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.

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Supreme Court No.: 90570
Related Case No. 84759

District Court No.: D-18-575860-D

APPEAL FROM FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDERS (POST-JUDGMENT) & ORDER DENYING MOTION FOR RECONSIDERATION

Eighth Judicial District Court of the State of Nevada
In and for the County of Clark
THE HONORABLE HEIDI ALMASE
DISTRICT COURT JUDGE

APPELLANT'S REPLY BRIEF

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Docket 90570 Document 2025-42977

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III. STATEMENT OF THE FACTS

Appellant, Ms. Luba Dace (hereinafter "Luba") does not find it necessary to repeat her statement of facts as set forth in her Fast Track Statement and incorporates her statement of facts as if fully set forth herein. However, Luba must clarify Respondent, Mr. Enrique Gonzalez's (hereinafter "Enrique") facts as necessary for disposition of this appeal.

Enrique claims Luba changed a dentist appointment to March 24, 2023 without Enrique's consent. Fast Track Response, hereinafter "FTR" p. 4. However, the evidence in the record via the parallel (partial) parenting plan establishes Luba *was not* required to obtain Enrique's consent to move the appointment, only to make notification that the change occurred, which she did. (**RA00001-RA00009; RA00010-RA00010**).

Enrique additionally claims that previously, in 2021, he had a scheduled vacation with the minor child, but Luba would not cooperate or give him the minor child's passport for travel. FTR p. 4. Enrique further explains in 2022, there was a problem with the itinerary, and the child was not exchanged. FTR p. 4-5. This rendition of facts is not supported by the record. On the contrary, Enrique requested trips to Mexico in 2021 that predated the Stipulated Decree of Divorce dated December 8, 2021. Nevertheless, on July 16, 2021, Enrique and the minor child were on vacation in Mexico. (AA1308). Moreover, on June 19, 2022, Luba provided the

child and her passport to Enrique, so he and their child made the trip despite missing information from Enrique. (AA1155). Again, on July 28, 2022, Luba provided the child and her passport to Enrique despite missing information from Enrique, but he missed his flight. (AA1164).

Contrary to Enrique's claim that Luba discussed his psychiatric report on an internet show, FTR p. 5, this is belied by the record. Luba testified she discussed the report with Mr. Grimes and did not recall making any statements about the psychiatric report (AA2684).

IV. ARGUMENT

A. THE DISTRICT COURT ERRED WHEN IT FOUND THAT ONE WITHOLDING CONSTITUTED ABDUCTION AS A MATTER OF LAW.

In this case, the District Court abused its discretion when it modified the child custody arrangement from joint to primary custody in Enrique's favor. This modification was not in the best interests of the child. The District Court's finding is particularly in error in this regard because it found Luba committed criminal abduction as a matter of law, a fact not supported by a plain reading of the statute or evidence. This finding is furthered because Luba relied, to her extreme detriment resulting in the loss of joint custody of her only child, on the faulty advice of her counsel.

1. For an act to be "willful" for the purposes of criminal abduction under NRS 200.359, specific intent is required.

A review of Enrique's response reveals a lengthy recitation of legislative history concerning abduction, ultimately concluding that Luba need not have any specific intent in willfully withholding the child from a custodial parent to satisfy the statute for criminal abduction under NRS 200.359(1). FTR p. 6-12. Luba withheld the minor child on a single occasion[1] due to legitimate safety concerns and upon the advice of her counsel, however misguided that advice may have been. Enrique now asks this Court to conclude that such conduct constitutes criminal abduction under NRS 200.359(1), despite the absence of any finding of willfulness or specific intent. Adopting his interpretation would mean that any parent who, in good faith, withholds a child for reasons such as safety concerns or reliance on legal advice, and thereby fails to complete an agreed exchange, would be guilty of criminal abduction. Nothing in the legislative history Enrique cites supports the conclusion that the legislature intended such an overreaching result.

In fact, Enrique's citation to *Wilson v. First. Jud. Dist. Ct.,* 140 Nev. Adv. Op. 7, 547 P.3d 122 (2024), does not support his position. Enrique citations to *Wilson* and this Court's review of the application of "willfully" as applied to an analysis of

[1] Despite Enrique's claims to the contrary, *See* FTR p. 4-5, the evidence shows Enrique completed his July 16, 0221, June 19, 202, July 28, 2022 travel as planned. No trip was canceled or materially impacted due to Luba. *See* FTS p. 30, referencing AA1308, 1155, 1164.

whether a defendant hindered, delayed or obstructed a public officer do not ultimately support his argument in this case. *Id.* at 130. Conveniently, Enrique ends his review/citation of this Court's analysis in *Wilson* without mentioning the remainder of the opinion. As cited by Enrique, this Court uses Black's Law Dictionary to define "willfully" and discussed how the terms are construed in other offenses and whether specific intent or general intent is applied. FTR p. 7-18. What Enrique's analysis of *Wilson* omits is this Court's finding that the term "willfulness" as applied to NRS 197.190 requires specific intent. *Id.* at 131.

This Court found that NRS 197.190 required a specific intent analysis of "willfully" because otherwise, it would raise grave doubt as to its constitutionality by criminalizing a significant amount of protected activity. *Id.* at 132. This Court also found a specific intent analysis was required because otherwise, the statute would be violated with regular frequency but only some would be subject to prosecution based upon unguided discretion. *Id.* This Court explained a specific intent finding is required otherwise, "a person could be charged with obstruction for intentionally walking in front of a police officer, even if the person was unaware that doing so would hinder, delay or obstruct the officer.

Luba submits this Court' rationale in *Wilson* supports her argument in this case. To be found liable for criminal abduction under NRS 200.359 (and subject to the presumption that joint custody is not in the child's best interests) one must harbor

the specific intent to willfully detain, conceal or remove a child and to deprive the other parent of custodial rights. Such a finding distinguishes an act of criminal abduction from a single instance of civil withholding in the family law context, with undoubtedly occurs frequently and has been continuously conflated in these proceedings. (*Compare* AA4130 *with* AA4154). The failure to hold as such, as noted in *Wilson*, would subject some (but not all) to prosecution (or here the presumption) based upon unguided discretion. Luba submits the district court's application of the statute was not used for its designated purpose (addressing serious crimes of child abduction) but instead as a punitive measure to punish her for a minor custody violation (a single civil withholding).

2. An act of withholding based upon safety concerns and the advice of counsel is not "willful" in the child abduction context.

In this case, Luba's good faith belief given the stipulation of the attorneys, her counsel's advice and valid safety concerns demonstrate she did not willfully commit abduction. Enrique's attempts to diminish these valid concerns and her counsel's advice is unavailing.

Enrique concedes he agreed to provide CBX tickets but ignores his failure to do so. This failure corroborates Luba's testimony that she understood, based upon her counsel's advice and the confirming emails, that Enrique's compliance with the requirement was a condition precedent to the exchange. Enrique cannot acknowledge the agreement while simultaneously insisting "no agreement was

reached." FTR p. 14. (AA3256). This is especially true when you consider attorney Child's testimony that the district court clarified CBX tickets were part of the itinerary. (AA2852).

Enrique claimed he did not purchase the CBX tickets because "he was under the impression that Luba was going to continue interfering…". FTR p. 2. But this ignores that Luba did not interfere with his travels. Prior to March of 2023, no trips were canceled or materially impacted due to Luba. (AA1308, 1155, 1164).

The email chain cited by Enrique supports, rather than refutes Luba's understanding. Enrique characterizes the back-and-forth emails as evidence there was no agreement. FTR p. 14-15. In reality, the emails show Enrique's counsel explicitly agreed he would purchase CBX tickets. (AA03256). The subsequent disputes were about the timing and mechanics of purchase, not about whether CBX tickets were required. This supports Luba's testimony that she understood Enrique's purchase of CBX tickets to be a condition of the exchange, consistent with her counsel's advice.

Additionally, Enrique fails to even acknowledge the district court's finding that Luba's counsel made "absolute misrepresentations" concerning the telephone conference. (AA2778). It is disingenuous for Enrique to argue that Luba knew no agreement was reached, FTR p. 14, when the district court itself recognized that her counsel misrepresented what occurred. There is no reason to assume that those same

misrepresentations were not communicated to Luba, which directly undermines any claim she acted willfully, with specific intent. The district court's finding that Attorney Childs made "absolute misrepresentations" is dispositive. Respondent cannot credibly argue Luba knew the attorneys had reached no agreement when the lower court itself found her counsel had misrepresented the conference.

Furthermore, Enrique focuses on whether Luba's safety concerns constituted "imminent danger" under NRS 200.359(11) (child welfare reporting statutes), but this is a red herring and not an argument Luba made below. FTR p. 12. Despite this, Luba submits the applicable standard here is "willful", which requires actual knowledge and specific intent to violate the order. Luba relied in good faith on her counsel's representations and Enrique's own failure to follow through with the agreed condition. That reliance negates any finding of specific intent.

Here, Enrique's citation of the email exchange ignores his failure to comply with the agreed conditions and omits the district court's express finding that Luba's counsel misrepresented the conference. The record as a whole demonstrates Luba acted in reliance on counsel's flawed advice and Enrique's noncompliance, not with the specific intent to abduct the child. Accordingly, the district court's finding of willful abduction lacks substantial evidentiary support.

Based upon the arguments herein and the evidence in the record, Luba respectfully requests this Court find there was not clear and convincing evidence of willful abduction of the child and reverse the lower court's finding.

B. THE DISTRICT COURT ERRED WHEN IT FOUND THAT APPELLANT DID NOT REBUT ANY PRESUMPTION THAT SHE SHOULD NOT HAVE JOINT PHYSICAL CUSTODY.

In stripping Luba of the benefit of joint custody, the district court made contradictory findings. On the one hand, the lower court found Luba could provide adequate care for the child, provide for the child's physical and emotional needs, while providing a safe home thereby overcoming the NRS 125C.0035(7) presumption that joint custody was not in the child best interests. Yet, at the same time, the lower court used the presumption to deny her joint custody.

In response, Enrique concedes the district court expressly found Luba rebutted the statutory presumption under NRS 125C.0035(7). FTR p. 17. Once rebutted, the presumption is no longer operative and cannot continue to weigh against Luba's custody rights. A review of the briefing makes it clear Enrique misunderstands the argument. Luba does not dispute the Court was required to consider the best interest factors. FTR p. 17. The error of the district court lies not in considering the best interest factors, but in misapplying them by continuing to treat Luba as though it had not just found she rebutted the presumption. Contrary to Enrique's argument, *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007), does not stand for the

proposition that a rebutted presumption under NRS § 125C.0035(7) continues to diminish a parent's custodial rights. Rather, *Ellis* addresses the necessity of considering best interest factors in all custody determinations, a point that is not in dispute.

Here, the district court's reliance on a single, isolated act of withholding is insufficient to outweigh Nevada's policy favoring joint custody because the court found Luba rebutted the presumption. Luba submits once rebutted, the presumption should not be permitted to be reintroduced under the guise of the best interest factors. Based upon inadequate cause, this Court should reverse finding joint custody must be reinstated to uphold Nevada's policy of prioritizing stability and the child's best interest.

C. 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 WELLFARE OF THE CHILD.

A plain review of the record indicates there was no substantial change in circumstances affecting the welfare of the child. Within her Fast Track Statement, Luba made several detailed arguments as to this claim: 1) the district court's finding was conclusory with no detailed analysis or factual support provided for appellate review, 2) a single incident of non-criminal withholding does not equate to "substantive and pervasive interference" under Nevada law, and 3) aside from the

single act of withholding, no other evidence of additional changes since the prior custody order was provided to support the alleged change in circumstances. FTS p. 40-44. Enrique briefly glances over these arguments, simply noting the district court's limited analysis was sufficient and that Luba failed to raise this argument below. FTR p. 18-19. Instead of addressing the arguments raised or attempting to distinguish the many authorities cited by Luba, Enrique falsely informs this Court that she admitted a substantial change in circumstances had been met. FTR p. 19.

First, Luba cited Nevada authority to support the notion that a ***single act*** of non-criminal withholding cannot be ***substantial and pervasive*** by its very nature. FTS p. 41. Enrique does not even address the fact that the interference must rise to this level before a withholding can constitute a substantial change. Enrique cites no authority for the proposition that a single, isolated withholding rises to this level, particularly when the withholding was based on valid safety concerns and the advice of counsel.

Second, Enrique ignores Nevada's stability doctrine that prohibits custody modifications absent clear, new circumstances arising since the last order. Enrique points to no evidence of changed circumstances beyond the single act of withholding. By not contesting this point, Enrique effectively concedes that no other change was presented.

Third, Enrique avoids directly addressing *Davis v. Ewalefo*, 131 Nev. 445, 352 P.3d 1139 (2015) and its requirement for specific, written findings in custody modifications. FTR p. 18. Luba's argument highlighted that the lower court provided no factual analysis to support its conclusion of substantial change and even declined to elaborate when asked via the motion for reconsideration. In response, Enrique simply claims the single sentencing indicating a substantial change was found is sufficient. The absence of required findings is independently reversible error.

Lastly, Enrique mischaracterizes Luba's counsel's acknowledgment at trial. FTR p. 18-19. Luba did not concede that a substantial change in circumstances was established. Rather, counsel merely acknowledged that if the presumption were rebutted (which it was), the court was required to address the best interest factors. (AA 3066). Enrique's attempt to transform this procedural acknowledgement into a concession if unsupported by the record and his citation to *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) has no application here[2].

Based on the record, the district court erred in finding a substantial change in circumstances and abused its discretion by awarding Enrique primary physical

[2] Even though Luba raised the district court's lack of written analysis/findings on this issue in the Motion for Reconsideration, she additionally contends a party cannot waive a requirement that the lower court make explicit written findings. As this Court explain in *Davis,* meaningful appellate review requires written findings, and their absence is structural error. 131 Nev. at 45. *See also Hardy v. First Natl. Bank of Nev.*, 86 Nev. 921, 923 478 P.2d 581, 582-83 (1970).

custody without making clear findings. Luba therefore asks this Court to reverse, concluding that no substantial change occurred, and restore joint physical custody as the parties previously shared.

D. THE DISTRICT COURT ERRED IN MODIFYING CUSTODY WHEN RESPONDENT DID NOT MEET THE STANDARD THAT MODIFICATION WAS IN THE MINOR CHILD'S BEST INTEREST.

Within her Fast Track Statement, Luba established in great detail that modifying custody was not in the child's best interest. FTS p. 44-57. Luba also demonstrated the lower court's order was not based upon the child's best interest, but as punishment against Luba. FTS p. 56-57. Enrique largely ignores the substance of Luba's arguments and instead relies on the general principle that appellate courts do not reweigh witness credibility. FTR p. 19-20. Luba does not request this Court reweigh witness credibility but rather, find that no substantial evidence in the record supports the district court's finding that each factor favored Enrique or that Enrique having primary physical custody was in the child's best interest. *See* FTS p. 56-57 (*citing Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) (noting a court abuses its discretion if "no reasonable judge could reach a similar conclusion under the same circumstances.").

Aside from a conclusory statement that substantial evidence exists, Enrique provides no information whatsoever to support this claim. FT p. 20. While Luba does not seek to reweigh credibility, she does challenge the district court's clear

misapplication of the law and its failure to properly analyze the best interest factors under NRS § 125C.0035(4). Enrique's complete failure to address the key aspects of Luba's argument should be construed as admission of its merit.

Luba's briefing demonstrated the district court's findings were unsupported by substantial evidence. The court mischaracterized the single withholding, treating Luba's single, safety-motivated act against her, while ignoring Enrique's repeated withholding of the child and false CPS allegations, which posed real harm to the child. Whereas, Luba consistently facilitated contact and communication with Enrique, including providing full information about medical appointments and scheduling, demonstrating her willingness to foster a continuing relationship between the child and Enrique. The district court also misattributed conflict to Luba, despite clear evidence that Enrique consistently failed to cooperate, refused to attend or make medical appointments, and engaged in hostile communications. Further, the district court minimized the child's allergies and medical needs, despite evidence that Luba ensured proper care where Enrique failed to act. Moreover, the district court found the child's physical, developmental and emotional needs favored Enrique despite undisputed evidence that Luba provided consistent care, including addressing her allergies, while Enrique's failure to schedule necessary appointments and leaving the child in an allergenic environment was disregarded.

The prior joint custody arrangement had served the child's best interest for years, yet the district court's modification was largely punitive and not grounded in the statutory factors. Enrique does not address any of these points or the controlling authorities Luba cited, which clarify that custody changes should not be used to punish and must prioritize the child's best interests.

As a result, this Court should reverse the district court's findings because the decision in favor of Enrique is clearly erroneous. *See United States v. Gypsum Co.,* [redacted]525, 542 (1948) ("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.").

E. THE DISTRICT'S COURT'S ORDER TO MODIFY CUSTODY VIOLATED APPELLANT'S RIGHT TO DUE PROCESS.

The district court's finding that Luba committed an act of abduction, without any of the categories set forth in NRS l 25C.0035(8) (the criminal acts which constitute abduction) based upon a single act of withholding for safety concerns violated her constitutional right to parent and denied her due process. Enrique's argument to the contrary misconstrues both the statutory scheme and the constitutional requirements.

First, Enrique claims Luba raises this issue for the first time on appeal. FTR p. 21. This is incorrect. These due process considerations were raised below and

addressed by the district court in its April 11, 2025 Order. AA 4517, 4520, 4523-4524, 4554, 4563. Furthermore, Luba has consistently objected below to the lower court's adverse inferences and findings that exceeded its statutory and constitutional authority. Even if this Court were to find the argument newly or differently raised on appeal, constitutional issues that implicate fundamental rights may be raised for the first time on appeal. *See Chambers v. Mississippi*, 410 U.S. 284, 304-05 (1973) ("[T]he rule that questions not raised in the trial court cannot be raised for the first time on appeal, is not without exceptions, among with are errors 'affecting fundamental rights of the parties….").

Second, Enrique mischaracterizes NRS 125C.0035(7)-(10). FTR p. 21. While subsection (10)(a) provides a definitional reference to abduction statutes, subsection (7) expressly imposes a presumption against custody where a parent is "found by clear and convincing evidence to have committed an act of abduction." A finding that a parent "committed" abduction is not merely definitional, it carries criminal character and consequences. By adopting the criminal code's definitions, the Legislature incorporated the substantive elements of those crimes.

Third, Enrique's reliance on NRS 125C.0035(8) actually supports Luba's argument. That section identifies "conclusive evidence" of abduction as a conviction, guilty or nolo plea, or an admission, showing that only a criminal adjudication or voluntary concession can trigger the presumption. The district court

however, found abduction without any such predicate, based on a single act of withholding for safety concerns. This interpretation undermines the Legislature's limit and strips parents of constitutionally protected safeguards.

Because the district court imposed a criminal stigma and custodial penalty against Luba without affording her constitutional protections, she respectfully requests reversal.

F. THE DISTRICT COURT'S ORDER MODIFYING CUSTODY WAS A RESULT OF THE BIAS THAT WAS FOUND AGAINST THE PRIOR JUDGE ASSIGNED TO THE CASE.

Enrique first argues that Luba failed to file an affidavit below specifying the facts upon which disqualification was sought. FTR p. 22. This purported procedural objection by Enrique does not preclude appellate review. Luba has raised a constitutional claim that the district court judge demonstrated bias during the proceedings. This Court has made clear that claims of judicial misconduct are reviewed *de novo*. *Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008). The statutory affidavit procedure does not foreclose appellate review where the record itself establishes circumstances that would cause a reasonable person to doubt a judge's impartiality. *See Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 271 (2011) (objective test is whether a reasonable observer would question impartiality). Due process requires an impartial tribunal, and the absence of a NRS 1.234 affidavit cannot insulate judicial bias from appellate scrutiny.

Enrique next claims Luba's argument is a "broad accusation" without any support in the record. FTR p. 22. A plain review of Luba's Fast Track Statement reveals she made specific examples illustrative of the bias of the court. FTS p. 60-61. These disputed examples not only undermine Enrique's claim of a "broad accusation", but they also highlight why credibility determinations cannot resolve the bias claim at issue in this case.

Enrique emphasizes credibility determinations, *see* FTR p. 23-24, but the reasonable-person standard governs bias claims. While a district court may assess witness credibility, a pattern of rulings can create an appearance of partiality. Here, the subsequent judge credited Enrique's self-serving testimony over neutral CPS findings, attributed the parties' high conflict to Luba, and penalized her for filing a good-faith Motion for Reconsideration. Even if individual rulings could be justified, the cumulative effect would cause a reasonable observer to question impartiality. Under these circumstances, Luba is entitled to reversal for consideration of the best interests of the child without the shadow of bias against her. *See Ybarra*, 127 Nev. at 51, 247 P.3d at 272.

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G. 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.

The district court abused its discretion in finding Luba committed contempt given the extenuating circumstances at issue in this case.

1. The Contempt Finding for Withholding the Child

Enrique's arguments fail to justify the district court's contempt finding, which constitutes an abuse of discretion under the circumstances. Luba's actions were justified and based on legitimate safety concerns. While Enrique emphasizes that Luba did not exchange the child on March 15, 2023, FTR p. 26-27, this overlooks the extenuating circumstances. Luba withheld the child to protect the minor from a serious and credible threat to safety in the region Enrique intended to visit, as advised by the U.S. Department of State and consistent with guidance from her attorney. (AA4372-4373). Her decision was reasonable and made in good faith to protect the child's best interests, which are paramount. *See Ellis*, 123 Nev. at 149, 159 P.3d at 646.

Enrique cites Luba's later trip to Mexico as undermining her safety concerns, but her subsequent travel does not negate the reasonableness of her actions. FTR p. 27. Enrique's (and the lower court's) rationale has a fatal flaw; Enrique's March 2023 trip involved a region and circumstances under an active travel advisory (the

Tijuana border and Nuevo Leon) whereas the later June 2023 trip by Luba (to Cancun) occurred under different conditions and a much safer route/region not subject to the same travel advisory. Luba testified as to this important distinction. (AA4144). The lower court improperly equated the two, disregarding the critical safety differences.

Considering the travel advisory, Luba's reasonable belief that Enrique had not satisfied preconditions for the exchange (by purchasing a CBX ticket to ensure safety), and her reliance on counsel, substantial evidence does not support the contempt finding. Accordingly, Luba respectfully requests the contempt finding and resulting sanction be reversed as an abuse of discretion.

2. The Contempt Finding for Rescheduling a Dentist Appointment

The district court found Luba in contempt for rescheduling a single dentist appointment from March 21, 2023. (AA4161). This holding was an abuse of discretion because it directly contradicts a previous order filed June 13, 2023. (AA2111-AA2116).

In response, Enrique argues the citations to the record do not relate to the dental appointment but instead to Luba's request to hold him in contempt. FTR p. 28. Enrique notes the portion of the Order discussing the dental appointment is located at AA2121, 2123. FTR p. 28. This is correct. Where the parties disagree is the effect of the wording in the district court's order. Enrique claims the wording in

the district court's order relates only to Enrique's request for modification of custody and not contempt of court. FTR p. 28. But this view fails to consider the case in totality as the avenues for which Enrique sought modification of custody (changing of dental appointments without his consent and withholding the child in March of 2023) are the same for which Luba was held in contempt. In addressing Enrique's allegation that "Luba routinely makes dental and doctor appointments without his consent" the district court explicitly found that the evidence showed "Luba made the appointments and do[es] not indicate Enrique objected to the appointments…". (AA2123). This was later confirmed by the court. (AA 4364) (indicating Luba informed Enrique of the dental appointment change via TalkingParents but he did not respond or object).

Considering the totality of the circumstances, Luba respectfully requests this Court reverse the contempt finding as the Order was a clear abuse of discretion.

H. THE DISTRICT COURT ERRED IN ITS AWARD OF CHILD SUPPORT AND MINOR TAX CREDIT ORDER.

Because the district court's decision modifying custody was in error, this Court should reverse the award of child support and minor tax credit to Enrique based upon this error.

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I. THE DISTRICT COURT ERRED IN AWARDING ATTORNEY'S FEES TO RESPONDENT AND DENYING FEES TO APPELLANT.

Enrique's defense of the fee award is unavailing. The district court abused its discretion by both awarding fees to Enrique and denying fees to Luba.

First, the lower court's (and Enrique's) reliance on EDCR 5.219(b) was misplaced. *See* FTR p. 29. That rule authorizes sanctions only where a party's filing was "unreasonably and vexatiously" made. Luba's Motion for Reconsideration challenged a drastic change in custody, the reduction of her joint custodial timeshare to alternating weekends, a challenge that was based on substantive legal grounds and supported by the record. A parent's attempt to preserve an established custodial relationship should not reasonably be deemed "vexatious." The record does not show that Luba's filing was frivolous or harassing, and the conclusory statement that it "multiplied litigation without just cause", FTR p. 29, is insufficient to justify sanctions.

Second, the order's reference to NRS 18.010(2)(b) fares no better. That statute permits fees only where a claim was brought "without reasonable ground or to harass." Luba's Motion for Reconsideration cannot be so characterized: it squarely addressed the court's custody determination and raised reasonable arguments concerning the child's best interests. The fact that the district court ultimately rejected the motion does not convert it into a baseless or frivolous filing. Afterall,

the "frivolousness of a claim is determined at the time the claim is filed". *Barozzi v. Benna*, 112 Nev. 635, 637, 918 P.2d 301, 302 (1996). Luba argued there was nothing in the record to suggest her Motion for Reconsideration was made with no reasonable grounds or to harass and Enrique makes no arguments to the contrary. *See* FTR p. 29-30.

Lastly, respondent's reliance on *Rosenstein v. Steele*, 103 Nev. 571, 747 P.2d 230 (1987), is misplaced. While it is true that an appellate court may affirm if the "right result" was reached, that principle presupposes that some valid legal basis exists in the record. Here, there is none. As a result, Luba respectfully requests this Court reverse the district court's finding of attorney fees to Enrique because the order was an abuse of discretion.

J. THE DISTRICT COURT WAS BIASED AGAINST APPELLANT.

Enrique first contends that Luba's claim of judicial bias fails because she did not comply with NRS 1.234(1) by filing an affidavit of disqualification. FTR p. 30. This argument misstates the issue. The present appeal is not directed at a procedural request for disqualification under NRS 1.234; rather, it raises a constitutional claim that the district court judge demonstrated bias during the proceedings. This Court has made clear that claims of judicial misconduct are reviewed *de novo*. *Lioce,* 124 Nev. at 20, 174 P.3d at 982. The statutory affidavit procedure does not foreclose appellate review where the record itself establishes circumstances that would cause

a reasonable person to doubt a judge's impartiality. *See Ybarra,* 127 Nev. at 51, 247 P.3d at 271 (objective test is whether a reasonable observer would question impartiality). Due process requires an impartial tribunal, and the absence of a NRS 1.234 affidavit should not insulate judicial bias from appellate scrutiny.

Enrique next dismisses Luba's showing of bias as "broad accusations." FTR p. 30. This is inaccurate. Luba cited specific findings in the record (AA3113, AA04395–AA4396) where the district court credited Enrique's testimony over the objective determinations of Child Protective Services, which had repeatedly found the allegations against Luba to be unsubstantiated. The court then attributed the parties' "high conflict" dynamic to Luba rather than Enrique, despite the evidence showing Enrique and his wife were the ones repeatedly initiating unfounded CPS investigations. A reasonable person reviewing these circumstances would harbor doubts about the court's impartiality.

Finally, Enrique argues that because the CPS reports predated the December 2021 divorce decree, they were irrelevant to the district court's later findings. This argument misunderstands the nature of the bias claim. Judicial bias is structural error that infects the proceedings whenever it arises. The fact that CPS involvement began before the decree is immaterial when the district court expressly relied on that history in making credibility determinations and allocating blame during subsequent proceedings. Neither *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742

(1994), nor *Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004), controls here, as those cases addressed the admissibility of stale evidence in custody modifications, not whether a judge's partiality is reasonably called into question. This is especially true in a case such as this where the district court specifically addressed the information in weighing the best interest factors, thereby revealing the bias. (AA4146, 4149).

Because this conduct raises an objective appearance of bias, remand to a different judge is necessary to preserve the integrity of the proceedings.

V. CONCLUSION

For these reasons, the District Court committed multiple errors when it modified custody in Enrique's favor, none of which served the child's best interests. The court's finding of abduction was unsupported by law or evidence, and Luba was prejudiced by reliance on faulty legal advice. Enrique failed to meet his burden to show a substantial change in circumstances or that modification benefited the child. The contempt findings and related awards were similarly flawed.

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Reversal and remand are warranted with instructions to reinstate joint physical custody, reject the abduction finding, and correct the legal and procedural errors outlined above.

DATED this 2nd of October, 2025.

MCFARLING COHEN FIC & SQUIRES

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VI. CERTIFICATE OF COMPLIANCE

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–Office 365 Business in font type Times New Roman size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains 6,366 words; or

☐ Does not exceed ___ pages.

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, in particular NRAP 28(e)(1), 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 2nd of October, 2025.

MCFARLING COHEN FIC & SQUIRES

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Attorney for Appellant, Luba Dace.

VII. CERTIFICATE OF SERVICE

I, an employee of McFarling Cohen Fic & Squires, hereby certify that on the 2nd of October, 2025, I served a true and correct copy of this Appellant's Reply Brief as follows:

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

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