

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2

3
4 ELIZABETH HOWARD)

5 Appellant,)
6)

7 vs.)

8 SHAUGHNAN L. HUGHES)

9 Respondents,)
10)
11

Electronically Filed
Jan 09 2018 09:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 64463

Dist. Court Case No. 15DC-100876

12 **APPENDIX TO:**

13 **APPELLANT'S OPENING BRIEF**

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15
16 **Volume One**

17 **AA 0001-AA 0100**
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1 Case No. 15-1000-0876

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2 Dept. No. I

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3 The undersigned hereby affirms that
4 this document does not contain the
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6 
7 JUSTIN M. TOWNSEND, Esq.

BY  DEPUTY

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

13 vs.

COMPLAINT
(Exempt from arbitration)

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

17 Defendants.

18 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES, by and through his counsel,
19 ALLISON MacKENZIE, LTD., and hereby complains and alleges against Defendants as follows:

20 **GENERAL ALLEGATIONS**

21 1. Plaintiff and Defendant, ELIZABETH C. HOWARD, own, in joint tenancy,
22 an undivided one hundred percent (100%) interest in and to that certain real property situated in
23 Churchill County, State of Nevada, commonly referred to as 11633 Fulkerson Road, Fallon, Nevada
24 89406 (the "Property") and more particularly described as follows:

25 PARCEL 2 AS SHOWN ON THE PARCEL MAP FOR AMMERCON
26 ENTERPRISES, RECORDED IN THE OFFICE OF THE CHURCHILL
27 COUNTY RECORDER'S OFFICE ON DECEMBER 28TH, 2000 AS
28 FILE NO. 333468, OFFICIAL RECORDS.

29 2. There may exist additional Defendants, whose true names and capacities,
30 whether individual, corporate, associate, or otherwise are unknown to Plaintiff, and are therefore

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 sued by fictitious names, DOES I through XX, inclusive. Plaintiff will seek leave of this Court to
2 amend this Complaint if and when the true identities of these Defendants become known to Plaintiff.
3 Plaintiff is informed and believes and alleges that each of Defendants, DOES I through XX,
4 inclusive, may have cognizable interests in the Property.

5 3. The Property consists of approximately 11.09 acres upon which exist several
6 improvements including but not limited to a single family residence, a hangar, other buildings and
7 certain improvements erected by Plaintiff at significant cost, in terms of time and money, to Plaintiff.

8 4. Plaintiff is informed and believes that there are no liens or interests in the
9 Property other than the joint tenancy interests of Plaintiff and Defendant.

10 5. The Property was deeded to Plaintiff and Defendant as joint tenants by
11 quitclaim deed recorded in the official records of Churchill County on July 11, 2012 as Document
12 No. 428132.

13 6. Plaintiff and Defendant were romantically involved for a period of
14 approximately six (6) years until March 2015.

15 7. On or about March 16, 2015, Defendant filed an application for protective
16 order.

17 8. A hearing was held on Defendant's application for protective order on March
18 23, 2015 at which time New River Township Justice of the Peace, Michael D. Richards, denied
19 Defendant's application and ordered her to allow Plaintiff access to the Property to retrieve his
20 belongings.

21 9. On April 3, 2015, Plaintiff, accompanied by a Churchill County Sheriff's
22 Deputy, went to the Property to retrieve his personal belongings, but was denied access to the
23 Property by Defendant.

24 10. Defendant has added a padlock to the entry gate to the Property such that
25 Plaintiff is denied access to the Property.

26 11. On May 3, 2015, with the assistance of the Churchill County Sheriff's Office,
27 Plaintiff was able to retrieve his personal belongings from the Property.
28

1 12. From March 2015 Defendant has had sole possession of the Property without
2 any compensation to Plaintiff for Defendant's sole possession of the Property.

3 13. Until March 2015 Plaintiff operated a licensed, internet-based firearms sales
4 business out of the Property pursuant to a Federal Firearms License and a Churchill County Special
5 Use Permit, each of which was specific to the Property.

6 14. As a result of Defendant's actions to deny Plaintiff access to the Property,
7 Plaintiff lost the ability to use his Federal Firearms License and lost the Churchill County Special
8 Use Permit, which resulted in Plaintiff losing the ability to operate his business.

9 15. Plaintiff continues to pay expenses associated with the Property, including but
10 not limited to all property taxes thereon.

11 16. Plaintiff paid \$2,011.85 to the Churchill County Assessor's Office on July 13,
12 2015 for taxes assessed on the Property for the 2015-2016 tax year.

13 17. Plaintiff has demanded compensation from Defendant for his interest in the
14 Property.

15 **FIRST CLAIM FOR RELIEF**
16 **(Partition – NRS 39.010 et seq.)**

17 18. Plaintiff incorporates and re-alleges each and every paragraph of the
18 Complaint as though fully set forth herein.

19 19. Plaintiff, as joint tenant, has an absolute right to insist upon partition of the
20 Property.

21 20. Plaintiff is entitled to an accounting of his interest in the Property, which must
22 take into account the amounts owed for Plaintiff's contributions to the Property, his continued
23 payment of expenses on the Property, Defendant's sole possession of the Property without rents, and
24 Plaintiff's loss of business resulting therefrom.

25 21. Partition of the Property cannot be made without great prejudice to the parties.

26 22. As partition of the Property cannot be made without great prejudice to the
27 parties, sale of the Property and equitable division of the proceeds thereof is appropriate.
28

1 23. Plaintiff is entitled to a judgment quantifying the parties' interests in the
2 Property and ordering a sale thereof on terms equitable to the parties.

3 24. This matter is exempt from the District Court Arbitration Program under NRS
4 Chapter 38 as Plaintiff is seeking equitable relief.

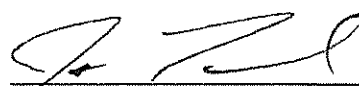
5 25. Plaintiff has been forced to incur fees and costs in pursuit of this action, for
6 which it is entitled to recover pursuant to NRS 39.170.

7 WHEREFORE, Plaintiff, SHAUGHNAN L. HUGHES, prays for judgment as
8 follows:

- 9 1. For entry of judgment identifying the parties' respective interests and shares
10 in the Property;
- 11 2. For entry of judgment ordering partition of the Property by sale on terms
12 equitable to the parties;
- 13 3. For attorneys' fees and costs of suit;
- 14 4. For such other and further relief as this Court deems just and proper.

15 DATED this 27th day of July, 2015.

16 ALLISON MacKENZIE, LTD.

17
18 By: 
19 JUSTIN M. TOWNSEND, ESQ.
20 Nevada State Bar No. 12293
21 402 N. Division St.
22 PO Box 646
23 Carson City, NV 89702

24 Attorneys for Plaintiff,
25 SHAUGHNAN L. HUGHES

26 4841-6064-2854, v. 2
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Case No.15-10DC-0876

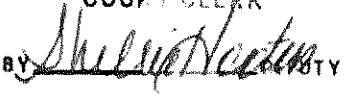
Dept. No. I

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JUSTIN M. TOWNSEND, Esq.

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IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an
individual,

Plaintiff,

PROOF OF PUBLICATION

vs.

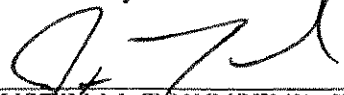
ELIZABETH C. HOWARD, an
individual; and DOES I through
XX, inclusive.

Defendants.

Attached hereto is the **Proof and Statement of Publication** of the Summons from the
Lahontan Valley News.

DATED this 23rd day of October, 2015.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703-4168

By: 
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293

Attorneys for Plaintiff,
SHAUGHNAN L. HUGHES

4843-5278-4169, v. 1

LMN
Lahontan Valley News
 & Fallon Eagle Standard

**Proof and
 Statement of Publication**

P.O. Box 1888, Carson City, NV 89702
 (775) 881-1201 FAX: (775) 887-2408

Customer Number: 1063889

Allison Mackenzie, Ltd.
 P.O. Box 646
 Carson City, NV 89702-0646
 Attn: Nancy Fontenot

Kristin Ritter says:
 That (s)he is a legal clerk of the **LAHONTAN VALLEY NEWS**, a newspaper published Wednesday, Friday and Sunday at Fallon, in the State of Nevada.

Hughes Summons

AD# 11566683

of which a copy is hereto attached, was published in said newspaper for the full required period of **4 times** commencing on **September 30, 2015**, and ending on **October 21, 2015**, all days inclusive.

Signed: *[Signature]*

State of Nevada, Carson city
 Subscribed and sworn to before me this 21
 day of **October, 2015**.

[Signature]
 Notary Public



STATEMENT:

Date	Amount	Credit	Balance
10/21/15	\$381.08	\$0.00	\$381.08

Cassandra G. Jones,
 Esq.
 Bar No.: 8518
 1625 Highway 88, Suite
 304
 Minden, Nevada
 89423
 775-782-0040
 Attorney for Petitioner
 The undersigned affirms that
 this document does not
 contain personal information,
 pursuant to NRS 603A.040

IN THE NINTH JUDICIAL
 DISTRICT COURT OF
 THE STATE OF
 NEVADA IN AND FOR
 THE COUNTY OF
 DOUGLAS
 In the Estate of
 NAOMI M. BUSH,
 Deceased,
 Case No. 15-PB-0089
 Dept. I

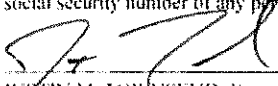
NOTICE TO CREDITORS
 NOTICE IS HEREBY GIVEN that Alissa A. Burns and Cynthia R. Lange were appointed and qualified by the above-entitled Court on September 29, 2015, as Co-Personal Representatives of the Estate of Naomi M. Bush, deceased.
 Naomi M. Bush was born on April 7, 1926.
 All creditors having claims against the estate are required to file their claims, with supporting documentation attached, with the Clerk of the Court at the Ninth Judicial District Court, P.O. Box 218, Minden, NV 89423, within 90 days after the date of mailing or the first date of publication (as the case may be) of this Notice. Dated this 30th day September, 2015.
 HERITAGE LAW GROUP, P.C.
 /s/ Cassandra G. Jones, Esq.
 Pub: October 7, 14, 21, 2015 Ad#11588537

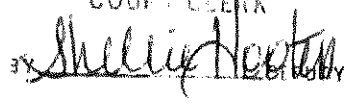
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Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 Case No.15-10DC-0876

2 Dept. No. 1

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4 this document does not contain the
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6 
7 JUSTIN M. TOWNSEND, Esq.

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8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

**CORRECTED
PROOF OF PUBLICATION**

13 vs.

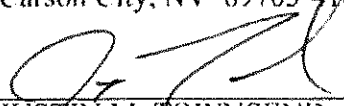
14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

17 Defendants.

18 Attached hereto is the **Proof and Statement of Publication (Corrected)** of the
19 Summons from the Lahontan Valley News.

20 DATED this 29th day of October, 2015.

21 ALLISON MacKENZIE, LTD.
22 402 North Division Street
23 Carson City, NV 89703-4168

24 By: 
25 JUSTIN M. TOWNSEND, ESQ.
26 Nevada State Bar No. 12293

27 Attorneys for Plaintiff,
28 SHAUGHNAN L. HUGHES

4849-5501-4954 v 1



**Proof and
Statement of Publication
CORRECTED**

P.O. Box 1888, Carson City, NV 89702
(775) 881-1201 FAX: (775) 887-2408

Customer Number: 1063889

Allison Mackenzie, Ltd.
P.O. Box 646
Carson City, NV 89702-0646
Attn: Nancy Fontenot

Kristin Ritter says:

That (s)he is a legal clerk of the **LAHONTAN VALLEY NEWS**, a newspaper published Wednesday, Friday and Sunday at Fallon, in the State of Nevada.

Hughes Summons

AD# 11566683

of which a copy is hereto attached, was published in said newspaper for the full required period of **4 times** commencing on **September 30, 2015**, and ending on **October 21, 2015**, all days inclusive.

Signed: _____

State of Nevada, Carson city
Subscribed and sworn to before me this 27
day of **October, 2015**.

Tammy Meckler

Notary Public



STATEMENT:

Date	Amount	Credit	Balance
10/21/15	\$381.08	\$0.00	\$381.08

Case No.15-10DC-0876
Dept. No. 1
In the Tenth Judicial
District Court of the State
of Nevada in and for the
County of Churchill

**SHAUGHNAN L.
HUGHES**, an individual,
Plaintiff,
vs.
**ELIZABETH C.
HOWARD**, an individual,
and **DOES I** through
XX, inclusive,
Defendants. /

**SUMMONS
TO THE DEFENDANT.
YOU HAVE BEEN
SUED. THE COURT
MAY DECIDE AGAINST
YOU WITHOUT YOUR
BEING HEARD UNLESS
YOU RESPOND WITHIN
20 DAYS. READ THE
INFORMATION BELOW
VERY CAREFULLY.**
A civil Complaint has
been filed by the plaintiff
against you for the relief
as set forth in that
document (see
complaint). When service
is by publication, add a
brief statement of the
object of the action. See
Rules of Civil Procedure,
Rule 4(b).

1. If you intend to defend
this lawsuit, you must do
the following within 20
days after service of this
Summons, exclusive of
the day of service:

a. File with the Clerk
of this Court, whose
address is shown below,
a formal written answer
to the complaint, along
with the appropriate filing
fees, in accordance with

the rules of the Court.

b. Serve a copy of
your answer upon the
attorney whose name
and address is shown
below.

2. Unless you respond, a
default will be entered
upon application of the
plaintiff and this Court
may enter a judgment
against you for the relief
demanded in the
Complaint.

* This action is brought to
partition the real property
described in the
Complaint.

Dated this 27th day
of July, 2015.

Issued on behalf of the
Plaintiff's attorney:

JUSTIN M. TOWNSEND,
Esq.
ALLISON MACKENZIE,
LTD.

402 North Division Street
Carson City, NV 89703
Telephone: 775-687-0202

CLERK OF THE COURT
By Sue Sevon
Deputy Clerk
Tenth Judicial District
Court

73 N. Maine St., Ste. B
Fallon, NV 89406
Telephone: 775-423-6088

Pub: September 30,
October 7, 14, 21, 2015
Ad#11566683

AA0008

Jeb

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BY Bennett DEPUTY

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 Charles R. Kozak
7 CHARLES R. KOZAK, ESQ.

8 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF CHURCHILL**

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

ANSWER AND COUNTERCLAIM

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive,

17 Defendants

18 ELIZABETH C. HOWARD, an
19 individual,

20 Counterclaimant,

21 vs.

22 SHAUGHAN L. HUGHES, an
23 individual; and DOES I through
24 XX, inclusive,

25 Counterdefendants

ANSWER

26 ELIZABETH HOWARD, an individual (hereinafter "Defendant/Counterclaimant"), by
27 and through her attorney of record, Charles R. Kozak, Esq., answers SHAUGHAN L.
28

1 HUGHES', an individual (hereinafter "Plaintiff/Counterdefendant"), Complaint as follows:

2 Answering Paragraph 1 of Plaintiff's Complaint. Defendant admits that Plaintiff and
3 Defendant are recorded as joint owners of the property described in Paragraph 1 but denies
4 Plaintiff is in fact entitled to any interest in the property whatsoever;
5

6 Answering Paragraph 2, Defendant denies the allegations therein;

7 Answering Paragraph 3, Defendant admits improvements have been made to the
8 property but denies Plaintiff has any interest in said improvements;
9

10 Answering Paragraph 4, Defendant admits the allegations contained therein;

11 Answering Paragraph 5, Defendant admits there was romantic involvement for a time,
12 but was substantially less than six years.

13 Answering Paragraph 6, Defendant admits the allegations contained therein;

14 Answering Paragraph 7, Defendant admits the allegations contained therein.

15 Answering Paragraph 8, Defendant admits the allegations contained therein.

16 Answering Paragraph 9, Defendant denies the allegations therein;

17 Answering Paragraph 10, Defendant admits the allegations contained therein;

18 Answering Paragraph 11, Defendant admits the allegations contained therein;

19 Answering Paragraph 12, Defendant admits the allegations contained therein;

20 Answering Paragraph 13, Defendant denies the allegations contained therein;

21 Answering Paragraph 14, Defendant denies the allegations contained therein;

22 Answering Paragraph 15, Defendant admits the allegations contained therein;

23 Answering Paragraph 16, Defendant admits the allegations contained therein;

24 Answering Paragraph 17, Defendant admits the allegations contained therein; and

25 Answering Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25, Defendant denies the
26
27
28

1 allegations contained therein.

2 **COUNTERCLAIM**

3 **STATEMENT OF FACTS**

4
5 1. Defendant/Counterclaimant was employed by Professional Hospital Supply located in
6 Fairfield, California from September 2007 until August 2008. On July 23, 2008,
7 Defendant/Counterclaimant was seriously injured on the job in San Francisco, California, and
8 thus is disabled from that accident.

9
10 2. Defendant/Counterclaimant was forced to sell precious metals and jewelry to make ends
11 meet after her worker's compensation was stalled and she was waiting for a third party personal
12 injury settlement.

13
14 3. Defendant/Counterclaimant met the Plaintiff/Counterdefendant, Shaughnan L. Hughes,
15 who was employed by a precious metal buying company when she sold her coins to him. At the
16 time, Plaintiff/Counterdefendant seemed very friendly and eager to help her.

17
18 4. Eventually a relationship developed between Defendant/Counterclaimant and
19 Plaintiff/Counterdefendant, and Defendant and they decided to move to Fallon, Nevada in
20 August of 2010, after dating for almost a year. Plaintiff/Counterdefendant requested that
21 Defendant/Counterclaimant give him all her jewelry and extra money from her worker's comp
22 check and state disability payment so they could rent a place in Fallon, Nevada.

23
24 5. On November 2, 2010, Defendant/Counterclaimant received \$4,489.14 as a settlement
25 for her dog bite case. Defendant/Counterclaimant used part of her settlement being \$2,500 to
26 purchase one-half interest in a 1995 Toyota 4-runner with the Plaintiff/Counterdefendant.
27 Plaintiff/Counterdefendant also insisted Defendant/Counterclaimant purchase a bed for \$1500
28 for Defendant/Counterclaimant and Plaintiff/Counterdefendant to sleep on since they were

1 sleeping on a sponge on the floor.

2 6. In April 2011, Plaintiff/Counterdefendant took a cut in pay to avoid going on the road
3 for his company and was reduced to answering prospective customers' questions on the phone.
4 Plaintiff/Counterdefendant spent most of his \$15 dollar per hour earnings on bullets, projectiles,
5 casings and firearms.
6

7 7. Plaintiff/Counterdefendant also had child support obligations for his two daughters
8 which he resented paying.
9

10 8. In September 2011, Plaintiff/Counterdefendant's ex-wife was going to move to Indiana
11 and take Plaintiff/Counterdefendant's two daughters with her, and Plaintiff/Counterdefendant's
12 father did not want to lose contact with his granddaughters, so Plaintiff/Counterdefendant's
13 father hired an attorney to help Plaintiff/Counterdefendant fight for custody of his two girls.
14 Plaintiff/Counterdefendant's ex did not want to wait a year before moving, so the ex-wife called
15 Plaintiff/Counterdefendant and told him that he had ruined her life again and to come and get
16 the girls. Defendant/Counterclaimant accompanied Plaintiff/Counterdefendant to all court cases
17 involving his children, including picking up the girls and bringing them back to Fallon, to the
18 small two bedroom, two bath manufactured home on one acre which Plaintiff/Counterdefendant
19 and Defendant/Counterclaimant rented when they first moved.
20

21 9. Life at home became extremely stressful as Savannah (the eldest daughter) was
22 becoming mentally unstable. Plaintiff/Counterdefendant was ill-prepared to be around his
23 children full time, and vented his frustration on the Defendant/Counterclaimant. His children
24 were and are habitual liars and Plaintiff/Counterdefendant would constantly yell at
25 Defendant/Counterclaimant over things his children had done. As a result,
26 Defendant/Counterclaimant threatened to leave Plaintiff/Defendant.
27
28

1 10. Eventually, Defendant/Counterclaimant received her settlement check in the amount of
2 \$156,000 on June 13, 2012. With the proceeds, Defendant/Counterclaimant purchased the
3 property located at 11633 Fulkerson Road in Fallon, Nevada.
4

5 11. Plaintiff/Counterdefendant insisted that Defendant/Counterclaimant put numerous
6 improvements on the property all of which she paid for. They included a \$25,000 garage, a few
7 thousand dollars of base rock, and about 700 railroad ties for retaining walls and fence posts.
8

9 12. Plaintiff/Counterdefendant exerted undue influence on Defendant/Counterclaimant to
10 quit claim Plaintiff/Counterdefendant on the deed to her residence five (5) days after she closed
11 the sale. Plaintiff/Counterdefendant represented that if she should die on one of her many trips
12 to her work comp doctors' appointments in San Francisco, California, that he and his children
13 would be out in the street, and brow beat her until she complied with his demands.

14 Plaintiff/Counterdefendant also took Defendant/Counterclaimant to an attorney in Fernley,
15 Nevada and wanted Plaintiff/Counterdefendant to make out a living will to him and his children
16 so they could inherit her things in case Defendant/Counterclaimant passed away.
17

18 13. Defendant/Counterclaimant was under a doctor's care and on heavy medication at that
19 time due to her injuries, and does not have a clear recollection as to the circumstances
20 surrounding her execution of the quit claim deed.
21

22 14. Plaintiff/Counterdefendant began introducing Defendant/Counterclaimant as his "wife"
23 to all of their friends and Defendant/Counterclaimant was very afraid because she truly couldn't
24 remember if they had married.

25 15. Plaintiff/Counterdefendant took Defendant/Counterclaimant and her mother to Virginia
26 City, Nevada, in or around March of 2013, to show Defendant/Counterclaimant's mother
27 around. While there, Plaintiff/Counterdefendant showed Defendant/Counterclaimant and her
28

1 mother "Verda" where he would like to get married to Defendant/Counterclaimant, in a little
2 church setting in a bar in Virginia City.

3 16. At this time, Plaintiff/Counterdefendant had demanded that Defendant/Counterclaimant
4 put all her money in cash in his safe and stated that "if you die, your family will get it all and I
5 won't be able to afford to live here. Plaintiff/Counterdefendant was constantly using
6 intimidation, coercion and guilt tactics to convince Defendant/Counterclaimant to put her assets
7 under his control.
8

9 17. In January of 2013, Plaintiff/Counterdefendant was fired from his job. He never
10 obtained further employment because he didn't want to take any jobs that the EDD wanted him
11 to interview for. Plaintiff/Counterdefendant never obtained further employment and
12 Defendant/Counterclaimant was forced to pay all the bills and buy food.
13 Defendant/Counterclaimant did so under duress; and if she complained,
14 Plaintiff/Counterdefendant would yell, "I don't have a job, and you have a paycheck, you're
15 loaded". Defendant/Counterclaimant was existing on a \$912 per month social security
16 disability check, and Defendant/Counterclaimant's mother "Verda" was also chipping in over
17 \$200 a month.
18

19 18. Plaintiff/Counterdefendant started driving Defendant/Counterclaimant's because he
20 totaled his own and couldn't afford to buy another one, and he complained that the Toyota was a
21 gas hog and couldn't afford to put gas in it.
22

23 19. Plaintiff/Counterdefendant began a campaign of terror, control and isolation over the
24 Defendant/Counterclaimant. He berated her in front of his daughters who as a result lost
25 complete respect for Defendant/Counterclaimant. Plaintiff/Counterdefendant constantly yelled
26 at her that she was crazy and needed to see a psychiatrist. Plaintiff/Counterdefendant never shut
27
28

1 up.

2 20. When Defendant/Counterclaimant was on the phone with anyone,
3 Plaintiff/Counterdefendant would drop what he was doing and come running in and start talking
4 to Defendant/Counterclaimant and grabbing her breasts and pulling his pants down and
5 spreading his butt cheeks in her face and try to hit her in the face with his penis while giggling
6 and laughing in an idiotic manner. This was a daily occurrence.
7

8 21. Plaintiff/Counterdefendant spent most of Defendant/Counterclaimant's money while she
9 was on opiate medication, and to this day she does not know where it all was spent.
10

11 22. Plaintiff/Counterdefendant eventually convinced Defendant/Counterclaimant's mother
12 "Verda" to sell her home of 67 years in the Bay area, and to move to Fallon, Nevada by
13 repeatedly stating to her that "we will have so much fun!".
14

15 23. Plaintiff/Counterdefendant insisted that instead of buying a home in town, she should
16 build one on the property behind the main house because Plaintiff/Counterdefendant didn't want
17 Defendant/Counterclaimant to be going to her mother's all the time.

18 Defendant/Counterclaimant's mother "Verda" is also disabled and needs constant help and
19 that Defendant/Counterclaimant could take care of him and his children as well as her mother at
20 the same time. Plaintiff/Counterdefendant told Defendant/Counterclaimant that her job was to
21 take care of him and his children first.
22

23 24. Defendant/Counterclaimant's mother purchased a fifth wheel to sleep in while her home
24 was being built on the property.

25 25. Plaintiff/Counterdefendant insisted that Defendant/Counterclaimant's mother "Verda" keep
26 all her cash in his safe and stole thousands of dollars from her. Plaintiff/Counterdefendant
27 incurred unauthorized expenses purportedly for her home so that she was unable to complete
28

1 her home.

2 26. After Plaintiff/Counterdefendant had depleted all of Defendant/Counterclaimant and her
3 mother's assets, he did not feel the need to be civil to them. Plaintiff/Counterdefendant never
4 mentioned getting married again; and if Defendant/Counterclaimant brought it up,
5 Plaintiff/Counterdefendant would say, "why would you want to get married to someone that
6 isn't working?", then Plaintiff/Counterdefendant would say "I consider us married".

7
8 27. Plaintiff/Counterdefendant became very distant and angry and found fault with
9 everything Defendant/Counterplaintiff did. On November 1, 2013, Defendant/Counterclaimant
10 was cut off from all medical help as worker's comp insisted Defendant/Counterclaimant could
11 pay for her own medical through Medicare, and Defendant/Counterclaimant went into severe
12 withdrawals.

13
14 28. In August of 2014, Plaintiff/Counterdefendant, Defendant/Counterclaimant and the kids
15 were in the car coming from Fernley, and Plaintiff/Counterdefendant decided to start berating
16 Defendant/Counterclaimant in the car in front of his kids until he had
17 Defendant/Counterclaimant in tears. Upon arriving at home, Defendant/Counterclaimant got
18 out of the car, walked up to the trees they planted a few months earlier and was crying, when
19 Plaintiff/Counterdefendant decided to come up and start ridiculing Defendant/Counterclaimant
20 for no reason until Defendant/Counterclaimant told him she was tired of watching
21 Plaintiff/Counterdefendant wrestle with his two teenagers and putting his hands where they
22 don't belong right in front of Defendant/Counterclaimant's mother and company. Afterwards,
23 Plaintiff/Counterdefendant stepped back and blasted Defendant/Counterclaimant with calling
24 him a pedophile, at which time Defendant/Counterclaimant said "it doesn't look right!", and
25 Plaintiff/Counterdefendant started yelling at Defendant/Counterclaimant telling her that "why
26
27
28

1 doesn't she just hurry up and die and leave them alone, and then he started running back to the
2 house yelling at his daughters "did you see that, she's gonna kill me, she's gonna kill us!, over
3 and over, screaming like a girl, yelling for them to call 911. Plaintiff/Counterdefendant ran into
4 the house and hid behind his 13 year old while yelling to his older daughter (Savannah) to push
5 Defendant/Counterclaimant off the steps, and she did. The Sheriffs came and took everyone's
6 statement, and Plaintiff/Counterdefendant lied about everything so he could have more control
7 over Defendant/Counterclaimant. Defendant/Counterclaimant's mother had just left that
8 morning to stay with Defendant/Counterclaimant's youngest sister in La Pine Oregon, and
9 wasn't there to be a witness.
10

11
12 29. After this incident, Plaintiff/Counterdefendant made life hell for
13 Defendant/Counterclaimant in her own home by constantly berating her in front of his teenage
14 daughters and was intent on getting rid of Defendant/Counterclaimant and her mother at all
15 costs. Plaintiff/Counterdefendant's father even confronted Defendant/Counterclaimant at her
16 home in 2015 demanding that Defendant/Counterclaimant put her mother in a rest home, at
17 which time Defendant/Counterclaimant told Plaintiff/Counterdefendant's father that her mother
18 "Verda" wasn't sick enough to be put in a rest home and what did he want her to do, throw her
19 mother into the street? After that, Plaintiff/Counterdefendant's father "John" yelled "YES!",
20 because he wanted to move into her home.
21
22

23 30. Plaintiff/Counterdefendant paid no bills or expenses with the exception of the property
24 taxes and guns and ammo for his business since January 2013. Defendant/Counterclaimant
25 applied for and received a food stamp card because Plaintiff/Counterdefendant would not do it
26 and complained that he wasn't going to sit in that office with all those low lives. So
27 Defendant/Counterclaimant sat in there and was able to get a food card for the four of them, and
28

1 when Defendant/Counterclaimant got home and Plaintiff/Counterdefendant found out that
2 Defendant/Counterclaimant had a food card, Plaintiff/Counterdefendant demanded it from
3 Defendant/Counterclaimant and wouldn't let her have it back, proclaiming that he was better at
4 buying food than her. All Plaintiff/Counterdefendant bought was breakfast food telling
5 Defendant/Counterclaimant that if she wanted dinner stuff, then she could buy it with her own
6 money.
7

8 31. In December of 2014, Defendant/Counterclaimant had helped her mother sell the fifth
9 wheel since now Defendant/Counterclaimant's mother was able to move into the home that was
10 built and Plaintiff/Counterdefendant was helping Defendant/Counterclaimant to flush the septic
11 out, but Defendant/Counterclaimant had a very bad dizzy spell and woke up on the dirt by the
12 fifth wheel, and Plaintiff/Counterdefendant's daughters were kneeling beside
13 Defendant/Counterclaimant and when Defendant/Counterclaimant saw
14 Plaintiff/Counterdefendant, he was standing about 6-7 feet behind his daughters and said in a very
15 nasty tone to Defendant/Counterclaimant "do you need an ambulance?", but
16 Defendant/Counterclaimant doesn't remember answering him. The
17 Plaintiff/Counterdefendant's two daughters stood Defendant/Counterclaimant up and walked
18 her to the house. When Defendant/Counterclaimant said she thought she broke her nose,
19 Plaintiff/Counterdefendant was caustic and told her that nothing was wrong with her, and
20 Defendant/Counterclaimant had to beg Plaintiff/Counterdefendant to take her to the ER, which
21 made Plaintiff/Counterdefendant mad. Plaintiff/Counterdefendant dumped
22 Defendant/Counterclaimant off at Banner Hospital and told Defendant/Counterclaimant to call
23 him when she was done, that he was going to take his daughter (Savannah) shopping, and
24 Plaintiff/Counterdefendant and his daughter sped off. Defendant/Counterclaimant was taken by
25
26
27
28

1 ambulance to Renown and kept for a week at which time Defendant/Counterclaimant had a
2 discectomy and fusion on her C-5 and 6. Plaintiff/Counterdefendant never called her to see how
3 she was and only came by once at Defendant/Counterclaimant's request to bring her some
4 toiletries.
5

6 **COUNT I**

7 **FRAUD**

8 32. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation
9 contained in Paragraphs 1 through 31 inclusive, as set forth in full herein.
10

11 33. Plaintiff/Counterdefendant exerted undue influence on Defendant/Counterclaimant to
12 quit claim Plaintiff/Counterdefendant on the deed to her residence five (5) days after she closed
13 the sale.
14

15 34. Defendant/Counterclaimant has suffered damages as a proximate result of
16 Plaintiff s/Counterdefendant's actions because she has been deprived of a peaceful and safe
17 place for her and her relatives to reside.
18

19 **COUNT II**

20 **CONVERSION**

21 35. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation
22 contained in Paragraphs 1 through 34 inclusive, as set forth in full herein.
23

24 36. Plaintiff/Counterdefendant knew that certain income and medical/disability payments
25 were for exclusively for Defendant/Counterclaimant.
26

27 37. Plaintiff/Counterdefendant also knew that the cash and monies of "Verda" belonged to
28 her and that he knowingly stole her money by manipulating her to put it in his safe.
29

30 38. Plaintiff/Counterdefendant knowingly took the food stamp benefits of
31

1 Defendant/Counterclaimant for his use and benefit.

2 **COUNT III**

3 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

4
5 39. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation
6 contained in Paragraphs 1 through 38 inclusive, as set forth in full herein.

7 40. For a period from 2010 to the present, Plaintiff/Counterdefendant has carried out a
8 carefully executed plan of inflicting emotional stress upon the Defendant/Counterclaimant.

9
10 41. This conduct constituted berating and belittling the Defendant/Counterclaimant in front
11 of others.

12 42. As a direct result of this repeated behavior, Defendant/Counterclaimant was forced to
13 seek medical attention which resulted in hospitalization.

14 43. Plaintiff/Counterdefendant's threatening and wrongful behavior resulted in abusive
15 mental anguish and anguish to the Defendant/Counterclaimant, and such was the
16 Plaintiff/Counterdefendant's malicious intent.

17
18 **COUNT IV**

19 **SPECIFIC PERFORMANCE**

20 44. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation
21 contained in Paragraphs 1 through 43 inclusive, as set forth in full herein.

22
23 45. Defendant/Counterclaimant should not be placed in the position of having to partition
24 the Property and to sell the property as the Plaintiff/Counterdefendant has no legal equitable
25 investment in the property.

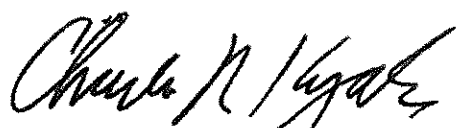
26 46. The only adequate remedy is have the Court Order the Plaintiff/Counterdefendent to
27 execute the proper documents for Defendant/Counterclaimant to have sole ownership of the
28

1 property.

2 **WHEREFORE**, Defendant/Counterclaimant ELIZABETH C. HOWARD, by and
3 through her Attorney of Record, CHARLES R. KOZAK, ESQ. of KOZAK LAW FIRM, prays
4 that the Court:
5

- 6 1. Award her damages in excess of Ten Thousand Dollars (\$10,000.00);
- 7 2. Award her punitive damages in excess of Ten Thousand Dollars (\$10,000.00);
- 8 3. Award her special damages according to proof in excess of Ten Thousand Dollars
9 (\$10,000.00);
- 10 4. Award her reasonable attorney's fees in excess of Five Thousand Dollars (\$5,000.00);
11 and
- 12 5. Issue an Order requiring the SHAUGHNAN L. HUGHES to specifically perform the
13 action required to give 100% sole ownership of the property to ELIZABETH C.
14 HOWARD.
15

16
17
18 DATED this 30 day of November 2015.



CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
Nevada State Bar #11179
3100 Mill Street, Suite 115
Reno, Nevada 89502
Phone (775) 322-1239
Facsimile (775) 800-1767
chuck@kozaklawfirm.com
Attorney for Elizabeth C. Howard

1 **CERTIFICATE OF SERVICE**

2
3 I certify that I am an employee working for Kozak Law Firm and am a citizen of the
4 United States, over twenty-one years of age, and not a party to the within action. My business
5 address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

6 On the 20th day of November 2015, I caused to be delivered via facsimile and U.S.
7
8 Mail, postage fully prepaid, a true and correct copy of the foregoing document: ANSWER
9 AND COUNTERCLAIM, in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

10
11 Justin M. Townsend, Esq.
12 Allison MacKenzie, Ltd.
13 Nevada State Bar No. 12293
14 402 N. Division Street
15 P. O. Box 646
16 Carson City, Nevada 89702
17 Phone (775) 687-0202
18 Facsimile (775) 882-7918
19 Attorney for Plaintiff

20 DATED this 20th day of November 2015.

21 Nan Adams
22 Nan Adams
23 Employee of Kozak Law Firm
24
25
26
27
28

4
ALLISON MACKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 Case No.15-10DC-0876
2 Dept. No. I

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7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CHURCHILL

9
10 SHAUGHNAN L. HUGHES, an
individual,

11 Plaintiff,

12 vs.

13 ELIZABETH C. HOWARD, an
14 individual; and DOES I through
15 XX, inclusive.

16 Defendants.

17 **ORDER GRANTING PLAINTIFF'S**
18 **MOTION TO DISMISS COUNTERCLAIM; MOTION TO STRIKE**

19 This matter comes before the Court on Plaintiff's Motion to Dismiss Counterclaim;
20 Motion to Strike. The Court having read the papers and the law applicable to the issues raised; and
21 considered the merits of the matter; and good cause appearing therefor; and Defendant's failure to
22 oppose the Motion to Dismiss Counterclaim; Motion to Strike.

23 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Dismiss Counterclaim and
24 Motion to Strike are **GRANTED** in their entirety.

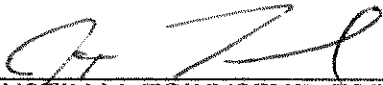
25 DATED this 7th day of January, 2016.

26
27 *[Signature]*
28 _____
DISTRICT COURT JUDGE

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 Respectfully submitted by:

2 ALLISON MacKENZIE, LTD.
3 402 North Division Street
4 Carson City, NV 89703-4168

5 By: 
6 JUSTIN M. TOWNSEND, ESQ.
7 Nevada State Bar No. 12293
8 Attorneys for Plaintiff,
9 SHAUGHNAN L. HUGHES

10 4833-9421-8284, v. 1

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ORIGINAL

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA
IN AND FOR CHURCHILL COUNTY

-oOo-

SEAN HUGHES, :
Plaintiff, :
vs. : Case No. 15-0876
ELIZABETH HOWARD, : Dept No.
Defendant. :

=====

TRANSCRIPT OF PROCEEDINGS

Hearing

May 17, 2016

Fallon, Nevada

SUNSHINE LITIGATION SERVICES

TRANSCRIBED FROM JAVS CD

Transcribed By: GAIL R. WILLSEY, CSR #359, CA CSR
#9748

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A P P E A R A N C E S

FOR THE PLAINTIFF:
ALLISON MACKENZIE, LTD.
By: JUSTIN TOWNSEND, ESQ.
402 N. Division St.
Carson City, Nevada 89701

FOR THE DEFENDANT:
KOZAK LUSIANI LAW LLC
By: CHARLES KOZAK, ESQ.
3100 Mill St., #115
Reno, Nevada 89502

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RENO, NEVADA, MAY 17, 2016, 1:25 P.M.

*** ^ ***

THE COURT: Good afternoon. This is Case Number 15-0876. Is it Sean Hughes?

MR. HUGHES: Sean.

THE COURT: Sean Hughes, plaintiff versus Elizabeth Howard, defendant. Mr. Hughes is present. Why don't we state our appearances on the record.

MR. TOWNSEND: Justin Townsend representing Mr. Hughes.

MR. KOZAK: Charles Kozak representing Elizabeth Howard, your Honor.

THE COURT: Thank you.

This pretrial conference was set at the request of Mr. Hughes' counsel. He indicated that they had some difficulty getting a Joint Case Conference Report filed; is that correct?

MR. TOWNSEND: Yes, your Honor.

THE COURT: And you did file your Case Conference Report?

MR. TOWNSEND: Correct.

THE COURT: Mr. Kozak, have you filed yours?

1 MR. KOZAK: I believe we did.

2 THE COURT: Have you received a copy?

3 MR. TOWNSEND: No.

4 THE COURT: The court has not either.

5 MR. KOZAK: Okay. We did one. I thought it
6 was because the difference is that the conference was
7 scheduled.

8 THE COURT: One of the things that I want to
9 start with is -- and I'm not going to deal with it
10 today but you filed a motion just recently to set
11 aside the dismissal of the counterclaim that was filed
12 on today's date. I want to go through some of the
13 courts' history and then I'm going to have you explain
14 some of them.

15 Ms. Howard called the court on 2/6 and talked
16 to one of our court clerks by the name of Julie and
17 then on 2/3, she talked to another one of our court
18 clerks named Tiffany inquiring about a document that
19 was allegedly filed that we did not have; do you
20 remember having those two conversations?

21 MS. HOWARD: Yes, your Honor.

22 THE COURT: So you personally called and
23 talked to our court staff?

24 MS. HOWARD: Yes.

1 THE COURT: The missing document -- well,
2 then Tiffany from our office called the attorney and
3 asked if they had a file stamped copy of the missing
4 document, said that they talked to you, Mr. Kozak, and
5 you stated that you did and that you would fax it to
6 us, a file stamped copy of the document which would be
7 this opposition. As of 2/9 when this note was
8 generated, that did not happen. The fax was not sent.
9 They then e-mailed you and asked for the missing
10 document that was to be faxed to us.

11 Now, you have -- the court just on today's
12 date, received a fax at 3:13 or 1313, 1:13 an
13 opposition to a motion to dismiss and opposition
14 motion to strike that purports to have been drafted on
15 December 30th, at least your staff -- my staff
16 believes your staff or you indicated that you actually
17 had a file stamped copy from this court.

18 MR. KOZAK: No, your Honor, that's a
19 misunderstanding. We didn't have a file stamped copy,
20 we just had a copy. So we did e-mail that on two
21 occasions to the court. I talked to Tiffany
22 personally and told her.

23 THE COURT: Do you have proof of that that it
24 was e-mailed the actual --

1 MR. KOZAK: Yes, I think so, your Honor.

2 THE COURT: Okay.

3 Did you receive a copy of the opposition?

4 MR. TOWNSEND: No. I've never received a
5 copy of the opposition. In fact, he says in that
6 motion that he filed today that I told him that I had
7 received a copy of the opposition and that's not true
8 and I told him that that I had never received a copy
9 of the opposition.

10 THE COURT: What I'm going to do is I'm going
11 to allow you time -- the first that this court files
12 shows was at 1:13 this afternoon, 1313 hours was a
13 faxed copy.

14 I will note that what's attached I briefly
15 looked at the notice of the motion that was filed
16 today and I looked at the exhibits which I did note
17 that the opposition wasn't attached to which I was
18 surprised. There's a declaration by Mr. Kozak and a
19 declaration by Nan Adams and then there's a postage
20 receipt. I readily admit that I'm no expert in
21 postage things, but I'm not sure what this purports,
22 it shows \$5 that was -- a \$5 postage that was
23 purchased on 12/30/2015, but I don't know what this is
24 to purport to me.

1 MR. KOZAK: Your Honor, that is the package
2 that the opposition memorandum was placed in and
3 mailed to this courthouse.

4 THE COURT: But how am I to know that from
5 that?

6 MR. KOZAK: Well, I think that my secretary
7 has in an affidavit that's what she bought at the post
8 office?

9 THE COURT: So one of the things I'm going to
10 allow you to supplement your opposition but I think
11 one of the things you need to wrestle with in that is
12 there's a Case Conference Report that you've just told
13 me that you filed with the court that the court file
14 doesn't have. There's a -- plaintiff's counsel told
15 me they don't have.

16 So if you're generating these documents and
17 you're mailing them to the court and to plaintiff's
18 counsel and they're not receiving them, we either have
19 a serious problem with the postal service from your
20 office or some other thing and I think you'll need to
21 be able to explain that if you're going to want me to
22 give weight to the allegation.

23 As I review this file, I sense the
24 plaintiff's frustration. I also sense your client's

1 frustration in the context with our court. It may be
2 totally explainable and I'm going to give you a chance
3 -- I'm going to give this whole -- I want it to be
4 brief. The motion was just filed today; have you
5 received it?

6 MR. TOWNSEND: I received it yesterday
7 afternoon.

8 THE COURT: So I'm going to give you a chance
9 -- do you use Reno/Carson Messenger Service?

10 MR. KOZAK: Yes, we do.

11 THE COURT: But you wouldn't have used them
12 to file the documents here, that's typically what
13 people do but I mean the mail is an appropriate way
14 but I don't have a Case Conference Report that you say
15 you've generated and filed.

16 MR. KOZAK: I'll check on that, your Honor.

17 THE COURT: And I don't have the opposition
18 until it was faxed today. So if you do have the proof
19 of the e-mails to Tiffany where the oppositions were
20 attached, I would like those proofs too, then I can
21 deal with it internally here. If it's a problem here,
22 I want to deal with it.

23 Do you understand from my perspective why I
24 may have some questions?

1 MR. KOZAK: Well, I do but when I talked to
2 Tiffany, she said that they were very concerned that
3 that had been misplaced so that's why we faxed down a
4 copy immediately when we learned --

5 THE COURT: Well, you didn't fax one down
6 immediately, we don't have one. You said you e-mailed
7 it?

8 MR. KOZAK: No. I think she asked us to fax
9 it but I'll check on that.

10 THE COURT: The note says she asked you to
11 fax it, but I think what you told me and I guess I can
12 look on the record and maybe counsel, did he say
13 e-mail or fax?

14 MR. TOWNSEND: I heard e-mail first.

15 THE COURT: Okay, that's what I heard and
16 there definitely would be a record of e-mail.
17 Depending on how your fax machine is set up, there may
18 be a record.

19 MR. KOZAK: I think we have that record.

20 THE COURT: Okay but do you understand --

21 MR. KOZAK: I do.

22 THE COURT: The first record I show this
23 opposition it hasn't been filed and it was faxed, it's
24 not even an original opposition happened at 1:13

1 today. And so we're going to need -- there's a Case
2 Conference Report that this file doesn't have that you
3 say has been completed that was due sometime ago.

4 MR. TOWNSEND: Your Honor, if I may?

5 THE COURT: Yes.

6 MR. TOWNSEND: We haven't received an initial
7 production of documents or witnesses either, despite
8 his secretary promised them on March 8th. I followed
9 up, nothing.

10 THE COURT: Okay, and is that why one of the
11 reasons why you asked for this to be set today?

12 MR. TOWNSEND: This is a pattern going back a
13 long time.

14 THE COURT: Okay. Well, that doesn't tell me
15 anything.

16 MR. TOWNSEND: So we filed our Complaint in
17 June I believe. The Sheriff's Office attempted to
18 serve it numerous time on Ms. Howard. She wouldn't
19 answer her door, wouldn't accept service, it happens.
20 So we had to serve by publication.

21 After service had been published, I received
22 a call from an attorney. I believe the attorney was
23 down in Las Vegas. The attorney claimed to be
24 representing Ms. Howard, asked me for a copy of the

1 Complaint. I said file an appearance and "Let's get
2 this thing going." That was the last time I heard
3 from that attorney.

4 A couple of weeks later, I heard from Mr.
5 Kozak who told me the same thing. I said, "Let's get
6 this thing going." He didn't file a notice of
7 appearance and then didn't file an answer in the time
8 prescribed for filing an answer. So I served him with
9 a notice of intent to take default. I gave him the
10 statutory three days to file an answer. The deadline
11 for that was Friday, September -- or I guess it was
12 not -- Friday, November 20th. On midnight of Friday
13 November 20, Mr. Kozak faxed to me an answer and
14 counterclaim. I don't know when it was filed. I
15 assume it wasn't filed until the following Monday.

16 THE COURT: Can I interrupt you for a second?

17 MR. TOWNSEND: Yes.

18 THE COURT: You have a Case Conference Report
19 that you've completed; is that correct?

20 MR. KOZAK: I believe we do, yes, sir.

21 THE COURT: I believe we do or we do?

22 MR. KOZAK: Well, I drafted it so I'm sure we
23 do.

24 THE COURT: Because why don't we do this, I

1 want to let you continue but could you contact your
2 office immediately and have them -- they just faxed us
3 for the first time, the motion -- the opposition to
4 the motion to dismiss and motion to strike, have them
5 fax that Case Conference Report. We'll make a copy
6 and we'll get that to defense counsel and that way we
7 can answer definitively because they ought to be able
8 to do that in minutes is fax this completed Case
9 Conference Report and then we can continue on.

10 I'm going to check with Tiffany. I'm going
11 to follow up -- and maybe she could fax also the
12 proofs of either the e-mail or the faxes of the
13 oppositions that were filed or sent to us when would
14 you estimate in the month of February?

15 MR. KOZAK: Yeah, it was right after we got
16 the call from Tiffany.

17 THE COURT: Okay.

18 So let's follow up and get all that
19 information and then we can kind of -- would a
20 10-minute recess be enough time for that? I mean, if
21 it's done. Then what I'm going to ask you to do, I'm
22 going to let you continue but I want counsel to meet
23 for a few minutes and talk about a plan on how we're
24 going to get this case moving forward because I want

1 to make sure that both Ms. Howard and Mr. Hughes have
2 their game cord but I want to do it in a way that
3 minimizes the cost but expedites a decision. The
4 motion is going to have to play out depending -- I'm
5 going to give you 10 days to supplement that and then
6 I'll let you oppose it when someone submits it or I'll
7 make a decision or have a hearing based on that
8 evidence.

9 The first thing I want you to do is call your
10 office. I want the Case Conference Report faxed here
11 and the proof of the previous e-mails of the
12 opposition faxed here. Then while we're waiting for
13 that, if counsel could meet and you could use the jury
14 room to map out a way going forward. Then we'll go
15 back on the record. As soon as we have the copies,
16 I'll provide a copy to you and the copy for the court
17 file; is that agreeable, Mr. Kozak?

18 MR. KOZAK: Yes, that's fine?

19 THE COURT: Is that agreeable?

20 MR. TOWNSEND: Yes, your Honor.

21 THE COURT: Very well. We'll be in recess.

22 (A recess was taken.)

23 THE COURT: Please be seated.

24 We're back on the record in Case Number

1 15-0876, Hughes V Howard. We took a brief recess.

2 Mr. Kozak, where are we at on getting the
3 Case Conference Report?

4 MR. KOZAK: I had my secretary send it down
5 here so did it come through?

6 THE COURT: Would you check and see; did she
7 fax it?

8 MR. KOZAK: Yes.

9 THE COURT: Go check on the fax machine. Did
10 anything come through on the fax machine?

11 THE CLERK: No. The only thing we received
12 was an e-mail of the opposition that we previously
13 received through fax. So something was e-mailed but
14 nothing has been faxed.

15 THE COURT: Would you bring that in and give
16 that to Mr. Kozak?

17 I just want to make sure. One of the things
18 I'm always deeply concerned from an access of justice
19 standpoint is that if there's something our court is
20 doing -- so we're going to spend a little bit of time
21 on this and I hope each side will bear with me to
22 explore to determine if we're doing everything right
23 from the court's perspective; any opposition to that?

24 MR. TOWNSEND: None.

1 THE COURT: Okay.

2 Mr. Kozak, any opposition to that? Any
3 opposition to the court exploring this a little bit
4 further?

5 MR. KOZAK: Oh no, not at all.

6 THE COURT: Mr. Kozak, so I'm clear, what did
7 you ask is it Nan from your office?

8 MR. KOZAK: Yes. I asked her to e-mail or
9 fax the opposition which we did fax down to the court.

10 THE COURT: At 1:13 today?

11 MR. KOZAK: Yes and also the Case Conference
12 Report that we filed with the court.

13 THE COURT: Okay. All we got was --

14 THE CLERK: That's an e-mail of the
15 opposition that was faxed at 1:13.

16 THE COURT: I'll go through this.

17 So there's an e-mail from Nan on today's date
18 in response to an e-mail that was sent on February 9th
19 directly to you, Mr. Kozak. There's no intervening
20 e-mails. Then attached is the opposition that
21 purports to have been signed and drafted and mailed on
22 December 30th and with a Certificate Of Service that
23 it was mailed on December 30th but there is no Case
24 Conference Report.

1 So there is -- so it looks like Tiffany
2 Joseph who is the Deputy Court Clerk here on
3 February 9th e-mailed you directly, Mr. Kozak, and
4 said what it purports to say and I may call her as a
5 witness in a minute. It says, "Per our conversation
6 last week, you indicated you would be faxing a file
7 stamped copy of your opposition to the motion to
8 dismiss. As of this time, we have not received the
9 fax from your office. That same evening, Ms. Howard
10 called us asking us if we had found the document."

11 Ms. Howard, do you remember doing that?

12 MS. HOWARD: No, in the evening?

13 THE COURT: But does it sound familiar?

14 MS. HOWARD: Yes.

15 THE COURT: "Called us asking us if we had
16 found the document. I informed her that you were
17 going to be sending us a copy. We are reaching out to
18 you because we are concerned that you may have faxed
19 it and we did not receive it. If it's more
20 convenient, you can e-mail me the document. We are
21 staying on top of this because we are concerned we
22 have misfiled the document, at least that's what's
23 been represented to us and this is a high priority for
24 this office to avoid. Your cooperation is

1 appreciated."

2 So that happened on February 9th, and very
3 quickly you just this e-mail chain that I'm saying
4 e-mailed Nan and who is Nan?

5 THE WITNESS: My secretary.

6 THE COURT: You said, "We need to e-mail this
7 to Tiffany right away might as well fax it too."

8 Then the very next e-mail in the chain is on
9 May 17th from Nan to Tiffany and let's see what it is.
10 Yeah and it's the opposition motion to dismiss, not a
11 file stamped copy but just the opposition that was
12 faxed at 1:15, but there's no copy of the Case
13 Conference Report.

14 So what we have before us and I'm going to
15 ask you again to ask her to specifically send us today
16 the Case Conference Report so we can see when that was
17 filed because opposing counsel doesn't have it and the
18 court doesn't have it but you're sending it, at least
19 that's what you're representing to me.

20 MR. KOZAK: Yeah. In fact, I have my draft
21 right here that I made the corrections on.

22 THE COURT: Okay.

23 MR. KOZAK: And so.

24 THE COURT: Do you see how this might cause

1 the court concern when it's repeated that we've had
2 this experience with the opposition to the motion to
3 dismiss where counsel has not received it. The court
4 has not received it, and the court has reached out and
5 e-mailed you and still hasn't received it until today.

6 So there seems to be at least a potential
7 pattern that we're either really messing up as a
8 court, that opposing counsel is messing up or there
9 may be some other explanation and that's what I'm
10 trying to identify. I'm deeply concerned about where
11 we're at.

12 So I'll stay here on the bench but would you
13 please reach out to your office and have them fax us
14 immediately the Case Conference Report?

15 MR. KOZAK: I will.

16 THE COURT: Okay. We'll wait.

17 MR. KOZAK: Okay.

18 (A recess was taken.)

19 THE COURT: And will you have one of the
20 court clerks bring it in as soon as it comes.

21 Then the third thing I had asked for was
22 proof of the faxes. You had indicated that sometime
23 in the February to March timeframe, that the
24 opposition has been faxed to our office and that you

1 were going to provide proof of that and that was not
2 included in this e-mail to us; did you ask Nan to
3 provide that to us?

4 MR. KOZAK: I did but I think in the rush to
5 get the rest of this stuff, she probably didn't
6 remember it but I can ask her to get that too.

7 THE COURT: Well, let's get this one and
8 we'll maybe do the same thing and get the next one
9 because I think it's important that we do this today
10 for both Ms. Hughes and Mr. Howard.

11 Mr. Kozak, have you had this experience in
12 any other cases?

13 MR. KOZAK: No.

14 THE COURT: Where it -- never in your -- how
15 long have you been practicing?

16 MR. KOZAK: We must have 50 cases that I've
17 had not one iota of this kind of problem with any of
18 them. We know the rules and we abide by them. We
19 sent that 16.1 discovery on a disk to the address that
20 we thought was the proper address. So this is
21 mystifying to me.

22 THE COURT: Was it returned?

23 MR. KOZAK: No. We sent a disk with all of
24 our documents.

1 THE COURT: If you were sitting in my chair
2 right now and these were the facts before you, would
3 you -- would it seem strange to you where you have
4 first the opposition that wasn't received by the court
5 and wasn't received by opposing counsel. Then you
6 have a Case Conference Report that wasn't received by
7 the court, wasn't received by opposing counsel and you
8 have opposing counsel filing motions saying we can't
9 get it done so would you please set it.

10 I would call this pretrial conference an
11 extraordinary -- it's not a normal remedy and then we
12 have the discovery C D that would not have been sent
13 to the court but would have been sent to defense
14 counsel and none of these have been returned. At
15 least according to you, right? None of these
16 documents have been returned to you as undeliverable.
17 If you were sitting in my chair, what would your
18 assessment of that be?

19 MR. KOZAK: This has been the subject of a
20 lot of discussion in our office as to what's going on
21 with this case and why these things aren't being filed
22 that are sent down here and why counsel is not getting
23 -- which we just found out today, the 16.1 discovery
24 which we mailed to his mailing address. We're

1 baffled.

2 THE COURT: And you said you use Reno/Carson
3 Messenger Service and just so the record is clear if
4 this is ever appealed, what is that service?

5 MR. TOWNSEND: It's a runner service?

6 THE COURT: It's a runner service that
7 provides human delivery and it's an accepted method of
8 service. The mail -- and I don't know, I mean it's
9 extraordinary I would say.

10 MR. KOZAK: It is, I agree, very frustrating
11 to us and from now on, we do use Reno/Carson. We
12 subscribe to their service and we'll use them
13 exclusively in this case, I promise you.

14 MR. TOWNSEND: If I could just add to that
15 too, your Honor, if the frustration is there on their
16 side, how come there's no communication with us?

17 THE COURT: There's what?

18 MR. TOWNSEND: There's no communication with
19 us about any of these issues. I have e-mails here and
20 I just spoke with Mr. Kozak. I've never had an answer
21 to a single e-mail to his office. I've e-mailed his
22 office both Mr. Kozak and his secretary and I've never
23 had a response to a single e-mail.

24 So that the communication where they're

1 saying that they're filing these things and they know
2 that we haven't received them, why aren't they
3 communicating with us to try and figure this out.
4 Months and months go by.

5 THE COURT: And I'm going to -- Ms. Hughes,
6 I'm going to ask you to stand and raise your right arm
7 to take the oath of a witness. I'm going to ask you
8 some questions about your experience.

9 I'm sorry, Ms. Howard I apologize.

10 (The witness was sworn.)

11 THE COURT: Thank you and I'm confused.
12 Normally the plaintiff sits next to the jury box and
13 so I'm just, I'm in that mode.

14 Ms. Hughes, would you explain to the court
15 your experience in coming to the courthouse. You've
16 had some interaction with our court clerks, tell me
17 about that.

18 MS. HUGHES: The court clerks at the other
19 one. I've never been in here before but the ones that
20 I dealt with.

21 THE COURT: What's the other one?

22 MS. HUGHES: Oh, I'm sorry, at the
23 courthouse, the other courthouse.

24 THE COURT: The Justice Court?

1 MS. HUGHES: Yes.

2 THE COURT: Why would you have gone to the
3 Justice Court on this case?

4 MS. HUGHES: When I first filed a what do you
5 call it, a restraining order.

6 THE COURT: But at least Ms. Joseph, Tiffany
7 Joseph, who's a deputy court clerk only in this
8 building indicates was it by phone call or that she's
9 had some contact with you.

10 MS. HUGHES: I came in personally.

11 THE COURT: Okay. You just told me that
12 you've never been there.

13 MS. HUGHES: No, I said I had that when I
14 came in.

15 THE COURT: Okay, that's what I want to find
16 out about. Tell me about that experience.

17 MS. HUGHES: It was good. I just asked
18 them --

19 THE COURT: Why did you come in?

20 THE WITNESS: I came in to get a copy of the
21 papers that were filed because I didn't want to have
22 to drive all the way to Reno to get them from --

23 THE COURT: What papers were you looking for?

24 THE WITNESS: Once that Nan said that they

1 had filed.

2 THE COURT: Okay.

3 And so what did Ms. Joseph tell you?

4 MS. HUGHES: She said, "We don't have them."

5 THE COURT: And what had Nan told you about
6 those documents; did she say that she had a copy of
7 them?

8 MS. HUGHES: She did and she said that they
9 had sent them. I said, "Well, they said they didn't
10 get them."

11 THE COURT: Because at least the e-mail of
12 Ms. Joseph or her notes in our case management
13 indicate that you believed that their office had a
14 file stamped copy of the documents; is that correct?

15 MS. HUGHES: That's what Nan said that they
16 sent it. I don't recall what she said how they sent
17 it but she said, "We filed it and it should have been
18 there," and that's when I panicked because I said I
19 don't know what could have gone on.

20 THE COURT: So that happened in February; is
21 that correct?

22 MS. HUGHES: Yes.

23 THE COURT: Then what did you do when we
24 told you that we didn't or what did the court clerks

1 tell you, I guess?

2 MS. HUGHES: Not much except that they were
3 waiting on a fax.

4 THE COURT: Okay.

5 So what did you do as a result of that?

6 MS. HUGHES: I didn't do anything. I just
7 called Nan and said that --

8 THE COURT: Well, that's something. So I
9 want the record to be clear so I want to be precise
10 with our language.

11 So we told you we didn't have what they told
12 you we should have?

13 MS. HUGHES: Yes.

14 THE COURT: So you called Nan?

15 MS. HUGHES: I called Nan and told her, and
16 she said, "Okay, we'll fax it, you know, if we haven't
17 already." She said, "I know we faxed it." I said,
18 "Okay."

19 I was just trying to save them money by doing
20 it myself coming down here and just picking the papers
21 up.

22 THE COURT: So that was 120 days ago roughly,
23 130 days ago, have you done anything else to make sure
24 that we received it?

1 MS. HUGHES: No, I forgot about it.

2 THE COURT: You forgot about it, okay.

3 Mr. Bailiff, can we check and see if that's
4 been faxed?

5 How long would it be reasonable for us to
6 expect a document that's already been generated that's
7 sitting in your office for it to be faxed to our
8 office?

9 MR. KOZAK: I mean, I can give her another
10 call --

11 THE COURT: I understand that but I'm just
12 asking you to tell me what a reasonable time period
13 would be, it's been about 15 minutes?

14 MR. KOZAK: Well, if we could have maybe
15 eight hours so when I get back to my office, I can
16 make sure that we get that proper document and get it
17 sent down here.

18 THE COURT: No. You've represented to me, as
19 an officer of the court, that the document is
20 completed and should be in my court file. All I'm
21 asking is for that document that is already completed
22 in your file that you believe has been sent to
23 opposing counsel and to the court be faxed to us.

24 So the document exists and I'm asking you,

1 you called 15 minutes ago and asked them to fax it to
2 us.

3 MR. KOZAK: I really --

4 THE COURT: What is a reasonable time period?

5 MR. KOZAK: I don't know. This is a very
6 extraordinary situation. I don't know if Nan has
7 found it going through the file or what, so I really
8 can't answer that question.

9 THE COURT: Well, you have the file though,
10 right?

11 MR. KOZAK: I have some of the file here. I
12 didn't bring the whole file. I have my draft of our
13 Joint Case Conference Report right here and so I
14 drafted it so it was filed.

15 MR. TOWNSEND: There was a Joint Case
16 Conference Report that was circulated, if that's what
17 he's got there. I circulated an initial draft of a
18 Joint Case Conference Report. He responded with some
19 changes and I responded back to him accepting some of
20 his changes and explaining why I couldn't accept a
21 couple of his other changes and that's the last I
22 heard.

23 THE COURT: Is that the document that you're
24 talking about there?

1 MR. KOZAK: Yeah.

2 THE COURT: That's -- do you remember when
3 the process broke down -- broke down, I mean, it's
4 anticipated within the rule, they filed an individual
5 Case Conference Report and then what is your
6 understanding of your obligation under the rules when
7 that happens?

8 MR. KOZAK: That we would file our own which
9 we did which so far as I know. Now, when I finished
10 this draft and signed off on it --

11 THE COURT: Is that your draft or is that the
12 joint?

13 MR. KOZAK: That's his draft but I made the
14 changes in it.

15 MR. TOWNSEND: It's a different document.

16 MR. KOZAK: The one I sent to him was not
17 acceptable so I told my secretary at that point we're
18 going to go ahead and file our own with the changes
19 that I made.

20 THE COURT: Would it be fair for me to
21 conclude that if we haven't received it by now, that
22 we're not going to receive it today?

23 MR. KOZAK: Today, yes, but we can certainly
24 supply it by tomorrow.

1 THE COURT: I mean, you can conclude what
2 your obligations are and I would agree.

3 I'm going to speak very candidly to you, Mr.
4 Kozak. I don't know you and I'm very, very concerned
5 about what's happened in this case so far. I'm going
6 to let this motion play out. I'm going to give you
7 10 days to file an additional motion and provide
8 whatever information. I'll then allow you the
9 statutory time to oppose it, if you do, or tell me
10 that's meritorious, whatever you decide to do. Then
11 you can reply and submitted to the court.

12 I think, in all likelihood, I'm going to want
13 an evidentiary hearing on this issue, and I would
14 expect that Nan will be here. Ms. Joseph will
15 probably testify also. I'm not going to make any
16 conclusions, but I'm deeply concerned and I would
17 expect greater attention to whether things are being
18 received than has been demonstrated so far in this
19 case.

20 Now, let's talk about moving forward. So you
21 have a C D that -- so when can you get that?

22 MR. KOZAK: We'll have that delivered by
23 Reno/Tahoe tomorrow.

24 THE COURT: Reno/Carson Messenger Service.

1 So you can expect to receive it by Reno/Carson, They
2 do the route so it might be --

3 MR. TOWNSEND: It might be two days.

4 THE COURT: So no later than say Thursday; is
5 that a reasonable expectation?

6 MR. KOZAK: That's very reasonable.

7 THE COURT: Now, this is a -- let's talk
8 about.

9 MR. TOWNSEND: Can I ask a clarifying
10 question about your previous statement. Are you
11 asking him to file a motion that would replace this
12 motion to set aside?

13 THE COURT: Yes.

14 MR. TOWNSEND: Okay, I just want to make
15 sure.

16 THE COURT: For example, the opposition that
17 you purport was filed isn't even attached. I'm
18 asking, for example, and maybe you can explain it to
19 me because I really don't know what it is. This
20 exhibit that shows that something was mailed.

21 MR. TOWNSEND: It's the last page I think.

22 THE COURT: Is it the last page?

23 MR. TOWNSEND: Yes.

24 THE COURT: So you know what I'm talking

1 about, the mail but it's the --

2 MR. TOWNSEND: It's this, your Honor, right?

3 THE COURT: Yes, that to me -- I don't know
4 what that's -- how I'm supposed to tell that that's
5 related to this case. So I want you to wrestle with
6 that --

7 MR. KOZAK: Well, I think the affidavit of my
8 secretary saying that's the receipt she got when she
9 mailed that to the court.

10 MR. TOWNSEND: This appears to be the corner
11 of the envelope so why not produce the entire
12 envelope?

13 THE COURT: Yeah, and I guess that's my
14 question, you know, that normally when you have a
15 photocopy of the postage which is basically what that
16 is, you would have the whole envelope that would show
17 where it was actually mailed because that could be a
18 corner of an envelope that was actually mailed to --
19 there may be a way to code the --

20 MR. TOWNSEND: This little thing here.

21 THE COURT: Yeah, what's that called?

22 MR. TOWNSEND: Q R Code.

23 THE COURT: Yeah, Q R Code. I don't know but
24 the fact that you have -- it's like a picture of a 49

1 cent stamp, that is equivalent to postage but I mean
2 why wouldn't we have the whole envelope; do you
3 understand what I'm saying?

4 MR. KOZAK: I do but wouldn't the envelope
5 have been sent?

6 THE COURT: But why would you only take a
7 photocopy of the Q R Code, the postage?

8 MR. KOZAK: Well, that was my secretary's
9 judgment so I don't know what was going through her
10 mind. I guess she thought --

11 THE COURT: But I mean, I guess make the
12 argument if I were to -- I'm not saying you did
13 because I'm going to look at the evidence but if I
14 wanted to defraud the court, what would I do. I could
15 go find postage that was mailed on that day in the
16 amount of \$5 and just take a picture of that when I
17 very easily could have photocopied the whole thing and
18 that would answer the question, right?

19 Do you understand what I'm saying?

20 MR. KOZAK: I do.

21 THE COURT: So I think you have some work
22 ahead on that issue whether we're going to consider
23 reviving.

24 MR. TOWNSEND: Your Honor, if I could add one

1 thing there too. This is something that we would
2 include in our opposition to this motion. The
3 opposition was due December 28th, not December 30th.
4 So even if they filed it December 30th, it was late.

5 THE COURT: So you can address that however
6 you want. I haven't done the math on the dates so I
7 don't know. I know the court didn't rule until well
8 after the time but let's talk about moving forward.

9 This case is going to move forward in one way
10 or the other. You'll get the discovery by Thursday.
11 What about -- what else can we -- how can the court be
12 of assistance to both parties?

13 MR. TOWNSEND: Right now, your Honor, as this
14 case stands, this is an action for partition.

15 THE COURT: Right.

16 MR. TOWNSEND: Which is governed by statute,
17 it's relatively straightforward what needs to happen.

18 So we would like to set a tentative date for
19 a bench trial on the action for partition with the
20 understanding that there's a chance that there's going
21 to be some additional claims brought in for which we
22 would need to do discovery and that date might need to
23 be pushed back.

24 THE COURT: How would you feel about because

1 the case is what it is right now and it could change
2 depending on how the next few weeks play out but would
3 you be opposed to setting a date now?

4 MR. KOZAK: No. If you want to set a date
5 four months down the road, that would be okay with us.

6 MR. TOWNSEND: That's the date we discussed
7 was about four months out.

8 THE COURT: How long do you need?

9 MR. TOWNSEND: I think we should probably set
10 it for a full day but I would expect a half day.

11 THE COURT: Would you agree with that?

12 MR. KOZAK: I would say a full day.

13 THE COURT: Okay.

14 So let's see, is June 27, 28 or 29th too
15 soon?

16 MR. TOWNSEND: Depending on what we get in
17 discovery.

18 THE COURT: Yeah, I guess that's the problem.

19 Would you see if the Court Administrator, she
20 usually goes to lunch on the 2:00 o'clock hour but let
21 me just see if she's available.

22 MR. TOWNSEND: I would be okay with maybe
23 setting a date. Well, I guess you would want to look
24 at --

1 THE COURT: I think the problem is the
2 posture could change depending on --

3 THE CLERK: She's on the phone but she said
4 she'll step in.

5 THE COURT: Okay.

6 MR. TOWNSEND: Another option might be to,
7 pardon me using this word again, but to partition the
8 this lawsuit where if there's a claim -- if there's
9 additional claims, that they be heard separate and
10 apart from the partition action. I'm not sure they're
11 related.

12 THE COURT: My preference is this was taken
13 care of as a whole; would you agree with that Mr.
14 Kozak?

15 MR. KOZAK: Yes.

16 MR. TOWNSEND: And I'm fine with that too.

17 THE COURT: How else can the court be of
18 assistance other than setting the date? My intention
19 would be to hold that date absent some dramatic change
20 in the procedural and expect counsel to move forward
21 because I think this case, just looking at it, has
22 dragged on longer than I would like not from filing to
23 completion but just there seems to have been -- it
24 hasn't been steadily moving forward.

1 MR. TOWNSEND: Right.

2 Your Honor, it has been our intention, it was
3 our intention today to ask for sanctions for the rule
4 -- for their failures to comply with the rules but I
5 understand you want to have an evidentiary hearing on
6 that so we can wait on that.

7 THE COURT: I think we do. I mean, I'll
8 entertain if I make findings that would support it and
9 I don't and --

10 MR. TOWNSEND: Because we agree that this is
11 something that should have been resolved or it could
12 have been resolved much quicker.

13 THE COURT: A one-day trial about four months
14 out.

15 THE CLERK: A one day, October 3rd at 9:00
16 o'clock.

17 THE COURT: Would that work with your
18 calendar?

19 MR. KOZAK: Yes, it will.

20 THE COURT: Would that work with your
21 calendar?

22 MR. TOWNSEND: Yes, your Honor.

23 THE COURT: We'll, just set that whole day.

24 Is there any appetite from counsel to set

1 this for a mediation or a settlement conference with
2 another judge?

3 MR. TOWNSEND: I would love to do that.

4 THE COURT: How would you feel about that?

5 MR. KOZAK: We always like mediations, your
6 Honor. We've settled many cases that way.

7 THE COURT: And, you know, we're a
8 single-judge district so it gets a little hard. Is
9 there a judge you have in mind that I can reach out to
10 and see if they would be willing to. I know Judge
11 Russell in Carson City does a good job. Judge Hardy
12 in Reno, he's a little harder to get into.

13 MR. TOWNSEND: Either of those would be great
14 for us.

15 THE COURT: How would you feel about Judge
16 Russell if he was willing to do it?

17 MR. KOZAK: I don't know Judge Russell. I do
18 know Judge Satler and Judge Hardy up in Reno. I've
19 settled cases with both of those judges. I would be
20 perfectly happy with either one of them. They are
21 very good settlement judges.

22 THE COURT: Is this case -- I mean are the
23 positions of the parties -- sometimes you just need
24 someone to decide or is this a case where there's some

1 flexibility?

2 I mean, I can tell you if the procedural
3 posture of this case doesn't change, it's a fairly
4 simple case potentially. If the -- if it does change,
5 it could become more -- and sometimes that uncertainty
6 creates flexibility.

7 I guess I'll start with you, Mr. Kozak, do
8 you think this is a case that could be successful in
9 mediating? The other idea what about someone like
10 Judge Whitehead. I don't know how much money is
11 involved in this case. He's not the least expensive
12 mediator out there but he's good.

13 MR. TOWNSEND: I don't know him.

14 THE COURT: How much is this property worth
15 roughly?

16 MR. TOWNSEND: 180.

17 THE COURT: Are there any encumbrances on it?

18 MR. TOWNSEND: Not that I know of, no.

19 THE COURT: Have either of you had any
20 experience with private mediators?

21 MR. TOWNSEND: Yes.

22 THE COURT: And who have you used in the
23 past?

24 MR. TOWNSEND: I'm really bad with names but

1 if you give me a minute, I might be able to come up
2 with it, it wasn't a judge though.

3 THE COURT: What about you?

4 MR. KOZAK: Yes. We used, Mr. Enzenberger up
5 in Reno, excellent private mediator. We would be very
6 happy with him. We settled a case with him. He's
7 excellent.

8 MR. TOWNSEND: What was his name?

9 THE COURT: Bob Enzenberger. I guess I'm
10 just looking for do you guys want -- if you go to a
11 private mediation, you guys are going to be splitting
12 the cost. Maybe we can get a senior judge in here
13 mediation, that might be our best bet. You would
14 probably have to take whoever is assigned; would the
15 parties be willing to do that?

16 MR. TOWNSEND: We would prefer a judicial
17 settlement.

18 THE COURT: Okay.

19 So Court Administrator, why don't we ask the
20 Supreme Court to assign a senior judge to mediate this
21 case and can we agree on a date where the parties will
22 be available and we'll just put in that -- well, you
23 know, why don't we have Judge Estes mediate it on --
24 he's going to be here on June 27; right?

1 THE CLERK: He is, your Honor.

2 THE COURT: We don't have anything set right
3 now?

4 THE CLERK: We do not have anything set.

5 THE COURT: That will be -- if you guys any
6 objection to having a senior Judge Robert Estes?

7 THE CLERK: Your Honor, give me one second.
8 I noticed just as I was coming in that Judge Estes
9 just sent me an e-mail in regard to that week so let
10 me verify what that says.

11 MR. TOWNSEND: I've dealt with Judge Estes
12 and he would be okay too.

13 THE COURT: I'm supposed to be out of town
14 that week, and he's just covering here so that would
15 be the simplest.

16 THE CLERK: Your Honor, Judge Estes has just
17 set something that week in Yerington for July 1st, but
18 he's indicated either June 29th or June 30th in
19 addition to the law and motion day, he will be
20 available.

21 THE COURT: What day is the law and motion
22 day?

23 THE CLERK: June 28th.

24 THE COURT: Okay.

1 So should we do the June 29th, would that
2 work with your schedule?

3 MR. KOZAK: That will work with us.

4 MR. TOWNSEND: Can you tell me what day of
5 the week that is?

6 THE COURT: It's a Wednesday.

7 MR. TOWNSEND: Yeah, that should be fine.

8 THE COURT: Okay. Let's set it for 9:00 in
9 the morning, and we'll give you -- should we give him
10 the whole day and that way -- I don't think it will
11 take the whole day but I won't set anything else that
12 day.

13 I would encourage -- litigation is expensive.
14 Litigation can get really expensive if you --
15 depending on if you're paying just for yourself or one
16 of the parties ended up having to pay for the other
17 side. So I would encourage you to come with open
18 minds and try to resolve this if you can. Judge Estes
19 will come out fresh. He won't have any experience
20 with the case.

21 So I'm going to ask each counsel to file a
22 Confidential Settlement Statement the Monday before
23 the mediation. So the mediation is set on the 29th;
24 is that correct?

1 THE CLERK: That's correct, it would be
2 June 20th, your Honor, is the Monday that is a full
3 week before.

4 THE COURT: It's June 20th, no later than
5 June 20th and just file that with the court here, it
6 won't be shared with opposing counsel.

7 MR. TOWNSEND: Do you want any page limits on
8 that?

9 THE COURT: I'll leave it to counsel's
10 discretion. I can tell you I know Judge Estes and he
11 would prefer -- yeah, I'm going to put a five-page
12 limit on it just knowing Judge Estes. He might self
13 impose a five-page limit.

14 MR. TOWNSEND: Right.

15 THE COURT: So we'll do that.

16 Is there anything that should take place
17 between now and then to put the parties in a better
18 position -- is there any questions as to the value of
19 the property that might -- I mean, we could get a
20 broker evaluation, it wouldn't necessarily be binding
21 on trial but at least you guys could come into it with
22 an idea of what a realtor here in town thought the
23 property might be worth.

24 Mr. Kozak, what are your thoughts on that?

1 MR. KOZAK: We can easily get the drive-by
2 appraisal from a reputable broker and we could do
3 that.

4 THE COURT: Would that be of assistance to
5 you?

6 MR. TOWNSEND: Yeah. We've actually talked
7 to a broker about doing something like that.

8 THE COURT: Who did you talk to?

9 MR. TOWNSEND: Carrie Norcut.

10 THE COURT: She's the owner of Burney Realty
11 here in town. She's someone that regularly appears
12 before the court.

13 Do you have any personal relationship with
14 Carrie Norcut?

15 MR. HOWARD: No sir.

16 THE COURT: So you just called her?

17 MR. TOWNSEND: Well, I think that she was
18 representing them.

19 THE COURT: So both of you did that together?
20 Would you be agreeable to use --

21 MR. KOZAK: We have our own broker. Damian
22 Jansen who's already looked at the house and can give
23 us a reasonable appraisal. So if they want to present
24 theirs and we have ours, that would be perfectly

1 agreeable to us.

2 THE COURT: Is that a local realtor?

3 MR. KOZAK: No. He's up in Reno but he does
4 a lot of work down here in Fallon.

5 THE COURT: Okay.

6 So then what we'll do is we won't use a
7 mutually agreeable one but you can get yours and you
8 can get yours and provide it for whatever assistance
9 Judge Estes can use it for.

10 So we have a trial date. We have a mediation
11 date. Let me ask, I mean I expect that the Case
12 Conference Report will be filed before then. Do we
13 want to burn a ton of money in attorney's fees
14 litigating the issue that -- on the dismissed cases or
15 do we want to wait for the mediation see if it
16 resolves and then move forward? I guess I'm asking
17 both counsel. I guess there's an argument for both
18 approaches. We can put it aside for a month and I can
19 give you a deadline sometime after to brief it and
20 hold the evidentiary hearing or we can -- I don't know
21 that we would get it decided by then anyway.

22 I'm just wondering what your thoughts are
23 because that might be attorney's fees money that could
24 be better spent toward settling the case. Counsel,

1 what are your thoughts?

2 MR. KOZAK: My thought is to put it over
3 until after the mediation. Since we're going
4 June 29th not that far off, I think decisions on any
5 motions should be after the mediation.

6 THE COURT: What about the actual briefing of
7 the motions? What about the actual briefing of the
8 motions?

9 MR. KOZAK: Oh, are you talking about the new
10 motion we're going to file?

11 THE COURT: Yeah.

12 MR. KOZAK: Yeah. If you could give us 15
13 days on that.

14 THE COURT: I guess my question is: Do you
15 want to burn all the attorney's fees before the
16 mediation or do you want to wait and see if you can
17 settle it and if you can't settle it, then I'll give
18 you some deadlines after that.

19 MR. KOZAK: Yeah, that would be fine.

20 THE COURT: What about you?

21 MR. TOWNSEND: That's what we would prefer as
22 well too to is to set it after.

23 THE COURT: So the mediation is on June 29th.
24 If there's going to be -- if it doesn't settle, then

1 my previous order about how the current motion is
2 going to be resubmitted, I'm going to give you a
3 deadline of July 8th to file that.

4 Then Mr. Hughes, you'll have just the
5 statutory time after July 8th and then Ms. Howard,
6 you'll have the statutory time to reply and at that
7 point, the court will set an evidentiary hearing. I
8 would just encourage you guys to really try to make as
9 good of effort as you can to try to settle this case
10 at that mediation or settlement conference.

11 Is this the Case Conference Report?

12 THE CLERK: Yeah, this just came in.

13 THE COURT: There is a Defendant's Case
14 Conference Report, it purports to have been signed on
15 March 10, 2016 by you, Mr. Kozak, and then it has a
16 signature that you can tell me -- the court hasn't
17 received this and it purports that it was mailed on
18 the 10th day of March 2016 to Mr. Townsend at 402
19 North Division Street, PO Box 646, Carson City, Nevada
20 89702, so and that was e-mailed to us?

21 THE CLERK: Yes, it just came over Ms.
22 Joseph's e-mail just about two minutes ago.

23 THE COURT: Okay.

24 How do you want to handle this, counsel, do

1 you want a copy?

2 MR. TOWNSEND: I'd like to see a copy, yeah.

3 THE COURT: Why don't we just make two
4 copies. We'll do the e-mail. And from that, it was
5 hard for me to tell when it was mailed to the court
6 because there's no way for the court to know. The
7 certificate of mailing doesn't require to say that it
8 was mailed to the court. The court received it when
9 it receives it and then files it in. When would that
10 have been mailed to the court?

11 MR. KOZAK: I presume the day that I signed
12 it.

13 THE COURT: Did you sign that document?

14 MR. KOZAK: I believe I did.

15 THE COURT: Okay.

16 MR. KOZAK: I don't think we can electronic
17 file down here. I think I have to sign those.

18 THE COURT: I guess my question is: Is there
19 -- in your office, is there anyone -- is there a stamp
20 where someone could stamp your signature or?

21 MR. KOZAK: No.

22 THE COURT: I've seen some attorneys who have
23 a stamp or sometimes people in the office get a little
24 -- I mean, they sign the attorney's signature.

1 MR. KOZAK: We don't do that.

2 THE COURT: Okay.

3 Why would it have been completed so late,
4 that's only a week ago, right? It was March 10th. So
5 I guess it was -- it was two months ago, that's still
6 late, it was due I think at the end of December.

7 MR. TOWNSEND: No, that one was due -- I
8 think we filed ours March 11th.

9 THE COURT: March 11th, okay.

10 So since these aren't originals, I'm not
11 going to file them in as court documents. I'll let
12 you file originals in, but I just want to have them in
13 the court record for -- is that your signature?

14 MR. KOZAK: Yes, it is.

15 THE COURT: Is there anything else, counsel?

16 MR. TOWNSEND: I don't think so right now.

17 THE COURT: Anything else from you?

18 MR. KOZAK: No, your Honor.

19 THE COURT: Then we'll have our settlement
20 conference. We'll then see where we are from there
21 and we have a trial date to work towards.

22 I want to thank counsel and I want to thank
23 the parties for coming in. Like I said, we don't
24 typically do this at this stage of the proceedings but

1 it is allowed under the rules to try to get -- if the
2 court deems it's necessary, and just upon Mr. Hughes'
3 application, the court determined that it would have
4 been helpful in this case so that's why we did it. So
5 let's see where we go.

6 Thank you.

7 MR. TOWNSEND: Thank you, your Honor.

8 MR. KOZAK: Thank you.

9 THE COURT: Court is in recess.

10 (The proceedings were concluded.)

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1 STATE OF NEVADA)

2)SS.

3 COUNTY OF WASHOE)

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6 I, GAIL R. WILLSEY, do hereby certify:

7 That I was provided a JAVS CD and that said

8 CD was transcribed by me, a Certified Shorthand

9 Reporter, in the matter entitled herein;

10 That said transcript which appears

11 hereinbefore was taken in stenotype notes by me from

12 the CD and thereafter transcribed into typewriting as

13 herein appears to the best of my knowledge, skill and

14 ability and is a true record thereof.

15

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GAIL R. WILLSEY, CSR #359

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1 Case No. 15-10DC-0876

2 Dept. I

FILED

2016 MAY 19 AM 9:55

ST. JAMES
COURT HOUSE

J. Benninghoff

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6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**
8
9

10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

12 vs.

ORDER AFTER PRETRIAL

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,

CONFERENCE

15 Defendants.
_____ /

16 This matter came before the Court for a Pretrial Conference pursuant to NRCP 16 on
17 May 17, 2016. Having heard from the parties and considered the issues presented at the Pretrial
18 Conference, and **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 19 1. This case has been set for a bench trial of one (1) day, to commence on October 3, 2016
20 at 9:00 a.m.
21 2. A settlement conference has been set for June 29, 2016 at 9:00 a.m. with one day
22 allocated for the settlement conference.

23 ///

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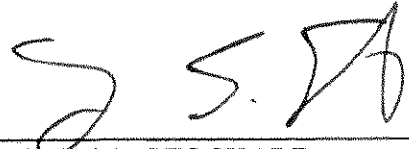
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- 3. Each party shall file a confidential settlement statement no later than June 20, 2016. Each party's confidential settlement statement shall contain a maximum of five (5) pages.
- 4. ELIZABETH C. HOWARD shall have until July 8, 2016 to file a supplement to her Motion to Set Aside Dismissal of Counterclaim filed on May 17, 2016. SHAUGHNAN L. HUGHES shall have until July 27, 2016 to file an opposition. ELIZABETH C. HOWARD shall have until August 5, 2016 to file a reply. After August 5, 2016, the Court will determine whether or not a hearing regarding the Motion to Set Aside Dismissal of Counterclaim is necessary or if the Court can rule on the merits of the Motion to Set Aside Dismissal of Counterclaim without a hearing.

IT IS SO ORDERED.

Dated this 19th day of May 2016.



THOMAS L. STOCKARD
DISTRICT JUDGE

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CERTIFICATE OF SERVICE

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER AFTER PRETRIAL CONFERENCE** on the parties, by depositing a copy thereof as shown below.

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
P.O. Box 646
Carson City, NV 89702

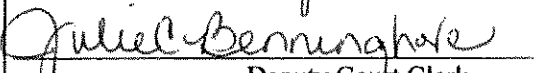
Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 19th day of May, 2016.


Sue Sevon, Court Administrator

Subscribed and sworn to this

19th day of May, 2016.


Deputy Court Clerk

1 Case No. 15-10DC-0876

2 Dept. I

FILED

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SUE SEVON
COURT CLERK

Shelly Neaton

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6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**

10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

12 vs.

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,

15 Defendants.

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S
MOTION TO SET ASIDE DISMISSAL
OF COUNTERCLAIM

16 This matter came before the Court on ELIZABETH HOWARD's (hereinafter "Ms.
17 Howard") Motion for Summary Judgment filed June 28, 2016, and her Motion to Set Aside
18 Dismissal of Counterclaim, filed May 17, 2016. Ms. Howard is represented by Charles Kozak,
19 Esq. SHAUGHNAN HUGHES (hereinafter "Mr. Hughes"), who is represented by Justin
20 Townsend, Esq., has opposed both Motions. The Motions have been fully briefed by both
21 parties.

22 **I. Factual and Procedural Background**

23 Mr. Hughes and Ms. Howard were involved in a romantic relationship in the years
24 leading up to the filing of the Complaint in this case. In June of 2012, a parcel of real property

1 in Churchill County, Nevada (hereinafter "Fulkerson property"), was purchased by and
2 conveyed to Ms. Howard by way of Special Warranty Deed.¹ Several days later, in July of
3 2012, Ms. Howard conveyed the Fulkerson property by way of Quitclaim Deed to herself and
4 Mr. Hughes as Joint Tenants.² The parties subsequently made a number of improvements to the
5 property, the details of which remain in dispute. What is not disputed is that Ms. Howard paid
6 for a number of materials used in the improvement of the land and that Mr. Hughes paid
7 property taxes on the land.³

8 Sometime around March of 2015 the relationship between the parties deteriorated. Ms.
9 Howard sought a Protection Order against Mr. Hughes from the New River Township Justice
10 Court, but was ultimately denied. Thereafter, Mr. Hughes initiated this action by filing his
11 Complaint on July 27, 2016.

12 In his Complaint, Mr. Hughes seeks an accounting of his interest in the Fulkerson
13 Property. He further seeks an order directing the sale of the Fulkerson property and an equitable
14 division of the proceeds thereof between the parties. On November 24, 2015, Ms. Howard filed
15 an Answer and Counterclaim requesting an order directing Mr. Hughes "to specifically perform
16 the action required to give 100% sole ownership of the property to [Ms. Howard]." Further, in
17 her Counterclaim, Ms. Howard alleges Fraud, Conversion, Intentional Infliction of Emotional
18 Distress, and Specific Performance; she asks for an award of damages and special damages.

19 On December 11, 2015, Mr. Hughes moved to dismiss Ms. Howard's Counterclaims and
20 strike certain allegations contained in the Counterclaim pursuant to NRCP 9(b), 12(b)(5), and
21 12(f). This motion remained unopposed, and on January 7, 2016 this Court entered an Order
22 granting the requested relief.

23

24

¹ See Defendant's Motion for Summary Judgment, Exhibit 5.

² See Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 1.

³ See, e.g. Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 3.

1 On May 17, 2016, Ms. Howard filed a Motion to Set Aside Dismissal of Counterclaim
2 pursuant to NRCP 60(b)(1). Specifically, Mr. Kozak (Ms. Howard's Attorney) stated that the
3 opposition to Mr. Hughes' Motion "perhaps due to post office mistake or being misplaced
4 somewhere at the Court, . . . was never filed by this Court."

5 Also on May 17, 2016, the court held a Pre-Trial Conference at which point the case was
6 scheduled for a Settlement Conference on July 29, 2016 and set for Trial on October 3, 2016 at
7 9:00 a.m. Ms. Howard was given until July 8, 2016 to file a supplement to her Motion to Set
8 Aside Dismissal of Counterclaim.

9 On June 20, 2016, Ms. Howard filed an Opposition to Motion to Dismiss; Motion to
10 Strike, however this Opposition was subsequently withdrawn on July 8, 2016. And, in its place
11 on July 8, 2016, Ms. Howard filed her "Supplement to Elizabeth Howard's Motion to Set Aside
12 Dismissal of Counterclaim Filed May 17, 2016."

13 Meanwhile, on June 28, 2016 Ms. Howard filed her Motion for Summary Judgment.
14 Both the Motion for Summary Judgment and Motion to Set Aside Dismissal of Counterclaim
15 were opposed by Mr. Hughes on July 20, 2016 and July 28, 2016, respectively, and come now
16 before the Court for consideration.

17 **II. Analysis**

18 *(a) Motion to Set Aside Dismissal of Counterclaim*

19 "On motion and upon such terms as are just, the court may relieve a party or a party's
20 legal representative from a final judgment, order, or proceeding for the following reasons: (1)
21 mistake, inadvertence, surprise, or excusable neglect." N.R.C.P. 60(b). "This is in the nature of
22 a remedial statute; its object [is] to relieve litigants who through some inadvertence, such as is
23 common to mankind, might be deprived of a hearing upon the merits through their unintentional
24 failure to bring themselves within a rule." *Whise v. Whise*, 36 Nev. 16, 20 (1913). Further, "the

1 court must give due consideration to the State's underlying basic policy of resolving cases on
2 their merits whenever possible." *Id.*

3 The Nevada Supreme Court has held "that the presence of the following factors indicates
4 that 60(b)(1) has been satisfied: (1) a prompt application to remove the judgment; (2) the
5 absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural
6 requirements; and (4) good faith." *Yochum v. Davis*, 98 Nev. 484, 487 (1982) (citing *Hotel Last*
7 *Frontier v. Frontier Prop.*, 79 Nev. 150 (1963)).

8 When considering if a Motion is prompt, the court generally looks to Rule 60(b), stating
9 that "[t]he motion shall be made within a reasonable time, and for reason (1), . . . not more than
10 6 months after the proceeding was taken or the date that written notice of entry of the judgment
11 or order was served." N.R.C.P. 60(b). However, there are circumstances in which filings within
12 the six month period are nevertheless not *prompt*. See, e.g. *Kahn v. Orme*, 108 Nev. 510, 514
13 (1992) (finding that a filing to set aside default was not prompt even when it was filed within
14 the six month period, because the moving party was aware of default and failed to take action
15 for over five months). See also *Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 339 (1980)
16 (noting that six months is the outer limit, but that "want of diligence in seeking to set aside a
17 judgment is ground enough for denial of such a motion").

18 Preliminarily, the Court is concerned by the lack of Mr. Kozak's candor regarding the
19 Opposition to the Motion to Dismiss. On May 17, 2016, Ms. Howard filed her initial Motion to
20 set aside the Order. In this Motion, Mr. Kozak indicated that his office properly prepared, and
21 placed in the mail, copies of Ms. Howard's opposition. Mr. Kozak further stated that Mr.
22 Townsend told Mr. Kozak that he had received a copy of the opposition. At the Pre-Trial
23 hearing on May 17, 2016, the Court questioned Mr. Kozak about these statements. Ultimately,
24 the record indicates that neither Mr. Townsend nor the Court ever received an Opposition to the

1 Motion to Dismiss. Nevertheless, Mr. Kozak indicated that he could provide a file stamped
2 copy of the Opposition from his records. Mr. Kozak has yet to produce such a copy.

3 The question remains as to whether Ms. Howard's Motion to Set Aside Dismissal was
4 timely. Mr. Hughes filed a Motion to Dismiss Ms. Howard's counterclaims on December 11,
5 2015. Ms. Howard failed to respond in a timely fashion. Thus, upon Mr. Hughes' Reply and
6 Request for Submission, the Court entered the Order dismissing Ms. Howard's Counterclaim on
7 January 7, 2016. Mr. Hughes filed a notice of entry regarding this Order on January 12, 2016.⁴

8 Ms. Howard took no action whatsoever regarding the Order until over five months after
9 it was entered. The most generous interpretation of the facts would lead the Court to find that
10 Mr. Kozak prepared the Opposition in a timely manner, that his assistant placed two copies of
11 the opposition in the mail, and that the post office inexplicably lost or mis-delivered both
12 envelopes. However, Mr. Kozak's failure to take action when he received Mr. Hughes' Reply,
13 filed December 30, 2015, or the Notice of Entry, filed January 12, 2016 is inexcusable. Both of
14 these filings put Mr. Kozak on notice that no one had received the Opposition. Nevertheless,
15 Mr. Kozak waited until May 17, 2016, the day of the Pre-Trial Hearing, to raise the issue for the
16 first time. Mr. Kozak's delay in raising the issue had the potential to significantly prejudice the
17 opposing party who arrived for the Pre-Trial Hearing with the understanding that the
18 Counterclaims had been resolved.⁵ Thus, although his filing was within the six month period
19 contemplated in N.R.C.P. 60(b), his actions do not constitute a "prompt application."

20 Further, the Court further finds that Mr. Kozak's conduct rises above the level of
21 "inadvertence" contemplated in *Whise*. *Whise*, 36 Nev. 16, see also *Sherman v. Sothern Pacific*
22 *Co.*, 31 Nev. 285, 291 (1909) (noting that the purpose of the court's discretion is to prevent
23 injustice that arises from excusable neglect and leads to an application of form over substance).

24 ⁴ There is no indication or allegation that Ms. Howard did not receive a copy of this notice of entry by mail.

⁵ The Court also notes that there is no mention of the counterclaims in the Plaintiff's Case Conference Report, filed March 15, 2016. This is the only case conference report in the record.

1 In the present case, Mr. Kozak's neglect is not excusable. Not only did Mr. Kozak fail to file an
2 opposition or serve it on the opposing party, but he also delayed addressing the issue, and
3 ultimately addressed it with a questionable level of candor.

4 Although the court recognizes the State's general preference of resolving issues on the
5 merits, there is a limit to the deviations from procedural requirements that the court will tolerate.
6 Mr. Kozak's conduct has exceeded that limit. Therefore, Ms. Howard's Motion to Set Aside
7 Dismissal of Counterclaim is DENIED.

8 *(b) Summary Judgment*

9 Ms. Howard has also moved the Court for Summary Judgment against Mr. Hughes with
10 respect to his Complaint. Summary judgment is proper only when "the pleadings, depositions,
11 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
12 there is no genuine issue as to any material fact and that the moving party is entitled to a
13 judgment as a matter of law." N.R.C.P. 56(c). "A factual dispute is genuine when the evidence
14 is such that a rational trier of fact could return a verdict for the nonmoving Party." *Wood v.*
15 *Safeway, Inc.*, 121 Nev. 724, 731 (2005). Summary judgment may not be granted "if a
16 reasonable jury could return a verdict for the non-moving party." *Sprague v. Lucky Stores*, 109
17 Nev. 247, 249 (1993) (citing *Oehler v. Humana, Inc.*, 105 Nev. 348, 350 (1983)).

18 When deciding a summary judgment motion, all evidence must be viewed in the light
19 most favorable to the nonmoving party. *Wood*, 121 Nev. at 729. However, once a party has
20 moved for summary judgment, the non-moving party must "set forth specific facts
21 demonstrating the existence of a genuine issue for trial or have summary judgment entered
22 against him." *Sprague*, 109 Nev. at 250.

23 In the present case, Mr. Hughes has filed a complaint asking for the Court to determine
24 the parties' respective rights to a parcel of real property which they own as joint tenants. A joint

1 tenancy in real property may be created “by transfer from a sole owner to himself or herself and
2 others.” Nev. Rev. Stat. 111.065(1) (2015). Once a joint tenancy is established, it may be
3 partitioned, at the request of a joint tenant, in accordance with Chapter 39 of the Nevada
4 Revised Statutes. The Court must then determine the respective interests of the parties in the
5 real property. See Nev. Rev. Stat. 39.080 (2015).

6 Where unmarried persons acquire a parcel of real property as joint tenants, the
7 apportionment should be in proportion to their respective contributions. *Langevin v. York*, 111
8 Nev. 1481, 1485 (1995). Ms. Howard argues that the Nevada Supreme Court has stated that
9 “there is a presumption that where cotenants unequally share in the purchase price of property,
10 “the cotenants intended to share in proportion to the amount contributed to the purchase price.”
11 *Id.* (quoting *Sack v. Tomlin*, 110 Nev. 204, 210 (1994)).⁶ However, *Langevin* is distinguishable
12 from the present case because the parties not only made unequal contributions to the purchase
13 price, but the party which did not contribute to the purchase price also provided no contribution
14 to improvements or maintenance of the property thereafter. *See* 111 Nev. at 1485–86. In *Sack*,
15 while the court started by looking at the contributions to the purchase price, it ultimately
16 adjusted the percentage based upon their subsequent contributions using the “*Kershman*
17 formula.” *Sack*, 110 Nev. at 211. Specifically, the court favorably cited *Kershman v. Kershman*,
18 which found that a joint tenant’s share should be the percentage of their contribution to the
19 value of the property—including contributions toward improvements after the initial purchase.
20 192 Cal. App. 2d 23, 28–29 (1961) (cited by *Sack*, 110 Nev. at 210).

21 In the present case, Ms. Howard deeded the property to herself and Mr. Hughes as joint
22 tenants. Mr. Hughes alleges that Ms. Howard intended to gift him an equal share in the
23

24 _____
⁶ Although the dispute in *Sack* was centered around property owned as a tenancy in common, the court in *Langevin*
found the precedent applicable to property owned as a joint tenancy. *Langevin*, 111 Nev. at 1485.

1 property. He has minimally supported this allegation with declarations in his Affidavit.⁷ Mr.
2 Hughes further provided receipts indicating that he paid property taxes for the Fulkerson
3 Property in an amount exceeding \$2,000.00.⁸ Mr. Hughes further alleges that he paid for certain
4 electrical work conducted on the Fulkerson Property's detached garage. He states that this
5 assertion is supported by an invoice provided in Defendant's Motion for Summary Judgment.⁹
6 Additionally, Mr. Hughes alleges that he contributed toward some of the items purchased for
7 the improvement for the property. Finally, Mr. Hughes alleges that he contributed to the value
8 of the property by personally completing some of the improvements.

9 Although Ms. Howard disputes the degree to which Mr. Hughes contributed to the cost
10 of improvements on the property, when viewed in the light most favorable to Mr. Hughes, there
11 is an issue of material fact with respect to the parties' respective contributions.

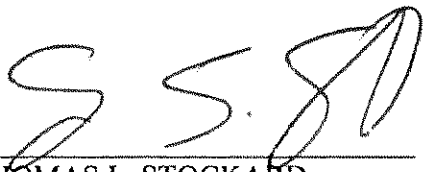
12 Because Mr. Hughes has provided specific allegations regarding his financial
13 contribution to the value of the property, and because the value of his contribution is a material
14 fact for the court to consider in apportioning the parties' interests in a partition, Summary
15 Judgment is not appropriate at this point. Therefore, Ms. Howard's Motion for Summary
16 Judgment is Denied.

17 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 18 1. Ms. Howard's Motion to Set Aside Dismissal of Counterclaims is hereby DENIED.
19 2. Ms. Howard's Motion for Summary Judgment is hereby DENIED.

20 IT IS SO ORDERED.

21 Dated this 7 day of September 2016.

22 
23 THOMAS L. STOCKARD
DISTRICT JUDGE

24 ⁷ See Affidavit of Shaughnan L. Hughes, filed July 20, 2016

⁸ See Opposition to Motion for Summary Judgment, Exhibit 3.

⁹ See Motion for Summary Judgment, Exhibit 19A.

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I
3 served the foregoing **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY**
4 **JUDGMENT AND DENYING DEFENDANT'S MOTION TO SET ASIDE DISMISSAL OF**
5 **COUNTERCLAIM** on the parties, by depositing a copy thereof as shown below.
6

7 Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
8 Carson City, NV 89703-4168

9 Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
10 3100 Mill Street, Suite 115
11 Reno, NV 89502

12 DATED this 7 day of September, 2016.

13
14 Sue Sevon
15 Sue Sevon, Court Administrator

16 Subscribed and sworn to this

17 7 day of September, 2016.

18 Shelley Nooten
19 Deputy Court Clerk
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1 Case No. 15-10DC-0876

FILED

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SUE SEVON
COURT CLERK

Sue Sevon

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6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**
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10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

12 vs.

ORDER CONTINUING TRIAL

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,

15 Defendants.

16 This matter came before the Court on Plaintiff SHAUGHNAN HUGHES' (hereinafter
17 "Mr. Hughes") Motion for Continuance, filed September 20, 2016. Mr. Hughes is represented
18 by Justin Townsend, Esq. Defendant, ELIZABETH HOWARD (hereinafter "Ms. Howard")
19 filed an Opposition to Continuance in Part on September 23, 2016. Ms. Howard is represented
20 by Charles Kozak, Esq.

21 In his Motion, Mr. Hughes alleges that he requires an appraisal of the property at issue
22 in this case and that the parties have been unable to arrange such an appraisal. Mr. Hughes
23 further alleges that Ms. Howard is in possession of certain photographs that would be beneficial
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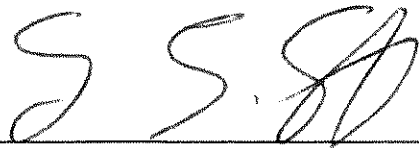
1 to his case. Ms. Howard has opposed the motion in part, stating that an appraisal is
2 unnecessary, and that she is willing to provide her laptop for inspection in the near future.

3 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 4 1. The Trial in this matter, which is currently set for October 3, 2016 is hereby continued to
5 February 6, 2017 at 9:00 a.m.
- 6 2. If, as part of his discovery, Mr. Hughes wishes to complete an appraisal of the property,
7 he shall bear any and all costs associated therewith.
- 8 3. Ms. Howard shall cooperate with Mr. Hughes to allow an appraiser to inspect the
9 property by no later than October 27, 2016.

10 IT IS SO ORDERED.

11 Dated this 27th day of September 2016.

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14 THOMAS L. STOCKARD
15 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing ORDER CONTINUING TRIAL on the parties, by depositing a copy thereof as shown below.

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
Carson City, NV 89703-4168

Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC.
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 27th day of September, 2016.


Sue Sevon, Court Administrator

Subscribed and sworn to this

27th day of September, 2016.


Deputy Court Clerk

1 Case No. 15-10DC-0876

FILED

2 Dept. I

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SUPREME COURT CLERK

BY *[Signature]* DEPUTY

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6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**

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10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

12 vs.

ORDER REGARDING PROPERTY

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,

APPRAISAL

15 Defendants.

16 In an Order entered September 27, 2016, this Court required the parties to cooperate to
17 obtain an appraisal of the Property at issue in this case by no later than October 27, 2016. On
18 November 16, 2016 counsel for both Plaintiff and Defendant conferred with the Court regarding
19 the logistics of obtaining the appraisal. Ultimately, the parties agreed to obtain the appraisal from
20 Tom Riggins, who will be escorted onto the property by Dedra L. Sonne, paralegal to Charles
21 Kozak, Esq.

22 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**


- 23 1. Upon a minimum of a 24-hour notice by Tom Riggins, Ms. Hughes shall make the
24 property and associated structures available for inspection and appraisal.

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a. Charles Kozak, Esq. shall ensure that Dedra L. Sonne is available and present to
escort Tom Riggins onto the property.

IT IS SO ORDERED.

Dated this 2nd day of December 2016.



THOMAS L. STOCKARD
DISTRICT JUDGE

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CERTIFICATE OF SERVICE

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER REGARDING PROPERTY APPRAISAL** on the parties, by depositing a copy thereof as shown below.

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
P.O. Box 646
Carson City, NV 89702

Charles Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 2nd day of December, 2016.


Sue Sevon, Court Administrator

Subscribed and sworn to this

2nd day of December, 2016.


Deputy Court Clerk

1 Case No. 15-10DC-0876

FILED

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STATE OF NEVADA
COURT CLERK

[Signature]
DEPUTY

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6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**
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10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

ORDER REGARDING MOTION IN
LIMINE AND MOTION TO AMEND

12 vs.

ANSWER

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,

15 Defendants.

16 This Matter comes before the Court on Plaintiff SHAUGHNAN L. HUGHES's
17 (hereinafter "Mr. Hughes") Motion in Limine, filed January 9, 2017. ELIZABETH HOWARD
18 (hereinafter "Ms. Howard") filed an Opposition to Plaintiff's Motion in Limine or in the
19 Alternative Motion for Leave to Amend Answer on January 20, 2017. This Matter is set for a
20 one-day bench trial on February 6, 2017.¹

21 The Court has set forth the factual and procedural background of this case in an Order
22 entered September 7, 2016.² In short, Mr. Hughes filed a Complaint seeking the sale and equitable
23

24 ¹ The Trial was originally set for October 3, 2016 but was continued to February 6, 2017 in an Order entered
September 27, 2016.

² Specifically, the Order Denying Defendant's Motion for Summary Judgment and Denying Defendant's Motion to
Set Aside Dismissal of Counterclaim.

1 division of proceeds of real property held by the parties in joint tenancy. Ms. Howard
2 subsequently filed an Answer and Counterclaim. The Counterclaim was dismissed in an Order
3 entered January 7, 2016.³

4 On February 16, 2016, the parties held an early case conference. Mr. Hughes submitted
5 his separate case conference report on March 15, 2016. The Court held various hearings and
6 conducted a Settlement Conference.⁴ The matter was set for a trial on October 3, 2016; trial was
7 continued until February 6, 2017. On January 4, 2017—almost ten months late—Ms. Howard
8 filed her separate case conference report.

9 In Ms. Howard's case conference report, she includes her brief description of the nature
10 of the action. Ms. Howard states in pertinent part:

11 B. Defendant should not be placed in a position of having to partition the
12 property to sell the property as the Plaintiff has no legal equitable
investment in the property.⁵

13 C. Plaintiff exerted undue influence on Defendant to quit claim on the deed
14 five (5) days after she closed the sale when she solely purchased the
property with her own funds.

15 D. Plaintiff used Conversion as he knew the monies had by Defendant were
for herself and Defendant's mother.

16 E. Plaintiff's threatening and wrongful behavior resulted in abusive mental
anguish to the Defendant, and such was the Plaintiff's malicious intent.

17 Defendant's Case Conference Report, p. 2; (hereinafter "Paragraphs B–E").

18 Mr. Hughes filed a Motion in Limine seeking an Order that limits "the introduction of
19 evidence at trial to matters pertinent to an equitable action for partition and restricting any
20 evidence in support of improperly pleaded affirmative defenses." Plaintiff's Motion in Limine, p.

21 4.⁶ Ms. Howard opposed the motion in limine, arguing that Paragraphs B–E do not amount to

22 ³ The Court considered and denied Defendant's Motion to Set Aside Dismissal of Counterclaim in the Order entered
September 7, 2016.

23 ⁴ The Court notes that Senior Judge Robert Estes conducted the Settlement Conference in this Matter.

24 ⁵ Regarding Section B, this is Ms. Howard's position as to the relative interests in the property. This statement does
not appear to raise any affirmative defenses and also mirrors the language of her denials within her Answer.

⁶ The Court also notes that Plaintiff objected to portions of Defendant's case conference report, which appeared to
request a 4-day jury trial in this Matter, however Defendant's Opposition explains that the jury trial request was in
error.

1 affirmative defenses. In the alternative, Ms. Howard moved to amend her answer to include the
2 affirmative defenses.

3 **Motion in Limine**

4 In general, relevant evidence is admissible. NRS 48.025. Evidence is relevant if it has
5 “any tendency to make the existence of any fact that is of consequence to the determination of the
6 action more or less probable than it would be without the evidence.” NRS 48.015. Even if
7 evidence is relevant, “evidence is not admissible if its probative value is substantially outweighed
8 by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.” NRS
9 48.035. Evidence is unfairly prejudicial when it “appeal[s] to the ‘emotional and sympathetic
10 tendencies of a jury, rather than the jury’s intellectual ability to evaluate evidence.’” *State v.*
11 *Eighth Judicial Dist. Court*, 267 P.3d 777, 781 (2011) (citing *Krause Inc. v. Little*, 117 Nev. 929
12 (1996).

13 Here, Mr. Hughes specifically notes that Paragraphs B–E appear to call for evidence that
14 would only be relevant to an affirmative defense. Mr. Hughes argues that Defendant failed to
15 plead any affirmative defenses and that evidence pertaining to any such defenses should be barred
16 at trial. While the parties agree that Ms. Howard did not explicitly plead any affirmative defenses
17 within her answer, Ms. Howard disputes that Paragraphs B–E amount to affirmative defenses.
18 Thus, the first question is whether Paragraphs B–E are affirmative defenses.

19 Affirmative defenses are defined in N.R.C.P. 8, which provides both a list of defenses that
20 a party must affirmatively plead and a catchall for “any other matter constituting an avoidance or
21 affirmative defense.” With respect to the catchall, “[a]llegations must be pleaded as affirmative
22 defenses if they raise ‘new facts and arguments that, if true, will defeat the plaintiff’s . . . claim,
23 even if all allegations in the complaint are true.’” *Clark Cnty. Sch. Dist. v. Richardson Constr.*,
24 123 Nev. 382, 393 (2007) (alteration in original) (internal quotations omitted) (quoting *Saks v.*

1 *Franklin Covey Co.*, 316 F.3d 337, 350 (2d Cir. 2003)). Failure to plead an affirmative defense
2 is generally considered waiver thereof, because the other party “is not given reasonable notice
3 and an opportunity to respond.” *Williams v. Cottonwood Cove Dev. Co.*, 96 Nev. 857, 860 (1980)
4 (citing *Schwartz v. Schwartz*, 95 Nev. 202, 204 (1979)).

5 As noted above, Paragraphs C–E allege undue influence, conversion, and “threatening and
6 wrongful behavior.” Beginning with undue influence, the argument is that Mr. Hughes unduly
7 influenced Ms. Howard into signing a deed that lists the parties as joint tenants. Mr. Hughes has
8 alleged that Plaintiff intended to gift him an equal share in the property when she signed the deed.⁷
9 Thus, the issue of whether the transfer was a gift is likely to be a question of fact at trial. Based
10 upon the limited information provided, it is conceivable that Ms. Howard’s evidence is relevant
11 for a purpose other than an affirmative defense.⁸

12 With respect to conversion, Ms. Howard argues: “Plaintiff used Conversion as he knew
13 the monies had by Defendant were for herself and Defendant’s mother.” The parties have
14 provided no other information regarding this category of evidence. Similarly, with respect to Ms.
15 Howard’s final category, she states, “Plaintiff’s threatening and wrongful behavior resulted in
16 abusive mental anguish to the Defendant, and such was the Plaintiff’s malicious intent.” Again,
17 neither party has elaborated on this statement.⁹

18 Although the Court is empowered to make preliminary determinations regarding the
19 admissibility of evidence, it is unable to do so when there is insufficient context from which to
20 base such a determination. Paragraphs D–E could be interpreted as affirmative defenses, but there
21 is insufficient information for the Court to determine if there is another relevant purpose for the
22

23 ⁷ See, e.g. Affidavit of Shaughnan L. Hughes, filed July 20, 2016.

24 ⁸ Based upon the brevity of the case conference report, the Court is unable to speculate as exact nature of Ms.
Howard’s evidence and argument. In the event that Ms. Howard seeks to introduce evidence that is only relevant to
an affirmative defense, Mr. Hughes may renew his motion.

⁹ Notably, Mr. Hughes had limited ability to elaborate on these statements because he was only alerted to Ms.
Howard’s position after she filed her case conference report 11 months late and 33 days before trial.

1 admission of evidence under these categories. Absent any information regarding the nature of
2 the evidence that Ms. Howard seeks to introduce and Mr. Hughes seeks to exclude, the Court will
3 reserve determinations as to the admissibility of the evidence for trial.

4 **Motion to Amend Answer**

5 Ms. Howard has also filed an alternative motion to amend her answer. The Court notes
6 that Ms. Howard's Motion for leave to amend her answer was filed less than 20 days before Trial.
7 Further, her certificate of service indicates that she served Mr. Hughes by mail on January 20,
8 2017. Ms. Howard did not accompany her Motion with a request to shorten time. Despite the
9 fact that Mr. Hughes' opposition was not due until after Trial, he filed his opposition on January
10 25, 2017.

11 As a preliminary matter, Ms. Howard's alternative motion hinges on the Court's
12 determination as to whether Paragraphs B–E are affirmative defenses. Notably, Ms. Howard is
13 in the best position to determine whether she intends to raise any affirmative defenses. Ms.
14 Howard specifically alleges that she is not raising any affirmative defenses. As the Court set forth
15 above, the limited language in the case conference report provides little insight into Ms. Howard's
16 claim. Nevertheless, to the extent that Ms. Howard requests leave from the Court to amend her
17 answer, the Court makes the following findings and conclusions:

18 Ms. Howard did not plead any affirmative defenses in her Answer. In general, failure to
19 plead an affirmative defense is considered waiver thereof. See *Williams*, 96 Nev. at 860. "Under
20 Rule 15 the district court may and should liberally allow an amendment to the pleadings if
21 prejudice does not result." *Schwartz v. Schwartz*, 95 Nev. 202, 205 (1979). "The liberal policy
22 provided in Rule 15(a) 'does not mean the absence of all restraint. Were that the intention, leave
23 of court would not be required. The requirement of judicial approval suggests that there are
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1 instances where leave should not be granted.” *State v. Sutton*, 120 Nev. 972, 988 (2004) (quoting
2 *Ennes v. Mori*, 80 Nev. 237, 243 (1964)).

3 To the extent that Ms. Howard requests leave to amend her pleadings, that request is
4 dilatory. “Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith
5 or dilatory motives on the part of the movant.” *Kantor v. Kantor*, 116 Nev. 886, 891 (2000)
6 (finding that the district court did not abuse its discretion when it denied defendant’s motion for
7 leave to amend her answer because defendant was dilatory and did not file the motion until the
8 “eve” of trial). Here, Ms. Howard’s counterclaims were dismissed in January 2016, over one year
9 prior to her request to amend her answer. Nevertheless, Ms. Howard made no effort whatsoever
10 to amend her answer until she filed her alternative motion less than 20 days before trial.

11 Not only is Ms. Howard’s delayed request dilatory, but an amendment at this stage would
12 also be prejudicial to Mr. Hughes. Prejudice may result if the opposing party is “deprived of
13 reasonable, prior notice of [the] particular issue [or is] denied the opportunity to develop facts and
14 confront the issue.” *Ivory Ranch v. Quinn River Ranch*, 101 Nev. 471, 473 (1985). Here, Ms.
15 Howard did not plead any affirmative defenses. Although Ms. Howard originally pled a series of
16 counterclaims (which included fraud, conversion and intentional infliction of emotional distress),
17 the counterclaims were dismissed in an order entered January 7, 2016.¹⁰

18 Throughout the entire discovery process, Mr. Hughes has only been on notice of the issues
19 raised in his own complaint. Mr. Hughes has not been on notice of any affirmative defenses or
20 counterclaims.¹¹ As a consequence, Mr. Hughes would suffer prejudice if the Court were to grant
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23 ¹⁰ This was before the parties’ early case conference and before Mr. Hughes filed his early case conference report.
In other words, pursuant to N.R.C.P. 26(a), the counterclaims were dismissed prior to discovery beginning.

24 ¹¹ Although Ms. Howard argues that the factual recitation within her counterclaims should have put Mr. Hughes on
notice of her (potential) affirmative defenses, this argument is illogical since her counterclaims were dismissed prior
to the start of discovery. Ms. Howard was on notice of the counterclaims’ dismissal in January 2016. In September
2016, the Court denied Ms. Howard’s Motion to Set Aside Dismissal of Counterclaims.

1 a motion to amend the answer, because Mr. Hughes had no opportunity to develop facts or
2 confront the issues now raised by Ms. Howard.¹²

3 Upon review of Ms. Howard's motion and the relevant law, to the extent that Ms. Howard
4 seeks to amend her answer to include an affirmative defense, her request is DENIED.

5 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 6 1. Mr. Hughes' Motion in Limine is DENIED without prejudice.
7 2. Ms. Howard's alternative Motion for Leave to Amend Answer is DENIED.

8 IT IS SO ORDERED.

9 Dated this 27th day of January 2017.

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13 THOMAS L. STOCKARD
14 DISTRICT JUDGE
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21 ¹² Notably, Ms. Howard filed a Motion for Summary Judgment on June 28, 2016, wherein she references the
22 arguments in Paragraphs B-E. For temporal context, she filed her Opposition to Motion to Dismiss; Motion to
23 Strike (which she later withdrew) on June 20, 2016 and she filed her Supplement to Set Aside Dismissal of
24 Counterclaim on July 6, 2016. In other words, in the weeks before and after she filed her Motion for Summary
25 Judgment, Ms. Howard also filed documents in support of her position that her counterclaims should not be
26 dismissed.

27 Mr. Hughes' opposition to the motion for summary judgment argued that Ms. Howard inappropriately referenced
28 her dismissed counterclaim and that the motion should be dismissed on those grounds alone. When Ms. Howard
29 referenced her counterclaims in the Motion for Summary Judgment at the same time she was attempting to have the
30 dismissal of her counterclaims set aside, it did not put Mr. Hughes on notice that she was separately pursuing an
31 affirmative defense.

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CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER REGARDING MOTION IN LIMINE AND MOTION TO AMEND ANSWER** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin Townsend, Esq.
Allison MacKenzie, Ltd.
P.O. Box 646
Carson City, NV 89702


Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC.
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 27th day of January, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

27th day of January, 2017.


Notary Public/Clerk