

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**FILED**

JUN 07 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

Case No. 88597

LEANNE NESTER,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND  
FOR THE COUNTY OF CLARK; AND  
THE HONORABLE BRYCE DUCKWORTH,  
DISTRICT COURT JUDGE

Respondents,

and

CODY GAMBLE,

Real Party in Interest.

---

**BRIEF OF AMICUS CURIAE**  
**OUR NEVADA JUDGES, INC.**

LUKE A. BUSBY, ESQ.

SBN 10319

316 California Ave.

Reno, Nevada 89509

775-453-0112

[luke@lukeandrewbusbyltd.com](mailto:luke@lukeandrewbusbyltd.com)

*Attorney for Our Nevada Judges*

24-19934

## **TABLE OF CONTENTS**

Statement of Identity, Interest, and Authority - page 1

Summary - page 2

Facts - page 2

The District Court Properly Exercised Its Discretion - page 3

Ex Parte Submission of Camera Access Is Required - page 3

There Is No Set Of Generic Facts That Would Mandate Closure - page 4

The Constitution and Children's Best Interests Coexist - page 5

Conclusion - page 7

Certificate of Compliance - page 9

Certificate of Service - page 10

## TABLE OF AUTHORITIES

### CASES

- Falconi v. Eighth Jud. Dist. Ct.*,  
543 P.3d 92, 97 (Nev. 2024) - page 1
- District of Columbia v. Heller*,  
554 US 570 (2008) - page 6
- Globe Newspaper Co. v. Superior Court*,  
457 U.S. 596 (1982) - page 5
- In re T.R.*,  
52 Ohio St.3d 6, 556 N.E.2d 439 (1990) - page 6
- Jackson v. State*,  
117 Nev. 116, 17 P.3d 998 (2001) - page 3
- Locklin v. Duka*,  
112 Nev. 1489, 929 P.2d 930 (1996) - page 6
- Matter of Parental Rights as to JLN*,  
118 Nev. 621, 55 P.3d 955 (2002) - page 5
- Press-Enter. Co. v. Superior Ct.*,  
478 U.S. 1 (1986) - page 6
- Solid v. Eighth Judicial Dist. Court*,  
133 Nev. 118, 393 P.3d 666 (2017) - page 4
- State, Dep't Mtr. Veh. v. Root*,  
113 Nev. 942, 944 P.2d 784 (1997) - page 3
- Troxel v. Granville*,  
530 U.S. 57 (2000) - page 6

## **STATUTES**

NRS 125.080 - page 7

NRS 125.110(2) - page 3

NRS 125C.0035(4)(f) and (g) - page 3

NRS 432B.430 - page 5

SCR 229(1)(c) - page 4

SCR 230(1) - pages 2, 4

SRCR 2(6) - page 3

**STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY PURSUANT  
TO NRAP 29(d)(3)**

Our Nevada Judges Inc. (hereinafter 'ONJ'), is a Nevada Non-Profit Corporation recognized by the IRS as a Section 501(c)(3) organization. With the support of a board of directors, Alexander Falconi, the founding director seeks to bridge the gap between the public and the judiciary by educating with the publication of statistics on the judiciary and videos of courtroom hearings.

This Court has recognized Mr. Falconi's pre-incorporated business as a "press organization." *Falconi v. Eighth Jud. Dist. Ct.*, 543 P.3d 92, 97 (Nev. 2024). There are a few ongoing issues regarding the coverage<sup>1</sup> of domestic relations matters in which ONJ is interested. These include the applicability of the SRCR, access to certain records, and the requisite facts that would necessitate closure of family court to the press. Resolution of the issues before this Court will add clarity regarding electronic coverage of family court proceedings in Nevada post-*Falconi*.

---

<sup>1</sup>Family Court Judges Heidi Almase, Tamatha Schreinert, Cynthia Lu, Bridget Robb, David Gibson Jr., Shell Mercer, Mary Perry, Dee Butler, Regina McConnell, Stacy Rocheleau, Mari Parlade, Bryce Duckworth, Stephanie Charter, Linda Marquis, and Paul Gaudet are allowing or have allowed Our Nevada Judges, Inc. physical and camera access to domestic relations matters before them subsequent to the issuance of *Falconi v. Eighth Jud. Dist. Ct.*

### **III. Summary**

Petitioner, Leanne Nester (hereinafter 'Nester'), asserts Respondent, District Court Judge Bryce Duckworth, abused his discretion. Nester argues ONJ should be denied both physical and camera access to the underlying proceedings. Real Party in Interest, Cody Gamble, is not opposed and has not objected to ONJ's requests for physical and camera access. PA0048:1-3. Parties and ONJ appear to agree that the SRCR are applicable in this case. Nester also cites medical and mental health issues as an independent basis supporting the request for issuance of a writ. Judge Duckworth appropriately exercised discretion in allowing both physical and camera access to the proceedings. Despite the expressed frustration in *dicta*, the Judge's findings and conclusions are well-reasoned and supported.

### **IV. Facts**

On February 29, 2024, Judge Duckworth issued an order granting ONJ's request to provide comprehensive electronic coverage of the proceedings. PA0001.

On March 14, 2024, Nester requested reconsideration. PA0003. On March 15, 2024, ONJ opposed. PA0021.

On March 22, 2024, Nester replied. PA0032.

On April 9, 2024, Judge Duckworth sustained ONJ's SCR 230(1) request. PA0046.

Nester instituted these proceedings and obtained a stay of the impending bench trial, which Mr. Gamble has challenged with a writ petition of his own. See Supreme Court docket No. 88678.

#### **V. The Court Properly Exercised Its Discretion**

If Judge Duckworth concluded the *Falconi Court* deprived him of discretion and mandated a public hearing, as Nester claims, Duckworth's decision would indeed constitute error - but the *Falconi Court* made no such determination, and neither did Judge Duckworth; he (1) cited the *Falconi Court's* nullification language at PA0048:14-4:4, which expressly provides that the exercise of discretion is not only appropriate but required, (2) rejected NRS 125.110(2) for the same reasons as articulated by this Court, (3) cited NRS 125C.0035(4)(f) and (g) in underscoring the relevance of medical and mental health considerations, yet prohibited the publication of SRCR 2(6) information as well as "the child custody evaluation and any mental health records." PA0052:9-11. "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) citing *State, Dep't Mtr. Veh. v. Root*, 113 Nev. 942, 947, 944 P.2d 784, 787 (1997). While Judge Duckworth expressed frustration with the *Falconi Court's* majority opinion, he did not commit an abuse of discretion.

#### **VI. Ex Parte Submission of Camera Access Is Required**

Nester appears to object to the “ex parte” procedure in obtaining permission to provide electronic coverage of judicial proceedings. The procedure does not initially invite motion practice, and in fact, can be waived altogether. SCR 230(1). To the extent Nester cites EDCR 5.211(a), the rule does not supersede the Supreme Court’s rules. SCR 229(1)(c) news reporters throughout this State submit SCR 230(1) requests directly to the judge, as the rule requires, and notice of same is provided to Parties by court administration, also as the rule requires. SCR 229(1)(c) does not permit the press to file motions and serve papers upon litigants and lawyers. Unless and until this rule changes, ONJ will continue to follow the procedure. Indeed, even this Court routinely considers SCR 230(1) requests ex parte.

Ultimately, due process in this case was upheld through a motion for reconsideration, which was properly filed in the underlying case and has been acknowledged by this court as suitable for appellate court review. *Solid v. Eighth Judicial Dist. Court*, 133 Nev. 118, 119, 393 P.3d 666, 670 (2017).

## **VII. There Is No Set Of Generic Facts That Would Mandate Closure**

Upon publication of the *Falconi Court’s* majority opinion, myriad discussions cropped up both inside and outside the courtroom wherein privacy advocates began to probe for a formula of generic facts that would mandate closure of a domestic relations matter. Nester brings this debate to this Court now in asserting that “child custody evaluations, mental



health examinations, children’s medical records, involvement of child protective services, [and] allegations of abuse between siblings” provide the necessary factual ingredients for this Court to step in and override Judge Duckworth’s exercise of discretion. But this has been tried before, and the United States Supreme Court rejected even the most extreme example imaginable. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) (nullifying a law mandating closure “at trials for specified sexual offenses involving a victim under the age of 18”). The contrast Nester draws between “run-of-the-mill” “uncontested” cases and “high-conflict” “hotly-contested actions” is irrelevant for the same reasons outlined by both the *Globe Court* and the *Falconi Court*. Indeed, even the Legislature conceded public access may be appropriate in abuse and neglect proceedings involving “child protective services”. See NRS 432B.430 (presumptively opening certain abuse & neglect proceedings and requiring findings to close the court).

#### **VIII. The Constitution and Children’s Best Interests Coexist**

Nester cites Judge Duckworth’s personal opinions as articulated in his “copious footnotes” in trying to bring this Court into agreement with Judge Duckworth about court access and “the consequences to children.” This Court’s introduction of the First Amendment to family law matters, however, is not as unusual or unprecedented as it might seem. Other areas of family law are also subject to constitutional constraint. *Matter of Parental Rights as to JLN*, 118 Nev. 621, 55 P. 3d 955 (2002) (statutes that

infringe upon the Due Process Clause of the Fourteenth Amendment infringe upon the parent-child fundamental liberty interest.) *District of Columbia v. Heller*, 554 US 570 (2008) (laws controlling firearms give way to the Second Amendment notwithstanding child protection measures). Nester's reliance on *Troxel* undermines her own argument, providing an example where best-interest statutes must give way to the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57 (2000). Even the Nevada Legislature has sometimes established laws that take precedence over a child's best interests. *Locklin v. Duka*, 112 Nev. 1489, 929 P. 2d 930 (1996) (referencing NRS 125.500(1) as the "parental preference presumption" in citing *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995)).

Nester's reliance on *In re T.R.*, 52 Ohio St.3d 6, 556 N.E.2d 439, 453 (1990) is unavailing as the case is distinguishable in three (3) ways. First, the *Falconi Court* and the *T.R. Court* both developed opinions relying on *Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 8 (1986) but came to different<sup>2</sup> conclusions in applying the experience and logic test. Secondly, the *T.R. Court* contemplated juvenile delinquency, which the *Falconi Court* expressly excluded from its discussion in footnote 2. Thirdly, the *T.R. Court* was reviewing an inferior appellate court's intervention in the trial judge's exercise of discretion imposing access restrictions on the press. This Court, however, is being asked by Nester to do the opposite; namely,

---

<sup>2</sup> In *Falconi v. Eighth Jud. Dist. Ct.*, the majority rejected the dissent's reliance upon an ecclesiastical history and also found having open family law proceedings to be important; the dissent does not make the law.

overturn Judge Duckworth's access restrictions by supplanting Judge Duckworth's exercise of discretion with its own. The *T.R. Court* refused to do precisely what Nester requests, by holding "[c]losure decisions are to be made by the trial judge on the totality of the circumstances. That decision should withstand review unless the trial judge has abused his or her discretion in applying the standard we have set." Judge Duckworth undoubtedly considered "the totality of the circumstances" and, notwithstanding his expression of concern, faithfully applied the standard the *Falconi's Court* set.

## **IX. Conclusion**

Nester fundamentally misunderstands Judge Duckworth's conclusion as one that "no family law proceeding would ever present an extraordinary circumstance" warranting closure. Rather, Judge Duckworth correctly concluded that no recipe of generic facts, including medical and mental health issues, exists to bypass the required First Amendment analysis. If there were, litigants could engineer their own *de facto* version of NRS 125.080. If this Court were to categorically forbid access to cases involving abuse allegations, a party seeking closure could make such an allegation just to avoid public scrutiny. If this Court were to forbid access to cases involving child custody evaluations categorically, a party could arrange to have one. As frustrating as it is for Judge Duckworth and Nester, NRS 125.080 has been found unconstitutional, and there no longer exists a formula, whether as simple as a mere demand or as complex as a

series of generic facts, that would ensure closure of a family law proceeding. What must occur is what Judge Duckworth has done; an analysis of the *specific* facts and the *specific* circumstances of the *specific* case before him, with the backdrop of the *critical* importance of public and press access.

The writ petition should be denied.

DATED this May 18, 2024

By: /s/ Luke Busby, Esq.  
LUKE A. BUSBY, ESQ.  
SBN 10319  
316 California Ave.  
Reno, Nevada 89509  
775-453-0112  
luke@lukeandrewbusbyltd.com

## **CERTIFICATE OF COMPLIANCE**

I, Luke Busby, declare and certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Google Docs in 14-point Helvetica. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 1997 words.

EXECUTED this May 18, 2024

By: /s/ Luke Busby, Esq.  
LUKE A. BUSBY, ESQ.  
SBN 10319  
316 California Ave.  
Reno, Nevada 89509  
775-453-0112  
[luke@lukeandrewbusbyltd.com](mailto:luke@lukeandrewbusbyltd.com)

**NRAP 25(5)(c)(1)(B) Certificate of Service**

I, Luke Busby, do hereby declare that I served a true and correct copy of this *Brief* by placing it into a sealed envelope and mailing it, postage prepaid, *via* United States Postal Service, addressed as follows:

The Hon. Bryce Duckworth  
Family Courts & Services Center  
601 N. Pecos Rd.  
Las Vegas, NV 89155

Shannon Wilson, Esq.  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
*Attorney for Leanne Nester*

Cody Gamble  
7710 Villa de la Paz  
Las Vegas, NV 89131

SERVED this May 18, 2024

By: /s/ Luke Busby, Esq.  
LUKE A. BUSBY, ESQ.  
SBN 10319  
316 California Ave.  
Reno, Nevada 89509  
775-453-0112  
luke@lukeandrewbusbyltd.com