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

14 [REDACTED]

15 Plaintiff,

16 vs.

17 [REDACTED]

18 Defendant.

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

21 **PLAINTIFF’S REPLY IN SUPPORT OF**
22 **HER MOTION FOR**
23 **RECONSIDERATION OF MEDIA**
24 **REQUEST AND ORDER FILED**
25 **FEBRUARY 29, 2024 AND FOR CLOSED**
26 **HEARING**

27 ORAL ARGUMENT REQUESTED: YES

28 Plaintiff [REDACTED] by and through her attorneys of the law firm of
Hutchison & Steffen, PLLC, appearing in a limited scope capacity, files her Reply
in Support of Her Motion for Reconsideration of Media Request and Order Filed
February 29, 2024 and For Closed Hearing.

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PLAINTIFF’S REPLY IN SUPPORT OF HER MOTION FOR RECONSIDERATION OF MEDIA REQUEST
AND ORDER FILED FEBRUARY 29, 2024 AND FOR CLOSED HEARING - 1

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MEMORANDUM OF POINTS AND AUTHORITIES

1. SUMMARY

Mr. Falconi submitted a form request for media access, which by its terms seeks “permission to broadcast, record, photograph or televise proceedings.” (Media Request and Order filed herein Feb. 29, 2024.) By signing the form, he states he is familiar with Nevada Supreme Court Rules “SCR” 229-249. *Id.* His opposition argues, *inter alia*, that SCR 230(1) does not “generally contemplate the use of a camera or publication of electronic content,” and, therefore, his argument continues, “the informational issue would be appropriately handled by this Court’s first amendment analysis in contemplated physical assess as required by the *Falconi* Court.” (Oppn. filed Mar. 15, 2024 at 7:18-24.) This argument makes no sense for two reasons.

First, SCR 230(1) begins, “News reporters desiring permission to provide electronic coverage of a proceeding in the courtroom shall file a written request with the judge” Consequently, SCR 230(1) is written precisely to govern the very thing Mr. Falconi says the rule does not contemplate. Second, he seems to be suggesting that this Court should analyze his request only under *Falconi*, and ignore SCR 230(2), but the presumption of open proceedings articulated in *Falconi*

1 is an issue separate and apart from the impacts of the media’s presence to record,
2 broadcast, or transmit those proceedings.
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4 Indeed, this Court, when it signed the “Request and Order for Camera
5 Access to Court Proceedings,” did not check the box stating whether “camera
6 access to the proceedings would or would not distract participants, impair the
7 dignity of the court or otherwise materially interfere with the achievement of
8 a fair trial or hearing.” (Media Request and Order filed Feb. 29, 2024.) This
9 is the analysis that is required by SCR 230(2)(a-f) and is addressed in section
10 2(B) in the legal argument below.
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14 **2. LAW & ARGUMENT**

15 **A. This is precisely the kind of case the *Falconi* Court had in mind when it**
16 **said, “the closure of various family law proceedings can and will be**
17 **warranted in various instances.”**

18 Mr. Falconi does not address, head on, the overriding interests that will be
19 prejudiced by an open hearing as asserted by Ms. ██████ in her Motion. Instead,
20 Mr. Falconi baldly asserts that freedom of the press trumps the Constitutional
21 interests of parents and children with little real analysis of the specific
22 extraordinary circumstances stated in Ms. ██████ motion. The *Falconi* Court
23 acknowledged, “the closure of various family law proceedings can and will be
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1 warranted in various instances.” *Falconi v. Eighth Jud. Dist. Ct. in & for Cnty. of*
2 *Clark*, 140 Nev. Adv. Op. 8, 543 P.3d 92, 99 (2024). The Court emphasized cases
3 in which “extraordinary circumstances” are present would qualify for such
4 protections under the balancing test articulated there. *Id.* Ms. [REDACTED] has asserted
5 just such extraordinary circumstances in as much detail as may be offered without
6 jeopardizing the very interests over which she is asserting protection.
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10 Mr. Falconi argued, “[t]he *mere* observation of the proceedings is not
11 interfering with the parent’s custody and control of their children.” (Oppn. filed
12 Mar. 15, 2024 at 4:6-7 (emphasis added).) However, that was hardly the only
13 concern raised by Mr. [REDACTED] and we are not talking about “*mere* observation,” are
14 we? We are talking about Mr. Falconi making a video record of the entire
15 proceeding that he will post to a publicly available website to be viewed potentially
16 in perpetuity. His assurances of protections are unavailing, it is not at all difficult
17 for a party, or persons known to the parties or their children, to identify the
18 litigants whose hearings and trials he posts to his website, and that brings us to the
19 next argument.
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1 **B. The Court must undertake the analysis in SCR 230(2)(a-f) and “make**
2 **particularized findings on the record when determining whether**
3 **electronic coverage will be allowed at the proceeding in whole or in**
4 **part.”**

5 The Nevada Supreme Court Rules on Electronic Coverage of Court
6 Proceedings, Rule 230(2) provides:

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8 Under these rules, there is a presumption that all courtroom proceedings
9 that are open to the public are subject to electronic coverage. A judge
10 shall make particularized findings on the record when determining
11 whether electronic coverage will be allowed at a proceeding, in whole
12 or in part. Specifically, the judge shall consider the following factors:
13 (a) The impact of coverage upon the right of any party to a fair trial;
14 (b) The impact of coverage upon the right of privacy of any party or
15 witness;
16 (c) The impact of coverage upon the safety and well-being of any party,
17 witness or juror;
18 (d) The likelihood that coverage would distract participants or would
19 detract from the dignity of the proceedings;
20 (e) The adequacy of the physical facilities of the court for coverage;
21 and
22 (f) Any other factor affecting the fair administration of justice.

23 These factors are analyzed in the context of the facts presented in Ms.
24 [REDACTED] s underlying motion to support her request to close the hearing. A
25 review of case law in Nevada reveals little case law apply facts of any
26 particular case to these factors.

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1 **(a) The impact of coverage upon the right of any party to a fair trial**

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3 The presence of the press in a custody case involving custody evaluations
4 and a Child Protective Services investigation may shroud the truth, not reveal it.

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6 First, the presence of the press – particularly press that intends to post a
7 whole trial to the internet for repeated viewings – has a greater likelihood to impact
8 free testimony of witnesses. The threat of reputational harm can feel just as
9 profound as the threat of a perjury conviction. This fear of reputational harm is
10 perhaps never greater—in a civil context—than when a parent or child are
11 addressing publicly available allegations of abuse or neglect upon a child. Here,
12 the presence of the media can incentivize witnesses to restrain their testimony and
13 as a means of reputational protection. This incentive impacts both the parties’ and
14 their children’s rights to a fair trial and does disservice to finding the truth in
15 discovery the best interest of minor children.

16
17 Not only does the presence of the media negatively impact a witness’s or
18 party’s ability to testify regarding sensitive matters, but it also challenges the
19 attorney’s ability to raise evidence necessary to a fair trial. The Supreme Court of
20 Ohio contemplated this issue in the case *In re T.R.*, 52 Ohio 3d 6, 556 N.E.2d 439,
21 *cert. denied sub nom Dispatch Printing Co v. Solove*, 498 U.S. 958, 111 S. Ct. 386,
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1 112 L.E.2d 396), which involved a highly publicized custody battle where
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3 reporters were present in the courtroom. *Id.* at 8, 443.

4 There, the child’s counsel and guardian ad litem explained they were in an
5
6 “untenable position” when deciding what evidence to present, as they were “forced
7
8 to weigh the psychological harm to [the child] posed by the disclosure of evidence
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10 against the value of evidence needed to support her case.” *Id.* The Supreme Court
11
12 of Ohio understood counsel’s predicament, holding the following:

13 [C]oncern for the effect on [the child] would burden a
14 lawyer’s conscience as he questions the witness. A lawyer
15 should be free of such extraneous conflicts of interest. . .
16 When the guardian must make strategic trial decisions
17 based upon the potential psychological harm to his ward
18 caused by the presence of the public, the fairness of the
19 adjudication is endangered. *Id.* at 52 Ohio 20, 556 N.E.2d
20 453.’

21 Therefore, this dual concern of an attorney—to protect the psychological health
22
23 of minor children in as well as zealously advocate for his or her client—further
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25 threatens the fairness of a trial.

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27 **(b) The impact of coverage upon the right of privacy of any party or**
28 **witness**

 The details of a child custody evaluations and Child Protective Services
investigations into allegations of harm to a child should not be made available to

1 the press. NRS 432B.280(1) states that except where otherwise required in a
2 court proceeding, “information maintained by an agency which provides child
3 welfare services, including, without limitation, reports and investigations made
4 pursuant to this chapter, is confidential.” This statutory language demonstrates a
5 strong policy interest in prohibiting the dissemination of information unearthed by
6 a Child Protective Services investigation except where absolutely necessary. In this
7 instance, while it is necessary for the finder of fact to have all information
8 pertaining to a child’s safety and best interests in determining custody, it is not
9 necessary for the press to have access to that same information. Public
10 dissemination of such sensitive information does not have any benefit to the public,
11 it merely pours salt in the wound for the family allegedly impacted by violence,
12 abuse, or neglect. Therefore, this Court should find that the parties have an
13 overwhelming interest in keeping trial testimony, exhibits, documents, and other
14 proceedings pertaining to child custody evaluations and Child Protective Services
15 investigations private.

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23 **(c) The impact of coverage upon the safety and well-being of any party,
24 witness, or juror**

25 The presence of the press may negatively affect—or even psychologically
26 harm—the minor child. Continued publicity could expose a child to negative

1 allegations about their parents, as well as provide the child’s peers, classmates,
2 friends, bullies, teachers, and/or other members of their community with highly
3 sensitive information about the most intimate and vulnerable details about the
4 child’s life.
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7 Moreover, press coverage of abuse allegations can expose parents and children
8 to unsafe conditions. The risks are present whether a party is a proponent or a
9 defender of the allegations. The potential reputational stains arising from being
10 labeled a “child abuse accuser” or an “accused child abuser,” may never be
11 overcome and are subject to perpetuation. Additionally, in some highly publicized
12 proceedings, some parents can reasonably fear vigilante harassment from strangers
13 who witnessed the press’s reporting of a trial.
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17 Additionally, this particular method of publication gives potential predators a
18 virtual road map to children. Therefore, this Court should deny this request.
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20 **(d) The likelihood that coverage would distract participants or would**
21 **detract from the dignity of the proceedings**

22 In private, child custody matters, the knowledge of a video camera recording
23 for the purpose of posting your trial to the internet is certainly a distraction for the
24 participants who are not accustomed to being so recorded are thinking about what
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1 their family, friends, or strangers will comment about their testimony. Detraction
2 from dignity of the proceedings is probably less a concern in this instance.
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4 **(e) The adequacy of the physical facilities of the court for coverage; and**

5 This does not appear to be a concern in this particular instance.
6

7 **(f) Any other factor affecting the fair administration of justice.**

8
9 Abuse can hold a lifelong grip over a victim. Allegations of abuse may hold
10 a lifelong grip over the accused. This Court should not strengthen that grip by
11 allowing the press to publicly disseminate otherwise confidential information about
12 allegations of abuse on a child. Already, children become subjected to lengthy,
13 confusing, and sometimes traumatizing family court and custody proceedings
14 through no wrongdoing of their own. Now, they seek an even further loss of
15 control over who has access to the most sensitive, vulnerable, and painful periods
16 of their young lives. This Court should protect the children's privacy and interests
17 in self-determination and hold that the press may not be present for court
18 proceedings involving high-conflict custody disputes, which may or may not
19 additionally include child custody evaluations and the presentation of
20 investigations by Child Protective Services.
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1 It is additionally worthwhile to question the applicability of cases like
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3 *Richmond Newspapers*, 448 US 525, 573 (1980) to Mr. Falconi’s practice no
4 matter how mightily he may strive to employ various protections. It seems
5 unlikely that the wholesale reproduction of a trial to the internet is what
6 Burger Court had in mind in 1980 when it recognized the media operating as
7 a surrogate for public attendance in court proceedings.
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10 **C. Children’s Lack of Representation in the Matter.**

11 The privacy rights of children are implicated by these decisions, but yet the
12 children themselves have no representation in these proceedings, this forms yet
13 another compelling circumstance and overriding interest that the Court may
14 consider to close the hearing and deny the media request.
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1 **3. CONCLUSION**

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3 Based on the foregoing, Plaintiff [REDACTED] respectfully requests the
4 Court RECONSIDER and DENY the Media Request and Order filed on February
5 29, 2024 and ORDER the hearing be CLOSED and all records SEALED, except as
6 otherwise provided by NRS 125.110.
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8 DATED this 22nd day of March, 2024.
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10 HUTCHISON & STEFFEN, PLLC

11 */s/ Shannon R. Wilson*

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