

RICHARD KILGORE,)	
Appellant/Cross-Respondent,)	Case No.: 73977
)	
vs.)	
)	
ELENI KILGORE,)	
Respondent/Cross-Appellant.)	

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1 THE COURT: I got a 2. 2 was --
2 MS. ALLEN: I didn't mark anything as 2.
3 THE COURT: Oh, okay. That will be 2.
4 MS. ALLEN: May I approach?
5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MS. ALLEN:

8 Q You pointed out -- looking at Plaintiff's Exhibit --
9 Exhibit 1, you pointed out a federal -- on the Medical Cash.
10 There was a federal offset intercept payment of 2283, correct?

11 A Correct.

12 Q Okay. Looking at the child support download from
13 the D.A.'s Office, is there a federal intercept there as well?

14 A Yes, 2500 -- \$2,503.67.

15 Q Okay. So two totally different numbers, correct?

16 A Correct.

17 Q Okay. So what was your total return last year that
18 was intercepted, do you remember, approximately?

19 A It was \$4985 or so.

20 Q Okay. So clearly that was split between medical and
21 child support.

22 A Yes.

23 Q Okay.

24 MR. PAGE: Objection, foundation.

1 THE COURT: And it's from the exhibit? You're
2 objecting to the exhibit?

3 MR. PAGE: Foundation that her leading question, oh,
4 that was split between child support and the medical support
5 -- medical arrears when -- I just ask the Court take judicial
6 notice that you don't turn in medical bills to the D.A. --
7 D.A.'s Office and have them collect.

8 THE COURT: That's not judicial.

9 MR. PAGE: I'm sorry?

10 THE COURT: I think -- I can't take judicial notice
11 of that. You would have to give me like a D.A. regulation or
12 an affidavit from a D.A. that they don't do that. So it's a
13 credibility issue.

14 MS. ALLEN: Thank you, Your Honor.

15 THE COURT: This is what I have. So the 2503, I
16 noted that. On the objection, I'm going to overrule it. I'll
17 take Dad's testimony that they took his refund last year,
18 about 4985, is that correct? 4,985?

19 MS. ALLEN: He can't hear sometimes.

20 THE WITNESS: For --

21 THE COURT: Oh.

22 THE WITNESS: I forgot my hearing aid --

23 THE COURT: Yeah.

24 THE WITNESS: -- here today, Your Honor.

1 THE COURT: You testified the D.A. took your tax
2 refund last year of 4985 --

3 THE WITNESS: Yes.

4 THE COURT: -- approximately? And -- but he -- Mr.
5 Page objected as to how it got distributed. So and that might
6 be a D.A. regulation. I'll -- I'll sustain that part. So
7 we're limited on information on how the D.A. distributed that.
8 But that's for me to rule on, eventually. It has nothing to
9 do with the parties.

10 MS. ALLEN: No, it was --

11 THE COURT: I'll take -- I'll accept they took a
12 4985 refund.

13 MS. ALLEN: And split it between Medical --

14 THE COURT: Right.

15 MS. ALLEN: -- Cash and --

16 MR. PAGE: No.

17 MS. ALLEN: -- child support.

18 MR. PAGE: That's -- that's --

19 THE COURT: Okay. You haven't gotten any exhibits
20 entered into yet. Are you moving for its admission?

21 MS. ALLEN: That -- no, it is. It is admitted. 1
22 is admitted.

23 THE COURT: Oh, we're back on 1 again?

24 THE CLERK: Yeah, 1 is admitted.

1 THE COURT: Okay.

2 MS. ALLEN: No, 1 was admitted, Your Honor. I -- we
3 were talking about Medical Cash versus child support and they
4 were two separate numbers on a federal intercept payment.
5 That's what he testified to.

6 THE COURT: Okay.

7 MS. ALLEN: It -- it was split between the two.

8 THE COURT: Maybe I'll just speed this up because,
9 you know, I've done hundreds of --

10 MR. PAGE: There was abs --

11 THE COURT: -- UIFSA objections --

12 MR. PAGE: There was --

13 THE COURT: -- in cases.

14 MR. PAGE: -- absolutely zero evidence Your Honor
15 that there were any --

16 THE COURT: This Exhibit 1, the first three pages,
17 is Medical Cash. And if you --

18 MR. PAGE: That's the --

19 THE COURT: -- look at the monthly obligations of
20 180, 193, they are enforcing the order for half of the health
21 insurance premiums --

22 MR. PAGE: Yes. Yes.

23 THE COURT: -- except make sure 193 that is the full
24 amount. So his obligation would be -- was it -- was 180 half?

1 MR. PAGE: At -- at the time, it was --
2 THE COURT: And it jumped 193 --
3 MR. PAGE: -- it was --
4 THE COURT: -- because of the Judge O'Malley
5 pronouncement at the settlement conference that it's now 193.
6 So I'm assuming 193 is -- was Richard's half.
7 MR. PAGE: Right. That's what --
8 THE COURT: These are all health insurance premiums
9 and not medical bills. If that will speed things up for you
10 guys, because you -- it's -- it's easy. You just look at the
11 first column, monthly obligation. It's a repeated pattern of
12 a one time 180 and the rest are 193. That's the -- the health
13 insurance premium that Mom was paying and that would have been
14 Dad's half share. That is confirmed by the court minutes from
15 August 2015. This can't be medical bills. So that's why
16 they're going through Wizard on that is my guess.
17 BY MS. ALLEN:
18 Q Briefly on Wizard, do you have the ability to scan
19 things?
20 A Now --
21 Q Back --
22 A -- I do.
23 Q Now you -- but before, you didn't.
24 A I did not.

1 Q Okay. So what's the only other way you have to get
2 receipts -- medical expenses to your exwife?

3 A Was going through my attorney to send them to her
4 attorney.

5 Q Okay. Other than that, you had no way to get them
6 there.

7 A No.

8 Q I'm going to ask you to look at -- this is Exhibit
9 -- marked as Exhibit 2. What are those?

10 A It's an IRS refund where they -- for myself.

11 Q Okay. And what years?

12 A This is 2013 tax returns.

13 Q And what's the second page?

14 A The second page is for 2012.

15 Q Okay. And those are -- whose -- when did you
16 receive these?

17 A I got these on March 12th of 2014 and February 18th
18 of 2013.

19 Q Those came to you from the IRS?

20 A Correct.

21 Q And what did the letters detail?

22 A It talks about the overpayment of the -- in the
23 amount owed, the amount that got refunded.

24 Q Okay. And are these documents in substantially the

1 same condition of when you received them from the IRS?

2 A Yes, they are.

3 MS. ALLEN: I move for admission.

4 THE COURT: Number 2?

5 MS. ALLEN: Yes.

6 THE COURT: Any objection?

7 MR. PAGE: No objection.

8 THE COURT: Okay. 2 is admitted.

9 (PLAINTIFF'S EXHIBIT 2 ADMITTED)

10 BY MS. ALLEN:

11 Q What's the difference between \$3,000 and \$10,000?

12 A 7,000.

13 MS. ALLEN: Thank you. I pass the witness.

14 THE COURT: Okay. Back to you, Mr. Page.

15 MR. PAGE: Your Honor, may I approach the witness?

16 THE COURT: You can.

17 RECROSS EXAMINATION

18 BY MR. PAGE:

19 Q Mr. Kilgore, you're claiming there's roughly \$4,000
20 that was taken from your tax refund?

21 A Yes.

22 Q Okay. This is the audit for your child support
23 payments. And I want you to take a look at the sixth column
24 in. Do you agree that that column says current unpaid

1 support?

2 A Correct.

3 Q Okay. You agree that that number is \$8,123.95?

4 A It's what it says.

5 Q Okay. Do you agree that that number is greater than
6 the \$4900 or \$4500 you claim that the IRS took out?

7 A I'm not sure on that, how that works.

8 Q You -- you agree that the two -- one -- one number
9 is greater than the other, right?

10 A Correct.

11 MR. PAGE: I could have Exhibit 2, please.

12 THE COURT: Here's the registry of action, right
13 here.

14 (COURT AND CLERK CONFER BRIEFLY)

15 MR. PAGE: Can I approach the witness?

16 THE COURT: Yes, you can.

17 Q Mr. Kilgore, I'm looking at the IRS letter to you
18 dated February 18, 2013. Do you agree that's what the date
19 is?

20 A Yes, sir.

21 Q Are you aware that the amount of overpayment for
22 2012 was \$3,629, right?

23 A Yes.

24 Q Okay. Do you agree that -- when the IRS was dealing

1 with this debt, they always combined everything together with
2 you?

3 A With me?

4 Q Yes.

5 A That is my debt or what? I don't recall.

6 Q That it was your debt and Ms. Kilgore's debt
7 together.

8 A Yes.

9 Q Okay. So this overpayment for 3629 could be \$3629
10 that was taken from Ms. Kilgore's refund.

11 A I couldn't tell you that --

12 Q Okay. So we --

13 A -- because it's --

14 Q So we don't know what this 3629 is for then, right?

15 A It's because I was on my social security number for
16 me, not her.

17 Q Okay. But it also could have been for her, right?
18 We don't know for sure though, correct?

19 A No, I do not.

20 Q Okay.

21 MR. PAGE: Also, we need to redact the social
22 security numbers on this, please.

23 THE COURT: Can we mark that up or do you need a
24 copy?

1 THE CLERK: I --
2 THE COURT: Can you mark it up?
3 THE CLERK: Yes.
4 THE COURT: Okay. You sure?
5 MS. ALLEN: Yeah.
6 THE COURT: He's got his last originals.
7 MS. ALLEN: That's fine. We can get -- I mean, that
8 -- you can get stuff like that from IRS.
9 THE WITNESS: Yes.
10 THE COURT: Okay. Good to know.
11 MR. PAGE: I'll pass the witness.
12 THE COURT: All right. Ms. Allen?
13 FURTHER REDIRECT EXAMINATION
14 BY MS. ALLEN:
15 Q With regard to the refund, your refund that was
16 taken this year was approximately how much?
17 A \$4,989.03 or something like that.
18 Q Okay. Based upon your pay scale and what you've
19 made with the city, would 3600 be approximately the amount you
20 would have gotten a refund for in 2013?
21 A Thereabouts.
22 Q Okay. If it were combined, it would be --
23 A Close --
24 Q -- 17 -- \$1700 a person. Does that sound right, a

1 \$1700 refund for you?

2 A I don't think when we were combined of marriage we
3 got over \$10,000 back refunds.

4 Q So 3600 sounds like an individual refund.

5 A Yes.

6 Q Thank you.

7 MS. ALLEN: Thank you, Your Honor.

8 THE COURT: Are you saying the 3629 could have been
9 your tax intercept?

10 MR. PAGE: Yes, it could have been --

11 THE WITNESS: That was mine.

12 MR. PAGE: It could have been Ms. Kilgore's.

13 THE COURT: She's claiming it's hers and he's
14 claiming it could have been his 3629?

15 MR. PAGE: Yes.

16 MS. ALLEN: Correct.

17 MR. PAGE: Because --

18 MS. ALLEN: And I would -- I mean, the --

19 MR. PAGE: Because her refunds --

20 THE COURT: Boy.

21 MR. PAGE: Her refunds were --

22 THE COURT: Nobody --

23 MR. PAGE: -- attached --

24 THE COURT: -- has their tax return, do they, for --

1 that would show what the amount owed refund?

2 MS. ALLEN: No, Your Honor. But those letters are
3 specifically addressed to my client and they specifically has
4 his social security number on them. They are not addressed to
5 her.

6 THE COURT: Because I'm trying to figure out who --
7 who has the burden. And they're filing joint married, aren't
8 they, at that time?

9 MS. ALLEN: No, they wouldn't have, Your Honor,
10 because they were divorced in 2013. They would have filed
11 separately.

12 THE COURT: So the 3629 though, the notice that was
13 issued on February 18th, 2013 --

14 (COURT AND CLERK CONFER BRIEFLY)

15 THE COURT: -- that would be for the 2012 tax year.
16 And they would have filed -- did they filed jointly for 2012?

17 MR. PAGE: Yes.

18 THE COURT: And nobody has their 2012 joint tax
19 return.

20 MR. PAGE: No.

21 THE COURT: And the assumption is it's a joint tax
22 return.

23 BY MS. ALLEN:

24 Q Do you recall if you filed --

1 THE COURT: If they're combined --

2 Q -- joint or separate?

3 THE COURT: -- incomes, then --

4 A I don't remember filing joint. 2011, we did, but
5 2012 I don't believe we did.

6 Q She had moved out of the home, is that correct?

7 A Yes.

8 MR. PAGE: People are -- until they're married, the
9 Court's generally forced the parties to file jointly. My
10 client indicates that's what their accountant told them to
11 do --

12 THE COURT: something here about that in --

13 MR. PAGE: -- or forced them to do.

14 MS. KILGORE: Yeah.

15 THE COURT: -- O'Malley's minutes here? What did
16 they -- what did she write about the taxes? It looks like
17 there might have been something here on the taxes. Maybe not.
18 Just the remaining issues of the IRS debt. No, it's not in
19 O'Malley's minutes. It's the divorce decree by Louis
20 Schneider (ph). There's a reference on taxes here. The --
21 the parties shall equally divide any monies owed to the IRS
22 prior to and including tax year 2011. So that's what I'm
23 supposed to rule on, right?

24 MR. PAGE: Yes.

1 THE COURT: 2011 -- for 2012, they're each
2 responsible for their own returns.

3 MR. PAGE: Is that what the decree says?

4 THE COURT: Yes, but does that mean that nobody
5 anticipated? Was it a mutual mistake that when you file for
6 2012 and you still owe the taxes, you should at least get the
7 credit because you're supposed to be claiming that -- the
8 problem is we don't know whose 3629. But we do know they were
9 -- they agreed in the divorce to file separately for 2012 tax
10 season. So if Mom filed separately, Dad filed separately.

11 THE CLERK: Those would be his refunds.

12 THE COURT: Dad's -- I guess he's suggesting that if
13 he filed separately, it would -- it was his --

14 MS. ALLEN: Those are -- he --

15 THE COURT: -- 36 --

16 MS. ALLEN: Those are his refunds, Your Honor.

17 THE COURT: So okay. Let's see. If that's his
18 testimony. Okay. Does that change his testimony? I'm going
19 ask him that.

20 MS. ALLEN: Pardon?

21 THE COURT: Does that change his testimony then? If
22 it was 10 grand and they each want to allocate five grand
23 apiece and he's paid -- he paid all of it?

24 MR. PAGE: No.

1 THE COURT: Does --
2 MS. ALLEN: He paid --
3 MR. PAGE: No.
4 THE COURT: Or is it 3629 and the 2091 --
5 MS. ALLEN: Right.
6 THE COURT: -- if you --
7 MS. ALLEN: Plus --
8 THE COURT: -- add that --
9 MS. ALLEN: Plus he -- plus he indicated --
10 THE COURT: And 1600 of --
11 MS. ALLEN: 1600, correct.
12 THE COURT: Let me add that up.
13 MR. PAGE: But we don't have any proof that he paid
14 it personally. That's proper 1600.
15 THE COURT: 2092. It's 5721 plus 1600. Do you have
16 proof of about what? That runs -- that's about 7321.
17 MR. PAGE: But we don't have any -- it's just he --
18 he -- because he says he did, paid 1600, I don't have any
19 proof of that. I certainly --
20 THE COURT: Credibility, weight. We also don't have
21 her tracing on her saying it was her refund.
22 MR. PAGE: The best I can show you is --
23 THE COURT: Unless at lunchtime you want to scramble
24 and get an IRS number, unless -- you're not going to be able

1 to get one that quick when -- what they took for you.

2 MR. PAGE: My client has something here from 2012
3 where \$1444 was taken from her for --

4 THE COURT: Print that out so she can get the
5 credit.

6 MR. PAGE: I may not be able to print it out, but --

7 THE COURT: Was that her refund? 1444?

8 MR. PAGE: Yes.

9 MS. ALLEN: And Your Honor, I would object. He --
10 Mr. Page closed his case.

11 THE COURT: Yeah.

12 MS. ALLEN: And I don't even have --

13 THE COURT: She put him back --

14 MS. ALLEN: I'm objecting.

15 THE COURT: Mr. Page --

16 MS. ALLEN: There's nothing --

17 THE COURT: -- will put her back on as a rebuttal.

18 MS. ALLEN: And that's fine, but there's nothing
19 been provided. I can't look --

20 THE COURT: Wait after lunch.

21 MS. ALLEN: -- at a phone.

22 THE COURT: It's just -- and until a request is made
23 to -- from me if you're going to put her back on rebuttal.

24 MR. PAGE: Okay.

1 THE COURT: And mark some rebuttal evidence. But I
2 don't take electronic. You're going to have to like get a
3 photocopy of that cell phone screenshot.

4 MR. PAGE: I can email it to you and have Johnny
5 print it out.

6 THE COURT: If these volunteer -- Johnny don't know
7 how to printout. These girls, if they want to.

8 MR. PAGE: Otherwise, there -- there may not be the
9 ability to go somewhere and print it out.

10 THE COURT: No, you -- go get a copying machine
11 downstairs. Stick your cell phone on there and copy it or
12 enlarge it.

13 MR. PAGE: All right. That -- that makes sense.

14 THE COURT: Rebuttal evidence might be coming. I
15 don't know. But it was only 1444?

16 MR. PAGE: 1444.

17 THE COURT: On her side. Okay. And he's got --

18 MS. ALLEN: And he testified --

19 THE COURT: -- 3629 and 2091 and a verbal on a 1600
20 is 7321.

21 MS. ALLEN: He did testify --

22 THE COURT: And then she has a --

23 MS. ALLEN: -- that she paid 200 to him.

24 THE COURT: So there's a 200 verbal cash. Okay. So

1 that's 1644? You add the two numbers, you got 8965. There's
2 still some -- it's over 9,000.

3 MR. PAGE: Yeah, and my client indicates that she
4 had \$3600 taken away from her by the IRS in addition to the --

5 THE COURT: You can locate --

6 MR. PAGE: -- 1444.

7 THE COURT: -- that. Yeah. It -- it sounds so
8 similar to the 3629 and then the logic we used on the 2012,
9 you guys agreed to file separately. So if it's under his name
10 and social security number, that would have -- maybe, I don't
11 know if that's the implication. It might be logical to say
12 that was his, unless you have the backup return, you know, and
13 that Page 2 says amount refunded back to you. Okay. Work
14 with what I have, okay?

15 All right. Anything else, Mr. Page?

16 MR. PAGE: Unless you want to put Ms. Kilgore on for
17 rebuttal for what we just talked about.

18 THE COURT: Might -- want to wait until after lunch?
19 We'll just convene early for lunch and bring you guys back at
20 2:00 o'clock? Because I got a 1:30 emergency motion.

21 MR. PAGE: Sure.

22 THE COURT: All right. 2:00 o'clock. But you're
23 done with Dad?

24 MR. PAGE: I'm done with Dad now.

1 THE COURT: So then put Mom on 2:00 o'clock. Okay.
2 We'll convene early for lunch. Figuring your closing
3 arguments, 20, 15 -- and who's the moving party, Mom?

4 MR. PAGE: I'm going to say 20 just because we're
5 going to --

6 THE COURT: Technically, Dad --

7 MS. ALLEN: No, actually --

8 MR. PAGE: -- cover a lot --

9 THE COURT: -- Dad --

10 MR. PAGE: -- of subjects.

11 MS. ALLEN: Dad's the moving --

12 THE COURT: -- actually filed his motion first --

13 MS. ALLEN: He did.

14 THE COURT: -- going back to 2014.

15 MS. ALLEN: Yeah, he did.

16 THE COURT: I mean, no, post 2015. It was his
17 motion to modify custody but then she filed a countermotion.

18 MS. ALLEN: We'll modify child support.

19 THE COURT: Do you mind? Does it matter? I'll give
20 her 15 and five. But you have a countermotion. I'll give you
21 15 and five. Is that enough to do your closings? Do you want
22 20 and --

23 MR. PAGE: We want --

24 THE COURT: -- five? 25 --

1 MR. PAGE: 20 and five --
2 THE COURT: -- 25 --
3 MR. PAGE: -- would actually --
4 THE COURT: -- would be a total of 50 minutes.
5 Closing argument ends. I got in the back hallway and go to my
6 chambers and take it under advisement and just organize my
7 notes and issue an oral decision from the bench.
8 MR. PAGE: My 15 minutes last Tuesday went by so
9 fast. I would say 20 is safer.
10 THE COURT: 2:00 o'clock, 4:00 o'clock. Eh, it
11 would be closer to 5:00, probably. I want to get done before
12 5:00. Okay.
13 MR. PAGE: All right.
14 THE COURT: You guys are --
15 (COURT RECESSED AT 11:50 AND RESUMED AT 14:00)
16 THE COURT: I thought we were done with him, but do
17 you want him back up on the stand?
18 MR. PAGE: Yeah, I'm going to ask him a quick
19 question.
20 THE COURT: Okay. It would be your cross. Oh, I
21 didn't know we were on the record.
22 (COURT RECESSED AT 14:00 AND RESUMED AT 14:06)
23 THE COURT: Are we back on?
24 THE CLERK: We're on.

1 THE COURT: I believe my last notes --

2 (COURT RECESSED AT 14:06 AND RESUMED AT 14:06)

3 THE COURT: -- of the dad by Mr. Page. So I guess
4 he has a few more questions. So why don't we get Dad back up
5 on the stand and then we'll follow up with Mom or any rebuttal
6 testimony if they have any. All right. Mr. Kilgore, do you
7 understand you're still under oath?

8 THE WITNESS: Yes, I do, Your Honor.

9 THE COURT: Okay. You take that. Anytime you're
10 ready, Mr. Page.

11 MR. PAGE: Can I have your phone?

12 MS. KILGORE: Have my phone?

13 MR. PAGE: I want you to open the app.

14 MS. KILGORE: Oh, okay.

15 THE COURT: Actually, I had a couple questions of
16 him. Do you want me to go first? But I had one or two
17 questions. Probably one. I can do it in one.

18 FURTHER RECROSS EXAMINATION

19 BY MR. PAGE:

20 Q Mr. Kilgore, you indicated that you're -- you're
21 unable to scan documents and upload them to FamilyWizard?

22 A At one point I was not.

23 Q I wanted to show you this.

24 THE COURT: I'm sorry, what was the question?

1 MR. PAGE: He -- the question was he indicated that
2 he was unable to -- until recently scan and upload documents.

3 MS. ALLEN: I would ask for a time frame.
4 Objection. Like I'm -- he's asking a blanket question. Can
5 Mr. Page narrow it down as to when he's referring?

6 THE COURT: Foundation. Sustained. Give me the
7 time frame.

8 MR. PAGE: Until -- it your test --

9 THE COURT: They -- they signed up until today.

10 MR. PAGE: I'm going to --

11 THE COURT: He didn't know how to upload a doc --

12 MR. PAGE: I can certainly ask him.

13 THE COURT: Hang on. Show Ms. Allen first.

14 BY MR. PAGE:

15 Q When did you recently obtain the ability to upload
16 documents to OurFamilyWizard?

17 A Within the last couple of years.

18 THE COURT: So he knew how?

19 Q You said you testified that you needed a scanner,
20 correct?

21 A Correct.

22 MR. PAGE: May I approach?

23 THE COURT: Show it to --

24 MS. ALLEN: Can I see it?

1 THE COURT: -- Ms. Allen first.
2 MS. ALLEN: Can I see it?
3 MR. PAGE: The OurFamilyWizard app.
4 Q You're -- you're aware of the Our -- OurFamilyWizard
5 app, yes?
6 A Yes, I am.
7 Q Okay. And you're aware that you can simply take a
8 picture of a bill and upload that, correct?
9 A No, I did not.
10 THE COURT: Picture with what, your cell phone?
11 MR. PAGE: Yes.
12 THE COURT: And do it on an app?
13 MR. PAGE: Yes.
14 THE COURT: Did you know that?
15 THE WITNESS: No, I did not, Your Honor.
16 THE COURT: He didn't know that.
17 MR. PAGE: I'll pass the witness.
18 THE COURT: Okay. You have anything? Can I ask you
19 about the fur coat thing? You --
20 THE WITNESS: Sure.
21 THE COURT: -- heard Mom on the stand before you got
22 on the stand saying I guess several times you told her I'm
23 going to give you back your coat and your dresses and then you
24 -- I guess reneged on it because she wouldn't sign documents.

1 How -- how did that happen? I mean, how --

2 THE WITNESS: I never said -- never said that at
3 all.

4 THE COURT: Never said I'm -- okay --

5 THE WITNESS: Never said it.

6 THE COURT: -- I'm giving it to your attorney, I'm
7 going to go through the attorneys and I'm going to deliver
8 your fur coat and your dresses, I have it, I'm going to give
9 it to you and she said you did that to her several times.

10 THE WITNESS: She said to her attorney I -- my -- I
11 had an attorney. My attorney asked me about it. I informed
12 my attorney I do not have them and she loaded them up. My --
13 her attorney --

14 THE COURT: I'm going to do like if you don't sign
15 those divorce papers --

16 THE WITNESS: Your Honor, I tried to get divorced
17 from day one. She's the one that drug it out, not me.

18 THE COURT: So your word against her word. But the
19 timing of that, and I don't know when time -- what time frame,
20 and I'll ask Mom that, time frame he was making those -- you
21 were supposedly making those statements to her and the time
22 that you said you were on reserve duty and that she said she
23 took advantage and loaded up her Suburban. And what time
24 frame was that that you -- that you think that's when she took

1 everything out?

2 THE WITNESS: It was the end of January of 2012 to
3 the beginning of February of 2012. I don't remember exactly.
4 It was right there at the end, because that's when she moved
5 out the end of January of 2012, beginning of February 2012.

6 THE COURT: Came home from reserve duty and --

7 THE WITNESS: She was in the process --

8 THE COURT: -- the closet was cleaned out.

9 THE WITNESS: She was in the process of loading
10 everything out.

11 THE COURT: Didn't take pictures?

12 THE WITNESS: No, I did not.

13 THE COURT: Didn't take pictures. Your word against
14 her word then? Then the divorce wasn't filed until -- was the
15 divorce filed around that time already?

16 THE WITNESS: We had separated in 2011.

17 THE COURT: Live together for a year? Or you have
18 been --

19 THE WITNESS: No, she had moved out -- she was
20 living off and on with her mom and their -- but that was when
21 she officially moved out.

22 THE COURT: So it was like a year later she cleared
23 out her closet.

24 THE WITNESS: She was still living at the house on

1 and off going to her mom's.

2 THE COURT: Okay. Got it. Follow up. Any follow
3 up?

4 MS. ALLEN: No, Your Honor.

5 THE COURT: Just to see what I have. Dad says they
6 separated in January 2011. Mom is kind of off and on, but she
7 had moved out. And then he went like a year later, early --
8 late January 2012, early February 2012. He went on reserve
9 duty weekend and that's when she took her Suburban and cleared
10 out the closet. That's his testimony.

11 MS. ALLEN: Correct.

12 THE COURT: Okay. Thank you. Anything else?

13 MR. PAGE: For Mr. Kilgore?

14 THE COURT: For the fur coat or any other issue?

15 FURTHER RECROSS EXAMINATION CONTINUED

16 BY MR. PAGE:

17 Q Isn't it true Mr. Kilgore that you lived rent free
18 in the former marital residence because the mortgage was not
19 paid for five years?

20 MS. ALLEN: Can I object --

21 THE COURT: Objection?

22 MS. ALLEN: Objection.

23 THE COURT: Basis for objection?

24 MS. ALLEN: It's irrelevant. It's outside --

1 THE COURT: Offer of proof?
2 MS. ALLEN: -- the scope of everything.
3 MR. PAGE: I'll withdraw --
4 MS. ALLEN: It has nothing --
5 MR. PAGE: -- the question.
6 THE COURT: We'll limit the speaking objections.
7 Offer of proof?
8 MR. PAGE: I'll withdraw the question.
9 THE COURT: All right. Anything else?
10 (COUNSEL AND CLIENT CONFER BRIEFLY)
11 MS. ALLEN: Anything else?
12 MR. PAGE: No.
13 THE COURT: That's all I had on the -- okay, on the
14 fur coat. Thank you, sir. You may step down.
15 (WITNESS EXCUSED)
16 THE COURT: You're putting Mom back up on the stand?
17 MR. PAGE: Yeah, I'll go ahead and put Mom -- Mom
18 back up on the stand.
19 (WITNESS SUMMONED)
20 THE COURT: Is it for rebuttal purposes? Were you
21 planning on calling her in your case in chief for additional
22 questions?
23 MS. ALLEN: No, I think I got --
24 THE COURT: Yeah, we have extensive questioning

1 already.

2 MS. ALLEN: I think I got it done.

3 THE COURT: We're winding down. All right. You
4 understand you're still under oath?

5 THE WITNESS: Yes.

6 THE COURT: While we're still on that -- can I ask
7 her about the fur coat?

8 MR. PAGE: Yes, of course.

9 THE COURT: You heard what he just said now.

10 THE WITNESS: Yes.

11 THE COURT: The he said, she said thing. And unless
12 somebody has proof, how -- how did -- how did it go down again
13 compared to his story of --

14 THE WITNESS: That's not what happened at all.

15 THE COURT: Is it true you moved out January 2011
16 and you were off and on for like a year or in -- in and out of
17 the house but mainly living with your mom or --

18 THE WITNESS: No. No. No. No. No.

19 THE COURT: Were you in the house?

20 THE WITNESS: Once I moved out, I did not load up my
21 Suburban. I --

22 THE COURT: When did you move out, like the 2011
23 January?

24 THE WITNESS: I think it was January 2011.

1 THE COURT: How did you move out? How much did you
2 take with you?

3 THE WITNESS: That's what I'm going to get to.

4 THE COURT: Okay.

5 THE WITNESS: When I left, I did go to my mom's
6 house. And he was not on reserve duty. And I did not load up
7 the Suburban. I didn't do any of that.

8 THE COURT: He didn't say that in 2011. He said --

9 THE WITNESS: Okay.

10 THE COURT: -- he went on reserve duty a year later
11 in --

12 THE WITNESS: Okay.

13 THE COURT: -- late January 2012.

14 THE WITNESS: No. I moved out January -- the end of
15 January 2011.

16 THE COURT: '11, right.

17 THE WITNESS: Yes. And when I left, I went to my
18 mom's house and I literally grabbed a couple of pants and
19 shirts for school, a pair of pajamas and like my bras and
20 underwear. That's all I took. I did not take anything else.

21 THE COURT: Okay.

22 THE WITNESS: Because it was traumatic enough as it
23 was. It was really hard on the kids and everything else. So
24 I didn't take anything else. Then he changed the locks. We

1 didn't go back and forth. We didn't do any of that.

2 THE COURT: When did he change the locks?

3 THE WITNESS: Right after I moved out he changed the
4 locks.

5 THE COURT: Okay. And --

6 THE WITNESS: And I never got -- I never got any of
7 my stuff out. I didn't get any -- I didn't get any of my
8 furniture out. I didn't get my clothes. I -- I had to go buy
9 new clothes. I was living with my mom and then the attorneys
10 told us to make up A and B lists or whatever. So we did that
11 and I picked a list and then he said okay. And then he didn't
12 give me anything of what was supposed to be on the list. He
13 went like by the other list.

14 And when I told him I was going to be there the day
15 before, he threw a bunch of stuff out on the lawn and said
16 come pick it up. I didn't even like -- I couldn't even go get
17 a van or do anything. And he -- he -- throughout like some of
18 the broken stuff, he tried to give me a broken TV, some other
19 stuff. I don't even have pictures of my kids. I don't have
20 anything.

21 THE COURT: Did you take pictures of the broken
22 stuff on the lawn?

23 THE WITNESS: I actually had a -- a video that my
24 friend Julie took which is on my old phone, but I didn't think

1 to bring it.

2 THE COURT: So you moved out. Soon thereafter he
3 changed the locks. You only --

4 THE WITNESS: Yes.

5 THE COURT: -- grabbed a few clothes, had to buy a
6 whole new wardrobe. Everything else got left alone -- behind.
7 And at some point later he threw stuff out on the lawn.

8 THE WITNESS: Yeah.

9 THE COURT: And you have a video, but you don't have
10 the video with you today. Okay. So we're still --

11 THE WITNESS: Because I didn't think I could do --

12 THE COURT: -- we're still in --

13 THE WITNESS: -- anything about it.

14 THE COURT: -- early Janu -- we're still in the
15 earlier part of 2011, right?

16 THE WITNESS: Uh-huh (affirmative).

17 THE COURT: He said you kind of came and went or you
18 only came over there when he let you in the house?

19 THE WITNESS: He never let me back in, ever.

20 THE COURT: Was there any reasons to go back to the
21 house and get some stuff?

22 THE WITNESS: Well, he wouldn't let me. You know, I
23 couldn't get back in. And when I tried -- even that night
24 when I tried to go get my stuff I called the police to try to

1 come over and he would not let the --

2 THE COURT: When did you call the police?

3 THE WITNESS: When I went -- when he threw my stuff
4 out on the lawn and then said come get it.

5 THE COURT: What month was that?

6 THE WITNESS: I don't know.

7 THE COURT: Right after you moved out? A couple
8 weeks after you moved out?

9 THE WITNESS: No, it was a little while, because I
10 had to go back and forth between --

11 THE COURT: A couple months after you moved out?

12 THE WITNESS: Yeah. I had to go back and forth
13 between attorneys.

14 THE COURT: Okay. A couple months and the lawn
15 incident. And you knew your fur coat and dresses were still
16 in there?

17 THE WITNESS: Yeah, along with --

18 THE COURT: So his story was -- now we're into late
19 January 2012, a year later. He went on reserve duty and you
20 filled your Sub -- Suburban.

21 THE WITNESS: But I never -- once I left, I never
22 got back in the house.

23 THE COURT: Because he changed the locks?

24 THE WITNESS: Yes, and he wouldn't let me back in.

1 And even when I tried to go with the police he wouldn't even
2 let the --

3 THE COURT: He -- break into the house.

4 THE WITNESS: -- he wouldn't even let the police in.

5 THE COURT: So you're saying -- he's saying you let
6 yourself in the house. You had access to the house?

7 THE WITNESS: No, he changed the locks. I never got
8 back in.

9 THE COURT: Okay. Go back to Richard -- if you --
10 if you changed the locks according to her story, either she
11 broken in while you were out in active duty and a year later.
12 I'm --

13 MR. KILGORE: I did -- never changed the locks, Your
14 Honor. The locks were never changed until the divorce was
15 final. My attorneys told me I could not. Nothing was thrown
16 out on the lawn. She would come in the house and I would go
17 to work. My kids told me she was coming in taking pictures --

18 THE COURT: Give me --

19 MR. KILGORE: -- of --

20 THE COURT: -- an example of why the locks were
21 never changed throughout -- for like a whole year.

22 MR. KILGORE: Because my attorney told me it's still
23 community property and I cannot change the locks or keep her
24 out.

1 THE COURT: Any examples of where she let herself
2 in?

3 MR. KILGORE: The kids told me she was coming in
4 when I would go to work and was taking --

5 THE COURT: Or the kids could let her in.

6 MR. KILGORE: -- stuff from the house.

7 THE COURT: Yeah.

8 MR. KILGORE: And was taking pictures. Things were
9 disappearing in the house. She would have my daughter taken
10 stuff. She -- when she moved out in January 2012, she took
11 everything. The --

12 THE COURT: It could have been possible the kids let
13 her in the house?

14 MR. KILGORE: No. They said she would just come in.
15 And when she came in and attacked me in the middle of the
16 night, she let --

17 THE COURT: With her key. She would come in with
18 her key?

19 MR. KILGORE: She came in with her key and attacked
20 me in the middle of the night and that's when I --

21 THE COURT: I'm talking about reserve duty weekend
22 when she cleared -- cleared out her closet.

23 MR. KILGORE: I loaded everything up. Everything --
24 my mom and I boxed everything up, wrapped everything up, set

1 it in the driveway on a box with everything written on what
2 was in it, had the A/B list attached to it, she said I will
3 come pick it up tonight because we were called to make
4 arrangements. Arrangements was made for her to pick it up
5 that night. Then she called me back and said I can't do it
6 tonight because everything is already out.

7 THE COURT: And you got to go to reserve duty.

8 MR. KILGORE: Everything is in the driveway.

9 THE COURT: Right.

10 MR. KILGORE: And it's like you have to get it
11 tonight because everything is here.

12 THE COURT: And you were going to reserve duty that
13 week.

14 MR. KILGORE: And that -- when they -- she showed up
15 to get everything finalized.

16 THE COURT: I'm not clear. Was that reserve duty
17 weekend?

18 MR. KILGORE: No, that was --

19 THE COURT: Oh.

20 MR. KILGORE: She did that separate when she came
21 and got all of her personal belongings. She was still in the
22 house.

23 THE COURT: You didn't take pictures of what you
24 stuffed in those boxes for her, did you?

1 MR. KILGORE: No, I did not, Your Honor.
2 THE COURT: Did that include a fur coat and 10
3 dresses?
4 MR. KILGORE: She had already loaded up the Suburban
5 and already taken that stuff.
6 THE COURT: Earlier.
7 MR. KILGORE: Earlier.
8 THE COURT: When you were on reserve duty.
9 MR. KILGORE: When I was on reserve duty. That's
10 when --
11 THE COURT: Did she have --
12 MR. KILGORE: -- she took all that.
13 THE COURT: -- a key to the house?
14 MR. KILGORE: What's that?
15 THE COURT: The kids were living by themselves in
16 the house?
17 MR. KILGORE: They were with her when she loaded up
18 the Suburban.
19 THE COURT: And the kids had a key to the house.
20 MR. KILGORE: Yes.
21 THE COURT: They always have a key to your house.
22 MR. KILGORE: Yes.
23 THE COURT: So when --
24 MR. KILGORE: They still do.

1 THE COURT: Your testimony will be it wouldn't be
2 hard to get in to access the house through the kids' keys.

3 MR. KILGORE: Yeah. But I never changed the locks.
4 They were never, ever changed, because my attorney advised
5 against that.

6 THE COURT: Do you think the fur coat from the
7 wardrobe closet was taken that weekend in --

8 MR. KILGORE: When she loaded up --

9 THE COURT: -- the Suburban incident.

10 MR. KILGORE: -- the Suburban, there was nothing --
11 she had two thirds of the closet. I had a third of the closet
12 or a quarter of the closet, actually.

13 THE COURT: Yeah.

14 MR. KILGORE: She loaded up everything --

15 THE COURT: You came home and it was empty?

16 MR. KILGORE: -- and took everything. There was
17 nothing left --

18 THE COURT: Okay. Back to you, Mom. Trying to rec
19 -- see credibility.

20 THE WITNESS: I know. I should have called in some
21 people to testify. I never got -- I didn't ever get anything
22 out of the house. I had to go buy new furniture, new
23 everything. She did change the locks.

24 THE COURT: So why were you buying --

1 THE WITNESS: Richard doesn't listen --
2 THE COURT: -- new stuff if --
3 THE WITNESS: Richard doesn't listen to what anybody
4 tells him. And the kids at that time, they did not have keys.
5 They were younger.
6 THE COURT: They were younger -- much younger?
7 THE WITNESS: Yes.
8 THE COURT: 10 years old, maybe?
9 THE WITNESS: Yeah, I think the --
10 THE COURT: Based on their age now --
11 THE WITNESS: -- the twins might have been.
12 THE COURT: -- 10, 11? They -- they not latchkey
13 kids? They -- after school have a key to get to the house?
14 THE WITNESS: I don't know how -- I don't know how
15 he worked that.
16 THE COURT: Your word against her word. All right.
17 THE WITNESS: I don't know how he worked that with
18 the kids. I know in my weeks when I would pick them up, I --
19 I picked them up.
20 THE COURT: So your testimony then you never asked
21 your kids if they had a key to the house -- Dad's house?
22 THE WITNESS: I never went -- Your Honor, I was so
23 afraid of him, I never went back in that house. I didn't do
24 anything. My attorneys advised me against everything. He

1 kept everything --

2 THE COURT: The Suburban thing --

3 THE WITNESS: -- and then he would --

4 THE COURT: -- never happen.

5 THE WITNESS: The what?

6 THE COURT: Suburban incident never happened.

7 THE WITNESS: I did not load up my car. My mom
8 would even come in and testify. Should have had her here.
9 She -- absolutely not. I took a few things. That never, ever
10 happened.

11 THE COURT: Okay. As far as you know, he held your
12 stuff hostage in the house?

13 THE WITNESS: In fact, he bragged. That's one of
14 the things that my kids were really upset about. He bragged
15 to all of his friends how he -- he traded in two cars without
16 me knowing. He bought himself a new truck.

17 THE COURT: I'm just dealing with the fur coat.

18 THE WITNESS: He -- he kept that stuff. He bragged
19 to all of his friends that he screwed me out of the house, the
20 money, the cars, and openly bragged about it --

21 MR. KILGORE: It's hearsay, isn't it?

22 THE WITNESS: -- to everybody.

23 THE COURT: Okay.

24 (COUNSEL AND CLIENT CONFER BRIEFLY)

1 THE COURT: Are you objecting, Counsel? Not -- your
2 client can't object.

3 MS. ALLEN: No, it's a statement of a party
4 opponent.

5 THE COURT: If he object, have your lawyer object.

6 MS. ALLEN: That's why I didn't object. I know what
7 I'm doing.

8 THE COURT: And this fur coat was given -- it was a
9 -- it's a very expensive fur coat.

10 THE WITNESS: Yes.

11 THE COURT: \$8,000, almost.

12 THE WITNESS: It was.

13 THE COURT: A friend gave it you --

14 THE WITNESS: Yes.

15 THE COURT: -- as you get -- how -- how old were you
16 when you got that fur coat? You said you had it for like 18
17 years something or --

18 THE WITNESS: It was -- it was a couple of years
19 after we first got married. One of my good friends gave it to
20 me because --

21 THE COURT: Was it new or used? It was like -- oh,
22 it was a hand-me-down or something or --

23 THE WITNESS: Well, the story was her fiancé giving
24 it to her because he was trying -- he was -- he had a lot of

1 money. So he gave it to her. She didn't want it when they
2 broke up. She gave it to me.

3 THE COURT: I can see it. Okay.

4 THE WITNESS: And he had a lot of money and she's
5 like I don't want anything to do with this.

6 THE COURT: You got a freebie.

7 THE WITNESS: Right. So I was like yay. I mean,
8 honestly until I started researching, I didn't know how much
9 everything was worth.

10 THE COURT: Where did you keep it, in the closet?

11 THE WITNESS: Yes.

12 THE COURT: Or do you store it in like a cool place
13 because --

14 THE WITNESS: No, it was just up in the closet.

15 THE COURT: Okay. Plastic coating on it or you
16 just --

17 THE WITNESS: It did have a -- it did have a cover
18 on it.

19 THE COURT: Yeah. Do you ever wear it a lot?

20 THE WITNESS: I only wore it a couple times.

21 THE COURT: So usually it's in the back of the
22 closet next to your formal evening gowns or your formal
23 dresses?

24 THE WITNESS: Yeah. I mean, I had all that stuff

1 together. I had like my jeans together, my shirts together,
2 my dresses together and --

3 THE COURT: And then you had left them a year
4 earlier and you've been -- for a year you've been trying to
5 get the rest of your stuff out of your closet.

6 THE WITNESS: Yes. And like I said, the -- I should
7 have -- if I had Giuliani come in too, because he had told me
8 on numerous occasions he's going to give it to you, he's going
9 to give it to you, he's going to give it to you. And then
10 when it came down to it, he said no.

11 THE COURT: I can't rely on the hearsay of an
12 attorney. So --

13 THE WITNESS: I know.

14 MR. PAGE: I can call Roger.

15 THE COURT: Huh?

16 MR. PAGE: I can put Roger on the phone.

17 THE COURT: Her testimony, she had conversations
18 with -- whose attorney was it?

19 MR. PAGE: It was -- Roger was her attorney.

20 THE WITNESS: Yeah, Roger Giuliani.

21 THE COURT: You had -- okay. I'll just accept you
22 had conversations with your attorney about arrangements.
23 Okay. Anything else?

24 MR. PAGE: Yeah. For her, I do. We did research

1 the tax issue.

2 THE COURT: Okay. You can go into that topic.

3 ELENI KILGORE

4 called as a rebuttal witness on her own behalf, having been
5 previously sworn, testified upon her oath as follows on:

6 DIRECT EXAMINATION

7 BY MR. PAGE:

8 Q Ms. Kilgore, did you conduct an investigation as to
9 how much the Internal Revenue Service took from your tax
10 refunds?

11 A As much as I could.

12 Q Okay. Did you find out how much of your refund for
13 2013 was taken?

14 A Yes.

15 Q How much was taken?

16 THE COURT: What tax year, fiscal year?

17 MR. PAGE: 2013.

18 THE COURT: For 2013?

19 MR. PAGE: Uh-huh (affirmative).

20 THE WITNESS: It was about 3600.

21 MR. PAGE: Okay.

22 THE COURT: For 2013, meaning when you filed or was
23 it for -- it was for tax year 2013. Because the document I
24 got from Richard was 2014, 2,098, and other one was the 3629.

1 Exhibit Number --

2 THE CLERK: 2.

3 THE COURT: It's Exhibit Number 2? Ah. All right.
4 So Plaintiff has 20 -- for tax year 2013, highlighted 2091.80.
5 And then for tax year 2012, 3629. But your 3600 is a much --
6 is -- is for tax year 2013, right?

7 THE WITNESS: I think that's what it was for.

8 THE COURT: They were --

9 THE WITNESS: I called my accountant.

10 MR. PAGE: Do you remember the exact amount?

11 THE WITNESS: Okay.

12 THE COURT: Do you remember the exact amount?

13 THE WITNESS: 36 -- it was like 3624.

14 MR. PAGE: May I refresh your recollection?

15 THE COURT: You may. You may approach.

16 BY MR. PAGE:

17 Q How much was the exact amount taken for --

18 MS. ALLEN: And can I ask what they're referring to,
19 Your Honor?

20 THE COURT: For tax year 20 -- show it to Ms. Allen.
21 But you're trying to refresh her recollection.

22 MS. ALLEN: Okay. So she's referring to --

23 THE COURT: Tax year 2013.

24 MS. ALLEN: Apparently, she's referring to an email

1 from someone.

2 THE COURT: It's just to refresh --

3 MR. PAGE: The tax preparer --

4 THE COURT: -- her recollection. I just wanted --

5 MR. PAGE: His name is --

6 THE COURT: -- to show it to you as a courtesy.

7 MR. PAGE: -- Randall van Reken. He is a C --

8 certified tax preparer.

9 THE COURT: She can look at it.

10 Q Does that refresh your recollection?

11 A Yes.

12 Q How much was taken from your refund for 2013?

13 A 3674.

14 Q Thank you.

15 THE COURT: 3674.

16 MR. PAGE: Move for admission of this document as

17 Exhibit M.

18 MS. ALLEN: And I would object. That -- that is an

19 -- there's absolutely zero authentication to this document.

20 MR. PAGE: It's a business record.

21 THE COURT: It's a business record.

22 MS. ALLEN: I -- I -- it doesn't even -- I don't

23 even know that it's a business record.

24 THE COURT: It's for rebuttal purposes.

1 MR. PAGE: Russel (sic) van -- van Reken --
2 THE WITNESS: I called my tax guy --
3 MR. PAGE: -- PA --
4 THE WITNESS: -- like you said.
5 MR. PAGE: -- CFP, ATP. The Tax Man, LLC.
6 THE COURT: Does it --
7 MS. ALLEN: But I don't know that that -- Your
8 Honor, I apologize, but I just don't --
9 THE COURT: Let me look.
10 MS. ALLEN: That's not a business record.
11 THE COURT: Okay. Objection noted. Not hearsay.
12 The -- and you say business record.
13 MS. ALLEN: There's no authentication to it.
14 There's --
15 THE COURT: It came from an Earthlink.net email, but
16 it is from the Tax Man, Randall van Reken, who's your --
17 THE WITNESS: Uh-huh (affirmative). Yeah, he's been
18 doing mine for like 20 years.
19 MR. PAGE: So he did Mr. --
20 THE COURT: The --
21 MR. PAGE: He did Mr. Kilgore's taxes as well when
22 they were married.
23 THE COURT: You're the customer and he's the tax
24 guy. It's a business record.

1 THE WITNESS: Yeah.

2 THE COURT: Overruled. M? Is it M, Mary?

3 THE CLERK: N.

4 THE COURT: N, Nancy.

5 THE CLERK: Nancy.

6 THE COURT: N is in.

7 (DEFENDANT'S EXHIBIT N ADMITTED)

8 THE COURT: Objection noted though.

9 BY MR. PAGE:

10 Q You also indicated you made some cash payments to

11 the IRS as well?

12 A I did.

13 Q Do you recall how much that was?

14 A I think there were a couple of cash payments for

15 \$200 and then I made some \$400.

16 (COUNSEL CONFER BRIEFLY)

17 (COUNSEL AND CLIENT CONFER BRIEFLY)

18 THE COURT: Yeah, my next question of Richard would

19 be what -- where is your -- did they take your tax refund for

20 2013? Because you only gave me '12 and '14, 2012 and 2014.

21 MR. KILGORE: They did. I've been trying to find it

22 in all the tax paperwork. I've been looking and I'm missing

23 that one, Your Honor.

24 THE COURT: Let me know.

1 MR. PAGE: May I approach the witness?

2 THE COURT: If you add up all those intercepts, the

3 refunds, like 10,838 or something like that.

4 MR. PAGE: I haven't added those up.

5 THE COURT: I did. I just did. There's 1444 on her

6 end and another 3674 according to that email. Then we got

7 Dad's 2091 and his 3629. You add those four up and you get

8 over 10 -- 10,000.

9 MR. PAGE: It's possible --

10 THE COURT: And we don't know if they took anything

11 for him for 2013 because he showed me --

12 MR. KILGORE: The interest was outrageous when --

13 THE COURT: I bet, plus 10 percent penalties.

14 THE WITNESS: But I think it was done, like I --

15 once they took both of mine, my tax guy told me that the IRS

16 stuff is done.

17 THE COURT: For me to sort out my --

18 THE WITNESS: Right.

19 THE COURT: -- decision.

20 THE WITNESS: Right.

21 THE COURT: Okay. Continue, Mr. Page.

22 BY MR. PAGE:

23 Q Did you make a payment in 2011 for \$200 to the IRS?

24 A Yes.

1 Q And did you also make a payment of \$200 on June 15,
2 2012?

3 A Yes, and my name is on --

4 THE COURT: Are we on the hundred dollar payments
5 now?

6 MR. PAGE: Yes, \$200 payments.

7 THE COURT: Okay. And what's her testimony? He
8 testified two cash payments to him for 200 credit.

9 MR. PAGE: She testifies two payments, \$200 each.

10 THE COURT: 400 total?

11 MR. PAGE: Yes.

12 THE COURT: Paid to whom?

13 MR. PAGE: Paid to the IRS.

14 THE COURT: Direct to the IRS.

15 MS. ALLEN: Who is this from?

16 MR. PAGE: Yes.

17 THE COURT: Two \$200 payments to the IRS. Did you
18 give Richard cash like --

19 THE WITNESS: Well, those are the --

20 THE COURT: -- a hundred dollars twice to him?

21 THE WITNESS: Those are the other ones. I have some
22 other ones that I paid a hundred dollars to.

23 THE COURT: You better establish that, Mr. Page.

24 THE WITNESS: Yeah.

1 THE COURT: Do you want to mark those?
2 MR. PAGE: Yes, mark it as Exhibit O.
3 THE COURT: Show it to Ms. Allen.
4 MS. ALLEN: Oh, yes. I have those.
5 THE COURT: No object -- any objection?
6 MS. ALLEN: No, Your Honor.
7 THE COURT: O is admitted.
8 (DEFENDANT'S EXHIBIT O ADMITTED)
9 THE COURT: That's going to -- the one coming up
10 here. So Mom paid IRS direct \$200 twice.
11 MS. KILGORE: Yeah.
12 THE COURT: Total 400, right?
13 MR. KILGORE: That she's claiming that as hers.
14 THE COURT: And then she's got some other proof.
15 (COUNSEL CONFER BRIEFLY)
16 MR. PAGE: \$400 payment to --
17 THE COURT: We don't have extras for Ms. Allen, do
18 you?
19 THE WITNESS: This is what I -- I just kept track
20 when I --
21 MR. PAGE: Oh.
22 THE WITNESS: Because I give --
23 MR. PAGE: Oh.
24 THE WITNESS: I put -- I paid a hundred, I paid a

1 hundred. Those were just my records back --

2 MR. PAGE: Okay.

3 THE WITNESS: -- then.

4 BY MR. PAGE:

5 Q Okay. So in those tax years which is 2013 and 2012,
6 you paid another hundred dollars.

7 THE COURT: Total?

8 MR. PAGE: \$200 total.

9 THE COURT: To whom, Richard or the IRS?

10 MR. PAGE: To --

11 THE WITNESS: Those ones, I --

12 MR. PAGE: To the IRS.

13 THE WITNESS: No, actually, those are the things I
14 think I gave money to Richard.

15 THE COURT: To Richard.

16 MR. PAGE: Okay.

17 THE COURT: Okay.

18 MS. ALLEN: So that's not --

19 MR. PAGE: It's -- it --

20 THE WITNESS: That's my record keeping.

21 MR. PAGE: But that was just prior testimony.

22 THE WITNESS: That's what I did.

23 Q Is this your handwriting?

24 A Yes.

1 Q You paid for both of those?

2 A Yes.

3 MR. PAGE: Move for exhi -- admission of Exhibit P.

4 THE COURT: And that would be Exhibit P. Any
5 objection?

6 MS. ALLEN: No, Your Honor.

7 THE COURT: That's admitted.

8 (DEFENDANT'S EXHIBIT P ADMITTED)

9 THE COURT: Let me see if I got this right. On
10 Mom's end, we have 1444 on that Exhibit N, 3674, \$200 to
11 Richard direct, and he confirmed that in his testimony, and
12 two times a \$200 payment for a total of 400 towards her share
13 of the IRS debt, is that correct? And Richard's in. He had
14 2091 and 3629 and \$900 in -- I'm sorry, \$1600 I think is what
15 he testified to.

16 MR. KILGORE: Yeah, 1600 --

17 THE COURT: Of the --

18 MR. KILGORE: -- cash.

19 THE COURT: -- monthly payments to the IRS. 2091,
20 3629, and 1600? I'm just double checking my numbers. Okay.
21 And Mom is -- those four items there. All right. Anything
22 else?

23 MR. PAGE: I believe that is everything.

24 THE COURT: IRS? Okay. So we'll tally these up.

1 Do you need more rebuttal? That's it? Okay. Ms. Allen, any
2 further questioning?

3 MS. ALLEN: No, Your Honor.

4 THE COURT: You rest?

5 MS. ALLEN: I rest.

6 THE COURT: No other witnesses. Thank you, Mom.
7 You may step down. That's going to take us to closing
8 arguments, correct?

9 MS. ALLEN: Yes.

10 MR. PAGE: Yes.

11 THE COURT: I don't know. What did I say? 20 plus
12 five each, Johnny. So it will be Ms. Allen, then for 20
13 minutes. Mr. Page for 20 minutes. Ms. Allen for five minutes
14 and then Mr. Page goes last for five minutes on his
15 counter-motion.

16 MS. ALLEN: If I don't take my full 20 at the
17 outset, can I have another rebuttal?

18 THE COURT: You add it to the five.

19 MS. ALLEN: Okay.

20 THE COURT: I allow that. You need two minutes or
21 you just -- you ready to dive into this?

22 MS. ALLEN: Just as ready as I'll ever be.

23 THE COURT: You need a second, you good or --

24 MS. ALLEN: Yeah.

1 THE COURT: Okay. Closing arguments. Let me lay
2 down the rules. You do not interrupt at all during opposing
3 Counsel's closing arguments. Save it all for the end if you
4 want to lodge any objections or make a record. At the
5 conclusion of the closing arguments, if there's any kind of
6 regularity or you want to object to something that -- or a
7 statement or a remark by Counsel during their closing, that's
8 fine. Make a record. And then I will go take it under
9 advisement and come back with an oral decision in this case.

10 MS. ALLEN: Okay. So I'm going to apologize for my
11 -- I'm -- I'm arguing, obviously, but I'm going to apologize
12 in advance for my recognition of dates in this case, because I
13 have not been on this case very long. So when things --
14 certain things were filed and when things happened, I'm not as
15 -- as clear let's say as the Court or Mr. Page on. But I
16 think the Court can sort of fill it in as I go along.

17 THE COURT: Yeah.

18 MS. ALLEN: So --

19 THE COURT: All right.

20 MS. ALLEN: -- first of all --

21 THE COURT: Johnny will let you know when you have
22 like -- you tell him, one minute left? You want to --

23 MS. ALLEN: Yes.

24 THE COURT: -- tell you?

1 MS. ALLEN: That's fine. Throw your hand up. So --

2 THE COURT: All right.

3 MS. ALLEN: -- with regard to -- I'm just going to
4 go straight down. The first issue I'm going to address is the
5 modification of child support. My client lost his job. He
6 lost his job due to -- it was an issue between he and his
7 exwife and her boyfriend and something else. And -- but he --
8 they -- the -- the -- Eleni's boyfriend calls Clark County --
9 or City of Las Vegas and essentially his complaint gets my
10 client fired.

11 As a result of that, his income went to zero. He
12 was fired. He was absolutely without income. He did go on
13 unemployment; however, he filed with this Court a proper
14 motion for modification of child support which the Court
15 declined to grant. It was sort of set off for some sort of
16 final decision when there was going to be a trial in this
17 case, right.

18 The problem is is that when my client is making
19 nothing, he has nothing to pay. As a result of the Court
20 refusing to modify his child support arrangement, he has gone
21 into, you know, default on his payments. It was taken before
22 the magistrate. He was given a contempt order and his
23 driver's license was suspended, all again affecting his
24 employment and getting his job back. These have been just

1 sort of a parade of horrors for him.

2 His -- his child support should have been modified
3 when he lost his job. Frankly, she should have been paying
4 him, because she was the one making the income, but at a
5 minimum -- and this Court should have ordered the minimum of a
6 hundred dollars a month until his -- his child support could
7 be paid by the job that he had. So that -- that's the first
8 problem is modification in this case should have come when he
9 filed for the modification.

10 Child support modifications are filed when there's a
11 change in income, a 20 percent change in income, people move.
12 Change in circumstances that are significant. Going from
13 7,000 a month to zero is more than 20 percent.

14 So I'm -- I'm requesting the Court go back to the
15 original day of his filing, modify his child support down to
16 the minimum of a hundred or zero -- actually, it should be
17 zero. Frankly, Mom should have been paying him this whole
18 time. Go down to zero and reimbursing him that money. That
19 money should be credited towards him, because he should not
20 have been paying it this entire time.

21 I'm requesting on the PERS issue, she is requesting
22 that her name be put on the survivor beneficiary for PERS.
23 And probably the greatest witness in this case for us was
24 Marshal Willick who talked about the Holyoke (ph) decision and

1 he gave everybody a copy of it and we talked about Henson
2 (ph). And specifically in Henson, it says we specifically set
3 forth in the divorce an allocation of community property
4 interest in the employee spouse's pension plan did not -- does
5 not also entitle the non-employee spouse to survivor benefits.

6
7 It's black and white law. And he brought up Holyoke
8 and interestingly in Holyoke it says in the footnote --
9 footnote one, because the district court in this case merely
10 interpreted the decree and enforced its terms rather than
11 modifying the parties' interest, the time requirements of NRCP
12 60B do not apply. That is exactly the case in point here --
13 that is absolutely on point in this case.

14 These two people hired lawyers. They went -- they
15 went in and consulted, they retained, and they both had
16 competent attorneys when they went through the divorce
17 proceedings in this case. They split everything including
18 their retirements and they specifically did not put survivor
19 benefits in this.

20 And let's say the Court doesn't want to take my word
21 for it or even their testimony, right, in light of that.
22 Let's talk about her PERS survivor benefits. Do you remember
23 her -- the testimony from the lady up north? Her PERS
24 survivor benefits go to the boyfriend. So if it was the

1 intent of the parties at the time this divorce decree was
2 filed, those survivor benefits would have been included in the
3 decree.

4 If this Court orders that she -- that he is to make
5 survivor benefits available for this woman, that is in direct
6 contradiction to the -- the case law in the state of Nevada.
7 That is absolutely directly contra -- contradictory to Hensen
8 and even Holyoke which is -- Mr. Willick testified to that.

9 So with -- and that -- and that also -- by the way,
10 I -- that also applies to her claim to sick leave and vacation
11 time. 90 percent of what this woman is trying to do here is
12 just in total violation of NRCP 60B. Her dresses, her fur
13 coats, all of it, this stuff was all done and litigated. She
14 waited year -- a year, two years to come back before this
15 Court and ask for this stuff.

16 My argument is that Judge Sanchez -- Sanchez?
17 O'Malley.

18 THE COURT: O'Malley.

19 MS. ALLEN: Sorry. Judge O'Malley didn't have the
20 right to address dresses and fur coats. But, you know, if the
21 Court wants to do that, then I -- then I ask the Court to take
22 note of the evidence presented about her bankruptcy. She
23 claimed \$3,000 for five people on her bankruptcy and then she
24 has the audacity to come before this Court and say she had

1 10,000 additional dollars? I don't know if she realizes she
2 opened herself up to a federal perjury charge, the likes of
3 which either -- anybody in this room could have reported her
4 for, and that's a federal felony.

5 I'm requesting the Court deny her motion with regard
6 to the beneficiary -- survivor beneficiary on the PERS. I'm
7 asking the Court to deny the sick time and vacation days. She
8 knew about these. She testified -- she used to open his mail
9 when he was on leave. She knew what he had and she knows he's
10 a city employee. It's common knowledge there that they get
11 sick days and vacation days. This was stuff that all could
12 have been litigated at the time of divorce. She just has sour
13 grapes because my client came in and tried to modify his child
14 support. Pardon me.

15 With regard to -- I'm asking the Court as well with
16 regard to the modification, I'm asking the Court to rescind
17 the contempt and the driver's license suspension in this case.
18 That really affect -- first of all, it shouldn't have happened
19 as a result of my argument on the modification of child
20 support. That never should have happened. But it did and now
21 that is a black mark with regard to his employment. And
22 that's clearly a -- that's a huge problem for him. And it
23 could affect future employment in any sort of law enforcement
24 or anything like that.

1 I'm requesting the Court -- I'm requesting the Court
2 -- if -- if the Court is still inclined to order the PERS, the
3 income that my client from his retirement go to Ms. Kilgore
4 through his PERS and the retirement, that that -- that portion
5 of the money be counted as income against the child support,
6 because that's what -- that's income to her. If she's getting
7 retirement from his retirement account, and she's getting it
8 now, then that needs to be counted against his child support
9 obligation. Again, one of the best witnesses in this case for
10 the -- for our side was Marshal Willick and he said that's
11 absolutely counted as income.

12 Because the Court is likely going to order that
13 she's entitled to take his PERS as settlement -- or his PERS
14 retirement now in addition to the child support, in addition
15 to what she makes, she would be making more money than my
16 client. Oh, a considerable amount more than my client. As a
17 result of that, I'm requesting that the Court go back to the
18 order of 6535 on the -- on the counseling for the child and
19 I'm asking the Court to split it down the middle. That is
20 only fair. When she is -- her income will far surpass my
21 client's. Once she starts taking all this money, he will be
22 making significantly less than she is.

23 The Court's indulgence.

24 Just briefly going back to the modification, I

1 apologize, my notes are everywhere. My client presented proof
2 to the Court that he attempted to get other employment. And
3 he couldn't for two reasons. He talked to the Court and I
4 asked him specifically did you look for other jobs. He's
5 specifically trained in law enforcement. That's been his
6 career for 27 years. And he -- I said did you try to find
7 other employment. He goes I did, I -- I tried to apply as a
8 PI which would go along with, what, like a law enforcement
9 type background.

10 No one would hire him because he was terminated from
11 the city and because he has an open Workers' Comp claim.
12 First of all, no one is going to hire anybody with an open
13 Workers' Comp claim, but what I will note to the Court is that
14 was not refuted by Mr. Page or his client at all. They didn't
15 even discuss that. That is irrefutable at this point, that
16 his -- it wasn't gain -- willful underemployment on his part.
17 He wasn't sitting around, you know, twiddling his thumb and
18 eating bonbons. This is something that he tried to get
19 another job and he could not get one. That goes directly to
20 the issue of modification.

21 Your Honor, and my client's further requesting that
22 he be entitled to draw on Ms. Kilgore's PERS retirement at
23 this point. Nothing in the statute doesn't allow that, that
24 she'll have a prepayment pen -- if there would be a penalty to

1 it, attached to it, but the statute doesn't address that at
2 this point; therefore, if the statute doesn't address it, that
3 means that the legislative intent was that it be equal to both
4 parties. So he is -- or asking the Court to order that she do
5 the same. If -- if he's going to have to pay his retirement
6 now, she should have to do the same.

7 Marshal Willick said this Court is a Court of
8 equity. This is -- we're supposed to make parties as equal as
9 we can after the divorce and put them as much in the position
10 as we were before the divorce. And if this Court continues to
11 order things that my client has to pay for repeatedly, we're
12 -- we're completely at an uneven playing field. And I would
13 reserve the rest of my time.

14 THE COURT: Okay.

15 MR. PAGE: One moment.

16 THE COURT: How many time -- how many minutes you
17 got left?

18 THE MARSHAL: She's got 14.

19 THE COURT: 14 left?

20 THE MARSHAL: Yes, Your Honor. 2 -- she only did
21 11.

22 THE COURT: She's got -- okay. Well, Mr. Page, if
23 you need it, you have 20 minutes. Defendant's closing
24 argument.

1 MR. PAGE: Child support modification. Child
2 support modification -- and I'm -- I'm just going to go with
3 what Counsel said and then I'll get on my own issues. Child
4 support modification was first heard in front of Judge Kathy
5 Hardcastle in December of 2014. Judge Hardcastle denied the
6 request to the extent that she did.

7 Income can be imputed to Mr. Kilgore based upon his
8 ability to earn a living and doing a job search and things
9 like that, but really the matter is one -- on one hand, res
10 judicata because it's already a decided matter. The Court
11 never set an evidentiary hearing on modification going forward
12 of child support.

13 Also, child support once accrued is nonmodifiable.
14 That's Day vs. Day, Ramaciotti vs. Ramaciotti (ph). The Court
15 is well familiar with those line of cases. So it's not a --
16 really a legal possibility to go back in time and
17 retroactively modify child support.

18 I will get into the issues that I perceive in this
19 case. The first issue are payment to Ms. Kilgore of the PERS
20 defined benefit plan in Richard's name, commencement of the
21 date of the payments from Richard to Eleni, what amount
22 Richard should be paying to Eleni, designation of Eleni as the
23 survivor beneficiary, dele -- designation of Eleni as the
24 beneficiary upon Richard's retirement, division of vacation

1 and sick pay, child support, custody, IRS, debt, attorney's
2 fees, the coat, and the dresses.

3 Under any definition, 123.220, the retirement income
4 stream is a community property asset. The decree of divorce
5 awarded that community property asset to Ms. Kilgore under
6 Gema (ph), Fondi (ph). The case law is that we cannot deprive
7 Eleni of her sole and separate property.

8 Mr. Willick testified that Gema, Fondi, Sertic, and
9 Wolfe (ph) stand for the proposition that normal date for
10 receipt of retirement benefits by the non-working spouse and
11 the first eligibility for retirement regardless of whether the
12 employee decides to retire. Mr. Willick further indicated
13 that the rule is modified slightly in Henson that the court
14 was willing to look under the California rule to -- in order
15 to actually order a flow of payments to be provided in the
16 underlying court order or file a motion requesting payment at
17 that time.

18 Out spouse payments begin at the time of the request
19 that the employee could have -- could have retired. That was
20 Mr. Willick's testimony. It's also supported here in the
21 Holyoke opinion where the supreme -- supreme court said in
22 particularly, we have held the non-employee spouse has a right
23 to his or her share of the employee spouse's benefits starting
24 from the date of eligibility for retirement. That is on Page

1 5 of Holyoke, on Page 6.

2 Accordingly, the calculation proportion share is
3 based upon the employee spouse's eligibility for retirement
4 and when the employee spouse does not retire when he is
5 eligible, he must pay the non-employee spouse that amount that
6 the employee spouse would have received if the employee spouse
7 had retired at that time. That's on Page 6 of Holyoke, para
8 -- first third of the page. And let's see. Here, it also
9 says this Court has repeatedly held that the non-employee
10 spouse has a right to share as soon as the employee spouse is
11 eligible to retire. That's on Page 6 of Holyoke.

12 To put a further finer point on it, when Mr. Willick
13 was asked about it, he said Mr. Kilgore was obligated at that
14 time to begin paying Ms. Kilgore and Mr. Willick said by court
15 order or upon the request of the out spouse, yes. That
16 request was made on December 30th, 2014. That's when the
17 calculation starts.

18 Ms. Hellwinkle's testimony supports Mr. Willick's
19 theoretical discussions as well. Ms. Hellwinkle confirmed
20 what we all know, and that is at 20, 30 -- I'm sorry, 20, 50,
21 after 20 years of service at age 50 with an unreduced benefit.
22 That's when they're first eligible to retire with an unreduced
23 benefit. Ms. Hellwinkle reviewed her file, Mr. Kilgore's
24 file, and concluded that in April of 2011 Mr. Kilgore had 20

1 years of service and was 50 years of age; therefore, he was
2 eligible to retire without any early retirement penalty.

3 Therefore under the case law under Gema, Serta --
4 Sertic, Fondi, and Holyoke and Mr. Willick's testimony, my
5 client was entitled to receive the pension income stream.
6 Under Henson, that has to start on December of 2014. We would
7 like it to start in March of 2013, but we believe the Henson
8 opinion forecloses an earlier start date. She simply didn't
9 know and didn't have Counsel who was aware of that.

10 As to Mr. Kilgore's testimony, he testified I can
11 retire anytime I want. I can work for as long as I want. He
12 under -- he indicated that he understood that if he continued
13 working that Ms. Kilgore would not receive any monies from
14 PERS directly. And he also agreed that Ms. Kilgore's interest
15 in the retirement was her community property. He understands
16 that if he continues working a day beyond today, he takes
17 property away from Ms. Kilgore that rightfully belongs to you
18 and that is prohibited by the Nevada Supreme Court.

19 Ms. Kilgore testified that she has not received her
20 share of the community property. She would like to receive
21 it. She understands that if Mr. Kilgore does not retire, she
22 is never going to receive it. She agrees that leaves her in a
23 vulnerable position. So she would like to be protected. She
24 would like to receive her property. She would like to -- like

1 -- not to be divested of the property that belongs to her.

2 As to Ms. Kilgore, Ms. Hellwinkle had her file
3 available. Ms. Kilgore is not available to retire at the
4 earliest until 2023. There was some breaks in service due to
5 the birth of -- of Richard, Jr. and Nicholas which pushed that
6 back for some time.

7 Exactly how far, we don't know. But in any event,
8 to require Ms. Kilgore to take an early retirement penalty so
9 he -- she can pay Mr. Kilgore his share of the community
10 property income stream that he has would be a violation of
11 Nevada law. It would be a violation of Holyoke, Sertic, Gema,
12 Fondi, and Wolfe and all of those other cases that exist in
13 Nevada.

14 As soon as 2023 comes or 2024, whatever the case may
15 be, upon her first eligibility for retirement under Chapter
16 286, then offsets came be looked at. But until that time, he
17 has to pay her. She does not have to retire early in order to
18 satisfy some demand on his part for an offset. I -- when the
19 payment to Ms. Kilgore should have commenced, we believe it to
20 be December 30, 20 -- 2014.

21 The amount of payment. Ms. Hellwinkle testified
22 that in order to generate a monthly amount that would be due
23 to Ms. Kilgore as of December 2014, she would need a court
24 order or she would need the member to request that from the

1 system. Ms. Kilgore cannot request it. All the -- all PERS
2 can give her is preexisting paperwork. So she can't request
3 that anything be created from Mr. Kilgore's account as far as
4 a monthly payment amount that he should be receiving.

5 So we're going to need an order from you to PERS to
6 go ahead and determine how much Mr. Kilgore would have
7 received if he retired in December of 2014. Then we can
8 determine the percentage that goes to Ms. Kilgore and make the
9 appropriate arrears schedule and either have Mr. Kilgore pay
10 that off in payments or reduce it to judgment.

11 The designation of Ms. Kilgore as a survivor
12 beneficiary, the survivor beneficiary as we know is the time
13 period between when Mr. Kilgore is working now to the time he
14 actually retires. That can be modified at any time. It's not
15 addressed often, but it is an asset, because it does have
16 value because if Mr. Kilgore dies before he retires, Ms.
17 Kilgore is still cutoff; therefore, this should be a mutual
18 order that Ms. Kilgore's a survivor beneficiary of his account
19 and Mr. Kilgore is the survivor beneficiary of her account
20 until each one of them actually retires and to ensure both
21 income streams are appropriately protected. We know it was
22 never discussed because that was the testimony of both
23 parties.

24 We should know that in Gremands (ph), Gremands was

1 an omitted asset case regarding the nuisance value of leases.
2 Nobody knew at that time that the leases had a great value by
3 being a nuisance for the corporations that wanted to build
4 there even though the parties were aware of all the existence
5 of the leases. They just didn't know there was any asset
6 value there. The Nevada Supreme Court concluded that even in
7 that instance when you're aware they existed but don't know
8 there's a value to them that they had to be divided. The same
9 is true here. So we are going to ask that the survivor
10 beneficiary designation be made reciprocal.

11 As for the designation of the beneficiary which is
12 upon retirement of Mr. Kilgore and Ms. Kilgore, we're again
13 asking for a reciprocal order. Both parties testified that
14 the beneficiary designation was never discussed. Mr. Willick
15 testified that all there has to be is a mistake. And the
16 mistake is it was never put into the decree.

17 In Tomlinson (ph), there was a specific right to
18 partition anything divided by fraud or mistake. There was no
19 designation of the beneficiary. And Mr. Willick indicating
20 that in his opinion that the failure to specify the
21 beneficiary indicated there was an omitted asset. The
22 consequence to Ms. Kilgore if she's not made the beneficiary
23 is upon Mr. Kilgore's death she's cutoff forever. The same is
24 true for Mr. Kilgore should she predecease him.

1 The retirement benefits are really the most valuable
2 assets of this marriage. Because they're the most valuable
3 asset of this marriage, they should be treated carefully.
4 They should be treat -- they should be protected. We should
5 all agree both these parties have spent most of their adult
6 lives with each other. It would be flied in the face of the
7 facts, it would be unjust, inequitable, for either party to
8 run the risk of being cutoff as to the survivor benefits upon
9 the out -- one predeceasing the other. That is not what is
10 intended.

11 Now as far as the new 125.150(3), the motion was
12 filed within three years of the decree of divorce being filed,
13 so that does not come into play.

14 As to equity, Mr. Willick indicated that Nevada is
15 an equal division state. About 1975 they were an equitable
16 division. About 1995, they became an equal division state.
17 So we are obligated to make sure that in addition to thinking
18 about whether this is equitable, that we do an equal division.
19 125.150(1)(b) states that we shall divide community property
20 equally. Unless we go ahead and make my client the surv --
21 the beneficiary of his pension and per the -- for him, the
22 beneficiary of her pension, we will not effectuate the intent
23 of the legislature in making this an equal division state.

24 Ms. Hellwinkle's testimony was that once they

1 retire, we have to name a beneficiary, that the survivor
2 beneficiary designation stops upon retirement. And we have to
3 elect an option for their beneficiary. That's what we need to
4 do.

5 Now as to the division of vacation and sick pay,
6 community property, under 123.220, we looked at Exhibit C
7 which was the termination paycheck for Mr. Kilgore. We have
8 Mr. Willick's testimony regarding terminal sick leave and
9 terminal sick pay. The state of the law on omitted vacation
10 and sick pay, he says it's not been squarely addressed by the
11 Nevada Supreme Court with which I certainly agree.

12 The presumption is that we'll analyze it -- we -- as
13 we would with all other property interest. If they're omitted
14 as they were because they were never raised in the decree,
15 omitted asset law applies as anything else.

16 So that it's treated as property. The amount of the
17 terminal sick leave was 8510.45. The amount of the terminal
18 vacation leave was 68 -- 6808.36. There is no dispute that
19 Mr. Kilgore never wrote Ms. Kilgore a check for half.

20 She -- both parties testified that it was never
21 raised by anyone. Mr. Kilgore admits that the sick and
22 vacation pay was accrued during marriage. That's time index
23 16:07. He admits under 16:07 that -- of the July 25 hearing
24 that he never wrote any check and he agreed that it was never

1 addressed in the decree.

2 So we're certainly asked that Ms. Hellwinkle
3 received one-half of each of that. The last hearing on the
4 15th of August you have concluded that I believe that it
5 already have been a decided matter because we did some further
6 investigation and we concluded during the hearing it had not,
7 so we're here with that today.

8 Now as to the IRS debt, I think you have the numbers
9 before you. There is no independent evidence as to any \$1600
10 that Mr. Kilgore has paid. That may be why the number is a
11 little bit higher than the 9 or \$10,000 that the parties have
12 testified to is what the total amount was.

13 And as to the dresses and the coat, we leave it up
14 to Your Honor, but my client has provided the information that
15 she believe that the coat was worth about \$8,000 because of a
16 very nice long length mink coat. Regardless of whether it was
17 gift or however it was, it does have value. Her research
18 indicates that it was worth about \$8,000. The dresses are
19 worth 2 to \$3,000. She is asking that she receive the full
20 value of those because they were gifts. And Mr. Kilgore had
21 no right to dispose of those items. We're asking you to
22 accept her testimony that Mr. Kilgore said he was going to
23 return it, said he was going to return it, said he was going
24 to return it and never returned it and now we're without the

1 -- both the fur coat and the dresses.

2 We also have the unreimbursed medical expenses.
3 Your Honor has seen the schedule that my client has provided.
4 Mr. Kilgore owes about \$3,202 to her for that. Mr. Kilgore
5 has not provided any evidence because he's failed to upload
6 any receipts that there are any unreimbursed medical expenses
7 on his end. So we're requesting that my client receive that
8 as well.

9 So we have the last issue of attorney's fees. We
10 can address that in a separate Brunzell brief. I can indicate
11 to you that after three half days of trial and the intent and
12 prep -- prep work that the attorney's fees that my client has
13 incurred from roughly December of 2014 through to today are
14 approximately \$7,500. I think given the amount of time that
15 has passed, the amount of work that has been done, that's an
16 exceptionally reasonable rate. The work involved here has
17 been to some degree complex. And as required something more
18 than a passing knowledge of family law.

19 Ms. Kilgore should be considered the prevailing
20 party and the positions that Mr. Kilgore has taken to be
21 intransigent -- and really for the sake of being intransigent
22 and that therefore she should be awarded her attorney's fees.

23 I will reserve the remainder of my time, but I
24 believe that is everything for the moment unless you have any

1 questions, Your Honor.

2 THE COURT: How many minutes does have left, Johnny?

3 THE MARSHAL: 18.

4 MR. PAGE: 18?

5 THE COURT: So he used --

6 MR. PAGE: Yeah, I'm at 17 on mine.

7 THE MARSHAL: I got 17 ,21.

8 MR. PAGE: I got 17, 27.

9 THE COURT: You have three minutes --

10 MS. ALLEN: 17?

11 THE COURT: -- that you can add --

12 MR. PAGE: I'm --

13 THE COURT: -- to your eight --

14 MR. PAGE: I'm going to -- I'm going to --

15 THE COURT: -- or five.

16 MR. PAGE: Oh.

17 THE COURT: You have five rebuttal. You can add
18 three, because you did 17.

19 MS. ALLEN: Did I go 14 or do I have 14 left?

20 THE COURT: You have six left, probably. Oh, you
21 probably went six --

22 THE MARSHAL: It's 20 -- it was 25 minutes
23 altogether.

24 THE COURT: Well, 20 and five. So Ms. --

1 THE MARSHAL: And she had -- and she did 11 minutes.
2 THE COURT: Her -- so Ms. Allen took 11 minutes?
3 THE MARSHAL: Yes.
4 THE COURT: She would have 9 added to her five. And
5 Mr. Page will have three added to your five. So for rebuttal,
6 Ms. Allen has up to 14 minutes, Johnny, and then Mr. Page, he
7 will have up to eight minutes.
8 MR. PAGE: Oh, and I'll just -- before I come back,
9 we do have the schedule of arrears and I'll -- I'll take -- it
10 wasn't part of my outline, but we -- I do need to address this
11 very briefly. Johnny, we can go ahead and start the clock
12 again here.
13 THE COURT: Start the clock. Okay. Go ahead.
14 MR. PAGE: And that's going to be the schedule of
15 arrears. We did submit to Your Honor schedule of arrears.
16 That --
17 THE COURT: Please locate and print.
18 MR. PAGE: -- schedule of arrears was Exhibit M, N,
19 somewhere in there.
20 THE COURT: That's one of the exhibits.
21 MR. PAGE: Mr. Kilgore testified I was ordered to
22 pay \$1200 a month. Did I pay it? He admits that he didn't
23 pay it. He attachably agrees that the amount of the arrears
24 from February through now are -- is \$10,800.

1 I would have to regard that as being open and
2 willful contempt of this Court's orders. And this Court
3 should deal with Mr. Kilgore accordingly as someone who is
4 willfully obeying -- disobeying a Court's order. We're not
5 exactly here on an order to show cause, but there is
6 absolutely no good reason for Mr. Kilgore to simply flout this
7 Court's orders, to thumb his nose at it, to not file a motion
8 for reconsideration or not file a 60B motion, to do nothing
9 other than ignore what this Court has ordered him to do. So
10 we would ask that my client be awarded attorney's fees, that
11 potentially he be sanctioned, and that a repayment schedule be
12 put in place under pain of further contempt.

13 With that, I will reserve the rest of my time.

14 THE COURT: All right. So we shaved another minute
15 off. You're going to be at --

16 THE CLERK: Seven minutes.

17 THE COURT: Seven minutes. Thank you. All right.
18 You have up to 14.

19 MS. ALLEN: All right.

20 THE COURT: Plaintiff's rebuttal, up to 14 minutes.

21 MS. ALLEN: Yes, Your Honor. With regard to the
22 modification of child support, that was at issue here. Judge
23 Hardcastle didn't deny it. She couldn't make a decision on it
24 because apparently the Defendant hadn't filed an updated

1 financial disclosure form and she couldn't find my client's
2 disclosure form. So it's my understand that that was sort of
3 punted for a trial issue is -- is what the -- my
4 understanding. So that this was never decided and that was
5 part and parcel of these proceedings. And I'm not even sure
6 why we would be talking about child support on both sides if
7 it wasn't part of that.

8 So the Court absolutely can modify the child support
9 back to 1214 and up until the date that my client was rehired
10 with the city. I believe it was about a year -- a year's
11 worth of child support which set him back.

12 And -- and that's -- that is the absolute proper
13 thing to do in this case is -- is modify his child support for
14 that period of time from when he filed until he got his job
15 back and that money deserves to be credited back to him or
16 credited towards future child support payments and/or
17 potentially the PERS.

18 You know, he can -- Mr. Page keeps arguing that my
19 client's eligible for retirement and he is. So is his client.
20 She is eligible to retire right now and both Hellwinkle and
21 Willick testified to that. Will she get a penalty for it?
22 Yeah, she will, but she's still eligible to retire.

23 He -- Mr. Page is using the word eligible as
24 eligible for the purposes of him because he won't, you know,

1 get a penalty versus her. She's not eligible because she
2 will. That's not what the statute says and that's not --
3 that's not at all what it says. Eligibil -- eligibility for
4 retirement is when you can retire. She can retire and she
5 could draw on her pension at that point in time.

6 With regard to sick days and vacation time, this was
7 not just a mistake, that we're not talking about an omitted
8 asset that was a mistake. The -- again, I go back to the idea
9 that these parties hired lawyers. These lawyers set out very
10 carefully in a divorce decree this 20 -- 20 page or however
11 long it is all of the things that these parties were going to
12 separate. That included sick days and vacation which they
13 admitted because my client doesn't have any of -- money from
14 her sick days and vacation and she gets paid for that with the
15 Scottsdale.

16 And then it goes straight to the survivor benefits
17 in this case. She's not entitled to have him change that.
18 And the funny thing is he argues well, it was an omitted thing
19 and they just didn't really know about it. They had two
20 attorneys, two competent attorneys.

21 But what you have to look at is two things. One is
22 she lives with her boyfriend, right? That's not the bigger --
23 that's not even the biggest issue here. She filled the form
24 out herself. She's been filling the form out herself since

1 she started with the school district. She knew there were
2 survivor benefits. She knew about this. This is again sour
3 grapes. She's coming back later and saying well, I'm entitled
4 to this and I want that. This was not in the decree.

5 If the Court deems it proper somehow for -- for her
6 to have survivor benefits in this case, usually in reciprocal
7 ones because that's what Mr. Page said, that is completely
8 contrary to the law in the state of Nevada under Holyoke and
9 under Henson. Holyoke was decided in 2014, I want to say?

10 MR. PAGE: Spring of this year.

11 MS. ALLEN: I apologize. I think it was 2014. Oh,
12 no. 2000 and -- I'm sorry, 2016. This is 2016 this was
13 decided. And in the footnote again, they flat -- the supreme
14 court flat out said an interpretation of the decree and
15 enforcement of terms versus modifying the parties' decree.
16 The Court would be modifying the parties' decree if the Court
17 made that order.

18 With regard to my client and PERS, he has not been
19 willfully ignoring the Court's order. He has to live. He has
20 -- he has to pay child support and he still has to live. And
21 so it's -- things have been stretched for him, especially when
22 we look at one year of the -- the child support, one year of
23 not working, on unemployment. The guy lost everything. He
24 still owes money to a bunch of people, all trying to keep up

1 with child support which he couldn't do.

2 This Court should not order that the -- the PERS go
3 back to December of 2014. It -- the -- the case law says upon
4 the Court's order. The Court ordered those PERS payments to
5 be made in March of 2016. The arrears should not go back
6 nearly two years, you know, before that just because that's
7 when he was eligible to retire.

8 They brought up the motion orally -- by the way, it
9 wasn't even filed in open court. It was an oral motion made
10 in front of the -- I don't know if it was this Court or
11 someone -- but anyways, the -- the oral motion in court and
12 the Court in -- in March of '16 actually made the order for
13 the PERS to be made. The Court should not go prior
14 retroactively before March of 2016.

15 With regard to the coats and the -- and the fur, I
16 -- I hate to -- I hate to belabor it, but again, I -- you
17 know, this goes back to the idea that the divorce decree was
18 closed and we're passed that and now we're just arguing about
19 things, you know, later that, you know, we're trying to get
20 our hands on or we want money for, whatever.

21 But this is the funny thing, and this goes to
22 credibility of Ms. -- Ms. Kilgore. She said my client -- she
23 moved out and my client changed the locks on the house, right?
24 And she called the police and the police said they can't do

1 anything about it. That has to be a lie, right? Because
2 Metro would have let her in the house. That's her home. They
3 weren't divorced. There wasn't even community property
4 proceedings at -- at -- there wasn't even a divorce proceeding
5 at that point in time. She had the right to have access to
6 the house. Even if she was a roommate in the house, Metro
7 would have let her in, because she had access and right to the
8 house. Her story doesn't make sense for that exact reason.
9 Henson

10 How many times has -- has the Court had, you know,
11 parties come in and I -- you know, I had to use Metro to get
12 in my home? They would have let her in. At a minimum, they
13 would have made arrangements with my client. But that was
14 still her home and she still had a hundred percent access to
15 that house. Even if he changed the locks, Metro would have
16 forced the issue and let her in. That's why her story doesn't
17 make sense. That's why you know she's lying about this -- the
18 Suburban and everything else. Her credibility is shot
19 literally with that one statement.

20 (COUNSEL AND CLIENT CONFER BRIEFLY)

21 I'm requesting the Court deny her request entirely
22 for the coats and these dresses that we have nothing on that.
23 There is zero. And I go back again to the bankruptcy issue
24 and then the -- the Metro thing. That's ludicrous. And when

1 you talk to my client, what does he say? My lawyer's told me
2 not to do it. That's a completely reasonable answer for
3 someone who was told not to change the locks on his house
4 which is what any lawyer would advise his client who is going
5 through a divorce.

6 I'm requesting the Court -- if they're ordering the
7 PERS, it only be -- only start from March 16th of -- or March
8 of 2 -- 2016, sorry, forward, not back to 2014, because it
9 wasn't requested back then. The Court -- it says in -- in the
10 case court -- under court order. The court order started in
11 March of 2016.

12 I'm requesting the Court modify that year of child
13 support. And talk about an inequality to another human being
14 when he's forced to pay child support and he's unemployed. It
15 wasn't wilful un -- unemployment at that point at all. There
16 was a problem and her boyfriend went and reported him to his
17 job for something that happened completely outside of work.
18 If anything, they're to blame for his job loss.

19 And I -- I already said -- I already talked about
20 the survivor benefits in this case, but, you know, I go back
21 to -- I was looking at -- I apologize. I was looking at
22 Holyoke and it says -- I quotes in there an agreement to
23 settle pending divorce litigation constitute a contract and
24 it's governed by the general principles of contract law.

1 That's kind of just basic law school like 101, right?

2 Divorces -- this is a contract. And this was the --
3 this was the contract that these parties entered into. And
4 the sad thing is now Ms. Kilgore is upset about it and she's
5 angry about her contract and she wants to go back and try to
6 reopen that. And that -- that is completely contrary to the
7 entire purpose of having divorce law and having a divorce
8 decree. The decree is the reason it stops everything. It
9 says this is the end and now we're stopping and now we're not
10 going to be able to gut each other anymore. But she just
11 wants to continue gutting my client. And it's just not
12 appropriate. And I would submit it.

13 THE COURT: I'm just curious. Johnny, how many
14 minutes did she take?

15 THE MARSHAL: It's --

16 THE COURT: How many did she use of?

17 THE MARSHAL: She still has five. She's on 19, 7 --
18 9, 17.

19 THE COURT: You have five minutes. You're done, Ms.
20 Allen?

21 MS. ALLEN: Thank you, Your Honor.

22 THE COURT: Okay. Mr. Page has seven, if I recall.
23 Seven minutes, Mr. Page.

24 MR. PAGE: I'll start off where Ms. Allen started

1 off and that was with modification. To reiterate, child
2 support once occurred is nonmodifiable. That has been black
3 letter case law in Nevada for 50 years. It was set at 521 and
4 once those payments accrue, they're accrued. There was no
5 appeal, reconsideration, or anything else filed to otherwise
6 blunt the permanency of those orders.

7 Counsel talks about when my client is first eligible
8 to retire. She may want to think back to Mr. Willick's
9 testimony on the 25th of July. Mr. Willick indicated that a
10 person is vested in PERS after five years. That doesn't mean
11 they can retire then and start receiving money. Mr. Willick
12 indicated quite clearly that that is not what first
13 eligibility means. First eligibility means, and that has to
14 do with the first eligibility to retire without an early
15 retirement penalty.

16 You may recall the discussion to have another
17 attorney up north, I can't remember her name, but they
18 concluded that was the meaning of Sertic, Gema, Fondi, and
19 those line of cases that it is upon first eligibility. That
20 is reasserted here in Holyoke. Obviously, if the Nevada
21 Supreme Court had meant something different than that, they
22 would have said so, but Mr. Willick indicated -- and everyone
23 else would agree as well. That's the only logical conclusion
24 as to first eligibility for retirement is upon a first

1 eligibility without early retirement penalties.

2 So that's what we have there as far as when Mr.
3 Kilgore was due to pay Ms. Kilgore her community property. He
4 should have been paying her back in March of 2013. He got
5 away with about a year and a half of divesting her of her
6 community property because she didn't know any better. But
7 once additional Counsel was on the case, it was pointed out,
8 and Your Honor is well familiar with this as well, that once
9 someone makes the request under Henson for the receipt of the
10 benefits, they're duty bound to be paid. The request was made
11 in December 30th, 2014. So therefore, that is the
12 commencement of the determination of what Mr. Kilgore owes Ms.
13 Kilgore.

14 He talks about how unfair it is to him. It is
15 completely inequitable and unfair to Ms. Kilgore to be
16 divested of her community property now for what's approaching
17 two years. And six months after Your Honor made the order to
18 Mr. Kilgore to at least start paying something, yet he comes
19 here after three and a half days of trial still refusing to
20 pay Ms. Kilgore a dime of what he's obligated to pay her under
21 Nevada community property law.

22 As to the claim about credibility, Ms. Kilgore
23 testified that she -- Mr. Kilgore would not let her into the
24 house and that she called Metro in. We see this at other

1 times. Metro will not force some -- force their way into a
2 house. Mr. Kilgore refused to let Metro in the house. Metro
3 tells Ms. Kilgore what they tell everyone else, it's a civil
4 matter. Take it up with the court. I hear that at least on a
5 monthly basis from clients who are having the dispute with
6 their ex-spouse.

7 There is no evidence and it didn't occur that her
8 fiancé Mr. Rou caused Mr. Kilgore to lose his job. Him saying
9 it is doesn't make it so, a circular reason that fails to meet
10 any level of legal proof. It's a fantasy constructed in Mr.
11 Kilgore's mind to try and justify his open intransitives to
12 obeying this Court's orders.

13 And they claim that this is -- well, this is a
14 contract, this is a contract. No, they didn't. It is why
15 omitted asset case law exists. It is why omitted statutes now
16 exist. Because people getting divorced all of the time fail
17 to list all of their assets, fail to recognize all of their
18 assets. It is why we have post-divorce work. In order to
19 effectuate the community property routine of valuing and
20 dividing assets properly that we have this, why it exists. So
21 if you don't list it and you should list things with
22 specificity, then it's an omitted asset. So the survivor
23 beneficiary is an omitted asset, the beneficiary is an omitted
24 asset, and the vacation sick pay are omitted assets as well.

1 My client is asking that the legislative requirement
2 of an equal division of community property be enforced and in
3 order to ensure that occurs, she should be made the survivor
4 beneficiary, the beneficiary, and the omitted assets of the
5 vacation sick pay should be divided and she should receive
6 one-half of that. Whether Your Honor chooses to reduce that
7 to judgment and make it collectible any and all legal means or
8 have Mr. Kilgore make payments is a discretionary matter for
9 you. But in any event, her rights to those -- that property
10 needs to be honored and respected and she's obligated under
11 law to receive it and so she should.

12 I don't think I have anything further unless you
13 have any questions, Your Honor.

14 THE COURT: Okay. How many minutes do you have
15 left, Johnny?

16 THE MARSHAL: I have two minutes.

17 THE COURT: Two minutes. Anything else, Mr. Page?
18 You're good?

19 MR. PAGE: I don't believe so. I think we're good.

20 THE COURT: That concludes closing arguments and the
21 trial and I'll take it under advisement. Check back with me
22 in like 30 minutes, because I have a bunch of issues. All
23 right. So I'm going to use my notes and just pronounce the
24 oral decision and I need about 30 to 40 minutes to get through

1 all that. 3 -- what is it, 3:15?

2 MR. PAGE: Yes.

3 THE COURT: Come back at a quarter til.

4 MR. PAGE: Very good.

5 THE COURT: Thank you.

6 MR. PAGE: Thank you for your time.

7 MS. ALLEN: I --

8 (COURT RECESSED AT 15:19 AND RESUMED AT 16:30)

9 THE CLERK: We're on.

10 THE COURT: Okay. It's going to be called a speed
11 decision, an oral decision, because we're going to have
12 another hearing because we probably all have somewhere to go
13 to after 5:00 o'clock today. And I'm going to give you guys a
14 half hour hearing somewhere, we have a 1:30 for a half hour,
15 for wrap-up issues, because once I'm going to issue my speed
16 issue, you guys are going to absorb this upon this end or
17 review the video. We -- because I would say about 75 percent
18 of the time I spent there was a snafu on the child support and
19 everything had to be recalculated. And plus when he got his
20 job back, that's why everything was on temporary orders. So
21 this is what we're going to start with.

22 Joint legal and now permanent primary of Nicholas to
23 Mom, the finding will be that the permanent primary was
24 temporarily assigned back in January 2016 or our hearing on

1 February 9th -- February 9th, 2016. That was when the
2 temporary -- it's becoming permanent now by stipulation today.
3 They've always had joint physical of Richard, Jr., so it's
4 going to be remained joint physical for purposes of Wright vs.
5 Osburn in the child support calculation.

6 So what happened was Dad lost his job on October
7 13th, 14th, according to the termination letter. I think he
8 wrote 17 somewhere. And four days later, you filed that
9 motion again in a court to modify the child support. That
10 started the time to preserve any reduction in child support.

11 Because he got his job back, there is no indication
12 that he was -- he got himself fired on purpose, basically. In
13 other words, then he gets the benefit of the minimum or the
14 unemployment checks. And this is how we calculated it. He
15 did provide evidence attached to his financial disclosure
16 form. There's been four or five filed. But I do know like
17 mid -- he got two checks in November 2014. One was like \$64,
18 the other one was the 371. The 370 was going to -- 371 was
19 going to be the regular checks every week. So he's getting
20 371 net every week.

21 So I don't know if there is some piece of evidence
22 sit -- sitting in there, but we go off of the gross, not the
23 371 net. So I added 10 percent back in of \$37 and maybe it
24 would put him at 408. 408 times 52 weeks in a year, divided

1 by 12, gives him 1768. And then what you do is you take --
2 you take -- at that time they always kept joint physical until
3 January -- yeah, about Feb -- well, February 9th I pronounced
4 the temporary change in custody.

5 So we're going to be joint physical Wright vs.
6 Osburn, all the way through. So what you do is you take 17 --
7 1768, 25 percent of Dad's would be -- I had the girls take
8 notes. I know it was everywhere.

9 THE CLERK: 25 percent.

10 THE COURT: Please do it on a calculator. Take
11 1768, because some numbers I can memorize. He was at 442.
12 You file -- you still with me?

13 MS. ALLEN: No, but that's fine. Just keep going.

14 THE COURT: They have joint physical custody of --

15 MS. ALLEN: Right.

16 THE COURT: -- the boys. They stay joint physical
17 until Nicholas went with Mom --

18 MS. ALLEN: Right.

19 THE COURT: -- realistically January this year.
20 February, I pronounced that. The entire 2015 and the last two
21 months of -- we'll start in December 2014 because he got a few
22 checks. But he didn't really get his full unemployment checks
23 until like the full four weeks, four checks in December, four
24 or five checks.

1 So December 2014, he's going to be at 1768 gross per
2 month which is the 371, add 10 percent back in for taxes to
3 make him a gross. So you take 408 -- all right. 408, 52
4 checks in a year, divided by 12, is 1768.

5 MS. ALLEN: Okay.

6 THE COURT: You follow me?

7 MS. ALLEN: Yes.

8 THE COURT: Okay. That's how I get the 1768.

9 That's what Dad's getting every month --

10 MS. ALLEN: That's his income.

11 THE COURT: -- gross. Take 25 percent for two kids,
12 you get 442.

13 MS. ALLEN: 440 what?

14 THE COURT: \$442.

15 MS. ALLEN: Got it.

16 THE COURT: Now Mom still kept her full-time job
17 with the school district. At that time, she was at --
18 something like 57,000 plus per year according to her FDF. And
19 we found her GMI back at that time -- you girls have the
20 notes? Okay. Mom's GMI back in December 2014. I got it --
21 it's somewhere -- it's somewhere here. This is why I had the
22 -- I got it. I got it. It is -- I know her 25 percent came
23 out to 1412. So just work your way backwards. 1412 divided
24 by 25 percent. Mom was making 5648 gross per month. You can

1 find that number in her FDF back in late 2014. She wrote down
2 5648. So I use that number and I took 25 percent of that.
3 Mom would be at 1412. Did you have 1412 written down
4 somewhere?

5 THE CLERK: No, because we only went on the 18
6 percent.

7 THE COURT: We're not there yet. We're still on
8 the --

9 THE CLERK: No, and that's where we started.

10 THE COURT: -- joint physical.

11 MS. ALLEN: Oh, okay.

12 THE COURT: All right. Put it down there Mom's FDF
13 in late 2014 was 5648 GMI. Want to confirm that, Mr. Page?
14 You can look it up later if you want, but I -- that's where I
15 got the number. I took 25 percent of that and Mom would be
16 1412. Now you subtract joint physical, Dad's 442. You with
17 me? This is why it's so complicated.

18 MS. ALLEN: Okay.

19 THE COURT: 5648 times 25 percent, Mom would
20 normally pay Dad her 25 percent of 1412.

21 MS. ALLEN: Okay.

22 THE COURT: What's Dad's 25 percent?

23 MS. ALLEN: 442.

24 THE COURT: 442. So what do you do? You subtract

1 the difference. She is -- would owe him more. She would owe
2 him.

3 MS. ALLEN: A thousand dollars.

4 THE COURT: So the difference is \$970. But what you
5 do is you take out -- according to her FDF, I think your
6 health insurance for the kids was listed at 426. Half of that
7 would have been Dad's. So you get a 213 discount off of your
8 970 and hopefully that's the -- then that's the number I got
9 and my girls will agree. We talked about it. 757 is the net.

10 MS. ALLEN: But isn't he paying that through D.A.
11 child support?

12 THE COURT: Hang on.

13 MS. ALLEN: He's has almost a zero --

14 THE COURT: Whoa.

15 MS. ALLEN: -- balance over there.

16 THE COURT: Hang on. I'm just looking at the --
17 what the order would have been --

18 MS. ALLEN: Okay.

19 THE COURT: -- when I preserved his request. And
20 I'm going back to the time he --

21 MS. ALLEN: Okay.

22 THE COURT: -- filed in October. But I'm not really
23 starting him. He filed at the end of October, right? So what
24 I -- what do I do with November? It -- Mom would owe him more

1 because he would be set at 200. It would be set at 200 and
2 then Mom -- give Mom the discount. But I figured we just
3 start with a clean slate. We'll do it on December 1st
4 forward.

5 You want to calculate for the wrap-up issues
6 hearing, the prorate -- October prorate November? That's
7 going to take another half hour for me to figure out, okay,
8 because I'm not that quick at math. But would -- for December
9 1st --

10 MS. ALLEN: Right.

11 THE COURT: -- stay with me, 757 for 13 months
12 because we're going to run it to December -- we're going to --
13 that's joint physical, Wright vs. Osburn.

14 MS. ALLEN: Okay.

15 THE COURT: I'm going to run joint physical until
16 December 2015. I think we're -- he got rehired and then I
17 think about January 2016 Nicholas went to live primarily with
18 Mom.

19 MS. ALLEN: Right.

20 THE COURT: So that's going to be my finding. So
21 that would be a credit to Dad of --

22 MS. ALLEN: Correct.

23 THE COURT: -- 15 -- 13 months. 9,841 back to Dad's
24 side of the ledger.

1 MR. PAGE: If I may interject. Mom had primary
2 physical custody of Nicholas from about December 2014 on.

3 THE COURT: That was a disputed issue. We were
4 working on reunification. We were working on counseling. I
5 did not make a formal pronouncement of temporary primary to
6 Mom until a year later.

7 MR. PAGE: Unfortunately --

8 THE COURT: We were working with what we got now.
9 We were working on reunification. We weren't trying to lay
10 blame or point fingers, just try to restore the relationship.
11 But on paper, they had joint physical and I'm enforcing that
12 part of the order.

13 MR. PAGE: On paper, they may have or Mom was
14 incurring all the expenses for Nicholas which would have been
15 more food, more electricity, more clothing. They could have
16 -- could be in --

17 THE COURT: That's -- okay, understood also, but not
18 -- the child didn't -- one -- the child was at that time
19 choosing who he wanted to stay with and how much he wanted to
20 spend and what can a parent do? It's a part of the realities
21 of parenting. We'll look at that, but right now I'm working
22 off of hard numbers. Take it up at the -- at the -- but I
23 didn't consider that. Either you'll have to file a motion, a
24 10 day -- I mean, a motion for reconsideration or a motion for

1 amend the judgment or the findings.

2 MR. PAGE: And we can certainly -- I think we can
3 certainly consider it now since we're here that the reality is
4 is that she would be paying child support for a child that's
5 living with her full-time from December 2014 on.

6 THE COURT: Well -- but we were working also on
7 reunification and not pressing the issue or forcing the child.

8 MS. ALLEN: Right.

9 MR. PAGE: Right, but that is something Mom has
10 cooperating with that something she shouldn't pay -- pay a
11 financial penalty for.

12 MS. ALLEN: Your Honor, I -- I appreciate that, but
13 I don't think that this was actually raised during the course
14 of this trial.

15 THE COURT: When I pronounced the 521 on Dad, that
16 number went away. It was redone because we -- we used the
17 Wright vs. Osburn until an order is actually changed
18 temporarily by the Judge.

19 MS. ALLEN: Right.

20 THE COURT: Now yeah, the issue is wide open.
21 Relative income of the households and the expenses of
22 Nicholas, because he wanted to stay more with Mom. Maybe that
23 would be for consideration, but that wasn't part of my
24 calculations, because, you -- you know, again, you're getting

1 to the discretionary.

2 MR. PAGE: Yes.

3 THE COURT: Let me cite to you the Barbagallo (ph)
4 case. It's more -- it has to be extraordinary. I mean, Mom's
5 -- she's getting -- the finding would be Mom would have to pay
6 Dad the child support because he legitimately lost his job
7 really not through his fault of his own because he got his job
8 back. So she was the major wage earn -- wage earner.

9 So right now the hard number is 9841, credit on
10 Dad's side of the books.

11 MR. PAGE: I --

12 THE COURT: If I reduce it by a few dollars, you're
13 asking me to make a compelling or extraordinary saying that
14 the Mom's household expenses and the fact that she would have
15 to pay Dad 757 child support, \$757. And so what does it cost,
16 another \$200 back on her side of the ledger to feed Nicholas?
17 This is why the parties are just -- they can't agree the sky
18 is blue.

19 MR. PAGE: If you take a look at Barbagallo --

20 THE COURT: But Barbagallo should be --

21 MR. PAGE: Is -- is --

22 THE COURT: -- compelling and extraordinary.

23 MS. ALLEN: And Your Honor --

24 MR. PAGE: But Barbagallo had to deal with the

1 situation where --

2 THE COURT: And these aren't people --

3 MR. PAGE: -- they're --

4 THE COURT: -- who make --

5 MR. PAGE: -- they're asking --

6 THE COURT: -- 8.25 --

7 MR. PAGE: -- for an upward deviation.

8 THE COURT: -- an hour minimum wage.

9 MR. PAGE: And --

10 MS. ALLEN: And --

11 MR. PAGE: And this --

12 THE COURT: Okay. So --

13 MR. PAGE: -- this one's a downward deviation also.

14 A compelling circumstance --

15 THE COURT: Mom's making 58 --

16 MR. PAGE: -- would be the fact --

17 THE COURT: -- 50 --

18 MR. PAGE: -- that --

19 THE COURT: -- she's pulling in 5600 gross and Dad's

20 at like 1768. There's a three to one ratio at the time. So

21 who is more able kind of to bear the -- you know, feeding of

22 two mouths, feeding the kids at the time?

23 MR. PAGE: Well, let --

24 THE COURT: Somebody on --

1 MR. PAGE: Well --

2 THE COURT: -- 1768 gross per month or somebody on
3 5648 gross but now you have to shift 757 of that --

4 MR. PAGE: I think what you may have been doing at
5 the time was you probably did the --

6 THE COURT: It's 1 --

7 MR. PAGE: -- 18 -- the 18 percent calculation for
8 Richie --

9 THE COURT: One thing for Mom saying --

10 MR. PAGE: -- and then did the --

11 THE COURT: -- yeah, I'm going to be paying more
12 because Nicholas is staying with me in reality full-time, so I
13 got to -- I got to feed another mouth in my house. But then
14 Dad has to live on 1768 when he's used to enjoying the 7300 a
15 month standard of living --

16 MR. PAGE: Obviously, he does --

17 THE COURT: -- and there's nothing he can do until
18 he's fighting to get his job back and he got his job back.

19 MR. PAGE: Under 030B -- or B to 030, there's a duty
20 -- he has a duty to pay support to Nicholas regardless of
21 anything else.

22 THE COURT: Mom -- and when they have joint physical
23 on paper --

24 MR. PAGE: But they didn't have joint physical.

1 Everyone agrees that --

2 THE COURT: -- Mom would be paying --

3 MR. PAGE: -- Nicholas puts --

4 THE COURT: -- Dad legitimately --

5 MR. PAGE: -- spends a hundred percent of this
6 time with Mom.

7 THE COURT: It's joint physical on paper. Yes, Mom
8 would pay 757.

9 MS. ALLEN: Like -- like I appreciate all of this,
10 but I mean, this time for argument has kind of passed. I
11 think the Court is issuing a ruling. And I appreciate Mr.
12 Page's concerns.

13 THE COURT: Right. And I walk through it
14 analytically and right now I'm not convinced it's compelling
15 and extraord -- extraordinary to lower Mom's 757. Typically
16 when you're paying 426 a month, 213 each, for your kids'
17 health insurance, and I don't know why the school district is
18 so high, 400 a month for -- okay, that's 200 per kid. Usually
19 I'm -- and it's a hundred percent kid for health insurance. I
20 made Dad pay the 213 and knocked it off a year, 999, or 9
21 whatever it was. I don't have to make Dad pay that 213 due to
22 hardship. I could have just said well, cancel it and then you
23 can go on Medicaid or something. I don't know. I mean,
24 there's not a lot of money to go around.

1 MR. PAGE: And it falls under --

2 THE COURT: But I -- I hit Dad up 213 and gave you
3 that discount. So that's another savings to you and I don't
4 know to give you another discount because you got to pay more
5 food for Nicholas in your house because he chooses to -- at
6 that time live with you because of the terrible, terrible
7 situation with the father-son relationship at that time. I
8 don't think I can give you anymore discounts. And I -- I
9 didn't necessarily have to hit Dad up 213 his half share of
10 insurance and I did.

11 MS. ALLEN: Can we --

12 MR. PAGE: Are -- are we --

13 THE COURT: On a 1768 income.

14 MS. ALLEN: I understand. Can we -- I'm sorry, but
15 can we --

16 THE COURT: I think that balances out.

17 MS. ALLEN: It does. Can we move on?

18 THE COURT: Let's move on.

19 MS. ALLEN: Thank you.

20 THE COURT: Save it. I'm not -- this isn't going to
21 be 7.50 until we have our wrap-up issues hearing, but I think
22 I'm comfortable right now analyzing it and leaving 757 with
23 the discount for Mom at 13 months. So there's 9 -- right now
24 there's 9841 sitting on the books on Dad's side of the ledger.

1 And let me progress, because there's going to be an offset
2 here. I'll just jump into that offset, because not in any
3 particular priority -- separate issue.

4 Dad's sick days and value pay, by the time we had
5 the evidentiary hearing, the Doan (ph) case had already
6 resulted and the supreme court ruling and because of the
7 supreme court ruling that we -- the Nevada legislature reacted
8 by issuing a new statute on omitted assets. And when you're
9 dealing with omitted assets, you have to -- well, there is a
10 -- there's a fraud standard there.

11 MR. PAGE: It's a mistake.

12 THE COURT: Fraud or mistake, yes. My finding is
13 though that I think it was earned clearly. And we have the
14 testimony of Marshal Willick on the omitted assets, and let me
15 refer to that in my notes just real quick. I'll tell you
16 what. Why don't you say we'll get to that at the -- maybe the
17 wrap-up issues, but it's all here on the record what Marshal
18 Willick testified. And it looks like our expert that was on
19 the stand believe that omitted assets such as sick and
20 vacation pay are omitted and can be divisible as a community
21 property interest. So what I did was I added the 8510.45 and
22 the 6808.36, write this number down, the grand total was
23 15318.81. Cut that in half and we round it out to 7659, round
24 -- .41 rounded down. 7659.

1 So what you do is you take the 9841 sitting on Dad's
2 side of the books and you back out -- I'm -- I'm getting to
3 that. I was going to do that. And you back out the 7659,
4 your balance is 3182. But there is -- when you calculate the
5 -- when you calculate the child support, you remember I set
6 them at 1200? I'm adding another thing to the mix for 2016
7 when I said Dad would pay -- and that's -- sorry, the 1200.

8 MR. PAGE: But that's the property -- that's the
9 retirement, the pension.

10 THE COURT: No, there was a child support. What it
11 was -- now I'm into 2016 January. Now Mom has primary of
12 Nicholas and they still have joint of Richard. So this is how
13 I calculated it. This is where it's going to get -- that's --
14 where -- I -- this snafu gets kind of hairy. This is what you
15 do. For January 2016 forward, Dad is now -- he got rehired on
16 January 4th. All right. So he -- four days later in January.
17 7362 gross per month. I pick that off of his FDF on 88,000
18 something a year salary. His 18 percent of Nicholas would be
19 1325, but he gets the benefit of the cap for the six -- first
20 six months of the year at 806 per one kid, capped. So it's
21 not 1325. He caps out for Nicholas at 806 for the first six
22 months. July 1st, you know, the chart goes up to 820. So we
23 went up another 14. So I'm going to hold him to 820 a month.

24 We are now end of October. So we are 10 months into

1 this. This is what Dad would have been paid. And I haven't
2 even checked yet and because the D.A. is taking it out of your
3 check. Guess what? The D.A. is going to have to -- and we're
4 going to have to figure out the wrap-up issues the final --
5 minus any payments the D.A. took out of your check. But in
6 principle, you would paying 806 for the first six month, July
7 1st it goes up to 820, you cap out for Nicholas.

8 Now Mom is at -- for this year 5885 GMI. With the
9 50/50 of Richard, Jr., you got to take 18 percent of Mom's
10 which will come out to 1059. Now remember, under Wesley v.
11 Foster (ph), we do not cap out. Right. You -- you with me?
12 So Dad's -- you go back to Dad's 1325 for Richard, 18 percent,
13 and then you take 1059 of Mom's 18 percent. The -- the
14 difference is 266.

15 So Dad being the greater wage earner would pay Mom
16 266 -- would be the -- on top of his -- okay, stay with me.
17 Dad's 266 for Richard and then what you do is you take the 806
18 for Nicholas and you get 1072 --

19 THE CLERK: Plus the one --

20 THE COURT: But you add 193 for the Mom's health
21 insurance.

22 MR. PAGE: More than that.

23 MS. KILGORE: It's 220.

24 THE COURT: We'll readjust the few dollars at the

1 wrap-up issue hearing --

2 MR. PAGE: Okay.

3 THE COURT: -- but right now I had 193. And the
4 D.A. is right is following 193. And guess what? Their audit
5 has to be completely redone unless you two lawyers sit down
6 and do the math together.

7 1265, so --

8 THE CLERK: Per month.

9 THE COURT: Right. And what did I order for Dad?
10 1500 back in January? He's overpaid. So now he has --

11 THE CLERK: (Indiscernible*16:48:18).

12 THE COURT: Dad would had to pay 1265.

13 MS. ALLEN: Right.

14 THE COURT: Now when he goes to 820 for Nicholas, he
15 would have had to pay 12 -- another 14 bucks. 79? So July
16 1st forward, I'm going to hold him to 1279, but they've been
17 taking 1500, right? So you get a credit. And then we're
18 going to do the math --

19 MS. ALLEN: Credit him back.

20 THE COURT: Right. So for the first six months,
21 take it off 1500 if they collected it, 235 a month for six for
22 six months and then 249 for July, August, September, October,
23 four months.

24 MS. ALLEN: Right.

1 THE COURT: You with me?
2 MS. ALLEN: Yeah.
3 THE COURT: Okay.
4 MS. ALLEN: Sort of.
5 THE COURT: So what you do is you take -- take --
6 whatever those numbers was.
7 THE CLERK: I -- we got the 235 --
8 THE COURT: Yeah, take 1500 from the temporary order
9 and back out 1265.
10 THE CLERK: Yeah.
11 THE COURT: That's how you get to 235.
12 THE CLERK: Okay.
13 THE COURT: Times six months first half of the year.
14 THE CLERK: Okay. Equals --
15 THE COURT: Then you take 2 -- add another \$14. So
16 1500 --
17 THE CLERK: (Indiscernible*16:49:22).
18 THE COURT: -- minus 12 -- I'm sorry, back out 14.
19 Correct. So Dad would get a credit of 221.
20 MR. PAGE: I'm sorry, how many months did you take
21 that for?
22 THE COURT: For four months.
23 MR. PAGE: For -- for the 12 -- for the 1265? How
24 many months did you do that for?

1 THE COURT: The first half of the year, because July
2 1st the cap supply.

3 MR. PAGE: The higher amount didn't start until
4 February.

5 THE COURT: Yes, but we're -- for the trial
6 purposes, it -- it would be bene -- I don't know if it would
7 benefit Mom, but for January we're starting Dad -- because Dad
8 got rehired in January.

9 MR. PAGE: Right. So --

10 THE COURT: So --

11 MR. PAGE: -- you didn't order the higher amount
12 effective until February --

13 THE COURT: It would ben --

14 MR. PAGE: -- so there was a --

15 THE COURT: Well, I don't know why you would argue
16 -- because it would benefit Mom, if you want me to start
17 February, then Dad gets the benefit of the lower amount.

18 MR. PAGE: Because if you --

19 THE COURT: Do you want to start --

20 MR. PAGE: -- if you want --

21 THE COURT: -- or February? Up to you.

22 MR. PAGE: -- if you did this temporary without
23 prejudice, there is \$1500 that should have been paid --

24 THE COURT: Do you want to start January --

1 MR. PAGE: -- to Mom in January that she didn't
2 receive. I want to make sure that he --

3 THE COURT: We're not on credits and payments yet --

4 MR. PAGE: Okay.

5 THE COURT: -- in principle. I said Dad got his job
6 back early February. So I'm starting him --

7 MR. PAGE: No.

8 THE COURT: -- on the new amount of child support in
9 February. I may have ordered it in February, but yeah, I know
10 I ordered 1500 and they're going to do the wage withholding.
11 That's totally separate.

12 MR. PAGE: Okay. But you --

13 THE COURT: We're going to look at it all -- you're
14 going to have to get an audit when we come back to court --

15 MR. PAGE: And --

16 THE COURT: -- of all payments to date.

17 MR. PAGE: He got his job back in December,
18 because --

19 THE COURT: He got his job back officially on -- he
20 testified January 4th.

21 MR. PAGE: But we had -- we also had testimony where
22 he got a big chunk of money in December. No, that -- in -- at
23 our -- our hearing in February, it was indicated that Dad
24 received a chunk of money in February --

1 THE COURT: Whose testimony --
2 MR. PAGE: -- about \$13,000.
3 THE COURT: -- was it under? Harry -- Hellwinkle's
4 testimony?
5 MR. PAGE: No, it wasn't Hellwinkle's testimony. It
6 was from the --
7 THE COURT: Was it Dad's testimony?
8 MR. PAGE: It was from the February 9th hearing.
9 That's where the --
10 THE COURT: Can you establish it at trial? I didn't
11 have none of my notes on that, eight pages of -- nine pages of
12 notes here.
13 MR. PAGE: It's -- it was -- it was never at trial.
14 It was at the February 9th hearing. The --
15 THE COURT: You didn't --
16 MR. PAGE: When you -- when you --
17 THE COURT: -- establish that at trial. What is
18 this chunk payment?
19 MS. ALLEN: I don't know anything about this. I
20 wasn't here on February, so I don't even know -- we -- I don't
21 remember any conversations about this.
22 MR. PAGE: We can just have reflect reality. We --
23 THE COURT: From what I -- my notes, Dad said I got
24 my job, I was rehired on January 4th, 2016.

1 MS. ALLEN: Okay. With no back pay. With no back
2 pay.
3 MR. PAGE: He -- he --
4 MS. ALLEN: That was part of the testimony too --
5 MR. PAGE: He did get --
6 MS. ALLEN: -- was that he had no --
7 MR. PAGE: -- back -- back pays.
8 THE COURT: You don't miss something -- if you don't
9 miss something like that, you're going to ask him in cross
10 examination did you get a chunk of money in December.
11 MS. ALLEN: I asked him if he got --
12 THE COURT: None of that --
13 MS. ALLEN: -- back pay.
14 THE COURT: -- in my notes.
15 MS. ALLEN: He didn't get any back pay.
16 MR. PAGE: He -- he got a chunk of money in
17 December. He got about \$13,000. That came out of -- that's
18 part of the record.
19 THE COURT: It -- that would be --
20 MR. PAGE: It's part of the record. Trial or no
21 trial, it's part of the record.
22 THE COURT: Everything's on the table until we go to
23 trial. If you don't put it up -- you don't decide it at
24 trial, the Judge is not going to go on temporary hearing

1 notes.

2 MR. PAGE: It was -- it was part of the record. I
3 didn't think we would have to bring up something again that's
4 already part of the record that was --

5 THE COURT: You didn't even bring it up --

6 MR. PAGE: -- made explicitly clear --

7 THE COURT: -- in closing arguments.

8 MR. PAGE: -- at the February hearing as to what he
9 -- what money he --

10 THE COURT: Wasn't even in the notes, was it?

11 MS. ALLEN: I don't --

12 MR. PAGE: It was --

13 THE COURT: On February 9th.

14 MR. PAGE: It was certainly part of the argument,
15 because --

16 THE COURT: There was no --

17 MR. PAGE: -- I distinctly know I brought it up.

18 THE COURT: Not even findings.

19 MS. ALLEN: But here's the prob -- here's the
20 problem, Your --

21 THE COURT: Look in the February 9th minutes.
22 Anything in here about back pay? Because if it's something
23 important, it would go in the minutes. Nothing.

24 MR. PAGE: No, I -- I've got --

1 THE COURT: It was a lengthy hearing.
2 MS. ALLEN: Your Honor, I --
3 MR. PAGE: We -- we sent out a subpoena to the City
4 of Las Vegas. The City of Las Vegas --
5 THE COURT: Are we on the same page? Because number
6 one, nobody had any -- if you got to duke it out at trial,
7 duke it out at trial if there was back pay or no back pay.
8 MS. ALLEN: I -- I -- we -- I -- the back pay -- the
9 word back pay has not been mentioned the entire --
10 THE COURT: Not once --
11 MS. ALLEN: -- three times --
12 THE COURT: -- in the --
13 MS. ALLEN: -- I've been here.
14 THE COURT: -- trial.
15 MS. ALLEN: But, Your Honor, I hate to do this
16 and --
17 THE COURT: And -- yeah.
18 MS. ALLEN: And Mr. -- all this deference to Mr.
19 Page --
20 THE COURT: My job is to get out of here by --
21 MS. ALLEN: -- he's --
22 THE COURT: -- by --
23 MS. ALLEN: -- arguing about this and I can't --
24 THE COURT: And that's why I want to warn you guys.

1 File a motion for new trial and file a motion for
2 reconsideration or the parents sit down and say I've had
3 enough of this, because that's what lawyers do. They're kind
4 of OCD. We don't miss any details. They don't miss any
5 details. But I live by the rules of court and the rules of
6 trial. If it's something big, big time money you're talking
7 about and these two fight like cats and dogs, put it on the
8 record at trial.

9 MS. ALLEN: I didn't hear it.

10 THE COURT: Put it on the record at trial.

11 MS. ALLEN: Okay.

12 THE COURT: I didn't.

13 MR. PAGE: I mean, I -- I --

14 THE COURT: I'm looking at my notes.

15 MR. PAGE: Your Honor, I've got it right here where
16 he received \$9,472 in December.

17 THE COURT: You did not

18 MR. PAGE: And that was --

19 THE COURT: -- bother to --

20 MR. PAGE: That was part of --

21 THE COURT: -- question him on direct or cross exam
22 on that, something for 9,000. These people are nickel and
23 diming each other. How do you miss nine grand?

24 MR. PAGE: It was --

1 MS. ALLEN: I didn't even know about it.

2 MR. PAGE: It was -- it was part of our record in --
3 in February.

4 THE COURT: You never --

5 MR. PAGE: I thought that was subsumed into the
6 February 9th order.

7 THE COURT: You never assume with a judge.

8 MR. PAGE: No, I didn't -- I didn't assume.

9 THE COURT: Not in my (indiscernible*16:53:50).

10 MR. PAGE: I said it was subsumed into the February
11 9th order this \$9400. He just --

12 THE COURT: Pull the --

13 MR. PAGE: -- flat out omitted.

14 THE COURT: Pull the February 9th order.

15 MS. ALLEN: He didn't omit it. He --

16 THE COURT: Everything's on the table. Everything
17 is contested. I -- when I -- when I'm ready, I'm geared up
18 for trial. When you put trial on, you better put everything
19 on. You count for every penny. Just like she wants the fur
20 coat, the 10 dresses, and he wants this and that, you don't
21 miss nine grand. You get it on the record. And I have
22 nothing in my trial notes.

23 MS. ALLEN: I'm so sorry, but is there any
24 possibility we can take this up at a -- the subsequent

1 hearing, so I could --

2 THE COURT: You can. I mean, I'm not closing the
3 door on anything right now, but I'm telling you there's
4 nothing in my trial notes. And you're -- I'm bound by my
5 trial notes, because that's formal evidence. That's formal
6 testimony. It's what your lawyers do in motion hearings. You
7 argue -- you argue whatever until you persuade the Judge, but
8 it's not the actual trial. The -- these three days were the
9 actual trial.

10 Sit on that, Mr. Page. I don't know if you can
11 convince me otherwise, but right now I didn't have it in my
12 trial notes.

13 MR. PAGE: I mean --

14 THE COURT: And I'm -- look.

15 MR. PAGE: (Indiscernible*16:54:48) trial notes.

16 THE COURT: I'm not here to cause any kind of
17 inequities, but we live by trial rules and we live by the
18 rules of conducting a trial.

19 MS. ALLEN: Oh, my --

20 THE COURT: Okay.

21 MS. ALLEN: -- gosh.

22 THE COURT: All right. And trials are very formal.
23 Very formal. Table that, because right now I -- I don't know
24 what to do with that. Okay.

1 MS. ALLEN: Oh, my gosh.

2 THE COURT: So we talked about the IRS debt, right?

3 And I think I'm going to -- did I talk about the IRS debt?

4 THE CLERK: No, not yet.

5 THE COURT: No. We're still on the child support.

6 THE CLERK: Yes.

7 THE COURT: Are you guys lost on the child support?

8 Because --

9 MR. PAGE: What month are you starting --

10 THE CLERK: You just need to get --

11 MR. PAGE: -- with on the 2 -- on the credit?

12 THE COURT: What I did was I took half of Mom's sick

13 pay and vacation pay entitlement to Dad's half and I backed it

14 out of Dad's credit. And his ending credit right now is --

15 THE CLERK: You changed it.

16 THE COURT: It's going to be changed. It's going to

17 be changed because there's also payments the D.A. collected.

18 MS. ALLEN: Right.

19 THE COURT: My original number was like 1318

20 ultimately on Dad's side, but we -- there's a lot more now

21 with the health insurance and all that. If you lawyers want

22 to do a chart for me next time, we'll walk it together. If we

23 put our three heads together and then I'll -- I'll spend time

24 to walk it -- what month-by-month.

1 MS. ALLEN: Based upon your order?

2 THE COURT: Yeah.

3 MS. ALLEN: Okay.

4 THE COURT: I get these at motion hearings. The
5 parents just want to throw their hands up and say look, let's
6 just call it a day or whatever or just -- we'll come to a
7 number. You're going to -- you're going to save your
8 attorneys 350 an hour to have to figure it out. It's not easy
9 when you -- when you want me to do it month-by-month. I will
10 explain it to you, because I have a lot of patience, and I'll
11 walk you through it month-by-month with findings, my findings
12 based on the trial record.

13 Do you want to have that sit down or you -- I
14 suggest you lawyers absorb it and get through a number . But
15 right now, I'm about 1318, but that can change because of the
16 health insurance premiums and all that.

17 MS. ALLEN: Right.

18 THE COURT: Well, yeah, because in January she has
19 primary in Nicholas and remained joint -- and you know where I
20 got the 1265.

21 MS. ALLEN: Right.

22 THE COURT: You know the -- or the 1235 -- or the
23 235 and the 221.

24 (COURT AND CLERK CONFER BRIEFLY)

1 THE COURT: 235 times six months is 1410. And then
2 you take 221 times four months. 884. But add -- add that to
3 the 1410, there's another like 2294 going to be credited on
4 Dad's side of the ledger.

5 THE CLERK: Right.

6 THE COURT: Your -- Your Honor --

7 THE COURT: And you add that to the 13 -- did we add
8 that to 1318?

9 THE CLERK: No. No. No. So then that -- that's 12
10 -- 135 then minus Mom's share of the vacation --

11 THE COURT: Now you're --

12 THE CLERK: -- and sick pay --

13 THE COURT: Hey, you're kind of losing --

14 THE CLERK: -- and --

15 THE COURT: -- me. Yeah, I'm losing that.

16 THE CLERK: We -- we did it before.

17 THE COURT: We'll do a chart. Well, you see where
18 I'm at? I'm -- he -- he gets 442 for the while 2015.

19 MS. ALLEN: Right.

20 THE COURT: In -- in December. And then January
21 2016 we jump him up to 14 -- I believe 806 plus 266. So --

22 THE CLERK: So it's 193.

23 THE COURT: Probably, yeah. Plus 193. And then
24 we'll do it that way. But we'll walk -- I don't have time

1 right now. We'll walk you through that and let you guys
2 absorb it. But you kind of get the general con -- where I am
3 setting his salary and I'm -- where I'm setting her GMI, her
4 salary.

5 MS. ALLEN: And does the Court -- and --

6 THE COURT: And who had joint? And who had primary
7 and joint of one?

8 MS. ALLEN: And does the Court eventually take into
9 -- and there's remaining orders obviously, but does the Court
10 eventually take into account I guess the PERS issue and the --
11 the -- the -- she will end up with additional income on her
12 side?

13 THE COURT: I'm not there yet. That's my next --

14 MS. ALLEN: I'm just wondering.

15 THE COURT: So you're -- we're good on the vacation
16 pay and sick pay for now in principle. We'll talk -- take it
17 up more -- I probably need -- probably need a half a day of
18 wrap-up issues unless you guys --

19 MR. PAGE: At -- at a minimum.

20 THE COURT: At a minimum.

21 MR. PAGE: For the 1500 you're assuming that Mom was
22 receiving for January she never received it. Your order for
23 1500 was only effective beginning February. So --

24 THE COURT: That's a payments and credits issue,

1 like a D.A. audit issue. I'm -- I'm pronouncing the order --
2 the final order for each month who is obligated what, minus or
3 credits to any payment that the D.A. took out or anything she
4 didn't get. Follow me?

5 MR. PAGE: I -- I think so.

6 THE COURT: Okay. So we'll get the D.A. to square
7 that away or you guys will sit down together. Hopefully you
8 two can sit together and say we got -- we got the math. But
9 if you -- but I'm telling you the principles of what we're --
10 I'm holding each of them to incomes and what their child
11 support obligations is. And that's two years. We're going on
12 almost two years worth of child support obligations.

13 All right. In principle, the 10,000 IRS debt looks
14 like is going to wash out, because I have evidence from Dad
15 that they took 3629 in 2012. And another 2091 in 20 -- I back
16 -- it's backwards. In 2012, they took 2091 from Dad intercept
17 and they took 3629 in 2014. Can't locate 2013. It might be
18 nothing, it might be something. And the interest and
19 penalties when they rack up is going to put you up way over 10
20 grand.

21 I got evidence -- rebuttal evidence from Mom today
22 that they took 1444 in 2012 and in 2013 they took 3674. When
23 you add it all up, you're both over five grand. It's just
24 going to wash out.

1 So Dad's request for 3,035 would be denied --
2 because it looks like tax intercepts took care of everything.
3 All right. That's my -- kind of my principle -- my order on
4 that. I plan on washing out the -- the IRS debt.

5 The big one, right? Which is the Sertic issue and
6 all that Holyoke? All right. Finding, decree of divorce was
7 filed 3/13/13. The Sertic case says -- it's all here. What
8 my trial notes indicate that we had a long discussion with our
9 expert on the stand Marshal Willick about how Sertic works.
10 And one of Mr. Page's briefs, there's supplemental brief.
11 Yeah, filed on March 10th. I agree with him when you said
12 that Sertic, you're -- the eligibility is not when you're --
13 if a worker does not retire at first eligibility, the worker
14 must pay the spouse whenever the -- the spouse -- whatever the
15 spouse would have received if the worker did retire at that
16 time. Holyoke kind of strengthens that argument and the
17 citation Holyoke decision. Paperwork everywhere. On Page --
18 I think it was 6? Got it right here. Page 5. In particular,
19 we have held that the non-employee spouse has a right to his
20 or her share of the employee's spouses benefits starting from
21 the date of the eligibility for retirement. Here's the deal.

22 Periwinkle (sic) -- or Hellwinkle? Hellwinkle. The
23 PERS lady, she testified Dad was eligible to retire with 20
24 years at the age of 50, correct?

1 MR. PAGE: Yes.

2 THE COURT: On 4/20/11. Right? But he had his 20
3 years in on somewhere like August 2009, but he wasn't 50 years
4 old. Doesn't matter, because Holyoke says you must file a
5 motion and request it to the Court. Now you probably disagree
6 with me, Mr. Page, but my ruling is formal motion filed.
7 Unfortunately, Mom represented herself pro per and she didn't
8 have the benefit of your legal expertise to file it in a
9 formal motion to the Court by way of your supplemental
10 briefing which was filed on March 10, 2015. So you know where
11 I'm going with this.

12 Your formal filing occurred -- a verbal request, and
13 even though you made a verbal request or you may have argued
14 it to me on 12/30/14 at the prior hearing does not count as a
15 motion filed under Holyoke. And I didn't know what to do at
16 the time. She was trying to couch it and in terms of
17 enforcing and getting the QDRO done. Yes, she's pro per.
18 She's not a lawyer. And what pro per would ever figure out
19 this complicated PERS stuff being a non-police officer
20 category and all that? So, so technical. And there's -- I
21 understand. She has no way what -- she would have figured it
22 out.

23 But then she hired you Mr. Page and then that's when
24 you started to argue the income stream. And you formalized

1 that in a motion on March 10th, 2015. I needed something in
2 writing. Let me cite to that Holyoke decision. I said I'm
3 not closing doors on it, but it appears to me you need to file
4 that motion. Look at the supreme court wording. Look at the
5 supreme court wording here on Page -- Page 3. Oh, case --
6 it's not line. In the bottom. However, the district court in
7 the Holyoke decision, the trial judge noted that the
8 Respondent must file -- first file a motion requesting to
9 begin receiving payment of her portion, the income stream.
10 Following the district court's order, Respondent filed a
11 motion for immediately election of her share of the PERS
12 benefits. That's the income stream request. So word motion
13 in there. You need a motion. Your motion was your supplement
14 filed on March 10th. So neither of you -- you wanted 2016?

15 MS. ALLEN: That's when the Court ordered.

16 THE COURT: Yeah. You need to file a motion. They
17 preserved it on March 10, 2015 It -- I know she did it pro
18 per, but Mr. Page made the proper request, the correct request
19 on March 10th. I'm going with March 10th because it's his
20 motion, the first filing I ever got. We had some discussion,
21 12/30/14. I think then it was starting to come to light and
22 I'm like whoa, I've never picked this up on Mom's pro per
23 motion. She wouldn't -- whoever wrote that, I don't know if
24 you have an attorney or a paralegal, ghostwrite that motion,

1 but there was not even a close discussion of income stream.

2 MR. PAGE: Leo Flangles (ph) was helping her a
3 little bit.

4 THE COURT: She wanted enforcement of an order, like
5 hey, let's get the QDROs done. But nobody knew about this
6 whole thing and it was a learning -- it was a learning
7 educational opportunity -- I mean, thing for us to do this
8 trial with Willick on the stand. We needed to have this
9 testimony done. Okay. I wouldn't do it if I was an expert on
10 all these things. I mean, I know a lot of stuff from 16
11 years, but this stuff's super complicated. So you with me?
12 I'm going March 10th, 2015 forward. She's start getting her
13 roughly 1200. We don't know until the QDRO is done, correct?
14 And in the decree, we're going to enforce the decree. They
15 agreed they were going to split the cost of any QDROs.

16 MS. ALLEN: They're done.

17 THE COURT: Mom testified she fronted 850 to
18 Schneider. Was it for this PERS deal? If you fronted it, did
19 you get the money back? Either way, parties are going to
20 split it.

21 MS. ALLEN: I thought Hellwinkle testified that they
22 both --

23 THE COURT: If you want to have --

24 MS. ALLEN: -- had QDROs on file.

1 THE COURT: -- Willick do it --
2 MS. KILGORE: But the QDROs --
3 THE COURT: -- across the street --
4 MS. KILGORE: -- are done.
5 THE WITNESS: Willick did --
6 THE COURT: -- I don't care. We'll do it --
7 MS. ALLEN: Right.
8 THE COURT: -- 50/50 and if Willick can do it
9 cheaper than 850, I don't know.
10 MS. KILGORE: The QDROs are done.
11 MR. PAGE: The QDROs are done. They were done by
12 Willick's office.
13 MS. KILGORE: Yeah.
14 MR. PAGE: They were done in June of 2015.
15 THE COURT: So we have the true amount of the income
16 stream, don't we?
17 MR. PAGE: We don't know the true amount. We have
18 to get that from Ms. Hellwinkle. There has to be --
19 THE COURT: That --
20 MR. PAGE: It has to do --
21 THE COURT: And now Ms. --
22 MR. PAGE: There has to be an order.
23 THE COURT: -- Hellwinkle knows I'm starting from
24 March 10th, 2015.

1 MR. PAGE: We have to get an order from you to give
2 to Ms. Hellwinkle asking for March 10, 2015.

3 THE COURT: Yeah. And I don't know if it has to
4 come out of Richard's pocket, because we don't know if she's
5 going to get a lump sum. I don't think PERS may lump --

6 MR. PAGE: They -- they won't make the payment
7 directly to her. It has to come from him.

8 THE COURT: Even -- yeah, even though he chooses not
9 to retire.

10 MR. PAGE: Yes.

11 THE COURT: It has to come out of his pocket.

12 MR. PAGE: Yes.

13 MS. ALLEN: And --

14 THE COURT: And we're talking four digits.

15 MR. PAGE: Yes.

16 THE COURT: All right. So with the -- with the
17 assistance on my decision, we're going to -- the QDROs are
18 already done.

19 MR. PAGE: Yes.

20 THE COURT: And now Hellwinkle now has instructions
21 that we're going to start it from March 10, 2015 forward.

22 MR. PAGE: And need an order from you or him doing
23 it, but I'm --

24 THE COURT: The findings.

1 MR. PAGE: -- not going to get his cooperation.

2 THE COURT: This will --

3 MR. PAGE: So I need an order --

4 THE COURT: I'll be called --

5 MR. PAGE: -- from you.

6 THE COURT: -- the findings of fact conclusions of
7 law in the final decision and order.

8 (COUNSEL AND CLIENT CONFER BRIEFLY)

9 THE COURT: Pending any 30 day or 10 day motion for
10 reconsideration, motion for new judgment, new trial, JNOV, or
11 an appeal. Okay. So all I know is that I'm going to start
12 March 10, 2015. Now you guys know. The day he was eligible
13 to retire on 4/20/11 has nothing to do until Mom -- it has
14 nothing to do until Mom filed the formal motion. She hired
15 Mr. Page and he rightly filed that motion on March 10, 2015.

16 Sorry, I know you wanted December 30th, 2014.
17 You're -- you're out like --

18 MR. PAGE: Two months.

19 THE COURT: -- two and a half months. Yeah, under
20 two and a half -- about two month. But somebody's got to make
21 a decision and that's going to be done.

22 THE COURT: QDROs I think then are already done.

23 THE CLERK: Yes.

24 THE COURT: We just to need to know now and we just

1 need to enforce the QDRO. But the QDROs are done. They just
2 sit there until he actually fully retires, right?

3 MR. PAGE: In order to expedite the --

4 THE COURT: So I --

5 MR. PAGE: -- process, can I submit an ex parte
6 order to you directing Ms. Hellwinkle to do the calculation?

7 THE COURT: Okay. I'll tell you right now the fact
8 that he's got to pay 1200 out of the pocket and then possibly
9 1200 in like child support and his 1200 mortgage and lease and
10 whatever his net is, I'm going to -- I haven't sat down yet.
11 I did take a look at it a little bit earlier. For the
12 contempt issues, I'm going to get to that next. I don't know
13 if he'll -- he'll be able to make that, but isn't any
14 different of getting a judgment and doing a writ of execution
15 on the judgment where, you know, they'll take up to 50 percent
16 of your paycheck and you make due. But I haven't even gone
17 there yet. And so we're going to have -- put that as a note
18 for discussion. How much can Dad afford? Is he going to pay
19 -- you know, going to leave him with 30 percent of his pay
20 left to live off, you know?

21 There's things like 100 dry cleaning, if that's for
22 his uniforms or 250 unreimbursed medical, prescriptions you
23 got to pay, we're going to have to take a closer -- closer
24 look at his FDF in order for me to make a -- a fair decision

1 on that.

2 So I'm not here to take anybody to the bank. I
3 don't know if some thing will be for -- forgone, because
4 financial hardship is something of consideration.

5 MS. ALLEN: And then -- well, and just to go back,
6 and then this --

7 THE COURT: It's a --

8 MS. ALLEN: -- whatever she gets --

9 THE COURT: -- property division. Your child
10 support will come first off the top above your rent, your car
11 payment, anything else. So don't even argue child support.
12 That's --

13 MS. ALLEN: I'm not --

14 THE COURT: That's common to Mom.

15 MS. ALLEN: What I'm arguing is --

16 THE COURT: Right.

17 MS. ALLEN: What I'm asking the Court though is at
18 some point then -- but -- but so if we're starting in --

19 THE COURT: So what could I do -- yeah.

20 MS. ALLEN: -- March 15 --

21 THE COURT: Let's say I say he owes her 1200 a
22 month. I don't know if I can make him pay 1200 a month.

23 MS. ALLEN: No.

24 THE COURT: But I want to give her something at

1 least.

2 MS. ALLEN: But what I'm -- no, no, no. What I'm
3 saying is does that 1200 a month that you're crediting back to
4 March of 2015 --

5 THE COURT: Mr. Page, help me make --

6 MS. ALLEN: -- that goes to income now and that
7 changes the whole child support scheme.

8 MR. PAGE: Actually --

9 THE COURT: Yes.

10 MR. PAGE: -- it's property division.

11 THE COURT: Yes, thank you for reminding me. That
12 was one of your things on my checklist. According -- and you
13 had -- you cited to Willick's testimony. Income from any
14 source. Let me compare it. You have a rental house. Mom has
15 say -- pretend you have a rental house and you're getting like
16 500 a month profit. That's a property profit. That's income
17 to you. And I add that to your purposes of child support.
18 Not property -- it's property division, but it's a recurring
19 stream. And just like you're getting his pension because you
20 want to take it early, that's an income stream to you. So
21 your 5648, you're going to add another 1200 for purposes of
22 child support.

23 MS. ALLEN: Correct.

24 THE COURT: His 1200 -- or his 1,000 or something is

1 going to go down to a couple hundred dollars.

2 MS. ALLEN: Well, and it also --

3 THE COURT: It may go down a few dollars.

4 MS. ALLEN: -- because that 2015 was also when he
5 was unemployed.

6 THE COURT: You see how complicated this -- this
7 snafu is?

8 MS. ALLEN: Yeah. No, I understand. But that
9 2000 --

10 THE COURT: Yeah.

11 MS. ALLEN: -- part of that 2015 -- like that's
12 seven months of unemployment. So that puts her income much
13 higher than --

14 THE COURT: And here's the thing.

15 MS. ALLEN: -- his.

16 THE COURT: She never got the money. So I'm not
17 including it for purposes of the child support until these
18 payments are made. So technically I'm not adding it to the
19 child support until she act -- I figure out what he's going to
20 pay her and what he can afford to pay her, another complicated
21 mix. So what do I tell -- eh, I'm going to take this much.
22 Yeah, you can afford the 1200 and now I'm going to add that
23 for child support. You're going to pay less child support.
24 If I say eh, you can only pay like 800 of that 1200 or 600 of

1 that 1200, I'm only adding 6 to 1200 then for purposes of
2 child support and then you're owing her the difference back
3 in, back in, back in. I don't know. We'll have to figure
4 something out with that.

5 You -- in 16 years on the bench, this is the first
6 time I've had to make an order on this, first time. So yeah,
7 never made an order like that before. But you follow me on
8 that one? We're going to talk about that some more at the
9 wrap -- I'm going to probably need a half day. I know. We'll
10 find a half day. It's money issues.

11 So you guys need a couple months to absorb this.
12 Take some time to sit down as lawyers and just do the right
13 thing and see if we can help the Judge do it. I don't have
14 all the easy answers, but it takes time. I don't mind putting
15 our three heads together and going month by month by month.
16 I'm going to make my ruling very detailed, very specific.

17 MS. ALLEN: Okay.

18 THE COURT: So we're good on that. We talked about
19 the IRS. I also talked about -- did I talk about the fur coat
20 or you did --

21 MS. ALLEN: No.

22 MS. KILGORE: No.

23 MR. PAGE: No.

24 THE CLERK: Not yet.

1 THE COURT: Fur coat. This was a tough issue. He
2 said , she said, no videos, no evidence, no witnesses. It's
3 legit. You said 60B, it's banned. O'Malley put it in the
4 minutes. If the parties waived any procedural defects, they
5 agreed -- they agreed, leave it for Judge Moss to deal with
6 the fur coats. Nobody challenged that. It's on the table.

7 Now typically if you're the -- if she moved out and
8 you're the person left in the marital home and typically
9 you're the safeguarder of any big screen TVs or her fur coat
10 or wardrobe, right, but it's challenged by Dad saying Mom had
11 access and I didn't -- it was a credibility issue, I think he
12 -- I believe in what he said he listened to his lawyer and say
13 do not change the locks because she's on title and she can get
14 in any time. I believe you that depending on the mood -- the
15 mood of the day or which cop you got that day, cops will let
16 them in because you're on title in the house and you're the
17 wife.

18 I believe depending on which copy of the day you
19 got, they're going to say take it up with the Family Court
20 judge, it's a civil matter, maybe that's what happened to you
21 that day. But I think there were many opportunities. One,
22 your key works. I think -- well, Nicholas was on your side at
23 that time and he's hanging around Dad's house at that time.
24 They'll let you in the house. I don't think it was difficult.

1 Maybe you said I'm afraid to go back to the house
2 because, you know, Richard's got a temper and all that. I
3 think the opportunity there, even though he was the
4 safeguarder of the property, when it comes out of the he said,
5 she said, there is no value I can give you on the fur coat.
6 It -- it -- it's gone. I mean, I can't give you anything on
7 that. He says you took it.

8 I mean, the -- the story about the Suburban and
9 active duty, you're saying it never happened. I have nothing
10 other than your word against his word. And I normally say
11 Judge Moss' policy is you're the safeguarder of the property,
12 you're the last in charge of the house, but I think there were
13 opportunities to get into the house. And there's a lot of
14 drama going back and forth and then throwing stuff out on the
15 lawn and he says he didn't throw it out on the lawn, he boxed
16 it neatly. You said you didn't come that night. So much kind
17 of drama going on. There's nothing I can give you on the fur
18 coats.

19 MS. ALLEN: The dresses as well?

20 THE COURT: Yeah.

21 MS. ALLEN: Okay.

22 THE COURT: Included. I mean, I don't know what to
23 do with it.

24 MS. ALLEN: Can I --

1 THE COURT: It's her word against his word.
2 MS. ALLEN: I hate to rush you. I hate --
3 THE COURT: I'm hurrying.
4 MS. ALLEN: -- to rush you.
5 THE COURT: I'm hurrying.
6 MS. ALLEN: I'm so sorry.
7 THE COURT: We'll add more to that later, but I
8 think that's pretty much what I'm saying on that. I normally
9 would rule in your favor if I said you're the safeguarder, but
10 there was so many access to the house, times to access the
11 house. We just don't know. And I think the kids were
12 latchkey kids. They had kids too. I mean, if we're hanging
13 -- if Nicholas was hanging out at Dad's house, or even
14 Richard, they would let Mom in. And I have to -- I had to
15 weigh that against Mom saying there was no way I wanted to go
16 back, that's why I called the police. And I have no police
17 reports, no -- nothing to verify any of that. Her word
18 against his word. So yeah.
19 I'm moving onto the next two. I talked about that,
20 that, that.
21 MS. ALLEN: Survivor benefits.
22 THE COURT: The share of Dad's retirement account --
23 and for income, we talked about -- that's going to be -- Mom's
24 going to be counted as income on that. 60B, procedural

1 defect. Oh, Dad should now draw on Mom's PERS. The answer is
2 no. What we're going to -- they're -- one, you have to file a
3 motion. Two, you probably don't want to file the motion
4 because I'm going to declare that Hellwinkle testified -- or
5 clearly in my trial notes, she's not eligible to return until
6 2023 or 2024. He's a 20 year non-police category. She's a 30
7 year county. 30 years is a lot more. And she -- yes, she can
8 draw, but you don't force somebody to take early retirement
9 with a penalty.

10 Now there's a new ruling on the law and if you don't
11 file a motion for reconsideration or get Willick to put an
12 expert testimony on, maybe the door or window is still open on
13 that, but right now I don't think I'm going to force every
14 county employee if floodgates would open. A floodgate of
15 cases would be open, public policy, that every 30 year --
16 yeah, she doesn't even have her 30 year yet, but, you know --
17 I'm not going to force somebody who doesn't have their 30
18 years yet to say I'm going to start drawing now because you're
19 -- you're vested. I think maybe you're talking about vested
20 as supposed to eligible to retire at the right age with 30
21 years. 60 for you, plus 30 years, right? Because if you're
22 below 60, you're going to be -- probably a four percent
23 reduction for every year. Okay. You follow me on that?

24 MS. ALLEN: Yes.

1 THE COURT: Child support is now going to be
2 permanently set. He's -- so permanently current. Right now
3 I'm looking to 820 cap for Nicholas and we're going to take
4 his 1412 and her 1059 and which leaves 266. And then you also
5 have to have Dad contribute half and you're going to give me
6 the health insurance. I'll accept the current -- you said
7 it's 220 now, I think. Yeah. So 220 would probably be his
8 share, subject to proof. Make sure you give proof to Ms.
9 Allen. And I'm going to add that -- I'm going to add that to
10 Dad because he makes more money than Mom. I'm going to add
11 that 220. So we'll come to some numbers. Please, lawyers,
12 sit down with your clients. Give me a chart month-by-month
13 now that you have my ruling and how I calculate things, okay?

14 SBP, that's another one, 125.155. I cannot force
15 you guys to choose who your SBP is. I think the same concept
16 with the military and I think there's not even that one year
17 rule, but anyway, I can't force it. Which complicates things,
18 because then 125.155, okay, one of you cited it and I think
19 it's Mr. Page. I have the option of saying you're going to
20 buy a life insurance policy, but who's going to pay it. It's
21 to protect you from not losing all your checks. So like in
22 the military when I -- when they do SBP in the military, the
23 wives choose it. I -- the wives pay that premium every month.

24 MS. ALLEN: That's right.

1 THE COURT: So you have to buy whatever you need.
2 MR. PAGE: Is that for the --
3 THE COURT: If it's like -- if you get an actuarial
4 number of how much many more years you think Richard's going
5 to live and if he's not going to retire for another --
6 potentially, we don't know, everything's a guess, but let's
7 say is a hundred thousand enough to cover or, you know, you
8 want to go get a hundred thousand or a \$300,000 life insurance
9 policy, you got to pay for it. Vice versa at anytime, but --
10 MS. ALLEN: Is this survivor benefits? I'm sorry.
11 THE COURT: SBP? I can't force it.
12 MS. ALLEN: No. No. No.
13 THE COURT: You --
14 MS. ALLEN: Is that what you're talking about?
15 THE COURT: You -- yeah, Mr. Page wanted to do a
16 reciprocal.
17 MS. ALLEN: Right.
18 THE COURT: Unless you stipulate to it, I'm not
19 forcing it.
20 MS. ALLEN: Okay.
21 THE COURT: You can keep your fiancée and you can
22 designate your children as SBPs, but I can't force it. If you
23 agree each reciprocal, that would be stipulated to and I -- I
24 can't force it, life insurance. The statute clearly authorize

1 Court's discretion, but I would say if Mom wanted to keep it,
2 you got to pay a price for that. Like military wives, they
3 pay -- they pay a premium every month. So you got to go make
4 Dad go find a life insurance policy term and pay the monthly
5 premium every month.

6 MS. ALLEN: And vice --

7 THE COURT: If --

8 MS. ALLEN: -- versa?

9 THE COURT: Yeah, but --

10 MS. ALLEN: All right.

11 THE COURT: -- she hasn't retired yet and he can do
12 that to her PERS. Follow me on that?

13 THE CLERK: Yes.

14 THE COURT: I'm signing -- okay, so like -- we're
15 going life insurance policy route. I can't do the reciprocal.
16 It would be a lot cleaner, yeah, but they would have to
17 stipulate. Only number I got on the reimbursed medical bills,
18 and I kind of rushed through that, but I think it's 3202.

19 I didn't have enough OFW uploads from Dad, nothing.
20 He didn't give me a chart on the expenses and what he wanted
21 offset. So I have nothing other than 3202 is the number I got
22 from the trial testimony and I think Dad -- is Dad's half
23 share, because Mom took the time, did the homework, added it
24 up, had her attorney present it to court and it's -- it's

1 there. And she has it all on her OFW emails. And that was
2 Exhibit -- I didn't write down the exhibit number, but I think
3 she -- I -- I saw them with the OFW emails. And the OFW is
4 part of court record automatically, anyway. Did you make it
5 an exhibit, the OFW emails, with the exhibit -- the med bills?

6 MR. PAGE: Yeah, it's like --

7 THE COURT: It was like this thick.

8 MR. PAGE: -- J, K, somewhere in there.

9 THE COURT: All right. One more thing to content
10 and then I'm done. And then we're going to bifurcate out
11 attorney's fees. You can file your Brunzell briefs and I can
12 just put it all in one order and -- and rule on the attorney's
13 fees all on one shot. I hate doing under advisements. So
14 we'll do it all at the next hearing.

15 MS. ALLEN: Understood.

16 THE COURT: Order to show cause contempt on the
17 \$1200 a month payments. Yes, I find that Dad had financial
18 hardship, testimony credible, but to take 1200 and to take
19 1500 as of February 9th, 2016 and I started -- I started the
20 income stream, if you'll look at his FDF, he put the 1200 and
21 the 5640 of monthly living expenses, you with me, and then I
22 took his 7648 and he had the 3,000 or something in deductions.
23 And it looks like he was in the hole and if I did not include
24 the 1200 a month, he would have maybe like 240 in the hole

1 without the 1200.

2 So he didn't have kind of the ability to pay that
3 1200, but I -- I do say that once I made an order and then
4 looking at the -- now you look -- it's a look back now that we
5 went to trial. He couldn't have afforded to pay her the 1200
6 which is our dilemma right now what my future order is going
7 to be because no way PER -- you're going to get it from PERS.
8 It's got to come out of his pocket and it's property division.
9 You're going to get your child support first though, the 1200
10 or something. You're going to get the child support off the
11 top. And then he has to live, so he's got to pay expenses.
12 You have to live and you got to pay your living expenses. So
13 I have to deal what to do with that 1200 that you're going to
14 be getting.

15 Do I find him in contempt? I find him in financial
16 hardship. Again, it's one of those weird decisions. The
17 first time I've ever done one where we did a Sertic, a Henson,
18 and Holyoke decision. And then the supreme court wouldn't
19 know what the impact is and you just say okay, he's obligated,
20 but in reality is there anything leftover in the paycheck.

21 When you choose to work and still continuing your
22 job and not a loss as you're forced to pay her her share,
23 nobody thinks about the living expenses and everything he got
24 leftover. He's kind of have much leftover. We'll talk about

1 that and I want you to take a good look at his FDF, but it
2 looks like without even the 1200 he's breaking even after he's
3 going to pay -- maybe with the child support. If you can find
4 a swing -- or like, what do you call it, a cushion of 5, \$600,
5 you know, I'll say -- you don't have 215 prescriptions every
6 month. You know, we'll -- we'll take a detailed look at his
7 FDF. And if I can swing 5, 600 your way, I'll -- I'll make
8 sure I don't put -- break the bank on him and I don't make --
9 and I made sure he doesn't go on the red and I'll make sure
10 you have -- you'll get your property division. Then that will
11 add to the child support obligations. Whatever I determine
12 then it's going to be her 18 percent for Richard is going to
13 be -- that's going to impact on the child support.

14 MS. ALLEN: So is the Court then not finding my
15 client in contempt.

16 THE COURT: No.

17 MS. ALLEN: Is --

18 THE COURT: He doesn't have the finan -- oh. Here's
19 the deal. I think he --

20 MS. ALLEN: Correct.

21 THE COURT: -- made his case. Yeah, originally I
22 would say look, you don't thumb your nose at a Judge's order
23 when I ordered on February 9th. So when I say pay something,
24 I think -- you guys can't read my mind. But now you know --

1 you lawyers know you tell your clients put 20 bucks in her
2 bank account or something if it's in good faith, because if it
3 looks like zero all the way through from January, February to
4 October is not -- it doesn't look good. It looks like you're
5 -- you know, but I understand he has financial hardship, but I
6 think in good faith I wouldn't care if he dropped 50 bucks in
7 her bank account or -- or send her a check saying I can't do
8 the 1200, I'm going to establish that at trial, but here's 50
9 bucks just to hold you over. Okay.

10 So typically -- no, he's not -- there's no contempt
11 for jail on that. I don't know. I can do monetary sanction
12 on that. And typically, the worst case scenario is up to 500
13 a month for every zero payment from February to October
14 inclusive -- or that's like nine, 10 months, you know. But
15 I'm not -- I'm not going to accumulate it like that on a --

16 MS. ALLEN: And will the Court --

17 THE COURT: -- on a money sanction.

18 MS. ALLEN: -- vacate then the suspension on his
19 driver's license as well?

20 THE COURT: It's kind of like on the table right
21 now. Well, driver's license, you can't do anything with that.
22 It's a D.A. --

23 MS. ALLEN: Can I -- can I give you a --

24 MR. PAGE: That's child support.

1 MS. KILGORE: That's the D.A.

2 MS. ALLEN: Well, no, if I can give you some
3 information though on that. His insurance went up like double
4 or triple because of that suspension. That would give a
5 cushion for her PERS.

6 THE COURT: Maybe --

7 MS. ALLEN: If the Court can vacate the suspension
8 on the child support -- or the -- the suspension --

9 THE COURT: First of all --

10 MS. ALLEN: -- on the driver's license.

11 THE COURT: -- does he -- I don't -- that's an
12 executive function of the D.A., bottom line. I cannot touch
13 your driver's license. Their rule is you pay 10 percent of
14 the arrears, but we haven't figured out if there is arrears.
15 If I say retroactively or he's been sitting on a credit all
16 this time, you will get your license back and I will -- I --
17 ask them to enforce the law properly. If I say ASAP and I --
18 like I say, if you want to come back to me on the wrap-up
19 hearing, because you want to get the license back.

20 It doesn't help you, Mom, for him to have his
21 license. You -- you have it to go to work though, right?

22 MR. KILGORE: I -- I got it back --

23 THE COURT: And for your job?

24 MR. KILGORE: -- but it's --

1 MS. ALLEN: The suspension --
2 MR. KILGORE: -- the suspension -- having a
3 suspension --
4 MS. ALLEN: On your license makes --
5 THE COURT: Right now --
6 MS. ALLEN: -- your insurance go --
7 THE COURT: -- as it stands today, I can make a
8 pronouncement and finding that -- right now there's a credit
9 sitting on his book -- on the books for child support. So he
10 shouldn't have his license suspended. If you want to walk
11 through an order tomorrow, it doesn't --
12 MS. ALLEN: I think --
13 THE COURT: -- impact you, Mom. We can just figure
14 out what the money is. You're going to get a steady stream of
15 money coming in. I don't think -- I don't know if you care
16 one way or the other --
17 MS. ALLEN: The -- the suspension --
18 THE COURT: -- but --
19 MS. ALLEN: -- came from that period of time --
20 THE COURT: It's a --
21 MS. ALLEN: -- when the Court kept --
22 THE COURT: It's a mark.
23 MS. ALLEN: -- his --
24 THE COURT: It's a blemish --

1 MS. ALLEN: -- child support --
2 THE COURT: -- on his job.
3 MS. ALLEN: -- in place and he shouldn't have been
4 paying it. And so if we can --
5 THE COURT: To answer you question, walk through an
6 order --
7 MS. ALLEN: All right.
8 THE COURT: -- tomorrow. I will -- a one page
9 order. You want to review it, Mr. Page?
10 MR. PAGE: Yes, to he didn't pay.
11 THE COURT: Mr. Page, do you want to review the one
12 page order to lift the suspension because of the findings as
13 of 5:20 today? I think he's got credit. He might -- he has
14 credit sitting for child support.
15 MR. PAGE: He doesn't have -- he -- he owes about
16 \$8,000 according to the audit from the --
17 THE COURT: Oh, we're not there yet. That's where
18 you're going to absorb and go month-by-month based on my
19 ruling today.
20 MR. PAGE: It's --
21 THE COURT: Ms. Allen, you can have the order. Do
22 you want to review it, Mr. Page, by email or no?
23 MR. PAGE: Yeah, I'll review it by email, but he
24 owes \$8,123.

1 THE COURT: You get 24 hour -- you get 24 hours to
2 review it. Today is Monday, Tuesday? I'll be at the -- if
3 you want to walk through an order, there will be a judge to
4 sign it. I might be at a conference.

5 MS. ALLEN: Okay.

6 THE COURT: Send it tomorrow, draft it. He has 24
7 hours --

8 MS. ALLEN: I'll email it to him.

9 THE COURT: Yeah, 24 hours. If you don't hear from
10 him, name a date and time, like Wednesday, walk it through.

11 MR. PAGE: And I'd also like to get an order through
12 to Ms. Hellwinkle for the March 15th --

13 THE COURT: I don't want you to put findings in the
14 order.

15 MS. ALLEN: No.

16 THE COURT: I just want to say it is hereby ordered
17 the dispensation (sic) -- the D.A. is lifted --

18 MS. ALLEN: Imposed.

19 THE COURT: -- because there is a finding -- only
20 finding by the Court that Dad is as of today -- as of today
21 without prejudice, Dad is not in arrears. He has zero arrears
22 and may have a possible credit.

23 MS. ALLEN: Okay.

24 THE COURT: Temporarily without prejudice.

1 MS. ALLEN: And I hate to --

2 THE COURT: When we get to our wrap-up hearing. I
3 know. We're done. And then that's it. I'm -- I'm kind of
4 done.

5 MR. PAGE: I --

6 THE COURT: File your --

7 MR. PAGE: Briefly, Your Honor. Your Honor, may I
8 get the order for Hellwinkle?

9 THE COURT: You got to do Brunzell briefs by the
10 time of the wrap-up hearing. I don't want to finagle a day.
11 I'll have Natalie work on it and call you guys tomorrow for a
12 date convenient for half a day with me.

13 MR. PAGE: And get an order for Hellwinkle to have
14 her give the -- the figure that's owed to Mom for March 2015.

15 THE COURT: Is that pro forma, just routine
16 administrative number now that you have my decision?

17 MR. PAGE: Yeah.

18 THE COURT: Yes. Now you have the insert date of
19 3/10/15.

20 MR. PAGE: Now you're going to also deal with the
21 survivor beneficiary as well as the beneficiary?

22 THE COURT: SBP will be -- can't touch it. They're
23 going to do life insurance.

24 MR. PAGE: But that also comes with the beneficiary,

1 because there's the survivor beneficiary and there's the
2 beneficiary if you recall Ms. Hellwinkle's testimony. There's
3 the pre-retirement amount and there's the post-retirement one.

4 THE COURT: I don't have time today. I guess we
5 need to discuss that. Is there a -- a hurry on Hellwinkle?

6 MR. PAGE: I would like --

7 THE COURT: I want it --

8 MR. PAGE: I -- I think it would be useful to have
9 that number so we can have meaningful discussions next time we
10 come back.

11 THE COURT: Right. You need at least a month to
12 absorb this. I'm booked solid, but if I have a month -- like
13 some opening like --

14 MS. ALLEN: Yeah.

15 THE COURT: -- early December, can I bring you back?

16 MR. PAGE: Either -- either way is fine. I just
17 want to get the -- I want to get the figure from Hellwinkle.

18 THE COURT: You can do that. I'm not stopping you
19 to do that based on my findings today.

20 MR. PAGE: Okay. I do -- but I -- she won't do it
21 without an order, so I need an order from you. If I submit
22 it --

23 THE COURT: I think --

24 MR. PAGE: -- will you sign it?

1 THE COURT: -- what you're saying is no harm, no
2 foul, right?
3 MS. ALLEN: As far as what?
4 THE COURT: You sign off on the order with Mr. Page?
5 MS. ALLEN: Yeah, if he'll send it over to me, I'll
6 sign off.
7 MR. PAGE: Okay.
8 THE COURT: You can have your signature. I'll sign
9 it.
10 MR. PAGE: Okay.
11 THE COURT: All right.
12 MR. PAGE: If I don't get it --
13 THE COURT: I'm in such a hurry too because I got to
14 be somewhere too.
15 MR. PAGE: If I don't get her signature --
16 THE COURT: I'm leaving my paperwork there.
17 MR. PAGE: -- can -- will you still sign it?
18 THE COURT: Huh?
19 MR. PAGE: If she refuses to sign it, will you still
20 sign it?
21 THE COURT: Sure.
22 MR. PAGE: Okay.
23 THE COURT: 24 hours, because we're in a hurry.
24 MS. ALLEN: That's fine. Oh, wait. Do we have a

1 date we're coming back? No? All right. Someone's going to
2 contact me tomorrow?

3 THE CLERK: Natalie will contact you within a day or
4 two.

5 MS. ALLEN: Thank you.

6 THE COURT: No, I'm going to make her do --

7 MS. ALLEN: Oh, you know what --

8 THE COURT: I'm going to make sure she squares it
9 away.

10 MS. ALLEN: Can I give you my -- well, let me give
11 you my cell phone.

12 THE COURT: Yeah, give us your cells.

13 MS. ALLEN: So -- because that's way easier to
14 contact me.

15 THE COURT: Yeah, right it on here. Oh, she got it.

16 THE CLERK: Oh, you guys can just --

17 THE COURT: Yeah, because I need to write myself a
18 sticky to have --

19 MS. ALLEN:

20 THE COURT:

21 MS. ALLEN: 348 --

22 THE CLERK: 48 --

23 MS. ALLEN: -- 4807. Yeah, and it's just super easy
24 to contact me.

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THE COURT: We need a Kilgore date.

MS. ALLEN: Thank you.

THE COURT: I'm look -- looking for a half day.

Thank you.

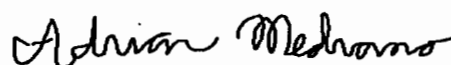
MS. ALLEN: Thank you, Your Honor. Have a great evening.

THE COURT: I know.

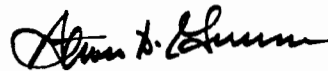
(PROCEEDINGS CONCLUDED AT 17:29:24)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.



Adrian N. Medrano



CLERK OF THE COURT

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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **RICHARD KILGORE,**
10 **Plaintiff,**

11 **vs.**

12 **ELENI KILGORE,**
13 **Defendant.**

CASE NO.: D-12-459171-D

DEPT. NO.: I

14 **ORDER**

15 **THIS MATTER** having come before the Court on August 2, 2016 with the Plaintiff
16 **RICHARD KILGORE** present, Plaintiff in Proper Person, and the Defendant, **ELENI**
17 **KILGORE**, not present, represented by Fred Page, Esq. and the Court having read all
18 the papers and pleading orders the following:

19 **IT IS HEREBY ORDERED** that the Plaintiff's Objection to Master's report and
20 **Recommendation is DENIED;**

21 **IT IS FURTHER ORDERED** that the District Attorney's office shall not impose
22 any sanctions, contempt, or set any future hearing dates pending trial decision.
23 **Further, the 25 day sanction is STAYED;**

24 **IT IS FURTHER ORDERED** that the Child Support Clerk shall amend the court
25 minutes from June 14, 2016 hearing to reflect Plaintiff's temporary child support shall
26 be set at \$1,500.00 per month, with \$692.13 being withheld from Plaintiff's paycheck
27 every two weeks;
28

1 IT IS FURTHER ORDERED that the Defendant's counter motion to the
2 Objection, being filed untimely, Court finds the Objection was filed timely;


3 IT IS FURTHER ORDERED that per stipulation, Sonya Hellwinkle, a PERS
4 representative, may appear by video conference for the Evidentiary Hearing on August
5 15, 2016;

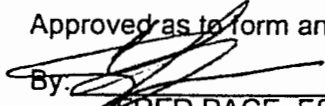
6 IT IS FURTHER ORDERED that Defendant's request for Attorney's fees and costs
7 is DENIED;

8 IT IS FURTHER ORDERED that the Evidentiary Hearing set for August 15, 2016
9 stands;

10 DATED the ____ day of OCT 13 2016, 2016.

11
12 
13 DISTRICT COURT JUDGE VR

14
15 
16 BY: BETSY ALLEN, ESQ.
17 Nevada Bar No. 6878

Approved as to form and content:
18 By: 
19 FRED PAGE, ESQ.
20 Nevada Bar No. 6080
21
22
23
24
25
26
27
28

Heather S. Lumin
CLERK OF THE COURT

ORDR

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

RICHARD KILGORE,

Plaintiff,

vs.

ELENI KILGORE,

Defendant.

CASE NO.: D-12-459171-D

DEPT. NO.: I

Hearing Dates: July 27, 2016,
August 15, 2016, and
October 31, 2016

Hearing Times: 1:30 p.m. and 9:00 a.m.

**ORDER FOR PERS TO PRODUCE A RETIRMENT BENEFIT ESTIMATE FOR
PLAINTIFF, RICHARD KILGORE**

The evidentiary hearing on child custody, child support modification, timing of the commencement of the receipt of the PERS retirement benefits by Defendant, Eleni Kilgore, in Plaintiff, Richard Kilgore's name, selection of survivor beneficiary and beneficiary for PERS retirement in Plaintiff, Richard Kilgore's name, for division of vacation and sick pay, for reimbursement of unreimbursed medical expenses, and for attorney's fees came on for hearing on the above referenced dates and times in front of the Hon. Cheryl Moss. The Court enters the following order as it relates to the timing of the receipt of the retirement benefits by Defendant,

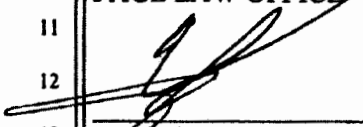
1
2 Eleni Kilgore, in Plaintiff, Richard Kilgore's name.

3 **IT IS HEREBY ORDERED** that PERS employer production and services shall create
4 and issue an estimate of the retirement benefits from PERS that Plaintiff, Richard Kilgore, would
5 have received if he had retired on March 10, 2015.


6 DATED this 10 day of November 2016

7
8 
9 DISTRICT COURT JUDGE *VR*

10 Respectfully submitted:
11 PAGE LAW OFFICE

12 
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