IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRK ROSS HARRISON,

Appellant/Cross-Respondent,

v.

VIVIAN MARIE LEE HARRISON,

Respondent/Cross-Appellant.

Supreme Court No. 66072
District Court Case No. D443611

APPEAL FROM JUDGMENT
EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR COUNTY OF CLARK
BRYCE DUCKWORTH, DISTRICT JUDGE

RESPONDENT'S ANSWERING BRIEF

DATED this 11 day of September, 2015

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Appellant,

v.

VIVIAN MARIE LEE HARRISON,

Respondent.

CASE NO.: 66072

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly –held companies owning 10 percent or more of the party's stock: None

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the District Court or before an administrative agency) or are expected to appear in this court:

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SILVERMAN, DECARIA, & KATTLEMAN

3. If litigant is using a pseudonym, the litigant's true name: None

DATED this 8 day of September, 2015.

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TABLE OF CONTENTS

		PAGES
	TABLE OF AUTHORITIES	iv-v
I.	STATEMENT OF ISSUES ON CROSS APPEAL	1
II.	STATEMENT OF FACTS	1
	1. SUMMARY OF THE CASE	1
	2. THE DISTRICT COURT'S ORDER AND FINDING	5
	3. KIRK'S INITIAL MOTION REGARDING CUSTODY, AND ITS SHAM "DIAGNOSIS" OF VIVIAN, GROSSLY AND UNNECESSARILY MULTIPLIED THE PROCEEDINGS AND COSTS OF THE CASE	7
	4. THE SCOPE OF WORK IN THE CASE	11
	5. VIVIAN'S COUNSEL'S ATTEMPT TO STOP THE VOLUMINOUS MOTION PRACTICE, AND KIRK'S INSISTENCE ON FILING ADDITIONAL VOLUMINOUS PLEADINGS	15
III.	ARGUMENT IN OPPOSITION TO APPEAL	19
	1. STANDARD OF REVIEW	19
	2. THE COURT'S ORDER DID NOT EXPAND THE HOLDING IN *SARGEANT*, AND THE ORDER WAS IN COMPLIANCE WITH THIS COURT'S REQUIREMENT TO APPLY THE *BRUNZELL* FACTORS	20

3. THE DISTRICT COURT'S DENIAL OF KIRK'S CLAIMS OF OVERBILLING WAS SUPPORTED BY SUBSTANTIAL EVIDENCE 23

A. TEAM APPROACH 23

B. DUPLICATE BILLING 24

C. EXCESSIVE BRIEF PREPARATION BILLING 24

D. BLOCK BILLING AND VAGUE BILLING 24

E. SUBPOENAING OF MEDICAL RECORDS 25

F. SUBPOENAING UNNECESSARY AND DUPLICATE FINANCIAL RECORDS 26

G. DESIGNATING CUSTODY EXPERTS 26

H. VIVIAN'S FINANCIAL AND FORENSIC ACCOUNTING EXPERTS 28

I. KIRK'S ALLEGATIONS REGARDING THE COST OF EXPERT APPRAISALS 29

4. THERE IS NO FINDING OR ORDER UPON WHICH KIRK CAN BASE ANY CLAIM OF ERROR FOR A DENIAL OF A MOTION FOR SUMMARY JUDGMENT 29

5. WHETHER THE COURT'S AFFIRMATION OF THE DISCOVERY COMMISSIONER'S SANCTION AGAINST KIRK WAS SUPPORTED BY SUBSTANTIAL EVIDENCE 30

IV. ARGUMENT ON CROSS APPEAL 30

1. WHETHER THE DISTRICT COURT ERRED IN NOT AWARDING VIVIAN ADDITIONAL AND SUBSTANTIAL FEES AND COSTS SHE INCURRED IN THE CASE ARISING FROM KIRK'S CLAIM OF NPD THAT THE DISTRICT COURT FOUND WAS UNSUPPORTED BY COMPETENT EVIDENCE 30

2. WHETHER THE DISTRICT COURT ERRED BY NOT GRANTING AN EQUALIZATION OF COMMUNITY FUNDS FOR THE PAYMENT OF ATTORNEY'S FEES AND COSTS AFTER FINDING THAT THE FEES AND COSTS VIVIAN INCURRED WERE "NOT UNREASONABLE" 36

V. CONCLUSION 38

TABLE OF AUTHORITIES

CASES	PAGES
Blanco v. Blanco, 129 Nev. Adv. Rep. 77, 311 P.3d 1170 (2013)	36
Brunzell v. Golden State Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)	19, 20, 22, 23, 35, 36
Haley v. Eighth Judicial District Court, 128 Nev. Adv. Rep. 16, 273 P.3d 855 (2012)	19
Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005)	21
Personhood Nevada v. Bristol, 245 P.3d 572, 126 Nev. Adv. Rep. 56 (2010)	29
Sargeant v. Sargeant, 88 Nev. 223, 495 P.2d 618 (1972)	5, 20, 21
Sunstone Behavioral health, Inc. v. Almeda County Medical Center, 646 F. Supp. 2d 1206, 1217 (E.D. Cal. 2009)	25
Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998)	22

RULES	PAGES
Nev. Const. Art. 6, § 4	29
NRS 125.141	5
NRS 125.150	5, 37
NRS 125.150(4)	5, 19
NRS 125.480	25
EDCR 7.60	5, 20, 35, 36
NRCP 16.2	29
NRCP 35	36

I.

STATEMENT OF ISSUES ON CROSS APPEAL

1. Whether the district court erred in not awarding Vivian additional and substantial fees and costs she incurred as a result of Kirk's claim of NPD that the district court found was unsupported by competent evidence.

2. Whether the district court erred by not granting an equalization of community funds for the payment of attorney's fees and costs even after finding that the fees and costs Vivian incurred were "not unreasonable."

II.

STATEMENT OF FACTS

1. Summary of the Case:

Kirk and Vivian incurred $897,822.94 in attorney's fees and costs in custody litigation addressing the care of their two youngest daughters Brooke and Rylee. 16 A.App 3399-3400. That amount of litigation was not justified by the facts. Brooke and Rylee were and are well adjusted, nearly straight "A" students. 2 A.App 367. They enjoyed dance, were socially active, and had close friends. 2 A.App. 368. There was no allegation of physical abuse of either minor child, no criminal record amongst the parties or their children, no illegal drug use, no excessive use of alcohol, and no reports of domestic violence. 2 A.App. 365.

Nothing in the parties' history justified the litigation. Vivian graduated at the top of her class in college, then left a promising career as an accountant to become a stay-at-home mother. 3 A.App. 427 She was a tireless contributor to both the children's events, and charitable events and organizations in the community. 3 A.App 434-46. Vivian almost singlehandedly raised the three older children, all of whom succeeded in sports, social activities, and academics. 3 App 443-447. None of the five Harrison children had any disciplinary problems in school or anywhere else. 3 App. 443-447.

While Vivian succeeded as a mother, Kirk succeeded as a lawyer. He worked long hours, and his firm's success allowed him to retire near his goal age of 50 with approximately $15,000,000 of assets. 2 A.App. 365. The parties were wealthy, and neither party worked much outside the home; both parties had the time and ability to enhance the children's lives. This was a plain case for joint legal and physical custody of the children.

In March 2011, Kirk filed for divorce, but did not inform or serve Vivian. 1 A.App. 1-7. The parties had discussed divorce, and they entered private mediation in June, 2011. Vivian believed the case would end in joint physical custody, so in June, 2011, she proposed a joint legal and physical custody plan through her then counsel Robert Dickerson, Esq. 7 A.App 1464. Kirk wanted to complete all property matters before addressing custody. 7 A.App. 1464.

Kirk insisted that the mediation be composed of only the distribution of assets. 7 A.App. 1464. It was only months later, after the mediation stalled, that in August, 2011 Kirk's counsel first mentioned Kirk's desire to have primary custody, and even then his counsel was not forthcoming about Kirk's basis for that order. 13 A.App. 2637, By that time, Kirk had manufactured a claim that Vivian suffered from Narcissistic Personality Disorder ("NPD") utilizing a psychiatrist, Dr, Norman Roitman, who never met Vivian or the children. 13 A.App 2634-2637. It was that claim, and its component elements, that fueled the entire custody litigation. The custody portion of the case ended on July, 2012 through a stipulation for joint legal and physical custody only when Kirk abandoned that claim. 7 A.App 1408.

Even though the parties settled the custody portion, they reserved the right to seek reimbursement for attorney's fees and costs from the other. 15 A.Appl 3281. In March, 2013, Vivian filed her Motion for Attorney's Fees and Sanctions. 7 A.App 1425-1548. The Motion sought reimbursement for attorney's fees incurred by Vivian in the custody portion based upon Kirk's unnecessarily multiplying the proceedings through his massive pleadings designed to support his claim that Vivian suffered from NPD. 7 A.App 1425-1548 Vivian did not base her request on the merits of the mass of factual allegations Kirk submitted in his gigantic pleadings, but instead based it upon on the method Kirk chose (large pleadings), to support his claim. 7 A.App 1425-1548

Consistent with his past actions of filing massive pleadings, Kirk's responded to Vivian's Motion for Attorney's Fees and Sanctions with an Opposition and Countermotion composed of 133 pages of text, and 803 pages of Exhibits ***he,*** not his lawyers, prepared. 7 A.App 1721-1723 Vivian responded to that pleading by moving to strike it, but when the district court rendered no order on that request, she filed her response composed of 82 pages of text, and 353 pages of Exhibits. 12 A.App 2503 Vivian incurred substantial fees pursuing her Motion fees and costs, and defending Kirk's countermotions. In its February 10, 2014 Order, the district court acknowledged that on January 15, 2014 Vivian filed her Request to File Supplemental Information in Support of Motion for Attorney's Fees; In the Alternative Supplemental Motion for Attorney's Fees, but states, "[t]his Court is not inclined to review additional billing records on an existing request for fees. 16 A.App 3379. Consequently, Vivian's request for fees incurred to prosecute her Motion for Attorney's Fees and Sanctions was left unadjudicated by the Court.

The arguments that Kirk presents on appeal are those arguments, or offshoots from those arguments, presented in his 133 page Opposition. The counter to those arguments, particularly Kirk's claims that Vivian's attorneys did not mediate in good faith, and his claims of overbilling, are meticulously and expansively addressed in Vivian's Reply and Opposition filed September 11, 2013. 13 A.App 2699-2848.

Vivian's arguments in that pleading are summarized below, but cannot provide detail (due to page limitation) addressed in that pleading.

2. The District Court's Order and Findings

The parties each appeal the February 10, 2014 Findings, Conclusion, and Order of the trial Court awarding Kirk to pay from his distribution of community funds the sum of $86,240 for attorney's fees and costs, and $5000.00 in fees as a discovery sanction. 16 A.App The order contains a detailed analysis and specific findings. The Court found:

A. It may award of fees under NRS 125.150, EDCR 7.60, and, *Sargeant v. Sargeant,* 88 Nev. 223, 495 P.2d 618 (1972);

B. Each party received $550,343.25 in community funds earmarked for attorney's fees. Kirk paid $448,738.21 in fees from March 8, 2011 through January 15, 2013, and Vivian paid $686,341.33 in fees and costs from May 2, 2011 through January 31, 2013. Kirk possessed $80,479.08 of community funds allocated equally to each party for fees, and Vivian had *paid* $137,163.03 from *her* share of the community funds for fees. 16 A.App; 3376-3377.

C. Neither party provided adequate basis for an award of fees relating to the portion addressing the division of property 16 A.App. 3380. Though Kirk complained that he was thwarted in his desire (through motion or otherwise) to expedite the division of property, he had failed to use the mechanism (an offer under NRS 125.141), provided to litigants to prompt resolution 16 A.App. 3382;

D. Each party sought primary physical custody of the children, and because they settled for joint physical custody, neither prevailed. However, "it is not lost on the Court that Kirk's allegation that Vivian suffered from a serious psychological disorder that impeded her parenting abilities was not proven by *competent* evidence." 16 A.App. 3444 [Emphasis in original];

E. An evidentiary hearing resolving the custody issue would have been set and held earlier than the parties' stipulation regarding custody had Kirk not plead for the Court to appoint Dr. Paglini; 16 A.App 3385.

F. The Court could not find that either party suffered from any mental deficiency compromising his or her ability to care for the children in light of Kirk's refusal to allow the custody evaluation of Dr. Paglini to be completed. "It is inconsistent to vociferously oppose the completion of the report while at the same time continue to suggest that Vivian suffers from a psychological infirmity that impairs her parenting ability." 16 A.App. 3385.

G. Dr. Norman Roitman's report, in which he diagnosed Vivian "to a reasonable degree of medical certainty" based upon allegations from Kirk without ever meeting her or reviewing her medical records, "effectively framed the complexity of the custody issue and established the blueprint for highly contentious litigation." 16 A.App 3386.

H. "Considering the gravity of the custody issue before the Court and the framework of litigation established by Kirk's Custody Motion (Sept. 14, 2011) this Court does not find the amount of time spent by Vivian's counsel to be unreasonable." 16 A.App. 3387-3388.

I. The quality of the representation by all attorneys for both sides was "at an exceptional level." 16 A.App 3391.

J. Kirk benefitted from his experience as an attorney and his ability to prepare detailed and comprehensive papers in the prosecution of his claims; 16 A.App 3388

K. The district Court's review of the merits of the parties' pleadings would "inhibit constructive settlement;" 16 A.App. 3388.

L. That Kirk still retained $80,479.08 of the community funds allotted for fees, and that his skill and effort as an attorney, based upon Kirk's one hour per page metric of fees expended, caused him to spend approximately $46,000 less in fees than Vivian in prosecuting and defending Vivian's Motion for Attorney's Fees and Sanctions 16 A.App. 3341; and

Kirk argues on appeal there is no legal basis for the Court equalizing fees in the custody portion of the case. Vivian counters that not only was there a basis for

the award, but that the Court abused its discretion by failing to grant Vivian a greater portion of the fees she expended to rebut Kirk's claim that Vivian suffered from a personality order. The Court specifically found that Kirk's claim was "not proven by *competent* evidence" (16 A.App 3392), and that his briefing to support that claim led to the size of the litigation, yet the Court did not reimburse Vivian or the community for the fees expended in defending that claim even after Kirk abandoned it. In the alternative, Vivian argues that the Court erred by failing to equalize the fees expended from community funds, including fees she incurred in pursuing her Motion for Attorney's Fees.

Further, Kirk contends upon appeal that Vivian's attorneys should reimburse her for fees that were overbilled or unnecessarily billed. Vivian counters that the premise for the argument is false; the district court found, upon substantial evidence summarized below, that Vivian's counsel did not overbill the case.

Finally, Kirk seeks a ruling on a Motion for partial summary judgment he never filed. That claim is both legally meritless and frivolous.

3. Kirk's Initial Motion Regarding Custody, and Its Sham "Diagnosis" of Vivian, Grossly and Unnecessarily Multiplied the Proceedings and Costs of this Case

On September 14, 2011, Kirk served his Complaint for Divorce and a massive motion to limit Vivian to ***supervised*** visitation of Brooke and Rylee, and remove her from the marital residence. 1 A.App 8-220, 2 A.App. 221-361; The girth of Kirk's

pleadings filed in the divorce action led to motion practice of unprecedented scope and expense.

In its February 10, 2014 Order, the district court recognized that Kirk's filing was the "blueprint" for the massive pleadings that resulted in the substantial fees and costs the parties incurred during the custody phase. 16 A.App 3386. It found that based upon the gravity of Kirk's allegations, it did not find the time spent by Vivian's counsel to be unreasonable.1 6 A.App. 3387-3388

A brief review of Kirk's course below provides the substantial evidence upon which the district court based its findings. Kirk's first Motion for Custody was composed of 55 pages of text, and approximately 304 pages of exhibits, including his affidavits totaling 132 pages, and a 35 page report from a psychiatrist, Dr. Norman Roitman, who diagnosed Vivian "to a reasonable degree of medical certainty" with an *incurable* Narcissistic Personality Disorder ("NPD"). 1 A.App. 8-220, 2 A.App. 221-361 Roitman had never met Vivian nor reviewed her medical records. (App. 1 p. 8-220, 2 p. 221-361). Nevertheless, Roitman recommended that Vivian be limited to supervised visitation of Brooke (then age 12) and Rylee (then age 8) even though he never met them either. Roitman's report grossly violated his standard of care as a psychiatrist. R.App. 9-12, 93-97.[1]

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[1] The history of Kirk's contact with and use of Dr. Roitman is detailed by timeline and event at 13 A.App 16. The reference to Roitman's violation of the standard of

Roitman's report was based entirely upon Kirk's affidavit, and affidavits Kirk initially prepared for two of the parties' adult children. 2A.App. p.222-223. Discovery revealed that Kirk had prepared a 43 page draft of Roitman's report, but Roitman failed to list that draft as a document he reviewed when preparing his report. 2 A.App. p.222-223. Roitman at first claimed he could not remember Kirk's draft, nor explain why it was not produced. 13 A.App 2744-2745. Kirk had also prepared a draft Motion for Temporary Custody of Rylee and Brooke containing Dr. Roitman's conclusions ***before*** Dr. Roitman had even issued a report. 13 A.App. 2633-2639.

Kirk's initial Motion, and his subsequent briefs designed to defend his NPD claim, were large by necessity. Kirk's approach to proving that Vivian was unfit to care for Brooke and Rylee was rooted in the elements of a DSM-IV diagnosis of NPD. To support his claim, he had to identify (or create) factual allegations that fit within those elements. That was the structure of the draft he wrote for Dr. Roitman, and ultimately the structure of Dr. Roitman's report. 7 A.App 1484

Dr. Roitman acknowledged in his deposition that his "diagnosis" depended on the facts he used – facts provided to him by Kirk. If those facts were inaccurate, the

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care is to from a letter from Dr. Paul Appelbaum, who reviewed Kirk's and Vivian's initial pleadings, including Dr. Roitman's report. Dr. Applebaum is former President of the American Psychiatric Association. 5 A.App 981-1042

diagnosis would be inaccurate. *See,* Excerpt from the Deposition of Norman Roitman, 7.A.App 1507-1508. For this reason Kirk had to carefully control the "facts" presented to Dr. Roitman's review to ***only*** the affidavits Kirk prepared. Kirk did not request that Dr. Roitman meet with Vivian, Tahnee, Whitney, Joseph (the adult children) or anyone else to that could have countered Kirk's assertions. Kirk wanted the diagnosis he researched and proposed to Dr. Roitman, and he did not want to take any risk that the diagnosis would be challenged by the presentation of contrary facts.

The allegations underlying Dr. Roitman's report included claims, underlying the claim for NPD, that Vivian was a drug addict, that Vivian had harmed Rylee by exposing her to testosterone cream, that Vivian had harmed the children by co-sleeping with them, and that Vivian had "abandoned" the children for years. 2 A.App. 222-256. Vivian provided records, drug tests, experts, a mass of witness statements, and her own affidavits all meticulously addressing Kirk's assertions in his initial Motion. 2 A.App. 362-418, 3 A.App. 419-652, 5 A.App. 935-1147, 6 A.App. 1148-1292

Contrary to Kirk's assertions, none of the doctors that examined or tested Vivian found she suffered from NPD (the core of Kirk's custody case) or any other personality disorder. 5 A.App 974, 5 A.App. 1044 Kirk's claims of "drug abuse" were proven false by Vivian voluntarily submitting to weekly blood tests for ten

months, all of which were negative for any drugs. 3 A.App. 589; Kirk's false claim that Vivian experienced negative side effects from a prescribed weight loss drug was rebutted by the doctor who led studies for the National Institute of Health regarding the long term effect of the drug. 5 A.App. 1044 The co-sleeping claims were addressed by one of the world's leading issues expert on the subject, Dr. James Mckenna: and, Kirk's claims that Vivian "abandoned" the children after 2006 were rebutted by 21 witness statements from friends, neighbors, coaches, and teachers, who attested to Vivian's long history of involvement, oversight and affection both before and after 2006. 5 A.App. 1122-1147, 6 A.App 1148-1157

Vivian's request for fees, however, was not based upon the merit of the claims, but instead upon the work required to rebut Kirk's allegations, and the results, two fundamental factors a district court must consider in determining an award of fees. It was not the facts Kirk alleged, it was the amount of facts that he alleged that Vivian asserts unnecessarily multiplied the pleadings. The district court understood and acknowledged in its findings that Kirk's initial motion, and the thrust of Dr. Roitman's report into the case, "established the blueprint for highly contested litigation."

4. The Scope of Work in the Case

In his Opposition to Vivian's motion for fees, and again upon appeal, Kirk fails to acknowledge the enormous cost of his attempt to try the entire case in his

written pleadings, and his refusal to proceed to trial. The district court recognized that in his 133 page Opposition to Vivian's Motion for Attorney's Fees and Sanctions, Kirk "takes no responsibility for the directional path of this litigation." 16 A.App. 3389. Kirk's continued filing of voluminous pleadings was the directional path of the litigation, and Kirk filed those pleadings to support his claim of NPD.

Kirk's motions for ***temporary*** orders engendered 454 pages of text and 1457 pages of exhibits. 13 A.App. 2721 The case involved 14 experts, all but one of whom provided one or more detailed reports. 13 A.App.2721 Kirk's initial Motion contained over one thousand factual assertions and opinions found in 132 pages of his own affidavit, 26 pages of the parties' adult daughter's affidavits, and a 36 page report from Dr. Roitman. Vivian responded with her own affidavit of 84 pages, and 48 pages of affidavits from 8 witnesses, and 11 pages of her expert's reports. Kirk's Reply topped that with 81 pages of text and 189 pages of exhibits. In her response to that motion, Vivian presented the expert reports of two of the world's leading authorities on NPD, 19 witness statements, 36 pages of text, and 343 pages of exhibits. 5 A.App 935-1147, 6 A.App. 1148-1292

Both below and in his appeal, Kirk minimizes the work necessary to rebut his convoluted and complex allegations. Kirk's analysis of the work done in the case

(his "one hour per motion text page" rule)[2], does not account for the time Vivian's counsel spent to identify and meet his thousand factual allegations, and then meet with witnesses by person and by phone (at times eight to ten time zones away). It does not account for counsel's preparation of detailed witness statements (Vivian presented 27 separate witness statements during the custody phase alone), or counsel's review and preparation of long and detailed affidavits of the parties. Counsel reviewed medical records (Vivian's records composed 649 pages), police reports, drug tests, report cards, expert reports, and the hundreds of pages of other information necessary to rebut Kirk's assertions. Vivian's counsel researched and analyzed complicated issues of mental health diagnosis, phentermine use, testosterone cream and its effect on puberty, co-sleeping, and a plethora of other subjects raised in Kirk's pleadings. Kirk's allegations that the case was simple is belied by the motion filings, all of which were addressed by Judge Duckworth in his February 10, 2014 Order. 16 A.App 3333

After Kirk filed his initial motion, Vivian provided that motion, and all subsequent pleadings to Dr. Tienhaus. Dr. Teinhaus's findings did not change – he found that Vivian did not suffer from NPD, and found that Dr. Roitman's course of "diagnosing" Vivian without meeting her was contrary to the ethical guidelines of

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[2] Opposition filed on or about May 28, 2013, at page 51, lines 9-10.

the American Psychiatric Association. 7 A.App. 1492. When Kirk later took issue with Dr. Teinhaus' qualifications, Vivian and her counsel hired Dr. Paul Applebaum, and Dr. Elsa Ronningstam, two of the foremost experts in the world on personality disorders, and in particular NPD. Vivian met with both, and provided all of the pleadings filed in the matter to both. Neither found that Vivian suffered from NPD or any other personality disorder. 5 A.App 974; 5 A.App 1044. Vivian provided those reports with her pleadings hoping the reports would resolve the issue. Kirk, instead, challenged the reports, and insisted on further proceedings on his claim of NPD.

Kirk insistence on trying the facts in the pleadings was the catalyst of nearly all of the fees incurred by both parties prior to the resolution of the custody issues. Kirk, as an experienced lawyer, had to understand that the factual claims would be addressed through the evidentiary hearing that Vivian requested. Kirk did not need to continuously file phonebook sized pleadings designed to support his repeated claims that Vivian was unfit, and suffered from NPD. Kirk had nothing to lose by allowing the process to proceed normally. He did not have to try to "stack the deck" against Vivian with claims that required him to "win" every factual issue.

Vivian faced the loss of her children. Her counsel had never seen an onslaught approaching the Motion that Kirk prepared. As a mother who had devoted her life to her children, she knew the devastating effect that an order limiting her time would

have on Brooke and Rylee. She had to meet all of Kirk's factual allegations. She met each claim with great care, providing the Court with multiple expert reports, the statements of 27 fact witnesses, and a mountain of documents rebutting Kirk's claims and supporting the claims in her affidavit, and the affidavits of others.

Kirk gained nothing by his Motions. At the hearing of February 24, 2011, the Court did not grant Kirk's motion to limit Vivian's contact to supervised visitation, nor did the Court make any finding that Vivian suffered from NPD. The Court granted the parties temporary joint legal and physical custody. 7 A.App 1404-1407. Though the Court granted Kirk's request for possession of the marital residence, within a short time of that hearing Kirk admitted that he had always viewed the home as Vivian's based upon the work she had put into the home (something he never mentioned in any of the pleadings prior to February 24, 2012). *See* Excerpts of the Deposition of Kirk Harrison, pages 101-102. (7 A.App. 1504-1505.

5. Vivan's Counsel's Attempt to Stop the Voluminous Motion Practice, and Kirk's Insistence on Filing Additional Voluminous Pleadings

After the first round of pleadings, and after the unsuccessful mediation in November 2011, Vivian's counsel asked Kirk and the Court to stop the voluminous pleading practice. On December 3, 2011, Vivian's attorney plead with the Court to stop the manner in which the case was being conducted, and limit additional briefing. (*See,* Transcript of hearing of December 5, 2011, 13 A.App. 2796. Kirk instead demanded that he be allowed additional briefing, and that the hearing then set for

December 19, 2011, be delayed for months. In light of Kirk's demand that Vivian be limited to supervised visitation, the Court logically inquired why Kirk would want to delay the hearing on his motion:

> THE COURT: Okay. I guess my question is, why delay this? If we have children who are potentially at risk, which is the nature of the underlying motion that was filed, why delay this any further? Why not proceed on [December] 19th and at least start that process and if it's not going to require outsourced evaluative services, why not get that moving now and have that discussion in the immediate future?

13 A.App 2799. Kirk's counsel provided no logical reason to delay. Vivian's counsel again pleaded with the Court to stop the manner in which Kirk was proceeding.

> [By MR. SMITH] I think frankly what we should do is setpage limitations. I mean how much information do you possibly need, Judge, to make simple [rulings] about healthy children? I mean it's just so overblown because [Kirk] has to make his case that way. [. . .]
>
> It's just - - if we allow this thing to get out of control, they're going to spend another $100,000 in reply briefs. What case is like this?
>
> And again, your observation was the absolute correct one. If, in fact, there is an issue, let's get started. Let's set a trial date. Let's get started with whatever analysis the Court [deems] fit. We don't think - - we think the first order of business would be to have these girls interviewed, but, that's up to the discretion of the Court after it hears the evidence. I just think we need to move this case along like any other case.

(Transcript from the December 3, 2011, 13 A.App 2804-2805). The above quotes belie Kirk's claim that Vivian's counsel's goal was to incur fees. Vivian's counsel offered solutions (proceeding directly to assessment, a page limit, setting trial) that

all would have been lower cost solutions than Kirk's insistence on filing more briefs. Kirk's claim he would allow the matter to be determined by a neutral expert is belied by his position at the December 3 hearing. Vivian's counsel, not Kirk or his counsel, proposed that the Court do just that, send the case to a neutral expert before another round of massive briefing.

Kirk argues that the character and scope of the work would have been less if had Vivian negotiated a resolution in good faith, and he seeks all of the fees he incurred after the mediation in November, 2011. He claims he made reasonable settlement offers, but Vivian (prompted by her lawyers) refused to negotiate in good faith. Contrary to his argument, Vivian continuously negotiated in good faith, and the case was eventually resolved under terms she had proposed before Kirk's initial motion. Kirk could have settled the case in June 2011 by placing his signature on a document (Mr. Dickerson's proposed parenting agreement) that would have left him with nearly the exact same custody arrangement he has now.

Kirk's fundamental argument is that Vivian should have accepted ***his*** offers, all of which contained elements of his claim that Vivian suffered from NPD. He demonstrated that when he stated in his Opposition to Vivian's Motion for Fees:

> This case was never complex: The questions regarding custody were very straight forward: What was causing Vivian's misbehavior? What safeguards should be put into place to protect Brooke and Rylee from any future physical and emotional damage?

8 A.App. 1656. His offers included cameras, nannys, drug tests, exams and manyterms based upon his presumption that something was wrong with Vivian. There was no need for any precautions and the best evidence of that is Kirk's execution of a parenting plan that includes none of those things, yet states that the plan is in the best interest of the children. 7 A.App 1408.

Remarkably, Kirk asserts upon appeal, "Vivian's problems were undeniable, and the need for her to get the help she needed was obvious." Appellant's Opening Brief, page 22. Kirk's claims are delusional: no mental health professional who ever met Vivian found she suffered from any personality disorder. Judge Duckworth, in his order of February 10, 2014, found that Kirk's allegation that Vivian suffered from a serious psychological disorder that impeded her parenting abilities was not proven by *competent* evidence. 16 A.App 3392. Because the only support for Kirk's claim was a report from an individual who unethically rendered a "diagnosis" without ever meeting Vivian, and without ever allowing her to respond to Kirk's claims, and without ever reviewing her medical records, the Court's finding was supported by substantial evidence.

Equally important, throughout this case Kirk avoided any trial or report that would challenge his baseless and contrived claims about Vivian, and put an end to them. At the hearing of February 1, 2012 on Kirk's initial motions, Vivian asked for the matter to be set for trial. By that time Vivian had been seen by Dr. Tienhaus,

and two of the world's leading authorities on personality disorders, Dr. Paul Applebaum and Elsa Ronningstam, a Harvard professor who helped write the DSM-IV's provisions on NPD. Vivian was prepared to present their testimony, and address the facts Kirk had asserted through her witnesses. Kirk avoided trial, and instead insisted on having a "neutral" assessment by a third party, the same remedy he could have chosen at the December 3, 2011 hearing.

III.

ARGUMENT IN OPPOSITION TO APPEAL

1. Standard of Review:

NRS 125.150(4)[3] grants Nevada district courts the discretion to award attorney's fees in divorce actions. There is no presumption under Nevada law, as Kirk contends, that each party should bear their own fees. "[D]istrict courts have great discretion to award attorney fees, and this discretion is tempered only by reason and fairness." *Haley v. Eighth Judicial District Court,* 128 Nev. Adv. Rep. 16, 273 P.3d 855, (2012). "[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is

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[3] NRS 125.150(4) reads: "Except as otherwise provided in NRS 125.141, whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce if those fees are in issue under the pleadings."

reviewed in light of the factors set forth in *Brunzell v. Golden State Bank,* 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)[.]" *Haley,* 273 P.3d at 860.

Under *Brunzell,* a district court weighs four factors when adjudicating a request for fees: (1) **the qualities of the advocate**: his ability, his training, education, experience, professional standing and skill; (2) **the character of the work to be done**: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) **the work actually performed by the lawyer**: the skill, time and attention given to the work; and, (4) **the result**: whether the attorney was successful and what benefits were derived. *Brunzell,* 85 Nev. at 349, 455 P.2d at 33.

EDCR 7.60(b)(3) also permits the Court to order sanctions and the payment of attorney fees against a party that "so multiplies the proceedings in a case as to increase costs unreasonably and vexatiously." Here, the District Court made findings under *Brunzell,* (16 A.App. 3356-3359), but made no findingrelating to the custody issue under EDCR 7.60. The review of those findings, and the Court's failure to render findings under EDCR 7.60, is under an abuse of discretion standard.

2. <u>The Court's Order did not Expand the Holding in *Sargeant,* and the Order complied with this Court's requirement to Apply the *Brunzell* Factors</u>

Kirk argues that the district court expanded the holding in *Sargeant v. Sargeant,* 88 Nev. 223, 495 P.2d 618 (1972), by addressing his contribution, as a trained and skilled lawyer, to save himself fees where Vivian could not. Kirk unreasonably limits the finding in *Sargeant,* and ignores other Nevada precedent applicable to an award of fees.

The fundamental holding of *Sargeant* is that a party need not show "necessitous circumstances" when requesting an award of fees. 88 Nev. at 226-227, The wealth of either party is irrelevant; the question before the Court is whether a party can meet their adversary on an equal footing. In *Sargeant,* the wife's financial condition would have been "destroyed" by causing her to pay her own fees, but that cannot be the only criteria for an award of fees. That criteria would require a party to show "necessitous circumstances" (that their financial condition would be destroyed), the criteria the Court overruled in *Sargeant. Sargeant,* as used by the district court, stands for the general proposition that parties should have access to equal resources to support their attorney's fees and costs, and a party need not show necessitous circumstances to justify a distribution of community or separate property to accomplish that equality.

Equally important, the district court here did not solely rely on the "equal footing" principle announced in *Sargeant.* In *Miller v. Wilfong,* 121 Nev. 619, 119 P.3d 727 (2005), this Court held that in family law matters, the district court must

utilize the factors identified in *Brunzell,* in when determining "the appropriate fee" to award in a case. *Wilfong* requires parties seeking attorney fees in family cases to support their fee request with "affidavits or other evidence" that meets the factors in *Brunzell,* and in cases involving a disparity in income, the factors in *Writght v. Osburn,* 114 Nev. 1367, 979 P.2d 1071 (1998). Here, Vivian provided affidavits and other evidence that supported her claim for an award of fees.

Here, the district court performed a careful analysis of the *Brunzell* factors to find that Vivian's fees expended were "not unreasonable." Because of the Court's finding that the fees Vivian expended were reasonable, and the Court's recognition that Kirk took fees earmarked for payment to attorney's that he did not use, and the Court equalized those funds.

Usually, there is a disparity in fees expended. That may be due to a myriad of factors, including the ability and skill of a party to aid in the attorney's presentation. There was substantial evidence supporting the Court's findings that Kirk, who initially drafted every pleading he filed, aided his attorney's in the presentation of his case. His initial custody motion was supported by virtually years of study and preparation by Kirk not billed by his attorneys, Kirk prepared his 132 page affidavit, the draft of the report of Dr. Roitman, and Kirk's draft of the Motion *after* Kirk had completed them. It was within the district court's discretion to utilize the contribution of one party to fees to determine an equitable award, but here the

method resulted in an award substantially less than what would have occurred if the parties utilized community funds to pay all fees incurred by the community to prosecute the divorce action.

3. The District Court's Denial of Kirk's claims of Overbilling was supported by Substantial Evidence

Kirk argues that Vivian's lawyers overbilled her for services. Under *Brunzell*, the "time and skill required" is a specific factor identified under the "character of work" element of the Court's analysis of a fee request. Brunzell, 85 Nev. at 349, 455 P.2d at 33. The Court should address whether the lawyer's billings reflect the time and skill required to perform the work presented by the facts and law in which the lawyer seeks fees. In its February 10, 2014 order, the Court found, in analyzing that element, that Vivian's fees were not unreasonable. That holding effectively denied Kirk's claims of overbilling.

In her Reply filed in response to Kirk's 133 page Opposition to her motion for attorney's fees and sanctions, Vivian addressed, and with citation to evidence, all of the claims of overbilling Kirk now repeats. Vivian's brief, affidavits supporting the brief, and evidence referenced, all constitute substantial evidence upon which the Court based its denial of Kirk's claims. 13 A.App 2664-2670.

A. Team Approach: Kirk cites as evidence of overbilling that multiple professionals billed Vivian's case. Kirk's billings revealed, however, that 14 people from *his* attorneys' firms billed time on his case (excluding the work Kirk performed

in this case). Thirteen people billed on Vivian's case. 13 A.App 2838. Kirk also cites as overbilling that 8 attorneys billed on Vivian's case; it was 7, and Kirk too had 7 attorneys bill his case. 13 A.App 2838.

Vivian's attorneys did more work at less cost. Kirk's attorneys and their paralegals billed at rates higher than Vivian's attorneys and their paralegals. 13 A.App 2838. *See* Analysis of rates at 13 A.App 2665.

B. Duplicate Billing: Kirk claims that Vivian was overbilled due to multiple attorneys being present at the hearings. Vivian had only one attorney, Mr. Smith, at the hearings of October 24, 2011, and October 2, 2012 while Kirk had two. Except for one hearing on February 24, 2012, Kirk had two attorneys (excluding him) present at all hearings (including in front of the Discovery Commissioner), and Mr. Standish was present telephonically at the hearing of February 24, 2012. 13 A.App. 2666.

Vivian used multiple attorneys because of the size of the case. Kirk, a licensed attorney who performed much of his work, did not need two attorneys at every hearing and meeting. Kirk apparently recognized the size of the case and had two attorneys present.

C. Excessive Brief Preparation Billing: *See,* section 4 above.

D. Block Billing and Vague Billing: Even a cursory review of the billings of Mr. Kainen and Mr. Standish reveal that they used the same block billing to

address large amounts of time. 10 A.App 2173. The reality, however, is that the case involved multiple tasks over the same period time, but rarely for more than a few hours. Kirk cites no example of such billing. The tasks where related entries are "block billed" does not render them so vague as to justify excluding them from an award of fees. In *Sunstone Behavioral Health, Inc. v. Alameda County Medical Center*, 646 F. Supp. 2d 1206, 1217 (E.D. Cal. 2009) the Court addressed the difference between acceptable and unacceptable block-billling:

> [E]ven where hours are block-billed, a district court should refrain from reducing fees until it first determines whether "'sufficient detail has been provided so that [the Court] can evaluate what the lawyers were doing and the reasonableness of the number of hours spent on those tasks.'" To be sure, the court must be "practical and realistic" regarding how attorneys operate; if attorneys "have to document in great detail every quarter hour or half hour of how they spend their time . . . their fee[s] . . . will be higher, and the lawyers will simply waste precious time doing menial clerical tasks."
>
> , the vast majority of the block-billing identified by defendant involves the grouping of highly related tasks that rarely cover more than a few hours. [. . .] [I]n most of counsel's entries, the court is well-equipped to "compare the hours expended against the tasks and assess the reasonableness of those tasks."

E. Subpoenaing of Medical Records: Vivian did not trust Kirk to reveal all information in his medical records, and the health of the parties is a factor in determining the best interests of a child in a custody action. NRS 125.480. Vivian's mistrust was justified when she learned only after custody resolved, the Kirk failed to report he had undergone psychological care or testing with Dr. Gary Lenkeit, a local psychologist, before he filed his motion. 13 App. 2637.

F. Subpoenaing Unnecessary and Duplicate Financial Records: Kirk claims Vivian's attorneys overbilled by seeking financial discovery from Kirk, and then sending subpoenas out for the same documents. Vivian's attorneys sent the subpoenas to financial institutions only after Kirk refused to provide those documents in discovery. *See* Letter from Mr. Smith to Mr. Standish and Mr. Kainen dated March 5, 2012 (13 A.App 2825) and Motion to Compel Discovery filed on January 27, 2012. 6 A.App. 1293-1296.

G. Designating Custody Experts

Kirk claims that Vivian's attorneys retained six custody experts - three of which were cumulative and two of which were retained after the appointment of Dr. Paglini, who was appointed to "avoid the battle of the experts." Vivian retained Dr. Tienhaus to rebut Kirk's expert witness, Dr. Roitman's report. Vivian retained Dr. Ronningstam and Dr. Applebaum before Dr. Paglini was appointed.

The remaining two experts addressed two of Kirk's fundamental claims supporting Roitman's report. Dr. McKenna is a professor at University of Notre Dame, and arguably the world's leading expert on co-sleeping. At the hearing of February 26, 2012, the only factor the Court addressed (other than confirming that it was not finding that Vivian suffered from NPD), was Vivian sleeping with the children. The history and studies surrounding co-sleeping suggest that the common notion that children are harmed by co-sleeping is erroneous. Vivian's co-sleeping

with the children was one of the elements of Dr. Roitman's diagnosis of NPD. Vivian hired Dr. McKenna to address that issue because Dr. Paglini was obliged by Dr. Roitman's report to address it. Dr. Mckenna's resume is at 14 A.App 2850-2894, and his report at 14 A.App. 2896-2935.

The same is true regarding her hiring of Dr. Edward Hendrick on long-term use of phentermine. Kirk's initial motion suggested that Vivian suffered from an addiction to phentermine. Vivian's response was to undergo drug tests. She attached those results, showing negative for all drugs. 3 A.App. 589. She continued to undergo drug tests regularly for many months, the results of which were all negative. 6 A.App 1275.

In his report, Dr. Roitman, at page 2, made the remarkable finding that Vivian's use of phentermine exacerbated her NPD. Kirk characterized phentermine as "speed" in his Opposition to Countermotion filed January 4, 2012, and again upon appeal. Dr. Roitman's and Kirk's opinions were not supported by science. Amphetamine and Phentermine are similar (but not the same) in molecular structure, but had very different effects and categorizations under the DSM-IV. Vivian cited below to the American Society of Bariatric Physicians treatment guidelines titled "Overweight and Obesity Evaluation and Management" that states: "Phentermine, in practice, has proven to have little or no potential for addiction."

Kirk never placed a medical record before the district that suggested that Vivian has suffered any ill effects from any drug she has taken in the past, including Phentermine, but that did not stop him from alleging it.

Dr. Hendrick received his medical degree at Columbia University. He is Board Certified in Bariatric Medicine, and Clinical & Anotomic Pathology. He has devoted his professional life to the study of phentermine, and has published dozens of articles on the subject of phentermine use. Dr. Hendrick provided a report to Dr. Paglini dispelling the notion that Kirk still promotes: that long term phentermine has adverse effects on cognitive function. 14 A.App. 3033 It was appropriate, in light of Kirk's continued allegations about the adverse effect of phentermine use, for Vivian to want to have an expert on phentermine to dispel Kirk and Dr. Roitman's claims. When she hired Dr. Hendrick, Kirk had still refused to accept Vivian's offers of settlement, and was proceeding forward with his NPD claim.

H. Vivian's Financial and Forensic Accounting Experts

Kirk claims that Vivian's financial experts overbilled her. Kirk provided no expert witnesses' declaration to the district court to support his claim. Mr. Boone was Mr. Beadle's counterpart, but also forensic work. Ms. Attanasio had several roles. She appeared at settlement conferences to help divide assets, she met with Kirk and Mr. Beadle to go over the division of the financial accounts, and she

analyzed financial data for the custody action and for the valuation of the ranch. Both financial experts earned their fees.

I. Kirk's Allegations regarding the Cost of Expert Appraisals

Kirk fails to note that nearly all of his expert appraisers performed "review" appraisals after Vivian's appraisers performed the original appraisal, both for personal property and real estate.

Kirk's allegations regarding a "valuation" by Mr. Lawlis was rebutted below in Vivian's Reply. Mr. Lawlis was a fraud that never completed an appraisal, and never worked on the property. Vivian's attorney's learned of this, and withdrew him as an expert. In violation of NRCP 16.2, Kirk insisted on taking his deposition. *See,* 13 App. 2686-2690.

4. <u>There is No Finding or Order Upon Which Kirk Can Base Any Claim of Error for a Denial of a Motion for Summary Judgment</u>

Kirk argues that the Court discouraged him from moving for partial summary judgment. Kirk filed no motion for partial summary judgment below, and the Court did not rule on such a motion. There is no order that Kirk can cite that supports this claim. He apparently seeks an advisory opinion from the Court on the issue of partial summary judgments and their place in divorce actions. Advisory opinions are prohibited by Art.6,§4 of the Nevada Constitution. *Personhood Nevada v. Bristol,* 245 P.3d 572, 126 Nev.Adv. Rep. 56 (2010).

5. Whether the Court's Affirmation of the Discovery Commissioner's Sanction Against Kirk was Supported by Substantial Evidence

The district court's finding of sanctions for Kirk's failure to produce discovery was supported by substantial evidence. Kirk tactically failed to produce documents for months after they were due, and for some documents (emails, text messages), he never produced them. *See,* Motion to Compel, January 27, 2012. 6 A.App. 1293-1296.

IV.

ARGUMENT ON CROSS APPEAL

1. Whether the district court erred in not awarding Vivian additional and substantial fees and costs she incurred arising from Kirk's claim of NPD that the district court found was unsupported by competent evidence.

In its March 10, 2014 Order, the Court agreed, and made findings consistent with Vivian's fundamental premise in her motion: Kirk massively increased attorney's fees by his claim of NPD he ultimately abandoned. The court found that Vivian's fees in addressing Kirk's claims were not unreasonable. The court further found that Kirk's claim that Vivian suffered from a personality disorder was never proved by "competent evidence," and that Kirk's insistence on delaying the proceedings prolonged them to a point where they would have already been adjudicated before the parties ultimately resolved the case. 16 A.App 3385.

Regardless of those findings, and facts apparent from the record, Judge Duckworth denied Vivian's request that it order Kirk to reimburse her for the fees she had expended in countering Kirk's massive filings. The district court's refusal appeared to center on its review of the "result of the case," a specific criteria under *Brunzell*. The Court held that because Vivian had plead in her Answer a claim for primary physical custody, she did not prevail because of a settlement for joint physical custody. 16 A.App. 3444. That finding did not reflect the realities of the litigation .

It was undisputed below that Vivian agreed, and actively sought through her counsel Mr. Dickerson, a resolution of joint legal and physical custody. 7 A.App. 1464. Throughout the action she continued to seek joint physical custody. During the parties' November, 2011 mediation, both Mr. Smith and Mr. Standish posited that regardless of the outcome of any psychological examinations, the parties would end up with joint physical custody. Mr. Standish and Mr. Smith approached the resolution from a standpoint of protecting the children from behavior that was harmful to them (Kirk's claim of NPD, Vivian's claim of alienation). Mr. Standish and Mr. Smith jointly proposed a solution that would include an "empowered therapist" for the parties' daughters. The therapist could demand meetings with the parents, and impose restrictions on the parent's behaviors. Kirk did not respond to that proposal. 7 App. 1464.

Mr. Smith memorialized that offer to Mr. Standish after the mediation. In a letter Mr. Smith faxed to Mr. Standish on December 13, 2011, he wrote:

> I have expressed to you and the Court in no uncertain terms that this is a custody case that should have been, and can be, resolved. One of the proposals we have discussed is the hiring of a therapist for Brooke and Rylee to monitor the behavior of the parties toward the children, and any affect that behavior has upon them. The parties, under that agreement, would take joint legal and physical custody of the children. That therapist could require the parties, or either of them, to participate in such counseling, and would be able to identify behaviors, actions or statements by either party that had an adverse effect on the mental or physical health of the children. By instituting that process, my client's concern about your clients' alienation, and your client's concern about my client's behavior toward the children, would be addressed.
>
> Rather than agreeing to such a process, your client seems intent on proving that my client suffers from a personality disorder, and thereby seeks to severely limit her time with the children. We have provided you an analysis from a qualified expert who has both met and tested Vivian, and considered the allegations contained in Kirk's affidavit, and the affidavits of Tahnee and Whitney. It is your client's desire to have further testing, even in the face of a solution that will monitor any effect either party's behavior has upon the children, that is causing the parties to spend enormous amounts of attorney's fees and costs in this case. Please note that this settlement discussion is not confidential, and that we intend to seek reimbursement from Kirk's portion of the parties' community assets for all fees expended to counter what we believe will be shown to be a position that lacks merit.

13 A.App. 2808. The case ultimately settled for the construct outlined in that letter. While Mr. Standish in good faith attempted frequently to propose settlements consistent with the notion expressed in the letter, Kirk insisted on various inclusions in the agreement that would significantly affect Vivian's ability to care for the children, such as cameras in Vivian's home that Kirk could monitor, or the use of a

full-time nanny/informant. During that period of time, Kirk filed another massive pleading suggesting that Dr. Teinhaus's diagnosis was flawed, and Vivian and the bulk of her witnesses were "perjurers." *See,* Kirk's Reply to Motion for Custody, filed January 4, 2012, 4 A. App 729-753. The matter was ultimately ordered to assessment, and Vivian continued with gathering information to meet Kirk's claims.

Vivian's counsel continued to seek a resolution of the case even after the February 26, 2012 hearing. On March 5, 2012, Mr. Smith sent a letter to Kirk's counsel again outlining a simple settlement offer with an "empowered therapist." 13 A.App 2825-2827. Kirk did not agree to settle the case upon those terms.

Kirk's position, however, continues even through appeal that Vivian suffers from NPD. He continued to press to limit Vivian to supervised visitation for months after competent and world class physicians found no basis for Kirk's claim of personality disorder. To view this course of events as a favorable result to Vivian is clearly erroneous.

In *Brunzell,* result is not synonymous with "prevailing party." The *Brunzell* court described the "result" as "whether the attorney was successful and what benefits were derived." 85 Nev. at 349, 455 P.2d at 33. Vivian, through what the Court found "exceptional representation" 16 A.App 3443, staved off a salvo designed to prevent her from ever having more than unsupervised visitation with her children. She consistently sought to limit the proceedings, develop methods to

expedite the litigation, and continuously offered the same settlement, joint legal and physical custody. She fended off Kirk's false claims, and achieved the settlement she had proposed since before the litigation. That was "success," and the benefit she sought from the representation of his attorney's.

Kirk did not prove his case by "competent evidence," did not get the finding of NPD he asserted through Dr. Roitman's unethical report, and did not achieve his goal of limiting Vivian to supervised visitation. He virtually received no benefit from his massive filings that caused the parties to spend extraordinary fees. The Court's review of the *Brunzell* factor of "the result" as neutral was error, and the case should be remanded to the Court to enter an order directing Kirk to pay all fees she incurred in the custody litigation based upon his claim of NPD (which Vivian submits are all of the fees in that portion of the litigation beyond the cost of the stipulation for joint legal and physical custody reached by the parties).

Under NRCP 7.60, a district court may order a party guilty of such conduct to pay the other party sanctions and attorney's fees, yet the district court made no finding on that issue.

It was Kirk's method of filing phone book sized pleadings containing thousands of factual allegations that led to the parties to incur a massive amount of fees and costs. Kirk did not need to do that. Kirk could have set forth general

allegations that Vivian should not have primary and joint custody. He could have provided a one-page letter from Dr. Roitman that indicated that based upon the facts Kirk had alleged to him, Dr. Roitman believed that Vivian may suffer from a personality disorder that would affect her ability to care for the children. As part of his motion, Kirk could have requested that Dr. Roitman be allowed to examine Vivian under NRCP 35, and that Vivian's mental care be addressed either to an independent psychologist or set for evidentiary hearing where the Court could hear from the parties' experts and other witnesses.

Had Kirk followed that course, the Court would have granted the request for IME, sent the matter to an independent psychologist, and/or set the matter for hearing. All of that could have been accomplished in the five months between the time of filing the motion and the Court's preliminary ruling on Kirk's initial motion for a fraction of the cost. Instead, Kirk filed his motion seeking to limit Vivian to supervised visitation, and after receiving Vivian's response in late October, requested another two months to file a Reply, belying any argument he was worried about Vivian remaining in the home with the children.

Vivian submits that the Court's failure to find that Kirk unnecessarily multiplied the pleadings in this case was clearly erroneous. Vivian requests this Court remand the matter to the district court for entry of sanctions and attorney's fees under EDCR 7.60.

2. **Whether the District Court Erred by not Granting an Equalization of Community Funds for the Payment Of Attorney's Fees and Costs After Finding that the Fees and Costs Vivian Incurred were "Not Unreasonable."**

Applying *Sargeant* by the district court here resulted in a division of community funds and payment of community debt that favored Kirk. There is no viable reason Kirk should receive a distribution of attorney's fees from community funds he did not spend. Moreover, Vivian should not have had to pay fees from her portion of community funds once the Court found that her fees were reasonable under the circumstances of the case.

Specifically, the Court found that Kirk possessed $80,479.08 of community funds remaining from those funds allocated equally to each party for fees, and Vivian had *paid* $137,163.03 from *her* share of other community funds not earmarked for fees. 16 A.App. 3341. Both parties' fee obligations are community debts that must be divided equally during a divorce. In *Blanco v. Blanco*, 129 Nev. Adv. Rep. 77, 311 P.3d 1170, 1175 (2013), this Court stated:

> With property division in particular, however, we conclude that community property and debt must be divided in accordance with the law. NRS 125.150(1)(b) requires the court to make an equal disposition of property upon divorce, unless the court finds a compelling reason for an unequal disposition and sets forth that reason in writing.

There is no Nevada statute that distinguishes debts for attorney's fees in divorce from any other debt incurred during the marriage. This Court should view a court's

discretion in determining the reasonableness of a parties' attorney's fees as a compelling reason to vary from the division of community obligations mandated by NRS 125(1)(b) in a divorce action.

Here, an equal division would be a division of the funds held by Kirk so each party received $40,239.04 (something the district court did), but also a reimbursement to Vivian of one half ($68,801.52) of what she had to expend from her portion of the community property. The Court should have granted an equal amount of community property to pay the fees of the parties, and caused Kirk to pay Vivian $109,040.56 just to play the parties on the "equal footing" envisioned under *Sargeant.*

CONCLUSION

For the reasons set forth above, the Court should deny the relief Kirk seeks by appeal, and order that the attorney's fees issue be remanded to the district court consistent with the requests above.

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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 style requirements of NRAP 32(a)(6) because this fast Respondent's Answering Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Font Size 14, in Times New Roman;

3. I further certify that I have read the Respondent's Answering 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 be supported by appropriate references to 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 to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules Appellate Procedure.

Dated this ....11.... day of September, 2015.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Radford J. Smith, Chartered, and that on this 11 day of September, 2015, Respondent's Answering Brief was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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