

1 Code: 1880

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6 IN THE FAMILY DIVISION
7 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9 ALEXANDER M. FALCONI,
10 Petitioner,

11 vs.

12 [REDACTED] ANN [REDACTED]
13 Respondent.

Case #: FV08-03200

Dept #: 13

14 **ORDER GRANTING MOTION TO MODIFY CHILD CUSTODY, CONDITIONALLY**
15 **GRANTING MOTION TO RELOCATE, AND JUDGMENT FOR MEDICAL AND**
16 **CHILD SUPPORT ARREARAGES**

17 Petitioner, Alexander Falconi ("FALCONI") and Respondent, [REDACTED] Ann [REDACTED]

18 [REDACTED] share a common minor child; to wit: [REDACTED] Falconi born [REDACTED]

19 The parties have never been married. On February 25, 2014, FALCONI, filed his *Motion to*
20 *Modify Child Custody* requesting court relief and modification of the custody Order then in
21 place. On March 20, 2014, [REDACTED] filed her *Opposition to Motion to Modify Child Custody*.
22 On March 24, 2014, FALCONI filed his *Reply to Opposition to Motion to Modify Child Custody*.
23 On July 8, 2014, the Honorable Judge Chuck Weller entered an *Order Of Recusal* and the matter
24 was reassigned to the Honorable Bridgett Robb. On July 11, 2014, the matter previously
25 scheduled for hearing was vacated and reset and consolidated with the *Order To Set* filed April
26 23, 2014 regarding FALCONI's previous request for judgment regarding medical and child
27 support arrearages. On November 4, 2014, Parties convened before the Court for trial on
28 FALCONI's *Motion to Modify Child Custody*, as well as for the adjudication of the

1 aforementioned additional issues raised by FALCONI. Andreia Aden, Esq. appeared on behalf
2 of FALCONI. [REDACTED] appeared in proper person. FALCONI presented expert witness
3 testimony through Dr. Luz Molina, a licensed dentist with a specialization in pediatric dentistry
4 and lay witnesses Brittany Falconi, FALCONI'S spouse, and the minor child's dental hygienist,
5 Leah Schebler. [REDACTED] presented testimony through lay witness Jeremy Butz. Having
6 considered the testimony of the witnesses and the evidence as a whole the Court makes the
7 following findings of fact and conclusions law.
8

9 **FINDINGS OF FACT**

10 The Court finds that it has jurisdiction over Parties and the minor child; that Nevada
11 remains the home state of habitual residence regarding the Uniform Child Custody Jurisdiction
12 Enforcement Act the Parental Kidnapping Prevention Act as well as for the purposes of the
13 Hague Treaty.
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15 The Court finds, taking the in considerations the factors enumerated in Nevada Revised
16 Statute ("NRS") 125.480(4), that pursuant to subsection (d) the level of conflict between the
17 parties is very high and in some ways one-side in so much as [REDACTED] is the parent that requires
18 a designee. The Court stated in support of its finding that [REDACTED] is the parent who insists on
19 the involvement of witnesses and is the parent who failed to notify FALCONI of the minor
20 child's medical visits; actions that have now required the intervention of the Court. The Court
21 finds that the testimony of FALCONI and his spouse, Brittany Falconi, to be consistent in that
22 they both placated [REDACTED] and refrained from using confrontational language in
23 communications with [REDACTED] upon the understanding that did not act to serve in the best
24 interest of the minor child. Furthermore, FALCONI and his spouse have sufficiently
25 demonstrated that neither FALCONI, nor his spouse, engage in public confrontations with
26 [REDACTED] and that any confrontations that have occurred originated with [REDACTED]
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1 The Court recognized that FALCONI's spouse, Brittany Falconi, demonstrated
2 remarkable maturity in recognizing and understanding her role as a step-parent; an insight that
3 Court acknowledged rarely seeing from a step-parent. Mrs. Falconi is a step-parent who
4 absolutely understands her role, yet is still willing to step up and be a source of comfort and
5 support to the minor child. Mrs. Falconi is a person that [REDACTED] should want on her side, not
6 someone she should be trying to alienate.
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8 Pursuant to NRS 125.480(4)(e), the Court finds that the ability of the parents to cooperate
9 to meet the needs of the minor child is virtually non-existent. While [REDACTED] testified that she
10 ultimately appreciated that the minor child received crucial and necessary dental care, it is
11 evident to this Court that she utterly failed to acknowledge at the time of the minor child's need
12 that he required urgent dental care. The Court looked to [REDACTED] own testimony in finding
13 that [REDACTED] abdicated her responsibilities regarding the minor child's dental care to FALCONI
14 against the best interest of the minor child and for purposes of burdening FALCONI.
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16 The Court considered the testimony of the minor child's dentist, Dr. Molina, D.D.S., who
17 testified that the minor child's previous dental surgery was necessary and required immediate
18 medical attention and intervention. The Court found particularly persuasive Dr. Molina's
19 testimony that the progression of minor child's tooth decay, as evidenced by x-rays taken in June
20 of 2013 and in July of 2013, were so alarming that the dental surgery needed to happen as soon
21 as possible. The Court finds that [REDACTED] recalcitrant and testimony that the surgery could
22 have waited until January of 2014 is a failure to acknowledge that her child was in pain and that
23 the minor child required dental care immediately.
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26 FALCONI testified that he charged the minor child's dental surgery on credit cards and
27 that he took out a loan to ensure that the required surgery would take place as soon as possible.
28 The Court finds that [REDACTED] testimony that her insurance would not cover the costs of the

1 procedure was not a sufficient reason to delay treatment. The Court notes that alternatives to
2 insurance were available, which [REDACTED] should have pursued, such as requesting that Dr.
3 Molina speak directly to [REDACTED] insurance company to inform [REDACTED] insurance
4 provider that the minor child's medical procedure was medically necessary. The Court
5 highlighted that it was [REDACTED] duty to advocate on her child's behalf to her insurance
6 provider. Citing [REDACTED] testimony, the Court finds that [REDACTED] did not taken any steps in
7 an attempt to procure payment through her insurance for the minor child's medically necessary
8 surgery. The Court finds that [REDACTED] presented no evidence to show that she was acting in the
9 best interest of the minor child and her sole concern was the financial cost at the expense of her
10 child's dental health. The Court finds that Dr. Molina and her staff had advised [REDACTED] as to
11 the consequences if the minor child did not have the dental surgery as soon as possible. Dr.
12 Molina testified that there was risk to the minor child's permanent teeth, the nerves of those
13 teeth, and even the minor child's entire oral system; specifically, that once the infection reaches
14 the nerves or the jawbone it becomes a systemic problem. Aside from consequences to the minor
15 child's health, there were also consequences to the child socially, as FALCONI testified that the
16 child's friends at school would have noticed the installation of five (5) steel crowns and brought
17 it to the child's attention to his potential embarrassment.

21 The Court also finds that [REDACTED] demonstrated a remarkable lack of sensitivity in
22 sending the minor child to school with shirts that were far too small for him causing him
23 unnecessary embarrassment. The Court finds FALCONI's shocked reaction to [REDACTED]
24 accusations that FALCONI withheld some of the minor child's school shirts from her to be
25 genuine and sincere.

27 The Court addressed and finds that the factor of the minor child's education was of great
28 concern. The Court expressed disappointment in both parents regarding the state of the minor

1 child's current academics and stated the need for diligent parental supervision to ensure the
2 improvement of the minor child's academic studies. The Court finds that the minor child is a
3 child who struggles in school. The Court finds that [REDACTED] repeated acts of pulling the minor
4 child out of school, in the absence of illness, is unacceptable. The Court noted that [REDACTED] had
5 previously been warned by this Court at hearing on June 17, 2014 and [REDACTED] continued
6 behavior of unjustifiably pulling the minor child out of school is inexplicable and represents to
7 this Court that [REDACTED] is tone-deaf when it comes to this issue.
8

9 Considering the factor of [REDACTED] ability to meet the minor child's physical, mental,
10 and emotional needs, the Court finds that [REDACTED] cannot. The Court finds that the midnight
11 exchanges of the minor child, which were at the request of [REDACTED] highlight [REDACTED]'s
12 failure to act in the best interest of the minor child. The Court finds the midnight exchanges
13 support [REDACTED] failure to act in the minor best interest to the same extent of [REDACTED] lack
14 of attention to the minor child's dental health and educational needs. The Court finds that
15 [REDACTED] actions of requesting the exchange at an hour in which the minor child is sleeping,
16 requiring the parties to wake the minor child to facilitate the exchange, was not for the benefit of
17 the minor child, but for [REDACTED]. The Court further finds that [REDACTED] insistence that the
18 minor child be placed on the ground by FALCONI and made to walk to [REDACTED] vehicle is
19 done only to satisfy [REDACTED]. The Court finds this to be cruel and pointless. It serves no
20 purpose or benefit to the minor child. After these exchanges occur, the minor child is merely
21 being placed into bed at [REDACTED] residence. This is highly indicative of [REDACTED] inability
22 to put her child's interests above her own.
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26 The Court finds that [REDACTED] close to being found to have committed educational
27 neglect upon the minor child. However, the Court does find that [REDACTED] has committed dental
28 neglect upon the minor child. The Court is convinced if not for FALCONI taking active steps to

1 ensure the minor child's dental surgery proceeded as scheduled, that Dr. Molina would have file
2 a report of dental neglect with Washoe County Child Protective Services as required of her by
3 law. The Court believes that any such report of dental neglect made by Dr. Molina would have
4 been well-founded. Therefore, there is sufficient evidence to establish a finding of dental neglect
5 by [REDACTED]. Furthermore, the Court finds [REDACTED] testimony that she suffers from dental
6 problems herself supports the finding that [REDACTED] does not place dental hygiene as a high
7 priority and her inability adequately provide the minor child proper dental care. The Court notes
8 that [REDACTED] did not controvert FALCONI's testimony regarding [REDACTED] dental hygiene
9 issues. The Court has reviewed photographs of the Red Cote tests performed on the minor child's
10 teeth, and considered the testimony of Dr. Molina and Ms. Schebler regarding the
11 aforementioned photographs, leading the Court to find that the minor child was not receiving
12 dental care and hygiene for at least 24 hours prior. The Court finds that this lack of dental care
13 and hygiene occurred during [REDACTED] custodial time. Conversely, FALCONI and his spouse
14 both testified to brushing the minor child's teeth themselves during the evenings, and allowing
15 the minor child to brush his own teeth during the mornings; this is both taking care of problem
16 now and empowering the minor child to learn to take care of himself in the future. This is
17 parenting. The photographs and testimony regarding the Red Cote tests indicate that [REDACTED]'s
18 level of parenting is to the minor child's great detriment and not adequately taking place during
19 [REDACTED] custodial time. The minor child has needs that must be met and those at issue in this
20 case are his dental care and his educational care. The minor child needs a parent that will get him
21 to school and brush his teeth. It is fortunate that the neglect occurring in this case has not
22 manifested itself in other ways.

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27 The Court finds there is a good faith reason for FALCONI's requested move to Las Vegas
28 from Reno. FALCONI wishes to further his education and there is no law school he can attend in

1 Reno. For [REDACTED] the William S. Boyd School of Law is probably the best choice as there is
 2 easy transportation between Las Vegas and Reno. FALCONI further testified that there is a
 3 support network with extended family available in Las Vegas that he will have a greater ability
 4 to become employed.

5 The Court finds that \$1,663.48 is one half of the outstanding balance of the minor child's
 6 dental surgery, including costs paid to the facility, the anesthesiologist – the services of which
 7 have found to be necessary - and the dentist. The outstanding balance also takes into
 8 consideration insurance payments.
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10 The Court finds that [REDACTED] is 13 months in arrears for child support, owing a total of
 11 \$960.83 at a rate of \$73.91 a month.
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13 On November 12, 2014, FALCONI filed his Financial Disclosure. On November 14,
 14 2014, [REDACTED] filed her Financial Disclosure. [REDACTED] bi-weekly paystub amounts indicate
 15 an average gross monthly income of \$3,673.56. (See Exhibit 1 of [REDACTED] Financial Disclosure
 16 filed November 14, 2014) (adding the reported amounts of \$1,689.69, \$1,716.46, and \$1,881.34,
 17 dividing by 3¹, multiplying by 26², and dividing by 12³). [REDACTED] pays a total of \$179.34 to
 18 cover the minor child's medical, dental, and vision insurance. (See Exhibit 3 of FARRAR
 19 Financial Disclosure filed November 14, 2014) (for dental, subtracting \$40.21⁴ from \$80.41⁵; for
 20 vision, subtracting \$27.50⁴ from \$41.25⁵; for health subtracting \$100.34⁴ from \$225.73⁵; and
 21 summing the amounts).
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23 CONCLUSIONS OF LAW

24 In Nevada, when a District Court determines the custody of a minor child, "the sole
 25 consideration of the court is the best interest of the child." *Ellis v. Carucci*, 161 P.3d 239123
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27 ¹ Averaging the amounts.

28 ² 26 biweekly periods in a year.

³ 12 months in a year.

⁴ The amount it would cost to cover [REDACTED] solely.

⁵ The amount to cover [REDACTED] and the child.

1 Nev. Adv. Op. 18 (Nev., 2007). NRS 125.480(1). The level of conflict between the parents is
2 extraordinarily high and originates primarily with [REDACTED] not FALCONI. NRS 125.480(4)(d).
3 The inability of the parents to meet the needs of the minor child has resulted in extensive dental
4 decay to the minor child's teeth and [REDACTED] has not only refused to take an active role in
5 ensuring that care was provided to the minor child, she exploited the minor child's dental needs
6 in a way that burdened FALCONI. NRS 125.480(4)(d). [REDACTED] has failed to meet the
7 physical, developmental, and emotion needs of the minor child by consistently failing to take
8 him to school and by failing to recognize and act upon the minor child's medical needs regarding
9 the dental surgery. NRS 125.480(4)(g). [REDACTED] inaction regarding the minor child's dental
10 needs constitute dental neglect. NRS 125.480(4)(j). All of these factors weigh heavily in favor of
11 primary physical custody to FALCONI.
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14 "Removal of minor children from Nevada by the custodial parent is a separate and
15 distinct issue from the custody of the children." *Schwartz v. Schwartz*, 812 P. 2d 1268, 107 Nev.
16 378, (Nev., 1991). While the Court in *Schwartz* addressed issues involving out-of-state moves
17 and not moves within the state, FALCONI's recitation of authority pursuant to *Schwartz* is
18 correct as FALCONI's move from Reno to Las Vegas is significant. There are educational
19 advantages for FALCONI in Las Vegas that are not available in Reno. These advantages will
20 lead to an improvement in his employment and income. FALCONI having established a good
21 faith reason to move; the Court will now look to the other *Schwartz* factors. The Court concludes
22 that FALCONI's stated motives are honorable. The Court also notes that, based on the substance
23 of and the number of pleadings and papers on file, the Court is satisfied that FALCONI will
24 continue to utilize the Court, asking for permission when needed rather than take unilateral
25 action. NRS 125C.480(4)(c). The Court concludes that [REDACTED] resistance to the move is
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1 likewise honorable. The Court ultimately concludes that a realistic opportunity for substitute
2 visitation is available.

3 "Expenses for health care which are not reimbursed, including expenses for medical,
4 surgical, dental, orthodontic and optical expenses, must be borne equally by both parents in the
5 absence of extraordinary circumstances." NRS 125B.080(7). [REDACTED] has failed to pay child
6 support for 13 months. Orders requiring [REDACTED] to pay these amounts are a judgment by
7 operation of law once a payment is due. NRS 125B.140(1)(a). FALCONI has complied with the
8 requirements of NRS 125B.140(2)(a). FALCONI is entitled to a judgment on medical and child
9 support arrearages. An award of interest at the legal rate is mandatory. NRS 125B.140(c); NRS
10 99.040(1). FALCONI is entitled to penalties in addition to interest. NRS 125B.095.

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13 The joint-physical custody relationship having been severed and FALCONI having
14 obtained primary physical custody of the minor child, [REDACTED] shall pay to FALCONI \$661.24
15 in child support per month. *Rivero v. Rivero* (In cases where one party has primary physical
16 custody and the other has visitation rights, *Barbagallo v. Barbagallo*, 105 Nev. 546, 779 P.2d
17 532 (1989), controls.) NRS 125B.070(1)(b)(1) ("[f]or one child, 18 percent" of [REDACTED] gross
18 monthly income). [REDACTED] is entitled to a monthly deviation in the amount of \$89.67 for one-
19 half of the cost of the minor child's medical, dental, and vision premiums. NRS 125B.080(9)(a).
20

21 **IT IS HEREBY ORDERED:**

22 FALCONI's Motion to Modify Child Custody is GRANTED.

23 FALCONI is granted primary physical custody of the minor child. [REDACTED] shall have
24 visitation every other weekend beginning Sunday at 8:00 a.m. and lasting until Tuesday morning,
25 at which time [REDACTED] will drop off the minor child at school. This schedule is effective as of
26 November 9, 2014.
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28 Parties shall continue to share joint legal custody of the minor child.