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BY *[Signature]*
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Pro Se

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEANNE M. NESTER
Petitioner,

vs.

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

Respondent,

AND CODY J. GAMBLE
Real-Party In Interest.

Case Number: 88597

REAL PARTY IN INTEREST CODY J. GAMBLE'S ANSWERING BRIEF

COMES NOW Real Party in Interest, Cody Gamble, Pro Se, hereby files this
Answering Brief.

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I. INTRODUCTION

The children have been living under the auspices of this conflict since December of 2021 when Cody moved out. It comprises most of their lives. His position is that he had to seek post judgement relief from the courts by pursuing primary custody, or alternatively, a schedule commensurate to what the custody evaluator proposed, to protect all the Gamble children from Leanne's continuing accusations of neglect and abuse. PA94-123. Cody has asked explicitly for a finding of fact as to whether any abuse or neglect has ever occurred in his home. RA6. See *Westmoreland v. Columbia Broad. Sys., Inc.*, 752 F.2d 16, 23 (2d Cir. 1984) holding, among other things, that "[P]ublic access to civil trials enhances the quality and safeguards the integrity of the factfinding process..."

Leanne petitions this Court for an extraordinary writ to compel private proceedings because of the extraordinary circumstances of: mental health evaluations, a child custody evaluation, medical records, abuse allegations, medical

professional testimony ¹, Child Protective Services testimony ², and child witness testimony ³ [inferred]. She highlights that she is only seeking preservation of the status quo and establishment of an anytime right of first refusal. She assumes that because Cody refuses to generally object to the presence of the press and public that he must be doing so for public opinion and to bully Leanne. She argues closures for the purpose of protecting the relationships between the parents, siblings, and extended family and friends. Cody respectfully disagrees with her positions.

Cody has a Petition for a Writ of Mandamus pending in this Court which arises from the district court's stay of the child custody case. This family has been in limbo since Nov of 2022. Leanne claims extraordinary circumstances compelling closure to the public and then requests relief "as soon as is convenient." It will be many more months in the system for this family. Cody, in his Petition, Docket No 88678 raises

¹ No medical professional is testifying. Cody subpoenaed the children's pediatrician to rebut Leanne's claims but as the Dr. did not wish to be involved, he instead provided Cody a declaration and the children's detailed medical records. Kathleen Bergquist Ph.D, the custody evaluator, is currently under Cody's subpoena, however she is a doctorate level LCSW and lawyer.

² CPS is not testifying. After the first continuance due to the media request, on 2-29-24, Cody excused them from his subpoena as they did not want involvement in the matter.

³ There are no child witnesses set to testify. During discovery Leanne listed Cody's eldest son NG, then 14yo, as a witness on her NRCP 16.205 Disclosures. At a subsequent calendar call on 1-29-24, upon objection by Cody, counsel disavowed any desire to call him. RA26.

concerns of judicial bias stemming from the footnotes in Judge Duckworth's April 9th Order RE: Media Request and comments made during hearings appearing to solicit the instant Petition, and inviting the subsequent stay. Therefore, Cody will only address certain points raised by Leanne but is not comfortable acting in the defense of Judge Duckworth. *See Omaha Indemnity Co. v. Superior Court*, 209 Cal. App. 3d 1266, 1273 explaining that "[w]rit petitions have the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him' in the underlying case." Internal quotation marks omitted.

II. SUMMARY OF THE ARGUMENT

Extraordinary Writs are extraordinary. Appellate courts do not have the resources to second-guess every ruling arising from lower ones. The district court correctly surmised that there are no extraordinary circumstances in this case. Leanne, through counsel, appeared to argue the same at the Jan 29th, 2024 calendar call, where she characterized the ongoing the dispute as stemming from communication difficulties. RA4, RA32. She cannot have it both ways. Leanne seeks to use false claims (of neglect and pernicious abuse between siblings) as a sword and shield: to gain advantage in litigation and then to isolate Cody in the court room.

Novel claims of abuse arising, for the first time, *pendente lite*, are common in soured domestic matters. While unsubstantiated CPS dispositions are not proof

positive, the veracity of such claims can be reasonably determined by timing—when and under what circumstances---the allegations arise.^{4 5}

Issuance of a writ compelling closure because of allegations will notice high conflict parties seeking such closure that the conflict must necessarily be escalated. Leanne was given a continuance on the day of trial *and* due process regarding objecting to the media request. PA3, PA32. No findings compelling closure evolved.

Leanne improperly relies on *In re T.R* as it was a custody action brought under the jurisdiction of the juvenile courts as an adoption proceeding. Other areas of Ohio law implicate presumptive openness of custody proceedings in divorce actions. *In re T.R*, 52 Ohio St 3d 6 at fn 9. Additionally, neither party seeking custody had

⁴ Alan D. Blotcky Ph.D, *The Weaponization of False Allegations of Abuse*, Forensic Practice, Psychiatric Times, (July 26, 2022), <https://www.psychiatrictimes.com/view/the-weaponization-of-false-allegations-of-abuse>

⁵ Cody believes that pathological parenting behaviors are the underlying issue. Events occurring directly after signing the Decree of Divorce spurred him to file the underlying Motion to Modify Custody. PA94-123. Within 6 months of him filing the custody action Leanne: sealed the case under NRS 125.110 (2) [PA 80-84], championed the custody evaluation [PA85-86], emailed her allegations to the evaluator one month in (on 5-22-23), and called the CPS hotline days later, initiating the investigation. PA181-194. Prior to separating from Leanne there were no reports of abuse or violence of any kind re Cody or his older sons. *All* of the allegations arose during the instant litigation. Custody Evaluation “Best Interest Factors pg. 67-72. (Cody cannot accurately pinpoint cite the report as his Motion for Access to a copy was denied a copy because of his Pro Se status, he uses his hand copied notes.)

blood ties, the mother went out of her way to doxx the father *and* the minor T.R. nationally on *Fox*, and the matter became a circus. ⁶ *Id.* at 16. ONJ is a responsible, recognized SCR 230 legal blogger that educates the public, anonymizes parties, children, witnesses, and redacts HIPPA related evidence.

III. LEGAL ISSUES

Whether unsubstantiated claims of child abuse, testimony regarding medical information, and/or the presence of high conflict create extraordinary circumstances or overriding interests sufficient to completely close hearings to the public.

Answer: No

IV. ARGUMENT

a. Compelling circumstances do not exist

Extraordinary Writs are extraordinary and if they were granted “at the drop of a hat” would disrupt the “orderly administration of justice at the trial and appellate levels.” See *Omaha Indemnity Co. v. Superior Court*, 209 Cal. App. 3d 1266, 1272.

Leanne, in her Motion for Reconsideration and Reply In Support, advanced generalized privacy concerns, her claims of child abuse, and the likelihood of testimony regarding medical records and mental health as a basis for global closure.

⁶ Tamar Lewin, *Custody Case in Ohio Ends in Slaying and Prison Term*, The New York Times, <https://www.nytimes.com/1990/12/08/us/custody-case-in-ohio-ends-in-slaying-and-prison-term.html>

PA3-20, PA32-44. After full briefing, the district court, in its April 9th, 2024 Order re: Media Request and Order, opened the proceedings to the public and advised Our Nevada Judges, Inc of its expectations that the non-profit “continue to act responsibly ⁷.” PA48 at fn 4. No findings supporting closure were made.

b. Granting such a petition will not serve the ends of justice but will increase the caseload of this Court

If it is true that the *Falconi* court meant unsubstantiated claims of child abuse when it alluded to “various instances” and “overriding interests” compelling closure, then it stands to reason that upon issuance of such a writ, a new and repugnant route to closure will have been created for the ages. Cody argues that rather than issue a mechanical test, the *Falconi* court left some ambiguity in the decision to provide room for the exercise of discretion in the lower courts.

Leanne’s Petition appears to concede that “the facts and circumstances of [this] case are commonplace” in the “civil-domestic arena.” She then draws a distinction between the commonplace and the ordinary and advances the commonplace circumstances of this case as an interest overriding the public’s. “The right to an open public trial is a shared right of the accused and the public, the common concern being the assurance of fairness.” *Press-Enterprise Co. v. Superior*

⁷ Our Nevada Judges, Inc’s internal policy is to anonymize all parties, redact personally identifying information of litigants and children, including visage, and to redact medical information during testimony etc.

Court (1986), 478 U.S. 1, 7. His household having been the subject of a CPS investigation, initiated by Leanne *pendente lite*, and subsequently unsubstantiated; Cody has concerns regarding fairness. PA619-640.

c. In re T.R. supports the conclusions under *Falconi* (2024)

Leanne improperly relies on this Ohio case to the extent that the fact pattern and the procedural posture is very different from the instant case. The *T.R.* case was a custody action brought through the Ohio juvenile courts as an adoption proceeding with the parties seeking custody having no blood ties to the minor child. These courts are based on a rehabilitative, informal, “inquisitional” model rather than the adversarial model of custody actions brought through divorce courts. *In re T.R.* at 15. Notably the *T.R* Court confirmed:

“We refer here *only* to those custody proceedings initiated in the juvenile court pursuant to R.C. 2151.23(A)(2). Most child custody adjudications are made by the domestic relations court as part of a divorce or dissolution of marriage. While we need not decide the question today, **we note that other courts have held that divorce actions, like other adult civil actions, are presumptively open to the public.”** *In re T.R.* at fn 9.

Emphasis added in bold.

Further, the parties were well known nationally as the mother had issued a homemade press release soliciting litigation monies, released personally identifiable

information of the child, and appeared on Fox, in People Magazine, and multiple parties were scheduled to appear on “Geraldo.” Our Nevada Judges is a responsible, recognized SCR 230 legal blogger that educates the public, anonymizes parties, children, witnesses, and redacts HIPPA related evidence. These differences are pertinent.

V. CONCLUSION

Excessive secrecy, especially in the context of high-conflict child custody, is in no one’s best interest and may even serve to make matters fester. These family courts exist as a part of the wider justice system where there is genuine and legitimate public concern. Wherever the State intervenes in the most fundamental way into its citizen’s lives, as family court does, the public, and the individual parent, has the right to understand *the why*. This cannot happen in isolation. Improved public knowledge, gavel to gavel, of the work in the family courts, allows a more informed debate around issues such as the role of domestic abuse, *in its myriad forms*, in family court litigation. It also serves as a measure to preserve the appearance of fairness, prevent bias, and curb misconduct by litigants, counsel, and judicial officers. Openness and confidentiality are not irreconcilable. No extraordinary writ should issue and this proceeding must necessarily remain open.

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DATED May 21st, 2024.

Respectfully Submitted,



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VERIFICATION OF CODY GAMBLE

I, Cody J. Gamble, state that I have authored and read this **Answering Brief** and that the contents are true and correct of my own personal knowledge, except for those matters I have stated that are not of my own personal knowledge, but that I only believe them to be true, and as for those matters, I do believe they are true.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 21st day of May 2024.

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

I, Cody J. Gamble, 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 MS Word and in 14-point Times New Roman. 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 2467 words.

EXECUTED this 21st day of May 2024.

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NRAP 25 CERTIFICATE OF SERVICE

I, Cody J. Gamble, do hereby declare that I am over the age of 18 and that I personally served a true and correct copy of this *Answering Brief* by placing it into a sealed envelope and mailing it, postage prepaid, *via* United States Postal Service, addressed as follows:

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SERVED this 21st day of May 2024.



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