

Alexander M. Falconi

Appearing in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER M FALCONI, an individual;

Petitioner,

vs.

SECRETARY OF STATE OF THE STATE
OF NEVADA,

Respondent.

Case #

59554

FILED

NOV 02 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner, Alexander M. Falconi, appearing in proper person, and hereby pursuant to NRAP 21 petitions The Second Judicial District Court for a writ of mandamus. This petition is based upon the following memorandum of points and authorities and the appendix of exhibits on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

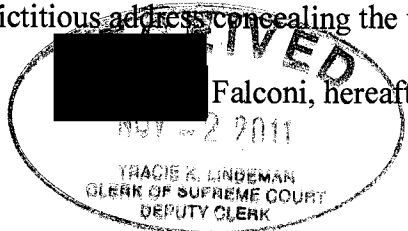
I. Persons of Interest

Alexander M. Falconi, hereafter 'FALCONI', is the natural father of [REDACTED] Falconi.

[REDACTED] Ann [REDACTED] hereafter [REDACTED] is the natural mother of [REDACTED] Falconi.

The Secretary of State of the State of Nevada, hereafter 'THE GOVERNMENT', issued a fictitious address concealing the whereabouts of [REDACTED] and [REDACTED] Falconi.

[REDACTED] Falconi, hereafter [REDACTED] is a minor child of age five (5).



II. Related Cases

FV08-03200 Falconi vs. [REDACTED] Custody and Visitation regarding [REDACTED]

FV08-03338 [REDACTED] vs. Falconi: Temporary Protective Order.

CV09-03089 Falconi vs. Sec. of State: Petition for Judicial Review.

SCN56169 Falconi vs. Sec. of State: Appeal to Supreme Court of Nevada.

III. Issues

The sole issue upon which this case hinges is whether NRS 217.462 authorizes 'THE GOVERNMENT' to issue a fictitious address to an applicant based on the mere existence of a protective order, or whether NRS 217.462(2)(a) and NRS 217.400(3) requires THE GOVERNMENT consider the substance of a protective order in search of specific evidence of domestic violence having occurred before issuing a fictitious address.

IV. Procedural History

On August 25, 2008, FALCONI sued [REDACTED] for Custody and Visitation of [REDACTED]

On September 5, 2008, [REDACTED] sued FALCONI for Temporary Protective Order.

On May 26, 2009, the Court (Case#FV08-03200) awarded physical and legal custody to FALCONI and [REDACTED] jointly.

On October 13, 2009, FALCONI filed Petition for Judicial Review against THE GOVERNMENT regarding its decision to award [REDACTED] a fictitious address.

On May 18, 2010, the Second Judicial District Court (Case#CV09-03089) dismissed FALCONI's claim on the merits.

On September 17, 2010, FALCONI appealed to The Supreme Court of the State of Nevada.

1 On September 13, 2011, The Supreme Court of the State of Nevada (Case#SCN56169)
2 affirmed the lower courts' order, albeit for a different reason. The Supreme Court affirmed on
3 the grounds that Petition for Judicial Review was not the proper vehicle to contest THE
4 GOVERNMENT's issuance of a fictitious address. Exhibit 3.

5 **V. Factual Background**

6 In 2005, FALCONI and [REDACTED] entered into a dating relationship.

7
8 On April 7, 2007, [REDACTED] tried to kill herself. FALCONI intervened to save her life. A
9 police report on file is attached hereto as Exhibit 1. A second police report regarding a separate
10 incident on file is attached hereto as Exhibit 2.

11 Soon after [REDACTED] attempted suicide. [REDACTED] and FALCONI's dating relationship
12 dissolved. A bitter custody battle (FV08-03200) ensued and continues to date.
13

14 On or around August 26, 2009, [REDACTED] filed an application for a fictitious address.
15 Exhibit 4. THE GOVERNMENT granted [REDACTED] application.
16

17 **VI. Argument in Support of Mandamus**

18 **1. Appellate Forum is Appropriate for Purely Legal Questions**

19 Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601 604, 637 P. 2d 534
20 (Exhibit 18) discussed:

21 As we have repeatedly noted, an appellate court is not an appropriate forum in
22 which to resolve disputed questions of fact. E.g., Sheriff v. Provenza, 97 Nev.
23 346, 630 P.2d 265 (1981); Buchanan v. Buchanan, 90 Nev. 209, 523 P.2d 1
24 (1974). When disputed factual issues are critical in demonstrating the
25 propriety of a writ of mandamus, the writ should be sought in the district
26 court, with appeal from an adverse judgment to this court. NRS 34.160;
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1 34.220; 34.310. The discretion of this court to entertain a petition for a writ of
2 mandamus when important public interests are involved, State ex rel. List v.
3 County of Douglas, 90 Nev. 272, 524 P.2d 1271 (1974), **will not be exercised**
4 **unless legal, rather than factual**, issues are presented. (emphasis added)

5 THE GOVERNMENT has maintained its position throughout CV09-03089 and SCN56169 that
6 the mere issuance of a protective order is sufficient to grant a fictitious address to [REDACTED] The
7 record aside, NRS 217.462(4) limits THE GOVERNMENT's review to the application filed and
8 the time before its filing. This required application provided by [REDACTED] was disclosed by THE
9 GOVERNMENT (Exhibit 4). Reviewing the application reveals [REDACTED] attached a Protective
10 Order issued in FV080-03338. FALCONI agrees the Exhibit and Protective Order are genuine.
11 Therefore, all material facts are in agreement. All that remains are the questions of law which
12 will be addressed below. Furthermore, this matter has already come before the district court and
13 was dismissed on the merits. Even though appeal to the Supreme Court lead to affirmance, it was
14 for an entirely different reason (Exhibit 3). Returning to the district court over the same question
15 of law would be redundant. Finally, as there is no case law on the fictitious address program to
16 date, there is an absence of guidance.

20 2. Extraordinary Writ

21 State ex rel. Masto v. SECOND JUDICIAL DIST. CT., 125 Nev. Adv. Op. 5 Pg. 6, 199
22 P. 3d 828 (Exhibit 11) discusses:

23 "A writ of mandamus is available to compel the performance of an act that
24 the law requires or to control a manifest abuse of discretion. See NRS
25 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637
26 P.2d 534, 536 (1981)."
27
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1 NRS 217.462 authorizes THE GOVERNMENT to issue fictitious addresses to victims of
2 domestic violence. FALCONI holds THE GOVERNMENT abused its discretion in issuing a
3 fictitious address to [REDACTED] because it failed to abide by the requirements of NRS
4 217.462(2)(a), which requires “specific evidence showing that the adult...has been a victim of
5 domestic violence...before the filing of the application”.

7 **3. Exploring Alternative Vehicles**

8 State ex rel. Masto v. SECOND JUDICIAL DIST. CT., 125 Nev. Adv. Op. 5 Pg. 6, 199
9 P. 3d 828 (Exhibit 11) further discusses:

10 Mandamus, moreover, is an extraordinary remedy, and the decision to
11 entertain such a petition is addressed solely to our discretion. See Poulos
12 v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). In
13 general, a writ may issue only when petitioner has no plain, adequate, and
14 speedy legal remedy, such as an appeal. NRS 34.170

15
16 Thus, in considering this writ petition, FALCONI has sought out any possible alternative vehicle.
17 Initially, FALCONI questioned whether or not to appeal the entry of the restraining order against
18 him in FV08-03338. The Court granted [REDACTED] request for a restraining order not on any
19 specific evidence that domestic violence had occurred, but rather, purely on [REDACTED]
20 allegations and speculations that domestic violence might possibly one day occur; allegations
21 which FALCONI vehemently denied. However, the requirements of issuing a protective order
22 are stated in NRS 33.020(1), and these orders may be granted “when there exists a threat of
23 domestic violence”. For this reason, specific evidence that domestic violence has occurred is not
24 required.
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1 A second possibility might be to rely on the authority of the district court in FV08-03200.
2 Surely, if [REDACTED] allegations that FALCONI is a perpetrator of domestic violence, so vicious
3 and dangerous that she need to conceal her address from him, NRS 125C.230 would bar him
4 from physical custody of [REDACTED]. One might thus presume that FALCONI, having been awarded
5 physical custody of [REDACTED] would be able to seek remedy by means of a motion in FV08-03200.
6 The unfortunate truth however, is that NRS 217.462 is entirely an extrajudicial procedure.
7 [REDACTED] filed an application, which was considered ex-parte by THE GOVERNMENT. The
8 district court in FV08-03200 lacks both authority and jurisdiction over what THE
9 GOVERNMENT does or does not do pursuant to NRS 217.462. A separate complaint seeking
10 declaratory relief would largely fail on this same principle.
11

12 Finally, there is the NRS 233B Petition for Judicial Review. FALCONI attempted this in
13 CV09-03089, and THE GOVERNMENT maintained a position that pursuant to NRS 233B.032,
14 the issuing of a fictitious address under NRS 217.462 was not a "contested hearing". THE
15 GOVERNMENT reinforced this defense with its citation of Citizens For Honest & Responsible
16 Government v. Secretary of State 116 Nev. 939, 11 P.3d 121 (Exhibit 12). The Supreme Court of
17 Nevada in SCN56169 acting on FALCONI's appeal from CV09-03089 agreed with THE
18 GOVERNMENT's 'lack of jurisdiction' argument and affirmed the district court's decision,
19 albeit for that different reason.
20

21 This leaves THE GOVERNMENT free to issuing fictitious addresses regardless of the
22 requirements of NRS 217.462. For this reason, FALCONI holds a Petition for Writ of
23 Mandamus his only possible remedy.
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4. A Fundamental Liberty Interest

The Nevada Supreme Court acknowledges the "fundamental liberty interest" between parents and their children in Champagne v. WELFARE DIV. OF NEV. STATE DEPT., 100 Nev. 640 647, 691 P. 2d 849 (Exhibit 13), where it discussed:

The jurisdictional aspect of termination proceedings focuses on the "fundamental liberty interests of the natural parents in the care, custody, and management of their child," and this interest "does not evaporate simply because they have not been model parents or have lost temporary custody of the child to the State." Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

It later referred to these parental rights as 'sacred' and Santosky v. Kramer, 455 US 745 – Supreme Court 1982 (Exhibit 14) The Supreme Court of the United States stated that "the absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment."

FALCONI understands that under certain circumstances, this liberty interest must be infringed, such is the intention of NRS 217.462 in protecting victims of domestic violence, but FALCONI truly believes that the Nevada Legislature took great care in ensuring this liberty interest was only infringed when absolutely necessary, such are the constraints described by NRS 217.462(2)(a). Thus, by violating the requirement of NRS 217.462(2)(a), THE GOVERNMENT has violated the intentions of the legislature, the fundamental liberty interest of a natural parent, and the Fourteenth Amendment.

5. Violation of NRS 217.462(4) and NRS 217.462(2)(a)

NRS 217.462(4) states that:

1 The Secretary of State shall approve an application if it is accompanied by
2 specific evidence, such as a copy of an applicable record of conviction, a
3 temporary restraining order or other protective order, that the adult, child or
4 incompetent person **has been a victim** of domestic violence, sexual assault or
5 stalking before the filing of the application.(emphasis added)
6

7 and NRS 217.462(2)(a) requires:

8 2. An application for the issuance of a fictitious address must include: (a)
9 Specific evidence showing that the adult, child or incompetent person **has**
10 **been a victim** of domestic violence, sexual assault or stalking before the filing
11 of the application; (emphasis added)
12

13 THE GOVERNMENT held a position in its Respondent's Answering Brief (Exhibit 5) that
14 because NRS 217.462(4) specifically lists "protective order" in its enumerated list of examples
15 of evidence, that the protective order [REDACTED] provided was sufficient. THE
16 GOVERNMENT's position would be sound if protective orders were only issued to persons who
17 have been victims of domestic violence, as NRS 217.462(4) and NRS 217.462(2)(a) requires,
18 but, pursuant to NRS 33.020(1), protective orders can be issued for the mere possibility of "a
19 threat of domestic violence". Therefore, NRS 33.020(1) and NRS 217.462(2)(a) are held to
20 different legal standards. This district court in FV08-03200 understood this when [REDACTED]
21 presented the same barrage of allegations and speculations, and because there were no findings
22 of fact that domestic violence **had** occurred (as opposed to **might** occur) NRS 125C.230 did not
23 apply and FALCONI was awarded physical custody. Essentially, if FALCONI does not have the
24 right to know where his child resides, FALCONI does not have the right to physical custody. In
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1 Allstate Ins. Co. v. Fackett, 125 Nev. Adv. Op. 14 Pg. 3, 206 P. 3d 572 (Exhibit 16), The
2 Supreme Court of Nevada discussed:

3 To determine legislative intent, this court first looks at the plain language of a
4 statute. Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 1168, 14 P.3d 511,
5 513-14 (2000). We only look beyond the plain language if it is ambiguous or
6 silent on the issue in question. Id. We read statutes within a statutory scheme
7 harmoniously with one another to avoid an unreasonable or absurd result.
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9 Torrealba v. Kesmetis, 124 Nev. ___, ___, 178 P.3d 716, 721 (2008).

10 The plain language of NRS 217.462 requires specific evidence of domestic violence having
11 occurred. The ambiguity or confusion as to whether or not the mere existence of a protective
12 order is evidence of domestic violence having occurred can be address can be addressed by
13 reading NRS 33.020(1) harmoniously with NRS 217.462 and NRS 125C.230. Absurd results do
14 indeed occur if we follow THE GOVERNMENT's argument. Firstly, NRS 217.462 would be
15 mutated into authorizing fictitious addresses whenever "a threat of domestic violence" exists,
16 thus throwing out the requirement that domestic violence must have occurred. Secondly, there
17 are going to be parents who are deemed safe enough to have custody of their children, but not
18 safe enough to know where their children reside.
19
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21 Allowing THE GOVERNMENT to issue fictitious addresses merely on the presentation
22 of a protective order is the easier choice. However, the easy choice is not always the right choice.
23 The legislature gave THE GOVERNMENT the authority to issue fictitious addresses on the ex-
24 parte application of an alleged victim, but in doing so, THE GOVERNMENT is required to have
25 specific evidence that domestic violence **has** occurred. Allegations and pure speculation should
26 not be sufficient standard to issue a fictitious address. Ultimately, straying from the legislature's
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1 directive has turned the entire purpose behind fictitious addresses on its head. It led to [REDACTED]
2 obtaining fictitious address protection against the very person who saved her life, and makes
3 [REDACTED] less safe by concealing his whereabouts from his father. If THE GOVERNMENT feels
4 the statutory responsibility is excessive, perhaps there is remedy in petitioning the legislature for
5 an amendment of the statute. As the law stands today, however, THE GOVERNMENT's
6 issuance of a fictitious address to [REDACTED] is illegal. The writ should issue.

7 8 VII. Argument in Support of Costs

9 NRAP 39(a)(3) may not apply to extraordinary writs, however, In Jones v. Jones, 86 Nev.
10 879 884, 478 P. 2d 148 (Exhibit 17) the Nevada Supreme Court discussed an award of costs:

11 If the action were one in equity, award of costs would be discretionary with
12 the trial court. Magee et al v. Whitacre et al, 60 Neb. 202, 96 P.2d 201, 106
13 P.2d 751 (1939).”

14
15 FALCONI has made THE GOVERNMENT aware of the circumstances behind this case and the
16 circumstances as to why [REDACTED] should not be concealed. Awarding costs is in integral part of
17 incentivizing good faith resolution prior to litigation. Now, FALCONI has incurred \$250 in costs
18 for filing this writ petition. If FALCONI prevails, THE GOVERNMENT should be required to
19 reimburse FALCONI his costs.
20

21 22 VIII. Conclusion

23
24 **THEREFORE**, Petitioner prays for relief as follows:

25 1. That the Court **ISSUE** a Writ of Mandamus directing the Secretary of State of the State
26 of Nevada to **REVOKE** [REDACTED] Ann [REDACTED] fictitious address;

27 2. For an award of costs;
28

1 3. For such further relief as the Court deems necessary and just.

2 Dated this October 27, 2011.

3
4 
5 Alexander M. Falconi

6
7 **Verified Declaration In Support of Petition**

8 I, Alexander Falconi, hereby declare under penalties of perjury and the law of the State of
9 Nevada, that the following statements are true in support of the attached Petition:
10

11 I am the Petitioner in the action; I have read the foregoing pleading; am competent to
12 testify as to the contents thereof and the contents are true of my own knowledge except as to
13 those matters stated on information and belief, and as to those matters, I believe them to be true.
14

15 I declare under penalty of perjury that the foregoing is true and correct.

16 DATED this 27 day of October, 2011.

17
18 
19 Alexander M. Falconi
20 Pro Se

21
22 **Affirmation Pursuant to Nevada Revised Statute 239B.030**

23 The undersigned hereby affirms that this document does not contain a Social Security
24 Number.

25 Dated this 27 day of October, 2011.

26
27 
28 Alexander M. Falconi
Pro Se

1 Alexander M. Falconi

3 Appearing in Proper Person

4 IN THE SUPREME COURT OF NEVADA

5 ALEXANDER M FALCONI,

6 Petitioner,

7 vs.

8 SECRETARY OF STATE OF THE STATE

9 OF NEVADA,

10 Respondent.

Case #

11 **PROOF OF SERVICE**

12 I, MARK BOLIN, do hereby declare and depose as follows:

- 13 1. That I am over the age of 18, have been a resident of the State of Nevada for greater than five
- 14 years, and am not a party to this action;
- 15 2. That **personally** I served a true and correct copy of Petition for Writ of Mandamus, Motion
- 16 For Expedited Review, and Appendix of Exhibits, upon the Secretary of State of the State of
- 17
- 18

20

21 I declare under penalty of perjury that the foregoing is true and correct.

22 SERVED this ____ day of November, 2011.

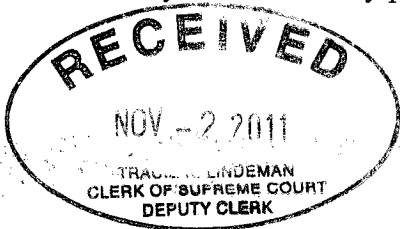
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24

25 Mark Bolin

26 **AFFIRMATION:** The undersigned hereby affirms that this document does not contain the

27 Social Security Number of any person.



Alexander M. Falconi