

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

2 DENNIS KOGOD,

3 Appellant/Cross-Respondent,

4 v.

5 GABRIELLE CIOFFI-KOGOD,

6 Respondent/Cross-Appellant.

Supreme Court No. 71147
Electronically Filed
Jun 06 2017 03:50 p.m.
District Court Case No. D-15-48942-D
Elizabeth A. Brown
Clerk of Supreme Court

7 **MOTION FOR EXTENSION OF TIME TO FILE**
8 **THE ANSWERING BRIEF AND OPENING BRIEF ON CROSS-APPEAL AND**
9 **THE RESPONDENT/CROSS-APPELLANT'S APPENDIX**

10 Respondent/Cross-Appellant, GABRIELLE CIOFFI-KOGOD ("Gabrielle") hereby
11 moves for a sixty (60) day extension of time under NRAP 26 for filing the Answering
12 Brief and Opening Brief on Cross-Appeal ("Answering Brief") to the Appellant/Cross-
13 Respondent's Opening Brief. The Answering Brief is presently due by June 7, 2017. With
14 a sixty (60) day extension, the Answering Brief will be due by August 7, 2017. This is the
15 second extension for the Answering Brief and the first request by motion for extension for
16 the Answering Brief and the Respondent/Cross-Appellant's Appendix.

17 This is a divorce action after a twenty-four (24) year marriage. The case involved
18 the division of a substantial community estate, and alimony. There were three primary
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1 contested issues in the case: 1) community waste;¹ 2) alimony; and, 3) the valuation of
2 the residences secretly acquired by Appellant/Cross-Respondent, DENNIS KOGOD
3 (“Dennis”).
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5 **1) Community Waste**
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7 In its 114 page Findings of Fact, Conclusions of Law, and Decree of Divorce, the
8 trial court, Judge Bryce Duckworth, addressed the effect of Dennis’s transfer of millions
9 of dollars of community funds by to third parties without Gabrielle’s knowledge or
10 consent. As more fully set forth in the trial Court’s findings, Dennis supported a mistress,
11 Nadya Khapsalis, for many years during the marriage. He fathered two children of Ms.
12 Khapsalis (twins, age now 9 years). Dennis lived a lavish lifestyle with his mistress and
13 their children, and transferred millions of dollars of community funds for their benefit. He
14 also transferred substantial funds for the benefit of his other family members.
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18 At trial, Gabrielle, through her experts, Anthem Forensics, provided extensive
19 evidence of Dennis’ deceptive waste, dissipation, and improper gifting of community
20 property in violation of his fiduciary duty to Gabrielle, Nevada statute, and the Joint
21 Preliminary Injunction (“JPI”). The district court found that Dennis hid his acts from
22 Gabrielle through deception, artifice and fraud, made false promises to the district court to
23 provide an accounting of his community waste, and submitted knowingly false statements
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28 ¹ The moniker “community waste” is used here as a form of shorthand to represent the complicated issue
of a “compelling reason” for an unequal division of property carefully analyzed in great detail in the
Decree.

1 to the district court to protect his relationship with another one of his mistresses – Jennifer
2 Steiner.
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4 The district court found that Dennis had improperly transferred or utilized
5 \$4,087,863 of community funds, and held that Dennis’ acts constituted a compelling
6 reason to divide the community property unevenly. The court required Dennis to
7 reimburse Gabrielle for one-half of that figure, and accomplished that reimbursement
8 through an unequal division of parties’ community assets. The court also concluded that
9 Dennis’ transfer, use or gifting of community funds could only occur after a marriage was
10 “irretrievably broken.”
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14 Gabrielle requested that she be compensated for the opportunity cost “of foregone
15 returns” associated with Dennis’ improper transfer and use of community assets and
16 income for purposes that did not benefit the marital community. The district court denied
17 that request.
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19 Gabrielle’s cross-appeal requests clarification of the calculation and metric of
20 damages arising from a parties’ improper transfer or gifting of community funds, and
21 whether that calculation should include interest. Though the Court has addressed the issue
22 of an uneven distribution of community property for “community waste,” this cross-
23 appeal provides the Court the opportunity to better define the issue, and set guidance for
24 damages arising from waste, specifically the improper gifting of community property
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1 prohibited by NRS 123.230. This cross-appeal also allows the Court to address whether
2 waste can occur only after a marriage is “irretrievably broken.”
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4 **2) Alimony**

5 Gabrielle also requested an award of alimony based in part upon the massively
6 different post-divorce earnings of the parties. The district court found that including
7 Dennis’s 2015 W-2 income, his average annual income for the five years from 2011
8 through 2015 was \$13,975,268.90. The district court further found that Gabrielle’s
9 average gross monthly income was \$4,624.30 (or \$55,491.60 per year) and her net
10 monthly income was \$3,800 (or \$45,600 per year). Despite the wide gap in the parties’
11 income, the district court awarded Gabrielle only \$18,000 per month in alimony for 108
12 months (or 9 years). The district court ordered that the alimony be paid in lump sum with
13 a 4% discount rate. Gabrielle has filed a cross-appeal on the issue of whether the district
14 court’s award of alimony for Gabrielle was inadequate based upon the relative incomes of
15 the parties, the length of the marriage, and other relevant alimony factors.
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21 **3) Attorney’s Fees and Expert’s Fees**

22 The bulk of the lawyers’ time and litigation costs (appraisers and forensic
23 accountants), were necessary to value the assets and account for the spending of a very
24 clever and secretive spouse. Dennis promised the trial court to provide an accounting, but
25 did not. Gabrielle, the “out” spouse with no knowledge of the parties’ finances, had to
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1 pay her lawyers and their experts to learn what Dennis knew but would not reveal and
2 thus perform those investigative accounting tasks.

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4 On August 22, 2016, the district court entered the Findings of Fact, Conclusions of
5 Law and Decree of Divorce (hereinafter “Decree”). On September 13, 2016, Gabrielle
6 timely moved for Attorney’s Fees and Costs (“Motion”) pursuant to NRCP 54(d) and
7 based upon the Decree entered on August 22, 2016. By that Motion, Gabrielle requested
8 that the district court enter an order directing Dennis to pay all of the fees Gabrielle
9 incurred in discovering and trying what was, in effect, an on-going fraud of great scale.
10 Gabrielle also requested an order directing Dennis to pay all or some reasonable portion of
11 the expert fees incurred by Gabrielle. In both cases (fees and costs), she argued that since
12 there was a finding that the costs incurred were reasonable, and there is good cause to
13 enter an order for an amount greater than the statutory limitation. Gabrielle argued that the
14 majority of the fees she incurred were due to the unusual circumstances underlying this
15 case, and were this simply a matter of dividing the parties’ assets, or a rudimentary
16 alimony claim, the parties would have expended a fraction of the fees and costs the
17 community ultimately incurred. She claimed that Dennis’s concealment and fraud over
18 many years wrongfully caused the fees and costs to be a multiple of those typically
19 expended in a divorce case.
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26 Gabrielle argued a straight analysis of the *Brunzell* factors justifies an award of
27 fees, even if the Court ignored Dennis’s role in causing the increase of fees. She was
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1 charged a fair rate for services; her counsel performed competent work; counsel and
2 Anthem performed investigative and valuation work of extraordinary degree, intensity,
3 and scale to prepare and try the case. Dennis's income overwhelmingly exceeded
4 Gabrielle's. And, definitively, Gabrielle prevailed.
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7 By an Order entered on December 5, 2016, the district court denied Gabrielle's
8 request for attorney's fees of \$418,511.04. The court directed Dennis to pay one-half, or
9 \$75,650.00, of Gabrielle's expert, Anthem Forensics' fees. That amount was stayed to
10 allow Dennis an opportunity to request a stay from the Supreme Court. Dennis appealed
11 the Order entered on December 5. Gabrielle filed a cross-appeal.
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14 **4) Gabrielle's Request for an Extension of Time to File Answering Brief and**
15 **Opening Brief on Cross-Appeal**

16 NRAP 31(b)(3) states in relevant part as follows:

17 **(3) Motions for Extensions of Time.** A motion for extension of time for
18 filing a brief may be made no later than the due date for the brief and must
19 comply with the provisions of this Rule and Rule 27.

20 **(A) Contents of Motion.** A motion for extension of time for
21 filing a brief shall include the following:

- 22 (i) The date when the brief is due;
- 23 (ii) The number of extensions of time previously granted (including
24 a 5-day telephonic extension), and if extensions were granted, the original
25 date when the brief was due;
- 26 (iii) Whether any previous requests for extensions of time have
27 been denied or denied in part;
- 28 (iv) The reasons or grounds why an extension is necessary; and
- (v) The length of the extension requested and the date on which the
brief would become due.

**(B) Motions in All Appeals Except Child Custody, Visitation, or
Capital Cases.** Applications for extensions of time beyond that to which
the parties are permitted to stipulate under Rule 31(b)(2) are not favored.

1 The court will grant an initial motion for extension of time for filing a brief
2 only upon a clear showing of good cause. The court shall not grant
3 additional extensions of time except upon a showing of extraordinary
4 circumstances and extreme need.

5 Gabrielle's counsel has been working diligently on the brief. The case, however, is
6 complicated and requires extensive research and review of the lengthy transcripts from the
7 proceedings that lasted for four (4) full days. Indeed, the Order that is being appealed by
8 both parties is itself 114 pages long due to the numerous issues that were litigated and
9 ruled and due to the several years of evidence that was presented by the parties in support
10 of each of their positions. The Trial also included testimony from numerous witnesses and
11 experts. This case was highly contentious and involved considerable research, numerous
12 motions and multiple judgments from those motions that caused the district court to enter
13 the Order that is being appealed. The issues raised on cross-appeal are primarily legal
14 issues as applied to the facts of this case. While the attorneys for the Respondent are
15 diligently working on the Answering Brief, due to the complexity of this case, the time it
16 has taken to go through the research on some very complex law involving alimony,
17 unequal division of assets and fees as set forth above, and the time it has taken to review
18 and identify the relevant portions of the trial transcripts, it is extremely difficult to meet
19 the present deadline of June 7, 2017.

20 Therefore, Gabrielle, through her counsel, requests a sixty (60) day extension, until
21 August 7, 2017 for filing the Answering Brief and Opening Brief on Cross-Appeal and
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1 the Respondent's Appendix. This motion is being submitted in good faith, and without
2 the intent to cause undue delay in the appeal.

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4 Dated this 6th day of May, 2017.

5 RADFORD J. SMITH, CHARTERED

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8 RADFORD J. SMITH, ESQ.

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CERTIFICATE OF SERVICE

I certify that on the 6th day of June, 2017, I served a copy of this Motion for Extension of to file the Answering Brief upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address:

Daniel Marks, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas NV 89101
Attorney for Dennis Kogod


GARIMA VARSHNEY, ESQ.