if applicable the name of the hotel where the child will be staying), and a number at which the

child may be reached in the event of an emergency. If the border crossing will be by car or on foot, the parent taking the child out of the country will also provide the dates of the border crossing as part of the itinerary." Id. at MSA Art. 9.5.1.

The MSA also includes a therapy provision:

> "9.9 Counselor. The parties agree that the minor child may go to see a counselor. Wife may select the counselor and will be responsible to pay all co-pays for the same. The counseling will take place only during Wife's custody time, unless an agreement is reached otherwise hereafter. Husband and Wife understand and agree that the counselor is not to be used as a tool to develop court testimony for a custody battle, unless there is a mandatory reporting issue that arises involving the counselor , but that counseling shall be solely for the purpose of assisting the child with any difficulty she has relative to the divorce, or other life circumstances. Both parties shall participate in counseling as needed."

Id. at MSA Art. 9.9.

On July 26, 2022, the parties entered a Stipulation and Order wherein they agreed to withdraw certain pleadings to include a pending appeal. See Stipulation and Order (filed July 26, 2022). In the Stipulation and Order, the parties reached certain agreements related to travel and communication. With respect to communication, the parties stipulated "[a]ll communication between the parents shall be through Talking Parents unless it is an emergency. Each parent has up to 24 hours to respond." Id. at Exhibit 1, p.1, ll.19-20.[1]

This case has been subject to extensive pre- and post-judgment litigation. Taking into account the history of this case and the current matters pending before the Court, on June 11, 2023, this Court issued an Order to Show Cause why a Special Master/Parenting Coordinator

---

[1] The Talking Parents provisions are similar those contained in the Decree's MSA wherein the parties agreed to continue to utilize the court-ordered communication application and to open and respond to parent communications within 24-hours of a message being sent. See Stipulated Decree of Divorce, MSA Art.9.8 (communications by Talking Parents) at p.13 (filed December 8, 2021).

should not be Appointed to this Case at the Parties' Expense pursuant to NRCP 53(b)(a). Responsive pleadings to the Order to Show Cause are due not later than June 26, 2023. Hearing on the Order to Show Cause is scheduled for August 3, 2023.

This matter is also scheduled for an August 31, 2023 Order to Show Cause hearing based on Enrique's March 20, 2023 Emergency Motion for Return of the Child, for an Order to Show Cause and for Referral to the District Attorney for Criminal Charges. See Order to Show Cause (filed March 20, 2023); see also Order after April 6, 2023 Hearing (filed June 6, 2023).

LUBA'S MOVING PAPERS

The Requests for Additional Orders

In her April 27, 2023 motion, Luba seeks an Order to Show Cause for 110 alleged violations. In the context of her request for an Order to Show Cause, Luba requested additional orders enter to include: 1) an order for detailed travel itinerary for international travel to include modification to preclude travel to any 'Do not Travel' or 'Reconsider Travel' countries and addition of precluding on foot crossing as well as CBX border crossing ticket proofs; 2) an order for video communication with the child via Talking Parents on Mondays and Fridays at 7PM as well as Mondays, Wednesdays and Fridays during specified Summer and Winter Break time periods and during any international travel; 3) a school selection request for the child to attend [redacted] Academy Charter School effective for the 2023 – 2024 academic year; and 4) an order changing the minor child's name to Snow-Gonzalez.

The Court FINDS, as Enrique argued in his May 5, 2023 Opposition and Countermotion, Luba failed to provide points and authorities in support of her requests for additional orders and/or modifications. See EDCR 5.503(a)(every motion shall include points and authorities supporting each position asserted). Further, the Court FINDS Luba has requested modification

of the parties' stipulated travel itinerary provisions, increased and specified electronic visitations, a school selection requests and an order changing the minor child's surname. See Mizrachi v. Mizrachi, 132 Nev. 666, 673-74, 385 P.3d 982, 987 (Nev. App. 2016)(modification alters the parties' substantive rights while clarification involves the Court's defining the rights that have already been awarded but leaving their substantive rights unchanged). Therefore, Luba's motions for additional orders fails where she has failed to provide points and authorities or any analysis in support of her requests.

Additionally, with respect to her request to modify the child's surname, the Court FINDS Luba cited to Petit v. Adrianzen, 133 Nev. 91, 94, 392 P.3d 630, 632-33 (2017), a case involving a child naming dispute at birth. The Court FINDS Magiera v. Luera, 106 Nev. 775, 778, 802 P.2d 6, 8 (1990) governs post-birth naming disputes wherein the only relevant consideration is the child's best interest. Id. The Court FINDS Luba cited to the wrong case but, in any event, failed to include any best interest analysis in support of her request. See, e.g., NRS 125C.0035(4).

With respect to Luba's request for a school selection modification, the Court FINDS, on December 7, 2021, a non-jury bench trial was held on school selection pursuant to Arcella. See Order after [December 7, 2021] Hearing (filed February 8, 2022). Following its Arcella v. Arcella, 133 Nev. 868, 870, 407 P.3d 341, 344 (2017) analysis, the Court ordered the child would continue to remain enrolled in [redacted] School, that Luba would be allowed to apply to the [redacted] Elementary School in February 2023 with the parties working together to research [redacted] to determine if enrollment was in the child's best interest and that "if the parties stipulate to attending family therapy, the parties shall agree on a therapist and attend therapy for a minimum of six months." Id. at p.7, ll.24-25.

The Court FINDS, in the first instance, Luba failed to include any analysis as set forth in Arcella. Second, the parties had a non-jury trial on school selection approximately eighteen (18) months ago wherein the Court concluded the child would continue to attend [redacted] with the Court Order after [December 7, 2021] Hearing.

Accordingly, for the foregoing reasons, the Court DENIES as legally deficient Luba's requests for additional orders 1 through 4; to wit Luba's requests for: 1) an order for detailed travel itinerary for international travel to include modification to preclude travel to any 'Do not Travel' or 'Reconsider Travel' countries and addition of precluding on foot crossing as well as CBX border crossing ticket proofs; 2) an order for video communication with the child via Talking Parents on Mondays and Fridays at 7PM as well as Mondays, Wednesdays and Fridays during specified Summer and Winter Break time periods and during any international travel; 3) a school selection request for the child to attend [redacted] Academy Charter School effective for the 2023 – 2024 academic year; and 4) an order changing the minor child's name to Snow-Gonzalez.

The Requests for Orders to Show Cause

As an initial matter and as Enrique argued in his Opposition, Luba failed to cite to any authority in support of her request for an Order to Show Cause. See EDCR 5.503(a)(points and authorities shall be included for each assertion). See also EDCR 5.509; NRS 22.030 and Awad v. Wright, 106 Nev. 407, 794 P.2d 713 (1990), *abrogated by Pengilly v. Rancho Santa Fe Homeowners Ass'n, 116 Nev. 646, 5 P.3d 569 (2000)*.

//

//

Counts 1 -3: Hair Cut Appointments

Legal custody is the basic responsibility for a child and the responsibility to make major decisions regarding the child. Rivero v. Rivero, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled in part on other grounds by Romano v. Romano, 138 Nev. Adv. Op. 1, 501 P.3d 980 (2022)*. For example, legal custody involves decisions regarding healthcare, education, and religion while the parent with whom the child is residing at that time usually makes day-to-day decisions. Id. Joint legal custody does not require that the parents have equal decision-making authority. Id.

As noted in the parties' controlling orders, the parties share joint legal custody. See Stipulated Decree of Divorce at Exhibit 1 p.8-9, Article 9.1 and 9.2 (Marital Settlement Agreement (MSA))(filed December 8, 2021).

The Court FINDS Enrique obtaining haircuts for the child on January 19, 2022, August 2, 2022 and April 14, 2023 does not rise to a violation of the joint legal custody order nor is a haircut or any modifications of the child's appearance included in the parties' extraordinarily detailed MSA. The Court further FINDS at least two of the alleged violations, January 19, 2022 and August 2, 2022, are extremely dated. A party may not simply sit on his/her hands but shall immediately address the issue with a parent as required by EDCR 5.501 and, if further relief is required, file the appropriate motion with the Court. See, e.g., Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997)(laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable; applicability of the doctrine of laches is a fact specific inquiry).

Accordingly, Luba's request for an Order to Show Cause related to her Counts 1 through 3 is DENIED.

Counts 4 – 87: Not Checking/Responding Talking Parents within 24-Hours

In the July 26, 2022 Stipulation and Order, as noted above, the parties stipulated "[a]ll communication between the parents shall be through Talking Parents unless it is an emergency. Each parent has up to 24 hours to respond." Id. at Exhibit 1, p.1, ll.19-20. The July 26, 2022 Stipulation and Order is the most recent controlling order related to the court-ordered communication application. The Court FINDS, in her motion, Luba cited the Stipulated Decree of Divorce communication order in support of her request for an Order to Show Cause. Because a show cause contempt proceeding is jurisdictional in nature, the initial prima facie burden must be explicitly met. As Enrique argued in his Opposition, Luba's Counts 4 through 87 allegations fail for this reason.

The Court additionally FINDS, notwithstanding the jurisdictional defect, Luba's allegations Enrique failed to respond to her Talking Parents messages within 24-hours range from December 12, 2021 through April 11, 2023. While the failure to abide by the Talking Parents order may, if properly pleaded result in this Court issuing an Order to Show Cause, Luba cannot sit on her hands when violations occur. See Carson City, 113 Nev. at 412, 934 P.2d at 1043.

For the foregoing reasons, Luba's request for an Order to Show Cause related to her Counts 4 through 87 is DENIED.

Counts 88 – 89: Travel Itinerary

For these allegations, Luba alleged violation of the Stipulated Decree of Divorce MSA provisions. See MSA Art.9.5.1 (filed December 8, 2021). However, the July 26, 2022

Stipulation and Order contain the most recent travel rules related to the minor child. See Stipulation and Order at Exhibit 1, p.1, ll.16-16 (filed July 26, 2022). Luba's failure to cite to the controlling order where a request for Order to Show Cause is requested is, as noted above, fatal.

Notwithstanding the jurisdictional issue, substantively Luba alleges Enrique violated the Stipulated Decree of Divorce MSA provisions related to travel on June 2022 and March 15, 2023 by failing to provide "complete itineraries". See MSA Art.9.5.1 (filed December 8, 2021). With respect to Luba's allegations related to June 2022 travel, Enrique argues this count (88) must be dismissed where the matter was pleaded by Luba in her June 20, 2022[2] Motion for Order to Show Cause et al. and resolved by the July 26, 2022 Stipulation and Order.

The Court FINDS, in Luba's June 5, 2022 Motion for Order to Show Cause et al., she alleged Enrique violated Art. 9.5 and 9.5.1 of the MSA by failing to timely provide her with a detailed itinerary for his planned travel to Mexico scheduled for June 15, 2022. See Luba's Motion for Order to Show Cause et al. at pp.2-3 (filed June 5, 2022). The Court FINDS Luba's June 5, 2022 motion was resolved by execution and filing of the July 26, 2022 Stipulation and Order Resolving all Post-Judgment Issues, i.e., the August 29, 2022 hearing scheduled on the pending motions were cancelled as a result of entry of the Stipulation and Order. Accordingly, Luba's allegations related to Enrique's June 15, 2022 travel was resolved by stipulation of the parties and she is not now able to request an Order to Show Cause for the allegation even if she had cited to the controlling order, i.e., the July 26, 2022 Stipulation and Order. Therefore, Luba's Count 88 is DENIED.

---

[2] Luba did not file any motion on June 20, 2022. Luba filed the relevant motion on June 5, 2022 (see docket entry number 347).

The Court FINDS allegations related to Enrique's March 15, 2023 travel to Mexico are currently scheduled for evidentiary hearing Enrique's request for an Order to Show Cause. See Enrique's Order to Show Cause (filed March 20, 2023)(scheduled for August 31, 2023 evidentiary hearing). The Court FINDS, in her March 13, 2023 Exhibits in support of her March 13, 2023 Motion to Clarify Orders and Make Additional Orders Regarding Travel of Minor Child, Luba included messages between her and Enrique wherein Enrique provided "new" flight itinerary on March 7, 2023. See Luba's Exhibit 1 at p.4 (filed March 13, 2023). In the exchange, Luba stated in part, "I don't have a problem with your taking [the child] to Mexico if you want to fly out of the United States." Id. at p.3 of 75 (message dated March 8, 2023 at 11:50AM). Nowhere in the message did Luba challenge the timing of Enrique's "new" itinerary. Rather, Luba challenges the completeness of the itinerary, that some of the itinerary is in Spanish, that Enrique had not provided CBX border crossing tickets and had not enabled the Talking Parents video communication application. Id. at pp.1-75. However, the text message exhibits Luba attached indicate Enrique: 1) attached the child's flight itinerary; 2) the address of the hotel the child was staying at; 3) reference to the Monterey address Enrique and his family stayed at in two prior visits to family; and 4) the date of return. Id. at p.2 of 75 (March 7, 2023 at 7:55PM message with attachments). The July 26, 2022 Stipulation and Order mandated a traveling parent provide: 1) dates of travel; 2) passengers on a reservation; 3) airline and flight details; and 4) address where party will be staying with the child. See July 26, 2022 Stipulation and Order at Exhibit 1, p.1, ll.11-16 (filed July 26, 2022).

Therefore, notwithstanding Luba's jurisdictional defect, her allegation in Count 89 fails based on text messages between the parties failing to include an objection to the 14-day travel notification provision, Luba's statement she had no issue with the child traveling to Mexico and

Enrique's messages indicating adherence to the travel provisions contained in the controlling July 26, 2022 Stipulation and Order.

Based on the foregoing, the Court DENIES Luba's request for an Order to Show Cause related to allegation/count 89.

Counts 90 -99: Zoom Video Calls

The MSA at Art. 9.6, Zoom Video Conferencing with the Minor Child, provides:

> "Wife shall continue to have the right to have Zoom video calls with the child while she is in the custody of the other parent on Mondays and Fridays. These shall take place at 7:15PM. The parties agree to give the child (and the other parent) privacy during these calls, and these calls shall not be monitored or recorded by the parent with custody of the child at the time of the call. This right shall also apply during vacation or holiday times."

See MSA, Art. 9.6 (filed December 8, 2021).

Luba alleges violations on the following dates: January 17, 2022; March 11, 2022; March 14, 2022; April 8, 2022; June 3, 2022; August 1, 2022; August 12, 2022; August 15, 2022; August 26, 2022; and November 7, 2022.

First, as noted with Luba's other allegations, the bulk of the Zoom call allegations are over a year old. A party may not sit on alleged violations. See Carson City, 113 Nev. at 412, 934 P.2d at 1043. However, as noted in Enrique's May 5, 2023 Opposition and separately filed Exhibit of the same date, Enrique has defeated Luba's allegations. See Enrique's Exhibit A at Bates DEF18, 26, 28, 33, 38, 131, 46-48, and 49. See also Enrique's Opposition at p.16, ll.14-28 (filed May 5, 2023). Specifically, as pertains to each allegation:

January 17, 2022	Enrique responds Luba is at a restaurant with bad reception Requests Luba make arrangements if she has plans (DEF BATES 18)
March 11, 2022	Enrique sends Join Zoom Meeting at 7:17PM (DEF BATES 26)

//

March 14, 2022	Enrique sends Join Zoom Meeting at 7:13PM (DEF BATES 28)
April 8, 2022	Call time continued to 7:49PM due to child being in bath (DEF BATES 33)
June 3, 2022	Enrique sends Join Zoom Meeting at 7:17PM (DEF BATES 38)
August 1, 2022	[redacted] did not want to speak to Luba; Luba threatens motion (DEF BATES 131)
August 12, 2022	Due to video issues, Luba elects to use iPhone at 6:56PM (DEF BATES 47)
August 15, 2022	Enrique sends Join Zoom Meeting at 7:12PM (DEF BATES 47)
August 26, 2022	Per Luba's request, call moved to child's birthday (DEF BATES 48 at 4:40PM (8/26/2022) Enrique sends Join Zoom Call on 8/29/2022 at 7:17PM
November 7, 2022	On November 8, 2022 Luba agrees to accept make-up call (DEF BATES 49 at 8:07AM)

Based on the foregoing, the Court DENIES Luba's allegations contained at her Counts 90 through 99. The Court FINDS, not only are the allegations time-delayed, the allegations are overtly false.

Counts 100 – 106: Using Talking Parents to Harass Luba

In these allegations, Luba alleges Enrique violated "the Order of the Court" by using the Talking Parents communication application to harass her. See Luba's Motion for Order to Show Cause et al. at p.7, ll.18-21 (filed April 27, 2023). The Court FINDS Luba failed to cite to the page and line number of the current controlling order alleged violated. Specifically, Luba cited to the December 8, 2021 Decree of Divorce MSA provision (Art. 9.8). However, the controlling order related to use of the Talking Parents communication application was filed on July 26, 2022. See Stipulation and Order at Exhibit 1, p.18-20 (filed July 26, 2022). As noted previously herein,

show cause proceedings are jurisdictional in nature. The failure to cite to the controlling order as a basis for a show cause proceeding is fatal.

Notwithstanding the jurisdictional defect, Luba alleged violations from the dates of January 21, 2022 through April 4, 2022. Specifically, the alleged violations occurred over a year ago. As with many of her allegations, Luba has delayed in seeking relief from this Court. See Carson City, 113 Nev. at 412, 934 P.2d at 1043.

Based on the foregoing jurisdictional defect, the Court DENIES Luba's request for an Order to Show Cause for allegations/counts 100 through 106.

Count 107: Counselor

The December 8, 2021 MSA also includes a therapy provision:

> "9.9 Counselor. The parties agree that the minor child may go to see a counselor. Wife may select the counselor and will be responsible to pay all co-pays for the same. The counseling will take place only during Wife's custody time, unless an agreement is reached otherwise hereafter. Husband and Wife understand and agree that the counselor is not to be used as a tool to develop court testimony for a custody battle, unless there is a mandatory reporting issue that arises involving the counselor , but that counseling shall be solely for the purpose of assisting the child with any difficulty she has relative to the divorce, or other life circumstances. Both parties shall participate in counseling as needed."

Id. at MSA Art. 9.9 (filed December 8, 2021).

In her allegation, Luba alleges Enrique that, on January 19, 2022, violated Art. 9.9 of the MSA where she contends he was ordered to participate in counseling after being contacted by a counselor multiple times. See Luba's Exhibit at hand-written BATES 132 (January 19, 2022 at 9:23PM)(filed April 27, 2023). Luba cited to the December 8, 2021 MSA. Art. 9.9, in support of her allegation.

The Court further FINDS Art. 9.9 of the MSA does not mandate Enrique participate in the child's counseling. Specifically, Art. 9.9 provides: "Both parties shall participate in

counseling ***as needed***." See MSA at Art. 9.9 (filed December 8, 2021)(emphasis added). The MSA does not contain any mandate for Enrique to participate in counseling whether the child's or any other type of counseling.

Accordingly, the Court DENIES Luba's request for an Order to Show Cause related to her allegation/count 107.

Counts 108 – 109: Extracurricular Activities

Luba next alleges Enrique violated an Art. 9.1, Legal Custody, on April 18 and 26, 2022. Luba alleges, on April 18, 2022, Enrique failed to notify her of the child's extracurricular activities in time for her to participate. With respect to this allegation, Luba cited to her Exhibit 2 at BATES 13-14 (filed April 17, 2023). The Court FINDS there are no references to any extracurricular activities on those pages as Enrique alleges in his Opposition. Accordingly, the Court FINDS Luba's allegation related to April 18, 2022 has a defect; to wit: there is no indication what, if any, violation occurred. Therefore, the Court DENIES Luba's allegation/count 109.

On April 26, 2022, Luba alleges Enrique's wife, Jennifer Terrana (an employee at the school the child attends), hid the child from Luba in her office. Enrique argues Luba was provided the same notice of the school event as he was. See Enrique's Exhibit A at BATES 127-28 (filed May 5, 2023). Notwithstanding Luba's notification of the event, Luba fails to demonstrate how the alleged behavior violates the order for the parties' to share join legal custody. Further, with regard to both allegations, the April 18 and 26, 2022 allegations are over a year old. See Carson City, 113 Nev. at 412, 934 P.2d at 1043.

Therefore, the Court DENIES Luba's allegation/count 108 as legally deficient.

//

Count 110: Withholding Child's Passport

Luba alleges that, on August 3, 2022, Enrique withheld the child's passport until August 8, 2022 in violation of the December 8, 2021 MSA, Art. 10.7 which provides, in relevant part:

> "In the summer months when the child is not in school, the passport shall be exchanged by the parents with the child such that it is always with the custodial parent. During the rest of the year in 2021, and in even numbered years thereafter, [Enrique] shall have the passport whenever it is not needed by [Luba] for her international travel, and in odd numbered years during the rest of the year other than summer, [Luba] shall have the passport whenever it is not needed by [Enrique] for his international travel."

See MSA at Art. 10.7 (filed December 8, 2021).

In support of her allegation, Luba cited to her Exhibit 2 at BATES 118 (August 3, 2022 at 12:46PM message). In her referenced messages, Luba told Enrique he was improperly withholding the child's passport because Summer Break was defined as the last day of school until the first day of school in the fall.

Again, Luba has submitted an allegation occurring in 2022 which amounts to delay. However, the Court FINDS the alleged violation took place in an even year – 2022 – which would be a period wherein the MSA at Art. 10.7 provided Enrique shall hold the child's passport unless Luba is travelling internationally. See MSA Art. 10.7, above. Therefore, the Court FINDS Luba's allegation has not merit and DENIES her request for an Order to Show Cause related to Count 110.

ENRIQUE'S COUNTERMOTIONS

NRCP 60(b) RELIEF

Enrique requests this Court set aside monetary provisions contained in the July 26, 2022 Stipulation and Order pursuant to NRCP 60(b) where he contends Luba violated the Stipulation's preclusion from filing any new motions for a period of two (2) years, i.e., breach of the stipulation. Presumably, though he does not cite to the specific provision, Enrique is referencing

the stipulation that each party shall pay his/her own attorney fees and costs. See Stipulation and Order at Exhibit 1, p.6, ll.2 (filed July 26, 2022). Enrique seeks a retroactive award of $1,635.50 in attorney fees and costs granted to him on April 27, 2022. Enrique additionally seeks award of $15,000 as return against proceeds from the sale of the parties' marital residence which was granted to Luba.

The Court FINDS Enrique generally cited to NRCP 60(b)(1) – (6) and did not cite to the specific basis for his requested relief. The Court FINDS Enrique's request for NRCP 60(b) relief untimely made. See NRCP 60(c)(1)(NRCP 60(b) relief must be made no more than six months from date of service of written notice of entry of the judgment or order). Therefore, the Court DENIES Enrique's request for NRCP 60(b) relief related to alleged breach of the July 26, 2022 Stipulation and Order.

CUSTODY MODIFICATION WITH CHILD SUPPORT REVIEW

Next, Enrique requests modification of custody to sole legal and primary physical custody in his favor. In support of a substantial change of circumstances, Enrique alleges Luba routinely makes doctor and dental appointments without his consent or knowledge and that Luba withheld the child from Enrique for his planned March 2023 family trip to Mexico without basis and amounting to parental kidnapping. In support of his request, Enrique requests a child support order comporting with his custody modification request.

In her Opposition, Luba alleges Enrique routinely fails to co-parent and violates court orders. Luba provided a general verification of the opposition but did not include a Declaration or Affidavit in support of her factual allegations. In evaluating whether an evidentiary hearing is warranted on a motion to modify custody, the district court may not consider the moving parties' factual allegations and exhibits unless they are "supported by verified pleadings, declarations, or

affidavits." Myers v. Haskins, 138 Nev. Adv. Op. 51, 513 P.3d 527, 534 (Ct. App. 2022). See also EDCR 5.503(a).

Further, also in Myers v. Haskins, the Nevada Court of Appeal concluded as follows:

> "[W]hen a district court seeks to determine if the movant has demonstrated a prima facie case for modification under Rooney, it must generally consider only the properly alleged fact in the movant's verified pleadings, affidavits, or declarations. It must not consider the alleged facts or offers of proof the nonmovant provides.
>
> "Despite this general rule, we also announce an exception. We hold that a district court may look to the nonmovant's evidentiary support when it "conclusively establishes" the falsity of the movant's allegations. The rules we announce today will help align current practice with Rooney's central purposes: discouraging challenges to temporary custody orders and preventing repeated and insubstantial motions to modify custody."
>
> Myers v. Haskins, 138 Nev. Adv. Op 51, ___ P.3d ___, ___ (2022).

Importantly, the Court FINDS Luba did not provide any documentation that conclusively established Enrique's allegations in support of his request to modify custody were false.

In order to modify custody, the movant is required to set forth a substantial change of circumstances affecting the child's welfare and in the child's best interest. See Romano v. Romano, 138 Nev. Adv. Op. 1, 501 P.3d 980,983 (2022). Further, the movant is required to demonstrate adequate cause for an evidentiary hearing on the request to modify custody. See Rooney v. Rooney, 109 Nev. 540, 542-3, 853 P.2d 123, 124-25 (1993). In evaluating whether an evidentiary hearing is warranted on a motion to modify custody, the district court may not consider the moving parties' factual allegations and exhibits unless they are "supported by verified pleadings, declarations, or affidavits." Myers v. Haskins, 138 Nev. Adv. Op. 51, 513 P.3d 527, 534 (Ct. App. 2022). "Adequate cause arises where the moving party presents a prima facie case that the requested relief is in the child's best interest". Id. quoting Rooney, 109 Nev. at 542, 853 P.2d at 125. In order to demonstrate a prima facie case, the moving party must show:

1) the fact alleged in the affidavits are relevant to the relief requested; and 2) the evidence is not merely cumulative or impeaching. Id. citing Rooney, 109 Nev. at 542, 853 P.2d at 125 (internal quotations omitted).

With respect to Enrique's allegation Luba routinely makes dental and doctor appointments without his consent, Enrique cited to his May 5, 2023 Exhibit B at BATES 678-83. However, the Court FINDS the Talking Parent communications indicate only that Luba made the appointments and do not indicate Enrique objected to the appointments in the same communications. Therefore, the Court DENIES Enrique's request to modify custody on this ground.

With respect to withholding the child for the March 2023 vacation, the Court FINDS Enrique has met his prima facie burden. While the Court does not necessarily agree at this juncture that the alleged withholding amounted to parental abduction, the Court concludes the allegation coupled with Enrique's NRS 125C.0035(4) analysis meets the prima facie requirement under Romano and that adequate cause exists for an non-jury bench trial on his request.

Therefore, the Court GRANTS Enrique's request for modification of custody and shall separately issue a Trial Management Order scheduling this matter for a full day non-jury bench trial in the ordinary course. All order shall remain status quo pending trial on this issue.

ATTORNEY FEES AND COSTS

Enrique requests an award for attorney fees and costs pursuant to NRS 18.010 where he alleges Luba filed her April 27, 2023 motion without reasonable grounds and for frivolous or vexatious purposes. The Court agrees. It appears Luba filed her motion in response to this Court's grant of Enrique's March 20, 2023 Order to Show Cause grant particularly where the bulk of her requests for show cause relief are stale. Further, the Court FINDS Luba's requests

related to the Zoom video calls were false. Therefore, the Court FINDS Luba's requests appear to this Court to be without reasonable grounds and meant to increase ligation costs.

Accordingly, the Court GRANTS Enrique's request for award for attorney fees and costs. Enrique shall file and serve a Memorandum of Fees and Costs, to include an attorney-client invoices (redacted), not later than JUNE 27, 2023. Luba shall timely file and serve any Objection. This Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or Objection, if filed. The Court will not consider any pleadings beyond the Memorandum of Fees and Costs and Objection, if filed. **The failure to timely file the Memorandum of Fee and Costs by June 27, 2023 SHALL be deemed a WAIVER of the right to seek attorney fees and costs**. Decision on attorney fees and costs shall be scheduled for AUGUST 30, 2023 AT 3AM Chamber Hearing (NO appearances).

ENRIQUE'S MOVING PAPERS

In his May 24, 2023 Emergency Motion, Enrique requests an order directing Luba to deliver the child to him on Father's Day, June 18, 2023 not later than 10AM. Enrique additionally requests an award for attorney fees and costs.

Enrique contends Luba scheduled her three (3) week vacation from May 31, 2023 through June 21, 2023. Enrique contends Luba provided her itinerary on May 22, 2023 or, ten (10) days prior to her planned vacation. Enrique contends the MSA does not provide for each party to have three (3) consecutive weeks' vacation with the child. Enrique alleged he complied with EDCR 5.501 and, further, asserted Luba could not withhold the child for Father's Day.

In her May 31, 2023 Opposition, Luba contends Enrique agreed to her requested vacation on December, 4, 2022. In support of her contention, Luba provided an exhibit text message wherein she notified Enrique of her vacation on December 4, 2022. See Luba's Exhibit 1 at

BATES 5 (December 4, 2022 message). Luba further contends she has agreed for Enrique to take vacation with the child from July 5 through 26, 2023. In her countermotion, Luba alleges Enrique is discussing the litigation with the child, that Enrique altered [redacted] passport and that she should be awarded attorney fees and costs. In support of her assertion the child's U.S. passport has been altered as to her physical address, the Court FIND Luba provided a picture of the child's passport with her "home" address modified multiple times via use of white-out.

In his Reply, Enrique disputes the amount of time taken for vacation and that the Father's Day award is mandatory not permissive. Enrique requests the Court deny Luba's countermotions.

The MSA at Art.9.4.4, Holidays, Father's Day, provides:

> "Each year the minor child shall reside with [Enrique] from 10:00 a.m. on Father's Day through 12:00 p.m. on the day following Father's Day."

See MSA at Art. 9.4.4 (filed December 8, 2021)

The MSA at Art.9.5, Vacation Time, provides:

> "Husband and Wife each have the right to take up to 7 days of vacation time per year with the child, which must be taken in one block of no more than 7 days per year. If in a given year Husband or Wife chooses to exercise a vacation block of time lasting less than 7 days duration, he or she will forfeit the balance of their vacation days for that year. The vacation period may be added to normal custody time such that Husband or Wife may, be exercising vacation time have the child for up to three weeks total by taking the child for his or her normal one week of custody time, plus a vacation week, then continuing to have the child during the following week, which would otherwise be the vacating [sic] parent's custody time anyway. Each party is required to give no less than 30 days' written notice of the planned vacation, and in the event of a dispute wherein both parties want the same dates or overlapping dates for a vacation with the child, the party who first gave written notice shall be entitled to take the vacation block he or she provided in written notice to the other."

Id. at Art.9.5.

The Court FINDS no provision in the MSA related to what should occur when a party's requested vacation time occurs during an other specified holiday, e.g., Father's Day. The Court

FINDS the Luba provided documentation that her vacation period was duly noticed to Enrique on December 4, 2022 and that Enrique agreed to the vacation time. The Court FINDS Enrique has vacation planned for July 5 through 26, 2023. The Court FINDS, in the MSA, the parties stipulated to seven (7) days' vacation which could be grouped with regular custodial time. See MSA Art.9.5 (file December 8, 2021). It appears likely Enrique did not consider what day Father's Day 2023 occurred when agreeing to Luba's vacation time and that subsequent litigation resulted in heightened conflict.

Based on the foregoing, the Court DENIES Enrique's May 24, 2023 motion mandating the child spend Father's Day 2023 with him where the parties agreed on Luba's vacation time on or about December 4, 2022. With respect to Luba's countermotion, the Court FINDS the child's passport has been a consistent issue between the parties with the current passport altered to such an extent it is unclear to the Court if any Customs agent would accept use of the passport. Therefore, the Court ORDERS pending trial in this matter, Luba's attorney of record SHALL retain the passport in his office. The Court ORDERS the passport SHALL be released to either parent when traveling internationally as allowed by the terms of the December 8, 2021 MSA at Article Art. 10.7 and shall be returned to Luba's attorney within forty-eight (48) hours of return to the United States.

The parties are ADMONISHED neither shall discuss this case with the minor child. See EDCR 5.304. The Court has issued an June 11, 2023 Order to Show Cause why a Special Master/Parenting Coordinator should not be appointed to this case pursuant to NRCP 53 which may assist in this regard.

Last, each party shall bear his/her own attorney fees and costs related to the set of motions commenced by Enrique's May 24, 2023 Emergency Motion.

Accordingly, the Court FINDS and ORDERS as follows:

1. This Court has determined to decide matters pending before it without recourse to oral argument pursuant to EDCR 5.702(a). Therefore, the Court ORDERS the June 15, 2023 hearing VACATED.
2. The Court DENIES Luba's April 27, 2023 motion in its entirety for reasons set forth herein.
3. The Court GRANTS Enrique's May 5, 2023 countermotion to modify custody. Enrique's request for child support review shall be deferred to trial. A Trial Management Order shall separately issue setting this matter for full day non-jury bench trial in the ordinary course. All underlying orders shall remain status quo.
4. The Court DENIES Enrique's May 5, 2023 countermotion for NRCP 60(b) relief as untimely made pursuant to NRCP 60(c)(1).
5. The Court GRANTS Enrique's May 5, 2023 countermotion for award for attorney fees and costs related the Luba's requests for relief initiated by her April 27, 2023 motion. Enrique shall file and serve a Memorandum of Fees and Costs, to include an attorney-client invoices (redacted), not later than JUNE 27, 2023. Luba shall timely file and serve any Objection. This Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or Objection, if filed. The Court will not consider any pleadings beyond the Memorandum of Fees and Costs and Objection, if filed. **The failure to timely file the Memorandum of Fee and Costs by June 27, 2023 SHALL be deemed a WAIVER of the right to seek attorney fees and costs**. Decision on attorney fees and costs shall be scheduled for AUGUST 30, 2023 AT 3AM Chamber Hearing (NO appearances).

6. The Court DENIES Enrique's May 24, 2023 motion mandating the child spend Father's Day 2023 with him where the parties agreed on Luba's vacation time on or about December 4, 2022.

7. With respect to Luba's countermotion, the Court FINDS the child's passport has been a consistent issue between the parties with the current passport altered to such an extent it is unclear to the Court if any Customs agent would accept use of the passport. Therefore, the Court ORDERS pending trial in this matter, Luba's attorney of record SHALL retain the passport in his office. The Court ORDERS the passport SHALL be released to either parent when traveling internationally as allowed by the terms of the December 8, 2021 MSA at Article Art. 10.7 and shall be returned to Luba's attorney within forty-eight (48) hours of return to the United States.

8. The parties are ADMONISHED neither shall discuss this case with the minor child. See EDCR 5.304.

9. The Court DENIES competing requests for award for attorney fees and costs related to the set of motions commenced on May 24, 2023 with Enrique's Emergency Motion.

10. Based on the foregoing, the Court DENIES Luba's Ex parte Application for Leave to file a Surreply as MOOT.

Dated this 13th day of June, 2023

HEIDI ALMASE
District Court Judge

D1D 6B3 EBC4 2643
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 6/13/2023

[redacted]

Electronically Filed
06/13/2023 3:50 PM

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X Date of Hearing: March 21, 2023 Time of Hearing: 11:00 a.m.

ORDER AFTER MARCH 21, 2023 HEARING

THIS MATTER having come before this Court on the 21st day of March, 2023, for Motion: Plaintiff's Motion To Clarify Orders and Make Additional Orders Regarding Travel of Minor Child. Defendants: Opposition To Plaintiff's Motion To Clarify Order and Make Additional Orders Regarding Travel of Minor Child and Countermotion for Attorney's Fees. The Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record,

Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff, Luba Gonzalez, being present and represented by and through her attorney of record, Benjamin B. Childs, Esq., of the Law Office of Benjamin B. Childs. The Parties and Counsel appeared via Blue Jeans video application, in accordance with Administrative Order. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby Notes as follows:

THE COURT HEREBY FINDS that a request for relief cannot be made in a Declaration. Plaintiff is free to file the proper motion and serve it to make her requests.

THE COURT FURTHER FINDS that Defendant has not filed an updated Financial Disclosure Form, and the Court shall review financials prior to ruling on Defendant's request for Attorney's Fees and Costs.

NOW THEREFORE,

THE COURT HEREBY ORDERS that Plaintiff's declaration for additional relief is DENIED without prejudice.

THE COURT FURTHER ORDERS that Defendant's Countermotion for Attorney's Fees is DENIED.

THE COURT FURTHER ORDERS that all underlying Orders remain in full force and effect.

THE COURT FURTHER ORDERS that Attorney Grimes shall prepare the Order, send it to Attorney Child's for review and signature and submit it to the Court.

IT IS SO ORDERED.



Submitted this _____ day of March, 2023.

Approv :

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972

By: _____
Benjamin B. Childs, Esq.
State of Nevada Bar No.

[redacted]

Attorneys for Defendant

Attorneys for Plaintiff

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 6/13/2023

[redacted]

Electronically Filed
6/14/2023 3:01 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X

NOTICE OF ENTRY OF ORDER AFTER MARCH 21, 2023 HEARING

\\\

\\\

\\\

\\\

\\\

\\\

PLEASE TAKE NOTICE an Order After March 21, 2023 Hearing was filed with this Court on the 14th day of June, 2023, a copy of which is attached hereto and fully incorporated herein by reference.

DATED this 14 day of June, 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
[redacted]

Attorneys for Defendant, Enrique Ivan Velazquez-Gonzalez

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 14th day of June, 2023, I served by and through Wiz-Net electronic service, pursuant Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Notice of Entry of Order After March 21, 2023 Hearing (with the Order After March 21, 2023 Hearing attached hereto), to the following;

Benjamin Childs, Esq.
[redacted]
Counsel for Plaintiff

By: _____
Employee of Roberts Stoffel Family Law Group

Electronically Filed
06/13/2023 3:50 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
4411 S. Pecos Road
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X Date of Hearing: March 21, 2023 Time of Hearing: 11:00 a.m.

ORDER AFTER MARCH 21, 2023 HEARING

THIS MATTER having come before this Court on the 21st day of March, 2023, for Motion: Plaintiff's Motion To Clarify Orders and Make Additional Orders Regarding Travel of Minor Child. Defendants: Opposition To Plaintiff's Motion To Clarify Order and Make Additional Orders Regarding Travel of Minor Child and Countermotion for Attorney's Fees. The Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record,

Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff, Luba Gonzalez, being present and represented by and through her attorney of record, Benjamin B. Childs, Esq., of the Law Office of Benjamin B. Childs. The Parties and Counsel appeared via Blue Jeans video application, in accordance with Administrative Order. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby Notes as follows:

[redacted] **HEREBY FINDS** that a request for relief cannot be made in a Declaration. Plaintiff is free to file the proper motion and serve it to make her requests.

THE COURT FURTHER FINDS that Defendant has not filed an updated Financial Disclosure Form, and the Court shall review financials prior to ruling on Defendant's request for Attorney's Fees and Costs.

NOW THEREFORE,

THE COURT HEREBY ORDERS that Plaintiff's declaration for additional relief is DENIED without prejudice.

THE COURT FURTHER ORDERS that Defendant's Countermotion for Attorney's Fees is DENIED.

THE COURT FURTHER ORDERS that all underlying Orders remain in full force and effect.

THE COURT FURTHER ORDERS that Attorney Grimes shall prepare the Order, send it to Attorney Child's for review and signature and submit it to the Court.

IT IS SO ORDERED.

Dated this 13th day of June, 2023

Submitted this _____ day of March, 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
[redacted]
Attorneys for Defendant

Approved as to Content and Form:

9E3 CA3 44E6 BD48
Heidi Almase
District Court Judge

By: _____
Benjamin B. Childs, Esq.
State of Nevada Bar No.
Attorneys for Plaintiff

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 6/13/2023

[redacted]

Electronically Filed
6/21/2023 3:16 PM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	Case No.: D-18-575860-D Department X

NOTICE OF ENTRY OF ORDER RE: ALL PENDING MOTIONS

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on June 13, 2023, a true and correct copy of which is attached hereto.

Dated this 21st day of June, 2023.

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamped date:

☒ E-Served pursuant to NEFCR 9 on June 21, 2023, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Benjamin B. Childs, ESQ
Melvin Grimes

☐ I mailed, via first-class mail, postage fully prepaid, the foregoing NOTICE OF ENTRY OF ORDER to:

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

Electronically Filed
06/13/2023 12:18 PM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, vs. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X

ORDER RE: ALL PENDING MOTIONS

This matter is currently scheduled for June 15, 2023 hearing on the following motions/countermotions:

Luba's Moving Papers: 1) Plaintiff Luba (Luba) Gonzalez' April 27, 2023 Motion for an Order to Show Cause, for Additional Orders Regarding Talking Parents Application, Travel, Child's Last Name Hyphenation, Changing Minor Child's School and Attorney's Fee, Ex parte Application for Order to Show Cause with separately filed Exhibits (docket entries 400, 402, 403, 404 and 406); 2) Defendant' Enrique (Enrique) Ivan Velazquez-Gonzalez' May 5, 2023 Opposition and Countermotion for Modification of Custody awarding [him] Primary Physical Custody and Sole Legal Custody, Sole Possession of Child's Passport and Award for Attorney's Fees with separately filed Exhibits (docket entries 407 and 408); and 3) Luba's May 19, 2023 Opposition (Reply) to Countermotion for Modification of Custody et al. with supporting Exhibits (docket entries 412 and 413).

Enrique's Moving Papers: 1) Enrique's Emergency Motion to Enforce with supporting Exhibits (docket entries 414, 417 and 419); 2) Luba's Opposition and Countermotion for Order

to Show Cause and Award of Attorney Fees and Costs with supporting Exhibits as well as Supplemental (docket entries 420, 421 and 423); 3) Enrique's Reply with supporting Exhibits (docket entries 426 and 428).

On June 9, 2023, this Court issued Minutes striking Luba's June 8, 2023 Omnibus Reply to Opposition to Countermotion for Order to Show Cause and Award for Attorney Fees and Costs and Reply to Opposition to Plaintiff's Motion for Order to Show Cause et al. and supporting Exhibits (docket entries 431 and 433).

This Court exercises authority granted it pursuant to NRCP 1 and EDCR 1.10 which provide district court dockets shall be administered to secure speedy, efficient and inexpensive determinations in every action. The Court exercises discretion granted it pursuant to EDCR 5.702(a) to decide this matter without recourse to oral argument. Accordingly, the Court ORDERS the June 15, 2023 hearing date VACATED.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] GONZALEZ, born [redacted] (age 6 years). The parties in this case share JOINT LEGAL and JOINT PHYSICAL CUSTODY. See Stipulated Decree of Divorce at Exhibit 1 p.8-9, Article 9.1 and 9.2 (Marital Settlement Agreement (MSA))(filed December 8, 2021).

The MSA includes detailed travel provisions at Article 9.5, Vacation Time with the Child and Article 9.5.1, Itinerary. Id. at MSA Articles 9.5 and 9.5.1. In particular, the parties agreed that, if traveling outside of Nevada, the travelling party shall provide a written itinerary not later than 14 days prior to a trip to include "all flights the minor child will take, and for each night of the trip, the address where the child will be staying each night she is away from Las Vegas (and if applicable the name of the hotel where the child will be staying), and a number at which the

child may be reached in the event of an emergency. If the border crossing will be by car or on foot, the parent taking the child out of the country will also provide the dates of the border crossing as part of the itinerary." Id. at MSA Art. 9.5.1.

The MSA also includes a therapy provision:

> "9.9 Counselor. The parties agree that the minor child may go to see a counselor. Wife may select the counselor and will be responsible to pay all co-pays for the same. The counseling will take place only during Wife's custody time, unless an agreement is reached otherwise hereafter. Husband and Wife understand and agree that the counselor is not to be used as a tool to develop court testimony for a custody battle, unless there is a mandatory reporting issue that arises involving the counselor , but that counseling shall be solely for the purpose of assisting the child with any difficulty she has relative to the divorce, or other life circumstances. Both parties shall participate in counseling as needed."

Id. at MSA Art. 9.9.

On July 26, 2022, the parties entered a Stipulation and Order wherein they agreed to withdraw certain pleadings to include a pending appeal. See Stipulation and Order (filed July 26, 2022). In the Stipulation and Order, the parties reached certain agreements related to travel and communication. With respect to communication, the parties stipulated "[a]ll communication between the parents shall be through Talking Parents unless it is an emergency. Each parent has up to 24 hours to respond." Id. at Exhibit 1, p.1, ll.19-20.[1]

This case has been subject to extensive pre- and post-judgment litigation. Taking into account the history of this case and the current matters pending before the Court, on June 11, 2023, this Court issued an Order to Show Cause why a Special Master/Parenting Coordinator

---

[1] The Talking Parents provisions are similar those contained in the Decree's MSA wherein the parties agreed to continue to utilize the court-ordered communication application and to open and respond to parent communications within 24-hours of a message being sent. See Stipulated Decree of Divorce, MSA Art.9.8 (communications by Talking Parents) at p.13 (filed December 8, 2021).

should not be Appointed to this Case at the Parties' Expense pursuant to NRCP 53(b)(a). Responsive pleadings to the Order to Show Cause are due not later than June 26, 2023. Hearing on the Order to Show Cause is scheduled for August 3, 2023.

This matter is also scheduled for an August 31, 2023 Order to Show Cause hearing based on Enrique's March 20, 2023 Emergency Motion for Return of the Child, for an Order to Show Cause and for Referral to the District Attorney for Criminal Charges. See Order to Show Cause (filed March 20, 2023); see also Order after April 6, 2023 Hearing (filed June 6, 2023).

LUBA'S MOVING PAPERS

The Requests for Additional Orders

In her April 27, 2023 motion, Luba seeks an Order to Show Cause for 110 alleged violations. In the context of her request for an Order to Show Cause, Luba requested additional orders enter to include: 1) an order for detailed travel itinerary for international travel to include modification to preclude travel to any 'Do not Travel' or 'Reconsider Travel' countries and addition of precluding on foot crossing as well as CBX border crossing ticket proofs; 2) an order for video communication with the child via Talking Parents on Mondays and Fridays at 7PM as well as Mondays, Wednesdays and Fridays during specified Summer and Winter Break time periods and during any international travel; 3) a school selection request for the child to attend [redacted] Academy Charter School effective for the 2023 – 2024 academic year; and 4) an order changing the minor child's name to Snow-Gonzalez.

The Court FINDS, as Enrique argued in his May 5, 2023 Opposition and Countermotion, Luba failed to provide points and authorities in support of her requests for additional orders and/or modifications. See EDCR 5.503(a)(every motion shall include points and authorities supporting each position asserted). Further, the Court FINDS Luba has requested modification

of the parties' stipulated travel itinerary provisions, increased and specified electronic visitations, a school selection requests and an order changing the minor child's surname. See Mizrachi v. Mizrachi, 132 Nev. 666, 673-74, 385 P.3d 982, 987 (Nev. App. 2016)(modification alters the parties' substantive rights while clarification involves the Court's defining the rights that have already been awarded but leaving their substantive rights unchanged). Therefore, Luba's motions for additional orders fails where she has failed to provide points and authorities or any analysis in support of her requests.

Additionally, with respect to her request to modify the child's surname, the Court FINDS Luba cited to Petit v. Adrianzen, 133 Nev. 91, 94, 392 P.3d 630, 632-33 (2017), a case involving a child naming dispute at birth. The Court FINDS Magiera v. Luera, 106 Nev. 775, 778, 802 P.2d 6, 8 (1990) governs post-birth naming disputes wherein the only relevant consideration is the child's best interest. Id. The Court FINDS Luba cited to the wrong case but, in any event, failed to include any best interest analysis in support of her request. See, e.g., NRS 125C.0035(4).

With respect to Luba's request for a school selection modification, the Court FINDS, on December 7, 2021, a non-jury bench trial was held on school selection pursuant to Arcella. See Order after [December 7, 2021] Hearing (filed February 8, 2022). Following its Arcella v. Arcella, 133 Nev. 868, 870, 407 P.3d 341, 344 (2017) analysis, the Court ordered the child would continue to remain enrolled in [redacted] School, that Luba would be allowed to apply to the [redacted] Elementary School in February 2023 with the parties working together to research [redacted] to determine if enrollment was in the child's best interest and that "if the parties stipulate to attending family therapy, the parties shall agree on a therapist and attend therapy for a minimum of six months." Id. at p.7, ll.24-25.

The Court FINDS, in the first instance, Luba failed to include any analysis as set forth in Arcella. Second, the parties had a non-jury trial on school selection approximately eighteen (18) months ago wherein the Court concluded the child would continue to attend [redacted] with the Court Order after [December 7, 2021] Hearing.

Accordingly, for the foregoing reasons, the Court DENIES as legally deficient Luba's requests for additional orders 1 through 4; to wit Luba's requests for: 1) an order for detailed travel itinerary for international travel to include modification to preclude travel to any 'Do not Travel' or 'Reconsider Travel' countries and addition of precluding on foot crossing as well as CBX border crossing ticket proofs; 2) an order for video communication with the child via Talking Parents on Mondays and Fridays at 7PM as well as Mondays, Wednesdays and Fridays during specified Summer and Winter Break time periods and during any international travel; 3) a school selection request for the child to attend [redacted] Academy Charter School effective for the 2023 – 2024 academic year; and 4) an order changing the minor child's name to Snow-Gonzalez.

The Requests for Orders to Show Cause

As an initial matter and as Enrique argued in his Opposition, Luba failed to cite to any authority in support of her request for an Order to Show Cause. See EDCR 5.503(a)(points and authorities shall be included for each assertion). See also EDCR 5.509; NRS 22.030 and Awad v. Wright, 106 Nev. 407, 794 P.2d 713 (1990), *abrogated by Pengilly v. Rancho Santa Fe Homeowners Ass'n, 116 Nev. 646, 5 P.3d 569 (2000)*.

//

//

Counts 1 -3: Hair Cut Appointments

Legal custody is the basic responsibility for a child and the responsibility to make major decisions regarding the child. Rivero v. Rivero, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled in part on other grounds by Romano v. Romano, 138 Nev. Adv. Op. 1, 501 P.3d 980 (2022)*. For example, legal custody involves decisions regarding healthcare, education, and religion while the parent with whom the child is residing at that time usually makes day-to-day decisions. Id. Joint legal custody does not require that the parents have equal decision-making authority. Id.

As noted in the parties' controlling orders, the parties share joint legal custody. See Stipulated Decree of Divorce at Exhibit 1 p.8-9, Article 9.1 and 9.2 (Marital Settlement Agreement (MSA))(filed December 8, 2021).

The Court FINDS Enrique obtaining haircuts for the child on January 19, 2022, August 2, 2022 and April 14, 2023 does not rise to a violation of the joint legal custody order nor is a haircut or any modifications of the child's appearance included in the parties' extraordinarily detailed MSA. The Court further FINDS at least two of the alleged violations, January 19, 2022 and August 2, 2022, are extremely dated. A party may not simply sit on his/her hands but shall immediately address the issue with a parent as required by EDCR 5.501 and, if further relief is required, file the appropriate motion with the Court. See, e.g., Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997)(laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable; applicability of the doctrine of laches is a fact specific inquiry).

Accordingly, Luba's request for an Order to Show Cause related to her Counts 1 through 3 is DENIED.

Counts 4 – 87: Not Checking/Responding Talking Parents within 24-Hours

In the July 26, 2022 Stipulation and Order, as noted above, the parties stipulated "[a]ll communication between the parents shall be through Talking Parents unless it is an emergency. Each parent has up to 24 hours to respond." Id. at Exhibit 1, p.1, ll.19-20. The July 26, 2022 Stipulation and Order is the most recent controlling order related to the court-ordered communication application. The Court FINDS, in her motion, Luba cited the Stipulated Decree of Divorce communication order in support of her request for an Order to Show Cause. Because a show cause contempt proceeding is jurisdictional in nature, the initial prima facie burden must be explicitly met. As Enrique argued in his Opposition, Luba's Counts 4 through 87 allegations fail for this reason.

The Court additionally FINDS, notwithstanding the jurisdictional defect, Luba's allegations Enrique failed to respond to her Talking Parents messages within 24-hours range from December 12, 2021 through April 11, 2023. While the failure to abide by the Talking Parents order may, if properly pleaded result in this Court issuing an Order to Show Cause, Luba cannot sit on her hands when violations occur. See Carson City, 113 Nev. at 412, 934 P.2d at 1043.

For the foregoing reasons, Luba's request for an Order to Show Cause related to her Counts 4 through 87 is DENIED.

Counts 88 – 89: Travel Itinerary

For these allegations, Luba alleged violation of the Stipulated Decree of Divorce MSA provisions. See MSA Art.9.5.1 (filed December 8, 2021). However, the July 26, 2022

Stipulation and Order contain the most recent travel rules related to the minor child. See Stipulation and Order at Exhibit 1, p.1, ll.16-16 (filed July 26, 2022). Luba's failure to cite to the controlling order where a request for Order to Show Cause is requested is, as noted above, fatal.

Notwithstanding the jurisdictional issue, substantively Luba alleges Enrique violated the Stipulated Decree of Divorce MSA provisions related to travel on June 2022 and March 15, 2023 by failing to provide "complete itineraries". See MSA Art.9.5.1 (filed December 8, 2021). With respect to Luba's allegations related to June 2022 travel, Enrique argues this count (88) must be dismissed where the matter was pleaded by Luba in her June 20, 2022[2] Motion for Order to Show Cause et al. and resolved by the July 26, 2022 Stipulation and Order.

The Court FINDS, in Luba's June 5, 2022 Motion for Order to Show Cause et al., she alleged Enrique violated Art. 9.5 and 9.5.1 of the MSA by failing to timely provide her with a detailed itinerary for his planned travel to Mexico scheduled for June 15, 2022. See Luba's Motion for Order to Show Cause et al. at pp.2-3 (filed June 5, 2022). The Court FINDS Luba's June 5, 2022 motion was resolved by execution and filing of the July 26, 2022 Stipulation and Order Resolving all Post-Judgment Issues, i.e., the August 29, 2022 hearing scheduled on the pending motions were cancelled as a result of entry of the Stipulation and Order. Accordingly, Luba's allegations related to Enrique's June 15, 2022 travel was resolved by stipulation of the parties and she is not now able to request an Order to Show Cause for the allegation even if she had cited to the controlling order, i.e., the July 26, 2022 Stipulation and Order. Therefore, Luba's Count 88 is DENIED.

---

[2] Luba did not file any motion on June 20, 2022. Luba filed the relevant motion on June 5, 2022 (see docket entry number 347).

The Court FINDS allegations related to Enrique's March 15, 2023 travel to Mexico are currently scheduled for evidentiary hearing Enrique's request for an Order to Show Cause. See Enrique's Order to Show Cause (filed March 20, 2023)(scheduled for August 31, 2023 evidentiary hearing). The Court FINDS, in her March 13, 2023 Exhibits in support of her March 13, 2023 Motion to Clarify Orders and Make Additional Orders Regarding Travel of Minor Child, Luba included messages between her and Enrique wherein Enrique provided "new" flight itinerary on March 7, 2023. See Luba's Exhibit 1 at p.4 (filed March 13, 2023). In the exchange, Luba stated in part, "I don't have a problem with your taking [the child] to Mexico if you want to fly out of the United States." Id. at p.3 of 75 (message dated March 8, 2023 at 11:50AM). Nowhere in the message did Luba challenge the timing of Enrique's "new" itinerary. Rather, Luba challenges the completeness of the itinerary, that some of the itinerary is in Spanish, that Enrique had not provided CBX border crossing tickets and had not enabled the Talking Parents video communication application. Id. at pp.1-75. However, the text message exhibits Luba attached indicate Enrique: 1) attached the child's flight itinerary; 2) the address of the hotel the child was staying at; 3) reference to the Monterey address Enrique and his family stayed at in two prior visits to family; and 4) the date of return. Id. at p.2 of 75 (March 7, 2023 at 7:55PM message with attachments). The July 26, 2022 Stipulation and Order mandated a traveling parent provide: 1) dates of travel; 2) passengers on a reservation; 3) airline and flight details; and 4) address where party will be staying with the child. See July 26, 2022 Stipulation and Order at Exhibit 1, p.1, ll.11-16 (filed July 26, 2022).

Therefore, notwithstanding Luba's jurisdictional defect, her allegation in Count 89 fails based on text messages between the parties failing to include an objection to the 14-day travel notification provision, Luba's statement she had no issue with the child traveling to Mexico and

Enrique's messages indicating adherence to the travel provisions contained in the controlling July 26, 2022 Stipulation and Order.

Based on the foregoing, the Court DENIES Luba's request for an Order to Show Cause related to allegation/count 89.

Counts 90 -99: Zoom Video Calls

The MSA at Art. 9.6, Zoom Video Conferencing with the Minor Child, provides:

> "Wife shall continue to have the right to have Zoom video calls with the child while she is in the custody of the other parent on Mondays and Fridays. These shall take place at 7:15PM. The parties agree to give the child (and the other parent) privacy during these calls, and these calls shall not be monitored or recorded by the parent with custody of the child at the time of the call. This right shall also apply during vacation or holiday times."

See MSA, Art. 9.6 (filed December 8, 2021).

Luba alleges violations on the following dates: January 17, 2022; March 11, 2022; March 14, 2022; April 8, 2022; June 3, 2022; August 1, 2022; August 12, 2022; August 15, 2022; August 26, 2022; and November 7, 2022.

First, as noted with Luba's other allegations, the bulk of the Zoom call allegations are over a year old. A party may not sit on alleged violations. See Carson City, 113 Nev. at 412, 934 P.2d at 1043. However, as noted in Enrique's May 5, 2023 Opposition and separately filed Exhibit of the same date, Enrique has defeated Luba's allegations. See Enrique's Exhibit A at Bates DEF18, 26, 28, 33, 38, 131, 46-48, and 49. See also Enrique's Opposition at p.16, ll.14-28 (filed May 5, 2023). Specifically, as pertains to each allegation:

January 17, 2022	Enrique responds Luba is at a restaurant with bad reception Requests Luba make arrangements if she has plans (DEF BATES 18)
March 11, 2022	Enrique sends Join Zoom Meeting at 7:17PM (DEF BATES 26)

//

March 14, 2022	Enrique sends Join Zoom Meeting at 7:13PM (DEF BATES 28)
April 8, 2022	Call time continued to 7:49PM due to child being in bath (DEF BATES 33)
June 3, 2022	Enrique sends Join Zoom Meeting at 7:17PM (DEF BATES 38)
August 1, 2022	[redacted] did not want to speak to Luba; Luba threatens motion (DEF BATES 131)
August 12, 2022	Due to video issues, Luba elects to use iPhone at 6:56PM (DEF BATES 47)
August 15, 2022	Enrique sends Join Zoom Meeting at 7:12PM (DEF BATES 47)
August 26, 2022	Per Luba's request, call moved to child's birthday (DEF BATES 48 at 4:40PM (8/26/2022) Enrique sends Join Zoom Call on 8/29/2022 at 7:17PM
November 7, 2022	On November 8, 2022 Luba agrees to accept make-up call (DEF BATES 49 at 8:07AM)

Based on the foregoing, the Court DENIES Luba's allegations contained at her Counts 90 through 99. The Court FINDS, not only are the allegations time-delayed, the allegations are overtly false.

Counts 100 – 106: Using Talking Parents to Harass Luba

In these allegations, Luba alleges Enrique violated "the Order of the Court" by using the Talking Parents communication application to harass her. See Luba's Motion for Order to Show Cause et al. at p.7, ll.18-21 (filed April 27, 2023). The Court FINDS Luba failed to cite to the page and line number of the current controlling order alleged violated. Specifically, Luba cited to the December 8, 2021 Decree of Divorce MSA provision (Art. 9.8). However, the controlling order related to use of the Talking Parents communication application was filed on July 26, 2022. See Stipulation and Order at Exhibit 1, p.18-20 (filed July 26, 2022). As noted previously herein,

show cause proceedings are jurisdictional in nature. The failure to cite to the controlling order as a basis for a show cause proceeding is fatal.

Notwithstanding the jurisdictional defect, Luba alleged violations from the dates of January 21, 2022 through April 4, 2022. Specifically, the alleged violations occurred over a year ago. As with many of her allegations, Luba has delayed in seeking relief from this Court. See Carson City, 113 Nev. at 412, 934 P.2d at 1043.

Based on the foregoing jurisdictional defect, the Court DENIES Luba's request for an Order to Show Cause for allegations/counts 100 through 106.

Count 107: Counselor

The December 8, 2021 MSA also includes a therapy provision:

> "9.9 Counselor. The parties agree that the minor child may go to see a counselor. Wife may select the counselor and will be responsible to pay all co-pays for the same. The counseling will take place only during Wife's custody time, unless an agreement is reached otherwise hereafter. Husband and Wife understand and agree that the counselor is not to be used as a tool to develop court testimony for a custody battle, unless there is a mandatory reporting issue that arises involving the counselor , but that counseling shall be solely for the purpose of assisting the child with any difficulty she has relative to the divorce, or other life circumstances. Both parties shall participate in counseling as needed."

Id. at MSA Art. 9.9 (filed December 8, 2021).

In her allegation, Luba alleges Enrique that, on January 19, 2022, violated Art. 9.9 of the MSA where she contends he was ordered to participate in counseling after being contacted by a counselor multiple times. See Luba's Exhibit at hand-written BATES 132 (January 19, 2022 at 9:23PM)(filed April 27, 2023). Luba cited to the December 8, 2021 MSA. Art. 9.9, in support of her allegation.

The Court further FINDS Art. 9.9 of the MSA does not mandate Enrique participate in the child's counseling. Specifically, Art. 9.9 provides: "Both parties shall participate in

counseling ***as needed***." See MSA at Art. 9.9 (filed December 8, 2021)(emphasis added). The MSA does not contain any mandate for Enrique to participate in counseling whether the child's or any other type of counseling.

Accordingly, the Court DENIES Luba's request for an Order to Show Cause related to her allegation/count 107.

Counts 108 – 109: Extracurricular Activities

Luba next alleges Enrique violated an Art. 9.1, Legal Custody, on April 18 and 26, 2022. Luba alleges, on April 18, 2022, Enrique failed to notify her of the child's extracurricular activities in time for her to participate. With respect to this allegation, Luba cited to her Exhibit 2 at BATES 13-14 (filed April 17, 2023). The Court FINDS there are no references to any extracurricular activities on those pages as Enrique alleges in his Opposition. Accordingly, the Court FINDS Luba's allegation related to April 18, 2022 has a defect; to wit: there is no indication what, if any, violation occurred. Therefore, the Court DENIES Luba's allegation/count 109.

On April 26, 2022, Luba alleges Enrique's wife, Jennifer Terrana (an employee at the school the child attends), hid the child from Luba in her office. Enrique argues Luba was provided the same notice of the school event as he was. See Enrique's Exhibit A at BATES 127-28 (filed May 5, 2023). Notwithstanding Luba's notification of the event, Luba fails to demonstrate how the alleged behavior violates the order for the parties' to share join legal custody. Further, with regard to both allegations, the April 18 and 26, 2022 allegations are over a year old. See Carson City, 113 Nev. at 412, 934 P.2d at 1043.

Therefore, the Court DENIES Luba's allegation/count 108 as legally deficient.

//

Count 110: Withholding Child's Passport

Luba alleges that, on August 3, 2022, Enrique withheld the child's passport until August 8, 2022 in violation of the December 8, 2021 MSA, Art. 10.7 which provides, in relevant part:

> "In the summer months when the child is not in school, the passport shall be exchanged by the parents with the child such that it is always with the custodial parent. During the rest of the year in 2021, and in even numbered years thereafter, [Enrique] shall have the passport whenever it is not needed by [Luba] for her international travel, and in odd numbered years during the rest of the year other than summer, [Luba] shall have the passport whenever it is not needed by [Enrique] for his international travel."

See MSA at Art. 10.7 (filed December 8, 2021).

In support of her allegation, Luba cited to her Exhibit 2 at BATES 118 (August 3, 2022 at 12:46PM message). In her referenced messages, Luba told Enrique he was improperly withholding the child's passport because Summer Break was defined as the last day of school until the first day of school in the fall.

Again, Luba has submitted an allegation occurring in 2022 which amounts to delay. However, the Court FINDS the alleged violation took place in an even year – 2022 – which would be a period wherein the MSA at Art. 10.7 provided Enrique shall hold the child's passport unless Luba is travelling internationally. See MSA Art. 10.7, above. Therefore, the Court FINDS Luba's allegation has not merit and DENIES her request for an Order to Show Cause related to Count 110.

ENRIQUE'S COUNTERMOTIONS

NRCP 60(b) RELIEF

Enrique requests this Court set aside monetary provisions contained in the July 26, 2022 Stipulation and Order pursuant to NRCP 60(b) where he contends Luba violated the Stipulation's preclusion from filing any new motions for a period of two (2) years, i.e., breach of the stipulation. Presumably, though he does not cite to the specific provision, Enrique is referencing

the stipulation that each party shall pay his/her own attorney fees and costs. See Stipulation and Order at Exhibit 1, p.6, ll.2 (filed July 26, 2022). Enrique seeks a retroactive award of $1,635.50 in attorney fees and costs granted to him on April 27, 2022. Enrique additionally seeks award of $15,000 as return against proceeds from the sale of the parties' marital residence which was granted to Luba.

The Court FINDS Enrique generally cited to NRCP 60(b)(1) – (6) and did not cite to the specific basis for his requested relief. The Court FINDS Enrique's request for NRCP 60(b) relief untimely made. See NRCP 60(c)(1)(NRCP 60(b) relief must be made no more than six months from date of service of written notice of entry of the judgment or order). Therefore, the Court DENIES Enrique's request for NRCP 60(b) relief related to alleged breach of the July 26, 2022 Stipulation and Order.

CUSTODY MODIFICATION WITH CHILD SUPPORT REVIEW

Next, Enrique requests modification of custody to sole legal and primary physical custody in his favor. In support of a substantial change of circumstances, Enrique alleges Luba routinely makes doctor and dental appointments without his consent or knowledge and that Luba withheld the child from Enrique for his planned March 2023 family trip to Mexico without basis and amounting to parental kidnapping. In support of his request, Enrique requests a child support order comporting with his custody modification request.

In her Opposition, Luba alleges Enrique routinely fails to co-parent and violates court orders. Luba provided a general verification of the opposition but did not include a Declaration or Affidavit in support of her factual allegations. In evaluating whether an evidentiary hearing is warranted on a motion to modify custody, the district court may not consider the moving parties' factual allegations and exhibits unless they are "supported by verified pleadings, declarations, or

affidavits." Myers v. Haskins, 138 Nev. Adv. Op. 51, 513 P.3d 527, 534 (Ct. App. 2022). See also EDCR 5.503(a).

Further, also in Myers v. Haskins, the Nevada Court of Appeal concluded as follows:

> "[W]hen a district court seeks to determine if the movant has demonstrated a prima facie case for modification under Rooney, it must generally consider only the properly alleged fact in the movant's verified pleadings, affidavits, or declarations. It must not consider the alleged facts or offers of proof the nonmovant provides.
>
> "Despite this general rule, we also announce an exception. We hold that a district court may look to the nonmovant's evidentiary support when it "conclusively establishes" the falsity of the movant's allegations. The rules we announce today will help align current practice with Rooney's central purposes: discouraging challenges to temporary custody orders and preventing repeated and insubstantial motions to modify custody."
>
> Myers v. Haskins, 138 Nev. Adv. Op 51, ___ P.3d ___, ___ (2022).

Importantly, the Court FINDS Luba did not provide any documentation that conclusively established Enrique's allegations in support of his request to modify custody were false.

In order to modify custody, the movant is required to set forth a substantial change of circumstances affecting the child's welfare and in the child's best interest. See Romano v. Romano, 138 Nev. Adv. Op. 1, 501 P.3d 980,983 (2022). Further, the movant is required to demonstrate adequate cause for an evidentiary hearing on the request to modify custody. See Rooney v. Rooney, 109 Nev. 540, 542-3, 853 P.2d 123, 124-25 (1993). In evaluating whether an evidentiary hearing is warranted on a motion to modify custody, the district court may not consider the moving parties' factual allegations and exhibits unless they are "supported by verified pleadings, declarations, or affidavits." Myers v. Haskins, 138 Nev. Adv. Op. 51, 513 P.3d 527, 534 (Ct. App. 2022). "Adequate cause arises where the moving party presents a prima facie case that the requested relief is in the child's best interest". Id. quoting Rooney, 109 Nev. at 542, 853 P.2d at 125. In order to demonstrate a prima facie case, the moving party must show:

1) the fact alleged in the affidavits are relevant to the relief requested; and 2) the evidence is not merely cumulative or impeaching. Id. citing Rooney, 109 Nev. at 542, 853 P.2d at 125 (internal quotations omitted).

With respect to Enrique's allegation Luba routinely makes dental and doctor appointments without his consent, Enrique cited to his May 5, 2023 Exhibit B at BATES 678-83. However, the Court FINDS the Talking Parent communications indicate only that Luba made the appointments and do not indicate Enrique objected to the appointments in the same communications. Therefore, the Court DENIES Enrique's request to modify custody on this ground.

With respect to withholding the child for the March 2023 vacation, the Court FINDS Enrique has met his prima facie burden. While the Court does not necessarily agree at this juncture that the alleged withholding amounted to parental abduction, the Court concludes the allegation coupled with Enrique's NRS 125C.0035(4) analysis meets the prima facie requirement under Romano and that adequate cause exists for an non-jury bench trial on his request.

Therefore, the Court GRANTS Enrique's request for modification of custody and shall separately issue a Trial Management Order scheduling this matter for a full day non-jury bench trial in the ordinary course. All order shall remain status quo pending trial on this issue.

ATTORNEY FEES AND COSTS

Enrique requests an award for attorney fees and costs pursuant to NRS 18.010 where he alleges Luba filed her April 27, 2023 motion without reasonable grounds and for frivolous or vexatious purposes. The Court agrees. It appears Luba filed her motion in response to this Court's grant of Enrique's March 20, 2023 Order to Show Cause grant particularly where the bulk of her requests for show cause relief are stale. Further, the Court FINDS Luba's requests

related to the Zoom video calls were false. Therefore, the Court FINDS Luba's requests appear to this Court to be without reasonable grounds and meant to increase ligation costs.

Accordingly, the Court GRANTS Enrique's request for award for attorney fees and costs. Enrique shall file and serve a Memorandum of Fees and Costs, to include an attorney-client invoices (redacted), not later than JUNE 27, 2023. Luba shall timely file and serve any Objection. This Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or Objection, if filed. The Court will not consider any pleadings beyond the Memorandum of Fees and Costs and Objection, if filed. **The failure to timely file the Memorandum of Fee and Costs by June 27, 2023 SHALL be deemed a WAIVER of the right to seek attorney fees and costs**. Decision on attorney fees and costs shall be scheduled for AUGUST 30, 2023 AT 3AM Chamber Hearing (NO appearances).

ENRIQUE'S MOVING PAPERS

In his May 24, 2023 Emergency Motion, Enrique requests an order directing Luba to deliver the child to him on Father's Day, June 18, 2023 not later than 10AM. Enrique additionally requests an award for attorney fees and costs.

Enrique contends Luba scheduled her three (3) week vacation from May 31, 2023 through June 21, 2023. Enrique contends Luba provided her itinerary on May 22, 2023 or, ten (10) days prior to her planned vacation. Enrique contends the MSA does not provide for each party to have three (3) consecutive weeks' vacation with the child. Enrique alleged he complied with EDCR 5.501 and, further, asserted Luba could not withhold the child for Father's Day.

In her May 31, 2023 Opposition, Luba contends Enrique agreed to her requested vacation on December, 4, 2022. In support of her contention, Luba provided an exhibit text message wherein she notified Enrique of her vacation on December 4, 2022. See Luba's Exhibit 1 at

BATES 5 (December 4, 2022 message). Luba further contends she has agreed for Enrique to take vacation with the child from July 5 through 26, 2023. In her countermotion, Luba alleges Enrique is discussing the litigation with the child, that Enrique altered [redacted] passport and that she should be awarded attorney fees and costs. In support of her assertion the child's U.S. passport has been altered as to her physical address, the Court FIND Luba provided a picture of the child's passport with her "home" address modified multiple times via use of white-out.

In his Reply, Enrique disputes the amount of time taken for vacation and that the Father's Day award is mandatory not permissive. Enrique requests the Court deny Luba's countermotions.

The MSA at Art.9.4.4, Holidays, Father's Day, provides:

> "Each year the minor child shall reside with [Enrique] from 10:00 a.m. on Father's Day through 12:00 p.m. on the day following Father's Day."

See MSA at Art. 9.4.4 (filed December 8, 2021)

The MSA at Art.9.5, Vacation Time, provides:

> "Husband and Wife each have the right to take up to 7 days of vacation time per year with the child, which must be taken in one block of no more than 7 days per year. If in a given year Husband or Wife chooses to exercise a vacation block of time lasting less than 7 days duration, he or she will forfeit the balance of their vacation days for that year. The vacation period may be added to normal custody time such that Husband or Wife may, be exercising vacation time have the child for up to three weeks total by taking the child for his or her normal one week of custody time, plus a vacation week, then continuing to have the child during the following week, which would otherwise be the vacating [sic] parent's custody time anyway. Each party is required to give no less than 30 days' written notice of the planned vacation, and in the event of a dispute wherein both parties want the same dates or overlapping dates for a vacation with the child, the party who first gave written notice shall be entitled to take the vacation block he or she provided in written notice to the other."

Id. at Art.9.5.

The Court FINDS no provision in the MSA related to what should occur when a party's requested vacation time occurs during an other specified holiday, e.g., Father's Day. The Court

FINDS the Luba provided documentation that her vacation period was duly noticed to Enrique on December 4, 2022 and that Enrique agreed to the vacation time. The Court FINDS Enrique has vacation planned for July 5 through 26, 2023. The Court FINDS, in the MSA, the parties stipulated to seven (7) days' vacation which could be grouped with regular custodial time. See MSA Art.9.5 (file December 8, 2021). It appears likely Enrique did not consider what day Father's Day 2023 occurred when agreeing to Luba's vacation time and that subsequent litigation resulted in heightened conflict.

Based on the foregoing, the Court DENIES Enrique's May 24, 2023 motion mandating the child spend Father's Day 2023 with him where the parties agreed on Luba's vacation time on or about December 4, 2022. With respect to Luba's countermotion, the Court FINDS the child's passport has been a consistent issue between the parties with the current passport altered to such an extent it is unclear to the Court if any Customs agent would accept use of the passport. Therefore, the Court ORDERS pending trial in this matter, Luba's attorney of record SHALL retain the passport in his office. The Court ORDERS the passport SHALL be released to either parent when traveling internationally as allowed by the terms of the December 8, 2021 MSA at Article Art. 10.7 and shall be returned to Luba's attorney within forty-eight (48) hours of return to the United States.

The parties are ADMONISHED neither shall discuss this case with the minor child. See EDCR 5.304. The Court has issued an June 11, 2023 Order to Show Cause why a Special Master/Parenting Coordinator should not be appointed to this case pursuant to NRCP 53 which may assist in this regard.

Last, each party shall bear his/her own attorney fees and costs related to the set of motions commenced by Enrique's May 24, 2023 Emergency Motion.

Accordingly, the Court FINDS and ORDERS as follows:

1. This Court has determined to decide matters pending before it without recourse to oral argument pursuant to EDCR 5.702(a). Therefore, the Court ORDERS the June 15, 2023 hearing VACATED.
2. The Court DENIES Luba's April 27, 2023 motion in its entirety for reasons set forth herein.
3. The Court GRANTS Enrique's May 5, 2023 countermotion to modify custody. Enrique's request for child support review shall be deferred to trial. A Trial Management Order shall separately issue setting this matter for full day non-jury bench trial in the ordinary course. All underlying orders shall remain status quo.
4. The Court DENIES Enrique's May 5, 2023 countermotion for NRCP 60(b) relief as untimely made pursuant to NRCP 60(c)(1).
5. The Court GRANTS Enrique's May 5, 2023 countermotion for award for attorney fees and costs related the Luba's requests for relief initiated by her April 27, 2023 motion. Enrique shall file and serve a Memorandum of Fees and Costs, to include an attorney-client invoices (redacted), not later than JUNE 27, 2023. Luba shall timely file and serve any Objection. This Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or Objection, if filed. The Court will not consider any pleadings beyond the Memorandum of Fees and Costs and Objection, if filed. **The failure to timely file the Memorandum of Fee and Costs by June 27, 2023 SHALL be deemed a WAIVER of the right to seek attorney fees and costs**. Decision on attorney fees and costs shall be scheduled for AUGUST 30, 2023 AT 3AM Chamber Hearing (NO appearances).

6. The Court DENIES Enrique's May 24, 2023 motion mandating the child spend Father's Day 2023 with him where the parties agreed on Luba's vacation time on or about December 4, 2022.

7. With respect to Luba's countermotion, the Court FINDS the child's passport has been a consistent issue between the parties with the current passport altered to such an extent it is unclear to the Court if any Customs agent would accept use of the passport. Therefore, the Court ORDERS pending trial in this matter, Luba's attorney of record SHALL retain the passport in his office. The Court ORDERS the passport SHALL be released to either parent when traveling internationally as allowed by the terms of the December 8, 2021 MSA at Article Art. 10.7 and shall be returned to Luba's attorney within forty-eight (48) hours of return to the United States.

8. The parties are ADMONISHED neither shall discuss this case with the minor child. See EDCR 5.304.

9. The Court DENIES competing requests for award for attorney fees and costs related to the set of motions commenced on May 24, 2023 with Enrique's Emergency Motion.

10. Based on the foregoing, the Court DENIES Luba's Ex parte Application for Leave to file a Surreply as MOOT.

Dated this 13th day of June, 2023

HEIDI ALMASE
District Court Judge

D1D 6B3 EBC4 2643
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 6/13/2023

[redacted]

Electronically Filed
08/04/2023 8:49 AM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, vs. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X DATE OF HEARING: 08/03/2023 TIME OF HEARING: 1:30PM

ORDER FROM AUGUST 3, 2023 ORDER TO SHOW CAUSE HEARING

This matter was scheduled for August 3, 2023 hearing on this Court's June 11, 2023 Order to Show Cause why a Special Master/Parenting Coordinator should not be appointed to the Case at the Parties' Expense pursuant to NRC 53(b)(2). On June 11, 2023, through her prior counsel, Plaintiff Luba (Luba) Gonzalez filed a Notice of Non-Opposition to the Court's Order to Show Cause. On June 15, 2023, Defendant Enrique (Enrique) Velazquez-Gonzalez filed an Objection.

This Court exercises authority granted it pursuant to NRCP 1 and EDCR 1.10 which provide district court dockets shall be administered to secure speedy, efficient and inexpensive determinations in every action. The Court has authored this order from hearing.

Luba was present in person with her current attorney, Alex Ghibaudo. Enrique was present via audiovisual means with his attorney, Melvin Grimes, also present via audiovisual means.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] GONZALEZ, born [redacted] (age 6 years). The parties in this case share

JOINT LEGAL and JOINT PHYSICAL CUSTODY. See Stipulated Decree of Divorce at Exhibit 1 p.8-9, Article 9.1 and 9.2 (Marital Settlement Agreement (MSA))(filed December 8, 2021).

Luba, through her current counsel, orally objected to appointment of a special master/parenting coordinator. Enrique argued his June 15, 2023 Objection and asserted that, of the approximately thirty-plus requests for relief in this case, he was responsible for five (5) requests. As such, Enrique asserted he was not responsible for the increased litigation in this matter and that, given the underlying history of this case, appointment of a special master/parenting coordinator would be unlikely to reduce litigation.

Accordingly, the Court FINDS and ORDERS as follows:

1. Taking into account Enrique's written Objection and Luba's oral objection, the Court WITHDRAWS the June 11, 2023 Order to Show Cause and GRANTS Enrique's timely Objection to the same.
2. All other hearings will remain as scheduled barring notification from the Department that it will exercise discretion granted it pursuant to EDCR 5.702(a) to decide a pending matter at any time.

Dated this 4th day of August, 2023

HEIDI ALMASE
District Court Judge

A6D B39 A129 3941
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 8/4/2023

[redacted]

Electronically Filed
8/8/2023 11:23 AM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	Case No.: D-18-575860-D Department X

NOTICE OF ENTRY OF ORDER FROM AUGUST 3, 2023 ORDER TO SHOW CAUSE HEARING

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on August 04, 2023, a true and correct copy of which is attached hereto.

Dated this 8th day of August, 2023.

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamped date:

☒ E-Served pursuant to NEFCR 9 on August 08, 2023, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Alex Ghibaudo
Melvin Grimes

☐ I mailed, via first-class mail, postage fully prepaid, the foregoing NOTICE OF ENTRY OF ORDER to:

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

HEIDI ALMASE
DISTRICT JUDGE

Electronically Filed
08/04/2023 8:49 AM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, vs. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X DATE OF HEARING: 08/03/2023 TIME OF HEARING: 1:30PM

ORDER FROM AUGUST 3, 2023 ORDER TO SHOW CAUSE HEARING

This matter was scheduled for August 3, 2023 hearing on this Court's June 11, 2023 Order to Show Cause why a Special Master/Parenting Coordinator should not be appointed to the Case at the Parties' Expense pursuant to NRC 53(b)(2). On June 11, 2023, through her prior counsel, Plaintiff Luba (Luba) Gonzalez filed a Notice of Non-Opposition to the Court's Order to Show Cause. On June 15, 2023, Defendant Enrique (Enrique) Velazquez-Gonzalez filed an Objection.

This Court exercises authority granted it pursuant to NRCP 1 and EDCR 1.10 which provide district court dockets shall be administered to secure speedy, efficient and inexpensive determinations in every action. The Court has authored this order from hearing.

Luba was present in person with her current attorney, Alex Ghibaudo. Enrique was present via audiovisual means with his attorney, Melvin Grimes, also present via audiovisual means.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] GONZALEZ, born [redacted] (age 6 years). The parties in this case share

JOINT LEGAL and JOINT PHYSICAL CUSTODY. See Stipulated Decree of Divorce at Exhibit 1 p.8-9, Article 9.1 and 9.2 (Marital Settlement Agreement (MSA))(filed December 8, 2021).

Luba, through her current counsel, orally objected to appointment of a special master/parenting coordinator. Enrique argued his June 15, 2023 Objection and asserted that, of the approximately thirty-plus requests for relief in this case, he was responsible for five (5) requests. As such, Enrique asserted he was not responsible for the increased litigation in this matter and that, given the underlying history of this case, appointment of a special master/parenting coordinator would be unlikely to reduce litigation.

Accordingly, the Court FINDS and ORDERS as follows:

1. Taking into account Enrique's written Objection and Luba's oral objection, the Court WITHDRAWS the June 11, 2023 Order to Show Cause and GRANTS Enrique's timely Objection to the same.
2. All other hearings will remain as scheduled barring notification from the Department that it will exercise discretion granted it pursuant to EDCR 5.702(a) to decide a pending matter at any time.

Dated this 4th day of August, 2023

HEIDI ALMASE
District Court Judge

A6D B39 A129 3941
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 8/4/2023

[redacted]

Electronically Filed
09/25/2023 3:27 PM
CLERK OF THE COURT

OSC
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X

ORDER TO SHOW CAUSE

This Court having reviewed and considered the foregoing Motion for an Order Show Cause why the Plaintiff, Luba Snow, should not be held in contempt of Court for knowing and willfully violating the Court's Order as follows:

Counts 1:

That Plaintiff, Luba Snow (Now Luba Dace), did knowingly and willfully violate the Order of this Court on March 15, 2023, when she willfully refused to

Page 1 of 5

exchange the minor child [redacted] Gonzalez at 9:00 AM

Luba's conduct is in contravention to the Order filed with the Clerk of the Court December 8, 2021, page 9 or Exhibit 1, Section 9.3, which states,

> The parties custodial schedule is described with sufficient particularity per NRS 125C.010. The parties agree that custodial shall take place as follows: the party shall exercise a week on, week off schedule with husband having custody of the minor child every other week from Wednesday morning at 9:00 AM, when school commences until the following Wednesday at 9:00 AM, except we're superseded by holiday, vacation or other special custody time, as more fully set out below. The sending parent shall deliver the child to school on Wednesday and the receiving parent shall pick the child up from school at the conclusion of the school day that same day, on Wednesday.

The Order continues,

> Except for superceded by holiday, vacation, or other special holiday custody times, as more fully set out below, in the event that there is no school on a Wednesday, the custody time shall be at 9:00 AM at the Chevron Gas Station located at [redacted] Las Vegas NV 89135.

Counts 2:

That Plaintiff, Luba Snow (Now Luba Dace), did knowingly and willfully violate the Order of this Court on March 13, 2023, when scheduled a dentist appointment for the minor child without the knowledge, consent or input of the Defendant, Enrique.

Page **2** of **5**

Luba's conduct is in contravention to the Order filed with the Clerk of the Court December 8, 2021, page 8 of Exhibit 1, Section 9.1, which states,

> The parties shall confer with each other on all important matters pertaining to the children's health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the child's best interest, and not to promote the personal desires of either party.
>
> The parent shall confer with each other on all matters regarding the Children's Health care, including but not limited to, medical, dental, orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health conditions of the children except in emergency situations when prior consultations are not possible.

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff, Luba Snow, shall appear in District Court at the courtroom of the above entitled Court, located at 20 Lewis Ave. Las Vegas, Nevada, on March 13, 2024, at 9:00 a.m., in Department "X" of said Court, and then and there show cause, if any she has, why she should not be adjudicated guilty of contempt of Court and punished accordingly.

IT IS FURTHER ORDERED that Plaintiff, Luba Snow, has the right to file an Affidavit of her behalf and may appear personally or by the way of an attorney, and present testimony on his behalf at the time of the hearing.

///

///

Page **3** of **5**

Luba's conduct is in contravention to the Order filed with the Clerk of the Court December 8, 2021, page 8 of Exhibit 1, Section 9.1, which states,

> The parties shall confer with each other on all important matters pertaining to the children's health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the child's best interest, and not to promote the personal desires of either party.
>
> The parent shall confer with each other on all matters regarding the Children's Health care, including but not limited to, medical, dental, orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health conditions of the children except in emergency situations when prior consultations are not possible.

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff, Luba Snow, shall appear in District Court at the courtroom of the above entitled Court, located at 20 Lewis Ave. Las Vegas, Nevada, on March 13, 2024, at 9:00 a.m., in Department "X" of said Court, and then and there show cause, if any she has, why she should not be adjudicated guilty of contempt of Court and punished accordingly.

IT IS FURTHER ORDERED that Plaintiff, Luba Snow, has the right to file an Affidavit of her behalf and may appear personally or by the way of an attorney, and present testimony on his behalf at the time of the hearing.

///

///

Page **3** of **4**

IT IS FURTHER ORDERED that if Plaintiff, Luba Snow, fails to appear, she shall be deemed to have waived her right to a hearing and that such case, the Court may hold her in contempt and issue a warrant for her arrest.

IT IS SO ORDERED this _____ day of _____, 2023.

The Court ORDERS Defendant SHALL have this Order to Show Cause served on Plaintiff and filed proof of the same PRIOR to the scheduled evidentiary hearing. The failure to file proof of service as ordered shall be deemed a WAIVER of the right to proceed to Show Cause hearing (ha).

ha

Dated this 25th day of September, 2023

334 162 749A E64B
Heidi Almase
District Court Judge

Respectfully submitted this ___ day of September. 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____

Melvin R. Grimes, Esq.
Nevada Bar No. 12972
[redacted]

Attorneys for Defendant

Page 4 of 4

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order to Show Cause 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: 9/25/2023

[redacted]

Electronically Filed
9/26/2023 10:36 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ

Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X

NOTICE OF ENTRY OF ORDER TO SHOW CAUSE

\\\

\\\

\\\

\\\

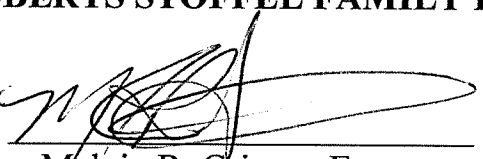
\\\

\\\

PLEASE TAKE NOTICE an Order to Shoe Cause was filed with this Court on the 25th day of September 2023, a copy of which is attached hereto and fully incorporated herein by reference.

DATED this 26th day of September, 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: 

Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
[redacted]

Attorneys for Defendant, Enrique Ivan Velazquez-Gonzalez

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 26th day of September, 2023, I served by and through Wiz-Net electronic service, pursuant Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Notice of Entry of Order to show Cause (with the Order attached hereto), to the following;

Benjamin Childs, Esq.
[redacted]
Counsel for Plaintiff

By: /s/ Missy DeJonge
Employee of Roberts Stoffel Family Law Group

Electronically Filed
09/25/2023 3:27 PM
CLERK OF THE COURT

OSC
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X

ORDER TO SHOW CAUSE

This Court having reviewed and considered the foregoing Motion for an Order Show Cause why the Plaintiff, Luba Snow, should not be held in contempt of Court for knowing and willfully violating the Court's Order as follows:

Counts 1:

That Plaintiff, Luba Snow (Now Luba Dace), did knowingly and willfully violate the Order of this Court on March 15, 2023, when she willfully refused to

Page 1 of 5

exchange the minor child [redacted] Gonzalez at 9:00 AM

Luba's conduct is in contravention to the Order filed with the Clerk of the Court December 8, 2021, page 9 or Exhibit 1, Section 9.3, which states,

> The parties custodial schedule is described with sufficient particularity per NRS 125C.010. The parties agree that custodial shall take place as follows: the party shall exercise a week on, week off schedule with husband having custody of the minor child every other week from Wednesday morning at 9:00 AM, when school commences until the following Wednesday at 9:00 AM, except we're superseded by holiday, vacation or other special custody time, as more fully set out below. The sending parent shall deliver the child to school on Wednesday and the receiving parent shall pick the child up from school at the conclusion of the school day that same day, on Wednesday.

The Order continues,

> Except for superceded by holiday, vacation, or other special holiday custody times, as more fully set out below, in the event that there is no school on a Wednesday, the custody time shall be at 9:00 AM at the Chevron Gas Station located at [redacted] Las Vegas NV 89135.

Counts 2:

That Plaintiff, Luba Snow (Now Luba Dace), did knowingly and willfully violate the Order of this Court on March 13, 2023, when scheduled a dentist appointment for the minor child without the knowledge, consent or input of the Defendant, Enrique.

Page 2 of 5

Luba's conduct is in contravention to the Order filed with the Clerk of the Court December 8, 2021, page 8 of Exhibit 1, Section 9.1, which states,

> The parties shall confer with each other on all important matters pertaining to the children's health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the child's best interest, and not to promote the personal desires of either party.
>
> The parent shall confer with each other on all matters regarding the Children's Health care, including but not limited to, medical, dental, orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health conditions of the children except in emergency situations when prior consultations are not possible.

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff, Luba Snow, shall appear in District Court at the courtroom of the above entitled Court, located at 20 Lewis [redacted] Vegas, Nevada, on March 13, 2024, at 9:00 a.m., in Department "X" of said Court, and then and there show cause, if any she has, why she should not be adjudicated guilty of contempt of Court and punished accordingly.

IT IS FURTHER ORDERED that Plaintiff, Luba Snow, has the right to file an Affidavit of her behalf and may appear personally or by the way of an attorney, and present testimony on his behalf at the time of the hearing.

///

///

Page 3 of 5

Luba's conduct is in contravention to the Order filed with the Clerk of the Court December 8, 2021, page 8 of Exhibit 1, Section 9.1, which states,

> The parties shall confer with each other on all important matters pertaining to the children's health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the child's best interest, and not to promote the personal desires of either party.
>
> The parent shall confer with each other on all matters regarding the Children's Health care, including but not limited to, medical, dental, orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health conditions of the children except in emergency situations when prior consultations are not possible.

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff, Luba Snow, shall appear in District Court at the courtroom of the above entitled Court, located at 20 Lewis [redacted] Vegas, Nevada, on March 13, 2024, at 9:00 a.m., in Department "X" of said Court, and then and there show cause, if any she has, why she should not be adjudicated guilty of contempt of Court and punished accordingly.

IT IS FURTHER ORDERED that Plaintiff, Luba Snow, has the right to file an Affidavit of her behalf and may appear personally or by the way of an attorney, and present testimony on his behalf at the time of the hearing.

///

///

Page 3 of 4

IT IS FURTHER ORDERED that if Plaintiff, Luba Snow, fails to appear, she shall be deemed to have waived her right to a hearing and that such case, the Court may hold her in contempt and issue a warrant for her arrest.

IT IS SO ORDERED this _____ day of _____, 2023.

The Court ORDERS Defendant SHALL have this Order to Show Cause served on Plaintiff and filed proof of the same PRIOR to the scheduled evidentiary hearing. The failure to file proof of service as ordered shall be deemed a WAIVER of the right to proceed to Show Cause hearing (ha).

Dated this 25th day of September, 2023

ha

334 162 749A E64B
Heidi Almase
District Court Judge

Respectfully submitted this ___ day of September. 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____

Melvin R. Grimes, Esq.
Nevada Bar No. 12972
[redacted]

Attorneys for Defendant

Page 4 of 4

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order to Show Cause 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: 9/25/2023



Electronically Filed
11/17/2023 1:38 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
4411 S. Pecos Road
[redacted]
Attorney for Defendant,
Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: P

ORDER AFTER HEARING

THIS MATTER having come before this Court on the 31st day of August 2023, for an Evidentiary Hearing on an Order to Show Cause. The Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record, Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff Luba Gonzalez, being present and represented by and through her attorney of record, Alex Ghibaudo. All Parties appeared in person in

the department. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby Orders as follows:

THE COURT NOTED on March 20, 2023, the Court signed an Order to Show Cause (OSC) in advance of hearing on the issue on April 6, 2023.

THE COURT FURTHER NOTED that the Order top Show Cause had not reissued with date of the hearing and service in that time seventy eight (78) documents have been filed.

THE COURT FURTHER NOTED Attorney Ghibaudo failed to file Pre-Trial Memorandum.

THE COURT FURTHER NOTED Attorney Ghibaudo substituted in three (3) months and didn't abide by the Trial Management Order.

THE COURT FURTHER NOTED Plaintiff's Motion for reconsideration will be by written decision no basis for the parties to attend Court.

THE COURT FURTHER NOTED Attorney Grimes represented he was not going to object to a pre- trial memorandum. Attorney Grimes stated he would rather have a late pre-trail so he knows the Court's defenses than to show up and not have a clue. Attorney Grimes stated he would pull his pre- trial into his pre-trail for the March evidentiary hearing.

NOW THEREFORE,

THE COURT HEREBY ORDERS All previous orders shall remain status quo.

THE COURT FURTHER ORDERS Attorney Grimes shall resubmit file and serve the Order to Show Cause (OSC) with the hearing date on top, all the issues that have been alleged, with standard language regarding failure to appear Bench Warrant will be issued, and what the penalties are if sustained by clear, convincing evidence.

THE COURT FURTHER ORDERS Order to Show Cause (OSC) shall be included in Pre-Trial Memorandum that are due on the June 13, 2023 Trial Management Order.

STATUTORY NOTICES

Approved by Presiding Judge Pursuant to EDCR 5.707

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.006:

1. If PRIMARY PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.020 through 31A.230, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form. The form can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

\\\

THE COURT FURTHER ORDERS Court will group Order to Show Cause (OSC) with March 13, 2024 Non-Jury Trial.

THE COURT FURTHER ORDERS Motion hearing set for September 11, 2023 at 10:00 AM shall be vacated.

THE COURT FURTHER ORDERS the Opposition and Countermotion set for September 11, 2023 at 10:00 AM shall be vacated.

THE COURT FURTHER ORDERS All future hearing dates shall stand.

THE COURT FURTHER ORDERS Attorney Grimes shall prepare the Final Order and attorney Ghibaudo shall review and countersign.

IT IS SO ORDERED.

Dated this 17th day of November, 2023

ha/countersigned

[redacted]
Heidi Almase
District Court Judge

Submitted this 17th day of November 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R, Grimes, Esq. (12972)
[redacted]
Attorneys for Defendant

Approved as to Content and Form:

By:/s/ *Alex Ghibaudo*
Alex Ghibaudo, Esq. (10590)
[redacted]
Attorneys for Plaintiff

Missy DeJonge

[redacted]

Sent: Thursday, November 16, 2023 4:23 PM
To: Missy DeJonge
Cc: Melvin Grimes; Office Staff
Subject: RE: Gonzalez v. Velasquez Gonzalez OAH

I reviewed the order and approve as to form and content. Please affix my electronic signature and submit to the department. Thanks.

Alex G.

[redacted]
Sent: Wednesday, November 8, 2023 8:32 AM
[redacted]
Subject: Gonzalez v. Velasquez Gonzalez OAH

Alex,

Attached is the Order from the 8/31/23 hearing. Please sign and return or send us your requested changes by close of business November 15, 2023.

Thank You,

Missy DeJonge, Paralegal
to Jason P. Stoffel, Esq.

ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
(Office is located on a small side street, University Avenue)
[redacted]
WEB: lvfamilylaw.com

NOTICE: This communication may contain privileged or other confidential information and is intended only for the use of the individual and/or entity named above. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Any dissemination, distribution or copying of this communication is strictly prohibited. Also, please indicate to the send that you have received this email in error, and delete the copy you received.

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C §§ [redacted] *and 2515-2521, and is legally privileged. This transmission may also be*

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 11/17/2023

[redacted]

Electronically Filed
11/20/2023 10:23 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ

Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant, Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: X

NOTICE OF ENTRY OF ORDER AFTER HEARING FOR AUGUST 31, 2023

\\\

\\\

\\\

\\\

\\\

\\\

PLEASE TAKE NOTICE an Order After Hearing for August 31, 2023 was filed with this Court on the 17th day of November, 2023, a copy of which is attached hereto and fully incorporated herein by reference.

DATED this 17th day of November, 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R. Grimes, Esq.
State of Nevada Bar No. 12972
[redacted]
Attorneys for Defendant, Enrique Ivan Velazquez-Gonzalez

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 20th day of November, 2023, I served by and through Wiz-Net electronic service, pursuant Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Notice of Entry of Order (with the Order attached hereto), to the following;

Alex Ghibaudo, Esq.
[redacted]

By: */s/ Missy DeJonge*
Employee of Roberts Stoffel Family Law Group

Electronically Filed
11/17/2023 1:38 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
4411 S. Pecos Road
[redacted]
Attorney for Defendant,
Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: P

ORDER AFTER HEARING

THIS MATTER having come before this Court on the 31st day of August 2023, for an Evidentiary Hearing on an Order to Show Cause. The Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record, Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff Luba Gonzalez, being present and represented by and through her attorney of record, Alex Ghibaudo. All Parties appeared in person in

the department. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby Orders as follows:

THE COURT NOTED on March 20, 2023, the Court signed an Order to Show Cause (OSC) in advance of hearing on the issue on April 6, 2023.

THE COURT FURTHER NOTED that the Order top Show Cause had not reissued with date of the hearing and service in that time seventy eight (78) documents have been filed.

THE COURT FURTHER NOTED Attorney Ghibaudo failed to file Pre-Trial Memorandum.

THE COURT FURTHER NOTED Attorney Ghibaudo substituted in three (3) months and didn't abide by the Trial Management Order.

THE COURT FURTHER NOTED Plaintiff's Motion for reconsideration will be by written decision no basis for the parties to attend Court.

THE COURT FURTHER NOTED Attorney Grimes represented he was not going to object to a pre- trial memorandum. Attorney Grimes stated he would rather have a late pre-trail so he knows the Court's defenses than to show up and not have a clue. Attorney Grimes stated he would pull his pre- trial into his pre-trail for the March evidentiary hearing.

NOW THEREFORE,

THE COURT HEREBY ORDERS All previous orders shall remain status quo.

THE COURT FURTHER ORDERS Attorney Grimes shall resubmit file and serve the Order to Show Cause (OSC) with the hearing date on top, all the issues that have been alleged, with standard language regarding failure to appear Bench Warrant will be issued, and what the penalties are if sustained by clear, convincing evidence.

THE COURT FURTHER ORDERS Order to Show Cause (OSC) shall be included in Pre-Trial Memorandum that are due on the June 13, 2023 Trial Management Order.

STATUTORY NOTICES

Approved by Presiding Judge Pursuant to EDCR 5.707

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.006:

1. If PRIMARY PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.020 through 31A.230, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form. The form can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

\\\

THE COURT FURTHER ORDERS Court will group Order to Show Cause (OSC) with March 13, 2024 Non-Jury Trial.

THE COURT FURTHER ORDERS Motion hearing set for September 11, 2023 at 10:00 AM shall be vacated.

THE COURT FURTHER ORDERS the Opposition and Countermotion set for September 11, 2023 at 10:00 AM shall be vacated.

THE COURT FURTHER ORDERS All future hearing dates shall stand.

THE COURT FURTHER ORDERS Attorney Grimes shall prepare the Final Order and attorney Ghibaudo shall review and countersign.

IT IS SO ORDERED.

Dated this 17th day of November, 2023

ha/countersigned

DDA[redacted]F94F
Heidi Almase
District Court Judge

Submitted this 17th day of November 2023.

ROBERTS STOFFEL FAMILY LAW GROUP

By:
Melvin R, Grimes, Esq. (12972)
[redacted]
Attorneys for Defendant

Approved as to Content and Form:

By:/s/ *Alex Ghibaudo*
Alex Ghibaudo, Esq. (10590)
Attorneys for Plaintiff

Missy DeJonge

[redacted]

Sent:	Thursday, November 16, 2023 4:23 PM
To:	Missy DeJonge
Cc:	Melvin Grimes; Office Staff
Subject:	RE: Gonzalez v. Velasquez Gonzalez OAH

I reviewed the order and approve as to form and content. Please affix my electronic signature and submit to the department. Thanks.

Alex G.

[redacted]

Sent: Wednesday, November 8, 2023 8:32 AM
[redacted]

Subject: Gonzalez v. Velasquez Gonzalez OAH

Alex,

Attached is the Order from the 8/31/23 hearing. Please sign and return or send us your requested changes by close of business November 15, 2023.

Thank You,

Missy DeJonge, Paralegal
to Jason P. Stoffel, Esq.

ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
(Office is located on a small side street, University Avenue)
[redacted]
WEB: lvfamilylaw.com

NOTICE: This communication may contain privileged or other confidential information and is intended only for the use of the individual and/or entity named above. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Any dissemination, distribution or copying of this communication is strictly prohibited. Also, please indicate to the send that you have received this email in error, and delete the copy you received.

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C §§ [redacted] *and 2515-2521, and is legally privileged. This transmission may also be*

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 11/17/2023

[redacted]

Electronically Filed
08/06/2024 2:05 PM
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO.: D-18-575860-D Department X

ORDER TO SHOW CAUSE

TO: **Melvin Grimes**

YOU ARE HEREBY ORDERED TO SHOW CAUSE why Counsel should not be held in contempt for failure to submit an order from hearing in accordance with EDCR 5.706.

On March 19, 2024, a Non-Jury Trial hearing was held. At the hearing, Counsel was ordered to prepare the order from hearing.

The Court FINDS Counsel has failed to file the order/decree from hearing. The Court further FINDS it has been five (5) months since Counsel was ordered to file the order/decree from hearing.

ACCORDINGLY, YOU ARE SUBJECT TO SANCTIONS.

YOU MAY DO ONE OF THE FOLLOWING:

1. Do nothing and you will be SUBJECT TO SANCTIONS; OR
2. [redacted] by **MONDAY, SEPTEMBER 30, 2024.**

DATED this 6th day of August, 2024.

Dated this 6th day of August, 2024

Heidi Almase
DISTRICT COURT JUDGE

F8C 6DF F0D3 B64A
Heidi Almase
District Court Judge

Heidi Almase
DISTRICT JUDGE
Department X
[redacted]

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

[redacted]

Melvin Grimes

[redacted]

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant

Heidi Almase
DISTRICT JUDGE
Department X
[redacted]

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order to Show Cause 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: 8/6/2024

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/7/2024

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
08/08/2024 12:42 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant,
Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: P

ORDER AFTER HEARING FROM MARCH 19, 2024

THIS MATTER having come before this Court on the 19th day of March, 2024, for a Trial on Modification of Custody and Order to Show Cause. The Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record, Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff Luba Gonzalez, being present and represented by and through her attorney of record, Alex Ghibaudo. All Parties appeared in

person in the department. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby Orders as follows:

THE COURT FINDS that according to the testimony presented today, there is clear and convincing evidence of a single act of unlawful detaining, in violation of NRS 125(c)(7) specifically willful detaining of the minor child on March 15, 2023, vacation timeshare that was owed to Defendant. A trial date is set to hear the complete testimony, review all exhibits, and determine whether or not that presumption has been overcome by Plaintiff.

NOW THEREFORE,

THE COURT HEREBY ORDERS AND STIPULATED BY THE PARTIES that Plaintiff/Ms. Snow will pay for a passport card for the child. Plaintiff will hold the minor child's Passport Card and Defendant/Mr. Gonzales will hold the minor child's Passport book. If Plaintiff travels to a location internationally that the book would be necessary for the minor child, Defendant will turn over the Passport book and vice versa.

STATUTORY NOTICES

Approved by Presiding Judge Pursuant to EDCR 5.707

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having

no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.006:

1. If PRIMARY PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires

to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical

custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.020 through 31A.230, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the [redacted] the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form. The form can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

THE COURT FURTHER ORDERS Attorney Grimes shall prepare a preliminary finding related to the presumption and Order from today's hearing.

THE COURT FURTHER ORDERS second day of the Non-Jury Trial is set for October 15, 2024 at 9:00 a.m.

IT IS SO ORDERED.

Dated this 8th day of August, 2024

945 E6E 6A4A 604B
Heidi Almase
District Court Judge

Submitted this 8 day of ~~April~~ MAY 2024.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R, Grimes, Esq. (12972)
[redacted]
Attorneys for Defendant

Approved as to Content and Form:

By: Declined to Sign
Alex Ghibaudo, Esq. (10590)
Attorneys for Plaintiff

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 8/8/2024

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/9/2024

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
8/8/2024 2:51 PM
Steven D. Grierson
CLERK OF THE COURT

NEO
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: P

NOTICE OF ENTRY OF ORDER AFTER HEARING FROM MARCH 19, 2024

\\\

\\\

\\\

\\\

\\\

\\\

PLEASE TAKE NOTICE that an Order After Hearing from March 19, 2024, was duly entered on the 8th day of August 2024, a copy of which is attached hereto and fully incorporated herein.

DATED this 8 day of August 2024

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____

Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
[redacted]

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 8 day of August 2024, I served by and through Wiz-Net electronic service, pursuant Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Notice of Entry of Order After Hearing from March 19, 2024 (with the Order attached herein), to the following:

Alex Ghibaudo, Esq.

[redacted]

Attorney for Plaintiff

By: Mandy Thomas
Employee of Roberts Stoffel Family Law Group

Electronically Filed
08/08/2024 12:42 PM
CLERK OF THE COURT

ORDR
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant,
Enrique Ivan Velazquez-Gonzalez

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: P

ORDER AFTER HEARING FROM MARCH 19, 2024

THIS MATTER having come before this Court on the 19th day of March, 2024, for a Trial on Modification of Custody and Order to Show Cause. The Defendant, Enrique Ivan Velazquez-Gonzales, being present and represented by and through his attorneys of record, Melvin R. Grimes Esq., of Roberts Stoffel Family Law Group; and the Plaintiff Luba Gonzalez, being present and represented by and through her attorney of record, Alex Ghibaudo. All Parties appeared in

person in the department. The Court having heard arguments of Counsel and reviewed the pleadings on file herein hereby Orders as follows:

THE COURT FINDS that according to the testimony presented today, there is clear and convincing evidence of a single act of unlawful detaining, in violation of NRS 125(c)(7) specifically willful detaining of the minor child on March 15, 2023, vacation timeshare that was owed to Defendant. A trial date is set to hear the complete testimony, review all exhibits, and determine whether or not that presumption has been overcome by Plaintiff.

NOW THEREFORE,

THE COURT HEREBY ORDERS AND STIPULATED BY THE PARTIES that Plaintiff/Ms. Snow will pay for a passport card for the child. Plaintiff will hold the minor child's Passport Card and Defendant/Mr. Gonzales will hold the minor child's Passport book. If Plaintiff travels to a location internationally that the book would be necessary for the minor child, Defendant will turn over the Passport book and vice versa.

STATUTORY NOTICES

Approved by Presiding Judge Pursuant to EDCR 5.707

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

> PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having

no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.006:

1. If PRIMARY PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires

to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical

custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.020 through 31A.230, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the [redacted] the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form. The form can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

THE COURT FURTHER ORDERS Attorney Grimes shall prepare a preliminary finding related to the presumption and Order from today's hearing.

THE COURT FURTHER ORDERS second day of the Non-Jury Trial is set for October 15, 2024 at 9:00 a.m.

IT IS SO ORDERED.

Dated this 8th day of August, 2024

945 E6E 6A4A 604B
Heidi Almase
District Court Judge

Submitted this 8 day of ~~April~~ MAY 2024.

ROBERTS STOFFEL FAMILY LAW GROUP

By: _____
Melvin R, Grimes, Esq. (12972)
[redacted]
Attorneys for Defendant

Approved as to Content and Form:

By: Declined to Sign
Alex Ghibaudo, Esq. (10590)
Attorneys for Plaintiff

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 8/8/2024

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 8/9/2024

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
10/03/2024 9:17 AM
CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

****

Luba Gonzalez, Plaintiff vs. Enrique Velazquez-Gonzalez, Defendant.	CASE NO.: D-23-677951-P DEPT: X HEARING DATE: 10/02/2024 TIME: CHAMBERS

ORDER REVOKING ORDER TO SHOW CAUSE

THIS MATTER came before the Court on an Order to Show Cause for want of prosecution pursuant to NRCP 41(e)(1)(B).

THE COURT FINDS, on March 19, a Non-Jury Trial was held. At the trial, Defendant's attorney, Melvin Grimes, was ordered to prepare the order and submit it to Plaintiff's attorney, Alex Ghibaudo, for review and countersignature.

THE COURT FINDS, on August 6, 2024, an Order to Show Cause was filed and served ordering Melvin Grimes to submit the order from the June 3, 2024 hearing not later than September 30, 2024 or be subject to contempt.

THE COURT FINDS, on August 8, 2024, attorney Grimes submitted the order from the June 3, 2024 hearing without attorney Ghibaudo's signature pursuant to EDCR 5.706(b).

THE COURT FINDS, on August 8, 2024 the order from the June 3, 2024 hearing was filed.

THEREFORE, IT IS HEREBY ORDERED, the August 29, 2024 Order to Show Cause is REVOKED.

Dated this 3rd day of October, 2024

By: _____
HEIDI ALMASE
DISTRICT COURT JUDGE

752 6C0 1881 CB41
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 10/3/2024

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/4/2024

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
10/21/2024 11:36 AM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	Case No.: D-18-575860-D Department X

NOTICE OF ENTRY OF ORDER

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on October 03, 2024, a true and correct copy of which is attached hereto.

Dated this 21st day of October, 2024.

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamped date:

☒ E-Served pursuant to NEFCR 9 on October 21, 2024, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Alex Ghibaudo
Melvin Grimes

☐ I mailed, via first-class mail, postage fully prepaid, the foregoing NOTICE OF ENTRY OF ORDER to:

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

HEIDI ALMASE
DISTRICT JUDGE

Electronically Filed
10/03/2024 9:17 AM
CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

****

Luba Gonzalez, Plaintiff vs. Enrique Velazquez-Gonzalez, Defendant.	CASE NO.: D-23-677951-P DEPT: X HEARING DATE: 10/02/2024 TIME: CHAMBERS

ORDER REVOKING ORDER TO SHOW CAUSE

THIS MATTER came before the Court on an Order to Show Cause for want of prosecution pursuant to NRCP 41(e)(1)(B).

THE COURT FINDS, on March 19, a Non-Jury Trial was held. At the trial, Defendant's attorney, Melvin Grimes, was ordered to prepare the order and submit it to Plaintiff's attorney, Alex Ghibaudo, for review and countersignature.

THE COURT FINDS, on August 6, 2024, an Order to Show Cause was filed and served ordering Melvin Grimes to submit the order from the June 3, 2024 hearing not later than September 30, 2024 or be subject to contempt.

THE COURT FINDS, on August 8, 2024, attorney Grimes submitted the order from the June 3, 2024 hearing without attorney Ghibaudo's signature pursuant to EDCR 5.706(b).

THE COURT FINDS, on August 8, 2024 the order from the June 3, 2024 hearing was filed.

THEREFORE, IT IS HEREBY ORDERED, the August 29, 2024 Order to Show Cause is REVOKED.

Dated this 3rd day of October, 2024

By: _____
HEIDI ALMASE
DISTRICT COURT JUDGE

752 6C0 1881 CB41
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 10/3/2024

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/4/2024

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
01/02/2025 1:34 PM
CLERK OF THE COURT

FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, N/K/A LUBA SNOW, Plaintiff, VS. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X DATES OF TRIAL: 03/19/2024 10/15/2024

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS (POST-JUDGMENT)

THIS MATTER came before this Court on March 19, 2024 and October 15, 2024 for two (2) full days non-jury bench trial on the above-captioned post-judgment divorce proceeding.

Plaintiff Luba (Luba) Gonzalez, n/k/a Luba Snow, was present and represented by her attorney Alex Ghibaudo, ALEX GHIBAUDO, PC. Defendant Enrique (Enrique) Ivan Velazquez-Gonzalez was present and represented by his attorney, Melvin Grimes, ROBERTS STOFFEL FAMILY LAW GROUP.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] Gonzalez, born [redacted] (current age 8 years).

Having reviewed the papers and pleadings on file herein and, after considering and weighing the credibility of the witnesses and exhibits admitted into evidence, this Court issues its *Findings of Fact, Conclusions of Law, and Orders (Post-Judgment)*.

//

RELEVANT PROCEDURAL HISTORY

Since Luba filed her Complaint for Divorce on August 20, 2018, this case has been in near constant litigation. The parties currently share JOINT LEGAL CUSTODY and JOINT PHYSICAL CUSTODY on a week on/ week off timeshare with custodial exchanges occurring Wednesdays at 9:00 AM.[1] The parties stipulated for Luba to have Zoom video calls with the child during Enrique's custody time, including holiday and vacation, each Monday and Friday at 7:15 PM.[2]

The parties further stipulated to each party having up to seven (7) days of specified vacation with the child per year with no less than thirty (30) days advance written notice.[3] The parties stipulated the traveling parent would provide a written itinerary for travel with the child outside of Nevada no later than fourteen (14) days prior to the trip.[4] The parties also stipulated the travel itinerary was to state all flights the child would take, the address where the child would stay each night of the trip, including hotel name if applicable, and emergency phone number for the child.[5] In the event border crossings (for travel between the United States and Mexico) would take place on foot, the parties stipulated the itinerary would include the dates of the border

---

[1] See Stipulated Decree of Divorce at Exhibit 1, pp.8-9, Articles 9.1, 9.2, and 9.3 (Marital Settlement Agreement) (filed December 8, 2021).

[2] Id. at p.13, Article 9.6.

[3] Id. at p. 12, Article 9.5.

[4] Id. at pp. 12-13, Article 9.5.1.

[5] Id.

crossings.[6] The parties further stipulated that, when travelling by air with the child, the parties would provide each other with "complete itineraries to include dates of travel, passengers on the reservation, and airline and flight details."[7] The parties stipulated to provide the other parent with the address they would be staying as soon as it was known.[8] Last, all communication between the parents was via the Talking Parents communication application absent an emergency.[9]

Instant Proceedings

On March 20, 2023, Enrique filed Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges alleging Luba violated the December 8, 2021 Stipulated Decree by refusing to exchange the child to him on March 15, 2023 for his scheduled vacation to Mexico and changing the March 21, 2023 dental appointment without consulting him. On March 20, 2021, an Order to Show Cause issued against Luba for the alleged violations. On March 30, 2023, Luba filed an Opposition and Countermotion. On April 27, 2023, Luba separately filed a Motion for an Order to Show Cause in which she alleged one-hundred and ten (110) alleged violations to include alleged communication and travel orders violations, request to change the child's surname, request to change the child's school and request for award for attorney fees. On May 5, 2023,

---

[6] Id.

[7] See Stipulation and Order, Exhibit 1, Memorandum of Understanding at p.1, ll.12 (filed July 26, 2022).

[8] Id. at p.1, ll.16.

[9] Id. at p.1, ll.17

Enrique filed an Opposition and Countermotion for Modification of Custody Awarding Defendant Primary Physical and Sole Legal Custody, Sole Possession of the Child's Passport, et al. In support of his request to modify custody, Enrique included allegations Luba consistently made doctor and dental appointments without his permission, sent her husband to the child's medical/dental appointments and wrongfully detained the child in violation of NRS 125C.0035(7) on March 15, 2023, the date of Enrique's scheduled vacation to Mexico.

On May 24, 2023, Enrique filed Defendant's Emergency Motion to Enforce seeking enforcement of his Father's Day, 2023 visitation. On May 31, 2023, Luba filed an Opposition and Countermotion for an Order to Show Cause.

At the April 6, 2023 hearing on Enrique's March 20, 2023 Emergency Motion for Return of Child, et al., the Court deferred the issue of custody modification and set evidentiary hearing on the Order to Show Cause against Luba.[10] In the June 13, 2023 Order Re: All Pending Motions, the Court issued a written order related to all other pending matters. Specifically, the Court denied each of Luba's one-hundred and ten (110) requests for indirect contempt, denied Luba's requests for surname and school modification and for award for attorney fees.[11] The Court found Enrique established a *prima facie* basis to modify child custody pursuant to Myers v. Haskins[12] based, in part, on Luba withholding the child for the March 15, 2023 vacation.[13]

//

---

[10] See Order from April 6, 2023 hearing at p.2-3, ll.17-4 (filed June 6, 2023).

[11] See Order Re: All Pending Motions at pp.22, ll.6-7 (filed June 13, 2023).

[12] 138 Nev. 553, 513 P.3d 527 (Ct. App. 2022).

[13] See Order Re: All Pending Motions at pp.18, ll.12-20 (filed June 13, 2023).

On June 9, 2023, Luba filed an Emergency Motion for Reconsideration followed, on July 5, 2023, Luba filed a Motion to Reconsider [the] Court's June 21, 2023 Order Granting Defendant an Evidentiary Hearing, et al. On July 21, 2023, Enrique filed an Opposition and Countermotion. On September 11, 2023, the Court filed an order denying Luba's July 5, 2023 motion and awarding Enrique attorney fees.[14]

Enrique's Request for NRS 125C.0035(7) Finding

Following close of the Day One March 19, 2024 Non-Jury Trial on Enrique's request to modify physical custody and an Order to Show Cause against Luba, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered following Enrique's oral motion for the same.[15] The Court found Enrique met the relevant factors in NRS 125C.0035(7) regarding an act of withholding or abduction demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2023.[16] The Court

---

[14] See Order Denying Plaintiff's July 5, 2023 Motion for Reconsideration et al at p.8, ll.8-22 (filed September 11, 2023).

[15] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

[16] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13. Specifically, NRS 125C.0035(7) provides as follows:

> "A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

defined abduction pursuant to NRS 200.359(1).[17] The Court FOUND the Decree clearly identified the vacation timeshare and itinerary provisions, the ordered visitation on March 15, 2023, and that Luba conceded in her testimony she did not turn the child over to Enrique.[18] The Court reminded the parties it ultimately had to make findings on all of the best interest factors and stated it would receive all evidence as to whether Luba was able to rebut the presumption upon full receipt of evidence.[19]

FINDINGS OF FACT

The Court cites only to those portions of the testimony that are relevant and necessary to its findings and ultimate conclusions of law. Specifically, the testimony included in the Findings

---

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted."

[17] Id. at 3:14:14 – 3:15:26. NRS 200.359(1) provides as follows:

"Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child . . ."

[18] Id. at 3:15:27 – 3:15:41.

[19] Id. at 3:19:54-3:20:48.

of Fact is not mere transcription of testimony offered during trial but only that testimony relevant to this Court's findings and orders.

> "Findings of fact constitute "the ultimate judgment on a mass of details" and are more than a mere recitation of evidence presented. Baumgartner v. United States, 322 U.S. 665, 670 (1944); *see also United States v. Adams*, 73 U.S. 101, 102 (1867)(noting lower courts are bound to make "a finding of the ultimate facts or propositions which the evidence shall establish . . . and not the evidence on which these ultimate facts are founded). On appellate review, [the appellate court] must interpret all statements contained in a district court's "Findings of Fact" as the ultimate truth of the case. *See Finding of Fact, Black's Legal Dictionary* (10th ed. 2014)(defined as "[a] determination by a judge"); *Determination, Black's Legal Dictionary* (defined as "a final decision by a court").[20]

JURISDICTION

The Court FINDS both parties and the minor child reside in Las Vegas, Nevada and no other state has taken jurisdiction over the parties or minor child in this case. Therefore, this Court has the required subject matter and personal jurisdiction as well as continuing and exclusive child custody jurisdiction to resolve the issues before it.

TESTIMONY

The following parties offered testimony:

Enrique Velasquez-Gonzalez, Defendant

Emma Muth, witness for Defendant

Gina Thornton, witness for Defendant

Luba Gonzalez n/k/a Luba Snow, Plaintiff

Benjamin Childs, witness for Plaintiff

---

[20] Franklin v. Franklin, ___ Nev. Adv. Op. ___, *p.17, ___ P.3d ___, ___ (December 4, 2023)(Dissenting, Bell, J.).

HOUSEKEEPING

The parties each waived opening statements. The parties stipulated to the admission of Plaintiff's exhibits 1, 2, 3, 4, and 5; and Defendant's exhibits A, B, C, D, and E.

TESTIMONY

Benjamin (Ben) Childs

Ben was Luba's former attorney in this case for an eighteen (18) month period of time that encompassed the dispute over Enrique's March 15, 2023 vacation to Nueva Leon, Mexico for the purpose of visiting his family with the parties' child.[21] Ben testified Luba was concerned about Enrique taking the child to Mexico because she felt she did not have sufficient assurances the child would be safe. Specifically, Luba was concerned about crime in Tijuana after Enrique provided his itinerary showing he would enter Mexico through Tijuana using a CBX [walking] border crossing pass. Ben testified Luba wanted Enrique to provide her with round-trip CBX tickets, allow her daily video calls with the child using the Talking Parents communications application and for an agreement Enrique would not travel outside of Nueva Leon with the child.

Ben testified he and Enrique's counsel, Melvin Grimes, had a telephone conference with the Court on March 15, 2023, the day travel was scheduled, in an effort to resolve the dispute between Luba and Enrique over the vacation. Ben testified the Court did not issue any orders during the teleconference but he and attorney Grimes exchanged emails immediately afterward attempting to negotiate final terms for Luba to release the child to Enrique for the vacation. Ben testified he shared the attorney emails with Luba, who was with him in his office during the teleconference.

---

[21] Prior to Ben beginning his testimony, Luba confirmed she affirmatively waived her attorney-client privilege.

Ben testified that, at the time scheduled for the child exchange, Enrique had neither provided Luba with round-trip CBX tickets nor downloaded the Talking Parents video communication application. Ben testified it was his opinion Luba could have reached the conclusion she did not have to exchange the child unless Enrique met all of the agreements made in the attorney's subsequent emails. Ben also testified he told Luba it was totally up to her whether to turn the child over to Enrique for the exchange once Enrique did not provide the CBX tickets to her. Ben denied telling Luba to violate a court order repeatedly stating he told Luba it was her decision. Ben agreed no orders issued as a result of his and attorney Grimes' March 15, 2023 teleconference with the Court. Ben testified the parties were and are expected to follow the orders of the Court.

Credibility: The Court FINDS attorney Child's testimony *generally* credible as to some facts and circumstances. The Court does NOT find credible Child's testimony related to information and/or advice he provided to Luba following the March 15, 2023 teleconference with the Court.

Emma (Emma) Muth

Emma is the child's first (1st) and second (2nd) grade teacher at [redacted] School (ES).[22] Emma testified she met both Luba and Enrique at parent teacher conferences and communicates with both through Class Dojo, the online parent-teacher communication application. Emma testified she observed the child has a good relationship with both parents.

Emma testified her primary concern is the child's [redacted] attachment to Jennifer, Enrique's wife and the child's stepmother, who is a reading strategist at Bryan ES. Emma

[22] The Court NOTES that, at the time Emma testified on March 19, 2024, [redacted] had nearly completed second grade.

testified the child is particularly attached to Jennifer and finds ways to interact with Jennifer during the school day during Luba's ordered timeshare. For example, Emma specified the child would try to find ways to see or eat lunch with Jennifer.

Emma also testified she noticed two specific small issues related to the child's grooming during Luba's custodial timeshare: 1) the child had a spot of dry skin on her chin a few months earlier rectified by Emma giving the child some lotion to put on it; and 2) the child had mismatched clothes. Specifically, Emma testified the child wore a Halloween-themed shirt around Valentine's Day in 2024 with leggings that did not match. Emma testified she did not bring this issue to the attention of either parent or CPS. Rather, Emma testified she discussed this with Jennifer, the child's step-mother.

Emma testified she and Jennifer have a collegial relationship, attending weekly staff meetings and a lunch at a staff development day the prior year. Emma confirmed that, although she was subpoenaed to testify, when Jennifer asked her if she would be willing to testify in this matter, Emma voluntarily agreed. Emma testified the subpoena was necessary so she could get the time off work to testify.

Credibility:

The Court FINDS Emma generally showed bias toward and in favor of Enrique due to her relationship with her co-worker, Jennifer, Enrique's wife. Notwithstanding this issue, the Court FINDS credible Emma's testimony Jennifer and the child are strongly attached and that the child has, on two occasions, presented at school with dry skin and mismatched clothing.

Gina (Gina) Thornton

Gina is the school counselor at the child's school, Bryan ES. Gina testified she has known the child since the [redacted] school year. Gina testified to her opinion the child is happy

while at school.

Gina testified she was present at the school for an October 2023 Halloween parade when Luba walked with the children, school faculty and staff in the parade while videotaping the child, Jennifer and Gina, who were all walking together. Gina testified Luba videotaping them made Jennifer and her very uncomfortable because Luba's videotaping was excessive and, in her opinion, for the purpose of harassing Jennifer. Gina testified she believed Luba inserting herself in the parade made the child sad because the child wanted to be with Jennifer, but was compelled to be with Luba. Gina testified she believed Luba's behavior caused the child to be unable to enjoy herself because she was torn between Jennifer and Luba. Gina testified she had no other incidents about which to testify.

Gina testified she has known Jennifer as long as Jennifer has worked at [redacted] ES or for a period of seven (7) or eight (8) years. Gina testified she and Jennifer are friends outside of work. Gina testified that she agreed to testify about what she witnessed at the parade when Jennifer asked, although she was present subject to a subpoena.

Credibility:

As with witness Emma Muth, the Court FINDS Gina showed general bias toward and in favor of Enrique due to her relationship with her co-worker, Jennifer, Enrique's wife. However, the Court FINDS credible Gina's testimony Luba has caused the child distress as a consequence of her behavior at the school credible.

Luba (Luba) Gonzalez N/K/A Luba Snow

Luba is [redacted] mother, and Enrique's ex-wife. Luba's current husband is Phil. Luba is also the step-mother to Phil's daughter, [redacted] Luba testified [redacted] and [redacted] were born five (5) weeks apart, have grown up together, and are closely bonded. Luba testified [redacted]

and [redacted] are on the same visitation schedule, share a bedroom, and are in the same grade, though they attend different schools. Luba testified she and Phil were investigated by Child Protective Services (CPS) for abuse in the past because [redacted] mother, Robin, made a false complaint. Luba testified Robin apologized since then, and they are all part of a big family now.

Luba testified Enrique has asked her to have the child stop calling Phil "Dad". Luba testified she refused the request on the basis she believes it is up to the child what to call Phil.

[redacted]

been damaged. Luba testified she reached out to [redacted] teacher on Class Dojo many times to ask what she can do better so she can fix it. Luba testified she did not receive a 2024 Mother's Day school project the child made for her or the child's report cards because, according to the child, Jennifer took them out of the child's backpack. When Luba raised these issues with Enrique, Luba testified he called her a liar and told her to look for the report card on the online portal. Luba testified she learned after the fact Jennifer took the child out of her regular classes for Bring Your Child to Work Day. When Luba raised this issue with Enrique, Luba testified he told her the child previously told her Bring Your Child to Work Day. Luba testified the child did not talk to her about Bring Your Child to Work Day and, even if she had, it was not the child's place to discuss adult matters with her or pass this kind of information back and forth.

//

---

[23] The school selection issue and order for the child to remain at Bryan ES followed an evidentiary hearing on a school selection motion wherein the former judicial department, Department P, granted Enrique's request for the child to remain at Bryan ES. See Order [after Evidentiary Hearing of December 7, 2021] (filed February 8, 2022).

Luba testified she provided the child with a cell phone and told Enrique he could contact the child on it anytime, but Enrique declined communication outside of the court orders. Luba testified she knows Enrique does not use the phone because she keeps the phone for the child and [redacted] use. Luba testified a Court order provided for specified electronic communication twice weekly but, because she missed the child, Luba demanded daily video phone calls with the child while on vacation and in exchange for allowing the child to go on the planned vacation to Mexico in March 2023. Luba testified Enrique agreed to her having daily video calls with the child using the Talking Parents application while they were in Mexico but he never downloaded the video function on the app.[24] Luba testified Enrique's mother, stepfather, and half-siblings live in Mexico, and while it was not her intent to stop the child from going on vacation with Enrique to visit his family on March 15, 2023, she did not release the child to Enrique for the vacation because he could not sufficiently assure her the child would be safe in Mexico.

Luba testified she offered Enrique compensatory visitation days after he returned from Mexico on March 20, 2023, but Enrique did not accept all of the dates she offered. Luba conceded she did not agree to Enrique's counter that she give him Father's Day weekend because she had plans to be on vacation in Cancun, Mexico with the child and her family that weekend. Luba testified Enrique declined all compensatory visitation as a result of her refusal to give him Father's Day weekend, a weekend he was otherwise entitled to by court order.

Related to best interest factors set forth at NRS 125C.0035(4), Luba testified as follows:

Level of Conflict between the Parents

Luba testified that, if she asks for information about the child, Enrique calls her a liar,

---

[24] See Plaintiff's Exhibit 4, p.LS0179.

crazy, unstable, says she enjoys drama, and is going to hurt people. Luba testified Enrique accuses her of trying to get Jennifer fired. Luba testified Enrique also accuses her of holding the child hostage at the school gates in the morning. Luba testified that, on the days she drops the child off for school, the child chooses to stay with her at the gates rather than play with her friends before the bell rings.

Luba testified the reason she is so cautious about the child's whereabouts is due to Enrique withholding the child from her for three (3) days in 2021 after he filed an emergency motion alleging she abused and neglected the child. Luba testified this incident traumatized her and she feels like the child will always be taken from her. Luba testified Enrique will not have anything to do with her or agree to anything.

Ability of the Parents to Cooperate to Meet the Child's Needs

Luba testified she believes she is a good co-parent. Luba testified she and Enrique attend parent-teacher child conferences separately. Luba conceded she met with the school principal regarding counseling for the child without notifying Enrique. Luba testified she asked Enrique to agree to the child enrolling in online counseling through the school to help the child with her discomfort with Luba and Jennifer being in the school at the same time. Luba testified Enrique refused because he was concerned the child would not be able to share her true and honest feelings with a counselor in a telemedicine setting. Luba testified she enrolled the child in online counseling over Enrique's objection because she has an order that allows her to do so even if Enrique refuses.[25]

---

[25] The Court NOTES Luba's testimony in this regard comports with the parties' Marital Settlement Agreement.

Luba testified she makes all of the child's medical and dental appointments on her custodial days, invites Enrique to attend, and gives him all of the paperwork and information she receives. Luba testified that she does not believe it is a unilateral decision for her to schedule a doctor appointment for the child and place it on the Talking Parents calendar without consulting Enrique beforehand.

Luba testified Enrique reciprocates similar information, although he does attend medical or dental appointments. Luba testified she took the child to an allergist following the March 19, 2024 trial date pursuant to Enrique's complaints the child had undiagnosed allergies. Luba testified Enrique did not attend the appointment. Luba testified the allergy test results showed the child is allergic to cats and has seasonal allergies to grass. Luba testified she gave Enrique, who has a cat, the information and he called her a liar. Luba testified she provided Enrique with all of the medical information, including a password to get the test results, and his own prescription nasal spray for the child to use solely at his home. Luba testified the child no longer has allergy issues.

Luba testified she has never prohibited Enrique from taking the child anywhere. However, Luba conceded she refused to exchange the child on March 15, 2023 for Enrique's vacation to Nueva Leon, Mexico to visit his family.

Luba testified she believes she is allowed to implement safety standards in her parenting relationship with Enrique, and Enrique is permitted to do the same. If she thinks Enrique is doing something that puts the child in danger, Luba testified she feels the parents have a duty to discuss it with each other. Luba testified she discussed her concerns about media reports of a gang-related shooting at the Tijuana border in 2023 with Enrique prior to his March 15, 2023 vacation to Mexico. Luba testified she gave Enrique the condition she would not turn the child

over unless she got daily video calls with the child on the Talking Parents application. Luba conceded this condition was not part of existing court orders. Luba further conceded she gave Enrique the additional condition she would not turn the child's passport over until she received airline confirmation codes with the child's name.

Luba testified that, after she discussed her concerns with Enrique related to him using the CBX border crossing for the March 15, 2023 trip to Mexico with the child, Luba nonetheless withheld the child from Enrique on March 15, 2023. Luba testified she withheld the child for the child's safety because she did not want Enrique "driving" through the Tijuana border with gangs shooting.[26]

Mental and Physical Health of the Parents

Luba testified she has been diagnosed with anxiety. Luba testified she saw a physician and counselor around 2020, took medication, and went to counseling for two (2) years. Luba testified she now has tools to help her make better decisions.

Physical and Emotional Needs of the Child

Luba testified she makes and attends all of the child's medical and dental appointments without Enrique because Enrique chooses not to participate. Luba testified she provides health insurance through her husband, Phil's, employment, and provided all of the insurance information to Enrique. However, Luba testified she refused to provide Phil's social security number as part of the insurance information despite Enrique's request. Luba testified she and Phil did not provide Phil's social security number to Enrique because neither she or Phil are required to provide it to any medical provider as a condition to using the insurance coverage.

---

[26] See October 15, 2024 Video Time Cite at 1:46:37 – 1:46:56.

Luba testified she enrolled the child in online counseling through school to help the child deal with the anxiety the child has due to Luba and Jennifer being at school together at the same time. Luba testified she asked Enrique about the online counseling and his only objection was to Zoom counseling because he did not believe the child would have privacy to express her true feelings in a telemedicine setting. Luba testified she nonetheless enrolled the child in online counseling because she has the right to enroll the child in counseling pursuant to the court orders and it was in the child's best interest. Luba also testified she met with the child's principal to discuss counseling without first consulting Enrique.

Failure to Exchange Child on March 15, 2023

Luba testified that, on January 13, 2023, Enrique sent her a Talking Parents message giving her notice of his intent to take the child on vacation to Nueva Leon, Mexico on March 15, 2023. Luba testified Enrique asked her to exchange the child's passport at school. Luba testified she refused to exchange the passport until Enrique gave her the child's flight confirmation codes. Luba testified Enrique provided her with the flight number, which is required information to be exchanged by the Decree. However, Luba testified Enrique did not provide her with a ticket showing the child's name on it.

Luba testified her next concern about Enrique's travel were related to him crossing the border using a CBX [walking] border crossing ticket as she did not know what CBX was at the time. Luba testified she learned about a gang-related shooting at the Tijuana border in the media. Luba testified she was also concerned about the child traveling to Mexico because Nueva Leon borders a more dangerous state, Enrique allegedly told her he was nearly kidnapped from his parent's home when it was robbed and she did not want Enrique "driving" through the Tijuana

border with gangs shooting.[27] Luba testified she was fine with Enrique crossing at CBX after she "Googled" to learn it went straight through into the Tijuana airport, which made her feel much safer. Luba testified she agreed to release the child to Enrique for the vacation if he would provide her with round-trip CBX tickets and daily video calls with the child using the Talking Parents application. Luba testified there was a teleconference call between her former attorney, Ben Childs, and Enrique's attorney, Melvin Grimes, with the Court at approximately 8:00 AM on March 15, 2023, the date of Enrique's scheduled travel. Luba testified she was scheduled to exchange the child on March 15, 2023 at 9:00 AM at the Chevron station for the vacation. Luba testified she was not present for the conference call but saw Ben Child's emails with attorney Grimes following the call. Luba testified it was her understanding the emails between Ben Childs and Melvin Grimes were the agreements she had to follow in order to exchange the child for the vacation.

Luba testified she told Enrique she would bring the child when Enrique sent her the CBX tickets. Luba testified Enrique sent her a message replying only: "Bye". Luba testified she was still in attorney Child's office when she decided to withhold the child from Enrique.[28] Luba further testified attorney Childs told her she did not have to turn the child over to Enrique. Luba testified to her opinion attorney Childs lied in his testimony when he testified he told Luba the Court did not issue new orders at the March 15, 2023 telephone conference and when he testified

---

[27] See October 15, 2024 Video Time Cite at 1:46:37 – 1:46:56.

[28] This testimony controverts Luba's earlier testimony she was *not* at attorney Child's office during the March 15, 2023 teleconference with the Court.

she was expected to follow the orders.[29]

Luba testified she did not violate the order by refusing to turn over the child to Enrique because Enrique did not give her the CBX tickets or turn on his Talking Parents video application. Later, Luba testified that, if she had it to do all over again, she would not withhold the child and would follow the court orders as she has done since the March 15, 2023 incident. Luba also repeatedly testified it was not her intent to have the child miss the vacation.

Luba conceded that, three (3) months later, she took the child on a family vacation of her own to Cancun, Mexico in June 2023 over a period that included Father's Day weekend. Luba testified Cancun, Mexico is not as dangerous – in her opinion – as the Nuevo Leon, Mexico location Enrique planned to travel to with the child.

Dental Appointments

Luba testified Enrique had scheduled a dental appointment for the child on March 21, 2023 during his custodial time. Luba testified she moved the appointment March 24, 2023 to occur on her custodial time. Luba testified she believed she got Enrique's consent by rescheduling it, putting it on the Talking Parents calendar, and getting no response back from Enrique. Luba conceded she did not communicate with Enrique before she moved the appointment. Luba testified she changed the appointment because she did not want the child to miss the appointment, which would happen if the appointment stayed scheduled during Enrique's time. Luba repeatedly testified Enrique did not have the dentist's address because he kept asking for it. However, Luba later testified she gave Enrique the dentist's address.

//

---

[29] See October 15, 2024 Video Time Cite at 1:45:45 – 1:46:15.

Credibility:

The Court FINDS Luba's testimony generally credible in that she agreed as to the fundamental facts of the case. However, the Court does NOT FIND CREDIBLE Luba's testimony she did not intend to withhold the child from Enrique on March 15, 2023 to prevent him from taking the child on vacation to Mexico. In particular, the Court FINDS, three (3) months later, Luba took the child and her family on a vacation also to Mexico and during Enrique's ordered Father's Day visitation. Similarly, the Court does NOT FIND CREDIBLE Luba's testimony related to moving the child's March 21, 2023 dental appointment.

Enrique (Enrique) Velasquez-Gonzalez

Enrique is [redacted] father and Luba's ex-husband. Enrique is married to Jennifer, and they have one (1) child together, [redacted] age four (4). Enrique testified he does not allow the child to call Jennifer "Mom". Enrique testified the March 15, 2023 vacation to Nueva Leon, Mexico was for [redacted] to visit her paternal grandparents, who live there.

Enrique testified he brought a motion to modify custody because Luba withheld the child from him and tries to block vacations. Enrique testified modifying custody is in the child's best interest because Luba will not follow even one (1) line of the Decree, does not co-parent, and does not provide for the child's care as well as him. Enrique testified it is in the child's best interest to spend three (3) consecutive weeks in his care and (1) week in Luba's care because this schedule will provide the child with stability, better grooming, and better alimentation. Enrique testified Jennifer tells him the child is not well groomed at school, meaning her hair is not brushed and she wears clothes that do not fit. Enrique also testified he provides the child with a master bedroom and her own bathroom so she can be well-rested at his home. Enrique testified Luba makes appointments for the child that interfere with the child's school time even over his

requests to do otherwise.

Enrique testified Luba withholds the child and does not let him travel with her, including going to Oaxaca, Mexico in 2021 and Cancun, Mexico in Summer 2022 and in 2023. Enrique denied being kidnapped from his family home, that his uncle was murdered, and that he and Luba were robbed while driving across Mexico while they were dating. Enrique testified Luba loves going to Mexico and took the child there right after Enrique returned from his vacation or, in June 2023.

Enrique testified co-parenting with Luba means following her rules including rules she adds in addition to orders contained in the Decree. Enrique testified he turns the child over to Luba even if she does not provide him with a full itinerary for her vacations. Enrique testified he does not feel Luba treats him like an equal parent. Enrique testified he wants Luba to have a role in the child's life but he cannot trust Luba at all.

Enrique testified he tries to minimize his conflict with Luba because she brings him to Court constantly on false allegations. Enrique denied blocking Luba on his cell phone but conceded he lets her calls go to voicemail because they are ordered to communicate by the Talking Parents communication application.

Enrique testified he believes Luba abuses and neglects the child. Enrique testified he does not agree with CPS failing to substantiate his allegations Luba abused or neglected the when he claimed the child had a third degree burn on her finger. Enrique testified CPS said he was lying.[30]

//

---

[30] See Exhibit 1 at p. 32.

Enrique testified to his opinion Luba neglects the child's health but conceded he lacked specific proof. Enrique testified the child suffers from dry skin, rashes, boogers, and red eyes due to Luba's refusal to treat her allergies. Enrique testified he wanted Luba to take the child to an allergist but Luba would not cooperate. Enrique testified he cannot take the child himself because Luba refuses to give him the insurance information from her husband's policy. Enrique testified he had the child's insurance card but Luba refused to give him her husband's social security number for two (2) years so he could make an appointment. Enrique later changed his testimony to state he received Phil's social security number on December 29, 2023 from his attorney. Despite the information, Enrique testified he had not made an appointment with an allergist since then because he was waiting for the instant litigation to come to an end. Enrique also testified he has not had time or done research on allergists as another reason he has not made an appointment for the child.

Enrique testified he does not attend the child's medical or dental appointments because Luba insists on being present for every appointment and lying about him, such as telling the doctor her husband has been in the child's life longer than Enrique, i.e., creating conflict during the appointments. Thus, Enrique testified he will not go in the same room with Luba.

Enrique testified he scheduled a March 21, 2023 dental appointment for the child and notified Luba via the Talking Parents application. Enrique testified Luba rescheduled the appointment to March 24, 2024 without asking him.

Credibility: The Court FINDS Enrique's testimony generally credible. As noted herein, Enrique and Luba substantially agreed on the fundamental facts of the case. The Court FINDS credible Enrique's testimony and evidence related to long-standing co-parenting issues with Luba and a general lack of co-parenting on her part to include withholding the child and placing

the child in the middle of parental conflict.

CONCLUSIONS OF LAW

MODIFICATION OF CUSTODY

In order to modify custody, a movant is required to set forth a substantial change of circumstances affecting the child's welfare and in the child's best interest.[31]

NRS 125C.001 states:

The Legislature declares that it is the policy of this State:

1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have ended their relationship, become separated or dissolved their marriage;

2. To encourage such parents to share the rights and responsibilities of child rearing; and

3. To establish that such parents have an equivalent duty to provide their minor children with necessary maintenance, health care, education and financial support. As used in this subsection, "equivalent" must not be construed to mean that both parents are responsible for providing the same amount of financial support to their children.

NRS 125C.0035(4) mandates trial courts shall consider statutory factors and set forth in writing its analysis. The factors and this Court's analysis are as follows:

a. The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.

The Court FINDS the minor child, [redacted] age (8), is of insufficient age and capacity to form an intelligent preference as to her physical custody.

The Court FINDS this factor is neutral.

b. Any nomination of a guardian for the child by a parent.

The Court FINDS nomination of a guardian is not relevant to these proceedings between two (2) parents not involving a third party.

---

[31] See Romano v. Romano, 138 Nev. 1, 2, 501 P.3d 980, 983 (2022).

The Court FINDS this factor does not apply to this case.

c. Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

The Court FINDS Luba has interfered with Enrique's vacations to visit his family in Mexico by withholding the child in March 2023, demanding daily video contact with the child while the child was to be in Enrique's custody in Mexico, and sending letters to the Air B&Bs at which Enrique was scheduled to stay to verify his reservations. The Court FINDS Luba's claim she had concerns about the child's safety in Mexico NOT CREDIBLE in light of Luba taking the child to Mexico on a scheduled vacation three (3) months later or, in June 2023. The Court FINDS Luba's showed awareness of her interference with Enrique's parent-child relationship though *only* in the context of on-going litigation.

The Court FINDS Luba did not dispute Enrique does not interfere with her vacation requests with the child even when she fails to provide him with a full itinerary. The Court further FINDS Luba withheld the child from Enrique on Father's Day, 2023, by scheduling her vacation to Mexico with her husband on his ordered holiday then refusing to accommodate Enrique's request for compensatory visitation.

The Court FINDS Luba provided one example of Enrique withholding the child from her for three (3) days in 2021 after he filed an emergency motion alleging she abused and neglected the child. The Court FINDS Luba grudgingly agreed Enrique returned the child to her as ordered. The Court further FINDS Luba did not allege Enrique withheld the child from her at any other time prior to order following the incident in 2021 related to his emergency motion concerning abuse and neglect of the child. The Court FINDS that, even though Enrique disagrees with the CPS findings regarding Luba's behavior, he obeys the Court custody orders.

Therefore, the Court FINDS Enrique is the parent more likely to allow the child to have frequent associations and a continuing relationship with Luba.

Accordingly, the Court FINDS this factor favors Enrique.

d. The level of conflict between the parents.

The Court FINDS Enrique testified he does not trust Luba at all and will not be in the same room with her because she constantly brings him back to court. The Court FINDS Luba has filed twenty-three (23) motions causing Enrique to litigate since the beginning of this case, which is an exceptionally high number of motions for any case within a six

(6) year period. [32] In the same period, the Court FINDS Enrique has filed seven (7) independent motions for specified relief.

The Court FINDS Luba conceded the child calls her husband "Dad" and she does not stop or correct the child. The Court FINDS Enrique does not allow the child to call his wife "Mom" out of respect for Luba's position as the child's mother.

The Court FINDS Enrique refuses to have communication with Luba outside of Talking Parents communication application to the extent he lets her telephone calls go to voicemail. This raises the concern that Enrique would not even speak to Luba in emergency circumstances, i.e., the court-ordered communication application is for *non-emergency* parent communication. The Court also FINDS it concerning Luba calls Enrique when there is no emergency demonstrating her unwillingness to abide by Court orders.

The Court FINDS Luba testified to her opinion Enrique refuses to have anything to do with her, to agree to anything she requests and refers to her as a liar. The Court FINDS the parties do not attend parent-teacher conferences or medical appointments together. The Court FINDS the high conflict between the parties is largely driven by Luba filing an extraordinarily high number of motions in this case resulting in this case being litigated without pause since the day Luba filed for divorce on August 20, 2018.

The Court FINDS the level of conflict between the parents is very high.

The Court FINDS this factor favors Enrique.

e. The ability of the parents to cooperate to meet the needs of the child.

The Court FINDS it is undisputed Luba not only schedules all of the child's medical and dental appointments, she also attends them either alone or with her husband, Phil. The Court FINDS Enrique's testimony CREDIBLE regarding Luba creating conflict in doctors' offices by alleging he abused her or saying Phil has been in the child's life longer than Enrique.

The Court FINDS that, to avoid conflict with Luba, Enrique avoids scheduling and attending the child's medical and dental appointments. As joint custodians, both parents have the right to attend the child's medical appointments. The Court FINDS Luba

---

[32] The dates Luba filed motions are as follows: 1. November 1, 2019; 2. December 19, 2019; 3. January 14, 2020; 4. February 20, 2020; 5. May 2, 2020; 6. July 2, 2020; 7. August 19, 2020; 8. August 19, 2020; 9. August 19, 2020; 10. October 9, 2020; 11. October 15, 2020; 12. November 16, 2020; 13. December 17, 2021 (duplicative filing); 14. February 9, 2022; 15. April 12, 2022; 16. May 18, 2022; 17. June 5, 2022; 18. June 23, 2022; 19. March 13, 2023; 20. April 27, 2023; 21. June 9, 2023; 22. July 5, 2023; and 23. August 22, 2024. These motions exclude motions related to attorney withdrawals and/or liens and ex parte motion for orders shortening time.

refused to acknowledge her role in the conflict, preferring to criticize Enrique for ceding the ground for the sake of peace.

Despite Enrique's refusal to attend appointments with Luba, Enrique testified he is frustrated Luba does not schedule appointments as he requests. For example, Enrique testified he asked Luba to schedule the child's dental appointment to occur outside of school hours and became upset she did not comply. Enrique also testified at the March 19, 2024 Day One of trial at great length regarding how the child needed to be seen by an allergist and how he could not schedule an appointment due to Luba refusing to give him Phil's social security number. The Court FINDS Enrique testified he had Phil's social security number as of December 30, 2023 and could have scheduled an appointment with an allergist of his choice. The Court FINDS Enrique's testimony he preferred to wait until this litigation was over to schedule an appointment for the child demonstrates he places an emphasis on his conflict with Luba over the needs of the child. Notwithstanding this issue, the Court FINDS that, when Enrique did schedule a March 21, 2023 dental appointment for the child during his custodial time, Luba unilaterally changed the appointment to her custodial timeshare without notifying Enrique. The Court does NOT FIND credible Luba's assertion she needed to change the dental appointment because, otherwise, Enrique would not have taken the child to the appointment.

Likewise, the Court FINDS Luba's refusal to schedule an appointment with an allergist until immediately after Enrique testified as to his great frustration over Luba's refusal to cooperate with him over the insurance issue for two (2) years demonstrates she places an emphasis on her conflict with Enrique over the needs of the child.

The Court FINDS Enrique fails to follow through with his joint legal custody rights, abdicating them to Luba or abandoning an issue, but then complaining he does not like what Luba does or how she does it.

Conversely, the Court FINDS Luba refuses to obey court orders she does not like such as turning the child over to Enrique for his properly noticed and scheduled vacation, and rescheduling dental appointments without consulting Enrique. The Court FINDS Luba failed to take responsibility for her actions in withholding the child by continuously claiming it was not her intent to prevent the child from going on vacation with Enrique on March 15, 2023 when she willfully and intentionally refused to exchange the child.

The Court FINDS the parties are entrenched in their conflict and often engage in a mutual refusal to cooperate. However, under the specific testimony and evidence presented to the Court, the Court FINDS this factor favors Enrique.

f. The mental and physical health of the parents.

The Court FINDS neither party alleged Enrique has physical or mental health issues.

The Court FINDS neither party alleged Luba has physical health issues.

The Court FINDS credible Luba's testimony she was diagnosed with anxiety for which she was treated with medication and talk therapy for two (2) years. The Court FINDS Luba is not taking prescribed medication to treat any mental illness at this time. The Court further FINDS Luba testified she is self-treating her anxiety at this time with self-help books and using the tools she learned in therapy. The Court FINDS Luba has struggled using the tools she learned in therapy to avoid making poor decisions, as evidenced by Luba's intentional decisions to violate orders by withholding the child from Enrique on March 15, 2023 and changing the child's March 21, 2023 dental appointment, both of which occurred after Luba terminated therapy. However, the Court FINDS Luba has not violated the orders since March 21, 2023 demonstrating she is capable of using her therapeutic skill set when she chooses or when the matter is pending litigation. The Court is cognizant that Luba has been under the threat of losing custody of the child during this time period.

The Court FINDS this factor favors Enrique.

g. The physical, developmental, and emotional needs of the child.

The Court FINDS no evidence or testimony was presented to demonstrate that [redacted] age eight (8), is anything but a normal, healthy child meeting her developmental milestones.

To be able to have help, parents must be able to build and maintain stable and healthy relationships with the people around them. The Court FINDS Enrique has the support of his wife, Jennifer, parents, siblings, and the child's school to assist him with the child. The Court FINDS Luba has the support of her husband, mother, sister, and the child's school with the child.

The Court FINDS it was undisputed that Luba has attended all of the child's medical and dental appointments by herself because Enrique refuses to be in the same room with Luba due to her creating conflict by insulting him to the doctors and bringing her husband. Consequently, the Court FINDS Enrique generally ceded responsibility for scheduling the child's medical and dental appointments to Luba. The Court FINDS that, when Enrique took the initiative to schedule the child's dental appointment on March 21, 2023, Luba unilaterally rescheduled it to her custodial time.

The Court FINDS Luba unilaterally enrolled the child in online counseling through the child's school to help the child deal with her anxiety created by Luba being at school at the same time as Jennifer. The Court FINDS it undisputed Enrique only objected to the child engaging in online counseling because he felt she would have no privacy to express her true feelings. The Court FINDS Luba enrolled the child in online counseling over his objection rather than even looking for an in-person provider for the child. The Court FINDS Luba's blanket statement that, the counseling is the child's best interest, unpersuasive in light of her failure to consider the issue of the child having privacy in her counseling, which was the only issue Enrique raised with her.

The Court FINDS this factor nominally favors Enrique.

h. The nature of the relationship of the child with each parent.

The Court FINDS it was undisputed the child is bonded with Enrique.

The Court FINDS it was undisputed the child is bonded with Luba.

The Court FINDS this factor is neutral.

i. The ability of the child to maintain a relationship with any sibling.

The Court FINDS the child has a half-sister, [redacted] (age 4), born to Enrique and his wife.

The Court FINDS the child has a step-sister, [redacted] (age 8), who is Phil's child. The Court FINDS [redacted] and [redacted] have grown up together, are in the same grade, and attend extracurricular and family events together. The Court FINDS it undisputed the children share the same weekly timeshare at Luba's home where they share a bedroom.

The Court FINDS there was no dispute the child is bonded with both of her siblings.

The Court FINDS this factor is neutral.

j. Any history of parental abuse or neglect of the child or any sibling of the child.

The Court FINDS no evidence was presented to the Court demonstrating either party engaged in abuse or neglect of a child despite Enrique's [prior] allegations to the contrary.

The Court FINDS this factor does not apply.

k. Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the children, a parent of the children or any other person residing with the children.

The Court FINDS there is no evidence before the Court suggesting there is any history of domestic violence.

The Court FINDS this factor does not apply.

l. Whether either parent or any other person seeking physical custody of the child has committed an act of abduction against the child or any other child.

The Court FINDS Luba committed an act of abduction against the child pursuant to NRS

200.359(1) creating a rebuttable presumption that sole or joint physical custody or unsupervised contact with the child is not in the child's best interest.[33]

Luba's testimony and evidence in support of rebutting the presumption is addressed below.

ANALYSIS AND ORDERS

Modification of Custody

After the March 19, 2024 Day 1 Non-Jury Trial, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered.[34] The Court found Enrique met the relevant factors in NRS 125C.0035(7) regarding an act of withholding or abduction demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2023.[35] However, the Court FINDS Luba demonstrated her ability to provide daily care for the child, provide for the child's physical and emotional needs, and provide the child

---

[33] Id. at 3:14:14 – 3:15:26. NRS 200.359(1) provides as follows:

> "Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.
>
> 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:
>
> (a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child . . ."

[34] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

[35] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13.

with a safe home overcomes the presumption set forth in NRS125C.0035(7). Specifically, the Court FINDS that, Luba's withholding of the child for one (1) vacation period in March 2023 combined with credible evidence and testimony demonstrating her ability to provide daily care for the child, overcomes presumption Luba should not have sole or joint physical custody *and* supervised visitation only. The mandate set forth for violations of NRS 125C.0035(7) is particularly restrictive amounting to sole physical custody.[36] Notably, Enrique did move this Court for sole physical custody of the parties' child.

While Enrique cannot prevail on his request for Luba to have supervised contact only with the child, a visitation order which would be *required* pursuant to the NRS 125C.0035(7)[37] *mandate*, the Court FINDS Enrique nonetheless established a substantial change of circumstances affecting the child's welfare and in the child's best interest. Taking into account the evidence and testimony presented to it and the best interest factors set forth at NRS

---

[36] See e.g., Roe v. Roe, 139 Nev. Adv. Op. 21, 535 P.3d 274 (2023)(mandating findings supporting the restrictive sole physical custody order).

[37] NRS 125C.0035(7) states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

125C.0035(4), the Court FINDS it in the child's best interest to grant Enrique's request for primary physical custody. The Court places particular emphasis on Luba's actions which prevented Enrique from having frequent associations with the child, Luba's demonstrated unwillingness to co-parent with Enrique, her near constant actions leading to increased conflict and litigation in this matter and her demonstrated inability to meet the needs of the child by valuing conflict with Enrique over the child's best interests. Accordingly, the Court FINDS it in the child's best interest to GRANT Enrique's request for modification of custody to PRIMARY PHYSICAL CUSTODY.

Timeshare

The Court FINDS Enrique requested modification of the parties' timeshare to him being awarded three (3) consecutive weeks of custody with one (1) week to Luba. The Court FINDS is not persuaded (3) consecutive weeks of visitation with Enrique is in the best interest of the child in light of her established sibling relationships and stability in each household. The Court places value on the child's undisputed close bond with her sister, [redacted] in Luba's home.

Accordingly, the Court ORDERS Luba shall have specified visitation with the minor child from each FRIDAY after school or, 3PM if there is no school, until Mondays to school or, 9AM if there is no school every weekend EXCEPT the THIRD WEEKEND OF EACH MONTH which shall be Enrique's specified weekend. The parties' prior holiday/vacation timeshare SHALL remain status quo.

Child Support

The Court FINDS Luba's most recent Financial Disclosure Form (FDF) was filed March 14, 2024 wherein she indicated she was employed by Aria Casino as a cocktail server earning

$1,904.44 per month including tip income.[38] In support of her FDF, Luba included a March 3, 2024 paystub listing $4,699.86 year to date income. March 3, 2024 is eleven (11) weeks into 2024. Accordingly, the Court FINDS Luba's calculated gross monthly income is $1,851.46 ($4,699.86 year to date income / 11 weeks into 2024 = $427.26 per week X 52 weeks in a year = $22,217.52 annual income / 12 months in a year = $1,851.46 calculated gross monthly income).

Therefore, Luba's monthly child support obligation is $301.00, effective JANUARY 1, 2025 and due on the first of each month thereafter.

Dependent Tax Credit

As the primary physical custodian, Enrique SHALL be solely entitled to claim the party's minor child each and every tax year commencing 2025.

Request for Prosecution for Parental Abduction

The Court DENIES Enrique's request for referral for prosecution for parental abduction.

Attorney Fees and Costs

The Court DENIES Luba's request for award for attorney fees and costs.

The Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs. Enrique SHALL file and serve a Memorandum of Fees and Costs, to include redacted attorney-client invoices and Brunzell and Wilfong analyses not later than JANUARY 16, 2025. Luba shall have the time allotted from date of service to file and serve an Objection. The Court will not consider any new requests for relief in either pleading nor will it entertain a reply. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for award for attorney fees and costs. Decision on award for attorney

---

[38] See Luba's Financial Disclosure Form (filed March 14, 2024).

fees and costs shall be scheduled for FEBRUARY 19, 2025 (Chambers/NO appearances).

ORDER TO SHOW CAUSE

Count 1

Enrique alleged Luba knowingly and willingly violated the Stipulated Decree of Divorce at Exhibit 1, p.9, Article 9.3 (Marital Settlement Agreement) (filed December 8, 2021):

> "The parties' custodial schedule is described with sufficient particularity per NRS 125C.010. The parties agree that custodial [sic] shall take place as follows: The parties shall exercise a week on, week off scheduled [sic] with Husband having custody of the minor children every other week from Wednesday morning at 9:00 a.m. when school commences until the following Wednesday at 9:00 a.m., except when superseded by holiday, vacation or other special custody times, as more fully set forth below. The sending parent shall deliver the child to school on Wednesday, and the receiving parent shall pick the child up from school at the conclusion of the school day that say day, on Wednesday.
>
> Except where superseded by holiday, vacation, or other special holiday custody times, as more fully set forth below, in the event that there is no school on a Wednesday, the custody time shall be at 9:00 am at the Chevron gas station located at 10890 W. Charleston Blvd., [redacted] This shall also be the exchange point whenever a custody exchange is to be made somewhere someplace other than the child's school. When a custody exchange is made at the Chevron gas station located at 10890 W. Charleston Blvd., [redacted] the parties agree that neither shall approach the other's vehicle except insofar as is necessary to facilitate the exchange safely. Neither party shall attempt to engage the other in conversation, but shall simply see that the child gets to the receiving parent's vehicle safely and leave."

THE COURT FINDS the order set forth in the December 8, 2021 Decree of Divorce at p.9, Exhibit 1, Article 9.3 was clear and unambiguous as required by Nevada law.[39]

THE COURT FURTHER FINDS Enrique presented clear and convincing evidence to this Court in support of a finding of contempt as to the September 25, 2023 Order to Show Cause.

---

[39] See Cunningham v. Eighth Jud. Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986).

THE COURT FURTHER FINDS, pursuant to Nevada law, this Court has inherent power to enforce its orders and decrees through contempt proceedings pending appeal.[40]

THE COURT FURTHER FINDS, with respect to the September 25, 2023 Order to Show Cause, Luba has NOT shown adequate cause why she should NOT be held in contempt and FINDS LUBA IS IN CONTEMPT AND HAS WILLFULLY VIOLATED SPECIFIC AND CLEAR OBLIGATIONS SET FORTH in the Decree of Divorce at p.9, Article 9.3; to wit: the Court FINDS the testimony of the parties clearly and convincingly established Luba exchange the child on Wednesday, March 15, 2023 at 9:00 AM at the Chevron station as ordered. The Court FINDS Luba testified she was still in her attorney Ben Childs' office the morning of March 15, 2023 when she decided she would not exchange the child with Enrique for his scheduled visitation.

The Court FINDS Enrique credibly established through his testimony he suffered harm in the form of not being able to enjoy the March 15, 2023 vacation to Mexico because he was not able to take the child to visit his family as planned, and he spent the vacation preparing litigation documents related to the withholding.

The Court FINDS Enrique credibly established a need to hold Luba in contempt through his testimony Luba interfered with his scheduled vacations to Mexico in 2021 and 2022 by either refusing to produce the child or by demanding to have information Enrique could not reasonably provide.

//

---

[40] See Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970) and Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

Count 2

Enrique alleged Luba knowingly and willingly violated the Stipulated Decree of Divorce at Exhibit 1, p.8, Articles 9.1, (Marital Settlement Agreement) (filed December 8, 2021):

> "The parties shall confer with each other on all important matters pertaining to the children's health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the child's best interest, and not to promote the personal desires of either party.
>
> The parents shall confer with each other on all matters regarding the children's health care, including but not limited to medical, dental, orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health conditions of the children except in emergency situations when prior consultations are not possible."

THE COURT FINDS the order set forth in the Stipulated Decree of Divorce at Exhibit 1, p.8, Articles 9.1 was clear and unambiguous as required by Nevada law.[41]

THE COURT FURTHER FINDS Enrique presented clear and convincing evidence to this Court in support of a finding of criminal contempt as to the September 25, 2023 Order to Show Cause.

THE COURT FURTHER FINDS, pursuant to Nevada law, this Court has inherent power to enforce its orders and decrees through contempt proceedings pending appeal.[42]

THE COURT FURTHER FINDS, with respect to the September 25, 2023 Order to Show Cause, Luba has NOT shown adequate cause why she should NOT be held in contempt and FINDS LUBA IS IN CONTEMPT AND HAS WILLFULLY VIOLATED SPECIFIC AND CLEAR OBLIGATIONS SET FORTH in the Stipulated Decree of Divorce at Exhibit 1, p.8,

---

[41] See Cunningham v. Eighth Jud. Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986).

[42] See Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970) and Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

Articles 9.1; to wit: the Court FINDS the testimony of the parties clearly and convincingly established Luba failed to consult with Enrique before changing the child's March 21, 2023 dental appointment to March 24, 2024.

The Court FINDS Enrique testified he scheduled the child's dental appointment to occur on March 21, 2023 and provided notice to Luba on Talking Parents application. The Court FINDS Luba testified she rescheduled the appointment from March 21, 2023 to March 24, 2023 without discussing the matter with Enrique. The Court FINDS Luba testified after she rescheduled the appointment, she notified Enrique of the change on Talking Parents, which she considers discussing it with him. The Court does NOT FIND CREDIBLE Luba's testimony she believes she is conferring with Enrique under the order if she moves the appointment first and notifies Enrique afterward.

The Court FINDS Enrique credibly established through his testimony he suffered harm in the form of not being able make appointments for the child because Luba changes them, causing conflict he seeks to avoid. The Court FINDS Enrique credibly established through his testimony the need for contempt due to Luba failing to confer with him so as to promote the child's best interest.

BASED ON THE FOREGOING, the Court ORDERS Luba SHALL pay $500 as for sanction of EACH violation of the September 23, 2023 Order to Show Cause – Counts 1 and 2 or, a total of $1,000 ($500 x 2 sustained counts of contempt = $1,000 total).

PURGE CLAUSE: In the event Luba strictly abides by the vacation orders and joint legal custody orders for a period of twelve (12) months, the Court SHALL PURGE the financial sanctions.

//

ORDERS

NOW THEREFORE, based on upon the foregoing *Findings of Fact and Conclusions of Law* and, good cause appearing:

IT IS HEREBY ORDERED that the parties shall continue to share JOINT LEGAL CUSTODY of the minor child.

IT IS FURTHER ORDERED that Enrique's request to modify custody is GRANTED and Enrique SHALL have PRIMARY PHYSICAL CUSTODY of the parties' minor child.

IT IS FURTHER ORDERED that Luba shall have specified visitation with the minor child from each FRIDAY after school or, 3PM if there is no school, until Mondays to school or, 9AM if there is no school every weekend EXCEPT the THIRD WEEKEND OF EACH MONTH which shall be Enrique's specified weekend.

IT IS FURTHER ORDERED that the parties' prior holiday/vacation timeshare SHALL remain status quo.

IT IS FURTHER ORDERED that Luba SHALL pay $301.00 per month child support, effective JANUARY 1, 2025 and due on the first of each month thereafter.

IT IS FURTHER ORDERED that Enrique SHALL be solely entitled to claim the minor child for federal tax purposes each year commencing 2025.

IT IS FURTHER ORDERED that Enrique's request for this matter to be referred for prosecution for parental abduction is DENIED.

IT IS FURTHER ORDERED that the Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs. Enrique SHALL file and serve a Memorandum of Fees and Costs, to include redacted attorney-client invoices and Brunzell and Wilfong analyses not later than JANUARY 16, 2025. Luba shall have the time allotted from date of service to file and

serve an Objection. The Court will not consider any new requests for relief in either pleading nor will it entertain a reply. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for award for attorney fees and costs. Decision on award for attorney fees and costs shall be scheduled for FEBRUARY 19, 2025 (Chambers/NO appearances).

IT IS FURTHER ORDERED that Enrique clearly and convincingly established evidence in support of Counts 1 and 2 of the September 25, 2023 Order to Show Cause re: contempt.

IT IS FURTHER ORDERED that Luba SHALL as for financial sanction for the September 25, 2023 Order to Show Cause, Luba shall pay $500 per count or, a total of $1,000. **PURGE CLAUSE**: In the event Luba strictly abides by the vacation orders and joint legal custody orders for a period of twelve (12) months, the Court SHALL PURGE the $1,000 sanction.

IT IS FURTHER ORDERED that, all other orders not addressed herein SHALL remain status quo.

MANDATORY STATUTORY NOTICES

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that the parties are subject to the relocation requirements of NRS 125C.006 & NRS 125C.0065. If joint or primary physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating: (a) attempt to obtain the written consent of the non-relocating parent to relocate with the child; and (b) if the non-relocating parent refuses to give that consent, petition the court for permission to move and/or for primary physical custody for the purpose of relocating. A parent who desires to relocate with a child has the burden of proving that relocating with the child is in the best interest of the child. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child without having reasonable grounds for such refusal, or for the purpose of harassing the relocating parent. A parent who relocates with a child pursuant to this section without the written consent of the other parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.010 through 31A.350, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that pursuant to NAC 425.165 and NRS 425.620, if the order pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child, and if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form, which can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

APPEAL NOTICE

The parties are noticed s/he has thirty (30) days from Notice of Entry of this Order to file any appeal with the Nevada Supreme Court. See NRAP 4(a)(1). The time to file a Notice of Appeal may not be extended by stipulation. Certain motions filed in this Court may impact the timing of a Notice of Appeal. See NRAP 4(a)(4)(A) – (D).

Dated this 2nd day of January, 2025

HEIDI ALMASE
District Court Judge

409 EFB E3AF A44D
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

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 Judgment 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: 1/2/2025

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 1/3/2025

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
1/7/2025 11:55 AM
Steven D. Grierson
CLERK OF THE COURT

NEO
Melvin R. Grimes, Esq.
State Bar of Nevada No. 12972
ROBERTS STOFFEL FAMILY LAW GROUP
[redacted]
Attorney for Defendant

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept No: P

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS (POST-JUDGEMENT)

\\\

\\\

\\\

\\\

\\\

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law and Orders (Post-Judgement) that was filed on January 2, 2025, was duly entered on the 7th day of January 2025, a copy of which is attached hereto and fully incorporated herein.

DATED this 7 day of January 2025

ROBERTS STOFFEL FAMILY LAW GROUP

By: [redacted]
Esq.
No. 12972
[redacted]
ant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 7 day of January 2025, I served by and through Wiz-Net electronic service, pursuant Clark County District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the N.E.F.C.R., the foregoing Notice of Entry of Findings of Fact, Conclusions of Law and Orders (Post-Judgement) from January 2, 2025 (with the Order attached herein), to the following:

Alex Ghibaudo, Esq.
[redacted]
Attorney for Plaintiff

Luba Snow
[redacted]

By: Mandy Thomas
Employee of Roberts Stoffel Family Law Group

Electronically Filed
01/02/2025 1:34 PM
CLERK OF THE COURT

FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, N/K/A LUBA SNOW, Plaintiff, VS. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X DATES OF TRIAL: 03/19/2024 10/15/2024

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS (POST-JUDGMENT)

THIS MATTER came before this Court on March 19, 2024 and October 15, 2024 for two (2) full days non-jury bench trial on the above-captioned post-judgment divorce proceeding.

Plaintiff Luba (Luba) Gonzalez, n/k/a Luba Snow, was present and represented by her attorney Alex Ghibaudo, ALEX GHIBAUDO, PC. Defendant Enrique (Enrique) Ivan Velazquez-Gonzalez was present and represented by his attorney, Melvin Grimes, ROBERTS STOFFEL FAMILY LAW GROUP.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] Gonzalez, born [redacted] (current age 8 years).

Having reviewed the papers and pleadings on file herein and, after considering and weighing the credibility of the witnesses and exhibits admitted into evidence, this Court issues its *Findings of Fact, Conclusions of Law, and Orders (Post-Judgment)*.

//

RELEVANT PROCEDURAL HISTORY

Since Luba filed her Complaint for Divorce on August 20, 2018, this case has been in near constant litigation. The parties currently share JOINT LEGAL CUSTODY and JOINT PHYSICAL CUSTODY on a week on/ week off timeshare with custodial exchanges occurring Wednesdays at 9:00 AM.[1] The parties stipulated for Luba to have Zoom video calls with the child during Enrique's custody time, including holiday and vacation, each Monday and Friday at 7:15 PM.[2]

The parties further stipulated to each party having up to seven (7) days of specified vacation with the child per year with no less than thirty (30) days advance written notice.[3] The parties stipulated the traveling parent would provide a written itinerary for travel with the child outside of Nevada no later than fourteen (14) days prior to the trip.[4] The parties also stipulated the travel itinerary was to state all flights the child would take, the address where the child would stay each night of the trip, including hotel name if applicable, and emergency phone number for the child.[5] In the event border crossings (for travel between the United States and Mexico) would take place on foot, the parties stipulated the itinerary would include the dates of the border

---

[1] See Stipulated Decree of Divorce at Exhibit 1, pp.8-9, Articles 9.1, 9.2, and 9.3 (Marital Settlement Agreement) (filed December 8, 2021).

[2] Id. at p.13, Article 9.6.

[3] Id. at p. 12, Article 9.5.

[4] Id. at pp. 12-13, Article 9.5.1.

[5] Id.

crossings.[6] The parties further stipulated that, when travelling by air with the child, the parties would provide each other with "complete itineraries to include dates of travel, passengers on the reservation, and airline and flight details."[7] The parties stipulated to provide the other parent with the address they would be staying as soon as it was known.[8] Last, all communication between the parents was via the Talking Parents communication application absent an emergency.[9]

Instant Proceedings

On March 20, 2023, Enrique filed Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges alleging Luba violated the December 8, 2021 Stipulated Decree by refusing to exchange the child to him on March 15, 2023 for his scheduled vacation to Mexico and changing the March 21, 2023 dental appointment without consulting him. On March 20, 2021, an Order to Show Cause issued against Luba for the alleged violations. On March 30, 2023, Luba filed an Opposition and Countermotion. On April 27, 2023, Luba separately filed a Motion for an Order to Show Cause in which she alleged one-hundred and ten (110) alleged violations to include alleged communication and travel orders violations, request to change the child's surname, request to change the child's school and request for award for attorney fees. On May 5, 2023,

---

[6] Id.

[7] See Stipulation and Order, Exhibit 1, Memorandum of Understanding at p.1, ll.12 (filed July 26, 2022).

[8] Id. at p.1, ll.16.

[9] Id. at p.1, ll.17

Enrique filed an Opposition and Countermotion for Modification of Custody Awarding Defendant Primary Physical and Sole Legal Custody, Sole Possession of the Child's Passport, et al. In support of his request to modify custody, Enrique included allegations Luba consistently made doctor and dental appointments without his permission, sent her husband to the child's medical/dental appointments and wrongfully detained the child in violation of NRS 125C.0035(7) on March 15, 2023, the date of Enrique's scheduled vacation to Mexico.

On May 24, 2023, Enrique filed Defendant's Emergency Motion to Enforce seeking enforcement of his Father's Day, 2023 visitation. On May 31, 2023, Luba filed an Opposition and Countermotion for an Order to Show Cause.

At the April 6, 2023 hearing on Enrique's March 20, 2023 Emergency Motion for Return of Child, et al., the Court deferred the issue of custody modification and set evidentiary hearing on the Order to Show Cause against Luba.[10] In the June 13, 2023 Order Re: All Pending Motions, the Court issued a written order related to all other pending matters. Specifically, the Court denied each of Luba's one-hundred and ten (110) requests for indirect contempt, denied Luba's requests for surname and school modification and for award for attorney fees.[11] The Court found Enrique established a *prima facie* basis to modify child custody pursuant to Myers v. Haskins[12] based, in part, on Luba withholding the child for the March 15, 2023 vacation.[13]

//

---

[10] See Order from April 6, 2023 hearing at p.2-3, ll.17-4 (filed June 6, 2023).

[11] See Order Re: All Pending Motions at pp.22, ll.6-7 (filed June 13, 2023).

[12] 138 Nev. 553, 513 P.3d 527 (Ct. App. 2022).

[13] See Order Re: All Pending Motions at pp.18, ll.12-20 (filed June 13, 2023).

On June 9, 2023, Luba filed an Emergency Motion for Reconsideration followed, on July 5, 2023, Luba filed a Motion to Reconsider [the] Court's June 21, 2023 Order Granting Defendant an Evidentiary Hearing, et al. On July 21, 2023, Enrique filed an Opposition and Countermotion. On September 11, 2023, the Court filed an order denying Luba's July 5, 2023 motion and awarding Enrique attorney fees.[14]

Enrique's Request for NRS 125C.0035(7) Finding

Following close of the Day One March 19, 2024 Non-Jury Trial on Enrique's request to modify physical custody and an Order to Show Cause against Luba, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered following Enrique's oral motion for the same.[15] The Court found Enrique met the relevant factors in NRS 125C.0035(7) regarding an act of withholding or abduction demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2023.[16] The Court

---

[14] See Order Denying Plaintiff's July 5, 2023 Motion for Reconsideration et al at p.8, ll.8-22 (filed September 11, 2023).

[15] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

[16] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13. Specifically, NRS 125C.0035(7) provides as follows:

> "A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

defined abduction pursuant to NRS 200.359(1).[17] The Court FOUND the Decree clearly identified the vacation timeshare and itinerary provisions, the ordered visitation on March 15, 2023, and that Luba conceded in her testimony she did not turn the child over to Enrique.[18] The Court reminded the parties it ultimately had to make findings on all of the best interest factors and stated it would receive all evidence as to whether Luba was able to rebut the presumption upon full receipt of evidence.[19]

FINDINGS OF FACT

The Court cites only to those portions of the testimony that are relevant and necessary to its findings and ultimate conclusions of law. Specifically, the testimony included in the Findings

---

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted."

[17] Id. at 3:14:14 – 3:15:26. NRS 200.359(1) provides as follows:

"Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child . . ."

[18] Id. at 3:15:27 – 3:15:41.

[19] Id. at 3:19:54-3:20:48.

of Fact is not mere transcription of testimony offered during trial but only that testimony relevant to this Court's findings and orders.

> "Findings of fact constitute "the ultimate judgment on a mass of details" and are more than a mere recitation of evidence presented. Baumgartner v. United States, 322 U.S. 665, 670 (1944); *see also United States v. Adams*, 73 U.S. 101, 102 (1867)(noting lower courts are bound to make "a finding of the ultimate facts or propositions which the evidence shall establish . . . and not the evidence on which these ultimate facts are founded). On appellate review, [the appellate court] must interpret all statements contained in a district court's "Findings of Fact" as the ultimate truth of the case. *See Finding of Fact, Black's Legal Dictionary* (10th ed. 2014)(defined as "[a] determination by a judge"); *Determination, Black's Legal Dictionary* (defined as "a final decision by a court").[20]

JURISDICTION

The Court FINDS both parties and the minor child reside in Las Vegas, Nevada and no other state has taken jurisdiction over the parties or minor child in this case. Therefore, this Court has the required subject matter and personal jurisdiction as well as continuing and exclusive child custody jurisdiction to resolve the issues before it.

TESTIMONY

The following parties offered testimony:

Enrique Velasquez-Gonzalez, Defendant

Emma Muth, witness for Defendant

Gina Thornton, witness for Defendant

Luba Gonzalez n/k/a Luba Snow, Plaintiff

Benjamin Childs, witness for Plaintiff

---

[20] Franklin v. Franklin, ___ Nev. Adv. Op. ___, *p.17, ___ P.3d ___, ___ (December 4, 2023)(Dissenting, Bell, J.).

HOUSEKEEPING

The parties each waived opening statements. The parties stipulated to the admission of Plaintiff's exhibits 1, 2, 3, 4, and 5; and Defendant's exhibits A, B, C, D, and E.

TESTIMONY

Benjamin (Ben) Childs

Ben was Luba's former attorney in this case for an eighteen (18) month period of time that encompassed the dispute over Enrique's March 15, 2023 vacation to Nueva Leon, Mexico for the purpose of visiting his family with the parties' child.[21] Ben testified Luba was concerned about Enrique taking the child to Mexico because she felt she did not have sufficient assurances the child would be safe. Specifically, Luba was concerned about crime in Tijuana after Enrique provided his itinerary showing he would enter Mexico through Tijuana using a CBX [walking] border crossing pass. Ben testified Luba wanted Enrique to provide her with round-trip CBX tickets, allow her daily video calls with the child using the Talking Parents communications application and for an agreement Enrique would not travel outside of Nueva Leon with the child.

Ben testified he and Enrique's counsel, Melvin Grimes, had a telephone conference with the Court on March 15, 2023, the day travel was scheduled, in an effort to resolve the dispute between Luba and Enrique over the vacation. Ben testified the Court did not issue any orders during the teleconference but he and attorney Grimes exchanged emails immediately afterward attempting to negotiate final terms for Luba to release the child to Enrique for the vacation. Ben testified he shared the attorney emails with Luba, who was with him in his office during the teleconference.

---

[21] Prior to Ben beginning his testimony, Luba confirmed she affirmatively waived her attorney-client privilege.

Ben testified that, at the time scheduled for the child exchange, Enrique had neither provided Luba with round-trip CBX tickets nor downloaded the Talking Parents video communication application. Ben testified it was his opinion Luba could have reached the conclusion she did not have to exchange the child unless Enrique met all of the agreements made in the attorney's subsequent emails. Ben also testified he told Luba it was totally up to her whether to turn the child over to Enrique for the exchange once Enrique did not provide the CBX tickets to her. Ben denied telling Luba to violate a court order repeatedly stating he told Luba it was her decision. Ben agreed no orders issued as a result of his and attorney Grimes' March 15, 2023 teleconference with the Court. Ben testified the parties were and are expected to follow the orders of the Court.

Credibility: The Court FINDS attorney Child's testimony *generally* credible as to some facts and circumstances. The Court does NOT find credible Child's testimony related to information and/or advice he provided to Luba following the March 15, 2023 teleconference with the Court.

Emma (Emma) Muth

Emma is the child's first (1st) and second (2nd) grade teacher at [redacted] School (ES).[22] Emma testified she met both Luba and Enrique at parent teacher conferences and communicates with both through Class Dojo, the online parent-teacher communication application. Emma testified she observed the child has a good relationship with both parents.

Emma testified her primary concern is the child's [redacted] attachment to Jennifer, Enrique's wife and the child's stepmother, who is a reading strategist at Bryan ES. Emma

[22] The Court NOTES that, at the time Emma testified on March 19, 2024, [redacted] had nearly completed second grade.

testified the child is particularly attached to Jennifer and finds ways to interact with Jennifer during the school day during Luba's ordered timeshare. For example, Emma specified the child would try to find ways to see or eat lunch with Jennifer.

Emma also testified she noticed two specific small issues related to the child's grooming during Luba's custodial timeshare: 1) the child had a spot of dry skin on her chin a few months earlier rectified by Emma giving the child some lotion to put on it; and 2) the child had mismatched clothes. Specifically, Emma testified the child wore a Halloween-themed shirt around Valentine's Day in 2024 with leggings that did not match. Emma testified she did not bring this issue to the attention of either parent or CPS. Rather, Emma testified she discussed this with Jennifer, the child's step-mother.

Emma testified she and Jennifer have a collegial relationship, attending weekly staff meetings and a lunch at a staff development day the prior year. Emma confirmed that, although she was subpoenaed to testify, when Jennifer asked her if she would be willing to testify in this matter, Emma voluntarily agreed. Emma testified the subpoena was necessary so she could get the time off work to testify.

Credibility:

The Court FINDS Emma generally showed bias toward and in favor of Enrique due to her relationship with her co-worker, Jennifer, Enrique's wife. Notwithstanding this issue, the Court FINDS credible Emma's testimony Jennifer and the child are strongly attached and that the child has, on two occasions, presented at school with dry skin and mismatched clothing.

Gina (Gina) Thornton

Gina is the school counselor at the child's school, Bryan ES. Gina testified she has known the child since the [redacted] school year. Gina testified to her opinion the child is happy

while at school.

Gina testified she was present at the school for an October 2023 Halloween parade when Luba walked with the children, school faculty and staff in the parade while videotaping the child, Jennifer and Gina, who were all walking together. Gina testified Luba videotaping them made Jennifer and her very uncomfortable because Luba's videotaping was excessive and, in her opinion, for the purpose of harassing Jennifer. Gina testified she believed Luba inserting herself in the parade made the child sad because the child wanted to be with Jennifer, but was compelled to be with Luba. Gina testified she believed Luba's behavior caused the child to be unable to enjoy herself because she was torn between Jennifer and Luba. Gina testified she had no other incidents about which to testify.

Gina testified she has known Jennifer as long as Jennifer has worked at [redacted] ES or for a period of seven (7) or eight (8) years. Gina testified she and Jennifer are friends outside of work. Gina testified that she agreed to testify about what she witnessed at the parade when Jennifer asked, although she was present subject to a subpoena.

Credibility:

As with witness Emma Muth, the Court FINDS Gina showed general bias toward and in favor of Enrique due to her relationship with her co-worker, Jennifer, Enrique's wife. However, the Court FINDS credible Gina's testimony Luba has caused the child distress as a consequence of her behavior at the school credible.

Luba (Luba) Gonzalez N/K/A Luba Snow

Luba is [redacted] mother, and Enrique's ex-wife. Luba's current husband is Phil. Luba is also the step-mother to Phil's daughter, [redacted] Luba testified [redacted] and [redacted] were born five (5) weeks apart, have grown up together, and are closely bonded. Luba testified [redacted]

and [redacted] are on the same visitation schedule, share a bedroom, and are in the same grade, though they attend different schools. Luba testified she and Phil were investigated by Child Protective Services (CPS) for abuse in the past because [redacted] mother, Robin, made a false complaint. Luba testified Robin apologized since then, and they are all part of a big family now.

Luba testified Enrique has asked her to have the child stop calling Phil "Dad". Luba testified she refused the request on the basis she believes it is up to the child what to call Phil.

[redacted]

been damaged. Luba testified she reached out to [redacted] teacher on Class Dojo many times to ask what she can do better so she can fix it. Luba testified she did not receive a 2024 Mother's Day school project the child made for her or the child's report cards because, according to the child, Jennifer took them out of the child's backpack. When Luba raised these issues with Enrique, Luba testified he called her a liar and told her to look for the report card on the online portal. Luba testified she learned after the fact Jennifer took the child out of her regular classes for Bring Your Child to Work Day. When Luba raised this issue with Enrique, Luba testified he told her the child previously told her Bring Your Child to Work Day. Luba testified the child did not talk to her about Bring Your Child to Work Day and, even if she had, it was not the child's place to discuss adult matters with her or pass this kind of information back and forth.

//

---

[23] The school selection issue and order for the child to remain at Bryan ES followed an evidentiary hearing on a school selection motion wherein the former judicial department, Department P, granted Enrique's request for the child to remain at Bryan ES. See Order [after Evidentiary Hearing of December 7, 2021] (filed February 8, 2022).

Luba testified she provided the child with a cell phone and told Enrique he could contact the child on it anytime, but Enrique declined communication outside of the court orders. Luba testified she knows Enrique does not use the phone because she keeps the phone for the child and [redacted] use. Luba testified a Court order provided for specified electronic communication twice weekly but, because she missed the child, Luba demanded daily video phone calls with the child while on vacation and in exchange for allowing the child to go on the planned vacation to Mexico in March 2023. Luba testified Enrique agreed to her having daily video calls with the child using the Talking Parents application while they were in Mexico but he never downloaded the video function on the app.[24] Luba testified Enrique's mother, stepfather, and half-siblings live in Mexico, and while it was not her intent to stop the child from going on vacation with Enrique to visit his family on March 15, 2023, she did not release the child to Enrique for the vacation because he could not sufficiently assure her the child would be safe in Mexico.

Luba testified she offered Enrique compensatory visitation days after he returned from Mexico on March 20, 2023, but Enrique did not accept all of the dates she offered. Luba conceded she did not agree to Enrique's counter that she give him Father's Day weekend because she had plans to be on vacation in Cancun, Mexico with the child and her family that weekend. Luba testified Enrique declined all compensatory visitation as a result of her refusal to give him Father's Day weekend, a weekend he was otherwise entitled to by court order.

Related to best interest factors set forth at NRS 125C.0035(4), Luba testified as follows:

Level of Conflict between the Parents

Luba testified that, if she asks for information about the child, Enrique calls her a liar,

---

[24] See Plaintiff's Exhibit 4, p.LS0179.

crazy, unstable, says she enjoys drama, and is going to hurt people. Luba testified Enrique accuses her of trying to get Jennifer fired. Luba testified Enrique also accuses her of holding the child hostage at the school gates in the morning. Luba testified that, on the days she drops the child off for school, the child chooses to stay with her at the gates rather than play with her friends before the bell rings.

Luba testified the reason she is so cautious about the child's whereabouts is due to Enrique withholding the child from her for three (3) days in 2021 after he filed an emergency motion alleging she abused and neglected the child. Luba testified this incident traumatized her and she feels like the child will always be taken from her. Luba testified Enrique will not have anything to do with her or agree to anything.

Ability of the Parents to Cooperate to Meet the Child's Needs

Luba testified she believes she is a good co-parent. Luba testified she and Enrique attend parent-teacher child conferences separately. Luba conceded she met with the school principal regarding counseling for the child without notifying Enrique. Luba testified she asked Enrique to agree to the child enrolling in online counseling through the school to help the child with her discomfort with Luba and Jennifer being in the school at the same time. Luba testified Enrique refused because he was concerned the child would not be able to share her true and honest feelings with a counselor in a telemedicine setting. Luba testified she enrolled the child in online counseling over Enrique's objection because she has an order that allows her to do so even if Enrique refuses.[25]

---

[25] The Court NOTES Luba's testimony in this regard comports with the parties' Marital Settlement Agreement.

Luba testified she makes all of the child's medical and dental appointments on her custodial days, invites Enrique to attend, and gives him all of the paperwork and information she receives. Luba testified that she does not believe it is a unilateral decision for her to schedule a doctor appointment for the child and place it on the Talking Parents calendar without consulting Enrique beforehand.

Luba testified Enrique reciprocates similar information, although he does attend medical or dental appointments. Luba testified she took the child to an allergist following the March 19, 2024 trial date pursuant to Enrique's complaints the child had undiagnosed allergies. Luba testified Enrique did not attend the appointment. Luba testified the allergy test results showed the child is allergic to cats and has seasonal allergies to grass. Luba testified she gave Enrique, who has a cat, the information and he called her a liar. Luba testified she provided Enrique with all of the medical information, including a password to get the test results, and his own prescription nasal spray for the child to use solely at his home. Luba testified the child no longer has allergy issues.

Luba testified she has never prohibited Enrique from taking the child anywhere. However, Luba conceded she refused to exchange the child on March 15, 2023 for Enrique's vacation to Nueva Leon, Mexico to visit his family.

Luba testified she believes she is allowed to implement safety standards in her parenting relationship with Enrique, and Enrique is permitted to do the same. If she thinks Enrique is doing something that puts the child in danger, Luba testified she feels the parents have a duty to discuss it with each other. Luba testified she discussed her concerns about media reports of a gang-related shooting at the Tijuana border in 2023 with Enrique prior to his March 15, 2023 vacation to Mexico. Luba testified she gave Enrique the condition she would not turn the child

over unless she got daily video calls with the child on the Talking Parents application. Luba conceded this condition was not part of existing court orders. Luba further conceded she gave Enrique the additional condition she would not turn the child's passport over until she received airline confirmation codes with the child's name.

Luba testified that, after she discussed her concerns with Enrique related to him using the CBX border crossing for the March 15, 2023 trip to Mexico with the child, Luba nonetheless withheld the child from Enrique on March 15, 2023. Luba testified she withheld the child for the child's safety because she did not want Enrique "driving" through the Tijuana border with gangs shooting.[26]

Mental and Physical Health of the Parents

Luba testified she has been diagnosed with anxiety. Luba testified she saw a physician and counselor around 2020, took medication, and went to counseling for two (2) years. Luba testified she now has tools to help her make better decisions.

Physical and Emotional Needs of the Child

Luba testified she makes and attends all of the child's medical and dental appointments without Enrique because Enrique chooses not to participate. Luba testified she provides health insurance through her husband, Phil's, employment, and provided all of the insurance information to Enrique. However, Luba testified she refused to provide Phil's social security number as part of the insurance information despite Enrique's request. Luba testified she and Phil did not provide Phil's social security number to Enrique because neither she or Phil are required to provide it to any medical provider as a condition to using the insurance coverage.

---

[26] See October 15, 2024 Video Time Cite at 1:46:37 – 1:46:56.

Luba testified she enrolled the child in online counseling through school to help the child deal with the anxiety the child has due to Luba and Jennifer being at school together at the same time. Luba testified she asked Enrique about the online counseling and his only objection was to Zoom counseling because he did not believe the child would have privacy to express her true feelings in a telemedicine setting. Luba testified she nonetheless enrolled the child in online counseling because she has the right to enroll the child in counseling pursuant to the court orders and it was in the child's best interest. Luba also testified she met with the child's principal to discuss counseling without first consulting Enrique.

Failure to Exchange Child on March 15, 2023

Luba testified that, on January 13, 2023, Enrique sent her a Talking Parents message giving her notice of his intent to take the child on vacation to Nueva Leon, Mexico on March 15, 2023. Luba testified Enrique asked her to exchange the child's passport at school. Luba testified she refused to exchange the passport until Enrique gave her the child's flight confirmation codes. Luba testified Enrique provided her with the flight number, which is required information to be exchanged by the Decree. However, Luba testified Enrique did not provide her with a ticket showing the child's name on it.

Luba testified her next concern about Enrique's travel were related to him crossing the border using a CBX [walking] border crossing ticket as she did not know what CBX was at the time. Luba testified she learned about a gang-related shooting at the Tijuana border in the media. Luba testified she was also concerned about the child traveling to Mexico because Nueva Leon borders a more dangerous state, Enrique allegedly told her he was nearly kidnapped from his parent's home when it was robbed and she did not want Enrique "driving" through the Tijuana

border with gangs shooting.[27] Luba testified she was fine with Enrique crossing at CBX after she "Googled" to learn it went straight through into the Tijuana airport, which made her feel much safer. Luba testified she agreed to release the child to Enrique for the vacation if he would provide her with round-trip CBX tickets and daily video calls with the child using the Talking Parents application. Luba testified there was a teleconference call between her former attorney, Ben Childs, and Enrique's attorney, Melvin Grimes, with the Court at approximately 8:00 AM on March 15, 2023, the date of Enrique's scheduled travel. Luba testified she was scheduled to exchange the child on March 15, 2023 at 9:00 AM at the Chevron station for the vacation. Luba testified she was not present for the conference call but saw Ben Child's emails with attorney Grimes following the call. Luba testified it was her understanding the emails between Ben Childs and Melvin Grimes were the agreements she had to follow in order to exchange the child for the vacation.

Luba testified she told Enrique she would bring the child when Enrique sent her the CBX tickets. Luba testified Enrique sent her a message replying only: "Bye". Luba testified she was still in attorney Child's office when she decided to withhold the child from Enrique.[28] Luba further testified attorney Childs told her she did not have to turn the child over to Enrique. Luba testified to her opinion attorney Childs lied in his testimony when he testified he told Luba the Court did not issue new orders at the March 15, 2023 telephone conference and when he testified

---

[27] See October 15, 2024 Video Time Cite at 1:46:37 – 1:46:56.

[28] This testimony controverts Luba's earlier testimony she was *not* at attorney Child's office during the March 15, 2023 teleconference with the Court.

she was expected to follow the orders.[29]

Luba testified she did not violate the order by refusing to turn over the child to Enrique because Enrique did not give her the CBX tickets or turn on his Talking Parents video application. Later, Luba testified that, if she had it to do all over again, she would not withhold the child and would follow the court orders as she has done since the March 15, 2023 incident. Luba also repeatedly testified it was not her intent to have the child miss the vacation.

Luba conceded that, three (3) months later, she took the child on a family vacation of her own to Cancun, Mexico in June 2023 over a period that included Father's Day weekend. Luba testified Cancun, Mexico is not as dangerous – in her opinion – as the Nuevo Leon, Mexico location Enrique planned to travel to with the child.

Dental Appointments

Luba testified Enrique had scheduled a dental appointment for the child on March 21, 2023 during his custodial time. Luba testified she moved the appointment March 24, 2023 to occur on her custodial time. Luba testified she believed she got Enrique's consent by rescheduling it, putting it on the Talking Parents calendar, and getting no response back from Enrique. Luba conceded she did not communicate with Enrique before she moved the appointment. Luba testified she changed the appointment because she did not want the child to miss the appointment, which would happen if the appointment stayed scheduled during Enrique's time. Luba repeatedly testified Enrique did not have the dentist's address because he kept asking for it. However, Luba later testified she gave Enrique the dentist's address.

//

---

[29] See October 15, 2024 Video Time Cite at 1:45:45 – 1:46:15.

Credibility:

The Court FINDS Luba's testimony generally credible in that she agreed as to the fundamental facts of the case. However, the Court does NOT FIND CREDIBLE Luba's testimony she did not intend to withhold the child from Enrique on March 15, 2023 to prevent him from taking the child on vacation to Mexico. In particular, the Court FINDS, three (3) months later, Luba took the child and her family on a vacation also to Mexico and during Enrique's ordered Father's Day visitation. Similarly, the Court does NOT FIND CREDIBLE Luba's testimony related to moving the child's March 21, 2023 dental appointment.

Enrique (Enrique) Velasquez-Gonzalez

Enrique is [redacted] father and Luba's ex-husband. Enrique is married to Jennifer, and they have one (1) child together, [redacted] age four (4). Enrique testified he does not allow the child to call Jennifer "Mom". Enrique testified the March 15, 2023 vacation to Nueva Leon, Mexico was for [redacted] to visit her paternal grandparents, who live there.

Enrique testified he brought a motion to modify custody because Luba withheld the child from him and tries to block vacations. Enrique testified modifying custody is in the child's best interest because Luba will not follow even one (1) line of the Decree, does not co-parent, and does not provide for the child's care as well as him. Enrique testified it is in the child's best interest to spend three (3) consecutive weeks in his care and (1) week in Luba's care because this schedule will provide the child with stability, better grooming, and better alimentation. Enrique testified Jennifer tells him the child is not well groomed at school, meaning her hair is not brushed and she wears clothes that do not fit. Enrique also testified he provides the child with a master bedroom and her own bathroom so she can be well-rested at his home. Enrique testified Luba makes appointments for the child that interfere with the child's school time even over his

requests to do otherwise.

Enrique testified Luba withholds the child and does not let him travel with her, including going to Oaxaca, Mexico in 2021 and Cancun, Mexico in Summer 2022 and in 2023. Enrique denied being kidnapped from his family home, that his uncle was murdered, and that he and Luba were robbed while driving across Mexico while they were dating. Enrique testified Luba loves going to Mexico and took the child there right after Enrique returned from his vacation or, in June 2023.

Enrique testified co-parenting with Luba means following her rules including rules she adds in addition to orders contained in the Decree. Enrique testified he turns the child over to Luba even if she does not provide him with a full itinerary for her vacations. Enrique testified he does not feel Luba treats him like an equal parent. Enrique testified he wants Luba to have a role in the child's life but he cannot trust Luba at all.

Enrique testified he tries to minimize his conflict with Luba because she brings him to Court constantly on false allegations. Enrique denied blocking Luba on his cell phone but conceded he lets her calls go to voicemail because they are ordered to communicate by the Talking Parents communication application.

Enrique testified he believes Luba abuses and neglects the child. Enrique testified he does not agree with CPS failing to substantiate his allegations Luba abused or neglected the when he claimed the child had a third degree burn on her finger. Enrique testified CPS said he was lying.[30]

//

---

[30] See Exhibit 1 at p. 32.

Enrique testified to his opinion Luba neglects the child's health but conceded he lacked specific proof. Enrique testified the child suffers from dry skin, rashes, boogers, and red eyes due to Luba's refusal to treat her allergies. Enrique testified he wanted Luba to take the child to an allergist but Luba would not cooperate. Enrique testified he cannot take the child himself because Luba refuses to give him the insurance information from her husband's policy. Enrique testified he had the child's insurance card but Luba refused to give him her husband's social security number for two (2) years so he could make an appointment. Enrique later changed his testimony to state he received Phil's social security number on December 29, 2023 from his attorney. Despite the information, Enrique testified he had not made an appointment with an allergist since then because he was waiting for the instant litigation to come to an end. Enrique also testified he has not had time or done research on allergists as another reason he has not made an appointment for the child.

Enrique testified he does not attend the child's medical or dental appointments because Luba insists on being present for every appointment and lying about him, such as telling the doctor her husband has been in the child's life longer than Enrique, i.e., creating conflict during the appointments. Thus, Enrique testified he will not go in the same room with Luba.

Enrique testified he scheduled a March 21, 2023 dental appointment for the child and notified Luba via the Talking Parents application. Enrique testified Luba rescheduled the appointment to March 24, 2024 without asking him.

Credibility: The Court FINDS Enrique's testimony generally credible. As noted herein, Enrique and Luba substantially agreed on the fundamental facts of the case. The Court FINDS credible Enrique's testimony and evidence related to long-standing co-parenting issues with Luba and a general lack of co-parenting on her part to include withholding the child and placing

the child in the middle of parental conflict.

CONCLUSIONS OF LAW

MODIFICATION OF CUSTODY

In order to modify custody, a movant is required to set forth a substantial change of circumstances affecting the child's welfare and in the child's best interest.[31]

NRS 125C.001 states:

The Legislature declares that it is the policy of this State:

1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have ended their relationship, become separated or dissolved their marriage;

2. To encourage such parents to share the rights and responsibilities of child rearing; and

3. To establish that such parents have an equivalent duty to provide their minor children with necessary maintenance, health care, education and financial support. As used in this subsection, "equivalent" must not be construed to mean that both parents are responsible for providing the same amount of financial support to their children.

NRS 125C.0035(4) mandates trial courts shall consider statutory factors and set forth in writing its analysis. The factors and this Court's analysis are as follows:

a. The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.

The Court FINDS the minor child, [redacted] age (8), is of insufficient age and capacity to form an intelligent preference as to her physical custody.

The Court FINDS this factor is neutral.

b. Any nomination of a guardian for the child by a parent.

The Court FINDS nomination of a guardian is not relevant to these proceedings between two (2) parents not involving a third party.

---

[31] See Romano v. Romano, 138 Nev. 1, 2, 501 P.3d 980, 983 (2022).

The Court FINDS this factor does not apply to this case.

c. Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

The Court FINDS Luba has interfered with Enrique's vacations to visit his family in Mexico by withholding the child in March 2023, demanding daily video contact with the child while the child was to be in Enrique's custody in Mexico, and sending letters to the Air B&Bs at which Enrique was scheduled to stay to verify his reservations. The Court FINDS Luba's claim she had concerns about the child's safety in Mexico NOT CREDIBLE in light of Luba taking the child to Mexico on a scheduled vacation three (3) months later or, in June 2023. The Court FINDS Luba's showed awareness of her interference with Enrique's parent-child relationship though *only* in the context of on-going litigation.

The Court FINDS Luba did not dispute Enrique does not interfere with her vacation requests with the child even when she fails to provide him with a full itinerary. The Court further FINDS Luba withheld the child from Enrique on Father's Day, 2023, by scheduling her vacation to Mexico with her husband on his ordered holiday then refusing to accommodate Enrique's request for compensatory visitation.

The Court FINDS Luba provided one example of Enrique withholding the child from her for three (3) days in 2021 after he filed an emergency motion alleging she abused and neglected the child. The Court FINDS Luba grudgingly agreed Enrique returned the child to her as ordered. The Court further FINDS Luba did not allege Enrique withheld the child from her at any other time prior to order following the incident in 2021 related to his emergency motion concerning abuse and neglect of the child. The Court FINDS that, even though Enrique disagrees with the CPS findings regarding Luba's behavior, he obeys the Court custody orders.

Therefore, the Court FINDS Enrique is the parent more likely to allow the child to have frequent associations and a continuing relationship with Luba.

Accordingly, the Court FINDS this factor favors Enrique.

d. The level of conflict between the parents.

The Court FINDS Enrique testified he does not trust Luba at all and will not be in the same room with her because she constantly brings him back to court. The Court FINDS Luba has filed twenty-three (23) motions causing Enrique to litigate since the beginning of this case, which is an exceptionally high number of motions for any case within a six

(6) year period. [32] In the same period, the Court FINDS Enrique has filed seven (7) independent motions for specified relief.

The Court FINDS Luba conceded the child calls her husband "Dad" and she does not stop or correct the child. The Court FINDS Enrique does not allow the child to call his wife "Mom" out of respect for Luba's position as the child's mother.

The Court FINDS Enrique refuses to have communication with Luba outside of Talking Parents communication application to the extent he lets her telephone calls go to voicemail. This raises the concern that Enrique would not even speak to Luba in emergency circumstances, i.e., the court-ordered communication application is for *non-emergency* parent communication. The Court also FINDS it concerning Luba calls Enrique when there is no emergency demonstrating her unwillingness to abide by Court orders.

The Court FINDS Luba testified to her opinion Enrique refuses to have anything to do with her, to agree to anything she requests and refers to her as a liar. The Court FINDS the parties do not attend parent-teacher conferences or medical appointments together. The Court FINDS the high conflict between the parties is largely driven by Luba filing an extraordinarily high number of motions in this case resulting in this case being litigated without pause since the day Luba filed for divorce on August 20, 2018.

The Court FINDS the level of conflict between the parents is very high.

The Court FINDS this factor favors Enrique.

e. The ability of the parents to cooperate to meet the needs of the child.

The Court FINDS it is undisputed Luba not only schedules all of the child's medical and dental appointments, she also attends them either alone or with her husband, Phil. The Court FINDS Enrique's testimony CREDIBLE regarding Luba creating conflict in doctors' offices by alleging he abused her or saying Phil has been in the child's life longer than Enrique.

The Court FINDS that, to avoid conflict with Luba, Enrique avoids scheduling and attending the child's medical and dental appointments. As joint custodians, both parents have the right to attend the child's medical appointments. The Court FINDS Luba

---

[32] The dates Luba filed motions are as follows: 1. November 1, 2019; 2. December 19, 2019; 3. January 14, 2020; 4. February 20, 2020; 5. May 2, 2020; 6. July 2, 2020; 7. August 19, 2020; 8. August 19, 2020; 9. August 19, 2020; 10. October 9, 2020; 11. October 15, 2020; 12. November 16, 2020; 13. December 17, 2021 (duplicative filing); 14. February 9, 2022; 15. April 12, 2022; 16. May 18, 2022; 17. June 5, 2022; 18. June 23, 2022; 19. March 13, 2023; 20. April 27, 2023; 21. June 9, 2023; 22. July 5, 2023; and 23. August 22, 2024. These motions exclude motions related to attorney withdrawals and/or liens and ex parte motion for orders shortening time.

refused to acknowledge her role in the conflict, preferring to criticize Enrique for ceding the ground for the sake of peace.

Despite Enrique's refusal to attend appointments with Luba, Enrique testified he is frustrated Luba does not schedule appointments as he requests. For example, Enrique testified he asked Luba to schedule the child's dental appointment to occur outside of school hours and became upset she did not comply. Enrique also testified at the March 19, 2024 Day One of trial at great length regarding how the child needed to be seen by an allergist and how he could not schedule an appointment due to Luba refusing to give him Phil's social security number. The Court FINDS Enrique testified he had Phil's social security number as of December 30, 2023 and could have scheduled an appointment with an allergist of his choice. The Court FINDS Enrique's testimony he preferred to wait until this litigation was over to schedule an appointment for the child demonstrates he places an emphasis on his conflict with Luba over the needs of the child. Notwithstanding this issue, the Court FINDS that, when Enrique did schedule a March 21, 2023 dental appointment for the child during his custodial time, Luba unilaterally changed the appointment to her custodial timeshare without notifying Enrique. The Court does NOT FIND credible Luba's assertion she needed to change the dental appointment because, otherwise, Enrique would not have taken the child to the appointment.

Likewise, the Court FINDS Luba's refusal to schedule an appointment with an allergist until immediately after Enrique testified as to his great frustration over Luba's refusal to cooperate with him over the insurance issue for two (2) years demonstrates she places an emphasis on her conflict with Enrique over the needs of the child.

The Court FINDS Enrique fails to follow through with his joint legal custody rights, abdicating them to Luba or abandoning an issue, but then complaining he does not like what Luba does or how she does it.

Conversely, the Court FINDS Luba refuses to obey court orders she does not like such as turning the child over to Enrique for his properly noticed and scheduled vacation, and rescheduling dental appointments without consulting Enrique. The Court FINDS Luba failed to take responsibility for her actions in withholding the child by continuously claiming it was not her intent to prevent the child from going on vacation with Enrique on March 15, 2023 when she willfully and intentionally refused to exchange the child.

The Court FINDS the parties are entrenched in their conflict and often engage in a mutual refusal to cooperate. However, under the specific testimony and evidence presented to the Court, the Court FINDS this factor favors Enrique.

f. The mental and physical health of the parents.

The Court FINDS neither party alleged Enrique has physical or mental health issues.

The Court FINDS neither party alleged Luba has physical health issues.

The Court FINDS credible Luba's testimony she was diagnosed with anxiety for which she was treated with medication and talk therapy for two (2) years. The Court FINDS Luba is not taking prescribed medication to treat any mental illness at this time. The Court further FINDS Luba testified she is self-treating her anxiety at this time with self-help books and using the tools she learned in therapy. The Court FINDS Luba has struggled using the tools she learned in therapy to avoid making poor decisions, as evidenced by Luba's intentional decisions to violate orders by withholding the child from Enrique on March 15, 2023 and changing the child's March 21, 2023 dental appointment, both of which occurred after Luba terminated therapy. However, the Court FINDS Luba has not violated the orders since March 21, 2023 demonstrating she is capable of using her therapeutic skill set when she chooses or when the matter is pending litigation. The Court is cognizant that Luba has been under the threat of losing custody of the child during this time period.

The Court FINDS this factor favors Enrique.

g. The physical, developmental, and emotional needs of the child.

The Court FINDS no evidence or testimony was presented to demonstrate that [redacted] age eight (8), is anything but a normal, healthy child meeting her developmental milestones.

To be able to have help, parents must be able to build and maintain stable and healthy relationships with the people around them. The Court FINDS Enrique has the support of his wife, Jennifer, parents, siblings, and the child's school to assist him with the child. The Court FINDS Luba has the support of her husband, mother, sister, and the child's school with the child.

The Court FINDS it was undisputed that Luba has attended all of the child's medical and dental appointments by herself because Enrique refuses to be in the same room with Luba due to her creating conflict by insulting him to the doctors and bringing her husband. Consequently, the Court FINDS Enrique generally ceded responsibility for scheduling the child's medical and dental appointments to Luba. The Court FINDS that, when Enrique took the initiative to schedule the child's dental appointment on March 21, 2023, Luba unilaterally rescheduled it to her custodial time.

The Court FINDS Luba unilaterally enrolled the child in online counseling through the child's school to help the child deal with her anxiety created by Luba being at school at the same time as Jennifer. The Court FINDS it undisputed Enrique only objected to the child engaging in online counseling because he felt she would have no privacy to express her true feelings. The Court FINDS Luba enrolled the child in online counseling over his objection rather than even looking for an in-person provider for the child. The Court FINDS Luba's blanket statement that, the counseling is the child's best interest, unpersuasive in light of her failure to consider the issue of the child having privacy in her counseling, which was the only issue Enrique raised with her.

The Court FINDS this factor nominally favors Enrique.

h. The nature of the relationship of the child with each parent.

The Court FINDS it was undisputed the child is bonded with Enrique.

The Court FINDS it was undisputed the child is bonded with Luba.

The Court FINDS this factor is neutral.

i. The ability of the child to maintain a relationship with any sibling.

The Court FINDS the child has a half-sister, [redacted] (age 4), born to Enrique and his wife.

The Court FINDS the child has a step-sister, [redacted] (age 8), who is Phil's child. The Court FINDS [redacted] and [redacted] have grown up together, are in the same grade, and attend extracurricular and family events together. The Court FINDS it undisputed the children share the same weekly timeshare at Luba's home where they share a bedroom.

The Court FINDS there was no dispute the child is bonded with both of her siblings.

The Court FINDS this factor is neutral.

j. Any history of parental abuse or neglect of the child or any sibling of the child.

The Court FINDS no evidence was presented to the Court demonstrating either party engaged in abuse or neglect of a child despite Enrique's [prior] allegations to the contrary.

The Court FINDS this factor does not apply.

k. Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the children, a parent of the children or any other person residing with the children.

The Court FINDS there is no evidence before the Court suggesting there is any history of domestic violence.

The Court FINDS this factor does not apply.

l. Whether either parent or any other person seeking physical custody of the child has committed an act of abduction against the child or any other child.

The Court FINDS Luba committed an act of abduction against the child pursuant to NRS

200.359(1) creating a rebuttable presumption that sole or joint physical custody or unsupervised contact with the child is not in the child's best interest.[33]

Luba's testimony and evidence in support of rebutting the presumption is addressed below.

ANALYSIS AND ORDERS

Modification of Custody

After the March 19, 2024 Day 1 Non-Jury Trial, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered.[34] The Court found Enrique met the relevant factors in NRS 125C.0035(7) regarding an act of withholding or abduction demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2023.[35] However, the Court FINDS Luba demonstrated her ability to provide daily care for the child, provide for the child's physical and emotional needs, and provide the child

---

[33] Id. at 3:14:14 – 3:15:26. NRS 200.359(1) provides as follows:

> "Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.
>
> 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:
>
> (a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child . . ."

[34] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

[35] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13.

with a safe home overcomes the presumption set forth in NRS125C.0035(7). Specifically, the Court FINDS that, Luba's withholding of the child for one (1) vacation period in March 2023 combined with credible evidence and testimony demonstrating her ability to provide daily care for the child, overcomes presumption Luba should not have sole or joint physical custody *and* supervised visitation only. The mandate set forth for violations of NRS 125C.0035(7) is particularly restrictive amounting to sole physical custody.[36] Notably, Enrique did move this Court for sole physical custody of the parties' child.

While Enrique cannot prevail on his request for Luba to have supervised contact only with the child, a visitation order which would be *required* pursuant to the NRS 125C.0035(7)[37] *mandate*, the Court FINDS Enrique nonetheless established a substantial change of circumstances affecting the child's welfare and in the child's best interest. Taking into account the evidence and testimony presented to it and the best interest factors set forth at NRS

---

[36] See e.g., Roe v. Roe, 139 Nev. Adv. Op. 21, 535 P.3d 274 (2023)(mandating findings supporting the restrictive sole physical custody order).

[37] NRS 125C.0035(7) states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

125C.0035(4), the Court FINDS it in the child's best interest to grant Enrique's request for primary physical custody. The Court places particular emphasis on Luba's actions which prevented Enrique from having frequent associations with the child, Luba's demonstrated unwillingness to co-parent with Enrique, her near constant actions leading to increased conflict and litigation in this matter and her demonstrated inability to meet the needs of the child by valuing conflict with Enrique over the child's best interests. Accordingly, the Court FINDS it in the child's best interest to GRANT Enrique's request for modification of custody to PRIMARY PHYSICAL CUSTODY.

Timeshare

The Court FINDS Enrique requested modification of the parties' timeshare to him being awarded three (3) consecutive weeks of custody with one (1) week to Luba. The Court FINDS is not persuaded (3) consecutive weeks of visitation with Enrique is in the best interest of the child in light of her established sibling relationships and stability in each household. The Court places value on the child's undisputed close bond with her sister, [redacted] in Luba's home.

Accordingly, the Court ORDERS Luba shall have specified visitation with the minor child from each FRIDAY after school or, 3PM if there is no school, until Mondays to school or, 9AM if there is no school every weekend EXCEPT the THIRD WEEKEND OF EACH MONTH which shall be Enrique's specified weekend. The parties' prior holiday/vacation timeshare SHALL remain status quo.

Child Support

The Court FINDS Luba's most recent Financial Disclosure Form (FDF) was filed March 14, 2024 wherein she indicated she was employed by Aria Casino as a cocktail server earning

$1,904.44 per month including tip income.[38] In support of her FDF, Luba included a March 3, 2024 paystub listing $4,699.86 year to date income. March 3, 2024 is eleven (11) weeks into 2024. Accordingly, the Court FINDS Luba's calculated gross monthly income is $1,851.46 ($4,699.86 year to date income / 11 weeks into 2024 = $427.26 per week X 52 weeks in a year = $22,217.52 annual income / 12 months in a year = $1,851.46 calculated gross monthly income).

Therefore, Luba's monthly child support obligation is $301.00, effective JANUARY 1, 2025 and due on the first of each month thereafter.

Dependent Tax Credit

As the primary physical custodian, Enrique SHALL be solely entitled to claim the party's minor child each and every tax year commencing 2025.

Request for Prosecution for Parental Abduction

The Court DENIES Enrique's request for referral for prosecution for parental abduction.

Attorney Fees and Costs

The Court DENIES Luba's request for award for attorney fees and costs.

The Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs. Enrique SHALL file and serve a Memorandum of Fees and Costs, to include redacted attorney-client invoices and Brunzell and Wilfong analyses not later than JANUARY 16, 2025. Luba shall have the time allotted from date of service to file and serve an Objection. The Court will not consider any new requests for relief in either pleading nor will it entertain a reply. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for award for attorney fees and costs. Decision on award for attorney

---

[38] See Luba's Financial Disclosure Form (filed March 14, 2024).

fees and costs shall be scheduled for FEBRUARY 19, 2025 (Chambers/NO appearances).

ORDER TO SHOW CAUSE

Count 1

Enrique alleged Luba knowingly and willingly violated the Stipulated Decree of Divorce at Exhibit 1, p.9, Article 9.3 (Marital Settlement Agreement) (filed December 8, 2021):

> "The parties' custodial schedule is described with sufficient particularity per NRS 125C.010. The parties agree that custodial [sic] shall take place as follows: The parties shall exercise a week on, week off scheduled [sic] with Husband having custody of the minor children every other week from Wednesday morning at 9:00 a.m. when school commences until the following Wednesday at 9:00 a.m., except when superseded by holiday, vacation or other special custody times, as more fully set forth below. The sending parent shall deliver the child to school on Wednesday, and the receiving parent shall pick the child up from school at the conclusion of the school day that say day, on Wednesday.
>
> Except where superseded by holiday, vacation, or other special holiday custody times, as more fully set forth below, in the event that there is no school on a Wednesday, the custody time shall be at 9:00 am at the Chevron gas station located at 10890 W. Charleston Blvd., [redacted] This shall also be the exchange point whenever a custody exchange is to be made somewhere someplace other than the child's school. When a custody exchange is made at the Chevron gas station located at 10890 W. Charleston Blvd., [redacted] the parties agree that neither shall approach the other's vehicle except insofar as is necessary to facilitate the exchange safely. Neither party shall attempt to engage the other in conversation, but shall simply see that the child gets to the receiving parent's vehicle safely and leave."

THE COURT FINDS the order set forth in the December 8, 2021 Decree of Divorce at p.9, Exhibit 1, Article 9.3 was clear and unambiguous as required by Nevada law.[39]

THE COURT FURTHER FINDS Enrique presented clear and convincing evidence to this Court in support of a finding of contempt as to the September 25, 2023 Order to Show Cause.

---

[39] See Cunningham v. Eighth Jud. Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986).

THE COURT FURTHER FINDS, pursuant to Nevada law, this Court has inherent power to enforce its orders and decrees through contempt proceedings pending appeal.[40]

THE COURT FURTHER FINDS, with respect to the September 25, 2023 Order to Show Cause, Luba has NOT shown adequate cause why she should NOT be held in contempt and FINDS LUBA IS IN CONTEMPT AND HAS WILLFULLY VIOLATED SPECIFIC AND CLEAR OBLIGATIONS SET FORTH in the Decree of Divorce at p.9, Article 9.3; to wit: the Court FINDS the testimony of the parties clearly and convincingly established Luba exchange the child on Wednesday, March 15, 2023 at 9:00 AM at the Chevron station as ordered. The Court FINDS Luba testified she was still in her attorney Ben Childs' office the morning of March 15, 2023 when she decided she would not exchange the child with Enrique for his scheduled visitation.

The Court FINDS Enrique credibly established through his testimony he suffered harm in the form of not being able to enjoy the March 15, 2023 vacation to Mexico because he was not able to take the child to visit his family as planned, and he spent the vacation preparing litigation documents related to the withholding.

The Court FINDS Enrique credibly established a need to hold Luba in contempt through his testimony Luba interfered with his scheduled vacations to Mexico in 2021 and 2022 by either refusing to produce the child or by demanding to have information Enrique could not reasonably provide.

//

---

[40] See Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970) and Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

Count 2

Enrique alleged Luba knowingly and willingly violated the Stipulated Decree of Divorce at Exhibit 1, p.8, Articles 9.1, (Marital Settlement Agreement) (filed December 8, 2021):

> "The parties shall confer with each other on all important matters pertaining to the children's health, welfare, education, religious training and upbringing to arrive at a harmonious policy to promote the child's best interest, and not to promote the personal desires of either party.
>
> The parents shall confer with each other on all matters regarding the children's health care, including but not limited to medical, dental, orthodontic, surgical, optical, or psychological, and shall immediately inform the other parent of any health conditions of the children except in emergency situations when prior consultations are not possible."

THE COURT FINDS the order set forth in the Stipulated Decree of Divorce at Exhibit 1, p.8, Articles 9.1 was clear and unambiguous as required by Nevada law.[41]

THE COURT FURTHER FINDS Enrique presented clear and convincing evidence to this Court in support of a finding of criminal contempt as to the September 25, 2023 Order to Show Cause.

THE COURT FURTHER FINDS, pursuant to Nevada law, this Court has inherent power to enforce its orders and decrees through contempt proceedings pending appeal.[42]

THE COURT FURTHER FINDS, with respect to the September 25, 2023 Order to Show Cause, Luba has NOT shown adequate cause why she should NOT be held in contempt and FINDS LUBA IS IN CONTEMPT AND HAS WILLFULLY VIOLATED SPECIFIC AND CLEAR OBLIGATIONS SET FORTH in the Stipulated Decree of Divorce at Exhibit 1, p.8,

---

[41] See Cunningham v. Eighth Jud. Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986).

[42] See Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970) and Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

Articles 9.1; to wit: the Court FINDS the testimony of the parties clearly and convincingly established Luba failed to consult with Enrique before changing the child's March 21, 2023 dental appointment to March 24, 2024.

The Court FINDS Enrique testified he scheduled the child's dental appointment to occur on March 21, 2023 and provided notice to Luba on Talking Parents application. The Court FINDS Luba testified she rescheduled the appointment from March 21, 2023 to March 24, 2023 without discussing the matter with Enrique. The Court FINDS Luba testified after she rescheduled the appointment, she notified Enrique of the change on Talking Parents, which she considers discussing it with him. The Court does NOT FIND CREDIBLE Luba's testimony she believes she is conferring with Enrique under the order if she moves the appointment first and notifies Enrique afterward.

The Court FINDS Enrique credibly established through his testimony he suffered harm in the form of not being able make appointments for the child because Luba changes them, causing conflict he seeks to avoid. The Court FINDS Enrique credibly established through his testimony the need for contempt due to Luba failing to confer with him so as to promote the child's best interest.

BASED ON THE FOREGOING, the Court ORDERS Luba SHALL pay $500 as for sanction of EACH violation of the September 23, 2023 Order to Show Cause – Counts 1 and 2 or, a total of $1,000 ($500 x 2 sustained counts of contempt = $1,000 total).

PURGE CLAUSE: In the event Luba strictly abides by the vacation orders and joint legal custody orders for a period of twelve (12) months, the Court SHALL PURGE the financial sanctions.

//

ORDERS

NOW THEREFORE, based on upon the foregoing *Findings of Fact and Conclusions of Law* and, good cause appearing:

IT IS HEREBY ORDERED that the parties shall continue to share JOINT LEGAL CUSTODY of the minor child.

IT IS FURTHER ORDERED that Enrique's request to modify custody is GRANTED and Enrique SHALL have PRIMARY PHYSICAL CUSTODY of the parties' minor child.

IT IS FURTHER ORDERED that Luba shall have specified visitation with the minor child from each FRIDAY after school or, 3PM if there is no school, until Mondays to school or, 9AM if there is no school every weekend EXCEPT the THIRD WEEKEND OF EACH MONTH which shall be Enrique's specified weekend.

IT IS FURTHER ORDERED that the parties' prior holiday/vacation timeshare SHALL remain status quo.

IT IS FURTHER ORDERED that Luba SHALL pay $301.00 per month child support, effective JANUARY 1, 2025 and due on the first of each month thereafter.

IT IS FURTHER ORDERED that Enrique SHALL be solely entitled to claim the minor child for federal tax purposes each year commencing 2025.

IT IS FURTHER ORDERED that Enrique's request for this matter to be referred for prosecution for parental abduction is DENIED.

IT IS FURTHER ORDERED that the Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs. Enrique SHALL file and serve a Memorandum of Fees and Costs, to include redacted attorney-client invoices and Brunzell and Wilfong analyses not later than JANUARY 16, 2025. Luba shall have the time allotted from date of service to file and

serve an Objection. The Court will not consider any new requests for relief in either pleading nor will it entertain a reply. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for award for attorney fees and costs. Decision on award for attorney fees and costs shall be scheduled for FEBRUARY 19, 2025 (Chambers/NO appearances).

IT IS FURTHER ORDERED that Enrique clearly and convincingly established evidence in support of Counts 1 and 2 of the September 25, 2023 Order to Show Cause re: contempt.

IT IS FURTHER ORDERED that Luba SHALL as for financial sanction for the September 25, 2023 Order to Show Cause, Luba shall pay $500 per count or, a total of $1,000. **PURGE CLAUSE**: In the event Luba strictly abides by the vacation orders and joint legal custody orders for a period of twelve (12) months, the Court SHALL PURGE the $1,000 sanction.

IT IS FURTHER ORDERED that, all other orders not addressed herein SHALL remain status quo.

MANDATORY STATUTORY NOTICES

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that the parties are subject to the relocation requirements of NRS 125C.006 & NRS 125C.0065. If joint or primary physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating: (a) attempt to obtain the written consent of the non-relocating parent to relocate with the child; and (b) if the non-relocating parent refuses to give that consent, petition the court for permission to move and/or for primary physical custody for the purpose of relocating. A parent who desires to relocate with a child has the burden of proving that relocating with the child is in the best interest of the child. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child without having reasonable grounds for such refusal, or for the purpose of harassing the relocating parent. A parent who relocates with a child pursuant to this section without the written consent of the other parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.010 through 31A.350, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that pursuant to NAC 425.165 and NRS 425.620, if the order pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child, and if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form, which can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

APPEAL NOTICE

The parties are noticed s/he has thirty (30) days from Notice of Entry of this Order to file any appeal with the Nevada Supreme Court. See NRAP 4(a)(1). The time to file a Notice of Appeal may not be extended by stipulation. Certain motions filed in this Court may impact the timing of a Notice of Appeal. See NRAP 4(a)(4)(A) – (D).

Dated this 2nd day of January, 2025

HEIDI ALMASE
District Court Judge

409 EFB E3AF A44D
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

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 Judgment 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: 1/2/2025

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 1/3/2025

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
04/11/2025 3:10 PM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, VS. ENRIQUE IVAN VELZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X

ORDER DENYING PLAINTIFF'S JANUARY 21, 2025 MOTION FOR RECONSIDERATION
AND
GRANTING DEFENDANT'S JANUARY 30, 2025 COUNTERMOTION
AND
RESOLVING APRIL 9, 2025 CHAMBERS MATTER

This matter was scheduled for April 1, 2025 hearing on Plaintiff Luba (Luba) Gonzalez's January 21, 2025 Motion for Reconsideration; Defendant's Enrique (Enrique) Velazquez-Gonzalez's January 30, 2025 Opposition and Countermotion for an Award of Attorney's Fees; and Luba's February 20, 2025 Reply to Opposition and Opposition to Enrique's Countermotion. Luba is represented by her attorney of record, Emily McFarling; Enrique is represented by his attorney of record, Melvin Grimes.

On March 27, 2025, this Court issued Minutes placing decision on the pending matters on its April 9, 2025 Chambers (NO appearance) calendar. Therefore, this Court further exercises discretion granted it pursuant to EDCR 5.702(a) to decide this matter without recourse to oral argument. Accordingly, this written order RESOLVES the April 9, 2025 Chambers matter.

//

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] Gonzalez, born [redacted] (current age 8 years). The parties currently share JOINT LEGAL CUSTODY.[1] Enrique was awarded PRIMARY PHYSICAL CUSTODY with Luba's regular visitation the first, second, fourth, and fifth weekends of each month from Friday after school or, 3:00 PM if no school, to Monday to school or, 9:00 AM if no school.[2] The parties previously agreed to each parent having up to seven (7) days of specified vacation with the child per year with no less than thirty (30) days advance written notice.[3] The parties further stipulated to receipt of a written itinerary for travel with the child outside of Nevada to be provided to the other parent no later than fourteen (14) days prior to the trip.[4] An appropriate itinerary was stipulated to state all flights the child would take, the address where the child would stay each night of the trip, including hotel name if applicable and an emergency phone number for the child.[5] If border crossings took place on foot, the itinerary was ordered to include the dates of the border crossings.[6]

---

[1] See Stipulated Decree of Divorce at Exhibit 1, pp.8-9, Articles 9.1, 9.2, and 9.3 (Marital Settlement Agreement) (filed December 8, 2021).

[2] See Findings of Fact, Conclusions of Law, and Orders (Post-Judgment) at p.37, ll.7-13 (filed January 2, 2025).

[3] See Stipulated Decree of Divorce at p.12, Article 9.5.

[4] Id. at pp. 12-13, Article 9.5.1.

[5] Id.

[6] Id.

Luba's child support obligation is $301 per month effective January 1, 2025.[7] Enrique was granted leave to claim the child for federal tax purposes each year beginning 2025.[8] The Court declined Enrique's request to refer this matter for prosecution for parental abduction.[9]

STANDARD OF REVIEW: TIMELINESS OF MOTION FOR RECONSIDERATION

On January 21, 2025, Luba filed her Motion for Reconsideration fourteen (14) days from service of the January 7, 2025 Notice of Entry of Order Findings of Fact, Conclusions of Law, and Order (Post-Judgment). EDCR 5.516(a) requires a motion for reconsideration be filed "within 14 calendar days after service of notice of entry of order". In this case, the Court FINDS Luba timely filed her January 21, 2025 Motion for Reconsideration.

STANDARD OF REVIEW: SUBSTANTIVE MERITS

Motions for reconsideration are not procedural vehicles to express discontent or to obtain a 'second bite at the apple'. Though, often without consideration for the standard of review for which motions for reconsideration are based, such motions are, with increasing frequency, filed.

Motions for reconsideration must request a substantive alteration of a judgment and "not merely the correction of a clerical error, or relief of a type wholly collateral to the judgment," and may include newly discovered or previously unavailable evidence.[10] "A district court may

---

[7] See Findings of Fact, Conclusions of Law, and Orders (Post-Judgment) at p.37, ll.17-18 (filed January 2, 2025).

[8] Id. at p.37, ll.17-18.

[9] Id. at p.37, ll.22-23.

[10] See *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585-89, 245 P.3d 1190, 1195-97 (2010) and *Saticoy Bay, LLC, Series 34 Innisbrook v. Thornburg Mortgage Securities Trust 2007-3*, 138 Nev. 335, 343-44, 510 P.3d 139, 146 (2022).

reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."[11] The Nevada Supreme Court has concluded a decision is "clearly erroneous" where: 1) there exist material errors in the proceedings or a mistake in law; 2) the judicial order is unsupported by any substantial evidence; or 3) the judicial order is against the clear weight of evidence.[12] In addition, United States v. United States Gypsum Co.,[13] states: "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

To meet the "substantially different evidence" prong, it is insufficient to merely raise additional facts or law; rather, the new facts or law must "support[ ] a ruling contrary to the ruling already reached."[14] To meet the "clearly erroneous" prong, the district court must be "left with [a] definite and firm conviction that a mistake has been committed."[15]

---

[11] *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); see also *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)("Only in very instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.").

[12] *Russell v. Thompson*, 96 Nev. 830, 834, 619 P.2d 537, 539 (1980). See also 9 Wright and Miller, *Federal Practice and Procedures*; Civil Sec. 2605, and cases cited therein.

[13] 333 U.S. 364, 395, 68 S.Ct. 525, 542 (1948).

[14] *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

[15] *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

ARGUMENT

In her motion, Luba requested reconsideration of the order modifying custody to primary physical custody to Enrique on the basis her act of detaining the child on March 15, 2023 which she contends should not have been considered abduction. Luba asserted abduction is a criminal matter. Because she was never criminally prosecuted, Luba argued she should be found to have committed an act of abduction by clear and convincing evidence pursuant to NRS 125C.0035(7).[16] Luba further requested reconsideration of the Court's order on the basis the Court did not find there was a substantial change of circumstances warranting modification of custody. Luba additionally argued modification of custody is not in the child's best interest, violated Luba's constitutional rights and occurred because the case is tainted by the prior judge's bias. Last, Luba further requested reconsideration of both counts of contempt.

In his Opposition, Enrique requested the Court deny Luba's request for reconsideration of the orders modifying custody on the basis Luba was properly found to have committed an act of

---

[16] **NRS 125C.0035(7)** states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

abduction by clear and convincing evidence pursuant to NRS 125C.0035(7).[17] Enrique emphasized the Court found he established a substantial change of circumstances affecting the child's welfare and modification was in the child's best interest. Enrique argued Luba's due process rights were not denied by her as a consequence of no criminal trial on the issue of abduction because NRS 125C.0035(7) does not require criminal prosecution. Enrique contended the case was not tainted by the bias of the prior judge. Rather, Enrique argued Luba dislikes the orders because they hold her accountable for her refusal to obey court orders. Last, Enrique opposed reconsideration of the orders holding Luba in contempt for violating the Decree of Divorce.

ANALYSIS AND ORDER

1. Luba's Request for Reconsideration for Modification of Custody: Abduction.

Luba requested reconsideration of the preliminary finding she engaged in the single March 15, 2023 act of unlawful detaining the minor child in violation of NRS 125C.0035(7) by withholding the vacation timeshare owed to Enrique. Luba argued the ground for reconsideration is that her actions were a minor civil custody withholding, not a criminal abduction as defined by NRS 200.359. Luba stated she must be afforded all criminal due process rights before the Court imposes criminal-like penalties, such as modification of custody.

In his Opposition, Enrique argued Luba the Court declined to refer her for criminal prosecution. Instead, the Court proceeded with the civil matter finding, by clear and convincing evidence at an evidentiary proceeding, that Luba committed an act of abduction as defined by

---

[17] Id.

NRS 200.359(1).[18] Enrique further argued NRS 125C.0035(7) does not require a criminal conviction, admission or no contest plea to criminal abduction to establish an abduction as defined by NRS 200.359(1). Enrique also asserted Luba's act of abducting the child was not found to qualify as a safety exception under NRS 200.359(11), i.e., as an act of protecting the child from abuse or neglect.[19]

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489

---

[18] **NRS 200.359** Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

[19] **NRS 200.359(11) This section does not apply to a person who detains, conceals, removes or relocates with a child to protect the c**hild from the imminent danger of abuse or neglect or to protect himself or herself from imminent physical harm, and reported the detention, concealment, removal or relocation to a law enforcement agency or an agency which provides child welfare services within 24 hours after detaining, concealing, removing or relocating with the child, or as soon as the circumstances allowed. As used in this subsection:

(a) "Abuse or neglect" has the meaning ascribed to it in paragraph (a) of subsection 4 of NRS 200.508.

(b) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(1997).

The Court FINDS Luba did not demonstrate she discovered new facts or law that would support a ruling contrary to the Court's preliminary finding of a rebuttable presumption Luba committed an abduction pursuant to NRS 125C.0035(7).

The Court further FINDS Luba did not provide newly discovered evidence to support her request for reconsideration.[20] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law and Orders (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law and Orders (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

2. Luba's Request for Reconsideration for Modification of Custody: Rebutted Presumption

Luba requested reconsideration of modification of custody on the basis she was found to have rebutted the presumption against her having sole or joint custody due to her committing an act of abduction. Luba argued the Court punished her by awarding Enrique primary physical custody without adequate cause despite Luba overcoming the presumption.

In his Opposition, Enrique opposed Luba's request on the basis her overcoming the presumption merely lifted the requirement for Luba to have *only* supervised visitation with the child. Enrique further asserted the Court made specific findings regarding the best interest of the child in support of modification of custody.

---

[20] *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

In her Reply, Luba argued that, because the Court did not refer her for criminal prosecution, none of the relevant factors to establish the statutory presumption were met. As a result, Luba argued there was no change of circumstances sufficient to warrant modification of custody.

The Court FINDS Luba did not demonstrate she discovered new facts or law that would support a ruling contrary to the Court's finding of a rebuttable presumption Luba committed an abduction pursuant to NRS 125C.0035(7). The Court further FINDS Luba did not provide newly discovered evidence to support her request for reconsideration.[21] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

3. Luba's Request for Reconsideration for Modification of Custody: Stability and Consistency

Luba requested reconsideration of the Court's Order on the basis the child was "thriving" under the prior joint physical custody orders.[22] Luba argued the award of primary custody to Enrique was not beneficial to the child because it was disruptive and only served to punish Luba for withholding the child from Enrique one time. Luba further maintained the act of withholding the child was not harmful to the child.

---

[21] *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

[22] See Plaintiff's Notice of Motion and Motion to Reconsider at p.14, ll.1 (filed January 21, 2025).

In his Opposition, Enrique opposed Luba's request on this ground on the basis the child was not "thriving", as evidenced by Luba enrolling the child in counseling during her custody timeshare. Enrique also argued the Court make specific findings there was: (1) a substantial change of circumstances affecting the welfare of the child; and (2) modification would serve the child's best interest.

In her Reply, Luba reiterated she was not criminally prosecuted for abduction and her belief modification of custody based on her withholding the child one time was punitive.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). The Court FINDS there is not finding the child was "thriving" under the joint physical custody timeshare. To the contrary, the Court FOUND Luba unilaterally enrolled the child in online counseling over Enrique's objection to help the child deal with anxiety created by Luba being at school at the same time as Jennifer [the child's stepmother, who is employed at the school.][23] The Court FURTHER FINDS there are specific findings that Enrique established a substantial change of circumstances affecting the child's welfare and in the child's best interest.[24] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact,

---

[23] See Findings of Fact, Conclusions of Law, and Order (Post-Judgment) at p.27, ll.22-27 (filed January 2, 2025).

[24] Id. at pp.30-31, ll.9-10.

Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

4. Luba's Request for Reconsideration of Modification of Custody: Best Interest

Next, Luba requested reconsideration of the Order modifying custody on the basis "the Court found that [redacted] is thriving under joint custody and that Enrique prioritizes legal disputes over [redacted] needs."[25] Luba also asserted the ORder "notably omits" any mention of the child's allergies, which was crucial to Enrique's case.[26] Luba contended the Court wrongfully used modification of custody to punish her for her misconduct of withholding the child from Enrique.[27] Luba argued it is not in the child's best interest to award Enrique primary custody because Enrique is focused on conflict.

In his Opposition, Enrique opposed Luba's request on this ground on the basis the Court did not find the child was "thriving" under joint physical custody. Further, Enrique argued it was Luba, not him, who filed numerous repetitive motions. Enrique asserted the child's allergy issue was addressed at trial. Enrique argued the best interest of the child factors were addressed in the January 2, 2025 Findings of Fact, Conclusions of Law, and Order, and not one of them favored Luba.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile

---

[25] See Plaintiff's Notice of Motion and Motion to Reconsider at p.14, ll.13-14 (filed January 21, 2025).

[26] Id. at p.14, ll.15-16.

[27] *Sims v. Sims*, 109 Nev. 1146, 1148-19, 865 P.2d 328, 330 (1993).

Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

The Court FINDS there are no findings the child was "thriving" under the joint physical custody orders. The Court FINDS Luba failed to fully and accurately state the Court's findings related to the ability of the parents to cooperate to meet the needs of the child, a factor the Court found ultimately favored Enrique.[28] The Court FINDS modification of custody was based on the totality of testimony and evidence before the Court after a full and thorough evidentiary hearing. The Court FINDS Luba failed to provide facts or evidence demonstrating the findings of fact, conclusions of law, and orders are punitive. The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

5. Luba's Request for Reconsideration of Modification of Custody: No Substantial Change of Circumstances

Luba requested reconsideration of Court's Order modifying custody on the basis Enrique failed to demonstrate a substantial change of circumstances or a sufficient basis to modify custody. Luba further reiterated her argument a single act of civil withholding did not constitute

[28] See Findings of Fact, Conclusions of Law, and Order (Post-Judgment) at pp.25-26 (filed January 2, 2025).

an act of abduction pursuant to NRS 200.359.[29] Specifically, Luba argued her act of withholding the child from Enrique was misrepresented as a criminal abduction under NRS 200.359.[30]

Enrique opposed Luba's request on the basis he pled the March 15, 2023 kidnapping by Luba was a substantial change of circumstances. Enrique stated the Court determined Luba's March 15, 2023 abduction coupled with her other conduct created a substantial change of circumstances.

In her Reply, Luba reiterated the arguments in her motion.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

//

//

---

[29] **NRS 200.359** Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

[30] Id.

The Court FINDS there are specific findings that Enrique established a substantial change of circumstances affecting the child's welfare and in the child's best interest.[31] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

6. Luba's Request for Reconsideration of Modification of Custody: Constitutional Rights Violations

Luba requested reconsideration of the Court's Order modifying custody on the basis she was not subject to a criminal proceeding pursuant to NRS 125C.0035(7)[32] to determine by clear

---

[31] Id. at pp.30-31, ll.9-10.

[32] **NRS 125C.0035(7)** states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

and convincing evidence whether she committed an abduction. Specifically, Luba contended NRS 125C.0035(7) is vague and ambiguous and was exploited to infringe on Luba's constitutional due process and parenting rights.

In his Opposition, Enrique requested the Court deny Luba's request on this ground on the basis she was found to have committed civil abduction as defined by the criminal statute. Enrique asserted Luba did not suffer the criminal penalty of a felony conviction but, rather, the presumption she was not fit to have joint or sole custody of the child. Enrique argued Luba conflated the two statutes throughout her motion.

In her Reply, Luba reiterated her argument.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

7. Luba's Request for Reconsideration of Modification of Custody: Relocation

Luba requested reconsideration of the Court's Order modifying custody on the basis Enrique may now wrongfully to petition to relocate to Mexico with the child.

In his Opposition, Enrique requested the Court deny reconsideration on this ground because he has no interest in relocating to Mexico as he and his wife are firmly established in

Las Vegas with jobs and a home they own. Enrique further argued Luba failed to cite any legal points and authorities in support of her claim on this ground.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial; "[p]oints and authorities lacking citation to relevant authority, or consisting of bare citations to statutes, rules, or case authority, do not comply with this rule."

The Court FINDS Luba did not provide points and authorities in support of her request. Therefore, the Court DENIES Luba's request for reconsideration on this ground as legally deficient pursuant to EDCR 5.503(a).

8. Luba's Request for Reconsideration of Modification of Custody: Prior Judge's Bias

Luba requested the reconsideration the Court's Order modifying custody on the basis the prior judge voluntarily disqualified itself for bias. Luba argued the prior judge's bias tainted the entire case against her. Luba argued the only correction would be for this Court to explicitly reject the prior judge's bias and reverse the order modifying custody to award Enrique primary physical custody.

In his Opposition, Enrique opposed Luba's request on the basis the prior judicial officer was not disqualified, an involuntarily process, but rather voluntarily recused herself for bias against Luba.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741,

941 P.2d 486, 489 (1997).

The Court FINDS this case was reassigned to Department X on May 19, 2022.[33] The Court FINDS Luba never filed a motion for disqualification claiming the Court was biased against her. The Court FINDS Luba is entitled to file a motion for disqualification at any time if she believes it appropriate. However, the Court FINDS Luba failed to provide a legal basis for this Court to review or address a prior judicial officer's recusal or orders. If Luba were concerned about bias in prior orders from the prior judicial officer, her remedy was to seek review of the voluntary determination of bias which resulted in the May 19, 2022 Reassignment. The Court FINDS Luba's argument to be untimely, spurious, and disingenuous in light of the order for modification of custody and, further, unsupported by any legal basis. Accordingly, the Court DENIES Luba's request to reconsider modification of custody on this ground.

9. Luba's Request for Reconsideration of Contempt Finding for Withholding Child

Luba requested reconsideration of the Court's Order finding her in civil contempt for violating the Decree of Divorce for failing to exchange the child on March 15, 2023 as ordered. Luba reiterated her factual arguments from trial regarding the reasons for her actions.

Enrique opposed Luba's request on the basis Luba misstated the full testimony and record at trial. In her Reply, Luba reiterated her motion.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

---

[33] See Notice of Department Reassignment (filed May 19, 2022).

The Court FINDS Luba failed to present substantially new evidence. The Court FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground and AFFIRMS the civil contempt finding.

10. Luba's Request for Reconsideration of Contempt for Rescheduling Dental Appointment

Luba requested reconsideration of the Court's Order finding her in civil contempt for rescheduling the March 21, 2023 dental appointment on the basis the Court previously found Luba acted appropriately on this matter in the June 13, 2023 Order under the parallel parenting plan and denied Enrique's motion to modify custody.[34]

Enrique opposed Luba's request on the basis she did not oppose the Order to Show Cause at trial and waived the issue. In her Reply, Luba reiterated her motion.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

The Court FINDS the March 20, 2023 Order to Show Cause contained the relevant orders related to Luba's violation of orders related to the March 21, 2023 dental appointment. The

---

[34] Citing Order Resolving All Pending Motions et al. at p.18, ll.5-11 (filed June 13, 2023).

Order to Show Cause was issued March 20, 2023 prior to the April 6, 2023 hearing on Enrique's March 20, 2023 Emergency Motion for Return of Child, for an Order to Show Cause, et al.

The Court FINDS Luba failed to present substantially new evidence. The Court FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground and AFFIRMS the civil contempt finding.

11. Luba's Request for Reconsideration of Child Support and Child Tax Credit

Luba requested reconsideration of the Court's Order related to child support and assignment of the child tax credit comporting with her request to reconsider the custody modification order. Enrique opposed Luba's requests.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial. All motions and oppositions involving payment of money by a party must be supported by a Financial Disclosure Form (FDF) or an assertion in the motion or opposition there is no material change to the FDF filed within the prior 6 months.[35] Failure to file a timely, complete, and accurate supporting FDF may be construed as an admission the positions asserted are not meritorious and grounds for adverse rulings and basis for sanctions

[35] See EDCR 5.507(d) and EDCR 5.507(f)

pursuant to EDCR 5.507(g).

Notwithstanding the Court's denial of Luba's requests for reconsideration, the Court FINDS Luba did not file a FDF in support of her request, the last FDF Luba filed in this case was on March 14, 2024 which is more than six months prior to her January 21, 2025 motion, and provide points and authorities in support of her request. Therefore, the Court DENIES Luba's request as legally deficient pursuant to EDCR 5.503(a).

12. Luba's Request for Reconsideration of the Award of Attorney Fees to Enrique

Luba requested reconsideration of the Court Order awarding attorney fees to Enrique and denial of her request for attorney fees. Enrique opposed Luba's request.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial. All motions and oppositions involving payment of money by a party must be supported by a Financial Disclosure Form (FDF) or an assertion in the motion or opposition there is no material change to the FDF filed within the prior 6 months.[36] Failure to file a timely, complete, and accurate supporting FDF may be construed as an admission the positions asserted are not meritorious and grounds for adverse rulings and basis for sanctions pursuant to EDCR 5.507(g).

The Court FINDS Luba did not file a FDF in support of her request, the last FDF Luba filed in this case was on March 14, 2024 which is more than six months prior to her January 21, 2025 motion, and provide points and authorities in support of her request. Therefore, the Court DENIES Luba's request as legally deficient pursuant to EDCR 5.503(a).

---

[36] See EDCR 5.507(d) and EDCR 5.507(f)

Enrique's Countermotion for Award for Attorney Fees and Costs

Enrique requested award for attorney fees and costs pursuant to NRS 18.010(2)(b) and EDCR 5.219.[37] Luba opposed Enrique's request.[38] The Court FINDS Luba's plea for relief multiplied the costs of litigation without just cause and did so unreasonably and vexatiously.[39] Specifically, the Court FINDS Luba significantly misstated the Order of the Court in her motion. Therefore, good cause appearing, the Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs.

ACCORDINGLY, THE COURT ORDERS:

1. The Court DENIES Luba's request for reconsideration in its entirety.

---

[37] EDCR 5.219, Sanctionable Conduct, provides as follows:

> Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct, including, but not limited to:
>
> (a) Presenting a position that is obviously frivolous, unnecessary, or unwarranted;
>
> (b) Multiplying the proceedings in a case so as to increase costs unreasonably and vexatiously;
>
> (c) Failing to prepare for a proceeding;
>
> (d) Failing to appear for a proceeding;
>
> (e) Failing or refusing to comply with these rules; or
>
> (f) Failing or refusing to comply with any order or directive of the court.

[38] See EDCR 5.503(b) which provides the "Failure of an opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent that it be granted."

[39] See *Roe v. Roe*, 139 Nev. Adv. Op. __, *35-36, ___ P.3d. ___, ___ (2023).

2. The Court *preliminarily* GRANTS Enrique's countermotion for award for attorney fees and pursuant to NRS 18.010(2)(b), EDCR 5.219 and 5.503(b). The Court ORDERS Enrique shall file and serve a Memorandum of Fees and Costs to include Brunzell[40] and Wilfong[41] analyses as well as attorney-client invoices not later than April 30, 2025. Luba shall have fourteen (14) days to file any Objection. The Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or the Objection, if filed. The Court will not consider any pleading beyond the Memorandum of Fees and Costs and Objection, if filed, related to award for attorney fees and costs. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for attorney fees and costs. Regarding the mandatory Wilfong analysis, Enrique shall be required to provide averment(s) related to Luba's income. The failure to provide one party's income may defeat any award for attorney fees and costs where the Nevada Supreme Court has mandated analysis of a party's ability to pay any discretionary award for attorney fees and costs. Decision on award for attorney fees and costs SHALL be scheduled for May 14, 2025 (Chambers/ NO appearances).

Dated this 11th day of April, 2025

HEIDI ALMASE
District Court Judge

6EF 9E0 5E4A 1848
Heidi Almase
District Court Judge

[40] *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

[41] *Miller v. Wilfong*, 121 Nev.619, 623, 119 P.3d 727, 730 (2005)(citing Wright v. Osburn, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)).

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 4/11/2025

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/14/2025

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

Electronically Filed
4/14/2025 10:46 AM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	Case No.: D-18-575860-D Department X

NOTICE OF ENTRY OF ORDER

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on April 11, 2025, a true and correct copy of which is attached hereto.

Dated this 14th day of April, 2025.

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamped date:

☒ E-Served pursuant to NEFCR 9 on April 14, 2025, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Emily M McFarling, ESQ
Melvin Grimes

☐ I mailed, via first-class mail, postage fully prepaid, the foregoing NOTICE OF ENTRY OF ORDER to:

/s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant to the
HONORABLE HEIDI ALMASE

HEIDI ALMASE
DISTRICT JUDGE

Electronically Filed
04/11/2025 3:10 PM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, Plaintiff, VS. ENRIQUE IVAN VELZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X

ORDER DENYING PLAINTIFF'S JANUARY 21, 2025 MOTION FOR RECONSIDERATION
AND
GRANTING DEFENDANT'S JANUARY 30, 2025 COUNTERMOTION
AND
RESOLVING APRIL 9, 2025 CHAMBERS MATTER

This matter was scheduled for April 1, 2025 hearing on Plaintiff Luba (Luba) Gonzalez's January 21, 2025 Motion for Reconsideration; Defendant's Enrique (Enrique) Velazquez-Gonzalez's January 30, 2025 Opposition and Countermotion for an Award of Attorney's Fees; and Luba's February 20, 2025 Reply to Opposition and Opposition to Enrique's Countermotion. Luba is represented by her attorney of record, Emily McFarling; Enrique is represented by his attorney of record, Melvin Grimes.

On March 27, 2025, this Court issued Minutes placing decision on the pending matters on its April 9, 2025 Chambers (NO appearance) calendar. Therefore, this Court further exercises discretion granted it pursuant to EDCR 5.702(a) to decide this matter without recourse to oral argument. Accordingly, this written order RESOLVES the April 9, 2025 Chambers matter.

//

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] Gonzalez, born [redacted] (current age 8 years). The parties currently share JOINT LEGAL CUSTODY.[1] Enrique was awarded PRIMARY PHYSICAL CUSTODY with Luba's regular visitation the first, second, fourth, and fifth weekends of each month from Friday after school or, 3:00 PM if no school, to Monday to school or, 9:00 AM if no school.[2] The parties previously agreed to each parent having up to seven (7) days of specified vacation with the child per year with no less than thirty (30) days advance written notice.[3] The parties further stipulated to receipt of a written itinerary for travel with the child outside of Nevada to be provided to the other parent no later than fourteen (14) days prior to the trip.[4] An appropriate itinerary was stipulated to state all flights the child would take, the address where the child would stay each night of the trip, including hotel name if applicable and an emergency phone number for the child.[5] If border crossings took place on foot, the itinerary was ordered to include the dates of the border crossings.[6]

---

[1] See Stipulated Decree of Divorce at Exhibit 1, pp.8-9, Articles 9.1, 9.2, and 9.3 (Marital Settlement Agreement) (filed December 8, 2021).

[2] See Findings of Fact, Conclusions of Law, and Orders (Post-Judgment) at p.37, ll.7-13 (filed January 2, 2025).

[3] See Stipulated Decree of Divorce at p.12, Article 9.5.

[4] Id. at pp. 12-13, Article 9.5.1.

[5] Id.

[6] Id.

Luba's child support obligation is $301 per month effective January 1, 2025.[7] Enrique was granted leave to claim the child for federal tax purposes each year beginning 2025.[8] The Court declined Enrique's request to refer this matter for prosecution for parental abduction.[9]

STANDARD OF REVIEW: TIMELINESS OF MOTION FOR RECONSIDERATION

On January 21, 2025, Luba filed her Motion for Reconsideration fourteen (14) days from service of the January 7, 2025 Notice of Entry of Order Findings of Fact, Conclusions of Law, and Order (Post-Judgment). EDCR 5.516(a) requires a motion for reconsideration be filed "within 14 calendar days after service of notice of entry of order". In this case, the Court FINDS Luba timely filed her January 21, 2025 Motion for Reconsideration.

STANDARD OF REVIEW: SUBSTANTIVE MERITS

Motions for reconsideration are not procedural vehicles to express discontent or to obtain a 'second bite at the apple'. Though, often without consideration for the standard of review for which motions for reconsideration are based, such motions are, with increasing frequency, filed.

Motions for reconsideration must request a substantive alteration of a judgment and "not merely the correction of a clerical error, or relief of a type wholly collateral to the judgment," and may include newly discovered or previously unavailable evidence.[10] "A district court may

---

[7] See Findings of Fact, Conclusions of Law, and Orders (Post-Judgment) at p.37, ll.17-18 (filed January 2, 2025).

[8] Id. at p.37, ll.17-18.

[9] Id. at p.37, ll.22-23.

[10] See *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585-89, 245 P.3d 1190, 1195-97 (2010) and *Saticoy Bay, LLC, Series 34 Innisbrook v. Thornburg Mortgage Securities Trust 2007-3*, 138 Nev. 335, 343-44, 510 P.3d 139, 146 (2022).

reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."[11] The Nevada Supreme Court has concluded a decision is "clearly erroneous" where: 1) there exist material errors in the proceedings or a mistake in law; 2) the judicial order is unsupported by any substantial evidence; or 3) the judicial order is against the clear weight of evidence.[12] In addition, United States v. United States Gypsum Co.,[13] states: "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

To meet the "substantially different evidence" prong, it is insufficient to merely raise additional facts or law; rather, the new facts or law must "support[ ] a ruling contrary to the ruling already reached."[14] To meet the "clearly erroneous" prong, the district court must be "left with [a] definite and firm conviction that a mistake has been committed."[15]

---

[11] *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); see also *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)("Only in very instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.").

[12] *Russell v. Thompson*, 96 Nev. 830, 834, 619 P.2d 537, 539 (1980). See also 9 Wright and Miller, *Federal Practice and Procedures*; Civil Sec. 2605, and cases cited therein.

[13] 333 U.S. 364, 395, 68 S.Ct. 525, 542 (1948).

[14] *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

[15] *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

ARGUMENT

In her motion, Luba requested reconsideration of the order modifying custody to primary physical custody to Enrique on the basis her act of detaining the child on March 15, 2023 which she contends should not have been considered abduction. Luba asserted abduction is a criminal matter. Because she was never criminally prosecuted, Luba argued she should be found to have committed an act of abduction by clear and convincing evidence pursuant to NRS 125C.0035(7).[16] Luba further requested reconsideration of the Court's order on the basis the Court did not find there was a substantial change of circumstances warranting modification of custody. Luba additionally argued modification of custody is not in the child's best interest, violated Luba's constitutional rights and occurred because the case is tainted by the prior judge's bias. Last, Luba further requested reconsideration of both counts of contempt.

In his Opposition, Enrique requested the Court deny Luba's request for reconsideration of the orders modifying custody on the basis Luba was properly found to have committed an act of

---

[16] **NRS 125C.0035(7)** states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

abduction by clear and convincing evidence pursuant to NRS 125C.0035(7).[17] Enrique emphasized the Court found he established a substantial change of circumstances affecting the child's welfare and modification was in the child's best interest. Enrique argued Luba's due process rights were not denied by her as a consequence of no criminal trial on the issue of abduction because NRS 125C.0035(7) does not require criminal prosecution. Enrique contended the case was not tainted by the bias of the prior judge. Rather, Enrique argued Luba dislikes the orders because they hold her accountable for her refusal to obey court orders. Last, Enrique opposed reconsideration of the orders holding Luba in contempt for violating the Decree of Divorce.

ANALYSIS AND ORDER

1. Luba's Request for Reconsideration for Modification of Custody: Abduction.

Luba requested reconsideration of the preliminary finding she engaged in the single March 15, 2023 act of unlawful detaining the minor child in violation of NRS 125C.0035(7) by withholding the vacation timeshare owed to Enrique. Luba argued the ground for reconsideration is that her actions were a minor civil custody withholding, not a criminal abduction as defined by NRS 200.359. Luba stated she must be afforded all criminal due process rights before the Court imposes criminal-like penalties, such as modification of custody.

In his Opposition, Enrique argued Luba the Court declined to refer her for criminal prosecution. Instead, the Court proceeded with the civil matter finding, by clear and convincing evidence at an evidentiary proceeding, that Luba committed an act of abduction as defined by

---

[17] Id.

NRS 200.359(1).[18] Enrique further argued NRS 125C.0035(7) does not require a criminal conviction, admission or no contest plea to criminal abduction to establish an abduction as defined by NRS 200.359(1). Enrique also asserted Luba's act of abducting the child was not found to qualify as a safety exception under NRS 200.359(11), i.e., as an act of protecting the child from abuse or neglect.[19]

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489

---

[18] **NRS 200.359** Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

[19] **NRS 200.359(11) This section does not apply to a person who detains, conceals, removes or relocates with a child to protect the c**hild from the imminent danger of abuse or neglect or to protect himself or herself from imminent physical harm, and reported the detention, concealment, removal or relocation to a law enforcement agency or an agency which provides child welfare services within 24 hours after detaining, concealing, removing or relocating with the child, or as soon as the circumstances allowed. As used in this subsection:

(a) "Abuse or neglect" has the meaning ascribed to it in paragraph (a) of subsection 4 of NRS 200.508.

(b) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(1997).

The Court FINDS Luba did not demonstrate she discovered new facts or law that would support a ruling contrary to the Court's preliminary finding of a rebuttable presumption Luba committed an abduction pursuant to NRS 125C.0035(7).

The Court further FINDS Luba did not provide newly discovered evidence to support her request for reconsideration.[20] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law and Orders (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law and Orders (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

2. Luba's Request for Reconsideration for Modification of Custody: Rebutted Presumption

Luba requested reconsideration of modification of custody on the basis she was found to have rebutted the presumption against her having sole or joint custody due to her committing an act of abduction. Luba argued the Court punished her by awarding Enrique primary physical custody without adequate cause despite Luba overcoming the presumption.

In his Opposition, Enrique opposed Luba's request on the basis her overcoming the presumption merely lifted the requirement for Luba to have *only* supervised visitation with the child. Enrique further asserted the Court made specific findings regarding the best interest of the child in support of modification of custody.

---

[20] *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

In her Reply, Luba argued that, because the Court did not refer her for criminal prosecution, none of the relevant factors to establish the statutory presumption were met. As a result, Luba argued there was no change of circumstances sufficient to warrant modification of custody.

The Court FINDS Luba did not demonstrate she discovered new facts or law that would support a ruling contrary to the Court's finding of a rebuttable presumption Luba committed an abduction pursuant to NRS 125C.0035(7). The Court further FINDS Luba did not provide newly discovered evidence to support her request for reconsideration.[21] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

3. Luba's Request for Reconsideration for Modification of Custody: Stability and Consistency

Luba requested reconsideration of the Court's Order on the basis the child was "thriving" under the prior joint physical custody orders.[22] Luba argued the award of primary custody to Enrique was not beneficial to the child because it was disruptive and only served to punish Luba for withholding the child from Enrique one time. Luba further maintained the act of withholding the child was not harmful to the child.

---

[21] *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

[22] See Plaintiff's Notice of Motion and Motion to Reconsider at p.14, ll.1 (filed January 21, 2025).

In his Opposition, Enrique opposed Luba's request on this ground on the basis the child was not "thriving", as evidenced by Luba enrolling the child in counseling during her custody timeshare. Enrique also argued the Court make specific findings there was: (1) a substantial change of circumstances affecting the welfare of the child; and (2) modification would serve the child's best interest.

In her Reply, Luba reiterated she was not criminally prosecuted for abduction and her belief modification of custody based on her withholding the child one time was punitive.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). The Court FINDS there is not finding the child was "thriving" under the joint physical custody timeshare. To the contrary, the Court FOUND Luba unilaterally enrolled the child in online counseling over Enrique's objection to help the child deal with anxiety created by Luba being at school at the same time as Jennifer [the child's stepmother, who is employed at the school.][23] The Court FURTHER FINDS there are specific findings that Enrique established a substantial change of circumstances affecting the child's welfare and in the child's best interest.[24] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact,

---

[23] See Findings of Fact, Conclusions of Law, and Order (Post-Judgment) at p.27, ll.22-27 (filed January 2, 2025).

[24] Id. at pp.30-31, ll.9-10.

Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

4. Luba's Request for Reconsideration of Modification of Custody: Best Interest

Next, Luba requested reconsideration of the Order modifying custody on the basis "the Court found that [redacted] is thriving under joint custody and that Enrique prioritizes legal disputes over [redacted] needs."[25] Luba also asserted the ORder "notably omits" any mention of the child's allergies, which was crucial to Enrique's case.[26] Luba contended the Court wrongfully used modification of custody to punish her for her misconduct of withholding the child from Enrique.[27] Luba argued it is not in the child's best interest to award Enrique primary custody because Enrique is focused on conflict.

In his Opposition, Enrique opposed Luba's request on this ground on the basis the Court did not find the child was "thriving" under joint physical custody. Further, Enrique argued it was Luba, not him, who filed numerous repetitive motions. Enrique asserted the child's allergy issue was addressed at trial. Enrique argued the best interest of the child factors were addressed in the January 2, 2025 Findings of Fact, Conclusions of Law, and Order, and not one of them favored Luba.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile

---

[25] See Plaintiff's Notice of Motion and Motion to Reconsider at p.14, ll.13-14 (filed January 21, 2025).

[26] Id. at p.14, ll.15-16.

[27] *Sims v. Sims*, 109 Nev. 1146, 1148-19, 865 P.2d 328, 330 (1993).

Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

The Court FINDS there are no findings the child was "thriving" under the joint physical custody orders. The Court FINDS Luba failed to fully and accurately state the Court's findings related to the ability of the parents to cooperate to meet the needs of the child, a factor the Court found ultimately favored Enrique.[28] The Court FINDS modification of custody was based on the totality of testimony and evidence before the Court after a full and thorough evidentiary hearing. The Court FINDS Luba failed to provide facts or evidence demonstrating the findings of fact, conclusions of law, and orders are punitive. The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

5. Luba's Request for Reconsideration of Modification of Custody: No Substantial Change of Circumstances

Luba requested reconsideration of Court's Order modifying custody on the basis Enrique failed to demonstrate a substantial change of circumstances or a sufficient basis to modify custody. Luba further reiterated her argument a single act of civil withholding did not constitute

[28] See Findings of Fact, Conclusions of Law, and Order (Post-Judgment) at pp.25-26 (filed January 2, 2025).

an act of abduction pursuant to NRS 200.359.[29] Specifically, Luba argued her act of withholding the child from Enrique was misrepresented as a criminal abduction under NRS 200.359.[30]

Enrique opposed Luba's request on the basis he pled the March 15, 2023 kidnapping by Luba was a substantial change of circumstances. Enrique stated the Court determined Luba's March 15, 2023 abduction coupled with her other conduct created a substantial change of circumstances.

In her Reply, Luba reiterated the arguments in her motion.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

//

//

---

[29] **NRS 200.359** Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

[30] Id.

The Court FINDS there are specific findings that Enrique established a substantial change of circumstances affecting the child's welfare and in the child's best interest.[31] The Court also FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

6. Luba's Request for Reconsideration of Modification of Custody: Constitutional Rights Violations

Luba requested reconsideration of the Court's Order modifying custody on the basis she was not subject to a criminal proceeding pursuant to NRS 125C.0035(7)[32] to determine by clear

---

[31] Id. at pp.30-31, ll.9-10.

[32] **NRS 125C.0035(7)** states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

and convincing evidence whether she committed an abduction. Specifically, Luba contended NRS 125C.0035(7) is vague and ambiguous and was exploited to infringe on Luba's constitutional due process and parenting rights.

In his Opposition, Enrique requested the Court deny Luba's request on this ground on the basis she was found to have committed civil abduction as defined by the criminal statute. Enrique asserted Luba did not suffer the criminal penalty of a felony conviction but, rather, the presumption she was not fit to have joint or sole custody of the child. Enrique argued Luba conflated the two statutes throughout her motion.

In her Reply, Luba reiterated her argument.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground.

7. Luba's Request for Reconsideration of Modification of Custody: Relocation

Luba requested reconsideration of the Court's Order modifying custody on the basis Enrique may now wrongfully to petition to relocate to Mexico with the child.

In his Opposition, Enrique requested the Court deny reconsideration on this ground because he has no interest in relocating to Mexico as he and his wife are firmly established in

Las Vegas with jobs and a home they own. Enrique further argued Luba failed to cite any legal points and authorities in support of her claim on this ground.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial; "[p]oints and authorities lacking citation to relevant authority, or consisting of bare citations to statutes, rules, or case authority, do not comply with this rule."

The Court FINDS Luba did not provide points and authorities in support of her request. Therefore, the Court DENIES Luba's request for reconsideration on this ground as legally deficient pursuant to EDCR 5.503(a).

8. Luba's Request for Reconsideration of Modification of Custody: Prior Judge's Bias

Luba requested the reconsideration the Court's Order modifying custody on the basis the prior judge voluntarily disqualified itself for bias. Luba argued the prior judge's bias tainted the entire case against her. Luba argued the only correction would be for this Court to explicitly reject the prior judge's bias and reverse the order modifying custody to award Enrique primary physical custody.

In his Opposition, Enrique opposed Luba's request on the basis the prior judicial officer was not disqualified, an involuntarily process, but rather voluntarily recused herself for bias against Luba.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741,

941 P.2d 486, 489 (1997).

The Court FINDS this case was reassigned to Department X on May 19, 2022.[33] The Court FINDS Luba never filed a motion for disqualification claiming the Court was biased against her. The Court FINDS Luba is entitled to file a motion for disqualification at any time if she believes it appropriate. However, the Court FINDS Luba failed to provide a legal basis for this Court to review or address a prior judicial officer's recusal or orders. If Luba were concerned about bias in prior orders from the prior judicial officer, her remedy was to seek review of the voluntary determination of bias which resulted in the May 19, 2022 Reassignment. The Court FINDS Luba's argument to be untimely, spurious, and disingenuous in light of the order for modification of custody and, further, unsupported by any legal basis. Accordingly, the Court DENIES Luba's request to reconsider modification of custody on this ground.

9. Luba's Request for Reconsideration of Contempt Finding for Withholding Child

Luba requested reconsideration of the Court's Order finding her in civil contempt for violating the Decree of Divorce for failing to exchange the child on March 15, 2023 as ordered. Luba reiterated her factual arguments from trial regarding the reasons for her actions.

Enrique opposed Luba's request on the basis Luba misstated the full testimony and record at trial. In her Reply, Luba reiterated her motion.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

---

[33] See Notice of Department Reassignment (filed May 19, 2022).

The Court FINDS Luba failed to present substantially new evidence. The Court FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground and AFFIRMS the civil contempt finding.

10. Luba's Request for Reconsideration of Contempt for Rescheduling Dental Appointment

Luba requested reconsideration of the Court's Order finding her in civil contempt for rescheduling the March 21, 2023 dental appointment on the basis the Court previously found Luba acted appropriately on this matter in the June 13, 2023 Order under the parallel parenting plan and denied Enrique's motion to modify custody.[34]

Enrique opposed Luba's request on the basis she did not oppose the Order to Show Cause at trial and waived the issue. In her Reply, Luba reiterated her motion.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

The Court FINDS the March 20, 2023 Order to Show Cause contained the relevant orders related to Luba's violation of orders related to the March 21, 2023 dental appointment. The

---

[34] Citing Order Resolving All Pending Motions et al. at p.18, ll.5-11 (filed June 13, 2023).

Order to Show Cause was issued March 20, 2023 prior to the April 6, 2023 hearing on Enrique's March 20, 2023 Emergency Motion for Return of Child, for an Order to Show Cause, et al.

The Court FINDS Luba failed to present substantially new evidence. The Court FINDS Luba failed to demonstrate the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the January 2, 2025 Findings of Fact, Conclusions of Law, and Order (Post-Judgment) is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration on this ground and AFFIRMS the civil contempt finding.

11. Luba's Request for Reconsideration of Child Support and Child Tax Credit

Luba requested reconsideration of the Court's Order related to child support and assignment of the child tax credit comporting with her request to reconsider the custody modification order. Enrique opposed Luba's requests.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial. All motions and oppositions involving payment of money by a party must be supported by a Financial Disclosure Form (FDF) or an assertion in the motion or opposition there is no material change to the FDF filed within the prior 6 months.[35] Failure to file a timely, complete, and accurate supporting FDF may be construed as an admission the positions asserted are not meritorious and grounds for adverse rulings and basis for sanctions

[35] See EDCR 5.507(d) and EDCR 5.507(f)

pursuant to EDCR 5.507(g).

Notwithstanding the Court's denial of Luba's requests for reconsideration, the Court FINDS Luba did not file a FDF in support of her request, the last FDF Luba filed in this case was on March 14, 2024 which is more than six months prior to her January 21, 2025 motion, and provide points and authorities in support of her request. Therefore, the Court DENIES Luba's request as legally deficient pursuant to EDCR 5.503(a).

12. Luba's Request for Reconsideration of the Award of Attorney Fees to Enrique

Luba requested reconsideration of the Court Order awarding attorney fees to Enrique and denial of her request for attorney fees. Enrique opposed Luba's request.

EDCR 5.503(a) requires that every motion shall include points and authorities supporting each position asserted, and the absence of such may be construed as an admission the filing lacks merit and as cause for denial. All motions and oppositions involving payment of money by a party must be supported by a Financial Disclosure Form (FDF) or an assertion in the motion or opposition there is no material change to the FDF filed within the prior 6 months.[36] Failure to file a timely, complete, and accurate supporting FDF may be construed as an admission the positions asserted are not meritorious and grounds for adverse rulings and basis for sanctions pursuant to EDCR 5.507(g).

The Court FINDS Luba did not file a FDF in support of her request, the last FDF Luba filed in this case was on March 14, 2024 which is more than six months prior to her January 21, 2025 motion, and provide points and authorities in support of her request. Therefore, the Court DENIES Luba's request as legally deficient pursuant to EDCR 5.503(a).

---

[36] See EDCR 5.507(d) and EDCR 5.507(f)

Enrique's Countermotion for Award for Attorney Fees and Costs

Enrique requested award for attorney fees and costs pursuant to NRS 18.010(2)(b) and EDCR 5.219.[37] Luba opposed Enrique's request.[38] The Court FINDS Luba's plea for relief multiplied the costs of litigation without just cause and did so unreasonably and vexatiously.[39] Specifically, the Court FINDS Luba significantly misstated the Order of the Court in her motion. Therefore, good cause appearing, the Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs.

ACCORDINGLY, THE COURT ORDERS:

1. The Court DENIES Luba's request for reconsideration in its entirety.

---

[37] EDCR 5.219, Sanctionable Conduct, provides as follows:

> Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct, including, but not limited to:
>
> (a) Presenting a position that is obviously frivolous, unnecessary, or unwarranted;
>
> (b) Multiplying the proceedings in a case so as to increase costs unreasonably and vexatiously;
>
> (c) Failing to prepare for a proceeding;
>
> (d) Failing to appear for a proceeding;
>
> (e) Failing or refusing to comply with these rules; or
>
> (f) Failing or refusing to comply with any order or directive of the court.

[38] See EDCR 5.503(b) which provides the "Failure of an opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent that it be granted."

[39] See *Roe v. Roe*, 139 Nev. Adv. Op. __, *35-36, ___ P.3d. ___, ___ (2023).

2. The Court *preliminarily* GRANTS Enrique's countermotion for award for attorney fees and pursuant to NRS 18.010(2)(b), EDCR 5.219 and 5.503(b). The Court ORDERS Enrique shall file and serve a Memorandum of Fees and Costs to include Brunzell[40] and Wilfong[41] analyses as well as attorney-client invoices not later than April 30, 2025. Luba shall have fourteen (14) days to file any Objection. The Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or the Objection, if filed. The Court will not consider any pleading beyond the Memorandum of Fees and Costs and Objection, if filed, related to award for attorney fees and costs. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for attorney fees and costs. Regarding the mandatory Wilfong analysis, Enrique shall be required to provide averment(s) related to Luba's income. The failure to provide one party's income may defeat any award for attorney fees and costs where the Nevada Supreme Court has mandated analysis of a party's ability to pay any discretionary award for attorney fees and costs. Decision on award for attorney fees and costs SHALL be scheduled for May 14, 2025 (Chambers/ NO appearances).

Dated this 11th day of April, 2025

HEIDI ALMASE
District Court Judge

6EF 9E0 5E4A 1848
Heidi Almase
District Court Judge

[40] *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

[41] *Miller v. Wilfong*, 121 Nev.619, 623, 119 P.3d 727, 730 (2005)(citing Wright v. Osburn, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)).

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Luba Gonzalez, Plaintiff vs. Enrique Ivan Velazquez-Gonzalez, Defendant.	CASE NO: D-18-575860-D DEPT. NO. Department X

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 4/11/2025

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/14/2025

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031