**POPP**

ATTORNEY CONTACT INFO

Attorney for XXX

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.: J-

) Dept. No.:

**CLIENT,**  )

DOB: )

)

A Minor. ) HEARING REQUESTED

)

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION OF FINDINGS AND RECOMMENDATION TO PLACE MINOR CHILD WITH FATHER**

Minor, CLIENT, by and through her attorney, *Attorney*, Esq. of *Firm,* hereby submits the following Memorandum of Points and Authorities in opposition of the Findings and Recommendation to Place Minor Child with Father, *Natural Father* dated September 27, 2019.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM OF POINTS AND AUTHORITIES**

CLIENT, age 17, objects to the findings and recommendation made placing her with her biological father, *Natural Father*, who resides in Milwaukee, Wisconsin. CLIENT has never met *Natural Father* in person and, until his recent contact with the Clark County Department of Family Services (“DFS”), he has never made substantive attempts to have a father/daughter relationship with CLIENT. CLIENT contends that placement with her newfound father will be harmful, both emotionally and educationally. The Minor objects to the Findings and Recommendation on the following grounds:

1. A father who has never had custody of a child does not enjoy the same constitutional protections as custodial parents;
2. CLIENT’s Fourth and Fourteenth Amendment Rights were not considered; and
3. The decision to place Javina with a virtual stranger is not in her best interests.

**I. STATEMENT OF FACTS**

Include relevant facts.

**II.** **LEGAL ARGUMENT**

**A. Maintaining wardship and keeping CLIENT in Nevada does not violate *Natural Father*’s fundamental rights.**

A parent who does not have a history of parenting his child or who has not established an emotional bond with a child does not have the same fundamental rights as a parent who has custody over a child. In making the recommendation to place CLIENT with *Natural Father*, the Court cited the United States Supreme Court decision in *Troxel v. Granville* for the premise that parents have a “fundamental liberty interest in the care, custody and control of their children.”  *See 9/27/19 Findings and Recommendation*, p. 4, ln 1-3. The *Troxel* decision addressed a Washington state statute permitting a court to disregard a custodial parent’s decision to allow or deny visitation by a non-party with their children. 530 U.S. 57, 120 S.Ct. 2054 (2000). Specifically, the lower court disagreed with how much visitation the mother, who had sole custody of the children after their father’s death, wanted to provide the paternal grandparents. *Id.* at 61-62; 120 S.Ct. at 2058. In finding that the statute violated the mother’s fundamental right to parent, the Court examined a long line of decisions, including *Stanley v. Illinois,* a 1972 decision involving the fundamental rights of unwed fathers. 405 U.S. 645, 92 S. Ct 1208 (1972)[[1]](#footnote-1). The *Stanley* Court found that an Illinois statute setting forth a presumption that unwed fathers were unfit, regardless of how that father cared for his children before court involvement, violated the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment. 405 U.S. at 658, 92 S.Ct. at 1216. The Court stated: “The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest protection.” *Id.* at 652, 92 S.Ct. at 1212. Mr. Stanley had lived with the mother intermittently for 18 years before she passed, and had raised three children with her. *Id.* at 646, 92 S.Ct. at 1209. The Court concluded that “all Illinois parents are constitutionally entitled on their fitness before their children are removed from their custody.” *Id.* at 658, 92S.Ct.at 1216. (emphasis added).

The United States Supreme Court has not extended those constitutional protections to unwed fathers who had less involvement in their children’s lives. In *Quilloin v. Walcott*, the Court did not find any constitutional issue with a Georgia statute that did not provide a father the right to veto an adoption of a child born outside of marriage whose paternity had not been acknowledged or established by court order. 434 U.S. 246, 98 S.Ct. 549 (1978). Mr. Quilloin paid child support, but never exercised legal or physical custody of his child. *Id.* at 256, 98 S.Ct. at 555. While the Court recognized that there would be no due process if Georgia’s law were “’to force the breakup of a natural family, over the objection of the parents and their children, without some showing of unfitness,’” (*Id.* at 255, 98 S.Ct. at 555 (internal citations omitted)), the Court found that Mr. Quilloin’s substantive rights were not violated by using the “best interests of the child” analysis. *Id.* at 254, 98 S.Ct. 554.

Later, the U.S. Supreme Court differentiated between the rights of a custodial parent and a parent who was not involved in the children’s lives in *Lehr v. Robertson*, 463 U.S. 248, 103 S. Ct. 2985 (1983), stating “the existence or nonexistence of a substantial relationship between a parent and child is a relative criterion in evaluating both the rights of the parent and the best interest of the child.” *Id.* at 266-267, 103 S.Ct. at 2996. However, “the mere existence of a biological link does not merit equivalent constitutional protection.” *Id.* at 261, 103 S.Ct. at 2993. “’Parental rights do not spring full-blown from the biological connection between a parent and child. They require relationships more enduring.’” *Id.* at 260, 103 S.Ct. 2992, quoting *Caban v. Mohammed¸*441 U.S. 380, 397, 99 S.Ct. 1760, 1770 (1979) (Stewart, J., dissenting). Recently, the United States Court of Appeals for the Ninth Circuit acknowledged the limited interest afforded a non-custodial parent in *Kirkpatrick v. County of Washoe* when it affirmed the summary judgment order against the father on his Section 1983 claims for alleged violations of his constitutional rights. 843 F.3d 784, 789-790 (9th Cir. 2016). Accordingly, the law does not require the same protection to *Natural Father*’s rights as a parent who has maintained a relationship with their child and then suffered a separation as a result of governmental interference.

The Court also relied upon *In re Parental Rights as to A.G.*, the 2013 Nevada Supreme Court decision that found that a father’s constitutional right to parent his child had been violated when the child welfare agency kept his child from him for 18 months, although he was not a party to the dependency case. 129 Nev. 125, 127, 295 P.3d 589, 590 (2013). That reliance is misplaced, as *In re A.G.* is factually dissimilar from this matter and does not address the limited rights of non-custodial parents as set forth by the U.S. Supreme Court decisions following *Stanley, supra*. The father in *In re A.G.* had been the child’s primary caretaker since birth. *Id.* at 128, 295 P.3d at 591; *see also, Id*. at 136, 295 P.3d at 596 (“Kory had been the primary caretaker to A.G. for most of her life, and she had been well cared for.”). The Nevada Supreme Court noted, it its analysis, that dependency law is derived from, among other things, a preference for keeping a child with her family. *Id.*  at 135, 295 P.3d at 595-596. The child in *In re A.G.* had lived with her father before the government interfered.

Here, CLIENT has never met *Natural Father* in person, let alone been in his care during her 17 years so far. Stated another way, *Natural Father* never had custody of CLIENT. By sending CLIENT to live with *Natural Father*, DFS is not keeping CLIENT with her family; DFS is essentially creating a new family. That is not the familial relations protected under the Constitution.

**B. Neither DFS or the Court considered CLIENT’s Fourth and Fourteenth Amendment rights in ordering placement with a stranger out of state.**

In deciding to place CLIENT with *Natural Father* in Milwaukee, neither DFS nor the Court considered CLIENT’s fundamental liberty interests. The United States Supreme Court, in *In Re Gault,* 387 U.S. 1, 87 S.Ct. 1428 (1967), clearly stated the Bill of Rights and the Fourteenth Amendment protections are not only for adults; those protections apply to minors. In *Kirkpatrick, supra*, the Ninth Circuit reversed summary judgment on the minor’s claim for violating the child’s right to be free from an unreasonable seizure. While the Ninth Circuit has not addressed a situation like this case, where a government agency is trying to force a minor to go to a parent, the Tenth Circuit has. In *Jones v. Hunt,* the United States Court of Appeals for the Tenth Circuit reversed a motion to dismiss on a student’s claim under 42 U.S.C. §1983 for an unreasonable seizure when a social worker and a deputy confronted her at school and coerced her into returning to her father’s home. 410 F.3d 1221 (2005). Whether a seizure is reasonable depends on the context of the action. *Id.* at 1227-1228. In *Hunt*, 16 year old Patrisha Jones was confronted by a social worker and a deputy at school, who told her she could not live with her mother and she had to return to her father, despite past physical abuse and an active restraining order. *Id.* at 1224. Those officials initially told Patrisha she would need to stay at a shelter; later, those officials threatened to arrest Patrisha, even though she had not done anything illegal. *Id.* She eventually capitulated, and left her school in the custody of her father. *Id.* at 1224-1225. The minor felt like she had no choice but to comply.

While the recommended placement here does not rise to the level of the conduct described in *Jones*, the *Jones* holding is instructive. Minors have a right to be free from unreasonable seizures. What is reasonable depends on the circumstances. Here, CLIENT has been in Nevada for more than six months, establishing residency. She has a Nevada ID, and has found a job. She finally has some educational stability. She has a plan for credit retrieval, which would allow her to graduate on time, even with the upcoming birth of her child. She has established care with a prenatal provider and has a plan to co-parent. She has none of this in Milwaukee, Wisconsin. More troubling, the DFS plan is to put her on a plane, alone, and send her to a man, whom she has never met in person, to live in a home that she has never seen. The plan was developed without any input from CLIENT; she was not even offered a visit with him before she is forced to move. Should the DFS plan go forward, it will be a violation of CLIENT’s fundamental rights.

**C. The Court’s determination of what is in CLIENT’s best interests, if any, was improper.**

The appropriate standard, in deciding placement, is the best interests of the child. *See, Clark County Dist. Atty. v. Eighth Judicial Dist. Ct.*, 123 Nev. 337, 167 P.3d 922 (2007). The Findings and Recommendation do not contain any explicit findings about what is in CLIENT’s best interests in evaluating potential placement with *Natural Father*, as the Court concluded that *Natural Father* was entitled to custody as a non-offending parent with rights that could not be restricted. As set forth above, non-custodial parents who have not established a parent/child relationship do not have the same fundamental interest in that relationship as a custodial parent.

To the extent that the 9/27/19 Findings do evaluate CLIENT’s interests, the Court is incorrect that it is in her best interests to move across the country during her senior year in high school. First, some of the facts listed in the Findings are incorrect: the father of CLIENT’s unborn baby is not an adult; the father is her 16 year old boyfriend, a fellow student at Valley High School. CLIENT denies that he has been abusive; the bruises and scratches on her upper arm came from an activity at the Boys & Girls Club over the summer. CLIENT has smoked marijuana in the past, but has not done so since discovering she was pregnant at the beginning of the summer. She disputes the accuracy of her grades and absences. She was aware of her low grades in English and Government, and had made arrangements to turn in her missing assignments.

In fact, it is possible for CLIENT to graduate on time using Apex at Valley. At the end of her junior year, she used Apex to make up lost time from moving around. She even accessed the computer lab on Saturdays. She is motivated to graduate in May 2020.

She also wants to work. She has a Nevada ID, and was going through the interview and orientation process at Old Navy when her foster placement disrupted. She plans to use her work experience as one of her elective credits to graduate. CLIENT’s goal is to have some work experience once her baby arrives, so she is in a better position to support herself and her child. While not ideal, these circumstances do not fit the Findings’ description of CLIENT as engaging in “high risk” behavior. CLIENT has had the same boyfriend since coming into care, she has not ran or eloped, she does not have DJJS involvement, and she has no issue with discipline at school. She has stopped using marijuana and is proactive regarding her medical care. She participates in therapy.

Other than determining that *Natural Father* was CLIENT’s biological father and acknowledging that DFS “had no safety concerns”, there was no analysis as to what CLIENT’s life would look like in Milwaukee. She has never met *Natural Father* in person. There was no information presented in court about who else lives in his home. No information was presented on where CLIENT would go to school, or what the plan would be to make sure she would graduate on time. There was no information about medical coverage or transferring prenatal care. Nothing was presented on how CLIENT would be supported in co-parenting with her boyfriend, who will not be in Milwaukee. In sum, the best interests’ determination, if conducted, was either incomplete or improper. As such, the placement decision cannot stand.

**III.** **CONCLUSION**

As discussed above, the decision to send CLIENT to her biological father, a stranger, is based on incomplete facts and an improper application of the law. CLIENT respectfully requests this Honorable Court to grant the following relief:

1. Modify the Recommendation to find that Minor CLIENT should not be placed with her father, Douglas Beasley as it is against her best interests;

Respectfully submitted this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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***CERTIFICATE OF SERVICE***

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION OF FINDINGS AND RECOMMENDATION TO PLACE MINOR CHILD WITH FATHER** by the Court’s electronic system (EFS E-File & Serve) and/or depositing in the U.S. Mail in a sealed envelope with first-class postage fully prepaid thereon, to the following:

An Employee of

*Firm*

1. The *Stanley* holding is also the primary due process case relied upon by the Nevada Supreme Court in *In re Parental Rights as to A.G.*  129 Nev. 125, 132, 295 P.3d 589, 594 (2013). [↑](#footnote-ref-1)