

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 RENELYN BAUSISTA }

Supreme Court No. 79534

3 }

4 Appellant }

RENEWED

Electronically Filed

RESPONDENT'S MOTION TO DISMISS NOV 04 2019 05:29 p.m.

5 vs. }

DISMISS APPEAL

Elizabeth A. Brown

Clerk of Supreme Court

6 JAMES PICONE }

7 }

8 Respondent }

9 -----

10 Respondent files this Motion to Dismiss as authorized by the Order

11 Denying Motion filed October 14, 2019. The settlement proceedings have

12 concluded.

13

14 PROCEDURAL HISTORY

15

16 Appellant filed the Notice of Appeal on August 26, 2019 [Exhibit 1],

17 intending to appeal an August 20, 2019 Decision and Order and the August

18 21, 2019 Amended Decision and Order, which Orders are attached to the

19 Notice of Appeal as exhibits A and B. The Order being appealed solely

20 “grants” the attorney fees to Respondent’s counsel and authorizes counsel to

21 “submit a judgment in the amount noted in bold.” [Exhibit B to Exhibit 1, 4:13]

22 Critically, the appealed Order does NOT enter judgment, but authorizes each

23 side to “submit a judgment”.

24 Appellant’s Docketing Statement filed October 1, 2019 incorrectly

25 states in Section 25 that the district court certified the judgment “as a final

26 judgment pursuant to NRCP 54(b)” and that the district court made “an

27 express determination, pursuant to NRCP 54(b) that there is no just reason

28 for delay and an express direction for entry of judgment.” Appellant did not

1 either seek or obtain certification of either the Decision or the Amended
2 Decision as a final, appealable order as required by NRCP 54(b), nor would
3 this rule be applicable because the case does not involve multiple parties.

4 Finally, an Amended Judgment was filed on September 24, 2019 with
5 Notice of Entry being filed and served on September 25, 2019. [Exhibit 2]
6 This Amended Judgment states, in pertinent part, "Judgment is entered in
7 favor of attorney BENJAMIN B. CHILDS against RENELYN BAUTISTA nka
8 RENELYN SCHRAMM for attorney fees in the amount of \$38,780.00 and
9 court costs advanced in the amount of \$1,803.04, for a total judgment
10 amount of \$40,583.04." This Amended Judgment has not been appealed and
11 the appeal deadline ran on October 28, 2019. Thus, there exists an
12 unappealed judgment which obviates the instant appeal, at least as to the
13 judgment against Appellant Bautista.

14 The result of this is that the appeal can proceed solely on the issue of
15 the district court denying Appellant's request for an award of court costs
16 because her request was untimely. [Exhibit B to Exhibit 1, 3:25] Appellant
17 was awarded attorney fees in "the full requested amount", so she is not
18 aggrieved and that is not appealable by her. [Exhibit B to Exhibit 1, 4:11]

19 20 **POINTS AND AUTHORITIES**

21 22 **LEGAL AUTHORITY**

23 24 **NRAP 3A. CIVIL ACTIONS: STANDING TO APPEAL; 25 APPEALABLE DETERMINATIONS**

26 (a) Standing to Appeal. A party who is aggrieved by an
27 appealable judgment or order may appeal from that judgment or
28 order, with or without first moving for a new trial.

(b) Appealable Determinations. An appeal may be taken from

1 the following judgments and orders of a district court in a civil
2 action:

- 3 (1) A final judgment entered in an action or proceeding
4 commenced in the court in which the judgment is
5 rendered.
- 6 (2) An order granting or denying a motion for a new trial.
- 7 (3) An order granting or refusing to grant an injunction or
8 dissolving or refusing to dissolve an injunction.
- 9 (4) An order appointing or refusing to appoint a receiver or
10 vacating or refusing to vacate an order appointing a
11 receiver.
- 12 (5) An order dissolving or refusing to dissolve an
13 attachment.
- 14 (6) An order changing or refusing to change the place of
15 trial only when a notice of appeal from the order is filed
16 within 30 days.
- 17 ...
- 18 (7) An order entered in a proceeding that did not arise in a
19 juvenile court that finally establishes or alters the custody of
20 minor children.
- 21 (8) A special order entered after final judgment, excluding
22 an order granting a motion to set aside a default judgment
23 under NRCP 60(b)(1) when the motion was filed and
24 served within 60 days after entry of the default judgment.
- 25 (9) An interlocutory judgment, order or decree in an action
26 to redeem real or personal property from a mortgage or lien
27 that determines the right to redeem and directs an
28 accounting.
- (10) An interlocutory judgment in an action for partition that
determines the rights and interests of the respective parties
and directs a partition, sale or division.

26 This Court is precluded from hearing an appeal which does not conform to
27 statutory regulations and procedures. The authority conferred on the Supreme
28

1 Court by NRAP 3A to review judgments from which appeals can be taken in the
2 manner prescribed “and not otherwise” precludes the Court from hearing any
3 appeal which does not conform to statutory regulations. Marx v. Lewis, 24 Nev.
4 306, 53 Pac. 600 (1898), cited, State v. Preston, 30 Nev. 301, at 306, 95 Pac.
5 918, 97 Pac. 388 (1908), Hoffman v. Owens, 31 Nev. 481, at 483, 103 Pac. 414,
6 104 Pac. 241 (1909), Shute v. Big Meadow Inv. Co., 41 Nev. 361, at 362, 170
7 Pac. 1049 (1918).

8 Interlocutory orders are not appealable. The appellate court will not
9 consider matters on appeal which concern interlocutory orders which are not
10 appealable. This Court stated as follows in O'Neill v. Dunn 83 Nev. 228, 230
11 (1967).

12 The order is not one designated by Rule 72 as an
13 appealable order, nor is any other statute cited or known to us
14 authorizing the appeal. “An aggrieved party does not have the
15 right to appeal unless it is expressly granted by statute or rule. Esmeralda County v. Wildes, 36 Nev. 526, 137 P. 400; Quinn
16 v. Quinn, 53 Nev. 67, 292 P. 621.” Alper v. Posin, 77 Nev.
17 328, 363 P.2d 502. “A final judgment in an action or
18 proceeding is essentially one that disposes of the issues
19 presented in the case, determines the cost, and leaves
20 nothing for the future consideration of the court. Smith v.
21 Smith, 69 Nev. 171, 243 P.2d 1048; Magee v. Whitacre, 60
22 Nev. 202, 96 P.2d 201, 106 P.2d 751; 83 Nev. 228, 230
(1967), 51 Nev. 162, 271 P. 691.” Alper v. Posin, supra.

23 NRCP 54 states as follows.

24 (a) Definition; Form. “Judgment” as used in these rules includes a decree
25 and any order from which an appeal lies. A judgment should not include
26 recitals of pleadings, a master’s report, or a record of prior proceedings.

27 (b) Judgment Involving Multiple Parties. **When multiple parties**
28 **are involved**, the court may direct the entry of a final judgment as
to one or more but fewer than all of the parties only upon an
express determination that there is no just reason for delay and
upon an express direction for the entry of judgment. In the

1 absence of such determination and direction, any order or other
2 form of decision, however designated, which adjudicates the rights
3 and liabilities of fewer than all the parties shall not terminate the
4 action as to any of the parties, and the order or other form of
5 decision is subject to revision at any time before the entry of
6 judgment adjudicating all the rights and liabilities of all the parties.

7
8
9 ARGUMENT

10 The Order purportedly being appealed meets none of the requirements of
11 NRAP 3A. It is an interlocutory order and not an appealable determination
12 because, by it's own unequivocal terms, a judgment is expressly intended to
13 follow. Respondent's attorney fee judgment has been filed, and that judgment
14 was not timely appealed.

15 There are not multiple parties involved, so NRCP 54(b) is not applicable,
16 and certification as a final order cannot be sought under that rule.

17 The district court has not entered a final written judgment adjudicating all
18 the rights and liabilities of all the parties because Appellant has not submitted
19 her attorney award judgment, but that judgment would not be appealable by her
20 because she is not aggrieved. A final judgment is one that finally resolves all
21 claims and issues against all parties to an action and leaves nothing to the
22 district court's consideration except postjudgment issues such as attorney fees
23 and costs. Lee v. GNLV, Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).
24 There can be only one final judgment in a case. Alper v. Posin, 77 Nev. 328, 363
25 P.2d 502 (1961), overruled on other grounds by Lee, 116 Nev. at 426, 996 P.2d
26 at 417.

27 ///

28 ///

1 CONCLUSION

2
3 Judgment having been filed and not appealed, Appellant has no standing
4 to appeal the Decision and Order regarding the judgment entered against her.
5 The instant appeal must be dismissed as to all issues, save the district court's
6 denial of costs to Appellant.

7
8 By: /s/ Benjamin B. Childs

9 BENJAMIN B. CHILDS, ESQ.
Nevada Bar #: 3946
Attorney for Respondent

10 Exhibits

- 11 1 Notice of Appeal filed 8/26/2019; includes Decision and Order filed
12 08/20/2019, with Notice of Entry as Exhibit A and Amended Decision and
Order filed 08/21/2019, with Notice of Entry as Exhibit B
13 2 Respondent's Amended Judgment filed 09/24/2019 [with Notice of Entry]

14 CERTIFICATE OF SERVICE

15
16 Attorney for Appellant, John Jones, is an electronic filer and will be served
17 through the electronic filing system.

18
19 By: /s/ Benjamin B. Childs

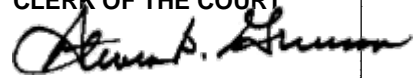
20 BENJAMIN B. CHILDS, ESQ.
Nevada Bar #: 3946
Attorney for Respondent
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1



1 **NOAS**
2 **BLACK & LOBELLO**
3 John D. Jones
4 Nevada Bar No. 6699
5 10777 West Twain Avenue, Suite 300
6 Las Vegas, Nevada 89135
7 Telephone Number: 702-869-8801
8 Fax Number: 702-869-2669
9 Email Address: jjones@blacklobello.law
10 Attorneys for Defendant,
11 **RENELYN BAUTISTA**

12 **DISTRICT COURT**
13 **FAMILY DIVISION**
14 **CLARK COUNTY, NEVADA**

15 **JAMES PICONE,**

CASE NO.: D-14-495928-P
DEPT. N

16 Plaintiff

17 vs.

18 **RENELYN BAUTISTA,**

19 Defendant

20 **NOTICE OF APPEAL**

21 NOTICE is hereby given that Defendant, RENELYN BAUTISTA, hereby
22 appeals to the Supreme Court of Nevada the Decision and Order filed August 20,
23 2019, attached hereto as **Exhibit "A"** and the Amended Decision and Order filed
24 August 21, 2019, attached as **Exhibit "B."**

25 DATED this 26 day of August, 2019.

26 **BLACK & LOBELLO**

27 John D. Jones

28 Nevada Bar No. 6699

10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

702-869-8801

Attorneys for Defendant

RENELYN BAUTISTA

CERTIFICATE OF SERVICE

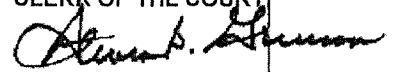
I HEREBY CERTIFY that on the 26th day of August, 2019 I served a true and correct copy of the NOTICE OF APPEAL, upon each of the parties by **electronic service** through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R. 9; and by depositing a copy of the same in a sealed envelope in the United States Mail, Postage Pre-Paid, addressed as follows:

Benjamin B. Childs, Esq.
Benjamin B. Childs, Ltd.
318 S. Maryland Parkway
Las Vegas, NV 89101
Email: ben@benchilds.com
Attorney For Plaintiff
JAMES PICONE

Cheryl Berdahl
an Employee of Black & LoBello

Exhibit A

Exhibit A



**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Petition by:
James Picone, Petitioner.

Case No.: D-14-495928-P
Department N

NOTICE OF ENTRY OF DECISION AND ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that the Court prepared a Decision and Order and that a copy is attached hereto.

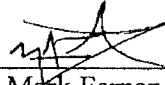
☒ I hereby certify that I electronically served, faxed, emailed, or placed in the appropriate attorney folder located in the Clerk of the Court's Office, a copy of the Decision and Order to:

Benjamin B. Childs, Esq.

John D. Jones, Esq.

☐ I hereby certify that I mailed the Decision and Order via first-class mail with postage fully prepaid to:

DATED: 20th day of August, 2019

By: 
Mark Fernandez
Judicial Executive Assistant
Department N

Eighth Judicial District Court

Family Division

Clark County, Nevada

JAMES PICONE,

Plaintiff,

vs.

RENELYN BAUTISTA,

Defendant.

Case: D-14-495928-P

Dept: N

DECISION AND ORDER ON AWARD OF ATTORNEY'S FEES¹/COSTS

This matter was set for evidentiary hearing on 05/08/2019. The Decision and Order was entered on 06/18/2019. On 06/09/2019, Plaintiff filed a timely Memorandum of Costs and Expenses for \$1,803.04 and a Motion for Attorney's Fees for \$38,780.00. On 07/08/2019, Defendant filed an Opposition and Countermotion for Attorney's Fees/Costs and accompanying Affidavit of Counsel requesting \$2,809.88 (\$900.00 in attorney's fees and \$1,909.88 in costs). Defendant filed a Reply on 07/09/2019. The matter was then taken under advisement.

I. LEGAL BASIS:

A) Attorney's fees

In *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), the Court announced: " We take this opportunity to clarify our jurisprudence in family law cases . . . when deciding attorney fee awards." *Id.* at 623. 4 requirements were set forth: 1) Counsel **must** cite a legal basis for attorney's fees; 2) The court **must** evaluate the 4 *Brunzell* factors (Qualities of the advocate, Character of work to be done, Work actually performed, and Results achieved); 3) The court **must** consider any disparity in income under the *Wright* case; and 4) The request **must** be supported by affidavit or other evidence. Further, **NRCP 54(d)(2)** provides:

¹ An award of attorneys fees is discretionary with the trial court. *Fox v. Fox*, 81 Nev. 186, 401 P.2d 53 (1965); *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Ellett v. Ellett*, 94 Nev. 34, 573 P.2d 1179 (1978); *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980); *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987); *Ford v. Ford*, 105 Nev. 672, 782 P.2d 1304 (1989); *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998); *Blanco v. Blanco*, 129 Nev. 311, 11 P.3d 1170 (2013).

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Judgment Reached by Trial
☐ Disposed After Trial Court

Filed/Withdrawn:
☒ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By AOR

1 (A) **Claim to Be by Motion.** A claim for attorney fees must be made by motion. The
2 district court may decide the motion despite the existence of a pending appeal from the
underlying final judgment.

3 (B) **Timing and Contents of the Motion.** Unless a statute provides otherwise, the
4 motion must be filed no later than 20 days after notice of entry of judgment is served;
5 specify the judgment and the statute, rule, or other grounds entitling the movant to the
6 award; state the amount sought or provide a fair estimate of it; and be supported by
7 counsel's affidavit swearing that the fees were actually and necessarily incurred and were
8 reasonable, documentation concerning the amount of fees claimed, and points and
9 authorities addressing appropriate factors to be considered by the court in deciding the
10 motion. The time for filing the motion may not be extended by the court after it has
11 expired.

12 At the forefront, this Court NOTES that it *did* consider all of the foregoing relevant
13 factors as set forth below. *Logan v. Abe*, 131 Nev. ___, ___, 350 P.3d 1139 (2015) (“[E]xpress
14 findings on each factor are *not* necessary for a district court to properly exercise its discretion.”).
15 *Miller* further holds that attorney’s fees are available to *pro bono* counsel. *Id.*

16 **B. Costs**

17 NRS 18.110(1) states.

18 The party in whose favor judgment is rendered, and who claims costs, must file with the
19 clerk, and serve a copy upon the adverse party, within 5 days after the entry of
20 judgment, or such further time as the court or judge may grant, a memorandum of the
21 items of the costs in the action or proceeding, which memorandum must be verified by
22 the oath of the party, or the party’s attorney or agent, or by the clerk of the party’s
23 attorney, stating that to the best of his or her knowledge and belief the items are correct,
24 and that the costs have been necessarily incurred in the action or proceeding.

25 Pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. ___, 345 P.3d 1049, 1054-55 (2015),
26 actual proof of costs incurred must be submitted.

27 **II. ANALYSIS**

28 **A. Costs**

This Court FINDS that Plaintiff’s request for fees is *timely*, that he has submitted
sufficient proofs, and that the costs have necessarily been incurred on behalf of Plaintiff.
Therefore, the amount of \$1,803.04 is GRANTED.

This Court FINDS that Defendant’s request for costs was *untimely* as it was not filed
within the requisite 5 day period and is therefore DENIED.

B. Attorney’s Fees

1) Legal Basis

Plaintiff’s counsel cites to various legal basis, including potential wrongdoing by

1 Defendant's counsel. This Court will not address any wrongdoing by counsel as it is simply
2 unnecessary. Only 1 legal basis is necessary. This Court FINDS the most pointed legal basis is
3 that, given this Court's Decision and Order, it is clear that Plaintiff was the *prevailing party* on
4 the most significant issues (*i.e.*, issues remanded). Pursuant to *Halbrook v. Halbrook*, 114 Nev.
5 1455, 971 P.2d 1262 (1998) and *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998), this Court can
6 award attorney's fees to the *prevailing party* in appropriate post-judgment motions related to
7 child custody. An alternative statutory basis for Plaintiff is NRS 125C.250.

8 As for Defendant's request for attorney's fees, this Court FINDS the most pointed legal
9 basis submitted is NRS 125B.140(2)(c)(2).

10 **2) BRUNZELL Factors**

11 Both counsel specifically address the *Brunzell* factors in their respective requests. Rather
12 than unnecessarily reiterate them, they are incorporated by reference as though fully set forth
13 herein. It is further noted that both counsel submitted full unredacted billing statements in
14 support of the fees incurred since the remand. *Love, supra*.

15 **3) Disparity in Income**

16 The parties filed Financial Disclosure Forms. As Plaintiff points out, to date Defendant
17 still refuses to fill out her household expenses. Further, the amount that she has paid her own
18 attorney is continuously/suspiciously left blank. Yet, Defendant seems to conveniently find the
19 funds to continue litigating/investigating this case *ad nauseam*. Therefore, this Court can only
20 assume that Defendant's household income is *extraordinary*² as proposed by Plaintiff.
21 Regardless, if this Court imputed minimum wage to Defendant or even assumed that she is
22 unemployed, Defendant's own income is meager. Thus, the assignment of his *pro bono* attorney.
23 This Court made the ultimate determination on the incomes that the parties as submitted.³

24 **4) Affidavit or Other Evidence**

25 Plaintiff's request for both costs and attorney's fees are addressed in an affidavit included

26
27 ² See Plaintiff's motion, p. 8, lines 27-30 to p. 9, lines 1-12 (referencing an affidavit from another
28 lawsuit noting Defendant herself is listed as a "managing partner" wherein Defendant's husband claimed
to have lost hundreds of millions of dollars).

³ This Court did not use the presumption set forth in EDCR 5.506(g).

1 in his motion. Defendant's request for attorney's fees was accompanied by a separate Affidavit.

2 **II. CONCLUSION**

3 Given the foregoing, this Court CONCLUDES that *both requests are reasonable*
4 pursuant to the findings, facts and circumstances of this case. Accordingly, Defendant is
5 GRANTED the full requested amount of **\$900.00** in attorney's fees (based on statutory
6 requirement for non-payment of child support) and Plaintiff is GRANTED the full requested
7 amount of \$38,780.00 (*prevailing party*). Plaintiff's total amount including costs granted above
8 would be **\$40,583.04**.⁴ Accordingly, both counsel can submit a judgment in the amount noted in
9 bold. Because the amount is being reduced to judgment (enforceable by any lawful means
10 available), non-payment will not be grounds for contempt proceedings before this Court.

11 DATED this 19th day of August, 2019.

12 

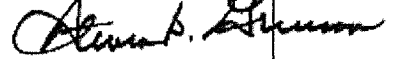
13 District Court Judge ~~rx~~
14 Mathew Harter

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⁴ This amount includes fees of \$1,520.00 for anticipated future filing of a Reply, *etc.*, which was
26 ultimately done. See p. 22 of Plaintiff's motion (Reply filed 07/09/2019). Further, Defendant in her
27 Opposition (p. 4) claims that "[t]he hours billed are not reasonable by any stretch of the imagination"
28 without any further reasoning. Defendant should review *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825
(2000) (Almost 2 decades ago, the Court found the district court's award of \$19,580.00 in attorney's fees
simply to [1] oppose a motion and [2] to amend an answer was *reasonable*). As noted in the Decision
and Order, this remand affair was spearheaded by Defendant's husband's "catfishing" expedition that
spawned this latest litigation. To reiterate, this Court did *not* believe Defendant had no knowledge as
she claimed. This Court is not finding any other extraneous fault on behalf of Defendant (this award is
not a penalty or sanction), only that Plaintiff was ultimately the *prevailing party*.

Exhibit B

Exhibit B



DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Petition by:
James Picone, Petitioner.

Case No.: D-14-495928-P
Department N

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TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that the Court prepared a Decision and Order and that a copy is attached hereto.

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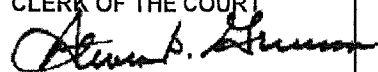
John D. Jones, Esq.

☐ I hereby certify that I mailed the Decision and Order via first-class mail with postage fully prepaid to:

DATED: 21st day of August, 2019

By: /s/ Mark Fernandez

Mark Fernandez
Judicial Executive Assistant
Department N



Eighth Judicial District Court

Family Division

Clark County, Nevada

JAMES PICONE,

Plaintiff,

vs.

RENELYN BAUTISTA,

Defendant.

Case: D-14-495928-P

Dept: N

AMENDED DECISION AND ORDER ON AWARD OF ATTORNEY'S FEES¹/COSTS

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1 (A) **Claim to Be by Motion.** A claim for attorney fees must be made by motion. The
2 district court may decide the motion despite the existence of a pending appeal from the
underlying final judgment.

3 (B) **Timing and Contents of the Motion.** Unless a statute provides otherwise, the
4 motion must be filed no later than 20 days after notice of entry of judgment is served;
5 specify the judgment and the statute, rule, or other grounds entitling the movant to the
6 award; state the amount sought or provide a fair estimate of it; and be supported by
7 counsel's affidavit swearing that the fees were actually and necessarily incurred and were
8 reasonable, documentation concerning the amount of fees claimed, and points and
9 authorities addressing appropriate factors to be considered by the court in deciding the
10 motion. The time for filing the motion may not be extended by the court after it has
11 expired.

12 At the forefront, this Court NOTES that it *did* consider all of the foregoing relevant
13 factors as set forth below. *Logan v. Abe*, 131 Nev. ___, ___, 350 P.3d 1139 (2015) (“[E]xpress
14 findings on each factor are *not* necessary for a district court to properly exercise its discretion.”).
15 *Miller* further holds that attorney’s fees are available to *pro bono* counsel. *Id.*

16 **B. Costs**

17 NRS 18.110(1) states.

18 The party in whose favor judgment is rendered, and who claims costs, must file with the
19 clerk, and serve a copy upon the adverse party, within 5 days after the entry of
20 judgment, or such further time as the court or judge may grant, a memorandum of the
21 items of the costs in the action or proceeding, which memorandum must be verified by
22 the oath of the party, or the party’s attorney or agent, or by the clerk of the party’s
23 attorney, stating that to the best of his or her knowledge and belief the items are correct,
24 and that the costs have been necessarily incurred in the action or proceeding.

25 Pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. ___, 345 P.3d 1049, 1054-55 (2015),
26 actual proof of costs incurred must be submitted.

27 **II. ANALYSIS**

28 **A. Costs**

This Court FINDS that Plaintiff’s request for fees is *timely*, that he has submitted
sufficient proofs, and that the costs have necessarily been incurred on behalf of Plaintiff.
Therefore, the amount of \$1,803.04 is GRANTED.

This Court FINDS that Defendant’s request for costs was *untimely* as it was not filed
within the requisite 5 day period and is therefore DENIED.

B. Attorney’s Fees

1) Legal Basis

Plaintiff’s counsel cites to various legal basis, including potential wrongdoing by

1 Defendant's counsel. This Court will not address any wrongdoing by counsel as it is simply
2 unnecessary. Only 1 legal basis is necessary. This Court FINDS the most pointed legal basis is
3 that, given this Court's Decision and Order, it is clear that Plaintiff was the *prevailing party* on
4 the most significant issues (*i.e.*, issues remanded). Pursuant to *Halbrook v. Halbrook*, 114 Nev.
5 1455, 971 P.2d 1262 (1998) and *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998), this Court can
6 award attorney's fees to the *prevailing party* in appropriate post-judgment motions related to
7 child custody. "[A] court may award attorney fees to the *prevailing party* [only] if the court finds
8 the opposing party's claim was brought or maintained without reasonable grounds." *Mack-*
9 *Manley v. Manley*, 122 Nev. 849, 859-60, 138 P.3d 525 (2006) (*emphasis added*). This Court
10 further FINDS that Defendant did in fact maintain her claim *without reasonable grounds*. The
11 underlying Decision and Order speaks for itself. Defendant surprisingly continued to hoodwink
12 the Supreme Court of Nevada as the remand involved a non-existent 15 year old girl and an
13 automobile incident involving a biased/suspect witness whereby not a scintilla of evidence was
14 produced at the evidentiary hearing. An alternative statutory basis for Plaintiff is NRS
15 125C.250.

16 As for Defendant's request for attorney's fees, this Court FINDS the most pointed legal
17 basis submitted is NRS 125B.140(2)(c)(2).

18 **2) BRUNZELL Factors**

19 Both counsel specifically address the *Brunzell* factors in their respective requests. Rather
20 than unnecessarily reiterate them, they are incorporated by reference as though fully set forth
21 herein. It is further noted that both counsel submitted full unredacted billing statements in
22 support of the fees incurred since the remand. *Love, supra*.

23 **3) Disparity in Income**

24 The parties filed Financial Disclosure Forms. As Plaintiff points out, to date Defendant
25 still refuses to fill out her household expenses. Further, the amount that she has paid her own
26 attorney is continuously/suspiciously left blank. Yet, Defendant seems to conveniently find the
27 funds to continue litigating/investigating this case *ad nauseam*. Therefore, this Court can only
28

1 assume that Defendant's household income is *extraordinary*² as proposed by Plaintiff.

2 Regardless, if this Court imputed minimum wage to Defendant or even assumed that she is
3 unemployed, Defendant's own income is meager. Thus, the assignment of his *pro bono* attorney.
4 This Court made the ultimate determination on the incomes that the parties as submitted.³

5 **4) Affidavit or Other Evidence**

6 Plaintiff's request for both costs and attorney's fees are addressed in an affidavit included
7 in his motion. Defendant's request for attorney's fees was accompanied by a separate Affidavit.

8 **II. CONCLUSION**

9 Given the foregoing, this Court CONCLUDES that *both requests are reasonable*
10 pursuant to the findings, facts and circumstances of this case. Accordingly, Defendant is
11 GRANTED the full requested amount of **\$900.00** in attorney's fees (based on statutory
12 requirement for non-payment of child support) and Plaintiff is GRANTED the full requested
13 amount of \$38,780.00 (*prevailing party*). Plaintiff's total amount including costs granted above
14 would be **\$40,583.04**.⁴ Accordingly, both counsel can submit a judgment in the amount noted in
15 bold. Because the amount is being reduced to judgment (enforceable by any lawful means
16 available), non-payment will not to be grounds for contempt proceedings before this Court.

17 DATED this 21st day of August, 2019.

18 

19
20 District Court Judge
Mathew Harter

21
22 ² See Plaintiff's motion, p. 8, lines 27-30 to p. 9, lines 1-12 (referencing an affidavit from another
23 lawsuit noting Defendant herself is listed as a "managing partner" wherein Defendant's husband claimed
24 to have lost hundreds of millions of dollars).

25 ³ This Court did not use the presumption set forth in EDCR 5.506(g).

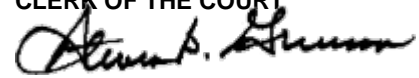
26 ⁴ This amount includes fees of \$1,520.00 for anticipated future filing of a Reply, *etc.*, which was
27 ultimately done. See p. 22 of Plaintiff's motion (Reply filed 07/09/2019). Further, Defendant in her
28 Opposition (p. 4) claims that "[t]he hours billed are not reasonable by any stretch of the imagination"
without any further reasoning. Defendant should review *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825
(2000) (Almost 2 decades ago, the Court found the district court's award of \$19,580.00 in attorney's fees
simply to [1] oppose a motion and [2] to amend an answer was *reasonable*). As noted in the Decision
and Order, this remand affair was spearheaded by Defendant's husband's "catfishing" expedition that
spawned this latest litigation. To reiterate, this Court did *not* believe Defendant had no knowledge as
she claimed. This Court is not finding any other extraneous fault on behalf of Defendant (this award is
not a penalty or sanction), only that Plaintiff was ultimately the *prevailing party*.

EXHIBIT 2

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In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES PICONE

Plaintiff

v.

RENELYN BAUSISTA nka RENELYN SCHRAMM

Defendant

CASE NO. D-14-495928-P
DEPT. NO. N

**NOTICE OF ENTRY OF
AMENDED JUDGMENT**

Take notice that an AMENDED JUDGMENT was filed on September 24,
2019 A copy of said AMENDED JUDGMENT is attached.

/s/ Benjamin B. Childs, Sr.

BENJAMIN B. CHILDS, Sr.
Nevada Bar # 3946
Attorney for Plaintiff

CERTIFICATE OF ELECTRONIC SERVICE

This Notice of Entry of Amended Judgment, with attachment, was served
through the Odessey File and Serve system to all counsel at the time of filing.
Electronic service is in place of service by mailing.

/s/ Benjamin B. Childs, Sr.

BENJAMIN B. CHILDS, Sr. ESQ.
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Heather S. Shuman
CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES PICONE

Plaintiff

v.

RENELYN BAUTISTA nka RENELYN SCHRAMM

Defendant

CASE NO. D-14-495928-P
DEPT. NO. N

AMENDED
JUDGMENT

This Amended Judgment is filed to correct the name of Defendant, which was misspelled in the Judgment filed September 17, 2019.

Judgment is entered in favor of attorney BENJAMIN B. CHILDS against RENELYN BAUTISTA nka RENELYN SCHRAMM for attorney fees in the amount of \$38,780.00 and court costs advanced in the amount of \$1,803.04, for a total judgment amount of \$40,583.04.

The basis for this judgment is set forth in the AMENDED DECISION AND ORDER ON AWARD OF ATTORNEY'S FEES/COSTS filed August 21, 2019 and the DECISION AND ORDER filed June 18, 2019. Plaintiff was the prevailing party. Attorney fees are awarded under NRS 125C.250, set forth below.

NRS 125C.250 - Attorney's fees and costs:

Except as otherwise provided in NRS 125C.0689, in an action to determine legal custody, physical custody or visitation with respect to a child, the court may order reasonable fees of counsel and experts and other costs of the proceeding to be paid in proportions and at times determined by the court.

BBC

This judgment is awarded after a custody trial requested by Defendant without reasonable grounds. BENJAMIN B. CHILDS was the attorney for Plaintiff JAMES PICONE during that proceeding.

This judgment is collectable by any legal means with the unpaid principal amount accruing interest at the legal rate pursuant to NRS 17.130(2).

Dated September 19, 2019


DISTRICT COURT JUDGE

Respectfully drafted and submitted by :


BENJAMIN B. CHILDS, ESQ.
NEVADA BAR # 3946
Attorney for Plaintiff

BBC