

1 CAS

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Electronically Filed
Nov 29 2017 02:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 CROSS-APPEAL CASE STATEMENT

19 TO: Plaintiff/Appellant, ELENI KILGORE

20 TO: BETSY ALLEN, ESQ., Attorney for Plaintiff/Appellant, RICHARD
21 KILGORE

22 1. Name of the Cross-Appellant filing this case appeal statement:

23 ELENI KILGORE

24 2. Identify the judge issuing the decision, judgment or order appealed
25 from:

1 HON. CHERYL B. MOSS

2 3. Identify each appellant and the name and address of counsel of each
3 appellant:

4 Parties: RICHARD KILGORE, Appellant

5 ELENI KILGORE, Cross-Appellant

6
7 Counsel for Appellant: Betsy Allen, Esq.
8 P.O. Box 46991
9 Las Vegas, Nevada 89114

10 Counsel for Cross-Appellant: Fred Page, Esq.
11 6145 Spring Mountain Road, Suite 201
12 Las Vegas, Nevada 89146

13 4. Identify each respondent in the name and address of appellate counsel,
14 if known, for each respondent:

15 Respondent: ELENI KILGORE

16
17 Counsel for Respondent: Fred Page, Esq.
18 6145 Spring Mountain Road, Suite 201
19 Las Vegas, Nevada 89146

20 5. Indicate whether any attorney identified above in response to question
21 3 or 4 is not licensed to practice law in Nevada and, if so, whether the
22 District Court granted that attorney permission to appear under SCR
23 42

24 None.

25 6. Indicate whether appellant was represented by appointed counsel or
26 retained counsel in the District Court.

27 Both appellant and cross appellant, and respondent were represented by
28 retained counsel in the District Court.

1 7. Indicate whether appellant is represented by appointed or retained
2 counsel on appeal:

3 Both appellant and cross appellant are represented by retained counsel on
4 appeal.

5 8. Indicate whether was granted leave to proceed in forma pauperis, and
6 the date of entry of the District Court order granting such leave:

7 Not applicable.

8 9. Indicate the date the proceedings were commenced in District Court.

9 On October 21, 2014, Richard filed a Motion to modify child support after
10 he was terminated from his job.

11 On March 10, 2015, Eleni made a formal request in a Brief filed with the
12 Court that she begin receiving her share of the PERS defined benefit plan in
13 Richard's name because he has reached his first eligibility for retirement. In that
14 same filing Eleni also made a formal request in a Brief filed with the Court that she
15 receives the Survivor's Benefit for the PERS defined benefit plan in Richard's
16 name as that item was never addressed in the Decree of Divorce. Eleni
17 additionally made a request to divide the omitted vacation/sick pay that was never
18 addressed in the Decree of Divorce.
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10. Provide a brief description of the nature of the action and the result in the District Court, including the type of judgment or order be an appeal and relief granted by the District Court:

The stipulated Decree of Divorce in this matter was filed on March 13, 2013.

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

The survivor beneficiary was never mentioned in the Decree of Divorce.

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

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

Also, on March 10, 2015, Eleni also made a formal request in a Brief filed with the Court that she receives the Survivor's Benefit for the PERS defined benefit plan in Richard's name as that item was never addressed in the Decree of Divorce. Eleni additionally made a request to divide the omitted vacation/sick pay that was never addressed in the Decree of Divorce.

It was established at the evidentiary hearing that Richard had reached his first eligibility for retirement under PERS. The cases of *Gemma v. Gemma*,¹ *Fondt*

¹ 105 Nev. 458, 778 P. 2d 429 (1989)

1 v. *Fondi*,² *Sertic v. Sertic*,³, and *Wolff v. Wolff*,⁴ stand for the proposition normal
2 date for receipt of retirement benefits by the nonworking spouse is the first
3 eligibility for retirement regardless if the employee decides to retire.
4

5 Richard testified that if he continued working that Eleni will not receive any
6 monies from PERS directly. Richard further testified that he agreed that pursuant
7 to the terms of the Decree of Divorce that Eleni's interest in the PERS pension in
8 his name was community property.
9

10 Richard additionally testified that by him continuing to work that he was not
11 allowing Eleni to receive her share of her community property and as long as he
12 kept working, PERS would not pay Eleni.
13

14 Richard testified that because will not pay Eleni any monies until he retires
15 he was in sole control as to if and when Eleni would get paid.
16

17 Under *Henson v. Henson*,⁵ absent an order, on the date one files a motion
18 asking for benefits commences the right to receive those retirement benefits. As
19 soon as the Eleni requested, Richard is obligated to begin making payments.
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25 ² 106 Nev. 856, 802 P. 2d 1264

26 ³ 111 Nev. 1194, 901 P.2d 148 (1995)

27 ⁴ 112 Nev. 1355, 929 P.2d 916 (1996)

28 ⁵ 334 P.3d 933, 130 Nev. Adv. Op. 79 (October 2, 2014)

1 There were lengthy discussions in the post-trial hearings as to how Richard
2 would pay Eleni her community interest portion of his PERS as Richard was
3 eligible to retire without early retirement penalty when the Decree was entered in
4 March 2013 although Richard presently continues to work full-time and has not yet
5 actually retired. Eleni's portion was of the PERS retirement in Richard's name
6 was calculated to be \$2,455 per month retroactive to March 2015, when Eleni's
7 Motion was filed.
8

9 For the relevant time period established at trial, the total accrued and owing
10 to Eleni was established to be \$54,003.62 principal plus \$2,572.14 of pre-judgment
11 interest for a grand total of \$56,575.76.
12

13 The monies owed were Eleni's community property. The District Court
14 agreed that the amount should be reduced to judgment and collectible by any
15 lawful means. However, the District Court stayed execution on Richard's
16 paychecks and instead, ordered Richard should pay Eleni \$350.00 per month from
17 January 2017 forward into her Chase bank account. Richard should direct deposit
18 \$175.00 on the 15th and \$175 on the last day of every month. Those orders have
19 the effect of divesting Eleni's community property awarded to her in the Decree of
20 Divorce which was never appealed by anyone.
21

22 Richard was also not required to commence paying Eleni her community
23 property share of the PERS pension even though Richard had reached his first
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1 eligibility for retirement. Those orders as well have the effect of divesting Eleni of
2 her community property share of the PERS pension even though the Decree of
3 Divorce was never appealed.
4

5 Despite the marriage being a 20 year marriage, the District Court declined to
6 require Richard to name Eleni the survivor beneficiary of the pension, meaning
7 that if Richard predeceased Eleni, her rights to the pension benefits would be cut
8 off.
9

10
11 11. Indicate whether the case has previously been the subject of appeal to
12 or original writ proceeding to the Supreme Court and, if so, the
13 caption and Supreme Court docket number of the prior proceeding:

14 None.

15
16 12. Indicate whether this appeal involves child custody or visitation:

17 The appeal does not involve child custody or visitation.

18
19 13. If this is a civil case, indicate whether this appeal involves a
20 possibility of settlement:

21 The case does not involve the possibility of settlement.

22 DATED this 15th day of September 2017

23 PAGE LAW OFFICE

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26 FRED PAGE, ESQ.

27 Nevada Bar No. 6080

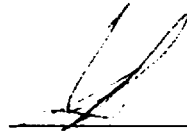
28 6145 Spring Mountain Road, Suite 201

Las Vegas, Nevada 89146

Attorney for Respondent/Cross-Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of September 2017 that the foregoing CROSS-APPEAL CASE STATEMENT was served pursuant to AO 14-2 by e-service to Betsy Allen, Esq. attorney for Plaintiff.

A handwritten signature in black ink, appearing to be a stylized 'L' or 'J' with a horizontal stroke.

An employee of Page Law Office