IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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On Appeal from the Eighth Judicial District Court- Family Division
Clark County, State of Nevada- Department X, Honorable Heidi Almase, Presiding

RESPONDENT'S FAST TRACK ANSWERING BRIEF

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NRAP § 26.1 DISCLOSURE

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

The following persons/ entities are disclosed:

- Amanda M. Roberts, Esq.;
- Melvin R. Grimes, Esq.; and
- Roberts Law Group, P.C., dba Roberts Stoffel Family Law Group.

Dated this 18th day of September, 2025.

ROBERTS STOFFEL FAMILY LAW GROUP

By: /s/ Amanda M. Roberts, Esq.
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Statement of Issues

1. Whether the District Court erred when it found that one withholding constituted abduction as a matter of law.
2. Whether the District Corut erred when it found that Appellant did not rebut any presumption that she should not have joint physical custody.
3. Whether the District Court erred in modifying custody when Respond did not meet the standard to show there was a substantial change in circumstances affect the welfare of the child.
4. Whether the District Corut erred in modifying custody when Respondent did not meet the standard that modification was in the minor child's best interest.

5. Whether the District Court's Order modify custody violated Appellant's right to due process.

6. 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.

7. Whether the District Court abused its discretion in holding Appellant in contempt for withholding the minor child and rescheduling a dentist appointment as well as the resulting sanctions.

8. Whether the District Court erred in its award of child support and minor tax credit Order.

9. Whether the District Court erred in awarding attorney's fees to Respond and denying fees to Appellant.

10. Whether the District Court was biased against Appellant.

I.
Statement of Case

The Parties to this action are Appellant, Luba Dace ("Luba") and Respondent, Enrique Velazquez-Gonzalez ("Enrique").[1] While the Parties were married, they had one (1) minor child, to wit: [redacted] Gonzalez [redacted] born on [redacted]

Testimony of Benjamin Childs-

Attorney Benjamin Childs ("Attorney Childs") testified during Trial as a witness for Luba.[3] Attorney Childs testified that the Court held a telephone conference with Counsel for the Parties wherein she specifically indicated that she was not making Orders, but was trying to assist the Parties to resolve outstanding issues.[4] The Court clarified multiple times during that telephone conference that the Parties were to follow the existing Court Orders.[5]

Attorney Childs further testified that the existing Court Orders did not contain any language regarding CBX tickets.[6] Attorney Childs confirmed that he had a telephone conversation with Enrique's Counsel, Attorney Grimes, regarding the CBX tickets and it was Enrique's position that if Luba wanted them in advance

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[1] AA00001.
[2] AA00002.
[3] AA02577-AA02598
[4] AA02596.
[5] AA02596.
[6] AA02591-AA02592.

rather than at the tunnel entrance, she should pre-purchase them and he would reimburse her at the exchange.[7] The reason that Enrique took that position was because he was under the impression that Luba was going to continue interfering and create additional roadblocks even if he purchased CBX tickets.[8] When presented with that option, Luba refused to purchase the CBX tickets in advance and be reimbursed by Enrique.[9]

Attorney Childs made it clear in testimony, he did not tell Luba to violate the Court's Order[10] and it was Luba's own decision to violate the Court's Order.[11]

Testimony of Gina Thornton-

Ms. Thornton is a counselor at the school where [redacted] attends. Ms. Thornton testified that during a Halloween parade in 2023, [redacted] was walking in the parade with Jennifer (step-Mom) and Ms. Thornton, when Luba walked out to become part of the parade although no other parents were walked.[12] Ms. Thornton testified that [redacted] body language and facial expressions made it clear that she

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[7] AA02595.
[8] AA02595 and AA0298.
[9] AA02595.
[10] AA02586.
[11] AA02587.
[12] AA02630, AA02635, AA02636, AA02644.

wanted to participate without being pulled away by Luba.[13] Additionally, Luba videotaped the entire parade and it was excessive and uncomfortable.[14]

Testimony of Luba Dace-

Luba testified that prior to Enrique leaving for Mexico on vacation in 2023, she had all the required itinerary information as set forth in the Decree of Divorce.[15] When it came time to exchange [redacted] Luba did not do the exchange on March 15, 2023.[16] When questioned about the demands she made on Enrique before he could travel with [redacted] in 2023, Luba confirmed that nothing that she was demanding was in a Court Order.[17]

Luba testified that she previously visited Enrique's family home in Mexico.[18] Luba also testified that Enrique previously took [redacted] to Mexico in the summer of 2022.[19]

Luba testified that [redacted] had a dentist appointment on March 21, 2023 which the Parties agreed for her to attend.[20] The scheduled appointment was on Enrique's custodial timeshare.[21] Luba confirmed the only reason that she changed

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[13] AA02633 and AA02641.
[14] AA02633 and AA02639.
[15] AAA02647 through AA02649.
[16] AA02668, AA02673, AA02677, AA02678, AA02681.
[17] AA02669.
[18] AA02656.
[19] AA02649.
[20] AA02693.
[21] AA02694.

the dental appointment was because it fell during Enrique's custodial timeshare.[22] Luba then changed the dentist appointment to March 24, 2023 without Enrique's consent, to her custodial timeshare.[23]

Testimony of Enrique Velazquez-Gonzalez-

Enrique testified that the reason he did not buy the CBX tickets in advance was because Luba does not follow through with agreements.[24] Enrique testified he had previously purchased CBX tickets by traveling to California, parking and then going to a counter to buy the CBX tickets[25]; he had never before or since purchased them online.[26] Enrique testified that he proposed that if Luba wanted to buy them online, once [redacted] was at the exchange, he would reimburse her the CBX price.[27]

Enrique testified that previously, in 2021, he had a scheduled vacation with [redacted] to Oaxaca, and Luba was not cooperating with giving him the minor child's Passport for travel which required Court intervention.[28] Then in 2022, there

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[22] AA02695.
[23] AA02693, AA02694, AA02696.
[24] AA02704, AA02750, AA02763.
[25] AA02761 to AA02762.
[26] AA02762.
[27] AA0763.
[28] AA02706.

was a problem with Enrique's itinerary and in 2023, Luba did not exchange the minor child for the vacation.[29]

Enrique testified that after denying him the ability to take [redacted] to Mexico in 2023, Luba herself traveled to Mexico in the summer of 2023 for vacation.[30]

Enrique further testified that Luba talked about his confidential psychiatric report on an internet show.[31] Luba obtained a copy of the confidential report from Attorney Childs and then went on an internet show and talked about the report.[32]

II.
Summary of Argument

There was substantial evidence to support the District Court's Order modifying physical custody wherein it was determined that Luba engaged in an act of abduction, and although the District Court found Luba could rebut the presumption set forth in *NRS* § 125C.0035 (7), the District Court properly applied the best interest factors set forth in *NRS* § 125C.0035 (a) through (l) when awarding Enrique primary physical custody. Moreover, Luba has failed to properly seek removal of the District Court Judge for bias and if her request is properly before this Court, there is evidence to support alleged bias which would warrant removal of the current District Court Judge in this matter.

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[29] AA02707.
[30] AA02760.
[31] AA02764.
[32] AA02685-AA02686

III.
Argument

1. Whether the District Court erred when it found that one withholding constituted abduction as a matter of law.

NRS § 125C.0035 (7) states in relevant part,

> 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[33] 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.

The District Court determined that *NRS* § 125C.0035 (8) was not applicable because there was no criminal proceeding against Luba.[34] Therefore, the District Court then applied the statutory language from *NRS* § 125C.0035 (10)(a) which states, ""Abduction" means the commission of an act described in NRS

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[33] Enrique would argue that "any act" makes it clear that a single act qualifies under the statute, and continues through all changes made by the legislature.
[34] AA02564 through AA02568, AA0273, AA02775.

200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct."[35] The District Court then went on to explain that willful was a component because abduction was defined in this situation pursuant to *NRS* § 200.359 (1)(a) and must be proven by Enrique to create the presumption in this matter.[36]

NRS § 200.359 (1)(a) was found to apply in this matter which states,

> 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[.]

Recently, the Nevada Court of Appeals addressed the term willfully when it is not defined by statute. *Willson v. The First Judicial Court of Nevada*, 140 Nev. Adv. Op. 7, 9-10 (February 8, 2024). The Nevada Court of Appeals determined that the common understanding must be used. *Id.* The Nevada Court of Appeals stated,

> Although the term is generally understood to mean "deliberately" or "intentionally]," see *Willful, Merriam-Webster's Collegiate Dictionary* (11th ed. 2020), the term

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[35] AA02776.
[36] AA02573 and AA02574.

> may denote either that an act is "[v]oluntary and intentional, but not necessarily malicious" or that an act "involves [a] conscious wrong or evil purpose on the part of the actor," see *Willful, Black's Law Dictionary.*
>
> Because the term "willfully" does not necessarily require malice, the phrase "willfully hinder, delay or obstruct any public officer" may reasonably be interpreted as requiring only that a person intend to perform an act that resulted in the hinderance, delay, or obstruction of a public officer. *See Robey v. State*, 96 Nev. 459, 461, 611 P.2d 209, 210 (1980) (stating the term '"willful' when used in criminal statutes with respect to proscribed conduct relates to an act or omission which is done intentionally, deliberately or designedly, as distinguished from an act or omission done accidentally, inadvertently, or innocently"); see also *Moore v. State*, 136 Nev. 620, 624, 475 P.3d 33, 36 (2020) (recognizing "the term 'wil[l]fully' has been defined to refer to general intent" in the context of statutes aimed at the protection of infants (alteration in original) (quoting *Jenkins v. State*, 110 Nev. 865, 870, 877 P.2d 1063. 1066 (1994))). *Id.*

If the statute is vague then the Court looks at legislative history and public policy. *Willson v. The First Judicial Court of Nevada*, 140 Nev. Adv. Op. 7, 11 (February 8, 2024).

In 1975, Chapter 200 of the Nevada Revised Statutes was amended to add a section which read, "Every person having a limited right of custody to a child pursuant to an order, judgment or decree of any court, or any parent having no right of custody to the child, who in violation of an order, judgment or decree of any court detains, conceals or removes such child from a parent, guardian or other

person having lawful custody is guilty of a misdemeanor."[37] It was described, during legislative session, as "AN ACT relating to crimes against the person; providing a penalty for retention of a child in violation of a court order; and provide other matters properly relating thereto."[38]

In 1981, NRS 200.359 was addressed during legislative session as "AN ACT relating to crimes and punishment; increasing the penalty for abduction of a child by a person having limited custody or a parent having no custody of the child; prohibiting interference with rights of visitation; and providing other matters properly relating thereto."[39] It was during this legislative session that the word "willfully" was added to the statute.[40]

In 1989, NRS 200.359 was amended to add section (1)(b), (2) and (3) which were previously not part of the statutory construction.[41] Those sections related to relocation and "*detains, conceals or removes the child" to avoid immediate danger of abuse and neglect.*[42]

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[37] www.leg.state.nv.us/Statutes/58th/Stats197507.html#Stats197507page1397
[38] *Id.*
[39] www.leg.state.nv.us/Statutes/61st/Stats198103.html#Stats198103page564
[40] *Id.*
[41] www.leg.state.nv.us/Statutes/65th/Stats198909.html#Stats198909page1678
[42] *Id.*

In 1991, the legislature went further to include the section that if someone "*detains, conceals or removes the child*" then reporting to an appropriate agency or law enforcement must happen within twenty-four (24) hours of the act occurring.[43]

In 1993, the legislature modified the language of section (2)(b) to include "specific intent" related to the parent and child relationship.[44] Moreover, additional safeguards were included regarding the issuance of a warrant for the offending parent.[45]

In 1995, the statutory language was maintain, but clarification was made to the punishment for violation of the statute related to section (2); and increased penalties were adopted.[46]

In 2001, the reporting requirement was modified to an agency which provided child welfare.[47]

In 2003, the language of the statute was amended as to the definition of "home state."[48]

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[43] www.leg.state.nv.us/Statutes/66th/Stats199107.html#Stats199107page1422
[44] www.leg.state.nv.us/Statutes/67th/Stats199307.html#Stats199307page1425
[45] *Id.*
[46] www.leg.state.nv.us/Statutes/68th/Stats199505.html#Stats199505page997
[47] www.leg.state.nv.us/Statutes/17thSS/Stats2001SS1701.html#Stats2001SS1701page17
[48] www.leg.state.nv.us/Statutes/72nd/Stats200308.html#Stats200308page1005

In 2015, the biggest overhaul occurred related to language of the statute, but not as to section (1)(a) which is applicable in this matter.[49]

Here, based upon the legislative intent was to establish a "penalty for retention of a child in violation of a court order", Enrique alleges that the willful in this situation should be interpreted as voluntary and intentional. The District Court found that Luba's act of failing to exchange the child for a properly noticed vacation that commenced on March 15, 2023 was an act of detaining the minor child.[50] Nowhere in the Finding of Fact, Conclusions of Law, and Orders (Post-Judgment) filed on January 2, 2025, does the Court find that Luba "concealed" the child as alleged in Luba's Opening Brief.[51] In fact, in the Order following the Motion for Reconsideration, the Court further clarified that the issue was detain not conceal.[52] Here, Luba specifically testified that she "withheld the child for the trip March of 2023"[53] while knowing that she was required by Order to exchange the child.[54] Luba further testified she refused to exchange the child.[55]

The statute is silent as the definition of detains. Therefore, Enrique alleges that looking at definition would be appropriate. Detain is a verb which means "to

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[49] www.leg.state.nv.us/Statutes/78th2015/Stats201524.html#Stats201524page2590
[50] AA04154.
[51] *See* Opening Brief at page 31.
[52] AA04554.
[53] AA03007.
[54] AA02673, AA02675, AA02676, AA02677.
[55] AA02675.

hold or keep in or as if in custody[.]" *Merriam-Webster.com Dictionary, Merriam-Webster*, https://www.merriam-webster.com/dictionary/detain. Accessed 16 Sep. 2025. In this matter, Luba held [redacted] from Enrique by failing to do an exchange that she acknowledges she was Court Ordered to conduct.[56] Therefore, Luba voluntarily and intentionally, violated the Court Order when detained the minor child.

In her Opening Brief, Luba alleges that her behavior in detaining [redacted] should be excused because of alleged safety concerns and stipulated agreements of Counsel. In *NRS* § 200.359 (11) addresses legal basis for violation of the statute and states,

> This section does not apply to a person who detains, conceals, removes or relocates with a child to protect the child 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.

[56] AA02673, AA02675, AA02676, AA02677.

Luba asserts that she wanted Enrique to use the CBX tunnel because of safety concerns.[57] Enrique agreed that he would do so with either Luba purchasing the CBX tickets and being reimbursed at the exchange or when he got to the tunnel.[58] However, the alleged safety concerns do not rise to the level of "imminent danger of abuse or neglect[.]" Moreover, Luba never made a report to "law enforcement agency or an agency which provides child welfare services[.]" Therefore, her behavior cannot simply be excused by raising alleged safety concerns without legal authority to support the allegation that her actions were justified.

As to the alleged agreements between Counsel, Attorney Childs testified that the Court held a telephone conference with Counsel for the Parties wherein she specifically indicated that she was not making Orders, but was trying to assist the Parties to resolve outstanding issues.[59] Attorney Childs confirmed that the Court clarified multiple times during that telephone conference that the Parties were to follow the existing Court Orders.[60] Subsequent to the telephone conference with the Court, emails were exchanged between Attorney Childs and Attorney Grimes.[61] However, there was no stipulated agreement reached between the Attorneys

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[57] AA02994.
[58] AA03257.
[59] AA02596.
[60] AA02596.
[61] AA03255 through AA03259.

regarding this issue; therefore, the Court's instruction was to follow the Orders which clearly delineated that Enrique was to receive the child for his vacation.[62]

Luba testified at that time of the telephone conference between the Attorneys and Court she was at Attorney Child's office, just not in the room.[63] Thereafter, Luba testified she was getting the emails between Attorney Childs and Attorney Grimes in real time.[64] If she was getting them in real time, Luba knew no agreement was reached so it begs the question- why did she refuse to exchange the minor child?

In her Opening Brief, Luba over simplifies the communication that was occurring between the Attorneys and cherry-picks the portions that she believes justify her act of detaining [redacted] from Enrique. In reality, when the entirety of the communication between Attorneys is reviewed, it is clear that no agreement was reached:

- At 8:11 a.m., Attorney Childs emailed Attorney Grimes that he would call.[65]
- At 8:44 a.m., Attorney Childs emails Attorney Grimes a list of Luba's demands.[66]
- At 8:54 a.m., Attorney Grimes emails Attorney Childs and said that for the vacation only, Enrique will do Talking Parents calls and Enrique will purchase the CBX tickets.[67]

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[62] AA02673, AA02675, AA02676, AA02677.
[63] AA02674.
[64] AA02676.
[65] AA03255.
[66] AA03255.
[67] AA03256.

- At 9:09 a.m., Attorney Grimes emails Attorney Childs that Enrique will buy the CBX at the terminal and provide her copies, and "They are not buying the CBX until they have [redacted] and the passport because they are not going to waste the money while waiting for the next condition."[68]
- At 9:19 a.m., Attorney Childs emails Attorney Grimes alleging that the itinerary was not sufficient because he did not provide the CBX tickets which Enrique should buy through an online application. Therefore, Luba will not be exchanging the minor child for Enrique's vacation."[69]
- At 9:28 a.m., Attorney Childs emails Attorney Grimes and said, "As soon as we have confirmation that these two tasks are completed, Luba will be at the exchange point within 45 minutes."[70]
- At 9:34 a.m., Attorney Grimes emailed Attorney Childs and indicated that due to a belief that additional barriers would be presented by his client, Luba can pay for the CBX and Enrique will reimburse at the exchange or Enrique will purchase after exchanging the child.[71]
- At 9:38 a.m., Attorney Childs emailed a copy of the minor child's Passport.[72]
- At 9:44 a.m., Attorney Grimes emailed Attorney Childs regarding the exchange, he clearly informs Attorney Childs that if Luba does not exchange the child then a Motion would be filed seeking an Order to Show Cause.[73]
- At 9:52 a.m., Attorney Childs alleges that Enrique failed to enable Talking Parents and referenced Enrique's psychological evaluation.[74]

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[68] AA03262.
[69] AA03261.
[70] AA03256.
[71] AA03257.
[72] AA03257.
[73] AA03258.
[74] AA03259.

- At 10:01 a.m., Attorney Childs alleged that the "assumption is noted and denied" that he was advising Luba not to exchange the minor child.[75]

Moreover, the Court issued a finding that,

> 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 ongoing litigation.[76]

It has repeatedly been held that the Appellate Court will not reweigh credibility of witnesses because the District Court is in a better position to observe demeanor and assess credibility of witnesses. *Matter of Parental Rights as to CJM*, 118 Nev. 724, 732, 58 P.3d 188, 194 (2002). Enrique asserts that there is substantial evidence to support the District Court's findings and Luba's request should be denied.

2. Whether the District Court erred when it found that Appellant did not rebut any presumption that she should not have joint physical custody.

NRS § 125C.0035 (7) states in relevant part that if abduction is found by clear and convincing evidence it "creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the

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[75] AA03258.
[76] AA04149.

abduction is not in the best interest of the child." In this matter, the District Court found that if Luba could rebut the presumption, but that an application of the best interest factors was still required in this matter.[77]

The Finding of Fact, Conclusions of Law, and Orders (Post-Judgment) filed on January 2, 2025 state, "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."[78] Though, although the presumption had been rebutted, the Court's next step of the analysis was an applicable of best interest factors pursuant to *NRS* § 125C.0035 (4)(a) through (l), because the Court cannot ignore the best interest of the child. *Ellis v. Carucci*, 125 Nev. 145, 149, 161 P.3d 239, 242 (2007). In fact, Luba's own Counsel stated on the record that even if she rebutted the presumption, the Court was required to consider the best interest factors and by this statement was an acknowledgement that there had been a change in circumstance based upon the abduction.[79]

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[77] AA04131.
[78] AA04155.
[79] AA03066.

3. Whether the District Court erred in modifying custody when Respondent did not meet the standard to show there was a substantial change in circumstances affect the welfare of the child.

On June 13, 2023, the Court issued an Order Re: All Pending Motions wherein, the Court specifically stated,

> 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.[80]

Then in the Finding of Fact, Conclusions of Law, and Orders (Post-Judgment) filed on January 2, 2025 the Court stated, "Enrique nonetheless established a substantial change of circumstances affecting the child's welfare[.]"[81] This was directly after going through extensive analysis regarding Luba's retention of [redacted] during Enrique's vacation timeshare in March of 2023 and concluded it was a substantial change in circumstances.[82]

During Trial, Luba did not raise the issue regarding whether there had been a substantial change in circumstance. Rather, Luba's Counsel seemingly acknowledged after the finding of abduction that the Court would be considering

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[80] AA02123 and AA02127.
[81] AA04155.
[82] AA04154 through AA04154.

best interest in the matter which was an acknowledgement that the substantial change in circumstance prong to change custody had been met.[83] Enrique would argue that because Luba did not raise this issue at the District Court level and it does not relate to jurisdiction, she cannot raise this issue on Appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

4. Whether the District Corut erred in modifying custody when Respondent did not meet the standard that modification was in the minor child's best interest.

In the Finding of Fact, Conclusions of Law, and Orders (Post-Judgment) filed on January 2, 2025 the Court determined that it was in [redacted] best interest for Enrique to have primary physical custody[84] and for Luba to have a visitation schedule which was each weekend except the third (3rd) weekend of the month from Friday through Monday with the holiday/vacation timeshare previously Ordered to be maintained.[85] In its decision, the District Court set forth all best interest factors of *NRS* § 125C.0035 (4)(a) through (l) and determined that of the twelve (12) best interest factors, six (6) favored Enrique with the remaining six (6) either being neutral or not applicable in the case.[86]

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[83] AA3066.
[84] AA04154 through AA04155.
[85] AA04156.
[86] AA04148 through AA04154.

"In reviewing child custody determinations, we will not set aside the district court's factual findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 243 (2007) *citing Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005) (quoting *Primm v. Lopes*, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993)) and *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Moreover, the Court will not reweigh evidence on Appeal and if conflicts exist then "all favorable inferences must be drawn toward the prevailing party." *Roe v. Roe*, 139 Nev. Adv. Opn. 21 (July 27, 2023) *citing Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998), and *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Here, Luba is requesting that the Court essentially reweigh the evidence and credibility of the Parties'. It has repeatedly been held that the Appellate Court will not reweigh credibility of witnesses because the District Court is in a better position to observe demeanor and assess credibility of witnesses. *Matter of Parental Rights as to CJM*, 118 Nev. 724, 732, 58 P.3d 188, 194 (2002). Enrique asserts that there is substantial evidence to support the District Court's findings and Luba's request should be denied.

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5. Whether the District Court's Order modify custody violated Appellant's right to due process.

In this matter, for the first time on Appeal, Luba raises a due process issue. Luba claims that because *NRS* § 200.359 is a criminal statute, the Family Court lacked jurisdiction to make a criminal determination, and in doing so the District Court violated her Due Process rights.

For the purpose determining whether an abduction occurred, *NRS* § 125C.0035 (10)(a) states, ""Abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct."[87] Enrique argues that the plain meaning of the statute is a definitional statute and did not require the District Court in this matter to engage in criminal prosecution of Luba to find that she abducted the minor child. *Sander v. State*, 119 Nev. 135, 140, 67 P.3d 323, 327 (2003). In fact, criminal prosecution is contemplated in later sections of the statute wherein *NRS* § 125C.0035 (8)(a) through (c) outlines "conclusive evidence" of abduction in a custody case including a conviction, guilty or nolo plea or admission.

Therefore, Luba's Due Process rights were not violated in this matter.

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[87] AA02776.

6. 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.

NRS § 1.234 (1) provides that when seeking to disqualify a Judge other than a Supreme Court or Court of Appeals, "must file an affidavit specifying the facts upon which the disqualification is sought." In this matter, Luba failed to comply with the statutory requirements to seek removal of the District Court Judge assigned in this matter. Moreover, Luba's claims as explained in detail herein are broad accusations without any support to the record on Appeal. A judge is presumed to be impartial, and the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification. *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 270 (2011).

Luba asserts that the District Court Judge was bias and "tainted by the prior bias and perpetuated throughout the entire proceedings. Luba asserts three (3) claims as the alleged bias- (1.) the District Court "disregarding the insulting, threatening, and often misleading nature of Enrique's pleadings, including false allegation of abuse; (2.) that Luba's Motion for Reconsideration was filed without just cause; and (3.) the modification of physical custody from joint physical custody to Enrique being awarded primary physical custody.[88]

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[88] As the arguments regarding modification of the physical custody Orders are detailed herein above, Enrique incorporates those arguments by reference as to avoid restatement of duplicative arguments previously addressed herein.

Disregard of Insulting, Threatening and Misleading Nature-

In the Finding of Fact, Conclusions of Law, and Orders (Post-Judgment) filed on January 2, 2025 the District Court found that "Luba testified to her opinion Enrique refuses to have anything to do with her, to agree to anything she requests and refers to as liar."[89] This finding of Luba's opinion was based upon her testimony wherein she alleged that "Luba testified he called her a liar and told her to look for the report card on the online portal."[90] In his testimony, Enrique specifically denied that he called Luba a liar.[91] Enrique testified that he did not call her a liar, but rather told her to stop lying which he viewed differently than calling liar.[92] Enrique explained that he's asking to stop lying.[93] A review of the record shows a difference of opinion of the Parties and there was no evidence admitted on the record which established that either of their opinions are not accurate as it is their perception.

On Appeal, it has repeatedly been held that the Court will not reweigh credibility of witnesses because the District Court is in a better position to observe demeanor and assess credibility of witnesses. *Matter of Parental Rights as to CJM*, 118 Nev. 724, 732, 58 P.3d 188, 194 (2002); *Castle v. Simmons*, 120 Nev. 98,

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[89] AA04150.
[90] AA04190.
[91] AA03048.
[92] AA03049.
[93] AA03049.

103, 86 P.3d 1042, 1046 (2004); *Davis v. Ewalefo*, 131 Nev. 445, 352, P.3d 1139, 1147 (2015), *citing Schwartz v. Schwartz*, 125 Nev. 89, 91, 225 P.3d 1273, 1276 (2010)

Motion for Reconsideration-

Luba asserts that the bias in the decision set forth in the Finding of Fact, Conclusions of Law, and Orders (Post-Judgment) filed on January 2, 2025 is apparent in the Motion for Reconsideration which was filed on January 21, 2025 after the decision in this matter. Luba points to a finding therein which states, "The Court FINDS Luba's plea for relief multiplied the cost of litigation without just cause and did so unreasonably and vexatiously."[94] This is a direction quote from *EDCR* § 5.219 (b).

According to the Court's ruling on Luba's Motion for Reconsideration,

> 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. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently

[94] AA04569.

> introduced or the decision is clearly erroneous." (*internal citations omitted*)[95]

The District Court then went through each and every claim by Luba in the Motion for Reconsideration and outlined the basis for denying Luba's requests[96] and in some instances outlined that Luba's Motion failed to include any legal basis under *EDCR* § 5.503 (a).[97]

Luba raised the issues regarding alleged bias in the Motion for Reconsideration and in response the Court made the following relevant findings regarding this issue,

> The Court FINDS this case was reassigned to Department X on May 19, 2022. 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. (*internal citation omitted*)[98]

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[95] AA04551-AA04552.
[96] AA04554-AA04569.
[97] AA04564.
[98] AA04565.

Based upon the foregoing, Luba has failed to establish bias and her request to disqualify the Judge should be denied.

7. Whether the District Court abused its discretion in holding Appellant in contempt for withholding the minor child and rescheduling a dentist appointment as well as the resulting sanctions.

Pursuant to *NRS* § 22.010 (1) and (3), acts or omissions constituting contempt including the following:

> 1. Disorderly, contemptuous or insolent behavior toward the judge while he is holding court, or engaged in his judicial duties at chambers, or toward masters or arbitrators while sitting on a reference or arbitration, or other judicial proceeding.
>
> 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

Withholding the Child

Luba admits in her Opening Brief that she violated the Court's Order by not exchanging the minor child, but argues that she should not be held in contempt of Court because of "extenuating circumstances[.]"[99] Luba provides no legal authority to support the argument that her contempt of Court should be excused under the circumstances. The record clearly establishes that Luba "withheld the

[99] *See* Opening Brief at page 62.

child for the trip March of 2023"[100] while knowing that she was required by Order to exchange the child.[101] Luba further testified she refused to exchange the child.[102] Moreover, Luba testified she was getting the emails between Attorney Childs and Attorney Grimes in real time regarding the travel issue which means she knew no agreement was reached and Enrique indicated he would be filing a Motion for an Order to Show Cause if she did not exchange the child.[103]

Moreover, the Court issued a finding that,

> 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 ongoing litigation.[104]

It has repeatedly been held that the Appellate Court will not reweigh credibility of witnesses because the District Court is in a better position to observe demeanor and assess credibility of witnesses. *Matter of Parental Rights as to CJM*, 118 Nev. 724, 732, 58 P.3d 188, 194 (2002). Enrique asserts that there is substantial evidence to support the District Court's findings and Luba's request should be denied.

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[100] AA03007.
[101] AA02673, AA02675, AA02676, AA02677.
[102] AA02675.
[103] AA02676, AA03258.
[104] AA04149.

Dental Appointment

In her Opening Brief, Luba alleges the District Court previously ruled on the issue regarding the dental appointment and it was improper for contempt to have issued because the rulings contradicted each other (AA02111-AA02116).[105] The referenced section of the Order filed June 13, 2023 directly relates to Luba's claims regarding contempt against Enrique, and do not relate to the dental appointment- AA02109 starts with "LUBA'S MOVING PAPERS" and AA02111 the addressed "The Requests for Order to Show Cause[.]" The quote contained in Luba's Opening Brief cannot be found between AA02111 through AA02116. In further review, AA02123 has the quote stated in Luba's Opening Brief and relates to Enrique's request for a modification of custody not contempt of Court. The entire section states,

> 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.[106]

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[105] *See* Opening Brief at page 63.
[106] AA02123.

Thereafter, although the dental appointment may not have been a basis to change custody, as set forth in the Court's Order above, it was still the subject of an Order to Show Cause.[107] In that regard, there was a dental appointment scheduled on Enrique's timeshare on March 21, 2023.[108] Enrique did not object to the scheduled date for the dental appointment.[109] However, without advance notice or consulting with Enrique[110], Luba changed the appointment to her timeshare[111] thereby moving the dental appointment from March 21, 2023 to March 24, 2023.[112]

8. Whether the District Court erred in its award of child support and minor tax credit Order.

Luba provides no legal argument regarding this claim except that the Court abused its discretion when modifying physical custody.

9. Whether the District Court erred in awarding attorney's fees to Respondent and denying fees to Appellant.

As it relates to the Motion for Reconsideration, "The Court FINDS Luba's plea for relief multiplied the cost of litigation without just cause and did so unreasonably and vexatiously."[113] This is a direction quote for *EDCR* § 5.219 (b). Thereafter, when Attorney Grimes submitted the Order for Attorney Fees which

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[107] AA00241-AA00242, and AA02385-AA02386.
[108] AA02693.
[109] AA02693.
[110] AA02694, AA02696.
[111] AA02694, AA02695.
[112] AA02693, AA02694.
[113] AA04569.

awarded Enrique $767.50 in attorney fees, the Order referenced *NRS* § 18.010 (2)(b) which in part contains language "Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third- party complaint or defense of the opposing party was brought or maintained without reasonable ground[.]"

Even if this Court finds that there is not sufficient evidence to support the findings regarding the applicability of *NRS* § 18.010 (2)(b), this Court should affirm the Order Awarding Attorney Fees if the correct result was reached, even if based upon a different decision. *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 222 (1987). Enrique asserts that there were other grounds set forth in the Order Awarding Attorney Fees seeking attorney fees besides *EDCR* § 5.219 (a) and *EDCR* § 5.102.

10. Whether the District Court was biased against Appellant.

NRS § 1.234 (1) provides that when seeking to disqualify a Judge other than a Supreme Court or Court of Appeals, "must file an affidavit specifying the facts upon which the disqualification is sought." In this matter, Luba failed to comply with the statutory requirements to seek removal of the District Court Judge assigned in this matter. Moreover, Luba's claims as explained in detail herein are broad accusations without any support to the record on Appeal. A judge is presumed to be impartial, and the burden is on the party asserting the challenge to

establish sufficient factual grounds warranting disqualification. *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 270 (2011).

In this section of the Opening Brief, Luba's claim is the District Court Judge is bias because she found Enrique's testimony to be credible despite Enrique making a claim to Child Protective Services against Luba which was unsubstantiated coupled with the finding that the high conflict nature of the case was caused by Luba rather than Enrique's report to Child Protective Services.

A review of the procedural history of the case shows that the issues regarding Child Protective Services were raised in May of 2020.[114] That filing pre-dates the Decree of Divorce filed on December 8, 2021 wherein the Parties stipulated to joint legal and physical custody of the minor child.[115] As the alleged contact with Child Protective Services pre-date the Decree of Divorce, and evidence that pre-dates the Decree of Divorce other than domestic violence would be inappropriate for the District Court to consider. *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P. 2d 742 (1994); and *Castle v. Simmons*, 120 Nev. 98, 86 P. 2d 1042 (2004). Attorney Grimes raised this issue during the Trial in this matter.[116]

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[114] AA03113, AA02915 and AA02916.
[115] AA0001-AA00032.
[116] AA02720.

IV.
Conclusion

In conclusion, Enrique requests the Court affirm the ruling of the District Court in this matter.

Dated this 18th day of September, 2025.

ROBERTS STOFFEL FAMILY LAW GROUP

By: /s/ Amanda M. Roberts, Esq.
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[redacted]
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CERTIFICATE OF COMPLIANCE (*NRAP* § 32 (a)(9))

Certificate of Compliance for Briefs

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2408 in 14 of Times New Roman; or

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2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40, 40A, or 40B because it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 7,041 words; or

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any

improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e)(1), if applicable, which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of September, 2025.

ROBERTS STOFFEL FAMILY LAW GROUP

By: /s/ Amanda M. Roberts, Esq.
Amanda M. Roberts, Esq.
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[redacted]
Attorneys for Respondent

CERTIFICATE OF SERVICE

I, an employee of Roberts Stoffel Family Law Group, hereby certify that on 18th day of September, 2025, I served a true and correct copy of this Respondent's Fast Track Answering Brief as follows:

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

Emily McFarling, Esq.
Attorney for Appellant

By: /s/ Amanda M. Roberts, Esq.
Employee of Roberts Stoffel Family Law Group