IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 12 2019 04:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SHARATH CHANDRA, ADMINISTRATOR, NEVADA REAL ESTATE DIVISION, Appellant, vs. MELANI SCHULTE; AND WILLIAM SCHULTE, Respondents.	Case No. 75477 District Court No. D-12-458809-D

APPELLANT'S OPENING BRIEF

AARON D. FORD
Nevada Attorney General
DAVID J. POPE (Bar No. 8617)
Chief Deputy Attorney General
DONALD J. BORDELOVE (Bar No. 12561)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Telephone: (702) 486-3094
Fax: (702) 486-3416
dbordelove@ag.nv.gov
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND REGULATIONS

STATUTES AND REGULATIONS (CONTINUED)

OTHER AUTHORITIES

Appellant Sharath Chandra, Administrator, Nevada Real Estate Division (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General, David J. Pope, Chief Deputy Attorney General, and Donald J. Bordelove, Deputy Attorney General, hereby submits its Opening Brief.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to NRAP 3A(b)(1). The District Court's final orders being appealed were entered on February 20, 2018, and notices of the entry of those orders were served by mail on February 21, 2018. The notice of appeal was timely filed on March 22, 2018. NRAP 4(a)(1).

ROUTING STATEMENT

The case should be retained by this Court as it raises, as a principal issue, a question of statewide public importance pursuant to NRAP 17(a)(11). The matter does not appear to be presumptively assigned to the Court of Appeals under NRAP 17(b)(10), as an administrative agency case, because the Petitions at issue were filed with the District Court, and the matter was never before the Division at the administrative level.

ISSUE PRESENTED FOR REVIEW

1. Did the District Court err in granting respondent Melanie Schulte payment from the Real Estate Education, Research and Recovery Fund despite the spousal exception set forth in NRS 645.844(4)(a)?

2. Are the judgements with reference to any transaction for which a license is required pursuant to NRS Chapter 645?

3. Did the District Court lack jurisdiction to enter the Amended Decree of Divorce rendering the judgments related thereto void?

4. Were the Petitions untimely made?

5. Did the District Court err in granting payment from the Fund in excess of the $25,000 statutory cap?

STATEMENT OF THE CASE

Appellant, the Administrator of the Real Estate Division, Department of Business & Industry, State of Nevada ("Division"), operates the Real Estate Education, Research and Recovery Fund ("Fund"), which allows limited recovery by a person who has been financially harmed by a real estate licensee's fraud, misrepresentation or deceit with reference to any transaction for which a license is

required pursuant NRS 645.

On or about October 25, 2017, respondent Melanie Schulte ("Ms. Schulte") filed nine Verified Petitions for an Order Directing Payment Out of the Education Research and Recovery Fund Pursuant to NRS 645.841 to 645.8494 ("Petitions") based on judgments she had obtained against respondent William R. Schulte ("William"), her former spouse. Joint Appendix ("JA"), at 0082-0126. The Petitions are identical with the exception that each petition was brought by Ms. Schulte either on an individual basis, or as the successor in interest of a property (collectively, "Schulte Properties LLCs") that had been owned by respondents at the time of the misconduct by Mr. Schulte. JA, at 16. The Division opposed Ms. Schulte's Petitions. JA, at 0138-0141.

On November 30, 2017, the District Court, on an order shorting time, conducted a hearing on the Petitions. JA, at 0128-0129, 0149-0182. As a result thereof, on February 20, 2018, the District Court issued nine Orders Directing Payment Out of the Fund ("Fund Orders"), with each Fund Order corresponding to one of the nine Petitions. JA, at 0183-0218.

. . .

In each Fund Order, the District Court held that:

> **THE COURT FINDS** that [Ms. Schulte] has met the requirements of NRS 645.841 et seq.
>
> **THE COURT FINDS** NRS 645.844 (4)(a) applies.
>
> **THE COURT FINDS** the "spouse exception" does not apply in this case because Plaintiff is a former spouse. At the time Plaintiff filed her action for recovery from the ERRF, Plaintiff was a former spouse not a current spouse and she is not married to [William], therefore, the exception does not apply.
>
> Further, the Court looked at the public policy pertaining to the word "spouse" in the NRS statute. The statute is designed to prevent married couples acting in concert to defraud other parties.
>
> **THE COURT FINDS** that the Plaintiff has never been found to have committed any type of business fraud concerning the former community property assets she was awarded in the divorce.
>
> **THE COURT FINDS** public policy also warrants that persons such as Plaintiff should be encouraged to keep businesses viable in Nevada. Otherwise, there would be less business conducted in Nevada. Here, Plaintiff has always acted in good faith concerning her duties in managing the former community property assets and ensuring no further harm to the tenants, paying restitution, and getting the businesses up to par….

JA, at 0184-0185, 0188-0189, 0192-0193, 0196-0197, 0200-0201, 0204-0205, 0208-0209, 0212-0213, 0216-0217.

The District Court also found that the nine Petitions involve separate judgments, and that each judgment "is less than the $25,000 per judgment limit." JA, at 0185, 0189, 0193, 0197, 0201,

0205, 0209, 0213, 0217. Based on those findings, the District Court granted each Petition, and directed the Division to pay Ms. Schulte from the Fund. JA, at 0185, 0189, 0193, 0197, 0201, 0205, 0209, 0213, 0217. The District Court also ordered that each Fund Order "is a final order." JA, at 0186, 0190, 0194, 0198, 0202, 0206, 0210, 0214, 0218. On March 22, 2018, the Division filed its appeal with this Court. JA, at 0273-0276.

STATEMENT OF FACTS

I. Administrative Proceedings Against William R. Schulte

On June 11, 2013, the Division filed an administrative complaint against Mr. Schulte with the Nevada Real Estate Commission ("Commission"). JA, at 0006-0013. The Complaint alleged Mr. Schulte committed violations of NRS 645 by, among other conduct, (1) failing to remit money to several individuals (*none* of whom were Ms. Schulte), and (2) failing to submit to the Division an annual accounting for the years 2009, 2010 and 2011, of the trust account for Sabreco, Inc. ("Sabreco"), for which Mr. Schulte was the real estate broker and property manager. JA, at 0007-0010.

On October 11, 2013, the Commission issued a decision against

Mr. Schulte finding that he committed the 15 violations set forth in the administrative complaint. JA, at 0026-0027. In addition to imposing a total fine of $77,079.08, the Commission revoked Mr. Schulte's real estate licensees and property management permit. JA, at 0027.

II. Respondents' Divorce Proceedings

On February 12, 2012, Ms. Schulte filed a complaint for divorce from Mr. Schulte. JA, at 0001-0005.[1] The District Court granted a Decree of Divorce on July 8, 2013. JA, at 0014-0025. In the Decree of Divorce, the court found, in pertinent part, as follows:

> **DIVISION OF COMMUNITY PROPERTY AND DEBTS**
> **The SABRECO Business and SCHULTE Properties**
> . . .
>
> 12. The Court finds that Sabreco is community property. Mr. Leauanae testified that Sabreco was merely a place of employment generating income for the community….
>
> 13. The Court finds that Mr. Leauanae found a discrepancy of $204,157.86 between the amount of security deposits that should have existed and what actually was contained in Sabreco's security deposit account. The relevant time period he looked at was January 2011 to March 2012.

[1] Non-relevant portions of the divorce complaint and divorce decrees containing sensitive information have been redacted by agreement between Ms. Schulte and the Division. *See, e.g.*, JA, at 0002-0004, 0014-0015, 0017-0025, 0028-0029, 0034-0043.

. . .

15. The Court previously held a contempt hearing and made findings that William was entrusted to run the daily operations of Sabreco. However, his management resulted in a discrepancy in excess of $200,000.00 that went unaccounted.

. . .

18. IT IS ORDERED, ADJUDGED AND DECREED, that Melani is awarded the Sabreco business, in its current state, as her sole and separate property. If any lawsuit judgments are issued against Sabreco arising from missing monies prior to Melani taking over in the Fall of 2012, and by his own express admission at trial, William shall be assigned those judgments and debts as his sole and separate debts if he is found liable as an individual. If Sabreco, as a business entity, is found liable, then the business shall bear those debts.

19. As to Schulte Properties, the parties own 32 rental properties, which include the marital residence at 509 Canyon Greens, Las Vegas, Nevada. The Court finds Schulte Properties is a community property asset.

. . .

28. IT IS ORDERED, ADJUDGED AND DECREED that Melani shall be awarded Schulte Properties as her sole and separate property along with any and all debts and encumbrances associated with the 32 real properties. There still remain payments owed in the Bankruptcy Order to the secured creditors. The Court is aware that both parties are both liable to the bankruptcy creditors. However, with Melani being awarded the 32 properties as her sole and separate property, she shall hold William harmless from any debts associated with the 32 properties.

JA, at 0015-0017.

Almost *four years later*, on February 13, 2017, Ms. Schulte filed a motion to amend the Decree of Divorce *Nunc Pro Tunc*, which the District Court granted on April 3, 2017. JA, at 0028-0043. The Division was not a party to these proceedings. The Amended Decree of Divorce *Nunc Pro Tunc* ("Amended Decree") revised paragraphs 18 and 28 of the Decree of Divorce to read as follows:

> **DIVISION OF COMMUNITY PROPERTY AND DEBTS**
> **The SABRECO Business and SCHULTE Properties**
> . . .
>
> 18. IT IS ORDERED, ADJUDGED AND DECREED, that Melani is awarded the Sabreco business, in its current state, as her sole and separate property. If any lawsuit judgments are issued against Sabreco arising from the missing monies prior to Melani taking over on October 12, 2012, and by his own express admission at trial, William shall be assigned those judgments and debts as his sole and separate debts if he is found liable as an individual. If Sabreco, as a business entity, is found liable, then the business shall bear those debts.
> [William] should be held solely and personally liable for any and all debts or liabilities if arising from his fraud, misrepresentation and deceit as a broker of Sabreco.
> If Sabreco, as a business entity, is found liable for any business debts arising out of [William]'s mismanagement prior to Melani taking over in the Fall of 2012, then William R. Schulte or Sabreco shall bear those debts and Melani will not be responsible for, or

be held personally liable for those debts.

. . .

28. IT IS ORDERED, ADJUDGED AND DECREED that Melani shall be awarded Schulte Properties as her sole and separate property along with any and all debts and encumbrances associated with the 32 real properties. There still remain payments owed in the Bankruptcy Order to the secured creditors. The Court is aware that both parties are both liable to the bankruptcy creditors. However, with Melani being awarded the 32 properties as her sole and separate property, she shall hold William harmless from any debts associated with the 32 properties....

JA, at 0030, 0032 (emphasis added).

In addition to the Amended Decree, the District Court entered an order granting final judgment against Mr. Schulte on May 18, 2017. JA, at 0044-0054. However, pursuant to Ms. Schulte's application, the District Court ordered that twenty-one "individual judgments be entered against William …." JA, at 0046. Those separate judgments were all issued in Ms. Schulte's favor (either individually or "as the Successor in Interest"). *See* JA, at 0055-0081.

SUMMARY OF ARGUMENT

First, Respondents' marriage at the time of Mr. Schulte's conduct precludes Fund relief pursuant to the Statutory Spousal Exception. The Schultes were married at the time of Mr. Schulte's fraud,

misrepresentation or deceit. While there is no Nevada case law directly on point, California courts have explicitly addressed this issue finding that recovery is barred when the parties are married at the time of the bad acts. This is significant because the Nevada Legislature stated that our Fund statute was modeled after California's ERRF statute. The provisions of our Fund statute are identical to that of California's. The Schultes were married at the time that Mr. Schulte's complained-about fraud, misrepresentation or deceit took place. Their relationship was one of husband and wife, not that of a real estate licensee and client. Their post-misconduct divorce does not change that fact, nor did the divorce transform Ms. Schulte's situation into one that the Fund is meant to remedy. A party should not simply be allowed to divorce after the misconduct occurs and then obtain relief from the Fund in an apparent attempt to create a loophole. Therefore, it is irrelevant what the Schultes' relationship status was at the time of filing.

Second, NRS 645.844(1) requires the final judgment to be "with reference to any transaction for which a license is required pursuant to this chapter...." The act of collecting security deposits and rents on one's own properties is not activity for which a license is required

pursuant to NRS Chapter 645. The companies allegedly affected by the misconduct, Sabreco and Schulte Properties LLCs, were marital and/or community property. Mr. and Ms. Schulte owned those companies when Mr. Schulte's fraudulent acts occurred. As the California Courts noted, "the theory of the statute setting up the fund is that a citizen has relied, to his damage, on the implied representation, inherent in the fact of licensure, that the licensee is honest and dependable". *Powers v. Fox*, 96 Cal. App. 3d 440, 445, 158 Cal. Rptr. 92, 94 (Cal. Ct. App. 1979). Instead, here, "where the victim and the fraudulent actor are married, the reliance is more likely based on the marital relationship with the trust therein involved than on the license." *Id.* The fact that Mr. Schulte had a real estate license is irrelevant.

Third, the Amended Decree of Divorce is void as the District Court lacked jurisdiction to enter the judgments, and the Petitions at issue were untimely made. The Amended Decree was entered 3 years, 8 months, and 26 days after the Decree of Divorce was entered. It is black letter law that a judgment is void if a court lacks jurisdiction to enter the judgment. The Nevada Supreme Court has held that a district courts lack the jurisdiction to modify a divorce decree's property

distribution provisions more than *six months* after the decree was entered.

Finally, and in the alternative, if the Court rules that Ms. Schulte is entitled to any Fund relief, her relief is limited to $25,000. NRS 645.844(1) declares that no more than $25,000 may be collected from the Fund per judgment. Approximately *four years after* the issuance of the Decree of Divorce, Ms. Schulte requested that the District Court issue multiple judgments against Mr. Schulte -- one in favor of Ms. Schulte individually, and 20 judgments in favor of a specified Schulte Properties LLC or "Melanie Schulte as the Successor in Interest." The underlying case is a divorce action. Ms. Schulte's tactic of splintering *her* judgment against Mr. Schulte into 21 separate judgments should not enable her to obliterate the statutory limit set forth in NRS 645.844(1). The Nevada Supreme Court has already addressed this issue and found that joint owners of property receive one judgment. It is undisputed that the Schultes were the joint owners of the properties until said properties were declared as Ms. Schulte's separate property via the Divorce Decree.

The Nevada Supreme Court even explicitly addressed the

legislative history in this regard finding that when the Nevada Legislature amended the statue to change it to per judgment instead of per claimant, this was not a change in the Legislature's intent but a clarification of the statute's *liability limitations*. The Court specifically rejected the interpretation that a judgment is each plaintiff's separate right to recovery. The amendment was not intended to provide Ms. Schulte an avenue to obtain greater Fund relief than she is entitled to by clever procedural tactics, just as this Court forbade the husband and wife from doing so in *Buhecker*. Further, no portion of a statute should be rendered meaningless nor should it be interpreted to produce an absurd or unreasonable result. The Fund has another cap: "The liability of the Fund does not exceed $100,000 for any person licensed". NRS 645.844(1). Allowing the splintering of judgments, as done in this case, produces an unreasonable and absurd result by negating the "liability limits of recovery funds" expressly intended by the Legislature. The Fund is meant to help all those who were harmed by a licensee's defined misconduct – not for one individual to gobble up (in other words, Ms. Schulte's interpretation renders the $25,000 cap meaningless, negates it, and leaves only the $100,000 cap in place).

The Fund is meant to remedy the bad acts of licensees using the trust inherit in licensure. Simply put, the Fund was not meant to increase the community property of the marital unit and satisfy a divorce award of separate property. The fact that Ms. Schulte convinced the District Court to divide her judgments among her various LLCs does not change the result, as she is the owner of those LLCs, they are joint plaintiffs, and their judgments are joint. The reasonable result in this case prohibits crafty structuring and instead favors that of logic, just results, and the express intent of the Fund.

ARGUMENT

I. Standard of Review

There are no material facts at issue in this matter. Rather, it is the legal conclusions reached by the District Court that are at issue, and this Court's review of those conclusions is *de novo* and without deference. *GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (citing *Caughlin Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)).

II. Respondents' Marriage at the Time of Mr. Schulte's Conduct Precludes Fund Relief – Statutory Spousal Exception

A petitioner for Fund relief bears the burden to prove she has met *all* requirements for recovery. NRS 645.844(4). One of those requirements is proof that the "petitioner is not the spouse of the debtor." NRS 645.844(4)(a). The District Court held that the Schultes' subsequent divorce satisfied Ms. Schulte's burden under NRS 645.844(4)(a). However, the Schultes were married at the time of Mr. Schulte's "fraud, misrepresentation or deceit," which occurred from 2009 through 2011.

Although there is no Nevada case law on the issue, a California Court of Appeals addressed the issue with respect to a California statute, Cal. Bus. & Prof. Code §10472(a), which mirrors the language in NRS 645.844(4)(a) (sections 10470 *et seq*. of the California Business and Professions Code is also known as the Real Estate Education, Research and Recovery Fund).

In *Powers v. Fox*, 96 Cal. App. 3d 440, 446, 158 Cal. Rptr. 92, 94 (Cal. Ct. App. 1979), the petitioner had her marriage to the real estate

licensee annulled. Nonetheless, the California Court of Appeal held "that, insofar as liability of the fund is based on frauds committed" by the licensee "between the date of his marriage to [the petitioner] and the decree of nullity, … **recovery is barred** by [§10472(a)]." *Id.* at 446 (**emphasis** added). The court indicated that "[t]he **obvious** reason for the exception … is that, where the victim and the fraudulent actor are married, the reliance is more likely based on the marital relationship with the trust therein involved than on the license." *Id.* (**emphasis** added).

Here, the Schultes were married at the time that Mr. Schulte's complained-about fraud, misrepresentation or deceit took place. The Schultes' relationship was one of husband and wife, not that of a real estate licensee and client. Their post-misconduct divorce does not change that fact, nor did the divorce transform Ms. Schulte's situation into one that the Fund is meant to remedy.

Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language. *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007); *Nevada v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170–71 (2008) ("court begins its

statutory analysis with the plain meaning rule"). "Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293–94, 995 P.2d 482, 485 (2000).

"However, where a statute has no plain meaning, a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions." *State, Div. of Ins.*, 116 Nev. at 294; *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007). "If the statute is ambiguous, meaning that it is capable of two or more reasonable interpretations, this court will 'look to the provision's legislative history and the ... scheme as a whole to determine what the ... framers intended,' and we will examine 'the context and the spirit of the law or the causes which induced the legislature to enact it.'" *Clark Cty. v. S. Nevada Health Dist.*, 128 Nev. 651, 656, 289 P.3d 212, 215 (2012).

There are two ways that a statute may be ambiguous: it may be "capable of being understood in two or more senses by reasonably

informed persons" or it may be "one that otherwise does not speak to the issue before the court." *Nelson*, 123 Nev. at 224. The spousal exception in NRS 645.844(4) is ambiguous in both senses. The statute does not provide whether one must be the spouse at the time of filing or conduct.

In 1967, Chapter 645 of the NRS was amended by SB 328 to create the Fund including the spousal exception which is still unchanged. 1967 Statues of Nevada (Chapter 378, SB 328). **Significantly, our Fund statute was modeled after California's ERRF statute**. Assembly Committee on Judiciary, Minutes of Meeting, 54th Session, April 4, 1967, 318 (stating that "This is patterned after California.").

Moreover, "[i]t is presumed that in enacting a statute the legislature acts with full knowledge of existing statutes relating to the same subject." *City of Boulder City. v. Gen'l Sales Drivers and Helpers, Intern. Broth. of Teamsters, Local 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985); *see also In re Walker River Irr. Dist.*, 44 Nev. 321, 195 P. 327, 329 (1921) ("where the Legislature of one state adopts the statute of another, the act of adoption raises the presumption that the

Legislature of the adopting state enacted the statute in the light of the construction that had been placed upon it in the parent state."); *Minden Butter Mfg. Co. v. First Judicial Dist. Court in & for Douglas Cty.*, 57 Nev. 29, 56 P.2d 1209, 1211 (1936) ("Our statutes were taken from the California Code. so we presume that section 9363, N.C.L., was adopted by the Legislature with the construction given it by the Supreme Court of the parent state."); *cf. State, Dep't of Bus. & Indus., Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 88, 40 P.3d 423, 426 (2002) ("When a federal statute is adopted in a statute of this state, a presumption arises that the legislature knew and intended to adopt the construction placed on the federal statute by federal courts. This rule of [statutory] construction is applicable, however, only if the state and federal acts are substantially similar and the state statute does not reflect a contrary legislative intent.").[2]

---

[2] For ease of reference, Cal. Bus. & Prof. Code § 10471 provided: "When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under this part, under grounds of fraud, misrepresentation, deceit, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this part, ..., the aggrieved person may, upon the judgment becoming final, file a verified application in the court in which the judgment was entered for an order directing payment out of

The language of California's subject statute was originally enacted in 1963 (our statute was enacted 4 years later, in 1967). *Nordahl v. Dep't of Real Estate*, 48 Cal. App. 3d 657, 661, 121 Cal. Rptr. 794, 796 (Ct. App. 1975).[3] In addition, the other provisions of our statute mirror

---

the separate account in the Real Estate Fund for education, research, and recovery purposes of the amount of actual and direct loss in such transaction up to the sum of ten thousand dollars ($10,000) of the amount unpaid upon the judgment...." **In comparison, our statute provides**: "... when any person obtains a final judgment in any court of competent jurisdiction against any licensee or licensees pursuant to this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required pursuant to this chapter, that person, upon termination of all proceedings, including appeals in connection with any judgment, may file a verified petition in the court in which the judgment was entered for an order directing payment out of the Fund in the amount of the unpaid actual damages included in the judgment, but not more than $25,000 per judgment. The liability of the Fund does not exceed $100,000 for any person licensed pursuant to this chapter, whether the person is licensed as a limited-liability company, partnership, association or corporation or as a natural person, or both. The petition must state the grounds which entitle the person to recover from the Fund." NRS 645.844(1).

[3] The Court in *Nordahl* noted that "[a]n examination of the statute, however, indicates that the fund is financed (s 10470) by fees exacted from licensed brokers and salesmen. Recovery from the fund is limited to circumstances where the defrauding licensee has no assets from which to satisfy the judgment (s 10472) and recovery is limited in the amount payable to any one judgment creditor (s 10471), and with respect to the amount allocable for the liability of any one licensee (s 10474). From the foregoing it appears that the Legislature intended minimum and limited rather than maximum benefits to those otherwise qualifying." *Nordahl*, 48 Cal. App. 3d at 661. Our statute requires the

that of California's.[4] The original statutory language of the Fund was also capped at $10,000 in the same manner as that of California's. 1967 Statutes of Nevada, Page 1044, Sec. 5 (Chapter 378, SB 328).

---

same. NRS 645.843(1) ("Upon application for or renewal ... every licensed ... shall pay ... a fee for real estate education, research and recovery."). Our statute also originally allowed recovery for "actual damages", as did California's and was subsequently amended in 1981 to only allow recovery for "unpaid actual damages" as did California. 1967 Statutes of Nevada, Page 1044 (Chapter 378, SB 328); 1981 Statutes of Nevada, Page 1615 (Chapter 673, SB 193).

[4] For ease of reference, Cal. Bus. & Prof. Code § 10472 provided: "At the hearing the aggrieved person shall be required to show: (a) He is not a spouse of debtor, or the personal representative of such spouse. (b) He has complied with all the requirements of this article. (c) He has obtained a judgment as set out in Section 10471, stating the amount thereof and the amount owing thereon at the date of the application. (d) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment. (e) That by such search he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized. (f) That he has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the separate account in the Real Estate Fund for education, research, and recovery purposes. (g) That he is making said application no more than one year after the judgment becomes final." **In comparison, our statute provides**: "Upon the hearing on the petition, the petitioner

Furthermore, while Judge Moss stated that the statute is meant to protect people from being defrauded by married couples working in concert to defraud (JA, at 167), there is simply no basis in the legislative history or otherwise for this limited conclusion. And, indeed, in this case produces an unreasonable or absurd result.

It is black letter law that no portion of a statute should be rendered meaningless nor should it be interpreted to produce an absurd

---

must show that: (a) The petitioner is not the spouse of the debtor, or the personal representative of that spouse. (b) The petitioner has complied with all the requirements of NRS 645.841 to 645.8494, inclusive. (c) The petitioner has obtained a judgment of the kind described in subsection 1, stating the amount thereof, the amount owing thereon at the date of the petition, and that the action in which the judgment was obtained was based on fraud, misrepresentation or deceit of the licensee in a transaction for which a license is required pursuant to this chapter. (d) A writ of execution has been issued upon the judgment and that no assets of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of assets was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due. (e) The petitioner has made reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment, and after reasonable efforts that no property or assets could be found or levied upon in satisfaction of the judgment. (f) The petitioner has made reasonable efforts to recover damages from each and every judgment debtor. (g) The petition has been filed no more than 1 year after the termination of all proceedings, including reviews and appeals, in connection with the judgment."

or unreasonable result. *City of Reno v. Building & Const. Trades Council of Northern Nevada*, 251.P.3d 718, 722 (2011).

It is clear that the District Court wanted to help Ms. Schulte (Ms. Schulte denied the properties had positive equity, and the Court found that the "Schulte Properties are upside down and have negative equity" based on the parties' failure to obtain "formal appraisals", JA, at 16); *see also* Transcript, JA, at 167-68 (Judge Moss stating: "It would be interesting if this is taken up to a higher court and they find a different interpretation from me. And I don't do a lot of civil litigation obviously in terms of I'm in the domestic area.").

Simply put, the Fund was not meant to increase the community property of the marital unit and satisfy a divorce award of separate property. It is undisputed that the parties to the divorce action were Mr. and Mrs. Schulte. It is undisputed that these judgments were in Ms. Schulte's favor, and she is now the sole owner of the LLCs. The Schultes were married at the time that Mr. Schulte's complained-about fraud, misrepresentation or deceit took place. A party should not simply be allowed to divorce after the misconduct occurs and then obtain relief from the Fund in an apparent attempt to create a loophole.

Interestingly, if we were to accept the arbitrary date of filing as the pivotal point (instead of the more logical time period of when the bad acts occurred), then relief could not be granted under the Fund.

Mr. Schulte was no longer licensed at the time Ms. Schulte obtained her judgments. As such, as Mr. Schulte was no longer a licensee, Fund recovery would then be precluded for this reason. *See* NRS 645.844(1) (**emphasis** added) ("when any person obtains a final judgment in any court of competent jurisdiction **against any licensee or licensees**.") Therefore, since Mr. Schulte was no longer a licensee at the time of the judgment, Fund relief is precluded using Ms. Schulte's interpretation.

While the Division could argue this point as a basis for denial, that is not how the Fund can be reasonably and meaningfully interpreted. The Fund is meant to remedy the bad acts of licensees using the trust inherit in licensure. It is irrelevant what the licensee's status is at the time of the judgment just as it is irrelevant what the Schultes' relationship status was at the time of filing. The pivotal point is, and always has been, when the bad acts occurred. The District Court's decision is based on an erroneous interpretation of the statute,

and the Fund Orders should be reversed and vacated.

III. The Recovery was Not with Reference to any Transaction for Which a License is Required Pursuant to Chapter 645

NRS 645.844(1) requires the final judgment to be "with reference to any transaction for which a license is required pursuant to this chapter...."

The companies allegedly affected by the misconduct, Sabreco and Schulte Properties LLCs, were marital and/or community property. Mr. and Ms. Schulte owned those companies when Mr. Schulte's fraudulent acts occurred. JA, at 16-17 (Decree of Divorce). As co-owner of those companies, Mr. Schulte was authorized to act to their benefit (or detriment) due to his ownership role – regardless of his real estate licenses. To award Fund recovery on the basis of alleged losses to any of those companies is basically using the Fund to prop up community property, ensure satisfaction of a divorce award, and award the Schultes for his misconduct.

In other words, the Schultes owned these properties. The act of collecting security deposits and rents on one's own properties is not activity for which a license is required pursuant to NRS Chapter 645.

NRS 645.0445 (Applicability of Chapter) provides that the provisions of NRS Chapter 645:

> do not apply to, and the terms 'real estate broker' and 'real estate salesperson' do not include, any: Owner or lessor of property, or any regular employee of such a person ... with respect to the property in the regular course of or as an incident to the management of or investment in the property. For the purposes of this subsection, 'management' means activities which tend to preserve or increase the income from the property by preserving the physical desirability of the property or maintaining high standards of service to tenants....

NRS 645.0445(1)(a); JA, at 15 (Decree of Divorce, noting "Sabreco is community property ... Sabreco was merely a place of employment generating income for the community."); JA, at 15 ("William was entrusted to run the daily operations of Sabreco."); JA, at 16 ("As to the Schulte Properties, the parties own 32 rental properties, which include the martial residence...."); JA, at 17 ("William shall sign all Quitclaim Deeds on the 32 rental properties."); JA, at 32 (listing the properties); JA, at 282 ("Melani was awarded 32 real properties … as her sole and separate property."); JA, at 286 ("Melani is not able to execute her duties as owner of Sabreco and Schulte Properties without more specific language in the Decree of Divorce."); JA, at 287 ("Decree of Divorce should be amended to specify the 32 properties awarded to Melani in

Paragraph 28 of the Decree of Divorce").

Furthermore, the Amended Decree provides that Mr. Schulte is "solely and personally liable for any and all debts or liabilities if arising from his fraud, misrepresentation and deceit as a broker of Sabreco." JA, at 0030. Accordingly, there is no legal financial liability to Ms. Schulte due to William's misconduct with respect to the Fund recovery sought.

As the Court in *Powers* noted, "the theory of the statute setting up the fund is that a citizen has relied, to his damage, on the implied representation, inherent in the fact of licensure, that the licensee is honest and dependable". *Powers*, 96 Cal. App. 3d at 445, 158. Instead, here, "where the victim and the fraudulent actor are married, the reliance is more likely based on the marital relationship with the trust therein involved than on the license." *Id.*

In the same vein, California's statute "provides for recovery only for a 'transaction' for which a license is required." *Powers*, 96 Cal. App. 3d at 446; NRS 645.844(1). The Court in *Powers* noted "[t]hat transaction, so defined, does not fall within the ambit of section 10471. As the record shows, that transaction was represented to be a joint

enterprise, into which both Hill and Powers were to invest. But a transaction is not one 'for which a license is required' as section 10471 requires, even though one of the coadventurers happens to hold a broker's license." *Powers*, 96 Cal. App. 3d at 446. *See also* NRS 645 645.030(1) (defining real estate broker and requiring that one must act "for another and for compensation or with the intention or expectation of receiving compensation"); NRS 645.035 (defining real estate broker-salesperson); NRS 645.040 (defining real estate salesperson); *see contra Gaessler v. Sheriff, Carson City*, 95 Nev. 267, 270, 592 P.2d 955, 957 (1979) (noting that the "solicitation and receipt of an 'advertising fee' for listing Wilcox's business for sale is the type of conduct which our real estate licensing statutes were designed to regulate and, therefore, Gaessler was required to have a real estate license.").

As the alleged monetary losses are not with reference to any transaction for which a real estate license was required, as mandated by NRS 645.844(1), the Division respectfully requests that this Court reverse and vacate the District Court's rulings affecting the Fund.

. . .

. . .

IV. The Amended Decree of Divorce is Void as the District Court Lacked Jurisdiction to Enter the Judgment, and the Petitions were Untimely Made

It was improper for the Court below to award individual judgments to the various LLCs in the Amended Decree of Divorce due to the span in time and due to the fact that the LLCs were NOT parties or plaintiffs to the divorce action (thus unable to be awarded judgments).

The original Decree of Divorce was entered on July 8, 2013. JA, at 25. The Amended Decree of Divorce was entered on April 3, 2017 – **3 years, 8 months, and 26 days later**. *See* JA, at 43. "The Nevada Supreme Court has long distinguished between an order modifying a judgment or decree and an order construing or clarifying a judgment or decree." *Mizrachi v. Mizrachi*, 132 Nev. Adv. Op. 66, 385 P.3d 982, 986 (Nev. App. 2016).[5] "This distinction is important in many cases because

[5] It cannot be reasonably argued that the Amended Decree of Divorce was "an order construing or clarifying a judgment or decree" as opposed to "an order modifying a judgment or decree". *Mizrachi*, 385 P.3d at 986. The Court in *Mizrachi* cited to a 1947 Nevada Supreme Court decision "concluding that the district court's order defining the effect of a divorce decree but not changing that decree construed, rather than modified, the decree"; *citing Murphy v. Murphy*, 64 Nev. 440, 445, 183 P.2d 632, 634 (1947); *also citing Kishner v. Kishner*, 93 Nev. 220, 225–26, 562 P.2d 493, 496 (1977) (noting that "the district court only 'has

modification of a judgment may not be permitted, absent special circumstances, once the judgment has become final and the time for seeking relief from the judgment has passed." *Id*; *citing* NRCP 60(b) (generally limiting the time for filing certain motions for relief from a judgment to six months); *Kramer v. Kramer*, 96 Nev. 759, 762–63, 616 P.2d 395, 397–98 (1980) (concluding that a district court lacked jurisdiction to modify a divorce decree's property distribution provisions

---

inherent power to construe its judgments and decrees for the purpose of removing any ambiguity.'"). The Court went on to note that "a modification 'alters the parties' substantive rights, while a clarification involves the district court defining the rights that have already been awarded to the parties' and leaves their substantive rights unchanged." *Mizrachi*, 385 P.3d at 987; *citing Vaile v. Porsboll*, 128 Nev. 27, 33, 268 P.3d 1272, 1276 (2012). It is more than evident that the District did not simply clarify the order but, instead, changed the decree and altered the parties' substantive rights. *See, e.g.*, Amended Decree of Divorce, JA, at 30 (adding that "Defendant should be held solely and personally liable for any and all debts or liabilities if arising from his fraud, misrepresentation and deceit as a broker of Sabreco" and "[i]f Sabreco ... is found liable ... Melani will not be responsible for, or be held personally liable for those debts"); *see* JA, at 44-81 (**awarding new judgments**). **In any event**, even if the Amended Decree is seen as a clarification (which it should not be), the motion to amend the decree was still untimely made. NRS 125.150(3) (requiring that "[a] motion pursuant to this subsection must be filed within 3 years after the discovery by the aggrieved party of the facts constituting the fraud or mistake."). The Motion to Amend was made on February 13, 2017 (JA, at 277), 3 years 7 months and 9 days after the July 8, 2013 Decree of Divorce was entered (*see* JA, at 14).

more than six months after the decree was entered).

It is black letter law that a judgment is void if a court lacks jurisdiction to enter the judgment. *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011).

In *Kramer*, the Court agreed that "because Frances filed the motion to modify three years after the decree was entered, the district court was without jurisdiction to modify the divorce decree concerning property distributions." *Kramer v. Kramer*, 96 Nev. 759, 761, 616 P.2d 395, 397 (1980); see *also* Motion to Amend Decree of Divorce *Nunc Pro Tunc*, JA, at 285-86 (citing to NRCP Rule 60 and NRS 125.040 for relief); Amended Decree of Divorce *Nunc Pro Tunc*, JA at 28-43 (failing to note the statutory support for entry of the amended decree).

The Court noted that "NRS 125.150(5) governed subsequent modification of orders adjudicating property rights ... [i]t did not provide for the court's continuing jurisdiction regarding property rights. If the legislature had intended to vest the courts with continuing jurisdiction over property rights, it would have done so expressly, as it did in NRS 125.140(2) concerning child custody and support." *Kramer*, 96 Nev. at 762. The Court concluded that "NRCP 60(b) governs motions to modify

property rights established by divorce decrees ... Frances' motion to modify was filed three years after the decree was entered; not within six months, as NRCP 60(b) requires. Therefore, the district court was without jurisdiction to modify the decree regarding the property distribution." *Id*; *Schmutzer v. Schmutzer*, 76 Nev. 123, 125, 350 P.2d 142, 144 (1960) (The decree in all respects, except as to custody and support of the minor children, became unmodifiable six months after the decree was entered).

Furthermore, NRS 645.844(4)(g) requires that "[t]he petition has been filed no more than 1 year after the termination of all proceedings, including reviews and appeals, in connection with the judgment." As the above confirms, the proceedings terminated once the original Decree of Divorce was entered in 2013.

Thus, the District Court did not have jurisdiction to amend the decree of divorce (and, as such, the Amended Decree and judgments are void), and the Petitions were untimely filed.

. . .

. . .

. . .

V. In the Alternative, Ms. Schulte's Entitlement, if any, is Limited to $25,000

NRS 645.844(1) declares that no more than $25,000 may be collected from the Fund per judgment. If this Court rules that Ms. Schulte is entitled to Fund relief, then the Division respectfully requests that her relief be limited to $25,000.

Approximately *four years after* the issuance of the Decree of Divorce, Ms. Schulte requested that the District Court issue multiple judgments against Mr. Schulte -- one in favor of Ms. Schulte individually, and 20 judgments in favor of a specified Schulte Properties LLC or "Melanie Schulte as the Successor in Interest." The Division was not a party to these proceedings. Soon after obtaining those 21 judgments, Ms. Schulte filed her nine Petitions with the Division, looking to collect approximately $94,045.46. JA, at 0082-0126.

The underlying case is a divorce action. Despite the surplus of judgments, none of the Schulte Properties LLCs were parties to that divorce action. Rather, the Schulte Properties LLCs were part of the Schultes' community property – assets awarded to Ms. Schulte via the Decree of Divorce. Ms. Schulte's tactic of splintering *her* judgment

against Mr. Schulte into 21 separate judgments should not enable her to obliterate the statutory limit set forth in NRS 645.844(1).

The Division anticipates that Respondents will cite to the Nevada Supreme Court case of *Adm'r of Real Estate Educ., Research & Recovery Fund v. Buhecker*, 113 Nev. 1147, 1148, 945 P.2d 954, 954 (1997), as they cited to a snippet of that decision in their Reply to the Division's Opposition before the District Court. However, in *Buhecker*, the Court clarified a prior Nevada Supreme Court case in support of its holding stating: "However, the issue considered in *Colello* is distinguishable from the current appeal, and the underlying facts of *Colello* support the interpretation **that joint owners of property receive one judgment.**" *Buhecker*, 113 Nev. at 1149 (**emphasis** added); *see also Colello v. Adm'r of Real Estate Div. of State of Nev.*, 100 Nev. 344, 346, 683 P.2d 15, 16 (1984) (stating that "appellants were granted a judgment totaling $46,394.95 against a real estate licensee on the basis of fraud, misrepresentation and embezzlement. Appellants could not recover the full amount of the judgment, so they claimed $10,000 ....").

It is undisputed that the Schultes were the joint owners of the properties until said properties were declared as Ms. Schulte's separate

property via the Divorce Decree. The Court in *Buhecker* went on to state that "it is noteworthy that the claimants in *Colello* were husband and wife and joint owners of the property." *Id.* "Consistent with *Colello* is the principle of law that 'a judgment in favor of joint plaintiffs should be joint if their cause of action is joint.'" *Id.* at 1150. So too here, the judgment is essentially in favor of one person – Ms. Schulte. The fact that she was able to convince the District Court to divide her judgments among her various LLCs does not change the result, as she is the owner of those LLCs, they are joint plaintiffs, and their judgment should be joint.

"Here, as in *Colello*, the Buheckers shared common claims for relief against each of the real estate agents." *Id.* Here, Ms. Schulte and her LLCs share common claims for relief against 1 individual. "There is no indication that Mr. Buhecker's causes of action are somehow different and separate from Mrs. Buhecker's. This is supportive of a finding that the Buheckers' judgment is not separable between them, but is joint in nature, therefore affording them two awards of $10,000.00 from the ERRF, **one for each original defendant**." *Id*

(emphasis added).[6] As the Court reasoned, "Under the Buheckers' analysis, judgment is each plaintiff's separate right to recover, **which is precisely the interpretation S.B. 268 rejected**. Therefore, we conclude that the Buheckers could not have *four* judgments against only

---

[6] In regards to legislative history, the Court held that "Appellant argues the legislative history of NRS 645.844(1) illustrates that the Nevada Legislature intended recovery to be limited to $10,000.00 per final judgment in cases of multiple plaintiffs", "We find that legislative history of the statute is persuasive of appellant's interpretation ...." *Buhecker*, 113 Nev. at 1149. The Court reasoned that "this is evidence that the legislature intended to limit joint claimants' recovery to $10,000.00 per judgment they received, and not to each claimant. Thus, the number of claimants in a joint action is irrelevant; only the number of judgments they received together is determinative of their recovery under the ERRF." *Id*. "Therefore, we conclude that the Buheckers could not have *four* judgments against only *two* real estate agents." *Id*. at 1150 (*emphasis* in original). There is only one real estate agent here and, as indicated above, none of the Schulte Properties LLCs were parties to the divorce action (the Schulte Properties LLCs were part of the Schultes' community property). The Court explained that in 1985 when NRS 645.844(1) was amended via SB 268, the amount recoverable was changed to $10,000 per *judgment*, rather than per *claimant*. *Id*. at 1150. The Court noted "the amendment to NRS 645.844(1) as a 'clarification of the liability limit' of the ERRF. Thus, the amendment was not a change in the legislature's intent, but a clarification of the statute's liability limitations." *Id*; Minutes of the Senate Committee on Commerce and Labor, 63rd Session, March 27, 1985, Exhibit G (stating that Section 38 "[p]rovides for clarification of the liability limit of the recovery funds...."); Minutes of the Assembly Commerce Committee, May 22, 1985, Exhibit C (stating the same). The amendment was not intended to provide Ms. Schulte an avenue to obtain *greater* Fund relief than she is entitled to by clever procedural tactics, just as the Court forbade the husband and wife from doing so in *Buhecker*.

two real estate agents." *Id.* at 1150 (**emphasis** added, *emphasis* in original).

Further, as indicated above, no portion of a statute should be rendered meaningless nor should it be interpreted to produce an absurd or unreasonable result. *City of Reno v. Building & Const. Trades Council of Northern Nevada*, 251. P.3d 718, 722 (2011). The Fund has another cap: "The liability of the Fund does not exceed $100,000 for any person licensed". NRS 645.844(1). Allowing the splintering of judgments, as done in this case, produces an unreasonable and absurd result by negating the "liability limits of recovery funds" expressly intended by the Legislature.

The Fund is meant to help all those who were harmed by the a licensee's defined misconduct – not for one individual to gobble up (in other words, Ms. Schulte's interpretation renders the $25,000 cap meaningless, negates it, and leaves only the $100,000 cap in place). *See State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 508, 306 P.3d 369, 380–81 (2013) (noting that "[w]hen two statutory provisions conflict, this court employs the rules of statutory construction, and attempts to harmonize conflicting provisions so that the act as a whole

is given effect" and "[s]tatutes are interpreted so that each part has meaning."); *Webb v. Shull*, 128 Nev. 85, 89–90, 270 P.3d 1266, 1269 (2012) (prohibiting interpreting a statute in a manner that would negate another provision); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595, 600 (2015) ("When construing various statutory provisions, which are part of a 'scheme,' this court must interpret them 'harmoniously' and 'in accordance with [their] general purpose.'").

"The primary purpose of the Fund is to aid victims of real estate fraud whose judgments against real estate licensees have proven to be uncollectable." *Colello*, 100 Nev. at 347. The purpose of the Act is not to satisfy property obtained in a divorce proceeding. "Where alternative interpretations of a statute are possible, the one producing a reasonable result should be favored." *Id.* The reasonable result in this case prohibits crafty structuring and instead favors that of logic, just results, and the express intent of the Fund.

. . .

. . .

. . .

. . .

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the District Court's Fund Orders be vacated and reversed, and that Ms. Schulte not be awarded any Fund relief. In the alternative, Ms. Schulte's Fund relief should be limited to $25,000.

Dated: February 12, 2019.

AARON D. FORD
Attorney General

By: /s/ Donald J. Bordelove
Donald J. Bordelove (Bar. No. 12561)
Deputy Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 pt. Century Schoolbook type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 8,987 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: February 12, 2019.

AARON D. FORD
Attorney General

By: /s/ Donald J. Bordelove
Donald J. Bordelove (Bar. No. 12561)
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Respondent's Answering Brief in accordance with this Court's electronic filing system and consistent with NEFCR 9 on February 12, 2019.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

Amberlea Davis, Esq.
Law Offices of Amberlea Davis
415 S. Sixth Street, Suite 300
Las Vegas, NV 89101

The following participants in this case are not registered electronic filing systems users and will be served via United States mail, first class, postage prepaid:

William R. Schulte
8252 Nice Court
Las Vegas, NV 89129

/s/ Danielle Wright
Danielle Wright, an employee of
the Office of the Attorney General