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IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BAUER and AMY BAUER

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
WASHOE AND THE HONORABLE
EGAN WALKER, DISTRICT JUDGE,
RESPONDENTS

and

In the Matter of Guardianship
ELIZABETH ELAINE BAUER,
Adult Ward

Real Party in Interest

Supreme Court No. _____

District Ct. Case No.
PRCV98-03405

EMERGENCY
MOTION FOR STAY PENDING APPEAL
FILED UNDER NRAP 27(e)

ACTION NECESSARY ON OR BEFORE
THURSDAY, NOVEMBER 6, 2012

Pursuant to NRAP 8 and NRAP 27(e), Petitioners hereby move this Honorable Court for an emergency stay of the unlawful and extraordinary proceedings being conducted by District Court Judge Egan Walker to determine whether the Court will compel a mentally retarded Ward of the State of Nevada, Elizabeth Elaine Bauer (“Elisa”), to have an abortion against her

1 will and against the will of her Guardians and Parents, William and Amy Bauer
2 (“the Bauers”).

3
4 **I.**

5 **NRAP 27(e) CERTIFICATE**

6 Petitioners respectfully certify that their motion for a stay pending Writ
7 of Mandamus/Prohibition is an emergency motion requiring “relief ... in less
8 than 14 days” to “avoid irreparable harm.” Indeed, immediate relief is needed
9 to prevent District Court Judge Egan Walker from continuing to deprive Elisa
10 and her parent/guardians of the due process protections of NRS 159.185 *et*
11 *seq.*, and NRS 159.1905, *et. seq.*, while forcing Elisa to remain in the facility
12 which permitted her to become pregnant, in order to determine if and when he
13 will compel Elisa to undergo a abortion against her will and the will of her
14 Guardians and Parents, the Bauers.
15

16 **A. NRAP 27(e)(3)(A) Telephone Numbers And Office Addresses Of**
17 **The Attorneys For The Parties.**

<p>18 JASON D. GUINASSO, ESQ. 19 Nevada Bar No. 8478 20 GUINASSO LAW, LTD. 21 190 W. HUFFAKER LANE, SUITE 22 402 23 RENO, NV 89511 24 (o) 775-853-8746 (f) 775-201-9611 jason@guinassolaw.com Attorney for Petitioners</p>	<p>DANIA REID, ESQ. Nevada Bar No. 5771 WASHOE COUNTY DEPUTY DISTRICT ATTORNEY ONE SOUTH SIERRA ST. PO BOX 11130 RENO, NV 89520 (o) 775-337-5700 (f) 775-337-5732 dreid@da.washoecounty.us Attorney for Washoe County Public Guardian</p>
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1 KAREN SABO, ESQ.
Nevada Bar No. 621
2 WASHOE LEGAL SERVICES
3 299 SO. ARLINGTON AVENUE
RENO, NV 89501
4 (o) 775-785-5718
(f) 775-329-2773
5 ksabo@washoelegalservices.org
Guardian Ad Litem for Elizabeth
6 Bauer, Adult Ward

MARY BOETSCH, ESQ.
Nevada Bar No. 156
SINAI, SCHROEDER, MOONEY,
BOETSCH, BRADLEY & PACE
448 HILL STREET
RENO, NV 89501
(o) 775-323-5178
(f) 775-323-0709
boetsch2@gmail.com
Attorney for Elizabeth Bauer, Adult
Ward

8
9 **B. Facts Showing The Existence And Nature Of The Claimed**
10 **Emergency.**

11 The following facts show that, unless emergency relief is granted on or
12 before the conclusion of several scheduled "evidentiary" hearings, starting on
13 Thursday, November 1, 2012, with an additional hearing scheduled for
14 November 6, 2012, Petitioners will be irreparably harmed:

15
16 **1. Background Leading Up To Elisa's Pregnancy.**

17 Twenty years ago, William and Amy Bauer of Fernley, Nevada, adopted
18 six children from Costa Rica, all siblings, suffering from fetal alcohol
19 syndrome. **Exhibit A, pg. 3, and Exhibit E, pg. 1.** Elizabeth Elaine Bauer
20 ("Elisa"), the second oldest child, suffered the most severe physical and mental
21 defects. **Exhibit A, pg. 3.** In this regard, Elisa has a diminished mental
22 capacity and she has epilepsy. **Exhibit E, pg. 2.** Elisa is said to have a 42 IQ
23 and the mental and social capacity of a six-year old child. Elisa is currently 32-
24 years old. **Exhibit E, pg. 1.**
25

1 When Elisa turned 18 years old, the Court named Mr. and Mrs. Bauer
2 her Guardians because Elisa did not have the capacity to care for herself or
3 make critical decisions about her health and well-being. **Exhibit B, pg. 1.**
4 Elisa lived with Mr. and Mrs. Bauer for a significant period of time and then
5 she moved to a group home called "Chrysalis" in Reno, Nevada. **Exhibit D,**
6 **pg. 1.**

8 Elisa frequently "eloped" from Chrysalis. **Exhibit E, pg. 4.** Sometimes
9 she eloped for a few hours; other times she eloped overnight and did not return
10 for a few days. **Id.** During her elopements, Elisa would have sexual
11 encounters with men at a nearby truck stop. **Exhibit D, pg. 3.** Whether these
12 encounters were consensual or not is unknown. **Exhibit E, pg. 5.** There has
13 been some speculation that Elisa received money in return for sex. **Exhibit D,**
14 **pg. 3.** However, this has been mere speculation without any support.

16 To put an end to the elopements, the Bauers and Chrysalis have
17 attempted every method of preventing Elisa from running away short of
18 physical restraint or institutionalization. **Exhibit P, Affidavit of William**
19 **Bauer.** In this regard, there were deterrents and safeguards implemented to
20 protect Elisa. **Exhibit P, Affidavit of William Bauer.** For example, Mr. and
21 Mrs. Bauer and Chrysalis agreed to purchase a cell phone with GPS for Elisa to
22 be able to locate her during elopements. **Exhibit P, Affidavit of William**
23 **Bauer.** Once she was located, Chrysalis' staff would then contact Elisa and
24

1 urge her to come home and they would offer Elisa transportation. **Exhibit P,**
2 **Affidavit of William Bauer.** Additionally, Chrysalis developed a procedure to
3 contact the police when Elisa had missed her medications due to elopement.
4 **Exhibit P, Affidavit of William Bauer.** The house manager and on-site staff
5 were trained to redirect elopement behavior. **Exhibit P, Affidavit of William**
6 **Bauer.** A behavioral plan was made that stressed positive reinforcements for
7 non-elopement. **Exhibit P, Affidavit of William Bauer.**

9 Moreover, to address the risk of pregnancy resulting from an elopement,
10 the house manager, in conjunction with Bauers tracked Elisa's menstrual cycle,
11 noting days of fertility and attempted to redirect elopement behavior with home
12 visits and other activities during those periods. **Exhibit P, Affidavit of**
13 **William Bauer.** Notably, the Bauers had put an end to Elisa contracepting
14 with depo provera two years ago because of the adverse health risks that this
15 drug presented. **Exhibit P, Affidavit of William Bauer; see Exhibit O; see**
16 **also Exhibit E, pg. 5.** Mr. and Mrs. Bauer used the natural family planning
17 method to address Elisa's promiscuous behavior and to prevent pregnancy.
18 **Exhibit P, Affidavit of William Bauer.** In this regard, the Bauers observed
19 and timed Elisa's menstrual period and noted the period of her fertility each
20 month. **Exhibit P, Affidavit of William Bauer.** Chrysalis and the Bauers
21 worked together to direct Elisa toward activities that she enjoyed during her
22 fertile times each month. **Exhibit P, Affidavit of William Bauer.** The
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1 collective efforts of Chrysalis and the Guardians were successful for nearly two
2 years. **Exhibit P, Affidavit of William Bauer.**

3 Due to growing concerns about Elisa's safety over the last year, the
4 Bauers spoke with Chrysalis about finding a placement inaccessible to
5 downtown Reno and Sparks and away from truck stops, fewer casinos, and
6 opportunities for elopements. Stead was discussed, but rejected as a
7 possibility. **Exhibit P, Affidavit of William Bauer.** Six (6) months ago, the
8 Bauers and Chrysalis requested of SRC (Sierra Regional Center) and Rural
9 Regional Center a housing transfer for Elisa to a smaller city that contained no
10 truck stops (Carson City). **Exhibit P, Affidavit of William Bauer.** A
11 roommate was found and plans were made to process the move in mid-summer
12 2012; however, Rural Regional Center abruptly pulled the vacancy for
13 Chrysalis in August 2012. **Exhibit P, Affidavit of William Bauer.** The
14 Bauers had repeatedly questioned SRC about the delay since early summer, but
15 no cogent answers were forthcoming. **Exhibit P, Affidavit of William Bauer.**

16 In all events, the Bauers have been and are vigorously committed to
17 keeping Elisa safe. **Exhibit P, Affidavit of William Bauer.** Keeping Elisa
18 safe, in the Bauers' view, is more than merely preventing her from becoming
19 pregnant, but working to change her behavior so that she is not exposed to
20 abuse from males, STD's, and other risks associated with her random
21 elopements. **Exhibit P, Affidavit of William Bauer.**

1 **2. Elisa's Pregnancy.**

2 About twelve weeks ago, Elisa became pregnant. **Exhibit E, pg. 4 and**
3 **Exhibit D, pg. 2.** Presently, the facts are not clear on how she became
4 pregnant. **Exhibit E, pg. 4.** The father of the child has not been identified. **Id.**
5 Those close to Elisa suspect she may have been raped, but there is also a
6 possibility that the sexual activity that led to her pregnancy was consensual.
7 **Exhibit E, pg. 4-5.** Presently, know one knows, but the matter is being
8 investigated by Washoe County. **Exhibit E, pg. 5.**

9
10 Elisa has stated several times to Mrs. Bauer that she wants to carry the
11 pregnancy to term, but she understands that she will not be able to keep the
12 baby. **Exhibit P, Affidavit of William Bauer.** In this regard, her expressed
13 desire, according to Mrs. Bauer, is to be able to see the child from time to time.
14 **Exhibit P, Affidavit of William Bauer.** Recently, this expressed desire has
15 been confused and dismissed by certain medical professionals and social
16 workers. **Exhibit P, Affidavit of William Bauer.**

17
18 Nevertheless, the District Court declared Elisa a Ward in 1998 and
19 assigned the Bauers as Guardians so that they could make all decisions related
20 to Elisa's health and well-being, including making a decision about pregnancy.

21
22 **3. Disposition of William And Amy Bauer Regarding Pregnancy.**

23 William and Amy Bauer were appointed Elisa's guardians when she
24 became an adult approximately fourteen years ago. **Exhibit B, pg. 1.** Elisa's
25

1 guardians support Ms. Bauer's desire to have the baby; however, they
2 recognize that Elisa does not have the capacity to care for her baby herself.

3 **Exhibit P, Affidavit of William Bauer.** Therefore, they have taken steps to
4 find a set of parents willing to adopt Elisa's baby. Id. In this regard, there are
5 at least six qualified couples who have expressed serious interest in adopting
6 Elisa's baby. **Exhibit H.**

8 **4. Washoe County District Court Intervention.**

9 On September 27, 2012, Washoe County Social Services, Adult
10 Division, provided an *ex parte* "informal" report to the Court advising the
11 Court that Ms. Bauer was approximately 7 weeks pregnant and that her treating
12 physicians had concerns regarding the medications she is taking and the effects
13 they may have on her pregnancy. **Exhibit C, pg. 1.** Apparently, according to a
14 doctor's report, this was precipitated by a discussion that a doctor had with
15 Washoe District Attorney, Cal Dunlap. **Exhibit E, pg. 4.**

17 Based on the "informal" *ex parte* report, the Court set a "Status
18 Conference" for October 9, 2012. **Exhibit C, pg. 1.** All parties appeared at the
19 Status Conference; however, Elisa and the Bauers were not represented by
20 counsel.¹ At the Status Conference, the Court ordered Washoe County to

23 ¹ There are no transcripts of the proceedings available. The Court does not
24 have a Court Report. Rather, the Court records the hearings onto CD. A party
25 that wants a transcript must order a copy of the CD, which takes 7-10 days to
produce and deliver. Thereafter, the requesting party must hire a

1 conduct an investigation and produce a report on or before a hearing set for
2 October 16, 2012 at 9:30 a.m.² **Exhibit G, pg. 2.** Additionally, the Court
3 found that counsel should be appointed for Ms. Bauer and that the Washoe
4 County Public Guardian's Office should conduct an investigation. **Exhibit F,**
5 **pg. 2.** Because counsel for Ms. Bauer was not present at the October 16, 2012,
6 hearing, the Court continued the "status hearing" to Thursday, October 25,
7 2012 at 9:00 a.m.

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12 transcriptionist to create a transcript. Because of this circumstance,
13 undersigned counsel has not been able to review what was said at the October
14 9, 2012, hearing. What is known is that the Judge asked questions and elicited
15 testimony from unrepresented parties; based on the information he obtained, he
16 ordered an investigation and set another hearing. **Exhibit G, pg. 2.**

17 ² On October 9, 2012, the District Court issued an Order directing a "Washoe
18 County Public Guardian and/or her Guardian Case Manager designee to
19 conduct an investigation pursuant to NRS 159.046 into Elizabeth Elaine
20 Bauer's personal circumstances ...". The Bauers objected to this order and
21 submitted to the Court that NRS 159.046 does not apply to the circumstances
22 of this matter. NRS 159.046(1) applies to the proceedings where a "Petition
23 for the Appointment of a Guardian" has been filed and an investigator is
24 needed to (a) locate persons who perform services needed by proposed ward;
25 (b) determine competing interests in the appointment of the guardian; or (c)
investigate allegations or claims which affect the ward. The Bauers pointed
out that the extraordinary proceedings this Court facilitated on October 9,
2012, do not constitute a "... filing of [a] Petition" and the circumstances that
would give this Court authority to enter an order to appoint an investigator are
not present in this case. Indeed, this Court did not have the authority to even
call a hearing in this matter as was fully argued in their Motion to Dismiss and
Vacate filed on October 17, 2012. Therefore, the Bauers objected to the
admission of Washoe County Guardian's rogue report and requested that the
Court strike it from the record. **Exhibit M, pg. 1.**

1 **5. Motion to Dismiss and Vacate**

2 Prior to the October 25, 2012 hearing, the Bauers filed a motion to
3 dismiss and vacate the Hearing. **Exhibit J.** In their Motion, the Bauers first
4 argued that the “Status Hearing” should be dismissed and vacated because the
5 District Court does not have authority to hear and decide whether Elisa should
6 carry the pregnancy to term. The Bauers pointed out that there are no statutes
7 or cases that allow an “informal” *ex parte* communication to the Court to serve
8 as a pre-text to compel a “status hearing” to usurp the authority of the
9 Guardians to make health care decisions for the Ward. If Washoe County
10 Social Services had questions about Elisa's health and welfare and the
11 Guardians’ decisions related thereto, the Bauers argued that Washoe County
12 Social Services was required to follow the procedures set forth in NRS Chapter
13 159. Specifically, Washoe County was required to file a “Petition for
14 Termination or Modification of Guardianship.” In this regard, the statute sets
15 forth what must be contained in the Petition:
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18 1. A ward, the guardian or another person may petition the court for the
19 termination or modification of a guardianship. The petition must state or
20 contain:

- 21 (a) The name and address of the petitioner.
- 22 (b) The relationship of the petitioner to the ward.
- 23 (c) The name, age and address of the ward, if the ward is not the
24 petitioner, or the date of death of the ward if the ward is deceased.
- 25 (d) The name and address of the guardian, if the guardian is not the
 petitioner.
- (e) The reason for termination or modification.
- (f) Whether the termination or modification is sought for a guardianship
 of the person, of the estate, or of the person and estate.

1 (g) A general description and the value of the remaining property of the
2 ward and the proposed disposition of that property.

3 2. Upon the filing of the petition, the court may appoint an attorney to
4 represent the ward if:

5 (a) The ward is unable to retain an attorney; and

6 (b) The court determines that the appointment is necessary to protect the
7 interests of the ward.

8 3. The petitioner has the burden of proof to show by clear and
9 convincing evidence that the termination or modification of the
10 guardianship of the person, of the estate, or of the person and estate is in
11 the best interests of the ward.

12 4. The court shall issue a citation to the guardian and all interested
13 persons requiring them to appear and show cause why termination or
14 modification of the guardianship should not be granted.

15 5. If the court finds that the petitioner did not file a petition for
16 termination or modification in good faith or in furtherance of the
17 best interests of the ward, the court may:

18 (a) Disallow the petitioner from petitioning the court for attorney's fees
19 from the estate of the ward; and

20 (b) Impose sanctions on the petitioner in an amount sufficient to
21 reimburse the estate of the ward for all or part of the expenses and for
22 any other pecuniary losses, which are incurred by the estate of the ward
23 and associated with the petition.

24 Alternatively, if Washoe County Social Services have reasons to believe
25 that Mr. and Mrs. Bauer should be removed as duly appointed Guardians of
Elisa, they must submit a "Petition for Removal" that states with particularity
the reasons the Guardians should be removed and show cause for removal.

NRS 159.1853. Cause for Removal may include one of the following
conditions:

(a) The guardian has become mentally incompetent, unsuitable or
otherwise incapable of exercising the authority and performing the
duties of a guardian as provided by law;

(b) The guardian is no longer qualified to act as a guardian pursuant to
NRS 159.059;

(c) The guardian has filed for bankruptcy within the previous 5 years;

- 1 (d) The guardian of the estate has mismanaged the estate of the ward;
2 (e) The guardian has negligently failed to perform any duty as provided
by law or by any order of the court and:

3 (1) The negligence resulted in injury to the ward or the estate of
the ward; or

4 (2) There was a substantial likelihood that the negligence would
result in injury to the ward or the estate of the ward;

5 (f) The guardian has intentionally failed to perform any duty as provided
by law or by any lawful order of the court, regardless of injury;

6 (g) The best interests of the ward will be served by the appointment of
another person as guardian; or

7 (h) The guardian is a private professional guardian who is no longer
8 qualified as a private professional guardian pursuant to NRS 159.0595.

9 NRS 159.185(1). Notably, of the enumerated conditions for removal under the
10 foregoing statute, none of the conditions include a moral disagreement about
11 health care decisions being made by the Guardian.
12

13 In this case, the Bauers explained to the District Court that Washoe
14 County Social Services disregarded and completely circumvented the
15 established procedures for challenging the authority and decisions of Bauers
16 regarding Elisa's health and welfare. Therefore, the Bauers asked the District
17 Court to dismiss and vacate the scheduled hearing and that the Court direct
18 Washoe County Social Services to follow the procedures of NRS Chapter 159
19 if they believe that Ms. Bauer's Guardians are no longer qualified and should
20 be removed and/or Ms. Bauer's Guardians are somehow abusing their authority
21 over Ms. Bauer's health and welfare.
22

23 Indeed, absent such a showing, the Bauers submitted to the District
24 Court that Nevada law provides that all decisions regarding Elisa's health and
25

1 welfare rest with her Guardians, William and Amy Bauer. The Bauers argued
2 that, neither the Court nor Washoe County have authority to make health care
3 decisions on behalf of Ms. Bauer. After being duly appointed by this Court to
4 be Guardians of Ms. Bauer in 1998, the exclusive authority to make health care
5 decisions for Ms. Bauer rests solely with Ms. Bauer's guardians, Mr. and Mrs.
6 Bauer.
7 Bauer.

8 NRS 159.017 defines "Guardian" as:

9 . . . any person appointed under this chapter as guardian of the person,
10 of the estate, or of the person and estate for any other person, and
11 includes an organization under NRS 662.245 and joint appointees. The
12 term includes, without limitation, a special guardian or, if the context so
13 requires, a person appointed in another state who serves in the same
14 capacity as a guardian in this State.

15 Once a guardian is appointed in accordance with the requirements of
16 NRS Chapter 159, the guardian has broad authority and responsibility. In this
17 regard, NRS 159.079, provides for the following general functions and powers
18 of a guardian of a person:

19 1. Except as otherwise ordered by the court, a guardian of the person has
20 the care, custody and control of the person of the ward, and has the
21 authority and, subject to subsection 2, shall perform the duties necessary
22 for the proper care, maintenance, education and support of the ward,
23 including, without limitation, the following:

24 (a) Supplying the ward with food, clothing, shelter and all incidental
25 necessities, including locating an appropriate residence for the ward.

**(b) Authorizing medical, surgical, dental, psychiatric, psychological,
hygienic or other remedial care and treatment for the ward.**

(c) Seeing that the ward is properly trained and educated and that the
ward has the opportunity to learn a trade, occupation or profession.

2. In the performance of the duties enumerated in subsection 1 by a
guardian of the person, due regard must be given to the extent of the

1 estate of the ward. A guardian of the person is not required to incur
2 expenses on behalf of the ward except to the extent that the estate of the
ward is sufficient to reimburse the guardian.

3 3. A guardian of the person is the ward's personal representative for
4 purposes of the Health Insurance Portability and Accountability Act of
5 19961, Public Law 104-191, and any applicable regulations. The
6 guardian of the person has authority to obtain information from any
government agency, medical provider, business, creditor or third party
who may have information pertaining to the ward's health care or health
insurance.

7 ***

8 (**emphasis supplied**). Importantly, there is nothing in the statutes that requires
9 a guardian to seek permission from the State, County, or Court to make health
10 care decisions for the Ward, including the very personal health care decision
11 regarding whether to carry a pregnancy to term or not. The only limitations to
12 a Guardian's authority regarding health care decisions are decisions involving
13 "experimental medical, biomedical or behavioral treatment of a ward" or
14 "sterilization of a ward" or "the participation of a ward in any biomedical or
15 behavioral experiment." NRS 159.0805(1). NRS Chapter 159 leaves the
16 decisions regarding health care, including pregnancy, to the guardians.
17

18 Moreover, the Bauers reminded the Court that there are no statutes that
19 give the District Court or Washoe County the authority to compel Elisa to have
20 an abortion. Again, such decisions are left to the sound discretion of the duly
21 appointed guardian(s). By comparison, the Bauers further explained to the
22 District Court that, if Mr. and Mrs. Bauer were abortion minded and decided
23 Elisa should have an abortion or if they had decided to allow Elisa to use
24

1 contraception and Washoe County Social Services had moral and ethical
2 concerns about contraception or the efficacy of an abortion, neither Washoe
3 County nor the District Court would have authority to prohibit the Guardians
4 from allowing Elisa from using contraception or undergoing an abortion.
5 Similarly, neither Washoe County nor the Court has the authority to prohibit
6 the Guardians from allowing Elisa to carry her pregnancy to term.
7

8 Therefore, for this additional reason, the Bauers submitted that the
9 scheduled status hearings must be dismissed and vacated and that the District
10 Court should direct Washoe County Social Services to follow the procedures of
11 NRS Chapter 159 if they believe that Elisa's Guardians are no longer qualified
12 and should be removed and/or Elisa's Guardians are somehow abusing their
13 authority over Elisa's health and welfare.
14

15 Finally, the Bauer's argued that the District Court and Washoe County
16 Social Services had no basis, in law or in fact, to intervene and usurp the
17 authority of Elisa's Guardians to make decisions regarding her health and
18 welfare. To date, Washoe County has utterly failed to provide clear and
19 convincing evidence that Mr. and Mrs. Bauer's decision to support Elisa's
20 efforts to carry her child to term is unlawful or that they are not acting in a
21 manner consistent with the best interests of Elisa's health and welfare. In this
22 regard, the medical opinions relied upon by Washoe County and the Court to
23
24

1 support the position that “abortion” and “sterilization” do not constitute the
2 appropriate medical standard of care for a woman with epilepsy.

3 The Bauers then argued that the *ipse dixit* opinions of Dr. Emani, Dr.
4 Torch, and Dr. Slotnick lacked factual foundation and were not supported by
5 any scholarly material. Indeed, the concerns expressed about the risks of
6 Elisa’s pregnancy were grossly overstated. Therefore, the Bauer’s decision to
7 give those opinions little weight regarding the best course of action to take with
8 Ms. Bauer and her pregnancy are reasonable and justified.

9
10 To further underscore the care and attention Mr. and Mrs. Bauer gave to
11 what the best medical course of action is for Elisa, Mr. and Mrs. Bauer
12 submitted an expert opinion from Stacy Mellum, M.D., a board certified,
13 practicing physician in Obstetrics/Gynecology to provide guidance and support
14 to the decisions that they must make regarding Ms. Bauer’s health and welfare
15 relative to her pregnancy. **Exhibit I.** Dr. Mellum’s biggest concern is Ms.
16 Bauer’s seizure disorder. **Exhibit I, pg. 1.** In this regard, Dr. Mellum
17 explained that he is concerned about Ms. Bauer complying with her doctor’s
18 orders to regularly take her seizure medications during pregnancy. **Exhibit I,**
19 **pg. 3.** Dr. Mellum acknowledged that women with seizures have a higher risk
20 of birth defects than the general population. (In a normal population the
21 incidence of birth defects is 2-3%, while the risk of birth defects is about
22 double (6-8%) in women with seizures.) However, the current standard of care
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1 is to use the medication that is most effective in controlling the seizures, not to
2 compel the woman who has seizures to have an abortion. Accordingly, Dr.
3 Mellum opined that, if Ms. Bauer can take her prescribed seizure medications,
4 then Ms. Bauer's pregnancy can be followed as safely as other patients with
5 seizure disorders.
6

7 Additionally, Mr. and Mrs. Bauer submitted another expert opinion from
8 Dr. Michael Czerkes, OB/GYN, St. Mary's Regional Medical Center in
9 Lewiston, Maine. **Exhibit L.** Dr. Czerkes reviewed all the medical facts and
10 concluded:
11

12 . . . monitoring and screening in pregnancy is the recommended course
13 of treatment in pregnancy for a baby who has been exposed to an anti-
14 epileptic medication, not abortion. The majority of the time the mother
15 may be kept on the same medication that has been controlling her
16 seizure disorder to remain seizure free. The risk of having a congenital
17 abnormality is increased when taking these medications, however the
18 risk is not great enough to recommend the ending of the pregnancy and
19 the life through abortion. With our excellent technology and ability to
20 determine if a baby has a severe malformation, this should be detected
21 prenatally and then recommended treatment for the baby can be
22 undertaken. In this circumstance, I would not recommend termination of
23 this pregnancy. As you can see from this discussion, treatment of
24 epilepsy in pregnancy is often necessary and the vast majority of the
25 time there is no harmful effects on the fetus, or the mother.

20 **Exhibit L, pg. 2.**

21 Therefore, for this additional reason, the Bauers asked that the District
22 Court to dismiss its "status hearing".
23

24 ///

25 ///

1 **6. October 25, 2012, Hearing**

2 The Judge took up the Bauers motion at the October 25, 2012, hearing.

3 In denying the Motion to dismiss, the Judge reasoned from the bench that:

4 a) He had "inherent authority" to call the hearing and to consider the
5 decisions being made about Elisa's health care;

6 b) Guardian's are "agents" of the Court;

7 c) The express provisions of Chapter 159 do not in any way limit a his
8 authority to take action to usurp the authority of the guardians and make
9 health care decisions, if and when necessary.
10

11 To support this reasoning, the District Court cited *In re Spangler*, 162 Ohio
12 App.3d 83, 832 N.E.2d 805 (Ohio App. 3 Dist., 2005) and a law review article
13 titled "Is A Guardian The Alter Ego of the Ward" 37 Stetson Law Review 54
14 (4/7/2008).³

15

16 To date, the District Court has not provided a written decision.⁴

17 After denying the Bauers' motion to dismiss, the Judge explained that he
18 would like to have weekly evidentiary hearings to take evidence and testimony
19 to address to questions:
20

21

22 ³ This Ohio case and Florida law review article do not support the District
23 Court's conclusions. Moreover, this Ohio case and Florida law review article
24 do not establish the District Court's jurisdiction to conduct the rogue
25 proceedings.

⁴ Upon request of undersigned counsel, the District Court said it would file a
 written decision and order right away.

1 (a) Whether Elisa has the mental capacity to understand the risks of
2 pregnancy and whether she is competent to make a decision about
3 carrying her unborn child to term;

4 (b) If Elisa had the mental capacity to understand the risks of her
5 pregnancy, would she decide to carry the pregnancy to term or would
6 she elect to have an abortion?
7

8 After framing the questions, the Judge ordered a psychological evaluation.

9 Additionally, he set two evidentiary hearings. **Exhibit N.** One for Thursday,
10 November 1, 2012, and the other for Tuesday, November 6, 2012. **Exhibit N.**

11 At the first hearing, the Judge asked to hear from Dr. Torch, Dr. Slotnick, Dr.
12 Mellum and any other doctor who could address the risks of Elisa's pregnancy.
13

14 At the second hearing, the Judge would like to hear from doctors who will
15 address Elisa's mental capacity. Additional hearings will be scheduled as
16 needed to take evidence and hear argument.

17 **II.**

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **IN SUPPORT OF PETITIONERS' EMERGENCY MOTION FOR STAY**

20 **A. Motion for an Emergency Stay to District Court Impracticable**

21 The Nevada Supreme Court rules generally require a party to seek a stay
22 in the district court before seeking a stay in this court except when the moving
23 party shows that such a step would be impracticable. NRAP 8(a). Here,
24

1 because Petitioners need immediate emergency relief from the District Court's
2 decisions and from the unlawful proceedings related thereto, moving first to the
3 District Court is impracticable because it would unduly delay the emergency
4 relief Petitioners seek. Unless Petitioners get immediate relief from the
5 pending hearings, Petitioners will be irreparably harmed.
6

7 **B. Procedural History**

8 On July 28, 1998, William and Amy Bauer were appointed as guardians
9 of Elizabeth Elaine Bauer (hereinafter "Elisa"). **Exhibit B.**

10 On September 27, 2012, Washoe County Social Services, Adult
11 Division, provided an *ex parte* "informal" report to the Court advising the
12 Court that Elisa was approximately 7 weeks pregnant and that her treating
13 physicians had concerns regarding the medications she is taking and the effects
14 they may have on her pregnancy.⁵ **Exhibit C.**

15
16 Based on the "informal" *ex parte* report, the Court set a "Status
17 Conference" for October 9, 2012. **Exhibit C, pg. 1.** All parties appeared at the
18 Status Conference; however, Elizabeth, Amy, and William Bauer were not
19 represented by counsel.
20

21 In response to the information provided at the Status Conference, the
22 Court set a hearing on October 16, 2012 at 9:30 a.m., to further address the
23

24 ⁵ Apparently, according to Dr. Torch's report, this was precipitated by a
25 discussion that Dr. Torch had with Former District Attorney, Cal Dunlap.
Exhibit E, pg. 4.

1 issues raised in the physicians' reports as well as the issues raised by Elisa's
2 guardians. **Exhibit F, pg. 2.** Additionally, the Court found that counsel should
3 be appointed for Elisa and that the Washoe County Public Guardian's Office
4 should conduct an investigation. **Exhibit F.**

5
6 Because counsel for Elisa was not present at the October 16, 2012,
7 hearing, the Court continued the "status hearing" to Thursday, October 25,
8 2012 at 9:00 a.m. **Exhibit K.**

9 On October 17, 2012, counsel for William and Amy Bauer (herein after
10 "Guardians") filed a motion to dismiss stating that the District Court lacked
11 jurisdiction to usurp the judgment of the Guardians without dues process of
12 law, namely without complying with Nevada Revised Statutes Chapter 159 *et*
13 *seq.* **Exhibit J.**

14
15 On October 25, 2012, the Judge took up the Bauer's motion at the
16 October 25, 2012, hearing. In denying the motion to dismiss, the Judge
17 reasoned from the bench that:

- 18 a) He had "inherent authority" to call the hearing and to consider the
19 decisions being made about Elisa's health care;
- 20 b) Guardian's are "agents" of the Court;
- 21 c) The express provisions of Chapter 159 do not in any way limit a his
22 authority to take action to usurp the authority of the guardians and make
23 health care decisions, if and when necessary.
24

1 To support this reasoning, the District Court cited *In re Spangler*, 162 Ohio
2 App.3d 83, 832 N.E.2d 805 (Ohio App. 3 Dist.,2005) and a law review article
3 titled "Is A Guardian The Alter Ego of the Ward" 37 Stetson Law Review 54
4 (4/7/2008).⁶

5 To date, the District Court has not provided a written decision.⁷

6 After denying the Bauers' motion to dismiss, the Judge explained that he
7 would like to have weekly evidentiary hearings to take evidence and testimony
8 to address to questions:

9 (a) Whether Elisa has the mental capacity to understand the risks of
10 pregnancy and whether she is competent to make a decision about
11 carrying her unborn child to term;

12 (b) If Elisa had the mental capacity to understand the risks of her
13 pregnancy, would she decide to carry the pregnancy to term or would
14 she elect to have an abortion?

15 After framing the questions, the Judge ordered a psychological evaluation.
16 Additionally, he set two evidentiary hearings. **Exhibit N.** One for Thursday,
17 November 1, 2012, and the other for Tuesday, November 6, 2012. **Exhibit N.**

18
19
20
21
22 ⁶ This Ohio case and Florida law review article do not support the District
23 Court's conclusions. Moreover, this Ohio case and Florida law review article
24 do not establish the District Court's jurisdiction to conduct the rogue
25 proceedings.

⁷ Upon request of undersigned counsel, the District Court said it would file a
written decision and order right away.

1 At the first hearing, the Judge asked to hear from Dr. Torch, Dr. Slotnick, Dr.
2 Mellum and any other doctor who could address the risks of Elisa's pregnancy.
3 At the second hearing, the Judge would like to hear from doctors who will
4 address Elisa's mental capacity. Additional hearings will be scheduled as
5 needed to take evidence and hear argument.
6

7 **C. Issues Presented By Writ Of Mandamus/Prohibition**

- 8 1. Did the Honorable Egan Walker, District Court Judge, act in an arbitrary
9 and/or capricious manner when he set the underlying action for a
10 “status” hearing based upon an “informal” *ex parte* communication with
11 state agents?
12
- 13 2. Did the Honorable Egan Walker, District Court Judge, act in an arbitrary
14 and/or capricious manner when he refused to dismiss the “status”
15 hearing in the underlying action because he did not have jurisdiction to
16 initiate such a proceeding when no one had petitioned the court for relief
17 pursuant to NRS 159.046?
18
- 19 3. Did the Honorable Egan Walker, District Court Judge, act in an arbitrary
20 and/or capricious manner when he set the underlying action for a series
21 of evidentiary hearings to determine if the Ward, Elizabeth Elaine Bauer,
22 should undergo a forced abortion procedure?

23 ///
24 ///

1 **D. SUMMARY OF ARGUMENT PRESENTED BY WRIT**

2 A Writ of Mandamus is available “to compel the performance of an act
3 that the law requires as a duty resulting from an ‘office, trust or station’ or to
4 control an arbitrary or capricious exercise of discretion.”⁸ Writs of Prohibition
5 are “the counterpart of the Writ of Mandamus.” It arrests the proceeding of
6 any tribunal, corporation, board or person exercising judicial functions, when
7 such proceedings are without or in excess of the jurisdiction of such tribunal,
8 corporation, board or person.⁹ Such writs may be issued when no plain,
9 speedy and adequate remedy exists in the ordinary course of law.¹⁰

11 The Nevada Supreme Court has held:

12 As a writ protection seeks an extraordinary remedy, we will
13 exercise our discretion to consider such a petition only when there
14 is no “plain, speedy and adequate remedy in the ordinary course of
15 law” or there are either urgent circumstances or important legal
16 issues that need clarification in order to promote judicial economy
and administration.¹¹

17 In the case at bar, there is a lack of remedy at law. The District Court
18 has issued a *sua sponte* order, which is not appealable, for a “status
19 conference” and now for a series of proceedings to hear evidence to determine
20 if the Elisa should be forced to have an abortion procedure to terminate her
21

22 _____
23 ⁸ See *Cheung v. Dist Ct.*, 121 Nev. 867, 868-69, 124 P. 3d 550, 552
(2005)(quoting NRS 34.160).

24 ⁹ NRS 34.320

25 ¹⁰ NRS 34.020; NRS 34.170; NRS 34.330

¹¹ See *Cheung*, 124 P. 3d at 552.

1 pregnancy. There is an urgent and strong necessity for a remedy plus a gross
2 miscarriage of justice will occur if this petition is not granted.¹² Even if the
3 order were appealable, should the District Court decide to order a forced
4 abortion on Elisa, then the pregnancy will be terminated before the appeal
5 could be heard.
6

7 Absent a clear abuse of discretion this Honorable Court will not overrule
8 a District Court, which has been granted broad powers of discretion.¹³ Here,
9 the Honorable Egan Walker acted outside of his statutory authority, arbitrarily
10 and capricious, in ordering the “status” hearing and the ensuing evidentiary
11 hearings to determine if it should order a forced abortion on Elisa. Such
12 actions by the District Court constitute a manifest abuse of discretion.
13

14 Since the Court, *sua sponte* and based upon ex parte “informal”
15 communications, initiated the current proceedings, the Court failed to provide
16 the Guardians and the Ward due process notice and a right to be heard as
17 required by Nevada Statutes.¹⁴ The essential elements of procedural due
18 process are adequate notice, a neutral decision-maker, an opportunity to present
19 one's case, representation by an attorney, and a decision based on the record
20
21
22

23 ¹² See *State v. Babayan*, 106 Nev. 155, 787 P. 2d 805 (1990; see also *Jeep*
24 *Corp. v. Dist. Ct.*, 98 Nev. 440, 652 P 2d. 244 (1983).

25 ¹³ See *Primm v. Lopes*, 109 Nev. 502, 504, 856 P 2d. 103, 104 (1993).

¹⁴ See NRS chapter 159 *et seq.*

1 with a statement of reasons for the decision.¹⁵ Fundamental requirement of due
2 process is an opportunity to be heard at meaningful time and in meaningful
3 manner.¹⁶

4 A fundamental requirement of due process of law in any proceeding
5 which is to be accorded finality is notice reasonably calculated under all the
6 circumstances to apprise interested parties of the pendency of the action and
7 afford them an opportunity to present their objections; and the notice must be
8 of such nature that it reasonably conveys the required information, and must
9 afford a reasonable time for those interested to make their appearance.¹⁷

10
11 NRS Chapter 159 requires that an interested party petition the court for
12 relief. If the Ward's life in danger, there remains a statutory mechanism to get
13 the [c]ourt involved. Even in life threatening situations involving children, the
14

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18 ¹⁵ See *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314, 70 S.Ct.
19 652, 94 L.Ed. 865 (1950).

20 ¹⁶ See *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

21 ¹⁷ See *Mullane* at 314; the fundamental requisite of due process is the
22 opportunity to be heard. See *Browning v. Dixon*, 114 Nev. 213, 954 P. 2d 741
23 (1998) (Citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,
24 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1949) "This right to be heard has little
25 reality or worth unless one is informed that the matter is pending and can
choose for himself whether to appear or default, acquiesce or contest ... An
elementary and fundamental requirement of due process in any proceeding
which is to be accorded finality is notice reasonably calculated, under all the
circumstances, to apprise interested parties of the pendency of the action and
afford them an opportunity to present their objections.")

1 Statutes and the Court still require compliance and due process to obtain
2 emergency guardianship to authorize emergency medical care.¹⁸

3 The District Court lacks jurisdiction to order a status conference and
4 evidentiary hearing to decide whether Elisa should undergo a forced abortion.
5 Under Nevada Law, only the duly appointed guardian may exercise the right to
6 consent to a medical procedure for the ward. Once a guardian is appointed in
7 accordance with the requirements of NRS Chapter 159, the guardian has broad
8 authority and responsibility. Namely, NRS 159.079, provides for the following
9 general functions and powers of a guardian of a person:
10

11 1. Except as otherwise ordered by the court, a guardian of the person has
12 the care, custody and control of the person of the ward, and has the
13 authority and, subject to subsection 2, shall perform the duties necessary
14 for the proper care, maintenance, education and support of the ward,
including, without limitation, the following:

15 (a) Supplying the ward with food, clothing, shelter and all incidental
necessaries, including locating an appropriate residence for the ward.

16 **(b) Authorizing medical, surgical, dental, psychiatric, psychological,
hygienic or other remedial care and treatment for the ward.**

17 (c) Seeing that the ward is properly trained and educated and that the
ward has the opportunity to learn a trade, occupation or profession.

18 2. In the performance of the duties enumerated in subsection 1 by a
19 guardian of the person, due regard must be given to the extent of the
20 estate of the ward. A guardian of the person is not required to incur
expenses on behalf of the ward except to the extent that the estate of the
ward is sufficient to reimburse the guardian.

21 3. A guardian of the person is the ward's personal representative for
22 purposes of the Health Insurance Portability and Accountability Act of
23 19961, Public Law 104-191, and any applicable regulations. The
guardian of the person has authority to obtain information from any

24
25 ¹⁸ See *In The Matter of the Guardianship of L.S and H.S., Minor Wards*, 120
Nev. 157, 87 P.3d 521 (2004).

1 government agency, medical provider, business, creditor or third party
2 who may have information pertaining to the ward's health care or health
insurance.

3 (emphasis added)

4 ***

5 Nothing in NRS Chapter 159 requires the guardian to seek permission
6 from the Court to make health care decisions for the Ward, including the very
7 personal health care decision regarding whether to carry a pregnancy to term or
8 not.¹⁹ NRS Chapter 159 leaves the decisions regarding health care, including
9 pregnancy, to the guardian's sole discretion.
10

11 Moreover, there are no statutes that give this Court or Washoe County
12 the authority to compel Elisa to have an abortion. Again, such decisions are
13 left to the sound discretion of the duly appointed guardian(s).²⁰

14 There are no statutes or cases that allow an "informal" ex parte
15 communication to the Court to serve as a pre-text to compel a "status hearing"
16
17

18 ¹⁹ The only limitations to a Guardian's authority regarding health care
19 decisions are decisions involving "experimental medical, biomedical or
20 behavioral treatment of a ward" or "sterilization of a ward" or "the
participation of a ward in any biomedical or behavioral experiment." NRS
159.0805(1).

21 ²⁰ By comparison, if the Guardians decided Elisa should have an abortion or
22 they had decided to allow Elisa to use contraception and Washoe County
23 Social Services had moral and ethical concerns about contraception or the
24 efficacy of an abortion, neither Washoe County nor this Court would have
25 authority to prohibit the Guardians from allowing Elisa from using
contraception or undergoing an abortion. Similarly, neither Washoe County
nor this Court has the authority to prohibit the Guardians from allowing Elisa
to carry her pregnancy to term.

1 to call into question the decisions of a duly appointed guardian of an adult
2 ward. If Washoe County Social Services had questions about Elisa's health
3 and welfare and the Guardians' decisions related thereto, Washoe County
4 Social Services was required to follow the procedures set forth in NRS Chapter
5 159. Specifically, Washoe County was required to file a "Petition for
6 Termination or Modification of Guardianship." In this regard, the statute sets
7 forth what must be contained in the Petition:
8

9 1. A ward, the guardian or another person may petition the court for the
10 termination or modification of a guardianship. The petition must state or
11 contain:

12 (a) The name and address of the petitioner.

13 (b) The relationship of the petitioner to the ward.

14 (c) The name, age and address of the ward, if the ward is not the
15 petitioner, or the date of death of the ward if the ward is deceased.

16 (d) The name and address of the guardian, if the guardian is not the
17 petitioner.

18 (e) The reason for termination or modification.

19 (f) Whether the termination or modification is sought for a guardianship
20 of the person, of the estate, or of the person and estate.

21 (g) A general description and the value of the remaining property of the
22 ward and the proposed disposition of that property.

23 2. Upon the filing of the petition, the court may appoint an attorney to
24 represent the ward if:

25 (a) The ward is unable to retain an attorney; and

(b) The court determines that the appointment is necessary to protect the
interests of the ward.

3. The petitioner has the burden of proof to show by clear and
convincing evidence that the termination or modification of the
guardianship of the person, of the estate, or of the person and estate is in
the best interests of the ward.

1 4. The court shall issue a citation to the guardian and all interested
2 persons requiring them to appear and show cause why termination or
modification of the guardianship should not be granted.

3 5. If the court finds that the petitioner did not file a petition for
4 termination or modification in good faith or in furtherance of the best
interests of the ward, the court may:

5 (a) Disallow the petitioner from petitioning the court for attorney's fees
6 from the estate of the ward; and

7 (b) Impose sanctions on the petitioner in an amount sufficient to
8 reimburse the estate of the ward for all or part of the expenses and for
any other pecuniary losses which are incurred by the estate of the ward
and associated with the petition.

9 Alternatively, if Washoe County Social Services believes Mr. and Mrs.
10 Bauer should be removed as duly appointed Guardians of Elisa, they must
11 submit a "Petition for Removal" that states with particularity the reasons the
12 Guardians should be removed and show cause for removal. NRS 159.1853.

13 Cause for Removal may include one of the following conditions:

14 (a) The guardian has become mentally incompetent, unsuitable or
15 otherwise incapable of exercising the authority and performing the duties
16 of a guardian as provided by law;

17 (b) The guardian is no longer qualified to act as a guardian pursuant to
NRS 159.059;

18 (c) The guardian has filed for bankruptcy within the previous 5 years;

19 (d) The guardian of the estate has mismanaged the estate of the ward;

20 (e) The guardian has negligently failed to perform any duty as provided
by law or by any order of the court and:

21 (1) The negligence resulted in injury to the ward or the estate of
the ward; or

22 (2) There was a substantial likelihood that the negligence would
result in injury to the ward or the estate of the ward;

23 (f) The guardian has intentionally failed to perform any duty as provided
by law or by any lawful order of the court, regardless of injury;

24 (g) The best interests of the ward will be served by the appointment of
another person as guardian; or

1 (h) The guardian is a private professional guardian who is no longer
2 qualified as a private professional guardian pursuant to NRS 159.0595.

3 NRS 159.185(1).

4 Notably, of the enumerated conditions for removal under the foregoing
5 statute, none of the conditions include a moral disagreement about health care
6 decisions being made by the Guardian.

7 In this case, Washoe County Social Services disregarded and completely
8 circumvented the established procedures for challenging the authority and
9 decisions of Mr. and Mrs. Bauer regarding Elisa's health and welfare.
10

11 In accordance with the forgoing, Petitioners respectfully request this
12 Honorable court for a Writ of Mandamus or, in the alternative, a Writ of
13 Prohibition directing District Court Judge Egan Walker to dismiss the action
14 commenced on October 16, 2012 because he lacks statutory authority to
15 conduct such proceedings and a directing District Court Judge to halt
16 proceedings to determine if the Ward, Elizabeth Elaine Bauer should be forced
17 to undergo an abortion because he does not have authority to make such
18 decisions.
19

20 **E. Stay Pending Appeal**

21 In deciding whether to issue a stay, the Nevada Supreme Court generally
22 considers the following factors:
23

- 24 (1) Whether the object of the appeal or writ petition will be defeated if
25 the stay is denied;

1 (2) Whether Petitioner/petitioner will suffer irreparable or serious injury
2 if the stay is denied;

3 (3) Whether respondent/real party in interest will suffer irreparable or
4 serious injury if the stay is granted; and

5 (4) Whether Petitioner/petitioner is likely to prevail on the merits in the
6 appeal or writ petition.
7

8 See NRAP 8(c); Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948).

9 **1. The Object Of Petitioners' Writ of Mandamus/Prohibition**
10 **Will Be Defeated And, Perhaps, Mooted If A Stay Does Not**
11 **Issue.**

12 While Petitioners' appeal is pending, the District Court is presiding over
13 "evidentiary" proceedings he does not have statutory authority to conduct in an
14 effort to decide. These proceedings are scheduled for November 1, 2012,
15 November 6, 2012 and November 13, 2012. The District Court has made it
16 clear that it wants to make a decision on:

17 (a) Whether Elisa has the mental capacity to understand the risks of
18 pregnancy and whether she is competent to make a decision about
19 carrying her unborn child to term;
20

21 (b) If Elisa had the mental capacity to understand the risks of her
22 pregnancy, would she decide to carry the pregnancy to term or would
23 she elect to have an abortion?
24

1 If a stay is not granted, the Court will continue to conduct rogue
2 proceedings and decide issues for which the Court has no statutory authority to
3 consider and decide. Such a circumstance demonstrates a blatant disregard for
4 the provision of NRS Chapter 159 and the rights of Mr. and Mrs. Bauer and
5 Elisa.
6

7 **2. Petitioners Will Be Irreparably And Seriously Harmed If A**
8 **Stay Is Not Granted Because The District Court Will Decide**
9 **On Whether To Force Elisa To Have An Abortion Before This**
10 **Honorable Court has an Opportunity To Hear And Decide On**
11 **Whether To Grant A Writ.**

12 The District Court Judge's actions have been highly irregular and
13 unpredictable in this matter. In this regard, the District Court Judge has
14 essentially declared that he is a law unto himself and that he has "inherent"
15 authority to drag the Guardians and Elisa into Court, usurp their statutory and
16 Constitutional authority to make a personal health care decision about Elisa's
17 pregnancy, and that he intends to "substitute" Elisa's judgment to compel her
18 to have an abortion. To this end, the District Court has instituted expedited
19 proceedings in order to make a decision on this matter within the next two to
20 three weeks. Unless this Honorable Court grants a stay, the Petitioner's will be
21 irreparably harmed because they will have been forced to participate in
22 unlawful rogue proceedings that may result in a decision to abort Elisa's baby
23 over their objection and against their statutory right to make these decisions on
24

1 their own before the Supreme Court has heard the merits of their Writ and
2 decided whether a writ will be issued.

3 **3. Respondents Will Not Be Irreparably Harmed Or Seriously**
4 **Injured If A Stay Is Granted.**

5 The State of Nevada, District Court and Washoe County will not be
6 harmed in any way if a stay is granted. In fact, a stay will prevent State of
7 Nevada, District Court and Washoe County from doing further violence to the
8 statutory requirements under NRS Chapter 159. In essence, a stay will prevent
9 the State, Court and County from further harming itself.
10

11 **4. Petitioners Are Likely To Succeed On The Merits Of Their**
12 **Appeal.**

13 Petitioners have filed the within Petition for a Writ of
14 Mandamus/Prohibition and are requesting that the Nevada Supreme Court to:

- 15 a. An Order directing District Court Judge Egan Walker to dismiss the
- 16 action commenced on October 16, 2012; and
- 17
- 18 b. An Order directing District Court Judge to halt proceedings to
- 19 determine if the Ward, Elizabeth Elaine Bauer should be forced to
- 20 undergo an abortion.

21 Petitioners contend that, when this Honorable fully considers their Writ,
22 they will succeed on the merits and a Writ will be issued.

23
24 ///

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III.

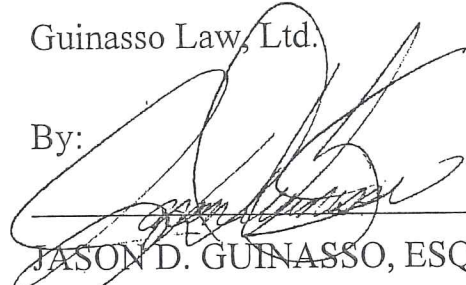
CONCLUSION

In accordance with the foregoing, Petitioners respectfully request that the Nevada Supreme Court enter an order granting an emergency stay that will prevent District Court Judge Egan Walker from continuing to commence proceedings that he has no authority to initiate or preside over in an effort to decide whether Elisa should be compelled to have an abortion against her will and the will of her Guardians and Parents, Mr. and Mrs. Bauer, pending a decision on the Writ of Mandamus/Prohibition.

DATED this ____ day of November, 2012.

Guinasso Law, Ltd.

By:



JASON D. GUINASSO, ESQ.

NV Bar No.: 8478
190 W. HUFFAKER LANE, SUITE 402
RENO, NV 89511
(o) 775-853-8746
(f) 775-201-9611
Attorney for William Bauer and Amy Bauer

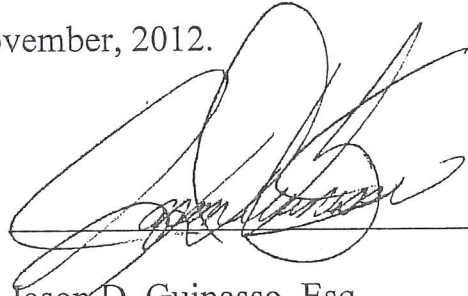
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IV.

ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Emergency Motion for Stay, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this motion complies with all applicable Nevada Rules of Appellate Procedure. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this _____ day of November, 2012.



Jason D. Guinasso, Esq.
Nevada Bar No. 8478
Guinasso Law, Ltd.
10425 Double R Blvd.
Reno, NV 89521
Tel.: 775-853-8746
Fax.: 775-201-9611
Attorney for William Bauer and Amy Bauer

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AFFIRMATION

The undersigned does hereby affirm that the EMERGENCY MOTION FOR STAY PENDING APPEAL FILED UNDER NRAP 27(e):

Does not contain the social security number of any person.

-OR-

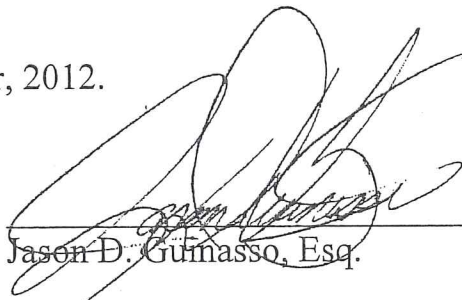
Contains the social security number of a person as required by:

A. A specific state or federal law, to wit: _____

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this _____ day of November, 2012.



Jason D. Guinasso, Esq.

Attorney for William Bauer and Amy Bauer

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CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 190 W. Huffaker Lane, Suite 402, Reno, Nevada, 89511.

On November 2, 2012, I served the following:

EMERGENCY
MOTION FOR STAY PENDING APPEAL
FILED UNDER NRAP 27(e)

on the following in said cause as indicated below:

KAREN SABO WASHOE LEGAL SERVICES 299 SO. ARLINGTON AVENUE RENO, NV 89501 (VIA U.S. MAIL)	WILLIAM AND AMY BAUER 1364 CANAL DR. FERNLEY, NV 89408 (VIA U.S. MAIL)
MARY BOETSCH, ESQ. SINAI, SCHROEDER, MOONEY, BOETSCH, BRADLEY & PACE 448 HILL STREET RENO, NV 89501 (VIA U.S. MAIL)	DANIA REID, ESQ. WASHOE COUNTY DEPUTY DISTRICT ATTORNEY ONE SOUTH SIERRA ST. PO BOX 11130 RENO, NV 89520 (VIA U.S. MAIL)
WASHOE COUNTY SOCIAL SERVICES ADULT DIVISION PO BOX 11130 RENO, NV 89520 (VIA U.S. MAIL)	JASON D. GUINASSO, ESQ. GUINASSO LAW, LTD. 190 W HUFFAKER LANE, SUITE 402 RENO, NV 89511 (FILE)

I declare under penalty of perjury that the foregoing is true and correct.
Executed on November 2, 2012, at Reno, Nevada.

