

FV08-03200
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 ALEXANDER M. FALCONI VS. MGN 3 Pages
 District Court 01/14/2009 09:50 AM
 Washoe County 3370
 m111700

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FILED

JAN 14 2009

HOWARD W. CONNERS, CLERK
 By [Signature]
 DEPUTY CLERK

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

ALEXANDER M. FALCONI,

Plaintiff,

Case No. FV08-03200

vs.

Dept. No. 11

[REDACTED] ANN [REDACTED]

Defendant.

ORDER DENYING APPLICATION FOR ORDER TO SHOW CAUSE

This Court has reviewed Alexander Falconi's (hereafter "Father") Motion filed for Order to Show Cause filed September 18, 2008; [REDACTED] (hereafter "Mother") Opposition to Motion for Order to Show Cause filed January 8, 2009; and Father's Response filed January 8, 2009 and now finds as follows:

The parties share one minor child [REDACTED] Falconi (hereafter "[REDACTED]" born [REDACTED] Child currently resides with [REDACTED] (hereafter "Mother"). An order regarding the temporary custody of [REDACTED] was issued in case FV08-03338 on October 10, 2008. Father was to have visitation from 8:00 A.M. until 5:00 P.M. every Thursday and Friday. A Case Management Conference was held on December 12, 2008. The Court issued an Order following the Case Management Conference which changed the parties' visitation schedule. The new visitation schedule was to go into place on December 26, 2008.

Father brings his current Motion requesting the Court hold Mother in contempt for exchanging [REDACTED] one hour late on December 18 and 19, 2008. Father contends Mother

1 did not drop off [REDACTED] as required by the October 10, 2008 Order. Father alleges that
2 he was willing to allow a later exchange if Mother would have allowed him to keep
3 [REDACTED] for an extra hour, but she refused.

4 Mother in her Opposition argues that the parties agreed to the later drop off time in
5 Court on December 12, 2008. Mother states that the agreement was to accommodate
6 [REDACTED] sleep schedule. Mother also argues that it is abuse of the legal process for
7 Father to file a Motion requesting an Order to Show Cause for two hours.

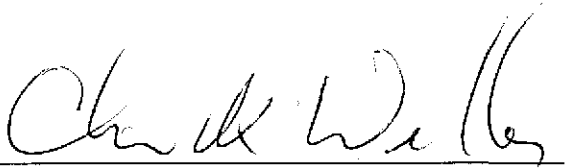
8 Father in his Reply argues that there was no agreement between the parties
9 allowing a later exchange. Father also argues that it is in the best interest of [REDACTED] to
10 be allowed to spend the full visitation period with his Father. Father does not request a
11 hearing.

12 NRS 22.010 defines contempt as "[d]isobedience or resistance to any lawful writ,
13 order, rule or process issued by the court or judge at chambers." The party moving for an
14 order to show cause must make a prima facie showing that the non-moving party had the
15 ability to comply with the order and that his or her violation was willful. See Rodriguez v.
16 District Court, 120 Nev. 798, 102 P.3d 41 (2004).

17 No record of the parties December 12, 2008 Case Management Conference was
18 kept. As such, the Court cannot verify whether the parties reached agreement on the 9:00
19 A.M. drop-off time. Accordingly, the Court cannot determine if Mother's actions were
20 willful and Father's Motion is denied.

21
22 **IT IS SO ORDERED.**

23 Dated: January 12, 2009.

24
25 
26 District Court Judge
27
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of JUDGE CHUCK WELLER, and that I deposited for mailing at Reno, Nevada, a true copy of the attached document, addressed to:

Alexander Falconi
[REDACTED]

Katherine Berning, Esq.
[REDACTED]

Dated this 14 Day of January, 2009.



ADMINISTRATIVE ASSISTANT