

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
2 **DENNIS KOGOD,**

3                   Appellant/Cross-Respondent,

4 v.

5 **GABRIELLE CIOFFI-KOGOD,**  
6

7                   Respondent/Cross-Appellant.  
8

Supreme Court No. 71147

District Court Case No. D-13-489442-D

Electronically Filed  
Nov 07 2016 10:42 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9                   **RESPONDENT/CROSS-APPELLANT'S OPPOSITION TO MOTION FOR A**  
10                   **STAY PENDING APPEAL**

11                   On August 23, 2016, Appellant/Cross-Respondent, DENNIS KOGOD ("Dennis")  
12 filed a Notice of Appeal of the district court's Findings of Fact, Conclusions of Law and  
13 Decree of Divorce ("Decree of Divorce") entered on August 22, 2016 regarding the  
14 district court's order awarding Respondent/Cross-Appellant, GABRIELLE CIOFFI-  
15 KOGOD ("Gabrielle") an unequal division of community property, and the award of  
16 sanctions to Gabrielle based on violations of the Joint Preliminary Injunction (JPI) by  
17 Dennis. The district court's decision is composed of 114 pages, and provides clear  
18 citation to the evidence upon which it made its findings, and the law upon which it based  
19 its conclusions. The law in most instances is clear and applicable Nevada precedent.  
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22                   Pursuant to NRAP 8 and NRCP 62, Dennis filed a Motion for Stay in the district  
23 court. By Stipulation, the parties agreed to extend Gabrielle's time to respond to Dennis'  
24 motion for stay filed in the district court.  
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1 All the money that Dennis seeks to stay is money that is already contained in the  
2 accounts and is payable to Gabrielle under the district court's Decree of Divorce. At the  
3 time of hearing on stay, Dennis proposed that he be allowed to take his portion of those  
4 funds from the community accounts and offered security in the form of a lien on a  
5 residence in Beverly Hills granted to him under the Decree in which his mistress and  
6 illegitimate children reside. He did not offer a supersedeas bond.  
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9 Contrary to Dennis' contention in his Motion, at the hearing, the district court  
10 addressed all applicable factors set forth in NRCP 62 as interpreted by *Nelson v. Heer*,  
11 121 Nev. 832, 122 P.3d 1252 (2005) and in the factors set forth in NRAP 8 and denied  
12 Dennis' motion for stay. Dennis now seeks a stay from this Court. As addressed below,  
13 the factors under NRAP 8 do not support his request.  
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## 16 II

### 17 DENNIS' CANNOT DEMONSTRATE A NEED FOR THE STAY UNDER THE 18 FACTORS SET FORTH IN NRAP 8 19

20 The factors set forth NRAP 8 do not support Dennis's request.

21 (1) *Whether the object of the appeal or writ petition will be defeated if the stay is*  
22 *denied;*

23 Dennis seeks to avoid the distribution of monies granted to Gabrielle under the district  
24 court's order. As Dennis pointed out, Gabrielle will receive sufficient additional funds so  
25 there is little or no chance that she will spend sufficient monies to preclude her from  
26 transferring money back to Dennis in the unlikely event of a reversal.  
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1           (2) *Whether appellant/petitioner will suffer irreparable or serious injury if the stay*  
2           *is denied;*

3           Dennis argues that if the stay is not granted he could suffer irreparable or serious  
4 injury because the UBS account that he was awarded is not liquid and could take four to  
5 six months to liquidate. Dennis did not make that argument in the district court.<sup>1</sup>

7           Denying stay and requiring Dennis to comply with the terms of the Decree do not  
8 cause Dennis any irreparable injury because the monies can be recovered from the  
9 various other assets awarded to Dennis, including luxury cars, bank accounts, and  
10 investments. Indeed, Dennis' mistress, Nadya Khapsalis drives a Bentley and is living in  
11 the Oak Pass residence valued at \$6.3 Million. In 2015, Dennis' income was \$13 Million.  
12 *See Decree of Divorce*, filed on August 22, 2016, page 88. Dennis makes more than \$1  
13 million per month. Gabrielle is awarded approximately \$4 Million. Dennis can easily  
14 pay the monies awarded to Gabrielle under the Decree in the next 4-5 months if  
15 necessary. The idea that he will suffer irreparable injury is preposterous.

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

18           The presumption underlying the motion is that Gabrielle has sufficient funds, and will not  
19 be prejudiced if some of those funds are limited to a blocked account. Gabrielle is  
20 prejudiced by her inability to invest those funds as she deems fit. She has been granted a  
21 judgment, and if she is not going to realize the use of the funds granted, then she should

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22           <sup>1</sup> Dennis argument that there is no Nevada Precedent regarding lump sum alimony award is spurious.  
23 *See* NRS125.150.



1 be afforded legal interest on funds held, if any. The effect of a stay is no different that  
2  
3 Dennis not paying the judgment granted.

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

6 Dennis must present a substantial case on the merits when a serious legal question  
7 is involved and show that the balance of equities weighs heavily in favor of granting the  
8 stay. *See Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 982 (2000). Here,  
9 the equities of the case strongly support the district court's findings granting alimony,  
10 determining an amount of "community waste" and sanctioning Dennis.  
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### 13 **A. Community Waste**

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15 During the last ten years of the parties' marriage, Dennis maintained a surreptitious  
16 physical and emotional relationship with Nadya Khapsalis. He fathered two children  
17 with Khapsalis through invitro fertilization. He transferred millions of dollars of  
18 community funds for the benefit of Khapsalis and the children. Gabrielle, through her  
19 experts, Anthem Forensics, provided a meticulous accounting of Dennis's deceptive  
20 waste, dissipation, and improper gifting of community property in violation of his  
21 fiduciary duty to Gabrielle, Nevada statute, and the JPI. The district court correctly  
22 found that Dennis hid his conduct and spending from Gabrielle through deception,  
23 artifice and fraud, made false promises to the district court to provide an accounting of  
24 his community waste, and submitted knowingly false statements to the district court to  
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1 protect his relationship with another one of his mistresses, the “other other woman,”  
2 Jennifer Steiner. Gabrielle submits that those findings (and frankly, all the district court’s  
3 factual findings) were supported by substantial evidence, including Dennis’s admissions.

4  
5 After careful review of the testimony of the parties, the parties’ experts, and the  
6 expert report, the district court found that Dennis had spent or transferred approximately  
7 \$4,000,000 in community waste, and found “compelling reason” for an unequal  
8 distribution of property in Gabrielle’s favor. On appeal, Dennis seeks reversal of that  
9 finding. Dennis’s primary argument at trial on this issue was that Dennis’s transfers, gifts  
10 and spending identified as waste by the experts Gabrielle presented, was not “material”  
11 due to Dennis’s wealth. His expert posited (without citation to any authority) that Dennis  
12 could have spent money on more than one girlfriend, which he did, and that spending  
13 would not be waste if it was not “material” in relation to Dennis’s income. The district  
14 court did not agree with that position, and that position contradicts basic Nevada law.  
15 Gabrielle and her counsel believe that Dennis has little chance of demonstrating that the  
16 district court’s order is not supported by substantial evidence.

## 22 **B. Alimony**

23 The district court correctly found that including Dennis’s average annual income  
24 for the five years from 2011 through 2015 was \$13,975,268.90. It further correctly found  
25 that Gabrielle’s average gross monthly income was \$55,491.60 per year. The district  
26 court found that the training, skill and acumen Dennis acquired throughout the marriage  
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1 community afforded him an income that Gabrielle could never hope to achieve. Despite  
2 the wide gap in the parties' income, the district court awarded Gabrielle only \$18,000 per  
3 month in alimony for 108 months (9 years) to be paid in lump sum with 4% discount rate.

4 Gabrielle's community share of the property exceeds \$20M in value. Dennis argues  
5 that Gabrielle has no "need" for alimony and therefore, the district court's order  
6 regarding lump sum alimony should be reversed. "Need" as a driver of alimony has not  
7 been the standard in Nevada for nearly 20 years, and is not one of the criteria for alimony  
8 in the defining Nevada statute. *See, Nevada Alimony: An Important Policy in Need of a*  
9 *Coherent Policy Purposse*, Hon. David A. Hardy, 9 Nev. L.J. 325 (2009). A Nevada  
10 district court's right to grant alimony is confined to the statutory law set forth NRS  
11 125.150. In *Shydler v. Shydler*, 114 Nev. 192, 954 P.2d 37 (1998) the court held that one  
12 of the primary purposes of alimony, at least in marriages of significant length, is to  
13 narrow any large gaps between the post-divorce earning capacities of the parties. The  
14 principles of property division and alimony are different. *See Rodriguez v. Rodriguez*,  
15 116 Nev. 993, 996-97, 13 P.3d 415, 417 (2000).

16 The first component of *Shydler* is the lifestyle of the parties. Here, when judging  
17 the parties pre-divorce lifestyle, the district court recognized that not only has Dennis's  
18 lifestyle been wildly expensive and rich, the parties have saved *millions* of dollars in  
19 investments and cash due to Dennis's large earnings. That savings and investment was  
20 part of the established lifestyle of the parties over a period of many years. Without  
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1 alimony, Gabrielle's approximately \$55,000 per year income will allow nothing close to  
2 the substantial savings and investment that arises from Dennis' income. The second  
3 component of the *Shydler* elements compensate Gabrielle for the "career asset" Dennis  
4 acquired in the marriage. The district court correctly found that Gabrielle followed  
5 Dennis to support his career and to support him even through the embarrassment, bizarre  
6 behavior, and shame he put her through.  
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### 8 **C. The District Court's Award of Sanctions**

9 Gabrielle served Dennis with a JPI on May 15, 2014. Both *Lofgren* and *Putterman*  
10 hold that violation of the JPI can constitute community waste, and can justify a finding of  
11 "compelling reason" for an unequal division of community assets. Under EDCR 5.85,  
12 the injunction is "enforceable by all remedies provided by law including contempt."  
13 Dennis ignored the prohibitions of the JPI. The district court correctly found that  
14 Dennis's expenditures were not expenditures that met the JPI criteria of "necessities of  
15 life" or "usual course of business." The district court found that after the issuance of the  
16 JPI, Dennis spent more than \$10,000 on thirty-nine (39) individual transactions that on  
17 his girlfriends, lifestyle, and dalliances even after being served with the JPI and  
18 sanctioned Dennis \$500 for each of the 39 violations, for a total of \$19,500. Dennis's  
19 challenge to the Court's order granting sanctions is highly unlikely to succeed.  
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### 26 **III.**

### 27 **DENNIS' REQUEST FOR AN ALTERNATE FORM OF SECURITY SHOULD** 28 **BE DENIED**



1 As stated above, Dennis asks that a lien of \$1,649,972 to cover the lump-sum  
2 alimony and sanctions be placed on the Oak Pass home which the district court (based on  
3 expert testimony at trial) valued at \$6.3 million and is owned free and clear. Dennis  
4 further requests that the court preclude the distribution of \$2,043,931.50 that is awarded  
5 to Gabrielle as an unequal division of property and instead seeks be place those monies in  
6 a blocked, interest-bearing account at UBS. The Oak Pass residence is currently occupied  
7 by Dennis' mistress, Nadya Khapsalis and their two children. The monies from the UBS  
8 accounts have already been adjudicated by the district court and divided between the  
9 parties per the district court's order dividing the assets and debts pursuant to the divorce.  
10 Gabrielle submits that there is simply no reason for the Court to award Dennis the relief  
11 that he is seeking because, as Dennis admits, Gabrielle will have sufficient funds to pay  
12 Dennis back in the unlikely event that the Court reverses the district court's orders.  
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14 The factors set forth in *Nelson v. Heer*, 121 Nev. 832(2005) are discussed below:  
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16 (1) *The complexity of the collection process;*  
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18 In the district court, Dennis did not argue the complexity of the collection process.  
19 Dennis now argues that if Judge Duckworth's orders regarding alimony, sanctions and/or  
20 unequal division of community property are reversed, then it will be a complex for him to  
21 recover the funds from Gabrielle. If Dennis' requests on appeal to reverse the district  
22 court decision is granted and the case is remanded to the district court, Gabrielle has  
23 sufficient holdings to return the monies to Dennis. Arguably, the collection process from  
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1 obtaining the monies back from Gabrielle versus obtaining the monies back by way of a  
2 supersedeas bond is easier and faster since Gabrielle has substantial monies held in the  
3 UBS accounts to pay Dennis. Indeed, if the Court grants Dennis' request to post a lien  
4 on the Oak Pass home, Gabrielle will have to go through the tedious and complex task of  
5 selling the Oak Pass residence which is currently occupied by Dennis's girlfriend and  
6 their two children if Dennis fails to pay the alimony award.  
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10 ***(2) the amount of time required to obtain a judgment after it is affirmed on  
11 appeal;***

12 Again, in the district court, Dennis did not argue the amount of time required to  
13 obtain a judgment after it is affirmed on appeal. Even if the district court's order is  
14 reversed, Gabrielle has shown a penchant to invest and save. She has substantial  
15 holdings and the district court found that nothing in Gabrielle's history suggests she will  
16 spend money frivolously, or hide money from Dennis or the Court.  
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19 ***(3) the degree of confidence that the district court has in the availability of funds  
20 to pay the judgment;***

21 Dennis asserts that Gabrielle could spend the money and/or make it difficult to  
22 collect the money if Dennis prevails on appeal. The district court found:

23 The record reflects, however, that Gabrielle did not spend extravagantly. To  
24 the contrary, she would inform Dennis of transactions as small as gifting a  
25 washer and dryer. (citing Exhibit "20" (October 21, 2011 message from  
26 Gabrielle inquiring: "Jennifer needs a washer. Okay for her to have ours?"))

27 See Decree of Divorce, page 67, lines 8-17. The district court's findings, and evidence  
28 submitted at trial, show that throughout the parties' 24-year marriage, Gabrielle was

1 extremely frugal in her spending while Dennis spent monies on girlfriends, lifestyle and  
2 dalliances which continued even after being served with the JPI. Gabrielle will have the  
3 sums available to pay Dennis in the event of a reversal.  
4

5 ***(4) whether the defendant's ability to pay the judgment is so plain that the cost of***  
6 ***a bond would be a waste of money;***

7 This is not a factor applicable in this case because Dennis has not offered to pay  
8 the cost of the bond. All Dennis has offered is to hold Gabrielle's receipt of funds that  
9 are due to her. Reason for him holding the funds is allegedly his fear that she will  
10 somehow dissipate those funds. As set forth above and as found by the district court,  
11 there is no basis for that.  
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14 ***(5) whether the defendant is in such a precarious financial situation that the***  
15 ***requirement to post a bond would place other creditors of the defendant in***  
16 ***an insecure position;***

17 Dennis earns more than \$13 million per year, has substantial assets and very few  
18 liabilities and is not in a precarious financial situation. It will not be a financial burden  
19 for Dennis to post a bond upon his income. For the foregoing reasons, Gabrielle requests  
20 that the Court deny Dennis's Motion for a Stay Pending Appeal.  
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23 DATED this 7<sup>th</sup> day of October, 2016

24 RADFORD J. SMITH, CHARTERED

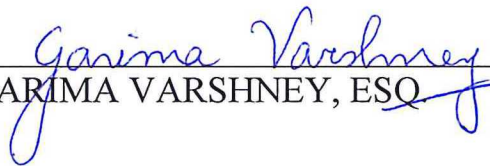
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**CERTIFICATE OF SERVICE**

I certify that on the 7<sup>th</sup> day of October, 2016, I served a copy of this  
OPPOSITION TO MOTION FOR A STAY PENDING APPEAL upon all counsel of  
record by mailing it by first class mail with sufficient postage prepaid to the following  
address:

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