

CLERK OF THE COURT

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KERSTAN MICONE,

Plaintiff,

CASE NO.: D-08-388334-D

DEPT. NO.: J

vs.

MICHAEL MICONE,

Defendant.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

**OPPOSITION TO DEFENDANT'S MOTION AND COUNTERMOTION FOR
DEFENDANT TO SHOW CAUSE AND FOR SANCTIONS AND ATTORNEY'S FEES**

COMES NOW, Plaintiff, KERSTAN MICONE, currently HUBBS, by and through her counsel of record, JOHN JONES, ESQ., with Black and LoBello Attorneys at Law, and brings PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION AND HER COUNTERMOTION.

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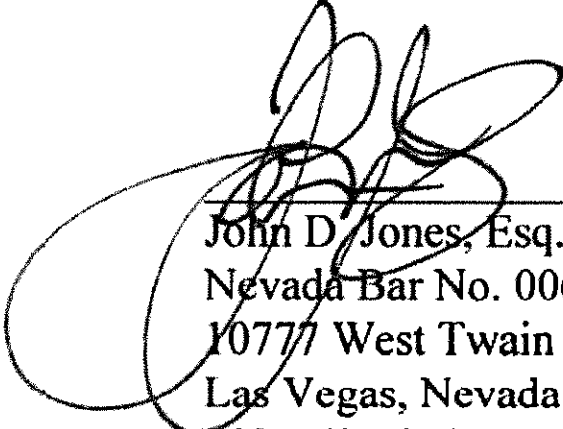
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1 This opposition and countermotion are based upon the Introduction, Points and
2 Authorities, any and all pleadings and papers on file in this matter, and any oral representation
3 that may take place at the hearing on November 4, 2015.

4 DATED this 9 day of September, 2015.

5 Respectfully submitted:

6 BLACK & LOBELLO

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9 
10 John D. Jones, Esq.
11 Nevada Bar No. 006699
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15 Attorneys for Plaintiff
16 KERSTAN HUBBS

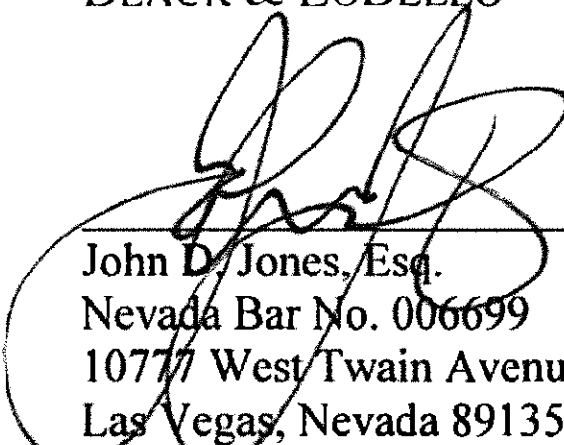
17 **NOTICE OF MOTION**

18 TO: ALL INTERESTED PARTIES:

19 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE**, that the undersigned
20 will bring the above and foregoing Countermotion For Defendant To Show Cause And For
21 Sanctions And Attorney's Fees on for hearing before the entitled Court on the 4th day of
22 November, 2015, at the hour of 9:00 o'clock a.m., or as soon thereafter as may be heard
23 before the District Court, Family Division, Department J.

24 DATED this 9 day of September, 2015.

25 BLACK & LOBELLO

26 
27 John D. Jones, Esq.
28 Nevada Bar No. 006699
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(702) 869-8801
Attorneys for Plaintiff
KERSTAN HUBBS

I.

INTRODUCTION & STATEMENT OF FACTS:

The current motion is completely unnecessary and false as Plaintiff, KERSTAN HUBBS (hereinafter "KERSTAN") has repeatedly asked Defendant, MICHAEL MICONE (hereinafter "MIKE") and his attorney to propose a new visitation plan to her attorney that provides KERSTAN adequate notice and a consistent schedule because MIKE has failed to even remotely comply with the existing visitation plan under the parties' decree. See **Exhibit "Affidavit from Mark DiPentino"**. KERSTAN has always allowed her son to visit his father and family members, at times bending over backwards to make sure it happened. KERSTAN has simply requested assurance that should MIKE not return Michael, the parties' son, similar to how he did not return Isabella, the parties' daughter on July of this year or take other actions without her consent that there be an adequate remedy for her under law.

MIKE and KERSTAN have undergone over eight (8) years of on and off litigation in this Family Court. This motion for a change in custody of a perfectly happy and thriving 10.5 year old boy, is once again, to meet MIKE'S desire to abuse her and to teach KERSTAN "lessons" by utilizing her children as pawns for his own personal gain and retaliatory desires, and because he is angry and frustrated; largely due to his own actions. KERSTAN has endured years of verbal abuse and threats from MIKE that he will "not stop until [she] end[s] up paying for this...", that she is a "fucking horrible person", to "fuck her [herself] on her fucked up birthday", that she is a "piece of shit", that he will "see her in court", "drain her of every penny [he] can", "will break [her]", "will end it once and for all", "file a complaint" to the state bar so that she will "learn the hard way", and just recently on August 30th, that she will "get a felony charge" on her birthday. **Exhibit 2 "Text messages"**. These message are only a small sample of the slanderous verbal abuse KERSTAN, and at times her husband, his relatives, and others experience at the hands' of MIKE, other disgusting comments include "you're a fat cow", "you are sick in the head", "she [KERSTAN] is a horrible fuck and person", "I will cut your tits out". KERSTAN does fear MIKE as he has assaulted her and her children by running into them with his car back in November of 2009 which culminated with MIKE being charged with four counts

1 of assault with a deadly weapon. MIKE just recently called the police on his own parents on or
2 about May30, 2015 in Reno, Nevada. His random verbal threats are often followed by actions.
3 By repeatedly using the court and police powers of the state to purposefully scare and harm
4 others is legal abuse.

5 Although the court recently awarded physical custody of the parties' daughter to MIKE'S
6 parents, Chuck and Carol Burr, on or about March 31, 2015, this order is currently on appeal. It
7 is important that the court understand the situation with Isabella as it relates now to Michael.

8 During Isabella's Junior year she became depressed. **Exhibit 3 "Report from Dr. Pitts,**
9 **PhD."** Isabella told her parents, while in counseling with a jointly selected therapist, Diane
10 Mercier, PhD, that she desired to move home with her Mother and brother, Michael, on or about
11 April of 2015 with MIKE, KERSTAN, and Isabella present in Diane's office together.
12 KERSTAN could not obtain input or consent from MIKE whether to enroll Isabella into her
13 previous private high school, Bishop Manogue, and the last correspondence she had was that he
14 would not pay for the school after Isabella's Junior year. **Exhibit 4 "Text message from**
15 **MIKE"**. KERSTAN told her daughter to complete her Junior year at Bishop Manogue and that
16 she could return back to Las Vegas and complete her Senior year with her and Michael. MIKE
17 and KERSTAN and Isabella's grandparents all were aware of and agreed to this change, so at the
18 end of May, Isabella returned to Las Vegas where she was enrolled into her prior high school,
19 Coronado High in Henderson, NV. **Exhibit 5 "Email from KERSTAN and Text message**
20 **from MIKE"**.

21 During the month of June, KERSTAN was approached by her attorney stating that an
22 attorney for Chuck and Carol Burr, the children's paternal grandparents, Gary Silverman, Esq.,
23 had requested that Michael spend time with them over the summer during her time with Michael.
24 **Exhibit 6 "Email from Gary Silverman"**. MIKE'S mother and stepfather rarely see Michael
25 because MIKE does not take Michael over to see his grandparents because MIKE despises them
26 for reasons somewhat unknown to KERSTAN. KERSTAN was advised to allow Michael to see
27 his grandparents. When MIKE found out that Michael was spending time with his parents he
28 was clearly very upset as you can see from his statements in this motion. Normally KERSTAN

1 does speak with MIKE openly about where the children will be at all times, however, two
2 reputable attorneys, who practice in the area of family law, advised her to just remain neutral and
3 say nothing to MIKE as he uses the Right of First Refusal (RFR) in the decree to withhold
4 Michael from his parents and had recently in May, called the police on his own parents, even
5 when they had a court order stating that Isabella could reside at their home. Michael was slated
6 to see his grandparents and his cousins. Additionally, MIKE did see Michael when he was in
7 Reno during this time. Chuck Burr, MIKE'S stepfather, made sure Michael visited with MIKE,
8 whereas MIKE patently misstates this fact and says he never saw Michael in his motion.
9 **Exhibit 7 "Email from Chuck Burr with text message correspondence with MIKE".**

10 Because MIKE was so angry with KERSTAN for allowing Michael to spend the week
11 with his parents, MIKE decided to violate the parties' decree by dishonoring the parties' status as
12 joint legal custodians of their daughter Isabella and unilaterally enrolled their daughter for school
13 at Bishop Manogue, after the parties had jointly decided she would attend school in Las
14 Vegas/Henderson. He then sent her to a therapist, Geri Goddard, without KERSTAN'S
15 knowledge or consent, all while Isabella was "visiting" MIKE over the summer. **Exhibit 8**
16 **"Email correspondence with Mike and Geri Goddard".** KERSTAN, unsure of whether or
17 not jurisdiction lies with this court has attempted to protect Michael, the parties' son from similar
18 violations of the current decree and orders. **Exhibit 9 "Court Minutes June 2, 2015 stating**
19 **"...the District Court does not have jurisdiction to hear *any further matters until authorized***
20 ***by the Supreme Court of Nevada*". (Emphasis Added).** KERSTAN was and is fearful that
21 MIKE would keep Michael and enroll him in school too in Reno during the summer months and
22 leave KERSTAN with no remedy in court while the appeal is underway. **Exhibit 10 "Email**
23 **from KERSTAN to MIKE."** KERSTAN believes this threat is valid and real and in good faith
24 is protecting Michael. Michael is a happy, loving, charismatic, smart little boy who is flourishing
25 with his friends and family and residing with KERSTAN, Mark, and Michael's stepsister
26 Graciana. **Exhibit 11 "Michael's Letter and Award".** Michael is not experiencing any
27 material change in circumstance; his well-being and normalcy is merely being protected, as
28 MIKE, recently does not appear to think joint legal custodianship pertains to him or means

1 deciding important matters concerning the health, welfare and education of the children
2 collectively and together with KERSTAN. MIKE, if allowed, would take Michael, and then turn
3 around and say, "Cutting me out of [his] life and taking a passive approach is what I have
4 learned from you. So thank you for teaching me..." which is exactly the statement made to
5 KERSTAN after he did not return Isabella to Las Vegas as promised. **Exhibit 12 "Text**
6 **message between MIKE and KERSTAN"**.

7 KERSTAN has repeatedly requested a new visitation schedule be developed because the
8 visitation as described in the parties' decree has never been followed by MIKE and if necessary
9 KERSTAN can request Safe Key daily logs from the City of Henderson reflecting the time when
10 the parties' son has been in the care of KERSTAN and his stepfather Mark. MIKE rarely visits
11 when he is slated to see his son and has not been to Las Vegas since required to attend mediation
12 in early August of 2015. Instead, MIKE requests that KERSTAN allow him to visit Michael at
13 his pleasure with absolutely no notice and/ or to take Michael to the airport and fly him up to
14 Reno after not returning Isabella as promised. **Exhibit 13 "Text message between MIKE and**
15 **KERSTAN**. KERSTAN was not willing to do that until she had clarification after her daughter
16 was NOT RETURNED as promised by MIKE. This request to obtain input on new visitation was
17 sent to MIKE and to his counsel and her counsel multiple times prior to MIKE filing this
18 frivolous motion, the latest request being September 1, 2015, one day before MIKE'S motion
19 was filed, where you can clearly see parties' counsel copied and KERSTAN awaiting input from
20 the professionals retained on this matter. KERSTAN states: "Once I have input and I know
21 Michael is safe and will return as promised, I would be happy to have him see his father." See
22 **Exhibit 14 "Email titled Isabella to Vegas"**. KERSTAN believes nobody has responded
23 because perhaps even the attorneys are unsure as to where jurisdiction lies on this matter.
24 MIKE and his counsel do not want to work out visitation; they would rather file motions in court
25 to waste time, money, and judicial resources and to harass, intimidate, and legally abuse
26 KERSTAN. KERSTAN has freely allowed her children visitation with MIKE for eight (8) years
27 until MIKE did not return one of them.

28 MIKE wanted physical custody of the parties' daughter as well, but the court wisely did

1 not grant this motion as MIKE has several character issues that would not warrant having MIKE
2 serve as physical custodian, the biggest issue being that he has been charged as perpetrator of
3 domestic violence and child abuse among other things. MIKE'S premise was/is that his parents
4 were/are horrible and that KERSTAN was/is horrible for various reasons, the majority of his
5 claims largely untrue in nature. The court then granted physical custody to a third party. Instead
6 of being upset about that decision, MIKE instead opposed KERSTAN when she attempted to
7 have the court reconsider or set the order aside order. MIKE flipped script and opposed
8 KERSTAN, even though custody has been provided to his parents, the same people he claimed
9 were horrible and alienated him from Isabella, and the same people he just called the police on in
10 May of this year. MIKE stated to KERSTAN that he wanted Isabella to reside with her so
11 KERSTAN moved Isabella, her possessions, and car, and enrolled her in school and MIKE again
12 flipped script and enrolled her in school in Reno and states that she will live with his parents
13 without even speaking with KERSTAN or considering her input on the matter. KERSTAN is
14 nervous about Isabella's latest evaluation and the therapists input regarding depression and
15 Isabella's early signs of having a borderline personality disorder. This is the same type of
16 personality disorder that MIKE was diagnosed with by Dr. Pagilini to this court after he
17 assaulted KERSTAN and the parties' children.

18 The truth is, although not ideal, MIKE is okay with the current order because he is not
19 required to pay child support so he opposes the reconsideration and request to set aside and the
20 current appeal, even though it means Isabella will stay with his parents who he claims he
21 despises. As a "punishment" to KERSTAN for sending his son to his own parent's home over
22 the summer, as recommended by two highly regarded family law attorneys, he enrolled his
23 daughter into a school in Reno, with full knowledge that she is enrolled in school in Las Vegas,
24 without KERSTAN'S knowledge and consent and then has his counsel file this motion to have
25 Michael, an innocent bystander, have his life uprooted to "teach" his mom "lessons" that MIKE
26 believes KERSTAN should be taught. This motion is unnecessary as the parties' can work out
27 visitation and what would transpire if MIKE does not return Michael, like he did not return
28 Isabella. Divorced parties need to rely on the representations of the other, especially as it pertains

1 to the return of the children to one another. KERSTAN clearly states: "...I can purchase their
2 flight up. Can you confirm you will fly them home?" MIKE clearly states: "Yes". So
3 KERSTAN relying on his representation flew the children up. KERSTAN clearly states: "So
4 you are confirming that she is not flying home after her visit?" Mike clearly states: "See you in
5 court." He had no intention of returning Isabella and is not remorseful in the least for his actions.
6 **Exhibit 13 "Text message "KERSTAN and MIKE".** Due to MIKE'S failure to return a child
7 as promised, KERSTAN has been hesitant to allow Michael to leave her custody as she is fearful
8 she does not have adequate protective measures to bring him home. To punish KERSTAN for
9 waiting for sound direction from two retained attorneys who should be able to assist MIKE and
10 KERSTAN is irrational and contrary to doing what is in the best interest of Michael.

11 This motion is unnecessary and frivolous in nature, brought to harass KERSTAN. MIKE
12 and his counsel should show cause as to why MIKE unilaterally enrolled their daughter in a
13 school and took her to a therapist surreptitiously and without KERSTAN'S knowledge and
14 consent in violation of the court's decree that clearly states MIKE and KERSTAN have joint
15 legal custody. If anyone should be held in contempt, it should be MIKE for not obtaining joint
16 consent on two major matters concerning the education and health and welfare of the eldest
17 child, Isabella and violating KERSTAN'S rights as legal custodian of Isabella and for never
18 adhering to the court ordered visitation stated in the decree. MIKE should also be sanctioned for
19 repeatedly perjuring himself in court. KERSTAN has brought the initial perjury to the court's
20 attention concerning the car seat with her son Michael when he was a toddler (MIKE claiming he
21 always used a car seat with Michael and Hal DeBecker a licensed PI having to show MIKE
22 repeatedly putting a 3 year old boy in the front passenger side of the car unrestrained). Once
23 again MIKE states that "...he did not see his son while Joseph (Michael's middle name) was
24 visiting MICHAEL'S parent..." See Motion Page 4, ¶¶ 12-13. As you can plainly see from
25 MIKE'S stepfather's correspondence, Michael visited with his father during that time. See
26 **Exhibit 7 Email from Chuck Burr.**

27 Unfortunately KERSTAN had two choices: 1) send Michael to his father's home in Reno
28 after he did not return the parties' eldest daughter and without knowing where jurisdiction might

lie for relief if MIKE failed to send him home as promised or 2) keep her son safe and with her until counsel or the court established a new visitation arrangement that could be enforced and remedied in District Court if necessary.

II.

OPPOSITION POINTS AND AUTHORITIES

A. **KERSTAN SHOULD NOT BE ORDERED TO SHOW CAUSE AS TO WHY SHE SHOULD BE HELD IN CONTEMPT OF COURT OR IMPRISONED AS MIKE HAS NEVER FOLLOWED THE COURT ORDERED VISITATION SCHEDULE AND RECENTLY VIOLATED KERSTAN'S PARENTAL ROLE AS JOINT LEGAL CUSTODIAN OF THE PARTIES' DAUGHTER.**

MIKE seeks: 1) an order to show cause and 2) imprisonment of KERSTAN. Under NRS 22.010 the court has stated that "disobedience to any lawful writ order, rule or process issued by the court ..." constitutes contempts. Additionally, under NRS 22.110(1), a person may be imprisoned for such contempts. NRS 22.010(7) also finds contempts when a party is "abusing the process or proceedings of the court or falsely pretending to act under the authority of an order or process of the court." (Emphasis Added). In *Hildahl v. Hildahl*, 601 P.2d 58, 95 Nev. 657 (1979), the court held that a husband's unilateral modification of his performance under that order violated the decree and he was properly held in contempt. Lastly, this court has held that the order on which judgment of contempt is based must be clear and unambiguous, and must spell out details of compliance in clear, specific and unambiguous terms, so that person will readily know exactly what duties are imposed on him. *Cunningham v. Eighth Judicial Dist. Court of State of Nev., In and For Clark County*, 1986, 729 P.2d 1328, 102 Nev. 551.

KERSTAN is not in contempt of court as she is awaiting a new visitation schedule and assurance that MIKE cannot take Michael under the guise of "visitation" and then not return him similar to what he just did on July 30th of this year when MIKE did not return the parties' eldest daughter after her visitation, but instead surreptitiously took her to "therapy" where it was decided Isabella did not want to return home and then enrolled her into school without KERSTAN's knowledge or consent. Isabella had a duffle bag in her possession and had fully planned on returning to Las Vegas prior to her visitation with her father. The parties are currently awaiting an appeal of a recent court order concerning their eldest daughter and the last

1 court minutes state that "...the District Court does not have jurisdiction to hear any further
2 matters until authorized to do so by the Supreme Court of Nevada."

3 MIKE did not return the parties' eldest daughter as promised. KERSTAN has properly
4 requested that both parties' counsel assist MIKE and KERSTAN with a new visitation schedule
5 as MIKE has never followed the current divorce decree and has recently behaved recklessly with
6 the parties' eldest daughter. MIKE and his counsel were told one day before they filed this
7 frivolous motion the following by KERSTAN:

8 "Mike has asked to visit Michael, but I have not obtained input from John
9 Jones or Donn Prokopius on what we would do if he [MIKE] did not
10 return Michael. Once I have input and I know that Michael is safe and
11 will return as promised, *I would be happy to have him see his father.*"
12 (Emphasis Added).

13 KERSTAN has freely allowed visitation with MIKE for eight (8) years. The only time
14 periods when KERSTAN has been reluctant to allow the children to see their father was when *he*
15 *assaulted them with a deadly weapon* and KERSTAN was waiting to get before this court for
16 relief and just recently when MIKE violated the joint legal custodianship established by this
17 court and did not return the parties' eldest child Isabella after a summer visit in Reno and then
18 unilaterally enrolled her into high school and took her to secretive "therapy". The only party to
19 this action, who is in contempt of court, is MIKE who similar to the husband in *Hildahl*,
20 unilaterally modified his performance under the court order and violated the decree. KERSTAN
21 was provided remedy from the court after being assaulted by MIKE, she is asking for the same
22 relief at this time.

23 KERSTAN is unsure whether this court has jurisdiction and KERSTAN has properly
24 appealed the recent order and is awaiting her day for the appeal to take place. Orders must be
25 clear or unambiguous. The recent court minutes have led KERSTAN to believe there may be no
26 relief in District Court should MIKE not return Michael similar to what he just did with Isabella.
27 Furthermore, MIKE has unilaterally changed his visitation in the court ordered decree. He does
28 not come to visit Michael as prescribed under the decree whereas KERSTAN should have the

children every nine (9) days and then Mike should have them for five (5), more or less, but rather comes and see his son when he wants to and expects KERSTAN to drop everything she is doing, as well as, Michael, in order for visitation to take place. MIKE has unilaterally expected visitation on demand and strict compliance by Michael and KERSTAN, regardless of what they have had planned during that time.

B. CUSTODY OF THE PARTIES' SON, MICHAEL, (NOT JOSEPH), SHOULD NOT BE MODIFIED AS MICHAEL'S BEST INTEREST IS SERVED BY RESIDING WITH HIS MOTHER AND THERE HAS NOT BEEN A MATERIAL CHANGE IN CIRCUMSTANCE THAT IS DETRIMENTAL TO HIS WELFARE. FURTHERMORE THERE IS A PRESUMPTION THAT MICHAEL SHOULD RESIDE WITH HIS MOTHER BECAUSE HIS FATHER HAS BEEN CHARGED WITH DOMESTIC ABUSE.

In determining whether the facts warrant a custody modification, courts should not take the "changed circumstances" prong lightly. *Ellis v. Carucci* 123 Nev. 145 (2007). In Nevada, when a district court determines the custody of a minor child, "the sole consideration of the court is the best interest of the child, which is governed by NRS 125.480. Under *Ellis*, the court has held that a modification of primary physical custody is warranted only when the party seeking a modification proves there has been a substantial change in circumstances affecting the welfare of the child and the child's best interest is served by the modification.

Under NRS 125.480, in determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

- (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.
- (b) Any nomination by a parent or a guardian for the child.
- (c) *Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.*
- (d) *The level of conflict between the parents.*
- (e) *The ability of the parents to cooperate to meet the needs of the child.*
- (f) *The mental and physical health of the parents.*
- (g) *The physical, developmental and emotional needs of the child.*
- (h) *The nature of the relationship of the child with each parent.*
- (i) *The ability of the child to maintain a relationship with any sibling.*
- (j) *Any history of parental abuse or neglect of the child or a sibling of the child.*
- (k) *Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.*

(l) Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

Michael is a happy, care-free, loving, smart boy who is excelling in the 5th grade and is obtaining love, support, care, time and attention of his family members and friends while residing with his mother. See **Exhibit 11 "Michael's Writing and Awards"**. On the converse, Michael's father has alienated his son from his paternal grandparents (See **Exhibit 6 "Email from Gary Silverman on behalf of Chuck and Carol Burr"**) and has currently attempted to alienate his daughter from her mother by keeping her up in Reno after he had promised to book her return flight after her visitation, violating the parties' joint legal custodianship by enrolling her in school and taking her to "therapy" without her mother's knowledge and consent. As you can see from Michael's letter, he loves spending time with his stepsister and family. He has a strong connection to all of them. Unfortunately, MIKE has been charged with the abuse of another young boy who was the son of his former girlfriend, Heather Velasquez Thomas. KERSTAN has provided proof of the arrest and charges to this court and if necessary can provide testimony as to how he BEAT THE BOY WITH A HANGER and upon information and belief, ABANDONED THE BOY WHILE BETWEEN THE AGES OF (6-10 YEARS OF AGE) AT LAKE TAHOE FOR ALLEGEDLY DAMAGING MIKE'S SPEEDBOAT with no food, water, phone while he drove the rest of the children back down to Reno, NV a few years back. His mother Heather was not at the lake and had to hear that her son was abandoned and had to immediately leave Reno to try and find and retrieve her son on the beach. This story was provided to KERSTAN by Isabella just this month, she had apparently kept this a secret in order to protect her father. Lastly, MIKE RAN HIS CAR INTO KERSTAN'S VEHICLE WHILE THREE (3) CHILDREN WERE INSIDE THE VEHICLE WITH HER. He was ultimately charged with four (4) counts of ASSAULT WITH A DEADLY WEAPON.

Michael's custody should not be modified as he has not experienced a material change in circumstances and it is definitely not in his best interest to reside with his father who has neglected and abused another boy Michael's age, assaulted Michael while in a car with his mother, and alienated Michael from his own parents and is currently alienating the parties' eldest

daughter Isabella from her mother by taking her to “therapy” sessions and enrolling her in school without her mother’s knowledge or consent.

C. MIKE SHOULD NOT BE AWARDED ATTORNEY’S FEES AS THIS MOTION IS PATENTLY FRIVOLOUS AND FILED SIMPLY TO HARRASS KERSTAN.

MIKE’S attorney is seeking attorney’s fees under NRS 18.010 and NRS 125.150(3). He claims that he is experienced, analyzed pertinent information, and expects to obtain a good result from filing this motion. What he doesn’t say is that he has and had full knowledge that MIKE violated the parties’ joint legal custodianship in July of 2015 and then turns around and files an unnecessary motion while a current appeal is underway.

MIKE’S attorney also has an ethical obligation under Nevada Rules of Civil Procedure, Rule 11 which states that:

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, *formed after an inquiry reasonable under the circumstances*,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation...;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery...

MIKE’S own Exhibit A demonstrates that KERSTAN had concerns with allowing visitation due to the fact that MIKE recently violated the decree and did not return the parties’ eldest child when promised and that the current minutes on file with this court state that, “...that the District Court does not have any jurisdiction to hear any matters until authorized by the Supreme Court of Nevada.”

For these reasons above, attorney’s fees should be denied.

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III.

COUNTERMOTION POINTS AND AUTHORIES

KERSTAN has been repeatedly brought back to court for motions to change custody of both her children as a form of legal abuse. MIKE has been diagnosed as having BORDERLINE NARCISSITIC PERSONALITY DISORDER by a court-ordered, Nevada licensed psychologist. He abuses and controls financially, emotionally, psychologically, and through the court system as well.

MIKE does not comply with court orders. He has taken the children's education funds, insurance premiums, and used KERSTAN's credit line and damaged her credit by not paying off legal obligations when due. He has failed to pay child support, modified child support under false pretenses, failed to follow court ordered visitation, and just recently failed to comply with the parties' joint legal custodial rights. MIKE should be ordered to show cause for his non-compliance and MIKE and his attorney should be sanctioned for filing another frivolous motion while an appeal is pending.

A. MIKE SHOULD BE ORDERED TO SHOW CAUSE AS TO WHY HE UNILATERALLY ENROLLED THEIR DAUGHTER ISABELLA INTO SCHOOL, TOOK HER TO "THERAPY" WITHOUT KERSTAN'S KNOWLEDGE AND CONSENT AND FAILED TO RETURN HER ON JULY 30TH OF THIS YEAR AFTER HIS SCHEDULED VISITATION.

MIKE recently requested that KERSTAN fly both Michael and Isabella, the parties' children up to Reno to visit with him over summer. Isabella had recently returned to reside with her mother and Michael after she expressed a desire to do so in counseling after a bout of depression she experienced at the end of her Junior year. Isabella had been attending school in Reno, NV and while in school, would stay with her paternal grandparents, Chuck and Carol Burr. KERSTAN purchased the flights up to Reno and confirmed with MIKE that the children would return on July 30th. He confirmed that he would return the children, but then during the vacation with MIKE, he surreptitiously took Isabella to therapy with Gerri Goddard, MA in Reno. MIKE then went to Bishop Manogue, Isabella's prior high school and re-enrolled her into high school for her Senior year. All of this was done without KERSTAN'S knowledge and

1 consent and in direct violation of the parties' joint legal custodianship specified in the decree.

2 Under NRS 22.010, the following acts or omissions shall be deemed contempts....:

3 3. Disobedience or resistance to any lawful writ, order, rule or process issued by
4 the court or judge at chambers....

5 7. Abusing the process or proceedings of the court or falsely pretending to act
6 under the authority of an order or process of the court.

7 In Nevada, it has been found that a husband's unilateral modification of his performance
8 under that order violated the decree and he was properly held in contempt. *Hildahl v. Hildahl*,
9 601 P.2d 58, 95 Nev. 657 (1979).

10 Here, MIKE simply states that Isabella has the right to do whatever she wants. That he
11 did not need to have KERSTAN'S consent to take make decisions regarding Isabella's health
12 and welfare, which would entail taking her to a therapist. MIKE also states that he does not need
13 KERSTAN'S consent regarding the child's schooling, which would entail enrolling Isabella into
14 high school. Both decisions are exactly what joint legal custodians should decide together.

15 The parties' divorce decree, (Decree pages 2-3), plainly states the following:

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the parties share joint
17 legal custody of the minor children, Isabella Caroline Micone, born March 26, 1998; and
18 Michael Joseph Micone, born January 7, 2005:

19 The parents shall confer with each other on all important matters
20 pertaining to the children's health, welfare, education, religious training and
21 upbringing to arrive at a harmonious policy to promote the children's best
22 interests, and not to promote the personal desires of either party.

23 The parents shall confer with each other on all matters regarding the children's
24 healthcare, including but not limited to...psychological...inform the other parent
25 of any health condition of the children...except in emergency situations...

26 The parent shall confer with each other regarding decisions pertaining to the
27 education and school curriculum of the children...

28 KERSTAN was never contacted by MIKE while he was taking Isabella to counseling or
enrolling her in high school. In fact the last harmonious decision reached pertaining to Isabella's
therapy was to take her to Diane Mercier, PhD, where it became evident Isabella wanted to move

1 home with her brother and mother. The last harmonious decision reached pertaining to Isabella's
2 schooling was reached between MIKE and KERSTAN when they decided not to enroll her at
3 Bishop Manogue, but rather to have Isabella enroll into high school in Henderson, NV.

4 MIKE abused the process or proceedings of the court and falsely pretended to act under
5 the authority of an order or process of the court by stating that Isabella could do what she
6 wanted, when in fact Isabella had two joint legal custodians and was not an emancipated adult.
7 Additionally, he took Isabella to a counseling session unilaterally and enrolled her into high
8 school unilaterally, similar to the husband in *Hilbahl* in violation of the decree and all recent
9 orders. He used the current order regarding Isabella's physical custody while ignoring the
10 parties' divorce decree pertaining to legal custodianship. MIKE violated both NRS 22.010 (3)
11 and (7) and should be ordered to show cause as to why he should not be held in contempt of
12 court. MIKE acted in bad faith by stating that he would return the children after their visitation
13 July 22nd and then said, "See you in court" when he failed to put Isabella on a flight home.
14 Isabella carried one duffle bag and left Las Vegas with full intention to return. Due to this
15 unlawful act and due to the questions regarding current jurisdiction with the District Court,
16 KERSTAN believes that MIKE may also keep Michael during his visitation and not return him
17 as promised.

18 **B. KERSTAN'S ATTORNEY SHOULD BE AWARDED ATTORNEY'S FEES FOR**
19 **HAVING TO OPPOSE THIS FRIVOLOUS MOTION WHILE A LEGITIMATE**
20 **APPEAL IS UNDERWAY AND THE DISTRICT COURT HAS STATED THAT**
21 **IS WILL NOT HEAR ANY FURTHER MATTERS UNTIL DIRECTED TO DO**
22 **SO BY THE SUPREME COURT OF NEVADA.**

23 MIKE has initiated this action in order to harass KERSTAN and comes to the court with
24 unclean hands, having recently violated the parties' joint legal custodianship and not returning
25 the eldest daughter on a recent visit to her father's home in Reno on July 22nd. MIKE
26 disingenuously pretends to act under the authority of a court order and does not recognize the
27 legal custody is strikingly different than physical custody. He states that since his parents, a 3rd
28 party, were granted physical custody of their daughter that he has the right alone and unilaterally
to take her to "therapy" sessions and then enroll her in a different high school then what was
agreed upon between the parties.

1 Furthermore, MIKE decides to violate the parties' decree while an appeal is pending and
2 the District Court has stated that it will not hear any more matters until directed to do so from the
3 Supreme Court of Nevada. MIKE should be required to pay KERSTAN's counsel for having to
4 oppose this motion in order to protect Michael's current custody and well-being. Fees should be
5 awarded and sanctions imposed under Rule 11.

6 The decision whether to award attorney fees is within sound discretion of trial court.
7 *Bergmann v. Boyce*, 856 P.2d 560, 109 Nev. 670 (1993). Attorney's fees may be awarded to a
8 prevailing party under NRS 18.010 when ...

9 2. In addition to the cases where an allowance is authorized by specific statute, the
10 court may make an allowance of attorney's fees to a prevailing party:

11 (a) When the prevailing party has not recovered more than \$20,000; or

12 (b) Without regard to the recovery sought, when the court finds that the claim,
13 counterclaim, cross-claim or third-party complaint or defense of the opposing
14 party was brought or maintained without reasonable ground or to harass the
15 prevailing party. The court shall liberally construe the provisions of this
16 paragraph in favor of awarding attorney's fees in all appropriate situations. It is
17 the intent of the Legislature that the court award attorney's fees pursuant to this
18 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil
19 Procedure in all appropriate situations to punish for and deter frivolous or
20 vexatious claims and defenses because such claims and defenses overburden
21 limited judicial resources, hinder the timely resolution of meritorious claims and
22 increase the costs of engaging in business and providing professional services to
23 the public.

24 Additionally under NRS 125.150(3), KERSTAN'S attorney may be awarded reasonable
25 attorney's fees...if those fees are in issues under pleadings.

26 Pursuant to *Brunzell v. Golden Gage Nat'l Bank*, 85 NV 345 (1969), the court should
27 take into consideration the following factors when determining an award of attorney's fees:

28 (1) The qualities of the advocate:

John Jones has practiced law in Nevada for over seventeen (17) years. Mr. Jones
also has extensive trial experience in complex child custody issues. Mr. Jones is
one of a small group of Board Certified Family Law Specialists in Nevada.

(2) The character and difficulty of the work performed:

1 The parties have a fast track appeal underway. The issues pertaining to this
2 appeal and this collateral motion are difficult and require extensive time and
understanding of procedure and law.

3 (3) The work actually performed by the attorney:

4 Mr. Jones has had to prepare this opposition and countermotion in a very
5 contentious divorce to protect his client and to protect the stability of Michael's
6 current custody. The opposition took substantial time in order to provide the
court with evidence that the assertions made in MIKE'S motion are largely
untrue.

7 (4) The results obtained:

8 Mr. Jones has advocated for KERSTAN since 2008 in a very heated and
9 contentious divorce and post-decree matters including protection of KERSTAN
10 and her children after MIKE assaulted them back in 2009, opposing a change in
custody of the parties' eldest daughter in 2014-2015, and now opposing a change
11 in custody of the parties' youngest son Michael in this current motion, which has
been brought to harass KERSTAN and brought without reasonable grounds.

12 For these reasons above, the court should award KERSTAN'S attorneys fees and impute
13 sanctions under NRS 18.010(2)(b) against both MIKE and his counsel.

14 IV.

15 CONCLUSION

16 KERSTAN opposes MIKE's motion for an order to show cause, his request for change of
17 custody of the parties' youngest child, Michael, for any modification of child support, and for
18 attorney's fees. MIKE'S current motion is brought in bad faith and to harass KERSTAN while
19 an appeal is underway concerning the parties' eldest daughter Isabella.

20 KERSTAN countermotions this court to issue an order to show cause as to why MIKE
21 should not be held in contempt of the parties divorce decree after MIKE recently violated the
22 parties' divorce decree and unilaterally enrolled their daughter into a school and taking their
23 daughter to "therapy" without KERSTAN's knowledge or consent. MIKE did so under false
24 pretense of complying with the order for physical custody that is currently on appeal. The
25 parties had already agreed to enroll Isabella into school in Henderson, NV. KERSTAN believes
26 MIKE violated decree because he was angry with KERSTAN for allowing their son, Michael to
27 visit with his own parents for one week in Reno, a week that KERSTAN was slated to have the
28

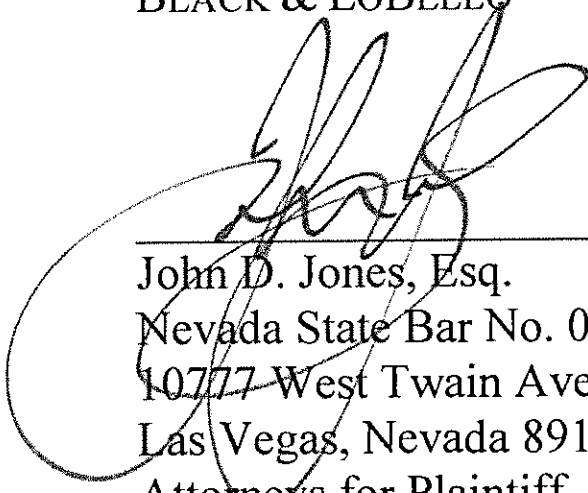
1 children. He lies repeatedly stating that he never saw Michael during this time, when he
2 obviously did and this was tracked by text message correspondence with his stepfather Chuck
3 Burr. He also states that KERSTAN "refuses to have Michael see him" when this is largely
4 untrue. KERSTAN has freely allowed visitation with Michael for eight (8) years, bending over
5 backwards to allow it to happen at times. It is MIKE who has never adhered to the court ordered
6 visitation schedule and expects KERSTAN to drop everything at a moment's notice to allow him
7 time with his son when he wants visitation to take place. KERSTAN has repeatedly requested
8 that his attorney provide a new schedule and assurance that there would be remedy for
9 KERSTAN should MIKE not return the parties' son similar to what he just did with the parties'
10 daughter Isabella, who flew up to Reno with a duffle bag and did not return after her "therapy"
11 sessions with her father.

12 For these reasons KERSTAN asks this court to deny MIKE'S motion in its entirety, order
13 him to show cause as to his willful violation of the parties' status as joint legal custodians, and to
14 award sanctions and attorney's fees to John Jones for having oppose this frivolous motion.

15 DATED this 9 day of September, 2015.

16 Respectfully submitted,

17 BLACK & LOBELLO

18
19
20 
21 John D. Jones, Esq.
22 Nevada State Bar No. 006699
23 10777 West Twain Avenue, Suite 300
24 Las Vegas, Nevada 89135
25 Attorneys for Plaintiff,
26 KERSTAN HUBBS
27
28

**DECLARATION OF KERSTAN MICONE IN SUPPORT OF HER OPPOSITION TO
DEFENDANT'S MOTION AND COUNTERMOTION FOR DEFENDANT TO SHOW
CAUSE AND FOR SANCTIONS AND ATTORNEY'S FEES**

KERSTAN MICONE, under penalties of perjury, being first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled action; that I have read the foregoing **Opposition To Defendant's Motion And Countermotion For Defendant To Show Cause And For Sanctions And Attorney's Fees** and know the contents thereof; that the same is true of my own knowledge except for those matters therein stated on information and belief and as to those matters, I believe them to be true. The allegations contained in the Motion are adopted as if fully set forth in this Declaration.

Signed under pains and penalties of perjury this 9th day of September, 2015.

Kerstan Micone
KERSTAN MICONE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of September, 2015 I served a true and correct copy of **Plaintiff's Opposition To Defendant's Motion And Countermotion For Defendant To Show Cause And For Sanctions And Attorney's Fees**, upon each of the parties by **electronic service** through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R. 9; and by depositing a copy of the same in a sealed envelope in the United States Mail, Postage Pre-Paid, addressed as follows:

Donn W. Prokopius, Esq.
PROKOPIUS & BEASLEY
931 South Third Street
Las Vegas, NV 89101
Email for Service: general@pandblawyers.com
Attorneys for Defendant


an Employee of BLACK & LOBELLO

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KERSTAN MICONE nka HUBBS,

Plaintiff/Petitioner

v.

MICHAEL MICONE,

Defendant/Respondent

Case No. D-08-388334-D

Dept. J

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

<input checked="" type="checkbox"/> \$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-	
<input type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>	The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>	The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>	The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
<input type="checkbox"/>	Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

<input checked="" type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input checked="" type="checkbox"/>	The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>	The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-	
<input type="checkbox"/> \$129	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-	
<input type="checkbox"/> \$57	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:	
<input type="checkbox"/> \$0	<input checked="" type="checkbox"/> \$25 <input type="checkbox"/> \$57 <input type="checkbox"/> \$82 <input type="checkbox"/> \$129 <input type="checkbox"/> \$154

Party filing Motion/Opposition: Kerstan Micone nka Hubbs Date 9/9/15

Signature of Party or Preparer Cheryl Berdahl

Exhibit 1

Exhibit 1

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1 overnight for a five day visit. In fact, what the Defendant has enjoyed on a regular basis
2 has been to come into town numerous times a year and make cameo appearances at the
3 children's events for a few short hours. When visiting Las Vegas, the Defendant rarely has
4 or had the care, custody, and control of either child for more than any twenty-four hour
5 period.
6

7
8 If the court would like to hear my testimony on this matter or the matter regarding
9 the dismay of my wife, the Plaintiff, and the strife that it had caused her when she learned
10 that the Defendant stole their children's college fund monies, intentionally harmed her
11 credit, and the horror of ramming his rental car into hers with the children inside, which
12 resulted the Defendant being arrested for four counts of assault with a deadly weapon, I will
13 gladly tell you all that I know.
14

15
16 Further, your Affiant sayeth naught.

17
18 
19 Mark DiPentino

20 Subscribed and sworn to before me
21 this 05 day of September, 2015.

22 
23 Notary Public

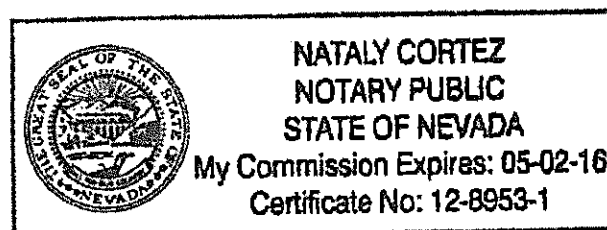


Exhibit 2

Exhibit 2

You're keeping
me from my
son! So fuck
you!!! I will not
stop until you
end up paying
for this. Fuck
you! I will not
stop!!!! You're
a fucking
horrible person
and you will
pay for all this

stop!!!! You're
a fucking
horrible person
and you will
pay for all this
shit you do. So
fuck you on
you fucked up
birthday when
you disowned
your daughter.
What a piece
of shit you are.

See you in court.

All those times you
drug me to

court ... How does

it feel. I will break

you. I have the rest

of my life to fight

for my kids and I

am sick of you

controlling me.

Your a controll

Greek and I will

end that once and

for all. See you in

court.

I will not stop. I will
drain you of every
penny I can. This
is going to my
redemption. You're
a horrible person
for keeping me
from my rights
with my daughter. I
won't stop!!!

iMessage
Yesterday 3:00 PM

I will be filing a
complaint that you
went through my
personal property
with out my
permission and
using it without
permission. Filing
it Monday. Next
time ask and get
permission but
now you will learn
the hard way.

Look up privacy laws. It's my phone and you need permission. That what the attorney just told me. Expect a complaint on your license soon. Have a great day

You don't scare me

Won't be funny
when you get
charged for a
felony. Have a
happy birthday

Oh any you will
hear from more
than John and
Don

Today.

All I can say is
FELONY
CHARGES
COMING.

Sunday 11:38 AM

Delivered

for 2008. Don't
fuck with me
anymore. I will not
stop if you keep
fuckimg with me. I
gave you property
houses degrees
paid off cars and
the house. I will
not pay you one
cent more. I will
make you pay. You
fucked with the
wrong person. See
you in COURT.

To: Kerstan, Mike

how does it
feel to be in
second
position. I
turned her
down
because she
is a horrible
fuck and
person. You

To: Kerstan, Mike

make in a life
time. I hope
Kerstan
wakes up
and dumps
your ass.
Your a loser
and a fuck
sponge.
Don't call or

To: Kerstan, Mike

her. So wake
up loser.
Your a filler
and you will
be
dedication
soon. And if
I said yes to
her you'd be
living in your

Exhibit 3

Exhibit 3

CONFIDENTIAL

Report of Neuropsychological Assessment

Finally, Isabella presented with symptoms suggesting that her academic and interpersonal difficulties have culminated in Isabella experiencing significant and severe symptoms associated with depressed mood. To this end, individual and family psychotherapy to better assess and to address these mood related symptoms is strongly recommended. This therapy also would allow for further exploration and assistance in the areas of this teen's ego development, identity development and parent-child relationship problems.

Summary Diagnostic Impression:

American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) criteria:

Cognitive Disorder, NOS (Executive Function Deficits)
Learning Disorder of Reading Accuracy
Dysthymic Disorder

It was a pleasure to work with Isabella and her family. Please feel free to contact me if I may be of further assistance. I can be reached by telephone at (775) 352-3898.

Traci B. Pitts, Ph.D.

Traci B. Pitts, Ph.D.
Child Clinical Psychologist

Exhibit 4

Exhibit 4

Sun, Nov 16, 8:33 PM

As long as I can't see Bella, I've made my last payment to Manogue. You have created this by prohibiting me from having Bella. I will not just write checks and have my rights as her father controlled. Please make arrangements to

pay for Manogue if
you want her to
still go there or she
can move to
Vegas and I will
get my kids
schedule modified
so I can get an
apartment and
have them stay
with my every
other Tues-
Sunday and I will
have my time one
way or another.

Exhibit 5

Exhibit 5

Sat, May 23, 6:54 AM

Bella had
dinner with us
last night and
she informed
she is moving
back to Vegas
on the 30th.
That was great
news. I've
always said
that she better

off living with
you or me.
Although that
wasn't how
you felt. I know
she wants to
be with family
and her
brother. For me
this is great bc
now I can see
her anytime
she wants and
I know you will

I know you will
help
encourage that
as you have
with Michael. I
want her
happy and all
of us to move
on. Let me
know if you
want me to
drive down
with her.

RE: Notice that Bishop Manogue Enrollment Due by April 24th

From: **Kerstan Hubbs** (khubbs@live.com)
Sent: Wed 4/29/15 9:11 AM
To: mikemicone@gmail.com (mikemicone@gmail.com)

Mike,

Isabella came down to see me this last weekend. She has agreed to enroll in Coronado High School her senior year. She actually is looking forward to it. I think it will be best if we are not all on board with her final year at Bishop Manogue. She said that she would like to spend her last year at home with me and Michael.

Kerstan

From: khubbs@live.com
To: mikemicone@gmail.com
Subject: Notice that Bishop Manogue Enrollment Due by April 24th
Date: Sun, 19 Apr 2015 14:54:34 -0700

Mke,

Good afternoon. A reminder that the enrollment for Isabella to attend Bishop Manogue for her Senior year is due by April 24th. Please confirm that you would like her to re-enroll in Bishop Manogue at this time. I spoke with Isabella today. She said that she wanted to attend Bishop Manogue for her Senior year.

Chuck has informed me that you have stated that you will only pay if Isabella has a 3.0 GPA. I think she is at a 2.67 (as of earlier this month). Please advise as to your commitment to payment for 2015-2016. I would like to confirm that statement.

I believe it is a \$25 penalty for late registration.

Sincerely,
Kerstan

Exhibit 6

Exhibit 6

From: Gary Silverman [mailto:silverman@silverman-decaria.com]
Sent: Wednesday, June 03, 2015 10:50 AM
To: John Jones
Cc: ckburr43@gmail.com
Subject: Burr/Hubbs: proposal to send child to grandparents; indemnity; RFR; time.

Dear John:

Chuck and Carol Burr want to visit with their grandson Michael during the summer for two weeks, when they would take him and his friend/cousin to Graeagle, Calif. As you may know or Kerstan will tell you, that place in the Sierras is as wholesome and cool (in both senses of the word) as a ten year-old or caring parents could want.

Apparently Mr. Micone will not agree to such an adventure with the Burrs and, further, he will invoke the "right to first refusal" provisions of the current custody order to prevent Kerstan from sending Michael to Graeagle on *her* time.

I do not have a copy of the Decree or Order which contains the RFR provisions so I am going on the routine wording we see. Respectfully, I submit the claim that an RFR provision bars Kerstan from sending Michael to his grandparents is absurd--the provision is inapplicable to a vacation...or at least not intended that way.

If such is the case with the routine RFR wording, in lieu of filing their own motion the Burr's ask that Kerstan send Michael to them for two weeks and let Mr. Micone bring such action as he sees fit and if he does for Kerstan to then file her own motion for leave to clarify the Order and permit her to send the boy north to his grandparents. Chuck and Carol will indemnify Kerstan for fees and costs. This seems much simpler than grandparents bringing their own motion.

Please send me a copy of the Order in effect and if the RFR provision is anywhere near what I have speculated, consider this course of action. I will call you after I have read the controlling order. The summer is here so time is of the essence.

GRS

Exhibit 7

Exhibit 7

[Print](#)

[Close](#)

Mike/ communications last two days

From: **Chuck Burr** (ckburr43@gmail.com)

Sent: Wed 7/15/15 11:38 AM

To: Kerstan Hubbs (khubbs@live.com)

 1 attachment

Test messages Mike and Chuck.docx (67.7 KB)

Chuck Burr

ckburr43@gmail.com

775-846-7093

815 Arlington Ct

Reno, NV 89509

Test messages Mike and Chuck

Chuck dropped off Michael at his dad's house at 2:30 on Tuesday the 14th of July. Mike was hoping to have him come over Monday night so I had Michael talk to his dad and he told him "I just want to hang out with Hudson"

At 8:48 I texted to Mike "What time would you like me to pick up Michael?"

Then later I texted to Mike "Is Michael going to stay over? If so I can pick him up at 8am."

Mike responded "He's staying the night. No need to pick up MY son."

Chuck texted "Great, I'll check in the morning as to the airport. Have a great night."

In the morning about 7:45 Mike texted to see what time I was picking him up. He said he had eaten but did not have a change of clothes. (Michael said he did not want to take anything with him to his dad's)

Chuck tested back at 8:19 "Good, see you at 8:30"

Chuck picked up Michael at 8:33 am and he came to our house and changed then chilled out till time to go to the airport.

Exhibit 8

Exhibit 8

RE: Isabella Senior Year

From: **Kerstan Hubbs** (khubbs@live.com)
Sent: Tue 7/28/15 11:14 PM
To: Geri Goddard (gerigoddard@yahoo.com)

Geri,

I would like a copy of all of her records at this time. You may scan them or fax them to my attention. My fax number is 702-534-1697.

Sincerely,
Kerstan

Date: Tue, 28 Jul 2015 22:32:42 +0000
From: gerigoddard@yahoo.com
To: khubbs@live.com
Subject: Re: Isabella Senior Year

Kerstan
Let me know if you'd like to speak by phone
Geri

Electronic Privacy Notice: This email and any attachments contains information that is, or may be, covered by the electronic communication privacy laws and is confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing or otherwise disclosing this information in any manner. Please reply to this sender if you have received this communication in error, then immediately delete the message.

From: Kerstan Hubbs <khubbs@live.com>
To: Geri Goddard <gerigoddard@yahoo.com>
Sent: Tuesday, July 28, 2015 3:18 PM
Subject: RE: Isabella Senior Year

Geri,

A phone call prior to you seeing my daughter would have been best. It is difficult for me to really think this session or service provided is above board. Please attempt to place yourself in my situation. This is very unprofessional and questionable in every manner to me. I do not want you to provide any more therapy sessions to my daughter at this time. YOU DO NOT HAVE MY CONSENT AND SHE IS A MINOR. My ex-spouse and I should make these decisions "jointly" and this has not been the case. I realize that counseling is likely necessary

for Bella, this custody dispute has wreaked havoc on her and however, I don't really want a unilateral assessment of my daughter where you have heard God knows what from her father. It is just not proper.

Thank You,
Kerstan

Date: Tue, 28 Jul 2015 22:02:16 +0000
From: gerigoddard@yahoo.com
To: khubbs@live.com; mikemicone@gmail.com
CC: alex@pandblawyers.com; donn@pandblawyers.com
Subject: Re: Isabella Senior Year

Kerstan

Let me know when we can speak by telephone and a number that is good for contact. I would like to make sure you are included.
Geri

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From: Kerstan Hubbs <khubbs@live.com>
To: "mikemicone@gmail.com" <mikemicone@gmail.com>
Cc: "gerigoddard@yahoo.com" <gerigoddard@yahoo.com>; 'Alex Gomez' <alex@pandblawyers.com>; 'Donn Prokopius' <donn@pandblawyers.com>
Sent: Tuesday, July 28, 2015 12:10 PM
Subject: RE: Isabella Senior Year

Mike et al,

I just spoke with my daughter who informed me that the psychologist told her that she would contact me. I was never contacted and my daughter was unaware that this was necessary. When I took her to counseling in Reno, you were right there with me Mike. We both signed paperwork. Every psychologist in Reno informed me that we both needed to be on board with her counseling. Geri should know better and so should Donn.

Thank you,
Kerstan

From: mikemicone@gmail.com
To: khubbs@live.com
CC: gerigoddard@yahoo.com; Alex@PANDBLAWYERS.COM;
Donn@PANDBLAWYERS.COM
Subject: RE: Isabella Senior Year
Date: Tue, 28 Jul 2015 12:01:49 -0700

Kerstan,

Bella is going to Manogue. She is enrolled and she wants to finish her last year here. Feel free to talk to your attorney but the best thing for Bella is to attend her last year of School in Reno at Manogue High School. I will keep Geri in the loop as your making threats to her now as well.

Thank,

Mike Micone

From: Kerstan Hubbs [mailto:khubbs@live.com]
Sent: Tuesday, July 28, 2015 11:39 AM
To: mikemicone@gmail.com
Subject: RE: Isabella Senior Year

Mike,

First, as joint legal guardians, you may not take her to a psychologist without my consent. What you did was wrong. Geri Goddard, MA should have requested dual consent understanding that Isabella is from a divorced family. She/He has their license on the line.

I will forward to my attorney. If the court believes that Bella should be allowed to live with you I will have to live with it, but I certainly don't support it. You ran into me and our children with a car. You hit Heather's boy with a hanger, and I recently found out that you abandoned Heather's boy at Lake Tahoe simply because you were mad at him.

What you have done to me personally is not of issue. It is what you have done to children. I am trying to keep Bella in a safe environment.

I just spoke to Bella and she said she was coming home after work camp. That is unless she is lying to me. I told her I am okay with her attending Manogue if she is with your parents.

Kerstan

From: mikemicone@gmail.com
To: khubbs@live.com
CC: gerigoddard@yahoo.com

Subject: Isabella Senior Year

Date: Tue, 28 Jul 2015 11:06:46 -0700

Kerstan,

Bella has decided to attend her last year at Manogue High School. As we know Bella had a hard decision to make but it was one that she is allowed to make according to the order from the judge. Bella went to see Geri Goddard, MA Psychologist for adolescents and Geri worked with Bella through this process and Bella made the decision that is best for her. Geri is going to contact you today regarding Bella's decision.

If you want to reach Geri yourself, her phone number is 775-826-1002 and she is cc'd on this email.

Bella is fully enrolled at Manogue and her registration is paid and payments have been scheduled. Bella has her class schedule set up and she is enrolled to play soccer as well. She is scheduled to take her Sr. photos on Monday at Johnson Photography.

I will email her class schedule to you or you can check her schedule on my backpack.

If you have any questions give me a call and we can work out the other logistics.

Thanks,

Mike

Exhibit 9

Exhibit 9

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint	COURT MINUTES	June 02, 2015
D-08-388334-D	Kerstan D Micone, Plaintiff vs. Michael A Micone, Defendant.	

June 02, 2015	12:00 AM	Minute Order
HEARD BY: Hughes, Rena G	COURTROOM: Courtroom 04	
COURT CLERK: Tiffany Skaggs		

PARTIES:
Isabella Micone, Subject Minor, not present
Kerstan Micone, Plaintiff, Counter Defendant, John Jones, Attorney, not present
not present
Michael Micone, Defendant, Counter Donn Prokopius, Attorney, not present
Claimant, not present
Michael Micone, Subject Minor, not present

JOURNAL ENTRIES
- Per Judge Hughes

NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Pursuant to EDCR 2.23(c) and 5.11(e), this Court can consider a motion and issue a decision on the papers at anytime without a hearing. Further, pursuant to EDCR 2.20(c), this Court can grant the requested relief if there is no opposition timely filed.

A hearing is scheduled for June 4, 2015 on Plaintiff s Motion to Reconsider and/or Set Aside Order that was entered by the Court on March 31, 2015. Defendant has filed an Opposition and Countermotion and the Plaintiff has filed a Reply and Opposition to Defendant s countermotion.

Plaintiff has filed an appeal on the March 31, 2015 Order, which is pending with the Supreme Court of Nevada. In light of that appeal, the District Court does not have jurisdiction to hear any further matters until authorized by the Supreme Court of Nevada.

The June 4, 2015 hearing shall be taken off calendar.

PRINT DATE:	06/02/2015	Page 1 of 1	Minutes Date:	June 02, 2015
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Exhibit 10

Exhibit 10

RE: Life Insurance Policy

From: **Kerstan Hubbs** (khubbs@live.com)
Sent: Fri 8/14/15 10:44 PM
To: mikemicone@gmail.com (mikemicone@gmail.com)
Cc: donn@pandblawyers.com (donn@pandblawyers.com)

Mike,

Please stop talking to me directly and work through Donn and John. I don't need your threats. Your visitation is not scheduled at this time and I don't feel comfortable with the current status of our order(s) or your recent actions with our daughter while she was up visiting with you. Call the police, I am doing nothing more than protecting my son. Please do not communicate with me again. I can wait to hear direction from John.

Kerstan

Subject: Re: Life Insurance Policy
From: mikemicone@gmail.com
Date: Fri, 14 Aug 2015 21:38:57 -0700
CC: donn@pandblawyers.com
To: khubbs@live.com

Kerstan,

I booked the flight for Michael Sunday and I will have a police escort to pick up Michael with the decree and order. You can choose to refuse for me to have Michael and I'm sure there is a consequence for your decision.

I have set up tuition and I have set up payments. I'm sure your glad you don't have to pay anything. I have also made the payment on her car and insurance. Do you have an opinion about that as well. You usually do. See you Sunday.

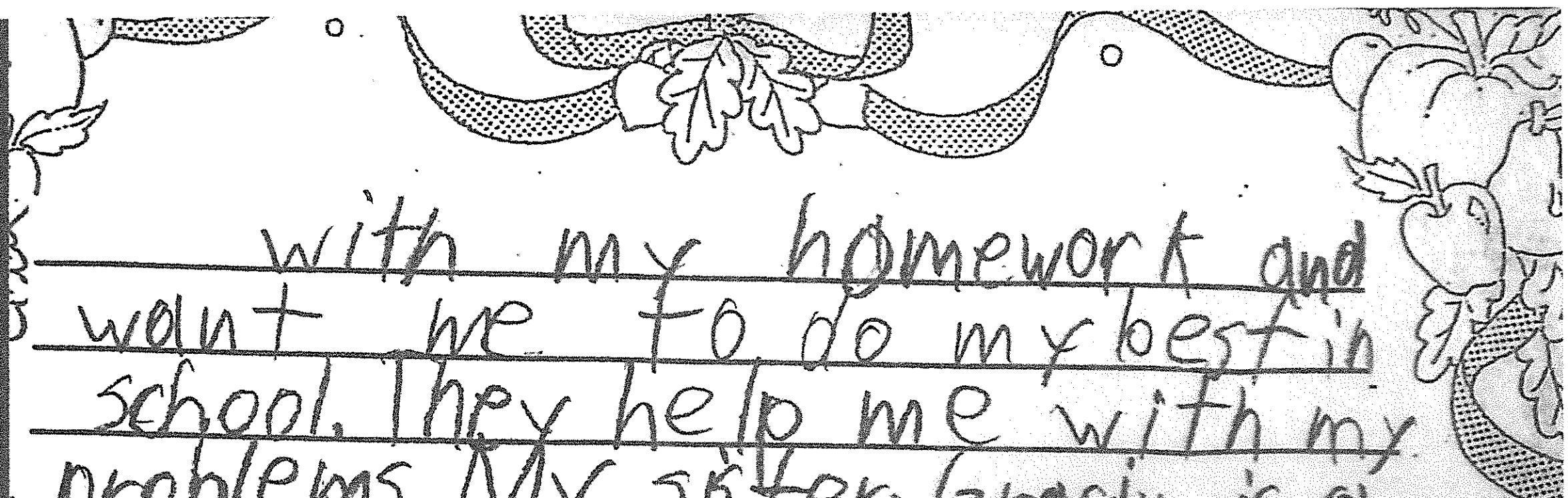
Mike Micone
CEO/President
Micone Staffing Resources, Inc.
702-339-1113

On Aug 14, 2015, at 6:44 PM, Kerstan Hubbs <khubbs@live.com> wrote:

See below. Kerstan

Exhibit 11

Exhibit 11



with my homework and
want me to do my best in
school. They help me with my
problems. My sister, Gracy, is a
good example to me and is a
loving sister.

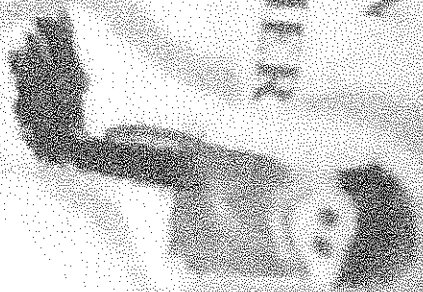
My last thankful thing
is my home. That protects
me. Because I have a roof
over my head, I'm protected
from the rain or poor weather.
I can stay warm and feel ha-
ppy in my home.

THE

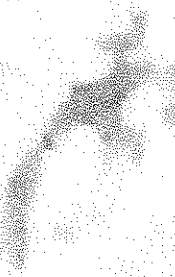
STEPPING

TIN SOLDIER

TIN
SOLDIER



LITTLE
PAPER
DANCER

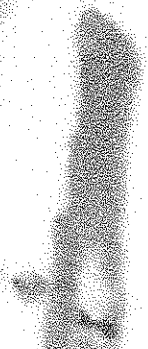


BOY

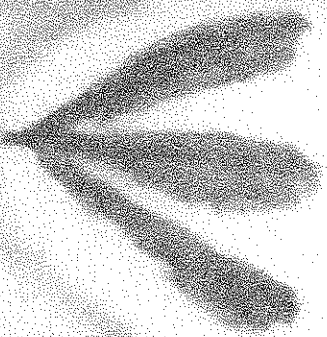


BLACK
GOBLIN

SKY AND GIRL



LITTLE BOY



FISH

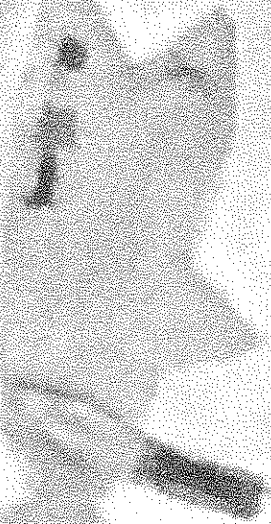


Exhibit 12

Exhibit 12

I just did to you
what you've
been doing to
me. Cutting me
out of her life
and taking a
passive
approach is
what I learned
from you. So
thank you for
teaching me
how to handle

Exhibit 13

Exhibit 13

Sun, Jun 14, 10:24 PM

Can Bella and
michael fly up
this
Wednesday
night?

Mon, Jun 15, 8:24 AM

Fri, Jul 17, 4:16 PM

Yes. Are they
both flying up.
Bella didn't

know

Text Message
Sat, Jul 18, 11:15 AM

Did you book
there flights?
Also what day
to you want
them back.
Prefer on a day
they can fly
Allegiant.

Sat, Jul 18, 2:09 PM

Sent as Text Message

Sat, Jul 18, 3:38 PM

Ok

Sun, Jul 19, 7:39 AM

Sat, Aug 1, 4:11 PM

We are having
a great time on
tahoe. Thanks
for asking.

Bella decided
to stay up
there. She
starts school
Monday. I
guess you still
want to fight.
That's who you

And Bella?

She is with
chuck and
Nona's.

See you in
court.

You ignored me
when i asked
for her flight.
We are joint
legal
custodians.
You don't
respect my
rights. Do you
know how
many times our
kids did not
want to fly up
and see you?

Exhibit 14

Exhibit 14

FW: Isabella to Vegas

From: **Kerstan Hubbs** (khubbs@live.com)

Sent: Tue 9/01/15 4:29 PM

To: graci dipentino (markdipentino@gmail.com)

☐ 2 attachments

Message from Bella.jpg (5.2 MB) , Text message.png (117.2 KB)

See below. Call me when you can. Kerstan

From: khubbs@live.com

To: ckburr43@gmail.com; carolburr1963@gmail.com; mikemicone@gmail.com

CC: donn@pandblawyers.com; silverman@silverman-decaria.com; jjones@blacklobellolaw.com

Subject: Isabella to Vegas

Date: Tue, 1 Sep 2015 16:17:04 -0700

Chuck, Carol, and Mike,

Bella messaged me on Facebook and said she would like to come to Vegas for Labor Day. I told her to book her flight and I will pick her up. I am afraid to book travel because of what transpired after her visitation on July 30th where she did not return to Vegas. I will refund the money for her travel once she lands and she has more than enough money in her account that I fund at Wells Fargo bank. She uses her card, so I see that she has it. I am copying all parties as my last correspondence with her father was horribly abusive and unnecessary.

Mike has asked to visit with Michael, but I have not obtained input from John/Donn on what we would do if he did not return Michael. Once I have input and I know Michael is safe and will return as promised, I would be happy to have him see his father.

I just would like to see my daughter and not have anyone interfere.

Thank you,
Kerstan

1 TRANS

FILED

SEP 21 2015

Ann L. Sullivan
CLERK OF COURT

2
3 COPY

4
5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8
9 KERSTAN D. MICONE,) CASE NO. D-08-388334-D
10 Plaintiff,) DEPT. J
11 vs.)
12 MICHAEL A. MICONE,)
13 Defendant.)

14
15 BEFORE THE HONORABLE RENA G. HUGHES,
16 DISTRICT COURT JUDGE
17 TRANSCRIPT RE: ALL PENDING MOTIONS
18 THURSDAY, JANUARY 15, 2015

1 APPEARANCES:

2
3 The Plaintiff: KERSTAN D. MICONE
4 For the Plaintiff: JOHN D. JONES, ESQ.
Black & LoBello
5 10777 W. Twain Ave. #300
Las Vegas, Nevada 89135
6 (702) 869-8801

7
8 The Defendant: MICHAEL A. MICONE
9 For the Defendant: DONN W. PROKOPIUS, ESQ.
931 S. Third St.
10 Las Vegas, Nevada 89101
(702) 474-0500

1 LAS VEGAS, NEVADA

THURSDAY, JANUARY 15, 2015

2 P R O C E E D I N G S

3 (THE PROCEEDING BEGAN AT 10:37:27.)

4 THE COURT: We're on the record in Case D388334.
5 Counsel, please state your appearances for the record.

6 MR. JONES: John Jones, Bar Number 6699, appearing on
7 behalf of the plaintiff, who is also present.

8 THE COURT: Very good.

9 MR. PROKOPIUS: Donn Prokopius, appearing on behalf of
10 the defendant. Bar Number 6460.

11 THE COURT: Okay. Very good.

12 Do we have any stipulations or agreements?

13 MR. PROKOPIUS: Not at this time, Judge.

14 MR. JONES: No, Your Honor.

15 THE COURT: Okay.

16 Mr. Jones, when did you enter the case?

17 MR. JONES: Today.

18 THE COURT: Okay. All right.

19 MR. JONES: But -- but I'm certainly bundled. So you
20 don't have to worry about --

21 THE COURT: You're bundled?

22 MR. JONES: I -- I'm -- I -- I've never been unbundled
23 that I can recall.

24 THE COURT: Okay. Yeah, I -- I didn't have a counsel of

1 record and --

2 MR. JONES: Actually, there wasn't one for either. I was
3 surprised even though Donn's papers were filed under his firm
4 name. The Marshal only had pro se for both parties.

5 MR. PROKOPIUS: It is odd. I did file the motion under
6 my name and --

7 THE COURT: Uh-huh.

8 MR. PROKOPIUS: -- and the reply and all of that, so.

9 THE COURT: Yeah. I -- I had your name on here, so.

10 MR. PROKOPIUS: Right.

11 THE COURT: That -- that's fine. Okay.

12 So, Mr. Prokopius.

13 MR. PROKOPIUS: Your Honor, I -- I think we outlined a
14 lot of it in -- in the motions. And -- and it's very clear.
15 But I just wanna -- I wanna just focus to you on -- on what is
16 really ha -- the relevant period of time here.

17 THE COURT: Okay.

18 MR. PROKOPIUS: Okay. And the relevant -- I mean, we --
19 we've got an opposition that throws out everything in the
20 kitchen sink that's happened in this entire case from the
21 beginning of time.

22 THE COURT: Uh-huh.

23 MR. PROKOPIUS: Unfortunately, all -- most of that means
24 nothing because of McMonigle.

1 THE COURT: Uh-huh.

2 MR. PROKOPIUS: And basically -- before Bella left Las
3 Vegas, my client was enjoying -- and before he left Las Vegas,
4 my client was enjoying regular visitation with his -- his
5 child from Tuesday to Sunday every other week, so, extensive
6 unsupervised visitation prior to an entire change of situation
7 happening.

8 At the end of the 2011-2012 school year, Bella
9 finished with, like, a 1.0 down here in Las Vegas; was hanging
10 out with the wrong people. All of that was happening. So
11 good parents, as they should do, came together and said, we've
12 got to do something about this.

13 Now, you can say why any of this happened. You can
14 say, oh, he refused to pay for private school here or
15 whatever. The fact is, is they came to an agreement that said
16 Bella was moving up to Reno. My client was living in Reno at
17 that time.

18 THE COURT: Uh-huh.

19 MR. PROKOPIUS: But yet was ext -- was still taking --
20 getting a lot of visitation, seeing his -- both of his
21 children on a regular basis.

22 My client had a job at that time where he was moving
23 around. He was traveling. So a -- the -- the -- the idea was
24 that the child wouldn't stay at the grandparents' or live at

1 the grandparents' hou -- his grand -- his parents' house.

2 And my client was daily actively involved with Bella
3 at that point and saw her grades in the 2012-2013 school year
4 -- I think I have that right. Or maybe it was the '13-'14
5 school year. I may be off by a year. I apologize, Judge.
6 But it's the last two years we're talking about.

7 THE COURT: Okay.

8 MR. PROKOPIUS: Come up to a 3.3, playing soccer, playing
9 softball and everything. My client spends most of the summer
10 with both his kids, this past -- this past summer.

11 And the plan was that Bella was gonna -- 'cause he
12 then separated from his employment. He's starting his own
13 business. He's on unemployment, but he's starting his own
14 business.

15 THE COURT: Uh-huh.

16 MR. PROKOPIUS: And it -- it -- he's now centralized to
17 -- to Reno. He doesn't have to travel nearly as much and
18 everything else.

19 So my client spends the last -- later part of the
20 summer with -- with Bella and -- and -- and her -- his son up
21 in Reno. And the school is gonna start. And what ends up
22 happening is Bella's gonna move in with him and gonna continue
23 to go to school. He's gonna have hands-on situation.

24 And plaintiff puts a complete stop to that. Says,

1 you're coming back to Las Vegas if you move in with -- with
2 your father. So she's like, I -- I -- I can't do it, dad.
3 I'm not goin' back to Vegas. I want to stay here. So -- so
4 all of the sudden, he doesn't -- she doesn't show back up at
5 his -- his house. He calls and says, I'm at grandma and
6 grandpa's because if I don't, I've got to go back to Vegas,
7 according to my mom.

8 Now what we have is this. We have a situation in
9 which grandma and grandpa, my client's parents, have aligned
10 with who they perceive to be the shot caller. And that is
11 plaintiff. For some reason, they believe, and she has them
12 believing, that because she has this designation as the
13 primary physical custodian, she calls the shots.

14 And -- and she's threatened - and you saw by e-mail
15 - my client, saying, if you take the child to come live with
16 you, I'm coming to get her; and she's coming back to Vegas.
17 Well, none of this really makes any sense. And -- and her
18 opposition doesn't make any sense.

19 But before I get into that, now, during the first part of
20 this school year, now I've got a client and a father who's now
21 being excluded from his daughter's life for the most part
22 because the grandparents are gatekeeping. The grandparents
23 are saying, you can't come to the house anymore. And when he
24 did come to the -- when -- when he was coming to the house,

1 they would hover over him. They would tell him when he had to
2 leave, et cetera, in front of his daughter.

3 So my client, basically, at that point, at the --
4 and, of course, we filed a motion at the end of the summer,
5 too, or close to the end at that time. And all of this
6 started happening as we file a motion saying, the child's
7 supposed to come live with me; and -- and I'm gonna be the
8 father of this child; and -- and we're gonna move forward in a
9 father-daughter parent -- parental relationship. Now it's
10 gone completely the other direction.

11 Now he's basically being -- he doesn't get
12 visitation with his child at all unless she sometimes comes
13 with her friends to the house and things like that. But he
14 can't go to the house anymore, to his own parents' house. So
15 they control that. He doesn't have anything set with his
16 daughter at this point. And -- and these parent --
17 grandparents think that they have complete control of the
18 situation. And -- and that's really not what's supposed to
19 happen. And we've watched her grades slip again.

20 And -- and the interesting thing is, is my client
21 just informed me that -- that he's paying for the daughter's
22 car. The --

23 THE COURT: Uh-huh.

24 MR. PROKOPIUS: -- the Sequoia that she drives. And --

1 and in that, he's put a GPS on his daughter's car; so she --
2 he knows where she is. Well, he now knows, also, that the
3 daughter's lying to the grandparents about where she is
4 because she knows that he's -- he knows that she's with a
5 boyfriend up in Truckee, et cetera, not where she says she's
6 supposed to be. Okay.

7 So my client -- and -- and how there can be any
8 argument to say there's no, say, change of circumstances under
9 the -- under Ellis versus Carucci is perplexing to me because
10 physical custody is physical, meaning the child is physically
11 present with the -- with the plaintiff and lives in the
12 plaintiff's house.

13 Isn't that what we de -- delineate where the child
14 resides for what percentage of the time indicates what
15 custody, physical custody, is.

16 THE COURT: Uh-huh.

17 MR. PROKOPIUS: Okay. At this point, she basically has
18 nothing more than visitation with the child, too, because she
19 comes up once a month to see the child. So --

20 THE COURT: So Bella is --

21 MR. PROKOPIUS: -- he --

22 THE COURT: -- always with the grandparents?

23 MR. PROKOPIUS: Well, yeah --

24 THE COURT: Is residing?

1 MR. PROKOPIUS: -- unfortunately. That's because Bella
2 was -- is now been put under the impression that if she goes
3 to live with her father, she -- mom's gonna come yank her and
4 take her back to Vegas.

5 THE COURT: And --

6 MR. PROKOPIUS: My client wants to do what's best for
7 this child. And that is, there is a parental preference. The
8 child should be living with my client in -- in -- in -- in
9 Reno. That's where they chose to put the child into school.
10 That's where they chose to try to straighten this child up.

11 There was a -- a period of time in which the child
12 moved in -- by agreement, she moved in with the grandparents
13 because my client was traveling a lot. That now has changed.
14 He has the fun -- the means and everything to -- to take care
15 of this child.

16 And -- and he -- he is perplexed as to why he should
17 be paying. And it's not -- listen, he wants what's best for
18 his child. This -- but I can understand where he's coming
19 from. Why, why do you send \$1,600 a month to a mother who is
20 not physically present with the child? It doesn't make any
21 sense whatsoever at this -- at this situation.

22 But, so, at -- at worst, you can -- you can say,
23 Judge, today -- I mean, I understand if we want to change
24 custody, there has to be an evidentiary hearing. I understand

1 that. We may have to go that route.

2 But at least today you can say, look, if anybody
3 should be getting support, it's the grandparents probably, not
4 the mom. And -- and it doesn't -- just because the mom
5 chooses to pay the grandparents, if she does, that's -- he
6 still shouldn't have to pay her and hope that he -- she pays
7 the grandparents.

8 THE COURT: And Bella's been with the grandparents since
9 August 2013?

10 MR. PROKOPIUS: Yes.

11 THE COURT: Okay.

12 MR. PROKOPIUS: That's correct.

13 THE COURT: Okay.

14 MR. PROKOPIUS: So, Judge, there was a couple of other
15 small issues in the -- in our motion. In the decree of
16 divorce, she had two -- two years to refinance the HELOC. I
17 know these are ancillary. But she's never done so.

18 MR. JONES: Wait, wait.

19 THE COURT: Uh-huh.

20 MR. JONES: Can you show me a paragraph? I don't like to
21 interrupt. But I don't want to have to address something when
22 I believe it's clearly a misrepresentation of what the decree
23 says.

24 MR. PROKOPIUS: I thought that's what the decree said.

1 MR. JONES: There's not a mention about a refinance of a
2 single mortgage.

3 MR. PROKOPIUS: Okay.

4 THE COURT: Uh-huh.

5 MR. PROKOPIUS: My client took -- got -- got that taken
6 out of his name and -- and everything out of her name that --
7 that was his responsibility. She hasn't done anything to even
8 try.

9 So, Judge, we're in a situation where due to the
10 situation, my client's relationship with his daughter --

11 THE COURT: Uh-huh.

12 MR. PROKOPIUS: -- is suffering because the -- the -- I
13 guess you could call them -- I don't even know what the guar
14 -- guardians or whatever they are; although, every time Bella
15 has to go to the doctor, she has to send up a letter saying
16 they're allowed to take her to the doctor.

17 THE COURT: Uh-huh.

18 MR. PROKOPIUS: So they're not really guardians either.
19 But they're gatekeeping because they're aligned with mom;
20 whereas, my client lives in the same city with his child --

21 THE COURT: Okay.

22 MR. PROKOPIUS: -- and it -- it just doesn't make any
23 sense.

24 THE COURT: Okay. All right. Thank you, counsel.

1 MR. JONES: Thank you, Your Honor.

2 The one thing you didn't hear in any of that
3 argument and the one thing you didn't read in any of the
4 papers and pleadings filed by the defendant is how changing
5 anything would be in the best interest of the child.

6 So let's assume that Ellis Carucci would allow for
7 -- Ellis v Carucci would allow for you to consider the fact
8 that dad moved from California back to Reno, has changed the
9 circumstances affecting the child, which it isn't. It's not
10 about a parent. It's about a child.

11 The change that occurred -- if he had -- if he had a
12 motion to file, it was in 2013 after the end of the 2012
13 school year when she was doing terribly; and there would be a
14 change of circumstances right along the lines of Ellis versus
15 Carucci.

16 What's so amazing about this position is that a mom
17 and a dad got together and they said, hey, our daughter is
18 doing poorly. She's not behaving the way we want her to.

19 THE COURT: Uh-huh.

20 MR. JONES: She's not with the right people. And they
21 make an agreement --

22 THE COURT: Uh-huh.

23 MR. JONES: -- as co-parents to, let's place the child
24 with my parents, with dad's parents.

1 THE COURT: Uh-huh.

2 MR. JONES: Not with mom's parents or someone aligned
3 with mom. This idea that dad's parents are now aligned with
4 mom -- you know who dad's parents are aligned in -- with, the
5 best interest of this little girl. I can't really call her a
6 little girl at 16 and a half now.

7 THE COURT: Yeah.

8 MR. JONES: But you have a situation where they agreed.
9 And -- and here's the -- the multiple agreements that are
10 involved in this case. The two parents agreed it was in the
11 best interest of the child for mom to have primary custody.
12 Period. End of story.

13 Both shar -- parents agreed that it was in the best
14 interest of the child to be placed for a year -- basically
15 two-and-a-half years to finish high school with grandparents.
16 Okay.

17 Dad doesn't like sending checks to mom. You saw the
18 text messages attached. You know, I'm gonna break you
19 financially. I'm going to destroy you. I mean, this is the
20 type of guy dad is.

21 And it's interesting that he's making the argument
22 that the child's grades have dipped recently. That would be
23 truly unfortunate that -- and it would probably be the best
24 evidence that this Court could rely on that dad is now back in

1 the picture and now trying to play a role and the child's
2 grades are suffering.

3 Listen, no one's downplaying the fact that he's a
4 parent. But as a parent, he reached this agreement. We're
5 going to place the child with my parents. She's going to go
6 to this school. And guess what? It worked. This is the
7 perfect example of parents working together.

8 Let me ask you this, Judge. If they decided that
9 this child needed to be in military school -- let's go with
10 this rather common sense example. So they go to X, Y, Z acad
11 -- she goes to X, Y, Z academy in Utah. She's staying there
12 for nine months out of the year. The summer she's with mom
13 primarily, which she was this past summer because mom is the
14 primary custodial parent.

15 And, oh, by the way, mom's the primary custodial
16 parent of their other child, Michael. So when he says, why
17 should he be paying 1,600? Well, he should keep pay --
18 paying for Michael for sure because mom has primary custody of
19 Michael; and there's no dispute on that.

20 So the issue, I guess, to dad is \$800 a month for
21 the next year and a half of the child's life. That -- that's
22 why we're here, which makes it absurd when a trial would
23 obviously cost far more than that per side.

24 So what you're down to is no evidence of best

1 interest, no evidence of a change of circumstances affecting
2 the welfare of the child because you have to go to the point
3 where the parties agreed that this was in the best interest of
4 the child. This is what the parents decided, not what a Court
5 decided, not what a third party decided.

6 So they can't meet either of the two prongs under
7 Ellis versus Carucci. There wasn't even a mention of best
8 interest. How could it be better to take a child from the
9 environment that they were excelling in and place them
10 elsewhere, when the only reason is, well, I'm the father?

11 How many times a week so far in the last three weeks
12 have you had someone, a -- a dad typically, come in and say,
13 well, I'm entitled to this custody because I'm a parent? You
14 still have to meet best interest. And he doesn't even bother
15 to allege it. He doesn't have any reason to be able to tell
16 you.

17 Now let's go back to best interest. They didn't
18 meet their burden. But I do want to talk to you about a few
19 things. You have significant fitness issues. This is not a
20 McMonigle issue. The decree was entered April of '09. In
21 November of '09, he rams his car into mom's car because he's
22 angry, while the kids are in the car.

23 MR. PROKOPIUS: What -- the -- we --

24 MR. JONES: Okay.

1 MR. PROKOPIUS: -- I -- I have to object because that did
2 go to court. And a -- and an order was made from that, too.

3 MR. JONES: But --

4 MR. PROKOPIUS: So that, again, happened prior to court
5 orders.

6 MR. JONES: Not a custodial order, Judge. We're talking
7 about issues since the last custodial order. The only
8 custodial order is the decree of divorce. So everything that
9 happened, his drug charges, his domestic violence, all of that
10 is relevant.

11 Now let's assume everybody lives in the same city.
12 And let's assume dad had none of the major fitness issues that
13 should keep this Court awake at night, particularly the
14 attitude he shows in his text messages. Let's assume they all
15 lived in the same city, but they found it was better and more
16 convenient for the child to sleep nights at grandma's house.

17 Now here's the other part. That -- that -- that's
18 why if we assume fitness, we assume they're in the same city
19 -- she's 16 and a half. She has a car. When do custodial
20 orders basically become meaningless? When the child is a 16-
21 and-a-half or 17-year-old, they're gonna drive and stay at
22 whatever parent's house they want.

23 Now the concern, obviously, that mom has and the
24 concern that grandma has because they know Mr. Micone -- I

1 know Your Honor has not really been fully made -- you know,
2 made to understand all of the issues that he's had. I think
3 mom did a very nice job in proper person drafting pleadings
4 that sort of gave you the history, the relevant history, of
5 the fitness concerns.

6 But even if he did not have all these fitness
7 concerns, he can't show you a basis for altering the current
8 circumstance. And, yes, mom's response that, well, then,
9 she's gonna be with me, goes back to the fact that the parties
10 agreed it was best for the child to be --

11 THE COURT: Uh-huh.

12 MR. JONES: -- in the primary care and custody of mom.
13 So there would be no reason for the child to be in the primary
14 care and custody of dad, particularly because he can't give
15 you either prong of Ellis versus Carucci.

16 And if you, you know -- it really stands for the
17 basic principle. You gotta have more than just, well, I'm the
18 father. I'm entitled.

19 THE COURT: Uh-huh.

20 MR. JONES: You have to have more, and you have to show
21 best interest, even a prima facie showing. He can't do it.

22 So right now, leave the child in school for the next
23 year and a half while staying with grandma. Maybe the parties
24 can work out a visitation schedule that gives him additional

1 time, but that's the part that I was trying to point out. It
2 doesn't make a lot of sense because a 16-and-a-half-year-old
3 is gonna go and stay where she wants basically, whether it's
4 with mom or with dad or with grandma.

5 And this issue that Bella wanted to live with dad,
6 that Bella asked to live with dad, as much as my client does
7 not want the child involved in litigation, I think you -- it
8 will probably go miles to the issue of attorney's fees and
9 potentially sanctions against dad if you have the child
10 interview because Bella likes where she's living.

11 And, yes, a 16-and-a-half-year-old -- and this is
12 the -- the slippery slope that mom's most concerned about.
13 When you have a child who has had behavior issues before,
14 placed in a household of someone who has historically not been
15 the person he tries to present -- por -- portray himself to
16 be, substance abuse issues, the text message from just this
17 December from daughter to mom. Dad's drunk, driving and --
18 and texting while he drives with us in the car. I mean,
19 hopefully you read that. It was in the most recently filed
20 documents from mom. These are major issues.

21 And if you put a child, who has recovered and
22 excelled, in a household with this type of fitness issues, she
23 will fail. She will re -- you know, it will be recidivism all
24 over with regard to the issue of her behavior, the issue of

1 her school performance. I've never seen somebody come into
2 court and argue that something that is not broken needed to be
3 fixed just because they're a parent.

4 THE COURT: Uh-huh.

5 MR. JONES: I now stand corrected that that has happened.

6 On these other residual issues --

7 THE COURT: Uh-huh.

8 MR. JONES: -- the district attorney has had a case
9 opened on child support now for years and years and years. If
10 he has an issue with the amount of arrears that they have,
11 which I think at one point was over \$10,000 --

12 THE COURT: Uh-huh.

13 MR. JONES: -- he can address that with them.

14 THE COURT: Yeah, I'm not reversing --

15 MR. JONES: That's not something you need to --

16 THE COURT: -- any of the R case orders.

17 MR. JONES: -- you don't need to --

18 THE COURT: I would like you to touch on the other
19 financial orders. I did not see a requirement in the decree
20 for the -- he would like to be re-fied.

21 MR. JONES: No, there isn't.

22 THE COURT: I did not see a schedule by mom for medical
23 expenses. I would need to see that. And the 529 account --

24 MR. JONES: Correct.

1 THE COURT: -- I didn't see any proof of that issue.

2 MR. JONES: Well, she did attach the -- he -- he admits
3 that he took the money. I mean, in his -- in his pa -- in his
4 responsive papers, he says, yeah, I -- I was on hard times and
5 I took the money. But we talked about that in court. Well,
6 there was never an order made. And that money belongs to the
7 children pursuant to the decree of divorce.

8 THE COURT: When was it taken?

9 MR. JONES: Some time between 2009 and 2013.

10 THE COURT: And dad was the custodian of the 529
11 accounts?

12 MR. JONES: And the decree is very clear that they are to
13 be maintained for the benefit of the children. That money's
14 gone, and he admits that it's gone.

15 THE COURT: Do we --

16 MR. JONES: But by all means, give him --

17 THE COURT: -- do we have statements, bank statements
18 from the accounts?

19 MR. JONES: I think that they were attached to -- I think
20 they were attached to -- they were attached to one of your
21 files.

22 MS. MICONE: The -- the -- he was the custodian and --
23 and --

24 If you don't mind, is it okay if I talk to her?

1 MR. JONES: No, you -- you can. Just stand up.

2 MS. MICONE: And he manage -- he managed that account,
3 Your Honor. And the only correspondence that I have is from
4 the broker who was working with him saying that it was taken
5 on a certain day, that it was depleted.

6 THE COURT: For some reason, your reply brief did not
7 show up, so. I'm seeing it now. But I didn't read it. So
8 when you're referencing things that were attached to the reply
9 brief, I'm sorry. I did not see that.

10 MR. JONES: I -- well, Your Honor, and -- and that's --
11 that's fine. It was actually --

12 MS. MICONE: (Indiscernible) it's in my objection. I
13 have the e-mail where she says it was --

14 THE COURT: I'm seeing it now.

15 MS. MICONE: Oh.

16 THE COURT: Yeah.

17 MR. JONES: But in the opposition is where the reference
18 to the (indiscernible) -- to the college accounts were.

19 THE COURT: Okay.

20 MS. MICONE: It was completely redeemed Thursday. I
21 mean, you can show both parties. It didn't come through --

22 MR. JONES: What exhibit was it?

23 MS. MICONE: It was on exhibit -- and these are the --
24 the insurance trusts that were taken.

1 MR. JONES: Exhibit 10, I believe to the opposition, Your
2 Honor.

3 THE COURT: Okay.

4 MS. MICONE: Yeah, Exhibit 10.

5 THE COURT: Thank you.

6 MS. MICONE: So that was on April 2011, April 25th, 2011.

7 MR. JONES: So within two years of the decree being
8 entered. So the -- the financial issues, Judge, are not
9 really that important to my client; although --

10 THE COURT: Well --

11 MR. PROKOPIUS: Well --

12 MR. JONES: -- at some point --

13 MR. PROKOPIUS: -- yeah --

14 MR. JONES: -- he does have to pay back --

15 THE COURT: -- they should be.

16 MR. PROKOPIUS: -- the reason -- well --

17 MR. JONES: -- \$250,000.

18 MR. PROKOPIUS: -- well, not really, Judge, because I can
19 show you the paper trail of a house that was given to him in
20 the decree of divorce --

21 THE COURT: Uh-huh.

22 MR. PROKOPIUS: -- was then transferred to her in lieu of
23 paying back this money to the 529. So basically, he gave her
24 back a piece of his property to take care of that situation.

1 MR. JONES: There's a stip and order addressing that
2 transfer of property, Judge.

3 THE COURT: Okay.

4 MR. JONES: She assumed the mortgage and she paid it off.

5 MR. PROKOPIUS: But it had -

6 MR. JONES: It wasn't --

7 MR. PROKOPIUS: -- \$250,000 worth of equity.

8 THE COURT: Wait, wait, wait. One at a time. One at a
9 time. Mr. Pro --

10 MR. PROKOPIUS: He had --

11 THE COURT: -- Mr. Prokopius.

12 MR. PROKOPIUS: -- a tremendous amount of equity in it.

13 THE COURT: Did you submit the paperwork to me?

14 MR. PROKOPIUS: I -- you know what? It came in -- in the
15 -- really, I -- I don't know that there was even a request,
16 really. It just said, oh, hey. If he has to pay child -- he
17 should have to pay this back. To whom? To whom does it have
18 to be paid back?

19 MR. JONES: The children.

20 THE COURT: I -- I'm sorry. You said there was an
21 agreement.

22 MR. PROKOPIUS: The children don't own anything.

23 THE COURT: There was an --

24 MR. PROKOPIUS: They're a child. They're minors.

1 MR. JONES: Which means the parent with primary custody

2 --

3 MR. PROKOPIUS: Oh --

4 MR. JONES: -- would get all of it.

5 MR. PROKOPIUS: -- okay.

6 THE COURT: Wait, wait, wait. There was an agreement

7 where he transferred property to her --

8 MR. PROKOPIUS: Correct.

9 THE COURT: -- in lieu of repaying the 529 --

10 MR. PROKOPIUS: Correct.

11 THE COURT: -- account?

12 MR. JONES: And she's saying there was not, Judge.

13 MS. MICONE: There was not. Your Honor, if you don't --

14 if you don't mind --

15 MR. PROKOPIUS: Did he transfer property that was his?

16 MS. MICONE: There was -- there was a piece of property
17 that Mike defaulted on. He was 90 days late. It was harming
18 my credit. So I told him that we needed to bring that
19 mortgage current. It was for ten acres of raw land in
20 California.

21 He said, I'm going to try to get a mortgage
22 modification. Just be quiet about it. And I said, no. I
23 can't have my credit ruined and I can't have creditors coming
24 after me because I'm joint and several on that mortgage.

1 So I brought it up to date. And I continued to pay
2 it for a year until I finally convinced him it was underwater
3 land to at least to convey it to me because I paid -- I'm
4 paying off the entire mortgage and it was -- it was his land.
5 And my family kept saying, you're gonna end up paying off that
6 mortgage and he's gonna sell it. And so he finally through
7 stip and order, conveyed it to me.

8 MR. JONES: Not in exchange for liquidating the -- the
9 college accounts. Why would you do a stip and order giving
10 her the property that doesn't say, oh, it's in consideration
11 for this? Particularly if the property was underwater. How
12 can we say it had \$250,000 in equity?

13 THE COURT: Okay.

14 MR. PROKOPIUS: Well, I guess that's an issue of fact,
15 Judge --

16 MR. JONES: Well --

17 MR. PROKOPIUS: -- honestly.

18 MR. JONES: -- no, no, he admitted he liquidated the
19 accounts.

20 MR. PROKOPIUS: And --

21 MR. JONES: He should be obligated to replenish them.

22 MR. PROKOPIUS: -- and he also said what the agreement
23 was between the parties. He didn't just say, I liquidated the
24 accounts, too bad.

1 MR. JONES: So before he took dime one from the college
2 accounts, he's saying that mom said it was okay to do that?
3 Come on, Judge, that -- that's absurd.

4 MR. PROKOPIUS: No, that's not what we said. We said he
5 took it. They had communications with regard to him taking
6 it, and he conveyed the property to pay back the money that he
7 took out of the account. That's an issue of fact. Not -- not
8 -- you're saying one thing. They're saying -- we're saying
9 another.

10 MR. JONES: It's an issue of a setoff. The obligation to
11 the children exists. Period. End of story. If he then has a
12 claim against her, I guess he can have a --

13 MR. PROKOPIUS: There is no obligation --

14 MR. JONES: -- claim against her.

15 MR. PROKOPIUS: -- to children.

16 THE COURT: Okay.

17 Mr. Prokopius, is there any evidence in the record
18 that says what the equity value of the property was?

19 MR. PROKOPIUS: The purchase was 400,000. 210 at the
20 time of the --

21 THE COURT: What was the value of --

22 MR. PROKOPIUS: -- of the transfer.

23 THE COURT: -- the property at the time of the transfer?
24 Is there anything in the record --

1 MR. PROKOPIUS: 320.

2 THE COURT: Is there anything in the record? I'm just
3 asking if there's anything in the record.

4 MR. JONES: And -- and I guess if we're talking about any
5 time between 2009 and 2011, we know that the value of property
6 probably plummeted about 100 percent.

7 THE COURT: That's why I'm asking --

8 MR. JONES: So --

9 MR. PROKOPIUS: Maybe.

10 THE COURT: -- the value at the time of the transfer.

11 MR. JONES: -- if -- if he wants to try to prove --

12 MR. PROKOPIUS: You don't know that.

13 MR. JONES: -- that it actually had some equity. But now
14 you're hearing it was listed for sale for 320. And she had to
15 pay off 190. It -- it's certainly not 250 anyway. But it's
16 also not agreed. There's a stipulation that if she paid --
17 think about it. She took over his payments to protect her own
18 credit. There's a value to that. And the total value of the
19 payments that she made -- I'd have to get the records, Judge.
20 But --

21 MS. MICONE: It's over \$250,000.

22 MR. JONES: That you paid off.

23 MS. MICONE: Yes.

24 MR. JONES: There you go. She paid off --

1 THE COURT: Okay.

2 MR. JONES: -- \$250,000 to pay off this loan to protect
3 her credit because he defaulted on his obligations under the
4 decree.

5 THE COURT: What I would like is -- is supplemental
6 briefing on the 529 account issue --

7 MR. JONES: Okay.

8 THE COURT: -- more evidence from both sides.

9 MR. JONES: Uh-huh.

10 THE COURT: I want to see that. I'm going to take the
11 matter under submission. But it -- would two weeks be enough
12 time for you all to supplement your briefs with regard to the
13 529 issue?

14 MR. JONES: Sure.

15 THE COURT: Mr. Prokopius, is two weeks enough time for
16 you?

17 MR. PROKOPIUS: That's fine, Judge.

18 THE COURT: Okay. So I'll review your briefs in two
19 weeks. I'm going to take --

20 MR. JONES: Okay.

21 THE COURT: -- everything under submission. I don't like
22 doing that, but I'm going to because I want to look into this
23 --

24 MR. JONES: And I -- and I appreciate you looking at her

1 -- her reply brief, Judge, because --

2 THE COURT: Yes.

3 MR. JONES: -- there -- there's a great deal in there
4 that sets the record straight because there are many, many
5 misrepresentations made by the defendant.

6 THE COURT: Okay.

7 Anything else --

8 MR. PROKOPIUS: Well, Judge --

9 THE COURT: -- Mr. Prokopius?

10 MR. PROKOPIUS: -- I mean, in response, as far as the
11 showing of the best interest, what -- what we've shown is now
12 that -- just quickly. The first year he was involved when she
13 was up there, on -- on a regular basis, involved with the
14 school, her schooling; involved with everything; 3.3 GPA. Now
15 he's been excluded.

16 THE COURT: Uh-huh.

17 MR. PROKOPIUS: And she's at a 2.0. He's not allowed in
18 the house anymore.

19 THE COURT: I don't have any current information on
20 grades.

21 MR. PROKOPIUS: And I can supplement with it, Judge.

22 THE COURT: So you can include that if you want --

23 MR. JONES: Be happy to.

24 THE COURT: -- if you want to do a little more analysis.

1 Your -- you in the case --

2 MR. JONES: And I'll be -- actually, I'll also be able --
3 be off -- be happy to offer you additional affidavits --

4 THE COURT: Uh-huh.

5 MR. JONES: -- showing just how non-involved he was in
6 the 3.3.

7 THE COURT: Okay.

8 MR. JONES: Okay. We'll -- we'll be happy to do that.

9 THE COURT: So I will allow both of you --

10 MR. PROKOPIUS: From the people that are aligned with mom
11 and -- and have excluded my client.

12 THE COURT: I understand.

13 MR. JONES: Yeah, because parents testify against their
14 children all the time, Judge.

15 THE COURT: I understand.

16 MR. PROKOPIUS: It -- it happens. It's not that
17 uncommon.

18 THE COURT: I would like both of you not only deal with
19 the -- I don't -- I don't need you to brief the HELOC issue.
20 I would like you to brief the 529 account. And if you have
21 additional evidence to submit regarding --

22 MR. JONES: Grades and --

23 THE COURT: -- no visitation, grades, things like that, I
24 will -- I'll give you an opportunity to include that.

1 MR. PROKOPIUS: Thank you, Judge.

2 THE COURT: And I'll take everything under submission.

3 And thank you very much for your arguments.

4 MR. JONES: Thank you so much, Judge.

5 THE COURT: You're very thorough.

6 (THE PROCEEDING ENDED AT 11:06:08.)

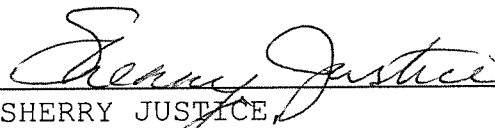
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8 * * * * *

9 ATTEST: I do hereby certify that I have truly and
10 correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

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SHERRY JUSTICE
Transcriber II

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IN THE SUPREME COURT OF THE STATE OF NEVADA

KERSTAN MICONE,
N/K/A KERSTAN HUBBS,

Appellant,

vs.

MICHAEL MICONE,

Respondent;

Electronically Filed
Oct 12 2015 12:24 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

S.C. DOCKET NO.: 67934
D.C. Case No. D-08-388334-D

APPELLANT'S APPENDIX

Volume II of II

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CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

VOLUME II OF II

DESCRIPTION	DATE FILED	VOL./PAGE No.
Defendant's Supplemental Brief as Requested by the Court	01/29/2015	II/AA 000254 -AA 000275
Notice of Entry of Order from January 15, 2015 Hearing	03/31/2015	II/AA 000276 -AA 000289
Motion to Reconsider and/or Set Aside Order	04/13/2015	II/AA 000290 -AA 000302
Certificate of Service of Motion to Reconsider and/or Set Aside Order	04/14/2015	II/AA 000303
Defendant's Opposition to Plaintiff's Motion to Reconsider and/or Set Aside Order and Defendant's Countermotion for Sanctions and his Attorney's Fees, Costs and Related Matters	05/01/2015	II/AA 000304 -AA 000322
Plaintiff's Reply and Opposition to Defendant's Countermotion	06/01/2015	II/AA 000323 -AA 000349
Affidavit of Defendant, Michael A. Micone	09/02/2015	II/AA 000350 -AA 000367
Defendant's Motion for an Order to Show Cause to Find the Plaintiff in Contempt of Court and to Change Custody of the Parties' Child Joseph; to Review and Modify Child Support for Defendant's Attorney's Fees; and Related Matters	09/02/2015	II/AA 000368 -AA 000394

DESCRIPTION	DATE FILED	VOL./PAGE No.
Certificate of Service of Defendant's Motion for an Order to Show Cause to Find the Plaintiff in Contempt of Court and to Change Custody of the Parties' Child Joseph; to Review and Modify Child Support for Defendant's Attorney's Fees; and Related Matters	09/03/2015	II/AA 000395
Opposition to Defendant's Motion and Countermotion for Defendant to Show Cause and for Sanctions and Attorney's Fees	09/09/2015	II/AA 000396 -AA 000475
Transcript of January 15, 2015 Hearing	09/21/2015	II/AA 00476 – AA 000507

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX
VOLUME II OF II

DESCRIPTION	DATE FILED	VOL./PAGE No.
Affidavit of Defendant, Michael A. Micone	09/02/2015	II/AA 000350 -AA 000367
Certificate of Service of Defendant's Motion for an Order to Show Cause to Find the Plaintiff in Contempt of Court and to Change Custody of the Parties' Child Joseph; to Review and Modify Child Support for Defendant's Attorney's Fees; and Related Matters	09/03/2015	II/AA 000395
Certificate of Service of Motion to Reconsider and/or Set Aside Order	04/14/2015	II/AA 000303
Defendant's Motion for an Order to Show Cause to Find the Plaintiff in Contempt of Court and to Change Custody of the Parties' Child Joseph; to Review and Modify Child Support for Defendant's Attorney's Fees; and Related Matters	09/02/2015	II/AA 000368 -AA 000394
Defendant's Opposition to Plaintiff's Motion to Reconsider and/or Set Aside Order and Defendant's Countermotion for Sanctions and his Attorney's Fees, Costs and Related Matters	05/01/2015	II/AA 000304 -AA 000322
Defendant's Supplemental Brief as Requested by the Court	01/29/2015	II/AA 000254 -AA 000275
Motion to Reconsider and/or Set Aside Order	04/13/2015	II/AA 000290 -AA 000302
Notice of Entry of Order from January 15, 2015 Hearing	03/31/2015	II/AA 000276 -AA 000289

DESCRIPTION	DATE FILED	VOL./PAGE No.
Opposition to Defendant's Motion and Countermotion for Defendant to Show Cause and for Sanctions and Attorney's Fees	09/09/2015	II/AA 000396 -AA 000475
Plaintiff's Reply and Opposition to Defendant's Countermotion	06/01/2015	II/AA 000323 -AA 000349
Transcript of January 15, 2015 Hearing	09/21/2015	II/AA 00476 – AA 000507


CLERK OF THE COURT

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MICHAEL A. MICONE

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN D. MICONE, Plaintiff, vs. MICHAEL A. MICONE, Defendant,	CASE NO.: D-08-388334-D DEPT. NO.: J
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DEFENDANT'S SUPPLEMENTAL BRIEF AS REQUESTED BY THE COURT

COMES NOW the Defendant, MICHAEL A. MICONE, by and through his attorney,
DONN W. PROKOPIUS, ESQ., and the following Brief:

Plaintiff, KERSTAN D. MICONE (hereinafter "KERSTAN") and Defendant, MICHAEL
A. MICONE (hereinafter "MICHAEL") were divorced in Clark county, Nevada by a Decree of
divorce that was entered on April 17, 2009. There are two minor children born to the parties as a
result of the marriage, namely, Isabella Caroline Micone (Bella), born: March 26, 1998, age 16;
and, MICHAEL J. Micone, born: January 7, 2005, age 8.

1 Pursuant to the Decree the parties share joint legal custody and shared physical custody of their
2 minor children with KERSTAN been designated the children's primary custodian.

3 1. In her supplemental brief KERSTAN deal with the issues of the 529 tax savings,
4 education plan for the parties that parties' minor child Isabella; the cash value of two life
5 insurance policies maintain for the benefit of both children; and certain real estate located at 963
6 Smith Creek. In reading KERSTAN's supplemental brief she tries to give the impression that
7 MICHAEL took the 529 account and the cash from the life insurance policies and use them for
8 his own benefit without her knowledge and consent. Needless to say, KERSTAN is not being
9 truthful about the circumstances surrounding the disposition of each of these items.
10

11 2. KERSTAN is correct that the 529 account was in existence at the time of the
12 divorce in April of 2009 and had a ~\$70,000 balance. KERSTAN states that she learned in an e-
13 mail on May 8, 2012 that the account had been redeemed on April 25, 2011 and that because
14 MICHAEL was the only one with the access to the account he must have done the redemption.
15 The disposition of the 529 account is an issue that the Court has already heard and decided.
16 KERSTAN filed a motion on March 12, 2013 in which she specifically told the Court that the
17 529 account had been redeemed and asked the Court for reimbursement. KERSTAN has never
18 explained why she waited an entire year after learning that the 529 account had been redeemed
19 before filing a motion to address the issue. The truth is KERSTAN was aware that MICHAEL
20 needed the funds from the 529 account because he was struggling financially. Beginning in 2011
21 and throughout 2012 the parties went back and forth negotiating for MICHAEL to use the funds
22 along with the cash value of the two life insurance policies. Attached hereto as **Exhibit A** is an
23 email dated November 29, 2011 in which MICHAEL offered KERSTAN a 50% interest in the
24 963 Smith Creek property.
25
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28

1 KERSTAN was agreeable to the arrangement and even sent an e-mail dated February 20, 2012 to
2 the Clark County DA to inform the DA that she and MICHAEL had settled the child support
3 arrears issue. A copy of the email is attached hereto as **Exhibit B**. In her e-mail KERSTAN
4 specifically states:
5

6 "Mike and I have agreed to exchange the outstanding child support payments for a
7 property share in the Smith Lake Road property in Graeagle, CA."

8 In a stipulation and order that *KERSTAN prepared* and which she signed on December
9 11, 2012 after MICHAEL first sign the agreement on December 7, 2012. The stipulation and
10 order was approved and adopted by the Court and filed on December 19, 2012. KERSTAN has
11 included a copy of the executed stipulation and order as Exhibit 8 to her supplemental brief and
12 therefore MICHAEL has not included a copy with his Brief. KERSTAN has failed to explain
13 why after executing the stipulation and order she filed a motion on March 12, 2013 in which she
14 raised the issues that she and MICHAEL had previously discussed and settled, namely, that
15 KERSTAN would receive 100% of the Smith Creek property, not just 50%, in exchange for
16 MICHAEL using the 529 funds and the two life insurance policies. KERSTAN's motion was
17 heard on June 26, 2013. KERSTAN claims that the Court never specifically addressed the issue
18 of the 529 account in its order from the June 26, 2013 hearing. The order from the hearing was
19 entered on August 29, 2013 and the notice of entry of order was served on September 16, 2013.
20 KERSTAN never filed a motion to rehear/reconsider the issue or a motion to set aside the order
21 pursuant to NRCP 60(b). She has also never filed a motion to set aside the stipulation and order
22 that was filed on December 19, 2012. A notice of entry of the stipulation and order was served
23 by mail on December 24, 2012.
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1 It is now too late to revisit these issues, even though KERSTAN has once again tried to get these
2 issues before the court when in fact they are *res judicata* (see *Kramer v. Kramer*, 96 Nev. 759,
3 616 P.2d 395 (1980 Nev)).

4
5 3. KERSTAN'S argument that her receipt of the 963 Smith Creek property was not
6 meant to resolve the issue of the 529 account is untrue. Her argument overlooks what the parties
7 actually did. KERSTAN received the entire 963 Smith Creek property, not just half. This came
8 about because as MICHAEL's financial troubles continued he and KERSTAN agreed that he
9 could use the 529 account funds along with the cash value of the two life insurance policies to
10 meet his business expenses in exchange for which KERSTAN would receive 100% of the 963
11 Smith Creek property. MICHAEL summarized this arrangement in an e-mail to KERSTAN
12 dated June 25, 2013, a copy of which is attached hereto as **Exhibit C**. MICHAEL subsequently
13 transferred the 963 Smith Creek property to KERSTAN. He did so in reliance on their
14 agreement. Indeed, there would be no reason for MICHAEL to transfer the entire ownership of
15 963 Smith Creek property to KERSTAN and not just 50% unless he had an agreement with her
16 that giving her 100% of the property would resolve the issues of child support arrears, the 529
17 funds and the two life insurance policies. The value of the 963 Smith Creek property far
18 exceeded the child support arrears that MICHAEL owed. He would never have given KERSTAN
19 100% of the land solely to pay the child support arrears.

20
21 4. KERSTAN now complains that her receipt of the land was not meant to
22 compensate her for the child support arrears, the 529 funds and the life insurance. Instead she
23 claims that the land was a liability that was harming her credit, she made \$81,273.02 of mortgage
24 payments and then the refinance payoff of \$297,003.85 but the land has been on the market for a
25 year at \$240,000 and has not sold.

1 If so, she fails to explain how taking title to the property solved the problems that she now
2 complains of. In fact, the net equity in the property was and is worth far more than KERSTAN
3 suggests. Furthermore, KERSTAN was well aware of the financial circumstances surrounding
4 the real estate, including MICHAEL'S inability to pay the mortgage, when she took title.
5 Complaining now about how much she spent on the mortgage payments, the amount of the
6 mortgage refinance and what KERSTAN claims is the current value of the property is irrelevant.
7 She agreed to accept the real estate in exchange for waiving issues regarding the 529 account, the
8 life insurance policies and the delinquent child support.

11 5. MICHAEL would submit that KERSTAN should be equitably estopped from
12 denying the existence of the parties' agreement. Equitable estoppel generally consists of the
13 following four elements: (1) The party to be estopped must be apprised of the true facts; (2) he
14 must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel
15 has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of
16 the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be
17 estopped. *Mahban v. MGM Grand Hotels, Inc.*, 100 Nev. 593, 691 P.2d 421(1984). The
18 requirement of actual knowledge of the true facts on the part of the party to be estopped does not
19 apply to a party whose affirmative conduct, consisting of either acts or representations, has
20 misled another. *Id* 100 Nev. at 596, 691 P.2d 423. In this case, KERSTAN entered into a written
21 agreement with MICHAEL but misled him into believing that she would accept the real estate in
22 exchange for waiving issues regarding the 529 account, the life insurance policies and the
23 delinquent child support. KERSTAN's duplicity can be seen and the fact that after getting
24 MICHAEL to sign the stipulation and order entered on December 19, 2012 she subsequently
25 filed a motion to address the same issues the parties had already settled.

1 KERSTAN certainly intended MICHAEL to rely on the agreement and MICHAEL did in fact do
2 so. MICHAEL was ignorant of the fact that KERSTAN intended to renege on her part of the
3 bargain. MICHAEL certainly relied to his detriment because he no longer owns a valuable piece
4 of California real estate and if KERSTAN has her way he will face paying her reimbursement of
5 substantial sums of money.
6

7 6. KERSTAN'S delay raises the issue of whether her action should be barred by the
8 equitable doctrine of laches. Laches is an equitable remedy that the Court may invoke when
9 delay by one party works to the disadvantage of the other, causing a change of circumstances
10 which would make the grant of relief to the delaying party inequitable. *Erickson v. One Thirty*
11 *Three, Inc.*, 104 Nev. 755, 766 P.2d 898 (1988). Laches is more than a party merely delaying the
12 enforcement of his or her rights. The delay must work to the disadvantage to another. *Nevada*
13 *Gaming Commission v. Rosenthal*, 107 Nev. 772, 819 P.2d 1296 (1991). In this case,
14 KERSTAN waited two years before raising these issues and then she only did so in response to
15 MICHAEL's motion. Her delay has severely disadvantaged MICHAEL and left him in an
16 impossible financial position. KERSTAN has no one but herself to blame for these
17 circumstances. KERSTAN delay has certainly worked to MICHAEL'S severe disadvantage.
18 MICHAEL is therefore requesting that KERSTAN'S claim for reimbursement of the 529
19 account, the life insurance policies and child support arrears barred by laches and if necessary
20 that the Court hold an evidentiary hearing on the issue.
21
22
23

24 7. MICHAEL submits that the stipulation and order and the agreement the parties
25 made regarding the disposition of the 529 account and the 2 life insurance policies and the 963
26 Smith Creek property as evidenced by the emails included herewith constitutes an accord and
27 satisfaction.
28

1 An accord is an agreement where one of the parties undertakes to give or perform, and others to
2 accept, in satisfaction of a claim something other than or different from what he is, or considers
3 himself, entitled to. *Walden v. Backus*, 81 Nev. 634, 408 P.2d 712 (1965). A finding of an
4 accord and satisfaction requires a "meeting of the minds" of the parties on the terms of the
5 agreement. *Pederson v. First Nat'l Bank of Nevada*, 93 Nev. 388, 392, 566 P.2d 89 (1977).
6 Here, MICHAEL agreed to give KERSTAN the California real estate in exchange for
7 KERSTAN waving certain terms originally ordered in the Decree. There was a clear meeting of
8 the minds because the parties executed a written contract, namely, the stipulation and order filed
9 on December 19, 2012 and the emails included herewith. MICHAEL fulfilled his part of the
10 bargain by transferring the real estate to KERSTAN and KERSTAN accepted the property in
11 satisfaction of money in the 529 account, the cash value of the life insurance policies and the
12 child support arrears. MICHAEL respectfully submits that the 529 account, the life insurance
13 policies and the child support arrears are all moot and KERSTAN'S attempt to have the Court
14 review these issues yet again must be denied.
15
16
17

18 8. In her supplemental brief, KERSTAN ignored the Court's request for school
19 information regarding Isabella. Presumably KERSTAN is not seriously disputing what
20 MICHAEL said in his original motion, namely, the reason Isabella moved to Reno was due to
21 her poor school performance. Attached hereto as **Exhibit D** are copies of Isabella's school
22 records. Even a cursory review of these records reveals that Isabella's school performance after
23 living with KERSTAN was dismal.
24

25 ///

26 ///

27 ///

28 ///

1
2 They show that when Isabella began school in Reno and MICHAEL had the chance to work with
3 her, Isabella's GPA went from 2.0 to 3.1. By contrast Bella had a 1.1 GPA when living with
4 KERSTAN.
5

6 Dated this 29th day of January, 2015.

7 **PROKOPIUS & BEASLEY**

8 /s/ Donn W. Prokopius

9 DONN W. PROKOPIUS, ESQ.

10 Nevada State Bar No. 006460

11 JEREMY R. BEASLEY, ESQ.

12 Nevada State Bar No. 12176

13 931 South Third Street

14 Las Vegas, Nevada 89101

15 (702) 474-0500 / Fax (702) 951-8022

16 general@pandblawyers.com

17 Attorney for Defendant,

18 MICHAEL A. MICONE
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John D. Jones, Esq.
BLACK & LOBELLO
10777 West Twain Ave. Suite 300
Las Vegas, NV 89135
E-Mail for Electronic Service: jjones@blacklobellolaw.com
Attorney for Plaintiff,
KERSTAN D. MICONE

An employee of
PROKOPIUS & BEASLEY

EXHIBIT A

From: **Kerstan Hubbs** <khubbs@live.com>

Date: Tue, Nov 29, 2011 at 10:39 AM

Subject: FW: Smith Creek

To: mikemicone@gmail.com

Mike,

Please see my responses in bold. Let me know your thoughts soon. I would like to keep moving forward and not fight or try to get ahead. I am trying to be fair.

K

Date: Tue, 29 Nov 2011 07:19:55 -0800

Subject: RE: Smith Creek

From: mikemicone@gmail.com

To: khubbs@live.com

Kerstan, Thanks for working on this. Although you have paid money, at the time we did not have an agreement and we are working on an agreement.

I have always informed you this was not a gift. My attorney advised me to pay on our joint and several liabilities and then to seek relief in court. I am trying to work directly with you, if it breaks down or fails I will go to court. I believe that the court would simply give me the land as you were going to lose it and it was damaging our credit and leaving me open to a deficiency judgment. Other alternatives might be: 1) me pay for your land to save my credit, but you still owning the land, which would be unjust so I cannot imagine the court doing that, 2) the court granting me a constructive trust in the land for my contribution, or 3) you reimbursing me \$25K with an order to refinance so I am no longer harmed by you not performing on the note. It is important to note that we both were ordered to pay the mortgages that came with our property and the other was held harmless from this debt. The court will see the failure to do so as contempt of our decree.

I have decided to try a novel approach, which is I partner with you and save the land during this hardship, you retain a 50% interest, I obtain a 50% interest for paying your debt, we both save our credit and avoid a deficiency judgment, moving forward we will be partners similar to Mesquite. Outside of our finances, we have our kids and it is something we can do that is proactive and works in their best interest. This is my "making lemonade out of lemons" and if we are not greedy or prideful, I believe it is the best option for our family.

You are the father of my kids. I want good things for you, me, and them. I cannot let you take advantage of me financially though. I probably wouldn't do this for any other person besides my siblings. You are right, partnerships are not easy, but we managed to have a 12-year partnership that was successful. Financially we always worked well, emotionally and psychologically, not so well. :)

I have a few questions before I agree to a property transfer.

1) I can agree if you pay exactly what I have paid since our divorce as well as HOA, taxes and special assessments that I have paid since our divorce.

Mike, I would agree to a 50-50 partnership. I cannot keep paying the entire note. Once you are on your feet, I will partner with you and pay 1/2 of everything and work very diligently to obtain a modification or refinance the note. If you don't want to do this then I suppose you can reimburse me the money and you can attempt to refinance and take me off the note.

2) I think it will be smart if we have a buy out clause or agreement between us. Or something in our will should one of us die or becomes unable to pay their share. **I agree, I can add this information to the Stipulation and Order or later in an operating agreement.**

a) If one party wants to sell then a first right is available determined by a current appraisal less 10% for no realtor or broker fee and with first right option. **Sounds okay, but this will not include a short sale scenario, meaning we would have to sell for a profit or at a minimum enough for me to recoup the funds I have paid up to the date of the sale. I do not want to be strong-armed into purchasing land.**

b) Also each party needs to be in good standing and current on their fiduciary responsibility to pay their 50% of taxes and HOA and payments and any fees or assessments. **This sounds good. What should be the consequence of the defaulting party?**

3) This is for you to consider. If you want to consider a buy out of the property for 65k from me if you wanted to buy now.

~ This offer is Valid from Dec. 1, 2011 - March 27th, 2012.

a) 10 ACRES at 936 Smith Creek. ~ \$485k was purchase price

a) Current property valued at 485k and balance of loan is 330k. Approximate equity is 175k. Lets discuss so we can ensure clear understanding and continue in good faith. We have options and the property is not under water. The prices in Graeagle have maintained through this economy.

I am hoping we can come to a quick agreement and refinance the first of the year to be able to keep this in our family.

I am not interested in purchasing the property outright. I am involved because I was on the note. I am trying to make a bad situation good. I agree, I want to save something for our family. I am willing to make a long-term investment rather than lose the land, harm our credit, and possibly be subject to a deficiency judgment.

On Nov 29, 2011 6:10 AM, "Kerstan Hubbs" <khubbs@live.com> wrote:
Mike,

I have created a Stipulation and Order, which will be signed by the judge and it essentially will change or amend our divorce decree. I will need to sign the order in front of a notary and then I will have it mailed to your address by a third party. *Please confirm in writing that you do not*

have an attorney. Jim Jimmerson is still on record as your attorney. The Stip and Order will allow the land to be transferred back to me (50% interest) and you will keep a 50% interest. This order will allow us to convey/transfer without paying real property transfer tax because it will be a conveyance under court order (decree).

Once you receive the Stip and Order in the mail, you will need to find a notary and have them sign the Acknowledgment Form stating that you freely signed the Stip and Order in front of them.

Do not date the Stip and Order, the judge will do that.

Once the Stip and Order is signed and the Acknowledgement Form notarized, you will send both documents back to me in the mail. I will make three copies and file them at the Family Court. The Stip will allow us to hold the property as Tenants in Common (similar to Mesquite) or we can keep it in the LLC you created and I can simply come on as Manager/Member with you and we can create an operating agreement of some sort.

I have paid \$25,484.03 to date on this land. A large part of the reason I have done this is because I don't want to lose the land to foreclosure and if we are smart I know we can save it over the long run. Any assets we preserve during this recession will be important to our kids later on after we are gone.

I noticed on 3/9/2011, Chase took \$6,281.60 of my payment of \$9,422.40 as "fees." This should have been applied to our interest and principal. I am filing a claim with their research dept. and disputing this issue. I will send you a copy of the dispute.

Kerstan

> Date: Tue, 29 Nov 2011 13:47:46 +0000
> Subject: Smith Creek
> From: mikemicone@gmail.com
> To: khubbs@live.com
>
> Send your resume.
> Also I have continued paying the HOA on Smith Creek. There was also a \$3k assessment that I have one payment remaining.
>
> Sent from my Droid Charge on Verizon 4GLTE

--

Mike Micone
VP of Staffing Solutions
702-339-1113

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.5645 / Virus Database: 4273/9002 - Release Date: 01/26/15

EXHIBIT B

From: **Mike Micone** <mikemicone@gmail.com>
Date: Wed, Mar 20, 2013 at 2:12 PM
Subject: Fwd: Child Support Payments - Kerstan Hubbs
To: smg@jimmersonhansen.com
Cc: sh@jimmersonhansen.com

This was an agreement for child support and for the 529 college plan money that I used to stay afloat. The property was appraised for \$380k and the loan was \$230 so then she took over payment and received a equity of \$150k which was to resolve any issues Kerstan had with me using the college funds.

----- Forwarded message -----

From: Kerstan Hubbs <khubbs@live.com>
Date: Mon, Feb 20, 2012 at 1:20 PM
Subject: Child Support Payments - Kerstan Hubbs
To: carlsok@co.clark.nv.us
Cc: mikemicone@gmail.com

Ms. Carlson,

Good afternoon. I have tried to phone several times, but have been unsuccessful to date. Mike and I have agreed to exchange the outstanding child support payments for a property share in the Smith Lake Road property in Graeagle, CA. I have listed the APN for this parcel in the paperwork submitted to your attention. We have decided to do this so that he can become current on his child support payments, provide me with compensation for the outstanding balance, and allow him to move forward on time with payment to the state.

Please let me know if you need further information from me regarding this matter. I have been informed by Mike that he is having complications with liquid assets so he has proffered payment by way of a property interest to this land. I am working on our operating agreement and amendments to the LLC for the Secretary of State at this time. I can submit these signed documents for your files if necessary.

Please feel free to contact me directly at [\(702\) 501-3442](tel:7025013442) if you should have any questions or concerns at this time.

Sincerely,
Kerstan Hubbs

EXHIBIT C

From: Mike Micone [mailto:mikemicone@gmail.com]
Sent: Tuesday, June 25, 2013 8:20 PM
To: Kerstan Hubbs
Subject: Re: Stip and Order

Kerstan,

This is what I know we had agreed to.

1) The Smith Creek property. For two years I paid over 25k until I could not pay for the property any further. We also agreed that we would be partners in the property. We agreed to convey the property over to you for protection from potential law suits from Lance. That is what we agreed to so lets discuss your option of completely converting this property to 100% yours. There is a value that you are gaining with me walking away.

2) You are asking for \$7,000 from the transfer from your accout to mine which I had no idea at the time until it was brought up to my attention. I have paid \$1,936 for 4 years while I was not earning any money. I also paid for your Mom's car which was \$17,000. I also had to pay \$40,000 in taxes during the time we were married.

3) The money that was in the 529 plan that I used to pay for child support and to pay on the Smith Creek property which will now be your in essence if conveyed to you will be an exchange in money as this asset will be 100% yours.

4) Also, you asked for me to get a life policy and you would take that in lew of all the above. So I have taken a \$200k policy and added Bella as the beneficiary should something happen to me.

You said this is what you would take in exchange for the 529 and the 7k. Which if you add up the 20k in taxes I paid and the 100k you get in asset in Smith Creek and the 200K in a life policy is 320k swing to your side and we can both walk away and again you will walk away with everything and I will have nothing.

Please call to discuss so we can finalize the agreement.

Kindly,
Mike Micone

On Sun, Jun 23, 2013 at 4:03 PM, Kerstan Hubbs <khubbs@live.com> wrote:
> Mike,
>
> Here is the attached Stip and Order for you to review. Let me know
> what your schedule looks like for next week.
>
> Kerstan

--

Mike Micone
Director of Professional Staffing Group

ANI - Professional Services Group
Sunnyvale, CA 94085
(408) 734-0403

EXHIBIT D



Bishop Manogue Catholic High School

Educating through Faith, Leadership, Knowledge, and Compassion

Marking Period Grades and Comments

Mr. Michael Micone

Student: **Isabella Caroline Micone** Student Account: **Bishop Manogue Catholic High School**

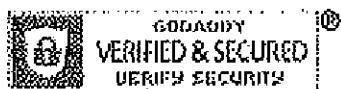
Course Name	Faculty	1st Progress	Qtr Grade - S1		S1-Final Grade		
		S1-P1	QTR1	QTR1C	S1	S1C	
Academic Seminar	Doug Whitener				A	A	
Academic Seminar	Doug Whitener						
Chemistry	Marcelino Ugalde	D = 1	C	2	A	C	A
Chemistry	Marcelino Ugalde						
English 11	Paul Richter	C = 2	C	2	A	C	A
English 11	Paul Richter						
Geometry	Tren Nolan	C = 2	C	2	A	D	A
Geometry	Tren Nolan						
Religion 11	Janine Kearney	B = 3	B	3	A	B	A
Religion 11	Janine Kearney						
Spanish I	Will Monsey	D = 1	C	2	A	D	A
Spanish I	Will Monsey	$\frac{9}{5} =$		11 = 2.2			
United States History	Robin Peri					B	A
United States History	Robin Peri		1.8				

GPA Name	Value
Semester 1	2.29
Cumulative GPA	2.62
Cumulative Weighted GPA	2.62
Cumulative Core GPA	2.22

$$1.8 + 2.2 = \frac{4}{2} = 2.0$$

Print Grades Only

Print Grades and Comments Marking Period: **S1-Final Grade**



Powered by Senior Systems, Inc.

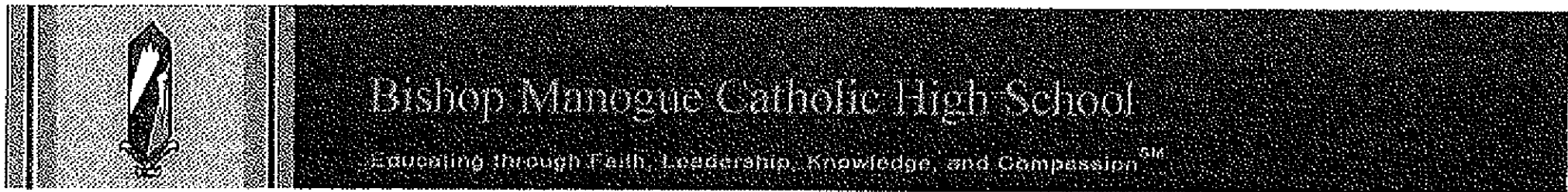
Junior Year.

For assistance with using this website, please email us at mbpsupport@bishopmanogue.org or call us at 775-336-6000.

* Current GPA 1.8 1st Semester

Junior Yr.

2.0 Current Total GPA



Grades and Comments History

Mr. Michael Micone

 Student: **Isabella Caroline Micone** Student Account: **Bishop Manogue Catholic High School** Academic Year: **2013-2014**

 Academic Year: **2013-2014** School: **Bishop Manogue Catholic High School** Grade: **10**

Course Name	Faculty	S1	S2	Credits Earned	View Comments
Academic Seminar	Tony Ghilleri		A	0.5	
Academic Seminar	Tony Ghilleri	A		0.5	
Algebra I	Mandy Holback	B		0.5	
Algebra I	Mandy Holback		C	0.5	
Drama I	Janet Beth Lazarus	B		0.5	
Drama II	Janet Beth Lazarus		B	0.5	
Earth Sci/Intro to Physics	Marcelino Ugalde	C		0.5	
Earth Sci/Intro to Physics	Marcelino Ugalde		B	0.5	
English 10	Montana Hill	C		0.5	
English 10	Montana Hill		B	0.5	
Math Foundations	Mandy Holback	A		0.5	
Math Foundations	Mandy Holback		C	0.5	
Soccer		CR		0.5	
World History	Don Johnson	B		0.5	
World History	Don Johnson		A	0.5	
World Religions-Religion 10	Cynthia Cunningham	B		0.5	
World Religions-Religion 10	Cynthia Cunningham		A	0.5	

4

2.5

3.0

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3.5

= 24.5/8 = 3.1 GPA

[Printable Version](#)
 For assistance with using this website, please email us at mbpsupport@bishopmanogue.org or call us at 775-326-6800.

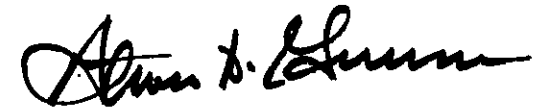
Soph Yr.

1 → I was involved w/ her math and as you can see her grades were (B+) in Algebra & (B) in Math foundations.

2 - A - in World History

Total GPA 3.1

NEO



CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Kerstan D Micone, Plaintiff
vs.
Michael A Micone, Defendant.

CASE NO: D-08-388334-D
DEPT. Department J

NOTICE OF ENTRY OF ORDER FROM JANUARY 15, 2015 HEARING

TO: John D. Jones, Esq., of Black & LoBello, Counsel for Plaintiff

TO: Donn W. Prokopious, Esq., of Prokopious & Beasley, Counsel for Plaintiff

Please take notice that an Order from January 15, 2015 Hearing was prepared by the Court, and was entered in the above-entitled matter on March 31, 2015, a copy of which is attached hereto.



JEANETTE LACKER
Judicial Executive Assistant
Department J

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CERTIFICATE OF SERVICE

I hereby certify that on the above file stamped date:

I have e-served pursuant to NEFCR 9 and/or placed a copy of the foregoing NOTICE OF ENTRY OF ORDER FROM JANUARY 15, 2015 HEARING in the appropriate attorney folder located in the Clerk of the Court's Office of:

John D. Jones, Esq
Counsel for Plaintiff

Donn W. Prokopious
Counsel for Defendant



Jeanette Lacker
Judicial Executive Assistant, Department J

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KERSTAN MICONE, nka
KERSTAN HUBBS,

Plaintiff,

vs.

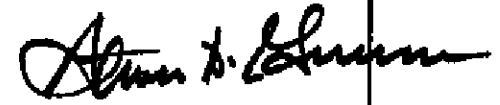
MICHAEL MICONE,

Defendant.

CASE NO. : D-08-388334-D

DEPARTMENT J

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CLERK OF THE COURT

ORDER FROM HEARING JANUARY 15, 2015

This matter came on for hearing before the Honorable Rena G. Hughes, Department J of the Eighth Judicial District Court, Family Division. Plaintiff, Kerstan Micone (nka Kerstan Hubbs, "Kerstan") was present and was represented by her attorney, John D. Jones, Esq., of Black & LoBello, and the Defendant, Michael Micone ("Michael") was present and represented by his attorney, Donn W. Prokopius, Esq., of Prokopius & Beasley. The Court, having read and reviewed all the papers and pleadings on file, and having heard oral argument of counsel, makes the following Findings of Fact and Orders.

FINDINGS OF FACT

The parties were divorced by Decree of Divorce dated April 17, 2009 in the Eighth Judicial District Court, Clark County, Nevada. The parties have two (2) minor children of the marriage, to wit: Isabella Micone, born March 26, 1998, and; Michael Micone, born January 7, 2005. The Decree of Divorce awarded Kerstan primary physical custody of the minor children, and the parties share joint legal custody.

1 The issues before the Court on January 15, 2015 were Michael's Motion for a change
2 in custody of Isabella, to modify child support, resolve child support arrears, to address an
3 omitted debt (HELOC), for Kerstan to refinance the omitted debt, for a holiday visitation
4 schedule of the minor child, Michael, and for attorneys' fees. Kerstan filed an Opposition
5 to Michael's Motion, and a Countermotion for reimbursement of the children's 529 college
6 account, the Penn Life Insurance cash value liquidated by Michael (together totaling
7 \$248,593.33), and to maintain the status quo for Isabella while she is attending school in
8 Reno, Nevada.
9

10 Some of the issues before the Court on January 15, 2015, were previously before the
11 Court on June 26, 2013 at which time the parties stipulated to resolve the issues, and placed
12 their agreements on the record¹. The issues disposed of at the June 26, 2013 hearing
13 included:
14

- 15 1. Michael's liquidation of the cash value of life insurance policies listed in the
16 Decree of Divorce, pages 16 – 17;
- 17 2. Michael's liquidation of the 529 college account;
- 18 3. Michael's receipt of the Coverdell funds;
- 19 4. Michael's use of \$7,000.00 from the HELOC secured against the 1242
20 Sonatina Drive, Henderson, Nevada residence awarded to Kerstan in the
21 Decree of Divorce; and
22
23

24 ¹ On March 12, 2013, Kerstan filed a "Motion to Stay Hearing of the Child Support Center of Southern
25 Nevada and to Consolidate the Modification or Adjustment of Child Support with this Motion to Show
26 Cause" seeking to stay a hearing in Case no. R-12-174206-R regarding Michael's request to modify his
27 child support obligation, so the District Court Judge in Dept. J could hear the matter, along with alleged
28 violations by Michael of the Decree of Divorce. Kerstan's Motion to Stay was set for hearing on April 25,
2013, but neither party appeared and the matter was taken off calendar. The hearing on Kerstan's Motion to
Stay, and for an Order to Show Cause was then set for hearing on June 26, 2013. On that date, both parties
appeared, and placed certain stipulations on the record.

1 5. Child support arrearages owed by Michael.

2 Since the order resulting from the hearing on June 26, 2013 lacked specificity and
3 detail, the Court reviewed all papers and pleadings pre-dating the hearing, as well as the
4 video record of the hearing before Judge Pollock. The Court focused its attention on the
5 chronology of events leading up to the stipulations of the parties on June 26, 2013 in
6 discerning the scope of the parties' resolution at the hearing of that date.
7

8 a. May 8, 2012 – Kerstan and Kathy Bax, a registered investment advisor of
9 Towerkeep, exchanged emails with a subject line: "529 and Coverdell."

10 1. Kerstan emailed Kathy Bax to ask her if the Coverdell funds could be
11 used to pay for Isabella's tutoring expenses.

12 2. Kathy Bax emailed Kerstan that the "529 was completely redeemed
13 4/25/11" and that "...[t]here is \$2,722.77 in Coverdell. Coverdell
14 cannot be used for college, but needs to be used for pre-college
15 expenses." (such as the tutoring expenses)².

16 3. At 12:10 p.m., Kerstan received another email from Kathy Bax stating,
17 "I just need to call and get a check. The account is owned by Isabel.
18 The check will go to her."
19

20 b. December 19, 2012 – the parties enter into a Stipulation and Order agreeing to
21 transfer the 963 Smithcreek property (the Smithcreek or "raw land" was
22 awarded to Michael in the Decree of Divorce) to Kerstan because "...Michael
23
24

25 ² The Coverdell and 529 American Fund accounts were not separately listed or awarded within the Decree
26 of Divorce, but were apparently included in the paragraph at page 17 of the Decree of Divorce stating: "IT
27 IS FURTHER ORDERED, ADJUDGED AND DECREED that all accounts, including prepaid tuition and
28 529 accounts, or life insurance policies in existence for the benefit of the children, or insuring their lives,
shall be maintained for said children with both parties being named as custodians and requiring both
signatures for any withdrawals."

1 can no longer make the mortgage, property tax, or HOA payments and Kerstan
2 has been paying the mortgage for nearly two (2) years..." The Stipulation and
3 Order made no mention of a transfer to Kerstan in exchange for
4 reimbursement of funds withdrawn by Michael from the 529 or Coverdell
5 accounts.
6

7 c. March 12, 2013 – Kerstan filed a "Motion to Stay Hearing of the Child
8 Support Center of Southern Nevada and to Consolidate the Modification or
9 Adjustment of Child Support with this Motion to Show Cause" but then did
10 not appear for the April 25, 2013 hearing on the Motion.
11

12 d. May 8, 2013 – Kerstan filed a "Notice of Motion for Order to Show Cause"
13 (presumably of the March 12, 2013 Motion for Order to Show Cause), which
14 was set for hearing on June 26, 2013.

15 e. June 26, 2013 – A hearing on Kerstan's March 12, 2013 Motion to Stay and
16 Motion for Order to Show Cause took place. Michael did not file an
17 Opposition to either Motion, but appeared at the hearing, and the parties
18 discussed various issues with the Court on the record. The parties also entered
19 into certain stipulations on the record, the extent and detail of which were
20 largely omitted from the written order filed on August 29, 2013.
21

22 f. June 26, 2013 agreements placed on the record included:

- 23 1. There were (3) life insurance policies that were liquidated by Michael
24 after the divorce. Michael agreed to replace them with a term policy
25 for 10 years with AAA. Kerstan wanted to be a co-owner to ensure it
26 stays in effect. Michael agreed to give her an authorization instead of
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1 making her a co-owner. Discussions regarding adding Michael as a
2 beneficiary by agreement of the parties.

- 3
4 2. With respect to the raw land (Smithcreek property) awarded to Michael
5 in the Decree of Divorce, (VTS 10:15:06) in 2010 - 2011 he had a
6 financial hardship and was falling behind on the mortgage. The
7 Smithcreek property is titled in the name of an LLC, but the LLC's
8 status is "revoked." Michael paid (2) years of mortgage payments, and
9 believes he should have some sort of equitable interest in the property.
10 (VTS 10:16:14). Michael does not mind giving Kerstan the property to
11 offset some other hardships he had, and monies he used while he was
12 unemployed. (VTS 10:16:58). They have a verbal agreement they are
13 still 50/50 owners. If Michael gives her the property, Kerstan wants
14 him to pay the fees that it will require to transfer the title (VTS
15 10:17:43). If Michael signs the deed, he is satisfying his arrearages,
16 and Kerstan is responsible for paying the cost to title it in her name.
17 (VTS 10:18:31). Kerstan is not on the LLC, and is not authorized to
18 reinstate the company. Kerstan questioned the Court whether the LLC
19 had to be in good standing to convey title. Since it is a California
20 property, the Court will only order Michael to execute transfer
21 documents, and it is up to her to find out if California requires more.
22 (VTS 10:19:30). The Court does not have authority to determine what
23 California will need to record the deed.
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3. HELOC - (VTS 10:21:00). Michael benefitted \$7,000.00 from the HELOC that went into his personal account to cover an overdraft because the HELOC was still associated with his account. Michael offered to pay \$100 per month to Kerstan until the \$7,000.00 is paid off, and she accepted. (VTS 10:22:10).

4. COVERDALE ACCOUNT FOR TUTORING - (VTS 10:22:43). Kerstan incurred \$5,000.00 in tutoring fees for Isabella. She contacted the financial representative to ask to the use the fund to reimburse her for the tutoring expenses, but when the check was cut, it went to Dad, and she is still paying on the tutoring bill. (VTS 10:23:28). Michael pointed out that the summer Isabella lived with him, he paid \$500.00 for her tutoring, so he used some of that money to pay for those expenses. (VTS 10:23:50). Rather than paying Kerstan the \$1,500.00 for reimbursement of that check, he wants to pay the next \$1,500.00 in tutoring expenses for Isabella. (VTS 10:26:02). Kerstan does not care if funds are used for current or future tutoring expenses, but just that they are used for tutoring expenses. (VTS 10:26:06). The parties both agreed to pay for Isabella's soccer camp, but Kerstan did not pay her ½ for the camp. (VTS 10:26:55). Kerstan agreed that as long as Michael pays her what they agreed for the 8th grade tutoring expenses, she will pay the rest. (VTS 10:29:18). The Court stated that it does not have a schedule of arrears for the tutoring expenses, so it cannot rule on the request. (VTS 10:29:55). Michael agreed to pay Kerstan the

1 \$7,000.00 for the HELOC and an additional \$1,000.00 for the tutoring
2 expenses, for a total of \$8,000 and that will resolve the HELOC and
3 the tutoring issue. (VTS 10:30:25). The Court asked the parties if
4 those were all the issues, and the parties confirmed those were all
5 the issues.
6

7 **ORDERS**

8 Based upon the foregoing Findings of Fact, the Court HEREBY ORDERS:

9 Res judicata attached to the following issues after the hearing of June 26, 2013, and
10 they will not be reconsidered:

11 1. Michael's liquidation of the cash value of life insurance policies listed in the
12 Decree of Divorce, pages 16 – 17;

13 2. Michael's liquidation of the 529 college account;

14 3. Michael's receipt of the Coverdell funds;

15 4. Michael's use of \$7,000.00 from the HELOC secured against the 1242
16 Sonatina Drive, Henderson, Nevada residence awarded to Kerstan in the Decree of Divorce;
17 and
18

19 5. Child support arrearages owed by Michael prior to June 26, 2013.

20 The issues remaining for the Court's consideration are:

21 1. Michael's request to modify custody of the minor child, Isabella (age 17) from
22 primary with Kerstan, to primary with him;

23 2. Michael's request for modification of child support;

24 3. Michael's request to determine child support arrearages after June 26, 2013;

25 4. Prospective child support;
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1 5. Michael's contention that the HELOC was an "omitted debt" from the Decree
2 of Divorce;

3 6. Michael's request for Kerstan to refinance the HELOC, and remove his name
4 from the obligation;

5 7. Kerstan's request to maintain the status quo regarding custody of Isabella, and
6 deny Michael's request for primary physical custody;

7 8. Each party's request for attorney's fees.

8
9 **PHYSICAL CUSTODY OF ISABELLA**

10 There has been a material change in circumstances regarding the physical custody of
11 the minor child, Isabella. Both parties admit that as of August 2013, Isabella has been
12 residing with the paternal grandparents in Reno, Nevada. Isabella moved in with her
13 grandparents to attend school in Reno, and both parents agreed to the move. Both parents
14 also agree that Isabella is doing well in school, and her behavior and grades have improved
15 over the status of the same while she was living primarily with Kerstan in Las Vegas.

16 The Court's primary focus in determining custody is the best interest of the child.
17 Given Isabella's improved grades and behavior, it is this Court's opinion that Kerstan's best
18 interest would be served by her continuing to reside with her paternal grandparents in Reno,
19 Nevada. Since Isabella is, and has been, residing with her paternal grandparents since
20 August 2013, neither parent has primary or shared physical custody of the child after that
21 date. Rather, the parents have consented to the paternal grandparents having primary
22 physical custody of Isabella. The Court orders that Isabella shall remain in the primary
23 custody of the paternal grandparents, and that she may exercise teenage discretion in any
24 visitation with either Michael or Kerstan, given her age of 17 years.
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1 **CHILD SUPPORT ARREARAGES**

2 Any child support arrearages that may have existed as of June 26, 2013 were resolved
3 by the parties at the hearing of this date. It is questionable whether Michael owed any child
4 support arrearages on June 26, 2013, and the Child Support Hearing Master, who
5 summarily ordered a \$100.00 monthly payment toward "arrearages" did not hear any
6 evidence of arrearages at the March 25, 2013 hearing in the R case.
7

8 Kerstan did not file a Schedule of Arrearages supporting alleged child support
9 arrearages owed by Michael after June 26, 2013, and Michael has continued paying
10 \$100.00 per month pursuant to the Child Support Order for unsubstantiated arrearages.
11 Thus, Michael is entitled to a credit of \$1,700.00 for an overpayment (\$100.00 per month
12 for 17 months). Rather than penalize the minor child, Michael, and issue an offset against
13 his entitlement to current support from his father, the Court is ordering that the \$1,700.00
14 be offset against Michael's obligation to repay Kerstan the monies withdrawn from the
15 HELOC account.
16

17 **MODIFICATION OF CHILD SUPPORT**

18 Pursuant to NRS 125B.040(3) "[a]n order of support of a child creates an obligation
19 for the support of the child and follows the child to the person who has obtained lawful
20 physical custody of the child." "Lawful physical custody" as defined in section (12) of the
21 statute encompasses physical custody "[w]ith the consent of the person who has been
22 awarded physical custody of the child pursuant to an order of a court." In this case, Kerstan
23 was awarded primary physical custody of Isabella, and acquiesced to Isabella moving to
24 Reno, Nevada to reside with her paternal grandparents. Thus, the paternal grandparents
25 have "lawful physical custody" of Isabella under the statute. Given this fact, child support
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1 follows the child, and the parental grandparents, not Kerstan, are entitled to receive the
2 support obligation of the parents.

3 It also follows that once Kerstan ceased having primary physical custody of Isabella,
4 she was no longer entitled to receive child support from Michael. Rather, Michael's child
5 support obligation followed Isabella, who resides primarily with her paternal grandparents.
6 However, since neither party, (nor the paternal grandparents) raised this issue until the
7 instant motion, the Court will not revisit historical child support, nor order prospective child
8 support for Isabella. Michael's child support obligation to Kerstan for Isabella shall cease
9 immediately.
10

11 **PROSPECTIVE CHILD SUPPORT**

12 Since Kerstan maintains primary physical custody of the minor child, Michael (age
13 10), his father, Michael, shall continue to pay Kerstan \$714.00 per month as and for this
14 minor child's support, and \$75.00 for medical support, beginning immediately.
15

16 Because the obligation of support follows the child, and neither Michael nor Kerstan
17 are the custodial parent of Isabella, the Court finds they are EQUALLY obligated to the
18 paternal grandparents for the support of Isabella. Once Kerstan ceased having primary
19 physical custody of Isabella, her obligation to support Isabella was triggered under NRS
20 125B.070 et seq. However, the paternal grandparents have not requested child support for
21 Isabella's benefit, so the Court is not ordering the same at this juncture.
22

23 **HELOC AS OMITTED DEBT**

24 Kerstan was awarded the residence located at 1242 Sonatina Drive, Henderson,
25 Nevada, together with the "encumbrance" thereon. While the Decree uses the singular of
26 this term at page 12, wherein Kerstan is awarded the property, at page 15, the parties
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1 included a catch all provision whereby each party assumes responsibility for, indemnifies
2 and holds the other harmless from "...the liabilities associated with the properties awarded
3 to each of them herein." See, Decree of Divorce, filed April 17, 2009.

4 While the HELOC was not specifically designated as Kerstan's liability, it was
5 "associated with the property" awarded to her, namely, the Sonatina residence, and she
6 assumed responsibility for this obligation by paying the same subsequent to the Decree of
7 Divorce in 2009. Kerstan only objected to paying the obligation when the sum of
8 \$7,000.00 was withdrawn and applied to Michael's overdrafted account. This issue was
9 also addressed at the June 26, 2013 hearing when the parties reached an agreement for
10 Michael to pay Kerstan the \$7,000.00.
11

12 The parties are precluded from arguing there has been a mistake of fact 6 years later,
13 when they have both conducted themselves consistent with a course of conduct whereby
14 Kerstan has assumed responsibility for the debt, and Michael has assumed responsibility for
15 his portion of an increase in the debt, to which Kerstan did not consent or acquiesce.
16

17 **REFINANCE OF HELOC**

18 The Decree of Divorce did not require either party to refinance any obligations
19 associated with any property they received. Further, Michael is responsible for actually
20 increasing the balance of the HELOC, thus this Court will not require Kerstan to refinance
21 the HELOC.
22

23 ...

24 ...

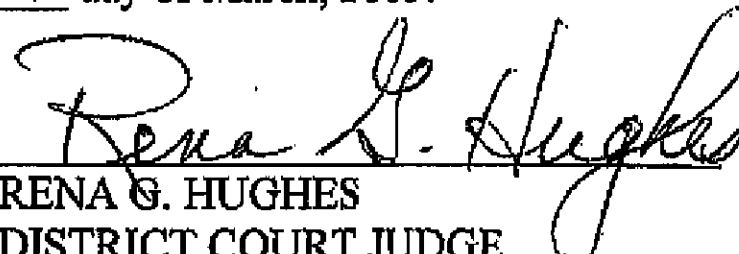
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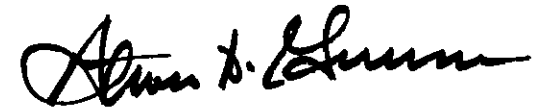
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1 **ATTORNEY'S FEES**

2 The Court finds that neither party is the prevailing party in this matter, and neither
3 party is entitled to an award of attorney's fees.

4 **IT IS SO ORDERED** this 30 day of March, 2015.

5 
6
7 **RENA G. HUGHES**
8 **DISTRICT COURT JUDGE**



CLERK OF THE COURT

MOT
BLACK & LOBELLO
John D. Jones, Esq.
Nevada State Bar No. 6699
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Attorneys for Plaintiff,
KERSTAN HUBBS

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN MICONE,

Plaintiff,

CASE NO.: D-08-388334-D

DEPT. NO.: J

vs.

MICHAEL MICONE,

Defendant.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

MOTION TO RECONSIDER AND/OR SET ASIDE ORDER

Date of Hearing: 06/04/2015

Time of Hearing: 9:00 A.M.

Oral Argument Requested: Yes

COMES NOW, Plaintiff, KERSTAN MICONE, currently HUBBS ("KERSTAN"), by and through her counsel of record, JOHN JONES, ESQ., with Black and LoBello Attorneys at Law, and brings this motion to reconsider and/or in the alternative motion to set aside an order under NRCP 60 (a) and (b)1.

This motion is based upon the Introduction and Background, Points and Authorities, any and all pleadings and papers on file in this matter, and any oral representation that may take

place at the hearing of this motion.

DATED this 13th day of April, 2015.

Respectfully submitted:

BLACK & LOBELLO

Sabrina M. Dolan #13105
for
John D. Jones, Esq.
Nevada Bar No. 006699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiff
KERSTAN HUBBS

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that the undersigned will bring the above and foregoing Motion to Reconsider and/or Set Aside Order on for hearing before the entitled Court on the 4th day of June, 2015, at the hour of 9:00 o'clock a.m., or as soon thereafter as may be heard before the District Court, Family Division, Department J.

DATED this 13th day of April, 2015.

BLACK & LOBELLO

Sabrina M. Dolan #13105
for
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KERSTAN HUBBS

I

INTRODUCTION & BACKGROUND

1. On March 31, 2015, this Court issued an ORDER FROM HEARING JANUARY 15, 2015. KERSTAN would like to provide the Court with the following corrections or arguments to the Court's statement of facts and order(s) as issued. KERSTAN requests that the Court to inquire more into Bella's needs at this time; independently and objectively in a manner the Court deems just.

2. KERSTAN takes issue or objects to the following findings of fact entered without an evidentiary hearing to demonstrate accurate information to the Court:

a. **Child Support Arrears:** KERSTAN properly transferred her rights to child support and enforcement of these rights to the Office of the District Attorney Family Support Division (the "DA") to manage, oversee, and enforce child support payment. KERSTAN does not manage the arrears of Defendant, MICHAEL MICONE ("MICHAEL") in regard to child support; the DA does. Schedule of Arrears should be provided to MICHAEL by the DA, not KERSTAN and she should not be penalized for actions outside of her direct control. Although MICHAEL's intention may have been to waive or remove his arrears; this was not agreed to by KERSTAN. MICHAEL's promises regarding the land on Smith Creek were not fulfilled and were a condition of any waiver of arrears owed to KERSTAN. The DA did not allow MICHAEL to contest arrears at his hearing to modify child support because KERSTAN was not provided proper legal notice of his intent to do so. KERSTAN would be able to provide this Court evidence that if MICHAEL had paid on the land as promised, she would have considered waiving arrears, *but he did not materially perform* and KERSTAN was left to pay all liability on the mortgage. Any arrearages that were "satisfied" by the transfer of land are contested by KERSTAN because the land was and still is underwater, there is no equity in the land to cover arrears and was not agreed upon between the parties or ordered by the

1 Court. As such the finding of the Court is erroneous.

2 **b. Coverdell Account for Tutoring:** Funds from this account were never
3 sent to Isabella Micone. KERSTAN was informed that a check was sent to MICHAEL at
4 his old address in a subsequent email by Kathy Bax. Michael has not fulfilled the order
5 to repay KERSTAN to date. MICHAEL told KERSTAN that he used the funds; not
6 Isabella. As such, the finding of the Court is erroneous.

7 **c. Motion to Stay Hearing of the Child Support Center et al.:** Both
8 parties did not appear before the Court on the day of the hearing because a stipulation and
9 order to vacate or move the hearing was with clerk of the Court, but not filed on time
10 and/or entered on calendar accordingly. MICHAEL had health issues and was not able to
11 sign and send the stipulation expeditiously.

12 3. KERSTAN takes issue or objects to the following ORDER(s) and was not
13 provided an evidentiary hearing to demonstrate accurate information to the Court:

14 **a. Res Judicata:** Overall, Michael did not file an objection to KERSTAN's
15 MOTION TO SHOW CAUSE on June 26th as noted by this Court and he did not file a
16 countermotion to argue arrears at all that day, but merely brought it up through his
17 testimony or noted later on VTS. It was not agreed upon in the Stipulation and Order
18 signed by the parties, thus Res Judicata as to this issue should not apply as it was not
19 ordered by the judge after a hearing on the merits or agreed upon by the parties.
20 KERSTAN would like to remind the Court that MICHAEL has perjured himself in Court
21 before, a simple statement in Court should be backed up with evidence; this has not been.

22 **b. Physical custody of Isabella (hereinafter "Bella"):** KERSTAN has
23 always held out that Bella resides at her Grandparent's home while attending private
24 school; her home is with KERSTAN. KERSTAN agrees that Bella is performing well
25 academically due to a change in schools; *not a change in residence*. KERSTAN and
26 MICHAEL did not consent to a change in custody to a 3rd party at any time. Neither
27 party filed a motion seeking such relief. No evidentiary hearing was held and Bella's
28 grandparents are not parties to this action.

e. **Prospective Child Support:** The calculations for support are not accurate as a change in physical custody was never agreed to between MICHAEL and KERSTAN and KERSTAN is not “detrimental” to Bella; in fact Bella wants KERSTAN to remain her physical custodian and would state the same if interviewed.

POINT AND AUTHORITIES

AA 000294

1 125.500 and binding precedent established in *Ellis v. Carucci* that speaks to a change in physical
2 custody of a minor child. In the alternative, KERSTAN requests that the order be set aside due
3 to errors arising from oversight or omission or errors arising from mistake inadvertence, surprise
4 or excusable neglect.

5 A. Motion to Reconsider

6 A district court may reconsider a previously decided issue if substantially different
7 evidence is subsequently introduced or the decision is clearly erroneous. See *Masonry & Tile*
8 *Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,
9 489 (1997); (citing *Little Earth of United Tribes v. Department of Housing*, 807 F.2d 1433, 1441
10 (8th Cir.1986); see also *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246
11 (1976)).

12 B. Motion to Set Aside Order

13 Under Nevada Rules of Civil Procedure (NRCP): Rule 60 – “Relief from Judgement or
14 Order” a party may motion the court to set aside an order for clerical mistakes. Under NRCP
15 60(a) it states:

- 16
17 (a) Clerical Mistakes. Clerical mistakes in judgments,
18 orders or other parts of the record and errors therein
19 arising from oversight or omission may be corrected by
20 the court at any time of its own initiative or on the
21 motion of any party and after such notice, if any, as the
22 court orders. During the pendency of an appeal, such
mistakes may be so corrected before the appeal is
docketed in the appellate court, and thereafter while the
appeal is pending may be so corrected with leave of the
appellate court.

23 Furthermore, if the mistake is not just clerical in nature, it may be set aside under section
24 60 (b) for mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; or more.
25 as follows:

- 26
27 (b) Mistakes; Inadvertence; Excusable Neglect; Newly
28 Discovered Evidence; Fraud, Etc. On motion and upon
such terms as are just, the court may relieve a party or a

1 party's legal representative from a final judgment,
2 order, or proceeding for the following reasons: (1)
3 mistake, inadvertence, surprise, or excusable neglect;
4 (2) newly discovered evidence which by due diligence
5 could not have been discovered in time to move for a
6 new trial under Rule 59(b); (3) fraud (whether
7 heretofore denominated intrinsic or extrinsic),
8 misrepresentation or other misconduct of an adverse
9 party; (4) the judgment is void; or, (5) the judgment has
10 been satisfied, released, or discharged, or a prior
11 judgment upon which it is based has been reversed or
12 otherwise vacated, or it is no longer equitable that an
13 injunction should have prospective application. The
14 motion shall be made within a reasonable time, and for
15 reasons (1), (2), and (3) not more than 6 months after
16 the proceeding was taken or the date that written notice
of entry of the judgment or order was served. A motion
under this subdivision (b) does not affect the finality of
a judgment or suspend its operation. This rule does not
limit the power of a court to entertain an independent
action to relieve a party from a judgment, order, or
proceeding, or to set aside a judgment for fraud upon
the court. Writs of coram nobis, coram vobis, audita
querela, and bills of review and bills in the nature of a
bill of review, are abolished, and the procedure for
obtaining any relief from a judgment shall be by motion
as prescribed in these rules or by an independent action.

17 The prior order was ruled upon without an evidentiary hearing or a child interview; both
18 requested by KERSTAN's counsel, especially prior to any change in custody. KERSTAN
19 believes that issues of fact remain largely unknown to this court and that with proper
20 presentation by way of a hearing, a different ruling would likely occur. Additionally, Bella's
21 paternal grandparents did not have an opportunity to present their case and it remains unknown if
22 they even want the responsibility of physical custodian. Upon information and belief,
23 KERSTAN can demonstrate that a change in custody is not desired by the paternal Grandparents
24 or Bella and that they would like physical custody to remain with KERSTAN. Below,
25 KERSTAN will demonstrate that time away at school should be considered her custodial time.

26 In determining whether the facts warrant a custody modification, courts should not take
27 the "changed circumstances" prong lightly. *Ellis v. Carucci* 123 Nev. 145 (2007). In Nevada,
28 when a district court determines the custody of a minor child, "the sole consideration of the court

1 is the best interest of the child, which is governed by NRS 125.480. Under *Ellis*, the court has
2 held that a modification of primary physical custody is warranted only when the party seeking a
3 modification proves there has been a substantial change in circumstances affecting the welfare of
4 the child and the child's best interest is served by the modification.

5 Additionally, an award of custody in contravention of NRS 125.500 is invalid or
6 unlawful. The statute states that "Before the court makes an order awarding custody to any
7 person other than a parent, without the consent of the parents, it shall make a finding that an
8 award of custody to a parent would be detrimental to the child and the award to a nonparent is
9 required to serve the best interest of the child.

10 The parties to this action were Bella's father, MICHAEL, who was seeking primary
11 physical custody of Bella and other matters and her mother who was seeking status quo or
12 retaining primary physical custody while Bella was attending Bishop Manogue, a private
13 Catholic school located in Washoe County, NV. There was not a party to the action seeking to
14 change physical custody to the grandparents, and more importantly, the Grandparents and Bella
15 would rather status quo continue (primary physical custody with KERSTAN) and be upheld.
16 KERSTAN and MICHAEL did not consent to Bella's grandparents having physical custody of
17 Bella. The court must make a finding that an award of custody to a parent would be detrimental
18 to Bella and that the award to a nonparent is required. Although the court states that KERSTAN
19 "acquiesced" allowing Isabella to go to private school outside of Clark County, this should not
20 be interpreted as KERSTAN's consent to give physical custody to a third party; that has never
21 been the case and KERSTAN has substantial facts to demonstrate her understanding that
22 physical custody would remain with her. Similar to parents around the world who decide to send
23 their children away to boarding schools, study abroad programs, or military schools, KERSTAN,
24 decided to send her daughter to a school that was outside of their county of residence because it
25 was better for Bella academically.

26 By changing physical custody of Bella, it will change financial and legal matters
27 pertaining to Bella's well-being. This may upset her current schooling as she has one more year
28 until graduation, by pulling necessary support from her reach. The court must protect Isabella's

1 custodial stability. As a change in circumstances is not to be taken lightly, the court should at a
2 minimum speak with third parties to this action such as Bella's grandparents and Bella herself
3 and allow them their due process rights and/or "day in court." KERSTAN's counsel did request
4 that prior to this court making any change in custody, that an evidentiary hearing on the matter
5 and child interview be conducted to examine both the changed circumstance prong and best
6 interest of the child and this did not happen.

7 Although Bella is away at school throughout the school year, other jurisdictions have
8 looked at similar fact patterns and have not made a change in custody due to these types of
9 parenting decisions. In California, the courts have looked at disabled children who have been
10 placed in a care home, children who spend time in daycare, and even children in boarding
11 schools (emphasis added) and have held that it is proper to credit the custodial parent with the
12 parenting time. See *In re Marriage of Whealon*, 53 Cal App. 4th 132; *In re Marriage of DaSilva*,
13 119 Cal. App. 4th 1030 (2004). These cases all led to the conclusion that just because your child
14 does not live with you, it does not necessarily mean that a change of custody is mandated or that
15 the parent should not receive child support. The court in California looks to "primary physical
16 responsibility" not actual custody or presence. *In re Marriage of Drake* 53 Cal. App. 4th 1139,
17 1160 (1997). Overall, parents need to be able to have options for disabled children and children
18 with educational needs who attend school away from home without risking the loss of custody.
19 At times decisions to send children away to school are actually in the child's best interest and
20 should be considered a factor in placing a child in custody of those who support their academic
21 environment. This is the case with Bella, where her primary custodian KERSTAN, placed her in
22 an academic setting that provides her more support for her diagnosed learning disability and that
23 was agreed upon between the parents, her legal custodians. These legal custodians did not
24 consent to a change in physical custody to a 3rd party at any time.

25 KERSTAN can assure the Court that she is not "detrimental to Bella." KERSTAN has
26 done everything she can possibly do to provide the best academic resources, time, love and
27 attention for both of her children and believes that with a proper evidentiary hearing on the
28 matter, including a child interview that this will become apparent to the Court. Just recently,

1 KERSTAN solely paid for Bella's re-evaluation with Dr. Tracy Pitts, PhD for her current 504
2 Plan in order for Bella to receive proper accommodations for college entrance exams and further
3 accommodations in college should she decide to attend university at a later date. KERSTAN
4 readily attends parent functions for Bella when needed, even when they require air travel and
5 time away from her work and residence in Clark County. KERSTAN has an abundance of
6 evidence that can demonstrate that she is a fit and loving parent and in no way is detrimental to
7 her daughter's well-being; the strongest evidence being her daughter's own statement and family
8 members who can attest to her character; including the paternal Grandparents. KERSTAN has
9 amply provided objective evidence to this Court as to why Mike's fitness is not adequate and
10 would likely be detrimental to Bella and again directs the Court to the domestic violence issues,
11 arrests, prior substance abuse, and Dr. Paglini's report.

12 KERSTAN requests the Court to reconsider the current order, or in the alternative, for the
13 order to be set aside under NRCP 60(a) or (b). KERSTAN believes a proper evidentiary hearing
14 on the matter along with an interview with Bella herself will provide the Court with further
15 information to order that physical custody of Bella Micone remain with her mother (status quo)
16 until she is of majority age (18) and has graduated from high school.

17 III

18 CONCLUSION

19 KERSTAN is requesting that this Court reconsider its recent order and/or to set the order
20 aside to allow a proper evidentiary hearing to be conducted on this matter. A change in custody
21 is not warranted at this time as it has been done in contravention of statute and Court precedent.
22 Both MICHAEL and KERSTAN took time to tour the school and speak with the teachers in the
23 Integrated Learning Center before committing Bella to this change in school. Bella resides with
24 her mother, but attends school elsewhere; this is similar to many families around the nation who
25 send their children to boarding school. What the Court is inadvertently saying by this order is
26 that by placing a child in a school away from home; a parent risks a losing custody and support.
27 KERSTAN believes the intent behind NRS 125.500 is to protect the parent-child relationship.
28 Changing Bella's education was not a whimsical decision in which KERSTAN "acquiesced" and

1 simply allowed her daughter to reside with a third party. KERSTAN believes the order should
2 be reconsidered because it is clearly erroneous and/or set aside due to clerical error or to mistake;
3 inadvertence; excusable neglect; newly discovered evidence; fraud; or more. KERSTAN has
4 taken 17 years to raise Bella, six (6) years of which she has served as her primary physical
5 custodian. She is a good parent and not a detriment to her child and asks that this Court
6 interview Bella and allow her paternal Grandparents a voice on this matter as well.

7 DATED this 13th day of April, 2015.

8 Respectfully submitted,

9 BLACK & LOBELLO

10
11 Sabrina M. Dolson #13105
12 John D. Jones, Esq. for
13 Nevada State Bar No. 006699
14 10777 West Twain Avenue, Suite 300
15 Las Vegas, Nevada 89135
16 Attorneys for Plaintiff,
17 KERSTAN HUBBS
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25
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28

**DECLARATION OF KERSTAN MICONE IN SUPPORT OF HER MOTION TO
RECONSIDER AND/OR SET ASIDE ORDER**

KERSTAN MICONE, under penalties of perjury, being first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled action; that I have read the foregoing **MOTION TO RECONSIDER AND/OR SET ASIDE ORDER** and know the contents thereof; that the same is true of my own knowledge except for those matters therein stated on information and belief and as to those matters, I believe them to be true. The allegations contained in the Motion are adopted as if fully set forth in this Declaration.

Dated this 13th day of April, 2015.

currently
Kerstan Micone, Plaintiff
KERSTAN MICONE

MOFI
BLACK & LOBELLO
John D. Jones
Nevada State Bar No. 6699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Telephone No.: 702-869-8801
Facsimile No.: 702-869-2669
Email: jjones@blacklobellolaw.com
Attorneys for Plaintiff,
KERSTAN HUBBS

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KERSTAN MICONE,

Plaintiff,

vs.

MICHAEL MICONE,

Defendant.

CASE NO. D-08-388334-D
DEPT. NO. J

FAMILY COURT MOTION/OPPOSITION
FEE INFORMATION SHEET (NRS 19.0312)

Party Filing Motion/Opposition: <input checked="" type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent										
MOTION FOR/OPPOSITION TO: Motion to Reconsider and/or Set Aside Order										
Motions and Oppositions to Motions filed after entry of a final Order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of \$25.00, unless specifically excluded. (NRS 19.0312) <i>NOTICE: If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.</i>	<u>Excluded Motions/Oppositions</u> <table><tr><td>1. No Final Decree or Custody Order has been entered.</td><td>YES</td><td><input type="checkbox"/> NO</td></tr><tr><td>2. This document is filed <u>solely to adjust the amount of support for a child</u>. No other request is made.</td><td>YES</td><td><input type="checkbox"/> NO</td></tr><tr><td>3. This motion is made for <u>reconsideration</u> or a <u>new trial</u> and is filed within 10 days of the Judge's Order. If YES, provide file date of Order. _____</td><td>YES</td><td><input type="checkbox"/> NO</td></tr></table> <p>If you answered YES to any of the questions above, you are <u>not</u> subject to the \$25 fee.</p>	1. No Final Decree or Custody Order has been entered.	YES	<input type="checkbox"/> NO	2. This document is filed <u>solely to adjust the amount of support for a child</u> . No other request is made.	YES	<input type="checkbox"/> NO	3. This motion is made for <u>reconsideration</u> or a <u>new trial</u> and is filed within 10 days of the Judge's Order. If YES, provide file date of Order. _____	YES	<input type="checkbox"/> NO
1. No Final Decree or Custody Order has been entered.	YES	<input type="checkbox"/> NO								
2. This document is filed <u>solely to adjust the amount of support for a child</u> . No other request is made.	YES	<input type="checkbox"/> NO								
3. This motion is made for <u>reconsideration</u> or a <u>new trial</u> and is filed within 10 days of the Judge's Order. If YES, provide file date of Order. _____	YES	<input type="checkbox"/> NO								
<input checked="" type="checkbox"/> Motion/Opposition IS subject to \$25.00 filing fee <input type="checkbox"/> Motion/Opposition IS NOT subject to filing fee										

Date: April 13, 2015

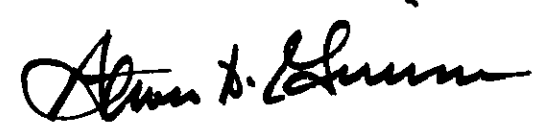
Cheryl Berdahl

Print Name of Preparer

Cheryl Berdahl
Signature of Preparer

CSERV
BLACK & LOBELLO
John D. Jones, Esq.
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KERSTAN HUBBS f/k/a KERSTAN MICONE

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CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KERSTAN MICONE,

Plaintiff,

CASE NO.: D-08-388334-D

DEPT. NO.: J

vs.

MICHAEL MICONE,

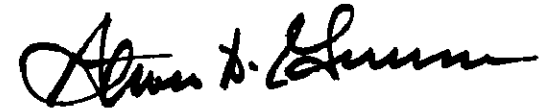
Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of April, 2015 I served a true and correct copy of Plaintiff's **MOTION TO RECONSIDER AND/OR SET ASIDE ORDER**, upon each of the parties by **electronic service** through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R. 9; and by depositing a copy of the same in a sealed envelope in the United States Mail, Postage Pre-Paid, addressed as follows:

Donn W. Prokopius, Esq.
PROKOPIUS & BEASLEY
931 South Third Street
Las Vegas, NV 89101
Email for Service: general@pandblawyers.com
Attorneys for Defendant


an Employee of BLACK & LOBELLO



CLERK OF THE COURT

OPCM
PROKOPIUS & BEASLEY
DONN W. PROKOPIUS, ESQ.
Nevada State Bar No. 006460
JEREMY R. BEASLEY, ESQ.
Nevada State Bar No. 12176
931 South Third Street
Las Vegas, Nevada 89101
(702) 474-0500 / Fax (702) 951-8022
general@pandblawyers.com
Attorney for Defendant,
MICHAEL A. MICONE

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN D. MICONE,

Plaintiff,

vs.

MICHAEL A. MICONE,

Defendant,

CASE NO.: D-08-388334-D

DEPT. NO.: J

DATE OF HEARING: 6/4/2015

TIME OF HEARING: 9:00 A.M.

"NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION/COUNTERMOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE."

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER
AND/OR SET ASIDE ORDER**

AND

**DEFENDANT'S COUNTER MOTION FOR SANCTIONS AND HIS ATTORNEY'S
FEES, COSTS AND RELATED MATTERS**

COMES NOW the Defendant, MICHAEL A. MICONE, by and through his attorney,
DONN W. PROKOPIUS, ESQ., and moves this Honorable Court for the following relief:

1. Denying the relief sought by Plaintiff;
2. For sanctions and for Defendant's attorney's fees and costs incurred in this case;
3. For such other relief as the Court deems just and appropriate in the circumstances.

This opposition and counter motion is made and based upon all the papers and pleadings on file, and the attached affidavit of Defendant and is made in good faith and not to delay justice.

Dated this 1st day of May, 2015.

PROKOPIUS & BEASLEY

/s/ Donn W. Prokopius

DONN W. PROKOPIUS, ESQ.

Nevada State Bar No. 006460

JEREMY R. BEASLEY, ESQ.

Nevada State Bar No. 12176

931 South Third Street

Las Vegas, Nevada 89101

(702) 474-0500 / Fax (702) 951-8022

general@pandblawyers.com

Attorney for Defendant,

MICHAEL A. MICONE

POINTS AND AUTHORITIES

I. RECENT CIRCUMSTANCES

Plaintiff, KERSTAN D. MICONE (hereinafter "KERSTAN") and Defendant, MICHAEL A. MICONE (hereinafter "MICHAEL") were divorced in Clark county, Nevada by a Decree of divorce that was entered on April 17, 2009. There are two minor children born to the parties as a result of the marriage, namely, Isabella Caroline Micone (Bella), born: March 26, 1998, age 16; and, MICHAEL J. Micone, born: January 7, 2005, age 8. Pursuant to the Decree the parties share joint legal custody and share physical custody of their minor children with KERSTAN been designated the children's primary custodian.

1 MICHAEL will respond to KERSTAN'S arguments in the order the appear in her
2 motion:

3 **a. Child Support Arrears**

4 KERSTAN states that she "transferred her rights to child support and enforcement of
5 these rights to the office of the District Attorney Family Support Division to manage, oversee,
6 and enforce child-support payment." Apparently this comment is meant to absolve KERSTAN
7 of any responsibility for monitoring and keeping track of the child support payments. The fact is
8 neither MICHAEL nor his lawyer are aware of any rule, law, statute or case that provides that a
9 litigant such as KERSTAN forfeits rights and responsibilities when she seeks the assistance of
10 the DA to enforce a child support obligation. In fact, NRS125B.150(3) specifically provides that
11 the District Attorney is *not* representing her and is not even acting on her behalf. Rather, the DA
12 is rendering a public service as a representative of the state of Nevada. The statute reads as
13 follows:
14
15

16 3. Except as otherwise provided in NRS 126.101, the district attorney and his deputies do
17 not represent the parent, alleged parent, guardian or child in the performance of their duties
18 pursuant to this chapter and chapter 31A, 126, 130 or 425 of NRS, but are rendering a public
19 service as representatives of the State.

20 Thus, KERSTAN's reliance on the DA is misplaced. It is ultimately her responsibility to
21 keep track of child support payments. KERSTAN admits that she may have agreed to waive
22 child support arrears had MICHAEL fulfilled his promise regarding the land on Smith Creek.
23 KERSTAN did agree to waive child support in consideration for which MICHAEL transferred
24 the land on Smith's Creek to her. KERSTAN acknowledged this arrangement when she sent an
25 email to the DA regarding the transfer of the land in exchange for child support arrears. Greedy
26 to the last, KERSTAN's current complaint is that she claims she and MICHAEL should have
27 been responsible to pay half the costs and certain expenses associated with the land. The parties
28

1 made no such agreement. Moreover, KERSTAN made this same argument at the January 15,
2 2015 hearing. The court had the issue before it and specifically found that no such arrangement
3 existed for the parties' to share costs and also found that KERSTAN did in fact receive the land
4 on Smith Creek as payment for any child support arrears and compensation for other funds
5 MICHAEL received. KERSTAN also ignores the fact that MICHAEL hired a tutor for Bella and
6 KERSTAN offered to pay half. However, when it came time to pay her share KERSTAN
7 refused therefore MICHAEL used the Coverdale to pay for tutoring as well as helping pay for his
8 children expenses while they were spending half the summer with him in Reno. MICHAEL also
9 used the money to pay for travel because KERSTAN never paid for a single flight during this
10 time post-divorce. MICHAEL spent over \$15,000 in travel over the 2 years post-divorce.

13 **b. Coverdale Account for Tutoring:**

14 KERSTAN once again alleges that MICHAEL took funds from a Coverdale Account for
15 tutoring but alleges the funds were never sent to the parties' daughter Bella. The parties have
16 already gone to court over these funds. This issue was specifically addressed at the June 26, 2013
17 hearing. KERSTAN tried to raise it again in opposition to MICHAEL's motion to change
18 custody and this court specifically found at the January 15, 2015 hearing that the matter had
19 already been heard and resolved nearly 2 years before. KERSTAN is now trying to raise the
20 issue for a third time now claiming that the funds were never sent to the parties' daughter Bella.
21 MICHAEL did not withdraw the money with the intention of turning it over to his daughter
22 Bella. When MICHAEL withdrew the funds from the account he did so because he was
23 struggling financially. KERSTAN specifically agreed to let MICHAEL have access to these
24 funds in exchange for which MICHAEL agreed to KERSTAN receiving the land on Smith
25 Creek. MICHAEL subsequently transferred the real estate to KERSTAN. It is disingenuous for
26
27
28

1 KERSTAN to now complain that MICHAEL did not use the funds for Bella. KERSTAN has
2 always known what MICHAEL intended to do with the money from the account.

3 **c. Motion to Stay Hearing of Child Support Center, et al**

4 MICHAEL has absolutely no idea what KERSTAN's point may be in this paragraph and
5 therefore neither he nor his lawyer have any idea what to say in response.

6
7 **3. KERSTAN'S objections to certain of the court's orders issued following the**
8 **January 15, 2015 hearing**

9 **a. Res Judicata**

10 KERSTAN complains that at the June 26, 2013 hearing MICHAEL did not file a counter
11 motion regarding the "arrear". Apparently this comment is meant to suggest that the issue was
12 never actually litigated and therefore *res judicata* does not apply. MICHAEL is unclear what
13 "arrear" KERSTAN is referring to however it does not matter. An issue such as this can be
14 resolved by way of agreement as well as by way of a contested hearing.

15
16 In the case of *Five Star Capital Corp v. Ruby*, 194 P.3d 709 (2008) the Nevada Supreme
17 Court clarified the doctrine of *res judicata* and reiterated that the goal of the doctrine is that final
18 orders of a court, are indeed final. The Supreme Court noted:

19
20 "As stated in Restatement (Second) of Judgments section 19, comment a, the purposes of
21 claim preclusion are "based largely on the ground that fairness to the defendant, and sound
22 judicial administration, require that at some point litigation over the particular controversy come
23 to an end" and that such reasoning may apply "even though the substantive issues have not been
24 tried, especially if the plaintiff has failed to avail himself of opportunities to pursue his remedies
25 in the first proceeding. . . ."

1 In *Five Star*, the Nevada Supreme Court was faced with the task of clarifying and
2 differentiating between the concepts of “claim preclusion” and “issue preclusion” as they applied
3 to the doctrine of *res judicata*.

4 Regarding “claim preclusion”, the Nevada Supreme Court held that there is a three-part
5 test for determining whether claim preclusion should apply: (1) the parties or their privies are the
6 same; (2) the final judgment is valid; and (3) the subsequent action is based on the same claims
7 or any part of them that were or could have been brought in the first case. This test maintains the
8 well-established principle that claim preclusion applies to all grounds of recovery that were or
9 could have been brought in the first case.
10

11
12 Regarding “issue preclusion”, the Supreme Court held:

13 For application of the issue preclusion doctrine, we affirm the validity of the three
14 factors outlined in *Tarkanian* [and applicable to claim preclusion], but we now add a fourth
15 factor to that test to better clarify the distinction between claim and issue preclusion.
16 Specifically, the fourth factor requires that the issue was actually and necessarily litigated. In
17 both *Tarkanian* and *Executive Management*, this court recognized this requirement for issue
18 preclusion but did not include it as a factor in the test for issue preclusion. Accordingly, the
19 following factors are necessary for application of issue preclusion: “(1) the issue decided in the
20 prior litigation must be identical to the issue presented in the current action; (2) the initial ruling
21 must have been on the merits and have become final; . . . (3) the party against whom the
22 judgment is asserted must have been a party or in privity with a party to the prior litigation”;
23 and (4) the issue was actually and necessarily litigated.
24

25
26 Thus, while claim preclusion can apply to all claims that were or could have been raised
27 in the initial case, issue preclusion only applies to issues that were actually and necessarily
28

1 litigated and on which there was a final decision on the merits. The reason for this distinction is
2 because claim preclusion applies to preclude an entire second suit that is based on the same set
3 of facts and circumstances as the first suit, while issue preclusion applies to prevent re-litigation
4 of only a specific issue that was decided in a previous suit between the parties, even if the
5 second suit is based on different causes of action and different circumstances
6

7 In this case, KERSTAN's argument regarding the "arrears" is clearly barred by issue
8 preclusion. Claim preclusion does not apply to these circumstances because the current
9 litigation is not an entirely new or second lawsuit. Rather, this instant motion derives from the
10 original divorce case and the hearing of June 26, 2013. As to the issues, it is clear that the four
11 pronged test of issue preclusion bars KERSTAN's attempt to modify either the original decree
12 of divorce or the subsequent court order from the June 26, 2013 hearing.
13

14 **(1) The issue decided in the prior litigation must be identical to the issue presented in**
15 **the current action.** The issues in question, namely, MICHAEL's liquidation of the life
16 insurance policies, MICHAEL's liquidation of the 529 account, MICHAEL's receipt of the
17 Coverdale funds, MICHAEL's use of \$7000 from the HELOC and the child support arrears
18 were before the Court at the June 26, 2013 hearing and have already been heard and decided in
19 that prior litigation.
20

21 **(2) The initial ruling must have been on the merits and have become final.** The prior
22 rulings were on the merits and have become a final judgment. The Court took evidence and
23 heard argument on these issues at the June 26, 2013 hearing. The Court adopted the stipulated
24 agreement of the parties. KERSTAN prepared the order from the June 26, 2013 hearing and it
25 was entered on August 19, 2013. KERSTAN then prepared and served a notice of entry of
26 order on September 16, 2013. The Order is now a final judgment because KERSTAN's time
27
28

1 limits within which to either rehear/reconsider the order; move to set aside the order; and/or
2 appeal the order have all expired. Indeed, the Nevada Supreme Court has specifically ruled that
3 a property distribution becomes a final judgment six months after the entry of the order *Kramer*
4 *v. Kramer*, 96 Nev. 759, 616 P.2d 395 (1980) (Absent specific authorization for continuing
5 jurisdiction over property rights, NRCP 60(b) governs motions to modify property rights
6 established by divorce decrees... a district court is without jurisdiction to modify a decree
7 regarding the property distribution six months after the decree was entered).

8
9 **(3) The party against whom the judgment is asserted must have been a party or in**
10 **privity with a party to the prior litigation".** In this case the party against whom the judgment
11 is asserted is KERSTAN. She was a party to the prior litigation and in fact has been a party
12 throughout these entire proceedings.
13

14 **(4) The issue was actually and necessarily litigated.** The issues in question were
15 actually and necessarily litigated. KERSTAN is the one who raised these very same issues in
16 the motion that she filed that resulted in the hearing of June 26, 2013. She is the one that
17 brought them before the court and she is the one who agreed to a disposition of the issues as
18 embodied in the stipulation the parties agreed to. The foregoing analysis establishes that the
19 issues of MICHAEL's liquidation of the life insurance policies, MICHAEL's liquidation of the
20 529 account, MICHAEL's receipt of the Coverdale funds, MICHAEL's use of \$7000 from the
21 HELOC and the child support arrears have already been heard and decided and are *res judicata*.
22 It is too late for KERSTAN to revisit these issues a third time.
23
24

25 **b. Physical Custody of Bella**

26 This paragraph of KERSTAN's motion is by far the most bizarre. KERSTAN claims that
27 although Bella lives with MICHAEL's parents in Reno the child's "home is with KERSTAN".
28

1 KERSTAN has not bothered to define what she means by the child's "home". Apparently she
2 does not want to get bogged down in semantics. The Nevada Supreme Court has never adopted
3 KERSTAN'S concept of "home". It held that in order for a parent to assert some measure of
4 custody (i.e., joint, primary or sole) the child must reside with that parent. This is clear from the
5 Nevada Supreme Court's opinion in *Rivero v. Rivero*, 216 P.3d 213 (2009), where the Nevada
6 Supreme Court held

8 "The district court should calculate the time during which a party has physical custody of
9 a child over one calendar year. Each parent must have physical custody of the child at least 40
10 percent of the time, which is 146 days per year. Calculating the timeshare over a one-year period
11 allows the court to consider weekly arrangements as well as any deviations from those
12 arrangements such as emergencies, holidays, and summer vacation. *In calculating the time
13 during which a party has physical custody of the child, the district court should look at the
14 number of days during which a party provided supervision of the child, the child resided with
15 the party, and during which the party made the day-to-day decisions regarding the child.* The
16 district court should not focus on, for example, the exact number of hours the child was in the
17 care of the parent, whether the child was sleeping, or whether the child was in the care of a third-
18 party caregiver or spent time with a friend or relative during the period of time in question. *Id.*
19 (Emphasis added).

20 Obviously if KERSTAN is going to claim that she remains Bella's primary physical
21 custodian is not enough to say that KERSTAN's house is the child's "home" or that KERSTAN
22 never intended to relinquish custody. She must show that Bella lives with her and that she
23 provides for the child's day to day care and supervision. Obviously, KERSTAN is doing none of
24 this. Thus, this court correctly concluded that because Bella was no longer living with
25 KERSTAN, she is no longer Bella's primary physical custodian.

26 KERSTAN claims that neither she nor MICHAEL consented to a change in custody to a
27 third party at any time. The parties do not have to consent to a change in custody. The change in
28 custody can come about by virtue of circumstances that create a de facto modification, which is
exactly what occurred in this case. KERSTAN complains that no evidentiary hearing was held.
None was necessary because KERSTAN failed to meet the standard of *Rooney v. Rooney*, 109

1 Nev. 540, 853 P.2d 123 (1993). She failed to demonstrate "adequate cause" for holding a
2 hearing. Both parties acknowledged that Bella had been living with MICHAEL's parents in
3 Reno for the past year. There would be no point in holding a hearing on an issue that was not in
4 dispute. Yet, KERSTAN claims that MICHAEL's parents are not a party to this action. They
5 don't have to be a party to this action. The court has jurisdiction to issue orders that are in the
6 child's best interests (see NRS125.510(a). The court clearly found based on the circumstances
7 that it would be in Bella's best interests to remain living with MICHAEL's parents. Subsequent
8 circumstances have proven the Court's decision to be the right one. Bella is doing well and now
9 sees MICHAEL far more than she used to now that the court has given her teenage discretion.
10 Bella feels free to see MICHAEL more frequently and she likes the fact she is no longer in the
11 middle of parental disputes. Bella for instance recently spent the entire weekend with
12 MICHAEL when MICHAEL's son was with him for visitation. This was the first time in a year
13 and Bella was able to do so because of the court's order giving her teenage discretion. Bella has
14 also been able to spend time with KERSTAN's family as well.

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18 **c. Child Support Arrears.**

19 KERSTAN claims that whether or not MICHAEL owes for child support arrears has not
20 been adequately reviewed but she also complains that she was not required to file a schedule of
21 arrears after June 26, 2013. She claims her updated accounting from the DA was sufficient.
22 E.D.C.R. 5.33 requires KERSTAN to file a schedule of arrears, whether she likes it or not. The
23 DA'S accounting cannot be relied upon because the DA was not continuously collecting child
24 support via wage withholding. There were gaps in its collection of child support. Therefore it is
25 anyone's guess how the DA arrived at the numbers contained in its accounting. MICHAEL
26 specifically questioned the DA'S audit summary which supposedly showed he owed \$10,518 in
27
28

1 arrears because the audit was two years out of date. The Chase payment record KERSTAN
2 included with her opposition to MICHAEL'S change custody motion revealed that MICHAEL
3 has made consistent child support payments over the last several years and owed no arrears – a
4 fact that now gets no mention in KERSTAN'S motion. MICHAEL did file an audit request with
5 the DA to review his child support payment history and he has requested a hearing to resolve the
6 issue. Moreover, as noted previously, the transfer of the Smith Creek property to KERSTAN
7 was meant in part to pay any arrears that were owed. In these proceedings, there is only one way
8 to resolve the arrears issue. If KERSTAN is going to claim she is owed child support arrears it is
9 incumbent upon her to produce a sworn schedule of arrears as required by E.D.C.R. 5.33. Only
10 then can MICHAEL compare his record of payments with the arrears KERSTAN claims she is
11 owed. MICHAEL would note that he believes he owes no arrears whatsoever not only for the
12 reasons previously discussed but in December of 2014 he was able to obtain a passport, which
13 would have been denied to him if he owed child support arrears.
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17 **d. Modification of Child Support.**

18 In support of this argument KERSTAN once again regurgitates the nonsense about Bella
19 living with MICHAEL's parents in Reno but KERSTAN remaining the children's primary
20 custodian. This argument is been previously addressed. The court correctly found that because
21 Bella is not living with KERSTAN or MICHAEL neither party could claim child support from
22 the other. Rather, if anyone is to be paying child support KERSTAN and MICHAEL should be
23 paying it to MICHAEL's parents. It goes without saying that KERSTAN has never given
24 MICHAEL's parents any financial assistance other than what MICHAEL paid to his parents in
25 lieu of child support to KERSTAN. MICHAEL was paying \$870 a month to KERSTAN even
26 though he was unemployed and waiting for the hearing on his motion but KERSTAN never
27
28

1 forwarded the full amount to MICHAEL'S parents. She was only sending \$300 at most but
2 never the full amount. KERSTAN stated to MICHAEL that she needed the extra money to fly to
3 Reno to see Bella. These circumstances however have not stopped KERSTAN from continuing
4 to ask MICHAEL for money. MICHAEL has not responded because he alone has been the one
5 paying child support during the time that Bella has been living in Reno. Fortunately for
6 KERSTAN, MICHAEL's parents have never asked for any financial assistance from her
7 however, MICHAEL submits it is time for the Court to order KERSTAN to begin paying her fair
8 share.
9

10
11 **e. Prospective Child Support**

12 KERSTAN for the third time complains that she never agreed to a change in physical
13 custody and that she remains the child's primary physical custodian and therefore she presumably
14 wants child support. KERSTAN is not entitled to child support as long as Bella is not living
15 with her.
16

17 **II. ARGUMENT**

18 **1. KERSTAN'S REQUEST TO RECONSIDER OR SET ASIDE**
19 **THE ORDER FROM THE JANARY 15, 2015 HEARING**

20 **a. Rehear/Reconsider the January 15, 2015 Hearing**

21 **EDCR 2.24 states:**

22 **Rehearing of motions.**

23 (a) No motion once heard and disposed of may be renewed in the same cause, nor may
24 the same matters therein embraced be reheard, unless by leave of the Court granted upon motion
therefor, after notice of such motion to the adverse parties.

25 (b) A party seeking reconsideration of a ruling of the Court, other than an order which
26 may be addressed by motion pursuant to NRCp 50(b), 52(b), 59 or 60, must file a motion of such
27 relief within 10 days after service of written notice of the order or judgment unless the time is
shortened or enlarged by order. A motion for rehearing or reconsideration must be served,
noticed, filed and heard as is any other motion. A motion for rehearing does not toll the 30 day
period for filing a notice of appeal from a final order or judgment.

28 (c) If a motion for rehearing is granted, the Court may make a final disposition of the
cause without re-argument or may restore it to the calendar for re-argument or resubmission or

1 may make such other orders as are deemed appropriate under the circumstances of the particular
2 case. (Amended 12-5-86, eff. 2-3-87)

3 The case of *Masonry and Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 941
4 P.2d 487 (1997) sets forth the standard to be applied by the district Court in assessing a request
5 to reconsider. In *Masonry and Tile* the Nevada Supreme Court held that a district Court may
6 reconsider a previously decided issue if substantially different evidence is subsequently
7 introduced or the decision is clearly erroneous.
8

9 The gist of KERSTAN's argument is her objection to the fact that the court allowed Bella
10 to remain living with MICHAEL's parents in Reno and the court's finding that MICHAEL's
11 parents were the child's actual physical custodian. KERSTAN has offered no new evidence in
12 her motion that would indicate the court's decision should be altered. She simply objects to
13 MICHAEL's parents being designated the child's custodian and argues that she never agreed to
14 that arrangement. As noted previously, KERSTAN does not have to agree to a change in
15 custody. KERSTAN did agree to Bella moving to Reno and living with MICHAEL's parents.
16 She does not dispute this fact. KERSTAN also does not dispute that Bella has been doing well in
17 school and that the change has proven beneficial for the child. Therefore, these events constitute
18 a de facto change in circumstances that meet the two-pronged standard of *Ellis v. Carucci*, 167
19 P3rd 239 (Nev. 2007) and support the court's decision to modify custody. In support of her
20 argument KERSTAN cites the case of *In Re Marriage of Whealon*, 53 Cal App. 4th 132 (1997).
21 The facts of *Whealon* have absolutely no application to KERSTAN's argument. *Whealon*
22 involved the case where the mother who had primary physical custody of the minor child sought
23 to relocate for employment purposes and take the child with her. KERSTAN agreeing to send
24 Bella to Reno to go to school and live with MICHAEL's parents is an entirely different situation.
25 KERSTAN also cited the case of *In Re Marriage of DaSilva*, 199 Cal App. 4th 1030 (2004). This
26
27
28

1 case also has no relevance. *DaSilva* involved imputing a time share to the parents for the purpose
2 of calculating child support under California's child support guidelines. KERSTAN also cites
3 the case of *In Re Marriage of Drake* 53 Cal App. 4th 1139 (1997) which dealt with an issue
4 similar to *DaSilva* regarding the imputation of timeshare for the purpose of calculating child
5 support. All three cases are from California and are therefore not binding authority. The two
6 latter cases deal with the interpretation and application of California's statutory child support
7 scheme. They have no relevance or bearing on how this court chose to decide the custodial issue
8 in the instant case. KERSTAN has offered no new evidence in support of her motion to
9 reconsider and she has failed to show that this court's decision regarding the custody issue was
10 clearly erroneous. Therefore her motion to reconsider the January 15, 2015 hearing must be
11 denied.
12

13
14 **b. In The Alternative, Setting Aside The Order Entered March 31, 2015**

15 **RULE 60. RELIEF FROM JUDGMENT OR ORDER**

16
17 **NRCP60(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence;**
18 **Fraud, Etc.** On motion and upon such terms as are just, the Court may relieve a party or a
19 party's legal representative from a final judgment, order, or proceeding for the following
20 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence
21 which by due diligence could not have been discovered in time to move for a new trial under
22 Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation
23 or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been
24 satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or
25 otherwise vacated, or it is no longer equitable that an injunction should have prospective
26 application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3)
27 not more than 6 months after the proceeding was taken or the date that written notice of entry of
28 the judgment or order was served. A motion under this subdivision (b) does not affect the finality
of a judgment or suspend its operation. This rule does not limit the power of a Court to entertain
an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a
judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela, and bills
of review and bills in the nature of a bill of review, are abolished, and the procedure for
obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an
independent action.

1 KERSTAN has requested in the alternative that the order entered March 31, 2015 be set
2 aside. The case of *Leslie vs. Leslie*, 941 P.2d 451 (Nev. 1997), provides that when the Court
3 assesses a Rule 60(b) request, the Court must analyze whether the movant (1) promptly applied
4 to remove the judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith;
5 (4) lacked knowledge of procedural requirements; and (5) tendered a meritorious defense. The
6 Nevada Supreme Court later eliminated the requirement that a movant tender a meritorious
7 defense. *Epstein v. Epstein*, 113 Nev. 1401, 950 P.2d 771 (1997).

9 KERSTAN has not even bothered to analyze the foregoing elements let alone
10 demonstrate that they apply to her request. Throughout these proceedings KERSTAN has been
11 represented by an attorney. She has had the opportunity to present her evidence and make her
12 arguments to the court. She has made no showing whatsoever that her actions in these
13 proceedings constitute mistake, inadvertence, surprise, or excusable neglect. Consequently,
14 there is no basis to set aside the order entered March 31, 2015.

17 2. ATTORNEY'S FEES

18 **NRS 18.010 provides as follows:**

19 2. In addition to the cases where an allowance is authorized by specific statute, the
Court may make an allowance of attorney's fees to a prevailing party:

- 20 (a) When he has not recovered more than \$20,000.00; or
21 (b) Without regard to the recovery sought, when the Court finds that the claim,
22 counterclaim, cross-claim or third party complaint or defense of the opposing party was brought
without reasonable ground or to harass the prevailing party.

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

26 In a long line of cases, the Nevada Supreme Court has held that attorney's fees may be
27 awarded in a post divorce action pursuant to NRS18.010 and NRS125.150(3). See *Sargeant v.*
28 *Sargeant*, 88 Nev. 223, 495 P.2d 618 1972); *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342

1 (1971); *Korbel v. Korbel*, 101 Nev. 140, 696 P.2d 993 (1985); *Fletcher v. Fletcher*, 89 Nev 540,
2 516 P.2d 103 (1973); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998); and, *Love v.*
3 *Love*, 114 Nev. 572, 959 P.2d 523 (1998). In the case of *Miller v. Wilfong*, 119 P.3d 727
4 (2005) the Nevada Supreme Court held that it is within the trial Court's discretion to determine
5 the reasonable amount of attorney fees under a statute or rule and that in exercising its discretion,
6 the district Court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank*,
7 85 Nev. 345, 455 P.2d 31 (1969), including the qualities of the advocate, the character and
8 difficulty of the work performed, the work actually performed by the attorney, and the result
9 obtained. In this case, MICHAEL'S counsel is an experienced attorney who has litigated
10 numerous divorce, custody, paternity and post-divorce actions. The legal representation in this
11 case involved the collection and analysis of the pertinent information, the preparation of legal
12 documents and Court appearances. MICHAEL'S counsel expects to obtain a good result based
13 on the facts of the case. MICHAEL is therefore requesting that he have an award of attorney's
14 fees and sanctions in the sum of \$5,000.00 .

15
16
17
18 WHEREFORE, let and an order issue granting the relief requested by Defendant.

19 Dated this 1st day of May, 2014.

20
21 **PROKOPIUS & BEASLEY**

22 /s/ Donn W. Prokopius

23 DONN W. PROKOPIUS, ESQ.

24 Nevada State Bar No. 006460

25 JEREMY R. BEASLEY, ESQ.

26 Nevada State Bar No. 12176

27 931 South Third Street

28 Las Vegas, Nevada 89101

(702) 474-0500 / Fax (702) 951-8022

general@pandblawyers.com

Attorney for Defendant,

MICHAEL A. MICONE

1 **DECLARATION OF DEFENDANT, MICHAEL A. MICONE**

2 MICHAEL A. MICONE, first being duly sworn, deposes and says:

- 3 1. That Affiant is the Defendant in the above-entitled matter. That I have read the
- 4 foregoing Opposition and Counter motion, including the points and authorities
- 5 and any exhibits attached thereto, and the same are true and correct to the best of
- 6 my knowledge and belief.
- 7
- 8 2. I respectfully request that this Honorable Court grant my foregoing Opposition
- 9 and Counter motion.
- 10

11 /S/ Michael A. Micone

12 **MICHAEL A. MICONE**

13

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1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of PROKOPIUS & BEASLEY, and on the 1st
3 day of May 2015, I caused the **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION**
4 **TO RECONSIDER AND/OR SET ASIDE ORDER AND DEFENDANT'S COUNTER**
5 **MOTION FOR SANCTIONS AND HIS ATTORNEY'S FEES, COSTS AND RELATED**
6 **MATTERS** to be served as follows:
7

8 [x] Pursuant to EDCR 8.05(a) EDCR 8.05(f) and Administrative Order 14-2
9 captioned "In the Administrative Matter of Mandatory Electronic Service in the
10 Eight Judicial" by mandatory electronic service through the Eight Judicial District
Court's electronic filing system;

11 [x] by placing same to be deposited for mailing in the United States Mail, in a sealed
12 envelope which first class postage was prepaid in Las Vegas, Nevada;

13 [] Pursuant to EDCR 7.26 to be sent via facsimile or e-mail, by duly executed
14 consent for service by electronic means;

15 To the Attorney's listed below at the address, email address, and/or facsimile
16 number indicated below:

17 John D. Jones, Esq.
18 BLACK & LoBELLO
19 10777 West Twain Ave., Suite 300
20 Las Vegas, NV 89135
21 E-Mail: jjones@blacklobello.com
Attorney for Plaintiff,
KERSTAN HUBBS

22
23 /s/ Alex Gomez
24 An employee of PROKOPIUS & BEASLEY
25
26
27
28

0001

DISTRICT COURT
CLARK COUNTY, NEVADA

KERSTAN D. MICONE,

Plaintiff(s),

-VS-

MICHAEL A. MICONE,

Defendant(s).

CASE NO. D-08-388334-D

DEPT. NO. J

FAMILY COURT
MOTION/OPPOSITION FEE
INFORMATION SHEET
(NRS 19.0312)

Party Filing Motion/Opposition: ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

MOTION FOR OPPOSITION TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO
RECONSIDER AND/OR SET ASIDE ORDER AND DEFENDANT'S COUNTER MOTION FOR
SANCTIONS AND HIS ATTORNEY'S FEES ET. AL.

**Motions and Oppositions to Motions
filed after entry of a final order
pursuant to NRS 125, 125B or 125C are
subject to the Re-open filing fee of
\$25.00, unless specifically excluded.
(NRS 19.0312)**

NOTICE:

*If it is determined that a motion or opposition is filed
without payment of the appropriate fee, the matter may
be taken off the Court's calendar or may remain
undecided until payment is made.*

Mark correct answer with an "X."

1. No final Decree or Custody Order has been
entered. ☒ YES ☐ NO
2. This document is filed solely to adjust the amount of
support for a child. No other request is made.
☐ YES ☒ NO
3. This motion is made for reconsideration or a new
trial and is filed within 10 days of the Judge's Order
If YES, provide file date of Order: _____
☐ YES ☒ NO

If you answered YES to any of the questions above,
you are not subject to the \$25 fee.

Motion/Opposition ☐ IS ☒ IS NOT subject to \$25 filing fee

Dated this 1ST DAY of MAY, 20015

Printed Name of Preparer

Signature of Preparer


CLERK OF THE COURT

RPLY
BLACK & LOBELLO
John D. Jones, Esq.
Nevada State Bar No. 6699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Telephone Number: (702) 869-8801
Fax Number: (702) 869-2669
Email Address: jjones@blacklobello.com
Attorneys for Plaintiff,
KERSTAN HUBBS

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN MICONE,

Plaintiff,

CASE NO.: D-08-388334-D
DEPT. NO.: J

vs.

MICHAEL MICONE,

Defendant.

PLAINTIFF'S REPLY AND OPPOSITION TO DEFENDANT'S COUNTERMOTION

COMES NOW, Plaintiff, KERSTAN MICONE, currently HUBBS ("KERSTAN"), by and through her counsel of record, JOHN JONES, ESQ., with Black and LoBello Attorneys at Law, and brings PLAINTIFF'S REPLY AND OPPOSITION TO DEFENDANT'S COUNTERMOTION.

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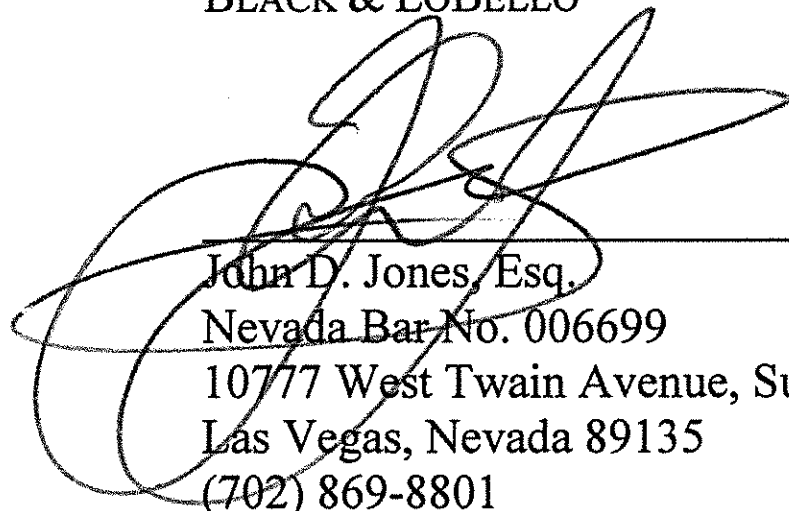
///

This response and this opposition are based upon the Introduction, Points and Authorities, any and all pleadings and papers on file in this matter, and any oral representation that may take place at the hearing on June 4, 2015.

DATED this 1 day of June, 2015.

Respectfully submitted:

BLACK & LOBELLO



John D. Jones, Esq.
Nevada Bar No. 006699
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiff
KERSTAN HUBBS

I.

INTRODUCTION

On September 14th of 2014, Defendant, MICHAEL MICONE ("MICHAEL"), filed a motion to modify custody concerning the parties' eldest daughter, BELLA. KERSTAN had physical custody of BELLA, but both parties had decided to enroll her in a private Catholic School in Reno, Nevada in order to further BELLA's academic learning environment. While attending school, BELLA stayed with her paternal grandparents: Charles and Carol Burr.

KERSTAN opposed MICHAEL's motion and countermotioned for status quo on October 1, 2014.

On March 31, 2015, this Honorable Court issued an order from the hearing on January 15, 2015. The most important ruling being that physical custody of the parties' eldest daughter BELLA be modified, with the Court granting physical custody to the paternal grandparents.

On April 13, 2014, KERSTAN timely motioned the Court to reconsider or in the alternative petitioned the court to set aside the order. KERSTAN requested an evidentiary hearing to obtain a decision on the merits with all factual information before the Court.

On May 1, 2015, MICHAEL opposed KERSTAN's motion to reconsider et al. and
countermotioned for sanctions and attorney's fees.

KERSTAN believes MICHAEL is filing this opposition and countermotion solely to
keep the current orders in place, which do not order him to financially support BELLA by court
order.

MICHAEL has not opposed the order in any manner, although it is contrary to his motion
to modify custody because the original motion was never about obtaining custody of BELLA,
but rather eliminating his requirement to pay child support for BELLA.

KERSTAN believes that MICHAEL does not want an evidentiary hearing as this may
support her arguments and motion to reconsider or in the alternative her petition to set aside.

II.

POINT AND AUTHORITIES

KERSTAN would like to briefly respond to various arguments and interpretations of
Nevada law provided to the Court in MICHAEL's recent opposition and countermotion under
Part One "Response to Opposition". In Part Two, KERSTAN will provide her opposition to
MICHAEL's countermotion for sanctions, his attorney's fees, costs and related matters.

PART ONE – RESPONSE TO OPPOSITION

**A. A SCHEDULE OF ARREARS IS REQUIRED WHEN A *MOVING PARTY*
ALLEGES THE OTHER PARTY IS IN AREARS IN PAYMENT OF PERIODIC
CHILD SUPPORT.**

EDCR 5.33 SPEAKS to a Schedule of Arrears during motions for judgment due to
arrears in periodic payments of child support. It states that:

"In any case where a party alleges the other party is in arrears in payment
of periodic child support, ... and *requests relief by motion*, that party
(emphasis added) shall file with the motion a schedule of arrears showing
when each periodic payment was due and how much was paid, if any, on
the due date..."

It goes on to state that the schedule should be on a court approved form.

KERSTAN did not request relief by motion; not back at the March 25th Child Support
Hearing or at the June 26th hearing before Judge Pollock in 2013 or in the current opposition and

1 countermotion before the Court. Rather, KERSTAN assigned her child support to the State of
2 Nevada for enforcement once MICHAEL fell behind in payment as ordered under the parties'
3 decree. It is important to note that MICHAEL has motioned the Court and challenged arrears;
4 not KERSTAN.

5 The State of Nevada, by way of the District Attorney's office collects and disburses child
6 support and reports THIS data or information under NRS 125B.160. The DA, by way of the
7 Division of Welfare and Supportive Services of the Department of Health and Human Services,
8 *has provided MICHAEL a schedule of arrears* and MICHAEL continuously does not explain to
9 the Court why that is not sufficient, but rather turns and points a finger at KERSTAN.
10 MICHAEL clearly states he is contesting the arrears with the DA's office. If MICHAEL's
11 counsel is correct, that the DA does not "represent her", then why does KERSTAN need to
12 answer MICHAEL when the DA furnishes a report to him, does KERSTAN speak for the DA?
13 KERSTAN *has never been ordered to produce a Schedule of Arrears* and would be happy to do
14 so, but does not believe she has been obligated to do so, especially when she has not requested
15 relief by motion. If MICHAEL does not agree to the arrears MICHAEL can provide evidence
16 that contradicts the DA's findings and challenge the report. MICHAEL is the moving party and
17 must do some work on this matter himself.

18 MICHAEL argues that child support arrears were paid under the transfer of underwater
19 real property. The property was a liability, draining additional funds from KERSTAN each
20 month as she fulfilled MICHAEL's obligation of making a monthly mortgage payment on the
21 Graeagle "Smith Creek" property. MICHAEL stubbornly refused to transfer the property and
22 even said that he would "rather see it burn" then for KERSTAN to own the land.

23 All the Court has to do is follow the math and see the land did not have any equity and
24 was not a form of consideration for the late arrears; the land was a liability. Prior to KERSTAN
25 taking ownership of the land, MICHAEL did state that he would "help" her make the payment
26 and he would pay ½ of the mortgage and that they would be partners, he pleaded with
27 KERSTAN to inform the DA. However, MICHAEL never paid anything on the land and this
28 "help" was a condition of any waiver on KERSTAN's part. KERSTAN represented to the DA

1 that they were looking at options to the late arrears on real property. KERSTAN clearly
2 represented to the DA that any such arrangement would result in the formal drafting of an
3 operating agreement in writing, but this never took place because MICHAEL did not provide any
4 support to KERSTAN or function as a partner in terms of sharing any of the liability.

5 Lastly, KERSTAN has included a Custodian Financial Audit from the DA's office. This
6 audit reflects \$2,854.00 in arrears, \$1,306.71 in interest, and \$285.60 in penalties, totaling
7 \$4,446.31. See Exhibit 1 – District Attorney Case No. UPI-249753200A. The Court will see
8 that MICHAEL paid nearly \$10,005.83 during the month of November of 2014 (page 9 of 10).
9 These funds were paid because the DA's office would not let MICHAEL have a new passport
10 issued to visit an old acquaintance in Costa Rica. As the trip was important to MICHAEL, the
11 funds were paid. The entire time MICHAEL had the funds, but chose not to pay the arrears until
12 is hurt his travel plans. MICHAEL has deemed the payment of the arrears a "credit" to
13 KERSTAN, even though the DA's office has reflected different figures on the audit. See Exhibit
14 2 – Email Correspondence from MICHAEL to KERSTAN 2/19/2015. MICHAEL and
15 apparently MICHAEL's counsel attempt to stigmatize KERSTAN as "greedy to the last"
16 apparently deferring child support owed to the children as some form of payment to KERSTAN.
17 KERSTAN requests that the Court reflect on the purpose of child support and that these funds be
18 interpreted correctly as support is for the parties' son MICHAEL and BELLA, this argument is
19 not about alimony.

20 **B. RES JUDICATA SHOULD NOT APPLY TO CHILD SUPPORT ARREARS**
21 **UNDER CLAIM OR ISSUE PRECLUSION AS THERE WAS NO FINAL**
22 **JUDGMENT ON THE MATTER, THE ISSUE ALTHOUGH MENTIONED**
23 **BRIEFLY, WAS NEITHER DECIDED ON THE MERITS AND DID NOT**
24 **BECOME FINAL, NOR WAS THE ISSUE ACTUALLY AND NECESSARILY**
25 **LITIGATED.**

26 MICHAEL and his counsel are correct that under *Five Star Capital, Corporation v. Ruby*,
27 124, Nev. 1048 (2008) the issue preclusion test should apply rather than the claim preclusion test
28 as to child support arrears as there was clearly no final judgment on this matter issued by the
Court, even the order lacked any mention of child support arrears. KERSTAN will not address
all other matters mentioned by MICHAEL and his Counsel as these are not at issue in her motion

1 for reconsideration, only that certain findings noted in the order were incorrect, specifically as it
2 relates to the Coverdale Account. It is clear MICHAEL took \$248,593.33 in funds under
3 accounts that were set aside for his children.

4 Concerning the child support arrears, under *Five Star*, the court has held that issue
5 preclusion applies if: 1) the issue decided in prior litigation is identical to the issue presented in
6 the current action; 2) the initial ruling had been on the merits and become final, 3) the party
7 against whom the judgment is asserted had been a party or in privity with a party to the prior
8 litigation; and 4) the issue were actually and necessarily litigated. *Id* at 1055.

9 KERSTAN concedes that third prong is met; the current parties are the same as to the
10 June 26th hearing. However all other prongs of *Five Star* are clearly not met. Under the first
11 factor, the issue decided in the prior litigation must be identical to the issue presented in the
12 current action; this is not the case here, we have no idea as to the amount of “arrears” briefly
13 mentioned on record as compared to those at issue at this time as 24 months have passed since
14 the June 2013 hearing. Under the second factor, the issue of arrears was clearly not decided on
15 the merits. Judge Pollock did not even know the value of the property at issue, the amount due
16 in arrears, and it was not even known if there was sufficient equity in the land to cover any
17 arrears. This statement on record does not reflect a clear decision on the merits of child support
18 arrears due. Under the fourth factor, the matter was not actually or necessarily litigated. In
19 Nevada, an issue must be “actually litigated”, *not simply that a party had an opportunity to*
20 *litigate the issue. In re Sandoval*, 126 Nev. Adv. Op. 15, 232 P.3d 422, 425 (2010). KERSTAN
21 and MICHAEL obviously did not actually litigate this issue. There was no evidence provided to
22 the Court, the Court made no finding of fact, KERSTAN did not even have notice that
23 MICHAEL would raise the issue of arrears as he had failed to file an opposition or
24 counter motion. The issue of arrears came out of nowhere and was thrown into the record; this
25 cannot be deemed a “matter actually litigated”, even if KERSTAN was provided notice that this
26 was going to be lumped into the hearing, under Nevada law, simply having the opportunity to
27 litigate does not mean it was “actually litigated.”
28

1 C. MICHAEL AND HIS COUNSEL MISAPPLY *ROONEY V. ROONEY* AS THE
2 HOLDING DOES NOT APPLY TO NON-MOVING PARTIES UNDER A
3 MOTION TO MODIFY CUSTODY, THEREFORE KERSTAN WAS NOT
4 REQUIRED TO PROVIDE "ADEQUATE CAUSE" AND DENIAL OF THE
5 EVIDENTIARY HEARING WAS HARMFUL TO BELLA.

6 This is the second time MICHAEL's counsel misapplies a Nevada court holding to
7 misconstrue the court. See Page 1 and 2 of Plaintiff's Brief Reply to Defendant's Reply to
8 Opposition concerning the application of *McMonigle v. McMonigle* 110 Nev. 1407, 887 P.2d 742
9 (1994). MICHAEL's counsel states that Kerstan has not met the standard in *Rooney v. Rooney*,
10 109 Nev. 540 (1993) and that KERSTAN failed to demonstrate "adequate cause" for holding a
11 hearing. However, the real holding states that the district court may "deny a *motion to modify*
12 *custody* without holding a hearing unless the *moving party* demonstrates "adequate cause" for
13 holding a hearing." KERSTAN was not the moving party asking for the Court to modify
14 custody; the moving party was MICHAEL. Thus it was proper to deny MICHAEL's motion for
15 lack of adequate cause. This holding does not apply to a non-moving party who simply wants to
16 keep the same custody that is already in place, which was Kerstan maintaining primary custody.
17 The Court has stated that "adequate cause" arises where the *moving party presents a prima facie*
18 *case for modification*. To constitute a prima facie case it must be shown that: 1) the facts
19 alleged in the affidavits are irrelevant to the grounds for *modification*; and 2) the evidence is not
20 merely cumulative or impeaching. *Id.* at 543. *Rooney v. Rooney* should not be used against a
21 non-moving party who is not seeking modification.

22 D. THE HOLDING IN *MASONRY AND TILE CONTRACTORS* IS NOT LIMITED
23 TO "DIFFERENT EVIDENCE", AS NEW ISSUES OF LAW AND CLEARLY
24 ERRONEOUS DECISIONS ALSO CALL FOR RECONSIDERATION OF
25 ORDERS ISSUED BY THE COURT AND KERSTAN HAS REQUESTED AN
26 EVIDENTIARY HEARING TO PROVIDE "DIFFERENT EVIDENCE" AS
27 NEEDED.

28 In response to MICHAEL's argument that the motion to reconsider should not be heard
because KERSTAN has not offered any "new evidence" to indicate that the Court's decision
should be altered. Notwithstanding the fact that a motion to reconsider is proper also when there
are new issues of law presented to the Court, see *Moore v. City of Las Vegas*, 92 Nev. 402, 405,

1 551 P.2d 244, 246 (1976), a motion to reconsider is also proper to grant if it is clearly erroneous.
2 KERSTAN has stated that the current order violates Nevada statute and court precedent and is
3 requesting an *evidentiary hearing* so that proper evidence can be placed before the Court.
4 Ironically, MICHAEL and his counsel fail to see that KERSTAN is requesting an evidentiary
5 hearing so that the Court can review additional evidence that is contradictory to the Court's
6 findings. The irony is that MICHAEL is arguing that under *Rooney* there was not adequate
7 cause to have an evidentiary hearing and then turns around and argues that the lack of production
8 of evidence from KERSTAN under *Moore* should be used against her to keep the Court from
9 actually looking at material facts pertinent to change in custody and to other issues raised in
10 KERSTAN's current motion.

11 **E. THE APPLICATION OF A 'DE FACTO' PHYSICAL CUSTODY CHANGE**
12 **UNDER *RIVERO* LEADS TO AN ABSURD OUTCOME AND SHOULD NOT BE**
13 **ROTELY APPLIED, ESPECIALLY WHEN OTHER JURISDICTIONS HAVE**
14 **PERSUASIVE HOLDINGS FOR THE CURRENT FACT PATTERN AT ISSUE.**

15 In response to MICHAEL and his counsel's argument of "de facto physical custody"
16 under *Rivero v. Rivero*, 125 Nev. 410 (2009), KERSTAN would like to demonstrate that the
17 current fact pattern at issue (i.e. child staying with grandparents while away at school) is very
18 different than the fact pattern in *Rivero* where the child was staying with mom and dad during
19 the week. MICHAEL and his counsel are correct that KERSTAN has used California precedent
20 to support her argument of custodial time allocation while a child is away at school. This is
21 merely because Nevada does not have a case on point that speaks to this issue. It is important to
22 note in *Rivero* the dissent by Justice Pickering concerning "the formulaic approach in *Rivero*."
23 Court-mandated and developed formulas, similar to the formula in *Rivero*, "are difficult to
24 change...and a bad rule of law can take a long time to return to the court..." The rote
25 application of *Rivero* proposed by MICHAEL and his counsel leads to an absurd result: if you
26 send your child away to attend school and this requires the child to stay overnight more than 146
27 days of the year away from home, then the custodial parent will lose physical custody to the
28 person or institution which houses the child. In Nevada, a student can plan on attending school
180 days out of the year. See NRS 388.090. Therefore, parents who choose this option will lose

1 physical custody of their children on a “de facto” basis. That presumption leads to a clearly
2 absurd outcome.

3
4 **PART TWO – OBJECTIONS**

5 **A. MICHAEL SHOULD NOT BE AWARDED ATTORNEY’S FEES AS A**
6 **SANCTION AS HIS OPPOSITION TO KERSTAN’S MOTION FOR**
7 **RECONSIDERATION ET AL. WAS NOT NECESSARY AND KERSTAN DID**
8 **NOT BRING HER MOTION WITHOUT REASONABLE GROUNDS OR TO**
9 **HARASS THE PREVAILING PARTY.**

10 Under Nevada law, the district court may award attorney fees in a post-divorce action as
11 part of its continuing jurisdiction. *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262
12 (1998) (recognizing that a district court has the authority to award attorney fees in post-divorce
13 proceedings involving child custody); *see also* NRS 125.150(3) (providing that the district court
14 may award attorney fees in a divorce proceeding when fees are in issue in the pleadings).
15 Moreover, under NRS 18.010(2)(b), a court may award attorney fees to the prevailing party if the
16 court finds that the opposing party's claim was brought or maintained without reasonable
17 grounds. *Mack-Manley v. Manley*, 122 Nev. 849, 859-60, 138 P.3d 525, 532-33 (2006).

18 The district court may award attorney fees as a sanction under NRS 18.010(2)(b) as
19 mentioned and also under NRCP 11 and EDCR 7.60(b) if it concludes that a party brought a
20 frivolous claim. *Rivero v. Rivero*, 125 Nev. 410, 441, 216 P.3d 213, 234 (2009). The district
21 court must determine if there was any credible evidence or reasonable basis for the claim at the
22 time of filing. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687–88
23 (1995) (discussing NRS 18.010(2)(b)). Although a district court has discretion to award attorney
24 fees as a sanction, there must be evidence supporting the district court's finding that the claim or
25 defense was unreasonable or brought to harass. *Id.*

26 What is plainly obvious is that there is not a “prevailing party” concerning the recent
27 order issued by the Court. KERSTAN requests that that Court analyze why MICHAEL and his
28 counsel may have filed an objection to KERSTAN’s motion to reconsider when MICHAEL was
not granted the relief he initially requested concerning his motion to modify custody, which was
physical custody of BELLA? It is clearly obvious to everyone: family members, friends, and

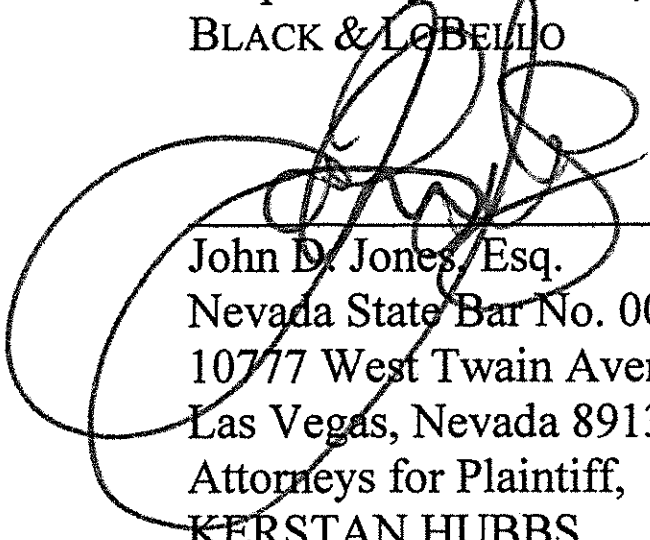
1 most likely all parties to this action, their counsel, and hopefully the Court, that all MICHAEL is
2 concerned about is that KERSTAN not receive child support for BELLA; not that he actually
3 have physical custody of BELLA. The current order provides the exact escape clause that
4 MICHAEL is looking for, thus you see MICHAEL failing to fight for custody, but rather
5 attempting to interfere with KERSTAN's request for reconsideration and petition to set aside as
6 he is fearful that the judge may change her mind. If anyone should be receiving attorney's fees it
7 should be KERSTAN for having to respond to MICHAEL's objections and oppose his
8 counter-motion on file that are disingenuous and simply about money.

9 KERSTAN did not bring or maintain her claim without reasonable grounds. What
10 mother would not ask a judge to reconsider a change of physical custody of her first born child?
11 This is the most serious and adverse action that KERSTAN has encountered pertaining to the
12 parties' entire divorce proceeding and all subsequent issues that have arisen in Court thereafter.
13 Furthermore, MICHAEL has represented to KERSTAN throughout the pendency of these
14 proceedings that he would prefer that BELLA reside with KERSTAN and that his real grief or
15 issue is with the issue that BELLA is staying with his parents. See Exhibit 3 – Email
16 correspondence from Mike to Kerstan. All of a sudden, MICHAEL is completely fine with
17 BELLA staying at his parents' house, really?

18 For these reasons stated herein, MICHAEL's attorney should not be awarded attorney's
19 fees as this opposition and counter-motion are simply to prevent MICHAEL from paying child
20 support and to harass KERSTAN.

21 DATED this 1 day of June, 2015.

22 Respectfully submitted,
23 BLACK & LOBELLO

24 
25 John D. Jones, Esq.
26 Nevada State Bar No. 006699
27 10777 West Twain Avenue, Suite 300
28 Las Vegas, Nevada 89135
Attorneys for Plaintiff,
KERSTAN HUBBS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of June, 2015 I served a true and correct copy of PLAINTIFF'S REPLY AND OPPOSITION TO DEFENDANT'S COUNTERMOTION, upon each of the parties by **electronic service** through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R. 9; and by depositing a copy of the same in a sealed envelope in the United States Mail, Postage Pre-Paid, addressed as follows:

Donn W. Prokopius, Esq.
PROKOPIUS & BEASLEY
931 South Third Street
Las Vegas, NV 89101
Email for Service: general@pandblawyers.com
Attorneys for Defendant


an Employee of BLACK & LOBELLO

Exhibit 1

Exhibit 1



CLARK COUNTY
OFFICE OF THE DISTRICT ATTORNEY

Family Support Division - Enforcement I-Enforcement Team 3

STEVEN B. WOLFSON
District Attorney

1900 E. Flamingo Rd., Suite 100 • Las Vegas, NV 89119 • 702-671-9200 • Fax: (702) 366-2328 • TDD: 702-385-7486

MARY-ANNE MILLER
County Counsel

TERESA LOWRY
Assistant District Attorney

CHRISTOPHER LALLI
Assistant District Attorney

ROBERT DASKAS
Assistant District Attorney

April 24, 2015

KERSTAN DAWN HUBBS
1319 MINUET ST
HENDERSON NV 89052

Re: KERSTAN HUBBS vs. Michael Micone
Our file no.: UPI-249753200A

- ☐ Enclosed is an order or correspondence from the out of state office.
- ☐ Please advise this office of any updates as to Respondent's whereabouts and/or employment.
- ☐ Please complete the enclosed paperwork and return to our office as soon as possible.
- ☐ Please advise this office of any direct payments you have received from the Respondent.
- ☐ Enclosed is insurance information and/or claim forms required for the child(ren)'s coverage.
- ☐ Health insurance is not available through the Respondent's employer. If the Respondent's employment status should change, we will review this matter again.
- ☐ Is the child(ren) living with the Respondent? If so, from what date and for how long?
- ☐ A status request has been sent to the out of state office. Once a response is received, we will forward it to you.
- ☐ Please provide the following documents to this office:
- ☐ Since we are no longer collecting current child support, this office will no longer be providing spousal support services. This meets federal case processing requirements.
- ☐ We are requesting permission to close our case for the following reason:
- ☐ The Non-custodial parent has been located.
- ☒ Other: As per your request, please see enclosed audit for your family court case.

Sincerely,

Todd Bronson
Family Support Specialist

Custodian Financial Audit (part 2 of 2)

Run Date: 04/24/2015

Run Time: 07:02 AM

NCP Name: Micone, Michael
CST Name: Hubbs, Kerstan

Case ID: 249753200A

Docket#: R-12-174206-R

Prepared By: BRONSOT

Last Updated By: WOODWAM

Office: 02

Prepared By Date: 04/24/2015

Last Updated By Date: 04/23/2015

Provision Type: Child Support

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Interest (On UA)		Unadjudicated Interest (On AA)		Adjudicated Interest		Unadjudicated Penalty		Adjudicated Penalty	
					Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance
1	11/01/2011	J	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2	11/01/2011	O	1936.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3	11/30/2011	M	0.00	0.00	16.94	16.94	0.00	0.00	0.00	0.00	193.60	193.60	0.00	0.00
4	12/01/2011	O	1936.00	0.00	0.00	16.94	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
5	12/27/2011	P	0.00	1936.00	0.00	16.94	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
6	12/31/2011	M	0.00	0.00	16.94	33.88	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
7	01/01/2012	O	1936.00	0.00	0.00	33.88	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
8	01/30/2012	P	0.00	1936.00	0.00	33.88	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
9	01/31/2012	M	0.00	0.00	16.94	50.82	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
10	02/01/2012	O	1936.00	0.00	0.00	50.82	0.00	0.00	0.00	0.00	0.00	193.60	0.00	0.00
11	02/29/2012	M	0.00	0.00	25.41	76.23	0.00	0.00	0.00	0.00	193.60	387.20	0.00	0.00
12	03/01/2012	O	1936.00	0.00	0.00	76.23	0.00	0.00	0.00	0.00	0.00	387.20	0.00	0.00
13	03/31/2012	M	0.00	0.00	33.88	110.11	0.00	0.00	0.00	0.00	193.60	580.80	0.00	0.00
14	04/01/2012	O	1936.00	0.00	0.00	110.11	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00
15	04/02/2012	P	0.00	1936.00	0.00	110.11	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00
16	04/30/2012	M	0.00	0.00	33.88	143.99	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00
17	05/01/2012	O	1936.00	0.00	0.00	143.99	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00
18	05/15/2012	P	0.00	1936.00	0.00	143.99	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00
19	05/31/2012	M	0.00	0.00	33.88	177.87	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00
20	06/01/2012	O	1936.00	0.00	0.00	177.87	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00

Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Interest (On UA)		Unadjudicated Interest (On AA)		Adjudicated Interest		Unadjudicated Penalty		Adjudicated Penalty	
				Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance
21 06/04/2012	P	0.00	1936.00	0.00	177.87	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 21
22 06/30/2012	M	0.00	0.00	33.88	211.75	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 22
23 07/01/2012	O	1936.00	0.00	0.00	211.75	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 23
24 07/11/2012	F	0.00	1936.00	0.00	211.75	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 24
25 07/31/2012	M	0.00	0.00	33.88	245.63	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 25
26 08/01/2012	O	1936.00	0.00	0.00	245.63	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 26
27 08/08/2012	P	0.00	1936.00	0.00	245.63	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 27
28 08/31/2012	M	0.00	0.00	33.88	279.51	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 28
29 09/01/2012	O	1936.00	0.00	0.00	279.51	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 29
30 09/27/2012	P	0.00	1936.00	0.00	279.51	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 30
31 09/30/2012	M	0.00	0.00	33.88	313.39	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 31
32 10/01/2012	O	1936.00	0.00	0.00	313.39	0.00	0.00	0.00	0.00	0.00	580.80	0.00	0.00 32
33 10/31/2012	M	0.00	0.00	42.35	355.74	0.00	0.00	0.00	0.00	193.60	774.40	0.00	0.00 33
34 11/01/2012	O	1936.00	0.00	0.00	355.74	0.00	0.00	0.00	0.00	0.00	774.40	0.00	0.00 34
35 11/15/2012	P	0.00	1000.00	0.00	355.74	0.00	0.00	0.00	0.00	0.00	774.40	0.00	0.00 35
36 11/30/2012	M	0.00	0.00	46.44	402.18	0.00	0.00	0.00	0.00	93.60	868.00	0.00	0.00 36
37 12/01/2012	O	1936.00	0.00	0.00	402.18	0.00	0.00	0.00	0.00	0.00	868.00	0.00	0.00 37
38 12/06/2012	P	0.00	1300.00	0.00	402.18	0.00	0.00	0.00	0.00	0.00	868.00	0.00	0.00 38
39 12/31/2012	M	0.00	0.00	49.23	451.41	0.00	0.00	0.00	0.00	63.60	931.60	0.00	0.00 39
40 01/01/2013	O	1428.00	0.00	0.00	451.41	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 40
41 01/07/2013	P	0.00	800.00	0.00	451.41	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 41
42 01/22/2013	P	0.00	1000.00	0.00	451.41	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 42
43 01/31/2013	M	0.00	0.00	47.60	499.01	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 43
44 02/01/2013	O	1428.00	0.00	0.00	499.01	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 44
45 02/01/2013	P	0.00	900.00	0.00	499.01	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 45
46 02/07/2013	P	0.00	800.00	0.00	499.01	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 46
47 02/21/2013	P	0.00	500.00	0.00	499.01	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 47
48 02/25/2013	P	0.00	600.00	0.00	499.01	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 48
49 02/28/2013	M	0.00	0.00	41.60	540.61	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 49
50 03/01/2013	O	1428.00	0.00	0.00	540.61	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 50
51 03/06/2013	P	0.00	400.00	0.00	540.61	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 51
52 03/18/2013	P	0.00	700.00	0.00	540.61	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 52
53 03/25/2013	P	0.00	440.00	0.00	540.61	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 53

Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Interest (On UA)		Unadjudicated Interest (On AA)		Adjudicated Interest		Unadjudicated Penalty		Adjudicated Penalty	
				Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance
54 03/31/2013	M	0.00	0.00	41.11	581.72	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 54
55 04/01/2013	O	1428.00	0.00	0.00	581.72	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 55
56 04/03/2013	P	0.00	1678.00	0.00	581.72	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 56
57 04/15/2013	P	0.00	501.37	0.00	581.72	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 57
58 04/30/2013	M	0.00	0.00	37.82	619.54	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 58
59 05/01/2013	O	1428.00	0.00	0.00	619.54	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 59
60 05/07/2013	P	0.00	1528.00	0.00	619.54	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 60
61 05/31/2013	M	0.00	0.00	37.38	656.92	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 61
62 06/01/2013	O	1428.00	0.00	0.00	656.92	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 62
63 06/07/2013	P	0.00	1528.00	0.00	656.92	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 63
64 06/30/2013	M	0.00	0.00	36.95	693.87	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 64
65 07/01/2013	O	1428.00	0.00	0.00	693.87	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 65
66 07/05/2013	P	0.00	1490.00	0.00	693.87	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 66
67 07/31/2013	M	0.00	0.00	36.67	730.54	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 67
68 08/01/2013	O	1428.00	0.00	0.00	730.54	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 68
69 08/16/2013	P	0.00	1490.00	0.00	730.54	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 69
70 08/31/2013	M	0.00	0.00	36.40	766.94	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 70
71 09/01/2013	O	1428.00	0.00	0.00	766.94	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 71
72 09/19/2013	P	0.00	1490.00	0.00	766.94	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 72
73 09/30/2013	M	0.00	0.00	36.13	803.07	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 73
74 10/01/2013	O	1428.00	0.00	0.00	803.07	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 74
75 10/03/2013	P	0.00	1490.00	0.00	803.07	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 75
76 10/31/2013	M	0.00	0.00	35.86	838.93	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 76
77 11/01/2013	O	1428.00	0.00	0.00	838.93	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 77
78 11/18/2013	P	0.00	1490.00	0.00	838.93	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 78
79 11/30/2013	M	0.00	0.00	35.59	874.52	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 79
80 12/01/2013	O	1428.00	0.00	0.00	874.52	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 80
81 12/23/2013	P	0.00	1490.00	0.00	874.52	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 81
82 12/31/2013	M	0.00	0.00	35.32	909.84	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 82
83 01/01/2014	O	1428.00	0.00	0.00	909.84	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 83
84 01/27/2014	P	0.00	1490.00	0.00	909.84	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 84
85 01/31/2014	M	0.00	0.00	35.05	944.89	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 85
86 02/01/2014	O	1428.00	0.00	0.00	944.89	0.00	0.00	0.00	0.00	0.00	931.60	0.00	0.00 86

Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Interest (On UA)		Unadjudicated Interest (On AA)		Adjudicated Interest		Unadjudicated Penalty		Adjudicated Penalty	
				Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance
87	02/24/2014	P	0.00	1490.00	0.00	944.89	0.00	0.00	0.00	0.00	931.60	0.00	0.00
88	02/28/2014	M	0.00	0.00	34.78	979.67	0.00	0.00	0.00	0.00	931.60	0.00	0.00
89	03/01/2014	O	1428.00	0.00	0.00	979.67	0.00	0.00	0.00	0.00	931.60	0.00	0.00
90	03/17/2014	P	0.00	1490.00	0.00	979.67	0.00	0.00	0.00	0.00	931.60	0.00	0.00
91	03/31/2014	M	0.00	0.00	34.50	1014.17	0.00	0.00	0.00	0.00	931.60	0.00	0.00
92	04/01/2014	O	1428.00	0.00	0.00	1014.17	0.00	0.00	0.00	0.00	931.60	0.00	0.00
93	04/30/2014	M	0.00	0.00	40.75	1054.92	0.00	0.00	0.00	142.80	1074.40	0.00	0.00
94	05/01/2014	O	1428.00	0.00	0.00	1054.92	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
95	05/02/2014	P	0.00	1490.00	0.00	1054.92	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
96	05/31/2014	M	0.00	0.00	40.48	1095.40	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
97	06/01/2014	O	1428.00	0.00	0.00	1095.40	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
98	06/09/2014	P	0.00	1590.00	0.00	1095.40	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
99	06/30/2014	M	0.00	0.00	39.77	1135.17	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
100	07/01/2014	O	1428.00	0.00	0.00	1135.17	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
101	07/01/2014	P	0.00	1590.00	0.00	1135.17	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
102	07/31/2014	M	0.00	0.00	39.06	1174.23	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
103	08/01/2014	O	1428.00	0.00	0.00	1174.23	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
104	08/05/2014	P	0.00	1490.00	0.00	1174.23	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
105	08/22/2014	P	0.00	1640.00	0.00	1174.23	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
106	08/31/2014	M	0.00	0.00	31.62	1205.85	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
107	09/01/2014	O	1428.00	0.00	0.00	1205.85	0.00	0.00	0.00	0.00	1074.40	0.00	0.00
108	09/30/2014	M	0.00	0.00	37.86	1243.71	0.00	0.00	0.00	142.80	1217.20	0.00	0.00
109	10/01/2014	O	1428.00	0.00	0.00	1243.71	0.00	0.00	0.00	0.00	1217.20	0.00	0.00
110	10/15/2014	P	0.00	1590.00	0.00	1243.71	0.00	0.00	0.00	0.00	1217.20	0.00	0.00
111	10/23/2014	P	0.00	1640.00	0.00	1243.71	0.00	0.00	0.00	0.00	1217.20	0.00	0.00
112	10/31/2014	M	0.00	0.00	29.98	1273.69	0.00	0.00	0.00	0.00	1217.20	0.00	0.00
113	11/01/2014	O	1428.00	0.00	0.00	1273.69	0.00	0.00	0.00	0.00	1217.20	0.00	0.00
114	11/17/2014	P	0.00	1490.00	0.00	1273.69	0.00	0.00	0.00	0.00	1217.20	0.00	0.00
115	11/21/2014	P	0.00	7584.00	0.00	1273.69	0.00	0.00	0.00	-793.37	423.83	0.00	0.00
116	11/21/2014	P	0.00	931.83	0.00	1273.69	0.00	0.00	0.00	-423.83	0.00	0.00	0.00
117	12/01/2014	O	1428.00	0.00	0.00	1273.69	0.00	0.00	0.00	0.00	0.00	0.00	0.00
118	12/31/2014	M	0.00	0.00	4.02	1277.71	0.00	0.00	0.00	0.00	0.00	0.00	0.00
119	01/01/2015	O	1428.00	0.00	0.00	1277.71	0.00	0.00	0.00	0.00	0.00	0.00	0.00

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Interest (On UA)		Unadjudicated Interest (On AA)		Adjudicated Interest		Unadjudicated Penalty		Adjudicated Penalty	
					Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance	Adjust Amount	Running Balance
120	01/31/2015	M	0.00	0.00	10.27	1287.98	0.00	0.00	0.00	0.00	142.80	142.80	0.00	0.00
121	02/01/2015	O	1428.00	0.00	0.00	1287.98	0.00	0.00	0.00	0.00	0.00	142.80	0.00	0.00
122	02/24/2015	P	0.00	2350.00	0.00	1287.98	0.00	0.00	0.00	0.00	0.00	142.80	0.00	0.00
123	02/28/2015	M	0.00	0.00	6.24	1294.22	0.00	0.00	0.00	0.00	0.00	142.80	0.00	0.00
124	03/01/2015	O	1428.00	0.00	0.00	1294.22	0.00	0.00	0.00	0.00	0.00	142.80	0.00	0.00
125	03/31/2015	M	0.00	0.00	12.49	1306.71	0.00	0.00	0.00	0.00	142.80	285.60	0.00	0.00
Totals:			\$65660.00	\$65959.20	\$0.00	\$1306.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$285.60	\$0.00	\$0.00

Total Unadjudicated Interest on UA: \$1306.71

Total Unadjudicated Interest on AA: \$0.00

Total Adjudicated Interest: \$0.00

Total Interest: \$1306.71

Total Unadjudicated Penalty: \$285.60

Total Adjudicated Penalty: \$0.00

Total Penalty: \$285.60

Total Arrears: \$2854.00

Total Interest: \$1306.71

Total Penalty: \$285.60

Grand Total: \$4446.31

Custodian Financial Audit (part 1 of 2)

Run Date: 04/24/2015

Run Time: 07:02 AM

NCP Name: Micone , Michael
CST Name: Hubbs, Kerstan

Case ID: 249753200A

Docket#: R-12-174206-R

Office: 02

Prepared By: BRONSOT

Prepared By Date: 04/24/2015

Last Updated By: WOODWAM

Last Updated By Date: 04/23/2015

Provision Type: Child Support

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Arrears		Adjudicated Arrears	
					Adjustment Amount	Running Balance	Adjustment Amount	Running Balance
1	11/01/2011	J	0.00	0.00	1936.00	1936.00	0.00	0.00
2	11/01/2011	O	1936.00	0.00	1936.00	3872.00	0.00	0.00
3	11/30/2011	M	0.00	0.00	0.00	3872.00	0.00	0.00
4	12/01/2011	O	1936.00	0.00	1936.00	5808.00	0.00	0.00
5	12/27/2011	P	0.00	1936.00	-1936.00	3872.00	0.00	0.00
6	12/31/2011	M	0.00	0.00	0.00	3872.00	0.00	0.00
7	01/01/2012	O	1936.00	0.00	1936.00	5808.00	0.00	0.00
8	01/30/2012	P	0.00	1936.00	-1936.00	3872.00	0.00	0.00
9	01/31/2012	M	0.00	0.00	0.00	3872.00	0.00	0.00
10	02/01/2012	O	1936.00	0.00	1936.00	5808.00	0.00	0.00
11	02/29/2012	M	0.00	0.00	0.00	5808.00	0.00	0.00
12	03/01/2012	O	1936.00	0.00	1936.00	7744.00	0.00	0.00
13	03/31/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00
14	04/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00
15	04/02/2012	P	0.00	1936.00	-1936.00	7744.00	0.00	0.00
16	04/30/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00
17	05/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00
18	05/15/2012	P	0.00	1936.00	-1936.00	7744.00	0.00	0.00
19	05/31/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00
20	06/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00
21	06/04/2012	P	0.00	1936.00	-1936.00	7744.00	0.00	0.00

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Arrears		Adjudicated Arrears	
					Adjustment Amount	Running Balance	Adjustment Amount	Running Balance
22	06/30/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00 22
23	07/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00 23
24	07/11/2012	P	0.00	1936.00	-1936.00	7744.00	0.00	0.00 24
25	07/31/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00 25
26	08/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00 26
27	08/08/2012	P	0.00	1936.00	-1936.00	7744.00	0.00	0.00 27
28	08/31/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00 28
29	09/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00 29
30	09/27/2012	P	0.00	1936.00	-1936.00	7744.00	0.00	0.00 30
31	09/30/2012	M	0.00	0.00	0.00	7744.00	0.00	0.00 31
32	10/01/2012	O	1936.00	0.00	1936.00	9680.00	0.00	0.00 32
33	10/31/2012	M	0.00	0.00	0.00	9680.00	0.00	0.00 33
34	11/01/2012	O	1936.00	0.00	1936.00	11616.00	0.00	0.00 34
35	11/15/2012	P	0.00	1000.00	-1000.00	10616.00	0.00	0.00 35
36	11/30/2012	M	0.00	0.00	0.00	10616.00	0.00	0.00 36
37	12/01/2012	O	1936.00	0.00	1936.00	12552.00	0.00	0.00 37
38	12/06/2012	P	0.00	1300.00	-1300.00	11252.00	0.00	0.00 38
39	12/31/2012	M	0.00	0.00	0.00	11252.00	0.00	0.00 39
40	01/01/2013	O	1428.00	0.00	1428.00	12680.00	0.00	0.00 40
41	01/07/2013	P	0.00	800.00	-800.00	11880.00	0.00	0.00 41
42	01/22/2013	P	0.00	1000.00	-1000.00	10880.00	0.00	0.00 42
43	01/31/2013	M	0.00	0.00	0.00	10880.00	0.00	0.00 43
44	02/01/2013	O	1428.00	0.00	1428.00	12308.00	0.00	0.00 44
45	02/01/2013	P	0.00	900.00	-900.00	11408.00	0.00	0.00 45
46	02/07/2013	P	0.00	800.00	-800.00	10608.00	0.00	0.00 46
47	02/21/2013	P	0.00	500.00	-500.00	10108.00	0.00	0.00 47
48	02/25/2013	P	0.00	600.00	-600.00	9508.00	0.00	0.00 48
49	02/28/2013	M	0.00	0.00	0.00	9508.00	0.00	0.00 49
50	03/01/2013	O	1428.00	0.00	1428.00	10936.00	0.00	0.00 50
51	03/06/2013	P	0.00	400.00	-400.00	10536.00	0.00	0.00 51
52	03/18/2013	P	0.00	700.00	-700.00	9836.00	0.00	0.00 52
53	03/25/2013	P	0.00	440.00	-440.00	9396.00	0.00	0.00 53
54	03/31/2013	M	0.00	0.00	0.00	9396.00	0.00	0.00 54
55	04/01/2013	O	1428.00	0.00	1428.00	10824.00	0.00	0.00 55

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Arrears		Adjudicated Arrears	
					Adjustment Amount	Running Balance	Adjustment Amount	Running Balance
56	04/03/2013	P	0.00	1678.00	-1678.00	9146.00	0.00	0.00 56
57	04/15/2013	P	0.00	501.37	-501.37	8644.63	0.00	0.00 57
58	04/30/2013	M	0.00	0.00	0.00	8644.63	0.00	0.00 58
59	05/01/2013	O	1428.00	0.00	1428.00	10072.63	0.00	0.00 59
60	05/07/2013	P	0.00	1528.00	-1528.00	8544.63	0.00	0.00 60
61	05/31/2013	M	0.00	0.00	0.00	8544.63	0.00	0.00 61
62	06/01/2013	O	1428.00	0.00	1428.00	9972.63	0.00	0.00 62
63	06/07/2013	P	0.00	1528.00	-1528.00	8444.63	0.00	0.00 63
64	06/30/2013	M	0.00	0.00	0.00	8444.63	0.00	0.00 64
65	07/01/2013	O	1428.00	0.00	1428.00	9872.63	0.00	0.00 65
66	07/05/2013	P	0.00	1490.00	-1490.00	8382.63	0.00	0.00 66
67	07/31/2013	M	0.00	0.00	0.00	8382.63	0.00	0.00 67
68	08/01/2013	O	1428.00	0.00	1428.00	9810.63	0.00	0.00 68
69	08/16/2013	P	0.00	1490.00	-1490.00	8320.63	0.00	0.00 69
70	08/31/2013	M	0.00	0.00	0.00	8320.63	0.00	0.00 70
71	09/01/2013	O	1428.00	0.00	1428.00	9748.63	0.00	0.00 71
72	09/19/2013	P	0.00	1490.00	-1490.00	8258.63	0.00	0.00 72
73	09/30/2013	M	0.00	0.00	0.00	8258.63	0.00	0.00 73
74	10/01/2013	O	1428.00	0.00	1428.00	9686.63	0.00	0.00 74
75	10/03/2013	P	0.00	1490.00	-1490.00	8196.63	0.00	0.00 75
76	10/31/2013	M	0.00	0.00	0.00	8196.63	0.00	0.00 76
77	11/01/2013	O	1428.00	0.00	1428.00	9624.63	0.00	0.00 77
78	11/18/2013	P	0.00	1490.00	-1490.00	8134.63	0.00	0.00 78
79	11/30/2013	M	0.00	0.00	0.00	8134.63	0.00	0.00 79
80	12/01/2013	O	1428.00	0.00	1428.00	9562.63	0.00	0.00 80
81	12/23/2013	P	0.00	1490.00	-1490.00	8072.63	0.00	0.00 81
82	12/31/2013	M	0.00	0.00	0.00	8072.63	0.00	0.00 82
83	01/01/2014	O	1428.00	0.00	1428.00	9500.63	0.00	0.00 83
84	01/27/2014	P	0.00	1490.00	-1490.00	8010.63	0.00	0.00 84
85	01/31/2014	M	0.00	0.00	0.00	8010.63	0.00	0.00 85
86	02/01/2014	O	1428.00	0.00	1428.00	9438.63	0.00	0.00 86
87	02/24/2014	P	0.00	1490.00	-1490.00	7948.63	0.00	0.00 87
88	02/28/2014	M	0.00	0.00	0.00	7948.63	0.00	0.00 88
89	03/01/2014	O	1428.00	0.00	1428.00	9376.63	0.00	0.00 89

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Arrears		Adjudicated Arrears	
					Adjustment Amount	Running Balance	Adjustment Amount	Running Balance
90	03/17/2014	P	0.00	1490.00	-1490.00	7886.63	0.00	0.00
91	03/31/2014	M	0.00	0.00	0.00	7886.63	0.00	0.00
92	04/01/2014	O	1428.00	0.00	1428.00	9314.63	0.00	0.00
93	04/30/2014	M	0.00	0.00	0.00	9314.63	0.00	0.00
94	05/01/2014	O	1428.00	0.00	1428.00	10742.63	0.00	0.00
95	05/02/2014	P	0.00	1490.00	-1490.00	9252.63	0.00	0.00
96	05/31/2014	M	0.00	0.00	0.00	9252.63	0.00	0.00
97	06/01/2014	O	1428.00	0.00	1428.00	10680.63	0.00	0.00
98	06/09/2014	P	0.00	1590.00	-1590.00	9090.63	0.00	0.00
99	06/30/2014	M	0.00	0.00	0.00	9090.63	0.00	0.00
100	07/01/2014	O	1428.00	0.00	1428.00	10518.63	0.00	0.00
101	07/01/2014	P	0.00	1590.00	-1590.00	8928.63	0.00	0.00
102	07/31/2014	M	0.00	0.00	0.00	8928.63	0.00	0.00
103	08/01/2014	O	1428.00	0.00	1428.00	10356.63	0.00	0.00
104	08/05/2014	P	0.00	1490.00	-1490.00	8866.63	0.00	0.00
105	08/22/2014	P	0.00	1640.00	-1640.00	7226.63	0.00	0.00
106	08/31/2014	M	0.00	0.00	0.00	7226.63	0.00	0.00
107	09/01/2014	O	1428.00	0.00	1428.00	8654.63	0.00	0.00
108	09/30/2014	M	0.00	0.00	0.00	8654.63	0.00	0.00
109	10/01/2014	O	1428.00	0.00	1428.00	10082.63	0.00	0.00
110	10/15/2014	P	0.00	1590.00	-1590.00	8492.63	0.00	0.00
111	10/23/2014	P	0.00	1640.00	-1640.00	6852.63	0.00	0.00
112	10/31/2014	M	0.00	0.00	0.00	6852.63	0.00	0.00
113	11/01/2014	O	1428.00	0.00	1428.00	8280.63	0.00	0.00
114	11/17/2014	P	0.00	1490.00	-1490.00	6790.63	0.00	0.00
115	11/21/2014	P	0.00	7584.00	-6790.63	0.00	0.00	0.00
116	11/21/2014	P	0.00	931.83	-508.00	-508.00	0.00	0.00
117	12/01/2014	O	1428.00	0.00	1428.00	920.00	0.00	0.00
118	12/31/2014	M	0.00	0.00	0.00	920.00	0.00	0.00
119	01/01/2015	O	1428.00	0.00	1428.00	2348.00	0.00	0.00
120	01/31/2015	M	0.00	0.00	0.00	2348.00	0.00	0.00
121	02/01/2015	O	1428.00	0.00	1428.00	3776.00	0.00	0.00
122	02/24/2015	P	0.00	2350.00	-2350.00	1426.00	0.00	0.00
123	02/28/2015	M	0.00	0.00	0.00	1426.00	0.00	0.00

	Event Date	Event Type	Current Amount Due	NCP Paid	Unadjudicated Arrears		Adjudicated Arrears	
					Adjustment Amount	Running Balance	Adjustment Amount	Running Balance
124	03/01/2015	O	1428.00	0.00	1428.00	2854.00	0.00	0.00
125	03/31/2015	M	0.00	0.00	0.00	2854.00	0.00	0.00
Totals:			\$65660.00	\$65959.20	\$0.00	\$2854.00	\$0.00	\$0.00

Total Unadjudicated: \$2854.00

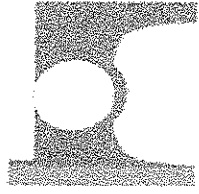
Total Adjudicated: \$0.00

Total Arrears: \$2854.00

Exhibit 2

Exhibit 2

RE: Michael Spring Break



Kerstan Hubbs 2/19/15

To: mikemicone@gmail.com Cc: donn@pandbla...

Mike,

That is not what the DA told me the other day on the phone. They told me you had \$2,500 in arrears and that they would revoke your license (notice had been sent) and contempt issues this month. I am simply the messenger. Those inconsistencies are telling.

Kerstan

From: mikemicone@gmail.com
To: khubbs@live.com
CC: donn@pandblawyers.com
Subject: Re: Michael Spring Break
Date: Thu, 19 Feb 2015 17:08:30 -0800

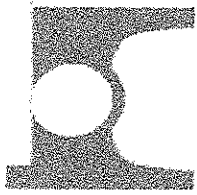
Kerstan,

I have requested my attorney, Donn to notify the DA of my child support. I actually have over 8k credit. Donn has sent the documentation to the judge. As well, there is no custody issue with Michael. The issue pertains to Bella not being able to be with me more in Reno.

Exhibit 3

Exhibit 3

RE: Spring Break - I have the kids with me for Presidents Holiday and Spring Break in Odd numbered years. See Decree below.



Mike Micone 3/28/15

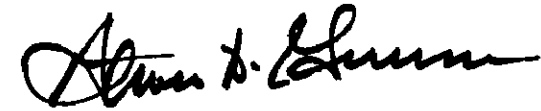
To: 'Kerstan Hubbs'

Kerstan,

I am taking Carol and Chuck out of the loop.

I will talk to Bella tonight and confirm her class and tell her we are going to Vegas. I think she does better when she gets to see you. I want her to spend as much time with us as we can get. It better that we take her and do something for her break vs letting her hang out in Reno with her grandparents.

Mike



CLERK OF THE COURT

AFFT
PROKOPIUS & BEASLEY
DONN W. PROKOPIUS, ESQ.
Nevada State Bar No. 006460
JEREMY R. BEASLEY, ESQ.
Nevada State Bar No. 12176
931 South Third Street
Las Vegas, Nevada 89101
(702) 474-0500 / Fax (702) 951-8022
general@pandblawyers.com
Attorney for Defendant,
MICHAEL A. MICONE

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN D. MICONE,

Plaintiff,

vs.

MICHAEL A. MICONE,

Defendant,

CASE NO.: D-08-388334-D
DEPT. NO.: J

DATE OF HEARING:
TIME OF HEARING:

AFFIDAVIT OF DEFENDANT, MICHAEL A. MICONE

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

MICHAEL A. MICONE, first being duly sworn, deposes and says:

1. That Affiant is the Defendant in the above-entitled matter. That I have read the foregoing Motion, including the points and authorities and any exhibits attached thereto, and the same are true and correct to the best of my knowledge and belief.
2. Plaintiff, KERSTAN D. MICONE (hereinafter "KERSTAN") and I were divorced in Clark County, Nevada by a Decree of divorce that was entered on

1 April 17, 2009. There are two minor children born as a result of the marriage,
2 namely, Isabella Caroline Micone (Bella), born: March 26, 1998; and, Michael
3 Joseph Micone, born: January 7, 2005 (hereinafter "Joseph").
4

5 3. The older child Isabella lives in Reno, Nevada with my parents and therefore
6 neither party has custody of her. The younger child Joseph remains living with
7 KERSTAN in Las Vegas. I am supposed to have visitation with Joseph.
8 However, since KERSTAN and I tried mediation following the latest round of
9 litigation, KERSTAN had refused to let me see my son at all.
10

11 4. KERSTAN had Joseph and Bella the first two weeks of July of 2015. In July of
12 2015 KERSTAN arranged without my consent for my parents to have Joseph on
13 my visitation time. KERSTAN sent Joseph to Reno to visit my parents but did
14 not tell me. Bella returned to Reno at the same time. I called KERSTAN in mid
15 July of 2015 and told KERSTAN I had Joseph's flight booked for Joseph to come
16 to Reno for visitation with me. It was only then that KERSTAN told me that
17 Joseph was already in Reno with my parents. I did not see my son while Joseph
18 was visiting my parents. Joseph went back to Las Vegas and I had to fly Joseph
19 back to Reno and I had Joseph for the last 10 days of visitation with Joseph July
20 of 2015. Joseph went back to Las Vegas on July 26, 2015.
21

22 5. On August 5, 2015 we attempted mediation but were unsuccessful. After the
23 mediation meeting I emailed KERSTAN's and asked if I could take Joseph to
24 lunch or dinner. KERSTAN sent an email stating "no". See email of her
25 response attached hereto as **Exhibit A**. KERSTAN told me I could only see
26 Joseph according to the Decree. Over the past 6 years, if I was in town and if
27
28

1 Joseph was available KERSTAN and I always worked it out and I was able to see
2 my son. Now KERSTAN is refusing to let me see Joseph at all. In 6 years there
3 was never a problem with scheduling time that is until our failure to reach a
4 settlement in mediation.
5

- 6 6. I scheduled a visit with Joseph from August 16th – August 23rd which was my
7 scheduled time according to the decree. I booked the flight and emailed the flight
8 times to KERSTAN (see itinerary attached hereto as **Exhibit B**). This visit was
9 particularly special because I had purchased tickets for a 49er's football game for
10 Joseph's 10th birthday. The day Joseph was supposed to fly up KERSTAN refused
11 to let Joseph go. I could have sought the assistance of the police but chose to
12 avoid the drama of having the police show up a KERSTAN'S residence and try
13 and enforce the Decree. I had to cancel the flight at the last minute. I lost \$100
14 from the non-refundable unaccompanied minor fee. These circumstances are
15 examples of the games KERSTAN insists on playing. Another example is
16 KERSTAN threatening to inform the Court that I had failed to maintain a life
17 insurance policy for the children as required in the Decree. Her allegation would
18 have been a lie because I have indeed maintained the policy, proof of which is
19 attached hereto as **Exhibit C**.
20
21

- 22 7. I have now scheduled another visitation for September 8 through September 13,
23 2015, which is my next scheduled time. I sent a text letting KERSTAN know that
24 I had scheduled visitation time with Joseph but KERSTAN said she had not heard
25 from my attorney or her lawyer so she is refusing to let me have my son yet again.
26 It will be 6 weeks since KERSTAN has refused to let me talk or see Joseph.
27
28

1 8. I respectfully request that this Honorable Court grant my foregoing motion.

2
3 Michael A. Micone
4 MICHAEL A. MICONE

5 State of Nevada
County of Washoe.
Subscribed and sworn to before me this

6 1st day of September, 2015, by *xx Michael Anthony Micone. xr*

7 Kimberly K. Foster
8 NOTARY PUBLIC

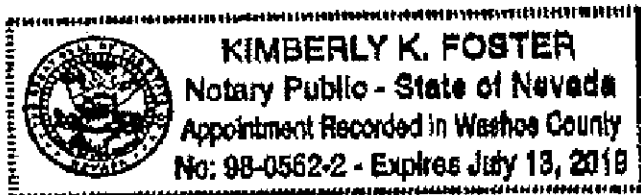


EXHIBIT A

From: Mike Micone [mailto:mikemicone@gmail.com]
Sent: Friday, August 14, 2015 9:39 PM
To: Kerstan Hubbs <khubbs@live.com>
Cc: donn@pandblawyers.com
Subject: Re: Life Insurance Policy

Kerstan,

I booked the flight for Michael Sunday and I will have a police escort to pick up Michael with the decree and order. You can choose to refuse for me to have Michael and I'm sure there is a consequence for your decision.

I have set up tuition and I have set up payments. I'm sure your glad you don't have to pay anything. I have also made the payment on her car and insurance. Do you have an opinion about that as well. You usually do. See you Sunday.

Mike Micone
CEO/President
Micone Staffing Resources, Inc.
702-339-1113

On Aug 14, 2015, at 6:44 PM, Kerstan Hubbs <khubbs@live.com> wrote:

See below. Kerstan

From: mikemicone@gmail.com
To: khubbs@live.com
CC: donn@pandblawyers.com; jjones@blacklobellolaw.com
Subject: RE: Life Insurance Policy
Date: Fri, 14 Aug 2015 16:43:22 -0700

Kerstan,

I have booked the flight for Michael on Sunday and to return to Vegas on Sunday. I emailed you both his departure and return itinerary. I am reviewing our current visitation clause in the original divorce decree as we all agree it needs to be updated. I will use as much of the current order and make adjustments as we both live in separate cities.

Let me know if those flight times work for Michael. We can adjust the time as I emailed you the conformation codes for both departure and return flights. I figured since I was paying for the flights that I would schedule his trip from Sunday to Sunday and get him home at a decent hour Sunday.

Mike I have not been able to communicate with John today. I will not be putting Michael on a flight to Reno tomorrow. I advise you to make sure you keep your flight credits and/or refund the flight at this time.

***I know Bella has asked for her clothes and you have avoided sending her clothes up with me and you have refused to send any thing up for her. She asked you to send a bag with Michael and you told her you knew nothing about Michaels trip to Reno. I showed her the email I sent you with Michael's Southwest Itinerary, so she knows I paid for Michael's flight and you have the opportunity to send a bag up with Michael. I have told her to go buy more clothes with the money I give her weekly but she is saving her money so she can go to college. I have set her up to try and save \$1,500 by the end of the year.**

Bella has been told several times by me that I will be sending up her kakis and jeans. This has been coordinated. It is not my fault that you decided to keep her in Reno with only a duffle bag and enroll her in a private school that requires uniforms. You must have known that some expenditure on your part would be necessary. I paid for a U-haul to move all her clothing and room back to Vegas as she requested. This is not my fault. I did not consent to this last minute change. It was orchestrated by you and most likely her grandparents.

I told Isabella that I was not sure if Michael would be coming up to Reno, but told her that clothes were coming regardless. I provide for her monthly as well and take care of her major medical, car insurance, and phone.

***Should you change her mind and want to send her clothes:**

Carol Burr/Isabella Micone

815 Arlington Ct.

Reno, NV 89509

Thank you, I already have their address.

So I have paid for her tuition to Manogue and I paid for all her books. I gave her money for clothes so I continue to take care of her needs.

Her tuition was fully paid for by Chuck Burr, her grandparent. I was told that it was a gift. Sierra's is covered too. You may want to coordinate with your parents, a second payment of tuition may be redundant.

Thank you,

Mike Micone

From: Kerstan Hubbs [<mailto:khubbs@live.com>]
Sent: Thursday, August 6, 2015 8:23 AM
To: mikemicone@gmail.com
Cc: donn@pandblawyers.com; jjones@blacklobellolaw.com
Subject: RE: Life Insurance Policy

Dear Mike,

I would have liked to have spoken with my daughter during this very big time in her life. She has struggled with a few depressive episodes and I would have like to have been involved in all major decision-making; like her schooling or who a good therapist might be. This is a very important decision and one an active mother should be involved in. You made sure that did not happen. You ignored my request for her to come home and talk to me and so did your parents.

Thank you for not putting yourself first and expecting Michael to drop his planned time with me at a moments notice. I want to be happy and enjoy my time with him. You just had him for ten days. When it is your planned visitation, and I have reasonable notice, then you both can enjoy your lunch at Freddie's another day. We are leaving out of town on Friday so it does not work with my schedule. I also worry that you might just put him in your car and drive up to Reno and stop returning my phone calls and never fly him home. That would not be safe and I do not have the relief of going to District Court for enforcement at this time. I do not feel safe and will not have my son go with you until I know that I can get him back.

Thanks,

Kerstan

Subject: Re: Life Insurance Policy
From: mikemicone@gmail.com
Date: Thu, 6 Aug 2015 07:23:06 -0700
CC: donn@pandblawyers.com; jjones@blacklobellolaw.com
To: khubbs@live.com

Dear All,

Every time I fly to Vegas I see a kids who's parents live in separate cities. Our situation is not that uncommon. Divorced parents have to coordinate all the time and we did great over the past 4 years being flexible and adaptable on both sides.

As we all know, I live and work outside of Vegas and over the past 6 years my visitation with my son was never an issue. I've always been respectful if he had other plans and i didn't want to interrupt his time with Kerstan or his friends. If he was available then we made it work. Michael loves to spend time with me and I with him. I'm sure he would like a hot dog from Freddie's and to see his Dad for an hour.

Yesterday I sent a text simply asking to take Michael to lunch or dinner. I am here through Friday so I thought a lunch would be ok. Today my request was denied. I was sent a text that I can't see him bc it's not my visitation time. We haven't used the visitation time in 4 years bc I don't live here.

If at all possible, and since Michael is not in school, I would like to take the little guy to lunch. He's 10 and shouldn't be used as a pawn. He didn't do anything wrong and his Dad wants to take him to his favorite place to have a hot dog at Freddie's. If he doesn't have anything serious going on today I am requesting request to take my son to lunch while I am here.

John, you asked for a visitation proposal and you'd look at it. I will work on that as I think it will be helpful moving forward. Give me some time to think through and look at what will work financially and something I can commit to and that fits around my work. I will keep it simple and use the current schedule as much as possible.

Any other suggestions I am open. I just want us all to get along for the sake of two kids who shouldn't be subject to our differences.

Thanks for the time and let me know how to proceed.

Thanks,

Mike Micone

702-339-1113

On Aug 6, 2015, at 6:27 AM, Kerstan Hubbs <khubbs@live.com> wrote:

Mike,

Good morning. I am making a request at this time that you provide the court ordered life insurance policy. I would like to verify that you in fact did take out the policy, that it is active, and other details for my files.

Sincerely,

Kerstan

EXHIBIT B

From: Kerstan Hubbs [<mailto:khubbs@live.com>]
Sent: Friday, August 14, 2015 8:31 AM
To: mikemicone@gmail.com
Subject: RE: Flight reservation (H3HZBC) | 16AUG15 | LAS-RNO | Micone/Michael

Mike, I have forwarded the itinerary to John for review. I want to see what can be done if you do not send him home. Once he informs me that it will be okay, I will send him, if not, then I will not. Kerstan

From: mikemicone@gmail.com
Subject: Fwd: Flight reservation (H3HZBC) | 16AUG15 | LAS-RNO | Micone/Michael
Date: Fri, 14 Aug 2015 07:28:19 -0700
To: khubbs@live.com

Kerstan,

I booked Michael a flight for this Sunday and returning on the following Sunday. Below is the itinerary.

If you have any questions please email me back.

Thanks,

Mike Micone
702-339-1113

Begin forwarded message:

From: "Southwest Airlines" <SouthwestAirlines@luv.southwest.com>
Date: August 12, 2015 at 4:14:28 PM PDT
To: MIKEMICONE@GMAIL.COM
Subject: Flight reservation (H3HZBC) | 16AUG15 | LAS-RNO | Micone/Michael
Reply-To: "Southwest Airlines" <no-reply@luv.southwest.com>

is all set for your trip!

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[Check In Online](#)

[Check Flight Status](#)

[Change Flight](#)

[Special Offers](#)

[Hotel Offers](#)

[Car Offers](#)

Takeoff!

Thanks for choosing Southwest® for your trip! You'll find everything you need to know about your reservation below. Happy travels!

AIR Itinerary

R Confirmation: H3HZBC

Confirmation Date: 08/12/2015

Passenger(s)	Rapid Rewards #	Ticket #	Expiration	Est. Points Earned
CONE/MICHAEL	366353573	5262134397473	Aug 11, 2016	2008

Rapid Rewards points earned are only estimates. Visit your (MySouthwest, Southwest.com or Rapid Rewards) account for the most accurate totals - including A-List & A-List Preferred bonus points.

Date	Flight	Departure/Arrival
on Aug 16	1965	Depart LAS VEGAS, NV (LAS) on Southwest Airlines at 11:00 AM Arrive in RENO/TAHOE, NV (RNO) at 12:20 PM Travel Time 1 hrs 20 mins Anytime

What you need to know to travel:

- Don't forget to check in for your flight(s) 24 hours before your trip on southwest.com or your mobile device. This will secure your boarding position on your flights.
- Southwest Airlines does not have assigned seats, so you can choose your seat when you board the plane. You will be assigned a boarding position based on your checkin time. The earlier you check in, within 24 hours of your flight, the earlier you get to board.
- WiFi, TV, and related services and amenities may vary and are subject to change based on assigned aircraft. [Learn more.](#)

Remember to be in the gate area on time and ready to board:

- 30 minutes prior to scheduled departure time: We may begin boarding as early as 30 minutes prior to your flight's scheduled departure time. We encourage all passengers to plan to arrive in the gate area no later than this time.
- 10 minutes prior to scheduled departure time: All passengers must obtain their boarding passes and be in the gate area available for boarding at least 10 minutes prior to your flight's scheduled departure time. If not, Southwest may cancel your reserved space and you will not be eligible for denied boarding compensation.
- If you do not plan to travel on your flight: In accordance with Southwest's No Show Policy, you must notify Southwest at least 10 minutes prior to your flight's scheduled departure if you do not plan to travel on the flight. If not, Southwest will cancel your reservation and all funds will be forfeited.

Air Cost: 230.00

Carryon Items: 1 Bag + small personal item are free. See full details. Checked Items: First and second bags fly free. Weight and size limits apply.

Ticket Rule(s): 5262134397473: NONTRANSFERABLE.

Valid only on Southwest Airlines. All travel involving funds from this Confirmation Number must be completed by the expiration date. Unused travel funds may only be applied toward the purchase of future travel for the individual named on the ticket. Any changes to this itinerary may

ult in a fare increase.

S WN RNO200.84YLNEV 200.84 END ZPLAS XFLAS4.5 AY5.60\$LAS5.60

Learn About Our
Booking Process

Get EarlyBird
Check-In® Details

Cost and Payment Summary

AIR - H3HZBC

Base Fare	\$ 200.84	Payment Information
Excise Taxes	\$ 15.06	Payment Type: Visa XXXXXXXXXXXXX0130
Segment Fee	\$ 4.00	Date: Aug 12, 2015
Passenger Facility Charge	\$ 4.50	Payment Amount: \$230.00
September 11th Security Fee	\$ 5.60	
Total Air Cost	\$ 230.00	

Useful Tools

- [Check In Online](#)
- [Early Bird Check-In](#)
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- [Cancel Air Reservation](#)
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This is a post-only mailing from Southwest Airlines. Please do not attempt to respond to this message. Your privacy is important to us. Please read our [Privacy Policy](#).

¹ All travel involving funds from this Confirmation Number must be completed by the expiration date.

² Security Fee is the government-imposed September 11th Security Fee.

See [Southwest Airlines Co. Notice of Incorporation](#)

See [Southwest Airlines Limit of Liability](#)

Southwest Airlines
P.O. Box 36647-1CR
Dallas, TX 75236

[Contact Us](#)

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EXHIBIT C



Policy 4022396107 - Policy Summary

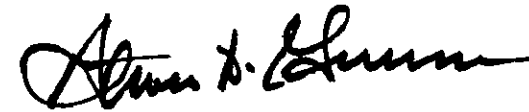
OWNER'S NAME	Michael Micone
PREMIUM AMOUNT	\$49.99 (Monthly)

BASE COVERAGE

TYPE	AAA Annual Renewable Term Life Insurance
EFFECTIVE DATE	4/22/2013
COVERAGE AMOUNT	\$200,000
INSURED'S NAME	Michael Micone

COVERAGE DETAILS

POLICY EXPIRATION DATE	4/22/2049
------------------------	-----------



CLERK OF THE COURT

MOSC
PROKOPIUS & BEASLEY
DONN W. PROKOPIUS, ESQ.
Nevada State Bar No. 006460
JEREMY R. BEASLEY, ESQ.
Nevada State Bar No. 12176
931 South Third Street
Las Vegas, Nevada 89101
(702) 474-0500 / Fax (702) 951-8022
general@pandblawyers.com
Attorney for Defendant,
MICHAEL A. MICONE

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN D. MICONE,

Plaintiff,

vs.

MICHAEL A. MICONE,

Defendant,

CASE NO.: D-08-388334-D
DEPT. NO.: J

DATE OF HEARING: 11/4/15
TIME OF HEARING: 9:00am

"NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION/COUNTERMOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION/COUNTERMOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE."

DEFENDANT'S MOTION FOR AN ORDER TO SHOW CAUSE TO FIND THE PLAINTIFF IN CONTEMPT OF COURT AND TO CHANGE CUSTODY OF THE PARTIES' CHILD JOSEPH; TO REVIEW AND MODIFY CHILD SUPPORT FOR DEFENDANT'S ATTORNEY'S FEES; AND RELATED MATTERS

COMES NOW the Defendant, MICHAEL A. MICONE, by and through his attorney, DONN W. PROKOPIUS, ESQ., and moves this Honorable Court for the following relief:

1. For an order to show cause to find the plaintiff in contempt of court for her refusal to allow defendant visitation with the parties' child Joseph;
2. Modifying physical custody and awarding the parties joint legal custody of their minor child Joseph, with the Defendant having primary physical custody, subject to the Plaintiff's right of visitation;
3. Ordering plaintiff to pay Defendant child support of 18% of her gross monthly income;
4. For Defendant's attorney's fees and costs incurred in this case;
5. For such other relief as the Court deems just and appropriate in the circumstances.

This motion is made and based upon all the papers and pleadings on file, and the attached affidavit of Defendant and is made in good faith and not to delay justice.

Dated this 1st day of August, 2015.

PROKOPIUS & BEASLEY

/s/ Donn W. Prokopius

DONN W. PROKOPIUS, ESQ.

Nevada State Bar No. 006460

JEREMY R. BEASLEY, ESQ.

Nevada State Bar No. 12176

931 South Third Street

Las Vegas, Nevada 89101

(702) 474-0500 / Fax (702) 951-8022

general@pandblawyers.com

Attorney for Defendant,

MICHAEL A. MICONE

1 **NOTICE OF MOTION**

2 **TO: KERSTAN D. MICONE THE PLAINTIFF ABOVE NAMED**

3 **YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE** that the undersigned
4 will bring the above and foregoing motion on for hearing before the Court at the Courtroom of
5 the above-entitled Court on the 4th day of November, 2015, at the hour of 9 o'clock
6 a.m. of said day, in Department J of said Court.
7

8 Dated this 1st day of September, 2015.
9

10 **PROKOPIUS & BEASLEY**

11 /s/ Donn W. Prokopius
12 DONN W. PROKOPIUS, ESQ.
13 Nevada State Bar No. 006460
14 JEREMY R. BEASLEY, ESQ.
15 Nevada State Bar No. 12176
16 931 South Third Street
17 Las Vegas, Nevada 89101
(702) 474-0500 / Fax (702) 951-8022
general@pandblawyers.com
Attorney for Defendant,
MICHAEL A. MICONE

18 **POINTS AND AUTHORITIES**

19 **I. RECENT CIRCUMSTANCES**

20 Plaintiff, KERSTAN D. MICONE (hereinafter "KERSTAN") and Defendant, MICHAEL
21 A. MICONE (hereinafter "MICHAEL") were divorced in Clark county, Nevada by a Decree of
22 divorce that was entered on April 17, 2009. There are two minor children born to the parties as a
23 result of the marriage, namely, Isabella Caroline Micone (Bella), born: March 26, 1998; and,
24 Michael Joseph Micone, born: January 7, 2005 (hereinafter "Joseph").
25

26 The older child Isabella lives in Reno, Nevada with MICHAEL'S parents and therefore
27 neither party has custody of her. The younger child Joseph remains living with KERSTAN in
28

1 Las Vegas. MICHAEL is supposed to have visitation with Joseph. However, since the parties
2 tried mediation earlier this year following the latest round of litigation, KERSTAN had refused
3 to let MICHAEL see his son at all.

4
5 KERSTAN had Joseph and Bella the first two weeks of July of 2015. In July of 2015
6 KERSTAN arranged without MICHAEL'S consent for MICHAEL'S parents to have Joseph on
7 MICHAEL'S visitation time. KERSTAN sent Joseph to Reno to visit MICHAEL'S parents but
8 did not tell MICHAEL. Bella returned to Reno at the same time. MICHAEL called KERSTAN
9 in mid July of 2015 and told KERSTAN he had Joseph's flight booked for Joseph to come to
10 Reno for visitation with MICHAEL. It was only then that KERSTAN told MICHAEL that
11 Joseph was already in Reno with MICHAEL'S parents. MICHAEL did not see his son while
12 Joseph was visiting MICHAEL'S parents. Joseph went back to Las Vegas and MICHAEL had
13 to fly Joseph back to Reno and MICHAEL had Joseph for the last 10 days of visitation with
14 Joseph July of 2015. Joseph went back to Las Vegas on July 26, 2015.

15
16
17 On August 5, 2015 the parties attempted mediation but were unsuccessful. After the
18 mediation meeting MICHAEL emailed KERSTAN's and asked if he could take Joseph to lunch
19 or dinner. KERSTAN sent an email stating "no". See email of her response attached hereto as
20 **Exhibit A.** KERSTAN told MICHAEL he could only see Joseph according to the Decree.
21 Over the past 6 years, if MICHAEL was in town and if Joseph was available the parties always
22 worked it out and MICHAEL was able to see his son. Now KERSTAN is refusing to let
23 MICHAEL see him at all. In 6 years there was never a problem with scheduling time that is until
24 the failure of the parties to reach a settlement in mediation.

25
26 MICHAEL scheduled a visit with Joseph from August 16th – August 23rd which was his
27 scheduled time according to the decree. MICHAEL booked the flight and emailed the flight
28

1 times to KERSTAN (see itinerary attached hereto as **Exhibit B**). This visit was particularly
2 special because MICHAEL had purchased tickets for a 49er's football game for Joseph's 10th
3 birthday. The day Joseph was supposed to fly up KERSTAN refused to let Joseph go.
4 MICHAEL could have sought the assistance of the police but chose to avoid the drama of having
5 the police show up a KERSTAN'S residence and try and enforce the Decree. MICHAEL had to
6 cancel the flight at the last minute. MICHAEL lost \$100 from the non-refundable
7 unaccompanied minor fee. These circumstances are examples of the games KERSTAN insists
8 on playing. Another example is KERSTAN threatening to inform the Court that MICHAEL had
9 failed to maintain a life insurance policy for the children as required in the Decree. Her
10 allegation would have been a lie because MICHAEL has indeed maintained the policy, proof of
11 which is attached hereto as **Exhibit C**.

14 MICHAEL has now scheduled another visitation for September 8 through September 13,
15 2015, which is his next scheduled time. MICHAEL sent a text letting KERSTAN know that he
16 scheduled visitation time with Joseph but KERSTAN said she had not heard from MICHAEL's
17 attorney or her lawyer so she is refusing to let MICHAEL have his son yet again. It will be 6
18 weeks since KERSTAN has refused to let MICHAEL talk or see Joseph.

21 **II. ARGUMENT**

22 **1. ORDER TO SHOW CAUSE**

23 **NRS 22.010 Acts or omissions constituting contempts. The following acts or**
24 **omissions shall be deemed contempts:**

25 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the
court or judge at chambers.

26 **NRS 22.110 Imprisonment until performance if contempt is omission to perform an**
27 **act;**

28 1. Except as otherwise provided in subsection 2, when the contempt consists in the
omission to perform an act which is yet in the power of the person to perform, he may be
imprisoned until he performs it. The required act must be specified in the warrant of

1 commitment.

2
3 Pursuant to NRS22.010 contempt includes acts of disobedience or resistance to any
4 lawful writ, order, rule or process issued by the court. Any order meant to be the subject of a
5 contempt proceeding must be clear, unambiguous, and set forth the details of compliance in
6 clear, specific terms, so the parties will know what duties or obligations are imposed.
7 *Cunningham v. District Court*, 102 Nev. 551, 729 P.2d 1328 (1986). The moving party carries
8 the burden of demonstrating the other party had the ability to comply with the order, and the
9 violation of the order was willful. *Rodriguez v. District Court*, 120 Nev. 789, 102 P.3d 41
10 (2004). The inability of a contemnor to obey the order (without fault on their part) is a complete
11 defense and sufficient to purge them of the contempt charged. *Mccormick v. Sixth Judicial*
12 *District Court*, 67 Nev. 318, 326; 218 P.2d 939 (1950). However, where the contemnors have
13 voluntarily or contumaciously brought on themselves the disability to obey the order or Decree,
14 such a defense is not available; and the burden of proving inability to comply is upon the
15 contemnor. *Id.* The court must have the power to punish a transgressor for contempt in order to
16 maintain respect, decency and dignity in the court's proceedings. *Lamb v. Lamb*, 83 Nev. 425,
17 433 P2d. 265 (1967).
18
19
20

21 In this case, KERSTAN has denied MICHAEL court ordered visitation with his son
22 Joseph. There is no excuse whatsoever for KERSTAN'S refusal to comply with the Court's
23 custody and visitation order. She is well aware that that MICHAEL is to have visitation with his
24 son upon him providing the requisite prior notice. The only way to remedy this situation is to
25 severely sanction KERSTAN to bring her into compliance with the Court's custody and
26 visitation and to ensure that her contemptuous behavior does not occur again. MICHAEL is
27 therefore respectfully requesting that KERSTAN be found in contempt of court and sanctioned,
28

1 including incarceration, the payment of a fine for each offense and the payment of MICHAEL'S
2 attorney's fees and costs.

3 MICHAEL is also requesting that KERSTAN be ordered to reimburse him for the \$100
4 fee that MICHAEL lost and that MICHAEL be allowed to deduct it from his child support
5 payment.
6

7 2. MODIFICATION OF CHILD CUSTODY

8 **NRS 125.510. Orders: modification or termination; form; expiration.**

9 1. In determining custody of a minor child in an action brought under this chapter, the
10 Court may:

11 (a) During the pendency of the action, at the final hearing or at any time
12 thereafter during the minority of any of the children of the marriage, make such an
order for the custody, care, education, maintenance and support of the minor children as
appears in their best interest;

13 **NRS 125.480 Best interest of child; preferences; considerations of Court;** 14 **presumption when Court determines that parent or person residing with child is** 15 **perpetrator of domestic violence.**

16 1. In determining custody of a minor child in an action brought under this chapter, the
17 sole consideration of the Court is the best interest of the child. If it appears to the Court that joint
custody would be in the best interest of the child, the Court may grant custody to the parties
jointly.

18 2. Preference must not be given to either parent for the sole reason that the parent is the
mother or the father of the child.

19 3. The Court shall award custody in the following order of preference unless in a
particular case the best interest of the child requires otherwise:

20 (a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the Court does
21 not enter an order awarding joint custody of a child after either parent has applied for joint
custody, the Court shall state in its decision the reason for its denial of the parent's application.

22 (b) To a person or persons in whose home the child has been living and where the child
has had a wholesome and stable environment.

23 (c) To any person related within the third degree of consanguinity to the child whom the
24 Court finds suitable and able to provide proper care and guidance for the child, regardless of
whether the relative resides within this State.

25 (d) To any other person or persons whom the Court finds suitable and able to provide
proper care and guidance for the child.

26 4. In determining the best interest of the child, the Court shall consider and set forth its
specific findings concerning, among other things:

27 (a) The wishes of the child if the child is of sufficient age and capacity to form an
28 intelligent preference as to his custody.

(b) Any nomination by a parent or a guardian for the child.

1 (c) Which parent is more likely to allow the child to have frequent associations and a
2 continuing relationship with the noncustodial parent.

3 (d) The level of conflict between the parents.

4 (e) The ability of the parents to cooperate to meet the needs of the child.

5 (f) The mental and physical health of the parents.

6 (g) The physical, developmental and emotional needs of the child.

7 (h) The nature of the relationship of the child with each parent.

8 (i) The ability of the child to maintain a relationship with any sibling.

9 (j) Any history of parental abuse or neglect of the child or a sibling of the child.

10 (k) Whether either parent or any other person seeking custody has engaged in an act of
11 domestic violence against the child, a parent of the child or any other person residing with the
12 child.

13 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by
14 the Court after an evidentiary hearing and finding by clear and convincing evidence that either
15 parent or any other person seeking custody has engaged in one or more acts of domestic violence
16 against the child, a parent of the child or any other person residing with the child creates a
17 rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic
18 violence is not in the best interest of the child. Upon making such a determination, the Court
19 shall set forth:

20 (a) Findings of fact that support the determination that one or more acts of domestic
21 violence occurred; and

22 (b) Findings that the custody or visitation arrangement ordered by the Court adequately
23 protects the child and the parent or other victim of domestic violence who resided with the child.

24 6. If after an evidentiary hearing held pursuant to subsection 5 the Court determines that
25 each party has engaged in acts of domestic violence, it shall, if possible, then determine which
26 person was the primary physical aggressor. In determining which party was the primary physical
27 aggressor for the purposes of this section, the Court shall consider:

28 (a) All prior acts of domestic violence involving either party;

(b) The relative severity of the injuries, if any, inflicted upon the persons involved in
those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors which the Court deems relevant to the determination.

In such a case, if it is not possible for the Court to determine which party is the primary
physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it
is possible for the Court to determine which party is the primary physical aggressor, the
presumption created pursuant to subsection 5 applies only to the party determined by the Court
to be the primary physical aggressor.

7. As used in this section, "domestic violence" means the commission of any act
described in NRS 33.018.

In seeking to change custody, MICHAEL must show (1) there has been a substantial
change in circumstances affecting the welfare of the child, and (2) the modification serves the
best interest of the child. *Ellis v. Carucci*, 167 P3rd 239 (Nev. 2007). The Nevada Supreme

1 Court has held that custodial parent's pervasive interference with the noncustodial parent's
2 parental rights may form a basis to modify physical custody. *Martin v. Martin*, 90 P.3D 981
3 (2004). KERSTAN's behavior over the past several months certainly embodies what the Nevada
4 Supreme Court had in mind in *Martin*. She has denied MICHAEL virtually all visitation with
5 his son. Her actions are clearly a substantial change in circumstances affecting Joseph's welfare.
6

7 KERSTAN has done everything possible to obstruct MICHAEL'S contact with Joseph
8 and deliberately interfere with MICHAEL'S relationship with his son. KERSTAN obviously has
9 no intention of allowing MICHAEL to have frequent associations and a continuing relationship
10 with Joseph as contemplated by NRS125.480. In fact, KERSTAN'S conduct indicates that she is
11 willing to whatever she can to obstruct and frustrate Joseph's relationship with his father.
12 KERSTAN'S behavior can scarcely be said to be in Joseph's best interests.
13

14 MICHAEL respectfully submits that it is not in Joseph's best interests to let KERSTAN
15 retain primary custody. MICHAEL is therefore requesting that the Court grant the parties joint
16 legal custody of Joseph and that MICHAEL have primary physical custody, subject to
17 KERSTAN'S right of supervised visitation.
18

19 3. CHILD SUPPORT

20 **NRS 125B.145 Review and modification of order for support: Request for review;**
21 **jurisdiction; notification of right to request review.**

22 1. An order for the support of a child must, upon the filing of a request for review by:
23 (a) The Welfare Division of the Department of Human Resources, its designated
24 representative or the district attorney, if the Welfare Division or the district attorney has
25 jurisdiction in the case; or

26 (b) A parent or legal guardian of the child,
27 shall be reviewed by the Court at least every 3 years pursuant to this section to determine
28 whether the order should be modified or adjusted. Each review conducted pursuant to this
section must be in response to a separate request.

2. If the Court:
27 (a) Does not have jurisdiction to modify the order, the Court may forward the request
28 to any Court with appropriate jurisdiction.

1 (b) Has jurisdiction to modify the order and, taking into account the best interests of
2 the child, determines that modification or adjustment of the order is appropriate, the Court shall
3 enter an order modifying or adjusting the previous order for support in accordance with the
requirements of NRS 125B.070 and 125B.080.

4 3. The Court shall ensure that:

5 (a) Each person who is subject to an order for the support of a child is notified, not
less than once every 3 years, that he may request a review of the order pursuant to this section; or

6 (b) An order for the support of a child includes notification that each person who is
subject to the order may request a review of the order pursuant to this section.

7 4. An order for the support of a child may be reviewed at any time on the basis of
changed circumstances. For the purposes of this subsection, a change of 20 percent or more in
8 the gross monthly income of a person who is subject to an order for the support of a child shall
be deemed to constitute changed circumstances requiring a review for modification of the order
9 for the support of a child.

10 5. As used in this section:

11 (a) "Gross monthly income" has the meaning ascribed to it in NRS 125B.070.

12 (b) "Order for the support of a child" means such an order that was issued or is being
enforced by a Court of this State.

13 Pursuant to NRS125B.145, the district Court must review a support order every three
14 years. The Court may also review a support order upon a showing of changed circumstances.
15 The Nevada Supreme Court has held that because the term "may" is discretionary, the district
16 Court has discretion to review a support order based on changed circumstances but is not
17 required to do so. However, a change of 20 percent or more in the obligor parent's gross
18 monthly income requires the Court to review the support order. Although these provisions
19 indicate when the review of a support order is mandatory or discretionary, they do not require the
20 Court to modify the order upon the basis of these mandatory or discretionary reviews. In
21 summary, although a party need not show changed circumstances for the district Court to review
22 a support order after three years, changed circumstances are still required for the district Court to
23 modify the order and the district Court must also consider the best interests of the child and
24 determine whether it is appropriate to modify the order. *Rivero v. Rivero*, 216 P.3d 213 (2009).

25 The modification of Joseph's custody is certainly grounds to review child support.
26 MICHAEL'S child support payment must be immediately terminated. KERSTAN must be
27
28

1 ordered to pay 18% of her gross monthly income, pursuant to NRS125B.070 as and for child
2 support.

3 4. ATTORNEY'S FEES

5 **NRS 18.010 provides as follows:**

6 2. In addition to the cases where an allowance is authorized by specific statute, the
Court may make an allowance of attorney's fees to a prevailing party:

7 (a) When he has not recovered more than \$20,000.00; or

8 (b) Without regard to the recovery sought, when the Court finds that the claim,
counterclaim, cross-claim or third party complaint or defense of the opposing party was brought
without reasonable ground or to harass the prevailing party.

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

12 In a long line of cases, the Nevada Supreme Court has held that attorney's fees may be
13 awarded in a post divorce action pursuant to NRS18.010 and NRS125.150(3). See *Sargeant v.*
14 *Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342
15 (1971); *Korbel v. Korbel*, 101 Nev. 140, 696 P.2d 993 (1985); *Fletcher v. Fletcher*, 89 Nev 540,
16 516 P.2d 103 (1973); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998); and, *Love v.*
17 *Love*, 114 Nev. 572, 959 P.2d 523 (1998). In the case of *Miller v. Wilfong*, 119 P.3d 727
18 (2005) the Nevada Supreme Court held that it is within the trial Court's discretion to determine
19 the reasonable amount of attorney fees under a statute or rule and that in exercising its discretion,
20 the district Court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank*,
21 85 Nev. 345, 455 P.2d 31 (1969), including the qualities of the advocate, the character and
22 difficulty of the work performed, the work actually performed by the attorney, and the result
23 obtained. In this case, MICHAEL'S counsel is an experienced attorney who has litigated
24 numerous divorce, custody, paternity and post-divorce actions. The legal representation in this
25 case involved the collection and analysis of the pertinent information, the preparation of legal
26
27
28

1 documents and Court appearances. MICHAEL'S counsel expects to obtain a good result based
2 on the facts of the case. MICHAEL has incurred attorney's fees in filing this motion. He had to
3 do so to compel KERSTAN'S compliance with the custody order. MICHAEL is therefore
4 requesting that he have an award of attorney's fees, costs and sanctions in the sum of \$3,000.00
5

6 WHEREFORE, let and an order issue granting the relief requested by Defendant.

7 Dated this 1st day of September, 2015.

8 **PROKOPIUS & BEASLEY**

9 /s/ Donn W. Prokopius

10 DONN W. PROKOPIUS, ESQ.

11 Nevada State Bar No. 006460

12 JEREMY R. BEASLEY, ESQ.

13 Nevada State Bar No. 12176

14 931 South Third Street

15 Las Vegas, Nevada 89101

16 (702) 474-0500 / Fax (702) 951-8022

17 general@pandblawyers.com

18 Attorney for Defendant,

19 MICHAEL A. MICONE
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EXHIBIT A

From: Mike Micone [<mailto:mikemicone@gmail.com>]
Sent: Friday, August 14, 2015 9:39 PM
To: Kerstan Hubbs <khubbs@live.com>
Cc: donn@pandblawyers.com
Subject: Re: Life Insurance Policy

Kerstan,

I booked the flight for Michael Sunday and I will have a police escort to pick up Michael with the decree and order. You can choose to refuse for me to have Michael and I'm sure there is a consequence for your decision.

I have set up tuition and I have set up payments. I'm sure you're glad you don't have to pay anything. I have also made the payment on her car and insurance. Do you have an opinion about that as well. You usually do. See you Sunday.

Mike Micone
CEO/President
Micone Staffing Resources, Inc.
702-339-1113

On Aug 14, 2015, at 6:44 PM, Kerstan Hubbs <khubbs@live.com> wrote:

See below. Kerstan

From: mikemicone@gmail.com
To: khubbs@live.com
CC: donn@pandblawyers.com; jjones@blacklobellolaw.com
Subject: RE: Life Insurance Policy
Date: Fri, 14 Aug 2015 16:43:22 -0700

Kerstan,

I have booked the flight for Michael on Sunday and to return to Vegas on Sunday. I emailed you both his departure and return itinerary. I am reviewing our current visitation clause in the original divorce decree as we all agree it needs to be updated. I will use as much of the current order and make adjustments as we both live in separate cities.

Let me know if those flight times work for Michael. We can adjust the time as I emailed you the conformation codes for both departure and return flights. I figured since I was paying for the flights that I would schedule his trip from Sunday to Sunday and get him home at a decent hour Sunday.

Mike I have not been able to communicate with John today. I will not be putting Michael on a flight to Reno tomorrow. I advise you to make sure you keep your flight credits and/or refund the flight at this time.

***I know Bella has asked for her clothes and you have avoided sending her clothes up with me and you have refused to send any thing up for her. She asked you to send a bag with Michael and you told her you knew nothing about Michaels trip to Reno. I showed her the email I sent you with Michael's Southwest Itinerary, so she knows I paid for Michael's flight and you have the opportunity to send a bag up with Michael. I have told her to go buy more clothes with the money I give her weekly but she is saving her money so she can go to college. I have set her up to try and save \$1,500 by the end of the year.**

Bella has been told several times by me that I will be sending up her kakis and jeans. This has been coordinated. It is not my fault that you decided to keep her in Reno with only a duffle bag and enroll her in a private school that requires uniforms. You must have known that some expenditure on your part would be necessary. I paid for a U-haul to move all her clothing and room back to Vegas as she requested. This is not my fault. I did not consent to this last minute change. It was orchestrated by you and most likely her grandparents.

I told Isabella that I was not sure if Michael would be coming up to Reno, but told her that clothes were coming regardless. I provide for her monthly as well and take care of her major medical, car insurance, and phone.

***Should you change her mind and want to send her clothes:**

Carol Burr/Isabella Micone

815 Arlington Ct.

Reno, NV 89509

Thank you, I already have their address.

So I have paid for her tuition to Manogue and I paid for all her books. I gave her money for clothes so I continue to take care of her needs.

Her tuition was fully paid for by Chuck Burr, her grandparent. I was told that it was a gift. Sierra's is covered too. You may want to coordinate with your parents, a second payment of tuition may be redundant.

Thank you,

Mike Micone

From: Kerstan Hubbs [<mailto:khubbs@live.com>]
Sent: Thursday, August 6, 2015 8:23 AM
To: mikemicone@gmail.com
Cc: donn@pandblawyers.com; jjones@blacklobellolaw.com
Subject: RE: Life Insurance Policy

Dear Mike,

I would have liked to have spoken with my daughter during this very big time in her life. She has struggled with a few depressive episodes and I would have like to have been involved in all major decision-making; like her schooling or who a good therapist might be. This is a very important decision and one an active mother should be involved in. You made sure that did not happen. You ignored my request for her to come home and talk to me and so did your parents.

Thank you for not putting yourself first and expecting Michael to drop his planned time with me at a moments notice. I want to be happy and enjoy my time with him. You just had him for ten days. When it is your planned visitation, and I have reasonable notice, then you both can enjoy your lunch at Freddie's another day. We are leaving out of town on Friday so it does not work with my schedule. I also worry that you might just put him in your car and drive up to Reno and stop returning my phone calls and never fly him home. That would not be safe and I do not have the relief of going to District Court for enforcement at this time. I do not feel safe and will not have my son go with you until I know that I can get him back.

Thanks,

Kerstan

Subject: Re: Life Insurance Policy
From: mikemicone@gmail.com
Date: Thu, 6 Aug 2015 07:23:06 -0700
CC: donn@pandblawyers.com; jjones@blacklobellolaw.com
To: khubbs@live.com

Dear All,

Every time I fly to Vegas I see a kids who's parents live in separate cities. Our situation is not that uncommon. Divorced parents have to coordinate all the time and we did great over the past 4 years being flexible and adaptable on both sides.

As we all know, I live and work outside of Vegas and over the past 6 years my visitation with my son was never an issue. I've always been respectful if he had other plans and i didn't want to interrupt his time with Kerstan or his friends. If he was available then we made it work. Michael loves to spend time with me and I with him. I'm sure he would like a hot dog from Freddie's and to see his Dad for an hour.

Yesterday I sent a text simply asking to take Michael to lunch or dinner. I am here through Friday so I thought a lunch would be ok. Today my request was denied. I was sent a text that I can't see him bc it's not my visitation time. We haven't used the visitation time in 4 years bc I don't live here.

If at all possible, and since Michael is not in school, I would like to take the little guy to lunch. He's 10 and shouldn't be used as a pawn. He didn't do anything wrong and his Dad wants to take him to his favorite place to have a hot dog at Freddie's. If he doesn't have anything serious going on today I am requesting request to take my son to lunch while I am here.

John, you asked for a visitation proposal and you'd look at it. I will work on that as I think it will be helpful moving forward. Give me some time to think through and look at what will work financially and something I can commit to and that fits around my work. I will keep it simple and use the current schedule as much as possible.

Any other suggestions I am open. I just want us all to get along for the sake of two kids who shouldn't be subject to our differences.

Thanks for the time and let me know how to proceed.

Thanks,

Mike Micone

702-339-1113

On Aug 6, 2015, at 6:27 AM, Kerstan Hubbs <khubbs@live.com> wrote:

Mike,

Good morning. I am making a request at this time that you provide the court ordered life insurance policy. I would like to verify that you in fact did take out the policy, that it is active, and other details for my files.

Sincerely,

Kerstan

EXHIBIT B

From: Kerstan Hubbs [<mailto:khubbs@live.com>]

Sent: Friday, August 14, 2015 8:31 AM

To: mikemicone@gmail.com

Subject: RE: Flight reservation (H3HZBC) | 16AUG15 | LAS-RNO | Micone/Michael

Mike, I have forwarded the itinerary to John for review. I want to see what can be done if you do not send him home. Once he informs me that it will be okay, I will send him, if not, then I will not. Kerstan

From: mikemicone@gmail.com

Subject: Fwd: Flight reservation (H3HZBC) | 16AUG15 | LAS-RNO | Micone/Michael

Date: Fri, 14 Aug 2015 07:28:19 -0700

To: khubbs@live.com

Kerstan,

I booked Michael a flight for this Sunday and returning on the following Sunday. Below is the itinerary.

If you have any questions please email me back.

Thanks,

Mike Micone

702-339-1113

Begin forwarded message:

From: "Southwest Airlines" <SouthwestAirlines@luv.southwest.com>

Date: August 12, 2015 at 4:14:28 PM PDT

To: MIKEMICONE@GMAIL.COM

Subject: Flight reservation (H3HZBC) | 16AUG15 | LAS-RNO | Micone/Michael

Reply-To: "Southwest Airlines" <no-reply@luv.southwest.com>

is all set for your trip!

[My Account](#) | [View My Itinerary Online](#)

[Check In Online](#)

[Check Flight Status](#)

[Change Flight](#)

[Special Offers](#)

[Hotel Offers](#)

[Car Offers](#)

Takeoff!

Thanks for choosing Southwest® for your trip! You'll find everything you need to know about your reservation below. Happy travels!

AIR Itinerary

R Confirmation: H3HZBC

Confirmation Date: 08/12/2015

Passenger(s)	Rapid Rewards #	Ticket #	Expiration	Est. Points Earned
CONE/MICHAEL	366353573	5262134397473	Aug 11, 2016	2008

Rapid Rewards points earned are only estimates. Visit your (MySouthwest, Southwest.com or Rapid Rewards) account for the most accurate totals - including A-List & A-List Preferred bonus points.

Date	Flight	Departure/Arrival
Mon Aug 16	1965	Depart LAS VEGAS, NV (LAS) on Southwest Airlines at 11:00 AM Arrive in RENO/TAHOE, NV (RNO) at 12:20 PM Travel Time 1 hrs 20 mins <u>Anytime</u>

What you need to know to travel:

- Don't forget to check in for your flight(s) 24 hours before your trip on southwest.com or your mobile device. This will secure your boarding position on your flights.
- Southwest Airlines does not have assigned seats, so you can choose your seat when you board the plane. You will be assigned a boarding position based on your checkin time. The earlier you check in, within 24 hours of your flight, the earlier you get to board.
- WiFi, TV, and related services and amenities may vary and are subject to change based on assigned aircraft. [Learn more.](#)

Remember to be in the gate area on time and ready to board:

- 30 minutes prior to scheduled departure time: We may begin boarding as early as 30 minutes prior to your flight's scheduled departure time. We encourage all passengers to plan to arrive in the gate area no later than this time.
- 10 minutes prior to scheduled departure time: All passengers must obtain their boarding passes and be in the gate area available for boarding at least 10 minutes prior to your flight's scheduled departure time. If not, Southwest may cancel your reserved space and you will not be eligible for denied boarding compensation.
- If you do not plan to travel on your flight: In accordance with Southwest's No Show Policy, you must notify Southwest at least 10 minutes prior to your flight's scheduled departure if you do not plan to travel on the flight. If not, Southwest will cancel your reservation and all funds will be forfeited.

Air Cost: 230.00

Carryon Items: 1 Bag + small personal item are free. See full details. Checked Items: First and second bags fly free. Weight and size limits apply.

Ticket Rule(s): 5262134397473: NONTRANSFERABLE.

Valid only on Southwest Airlines. All travel involving funds from this Confirmation Number must be completed by the expiration date. Unused travel funds may only be applied toward the purchase of future travel for the individual named on the ticket. Any changes to this itinerary may

ult in a fare increase.

S WN RNO200.84YLNEV 200.84 END ZPLAS XFLAS4.5 AY5.60\$LAS5.60

1 About Our
ding Process

Get EarlyBird
Check-In® Details

ost and Payment Summary

AIR - H3HZBC

se Fare	\$ 200.84	Payment Information
cise Taxes	\$ 15.06	Payment Type: Visa XXXXXXXXXXXXX0130
gment Fee	\$ 4.00	Date: Aug 12, 2015
ssenger Facility Charge	\$ 4.50	Payment Amount: \$230.00
ptember 11th Security Fee	\$ 5.60	
tal Air Cost	\$ 230.00	

Useful Tools

- [Check In Online](#)
- [Early Bird Check-In](#)
- [View/Share Itinerary](#)
- [Change Air Reservation](#)
- [Cancel Air Reservation](#)
- [Check Flight Status](#)
- [Flight Status Notification](#)
- [Book a Car](#)
- [Book a Hotel](#)

Know Before You Go

- [In the Airport](#)
- [Baggage Policies](#)
- [Suggested Airport Arrival Times](#)
- [Security Procedures](#)
- [Customers of Size](#)
- [In the Air](#)
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- [Notice of Incorporated Terms](#)
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This is a post-only mailing from Southwest Airlines. Please do not attempt to respond to this message. Your privacy is important to us. Please read our [Privacy Policy](#).

¹ All travel involving funds from this Confirmation Number must be completed by the expiration date.

² Security Fee is the government-imposed September 11th Security Fee.

See [Southwest Airlines Co. Notice of Incorporation](#)

See [Southwest Airlines Limit of Liability](#)

Southwest Airlines
P.O. Box 36647-1CR
Dallas, TX 75235

[Contact Us](#)

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EXHIBIT C



Policy 4022396107 - Policy Summary

OWNER'S NAME	Michael Micone
PREMIUM AMOUNT	\$49.99 (Monthly)

BASE COVERAGE

TYPE	AAA Annual Renewable Term Life Insurance
EFFECTIVE DATE	4/22/2013
COVERAGE AMOUNT	\$200,000
INSURED'S NAME	Michael Micone

COVERAGE DETAILS

POLICY EXPIRATION DATE	4/22/2049
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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

KESTAN S. MICONE
Plaintiff/Petitioner

v. MICHAEL A. MICONE
Defendant/Respondent

Case No. 8-08-388334-1
Dept. J

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
- ☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

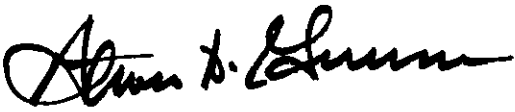
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Dawn P. Prokopen, Esq. Date 9/1/15

Signature of Party or Preparer [Signature]


CLERK OF THE COURT

COM
PROKOPIUS & BEASLEY
DONN W. PROKOPIUS, ESQ.
Nevada Bar No.: 6460
JEREMY R. BEASLEY, ESQ.
Nevada Bar No.: 12176
931 South Third Street
Las Vegas, Nevada 89101
(702) 474-0500 / Fax (702) 951-8022
general@pandblawyers.com
Attorney for Plaintiff,
MICHAEL A. MICONE

**DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA**

KERSTAN D. MICONE,

Plaintiff,

vs.

MICHAEL A. MICONE,

Defendant.

CASE NO.: D-08-388334-D
DEPT. NO.: J

DATE OF HEARING: 11/4/2015
TIME OF HEARING: 9:00 A.M.

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the PROKOPIUS & BEASLEY, and on the 3rd day of September, 2015, I duly deposited a true and correct copy of the above and foregoing **DEFENDANT'S MOTION FOR AN ORDER TO SHOW CAUSE TO FIND THE PLAINTIFF IN CONTEMPT OF COURT AND TO CHANGE CUSTODY OF THE PARTIES' CHILD JOSEPH; TO REVIEW AND MODIFY CHILD SUPPORT FOR DEFENDANT'S ATTORNEY'S FEES AND RELATED RELIEF** for mailing in the U.S. Mail at Las Vegas, Nevada, postage prepaid thereon, addressed to the following at the last known address to:

John D. Jones, Esq.
BLACK & LoBELLO
10777 West Twain Ave., Suite 300
Las Vegas, NV 89135
Attorney for Plaintiff, KERSTAN HUBBS

/s/ Alex Gomez

An employee of PROKOPIUS & BEASLEY