

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman

ALEXANDER M. FALCONI,
Appellant,
vs.

Sup. Ct. Case No. 57516
Case No. FV08-03200
Dept. 11

ANN
Respondent.

CERTIFIED COPIES

VOLUME 3 OF 4

RECORD ON APPEAL

FV08-03200_MINUTES_VOL3

ALEXANDER FALCONI

ANN

APPELLANT

RESPONDENT

CASE NO. FV08-03200

TITLE: ALEXANDER M. FALCONI v. [REDACTED] A. [REDACTED]**DATE, JUDGE
OFFICERS OF
COURT PRESENT****APPEARANCES - HEARING**

02-10-2009

**HONORABLE
CHUCK WELLER****DEPT. 11****J. STODDARD
Court Clerk****CD RECORD****BAILIFF
NORA TURNER**

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SETTLEMENT CONFERENCE

Plaintiff ALEXANDER M. FALCONI was present IN PRO PER. Defendant [REDACTED] A. [REDACTED] was present with counsel KATHRINE BERNING, ESQ.

Discussions held off the record.

Court recited the parties' agreement: **Father is taking a parenting class at the Children's Cabinet on March 19, 2009. The parties agree to return to mediation on March 13, 2009 at 9:30 a.m. to continue working on the issues of custody and visitation. The parties agree that some issues have not been able to be resolved by the Court today because the parties made different representations; therefore, each party is authorized to tape record their conversations with the other so there will not be any further disputes. Father is in arrears on his child support, however his ongoing obligation is suspended with Mother's acquiescence. Father will pay his child support arrears within 30 days. Father will file an updated financial declaration with the Court and provide a copy of same to Mother within 30 days of securing employment. Father will pay to Mother the amount of \$75.64 per month that is one-half of the child's medical insurance premium. With respect to Mother's psychological records and mental health records at West Hills Hospital the parties agree that an *in camera* review of those records will occur and that Mother will sign the appropriate releases of information in this regard. Father will pay any costs associated with the production of those records. Following the Court's receipt and review of the records, the Court will determine whether a telephone conference or hearing will be held.**

Father said he agrees with what was recited. Atty Berning further recited the parties' agreement: **In reference to Mother's settlement statement, the parties agree to paragraphs 1, 2, 3 and 6. As to paragraph 5, the parties agree to Father's modification, that the parent missing the phone call is responsible for calling back the other parent after one attempt.**

Father said that recitation is correct. Atty Berning stated Father has moved and it would put Mother's mind at ease to know whether he's sharing the home with others. Father said he lives in a 3bdrm house; he hasn't moved from his other residence just yet, but he'll be filing a change of address today. **The parties further agree that Paragraph 7 is amended to reflect Thanksgiving Day and Halloween rather than Sunday to Monday. The parties agree with paragraph 8.**

COURT ORDERED: The Court affirms the parties' agreement as recited on the record as the Order of the Court.

Parties served with mediation order at conclusion of hearing.

Atty Berning to prepare order. Review hearing set.

CASE NO. FV08-03200 **TITLE: ALEXANDER M. FALCONI v. [REDACTED] A. [REDACTED]**

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

APPEARANCES - HEARING

REVIEW HEARING

04-20-2009

Plaintiff ALEXANDER M. FALCONI was present IN PRO PER. Defendant [REDACTED] A. [REDACTED] was present with counsel KATHRINE BERNING, ESQ. *The parties were sworn.*

**HONORABLE
CHUCK WELLER**

The Court invited preliminary discussions. Atty Berning said it's her belief that today's hearing is with respect to an *in camera* review of Mother's mental health records and whether they will impact custody and visitation. Father said that's true; he would like joint physical custody and for the Court to apply *Wright v. Osburn*; he has the child four days per week and overnights.

DEPT. 11

**J. STODDARD
Court Clerk**

Atty Berning stated a proposed order was prepared and Father objected to it, and that Father said he didn't agree to provide contact information for the babysitter. *The Court inquired of Father.* Father stated that in his initial papers he asked for joint physical custody. Atty Berning stated her agreement and that joint physical custody wasn't addressed at the last hearing; that issue is open for discussion.

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**BAILIFF
MICHAEL MALLOY**

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Father said he'd like to keep the arrangement as-is, but with joint physical custody. He would prefer his son isn't woken up in the middle of the night for exchanges. Atty Berning said it's not exactly a 50/50 custody situation. The issue concerning who is the primary physical custodian goes to more than the percentage of time; there are issues regarding Father's performance and he's been late for drop-offs that resulted in Mother's work being jeopardized; Mother has a letter from her employer. Atty Berning represented this goes to Father's ability to parent his child and to allow access to Mother pursuant to NRS 125.480, that the parent who is willing to give liberal access to the child should be the primary custodian. Atty Berning stated that Mother is willing to implement the order as-is, but she should be named the primary physical custodian.

Father said he's returned every phone call Mother has made and that sometimes she's called at 8:00pm when the child is asleep. As for being late to visitation, he was late one time; he volunteers with the police academy and that was his fault; he hasn't been late for any other time except when Mother was claiming time as vacation. Father lives 30 minutes from Mother's work and Mother waited two hours later to call him, and she did this to create a situation that made it appear he's not a good father. Father said he has the best intentions to pick-up his son; all Mother needs to do is call him and he's there.

Atty Berning requested that the Court consider that the parties were allowed to email one another, but that Father waited to go through Mother's attorney to provide his new address and that this doesn't go to Father's cooperation; there are also other issues of concern, that Father had had three separate residences in the past three months, three different babysitters since December, that he shares a room with the child, that he takes a gun with him when he goes to an exchange, that Father said in mediation he would keep continuity and use Mother's babysitter, that he hasn't been appropriately dressing the child for the weather, and that even though he's involved as a volunteer with the police academy it's extremely inappropriate to bring a gun to exchanges because it constitutes potential danger; Atty Berning isn't aware of whether Father has a concealed weapons carry permit.

Mother addressed the Court, that Father has had a gun for a while and he only recently showed up with the gun at exchanges; he's made comments about "taking out" or "taking down" people. The program he's involved with is for public relations; he only recently started carrying the gun.

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MICHAEL MALLOY

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REVIEW HEARING

Atty Berning said that with joint physical custody there should be some cooperation between the parents and clearly that's not happening in this case; if the Court ordered joint physical custody this couple may have locked horns for the next 16 hears. *The Court inquired, if the parties are in agreement with the visitation schedule then what is the difference of what term is used.* Atty Berning stated that while looking at the requisite factors, there's a certain amount of cooperation that's required between the parties and Father hasn't been responsible to be a joint custodian. Atty Berning represented that Mother would always give visitation to Father and that she'd never play game with him; what Father has done is the reverse, he's put Mother at odds, he's abused visitation by not showing up on time or at all, and he uses it as a way to harass Mother. Atty Berning stated she believes Mother should be the primary physical custodian.

RECESS for Atty Berning to speak with her client. Back on the record. Atty Berning said that because of the nature of the relationship and with Mother being the primary physical custodian of her child, it would be Mother's honor and based upon Father's performance and actions he doesn't deserve to be the primary custodian. Atty Berning represented that although this doesn't fit any legal criteria, it's brought before the Court to consider the cooperation between the parties; Atty Berning is aware there is no other legal argument.

Father said he'd like this resolved today, but per their mediation there hasn't been cooperation and it hasn't been because of him. Father said he knows Mother is concerned about the attempted suicides, but he's prepared to go to trial if necessary; it's important to him to be a huge part of his son's life and he cannot help Mother. Father represented that the volunteer program is not public relations, but it's with the Sheriff's office, and Reno and Sparks Police Departments. Father went to domestic violence classes because he wanted to become an advocate, not because he wants to hurt Mother. Father stated the issue regarding the handgun is over now because he has a permit. *The Court inquired of Father, why would he do a provocative thing such as showing his handgun to Mother at the exchanges.* Father said he didn't have a permit at that time so he didn't have the gun concealed, but he has the permit now and he won't show it; he carried the gun because of where they did the exchanges and also for his own safety around Mother. Father said Mother's statements that the child doesn't have on the right clothes are untrue. Father represented that the babysitters complained when Mother called because she was rude and harsh. The Court Order said he was to tell Mother who is the babysitter, not where he's living. *The Court addressed Father, that it's insensitive to display a handgun at Wendy's to Mother who has applied for a protection order.* Father replied that it's his right to carry a handgun and he disagrees with the Court. Father is 25yo; he's owned the firearm since right after the TPO expired in approximately late January of this year.

Atty Berning represented that Mother is willing to have the Court enter an order for joint physical custody, and that Mother would like to respond to some of what Father has said. *The Court noted, the relevant case regarding custody is the Rivero case.*

Father said that in his experience of carrying the firearm on his hip has sometimes made people nervous at first, but then things are fine. He has a right under the Second Amendment to carry a firearm. *The Court addressed Father, that carrying a firearm into Wendy's on his hip indicates that he doesn't have a mature attitude toward firearms.* Father said the Court doesn't understand. *The Court suggested Father talk to someone in his volunteer program regarding what's reasonable about carrying a firearm.* Father said that is a good suggestion. Mother stated that she's currently dating a cop and she appreciates people's rights to carry a firearm, but that Father has it when they exchange their son and she had a TPO against him.

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The Court addressed Atty Berning, that with a 60/40 split Father will have primary physical custody; however if Mother requests a hearing, then one will be scheduled. The Court further stated that the issue regarding the child's clothing seems minor and could probably be resolved. Atty Berning represented that Father was late for visits and he was also a no-show. Mother said that Father hasn't notified her in advance that he'd be late or not showing. The Court inquired of Mother, of the last 16 scheduled visits how many has Father been either late or a no-show. Mother said since the last Court date he no-showed for two, he was late by 10 minutes for one, and less than 10 minutes late for three.

Father said he was no-show one time and that he's been late by maybe three minutes and on time all the rest. *The Court suggested to the parties that if Father is late to a visitation then his visitation should be suspended.* Father said if that's the order then he'd like it to be reciprocal because one time Mother didn't show up, she slept late, and she said she was stuck on the freeway. Mother stated she notified Father she was stuck on the freeway and the parties worked together that day; her oversleeping was before the last Court hearing. Atty Berning said that Mother has called the child at 7:57pm, 7:32pm, and 7:40pm, that are close to the 8:00pm end time because that's when she had time available. Mother said per the last Court order she's allowed to talk to her child before 8:00pm. Father represented that one time he called Mother back when she left a message to tell her their son was asleep and that Mother tried to argue with him. Father said he doesn't always have his phone with him. Their child goes to bed at 8pm, sometimes 9pm. Mother said that's true. *The Court inquired of Mother, whether she believes it's reasonable to call 3 minutes before the child's bedtime.* Mother replied no, but Father gives her "attitude" when she calls. Father said he'd like to eliminate the midnight visit. Mother is off of work at midnight. Mother represented that Father hasn't paid the health insurance for January and February. Father said he did pay, but he didn't bring his checkbook today; he hands the checks to Mother and she cashes them. Mother said Father owes \$45.72 and she's emailed him about it. Father said she has emailed, but her math is incorrect. Mother said Father talks negatively to her in front of the child and tells her to "get a life" and that she's "stupid." Father informed the Court that he'd file a new financial declaration.

COURT ORDERED: The Court finds that based upon an *in camera* review of Mother's psychological and mental health records that she is not a danger to the parties' minor child or to anyone else. The parties will have joint physical custody of the minor child. The visitation exchange is changed to 2:00pm at McDonald's restaurant on Plumb Lane in Reno, NV. The parties will have a five minute window within which to be late and if either party violates this order, it may be brought back to Court on a contempt motion. Mother's telephone visitation with the minor child will be between 10:00am and 7:30pm and Father will cooperate in facilitating Mother's phone calls. The Court encourages the parties to be reasonable with one another and neither party will make disparaging remarks about the other in the presence of the minor child. Father will ensure the child is dressed appropriately for the weather and return clothing to Mother as appropriate. Within 24 hours of today's hearing each party will exchange with the other their arithmetic regarding the health insurance premium to verify the amount Father owes, that Mother represented is in the amount of approximately \$45.00. Within that same 24 hour period the parties will mutually agree upon the amount and Father will pay it to Mother. If the parties are unable to mutually agree and the amount remains in dispute, then the Court may fine them \$500.00 in sanctions to be paid to the Washoe County Law Library.

Atty Berning to prepare order; Court signed Order After Hearing submitted April 15, 2009.

CASE NO. FV08-03200 **TITLE: ALEXANDER M. FALCONI v. [REDACTED] A. [REDACTED]**

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

APPEARANCES - HEARING

02-23-2010

**HONORABLE
CHUCK WELLER**

DEPT. 11

**J. STODDARD
Court Clerk**

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**BAILIFF
DAVID LEE**

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REVIEW HEARING

Plaintiff ALEXANDER FALCONI was present IN PRO PER. Defendant [REDACTED] was present with counsel KATHRINE BERNING, ESQ. *The parties were sworn.*

The Court noted, custody was determined in this case on May 26, 2009 and Father has filed a motion every two months since that time. Father responded that the first motion was for doctors' contact information and the benefits card, and the Court said he should have that information and that he couldn't get it without a motion; the other motion was regarding scheduling the doctors' appointments. The Court addressed Father, that Mother's counsel has indicated Father hasn't attempted to resolve any issues for today. Father said he sent an email to Mother prior to filing his motion for today's hearing; Father provided a copy of the email for the Court to review, a copy of which is attached to Father's motion as Exhibit 2. The Court addressed Father, that his email is rude and discusses more than what's addressed in his present motion; is there anything else Father intends to come to Court to address. Father responded, there are no other issues to be resolved today.

Father stated he'd like to participate in their child's medical appointments so he's also involved with their child. The Court inquired, has Father attempted to resolve this issue with Mother; it's not mentioned in the email. Father said he has, but that he didn't bring that email to Court. Father thinks the no contact order that's in effect is a good idea. The Court addressed Father, that Mother has advised him of the doctor appointments, but he doesn't go to them. Father stated he doesn't like going to the appointments when Mother is there because she belittles him in front of everyone including the doctors; he used to go to all of the appointments. The Court recited a portion of the October 2009 Order regarding the parties consulting one another regarding scheduling doctor appointments.

Atty Berning stated Mother has wanted to work with Father through her; Father hasn't contacted counsel by letter. Mother eventually sent the communication to counsel following Father filing the motion. Mother provided insurance card for Father in Court. Mother has notified Father about setting the appointments, but that doesn't meet what the Court wanted to occur; Atty Berning will advise her client about providing dates for Father. The Court addressed the party, that this has been going on for months and each party ignores the Court Orders. Atty Berning said that Father is involved in litigation with the State of Nevada to eliminate Mother's fictitious address; he's been provided with Mother's mailing address. The Court inquired, why hasn't there been compliance with the Order of October 2009. Mother made future appointments while at the doctor's office and then provided the dates to Father; Father won't respond to her emails. The Court recited the Order, that the parties are to consult together prior to setting appointments. The Court would like to see whatever Mother has to show her compliance with the Order.

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02-23-2010

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Atty Berning presented an email for the Court's review. *The Court reviewed the email that indicates Mother and son were sick and going to the doctor, that Father responded and thanked her for letting him know. The Court stated Mother's notification in advance shows compliance with the Order. Atty Berning suggested Mother provide dates for Father and that Father timely respond. The Court noted, per Mother's testimony she didn't attempt to do that. Atty Berning would like this to be clear to the parties. The Court mentioned Rivero and that if the parties cannot agree they should return to Court and if they're truly unable to work together on a mechanism that's been in place for six months then certain legal custody decisions may be given to one parent.*

Atty Berning said Mother is concerned that Father hasn't gone to the appointments. These parents are young and it's not even been a year for them to practice co-parenting. A more particular description by the Court would be important. But alternating the doctor visits may cause fractured health care for their son. According to Mother there are no pending appointments so this isn't an issue for today. Atty Berning added that Mother regrets not understanding the order and she wants to do what the Court would like; it's difficult to email Father with the type of response he gives.

The Court addressed Father, that it doesn't appear either parent is interested in cooperating with the Court's Order and it's charitable to say one party doesn't understand the order. Father stated he could provide to Mother the best dates he's available; he would agree to two weeks' notice of an appointment

COURT ORDERED: Mother will give 14 days' notice by email to Father of appointment dates for all non-emergency medical appointments for the child. Father will timely respond to Mother's emails and notify her of the days he's available to attend the child's medical appointments.

Atty Berning to prepare order.