

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

RICHARD KILGORE,
Appellant/Cross-Respondent

ELENI KILGORE,
Respondent/Cross-Appellant

Electronically Filed
No. St. Ct. No. 73977 Jan 08 2018 08:10 a.m.
Elizabeth A. Brown
DOCKETING STATEMENT
Clerk of Supreme Court
CIVIL APPEALS

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 Hon. Cheryl B. Moss
District Ct. Case No. D459171

2. Attorney filing this docketing statement:

Attorney Fred Page, Esq. Telephone (702) 469-3278
Firm Page Law Office
Address 6145 Spring Mountain Road, Suite 201
Las Vegas, Nevada 89146

Client(s) Eleni 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 Betsy Allen, Esq. Telephone (702) 386-9700
Firm Law Office of Betsy Allen
Address P.O. Box 46991
Las Vegas, Nevada 89114

Client(s) Richard Kilgore

Attorney Not applicable Telephone Not applicable
Firm Not applicable
Address Not applicable

Client(s) Not applicable

(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 checked="" 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:

Richard Kilgore v. Eleni Kilgore D-12-159171-D

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

In the Decree of Divorce, filed March 13, 2013, the parties agreed to divide the PERS defined benefit plan in Richard's name pursuant to the time rule formula in keeping with NRS 125.150 which requires an equal division of community property.

Post-judgment, on March 10, 2015, Eleni made a formal request in a Brief filed with the Court that she begin receiving her community property share of the PERS defined benefit plan in Richard's name because he had reached his first eligibility for retirement as required under *Sertic v. Sertic*, 111 Nev. 1194, 901 P.2d 148 (1995). Eleni also made a request that she receive the survivor's benefit for the PERS defined benefit plan as that item was never addressed in the Decree.

The district court agreed that Eleni was entitled to receive her share of the defined benefit plan, but prevented her from receiving the same, which has divested her of her property.

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

1. Whether the district court can divest a spouse of his or her share of community property in contravention of the requirements of NRS 125.150(1)(b) which requires equal division by preventing the spouse from collecting her community property share of the PERS defined benefit plan.

2. Whether the survivor benefit for PERS is an asset of the marriage to be divided.

3. Whether the district court violated the holding in *Sertic v. Sertic* 111 Nev. 1194, 901 P.2d 148 (1995) which requires that the "...if a worker does not retire at first eligibility [for retirement] the worker must pay the spouse whatever the spouse would have received if he did retire at that time" by failing to order that Richard pay Eleni her spousal share.

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

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: The substantial issue is whether a district court can be permitted to subvert the requirements of NRS 125.150(1)(b) and effectively divest a spouse of his or her right to their share of community property by preventing a spouse from obtaining possession of that property.

The other substantial issue is whether the survivor benefit from the PERS defined benefit plan is community property.

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:

The matter is presumptively assigned to the Court of Appeal under NRAP 17(b)(5).

14. Trial. If this action proceeded to trial, how many days did the trial last? 3

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 8-2-17

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

Not applicable

17. Date written notice of entry of judgment or order was served 8-21-17

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 Not applicable

☐ NRCP 52(b) Date of filing Not applicable

☐ NRCP 59 Date of filing Not applicable

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 Not applicable

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 9-15-17

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:

Not applicable

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 3(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Order from the evidentiary hearing was filed 8-2-17 and the Notice of Entry of Order was filed 8-21-17 and was a final judgment entered in the action. The district court's appealed Order effects both parties. The Order constitutes a special order after judgment *Lee v. GNLV Corp.*, 116 Nev. 121, 996 p.2d 416 (2000).

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

(a) Parties:

Eleni Kilgore - respondent/cross appellant
Richard Kilgore appellant/cross respondent

(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:

Not applicable

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.

Cross-Appellant/Eleni is seeking monthly payments upon Appellant/Richard's first eligibility for retirement as part of her award of community property. August 2, 2017.

Cross-Appellant/Eleni is seeking her monthly payment arrears retroactively to the date of notice and motion. August 2, 2017

Cross-Appellant/Eleni is seeking an award of the PERS survivor beneficiary.

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:

Not applicable.

(b) Specify the parties remaining below:

Not applicable.

(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)):

The Order is independently appealable as a special order after judgment pursuant to 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.

Eleni Kilgore
Name of appellant

Fred Page, Esq.
Name of counsel of record

12-21-17
Date


Signature of counsel of record

Nevada, Clark County
State and county where signed


CERTIFICATE OF SERVICE

I certify that on the 21st day of December, 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.)

Betsy Allen, Esq.
P.O. Box 46991
Las Vegas, Nevada 89111

Dated this 21st day of December, 2017


Signature

Steven D. Grierson

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
10 Attorney for Defendant

11 DISTRICT COURT, FAMILY DIVISION

12 CLARK COUNTY, NEVADA

13 RICHARD KILGORE,

14 Plaintiff,

15 vs.

16 ELENI KILGORE,

17 Defendant.

CASE NO.: D-12-459171-D

DEPT. NO.: I

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 2nd day of August 2017, of which a true and correct
26
27
28

1 copy is attached hereto:

2 DATED this 21st 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

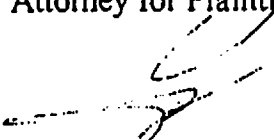
10 (702) 469-3278

11 *Attorney for Defendant*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st 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

Steven D. Grierson

ORDR

FRED PAGE, ESQ.

Nevada Bar: 6080

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E-mail: fpagelaw@pagelawoffices.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 16. Eleni and Richard continued to maintain joint physical custody of
12 Ritchie. Because Richard was still unemployed, Eleni would have to pay child
13 support to Richard. Eleni would have to pay child support to Richard for Ritchie at
14 18 percent of her income and Richard would have to pay child support to Eleni for
15 Ritchie at 18 percent of his gross monthly income with the person with the higher
16 income paying the difference to the person with the lower income subject to the
17 caps set forth in NRS 125B.070 as set forth in *Wright v. Osburn, infra*, as modified
18 by *Wesley v. Foster, infra*.
19
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 different standard than does police/fire.
28

- 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

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

7 o. Eleni is part of the Clark County School District.
8

9 p. As a regular member Eleni would first be eligible to retire at age 60 or
10 after 30 years of service with an unreduced benefit.
11

12 q. For 30 years of service Eleni would be first eligible for retirement in
13 2023 if there were no breaks in service.
14

15 24. There were lengthy discussions in the post-trial hearings as to how
16 Richard would pay Eleni her community interest portion of his PERS as Richard
17 was eligible to retire without early retirement penalty when the Decree was entered
18 in March 2013 although Richard presently continues to work full-time and has not
19 yet actually retired. Eleni's portion was of the PERS retirement in Richard's name
20 was calculated to be \$2,455 per month retroactive to March 2015, when Eleni's
21 Motion was filed.
22
23

24 25. For the relevant time period established at trial, the total accrued and
25 owing to Eleni is \$54,003.62 principal plus \$2,572.14 of pre-judgment interest for
26 a grand total of \$56,575.76. Said amount should be reduced to judgment and
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
25 and where the child has had a wholesome and stable environment.

26 (c) To any person related within the fifth degree of consanguinity to
27 the child whom the court finds suitable and able to provide proper care
28 and guidance for the child, regardless of whether the relative resides
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*,¹ and as modified by *Wesley v. Foster*.²

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.

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27 ¹ 114 Nev. 1367, 970 P.2d 1071 (1998)

28 ² 119 Nev. 110, 65 P.3d 251 (2003)

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

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

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

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

15. Attorney's fees may be awarded under NRS 125.040, NRS 18.010, and *Brunzell v. Golden Gate National Bank*.⁴

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

³ 111 Nev. 1194, 901 P.2d 148 (1995)

⁴ 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. Richard shall receive a credit of \$2,294. for overpayments of child support
11 for 2016.
12

13 12. Commencing January 2017 forward, all District Attorney wage withholding
14 shall cease. Richard shall direct deposit one-half of the current child support on
15 the 15th and last day of each month into Eleni's Chase bank account. Eleni shall
16 set up this separate Chase bank account and provide the bank account number to
17 Richard via Our Family Wizard.
18
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 15. Eleni shall receive no offset/no value for the fur coat and dresses.

25
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
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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
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CHILD CUSTODY NOTICES

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

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19 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,
20 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS
21 ORDER IS PUNISHABLE, AS A CATEGORY D FELONY, BY UP TO 6
22 YEARS IN PRISON AS PROVIDED IN NRS 193.130. NRS 200.359 provides
23 that every person having a limited right of custody to a child or any parent having
24 no right of custody to the child who willfully detains, conceals or removes the
25 child from the parent, guardian or other person having lawful custody or a right of
26 visitation of the child in violation of an order of this court, or removes the child
27 from the jurisdiction of the court without the consent of either the court or all
28 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
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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
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1 the delinquent amount.

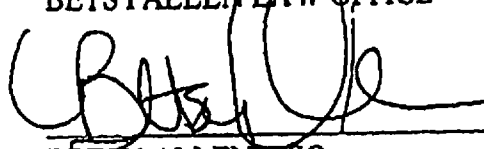
2 DATED this 31 day of July 2017

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6
7 Respectfully submitted:
8 PAGE LAW OFFICE

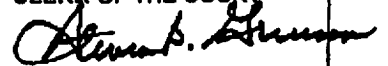
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10
11 FRED PAGE, ESQ.
12 Nevada Bar No.: 6080
13 6145 Spring Mountain Road, Suite 201
14 Las Vegas, Nevada 89146
15 Phone: (702) 469-3278
16 E-mail: fpagelawoffices.com
17 Attorney for Defendant
18
19
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27
28


DISTRICT COURT JUDGE

Approved as to Form & Content:
BETSY ALLEN LAW OFFICE


BETSY ALLEN, ESQ.
Nevada Bar No.: 6878
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Las Vegas, Nevada 89114
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Email: betsyallenesq@yahoo.com
Attorney for Plaintiff

Kilgore vs. Kilgore



1 NEO
2 FRED PAGE, ESQ.
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7 Phone: (702) 469-3278
8 Facsimile: (702) 628-9884
9 E-mail: fpagelawoffices.com
10 Attorney for Defendant

11 DISTRICT COURT, FAMILY DIVISION

12 CLARK COUNTY, NEVADA

13 RICHARD KILGORE,

14 Plaintiff,

15 vs.

16 ELEN KILGORE,

17 Defendant.

CASE NO.: D-12-459171-D

DEPT. NO.: I

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 2nd day of August 2017, of which a true and
23
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28

1 correct copy is attached hereto:

2 DATED this 21st 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 21st 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

Case Number: D-12-459171-D

Non-Trial Dispositions: Sealed/Withdrawn:
☐ Other ☐ With Judicial Continuing
☐ Dismissed - With Prejudice ☒ With Judicial Continuing
☐ Dismissed - Without Prejudice ☐ By ACR
☐ Default Judgment ☐ Transferred

Trial Dispositions: Judgment Reached by Trial
☐ Disposed After Trial Start ☐ 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

15 2. Plaintiff/Father was unemployed August 2015 through January 2016.
16

17 3. Plaintiff/Father's date of hire was January 4, 2016.
18

19 4. Defendant/Mother pays \$213.00 for the children's health insurance.
20

21 **THE COURT HEREBY ORDERS** as follows:
22

23 1. Defendant/Mother's Motion to Make Additional Findings of Fact, or
24 to Alter or Amend the Judgment is granted in part.
25

26 2. The Court calculated Plaintiff/Father owes Defendant/Mother child
27 support, inclusive from August 2015, through December 2015, in the amount of
28 \$2,145.00. From January 2016, through June 2016, Plaintiff/Father owes
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 Respectfully submitted:
6 PAGE LAW OFFICE

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

9 
10 FRED PAGE, ESQ.
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12 6145 Spring Mountain Road, Suite 201
13 Las Vegas, Nevada 89146
14 Phone: (702) 469-3278
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16 Attorney for Defendant

17 
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24 Attorney for Plaintiff