

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

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Volume 7

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1 **TRANS**

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Alison L. Lohman
CLERK OF COURT

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3 **COPY**

4
5 **EIGHTH JUDICIAL DISTRICT COURT**

6 **FAMILY DIVISION**

7 **CLARK COUNTY, NEVADA**

8
9 RICHARD SCOTT KILGORE,)

10 Plaintiff,)

CASE NO. D-12-459171-D

11 vs.)

DEPT. I

12 ELENI KILGORE,)

13 Defendant.)

14
15 BEFORE THE HONORABLE CHERYL B. MOSS
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: STATUS CHECK

17 THURSDAY, DECEMBER 1, 2016

18 APPEARANCES:

19 The Plaintiff:
For the Plaintiff:

RICHARD SCOTT KILGORE
BETSY ALLEN, ESQ.
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Las Vegas, Nevada 89101
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22 The Defendant:
For the Defendant:

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1 LAS VEGAS, NEVADA

THURSDAY, DECEMBER 1, 2016

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 10:21:25)

4

5 THE CLERK: We're on the record.

6 THE COURT: Richard and Eleni Kilgore, 459171.

7 Counsel, your appearances and your bar numbers.

8 MS. ALLEN: Betsy Allen, bar number 6878, on behalf
9 of the Plaintiff, Richard Kilgore. He is present today.

10 THE COURT: Thank you.

11 MR. PAGE: Good morning, Your Honor. Fred Page, bar
12 number 60 -- stuck in traffic just like you.

13 THE COURT: So was I. So totally understandable.
14 It looks like Dad and his attorney are the only ones that came
15 in on time here. All right. I have to make a disclosure on
16 the record, but I have a substitute bailiff here in the
17 courtroom today because mine is out on -- on leave. And Tom.
18 Yeah, you and Richard know each other?

19 THE MARSHAL: Yes.

20 THE COURT: Okay. Just disclosure. Anybody have
21 problems or questions about that?

22 MS. ALLEN: I know him too.

23 THE COURT: Yeah, he's -- he -- downtown. He's --

24 MS. ALLEN: Yeah.

1 THE COURT: -- borrowed from (sic) today.
2 THE MARSHAL: Yeah.
3 MS. ALLEN: I know.
4 THE COURT: I have borrowed him for a few days
5 because mine's been sick for a while.
6 MS. ALLEN: Yeah, no. I don't have -- well
7 obviously I know him.
8 THE COURT: Any questio -- any concerns?
9 MS. ALLEN: He did -- he did a trial with me.
10 THE COURT: Just saying. You want a new bailiff?
11 I'll get a new one in the courtroom here. I'll switch him
12 out.
13 MR. PAGE: I don't have a basis to object.
14 THE COURT: Full disclosure.
15 MR. PAGE: I appreciate -- I just -- I -- if I knew
16 more, I might, but I don't. So I won't.
17 THE COURT: You can ask. How you know each other?
18 THE MARSHAL: We work at the same courthouse
19 downtown.
20 MR. PAGE: Yeah, I'm -- I'm -- I kind of gathered
21 that, but do you have any decision making responsibility?
22 THE MARSHAL: No.
23 MR. PAGE: Can you unduly inf --
24 THE MARSHAL: No.

1 MR. PAGE: Can you unduly influence the Judge?
2 THE COURT: He'll just --
3 THE MARSHAL: No.
4 MR. PAGE: Okay.
5 THE COURT: Then he'll just sit there quietly. All
6 right. I reviewed the court minutes. Thank God they got done
7 from the October hearing. They were buried in the July
8 minutes. I had to go find them. Everybody got the court
9 minutes?
10 MS. ALLEN: No.
11 MR. PAGE: Yes.
12 THE COURT: Who's drafting the order? Has it --
13 MR. PAGE: I --
14 THE COURT: -- been done?
15 MS. ALLEN: He --
16 MR. PAGE: I drafted. I gave it to Ms. Allen.
17 MS. ALLEN: This morning.
18 THE COURT: Okay. It's why we wrap-up.
19 MS. ALLEN: I got it last night at 10:30.
20 THE COURT: And then I approved your QDRO order.
21 Was that signed off by Ms. Allen? Good, process that. So to
22 me, what I'm reading in the minutes is just these money
23 issues. And we do not have time to do the final calculations.
24 So you guys can pitch it to me about what's left over and who

1 owes what.

2 MR. PAGE: I --

3 THE COURT: And I can make any additional orders if
4 necessary.

5 MR. PAGE: I did submit a supplemental exhibit. Now
6 we --

7 THE COURT: Okay.

8 MR. PAGE: I -- I put --

9 THE COURT: Ms. Allen get it?

10 MS. ALLEN: I don't have it.

11 THE COURT: I haven't seen one filed. I checked it
12 again -- I checked this case again this morning -- early this
13 morning.

14 MR. PAGE: I put a courtesy copy in your Judge's --
15 your clerk's drop box.

16 THE COURT: Oh, my bad. It's sitting on my bench.

17 MR. PAGE: And then I also faxed a copy early this
18 morning.

19 THE COURT: You got a extra one for Ms. Allen?

20 MR. PAGE: Yeah, she can have my original. That's
21 fine.

22 THE COURT: I'll make an extra.

23 MR. PAGE: I --

24 THE COURT: I got a copier here. I'll make an

1 extra.

2 MR. PAGE: I emailed her a copy as well.

3 THE COURT: Can I have one quick copy of this? And
4 yes. And before I speak, let me get a copy of this and take a
5 -- let's take two minutes to read their supplemental. Is it
6 like a calculation tabulation?

7 MR. PAGE: It is what the -- the estimated
8 retirement benefit is for Mr. Kilgore if he retired as of
9 March 10, 2015.

10 THE COURT: Oh, okay. We'll talk about that. Okay.

11 MR. PAGE: I also include a EWMA calculation going
12 from March 2015 through to the present that would also add in
13 a statutory amount of interest.

14 THE COURT: Duly noted. That's a completely
15 separate issue. In the other parts of the court minutes,
16 there was two types of credits for Dad. One was like 7,000
17 plus, another one was like 3,000 plus. Maybe he got like a 10
18 -- \$11,000 credit. And then Mom was entitled to a credit of
19 7,600 plus. So normally I would offset that, but I didn't
20 have time to -- to do the calculations. And then Dad -- I
21 found him responsible for the 3600 in medical bills and we
22 need to calculate and offset that. And then we come to a
23 final number and see who owes what on that.

24 THE CLERK: Here's your copy, Judge.

1 MR. PAGE: I -- I did that calculation independently
2 last night.

3 THE COURT: Mr. Page.

4 MR. PAGE: My calculation came that there was a
5 credit owed to Dad, based upon the minutes, of about \$2200.

6 THE COURT: Is that what it came out to based on the
7 minutes?

8 MR. PAGE: And I'm working from memory. I didn't
9 write it down. So -- but it's --

10 THE COURT: Roughly.

11 MR. PAGE: It's imperfect but it -- it's around
12 there.

13 THE COURT: So yeah.

14 MR. PAGE: I had a larger issue with that, because
15 when I looked at the February 9, 2015 order, and I looked at
16 Mr. Kilgore's pretrial memorandum, I did not see retroactive
17 child support modification as being one of the issues set for
18 the evidentiary hearing either by the February 9 order or Mr.
19 Kilgore's pretrial memorandum; therefore, I felt like the --
20 it'll -- it'll be an issue we can address probably later on in
21 a different way --

22 THE COURT: Another --

23 MR. PAGE: -- but I'm just giving you notice now
24 that I didn't see where it was part of the issues for trial

1 and which be -- then becomes a due process problem for Mom if
2 that's actually the case.

3 THE COURT: Totally understand, but I spent some
4 time doing these time periods to do the calculation.

5 MS. ALLEN: It was --

6 THE COURT: Yeah, of course I would say first
7 thought, yeah. I mean, you'll have to file a motion -- or a
8 motion for a new trial, motion to reconsider, but let me --

9 MR. PAGE: And it's probably just --

10 THE COURT: Let me check the --

11 MR. PAGE: It's -- it may be just a notice thing for
12 Your Honor. This is something I perceived and we may have to
13 deal with it later on down the road. It -- it's probably not
14 in -- something that's ripe for today as of yet.

15 THE COURT: That -- no, that's a good point because
16 that's -- that's a big thing. I mean, you open up a can of
17 worms again then.

18 MR. PAGE: And I was kind of -- yeah, I agree with
19 you. I thought about that when I reviewed everything because
20 I was -- I was really puzzled at the closing argument and the
21 decision because I really hadn't prepped for that.

22 THE COURT: Talk about notice issue. Even before we
23 got to trial, we had court hearings when I -- when Dad wanted
24 the adjustment of the child --

1 MS. ALLEN: Correct.

2 THE COURT: -- support. We had --

3 MS. ALLEN: And it just --

4 THE COURT: -- participation --

5 MS. ALLEN: -- kept getting past --

6 MR. PAGE: But -- but that -- but --

7 MS. ALLEN: -- is what I understood.

8 MR. PAGE: As -- as part of the notice to Mom, that

9 we -- we address the issues in the February 9 order. We also

10 address the issues on pretrial memoran --

11 THE COURT: That's kind of why he spawned this?

12 He's like, you know, I need a reduction? And it's been an

13 ongoing thing to monitor his employment status too. The good

14 news was he got -- he got his job back and he was going to

15 make -- making money again.

16 MS. ALLEN: It was in the pretrial memorandum. He

17 put it in his pretrial memorandum.

18 THE COURT: This had been ongoing for like a year.

19 Like January, I remember. He finally got that job back.

20 MS. ALLEN: Right.

21 THE COURT: And I put him on temporary orders.

22 MS. ALLEN: Right.

23 THE COURT: Reduce him, but then I'd say we'll maybe

24 save it for trial. I think there's enough notice there that

1 this was definitely an ongoing issue.

2 MS. ALLEN: Tha -- that's what started everything.
3 We wouldn't even be in court today --

4 THE COURT: That's what I'm thinking.

5 MS. ALLEN: -- if it wasn't for him filing that.

6 THE COURT: And that's why I said now he's
7 stabilized, he got a job. I will now go month by month from
8 the time this all started and then just apply the law. Yeah,
9 so not sure if -- I think there's a lot of notice there. I
10 mean, we've had a dozen court hearings on that. Did he have
11 to actually plead it? I mean, the divorce trial was when,
12 January 10th, 2013? The divorce was filed March 13th. And
13 motion to modify October 2014. That's when he had problems
14 with his job. Okay. And then he had to go appeal it and then
15 it was on hold. We were monitoring that. And so I made all
16 these temporary orders without prejudice. And then we had
17 information, testimony about their respective incomes. I
18 applied, you know, 18 percent, Wright v. Osburn. And then I
19 thought that was the -- the legal analysis. Okay. If you
20 need more time to look at and file whatever motion, yeah, I
21 mean --

22 MR. PAGE: I mean, what -- what --

23 THE COURT: -- check on that but I'm -- I'm trying
24 to help and just tell you what my two cents is on that.

1 That's why I went through the whole process.

2 MS. ALLEN: I -- I do have --

3 MR. PAGE: And that's why I'm giving you notice
4 because I'm telling what my two cents worth is as well.

5 THE COURT: To finally give them closure to give
6 them these orders to say this is what you owe and the law says
7 this is what you owe. Did he have to specifically plead? I
8 -- looks like he did. That's what caused this whole thing to
9 be reopened.

10 MR. PAGE: Well, we'd -- if it was something that
11 was resolved prior to then, then it was resolved or it was not
12 adequately noticed because --

13 THE PLAINTIFF: It was at a pretrial.

14 THE COURT: Okay. Take a second if you wanted --
15 you wanted to double check something, but --

16 MR. PAGE: I -- I'm looking here.

17 THE COURT: -- the motion is to mo -- modify custody
18 and support. October 21st, 2014 if you're going back from the
19 time of the divorce.

20 MS. ALLEN: And -- and from my understanding,
21 everything was a temporary --

22 THE COURT: She oppo -- yeah.

23 MS. ALLEN: -- order from thereon forward. Nothing
24 -- but there was never --

1 THE COURT: Thereon forward and took us like, what,
2 a year and a half to get to trial?

3 MS. ALLEN: It is. Your Honor, I just have --

4 MR. PAGE: We -- we put it -- we put it very clearly
5 as -- in the February 9 order as to what the tri -- trial
6 issues were. And I -- by us limiting those issues, that's
7 what we agreed to have the trial on. Discovery's submitted on
8 omitted assets and --

9 THE COURT: You have financial considerations and
10 wrap up --

11 MR. PAGE: Because -- because --

12 THE COURT: -- what his obligation is month by month
13 by month.

14 MR. PAGE: We had the -- an evidentiary hearing is
15 scheduled on July 25th, I'm reading from the order here, at
16 1:30 p.m. on stack number one regarding the issues of survivor
17 beneficiary designation, omitted vacation and sick pay,
18 property equalization payments, and Hartford deferred
19 compensation account to Plaintiff that was never divided.
20 Those were the only four issues that were before us per your
21 order. So it's --

22 THE PLAINTIFF: That was his pretrial motion --
23 order.

24 MR. PAGE: That's the notice of what the hearing was

1 about. There was no evidentiary hearing scheduled for --
2 THE COURT: Right.

3 MR. PAGE: -- anything else.

4 THE COURT: If you look at -- for example, take a
5 look at the court minutes from February 9th, 2016. It says
6 Dad's going to pay X amount of dollars on child support.

7 MR. PAGE: Temporarily.

8 THE COURT: We're going to deal with -- yeah.

9 MR. PAGE: Because that has to do with the custody
10 issue, but we have here --

11 THE COURT: They stipulated to --

12 MR. PAGE: An evidentiary hearing is around the
13 outstanding financial issues of that. Those are the only
14 financial issues that were there.

15 THE COURT: Yeah, but I think just always we're
16 making temporary orders on child support until they can --

17 MR. PAGE: I would submit for the -- for -- to make
18 sure my client has adequate notice under -- for due process --

19 THE COURT: Right.

20 MR. PAGE: -- purposes, we probably should have had
21 something in the February 9th order that would have specified
22 that we're --

23 THE COURT: 2016?

24 MR. PAGE: -- looking at temporary child support.

1 THE COURT: You mean the one filed on March 8th from
2 the --

3 MR. PAGE: Yes.

4 THE COURT: -- 2/9/16 hearing?

5 MR. PAGE: From the -- from the February 25 -- 20
6 fif -- 2016 hearing because that's when we set the evidentiary
7 hearing.

8 THE COURT: Temporary without prejudice, Dad would
9 pay 1500 support and then 1200 for the PERS payment.

10 MR. PAGE: Now, if we look back to the --

11 THE COURT: Counter-call discovery --

12 MR. PAGE: -- minutes from Judge O -- O'Malley, then
13 that also really never addressed anything other than the
14 omitted dresses and --

15 THE COURT: Be honest with you, I'm completely blown
16 away. We've been making orders -- I've been making orders on
17 child support and on temporary basis. Seems like every
18 hearing they're fighting about money, right? So I make the
19 orders on the child support, but it wasn't a done deal until
20 we got to trial so we can prove his income or submit proof,
21 testify to it, and then put these parties back on track. And
22 Mom would be able to get her child support, only what she's
23 entitled to under the law based on what I believe what his
24 income was. Okay.

1 Technical wording in an order. It wasn't just --
2 mention what we're going to trial. I think everybody knew
3 that and they were going to go to trial. Financial issues and
4 his final child support. The reason why it was kept temporary
5 is because they didn't come to any final order on -- on
6 custody. We're monitoring that. And they finally stipulated
7 on the day of trial what the custody is going to be. We were
8 doing other orders too like, you know, reunification,
9 counseling, monitoring the situation, but I think -- I think
10 the parents -- they knew about that. They're all on notice on
11 that. Can't -- you don't leave things hanging. And you go
12 back from the time of the divorce decree to resolve
13 everything. So --

14 MS. ALLEN: Can I --

15 THE COURT: Because it didn't -- wasn't in a
16 specific order when I set the trial. I think there's enough
17 notice there. Yeah.

18 MR. PAGE: It's -- it's fair -- there are shades of,
19 you know, gray as to whether there is --

20 THE COURT: You're -- I mean, I guess I --

21 MR. PAGE: -- sufficiently specific notice to put
22 her on -- make her aware that we're also looking at
23 retroactively mo -- modifying her -- her support obligations.

24 MS. ALLEN: But if you follow -- if I may just add

1 my two cents since --

2 THE COURT: Yeah -- yeah.

3 MS. ALLEN: But I mean, if you file a motion for
4 modification and the -- the issue --

5 THE COURT: You preserve.

6 MS. ALLEN: -- is never decided, you're on notice.
7 Like if that issue was --

8 THE COURT: And you also preserve. You're not --
9 you preserve the right to modify going back from the time --

10 MS. ALLEN: Right.

11 THE COURT: -- that you filed your motion.

12 MS. ALLEN: He filed -- which was October. And if
13 that issue truly has never been ruled on by the Court -- if
14 there was never a final ruling --

15 THE COURT: That's not retroactive.

16 MS. ALLEN: -- then you're on notice that this is an
17 issue that is -- is going to be decided.

18 MR. PAGE: I take exception as to whether you're
19 truly on notice because when we set an evidentiary hearing, we
20 list what we're going to decide. One, two, three, four, which
21 we did in February. And then we also expanded a little bit
22 because Judge O'Malley's minutes indicated that the dresses
23 were an omitted asset and that the --

24 THE COURT: And what were you planning to do with

1 the child support if that's what you said that I ordered that
2 we were just going to go to trial and you were going to
3 prepare for these particular issues?

4 MR. PAGE: Either it's something that we overlooked
5 in the setup for the -- the evidentiary hearing or it's
6 something where child support, once it's set --

7 THE COURT: Serious? I mean --

8 MR. PAGE: -- whether it has the label of temporary
9 or not, is subject to the Day vs. Day, Ramaciotti vs.
10 Ramaciotti (ph) sort of restrictions.

11 THE COURT: That motion -- that motion started that.
12 Soon after the divorce, he knew he had a change in his job.
13 He had a situation with his job. So he filed that motion
14 10/21 of '14, wasn't it, right? Because the --

15 MR. PAGE: Give or take.

16 THE COURT: -- divorce trial was on January 10,
17 2013? And so it look (sic) like a year an a half later, he's
18 -- he requested the modification. Are you saying I went back
19 before the time of the filing of his motion?

20 MR. PAGE: Oh no, I'm not -- certainly not saying
21 that. I'm saying that there's a couple of potential issues.
22 One potential issue --

23 THE COURT: No, actually, according to the minutes,
24 I only dealt with 2015, 2016.

1 MR. PAGE: One of the potential issues is the
2 ability to modify support once it's accrued. The other
3 ability (sic) is whether there was sufficient advanced notice
4 in the form of the minutes from Judge O'Malley and the order
5 from the February 9 hearing that these are one of the issues
6 we're going to be --

7 THE COURT: O'Malley or Hardcastle?

8 MR. PAGE: It was O'Malley.

9 THE COURT: There's one December 9th, 2014 with
10 Kathy Hardcastle.

11 MR. PAGE: Oh that was Kathy Hardcastle. That was
12 before I ever was on the case.

13 THE COURT: Are you referring to that one then?

14 MR. PAGE: No, I was referring to the settlement
15 conference minutes from Judge O'Malley regarding the remaining
16 outstanding issues, which occurred approx -- approximately
17 September of 2015.

18 (WHISPERED CONVERSATION)

19 THE COURT: September of 2015. So let's look at
20 there. That was a settlement conference?

21 MR. PAGE: Yes.

22 THE COURT: Here it is, August 28th actually.

23 (COUNSEL AND CLIENT CONFER BRIEFLY)

24 THE COURT: All right. It was Jan Jaclavino (ph) --

1 MR. PAGE: Okay. You're right, it's August. I'm
2 sorry.

3 THE COURT: -- and it was Mr. Page. Yeah, August
4 28th, right?

5 MR. PAGE: Yeah, it says the Court ordered that the
6 remaining issues are IRS debt, omitted asset, Mom's clothes,
7 final order for child support once Dad is employed.

8 THE COURT: Final order for child support once Dad
9 is employed.

10 MR. PAGE: And that -- I -- I treat that as going --
11 what his obligation's going to be going forward once he
12 becomes employed.

13 THE COURT: Once he becomes employed.

14 MR. PAGE: Because he -- he --

15 THE COURT: But you have his motion from October
16 2014, a year -- less than a year ago.

17 MR. PAGE: If it was going to address child support
18 arrears, I would suggest that for the purposes of clarity it
19 should shay -- say child support arrears.

20 MS. ALLEN: Your Honor, if I may, I -- I so
21 appreciate Mr. Page's efforts.

22 THE COURT: Go ahead, Ms. Allen.

23 MS. ALLEN: Could we just -- if he's going to do
24 something, then let him file a motion. I -- I don't -- I

1 don't want to spend more time arguing about this. The Court
2 made a ruling.

3 THE COURT: I don't want to waste the parents' time.
4 And I want to try and tell Mr. Page if you're reading it that
5 way, that's not -- it shouldn't be read that way going
6 forward. Mom, is that your understanding? When you walked in
7 and you talked to Judge O'Malley? I mean, first of all, you
8 don't want to talk about settlement conference unless what's
9 on record because that's supposed to be confidential. Is that
10 your -- was that your general understanding? This --

11 THE DEFENDANT: My --

12 THE COURT: -- thing had been hanging over his head
13 the whole time.

14 THE DEFENDANT: My understanding from when we --

15 MR. PAGE: Go ahead and --

16 THE DEFENDANT: -- come to court --

17 MR. PAGE: Go ahead and stand up.

18 THE DEFENDANT: Stand up?

19 THE COURT: No, that's okay. You could sit down.
20 It's fine.

21 THE DEFENDANT: My understanding honestly was --

22 THE COURT: That he was on the hook for the old
23 amount -- the divorce decree amount the whole time?

24 THE DEFENDANT: My understanding was when you had

1 ruled he was fired for cause --

2 THE COURT: Right.

3 THE DEFENDANT: Right, so technically when you're
4 fired for cause, you're still obligated to child support. So
5 that was my understanding was he would still have to pay
6 because --

7 THE COURT: Like it was his fault he got fired?

8 THE DEFENDANT: -- because of his -- yeah, because
9 if you look at his termination papers, he was fired for --

10 THE COURT: Let's assume --

11 THE DEFENDANT: -- engaging --

12 THE COURT: -- Counsel --

13 THE DEFENDANT: -- in illegal activity and --

14 THE COURT: -- that that would be a trial issue. We
15 had a trial issue -- a trial on that. It kind of became moot
16 because he got his job back.

17 THE DEFENDANT: I -- I never --

18 THE COURT: Because he got his job back, then he did
19 not get fired for his own -- for his fault. It wasn't his
20 fault. He got his job back. So I thought everybody in this
21 room understood, you got your job back, it wasn't your fault,
22 and you didn't do anything to get yourself fired.

23 MS. ALLEN: Why was there no objection when I was --

24 THE COURT: So now we're going to set you at the

1 correct amount. And because he didn't -- you got your job
2 back means, you know, for the times he was unemployed -- now,
3 are you saying did they have to go back and pay him because he
4 was right and he won the appeal and got his job back? Then
5 you would go -- go to trial and present those monies if you
6 can prove that he got monies -- monies back or back pay or
7 attorney's fees or costs. Maybe that might be your point.

8 THE DEFENDANT: But this is all very confusing to
9 me. I -- it was my understanding that what was set -- like I
10 had the temporary orders for Nicholas. He paid this and you
11 would -- ordered it temporarily and --

12 THE COURT: Did I --

13 THE DEFENDANT: -- we would go on from there.

14 THE COURT: Did I not lower it at some point when he
15 filed his motion in 2014 when he told me he got fired? I
16 lowered it temporarily when I say without prejudice. Your
17 position would have been, well, you got yourself in that
18 situation so you should pay the correct amount --

19 THE DEFENDANT: Well I think that's --

20 THE COURT: -- the court ordered amount.

21 THE DEFENDANT: I thought that's what Fred argued.

22 THE COURT: Right, right. All right. I know. And
23 you -- you're not a lawyer and --

24 THE DEFENDANT: Right, and we've been here for

1 almost --

2 THE COURT: Right.

3 THE DEFENDANT: -- six years. I don't remember all
4 this stuff.

5 THE COURT: So yeah, and I'm -- I'm trying to figure
6 out what your lawyer's is --

7 THE DEFENDANT: I just didn't --

8 THE COURT: -- planning to file.

9 THE DEFENDANT: I honestly didn't know that you
10 could go back and do it retroactively. I just thought we're
11 going from here, we'll be done, and this thing will finally --

12 THE COURT: From going forward when he got employed.
13 And he got employed January of this year.

14 THE DEFENDANT: Yeah.

15 THE COURT: So your beef is why did I make orders to
16 rearrange his child support back in 2015, correct? And put
17 him at --

18 THE DEFENDANT: Yeah.

19 THE COURT: -- whatever unemployed amount or -- or
20 whatever income he got for that particular month, right?

21 THE DEFENDANT: Yeah.

22 THE COURT: That's -- that's kind of your issue?

23 THE DEFENDANT: Yeah.

24 THE COURT: Concern?

1 THE DEFENDANT: And -- and because like I said, I
2 had Nicholas full time and --

3 THE COURT: I would tell you right now, I mean, if
4 -- file the motion, Mr. Page, but --

5 MR. PAGE: Okay.

6 THE COURT: -- that motion was preserved on October
7 2014.

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

9 THE COURT: Yeah, October 21st. Next time maybe you
10 and your client will have to sit down and discuss, but that
11 issue was preserved. I think you don't have a beef with that,
12 it's just that did we know we were going to go to trial on
13 that. And as I -- well, I think that --

14 MS. ALLEN: I asked a number of questions of my
15 client about his job and --

16 THE COURT: What happened, how much did you make.

17 MS. ALLEN: -- and attempting -- well, not just
18 that, the Court remembers I asked have you been looking for
19 other employment, I mean, did you look for another job while
20 you were out. You know, we talked about his dis -- his knees
21 and his -- I mean, why would I ask all of those questions
22 related to his employment if that wasn't at issue at the
23 trial? And there was certainly no objection from them about
24 relevance because it wouldn't have been relevant if this was

1 an issue at trial.

2 THE COURT: You had a lot of discussion also about
3 the QDRO and the PERS and all that, but when you both came
4 back into the courtroom, you didn't know I was going to make
5 those issues. Technically, I didn't know either until I
6 looked back at the procedural history and I says, I need to
7 rule on Dad's motion. So that's why I got delayed a little
8 bit. And then I had -- pulling my hair, I had to do
9 calculations. You guys didn't see that -- that I was going to
10 do that. So maybe I think that's why Mr. Page was asking
11 about that. And I said well I'm just -- it's cleanup work.

12 MS. ALLEN: I do have one issue --

13 THE COURT: Something's pending, I got to -- I got
14 to rule on it.

15 MS. ALLEN: -- with the order and the -- I think the
16 ruling from the Court.

17 THE COURT: Okay. I guess that's all I -- more I
18 can discuss on that, but as of today, I now put on the record
19 it appears to me he preserved that issue. That's what you do.
20 That's why Dad's come back to court. I lost my job, I need to
21 start the date timing because if I wait and wait, he's stuck
22 every month until you file that motion and preserve --
23 preserve it and say now you can go back from the time I filed
24 my request.

1 MS. ALLEN: Correct.
2 MR. PAGE: I appreciate --
3 THE COURT: That's --
4 MR. PAGE: -- your consideration on the issue.
5 THE COURT: Huh?
6 MR. PAGE: I appreciate your consideration on the
7 issue.
8 THE COURT: Yeah, okay. Appreciate the discussion.
9 Okay. What do you want to take up next?
10 MS. ALLEN: The -- one of the omitted assets the
11 Court said that she was entitled to is the sick and vacation
12 pay.
13 THE COURT: Do you have a draft order?
14 MS. ALLEN: He -- yeah, he handed it to me this
15 morning.
16 THE COURT: Can I follow along, get a copy?
17 MS. ALLEN: He -- he handed it to me this morning.
18 You can look at mine, I don't care, but --
19 THE COURT: There's no draft sitting with the Court.
20 MS. ALLEN: My -- my --
21 MR. PAGE: I -- I -- no, I didn't send you a copy --
22 THE COURT: Yeah, I've --
23 MR. PAGE: -- because I can't.
24 THE COURT: And you want to hash out the language

1 now kind of as a wrap-up issue? Let me get a copy.

2 THE CLERK: Okay.

3 MS. ALLEN: Okay. Well, my -- my --

4 THE COURT: And you have your copy, Mr. Page?

5 MR. PAGE: I can look on -- on my computer.

6 THE COURT: Okay.

7 MS. ALLEN: The -- the issue I believe is this, that
8 the sick --

9 THE COURT: Print two copies. It's easier to work
10 with a hard copy.

11 MS. ALLEN: The sick vacation pay was calculated as
12 of --

13 THE PLAINTIFF: The time I was terminated.

14 MS. ALLEN: -- the time he was terminated.

15 THE PLAINTIFF: In October of 2014, not the divorce
16 date.

17 MS. ALLEN: It should have been the divorce date.
18 So his -- the sick vacation pay should have been -- her half
19 should have stopped when they were divorced.

20 THE COURT: Measure and divide on the date of
21 divorce.

22 MS. ALLEN: Right, and I think the Court measured
23 and divided on the date of his termination, which was --
24 extended it considerably.

1 THE COURT: The number was like 70 something, right?
2 MS. ALLEN: Her --
3 THE COURT: 7500?
4 MS. ALLEN: Her half was like 7,000.
5 THE COURT: They must have been because you produced
6 an exhibit to me. And the exhibit might have been the number
7 after value --
8 MS. ALLEN: After the divorce. And so that --
9 that's the only thing is it just needs to be corrected.
10 THE COURT: You want to make an oral request to
11 correct an error of law?
12 MS. ALLEN: No, I need to make -- I just want to
13 make a oral request to correct the number. It's on --
14 THE COURT: The number.
15 MS. ALLEN: The number on the --
16 THE COURT: That's a substantive number you want to
17 change. There's a reason why I put this 7500 number there. I
18 took a number that was on an exhibit and I cut it in half but
19 if that's an error of law. Mr. Page, you follow?
20 MR. PAGE: I understand what you're saying.
21 THE COURT: Yeah, yeah. Let me see how to get those
22 minutes back. It's not those minutes I want. I don't want
23 those minutes. Get back to -- well, your response, Mr. Page?
24 It's 7,659.41.

1 MR. PAGE: As a tech --

2 THE COURT: And --

3 MR. PAGE: As a technical matter, as a -- as a
4 clerical function, she may be correct because the community
5 does end upon the filing of the decree of divorce; therefore,
6 anything that would be accrued from --

7 THE COURT: If us three agree; that's the law.

8 MR. PAGE: -- from March of --

9 THE COURT: Cut -- you cut it off at the time of the
10 divorce.

11 MR. PAGE: -- from March of 2013 -- 2014 --

12 THE COURT: Right.

13 MR. PAGE: -- through to October 2014.

14 THE COURT: Okay. Whose exhibit was it then?

15 MR. PAGE: But I would like to place the burden on
16 him as to determine what that number is.

17 THE COURT: I don't have the exhibits. I don't have
18 my notes with me.

19 MS. ALLEN: I actually think it probably was Mr.
20 Page's exhibit because I don't think I submitted any exhibits.

21 THE COURT: Do you guys have any spare copies of
22 that or remember what it was or -- was it filed in a prior
23 motion? If you can dig it up in your files, great, I'll look
24 at it, but I see what you're saying, but I think three of us

1 are on the same page here. You got to stop it on the date of
2 divorce. If that's -- do I call it clerical error or an error
3 of law? I mean, probably because I left it open for wrap-up
4 issues, I think I have -- a Judge sua sponte can at any time
5 correct any errors of law when you're in a hurry and did an
6 oral decision late in the day. So, I think we should just
7 clean that off and I order that. I'll order it sua sponte,
8 correct an error of law from date of divorce.

9 MS. ALLEN: I have --

10 MR. PAGE: I would like to place the -- the
11 responsibility --

12 THE COURT: Do you --

13 MR. PAGE: -- on Mr. Kilgore to figure what that
14 number is.

15 THE COURT: Do you have the number though, or now do
16 you got to go get another number?

17 MS. ALLEN: I need to get a statement. Mr. -- I'll
18 be honest with the Court, Mr. Kilgore did send it to me and
19 I've been out of town most of this last week. And I got in --

20 THE COURT: But we know what we're going to do,
21 right?

22 MS. ALLEN: So I'm tired. And I -- and I didn't
23 bring it with me, but he did send it to me.

24 THE COURT: Going to take -- take exception or

1 objection on the record, but I will do it sua sponte.

2 MR. PAGE: I -- conceptually I agree with the
3 concept that --

4 THE COURT: Measure of time of divorce.

5 MR. PAGE: -- the measure from beyond the date the
6 decree was filed through the time he was terminated, that's
7 separate property. It's no --

8 THE COURT: Okay.

9 MR. PAGE: -- different than if it was a retirement
10 benefit --

11 MS. ALLEN: Correct.

12 MR. PAGE: -- that was accrued post divorce.

13 THE COURT: Correct, and not take her word face
14 value but she's saying the number that I chopped in half was
15 measured at the time of termination. So a portion of that
16 needs to be backed out. And you only give her up to the time
17 of the divorce. And then direct the attorneys, whoever's
18 drafting the order, to correct and produce the --

19 MS. ALLEN: I can produce it by today --

20 THE COURT: -- statement.

21 MS. ALLEN: -- to Mr. Page.

22 THE COURT: Now the statement was not ara --
23 available at trial, but the Court can use, after -- post
24 trial, a corrected statement to do the correct number because

1 it's what you'd be entitled to under the law.

2 MR. PAGE: I'm trying to be right about this. I
3 mean, I could argue this. She's bringing this up after the
4 close of evidence; therefore, she's barred from bringing it up
5 but I'm trying to --

6 THE COURT: Sure, duly noted.

7 MR. PAGE: -- do this in a way to avoid the people
8 from coming back to court.

9 THE COURT: Okay. Absolutely, good argument there,
10 but I would override it and just say fix it and you have to
11 get the do -- the documentation --

12 MS. ALLEN: I will.

13 THE COURT: -- on that. Burden's on Dad and his
14 attorney to produce it. Then you can just cut it right in
15 half and then insert the dollar amount, fill in the blank. I
16 will prove that. You can attach it to the evidentiary order
17 to provide the proof. Okay? Next item.

18 MR. PAGE: Don't think I --

19 THE COURT: Then I can -- want to talk about your
20 supplemental exhibit?

21 MR. PAGE: Sure.

22 THE COURT: That'll be your next item?

23 MR. PAGE: Yes.

24 THE COURT: All right. So let me get back to that.

1 MR. PAGE: As part of supplemental exhibit --

2 THE COURT: Oh, by the way, what page in that so my
3 clerk can do the page number of the draft order? There it is.
4 Page 2 of 6. Right here. Line 26 and 27. That'll be
5 correct. The Court directs the attorneys to amend the dollar
6 amount. All right. Mr. Page.

7 MR. PAGE: You ordered hers because that's the only
8 way they'll produce the information what Mr. Kilgore was
9 expected to receive upon retirement as of March 10, 2015. I
10 sent the order to Sonya Hellwinkel. She produced a letter
11 dated November 22nd. I received it about November 28th.

12 THE COURT: Is it attached?

13 MR. PAGE: I attached it. His service retirement
14 allowance was 60 --

15 THE COURT: No, her letter. Hellwinkel's letter.
16 That would have helped.

17 MR. PAGE: Well, it's -- I -- I have it here if you
18 want to look at --

19 THE COURT: Can I borrow it?

20 MR. PAGE: -- but I just didn't -- I didn't attach
21 that.

22 THE COURT: It's a quick letter.

23 MR. PAGE: I think opposing Counsel --

24 THE COURT: Ms. Allen, you need a copy? I'll get

1 you a copy.

2 MS. ALLEN: No, she actually sent it to me too.

3 THE COURT: Oh, okay.

4 MS. ALLEN: She sent me a copy of everything --
5 well, she sent me a copy of all the -- the paperwork that is
6 attached.

7 THE COURT: Enclosed is a copy of the requested
8 estimate. Okay. I don't need it just from what it reads.
9 Okay. Thanks. All right. So she -- is that enclosed here,
10 attached?

11 MR. PAGE: The amount that Mr. Kilgore was scheduled
12 to receive is \$6,136.77.

13 THE COURT: Exhibit A, right. Okay.

14 MR. PAGE: So if we do the calculations, Ms.
15 Kilgore's entitled to approximately 40 percent of that, which
16 comes out to --

17 THE COURT: Fraction, it's fraction. Yeah.

18 MR. PAGE: Right, that -- that's her fraction, which
19 comes out to \$2,454.71 beginning March of 2015. So if you add
20 up all of the months for which she was entitled to 2454.71 and
21 didn't receive it, it co --

22 THE COURT: They were married less than the more --
23 he worked more than they were married -- the length of the
24 marriage.

1 MR. PAGE: It's a very -- it's a very slight --

2 THE COURT: So 80 percent.

3 MR. PAGE: -- non-overlap. Just a couple of years.

4 THE COURT: So 80 percent and half of that would be
5 Mom's, which would be 40 percent. And 40 percent of 6136 is
6 how you get to 2454?

7 MR. PAGE: Yes.

8 THE COURT: On page 2 of your supplement?

9 MR. PAGE: Page 2. I did an EMWA calculation. That
10 came out to \$54,003.62. When you add on interest because she
11 was denied the use of that money, that's another \$2,572 for a
12 total 56,575.

13 THE COURT: Two thousand more in interest.
14 Question. Just questioning, 54,000 in principal. Anybody
15 disputing that?

16 MS. ALLEN: I -- I mean, I don't just --

17 THE COURT: The question is the interest. Am I
18 going to impose the interest? Because they didn't know what
19 the amount was. And then they were in litigation this whole
20 time. Do I impose interest?

21 MR. PAGE: You already entered the prejudgment
22 interest.

23 THE COURT: Prejudgment interest. By statute?
24 Chapter 17?

1 MR. PAGE: Yes, if -- anytime you look at a general
2 civil case, and this is a form of a general civil case, you
3 always get prejudgment interest, because these things can drag
4 on for years.

5 THE COURT: From the time she made the request to
6 the Court, March 10th.

7 MR. PAGE: And the longer you drag it on, the longer
8 they're deprived of their money.

9 THE COURT: And you only went back to March 10th,
10 the day she made the request to the Court --

11 MR. PAGE: Yes, yes.

12 THE COURT: -- and filed the motion?

13 MR. PAGE: Yes.

14 THE COURT: And I cleared that up legally. Anybody
15 -- Ms. Allen, challenge the calculation?

16 MS. ALLEN: I don't challenge his -- no, I mean, his
17 math seems appropriate. The only thing --

18 THE COURT: You can also --

19 MS. ALLEN: The only chall -- I guess the only
20 challenge I have is to the -- I mean, that's a ridiculous
21 amount of money that is now owed when --

22 THE COURT: You mean a lump sum? Then how do you
23 collect that?

24 MS. ALLEN: Well, not just that, but, I mean, if

1 you're -- if literally -- I mean, again, we go back to --

2 THE COURT: No, earlier I've asked what Hellwinkel
3 right now.

4 MS. ALLEN: -- Marshal Willick and his --

5 THE COURT: This is the number. How does Mom
6 collect on it?

7 MS. ALLEN: You ha -- you go back to the Marsh --
8 the Marshal Willick testimony and --

9 THE COURT: And is that taxable to you? Because --

10 MS. ALLEN: -- equalization of the parties post
11 divorce. And this puts her -- this puts my client at -- if
12 you look at how much child support everything else --

13 THE COURT: We cut you a check for 50 plus, now you
14 got to pay taxes on it too. Tax consequences.

15 MS. ALLEN: And it goes -- and that -- and the other
16 part of it is is that anything she collects --

17 THE COURT: So does that mean I direct PERS now to
18 cut her a check for 50 -- 56 grand? I would want to ask
19 Hellwinkel that. Do you want your --

20 MS. ALLEN: I don't know that they can do that.

21 THE COURT: Want to call her on the phone? I could
22 take a little five minute break. See if she's available.

23 MS. ALLEN: The other thing is that that money needs
24 to go -- well whatever is she's paid then -- if -- if that's

1 the case and if PERS pays for that, then he's entitled to some
2 --

3 THE COURT: Well, I don't know if they're going to
4 pay. We need to find out.

5 MS. ALLEN: Well, I understand, but if they do, then
6 the child support changes over the last however many -- that
7 -- that's -- affects her child support as well, because now
8 that's income.

9 THE COURT: Wow.

10 THE PLAINTIFF: It goes up to 29,400.

11 THE COURT: Could be right, I don't know. Income is
12 from any source.

13 THE PLAINTIFF: It's almost \$30,000 a year more
14 she'll be making.

15 THE COURT: Income's from any source.

16 THE PLAINTIFF: And then you need to take that off
17 my income.

18 THE COURT: For Wright vs. Osburn, I would say.

19 MS. ALLEN: Yeah, absolutely. It's in there.

20 THE COURT: For sure Wright vs. Osburn, but for one
21 kid, if he owes her, then he got (sic) to pay the straight 18
22 percent. Then I can look at factors like household incomes
23 but that's usually the exception, not the rule.

24 MS. ALLEN: Right.

1 THE COURT: But definitely for Wright vs. Osburn, I
2 would have it attribute -- and what do I do? Average it per
3 month over the time period and then recalculate Wright vs.
4 Osburn?

5 MS. ALLEN: Absolutely.

6 MR. PAGE: You may have to do something -- I
7 understand what you're -- what we're talking about in -- in
8 theoretical sense but we're also talking about monies that
9 he's never paid her.

10 MS. ALLEN: But if she gets payments --

11 THE COURT: Oh, I know --

12 MS. ALLEN: -- that's still in there.

13 THE COURT: -- but if I signed it, Ms. Allen's
14 argument is let's take 2400 a month on paper and say add that
15 to Mom's income. Now when I'm calculating 18 percent for
16 Richard -- 18 percent for Richard the other kid, the joint
17 physical child.

18 MS. ALLEN: She may be paying him.

19 THE COURT: Could be. Incomes from any source.
20 Incomes from any source. That's including a property
21 distribution.

22 MR. PAGE: The bottom line is going to be he's -- he
23 needs to begin --

24 THE COURT: Then I need to readjust his --

1 MR. PAGE: -- paying money to my client whatever
2 that amount is going to be.

3 THE COURT: And you go --

4 MR. PAGE: And I need --

5 THE COURT: -- by my month by month going back to
6 March 10, 2015. And now we know the numbers. Now we have to
7 attribute it to Mom. We can sit down. It's not that hard to
8 calculate it, because I made -- can they dig out my trial
9 notes, my calculations from the trial? They left-side filed
10 it unless you know how to open it. But Susanna (ph) -- just
11 -- fastest way, have Susanna -- okay, let me take a five
12 minute break. Why don't -- you want to get on the phone with
13 Hellwinkel, see if she -- she could stand by on speaker phone,
14 or we can call her and we can ask her about how to pay and how
15 does it work? And then I'll -- we'll go back and redo and add
16 the 2451 to the Wright vs. Osburn starting from March forward
17 and apply the proper child support and then readjust the
18 numbers. And would that wrap everything up?

19 MS. ALLEN: I think so.

20 THE COURT: And then we have your Brunzell
21 attorney's fees brief. We're going to set deadline.

22 MS. ALLEN: Which I -- he sent to me this morning.
23 I haven't looked at -- and I'm --

24 MR. PAGE: She hasn't filed one.

1 THE COURT: I -- and it's not officially on file yet
2 here. There -- you weren't required -- it said it was
3 ordered, but I set briefing deadlines.

4 MR. PAGE: I -- I have it.

5 THE COURT: Yeah, you could serve it on me today.
6 And we'll do briefing deadlines and then just --

7 MS. ALLEN: Thank you.

8 THE COURT: -- I take those under advisement.

9 MS. ALLEN: Yeah, that's fine. I prefer it that
10 way.

11 THE COURT: And would be -- and then when we wrap
12 these up, then I can have a bigger picture and see where -- if
13 there's any basis to award fees on both sides, if any. Okay.
14 Maybe you lawyers can call Hellwinkel --

15 MR. PAGE: I can call her right now.

16 THE COURT: -- and see if she could be on standby
17 and get her callback number. And when I get back on the
18 bench, we can call her if she's just hanging around at her
19 office. If she can't, ask her then how do we get the 56,000
20 paid out to Mom. And then, we will sit down and start it and
21 add -- redo month by month, but I want to -- I had my notes,
22 I'm going to go retrieve them, from the trial of how I went
23 month by month.

24 MR. PAGE: I'll make the call now.

1 THE COURT: Yeah, okay. 10 minute break. We're
2 going to need about 10.

3 THE CLERK: Off the record.

4 (COURT RECESSED AT 10:55:46 AND RESUMED AT 11:07:25)

5 THE COURT: Let me adjust these numbers and then --

6 THE CLERK: We're on record.

7 THE COURT: Okay. We're back on the record. Mr.
8 Page or Ms. Allen, did you contact Ms. Hellwinkel?

9 MR. PAGE: I did call her number. She didn't answer
10 the phone. I left a message for her to return call.

11 THE COURT: Okay. If she does call back, great, let
12 me know. Keep your phone on, but I think we won't need her.
13 This is just administrative. I think we will approve the
14 dollar amount, which is the in -- the principal of 54,000.
15 It's on this piece of paper here -- 003.62. And then
16 prejudgment interest of 2,572.14 for a grand total of 56,000
17 -- as of today, 575.76.

18 Both Counsel are directed to contact PERS -- Ms.
19 Sonya Hellwinkel. It might be her name. There it is, just a
20 quick spelling of her name. For distribution, disbursement,
21 and payment to Mom. Did you double check Mr. Page's math on
22 the 2454.71? If that's correct, then I have to add that
23 income for purposes of Wright vs. Osburn going back to the
24 time that Dad filed his motion to modify, but let me double

1 check. At the time of the motion to modify. Was it the
2 arrangement of primary to Mom of Nicholas and joint? Not at
3 that time. Did they have joint?

4 MS. ALLEN: It was joint to both. We came in last
5 time we were here and stipulated to --

6 THE COURT: Okay. So are we on the same page that
7 we are doing joint until a change to primary to Mom?

8 MR. PAGE: No, I'm going to have to look at the
9 order.

10 THE COURT: Okay. Take your time.

11 MR. PAGE: Because I -- I know, at that time --

12 THE COURT: Good thing my clerk found the notes.

13 MR. PAGE: -- she had Nicholas all the time.

14 THE COURT: Yeah, while you're looking, this is what
15 my court notes say, that as of October 2014, I think I did a
16 straight joint. And I had a number here of 999. Anybody
17 remember that from their notes?

18 MR. PAGE: I --

19 THE COURT: Dad would owe Mom, or Mom would owe Dad?
20 Dad wasn't working at the time, right?

21 MS. ALLEN: No.

22 THE COURT: So Dad's 200 -- I'm sorry. Yeah, Dad's
23 200 -- I found it. Mom was 5648 times 25 percent, which was
24 1412 minus 200 minus 213. Must have been health insurance

1 premiums?

2 MR. PAGE: Mom is paying for health insurance. Why
3 is there a \$200 deduction? Should be added.

4 THE COURT: Yeah, give her that credit. So write
5 this down. From October 2014, Dad was 200, unemployed, two
6 kids. And Mom was at 5648. And this is how I calculated it.
7 25 percent was 1412 minus 200 for Dad. And then minus 213
8 discount for Mom, which brought her down to 999 on paper.
9 Now, you got to be readjusted because now Mom's at 5648. And
10 we're going to add -- what's the number rounded up?

11 THE CLERK: I think it's --

12 MR. PAGE: 2454 -- 2455.

13 THE COURT: Five rounded up.

14 MR. PAGE: But Your Honor, before we go there --

15 THE COURT: Before we go there, yes.

16 MR. PAGE: -- can I -- I'd like -- I'd like to make
17 a record please. May I?

18 THE COURT: Yes.

19 MR. PAGE: The record is that this is contingent
20 upon Mr. Kilgore actually paying her any monies. You're
21 attributing income to her that he has never paid and actually
22 may never pay her.

23 THE DEFENDANT: Yeah.

24 THE COURT: Any credits or payments -- I don't think

1 I had time to -- you mean like actual payments that he paid
2 her?

3 MR. PAGE: No, of the 2454, he may never pay her.
4 Unless you hold him in contempt and throw him in jail --

5 THE COURT: Then I would have --

6 MR. PAGE: -- he may never pay her.

7 THE COURT: I would hold the number in abeyance.
8 Let's talk about this.

9 MS. ALLEN: Well the -- I think it's --

10 THE COURT: She didn't actually have access to the
11 money. So I'm making Mom pay --

12 MR. PAGE: Yes.

13 THE COURT: -- more money to Dad when she didn't
14 have access to the money.

15 MS. ALLEN: Well, what I'm --

16 MR. PAGE: Right.

17 MS. ALLEN: -- saying -- no, what I'm saying to the
18 Court is is that if -- if for whatever reason --

19 THE COURT: Unless they have -- we have another --

20 MS. ALLEN: If Sonya Hellwinkel says yeah, you can
21 just disperse this money, she then gets this huge lump sum
22 payment of \$56,000.

23 THE COURT: Yes, treat it that way and then declare
24 it as income.

1 MS. ALLEN: That should go back to the whatever --
2 March or wherever we were -- October.

3 THE COURT: I think your argument is unrealistic to
4 make Mom pay for money she didn't have access to.

5 MS. ALLEN: No, I understand that now but what I'm
6 saying is --

7 THE COURT: No, I like your suggestion. Let's take
8 a lump sum now and if we were going to do it, then we're going
9 to attribute it for future purposes or for a particular year.

10 MS. ALLEN: Well, what I -- yeah, but I'm saying we
11 sort of -- what I -- I guess what I -- the bottom line is this
12 conversation hinges on Sonya Hellwinkel, right? We can't
13 really do anything yet. Now, going forward --

14 THE COURT: I'm --

15 MS. ALLEN: -- as of right now, I -- I think that we
16 can -- we can figure out potentially what the child support
17 issue would be from here forward --

18 THE COURT: Sure, we can negotiate -- they can
19 negotiate an amount.

20 MS. ALLEN: -- but we -- we did discuss last --

21 THE COURT: That'll save a lot of time.

22 MS. ALLEN: -- time we were here this -- this
23 amount. This 2455 --

24 MR. PAGE: Four.

1 MS. ALLEN: Well, I'm rounding it up. 2454 a
2 month --

3 THE COURT: Five.

4 MS. ALLEN: -- that he --

5 THE COURT: It's rounded up.

6 MS. ALLEN: Or 2455, sorry, that he theoretically --

7 THE COURT: Yeah, I'm not going to --

8 MS. ALLEN: -- owes her every month. The Court had
9 said last time that we were here that, you know, that's a lot
10 of money that he -- so 2454 and then 1300 in -- in child
11 support? We're basically taking his entire check. So I think
12 the arguments that we need to make at this point are what he
13 should be paying her.

14 THE COURT: What's he on now? What's he paying now?

15 MS. ALLEN: Well, He -- he hasn't paid -- he hasn't
16 paid anything.

17 MR. PAGE: Nothing. He pays nothing.

18 THE PLAINTIFF: I'm paying --

19 THE COURT: No, I mean -- no, on -- on paper.

20 THE PLAINTIFF: -- a minimum of \$1500 a month now
21 in child support.

22 THE COURT: So 15?

23 MS. ALLEN: He's still paying 1500 a month in child
24 support. So --

1 THE COURT: I thought it was lower.

2 MS. ALLEN: Well, hi -- so he -- so he's basically
3 -- \$200 a month is going -- it would be going towards --

4 THE COURT: Okay.

5 MS. ALLEN: -- the PERS payment because --

6 THE COURT: I'm hoping the good news is I don't have
7 to change my numbers.

8 MS. ALLEN: Where's my child support --

9 THE COURT: The arrears. This 54,000 -- maybe
10 there's a way. I don't think -- because Mom didn't have
11 access to it. Like I said, I'm not going to pay her more --
12 have her pay child support she didn't have access to. That
13 doesn't seem fair.

14 MR. PAGE: No, it's not.

15 THE COURT: So I'm not going to apply it
16 retroactively but you are going to be coming into some money,
17 ma'am. If it happens before the end of this year, I'm going
18 to divide that by 12 and then apply the child support amount
19 or -- I'll tell you what. I can hold it. Let's assume --
20 whether it's paid close enough to the end of this year or
21 early next year, we're going to average out 54,000 -- 56,000
22 divide by 12 plus your normal pay. And then I'm going to
23 apply future wise and just apply it over a 12 month period.

24 MS. ALLEN: I don't think ==

1 MR. PAGE: I can -- I can tell you with certainty
2 that --
3 THE COURT: But I don't know and I'm just --
4 MS. ALLEN: I don't think PERS can do that, though.
5 MR. PAGE: I can tell you with certainty PERS is not
6 going to cut her a check for --
7 THE DEFENDANT: No.
8 MR. PAGE: -- \$56,000 because they will not disperse
9 any monies until he actually retires.
10 THE DEFENDANT: Right.
11 MS. ALLEN: So -- but with rega -- so you were
12 asking how much he's paying now. I just want to clear that
13 up.
14 THE COURT: You could be ri -- I mean, yeah, I think
15 you're right.
16 MS. ALLEN: Beginning July of 2 --
17 THE COURT: I think you're right.
18 MR. PAGE: We could -- I'll tell you what. Can we
19 shortcut this? We can call Marshal.
20 THE COURT: For any creative suggestions?
21 MS. ALLEN: Beginning in the order -- or the court
22 order that beginning July of 2016, his child support order was
23 1306, right? So since July, he should have been paying her
24 1306. He's still paying her 1500. So that overage --

1 THE COURT: Still go -- ongoing.

2 MS. ALLEN: My argument -- that overage goes towards
3 whatever PERS --

4 MR. PAGE: But part -- what we asked -- what you
5 ordered to do is --

6 THE COURT: I think --

7 MR. PAGE: She was ordered to do an audit with the
8 District Attorney's office. She hasn't done it or he hasn't
9 done it.

10 THE COURT: Can you print me the minutes from the --
11 the last day of trial? Let me ask Dad. Do you know how that
12 all works? How she's going to get her 54 -- 56,000?

13 THE PLAINTIFF: It has to come from me, because
14 according to PERS, they will not pay anything out of -- until
15 I --

16 THE COURT: It'll come from your pocket.

17 THE PLAINTIFF: Until I retire.

18 THE COURT: We have to make arrangements.

19 THE PLAINTIFF: I am not fully vested in PERS yet.

20 THE DEFENDANT: Yes, he is.

21 THE PLAINTIFF: So if I retire right now --

22 THE COURT: Wait, wait.

23 THE PLAINTIFF: Mr. Page, I'm talking.

24 THE COURT: Yeah. Yeah, I know. Please.

1 THE PLAINTIFF: We know I could throw out my
2 retirement. We all know that, it's accepted. We got that.
3 THE COURT: Right, but you're --
4 THE PLAINTIFF: It's on the record.
5 THE COURT: -- actively working right now.
6 THE PLAINTIFF: I'm working.
7 THE COURT: So you're holding off on that.
8 THE PLAINTIFF: I -- I max out at 75 percent at 29
9 years into PERS.
10 THE COURT: I get that. We have the same thing for
11 judges, yeah.
12 THE PLAINTIFF: So if I retire now, I'm not maxed
13 out. I'll get 66 percent roughly of my re -- PERS if I leave
14 right now. So I'm being penalized if I stay, I'm being
15 penalized if I leave.
16 THE COURT: Yeah.
17 THE PLAINTIFF: You know, and it's all about money
18 for her. You know. So --
19 THE COURT: Well, my question was, we all know
20 there's no check coming like right now for Mom.
21 THE PLAINTIFF: No.
22 THE DEFENDANT: Right.
23 THE PLAINTIFF: PERS is not going to pay them
24 anything. I --

1 THE COURT: No, because you're not --

2 THE PLAINTIFF: I'm barely paying my bills now. I
3 can't afford to pay her \$2400.

4 THE COURT: So this is a property interest that Mom
5 would actually be sitting on and -- and waiting until --

6 THE DEFENDANT: Yes.

7 THE COURT: -- he actually puts in his retirement,
8 correct?

9 MR. PAGE: Anytime you make her wage --

10 THE PLAINTIFF: And PERS will not back pay it --

11 THE DEFENDANT: Yes.

12 THE PLAINTIFF: -- either, Your Honor. They don't
13 back pay.

14 THE COURT: No, they won't back pay.

15 MR. PAGE: No.

16 THE COURT: But this will be a money judgment. Does
17 it continue to accrue --

18 THE DEFENDANT: Yes.

19 MR. PAGE: Yes.

20 THE COURT: -- interest?

21 MR. PAGE: Of course it does, it's a judgment.

22 THE COURT: Question. Does it? Because it's not a
23 judgment that's not -- I wouldn't say vested, that's not
24 payable yet under the law.

1 MR. PAGE: She can go ahead and search out whatever
2 assets Mr. Kilgore has and --

3 THE COURT: Name -- okay.

4 MR. PAGE: -- satisfy the judgment.

5 THE COURT: Just looking at both sides of the coin.
6 Maybe --

7 MR. PAGE: As a matter of law under Sertic, you are
8 not able to deprive her of her community property.

9 THE COURT: Right.

10 MR. PAGE: And what he's proposing deprives her of
11 her community property. He doesn't get to take her stuff away
12 from her.

13 THE COURT: Only whatever the law says.

14 THE PLAINTIFF: But you're proposing she takes my
15 stuff away and --

16 MR. PAGE: But it's not your stuff.

17 THE PLAINTIFF: -- and in the ba --

18 THE DEFENDANT: It's not your stuff.

19 THE COURT: Okay.

20 THE DEFENDANT: It's my community property.

21 THE PLAINTIFF: It is my stuff now.

22 THE COURT: Whatever the PERS rules are. I don't
23 have all the special expertise or knowledge on these specific
24 details. Trust me, if I knew, 16 years on the bench, I would

1 tell you. Okay. Okay. I think we all agree though, there's
2 not going to be a check cut for you. Makes sense to me now.
3 And until he actually choose -- when -- the date when he
4 retires, then -- then it's still not going to come from PERS
5 period. It has to be made arrangements from him.

6 THE PLAINTIFF: PERS --

7 MS. ALLEN: Well the back part of it is. Once he
8 retires, PERS will cut her a check separately out of --

9 THE PLAINTIFF: They'll send her a check.

10 THE COURT: Correct.

11 MS. ALLEN: Yeah, they'll send her a check.

12 THE COURT: Her monthly check.

13 THE PLAINTIFF: And the lo --

14 MS. ALLEN: Right, monthly check.

15 THE COURT: First --

16 THE PLAINTIFF: The longer I stay working is a
17 higher more amount she's going to get from PERS too, because
18 it's based off the total years.

19 THE COURT: Percentage. It's based on her community
20 interest percentage.

21 THE PLAINTIFF: And -- and it'll be off the total
22 what I make. So when I get 75 percent, she will actually be
23 making more than the 24 how PERS explained it to me.

24 MR. PAGE: She's entitled --

1 THE PLAINTIFF: So if I go --

2 MR. PAGE: -- to cost of living increases
3 regardless.

4 THE COURT: Yeah, and -- and you take issue with
5 that?

6 THE DEFENDANT: Well, he's going to get money too --
7 eventually.

8 (COUNSEL AND CLIENT CONFER BRIEFLY)

9 THE COURT: So because we measure -- we measure --
10 but her interest is preserved as a percentage, isn't it?

11 MR. PAGE: Yes.

12 THE PLAINTIFF: Yes.

13 THE COURT: But he continues to work and they're not
14 married anymore.

15 MR. PAGE: Her perce -- the longer he works, the
16 lower her percentage gets. So it's -- it -- it's --

17 THE COURT: Yeah, I think the percentage -- yeah.

18 THE PLAINTIFF: They -- no, it does not.

19 MR. PAGE: So the increase --

20 THE DEFENDANT: Yes, it does.

21 THE PLAINTIFF: It --

22 MR. PAGE: -- he's claiming that happens really
23 doesn't.

24 THE DEFENDANT: It doesn't, because we talked to

1 PERS.

2 THE PLAINTIFF: Perce -- her percentage will go up.

3 THE COURT: Her percentage stays fixed because --

4 THE DEFENDANT: My percentage is based on our
5 marriage.

6 THE PLAINTIFF: It says 40 percent at what --

7 MS. ALLEN: At he retires at.

8 THE PLAINTIFF: -- at retires at.

9 MS. ALLEN: Yeah.

10 THE PLAINTIFF: It's --

11 THE COURT: When he retires.

12 MR. PAGE: No.

13 THE DEFENDANT: No, it goes by date of divorce.

14 THE PLAINTIFF: We'll get 40 percent of the 75
15 percent --

16 THE COURT: Okay.

17 THE PLAINTIFF: -- versus 40 percent --

18 THE DEFENDANT: It goes by the date of the divorce.
19 That's what's in the QDRO.

20 THE COURT: Ma'am, I think he's just -- there's
21 nothing he can fight on. He understands the longer he stays
22 working, your check's going to be few dollars more every --
23 every time.

24 MR. PAGE: Well, yes and no, because the percentage

1 under the credible years gets smaller. So the -- the marria
2 -- length of the marriage stays the same. The length of
3 service increases. So the percentage becomes smaller
4 obviously.

5 THE COURT: But his check is always growing bigger
6 because he's not at 66 percent. If he maxes out at 75
7 percent, you're going to get your proportionate --

8 MR. PAGE: Regardless, her -- her percentage --

9 THE COURT: It is --

10 MR. PAGE: -- of that is always going to be small.

11 THE COURT: In other words, it is what it is. We --
12 we can't fiddle with the numbers.

13 THE PLAINTIFF: It won't be smaller, it's going to
14 be more.

15 THE DEFENDANT: He's -- he's going to get mine too.

16 THE COURT: We're fighting about something --

17 THE DEFENDANT: Yes.

18 THE COURT: -- we can't fight about. It is what it
19 is. It's a percentage --

20 THE DEFENDANT: Well, I'm --

21 THE COURT: -- and he knows it. He knows it.

22 THE DEFENDANT: And same as mine too. He's going to
23 get part of mine too when I retire.

24 THE COURT: Exactly, it's how it works. Okay. So

1 where are we at? First of all, yeah, send you guys to
2 Hellwinkel if you need to have any questions answered, but I
3 think we've answered the question. There's no hard monies
4 coming to Mom right now on the 54 -- the -- I keep saying 54.

5 MR. PAGE: 56,000.

6 THE COURT: The 56,000 with the interest included.
7 And we don't know when his date of retirement is?

8 MS. ALLEN: Not yet, no.

9 THE COURT: Okay. It could be between now or the --
10 when -- whenever.

11 MS. ALLEN: It could be tomorrow, it could be
12 whenever.

13 THE COURT: Right, and so Mom's checks -- percentage
14 checks, the ones that are -- come monthly to her -- when the
15 day he -- the month he retires then her checks will be
16 distributed future wise but then we're sitting on this 56,000
17 that has to be reimbursed back to Mom, correct? Okay. And so
18 yeah, going to have this situation now. We -- we figured it
19 out what it is under law, now we don't fig -- figure out how
20 we're going to pay it back. And he's stuck and interest is
21 accruing on a daily basis. And he didn't know this was the
22 amount that he was going to owe her but I've already approved
23 the prejudgment interest, but he'll continue to get interest
24 every day.

1 So I'm -- I don't know. I'm guessing one suggestion
2 would be to -- to start monthly installment payments, treat it
3 as a money judgment and just pay it back as a money judgment
4 on a monthly installment basis wherever -- how big or however
5 small. And then treat it just like any other type of
6 judgment, correct?

7 MS. ALLEN: Well, the -- and that's what I was
8 getting at. What -- whatever we're -- whatever we -- that's
9 -- and that was my argument on the child support. Whatever
10 number we come up with as far as what he's paying her, above
11 and beyond the 1306, which is child support, that would go to
12 her income. And that is going to adjust the child support.

13 THE COURT: We can use it to use offsets as well.
14 Second -- se -- second thing I would add as part of this
15 wrap-up issue is, it is a property judgment. So we need to
16 put some language in there under Siragosa. And I'm not saying
17 he would or he wouldn't but you know the concept of
18 bankruptcy? So if he bankrupts her, we would have to preserve
19 her rights to request relief from the Court, because legally
20 he's allowed to bankrupt her. I'm not trying to hide the ball
21 here. I'm not saying he would or he wouldn't, but if he does,
22 okay, she would preserve her right to come here and make the
23 request to preserve the judgment because legally creditors --
24 she's his cre -- she's his creditor. She can't come after him

1 to collect the rest of her 50K or whatever. So then you got
2 to explain to her and explain to him what that means. Okay.

3 And I can't convert the nature or the character of
4 it and the nature of support. It is a property judgment. So
5 neither here nor there and I'm not a bankruptcy expert,
6 neither are they. I'm assuming they're going to say you
7 better talk to a bankruptcy attorney about that or consult
8 with somebody like Mr. Willick about the effects -- the
9 Siragosa effects, Martin v. Martin. Okay. It's nothing new
10 to us. I put language in there and I would include that in my
11 order in the event that might happen. And then I could
12 preserve jurisdiction to indemnify I guess. All right. Look
13 into -- look into that. That's just -- that's just an
14 afterthought out there.

15 All right. So this is what we know for sure. You
16 have any other future questions, you can direct -- be directed
17 to Ms. Hellwinkel, who will prove the 56,000 final judgment.
18 It is a property judgment. Execution is stayed because --
19 well, execution is stayed but can he start to make monthly
20 installment payments to continue to reduce that every month?
21 And then can -- if I treat it as a prop -- if it's a property
22 asset, I want to mix it with child support and -- and support
23 amounts. So we need to make payments separate. Keep them
24 separate.

1 MS. ALLEN: I don't mind keeping them separate.

2 THE COURT: Exactly.

3 MS. ALLEN: The only argument --

4 THE COURT: Because you don't want to make a mess
5 out of it.

6 MS. ALLEN: -- I'm making is that that becomes
7 income on her side. So that will change the child support
8 calculation is what I'm saying.

9 THE COURT: Now, yeah, so before I spit out any
10 dollar amount on what he would pay, if I consider that he
11 starts paying her a hundred a month, 500 a month -- let's find
12 out what his child support amount is. Now, if that is a money
13 judgment, that is not -- is that income attributable due to
14 wages or efforts?

15 MS. ALLEN: That's income, taxable income. If it's
16 taxable income -- if she can be taxed on it, which she can,
17 she's going to have to pay taxes on this, then it's income
18 under -- under the federal law, it's income under state law,
19 and -- and it absolutely affects the child support.

20 THE COURT: It's a very broad definition. I'm --

21 MS. ALLEN: It's income.

22 THE COURT: Right now I (sic) thinking let --

23 MS. ALLEN: She's getting --

24 THE COURT: Yeah.

1 MS. ALLEN: -- rent. It's in -- I mean, it's
2 income. That's --

3 THE PLAINTIFF: Because I can write it off on my
4 taxes.

5 THE COURT: If you had a pension or a retirement and
6 you start collecting on your PERS, that's income. Income's
7 from any source. Gambling winnings, that's income from any
8 source. If you have a retirement distribution, that's income
9 from any source, but for purposes of child support
10 calculation, she's not getting 54 right on the spot. If I say
11 Dad, start paying her at a hundred a month and -- and pay down
12 that 54,000, okay, then I will only add a hundred a month to
13 her income as a property distribution, right?

14 THE DEFENDANT: Yes.

15 MR. PAGE: I should note the interest is \$240 a
16 month.

17 THE COURT: A month?

18 MR. PAGE: A month. It's \$8 a day.

19 THE COURT: Ten percent? Prime plus two?

20 MR. PAGE: Eight dollars times 30 is 240.

21 THE COURT: He didn't know. Neither of them knew.
22 I don't use equity unless it's -- there's -- it's a last
23 resort. Court of equity -- put a halt or minimize the
24 interest accruing.

1 MR. PAGE: She's entitled to her property.
2 THE COURT: Is it really 240 a month or 240 a year?
3 MR. PAGE: 240 a month. It's \$8 -- interest is
4 accruing at -- at the rate of \$8.11 per day.
5 THE COURT: Well if you had like a \$54,000 credit
6 card balance, you're paying 240 in interest? I guess so.
7 Yeah, I guess.
8 MS. ALLEN: This -- I -- you know, I was just
9 explaining to him this is --
10 THE COURT: He didn't know and she didn't know.
11 MS. ALLEN: Well but this puts -- you know, this
12 puts people in just a completely untenable position.
13 THE COURT: It's like having a credit card debt.
14 MS. ALLEN: Well, no, but this puts someone --
15 THE COURT: Basically he has a \$54,000 credit card
16 debt now.
17 MS. ALLEN: This puts him in an unte -- anybody in
18 this position -- just completely untenable position. Like I
19 can't imagine that this is what the legislature --
20 THE COURT: Well, that's not --
21 MS. ALLEN: -- meant when they did this. And even
22 if he had been paying the 24 -- and I'm not --
23 THE COURT: True, and I will --
24 MS. ALLEN: -- dinging the Court. You're following

1 along, but if he were to pay her that 2400 a month since the
2 start of this, and let's say the -- the 54,000 didn't exist,
3 his paycheck he would be taking home --

4 THE COURT: The law says you can't take more than 50
5 percent of your paycheck.

6 MS. ALLEN: A quarter perc -- he'd be taking a
7 quarter of -- maybe a quarter of his paycheck and she would be
8 in a position of --

9 THE COURT: Check the garnishment laws. You can't
10 take more than somebody's 50 percent.

11 MS. ALLEN: I under -- no, no. I understand that,
12 but what I'm saying is -- the legislature says he has to pay
13 this, right? So -- so he's -- he's being told that he's
14 supposed to be paying, you know, 1300 a month in child support
15 or whatever that was and then 2400 --

16 THE COURT: Where are we at?

17 MS. ALLEN: -- a month --

18 THE COURT: Can I have the mi -- oh there we go.

19 MS. ALLEN: -- for -- for this PERS settlement.

20 THE COURT: All right.

21 MS. ALLEN: Add 1300 and 2400 a month, that's four
22 grand and he makes like six. So I mean, that's over half his
23 paycheck he would have been having to pay. I cannot imagine
24 this is what the legislature meant when they drafted this. I

1 think it is a fabulous appellate issue because that puts him
2 in -- in a completely -- I -- you -- he is literally forced to
3 declare bankruptcy if that's the case, because this is
4 ridiculous.

5 MR. PAGE: And bankruptcy --

6 MS. ALLEN: This is ridiculous.

7 MR. PAGE: -- will change absolutely nothing.

8 THE COURT: If you set it out on paper, we'll take a
9 look at that. The Court has always ongoing jurisdiction to
10 look at relative income and the household's financial
11 hardship, but again, still we have to apply the child support
12 laws, but --

13 MS. ALLEN: Of course.

14 THE COURT: -- I have to have --

15 MS. ALLEN: Child support I'm -- I don't have an
16 issue with.

17 THE COURT: Yeah, but --

18 MS. ALLEN: It's this.

19 THE COURT: -- I have to have a good -- a good basis
20 to give these types of offsets. Likewise with Mom. She --
21 she'd be under the same rules. Yeah, trust me, I hear it
22 every day. I got moms and dads coming in.

23 MS. ALLEN: I know.

24 THE COURT: I can't afford it and it's too much

1 money.

2 MS. ALLEN: But -- but I mean, you're looking -- if
3 6 -- if 6,000 is his take home every month and over 4,000 of
4 it should have been going to her, that's --

5 THE COURT: Where'd you get 4,000?

6 MS. ALLEN: Well, the 24 -- or not over 4,000. I
7 apologize. 20 -- what is it? 24 whatever and --

8 THE COURT: You mean when he's -- when he chooses --
9 when he -- the date he chooses to retire?

10 MS. ALLEN: No, no, no. I'm talking about while
11 he's still working. What is it? 24 --

12 THE COURT: Oh, while he's still working, he has to
13 pay her the 2455?

14 MR. PAGE: Yes, yes.

15 MS. ALLEN: 3955 is what he should -- is essentially
16 what the Court is saying he should have been paying this
17 entire time. \$4,000. He takes home six.

18 THE COURT: Yeah, going forward, he has to pay the
19 -- or else it's going to continue to accrue if he doesn't pay
20 her.

21 MS. ALLEN: He can't pay her 4,000 --

22 THE COURT: The 2455.

23 MS. ALLEN: He can't.

24 THE COURT: Her 40 percent.

1 MS. ALLEN: He can't. He won't live.
2 MR. PAGE: That's --
3 MS. ALLEN: He can't pay her that money.
4 THE COURT: And then that stops when he actually
5 retires because then PERS takes over and then cuts her her
6 four -- 24.
7 MS. ALLEN: Cuts her her 40 percent.
8 THE COURT: But in the meantime, he has to pay the
9 2455.
10 MS. ALLEN: But he can't. How is he going to live?
11 He -- that literally is over half his paycheck.
12 MR. PAGE: He doesn't get to deprive my client of
13 her property.
14 MS. ALLEN: But he gets to live, right? I mean --
15 MR. PAGE: No, he gets --
16 MS. ALLEN: -- we do get to live and eat, right?
17 MR. PAGE: He gets to pay my -- he -- my client gets
18 her property. I mean, had he done things like --
19 THE COURT: Because he was allegeable to retire.
20 MR. PAGE: -- not alienated Nicholas, none of this
21 would be a problem.
22 THE COURT: Because he was allegeable to retire.
23 MS. ALLEN: How would Nic -- how does alienation of
24 Nicholas have anything to do with \$4,000?

1 MR. PAGE: Because then we'd have --

2 THE COURT: All right.

3 MR. PAGE: -- we'd have shared physical custody and
4 a very much different --

5 THE COURT: Let's take a look at that.

6 MR. PAGE: -- child support order.

7 THE COURT: I'm -- now I'm following -- I'm
8 following what you're saying. So beginning July 2016, child
9 support for Nicholas was set at 820 plus 266 for joint
10 physical custody of Richard, Jr. plus 220 for health insurance
11 premiums for a total of 1306 per month. That's where we're
12 at. And he's been paying 1500. Of course we'll give him the
13 --

14 MS. ALLEN: Right.

15 THE COURT: -- appropriate credits. So, we know
16 that for sure. And that's our starting point. Okay. Dad's
17 at 1306. Now he's going to be on the 2455. I mean, if my --
18 I want to say if my hands are tied and I have to order it as a
19 property distribution, courts of equity or equitable powers,
20 they're only a last, last resort. So yeah, we'll -- we'll --
21 let's take a look at that. His obligation to Mom is 3,767 --
22 61; 3761. 1306 plus 2455. And I'd have to pull his financial
23 disclosure form, but is 6,000 the net or do you have the
24 actual number?

1 MR. PAGE: He could probably give us a new paycheck
2 because he -- he did get a raise in July.

3 MS. ALLEN: So did Mom.

4 THE COURT: Did we know that when we went to trial?

5 THE PLAINTIFF: Got one in September also.

6 MR. PAGE: Yes, Mom -- Mom included hers, he didn't
7 include his.

8 THE DEFENDANT: Yeah, mine --

9 THE COURT: What was his --

10 MR. PAGE: We had that at trial.

11 THE COURT: So what's his net? You have his old
12 FDF? I'm going to have to dig it. Dig for it.

13 MR. PAGE: I can pull it up.

14 THE COURT: Okay. Check my computer.

15 MR. PAGE: He could -- he could pull up a paycheck
16 on his phone and we can calculate from there.

17 THE PLAINTIFF: I don't have access to the City
18 website.

19 MR. PAGE: Sure, you do. Give it to me and I'll
20 look it up.

21 THE PLAINTIFF: Negative there, Mr. Page.
22 Negative, Ghost Rider.

23 MR. PAGE: Excuse me? That should be contempt, Your
24 Honor.

1 THE COURT: Counsel, Mr. Kilgore, yeah, let's not go
2 there. I'm just going to look it up.

3 MR. PAGE: Okay. I can make him pull -- pull it up.

4 (COUNSEL AND CLIENT CONFER BRIEFLY)

5 THE COURT: Might have been usually in my notes
6 somewhere but I'm working off gross when I do the child
7 support. Defendant, Plaintiff. Does July 25th ring a bell
8 when he last filed his?

9 MR. PAGE: Yep.

10 THE COURT: Yeah, that's him. July 25th. 51759.70
11 through the end of -- through July 8th. So that's -- I only
12 got half a year's worth but he says at that time he
13 represented 7362.03 gross, 88,000 year. After deductions,
14 7362.

15 MR. PAGE: He's taken off of 401(k)s.

16 THE COURT: Yeah, who developed this one? Marshal?
17 Because then when you subtract the deductions out, I don't get
18 the net on page 3. The old form gave that to me. 3373 in
19 deductions. Yeah, that includes the 1500 in child support.
20 That's fine. Social security and union dues and Medicare.
21 Did I miss any other deductions?

22 MR. PAGE: 401(k).

23 THE PLAINTIFF: I don't have a 401(k), Mr. Page.

24 THE COURT: And well, even if he did, I wouldn't --

1 I wouldn't include it as a discretionary expense. 3989 is
2 what he's got to live off of based on his representation on
3 his -- on his net pay. And 3989 and you take out 3761, he's
4 got, what, \$228 to pay his rent?

5 MS. ALLEN: He's got what? I'm sorry.

6 THE COURT: \$228 to pay his rent.

7 MR. PAGE: Not my client's fault.

8 THE PLAINTIFF: My rent's 1,215.

9 THE COURT: I know it's not her fault.

10 MS. ALLEN: How much -- but -- but --

11 THE COURT: But it's not realistic.

12 MS. ALLEN: So he has -- what -- what did the --
13 what was the Court's --

14 THE COURT: But then --

15 MS. ALLEN: She gets to live on like --

16 THE COURT: You defer payment, sir, it's just going
17 to tack on, add up, add up. It's a catch 22 for you.

18 MS. ALLEN: Right, which is why I'm --

19 THE COURT: For us --

20 MS. ALLEN: -- saying I cannot --

21 THE COURT: For us --

22 MS. ALLEN: -- imagine --

23 THE COURT: -- government employees, catch 22.

24 MS. ALLEN: -- this is what the legislature

1 intended.

2 MR. PAGE: Then we need to go to the legislature and
3 change law --

4 THE COURT: Wow.

5 MR. PAGE: -- but we're here to enforce the law.

6 THE COURT: Right, what we all --

7 MR. PAGE: The law says she gets her --

8 THE COURT: Mr. Page.

9 MR. PAGE: -- share of the property.

10 THE PLAINTIFF: I give her share of the property.
11 I should be getting her PERS too because --

12 THE COURT: Okay.

13 THE PLAINTIFF: -- she could start drawing it now.

14 MR. PAGE: That's not --

15 THE COURT: Let -- let's not argue in the courtroom.
16 You -- you lawyers are on the ball on that. This definitely
17 probably should go to Supreme Court.

18 MS. ALLEN: Oh yeah.

19 THE COURT: Never -- 16 years on the bench. Never
20 had a situation like this and ended up with a financial --

21 MS. ALLEN: Me either. This is ridiculous.

22 THE COURT: -- situation for --

23 MS. ALLEN: Yeah.

24 THE COURT: You know, Dad, who has 228 leftover

1 after he's got to pay Mom. Child support, yeah, you got to
2 pay that off the top. He knows that.

3 MR. PAGE: He can retire.

4 THE COURT: But now, I got to pay my property
5 distribution going forward. And nobody anticipated --

6 MS. ALLEN: Please don't --

7 THE COURT: -- this was going to be --

8 MS. ALLEN: Please don't --

9 THE COURT: That leaves him \$228 a month to pay
10 what? His car payment, rent, car insurance, electric bill?
11 That's not im -- impossibility.

12 MS. ALLEN: And it's not --

13 MR. PAGE: He has the --

14 MS. ALLEN: It's not equitable. It doesn't make
15 sense.

16 MR. PAGE: He has the ability to --

17 THE COURT: And if I said --

18 MR. PAGE: -- retire and get a different job, but
19 Mom's obligation -- his -- Mom's right to property is every
20 bit as important.

21 THE COURT: Guy's not -- 88 grand a year. He's not
22 willfully underemployed. He's not willfully underemployed.

23 MR. PAGE: He ha -- he has the ability --

24 MS. ALLEN: And he shouldn't have to retire.

1 MR. PAGE: He has the ability to retire, allow PERS
2 to --
3 THE COURT: I can't force people to work three full
4 time jobs too.
5 MR. PAGE: -- pay Mom her portion. He can get a job
6 doing something else.
7 MS. ALLEN: He shouldn't have to retire.
8 THE COURT: The numbers are what they are.
9 MR. PAGE: She shouldn't have to be deprived of her
10 property.
11 THE COURT: Okay. That's not going to help. I'm
12 just telling you that's --
13 MS. ALLEN: Her making 10,000 a month and --
14 THE COURT: It's -- it's so obvious right now.
15 MS. ALLEN: -- him making three is not -- yeah, come
16 on.
17 THE COURT: Eighty-eight grand --
18 MR. PAGE: It doesn't matter.
19 THE COURT: Eighty-eight grand a year. A guy's got
20 to pay the child support, no problem. He knows he has to pay
21 that off the top but then you got to take 2455. It's -- yeah,
22 catch 22 situ -- a really tough situation. And I -- there's
23 no way he can live. It's not more than 50 percent of his
24 check, he's got five percent -- 10 percent of his check left

1 -- five percent of his check left to live. He won't be able
2 to live that way.

3 MR. PAGE: The law is the law.

4 THE COURT: I'm not disagreeing. I'm not taking it
5 away from Mom, just the matter of -- the manner of payment.
6 The manner -- I mean, be reasonable people here.

7 MS. ALLEN: I'm not being unreasonable, I'm just
8 saying.

9 THE COURT: I'm crunching the numbers. How you
10 going to get a dad to live on 228 a month after I pay Mom off
11 the top? Which she's definitely legally entitled to get.

12 MR. PAGE: If Dad had not alienated Nicholas, the
13 child support --

14 THE COURT: Wow, oh no. I -- I can't deal with --

15 MR. PAGE: -- situation would be very much reversed.

16 THE COURT: I'm not going to deal with finger
17 pointing.

18 THE PLAINTIFF: Mr. Page, she alienated him. She
19 has created parental terrorism.

20 THE COURT: We won't go there. Sir, we won't go
21 there. That doesn't help me.

22 THE DEFENDANT: All three of your kids hate you.

23 MS. ALLEN: It doesn't help.

24 MR. PAGE: I know what you did and I know why he

1 doesn't like you.

2 MS. ALLEN: Mr. Page, arguing it doesn't help. Like
3 come on.

4 THE COURT: Okay.

5 MS. ALLEN: Let's just -- enough.

6 THE COURT: Yeah, that's -- that's a hefty summon.
7 The way the PERS and the law -- and you know, and there's --
8 that's definitely --

9 MS. ALLEN: Will the Court do me --

10 THE COURT: That should be something the
11 legislature, not even Supreme Court --

12 MS. ALLEN: Will the Court do me a favor? Can we --
13 will you -- will the Court give me time to brief this?

14 THE COURT: Absolutely, I can probably figure out
15 when the next legislative session is.

16 MS. ALLEN: No, I just need time to brief it.

17 THE COURT: It's a hard --

18 MS. ALLEN: Because I think there -- I -- I'm -- I
19 -- give me -- if the Court would give me --

20 THE COURT: And Mom, I'm not taking his side. I'm
21 just saying it's -- it's a -- what's the word? Crazy, weird
22 situation that this ended up this way. And nobody's trying to
23 take anything from you that you're entitled to that they gave
24 you under the law, but the manner of payment is the -- wow.

1 If I say okay, Dad, you can't pay her 2455, you need to use
2 that to pay your rent and your gas money or whatever and to
3 eat, he's still on the hook 2455 every month. If I said pay
4 -- pay him, you know, \$55 a month and then he's still on the
5 hook 2400 every year. And then it's going to -- what do you
6 call it, a balloon? It's going to balloon and snowball.
7 Snowball effect that she's going to --

8 THE DEFENDANT: Well, can't you even award half of
9 that then?

10 THE COURT: You know, well, he'll cry financial
11 devastation.

12 MR. PAGE: He doesn't want to pay anything. He
13 won't pay anything.

14 THE COURT: No, it's not that. It's not that, it's
15 the situation.

16 THE PLAINTIFF: She's getting child support, Mr.
17 Page. Quit saying I'm not paying anything.

18 MR. PAGE: He will not pay -- he will not pay
19 anything toward the property utilization. He just won't.

20 THE COURT: You'll get the child support off the
21 top. He's -- he -- he can't fight me on that one.

22 THE DEFENDANT: Thank God.

23 THE COURT: You will get that for sure. Yeah, we
24 probably need to -- we know what the numbers are now, we know

1 what the law says. Somebody's probably got to make le -- it's
2 a legislature issue, not a --

3 MS. ALLEN: Well, I think it's a Supreme Court --

4 THE COURT: -- Supreme Court interpretation issue.

5 MS. ALLEN: No, I think the Supreme Court can take
6 this up.

7 THE COURT: Why? You think they're going to --
8 yeah, to declare a law unconstitutional?

9 MS. ALLEN: I think they can take this up. I -- I
10 think the Supreme Court --

11 THE COURT: What are they going to do? Give him ret
12 -- re -- relief? Excuse him? Mom -- they're not going to do
13 that.

14 MR. PAGE: Why's -- what --

15 THE COURT: I'm going to excuse you from the 2455 a
16 month.

17 MS. ALLEN: I think --

18 THE COURT: That -- the Nevada Legislature, the PERS
19 people, made that up. I mean, they made the law though that
20 way.

21 MS. ALLEN: Well, I think --

22 THE COURT: The only way to get Supreme Court to do
23 it is to declare -- and they're not going to declare
24 unconstitutional. So what do you do? You got to go back to

1 Nevada Legislature.

2 MS. ALLEN: Anyhow --

3 THE COURT: Right? Everybody has rights and they
4 have interests on both sides and motivations. And they want
5 to preserve --

6 MS. ALLEN: I understand that.

7 THE COURT: -- their rights. Yeah, did not know
8 that coming in here today. This is going to be the situation.

9 MS. ALLEN: Well --

10 THE COURT: For sure, yeah, he's going to get --
11 continue to pay the -- well, he's paying 1500. We don't even
12 know if he's in arrears.

13 MS. ALLEN: He's not.

14 THE COURT: And --

15 MS. ALLEN: He's ahead.

16 THE COURT: -- should I just pay -- tell him to pay
17 the right amount? It's 1306, you know.

18 MS. ALLEN: But they're -- they're garnishing his
19 paycheck. So he doesn't have a choice. Like they're --
20 they're garnishing his --

21 THE COURT: Oh.

22 MS. ALLEN: -- paycheck.

23 MR. PAGE: Because he wouldn't do it voluntarily.

24 THE COURT: So the extra 194 --

1 MS. ALLEN: 1500.

2 THE COURT: -- is just credit every month.

3 MS. ALLEN: Yeah, he's getting a hundred and --
4 yeah, whatever it is.

5 THE COURT: And because technically, as of like
6 today, yeah, he's supposed to pay her 2455, I think -- fine,
7 we'll just leave it at the 1500 for now. And then yeah, maybe
8 if I say my -- my job -- kind of my order is done here --
9 right? I haven't decided. And I have to make a decision
10 because then he can say the decision has impacted him or
11 impacted her. Then you got to run to the legislature. Call
12 your assemblyman or senator and say this creates a really bad
13 situation, you know, for both having to pay and then having to
14 collect. I don't take sides here. I don't take sides. Wow.
15 Okay. Crazy case. All right.

16 For sure this is my declaration. Yeah, Dad will
17 continue to pay the \$1500 a month. It is 1306 of child
18 support. There's a 194 credit sitting every time and every
19 month that he's been paying since I set him at the 1306. That
20 1306 started at July 2016, but the first six months of this
21 year, he was at 1292, correct? Just a few dollars less? So
22 whatever that credit is off the 1500, that continues to
23 accrue. And then through the end of 2015 -- but the 1500
24 started when? Because I need -- I need --

1 MS. ALLEN: This has been in effect I think since
2 October when --
3 THE COURT: Since he got his job early January this
4 year? Is that --
5 MS. ALLEN: No, you -- you set 1500 I think back in
6 October of -- what? 2 -- 2014?
7 MR. PAGE: No, the --
8 THE DEFENDANT: No.
9 MR. PAGE: This -- no, no, no, no, no, no.
10 THE COURT: No, October 20 -- oh, '15, maybe.
11 MS. ALLEN: 1500 has been set for a very long time.
12 MR. PAGE: No.
13 THE COURT: How long's it been in effect?
14 THE DEFENDANT: No, since I think February of this
15 year, Your Honor.
16 THE PLAINTIFF: Then I went back to --
17 THE COURT: I knew he got his job back January.
18 That's why I put him back up.
19 THE DEFENDANT: Yeah, by February.
20 THE COURT: I think in January, February this year.
21 THE DEFENDANT: Yeah.
22 MR. PAGE: No -- well, yes, since -- since February,
23 it is --
24 THE COURT: In 2014, Mom owed Dad -- like I said,

1 for 2014, Mom was owing Dad 999 on paper. And then for 2015,
2 let me just see what I had Mom at. 2015. July 1st I had to
3 hear ca -- from -- because of the caps -- on July 1st, the
4 caps change. Mom was owing Dad on paper first half of July 20
5 -- last half of July 2015 it looks like -- oh, my notes, my
6 scribble notes. I thought I had my -- July -- oh, that's
7 2016. Yeah, 1/4/16 was the date of rehire. So what did I
8 have her at? Look at the minutes.

9 (COUNSEL AND CLIENT CONFER BRIEFLY)

10 THE COURT: The minutes say 757 a month on paper Mom
11 would owe Dad from -- from December 2014 to January 2016.
12 When Dad got his job back January 16 this year, 2016. That's
13 when the 1500 went into effect.

14 THE DEFENDANT: But even though --

15 THE COURT: So we -- now we -- we just want to make
16 sure we have on record what we -- his continuing credits are.
17 Okay. Yeah.

18 (COUNSEL AND CLIENT CONFER BRIEFLY)

19 THE COURT: Now, did you guys -- these minutes were
20 -- when were they done? Probably took two weeks to get them
21 done, right? So since you got availability of the court
22 minutes, did you guys check items 10 and 11 on the minutes?
23 His credits. And then item 12 is Mom's credit.

24 MR. PAGE: Yeah.

1 THE COURT: You add his two, subtract her credit but
2 the number 12 credit's going to change because of the error of
3 law.

4 MR. PAGE: Yeah.

5 THE COURT: So it's --

6 MR. PAGE: That's where I had the --

7 THE COURT: -- going to be down a few dollars. And
8 then I would take -- add 10 and 11 and then subtract out
9 number 12 on the minutes. And then it still looks like Dad's
10 still got another credit. He's still got another credit
11 sitting.

12 MS. ALLEN: That's what it was.

13 THE COURT: Now let's -- but he -- take out the
14 medical bills arrears of 3600. That may shift the credit to
15 Mom. The 3202 --

16 MR. PAGE: Yes.

17 THE COURT: -- item 20, would be subtracted off of
18 Dad's credit. So if you're saying he's at about 2200ish and
19 then 3,000 -- 3200, then Mom's probably going to be owed a
20 thousand to finalize and wrap all of that up. And then all we
21 have left would then be the payment of the 2455. Yes.

22 MR. PAGE: And the 56,000.

23 THE COURT: Put it in the minutes. Court did
24 calculations. Dad must pay child support of at least the

1 1306. He's paying 1500 by garnishment. And to -- and if he
2 were to pay 2455 going forward, Mom's monthly share of his
3 pear -- PERS -- he would have \$228 left per month to live --
4 for living expenses, which --
5 MR. PAGE: He can get another job.
6 THE COURT: Can't.
7 THE PLAINTIFF: Sorry, Mr. Page.
8 THE COURT: He has a full time -- he has a full time
9 job, not willful underemployment. And that's called
10 involuntary servitude. I can't force him to take --
11 MR. PAGE: He can do --
12 THE COURT: -- another second job.
13 MR. PAGE: Mom's -- Mom's property rights can be
14 honored.
15 THE COURT: Legally, I can't say sir, go get a
16 second full time job.
17 MR. PAGE: No, you can't. He can do that on his
18 own.
19 THE COURT: You know that.
20 MS. ALLEN: She -- he can't. He can't work for
21 someone else when he's employed with the City.
22 THE COURT: Yeah, well, that's a whole new
23 discussion. I'm not getting there and it's not my -- that's
24 not my thing.

1 MS. ALLEN: Well, he can't --

2 THE COURT: Legally -- I'll tell you legally he --
3 he's -- he's not willfully employed (sic) and he's got a (sic)
4 \$88,000 a year job.

5 MR. PAGE: Yeah -- no, but he could -- She -- her --
6 her right to the property, as mandated by the legislature,
7 needs to be honored.

8 THE COURT: Absolutely, I said I'm not taking sides.

9 MR. PAGE: And then -- then he can do whatever he
10 wants with whatever's left. That's up to him.

11 THE COURT: I know what she's entitled to and I know
12 what he has to pay. Have him pay but not on 228 a month.
13 We're -- we're now on a stalemate which needs briefing. And
14 then if I need to -- if I need to finish up my order --

15 MR. PAGE: What we can do --

16 THE COURT: What do I give Dad? The option of zero
17 right now? And then you want to take it up with the
18 legislature? I -- I won't make him pay the --

19 MS. ALLEN: Here's --

20 THE COURT: -- zero or make him pay a hundred
21 towards it --

22 MS. ALLEN: I'm --

23 THE COURT: -- but there's no way he's getting --
24 getting out of it unless he -- he gets something -- wild

1 decision like declare it unconstitutional. I mean --
2 MS. ALLEN: Well --
3 THE COURT: -- that would violate --
4 MS. ALLEN: That's --
5 THE COURT: -- community property laws.
6 MS. ALLEN: That -- but there's -- there is -- there
7 is an issue actually with -- okay. This is what I was just
8 sort of reading.
9 THE COURT: I --
10 MS. ALLEN: I need to do the research on it but
11 according to the legislature, they said, right, that it wasn't
12 payable until the person retires, but the Supreme Court came
13 in and said no, no, no, they're entitled to a plan --
14 THE COURT: Holyoke, right.
15 MS. ALLEN: So now we have a disparity in what the
16 legislature said and what the Supreme Court said.
17 THE COURT: You got to go in now also to the Supreme
18 Court and try --
19 MR. PAGE: The legislature didn't say that.
20 THE COURT: You know.
21 MS. ALLEN: Well, I appreciate Mr. Page and his
22 legislative expertise. Can I have --
23 MR. PAGE: And -- and I -- I appreciate her
24 legislative expertise, because --

1 MS. ALLEN: Can I have --
2 MR. PAGE: -- she's saying things that the
3 legislature never said.
4 MS. ALLEN: Can I have 30 days to brief?
5 THE COURT: Absolutely.
6 MS. ALLEN: Thank you.
7 MR. PAGE: My client's entitled to this money.
8 Please make him pay.
9 MS. ALLEN: How? Blood?
10 THE COURT: Wait, hang on. I --
11 MR. PAGE: Five -- \$500 a month.
12 THE COURT: Right.
13 MR. PAGE: Whatever it may be, she's entitled to
14 something while the remainder accrues.
15 THE COURT: If I -- if I wanted to lose my job and I
16 made him -- make him pay, I'm not going to make somebody pay
17 who has \$228 left every month.
18 MR. PAGE: I'm sorry, lose your job?
19 THE COURT: Yeah.
20 MR. PAGE: Why?
21 THE COURT: Because it would be a error of law to
22 force him to pay two -- 2455 on top of his 1306.
23 MR. PAGE: Then make him pay something toward it.
24 THE COURT: Well, yeah.

1 MR. PAGE: He owes \$56,000.
2 THE COURT: Okay.
3 MR. PAGE: Reduce that to judgment. She can do with
4 it what she wants to. Make him pay something toward the
5 ongoing prop -- property equalization arrears please.
6 THE COURT: All right. And I don't pick numbers out
7 of the air. So, you want me to go back and look at his
8 financial disclosure form and see what he's got leftover?
9 MR. PAGE: Sure.
10 THE COURT: I have no problem doing that. Okay.
11 All right, but don't yell at me, Mr. Page.
12 MR. PAGE: I'm sorry, I'm just -- she's -- she --
13 THE COURT: Let's take a look at this.
14 MR. PAGE: She doesn't even practice family law and
15 she's telling us what the legislature says on PERS.
16 THE COURT: I'm -- I'm going to -- I'm looking at
17 it. I pull up his FDF on page 4 of 12. Sir, is your car
18 insurance 350 a month? Or --
19 THE PLAINTIFF: It actually went up, Your Honor,
20 because of the --
21 THE COURT: You covering the kid too?
22 THE PLAINTIFF: I have the kid, which also raised
23 it another hundred seven dollars.
24 THE COURT: Is that Nicholas' insurance?

1 THE PLAINTIFF: Richard. Richard.

2 THE COURT: And you're not splitting that with the
3 mom? And you got a multi --

4 THE PLAINTIFF: I --

5 THE COURT: -- vehicle policy?

6 THE PLAINTIFF: It's for him on my policy.

7 THE COURT: Let me tell you this. The kid's not
8 going to be happy, but I said you -- legally -- that's a
9 privilege for him. Legally for your -- for your survival, you
10 should only be paying your car and your car insurance. So
11 bye-bye car insurance, bye-bye privileges to drive. Yeah, I
12 understand the kid needs to get around, may have a part-time
13 job. Mom, you're not splitting that with him, are you? Not
14 helping out with that? So it's -- it's a --

15 THE DEFENDANT: He never split our daughter's. I
16 paid it all by myself for the last six years.

17 THE COURT: Okay. Yeah, I'm not doing tit for tat
18 but --

19 THE DEFENDANT: Okay. I'm just telling you.

20 THE COURT: -- I'm telling Dad right now I'm not --
21 I cannot give --

22 THE DEFENDANT: He doesn't pay for anything.

23 THE COURT: I cannot assign that as an expense,
24 Richard's car insurance.

1 THE PLAINTIFF: But that's an added expense with
2 him being on my car and stuff and --
3 MR. PAGE: It's not --
4 THE DEFENDANT: Alex is on mine.
5 THE COURT: Well, moral obligations again versus
6 legal obligations. There are kids that don't have cars, don't
7 have --
8 THE PLAINTIFF: Oh, I agree.
9 THE COURT: -- licenses, don't have insurance.
10 What's your car insurance? A hundred? Depends how old your
11 car is.
12 THE PLAINTIFF: I have a 2011 truck. And it's \$450
13 because of the suspension for my driver's licence because of
14 the District Attorney's office.
15 THE COURT: For the child support?
16 THE PLAINTIFF: Yes.
17 THE COURT: Is that gone now? Did you walk through
18 the order?
19 MR. PAGE: The suspension was taken off immediately.
20 MS. ALLEN: I -- I sent the order --
21 THE COURT: I told you to walk through an order.
22 MS. ALLEN: I sent the order to Mr. Page.
23 THE COURT: He said --
24 MS. ALLEN: And --

1 MR. PAGE: And you got it back promptly.

2 MS. ALLEN: Oh, my God. Do you have to interrupt
3 everything I say? Anyhow --

4 THE COURT: You should have gotten that back.

5 MS. ALLEN: It's like my children.

6 THE COURT: Your lawyer's supposed to walk through
7 an order.

8 MS. ALLEN: I -- anyways -- and I -- I believe I
9 forwarded it --

10 THE COURT: He had 24 hours to object to the
11 language of your order.

12 MS. ALLEN: Right, and I -- and I -- what I'm saying
13 is, Your Honor, is that I forwarded it on to your office and
14 to your law clerk. And --

15 THE COURT: Oops. It's up there?

16 MS. ALLEN: Yeah.

17 THE COURT: That's on me then. Call Natalie.

18 MS. ALLEN: But if I -- if -- if -- I mean, I still
19 have it obviously.

20 THE COURT: No, no, I am. Call eight --

21 THE CLERK: I'm calling the person.

22 THE COURT: 1889. Or 1887. Susanna might know.

23 She logs in, logs out. Susanna might know. A proposed order
24 from Kilgore. Approximate date you dropped off?

1 MS. ALLEN: It would have been right arou -- I
2 didn't drop it off, I emailed it to her because everything's
3 efiled. So I --

4 THE COURT: When?

5 MS. ALLEN: I email everything.

6 THE COURT: When? You should -- it shouldn't have
7 gone that --

8 MS. ALLEN: It would have been within a couple of
9 days of the October 31st.

10 MR. PAGE: It was November 3rd.

11 THE COURT: You're kidding me.

12 MS. ALLEN: No.

13 MR. PAGE: I sent -- I sent it to -- back to Counsel
14 November 3rd.

15 THE COURT: You should have -- you should have
16 stopped by my quorum. I've -- we've had issues up there.

17 MS. ALLEN: I have been -- I have a --

18 THE COURT: Stuff sitting for two months. I to -- I
19 -- I told you, I gave my word, I'll -- I'll process it on the
20 day --

21 MS. ALLEN: Oh, I know.

22 THE COURT: -- you walk it through.

23 MS. ALLEN: I remember. But anyway --

24 THE COURT: Sorry.

1 MS. ALLEN: So but -- so but --
2 THE COURT: Next time bring it to my courtroom right
3 here. I'll sign it.
4 MS. ALLEN: I -- I -- honest to God, I'm almost
5 never down here. I really have tried to --
6 THE COURT: Well, I'm embarrassed.
7 MS. ALLEN: -- stay away from this building --
8 THE COURT: I'm totally embarrassed that it's not
9 been processed or logged out.
10 MS. ALLEN: -- as much as humanly possible.
11 THE COURT: They don't know, because they don't know
12 what happens here, because I can't totally blame them because
13 they don't know what happens --
14 MS. ALLEN: I understand.
15 THE COURT: -- and the -- the urgency of it.
16 MS. ALLEN: I understand.
17 THE COURT: But you lawyers know next time you need
18 something urgent, procedurally you -- you can just see me.
19 I'm here every day. I'm -- I'm hardly up there. Do you have
20 it on email? Can you email it to my clerk here? And then we
21 can print it in the courtroom and I'll sign it today. And you
22 should have had it a week -- week or two ago.
23 MS. ALLEN: Let me see if I have it under my sent.
24 THE COURT: You are not in arrears based on my

1 findings.

2 MS. ALLEN: Yeah.

3 THE COURT: They should have not -- penalize you.

4 And you -- are you on a SR22?

5 THE PLAINTIFF: No, Your Honor. I --

6 THE COURT: Oh.

7 THE PLAINTIFF: -- filed everything with the family
8 court hearing master down there. And they just said --

9 THE COURT: You got to --

10 THE PLAINTIFF: -- talk to the --

11 THE COURT: I'll sign the order today. You get a
12 certified copy and you walk it through DA right now and say I
13 want my licence back. That order should have been done.

14 Okay. My bad.

15 THE CLERK: Where was it submitted?

16 THE COURT: By email. Everything is by email. When
17 we email, we don't log in/log out. I -- I don't make the
18 rules up there and I don't -- I didn't know we do things by
19 email now.

20 MS. ALLEN: I don't see it.

21 THE COURT: Because we -- we log in, log out date
22 stamp, file stamp, or receive stamp hard copies, but email you
23 have a record of when you emailed it.

24 MR. PAGE: I physically dropped of my PERS order. I

1 got it back promptly.

2 THE COURT: Good, okay. I did something right
3 there.

4 MS. ALLEN: I will --

5 THE COURT: Shoot.

6 MS. ALLEN: I -- I can't --

7 THE COURT: Sorry.

8 MS. ALLEN: -- find it on my -- my phone right now.

9 THE COURT: Some -- I mean, yeah.

10 MS. ALLEN: I'll -- I'll send it --

11 THE COURT: Squeaky wheel gets the grease.

12 MS. ALLEN: This afternoon I can send it.

13 THE COURT: But like one time I hadn't --

14 MR. PAGE: I have -- I have a copy in my -- in my
15 e-file. I can --

16 THE COURT: Yeah.

17 MR. PAGE: -- email it to you.

18 THE COURT: Yeah, well now I take responsibility.

19 MR. PAGE: If she'll -- if she'll print it off and
20 she'll sign it, it'll be done.

21 THE COURT: That's on me. That's on me for not --
22 we'll get it done. So email it.

23 MS. ALLEN: I will.

24 THE COURT: No, right now. I'll sign it.

1 MS. ALLEN: No, I ca -- it's -- I can't find it on
2 my phone.

3 MR. PAGE: I can find it. I can. I'll forward it
4 to the la -- to the clerk.

5 THE COURT: Call back. She'll call back. All
6 right. Mr. Page can find it and we can print it.

7 MR. PAGE: I can --

8 THE COURT: I'm going to get a wireless printer so
9 you guys can just print.

10 MR. PAGE: I have it. I'll forward it now.

11 THE COURT: Get yours certified, sir.

12 MR. PAGE: Who do I forward it too?

13 THE COURT: Walk it through the DA today. Serve it.

14 THE CLERK: It'll be me, sir.

15 THE COURT: You should have gotten your licence back
16 two weeks ago.

17 MR. PAGE: That -- that doesn't help me. Who?

18 THE CLERK: I was going to explain --

19 THE COURT: The SR22 then should not --

20 MR. PAGE: What's --

21 THE COURT: -- have happened.

22 MR. PAGE: What's the e --

23 THE COURT: I mean, I have no --

24 THE CLERK: Capital -- capital E.

1 MR. PAGE: Capital what?
2 THE COURT: -- jurisdiction. The going to --
3 THE CLERK: Estrada.
4 THE COURT: How you going to deal with your
5 insurance company with that?
6 THE PLAINTIFF: Well, once it shows there's no
7 suspension, I'll send it to them too.
8 THE COURT: Yeah, but it was -- it's vacated. You
9 were not found in arrears.
10 MS. ALLEN: Right.
11 THE COURT: You have to put that -- you need finding
12 an order.
13 MS. ALLEN: It's in the order. I -- I -- the order
14 was --
15 THE COURT: But then he shouldn't have to pay added
16 insurance. You know, SR22. If you weren't SR22, then what
17 would it be? Like a hundred a month on the 2011 car? 150?
18 THE PLAINTIFF: No, I -- because of my high limits,
19 it was 250 a month then it went up to a little ov -- right
20 around four.
21 THE COURT: I think -- with or without SR22?
22 THE PLAINTIFF: Without. It went up.
23 THE COURT: High four on comprehensive?
24 THE PLAINTIFF: It went up to --

1 THE COURT: Collision?
2 THE PLAINTIFF: -- four after they -- they
3 suspended my license.
4 THE COURT: For years, what would it have been?
5 Like last year?
6 THE PLAINTIFF: It was 250.
7 THE COURT: For a truck?
8 THE PLAINTIFF: Yeah.
9 THE COURT: One -- one vehicle?
10 THE PLAINTIFF: Yeah.
11 THE COURT: 250 a month?
12 THE PLAINTIFF: Well, my daughter had an accident
13 when she was on our insurance. So it still shows.
14 THE DEFENDANT: No, it doesn't, because she's
15 covered under me.
16 THE PLAINTIFF: When she had the accident, it was
17 under my policy.
18 THE COURT: I got three cars. It's 300 a month.
19 THE DEFENDANT: No, because I pay for it.
20 THE COURT: They're --
21 THE PLAINTIFF: It was under my policy.
22 THE COURT: They're old cars.
23 THE PLAINTIFF: When we had the joint policy.
24 THE DEFENDANT: No, it's under me.

1 THE COURT: I have three cars, they're 10 years old,
2 and a truck and I pay 300 a month.

3 THE DEFENDANT: Yeah, his --

4 THE PLAINTIFF: Because my insurance shot -- This
5 -- my daughter's accident still comes up on there.

6 THE COURT: Really?

7 THE PLAINTIFF: For having a claim.

8 THE COURT: I can't -- that's something you and Mom
9 got to work out but -- on a truck?

10 MR. PAGE: Get a smaller vehicle.

11 THE DEFENDANT: Well, he -- he has higher limits.
12 If he -- if he --

13 MR. PAGE: Lower the limits.

14 THE DEFENDANT: -- did the minimum, he'd be paying a
15 hundred or a hundred and fifty a month. He's just trying to
16 get out of paying everything.

17 MR. PAGE: Get -- get lower minimum, get a smaller
18 car.

19 THE COURT: How about I put -- assign 200 a month
20 for one vehicle in my calculations? 200 a month. Your car
21 loan's still 499 --

22 THE PLAINTIFF: Yes.

23 THE COURT: -- for yourself? Add that. Cell phone,
24 226.

1 MS. ALLEN: That's what I pay.
2 THE COURT: You know what I'm going to say with
3 that.
4 MS. ALLEN: I pay that. So --
5 THE COURT: One adult, unlimited text, data,
6 T-Mobile.
7 THE PLAINTIFF: I have unlimited. My son does not
8 have unlimited -- because --
9 THE COURT: Son -- yeah.
10 THE PLAINTIFF: -- I got him a new phone.
11 THE COURT: That's moral obligation again. An adult
12 could have a unlimited text and talk and data, T-Mobile -- 75
13 a month? Ninety-nine a month?
14 THE DEFENDANT: Yeah, like 67 a month.
15 MS. ALLEN: Who are you with?
16 THE PLAINTIFF: I'm with Verizon.
17 MR. PAGE: Minus \$75 a month. And that includes two
18 gigabytes of data. Unlimited talk.
19 THE COURT: Seventy-five a month?
20 MR. PAGE: Yep.
21 THE COURT: All right. Write this -- can you help
22 me for a minute? I'm -- I need a calculator. Write down --
23 what did I say? Two hundred for car insurance for his truck.
24 THE PLAINTIFF: But I tell my son he has no more

1 phone?

2 THE COURT: Write down 499 for his car payment.

3 When's car payment going to end?

4 THE PLAINTIFF: Next year.

5 THE COURT: All right. So it's still existing.

6 Write down and -- write down 75 for cell phone. I'm not going

7 to give you clothing. That's discretionary and times are

8 tough. Twenty-five credit card payment still exists?

9 THE PLAINTIFF: Yes.

10 THE COURT: All right. 25 -- a minimum credit card

11 payment. Minimum monthly. A hundred dry cleaning for your

12 uniform?

13 THE PLAINTIFF: Yes.

14 THE COURT: Twenty-five a week?

15 THE PLAINTIFF: Yes, Your Honor.

16 THE COURT: All right.

17 MR. PAGE: My -- Your Honor, my client says he

18 doesn't pay for dry cleaning.

19 THE DEFENDANT: They actually get an allotment once

20 a year for dry cleaning.

21 THE PLAINTIFF: It's changed. And we still have to

22 (indiscernible - simultaneous speech).

23 THE COURT: Like per diem?

24 MR. PAGE: Ask the Marshal.

1 THE COURT: Tom, do you know?
2 THE PLAINTIFF: He's a different agency.
3 THE COURT: You're county --
4 THE MARSHAL: I get a different agency. I don't
5 get --
6 THE COURT: How do you do your dry cleaning? Out of
7 your pocket?
8 THE MARSHAL: Yeah.
9 THE COURT: Really?
10 THE MARSHAL: Yeah.
11 THE COURT: Twenty-five a week?
12 THE MARSHAL: Mine is 5.90 a uniform.
13 THE COURT: \$5.90 a uniform?
14 THE MARSHAL: Yeah.
15 THE COURT: Add a hundred. I think so. I think
16 they got to pay for their dry cleaning. Okay. Electric, 250.
17 How big is your house again?
18 THE PLAINTIFF: 1800 square feet.
19 THE COURT: 250 on the high end in the summertime.
20 You filed this in the summertime. What would be an average
21 over 12 months?
22 THE PLAINTIFF: Summertime I was hitting 350
23 because it's a vaulted ceilings. And --
24 THE COURT: For 1800 -- okay.

1 THE PLAINTIFF: Yeah.
2 THE COURT: I could --
3 THE PLAINTIFF: It's --
4 THE COURT: I could kind of see that.
5 THE PLAINTIFF: And 160 in the winter when I was
6 there last ye --
7 THE COURT: You got a pool?
8 THE PLAINTIFF: No pool.
9 THE COURT: 350's high for 1800 -- well --
10 THE DEFENDANT: Yeah, it's a small house.
11 MS. ALLEN: Oh no.
12 MR. PAGE: It's --
13 THE DEFENDANT: Small house.
14 THE COURT: You got ki -- the one kid's living with
15 him taking up electricity too.
16 MR. PAGE: Week on, week off.
17 MS. ALLEN: My AC bill in the summer is 700.
18 THE COURT: Average electric bill, 200 a month?
19 THE PLAINTIFF: 250 is -- is usually what it's
20 around in average.
21 THE COURT: A -- did you average that then?
22 THE PLAINTIFF: Yeah.
23 MR. PAGE: My electric bill last month was \$83.
24 THE DEFENDANT: Yeah, my house is 2500 and we don't

1 even pay that.

2 MR. PAGE: I was -- I --

3 THE PLAINTIFF: But you have a \$400 cable bill.

4 THE COURT: Mine is same size.

5 MR. PAGE: I -- no, I take it back.

6 THE COURT: I pay that.

7 MR. PAGE: My most recent --

8 THE DEFENDANT: I mean, in the summer, yes, but not

9 --

10 THE COURT: 400 in the summer. No kids, two adults,
11 two dogs. 400 a month in the -- and we leave it on like 81.

12 Vaulted ceilings too.

13 THE PLAINTIFF: I --

14 THE COURT: Yours is smaller house. In the winter
15 right now, it's 200 a month.

16 THE DEFENDANT: We just paid 150.

17 THE COURT: I think 250 is reasonable.

18 MR. PAGE: I paid 54.

19 THE COURT: No, make it 225. His house is smaller.
20 Okay. I'll give him 225 average. Where are we at? Food and
21 groceries. That's a little low, 500. That's for dining out
22 and eating for yourself?

23 THE PLAINTIFF: That's just eating in.

24 THE COURT: No -- no Nicholas involved.

1 THE PLAINTIFF: Nicholas eats --
2 MR. PAGE: That's a lot.
3 THE PLAINTIFF: -- a lot but Richie eats more than
4 Nicholas.
5 THE DEFENDANT: He comes to my house --
6 THE COURT: That's --
7 THE DEFENDANT: He comes to my house and eats.
8 THE COURT: -- 125 a week. You can go survive on
9 that?
10 THE PLAINTIFF: And Richie comes to my house and
11 eats at my house too. And we can go back and forth on this.
12 THE COURT: And they don't get free meals at the
13 courthouse. They don't get free meals. None of us get free
14 meals -- courthouse.
15 THE DEFENDANT: They actually have free lunches at
16 school.
17 THE COURT: For teachers?
18 THE DEFENDANT: Oh, not for teachers.
19 THE COURT: Oh.
20 THE DEFENDANT: For the -- I thought you meant for
21 the kids.
22 THE COURT: Okay.
23 THE DEFENDANT: Centennial did a free lunch this
24 year.

1 THE COURT: Okay. Teachers got to bring their own
2 lunch too, right?

3 THE DEFENDANT: Oh, yeah, we don't get anything.

4 THE COURT: Yeah.

5 THE PLAINTIFF: What's that?

6 THE COURT: It's a little low but yeah, you could do
7 it.

8 THE PLAINTIFF: I have no choice.

9 THE COURT: Okay. Let's start with that. If I have
10 to add -- I usually go 600 on that. 150, several groceries
11 and then Taco Bell. All right. 500 for food and groceries.
12 That's what he declared. Fuel, 300. That's 75 with a tank of
13 gas every week on the truck?

14 THE PLAINTIFF: Correct.

15 MR. PAGE: Why get --

16 THE COURT: 75 to fill up. I -- I can't argue that.

17 MR. PAGE: We're ta -- we're talking about legal
18 obligations and moral obligation. Let's talk about lifestyle
19 choices. He does not --

20 THE COURT: He must be realistic too.

21 MR. PAGE: He does not --

22 THE COURT: He's got to pick up Nicholas from
23 school --

24 MR. PAGE: He did not have --

1 THE COURT: -- take to activities too. And --
2 MS. ALLEN: Richie.
3 THE DEFENDANT: Richie.
4 MS. ALLEN: Richie.
5 THE DEFENDANT: I have Nicholas.
6 THE COURT: Richie.
7 MR. PAGE: He doesn't have the --
8 THE COURT: Richie, I apologize.
9 MR. PAGE: -- the need for a --
10 THE COURT: Oh, a big --
11 MR. PAGE: -- big gas guzzling vehicle.
12 MS. ALLEN: Oh my God.
13 THE PLAINTIFF: Oh, are you an environmentalist?
14 MR. PAGE: These are lifestyle choices that she's
15 not res -- she shouldn't --
16 THE COURT: I'm not going to nitpick, Mr. Page.
17 MR. PAGE: -- get less because he doesn't have to
18 change his lifestyle.
19 MS. ALLEN: Oh my God.
20 THE COURT: 75 a week.
21 THE PLAINTIFF: So I'm supposed to live on the
22 street.
23 THE COURT: No, don't worry, sir.
24 THE PLAINTIFF: Eat free foods at --

1 THE COURT: Don't -- Mr. Kilgore, don't worry about
2 it. 75 a week is fine. I'll include it. I gave him low on
3 the groceries what he declared. We can't nitpick here.

4 MR. PAGE: Groceries is not low.

5 THE COURT: \$30 a month for gas -- Southwest Gas?
6 Yeah, normal.

7 MS. ALLEN: Oh yeah.

8 THE COURT: I'll give him that. You jotting that
9 down?

10 THE CLERK: Yes.

11 THE COURT: I'm giving him -- and I'm making a
12 record of this, okay, because you need to go Supreme Court or
13 legislator -- legislature. No HOA. And a home phone, you got
14 a landline? Ten bucks?

15 THE PLAINTIFF: I have the -- the bundle with Cox.

16 THE COURT: Yeah, so is it 10?

17 THE PLAINTIFF: Yeah, it's 10.

18 THE COURT: And there's a homeowner's for 25?

19 THE PLAINTIFF: Yes.

20 THE COURT: All right. So I had it reversed. 25
21 for home insurance and then 10 for a landline. 179 internet,
22 cable?

23 THE PLAINTIFF: Yes.

24 THE COURT: Can we --

1 MR. PAGE: Again we have lifestyle choices here.
2 Nobody needs to have a hundred-eighty dollar --
3 THE COURT: I don't need lengthy arguments, but
4 look, basic internet is what? 50 a month?
5 MR. PAGE: Yes.
6 THE COURT: Okay. And basic cable is 50 a month?
7 THE DEFENDANT: Yeah, 50.
8 MR. PAGE: Playstation Vue, \$35 a month. It --
9 THE COURT: 179? Maybe I can put him at a hundred.
10 THE DEFENDANT: Yeah.
11 THE PLAINTIFF: And she has a \$400 Internet cable
12 bill on her --
13 THE COURT: No.
14 THE PLAINTIFF: -- FDF.
15 THE COURT: If I look at relative income in the
16 household, then that's -- that's another thing right now.
17 MS. ALLEN: I think the --
18 THE COURT: I haven't even looked at hers yet.
19 MS. ALLEN: When --
20 THE COURT: And no, I would not give her --
21 MS. ALLEN: 150 is more -- I think appropriate ca --
22 if you're doing a bundle, you're doing cable, you're doing
23 internet.
24 THE COURT: Do you know what? Some people don't

1 even have Inter -- I mean cable or DIRECTV no more because
2 they watch Netflix and Hulu.

3 MS. ALLEN: No, I know.

4 THE PLAINTIFF: I don't watch Netflix.

5 MS. ALLEN: Apple TV. I understand, but that's
6 not --

7 THE PLAINTIFF: That's extra fees on Netflix and
8 stuff.

9 MS. ALLEN: Yeah, it's extra on Netflix.

10 THE COURT: Basic Internet 50. Basic cable
11 package -- do you know?

12 THE CLERK: I don't have cable.

13 THE COURT: A hundred for basic cable?

14 THE DEFENDANT: You can get --

15 THE COURT: Do you know?

16 MS. ALLEN: It's cable and phone. Like I think --

17 THE DEFENDANT: My mom pays 49.99 for -- for --

18 THE COURT: Internet?

19 THE DEFENDANT: -- for the DIRECTV cable and --

20 THE COURT: Hun -- I'll give him a hundred dollar
21 bundle.

22 THE PLAINTIFF: You pay 400. So you want to
23 average the difference between the three?

24 THE COURT: Okay. I'll give you a hundred for the

1 bundle, internet and cable, but not 1 -- 179. Lawn care, 10
2 bucks. What's that?

3 MR. PAGE: Why would he need lawn care?

4 THE COURT: I'm asking him now.

5 THE PLAINTIFF: Maintenance of the yard. I'm
6 responsible for all the upkeep of the shrubs and everything
7 that's on there and replace them if they die.

8 THE COURT: Sprinkler heads and all that?

9 THE PLAINTIFF: Sprinkler heads.

10 THE COURT: It's less or more? No, we're not
11 talking about lawn guys that come in at 25, \$30 a week. This
12 is just supplies that he needs to do lawn care. And 10 is so
13 low it's -- \$11 membership fee?

14 MR. PAGE: For what?

15 THE COURT: Hang on, I'm asking him.

16 THE PLAINTIFF: For association -- the Latino
17 Police Officer's Association.

18 THE COURT: A month?

19 THE PLAINTIFF: A month.

20 THE COURT: Okay. Do I say that's necessary or no?

21 MR. PAGE: No.

22 THE PLAINTIFF: Yes, it's part of my -- because the
23 union doesn't cover us on some things. So, I have an extra
24 coverage with them and a health -- or a life insurance policy

1 through them and stuff.

2 THE COURT: Okay.

3 MR. PAGE: There's no life insurance policy
4 deduction.

5 THE COURT: I'm not going to fight over 11 -- \$11 a
6 month. Okay. 1215 for the 1800 square foot house?

7 THE PLAINTIFF: Yes.

8 THE COURT: 1215 still? 1,215. \$20 for pest
9 control?

10 THE PLAINTIFF: Yes.

11 THE COURT: Still exists. You got a hundred dollars
12 for pets. 25 a week to --

13 THE PLAINTIFF: Yes.

14 THE COURT: -- feed them? How big are the dogs?

15 MS. ALLEN: They're dobbies, big dogs.

16 THE COURT: Big dogs.

17 THE DEFENDANT: He has one.

18 THE PLAINTIFF: A doobby and a mutt.

19 THE COURT: How many pounds?

20 THE PLAINTIFF: Dobby's a hundred and ten and the
21 mutt's 30.

22 THE DEFENDANT: Sparky's like 20.

23 THE COURT: 25 a week, that's about right.

24 MS. ALLEN: Yeah, it is.

1 THE COURT: Okay.

2 MS. ALLEN: I have three big dogs.

3 THE COURT: He doesn't have anything else except

4 unreimbursed medicals recurring every month at 250 out of

5 pocket. Are you talking about doctor visits or prescriptions?

6 THE PLAINTIFF: Prescriptions for all my pills and

7 all.

8 THE COURT: Did they change?

9 THE PLAINTIFF: What's that?

10 THE COURT: Prescription policy plans with the City

11 or State change all the time.

12 THE PLAINTIFF: The City doesn't cover as much as

13 they used to. And some of the stuff they don't cover hardly

14 at all but I have to take --

15 THE COURT: I'll guarantee you mine's worse than

16 yours. State --

17 THE PLAINTIFF: It's --

18 THE COURT: PEBP?

19 THE PLAINTIFF: It's horrible. The -- our --

20 THE COURT: I know, everything I pay out of pocket.

21 250?

22 THE PLAINTIFF: 250.

23 MR. PAGE: I would like to see some evidence of

24 that.

1 THE PLAINTIFF: That's going to get into HIPAA
2 issues, Your Honor. So that'll have to be a gag order on it.
3 And he's not to share it with his client at all and it'll --
4 MR. PAGE: I --
5 THE PLAINTIFF: -- stay in this courtroom.
6 MR. PAGE: I can always share with my client. It's
7 my client.
8 THE PLAINTIFF: No, you can't. It's a --
9 THE COURT: Okay.
10 THE PLAINTIFF: -- HIPAA regulation.
11 MR. PAGE: Yes, I can.
12 THE COURT: We'll -- we're not -- we're not going to
13 play that game, but 250 is roughly about \$40 a week but you
14 have these recurring -- is it -- you said it's medications and
15 seeing the doctor?
16 THE PLAINTIFF: Seeing the doctor.
17 THE COURT: We might have had testimony on it at the
18 trial but --
19 MS. ALLEN: Well he's got the -- remember he's got
20 the -- sorry, my nose --
21 THE COURT: Knee?
22 MS. ALLEN: -- is bothering me.
23 THE COURT: Knee issues?
24 MR. PAGE: She can't even remember. (Indiscernible)

1 - simultaneous speech) lawyer.

2 THE PLAINTIFF: Once shot for my knee is \$2,000
3 that the City does not pay for that I have to pay out of
4 pocket.

5 THE COURT: Just making sure it's not a one time
6 deal like an MRI or something. This is like a recurring --

7 THE PLAINTIFF: Recurring.

8 THE COURT: -- 250 a month?

9 MR. PAGE: For what --

10 THE COURT: Okay.

11 MR. PAGE: For what diagnosis? For what treatments?

12 THE COURT: Hey, we're not at trial today. That
13 trial's done.

14 MR. PAGE: Well, that's why --

15 THE COURT: 60 for water? There's a water bill?
16 Oh, 60? Yeah, mine's way higher.

17 THE PLAINTIFF: Actually, it's higher because I got
18 a water leak and they haven't fixed it yet.

19 THE COURT: That's a killer. Get it fixed. And you
20 don't have a pool. So that's right. 3,755 grand -- grand
21 total? And what was his -- did you take notes on what his net
22 was? So I'm going to do two ways, one with the child support
23 off the top for sure and one -- oh, on -- that 228 a month, he
24 needs -- I didn't include the child support yet of 1500.

1 That's 5255? But what did I say his net was? Page 3, what
2 you -- you take the -- okay, can you write 5255 with child
3 support, with child support?

4 MR. PAGE: Your Honor, you realize at the very top,
5 he lists \$1200 in alimony spousal support that he doesn't pay?

6 THE COURT: Right, so make sure we don't double dip.
7 So you -- what you do is you take his 7362, right, on the
8 prior page of gross. That's his representation. Take out
9 1691 rounded up and FICA, federal income ta -- or fi --
10 federal income tax. And Medicare, minus 106.20. Any other
11 deductions? 66 for union dues. Per month, right?

12 THE PLAINTIFF: Yes.

13 THE COURT: And \$10 for child support fee? Every
14 month they charge you that now?

15 THE PLAINTIFF: Yes, they do.

16 THE COURT: I thought it was like \$2 a paycheck.
17 \$10 a month?

18 THE PLAINTIFF: So, they take it out twice a --

19 THE COURT: What is up with the DA.? Wow, I thought
20 it was only like \$2 administrative fee.

21 MS. ALLEN: They have to pay to --

22 THE DEFENDANT: No, then they charge me a fee too
23 because I don't get -- they --

24 THE COURT: To have your debit card?

1 THE DEFENDANT: They -- to --

2 THE COURT: Geez.

3 THE DEFENDANT: -- get it granted.

4 THE COURT: 5489 -- you following me on that? Is
5 his net. 5489. No double dips. And he was at 5255? Minus
6 5255. Your leftover, sir, is 234, which I normally would say,
7 you know, that's your cushion for any emergencies or expenses
8 or I say 200 and -- 200 go to Mom --

9 MS. ALLEN: Well you're --

10 THE COURT: -- because I -- now I have all your
11 expenses paid, legal expenses.

12 MS. ALLEN: He's overpaying on the child support.
13 So -- right?

14 THE COURT: I included his child support.

15 MS. ALLEN: No, no, no. What I'm saying is you're
16 setting at 1500. It should be 1306. And so he's overpaying
17 her a hundred and whatever it is.

18 THE COURT: So do I take 234 and add 194 back in
19 then? So that gives him a res -- residual of -- of four --
20 add 194 back in? He's 427. So let's say -- if I could say
21 you got 427. I have all your bills paid that we talked about
22 on the record today. Shift 400 to Mom every month, credit
23 that off the 275 -- or do I say take half of that and say
24 shift 200 to Mom because I need to leave 200 emergency money

1 for him? Cushion. I call it a cushion, emergency money.
2 MS. ALLEN: He needs a cushion.
3 THE COURT: Yeah.
4 MS. ALLEN: There are things --
5 MR. PAGE: Mom needs a cushion.
6 THE COURT: Whoa, wait.
7 MS. ALLEN: Oh my God.
8 THE COURT: We haven't gone to that side of the
9 equation.
10 THE PLAINTIFF: Mom makes 75,000 and lives with a
11 guy --
12 THE COURT: Wait.
13 THE PLAINTIFF: -- also.
14 THE COURT: Wait.
15 MR. PAGE: Hold him in contempt.
16 THE COURT: Is it after 12:00?
17 THE PLAINTIFF: You know he pays his and she pays
18 hers.
19 THE COURT: It's after 12:00. You guys got to be in
20 court somewhere else this --
21 MR. PAGE: No.
22 THE COURT: -- afternoon?
23 MS. ALLEN: No.
24 THE COURT: I've -- just indulge me a few more

1 minutes. Let me add Mom's expenses so I can make a record.

2 So then you can appeal it --

3 MS. ALLEN: Thank you.

4 THE COURT: -- or take it to Supreme Court or take
5 it to Nevada Legislature. Mom's recent FDF -- August 11th?
6 Wait, wait, wait. Yeah, yeah, yes. August 11th, 2016. Can
7 you print that for me? It's easier. Or I just -- nevermind.
8 It's just faster to get it on my screen. I got logged out. I
9 got to do this again. I'm almost there. Let me -- all right.
10 Pull up August 11th filing, Mom's FDF. All right. So just
11 generally, she's CSD teacher. And she's at let's say -- don't
12 include the child support yet. So back out. Seven -- she put
13 7385 rounded up? Back out 1500 in child support before we
14 deal with that. Okay?

15 MR. PAGE: It's 50 --

16 THE COURT: 58?

17 MR. PAGE: 5884.

18 THE COURT: 5885 rounded up. Write this down. 5885
19 GMI. Take out her deductions on the next page. Minus 525
20 minus 78 for Medicare. 525 is the -- the federal income tax.
21 Minus 65 union dues. And what is 329.70? Health insurance,
22 life insurance, and all that? Is that the --

23 THE DEFENDANT: I'm looking to see which one.

24 THE COURT: Life, disability, or other insurance

1 premiums.

2 MR. PAGE: 329.70.

3 THE COURT: 329.70. And what is the 440?

4 THE DEFENDANT: Okay. The -- the 440 is health
5 insurance for the children.

6 THE COURT: And he's going to reim --

7 MR. PAGE: Life insur --

8 THE DEFENDANT: And then --

9 THE COURT: And he reimburses you back 213 a month
10 on that. So all right. Let's include the 440 for the health
11 insurance for the kids. What is item five?

12 THE DEFENDANT: That is -- like I have long term
13 disability, short term disability.

14 THE COURT: You're actually buying that? Yeah.

15 THE DEFENDANT: Well they make you for teachers
16 because we don't get --

17 THE COURT: They're for you --

18 THE DEFENDANT: We don't get any --

19 THE COURT: -- and your husband?

20 THE DEFENDANT: I'm not married.

21 THE COURT: Oh.

22 THE DEFENDANT: That's just -- that's just me.

23 THE COURT: My bad, I'm sorry.

24 THE DEFENDANT: That's just me.

1 THE COURT: That's just for you? 330 a month?

2 THE DEFENDANT: Well it's --

3 THE COURT: In case you need --

4 THE DEFENDANT: It's -- it's because they don't
5 cover us. We don't get like vacation pay. We don't get any
6 of that. So if we're out longer than two weeks, they don't
7 pay us.

8 THE COURT: So it could be short term disability, it
9 could be long term, or nursing home care or in home nursing?

10 THE DEFENDANT: So short term, long term, and like a
11 hundred of it is life in -- I bought life insurance for the
12 kids.

13 THE COURT: Where am I at? How old are you? Mind
14 me asking?

15 THE DEFENDANT: Forty-six.

16 THE COURT: People as young as Mom start buying
17 stuff like that.

18 THE DEFENDANT: Well, because we don't get va -- we
19 don't --

20 THE COURT: Life planning.

21 THE DEFENDANT: -- get like vacation or anything
22 like that. If we're out longer than two weeks, they don't pay
23 us.

24 THE COURT: He's older.

1 THE DEFENDANT: I know.

2 THE COURT: He should be buying it too, but he can't
3 afford --

4 MS. ALLEN: No.

5 THE COURT: Do I call it discretionary?

6 Technically, like yeah, I'm like -- I'm a little older than
7 you, but I should be buying it, but I don't buy it.

8 MR. PAGE: I would submit that her expenses --

9 THE COURT: They're --

10 MR. PAGE: -- are irrelevant.

11 THE COURT: They're bugging me to buy it.

12 MR. PAGE: He owes her money.

13 THE DEFENDANT: But like I said, we don't get
14 vacation, we don't get any of that. So they tell us we need
15 to buy it --

16 THE COURT: Is it like --

17 THE DEFENDANT: -- because otherwise we don't get
18 paid.

19 THE COURT: -- if you paid, you know, funeral plans?
20 Is that the same thing? Sure, I think you should have your
21 health insurance through your job, but this long term
22 disability and short term disability -- I guess you're
23 optional with an employee, don't you think? And since he's
24 not doing it, I don't know if I can give you credit for that,

1 because technically, yeah, you stop and went without. He's
2 without.

3 THE DEFENDANT: But he gets vacation day and stuff,
4 I don't.

5 THE PLAINTIFF: You get vacation time and sick time
6 as well.

7 MR. PAGE: Is -- is there a --

8 THE DEFENDANT: We don't get --

9 MR. PAGE: Is there a --

10 THE DEFENDANT: No, no.

11 THE COURT: No, ma'am, I'm not telling you to take
12 it off --

13 MR. PAGE: Is there a point?

14 THE COURT: -- but I'm just saying I'm not including
15 it as part of your deduction. I don't think I'm inclined to.

16 MR. PAGE: Is there a point to this? Because he
17 owes her money.

18 THE COURT: Yes, because I can't include it as a
19 legit mandatory deduction. It's an extra for her.

20 MR. PAGE: He owes her --

21 THE COURT: Extras come out of her own pocket.

22 MR. PAGE: What -- whatever her deductions are,
23 whatever her income is is largely irrelevant --

24 THE COURT: Where am I at?

1 MR. PAGE: -- because he owes her money.
2 THE COURT: Okay.
3 MS. ALLEN: I think it became relevant --
4 THE COURT: Okay.
5 MS. ALLEN: -- when you said --
6 THE COURT: I'll tell you what.
7 MS. ALLEN: -- how is she supposed to live.
8 THE COURT: Either way, I got to put my foot down,
9 make a decision, make a record. And then you can take it up
10 to Supreme Court.
11 MS. ALLEN: Thank you.
12 THE COURT: I'm going to say no, it's discretionary.
13 MS. ALLEN: Thank you.
14 THE COURT: I don't think you -- no mandatory, but I
15 will -- yeah.
16 MR. PAGE: What's discretionary?
17 THE COURT: I expect people to have health insurance
18 through their jobs and cover their kids. Where am I at, 4447?
19 Did I take the 330 off or no?
20 THE CLERK: I'm doing it right now.
21 THE COURT: Do it again. What was her GMI, 5489?
22 Is her GMI 5489? Minus 525, minus 440, for sure, minus 78,
23 and then the union dues, 65. I'm at 4781. Net, 4781. Write
24 that down. Net for Mom. Now, let's add her expenses. Okay.

1 750 auto insurance. We're going to have that same discussion
2 I had with Dad just for you, ma'am. What kind of car you got?

3 THE DEFENDANT: I have an Equinox.

4 THE COURT: SUV.

5 THE DEFENDANT: Yeah.

6 THE COURT: Chevy. What year? How old is your car?

7 THE DEFENDANT: A couple years old.

8 THE COURT: Two, three years?

9 THE DEFENDANT: Maybe --

10 THE COURT: 200 a month?

11 THE DEFENDANT: 2013, 2014. I can't remember.

12 THE COURT: Counsel, I'm thinking 200 a month to
13 cover her car.

14 THE DEFENDANT: Actually, my car's 500 and Alex's
15 was --

16 THE COURT: And get this, I haven't even included
17 your auto registrations every year. And if you have special
18 commemorative plates, you have to average that over the year.
19 A car that old, you're looking at 400 maybe to register it. A
20 brand new car's like 6 -- 700 if you buy like, you know, a
21 brand new car, brand, brand new.

22 MS. ALLEN: We didn't add that into his --

23 THE COURT: His truck is -- what's his registration
24 every year on a 2011 --

1 THE PLAINTIFF: It --
2 THE COURT: -- right?
3 THE PLAINTIFF: It's -- last year, it was \$495.
4 THE COURT: Yeah, based on the value.
5 MS. ALLEN: But we didn't add that in on his either.
6 THE COURT: My truck's much older and it's like --
7 MS. ALLEN: Mine's like two.
8 THE COURT: -- 300 -- 350.
9 MS. ALLEN: 200.
10 THE COURT: Kind of truck you got?
11 MS. ALLEN: I -- an old Lexus SUV.
12 THE COURT: Oh, SUV.
13 MS. ALLEN: Like -- and it's 2005 but it was like 2
14 -- and 198 last year or something.
15 THE COURT: I didn't include his. So I'm not going
16 to include the car registration. But car insurance -- did you
17 figure it out?
18 THE DEFENDANT: Mine was -- mine was 500 and then
19 Alexandra's like 250.
20 THE COURT: I know, you put 750 here.
21 THE DEFENDANT: I know.
22 THE COURT: Yours is 500?
23 THE DEFENDANT: My -- my -- under me --
24 THE COURT: Single vehicle, 500 -- oh, every six

1 months? No, that doesn't make sense.

2 THE DEFENDANT: No, that's every month because what
3 he was saying. Alexandra's covered under me and she had an
4 accident. And I have tickets. So --

5 THE COURT: And she's a grown adult now?

6 THE PLAINTIFF: She's 21.

7 THE COURT: Moral obligation. So if you were just
8 Mom, single adult, with a Equinox, couple years old -- anybody
9 know what car insurance would be?

10 MS. ALLEN: That's --

11 THE COURT: I think --

12 THE DEFENDANT: I --

13 THE COURT: -- 200 -- and you have -- you --

14 THE DEFENDANT: Like I said, my part was 500 --

15 THE COURT: Hmm?

16 THE DEFENDANT: -- but I -- with Liberty Mutual, my
17 part was 500.

18 MS. ALLEN: Oh, my God.

19 THE COURT: But what I do for you, I also do for
20 Dad. And I said Dad, I'm only giving you a hundred-fifty for
21 car insurance.

22 MS. ALLEN: 200.

23 THE PLAINTIFF: 200.

24 THE COURT: 200. I gave 2 -- so why don't I give

1 her 200?

2 MR. PAGE: Why is what she spends on car insurance
3 relevant to the inquiry when he owes her money?

4 THE COURT: No, I'm looking at her monthly living
5 expenses right now. We're looking at relative income of the
6 households or -- I don't want to get off track.

7 MR. PAGE: My objection will be relevance. The obje
8 -- the relevance objection being what her expenses are are
9 irrelevant when we're asking how much money he owes her.

10 THE COURT: Yes.

11 MS. ALLEN: This is for the record.

12 THE COURT: Relative income of the households. The
13 parity, the disparity, if any, in incomes.

14 MR. PAGE: For?

15 THE COURT: Yes.

16 MS. ALLEN: For the record for the appeal.

17 THE COURT: For determining, do I make him pay zero
18 on the 2455? Do I make him pay 400, his leftover? Do I make
19 him pay 200, and leave him a cushion?

20 MR. PAGE: I will -- let me make a record here --

21 THE COURT: Yes.

22 MR. PAGE: -- if I may. Property equalization is
23 not subject to the deviation factors set forth under --

24 THE COURT: No, it's not.

1 MR. PAGE: -- 125D.080.

2 THE COURT: I'm invoking my equitable powers. Yes,
3 I get it. Mom pushed for the 400. You got 433 leftover.
4 Give --

5 MR. PAGE: We -- we have a -- we have laws --

6 THE COURT: You have no reason to complain. All
7 your --

8 MR. PAGE: -- which indicate that she gets 2454 per
9 month.

10 THE COURT: Which is an --

11 MR. PAGE: We're not -- we're not --

12 THE COURT: -- impossibility to pay --

13 MR. PAGE: If it's an impossibility to pay --

14 THE COURT: -- because then he would be -- end up on
15 the streets with no --

16 MR. PAGE: If it's an impossibility for him to pay
17 all of it, then she -- he can pay some of it. The rest can be
18 reduced to judgment.

19 THE COURT: Exactly, that's what --

20 MR. PAGE: She can go to coll --

21 THE COURT: -- we're trying to determine. Right
22 now, what I got to work with max -- if you were listening,
23 Mom, I think you follow me. 433 bucks is what I could squeeze
24 out of him. Okay?

1 THE DEFENDANT: But I also think honestly --

2 THE COURT: All right, but now I'm going to take a
3 look and see what you have leftover.

4 THE DEFENDANT: I got it. We need an --

5 THE COURT: Just to look at it. I'm not doing a tit
6 for tat.

7 THE DEFENDANT: No, I -- I understand --

8 THE COURT: Yeah.

9 THE DEFENDANT: -- but I also want an updated
10 paycheck stub from him though.

11 THE COURT: All right. I'm not even past the first
12 line yet. Auto insurance, 200. Let me just get to your
13 number at the bottom here. Car loan, 650 on an Equinox?
14 Okay. I'll give you that. 320 cell phone? That's not going
15 to happen. What did I give Dad? 75?

16 THE PLAINTIFF: Yes.

17 THE COURT: I'll give her 75. Let's talk clothing.
18 200? Nope, didn't give him -- Dad that. 300 in minimum
19 credit card payments?

20 THE DEFENDANT: Yes.

21 THE COURT: Yes?

22 THE DEFENDANT: Yes.

23 THE COURT: Is it the minimum?

24 THE DEFENDANT: Yes.

1 THE COURT: You got a bunch of cards?
2 THE DEFENDANT: Yeah, I had to pay attorneys. They
3 come off credit cards.
4 THE COURT: Let me include it for now. Include it.
5 50 dry cleaning?
6 THE DEFENDANT: Yeah.
7 THE COURT: For work?
8 THE DEFENDANT: Yeah.
9 THE COURT: I gave him a hundred. Yeah, 400
10 electric? That's high in the -- that's for summertime. So if
11 we were to average it -- what did I give you? 225?
12 THE PLAINTIFF: Yes.
13 THE DEFENDANT: Yeah, but I have --
14 THE COURT: I think I'll make her like 275.
15 MR. PAGE: She has a bigger house.
16 THE DEFENDANT: But I have a bigger house and I have
17 Nicholas and Alex --
18 THE COURT: That's why I said I'll make you like 275
19 average.
20 THE DEFENDANT: -- Nicholas and Alex living with me.
21 THE COURT: 275 times 12 -- 275, yeah. It's a
22 little lower, probably 200 or less in the winter. And then
23 400 in the summer. Extra 75 times six is -- yeah, it'll count
24 for it. Okay. What did I give her, 275? Did I add that? I

1 didn't add it in yet? Okay. I -- I have her up to 1550.
2 Food and groceries. 1800's not going to cut it.

3 MS. ALLEN: Oh.

4 THE COURT: I have him at 500 --

5 MS. ALLEN: What?

6 THE COURT: -- for a single adult. Does that
7 include him feeding Richard, Jr. on his time and you feeding
8 Richard and Nicholas on your time? I haven't included that.
9 Something I can look at for sure, but for single adult,
10 groceries and dining out and lunch --

11 THE DEFENDANT: You mean just -- just me?

12 THE COURT: That work?

13 THE DEFENDANT: And not the kids?

14 THE COURT: For single adult, yeah. I don't know.
15 I gave him five.

16 MR. PAGE: She has Nicholas full time.

17 THE DEFENDANT: And I have Alex.

18 MR. PAGE: She has -- she has Alex. Alex lives with
19 her.

20 THE PLAINTIFF: Alex is a grownup, she's 21.

21 THE COURT: Right, right.

22 THE DEFENDANT: So --

23 THE COURT: We know that.

24 MR. PAGE: So go ahead and have your daughter

1 starve. That's -- that's --

2 THE DEFENDANT: That's what he wants.

3 MR. PAGE: That's classy.

4 THE PLAINTIFF: And there's --

5 THE DEFENDANT: She hates him.

6 THE PLAINTIFF: The fiancé lives there for free.

7 THE COURT: We can't argue moral obligations, Mr.
8 Page. How about I give her -- groceries and dining out.

9 MS. ALLEN: Your Honor, doesn't Nicholas -- the
10 child support issue. Isn't that --

11 THE COURT: He's 500. He's practically eating on
12 bologna sandwiches. Do I put you at 500? No. You want --
13 put you at 600? 700? You tell me.

14 THE DEFENDANT: Put me at 800, then because I still
15 have to feed the kids.

16 THE COURT: 200 a week? It's not that hard to go a
17 Albertsons and then rack up --

18 MS. ALLEN: I know.

19 THE COURT: -- a hundred dollars, \$200 in groceries.

20 MS. ALLEN: I have three kids at home, I know.

21 THE COURT: I'm going to put her at 800. Fine.

22 Fuel, 400 a month? A hundred a week to fill up an Equinox to
23 get to and from work and tote the kids around. A hundred a
24 week? A tank and a half of gas?

1 THE DEFENDANT: Yeah, because I run them back and
2 forth to wrestling and I --

3 THE COURT: \$50 for Southwest Gas a month?

4 THE DEFENDANT: Yeah.

5 THE COURT: Sure, could be as high as 200 in the
6 winter, but not like \$12 in the summer. 36 for homeowner's
7 insurance, ma'am?

8 THE DEFENDANT: Yeah, for renter's insurance.

9 THE COURT: Add that. 400 for internet, cable?
10 What did I give Dad? 100?

11 THE PLAINTIFF: Yep.

12 MS. ALLEN: Like 100.

13 THE COURT: 30 for lawn care for the -- is that per
14 month? Per month? I gave him 10. I'll give you 30. I'll
15 give you 30, I gave him 10. 1505 in your mortgage rent?

16 THE DEFENDANT: Yes.

17 THE COURT: Same number. 100 for pets? Sure. 40
18 for security alarm system?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. You got to pay that, sure.
21 Sewer, 40 a month or every quarter? Sewer, 60 -- 60 --

22 THE DEFENDANT: No, that's split up. It's 40 a
23 month.

24 THE COURT: \$67 every three -- every quarter, every

1 three months.

2 MS. ALLEN: Yeah, I pay like \$50 every three months.

3 THE COURT: I pay 67 every three months.

4 THE DEFENDANT: They -- they actually -- that's what
5 they charge us in addition to our rent. It's just part of
6 the --

7 THE COURT: It's a hard expense?

8 THE DEFENDANT: They --

9 THE COURT: 40 a month for sewer?

10 THE DEFENDANT: They char -- well they charge us
11 that and the -- the trash.

12 THE COURT: On top of your 1505?

13 THE DEFENDANT: Yeah, because they don't pay for
14 that.

15 THE COURT: They charge you trash too?

16 THE DEFENDANT: Trash and sewer, we have to pay
17 extra.

18 THE PLAINTIFF: I pay 15 a month for trash. 1215
19 including --

20 THE COURT: And I rent my house out to my uncle in
21 -- in Centennial and I pay for all that. I must be a nice
22 landlord. I didn't know you could charge for that.

23 THE DEFENDANT: Well they charge us in addition to
24 the rent.

1 THE COURT: I just charge him rent. He pays
2 electric and gas and water. I pay everything else. Pest
3 control. I got to charge my uncle more. All right. I gave
4 you 40 for sewer. 400 unreimbursed. He was 250.

5 THE DEFENDANT: Yeah.

6 THE COURT: I can't include kids.

7 THE DEFENDANT: Okay, but this month alone, I paid
8 600 because I had to have two shots in my back.

9 THE COURT: That's a one time deal.

10 THE DEFENDANT: But --

11 THE COURT: I average it out but recurring every
12 month --

13 MR. PAGE: It's an ongo --

14 THE DEFENDANT: Right, but I been going --

15 MR. PAGE: She --

16 THE DEFENDANT: -- back and forth to the doctor.

17 MR. PAGE: She has ongoing continuing back pain.

18 THE COURT: You have more medical conditions than
19 him?

20 MR. PAGE: It requires epidurals and facet
21 injections.

22 THE DEFENDANT: Well, for my back lately, yeah.

23 THE COURT: This is an ongoing thing?

24 THE DEFENDANT: Yeah, because a kid threw a fit in

1 my classroom. I bent down to pick him up. And when I stood
2 up, I really hurt my back.

3 THE COURT: Let me take her number for now, the 400.

4 MS. ALLEN: A month?

5 THE COURT: I know he's at 250. Let me take it for
6 now, see where she's at. Water, 32, correct?

7 THE DEFENDANT: Yes.

8 THE COURT: You don't have a pool?

9 THE DEFENDANT: No.

10 THE COURT: Okay. That's about right. 319 for
11 Alexandra's college? You know I can't -- I can't give you
12 credit for that. 5083. 5083 standard living. What's Dad?
13 37 -- 3900? What I have him at? Oh, he was at 4070? If you
14 guys are still maintaining your -- Dad's living expenses. Mom
15 is 5083. Now, what was her net, 5489? 5489?

16 MR. PAGE: 4781.

17 THE CLERK: Mom's net is 4781.

18 THE COURT: Oh, 4781?

19 THE CLERK: Yes.

20 THE COURT: She's in the hole 302? Now let's add in
21 15 -- 1306 or 1500?

22 MS. ALLEN: You took 1306 off, right?

23 THE COURT: All right. Back in the 1306 of child
24 support. Negative 302, plus 1306 --

1 MR. PAGE: Your Honor, you're not counting in the
2 kid expenses on the next page.

3 THE COURT: Wait, I haven't gotten there yet. Hang
4 on, if I do get there. 160 -- so 30 --

5 MS. ALLEN: A thousand.

6 THE COURT: 13 -- 1306 minus 3 -- negative 302.
7 1004. Write that down. So Mom is in the plus. 1004. If I
8 said no, I didn't give Dad kid expenses, I wouldn't give Mom
9 kid expenses but yeah, I know she -- they have joint of
10 Richard but primary of Nicholas. That's what the child
11 support for, isn't it? And add driving privileges, insurance.
12 That's a -- that's extra. It's a moral -- it's a moral
13 expense, moral obligation.

14 So I have her at 1004 and I have him at 433. I
15 would say Dad, I don't want you to go zero because then you're
16 on the -- you're -- right now, unless it's changed by the
17 legislature or you get relief from the Supreme Court, it's
18 racking up every month. It's -- it's a killer but not that --
19 I'm not saying I'm feeling sympathetic, it's the law. And
20 Mom, I don't take sides. You're entitled to that under the
21 law. So 1004 and 433. I didn't -- and you know some of the
22 things that we tweaked. And we -- you guys have disputes.
23 You know, should he eat on bologna sandwiches or should you
24 eat on your \$800 a month grocery thing? He's got to pay

1 something. I think --

2 MS. ALLEN: Well, that's why --

3 THE COURT: I think the middle of the road thing is
4 she's has -- yeah, she still has --

5 MS. ALLEN: He's been paying --

6 THE COURT: She's got coverage availability.

7 Disposable -- after the child support, the fair thing is you
8 just take half of that and attribute it to her every month.

9 MS. ALLEN: Well, I was going to suggest that the
10 1500 cont -- well not 1500 but --

11 THE COURT: We could continue that on paper.

12 MS. ALLEN: Well, I'm just -- no, no, not on -- I
13 mean, yeah, on paper. What I'm saying is --

14 THE COURT: And 194 credit?

15 MS. ALLEN: -- 1306 and then whatever the difference
16 is on the 1500, that would --

17 THE COURT: The 194.

18 MS. ALLEN: Yeah, that would go towards the --

19 THE COURT: But he'd keep his 433 every month?

20 MS. ALLEN: Yeah. As we --

21 THE COURT: There's a good argument for that because
22 she'll be 1004. And then an additional --

23 MS. ALLEN: 190.

24 THE COURT: -- 194 would put her at a net disposable

1 availability cash on hand, liquid cash, of 1198 a month with
2 the child support.

3 MS. ALLEN: Right.

4 THE COURT: Things change when -- who's turning 18
5 in -- next June?

6 MS. ALLEN: The -- the twins turn 18.

7 MR. PAGE: Twins just turned 17. They won't turn
8 18 --

9 THE PLAINTIFF: They're 16 now.

10 THE DEFENDANT: They're 16.

11 MR. PAGE: 16 now.

12 THE PLAINTIFF: They'll turn -- they got two more
13 -- a year and --

14 THE COURT: Oh you got two more years.

15 THE PLAINTIFF: 18 months.

16 THE COURT: Okay. I -- I could buy myself some time
17 for two more years because that impacts. So that's going to
18 go away when they turn 18, emancipate, and graduate high
19 school.

20 MS. ALLEN: Right.

21 THE COURT: Right now, she has 1198. Yeah.

22 THE PLAINTIFF: Then if I retire, then my income
23 will go down. And that's going to affect everything.

24 THE COURT: We revamp the whole numbers. Yes,

1 everything's -- for sure.

2 THE DEFENDANT: Yeah, but that's also me paying --

3 THE COURT: Is --

4 THE DEFENDANT: -- all the wrestling stuff, all
5 their stuff.

6 THE COURT: Yeah, I can't fight you on that
7 argument. 1198 --

8 MR. PAGE: She pays for --

9 THE COURT: -- with the 194. And then he keeps his
10 433.

11 MR. PAGE: Your Honor, she pays for all the extracu
12 -- he doesn't pay for any wrestling, he doesn't pay for any of
13 the sports -- any of the activities that they do.

14 THE PLAINTIFF: Pay child support and that's
15 supposed to cover that stuff.

16 THE COURT: I got parents who say my kids are going
17 to end up on a national team of the -- I had -- what case?
18 Gymnastics, right? They got to go tournaments. It was like
19 2,000 a month to go travel.

20 THE DEFENDANT: Yeah.

21 THE COURT: And they're going to be like Olympians,
22 right? The other side said no, I'm not paying. And I said
23 there's nothing I can do.

24 MS. ALLEN: I pay private school --

1 THE COURT: Then they don't go to the Olympics.
2 THE DEFENDANT: I -- I know but --
3 MS. ALLEN: -- alone.
4 THE DEFENDANT: -- that should at least be taken
5 into account.
6 THE COURT: I -- I --
7 MS. ALLEN: I pay private school. To keep my kids
8 in private school, I paid it by myself.
9 MR. PAGE: But Your Honor, you're -- but you're
10 talking about equities here. Is it equitable for her to just
11 have to take it when the law says that she gets \$2400 a month?
12 THE PLAINTIFF: Gets child support to cover that --
13 THE COURT: Okay.
14 THE PLAINTIFF: -- stuff for the children.
15 THE COURT: That's why lawyers -- they advocate for
16 their clients. The clients -- they're here, they sit on both
17 sides of the courtroom. I'm right -- that's why I sit right
18 here in the middle. And there's just, I hate to say, bad
19 blood going on and equities and all that, but I deal with it
20 objectively. I don't have feelings for either of you guys.
21 All right? I don't care, you know.
22 MR. PAGE: Please have feeling --
23 THE COURT: I --
24 MR. PAGE: -- for the law. Enforce the law. She's

1 entitled to 24 --

2 THE COURT: I am very passionate about the law. I
3 will enforce the law.

4 MR. PAGE: Then -- and have been -- and please
5 enforce it. That's -- that's --

6 THE COURT: Absolutely.

7 MR. PAGE: -- what you do on the bench. You enforce
8 the law. The law says she gets \$2400 a month. To tell her
9 that she can't have that \$2400 a month is not enforcing the
10 law.

11 THE COURT: Okay. Any response, Ms. Allen? I'm
12 making a record. Let --

13 MS. ALLEN: No, I understand that.

14 THE COURT: Okay.

15 MS. ALLEN: I mean, this is --

16 THE COURT: It might go through one -- because you
17 only want to hear what you want to hear. I'm making a record.
18 Mom.

19 MS. ALLEN: I know.

20 THE COURT: You've got \$1,198 available to you that
21 I have established on the record. Dad, you have \$433
22 available to you, give or take. All right. And yes, he's on
23 500 budget, she's on 800 budget. If I were to tweak it, yeah,
24 I can lower those numbers. Play around with those numbers.

1 She's in the positive. Yes, he's in the positive. Mom would
2 like to take the entire 433 and shift it over to her side --

3 MS. ALLEN: Of course she would.

4 THE COURT: -- because she'll say you get your
5 expenses paid. And you're -- it's -- it's racking up every
6 year on you.

7 MS. ALLEN: It is.

8 THE COURT: As -- as the current decision under the
9 law stands.

10 MS. ALLEN: I understand. And it -- and again, if
11 it's -- of course --

12 THE COURT: And realistically, yeah, to change the
13 law future wise or to give you any relief or retroactively --
14 good luck with that. I mean, I don't know. I -- I'd like --
15 we'd all like to find out how the Nevada Legislature -- you
16 are a test case, sir. You are first case -- case -- a first
17 impression.

18 MS. ALLEN: Lucky you.

19 THE COURT: Yeah, history's being made today. I
20 don't know because I've never had this en -- encounter.

21 MS. ALLEN: And I, you know, agai -- it's -- it's
22 really hard for me to imagine.

23 THE COURT: Marshal Willick's practice law how many
24 years? 30 years? 40 years?

1 THE MARSHAL: 35.
2 THE COURT: Yeah.
3 MS. ALLEN: I ca --
4 THE COURT: I'll bet -- I bet he didn't see this
5 coming.
6 MS. ALLEN: I can't fathom that --
7 MR. PAGE: Sure he knows.
8 MS. ALLEN: The -- the argument Mr. Page is making
9 that you could actually say that --
10 THE COURT: You're free to go to him and talk to him
11 if you want. You both can pick his brain.
12 MS. ALLEN: You could actually make that argument in
13 -- in any sort of --
14 THE COURT: Anyway, you want briefing done. You
15 probably want to do a -- and I won't get offended. You could
16 take in a proper appeal on it.
17 MS. ALLEN: Oh I'm not -- you're --
18 THE COURT: Then you can do -- they --
19 MS. ALLEN: I don't take any offense to what you've
20 done. I --
21 THE COURT: Right.
22 MS. ALLEN: I think generally you've been very fair.
23 I -- I --
24 THE COURT: I -- I just use --

1 MS. ALLEN: But you're going --
2 THE COURT: -- reasonableness.
3 MS. ALLEN: -- off of what the -- what the
4 legislature said, and I understand that, but at the -- at the
5 end of the day -- and I mean this --
6 THE COURT: I'll tell you what.
7 MS. ALLEN: This came from Mr. Willick. I said
8 is --
9 THE COURT: You want me to make more findings? You
10 want me to make more findings? I put her at \$800 groceries.
11 And I can -- if you want me to look at that number, I got to
12 up his number. Nobody lives on bologna sandwiches.
13 MS. ALLEN: I understand.
14 THE COURT: So if I shift 200, I'm back where I'm
15 at. I'll do a \$200 shift. That's what was my intent
16 originally.
17 MS. ALLEN: I understand, but --
18 THE COURT: Gives him a little leftover for
19 emergency money cash. And ma'am, I'm putting it on the
20 record. And he's not happy about -- that you have 1400, but
21 he understands you got to pay for Nicholas and Richard's
22 activities too. I didn't include it for him, include it for
23 you. Nobody can get to a perfect calculation system.
24 MS. ALLEN: What I was going to say --

1 THE COURT: So yes, this is what it stands. 200
2 shift, 1400 available, 200 cushion. Come back if you want to
3 file a motion to reconsider. We got to prepare an order on
4 that. Convince me otherwise.

5 MS. ALLEN: I --

6 MR. PAGE: It becomes --

7 THE COURT: Some maybe he can live with.

8 MR. PAGE: -- 1500 that my client still continues to
9 receive going forward.

10 THE COURT: I'm just going to cut -- cut it in half.
11 I'm sorry, what was your question?

12 MR. PAGE: I think you stated the numbers
13 incorrectly. It's not 1400, it's 1500 she receives --

14 MS. ALLEN: 1500.

15 MR. PAGE: -- because child support is 1309.

16 MS. ALLEN: 06.

17 MR. PAGE: 06.

18 THE COURT: And then I added back 194 because he's
19 agreeing not to change that number.

20 MS. ALLEN: And that 196 goes --

21 THE COURT: And that 194 --

22 MR. PAGE: He doesn't have any authority to agree or
23 disagree.

24 THE COURT: The -- the 194 goes added to -- what was

1 her -- she was at 1,004. So I added the 194 that she's
2 getting, right? So that brings her to 1198. Now you're at
3 1200 -- \$2 shy of 1200. I'm going to have Dad pay 200 more.
4 Still gives him a little leftover to live with. And now I'm
5 putting him on a grocery budget of 700 and you at 800. Okay?
6 So you have 1400 for whatever you need, whatever the kids
7 need. And you are entitled to collect 2455 minus 200 every
8 month credit. Okay. So he has to -- he does have to
9 voluntarily -- is he going to put it in her bank account?
10 Shift 200 for the -- the PERS?

11 MS. ALLEN: Well, I mean, so what we're doing then
12 is -- we're going to set child support at 1306. And that --

13 THE COURT: Nothing's going to change. Don't touch
14 that with the DA; it's 1500.

15 MS. ALLEN: Okay.

16 THE COURT: And of the 1500, 1306 is the actual
17 amount.

18 MS. ALLEN: Right.

19 THE COURT: 190 --

20 MS. ALLEN: Four.

21 THE COURT: 194 is credit --

22 MS. ALLEN: Towards --

23 THE COURT: -- to Mom -- towards her net living
24 expenses. Oh, so you're saying 196 should be going to the

1 PERS?

2 MS. ALLEN: Right.

3 THE COURT: My bad. And then add another -- make
4 sure I got this right. He's at -- it's 1306. So 194, it's
5 not 196.

6 MS. ALLEN: Yeah, right.

7 THE COURT: It's 194 plus a \$200 shift. Then it'd
8 be 394 credit. 394 credit minus the 2455. Start again?

9 MS. ALLEN: Okay. So --

10 THE COURT: Okay. Dad's paying 1500 child support.
11 That's --

12 MS. ALLEN: No, he's paying 1306 in child support.

13 THE COURT: That's right, 1306. 1500 in -- from the
14 DA.

15 MS. ALLEN: Right.

16 THE COURT: There's 194 of credit sitting on paper.

17 MS. ALLEN: Correct.

18 THE COURT: 194 should be applied towards PERS
19 reimbursement towards the --

20 MS. ALLEN: Right.

21 THE COURT: -- 54 grand.

22 MS. ALLEN: So, we're not going to change the 1500
23 with the DA's office.

24 THE COURT: I'm sorry, no. The 54 -- the 56 grand

1 is -- is -- it stays. This is the from now on 2455.
2 MS. ALLEN: I understand.
3 THE COURT: So take 2455 and take off 194.
4 MS. ALLEN: Right.
5 THE COURT: And I'm shifting another 200 from Dad to
6 Mom.
7 MS. ALLEN: So you want Dad to, on top of the
8 1500 --
9 THE COURT: Yes.
10 MS. ALLEN: -- to pay another 200?
11 THE COURT: Right, so he has 200 cushion left every
12 month.
13 THE PLAINTIFF: So 1700 a month.
14 THE COURT: Hmm?
15 THE DEFENDANT: 1700 a month.
16 THE COURT: Where'd you get 1700? Don't mix the
17 money with the child support.
18 MS. ALLEN: But that's 1700 in total a month the
19 Court is asking him to pay her.
20 THE COURT: Correct, and when you cut the numbers
21 in, he has 200 leftover. 233 to be exact. Not to be too
22 exact, but you get my drift. 233. And I didn't include
23 expenses, which she can now use towards, you know, whatever
24 the kids need. Baseball, whatever, football. Yes, now that's

1 10 percent of what she's supposed to be getting because I
2 can't break the bank on either of them.

3 MS. ALLEN: I also understand that, but it's also
4 her --

5 THE COURT: Less than 10 percent.

6 MS. ALLEN: Her living expenses are -- far exceed my
7 client's. You know what I mean?

8 THE COURT: Right.

9 MS. ALLEN: Her cushion every month is --

10 THE COURT: So yeah.

11 MS. ALLEN: -- three times what his is.

12 THE COURT: You could play with the fuzzy math. If
13 you want Supreme Court to tell me, let's put them on even
14 keel, so let's equalize, what does that mean? You know, then
15 I can't make him pay at all, or leave him at zero? I'm not
16 leaving open that can of worms but I -- I'm a plus and minus
17 judge. I'm not here to break the bank, I want to make sure
18 all your bills are paid on both sides. And if there's money
19 extra there that she can use, yes. That means he's only
20 paying less than 10 percent of what you're supposed to be
21 getting every month but I -- I make sure his, you know -- his
22 bills are paid; your bills are paid. And your -- your redress
23 is the continuing interest at 240 a month like your lawyer
24 said. That adds on -- tacks on every month. And then this --

1 this is his dilemma. This is his catch 22.

2 THE DEFENDANT: So when the twins turn 18, then do I
3 get the whole 2400?

4 THE COURT: No, he gets credit on paper and you get
5 the judgment accruing every month.

6 MR. PAGE: We have -- but the 56 --

7 THE COURT: So 2455 minus 194 minus 200. And then
8 he's got to put that in your bank account. You -- he is
9 shorting you 2061. Write that down. He's shorting you 2061 a
10 month plus interest at the legal rate. And we're going to
11 start this for -- wow, when did the judgment of the 56 end?
12 What month are we starting this?

13 MR. PAGE: That would --

14 THE COURT: Effective date?

15 MR. PAGE: The judgment on the 56 would start on the
16 fir -- on today. It's calculated through December 1.

17 THE COURT: Agreed, Ms. Allen? Agreed?

18 MS. ALLEN: Yes.

19 THE COURT: Sound about right? Okay. December 1st,
20 2016 forward. You're short 2061. Okay.

21 THE DEFENDANT: But --

22 THE COURT: So 394 is going towards that if I'm
23 correct.

24 MR. PAGE: Is going toward the --

1 THE COURT: Yeah.
2 MR. PAGE: -- 2 -- 25 -- 240 --
3 THE COURT: Right.
4 MR. PAGE: 2454?
5 THE COURT: The 194 that you're getting through your
6 debit card -- and like I said --
7 THE DEFENDANT: Yeah.
8 THE COURT: I'm -- I'm nervous about mixing child
9 support, but we'll do it right now. Maybe it's not going to
10 be a long term thing. I don't like to mix child support with
11 the -- accounting with the -- because when you fight with the
12 DA, they're going to be like what is this. Right? Who help
13 -- keep thinking about proper accounting solutions. And 200
14 in your bank account. You want to deposit it every month, or
15 one time per pay period?
16 MS. ALLEN: So hold on. 200 plus -- so --
17 THE COURT: Or is he wanting to tell the DA take
18 1700, I don't want to deal with --
19 MS. ALLEN: So --
20 THE COURT: -- going to a bank.
21 MS. ALLEN: And this 394 she's getting extra every
22 month has not been calculated into the child support, correct?
23 To the joint custody.
24 THE PLAINTIFF: Because I need to be able to write

1 that off on my taxes at the end of the year. And if it's
2 being taken by the DA, they're not --

3 THE COURT: Correct.

4 THE PLAINTIFF: -- going to be able to calculate
5 that.

6 THE COURT: You got to get a few dollar -- yeah, you
7 got to get a few dollars difference. I'm only -- attribute
8 200 in income to her as a property distribution because the
9 only -- what she's getting in reality. You don't make her pay
10 something she's not receiving. You don't make her pay 25 --
11 18 percent for Richard, Jr. of something she's only getting 10
12 percent of.

13 MS. ALLEN: But --

14 THE COURT: Yeah.

15 MS. ALLEN: But she's getting an additional \$400 a
16 month in -- in income.

17 THE COURT: 394. Yes, we're attributing 394.

18 MS. ALLEN: Right.

19 THE COURT: Correct, so --

20 MS. ALLEN: So that changes the income balance.

21 THE COURT: Well, 1306 -- what are you going to get
22 to? 1,290 something? Few dollar difference? \$3 difference?
23 You sure you want to calculate it? I don't think Mr. Page can
24 fight you on that.

1 MS. ALLEN: What about the -- and --

2 THE COURT: You want to redo that, you're going to
3 have to stipulate to that.

4 MS. ALLEN: And then the additional -- like he was
5 saying that that -- that money needs to be -- he needs to be
6 able to write that off at the end of the year as well, that
7 400 -- 394 a month.

8 THE COURT: Yeah, what do you call that? Property
9 distribution? It's not alimony. What do you call that?

10 MR. PAGE: Again, we -- he can go to a tax attorney
11 to figure that out. We don't give tax advice.

12 THE COURT: Because the source is not from PERS --
13 if -- if the source --

14 MS. ALLEN: That's not the point I'm trying to make.

15 THE COURT: -- was PERS, you get -- don't you get
16 like a 1099 on that?

17 MS. ALLEN: But --

18 THE PLAINTIFF: She would 1099 -- I would 1099 her
19 for it.

20 THE COURT: Right, but again, rock and a hard place.
21 The PERS -- no way they're going to do that. So yeah, you
22 1099 Mom, right?

23 MS. ALLEN: Right.

24 THE PLAINTIFF: Yeah.

1 THE COURT: Technically you got to go to your tax
2 guy and you got to 1099 Mom.

3 MS. ALLEN: But the problem with -- with what we're
4 doing in --

5 THE COURT: For one month. For December since we're
6 starting it for December.

7 MS. ALLEN: The problem with what -- but --

8 THE COURT: Yeah.

9 MS. ALLEN: Well, I guess he can still 1099 it. I'm
10 not sure but the problem --

11 THE COURT: Absolutely.

12 MS. ALLEN: -- he's pointing out is if the \$1500 a
13 month through the DA's Office is technically labeled as child
14 support -- and so that 194 would be lumped into child support,
15 which you cannot write off.

16 THE COURT: That's why, if I were you, I'd separate
17 out because --

18 MS. ALLEN: Yeah.

19 THE COURT: -- then yeah, it's good for Mom because
20 then --

21 MS. ALLEN: That's 194 she doesn't --

22 THE COURT: -- he can't bankrupt her on that
23 portion.

24 MS. ALLEN: Right.

1 THE COURT: Right? I'm not saying he would.

2 MS. ALLEN: Yeah, so I think the child support just
3 needs to be set at 1306 and then he just pays her an
4 additional 394.

5 THE COURT: Then tell the DA -- well, yeah, but then
6 you want a little less than 1306 because now you want to
7 attribute 394 to hers and then do the Wright vs. Osburn. And
8 you want to knock a few dollars off.

9 MS. ALLEN: But is the -- what is the -- what is it?
10 I don't even know. I don't even know what her income is? I'm
11 tired and hungry and --

12 THE COURT: I know, and it's --

13 MS. ALLEN: -- I want to go.

14 THE COURT: -- way past 12:00. And I got 1:30
15 matters.

16 MR. PAGE: And then we don't know what his income is
17 because he won't provide the statements.

18 THE COURT: What did I have for Mom for 2016? Let
19 me tell you. I had -- I had her at -- come on, notes.

20 MS. ALLEN: It was gross.

21 THE COURT: Where are you, notes?

22 MR. PAGE: You had her at 5884.

23 THE COURT: Where's the 1306 on my notes? Well, I
24 would know the number if I backed out whatever the 1306 is,

1 whatever one of their numbers is. And that includes the 213
2 of health insurance premiums.

3 THE DEFENDANT: It's 220 -- for health insurance.

4 THE COURT: Did I say your -- yeah, your GMI maybe I
5 said was 5885? I --

6 THE PLAINTIFF: 5885's what I had.

7 THE COURT: Yeah, 5885 is what I had on my original
8 notes from the trial. And I take 18 percent for Richard.
9 Yeah, which would be 1059 rounded down. I have that. And I
10 had Dad, Richard, 1325. So 266 for Richard. And then what is
11 Dad's -- 18 percent for Nicholas.

12 MR. PAGE: Could we have --

13 MS. ALLEN: Right.

14 MR. PAGE: -- Dad just simply provide an updated pay
15 stub later on --

16 THE DEFENDANT: Yes.

17 MR. PAGE: -- so as to his current income is?
18 Because he hasn't updated his -- his -- step up and pay.

19 THE COURT: Well, that's a new motion and --

20 THE PLAINTIFF: And we'll need one from her as well
21 because --

22 THE COURT: Number one, three year rule starts now.
23 Number two, substantial change of circumstances. Number
24 three, trial's over. Discovery's over. So four, you ought to

1 have permission to reopen discovery on a limited basis. If
2 you -- you do open it, I'm not doing it on the fly. You have
3 to argue that it's either -- it's either a wrap-up issue, but
4 that's not a wrap-up issue, or file a new motion based on
5 substantial change of circumstances, 20 percent or more. What
6 did I have Dad for Nicholas? 18 percent. And I don't --

7 MS. ALLEN: You had him set at 806 I think.

8 THE COURT: That's what I wrote for January to June
9 but for July to present, 820 cap.

10 MS. ALLEN: Oh 820, sorry.

11 THE COURT: So you take the 820 cap and then you add
12 the 266 for Richard.

13 MS. ALLEN: Yeah, it's 1306.

14 THE COURT: It's 1086 plus 213. Does that make
15 sense? Or whatever the health insurance was.

16 THE DEFENDANT: It's 220 for health insurance.

17 THE COURT: 820 plus -- 820 plus 266 plus 220 is --
18 that's how I get the 1306. Thank you, Mom. All right. So if
19 it's that, then you do the -- Mom would be 5885. Now add 394,
20 correct? Take 18 percent of that. Would be 1130. 1130
21 instead of her 1059 on the Wright vs. Osburn minus Dad's 1325.
22 The 266 -- what did I say, 1130?

23 THE CLERK: Yes.

24 THE COURT: I hope you're ready for that.

1 THE CLERK: Okay. I am.

2 THE COURT: 1130 minus Dad's 1325, which is 18
3 percent of 7362. 195 -- or you just knock 70 something
4 dollars off. 195 minus 266. What's the difference? 71. So
5 now, 1306 minus 70 -- 71. 1235. You -- you do math quick.
6 394 difference. 79 -- 79 off the child -- 71 off the child
7 support. Okay.

8 MS. ALLEN: So 1235 is the final child support
9 number?

10 THE COURT: Reduce that to the order. Okay. Now --
11 now what do you want to do? You don't want to mix money with
12 -- child support with property. So you -- now you're going to
13 tell the DA with a new order, wait for the next pay period to
14 kick in, for 1235.

15 MS. ALLEN: Correct.

16 THE COURT: He's not in arrears.

17 MS. ALLEN: No.

18 THE COURT: And it's going forward for whenever it
19 kicks in. We keep track of the running credits. And now we
20 want to say -- that means that's 265 off the 1500, right?
21 It's going back in his pocket. And if he has 265 plus the
22 433, he's sitting on -- right? Okay. If it were Mom, Mom
23 would say I want that entire 698 and you get all your bills
24 paid.

1 MS. ALLEN: Correct, but at 394, he's giving her
2 half of what -- his extra money every month.

3 THE COURT: No, we're on new numbers now with the
4 child support.

5 THE DEFENDANT: Yeah.

6 MS. ALLEN: No, I know.

7 THE DEFENDANT: Yeah.

8 MR. PAGE: In order to keep up the 17 --

9 THE COURT: If I -- and what I did is to cut that in
10 half. That'd be 349. Her -- Dad's leftover would be 698
11 after we add --

12 MS. ALLEN: Right.

13 THE COURT: -- back in.

14 MS. ALLEN: After we add it back in.

15 THE COURT: So if I cut it in half, it's about 349.
16 We could just say 350 even.

17 MS. ALLEN: Right, but you ordered 394.

18 THE COURT: Okay.

19 MS. ALLEN: No, I'm just saying.

20 THE COURT: I'm be -- how about we make it 400 even?

21 THE DEFENDANT: Yes.

22 THE PLAINTIFF: No, they --

23 THE COURT: Dad's at 698 minus 400 even. You got
24 298 leftover at the end of every month.

1 THE PLAINTIFF: You're not leaving me much room to
2 pay for any incidental medical --
3 THE COURT: I know.
4 THE PLAINTIFF: -- expenses on the kids or anything
5 when she bottles up --
6 THE DEFENDANT: You don't pay medical expenses on
7 kids.
8 THE COURT: Reco -- recovering?
9 MR. PAGE: He hasn't paid medical expenses.
10 THE DEFENDANT: In 5 years.
11 MR. PAGE: He has a \$3,000 judgment against him
12 because --
13 THE DEFENDANT: Right.
14 MR. PAGE: -- he wouldn't pay.
15 THE COURT: That's a new story.
16 THE PLAINTIFF: She hasn't paid anything to me
17 either, Mr. Page.
18 THE COURT: Well, you just reminded me --
19 THE DEFENDANT: You don't take them to the doctor.
20 MR. PAGE: Because you asked for it and you didn't
21 get it.
22 THE COURT: You got --
23 MS. ALLEN: Enough.
24 THE COURT: Yeah, you got 3200 you owe Mom --

1 MS. ALLEN: Enough.

2 THE COURT: -- for past med bills.

3 THE DEFENDANT: Yeah.

4 THE COURT: So, I think you're on the -- did I see
5 -- he'd probably owe like a thousand on that. You still got
6 to make payments on that too. And you want to knock that one
7 out first. Support comes first.

8 MS. ALLEN: Well he has a credit. Remember we have
9 a credit going into this. Like a \$2,000 --

10 THE COURT: Without the me -- the med expenses. Now
11 he's on the hook 3200 med expenses. I think he's --

12 MS. ALLEN: Right.

13 THE COURT: -- leftover -- he will actually end up
14 owing Mom I think a thousand.

15 MS. ALLEN: Bad --

16 THE DEFENDANT: Yeah.

17 MS. ALLEN: I mean, but well, hold on.

18 THE COURT: I mean --

19 MS. ALLEN: No, no, no, no, because that --

20 THE COURT: We haven't even gotten there yet.

21 MS. ALLEN: Part of -- wait a -- but wait a second,
22 that 7659.41. If that's included in there, which is the sick
23 and vacation pay, I have a letter from the City.

24 THE COURT: It's a little less.

1 MS. ALLEN: I sent it to Mr. Page.
2 THE COURT: Yeah.
3 MS. ALLEN: His sick and vacation pay was 8635.69
4 total, which -- her half would be 4317.85. So that takes
5 \$3,000 off.
6 THE COURT: Her half got more?
7 MS. ALLEN: Less.
8 THE COURT: Her half?
9 THE PLAINTIFF: Less.
10 MS. ALLEN: Less, his total vacation --
11 THE COURT: Oh, was eight.
12 MS. ALLEN: -- was 8,000. So --
13 THE COURT: Not 15 grand.
14 MS. ALLEN: No, so --
15 THE COURT: Not 15 grand.
16 MS. ALLEN: So he has a 3,000 --
17 THE COURT: His credit's going to -- yeah, bigger.
18 MS. ALLEN: He's got like a \$3,000 credit on his
19 sick and vacation pay as well --
20 THE COURT: All right.
21 MS. ALLEN: -- according to this.
22 THE COURT: We'll take 32 off for the med bills.
23 MS. ALLEN: So that's what I'm saying.
24 THE COURT: Yeah.

1 MS. ALLEN: Like that's -- that's the point I'm
2 trying to make. Like I think --

3 THE COURT: All right. Okay. That's better --
4 that's better math.

5 MS. ALLEN: And I sent him -- and that was -- that
6 -- that eight -- that figure of 8635 --

7 THE COURT: So where are we at?

8 MS. ALLEN: -- is before taxes.

9 THE COURT: 12 something for Dad. What is it? Dad,
10 tell the DA to take out only 12 --

11 THE CLERK: 35.

12 THE COURT: -- 35 with the adjusted numbers from
13 here on out.

14 MR. PAGE: So in order to get --

15 THE COURT: Okay. You're going to do 1235.

16 MR. PAGE: In order to get Mom to 1700, just have
17 him pay the difference directly to Mom. And they can 1099
18 her. That's really an easy way of doing this. So he'd pay
19 her 465.

20 THE PLAINTIFF: Then I have no -- nothing to --

21 THE COURT: What is your proposal?

22 THE DEFENDANT: Yes, you do.

23 THE COURT: The 394 -- I just round it up to four?
24 Give her four credit every month?

1 MR. PAGE: 465.
2 THE COURT: 1099 her --
3 MR. PAGE: 465.
4 THE COURT: -- for 400 a month?
5 MS. ALLEN: That's over half of his extra money
6 every month.
7 THE COURT: His number right now -- we got to re --
8 MR. PAGE: He can retire.
9 THE COURT: -- recoup something from the child
10 support -- is --
11 THE DEFENDANT: Six.
12 THE COURT: And we back out down to 1265. He's
13 sitting on 698 every month.
14 THE DEFENDANT: Right, it's almost \$700.
15 MS. ALLEN: Yeah, 698 is his -- is --
16 THE COURT: What are you offering?
17 THE PLAINTIFF: 250 would be a --
18 THE DEFENDANT: No.
19 THE PLAINTIFF: -- comfortable zone. It would
20 allow me to have a buffer zone.
21 THE COURT: To pay for kid expenses.
22 THE PLAINTIFF: Pay stuff and --
23 THE DEFENDANT: He doesn't pay for the kids.
24 MR. PAGE: He doesn't pay for anything.

1 THE PLAINTIFF: Because I still do pay stuff for
2 the kids' wrestling and stuff.
3 MS. ALLEN: 350. 350, that's half.
4 THE COURT: That's what I was going to --
5 MS. ALLEN: Yeah.
6 MR. PAGE: 465.
7 MS. ALLEN: 350 is half. That's half his available
8 income.
9 MR. PAGE: 465.
10 THE DEFENDANT: I --
11 THE COURT: I don't know where you got 465.
12 MR. PAGE: 1700 is what she --
13 THE COURT: Where'd you get 1700? That was just
14 something he blurted out. Do I have to pay 1700 now?
15 THE DEFENDANT: No, that's what you --
16 MR. PAGE: No, that's -- that's what you came up
17 with.
18 THE DEFENDANT: That's what you originally said.
19 MR. PAGE: I'm trying to go back to the number you
20 were originally at, because --
21 THE COURT: That all went --
22 MR. PAGE: -- he was supposed to be paying 13 --
23 1500 and then you're going to have him pay another 194 on top
24 of that, which was essentially \$1700 a month.

1 THE COURT: Okay. My last dec --
2 MR. PAGE: And now -- now since you changed the
3 numbers, you -- you're basically taking away from my client
4 again.
5 THE COURT: Not taking it away. I applied the law
6 and he -- he owes her less child support.
7 MR. PAGE: There is -- the -- the law is she gets
8 2454 a month.
9 MS. ALLEN: I cannot believe --
10 THE COURT: Oh the 394 -- the 394 --
11 MS. ALLEN: How are you yelling at the --
12 THE COURT: Because he's --
13 MS. ALLEN: -- the Court like this and getting away
14 with it?
15 THE COURT: Because we're all cranky and it's after
16 lunch.
17 THE DEFENDANT: Richard gets away with it.
18 MS. ALLEN: I can't -- I'm -- wow.
19 THE COURT: I don't know, I'm used to it but I
20 usually should -- yeah.
21 MS. ALLEN: Really? Because if I were sitting where
22 you were, I'd tell him to be in jail.
23 THE COURT: Probably.
24 THE DEFENDANT: Well, he's never gone --

1 THE COURT: You should --
2 THE DEFENDANT: -- to jail and he yells all the
3 time.
4 THE COURT: You should see his face, it gets real
5 red.
6 MS. ALLEN: If I talk like this to any judge over on
7 the RJC, I'd be sitting with handcuffs on. Ask your Marshal.
8 THE COURT: Welcome to Family Court.
9 MR. PAGE: Yes, I agree. I would be too.
10 THE DEFENDANT: Well, he should too. He yells at
11 the Judge all the time.
12 MR. PAGE: I've been a friend of this judge for 20
13 years -- or 16.
14 THE COURT: Sixteen years.
15 MS. ALLEN: Still a Judge, still wearing a robe,
16 still deserves respect.
17 THE DEFENDANT: Tell Richard to respect her too
18 then.
19 THE COURT: Appreciate that. Thank you.
20 THE DEFENDANT: He yells at her all the time.
21 MS. ALLEN: Pardon?
22 MR. PAGE: Actually, obey a court order and I
23 wouldn't get upset.
24 THE COURT: Let's go back to the matter at hand.

1 MS. ALLEN: Oh, wow.
2 THE COURT: What I have --
3 MS. ALLEN: Oh, my God.
4 THE COURT: -- when I applied the law --
5 MS. ALLEN: I'm done.
6 THE COURT: -- is I got 698 leftover on Dad's end.
7 Mom's leftover didn't changed. It's like 1,004; is it not?
8 Correct? We haven't done anything else.
9 MS. ALLEN: You're right. We're proposing 350,
10 that's half his disposable income literally.
11 MR. PAGE: It's not a proposal, she's entitled to
12 her share of the property.
13 THE COURT: And now we're not 1099ing her except for
14 the -- whatever I order that she's going to get.
15 MS. ALLEN: Right, the 350 or whatever it is.
16 Whatever the --
17 THE COURT: Right? Okay.
18 MS. ALLEN: Yes.
19 THE COURT: Okay. We're not mixing child --
20 MS. ALLEN: No, you can't 1099 on child support
21 anyways.
22 THE COURT: It's cleaner that way. It's cleaner
23 that way.
24 MS. ALLEN: Yeah.

1 THE COURT: So we went up because Mom always going
2 to tell them to give you -- okay. Yeah, I'm not taking away
3 from you. Yes, your child support of 1500 is now back to the
4 -- the law. It's 1265 hard -- hard number.

5 MR. PAGE: 1265?

6 THE PLAINTIFF: 1235 I thought.

7 THE DEFENDANT: 1235.

8 THE COURT: 1235. Thank you, 1235. So yeah, just
9 the way the math works out. I'm not taking away from you.
10 You have 1,004. Okay. And he has 698. To make things fair,
11 split it -- split his 698. It allows him time -- sorry, 350.
12 And then it would give him 350 cushion. And that'll bring her
13 to 1,004 plus 350. 1354 of available.

14 MR. PAGE: What about her -- what about my client's
15 property that she's owed?

16 THE COURT: So -- wait. 350 minus 2455. So he's
17 shorting her 2105? Did I get it right? He's shorting her
18 three -- 2105. Every month that she collects interest on it,
19 it accrues from December 1st, 2016 forward. 350. Now,
20 payment. You put it in a bank account every month?

21 MS. ALLEN: The 350?

22 THE COURT: Split it two times a month. 175, 175.
23 Designate the bank account. And keep -- the bank records are
24 perfect record keeping.

1 MS. ALLEN: Right, or a check that can be --
2 THE COURT: I start it for this month since you were
3 going to -- or you want state Ja -- January 1st? Then you
4 could start 1099ing her January 1st.
5 MS. ALLEN: Right.
6 THE COURT: Wouldn't want you due for this month.
7 MS. ALLEN: Well, he can 1099 --
8 THE COURT: Just start it?
9 MS. ALLEN: He could 1099 --
10 THE PLAINTIFF: She's still going to get the 1500
11 from --
12 MS. ALLEN: The DA's office.
13 THE PLAINTIFF: -- the DA's -- that's like --
14 THE COURT: That gives you a month for the new order
15 to kick in then. There you go. All right. Keep track. 175,
16 175. January 15 -- Jan -- and the last day of each month.
17 Mom, where do you bank? I'll have them put in your bank
18 account 350 cash -- 175 -- or online transfer.
19 THE DEFENDANT: Do I have -- I don't want to give
20 him my numbers.
21 THE COURT: Oh, it's safe.
22 MR. PAGE: Give him the bank account.
23 THE DEFENDANT: Okay.
24 THE COURT: He's not going to take money from your

1 account. I --
2 THE DEFENDANT: I'll get a new --
3 THE COURT: I do it in all my cases now.
4 THE DEFENDANT: Okay. I don't -- I don't -- I just
5 don't know how it works.
6 THE COURT: Okay. Where you bank at?
7 THE DEFENDANT: Chase.
8 THE COURT: All right. If you don't want him to
9 disclose your regular use account --
10 THE DEFENDANT: Yeah.
11 THE COURT: -- make another account --
12 THE DEFENDANT: Okay.
13 THE COURT: -- at Chase. Where do you bank at?
14 THE PLAINTIFF: Chase, same bank as her.
15 THE COURT: Press a button, money goes in there. If
16 I -- the dad's, they get the account numbers.
17 THE DEFENDANT: Okay.
18 THE COURT: They can't take money out but they can
19 deposit in your account --
20 THE DEFENDANT: Okay.
21 THE COURT: -- or walk into any branch and put it in
22 there.
23 THE DEFENDANT: I'll -- I'll make a new -- I'll make
24 a new account and give --

1 THE COURT: Hmm?

2 THE DEFENDANT: -- him the numbers. I'll make a new
3 account and give him the numbers.

4 THE COURT: Moms give their account, it don't (sic)
5 matter. They can't withdraw, but they can put in.

6 MS. ALLEN: He can put -- it's transfer; it's easy.

7 THE COURT: Sure, I'll give you my account number.
8 You can put money in my account.

9 MS. ALLEN: Oh, my gosh.

10 THE COURT: Can you text that to him? Like -- or
11 how do you communicate?

12 THE DEFENDANT: I'll put it on Family Wizard --

13 THE COURT: Perfect.

14 THE DEFENDANT: -- so there's a record.

15 THE COURT: Okay. You got time, because he's not
16 going to start it until January 15th and the last day of each
17 month. 175, 175.

18 MS. ALLEN: Yeah.

19 THE COURT: Two times a month. And my clerk's
20 taking notes. Okay. And then Chase to Chase account. Okay.
21 Mom will have -- give him the account number. We good?
22 Brunzell briefs.

23 MS. ALLEN: Yes.

24 MR. PAGE: I have --

1 MS. ALLEN: How much ti -- I'm 30 --
2 MR. PAGE: My Brunzell brief is ready.
3 MS. ALLEN: I just --
4 THE COURT: Here's the thing. It's not like you're
5 going to file an appeal because normally if you file an
6 appeal, I -- I wait on the attorney's fees. We might have a
7 history made. We might have a change in the statute but if
8 you want me to rule, I'll rule to -- if somebody gets fees in
9 collecting it, I don't know if I will actually reduce it to ju
10 -- yeah, I could if I want but then -- look, if somebody then
11 says the law got changed, we made history, give me back my
12 attorney's fees that I had to end up paying you, one or the
13 other -- you see what I'm -- you see what I'm saying? If you
14 want me to do it, I'll do it. What do you guys want to do?
15 Wait? Wait?
16 MR. PAGE: Well I -- I think we --
17 THE COURT: And if -- if you want to wait --
18 MR. PAGE: I think we could use -- I think we need
19 to submit it while it's still fresh because we just need to.
20 THE COURT: Because you just did yours anyway. You
21 just submitted yours, didn't you?
22 MR. PAGE: It's done. It's -- I may as well submit
23 it.
24 THE COURT: You want a deadline?

1 MS. ALLEN: Yes, please.
2 THE COURT: Yeah, when?
3 MS. ALLEN: Thirty days.
4 MR. PAGE: Fifteen.
5 MS. ALLEN: Oh, my God.
6 THE COURT: No rush.
7 MS. ALLEN: I have an incredibly high caseload,
8 including four death penalty cases.
9 THE COURT: Tell you what.
10 MS. ALLEN: Can I please --
11 THE COURT: Do you want to add your request, because
12 we had more time spent here and now you have more of the
13 issues?
14 MR. PAGE: It's just a matter of a new invoice,
15 that's all.
16 THE COURT: Because you can go back and argue really
17 who prevailed on the merits under factor four of Brunzell and
18 say, I'm entitled to more fees than what I'm claiming in my
19 brief that I filed. You want a supplement?
20 MR. PAGE: My client got everything she wanted.
21 THE COURT: Let me suggest this. I'll give you
22 another 15 days -- two weeks. If you want to add to your
23 request, add your -- amend your billing statement. And then I
24 will give her 15 days later. So she'll be 30 days.

1 MR. PAGE: I -- I can have it to you tomorrow and
2 she can have it done in two weeks.

3 THE COURT: Okay. There's no rush.

4 MS. ALLEN: Thank you.

5 THE COURT: And pay -- and --

6 MS. ALLEN: Thank you.

7 THE COURT: -- paying it from one to the other.
8 Depends, I don't know who pays. She's got leftover, he's got
9 leftover but she would -- she's still short 2,000 something
10 every month.

11 MR. PAGE: That's --

12 THE COURT: Okay. Let me just put my foot down. So
13 go ahead, Mr. Page. You want until the end of the week,
14 December 2nd. That's fine. Final, final brief. Okay. And
15 30 day -- look, I'm going to get slammed at the holidays. So
16 even if I have Ms. Allen filed by the last business day,
17 December 30th, by 5:00 p.m. -- okay.

18 MS. ALLEN: Yeah.

19 THE COURT: I'm going to be slammed in January. So
20 if I take it under advisement, I might not guarantee anything
21 until like mid til end of January under -- under advisement
22 decision. So that's fine. No replies, right? We're not
23 doing reply briefs.

24 MS. ALLEN: No.

1 THE COURT: Too much. So you file end of the week
2 and she files end of the month. And it's under advisement
3 starting on January 2nd.

4 (COUNSEL AND CLIENT CONFER BRIEFLY)

5 MS. ALLEN: Okay. And I will email that -- or no,
6 did -- I don't know -- Mr. Page did it. Put the signed order
7 on the -- the reci -- the rescision of the driver's licence.

8 THE COURT: Driver license. Walk it through today.

9 MS. ALLEN: He said he sent it to your clerk. I
10 have no idea if it got there.

11 THE COURT: Oh, were you guys doing that in the
12 background while I was --

13 MS. ALLEN: So we could sign it today, have the
14 Court sign off on it.

15 THE COURT: Got it, we got it.

16 MS. ALLEN: File it. Do I need to sign it? I might
17 need to sign that one.

18 THE COURT: Shall be rescinded due to the findings.
19 Are they going to ask about the findings? Yeah.

20 MS. ALLEN: You know, I don't know.

21 THE COURT: I'll do --

22 MS. ALLEN: Do I need to sign it though, or no?

23 THE COURT: It's got both your signatures on it.

24 MS. ALLEN: Oh it does? Oh okay.

1 THE COURT: It is hereby ordered Plainti -- that the
2 Plaintiff's driver's licence suspension imposed by the DA and
3 sanctioned by the hearing master shall be rescinded due to the
4 findings of this Court on or about -- yeah, at the hearing
5 that Dad -- Plaintiff, right? That --

6 MS. ALLEN: Yeah.

7 THE COURT: -- Dad was never in arre -- not in
8 arrears. Right?

9 MS. ALLEN: Yes.

10 THE COURT: On the day of trial was not -- was not
11 -- not in child support arrears, right? I'm penciling it in
12 right now.

13 MS. ALLEN: Okay. Do you need us to initial it?

14 THE COURT: Yeah. That Dad was not in child support
15 arrears. Is there like a -- yeah. When I made that at the
16 trial. Okay. Initial. Dad has zero arrears. They have a
17 finding of zero. There's no basis to suspend. And today's
18 the first day of December? Okay. It's got your signatures on
19 it already.

20 MS. ALLEN: Okay.

21 THE COURT: Going to electronic filing.

22 MS. ALLEN: I just didn't know if you want us to
23 initial that -- that portion of it or not.

24 THE COURT: Yeah, come here.

1 MS. ALLEN: Okay.

2 THE COURT: You don't need a final judgment stamp on
3 this. So I just log it in, log it out -- or put in the
4 minutes.

5 MS. ALLEN: So just initial it right here, correct?
6 That okay?

7 MR. PAGE: It's the driver's licence reci --
8 recision order.

9 THE COURT: Yeah, and you can file it. Get a
10 certified copy, serve it on DA today. They should be able to
11 give him his licence back. Now Mr. Page, you've got the draft
12 order from the 10/31 trial?

13 MR. PAGE: Yes.

14 THE COURT: Okay. And we were going to make those
15 changes. I signed it.

16 MS. ALLEN: Oh, that's right. I'll take --

17 THE COURT: We're going to make those --

18 MS. ALLEN: I'll go downstairs and --

19 THE COURT: -- changes. Now you want to combine it
20 with the wrap-up issues minutes that Cory (ph) here is going
21 to have to prepare?

22 MR. PAGE: No, I -- I think it be better to put --
23 make those separate I -- I think just for clarity.

24 THE COURT: Agreed. Ms. Allen? The 10/31 order

1 will be filed.

2 MS. ALLEN: Okay.

3 THE COURT: Then the wrap-up issues order, which my
4 supercede or add to the 10/31 order --

5 MS. ALLEN: Okay.

6 THE COURT: -- will be done separately. So do you
7 want to volunteer to do that one --

8 MS. ALLEN: I'm --

9 THE COURT: -- since he did the 10/31 one?

10 MS. ALLEN: That's fine. I don't mind, that's fine.
11 As long as I can -- can your clerk email me a copy of the
12 minutes, please?

13 THE COURT: This is Cory.

14 MS. ALLEN: Yeah, can -- do you mind? I'm -- yeah,
15 if you can email them to me, that's fine. So then -- but just
16 to be clear then, so the issue of the vacation sick pay will
17 be then part of the second one?

18 THE COURT: First one.

19 MS. ALLEN: Okay.

20 THE COURT: Because you're readjusting the number.

21 MS. ALLEN: Okay. He's going to take care of that.
22 I did give him that letter.

23 THE COURT: If I had heard you right, and the
24 numbers don't lie, it was 15. I cut it in half, 75, but it --

1 MS. ALLEN: Right.
2 THE COURT: -- actually turned out to be eight.
3 MS. ALLEN: Correct.
4 THE COURT: And Mom's got about four coming to her.
5 MS. ALLEN: And just for --
6 THE COURT: Not 7,500.
7 MS. ALLEN: -- clarification though, that was
8 pretax --
9 THE COURT: Do you have -- I'm sorry, did Cory take
10 that dollar amount? Did you -- did you actually tell the
11 dollar amount of the 4,000?
12 MS. ALLEN: Yeah.
13 THE COURT: Did you get it on the record? I don't
14 think you did.
15 THE CLERK: No.
16 THE COURT: Can -- you had it up on your phone?
17 MS. ALLEN: Sure, so I'm -- this is what I'm going
18 to -- I'll tell the Court. These are the numbers. It was a
19 hundred and seven hours of vacation and a hundred and two
20 point three-five hours of sick --
21 THE COURT: Sick pay.
22 MS. ALLEN: -- times 41.25, which is -- what's his
23 hourly rate --
24 THE COURT: Okay.

1 MS. ALLEN: -- for a total of 8635.69.
2 THE COURT: That's it, 8665.39.
3 MS. ALLEN: 8635.69 --
4 THE COURT: 8635.69.
5 MS. ALLEN: -- divided by two is 4317.85.
6 THE COURT: Correct.
7 MS. ALLEN: But I -- the question I have for the
8 Court is, that's pretax. That wasn't taxed money yet. So
9 that -- taxes were taken out of that.
10 THE COURT: You cashed it out, right? Did you cash
11 it out?
12 THE PLAINTIFF: When I got fired, they cashed me
13 out.
14 THE COURT: Yeah, you cashed it out.
15 THE PLAINTIFF: So they took taxes on it.
16 MS. ALLEN: They took the taxes on it. So it would
17 be --
18 THE COURT: Pretax, right? Pretax. 4317.85 pretax.
19 MR. PAGE: We don't know what taxes are -- the same
20 thing as if you're going to sell -- if you would get awarded a
21 house, you can't include hypothetical selling cost because --
22 THE COURT: Next question.
23 MR. PAGE: -- you don't know what they are.
24 THE COURT: He spent it. He's got to owe her that

1 too, right? So we got to do more --

2 MS. ALLEN: I'm sorry, Your Honor. What?

3 THE COURT: He had to spend it to live.

4 MS. ALLEN: Yes.

5 THE COURT: He owes her money judgment. Reduce to
6 judgment, collectable by any lawful means but I don't
7 recommend -- I mean, technically, yeah, she can go garnish his
8 paycheck up to 50 percent.

9 MS. ALLEN: Well, but the -- the amount that -- that
10 is owed --

11 THE COURT: But we do a payment arrangement. Yeah.

12 MS. ALLEN: Well the amount that is owed though I
13 believe will be canceled out by --

14 THE COURT: That's why we probably need another
15 hearing to find where we're at with all these other numbers.

16 MS. ALLEN: Okay.

17 THE COURT: And I -- sorry I didn't wrap it up in
18 the morning. So can my JEA call you for another half day?

19 MS. ALLEN: Yeah.

20 THE COURT: All right.

21 MS. ALLEN: That's fine.

22 THE COURT: Yeah, I mean, we got focused on few big
23 things, not all these other things. We don't know how -- I
24 mean, Dad wants to know how am I going to pay Mom or if she's

1 going to pay me or where are we at total total, because if he
2 can offset some things, then we can close the door on some of
3 those issues. Like the med bills. You know, and he's not in
4 child support arrears. Let's meet up again.

5 MS. ALLEN: Okay.

6 THE COURT: JEA to schedule a half day with you
7 guys.

8 MS. ALLEN: All right.

9 THE COURT: Okay?

10 MS. ALLEN: That's fine.

11 MR. PAGE: And then the 56 is reduced to judgment?
12 The -- this arrears schedule is reduced to judgment?

13 THE COURT: Right, collectable by any lawful means.

14 MR. PAGE: Thanks.

15 THE COURT: Execution stayed except for the 350.

16 MS. ALLEN: Right.

17 MR. PAGE: Yeah.

18 THE COURT: Execution stayed on his paycheck.

19 MR. PAGE: Right, well that -- that's a separate
20 issue because that's going forward.

21 THE COURT: Correct.

22 MR. PAGE: Perfect.

23 THE COURT: All right. So yes.

24 MR. PAGE: Okay.

1 THE COURT: Try to have when we meet up.
2 MR. PAGE: All right. I'll draft.
3 THE COURT: We'll talk some more.
4 MS. ALLEN: Okay. And if the -- she emails me the
5 notes from today, I'll do an order from today. And then if
6 Mr. Page --
7 THE COURT: You are correct, yeah.
8 MS. ALLEN: -- will forward me the corrected order
9 from the 31st, I'll sign off on that. And then I'll do the
10 order from today --
11 THE COURT: I don't think it'll take as long as
12 today, but I want to make sure I reserve so other things look
13 like --
14 MS. ALLEN: I understand.
15 THE COURT: I think we kind of know where we're at.
16 We just need to know -- what I do know the 350's effective
17 January --
18 MS. ALLEN: Right.
19 THE COURT: -- for him.
20 MS. ALLEN: Got it. Thank you.
21 THE COURT: Thank you. And then you --
22 MR. PAGE: I'll draft the order. That's fine, thank
23 you.
24 (PROCEEDINGS CONCLUDED AT 13:02:32)

* * * * *

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 Medrano

Adrian N. Medrano

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint

COURT MINUTES

December 01, 2016

D-12-459171-D Richard Scott Kilgore, Plaintiff
vs.
Eleni Kilgore, Defendant.

December 01, 2016 3:30 PM Minute Order

HEARD BY: Moss, Cheryl B.

COURTROOM: Courtroom 13

COURT CLERK: Valerie Riggs

PARTIES:

Alexandra Kilgore, Subject Minor, not present
Eleni Kilgore, Defendant, Counter Claimant, Fred Page, Attorney, present
present
Nicholas Kilgore, Subject Minor, not present
Richard Kilgore, Plaintiff, Counter Defendant, Betsy Allen, Attorney, present
present
Richard Kilgore, Subject Minor, not present

JOURNAL ENTRIES

- STATUS CHECK RE: WRAP UP ISSUES

COURT S MINUTE ORDER

CHILD SUPPORT ISSUES

1. The following summarizes the Court's historical calculations of child support. This Minute Order shall also CLARIFY AND SUPERSEDE the calculations from the October 31, 2016 hearing and the District Attorney's Office shall conform to this Minute Order.
2. Prior to December 2014, the Decree of Divorce filed on 3/13/13 was the initial child support order.

PRINT DATE:	01/09/2017	Page 1 of 4	Minutes Date:	December 01, 2016
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

In the Decree, Dad's child support obligation for joint physical custody of the two minor children, Nicholas and Richard, Jr., was set at \$1275 per month commencing November 1, 2012. As of November 1, 2012, Dad's child support arrears was \$1398. However, there was no additional installment payment in the Decree for the arrears on top of the \$1275.

3. For December 2014 to January 2016, Mom and Dad continued to maintain joint physical custody of the children. Mom's 25% would have been \$1170 minus Dad's \$200 (unemployed rate) which equals \$970. Subtract \$213 for Mom providing health insurance for a net total of \$757 per month. \$757 per month times 13 months totals \$9841 that Dad should have received from Mom for 12/14 to 1/16. If the DA was collecting from Dad's income and Mom made zero payments, then Dad should receive additional credit.

4. In February 2016, Dad returned to working full-time. From February 2016 to June 2016, Dad would pay Mom 18% for Nicholas when custody changed to Mom having primary physical custody, however Dad would be capped out at \$806 per month. For Richard, Jr., the parties continued to have joint physical custody, and Dad would pay Mom \$266. This is derived from subtracting Dad's 18% of \$7362 GMI or \$1325, and Mom's 18% of \$5883 GMI or \$1059, which equals \$266 from Dad to Mom. Adding \$806 for Nicholas and \$266 for Richard, Jr., Dad's monthly child support obligation would be \$1072. But, Dad would also pay Mom \$220 per month for his portion of the children's health insurance premiums. Therefore, Dad's total child support obligation for this time period is \$1072 plus \$220 for a total of \$1292. \$1292 per month times 5 months equals \$6460 for 2/16 to 6/16. If the DA was collecting more than \$1292 per month from Dad's paychecks, then Dad should receive the appropriate credit.

5. On July 1, 2016, the Maximum Child Support Guidelines for caps increased Dad's 18% for Nicholas from \$806 to \$820 (mom having primary physical custody). The parties continued to have joint physical custody of Richard, Jr. As to Richard, Jr., Dad's GMI was \$7362 and his 18% would be \$1325. Mom's GMI was \$5855 and her 18% would be \$1059. Subtracting the amounts, Dad would owe Mom \$266 per month. Adding \$820 for Nicholas and \$266 for Richard, Jr., Dad would pay \$1086. Dad also has to pay \$220 additional for health insurance premiums. \$1086 plus \$220 totals \$1306. Dad's obligation therefore is \$1306 from 7/1/16 to 12/31/16. Dad testified at trial that the District Attorney's Office was withholding \$1500 per month from his paychecks. The District Attorney should do a proper audit based on the above and foregoing.

6. It appears from post-trial discussions held on the record, Dad has zero child support arrears. Attorney Allen shall prepare an Order indicating the zero child support arrears amount and serve it on the District Attorney's Office forthwith so that Dad's driver's license can be restored to him.

7. Commencing January 2017 forward, all District Attorney wage withholding shall cease. Dad shall

PRINT DATE:	01/09/2017	Page 2 of 4	Minutes Date:	December 01, 2016
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direct deposit one-half of the \$1306 current child support (\$653 + \$653) on the 15th and last day of each month into Mom s Chase bank account. Mom shall set up this separate Chase bank account and provide the bank account number to Dad via Our Family Wizard.

PERS ISSUE

8. There were lengthy discussions in the post-trial hearings as to how Dad would pay Mom her community interest portion of Dad's PERS when he became eligible to retire in March 2015, although Dad presently continues to work full-time and has not yet actually retired. Mom's portion was calculated to be \$2455 per month retroactive to March 2015. For the relevant time period established at trial, the total accrued and owing to Mom is \$54003.62 principal plus \$2572.14 of pre-judgment interest for a grand total of \$56575.76. Said amount is reduced to judgment and collectible by any lawful means. However, execution on Dad's paychecks is stayed and instead, due to the financial conditions of the parties explored in-depth at the hearings, Dad will pay Mom \$350.00 per month from January 2017 forward into her Chase bank account. Dad shall direct deposit \$175.00 on the 15th and \$175 on the last day of every month.

9. Counsel shall have ongoing authority to conduct limited discovery and confer jointly with the PERS representative, currently Ms. Sonya Helwinkle, for ongoing information on Dad s PERS and information when Dad actually retires.

VACATION/SICK PAY ISSUE

10. Dad's counsel, Attorney Allen, shall submit an addendum to the Order from the December 1, 2016 hearing titled Vacation/Sick Pay Calculation Sheet delineating the correct amount calculated as to Dad's vacation and sick leave measured at the time of the divorce, not based on the exhibit produced at the trial which showed the amount as of the time that Dad was terminated from employment. The Court makes this Addendum to Order sua sponte to correct the calculation established at trial. Page 2 of 6, lines 26 and 27, of the previous Order shall be amended and corrected. The correct calculation is as follows: Dad's vacation pay of 107 hours plus sick time of 102.35 hours based on an hourly wage of \$41.25 totals \$8635.70 at the time of divorce. One-half is \$4317.85 pre-taxed and is owed to Mom. Dad's entire \$8635.70 was cashed out early and Dad had to pay taxes on the full amount. Therefore, Dad owes Mom her one-half of \$4,317.85 minus taxes that would have been attributed to Mom had she gotten paid out her half share at the time of the divorce. Dad and his attorney shall produce proof of how much he was taxed on the \$8635.70, and half of the taxes shall be taken of Mom s \$4317.85. The net amount shall then be reduced to judgment and collectible by any lawful means.

ATTORNEY S FEES ISSUE

PRINT DATE:	01/09/2017	Page 3 of 4	Minutes Date:	December 01, 2016
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

11. The issue of attorney's fees shall be taken under advisement. Counsel shall submit Brunzell briefs and Memorandums of Fees and Costs beginning 1/2/2017. Atty Page shall submit his Brief on 12/2/2017. Atty Allen shall submit her Brief on 12/30/2017.

STATUS CHECK HEARING

12. The Court's JEA shall contact both counsel regarding a future half-day Status Check hearing.

Atty Allen shall prepare the Order and the District Attorney's Order to Amend Child Support from today's hearing.

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	01/09/2017	Page 4 of 4	Minutes Date:	December 01, 2016
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

01/19/2017

Heather L. Hemin

CLERK OF THE COURT

MOT

FRED PAGE, ESQ.

Nevada Bar: 6080

PAGE LAW OFFICE

6145 Spring Mountain Road, Suite 201

Las Vegas, Nevada 89146

Phone: (702) 469-3278

Facsimile: (702) 628-9884

E-mail: fpagelaw@pagelawoffices.com

Attorney for Defendant

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

RICHARD KILGORE,

Plaintiff,

vs.

ELENI KILGORE,

Defendant.

CASE NO.: D-12-459171-D

DEPT. NO.: I

Hearing Date: 3/28/17

Hearing Time: 10:00 AM

ORAL ARGUMENT REQUESTED: Yes ☒ No ☐

**DEFENDANT'S MOTION TO AMEND OR MAKE ADDITIONAL FINDINGS OF
FACT, TO ALTER OR AMEND JUDGMENT
AND
FOR ATTORNEY'S FEES AND COSTS**

NOTICE: YOU ARE ADVISED THAT FAILURE TO FILE AND SERVE A WRITTEN OPPOSITION WITHIN 10 DAYS AFTER SERVICE MAY BE UNDERSTOOD THAT THIS MOTION IS VALID. IF YOU HAVE CHILDREN FROM THIS RELATIONSHIP, THE COURT IS REQUIRED TO ORDER PAYMENT OF CHILD SUPPORT. THE AMOUNT OF CHILD SUPPORT MAY BE LARGE. IT NORMALLY CONTINUES UNTIL THE CHILD IS 18. YOU SHOULD SUPPLY THE COURT WITH INFORMATION ABOUT YOUR FINANCES OTHERWISE THE CHILD SUPPORT ORDER WILL BE BASED ON THE INFORMATION SUPPLIED BY THE OTHER PARENT.

COMES NOW, Defendant, ELENI KILGORE, by and through her counsel Fred Page, Esq. and hereby files her Motion to Amend or Make Additional Findings of Fact, to Alter or Amend Judgment, and for Attorney's Fees. This Motion is based upon the papers and pleadings

1 on file. the attached Points and Authorities and any oral argument that the Court may wish to
2 entertain.

3 DATED this 21 day of January 2017

4 PAGE LAW OFFICE

5
6
7 FRED PAGE, ESQ.

8 Nevada Bar No. 6080

9 6145 Spring Mountain, Suite 201

10 Las Vegas, Nevada 89146

11 (702) 469-3278

12 Attorney for Defendant

13 **NOTICE OF MOTION**

14 TO: RICHARD KILGORE, Plaintiff

15 TO: BETSY ALLEN, ESQ., attorney for Plaintiff

16 **PLEASE TAKE NOTICE** that a hearing on this motion for the relief requested will be
17 held before the Eighth Judicial District Court in Dept. 1 located at: the Family Courts, 601 North
18 Pecos, Las Vegas, Nevada 89101 on:

19 PAGE LAW OFFICE

20
21 FRED PAGE, ESQ.

22 Nevada Bar No. 6080

23 6145 Spring Mountain, Suite 201

24 Las Vegas, Nevada 89146

25 (702) 469-3278

26 Attorney for Defendant
27
28

1
2 **POINTS AND AUTHORTIES**

3 **I.**

4 **FACTUAL BACKGROUND**

5 **A. Introduction**

6 Defendant, Eleni Kilgore (hereinafter "Eleni") and Plaintiff, Richard Kilgore, (hereinafter
7 "Richard") were divorced from each other on March 13, 2014.

8 **B. Factual and Procedural History**

9 The case has a long litigation history of which the Court is already familiar and need not
10 be recited in great detail here.

11 On December 30, 2014, the Court entered the following order regarding child support.

12 IT IS FURTHER ORDERED that, TEMPORARILY, without prejudice, Plaintiff's CHILD
13 SUPPORT is SET at \$521.00 per month, which includes health insurance premiums.

14 On March 11, 2015, the Court entered the following pertinent order regarding custody.

15 Defendant is hereby TEMPORARILY awarded PRIMARY PHYSICAL CUSTODY.
16 Plaintiff is hereby TEMPORARILY awarded VISITATION with the minor child,
17 Nicholas Kilgore, on the first, third, and fifth weekends. Plaintiff shall retrieve the minor
18 child, Nicholas, after-school, or at 3:00pm, on Fridays and return the minor child to
19 school on Mondays.

20 On August 28, 2015, a settlement conference was held in with the Hon. Gloria O'Malley.
21 Judge O'Malley settled some issues and the parties agreed that the only issues that remained
22 were, "the IRS debt, the omitted asset (Dad's sick leave and pay), Mom's clothes (1 fur coat and
23 10 formal dresses), final order for child support once Dad is employed, physical custody of
24 Nicholas, Dad's request for Attorney's Fees distribution of Dad's retirement and arrearages."
25 Child support was not one of the issues that remained outstanding.

26 On September 16, 2015, a status check hearing was held. It was ordered that the orders
27 that were currently in place would remain in place. The December 1, 2015, status check hearing
28 was continued to February 9, 2016.

1 On February 9, 2016, Richard was ordered to commence paying Eleni \$1,200 per month
2 for her partial share of her interest in the PERS defined benefit plan in Richard's name as
3 Richard first became eligible for retirement in November 2014. Richard refused to do so. The
4 Court also noted, in the Minutes from that hearing, based upon Richard's representations in the
5 courtroom that he had commenced employment on January 4, 2016.

6
7 The Order from the February 9, 2016, indicated that an evidentiary hearing was set for
8 July 25, 2016, at 1:30 p.m. on stack #1 regarding the outstanding financial issues of:

- 9 a. The Survivor Beneficiary designation for the Nevada Public Employees
10 retirement account for both pre and post retirement designations.
11
12 b. The omitted vacation and sick pay that Plaintiff received when he was
13 terminated from the City of Las Vegas but was never divided.
14
15 c. The property equalization payments for the defined benefit plan that were to
16 be made to Defendant by Plaintiff upon Plaintiff's first eligibility for
17 retirement but that were never made.
18
19 d. The Hartford Deferred Compensation Account in Plaintiff's name that was
20 never divided.

21 There was no specific mention of child support being at issue.

22 On July 25, 2016, August 15, 2016, and October 31, 2016, the evidentiary hearing was
23 held.

24 On July 25, 2016, Marshal Willick, Esq. testified as to the theories surrounding the first
25 eligibility for retirement as well as omitted asset law.

26 On August 15, Ms. Sonya Hellwinkel testified that Richard first became eligible for
27 unreduced retirement benefits April 20, 2011, and that PERS will not pay retirement benefits to
28

1 the nonemployee spouse pursuant to a QDRO so long as the obligor spouse continues to work.
2 Ms. Hellwinkel and Richard both agreed that they were in sole control if and when Eleni would
3 ever receive her agreed to and court ordered share of the retirement benefits.

4 On October 31, 2016, the Court issued many of its orders including

- 5 1. Beginning January 2016, Richard's child support for Nicholas was set at \$806.00 per
6 month, plus \$266.00 per month for joint physical custody of Richard, Jr., plus
7 \$220.00 per month for health insurance premiums allocable to the minor children, for
8 a total of \$1,292.00 per month.
9
- 10 2. Beginning July 2016, Plaintiff/Dad's child support for Nicholas was set at \$820.00
11 per month, plus \$266.00 per month for joint physical custody of Richard, Jr., plus
12 \$220.00 per month for health insurance premiums, allocable to the minor children for
13 a total of \$1,306.00 per month.
14
- 15 3. Defendant/Mom shall receive \$7,659.41 from Plaintiff's omitted assets from sick and
16 vacation pay.
17
- 18 4. Richard's share of the unreimbursed medical expenses is \$3,202.00.

19 On December 1, 2016, a status check/return hearing was held. At that hearing, it was
20 pointed out that Richard owed Eleni \$2,455 per month for her share of the PERS retirement
21 retroactive to March 2015. The arrears were determined to be \$54,003.62 plus interest of
22 \$2,572.14 for a total of \$56,575.76.
23

24 The arrears were reduced to judgment and made collectible by any and all legal means.
25 No stay was announced from the bench. Instead, at the conclusion of the hearing, it was again
26 confirmed that the amounts due and owing would be collectible.
27
28

1 As to the PERS retirement benefits going forward which were due and owing to Eleni
2 each and every month of \$2,455, the Court ordered that Richard \$350 per month toward Eleni's
3 community property, meaning that Richard was going into arrears \$2,105 each and every month
4 or \$25,260 each year.¹ Richard's counsel was directed to prepare the subsequent Order.

5 On January 9, 2017, a Minute Order was emailed to counsel. A review of Odyssey does
6 not show any Notice of Entry Order being entered. In the Minute Order, the Court made a
7 number of findings. Some of those pertinent findings include.
8

- 9 1. For December 2014 to January 2016, Mom and Dad continued to maintain joint
10 physical custody of the children. Mom's 25% would have been \$1170 minus Dad's
11 \$200 (unemployed rate) which equals \$970. Subtract \$213 for Mom providing health
12 insurance for a net total of \$757 per month. \$757 per month times 13 months totals
13 \$9841 that Dad should have received from Mom for 12/14 to 1/16. If the DA was
14 collecting from Dad's income and Mom made zero payments, then Dad should
15 receive additional credit.
- 16 2. In February 2016, Dad returned to working full-time. From February 2016 to June
17 2016, Dad would pay mom 18% for Nicholas when custody changed to Mom having
18 primary physical custody, however Dad would be capped out at \$806 per month. For
19 Richard, Jr., the parties continued to have joint physical custody, and Dad would pay
20 Mom \$266. This is derived from subtracting Dad's 18% of \$7362 GMI or \$1325,
21 and Mom's 18% of \$5883 GMI or \$1059, which equals \$266 from Dad to Mom.
22 Adding \$806 for Nicholas and \$266 for Richard, Jr., Dad's monthly child support
23 obligation would be \$1072. But, Dad would also pay Mom \$220 per month for his
24 portion of the children's health insurance premiums. Therefore, Dad's total child
25 support obligation for this time period is \$1072 plus \$220 for a total of \$1292. \$1292
26 per month times 5 months equals \$6460 for 2/16 to 6/16. If the DA was collecting
27 more than \$1292 per month from Dad's paychecks, then Dad should receive the
28 appropriate credit.
3. There were lengthy discussions in the post-trial hearings as to how Dad would pay
Mom her community interest portion of Dad's PERS when he became eligible to
retire in March 2015, although Dad presently continues to work full-time and has not
yet actually retired. Mom's portion was calculated to be \$2,455 per month
retroactive to March 2015. For the relevant time period established at trial, the total
accrued and owing to Mom is \$54,003.62 principal plus \$2,572.14 of pre-judgment
interest for a grand total of \$56,575.76. Said amount is reduced to judgment and
collectible by any lawful means. However, execution on Dad's paychecks is stayed
and instead, due to the financial conditions of the parties explored in-depth at the
hearings, Dad will pay Mom \$350.00 per month from January 2017 forward into her

¹ The \$350 payment does not even address the interest on the arrears which is growing by approximately \$255 each month.

1 Chase bank account. Dad shall direct deposit \$175.00 on the 15th and \$175 on the
2 last day of every month.

3 Richard's counsel still has not prepared the Order from the based upon the Minute Order,
4 and no direction was given from the Court to do so and therefore this Motion is being filed.

5 **II.**
6 **GOVERING LAW AND ARGUMENT**

7 **A. The Findings of Fact Made Should Be Altered or Amended**

8 Some of the findings made are contradicted by the record in this case and testimony
9 given during the evidentiary hearing.

10 The finding that the parties had joint physical custody from December 2014, to January
11 2016, is contradicted by the record. As indicated, the Court found and ordered on March 11,
12 2015, that Eleni had primary physical custody of Nicholas. That Order was filed and there was
13 no appeal and there was no request for a correction under NRCP 60(b). Therefore, for the period
14 at minimum of March 2015, through January 2016 was the Eleni had primary physical custody
15 of Nicholas.
16

17
18 The finding that Eleni should have been paying 25 percent of her gross monthly income
19 for child support when is, as indicated, contradicted by the record in this case. As indicated, the
20 record is clear, the Orders state that Eleni had primary physical custody from, at a minimum
21 from March 2015, through January 2016, and then from January 2016, through to the present.
22 See Order from March 11, 2015, hearing at page 3, lines 20-24.

23
24 If Eleni had primary physical custody, then Eleni is entitled to child support based upon
25 primary physical custody regardless of whether denominated as permanent or temporary.
26 Otherwise, Eleni would be paying child support to another person while she has primary custody.
27 Such a result could not have been intended by the Nevada Legislature.
28

1 The finding that Mr. Kilgore was first eligible to retire March 2015, is contradicted by
2 Ms. Hellwinkel's testimony. As indicated, Ms. Hellwinkel testified on August 15, 2016. As also
3 indicated, Ms. Hellwinkel testified that.

- 4 1. Richard turned age 50, April 20, 2011.
- 5
- 6 2. Pursuant to Chapter 286, Richard was eligible for an unreduced retirement benefit on 4-
7 20-11.

8 The finding was made the Richard returned to work fulltime in February 2016. The
9 claim is contradicted by the record. The Minutes from the February 9, 2016, hearing state that
10 Richard returned to fulltime work on Court noted Plaintiff was reinstated at his job January 4,
11 2016.

12 The Court's findings on child support and custody should be removed as well. The
13 Court's orders from the February 9, 2016, hearing were unambiguous as to the issues for trial.
14 Retroactive modification of child support was not one of the issues. Judge O'Malley's recitation
15 of the remaining issues did not include retroactive child support.
16

17 Nevada Rule of Civil Procedure 52(b) states.

18 Upon a party's motion filed not later than 10 days after service of written notice of entry of
19 judgment, the court may amend its findings or make additional findings and may amend the
20 judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When
21 findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting
22 the findings may later be questioned whether or not in the district court the party raising the
23 question objected to the findings, moved to amend them, or moved for partial findings.

24 Given the above citations to the testimony during the evidentiary hearing and the record,
25 the findings made should be amended and the accurately reflect the record.

26 **B. The Judgment In the Minute Order Should Be Altered or Amended**

27 In the Minute Order, the Court has entered a number of orders. Those orders include.

- 28 1. Basing child support on an incorrect calculation based upon when Elcni had primary
physical custody.

2. Calculating child support based upon an incorrect timing of when Richard resumed employment.
3. Changing its order regarding the collectability of arrears for property division.
4. Child support should have never been one of the issues ruled upon.
5. Judgment should also be altered or amended regarding Eleni being deprived of her community property interest in the PERS retirement until such time as Richard decides to retire. Each item is addressed below.

1. Child custody

There should be no factual dispute that the record indicates that, at a minimum, Eleni had primary physical custody of Nicholas from March 2015, through to the present. However, child support was calculated as though the parties had joint physical custody from December 2014, through January 2016.

The conclusion appears to be contradicted by the record and therefore the judgment should be altered or amended.

2. Child support

At the February 9, 2016, hearing Richard admitted that he commenced employment on Monday, January 4, 2016, the first day court services resumed. In other words, Richard began working again the first day possible of the New Year. Any calculations regarding Richard's new higher income should commence January 2016, rather than February 2016.

3. Retirement Division Arrears

The Court has found that is \$54,003.62 principal plus \$2,572.14 of pre-judgment interest for a grand total of \$56,575.76. The Court then made the amount collectible as a judgment. The monies are due to Eleni as her community property. The Decree was unambiguous. Eleni was

1 entitled to her community property share of the retirement. The Decree was never appealed and
2 no Motion under 60(b) was ever filed.

3 After the December 1, 2016, hearing, the Court subsequently modified its pronouncement
4 from the bench and refused to allow Eleni to collect on her judgment. Refusing to allow Eleni to
5 receive her community property deprives Eleni of her rights to that property. There should be no
6 justification that Eleni have to bear 100 percent of the post-divorce conduct by Richard to lose
7 his job and then refuse to find another job, all while refusing to retire which deprives Eleni of her
8 community property.
9

10 Eleni requests that the Order be altered or amended to conform with the Court's
11 pronouncement from the bench on December 1, 2016, that the arrears that she is owed are fully
12 collectible.
13

14 **4. Retirement Benefits Going Forward**

15 The Court has declined to require Richard to pay to Eleni the retirement benefits that
16 belong to her going forward. There is no provision under the Nevada Revised Statutes or the
17 case law which permits one party to divest the other of their community property. To the
18 contrary cases such as *Sertic v. Sertic*,² indicate that the spouse who continues to work cannot
19 deprive the non-employee spouse his or her benefits.
20

21 Any anything other than an order which allows full and complete collection violates this
22 requirement. Neither the Court, nor Eleni is responsible for Richard's choice to continue
23 working. As testified to by both Ms. Hellwinkel and Richard, he maintains complete control to
24 divest Eleni of her rights to her community property.
25
26
27

28 ² 111 Nev. 1194, 901 P.2d 148 (1995).

1 Eleni respectfully requests that the Order be altered or amended to conform with *Sertic*.
2 *supra* and that Richard be required to pay her community property share of the retirement
3 benefits effective immediately.

4 **5. That Child Support Was Considered At All Should Be Altered or Amended**

5 There was nothing in Judge O'Malley's recitation of the issues remaining after the
6 settlement conference, nothing in the Order from the February 9, 2016, hearing and nothing in
7 Richard's Pre-Trial Memorandum that would reasonably put anyone on notice that a retroactive
8 modification of child support was going to be considered.
9

10 It is submitted that since there is no findings and absent in the record any reasonable
11 factual support to consider child support retroactive to December 2014, that any consideration of
12 the same should be altered or amended.
13

14 **C. Eleni Should Be Awarded Her Attorney's Fees**

15 The Court may award Eleni fees from Mark under *Brunzell v. Golden Gate National*
16 *Bank*.³ In brief, the undersigned is well experienced in the area of family law, the work is
17 relatively straightforward, the undersigned has performed 100 percent of the work, and the result
18 should be considered as being favorable to Eleni. The Court also has authority under NRS
19 125.040(1)(c), NRS 125B.140 (fees for collecting past due child support), and NRS 22.100
20 (authorization for awards of attorney's fees for contempt).⁴
21
22
23

24 ³ 85 Nev. 345, 455 P.2d 31 (1969). In *Brunzell*, the Court held that a district court should consider in awarding
25 attorney's fees the following factors (1) the qualities of the advocate; his ability, his training, education, experience,
26 professional standing and skill, (2) the character of the work to be done; its difficulty its intricacy, its importance,
27 time and skill required, the responsibility imposed and the prominence and character of the parties where they affect
the importance of the litigation; (3) the work actually performed by the lawyer; the skill, time and attention given to
the work; and (4) the result; whether the attorney was successful and what benefits were derived.

28 ⁴ In any suit for divorce the court may, in its discretion, upon application by either party and notice to the other
party, require either party to pay moneys necessary to assist the other party in accomplishing one or more of the
following:

1 It is asked that Eleni awarded \$1,500 in attorney's fees for having to review the
2 underlying paperwork and record, draft the Motion and appear at the hearing.

3 **III.**
4 **CONCLUSION**

5 WHEREFORE, Defendant, ELENI KILGORE, respectfully requests that the Court enter
6 the following orders.

- 7 1. Altering and amending the findings as indicated.
8 2. Altering and amending the judgment as indicated.
9 3. Awarding Eleni \$1,500 in attorney's fees, and;
10 4. For any further relief the Court deems proper and just.
11

12 DATED this 16th day of January 2017

13 PAGE LAW OFFICE

14 
15 FRED PAGE, ESQ.

16 Nevada Bar No. 6080

17 6145 Spring Mountain Road, Suite 201

18 Las Vegas, Nevada 89146

19 (702) 469-3278

20 Attorney for Defendant

21
22
23
24
25
26
27
28 (c) To enable the other party to carry on or defend such suit.

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I am the Defendant in the above-entitled action. I have read the Motion. I have personal knowledge of the facts contained in the Motion and am competent to testify to these facts. I declare under penalty of perjury that the foregoing is true and correct.

~~to be signed~~
ELENI KILGORE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

RICHARD KILGORE

Plaintiff/Petitioner

V.

ELENI KILGORE

Defendant/Respondent

Case No. D-12-459171-D

Dept. 1

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.

-OR-

☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:

☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☒ Other Excluded Motion (must specify) Motion to Alter or Amend.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:

☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.

-OR-

☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **\$57** The Motion/Opposition being filed with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ **\$0** ☐ **\$25** ☐ **\$57** ☐ **\$82** ☐ **\$129** ☐ **\$154**

Party filing Motion/Opposition: Eleni Kilgore

Date 1-19-17

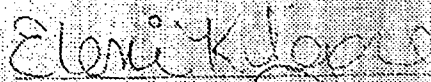
Signature of Party or Preparer [Signature]

DECLARATION IN SUPPORT OF MOTION

ELEINI KILGORE, declares and states as follows:

I am the Defendant in the above-entitled action. I have read the Motion. I have personal knowledge of the facts contained in the Motion and am competent to testify to these facts. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of January 2017.


ELENI KILGORE

SUPE

FRED PAGE, ESQ.

Nevada Bar: 6080

PAGE LAW OFFICE

6145 Spring Mountain Road, Suite 201

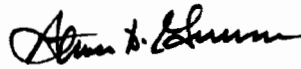
Las Vegas, Nevada 89146

Phone: (702) 469-3278

Facsimile: (702) 628-9884

E-mail: fpagelawoffices.com

Attorney for Defendant



CLERK OF THE COURT

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

RICHARD KILGORE,

Plaintiff,

vs.

ELENI KILGORE,

Defendant.

CASE NO.: D-12-459171-D

DEPT. NO.: 1

Hearing Date: March 28, 2017

Hearing Time: 10:00 a.m.

DEFENDANT'S SUPPLEMENTAL EXHIBIT IN SUPPORT MOTION TO AMEND OR
MAKE ADDITIONAL FINDINGS OF FACT, TO ALTER OR AMEND JUDGMENT
AND
FOR ATTORNEY'S FEES AND COSTS

COMES NOW, Defendant, ELENI KILGORE, by and through her counsel Fred Page,
Esq. and hereby files her Supplemental Exhibit in Support of Her Motion to Amend or Make
Additional Findings of Fact, to Alter or Amend Judgment, and for Attorney's Fees. The

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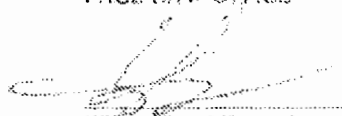
///

///

1 Supplemental Exhibit is Defendant's executed Declaration.

2 DATED this 21st day of January 2017

3 PAGE LAW OFFICE

4
5 
6 FRED PAGE, ESQ.

7 Nevada Bar No. 6080

8 6145 Spring Mountain, Suite 201

9 Las Vegas, Nevada 89146

10 (702) 469-3278

11 Attorney for Defendant