IN THE SUPREME COURT OF THE STATE OF NEVADA

PIERRE HASCHEFF, AN INDIVIDUAL, Appellant/Cross-Appellant, *vs*. LYNDA HASCHEFF, AN INDIVIDUAL, Respondent/Cross-Appellant.	Case No. 86976

APPELLANT'S COMBINED REPLY BRIEF AND ANSWERING BRIEF ON CROSS-APPEAL

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APPELLANTS' REPLY BRIEF

SUMMARY OF THE ARGUMENT

Appellant/Cross-Respondent Pierre Hascheff's ("Pierre's") appeal of the district court's order on indemnification and prevailing party is timely, because the district court did not issue a final, appealable order resolving all issues remanded to it until it entered its order in June 2023 establishing the amount of fees awarded to Respondent/Cross-Appellant Lynda Hascheff ("Lynda"). Orders which determine a party's right to fees without also establishing the amount are not final appealable orders. *See, e.g., Medallic Art Ltd. P'ship v. Hoff,* No. 67101, 2015 WL 8478527, at *1 (Nev. Dec. 8, 2015). Furthermore, when this Court's order on remand expressly requires a lower court to analyze and award fees, the question of fees is no longer a "collateral matter." *City of N. Las Vegas v. 5th & Centennial LLC,* No. 58530, 2014 WL 1226443, at *11-12 (Nev. Mar. 21, 2014). For an order following remand to qualify as a final appealable judgment, it must answer ***all*** issues and questions remanded to it. Accordingly, the district court's order on indemnification and prevailing party was not a final, appealable order following remand because it did not resolve all of the remanded issues.

Pierre, not Lynda, is the prevailing party who obtained a judgment that resulted in a material alteration in the parties' relationship that benefitted Pierre. Lynda sought declaratory relief that she was ***not*** required to indemnify Pierre for the

Malpractice Action. Contrary to Lynda's argument, her litigation position below was that she did not owe Pierre any money for the Malpractice Action because (1) no fees had been incurred in that action due to it being stayed, and (2) Pierre waived his right to seek any fees for failure to timely notify Lynda of the litigation. She lost both of these issues on appeal and remand. Moreover, Pierre provided Lynda with largely unredacted legal invoices at the inception of this litigation. The information Lynda continued to insist was withheld from her was not the legal billing invoices necessary to evaluate her claim but was instead Pierre's privileged communications with his lawyer and with Todd Jaksick's lawyer on matters of common interest. This argument was rejected implicitly by this Court in the first appeal. Accordingly, the district court erred in finding that Lynda was the prevailing party.

Should this Court disagree, the district court abused its discretion in awarding an unreasonable amount of fees to Lynda for (1) unsuccessful legal theories, (2) excessive fees, (3) time billed to Lynda's sister Lucy.[1]

The district court also erred in interpreting MSA ¶ 40 to exclude fees incurred by Pierre that were in defense of the Malpractice Action but concerned testimony in the Collateral Litigation. Nothing in this Court's order on remand, or MSA ¶ 40,

[1] In his opening brief, Pierre contested the district court's award of fees for advice given to Lynda on alimony, which was not at issue in this litigation. Pierre withdraws that argument as a closer scrutiny of the district court's order reveals those fees were not awarded.

finds that fees incurred in the Collateral Litigation cannot also be incurred in defense of the Malpractice Action. To the contrary, this Court recognized that possibility and remanded this matter for a determination of any ambiguity as to what fees fell within MSA ¶ 40. Pierre testified as a witness at the trial in the Collateral Litigation after the Malpractice Action was filed and on topics which were the subject of the Malpractice Action. Because Pierre's trial testimony will be admissible against him in the Malpractice Action, these fees were incurred in "defense" of the Malpractice Action. MSA ¶ 40 does not contain a bright-line limitation that restricts indemnification to the docketed Malpractice Action, and interposing such a limitation is an impermissible red-line of the parties' contract.

Should this Court disagree, the district court erred in concluding two fee entries from February 2019 were not in defense of the Malpractice Action and should be additionally reversed on this basis.

ARGUMENT

I. PIERRE'S APPEAL IS TIMELY

Pierre timely appealed the district court's order on indemnification and prevailing party. In order to be appealable, an order must constitute a "final judgment." *Archon Corp. v. Eighth Jud. Dist. Ct.,* 133 Nev. 816, 823-34, 407 P.3d 702, 709 (Nev. 2017). "A final judgment is generally defined as one that resolves ***all*** of the parties' claims and rights in the action, leaving nothing for the court's

future consideration except for post-judgment issues." *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.,* 127 Nev. 86, 87, 247 P.3d 1107, 1108 (2011) (emphasis added). This rule arises from Nevada's long-standing policy of "promoting judicial economy by avoiding the specter of piecemeal appellate review." *Barbara Ann Hollier Tr. v. Shack,* 131 Nev. 582, 590, 356 P.3d 1085, 1090 (Nev. 2015).

Orders which determine a party's right to fees but do not establish the amount are not appealable final orders. *See, e.g. Medallic Art Ltd. P'ship,* 2015 WL 8478527 at *1 (order finding prevailing party was not an appealable final judgment "because it did not award an amount of attorney fees"); *Leavitt v. Abbatangelo,* No. 72953, 2017 WL 4950058 (Nev. Oct. 30, 2017) (same); *Strom v. Keller,* No. 82851-COA, 2022 WL 214036, at *1 (Nev. App. Jan. 24, 2022) (same); *Martin v. Martin,* No. 85323, 2023 WL 3055103 (Nev. Apr. 21, 2023) (same).[2] Thus, Pierre could not

[2] While this Court has not yet addressed this question in a published opinion, this is the majority rule. *See AU Enter. Inc. v. Edwards,* 458 P.3d 113, 115 (Ariz. Ct. App. 2020) (holding that a judgment which found prevailing party but did not award the amount of attorney fees is not appealable); *Winkelman v. Toll,* 632 So. 2d 130, 131 (Fla. Dist. Ct. App. 1994) (holding that "orders granting attorney's fees without determining the amount are not ripe for appellate review"); *Rothert v. Rothert,* 441 N.E.2d 179, 184 (Ill. App. Ct. 1982) (order finding prevailing party but without awarding the amount of fees is not appealable); *Est. of Rich v. Caskey,* 602 S.W.3d 306, 310 (Mo. Ct. App. 2020) (order granting the right to fees but not the amount was not appealable); *Milone & MacBroom, Inc. v. Corkum,* 865 S.E.2d 763, 765-66 (N.C. Ct. App. 2021) ("Similarly, as a general matter, an appeal from an award of attorneys' fees may not be brought until the trial court has finally determined the amount to be awarded."); *Lehman v. Bielenberg,* 307 P.3d 478,

have appealed the district court's order because it did not establish the amount of fees.

Lynda's argument further overlooks the fact that what constitutes an appealable final judgment after remand is a different inquiry than what constitutes an appealable final judgment prior to the first appeal taken. Review upon remand is limited, and district courts are only permitted review those matters which fall within the scope of the higher court's ruling on remand. *Est. of Adams by & through Adams v. Fallini,* 132 Nev. 814, 819, 386 P.3d 621, 624 (Nev. 2016). Furthermore, the district court must proceed in accordance with the appellate court's order on remand. *State Eng'r v. Eureka Cnty.,* 133 Nev. 557, 559, 402 P.3d 1249, 1251 (Nev. 2017). Failure to do so is error. *Id.; see also Wheeler Springs Plaza, LLC v. Beemon,* 119 Nev. 260, 263-64, 71 P.3d 1258, 1260 (2003) (holding that a lower court "is bound to specifically carrying out the reviewing court's instructions" on remand).

Nevada has not yet addressed what constitutes a final appealable judgment following remand, but other jurisdictions find that an order after remand is not final for appeal purposes until it resolves ***all*** of the remanded issues. *See RL v. DL,* No. CAAP-20-0000462, 2020 WL 5092801, at *1 (Haw. Ct. App. Aug. 28, 2020)

483-84 (Or. Ct. App. 2013) (holding that fees must be awarded before an attorney fee award can be appealed); *GDE Constr., Inc. v. Leavitt,* 294 P.3d 567, 570 (Utah Ct. App. 2012) ("Furthermore, an order that awards attorney fees is not final until the trial court decides the amount of attorney fees to be awarded.").

("However, the Family Court's post-judgment order must resolve all of the issues in the post-judgment remand proceeding in order to qualify as an appealable final post-judgment order . . . ."); *Zweifel v. Zweifel,* 626 S.W.3d 911, 915 (Mo. Ct. App. 2021) ("Because the circuit court has not fully complied with our opinion and mandate, its order and judgment on remand is not yet final, and we do not have jurisdiction to hear this appeal."); *Indiana Ins. Co. v. Farmers Ins. Co. of Columbus,* No. 2004 AP 07 0055, 2005 WL 858168, at *1 (Ohio Ct. App. 2005) (holding that a judgment which "did not resolve and determine all the remanded issues . . . was not a final appealable order").

This case law is consistent with this Court's jurisprudence, which expressly requires the district courts to consider the precise issues remanded to them. *See State Eng'r,* 133 Nev. at 559, 402 P.3d at 1251*; Wheeler Springs Plaza, LLC,* 119 Nev. at 263-64, 71 P.3d at 1260. It is also consistent with this Court's long-stated rule that final, appealable judgments require resolution of ***all*** issues before the court, *Simmons Self-Storage Partners, LLC,* 127 Nev. at 87, 247 P.3d at 1108, and it furthers this Court's disfavor of piecemeal appellate review of the same orders. *Barbara Ann Hollier Tr.,* 131 Nev. at 590, 356 P.3d at 1090.

Moreover, when remand expressly requires consideration of attorney fees, the question of fees is no longer a "collateral matter," but is, instead expressly related to the merits of the issues before the district court on remand. *City of N. Las Vegas v.*

5th & Centennial, LLC, No. 58530, 2014 WL 1226443, at *11-12 (Nev. Mar. 21, 2014) (holding that when "the issues of attorney fees, costs, and interest are squarely before this court in [an] appeal and cross-appeal, they are not collateral" issues over which a district court retains jurisdiction pending appeal). When an order on remand issues instructions for a court to consider pertaining to fees, the district court is required to comply with the appellate court's mandate and does not have discretion to deviate from it. *State Eng'r,* 133 Nev. at 559, 402 P.3d at 1251*; Wheeler Springs Plaza, LLC,* 119 Nev. at 263-64, 71 P.3d at 1260.

Here, the question of fees was not a collateral matter because it was a primary issue on the first appeal and cross-appeal. *See* 3 AA 637, 683-85, 685; 4 AA 788-789 ("Lynda also cross-appeals from the district court's denial of her attorney fees and costs . . .."). This Court expressly instructed the district court to make findings as to both the scope of the indemnification clause ***and*** fees. *See* 4 AA 796. Specifically, this Court further instructed the district court to "determine which party is the prevailing party, and then consider an award of reasonable attorney fees and costs." *Id.* The February 17 order did not resolve all of these issues and was not a final appealable judgment on remand. *See* 4 AA 930-938.

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II. THE DISTRICT COURT ERRED IN AWARDING ATTORNEY FEES TO LYNDA, RATHER THAN TO PIERRE.

A. Lynda's Litigation Position was that No Fees were Incurred in the Malpractice Action, and, Therefore, Lynda Did Not Have a Duty to Indemnify Pierre.

Lynda never took the position that she was obligated to pay Pierre for ***this*** Malpractice Action. Instead, her litigation position before the district court was that she never owed Pierre any fees because (1) no fees were ever actually incurred in the Malpractice Action, and (2) Pierre waived his right to seek indemnification by failing to timely notify Lynda and/or by withholding information from Lynda.

Lynda's brief cites to her pre-litigation position, in which she initially offered to pay half of any of the fees Pierre incurred. *See* Answering Brief ("AB"), pp. 27-29; *see also* 1 AA 62 (pre-litigation correspondence). But, once litigation began, Lynda consistently and repeatedly took the position that she did not have an obligation to indemnify Pierre because he had incurred ***no fees*** in the Malpractice Action, as it had been stayed. *See* 1 AA 14 ("no fees or cost are being incurred in [the Malpractice Action]"); 1 AA 17 ("Thus, nothing in the malpractice action is ongoing and essentially no fees or costs were incurred in defending the malpractice lawsuit."); 1 AA 137 ("There were essentially no fees incurred in the defense of the malpractice action."); 1 AA 149 ("There were essentially no fees incurred in defense of that malpractice action."); 3 AA 521 ("That [malpractice] action was immediately

stayed. No work was done in the malpractice action."). Thus, while Lynda did request an order stating that she was only liable to pay fees for the Malpractice Action, 1 AA 24, 134, she repeatedly argued that ***no fees*** were incurred in the Malpractice Action and Lynda was consequently not liable for any indemnification. *See* 1 AA 14, 17, 137; 3 AA 521.

Lynda also takes the district court's characterization of Lynda's arguments out of context, *see* AB p. 28; *see also* 3 AA 623, as the district court clearly stated that Lynda's position had been that ***no fees*** were incurred in the Malpractice Action. 3 AA 626 ("Ms. Hascheff states she contractually agreed to pay half of the costs of the defense of the malpractice action, which in this case was immediately stayed with no fees incurred."). On appeal, Lynda continued to contend that no fees had been incurred in the malpractice action and, therefore, no fees were owed. 3 AA 658 ("Moreover, the malpractice action was almost immediately stayed such that no fees were being incurred to defend against that action.").

And Lynda consistently and repeatedly maintained that even if fees had been incurred, Pierre had waived any right to them by failing to provide Lynda notice. 1 AA 20, 23, 140. This was, again, Lynda's primary argument on appeal as well. 3 AA 673-681. Thus, the record is clear that Lynda sought declaratory relief that she was ***not*** required to indemnify Pierre for the Malpractice Action. 1 AA 13-67; 1 A 133-147; 2 AA 486 – 3 AA 505; 3 AA 693 – 4 AA 766. This Court further confirmed

that Lynda's position was that Lynda "should not be required to reimburse any fees and costs in the malpractice case because [Pierre] failed to timely notify her of it." 4 AA 788. Pierre successfully opposed Lynda's position and obtained an order that she had to indemnify Pierre for some, if not all, of the Malpractice Action fees. 1 AA 68-132; *see also* 2 AA 454-485.

B. Pierre Did Not Withhold "Pertinent" Information.

This Court previously rejected Lynda's argument that laches should apply in equity because Pierre "withheld pertinent information." 3 AA 678, 680. This Court implicitly rejected this argument when it explicitly found that laches did not apply. 4 AA 794-95. Thus, Lynda's repeat of this argument is not an appropriate basis upon which to find Lynda as a prevailing party. *See Estate of Adams,* 132 Nev. at 819, 386 P.3d at 624 (law of the case doctrine precludes re-litigation of any legal theory implicitly decided by the higher court).

Regardless, Lynda was provided, from the outset, all necessary information to evaluate Pierre's request, including redacted legal invoices of Pierre's counsel. 1 AA 33-36. These invoices were provided prior to litigation, negating Lynda's claim that she had to file the action to "force" Pierre to provide evidence. *See id.; see also* AB, p. 30. Lynda disclosed these legal invoices as her own hearing exhibit. 1 AA 225-226; *see also* 2 AA 338-354. As this Court can see from those records, they are

largely unredacted. Of twenty-nine-time entries, only seven were redacted. *See* 2 AA 338-354.

The information that Lynda continued to argue was withheld from her was not the invoices, but Pierre's communications with his counsel and with Todd Jaksick's counsel, which were protected under the attorney-client and common-interest privileges, respectively. *See* NRS 49.095(1), (3);[3] *see also, e.g.,* 1 AA 49 ("I would like to review all correspondence between you and your counsel in the malpractice action."); 1 AA 55 (same); 3 AA 519 (same).

Lynda had largely unredacted invoices from Pierre's counsel in her possession prior to filing this litigation. Pierre was transparent as to which fees he was seeking reimbursement, and he provided a chart to the district court and Lynda outlining those fees, as well as identifying amounts paid by the malpractice insurance carrier. 1 AA 111-112. Lynda could have taken the position that some, but not all, of those fees were subject to MSA ¶ 40. She did not. Instead, as set forth above, Lynda

[3] The common-interest privilege applies when the respective parties "anticipate litigation against a common adversary on the same issue or issues," and have "common interests in sharing the fruit of the trial preparation efforts." *Cotter v. Eighth Jud. Dist. Ct.,* 134 Nev. 247, 250, 416 P.3d 228, 232 (Nev. 2018). It is not limited to co-parties and does not require a formal written agreement. *Id.* The privilege also applies even if the interests of the parties are adverse in other respects. Restatement (Third) of the Law Governing Lawyers, § 76, cmt. e (2000) ("The fact that clients with common interests also have interests that conflict, perhaps sharply, does not mean that communications on matters of common interest are nonprivileged."). Pierre cannot waive the common-interest privilege held by Todd Jaksick in these communications. *Id.* at cmt. g.

repeatedly argued that ***none*** of these fees were incurred in the Malpractice Action, and that Lynda owed Pierre nothing. Thus, Lynda's arguments are simply not supported by the record.

C. Lynda is Not the Prevailing Party.

Lynda does not cite any authority to this Court which provides a different definition of "significant success" than that included in Pierre's opening brief. As Pierre demonstrated, success on a significant issue is only sufficient to convey prevailing party status when the "success" the fee applicant obtains results in a material alteration in the legal status between itself and the opposing party. *Rhodes v. Stewart,* 488 U.S. 1, 3-4 (1988)*; Texas State Teachers Assoc. v. Garland Independent Sch. Dist.,* 489 U.S. 782, 792 (1989); *Farrar v. Hobby,* 506 U.S. 103, 111-12 (1992). Lynda is attempting to do now what the case law prohibits, i.e., transform an insignificant technical victory into a basis for fees. *See Garland,* 489 U.S. at 792.

This Court previously rejected an argument similar to Lynda's in *Lee Tire & Rubber Co. of N.Y. v. McCarran,* 57 Nev. 123, 59 P.2d 649 (1936). In *Lee,* the respondent on appeal argued that it was a prevailing party entitled to costs because it "won" on the major issue in the appeal. *Id.* The Nevada Supreme Court disagreed, because the appellant had appealed an adverse ruling, had achieved reversal on appeal and the matter had been remanded for a new trial. *Id.* The fact that the

remand order was consistent with one of the respondent's theories did not convey prevailing party status because the respondent had unsuccessfully defended an order in its favor, and the order was "was wiped out in its entirety" by the Nevada Supreme Court. *Id.*

Lynda's victory was a *de minimis* technical victory of the type rejected by this Court in *Lee,* and by the Supreme Court in both *Rhodes* and *Texas State Teachers Association. See Rhodes,* 488 U.S. at 3-4; *Texas State Teachers Assoc.,* 489 U.S. 782 at 792. Lynda never disputed that she was contractually obligated to indemnify Pierre for ***a*** malpractice action, and Lynda never argued that she did not understand the meaning of the MSA. *See* 1 AA 13-67. Lynda's actual argument was that, notwithstanding this conceded contractual obligation, Lynda was not obligated to pay Pierre for ***this*** Malpractice Action. *Id.*; 1 AA 133-158; 2 AA 486 – 3 AA 505; 3 AA 693 – 4 AA 784. Her argument was based on (1) her insistence that no fees were incurred in defense of the Malpractice Action, and (2) even if they were, Pierre waived any right to seek these fees. *See id.* Lynda lost on these bases both on appeal, 4 AA 785-796, and remand, and the district court recognized this fact. 5 AA 1116.

Lynda did not obtain the declaratory relief that she sought in bringing her motion, i.e., that she was not obligated to indemnify Pierre at all. To the contrary, Lynda was not only ordered to indemnify Pierre for the Malpractice Action but was also ordered to pay fees she argued were not properly incurred in defense of the

Malpractice Action. *See* 4 AA 902-903 (arguing only $295 was incurred in defense of the Malpractice Action); 4 AA 932-933 (district court's finding that $2,295 was incurred in defense of the Malpractice Action).

Notably, although this Court's order "affirmed in part" the district court, this Court's order was, in effect, a total reversal. While the district court's order at one point found that notice was not required, it then later found that Pierre was obligated to give notice and his failure was a basis to apply laches, which this Court later reversed. 3 AA 632 (holding that MSA ¶ 40 "does not contain express and unambiguous language requiring Judge Hascheff to have provided immediate notice"); 3 AA 633-34 (holding that Pierre's failure to "to notify Ms. Hascheff" was a basis to apply "laches"); 4 AA 794-796 (reversing the laches holding).

Lynda also misrepresents the monetary success she purportedly achieved. In the first appeal, Lynda argued that she owed Pierre $0.00, and the district court agreed. 3 AA 632-633. This Court reversed and remanded. 4 AA 795-796. Following this Court's remand, Pierre argued that he had incurred $3,195.00 in defense of the Malpractice Action and asked that Lynda pay him $1,578.00. 3 AA 626. Lynda claimed that the most Pierre could have incurred, even after reviewing the unredacted invoices, was $295.00 and the most she owed to him was $147.50. 4 AA 903-904. The district court disagreed with Lynda and found that Pierre had incurred $2,295.00 in the Malpractice Action, far more than what Lynda argued. 4

AA 933. Lynda went from owing $0, to owing $1,147.50. It is unclear how this can plausibly be considered a success.

It was Pierre, not Lynda, who beneficially altered the parties' legal relationship as Lynda went from refusing to pay Pierre anything to having to pay him something. Again, the question this Court must resolve in this appeal is what changed from Lynda being found not to have prevailed when the district court determined that she owed Pierre $0.00, to Lynda somehow having won despite unsuccessfully defending that order on appeal. Nothing changed in Lynda's favor. Instead, Pierre achieved the relief he sought, which is that Lynda indemnifies him for fees incurred in defense of a malpractice action. Accordingly, Pierre is the prevailing party under the MSA, and this Court should reverse the district court's order.

D. The District Court's Error is Not Harmless.

To be clear, Pierre is not asking this Court to consider fees under NRS Chapter 18 or NRCP 68. Although Lynda argues to the contrary, Pierre raises these bases to demonstrate that the district court's findings are not harmless error, and warrant reversal. *See Khoury v. Seastrand,* 132 Nev. 520, 539, 377 P.3d 81, 94 (Nev. 2016) ("To be reversible, an error must be prejudicial and not harmless."); *see also* NRCP 61 (holding that errors which do not "affect a party's substantial rights" are not reversible).

The district court's order did not just find that Lynda was a prevailing party, but also found that Pierre ***did not*** prevail. 4 AA 935-36. This prejudiced Pierre by precluding his ability to argue to the district court that there may be multiple prevailing parties given that the various bases to seek fees, whether by statute or rule. Thus, Pierre was precluded from arguing that although the district court found that Lynda was a prevailing party under the parties' contract, Pierre was also a prevailing party pursuant to statute and rule, and his fee should operate as a set-off to any award to Lynda. This is the prejudice arising from the district court's error that renders the error reversible.

E. Alternatively, the District Court Abused its Discretion by Awarding an Unreasonable Amount of Fees.

Should this Court disagree, it should still reverse the district court's order because the district court abused its discretion in awarding Lynda attorney fees in an unreasonable amount. *Berkson v. LePome,* 126 Nev. 492, 504, 245 P.3d 560, 568 (2010) (the amount of fees awarded is reviewed for an abuse of discretion).

Lynda again argues that she should be permitted to recover for her unsuccessful appeal and her unsuccessful legal theories, but legal fees are not appropriately awarded for unsuccessful legal theories or claims. *Bergmann v. Boyce,* 109 Nev. 670, 675-76, 856 P.2d 560, 563-64 (1993) (superseded by statute on other grounds); *Tarkanian v. Nat'l Collegiate Athletic Ass'n,* 103 Nev. 331, 342, 741 P.2d 1345, 1352 (1987) (reversed on other grounds). In *Tarkanian,* this Court held that

the plaintiff could not recover fees for the initial trial which was reversed on appeal and unsuccessful. *Id.* This Court affirmed its decision in *Tarkanian* in *Univ. of Nev. v. Tarkanian,* 110 Nev. 581, 879 P.2d 1180 (1994), in which this Court again approved of the removal of the fees incurred by the plaintiff for its unsuccessful first trial from the amount awarded. *Id.* at 596, 879 P.2d at 1189. And in *Boyce,* this Court reversed and remanded a fee award to the district court to "allocate . . . attorney's fees between the grounded and groundless claims," because "[t]he prosecution of one colorable claim does not excuse the prosecution of five groundless claims." 109 Nev. at 675-76, 856 P.2d at 563-64.

Nor does *Hensley* support Lynda's position. As this Court has explained, under *Hensley*, "if a plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims . . . he should not be entitled to attorney's fees for work done on the unsuccessful claims." *Herbst v. Humana Health Ins. of Nev., Inc.,* 105 Nev. 586, 591-92, 781 P.2d 762, 765 (1989). Indeed, the *Hensley* court itself held that, where a party "has achieved only limited or partial success, the product of hours reasonably expended on the litigation as a whole times . . . may be an excessive amount." *Hensley v. Eckerhart,* 461 U.S. 424, 436 (1983).

Here, Lynda's theory of laches, delay, notice, secrecy, breach of fiduciary duty, etcetera, were all based upon separate and distinct arguments than her argument as to the Collateral Action. Specifically, Lynda's argument regarding the

Collateral Action was centered upon interpretation of the language of the MSA. *See* 3 AA 669-671. Lynda's arguments regarding laches, notice, breach of fiduciary duty, breach of the implied covenant, bad faith, and privilege, however, pertained to her argument that she was not required to indemnify Pierre for the Malpractice Action, and were centered upon legal and equitable theories, as well as interpretation of separate provisions of the MSA. *See* 3 AA 673-682. Under *Hensley* and *Herbst,* Lynda should not have been awarded her fees for these theories because they do not arise from the same common core of facts. Accordingly, the district court abused its discretion when it did not separate out the fees for time spent litigating Lynda's unsuccessful theories in district court related to laches, notice, secrecy, transparency, selective enforcement, collateral estoppel, waiver, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and failure to demonstrate that the fees incurred were in defense of the Malpractice Action. 5 AA 1105-1117.

Moreover, the amount of fees in relation to the amount at issue for Lynda is not reasonable. As noted above, Lynda never agreed to pay half of the fees incurred in the Malpractice Action. Her litigation position was always that Pierre had incurred ***no*** fees in the Malpractice Action, and that Pierre had waived his right to seek fees. 1 AA 13-67; 1 A 133-147; 2 AA 486 – 3 AA 505; 3 AA 693 – 4 AA 766.

Pierre did not file unnecessary briefing when he sought to brief the issue of ambiguity in the MSA. This Court ***ordered*** that issue be resolved on remand and its

order contemplated further proceeds to ascertain the parties' intent. 4 AA 795. Furthermore, the district court itself entered an order finding that there was "good cause" to brief the issue of ambiguity. 5 AA 856 (finding "good cause" to order briefing on the issue of ambiguity).

Lynda also argues that Pierre unnecessarily tried to brief the question of prevailing party, but Pierre did not brief this issue. Instead, Pierre sought leave to file a brief (which is different) and Lynda filed a two-page opposition. 4 AA 912-919.

Similarly, the fact that Pierre exercised his appellate rights from a prior court order finding that Pierre had permanently forfeited his indemnity rights, and leaving Pierre solely liable for any eventual defense or judgment in the Malpractice Action is not a vexatious or frivolous extension of litigation, particularly since Pierre prevailed on appeal.

It was Lynda, not Pierre, who vexatiously extended this litigation. Pierre initially requested that Lynda pay one-half of $9,351.80 (i.e., $4,675.90). 1 AA 111-112. This amount did not include any fees that were incurred before the Malpractice Action was filed. *See id.* Therefore, Pierre's opening offer was consistent with this Court's ultimate finding on appeal. Lynda refused to pay any of these fees, as set forth above. Lynda refused Pierre's multiple requests to mediate this matter, including a mediation with Judge Schumacher, and a mediation with Judge Berry. 4

AA 817. Lynda refused Pierre's offer of judgment to resolve this matter for $1,400, which amount, again, was not based on fees incurred prior to the Malpractice Action. 5 AA 1126, 1031, 1036-1035. This was only a $252.50 difference of what Lynda was ultimately ordered to pay. 4 AA 933. Lynda also refused to accept Pierre's offer of her making monthly payments to pay off her one-half obligation. 1 AA 52-53. It was Lynda, not Pierre, who unreasonably extended these proceedings.

Finally, the district court should have discounted the fees awarded for Lynda being billed for her counsel's communications with Lynda's sister, Lucy Mason. These amounted to approximately $32,785 in fees of the total approximate $53,000. 5 AA 1042. Lucy Mason expressly disavowed that she was representing Lynda. 1 AA 126 ("I am helping Lynda as her sister, not as an attorney."). Lynda cites NRS 49.055, which defines "confidential" for purposes of attorney-client privilege. It does not, however, provide that a party may properly incur attorney fees for work done by someone who does not represent them, and Lynda does not provide this Court with authority supporting that contention. These amounts were not properly billed to Lynda, and certainly should not be billed to Pierre. Therefore, the district court abused its discretion in awarding an unreasonable amount of fees.

III. THE DISTRICT COURT ERRED IN DETERMINING THAT CERTAIN OF PIERRE'S FEES ARE NOT "IN DEFENSE" OF MALPRACTICE ACTION

A. Fees Incurred In Defense of Pierre's Trial Testimony in the Collateral Litigation are "in defense" of the Malpractice Action.

The district court erred in interpreting MSA ¶ 40 to exclude certain fees related to the defense of the Malpractice Action. Pierre's brief does not violate the law-of-case doctrine because this Court's order clearly contemplated that fees could be incurred in defense of both the Collateral Action and the Malpractice Action. 4 AA 785-796. Otherwise, this Court would not have needed to remand this matter to the district court to resolve any ambiguity as to what fees were covered by the provision. *See id.* Neither MSA ¶ 40 nor this Court's prior order contain a limitation that fees incurred in the Collateral Action cannot overlap with fees incurred with the Malpractice Action. *See id.*

To the contrary, this Court's order implicitly recognized the exact ambiguity at issue in this appeal – i.e., where Pierre testified in the Collateral Action after having been sued for malpractice, on topics upon which he was sued in the Malpractice Action. Pierre's trial testimony in the Collateral Action is both relevant and admissible against him in the Malpractice Action. *See* NRS 51.035(3)(a) (prior testimony is admissible against a party). Because it was after the initiation of the Malpractice Action, admissible in the Malpractice Action, and relevant to the

Malpractice Action, Pierre's representation clearly related to the Malpractice Action. Lynda does not dispute this fact, nor does she provide argument or authority to this Court as to how these fees are not related to the Malpractice Action.

The district court's inclusion of such a limitation was error because it inserted a term into MSA ¶ 40 that it does not contain. *Traffic Control Servs., Inc. v. United Rentals, NW., Inc.,* 120 Nev. 168, 175-76, 87 P.3d 1054, 1059 (2004). Moreover, inserting this limitation improperly results in a harsh and unreasonable contract. *Shelton v. Shelton,* 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

Lynda similarly not provide this Court with evidence that Pierre's interpretation is ***inconsistent*** with the parties' intent. On remand, this Court specifically instructed the district court to consider evidence of the parties' intent in entering into this agreement. 4 AA 795. The only evidence of the parties' intent in the record below is Pierre's testimony from the hearing. 3 AA 565-619. Lynda never provided an affidavit or anything to the contrary that refuted Pierre's interpretation of the MSA. The only "evidence" Lynda presented was the argument of her counsel, which is not evidence at all. *Nev. Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.,* 130 Nev. 949, 957, 338 P.3d 1250, 1255-56 (2014) ("Arguments of counsel are not evidence and do not establish the facts of the case."). In light of Pierre's unrebutted evidence of intent, the district court erred in ruling against Pierre on this issue. *See Century Sur. Co. v. Casino W., Inc.,* 130 Nev. 395, 398, 329 P.3d 614,

616 (Nev. 2014) ("The purpose of contract interpretation is to determine the parties' intent when they entered into the contract.").

B. Alternatively, the District Court Erred in Declining to Award Fees for the February 2019 Entries.

Should this Court disagree, the district court erred in reducing the two February 2019 entries. Under the district court's holding, any time spent reviewing a complaint was compensable. 4 AA 932-933. Yet, these two entries were excluded. The district court specifically noted that one of these entries appeared to apply to the Malpractice Action but excluded it. The second entry, contrary to Lynda's position and the district court's finding, also pertained to the Malpractice Action. *See id.*

ANSWERING BRIEF ON CROSS APPEAL

SUMMARY OF ARGUMENT

The District Court did not err in refusing to award Lynda her appellate fees. As set forth in Pierre's appeal, Lynda is not a prevailing party entitled to ***any*** fees. Should this Court disagree, and find that Lynda also prevailed in some respects, then this Court should still reverse the district court's order because both Pierre and Lynda are prevailing parties. When both sides prevail, there is no "prevailing party," and attorney fees need not be awarded either side.

Should this Court determine that Lynda is entitled to fees, it should nevertheless affirm the district court's reduction of Lynda's appellate fees as Lynda did not prevail in the appeal. A district court does not abuse its discretion by declining to award fees for unsuccessful phases of litigation, as such an award would not be reasonable in amount.

Finally, no Nevada law, whether rule, statute or jurisprudence, prohibits a district court from fashioning the form of a judgment for fees while sitting in an equitable action arising in family court. To the contrary, NRS 125.150, the statute granting continuing jurisdiction of this dispute to the district court, expressly grants the district court discretion to enter orders requiring monetary judgments be paid in installments. The district court did not abuse its discretion, and these rulings of the district court should be affirmed should this Court choose not to reverse the district court's order.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN REFUSING TO AWARD LYNDA HER APPELLATE FEES.

A. Lynda is Not the Prevailing Party Entitled to Fees.

The district court did not err in refusing to award Lynda her appellate fees because Lynda was not the prevailing party following appeal. Because this issue

has been briefed extensively in Pierre's appeal, Pierre does not repeat those arguments for sake of brevity.

Should this Court disagree, and find that Lynda also achieved sufficient success on a significant issue to qualify her as a prevailing party, then this Court should still reverse the district court's order because both Pierre and Lynda are prevailing parties. When both sides prevail, there is no "prevailing party," and attorney fees need not be awarded either side. *Glenbrook Homeowners' Ass'n v. Glenbrook Co.,* 111 Nev. 909, 922, 901 P.2d 132, 141 (1995) (recognizing that all parties prevailed on some issues and lost on others such that neither could be considered a prevailing party); *see also Schultz v. Wells Fargo Bank, N.A.,* 301 P.3d 1237, 1242 (Alaska 2013) (explaining that, if "both parties prevail on main issues" then the court can "opt not to designate a prevailing party" (internal quotations omitted)).

B. The District Court Properly Refused to Award Lynda Fees for Her Unsuccessful Appeal.

Should this Court determine that Lynda is entitled to fees, it should nevertheless affirm the district court's reduction of Lynda's appellate fees as Lynda did not prevail in the appeal. A district court does not abuse its discretion by declining to award fees for unsuccessful phases of litigation, as such an award would not be reasonable in amount. *See Berkson v. LePome,* 126 Nev. 492, 504,

245 P.3d 560, 568 (2010) (district court orders awarding fees are reviewed for an abuse of discretion).

This Court reviews de novo the question of whether MSA ¶ 35.1 required the district court to award Lynda all fees incurred. *Galardi v. Naples Polaris, LLC,* 129 Nev. 306, 309, 301 P.3d 364, 366 (2013). Traditional rules of contract interpretation apply to analysis of contractual attorney fee provisions. *Davis v. Beling,* 128 Nev. 301, 321, 278 P.3d 35, 38 (2009). "Where a contract provision purports to allow attorney's fees in an action arising out of the terms of the instrument, we will not construe the provision to have broader application." *Dobron v. Bunch,* 125 Nev. 460, 465, 215 P.3d 35, 38 (2009) (internal quotations and alterations omitted).

Here, MSA ¶ 35.1 provides that the "prevailing party in that action or proceeding [to enforce any provision of this Agreement] shall be entitled to ***reasonable*** attorney fees and other ***reasonably*** necessary costs from the other party." 1 AA 197 (emphasis added). Nothing in this provision states that the prevailing party is entitled to ***all*** fees incurred. *See id.* Instead, the award is limited to only those fees found to be "reasonable." *See id.*

The MSA does not define "reasonable." Fortunately, this Court has previously promulgated a series of factors the district courts must consider determining what amount of fees are reasonable to award. *See Brunzell v. Golden*

Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *see also O'Connell v. Wynn Las Vegas, LLC,* 134 Nev. 550, 555, 429 P.3d 664, 668 (Nev. App. 2018) ("When considering the amount of attorney fees to award, the analysis turns on the factors set forth in *Brunzell*."). A factor which must be specifically considered under *Brunzell* is "*the result:* whether the attorney was successful and what benefits were derived." *Brunzell,* 85 Nev. at 349, 455 P.2d at 33.

In *Hensley,* the Supreme Court explained what constitutes a "reasonable" fee amount to award when analyzing the result of litigation:

> The result is what matters. If, on the other hand, the ***plaintiff has achieved only partial or limited success,*** the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff's claims are interrelated, nonfrivolous, and raised in good faith.

461 U.S. 435-436 (1983) (emphasis added). When faced with partial success, the Supreme Court noted that the lower courts have substantial discretion in how to reduce the amount of fee to arrive at a reasonable award:

> There is no precise rule or formula for making these determinations. The trial court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment.

Id. at 436-37.

This Court has relied upon *Hensley* to note that an award of the total fees incurred may not be reasonable given the overall result of the litigation. *Univ. of Nev. v. Tarkanian,* 110 Nev. 581, 595-96, 879 P.2d 1180-1189 (1994). In *Tarkanian,* this Court held that a plaintiff could not recover fees for the initial trial

which was reversed on appeal and unsuccessful. *Tarkanian v. Nat'l Collegiate Athletic Ass'n,* 103 Nev. 331, 342, 741 P.2d 1345, 1352 (1987) (reversed on other grounds). This Court affirmed its decision in *Tarkanian* in *Univ. of Nev. v. Tarkanian,* 110 Nev. 581, 879 P.2d 1180 (1994), in which this Court again approved of the removal of the fees incurred by the plaintiff for its unsuccessful first trial from the amount awarded. *Id.* at 596, 879 P.2d at 1189.

Other courts have similarly relied upon *Hensley* to deny fees for an unsuccessful appeal. *See, e.g., Snider v. Am. Fam. Mut. Ins. Co.,* 298 P.3d 1120, 1132 (Kan. 2013); *Anthony v. Sullivan,* 982 F.2d 586, 590 (D.C. Cir. 1983). Outside the arena of civil rights claims, courts have relied upon *Hensley* and its progeny to find that partial success may warrant a reduction in the overall amount of fees to be awarded, in order for the fee to be reasonable. *See, e.g., Blackorby v. BNSF Ry. Co.,* 60 F. 4th 415, 420 (8th Cir. 2023) (internal quotations and alterations omitted) (explaining "where a plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained").[4]

[4] *See also Gunther v. Alaska Airlines, Inc.,* 287 Cal. Rptr. 3d 229, 251-52 (Ct. App. 2021) ("The trial court may reduce the amount of the fee award where a prevailing party is actually unsuccessful with regard to certain objectives of its lawsuit." (Internal quotations omitted)); *Lee v. State,* 906 N.W.2d 186, 202 (Iowa 2018) ("When a plaintiff achieves only partial or limited success on the claim for which attorney fees are recoverable, a reduction in the fee award may be appropriate even if the entire lawsuit flows from a common core of facts." (Internal quotations

Furthermore, this Court has held that fees should be allocated between successful and unsuccessful legal theories. In *Bergmann v. Boyce,* this Court rejected the argument that the fact that a party prevailed on one minor claim meant they were entitled to a fee award for work done on multiple other non-prevailing claims. 109 Nev. 670, 675, 856 P.2d 560, 563 (1993). As this Court explained, "[t]he prosecution of one colorable claim does not excuse the prosecution of five groundless claims." *Id.* Thus, this Court ordered the district court to allocate fees between the "grounded and groundless claims," on remand. *Id.*

Here, Lynda was, at best, only partially successful on appeal as she went from owing Pierre nothing to owing Pierre $1,147.50. Adopting Lynda's view that she should be awarded for her unsuccessful defense on appeal overlooks *Brunzell's* requirement that the results obtained be analyzed to ascertain the reasonableness of the fee award. The district court properly reduced the fee award for that appeal.

The district court's reasoning in denying fees for the appeal is also consistent with this Court's prior precedent. Specifically, the district court determined that ***both*** Lynda and Pierre prevailed on appeal. 5 AA 1112. Thus, consistent with *Glenbrook Homeowners' Ass'n,* the district court declined to award

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omitted)); *Underwood Props., LLC v. City of Hackensack,* 269 A.3d 509, 518 (N.J. App. Div. 2022) (holding that courts should reduce the fee award "if the level of success achieved in the litigation is limited as compared to the relief sought" (internal quotations omitted)).

fees to either party as there was not one prevailing party. *See* 111 Nev. at 922, 901 P.2d at 141 (recognizing that all parties prevailed on some issues and lost on others such that neither could be considered a prevailing party).[5] Accordingly, this Court should affirm the district court's reduction in award of fees to Lynda.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ORDERING PAYMENT OF THE ATTORNEY FEE AWARD IN INSTALLMENTS.

No Nevada law, whether rule, statute or jurisprudence, prohibits a district court from fashioning the form of a judgment for fees while sitting in an equitable action arising in family court. The district court had jurisdiction over this dispute pursuant to NRS 125.150. *See* NRS 125.150(3) (district courts have continuing jurisdiction to hear post-judgment disputes about community property liabilities); NRS 125.150(7) (district court retains jurisdiction to modify the parties' marital property settlement agreements, even if not expressly agreed to by the parties in the agreement). Under NRS 125.150, the district court has discretion to order periodic payments of judgments without inquiry into ability to pay a lump sum judgment. *See, e.g.,* NRS 125.150(1)(a) (stating that a court "may" order alimony to be paid "in a specified principal sum or a specified periodic payments, as

[5] Pierre disagrees that Lynda prevailed on appeal.

appears just and equitable" without requiring inquiry into ability to pay). Thus, the district court properly exercised its discretion to order periodic payments.

NRS Chapter 21, cited by Lynda, governs the ***execution*** of judgments and not their form. NRS Chapter 17 is the relevant statutory chapter governing the form of judgments. Nothing in either NRS Chapter 17 or NRS Chapter 21 expressly prohibits orders requiring judgments be paid in installments. *See* NRS Chapter 17. To the contrary, NRS 17.130(1) merely requires that any judgment contain the amount of the judgment, and is otherwise silent as to whether this amount is payable in installments. *See id.* This Court cannot interpret NRS 17.130(1) to prohibit periodic payments, absent language in that statute. *See Double Diamond v. Second Jud. Dist. Ct.,* 131 Nev. 557, 563, 354 P.3d 641, 645 (2015) (this Court will not "read additional language into [a] statute"); *McKay v. Bd of Cnty. Comm'rs of Douglas Cnty.,* 103 Nev. 490, 492, 746 P.2d 124, 125 (1987)(holding that it is "not the business of this court to fill in alleged legislative omissions").

Had the Legislature wanted to prohibit such orders, and/or require district courts to first make inquiries as to ability to pay, it certainly could have. For example, Lynda cites to *Bolden v. State,* 139 Nev., Adv. Op. 46, 538 P.3d 1161, 1165 (Nev. App. 2023), which concerns NRS 179.225(2), a ***criminal*** restitution statute that requires a court to ascertain whether a person who is convicted of

and/or has plead to a criminal charge is financially capable of paying restitution to the victims of the crime. *See id.* Similarly, Lynda also cites to *Harrington v. Harrington,* 759 S.W.2d 664, 667-68 (Tenn. 1988), which relies upon the Tennessee Code § 26-2-216(a)(1), a statute which requires a court to make specific findings as to ability to pay before ordering installment payments of a judgment through periodic wage garnishments of a judgment debtor. *See id.*

The Legislature, however, specifically chose not to include a statute similar to NRS 179.225(2) for civil judgments, and Nevada does not have a statute similar to the Tennessee statute at issue in *Harrington.* Nevada law simply does not prohibit a district court from requiring judgments be paid in installments. Accordingly, this Court should affirm the judgment of the district court.

CONCLUSION

For the reasons set forth above, this Court should reverse the district court's order and remand this matter for the district court to enter an award of fees in favor of Pierre, the actual prevailing party.

Should this Court disagree, then Pierre alternatively requests that this Court reverse the district court's order and find there to be no prevailing party. Pierre further requests that this Court deny Lynda's cross-appeal.

/////

/////

Dated this 15th day of March 2024.

/s/ *Therese M. Shanks*

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type of style requirements of NRAP 32(a)(6) because:

This Brief has been prepared in a proportionally spaced typeface using Microsoft Word 16 in 14 font and Times New Roman type.

2. I further certify that this Brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Writ exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 5,791 words for the Reply Brief, and 2,282 words for the Answering Brief on Cross-Appeal.

3. Finally, I hereby certify that I have read this Brief, 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 Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject

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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 15th day of March 2024.

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CERTIFICATE OF SERVICE

Pursuant to Rule 25(b) of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this date, I served a true and correct copy of the attached document through the Court's e-filing system:

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DATED this 15th day of March, 2024.

/s/ *Madelaine A. Shek*
An Employee of Fennemore Craig, P.C.

IN THE SUPREME COURT OF THE STATE OF NEVADA

PIERRE HASCHEFF, AN INDIVIDUAL, Appellant/Cross-Appellant, *vs*. LYNDA HASCHEFF, AN INDIVIDUAL, Respondent/Cross-Appellant.	Case No. 86976

SUPPLEMENTAL APPENDIX

Pages AA 1159-1181

FENNEMORE CRAIG, P.C.

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Attorney for Appellant/Cross-Appellant

SUPPLEMENTAL APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

SUPPLEMENTAL APPENDIX – ALPHABETICAL TABLE OF CONTENTS

CERTIFICATE OF SERVICE

Pursuant to Rule 25(b) of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this date, I served a true and correct copy of the attached document through the Court's e-filing system:

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IN THE FAMILY DIVISION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,

Plaintiff,

v.

LYNDA L. HASCHEFF,

Defendant.

CASE NO. DV13-00656

DEPT. NO. 12

NOTICE OF ENTRY OF ORDER

Please take Notice that the Order Denying Motion to Allow Briefing on Prevailing Party was entered on February 15, 2023, attached hereto as Exhibit 1.

DATED this 16th day of February, 2023.

WOODBURN AND WEDGE

By */s/ Shawn B Meador*
Shawn B Meador, Esq.
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER

on the party set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Federal Express or other overnight delivery.

__X__ Second Judicial E-Flex

addressed as follows:

X John Springgate, Esq

The undersigned affirms that this document contains no social security numbers

Dated this 16th day of February, 2023.

/s/ Vanessa Martinez
Vanessa Martinez

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EXHIBIT LIST

Exhibit No.	Document Title	Page No.
1	Order Denying Motion to Allow Briefing on Prevailing Party	6

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EXHIBIT 1

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IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,

Plaintiff,

vs.

LYNDA HASCHEFF,

Defendant.
_____/

Case No. DV13-00656

Dept. No. 12

ORDER DENYING MOTION TO ALLOW BRIEFING ON PREVAILING PARTY

Presently before the Court is Plaintiff, Pierre A. Hascheff's ("Judge Hascheff"), Motion to Allow Briefing on Prevailing Party ("Motion") filed December 27, 2022. Defendant, Lynda Hascheff ("Ms. Hascheff"), was served with the Motion by eFlex on December 27, 2022 and filed her Opposition to Motion to Allow Briefing on Prevailing Party ("Opposition") on January 9, 2023. Mr. Hascheff filed his Reply on Motion to Allow Briefing on the Issue of Prevailing Party ("Reply") on January 17, 2023 and then submitted the Motion to the Court for decision on January 18, 2023.

The parties were divorced pursuant to the Findings of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013, which ratified, approved, adopted, merged, and incorporated by reference the parties' Marital Settlement Agreement (MSA) filed on September 30, 2013. On February 1, 2021, the Court entered its Order Granting Motion for Clarification or

Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorneys' Fees and Costs. The matter was timely appealed by Judge Hascheff and cross appealed by Ms. Hascheff. In the June 29, 2022 Order Affirming in Part, Reversing in Part, and Remanding, the Nevada Court of Appeals remanded two issues to this Court: (1) "whether the fees and costs incurred in the malpractice action are covered by the indemnification provision in [§ 40]" of the parties' MSA; and (2) determining which party is the prevailing party for the purposes of an award of attorney fees and costs in accordance with MSA § 35.1. The Court held a status hearing on September 28, 2022 to determine how to proceed with the remanded issues. Pursuant to the Order After Status Hearing entered September 29, 2022, the parties were ordered to: (1) file a copy of the unredacted invoices along with a proposed protective order; and (2) file brief three-page statements related to Judge Hascheff's claims of ambiguity in MSA § 40. In the Order Regarding Ambiguity in MSA § 40 and Remand entered December 8, 2022, the Court found Judge Hascheff had failed to show MSA § 40 is ambiguous. The Court stated it would take the remanded issues under advisement and issue a decision based upon the evidence in the record, including the unredacted invoices.

In the Motion, Judge Hascheff requests the Court enter an order allowing the parties to brief the issue of which party is the prevailing party under MSA § 35.1. Judge Hascheff states the Court previously asked the parties for brief statements on the issue of which fees and costs were incurred and related to the malpractice action. Judge Hascheff asserts limited briefing would assist the Court in determining which party is the prevailing party by clarifying the issues, using the parties' time instead of the Court's time, and preventing either party from later claiming they were precluded from addressing an important issue or that the Court overlooked an argument. Judge Hascheff requests simultaneous briefings of more than three pages in length, with a short response to address the claims of the other party.

In the Opposition, Ms. Hascheff states the Motion should be denied as the Court already indicated it has the ability to determine the prevailing party. Ms. Hascheff asserts the Motion fails to demonstrate the Court lacks this ability and fails to make a prima facie showing of an argument not previously raised. Ms. Hascheff notes the Court did not ask for the brief statements, but rather

Judge Hascheff's prior counsel requested such briefing based on his assertion that MSA § 40 is ambiguous. Ms. Hascheff asserts the Motion is part of a pattern of forcing Ms. Hascheff to unnecessarily incur legal fees and as such, Judge Hascheff should be required to pay her attorney's fees associated with the Opposition. Ms. Hascheff states if the Court determines additional briefing is appropriate, Judge Hascheff should be ordered to advance $1,350 in legal fees for Ms. Hascheff's attorney to prepare the brief.

In the Reply, Judge Hascheff states the Opposition provides no cogent argument against the request for limited briefing on the prevailing party issue, except that both parties will incur more legal fees. Judge Hascheff states the limited nature of the briefing would limit the fees incurred. Judge Hascheff asserts this Court and the Court of Appeals ruled against all of Ms. Hascheff's claims, except that she was required to pay only those fees and costs incurred in the malpractice action filed on December 26, 2018. Judge Hascheff alleges Ms. Hascheff's position at the outset of this litigation was that she was not obligated to pay any fees and costs, whether related to the malpractice action or note, because Judge Hascheff failed to timely provide notice, precluding his right to indemnity under the doctrine of laches, in addition to many other grounds. Judge Hascheff asserts Ms. Hascheff only agreed that she should pay part of the fees and costs incurred in the malpractice action after the Court of Appeals decided against her.

Based on the foregoing, the Court finds and orders as follows:

Order

The Court **DENIES** the Motion. The purpose of the status hearing held on September 28, 2022 was to determine how to proceed with the two remanded issues. Judge Hascheff raised the issue of the alleged ambiguity in MSA § 40 and as a result, the Court ordered the parties to brief the issue. Neither party raised the need to brief the issue of prevailing party. In the Motion, Judge Hascheff provides no case law, statute, rules, or other legal authority in support of his request for briefing on the prevailing party issue. The only reasoning stated in the Motion as to why the Court needs the parties' assistance in determining prevailing party is that a party may later claim they were precluded from addressing an important issue or the Court might overlook an argument. The Court is not persuaded by this argument. As Judge Hascheff failed to request briefing on the

prevailing party issue at the September 28, 2022 status hearing and as this Court is capable of determining the prevailing party in this matter without the parties' assistance, the Court denies the request for further briefing.

If Ms. Hascheff wishes to pursue an award of attorney's fees, she may file a motion for attorney's fees, along with a *Wilfong* affidavit and supporting billing documentation, within 21 days of written notice of entry this Order in compliance with NRPC 54(d)(2).

GOOD CAUSE APPEARING, IT IS SO ORDERED.

Dated this 15 day of February, 2023.

Sandra A. Unsworth
District Judge

DV13-00656

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on February 15, 2023, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or by e-filing, a true copy of the foregoing document addressed as follows:

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DEPT. NO. 12

NOTICE OF ENTRY OF ORDER

Please take Notice that the Order Regarding Indemnification of Fees and Costs Under MSA § 40; Order Regarding Prevailing Party Under MSA § 35.1 was entered on February 17, 2023, attached hereto as Exhibit 1.

DATED this 21st day of February, 2023.

WOODBURN AND WEDGE

By */s/ Shawn B Meador*
Shawn B Meador, Esq.
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER

on the party set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Federal Express or other overnight delivery.

__X__ Second Judicial E-Flex

addressed as follows:

X John Springgate, Esq

The undersigned affirms that this document contains no social security numbers.

Dated this 21st day of February, 2023.

/s/ Vanessa Martinez
Vanessa Martinez

WOODBURN AND WEDGE
6100 Neil Road, Ste. 500
Reno, Nevada 89511
Tel: (775) 688-3000

EXHIBIT LIST

Exhibit No.	Document Title	Page No.
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EXHIBIT 1

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FILED
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Clerk of the Court
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CODE

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,

Plaintiff,

vs.

LYNDA HASCHEFF,

Defendant.

_____/

Case No. DV13-00656

Dept. No.12

ORDER REGARDING INDEMNIFICATION OF FEES AND COSTS UNDER MSA § 40; ORDER REGARDING PREVAILING PARTY UNDER MSA § 35.1

Presently before the Court are the issues remanded by the Nevada Court of Appeals in its June 29, 2022 Order Affirming in Part, Reversing in Part, and Remanding. Specifically, this Court must: (1) "necessarily determine whether the fees and costs incurred in the malpractice action are covered by the indemnification provision in [§ 40]" of the parties' Marital Settlement Agreement (MSA); and (2) "consider an award of attorney fees and costs in accordance with MSA § 35.1," including determining which party is the prevailing party.

The parties were divorced pursuant to the Findings of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013, which ratified, approved, adopted, merged, and incorporated by reference the parties' MSA filed on September 30, 2013. On February 1, 2021, the Court entered its Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for

Attorneys' Fees and Costs. The matter was timely appealed by Judge Hascheff and cross appealed by Ms. Hascheff. The two issues stated herein were remanded by the Court of Appeals. The Court held a status hearing on September 28, 2022 to determine how to proceed with the remanded issues. At the status hearing, counsel for the parties agreed to a protective order related to the unredacted invoices, and counsel for Judge Hascheff requested briefing related to alleged ambiguity in MSA § 40. At no time did either counsel express concern about the Court's ability to determine who was the prevailing party. Pursuant to the Order After Status Hearing entered September 29, 2022, the parties were ordered to: (1) file a copy of the unredacted invoices along with a proposed protective order; and (2) file brief three-page statements related to Judge Hascheff's claims of ambiguity in MSA § 40. Unredacted invoices were provided to the Court and parties pursuant to the Stipulated Protective Order filed October 13, 2022. In the Order Regarding Ambiguity in MSA § 40 and Remand entered December 8, 2022, the Court found Judge Hascheff had failed to show MSA § 40 is ambiguous. In the same Order, the Court stated it would take the remanded issues under advisement and issue a decision based upon the evidence in the record, including the unredacted invoices. On December 27, 2022, Judge Hascheff filed a Motion to Allow Briefing on Prevailing Party. The Court denied the Motion in the Order Denying Motion to Allow Briefing on Prevailing Party entered February 15, 2023.

The Court, having reconsidered the two issues remanded by the Court of Appeals based on upon the evidence in the record, including the exhibits and testimony from the evidentiary hearing on December 21, 2020 and the unredacted invoices provided pursuant to the Stipulated Protective Order, now finds and orders as follows:

A. Indemnification Under MSA § 40 for Legal Fees Incurred in the Malpractice Action.

MSA § 40 states:

> Except for the obligations contained in or expressly arising out of this Agreement, each party warrants to the other that he or she has not incurred, and shall not incur, any liability or obligation for which the other party is, or may be, liable. Except as may be expressly provided in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission of the other, the warranting party shall, at his or her sole expense, defend the other against the claim, action, or proceeding. The warranting party shall

> also indemnify the other and hold him or her harmless against any loss or liability that he or she may incur as a result of the claim, action, or proceeding, including attorney fees, costs, and expenses incurred in defending or responding to any such action. **In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment[.]** Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs. (emphasis added).

The Court of Appeals found in the Order Affirming in Part, Reversing in Part, and Remanding that Judge Hascheff "is precluded from seeking indemnification from [Ms. Hascheff] for his decision to retain counsel to represent his interests as witness" in the collateral trust action as he was not sued as a party in the collateral trust action. The Court of Appeals continued, stating "the plain language of this section supports that [Judge Hascheff] must first be sued for malpractice before seeking indemnification for his legal fees and costs and those legal fees and costs must arise from the malpractice action only" (emphasis added). The Court of Appeals did not consider whether this Court "erred in its evaluation of [Judge Hascheff's] request for fees and costs in the collateral trust litigation . . . because the court reached the correct result by denying his request." Therefore, this Court considers legal fees and costs incurred after the date Judge Hascheff was sued for malpractice and arising from the malpractice action only.

The Court finds Judge Hascheff was sued for malpractice on December 26, 2018, the date of the filing of the Complaint against Judge Hascheff by Todd Jaksick, which was admitted as Confidential Exhibit G at the evidentiary hearing on December 21, 2020. The malpractice case was stayed thereafter pending the resolution of the collateral trust action.

Based upon the unredacted invoices provided under the Stipulated Protective Order, the Court finds Judge Hascheff incurred legal fees as a result of the malpractice action on the following dates and in the following amounts:

a. January 24, 2019: $825.00

b. February 20, 2019: $1,175.00

c. June 21, 2019: $200.00

d. July 1, 2019: $20.00

e. September 25, 2019: $75.00[1]

As each time entry for the above dates references either the Complaint or the suit against Judge Hascheff or evaluating his potential liability and claimed damages in the malpractice suit, the Court finds these fees arose from the defense of the malpractice action. The Court did not include any fees charged to Judge Hascheff prior to the commencement of the malpractice suit[2] or fees charged for representation in the collateral trust litigation.[3] Pursuant to MSA § 40, Ms. Hascheff must indemnify Judge Hascheff for one-half of these legal fees, which total $2,295.00. Thus, Ms. Hascheff shall pay $1,147.50 to Judge Hascheff within 30 days of entry of this Order.

B. Prevailing Party Under MSA § 35.1.

MSA § 35.1 states:

> If either party to this Agreement brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

The Nevada Supreme Court has stated, "[a] party prevails if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Review-Journal v. City of Henderson*, 137 Nev., Adv. Op. 81, 500 P.3d 1271, 1276 (2021) (quoting *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 943 P.3d 608, 615 (2015)) (emphasis in original). A party does not need to succeed on every issue to be the prevailing party. *Las Vegas Metro. Police Dep't*, 131 Nev. at 90, 943 P.3d at 615.

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[1] Despite the parties advising the Court that the malpractice action was stayed almost immediately, this charge related to staying the proceedings occurred approximately nine months later.

[2] A fee of $125.00 was incurred on September 18, 2018 that appears to be related to concerns regarding malpractice but as it was incurred prior to the filing of the malpractice action and contemporaneously with issues related to Judge Hascheff's deposition in the collateral trust litigation, the Court finds Ms. Hascheff is not required to indemnify this fee under MSA § 40.

[3] As to a fee of $700.00 incurred on February 21, 2019 for 3.50 hours of time, the description of the charge references the review of a complaint, but it is unclear which case it refers to and how much time was spent on reviewing the complaint as compared to the five other tasks listed in the description that arise from the collateral trust litigation. Additionally, while Judge Hascheff asserted the February 21, 2019 fee should be indemnified in Exhibit 1 to his Brief Statement filed October 31, 2022, his monetary claim was listed as $0. As to a fee of $775.00 incurred on February 22, 2019, the description of the charge clearly indicates the charge was incurred in the collateral trust litigation.

The current litigation commenced on June 16, 2020 when Ms. Hascheff filed her Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Clarification Motion"). Judge Hascheff thereafter filed his Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("OSC Motion") on July 8, 2020.

In the Clarification Motion, Ms. Hascheff requested the "Court enter an Order clarifying that Ms. Hascheff is only responsible for fees incurred in the malpractice action and that she is not responsible for the fees or costs he chose to incur to have personal counsel protect his interests in connection with his role as a percipient witness in the [collateral trust litigation]." In the Clarification Motion, Ms. Hascheff asserts she has not refused to indemnify Judge Hascheff for malpractice fees covered by MSA § 40, only the fees he incurred in connection with his role as a percipient witness in the collateral trust litigation. Ms. Hascheff did raise other arguments, including that "Judge Hascheff should be equitably estopped from asserting such a claim based on his breach of fiduciary duty and his breach of the covenant of good faith and fair dealing," such as by keeping the malpractice action secret from Ms. Hascheff until January 15, 2020.

In the OSC Motion, Judge Hascheff requested the Court issue an order for Ms. Hascheff to show cause why she intentionally disobeys the MSA by refusing to indemnify Judge Hascheff for fees incurred after the filing of the malpractice complaint, or in the alternative enforce the MSA and order the payment of indemnification in the amount of $4,924.05.[4] In the OSC Motion, Judge Hascheff asserts MSA § 40 requires "the payment of all attorney fees and costs relating to the [collateral] trust litigation as it directly related to the malpractice action." Judge Hascheff states Ms. Hascheff seeks to delay payment and gain leverage with her Clarification Motion.

Both parties requested attorney's fees and costs in their respective Motions under MSA § 35.1.

In the Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorneys' Fees and Costs entered February 1, 2021, the Court granted Ms. Hascheff's

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[4] Prior to the filing of Ms. Hascheff's Clarification Motion and Judge Hascheff's OSC Motion, Judge Hascheff had requested $5,200. 90 on January 15, 2020 and then $4,675.90 on February 5, 2020 be indemnified by Ms. Hascheff.

Clarification Motion, denied Judge Hascheff's OSC Motion based on the doctrine of laches, and denied both parties' requests for awards of attorney's fees and costs. In the Order Affirming in Part, Reversing in Part, and Remanding, the Court of Appeals found this Court "abused its discretion in applying laches to grant [Ms. Hascheff's] motion and deny [Judge Hascheff's] request for indemnification in the malpractice action" and remanded the matter to this Court. On remand, the Court herein determined the amount Ms. Hascheff must indemnify Judge Hascheff under MSA § 40 for legal fees incurred in defense of the malpractice suit filed on December 26, 2018, specifically excluding fees incurred in the collateral trust litigation as required by the Court of Appeals.

Accordingly, the Court finds Ms. Hascheff is the prevailing party in this matter. Ms. Hascheff's Clarification Motion sought clarification from the Court regarding what fees she owed Judge Hascheff under MSA § 40 and asserted she is not required to indemnify fees arising from the collateral trust litigation. As the Court of Appeals held MSA § 40 only applies to fees and costs that arise from the malpractice action, this Court found herein Ms. Hascheff must indemnify Judge Hascheff for only those fees, which amount to $1,147.50. Thus, the Court finds Ms. Hascheff is the prevailing party as she received the predominate relief requested in her Clarification Motion.

In regard to Judge Hascheff's OSC Motion, the Court finds Ms. Hascheff did not willfully disobey the parties' MSA but properly sought clarification when the parties disagreed on what fees were covered by MSA § 40. The Court finds Ms. Hascheff could not have complied with the MSA without the Court's assistance as even this Court could not determine the proper amount of fees until provided with the unredacted invoices under the Stipulated Protective Order.[5] The Court further finds enforcement is unnecessary as Ms. Hascheff indicated in her Clarification Motion she is willing to pay the fees required under MSA § 40 but simply needed the Court to clarify what fees she is required to pay. Given that Ms. Hascheff's Clarification Motion indicates she is willing to indemnify the fees required under MSA § 40, it appears to this Court that the filing of Judge Hascheff's OSC Motion three weeks later was premature. Thus, the Court finds Judge Hascheff

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[5] The Court notes the redacted invoices originally admitted into evidence at the December 21, 2020 evidentiary hearing as Plaintiff's Exhibit I and Defendant's Exhibit 15 feature redactions that obscure the descriptions of almost all of the charges actually related to the malpractice action.

has not prevailed on any significant issue in his OSC Motion as the use of the Court's contempt and enforcement powers are unnecessary and inappropriate under these circumstances.

C. Compliance with MSA § 35.2.

Although the Court previously found the parties complied with the notice requirements of MSA § 35.2, based upon footnote 7 in the Court of Appeal's Order Affirming in Part, Reversing in Part, and Remanding, this Court reanalyzes Ms. Hascheff's compliance with MSA § 35.2 and finds as follows:

MSA § 35.2 states:

> A party intending to bring an action or proceeding to enforce this Agreement shall not be entitled to recover attorney fees and costs under this provision unless he or she first gives the other party at least 10 [days] written notice before filing the action or proceeding. The written notice shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of the Agreement; (2) the reasons why the moving party believes the subsequent action or proceeding is necessary; (3) whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding; and (4) a period of time within which the other party may avoid the action or proceeding by taking the specified action. The first party shall not be entitled to attorney fees and costs if the other party takes the specified action within the time specified in the notice.

The Court finds Ms. Hascheff provided written notice to Judge Hascheff 14 days prior to filing her Clarification Motion on June 16, 2020 as evidenced by a letter dated June 2, 2020 from Ms. Hascheff's counsel to Judge Hascheff's counsel admitted as Defendant's Exhibit 8 at the evidentiary hearing on December 21, 2020. The letter states, among other things:

> Pursuant to paragraph 35.2 of the parties' MSA, if we have not been able to reach an agreement within ten days of the date of this letter my client will file a declaratory relief action so that the court can determine my client's liability under these facts. To assure there is no confusion, my client's position is that she is responsible for one-half of the fees and costs associated with the malpractice action, that she is not responsible for Judge Hascheff's fees and costs as a percipient witness.

Having found timely written notice was provided, the Court analyzes whether the letter met the four requirements of MSA § 35.2 as follows:

(1) *Whether the subsequent action or proceeding is to enforce the original terms of the Agreement*: The Court finds the June 2, 2020 letter specifies the declaratory relief action Ms. Hascheff intends to file is to enforce the original terms of the MSA as it seeks the Court's clarification of the MSA so Ms. Hascheff is not forced to indemnify Judge Hascheff for fees and costs not covered by MSA § 40.

(2) *The reasons why the moving party believes the subsequent action or proceeding is necessary*: The Court finds the June 2, 2020 letter specifies Ms. Hascheff believes the declaratory relief action is necessary as the parties were unable to agree on the extent of Ms. Hascheff's liability to indemnify Judge Hascheff under the MSA.

(3) *Whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding*: The Court finds the June 2, 2020 letter specifies Judge Hascheff may avoid the necessity for the filing of the declaratory relief action by reaching an agreement regarding the fees and costs Ms. Hascheff would be liable for under the MSA.

(4) *A period of time within which the other party may avoid the action or proceeding by taking the specified action*: The Court finds the June 2, 2020 letter specifies a period of 10 days from the date of the letter in which the agreement must be made to avoid the filing of the declaratory action. Ms. Hascheff's Clarification Motion was filed 14 days after the date of the letter.

As Ms. Hascheff complied with the terms of MSA § 35.2, an award of attorney's fees and costs may be awarded under MSA § 35.1 as she prevailed on the Clarification Motion.

Order

A. Indemnification Under MSA § 40.

The Court orders Ms. Hascheff to indemnify Judge Hascheff within 30 days of the entry of this Order in the amount of $1,147.50 for fees and costs incurred in the defense of the malpractice action pursuant to MSA § 40.

B. Award of Attorney's Fees Under MSA § 35.1.

As Ms. Hascheff was the prevailing party in this matter and as she complied with MSA § 35.2 prior to filing her Clarification Motion, the Court finds Ms. Hascheff is entitled to an award of

her reasonable attorney fees and other reasonably necessary costs she incurred in her Clarification Motion pursuant to MSA § 35.1. Ms. Hascheff shall file a *Wilfong* affidavit and supporting billing documents within 21 days of the entry of this Order.

GOOD CAUSE APPEARING, IT IS SO ORDERED.

Dated this 17 day of February, 2023.

Sandra A. Unsworth
District Judge

DV13-00656

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on February 17, 2023, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or by e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

JOHN SPRINGGATE, ESQ. for PIERRE HASCHEFF
SHAWN MEADOR, ESQ. for LYNDA HASCHEFF

Judicial Assistant