

FILED

Alexander M. Falconi

Appearing in Proper Person

BY  20
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER M. FALCONI,

Appellant,

Case #: 64551

vs.

ANN

Respondent.

**MOTION FOR EXTENSION OF TIME TO PAY FILING FEE OR IN THE
ALTERNATIVE TO PROCEED IN FORMA PAUPERIS**

COMES NOW, Appellant, Alexander M. Falconi, appearing in proper person; and hereby files a motion for extension of time to pay filing fee or in the alternative to proceed *in forma pauperis*. This motion is based upon the following memorandum of points and authorities and all pleadings on file herein.

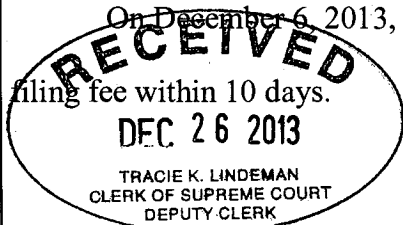
Memorandum of Points and Authorities

I. Factual Background

On November 13, 2013, the district court entered an Order Denying Motion to Modify Child Support.

On November 21, 2013, Appellant filed a Notice of Appeal together with *Application to Proceed in Forma Pauperis on Appeal and for the Production of Transcripts at the Expense of the County* ('IFP') from the aforementioned order.

On December 6, 2013, the Supreme Court entered an order directing Appellant to pay the filing fee within 10 days.



13-39364

II. Argument

1. Extension of Time to Pay Filing Fee

Pursuant to NRAP 24(a)(1), "...a party to a district court action who desires to appeal in *forma pauperis* shall file a motion in the district court."

To date, the chief judge of the Family Division of the Second Judicial District Court has not rendered a decision on the IFP. The district clerk has advised Plaintiff that the district court can take up to 60 days to render a decision on any submitted matters.

The time it takes the district court to render a decision could frustrate the purpose of the appeal. Even if the district court does render a timely decision denying, Appellant will still need extra time with which to submit the request to this Court. NRAP 24(5).

2. Request to Proceed in Forma Pauperis

Alternatively, Appellant requests this Court can grant Appellant leave to proceed in *forma pauperis* in the event the district court declines to render a decision, or denies Appellant's request.

Affidavit

I, Alexander M. Falconi, do hereby declare that I am the Appellant in the above-entitled case; that in support of the motion to proceed without being required to prepay fees, cost or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present on the appeal of the November 13, 2013 *Order Denying Motion to Modify Child Support* are the following:

The district court abused its discretion in its application of NRS 125B.080(8) and *Minnear v. Minnear*, 814 P.2d 85 -Nev: Supreme Court (1991); and,

1 The district court committed legal error in violating the doctrine of statutory construction
2 by constructing NRS 125B.080(8) in a manner that renders the phrase "for the purpose of
3 avoiding an obligation for support of a child" nugatory; and,

4 The district court committed plain error in basing its decision on points raised *sua sponte*
5 without giving FATHER an opportunity to respond; and,
6

7 The district court violated the best-interests-of-the-child doctrine by hamstringing a
8 natural parent's right to seek betterment *via* a computer science and engineering degree.

9 *Financial Status*

10 1. I, Alexander M. Falconi, am presently self-employed, now doing occasional work for
11 Yvette Chevalier, Esq., after having been rendered an **on-call** paralegal at Collection Service of
12 [REDACTED]
13

14 2. My wife, Brittany Ames, ('Wife') is employed as a waitress at Darden Inc. d.b.a. Olive
15 Garden, earning approximately \$1000.00 per month in wages and tips; and,
16

17 3. My Wife contributes an additional \$1000.00 per month to the household for a personal
18 injury settlement; and,
19

20 4. I receive² \$73.91 per month in child support from Respondent; and,
21

22 5. I have not, within the past twelve months, any income from a business, profession, or
23 in the form of rent payments, interest, dividends; and,
24

25 6. I have a joint-checking and savings account with my Wife with a combined value of
26 \$39.31³ (Exhibit 1); and,
27

28 7. I do not receive food stamps or welfare of any kind; and,

¹ This income used to be \$200-\$300 higher, but the industry in the Reno area has slowed immensely.

² Respondent is in arrears for nonpayment of child support.

³ There is an \$80.00 check out for my son's tuition at Coral Academy of Science, a pending bill pay to Capital One for \$100.00 and to State Farm Homeowners Insurance for \$34.99.

1 8. I have applied for unemployment insurance and have been approved for a weekly
2 disbursement of \$227.00 but may possibly increase depending on whether or not the final two
3 quarters of my 2012 wages which were not properly reported have an impact on my case
4 (Exhibit 2); and,

5 [REDACTED]
6
7 10. I do not own any stocks, bonds, or notes; and,

8 11. I own a Toyota Corolla 2009⁴ with an approximate value of \$10,350.00 (Exhibit 3);
9 and,

10 12. I have student loan debt in the amount of \$5,500.00 (Exhibit 4); and,

11 13. My minor child of age seven (7) is dependent upon me; and,

12 14. My household's monthly expenses include \$625.00 in food, \$250.00 in transportation,
13 \$0.00 in child care, \$142.00 in phone bills, \$44.99 in internet access, \$148.00 in homeowner
14 association assessments, \$37.96 in sewage, \$73.38 in homeowners insurance, \$154.80 in energy,
15 \$57.15 in auto insurance, \$342.93 in car payments, \$44.16 in waste management, and \$65.59 in
16 property taxes, for a total of \$1843.96 (Exhibit 5); and

17 15. Our leftover income is needed to cover educational expenses for myself⁵, and the
18 minor child; severe dental expenses for the minor child (which Respondent has refused to help
19 pay and has burdened me with an excess of \$3000 in surgical expenses), and my wife's medical
20 bills (which exceed \$1000 due to a complication in a surgery she had in June of 2013).

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

22 EXECUTED this 22 day of DECEMBER, 2013.

23 

24
25
26 Alexander M. Falconi

27
28 ⁴ My son and I rely heavily on my vehicle for drives to the sitter and his school, to work, etc.

⁵ I am a full-time student on the brink of graduation.

1 *Precedent*

2 Our superior court has held that *in forma pauperis* access to the courts is a legal theory
3 rooted in the equal protection clauses of the State and federal constitutions. *Jordan v. State Dep't*
4 *of Motor Vehicles*, 110 P. 3d 30 - Nev: Supreme Court (2005) at page 39 ("Nevada has long
5 recognized the importance of maintaining direct access to its state courts. [SCR 44 and NRS
6 12.015] help to ensure that every person in Nevada is afforded meaningful access to the courts,
7 regardless of that person's financial status.") Although this Court is not bound by NRS 12.015, it
8 has exercised its inherent power to waive its filing fee. In doing so, this Court has stood as a
9 beacon for liberty and justice for this State and as a shining example to the rest of the nation that
10 even the most impoverished of the citizenry have access to the publishing power of this Court.
11 This Court has consistently rejected attempts at circumventing this principle. *Barnes v. Eighth*
12 *Judicial Dist. Court*, 748 P. 2d 483 - Nev: Supreme Court (1987) at page 487 (rejecting Chief
13 Judge Miriam Shearing's argument that an alternative course of action is an appropriate
14 substitute for direct court access when impoverished indigent cannot afford to pay filing fees).

15
16
17
18 **III. Conclusion**

19 Appellant has been careful not to abuse *in forma pauperis* status. When possible,
20 Appellant has paid filing fees. FV08-03200. CV12-02385. SCN 59554. SCN 57516. Appellant
21 has also prevailed before on appeal. See SCN 62296 (reversing and remanding based on the
22 fourth analytical prong of Appellant's *Appellant's Opening Brief*). See also *Falconi v. Secretary*
23 *of State*, 129, Nev. Adv. Op. No. 28 (expanding Nevada case law to include New Jersey's
24 *Sacharow* procedure to clarify ambiguities in the fictitious address program's statutory scheme,
25 ultimately, the fictitious address was cancelled and The Secretary was ordered to disclose it to
26
27
28

Appellant in CV13-01019). These outcomes would not have been possible if Appellant were not granted *in forma pauperis* status.

THEREFORE, Appellant hereby requests that:

1. That this Court grant Appellant an extension of time to pay the filing fee; or, in the alternative,
2. That this Court allow Appellant to proceed *in forma pauperis*; or,
3. For such other relief as the Court deems necessary and just.

AFFIRMATION⁶: This document does not contain a social security number of any person.

DATED THIS 24 day of DECEMBER, 2013.


Alexander M. Falconi

CERTIFICATE OF SERVICE

I, Alexander M. Falconi, do hereby solemnly swear under penalty of perjury that I am over the age of 18 and not a party to this action and that I ^{mailed Arf} personally served a true and correct copy of this Motion upon:

Kathrine Berning, Esq.


SERVED THIS 24 day of DECEMBER, 2013.


Alexander M. Falconi

⁶ This affirmation is in accordance with NRS 239B.030."

LIST OF EXHIBITS

Exhibit 1: Bank Account.

Pages: 1

Exhibit 2: Unemployment Insurance.

Pages 1

Exhibit 3: Car Blue Book.

Pages 1

Exhibit 4: Student Loan Debt

Pages 1

Exhibit 5: Bill Pay

Pages 3