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ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

[REDACTED])
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 Plaintiff,)
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 v.)
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 [REDACTED])
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 Defendant.)
 _____)

CASE NO. D-21-[REDACTED]-D
DEPT NO. Q

ORDER RE: MEDIA REQUEST AND ORDER

This matter comes before the Court on Plaintiff’s Motion for Reconsideration of Media Request and Order Filed February 29, 2024 and for a Closed Hearing (Mar. 14, 2024) (hereinafter “Plaintiff’s Motion”), and the Opposition to Motion for Reconsideration of Order Granting Camera Access and for a Closed Hearing (Mar. 15, 2024) (hereinafter “Opposition”) filed on behalf of Our Nevada Judges, Inc. The Court also reviewed Plaintiff’s Reply in Support of Her Motion for Reconsideration of Media Request and Order Filed February 29, 2024 and for Closed Hearing (Mar. 22, 2024). Plaintiff’s Motion is scheduled for a hearing on the Court’s April 19, 2024 Chamber Calendar.

The parties previously appeared before the Court on February 29, 2024 for an evidentiary hearing on Defendant’s Motion to Modify Child Custody, Motion for an

1 Order to Enforce and/or Order to Show Cause Regarding Decree of Divorce; for
2 Issuance of a Behavior Order; for an Injunction Against Harassment for Attorneys' Fees
3 and Costs; and for Related Relief (Nov. 30, 2022) (hereinafter "Defendant's Motion"),
4 and Plaintiff's Opposition to Defendant's Motion and Countermotion for Primary
5 Physical Custody of Minor Children, for Attorney's Fees and Costs, and for Such Other
6 Relief as the Court Deems Just and Proper (Dec. 27, 2022) (hereinafter "Plaintiff's
7 Countermotion").¹

9 On February 17, 2024, Alex Falconi of Our Nevada Judges, Inc. submitted a
10 "Media Request and Order for Camera Access to Court Proceedings" (hereinafter
11 "Media Request").² At the hearing, the Court noted the public nature of these
12 proceedings and the importance of transparency. Plaintiff, [REDACTED]
13 represented that she became aware of the Media Request earlier in the week preceding
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16 ¹The evidentiary hearing date was delayed by several stipulations entered into by the
17 parties. This included a stipulation by the parties to pursue a custody evaluation pursuant to
18 NRCPC 16.22. *See* Stipulation & Order for Custody Evaluation (Apr. 7, 2023). At the initial
19 hearing on Defendant's Motion on January 11, 2023, a return hearing regarding an outsourced
20 evaluation was scheduled for April 17, 2023. The Stipulation and Order Continuing Hearing
21 (Apr. 13, 2023) continued the status check hearing to August 7, 2023. The Stipulation and
22 Order Re: CPS Records and Continuing Status Check Hearing (Aug. 7, 2023) continued the
23 status check hearing to September 11, 2023. At the September 11, 2023 hearing, the parties
24 represented that they were engaged in settlement discussions and requested a continuance of
25 the hearing. At the continued hearing on October 4, 2023, the evidentiary hearing was
26 scheduled.

27 ²The Media Request is an ex-parte request as there is nothing filed *in the record* that
imparts notice to the parties of such a request. At the hearing, Mr. Falconi explained the
process for procuring media access, which inherently includes the submission of a such a
request in this manner. Regardless of the process, there does not appear to be a dispute that
a party involved in the litigation has the right to address the request as a matter of due process.
A separate Motion to Unseal (Feb. 23, 2024) was subsequently filed and was scheduled for a
hearing on April 5, 2024. The Motion to Unseal (Feb. 23, 2024) references that a "camera
access request is pending." Based on the clarification offered by the Court on February 29,
2024, the Motion to Unseal (Feb. 23, 2024) was withdrawn.

1 the evidentiary hearing and opposed the request. Defendant, [REDACTED]
2 represented that he was aware of the Media Request earlier and did not oppose the
3 request. Notwithstanding an established protocol and procedure for the Media
4 Request, all parties involved should have the opportunity to address the request, which
5 necessarily delays this matter.³

7 The focus of [REDACTED] and [REDACTED] Countermotion is the care and custody
8 of the parties' two children, namely [REDACTED] (hereinafter [REDACTED]), born November
9 21, 2019, and [REDACTED] born May 30, 2022.⁴ Pursuant to
10 *Falconi v. Eighth Judicial District Court*, 140 Nev. Adv. Op. 8 (Feb. 15, 2024), "the public
11 has a constitutional right of access to court proceedings." The Supreme Court of
12 Nevada concluded:

14 NRS 125.080, EDCR 5.207, and EDCR 5.212 violate the constitutional
15 right to access court proceedings. Family law proceedings are
16 presumptively open, as they have been traditionally open across the
country and the openness of the proceedings plays a significant role in the

17 [REDACTED] expressed his sincere concerns about any further delay in finalizing this matter.
18 Both parties were prepared to proceed, and [REDACTED] noted that he had witnesses ready to testify
19 who traveled from outside the State of Nevada. While sympathetic to the delay caused by the
20 Media Request, *the Court emphasizes the need for transparency and the ability of all parties involved
to participate in this process in due course.* [REDACTED] is entitled to respond to the request (and the
Court's approval of the same).

21 ⁴Although references to children routinely use the initials of the subject children, such
22 generally is not the practice during testimony in civil litigation involving children. The instant
23 litigation is about [REDACTED] and [REDACTED] – *and not Z.G.(1) and Z.G (2)*. (The Court declines the
24 invitation to treat the parties' children as part of Dr. Seuss production ("Thing 1" and "Thing
25 2"). Rather, for the parties and the children, these matters are deeply personal and beyond
26 such impersonal and indifferent identifiers.) Although on a personal level the undersigned
27 prefers to shield the children from public disclosure, this is neither reasonable nor practical
based on the Nevada Supreme Court's recent directives. The Court would not expect the
parties to use "code" language during the evidentiary hearing when discussing their relationship
with their children – nor is the Court inclined to do so. As noted in the Opposition, the Court
expects Our Nevada Judges, Inc. to continue to act responsibly in this regard.

1 functioning of the family court. Because NRS 125.080, EDCR 5.207, and
2 EDCR 5.212 preclude the district court's exercise of discretion in closing
3 proceedings, they are not narrowly tailored to serve a compelling interest.
4 Thus, we hold that NRS 125.080, EDCR 5.207, and EDCR 5.212 are
unconstitutional to the extent they permit closed court proceedings
without the exercise of judicial discretion.

5 *Falconi* at 15.

6 As noted in the Opposition, NRS 125.110(2) does not offer a "lawful basis for
7 closing divorce hearings to the press." [REDACTED] Motion fails to identify a sufficient legal
8 basis that warrant's the Court restricting public access to this proceeding or that
9 supercedes the "critical importance of the public's access to the courts." The Court
10 recognizes that the testimony likely to be offered at the evidentiary hearing will include
11 specific references to counseling for the children, as well as [REDACTED] and [REDACTED]'s mental
12 health. For those with experience in the civil-domestic arena, however, discussion of
13 parents' and a child's mental health routinely (and oftentimes necessarily) is woven into
14 the fabric of contested custody litigation – whether offered by a licensed professional
15 or lay witnesses (frequently the child's parents). Indeed, a case that includes a "best
16 interest" child custody analysis (*i.e.*, any initial custody decision and many modification
17 proceedings), *requires* that the Court consider the "mental and physical health of the
18 parents," and the "physical, developmental and emotional needs of the child." NRS
19 125C.0035(4)(f) and (g). Because these mental health considerations are prevalent in
20 most custody cases and are discussed throughout an evidentiary hearing, restrictions on
21 media access to testimony are neither practical nor realistic.⁵
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26 ⁵The reality that, even limiting access to mental health records, testimony regarding the
27 children's mental and emotional well-being will be broadcast and potentially accessed by

1 Because NRS 125.080, 125.110, EDCR 5.207, and EDCR 5.212 offer no judicial
2 discretion, there is not a sufficient statutory or rule basis to close the hearing.⁶
3 Nevertheless, Leanne and Our Nevada Judges, Inc. both acknowledged that the Rules
4 Governing Sealing and Redacting Court Records provide limitations to access certain
5 information. Specifically, SRCR 2(6) provides that:

7 “Restricted personal information” includes a person's social security
8 number, driver's license or identification card number, telephone numbers,
9 financial account numbers, personal identification numbers (PINs), and
10 credit card or debit card account numbers, in combination with any
11 required security code, access code, or password that would permit access
12 to a person's financial account(s). The term does not include the last four
13 digits of a social security number or publicly available information that is
14 lawfully made available to the general public.⁷

15 friends and acquaintances of the children should frighten any parent from having matters
16 decided in a court of law.

17 ⁶It is not lost on the Court that a much different result would arise had this matter been
18 initiated as a petition to establish paternity under Chapter 126. Pursuant to NRS 126.111
19 (which has not been declared unconstitutional — *yet*), the “public *shall be barred* from the
20 hearing.” The statute does not require that a party request such a closure. Thus, if an action
21 is initiated as a paternity action under Chapter 126 (*which frequently includes requests for custodial
22 relief*), the hearing is automatically closed by statute. Expressed differently, █████ and █████
23 would have been offered greater privacy had their parents never married and chosen to file a
24 petition to establish paternity. As absurd as this may sound, it would have been better for
25 █████ not to marry and have children if she desired to protect her children’s privacy. Such
26 is the state of Nevada law. Chapter 126 was enacted at a time when social stigmas existed
27 regarding children born “out-of-wedlock.” Today, the majority of custody disputes arise from
unwed parties. Over the years, courts have accepted “custody complaints” as a matter of
practice — *although such a statutory cause of action does not appear to exist*. As of today, an
individual who desires to preserve his/her privacy from the government and the public is better
served not marrying and initiating any custody dispute through a petition to establish
paternity.

⁷SRCR 3(4) deals with written records that are part of the Court’s record. SRCR 3(4)
provides as follows:

4. Grounds to seal or redact; written findings required. The court
may order the court files and records, or any part thereof, in a civil action to be
sealed or redacted, provided the court makes and enters written findings that
the specific sealing or redaction is justified by identified compelling privacy or
safety interests that outweigh the public interest in access to the court record.

1 Although the foregoing authority permits the Court to restrict access to specific
2 documents that are offered and admitted into the record, such restrictions do not rise
3 to a *carte blanche* denial of access to the proceedings. As noted earlier, many custody
4 proceedings necessarily include sensitive discussions of mental health and the emotional
5 well-being of children. Apart from restricting access to specific mental health records,
6 however, the Nevada Supreme Court has made it clear that this is not a basis to close
7 the hearing — regardless of the consequences to the children outside these proceedings.
8 After all (for some — *particularly for those who have neither experienced nor practiced in the civil-*
9 *domestic arena*), this is just another civil case.⁸

12 The parties' agreement alone does not constitute a sufficient basis for the court
13 to seal or redact court records. The public interest in privacy or safety interests
14 that outweigh the public interest in open court records include findings that:

14 (a) The sealing or redaction is permitted or required by
15 federal or state law;

15 (b) The sealing or redaction furthers an order entered under
16 NRCF 12(f) or JCRCF 12(f) or a protective order entered under NRCF
17 26(c) or JCRCF 26(c);

17 (c) The sealing or redaction furthers an order entered in
18 accordance with federal or state laws that serve to protect the public
19 health and safety;

18 (d) The redaction includes only restricted personal
19 information contained in the court record;

19 (e) The sealing or redaction is of the confidential terms of a
20 settlement agreement of the parties;

20 (f) The sealing or redaction includes medical, mental health,
21 or tax records;

21 (g) The sealing or redaction is necessary to protect intellectual
22 proprietary or property interests such as trade secrets as defined in NRS
23 600A.030(5); or

23 (h) The sealing or redaction is justified or required by another
24 identified compelling circumstance.

24 ⁸On a personal level, the undersigned appreciates and understands ██████ desire to
25 shield the parties' children from what she perceives as a public spectacle and an intrusion into
26 the children's privacy. Similarly on a personal level, the Court understands her argument that
27 such access arguably is deleterious to the children's best interests. Personal feelings, however,
must necessarily be set aside. Despite appellate proclamations that a child's best interest is

1 Based on the foregoing, and good cause appearing therefor,

2 It is hereby ORDERED that the information specified in SRCR 2(6) shall not be
3 published or broadcast as set forth herein. Specifically, it is further ORDERED that the
4 following information shall not be published or broadcast: a person's social security
5 number, driver's license or identification card number, telephone numbers, financial
6 account numbers, personal identification numbers (PINs), and credit card or debit card
7 account numbers, in combination with any required security code, access code, or
8 password that would permit access to a person's financial account(s). It is further
9 ORDERED that the child custody evaluation and any mental health records of the
10 parties and the children shall not be published or broadcast.
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13 It is further ORDERED that, in all other respects, [REDACTED] Motion is DENIED.

14 It is further ORDERED that the hearing scheduled for April 19, 2024 is
15 VACATED.

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A handwritten signature in black ink, appearing to be 'J. D. [unclear]', is written over a horizontal line. The signature is stylized and somewhat cursive.

25 "the polestar" and the "sole consideration," the reality is that appellate decisions routinely
26 place a child's best interest secondary to other interests (including paramount deference to the
27 rights of parents and access by the press). Thus, the notion that a child's best interest is "the
polestar" of all district court decisions is, at times, illusory.