

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

RICHARD KILGORE,  
Appellant,

vs.

ELENI KILGORE,  
Respondent.

No. 73977

DOCKETING  
CIVIL APPEALS

Electronically Filed  
Sep 18 2017 01:55 p.m.  
Elizabeth N. Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department I

County Clark Judge Cheryl B. Moss

District Ct. Case No. D-12-459171-D

**2. Attorney filing this docketing statement:**

Attorney Betsy Allen, Esq. Telephone (702) 386-9700

Firm Law Office of Betsy Allen

Address P.O. Box 46991  
Las Vegas, NV 89114

Client(s) Richard Kilgore

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Fred Page, Esq. Telephone (702) 469-3278

Firm (702) 469-3278

Address 6145 Spring Mountain Rd.  
Suite 201  
Las Vegas, NV 89146

Client(s) Eleni Kilgore

Attorney N/A Telephone N/A

Firm N/A

Address N/A

Client(s) N/A

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                     |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                                       |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification               |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>Special Order</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

D-12-459171-D: Divorce (Kilgore v. Kilgore)

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The trial court entered decree of divorce on Parties stipulation. Respondent filed a post-judgment motion to, inter alia, compel Appellant to make payments to her on the PERS retirement benefits he would be receiving, together with arrearages retroactive to date of notice and motion. Appellant opposed. An evidentiary hearing was held, expert and lay testimony taken and evidence considered, and the trial court ultimately agreed with Respondent. Appellant was ordered to pay \$2455 per month on PERS retirement benefits, and a judgment on arrearages was entered. Other issues raised by Parties and resolved by the trial court are not being challenged on appeal.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the trial court erred in compelling payment to Respondent on Appellant's PERS retirement benefits when Appellant is not in fact receiving PERS retirement benefits.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None that are known of.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively assigned to the Court of Appeals under NRAP 17.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from August 8, 2017**

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

**17. Date written notice of entry of judgment or order was served August 21, 2017**

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** September 6, 2017

---

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
N/A

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

---

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
The trial court's appealed post-judgment order affects the the parties. It constitutes a special order after judgment. Lee v. GNLV Corp., 116 Nev. 424, 996 P. 2d 416 (2000).



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Richard Kilgore

Eleni Kilgore

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Respondent's claim seeking a monthly payment on a portion of Appellant's PERS retirement benefits. August 2, 2017.

Respondent's claim seeking arrearages on the aforementioned payments, retroactive to the date of notice and motion. August 2, 2017.

All other claims are disposed of and not being challenged on appeal.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:  
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**  
Order is independently appealable as a special order after judgment. NRAP 3A(b)(8).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Richard Kilgore  
Name of appellant

Betsy Allen  
Name of counsel of record

9/18/2017  
Date

Signature of counsel of record

Nevada, County of Clark  
State and county where signed

## CERTIFICATE OF SERVICE


I certify that on the 18 day of September, 2017, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Fred Page, Esq.  
6145 Spring Mountain Road  
Suite 201  
Las Vegas, Nevada 89146

Dated this 18 day of September, 2017

Signature



**ORDR**

FRED PAGE, ESQ.  
Nevada Bar: 6080  
PAGE LAW OFFICE  
6145 Spring Mountain Road, Suite 201  
Las Vegas, Nevada 89146  
Phone: (702) 469-3278  
Facsimile: (702) 628-9884  
E-mail: [fpagelawoffices.com](mailto:fpagelawoffices.com)  
*Attorney for Defendant*

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

RICHARD KILGORE,

Plaintiff.

vs.

ELENI KILGORE,

Defendant.

CASE NO.: D-12-459171-D

DEPT. NO.: 1

Hearing Dates: July 25, 2016, August  
15, 2016, October 31, 2016, December  
1, 2016

Hearing Times: 9:30 a.m. and 1:30  
p.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND  
ORDERS FROM EVIDENTIARY HEARING AND STATUS CHECK  
HEARING**

The evidentiary hearing regarding the PERS payment, omitted vacation and  
sick, pay, survivor beneficiary, and attorney's fees was held in front of the Hon.  
Cheryl B. Moss on the above referenced dates and times. A status check hearing

1 was also held December 1, 2016. Defendant, Eleni Kilgore, was present and was  
2 represented by and through her counsel, Fred Page, Esq. Plaintiff, Richard  
3 Kilgore, was present and was represented by and through his counsel, Betsy Allen,  
4 Esq. The Court having considered the exhibits admitted and the testimony  
5 presented hereby enters the following orders.  
6

### 7 8 **FINDINGS OF FACT**

9 1. Defendant, Eleni Kilgore (hereinafter "Eleni"), and Plaintiff, Richard  
10 Kilgore (hereinafter "Richard"), were married to each other on December 15,  
11 1992, in Las Vegas, Nevada.  
12

13 2. When Eleni and Richard were married to each other that Richard was  
14 employed by the Clark County Courts as Marshal.  
15

16 3. The parties have two remaining minor children, the issue of the  
17 marriage, Nicholas Kilgore (hereinafter "Nicholas"), born June 29, 2000, and  
18 Richard Boyd Kilgore (hereinafter "Ritchie"), born June 29, 2000.  
19

20 4. The stipulated Decree of Divorce in this matter was filed March 13,  
21 2013. In the stipulated Decree of Divorce, the parties were ordered to have joint  
22 physical and joint legal custody of those two remaining minor children.  
23

24 5. In the Decree, the Richard's initial child support obligation for joint  
25 physical custody of the two minor children, Nicholas and Ritchie, was set at  
26 \$1,275 per month commencing November 1, 2012. As of March 13, 2013, the date  
27  
28

1 the Decree of Divorce was filed, Richard's child support arrears were \$1,398.  
2 However, there was no additional installment payment in the Decree for the arrears  
3 on top of the \$1,275.  
4

5 6. In the Decree of Divorce, the parties agreed to divide the PERS  
6 defined benefit plan in Richard's pursuant to the time rule formula.  
7

8 7. The survivor beneficiary was never mentioned in the Decree of  
9 Divorce.  
10

11 8. After the Decree of Divorce was entered, Richard never made any  
12 payments to Eleni for her share of the PERS defined benefit plan in his name.  
13

14 9. In early October 2014, Richard was terminated from his position as a  
15 Marshal at the Las Vegas Municipal Courts.  
16

17 10. On October 14, 2014, Richard filed a Motion to modify child support.  
18

19 11. On November 4, 2014, Eleni filed an Opposition and a Countermotion  
20 to change custody.  
21

22 12. On March 10, 2015, Eleni made a formal request in a Brief filed with  
23 the Court that she begin receiving her share of the PERS defined benefit plan in  
24 Richard's name because he has reached his first eligibility for retirement.  
25

26 13. On March 10, 2015, Eleni also made a formal request in a Brief filed  
27 with the Court that she receives the Survivor's Benefit for the PERS defined  
28 benefit plan in Richard's name as that item was never addressed in the Decree of

1 Divorce. Eleni additionally made a request to divide the omitted vacation/sick pay  
2 that was never addressed in the Decree of Divorce.

3 14. The parties continued to share joint physical custody of Nicholas and  
4 Ritchie until July 2015.

5 15. Commencing August 2015, Eleni had primary physical custody of  
6 Nicholas. Richard would have to pay child support to Eleni for primary physical  
7 custody of Nicholas at 18 percent of his gross monthly income pursuant to NRS  
8 125B.070.  
9  
10  
11

12 16. Eleni and Richard continued to maintain joint physical custody of  
13 Ritchie. Because Richard was still unemployed, Eleni would have to pay child  
14 support to Richard. Eleni would have to pay child support to Richard for Ritchie at  
15 18 percent of her income and Richard would have to pay child support to Eleni for  
16 Ritchie at 18 percent of his gross monthly income with the person with the higher  
17 income paying the difference to the person with the lower income subject to the  
18 caps set forth in NRS 125B.070 as set forth in *Wright v. Osburn, infra*, as modified  
19 by *Wesley v. Foster, infra*.  
20  
21  
22

23 17. Marshal S. Willick, Esq. was qualified as an expert regarding  
24 retirement benefits and testified. Mr. Willick testified to the following:  
25

- 26 a. Eleni's retirement as a Clark County School District teacher has  
27  
28 different standard than does police/fire.

- 1 b. Eleni was entitled to receive a portion of the retirement pay in  
2 Richard's name upon his first eligibility to retire.
- 3 c. The cases of *Gemma v. Gemma*, *Fondi v. Fondi*, *Sertic v. Sertic*, and  
4 *Wolff v. Wolff*, stand for the proposition normal date for receipt of  
5 retirement benefits by the nonworking spouse is the first eligibility for  
6 retirement regardless if the employee decides to retire  
7  
8 d. That rule was modified slightly in *Henson v. Henson*, the Supreme  
9 Court was willing to look at California rule in order actually a flow  
10 payments have to be provided for in the underlying court order or file  
11 a motion that requesting payment at that time. Under *Henson*, the  
12 non-employee spouse's payments begin at the time of the request at  
13 the time if the employee spouse could have retired.  
14  
15 e. As a result of *Henson*, eligibility now for the non-employee spouse  
16 begins at order or court motion.  
17  
18 f. That there are no retroactive benefits under the current law as the  
19 *Henson* opinion does not allow for retroactively.  
20  
21 g. Absent an order, once the date one files a motion asking for benefits  
22 commences the right to receive those retirement benefits. As soon as  
23 the Eleni requests Richard is obligated to begin making payments.  
24  
25  
26  
27  
28



1 h. Once the non-employee spouse starts receiving money, the non-  
2 employee spouse is taxed on it. Under the current law the receipt of  
3 retirement benefit income is treated as normal income.  
4

5 i. There was designation of survivor beneficiary in the Decree of  
6 Divorce. The lack of the designation of a survivor beneficiary would  
7 indicate an omitted asset. The survivor beneficiary is a valuable  
8 component of the retirement. There is no other meaning of a  
9 survivorship interest of anything other than a property interest. The  
10 consequence of Eleni not being designated as a survivor beneficiary is  
11 that if Richard dies, and Eleni is not designated as a beneficiary all  
12 benefits stop.  
13  
14  
15

16 18. Richard testified that the vacation/sick time was never discussed and  
17 was omitted from the Decree of Divorce. Richard further testified on October 17,  
18 2014, that he was terminated from the City of Las Vegas. Richard attempted to  
19 claim at the evidentiary hearing that he was not eligible to retire without early  
20 retirement penalty when he was terminated.  
21  
22

23 19. Richard testified that if he continued working that Eleni will not  
24 receive any monies from PERS directly. Richard further testified that he agreed  
25 that pursuant to the terms of the Decree of Divorce that Eleni's interest in the  
26 PERS pension in his name was community property.  
27  
28

1           20. Richard additionally testified that by him continuing to work that he  
2 was not allowing Eleni to receive her share of her community property and as long  
3 as he kept working, PERS would not pay Eleni.  
4

5           21. Richard testified that because will not pay Eleni any monies until he  
6 retires he was in sole control as to if and when Eleni would get paid.  
7

8           22. Richard was reinstated with the City of Las Vegas effective January  
9 2016.  
10

11           23. Sonya Hellwinkel testified as the Director of Employee and  
12 Production Services for Nevada PERS. Ms. Hellwinkel testified that her duties  
13 were to oversee the work completed by pension, respond to subpoena requests for  
14 records, and determine if PERS is compliant with PERS policies. Ms. Hellwinkel  
15 also testified as to the following:  
16

17           a. PERS determines whether one is eligible to retire and to determine if  
18 an employee is police/fire.  
19

20           b. That she has access to retirement benefit information for PERS  
21 employees.  
22

23           c. That she had reviewed the records for Richard and that Richard was  
24 enrolled in the system May 8, 1989, and at the time enrolled Richard  
25 was part of police/fire and that Richard is still part of police/fire.  
26  
27  
28

- 1 d. Members of police/fire eligible to retire after 20 years at age 50 with  
2 an unreduced benefit and that Richard has 20 years in with the State  
3 of Nevada.  
4
- 5 e. A review of the records in her possession showed that Richard  
6 achieved the 20 year mark in June 2009.  
7
- 8 f. Members of police/fire able to retire with an unreduced benefit at age  
9 50 with 20 years of service, meaning that Richard would not have  
10 suffered any early retirement penalty by retiring now.  
11
- 12 g. Richard turned age 50 on April 20, 2011.  
13
- 14 h. Pursuant to Chapter 286, Richard was eligible for an unreduced  
15 retirement benefit on April 20, 2011 as he was 50 years of age and  
16 had 20 years of service.  
17
- 18 i. However, PERS will not pay a retirement benefit to the nonworking  
19 directly prior to the working spouse retiring.  
20
- 21 j. If a working spouse decides to work until the day they die then PERS  
22 will never make a payment to the nonworking spouse. If that scenario  
23 occurs, the non-working spouse never receives a payment from PERS.  
24
- 25 k. If Richard decided to work until died, no payment would be made by  
26 PERS to Eleni for her share of the retirement.  
27  
28

1 l. The only way for Eleni to get her share the retirement income stream  
2 form Richard is for her is to get it from him directly.

3 m. As long as Richard continues to work, PERS will not make any  
4 payments to Eleni. Richard must make payments to Eleni.

5 n. PERS is unable to pay benefits until Richard retires.

6 o. Eleni is part of the Clark County School District.

7 p. As a regular member Eleni would first be eligible to retire at age 60 or  
8 after 30 years of service with an unreduced benefit.

9 q. For 30 years of service Eleni would be first eligible for retirement in  
10 2023 if there were no breaks in service.

11  
12 24. There were lengthy discussions in the post-trial hearings as to how  
13 Richard would pay Eleni her community interest portion of his PERS as Richard  
14 was eligible to retire without early retirement penalty when the Decree was entered  
15 in March 2013 although Richard presently continues to work full-time and has not  
16 yet actually retired. Eleni's portion was of the PERS retirement in Richard's name  
17 was calculated to be \$2,455 per month retroactive to March 2015, when Eleni's  
18 Motion was filed.

19  
20 25. For the relevant time period established at trial, the total accrued and  
21 owing to Eleni is \$54,003.62 principal plus \$2,572.14 of pre-judgment interest for  
22 a grand total of \$56,575.76. Said amount should be reduced to judgment and  
23  
24  
25  
26  
27  
28

1 collectible by any lawful means. However, execution on Richard's paychecks is  
2 stayed and instead, due to the financial conditions of the parties explored in-depth  
3 at the hearings, Richard should pay Eleni \$350.00 per month from January 2017  
4 forward into her Chase bank account. Richard should direct deposit \$175.00 on  
5 the 15th and \$175 on the last day of every month.  
6

7  
8 26. Should any of these Findings of Fact be more properly construed as  
9 Conclusions of Law they should be construed as such.  
10

#### 11 CONCLUSIONS OF LAW

12 1. NRS 125C.0035 states in pertinent part:

13 1. In any action for determining physical custody of a minor child,  
14 the sole consideration of the court is the best interest of the child. If it  
15 appears to the court that joint physical custody would be in the best  
16 interest of the child, the court may grant physical custody to the parties  
jointly.

17 2. Preference must not be given to either parent for the sole reason  
that the parent is the mother or the father of the child.

18 3. The court shall award physical custody in the following order of  
19 preference unless in a particular case the best interest of the child requires  
otherwise:

20 (a) To both parents jointly pursuant to NRS 125C.0025 or to either  
21 parent pursuant to NRS 125C.003. If the court does not enter an order  
22 awarding joint physical custody of a child after either parent has applied  
23 for joint physical custody, the court shall state in its decision the reason  
for its denial of the parent's application.

24 (b) To a person or persons in whose home the child has been living  
and where the child has had a wholesome and stable environment.

25 (c) To any person related within the fifth degree of consanguinity to  
26 the child whom the court finds suitable and able to provide proper care  
27 and guidance for the child, regardless of whether the relative resides  
28 within this State.

(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.

(b) Any nomination of a guardian for the child by a parent.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

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

2. Discretion should be given to Nicholas as he is of a suitable age and capacity and is able to form an intelligent preference.

3. The parties should continue to share joint physical custody of Ritchie.

4. Richard should pay child support pursuant to NRS 125B.070 for Nicholas at 18 percent of his gross monthly income subject to any caps.

1           5. Child support should be ordered pursuant to NRS 125B.070 and  
2 *Wright v. Osburn*,<sup>1</sup> and as modified by *Wesley v. Foster*.<sup>2</sup>

3           6. Under NRS 123.130, all property acquired after marriage is presumed  
4 to be community property unless there is a pre or post-nuptial agreement, the  
5 property was acquired by gift, award of personal injury damages or acquired by  
6 gift or devise, and the rents issues and profits thereof.

7           7. Under NRS 123.220, all property other than property owned by before  
8 marriage, and that acquired by afterwards by gift, bequest, devise, descent or by an  
9 award for personal injury damages, with the rents, issues and profits thereof, is  
10 community property unless otherwise provided by, an agreement in writing  
11 between the spouses, a decree of separate maintenance, or if divided pursuant to  
12 NRS 123.259, a spouse being institutionalized.

13           8. Under NRS 125.150(1)(b), community property shall, to be extent  
14 practicable, be divided equally.

15           9. The defined benefits plan with Nevada PERS in Richard's name is  
16 community property.

17           10. At the time the Decree of Divorce was entered that no compelling  
18 reason was put forth for there to be an unequal division of community property.

19  
20  
21  
22  
23  
24  
25  
26  
27 <sup>1</sup> 114 Nev. 1367, 970 P.2d 1071 (1998)

28 <sup>2</sup> 119 Nev. 110, 65 P.3d 251 (2003)

1           11. The time for appealing the Decree of Divorce passed 30 days after the  
2 Notice of Entry of Decree of Divorce was served.

3           12. In *Sertic v. Sertic*,<sup>3</sup> the Supreme Court ordered that the "normal  
4 distribution of a spousal share of a retirement is to be upon first eligibility for  
5 retirement, and that if a worker does not retire at first eligibility, the worker must  
6 pay the spouse whatever the spouse would have received if the worker did retire at  
7 that time."  
8

9           13. NRS 125.150 was amended to include authority a party may file a  
10 post-judgment motion to obtain the division of omitted community property assets  
11 omitted from the Decree.  
12

13           14. The omitted deferred compensation account and the omitted  
14 vacation/sick time were never discussed or considered. Eleni should be entitled, as  
15 a matter of law, to one-half of the time rule portion of the accumulated vacation  
16 and sick pay from the date of marriage through March 13, 2013.  
17

18           15. Attorney's fees may be awarded under NRS 125.040, NRS 18.010,  
19 and *Brunzell v. Golden Gate National Bank*.<sup>4</sup>  
20

21           16. Should any of these Conclusions of Law be more properly construed  
22 as being Findings a Fact, they should be construed as such.  
23

24  
25  
26  
27 <sup>3</sup> 111 Nev. 1194, 901 P.2d 148 (1995)

28 <sup>4</sup> 85 Nev. 345, 455 P.2d 31 (1969)



**ORDERS**

**THE COURT HEREBY ORDERS** as follows:

1. Eleni shall have permanent primary physical custody of Nicholas, born June 29, 2000 effective August 2015.
2. The parties stipulated to joint physical custody of Richard, Jr. born, June 29, 2000.
3. Within 30 days, Nicholas is referred to either Nicholas Ponzo or Keisha Weiford, for reunification with Richard. He shall pay 65 percent of the fees, Eleni shall pay 35 percent of the fees.
4. Nicholas is to go back to his therapist before beginning reunification.
5. Beginning December 2014, Eleni's child support was set at \$970.00 per month based on joint physical custody of both children, using *Wright vs Osborn*, minus \$213.00 per month for health insurance premiums, for a total of \$757.00 per month, through January 2016, for a grand total of \$9,841.00.
6. Beginning January 2016, Richard's child support for Nicholas was set at \$806.00 per month, plus \$266.00 per month for joint physical custody of Richard, Jr., plus \$220.00 per month for health insurance premiums allocable to the minor children, for a total of \$1,292.00 per month.
7. Beginning July 2016, Richard's child support for Nicholas was set at \$820.00 per month, plus \$266.00 per month for joint physical custody of Ritchie,

1 plus \$220.00 per month for health insurance premiums, allocable to the minor  
2 children for a total of \$1,306.00 per month. The Court finds that the amount of  
3 child support Richard is ordered to pay is in conformance with NRS 125B.070.  
4

5 8. Eleni shall provide proof the health insurance costs for the minor children.

6 9. Counsel is to request a District Attorney audit forthwith.  
7

8 10. Richard shall receive a credit of \$9,841.00 for December 2014 to December  
9 2015.  
10

11 11. Richard shall receive a credit of \$2,294, for overpayments of child support  
12 for 2016.  
13

14 12. Commencing January 2017 forward, all District Attorney wage withholding  
15 shall cease. Richard shall direct deposit one-half of the current child support on  
16 the 15th and last day of each month into Eleni's Chase bank account. Eleni shall  
17 set up this separate Chase bank account and provide the bank account number to  
18 Richard via Our Family Wizard.  
19

20 13. The parties will equally divide the costs of any Qualified Domestic Relations  
21 Orders.  
22

23 14. The \$10,000.00 tax debt is washed out.  
24

25 15. Eleni shall receive no offset/no value for the fur coat and dresses.

26 16. Eleni shall file an Order to Show Cause to Richard for the non-payment of  
27 retirement payment for 2016. Sanctions are to be determined.  
28

1 17. Richard shall walk-through an Order to lift the District Attorney's driver's  
2 license suspension, as of today there are zero (0) arrears. Eleni shall have 24 hours  
3 to review the Order.  
4

5 18. Eleni's PERS will not be eligible until 2023, at the earliest. The Court  
6 cannot force reciprocal Survivor Beneficiaries unless the parties stipulate to that.  
7 Eleni can pay for a Life Insurance Policy for retirement payments and vice versa.  
8

9 19. Richard's share of the unreimbursed medical expenses is \$3,202.00.  
10

11 20. For the relevant time period established at trial for the PERS retirement  
12 benefits in Richard's name that should have been paid to Eleni, the total accrued  
13 and owing to Eleni is \$54,003.62 principal plus \$2,572.14 of pre-judgment interest  
14 for a grand total of \$56,575.76. Said amount is reduced to judgment and  
15 collectible by any lawful means. However, execution on Richard's paychecks is  
16 stayed and Richard shall pay Eleni \$350.00 per month from January 2017 forward  
17 into her Chase bank account. Richard shall direct deposit \$175.00 on the 15th and  
18 \$175 on the last day of every month.  
19  
20  
21

22 21. Counsel shall have ongoing authority to conduct limited discovery and  
23 confer jointly with the PERS representative, currently Ms. Sonya Helwinkle, for  
24 ongoing information on Richard's PERS and information when Richard actually  
25 retires.  
26  
27  
28

1 22. Richard's counsel, shall submit an addendum to the Order from the  
2 December 1, 2016, hearing titled "Vacation/Sick Pay Calculation Sheet"  
3 delineating the correct amount calculated as to Richard's vacation and sick leave  
4 measured at the time of the divorce, not based on the exhibit produced at the trial  
5 which showed the amount as of the time that Richard was terminated from  
6 employment for misconduct. The Court makes this Addendum to Order *sua sponte*  
7 to correct the calculation established at trial. The correct calculation is as follows:  
8 Richard's vacation pay of 107 hours plus sick time of 102.35 hours based on an  
9 hourly wage of \$41.25 totals \$8,635.70 at the time of divorce. One-half is  
10 \$4,317.35 pre-tax and is owed to Eleni. Richard's entire \$8,635.70 was cashed out  
11 early and Richard had to pay taxes on the full amount. Therefore, Richard owes  
12 Eleni her one-half of \$8,635.70 minus taxes that would have been attributed to  
13 Eleni had she gotten paid out her half share at the time of the divorce. Richard and  
14 his attorney shall produce proof of how much he was taxed on the \$8,635.70, and  
15 half of the taxes shall be taken of Mom's \$4,317.35. The net amount shall then be  
16 reduced to judgment and collectible by any lawful means.  
17

18 23. Attorney's Fees are bifurcated. Counsels are to submit *Brunzell* Briefs for  
19 attorney's fees. Attorney Page shall submit his Brief on December 2, 2017 and  
20 Attorney Allen shall submit her Brief on December 30, 2017.  
21

22 24. Counsel shall be notified of a Return Hearing date.  
23  
24  
25  
26  
27  
28

### CHILD CUSTODY NOTICES

**NOTICE IS HEREBY GIVEN** that the parties are subject to the provisions of NRS 125C.065(1) and NRS 200.359, which provide: "If custody has been established and the custodial parent or a parent having joint custody intends to move his residence to a place outside of this state and to take the child with him, he must, as soon as possible and before the planned move, attempt to obtain the written consent of the other parent to move the child from the state. If the noncustodial parent or other parent having joint custody refuses to give that consent, the parent planning the move shall, before he leaves the state with the child, petition the court for permission to move the child. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent or other parent having joint custody;" as well as NRS 125C.045(6) which provides:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE, AS A CATEGORY D FELONY, BY UP TO 6 YEARS IN PRISON AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from the parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not less than \$1,000 nor more than \$5,000, or by both fine and imprisonment.

1           **NOTICE IS HEREBY GIVEN** that pursuant to NRS 125C.045, the terms  
2 of the Hague Convention of October 25, 1980, adopted by the 14th Session of the  
3 Hague Conference on Private International Law are applicable to the parties.  
4 Nevada is hereby declared the State, and the United States of America is hereby  
5 declared the country, of habitual residence of the child for the purposes of applying  
6 the terms of the Hague Convention as set forth above.  
7

8  
9           **NOTICE IS HEREBY GIVEN** that under the terms of the Parental  
10 Kidnapping Prevention Act, 28 U.S.C. Sec. 1738A, and the Uniform Child  
11 Custody Jurisdiction Act, NRS 125A.010 *et seq.*, the courts of Nevada have  
12 exclusive modification jurisdiction of the custody visitation and child support  
13 terms relating to the child at issue in this case so long as either of the parties, or the  
14 child, continues to reside in this jurisdiction.  
15

16  
17                           **CHILD SUPPORT NOTICES**  
18

19           **NOTICE IS HEREBY GIVEN** to both parties that the parent having the  
20 child support obligation is subject to NRS 125.450 and NRS 31A.020 through  
21 31A.230, inclusive, regarding the immediate withholding or assignment of wages,  
22 commissions or bonuses for payment of child support, whether current or  
23 delinquent.  
24  
25  
26  
27  
28

1           **NOTICE IS HEREBY GIVEN** that pursuant to NRS 125B.145, either  
2 party may request that the Court review the child support obligation every three  
3 years or upon changed circumstances  
4

5           **NOTICE IS HEREBY GIVEN** that pursuant to NRS 125B.140 if an  
6 installment of an obligation to pay support for a child becomes delinquent, the  
7 Court shall determine interest upon the arrearages at a rate established pursuant to  
8 NRS 99.040, from the time each amount became due. Interest shall continue to  
9 accrue on the amount ordered until it is paid, and additional attorney's fees must be  
10 allowed if required for collection.  
11

12           **NOTICE IS HEREBY GIVEN** that pursuant to NRS 125B.095, if an  
13 installment of an obligation to pay support for a child becomes delinquent in the  
14 amount owed for one month's support, a 10% per annum penalty must be added to  
15

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///


1 the delinquent amount.


2 DATED this 31 day of July 2017

3  
4  
5   
6 DISTRICT COURT JUDGE

7 Respectfully submitted:  
8 PAGE LAW OFFICE

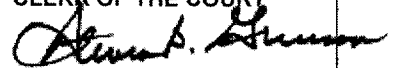
Approved as to Form & Content:  
BETSY ALLEN LAW OFFICE

9  
10   
11 FRED PAGE, ESQ.  
12 Nevada Bar No.: 6080  
13 6145 Spring Mountain Road, Suite 201  
14 Las Vegas, Nevada 89146  
15 Phone: (702) 469-3278  
16 E-mail: [fpagelawoffices.com](mailto:fpagelawoffices.com)  
17 Attorney for Defendant

18  
19   
20 BETSY ALLEN, ESQ.  
21 Nevada Bar No.: 6878  
22 P.O. Box 46991  
23 Las Vegas, Nevada 89114  
24 (702) 386-9700  
25 Email: [betsyallenesq@yahoo.com](mailto:betsyallenesq@yahoo.com)  
26 Attorney for Plaintiff

27  
28 Kilgore vs. Kilgore





1 **NEO**  
2 **FRED PAGE, ESQ.**  
3 Nevada Bar: 6080  
4 **PAGE LAW OFFICE**  
5 6145 Spring Mountain Road, Suite 201  
6 Las Vegas, Nevada 89146  
7 Phone: (702) 469-3278  
8 Facsimile: (702) 628-9884  
9 E-mail: [fpagelawoffices.com](mailto:fpagelawoffices.com)  
10 *Attorney for Defendant*

11 **DISTRICT COURT, FAMILY DIVISION**

12 **CLARK COUNTY, NEVADA**

13 **RICHARD KILGORE,**

14 Plaintiff,

CASE NO.: D-12-459171-D

DEPT. NO.: I

15 vs.

16 **ELENI KILGORE,**

17 Defendant.

18 **NOTICE OF ENTRY OF ORDER FROM MARCH 28, 2017, HEARING**

19 TO: RICHARD KILGORE, Plaintiff

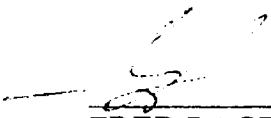
20 TO: BETSY ALLEN, ESQ., Attorney for Plaintiff

21 YOU AND EACH OF YOU please take notice the Order from the March  
22 28, 2017, hearing was entered on the 2<sup>nd</sup> day of August 2017, of which a true and  
23  
24  
25  
26  
27  
28

1 correct copy is attached hereto:

2 DATED this 21<sup>st</sup> day of August 2017

3 PAGE LAW OFFICE

4  
5  
6   
7 FRED PAGE, ESQ.

8 Nevada Bar No.: 6080

9 6145 Spring Mountain Road, Suite 201

10 Las Vegas, Nevada 89146

11 (702) 469-3278

12 *Attorney for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 21<sup>st</sup> day of August 2017,  
the foregoing NOTICE OF ENTRY OF ORDER FROM THE MARCH 28, 2017,  
HEARING was served pursuant to NRCP 5(b) by placing a true and correct copy  
in the United States mail, postage prepaid, to the following:

Betsy Allen, Esq.  
P.O. Box 46991  
Las Vegas, Nevada 89114  
Attorney for Plaintiff

  
An employee of Page Law Office

*Attorney for Defendant*

**Non-Lit Dispositions:**      **Settled/Withdrawn:**

☐ Other      ☐ Without Judicial Confirmation

☐ Dismissed - Want of Prosecution      ☒ With Judicial Confirmation

☐ Withdrawn - No Discovery      ☐ By ADR

☐ Default Judgment      **Final Dispositions:**

☐ Transferred      ☐ Disposed After Trial Start

☐ Disposed      ☐ Judgment Reached by Trial

1 Richard Kilgore, was present and was represented by and through his counsel,  
2 Betsy Allen. The Court having reviewed the papers and pleadings on file and  
3 having entertained oral argument hereby makes the following findings and enters  
4 the following orders.  
5

6 **THE COURT HEREBY FINDS** as follows:  
7

8 1. Defendant/Mother had Primary Physical custody of Nicholas from  
9 August 2015, forward. The court calculated child support of Nicholas based on  
10 Joint Physical from December 2015 through January 2016, however,  
11 Plaintiff/Father's calculation was based on 18% of his income, which is an  
12 acknowledgment Defendant/Mother had Primary Physical custody of Nicholas.  
13

14 2. Plaintiff/Father was unemployed August 2015 through January 2016.  
15

16 3. Plaintiff/Father's date of hire was January 4, 2016.  
17

18 4. Defendant/Mother pays \$213.00 for the children's health insurance.  
19

20 **THE COURT HEREBY ORDERS** as follows:  
21

22 1. Defendant/Mother's Motion to Make Additional Findings of Fact, or  
23 to Alter or Amend the Judgment is granted in part.  
24

25 2. The Court calculated Plaintiff/Father owes Defendant/Mother child  
26 support, inclusive from August 2015, through December 2015, in the amount of  
27 \$2,145.00. From January 2016, through June 2016, Plaintiff/Father owes  
28 Defendant/Mother \$7,752.00. These calculations supersede the calculations made

1 from orders from the evidentiary hearing. Beginning July 1, 2016, and every  
2 month thereafter, Plaintiff/Father owes Defendant/Mother \$1,260.00 per month.

3 3. Plaintiff/Father's child support shall terminate June 2018. The children  
4 are twins and will graduate from high school in June 2018.

5 4. The District Attorney shall do a full audit that conforms to this Order  
6 by 5:00 p.m. on July 17, 2017, to determine if Plaintiff/Father has an overpayment  
7 credit. The audit shall be filed in this case (D459171).

8 5. Defendant/Mother shall receive a credit of \$208.00 as payment to  
9 Plaintiff/Father in May 2017.

10 6. The Supplemental Exhibit for Plaintiff/Father regarding vacation/sick  
11 pay was filed in open court. The net amount is \$3,238.71. and it is reduced to  
12 judgment plus interest at the legal rate, collectible by any lawful means.

13 7. Attorney Allen's oral request for Defendant/Mother to pay  
14 Plaintiff/Father his share of the community property from her PERS retirement is  
15 denied due to eligibility.

16 8. Attorney Page shall submit the Findings of Fact from the Evidentiary  
17 Hearing that took place on October 31, 2016.

18 9. Attorney's Fees deferred due to upcoming appeal.

19 10. Either party may request a hearing through chambers if a judgment is  
20 needed for an offset to refund on child support. Attorney Page shall prepare the  
21


1 Order from today's hearing.

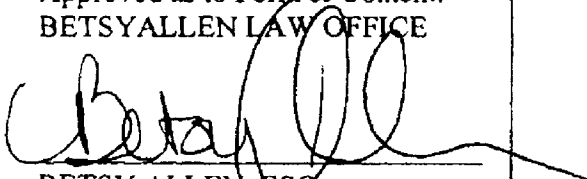
2 DATED this 31 day of July 2017

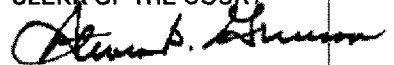
3   
4 DISTRICT COURT JUDGE

5  
6 Respectfully submitted:  
7 PAGE LAW OFFICE

8 Approved as to Form & Content:  
9 BETSY ALLEN LAW OFFICE

10   
11 FRED PAGE, ESQ.  
12 Nevada Bar No.: 6080  
13 6145 Spring Mountain Road, Suite 201  
14 Las Vegas, Nevada 89146  
15 Phone: (702) 469-3278  
16 E-mail: [fpagelawoffices.com](mailto:fpagelawoffices.com)  
17 Attorney for Defendant

18   
19 BETSY ALLEN, ESQ.  
20 Nevada Bar No.: 6878  
21 P.O. Box 46991  
22 Las Vegas, Nevada 89114  
23 (702) 386-9700  
24 Email: [betsyallenesq@yahoo.com](mailto:betsyallenesq@yahoo.com)  
25 Attorney for Plaintiff



1 **NEO**  
2 FRED PAGE, ESQ.  
3 Nevada Bar: 6080  
4 PAGE LAW OFFICE  
5 6145 Spring Mountain Road, Suite 201  
6 Las Vegas, Nevada 89146  
7 Phone: (702) 469-3278  
8 Facsimile: (702) 628-9884  
9 E-mail: [fpagelawoffices.com](mailto:fpagelawoffices.com)  
10 *Attorney for Defendant*

11 **DISTRICT COURT, FAMILY DIVISION**

12 **CLARK COUNTY, NEVADA**

13 RICHARD KILGORE,

14 Plaintiff,

CASE NO.: D-12-459171-D

DEPT. NO.: I

15 vs.

16 ELENI KILGORE,

17 Defendant.

18  
19 **NOTICE OF ENTRY OF ORDER FINDINGS OF FACT, CONCLUSIONS**  
20 **OF LAW AND ORDER**

21 TO: RICHARD KILGORE, Plaintiff

22 TO: BETSY ALLEN, ESQ., Attorney for Plaintiff

23 YOU AND EACH OF YOU please take notice the Findings of Fact,  
24 Conclusions of Law, and Orders from Evidentiary Hearing and Status Check  
25 Hearing was entered on the 2<sup>nd</sup> day of August 2017, of which a true and correct  
26  
27  
28



1 copy is attached hereto:

2 DATED this 21<sup>st</sup> day of August 2017

3 PAGE LAW OFFICE

4  
5   
6 FRED PAGE, ESQ.

7 Nevada Bar No.: 6080

8 6145 Spring Mountain Road, Suite 201

9 Las Vegas, Nevada 89146

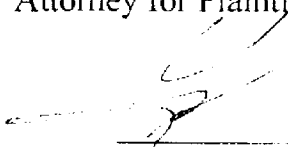
10 (702) 469-3278

11 *Attorney for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 21<sup>st</sup> day of August 2017, the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS FROM EVIDENTIARY HEARING AND STATUS CHECK HEARING was served pursuant to NRCP 5(b) by placing a true and correct copy in the United States mail, postage prepaid, to the following:

Betsy Allen, Esq.  
P.O. Box 46991  
Las Vegas, Nevada 89114  
Attorney for Plaintiff

  
An employee of Page Law Office