IN THE SUPREME COURT OF THE STATE OF NEVADA
*** * * * ***

Case No. 86976

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PIERRE A. HASCHEFF,

Appellant/Cross-Respondent,

vs.

LYNDA HASCHEFF,

Respondent/Cross-Appellant.

Appeal From Special Order Entered After Final Judgment
Second Judicial District Court Case No. DV13-00656

RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF ON CROSS-APPEAL

LEONARD LAW, PC
Debbie Leonard (#8260)
955 S. Virginia St., Suite #220
Reno, NV 89502
775-964-4656
debbie@leonardlawpc.com

Attorney for Respondent/Cross-Appellant

Docket 86976 Document 2024-11265

NRAP 26.1 DISCLOSURE STATEMENT

The following law firms have lawyers who appeared on behalf of the Respondent/Cross-Appellant Lynda Hascheff or are expected to appear on her behalf in this Court:

Leonard Law, PC
Woodburn and Wedge

DATED March 29, 2024

LEONARD LAW, PC

By: /s/ Debbie Leonard
Debbie Leonard (# 8260)
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Phone: 775-964-4656
debbie@leonardlawpc.com

Attorney for Respondent/Cross-Appellant

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE STATEMENT .... **ii**

TABLE OF AUTHORITIES .... **v**

INTRODUCTION **1**

ARGUMENT **2**

A. Having Prevailed In Obtaining The Declaratory Relief She Sought – That Her Indemnification Obligation Is For Only One Half The Costs To Defend Against A Malpractice Action – Lynda Is Entitled To Her Appellate Fees 2

1. The Court Lacks Jurisdiction To Change Who Prevailed Because Pierre Failed To Timely Appeal The February 17, 2023 Indemnity Order 2

2. Even If This Court Reviews the Prevailing Party Issue, It Cannot Review the Underlying Decision that Lynda Won 4

3. Lynda's Request For Declaratory Relief Did Not Differ From Her "Pre-Litigation" Position 6

4. The District Court's Categorical Exclusion of Appellate Fees Was Reversible Legal Error 8

a. The Court Reviews De Novo The District Court's Categorical Exclusion Of Appellate Fees 8

b. Lynda Succeeded In The First Appeal 9

c. *Hensley* And *Tarkanian* Support Lynda's Position, Not Pierre's 11

5. Because Pierre Has Not Disputed The Reasonableness Of Lynda's Appellate Fees, The Court Should Award Them In Full 14

B. By Failing To Cite Supporting Authority Or Dispute The Finding That He Can Pay A Substantial Fee Award In Full, Pierre Admits The District Court's Installment Plan Cannot Stand 15

1. NRS 125.150 Only Authorizes Payment Plans For Alimony Awards In Divorce Decrees, And Pierre Himself Acknowledges No Part Of The Post-Judgment Fee Order Related To Alimony 15

2. Even If NRS 125.150 Could Be Construed To Apply, Pierre's Ability To Pay In Full Foreclosed An Installment Plan 18

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 21

CERTIFICATE OF SERVICE 22

TABLE OF AUTHORITIES

Cases

Am. First Fed. Credit Union v. Soro,
131 Nev. 737, 359 P.3d 105 (2015)....................15

Anthony v. Sullivan,
982 F.2d 586 (D.C. Cir. 1993)....................12

Barbara Ann Hollier Tr. v. Shack,
131 Nev. 582, 356 P.3d 1085 (2015)....................5

Berberich v. Bank of Am., N.A.,
136 Nev. 93, 460 P.3d 440 (2020)....................16

Bergmann v. Boyce,
109 Nev. 670, 856 P.2d 560 (1993)....................13

Blackorby v. BNSF Ry. Co.,
60 F.4th 415 (8th Cir. 2023)....................12

Brown v. MHC Stagecoach, LLC,
129 Nev. 343, 301 P.3d 850 (2013)....................4, 5

Byrd v. Byrd,
137 Nev. 587, 501 P.3d 458 (Nev. App. 2021)....................17

Campos-Garcia v. Johnson,
130 Nev. 610, 331 P.3d 890 (2014).................... 3, 4, 5

Clark Cnty. Sports Enters., Inc. v. City of Las Vegas,
96 Nev. 167, 606 P.2d 171 (1980)....................16

Corder v. Gates,
947 F.2d 374 (9th Cir. 1991)....................12

Dep't of Tax'n v. DaimlerChrysler Servs. N. Am., LLC,
121 Nev. 541, 119 P.3d 135 (2005).................... 16, 17

Double Diamond v. Second Jud. Dist. Ct.,
131 Nev. 557, 354 P.3d 641 (2015)..15

Galardi v. Naples Polaris, LLC,
129 Nev. 306, 301 P.3d 364 (2013)..8

Galloway v. Truesdell,
83 Nev. 13, 422 P.2d 237 (1967)..16

Gumm v. Mainor,
118 Nev. 912, 59 P.3d 1220 (2002)... 3, 4, 5

Gunther v. Alaska Airlines, Inc.,
287 Cal. Rptr. 3d 229 (Ct. App. 2021) 12

Hensley v. Eckerhart,
461 U.S. 424 (1983).. 11, 12

Henson v. Henson,
130 Nev. 814, 334 P.3d 933 (2014)..17

In re Estate of Miller,
125 Nev. 550, 216 P.3d 239 (2009)..13

Kogod v. Cioffi-Kogod,
135 Nev. 64, 439 P.3d 397 (2019)..18

Lee v. State,
906 N.W.2d 186 (Iowa 2018) 12

Martin v. Martin,
No. 85323, 2023 WL 3055103 (Nev. Apr. 21, 2023).................................. 4, 5, 6

Mizrachi v. Mizrachi,
132 Nev. 666, 385 P.3d 982 (Nev. App. 2016) 17

Musso v. Binick,
104 Nev. 613, 764 P.2d 477 (1988)..9

Nat'l Collegiate Athletic Ass'n v. Tarkanian,
488 U.S. 179 (1988)....................12

Snider v. Am. Fam. Mut. Ins. Co.,
298 P.3d 1120 (Kan. 2013)....................12

Tarkanian v. NCAA,
103 Nev. 331, 741 P.2d 1345 (1987)....................12

TRP Int'l, Inc. v. Proimtu MMI LLC,
133 Nev. 84, 391 P.3d 763 (2017)....................3

Underwood Props., LLC v. City of Hackensack,
269 A.3d 509 (N.J. App. Div. 2022)....................12

Univ. of Nev. v. Tarkanian,
110 Nev. 581, 879 P.2d 1180 (1994)....................12

Valley Bank of Nev. v. Ginsburg,
110 Nev. 440, 874 P.2d 729 (1994)....................5

Statutes

NRS Chapter 17....................15

NRS 18.010....................13

NRS 21.010....................16, 19

NRS 125.150....................1, 14, 15, 16, 17, 18

NRS 176.085....................18

NRS 179.225....................18

Tenn. Code § 26-2-216....................18

Rules

NRAP 3A 2, 3, 4, 5

NRCP 11 13

NRAP 28 20

NRAP 32 20

NRAP 36 .... 4, 6

INTRODUCTION

Although the district court correctly recognized that the first appeal delivered Lynda the very "clarification sought by her Clarification Motion," it categorically – and erroneously – barred Lynda from recovering any of her fees from the first appeal. 5AA1112. Rather than address this inconsistency, Pierre repeatedly trumpets his unsupported assertion that Lynda did not prevail on appeal. In so doing, Pierre distorts the Court of Appeals' decision beyond recognition, misapplies the pertinent case law, and misstates the record. Nothing asserted by Pierre alters the necessary conclusion that Lynda is entitled to her reasonable appellate fees.

Moreover, the only legal authority Pierre could muster to backstop the district court's faulty payment plan, NRS 125.150(1)(a), actually supports Lynda's position, not Pierre's. That statute authorizes an installment plan for *alimony* in a divorce decree, and as Pierre admits, this case does involve alimony. Even if the statute could be deemed applicable, it does not justify installment payments here because Pierre does not dispute the district court's finding that he is capable of paying the fee award in full. As a result, he must pay a lump sum or be subject to execution on the judgment, as would any other litigant.

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ARGUMENT

A. Having Prevailed In Obtaining The Declaratory Relief She Sought – That Her Indemnification Obligation Is For Only One Half The Costs To Defend Against A Malpractice Action – Lynda Is Entitled To Her Appellate Fees

1. The Court Lacks Jurisdiction To Change Who Prevailed Because Pierre Failed To Timely Appeal The February 17, 2023 Indemnity Order

The lynchpin of Pierre's answering brief on cross appeal is a rehashing of his challenge to Lynda's status as the prevailing party, which the district court established in the February 17, 2023 Indemnity Order and Pierre did not timely appeal.[1] ARB 24-25.[2] In his effort to overcome this jurisdictional defect, Pierre conflates a final judgment that is appealable under NRAP 3A(b)(1) with a special order entered after final judgment that is appealable under NRAP 3A(b)(8). ARB 1, 3-7, 24-25. NRAP 3A(b)(8) allows for appeal of a "special order after final judgment," that "affects the rights of a party to the action, growing out of the previously entered judgment." *TRP Int'l, Inc. v. Proimtu MMI LLC*, 133 Nev. 84,

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[1] Because Pierre's Answering Brief on Cross-Appeal incorporates by reference the arguments from his Reply Brief on Appeal, Lynda addresses the incorporated arguments.

[2] This brief uses the abbreviations "ARB" to refer to Pierre's Combined Reply Brief on Appeal and Answering Brief on Cross-Appeal, and "RAB" to refer to Lynda's Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal.

85, 391 P.3d 763, 764 (2017), *citing Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

The "final judgment" in this case was the divorce decree entered in 2013. 1AA0010-0012. The instant dispute involves post-judgment proceedings to interpret and declare the respective rights in the Marital Settlement Agreement ("MSA") incorporated into the final divorce decree. 1AA0013-0102. The district court entered two post-judgment orders that affected the parties' decree rights: the February 17, 2023 Indemnity Order (which neither party appealed) and the June 12, 2023 Fee Order (the subject of the instant appeal). 4AA0930-0939; 5AA1105-1117. As Pierre stated in his jurisdictional statement (AOB at iv), he appealed the June 12, 2023 Fee Order pursuant to NRAP 3A(b)(8), not NRAP 3A(b)(1). As a result, his reliance on the final judgment rule now is misplaced.

The factors that make an order appealable under NRAP 3A(b)(1) do not apply to the district court's order entered nearly seven years *after* entry of the final judgment. Any post-judgment order that affects a party's rights in the judgment must be appealed "when first entered." *Campos-Garcia v. Johnson*, 130 Nev. 610, 611, 331 P.3d 890, 890 (2014). Pierre does not dispute that the Indemnity Order affected the parties' rights by interpreting the MSA incorporated into the previously entered divorce decree, determining the scope and amount of Lynda's indemnity obligation, and deeming her the prevailing party. 4AA0932-0933. It was, therefore, appealable

under NRAP 3A(b)(8), and Pierre had to appeal it within 30 days, even though the amount of fees he owed Lynda remained outstanding. *See id.* His failure to do so renders the findings and conclusions in the Indemnity Order unreviewable on appeal. *See Campos-Garcia*, 130 Nev. at 611, 331 P.3d at 890.

Notably, although Pierre brought his appeal pursuant to NRAP 3A(b)(8), his attempt to overcome this jurisdictional defect fails to even cite that rule or the cases that interpret it. Pierre cannot manufacture appellate jurisdiction by pretending that *Campos-Garcia* and *Gumm* do not exist. Those precedents make clear that he cannot now belatedly challenge the findings or conclusions in the Indemnity Order. *See Campos-Garcia*, 130 Nev. at 611, 331 P.3d at 890; *Gumm*, 118 Nev. at 920, 59 P.3d at 1225.

2. Even If This Court Reviews the Prevailing Party Issue, It Cannot Review the Underlying Decision that Lynda Won

Pierre's reliance on *Martin v. Martin*, No. 85323, 2023 WL 3055103 (Nev. Apr. 21, 2023) (unpublished disposition) does not alter this conclusion. As a non-binding, unpublished order, *Martin* "does not establish mandatory precedent." NRAP 36(c)(2). *Martin* also lacks persuasive value because it stands on faulty analytical underpinnings by citing case law that addressed appealability under NRAP 3A(b)(1), not NRAP 3A(b)(8). *See Martin*, 2023 WL 3055103 at *1.

Specifically, *Martin* relies on *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 301 P.3d 850 (2013), for the proposition that "only an order 'finally and completely'

resolving a claim is appealable." *Martin*, 2023 WL 3055103 at *1. *Brown* only decided that a particular order was not "final" enough to fall "within the ambit of NRAP 3A(b)(1)," and did not address special orders entered *after* final judgment under NRAP 3A(b)(8). *Brown*, 129 Nev. at 347, 301 P.3d at 852. Moreover, the post-judgment order at issue in *Martin* did not resolve a "claim" at all, as that had already occurred in the judgment itself. *See id.*, 2023 WL 3055103 at *1.

Critically, *Martin* contravenes the case law interpreting NRAP 3A(b)(8), that any order that alters a party's rights in a judgment is appealable when entered, and failure to timely appeal is a jurisdictional defect. *See Campos-Garcia*, 130 Nev. at 611, 331 P.3d at 890; *Gumm*, 118 Nev. at 920, 59 P.3d at 1225. Although *Martin* determines jurisdiction over a post-judgment order, it does not cite these cases.

Finally, *Martin*'s exertion of "jurisdiction over [one] **<u>portion</u>**" of an order and not another, *see* 2023 WL 3055103 at *1 (emphasis added), is hard to square with the principle of "avoiding the specter of piecemeal appellate review." *See Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 590, 356 P.3d 1085, 1090 (2015), *quoting Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 733 (1994). The jurisdictional rules in NRAP 3A(b) look at the appealability of a "judgment or order" as a whole, not the appealability of certain portions of an order. *See id.* In setting forth which **<u>orders</u>** are reviewable on appeal, NRAP 3A(b) does not authorize the Court to exert jurisdiction to review some **<u>rulings within an order</u>** but not others.

See id. For these reasons, *Martin* has little "persuasive value" and does not salvage Pierre's failure to timely appeal the Indemnity Order. *See* NRAP 36(b)(3).

Even if the Court were to hold otherwise, *Martin* nevertheless confirms that the merits portion of the Indemnity Order – i.e., establishing the scope and amount of Lynda's indemnity obligation – was appealable at the time it was entered. *See* 2023 WL 3055103 at *1. There, the Court exercised jurisdiction over the portion of the district court's order that determined the substantive motions. *See id.* Yet, here, Pierre did not appeal any portion of the Indemnity Order. As a result, the Court must accept as final and nonreviewable the district court's conclusion that Pierre

> 'is precluded from seeking indemnification from [Lynda] for his decision to retain counsel to represent his interests as witness… [rather, he] 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 <u>only</u>'… [amounting to] $2,295.00.

4AA0932-0933 (quoting 4AA0790) (emphasis added by district court). In other words, according to the very case Pierre cites, the Court has no jurisdiction to review the merits of the district court's grant of the declaratory relief Lynda sought and that rendered her the prevailing party.

3. Lynda's Request For Declaratory Relief Did Not Differ From Her "Pre-Litigation" Position

The district court's holding, quoted above, granted Lynda the relief she asked for—and had always asked for. Lynda has consistently and unwaveringly argued that she is responsible for half of only those fees that Pierre could demonstrate he

incurred to defend against the Malpractice Action. 1AA0049-0050, 0056, 0062. Misrepresenting the record, Pierre disingenuously accuses Lynda of "cit[ing] to her pre-litigation position" (ARB 8) when, in reality, Lynda cited the briefing and evidence in support of her motion for declaratory relief—which is precisely the "litigation" at issue in this case. RAB 8, 10, 28 (citing 1AA0014, 0017, 0024, 0049-0050, 0056, 0062, 0134). Those documents reinforce that Lynda's litigation position was consistent with her pre-litigation position: that she was "responsible for one-half of the costs specifically incurred in the defense of th[e] malpractice lawsuit." 1AA0134. Likewise, Lynda consistently took the position that Pierre had not demonstrated any more than *de minimis* fees in the Malpractice Action—but that if he could prove otherwise through actual evidence, she would pay them. 1AA0062 (offering to pay half of $95 and indicating that redacted bills did not provide sufficient information "to know what the fees and costs have been that are directly related to the malpractice action"); 1AA0017 (noting that, because it was immediately stayed, "essentially no fees or costs were incurred in defending the malpractice lawsuit").

Before this litigation, during this litigation, and today, Lynda has always wanted the same thing: a declaration that she is "responsible for one-half of the costs specifically incurred in the defense of th[e] malpractice lawsuit," and clarification as to which costs qualified. 1AA0134. She has also consistently argued that few, if

any, of Pierre's costs qualified. 1AA0017, 0062. She won that argument as well, successfully persuading the district court to find that Pierre could not recover the majority of his original demand. 4AA0933. The fact that Lynda did not win on each and every line item of Pierre's bills does not mean the district court abused its discretion in determining that Lynda was the prevailing party.

4. The District Court's Categorical Exclusion of Appellate Fees Was Reversible Legal Error

a. The Court Reviews De Novo The District Court's Categorical Exclusion Of Appellate Fees

Although Pierre tries to couch the district court's categorical denial of Lynda's appellate fees as discretionary (ARB 25-26), he perpetuates the same legal error – which is reviewable de novo – employed by the district court. Interpretation of the contractual fee provision in MSA §35.1 presents a question of law that is subject to de novo review. *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013). MSA §35.1 provides:

> 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.

1AA0197 (emphasis added). While this provision gives the district court discretion to decide what amount of fees are reasonable, it mandates that all reasonable fees be awarded to the prevailing party. *See id.*

In this respect, in categorically excluding the fees incurred by Lynda for the first appeal, the district court stated an incorrect legal standard: that it "**may** award attorney fees for successfully bringing or defending an appeal pursuant to a contract provision for attorney's fees." 5AA1128 (emphasis added) (citing *Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477, 477 (1988). *Musso* does not give the district court such discretion; rather, it clearly holds that a prevailing party is "**entitled** to an award of attorney's fees pursuant to the contractual agreement of the parties." 104 Nev. at 615, 764 P.2d at 477 (emphasis added). Because Lynda prevailed, the only subsequent discretionary issue for the district court to determine was whether the amount requested was "reasonable." *See id.* at 615, 764 P.2d at 478. The district court erred as a matter of law in categorically excluding fees that the MSA states the prevailing party "shall" recover. 1AA0197.

b. Lynda Succeeded In The First Appeal

In its 2021 Declaratory Relief Order, the district court incorrectly held that "the legal fees incurred by Judge Hascheff as a witness in the collateral trust action and the stayed malpractice lawsuit where he is sued individually are encompassed by MSA § 40." 3AA0632. At Lynda's prompting, the Court of Appeals reversed that holding to Lynda's benefit:

> First, we disagree that MSA § 40 allows for indemnification for legal fees and costs incurred by Pierre while acting in his professional capacity in all circumstances, including testifying as a percipient witness in collateral litigation. Under the relevant provision of MSA §

> 40, Pierre must first be sued for malpractice before he can seek indemnification for his legal fees and costs.
>
> * * *
>
> As Pierre was not sued as a party in the collateral trust litigation, he is precluded from seeking indemnification from Lynda for his decision to retain counsel to represent his interests as a witness. As Lynda aptly points out, the indemnification provision could have been written to include indemnification for legal representation in cases where he was not named as a party. As written, however, MSA § 40 does not contemplate indemnification where Pierre testifies as a witness in collateral litigation. Simply, the plain language of this section supports that Pierre 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.

4AA0790-0791. Moreover, the Court of Appeals wholly agreed with Lynda's cross appeal that "[t]he district court <u>**must consider**</u> an award of attorney fees and costs in accordance with MSA § 35.1." 4AA0795 (emphasis added).

Effectuating the Court of Appeals' decision on remand, the district court limited Lynda's indemnification of Pierre to those fees he incurred "from the malpractice action <u>only</u>," just as Lynda had urged all along. 4AA0910 (emphasis added by the district court); *see* 4AA0935. It also awarded Lynda fees under MSA § 35.1, as directed by the Court of Appeals. 4AA0795; 5AA1106. Yet by categorically denying her appellate fees, the district court essentially said that her successful defense of Pierre's appeal and her successful cross appeal were not reasonably brought, even though they delivered her the relief she sought. 5AA1112.

The fact that the Court of Appeals rejected the district court's *sua sponte* application of the laches doctrine – something that Lynda had never argued below – did not deprive Lynda of her prevailing party status or render Pierre the prevailing party. 4AA0793-0794. Pierre failed in his effort to have Lynda held in contempt of court, which barred him from being the prevailing party. 4AA0785, 0796; 5AA1112 (noting, "The Court's February 17, 2023 Order was not an order to show cause nor an order for enforcement pursuant to Judge Hascheff's OSC Motion"). Lynda got the declaratory relief she sought and the ruling urged by her cross appeal that MSA § 35.1 mandated fees, which made her the prevailing party on the appeal and cross appeal. 4AA0790-0791. Under MSA § 35.1, she is "entitled" to her appellate fees. 1AA0197.

c. *Hensley* And *Tarkanian* Support Lynda's Position, Not Pierre's

Pierre cannot circumvent the fact that Lynda succeeded in her request for declaratory relief by contending that she should be penalized for "unsuccessful legal theories." ARB 16, 29. Indeed, Pierre's position is undermined by the very authorities he cites. *Hensley v. Eckerhart* held only that fees should not be awarded for work on unsuccessful *claims* that are "distinct in all respect from [the party's] successful claims." 461 U.S. 424, 440 (1983). Pierre selectively quotes *Hensley* (ARB 27), omitting the critical language that "[l]itigants in good faith may raise alternative legal grounds for a desired outcome, **and the court's rejection of or**

<u>failure to reach certain grounds is not a sufficient reason for reducing a fee</u>. The result is what matters." *Hensley*, 461 U.S. at 435 (emphasis added). This language directly contradicts Pierre's assertion that "unsuccessful legal theories" justify reducing a fee. ARB 16.

Here, exactly as contemplated in *Hensley*, Lynda raised a number of legal theories to support her request for declaratory relief. 1AA0014-0067; 3AA0637-0689. The fact that the Court of Appeals ultimately did not rely on some of those theories when concluding – as Lynda asserted – that her indemnity obligation was limited to half the fees Pierre incurred to defend a malpractice action, does not change her successful result. 4AA0790-0792, 0909-0910, 0932-0933. Therefore, under *Hensley*, Lynda is entitled to an award of fees for "all hours reasonably expended on the litigation." *Id.* at 435; *see also Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 596, 879 P.2d 1180, 1189 (1994) ("'If a plaintiff ultimately wins on a particular claim, she [or he] is entitled to all attorney's fees reasonably expended in pursuing that claim—even though she may have suffered some adverse rulings'") (alteration in original) (quoting *Corder v. Gates*, 947 F.2d 374, 379 n.5 (9th Cir. 1991)). It is improper to reduce a fee award "simply because the district court did not adopt each contention raised." *Tarkanian v. NCAA*, 103 Nev. 331, 342, 741 P.2d 1345, 1352

(1987) (quoting *Hensley*, 461 U.S. at 440), *reversed on other grounds by Nat'l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179 (1988).[3]

Pierre's citation to *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993), is entirely irrelevant because that case involved fees under NRS 18.010(2)(b), which are awarded to a party defending against frivolous claims and are closely related to sanctions under NRCP 11. *See id.* It did not involve an award of fees to a prevailing party under a contractual provision, as exists here. *See id.* Lynda was not required to show that Pierre's claims were sanctionably frivolous in order to recover her fees pursuant to MSA § 35.1's prevailing party clause. 1AA0197.

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[3] The cases from other jurisdictions that Pierre cites also do not support the categorical exclusion of Lynda's appellate fees. *Snider v. Am. Fam. Mut. Ins. Co.*, 298 P.3d 1120, 1132 (Kan. 2013), denied appellate fees in supplemental fee litigation pursuant to a fee-shifting statute because the movant had not prevailed in that appeal. In *Anthony v. Sullivan*, the movant "did not prevail on any contested issue." 982 F.2d 586, 587 (D.C. Cir. 1993). *Blackorby v. BNSF Ry. Co.*, actually supports Lynda because the court held that fees should not have been reduced for "limited success" where plaintiff prevailed on the claim "at the heart of [his] case... regardless of the fate of [another] claim or another theory of liability…." 60 F.4th 415, 420-21 (8th Cir. 2023). The court denied appellate fees because the plaintiff had invited the error that necessitated that appeal. *Id.* at 422. *Gunther v. Alaska Airlines, Inc.*, 287 Cal. Rptr. 3d 229 (Ct. App. 2021), held that "[t]he trial court properly declined to reduce the lodestar based on alleged "limited success," because "the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." *Id.* at 251-52, *quoting Hensley*, 461 U.S. at 435. *Lee v. State*, 906 N.W.2d 186, 201 (Iowa 2018), held that the trial court abused its discretion by reducing the fee award by forty percent because it should have given "full credit to a meaningful[ly] successful plaintiff…." *Id.* at 201. In *Underwood Props., LLC v. City of Hackensack*, 269 A.3d 509, 518 (N.J. App. Div. 2022), the court affirmed a reduced lodestar where the plaintiff obtained preliminary success but continued to litigate unsuccessfully thereafter.

Notably, Pierre's brief makes no effort to discuss, much less distinguish, *In re Estate of Miller*, which holds that "an attorney fees award includes fees incurred on appeal." 125 Nev. 550, 555, 216 P.3d 239, 243 (2009). As noted in *Miller*, "The trial and appellate stages are naturally related." 125 Nev. at 553, 216 P.3d at 242. Pierre offers no rational way of separating them, especially given the district court's heavy reliance on the Court of Appeals' decision in awarding Lynda the declaratory relief she sought: "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." 4AA0935.

5. Because Pierre Has Not Disputed The Reasonableness Of Lynda's Appellate Fees, The Court Should Award Them In Full

Both below and on appeal, Pierre has never identified any portion of Lynda's fees incurred in the first appeal that could be considered unreasonable. Indeed, in his Opposition to Lynda's *Wilfong* Affidavit, Pierre did not object to the amount of appellate fees on the basis of the difficulty of the work or the quality of the advocate. 5AA1020-1032. Nor did he object to any time entries as having been unreasonable. *See* 5AA1029 (asking the court to exclude hours not reasonably expended without identifying a single such hour). On appeal, he likewise does not point to a single time entry that was not reasonably incurred in the first appeal.

At best, both in the district court and here, Pierre objects generally on the basis of the "result obtained," *i.e.*, that Lynda purportedly did not prevail. 5AA1026-1028;

RAB 27. This argument goes to Lynda's entitlement to fees, not the reasonableness of the amount. As a result, if the Court agrees with Lynda that she prevailed, the Court should award her appellate fees in full.

B. By Failing To Cite Supporting Authority Or Dispute The Finding That He Can Pay A Substantial Fee Award In Full, Pierre Admits The District Court's Installment Plan Cannot Stand

1. NRS 125.150 Only Authorizes Payment Plans For Alimony Awards In Divorce Decrees, And Pierre Himself Acknowledges No Part Of The Post-Judgment Fee Order Related To Alimony

To backstop the district court's faulty installment plan, Pierre cites NRS 125.150 regarding alimony, yet as Pierre admits elsewhere, alimony "was not at issue in this litigation." *Compare* ARB 30 *to* ARB 2 n.1. The Fee Award involved post-judgment attorneys' fees awarded to Lynda as the prevailing party in a contractual dispute, not alimony. 5AA1105-1117. Although Pierre concedes as much (ARB at 2 n.1), in defending the district court's installment plan, he incongruously relies on a statute governing periodic payments of alimony. ARB 30, *citing* NRS 125.150.

That statute provides: "**In granting a divorce**, the court… [m]ay award such **alimony** to either spouse, in a specified principal sum or as specified periodic payments, as appears just and equitable." NRS 125.150(1)(a) (emphases added). By its plain language, therefore, NRS 125.150(1)(a) allows for an installment plan *only* for "alimony" and *only* when a district court is "granting a divorce." *Id.* As Pierre

acknowledges (ARB 31), the Court cannot "read additional language into [a] statute."[4] *Double Diamond v. Second Jud. Dist. Ct.*, 131 Nev. 557, 563, 354 P.3d 641, 645 (2015). Yet Pierre urges the Court to expand the statutory language to allow periodic payments for a post-judgment fee award that has nothing to do with alimony. *See* ARB 30-31.

Moreover, because – as Pierre acknowledges – NRS Chapter 17 is "silent as to whether [the judgment] amount is payable in installments" (ARB 31), the Court cannot expand the limited authority for periodic payments contained in NRS 125.150(1)(a) to encompass any kind of judgment. "[O]missions of subject matters from statutory provisions are presumed to have been intentional." *Dep't of Tax'n v. DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005). "The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (emphasis in the original). "Had the legislature intended inclusion [beyond the limited scope of a statute], it would have specifically so provided by language to that effect." *Clark*

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[4] Nor can it "read language into the contract that is not there." *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 742, 359 P.3d 105, 108 (2015). The parties' contract provision that requires an award of attorney fees to the prevailing party, MSA § 35.1, does not authorize installment payments. 1AA0197.

Cnty. Sports Enters., Inc. v. City of Las Vegas, 96 Nev. 167, 174, 606 P.2d 171, 176 (1980).

Pierre flips this authority on its head by asking the Court to hold that, notwithstanding the absence of authorizing language, a district court can order installment payments for *any* judgment so long as there is no statutory prohibition. ARB 31. This would deprive judgment creditors the carefully crafted rights of execution found in NRS 21.010, *et seq.* It would also render "surplusage" and with "no consequence" the statutes in which the Legislature has specifically authorized periodic payments. *Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 95, 460 P.3d 440, 442 (2020).

With NRS 125.150(1)(a), the Legislature restricted the circumstances in which periodic payments are allowed to just an alimony award in a divorce decree. By arguing that periodic payments are authorized for any monetary award in any case, Pierre asks the Court to violate basic rules of statutory construction and expand NRS 125.150 beyond its plain language. *See id.* Absent legislative authorization, the payment plan established by the district court is not permissible. *See id.*; *Dep't of Tax'n*, 121 Nev. at 548, 119 P.3d at 139.

Pierre's assertion (at ARB 30) that the district court's jurisdiction to enter a post-judgment order derived from NRS 125.150(3) and NRS 125.150(7) does not alter this conclusion. Those subsections do not address periodic payments and, in

any event, cannot expand NRS 125.150(1)(a) beyond alimony awarded in a divorce decree. They only allow a district court to modify decrees of divorce in certain circumstances not relevant here: when there has been an omission caused by fraud or mistake (subsection 3), or on stipulation (subsection 7).

Here, the district court was never asked to modify the divorce decree and did not do so. *Cf. Mizrachi v. Mizrachi*, 132 Nev. 666, 673, 385 P.3d 982, 986 (Nev. App. 2016) (recognizing distinction between an order modifying and an order construing a divorce decree). Rather, the district court's jurisdiction to grant Lynda declaratory relief and award her fees was founded on its "inherent authority to interpret and enforce" its prior orders, which include a divorce decree. *Byrd v. Byrd*, 137 Nev. 587, 590, 501 P.3d 458, 462 (Nev. App. 2021) (citing *Henson v. Henson*, 130 Nev. 814, 820 n.6, 334 P.3d 933, 937 n.6 (2014)). No part of NRS 125.150 justified the district court's installment plan.

2. Even If NRS 125.150 Could Be Construed To Apply, Pierre's Ability To Pay In Full Foreclosed An Installment Plan

Because Pierre does not dispute that he has the ability to pay in full, even if the Court were to expand NRS 125.150(1)(a) to encompass a post-judgment fee award, that statute could not authorize an installment plan here. The district court explicitly found that Pierre "ha[d] the ability to pay substantial attorney fees," and Pierre does not contend otherwise. 5AA1115:22. Instead, he defends the district

court's *sua sponte* imposition of a thirty-plus-month installment plan by arguing that it did not need to "inquir[e] into ability to pay a lump sum." ARB 30.

However, the alimony statute specifically "directs a district court to consider several factors that help the court to understand the spouses' financial needs and **abilities to pay**… [including] '[t]he financial condition of each spouse.'" *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 69, 439 P.3d 397, 402 (2019) (emphasis added) (quoting NRS 125.150(9)(a)). By way of example, evaluation of ability to pay is a key component of other statutes that authorize periodic payments. *See*, *e.g.*, NRS 176.085(2); NRS 179.225(2); Tenn. Code § 26-2-216(a)(1). Because the only finding about Pierre's "financial condition" was that he "ha[d] the ability to pay substantial attorney fees" (5AA1115:22), NRS 125.150 cuts against the district court's installment plan. A litigant such as Lynda is entitled to immediate payment of the full amount of a judgment in her favor and, absent payment in full by the judgment debtor, should be allowed to execute as the law provides. *See* NRS 21.010, *et seq*.

CONCLUSION

Nothing presented in Pierre's answering brief on cross appeal alters the conclusion that the Court should reverse the Fee Order to the extent it (1) declined to award Lynda attorneys' fees for the first appeal, and (2) instituted a payment plan without any justification, in contravention of the finding that Pierre had the ability

to pay. Because Pierre did not object to the reasonableness of any particular time entry for the appeal, or appellate counsel's qualification or quality of work, Lynda respectfully asks the Court to enter an order that Pierre must pay all of Lynda's appellate fees, as well as the fees already awarded, immediately. The Court should remand for the district court to determine the reasonable fees for the instant appeal and cross appeal.

DATED March 29, 2024

LEONARD LAW, PC

By: /s/ Debbie Leonard

Debbie Leonard (# 8260)
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Phone: 775-964-4656
debbie@leonardlawpc.com

Attorney for Respondent/Cross-Appellant

CERTIFICATE OF COMPLIANCE

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-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 28.1(e)(2)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains **4,898** words.

Pursuant to NRAP 28.2, 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), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED March 29, 2024

LEONARD LAW, PC

By: /s/ Debbie Leonard

Debbie Leonard (# 8260)
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Phone: 775-964-4656
debbie@leonardlawpc.com

Attorney for Respondent/Cross-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on March 29, 2024, a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). The following participants who are registered as E-Flex users will be served by the EFlex system upon filing. All others will be served by first-class mail.

Therese M. Shanks
Fennemore Craig, P.C.
7800 Rancharrah Pkwy
Reno, NV 89511

/s/ Tricia Trevino
An employee of Leonard Law, PC