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11 **EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 [REDACTED]

14 Plaintiff,

15 vs.

16 [REDACTED]

17 Defendant.

18 Case No.: D-21 [REDACTED]-D
19 Dept No.: Q

20 PLAINTIFF’S MOTION FOR
21 RECONSIDERATION OF MEDIA
22 REQUEST AND ORDER FILED
23 FEBRUARY 29, 2024 AND FOR
24 CLOSED HEARING

25 Oral Argument Requested: NO

26 **NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION**
27 **WITH THE CLERK OF THE COURT AND PROVIDE THE**
28 **UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN**
29 **FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE**
30 **TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT**
31 **WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION**
32 **MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE**
33 **COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING**
34 **DATE.**

35 PLAINTIFF’S MOTION FOR RECONSIDERATION OF MEDIA REQUEST AND ORDER FILED FEBRUARY
36 29, 2024 AND FOR CLOSED HEARING - 1

1 Plaintiff [REDACTED] by and through her attorneys of the law firm
2 Hutchison & Steffen, PLLC, appearing in a limited scope capacity pursuant to that
3 notice filed March 14, 2024, files her Motion for Reconsideration of Media
4 Request and Order Filed February 29, 2024 and for Closed Hearing.
5

6 This Motion is made and based on, *inter alia*, NRS Chapters 125 and 125C
7 and the Nevada Rules for Sealing and Redacting Court Records. The pleadings
8 and papers on file herein, the following points and authorities, and any oral
9 argument this Court may allow.
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12 POINTS & AUTHORITIES

13 1. FACTS

14 Plaintiff [REDACTED] (“Mom”) and Defendant [REDACTED] (“Dad”) were
15 married September 23, 2018 and divorced by stipulated decree of divorce entered on
16 July 21, 2022. The parties share two minor children, a girl, [REDACTED]
17 (“ZLG”) born November 21, 2019, age 4, and, a boy, [REDACTED]
18 (“ZMG”), born May 30, 2022, age 22 months. Additionally, Dad has two older
19 children from his first marriage, two boys, “NG” born February 24, 2009, age 15,
20 and “IG” born September 2, 2011, age 12. Both of Dad’s older children are home
21 schooled.
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1 The Decree provided, *inter alia*, that the parties would share joint legal and
2 joint physical custody of ZLG and ZMG. The timeshare arrangement stated in the
3 Decree is unique. The parties created it themselves with assistance from The
4 Honorable Jennifer Elliott (Ret.) through the senior judge settlement conference
5 program. The timeshare is different for each child with Mom having more time than
6 Dad while the children are younger, and Dad's time increases at stated intervals until
7 age six, at which time each child will exercise a rolling 3 / 3 timeshare with each
8 parent.
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12 The rolling 3 / 3 timeshare is the same timeshare that Dad exercises with his
13 older children and is due to the fact that he is a firefighter with North Las Vegas Fire
14 Department (NLVFD) and national guardsman with the Air National Guard
15 ("ANG"). Dad's schedule with NLVFD is 48 hours on / 96 hours off. Dad has no
16 set scheduled with ANG, but Dad must fly two aircraft to maintain his own
17 certifications as well as assist the ANG to maintain the aircrafts' certifications.
18 Additionally, Dad has annual training as well as occasional drills and deployments.
19 Mom is a real estate agent. She makes her own schedule.
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24 From the time of the parties' separation in or about the fall of 2021 to the
25 present, the parties have struggled to effectively co-parent. Their written
26 communications, while free of foul language, were difficult and unpleasant for each
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1 of them. They struggled at times to agree on the implementation of some legal and
2 physical custody provisions stated in the Decree. The children experienced a variety
3 of maladies, and ZLG consistently resisted going to Dad's despite Mom's persistent
4 efforts to encourage her. Some of these difficulties persist to the present day.
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7 On November 30, 2022, barely four months after the Decree was entered, Dad
8 filed a motion to modify custody. Mom filed an opposition and counter-motion. A
9 hearing was held on January 11, 2023, at which The Honorable Bryce Duckworth
10 suggested he would likely need the assistance of an outsourced provider to
11 understand the issues the parties raised by their moving papers, and the parties
12 stipulated to a custody evaluation. They agreed to use Kathleen Bergquist, Psy.D.
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14 The custody evaluation was performed and completed, and it included psychological
15 evaluations of both parties.¹ Dr. Bergquist's evaluation made several
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17 recommendations, most of which the parties implemented by a stipulation and
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19 order.²
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24 ¹ The parties also stipulated during the January 2023 hearing to take
25 the UNLV co-parenting class, which they both did. Subsequently, Dr. Bergquist
26 recommended they each take a Triple P Positive Parenting Program, which Mom
27 completed, Dad's status is unknown.

28 ² The parties, though their respective counsel, continued status check hearings
a couple of times in the hope they would be able to reach further agreements to
vacate the pending motions, but when those efforts failed to attain global resolution,
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1 During the pendency of the custody evaluation by Dr. Bergquist, ZLG made
2 some statements to Mom about actions by her older brother in Dad's household that
3 was, shall we say, disconcerting. ZLG had made similar, but not quite so serious,
4 statements previously, and when Mom had shared them with Dad, Dad was
5 dismissive. When Mom shared the more concerning statements with Dad, Dad's
6 response was non-responsive. Mom made contact with child protective services
7 ("CPS"). The investigation appears to have been prolonged by, *inter alia*, Dad's
8 insistence on having a subpoena for the forensic interview of his boys, and the boys
9 being out of town for a period. The investigation concluded as "unsubstantiated,"
10 but what precisely was unsubstantiated is not clear in the CPS records, the further
11 statements by [REDACTED] during her forensic interview and statements of others
12 interviewed did nothing to dispel Mom's concerns, indeed, since reading the report,
13 she has as many concerns as she ever did. Presumably, this is what prompted the
14 custody evaluator's recommendation that Dad never leave ZLG with NG or IG
15 unless Dad or his father is present to supervise.
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26 they requested a trial date. Shortly thereafter, Dad let go his counsel. Since, Dad's
27 motion to modify custody, Mom's has retained Hutchison & Steffen, PLLC on a
28 series of limited scope representations.

1 This matter was set for trial on Thursday, February 29, 2024. Witnesses
2 included, the parties, Dr. Bergquist, CPS workers, and percipient witnesses for each
3 party. On February 15, 2024, the Nevada Supreme Court issued the decision in
4 *Falconi v. Eighth Judicial District Court*, 140 Nev. Adv. Opn. 8 (Nev. 2024). On
5 February 17, 2024, Alexander Falconi and Our Nevada Judges filed a Motion to
6 Unseal this matter. That same day, unbeknownst to Mom, Mr. Falconi submitted a
7 Media Request and Order to the Department. Mom's counsel learned of the Media
8 Request on the afternoon of Monday, February 26, 2024. On February 27, 2024,
9 Mom filed a motion to continue the trial so that she could retain counsel to advise
10 and represent her on Mr. Falconi's pending media request which sought to have his
11 video camera in the courtroom.

12 On February 29, 2024, the parties appeared, ready for trial. The first matter
13 of business was Mr. Falconi's Media Request and Order. After some colloquy
14 between the Court, Mom's counsel, Dad, Mr. Falconi, and Assistant District
15 Attorney Amity Leighton who was present to represent the subpoenaed CPS
16 representatives, the Court stated it would continue the trial, sign the Media Request
17 and Order, and if Mom filed a motion for reconsideration of the media request and
18 order, then the Court would set it for hearing contemporaneously with Mr. Falconi's
19 motion to unseal the case. Since that time, the court clerk partially unsealed the
20

1 matter, consistent with NRS 125.110, the statute under which the matter was sealed.
2 On March 9, 2024, Mr. Falconi withdrew his motion to unseal; however, Mom still
3
4 opposes the Media Request and Order and requests the Court to close the evidentiary
5 hearing presently set for May 2, 2024.
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7

8 **2. LAW & ARGUMENT**

9 **The Court May Apply the Nevada Rules for Sealing and Redacting Court** 10 **Records to the Instant Case.**

11 This matter was sealed pursuant to NRS 125.110, and the divorce in this
12 matter was final in July 2022. Therefore, the present action is a post-divorce child
13 custody matter, which is additionally governed by NRS Chapter 125C. The Nevada
14 Rules for Sealing and Redacting Court Records (SRCR) Rule 1, part 4, sets forth the
15 statutes for which the rules do not apply. NRS Chapter 125C, is not listed in the
16 statutes for which the sealing rules do not apply. Thus, this case, which is governed
17 by NRS Chapter 125C, is covered by both NRS 125.110 and SRCR.
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21 In *Falconi v. Eighth Jud. Dist. Ct.*, 140 Nev. Adv. Opn. No. 8 (Nev. 2024),
22 the Nevada Supreme Court declared unconstitutional NRS 125.080 and EDCR 5.207
23 and 5.212, and it left undisturbed NRS 125.110. The following statute remains
24 available to this instant action:
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26 **NRS 125.110 What pleadings and papers open to public** 27 **inspection; written request of party for sealing.**

28 1. In any action for divorce, the following papers and pleadings

1 in the action shall be open to public inspection in the clerk's
2 office:

3 (a) In case the complaint is not answered by the defendant, the
4 summons, with the affidavit or proof of service; the complaint
5 with memorandum endorsed thereon that the default of the
6 defendant in not answering was entered, and the judgment; and
7 in case where service is made by publication, the affidavit for
8 publication of summons and the order directing the publication
9 of summons.

10 (b) In all other cases, the pleadings, the finding of the court, any
11 order made on motion as provided in Nevada Rules of Civil
12 Procedure, and the judgment.

13 **2. All other papers, records, proceedings and evidence,
14 including exhibits and transcript of the testimony, shall,
15 upon the written request of either party to the action, filed
16 with the clerk, be sealed and shall not be open to inspection
17 except to the parties or their attorneys, or when required as
18 evidence in another action or proceeding.**

19 [Emphasis added.]

20 We note that this Court may still desire an analysis of *Falconi* notwithstanding the
21 validity of NRS 125.110 because of its similar language to NRS 125.080.

22 In 2008, SRCR were adopted by the Nevada Supreme Court with the purpose
23 of ensuring court records were open to the public except in special cases. The Rules
24 also provided a uniform procedure for the sealing and redacting of court records in
25 civil actions. The goal of the Nevada Supreme Court in its adoption of the rules was
26 to identify, “compelling privacy or safety interests that outweigh the public interest
27 in access to the court record.” *SRCR Rule 4*.

28 The SRCR provides the avenue by which litigants may seek to protect their

1 private information from the public. SRCR Rule 1, part 3, states: “All court records
2 in civil actions are available to the public, except as otherwise provided in these rules
3 or by statute.” *Id.* However, litigants may not seek a blanket sealing of their case
4 or matter as permitted by other statutes, such as those sealed under NRS 125.110.
5
6 SRCR Rule 3(4)(c) prohibits the sealing of an entire file as follows:
7

8 Under no circumstances shall the court seal an entire court file. An
9 order entered under these rules must, at a minimum, require that the
10 following information is available for public viewing on court
11 indices: (i) the case number(s) or docket code(s) or number(s); (ii)
12 the date that the action was commenced; (iii) the names of the parties,
13 counsel of record, and the assigned judge; (iv) the notation “case
14 sealed”; (v) the case type and cause(s) of action, which may be
15 obtained from the Civil Cover Sheet; (vi) the order to seal and
16 written findings supporting the order; and (vii) the identity of the
17 party or other person who filed the motion to seal.

18 Instead, SRCR Rule 4 permits the court may order the sealing or redacting of
19 court files and records, or any part thereof, in a civil action..... “provided the court
20 makes and enters written findings that the specific sealing or redaction is justified
21 by identified compelling privacy or safety interests that outweigh the public interest
22 in access to the court record.” *SRCR Rule 4.*

23 In seeking to redact or seal the court files or records a written motion must be
24 filed or, the court may, upon his own motion, seal or redact a court record. *SRCR*
25 *Rule 3(1).* Specifically, a motion to seal must disclose the request in its title and
26 document code that a sealing is being sought and must be served upon all parties in
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28 PLAINTIFF’S MOTION FOR RECONSIDERATION OF MEDIA REQUEST AND ORDER FILED FEBRUARY
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1 accordance with NRCP 5. *Id.*

2 Once a motion to seal has been filed, the court must determine if the public
3 interest in privacy or safety interest outweighs public interest in open records by
4 making any of the following findings:
5

6 (a) The sealing or redaction is permitted or required by federal or
7 state law;

8 (b) The sealing or redaction furthers an order entered under
9 [NRCP 12\(f\)](#) or [JCRCP 12\(f\)](#) or a protective order entered under
10 [NRCP 26\(c\)](#) or [JCRCP 26\(c\)](#);

11 (c) The sealing or redaction furthers an order entered in
12 accordance with federal or state laws that serve to protect the
13 public health and safety;

14 (d) The redaction includes only restricted personal information
15 contained in the court record;

16 (e) The sealing or redaction is of the confidential terms of a
17 settlement agreement of the parties;

18 **(f) The sealing or redaction includes medical, mental health,
19 or tax records;**

20 (g) The sealing or redaction is necessary to protect intellectual
21 proprietary or property interests such as trade secrets as defined
22 in [NRS 600A.030\(5\)](#); or

23 **(h) The sealing or redaction is justified or required by
24 another identified compelling circumstance.**

25 SRCR Rule 3, part 4(a-h). (Emphasis added).

26 The SRCRs provide limitations on the access to certain forms of litigant
27 information. SRCR 2(5) defines redaction from the record. SRCR 2(6) defines
28 “restricted personal information” and enumerates the following items which are to
free from public access:

- 1 1. Social Security Number;
- 2 2. NV driver’s license or identification card number;
- 3 3. Litigant telephone numbers;
- 4 4. Financial account numbers;
- 5 5. Personal identification numbers (PINs);
- 6 6. Credit card or debit card account numbers;
- 7 7. Security code, access code, or passwords to one’s financial accounts;
- 8 8. Confidential terms of a settlement agreement;
- 9 9. **Medical and mental health information**; and tax records.

10 To give effect to the rules, the requests for media and camera access in the
11 courtroom would have to be limited to those portions of the proceedings outside of
12 the presentation of evidence on these matters. In a proceeding such as this, it is
13 impractical to provide limited access because medical and mental health information,
14 including the physical, emotional, and developmental needs of children and each
15 parent’s ability to meet those needs are the central issue, which will be the subject
16 of examination, cross-examination, and direct examination *throughout the*
17 *proceeding.*

18 **Nevada law recognizes the fundamental liberty interest in the care and**
19 **raising of one’s child.** Nevada has a general policy for Courts to support “frequent
20 associations and a continuing relationship” between parent and child. *Cox v. Roe*,
21 139 Nev. Adv. Opn. No. 21 (July 27, 2023) at page 3, citing to NRS 125C.001(1)
22 and to *Troxel v. Granville*, 530 US 57, 65 (2000) (concluding that parents have a
23 fundamental interest “in the care, custody, and control of their children.”)

1 ***Falconi’s* First Amendment rights for public access to proceedings does**
2 **not overrule or supersede *Cox’s* fundamental interest of a parent “in the care,**
3 **custody, and control of their children.”** The Nevada Supreme Court balanced the
4 tension between the interest in public disclosure and privacy concerns and applied
5 the “experience and logic test” to determine whether there is a constitutional right of
6 access to Family Court proceedings:

7 “Even if there is an affirmative answer to the experience and logic test, the
8 presumption of a First Amendment right of access ***can be overcome*** when the
9 closure is necessary to preserve a compelling interest and is narrowly tailored
10 to serve that interest.”

11 [Emphasis added.] *Falconi* at 8.

12 In citing to *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995),
13 the NVSC set out four factors to assess:

- 14 1. The party seeking to close the hearing must advance an overriding interest
15 which is likely to be prejudiced.
- 16 2. The closure must be no broader than necessary to protect the overriding
17 interest.
- 18 3. The trial court must consider reasonable alternatives to closing the proceeding.
- 19 4. The trial court must make findings adequate to support the closure.

20 *Falconi* at 14.

21 **Evidence and testimony of children present special concerns for**
22 **protection and therefore a greater interest in privacy.** Acknowledging that a
23 blanket prohibition in custody matters is not sufficient to support an order sealing all
24 or part of a case, there are several places in the law where the Nevada legislature and
25 case law protect the privacy of children more than adults. For example, below the
26 age of 18, children cannot serve in the armed forces, have no right of suffrage, cannot
27

1 enroll or disenroll themselves from school, contracts are voidable, etc. The Uniform
2 Child Witness Testimony by Alternative Methods Act provides an alternate means
3 of receiving testimony to shield children. NRS 50.500-50.620. A related rule is set
4 specifically for family law proceedings. NRCP 16.215. These alternative means
5 shield children from direct exposure to litigation or set things so that the exposure is
6 minimized. Therefore, limiting the media and cameras in the courtroom must also
7 be limited. This does not circumvent the development of the public record or access
8 to information but does provide a buffer to protect children.

9 We note at this juncture the more sinister dangers of exposing information
10 regarding children to an open door into their lives. The information of a child's
11 school location, activities schedule, IEPs and/or treatment for ADHD or similar
12 issues, the names of treaters and trusted adults, provides an easy checklist for access
13 to a child and information to develop trust with predators. These safety issues
14 dovetail into the parents' fundamental interest "in the care, custody, and control of
15 their children."
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19 Here, *the overriding interest in the privacy and safety of the minor*
20 *children's medical records, the CPS records, and the concerns giving rise to the*
21 *CPS investigation, the parent's rights of privacy in the custody evaluation*
22 *(including but not limited to the psychological evaluations), the importance of*
23 *protecting the sibling relationships, all far outweighs the public's interest in such*
24 *records and proceedings.* There is no compelling interest for the public to be privy
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1 to the personal information involving the minor children in this case or in the custody
2 evaluation, including but not limited to the psychological evaluations of the parties
3 that was part of the custody evaluation. The case contains extremely sensitive
4 personal information regarding the parties' minor children's medical care, as well as
5 concerns that impact the subject minor's siblings, and potentially the relationships
6 between with sibling groups, which should be protected in their own right.
7

8
9 There is an Evidentiary Hearing scheduled for May 2, 2024. At the time of
10 the Evidentiary hearing, it is anticipated that the Court will hear evidence as it relates
11 to information contained in the children's medical records, the custody evaluation,
12 the records of CPS, as well as testimony from a child custody evaluator and CPS
13 representatives, and that of the parents on all of these same topics. It is also
14 anticipated that the Court will hear information regarding children's physical,
15 emotional, and psychological needs. All of this information should be sealed to
16 protect the children.
17

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19 Therefore, based on the foregoing, Plaintiff requests this Court find that the
20 public interest in privacy or safety interest of the children, as well as that of the
21 parents, outweighs the public interest in open records under SRCR 4, and that
22 closing the hearings and maintaining all papers, records (in paper, electronic, or
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1 video form) remaining sealed as per NRS 125.110 is justified by the compelling
2 circumstances of this case under SRCR 3(4)(f),(h).
3

4 **3. CONCLUSION**

5 Based on the foregoing, Plaintiff [REDACTED] respectfully requests the
6 Court RECONSIDER and DENY the Media Request and Order filed on February
7 29, 2024 and ORDER the hearing be CLOSED and all records SEALED, except as
8 otherwise provided by NRS 125.110.
9
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11 DATED this 14th day of March, 2024.
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21 *Attorney for Plaintiff* [REDACTED]
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1 **UNSWORN DECLARATION³**

2 1. My name is [REDACTED] I am the Defendant in the action styled [REDACTED]
3 [REDACTED] lodged in the Eighth Judicial District Court, Clark County, Nevada, Case No. D-21-
4 [REDACTED]-D. I am over the age of eighteen. I am competent to make this declaration and do so
5 based on personal knowledge.
6

7 2. I have read the foregoing PLAINTIFF’S MOTION FOR RECONSIDERATION OF
8 MEDIA REQUEST AND ORDER FILED FEBRUARY 29, 2024 AND FOR CLOSED
9 HEARING, the factual averments contained therein are true and correct to the best of my
10 knowledge, except for those matters that are stated on information and belief and as to those
11 matters I believe them to be true. Those factual averments contained in the referenced filing are
12 incorporated herein as if set forth in full.
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14 3. I [REDACTED] declare under the penalty of perjury that the foregoing is true and
15 correct.
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17 03 / 14 / 2024 [REDACTED]

18 _____
19 DATE [REDACTED]
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27 ³ NRS 53.045 states, “Any matter whose existence or truth may be established by an affidavit or other sworn
28 declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by
the declarant under penalty of perjury, and dated . . .”