INDEX TO APPENDICES

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARVIN CARRERA,

Plaintiff-Appellant,

v.

RHONDA K. FORSBERG,

Defendant-Appellee.

No. 21-16582

D.C. No. 2:20-cv-02138-GMN-EJY

District of Nevada,

Las Vegas.

Submitted March 21, 2023

Molly C. Dwyer, Clerk

U.S. COURT OF APPEALS

Before: WALLACE, TALLMAN, AND BYBEE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App.P.35.

Carrera's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 20) are denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARVIN CARRERA,

Plaintiff-Appellant,

v

RHONDA K. FORSBERG,

Defendant-Appellee.

No. 21-16582

D.C. No. 2:20-cv-02138-GMN-EJY

MEMORANDUM

Appeal from the United States District Court

For the District of Nevada

Gloria M. Navarro, District Judge, Presiding

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

**The panel unanimously concludes this case is suitable for decision without oral argument. See Fed.R.App. P.34(a)(2).

Submitted December 8, 2022

District of Nevada

Before: WALLACE, TALLMAN, AND BYBEE,

Circuit Judges.

Marvin Carrera appeals pro se from the district court's judgment dismissing his action alleging various federal claims arising from state court child custody proceedings. We have jurisdiction under 28 U.S.C. 1291. We review de novo. Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034,1040(9th Cir. 2011)(dismissal under Federal Rule of Civil Procedure 12(b)(6)); Noel v. Hall, 341 F.3d 1148, 1154 (9th Cir. 2003) (dismissal under Rooker-Feldman doctrine). We affirm.

The district court properly dismissed Carrera's action for lack of subject matter jurisdiction under the Rooker-Feldman doctrine because it was a "forbidden de facto appeal" of a prior state court decision and raised issues that were "inextricably intertwined" with that decision. See also Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005) (explaining that the Rooker-Feldman doctrine is limited to "cases brought by state-court losers complaining of injuries caused by state-court judgements rendered before the district court proceedings commenced and inviting district court review and rejection of those judgements"); Cooper v. Ramos, 704 F.3d 772, 782 (9th Cir. 2012) (explaining that claims are inextricable intertwined" with state court decisions where federal adjudication

"would impermissibly undercut the state ruling on the same issues" (citation and internal quotation marks omitted)).

We do not consider arguments and allegations raised for the first time on appeal. See Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARVIN CARRERA,

Plaintiff,

v.

RHONDA K. FORSBERG,

Defendant.

Case No.: 2:20-cv-02138-GMN-EJY

District of Nevada,

Las Vegas.

Before: Gloria M. Navarro,

DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Pending before the court is Defendant Rhonda K. Forsberg's ("Defendant's") Motion to Dismiss, (ECF No.8). For the reasons discussed below, the court GRANTS Defendant's Motion to Dismiss.

I. BACKGROUND

This case arises from Plaintiff's family court case, Case #D-11-453527-C, in the Eight Judicial District Court for the Clark County, Nevada ("state district court"). (See generally Compl., ECF No.1). Defendant was the presiding judicial officer in Plaintiff's underlying state case. (Id. at 3).

On October 7 2011, Plaintiff Marvin Carrera initiated a child custody suit against his partner, Claudia Montes. (See Docket, Case #D-11-453527-C, Ex A to MTD, ECF No. 5-1). After a lengthy trial, the state district court ultimately granted Claudia Montes sole custody. (See id.). Plaintiff appealed. (id.) The Nevada Court of Appeals affirmed the state district court's decision, and the Nevada Supreme Court subsequently denied review. (id).

Plaintiff filed a Complaint on November 20, 2020. (Compl., ECF No. 1). Plaintiff alleges that defendant "violated rules of practice, Nevada rules of professional conduct and nevada Rules of evidence." (Id. at 3). Plaintiff accordingly requests, inter alia, that the federal court to review his family court case and send the case to District Attorney's Office under Nevada Revised Statutes 200.508 and 200.5081. (Id. at 9). Defendants thereafter filed the instant Motion to Dismiss. (ECF No. 5).

II. LEGAL STANDARD

Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon which relief can be granted . Fed. R Civ. P. 12(b)(6); Bell Atl. Corp. v.

Twombly, 550 U.S. 544, 555, 127d. Ct 1955, 167 L. Ed. 2d 929 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on which it rests, and although a court must take all factual allegations as true, legal conclusions couched as a factual allegations are insufficient. Twombly, 550 U.S. at 555. Accordingly, Rule 12(b)(6) requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662,678,129 S. Ct 1937,173 L. Ed. 2d 868 (2009) (quoting Twombly, 550 U.S. at 555). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. this standard "asks for more than a sheer possibility that a defendant has acted unlawfully" Id.

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F. 2d 1542, 1555 n. 19 (9th Cir. 1990). However, material which is properly submitted as part of the complaint may be considered." Id. Similarly, "documents whose contents are alleged in a complaint may be considered." Id. Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. Branch v.

Tunnell, 14 F.3d 449,454 (9th Cir. 1994). On a motion to dismiss, a court may also take judicial notice of 'matters of public record." Mack v. S. Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir.1986). Otherwise, if a court considers materials outside of the pleadings, the motion to dismiss is converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

If the court grants a motion to dismiss for failure to state a claim, leave to amend should be granted unless it is clear that the deficiencies of the complaint cannot be cured by amendment. DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655,658 (9th Cir. 1992). Pursuant to Rule 15(a), the court should "freely" give leave to amend "when justice so requires," and in the absence of a reason such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962).

Ill. DISCUSSION

Defendant moves to dismiss Plaintiffs Complaint on four grounds. specifically that: (l) Plaintiffs claims are barred by the Eleventh Amendment: (2) Defendant is protected by absolute judicial immunity; (3) the Rooker-Feldman Doctrine precludes federal court review of Plaintiffs state court case; and (4) Plaintiff fails to plead sufficient facts supporting a claim for relief. (Mot. Dismiss ("MTD") 1:21-26, ECF No. 5). What has become known as the Rooker-Feldman doctrine arises from two

United States Supreme Court decisions defining federal district court jurisdiction and the relationship between federal district courts and state courts. Federal district courts possess "strictly original" jurisdiction, and thus have no power to exercise subject matter jurisdiction over a de facto appeal from a state court judgment. See D.C. Ct. of Appeals, et al. v. Feldman, 460 U.S. 462,482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); Rooker v. Fid. Trust Co., 263 U.S. 413, 414-17, 44 S. Ct. 149, 68 L. Ed. 362 (1923); see also Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). Only the United States Supreme Court has jurisdiction to review such judgments. Feldman, 460 U.S. at 482. The Rooker-Feldman doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280,284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). "The clearest case for dismissal based on the Rooker-Feldman doctrine occurs when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision "'Henrichs v. Valley View Dev., 474 F.3d 609,613 (9th Cir. 2007) (quoting Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003)). In addition to barring de facto appeals from state coul1 judicial decisions, the Rooker-Feldman doctrine forbids federal district courts from deciding issues "inextricably intertwined" with an issue the state court resolved in its decision. Noel, 341 F.3d at 1158. If a plaintiffs suit falls within the Rooker-Feldman doctrine, then the district court must dismiss the case

for lack of subject matter jurisdiction. Kougasian, 359 F.3d at 1139. Here, Plaintiff seeks relief for an allegedly erroneous determination of a state court decision. In his Response, Plaintiff broadly disputes the state court's findings in his underlying case. For example, Plaintiff alleges that Defendant "refused to recognize or admit into evidence the findings from the Authorities in California (California CPS and the Special Victims Unit of the Los Angeles Sheriff's Department)." (Resp. to MTD 4:18-23, ECF No. 7). Plaintiff specifically requests that the "federal court to review [his] family court case" in his Request for Relief. (See Compl. at Because Plaintiff seeks a "de facto appeals from [a] state court judicial decision," the Court lacks jurisdiction over Plaintiffs claims under the Rooker-Feldman doctrine.1 The Court accordingly grants Defendant's Motion to Dismiss.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, (ECF No. 5), is GRANTED.

DATED this 7 day of September, 2021.

/s/ Gloria M. Navarro, District Judge

UNITED STATES DISTRICT COURT

*Because amendment is futile, the Court additionally denies leave to amend and dismisses the case with prejudice. See Foman, 371 U.S. at 182 (finding that leave to amend should be granted in the absence of a reason such as "futi lity of the amendment").

IN THE COURT OF APPEALS OF THE STATE

OF NEVADA

MARVIN CARRERA,

Appelant,

v.

CLAUDIA MONTES,

Respondent.

Case No.: 80457-COA

APPELAT COURT, NEVADA.

ORDER OF AFFIRMANCE

Marvin Carrera appeals from a final order in a child custody matter. Eighth Judicial District Court, Clark County; Rhonda Kay Forsbel·g, Judge. In the proceedings below, the parties have had a highly contentious custody case, with extensive litigation. As relevant here, the parties entered a stipulated decree of custody in 2012, providing that respondent Claudia Montes would have primary physical custody and the parties would share joint legal custody of their minor child. In 2017, after extensive litigation, the district court entered a new custody order based on the parties' stipulation, whereby Claudia retained primary physical custody and the parties continued to share joint legal custody of their child. The parties continued to litigate and, in 2019, the matter ultimately proceeded to trial on the parties' competing motions for sole physical and legal custody. Notably, the parties both made allegations of abuse throughout the litigation and numerous hearings were held regarding the child's need for therapy. After trial, the district court denied Marvin's motion to modify custody, finding that be failed to demonstrate a substantial change in circumstances warranting modification, and granted Claudia's motion to modify legal custody, awarding her sole legal custody. In granting Claudia sole legal custody, the district court found that such modification was in the child's best interest in light of the parties' inability to co-parent and inability to work together to select a therapist for the child. The district court also awarded Claudia her attorney fees and costs, and subsequently denied

Marvin's motion for reconsideration. This appeal followed. On appeal, Marvin challenges the district court's orders, asserting that the district court improperly admitted certain evidence and improperly excluded other evidence, and challenges the award of fees. Child custody matters rest in the sound discretion of the district court. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541,543 (1996). Accordingly, this court reviews a child custody decision for a clear abuse of discretion. Ellis u. Carl.1,cci, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody decisions, this court will affirm the district court's child custody determinations if they are supported by substantial evidence. Id. at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. Id. Additionally, this court reviews the district court's evidentiary determinations for an abuse of discretion. Abid v. Abid, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017).

As to Marvin's assertion that the district court improperly admitted witness testimony from Donna Gosnell, MFr because she was not credible, this court does not reweigh witness credibility on appeal. See Ellis, 123 Nev. at 152, 161 P.3d at 244. To the extent Marvin argues that the district court should have precluded Gosnell's testimony because Claudia allegedly chose Gosnell as the child's therapist unilaterally, contrary to a prior court order, and because a prior court order allegedly stated that "Gosnell was not to be used for anything regarding the court," the record does not support Marvin's assertions and we discern no abuse of discretion in the district court's decision to allow Gosnell to testify. See Abid, 133

Nev. at 772, 406 P.3d at 478. Moreover, we note that Marvin failed to object to Gosnell testifying at the time of trial; thus, he has waived any such argument on appeal. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Marvin's assertion that the district court improperly admitted Claudia's evidence because he received it for the first time on the morning of trial is also without merit. The district court found that the proposed evidence was properly disclosed to Marvin's prior counsel. Notably, Marvin's counsel moved to withdraw on the eve of trial and at the hearing on that motion, the district court indicated it was not inclined to grant the motion to withdraw on the eve of trial, but Marvin insisted that he did not want his counsel to represent him at trial. Based on this, the district court allowed counsel to withdraw and indicated that Marvin would be required to obtain the file from his counsel and determine what evidence was disclosed and when, and Marvin indicated he would do so the same day. Thus, we discern no abuse of discretion in the district court's admission of evidence on this basis. See Abid, 133 Nev. at 772, 406 P.3d at 478.

Marvin also contends that the district court improperly excluded his evidence demonstrating that Gosnell and Claudia were not credible, and evidence of the parties1 conflict that p1 edated the 2017 stipulated custody order, which he alleges would establish a "pervasive pattern of behavior" by Claudia. The district court excluded Marvin's evidence because it found that Marvin failed to properly produce the evidence prior to trial, that Marvin failed to establish foundation for the evidence, and that it could not properly consider evidence predating the last custody

order, from 2017, pursuant to McMonigle v. McMonigle, 110 Nev. 1407. 887 P.2d 742 (1994). Although Marvin summarily asserts that the district court improperly excluded his evidence, he has failed to provide any cogent argument addressing the district court's basis for excluding the evidence. See Edwa.rds v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that thjs court need not consider claims that are not cogently argued). Regardless, as noted above, this court does not reweigh witness credibility on appeal. See Ellis, 123 Nev. at 152, 161 P.3d at 244. Moreover, we note that substantial evidence in the record supports the district court's conclusion that Marvin failed to demonstrate that he properly produced the evidence and that he failed to lay any foundation for the proffered evidence at trial. Thus, we discern no abuse of discretion in the district court's exclusion of Marvin's evidence. See Abid, 133 Nev. at 772, 406 P.3d at 478.

Finally, Marvin challenges the district court's order awarding Claudia her attorney fees and costs. In particular, Marvin contends that the district court improperly awarded Claudia fees pursuant to NRS 18.010 because his claim was not brought without reasonable grounds or to harass Claudia. This court reviews a district court's award of attorney fees for an abuse of discretion. Miller v. Wilfong, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). As an initial matter, we note that the district court did not expressly cite the rule it relied upon in awarding attorney fees and its findings are not detailed. But the district court concluded that Claudia prevailed at trial, and found that an awa1 ·d of fees was warranted based on the pleadings, the testimony at trial, and the arguments made. The district court also

repeatedly found that a modification oflegal custody was required because of the parties' inability to co-parent and cooperate, particularly as it related to selecting a therapist for the child. Based on these findings and our review of the record, substantial evidence would support an award pursuant to NRS 18.010(2)(b) or EDCR 7.60(b). Regardless, the district court has discretion to award attorney fees in child custody matters pursuant to NRS 126C.250. And from our review of the record and the parties' arguments as to the award of fees, we cannot conclude that the district court abused its discretion in determining an award of attorney fees was warranted. See Miller, 121 Nev. at 622, 119 P.3d at 729.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.1

/s/ Gibbons , C.J.

/s/ Tao , J.

/s/ Bulla , J.

cc: Hon. Rhonda Kay Forsberg, District Judge Marvin Carrera

Robison, Sha, p, Sullivan & Brust

Eighth District Court Clerk

*1 J nsofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIA MONTES,

Plaintiff,

v.

MARVIN CARRERA,

Defendant.

Case No.: D-11-453527-C

Las Vegas.

Before: RHONDA K FORSBERG,

FAMILY COURT JUDGE

ORDER ON ATTORNEY'S FEES

This matter having come on for hearing on for Evidentiary Hearing on July 1, 2019, the Court having reviewed the papers and pleadings on file herein, having heard the argument of counsel for both parties, and having been fully apprised as to the facts and matters herein, wherefore:

THE COURT HEREBY FINDS that, Plaintiff CLAUDIA MONTES having prevailed in a majority of her application for relief to the Court, the Defendant MARVIN CARRERA shall bear a portion of the cost of P1aintiff CLAUDIA MONTES's attorney's fees for the tria1.

THE COURT FURTHER FINDS that the Court finds, having considered the testimony heard and arguments made at the Evidentiary Hearing held in this matter, as well as Plaintiff CLAUDIA MONTES's Memorandum of Fees and Costs filed on April 30, 2019, that an award of attorney's fees to Plaintiff CLAUDIA MONTES is appropriate.

THE COURT FURTHER FINDS that counsel for Plaintiff CLAUDIA MONTES cited the Brunzel/ factors in his Memorandum of Fees and Costs. The attorney's fees and costs incurred by Plaintiff CLAUDIA MONTES were appropriate and in keeping with the level of experience that her counsel has and exhibited during the Evidentiary Hearing and an award of fees is appropriate based upon the outcome of said Evidentiary Hearing.

WHEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment for attorney's fees is hereby entered in favor of Plaintiff CLAUDIA MONTES and against Defendant MARVIN CARRERA in the amount of $16,828.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this amount is hereby reduced to judgment and shall accrue interest at the legal rate, until paid in full, and collectible by any lawful means.

DATED AND DONE this 19th day of September 2019.

/s/ Rhonda K. Forsberg

DISTRICT COURT JUDGE

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIA MONTES,

Plaintiff,

v.

MARVIN CARRERA,

Defendant.

Case No.: D-11-453527-C

Las Vegas.

Before: RHONDA K FORSBERG,

FAMILY COURT JUDGE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER FROM THE JULY 01, 2019 EVIDENTIARY HEARING

THIS MATIER having come on for an evidentiary hearing on the 1st day of July, 2019, in the Family Division, Department G, of the Eighth Judicial District Court, County of Clark; and Plaintiff, CLAUDIA MONTES, present and represented by counsel JOHN T. KELLEHER, ESQ., of the law firm of KELLEHER & KELLEHER, LLC., and Defendant, MARVIN CARRERA, appearing in proper person.

The Court having reviewed all of the evidence produced at the time of Evidentiary Hearing, the testimony of the witnesses, specifically referencing Plaintiff, Defendant and all other witnesses, the exhibit(s) offered and admitted by Plaintiff and by Defendant, the arguments of the Parties, and the Court being fully advised in the premises, both asto subject matter as well asthe parties thereto, and that jurisdiction is proper in Nevada, in good cause ofappearing, the Court makes the following Findings of Facts, Conclusions of Law and Final Orders:

I.

CONSIDERATIONS

1. This matter is before the Court on Defendant's Emergency Motion to Change Custody, filed on December 26, 2018, and Plaintiff's Opposition and Countermotion, filed on December 27,2018.

2. The Order entered on April 16, 2019 included, but was not limited to, the following Findings and Orders:

a. Defendant, Marvin Carrera ("Defendant") right to exercise visitation of the minor child, Tarzo Montes Carrera, as Ordered on October 10, 2017, is reinstated;

b. Defendant, who is the party requesting an evidentiary hearing for a change in custody based upon child alienation, bears the burden of proof;

c. That should Defendant fail to prove his case and a change in custody is not granted, the Judge may determine it is a highly contentious case and that it is not in the best interest of the child to allow continued motions to be filed;

d. Plaintiff may be awarded sole legal and sole physical custody of the minor child with very little visitation for Defendant allowed;

e. That the evidentiary hearing for a change in custody is based upon the inability of the parents to cooperate with each other, to co-parent with each other, and the negative impact the parties are having on the child;

f. That the guardian ad litem shall be released as of January 24, 2019, after review of the Guardian Ad Litem's correspondence and recount of Defendant's inappropriate actions towards Mr. Tilman and his office;

g. That the Order to Show Cause to hold Plaintiff in Contempt is denied; and

h. That Defendant shall not have anything regarding this case on the internet or Facebook or any other form of social media. Everything shall be removed immediately.

THE COURT NOTES that, in addition to its review of all of the pleadings, history in the matter, discovery, reports, evaluations and the like, in this matter; it also reviewed and considered, per request of Defendant, DSM5, which is a section of the Diagnostic and Statistical Manual of Mental Disorders (a taxonomic and diagnostic tool published by the American Psychiatric Association (APA)). DSM5speaks to Generalized Anxiety Orders, which Defendant discussed, and the Court indulged, greater review including, but not limited to, the following sections:

1. Code 309 which speaks to adjustment disorders;

2. Code V61.20 which speaks to parent-child relational problems;

3. Code V61.29 which speaks to children being affected by parental relationship distress; and

4. Code 995.51 which speaks to child psychological abuse confirmed.

THE COURT FURTHER NOTES that it takes Dr. Gravley's findings of psychological abuse very seriously. See hearing cite at 8:37:21.

THE COURT FURTHER NOTES that it is concerned that both parents cannot agree to anything together. As such, co-parenting in this case is severely

lacking. Therefore, the Court has no choice but to Order sole legal custody to one parent. See hearing cite at 8:38:27.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS COURT HEREBY FINDS that based upon the evidence that was heard, and all of the pleadings in this case, including the aforementioned evidence noted above, as requested by Defendant, the Court still has to look at Ellis v Carucci to determine whether there has been a substantial change affecting the child, and based upon that substantial change, if there should be a change in custody.

THIS COURT FURTHER FINDS that Dr. Donna Gosnell's testimony is very credible. See video cite at 8:46:34.

THIS COURT FURTHER FINDS that it agrees with Defendant that a psychologist who should be treating the minor child; however, the Court does not believe that any of the testimony rose to the level of Ellis v Carucci as far as determining that there should be a change in custody as far as physical custody goes of the minor child.

THIS COURT FURTHER FINDS that Defendant has researched the law and has willfully chosen to represent himself. by no instruction of the Court or the parties. See video cite at 8:52:21.

THIS COURT FURTHER FINDS that it reviewed the factors of NRS 125C.0035(4) governing a change in custody. See video cite at 8:48:04. The Court

finds that the facts of this matter do not warrant a change in custody from Plaintiff to Defendant and finds, as follows:

b. The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody. The Court finds that the minor child is eight (8) years old, and is not of sufficient age and capacity to form an intelligent preference as to his custody. Upon multiple reviews of Dr. Gosnell's testimony, the Court is gravely concerned about the minor child's desire to die and the issues that surrounded that desire. See hearing cite at 8:37:41.

c. Any nomination of a guardian for the child by a parent. Not currently applicable, as the Order appointing Mr. Christopher R. Tilman, Esq., as Guardian Ad Litem was released on January 24, 2019. See Order from the 1/24/19 hearing at 2:15-16.

d. Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent. The Court finds that both parents cannot agree to anything together. As such, co- parenting in this case is severely lacking. Therefore, the Court has no choice but to Order sole legal custody to one parent. See hearing cite at 8:38:43.

e. The level of conflict between the parents. The Court finds that it is distressed about the level of filing in this case. The Court is concerned that the parties are more concerned with fighting rather than focusing on the wellbeing of the child. See hearing cite at 8:38:26.

f. The ability of the parents to cooperate to meet the needs of the child. The Court finds that the delay in the minor child's seeking counseling with a therapist for the four (4) visits the minor child that should have happened in a month's time is appalling to the Court. This delay is attributable to the parties' inability to agree on anything, which is why Plaintiff is to exercise sole legal custody moving forward, so that she can ensure that the best interests of the child are being met. See video cite at 8:47:27.

g. The mental and physical health of the parents. The parents appear to be in good mental and physical health, however, both parents are unable to cooperate with one another. See generally, July 16, 2019 hearing.

h. **The physical, developmental and emotional needs of the child.**

The Court finds that the minor child is expected to be seen by a psychologist or any other professional Plaintiff selects that is a Doctor of Psychology (PhD) or Doctor of Philosophy (PsyD), which also addresses Defendant's biggest concern, as he has pied and testified. See hearing cite at 8:40:35.

The Court further finds that the child's well-being is the most crucial factor, and that ultimately, the well-being of the child is best served by Plaintiff. See video cite atS:48:17.

The Court further finds that due to the psychological reports and testimony regarding the minor child's well-being, the Court has no other option but to award sole legal custody to Plaintiff to ensure that the minor child receives proper and

adequate help, without requiring the consent of Defendant when making such decisions. See video cite at 8:47:18.

i. **The nature of the relationship of the child with each parent.** The Court finds that in deciding physical custody, the Court finds that the minor child needs both parents in his life. Therefore, to ensure the best interests of the child, Plaintiff will have sole legal custody and primary physical custody, but Plaintiff will not have sole physical custody. See hearing cite at 8:39:12.

j. **The ability of the child to maintain a relationship with any sibling.** Not applicable.

k. **Any histozy of parental abuse or neglect of the child or a sibling of the child.** The Court reiterates its findings as indicated in subsection (e).

l. **Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child orany other person residing with the child.** Not applicable

m. **Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.** Not applicable.

THISCOURT FURTHER FINDS that under the Ellis v Carucci, a modification of primary physical custody is warranted only when (1) there has been a substantial

change in circumstances affecting the welfare of the child, and (2) the modification would serve the child's best interest. See Ellis v Carucci.

THIS COURT FURTHER FINDS that the standard under Ellis v Carucci determining whether a change of circumstance warrants a modification of primary physical custody has not been met.

THISCOURT FURTHER FINDS that a substantial change in circumstances which affects the welfare of the child, is not found, as the evidence and testimony did not show that the changed circumstances rose to the level of Ellis v Carucci level. See hearing cite at 8:38:07. Therefore, the circumstances do not warrant a modification of physical custody. Id

THIS COURT FURTHER FINDS that after a review of Ellis v Carucci, the Court does not believe the alleged change in circumstance warrants such a change. See video cite at 8:48:10.

THIS COURT FURTHER FINDS that Defendant intends to re-litigate this matter at the appellate level once this Order is entered. See video cite at 8:44:10, 8:45:10, and 8:48:42.

THIS COURT FURTHER FINDS that Defendant argues that Nevada law does not serve the best interests of the child is ingrained in case law and statute. See video cite at 8:44:10 and 8:45:10.

III.

FINAL ORDERS

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff CLAUDIA MONTES shall be granted sole legal custody and primary physical custody of the minor child, TARZO MONTES CARRERA, born March 20, 2011. See hearing cite at 8:39:06.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff shall share with Defendant any and all information relative to the child's health and education. See hearing cite at 8:39:37.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that visitation shall remain status quo.

IT IS FURIBER ORDERED, ADJUDGED, AND DECREED that upon the Court's review of the CPS records, there was concern from both parties as to whom was manipulating the minor child. The Court finds that it is in both party's interests to focus on their child instead. See video cite at 8:46:06.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the minor child shall continue with treatment to address his disorders with Sandra Gray, PhD., or any other professional Plaintiff selects that is a Doctor of Psychology (PhD) or Doctor of Philosophy (PsyD). See hearing cite at 8:40:35.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that as to Plaintiff's request for attorney's fees, Mr. Gibbs shall submit a Memorandum of

Fees and Costs, with a copy to be served on Defendant within seven (7) days. Defendant shall have seven (7) days upon receipt to file an objection/response. See video cite at 8:49:40.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties are admonished to begin focusing on their child.

IT IS FURIBERORDERED, ADJUDGED, AND DECREED that Plaintiff's request that Defendant be declared a vexatious litigant is denied without prejudice at this time; however the Court acknowledges that the previous judges presiding on this matter has considered such Order. See video cite at 8:56:15.

ITISFURTHER ORDERED, ADJUDGED, AND DECREED that Mr. Kelleher's office shall prepare the order from today's hearing and provide a copy to Defendant. Defendant shall have five (5) days upon receipt to review and sign off. See video cite at 8:49:10.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that though Defendant has stated that he has no intention of signing the Order, Mr. Kelleher's office is to submit it to Defendant anyway. Once five (5) days has passed, Mr. Kelleher's office is free to send the Order to the Court for ratification, including with it, the attempted communication with Defendant. See video cite at 8:49:10.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this case shall be closed upon filing of the Notice of Entry of Order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN of the following provision of NRS 125.0045(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 the 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN that 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. The parties are also put on notice of the following provisions in NRS 125.0045(8): If a parent of the child lives in a foreign country or has significant commitment 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 the 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 him to his 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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN of the following provision of NRS 125C.0065:

1. If JOINT PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this state or to a place within this state that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non- relocating parent to relocate with the child; and (b) If the non-relocating parent refuses to give that

consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS

HEREBY GIVEN that they are subject to the provisions ofNRS 31A and 125.450 regarding the collection of delinquent child support payments.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN that either party may request a review of child support pursuant to NRS 125B.145.

IT IS SO ORDERED this 11th day of September, 2019.

/s/ Rhonda K. Forsberg

DISTRICT COURT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 21 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARVIN CARRERA, Plaintiff-Appellant, v. RHONDA K. FORSBERG, Defendant-Appellee.	No. 21-16582 D.C. No. 2:20-cv-02138-GMN-EJY District of Nevada, Las Vegas ORDER

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Carrera's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 20) are denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

FILED

DEC 15 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARVIN CARRERA, Plaintiff-Appellant, v. RHONDA K. FORSBERG, Defendant-Appellee.	No. 21-16582 D.C. No. 2:20-cv-02138-GMN-EJY MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Submitted December 8, 2022**

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Marvin Carrera appeals pro se from the district court's judgment dismissing his action alleging various federal claims arising from state court child custody proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(dismissal under Federal Rule of Civil Procedure 12(b)(6)); *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003) (dismissal under *Rooker-Feldman* doctrine). We affirm.

The district court properly dismissed Carrera's action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because it was a "forbidden de facto appeal" of a prior state court decision and raised issues that were "inextricably intertwined" with that decision. *See Noel*, 341 F.3d at 1163-65 (discussing the *Rooker-Feldman* doctrine); *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (explaining that the *Rooker-Feldman* doctrine is limited to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments"); *Cooper v. Ramos*, 704 F.3d 772, 782 (9th Cir. 2012) (explaining that claims are "inextricably intertwined" with state court decisions where federal adjudication "would impermissibly undercut the state ruling on the same issues" (citation and internal quotation marks omitted)).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARVIN CARRERA,

Plaintiff,

vs.

RHONDA K. FORSBERG,

Defendant.

Case No.: 2:20-cv-02138-GMN-EJY

ORDER

Pending before the Court is Defendant Rhonda K. Forsberg's ("Defendant's") Motion to Dismiss, (ECF No. 5). Plaintiff Marvin Carrera ("Plaintiff") filed a Response, (ECF No. 7), to which Defendant filed a Reply. (ECF No. 8). For the reasons discussed below, the Court **GRANTS** Defendant's Motion to Dismiss.

I. BACKGROUND

This case arises from Plaintiff's family court case, Case #D-11-453527-C, in the Eighth Judicial District Court for Clark County, Nevada ("state district court"). (*See generally* Compl., ECF No. 1). Defendant was the presiding judicial officer in Plaintiff's underlying state case. (*Id.* at 3).

On October 7, 2011, Plaintiff Marvin Carrera initiated a child custody suit against his partner, Claudia Montes. (*See* Docket, Case #D-11-453-527-C, Ex. A to MTD, ECF No. 5-1). After a lengthy trial, the state district court ultimately granted Claudia Montes sole custody. (*See id.*). Plaintiff appealed. (*Id.*). The Nevada Court of Appeals affirmed the state district court's decision, and the Nevada Supreme Court subsequently denied review. (*Id.*).

Plaintiff filed a Complaint on November 20, 2020. (Compl., ECF No. 1). Plaintiff alleges that Defendant "violated rules of practice, Nevada rules of professional conduct and

Nevada rules of evidence." (*Id.* at 3). Plaintiff accordingly requests, *inter alia*, that the federal court to review his family court case and send the case to the District Attorney's Office under Nevada Revised Statutes ¶¶ 200.508 and 200.5081. (*Id.* at 9). Defendants thereafter filed the instant Motion to Dismiss, (ECF No. 5).

II. LEGAL STANDARD

Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon which relief can be granted. Fed. R Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on which it rests, and although a court must take all factual allegations as true, legal conclusions couched as a factual allegation are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule 12(b)(6) requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.*

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 555). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). "However, material which is properly submitted as part of the complaint may be considered." *Id.* Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14

F.3d 449, 454 (9th Cir. 1994). On a motion to dismiss, a court may also take judicial notice of "matters of public record." *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if a court considers materials outside of the pleadings, the motion to dismiss is converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

If the court grants a motion to dismiss for failure to state a claim, leave to amend should be granted unless it is clear that the deficiencies of the complaint cannot be cured by amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant to Rule 15(a), the court should "freely" give leave to amend "when justice so requires," and in the absence of a reason such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962).

III. DISCUSSION

Defendant moves to dismiss Plaintiff's Complaint on four grounds, specifically that: (1) Plaintiff's claims are barred by the Eleventh Amendment; (2) Defendant is protected by absolute judicial immunity; (3) the *Rooker-Feldman* Doctrine precludes federal court review of Plaintiff's state court case; and (4) Plaintiff fails to plead sufficient facts supporting a claim for relief. (Mot. Dismiss ("MTD") 1:21–26, ECF No. 5).

What has become known as the *Rooker-Feldman* doctrine arises from two United States Supreme Court decisions defining federal district court jurisdiction and the relationship between federal district courts and state courts. Federal district courts possess "strictly original" jurisdiction, and thus have no power to exercise subject matter jurisdiction over a de facto appeal from a state court judgment. *See D.C. Ct. of Appeals, et al. v. Feldman*, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 414-17, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *see also Kougasian v. TMSL, Inc.*, 359 F.3d 1136,

1139 (9th Cir. 2004). Only the United States Supreme Court has jurisdiction to review such judgments. *Feldman*, 460 U.S. at 482. The *Rooker-Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

"The clearest case for dismissal based on the *Rooker-Feldman* doctrine occurs when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision . . . .'" *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) (quoting *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)). In addition to barring *de facto* appeals from state court judicial decisions, the *Rooker-Feldman* doctrine forbids federal district courts from deciding issues "inextricably intertwined" with an issue the state court resolved in its decision. *Noel*, 341 F.3d at 1158. If a plaintiff's suit falls within the *Rooker-Feldman* doctrine, then the district court must dismiss the case for lack of subject matter jurisdiction. *Kougasian*, 359 F.3d at 1139.

Here, Plaintiff seeks relief for an allegedly erroneous determination of a state court decision. In his Response, Plaintiff broadly disputes the state court's findings in his underlying case. For example, Plaintiff alleges that Defendant "refused to recognize or admit into evidence the findings from the Authorities in California (California CPS and the Special Victims Unit of the Los Angeles Sheriff's Department)." (Resp. to MTD 4:18–23, ECF No. 7). Plaintiff specifically requests that the "federal court to review [his] family court case" in his Request for Relief. (*See* Compl. at 9). Because Plaintiff seeks a "de facto appeals from [a] state

court judicial decision," the Court lacks jurisdiction over Plaintiff's claims under the *Rooker-Feldman* doctrine.[1] The Court accordingly grants Defendant's Motion to Dismiss.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, (ECF No. 5), is **GRANTED.**

DATED this 7 day of September, 2021.

Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT

[1] Because amendment is futile, the Court additionally denies leave to amend and dismisses the case with prejudice. *See Foman*, 371 U.S. at 182 (finding that leave to amend should be granted in the absence of a reason such as "futility of the amendment").

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARVIN CARRERA,
Appellant,
vs.
CLAUDIA MONTES,
Respondent.

No. 80457-COA

ORDER OF AFFIRMANCE

Marvin Carrera appeals from a final order in a child custody matter. Eighth Judicial District Court, Clark County; Rhonda Kay Forsberg, Judge.

In the proceedings below, the parties have had a highly contentious custody case, with extensive litigation. As relevant here, the parties entered a stipulated decree of custody in 2012, providing that respondent Claudia Montes would have primary physical custody and the parties would share joint legal custody of their minor child. In 2017, after extensive litigation, the district court entered a new custody order based on the parties' stipulation, whereby Claudia retained primary physical custody and the parties continued to share joint legal custody of their child. The parties continued to litigate and, in 2019, the matter ultimately proceeded to trial on the parties' competing motions for sole physical and legal custody. Notably, the parties both made allegations of abuse throughout the litigation and numerous hearings were held regarding the child's need for therapy. After trial, the district court denied Marvin's motion to modify custody, finding that he failed to demonstrate a substantial change in circumstances warranting modification, and granted Claudia's motion to

modify legal custody, awarding her sole legal custody. In granting Claudia sole legal custody, the district court found that such modification was in the child's best interest in light of the parties' inability to co-parent and inability to work together to select a therapist for the child. The district court also awarded Claudia her attorney fees and costs, and subsequently denied Marvin's motion for reconsideration. This appeal followed.

On appeal, Marvin challenges the district court's orders, asserting that the district court improperly admitted certain evidence and improperly excluded other evidence, and challenges the award of fees. Child custody matters rest in the sound discretion of the district court. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Accordingly, this court reviews a child custody decision for a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody decisions, this court will affirm the district court's child custody determinations if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* Additionally, this court reviews the district court's evidentiary determinations for an abuse of discretion. *Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017).

As to Marvin's assertion that the district court improperly admitted witness testimony from Donna Gosnell, MFT because she was not credible, this court does not reweigh witness credibility on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. To the extent Marvin argues that the district court should have precluded Gosnell's testimony because Claudia allegedly chose Gosnell as the child's therapist unilaterally, contrary to a prior court order, and because a prior court order allegedly stated that "Gosnell was not to be used for anything regarding the court," the record

does not support Marvin's assertions and we discern no abuse of discretion in the district court's decision to allow Gosnell to testify. *See Abid*, 133 Nev. at 772, 406 P.3d at 478. Moreover, we note that Marvin failed to object to Gosnell testifying at the time of trial; thus, he has waived any such argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Marvin's assertion that the district court improperly admitted Claudia's evidence because he received it for the first time on the morning of trial is also without merit. The district court found that the proposed evidence was properly disclosed to Marvin's prior counsel. Notably, Marvin's counsel moved to withdraw on the eve of trial and at the hearing on that motion, the district court indicated it was not inclined to grant the motion to withdraw on the eve of trial, but Marvin insisted that he did not want his counsel to represent him at trial. Based on this, the district court allowed counsel to withdraw and indicated that Marvin would be required to obtain the file from his counsel and determine what evidence was disclosed and when, and Marvin indicated he would do so the same day. Thus, we discern no abuse of discretion in the district court's admission of evidence on this basis. *See Abid*, 133 Nev. at 772, 406 P.3d at 478.

Marvin also contends that the district court improperly excluded his evidence demonstrating that Gosnell and Claudia were not credible, and evidence of the parties' conflict that predated the 2017 stipulated custody order, which he alleges would establish a "pervasive pattern of behavior" by Claudia. The district court excluded Marvin's evidence because it found that Marvin failed to properly produce the evidence prior to trial, that Marvin failed to establish foundation for the evidence, and that it could not properly consider evidence predating the last

custody order, from 2017, pursuant to *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (1994). Although Marvin summarily asserts that the district court improperly excluded his evidence, he has failed to provide any cogent argument addressing the district court's basis for excluding the evidence. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued). Regardless, as noted above, this court does not reweigh witness credibility on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Moreover, we note that substantial evidence in the record supports the district court's conclusion that Marvin failed to demonstrate that he properly produced the evidence and that he failed to lay any foundation for the proffered evidence at trial. Thus, we discern no abuse of discretion in the district court's exclusion of Marvin's evidence. *See Abid*, 133 Nev. at 772, 406 P.3d at 478.

Finally, Marvin challenges the district court's order awarding Claudia her attorney fees and costs. In particular, Marvin contends that the district court improperly awarded Claudia fees pursuant to NRS 18.010 because his claim was not brought without reasonable grounds or to harass Claudia. This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). As an initial matter, we note that the district court did not expressly cite the rule it relied upon in awarding attorney fees and its findings are not detailed. But the district court concluded that Claudia prevailed at trial, and found that an award of fees was warranted based on the pleadings, the testimony at trial, and the arguments made. The district court also repeatedly found that a modification of legal custody was required because of the parties' inability to co-parent and cooperate, particularly as

it related to selecting a therapist for the child. Based on these findings and our review of the record, substantial evidence would support an award pursuant to NRS 18.010(2)(b) or EDCR 7.60(b). Regardless, the district court has discretion to award attorney fees in child custody matters pursuant to NRS 125C.250. And from our review of the record and the parties' arguments as to the award of fees, we cannot conclude that the district court abused its discretion in determining an award of attorney fees was warranted. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Rhonda Kay Forsberg, District Judge
Marvin Carrera
Robison, Sharp, Sullivan & Brust
Eighth District Court Clerk

[1]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

LAW OFFICES
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(702) 384-7494
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of KELLEHER & KELLEHER, LLC., and that on the 24th day of September, 2019, I caused the above and foregoing NOTICE OF ENTRY OF ORDER, to be served as follows:

[ ] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[X] By placing the same to be deposited in the United States Mail, in a sealed envelope upon which First Class postage was prepaid in Las Vegas, Nevada;

[ ] Pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Marvin Carrera
24512 Marine Avenue
Carson, CA 90754
Defendant in Proper Person

/s/Stacey L. Stirling
An employee of KELLEHER & KELLEHER, LLC.

JUDG
JOHN T. KELLEHER, Esq.
Nevada Bar No. 006012
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Email: kelleherjt@aol.com
Attorney for Plaintiff, **CLAUDIA MONTES**

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIA MONTES,

Plaintiff,

vs.

MARVIN CARRERA,

Defendant.

CASE NO.: D-11-453527-C
DEPARTMENT "G"

Date of Hearing: 7/01/2019
Time of Hearing: 9:00 AM

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ORDER ON ATTORNEY'S FEES

This matter having come on for hearing on for Evidentiary Hearing on July 1, 2019, the Court having reviewed the papers and pleadings on file herein, having heard the argument of counsel for both parties, and having been fully apprised as to the facts and matters herein, wherefore:

THE COURT HEREBY FINDS that, Plaintiff CLAUDIA MONTES having prevailed in a majority of her application for relief to the Court, the Defendant MARVIN CARRERA shall bear a portion of the cost of Plaintiff CLAUDIA MONTES's attorney's fees for the trial.

THE COURT FURTHER FINDS that the Court finds, having considered the testimony heard and arguments made at the Evidentiary Hearing held in this matter, as well as Plaintiff CLAUDIA MONTES's Memorandum of Fees and Costs filed on April 30, 2019, that an award of attorney's fees to Plaintiff CLAUDIA MONTES is appropriate.

///

///

THE COURT FURTHER FINDS that counsel for Plaintiff CLAUDIA MONTES cited the *Brunzell* factors in his Memorandum of Fees and Costs. The attorney's fees and costs incurred by Plaintiff CLAUDIA MONTES were appropriate and in keeping with the level of experience that her counsel has and exhibited during the Evidentiary Hearing and an award of fees is appropriate based upon the outcome of said Evidentiary Hearing.

WHEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment for attorney's fees is hereby entered in favor of Plaintiff CLAUDIA MONTES and against Defendant MARVIN CARRERA in the amount of $ 16,928.00 RKF.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this amount is hereby reduced to judgment and shall accrue interest at the legal rate, until paid in full, and collectible by any lawful means.

DATED AND DONE this 19th day of September 2019.

DISTRICT COURT JUDGE
Rhonda K. Forsberg

Respectfully submitted:

KELLEHER & KELLEHER, LLC.

JOHN T. KELLEHER, ESQ.
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40 S. Stephanie Street, Suite 201
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Attorney for Plaintiff, **CLAUDIA MONTES**

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIA MONTES,

Plaintiff,

vs.

MARVIN CARRERA,

Defendant.

CASE NO.: D-11-453527-C
DEPARTMENT "G"

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NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES IN INTEREST:

YOU ARE HEREBY GIVEN NOTICE that an FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER FROM THE JULY 01, 2019 EVIDENTIARY HEARING was filed on September 13, 2019. A copy of said Order is attached hereto.

DATED this 17th day of September, 2019.

KELLEHER & KELLEHER, LLC

/s/R. Nathan Gibbs
R. NATHAN GIBBS, ESQ.
Nevada Bar No. 005965
40 S. Stephanie Street, Suite 201
Henderson, Nevada 89012
Attorney for Plaintiff

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of KELLEHER & KELLEHER, LLC., and that on the 17th day of September, 2019, I caused the above and foregoing NOTICE OF ENTRY OF ORDER, to be served as follows:

[ ] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[X] By placing the same to be deposited in the United States Mail, in a sealed envelope upon which First Class postage was prepaid in Las Vegas, Nevada;

[ ] Pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Marvin Carrera
24512 Marine Avenue
Carson, CA 90754
Defendant in Proper Person

/s/Stacey L. Stirling
An employee of KELLEHER & KELLEHER, LLC.

ORDR
John T. Kelleher, Esq.
KELLEHER & KELLEHER, LLC
Nevada Bar No. 006012
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Henderson, Nevada 89012
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rngibbs@kelleherandkelleher.com
Attorney for Plaintiff, **CLAUDIA MONTES**

DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIA MONTES,

Plaintiff,

vs.

MARVIN CARRERA,

Defendant.

CASE NO.: D-11-453527-C
DEPARTMENT "G"

Date of Hearing: 7/01/2019
Time of Hearing: 9:00 AM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER FROM THE JULY 01, 2019 EVIDENTIARY HEARING

THIS MATTER having come on for an evidentiary hearing on the 1st day of July, 2019, in the Family Division, Department G, of the Eighth Judicial District Court, County of Clark; and Plaintiff, CLAUDIA MONTES, present and represented by counsel JOHN T. KELLEHER, ESQ., of the law firm of KELLEHER & KELLEHER, LLC., and Defendant, MARVIN CARRERA, appearing in proper person.

The Court having reviewed all of the evidence produced at the time of Evidentiary Hearing, the testimony of the witnesses, specifically referencing Plaintiff, Defendant and all other witnesses, the exhibit(s) offered and admitted by Plaintiff and by Defendant, the arguments of the Parties, and the Court being fully advised in the premises, both as to subject matter as well as the parties thereto, and that jurisdiction is proper in Nevada, in good cause of appearing, the Court makes the following Findings of Facts, Conclusions of Law and Final Orders:

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I.

CONSIDERATIONS

1. This matter is before the Court on Defendant's Emergency Motion to Change Custody, filed on December 26, 2018, and Plaintiff's Opposition and Countermotion, filed on December 27, 2018.

2. The Order entered on April 16, 2019 included, but was not limited to, the following Findings and Orders:

   a. Defendant, Marvin Carrera ("Defendant") right to exercise visitation of the minor child, Tarzo Montes Carrera, as Ordered on October 10, 2017, is reinstated;

   b. Defendant, who is the party requesting an evidentiary hearing for a change in custody based upon child alienation, bears the burden of proof;

   c. That should Defendant fail to prove his case and a change in custody is not granted, the Judge may determine it is a highly contentious case and that it is not in the best interest of the child to allow continued motions to be filed;

   d. Plaintiff may be awarded sole legal and sole physical custody of the minor child with very little visitation for Defendant allowed;

   e. That the evidentiary hearing for a change in custody is based upon the inability of the parents to cooperate with each other, to co-parent with each other, and the negative impact the parties are having on the child;

   f. That the guardian ad litem shall be released as of January 24, 2019, after review of the Guardian Ad Litem's correspondence and recount of Defendant's inappropriate actions towards Mr. Tilman and his office;

   g. That the Order to Show Cause to hold Plaintiff in Contempt is denied; and

   h. That Defendant shall not have anything regarding this case on the internet or Facebook or any other form of social media. Everything shall be removed immediately.

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THE COURT NOTES that, in addition to its review of all of the pleadings, history in the matter, discovery, reports, evaluations and the like, in this matter, it also reviewed and considered, per request of Defendant, DSM5, which is a section of the Diagnostic and Statistical Manual of Mental Disorders (a taxonomic and diagnostic tool published by the American Psychiatric Association (APA)). DSM5 speaks to Generalized Anxiety Orders, which Defendant discussed, and the Court indulged, greater review including, but not limited to, the following sections:

1. Code 309 which speaks to adjustment disorders;
2. Code V61.20 which speaks to parent-child relational problems;
3. Code V61.29 which speaks to children being affected by parental relationship distress; and
4. Code 995.51 which speaks to child psychological abuse confirmed.
    a. The Court noted that Dr. Gravley's interview process confirmed psychological abuse of the minor child. *See hearing cite* at 8:36:26.

THE COURT FURTHER NOTES that it takes Dr. Gravley's findings of psychological abuse very seriously. *See hearing cite* at 8:37:21.

THE COURT FURTHER NOTES that it is concerned that both parents cannot agree to anything together. As such, co-parenting in this case is severely lacking. Therefore, the Court has no choice but to Order sole legal custody to one parent. *See hearing cite* at 8:38:27.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS COURT HEREBY FINDS that based upon the evidence that was heard, and all of the pleadings in this case, including the aforementioned evidence noted above, as requested by Defendant, the Court still has to look at *Ellis v Carucci* to determine whether there has been a substantial change affecting the child, and based upon that substantial change, if there should be a change in custody.

THIS COURT FURTHER FINDS that Dr. Donna Gosnell's testimony is very credible. *See video cite* at 8:46:34.

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THIS COURT FURTHER FINDS that it agrees with Defendant that a psychologist who should be treating the minor child; however, the Court does not believe that any of the testimony rose to the level of *Ellis v Carucci* as far as determining that there should be a change in custody as far as physical custody goes of the minor child.

THIS COURT FURTHER FINDS that Defendant has researched the law and has wilfully chosen to represent himself, by no instruction of the Court or the parties. *See video cite* at 8:52:21.

THIS COURT FURTHER FINDS that it reviewed the factors of NRS 125C.0035(4) governing a change in custody. *See video cite* at 8:48:04. The Court finds that the facts of this matter do not warrant a change in custody from Plaintiff to Defendant and finds, as follows:

b. The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody.
The Court finds that the minor child is eight (8) years old, and is not of sufficient age and capacity to form an intelligent preference as to his custody. Upon multiple reviews of Dr. Gosnell's testimony, the Court is gravely concerned about the minor child's desire to die and the issues that surrounded that desire. *See hearing cite* at 8:37:41.

c. Any nomination of a guardian for the child by a parent.
Not currently applicable, as the Order appointing Mr. Christopher R. Tilman, Esq., as Guardian Ad Litem was released on January 24, 2019. *See* Order from the 1/24/19 hearing at 2:15-16.

d. Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
The Court finds that both parents cannot agree to anything together. As such, co-parenting in this case is severely lacking. Therefore, the Court has no choice but to Order sole legal custody to one parent. *See hearing cite* at 8:38:43.

e. The level of conflict between the parents.
The Court finds that it is distressed about the level of filing in this case. The Court is concerned that the parties are more concerned with fighting rather than focusing on the well being of the child. *See hearing cite* at 8:38:26.

f. The ability of the parents to cooperate to meet the needs of the child.
The Court finds that the delay in the minor child's seeking counseling with a therapist for the four (4) visits the minor child that should have happened in a month's time is appalling to the Court. This delay is attributable to the parties' inability to agree on anything, which is why Plaintiff is to exercise sole legal custody moving forward, so that she can ensure that the best interests of the child are being met. *See video cite* at 8:47:27.

g. The mental and physical health of the parents.
The parents appear to be in good mental and physical health, however, both parents are unable to cooperate with one another. *See generally,* July 16, 2019 hearing.

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h. The physical, developmental and emotional needs of the child.
The Court finds that the minor child is expected to be seen by a psychologist or any other professional Plaintiff selects that is a Doctor of Psychology (PhD) or Doctor of Philosophy (PsyD), which also addresses Defendant's biggest concern, as he has pled and testified. *See hearing cite* at 8:40:35.

The Court further finds that the child's well-being is the most crucial factor, and that ultimately, the well-being of the child is best served by Plaintiff. *See video cite* at 8:48:17.

The Court further finds that due to the psychological reports and testimony regarding the minor child's well-being, the Court has no other option but to award sole legal custody to Plaintiff to ensure that the minor child receives proper and adequate help, without requiring the consent of Defendant when making such decisions. *See video cite* at 8:47:18.

i. The nature of the relationship of the child with each parent.
The Court finds that in deciding physical custody, the Court finds that the minor child needs both parents in his life. Therefore, to ensure the best interests of the child, Plaintiff will have sole legal custody and primary physical custody, but Plaintiff will not have sole physical custody. *See hearing cite* at 8:39:12.

j. The ability of the child to maintain a relationship with any sibling.
Not applicable.

k. Any history of parental abuse or neglect of the child or a sibling of the child.
The Court reiterates its findings as indicated in subsection (e).

l. Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child. Not applicable.

m. Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child. Not applicable.

THIS COURT FURTHER FINDS that under the *Ellis v Carucci*, a modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the modification would serve the child's best interest. *See Ellis v Carucci.*

THIS COURT FURTHER FINDS that the standard under *Ellis v Carucci* determining whether a change of circumstance warrants a modification of primary physical custody has not been met.

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THIS COURT FURTHER FINDS that a substantial change in circumstances which affects the welfare of the child, is not found, as the evidence and testimony did not show that the changed circumstances rose to the level of *Ellis v Carucci* level. *See hearing cite* at 8:38:07. Therefore, the circumstances do not warrant a modification of physical custody. *Id.*

THIS COURT FURTHER FINDS that after a review of *Ellis v Carucci*, the Court does not believe the alleged change in circumstance warrants such a change. *See video cite* at 8:48:10.

THIS COURT FURTHER FINDS that Defendant intends to re-litigate this matter at the appellate level once this Order is entered. *See video cite* at 8:44:10, 8:45:10, and 8:48:42.

THIS COURT FURTHER FINDS that Defendant argues that Nevada law does not serve the best interests of the child is ingrained in case law and statute. *See video cite* at 8:44:10 and 8:45:10.

III.

FINAL ORDERS

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff CLAUDIA MONTES shall be granted sole legal custody and primary physical custody of the minor child, TARZO MONTES CARRERA, born March 20, 2011. *See hearing cite* at 8:39:06.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff shall share with Defendant any and all information relative to the child's health and education. *See hearing cite* at 8:39:37.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that visitation shall remain status quo.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the Court's review of the CPS records, there was concern from both parties as to whom was manipulating the minor child. The Court finds that it is in both party's interests to focus on their child instead. *See video cite* at 8:46:06.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the minor child shall continue with treatment to address his disorders with Sandra Gray, PhD., or any other professional Plaintiff selects that is a Doctor of Psychology (PhD) or Doctor of Philosophy (PsyD). *See hearing cite* at 8:40:35.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that as to Plaintiff's request for attorney's fees, Mr. Gibbs shall submit a Memorandum of Fees and Costs, with a copy to be served on Defendant within seven (7) days. Defendant shall have seven (7) days upon receipt to file an objection/response. *See video cite* at 8:49:40.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties are admonished to begin focusing on their child.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's request that Defendant be declared a vexatious litigant is denied without prejudice at this time; however the Court acknowledges that the previous judges presiding on this matter has considered such Order. *See video cite* at 8:56:15.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mr. Kelleher's office shall prepare the order from today's hearing and provide a copy to Defendant. Defendant shall have five (5) days upon receipt to review and sign off. *See video cite* at 8:49:10.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that though Defendant has stated that he has no intention of signing the Order, Mr. Kelleher's office is to submit it to Defendant anyway. Once five (5) days has passed, Mr. Kelleher's office is free to send the Order to the Court for ratification, including with it, the attempted communication with Defendant. *See video cite* at 8:49:10.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this case shall be closed upon filing of the Notice of Entry of Order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN of the following provision of NRS 125.0045(6):

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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 the 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN that 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. The parties are also put on notice of the following provisions in NRS 125.0045(8):

If a parent of the child lives in a foreign country or has significant commitment 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 the 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 him to his 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN of the following provision of NRS 125C.0065:

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1. If JOINT PHYSICAL CUSTODY has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this state or to a place within this state that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN that they are subject to the provisions of NRS 31A and 125.450 regarding the collection of delinquent child support payments.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AND NOTICE IS HEREBY GIVEN that either party may request a review of child support pursuant to NRS 125B.145.

IT IS SO ORDERED this 17th day of September, 2019.

DISTRICT COURT JUDGE
Rhonda K. Forsberg

Respectfully submitted:

KELLEHER & KELLEHER, LLC

JOHN T. KELLEHER, ESQ.
Nevada Bar No. 006012
40 S. Stephanie Street, Suite 201
Henderson, Nevada 89012
Attorney for Plaintiff, **CLAUDIA MONTES**

Approved as to Form and Content:

MARVIN CARRERA
24512 Marine Avenue
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