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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RESPONDENT'S RESPONSE TO APPELLANT'S PETITION FOR REVIEW BY THE SUPREME COURT PURSUANT TO NRAP § 40B

COMES NOW Enrique Velazquez-Gonzalez, Respondent, by and through his attorney of record, Amanda M. Roberts, Esq., of Roberts Stoffel Family Law Group,

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Docket 90570 Document 1334201

and hereby submits Respondent's Response to Appellant's Petition for Review by the Supreme Court Pursuant to *NRAP* § 40B ("Petition for Review").

I.
QUESTIONS FOR REVIEW

1. Whether the Court committed legal error by applying the abduction presumption to a protective act occurring under legally ambiguous circumstances, resulting in a custody modification that is both factually and legally absurd.

2. Whether the Court exceeded its jurisdiction by bootstrapping a contempt finding into a "substantial change of circumstances," utilizing a custody modification as a measure that is improperly punitive to the parent and the child.

II.
WHETHER THE COURT COMMITTED LEGAL ERROR BY APPLYING THE ABDUCTION PRESUMPTION TO A PROTECTIVE ACT OCCURRING UNDER LEGALLY AMBIGUOUS CIRCUMSTANCES, RESULTING IN A CUSTODY MODIFICATION THAT IS BOTH FACTUALLY AND LEGALLY ABSURD.

In her Petition for Review, Luba alleges that successfully rebutting the presumption pursuant to *NRS* § 125C.0035 (7) and the District Court finding that the act of abduction was a substantial change in circumstance under the holding in *Romano v. Romano*, 138 Nev. ___, 501 P.3d 980 (Adv. Opn. No. 1, Jan. 13, 2022), are inconsistent with Nevada law. Further she alleges that a good-faith misstep, such as occurred in this case, could trigger permanent loss of joint physical custody regardless of fitness.

First, Luba asserts that the District Court action was essentially a contempt issue bootstrapped to a custody determination wherein the District Court misapplied the best interest of *NRS* § 125C.0035 (4). That position negates the record because Enrique clearly sought a modification of custody[1] and set forth in his Opposition and Countermotion that the substantial change in circumstances was Luba's act of abduction, and making medical appointments without consulting Enrique.[2]

Luba argues that the District Court's modification of physical custody for one incident of abduction is extreme and punitive. However, *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."[3] Enrique would argue that "any act" makes it clear that a single act qualifies under the statute which the Court of Appeals agreed with in its decision.

Luba argues that "withholding" is not the same as abduction. This argument is simply not supported by the controlling law or statutory authority. *NRS* § 125C.0035 (10)(a) states, ""Abduction" means the commission of an act described

[1] AA01051 through AA01089.
[2] AA10077.
[3] AA02776.

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."[4] *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[.]

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.[5] This was based partially on Luba's own testimony wherein she stated that she "withheld the child for the trip March of 2023"[6] while knowing that she was required by Order to exchange the child.[7] Luba further testified she refused to exchange the child.[8]

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[4] AA02776.
[5] AA04154.
[6] AA03007.
[7] AA02673, AA02675, AA02676, AA02677.
[8] AA02675.

Luba asks this Court "to consider the absurdity and detrimental impact on the child[.]" Enrique asks this Court to consider the exact same thing in this situation. Luba's absurd refusal to comply with valid Court Orders regarding his vacation while knowing she was supposed to exchange the child and failing to do so.[9] Luba's actions are contrary to Nevada law because they did not foster and encourage Enrique's relationship with the minor child (*NRS* § 125C.0035 (4)(c)) or allow for the "preservation and strengthening of family life[.]" *NRS* § 125.005 (1). Luba's act of withholding was harmful to the minor child, she missed opportunities to spend time with Enrique and her extended family, and that time cannot be restored.[10] Moreover, when it came time for Luba to travel to Mexico after withholding the child from Enrique's vacation, she was able to exercise her time without incident and experience this special time with the minor child.[11]

Luba argues that she requested clarification from the Court which was granted and the District Court clarified multiple times that the Parties were to follow the existing Court Orders.[12] Luba testified that prior to Enrique leaving for Mexico on vacation in 2023, she had all the required itinerary information as set

[9] AA02673, AA02675, AA02676, AA02677.
[10] AA02656.
[11] AA02760.
[12] AA02596.

forth in the Decree of Divorce.[13] When it came time to exchange [redacted] Luba did not do the exchange on March 15, 2023.[14] 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.[15]

Second, Luba's characterization of her behavior as a "good-faith misstep" is contrary to the record in this matter. During the telephone conversation between the attorneys and the District Court immediately before Luba's act of withholding, the District Court clarified multiple times that the Parties were to follow the existing Court Orders.[16] Moreover, 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.[17] The District Court issued a finding,

> 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.[18]

[13] AAA02647 through AA02649.
[14] AA02668, AA02673, AA02677, AA02678, AA02681.
[15] AA02669.
[16] AA02596.
[17] AAA02647 through AA02649.
[18] AA04149.

To characterize Luba's actions a "good-faith misstep" is simply not supported by the record in this matter.

Third, physical custody is always modifiable during the minority of child if the moving Party can establish that there has been a substantial change in circumstances affecting the welfare of the child and the modification would serve the child's best interest. *Romano v. Romano*, 138 Nev. ___, 501 P.3d 980 (Adv. Opn. No. 1, Jan. 13, 2022).

Fourth, Luba's characterization of the Court of Appeals ruling as being inconsistent with Nevada law is inaccurate. *NRS* § 125C.0035 (7) clearly articulates that the legal standard pertaining to abduction related to the presumption regarding physical custody is "clear and convincing." However, as set forth in *Soldo-Alessio v. Ferguson*, 141 Nev ___, ___ P.3d ___ (Adv. Op. 9, February 13, 2025), when considering abduction as a best interest factor pursuant to *NRS* § 125C.0035 (4)(l), the standard is preponderance of the evidence. *Id citing Davis,* 131 Nev. at 450, 352 P.3d at 1142.

In this matter, the District Court properly conducted an analysis under *NRS* § 125C.0035 (7).[19] Although the District Court found by clear and convincing evidence that abduction occurred, the District Court also considered the rebuttal

[19] AA04155.

presumption and determined that Luba could overcome the presumption in this matter.[20] Overcoming the presumption does not mean the District Court was required to put blinders on when considering abduction for the purpose of best interest, in fact Enrique would argue that would be improper under the current precedent. *Soldo-Alessio v. Ferguson*, 141 Nev ___, ___ P.3d ___ (Adv. Op. 9, February 13, 2025). Moreover, the District Court completed an analysis of the best interest factors to the circumstances in this case creating a detailed analysis of how the child's best interests would be supported by a modification of physical custody.

III.
WHETHER THE COURT EXCEEDED ITS JURISDICTION BY BOOTSTRAPPING A CONTEMPT FINDING INTO A "SUBSTANTIAL CHANGE OF CIRCUMSTANCES," UTILIZING A CUSTODY MODIFICATION AS A MEASURE THAT IS IMPROPERLY PUNITIVE TO THE PARENT AND THE CHILD.

Here, Luba is attempting to bring up arguments not previously raised before the District Court or Court of Appeal. A review of the records indicates this argument was never previously raised. Enrique would argue that because Luba did not raise this issue at the District Court or Court of Appeal levels, she should not be able to raise the issue at this stage. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

[20] AA04155.

Enrique would point out that *NRS* § 125C.020 (1) falls under the subsection of Chapter 125C entitled "Visitation." *NRS* § 125C.020 (1) references to the "rights of the noncustodial parent[.]" Chapter 125C does not define noncustodial parent, but *NRS* § 125C.006 (1)(a) references noncustodial and it indicates that noncustodial parent means a parent who does not have joint physical custody. In this matter, Enrique had joint physical custody prior to the District Court's Order.[21] Therefore, Enrique alleges that *NRS* § 125C.020 was not applicable to the Parties of this action.

Luba next argues that the District Court failed to consider *NRS* § 200.359 (6)(b), (8) and (11) in issuing its decision. Enrique would argue that because Luba did not raise this issue at the District Court or Court of Appeal levels, she should not be able to raise the issue at this stage. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Enrique would not, in his briefing, he addressed *NRS* § 200.359 (11) and in response Luba stated, "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 hearing and not an argument Luba made below."[22]

[21] AA00014
[22] Luba's Reply Brief at page 7.

Now, Luba is requesting that this Court consider her admitted act of withholding and the alleged reasoning behind it as a mitigating factor under *NRS* § 200.359 (11), in determining whether to review the ruling from the Court of Appeal. If this Court were to do so, Luba would need to have complied with the statutory requirements because she never made a report to "law enforcement agency or an agency which provides child welfare services[.]" *Id.* However, even if this Court were to consider Luba's various arguments regarding the "grey area" and her understanding, the District Court found that Luba's claims regarding safety issues were 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."[23] 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). Therefore, Luba's varied arguments regarding the reasons for her withholding lack further merit and should not be considered by this Court.

[23] AA04149.

Luba argues as with domestic violence there are varying degrees of abduction which were not considered by the District Court or the Court of Appeals. However, asking this Court to consider the alleged varying degrees is comparable to asking for evidence and credibility to be reweighed which this Court does not do 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).

Luba argues that the Court of Appeals decision created "a dangerous precedent where a parent is forced to choose between the child's safety and the permanent loss of custody, thus contradicting the very safety goals the presumption was intended to achieve." This statement is absurd given that if there were true safety concerns, the statute already addresses how to handle those situations. Specifically, *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.

A parent who believed there was a safety concern by reporting it to the proper "law enforcement agency or an agency which provides child welfare services within 24 hours[.]" This Court need not take any action as the legislature has already put in place a mechanism to handle the issue raised by Luba in her argument.

Luba argues that a finding that one act of withholding is a substantial change in circumstance reduces the burden placed on the Party seeking a modification of physical custody. However, in *Myers v. Haskins*, 138 Nev. ___, 513 P.3d 527 (Nev. App. Adv. Opn. No. 51, June 30, 2022), the Court determined that there would be a substantial change in circumstance if Myers' allegations were proven at an Evidentiary Hearing. A single act, in the decision, that might warrant a substantial change in circumstance included allegations that a parent or other child in a home threatened harm to the child of the action, a step-parent struck a child not of the action in front of the child of the action, step-mother were using derogatory terms to demean the child, failure to obtain proper medical treatment or allow the other parent to do so, forcing a child to provide care for a step-sibling, not providing proper living accommodations (foam mattress in a crowded house

with people and animals), and a deprivation of parenting time, interference with parenting time. Under the case law there is no requirement that a substantial change in circumstance be more than a single act because there are circumstances when a single act may rise to the level of a substantial change in circumstance. That should be weighed by the District Court not at the appellate level. *Matter of Parental Rights as to CJM*, 118 Nev. 724, 732, 58 P.3d 188, 194 (2002).

Luba argues that the District Court did not explain how something that happened two years before the Trial to change custody was "affecting the child's welfare." Under this argument, as Trial settings are generally out a substantial amount of time in the Eighth Judicial District (*sometimes over twelve months*), no case could ever meet the first prong for a change in circumstances. *Romano v. Romano*, 138 Nev. ___, 501 P.3d 980 (Adv. Opn. No. 1, Jan. 13, 2022). Typically that first prong is determined at the original Motion hearing which is what happened in this matter. The Court specifically found, "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."[24]

Luba argues that substantial evidence did not support the decision of the District Court. This was addressed by the Court of Appeal which stated,

> 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,* 123 Nev. at 149, 161 P .3d at 242 (footnote omitted). Here, the district court found that Enrique proved, by clear and convincing evidence, that "Luba willfully detained the minor child on March 15, 2023," as the decree "clearly identified the vacation timeshare and itinerary provisions" and Luba "conceded in her testimony" that she did not turn LG. over to Enrique for his vacatio eshare on that date . . . Luba held or kept custody of even though the decree required her to complet exchange. Thus, substantial evidence rts the district court's finding that Luba detained *See Ellis,* 123 Nev. at 149, 161 P.3d at 242.[25]

Luba asserts that her act of withholding was harmless, but that was not explored at the District Court level. Luba assumes facts which were not part of the record. Luba is asking this Court to substitute its judgment for that of the District Court and Court of Appeals when there was substantial evidence to support the decisions in this matter.

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[24] AA02123.

[25] Order Affirming in Part and Reversing in Part pages 10 through 11

Luba asserts that specific findings of the District Court were in error; however, Luba again did not raise this issue at the District Court level pursuant to *NRCP* § 59 (a)(2) or in her Opening Brief. This was not raised until the Petition for Review. Lube rewords specific findings and credibility statement to meet her narrative in the Petition for Review when if stated as written have little to no bearing on the decisions.

The modification of physical custody was not a contempt sanction. The District Court conducted a thoughtful analysis of the facts presented by each Party, their respective witnesses and admitted evidence as it applied to a modification of physical custody. *Romano v. Romano*, 138 Nev. ___, 501 P.3d 980 (Adv. Opn. No. 1, Jan. 13, 2022). The Court of Appeals went through and reviewed the findings regarding the best interest factors pursuant to *NRS* § 125C.0035 (4) and found that substantial evidence supported the District Court's ruling in this matter. Much of what Luba has raised here is new, not previously argued before the Court of Appeals. Luba is seeking yet another bite at the apple without factual and legal authority to support her requests.

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IV.
CONCLUSION

Based upon the foregoing, Enrique would argue that Luba's request should be denied and the Ordering Affirming in Part and Reversing in Part filed on February 27, 2026, should stand.

DATED this 12th day of June, 2026.

Roberts Stoffel Family Law Group

By: /s/ Amanda M. Roberts, Esq.
Amanda M. Roberts, Esq.
9294
[redacted]

CERTIFICATE OF COMPLIANCE (*NRAP* § 32 (a)(9)

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 2405 in 14 point, Times New Roman; or

☐ This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

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 3655 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 12th of June, 2026.

Roberts Stoffel Family Law Group

By: /s/ Amanda M. Roberts, Esq.
Amanda M. Roberts, Esq.
9294
[redacted]

CERTIFICATE OF SERVICE

I, an employee of Roberts Stoffel Family Law Group, hereby certify that on 12th day of June, 2026, I served a true and correct copy of this Respondent's Response To Appellant's Petition For Review By The Supreme Court Pursuant To NRAP § 40B, via the Supreme Court's electronic filing and service system (eFlex):

Emily McFarling, Esq.
Attorney for Respondent

By: /s/ Shayna Hall
Employee of Roberts Stoffel Family Law Group