Electronically Filed
8/25/2025 5:27 PM
Steven D. Grierson
CLERK OF THE COURT

MDSM
BENJAMIN B. CHILDS, SR, ESQ.
State Bar # 3946
[redacted]
nts
BENJAMIN CHILDS
LAW OFFICE OF BENJAMIN B. CHILDS

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA DACE Plaintiffs v. MELVIN GRIMES; BENJAMIN CHILDS; LAW OFFICE OF BENJAMIN B. CHILDS; MARY PERRY Defendants	CASE NO. A-25-922833-C DEPT. NO. 29 Hearing Requested

DEFENDANTS BENJAMIN CHILDS AND LAW OFFICE OF BENJAMIN B. CHILDS' (1) ANTI-SLAPP MOTION AND (2) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Defendants BENJAMIN CHILDS and LAW OFFICE OF BENJAMIN B. CHILDS [Childs herein] respectfully move the court pursuant to NRCP 12(b)(5) for an order dismissing the causes of action set forth in Plaintiff's various complaints and amended complaints. Childs has not been served with any Complaint, but is aware of the case and desires to address this case head on. Childs has filed an Opposition to Plaintiff's Motion to File a Fourth Amended Complaint and the hearing is set for October 9, 2025. Childs requested countermotion relief declaring that all complaints after the Second Amended Complaint are void ab initio. This Motion dovetails with Childs' Countermotion.

The Court is informed that the various cases filed by Plaintiff are for the purpose of publicity, to provide content to a website named ournevadajudges.

Case Number: A-25-922833-C

com. Exhibit B is (1) the media request in this case and (2) the calendar listing cases which Plaintiff is involved in. The Court must consider the fact that that primary purpose of these lawsuits is that Plaintiff is seeking publicity, which is an improper use of the court system and a waste of judicial resources.

Finally, Plaintiff's underlying custody case is on appeal and, as to Childs, any malpractice allegations are not ripe because the appeal has not been resolved.

PROCEDURAL SUMMARY

A review of the Court's docket [Exhibit A] discloses that the initial Complaint was filed on July 9, 2025. [ECF[1] # 2] An Amended Complaint was filed on July 10, 2025. [ECF # 3, referred to as the FAC herein] A Second Amended Complaint was filed on July 10, 2025. [ECF # 4] A Third Amended Complaint was filed August 4, 2025. [ECF #13]

The Second and Third Amended Complaints were filed by Plaintiff without the Court's permission, in violation of NRCP 15. Therefore, the Court should enter an order that the Second and Third Amended Complaints are expressly stricken and void ab initio.

This motion is based upon the claims made in the First Amended Complaint [ECF # 3] filed July 10, 2025 @ 7:34PM, which is the last validly filed complaint.

POINTS AND AUTHORITIES

The gist or gravamen of the FAC involving Childs is at paragraph 12 through 18. Plaintiff is alledging that testimony provided by Childs at Plaintiff's trial on March 19, 2024 was false and misleading, and this resulted in Plaintiff losing custody of her child. Exhibit D pages 34 - 35 are the section of the custody court's

[1] Electric Case File

Order addressing Childs' testimony, which also notes that Plaintiff waived her attorney/client privilege to allow this testimony. The 45 page Order filed January 2, 2025 [Exhibit D] notes multiple issues which the custody trial judge addressed, including the level of conflict between the parents, ability of parents to cooperate for the child, the fact that Luba took the child to Mexico, issues with medical/dental appointments, etc.

Plaintiff goes on to allege in the FAC that there was conspiracy between Childs "by providing false testimony under oath" [FAC 56:1].

In the FAC, Plaintiff goes on at great length about all of the major disputes in the divorce case and how, in her opinion, she was falsely accused of many misbehaviors. None of that matters in this case because Childs' testimony in the divorce case are protected by the absolute litigation privilege under Nevada law.

a. THE ABSOLUTE LITIGATION PRIVILEGE

Nevada's absolute litigation privilege immunizes from civil liability communicative acts occurring in the course of judicial proceedings, even if those acts would otherwise be tortious. Greenberg Traurig v. Frias Holding Co., 130 Nev. 627, 628, 331 P.3d 901, 902 (2014). The privilege applies as long as the statements are in some way pertinent to the subject of the controversy. Id. at 630, 903. Moreover, the privilege is absolute, in that it applies even if the communications were made with knowledge and malice in cases such as this. Id. at 630-31, 903.

Whether the litigation privilege applies is a question of law. Clark Cty. Sch. Dist. v. Virtual Educ. Software Inc., 125 Nev. 374, 382, 213 P.3d 496, 502 (2009).

In order to facilitate the policy of honesty and forthrightness unnderlying this privilege, courts should apply the absolute privilege liberally, resolving any doubt in favor of its relevancy or pertinency. Fink v. Oshins, 118 Nev. 428, 433-34, 49 P.3d 640, 644 (2002). Courts routinely apply the litigation privilege to bar claims

against opposing counsel. *See, e.g.,* Lory v. Fed. Ins. Co., 122 Fed. Appx. 314, 318 (9th Cir. 2005). Nevada law has long recognized that the absolute privileges for filing civil complaints is fully applicable in Nevada. See e.g. Lewis v. Benson, 101 Nev. 300, 301, 701 P.2d 751, 752 (1985)

> "we hold that the public policy of this state demands that Benson be absolutely privileged from civil prosecution for defamation or intentional infliction of emotional distress."

The privilege applies equally to parties **and witnesses** to the litigation.

A series of later cases illustrates how expansive the absolute privilege is applied in Nevada . In Clark County School District v. Virtual Software, Inc., 125 Nev. 374, 382-83, 213 P.3d 496, 504-505 (2009)

> "It is a "long-standing common law rule that communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged." Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). In addition, the applicability of the absolute privilege is a matter of law for the court to decide, which this court will review de novo. Id. at 62, 657 P.2d at 105. Fink v. Oshins, 118 Nev. 428, 432, 49 P.3d 640, 643 (2002). Further, because the scope of the absolute privilege is broad, a court determining whether the privilege applies should resolve any doubt in favor of a broad application. Fink, 118 Nev. at 433-34, 49 P.3d at 644.
>
> In Fink v. Oshins, we determined that an attorney's statements made to his client were absolutely privileged after his client began seriously considering commencing proceedings to remove the defendant as cotrustee of a trust. Id. at 434, 49 P.3d at 644. In order to support the interpretation of the absolute privilege in Fink and in other cases, we have relied on the Restatement (Second) of Torts section 587, which does not limit the

application of the absolute privilege to attorney communications. *Fink,* 118 Nev. at 433 n.13, 49 P.3d at 644 n.13; 3 see also Pope v. Motel 6, 121 Nev. 307, 316, 114 P.3d 277, 283 (2005); K-Mart Corporation v. Washington, 109 Nev. 1180, 1191 n.7, 866 P.2d 274, 282 n.7 (1993), receded from on other grounds by Pope, 121 Nev. at 316-17, 114 P.3d at 283. The purpose of the absolute privilege is to afford all persons freedom to access the courts and freedom from liability for defamation where civil or criminal proceedings are seriously considered. Restatement (Second) of Torts § 587 cmts. a, e (1977). Therefore, the absolute privilege affords parties the same protection from liability as those protections afforded to an attorney for defamatory statements made during, or in anticipation of, judicial proceedings. Restatement (Second) of Torts § 587 cmt. d (1977).

Thus, where a judicial proceeding has commenced or is, in good faith, under serious consideration, we determine no need to limit the absolute privilege to communications made by attorneys. See Hall v. Smith, 214 Ariz. 309, 152 P.3d 1192, 1195-96 (Ariz. Ct. App. 2007) ("The privilege applies to both attorneys and parties to litigation."). In Hall v. Smith, an Arizona Court of Appeals also relied on the Restatement (Second) of Torts section 587 to conclude that the absolute privilege applies to both attorneys and parties to litigation. Id. We concur for two reasons. First, there is no good reason to distinguish between communications between lawyers and nonlawyers. Second, it is anticipated that potential parties to litigation will communicate before formally retaining counsel.

Consequently, we extend the protections of the absolute privilege to instances where a nonlawyer asserts an alleged defamatory communication in response to threatened litigation or during a judicial proceeding. Thus, just as we announced in Fink, for the privilege to apply (1) a judicial proceeding must be contemplated in good faith and under serious

consideration, and (2) the communication must be related to the litigation. 118 Nev. at 433-34, 49 P.3d at 644."

See also Bullivant Houser Bailey PC v Eighth Judicial District Court, 2012 Nev. Unpublished LEXIS 461 (2012) for a similar result

b. TIMING OF MOTION

The relevant portion of NRCP 12(b) is set forth below. This motion is property filed before a responsive pleading.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(5) failure to state a claim upon which relief can be grante

c. SELF-REPRESENTED PARTIES HAVE TO FOLLOW THE RULES

While much is made by Plaintiff about her self-represented status, that does not create any special application of procedural or substantive rules. There is no legal basis for the Court to grant pro per parties leniency in following all applicable rules in proceedings because they have chosen to represent themselves. A party proceeding as a self-represented litigant must comply with all applicable court rules and procedures. See Rodriguez v. Fiesta Palms, LLC, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) (noting procedural rules cannot be applied differently to pro se litigants). See, also, Bonnell v. Lawrence, 128 Nev. 394, 282 P3d 712 (2012).

///

d. AMENDED PLEADINGS

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.
(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
(A) 21 days after serving it; or
(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Only the FAC is being addressed herein as Plaintiff was not authorized to filed the Second and Third Amended Complaints.

e. ANTI-SLAPP MOTION

Nevada's anti-SLAPP (Strategic Lawsuit Against Public Participation) statutes, codified under NRS 41.635 through 670, are designed to protect individuals from meritless lawsuits that aim to chill their constitutional rights to free speech and petition. These statutes provide a procedural mechanism for defendants to seek early dismissal of such lawsuits, thereby safeguarding public participation in matters of public concern. In the instant case, Plaintiff is seeking to hold Childs liable for testimony given in her family court proceeding. The relevant orders from that testimony are attached as Exhibits C and D.

Under NRS 41.660, a defendant may file a special motion to dismiss within 60 days of being served with the complaint. This deadline may be extended by the court for good cause. Once the motion is filed, discovery is automatically stayed pending the court's ruling on the motion and any subsequent appeals. However, limited discovery may be permitted if a party demonstrates that essential information is in the possession of another party or a third party and is not otherwise reasonably available.

Nevada's anti-SLAPP statutes require courts to apply a two-pronged test when evaluating a special motion to dismiss. First, the defendant must establish by a preponderance of the evidence that the plaintiff's claim is based on a "good faith communication" in furtherance of the right to petition or free speech in connection with an issue of public concern. If the defendant meets this burden, the burden shifts to the plaintiff to demonstrate with prima facie evidence a probability of prevailing on the claim. This framework ensures that only claims with genuine merit proceed to litigation.

In this case, it is expressly stated in the FAC that the complaint is based on Childs' witness testimony. This testimony was after Childs had a ceased to be Plaintiff's attorney, and Plaintiff waived attorney/client privilege. [Exhibit D, 34:28]. This is the "issue of public concern", the public concern to have honest testimony.

The term "good faith communication" is defined under NRS 41.637 to include four categories of protected speech, such as statements made in connection with official proceedings or matters of public interest. To qualify as a good faith communication, the statement must be truthful or made without knowledge of its falsehood. Nevada courts have clarified that statements of opinion are considered truthful under the anti-SLAPP statutes, as there is no such thing as a false idea.

If the court grants this special motion to dismiss under NRS 41.660, the dismissal operates as an adjudication on the merits. Additionally, individuals who engage in good faith communications are immune from civil liability for claims arising from those communications. This immunity underscores the legislature's intent to protect citizens from abusive litigation tactics that undermine public participation.

f. LEGAL MALPRACTICE CAUSE OF ACTION IS PREMATURE

Plaintiff filed an appeal of the Order which was issued after Childs testified. [Exhibit E] The appeal is still pending, although the Nevada Supreme Court

website was unavailable on August 25, 2025 when this motion is being finalized.

Legal malpractice claims are not ripe until the appeal is concluded.

> ... legal malpractice committed in the representation of a party to a lawsuit, damages do not begin to accrue until the underlying legal action has been resolved. 14 Thus, when the malpractice is alleged to have caused an adverse ruling in an underlying action, the malpractice action does not accrue while an appeal from the adverse ruling is pending. The general rule regarding legal malpractice actions and appeals is based on the rationale that "apparent damage may vanish with successful prosecution of an appeal and ultimate vindication of an attorney's conduct by an appellate court." Hewitt v. Allen, 118 Nev. 216, 221, 43 P.3d 345, 348 (2002)

CONCLUSION

Plaintiff's case against Childs should be dismissed. Childs' witness testimony is protected by litigation privilege. In addition, the Anti-Slapp statute further protects Childs from claims set forth in Plaintiff's multiple complaints. Finally, any legal malpractice cause of action is premature until the appeal is concluded.

/s/ Benjamin B. Childs
BENJAMIN B. CHILDS
Nevada Bar # 3946
Attorney for Defendants
BENJAMIN CHILDS
LAW OFFICE OF BENJAMIN B. CHILDS

CERTIFICATE OF SERVICE

This DEFENDANTS BENJAMIN CHILDS AND LAW OFFICE OF BENJAMIN B. CHILDS' (1) ANTI-SLAPP MOTION AND (2) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE

GRANTED, with Exhibits, was served through the electronic filing system to Plaintiff and all parties on the Court's eservice list at filing. Electronic service is in lieu of mailing.

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

Exhibit	Bates #	Description
A	1 - 7	Court Docket
B	8 - 12	Media Request and Calendar from Ournevadajudges.com
C	13 - 25	10/11/2024 Order Denying Motion for Reconsideration et al
D	26 - 68	1/2/2025 Findings of Fact, Conclusions of Law and Orders
E	69 - 72	4/24/2025 Notice of Appeal

EXHIBIT A

EXHIBIT A

Case Information

A-25-922833-C | Luba Dace, Plaintiff(s) vs. Melvin Grimes, Defendant(s)

Case Number A-25-922833-C	Court Department 29	Judicial Officer Reynolds, Jacob A.
File Date 07/09/2025	Case Type Legal Malpractice	Case Status Open

Party

Plaintiff
Dace, Luba

Address
[redacted]

Active Attorneys
Pro Se

Defendant
Grimes, Melvin

Address
1888 Fairfield Terr
[redacted]

Defendant
Law Office of Benjamin B Childs

Defendant
Perry, Mary

Defendant
Childs, Benjamin

Events and Hearings

07/09/2025 Application

Application - APPL (CIV)

Comment
[1] Application to Proceed in Forma Pauperis

07/09/2025 Complaint

Complaint - COMP (CIV)

Comment
[2] Complaint for Legal Malpractice, Civil Conspiracy, Breach of Fiduciary Duty, Fraud/Intentional Misrepresentation, Concert of Action

07/10/2025 Amended Complaint

Amended Complaint - ACOM (CIV)

Comment
[3] AMENDED COMPLAINT FOR LEGAL MALPRACTICE

07/10/2025 Amended Complaint

Amended Complaint - ACOM (CIV)

Comment
[4] Second Amended Complaint For Legal Malpractice, Civil Conspiracy, Breach Of Fiduciary Duty, Fraud/Intentional Misrepresentation, Concert Of Action

07/10/2025 Summons Electronically Issued - Service Pending

Comment
[5] SUMMONS SERVICE PENDING

07/11/2025 Application

Application - APPL (CIV)

Comment
[6] CORRECTED DISTRICT COURT APPLICATION FROMA PAUPERIS

07/11/2025 Application

Application - APPL (CIV)

Comment
[7] CORRECTED DISTRICT COURT APPLICATION FROMA PAUPERIS

07/14/2025 Application

Application - APPL (CIV)

Comment
[8] FINAL CORRECTED APPLICATION FOR FEE WAIVER

07/14/2025 Notice

Notice - NOTC (CIV)

Comment
[9] Notice Of Demand For Jury Trial

07/14/2025 Order to Proceed In Forma Pauperis

Comment
[10] Order to Proceed In Forma Pauperis

07/30/2025 Motion

Motion - MOT (CIV)

Comment
[11] Motion for Request for Alternate Service and Appointment of Guardian Ad-Litem

07/31/2025 Clerk's Notice of Nonconforming Document

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[12] Clerk's Notice of Noncoforming Document

08/04/2025 Third Amended Complaint

Amended Complaint - ACOM (CIV)

Comment
[13] Third Amended Complaint for Legal Malpractice, Breach of Fiduciary Duty, Fraud/Intentional Misrepresentation, Concert of Action, Violation of Civil Rights Under 42 U.S.C. 1983, Judicial Misconduct, Abuse of Authority, and Two Counts of Civil Conspiracy

08/05/2025 Motion

Motion - MOT (CIV)

Comment
[14] Motion for Request for Alternate Service, Request for Expedited Deposition and Appointment of Guardian ad Litem

08/07/2025 Clerk's Notice of Hearing

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[15] Notice of Hearing

08/13/2025 Notice

Notice - NOTC (CIV)

Comment
[16] NOTICE OF WITHDRAWL OF COMBINED MOTION

08/15/2025 Motion

Motion - MOT (CIV)

Comment
[17] Plaintiff's Motion for Leave to File Fourth Amended Complaint

08/20/2025 Affidavit of Service

Affidavit of Service - AOS (CIV)

Comment
[18] AFFIDAVIT OF SERVICE FOR CHILDS COMPLAINT

08/20/2025 Motion for Order

Motion for Order - MODR (CIV)

Comment

[19] Plaintiff's Motion for Order Shortening Time on Motion to Amend Complaint

08/20/2025 Motion

Motion - MOT (CIV)

Comment
[20] Plaintiffs Motion For Expedited Deposition Of Defendant Melvin Grimes

08/20/2025 Clerk's Notice of Hearing

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[21] Clerk's Notice of Hearing

08/20/2025 Clerk's Notice of Hearing

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[22] Notice of Hearing

08/21/2025 Minute Order

Minute Order

Judicial Officer
Clark Newberry, Tara

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

08/21/2025 Motion

ADR - Motion - STMOT (CIV)

Comment
[23] Plaintiff's Motion to Preserve and Compel Production of Communications

08/22/2025 Notice of Department Reassignment

Notice of Department Reassignment - NODR (CIV)

Comment
[24] Notice of Department Reassignment

08/22/2025 Notice

ADR - Notice - STNOTC (CIV)

Comment
[25] NOTICE OF WITHDRAWAL OF MOTION

08/22/2025 Ex Parte Motion

Ex Parte Motion - EXMT (CIV)

Comment
[26] Ex Parte Motion for Order Shortening Time

08/22/2025 Clerk's Notice of Hearing

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[27] Clerk's Notice of Hearing

08/25/2025 Affidavit of Service

Affidavit of Service - AOS (CIV)

Comment
[28] AFFIDAVIT OF SERVICE GRIMES

09/25/2025 Motion

Judicial Officer
Reynolds, Jacob A.

Hearing Time
9:00 AM

Comment
Plaintiff's Motion for Request for Alternate Service, Request for Expedited Deposition and Appointment of Guardian ad Litem

10/09/2025 Motion for Leave

Judicial Officer
Reynolds, Jacob A.

Hearing Time
9:00 AM

Comment
Plaintiff's Motion for Leave to File Fourth Amended Complaint

10/09/2025 Motion for Order

Judicial Officer
Reynolds, Jacob A.

Hearing Time
9:00 AM

Comment
Plaintiff's Motion for Order Shortening Time on Motion to Amend Complaint

10/09/2025 Motion

Judicial Officer
Reynolds, Jacob A.

Hearing Time
9:00 AM

Comment
Plaintiffs Motion For Expedited Deposition Of Defendant Melvin Grimes

10/09/2025 Motion

Judicial Officer
Reynolds, Jacob A.

Hearing Time
9:00 AM

Comment
Plaintiff's Motion to Preserve and Compel Production of Communications

Financial

Dace, Luba

Total Financial Assessment	$270.00
Total Payments and Credits	$270.00

7/9/2025	Transaction Assessment	$270.00
7/9/2025	Fee Waiver	($270.00)

Documents

Application - APPL (CIV)
Complaint - COMP (CIV)
Amended Complaint - ACOM (CIV)
Amended Complaint - ACOM (CIV)
Application - APPL (CIV)
Application - APPL (CIV)
Application - APPL (CIV)
Notice - NOTC (CIV)
Motion - MOT (CIV)
Clerk's Notice of Hearing - CNOC (CIV)
Amended Complaint - ACOM (CIV)
Motion - MOT (CIV)
Clerk's Notice of Hearing - CNOC (CIV)
Notice - NOTC (CIV)
Motion - MOT (CIV)
Affidavit of Service - AOS (CIV)
Motion for Order - MODR (CIV)
Motion - MOT (CIV)
Clerk's Notice of Hearing - CNOC (CIV)
Clerk's Notice of Hearing - CNOC (CIV)
ADR - Motion - STMOT (CIV)
Minute Order
Notice of Department Reassignment - NODR (CIV)
ADR - Notice - STNOTC (CIV)
Ex Parte Motion - EXMT (CIV)
Clerk's Notice of Hearing - CNOC (CIV)
Affidavit of Service - AOS (CIV)

EXHIBIT B

EXHIBIT B

Justice of the Peace data was recently added and is going through continuous auditing; please be patient as we curate this data.

Events | Coverage | Videos | Documents

There are a total of **1593** events, **86** of which are pending.

Advertisement

Advertisement

Previous Month

Sun, Jul 27, 2025

Mon, Jul 28, 2025

9:00 AM ★ **Status Check**
Jon Gruden vs National Football League

Tue, Jul 29, 2025

Wed, Jul 30, 2025

9:00 AM **Hearing**
Debra Adimey vs Station Casinos

9:15 AM **Arraignment**
The State of Nevada vs Las Vegas Super Mom

Thu, Jul 31, 2025

Fri, Aug 1, 2025

Sat, Aug 2, 2025

Sun, Aug 3, 2025

Mon, Aug 4, 2025

Tue, Aug 5, 2025

Wed, Aug 6, 2025

Thu, Aug 7, 2025

8:30 AM **Disciplinary Hearing**
In the Matter of Erika Ballou

10:00 AM **Motion Hearing**
D.H., a Mother vs J.M., a Father

Fri, Aug 8, 2025

Sat, Aug 9, 2025

Sun, Aug 10, 2025

Mon, Aug 11, 2025

10:00 AM Status Check
The State of Nevada vs Michael McDonald

Tue, Aug 12, 2025

Wed, Aug 13, 2025

Thu, Aug 14, 2025

9:30 AM Status Check
Todd Matthew Phillips vs The World

Fri, Aug 15, 2025

Sat, Aug 16, [redacted]

Mon, Aug 18, 2025

Tue, Aug 19, 2025

Wed, Aug 20, 2025

8:30 AM Sentencing
The State of Nevada vs Dirty Ones Motorcycle Club

2:00 PM Special Master Hearing
The Real Water Lawsuits

Thu, Aug 21, 2025

10:30 AM Habeas Corpus Hearing
The State of Nevada vs Kim Blandino

Fri, Aug 22, 2025

Sat, Aug 23, 2025

Sun, Aug 24, 2025

Mon, Aug 25, 2025

11:00 AM Motion Hearing
Dylan Houston vs Ashley Prince

Tue, Aug 26, 2025

8:30 AM Motion to Stay
The State of Nevada vs Meta & TikTok

1:30 PM Review Hearing
The State of Nevada vs John O'Connor

Wed, Aug 27, 2025

8:30 AM Sentencing
The State of Nevada vs Dirty Ones Motorcycle Club

9:05 AM Motion to Retax
The Real Water Lawsuits

10:00 AM Motion for Temporary
Luba Snow vs Louis Schneider

Thu, Aug 28, 2025

8:30 AM Status Check
The State of Nevada vs Meta & TikTok

Fri, Aug 29, 2025

Sat, Aug 30, 2025

Sun, Aug 31, 2025

Mon, Sep 1, [redacted]

11:00 AM **Case Management Conference**
J.O., a Mother vs R.O., a Father

Wed, Sep 3, 2025

9:00 AM **Pretrial Conference**
Stephen Lara vs Department of Public Safety

9:00 AM **Case Management Conference**
The State of Nevada vs Victoria Goodwin

9:30 AM **Motion In Limine**
The State of Nevada vs Austin Sachs

Thu, Sep 4, 2025

9:00 AM **Evidentiary Hearing**
L.N., a Mother vs C.G., a Father

9:00 AM **Evidentiary Hearing**
The Murdoch News Corp Trust Case

Fri, Sep 5, 2025

9:00 AM **Evidentiary Hearing**
The State of Nevada vs Austin Sachs

3:00 PM **Order to Show Cause**
The State of Nevada vs Stephen Kromer

Sat, Sep 6, 2025

Next Month

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ELECTRONICALLY SERVED
8/25/2025 1:58 PM

Electronically Filed
08/25/2025 1:58 PM
CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA DACE

PLAINTIFF

-VS-

BENJAMIN CHILDS [redacted]

CASE NO: A-25-922833-C

DEPT. NO: 29

MEDIA REQUEST AND ORDER ALLOWING CAMERA ACCESS TO COURT PROCEEDINGS

Alex Falconi (name), of Our Nevada Judges, Inc. (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in Dept. No. 29, the Honorable Judge Jacob Reynolds Presiding, on the ~~9~~ 25 day of September, 2025.

I hereby certify that I am familiar with, and will comply with Supreme Court Rules 229-246, inclusive. If this request is being submitted less than twenty-four (24) hours before the above-described proceedings commence, the following facts provide good cause for the Court to grant the request on such short notice:

N/V

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and must be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 23 day of August, 2025.

SIGNATURE: [redacted]

****

IT IS HEREBY ORDERED THAT:

☐ The media request is **denied** because it was submitted less than 24 hours before the scheduled proceeding was to commence, and no "good cause" has been shown to justify granting the request on shorter notice.

☐ The media request is **denied** for the following reasons: _____

☒ The media request is **granted**. The requested media access remains in effect for each and every hearing in the above-entitled case, at the discretion of the Court, and unless otherwise notified. This order is made in accordance with Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to reconsideration upon motion of any party to the action. Media access may be revoked if it is shown that access is distracting the participants, impairing the dignity of the Court, or otherwise materially interfering with the administration of justice.

☐ **OTHER:** _____.

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this _____ day of _____, 20 _____.

Dated this 25th day of August, 2025

Jacob A. Reynolds

DISTRICT COURT JUDGE

026 D3D 0744 8B4B
Jacob A. Reynolds
District Court Judge

EXHIBIT C

EXHIBIT C

Electronically Filed
10/11/2024 9:31 AM
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

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

ORDER DENYING PLAINTIFF'S AUGUST 22, 2024 MOTION FOR RECONSIDERATION
AND
GRANTING DEFENDANT'S AUGUST 28, 2024 COUNTERMOTION UNOPPOSED
AND
VACATING OCTOBER 21, 2024 HEARING

This matter is scheduled for October 21, 2024 hearing on Plaintiff Luba (Luba) Gonzalez's August 22, 2024 Motion for Reconsideration; Defendant's Enrique (Enrique) Velazquez-Gonzalez's August 28, 2024 Opposition and Countermotion for an Award of Attorney's Fees. Luba did not file any Reply and the time for filing a Reply has passed. Luba is represented by her attorney of record, Alex Ghibaudo; Enrique is represented by his attorney of record, Melvin Grimes. This matter is currently scheduled for October 15, 2024 Day 2 civil non-jury trial.

This Court exercises authority granted it pursuant to NRCP 1 and EDCR 1.10 which provide district court dockets shall be administered to secure speedy, efficient and inexpensive determinations in every action. This Court exercises discretion granted it pursuant to EDCR 5.702(a) to decide this matter without recourse to oral argument. Accordingly, the October 21,

2024 hearing is VACATED.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] Gonzalez, born [redacted] (current age 8 years). The parties currently share JOINT LEGAL CUSTODY and JOINT PHYSICAL CUSTODY with week on/ week off visitation exchanges each Wednesday at 9:00 AM.[1] The parties agreed to each party having up to seven (7) days of specified vacation with the child per year with no less than thirty (30) days advance written notice.[2] The parties stipulated that a written itinerary for travel with the child outside of Nevada was to be provided to the other parent no later than fourteen (14) days prior to the trip.[3] The itinerary also had to state all flights the child would take, the address where the child would stay each night of the trip, including hotel name if applicable, and emergency phone number for the child.[4] If border crossings would take place on foot, the itinerary also had to include the dates of the border crossings.[5]

After the March 19, 2024 Day 1 Non-Jury Trial on Enrique's request to modify physical custody and an Order to Show Cause against Luba, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered.[6] The Court found the relevant factors

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[1] See Stipulated Decree of Divorce at Exhibit 1, pp.8-9, Articles 9.1, 9.2, and 9.3 (Marital Settlement Agreement) (filed December 8, 2021).

[2] Id. at Article 9.5.

[3] Id. at Article 9.5.1.

[4] Id.

[5] Id.

[6] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

in NRS 125C.0035(7) regarding an act of withholding or abduction were met by Enrique demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2024.[7] The Court defined abduction pursuant to NRS 200.359(1).[8] The Court

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[7] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13.

NRS 125C.0035(7) states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

> (a) Findings of fact that support the determination that one or more acts of abduction occurred; and
>
> (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

[8] Id. at 3:14:14 – 3:15:26

NRS 200.359 Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

> 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:
>
> (a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

FOUND the Decree clearly identified the timeshare and itinerary provisions, the ordered visitation on March 15, 2023, and that Luba conceded in her testimony she did not turn the child over to Enrique.[9] The Court reminded the parties it ultimately had to make findings on all of the best interest factors and stated it would receive all evidence as to whether Luba was able to rebut the presumption upon full receipt of evidence.[10] As noted herein, Day 2 of trial is scheduled for October 15, 2024 (full day).

STANDARD OF REVIEW: TIMELINESS OF MOTION FOR RECONSIDERATION

On August 22, 2024, Luba filed her Motion for Reconsideration fourteen (14) days from service of the August 8, 2024 Notice of Entry of Order after Hearing on March 19, 2024. EDCR 5.516(a) requires a motion for reconsideration be filed "within 14 calendar days after service of notice of entry of order". In this case, the Court FINDS Luba timely filed her August 22, 2024 Motion for Reconsideration.

STANDARD OF REVIEW: SUBSTANTIVE MERITS

Motions for reconsideration are not procedural vehicles to express discontent or to obtain a 'second bite at the apple'. Though, often without consideration for the standard of review for which motions for reconsideration are based, such motions are, with increasing frequency, filed.

Motions for reconsideration must request a substantive alteration of a judgment and "not merely the correction of a clerical error, or relief of a type wholly collateral to the judgment,"

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[9] Id. at 3:15:27 – 3:15:41.

[10] Id. at 3:19:54-3:20:48.

and may include newly discovered or previously unavailable evidence.[11] "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."[12] The Nevada Supreme Court has concluded a decision is "clearly erroneous" where: 1) there exist material errors in the proceedings or a mistake in law; 2) the judicial order is unsupported by any substantial evidence; or 3) the judicial order is against the clear weight of evidence.[13] In addition, United States v. United States Gypsum Co.,[14] states: "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

To meet the "substantially different evidence" prong, it is insufficient to merely raise additional facts or law; rather, the new facts or law must "support[ ] a ruling contrary to the ruling already reached."[15] To meet the "clearly erroneous" prong, the district court must be "left

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[11] See AA Primo Builders, LLC v. Washington, 126 Nev. 578, 585-89, 245 P.3d 1190, 1195-97 (2010) and Saticoy Bay, LLC, Series 34 Innisbrook v. Thornburg Mortgage Securities Trust 2007-3, 138 Nev. 335, 343-44, 510 P.3d 139, 146 (2022).

[12] Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); see also Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)("Only in very instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.").

[13] Russell v. Thompson, 96 Nev. 830, 834, 619 P.2d 537, 539 (1980). See also 9 Wright and Miller, *Federal Practice and Procedures*; Civil Sec. 2605, and cases cited therein.

[14] 333 U.S. 364, 395, 68 S.Ct. 525, 542 (1948).

[15] Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

with [a] definite and firm conviction that a mistake has been committed."[16]

ARGUMENT: Reconsideration of Preliminary Finding pursuant to NRS 125C0035(7)

In her motion for reconsideration, Luba requested reconsideration of the preliminary finding Luba engaged in a single act of unlawful detaining the minor child in violation of NRS 125C.0035(7) on March 15, 2023 by withholding vacation timeshare owed to Enrique. Luba argued the ground for reconsideration is the existence of new evidence that has come to light in the form of the testimony from Luba's her prior attorney, Ben Childs, at the March 19, 2024 trial. Specifically, Luba claimed Mr. Childs' testimony did not comport with what Luba expected Mr. Childs to state on the stand related to the events on March 15, 2023. Luba claimed Mr. Childs led her to believe he was going to proverbially "fall on his sword" for Luba a trial, but instead he testified he never told her to violate the law. As a result of Mr. Childs testifying differently than she expected, Luba was unprepared to impeach him with text messages and witnesses. Luba argued Mr. Childs' testimony constitutes new evidence.

In his opposition, Enrique first opposed reconsideration arguing Luba cited to EDCR 5.512(a), which is the local rule on supplements to motions, not reconsideration. Enrique also opposed Luba's motion on the merits on the basis the text messages between Luba and Mr. Childs were always in Luba's possession, but she failed to timely enter them into evidence. Enrique argued Luba nonetheless could not have elicited hearsay testimony from witnesses. Enrique argued Luba's failure to properly disclose and produce the text messages and exhibits was a tactical decision on Luba's part.

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[16] Unionamerica Mortg. & Equity Tr. v. McDonald, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting United States v. Gypsum Co., 333 U.S. 364, 395 (1948)).

ANALYSIS AND ORDER

The Court FINDS Luba relied on EDCR 5.512(a) in support of her ability to file for reconsideration. The Court FINDS EDCR 5.512(a) is related to supplements on motions, not reconsideration. EDCR 5.516 relates to motions for reconsideration.

The Court FINDS Luba did not claim or demonstrate she discovered new evidence not previously available or unknown to her, i.e., her own text messages with Ben Childs, or the existence of witnesses to her conversations with Mr. Childs, such as her mother and husband. The Court FINDS Mr. Childs' testimony is not new evidence that occurred after the Court's March 19, 2024 Order. Mr. Childs testified on Luba's behalf at the March 19, 2024 trial, which was the time for the parties to present their evidence to include impeachment of Mr. Childs. The Court FINDS both parties presented their cases through counsel at the March 19, 2024 hearing, which lasted a full day. At that time, Luba had ample opportunity to impeach Mr. Childs on his testimony. Prior to trial, Luba had ample opportunity to produce her text messages in discovery, list her mother and/or her husband as witnesses, and prepare to impeach Mr. Childs, if necessary. Notably, Luba does not claim the text messages and witnesses are newly discovered.

Luba further does not demonstrate the result would be different *even if* the Court permitted those documents and witnesses to testify, as the Court specifically found Mr. Childs testified credibly he did not tell Luba to violate the law but understood Luba was going to do what she wanted.[17]

The Court FINDS Luba did not demonstrate she discovered new facts or law that would support a ruling contrary to the Court's preliminary finding of a rebuttable presumption Luba

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[17] See March 19, 2024 Hearing Video Time Cite 3:19:54-3:3:20:48.

committed an abduction pursuant to NRS 125C.0035(7).

The Court further FINDS Luba did not provide newly discovered evidence to support her request for reconsideration.[18] The Court also FINDS Luba failed to demonstrate the Order from March 19, 2024 Hearing is clearly erroneous, that material errors exist in the proceedings or a mistake in law exists or that the Order from March 19, 2024 is unsupported by any substantial evidence or against the clear weight of evidence. For the foregoing reasons, the Court DENIES Luba's request for reconsideration.

Enrique's Countermotion for Award for Attorney Fees and Costs

Enrique requested Luba pay his attorney fees pursuant to NRS 18.010(2)(b) and EDCR 5.219.[19] Luba did not file a Reply opposing Enrique's countermotion.[20] Notwithstanding the

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[18] Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

[19] EDCR 5.219, Sanctionable Conduct, provides as follows:

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

findings herein and Luba's failure to timely file any reply to Enrique's countermotion, the Court FINDS Luba's plea for relief multiplied the costs of litigation without just cause and did so unreasonably and vexatiously.[21] Specifically, the Court's NRS 125C.0035(7) finding Enrique had triggered the statutory presumption was, first, made at counsel's request and, second, does not forestall Luba's ability or right to attempt to overcome the presumption. Therefore, the Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs.

ACCORDINGLY, THE COURT ORDERS:

1. The Court DENIES Luba's request for reconsideration in its entirety.
2. The Court GRANTS Enrique's countermotion for award for attorney fees and pursuant to NRS 18.010(2)(b), EDCR 5.219 and 5.503(b). The Court ORDERS Enrique shall file and serve a Memorandum of Fees and Costs to include Brunzell[22] and Wilfong[23] analyses as well as attorney-client invoices not later than November 1, 2024. Luba shall have fourteen (14) days to file any Objection. The Court will not consider any new requests for relief in either the Memorandum of Fees and Costs or the Objection, if filed. The Court will not consider any pleading beyond the Memorandum of Fees and Costs and Objection, if filed, related to award for attorney fees and costs. The failure to timely file

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[20] See EDCR 5.503(b) which provides the "Failure of an opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent that it be granted."

[21] See Roe v. Roe, 139 Nev. Adv. Op. __, *35-36, ___ P.3d. ___, ___ (2023).

[22] Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

[23] Miller v. Wilfong, 121 Nev.619, 623, 119 P.3d 727, 730 (2005)(citing Wright v. Osburn, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)).

and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for attorney fees and costs. Regarding the mandatory Wilfong analysis, Enrique shall be required to provide averment(s) related to Luba's income. The failure to provide one party's income may defeat any award for attorney fees and costs where the Nevada Supreme Court has mandated analysis of a party's ability to pay any discretionary award for attorney fees and costs. Decision on award for attorney fees and costs SHALL be scheduled for DECEMBER 4, 2024 (Chambers/ NO appearances).

3. The hearing scheduled for October 21, 2024 at 9:00 AM SHALL BE VACATED.

Dated this 11th day of October, 2024

HEIDI ALMASE
District Court Judge

381 7BD E728 5141
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/11/2024

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/14/2024

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

EXHIBIT D

EXHIBIT D

Electronically Filed
01/02/2025 1:34 PM
CLERK OF THE COURT

FFCL

DISTRICT COURT
CLARK COUNTY, NEVADA

LUBA GONZALEZ, N/K/A LUBA SNOW, Plaintiff, VS. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Defendant.	Case No: D-18-575860-D Dept. No: X DATES OF TRIAL: 03/19/2024 10/15/2024

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS (POST-JUDGMENT)

THIS MATTER came before this Court on March 19, 2024 and October 15, 2024 for two (2) full days non-jury bench trial on the above-captioned post-judgment divorce proceeding.

Plaintiff Luba (Luba) Gonzalez, n/k/a Luba Snow, was present and represented by her attorney Alex Ghibaudo, ALEX GHIBAUDO, PC. Defendant Enrique (Enrique) Ivan Velazquez-Gonzalez was present and represented by his attorney, Melvin Grimes, ROBERTS STOFFEL FAMILY LAW GROUP.

This is a post-judgment divorce proceeding involving one (1) minor child: [redacted] Gonzalez, born [redacted] (current age 8 years).

Having reviewed the papers and pleadings on file herein and, after considering and weighing the credibility of the witnesses and exhibits admitted into evidence, this Court issues its *Findings of Fact, Conclusions of Law, and Orders (Post-Judgment)*.

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RELEVANT PROCEDURAL HISTORY

Since Luba filed her Complaint for Divorce on August 20, 2018, this case has been in near constant litigation. The parties currently share JOINT LEGAL CUSTODY and JOINT PHYSICAL CUSTODY on a week on/ week off timeshare with custodial exchanges occurring Wednesdays at 9:00 AM.[1] The parties stipulated for Luba to have Zoom video calls with the child during Enrique's custody time, including holiday and vacation, each Monday and Friday at 7:15 PM.[2]

The parties further stipulated to each party having up to seven (7) days of specified vacation with the child per year with no less than thirty (30) days advance written notice.[3] The parties stipulated the traveling parent would provide a written itinerary for travel with the child outside of Nevada no later than fourteen (14) days prior to the trip.[4] The parties also stipulated the travel itinerary was to state all flights the child would take, the address where the child would stay each night of the trip, including hotel name if applicable, and emergency phone number for the child.[5] In the event border crossings (for travel between the United States and Mexico) would take place on foot, the parties stipulated the itinerary would include the dates of the border

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[1] See Stipulated Decree of Divorce at Exhibit 1, pp.8-9, Articles 9.1, 9.2, and 9.3 (Marital Settlement Agreement) (filed December 8, 2021).

[2] Id. at p.13, Article 9.6.

[3] Id. at p. 12, Article 9.5.

[4] Id. at pp. 12-13, Article 9.5.1.

[5] Id.

crossings.[6] The parties further stipulated that, when travelling by air with the child, the parties would provide each other with "complete itineraries to include dates of travel, passengers on the reservation, and airline and flight details."[7] The parties stipulated to provide the other parent with the address they would be staying as soon as it was known.[8] Last, all communication between the parents was via the Talking Parents communication application absent an emergency.[9]

Instant Proceedings

On March 20, 2023, Enrique filed Defendant's Emergency Motion for Return of the Child, for an Order to Show Cause and for a Referral to the District Attorney for Criminal Charges alleging Luba violated the December 8, 2021 Stipulated Decree by refusing to exchange the child to him on March 15, 2023 for his scheduled vacation to Mexico and changing the March 21, 2023 dental appointment without consulting him. On March 20, 2021, an Order to Show Cause issued against Luba for the alleged violations. On March 30, 2023, Luba filed an Opposition and Countermotion. On April 27, 2023, Luba separately filed a Motion for an Order to Show Cause in which she alleged one-hundred and ten (110) alleged violations to include alleged communication and travel orders violations, request to change the child's surname, request to change the child's school and request for award for attorney fees. On May 5, 2023,

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[6] Id.

[7] See Stipulation and Order, Exhibit 1, Memorandum of Understanding at p.1, ll.12 (filed July 26, 2022).

[8] Id. at p.1, ll.16.

[9] Id. at p.1, ll.17

Enrique filed an Opposition and Countermotion for Modification of Custody Awarding Defendant Primary Physical and Sole Legal Custody, Sole Possession of the Child's Passport, et al. In support of his request to modify custody, Enrique included allegations Luba consistently made doctor and dental appointments without his permission, sent her husband to the child's medical/dental appointments and wrongfully detained the child in violation of NRS 125C.0035(7) on March 15, 2023, the date of Enrique's scheduled vacation to Mexico.

On May 24, 2023, Enrique filed Defendant's Emergency Motion to Enforce seeking enforcement of his Father's Day, 2023 visitation. On May 31, 2023, Luba filed an Opposition and Countermotion for an Order to Show Cause.

At the April 6, 2023 hearing on Enrique's March 20, 2023 Emergency Motion for Return of Child, et al., the Court deferred the issue of custody modification and set evidentiary hearing on the Order to Show Cause against Luba.[10] In the June 13, 2023 Order Re: All Pending Motions, the Court issued a written order related to all other pending matters. Specifically, the Court denied each of Luba's one-hundred and ten (110) requests for indirect contempt, denied Luba's requests for surname and school modification and for award for attorney fees.[11] The Court found Enrique established a *prima facie* basis to modify child custody pursuant to Myers v. Haskins[12] based, in part, on Luba withholding the child for the March 15, 2023 vacation.[13]

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[10] See Order from April 6, 2023 hearing at p.2-3, ll.17-4 (filed June 6, 2023).

[11] See Order Re: All Pending Motions at pp.22, ll.6-7 (filed June 13, 2023).

[12] 138 Nev. 553, 513 P.3d 527 (Ct. App. 2022).

[13] See Order Re: All Pending Motions at pp.18, ll.12-20 (filed June 13, 2023).

On June 9, 2023, Luba filed an Emergency Motion for Reconsideration followed, on July 5, 2023, Luba filed a Motion to Reconsider [the] Court's June 21, 2023 Order Granting Defendant an Evidentiary Hearing, et al. On July 21, 2023, Enrique filed an Opposition and Countermotion. On September 11, 2023, the Court filed an order denying Luba's July 5, 2023 motion and awarding Enrique attorney fees.[14]

Enrique's Request for NRS 125C.0035(7) Finding

Following close of the Day One March 19, 2024 Non-Jury Trial on Enrique's request to modify physical custody and an Order to Show Cause against Luba, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered following Enrique's oral motion for the same.[15] The Court found Enrique met the relevant factors in NRS 125C.0035(7) regarding an act of withholding or abduction demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2023.[16] The Court

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[14] See Order Denying Plaintiff's July 5, 2023 Motion for Reconsideration et al at p.8, ll.8-22 (filed September 11, 2023).

[15] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

[16] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13. Specifically, NRS 125C.0035(7) provides as follows:

> "A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

defined abduction pursuant to NRS 200.359(1).[17] The Court FOUND the Decree clearly identified the vacation timeshare and itinerary provisions, the ordered visitation on March 15, 2023, and that Luba conceded in her testimony she did not turn the child over to Enrique.[18] The Court reminded the parties it ultimately had to make findings on all of the best interest factors and stated it would receive all evidence as to whether Luba was able to rebut the presumption upon full receipt of evidence.[19]

FINDINGS OF FACT

The Court cites only to those portions of the testimony that are relevant and necessary to its findings and ultimate conclusions of law. Specifically, the testimony included in the Findings

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

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

[17] Id. at 3:14:14 – 3:15:26. NRS 200.359(1) provides as follows:

"Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.

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

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

[18] Id. at 3:15:27 – 3:15:41.

[19] Id. at 3:19:54-3:20:48.

of Fact is not mere transcription of testimony offered during trial but only that testimony relevant to this Court's findings and orders.

> "Findings of fact constitute "the ultimate judgment on a mass of details" and are more than a mere recitation of evidence presented. Baumgartner v. United States, 322 U.S. 665, 670 (1944); *see also United States v. Adams*, 73 U.S. 101, 102 (1867)(noting lower courts are bound to make "a finding of the ultimate facts or propositions which the evidence shall establish . . . and not the evidence on which these ultimate facts are founded). On appellate review, [the appellate court] must interpret all statements contained in a district court's "Findings of Fact" as the ultimate truth of the case. *See Finding of Fact, Black's Legal Dictionary* (10th ed. 2014)(defined as "[a] determination by a judge"); *Determination, Black's Legal Dictionary* (defined as "a final decision by a court").[20]

JURISDICTION

The Court FINDS both parties and the minor child reside in Las Vegas, Nevada and no other state has taken jurisdiction over the parties or minor child in this case. Therefore, this Court has the required subject matter and personal jurisdiction as well as continuing and exclusive child custody jurisdiction to resolve the issues before it.

TESTIMONY

The following parties offered testimony:

Enrique Velasquez-Gonzalez, Defendant

Emma Muth, witness for Defendant

Gina Thornton, witness for Defendant

Luba Gonzalez n/k/a Luba Snow, Plaintiff

Benjamin Childs, witness for Plaintiff

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[20] Franklin v. Franklin, ___ Nev. Adv. Op. ___, *p.17, ___ P.3d ___, ___ (December 4, 2023)(Dissenting, Bell, J.).

HOUSEKEEPING

The parties each waived opening statements. The parties stipulated to the admission of Plaintiff's exhibits 1, 2, 3, 4, and 5; and Defendant's exhibits A, B, C, D, and E.

TESTIMONY

Benjamin (Ben) Childs

Ben was Luba's former attorney in this case for an eighteen (18) month period of time that encompassed the dispute over Enrique's March 15, 2023 vacation to Nueva Leon, Mexico for the purpose of visiting his family with the parties' child.[21] Ben testified Luba was concerned about Enrique taking the child to Mexico because she felt she did not have sufficient assurances the child would be safe. Specifically, Luba was concerned about crime in Tijuana after Enrique provided his itinerary showing he would enter Mexico through Tijuana using a CBX [walking] border crossing pass. Ben testified Luba wanted Enrique to provide her with round-trip CBX tickets, allow her daily video calls with the child using the Talking Parents communications application and for an agreement Enrique would not travel outside of Nueva Leon with the child.

Ben testified he and Enrique's counsel, Melvin Grimes, had a telephone conference with the Court on March 15, 2023, the day travel was scheduled, in an effort to resolve the dispute between Luba and Enrique over the vacation. Ben testified the Court did not issue any orders during the teleconference but he and attorney Grimes exchanged emails immediately afterward attempting to negotiate final terms for Luba to release the child to Enrique for the vacation. Ben testified he shared the attorney emails with Luba, who was with him in his office during the teleconference.

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[21] Prior to Ben beginning his testimony, Luba confirmed she affirmatively waived her attorney-client privilege.

Ben testified that, at the time scheduled for the child exchange, Enrique had neither provided Luba with round-trip CBX tickets nor downloaded the Talking Parents video communication application. Ben testified it was his opinion Luba could have reached the conclusion she did not have to exchange the child unless Enrique met all of the agreements made in the attorney's subsequent emails. Ben also testified he told Luba it was totally up to her whether to turn the child over to Enrique for the exchange once Enrique did not provide the CBX tickets to her. Ben denied telling Luba to violate a court order repeatedly stating he told Luba it was her decision. Ben agreed no orders issued as a result of his and attorney Grimes' March 15, 2023 teleconference with the Court. Ben testified the parties were and are expected to follow the orders of the Court.

Credibility: The Court FINDS attorney Child's testimony *generally* credible as to some facts and circumstances. The Court does NOT find credible Child's testimony related to information and/or advice he provided to Luba following the March 15, 2023 teleconference with the Court.

Emma (Emma) Muth

Emma is the child's first (1st) and second (2nd) grade teacher at [redacted] School (ES).[22] Emma testified she met both Luba and Enrique at parent teacher conferences and communicates with both through Class Dojo, the online parent-teacher communication application. Emma testified she observed the child has a good relationship with both parents.

Emma testified her primary concern is the child's [redacted] attachment to Jennifer, Enrique's wife and the child's stepmother, who is a reading strategist at Bryan ES. Emma

[22] The Court NOTES that, at the time Emma testified on March 19, 2024, [redacted] had nearly completed second grade.

testified the child is particularly attached to Jennifer and finds ways to interact with Jennifer during the school day during Luba's ordered timeshare. For example, Emma specified the child would try to find ways to see or eat lunch with Jennifer.

Emma also testified she noticed two specific small issues related to the child's grooming during Luba's custodial timeshare: 1) the child had a spot of dry skin on her chin a few months earlier rectified by Emma giving the child some lotion to put on it; and 2) the child had mismatched clothes. Specifically, Emma testified the child wore a Halloween-themed shirt around Valentine's Day in 2024 with leggings that did not match. Emma testified she did not bring this issue to the attention of either parent or CPS. Rather, Emma testified she discussed this with Jennifer, the child's step-mother.

Emma testified she and Jennifer have a collegial relationship, attending weekly staff meetings and a lunch at a staff development day the prior year. Emma confirmed that, although she was subpoenaed to testify, when Jennifer asked her if she would be willing to testify in this matter, Emma voluntarily agreed. Emma testified the subpoena was necessary so she could get the time off work to testify.

Credibility:

The Court FINDS Emma generally showed bias toward and in favor of Enrique due to her relationship with her co-worker, Jennifer, Enrique's wife. Notwithstanding this issue, the Court FINDS credible Emma's testimony Jennifer and the child are strongly attached and that the child has, on two occasions, presented at school with dry skin and mismatched clothing.

Gina (Gina) Thornton

Gina is the school counselor at the child's school, Bryan ES. Gina testified she has known the child since the [redacted] school year. Gina testified to her opinion the child is happy

while at school.

Gina testified she was present at the school for an October 2023 Halloween parade when Luba walked with the children, school faculty and staff in the parade while videotaping the child, Jennifer and Gina, who were all walking together. Gina testified Luba videotaping them made Jennifer and her very uncomfortable because Luba's videotaping was excessive and, in her opinion, for the purpose of harassing Jennifer. Gina testified she believed Luba inserting herself in the parade made the child sad because the child wanted to be with Jennifer, but was compelled to be with Luba. Gina testified she believed Luba's behavior caused the child to be unable to enjoy herself because she was torn between Jennifer and Luba. Gina testified she had no other incidents about which to testify.

Gina testified she has known Jennifer as long as Jennifer has worked at [redacted] ES or for a period of seven (7) or eight (8) years. Gina testified she and Jennifer are friends outside of work. Gina testified that she agreed to testify about what she witnessed at the parade when Jennifer asked, although she was present subject to a subpoena.

Credibility:

As with witness Emma Muth, the Court FINDS Gina showed general bias toward and in favor of Enrique due to her relationship with her co-worker, Jennifer, Enrique's wife. However, the Court FINDS credible Gina's testimony Luba has caused the child distress as a consequence of her behavior at the school credible.

Luba (Luba) Gonzalez N/K/A Luba Snow

Luba is [redacted] mother, and Enrique's ex-wife. Luba's current husband is Phil. Luba is also the step-mother to Phil's daughter, [redacted] Luba testified [redacted] and [redacted] were born five (5) weeks apart, have grown up together, and are closely bonded. Luba testified [redacted]

and [redacted] are on the same visitation schedule, share a bedroom, and are in the same grade, though they attend different schools. Luba testified she and Phil were investigated by Child Protective Services (CPS) for abuse in the past because [redacted] mother, Robin, made a false complaint. Luba testified Robin apologized since then, and they are all part of a big family now.

Luba testified Enrique has asked her to have the child stop calling Phil "Dad". Luba testified she refused the request on the basis she believes it is up to the child what to call Phil.

[redacted]

been damaged. Luba testified she reached out to [redacted] teacher on Class Dojo many times to ask what she can do better so she can fix it. Luba testified she did not receive a 2024 Mother's Day school project the child made for her or the child's report cards because, according to the child, Jennifer took them out of the child's backpack. When Luba raised these issues with Enrique, Luba testified he called her a liar and told her to look for the report card on the online portal. Luba testified she learned after the fact Jennifer took the child out of her regular classes for Bring Your Child to Work Day. When Luba raised this issue with Enrique, Luba testified he told her the child previously told her Bring Your Child to Work Day. Luba testified the child did not talk to her about Bring Your Child to Work Day and, even if she had, it was not the child's place to discuss adult matters with her or pass this kind of information back and forth.

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[23] The school selection issue and order for the child to remain at Bryan ES followed an evidentiary hearing on a school selection motion wherein the former judicial department, Department P, granted Enrique's request for the child to remain at Bryan ES. See Order [after Evidentiary Hearing of December 7, 2021] (filed February 8, 2022).

Luba testified she provided the child with a cell phone and told Enrique he could contact the child on it anytime, but Enrique declined communication outside of the court orders. Luba testified she knows Enrique does not use the phone because she keeps the phone for the child and [redacted] use. Luba testified a Court order provided for specified electronic communication twice weekly but, because she missed the child, Luba demanded daily video phone calls with the child while on vacation and in exchange for allowing the child to go on the planned vacation to Mexico in March 2023. Luba testified Enrique agreed to her having daily video calls with the child using the Talking Parents application while they were in Mexico but he never downloaded the video function on the app.[24] Luba testified Enrique's mother, stepfather, and half-siblings live in Mexico, and while it was not her intent to stop the child from going on vacation with Enrique to visit his family on March 15, 2023, she did not release the child to Enrique for the vacation because he could not sufficiently assure her the child would be safe in Mexico.

Luba testified she offered Enrique compensatory visitation days after he returned from Mexico on March 20, 2023, but Enrique did not accept all of the dates she offered. Luba conceded she did not agree to Enrique's counter that she give him Father's Day weekend because she had plans to be on vacation in Cancun, Mexico with the child and her family that weekend. Luba testified Enrique declined all compensatory visitation as a result of her refusal to give him Father's Day weekend, a weekend he was otherwise entitled to by court order.

Related to best interest factors set forth at NRS 125C.0035(4), Luba testified as follows:

Level of Conflict between the Parents

Luba testified that, if she asks for information about the child, Enrique calls her a liar,

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[24] See Plaintiff's Exhibit 4, p.LS0179.

crazy, unstable, says she enjoys drama, and is going to hurt people. Luba testified Enrique accuses her of trying to get Jennifer fired. Luba testified Enrique also accuses her of holding the child hostage at the school gates in the morning. Luba testified that, on the days she drops the child off for school, the child chooses to stay with her at the gates rather than play with her friends before the bell rings.

Luba testified the reason she is so cautious about the child's whereabouts is due to Enrique withholding the child from her for three (3) days in 2021 after he filed an emergency motion alleging she abused and neglected the child. Luba testified this incident traumatized her and she feels like the child will always be taken from her. Luba testified Enrique will not have anything to do with her or agree to anything.

Ability of the Parents to Cooperate to Meet the Child's Needs

Luba testified she believes she is a good co-parent. Luba testified she and Enrique attend parent-teacher child conferences separately. Luba conceded she met with the school principal regarding counseling for the child without notifying Enrique. Luba testified she asked Enrique to agree to the child enrolling in online counseling through the school to help the child with her discomfort with Luba and Jennifer being in the school at the same time. Luba testified Enrique refused because he was concerned the child would not be able to share her true and honest feelings with a counselor in a telemedicine setting. Luba testified she enrolled the child in online counseling over Enrique's objection because she has an order that allows her to do so even if Enrique refuses.[25]

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[25] The Court NOTES Luba's testimony in this regard comports with the parties' Marital Settlement Agreement.

Luba testified she makes all of the child's medical and dental appointments on her custodial days, invites Enrique to attend, and gives him all of the paperwork and information she receives. Luba testified that she does not believe it is a unilateral decision for her to schedule a doctor appointment for the child and place it on the Talking Parents calendar without consulting Enrique beforehand.

Luba testified Enrique reciprocates similar information, although he does attend medical or dental appointments. Luba testified she took the child to an allergist following the March 19, 2024 trial date pursuant to Enrique's complaints the child had undiagnosed allergies. Luba testified Enrique did not attend the appointment. Luba testified the allergy test results showed the child is allergic to cats and has seasonal allergies to grass. Luba testified she gave Enrique, who has a cat, the information and he called her a liar. Luba testified she provided Enrique with all of the medical information, including a password to get the test results, and his own prescription nasal spray for the child to use solely at his home. Luba testified the child no longer has allergy issues.

Luba testified she has never prohibited Enrique from taking the child anywhere. However, Luba conceded she refused to exchange the child on March 15, 2023 for Enrique's vacation to Nueva Leon, Mexico to visit his family.

Luba testified she believes she is allowed to implement safety standards in her parenting relationship with Enrique, and Enrique is permitted to do the same. If she thinks Enrique is doing something that puts the child in danger, Luba testified she feels the parents have a duty to discuss it with each other. Luba testified she discussed her concerns about media reports of a gang-related shooting at the Tijuana border in 2023 with Enrique prior to his March 15, 2023 vacation to Mexico. Luba testified she gave Enrique the condition she would not turn the child

over unless she got daily video calls with the child on the Talking Parents application. Luba conceded this condition was not part of existing court orders. Luba further conceded she gave Enrique the additional condition she would not turn the child's passport over until she received airline confirmation codes with the child's name.

Luba testified that, after she discussed her concerns with Enrique related to him using the CBX border crossing for the March 15, 2023 trip to Mexico with the child, Luba nonetheless withheld the child from Enrique on March 15, 2023. Luba testified she withheld the child for the child's safety because she did not want Enrique "driving" through the Tijuana border with gangs shooting.[26]

Mental and Physical Health of the Parents

Luba testified she has been diagnosed with anxiety. Luba testified she saw a physician and counselor around 2020, took medication, and went to counseling for two (2) years. Luba testified she now has tools to help her make better decisions.

Physical and Emotional Needs of the Child

Luba testified she makes and attends all of the child's medical and dental appointments without Enrique because Enrique chooses not to participate. Luba testified she provides health insurance through her husband, Phil's, employment, and provided all of the insurance information to Enrique. However, Luba testified she refused to provide Phil's social security number as part of the insurance information despite Enrique's request. Luba testified she and Phil did not provide Phil's social security number to Enrique because neither she or Phil are required to provide it to any medical provider as a condition to using the insurance coverage.

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[26] See October 15, 2024 Video Time Cite at 1:46:37 – 1:46:56.

Luba testified she enrolled the child in online counseling through school to help the child deal with the anxiety the child has due to Luba and Jennifer being at school together at the same time. Luba testified she asked Enrique about the online counseling and his only objection was to Zoom counseling because he did not believe the child would have privacy to express her true feelings in a telemedicine setting. Luba testified she nonetheless enrolled the child in online counseling because she has the right to enroll the child in counseling pursuant to the court orders and it was in the child's best interest. Luba also testified she met with the child's principal to discuss counseling without first consulting Enrique.

Failure to Exchange Child on March 15, 2023

Luba testified that, on January 13, 2023, Enrique sent her a Talking Parents message giving her notice of his intent to take the child on vacation to Nueva Leon, Mexico on March 15, 2023. Luba testified Enrique asked her to exchange the child's passport at school. Luba testified she refused to exchange the passport until Enrique gave her the child's flight confirmation codes. Luba testified Enrique provided her with the flight number, which is required information to be exchanged by the Decree. However, Luba testified Enrique did not provide her with a ticket showing the child's name on it.

Luba testified her next concern about Enrique's travel were related to him crossing the border using a CBX [walking] border crossing ticket as she did not know what CBX was at the time. Luba testified she learned about a gang-related shooting at the Tijuana border in the media. Luba testified she was also concerned about the child traveling to Mexico because Nueva Leon borders a more dangerous state, Enrique allegedly told her he was nearly kidnapped from his parent's home when it was robbed and she did not want Enrique "driving" through the Tijuana

border with gangs shooting.[27] Luba testified she was fine with Enrique crossing at CBX after she "Googled" to learn it went straight through into the Tijuana airport, which made her feel much safer. Luba testified she agreed to release the child to Enrique for the vacation if he would provide her with round-trip CBX tickets and daily video calls with the child using the Talking Parents application. Luba testified there was a teleconference call between her former attorney, Ben Childs, and Enrique's attorney, Melvin Grimes, with the Court at approximately 8:00 AM on March 15, 2023, the date of Enrique's scheduled travel. Luba testified she was scheduled to exchange the child on March 15, 2023 at 9:00 AM at the Chevron station for the vacation. Luba testified she was not present for the conference call but saw Ben Child's emails with attorney Grimes following the call. Luba testified it was her understanding the emails between Ben Childs and Melvin Grimes were the agreements she had to follow in order to exchange the child for the vacation.

Luba testified she told Enrique she would bring the child when Enrique sent her the CBX tickets. Luba testified Enrique sent her a message replying only: "Bye". Luba testified she was still in attorney Child's office when she decided to withhold the child from Enrique.[28] Luba further testified attorney Childs told her she did not have to turn the child over to Enrique. Luba testified to her opinion attorney Childs lied in his testimony when he testified he told Luba the Court did not issue new orders at the March 15, 2023 telephone conference and when he testified

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[27] See October 15, 2024 Video Time Cite at 1:46:37 – 1:46:56.

[28] This testimony controverts Luba's earlier testimony she was *not* at attorney Child's office during the March 15, 2023 teleconference with the Court.

she was expected to follow the orders.[29]

Luba testified she did not violate the order by refusing to turn over the child to Enrique because Enrique did not give her the CBX tickets or turn on his Talking Parents video application. Later, Luba testified that, if she had it to do all over again, she would not withhold the child and would follow the court orders as she has done since the March 15, 2023 incident. Luba also repeatedly testified it was not her intent to have the child miss the vacation.

Luba conceded that, three (3) months later, she took the child on a family vacation of her own to Cancun, Mexico in June 2023 over a period that included Father's Day weekend. Luba testified Cancun, Mexico is not as dangerous – in her opinion – as the Nuevo Leon, Mexico location Enrique planned to travel to with the child.

Dental Appointments

Luba testified Enrique had scheduled a dental appointment for the child on March 21, 2023 during his custodial time. Luba testified she moved the appointment March 24, 2023 to occur on her custodial time. Luba testified she believed she got Enrique's consent by rescheduling it, putting it on the Talking Parents calendar, and getting no response back from Enrique. Luba conceded she did not communicate with Enrique before she moved the appointment. Luba testified she changed the appointment because she did not want the child to miss the appointment, which would happen if the appointment stayed scheduled during Enrique's time. Luba repeatedly testified Enrique did not have the dentist's address because he kept asking for it. However, Luba later testified she gave Enrique the dentist's address.

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[29] See October 15, 2024 Video Time Cite at 1:45:45 – 1:46:15.

Credibility:

The Court FINDS Luba's testimony generally credible in that she agreed as to the fundamental facts of the case. However, the Court does NOT FIND CREDIBLE Luba's testimony she did not intend to withhold the child from Enrique on March 15, 2023 to prevent him from taking the child on vacation to Mexico. In particular, the Court FINDS, three (3) months later, Luba took the child and her family on a vacation also to Mexico and during Enrique's ordered Father's Day visitation. Similarly, the Court does NOT FIND CREDIBLE Luba's testimony related to moving the child's March 21, 2023 dental appointment.

Enrique (Enrique) Velasquez-Gonzalez

Enrique is [redacted] father and Luba's ex-husband. Enrique is married to Jennifer, and they have one (1) child together, [redacted] age four (4). Enrique testified he does not allow the child to call Jennifer "Mom". Enrique testified the March 15, 2023 vacation to Nueva Leon, Mexico was for [redacted] to visit her paternal grandparents, who live there.

Enrique testified he brought a motion to modify custody because Luba withheld the child from him and tries to block vacations. Enrique testified modifying custody is in the child's best interest because Luba will not follow even one (1) line of the Decree, does not co-parent, and does not provide for the child's care as well as him. Enrique testified it is in the child's best interest to spend three (3) consecutive weeks in his care and (1) week in Luba's care because this schedule will provide the child with stability, better grooming, and better alimentation. Enrique testified Jennifer tells him the child is not well groomed at school, meaning her hair is not brushed and she wears clothes that do not fit. Enrique also testified he provides the child with a master bedroom and her own bathroom so she can be well-rested at his home. Enrique testified Luba makes appointments for the child that interfere with the child's school time even over his

requests to do otherwise.

Enrique testified Luba withholds the child and does not let him travel with her, including going to Oaxaca, Mexico in 2021 and Cancun, Mexico in Summer 2022 and in 2023. Enrique denied being kidnapped from his family home, that his uncle was murdered, and that he and Luba were robbed while driving across Mexico while they were dating. Enrique testified Luba loves going to Mexico and took the child there right after Enrique returned from his vacation or, in June 2023.

Enrique testified co-parenting with Luba means following her rules including rules she adds in addition to orders contained in the Decree. Enrique testified he turns the child over to Luba even if she does not provide him with a full itinerary for her vacations. Enrique testified he does not feel Luba treats him like an equal parent. Enrique testified he wants Luba to have a role in the child's life but he cannot trust Luba at all.

Enrique testified he tries to minimize his conflict with Luba because she brings him to Court constantly on false allegations. Enrique denied blocking Luba on his cell phone but conceded he lets her calls go to voicemail because they are ordered to communicate by the Talking Parents communication application.

Enrique testified he believes Luba abuses and neglects the child. Enrique testified he does not agree with CPS failing to substantiate his allegations Luba abused or neglected the when he claimed the child had a third degree burn on her finger. Enrique testified CPS said he was lying.[30]

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[30] See Exhibit 1 at p. 32.

Enrique testified to his opinion Luba neglects the child's health but conceded he lacked specific proof. Enrique testified the child suffers from dry skin, rashes, boogers, and red eyes due to Luba's refusal to treat her allergies. Enrique testified he wanted Luba to take the child to an allergist but Luba would not cooperate. Enrique testified he cannot take the child himself because Luba refuses to give him the insurance information from her husband's policy. Enrique testified he had the child's insurance card but Luba refused to give him her husband's social security number for two (2) years so he could make an appointment. Enrique later changed his testimony to state he received Phil's social security number on December 29, 2023 from his attorney. Despite the information, Enrique testified he had not made an appointment with an allergist since then because he was waiting for the instant litigation to come to an end. Enrique also testified he has not had time or done research on allergists as another reason he has not made an appointment for the child.

Enrique testified he does not attend the child's medical or dental appointments because Luba insists on being present for every appointment and lying about him, such as telling the doctor her husband has been in the child's life longer than Enrique, i.e., creating conflict during the appointments. Thus, Enrique testified he will not go in the same room with Luba.

Enrique testified he scheduled a March 21, 2023 dental appointment for the child and notified Luba via the Talking Parents application. Enrique testified Luba rescheduled the appointment to March 24, 2024 without asking him.

Credibility: The Court FINDS Enrique's testimony generally credible. As noted herein, Enrique and Luba substantially agreed on the fundamental facts of the case. The Court FINDS credible Enrique's testimony and evidence related to long-standing co-parenting issues with Luba and a general lack of co-parenting on her part to include withholding the child and placing

the child in the middle of parental conflict.

CONCLUSIONS OF LAW

MODIFICATION OF CUSTODY

In order to modify custody, a movant is required to set forth a substantial change of circumstances affecting the child's welfare and in the child's best interest.[31]

NRS 125C.001 states:

The Legislature declares that it is the policy of this State:

1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have ended their relationship, become separated or dissolved their marriage;

2. To encourage such parents to share the rights and responsibilities of child rearing; and

3. To establish that such parents have an equivalent duty to provide their minor children with necessary maintenance, health care, education and financial support. As used in this subsection, "equivalent" must not be construed to mean that both parents are responsible for providing the same amount of financial support to their children.

NRS 125C.0035(4) mandates trial courts shall consider statutory factors and set forth in writing its analysis. The factors and this Court's analysis are as follows:

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

The Court FINDS the minor child, [redacted] age (8), is of insufficient age and capacity to form an intelligent preference as to her physical custody.

The Court FINDS this factor is neutral.

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

The Court FINDS nomination of a guardian is not relevant to these proceedings between two (2) parents not involving a third party.

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[31] See Romano v. Romano, 138 Nev. 1, 2, 501 P.3d 980, 983 (2022).

The Court FINDS this factor does not apply to this case.

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

The Court FINDS Luba has interfered with Enrique's vacations to visit his family in Mexico by withholding the child in March 2023, demanding daily video contact with the child while the child was to be in Enrique's custody in Mexico, and sending letters to the Air B&Bs at which Enrique was scheduled to stay to verify his reservations. The Court FINDS Luba's claim she had concerns about the child's safety in Mexico NOT CREDIBLE in light of Luba taking the child to Mexico on a scheduled vacation three (3) months later or, in June 2023. The Court FINDS Luba's showed awareness of her interference with Enrique's parent-child relationship though *only* in the context of on-going litigation.

The Court FINDS Luba did not dispute Enrique does not interfere with her vacation requests with the child even when she fails to provide him with a full itinerary. The Court further FINDS Luba withheld the child from Enrique on Father's Day, 2023, by scheduling her vacation to Mexico with her husband on his ordered holiday then refusing to accommodate Enrique's request for compensatory visitation.

The Court FINDS Luba provided one example of Enrique withholding the child from her for three (3) days in 2021 after he filed an emergency motion alleging she abused and neglected the child. The Court FINDS Luba grudgingly agreed Enrique returned the child to her as ordered. The Court further FINDS Luba did not allege Enrique withheld the child from her at any other time prior to order following the incident in 2021 related to his emergency motion concerning abuse and neglect of the child. The Court FINDS that, even though Enrique disagrees with the CPS findings regarding Luba's behavior, he obeys the Court custody orders.

Therefore, the Court FINDS Enrique is the parent more likely to allow the child to have frequent associations and a continuing relationship with Luba.

Accordingly, the Court FINDS this factor favors Enrique.

d. The level of conflict between the parents.

The Court FINDS Enrique testified he does not trust Luba at all and will not be in the same room with her because she constantly brings him back to court. The Court FINDS Luba has filed twenty-three (23) motions causing Enrique to litigate since the beginning of this case, which is an exceptionally high number of motions for any case within a six

(6) year period. [32] In the same period, the Court FINDS Enrique has filed seven (7) independent motions for specified relief.

The Court FINDS Luba conceded the child calls her husband "Dad" and she does not stop or correct the child. The Court FINDS Enrique does not allow the child to call his wife "Mom" out of respect for Luba's position as the child's mother.

The Court FINDS Enrique refuses to have communication with Luba outside of Talking Parents communication application to the extent he lets her telephone calls go to voicemail. This raises the concern that Enrique would not even speak to Luba in emergency circumstances, i.e., the court-ordered communication application is for *non-emergency* parent communication. The Court also FINDS it concerning Luba calls Enrique when there is no emergency demonstrating her unwillingness to abide by Court orders.

The Court FINDS Luba testified to her opinion Enrique refuses to have anything to do with her, to agree to anything she requests and refers to her as a liar. The Court FINDS the parties do not attend parent-teacher conferences or medical appointments together. The Court FINDS the high conflict between the parties is largely driven by Luba filing an extraordinarily high number of motions in this case resulting in this case being litigated without pause since the day Luba filed for divorce on August 20, 2018.

The Court FINDS the level of conflict between the parents is very high.

The Court FINDS this factor favors Enrique.

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

The Court FINDS it is undisputed Luba not only schedules all of the child's medical and dental appointments, she also attends them either alone or with her husband, Phil. The Court FINDS Enrique's testimony CREDIBLE regarding Luba creating conflict in doctors' offices by alleging he abused her or saying Phil has been in the child's life longer than Enrique.

The Court FINDS that, to avoid conflict with Luba, Enrique avoids scheduling and attending the child's medical and dental appointments. As joint custodians, both parents have the right to attend the child's medical appointments. The Court FINDS Luba

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[32] The dates Luba filed motions are as follows: 1. November 1, 2019; 2. December 19, 2019; 3. January 14, 2020; 4. February 20, 2020; 5. May 2, 2020; 6. July 2, 2020; 7. August 19, 2020; 8. August 19, 2020; 9. August 19, 2020; 10. October 9, 2020; 11. October 15, 2020; 12. November 16, 2020; 13. December 17, 2021 (duplicative filing); 14. February 9, 2022; 15. April 12, 2022; 16. May 18, 2022; 17. June 5, 2022; 18. June 23, 2022; 19. March 13, 2023; 20. April 27, 2023; 21. June 9, 2023; 22. July 5, 2023; and 23. August 22, 2024. These motions exclude motions related to attorney withdrawals and/or liens and ex parte motion for orders shortening time.

refused to acknowledge her role in the conflict, preferring to criticize Enrique for ceding the ground for the sake of peace.

Despite Enrique's refusal to attend appointments with Luba, Enrique testified he is frustrated Luba does not schedule appointments as he requests. For example, Enrique testified he asked Luba to schedule the child's dental appointment to occur outside of school hours and became upset she did not comply. Enrique also testified at the March 19, 2024 Day One of trial at great length regarding how the child needed to be seen by an allergist and how he could not schedule an appointment due to Luba refusing to give him Phil's social security number. The Court FINDS Enrique testified he had Phil's social security number as of December 30, 2023 and could have scheduled an appointment with an allergist of his choice. The Court FINDS Enrique's testimony he preferred to wait until this litigation was over to schedule an appointment for the child demonstrates he places an emphasis on his conflict with Luba over the needs of the child. Notwithstanding this issue, the Court FINDS that, when Enrique did schedule a March 21, 2023 dental appointment for the child during his custodial time, Luba unilaterally changed the appointment to her custodial timeshare without notifying Enrique. The Court does NOT FIND credible Luba's assertion she needed to change the dental appointment because, otherwise, Enrique would not have taken the child to the appointment.

Likewise, the Court FINDS Luba's refusal to schedule an appointment with an allergist until immediately after Enrique testified as to his great frustration over Luba's refusal to cooperate with him over the insurance issue for two (2) years demonstrates she places an emphasis on her conflict with Enrique over the needs of the child.

The Court FINDS Enrique fails to follow through with his joint legal custody rights, abdicating them to Luba or abandoning an issue, but then complaining he does not like what Luba does or how she does it.

Conversely, the Court FINDS Luba refuses to obey court orders she does not like such as turning the child over to Enrique for his properly noticed and scheduled vacation, and rescheduling dental appointments without consulting Enrique. The Court FINDS Luba failed to take responsibility for her actions in withholding the child by continuously claiming it was not her intent to prevent the child from going on vacation with Enrique on March 15, 2023 when she willfully and intentionally refused to exchange the child.

The Court FINDS the parties are entrenched in their conflict and often engage in a mutual refusal to cooperate. However, under the specific testimony and evidence presented to the Court, the Court FINDS this factor favors Enrique.

f. The mental and physical health of the parents.

The Court FINDS neither party alleged Enrique has physical or mental health issues.

The Court FINDS neither party alleged Luba has physical health issues.

The Court FINDS credible Luba's testimony she was diagnosed with anxiety for which she was treated with medication and talk therapy for two (2) years. The Court FINDS Luba is not taking prescribed medication to treat any mental illness at this time. The Court further FINDS Luba testified she is self-treating her anxiety at this time with self-help books and using the tools she learned in therapy. The Court FINDS Luba has struggled using the tools she learned in therapy to avoid making poor decisions, as evidenced by Luba's intentional decisions to violate orders by withholding the child from Enrique on March 15, 2023 and changing the child's March 21, 2023 dental appointment, both of which occurred after Luba terminated therapy. However, the Court FINDS Luba has not violated the orders since March 21, 2023 demonstrating she is capable of using her therapeutic skill set when she chooses or when the matter is pending litigation. The Court is cognizant that Luba has been under the threat of losing custody of the child during this time period.

The Court FINDS this factor favors Enrique.

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

The Court FINDS no evidence or testimony was presented to demonstrate that [redacted] age eight (8), is anything but a normal, healthy child meeting her developmental milestones.

To be able to have help, parents must be able to build and maintain stable and healthy relationships with the people around them. The Court FINDS Enrique has the support of his wife, Jennifer, parents, siblings, and the child's school to assist him with the child. The Court FINDS Luba has the support of her husband, mother, sister, and the child's school with the child.

The Court FINDS it was undisputed that Luba has attended all of the child's medical and dental appointments by herself because Enrique refuses to be in the same room with Luba due to her creating conflict by insulting him to the doctors and bringing her husband. Consequently, the Court FINDS Enrique generally ceded responsibility for scheduling the child's medical and dental appointments to Luba. The Court FINDS that, when Enrique took the initiative to schedule the child's dental appointment on March 21, 2023, Luba unilaterally rescheduled it to her custodial time.

The Court FINDS Luba unilaterally enrolled the child in online counseling through the child's school to help the child deal with her anxiety created by Luba being at school at the same time as Jennifer. The Court FINDS it undisputed Enrique only objected to the child engaging in online counseling because he felt she would have no privacy to express her true feelings. The Court FINDS Luba enrolled the child in online counseling over his objection rather than even looking for an in-person provider for the child. The Court FINDS Luba's blanket statement that, the counseling is the child's best interest, unpersuasive in light of her failure to consider the issue of the child having privacy in her counseling, which was the only issue Enrique raised with her.

The Court FINDS this factor nominally favors Enrique.

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

The Court FINDS it was undisputed the child is bonded with Enrique.

The Court FINDS it was undisputed the child is bonded with Luba.

The Court FINDS this factor is neutral.

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

The Court FINDS the child has a half-sister, [redacted] (age 4), born to Enrique and his wife.

The Court FINDS the child has a step-sister, [redacted] (age 8), who is Phil's child. The Court FINDS [redacted] and [redacted] have grown up together, are in the same grade, and attend extracurricular and family events together. The Court FINDS it undisputed the children share the same weekly timeshare at Luba's home where they share a bedroom.

The Court FINDS there was no dispute the child is bonded with both of her siblings.

The Court FINDS this factor is neutral.

j. Any history of parental abuse or neglect of the child or any sibling of the child.

The Court FINDS no evidence was presented to the Court demonstrating either party engaged in abuse or neglect of a child despite Enrique's [prior] allegations to the contrary.

The Court FINDS this factor does not apply.

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

The Court FINDS there is no evidence before the Court suggesting there is any history of domestic violence.

The Court FINDS this factor does not apply.

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

The Court FINDS Luba committed an act of abduction against the child pursuant to NRS

200.359(1) creating a rebuttable presumption that sole or joint physical custody or unsupervised contact with the child is not in the child's best interest.[33]

Luba's testimony and evidence in support of rebutting the presumption is addressed below.

ANALYSIS AND ORDERS

Modification of Custody

After the March 19, 2024 Day 1 Non-Jury Trial, the Court made a preliminary finding the NRS 125C.0035(7) rebuttable presumption was triggered.[34] The Court found Enrique met the relevant factors in NRS 125C.0035(7) regarding an act of withholding or abduction demonstrating by clear and convincing evidence Luba willfully detained the minor child on March 15, 2023.[35] However, the Court FINDS Luba demonstrated her ability to provide daily care for the child, provide for the child's physical and emotional needs, and provide the child

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[33] Id. at 3:14:14 – 3:15:26. NRS 200.359(1) provides as follows:

> "Detention, concealment or removal of child from person having lawful custody or from jurisdiction of court and relocation of child by parent without written consent of other parent or court permission: Penalties; limitation on issuance of arrest warrant; restitution; exceptions.
>
> 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:
>
> (a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child . . ."

[34] See Order after Hearing from March 19, 2024 at p.2, ll.4-10 (filed August 8, 2024). The Court NOTES the Order inaccurately refers to NRS 125C.0035(7) as "NRS 125(c)(7)" at p.2, ll.6.

[35] See March 19, 2024 Hearing Video Time Cite at 3:13:06 – 3:14:13.

with a safe home overcomes the presumption set forth in NRS125C.0035(7). Specifically, the Court FINDS that, Luba's withholding of the child for one (1) vacation period in March 2023 combined with credible evidence and testimony demonstrating her ability to provide daily care for the child, overcomes presumption Luba should not have sole or joint physical custody *and* supervised visitation only. The mandate set forth for violations of NRS 125C.0035(7) is particularly restrictive amounting to sole physical custody.[36] Notably, Enrique did move this Court for sole physical custody of the parties' child.

While Enrique cannot prevail on his request for Luba to have supervised contact only with the child, a visitation order which would be *required* pursuant to the NRS 125C.0035(7)[37] *mandate*, the Court FINDS Enrique nonetheless established a substantial change of circumstances affecting the child's welfare and in the child's best interest. Taking into account the evidence and testimony presented to it and the best interest factors set forth at NRS

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[36] See e.g., Roe v. Roe, 139 Nev. Adv. Op. 21, 535 P.3d 274 (2023)(mandating findings supporting the restrictive sole physical custody order).

[37] NRS 125C.0035(7) states: A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

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

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

125C.0035(4), the Court FINDS it in the child's best interest to grant Enrique's request for primary physical custody. The Court places particular emphasis on Luba's actions which prevented Enrique from having frequent associations with the child, Luba's demonstrated unwillingness to co-parent with Enrique, her near constant actions leading to increased conflict and litigation in this matter and her demonstrated inability to meet the needs of the child by valuing conflict with Enrique over the child's best interests. Accordingly, the Court FINDS it in the child's best interest to GRANT Enrique's request for modification of custody to PRIMARY PHYSICAL CUSTODY.

Timeshare

The Court FINDS Enrique requested modification of the parties' timeshare to him being awarded three (3) consecutive weeks of custody with one (1) week to Luba. The Court FINDS is not persuaded (3) consecutive weeks of visitation with Enrique is in the best interest of the child in light of her established sibling relationships and stability in each household. The Court places value on the child's undisputed close bond with her sister, [redacted] in Luba's home.

Accordingly, the Court ORDERS Luba shall have specified visitation with the minor child from each FRIDAY after school or, 3PM if there is no school, until Mondays to school or, 9AM if there is no school every weekend EXCEPT the THIRD WEEKEND OF EACH MONTH which shall be Enrique's specified weekend. The parties' prior holiday/vacation timeshare SHALL remain status quo.

Child Support

The Court FINDS Luba's most recent Financial Disclosure Form (FDF) was filed March 14, 2024 wherein she indicated she was employed by Aria Casino as a cocktail server earning

$1,904.44 per month including tip income.[38] In support of her FDF, Luba included a March 3, 2024 paystub listing $4,699.86 year to date income. March 3, 2024 is eleven (11) weeks into 2024. Accordingly, the Court FINDS Luba's calculated gross monthly income is $1,851.46 ($4,699.86 year to date income / 11 weeks into 2024 = $427.26 per week X 52 weeks in a year = $22,217.52 annual income / 12 months in a year = $1,851.46 calculated gross monthly income).

Therefore, Luba's monthly child support obligation is $301.00, effective JANUARY 1, 2025 and due on the first of each month thereafter.

Dependent Tax Credit

As the primary physical custodian, Enrique SHALL be solely entitled to claim the party's minor child each and every tax year commencing 2025.

Request for Prosecution for Parental Abduction

The Court DENIES Enrique's request for referral for prosecution for parental abduction.

Attorney Fees and Costs

The Court DENIES Luba's request for award for attorney fees and costs.

The Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs. Enrique SHALL file and serve a Memorandum of Fees and Costs, to include redacted attorney-client invoices and Brunzell and Wilfong analyses not later than JANUARY 16, 2025. Luba shall have the time allotted from date of service to file and serve an Objection. The Court will not consider any new requests for relief in either pleading nor will it entertain a reply. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for award for attorney fees and costs. Decision on award for attorney

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[38] See Luba's Financial Disclosure Form (filed March 14, 2024).

fees and costs shall be scheduled for FEBRUARY 19, 2025 (Chambers/NO appearances).

ORDER TO SHOW CAUSE

Count 1

Enrique alleged Luba knowingly and willingly violated the Stipulated Decree of Divorce at Exhibit 1, p.9, Article 9.3 (Marital Settlement Agreement) (filed December 8, 2021):

> "The parties' custodial schedule is described with sufficient particularity per NRS 125C.010. The parties agree that custodial [sic] shall take place as follows: The parties shall exercise a week on, week off scheduled [sic] with Husband having custody of the minor children every other week from Wednesday morning at 9:00 a.m. when school commences until the following Wednesday at 9:00 a.m., except when superseded by holiday, vacation or other special custody times, as more fully set forth below. The sending parent shall deliver the child to school on Wednesday, and the receiving parent shall pick the child up from school at the conclusion of the school day that say day, on Wednesday.
>
> Except where superseded by holiday, vacation, or other special holiday custody times, as more fully set forth below, in the event that there is no school on a Wednesday, the custody time shall be at 9:00 am at the Chevron gas station located at 10890 W. Charleston Blvd., [redacted] This shall also be the exchange point whenever a custody exchange is to be made somewhere someplace other than the child's school. When a custody exchange is made at the Chevron gas station located at 10890 W. Charleston Blvd., [redacted] the parties agree that neither shall approach the other's vehicle except insofar as is necessary to facilitate the exchange safely. Neither party shall attempt to engage the other in conversation, but shall simply see that the child gets to the receiving parent's vehicle safely and leave."

THE COURT FINDS the order set forth in the December 8, 2021 Decree of Divorce at p.9, Exhibit 1, Article 9.3 was clear and unambiguous as required by Nevada law.[39]

THE COURT FURTHER FINDS Enrique presented clear and convincing evidence to this Court in support of a finding of contempt as to the September 25, 2023 Order to Show Cause.

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[39] See Cunningham v. Eighth Jud. Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986).

THE COURT FURTHER FINDS, pursuant to Nevada law, this Court has inherent power to enforce its orders and decrees through contempt proceedings pending appeal.[40]

THE COURT FURTHER FINDS, with respect to the September 25, 2023 Order to Show Cause, Luba has NOT shown adequate cause why she should NOT be held in contempt and FINDS LUBA IS IN CONTEMPT AND HAS WILLFULLY VIOLATED SPECIFIC AND CLEAR OBLIGATIONS SET FORTH in the Decree of Divorce at p.9, Article 9.3; to wit: the Court FINDS the testimony of the parties clearly and convincingly established Luba exchange the child on Wednesday, March 15, 2023 at 9:00 AM at the Chevron station as ordered. The Court FINDS Luba testified she was still in her attorney Ben Childs' office the morning of March 15, 2023 when she decided she would not exchange the child with Enrique for his scheduled visitation.

The Court FINDS Enrique credibly established through his testimony he suffered harm in the form of not being able to enjoy the March 15, 2023 vacation to Mexico because he was not able to take the child to visit his family as planned, and he spent the vacation preparing litigation documents related to the withholding.

The Court FINDS Enrique credibly established a need to hold Luba in contempt through his testimony Luba interfered with his scheduled vacations to Mexico in 2021 and 2022 by either refusing to produce the child or by demanding to have information Enrique could not reasonably provide.

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[40] See Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970) and Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

Count 2

Enrique alleged Luba knowingly and willingly violated the Stipulated Decree of Divorce at Exhibit 1, p.8, Articles 9.1, (Marital Settlement Agreement) (filed December 8, 2021):

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

THE COURT FINDS the order set forth in the Stipulated Decree of Divorce at Exhibit 1, p.8, Articles 9.1 was clear and unambiguous as required by Nevada law.[41]

THE COURT FURTHER FINDS Enrique presented clear and convincing evidence to this Court in support of a finding of criminal contempt as to the September 25, 2023 Order to Show Cause.

THE COURT FURTHER FINDS, pursuant to Nevada law, this Court has inherent power to enforce its orders and decrees through contempt proceedings pending appeal.[42]

THE COURT FURTHER FINDS, with respect to the September 25, 2023 Order to Show Cause, Luba has NOT shown adequate cause why she should NOT be held in contempt and FINDS LUBA IS IN CONTEMPT AND HAS WILLFULLY VIOLATED SPECIFIC AND CLEAR OBLIGATIONS SET FORTH in the Stipulated Decree of Divorce at Exhibit 1, p.8,

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[41] See Cunningham v. Eighth Jud. Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986).

[42] See Noble v. Noble, 86 Nev. 459, 470 P.2d 430 (1970) and Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).

Articles 9.1; to wit: the Court FINDS the testimony of the parties clearly and convincingly established Luba failed to consult with Enrique before changing the child's March 21, 2023 dental appointment to March 24, 2024.

The Court FINDS Enrique testified he scheduled the child's dental appointment to occur on March 21, 2023 and provided notice to Luba on Talking Parents application. The Court FINDS Luba testified she rescheduled the appointment from March 21, 2023 to March 24, 2023 without discussing the matter with Enrique. The Court FINDS Luba testified after she rescheduled the appointment, she notified Enrique of the change on Talking Parents, which she considers discussing it with him. The Court does NOT FIND CREDIBLE Luba's testimony she believes she is conferring with Enrique under the order if she moves the appointment first and notifies Enrique afterward.

The Court FINDS Enrique credibly established through his testimony he suffered harm in the form of not being able make appointments for the child because Luba changes them, causing conflict he seeks to avoid. The Court FINDS Enrique credibly established through his testimony the need for contempt due to Luba failing to confer with him so as to promote the child's best interest.

BASED ON THE FOREGOING, the Court ORDERS Luba SHALL pay $500 as for sanction of EACH violation of the September 23, 2023 Order to Show Cause – Counts 1 and 2 or, a total of $1,000 ($500 x 2 sustained counts of contempt = $1,000 total).

PURGE CLAUSE: In the event Luba strictly abides by the vacation orders and joint legal custody orders for a period of twelve (12) months, the Court SHALL PURGE the financial sanctions.

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ORDERS

NOW THEREFORE, based on upon the foregoing *Findings of Fact and Conclusions of Law* and, good cause appearing:

IT IS HEREBY ORDERED that the parties shall continue to share JOINT LEGAL CUSTODY of the minor child.

IT IS FURTHER ORDERED that Enrique's request to modify custody is GRANTED and Enrique SHALL have PRIMARY PHYSICAL CUSTODY of the parties' minor child.

IT IS FURTHER ORDERED that Luba shall have specified visitation with the minor child from each FRIDAY after school or, 3PM if there is no school, until Mondays to school or, 9AM if there is no school every weekend EXCEPT the THIRD WEEKEND OF EACH MONTH which shall be Enrique's specified weekend.

IT IS FURTHER ORDERED that the parties' prior holiday/vacation timeshare SHALL remain status quo.

IT IS FURTHER ORDERED that Luba SHALL pay $301.00 per month child support, effective JANUARY 1, 2025 and due on the first of each month thereafter.

IT IS FURTHER ORDERED that Enrique SHALL be solely entitled to claim the minor child for federal tax purposes each year commencing 2025.

IT IS FURTHER ORDERED that Enrique's request for this matter to be referred for prosecution for parental abduction is DENIED.

IT IS FURTHER ORDERED that the Court *preliminarily* GRANTS Enrique's request for award for attorney fees and costs. Enrique SHALL file and serve a Memorandum of Fees and Costs, to include redacted attorney-client invoices and Brunzell and Wilfong analyses not later than JANUARY 16, 2025. Luba shall have the time allotted from date of service to file and

serve an Objection. The Court will not consider any new requests for relief in either pleading nor will it entertain a reply. The failure to timely file and serve the Memorandum of Fees and Costs SHALL be deemed a WAIVER of the request for award for attorney fees and costs. Decision on award for attorney fees and costs shall be scheduled for FEBRUARY 19, 2025 (Chambers/NO appearances).

IT IS FURTHER ORDERED that Enrique clearly and convincingly established evidence in support of Counts 1 and 2 of the September 25, 2023 Order to Show Cause re: contempt.

IT IS FURTHER ORDERED that Luba SHALL as for financial sanction for the September 25, 2023 Order to Show Cause, Luba shall pay $500 per count or, a total of $1,000. **PURGE CLAUSE**: In the event Luba strictly abides by the vacation orders and joint legal custody orders for a period of twelve (12) months, the Court SHALL PURGE the $1,000 sanction.

IT IS FURTHER ORDERED that, all other orders not addressed herein SHALL remain status quo.

MANDATORY STATUTORY NOTICES

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

NOTICE IS HEREBY GIVEN that the parties are subject to the relocation requirements of NRS 125C.006 & NRS 125C.0065. If joint or primary physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating: (a) attempt to obtain the written consent of the non-relocating parent to relocate with the child; and (b) if the non-relocating parent refuses to give that consent, petition the court for permission to move and/or for primary physical custody for the purpose of relocating. A parent who desires to relocate with a child has the burden of proving that relocating with the child is in the best interest of the child. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child without having reasonable grounds for such refusal, or for the purpose of harassing the relocating parent. A parent who relocates with a child pursuant to this section without the written consent of the other parent or the permission of the court is subject to the provisions of NRS 200.359.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.010(1)(b), for purposes of visitation rights of a child, the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

NOTICE IS HEREBY GIVEN that the parent having the child support obligation is subject to NAC 425.025 and NRS 31A.010 through 31A.350, inclusive, regarding the immediate withholding or assignment of wages, commissions or bonuses for payment of child support, whether current or delinquent.

NOTICE IS HEREBY GIVEN that pursuant to NRS 125B.145 and NAC 425.170, either party may request that the Court review the child support obligation every three years or upon changed circumstances.

NOTICE IS HEREBY GIVEN that pursuant to NAC 425.165 and NRS 425.620, if the order pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child, and if you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

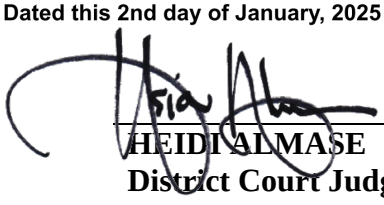
NOTICE IS HEREBY GIVEN that each party shall submit the information required in NRS 125B.055, NRS 125.130, and 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten days from the date this Decree is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten days should any of that information become inaccurate.

NOTICE IS HEREBY GIVEN that you have an affirmative duty to update any changes in your personal information by filing a Notice of Change of Address form, which can be found at the following link: https://www.familylawselfhelpcenter.org/images/forms/misc/address-change-pdf-fillable.pdf

APPEAL NOTICE

The parties are noticed s/he has thirty (30) days from Notice of Entry of this Order to file any appeal with the Nevada Supreme Court. See NRAP 4(a)(1). The time to file a Notice of Appeal may not be extended by stipulation. Certain motions filed in this Court may impact the timing of a Notice of Appeal. See NRAP 4(a)(4)(A) – (D).

Dated this 2nd day of January, 2025



HEIDI ALMASE
District Court Judge

409 EFB E3AF A44D
Heidi Almase
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/2/2025

[redacted]

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 1/3/2025

John Muije

John W. Muije & Associates
Attn: John W. Muije, Esq
[redacted]
North Las Vegas, NV, 89031

EXHIBIT E

EXHIBIT E

Electronically Filed
4/24/2025 3:18 PM
Steven D. Grierson
CLERK OF THE COURT

NOAS
Emily McFarling, Esq.
Nevada Bar Number 8567
MCFARLING COHEN FIC & SQUIRES
[redacted]
Attorney for Plaintiff,
Luba Dace f/k/a Luba Gonzalez.

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

LUBA DACE f/k/a LUBA GONZALEZ, Plaintiff, vs. ENRIQUE IVAN VELAZQUEZ- GONZALEZ, Defendant.	Case Number: D-18-575860-D Department: X

NOTICE OF APPEAL

TO: Defendant, Enrique Ivan Velazquez-Gonzalez, and to his attorney of record, Melvin R. Grimes, Esq.:

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Notice is hereby given that Plaintiff, Luba Dace f/ka Luba Gonzalez, in the above-named matter, hereby appeals to the Supreme Court of Nevada all appealable orders in this case, including the following orders:

1. Findings of Fact and Conclusions of Law, and Orders (Post-Judgment) entered in this action on January 2, 2025.
2. Order Denying Plaintiff's January 21, 2025, Motion for Reconsideration and Granting Defendant's January 30, 2025, Countermotion and Resolving April 9, 2025 Chambers Matter entered in this action on April 11, 2025.

DATED this 24th day of April, 2025.

MCFARLING COHEN FIC & SQUIRES

/s/ Emily McFarling
Emily McFarling, Esq.
Nevada Bar Number 8567
[redacted]
Attorney for Plaintiff,
Luba Dace f/k/a Luba Gonzalez.

CERTIFICATE OF SERVICE

The undersigned, an employee of McFarling Cohen Fic & Squires, hereby certifies that on this 24th day of April, 2025, served a true and correct copy of this Notice of Appeal:

☒ via mandatory electronic service using the Eighth Judicial District Court's E-file and E-service System to the following:

MELVIN R. GRIMES, ESQ.
[redacted]
Attorney for Defendant

/s/ Rebeca Renderos
Rebeca Renderos