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ORDR

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

XXXXXXXXXXXXXXXXXXXX
Plaintiff,

v.

XXXXXXXXXXXXXXXXXXXX
Defendant.

Case No.: D-08-XXXXXX-C
Dept.: E

Date of Hearing: Dec. 5, 2022
Time of Hearing: 1:30 p.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

This matter having come on for Evidentiary Hearing on Plaintiff's request to modify physical custody on the 5th day of December, 2022; Plaintiff, XXXXXXXXXXXX being present and represented by his attorney, Rena Hughes, Esq.; Defendant, XXXXXXXXXXXXXXXXXXXX being present and represented by her attorneys, Jayme Martinez, Esq. and Joshua Aronson, Esq.; the Court heard the evidence presented, and, after taking the matter under advisement, finds and orders as follows.

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Statement of the Case

The controlling custody order in this case is the *Order*, filed April 6, 2009. That *Order* awarded the parties joint legal custody and joint physical custody of the parties' minor child, [REDACTED], born [REDACTED], 2007 (child).

In June 2020, the parties were next before the Court and the Department of Family Services (CPS) report was reviewed. The Court expressed concerns over [REDACTED] withholding of the child and the potential of improperly empowering of the child. No basis to modify the custody orders was found. At the July 16, 2020 Status Check hearing, the Court permitted the parties to move forward with therapeutic involvement for the child and admonished them to follow court orders.

[REDACTED] filed a Motion to Enforce on December 20, 2021. At the February 3, 2022 hearing, [REDACTED] requested a continuance to hire an attorney. The Court was made aware that [REDACTED] withheld the child for five months and unilaterally changed the child's school. At the March 29, 2022 hearing, the Court expressed concern regarding the amount of time the child had been out of [REDACTED] life. The parties stipulated to utilize Nicholas Ponzo to perform a child and family evaluation. A Status Check was set to determine progress.

1 At the April 28, 2022 Status Check hearing, the Court was advised
2 that [REDACTED] was still not receiving contact with the child. The Court found
3 adequate cause to set an Evidentiary Hearing on his request to modify
4 custody in August 2022. No temporary change to the controlling custody
5 order was approved.
6

7
8 At the May 26, 2022 Hearing on [REDACTED] Motion for Orders Related to
9 *the Minor Child's Schooling*, the issue was determined to be moot as school
10 was out for the summer. The Court was discouraged by [REDACTED] behavior
11 and possible violations of the joint legal custody orders. On August 4, 2022
12 the parties entered a *Stipulation and Order* regarding school.
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15 At the August 9, 2022 *Calendar Call*, the *Evidentiary Hearing* was set
16 firm. At the August 23, 2022 Evidentiary Hearing, [REDACTED] attorney's
17 Motion to Withdraw was addressed. [REDACTED] was advised that she would be
18 responsible for [REDACTED] reasonable attorney's fees should a continuance be
19 granted. The withdrawal was granted and the *Evidentiary Hearing* was
20 continued. Discovery was not reopened. [REDACTED] was permitted to have the
21 child's physical health evaluated.
22
23

24 At the September 27, 2022 *Calendar Call*, the Court was made aware
25 that [REDACTED] attorney was on medical leave and a continuance was requested.
26 The continuance was granted without opposition. At the October 11, 2022
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1 *Calendar Call*, the parties indicated that they were ready to proceed and the
2
3 *Evidentiary Hearing* was set firm. On October 20, 2022 the parties
4 submitted a *Stipulation and Order* to continue the *Evidentiary Hearing*. At
5 the November 29, 2022 *Calendar Call*, the *Evidentiary Hearing* was, once
6 again, set firm.
7

8 Prior taking evidence, the parties stipulated to the admission of
9 Plaintiff's Exhibits 1 – 33.
10

11 **Findings of Fact**

12 That this Court has personal and subject matter jurisdiction in this
13 case.
14

15 That [REDACTED] testified in his case-in-chief. He confirmed that the parties
16 share joint custody of their 15 year old son. The controlling order is from
17 2009 and gives Monday and Tuesday to [REDACTED], Wednesday and Thursday to
18 [REDACTED] and alternating weekends to the parties.
19

20 That [REDACTED] was not clear on where, exactly, [REDACTED] and the child
21 reside. They may reside with [REDACTED] mother, but also may reside with
22 [REDACTED] boyfriend. [REDACTED] stated that on several occasions when dropping
23 off or picking up the child [REDACTED] is not present.
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1 That [REDACTED] resides in Centennial Hills in a three bedroom home. The
2 child has his own room in [REDACTED] residence. [REDACTED] is unemployed. He did
3 not articulate an acceptable reason for his continued unemployment.
4

5 That [REDACTED] related that, following a Temporary Protective Order (TPO)
6 in April 2020, he did not see the child for several months. Then, in August
7 2021 [REDACTED] again withheld the child from [REDACTED]. Such resulted in [REDACTED]
8 filing a Motion to obtain the Court's assistance in visitation. [REDACTED] stated that
9 [REDACTED] withheld the child for a year and [REDACTED] did not exercise visits again
10 until late July 2022.
11

12 That [REDACTED] reviewed Exhibit 23 which contains police contact cards
13 evidencing his efforts to exercise his visitation in the fall of 2021. No
14 explanation regarding [REDACTED] not exercising visitation following the April 28,
15 2022 Hearing was provided.
16

17 That [REDACTED] expressed concern regarding the child's education. He
18 reviewed Exhibit 9, which is a notification from 2015 that the child was
19 recommended for the Gifted and Talented Education program.
20

21 That Exhibit 12, an attendance summary dated May 2022, indicates
22 that the child was absent from school for 26 days. [REDACTED] stated that the child
23 takes the bus from his residence and is always on time during his days.
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1 That in 2021, [REDACTED] removed the child from in-person school
2 without approval from [REDACTED]. [REDACTED] stated that, on [REDACTED] Wednesdays
3 and Thursdays, the child is tardy. The child failed all classes in the
4 2021/2022 school year when the child was solely with [REDACTED]
5

6
7 That Exhibit 25 contains text messages between the parties. Such
8 evidences [REDACTED] attempts to exercise his visitation. It also demonstrates
9 that [REDACTED] either did not permit the visits or deflected the conversations.
10 In some entries, [REDACTED] indicated that [REDACTED] needed to contact the child
11 directly to schedule visits.
12

13 That the child is prescribed medication for his ADHD. Currently
14 Prozac is prescribed. However, the child has not taken those medicines for
15 several months. [REDACTED] indicated that [REDACTED] prefers a holistic approach.
16

17 That [REDACTED] is requesting that custody change so that he has the child
18 during the school week and can focus on the child's educational success. He
19 believes he is better able to help the child with school. If such is granted,
20 [REDACTED] would request that the school zoning change to his residence, rather
21 than the maternal grandmother's residence.
22

23 That Exhibit 32 is an investigators report which appears to confirm
24 that [REDACTED] "lives" in more than one residence.
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1 That, on cross-examination, [REDACTED] reviewed Exhibit 20, the child's
2 school report from December 2021. [REDACTED] confirmed that the child was
3 struggling in school prior to the 21/22 school year. [REDACTED] added that such
4 was during the pandemic as well.
5

6 That, when reviewing Exhibit 12, [REDACTED] admitted that some of the
7 represented absences may have been excused.
8

9 That [REDACTED] explained the incidents where the child pulled a knife on
10 him. Those incidents resulted from [REDACTED] disciplining the child. The prior
11 incidents raise concerns regarding the relationship between father and child.
12

13 That the child has attended Western High School since August 2022.
14 The school is reporting that the child is not turning in school work.
15

16 That, on re-direct, [REDACTED] indicated that there have been no recent
17 physical altercations.
18

19 That Nicholas Ponzo (Ponzo), who evaluated this family, testified in
20 [REDACTED] case-in-chief. He referenced his Report, dated August 20, 2022. See
21 Exhibit 33. Ponzo could not confirm [REDACTED] or the child's residence.
22 Ponzo could not find that [REDACTED] was a danger to the child. [REDACTED] has
23 exposed the child to the court proceedings and discussed the same with the
24 child.
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1 That Ponzo found that [REDACTED] is critical of [REDACTED] without a basis, both
2
3 in writing and in Ponzo's discussions with [REDACTED]. Ponzo is concerned
4 regarding these parties ability to co-parent. [REDACTED] has expressed resistance
5 to co-parenting and demonstrated outright hostility towards [REDACTED]. Ponzo
6 explained that [REDACTED] is triangulating the child into the parent's conflict and
7 attempting to force the child to pick a side between his parents. Such is not
8 in the child's best interests. The unresolved parental conflict has a
9 continuing and ongoing effect on the wellbeing of the child. Such is mainly
10 the result of [REDACTED] actions.

13 That Ponzo could find no rationale for the alleged estrangement
14 between the father and child. Ponzo discussed [REDACTED] need to change her
15 behavior with her. [REDACTED] was resistant to follow those directions and
16 cooperate. Ponzo indicated that [REDACTED] needs to be enabled to take steps to
17 serve the child's best interests.

20 That, on cross-examination, Ponzo indicated that the last joint session
21 with this family occurred in August 2022. Ponzo clarified that he saw his
22 task as mostly assessment orientated. Ponzo confirmed that the child stated
23 that [REDACTED] hit him with a belt and called him dumb.

25 That, on re-direct, Ponzo clarified that the belt and calling dumb
26 incidents occurred several years prior.

1 That [REDACTED] testified in her case-in-chief. She indicated that the
2 child's behavior changed during his fifth grade year. The child would stop
3 communicating and cry for no reason. Previously, the child was on the A/B
4 Honor Roll.
5

6 That [REDACTED] was asked about the 2020 incident; but, as she was not
7 present, was unable to testify concerning that incident due to hearsay and
8 foundational objections. [REDACTED] did take the child to the doctor as a result
9 of bruises to the child's arms and face. [REDACTED] indicated that the child
10 became more withdrawn.
11

12 That [REDACTED] stated that, following the August 2021 incident that the
13 child had another change in behavior and she stopped the visitation. [REDACTED]
14 indicated that the child refused to visit with [REDACTED]. However, her text
15 messages belie that statement. As such, [REDACTED] credibility is in question.
16 Interestingly, [REDACTED] did not testify that the child improved during the year
17 that he was solely in her care.
18

19 That [REDACTED] August 5, 2022 Financial Disclosure Form (FDF)
20 represents that he is unemployed. [REDACTED] September 21, 2022 FDF
21 indicates a GMI of \$4,225.00. There has been more than three years since
22 the last child support order was entered, thus making review of the child
23 support order appropriate.
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Conclusions of Law

The current custody order is that the parties share joint physical custody. [REDACTED] requests he be awarded primary physical custody and [REDACTED] requests that the parties maintain their current arrangement.

The Nevada Supreme Court clarified the standards for custody modification in *Romano v. Romano*, 138 Nev. Adv. Op. 1, 501 P.3d 980 (2022). *Romano* directs that, when considering a modification of existing custody orders, the District Court must require that the movant show that there has been a substantial change in circumstances affecting the welfare of the child and that the child's best interest is served by the modification.

NRS 125C.002 states:

1. When a court is making a determination regarding the legal custody of a child, there is a presumption, affecting the burden of proof, that joint legal custody would be in the best interest of a minor child if:

(a) The parents have agreed to an award of joint legal custody or so agree in open court at a hearing for the purpose of determining the legal custody of the minor child; or

(b) A parent has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with the minor child.

Given that the parties stipulated to joint physical custody in their April 6, 2009 Order, there is a presumption, affecting the burden of proof, that joint

1 legal custody would be in the best interest of a minor child. [REDACTED] must
2 overcome that presumption.
3

4 [REDACTED] established that [REDACTED] has not specifically complied with the
5 terms of the custody arrangement between August 2021 and July 2022.
6 Additionally, [REDACTED] has inappropriately involved the child in this litigation
7 and her actions have been detrimental to the child's best interests. Such is a
8 substantial change of circumstances.
9
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11 The evidence supports that there has been a substantial change in
12 circumstances affecting the welfare of the child since the entry of the last
13 custody order. As such, the Court will continue with the second-prong, best
14 interest, analysis.
15

16 The Court will analyze whether the child's best interests would be
17 served by a modification of custody. In analyzing the best interest of the
18 child, the Court must analyze the factors enumerated in NRS 125C.0035(4).
19 Those factors are reviewed below:
20

21 *The wishes of the child if the child is of sufficient age and*
22 *capacity to form an intelligent preference as to his or her physical*
23 *custody.* The child is 15 years old. While the Court presumes that he
24 is of sufficient age and capacity to form an intelligent preference, no
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1 credible evidence relating to the current wishes of the child was
2 presented. This factor is neutral.

3
4 *Any nomination of a guardian for the child by a parent.* No
5 nomination occurred in this case.

6
7 *Which parent is more likely to allow the child to have frequent*
8 *associations and a continuing relationship with the noncustodial*
9 *parent.* [REDACTED] demonstrated that she is reluctant to co-parent.
10 [REDACTED] disparages [REDACTED] to the child and withheld the child for more
11 than a year. [REDACTED] demonstrated that he is motivated to assist and care
12 for the child. This factor favors [REDACTED].

13
14
15 *The level of conflict between the parents.* There has been
16 conflict between the parties stemming from [REDACTED] withholding of
17 visitation. The same was confirmed within Ponzo's report. The
18 conflict adversely affects the child. This factor favors [REDACTED].

19
20 *The ability of the parents to cooperate to meet the needs of the*
21 *child.* [REDACTED] is critical of [REDACTED] and continues to be confrontational.
22 [REDACTED] is unwilling to co-parent with [REDACTED], which has been
23 demonstrated over the last several years. The child is struggling in
24 school and [REDACTED] offered no plans or solutions to rectify the issues.
25 [REDACTED] had the child solely in her care for more than a year and
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1 provided no assistance to the child or proposals to assist the child in
2 the future. Ultimately, [REDACTED] unilateral decisions and refusal to
3 co-parent and actively harm the relationship between father and child
4 cause this factor to favor [REDACTED].
5

6
7 *The mental and physical health of the parents.* Neither party
8 presented any mental or physical health issues. This factor is neutral.
9

10 *The physical, developmental and emotional needs of the child.*
11 The child is doing poorly in school. Such is a change from several
12 years ago. However, it appears that [REDACTED] is unable or unwilling to
13 address those concerns. [REDACTED] does not involve [REDACTED] in medical
14 decisions. The child has needs which do not currently appear to be
15 met by the parents. While some therapy has previously been
16 referenced, no evidence of the same was provided to the Court at the
17 Evidentiary Hearing. Ponzio's report provides some suggestions. As
18 that report was received several months ago and no effort appears to
19 have been made to follow those recommendations, it appears that the
20 parties may be waiting for the Court to tell them how to raise their
21 child. [REDACTED] expressed a desire to serve the child's needs. [REDACTED]
22 recent resumption of his joint physical time has not, evidently,
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1 resulted in any new issues with the child. Ultimately, this factor is
2 neutral.
3

4 *The nature of the relationship of the child with each parent.*
5 Interestingly, neither party specifically referenced the nature of their
6 relationship with the child. This factor is neutral.
7

8 *The ability to maintain a relationship with a sibling.* No
9 siblings were mentioned. This factor is neutral.
10

11 *Any history of parental abuse or neglect of the child or a*
12 *sibling of the child.* No evidence was presented concerning this factor.
13 This factor is neutral.
14

15 *Whether either parent has engaged in an act of domestic*
16 *violence against the child, a parent of the child or any other person*
17 *residing with the child.* No credible evidence was presented
18 concerning this factor. This factor is neutral.
19

20 *Whether either parent has engaged in an act of abduction.* No
21 evidence was received concerning any abduction of the minor child,
22 which renders this factor neutral.
23

24 Under an analysis of the NRS 125C.0035 factors, this Court
25 determines that [REDACTED] actions over the last several years have not served
26 the best interests of the child and the best interest analysis supports a review
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1 of the current custody orders. However, since the parties resumed the court
2 ordered visitation in August 2022, neither party provided any examples of a
3 continued need for modification. Ultimately a change in the schedule, at
4 least, is warranted as the child's best interests are not being served by the
5 current schedule. XXXXX demonstrates more desire to positively affect the
6 child's educational issues. Changes to the schedule and attention to
7 educational and emotional issues are appropriate.

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11 Further, neither party established that the other is incapable of
12 adequately caring for the minor child at least 146 days per year. *See* NRS
13 125C.003. That statute makes such a finding a requirement to award other
14 than joint physical custody. However, the presumptions were not overcome
15 to modify the custodial order.

16
17 The most recent child support order was entered, in case R-17-
18 XXXXXX-R, on March 15, 2018. As such, child support is ripe for review.
19 XXXX did not establish that he is incapable of employment, but XXXXXX did
20 not provide evidence of what XXXX could or should be earning. As such, it is
21 appropriate to set XXXX child support obligation at \$220.00 per month;
22 XXXXXXXX child support obligation would be calculated at \$676.00 per
23 month; resulting in XXXXXXXX calculated monthly obligation of \$456.00. See
24 NAC 425.115 and 425.140.
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1 After considering the evidence presented, and the mandates of NRS
2 18.010, it is appropriate that, given [REDACTED] withholding of the child,
3 contra to the court order, that she should bear some of [REDACTED] attorney's fees
4 and costs. Additionally, this Court previously awarded [REDACTED] fees for the
5 August 22, 2022 Hearing and no order for fees or affidavit has yet been
6 submitted, such should be resolved with the submission of the same.
7

8 **DECISION**

9
10 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
11 [REDACTED] request to modify the physical custody order is DENIED. However,
12 [REDACTED] actions over the last several years cannot be ignored and some
13 modifications are appropriate.
14

15
16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
17 the parties' visitation schedule shall be modified as follows:
18

19 The child shall reside with [REDACTED], during the school week, when
20 school is in session, from Sunday evening at 8:00 p.m. until Friday
21 after school. [REDACTED] shall also be entitled to the third weekend (as
22 determined by the Sunday) each month, with [REDACTED] having custody
23 the Thursday after school until Friday after school preceding the third
24 weekend.
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1 [REDACTED] shall exercise the remaining time with the child.

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3 However, when school is not in session, the schedule shall reverse
4 until school resumes.

5 The parties' prior holiday and vacation schedule shall remain in
6 effect.
7

8 The parties shall be entitled to regular video conferencing and
9 telephone contact with the children while in the other party's care.
10

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
12 this custodial change shall become effective in January 2022. As the child
13 will spend the school week in [REDACTED] care, he shall be entitled to permit the
14 child to attend the school where his home is zoned. [REDACTED] shall cooperate
15 in the transferring of schools for the child.
16

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
18 [REDACTED] child support obligation shall be set at \$456.00 per month,
19 beginning December 2022, and continuing until further order of the Court.
20

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
22 [REDACTED] shall be responsible for some of [REDACTED] attorney's fees and costs for
23 her violation of court orders and the previously award from earlier this year.
24

25 [REDACTED] attorney is directed to submit a Brunzell affidavit, an Affidavit of Fees
26 and Costs and an Order Awarding Fees, with a blank for this Court to fill in
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1 and reduce to JUDGMENT. Such shall be submitted within 14 days of the
2 entry of this Order. [REDACTED] attorney shall then have 7 days to submit any
3 opposition to the fees and costs requested by [REDACTED]
4

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
6 parties shall cooperate in obtaining a current neuropsychological evaluation
7 of the child and shall follow any resulting recommendations. They shall also
8 cooperate in having the child examined by a new physician to determine the
9 appropriate use of medication for the child.
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12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
13 parents are expected to reevaluate their approach to each other and to co-
14 parenting with their primary focus being the best interests of the child. They
15 are to follow the joint legal custodial requirements.
16

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, all
18 existing orders, not in conflict with this Order, shall remain in full force and
19 effect.
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22 IT IS SO ORDERED

23 Dated this 8th day of December, 2022

24 

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26 769 A60 D44E B314
27 Charles J. Hoskin
28 District Court Judge

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