IN THE SUPREME COURT

OF THE STATE OF NEVADA

TRISHA KUPTZ BLINKINSOP
a/k/a TRISHA MARGOLIS,

Appellant,

v

THOMAS R. BLINKINSOP,

Respondent,
_____/

Supreme Court Case No. 78284

District Court Case No
A-18-783766-C

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Charles Thompson, Senior District Court Judge

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

Respondent Thomas Blinkinsop is a natural person and is not subject to these disclosures.

Dated this 24th day of September, 2019

By */s/ George O. West III*
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THOMAS BLINKINSOP

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INTRODUCTION

Boiled down to its essence, this appeal *primarily involves* the interpretation of NRS 125.184 with respect to the nature, extent and scope of its binding and preclusive effect on a martial property distribution, when a valid, final uncontested and summary divorce judgment is entered pursuant to its provisions. This appeal also involves NRS 125.184's inter relationship to the more general doctrine of issue preclusion (res judicata), as established under common law and case law within Nevada. Appellant KUPTZ entirely avoided any mention or analysis of NRS 125.184 at the trial level, and continues to avoid and/or ignore it in the instant appeal.

In 2009, Appellant ("KUPTZ") and Respondent ("BLINKINSOP"), who were married and had no children, entered into a valid uncontested and final summary divorce judgment pursuant to NRS 125.184. *JA 120-125, Div. Judg*. In the party's final divorce judgment, both KUPTZ and BLINKINSOP expressly and unambiguously agreed to the adjudication, division and distribution of all real properly that was subject to and/or included in the marital estate. *JA 120-125, Div. Judg*. This included the real property at issue in the instant case, which was party's marital home, ("Deer Springs Property"). *JA 123;3-7, Div. Judg*.

The final summary divorce judgment adjudicated the Deer Springs Property to be ***"the sole and separate property of BLINKINSOP",*** subject to existing encumbrances on the property. *JA 123; 3-7.* As a result of the party's final and uncontested divorce judgment, any and all ownership interest and/or title KUPTZ previously had in the Deer Springs Property, whether in law or in equity, was *entirely and forever* extinguished, dissolved, severed and terminated. *JA 123:3-7, Div. Judg.*

Nine (9) years later, in 2018, KUPTZ filed the instant action in District Court, civil division, seeking a partition of the Deer Springs Property and an equity share in the property. In her Complaint, KUPTZ affirmatively and factually alleged that: **(1)** she had an present and actual ownership interest in the Deer Springs Property, **(2)** that a "rift" had developed between KUPTZ and BLINKINSOP, and **(3),** that she was entitled to an "equitable division" of the proceeds of the Deer Springs Property upon is partition and sale. *JA:1-2, Comp. ¶¶ 1-3 & 9.*

Nowhere in KUPTZ's complaint did KUPTZ mention or plead, (which under Rule 11 she was required to do), that there was a previous, valid, final and binding divorce judgment between the parties in 2009, wherein: (1) KUPTZ voluntarily waived and relinquished any and all of her ownership interest in the Deer Springs Property, (2) that KUPTZ's previous ownership interest in the Deer Springs Property was entirely and forever extinguished

and/or severed, and (3), that the Family Law Court, in the final previous divorce decree, fully adjudicated the Deer Springs Property to be the "sole and separate property of BLINKINSOP. *JA:1-2; Comp.*

KUPTZ's action for partition is entirely predicated upon an untenable and outlandish argument, for which is there is no support in the law. KUPTZ's argument on her summary judgment, and in opposition to BLINKINSOP's counter motion for summary judgment, and as still contended the instant appeal is this; because KUPTZ never tendered the required quit claim deed on the Deer Springs Property to BLINKINSOP, *(as she was affirmatively obligated and ordered to do within ten (10) days under the final divorce judgment),* the Family Law Court's previous adjudication in the 2009 final divorce judgment that the Deer Springs Property was the *"sole and separate property of BLINKINSOP,"* ***is "void"*** and/or no longer enforceable -- it is entirely eviscerated and is nothing more than a nullity. *Open. Brf. 10-13.*

Nine (9) and half years later, KUPTZ now contends that: **(1)** because KUPTZ never complied with her affirmative obligation under the final divorce judgment to tender the quit claim in the Deer Springs Property, **(2)** and because BLINKINSOP never "renewed" the final divorce judgment pursuant to NRS 17.214, and **(3)**, because more than six (6) years has elapsed since the entry of the final divorce judgment, pursuant to NRS 11.090(1)(a)

and 17.214, KUPTZ's previously severed and terminated ownership interest in the Deer Springs Property has magically and/or retroactively "revived" and/or "sprung back to life," and therefore, she is entitled to 50% of the equity interest in the Deer Springs Property. *JA 34:4-6, Kuptz MSJ.*

In other words, KUPTZ contends that BLINKINSOP was required to successively renew the 2009 final divorce judgment every six (6) years, pursuant to NRS 17.214, in order for him to preserve and maintain his "sole and separate" exclusive property interest in the Deer Springs Property, and any failure to do so "sue sponte revived" KUPTZ's previous joint ownership interest in the property.

Notwithstanding, it is axiomatic that a prerequisite to a viable claim for partition have some current and/or actual ownership interest in the property at issue. However, KUPTZ does not cite any applicable or other valid authority that supports his outlandish theory of "spontaneous revival" of her previous ownership interest in the Deer Springs Property, ***after*** a court of competent jurisdiction extinguished, terminated and severed all of her ownership rights in the property, and that same court in the same final judgment adjudicated the same property to be ***the sole and separate property*** of BLINKINSOP. *JA 123:3-7*

However, as will be abundantly demonstrated *infra,* BLINKINSOP's failure to "renew" the final 2009 divorce judgment pursuant to NRS 17.214, does not in any way effect the validity of the Family Law Court's prior "adjudication" of the Deer Springs Property being BLINKINSOP's "sole and separate property," nor does it affect the Court's previous "adjudication" that KUPTZ's prior ownership interest in the property was entirely and forever extinguished. *JA 123:3-7.*

COUNTER ROUTING STATEMENT

Appellant ("KUPTZ") contends this matter is presumptively within the Court of Appeals ("COA") purview, citing to NRAP 17(b)(7), claiming the underlying case involved "injunctive relief." However, neither KUPTZ nor BLINKINSOP sought or plead any injunctive relief.

What NRAP 17(b)(7) does deal with is "*post judgement* orders in civil cases" which is *one of two* accurate descriptions of the nature of this particular matter. *See infra.* This is because the genesis of this case stems from the entry of a final summary divorce judgment between the parties, entered nine (9) years *prior to* the filing of the instant complaint.

Furthermore, given the genesis of this matter *originating* in the family law court, the COA also has presumptive review over this matter pursuant to NRAP 17(b)(10), as "the case involves family law matters other than termination of parental rights or NRS Chapter 432B." This is because the

entire gravamen of the instant matter on appeal ***specifically relates back*** to an uncontested summary and final divorce judgment that was entered into pursuant to NRS 125.184 in May of 2009. Consequently, this matter could be considered a *hybrid* appeal.

However, it should also be noted that in KUPTZ's issues on review, and as further set forth in her opening brief, KUPTZ's contends that two published decisions, subsequently decided by the Supreme Court, *"implicitly overruled"* two previous published decisions by the Supreme Court, which KUPTZ contends favor's her position in this appeal. By making this argument KUPTZ has asked the COA to overrule Nevada Supreme Court precedent, thereby, at least indirectly, asserted that there is *"an issue upon which there is an inconsistency in the published decisions of the Supreme Court..."* which would presumptively keep this matter within the purview of the Supreme Court under NRAP 17(a)(12).

Notwithstanding, perhaps most critically, KUPTZ deflects and does not discuss, anywhere in her briefing, the unambiguous language of NRS 125.184, or its claim preclusive effect with respect to a party's ownership interest in real property that is adjudicated in an uncontested summary final divorce judgment pursuant to NRS 125.184. If KUPTZ's argument on appeal is accepted, (that BLINKINSOP was required to ***successively renew*** the 2009 final divorce judgment every six (6) years in order to preserve his

ownership rights in the real property at issue), it would essentially render a Family Court's adjudication under a final divorce judgment under NRS 125.184 ***entirely nugatory***. In so doing, it would have far, wide ranging and cataclysmic effects to the "finality" of real property adjudications under valid and uncontested summary divorce judgments that have been entered pursuant to NRS 125.184.

Any ruling adversely affecting the claim preclusive effect of real property adjudications under NRS 125.184 would materially affect, conservatively speaking, *at least* tens of thousands of family law litigates who entered into a voluntary, uncontested and summary divorce judgment pursuant to NRS 125.184.

This is precisely why BLINKINSOP ultimately entered into a summary and uncontested divorce judgment pursuant to NRS 125.184, presumably to buy his peace, and move on. Consequently, because of KUPTZ's assertion would have dramatic effect on the claim preclusive effect on the adjudication of real property rights under a summary divorce judgment pursuant NRS 125.184, this matter could equally fall within the purview of the Supreme Court pursuant to NRAP 17(a)12.

COUNTER STATEMENT OF ISSUES FOR REVIEW

1. Was KUPTZ's equitable claim for partition of the party's previous martial home (Deer Springs Property), *or any other claims* that she could

have brought in the instant action as against BLINKINSOP, that arose from or in connection with the final 2009 summary and uncontested divorce judgment pursuant to NRS 125.184, *barred by the plain and unambiguous language of NRS 125.184, and the doctrine of claim preclusion (res judicata)?*

2. Did the holding in *Davidson v Davidson* 132 Nev. 709 382 P. 3d. 887 (2016) affect the Family Law Court's 2009 final adjudication of BLINKINSOP's ownership rights and interest in the Deer Springs Property, due to BLINKINSOP not "renewing" the final divorce judgment pursuant to NRS 17.214?

3. Did KUPTZ *voluntarily waive* and relinquish any and all of her previous ownership interest in the Deer Springs Property when she entered into the 2009 summary and uncontested divorce judgment pursuant to NRS 125.184?

4. Was KUPTZ's equitable claim for partition of the Deer Springs Property barred by the doctrine of *equitable estoppel?*

5. Was KUPTZ's equitable claim for partition of the Deer Springs Property barred by the doctrine of *unclean hands?*

6. Because KUPTZ did not have any ownership interest in the Deer Springs Property at the time she filed the instant action, was BLINKINSOP entitled to judgment as a matter of law on his counter claim for quite title

and declaratory relief, given the Deer Springs Property was adjudicated to be the "sole and separate property" of BLINKINSOP via the 2009 final divorce judgment?

7. Because KUPTZ *entirely ignored and failed to respond* to or even challenge any of the undisputed material facts set forth in BLINKINSOP's Rule 56(c) Concise Separate Statement, were those material facts deemed undisputed for purposes of summary judgment, such that BLINKINSOP was entitled to judgment as a matter of law?

Did the trial court rule correctly in denying KUPTZ's Rule 56(f) request because KUPTZ failed to demonstrate how any discovery would aid KUPTZ in acquiring any additional material facts that KUPTZ needed to enable her to adequately oppose BLINKINSOP's counter motion for summary judgment?

COUNTER STATEMENT ON STANDARD OF REVIEW

While this Court's review of the grant of BLINKINSOP's counter motion for summary judgment is de novo review, *Wood v. Safeway, Inc.,* 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005), contrary to KUPTZ's assertion that "equitable cases are uniquely factually based, making summary judgment inappropriate," in Nevada, equitable claims are ***equally appropriate and ripe*** for summary judgment. See *Shadow Wood HOA v. N.Y. Cmty. Bancorp.,* 132 Nev. 49, 55, 366 P.3d 1105, 1109 (2016) [holding

that actions that seek declaratory or equitable relief do not prevent their adjudication via summary judgment].

Furthermore, statutory interpretation with respect to NRS 125.184 is a question of law that is reviewed de novo. *G.C. Wallace, Inc. v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 701, 705, 262 P.3d 1135, 1137–38 (2011). Additionally, whether claim preclusion is available is a question of law and is also reviewed de novo. *G.C. Wallace, id.*

COUNTER STATEMENT OF FACTS [1]

KUPTZ and BLINKINSOP were married between 2002 and 2009. *JA 143, SS # 1, JA 94, ¶ 3; Decl. of Blink.* Over the course of their marriage, KUPTZ and BLINKINSOP acquired the Deer Springs Property, which was

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[1] Again, none of the following material facts were disputed, contested or challenged by KUPTZ, either in her Opposition to BLINKINSOP's counter motion for summary judgment, or via her reply brief in support of her motion for summary judgment, which was titled "motion for declaratory judgment." *JA 30-60, Kuptz MSJ, JA 149-162, Kuptz Opp. to Cnt. Mot. and Reply on MSJ.*

Even though KUPTZ had the ability and the opportunity to respond to or challenge all of BLINKINSOP's material facts in his Separate Statement, via a declaration or other admissible evidence, ***KUPTZ affirmatively choose not to do so.*** *JA 142-148***.** Consequently, all of the material facts in BLINKINSOP's Rule 56(c) separate statement should be deemed undisputed, and KUPTZ's failure to respond to BLINKINSOP's separate statement, or her failure to submit her own separate statement in her opposition, ***can also serve as a basis for granting summary judgment.*** See *Sargeant v. Henderson Taxi*, 133 Nev. 196, 394 P.3d 1215 (2017), *Schuck v. Signature Flight Support of Nevada, Inc.,* 126 Nev. 434, 245 P.3d 542 (2010) [both holding an opposing party's ***failure to contest a moving party's separate statement on MSJ,*** or the opposing party's failure to submit their own separate statement in opposition to MSJ, can be a grounds to grant the moving party's motion]

the marital home both parties resided in during their marriage. *JA 143, SS # 2, JA 94, ¶ 4, Decl. of Blink.*

On or about March 8, 2004, BLINKINSOP purchased the Deer Springs Property, and took title to the Deer Springs Property as a *"married man as his sole and separate property,"* as KUPTZ was not on the purchase loan to that property. *JA 143, SS # 2, JA 97-102, Deed.* On or about October 28, 2005, BLINKINSOP executed a grant deed on the Deer Springs Property in his capacity as "a married man as his sole and separate property" and conveyed the Deer Springs Property to *"Thomas R. Blinkinsop and Trisha Kuptz-Blinkinsop, Husband and wife as Joint Tenants with Rights of Survivorship." JA 143, SS # 3 and JA 104-108, Deed.*

On April 3, 2009, after retaining a family law attorney, KUPTZ filed a verified Complaint in the Family Division of the Eight Judicial District Court seeking dissolution of her marriage with BLINKINSOP. *JA 110-112, Div. Comp., JA 143, SS # 4.* In her Complaint, in addition to a dissolution of her marriage with BLINKINSOP, KUPTZ also sought ***adjudication and division of any and all community, joint and separate property assets and debts.*** *JA 111, **2**:14-16, Div. Comp. JA 143, SS # 5.* BLINKINSOP filed a verified Answer in pro per to KUPTZ's Complaint for divorce. *JA 114-115, Ans. to Div. Comp., JA 143, SS # 6.*

Shortly after BLINKINSOP filed his Answer, BLINKINSOP agreed to a mediation with Plaintiff **and** KUPTZ's attorney of record to attempt to resolve the divorce in an amicable and uncontested manner. *JA 117, Req. for Summ. Div., JA 144, SS # 7 & 8, JA 120-125, Div. Judg.* The parties amicably agreed to an uncontested and summary divorce. *JA 120-125, Div. Judg.* ***The summary divorce decree included the full disclosure and division of all of the party's community, joint and separate property assets and debts.*** *JA 145, SS # 12, 13 & 14, JA 95, Decl. of Blink. ¶ 7, JA 120-125, Div. Judg.*

KUPTZ's attorney then prepared the summary divorce judgment that accurately and unambiguously memorialized the mutually agreed upon disposition and adjudication of all the party's community and separate property assets and debts. *JA 145, SS # 12-14, JA 97 ¶, Decl. of Blink, JA 120-125, Div. Judg.* Under the final divorce decree, KUPTZ waived and relinquished any and all ownership interest in the Deer Springs Property. *JA 123:3-7, Div. Judg.* At the time the divorce judgment was executed, the Deer Springs Property had significant *negative equity* in the amount of approximately $180,000.00. *JA 95, Decl. of Blink. ¶ 6, JA 146. SS # 2.* [2]

[2] See *City of Elko v. Zillich*, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984) [holding the general rule is that an owner, because of his ownership, is presumed to have special knowledge of the property ***and may testify as to its value.*** Nevada follows this general rule].

The uncontested and summary divorce decree adjudicated the Deer Springs Property to be the sole and separate property of BLINKINSOP. *JA 123: 3-7, Div. Judg*. Under the final divorce judgment, KUPTZ agreed to and was ordered to "fully cooperate" in executing all documents to effectuate transfer of title to the Deer Springs Property. *JA 124;5-9*. Under the final divorce judgment KUPTZ agreed and was ordered to tender a quit claim deed to BLINKINSOP, within ten days, conveying her relinquished ownership in the Deer Springs Property. *JA 123:3-7, Div. Judg*.

KUPTZ never tendered required quit claim deed with respect to the Deer Springs Property. *JA 137, SS # 24*. Neither KUPTZ or BLINKINSOP renewed the final divorce judgment pursuant to NRS 17.214 . *Op. Brf. 4:2-3*. KUPTZ paid no further mortgage payments, property taxes, hazard insurance or for any improvements or maintenance to the Deer Springs Property after the divorce judgment was entered in May of 2009. *JA 147, SS # 25, JA 96, Dec. of Blink., ¶ 10*. Since the divorce judgment became final in May of 2009, BLINKINSOP has been residing in the Deer Springs Property,

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Furthermore, KUPTZ, at the time the final judgment was entered, ***was an experienced and Nevada licensed real estate agent***. *JA 144-145, SS # 11 & 12,, JA 95, Dec. of Blink., ¶ 8*. In addition, KUPTZ, was also titled as a joint tenant and owner the Deer Springs Property. KUPTZ had every opportunity and the ability to dispute or challenge BLINKINSOP'S valuation in her declaration, or via other admissible evidence, but she utterly failed to do so, so this fact, like the balance of the facts in BLINKINSOP's separate statement, should be deemed undisputed. *JA 149-162, Kuptz Opp. to MSJ*.

has paid all mortgage payments, all property taxes, hazard insurance and all maintenance and improvements on the property. *JA 147, SS # 26, JA 96, Dec. of Blink., ¶ 10.* The Deer Springs Property, as of the time of the filing of KUPTZ instant complaint, had approximately $150,000.00 *in positive equity. JA 147, SS # 25, JA 96, Dec. of Blink., ¶ 10.* [3]

SUMMARY OF ARGUMENT

As a threshold matter, there were a total of four (4) valid grounds, including claim preclusion, that were asserted by BLINKINSOP in his counter-motion, any one of which either taken in isolation, or in conjunction with one another, would have justified the propriety of the grant of BLINKINSOP's counter motion for summary judgment. ***This is especially true given KUPTZ never disputed a single material fact contained in BLINKINSOP's Concise Separate Statement pursuant to Rule 56(c).*** *JA 142-148.* See *Sargeant and Schuck, supra.* BLINKINSOP met his burden of persuasion on all four asserted grounds that were before the trial court, and KUPTZ failed to meet her burden of production in opposing BLINKINSOP's counter motion.

[3] See fn. 2, supra. *City of Elko, supra.*

This is not to say, imply or even intimate that the District Court did not decide the matter correctly on the defense of issue preclusion, because it did. It is just that given the unambiguous content and terms of the final divorce decree, coupled KUPTZ's total failure to dispute or challenge any of the material facts in BLINKINSOP's separate statement, (*JA 142-148*), this essentially precluded KUPTZ from asserting there were any genuine issues of "material fact" in dispute. even with respect to the three (3) other asserted grounds which would also have also sustained summary judgment.

If it has long been held that the appellate court will affirm a district court's order, if the district court reached the correct result, even for the wrong reasons,[4] then the corollary to this rule must also be true, which is, if this appeal is de novo review, wherein this Court reexamines all the evidence which was before the District Court without deference to the lower court's findings, then an equally valid alternative and/or additional grounds for the grant of summary judgment, can be, and should be examined by this Court. This is especially true in light of KUPTZ' utter failure to dispute or contest of any BLINKINSOP's undisputed material facts in his separate statement in

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[4] *See Saavedra-Sandoval v. Wal-Mart Stores,* 126 Nev. 592, 599, 245 P. 3d 1198, 1202 (2010) [holding the appellate court will affirm the district court's order if the district court reached the correct result, even if for the wrong reason, citing, *Rosenstein v. Steele,* 103 Nev. 571, 575, 747 P.2d 230, 233 (1987)]

support of his counter motion for summary judgment. *JA 142-148*. See *Sargeant and Schuck supra*.

Summary judgment is appropriate where issue preclusion bars a claim. *Elyousef v. O'Reilly & Ferrario, LLC,* 126 Nev. 441, 443, 245 P. 3d 547, 548 (2010). In the underlying divorce action, KUPTZ, via her divorce complaint, specifically sought an adjudication of her and BLINKINSOP's ownership rights and obligations in relation to certain real properties acquired during the marriage. *JA 111, 14-15, Div. Comp*.

KUPTZ's ownership rights were fully adjudicated via the 2009 final summary divorce judgment. *JA 120-125, Div. Judg*. Consequently, KUPTZ is not allowed to relitigate any claim, as against BLINKINSOP, relating to any ownership interest she purports to have in the Deer Springs Property, because KUPTZ's ownership interest in that property was fully adjudicated nine and half years prior, via a final and uncontested summary divorce judgment pursuant to NRS 125.184. *JA 123; 3-7, Div. Judg*.

Furthermore, KUPTZ is not entitled to collaterally attack the final divorce decree. This is precisely what KUPTZ attempted to do, at least indirectly, by filing a subsequent equitable claim for partition. This is because a required element of any partition action is some sort of "ownership" interest in the property, either in equity or in law -- but KUPTZ's previous ownership interest in the Deer Springs Property was entirely and

forever terminated, dissolved and severed via the final divorce judgment nine (9) years earlier. *JA 123; 3-7, Div. Judg.*

Furthermore, KUPTZ has not alleged or demonstrated any other valid basis or grounds which would otherwise justify any such collateral attack on the previous divorce judgment, such as intrinsic fraud on the court or a failure or concealment on the part of BLINKINSOP to disclose a marital property asset. *JA 1-2, Comp, JA 30-60, Kuptz Mot. for Dec. Relief, JA 149-162, Kuptz Opp. to Cnt. Mot.*

In sum, KUPTZ's claim for partition, and any other claim that she could have brought relating to any other real property that was adjudicated via the final divorce judgment is expressly barred by NRS 125.184, as well as under the doctrine of claim preclusion.

With respect to BLINKINSOP's affirmative defense of *waiver,* KUPTZ knowingly and expressly waived and relinquished any and all ownership interest she previously had in the Deer Springs Property, which was memorialized in writing via an uncontested and final summary divorce judgment. *JA 123, 3-7, Div. Judg.* By waiving and relinquishing her property interest in the Deer Springs Property, via the uncontested divorce judgment, KUPTZ was precluded and/or estopped from asserting any ownership interest in the Deer Springs Property, and therefore her claim for partition was barred by the doctrine of waiver.

On the issue of *equitable estoppel*, (which is the other side of the same coin involving BLINKINSOP's waiver argument), KUPTZ is not entitled, later in time, to essentially "pick and choose" which portions or provisions of the final judgment she no longer wants to be bound by, to the detriment of BLINKINSOP, after expressly agreeing to all the terms encompassed and embodied in the final divorce judgment nine years earlier. KUPTZ's claim for partition was barred by the doctrine of equitable estoppel.

Finally, on the defense of *unclean hands*. A claim for partition is a claim purely based in equity. *Terrible v. Terrible*, 91 Nev. 279, 534 P.2d 919 (1975). The unclean hands doctrine generally "bars a party from receiving equitable relief because of that party's own inequitable conduct." *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.,* 124 Nev. 272, 275–76, 182 P.3d 764, 766 (2008).

Under the final divorce judgment, KUPTZ had the absolute and affirmative obligation to tender a quit claim deed to BLINKINSOP on the Deer Springs Property nine and half years ago. *JA 123:3-7 Div. Judg.* Critically, KUPTZ not only agreed to tender said quit claim deed, she was also ***ordered*** to *"fully cooperate"* and that she *"shall not unreasonably withhold executed of any documents necessary to effectuate the transfer of any property specified herein..." JA 124; 5-8, Div. Judg.*

KUPTZ's failure to tender the deed was ***never disputed*** by KUPTZ in opposition to BLINKINSOP's counter motion for summary judgment, KUPTZ never disputed any material fact in BLINKINSOP's separate statement, JA 142-148, nor did KUPTZ offer any reason or other justification for never tendering the quitclaim when she ***was ordered to do so*** in the 2009 final divorce judgment. KUPTZ claim was barred by the doctrine of unclean hands

ARGUMENT

A. AS A MATTER OF LAW KUPTZ WAS ENTIRELY FORECLOSED UNDER NRS 125.184 AND THE DOCTRINE OF CLAIM PRECLUSION (RES JUDICATA) FROM RELITIGATING, CONTENDING OR ASSERTING ANY OWNERSHIP INTEREST WHATSOEVER IN THE DEER SPRINGS PROPERTY, WHETHER IN LAW OR IN EQUITY.

Summary judgment is appropriate where issue preclusion bars a claim. *Kahn v. Morse & Mowbray,* 121 Nev. 464, 474, 117 P.3d 227, 234 (2005). *Elyousef v. O'Reilly & Ferrario, LLC,* 126 Nev. 441, 443, 245 P.3d 547, 548 (2010). Whether claim preclusion is available is a question of law and is reviewed de novo. *G.C. Wallace, supra.*

As a threshold matter, interpretation of NRS 125.184 is at the very heart of this action with respect to the binding nature and claim preclusive effect of a property rights right's adjudication and distribution under a summary and uncontested divorce proceeding pursuant to NRS 125.181 et

seq, which is inclusive of NRS 125.184. Yet despite this,' KUPTZ avoids any analysis, or even any mention of it in her briefing,

KUPTZ and BLINKINSOP both agreed to have KUPTZ's Complaint for Divorce be summarily disposed of pursuant to NRS 125.181 et seq, *JA 117, Req. for Summ. Dispo., JA 120-125; Div. Judg*. The dissolution of their marriage, and the division and adjudication of all of KUPTZ's and BLINKINSOP's community, joint and separate personal and real property, and debts, was ***uncontested*** and agreed to by KUPTZ. *JA 120-125; Div. Judg*. NRS 125.184 is ***CRYSTAL CLEAR*** with respect to the binding nature and preclusive effect of a divorce decree under a summary [uncontested] divorce proceeding. NRS 125.184 states:

> ***Entry of the final judgment upon a petition for a summary proceeding for divorce CONSTITUTES A FINAL ADJUDICATION of the rights and obligations of the parties with respect to the status of the marriage AND THE PROPERTY RIGHTS OF THE PARTIES*** and waives the respective rights of the parties to written notice of entry of the judgment or decree, to appeal, to request findings of fact and conclusions of law and to move for a new trial. [emphasis added]. [5] [emphasis added]

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[5] See also *Davidson v. Davidson,* 132 Nev. Adv. Op. 71, 382 P.3d 880, 882 (2016), [holding that ***the decree of divorce is a final judgment.*** It adjudicates all of the parties' rights regarding child custody and support, spousal support, ***and the division of property.***] [emphasis added]

With very limited statutory exceptions under Chapter 125 of the NRS regarding spousal maintenance, or child support or custody, wherein the Family law court has continuing jurisdiction to modify those provisions of a divorce decree, a divorce decree in all other respects is a final binding

In particular, with respect to the Deer Springs Property, the divorce decree ordered, adjudged and decreed *JA 123-124, Div. Judg.*:

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall receive as his sole and separate property the real property located at 2042 Deer Springs Drive, Henderson, Nevada. Defendant shall assume, and hold Plaintiff harmless from, any and all encumbrances on said real property. Plaintiff shall execute a quitclaim deed to remove Plaintiff's name from title within 10 days of entry of this decree.**
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties shall fully cooperate with each other and shall not unreasonably withhold execution of any documents necessary to effectuate the transfer of any property specified herein, and if parties fail to cooperate, the Clerk of Court is authorized to execute any document on behalf of either party upon presentment of this Decree;**

The general rule of issue preclusion is that if an issue of fact or law was actually litigated and determined by a valid and final judgment, ***the determination is conclusive in a subsequent action between that parties.*** The doctrine provides that any issue that was actually and necessarily litigated in [case I] will be estopped from being relitigated in [case II]. *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 983–84, 103 P.3d 8, 16 (2004).

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judgment like any other judgment. ***The adjudication in the final divorce judgment that the Deer Springs Property was the sole and separate property of BLINKINSOP divested and extinguished any and all interest whatsoever KUPTZ had in that real property, and that adjudication was absolutely binding on KUPTZ.***

The doctrine is intended to prevent multiple litigation causing vexation and expense to the parties and wasted judicial resources by precluding parties from relitigating issues they were or could have been raised in a prior action concerning the same controversy. *Univ. of Nevada v. Tarkanian,* 110 Nev. 581, 598–600, 879 P.2d 1180, 1191–92 (1994), holding modified by *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.,* 114 Nev. 823, 963 P.2d 465 (1998). [6]

> ***Claim preclusion, or merger and bar, is triggered when a judgment is entered.*** A valid and final judgment on a claim precludes a second action on that claim ***or any part of it*** … If the defendant [in the previous action] prevails, the plaintiff [in a subsequent action] is thereafter barred from subsequent suits on the same claim. *See* Restatement (Second) of Judgments § 24 (1982). ***The modern view is that claim preclusion EMBRACES ALL GROUNDS OF RECOVERY that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel***. [emphasis added]
>
> For res judicata to apply, three pertinent elements must be present: **(1)** the issue decided in the prior litigation must be identical to the issue presented in the current action; **(2)** the initial ruling must have been on the merits and have become final; and **(3)** the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation*, id.*

[6] The "modification" to the opinion in *Tarkanian* by *Exec. Mgmt* is ***not*** applicable in the instant action. *Exec. Mgmt* still reaffirmed *Tarkanian* with respect to claim preclusion, but *Exec. Mgmt* strictly dealt with the issue vis-à-vis *permissive counterclaims and cross claims* under NRCP Rule 13, and only within the context of subsequent litigation between ***former Co-Defendants*** in an previous action, which is not involved or implicated in the instant action.

Moreover, it has been clearly held in Nevada that a former spouse is ***precluded*** under the doctrine of claim preclusion from seeking a subsequent partition of marital assets relating to a division of property that was previously adjudicated under a divorce decree. In *Doan v. Wilkerson,* 130 Nev. 449, 454–55, 327 P.3d 498, 502 (2014) the Court held:

> … Historically, our case law has held that ex-spouses may ***not*** bring independent actions to partition after the final judgment of the court ***unless they show fraud upon the court…*** [7]

In addition to seeking a dissolution of her marriage, KUPTZ also specifically sought an adjudication and equitable division of all community and separate property assets and debts ***as between herself and BLINKINSOP.*** The real property that was encompassed within the marital estate *included the Deer Springs Property, supra. JA 123; 4-7, Div. Judg.*

KUPTZ put her property ownership and/or rights in the Deer Springs Property ***directly at issue*** in her previous divorce action because it was part of the marital estate, and in her prayer, she requested an adjudication

[7] While *Doan* had to do with denying a partition of a pension plan that was part of a marital estate, the applicability of the rule in *Doan* with respect to real property is no different. KUPTZ has not, and cannot make any credible or viable argument that any type of "fraud" was perpetrated upon her, upon the Court, or that the divorce decree is the product of some sort of fraud or overreaching by BLINKINSOP. *JA 1-2, Comp, JA 30-60, Kuptz. MSJ, JA, 149-162, Kuptz Opp. to Blink. cnt. mot for MSJ.*

and equitable division of the party's marital and separate property. *JA 110-113 Div. Comp, and JA 120-125, Div. Judg*. Any ownership interest or rights KUPTZ previously had in the Deer Springs Property, based on the October 2005 grant deed, whether in law or in equity, were ***fully and entirely adjudicated*** in the underlying divorce action. *JA 123: 3-7, Div. Judg*. More specifically, KUPTZ's previous ownership interest in the Deer Springs Property under the October 2005 deed was entirely and forever terminated, severed, dissolved and extinguished because BLINKINSOP was adjudicated to have 100% ownership in the Deer Springs Property, subject to existing encumbrances. *JA 123: 3-7, Div. Judg*.

It is axiomatic that if a party seeks a partition of real property, in order to have *any valid grounds or claim* to do so, that party seeking partition is ***required*** to have some sort of ownership interest in the real property at issue. KUPTZ had no ownership interest in the Deer Springs Property when she filed the instant action for partition, nine years after her ownership rights were severed and terminated via the 2009 final divorce judgment. *JA 123:3-7. Div. Judg*.

Those same issues involving KUPTZ's purported "ownership interest" and/or equitable distribution and division of the Deer Springs Property, which were previously adjudicated via the 2009 final divorce judgment, ***are identical*** to the issues raised in KUPTZ's subsequent partition claim. *See*

JA 1-2, Comp; JA 120-125, Div. Judg. ***Element number one was met.***

KUPTZ and BLINKINSOP agreed to an uncontested "summary divorce proceeding" pursuant to NRS 125.181 et seq, *JA 117, Req. for Summ. Div., JA 120-125, Div. Judg.* They reviewed and executed the divorce decree, which was then subsequently approved and signed by the judge and then filed with the Court. *JA 120-125, Div. Judg.* That divorce decree adjudicated the Deer Springs Property as BLINKINSOP as the ***sole and separate property.*** *JA 123:3-7, Div. Judg.* This was a judgment on "on the merits and was final" with respect to the party's property rights pursuant to NRS 125.184. *See NRS 125.184 supra and JA 120-125, Div. Judg.* ***Element number two was met.***

Finally, KUPTZ is the party against whom BLINKINSOP sought to assert the res judicata effect of the prior divorce judgment. BLINKINSOP was also the same adverse party to KUPTZ to the underlying divorce action. *JA 1-2, Comp., JA 120-125, Div. Judg.* ***Element number three was met.***

If there was a "textbook" case of claim preclusion after a final real property distribution in a divorce judgment under NRS 125.184, this would be it. Based on the evidence before the trial court, there was no genuine issue of material fact that KUPTZ had any ownership interest in the Deer Springs Property, and BLINKINSOP was entitled to judgment as a matter of law.

B. KUPTZ WAS FORECLOSED FROM MAKING ANY NEW ARGUMENT, ASSERTION OR CLAIM RELATING TO ANY OTHER REAL PROPERTY THAT WAS ENCOMPASSED WITHIN THE FINAL DIVORCE JUDGMENT

Summary judgment is framed by the pleadings. Nevada is a notice pleading jurisdiction and pleadings are construed to place matters into issue which are ***fairly noticed*** to the adverse party. *Nutton v. Sunset Station, Inc.,* 131 Nev. 279, 291, 357 P.3d 966, 974 (Nev. App. 2015). However, notice pleading cannot be construed so liberally so as to deprive a Defendant ***of fair notice*** of other additional claims or material allegations at the summary judgment stage relating to other material subject matters, which were never plead, averred to and never put at issue by the Plaintiff, ***prior to*** summary judgment.

Furthermore, it has long and widely been held that a Plaintiff, in opposition to a summary judgment, may ***not*** raise new claims for the first time in response to the moving party's summary judgment motion. At the summary judgment stage, the proper procedure to assert a new claim is to amend the complaint in accordance with Rule 15(a). *Tucker v. Union of Needletrades, Indus. & Textile Employees*, 407 F.3d 784, 788 (6th Cir. 2005)[8]

[8] *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968 (**9th Cir. 2006**) [same]; *Tucker v. Union of Needletrades, Indus. & Textile Employees,* 407 F.3d 784, 789 (**6th Cir. 2005**) [same]; *Avillan v. Donahoe*, 483 F. App'x

Consequently, KUPTZ was precluded from attempting to collaterally raise other purported claims or material allegations involving other real properties that were also encompassed in the final divorce decree, which was something KUPTZ attempted to do in: **(1)** her motion for summary judgment, *JA 29 & 34; Decl. of Kuptz and Kuptz MSJ,* **(2),** in her written opposition to BLINKINSOP's counter motion, *JA 162; Decl. of Kuptz,* **(3)** during the oral argument on the competing motions, *JA 87:4-9, MSJ Trans.,* and **(4),** still continues to assert these unplead and additional material issues/claims on appeal, when they were never alleged in the Complaint. *Open. Brf. p. 10 and JA 1-2, Comp.*

Perhaps KUPTZ was attempting to include these new material allegations and material issues in her moving papers, and in her opposition to BLINKINSOP's counter motion, in order to try and preserve these "new" material issues on appeal, so as to avoid having them brought up for "the first time" on appeal. Notwithstanding, KUPTZ cannot "bootstrap" or otherwise attempt to "preserve" these new issues on appeal when KUPTZ was precluded from raising these new and material issues ***in the first instance*** on summary judgment.

637, 639 (**2d Cir. 2012**) [same]; *Barclay White Skanska, Inc. v. Battelle Mem'l Inst.,* 262 F. App'x 556, 563 **(4th Cir. 2008**); *Shanahan v. City of Chicago*, 82 F.3d 776, 781 (**7th Cir. 1996**)

What KUPTZ was attempting to do was to essentially amend her Complaint "on the fly" via her summary judgment and in opposition to BLINKINSOP's counter motion for summary judgment, which is something KUPTZ is precluded from doing. *See Trucker, supra, and fn. 8, supra.* KUPTZ had every opportunity to properly amend her Complaint prior to filing her motion for summary judgment.

Furthermore, KUPTZ had the right to discovery and could have engaging in acquiring discovery, but she chose not to do so, and instead chose to file her motion for summary judgment right out of the gate. Ironically, KUPTZ contended at the hearing that she "needed discovery" to enable her to adequately oppose BLINKINSOP's counter motion, which segues into the next point.

KUPTZ's glaring contradiction with respect to her Rule 56(f) request is now on full display. *JA 160; Decl. of Kuptz Counsel.* KUPTZ most certainly could have plead these other material allegations and claims relating to the other real properties in her initial complaint, or she could have sought to amend to properly add them via Rule 15. But instead of attempting to raise these other material and unpled claims and/or material issues the proper way, she kept them in her back pocket to try and avoid summary judgment being granted against her.

Moreover, KUPTZ's Rule 56(f) request was futile, because her counsel was requesting discovery only relating to KUPTZ's "newly" asserted issues relating to these other properties ***which she never put at issue in her Complaint,*** and therefore any additional discovery would be entirely irrelevant with respect to obtaining any probative facts involving the only property did KUPTZ put at issue, which was the Deer Springs Property. *JA 1-2, Comp*.

C. KUPTZ IS ESTOPPED FROM ASSERTING OR SEEKING A PARTITION BECAUSE OF HER PREVIOUS AGREEMENT TO RELINQUISH ANY AND ALL OWNERSHIP INTEREST IN THE DEER SPRINGS PROPERTY VIA THE UNCONTESTED DIVORCE DECREE

KUPTZ contended in her motion for summary judgment that the right to partition is an "absolute right." *JA 36:20-22, Kuptz's MSJ*. It is not an "absolute" right. *Terrible v. Terrible*, 91 Nev. 279, 534 P.2d 919 (1975). First, KUPTZ had to demonstrate she had an ownership interest in the property, (which she did not), and second, a claim for partition is strictly an equitable claim grounded entirely upon equitable principals. *See Terrible, id*. KUPTZ was estopped from seeking partition of the Deer Springs Property via a subsequent action after the divorce decree became final.

KUPTZ agreed to relinquish, surrender and give up any and all ownership interest she had in that Deer Springs Property. *JA 120-125, Div. Judg*. KUPTZ further ***agreed and conceded*** that the Deer Springs

Property was the sole and separate property of BLINKINSOP. *JA 123:3-7, Div. Judg.* ***In exchange*** BLINKINSOP agreed to hold KUPTZ harmless from any liability on all encumbrances on the Deer Springs Property, and assume all liabilities on the property, which would have also included the first mortgage ***and*** the HELOC.[9] *JA 123:3-7 Div. Judg.*

Consequently, while part of the marital estate, the Deer Springs Property offered KUPTZ ***no positive cash position in the property and only offered KUPTZ continued liability for the HELOC*** -- hence the reason for KUPTZ agreeing to relinquish any and all of her ownership interest to BLINKINSOP, ***as long as*** BLINKINSOP agreed to assume all liabilities on the property, which he agreed to do, and in fact he has done. *JA 123:3-7, Div. Judg. JA 146-147, SS # 18, 25 & 26.*

For the nine and half years since the final divorce judgment was entered**,** BLINKINSOP resided, and still resides at the Deer Springs Property. He has paid all of the mortgage payments on the property, all of the property taxes, the hazard insurance, and all other maintenance and improvements on the property. *JA 146-147, SS # 18, 25 & 26.*

[9] In her opening brief, KUPTZ concedes she was on the HELOC loan on the Deer Springs Property, as well in is her declarations. *Open. Brf. 11 and JA 29 and 162.*

KUPTZ gladly accepted the benefits under the divorce decree with respect to the Deer Springs Property. Meaning she would not be responsible for any of the HELOC mortgage debt, (***which was a community debt***), in addition to other future liabilities on the property such as mortgage payments and property taxes -- on a property that was $180,000.00 underwater. *JA 123:3-7, Div. Judg., JA 146, SS # 21. JA 123:3-7, Div. Judg*. Under these circumstances, back in 2009, KUPTZ was more than happy to relinquish all of her ownership interest in the Deer Springs Property to BLINKINSOP. It was nothing but an financial Albatross around KUPTZ's neck, which KUPTZ was more than willing to saddle BLINKINSOP with, which he accepted under the divorce judgment, during the most precipitous downturn in the real estate market in modern history.

Nine and half years later, in 2018, after paying all the mortgage payments, and after weathering the worst residential real estate market downturn in modern history, the Deer Springs Property had a positive equity position of approximately $150,000.00. When this positive change in economic conditions occurred, KUPTZ then ***sought to repudiate*** her knowing and voluntary relinquishment her ownership interest in Deer Springs Property, and sought to "cash in" on the positive equity by seeking a partition, notwithstanding the fact that KUPTZ acknowledged, nine years earlier, she had no further ownership interest in the Deer Springs Property.

Boiled down to its essence, through KUPTZ's subsequent partition action, KUPTZ essentially sought to "pick and choose" which terms of the final divorce judgment she wanted to be held to, and those she sought to repudiate because they no longer worked to her economic advantage.

Concomitantly, those same terms (i.e. that the Deer Springs Property would be 100% his etc..) were also ***relied upon*** by BLINKINSOP in agreeing to the summary divorce and distribution and adjudication of the property division, as well as the other terms such as payment of cash to KUPTZ, and other benefits she obtained under the final divorce judgment.

Consequently, in addition to being barred by the doctrine of claim preclusion and NRS 125.184, KUPTZ is ***also estopped*** from subsequently seeking any partition relating to the Deer Spring Property based upon her prior agreement to relinquish her ownership interest in the Deer Springs Property, which was also part of the final divorce decree. *JA 120-125, Div. Judg.*

Terrible v. Terrible, 91 Nev. 279, 534 P.2d 919 (1975) is directly on point and is also dispositive with respect to KUPTZ being estopped from seeking partition of the Deer Springs Property. *JA 9: Ans.* In *Terrible*, the parties were husband and wife who were engaged in a divorce proceeding. One of the real properties included in the marital estate was one that was ***held in joint tenancy*** by the husband and the wife. The court terminated

the joint tenancy in that particular real property and ordered that the property ("Parcel 1") be held as tenants in common, with each spouse owning an undivided one half interest. [10]

However, as part of the divorce decree, (and as confirmed in the Court's findings of fact and conclusions of law), the former husband agreed that the former wife shall be allowed to occupy and exclusively possess Parcel 1, and retain all income therefrom, and maintain Parcel 1 in good rental condition, and shall pay all property taxes, utilities, hazard insurance and other expenses incurred in the use and occupancy of Parcel 1. The wife did so.

Approximately seven months after the final divorce decree was entered, the ex-husband received an offer on Parcel 1 in the amount of $150,000.00. The ex-husband attempted to induce the ex-wife to agree to the sale, but she refused. The husband then filed a subsequent action ***seeking partition*** of Parcel 1 on his undivided half interest in the property in his capacity as a non-possessory joint tenant.

In the subsequent partition action, the court granted partition of the property and ordered a sale of the property (Parcel 1). The Supreme Court

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[10] Contrary to KUPTZ's contention, there is no inconsistency or other "implied overruling" of *Terrible, supra,* based on this court's subsequent opinion in *Davidson*, *supra*. They are entirely independent of each other, and other than having a final divorce judgment being involved in the factual background of both cases, that is where any similarity between the two decisions ends.

reversed the trial court and ruled the husband ***was estopped*** from seeking any partition of the property in a subsequent action after entry of the divorce decree, ***because the issue of partitioning the property was litigated in the divorce action and adjudicated by the divorce decree.*** The *Terrible* Court stated and held:

> ***... [T]he right to partition the real property is NOT absolute and MAY BE WAIVED BY REASON OF AN AGREEMENT, or, as here, defeated by directives in a prior judgment from which no appeal has been taken.*** [citations omitted] [emphasis added]
>
> ... It has been said in general terms that an adult tenant in common has an absolute right to partition. . . . (B)ut it has been in cases where there was neither an equitable nor legal objection to the exercise of the right, and partition was in accordance with the principles governing courts of equity. ***Wherever any interest inconsistent with partition has been involved, the general rule has always been qualified by the statement that equity will not award partition at the suit of one in violation of his own agreement, . . . or where partition would be contrary to equitable principles.*** Partition will not be awarded in a court of equity, where there has been an agreement either not to partition, or where the agreement is such that it is necessary to secure the fulfillment of the agreement that there should not be a partition... [emphasis added]
>
> Here the issue of the right to possession and enjoyment of this particular property was litigated in the action for divorce and adjudicated by the divorce decree. ***It cannot be relitigated in this action for partition between the same parties. THE DIVORCE DECREE IS A BAR TO THIS SUBSEQUENT ACTION FOR PARTITION...*** [emphasis added]

> The doctrine of equitable estoppel ***will not permit a party to repudiate acts done or positions taken or assumed by him when there has been reliance thereon and prejudice would result to the other party.*** [citations omitted] [emphasis added]
>
> [The husband] voluntarily consented to an occupation and use of the real property which has been embodied in a decree of divorce upon which [the wife] has relied. ***By that unilateral concession [the husband] HAS WAIVED ANY RIGHT TO PARTITION to which he might otherwise have been entitled and he is estopped from proceeding to partition.*** [emphasis added]
>
> It is well settled that a person cannot accept and reject the same instrument, or, having availed himself of it as to part, defeat its provisions in any other part. ***[This] principle is ... applicable with equal force to a decree of divorce...***[11] [emphasis added]
>
> ***We conclude that respondent's action for partition IS BARRED by the divorce decree...*** [emphasis added]

Id, 282–84 and 921-22

The same is true in the instant case except the facts in the instant case are much more compelling than those in *Terrible*. *Terrible* dealt with a former spouse's subsequent and continued *right to use and possess* certain real property that was adjudicated as part of the marital estate, wherein the non-possessory former spouse still retained a one half undivided ownership interest in the real property ***under the final divorce decree.***

[11] This is precisely what KUPTZ attempted to do in the instant action.

In the instant case, KUPTZ relinquished and ***never retained*** any ownership interest whatsoever in the Deer Springs Property under the final uncontested and summary divorce judgment. *JA 123:3-7, Div. Judg.* KUPTZ had no ownership interest in the Deer Springs Property, nor did she even have the right to occupy or possess the property under the divorce decree. *JA 123:3-7, Div. Judg.*

KUPTZ was estopped from seeking any subsequent partition of the property after BLINKINSOP ***relied on*** KUPTZ's relinquishment of all her ownership interest in the property under the final summary divorce judgment. *JA 123:3-7.* If there was a "textbook" case of estoppel after a final real property distribution in a divorce decree, this would be it.

D. KUPTZ EXPRESSLY WAIVED ANY AND ALL OWNERSHIP RIGHTS AND INTEREST SHE PREVIOUSLY HAD THE DEER SPRINGS PROPERTY, WHETHER IN LAW OR IN EQUITY, BY AGREEING TO AND VOLUNTARILY ENTERING INTO THE UNDERLYING SUMMARY DIVORCE DECREE

A waiver is an intentional relinquishment of a known right. To be effective, a waiver must occur with full knowledge of all material facts. *Thompson v. City of N. Las Vegas,* 108 Nev. 435, 439, 833 P.2d 1132, 1134 (1992); *State, Univ. & Cmty. Coll. Sys. v. Sutton,* 120 Nev. 972, 987, 103 P.3d 8, 18 (2004) [same]. See also *McKeeman v. Gen. Am. Life Ins. Co.,* 111 Nev. 1042, 1048, 899 P.2d 1124, 1128 (1995). [holding a finding of waiver requires

"an existing right, a knowledge of its existence, and an actual intention to relinquish it."]

Plaintiff KUPTZ retained a family law attorney to prosecute her complaint for divorce. *JA 110-112, Div.Comp.* KUPTZ, was not only represented by a skilled family law attorney, but KUPTZ ***by profession*** was also an active and licensed real estate agent in Nevada throughout her marriage to BLINKINSOP. *JA 144-145, SS # 11 & 12.* KUPTZ clearly knew and fully understood she had an ownership interest in the Deer Springs Property at the time she filed her Complaint for divorce in 2009, and at the time she entered into the summary divorce judgment. *JA 144-145, SS # 11 & 12, JA 123:3-7, Div. Judg.* This is not only because KUPTZ knew the Deer Springs Property was acquired during the marriage, but more importantly, KUPTZ knew because she was on record title to the property via the October 2005 deed, ***and her signature is on the "accommodation" acknowledgment.*** *JA 104-108, Deed.*

There ***cannot be any colorable or credible dispute*** that KUPTZ was fully aware of and clearly understood that she had an actual ownership interest in the Deer Springs Property at the time she agreed to waive and relinquish any and all ownership interest she had in that real property. However, after being fully aware of the all the facts with respect to her actual ownership interest in the Deer Springs Property, and fully understanding the

nature, scope and extent of her ownership rights and interest in the Deer Springs Property, as well as her remedies with respect to the property in her underlying divorce action, KUPTZ knowingly, voluntarily, clearly and unmistakably, waived, relinquished, surrendered, renounced and gave up any and all ownership rights and interest in the Deer Springs Property via the final summary divorce Judgment. *JA 120-125, Div. Judg, JA 144-145,* ***SS # 7 & 8, # 12-17.***

Again, this was never disputed or contested by KUPTZ, as she failed to respond to any of the material facts relating to her waiver of all her ownership interest in the Deer Springs Property as set forth in BLINKINSOP's concise separate statement on his counter motion. *JA 144-145,* ***SS # 7 & 8, # 12-17,*** and *JA 123:3-7.* The final summary divorce judgment is also, on its face, crystal clear. *JA 120-125, Div. Judg*

Based on the aforementioned, because Plaintiff KUPTZ had previously ***waived*** any and all her ownership rights in the Deer Springs Property, her claim for partition was barred as a matter of law.

E. KUPTZ'S PREVIOUS OWNERSHIP INTEREST IN THE DEER SPRINGS PROPERTY DID NOT SOMEHOW "MAGICALLY REVIVE" OR OTHERWISE "SPRING BACK TO LIFE" BASED ON HER FAILURE AND/OR CONTINUED REFUSAL TO TENDER THE QUIT CLAIM, (AS PREVIOUSLY ORDERED TO DO SO), OR BECAUSE BLINKINSOP DID NOT "RENEW" THE DIVORCE DECREE UNDER NRS 17.214

1. *Leven v Frey* is entirely inapplicable [12]

Boiled down to its essence, KUPTZ has the temerity to contend that her previous ownership interest in the Deer Springs Property has "magically revived" and "sprung back to life," because she failed and refused to tender the quit claim to BLINKINSOP, (as required and ordered to do so under the final divorce judgment), coupled with BLINKINSOP not renewing the divorce decree that adjudicated the Deer Springs Property to be BLINKINSOP's sole and separate property. [13] Not only are there wide-ranging problems with KUPTZ's outlandish contention, and they are numerous, but KUPTZ cites no applicable authority whatsoever in support of her position, and her contention is ***categorically antithetical*** to the plain language and underlying objectives behind NRS 125.184, *supra*.

KUPTZ goes so far as to contend that "when the decree [final divorce judgment] was not renewed as required by NRS 17.214, the decree [final divorce judgment] ***became void*** ... an unrenewed judgment is VOID not just voidable. Once expired, the judgment is 'dead' and is void and unenforceable." *Op. Brf. 11* & 13. By making this contention that the 2009

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[12] *Levin v Frey* 123 Nev. 399, 168 P. 3d 712 (2007)

[13] KUPTZ contended in her MSJ, "... since the judgment was not renewed within the 6 year period, it has expired and ***[KUPTZ] remains [an] owner[] of the Subject Property***" *JA 34:4-7, Kuptz's MSJ*.

final divorce judgment was "void," because BLINKINSOP did not "renew" it within six years under 17.214, ***would also mean the KUPTZ and BLINKINSOP <u>are still legally married</u>.*** This is only one (1) of the many absurd results KUPTZ's contention would lead to, *see infra,* not only with respect to BLINKINSOP, ***but also with respect to every family law litigant who entered into an uncontested summary divorce judgment pursuant to NRS 125.184.***

NRS 17.214 unambiguously on its face, ONLY applies to, and is strictly limited to money judgments, or judgments that involve some sort of *"terms of indebtedness"* that is owed by one person to another. *See NRS 17.214, infra.* Such was ***not*** the situation in this case as between KUPTZ and BLINKINSOP with respect to the Deer Springs Property under the 2009 final divorce judgment. *JA 123:3-7, Div. Judg.*

Rather, the 2009 final divorce judgment with respect to the Deer Springs Property was an adjudication of the ownership rights in a certain real property that was part of the marital estate, which did ***not*** establish any type of debtor creditor relationship as between KUPTZ and BLINKINSOP. This distinction is critical because KUPTZ is intentionally conflating two very different things -- a money judgment, verses a judgment that adjudicated a party's ownership rights in a real property that involved no terms of indebtedness as between KUPTZ and BLINKINSOP. *JA 123:3-7, Div. Judg*

KUPTZ cites *Levin v Frey* 123 Nev. 399, 168 P. 3d 712 (2007) in support of her astonishing contention that BLINKINSOP was "sue sponte" divested of 50% of his ***exclusive*** ownership interest in the Deer Springs Property, because BLINKINSOP was required to renew the 2009 final divorce judgment in order for him "preserve" and maintain the Court's previous adjudication of BLINKINSOP being the sole and exclusive owner of the Deer Springs Property.

Levin strictly had to do with a MONEY JUDGMENT involving a judgment creditor's legal ability *to preserve their collection rights* to sue and/or collect under a money judgment that was not timely and properly renewed, (i.e. where money is owed by one person, (the judgment debtor), to another person, (the judgement creditor)). ***That is not this case, not even peripherally.***

Consequently, while it may very well be true that under *Leven* and NRS 17.214 that a previously valid ***money judgment*** may ultimately be deemed "void" for purposes of a judgment creditor's ability to preserve their right to sue and/or collect on a money judgment, (if it is not timely and properly renewed by a judgment creditor pursuant to NRS 17.214), such is ***not*** the situation in the instant case, not even remotely. This is because the final divorce judgment involving the adjudication of the ownership rights in the Deer Springs Property did ***not*** involve the payment of money, or any other

"terms of indebtedness" owed by BLINKINSOP to KUPTZ vis-a-vis the Deer Springs Property. *JA 123:3-7, Div. Judg.*

Under KUPTZ's contention, a party who obtains a final judgment that adjudicates a certain real property to be their "sole and separate property," is required to "renew" the final judgment every six (6) years in order to "preserve" their ownership rights in that real property. This is precisely what KUPTZ is contending. This would result in insanely absurd results, would unduly interfere with a person's property rights in a myriad of ways, as well as put a severe restraint on the alienation of their own property.

If the ownership rights of a previous joint owner, (*who was previously adjudicated in a final judgment not to have any ownership rights in the property*), could "spontaneously revive," based on the failure of the other person to "renew" the judgment that adjudicated the property to be his or her's exclusive and/or "sole and separate real property," such a result would have cataclysmic effects on private property rights.

Furthermore, adopting KUPTZ's position would put an excessively onerous burden on property owners who obtained a previous final judgment that adjudicated their "ownership" rights on a certain real property. Adopting KUPTZ's argument of "spontaneous revival" would render final judicial adjudications relating to real property ownership rights essentially a nullity, because if they are not renewed every six years, ***automatic***

forfeiture of a significant percentage, or maybe all of that person's ownership rights in that property, could very well occur. ***This is precisely the position KUPTZ seeks to have this court adopt.*** This contention is utterly befuddling, and again, is not supported by any applicable authority.[14]

2. *Davidson v Davidson* is only applicable to money judgments or other judgments that establish some sort of "terms of indebtedness" as between the litigants

Like at trial level, KUPTZ also cites *Davidson v. Davidson*, 132 Nev. Adv. Op. 71, 382 P.3d 880 (2016), for the proposition that KUPTZ's previous ownership interest in the Deer Springs Property "spontaneously revived," because BLINKINSOP did not new the final divorce judgment pursuant to NRS 17.214. Or put another way, KUPTZ contends Davidson stands for the proposition that BLINKINSOP was required to ***successively renew*** the 2009 final divorce judgment every six (6) years in order for him to preserve his "sole and separate property" ownership rights in the Deer Springs Property. *Davidson* does not stand, for this proposition, not even remotely.

Critically, when the uncontested and summary divorce decree was entered in the instant case, the claim preclusive effect of the divorce decree

[14] Even the out of state authority cited by KUPTZ does not support KUPTZ's contention, and like *Levin*, supra, only related to ***money judgments.***

with respect to the Deer Springs Property did two things: (1) it ***extinguished and terminated*** any and all previous ownership interest and title KUPTZ had in the Deer Springs Property, and (1), it affirmatively adjudicated the property to be the sole and separate property of BLINKINSOP. *JA 123:3-7.*

Secondly, and even more critical, is the fact that the divorce decree in the instant action did ***not*** establish any "indebtedness" owed by BLINKINSOP to KUPTZ in relation to the Deer Springs Property, nor did the divorce decree set up or establish any type of debtor/creditor relationship, or other similar status, as between BLINKINSOP or KUPTZ in relation to the Deer Springs Property.

There could not have been any such debtor/creditor relationship established as between BLINKINSOP and KUPTZ, because the Deer Springs Property was adjudicated to be BLINKINSOP's sole and separate property. BLINKINSOP owed no indebtedness or monies to KUPTZ in relation to the Deer Springs Property under the 2009 final divorce judgment. *JA 123:3-7.*

It is mystifying how KUPTZ' could colorably or plausibly argue that *Davidson* is even remotely applicable to the instant case, or that *Davidson* supports KUPTZ's contention that BLINKINSOP was required to "renew" the divorce judgment pursuant to NRS 17.214 in order for him to "preserve" the Court's previous adjudication that the Deer Springs Property was his sole

the separate property. *Davidson* is apples, and the instant case is watermelons in this respect, but KUPTZ conspicuously omitted any discussion of the operative facts of *Davidson*.

In *Davidson*, the Court entered a decree of divorce in 2006. Like in the instant case, the divorce decree found the martial home to be part of the martial estate, and like in the instant case, the final divorce judgment also required the former wife to execute a quitclaim deed to the former husband ***and release all of her rights in the marital residence.***

In exchange for the quit claim, the decree required the husband ***to pay*** the ex-wife one-half of the appraised equity value in the martial residence, according to the appraised value in 2006. *Unlike* in the instant action, the wife *complied* with the Court's order and quitclaimed her ownership interest in the martial home to husband in 2006.

Two weeks after the divorce, the couple reconciled and began to cohabitate wherein the former wife moved back into the former marital home with her former husband through 2011, however, they never remarried. The reconciliation did not endure, and in 2014, after the ex-wife moved out, and eight (8) years ***after*** the divorce decree became final, and eight (8) years after the former wife tendered the quit claim deed to the ex-husband, the ex-wife filed a motion in family court to enforce ***and collect*** her 50% of the equity ***(i.e. money to be paid to her),*** based on the 2006 appraisal of

marital home, as ordered and provided for in the decree.[15]

The Family Law court found the ex-wife's claim to enforce and collect her 50% of the appraised equity in the marital property, ***based upon the payment obligations*** established under property distribution in the divorce decree, was time barred. The Supreme Court upheld the trial court and held that the ex-wife did not bring her claim ***for the payment and collection of her 50% interest*** in the marital home within six (6) years, under NRS 11.090(1)(a). Consequently, the ex-wife was time barred from ***collecting any monies*** that were due and owing to her from the former husband under the divorce decree. The *Davidson* court was very clear on this point with respect to the ex-wife's claim being entirely grounded in the collection of a money judgment. The court stated and held:

> [The former wife] further claims that the Legislature did not intend for a divorce litigant [the former husband] to receive a windfall for the full value of a marital property by waiting for the six-year limitations period to end and then selling the property and retaining the full value of the proceeds. While [The former wife's] argument has merit, we believe that the Legislature also did not intend for parties to endlessly "sit" on potential claims. *See Doan v. Wilkerson,* 130 Nev. Adv. Op. 48, 327 P.3d 498, 501 (2014) ***("The policy in favor of finality and certainty ... applies equally, and some might say especially, to a divorce proceeding.").*** The Legislature provided **NRS 17.214,** which [The former wife] could have used to prevent [the former husband] from allegedly receiving a double windfall. NRS 17.214 ***allows a judgment creditor*** to

[15] Apparently by 2014, the property had been sold by the ex-husband after the ex-wife moved out.

> renew a judgment and avoid the harsh results that could accompany the expiration of a statute of limitations. Unfortunately, [The former wife] failed to avail herself of the statute's protections...[16] [emphasis added]
>
> ... [W] conclude that no basis exists for us to create a new rule that excuses property distribution provisions in divorce decrees from NRS 11.190(1)(a) and that the six-year statute of limitations in NRS 11.190(1)(a) applies to the instant case... We conclude that the statute of limitations expired six years after [the former wife] delivered the quitclaim deed to [the former husband on the marital home].
>
> NRS 11.200 states as follows:
>
> The time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given; and whenever any payment on principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note ***or other evidence of indebtedness*** if such payment be made after the same shall

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[16] NRS 17.214 states in pertinent part:

1. ***A judgment creditor*** or a judgment creditor's successor in interest may renew a judgment which has not been paid by:

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation. The affidavit must be titled as an "Affidavit of Renewal of Judgment" and must specify:

(1) The names of the parties and the name of the ***judgment creditor's*** successor in interest, if any, and the source and succession of his or her title;

(5) ***The date and amount of any payment on the judgment;***

(6) Whether there are any setoffs or counterclaims in favor of the ***judgment debtor*** and the amount or, if a setoff or counterclaim is unsettled or undetermined it will be allowed as payment or credit on the judgment;

(7) ***The exact amount due on the judgment;***

3. The ***judgment creditor*** or the judgment creditor's successor in interest shall notify the ***judgment debtor*** ... at his or her last known address within 3 days after filing the affidavit. [emphasis added]

have become due, ***the limitation shall commence from the time the last payment was made.*** [emphasis added]

> ***According to NRS 11.200, the statute of limitations began running when there was "evidence of indebtedness" for half of the equity in the marital property ... [E]vidence of indebtedness*** occurred with the delivery of the deed. Here, the latest time at which the debt was due ... was after [the former wife] delivered the quitclaim deed to [the former husband] in 2006. As a result, the statute of limitations for [the former wife's] claim has expired. *See* NRS 11.190(1)(a) ... [T]he consideration for receiving half of the equity was [the former wife's] deliverance of the deed so that [the former husband] could title the house in his name alone. The decree does not indicate that [the former wife] was to vacate the residence in consideration for half of the equity. Consequently, [the former husband] ***became indebted*** to [the former wife] when she delivered the deed to him, not when she vacated the residence in 2011. Thus, we conclude that NRS11.200[17] and our holding in *Borden* apply here and the statute of limitations began running after [the former wife]

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[17] NRS 11.200 entitled *"computation of time"* states The time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given; ***and whenever any payment on principal or interest has been or shall be made upon an existing contract,*** whether it be a bill of exchange, promissory note ***or other evidence of indebtedness*** if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made. [emphasis added]

Again, *Davidson's* reliance and express incorporation of NRS 11.200 and 17.214, ***which are central to the Court's opinion***, makes it clear that the requirement to "renew" a final divorce judgment only applies when a former spouse seeks to preserve his or her collection rights under a final divorce judgment, and further, only applies to when the divorce decree establishes a debtor creditor relationship between the former spouses, wherein "terms of indebtedness" are at issue in the judgment. ***No such debtor creditor relationship was established between BLINKINSOP and KUPTZ in relation to the Deer Springs Property.***

> delivered the quitclaim deed to [the former husband] in 2006. Because the statute of limitations expired in 2012, [the former wife's] motion is time-barred pursuant to NRS 11.190(1)(a). [emphasis added]
>
> We hold that when a litigant seeks to enforce a provision in a decree ***awarding him or her half of the equity in marital property***, the statute of limitations begins to accrue when there is ***evidence of indebtedness,*** which occurred in this case when [the former wife] delivered the quitclaim deed to [the former husband]. Accordingly, we affirm the decision of the district court. [emphasis added]

Id at 132 Nev. Adv. Op. 71, 884–86

There are two operative and critical distinctions between *Davidson* and in the instant case making *Davidson* entirely inapplicable. As a threshold matter, unlike in the instant action, in *Davidson*, the ex-wife was ***adjudicated*** and awarded by the court, via the divorce decree, to be entitled to 50% of the equity in the martial home, which was required to be ***paid to her*** by the ex-husband.

In the instant case, *unlike in Davidson*, supra, KUPTZ was adjudicated to have NO ownership or other interest, either in law or in equity, in the martial home, (Deer Springs Property), because the marital home was adjudicated to be BLINKINSOP's ***sole and separate property.*** KUPTZ cannot seek a partition to a real property to which she has no ownership interest, nor was KUPTZ ever entitled to the payment of any monies or other "indebtedness" from BLINKINSOP relating to or arising from the Deer

Springs property under the divorce decree, which segues into the next point why *Davidson* is inapplicable.

Unlike the instant action, *Davidson* specifically dealt with ***"terms of indebtedness" and collection of monies*** owed by one former spouse to the other, relating to and arising from a property division under a final divorce decree (judgment). *Simply put, the ex-husband in Davidson owed the ex-wife 50% of the appraised value in the martial home under the divorce decree* ***and never paid the former wife.*** Put another way, the underlying divorce decree in *Davidson* established a debtor/creditor status and/or relationship as between the former husband and former wife ***involving an actual debt or monies that were to be paid*** by one spouse to the other under the terms of the final divorce judgment.

The situation in *Davidson* is not involved in the instant case. Not only did BLINKINSOP not owe any monies or other indebtedness to KUPTZ under the divorce decree arising from or related to the Deer Springs Property, but notably, under *Davidson*, the Supreme Court held that the ex-wife had six years, (like any other judgment creditor), to file suit ***to collect those amounts*** owed to her regarding the property distribution, or in the alternative, renew the divorce decree (judgment) under NRS 17.214 to extend the time to preserve her right to ***collect those monies*** from the ex-husband with respect to her 50% equity in the marital home.

Consequently, if anything, *Davidson* is supportive of BLINKINSOP's position that KUPTZ is entirely barred and precluded from relitigating ***any issue or claim*** relating to, arising from or in connection with the 2009 final divorce judgment, ***because under Davidson, a divorce decree is a "final" judgment like any other judgment.***

Consequently, even assuming arguendo that BLINKINSOP was a "judgment debtor" in relation to KUPTZ under the 2009 final divorce decree, under *Davidson*, KUPTZ ***would be time barred*** from filing any claim seeking the payment of money as against BLINKINSOP that arises from, is related to, or is in connection with the 2009 final divorce decree. [18]

Finally, *Davidson* had nothing to do with a former spouse's ability to seek or otherwise preserve his or her rights ***to a partition*** of real property that was adjudicated the sole and separate property of the other spouse in the final divorce judgment. Rather, *Davidson* only had to do with the applicable statute of limitations when an ex-spouse ***is indebted*** to the other

[18] Indeed, that is why KUPTZ filed her instant action for "partition," because it is not a claim at law based or grounded on "money owed." By alleging an equitable claim for "partition," KUPTZ was clearly attempting an "end run" around the holding in *Davidson*, which would bar any claims at law for money as against BLINKINSOP. While a claim for partition is equitable, and not based on a "claim for money owed," given the nature of the remedy, and given KUPTZ was seeking 50% of the positive equity in the property, (i.e.money), at the end of the day, KUPTZ was, in fact, seeking a "monetary recovery" in the instant action via an equitable claim for partition.

ex-spouse under the terms of the property distribution in the final divorce decree. KUPTZ's argument that *Davidson* is supportive of her "spontaneous revival' theory of her ownership interest in the Deer Springs Property is wholly without merit.

F. KUPTZ IS BARRED FROM PREVAILING ON HER COMPLAINT FOR PARTITION BECAUSE SHE HAS UNCLEAN HANDS

"A partition action is an equitable one in which the courts will apply the broad principles of equity. *Kent v. Kent,* 108 Nev. 398, 401–02, 835 P.2d 8, 10 (1992). "The doctrine of unclean hands derives from the equitable maxim that 'he who comes into equity *must come with clean hands.* The doctrine bars relief to a party who has engaged in improper conduct in the matter in which that party is seeking relief." *Truck Ins. Exch. v. Palmer J. Swanson, Inc.,* 124 Nev. 629, 637–38, 189 P.3d 656, 662 (2008). ***"The doctrine of unclean hands is an equitable doctrine that prevents relief to a party that has acted improperly."*** *Debunch v. State, ex rel. Dep't of Transp.,* 126 Nev. 705, 367 P.3d 762 (2010). The divorce decree states very clearly:

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall receive as his sole and separate property the real property located at 2042 Deer Springs Drive, Henderson, Nevada. Defendant shall assume, and hold Plaintiff harmless from, any and all encumbrances on said real property. Plaintiff shall execute a quitclaim deed to remove Plaintiff's name from title within 10 days of entry of this decree.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties shall fully cooperate with each other and shall not unreasonably withhold execution of any documents necessary to effectuate the transfer of any property specified herein, and if parties fail to cooperate, the Clerk of Court is authorized to execute any document on behalf of either party upon presentment of this Decree;

KUPTZ agreed to and was ordered to tender a quit claim deed to BLINKINSOP in the Deer Springs Property. *JA 123-124, Div. Judg., id.* KUPTZ also agreed to and the Court ***previously ordered*** for her to *"fully cooperate"* and she *"shall not unreasonably withhold executed of any documents necessary to effectuate the transfer of any property specified herein..." id.* Yet, knowing this, KUPTZ filed a partition action seeking equity when KUPTZ was indisputably the party who was in blatant violation of that previous order and judgment, and who continues to refuse to comply with that order.

Based on the aforementioned, and given KUPTZ did not dispute, challenge or contest any of the material facts in BLINKINSOP's concise separate statement, JA 142-148, there was no disputed issue of genuine material fact that KUPTZ did not have unclean hands with respect to seeking partition of the Deer Springs Property.

G. BLINKINSOP WAS ENTITLED TO SUMMARY JUDGMENT ON HIS COUNTER CLAIMS FOR QUITE TITLE AND DECLARATORY RELIEF AS THERE WAS NO GENUINE ISSUE OF MATERIAL FACT THAT KUPTZ HAD ANY OWNERSHIP INTEREST IN THE DEER SPRINGS PROPERTY, EITHER IN LAW OR IN EQUITY

"In a quiet title action, a party's right to relief depends on superiority of title." [T]he burden of proof rests with the plaintiff to prove good title in himself." *W. Sunset 2050 Tr. v. Nationstar Mortg., LLC,* 420 P.3d 1032, 1034–35 (2018). Based on the ***undisputed fact*** that all of KUPTZ's previous ownership interest in the Deer Springs Property was either knowingly waived, and was expressly extinguished, terminated and/or severed via the 2009 final divorce decree, (*JA 123:3-7, Div. Judg.),* ***KUPTZ had no interest, either in law or in equity, in the Deer Springs Property – none.***

KUPTZ's ownership interest was extinguished nine and half years earlier via a valid and final divorce judgment. BLINKINSOP was adjudicated the Deer Springs Property to be BLINKINSOP's sole and separate property. *JA 123:3-7.* Furthermore, KUPTZ never disputed or contested any of material facts contained in BLINKINSOP's separate statement. *JA 142-148, Sep. Stmt.* BLINKINSOP was entitled to judgment as a matter of law on his counter claims.

CONCLUSION

Based on the aforementioned, the District Court properly denied KUPTZ's motion for summary judgment, and properly granted summary judgment in favor of BLINKINSOP on his counter motion for summary judgment.

Dated this 24th day of September, 2019

By */s/ George O. West III*
George O. West III
Law Offices of George O. West III
Attorney for Respondent
THOMAS BLINKINSOP

CERTIFICATE OF COMPLIANCE

1. 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 2017 in 14-point Georgia font.

2. 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:

[X] proportionally spaced, has a typeface of 14 points or more and contains 12,955 words.

Finally, I hereby certify that we have read this brief, and to the best of our knowledge, information and belief, it is not frivolous or interposed for any improper purpose. We further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP28(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. we understand that we 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.

PROOF OF SERVICE

On September 24, 2019, I served the forgoing document(s) described as 1) **RESPONDENT THOMAS BLINKINSOP'S ANSWERING BRIEF** on interested party(ies) in this action by placing a true and correct copy and/or original thereof enclosed in a sealed envelope addressed as follows :

BENJAMIN CHILDS
318 South Maryland Pkwy
Las Vegas, NV 89101
ben@benchilds.com

[ ] **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service on that same day with first class postage thereon fully prepaid at Las Vegas, NV in the ordinary course of business.

[ ] **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office, and/or to the attorney listed as the addressee below.

[ ] **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule 7.26(a), as set forth herein.

[x] **(BY EMAIL/ELECTRONIC SERVICE) (Eflex/email)** Pursuant NRCP and/or NRAP and other rules relating to electronic service, I hereby certify that proper service of the aforementioned document(s) via electronic service was made.

/s/ George O. West III
GEORGE O. WEST III