

CLERK OF THE COURT

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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**
10 **FAMILY DIVISION**

<p>11 [REDACTED], 12 Plaintiff, 13 14 vs. 15 [REDACTED]; 16 Defendant. 17 _____/</p>	<p>18 CASE NO: D-21 [REDACTED] D 19 20 DEPT NO: Q</p>
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21 **ORDER FOR LIMITED CLOSURE OF EVIDENTIARY HEARING AND ALLOWING**
22 **ELECTRONIC COVERAGE OF PUBLIC PORTIONS**

23 This matter comes before the Court for a calendar call on February 18, 2025,
24 at 10:00 a.m. Plaintiff, [REDACTED], appeared through and by her
25 counsel, Shannon Wilson, Esq. Defendant, [REDACTED], appeared
26 through and by his counsel, Michael Burton, Esq. A non-party media entity, Our
27 Nevada Judges, Inc. ('ONJ'), appeared through and by its counsel, Luke Busby,
28 Esq.

I. Procedural Background

This matter was previously scheduled for evidentiary hearing to occur on May 2, 2024. At issue were post-judgment motions to modify child custody.

1 On February 29, 2024, this Court granted SCR 229(1)(c) news reporter ONJ's
2 SCR 230(1) request for camera access [Document 192].

3 On March 14, 2024, [REDACTED] filed a Motion for Reconsideration [Document 199].

4 On March 15, 2024, ONJ filed opposition [Document 201].

5 On March 22, 2024, [REDACTED] filed a reply [Document 203].

6 On April 9, 2024, this Court denied Nester's motion [Document 206].

7 On January 30, 2025, the Nevada Supreme Court issued a *Writ of Mandamus*
8 expanding its guidance on physical access to the courtroom but declining to rule on
9 [REDACTED] camera access arguments. *Nester v. Eighth Judicial Dist. Court*, 141 Nev.
10 Advance Opinion 4 (Jan. 30, 2025) citing *Falconi v. Eighth Judicial Dist. Court*, 140
11 Nev. Adv. Rep. 8, 543 P.3d 92 (Nev. 2024).

12 On February 5, 2025, [REDACTED] filed a Motion to Continue [Document 283] which
13 included arguments seeking to close the Court based on the Nester Court's holding.
14 Separately, [REDACTED] filed an Ex Parte Request for Order Shortening Time [Document
15 285], which this Court granted.

16 On February 6, 2025, ONJ filed an Opposition and Countermotion [Document
17 288].

18 On February 10, 2025, Gamble filed opposition [Document 210].

19 On February 13, 2025, this Court entered an order where the Court indicated it
20 would entertain arguments regarding the Plaintiff's burden to demonstrate the
21 necessity of closing the hearing based on the test outlined in *Falconi*, in compliance
22 with the Writ of Mandate. On the same date, [REDACTED] filed a reply and request to
23 strike ONJ's filing, which included a request for attorney fees [Document 293].
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1 On February 14, 2025, ONJ filed a Motion for Leave to file a Reply to
2 Opposition to Countermotion [Document 294].

3 **II. Factual Background**

4 The underlying case was disposed of by stipulated decree. [REDACTED] and
5 [REDACTED] are recognized as two good, loving parents, with different beliefs and
6 approaches to parenting. The Court understands on a personal level the desire for
7 privacy as well as the intimately private nature of domestic relations matters. The
8 Court empathizes with [REDACTED] desire for privacy. However, the First Amendment
9 requires that the judicial process is open to the press unless closure is justified
10 based on a compelling privacy interest.
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13 In other words, the Court must separate personal feelings from the judicial
14 analysis, which the *Nester* and *Falconi* Courts instruct, mandates a strict scrutiny
15 analysis upon any request to close a courtroom to the press and public.
16 Accordingly, this analysis follows:
17

18 **III. Conclusions of Law**

19 [REDACTED] raises physical and camera access concerns. [REDACTED] and ONJ argued
20 in favor of both.
21

22 **a. Consideration of Children Potentially Learning Of Parental Conflict**

23 The Court empathizes with [REDACTED]'s concerns that mere exposure of children
24 to their parents litigation could implicate mental health concerns, but these
25 concerns are too broad and speculative. It can be said that any child of any divorce
26 who learns of the proceedings may suffer psychologically, but those same children
27 of a divorce are by nature living through the divorce and without a more specific
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1 reason, this Court cannot conclude that this alone serves as a compelling interest to
2 close the court.

3 [REDACTED] arguments as to the high-conflict nature of this case fail for similar
4 reasons, but this Court need not ultimately need to consider it given [REDACTED] and
5 [REDACTED] both concede that their communications are not acrimonious, with [REDACTED]
6 specifically conceding Parties dispute is confined to the litigation and that their
7 parenting is “mid-conflict”.
8

9 [REDACTED] and this Court both struggled to distinguish these concerns from the
10 very statutes and rules the *Falconi* Court expressly struck down as unconstitutional.
11 “In fact, the majority of jurisdictions to have considered this issue have concluded
12 that when there are no **extraordinary** circumstances present, the public's right to
13 access family law proceedings outweighs the litigants' privacy interests.” *Falconi, Id*
14 (emphasis added). Because [REDACTED] concerns are not sufficiently specific or
15 extraordinary, this Court cannot find the general privacy interest based on the claim
16 that privacy is in the best interests of the children at stake compelling.
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19 **b. Consideration of Public Exposure of Expert Testimony**

20 The Court does recognize, however, that certain testimony provided may
21 contain details that are specific to these children’s psychology in the context of
22 experts and finds the privacy interest in this testimony compelling. Because the
23 expert testimony in this case specifically will include analysis of sexual abuse
24 complaints, the Court does find a compelling interest in closing the court to the
25 testimony of Dr. Kathleen Bergquist and any Child Protective Services
26 representatives that may be called to testify, consistent with the *Nester Court’s*
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1 recognition of the importance of “safeguarding the psychological well-being of
2 minors”.

3 There is a substantial probability that, in the absence of closure, this
4 compelling interest could be harmed because expert testimony will go beyond mere
5 allegations and could implicate specific medical analysis that could harm the
6 psychological well-being of the minors. Conversely, there is a significantly less
7 probability that the absence of closure would have any effect on any other evidence
8 because the allegations in this case are already known by ONJ and the public.
9
10 XXXXX point ¹ that a parent’s audience is smaller than the media’s assumes that no
11 publication will occur and invites this Court to bar access simply because the
12 litigant’s voices are not loud enough to matter. Indeed, news reporters routinely
13 provide coverage of cases, whether or not they have access to the proceedings.
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15 The Court declines to close the entirety of the proceedings because the third
16 prong of the strict scrutiny analysis requires this Court “narrowly tailor” the closure
17 to what is necessary to protect the compelling interest. The Court’s closing of the
18 courtroom during examination of expert testimony sufficiently “preserve[s] [this]
19 higher value[] and is narrowly tailored to serve th[is] interest[]”. *Nester, Id.*
20

21 **c. Camera Access To The Public Portions Is Allowed**
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23 The Court recognizes XXXXXXXX requests an independent analysis on camera
24 access, consistent with SCR 230(2). The Court, however, finds the analysis on SCR
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26 ¹ Nester’s citation to NRS 125.110 and EDCR 5.304 are unpersuasive to this Court for
27 the reason that the *Nester* and *Falconi* Courts made clear a strict scrutiny test must be
28 conducted before closure of a courtroom can occur. The Constitutional basis upon
which the strict scrutiny test is buttressed will simply not tolerate interference from any
court rule or statute.

1 230(2)(a), (d), and (f), no different than its April 9, 2024 analysis; and, SCR 230(b) and
2 (c) obviated by its limited closure of the courtroom. This is because, with the
3 examination of expert witnesses closed, the SCR 230(2) presumption does not
4 trigger for those portions of the proceedings and thus, the expert testimony will not
5 be subjected to electronic coverage. [REDACTED] appears to assert that an order barring
6 camera access will prevent publication of the public portions of the proceedings,
7 but there is no reason why a news reporter who sits and physically observes a
8 proceeding cannot simply step out of the courtroom after the fact and televise what
9 was observed. In summary, [REDACTED] privacy and child safety concerns are
10 informational concerns and sufficiently analyzed by this Court in its strict scrutiny
11 analysis which, in closing the courtroom, effectively precludes camera access of
12 those closed courtroom portions.
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15 **d. Regarding ONJ's Requests to Unseal and Intervene**

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17 ONJ requested to unseal and intervene, consistent with its efforts to secure
18 physical and camera access to these proceedings. ONJ specifically characterized
19 these requests as conditional and necessary only to secure access to these
20 proceedings. For this reason, ONJ's requests are deemed withdrawn or otherwise
21 moot as this Court has rendered its decision consistent with ONJ's underlying
22 efforts.
23

24 THEREFORE, it is HEREBY ORDERED, ADJUDGED, and DECREED that an
25 evidentiary hearing on Parties pending custody and support issues is scheduled for
26 May 15, 2025 at 9:00 a.m.
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1 IT IS FURTHER ORDERED that examination of expert witnesses and Child
2 Protective Services agents shall be conducted in closed courtroom sessions.

3 IT IS FURTHER ORDERED that ONJ is permitted to conduct electronic
4 coverage of the evidentiary hearing as to the public portions only.

5 IT IS FURTHER ORDERED that ONJ's motion to intervene is moot.

6 IT IS FURTHER ORDERED that ONJ's motion to unseal is construed as
7 withdrawn.
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9 Dated this 11th day of March, 2025

10 
11 _____
12 DISTRICT COURT JUDGE *Sm*


13 Submitted By: /s/ Luke Busby
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D24 C50 C4A5 7B4E
Bryce C. Duckworth
District Court Judge

19 Approved as to form and content:

20 /s/ Michael Burton
21 Michael Burton, Esq.
Attorney for 

22 Notified by did not respond:

23 Shannon Wilson, Esq.
24 *Attorney for* 
25 *In an Unbundled Capacity*
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27
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