

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

DENNIS KOGOD,

Appellant/Cross-Respondent,

v.

GABRIELLE CIOFFI-KOGOD.

Respondent/Cross-Appellant.

S.C. Docket No. 71147

71094

(Dist. Ct. No. D-13-489442-B)

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**Appeal from the Eighth Judicial District Court**

**RESPONDENT/CROSS-APPELLANT'S**

**REPLY BRIEF**

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### NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 (a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. During the proceedings leading up to this appeal, Respondent/Cross-Appellant has been represented by the following attorneys:

- a. Radford J. Smith, Esq., Garima Varshney, Esq. and, Kimberly Medina, Esq., for Radford J. Smith, Chartered, attorney of record for Plaintiff/Respondent/Cross-Appellant.
- b. Denise Gentile, Esq., as an attorney in the district court only. Judge Gentile was elected to the Family Division of the Eighth Judicial District Court in November 2014, after which time she withdrew from the representation.

Dated this 5<sup>th</sup> day of February 2018.

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**A. Dennis' Financial Misconduct:**

On cross-appeal, Gabrielle challenges as error the district court's finding that a spouse's improper transfer, use or gifting of community funds could only occur after a marriage was "irretrievably broken" and the district court's failure to award Gabrielle lost opportunity cost resulting from Dennis' unauthorized use of community funds. In his opposition to the Cross Appeal, Dennis rehashes his themes in the Opening Brief. Spouses are in a fiduciary relationship. NRS 123.070 provides:

Either husband or wife may enter into any contract, engagement or transaction with the other, or with any other person respecting property, which either might enter into if unmarried, subject in any contract, engagement or transaction between themselves, *to the general rules which control the actions of persons occupying relations of confidence and trust toward each other* [emphasis added].

It is generally recognized that the marital community is a *partnership* to which both parties contribute. Each spouse contributes his or her industry in order to further the goals of the marriage" *See York v. York*, 102 Nev. 179, 180 (1986).

Nothing could be more damaging and contrary to societal norms than a surreptitious relationship with a mistress in which he repeatedly, and systematically through lies and deception prevented Gabrielle from knowing about the relationship. RAB 13-17. Dennis cites to *Applebaum v. Applebaum*, 93 Nev. 382, 384-85, 566 P.2d 85 (1977) to argues that when he made the announcement for divorce in July

2010, any fiduciary relationship between Gabrielle and him ended because she should have known that their interests were adverse. Dennis argues that Gabrielle consulted with legal counsel after July 2010 to find out her rights. RB p.16. Gabrielle only discussed her case with her friends who happened to be attorneys. AA.8.1509. Moreover, in *Applebaum* the appeal rose out of wife's challenge to a property settlement agreement which was incorporated in the parties' Decree of Divorce. Here, unlike *Applebaum*, there was no divorce in 2010. Dennis did not proceed forward with that divorce and it was later dismissed. Gabrielle did not consult with divorce counsel until she retained Ms. Denise Gentile, Esq. and filed for a divorce, three years later. AA.8.1509.

It is not Dennis' overspending or gambling that is in issue here. It is the fact that he surreptitiously expended significant amount of monies, without Gabrielle's knowledge or consent, on two mistresses and his children from one of those mistresses in violation of NRS 123.230. The Nevada appellate courts will not go beyond a statute's plain language if the statute is facially clear. *Bacher v. State Engineer*, 122 Nev. 1110, 1117, 146 P.3d 793, 798 (2006). Dennis does not argue that Gabrielle gave express consent, and any suggestion that she gave implied consent has no support in the record. Dennis admitted that he purposely deceived Gabrielle. RAB 13-17.

Dennis claims that he did not omit assets. RB 17. Even while Dennis was negotiating with Gabrielle, he never informed her of his relationship with Nadya, or his children with her. AA.8.1532. In September 2014, someone alerted Gabrielle to an online video in which during a speech at a DaVita Shareholder's meeting, Dennis commented about the challenges of "raising small children." AA.8.1532. That is how Gabrielle became aware of Dennis' mistress and children.

Dennis argues that the court should have used the preponderance of the evidence standard to support a finding of waste. RB 12. Dennis argues that Gabrielle was required to show more than the fact that Dennis spent money. She was required to show that Dennis dissipated assets by a preponderance of the evidence. RB 13. Once Gabrielle made a *prima facie* showing of improper gifting, destruction or transfer of community property or funds, the court found that Dennis had a duty to account and show by clear and convincing evidence that the use of the property or funds was for a community purpose. AA.44.8526. The issue of the district court's identification of a "clear and convincing standard" was rendered moot by its finding that "Dennis failed to meet his burden by clear and convincing evidence (or even a preponderance of the evidence)." AA.44.08536. Even if this court was to find the clear and convincing standard to be error, that finding did not affect the district court's determination of waste.



Dennis argues that the district court improperly took into account marital fault, i.e. Dennis' adultery, in its decision even though the totality of Dennis' actions enhanced the community. RB 3. Dennis argues that the Court's decision would return Nevada to the days of a fault-based system. RB 3. Under Nevada law, Gabrielle is entitled to an equal division of community property, NRS 125.150(1). Dennis received an equal division of the property that was the subject of Gabrielle's waste claim – he just chose to spend his portion on his girlfriend and illegitimate children. The court's remedy of making Gabrielle whole was an order directing Dennis to account for one half of the funds he gifted, transferred or used on his mistresses and their children and simply a return Gabrielle's equal portion of the community property. Dennis had already enjoyed full use of his portion of that property.

Here, the district court's unequal division was based primarily upon Dennis's unauthorized gifts of community property (including community income), in violation of NRS 123.230(2). The prohibition is absolute – a spouse may not gift community property without the express or implied consent of the other spouse.

Dennis argues that Gabrielle did not rebut his analysis on pages 43 through 52 and therefore the Court should treat Gabrielle's failure to respond to Dennis' argument as an admission that his argument has merit. RB 28. This is false. In her Answering Brief on pages 55 through 58, Gabrielle rebutted Dennis' analysis on

pages 43 through 52. She identified that the district court's substantial findings regarding every sub category of waste was contained in pages 56 through 78 of the Decree of Divorce. AA.44.8530-8552. As Dennis has recognized throughout his brief, a district court's decisions made in a divorce decree are reviewed for an abuse of discretion. *Devries v. Gallio*, 128 Nev. Adv. Op. 63, 290 P.3d 260, 263 (2012). Here, the district court did not abuse its discretion in calculating Dennis' financial misconduct.

Dennis argues that Anthem placed an "arbitrary budget" on him. RB 19. That is false. Anthem's analysis of waste was based upon Dennis' admission regarding his monthly expenses as set forth in his Financial Disclosure Form. Anthem gave Dennis credit for those monthly expenses and then calculated the monies that he expended on his mistress and his children. Arguably, Dennis' unauthorized use of community funds was likely higher than what it was during the divorce proceedings when he knew that the financial records were being scrutinized by Gabrielle's experts. The court even adjusted those expenses that were justified by Dennis' testimony and Dennis' expert, Teichner's report. AA.44.8530-8552.

Dennis argued that Gabrielle did not object to the district court's decision to end community property on February 26. RA 29. That is false. At the February 26, 2016 hearing the district court orally announced that the parties were granted a divorce and ordered that the accrual of community property would stop on that date.

The Decree of Divorce, however, was entered months later on August 22, 2016. AA.44.08570. The district court's order directing the end of the accrual of community property was contrary to NRS 123.220 which states that all property acquired after marriage by either spouse or both spouses is community property. Dennis does not deny that the formal dissolution of a marriage can only be accomplished by the execution and filing of a written Decree of Divorce.

Gabrielle objected to the court's demarcation of the divorce through February 26. Gabrielle's counsel argued that the entry of the decree is the date at which the parties' community estate ends. So, the parties should use their own money to handle their own expenses in the meantime, and the funds from the earnings continue to be deposited into the account, until such time as the community is severed. RA000182-184. Moreover, the court's demarcation of the divorce through February 26 was improper because it was still taking evidence on the values of the real estate located at 9716 Oak Pass Road, Beverly Hills, California in an evidentiary hearing on May 4, 2016.

Gabrielle did not, as Dennis suggests on appeal, stay in a marriage with Dennis for his income, nor did the court make that finding. After 2010, little of the parties' communication addressed money. Most of it addressed Gabrielle's desire to fix her marriage. AA.14.2629-2813; AA.15.2814-3061.

The evidence demonstrated it was Dennis, not Gabrielle, who stayed married for money. Dennis testified that he did not divorce Gabrielle in 2010 because he was afraid that she would go to DaVita. AA.6.1051. He admitted that he had misled DaVita personnel by claiming that his children with Nadya were his grandchildren. AA.6.1078. Gabrielle comprehensively addressed Dennis's deceptions and fraud in her Respondent's Answering Brief at pages 13-17.

Dennis argues that the court "ignored Gabrielle's spending and focused solely on Dennis' spending with microscopic intensity." RB 19. That is false. The court considered evidence and testimony from Gabrielle as well. Gabrielle testified that she used her income and money to pay the expenses associated with the parties' Lake at Las Vegas home. AA.7.1310-1351. Dennis benefitted from all the payments, upkeep and maintenance of the home when the parties sold it in 2016 and he received and equal portion of the sales proceeds. AA.8.1477. Gabrielle did not know about Dennis's lifestyle of exotic cars, houses, maintenance of a mistress and children, yachts, private jet travel, etc. Gabrielle's view of spending was best characterized by her text in October 2011 asking Dennis if she could give away an old washer. AA.8.1409. Dennis never had to question her spending.

Dennis argues that the two yachts that he sold and purchased during the marriage without Gabrielle's knowledge or consent related to his "boating hobby" and were therefore not waste. RB 34. In *Putterman*, the Nevada Supreme Court

noted that hiding or wasting of community assets or misappropriating community assets for personal gain may indeed provide compelling reasons for unequal disposition of community property. *Putterman v. Putterman*, 113 Nev. 606, 609, 939 P.2d 1047, 1049 (1997).

Here, it was clear that Dennis was actively hiding the purchase, sale and expenses related to the yacht. Dennis hid the purchase of the yacht by placing it in his parent's name even though his parents had no interest in the yacht. AA.44.08542. He placed property, yachts and other assets into a trust, naming his father as trustee. AA.44.08491 FN26. In his deposition in 2015, his father testified that that he knew nothing about the trust. AA.29.05614-05615.

The district court correctly found that Dennis' newfound "hobby" was not disclosed to Gabrielle. AA.44.08543. The court also found that Gabrielle did not consent to those expenditures. AA.44.08543. Gabrielle testified that Dennis never invited her to either of the yachts that he purchased. AA.8.1431. This was not a case of "over consumption" of community funds by one party or a "hobby" of one party. Dennis actively and fraudulently concealed his purchase and use of the yacht and Gabrielle did not benefit from that purchase and use. The district court erred in finding zero waste for the expenses related to the yacht.

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**B. Alimony:**

On cross-appeal, Gabrielle challenges as error the district court's failure to recognize all of Dennis's income when addressing its award of alimony to Gabrielle. Dennis's response in his Answering Brief on Cross Appeal is primarily composed of a rehash of his general themes in his Appellant's Opening Brief, and the bulk of his Appellant's Reply Brief. He argues that a Nevada court may not award alimony to a spouse that does not have financial need; that the district court erred by utilizing an economic loss theory of alimony, and that Nevada court may only award lump sum alimony when the payor is ill, or there is a large gap in age.

Gabrielle comprehensively addressed Dennis's arguments in her Respondent's Answering Brief at pages 19-34. In sum, under NRS 125.150(9), the district court must consider certain statutory guidelines when entering its order regarding alimony and must make written findings regarding those guidelines. NRS 125.150(9) does not expressly include "need" as a basis for alimony. The district court made extensive written findings regarding each of the guidelines when entering its award. AA.44.08556-08569.

The district courts order was consistent with existing Nevada decisions. In both *Gardner v. Gardner*, 110 Nev. 1053, 881 P.2d 645 (1994) and *Shydler v. Shydler*, 114 Nev. 192, 954 P.2d 37 (1998), the district court held that the wife in those cases did not need alimony, and in *Shydler* the district court found that the

wife could support her lifestyle through property equalization payment, but the Nevada Supreme Court reversed. In both instances, the appellate court focused on the significant difference in the spouses' income capacity that was based upon education, skill, or business acumen gained during marriage. While Dennis has focused his argument on "need," the Nevada Supreme Court defined alimony as an "equitable award serving to meet the post-divorce needs and **rights** of a former spouse." *Shydler*, 114 Nev. at 198, 954 P.2d at 40. [emphasis supplied]. In its analysis, the *Shydler* court recognized that under Nevada law, a party is entitled to a division of property as a matter of right. *Id.* By contrast it held:

Alimony is an equitable award serving to meet the post-divorce needs **and** rights of the former spouse. It follows from our decisions in this area that two of the primary purposes of alimony, at least in marriages of significant length, are to narrow any large gaps between the post-divorce earning capacities of the parties, **and** to allow the recipient spouse to live as nearly as fairly possible to the station in life enjoyed before the divorce.

*Id.* at 198, 954 P.2d at 40 [citations omitted; emphasis supplied]. The court did not pose those goals as mutually exclusive; it presented them, using the conjunction "and," as equally important purposes of alimony.

As stated, Gabrielle's challenge of error on cross-appeal is based upon the district court's refusal to consider all of Dennis's income. The district court limited its review to Dennis's \$800,000 salary. The Court focused its review and decision on the difference in part of Dennis's income, his \$800,000 salary, but ignored his

average bonus earnings of approximately \$13,000,000 per year for the five years preceding trial. AA.44.08556-08569. The district court provided, without legal citation, three reasons for ignoring Dennis's historical income. First, the court observed that his "compensations awards" fluctuated, and that Dennis's W-2 income was more predictable. AA.44.08564. Second, the district court noted that Dennis's highest income "came at a time that the marital relationship was broken, and the parties had been permanently separated." AA.44.08565. Third, "the delay in the parties divorcing has resulted in significant growth in the size of the overall marital estate." AA.44.08565.

Dennis argues that the district court properly excluded Dennis's bonus income because Dennis testified that he was at the end of his executive career. RB 42. As set forth above, that was not one of the stated bases that the district court used to ignore Dennis's years of eight-figure bonus income. Moreover, it is not a reasonable basis to do so. NRS 125.150 lists spouse's income *and* earning capacity as elements of the Court's review of alimony.

The district court found that Dennis's average annual income from 2011 to 2015 was \$13,975,268.90 per year, but it limited its calculation alimony to Dennis's base salary, \$800,000 per year. AA.44.08562. To put the Court's award into perspective, at the time of trial, Dennis's average income was 252 times Gabrielle's 2015 earnings of \$55,491.60. During the five previous years, Dennis earned the



entirety of Gabrielle's yearly earnings every 34.78 hours, and the amount necessary to satisfy the Court's alimony award in 43 days.

Dennis argues that there was "no evidence Dennis' pretrial earnings would continue post-trial or he had a continue to generate money in the future." RA 42. That argument defies reason. Dennis was still employed at the same job at DaVita that had granted him an average earning of approximately \$13,000,000 million dollars per year. Contrary to Dennis' argument, there was no evidence that suggested he would earn less.

Dennis's evidence of an impending loss of income was based upon Dennis' claimed that he had "serious concerns" about his ongoing ability at DaVita to stay in his current capacity. AA.6.01198. Dennis based that testimony on "some conversations" he had with the DaVita, CEO, Kent Thiry (AA.6.01198), but he never presented any DaVita officers or employees to substantiate he claims. The district court gave little weight to that testimony because it projected Dennis's income over nine years in making its lump sum award calculation. (AA.44.8564) Further, the district court found that comparing the total income each party would earn based on the history of their earnings during the previous five years (combined with the passive income Gabrielle would likely earn), the record supported a finding

that Dennis would continue to earn more income annually than Gabrielle. AA.44.08567.<sup>1</sup>

Dennis continues to challenge the district court's order directing lump sum alimony. Dennis reads the decision in *Klabacka v. Nelson*, 133 Nev. Adv. Op. 34, 394 P.3d 940 (2017), and its citation to *Sargeant v. Sargeant*, 88 Nev. 223, 228, 495 P.2d 618, 622 (1972) as a finding that a district court may order lump sum "where a husband's conduct indicated the possibility he might liquidate or interfere with his assets to avoid paying support." RA 45. Dennis argues that since the district court did not specifically find that he would shirk periodic payments, there was no basis for a lump sum award. RA 46.

Dennis argument fails because there was substantial evidence in the record demonstrating Dennis could not be trusted to be honest with Gabrielle regarding his income and assets, nor could he be trusted to follow court orders. The evidence presented in the case demonstrated that Dennis repeatedly and fraudulently

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<sup>1</sup> In his Reply brief, Dennis states that his employment ended on November 30, 2016, approximately eight (8) months after the trial in this case. RA 42. Dennis improperly relies on evidence that was *not* presented to the district court and not part of the record of this case. Moreover, the nature of Dennis' employment and income after the divorce is a matter of significant concern to Gabrielle, and was the subject matter of a post-trial motions heard by the district court during the pendency of this appeal. The district court has deferred its ruling on those motions pending the outcome of this appeal.

concealed, hid and transferred assets and income to mistresses and illegitimate children during their marriage. *See*, Respondent's Reply Brief, pages 13-17. Moreover, the district court found that Dennis had violated the court's JPI 39 times. AA.44.08556. The record reflected that after the issuance of the JPI, Dennis spent more than \$10,000 on thirty-nine (39) individual transactions that totaled \$1,486,452. AA.44.08555. Those expenditures did not qualify as the "necessities of life" nor were made in the "ordinary course of business" AA.44.08555. Dennis also had a history of failing to comply with the court's specific direction (evidenced by the district court's findings that Dennis failed to provide an accounting despite his numerous promises to do so. AA.44.8500.

### **C. Sanctions**

On Cross-appeal, Gabrielle asserts that sanctions of \$500 for each of 39 violations of the JPI for a person that averaged approximately a \$1,000,000 per month in income is an abuse of discretion. Dennis curiously argues in opposition that the Court should not have granted Gabrielle any sanctions under EDCR 7.60 because her claims for relief were limited to contempt. RA 50. Dennis' argument

is wrong. Gabrielle specifically sought sanctions under EDCR 7.60 in her Motion addressing Dennis' violations of the JPI. AA.4.0656-0657<sup>2</sup>; AA.43.08276<sup>3</sup>.

A JPI in this case was issued under EDCR 5.85. Effective May 1, 2017, EDCR 5.85 has been repealed and replaced by EDCR 5.517. Dennis acknowledges that EDCR 5.85 has since been repealed but appears to be arguing that even though EDCR 5.85 was a valid rule at the time that JPI was issued in this case, it cannot be enforced because the JPI was never signed by a district court judge which is now required under EDCR 5.517. RA 49. The JPI issued in this case was properly issued under EDCR 5.85 and served on Dennis. AA.1.15-16, AA.1.14. Dennis testified that he had been served with the JPI. AA.6.1140. The JPI clearly states that a violation of the order is punishable by contempt.

Dennis argues that the JPI in this case under EDCR 5.85 is ambiguous because it does not define "necessities of life" or "usual course of business." RA 49. This court reviews a district court's decisions made in a divorce decree for an abuse of discretion. *Devries v. Gallio*, 128 Nev. Adv. Op. 63, 290 P.3d 260, 263 (2012) (citing *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004)). Those

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<sup>2</sup> See Plaintiff's Motion for the Issuance of an Order to Show Cause why Defendant Should Not be Held in Contempt for his Multiple Violations of the Joint Preliminary Injunction; Plaintiff's Motion for an Order Limiting the Access and Payments from Community Accounts filed on January 19, 2016.

<sup>3</sup> See Plaintiff's Closing Brief filed on August 1, 2016.

decisions supported by substantial evidence will be affirmed. *Id.* at 264. Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment. *Id.*

Here, the district court made specific findings regarding Dennis' violations of JPI, gave Dennis credit for monies he expended on Nadya, the children and his family members during this litigation. AA.44.08556. The court found that even though those expenses form sufficient basis to impose additional monetary sanctions against Dennis, the court did not consider those expenses in calculating the waste. AA.44.08556. It should be noted that even under the new rule EDCR 5.517, the JPI does not define "necessities of life" or "usual course of business" likely because what constitutes such expenses vary in each case, and are left to the common definition of those terms.

#### **D. Expert Witness Costs**

NRS 18.110(1) provides that a memorandum of costs must be filed within five days of entry of judgment, "or such further time as the court or judge *may* grant." (Emphasis added.) Accordingly, an abuse of discretion standard applies. *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 885 P.2d 580 (1994). In *Eberle v. State ex rel. Redfield Tr.*, 108 Nev. 587, 836 P.2d 67 (1992) this Court clarified NRS 18.110(1) and found that although no further time for filing a motion for costs was specifically granted by the district court, by granting the motion for expert witness fees and costs, the

district court either considered the motion to be timely, or impliedly granted respondents additional time within which to move for expert witness fees and costs. In either case, the district court's exercise of discretion to reach the merits of the motion will not be disturbed on appeal. *Id.* This Court ordered that the statutory period of NRS 18.110(1) is, by its own terms, not a jurisdictional requirement. *Id.*

Here, the district court impliedly granted Gabrielle additional time within which to move for expert witness fees and costs by ordering that Gabrielle *should be* reimbursed for the forensic accounting costs associated with her retention of Anthem Forensics for the work that Dennis had promised and was legally obligated to perform [Emphasis in the decree] AA.44.08477, FN6.

Dennis argues that the district court should have analyzed all 11 of *Frazier* factors in its award of fees. RB 54. In *Frazier*, this Court held that not all of those factors may be pertinent to every request for expert witness fees in excess of \$1,500 per expert under NRS 18.005(5), and thus, the resolution of such requests will necessarily require a case-by-case examination of appropriate factors. *Frazier v. Drake*, 357 P.3d 365, 375 (2015). As discussed in Gabrielle's Answering Brief, the district court did make findings regarding anthem's fees throughout the Decree of Divorce. RAB 70-73.

#### **E. Attorney's Fees**

EDCR 7.60 states in relevant part,

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

...  
(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

...  
(5) Fails or refuses to comply with any order of a judge of the court.

Dennis argues that EDCR 7.60 does not apply because he did not refuse to comply with the court's orders and he did not multiply the proceedings. RB 57.

*(1) Dennis' multiplication of the proceedings*

There were two primary contested issues in the case: 1) community waste; and 2) alimony. All of the assets that were in issue were acquired by Dennis without Gabrielle's knowledge or consent; all of the "waste" in issue was money expended by Dennis without Gabrielle's knowledge or consent. AA.6.1052; AA.6.1090-1091; AA.44.0847, FN26. Dennis multiplied these proceedings when he failed to account for his financial misconduct despite assurances from his previous counsel he will do and the court's direction that it expects Dennis to account for the waste. Instead of complying with that order, Dennis terminated his counsel and retained a new counsel, presumably because he was advised by his new counsel not to provide any accounting. Gabrielle has analyzed Dennis' needless multiplication of these proceedings throughout her Answering Brief. RAB 78-80.

The court awarded Gabrielle one-half of Anthem's fees. AA.47.9276-9279. Gabrielle submits that the bulk of the fees incurred by her in this case were related to gathering the information underlying the Anthem reports, and for that reason, those fees should be held in the same light as the work performed by Anthem. AA.44.8607-8703.

*(2) Dennis' violations of the Court's orders*

The court found that Dennis committed thirty-nine (39) separate violations of the court's order. Even though the district court sanctioned Dennis for his violation of the JPI, the court did not award Gabrielle any attorney's fees. AA.44.08556.

Dated this <sup>th</sup>5..... day of February 2018.

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### **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast Respondent/Cross-Appellant's Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Font Size 14, in Times New Roman;
2. I further certify that this brief complies with the page- or type-volume limitations of NRAP32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionally spaced, has a typeface of 14 points or more, and including the footnotes, contains 4,430 words.
3. I further certify that I have read the Respondent/Cross-Appellant's Reply Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by appropriate references to page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules Appellate Procedure.

Dated this <sup>th</sup>5..... day of February 2018.

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### CERTIFICATE OF MAILING

I hereby certify that I am an employee of Radford J. Smith, Chartered, and that on the 5<sup>th</sup> day of February 2018, a copy of Respondent/Cross-Appellant's Reply Brief in the above entitled matter was e-mailed and was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list, to the attorney listed below at the address, email address and/or facsimile number indicated below:

Dan Marks, Esq.  
Law Office of Daniel Marks  
610 South Ninth Street  
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*Attorney for Appellant/Cross-Respondent*



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