

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GRADY BYRD
Appellant,
vs.
CATERINA ANGELA BYRD
Respondent.

No. 80548
Electronically Filed
Feb 25 2020 03:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District 8th Department G
County CLARK Judge RHONDA FORSBERG
District Ct. Case No. D-18-577701-Z

2. Attorney filing this docketing statement:

Attorney DANIEL W. ANDERSON Telephone 702 386-0030
Firm MILLS & ANDERSON
Address 703 S. 8TH STREET
LAS VEGAS, NEVADA 89101

Client(s) GRADY BYRD

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney ANITA A. WEBSTER Telephone (702) 562-2300
Firm WEBSTER & ASSOCIATES
Address 6882 Edna Ave
Las Vegas, NV 89146

Client(s) CATERINA ANGELA BYRD

Attorney JEANNE F. LAMBERTSEN Telephone (702) 562-2300
Firm WEBSTER & ASSOCIATES
Address 6882 Edna Ave
Las Vegas, NV 89146

Client(s) CATERINA ANGELA BYRD

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input checked="" type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>ENFORCEMENT</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

NONE.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

NONE.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an appeal from a post-divorce evidentiary hearing on Respondent's motion for contempt and enforcement of the parties' decree of divorce. The district court found in favor of Respondent after determining that the Decree of Divorce required the Appellant to continue to make support payments to Respondent notwithstanding language in the Decree of Divorce to the contrary.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The district court erred as a matter of law or abused its discretion by: 1. Finding that ambiguities existed in the decree of divorce regarding the alimony waiver and Grady's retired military pay, 2. considering evidence outside the decree to determine its meaning 3. determining that Caterina timely filed a motion for relief under NRCP 60B, 4 by determining that Grady had a fiduciary duty to Caterina, 5. By "setting aside" a portion of Grady's disability benefits as alimony, 6. by ordering "the government" to withhold Grady's disability benefits in order to satisfy arrears owed to Caterina, 7, by making findings of facts regarding "threats" made by Grady to Caterina.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Counsel is unaware of any pending proceedings addressing these issues.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(10). Appellant as no objection to the presumptive assignment.

14. Trial. If this action proceeded to trial, how many days did the trial last? 1/2 day

Was it a bench or jury trial? Bench trial

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 1/23/2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 1/23/2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 2/3/2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from a special order entered after final judgment as the order affects the rights of the parties, growing out of the judgment previously entered. Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (Nev. 2002)

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

GRADY BYRD, Appellant

CATERINA BYRD, Respondent

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondent requested contempt and enforcement of alimony and periodic payments from Appellant's military retirement. Appellant opposed the requests based on the plain language of the decree. The Court found in favor of Appellant on all issues, including attorney's fees.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

GRADY BYRD

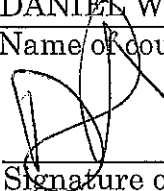
Name of appellant

DANIEL W. ANDERSON

Name of counsel of record

2/24/2020

Date


Signature of counsel of record

CLARK

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 25th day of FEBRUARY, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

JEANNE LAMBERTSON, ESQ

ANITA WEBSTER, ESQ.

Dated this

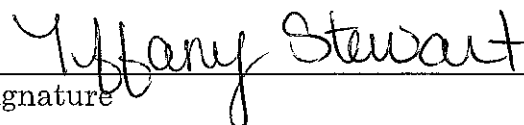
25th

day of

February

, 2020

Signature



ORIGINAL

D-18-577701-Z
DEPT: G

Case No. 14-0006-0219

Department No. 1

FILED

JUN -5 AM 10:56

SUE SEYON
COURT CLERK

Mullie Norton

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

GRADY EDWARD BYRD and
CATERINA ANGELA BYRD,

DECREE OF DIVORCE

Petitioners.

[NRS 125.182]

The verified Petition of GRADY EDWARD BYRD and CATERINA ANGELA BYRD, praying for a Decree of this Court of summary divorce, having been presented to this Court pursuant to Chapter 125 of the Nevada Revised Statutes; CATERINA ANGELA BYRD is now and has been, for more than six weeks preceding the commencement of this action, a bona fide resident of the State of Nevada, having been continually physically present in said State for a period in excess of six weeks prior to the filing of this action, with the intention of making the State of Nevada a home for an indefinite period of time and is a resident of Las Vegas, Nevada; every condition of Section 125.181 of the Nevada Revised Statutes has been met; the parties qualify for divorce because the parties are incompatible in marriage; and the Court being satisfied that the requirements of the law have been met;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That GRADY EDWARD BYRD and CATERINA ANGELA BYRD hereby are granted an absolute Decree of Divorce, forever dissolving the bonds of matrimony now and heretofore existing between them, and restoring each of them to the status of a single, unmarried person.
2. The Wife is not pregnant. There are no minor children or minor adopted children of the marriage.

1 3. The Wife shall receive as her sole and separate property the miscellaneous items of
2 personal property, personal possessions, articles of clothing and jewelry in her possession and the
3 following real and personal property:

4 Real property at 2120 LOOKOUT DRIVE LAS VEGAS NEVADA 89117, \$365,000.00.

5 4. The Husband shall receive as his sole and separate property the miscellaneous items of
6 personal property, personal possessions, articles of clothing and jewelry in his possession and the
7 following real and personal property:

8 The Husband has no assets.

9 5. Husband and Wife mutually agree and acknowledge that each party shall be solely
10 responsible for any and all payments or obligations or debts which may be due and payable and
11 which were incurred by either Husband or Wife after the entry of Decree of Divorce. Regarding any
12 such obligations, payments or debts incurred by either Husband or Wife after the entry of Decree of
13 Divorce Husband and Wife each agree to indemnify and defend the other and hold the other free and
14 harmless from any and all liability or responsibility for payment of the same.

15 6. Husband and Wife mutually agree and acknowledge that each party shall be solely
16 responsible for any and all payments or obligations or debts which may be due and payable and
17 which were incurred by either Husband or Wife prior to the entry of Decree of Divorce.

18 7. The Wife shall pay the following debts:

19 USAA, #130904xxxx, \$347,345.00;

20 I request the following statements be added to the papers:

21 1. Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States Army Retired Pay as long as
22 he lives.

23 2. Caterina A. Byrd is entitled to United States Army Survivor Benefit Plan payments after Grady E.
24 Byrd's death.

25 3. Caterina A. Byrd is entitled to Office of Personnel Management death benefits, United States
26 Retired Military Health Care, Long Term Health Insurance, VYSTAR Credit Union Accidental
27 Death Insurance, and Veteran's Group Life Insurance after Grady E. Byrd's death.

28 4. Grady E. Byrd will continue to pay Caterina A. Byrd 1500 dollars extra a month to assist with her

1 home mortgage. If her financial situation changes or if the home is sold or paid off this payment may
2 cease. This is not an alimony payment and is not required.

3 8. The Husband shall pay the following debts:

4 The Husband has no debts.

5 9. Should either Husband or Wife become aware of any payments or obligations or debts not
6 so contained herein, then said payments or obligations or debts shall be paid by the party that
7 incurred said debt.

8 10. The parties anticipate no income tax problems from their previously filed Federal Income
9 Tax Returns. However, Husband and Wife agree that any Federal income tax obligations for any
10 past tax years, which may arise in the future, shall be paid by the Husband, including any penalty,
11 interest, accounting fees or other professional fees.

12 11. The written Marital Settlement Agreement, attached as Exhibit A to the Joint Petition for
13 Summary Divorce, settling all community property rights, community obligations, spousal support
14 and confirmation of separate property, incorporated by reference, is hereby merged into the
15 Judgment and Decree of Divorce.

16 12. Husband and Wife agree that neither party shall be required to pay spousal support to the
17 other party.

18 13. That CATERINA ANGELA BYRD does not desire or require to have her former name
19 restored to her.

20 14. The division of property and debts as contained in this Decree is fair, just and equitable,

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1 and the provisions are to be binding and conclusive upon the parties for all time.

2 15. Both Husband and Wife waive all rights to written notice of entry of the Decree of
3 Divorce and further waives rights to appeal, obtain a new trial, and to request Findings of Fact and
4 Conclusions of Law.

5 16. The undersigned certify that this document does not contain the social security number of
6 any person.

7 THIS IS A FINAL DECREE.

8 IT IS SO ORDERED this 5th day of June, 2014.

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10 By: 
11 DISTRICT JUDGE
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EXHIBIT A

MARITAL SETTLEMENT AGREEMENT

THIS AGREEMENT is made by and between GRADY EDWARD BYRD, hereinafter referred to as "Husband", and CATERINA ANGELA BYRD, hereinafter referred to as "Wife".

WITNESSETH:

WHEREAS, Husband and Wife were married on September 10, 1983, in Hawaii, and ever since such date, have been and are presently Husband and Wife; and,

WHEREAS, certain irreconcilable differences have arisen between Husband and Wife which have caused the irremediable breakdown of the marriage, as the result of which the parties have decided to separate and hereinafter permanently live apart; and,

WHEREAS, there are no minor children or adopted minor children of the parties' marriage; and,

WHEREAS, the parties wish to incorporate in a single document two (2) severable marital settlement agreements, one concerning the marital and community property rights and obligations of the parties, and another concerning matters of spousal support, all of which are made in consideration of and to be submitted to a Court for approval and to be merged and incorporated in a final Decree of Divorce, if and when the same shall be obtained by the parties, terminating and dissolving their marital relationship.

The purpose of this Marital Settlement Agreement is to make final and complete settlement of all rights and obligations between Husband and Wife, including their respective property rights and their rights and obligations regarding the matters of spousal support.

The present Marital Settlement Agreement sets forth the entire agreement of the parties on the matters it covers and supersedes any previous agreement between the parties and any pendente lite orders which may have been entered in the proceeding. No other agreement, statement, or promise made by or to either party or agent or representative of either party shall be binding on the parties unless it is in writing and signed by both parties or unless contained in an order of a Court of competent jurisdiction.

Both Husband and Wife acknowledge that each has had the opportunity to be represented in the negotiations for and in the preparation of the Marital Settlement Agreement by counsel of their own

1 choice, and that each has had the opportunity to have the agreement read to them and explained to
2 them by counsel of their own choice, and each is fully aware of the contents and legal effect of this
3 agreement.

4 NOW, THEREFORE, in consideration of the mutual covenants and warranties herein contained,
5 it is mutually agreed this agreement shall be submitted to a Court of competent jurisdiction for
6 incorporation and merger in a final Decree of Divorce, and accordingly, the parties agree as follows:

7 **1. SPOUSAL SUPPORT.**

8 Husband and Wife agree that neither party shall be required to pay spousal support to the other
9 party.

10 **2. CHILD CUSTODY, CHILD SUPPORT AND VISITATION.**

11 Both Husband and Wife acknowledge there are no minor children or adopted minor children
12 The Wife is not pregnant.

13 **3. COMMUNITY PROPERTY.**

14 Each party hereby waives any and all rights in and to the miscellaneous personal possessions,
15 clothing and household furnishings and effects as more fully described in this Section. It is further
16 agreed by Husband and Wife that subsequent to their execution of the present Marital Settlement
17 Agreement, any and all property, real, personal or mixed, acquired by either Husband or Wife from
18 whatever source, shall be the sole and separate property of the party so acquiring the same.

19 All property transferred herein is transferred subject to all obligations owing on said property
20 and said obligations shall be born by the person receiving said property, unless otherwise stated in
21 this Agreement. All insurance on the property being transferred hereunder is assigned to the party
22 receiving such property. All insurance premiums from the date hereof shall be paid by the party to
23 whom the insurance is assigned.

24 Husband and Wife hereby acknowledge that their distribution of the community property estate
25 is a substantially equal division of community property and both hereby confirm the property listed
26 hereinafter to the other, as his or her sole and separate property.

27 **A. To Wife, As Her Sole And Separate Property:**

28 The miscellaneous items of personal property, personal possessions, articles of clothing and

1 jewelry in Wife's possession and the miscellaneous items of household furniture, furnishings,
2 appliances and effects and other property as follows:

3 Real property at 2120 LOOKOUT DRIVE LAS VEGAS NEVADA 89117, \$365,000.00.

4 **B. To Husband As His Sole and Separate Property.**

5 The miscellaneous personal property, personal possessions, articles of clothing and jewelry in
6 Husband's possession and the miscellaneous items of household furniture, furnishings, appliances
7 and effects and other property as follows:

8 The Husband has no assets.

9 The personal property, clothing and jewelry currently in the possession of each party shall be
10 deemed to be the possessing party's sole and separate property unless otherwise specified herein.

11 **4. RESPONSIBILITY FOR COMMUNITY OBLIGATIONS.**

12 Husband and Wife mutually agree and acknowledge that each party shall be solely responsible
13 for any and all payments or obligations or debts which may be due and payable and which were
14 incurred by either Husband or Wife after the entry of Decree of Divorce. Regarding any such
15 obligations, payments or debts incurred by either Husband or Wife after the entry of Decree of
16 Divorce, Husband and Wife each agree to indemnify and defend the other and hold the other free
17 and harmless from any and all liability or responsibility for payment of the same.

18 Husband and Wife mutually agree and acknowledge that each party shall be solely responsible
19 for any and all payments or obligations or debts which may be due and payable and which were
20 incurred by either Husband or Wife prior to the entry of Decree of Divorce.

21 The Wife shall pay the following debts:

22 USAA, #130904xxxx, \$347,345.00;

23 I request the following statements be added to the papers:

24 1. Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States Army Retired Pay as long as
25 he lives.

26 2. Caterina A. Byrd is entitled to United States Army Survivor Benefit Plan payments after Grady E.
27 Byrd's death.

28 3. Caterina A. Byrd is entitled to Office of Personnel Management death benefits, United States

1 Retired Military Health Care, Long Term Health Insurance, VYSTAR Credit Union Accidental
2 Death Insurance, and Veteran's Group Life Insurance after Grady E. Byrd's death.

3 4. Grady E. Byrd will continue to pay Caterina A. Byrd 1500 dollars extra a month to assist with her
4 home mortgage. If her financial situation changes or if the home is sold or paid off this payment may
5 cease. This is not an alimony payment and is not required.

6 The Husband shall pay the following debts:

7 The Husband has no debts.

8 Should either Husband or Wife become aware of any payments or obligations or debts not so
9 contained herein, then said payments or obligations or debts shall be paid by the party that incurred
10 said debt.

11 **5. INCOME TAXES AND PRIOR INCOME TAX RETURNS.**

12 The parties anticipate no income tax problems from their previously filed Federal Income Tax
13 Returns. However, Husband and Wife agree that any Federal income tax obligations for any past
14 tax years, which may arise in the future, shall be paid by the Husband, including any penalty,
15 interest, accounting fees or other professional fees.

16 **6. ATTORNEY FEES.**

17 The parties shall each bear the sole responsibility for payment of the parties' respective
18 attorney's fees, court costs and miscellaneous expenses incurred on his or her behalf in connection
19 with the present divorce proceeding.

20 However, should either party fail to perform his or her respective obligations under this Marital
21 Settlement Agreement or the Judgment and Decree of Divorce to be entered, and the other is thereby
22 required to incur attorney's fees, accountant's fees, or other fees or costs, then either party shall be
23 entitled to apply to any Court of competent jurisdiction for such fees and costs against the other
24 party. The same rights apply if either party has breached any warranties or representations set forth
25 in the present Marital Settlement Agreement.

26 **7. COVENANTS AND WARRANTIES.**

27 It hereby is agreed by and between the parties hereto, that each has represented and warranted to
28 the other that there is no item of marital property in existence which has not been mentioned in this

1 agreement, and should any such item of property be discovered in the future and be established to be
2 marital property, it shall be divided equally between the parties. Except as otherwise provided in
3 this agreement, each party releases the other from any and all liabilities, debts and obligations of
4 every kind or character that have been or will be incurred and from any and all claims and demands,
5 including all claims that either party may have upon the other for support and maintenance as
6 Husband and Wife, and it being understood that, by this present agreement, the parties intend to
7 settle all aspects of their marital rights. In addition to the above warranties, Husband and Wife
8 warrant to each other that they have not incurred and covenant that they will not incur, any liability
9 or obligation for which the other party is or may be liable, and they covenant that, if any claim,
10 action or proceeding shall hereafter be brought seeking to hold the other party liable on account of
11 any of their debts, liabilities, acts or omissions, they shall, at their sole expense, defend the other
12 party against any such claim or demand, whether or not well-founded, and they shall hold the other
13 party free and harmless therefrom.

14 The parties agree that any and all property acquired by either from and after the entry of Decree
15 of Divorce, shall be the sole and separate property of the party so acquiring the same; and each party
16 waives any and all property rights in and to such acquisitions of property as the sole and separate
17 property of the one so acquiring it.

18 Each party waives any and all right to do any and all of the following:

19 A. Inherit the estate of the other at his or her death;

20 B. Take property from the other by devise or bequest unless under a Will executed subsequent
21 to the effective date of this Agreement.

22 C. Claim any family allowance or probate homestead; or,

23 D. Act as personal representative upon intestacy of the other's estate (except as the nominee of
24 another personal representative under the Will of the other), unless under a will executed subsequent
25 to the effective date of this Agreement.

26 **8. EXECUTION OF FURTHER DOCUMENTS AND/OR INSTRUMENTS.**

27 Each party shall execute promptly all documents and instruments necessary or convenient to
28 vest titles and estates as provided in this Marital Settlement Agreement to effectuate its purpose and

1 intent. The parties mutually covenant and agree, upon demand, to execute such other or further
2 instruments or documents necessary or convenient to carry out the provisions of this Marital
3 Settlement Agreement. Notwithstanding the failure or refusal of either party to execute any such
4 instrument, this Agreement shall constitute a complete transfer and conveyance of the properties
5 designated as being transferred, conveyed, or assigned by each party. If the parties fail to execute
6 any documents necessary to effectuate the terms of this Agreement, within thirty (30) days after
7 execution of the Agreement, and demand for execution of the document or instrument, upon ex parte
8 application to the District Court, with three (3) days prior notice of application to the other party, the
9 Clerk of the Court shall be appointed to execute such documents. In the event either party shall fail
10 to comply with this provision, he or she agrees to pay the other party all reasonable attorney's fees,
11 Court costs and other expenses reasonably necessary to achieve the result herein provided.
12 However, neither party waives any privilege against nondisclosure of future separate income tax
13 returns.

14 **9. AGREEMENT IS BINDING UPON SUCCESSORS.**

15 This Agreement shall be binding upon and inure to the benefit of both parties and to their heirs,
16 executors, administrators, successors and assigns.

17 **10. CHOICE OF LAW AND FORUM.**

18 This Marital Settlement Agreement and the rights and duties of the parties hereunder, shall be
19 construed and interpreted by and in accordance with the laws of the State of Nevada. Any future
20 litigation under the terms of the present Marital Settlement Agreement shall be governed by the laws
21 of the State of Nevada.

22 **11. MISCELLANEOUS PROVISIONS.**

23 A. Both Husband and Wife acknowledge that they have entered into this Agreement openly
24 and freely, after a full disclosure by each of them and after the opportunity to obtain, seek and have
25 independent consultations with and the advice of counsel.

26 B. If any portion of this Agreement is held illegal, unenforceable, void, or voidable by any
27 Court, each of the remaining terms shall continue in full force as a separate agreement.

28 C. Husband and Wife agree that each shall have the right to live separately from the other

1 without interference or harassment.

2 D. No waiver of the breach of any of the terms or provisions of this agreement shall be a
3 waiver of any preceding or succeeding breach of the agreement or any other provisions of it.

4 E. Both Husband and Wife waive all rights to written notice of entry of the Decree of Divorce
5 and further waives all rights to appeal, obtain a new trial, and to request Findings of Fact and
6 Conclusions of Law.

7 F. The captions of various paragraphs in this agreement are for convenience only and none of
8 them is intended to be any part of the test of this agreement, nor intended to be referred to in
9 construing any of the provisions of the agreement.

10 G. The undersigned certify that this document does not contain the social security number of
11 any person.

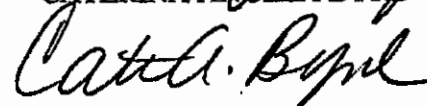
12 IT IS SO AGREED.

13 Dated 14 MAY 2014

By: 
GRADY EDWARD BYRD

15 Dated 4/25/2014

By: 
CATERINA ANGELA BYRD



1 ACKNOWLEDGMENT

2 *Ramona A. R. Phie*
3 STATE OF ARIZONA
4 *City of Maricopa*
5 COUNTY OF

6 On May 15, 2014, personally appeared before me, a notary public,
7 GRADY EDWARD BYRD, who acknowledged to me that he/she executed the foregoing
8 MARITAL SETTLEMENT AGREEMENT, freely and voluntarily and for the uses and purposes
9 therein mentioned.

10 *[Signature]*
11 ATTY. JESUS RAMON M. GUEVENCO
12 COMMISSION NO. 2013-017
13 NOTARY PUBLIC FOR DOMAGUETE CITY
14 NOTARY PUBLIC DECEMBER 31, 2014
15 ROLL No. 57755 ADMITTED: APRIL 29, 2010
16 IBP No. 09226 (LIFETIME)
17 PTR No. 602430A: 01/03/14; DOMAGUETE CITY
18 MCLE COMPLIANCE IV-0020495 5/27/2013

13 ACKNOWLEDGMENT

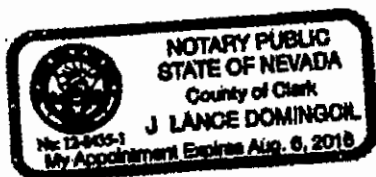
14 STATE OF NEVADA)

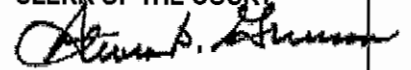
15) ss.

16 COUNTY OF CLARK)

17 On April 25th, 2014, personally appeared before me, a notary public,
18 CATERINA ANGELA BYRD, who acknowledged to me that he/she executed the foregoing
19 MARITAL SETTLEMENT AGREEMENT, freely and voluntarily and for the uses and purposes
20 therein mentioned.

21 *[Signature]*
22 NOTARY PUBLIC





MENF
WEBSTER & ASSOCIATES
ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
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e-mail: jlambertsen@embarqmail.com
Attorney for Plaintiff, Unbundled

DISTRICT COURT

CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff,

v.

GRADY EDWARD BYRD

Defendant

CASE NO.: D-18-577701-Z
DEPT NO.: G

Oral Argument Requested: Yes

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

Notice of Motion and Motion to Enforce the Decree of Divorce, For An Order to Show Cause, To Divide a Newly Discovered Asset, To Execute QDROs, and for Attorney's Fees and Costs

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the 27th day of November,
2018 at the hour of 10:30 a .m., or as soon thereafter as counsel may be heard

1 Plaintiff, CATERINA ANGELA BYRD, by and through her attorneys, ANITA A.
2 WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ., of the law offices of
3 WEBSTER & ASSOCIATES, in an Unbundled Capacity, does hereby move this
4 Honorable Court for an Order Motion to Enforce the Decree of Divorce, For An
5 Order to Show Cause, To Divide a Newly Discovered Asset, To Execute QDROs,
6 and for Attorney's Fees and Costs.
7

8 This Motion is made and based upon the pleadings and papers on file
9 herein, the following Points and Authorities and upon such oral argument as the
10 Court may allow at the time of the hearing.
11

12 Dated: October 5th, 2018.

13 **WEBSTER & ASSOCIATES**

14
15
16
17 By: _____

18 ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
19 JEANNE LAMBERTSEN, ESQ.
Nevada Bar No. 9460
20 6882 Edna Ave.
21 Las Vegas, Nevada 89146
22 Attorneys for Plaintiff, Unbundled

23 **POINTS AND AUTHORITIES**

24 **Background**

25 The parties, Plaintiff Caterina Byrd (hereinafter "Caterina") and Defendant,
26 Grady Byrd (hereinafter "Grady") were married nearly 31 years, and divorced on
27 June 5, 2014. Caterina was a housewife and Grady was a U.S. Army Command
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1 Sargeant Major (E-9). At the time of divorce, the parties' were separated. The last
2 time Caterina saw Grady was in March 2008. Grady resides in the Philippines.
3 Throughout the marriage, Grady always handled any paperwork that had to do
4 with his work, military, employment and finances. The parties moved 16 times by
5 2008. Grady handled everything. He even obtained her military I.D. so that she
6 could shop at the commissary, obtained her health insurance and arranged her
7 doctors. When she had questions about finances or other matters, he always
8 answered "I'll take care of that".
9

10 In 2014, Grady e-mailed Caterina the divorce documents, instructed her to
11 sign them and if she did not sign them, he wouldn't give her a dime. Grady
12 refused to give Caterina his cell phone number, his address, and only allowed her
13 to communicate by e-mail. Fearful of Grady's threats and fearful of being
14 abandoned, she signed the documents. Grady began to deposit \$3,000.00
15 monthly into the parties' joint bank account for Caterina on or about the first of
16 each month until September 2018. Caterina believes \$1,500.00 is for the home
17 mortgage assistance referenced in the decree of divorce. See Decree, pg. 2, In.
18 28. She is unsure what the remaining \$1,500.00 is for. Caterina is unclear about
19 Grady's work history and possible retirement plans. She does not know if the
20 \$1,500 is for a retirement plan. During marriage, Grady retired from the U.S.
21 Army and then went to work for the Department of Defense as a G.S. 14
22 (Government Service).
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26 About July 2016, Caterina went to the U. S. military base to renew her
27 health care identification card. Per the decree, she is to receive "United States
28

1 Retired Military Health Care" that Grady listed as one of her assets. See Decree,
2 pg 2, In 25-26. She informed the staff member that she was divorced. The staff
3 member called TriCare to notify them that Caterina was divorced. Tricare advised
4 that she was not covered, and that she was responsible for the bills since 2014.
5 The staff member informed Caterina that if Grady had notified them about the
6 divorce, she would have been given health care coverage during a transition
7 period to give her time to obtain her own insurance. Caterina was devastated.
8

9 About 2017, Caterina started getting health care bills. She received
10 \$9,254.50 in bills for hospitalization, ambulance and doctor care. She paid
11 \$2,750.50 and has not been able to pay the rest. She had to find and purchase
12 health insurance. This was an unexpected expense. Grady must compensate
13 Caterina for her life-long health insurance coverage that she was promised in the
14 decree. As such, Grady should reimburse Caterina the cost of her health
15 insurance premium. Currently, it is \$71.80 per month and may change annually
16 as health insurance policies change. See Health Plan of Nevada, **Exhibit "1"**.
17

18 Additionally, Caterina was entitled to long-term health insurance. See
19 Decree, pg. 2, In 26. Grady acquired the policy when Caterina was 38 years old.
20 The parties paid on this policy, Federal Long Term Care Insurance Program, for
21 years. Grady is refusing to pay the monthly payment. The payment went up to
22 over \$200 per month. Caterina reduced her benefit/services that she would
23 receive to lower the premium to \$128.01 per month. See Long Term Care
24 Partners, **Exhibit "2"**. However, Caterina cannot afford the \$128.01 per month.
25 Grady should reimburse Caterina \$128.01 per month so that she can continue the
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1 Federal Long Term Care Insurance Program.

2 She e-mailed Grady, trying to get documents verifying her other assets that
3 Grady listed in the decree of divorce. She learned that the VYSTAR credit Union
4 Accidental Death Insurance lapsed for non payment and was terminated. She
5 reached out to the other entities, the U.S. Army and the federal Office of
6 Personnel Management about retirement plans. These entities would not speak
7 to her since she was not the member and the parties were divorced. She e-mailed
8 Grady for help, and he told her to back off, or he would stop depositing money
9 into the joint account.
10

11
12 About August 2018, Caterina received mail addressed to Grady. This
13 puzzled her because about November 2017, Grady asked Caterina if he could
14 use her home address and she said no. He received a letter form the DMV with
15 a Nevada Drivers License, a Findlay Chevrolet "congratulations" on your new
16 2018 Chevrolet Cruze, a letter from First Internet Bank, Visa card and other mail.
17 He was notified by e-mail and letter to please make arrangements to pick up his
18 mail from her attorney's office. No response was received. Around this time,
19 Caterina also received a e-mail from Grady notifying her that he was in Las
20 Vegas, getting medical care at the VA hospital. Caterina grew concerned that
21 Grady's health may be in jeopardy, and that she did not have any documents
22 related to his retirement plan benefits, survivor benefits or life insurance. On
23 August 7, 2018, the undersigned counsel e-mailed Grady asking for documents.
24 See e-mail, **Exhibit "3"**. No response was received. An EDCR 5.501 letter was
25 mailed and faxed to Grady at the Cannery Hotel & Casino where he told Caterina
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he was staying. See 08/13/18 letter, **Exhibit "4"**. Grady had checked-out and the letters were returned.

About August 22, 2018, Caterina received some documents that Grady mailed from the Philippines. The following is a table of the documents and a description of the problems:

Document	Concern	Action needed
August 6, 2018 Federal Employees' Group Life Insurance (FEGLI) coverage. Amount of insurance \$23,750.00	No contact information on the certificate. No assurances that Grady is paying the premium, if any.	Grady needs to provide the policy and confirm payments, if any, or allow Caterina to make payments and reimburse her, if any. Policy needs to confirm Caterina's mailing address and telephone number.
Certificate of Insurance for Veteran's Group Life Insurance Issued 12-21-2000		
August 16, 2018 Beneficiary sheet listing Caterina		On 9/11/18, blank forms were e-mailed to Grady. Exhibit "6" . No response received. E-mail re-sent on 10/09/18. Original signature forms needed.
FEGLI Designation of Beneficiary Forms signed by Grady	FEGLI Beneficiary forms sent to OPM, but were rejected as not "original" signature. Exhibit "5" .	
December 3, 2017 Defense Finance and Accounting Service US Military Retirement Pay account statement	A QDRO (QMCO) was prepared and mailed & e-mailed to Grady 10/8/18 for signature.	Signed QDRO (QMCO) needed.

1 2 3 4 5 6 7	August 20, 2018 internet page from Grady re: Defense Finance and Accounting Service (DFAS) about former spouse survivor benefit coverage	Page states that the decree of divorce was to be submitted within one year of the date of divorce.	Caterina learned that she must submit the decree of divorce to DFAS around the time she received the internet page from Grady. She sent the decree & SBP election to DFAS and they rejected it. Compensation needed.
8 9 10 11	March 5, 2018 e-mail from Grady describing CMFG Life Insurance Company Vystar credit union accidental death insurance	Grady claims that Caterina was to make the payments.	Policy was terminated by Vystar. Decree unclear as to the source of the funds for the payments.

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Caterina wondered if there was a pension or retirement plan with the Department of Defense like the retirement plan Grady has with the U. S. Army. Caterina's e-mail to Grady on August 7, 2017, asked Grady for information about the existence of a retirement plan with the U. S. Department of Defense, (**Exhibit "3"**). She received no response. This asset needs to be explored and divided.

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Further, Grady stopped depositing \$3,000.00 for Caterina in September 2018. On September 4, 2018, he only deposited \$1,000 into their joint savings account and closed the parties' joint checking account. He deposited the balance of \$8.97 from the checking account into the joint savings account. These accounts were opened by Caterina for the parties 31 years ago. So, out of the \$3,000 monthly payment that Grady has provided Caterina since the divorce, he only deposited \$1,008.97. He had threatened her several weeks ago, that there would be trouble with the monthly payment if she insisted on getting documents from him. On September 4, 2018, Caterina e-mailed Grady about closing the

1 checking account, her \$3,000 monthly deposit, and related matters. See Email
2 dated 09/04/18, **Exhibit "7"**. She received no response. Caterina is struggling to
3 make the house payment and pay other bills. She is in financial and emotional
4 distress. He is bullying, controlling, and harassing Caterina and in contempt of
5 court. Caterina is requesting the court's assistance.
6

7 **II.**

8 **POINTS AND AUTHORITIES**

9 **A. GRADY FAILED TO COMPLY WITH THE TERMS OF THE DECREE**
10 **OF DIVORCE REGARDING HIS \$1,500.00 MONTHLY PAYMENT**

11 NRS 22.010 Acts or omissions constituting contempts. The
12 following acts or omissions shall be deemed contempts:

13 1. Disorderly, contemptuous or insolent behavior toward the
14 judge while the judge is holding court, or engaged in judicial duties at
15 chambers, or toward masters or arbitrators while sitting on a reference
16 or arbitration, or other judicial proceeding.

17 2. A breach of the peace, boisterous conduct or violent
18 disturbance in the presence of the court, or in its immediate vicinity,
19 tending to interrupt the due course of the trial or other judicial
20 proceeding.

21 3. Disobedience or resistance to any lawful writ, order, rule or
22 process issued by the court or judge at chambers.

23 4. Disobedience of a subpoena duly served, or refusing to be
24 sworn or answer as a witness.

25 5. Rescuing any person or property in the custody of an officer
26 by virtue of an order or process of such court or judge at chambers.

27 6. Disobedience of the order or direction of the court made
28 pending the trial of an action, in speaking to or in the presence of a
juror concerning an action in which the juror has been impaneled to
determine, or in any manner approaching or interfering with such juror
with the intent to influence the verdict.

7. Abusing the process or proceedings of the court or falsely

1 pretending to act under the authority of an order or process of the
2 court.

3 NRS 22.100 Penalty for contempt.

4 1. Upon the answer and evidence taken, the court or judge or
5 jury, as the case may be, shall determine whether the person
6 proceeded against is guilty of the contempt charged.

7 2. Except as otherwise provided in NRS 22.110, if a person is
8 found guilty of contempt, a fine may be imposed on the person **not**
9 **exceeding \$500 or the person may be imprisoned not exceeding**
10 **25 days, or both.**

11 3. In addition to the penalties provided in subsection 2, if a
12 person is found guilty of contempt pursuant to subsection 3 of NRS
13 22.010, **the court may require the person to pay to the party**
14 **seeking to enforce the writ, order, rule or process the reasonable**
15 **expenses, including, without limitation, attorney's fees, incurred**
16 **by the party as a result of the contempt.**

17 (Emphasis Added).

18 Per the Decree of Divorce, page 2, line 28:

19 **Grady E. Byrd will continue to pay Caterina A. Byrd 1500**
20 **dollars extra a month to assist with her home mortgage. If her**
21 **financial situation changes or if the home is sold or paid off**
22 **this payment may cease. This is not an alimony payment and is**
23 **not required.**

24 Grady unilaterally ceased paying Caterina \$3,000 per month, a portion of
25 which was the \$1,500.00 assistance with her home mortgage. This \$1,500.00 is
26 truly spousal support despite Grady's attempt to characterize it otherwise. In
27 September 2018, he only paid her \$1,000.00. Grady must pay Caterina \$500 for
28 September 2018, and \$1,500.00 for each month thereafter. Caterina's financial
situation has worsened by Grady withholding the \$3,000 per month he was paying
her. It is further requested that Grady be found in contempt, sanctioned \$500.00
for each month that he fails to pay Caterina \$1,500.00, and that Caterina be

1 awarded attorney's fees.

2 **B GRADY REFUSES TO COOPERATE AND PROVIDE PROOF THAT**
3 **HE IS COMPLYING WITH THE DECREE OF DIVORCE.**

4 **Grady Refuses to Prove that He Has Provided Caterina 50% of his U.S. Army**
5 **retirement pay**

6 Per the Decree of Divorce, page 2, line 21-22:

7 **Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United**
8 **States Army Retired Pay as long as he lives.**

9 Grady should be found in contempt of court for failing to provide Caterina
10 50% of his U.S. Army Retired pay. He failed to provide her proof of the total
11 amount that he receives in retired pay and demonstrate that he is providing her
12 50%. Possibly, of the \$3,000.00 that he provided Caterina (until September 1,
13 2018), \$1,500.00 was for Caterina's community interest in his U. S. Army retired
14 pay. Caterina has no idea if \$1,500.00 is actually 50% of his U.S. Army retired
15 pay since Grady has never provided her proof. Caterina should be awarded
16 attorney's fees necessitated by these proceedings.
17

18 **Grady Refuses to Sign the QDRO (QMCO)**
19

20 Per the Decree of Divorce, page 2, line 21-22:

21 **Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United**
22 **States Army Retired Pay as long as he lives.**

23 Caterina does not trust Grady. He has been secretive, controlling and he has
24 not provided Caterina proof of his U.S. Army retirement income. She should not
25 be forced to accept Grady's word that \$1,500.00 is her community portion of his
26 U. S. Army retirement plan. Caterina should receive her payment directly from
27 DFAS instead of being forced to rely on Grady. It is respectfully requested that
28

1 Grady immediately sign the U.S. Army QDRO (QMCO) or that the QDRO (QMCO)
2 be signed without his signature.

3 **Grady Should Compensate Caterina For the U. S. Army Lost Survivor Benefit**

4 Per the Decree of Divorce, page 2, line 23-24:

5 **Caterina A. Byrd is entitled to United States Army Survivor**
6 **Benefit Plan payments after Grady E. Byrd's death.**

7 At no time did Grady tell Caterina that she would lose the Survivor Benefit
8 if the decree of divorce was not sent to DFAS within one year of the date of
9 divorce. The last time she saw Grady was March 2008. He e-mailed her the
10 divorce forms and told her to sign them "or else", he did not give her his phone
11 number or address, and it was Grady who was the participating military member
12 who was in contact with DFAS, not Caterina. He kept her in the dark. It is
13 respectfully requested that Grady immediately obtain a life insurance plan and pay
14 for said plan, for a dollar amount that would cover the dollar amount of the
15 Survivor Benefit he caused Caterina to lose. Caterina does not know the exact
16 dollar amount that the life insurance should be. One form Grady gave Caterina in
17 August 2018 suggests that she would have received \$1,805.58 per month. See
18 DFAS Retiree Account Statement dated 12.03/17, **Exhibit "8"**. Grady should be
19 ordered to confirm this dollar amount, and Caterina needs to speak to an
20 accountant or other financial advisor about calculating the total dollar amount that
21 she would have received based on her life expectancy.

22 Grady may also have the ability to contact the DFAS and see if he can get
23 the Survivor Benefit Plan reinstated for Caterina.

24 ///

1 **Grady Refuses to Sign and Return Original FEGLI Forms**

2 Per the Decree of Divorce, page 2, line 25:

3 **Caterina A. Byrd is entitled to Office of Personnel Management**
4 **death benefits,**

5 About August 22, 2018, Grady sent copies of FEGLI beneficiary designation
6 forms. Caterina mailed them to the Office of Personnel Management. They were
7 rejected and returned because it was not the "original" signature of Grady. On
8 September 11, 2018, blank forms were e-mailed to Grady along with a letter
9 asking for his original signature. See Exhibit "6". No response received. The
10 e-mail was re-sent on October 9, 2018 regarding the need for original signature
11 forms needed. It is respectfully requested that Grady immediately sign the FEGLI
12 Beneficiary forms. The Federal Government will not accept the State of Nevada
13 Clerk of the Court's signature. This may require an order of the court. Caterina is
14 fearful that she may lose this benefit, just like Grady caused her to lose her
15 Survivor Benefit Plan with DFAS.

16 **C. GRADY MAY HAVE A UNDISCLOSED RETIREMENT PLAN OR**
17 **OTHER BENEFIT FROM WORKING FOR THE U.S.**
18 **DEPARTMENT OF DEFENSE**

19 NRS 125.150(3) states in pertinent part:

20
21 3. A party may file a postjudgment motion in any action
22 for divorce, annulment or separate maintenance to obtain
23 adjudication of any community property or liability omitted
24 from the decree or judgment as the result of fraud or
25 mistake. A motion pursuant to this subsection must be
26 filed within 3 years after the discovery by the aggrieved
27 party of the facts constituting the fraud or mistake. The
28 court has continuing jurisdiction to hear such a motion and
shall equally divide the omitted community property or
liability between the parties unless the court finds that:

1 (a) The community property or liability was included in
2 a prior equal disposition of the community property of the
3 parties or in an unequal disposition of the community
4 property of the parties which was made pursuant to written
findings of a compelling reason for making that unequal
disposition; or

5 (b) The court determines a compelling reason in the
6 interests of justice to make an unequal disposition of the
7 community property or liability and sets forth in writing the
reasons for making the unequal disposition.

8 If a motion pursuant to this subsection results in a
9 judgment dividing a defined benefit pension plan, the
10 judgment may not be enforced against an installment
11 payment made by the plan more than 6 years after the
installment payment.

12 Caterina discovered the potential for a undivided retirement plan about
13 August 2018, when Grady sent Caterina his Designation of Beneficiary form to
14 forward to the Federal Employees' Group Life Insurance (FEGLI) program. As
15 stated in the above Table on page 5, the FEGLI Beneficiary forms were sent for
16 processing, but were rejected as not "original" signature. On September 11, 2018,
17 blank forms were e-mailed to Grady for signature and return of the originals. No
18 response was received. On October 9, 2018, the e-mail was sent again. No
19 response was received.
20

21 Caterina began to wonder if Grady has a pension or other retainment
22 benefit from his work with the Department of Defense. The e-mail to Grady dated
23 August 7, 2018, asking about the existence of such a retirement plan went
24 unanswered. A "Google" search for the Department of Defense suggests that
25 federal civilian employees may have retirement plans called Federal Employees
26 Retirement System (FERS). See internet search FERS Information, **Exhibit "9"**.
27
28

1 Grady needs to provide Caterina information on this retirement plan so that her
2 community interest and survivor benefits can be awarded to her in a QDRO (or
3 other appropriate order).

4
5 Caterina's instant motion is within the statutory requirement of 3 years after
6 the "discovery by the aggrieved party of the facts constituting the fraud or
7 mistake." Grady should be ordered to provide all documents related to any
8 retirement plan, pension or other benefit received from his employment with the
9 Department of Defense. Caterina's community interest and survivor benefits
10 should be awarded to her from the date of the parties divorce on June 5, 2014.
11

12 **D. CATERINA IS ENTITLED TO AN AWARD ATTORNEY'S FEES**

13 Caterina and her counsel have tried repeatedly to resolve the issues
14 referenced herein without the assistance of the court, but to no avail. Grady's
15 secrecy and failure to cooperate has caused Caterina to incur attorney's fees.
16

17 **NRS 125.040:**

18 1. In any suit for divorce the court may, in its discretion, upon application by
19 either party and notice to the other party, require either party to pay moneys
20 necessary to assist the other party in accomplishing one or more of the
21 following:

- 22 (a) To provide temporary maintenance for the other party;
23 (b) To provide temporary support for children of the parties; or
24 (c) To enable the other party to carry on or defend such suit.

25 2. The court may make any order affecting property of the parties, or either
26 of them, which it may deem necessary or desirable to accomplish the
27 purposes of this section. Such orders shall be made by the court only after
28 taking into consideration the financial situation of each of the parties.

25 **NRS 18.010(2):**

- 26 (a) When the prevailing party has not recovered more than \$20,000; or
27 (b) Without regard to the recovery sought, when the court finds that the
28 claim, counterclaim, cross-claim or third-party complaint or defense of the
opposing party was brought or maintained without reasonable ground or to

1 harass the prevailing party. The court shall liberally construe the provisions
2 of this paragraph in favor of awarding attorney's fees in all appropriate
3 situations. It is the intent of the Legislature that the court award attorney's
4 fees pursuant to this paragraph and impose sanctions pursuant to Rule 11
5 of the Nevada Rules of Civil Procedure in all appropriate situations to punish
6 for and deter frivolous or vexatious claims and defenses because such
claims and defenses overburden limited judicial resources, hinder the timely
resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

7 NRS 7.085 Payment of additional costs, expenses and attorney's fees by
8 attorney who files, maintains or defends certain civil actions or extends civil
actions in certain circumstances.

9 1. If a court finds that an attorney has:

10 (a) Filed, maintained or defended a civil action or proceeding in any court in
11 this State and such action or defense is not well-grounded in fact or is not
warranted by existing law or by an argument for changing the existing law
that is made in good faith; or

12 (b) Unreasonably and vexatiously extended a civil action or proceeding
13 before any court in this State, the court shall require the attorney personally
to pay the additional costs, expenses and attorney's fees reasonably
incurred because of such conduct.

14 2. The court shall liberally construe the provisions of this section in favor of
15 awarding costs, expenses and attorney's fees in all appropriate situations.
16 It is the intent of the Legislature that the court award costs, expenses and
17 attorney's fees pursuant to this section and impose sanctions pursuant to
Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations
to punish for and deter frivolous or vexatious claims and defenses because
such claims and defenses overburden limited judicial resources, hinder the
timely resolution of meritorious claims and increase the costs of engaging
in business and providing professional services to the public.

18
19
20 Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). Equal
21 footing so don't have to liquidate savings. The Nevada Supreme Court held that
22 the district court did not abuse its discretion in awarding approximately \$50,000.00
23 in attorney fees to the wife in a divorce proceeding. The Court noted that without
24 the district court's assistance, the wife would have been required to liquidate her
25 savings and jeopardize her financial future in order to meet her adversary in court
26 on an equal basis.
27
28

1 In Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016) the
2 Appellate Court held that: Pursuant to NRS 125.040 the court can award
3 attorney's fees from the start of the action through the appeal.

4
5 Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998). Disparity in income
6 is a factor to be considered in awarding attorney fees.

7 Hornwood v. Smith Food King, attorney fees to prevailing party if succeed
8 on a significant number of issues. This court has held that "[a] plaintiff may be
9 considered the prevailing party for attorney's fee purposes if it succeeds on any
10 significant issue in litigation which achieves some of the benefit is sought in
11 bringing the suit." Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d
12 1284 (1989) (quoting Women's Federal S & L Ass'n. v. Nevada Nat. Bank, 623
13 F.Supp. 469, 470 (D.Nev.1985).

14
15 Awards of attorney fees are within the sound discretion of the Court. See
16 Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher, 89 Nev.
17 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev. 530, 532,
18 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev. 1455, 971 P.2d
19 1262 (1998) .

20
21 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
22 Court should take into consideration the following factors when determining an
23 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
24 been practicing law for 32 years and Ms. Lambertsen has been practicing law for
25 13 years; the law firm's practice is dedicated to family law. (2) The character and
26 difficulty of the work performed: The intricacy, importance, time and skill required
27
28

1 to prepare this Motion is moderate. (3) The work actually performed by the
2 attorneys and legal assistants: Approximately 10 hours were spent by counsel and
3 legal assistants in fees (4) The result obtained is unknown but the Motion
4 demonstrates Grady's lack of cooperation and continuing control of Caterina.
5

6 CONCLUSION

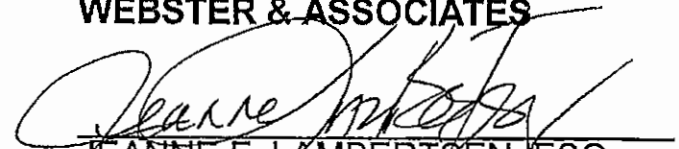
7 Caterina is seeking the following relief:

- 8 1. That Grady be found in Contempt for Failing to pay Caterina \$1,500 in
9 assistance since September 1, 2018; that Grady be subject to sanctions of
10 \$500 per event, and attorney's fees;
11
- 12 2. That Grady be ordered to pay Caterina the assistance arrears;
- 13 3. That Grady immediately execute the U.S. Army QDRO (QMCO) so that
14 Caterina can receive the benefits directly from the U.S.Army (DFAS) and not
15 from Grady;
16
- 17 4. That Grady immediately provide proof of the dollar amount of his U.S. Army
18 Retirement plan payments to determine the dollar amount that Caterina
19 should have been receiving;
- 20 5. That Grady immediately obtain and pay for a life insurance plan in the dollar
21 amount of Caterina's lost survivor benefit plan, and that if he fails to do so
22 that he be found in contempt;
- 23 6. That Grady immediately sign and mail the original signature form for the
24 FEGLI Beneficiary Designation to Caterina's counsel. If he fails to do so,
25 that he be found in contempt;
- 26 7. Grady should reimburse Caterina \$9,254.50 for unpaid health care bills;
27
28

- 1 8. Grady should reimburse Caterina the cost of her health insurance premium
2 which is \$71.80 per month. This dollar amount should be adjusted annually
3 for any insurance cost changes;
4
5 9. Grady should reimburse Caterina \$128.01 for the monthly cost of her
6 Federal Long Term Care Insurance Program;
7 10. That Caterina be awarded her Attorney's fees and costs; and
8 11. For any other relief that is just and equitable under the premises.

9 Dated: October 15th, 2018

WEBSTER & ASSOCIATES


JEANNE F. LAMBERTSEN, ESQ.
Attorneys for Plaintiff
Unbundled Capacity

16 ///

20 ///

24 ///

27 ///

DECLARATION OF CATERINA BYRD

1
2 1. I, Caterina Byrd am the Plaintiff in the above-entitled action.

3 2. I have read the foregoing Motion, and the factual averments contained
4 therein are true and correct to the best of my knowledge, except as to those
5 matters based on information and belief, and as to those matters, I believe them
6 to be true. Those factual averments contained in the preceding are incorporated
7 herein as if set forth in full.
8

9 3. That I had been receiving payments of \$3,000.00 from the Defendant,
10 Grady Byrd since the filing of the decree of divorce on June 5, 2014 and that these
11 payments ceased September 1, 2018.
12

13 4. That on September 4, 2018, I learned that the checking account that
14 Grady Byrd had deposited my monthly payment into was closed. It was a joint
15 checking account that had been established for 31 years.
16

17 5. That on September 4, 2018, he only deposited \$1,000.00 into the joint
18 savings account and transferred about \$8.00 that was remaining in the now closed
19 checking account into the joint savings account.

20 6. That my e-mail to him on September 4, 2018 asking why he closed the
21 joint checking account and if he was going to pay the balance of the money for the
22 month was not answered.
23

24 7. That I have not received any money from Grady since the \$1,000.00
25 September 4, 2018 deposit and I am struggling to pay my bills and living
26 expenses.

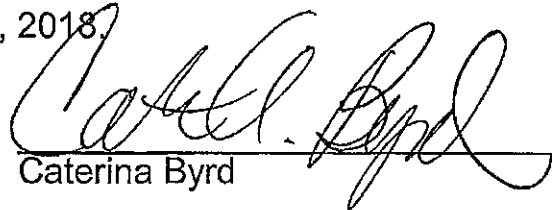
27 8. That I do not know if a retirement plan or retirement benefit exists from
28

1 Grady's work with the Department of Defense. Only about August 2018 did I begin
2 to suspect that something might exist. I have never received any information about
3 a Department of Defense pension, retirement or other plan. The only thing I knew
4 about was a life insurance plan if Grady died and that I am supposed to be the
5 beneficiary. However, I am worried about this life insurance plan because the form
6 that Grady filled out was rejected and he hasn't responded with the correct,
7 original signature, form.
8

9
10 9. Based upon the foregoing, I respectfully request that this Court grant the
11 relief requested by me in this Motion.

12 I declare under penalty of perjury in the State of Nevada that the foregoing
13 is true and correct.

14 Executed this 15 day of October, 2018.

15
16 
17 Caterina Byrd
18
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1
2 **Certificate of Service**

3 Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
4 WEBSTER & ASSOCIATES, and that on this 16th day of October, 2018, I
5 caused the above and foregoing to be served as follows:

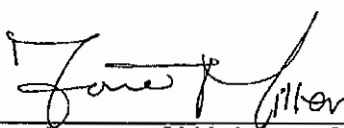
6 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f) NRCP (b)(2)(D) and
7 Administrative Order 14-2 Captioned "In the Administrative Matter of
8 Mandatory Electronic Service in the Eighth Judicial District Court." by
9 mandatory electronic service through the Eighth Judicial District
10 Court's electronic filing system; and

11 [X] by placing the same to be deposited for mailing in the United States
12 Mail, in a sealed envelope upon which first class postage was prepaid
13 in Las Vegas, Nevada;

14 To the Defendant listed below at the address, email address, and/or facsimile
15 number indicated:

16 CSM Grady E. Byrd USA Ret
17 Purok 2 Cangmating
18 Sibulan Negros Oriental
19 Dumaguete Philippines 6201

20 E-mail: cbsmail2006@yahoo.com

21
22
23
24
25
26
27
28

An employee of Webster & Associates

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2300 • Facsimile (702) 562-2303

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff/Petitioner

v.

GRADY EDWARD BYRD

Defendant/Respondent

Case No. D-18-577701-Z

Dept. G

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-

☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:

☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☒ Other Excluded Motion (must specify) No Final Order.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
☒ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.

-OR-

☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

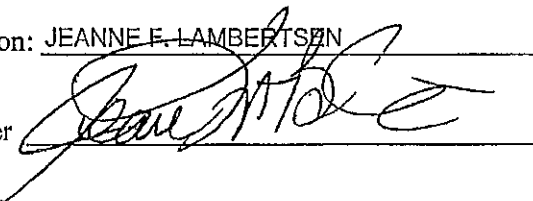
The total filing fee for the motion/opposition I am filing with this form is:

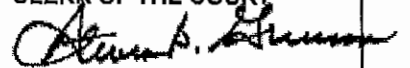
☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: JEANNE E. LAMBERTSEN

Date 10/16/2018

Signature of Party or Preparer





1 **OPPC**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
7 6882 Edna Ave.
8 Las Vegas, Nevada 89146
9 Tel No: (702) 562-2300
10 Fax No: (702) 562-2303
11 e-mail: anitawebster@embarqmail.com
12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, Unbundled

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 CATERINA ANGELA BYRD

17 Plaintiff,

18 v.

19 GRADY EDWARD BYRD

20 Defendant.

21 CASE NO.: D-18-577701-Z
22 DEPT NO.: G

23 Oral Argument Requested: Yes

24 **Plaintiff's Opposition to Defendant's Ex Parte Motion For A Continuance**
25 **of Plaintiff's Motion to Enforce the Decree of Divorce, For An Order to**
26 **Show Cause, to Divide a Newly Discovered Asset, to Execute QDROs,**
27 **and for Attorney's Fees and Costs**

28 **and**

29 **Counter-motion For Attorney Fees and Costs**

30 COMES NOW Plaintiff, CATERINA ANGELA BYRD, by and through her
31 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
32 of the law offices of WEBSTER & ASSOCIATES, in an Unbundled Capacity,
33 does hereby file her *Opposition to the Defendant's Ex Parte Motion For A*
34 *Continuance of Plaintiff's Motion to Enforce the Decree of Divorce, For An Order*
35 *to Show Cause, To Divide a Newly Discovered Asset, To Execute QDROs, and*

1 *for Attorney's Fees and Costs and Countermotion For Attorney Fees and Costs.*

2 This Opposition and Countermotion is made and based upon the pleadings
3 and papers on file herein, the following Points and Authorities and upon such oral
4 argument as the Court may allow at the time of the hearing.

5 Dated: December 19th, 2018.

7 **WEBSTER & ASSOCIATES**

10 By: 

11 ANITA A. WEBSTER, ESQ.

12 Nevada Bar No. 1221

13 JEANNE LAMBERTSEN, ESQ.

14 Nevada Bar No. 9460

15 6882 Edna Ave.

16 Las Vegas, Nevada 89146

17 Attorneys for Plaintiff, Unbundled

18 **POINTS AND AUTHORITIES**

19 **Introduction**

20 After 31 years of marriage, on June 5, 2014, the Decree of Divorce was
21 filed by the Defendant, Grady Byrd (hereinafter "Grady") in Churchill County,
22 Nevada, despite neither party ever living in Churchill County and their last marital
23 residence was Clark County, Nevada.

24 About July 16, 2018 Plaintiff, Caterina Byrd (hereinafter "Caterina"),
25 received an e-mail from Grady notifying her that he was coming to Las Vegas to
26 get medical care at the VA hospital. He told Caterina to add him to her
27 automobile insurance policy so that he could avoid paying \$28.00 per day for
28 rental car insurance. Caterina had two reactions to this email. First, she contacted

1 her automobile insurance agent about Grady's request. On July 24, 2018, she
2 e-mailed Grady that he cannot be added to her insurance because he is not a
3 member of her household. She also asked for his address because he was
4 receiving mail addressed to him at her home. Caterina's second reaction to
5 Grady's e-mail was that she grew concerned that Grady's health may be in
6 jeopardy, and that she did not have any documents related to his retirement plan
7 benefits, survivor benefits or life insurance. Her concern grew worse when Grady
8 informed her on July 24, 2018 that he did not have an address and to just hold
9 his mail until he arrived in Las Vegas. He did not pick up his mail.

10
11
12 On August 7, 2018, the undersigned counsel e-mailed Grady asking for
13 documents. Grady did not respond. Fearing that she may lose the assets
14 awarded to her in the Decree of Divorce, Caterina sought the court's assistance.

15
16 Grady wrongly claims that Caterina had "more than 4 years to prepare for
17 this case." See Grady's Ex Parte Motion, filed December 13, 2018, pg. 2. She
18 first discovered the problems with the Decree of Divorce about August 2018. This
19 was only 2 months before she filed her Motion seeking the court's assistance.

20
21 When Grady failed to agree to stipulate to change the venue to Clark
22 County, Caterina had no choice but to pay fees, file documents, and notify Grady
23 of her request to change the venue to Clark County, Nevada. Her request was
24 granted and an order was issued. Caterina then had to pay filing fees to Clark
25 County Nevada.

26
27 When Grady continued to refuse to cooperate and provide documents
28 supporting the assets that were awarded to Caterina in the Decree of Divorce, on

1 October 16, 2018, Caterina filed her Notice of Motion and Motion to Enforce the
2 Decree of Divorce, for An Order to Show Cause, to Divide a Newly Discovered
3 Asset, to Execute QDROs, and for Attorney's Fees and Costs. The hearing was
4 set for November 27, 2018. Grady was duly served, but never filed a response.
5 Grady wrongfully claims that "I am being given days to respond." See Grady's Ex
6 Parte Motion, filed December 13, 2018, pg. 2. He retaliated against Caterina. On
7 September 1, 2018, Grady cut off the \$1,500 assistance he pays her for the
8 house mortgage and cut off another \$1,500 he pays Caterina, which she believes
9 is part of her interest in his military pension. As a result of the loss of her only
10 income, Caterina is suffering financial hardship. Grady wrongfully claims "I have
11 no doubt I will prevail because I have kept records that will prove my defense."
12 Id. This is false. For example, Grady has no records proving that he paid Caterina
13 \$3,000 per month from September 1, 2018, to the present date. Caterina, on the
14 other hand, filed a Schedule of Arrears on October 29, 2018, and an updated
15 Schedule of Arrears on December 17, 2018. Grady's records will also support
16 Caterina's claims that Grady closed the bank account that he was using to
17 deposit the \$3,000 per month for Caterina.
18

19 **On November 16, 2018, Grady filed his first Request for Continuance.**
20
21 He still did not file his response to Caterina's Motion. At the November 27, 2018,
22 hearing, Caterina objected to Grady's request for a continuance. She is suffering
23 financially. Over Caterina's objection, Grady's request for a continuance was
24 granted. He was ordered to provide documents that he listed in his November 16,
25 2018, response and listed on page 2 of the Decree of Divorce, lines 21 - 28. The
26
27
28

1 hearing was continued until December 18, 2018. On December 3, 2018, the
2 undersigned counsel e-mailed Grady the list of documents that he needs to
3 provide for the December 18, 2018 hearing. On December 7, 2018, Grady asked
4 for an agreement to another continuance. Grady was informed that Caterina is
5 unable to continue the hearing for multiple reasons, including the fact that Grady
6 has had ample notice of Caterina's Motion filed on October 16, 2018, that Grady
7 will be in town anyway on December 18, 2018 as referenced in the document that
8 he filed on November 16, 2018, and that Caterina is suffering financial hardship;
9 borrowing money from friends and family to pay the house mortgage and living
10 expenses because he has not paid her the \$3,000.00 per month since September
11 1, 2018.
12

13
14 Grady claims that "I spent thousands of dollars returning to and residing in
15 Las Vegas to defend against these accusations" See Grady's Ex Parte Motion,
16 filed December 13, 2018, pg. 2. This claim is false. The document that he filed
17 on November 16, 2018 informs the court that he is traveling to Las Vegas "no
18 later than the first week of December 2018" for "follow up appointment 4
19 December 2018 and another medical condition follow up appointment on 19
20 December 2018". The Court specifically chose December 18, 2018 for the return
21 hearing to coincide with Grady's *already existing* trip to Las Vegas. His return to
22 Las Vegas was not motivated or precipitated by this instant proceeding, rather,
23 it was to get his free medical care in the U.S. that he would otherwise pay for in
24 the Philippines. Additionally, Grady has availed himself of the Family Court Self
25 Help Center for which there are no legal fees charged. Further, Grady filed a
26
27
28

1 monthly income. Instead, he uses delay tactics, designed to hurt Caterina by
2 delaying her day in court, by writing letters to the sources of his income asking
3 for his statements. Caterina is suffering financially and needs the Court's
4 assistance.

5
6 **Problems with the Assets Grady gave Caterina in the Divorce Decree**

7 In 2014, Grady e-mailed Caterina the divorce documents, instructed her
8 to sign them and if she did not sign them, he wouldn't give her a dime. If she got
9 a lawyer, he would disappear and said "good luck finding me." He resided in the
10 Philippines. Believing that she had no choice but to comply with Grady, she
11 signed the divorce documents.

12
13 Grady paid Caterina \$3,000 each month until September 1, 2018. On this
14 day, he ceased paying her and closed the bank account that the funds were
15 deposited into. Grady did this in retaliation for Caterina asking Grady to please
16 provide copies of documents supporting each of the assets that he awarded to
17 her in the Decree of Divorce. She asked him for copies of these documents about
18 after July 2018. This was when he notified her that he was coming to town to get
19 medical care at the Veterans Administration Hospital in Las Vegas. Caterina
20 realized that should something happen to Grady, she had no paperwork
21 describing each of the assets that he gave her in the decree.

22
23 The Decree of Divorce includes the following (on page 2, lines 21- 28 and
24 page 3, lines 1-2). Problems arouse with each and every asset Grady listed for
25 Caterina and he must compensate her for each loss:

- 26
27 1. "Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States
28

1 Army Retired Pay as long as he lives." On September 1, 2018, Grady stopped
2 paying Caterina \$1,500.00 (which was never explained to her and she believes
3 is for her interest in his U.S. Army pension, but not sure) and Grady refused to
4 sign the QDRO allowing Caterina to receive her funds directly from Defense
5 Accounting and Finance Service. Since September 1, 2018, Caterina has
6 borrowed money from friends and family to pay her mortgage. She believes that
7 Grady is trying to cause Caterina to lose her house.

9 2. "Caterina A. Byrd is entitled to United States Army Survivor Benefit Plan
10 payments after Grady E. Byrd's death". Grady never sent a copy of the Decree
11 of Divorce to the Defense Accounting and Finance Service. On August 20, 2018,
12 Grady sent Caterina an internet page about the Defense Finance and Accounting
13 Service (DFAS) and about former spouse survivor benefit coverage. Caterina
14 sent the decree of divorce to DFAS and her spouse survivor benefits were
15 rejected since more than a year had passed since the filing of the Decree of
16 Divorce. Grady needs to compensate Caterina through a life insurance plan.

18 3. Caterina A. Byrd is entitled to Office of Personnel Management death
19 benefits, United States Retired Military Health Care, Long Term Health Insurance,
20 VYSTAR Credit Union Accidental Death Insurance, and Veteran's Group Life
21 Insurance after Grady E. Byrd's death. Each of the entitlements is described
22 below and the outcome:
23

24 A. Office of Personnel Management death benefits. The OPM will not
25 communicate with Caterina. As a result, she turned to Grady for copies of the
26 documents verifying that she is receiving the OPM death benefits. Grady refused
27
28

1 to provide Caterina the document(s). Instead, he sent her copies of a form he
2 signed to request the documents. Caterina sent the copied request form to the
3 OPM. It was rejected. The instructions state to send the original signature form.
4 Grady gave Caterina copies. To correct the problem, instead of sending the
5 original signature form to the OPM himself, he once again sent the form to
6 Caterina, who had to send it to the OPM. This was another delay tactic, a means
7 of harassing Caterina, and adding stress and unnecessary expenses to her
8 already destroyed financial condition. Grady has not informed Caterina of the
9 status of the request form. Grady has not provided Caterina copies of the
10 documents verifying that she is receiving the OPM death benefits.

13 B. United States Retired Military Health Care: About July 2016,
14 Caterina went to the military base to renew her health card. She learned that she
15 was no longer eligible, and had to obtain health insurance on her own at her own
16 cost. Currently, it is \$71.80 per month and is subject to annual change.
17 Meanwhile, Caterina started getting health care bills. She received \$9,254.50 in
18 bills for hospitalization, ambulance and doctor care that the U. S. Military refused
19 to cover. She paid \$2,750.50 and has not been able to pay the rest.

21 C. Long Term Health Insurance: The parties paid on this policy,
22 Federal Long Term Care Insurance Program, for years. Grady acquired the policy
23 when Caterina was 38 years old and she is relying on it. However, Grady is
24 refusing to pay the monthly payment. The payment went up to \$200 per month.
25 Caterina cannot afford the \$200 monthly payment so Caterina reduced her
26 benefit/services so that she could lower the premium to \$128.01 per month.
27
28

1 However, Caterina cannot even afford the \$128.01 per month. Grady should
2 reimburse Caterina \$128.01 per month so that she can continue the Federal Long
3 Term Care Insurance Program.

4
5 D. VYSTAR Credit Union Accidental Death Insurance: She learned
6 that the VYSTAR credit Union Accidental Death Insurance lapsed for non
7 payment and was terminated. Grady should provide a comparable insurance.

8 E. Veteran's Group Life Insurance: Federal Employees' Group Life
9 Insurance (FEGLI) coverage. Caterina asked Grady to provide her a copy of the
10 policy, confirm that he is making payments on the policy (if required) and confirm
11 that the policy has Caterina's mailing address and telephone number. Instead of
12 providing this information, Grady sent beneficiary forms to the undersigned
13 counsel who then forwarded them to the Office of Personnel Management. No
14 response has been received, so this issue is not resolved.

15
16 4. Grady E. Byrd will continue to pay Caterina A. Byrd \$1,500 dollars extra
17 a month to assist with her home mortgage. If her financial situation changes or
18 if the home is sold, or paid off, this payment may cease. This is not an alimony
19 payment and is not required. Grady suddenly ceased making this \$1,500 payment
20 to Caterina on September 1, 2018. She has filed Schedule of Arrears listing the
21 amount owed. Caterina has had to borrow money from friends and family to pay
22 the mortgage and fears that Grady is trying to cause her to lose the house. The
23 home is not sold, is not paid off and Caterina's financial situation has been made
24 worse by the loss of these funds. Caterina definitely needs this money.

25
26 **Caterina is suffering emotionally, physically and financially because of**
27
28

1 **Grady**

2 Caterina has trouble sleeping at night and is physically fatigued and anxious
3 because of Grady's refusal to comply with the decree of divorce and refusal to
4 provide her proof of each asset awarded to her in the decree of divorce. Further,
5 Grady is destroying Caterina's financial condition by not providing the \$3,000.00
6 per month that she relies on to live. Additionally, she has to pay for health
7 insurance, pay for unreimbursed health expenses, and pay for long term health
8 care insurance that were not anticipated.
9

10 Grady, on the other hand, receives low cost or free medical care at the
11 Veterans Hospital, bought a new car, opened new credit cards and he remarried.
12 About July 2018, mail started coming to Caterina's house addressed to Grady:
13 DMV with a Nevada Drivers License, a Findlay Chevrolet "congratulations" on
14 your new 2018 Chevrolet Cruze, a letter from First Internet Bank, Visa card, and
15 his new wife's U.S. Military Health Care insurance. Caterina, who was married to
16 Grady for 31 years, does not receive the health care insurance as promised in the
17 Decree, yet his new wife does. Caterina must be compensated for these assets
18 awarded, but not provided.
19
20

21 **Assets Grady Omitted from the Divorce Decree**

22 Grady refuses to respond to Caterina's inquiries about the possibility that
23 a U. S. Department of Defense pension or retirement plan exists. This asset
24 needs to be explored and divided. Grady lists such an asset, Federal Employees
25 Retirement, on the document that he filed on November 16, 2018.
26

27 **Grady has had ample time to respond to Caterina's Motion filed October 16,**
28

1 **2018.**

2 Grady was served Caterina's Motion on October 17, 2018 via U.S. Mail and
3 E-mail. The deadline for his response was Monday, November 5, 2018. He failed
4 to file any response by November 5, 2018.

5
6 Grady claims that he needs time to save enough money to obtain legal
7 representation See pg. 2 of his Ex Parte Motion. His claim is not genuine. He has
8 not filed a Financial Disclosure Form describing his financial status, he lists
9 multiple sources of income on his November 16, 2018 letter to the court, his
10 estimated gross income may be more than \$12,000 per month, Grady has had
11 the benefit of the \$3,000.00 per month since September 1, 2018 that he's
12 deprived Caterina of, Grady receives low cost or free medical care at the
13 Veterans Hospital and other health care providers, Grady bought a new car, and
14 opened new credit cards. About July 2018, mail started coming to Caterina's
15 house addressed to Grady: DMV with a Nevada Drivers License, a Findlay
16 Chevrolet "congratulations" on your new 2018 Chevrolet Cruze, a letter from First
17 Internet Bank, Visa card and mail for his new wife's U.S. Military Health Care
18 insurance arrived too. Caterina has not had the benefit of the assets awarded to
19 her in the decree of divorce such as the health insurance, long term health
20 insurance or the \$3,000 per month Grady was sending her.

21 **COUNTERMOTION**

22
23 Caterina is struggling to make the house payment and pay other bills. She
24 is in financial and emotional distress. Grady is bullying, controlling, and harassing
25 Caterina and in contempt of court for suddenly ceasing to comply with the court
26
27
28

orders since September 1, 2018. He owes Caterina more than \$6,000.00 in support and \$6,000.00 in pension funds. His refusal to pay has forced Caterina to borrow money from friends, take on a roommate, and borrow from family to pay her bills. Grady is putting Caterina at risk of losing her house. She desperately needs the Court's assistance. Grady's second request to continue the Motion hearing should not be granted, or alternatively, the time shortened on the February 5, 2019, hearing. An Ex Parte Application for a Order Shortening Time will be provided. Further, Caterina should be awarded attorney fees and costs.

Caterina is Entitled to An Award Attorney's Fees

Caterina and her counsel have tried repeatedly to resolve the issues referenced herein without the assistance of the court, but to no avail. Grady's secrecy, delays, and failure to cooperate has caused Caterina to incur attorney's fees. Further, Grady is in Contempt of Court for failing to pay Caterina the \$1,500.00 each month in assistance since September 1, 2018, as ordered in the Divorce Decree. He also will not sign the QDRO so that Caterina can receive her portion of the U.S. Army pension, yet Grady is refusing to pay the \$1,500.00 that he had been giving Caterina for what she believes is her interest in his Army pension. Grady is also refusing to communicate directly with the Federal Office of Personnel Management for proof that Caterina is indeed the beneficiary of his death benefits. He is causing delays, harassment and increased attorney fees by making Caterina send the documents to the Federal Office of Personnel Management.

NRS 125.040:

1. In any suit for divorce the court may, in its discretion, upon application

1 by either party and notice to the other party, require either party to pay
2 moneys necessary to assist the other party in accomplishing one or more
3 of the following:

- 4 (a) To provide temporary maintenance for the other party;
5 (b) To provide temporary support for children of the parties; or
6 (c) To enable the other party to carry on or defend such suit.

7 2. The court may make any order affecting property of the parties, or either
8 of them, which it may deem necessary or desirable to accomplish the
9 purposes of this section. Such orders shall be made by the court only after
10 taking into consideration the financial situation of each of the parties.

11 NRS 18.010(2):

- 12 (a) When the prevailing party has not recovered more than \$20,000; or
13 (b) Without regard to the recovery sought, when the court finds that the
14 claim, counterclaim, cross-claim or third-party complaint or defense of the
15 opposing party was brought or maintained without reasonable ground or to
16 harass the prevailing party. The court shall liberally construe the provisions
17 of this paragraph in favor of awarding attorney's fees in all appropriate
18 situations. It is the intent of the Legislature that the court award attorney's
19 fees pursuant to this paragraph and impose sanctions pursuant to Rule 11
20 of the Nevada Rules of Civil Procedure in all appropriate situations to
21 punish for and deter frivolous or vexatious claims and defenses because
22 such claims and defenses overburden limited judicial resources, hinder the
23 timely resolution of meritorious claims and increase the costs of engaging
24 in business and providing professional services to the public.

25 NRS 7.085 Payment of additional costs, expenses and attorney's fees by
26 attorney who files, maintains or defends certain civil actions or extends civil
27 actions in certain circumstances.

28 1. If a court finds that an attorney has:

- (a) Filed, maintained or defended a civil action or proceeding in any court
in this State and such action or defense is not well-grounded in fact or is not
warranted by existing law or by an argument for changing the existing law
that is made in good faith; or
(b) Unreasonably and vexatiously extended a civil action or proceeding
before any court in this State, the court shall require the attorney personally
to pay the additional costs, expenses and attorney's fees reasonably
incurred because of such conduct.

2. The court shall liberally construe the provisions of this section in favor
of awarding costs, expenses and attorney's fees in all appropriate
situations. It is the intent of the Legislature that the court award costs,
expenses and attorney's fees pursuant to this section and impose sanctions
pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all
appropriate situations to punish for and deter frivolous or vexatious claims
and defenses because such claims and defenses overburden limited

1 judicial resources, hinder the timely resolution of meritorious claims and
2 increase the costs of engaging in business and providing professional
3 services to the public.

4 NRS 22.100 Penalty for contempt.

5 1. Upon the answer and evidence taken, the court
6 or judge or jury, as the case may be, shall determine
7 whether the person proceeded against is guilty of the
8 contempt charged.

9 2. Except as otherwise provided in NRS 22.110, if
10 a person is found guilty of contempt, a fine may be
11 imposed on the person not exceeding \$500 or the person
12 may be imprisoned not exceeding 25 days, or both.

13 3. In addition to the penalties provided in
14 subsection 2, if a person is found guilty of contempt
15 pursuant to subsection 3 of NRS 22.010, the court may
16 require the person to pay to the party seeking to enforce
17 the writ, order, rule or process the reasonable expenses,
18 including, without limitation, attorney's fees, incurred by
19 the party as a result of the contempt.

20 Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). Equal
21 footing so don't have to liquidate savings. The Nevada Supreme Court held that
22 the district court did not abuse its discretion in awarding approximately
23 \$50,000.00 in attorney fees to the wife in a divorce proceeding. The Court noted
24 that without the district court's assistance, the wife would have been required to
25 liquidate her savings and jeopardize her financial future in order to meet her
26 adversary in court on an equal basis.

27 In Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016) the
28 Appellate Court held that: Pursuant to NRS 125.040 the court can award
attorney's fees from the start of the action through the appeal.

Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998). Disparity in

1 income is a factor to be considered in awarding attorney fees.

2 Hornwood v. Smith Food King, attorney fees to prevailing party if succeed
3 on a significant number of issues. This court has held that "[a] plaintiff may be
4 considered the prevailing party for attorney's fee purposes if it succeeds on any
5 significant issue in litigation which achieves some of the benefit is sought in
6 bringing the suit." Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d
7 1284 (1989) (quoting Women's Federal S & L Ass'n. v. Nevada Nat. Bank, 623
8 F.Supp. 469, 470 (D.Nev.1985).

9
10 Awards of attorney fees are within the sound discretion of the Court. See
11 Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher, 89 Nev.
12 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev. 530, 532,
13 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev. 1455, 971 P.2d
14 1262 (1998) .

15
16 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
17 Court should take into consideration the following factors when determining an
18 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
19 been practicing law for 32 years and Ms. Lambertsen has been practicing law for
20 13 years; the law firm's practice is dedicated to family law. (2) The character and
21 difficulty of the work performed: The intricacy, importance, time and skill required
22 to prepare this Opposition and Countermotion is moderate. (3) The work actually
23 performed by the attorneys and legal assistants: Approximately 5 hours were
24 spent by counsel and legal assistants in fees (4) The result obtained is unknown
25 but the Opposition and Countermotion demonstrates Grady's lack of cooperation
26
27
28

1 and continuing control of Caterina.

2 **CONCLUSION**

3 Caterina is seeking the following relief:


- 4 1. That Caterina's relief requested in her Motion filed on October 16, 2018, be
5 granted, which includes the following:
- 6 a. Grady be found in Contempt for Failing to pay Caterina \$1,500 in
7 assistance since September 1, 2018; that Grady be subject to
8 sanctions of \$500 per event, and attorney's fees;
 - 9 b. That Grady be ordered to pay Caterina the assistance arrears;
 - 10 c. That Grady immediately execute the U.S. Army QDRO (QMCO) so
11 that Caterina can receive the benefits directly from the U.S. Army
12 (DFAS) and not from Grady;
 - 13 d. That Grady immediately provide proof of the dollar amount of his U.S.
14 Army Retirement plan payments to determine the dollar amount that
15 Caterina should have been receiving;
 - 16 e. That Grady immediately obtain and pay for a life insurance plan in the
17 dollar amount of Caterina's lost U.S. Army retirement survivor benefit
18 plan, and that if he fails to do so, that he be found in contempt;
 - 19 f. That Grady provide proof that Caterina will receive the Office of
20 Personnel Management death benefits;
 - 21 g. Grady should reimburse Caterina \$9,254.50 for unpaid health care
22 bills;
 - 23 h. Grady should reimburse Caterina the cost of her health insurance
24
25
26
27
28

premium which is \$71.80 per month. This dollar amount should be adjusted annually for any insurance cost changes;

- i. Grady should reimburse Caterina \$128.01 for the monthly cost of her Federal Long Term Care Insurance Program;
2. That Caterina be awarded her Attorney's fees and costs; and
3. For any other relief that is just and equitable under the premises.

Dated: December 19th, 2018

WEBSTER & ASSOCIATES


JEANNE F. LAMBERTSEN, ESQ.
Attorney for Plaintiff
Unbundled Capacity

DECLARATION OF CATERINA BYRD

1
2 1. I, Caterina Byrd am the Plaintiff in the above-entitled action.

3
4 2. I have read the foregoing Opposition and Countermotion, and the factual
5 averments contained therein are true and correct to the best of my knowledge,
6 except as to those matters based on information and belief, and as to those
7 matters, I believe them to be true. Those factual averments contained in the
8 preceding are incorporated herein as if set forth in full.

9
10 3. That I had been receiving payments of \$3,000.00 from the Defendant,
11 Grady Byrd since the filing of the Decree of Divorce on June 5, 2014, and that
12 these payments ceased September 1, 2018.

13 4. That on September 4, 2018, I learned that the checking account that
14 Grady Byrd had deposited my monthly payment into was closed. It was a joint
15 checking account that had been established for 31 years.

16
17 5. That on September 4, 2018, Grady deposited \$1,000.00 into the joint
18 savings account and then withdrew the \$1,000.00, and about another \$8.00 that
19 was remaining in the account, then closed the checking account. I never received
20 the \$1,000.00 that Grady deposited into the account. He removed it.

21
22 6. That my e-mail to him on September 4, 2018, asking why he closed the
23 joint checking account and if he was going to pay the money for the month was
24 not answered.

25
26 7. That I have not received any money from Grady since August 2018. I am
27 struggling to pay my bills and living expenses. I have had to borrow money from
28 my friends, family and took in a roommate to help pay expenses. I fear that I may

1 lose my house because paying the mortgage is difficult.

2 8. That I do not know if a retirement plan or retirement benefit exists from
3 Grady's work with the Department of Defense. Only about August 2018, did I
4 begin to suspect that something might exist. I have never received any
5 information about a Department of Defense pension, retirement or other plan. The
6 only thing I knew about was a life insurance plan if Grady died and that I am
7 supposed to be the beneficiary. However, I am worried about this life insurance
8 plan because the form that Grady filled out was rejected and he hasn't responded
9 with the correct, original signature form.
10

11
12 9. Based upon the foregoing, I respectfully request that this Court grant the
13 relief requested by me in this Opposition and Countermotion.

14 I declare under penalty of perjury in the State of Nevada that the foregoing
15 is true and correct.

16 Executed this 19 day of December, 2018.

17
18  12/19/2018
19 Caterina Byrd
20
21
22
23
24
25
26
27
28

1 **Certificate of Service**

2 Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
3 WEBSTER & ASSOCIATES, and that on this 19th day of December, 2018, I
4 caused the above and foregoing to be served as follows:
5

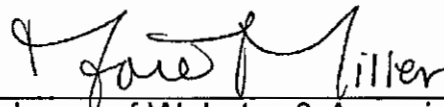
6 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f) NRCP (b)(2)(D) and
7 Administrative Order 14-2 Captioned "In the Administrative Matter of
8 Mandatory Electronic Service in the Eighth Judicial District Court." by
9 mandatory electronic service through the Eighth Judicial District
Court's electronic filing system; and

10 [X] by placing the same to be deposited for mailing in the United States
11 Mail, in a sealed envelope upon which first class postage was prepaid
in Las Vegas, Nevada;

12 To the Defendant listed below at the address, email address, and/or facsimile
13 number indicated:

14 Grady E. Byrd
15 5330 E. Craig Rd.
16 Las Vegas, NV 89115

17 E-mail: cbsmail2006@yahoo.com

18 

19 An employee of Webster & Associates
20
21
22
23
24
25
26
27
28

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2100 • Facsimile (702) 562-2303

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD ☒

Plaintiff/Petitioner

v.

GRADY EDWARD BYRD

Defendant/Respondent

Case No. D-18-577701-Z

Dept. G

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☒ Other Excluded Motion (must specify) No Final Order

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☒ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

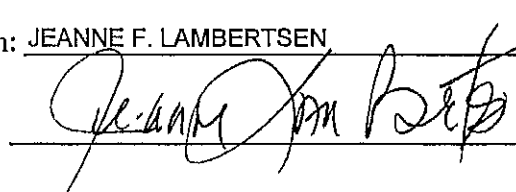
The total filing fee for the motion/opposition I am filing with this form is:

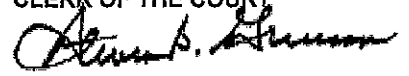
☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: JEANNE F. LAMBERTSEN

Date 12/19/18

Signature of Party or Preparer





RPLY

Name: GRADY EDWARD BYRD

Address: 5330 E. CRAIG RD.

LAS VEGAS NV 89115

Telephone: 7029184712

Email Address: CBSMAIL2008@YAHOO.COM

Self-Represented

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CATERINA ANGELA BYRD

Plaintiff,

VS.

GRADY EDWARD BYRD

Defendant.

CASE NO.: D-18-577701-Z

DEPT: G

DATE OF HEARING: 01/23/2018

TIME OF HEARING: 10:30 am

Oral Argument Requested: ☒ Yes ☐ No

REPLY TO OPPOSITION AND/OR COUNTERMOTION

(Your name) GRADY EDWARD BYRD, in Proper Person, files this Reply to the Opposition and Countermotion filed by the opposing party.

REPLY TO OPPOSITION AND COUNTERMOTION

A. Memorandum of Points and Authorities

I do not agree with the opposing party's Opposition and Countermotion. The legal basis to support my argument is: *(explain any relevant laws and cases that support your argument)*

This Reply is made and based upon the pleadings and papers on file herein, the following Points and Authorities and upon such oral argument as the Court may allow at the time of the hearing.

Dated: December 28, 2018.

REFERENCE: NRS 125.150; NRS 125.165

1 **B. Statement of Facts.**

2
3 I do not agree with Caterina Angela Byrd's (herein after "plaintiff") Opposition and
4 Countermotion. Additional facts that support my arguments are:
5

6 **INTRODUCTION**

7
8 As declared by plaintiff in Notice of Motion, Plaintiff and Defendant have only
9 communicated by email since their separation in early 2008. This is by my design for
10 two reasons. 1. Reference email dated June 14, 2014, my mental health is destroyed
11 when I have contact with plaintiff and 2. I have learned to keep a good record of our
12 interactions. So with that, every allegation, accusation, character defamatory remark,
13 etc. directed at me that is presented in this document from April 2008 until the present
14 must have written evidence proving it or it should be considered false, unverifiable,
15 hyperbole, misrepresentation, distortion, misdirection, disingenuous, or anything but the
16 true depiction of the facts or circumstances.
17

18 I, as the defendant, will provide written evidence on all matters of interest that I bring
19 before the court.
20

21 **REPLY TO POINTS AND AUTHORITIES**

22
23 **REFERENCE INTRODUCTION:**

24

25 1. Page 2. Lines 18-21. MISDIRECTION. No purpose for this statement other than to
26 create the appearance of some type of subterfuge. Divorce was legally filed in the State
27 of Nevada and ordered by the 10th Judicial District Court.

28

29 2. Page 3. Lines 15-19. FALSE STATEMENT. Email from plaintiff (Caterina Angela
30 Byrd) to defendant (Grady Edward Byrd) dated APRIL 18, 2014 lists all federal disability
31 benefits that defendant currently possesses to include the following statement:

32

33 "....and in four years full pension from OPM..."

34

35 **A full accounting of this deceit is provided at No. 51.**

36

37 3. Page 3. Lines 20-25. MISDIRECTION. Plaintiff started this case in an adversarial
38 manner. That plaintiff intended on taking me to court is amateurishly obvious. After I
39 received initial demands from plaintiff and representatives I blocked email
40 communications until I received registered documents.

41

42 4. Page 3. Lines 26-27. FALSE STATEMENT. I provided all of these documents to
43 plaintiff in August 2018. This is acknowledged in Notice of Motion pgs 6-7.

44

45 5. Page 4. Lines 3-4. FALSE STATEMENT. I filed an opposition and request for
46 continuance that was accepted by the court on 16 November 2018.

47

48 6. Page 4. Lines 7. HYPERBOLE. I exercised my rights under Nevada Law to fully
49 comply with an approved Divorce Decree. I do not consider this retaliation.

50

51 7. Page 4. Lines 8-9. MISREPRESENTATION. There is no court ordered mandate for
52 Grady Edward Byrd to pay any funds to plaintiff. Decree page. 3. Line 2. specifically
53 states " This is not an alimony payment and is not required." Decree page 3. No. 12.
54 reinforces this fact when the Court ordered "Husband (DEFENDANT) and Wife
55 (PLAINTIFF) agree that neither party shall be required to pay spousal support to the
56 other party. "Decree also specifies " The wife (PLAINTIFF) shall pay the following
57 debts: USAA\$347,345.00" (HOUSE MORTGAGE)

58

59 Emails dated April 17 and 18, 2014 prove that plaintiff was an active participant in
60 producing the decree. Email dated April 15, 2014 proves that that the defendant was
61 the aggrieved party in this settlement.

62

63 8. Page 4. Lines 9-10. MISDIRECTION. I provided plaintiff a copy of latest Retiree
64 Account Statement in August 2018. Plaintiff included this document as an exhibit in the
65 Notice of Motion. I circled the appropriate amounts of pay so that there could be no
66 misunderstanding. I really do not know how to explain more clearly. If plaintiff had
67 been amicable to negotiations, this document could have been easily explained.

68

69 9. Page 4. Line 22. FALSE STATEMENT. Reference Motion accepted by the Court
70 on 11/16/2018, numbers 2; 5; 7, and 10 clearly show response and opposition to Notice
71 of Motion. Number 8. is a direct response to the allegations in the Notice of Motion.

72
73 The information contained in this reply motion is presented throughout plaintiff's
74 Opposition in numerous instances so the motion submitted on 11/16/2018 is definitely
75 an opposition response.

76
77 10. Page 5. Lines 14-15. MISREPRESENTATION. I had no plans to return to Las
78 Vegas until my 19 December 2018 appointment. Everything was accelerated when I
79 was notified on November 8, 2018 of the 27 November 2018 hearing. Last minute
80 flights, hotel, and living expenses, cost me money I didn't expect to pay. NOTE: On 23
81 December 2018 I paid another one thousand dollars for hotel costs that I did not plan on
82 paying. I scheduled the December 4, 2018 appointment after I was informed of the
83 hearing on 27 November 2018. I reside in the Philippines. I will return there as soon as
84 I can. I will change my address when I leave the U.S.

85
86 REFERENCE OPPOSITION:

87
88 11. Factual Background. MISDIRECTION. I find very little of this information factual. If
89 plaintiff would cease adding unverifiable and just plain false information into the record I
90 believe the case could be resolved much sooner.

92 12. Page 6. Lines 13. MISREPRESENTATION. Plaintiff was much more than "a
93 housewife." She also worked outside the house on salary for approximately 19 years of
94 the approximately 25 years that she lived with defendant. This work included fast food
95 worker, day care worker, multiple department stores salesperson, four different gift
96 shops and six years as a highly successful salon owner. I supported her as a house
97 husband during these times.

98
99 13. Page 6. Line 21. MISDIRECTION. Requesting additional time to prepare for the
100 legal barrage brought by the plaintiff is provided by the State of Nevada and is not
101 considered a "delay". I have made no misrepresentations to the court. I will provide
102 written evidence on all matters of interest that I bring before the court. On the other
103 hand, plaintiff has provided mostly false or unverifiable information to the court and this
104 statement will be verified by the lack of written evidence provided by plaintiff to back up
105 allegations and assertions against me.

106
107 14. Page 6. Lines 24-25. MISDIRECTION. Plaintiff acknowledged that I requested
108 updated dated copies of these documents on December 7, 2018. I will provide the
109 latest copies I possess which may or may not be the most recent versions.

110
111 15. Page 6. Line 26. MISINTERPRETATION. Plaintiff signed joint mortgage
112 application July 2013. This application provided the dollar amount of all assets of
113 defendant. As I have already stated in my first response to plaintiff's Notice of Motion,

114 the sources of my assets, which I listed, and plaintiff has acknowledged so, have not
115 changed.

116

117 16. Page 7. Line. 1. FALSE STATEMENT. Another outrageous statement that is
118 designed to distract from the evidence of record.

119

120 17. Page 7. Lines 8-12. FALSE STATEMENT/HYPERBOLE. I never made such
121 statements. The plaintiff cannot produce any evidence to support these outrageous
122 statements. The factual version of this statement can be found in email dated April 9,
123 2014 where I stated:

124

125 "I'm sending you the papers. You sign or I will hire a lawyer
126 and take you to court."

127

128 18. Page 7. Line 15. FALSE STATEMENT. No evidence to support this outrageously
129 false statement. Hyperbole designed to distract from the facts of the case.

130

131 19. Page 7-8. Lines 27-1. FALSE STATEMENT. I have never failed to comply with
132 this order. My Army retired pay changed in September 2018 and I commenced
133 depositing the new authorized amount in plaintiff's Savings account.

134

135 20. Page 8. Lines 3-4. MISREPRESENTATION. Prior to September 2018 no QDRO
136 was possible due to no entitlement to Army retired pay.

137

138 21. Page 8. Line 8. HYPERBOLE. Outrageously false assertion that is not grounded
139 in reality. I gave plaintiff 100% of my Thrift Savings Plan (approximately \$90,000.00
140 before taxes) for house down payment. I paid the mortgage from purchase date until
141 the commencement of this legal action out of my own funds. Why would I want her to
142 lose a house I paid for?

143

144 22. Page 8. No. 2. MISREPRESENTATION. Divorce Decree does not direct Grady
145 Edward Byrd to be responsible for any actions related to Survivor Benefit Plan after the
146 final order. In actuality Department of Defense procedures are clear on this point.
147 Divorced spouse can submit required documents on her own behalf. I had no
148 knowledge that plaintiff did not follow the rules. This is evidenced by the fact that I
149 continued paying the SBP premium until plaintiff notified Defense Finance and
150 Accounting Service of her error. This had nothing to do with me. I have tried to fix
151 plaintiff's error but to no avail.

152

153 23. Page 8. No. 3. A. FALSE STATEMENT AND MISREPRESENTATION. I sent the
154 original document and one copy plus simple instructions for mailing. Instead of
155 following instructions plaintiff made a file copy and sent off copies instead of original
156 signed document. After the OPM notified me of plaintiff's mistake I completed form
157 again and resent to plaintiff for mailing. I sent to plaintiff for mailing so that she knew I
158 had complied with her orders. I have not received confirmation from OPM that the form
159 was processed. I will provide to plaintiff when I receive.

160

161 24. Page 9. Lines 7-9. **HYPERBOLE.** Another outrageously false assertion based
162 upon plaintiff's misinterpretation of facts. I sent the document to plaintiff to provide
163 evidence that I had complied with her orders, demands, and threats. That is now
164 expressed as an act of harassment, delaying, destroying, etc., etc. Truly outrageous
165 character defamation.

166

167 25. Page 9. B. **MISREPRESENTATION.** Health care was available to plaintiff if she
168 would have followed DOD Instructions. To insinuate that it is somehow my fault that
169 plaintiff didn't follow instructions is directly contradictory to the Decree which did not
170 order me to take any action for plaintiff after the final Order.

171

172 26. Page 9. C. **MISREPRESENTATION.** Plaintiff has paid this premium since our
173 separation. There is no order for me to pay this premium. In compliance with Decree
174 stating Plaintiff is entitled to LTC Insurance I take no action on this policy. Policy will
175 remain in effect as long as premium is paid. This has nothing to do with me.

176

177 27. Page 10. D. **MISREPRESENTATION.** Plaintiff has paid this premium since our
178 separation. There is no order for me to pay this premium. Plaintiff was entitled to
179 AD&D Insurance as long as premium was paid. Plaintiff missed several payments in
180 2015 and ignored the warning letters sent to her home address. The policy was
181 cancelled. This has nothing to do with me.

182

183 28. Page 10. E. MISREPRESENTATION. I sent the Certificate proving Plaintiff as
184 beneficiary of VGLI. I will provide the latest copy I have. Nothing else I can do.

185

186 29. Page 10. 4. Line 19-20. MISREPRESENTATION/HYPERBOLE. In the Notice of
187 Motion, plaintiff described this payment as "truly spousal support". Since this assertion
188 has been removed and not mentioned in this filing, it appears as if we now are all in
189 agreement that no alimony or spousal support is ordered. I am not required to make
190 this payment. The rest of this statement is unsubstantiated hyperbole.

191

192 30. Page 11. Lines 6-7. HYPERBOLE/MISREPRESENTATION. Defendant is in
193 complete compliance with Decree. Evidence of federal disability benefits awarded has
194 been provided.

195

196 **NOTE: This statement does not continue the false narrative that defendant owes**
197 **plaintiff any alimony or spousal support.**

198

199 31. Page 11. Lines 22-23. FALSE STATEMENT. See No 2. and No. 15. of this Reply.
200 These facts will not change regardless of the formatting, arrangement, associated
201 hyperbole, or number of times this same information is presented.

202

203 32. Page 12. Lines 2-5. FALSE STATEMENT. I first received and signed for
204 registered notification of this case on November 8, 2018 at my home in the Philippines.
205 I submitted an opposition motion on November 18, 2018. Due to time differences the

206 Court accepted my filing on November 16, 2018. Though I responded in time, a hearing
207 went forth on November 27, 2018 with no response to my motion.

208

209 While I was recovering from surgery and still in poor health, I was only provided nine
210 days total to arrange flights from the Philippines, hotels, consult and hire an attorney,
211 and prepare for a Judicial District Court hearing. The earliest I could arrange travel and
212 living matters in my medical condition and return to the United States was November
213 29, 2018. I still cannot afford to hire an Attorney.

214

215 The hearing went forth without my presence. The false information that is rampant in
216 this case continued at that hearing where it was entered into the official record
217 reference NOTICE OF ENTRY OF ORDER dated December 17, 2018 and ORDER
218 FROM THE NOVEMBER 27, 2018 HEARING dated December 13, 2018 that:

219

220 Page 1. Lines 23-24. MISREPRESENTATION OF SITUATION. I was still in
221 Philippines at this time and no notice of that fact was recorded.

222

223 Page 2. Lines 2-3. FALSE STATEMENT. I responded to the Motion and also
224 requested a continuance to respond further to the motion. I submitted this Motion on
225 November 18, 2018 and was accepted by the Court on 16 November 2018. The Court
226 hearing went forward without my opposition and requests being heard.

227

228 My Motion was sent to plaintiff on November 18, 2018. Plaintiff has referenced this
229 Motion on multiple occasions in multiple filings. The fact is that I had responded and the
230 information contained in my Motion was withheld from the court by plaintiff.

231

232 33. Page 12. Line 7. FALSE STATEMENT. Another statement from plaintiff that has
233 no basis in fact and no evidence can be presented to support the statement.

234

235 34. Page 12. Line 8. MISREPRESENTATION. This implies that I have failed some
236 legal obligation. As plaintiff noted on page 5. Line 26-27. I am responding to all these
237 legal documents and accusations against me with the help of the 8th Judicial District
238 Court Family Court Self Help Center. Based on my reading of all documents to this
239 point I was not required to submit a Financial Disclosure Form until I submit this Reply.

240

241 35. Page 12. Line 10. FALSE STATEMENT. See No. 15.

242

243 36. Page 12. Lines 20-21. MISREPRESENTATION OF FACTS. Plaintiff is completely
244 responsible for these assets. Nowhere, other than by plaintiff, is it implied, suggested,
245 or ORDERED that defendant is responsible for maintaining these assets.

246

247 37. Page 12. Line 26. HYPERBOLE. Outrageous character defamation that would
248 result in a libel suit in any other setting. These remarks are only presented to distract
249 from the facts of the case which is that the defendant is in complete compliance with

250 Ordered Divorce Decree and that plaintiff has provided demonstrably false information
251 to the Court. All evidence presented by the defendant proves this statement is a fact.

252

253 38. Page 13. Line 1-2. FALSE STATEMENT. As noted by all parties throughout this
254 reply, defendant is in complete compliance with Decree.

255

256 39. Page 13. Lines 3-5. UNSUBSTANTIATED INFORMATION. Information presented
257 to distract from the facts of the case.

258

259 40. Page 13. Lines 6-9. As plaintiff has noted in this filing, defendant is forced to use
260 Self Help and try to learn Nevada Divorce Law and the Rules of the Court.

261 I cannot afford the thousands and thousands of dollars that Las Vegas attorneys require
262 for their services. I will have to rely on the Court's Self Help Center until I have enough
263 money to hire an Attorney.

264

265 If nothing else provides evidence that I should have as much time as possible to
266 respond to plaintiff's Attorneys this information should.

267

268 Reference defendant's CONCLUSION, I disagree that attorney fees should be awarded
269 to plaintiff.

270

271 41. Page 13. Lines 12-13. MISREPRESENTATION. Plaintiff did nothing to avoid a
272 court case. Plaintiff's approach was adversarial and made no attempt to negotiate a

273 settlement. Upon securing legal counsel, plaintiff began producing emails to the
274 defendant solely for the purposes of creating the appearance of existing evidence. Note
275 that none of the listed emails from plaintiff to defendant were between 2008 and June
276 2018.

277

278 Plaintiff then issued an ultimatum that defendant comply with their orders or the legal
279 system and Courts would be used against the defendant. I did commence complying
280 with plaintiff's orders. I was never offered the chance to discuss the issues or explain
281 the circumstances or meaning of documents to plaintiff.

282

283 If plaintiff really wanted to avoid court, its begs the question, Why was a change of
284 venue directed in the first contact between plaintiff and defendant? If negotiation and
285 mediation were on the table this option would not be necessary at first contact.

286

287 Though plaintiff may have been technically in compliance with Court Rules they
288 definitely were not acting in the spirit of the Rule.

289

290 42. Page 13. Lines 13-15. MISREPRESENTATION. Plaintiff has been provided all
291 information they have asked for up to the point of the cancelled December 18, 2018
292 hearing. Their inability to accurately interpret the information is the problem.

293

43. Page 13. Lines 15-17. MISREPRESENTATION. Decree states " This is not alimony and is not required". Plaintiff's repeating their false analysis of this statement is not going to change these Court Orders.

44. Page 14. Lines 17. MISREPRESENTATION. This is an issue that could have been explained if plaintiff had attempted negotiation or mediation. The obvious rush to involve the Court prevented any meaningful discussions. At this time a QDRO is available and I will sign as necessary.

45. Page 13. Line 23. FALSE STATEMENT AND HYPERBOLE. Following Nevada Law and the Rules of the Court are not a form of delay, are not harassment, and may result in increased legal fees if the plaintiff is not accurately interpreting all the information provided.

46. Pages 13-16. MISREPRESENTATION/HYPERBOLE/FALSE STATEMENT. I reject this request for legal fees. Plaintiff has sourced four Nevada Statutes and ten case law decisions in support of the award of legal fees. Fortunately, these are only legal references in the Opposition so my research can be focused towards the basis for awarding legal fees. This is a prime reason I need more time to learn the law. This case would not have been necessary if plaintiff had been willing to cooperate and negotiate in good faith.

47. Pages 16-17. Lines 27-1. HYPERBOLE. This Opposition and Counter-motion demonstrates plaintiff's mischaracterization of the Divorce Decree Order; misinterpretation of the Retire Account Statement, VGLI Certificate, FEGLI forms; plaintiff's adversarial approach and unwillingness to cooperate; the formulation of documents to create the appearance of evidence; the continued advancement of false narratives, and the continued presentation of patently false statements to the Court.

The problem is that plaintiff has misinterpreted basic government and insurance documents; failed to accurately analyze the information presented; completely misunderstood the Divorce Decree Order; continuously presented outrageous libelous accusations designed to distract from facts; and failed to work within the spirit of Court Rules.

Certainly no award of attorney fees are warranted in these circumstances.

48. Page 17. Line 2. 1.:

a. Defendant has strictly adhered to all requirements of the Decree. There is no contempt when all requirements are followed.

b. There is no order for spousal support and no funds to divide under Army Retirement pay so there cannot be any arrears. Since Army Retirement pay was reinstated on October 1, 2018, 50% of the total has been deposited in plaintiff's savings account.

339

340 REFERENCE: NRS 125.165:

341

342 (ALSO DISCLOSED IN OPPOSITION MOTION 18 NOVEMBER 2018)

343

344 I am a disabled combat veteran. All of my financial assets are federal disability benefits
345 awarded for service-connected injuries pursuant to 38 U.S.C. §§ 1101 to 1151:

346

347 - Department Of Veterans Affairs Service-Connected Injury Pension;

348

349 - U.S. Army Combat Related Special Compensation;

350

351 - Social Security Disability Insurance;

352

353 - Department of Defense Federal Employee Disability Pension,

354

355 and all are subject to the provisions of NRS 125.165:

356

357 Federal disability benefits awarded to veteran for service-connected disability:

358 Attachment, levy, seizure, assignment and division prohibited. Unless the action is contrary to a
359 premarital agreement between the parties which is enforceable pursuant to chapter 123A of NRS, in
360 making a disposition of the community property of the parties and any property held in joint tenancy
361 by the parties, and in making an award of alimony, the court shall not:

1. Attach, levy or seize by or under any legal or equitable process either before or after receipt by a veteran, any federal disability benefits awarded to a veteran for a service-connected disability pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

2. Make an assignment or otherwise divide any federal disability benefits awarded to a veteran for a service-connected disability pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

c. I agree to this if plaintiff pays all associated costs and it is still considered necessary after the hearing.

d. Asked for and provided for at least two times this year. An updated RAS will be provided.

e. I reject this claim. Decree does not assign responsibility to defendant to manage plaintiff's affairs. Decree does not order defendant to provide external life insurance benefits to plaintiff.

f. Asked for and answered. Will do so again at hearing.

g. I reject this claim. Decree does not order defendant to pay plaintiff's medical costs.

h. I reject this claim. Decree does not assign responsibility to defendant to manage plaintiff's affairs. Decree does not order defendant to provide external health care benefits to plaintiff.

386 i. I reject this claim. Decree does not assign responsibility to defendant to pay LTC
387 Insurance. Plaintiff has paid this premium since the parties separated in 2008.

388

389 49. Page 18. Line 2. No. 2. I dispute this request. The defendant is in compliance with
390 all requirements of Decree. If plaintiff had worked within the spirit of the Rule of
391 negotiation and not just created documents for an evidence trail this case most probably
392 could have been settled out of court with only minimal costs and attorney fees and a lot
393 less hurt feelings on my part. The introduction of false information into this case
394 requires that plaintiff be responsible for her own costs and fees.

395

396 50. Page 18. Line 2. No. 3. All just and equitable relief should be directed towards the
397 defendant as he has provided evidence for all pertinent matters that he presented to the
398 Court.

399

400 51. Page 20. No. 8. FALSE STATEMENT.

401

402 - Plaintiff's Declaration in part states, 8. "That I do not know if a retirement plan
403 or retirement benefit exists from Grady's work with the Department of Defense. Only
404 about August 2018, did I begin to suspect that something might exist. I have never
405 received any information about a Department of Defense pension, retirement or other
406 plan.

407

408 FOR REFERENCE: STATEMENTS PRESENTED TO THE COURT IN THE NOTICE
409 OF MOTION:

410

411 PAGE 12. LINE 18. "GRADY MAY HAVE A UNDISCLOSED RETIREMENT
412 PLAN OR OTHER BENEFIT FROM WORKING FOR THE U.S. DEPARTMENT
413 OF DEFENSE"

414

415 PAGE 13. LINE 12. "Caterina discovered the potential for a undivided retirement
416 plan about August 2018,.... "

417

418 PAGE 13. LINE 21. "Caterina began to wonder if Grady has a pension or other
419 retainment benefit from his work with the Department of Defense."

420

421 PAGE 14. LINE 4. "Catherina's instant motion is within the statutory
422 requirement of 3 years after the "discovery"")

423

424 - Email from plaintiff (Caterina Angela Byrd) to defendant (Grady Edward Byrd)
425 dated APRIL 18, 2014 listed all federal disability benefits that he currently possesses to
426 include the following statement:

427

428 "you have army ret pay , combat pay, va pay, ss disability pay ,, and in four years
429 full pension from OPM , and social security ."

(THIS INFORMATION FILED WITH DEFENDANT'S OPPOSITION STATEMENT TO
COURT NOVEMBER 16, 2018)

- The USAA Bank Certified Cash Buyer Program prepared for plaintiff and
defendant on July 9, 2013 listed all of these assets as requiring "acceptable
documentation" evidence.

- Uniform Residential Mortgage Application signed and submitted by plaintiff and
defendant shows all federal disability benefits of the defendant were listed by the
plaintiff in her email. The total amount of these disability payments was \$8128.17.

These documents provide evidence that plaintiff knew of the OPM pension more
than four years ago. Plaintiff waited until four years passed to submit Motion to
address defendant's federal disability benefits. This is obviously not a
coincidence and plaintiff's "DECLARATION OF CATERINA BYRD" must be
considered false information submitted to the court.

In addition the provisions of NRS 125.150. 3. must be considered:

NRS 125.150. 3. A party may file a postjudgment motion in any action for divorce, annulment or
separate maintenance to obtain adjudication of any community property or liability omitted from the decree
or judgment as the result of fraud or mistake. A motion pursuant to this subsection must be filed within 3
years after the discovery by the aggrieved party of the facts constituting the fraud or mistake.

The Nevada Tenth Judicial District Court Divorce Decree was ordered June 5, 2014. Plaintiff's Opposition Motion and Counter Motion was filed December 19, 2018. The time period from Ordered Decree to Motion filed is four years, six months, and fourteen days.

(Notice of Motion was filed October 15, 2018. The time period from Decree to Motion filed is four years, four months, and four days.)

This time period exceeds the allowed three years to file a motion in accordance with NRS. 125.150 absence evidence of fraud or mistake.

The plaintiff has not alleged FRAUD. No example of fraud is submitted for the Court's review. There is no mention in the Opposition (or Motion) of Deception, Double-dealing, Subterfuge, Trickery, Cheating, or any other allegation that describes or suggests fraud.

The plaintiff has not alleged MISTAKE. No example of a mistake submitted for the Court's review. There is no mention in the Opposition (or Motion) of misinterpretation, misconstrued, misunderstanding, error, blunder, slip, lapse, or any other allegation that describes or suggests a mistake.

477 CONCLUSION

478
479 I request the following relief:
480

481 1. Based upon the overwhelming evidence of fraudulent statements submitted to the
482 Court by plaintiff, I request that all plaintiff's Motions, Oppositions, Ex-Parte
483 Applications, Schedule of Arrears, Attorney Fees, and any form of relief requested by
484 plaintiff be denied.
485

486 2. Based upon the fact that information was withheld from the Court and a fraudulent
487 entry was entered into the Court record, I request that all plaintiff's Motions,
488 Oppositions, Ex-Parte Applications, Schedule of Arrears, Attorney Fees, and any form
489 of relief requested by plaintiff be denied.
490

491 3. Plaintiff has not met the requirements of NRS. 125.150. 3. I request that all plaintiff's
492 Motions, Oppositions, Ex-Parte Applications, Schedule of Arrears, Attorney Fees, and
493 any form of relief requested by plaintiff be denied.
494

495 4. Plaintiff has not provided any evidence that contradicts the Ordered Decree which
496 specifically states that defendant has no obligation to provide alimony or spousal
497 support. I request that all plaintiff's Motions, Oppositions, Ex-Parte Applications,
498 Schedule of Arrears, Attorney Fees, and any form of relief requested by plaintiff be
499 denied.

500

501 5. Plaintiff has not provided any evidence that the Divorce Decree assigned defendant
502 any responsibility for managing plaintiff's affairs after the Order. I request that all
503 plaintiff's Motions, Oppositions, Ex-Parte Applications, Schedule of Arrears, Attorney
504 Fees, and any form of relief requested by plaintiff be denied.

505

506 6. I request that the hearing on January 23, 2019 be cancelled and the court deny
507 plaintiff's Motions, Oppositions, Ex-Parte Applications, Schedule of Arrears, Attorney
508 Fees, and any form of relief requested by plaintiff.

509

510 7. If this case must continue, defendant should be awarded attorney fees so that he
511 may obtain legal representation to defend himself against the demonstrably false,
512 misleading, and libelous accusations made against him. Also, if the court so recognizes
513 defendant's reply, he requests reimbursement from plaintiff for all expenses related to
514 defending himself against these spurious claims and libelous allegations.

515

516 8. Defendant requests any other relief that is just and equitable under the premises.

517 I respectfully ask the Court to deny the opposing party's countermotion and grant me
518 the relief requested in my motion, including an award of attorney's fees if I am able to
519 retain an attorney for this matter, and any other relief the Court finds appropriate.

520 DATED DECEMBER 28, 2018.

521

Submitted By: 

522

GRADY EDWARD BYRD

DECLARATION IN SUPPORT OF REPLY TO OPPOSITION / COUNTERMOTION

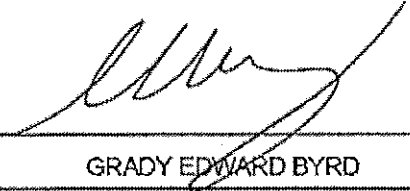
I declare, under penalty of perjury:

1. I have read the foregoing reply to opposition / counter motion, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.
2. Additional facts to support my requests include: *(write anything else that the judge should know to make a decision about your case, or write "N/A" if there is nothing else to add)*
N/A

3. Any Exhibit(s) in support of this filing will be filed separately in an Exhibit Appendix.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED DECEMBER 28, 20 18.

Submitted By: *(your signature)* 

(print your name) _____

GRADY EDWARD BYRD

Steven D. Grierson

1 **NEO**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
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12 e-mail: jlambertsen@embarqmail.com
13 Unbundled Attorney for Plaintiff

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 CATERINA ANGELA BYRD)

17 Plaintiff,)

18 v.)

19 GRADY EDWARD BYRD)

20 Defendant.)

CASE NO.: D-18-577701-Z
DEPT NO.: G

**NOTICE OF ENTRY OF ORDER FROM
THE JANUARY 23, 2019 HEARING**

21 PLEASE TAKE NOTICE that an Order was entered in the above-entitled
22 action on the 5th day of April, 2019, a copy of which is attached.

23 Dated this 5th day of April, 2019.

24 **WEBSTER & ASSOCIATES**

25 *Jeanne F. Lambertsen*
26 JEANNE F. LAMBERTSEN, ESQ.
27 Unbundled Attorney for Plaintiff
28

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2300 • Facsimile (702) 562-2303

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 5th day of April, 2019, I caused the above and foregoing document to be served as follows:

- ☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f) NRCP (b)(2)(D) and Administrative Order 14-2 Captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court." by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☒ [X] by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26 to be sent via facsimile, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

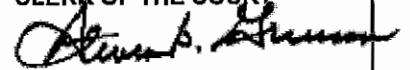
To the attorney(s)/person(s) listed below at the address, email address, and/or facsimile number indicated below:

Grady E. Byrd
5330 E. Craig Rd.
Las Vegas, NV 89115

E-mail: cbsmail2006@yahoo.com

Byron Mills, Esq.
Modonnell@millsnv.com


An employee of Webster & Associates



1 **ORDR**
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13 Attorney for Plaintiff, unbundled

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 CATERINA ANGELA BYRD

17 Plaintiff,

18 v.

19 GRADY EDWARD BYRD

20 Defendant.

21 CASE NO.: D-18-577701-Z
22 DEPT NO.: G

23 **ORDER FROM THE JANUARY 23,**
24 **2019 HEARING**

25 This matter having come before the court on the 23rd day of January 2019,
26 continued from the November 27, 2018 hearing, for Plaintiff's Motion to Enforce
27 the Decree of Divorce, Plaintiff, CATERINA ANGELA BYRD (hereinafter
28 "Plaintiff"), by and through her unbundled attorney, JEANNE F. LAMBERTSEN,
29 ESQ., of the law firm of WEBSTER & ASSOCIATES and Defendant, GRADY
30 EDWARD BYRD (hereinafter "Defendant"), appearing in proper person, the Court
31 having heard the argument of counsel, finds and orders the following:

32 Argument by Attorney Lambertsen regarding Defendant's non-payment of
33 the \$1,500.00 monthly Alimony, which is currently in arrears in the amount of

1 \$7,500.00 from September 1, 2018 through January 2018, and arrearages in the
2 amount of \$7,500.00 for Plaintiff's portion of Defendant's US Army Pension to be
3 paid in the amount of \$1,500.00 monthly from September 1, 2018 through
4 January 2018. Plaintiffs' interest in insurance policies, Military Health care and
5 long-term health care and other accounts or policies awarded to Plaintiff in the
6 Decree that have either been lost or lapsed, or moved to different accounts by
7 Defendant. Further Argument regarding Attorney's Fees and Costs and contempt
8 of Court. Argument in opposition by Defendant.

10 **COURT NOTES** that the Court reviewed the Motions, Oppositions, Replies,
11 Financial Disclosure Forms, and Exhibits, and reviewed the parties' Decree of
12 Divorce. The Court noted and Defendant acknowledged that Defendant's income
13 is around \$116,000.00 per year (VT 10:52:40). Within the Decree of Divorce,
14 there is language that provides for \$1,500.00 per month to be paid to Plaintiff for
15 life that can be changed when her financial condition improves or if the marital
16 house is sold. The Court deems that the \$1,500.00 per month to Plaintiff is and
17 should be deemed alimony. This is supported by Lake v. Bender, 18 Nev. 361,
18 4 Pac. 711, 7 Pac. 74 (1884), and Shydler v. Shydler, 114 Nev. 192, 954 P.2d
19 37 (1998).

22 **COURT FINDS** that Defendant has no right to unilaterally stop the
23 \$1,500.00 per month alimony payments to Plaintiff. Even though Defendant's
24 payment status has changed, Defendant is still responsible in the Decree to pay
25 the Plaintiff.

27 **COURT FURTHER FINDS** that within the Decree there is language that
28

1 provides that Plaintiff is entitled to 50% of Defendant's United States Army
2 Retired Pay as long as Defendant lives, that Plaintiff is entitled to her marital
3 portion of Defendant's United States Army Retired Pay, that Defendant
4 performed and paid \$1,500.00 per month to Plaintiff for her interest in his United
5 States Army Retired Pay, that the Defendant then began taking his United States
6 Army Retired Pay as a tax-exempt disability payment, and that Defendant ceased
7 his \$1,500.00 per month payments to Plaintiff. That the Defendant is now taking
8 his retirement pay as a tax-exempt disability payment does not negate
9 Defendant's obligation to pay Plaintiff the \$1,500.00 per month as and for her
10 marital interest in his United States Army military retirement pay. (VT 11:19:20).
11 Defendant must continue his obligation to pay the Plaintiff \$1,500.00 per month
12 under the Decree of Divorce pursuant to Shelton v. Shelton, 78 P.3d 507, 119
13 Nev. 492 (Nev., 2003).
14
15

16 **COURT FURTHER FINDS** that Plaintiff had an obligation to follow up on
17 some of the health care policies, and other items, therefore it is not necessarily
18 something Defendant is going to be solely responsible for and Parties may need
19 an Evidentiary Hearing.
20

21 Defendant sworn and testified.

22 **IT IS HEREBY ORDERED** that Discovery is open.

23 **IT IS FURTHER ORDERED** that Defendant shall make himself available for
24 a deposition with Plaintiff's attorney.
25

26 **IT IS FURTHER ORDERED** that Defendant shall provide Plaintiff with the
27 Federal Employees Retirement System (FERS) Plan by February 4, 2019 (ten
28

1 days).

2 **IT IS FURTHER ORDERED** that Defendant shall cooperate in any manner
3 needed in order for the insurance company, Prudential Veterans' Group Life
4 Insurance, Federal Employees' Group Life Insurance (FEGLI) to keep Plaintiff
5 informed that the premiums are being paid. Defendant has an ongoing obligation
6 to pay the insurance premiums and keep the policies up to date. Defendant shall
7 be held in contempt of court for failure to do so.

8
9 **IT IS FURTHER ORDERED** that Defendant shall provide copies of
10 statements from the last year (2018) of all accounts to present in which
11 Defendant has received money, including annuity payments, the Federal
12 Employees Retirement system, and all other sources of income that were set up
13 at the time of the divorce (VT 11:07:00). Defendant shall provide documents
14 showing where monies originated from, where and when Annuities were
15 purchased and any other accounts defendant is receiving monies from.

16
17 **IT IS FURTHER ORDERED** that Defendant shall provide copies of any
18 insurance policies and documentation showing payment on those policies,
19 including a copy of the Prudential Veterans Group Life Insurance, Federal
20 Employees' Group Life Insurance (FEGLI) policy, what the monthly payment is,
21 and other insurance policies that the Plaintiff is entitled to under the Decree of
22 Divorce. The plaintiff shall contact the Prudential Veterans' Group Life Insurance,
23 Federal Employees' Group Life Insurance (FEGLI) coverage and find out what
24 they require for the Plaintiff to communicate directly with Prudential Veterans'
25 Group Life Insurance, Federal Employees' Group Life Insurance (FEGLI) to make
26
27
28

1 sure that the Defendant is paying the monthly premium, if they require a consent
2 or release by the Defendant, he is to sign the consent or release. If Defendant
3 refuses to sign the consent or release, or if Defendant fails to pay the premium
4 on the Prudential Veterans Group Life Insurance, Federal Employees' Group Life
5 Insurance (FEGLI), then Defendant can be held in contempt and the Clerk of the
6 Court can sign the consent or release on his behalf. (VT 10:58:30) Defendant
7 shall provide information regarding any undisclosed accounts accrued before the
8 divorce.
9

10 **IT IS FURTHER ORDERED** that Defendant shall provide proper
11 documentation of any other income including federal retirement plans and any
12 other plans defendant had set up at the time of the divorce. Defendant shall be
13 held in contempt of court if he does not provide appropriate documentation as
14 requested by the court and shall be placed in custody.
15

16 **IT IS FURTHER ORDERED** that Office of Personal Management Death
17 Benefit for the Plaintiff as listed in the Decree of Divorce shall continue to be kept
18 intact by the Defendant. (VT 10:59:45).
19

20 **IT IS FURTHER ORDERED** that Defendant's obligations to Plaintiff in the
21 decree of divorce shall stand. Defendant shall pay Plaintiff \$1,500.00 per month
22 as Plaintiff's share of the Defendant's United States Army military retirement
23 benefit, and \$1,500.00 per month in spousal support payments.
24

25 **IT IS FURTHER ORDERED** that attorney fees in the amount \$7,000.00
26 shall be paid from Defendant to Plaintiff as described below. Attorney fees are
27 awarded pursuant to Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998),
28

1 wherein disparity in income is a factor to be considered in awarding attorney fees.
2 Hornwood v. Smith Food King, 105 Nev. 188, 192, 772 P.2d 1284 (1989)
3 awarding attorney fees to the prevailing party if they succeed on a significant
4 number of issues. Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d
5 1284 (1989) (quoting Women's Federal S & L Ass'n. v. Nevada Nat. Bank, 623
6 F.Supp. 469, 470 (D.Nev.1985). Awards of attorney fees are within the sound
7 discretion of the Court. See Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998),
8 Fletcher v. Fletcher, 89 Nev. 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v.
9 Leeming, 87 Nev. 530, 532, 490 P.2d 342, 343 (1971), and Halbrook v.
10 Halbrook, 114, Nev. 1455, 971 P.2d 1262 (1998).

13 That the Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), factors
14 were considered; (1) The qualities of Plaintiff's counsel, Ms. Lambertsen has
15 been practicing for over 13 years (2) The character and difficulty of the work
16 performed was moderate to extensive and included Plaintiff's papers and
17 pleadings to change venue from Churchill County to Clark County Nevada,
18 Plaintiff's Motion to Enforce the Decree of Divorce, Schedule of Arrearages,
19 Reply and Opposition, Reply, Financial Disclosure Form, Exhibit Index,
20 attendance at the November 27, 2018 hearing, preparation of the Order from the
21 November 27, 2018 hearing and this instant hearing January 23, 2019; (3) The
22 work actually performed by the attorney as described herein and (4) The result
23 obtained is in favor of the Plaintiff.

26 **IT IS FURTHER ORDERED** that Defendant's arrears and attorneys' fees
27 shall be reduced to judgment: arrearages in spousal support of \$7,500.00 from
28

1 September 2018 through January 2019; arrearages in Plaintiff's half of
2 Defendant's United States Army military retirement benefits of \$7,500.00 from
3 September 2018 through January 2019, and Attorneys' fees in the amount of
4 \$7,000.00, for a total of \$22,000.00 reduced to judgment.
5

6 **IT IS FURTHER ORDERED** that effective February 15, 2019, Defendant
7 shall pay Plaintiff \$4,500.00 per month and \$4,500.00 thereafter each month on
8 the 15th of each month until Defendant has the \$22,000.00 in arrears paid in full.
9 The \$4,500.00 is the sum of Defendant's \$3,000.00 per month obligation to the
10 Plaintiff plus \$1,500.00 toward the arrears. (VT 11:11:50). Once the \$22,000.00
11 is paid, Defendant's monthly payment to the Plaintiff goes back down to
12 \$3,000.00 per month unless further order from the court. Defendant shall deposit
13 the \$4,500.00 into Plaintiff's Bank of America account such that the \$4,500.00 is
14 to be in the Plaintiff's bank account by the 15th of each month. (VT 11:15:20).
15 The Plaintiff's bank account was placed on the record. The plaintiff also provided
16 the Defendant a voided check in open court to set up automatic deposits.
17

18
19 **IT IS FURTHER ORDERED** that Defendant shall be held in contempt of
20 court if he does not pay Plaintiff the \$4,500.00 per month and catch up on the
21 payments due to the Plaintiff. The Defendant's \$3,000.00 monthly obligation to
22 the Plaintiff for spousal support (\$1,500.00) and her interest in his United States
23 Army Military retirement pay (\$1,500.00) shall continue to accrue as the
24 \$4,500.00 monthly payments are being made as described above.
25

26 **IT IS FURTHER ORDERED** that contempt of court shall be deferred. If
27 Defendant fails to pay Plaintiff or if he fails to catch up the arrearages or pay
28

1 attorney's fees, Plaintiff's Motion for Contempt of court may be renewed.

2 **IT IS FURTHER ORDERED** that Defendant shall not miss one (1) more
3 payment to Plaintiff. Should Defendant miss a payment and the Court finds
4 Defendant is in Contempt, the Court will incarcerate Defendant. A no-bail arrest
5 warrant will be issued if necessary. (VT 11:20:00).
6

7 **IT IS FURTHER ORDERED** that Plaintiff can file a Motion for Contempt and
8 the Court will incarcerate Defendant if found in contempt.

9 **IT IS FURTHER ORDERED** that parties shall not change any information
10 relating to the mortgage account for the Plaintiff's residence and both parties
11 shall have online access to the mortgage statements, and neither party shall
12 interfere with the other parties' ability to have on-line access to the mortgage
13 account; user names and passwords shall not be changed by either party. (VT
14 11:21:07).
15

16 **IT IS FURTHER ORDERED** that Plaintiff shall take a copy of the parties'
17 Divorce Decree and go and inquire regarding the Insurance Policies and other
18 benefits that she may be entitled to under the Decree of Divorce. Defendant is to
19 cooperate if a release or consent is needed for Plaintiff to get the information she
20 needs.
21

22 **IT IS FURTHER ORDERED** that status check re: discovery set on May, 2,
23 2019 at 11:00 a.m. in department G. If Defendant does not appear at the return
24 hearing on May 2, 2019, a no-bail bench warrant will be issued for his arrest. (VT
25 11:20:08).
26

27 ///


IT IS FURTHER ORDERED that Attorney Lambertsen is to prepare the Order.

IT IS FURTHER ORDERED that chamber review re: order from (1-23-19 hearing) set for 2-19-19.

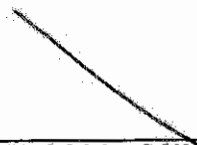
DATED this 3rd day of April 2019.

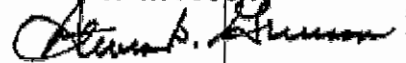

DISTRICT COURT JUDGE
KATHY HARDCASTLE

Submitted by:
WEBSTER & ASSOCIATES


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Counsel for Plaintiff, unbundled

Reviewed as to form and content:
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Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD,

Plaintiff,

vs.

GRADY EDWARD BYRD,

Defendant,

CASE NO.: D-18-577701-Z

DEPT. NO.: G

DATE OF HEARING:

TIME OF HEARING:

DEFENDANT'S MOTION FOR RECONSIDERATION

COMES NOW the Defendant, GRADY EDWARD BYRD, by and through his attorney, BYRON L. MILLS, ESQ., of MILLS & ANDERSON., and pursuant to the Nevada Revised Statutes and Eighth Judicial District Court Rules cited hereinbelow, hereby respectfully moves this Honorable Court for the following:

1. For the Court to reconsider its order granting Plaintiff's motion to Enforce the Divorce Decree and confirm that:
 - a. No alimony is due to Plaintiff under the Decree of Divorce, and
 - b. Caterina is awarded 50% of only Grady's military retired pay.
2. For such other and further relief as this Court deems just and proper in the premises.

1 This Motion is made and based upon the papers and pleadings on file herein,
2 Points and Authorities cited below, Affidavit of Defendant, GRADY EDWARD
3 BYRD, attached hereto and oral argument of counsel to be heard at the time of
4 hearing.

5 DATED this 12th day of March, 2019.

6 MILLS & ANDERSON.

7
8 BY: 

9 BYRON L. MILLS, ESQ.

10 Bar No. 6745

11 703 S. 8th Street

12 Las Vegas, Nevada 89101

13 Attorney for Defendant

14 **NOTICE OF MOTION**

15 **TO: ALL PARTIES IN INTEREST**

16
17 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
18 undersigned will bring the foregoing **MOTION FOR RECONSIDERATION** filed
19 in the above-captioned matter on for hearing in the above-entitled Court on the
20 _____ day of _____, 2019, at the hour of _____ o'clock ____ m., in
21 Department No. G or as soon thereafter as counsel may be heard. You are required
22 to attend if you wish to oppose said Motions.

23 DATED this 12th day of March 2019

24 MILLS & ANDERSON

25
26 By: 

27 BYRON L. MILLS, ESQ.

28 Nevada Bar No. 6745

703 S. 8TH Street

Las Vegas, Nevada 89101

Attorneys for Defendant

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1 the following conclusions the Court drew at the time of the hearing:

- 2 1. The Court believed the parties' Decree included language that provided for
3 \$1,500.00 to be paid to Caterina as spousal support despite the Decree stating
4 otherwise.
- 5 2. The Court believed that Grady was paying Caterina \$3000.00 per month
6 because the additional \$1500.00 was Caterina's 50% share of the United
7 States Retired Pay Grady was receiving.
- 8 3. The Court found it could not order the military to pay Caterina the \$1500.00
9 in military benefits directly. However, the Court concluded it could order
10 Grady to pay Caterina directly after receiving the money from the military.
- 11 4. The Court found that Grady had no right to unilaterally stop payments to
12 Caterina because, even though his payment status changed, his responsibility
13 to make payments to Caterina pursuant to the Decree remained.

14 These findings appear to be the primary impetus of the alimony and property award
15 from Grady to Caterina in the amount of \$3,000.00 per month indefinitely as well
16 as the award of a \$4,500.00 deposit from Grady until he pays the alleged \$22,000.00
17 in arrears. The Court's order granting Caterina's motion contains the following
18 statement:

19 Within the Decree there is language that provides for \$1,500.00 to be
20 paid to Plaintiff for life that can be changed when her financial
21 condition improves or if the marital house is sold. The Court deems that
22 the \$1,500.00 to Plaintiff is and should be deemed alimony.

23 The foregoing findings of the Court are erroneous in two respects. First; much
24 of the foregoing was not what was agreed to by the parties in the Decree. This is
25 particularly true with respect to spousal support. The Decree specifically states the
26 \$1500.00 per month to assist Caterina with the home mortgage is not alimony and
27 is not required. While the Court made brief mention of this, it does not appear to
28 have factored into the Court's decision at all. This is especially important in the

context of enforcement of a divorce decree where the parties explicitly agreed that there would be no spousal support to either party. Second, the United States Retired Pay, which the Court deemed payable to Caterina in the amount of \$1500.00 per month, is actually VA military disability pay from which Grady was voluntarily paying Caterina an additional \$1,500 per month.

Grady's military retired pay shortly after the Decree was entered was only \$128.40 per month. This was the sole divisible retirement asset at the time the Decree was entered. The other payments that Grady was receiving were all from sources of federal retirement disability pay that, under federal law, CANNOT be divided as a community asset under any state law. Below is a table that shows all of Grady's income and whether it was a divisible asset in 2014:

Description	Amount	Divisible/non-divisible
Net Military Retired Pay (Ex. A)	\$128.40	Divisible under state law and 10 USC § 1408
Combat Related Special Compensation (Ex. A)	\$3,007.60	Non-divisible pursuant to 38 USC § 5301
VA Disability Payments (Ex. A and B)	\$2,858.24	Non-divisible pursuant to 10 USC § 1408, 38 USC 5301, <i>Mansell v. Mansell</i> , 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) and <i>Howell v. Howell</i> , 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017).
OPM (Department of Defense) disability (Ex. C)	\$1,057.72	2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 29 * June 2017 29-1 VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY"
Social Security Disability (Ex. D)	\$2,584.56	Non-divisible pursuant to 42 U.S.C. § 407

Because Grady's income was almost entirely sourced from federal disability payments at the time of the divorce, the Court's finding that Grady owed \$1,500 as one half of his military retired pay to Caterina was clearly erroneous. The only divisible retired pay that Grady has received since the divorce is military retired pay of between \$128.40 (2014) and, as of February 1, 2019, his pay is -0-. Under the terms of the decree of divorce, 50% this amount is all that Caterina was entitled to.

1 Indeed, as more fully explained below, 50% of the military retired pay is all that the
2 Court could have ordered then, because the balance of the pay that Grady was
3 receiving was federal disability pay.

4 That fact remains true today. Below is a chart showing all of Grady's sources
5 of income as they exist today:

Description	Amount	Divisible/non-divisible
Net Military Retired Pay (Exhibit E)	-0-	Divisible under state law and 10 USC § 1408
Combat Related Special Compensation (Grady's FDF)	\$3,227.58	Non-divisible pursuant to 38 USC § 5301
VA Disability Payments (Grady's FDF)	\$2,896.67	Non-divisible pursuant to 10 USC § 1408, 38 USC 5301, <i>Mansell v. Mansell</i> , 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) and <i>Howell v. Howell</i> , 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017).
OPM (Department of Defense) disability (Grady's FDF)	\$1,315.00	Non-divisible pursuant to 2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 29 * June 2017 29-1 VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY"
Social Security Disability (Grady's FDF)	\$2,176.00	Non-divisible pursuant to 42 U.S.C. § 407

18 Again, the only divisible community asset from which Caterina could receive a
19 portion of Grady's income is the military retired pay, which is currently in the
20 amount of -0-.

21 The payments that Grady has made to Caterina since the decree of divorce
22 above 50% of -0- have been completely voluntary. As the decree of divorce states,
23 there is no spousal support order to either party. The decree further states that Grady
24 can terminate the \$1,500 per month payment toward the mortgage at any time.
25 Finally, regarding the retired military pay, the Decree only awards 50% of the
26 military retired pay to Caterina. There is no specific amount set, meaning that any
27 payments Grady made to Caterina above the 50% threshold were not obligatory in
28 any way.

1 Notwithstanding these facts, the Court ordered Grady to continue to pay
2 \$1,500 in alimony (which does not exist under the decree and therefore cannot be
3 modified) and \$1,500 as 50% of his military retired pay, (which is \$1,500 more than
4 the Court can legally order him to pay). As such, Grady has no choice but to request
5 rehearing and reconsideration of the Court's orders resulting from Caterina's
6 motion as clearly erroneous.

7 II

8 ARGUMENT

9 A. The Court should Reconsider its Order Granting Caterina's Motion to 10 Enforce the Decree of Divorce and Eliminate Grady's Alimony Order.

11 This Court has the authority to reconsider its previous orders pursuant to
12 EDCR 2.24, and NRCPC 59e, which read as follows:

13 Rule 2.24. Rehearing of motions.

14 (a) No motions once heard and disposed of may be renewed in the
15 same cause, nor may the same matters therein embraced be reheard,
16 unless by leave of the court granted upon motion therefor, after notice
of such motion to the adverse parties.

17 (b) A party seeking reconsideration of a ruling of the court, other
18 than any order which may be addressed by motion pursuant to N.R.C.P.
19 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days
20 after service of written notice of the order or judgment unless the time
21 is shortened or enlarged by order. A motion for rehearing or
22 reconsideration must be served, noticed, filed and heard as is any other
motion. A motion for reconsideration does not toll the 30-day period
for filing a notice of appeal from a final order or judgment.

23 (c) If a motion for rehearing is granted, the court may make a final
24 disposition of the cause without reargument or may reset it for
25 reargument or resubmission or may make such other orders as are
deemed appropriate under the circumstances of the particular case.

26 NRCPC 59:

27 (a) **Grounds.** A new trial may be granted to all or any of the parties
28 and on all or part of the issues for any of the following causes or
grounds materially affecting the substantial rights of an aggrieved
party: (1) Irregularity in the proceedings of the court, jury, master, or

1 adverse party, or any order of the court, or master, or abuse of discretion
2 by which either party was prevented from having a fair trial; (2)
3 Misconduct of the jury or prevailing party; (3) Accident or surprise
4 which ordinary prudence could not have guarded against; (4) Newly
5 discovered evidence material for the party making the motion which
6 the party could not, with reasonable diligence, have discovered and
7 produced at the trial; (5) Manifest disregard by the jury of the
8 instructions of the court; (6) Excessive damages appearing to have been
9 given under the influence of passion or prejudice; or, (7) Error in law
10 occurring at the trial and objected to by the party making the motion.
11 On a motion for a new trial in an action tried without a jury, the court
12 may open the judgment if one has been entered, take additional
13 testimony, amend findings of fact and conclusions of law or make new
14 findings and conclusions, and direct the entry of a new judgment.

15 ...

16 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend
17 the judgment shall be filed no later than 10 days after service of written
18 notice of entry of the judgment.

19 Grady respectfully submits that this Court should reconsider its decision
20 based on the foregoing statutes due to clear errors of law that occurred. As indicated
21 in the chart above and statutes and case law set forth below, Federal law and U.S.
22 Supreme Court decisions completely preclude this Court from dividing or assigning
23 any and all of Grady's disability benefits. Furthermore, pursuant to the U.S.
24 Supreme Court decision in *Howell*, this Court cannot order Grady to pay a portion
25 of those benefits to Caterina as compensation for any loss of retired pay that she
26 might have received but for Grady receiving disability pay. Furthermore, the Court
27 does not have the authority to create an alimony order where one does not exist
28 under NRS 125.150.

29 **A. The Decree of Divorce Specifically States There is No Alimony or**
30 **Obligation of Spousal Support**

31 As explained above, the Court relied on its finding that the Decree implied a
32 responsibility of alimony payments from Grady to Caterina. The Court's
33 implication is not supported by the language in the Decree. The Court appears to

1 have come to its conclusion based solely on the relative circumstances of the parties
2 rather than their agreement, to create an alimony order where none existed. This is
3 not authorized under Nevada law.

4 NRS 125.150(8) states:

5 8. If a decree of divorce, or an agreement between the parties which
6 was ratified, adopted or approved in a decree of divorce, provides for
7 specified periodic payments of alimony, the decree or agreement is not
8 subject to modification by the court as to accrued payments. **Payments**
9 **pursuant to a decree** entered on or after July 1, 1975, which have not
10 accrued at the time a motion for modification is filed may be modified
11 upon a showing of changed circumstances, whether or not the court has
12 expressly retained jurisdiction for the modification. In addition to any
13 other factors the court considers relevant in determining whether to
14 modify the order, the court shall consider whether the income of the
15 spouse **who is ordered to pay alimony**, as indicated on the spouse's
16 federal income tax return for the preceding calendar year, has been
17 reduced to such a level that the spouse is financially unable to pay the
18 amount of alimony the spouse has been ordered to pay.

19 NRS 125.150(8)(emphasis added).

20 NRS 125.150(8) makes it clear that any change of circumstance in the
21 finances of either party can trigger a modification of an existing alimony order. In
22 this case, however, there was no order of alimony in the Decree, which means there
23 is no existing alimony. The Court's authority under NRS 125.150(8) is limited to
24 existing alimony orders. Caterina specifically agreed that no spousal support would
25 be required and that the mortgage assistance was not alimony and was also not
26 required.

27 The Court's reliance on *Lake v. Bender*, 18 Nev. 361 (1884), and *Shydler v.*
28 *Shydler*, 114 Nev. 192 (1998) is completely misplaced. The Lake case stands only
for the proposition that the trial court has legal discretion regarding the division of
property and was decided over 100 years ago. The Shydler case, with respect to
alimony did nothing more than make a finding that the Court abused its discretion

1 by denying the wife alimony in the initial trial determination. It has nothing to do
2 with whether this Court can determine, after the fact, that Grady owes alimony when
3 the parties agreed and the decree confirms that he does not.

4 Grady therefore requests that the Court reconsider its order granting
5 Caterina's Motion to Enforce the Decree of Divorce, and immediately eliminate
6 Grady's alimony obligation.

7 **B. VA Military Disability is Not Divisible Upon Divorce and the Court**
8 **Cannot Arbitrarily order Grady to Pay \$1,500 per month.**

9 The Court's order regarding Grady's obligation to Caterina for military
10 retired pay states the following:

11 That the Defendant is now taking his retirement pay as a tax-exempt
12 disability payment does not negate Defendant's obligation to pay
13 Plaintiff 1500 per month as and for her marital interest in his United
14 States Army military retirement pay. Defendant must continue his
15 obligation to pay the Plaintiff 1500 per month under the decree of
16 divorce pursuant to *Shelton v. Shelton*, 78 P3d. 5, 119 Nevada 492 (Nev.
2003).

17 This order is clearly erroneous. First, the Court's reliance on *Shelton* is misplaced.
18 In *Shelton*, the Court determined that the parties' agreement awarding the wife with
19 50% of the husband's retirement benefits in the amount of \$577 per month was
20 ambiguous. In order to resolve the ambiguity, the Court interpreted the agreement
21 to mean that husband had contractually agreed to the payment of \$577 per month
22 to wife, and that he could not avoid that obligation simply because he elected to
23 reduce his military retired pay in favor of receiving VA benefits. As such, the *Shelton*
24 case was decided on principles of contract law and did not address the question of
25 whether the Court could order the husband to reimburse the wife for any reduction
26 in military retired pay because of his VA election. If that had been the issue, the
27 Nevada Supreme Court would have clearly found (as explained below) that it had
28 no authority to do so.

1 Second, Grady did not reduce his military retired pay in favor of VA benefits.
2 At the time the decree was entered, Grady was already receiving disability benefits.
3 His military retired pay, which began in late 2014, started at \$128.40. There was
4 never a reduction that could have triggered a *Shelton* analysis in the first place. Even
5 if *Shelton* had been triggered, the parties' agreement in this case is not ambiguous.
6 It clearly states that Caterina is to receive 50% of Grady's U.S. Army Retired Pay.
7 There was no specified amount and therefore no basis to assert that Grady
8 guaranteed a specific payment amount on the basis of contract.

9 Finally, under Federal law, even if Grady had elected VA benefits and by so
10 doing reduced the amount that Caterina was receiving, this Court CANNOT order
11 Grady to indemnify Caterina for the loss veteran's retirement pay caused by the
12 veteran's waiver of retirement pay to receive service-related disability benefits.

13 10 U.S.C. § 1408 states:

14 Authority for court to treat retired pay as property of the member and
15 spouse.--(1) Subject to the limitations of this section, a court may treat
16 *disposable retired pay* payable to a member for pay periods beginning
17 after June 25, 1981, either as property solely of the member or as
18 property of the member and his spouse in accordance with the law of
19 the jurisdiction of such court. A court may not treat retired pay as
20 property in any proceeding to divide or partition any amount of retired
21 pay of a member as the property of the member and the member's
22 spouse or former spouse if a final decree of divorce, dissolution,
23 annulment, or legal separation (including a court ordered, ratified, or
24 approved property settlement incident to such decree) affecting the
25 member and the member's spouse or former spouse (A) was issued
before June 25, 1981, and (B) did not treat (or reserve jurisdiction to
treat) any amount of retired pay of the member as property of the
member and the member's spouse or former spouse.

§ 1408(c)(1)(emphasis added).

26 10 U.S.C § 1408 further states:

27 The term "*disposable retired pay*" means the total monthly retired pay
28 to which a member is entitled *less amounts* which--

1 (i) are owed by that member to the United States for previous
2 overpayments of retired pay and for recoupments required by law
3 resulting from entitlement to retired pay;
4 (ii) *are deducted from the retired pay of such member* as a result of
5 forfeitures of retired pay ordered by a court-marital or *as a result of a*
6 *waiver of retired pay required by law in order to receive compensation*
7 *under title 5 or title 38.* § 1408 (a)(4)(A)(emphasis added).

7 Grady respectfully submits that this Court should reconsider its decision based on
8 the foregoing statutes. As Grady's income is entirely federal disability, it does not
9 constitute income that can be awarded to pay alimony. Thus, it cannot be used to
10 make up for any inequitable result of the Decree.

11 U.S. Supreme Court caselaw on this point could not be clearer. In *Mansell*
12 *v. Mansell*, the U.S. Supreme Court held that military retirement pay that had been
13 waived by the former husband in order to receive veterans' disability benefits was
14 not community property divisible upon divorce. 490 U.S. 581, 109 S. Ct. 2023, 104
15 L. Ed. 2d 675 (1989). The Court held that federal law completely pre-empts the
16 States from treating waived military retirement pay as divisible community
17 property. *Id.*, at 594-595. The Court acknowledged that Title 10 had the capacity
18 to inflict economic harm on former spouses, but it refused to overlook the legislative
19 history which, read as a whole, indicates the intent by Congress to protect military
20 retirees. *Id.* Furthermore, even in the absence of legislative history, the plain and
21 precise language of the statute is enough to make the intent of Congress clear.

22 Under § 1408(c)(1), the term "disposable retired or retainer pay," is used
23 specifically to limit the extent to which state courts may treat military retirement
24 pay as community property. *Id.* at 590. The Court noted that veterans who became
25 disabled as a result of military service are eligible for disability benefits under Title
26 38, *Id.* at 583, which are explicitly excluded from the definition of disposable retired
27 pay and therefore could not be divided by a state court.

1 The *Mansell* Court's holding was recently confirmed in *Howell v. Howell*,
2 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). The *Howell* decision reaffirms that under
3 the *McCarty*³ holding, federal retirement benefits are not divisible unless
4 specifically authorized by federal statute. While federal law was amended
5 subsequent to *McCarty* to allow states to divide military retired pay under 10 USC
6 § 1408, that statute specifically exempted VA pay. This was confirmed in *Mansell*
7 and again in *Howell*.

8 The facts and decision in the *Howell* case are particularly relevant to this
9 Court's decision. In *Howell*, the Arizona court attempted to "restore" a portion of
10 the wife's retirement payment by ordering the husband to repay her the amount she
11 was receiving that was reduced after the husband's military retired pay was reduced
12 in lieu of receiving tax free VA pay. The *Howell* court held that such an order was
13 a violation of federal law, stating the following:

14 Neither can the State avoid *Mansell* by describing the family court
15 order as an order requiring John to "reimburse" or to "indemnify"
16 Sandra, rather than an order that divides property. The difference is
17 semantic and nothing more. The principal reason the state courts have
18 given for ordering reimbursement or indemnification is that they wish
19 to restore the amount previously awarded as community property, i.e.,
20 to restore that portion of retirement pay lost due to the post divorce
21 waiver. And we note that here, the amount of indemnification mirrors
22 the waived retirement pay, dollar for dollar. Regardless of their form,
23 such reimbursement and indemnification orders displace the federal
24 rule and stand as an obstacle to the accomplishment and execution of
25 the purposes and objectives of Congress. All such orders are thus pre-
26 empted.

27 The basic reasons *McCarty* gave for believing that Congress intended
28 to exempt military retirement pay from state community property laws
apply a fortiori to disability pay. See 453 U.S., at 232-235, 101 S.Ct.
2728 (describing the federal interests in attracting and retaining military
personnel). And those reasons apply with equal force to a veteran's

³ *McCarty v. McCarty*, 453 U.S. 210, 211-215, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981)

1 post-divorce waiver to receive disability benefits to which he or she has
2 become entitled.

3 We recognize, as we recognized in *Mansell*, the hardship that
4 congressional pre-emption can sometimes work on divorcing spouses.
5 See 490 U.S., at 594, 109 S.Ct. 2023. But we note that a family court,
6 when it first determines the value of a family's assets, remains free to
7 take account of the contingency that some military retirement pay might
8 be waived, or, as the petitioner himself recognizes, take account of
9 reductions in value when it calculates or recalculates the need for
10 spousal support. See *Rose v. Rose*, 481 U.S. 619, 630–634, and n. 6,
11 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987) ; 10 U.S.C. § 1408(e)(6).

12 *Howell* at 137 S.Ct. at 1406. While the *Howell* case leaves open the
13 possibility that a reduction in retired pay could trigger a review of prospective
14 alimony, that is impossible in this case because, 1) Grady's military retired pay has
15 never substantially changed: it was \$128 in 2104 and is -0- now, and 2) there is no
16 alimony order that can be modified. The decree of divorce specifically states that
17 neither party will receive alimony and that Grady's contributions toward Caterina's
18 mortgage were completely voluntary.

19 Nevada's law is also explicit in preventing the Court from awarding any
20 portion of disability pay to Caterina AND prohibiting the assignment of the pay to
21 Caterina after Grady receives it.

22 NRS 125.165 states the following:

23 Federal disability benefits awarded to veteran for service-connected
24 disability: Attachment, levy, seizure, assignment and division
25 prohibited.

26 Unless the action is contrary to a premarital agreement between the
27 parties which is enforceable pursuant to chapter 123A of NRS, in
28 making a disposition of the community property of the parties and any
property held in joint tenancy by the parties, and in making an award of
alimony, the court shall not:

1. Attach, levy or seize by or under any legal or equitable process

1 either before or after receipt by a veteran, any federal disability benefits
2 awarded to a veteran for a service-connected disability pursuant to 38
3 U.S.C. §§ 1101 to 1151, inclusive.

4 2. Make an assignment or otherwise divide any federal disability
5 benefits awarded to a veteran for a service-connected disability
6 pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

7 NRS 125.165 (emphasis added). The Court order entered on January 23, 2019, is
8 impermissible under Nevada law. Furthermore, even if Nevada law allowed the
9 Court to order Grady to pay a portion of his disability to Caterina, federal law and
10 United States Supreme Court jurisprudence forbid it. This Court's order directing
11 Grady to pay Caterina \$1,500 at her portion of his retirement is invalid under
12 Nevada law, federal law and according the holdings in *McCarty*, *Mansell* and
13 *Howell*.

14 Based on the foregoing facts and argument, the Court should reconsider and
15 modify its order. The Court should order that no alimony is due to Caterina and
16 confirm that Caterina is awarded and eligible to receive 50% of Grady's military
17 retired pay.

18 III 19 CONCLUSION

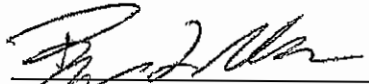
20 Wherefore, based on the above and foregoing, the Defendant respectfully
21 requests the following:

- 22 1. For the Court to reconsider its order granting Plaintiff's motion to Enforce
23 the Divorce Decree and confirm that:
 - 24 a. No alimony is due to Plaintiff under the Decree of Divorce, and
 - 25 b. Caterina is awarded 50% of Grady's military retired pay.
- 26
27
28

1 2. For such other and further relief as this Court deems just and proper in the
2 premises.

3 DATED this 12th day of March, 2019.

4 MILLS & ANDERSON.

5 

6 BYRON L. MILLS, ESQ.

7 Nevada Bar #6745

8 703 S. 8th Street

9 Las Vegas NV 89101

10 Attorney for Defendant

PROVINCE OF NEGROS ORIENTAL)

COUNTRY OF PHILIPPINES

GRADY EDWARD BYRD, being first duly sworn according to law,

1. I am the Defendant in the above-entitled action;
2. I have provided all the information, dates and incidents for use in this Motion and state under oath that the information contained therein and which I have read, corrected and approved, is true and correct and approved, is true and correct to the best of my knowledge;
3. That based on my knowledge, belief and information and as though repeated herein by my affidavit, I incorporate the facts and incidents of the opposition as though fully reprinted in this affidavit.

WHEREFORE, I respectfully request that this Court grant the relief

FURTHER AFFIANT SAYETH NAUGHT.

GRADY EDWARD BYRD

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)

CITY OF DUMAGUETE

WITNESS MY HAND AND SEAL.

SUBSCRIBED AND SWORN TO before me this MAR 12 2019 in
Dumaguete, Negros Oriental, Philippines, affiants exhibiting to me his valid proofs
of identification.

Doc. No. 73 ;
Page No. 10 ;
Book No. 64 ;
Series of 2019 .

ATTY. RAYMUND J.A. MERCADO
NOTARY PUBLIC FOR CITY OF DUMAGUETE & THE MUN. OF
SIBULAN, BACOR, VALENCIA, DADIN, YAMBOANGUITA & SIATON
UNTIL DECEMBER 31, 2020
NOTARIAL COMMISSION NO. 2017-001
PTR NO. 2109164 / 1-5-2019
ROLL NO. 35548 / 4-29-89
IBP NO. CHOR LIFETIME
6TH MCLE COMPLIANCE NO. 00341, 8/16/16
2ND FLR. RM BLDG. BANTAYAN, DUMAGUETE CITY

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Caterina Angela Byrd
Plaintiff/Petitioner

Case No. 18-577701-2

Dept. 9

Grady Edward Byrd
Defendant/Respondent

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☒ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition:

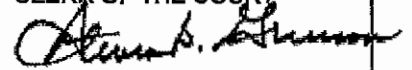
Grady Byrd

Date

4/8/19

Signature of Party or Preparer

LS/Byrd for M. H. S.



1 **OPPC**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
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9 Tel No: (702) 562-2300
10 Fax No: (702) 562-2303
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12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, Unbundled

DISTRICT COURT
CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD

12 Plaintiff,

13 v.

14 GRADY EDWARD BYRD

15 Defendant.

CASE NO.: D-18-577701-Z
DEPT NO.: G

Hearing Date: May 22, 2019
Hearing Time: 9:00 a.m.

Hearing Requested: Yes

**Plaintiff's Opposition to Defendant's Motion for
Reconsideration and Countermotion**

19 COMES NOW Plaintiff, CATERINA ANGELA BYRD (hereafter "Caterina"),
20 by and through her attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F.
21 LAMBERTSEN, ESQ., of the law offices of WEBSTER & ASSOCIATES, in an
22 Unbundled Capacity, and does hereby file *Plaintiff's Opposition to Defendant's*
23 *Motion for Reconsideration and Countermotion*.¹ This Opposition and
24 Countermotion is made and based upon the pleadings and papers on file herein,
25
26
27

28 ¹This constitutes our request to file a motion, opposition or reply in excess of 30
pages pursuant to EDCR 5.503(4) due to the number of issues in this matter.

1 the following Points and Authorities and upon such oral argument as the Court
2 may allow at the time of the hearing.

3 Caterina respectfully requests the following relief:

- 4 1. Deny Grady's Motion for Reconsideration in its entirety;
- 5 2. That Grady continue the \$1,500.00 per month payment to Caterina to
- 6 assist her with her home mortgage because this is spousal support;
- 7 3. That Grady continue the \$1,500.00 per month payment to Caterina to
- 8 satisfy his contractual obligations to Caterina for Caterina's interest in
- 9 Grady's military income;
- 10 4. For an Order to Show Cause why Grady Should Not Be Held In Contempt
- 11 Of Court for Failing to Comply with the Court's order from the January 23,
- 12 2019 Hearing, filed on or about April 5, 2019, and pay to Caterina
- 13 \$4,500.00 by February 15, 2019, \$4,500.00 by March 15, 2019, and
- 14 \$4,500.00 by April 15, 2019;
- 15 5. For an Order to Show Cause why Grady Should Not Be Held In Contempt
- 16 Of Court for unilaterally reducing Caterina from 100% Beneficiary of the
- 17 Veteran's Group Life Insurance awarded to her in the divorce to 89% and
- 18 naming his new 25 year old wife an 11% beneficiary;
- 19 6. For An Order that Grady Voluntarily Designate Caterina the Beneficiary of
- 20 his Military Survivor Benefit Plan (hereafter "SBP"), which was awarded to
- 21 Caterina in the divorce;
- 22 7. That Grady name Caterina 100% Beneficiary of the VyStar \$1,000.00 free
- 23 life insurance on Grady's life that was awarded to Caterina in the divorce;
- 24 8. For Attorney's Fees and Costs; and
- 25 9. For any further orders that the court deems just and equitable under the
- 26 premises.

27 Dated: April 23, 2019.

WEBSTER & ASSOCIATES

28 By: 

JEANNE LAMBERTSEN, ESQ.
Attorneys for Plaintiff, Unbundled

POINTS AND AUTHORITIES

I. INTRODUCTION

The Court's findings and orders filed on April 8, 2019, are based on the totality of the papers and pleadings on file, oral argument, Grady's sworn testimony, and applicable law. The Court's findings and orders are just and proper and should remain. Grady's request that no alimony is due to Caterina should be denied. His request that he does not have to follow the principles of contract law and continue the other \$1,500.00 payments to Caterina for his military pay, should also be denied. He admitted he had been giving Caterina \$3,000.00 per month because it is the right thing to do.² Grady must continue to do the right thing.

II. OPPOSITION

The parties were married for 31 years, divorcing on June 5, 2014, by way of a Joint Petition that Grady arranged to have prepared. The last time they resided together was in 2008 in Las Vegas, Nevada. Caterina was about 19 years old when the parties met and married shortly thereafter. During marriage, Grady was in the U. S. Army, and after retiring from the U.S. Army in 1999 as a CSM E-9, he became a high-ranking Department of Defense GS-14, in charge of 3 military bases. Grady retired from the Department of Defense and earns more than \$116,000.00 annually. Grady is 63, lives in the Phillippines, married a 25-year old girl, and is trying to eliminate his financial obligations to Caterina.

Caterina has a high school education. English is her 2nd language. Grady

² Exhibit "1".

1 took care of all financial matters, especially all things military. During the
2 marriage, Caterina supported Grady as he earned two Masters Degrees, a "War
3 College" degree, a FEMA certification education and furthered his career. She
4 moved approximately 16 times as a military wife. She only worked part-time
5 during the parties' 31 years of marriage. The most she ever earned was
6 \$17,084.00 in 1989. The last time she worked was in 2006 as a nail manicurist.
7 The military base in Germany closed and they moved again. The money that she
8 earned barely covered her supplies and leased space. She couldn't hold a job
9 and earn a retirement on her own. Grady reassured her that he was advancing
10 his career so he could take care of her. She relies on the \$3,000.00 per month
11 that Grady pays her. After his death, she will rely on the military SBP and Life
12 Insurance that Grady gave her in the divorce. She is 55 years old, single, and
13 remains in the marital residence. Her expenses are more than \$3,745 a month.
14 Grady left Caterina completely destitute when, on September 1, 2018, he
15 stopped paying her \$3,000.00 per month in retaliation for Caterina asking him
16 for copies of the life insurances and benefits he gave her in the decree. She had
17 no choice but to seek the Court's assistance.

18 *"Grady E. Byrd will continue to pay Caterina A. Byrd 1500 dollars extra a*
19 *month to assist with her home mortgage. If her financial situation changes*
20 *or if the home is sold or paid off this payment may cease."*³

21 The plain language that Grady placed in the joint petition for summary
22 decree of divorce clearly demonstrates that Grady was already making
23 \$1,500.00 monthly payments to Caterina at the time of divorce (i.e. "continue to
24

25
26
27
28 ³ Joint petition attached to the decree of divorce filled 06-05-14, pg 4. Ln 3-5.

pay") and that the \$1,500.00 a month is an ongoing financial obligation because its termination is conditional upon the occurrence of specific subsequent events. The specific subsequent events are that Caterina's financial situation changes or the home is sold or the home is paid off. Grady cannot cease the payments unless he proves a condition for cessation of the payments occurred. None of the cessation-triggering events occurred. The Court correctly found that Grady had no right to unilaterally stop the payments. The next sentence in the decree is "*This is not an alimony payment and is not required.*" The Court correctly found that the \$1,500.00 per month that Grady pays Caterina *is alimony* because it is financial assistance to his former wife consistent with applicable law defining what spousal support is and the purpose of spousal support. Grady arranged for all the financing of the home, threatened Caterina to not speak to the loan officers⁴ and then 6 months after escrow closed, he announced he wanted a divorce. The mortgage was about \$1,933.07 per month.⁵ It was extremely important to Caterina that she receive assistance with her home mortgage. She never would have signed the decree otherwise. Any language in the decree that the parties waived alimony correctly did not control the Court's decision when compared to the specific and unique language that Grady placed in the decree. A waiver requires a knowing and voluntary relinquishment of a right which Caterina did not do. Additionally, Grady was the drafter of the joint petition and any ambiguity must be held against the drafter. His e-mails to

⁴ Exhibit "2".

⁵ Exhibit "3", (also previously submitted as Exhibit "21" on 01/15/19).

1 Caterina around the time of divorce include: "I'm sending you the papers. You
2 sign or I will hire a lawyer and take you to court,"⁶ and "This is your last warning,
3 take the deal I'm offering or you can ask a lawyer to try and get me to put what
4 you want in writing. I gurantee [sic] you your lawyer will tell you that you should
5 have taken what I was offering. Last chance."⁷ The Court orders regarding
6 Grady's ongoing obligation to pay Caterina alimony are just and proper and
7 should not be reconsidered. Grady's motion should be denied.

8
9 *"Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States
10 Army Retired Pay as long as he lives."*⁸

11 Nothing in the 2017 U.S. Supreme Court case of Howell prohibits the
12 principals of contract law described in Shelton⁹ from applying. *At the time of*
13 *divorce*, Grady admits that he advised Caterina that "My retired pay is 3017 a
14 month after they deduct the payment for SBP [Survivor Benefit Plan]. You are
15 entitled to half of that which is 1508. You are not entitled to any more money.
16 I give you 3000 a month because I think it is the right thing to do. If I was only
17 going to give you 1500, I would not be giving you 3000 all these years."¹⁰ Thus,
18 Grady informed Caterina that she was entitled to the amount of \$1,508.00 from
19 his retirement pay, he paid her a total of \$3,000.00 each month, of which
20 \$1,500.00 was for assistance with her home mortgage. She relied on these
21
22

23
24 ⁶ Exhibit "1".

25 ⁷ Exhibit "1".

26 ⁸ Joint Petition decree of divorce filed 06-05-14, attachment, pg 3. Ln 24-25.

27 ⁹Shelton v. Shelton 78, P.3d 507, 119 Nev. 492 (2003).

28 ¹⁰ Exhibit "2" and Exhibit "1".

1 funds to pay her bills and when he unilaterally terminated the payments on
2 September 1, 2018, he left her destitute. Grady can continue to pay Caterina
3 \$3,000.00 per month when he testified that he earns more than \$116,000.00
4 annually.¹¹ Grady then argues that *in September 2018, his army retire pay*
5 *changed* to disability and because he doesn't have to give her any of his
6 disability money, he stopped paying Caterina.¹² Now, *in his Motion for*
7 *Reconsideration*, Grady claims that he already waived his army retirement pay
8 to receive it as disability pay at the time the decree was entered.¹³ This new
9 information actually fortifies the Court's order that Grady must continue the
10 \$1,500.00 payments under contract principles. By claiming that his army retire
11 pay was only \$128.40 around the time of divorce, he misled Caterina. The
12 \$3,017.00 pay that Grady said that he received each month at the time of
13 divorce was not retired pay. The \$3,017 that Grady received each month was
14 disability pay. Contract principal analysis would include: If his only dividable
15 retired pay at the time of divorce is \$128.40¹⁴ and she gets 50% (\$64.20), then
16 why was Grady paying Caterina a total of \$3,000.00 per month for over 4 years?
17 Because \$1,500.00 is what he agreed to pay Caterina, she accepted, he
18 performed and he has wrongfully breached the contract. The Court correctly
19 found that under contract principles of law that Grady must continue these
20
21
22
23

24
25 ¹¹Grady's FDF filed 10-02-19 and testimony at 01-23-19 hearing, see order filed 04-
05-19, pg. 2 ln 19.

26 ¹² Grady's Reply to Opposition and Countermotion filed 12-28-18, pg. 7, ln 131-132.

27 ¹³Defendant's Motion for Reconsideration, page 11, line 2.

28 ¹⁴Defendant's Exhibit "A", page number DEF 106.

1 \$1,500.00 per month payments and that he wrongfully terminated the payments
2 in September 2018. Nothing in the 2017 U.S. Supreme Court case of Howell v.
3 Howell prohibits a state court from enforcing an agreement by ordering a service
4 member, who unilaterally stops making payments the service member was
5 legally obligated to make, to resume those payments and pay arrearages. Lesh
6 v. Lesh, 809 S.E. 2d 890 (N.C.Appl. 2018). The Court did not order Grady to
7 indemnify Caterina. The Court did not divide disability pay. The Court did not
8 assign disability benefits. The Court did not arbitrarily order Grady to pay
9 \$1,500.00 per month to Caterina. Rather, the Court ordered Grady to resume
10 monthly payments to Caterina that he was already making. There was no error
11 of law. Grady's Motion for Reconsideration should be denied.
12

13 **III. ARGUMENT**

14 **No Error in the Court order that Grady wrongfully terminated the** 15 **\$1,500.00 monthly payments to Caterina to assist with her home** 16 **mortgage**

17 Grady wrongfully continues to assert the reason that he stopped the
18 \$1,500.00 payment to Caterina is that he can stop it any time that he wants to
19 because it is not required. The Court correctly found that the Joint Petition for
20 a Summary Decree of Divorce clearly and unambiguously states that he is
21 required to pay it unless Caterina's financial condition changes or if her home is
22 sold or paid off. Grady never addresses these precedents that must occur
23 before assistance can be terminated.
24

25 If contract language is clear, it will be enforced as written. Buzz Stew, LLC
26 v. City of N. Las Vegas, 131 Nev., Adv. Op. 1, 341 P.3d 646, 650 (2015).
27
28

Caterina's financial condition has not changed. She has \$3,745.13 in monthly expenses.¹⁵ She provided Grady receipts showing that she now must pay \$102.97 per month for health insurance¹⁶ (she previously was covered for free under military TriCare), and that she now must pay \$128.01 for Federal Long Term Care Insurance (Grady previously paid it).¹⁷ Caterina's largest expense is the home mortgage of \$1,933.07 per month.¹⁸ Grady is fully aware that the home has not been sold because he is listed on the mortgage statement and can view the statement anytime he wants. When Caterina asked for the Court's assistance that Grady cease changing the mailing address for the mortgage statements from her home to his address because she was worried about missing a payment, the Court issued orders allowing Grady continued access to view the mortgage statement:

IT IS FURTHER ORDERED that parties shall not change any information relating to the mortgage account for the Plaintiff's residence and both parties shall have online access to the mortgage statements, and neither party shall interfere with the other parties' ability to have on-line access to the mortgage account; user names and passwords shall not be changed by either party.(VT 11:21:07).

The court correctly found that Grady cannot unilaterally terminate the \$1,500.00 payments to Caterina to assist with her home mortgage. Grady wrongfully terminated these payments September 2018 and owed Caterina 5 months of arrears which was \$7,500.00. He was ordered to begin resuming the payments

¹⁵ Caterina's FDF filed 10-18-18.

¹⁶ Exhibit "4" (also previously submitted as Exhibit "16" on 01/15/19)

¹⁷ Exhibit "5"

¹⁸ Exhibit "3"

1 on February 15, 2019, which he failed to do. As discussed below, Caterina is
2 seeking an order to show cause why he should not be held in contempt of court.

3 **No Error in the Court order that the \$1,500.00 payments from Grady to**
4 **Caterina to assist with her home mortgage is alimony**

5 The Court did not err in finding that Grady's \$1,500.00 monthly payments
6 to Caterina to assist with her home mortgage are deemed alimony. Lake offers
7 guidance in defining alimony and Shydler explains that alimony is an economic
8 right that arises out of the marital relationship and provides the dependent
9 spouse with a level of support and standard of living similar to the quality of
10 economic life that existed during the marriage. Lake v. Bender, 18 Nev. 361, 4
11 Pac. 711, 7 Pac. 74 (1884), and Shydler v. Shydler, 114 Nev. 192, 954 P.2d 37
12 (1998). Under Lake and Shydler, an analysis, Grady's \$1,500.00 monthly
13 payments to Caterina to assist with her home mortgage is alimony. The monthly
14 assistance with mortgage payments is even consistent with the federal definition
15 of alimony 42 U.S.C. §659 (2)(i)(3):
16
17

18 The term "alimony", when used in reference to the legal obligations
19 of an individual to provide the same, means periodic payments of
20 funds for the support and maintenance of the spouse (or former
21 spouse) of the individual, and (subject to and in accordance with
22 State law) includes separate maintenance, alimony pendente lite,
23 maintenance, and spousal support, and includes attorney's fees,
24 interest, and court costs when and to the extent that the same are
25 expressly made recoverable as such pursuant to a decree, order, or
26 judgment issued in accordance with applicable State law by a court
27 of competent jurisdiction."
28

25 The Nevada Supreme Court held in Lake, that "support" is a word of broad
26 signification. It includes everything, necessities and luxuries, which the wife in
27
28

1 like circumstances is entitled to have and enjoy. In determining the amount
2 necessary for such support, all of the circumstances surrounding the parties,
3 including the financial condition of the husband and the requirements of the wife,
4 should be considered. Lake v. Bender, 18 Nev. 361, 4 Pac. 711, 7 Pac. 74
5 (1884). Paying the mortgage on a home is a necessity. The Nevada Supreme
6 Court held in Shydler, that the two primary purposes of spousal support are to
7 narrow any large gaps between the post-divorce earning capacities of the
8 spouses and to allow the recipient spouse to live as nearly as possible to the
9 station in life enjoyed before the divorce. Shydler v. Shydler, 114 Nev. 192, 954
10 P.2d 37 (1998).
11

12
13 The papers and pleadings that the Court reviewed for the January 23,
14 2019, hearing revealed that Caterina and Grady were married for nearly twice
15 the length of time as the parties in Shydler, hence, they had a marriage of
16 significant length. Like the husband in Shydler, Grady earns more than
17 \$100,000 per year. Grady testified to annual earnings around \$116,000.00.
18 Caterina's earning capacity was only \$17,084 in 1989¹⁹ which is far less than
19 the wife in Shydler. Grady admits that he paid Caterina \$36,000.00 per year.
20 This is only about 30% of Grady's income.
21

22
23 Grady wrongfully claims that the Lake case stands only for the proposition
24 that the trial court has legal discretion regarding the division of property, and
25 erroneously claims that the Shydler case did nothing more than find that the trial
26

27 ¹⁹ Exhibit "6" (also previously submitted as Exhibit "17" on 01/15/19)
28

1 court abused its discretion in denying the wife alimony. Grady cannot cherry-
2 pick the Nevada Supreme Court's findings and rulings in Lake and Shydler.
3 These cases stand for more than what Grady describes. The definition and
4 purpose of spousal support discussed in Lake and Shydler has not been
5 overruled and is relevant to the case at bar.²⁰ Grady also complains that Lake
6 was decided over 100 years ago, as if this somehow reduces the legal authority
7 of the case. The fact that Lake was decided over 100 years ago actually fortifies
8 the Court's order that his assistance with the home mortgage is alimony. This is
9 because Lake demonstrates that alimony is not a new concept to Nevada law,
10 rather, it is a long-standing law and Lake has been cited as authority since it was
11 decided.
12

13
14 [t]he amount which may be awarded in divorce action to the wife from the
15 husband's separate property for her support and that of the children is left
16 to the legal discretion of the trial court and its award should not be disturbed
17 upon appeal in the absence of abuse of discretion. Lake v. Bender, 18 Nev.
18 361, 4 Pac. 711, 7 Pac. 74 (1884), cited, Powell v. Campbell, 20 Nev. 232,
19 at 238, 20 Pac. 156 (1888), Phillips v. Phillips, 42 Nev. 460, at 466, 180
20 Pac. 907 (1919), Greinstein v. Greinstein, 44 Nev. 174, at 178, 191 Pac.
21 1082 (1920), Foy v. Estate of Smith, 58 Nev. 371, at 376, 81 P.2d 1065
22 (1938), Herzog v. Herzog, 69 Nev. 286, at 290, 249 P.2d 533 (1952).

23
24 Gardner v. Gardner, 881 P.2d 645, 110 Nev. 1053 (Nev., 1994):

25 " In Heim we stated that in **deciding matters concerning alimony, the**
26 **judge must "form a judgment as to what is equitable and just, having**

27
28
²⁰ In Johnson v. Johnson, 89 Nev. 244, 247, 510 P.2d 625, 626-627 (1973), the Nevada Supreme Court departed from the all-or-nothing approach to the division of separate and community property of Lake v. Bender, 18 Nev. 361, 7P.74 (1884) and announced the rule that the increase in the value of separate property during marriage should be apportioned between the separate property of the owner and the community property of the spouses. The description of spousal support in Lake was not altered.

1 regard to the respective merits of the parties and to the condition in
2 which they will be left by the divorce." Id. at 609, 763 P.2d at 680.
3 Moreover, we noted that the "'Buchanan guidelines' (Buchanan v.
4 Buchanan, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974)) are simply an
5 inexhaustive list of such common sense considerations as the financial
6 condition of the parties (property, income, relative earning capacity), duration
7 of the marriage, age and health of the parties" and the contribution each has
8 made to the property owned by the community. Id. at 608-09, 763 P.2d at
9 680. Finally, in Heim, we emphasized that an award of alimony must be fair.
10 Id. at 610, 763 P.2d at 681.

11 Our case law thus reflects the clear legislative mandate that authorizes the
12 district courts to award alimony to the wife or husband in an amount that
13 "appears just and equitable." NRS 125.150(1)(a).

14 Lawrimore v. Lawrimore, 381 P.3d 632(Table) (Nev., 2012):

15 "The **district court has wide discretion in determining spousal support**
16 **issues**, and this court will not disturb the district court's award of alimony
17 absent an abuse of discretion. Lawrimore citing: Wolff v. Wolff, 112 Nev.
18 1355 1359, 929 P.2d 916, 918-19 (1996) (explaining that an award of
19 spousal support will not be disturbed on appeal unless it appears from the
20 record that the district court abused its discretion). The court "[m]ay award
21 such alimony to the wife or to the husband, in a specified principal sum or as
22 specified periodic payments, **as appears just and equitable.**" NRS
23 125.150(1)(a). **A district court's factual findings will be upheld if**
24 **supported by substantial evidence in the record.** Gepford v. Gepford, 116
25 Nev. 1033 1036, 13 P.3d 47, 49 (2000). **Substantial evidence is that which**
26 **a sensible person may accept as adequate to sustain a judgment.** See
27 Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999). This
28 court generally defers to the district court regarding witness credibility and will
not reweigh evidence. Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042,
1046 (2004) (noting that this court "will not reweigh the credibility of
witnesses on appeal; that duty rests within the trier of fact's sound
discretion")." [emphasis added]

Consistent with Lake and Buchanan, alimony includes an inexhaustible list
of everything, necessities and luxuries, which Caterina is entitled to have and
enjoy. Mortgage payments are a necessity for Caterina. Consistent with Gepford,
the Court's factual findings and orders are supported by substantial evidence in
the record and should be upheld. Substantial evidence is that which a sensible

1 person may accept as adequate to sustain a judgment. Schmanski. A sensible
2 person would accept the evidence is adequate to sustain the Court's orders. The
3 Court used common sense principles in deeming Grady's financial assistance
4 with Caterina's home mortgage alimony, consistent with Gardner and Lawrimore.
5 Further, Grady is the drafter of the decree, he selected the terms for the decree,
6 hired the legal staff to prepare the decree, and sent it to Caterina to sign telling
7 her "I will always give the money to you but I do it because I want to not because
8 anybody can make me do it. If I put everything in writing that you want I will never
9 be able to get a loan in my own name. I will never be able to get ahead of my
10 present life. I will have to live poor until I die" and "I will always keep my word" and
11 "I am ensuring that you are taken care of for your entire life I do not understand
12 why you are not satisfied."²¹ Any vagueness or ambiguity must be interpreted
13 against the drafter. Basic principles of contract law hold the drafter to a higher
14 standard. Williams v. Waldman, 108 Nev. 466, 473, 836 P.2d 614, 619 (1992)
15 ("[I]t is a well settled rule that '[i]n cases of doubt or ambiguity, a contract must be
16 construed most strongly against the party who prepared it, and favorably to a
17 party who had no voice in the selection of its language.' " (alteration in original)
18 (quoting Jacobson v. Sassower, 66 N.Y.2d 991, 499 N.Y.S.2d 381, 489 N.E.2d
19 1283, 1284 (1985))). Golden Rd. Motor Inn, Inc. v. Islam, 376 P.3d 151, 132 Nev.
20 Adv. Op. 49 (Nev., 2016).

21 Also, NRS 125.150(9)(e) analysis of income of the parties supports the
22 \$1,500.00 per month is alimony. Grady earns about \$116,000.00 annually, was
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²¹ Exhibit "1" and Exhibit "2"

1 paying Caterina about 30% of this amount.

2 The Nevada Supreme Court held "this court generally defers to the district
3 court regarding witness credibility and will not reweigh evidence" Castle and "this
4 court "will not reweigh the credibility of witnesses on appeal; that duty rests within
5 the trier of fact's sound discretion." Lawrimore. This Court properly considered
6 Grady's sworn testimony at the hearing in determining that the \$1,500.00 per
7 month payments are alimony.
8

9 **Caterina Did Not Waive Her Right To Alimony**

10 Contrary to Grady's assertions, Caterina did not waive her right to alimony.

11
12 A waiver "is the intentional relinquishment of a known right. It is a voluntary
13 act, "and implies an election by the party to dispense with something of value,
14 or to forego some advantage which he might at his option have demanded and
15 insisted on." It is requisite to waiver of a legal right that there be "a clear,
16 unequivocal, and decisive act of the party showing such a purpose or acts
17 amounting to an estoppel on his part"; "A waiver, to be operative, must be
18 supported by an agreement founded on a valuable consideration[.]"

19 In order to establish a waiver, the intention to waive must clearly appear, Afriat
20 v. Afriat, 61 Nev. 321, 117 P.2d 83, 119 P.2d 883, and the party relying upon
21 216*216 the waiver must have been misled to his prejudice. Union Central Life
22 Ins. Co. v. Schultz, 45 Ida. 185, 261 P. 235; Universal Gas Co. v. Central
23 Illinois Public Service Co., 7 Cir., 102 F.2d 164. Melahn v. Melahn, 370 P. 2d
24 213 - Nev: Supreme Court 1962.

25 Caterina agreed to receive assistance with her home mortgage. She did
26 not knowingly and voluntarily agree to not receive any assistance. There was no
27 clear, unequivocal, and decisive act by Caterina to waive alimony. Rather, the
28 complete opposite occurred. She needed financial support to pay her bills. Her
mortgage alone is \$1,933.07 per month, and Grady was fully aware at the time
of divorce what her mortgage payment was. He arranged for all the financing
and instructed Caterina to not talk to the loan agents, to ignore them and that he

1 will "make up some information on money."²² The parties had been married 31
2 years. Grady paid her \$1,500.00 per month from June 2014 to August 2018.
3 There was no waiver of alimony, given the parties conduct.

4
5 **No Error in the court order regarding the \$1,500.00 payments from Grady
to Caterina for her interest in his military pay**

6 Grady initially claimed that in September 2018 he began to receive his U.S.
7 Army military retirement funds via tax-free disability, therefore he can unilaterally
8 cut off the \$1,500 that he was paying Caterina.²³ Now, in his Motion for
9 Reconsideration, he states that at the time of divorce, he actually began
10 receiving his disability pay. This new information actually fortifies the Court's
11 application of contract law and the Court's order that Grady continue the
12 \$1,500.00 per month payments to Caterina. This is because Grady willfully and
13 knowingly applied for and received his disability pay around the time of divorce,
14 and yet he continued to pay Caterina the dollar amount that he promised
15 because "it is the right thing to do", which is in compliance with their contractual
16 agreement.

17
18
19 Howell involved state court orders requiring a service member to reimburse
20 a former spouse the a mount of retirement pay the former spouse was entitled
21 to when thirteen (13) years after divorce, he waived his military pay to get tax
22 free disability pay. Under Howell, such an order violates federal law. Howell v.
23 Howell, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). The case at bar is
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25

26
27 ²² Exhibit "2".

28 ²³Grady's Reply to Opposition and/or Countermotion filed 12-28-18, pg. 7, in 131-132
and Grady's Exhibit "A" showing that the dollar amount was \$62.50.

distinguished from Howell.

We now learn in Grady's Motion for Reconsideration, that around the time of divorce, he had *already waived his retired pay* and was receiving disability pay. He did not make a post-divorce waiver 13 years after divorce that reduced retirement to receive disability pay. Nothing in Howell prohibits a state court from enforcing an agreement by ordering a service member, who unilaterally stops making payments the service member was legally obligated to make, to resume those payments and pay arrearages. Lesh v. Lesh, 809 S.E. 2d 890 (N.C.Appl. 2018). Also held by Gross v. Wilson, 424 P.3d 399 (Alaska 2018):

Under Howell a state court may not circumvent Mansell by ordering a service member to "indemnify" a former spouse for retirement benefits waived to receive disability pay. **But Howell does not hold that a state court cannot enforce a property division by ordering a service member who unilaterally stops making payments the service member was legally obligated to make to resume those payments and pay arrearages.** [emphasis added].

Under contract law principles, Grady was legally obligated to make the \$1,500.00 payments to Caternia and he must resume paying her.

Henson v. Henson, 130 Nev., Adv. Op. 79, 334 P.3d 933, 936 (2014):

An agreement to settle pending divorce litigation constitutes a contract and is governed by the general principles of contract law. Grisham v. Grisham, 128 Nev., Adv. Op. 60, 289 P.3d 230, 234 (2012). In the context of family law, parties are permitted to contract in any lawful manner. See Rivero v. Rivero, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). "Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy." *Id.* An enforceable contract requires "an offer and acceptance, meeting of the minds, and consideration." May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Further, this court views a contract as "ambiguous if it is reasonably susceptible to more than one interpretation." Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (internal quotation and footnote omitted). When interpreting an ambiguous contract, this **court looks beyond the express terms and analyzes the circumstances surrounding the contract to determine the**

1 **true mutual intentions of both parties.** Id. (footnote omitted). Finally, this
2 court has recognized that an interpretation that **"results in a fair and**
3 **reasonable contract is preferable to one that results in a harsh and**
4 **unreasonable contract."** Id. (internal quotation and footnote omitted).
5 Holyoak v. Holyoak (Nev., 2016). [emphasis added]

6 Shelton v. Shelton, 78 P.3d 507, 119 Nev. 492 (Nev., 2003):

7 The property settlement agreement between Roland and Maryann is
8 ambiguous. The agreement states that Roland's military disability is community
9 property, but it awards the entire amount to Roland. The award of military
10 retirement pay to Maryann describes the award as "[o]ne half of HUSBAND'S
11 military retirement in the amount of \$577, until her demise," but the amount
12 designated is more than one-half the amount of Roland's retirement pay at the
13 time. Roland paid Maryann \$577 until the time he elected to take disability pay
14 in lieu of retirement pay.

15 It appears, therefore, that the agreement of the parties was that Roland pay
16 Maryann \$577 each month for her portion of the community asset, rather than
17 pay her one-half of his retirement pay, since \$577 is more specific than
18 "one-half." **Moreover, the parties' subsequent conduct reinforces this**
19 **conclusion, in that Roland ratified the terms of the agreement by**
20 **performing his obligations under the decree for a period of two years.**
21 **In addition, this interpretation yields a fair and reasonable result, as**
22 **opposed to a harsh and unfair result.** Roland cannot escape his contractual
23 obligation by voluntarily choosing to forfeit his retirement pay. It appears that
24 **Roland possesses ample other assets from which to pay his obligation**
25 **without even touching his disability pay.** Even if he lacks these assets,
26 nothing prevents him from using his disability payments to satisfy his
27 contractual obligation.

28 Although states are precluded by federal law from treating disability benefits
as community property, states are not precluded from applying state contract
law, even when disability benefits are involved. The district court's order is
reversed and this matter is remanded to the district court for further
proceedings consistent with this opinion.

Grady's analysis of Shelton is incorrect. A Shelton analysis is not triggered by a
reduction in retirement pay.²⁴ Rather, it is the assessment of the contract
obligation between the parties that triggers a Shelton analysis. Shelton held that;

²⁴ Defendant's Motion for Reconsideration, page 11, line 4.

1 "The best approach for interpreting an ambiguous contract is to delve beyond its
2 express terms and "examine the circumstances surrounding the parties'
3 agreement in order to determine the true mutual intentions of the parties". This
4 Court's analysis under Shelton was proper. Grady offered to pay Caterina
5 \$3,000.00 per month (of which \$1,500.00 is for mortgage assistance), Caterina
6 accepted, Grady paid from before June 2014 until September 1, 2018 and
7 Caterina was harmed by the loss of payments. The Court did not order Grady
8 to "indemnify" Caterina \$1,500.00 per month for the reduction in U.S. Military
9 retirement pay. Rather, the Court applied state law of contract, which is not
10 preempted by federal law. Grady was ordered to satisfy his contractual
11 obligations to Caterina to pay her the \$1,500.00 that he unilaterally ceased
12 paying her on September 1, 2018 from his other assets.

13 Grady may have divisible pay that is not precluded from division by Howell.
14 For example, Title 10 assets are divisible under the Uniformed Services Former
15 Spouses' Protection Act (USFSPA) 10 U.S.C. 1408(c)(1). Grady receives
16 combat related special compensation (CRSC) 10 U.S.C. 1413a. This is a Title
17 10 asset. CRSC is another form of military disability pay, separate from standard
18 Veteran Administration disability benefits. Title 10 assets are distinguished from
19 Title 38 assets. Military veterans generally are entitled to compensation for
20 service connected disabilities under 38 U.S. C. 1101 et seq., and under Mansell
21 v. Mansell, 490 U.S. 581, 594-595 (1989), a state cannot divide the waived
22 portion of a veteran's retirement pay that is 38 U.S. C. 1101 et seq. disability pay.
23 However, Grady has Title 10 assets which are not specifically addressed in
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1 Mansell or Howell as prohibited from being divided. The division of CRSC income
2 was upheld the case of Foster v. Foster, No. 324853, unpublished (Mich. App,
3 March 22, 2018):

4
5 Howell involved general service-connected disability benefits, and
6 the Supreme Court's opinion rested squarely on the language in
7 former 10 USC 1408(a)(4)(B), which provided and still provides in
8 10 USC 1408(a)(4)(A)(ii), that "disposable retired pay" means a
9 member's total monthly retired pay less amounts that "are
10 deducted from the retired pay . . . as a result of a waiver of retired
11 pay required by law in order to receive compensation under title 5
12 or title 38[.]" Howell, 137 S Ct at 1402-1404. CRSC
13 (combat-related special disability pay), at issue in this appeal, is
14 compensation under Title 10, not Title 5 or Title 38 as referenced
15 when arriving at "disposable retired pay." In our earlier opinion, we
16 relied on this Court's opinion in Megee, 290 Mich App 551, which
17 distinguished CRSC from general service-connected disability pay
18 found in title 38 on the basis that the panel was addressing a
19 waiver of retirement pay in favor of title 10 CRSC compensation.
20 Given that CRSC is at issue in the instant case, that Howell did not
21 concern or analyze a waiver of retirement pay in favor of CRSC
22 disability pay, and that Megee is on point and remains binding
23 precedent, MCR 7.215(J)(1), we again affirm the trial court's ruling.

24
25 FN 1. The contempt order does not require payment from CRSC
26 funds, nor do we construe the divorce judgment's offset provision
27 as ordering payment from CRSC funds, and any such
28 construction must be avoided.

Grady also receives annuity income. When he retired from the army in
1999, he went to work for the federal government. He receives Federal
Employees Retirement System income. This income is seen as his US Office of
Personnel Management (hereafter "OPM") in the form of annuity income of
\$1,315.00 per month.²⁵ This is not Title 5 or Title 38 income covered by the
Howell and Mansell cases.

IV. COUNTERMOTION

²⁵ Defendant's FDF filed on 01-02-19, proof of income attachments.

**If, For The Sake Of Argument, the Court is inclined to eliminate the
\$1,500.00 Payment for Caterina's interest in Grady's military pay,
Caterina's Spousal Support Should Be Increased**

The Supreme Court cases of Howell and Rose unequivocally stand for the premise that the harsh consequences of a former spouse's loss of income due to a military member electing to waive his retirement pay for disability pay, can be addressed by recalculating the former spouse's spousal support award. In recalculating Caterina's spousal support, all of Grady's income is eligible to be considered in determining his annual income. Under federal law, all of his income is eligible for garnishment of a spousal support order. 42 U.S.C. §§ 659. Grady knows this and that is why he is desperate to prevent this court from awarding spousal support. He should not be allowed to leave Caterina destitute.

Howell v. Howell, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017)

We recognize, as we recognized in Mansell, the hardship that congressional pre-emption can sometimes work on divorcing spouses. See 490 U.S., at 594, 109 S.Ct. 2023. **But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support.** See Rose v. Rose, 481 U.S. 619, 630-634, and n. 6, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987) ; 10 U.S.C. § 1408(e)(6).

n.6 . Consistent with the distinction suggested in Wissner v. Wissner, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 (1950), Congress had amended the Social Security Act to **authorize garnishment** of certain federal benefits, including railroad retirement annuities, **for spousal and child support** but not for community property divisions. 42 U.S.C. §§ 659 and 662. **We construed these amendments to "expressly override" the anti-attachment provision for support claims, finding it "logical to conclude that Congress . . . thought that a family's need for support could justify garnishment,** even though it deflected other federal benefit programs from their intended goals, but that

community property claims, which are not based on need, could not do so." Hisquierdo v. Hisquierdo, 439 U.S., at 587, 99 S.Ct., at 811; see also McCarty v. McCarty, 453 U.S., at 230, 101 S.Ct., at 2740. Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987)

Veterans' disability benefits compensate for impaired earning capacity, H.R.Rep. No. 96-1155, p. 4 (1980), U.S. Code Cong. & Admin.News 1980, p. 3307, and are intended to "provide reasonable and adequate compensation for disabled veterans **and their families**." S.Rep. No. 98-604, p. 24 (1984) (emphasis added), U.S.Code Cong. & Admin.News 1984, pp. 4479, 4488.

..[s]tate contempt proceedings to enforce a valid child support order coincide with Congress' intent to provide veterans' disability compensation for the benefit of both appellant and his dependents. Moreover, in reaching what was clearly an alternative holding in Wissner that a community property division of the insurance proceeds would constitute a "seizure" in violation of a provision against "attachment, levy, or seizure," the **Court was careful to identify a possible exception for alimony** and child support cases. Id., at 659-660, 70 S.Ct., at 400. The suggested basis for this exception was that **family support obligations are deeply rooted moral responsibilities**, while the community property concept is more akin to an amoral business relationship. Id., at 660, 70 S.Ct., at 400.

Cassinelli v. Cassinelli, 229 Cal Rptr. 3d 801, 20 Cal App. 5th 1267 (Cal. App. 2018):

"Arguably some or all of these funds would be exempt from an ordinary money judgment. **However, they are not exempt from a spousal support order. Specifically, a spousal support order would be enforceable against Robert's:**

1. Veteran's disability benefits (although only up to the amount of his waiver of retired pay). (42 U.S.C. §§ 659(a), 659(h)(1)(A)(ii)(V), 659(h)(1)(B)(iii) ; 5 C.F.R. § 581.103 ; United States v. Murray (1981) 158 Ga.App. 781, 785, 282 S.E.2d 372, 375.)
2. CRSC. (Fin. Mgmt. Reg., supra , § 630101(C)(2).)
3. Social security benefits. (42 U.S.C. §§ 659(a), 659(h)(1)(A)(ii)(I) ; DeTienne v. DeTienne (D.Kan. 1993) 815 F.Supp. 394, 396-397.).
4. State teacher's disability benefits. (Code Civ. Proc., § 704.110, subd. (c) ; Ed. Code, § 22006.).

1 Similar to the husband in Cassinelli, Grady has multiple sources of income
2 and they are *not exempt from a spousal support order*. All of this income, which
3 comprises Grady's approximate \$116,000.00 annual income, can be considered
4 when a spousal support obligation to Caterina is calculated. Pursuant to NRS
5 125.150 (4), the court may set apart a portion of the husband's separate property
6 for the wife's support as is deemed just and equitable.
7

8
9 Should this Court eliminate Grady's \$1,500 per month payments to Caterina
10 as a result of her interest in his military pay, then an increase in spousal support
11 to Caterina is justified based on her \$3,745.13 per month living expenses. Her
12 mortgage is \$1,933.07. Grady knows this because he solely handled the financing
13 of the home then asked for a divorce 6 months later. The United States Retired
14 Military Health Care that Grady promised to Caterina vanished in 2016,
15 unbeknownst to Caterina. She was left with thousands of dollars in uncovered
16 medical bills and had to purchase insurance. She pays \$102.97 per month. The
17 Long Term Health Insurance also promised to Caterina was about to vanish, but
18 Caterina stepped in to make the payments. They are \$128.00 per month. Her
19 spousal support should be increased.
20
21

22 **Should this Court find that Caterina Waived Alimony and She also Lost**
23 **Grady's Contractual Obligation to Pay Her the Pension, then the**
24 **Unforeseeable loss of the Bargained-for Pension Invalidates the Waiver**

25 If this Court finds that Caterina waived her right to alimony, then the alimony
26 waiver should not be upheld if the Court also eliminates Caterina's interest in the
27 parties' community property: the military pension. Grady left her destitute by
28 stopping the payments. If the Court is inclined to eliminate these funds because

1 Grady waived his military pension to receive disability funds, then the
2 unforeseeable loss of the pension benefit should invalidate the alimony waiver.
3 Upholding the alimony waiver would be unjust.
4

5 Fick v. Fick, 851 P.2d 445, (1993)

6 Where the Nevada Supreme Court upheld the trial Court's
7 invalidation of the parties alimony waiver provision of their prenuptial
8 agreement.

9 Fattore v. Fattore Docket No. A-3727-16T1 Argued January 16, 2019 and
10 February 5, 2019 (N.J. Super. App. Div., 2019), not for publication.

11 "Here, we hold **the alimony waiver was not a bar to a**
12 **consideration of a post-judgment award of alimony to**
13 **plaintiff.** Although the waiver of alimony was mutual, we need not
14 speculate what defendant's reasons for waiving it were because
15 his waiver stands separate, and presumably had separate
16 consideration, from plaintiff's waiver. However, the record readily
17 demonstrates plaintiff gave valuable consideration for the waiver
18 of alimony in exchange for the promise of the future ability to share
19 in defendant's military pension. Moreover, as defendant notes in
20 his reply brief, his earnings were approximately thirty-four percent
21 greater than plaintiff's at the time of the divorce. Thus, there was
22 valuable consideration given by plaintiff in exchange for the
23 alimony waiver, and **the unforeseeable loss of the bargained for**
24 **pension benefit was a substantial and permanent change in**
25 **circumstances, which invalidated the waiver. Upholding the**
26 **alimony waiver in these circumstances would be wholly**
27 **unfair."**

21 **Caterina Should be Allowed to Modify the Joint Petition for Summary**
22 **Decree of Divorce due to Grady's Misrepresentations**

23 Grady admits that he advised Caterina at the time of divorce that "My retired
24 pay is 3017 a month after they deduct the payment for SBP [Survivor Benefit
25 Plan]. You are entitled to half of that which is 1508. You are not entitled to any
26 more money. I give you 3000 a month because I think it is the right thing to do.
27 If I was only going to give you 1500, I would not be giving you 3000 all these
28

years."²⁶ Grady informed Caterina that she was entitled to the amount of \$1,508.00 from his retirement pay. He paid her a total of \$3,000.00 each month, (of which \$1,500.00 was for assistance with her home mortgage), and she relied on these funds to pay her bills. When Grady unilaterally terminated the payments on September 1, 2018, he left Caterina destitute. Grady now claims that he was already receiving disability benefits at the time the Decree was entered. Grady claims that his army retire pay actually was only \$128.40 around the time of divorce.²⁷ Caterina should be allowed to modify the Decree of Divorce due to Grady's misrepresentations to Caterina and increase her spousal support.

Rule 60. Relief From a Judgment or Order

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.**
[emphasis added]

Caterina should be granted NRCP 60(b)(6) relief from the Decree of Divorce. Subsection (b)(6) of this rule was enacted March 1, 2019. However, subsection (b)(6) has been active in Nevada Federal District Court for years and offer persuasive authority and guidance to its application to the instant case such

²⁶ Exhibit "1" and Exhibit "2".

²⁷ Defendant's Appendix to Motion for Reconsideration, Exhibit A.

1 as the following:

2 Under Rule 60(b)(6), a district "court may relieve a party or its legal
3 representative from a final judgment, order, or proceeding for . . . any . . .
4 reason that justifies relief." However, such relief is generally warranted only
5 under "extraordinary circumstances." Naylon v. Wittrig, No.
6 3:08-cv-00625-LRH-WGC, U.S. Dist. Ct., D. Nev (May 3, 2017) citing; Keeling
7 v. Sheet Metal Workers Int'l Ass'n, Local Union 162, 937 F.2d 408, 410 (9th
8 Cir. 1991) (citing United States v. Sparks, 685 F.2d 1128, 1129 (9th Cir.
9 1982)). In Keeling, the Ninth Circuit held that "repudiation" or "complete
10 frustration" "of a settlement agreement that terminated litigation pending
11 before a court constitutes an extraordinary circumstance . . ." Id. at 410-11.
12 The court ultimately deferred to the district court's conclusion that the
13 defendant's "specific acts" of "bad faith noncompliance" with the settlement
14 agreement caused its complete frustration and thus warranted Rule 60 relief.

15 Carlson v. Carlson, 832 P.2d 380, 108 Nev. 358 (Nev., 1992).

16 Trudy argues that Austin improperly received the bulk of the community
17 property because he misrepresented the value of his pension. Trudy contends
18 that she demonstrated that the divorce decree should be set aside based on
19 either mutual mistake or fraud. We agree.

20 [t]he record clearly demonstrates that the representations were the result of
21 either mistake or fraud. If both Austin and Trudy were mistaken about the
22 pension's value, the parties entered the property settlement based upon a
23 mutual mistake, namely, that they had essentially split their property equally.
24 A mutual mistake entitles a party to relief from a judgment. NRCP 60(b)(1). If,
25 **however, Austin or his counsel knew the value of the pension, they**
26 **fraudulently misrepresented the value of Austin's pension. Such fraud is**
27 **grounds for relief from the judgment** pursuant to NRCP 60(b)(2).
28 Therefore, we conclude that Trudy was entitled to relief from the judgment.

[emphasis added]

21 Like the husband in Carlson, Grady's misrepresentation of his military pay
22 is grounds for Caterina's relief from judgment.

23 Barelli v. Barelli, 944 P.2d 246, 113 Nev. 873 (Nev., 1997).

24 Parties divorced in 1988 and in 1992, the former wife, Madeline, filed a
25 complaint in a district court of general jurisdiction, alleging that Anthony
26 fraudulently induced her to waive alimony in return for lifetime employment with
27 his medical practice. She asked the district court to reform the property
28 settlement agreement so that she could receive monthly alimony and an
additional \$250,000 in community property. Madeline has filed an action to

1 reform (or, by seeking alimony, to rescind) the agreement.

2 We hold that actions regarding the resolution of the marriage filed independent
3 of the divorce proceeding to reform or rescind unmerged property settlements
4 fall within the jurisdiction of the family court pursuant to article 6, section 6(2)(b)
5 of the Nevada Constitution, and NRS 3.223(1)(a). Even though Madeline
6 brought a separate claim for contractual damages, the resolution of whether the
7 property settlement agreement could be reformed or rescinded based on
8 allegations of fraud was dependent on the resolution of whether, in fact, there
9 was a contract ab initio (the oral side agreement). **Therefore, because the**
10 **reformation/rescission claim was dependent upon the existence of the**
11 **oral contract, and because a favorable ruling on the**
12 **reformation/rescission had a potential for resurrecting claims for alimony**
13 **and community property, the family court also had jurisdiction to**
14 **adjudicate its existence. [emphasis added]**

15 Caterina did not knowingly and voluntarily waive alimony. He promised her
16 \$3,000.00 per month like he had been paying. If Grady intended to get Caterina
17 to waive alimony, then like the wife in Barelli, Grady fraudulently induced Caterina
18 to waive alimony in return for \$1,500.00 monthly assistance with her home
19 mortgage and \$1,500 per month for her interest in his military monthly pay. He
20 misrepresented the value of his pension at the time of divorce and he
21 misrepresented that he applied for and was receiving disability pay in lieu of
22 military pay. Caterina should be allowed to resurrect her right to alimony.

23 NRS 125.040 Orders for support and cost of suit during pendency of action.

24
25
26 2. The court may make any order affecting property of the parties,
27 or either of them, which it may deem necessary or desirable to
28 accomplish the purposes of this section. Such orders shall be
made by the court only after taking into consideration the financial
situation of each of the parties.

29 NRS 125.150 Alimony and adjudication of property rights; award of attorney's
30 fee; postjudgment motion; subsequent modification by court:

31 1. In granting a divorce, the court:

1 (a) May award such alimony to either spouse, in a specified
2 principal sum or as specified periodic payments, as appears just
3 and equitable;

4 If this Court is inclined to find that Caterina is not entitled to Grady's
5 community property military funds under principles of contract law, then the Court
6 should find that extraordinary circumstances exist to grant Caterina relief from
7 judgment under 60(b)(6). Grady misinformed Caterina and led her to believe that
8 she would receive her community interest in his army pension for his lifetime;
9 Grady paid Caterina \$3,000.00 per month (of which \$1,500.00 is for mortgage
10 assistance) for over 4 years; Grady abruptly stopped paying her \$3,000.00 per
11 month, claiming that she was only entitled to \$62.00 per month from his military
12 pay; Caterina did not foresee this event because Grady did not tell her that he
13 was electing the waiver of his military pay to receive disability pay; and Grady left
14 her destitute since he also abruptly terminated her monthly assistance with her
15 mortgage.
16

17 A favorable ruling on the recession of any alimony waiver can resurrect
18 Caterina's claim for alimony. This Court has jurisdiction to adjudicate the
19 existence of Grady's agreement to pay Caterina alimony in the form of \$1,500.00
20 per month to assist Caterina with her home mortgage (which is \$1,933.07/month).
21 Like the case of Carlson, Grady misrepresented the value of his army pension to
22 Caterina. It was not \$3,017.00 a month, rather it was only \$128.40 per month of
23 which, she would receive 1/2 (\$62.00). The unforeseeable loss of the bargained
24 for pension benefit plus Grady cutting off the \$1,500.00 mortgage assistance
25 brutally claiming that "it wasn't required", was a substantial and permanent
26
27
28

1 change in circumstances. These circumstances should be considered
2 extraordinary circumstances sufficient to grant Caterina relief from judgment.

3 **Grady Should Immediately Complete Documents Necessary to**
4 **Voluntarily Keep Caterina as the Sole Beneficiary of the Survivor Benefit**
5 **Plan**

6 Caterina also received terrible news from the U.S. Military DFAS that she
7 would not receive the SBP because the Decree of Divorce was not submitted to
8 them within 12 months of the divorce. Grady promised her this benefit and told
9 her that it was to be her income after he died. Her sporadic and part time work
10 during marriage prevented her from acquiring a pension on her own. Caterina
11 relied on this promise during marriage. Grady told Caterina:
12

13 "I have kept all of my promises to you and I will continue to do so while I live and
14 after my death.You will receive \$3,000 a month as long as I live. After my
15 death you will get SBP [Survivor benefit Plan] and all other payments you are
entitled to."²⁸

16 "You get the same benefits whether we are married are not [sic]. SBP, SS, and
17 insurance. There is no difference."²⁹

18 The approximate \$1,860.00 SBP Caterina would receive after Grady passed
19 away would be a monthly income for her. The military recognizes spouses'
20 sacrifices by offering the SBP on the day the military member retires to provide
21 income for surviving spouses or ex-spouses. Grady took out the SBP for
22 Caterina the day he retired in 1999, he continues to pay the approximate \$219
23 per month for it, has paid about 180 payments and in about 7 years, when Grady
24 turns age 70, the \$219 payments cease. Knowing that the \$3,000.00 per month
25

26
27 ²⁸ Exhibit "7"

28 ²⁹ Exhibit "8"

1 Grady was paying her would end when he passes, Caterina was relying on the
2 SBP to survive on. Because Grady was always in charge of the parties financial
3 matters, particularly all things military, Caterina had no clue that the decree
4 needed to be sent to DFAS for processing. Apparently Grady didn't know either
5 He wrote the DFAS on September 20, 2018 stating that he did not request a
6 change, that this plan has been in effect for 20 years, it's mandated in the decree
7 and to reinstate it.³⁰ The 12 months lapsed and Caterina is no longer listed as the
8 beneficiary. Recently he sent correspondence to DFAS to reinstate Caterina.
9 Luckily, he can.

10
11
12 In a document that Grady provided Caterina on or about April 2, 2019, a
13 DFAS Representative, on states that:

14 "If you want to keep your Former Spouse on you will have to volunteer to keep
15 her on the SBP on form DD2656-1"³¹

16 Thrilled with the news that Caterina could still receive her military SBP,
17 about April 5, 2019, her counsel sent a written request to Grady's counsel to
18 please have Grady complete the documents necessary to voluntarily keep
19 Caterina as the sole beneficiary of the SBP and provide documents evidencing
20 that she is the beneficiary. Just because the parties missed the 12 month
21 deadline to submit the decree to DFAS does not mean that her right to the SBP
22 is extinguished. She was awarded the SBP in the decree and this has not
23 changed.³² Regrettably, Grady refuses to voluntarily name her on the SBP.

24
25
26 ³⁰ Exhibit "9"

27 ³¹ Exhibit "10"

28 ³² Exhibit "11"

1 Grady has once again forced Caterina to seek the Court's assistance for orders.

2 **Grady Should List Caterina Beneficiary of the VyStar Credit Union**
3 **Accidental Death Insurance**

4 The VyStar Credit Union Accidental Death Insurance awarded to Caterina
5 in the Divorce vanished. Caterina believed that Grady was to make the
6 payments. Grady believes otherwise. Fortunately, Grady has a "free" \$1,000.00
7 policy that currently exists. On or about April 5, 2019, Caterina's counsel sent
8 Grady's counsel a written request that Grady list her as the sole beneficiary of the
9 \$1,000.00 "free" VyStar life insurance plan and provide her a copy of the plan and
10 proof that she is the beneficiary. Grady refused.
11

12 **Federal Employees Group Life Insurance Proof of Beneficiary**

13 Grady told Caterina that "when I die you [will] get my annuity just like sbp
14 which will be around 50%." In the Decree, Grady gave her his OPM death
15 benefits. She is concerned that he will unilaterally alter her beneficiary status.
16 She has requested proof that she is the sole beneficiary. Grady provided a
17 "Designation of Beneficiary" for the Federal Employees Group Life Insurance
18 program that indicates the form was received by the OPM January 22, 2019.
19 Grady has not provided Caterina any further documents proving that the form has
20 been processed, that she is indeed listed as the sole beneficiary and confirmation
21 of the dollar amount that she will receive.
22
23

24 **Grady Is In Contempt Of Court For Failing To Deposit \$4,500.00 by**
25 **February 15, 2019, \$4,500.00 by March 15, 2019, and \$4,500.00 by April**
26 **15, 2019, into Caterina's Bank of America Account**

27 At the January 23, 2019, hearing, Grady was found to be in arrears of
28 \$7,500.00 for spousal support from September 1, 2018, to January 30, 2019, and

1 \$7,500.00 in arrears for Caterina's interest in retirement pay from the same time
2 period. Attorney fees of \$7,000.00 were awarded to Caterina. The total amount
3 of \$22,000.00 was reduced to judgment, payable at the rate of \$4,500.00 per
4 month with the first \$4,500.00 payment due by February 15, 2019, and the 15th
5 of each month thereafter until \$22,000.00 is paid in full. Grady was also ordered
6 to continue the \$1,500.00 per month for spousal support and the \$1,500.00 per
7 month for Caterina's interest in retirement pay. The \$4,500.00 is the sum of
8 Grady's \$3,000.00 per month obligation to Caterina plus \$1,500.00 toward the
9 arrears. Once the \$22,000.00 is paid, Grady's monthly payment to Caterina goes
10 back down to \$3,000.00 per month, unless further order from the Court. Grady
11 shall deposit the \$4,500.00 into Caterina's Bank of America account such that the
12 \$4,500.00 is to be in Caterina's bank account by the 15th of each month.
13 Caterina's bank account was placed on the record. Caterina also provided Grady
14 a voided check in open court to set up automatic deposits. Grady failed to make
15 the deposits. There is no "stay" of the court's orders. A letter was sent to Grady
16 on February 19, 2019, April 5, 2019, and April 17, 2019, requesting the deposits.
17 Grady refuses.

21 **Caterina is Entitled to An Award of Attorney's Fees**

22 Grady is in Contempt of Court for failing to pay Caterina \$4,500.00 February
23 15th, March 15th and April 15th of 2019. Grady has also not provided proof from the
24 Federal OPM that Caterina is the beneficiary of his death benefits. They will not
25 speak to Caterina. They want a Power of Attorney or for Grady to call. He hasn't.
26 He claims that the form showing that they received the form is sufficient. His
27
28

behavior is causing her increased attorney fees.

NRS 125.040:

1. In any suit for divorce the court may, in its discretion, upon application by either party and notice to the other party, require either party to pay moneys necessary to assist the other party in accomplishing one or more of the following:

- (a) To provide temporary maintenance for the other party;
- (b) To provide temporary support for children of the parties; or
- (c) To enable the other party to carry on or defend such suit.

2. The court may make any order affecting property of the parties, or either of them, which it may deem necessary or desirable to accomplish the purposes of this section. Such orders shall be made by the court only after taking into consideration the financial situation of each of the parties.

NRS 18.010(2): a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 22.100 Penalty for contempt.

1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.

2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned not exceeding 25 days, or both.

3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). Equal footing so don't have to liquidate savings. The Nevada Supreme Court held that the district court did not abuse its discretion in awarding approximately

1 \$50,000.00 in attorney fees to the wife in a divorce proceeding. The Court
2 noted that without the district court's assistance, the wife would have been
3 required to liquidate her savings and jeopardize her financial future in order
to meet her adversary in court on an equal basis.

4 In Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016) the
5 Appellate Court held that: Pursuant to NRS 125.040 the court can award
attorney's fees from the start of the action through the appeal.

6 Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998). Disparity in income
7 is a factor to be considered in awarding attorney fees.

8 Hornwood v. Smith Food King, attorney fees to prevailing party if that party
9 succeeds on a significant number of issues. This court has held that "[a]
10 plaintiff may be considered the prevailing party for attorney's fee purposes if
it succeeds on any significant issue in litigation which achieves some of the
11 benefit is sought in bringing the suit." Hornwood v. Smith's Food King, 105
Nev. 188, 192, 772 P.2d 1284 (1989) (quoting Women's Federal S & L Ass'n.
12 v. Nevada Nat. Bank, 623 F.Supp. 469, 470 (D.Nev.1985).

13 Awards of attorney fees are within the sound discretion of the Court.
14 See Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher,
89 Nev. 540, 542-43, 516 P.2d. 103, 104 (1973), Leeming v. Leeming, 87 Nev.
15 530, 532, 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev.
1455, 971 P.2d 1262 (1998).

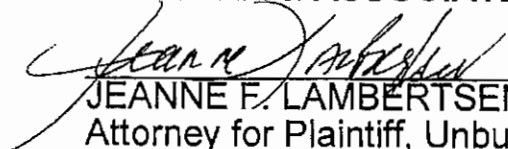
16 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
17 Court should take into consideration the following factors when determining an
18 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
19 been practicing law for 33 years and Ms. Lambertsen has been practicing law for
20 14 years; the law firm's practice is dedicated to family law. (2) The character and
21 difficulty of the work performed: The intricacy, importance, time and skill required
22 to prepare this Opposition and Countermotion and Exhibit Index is moderate to
23 high. (3) The work actually performed by the attorneys and legal assistants:
24 Approximately 15 hours were spent by counsel and legal assistants in fees (4) The
25 result obtained is unknown but the Opposition and Countermotion demonstrates
26
27
28

1 Grady's, contempt, lack of cooperation and continuing control of Caterina.

2 Plaintiff, Caterina Byrd, respectfully requests the above relief.

3 Dated: April 23, 2019.

WEBSTER & ASSOCIATES

4 
5 JEANNE F. LAMBERTSEN, ESQ.
6 Attorney for Plaintiff, Unbundled
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DECLARATION OF CATERINA BYRD

1. I, Caterina Byrd am the Plaintiff in the above-entitled action.

2. I have read the foregoing Opposition and Countermotion, and the factual averments contained therein are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the preceding are incorporated herein as if set forth in full.

3. That I had been receiving payments of \$3,000.00 per month from the Defendant, Grady Byrd since before the filing of the Joint Petition for Summary Decree of Divorce on June 5, 2014. Around the time of divorce, in emails to me, Grady promised me that I would receive the \$3,000.00 per month. These payments ceased September 1, 2018. My last payment was August 2018.

4. That on September 4, 2018, I learned that the checking account that Grady Byrd had deposited my monthly payment into was closed. It was a joint checking account that had been established for 31 years. At the hearing on January 23, 2019, I gave Grady Byrd my Bank of America routing number and account number so that he could make deposits into my account.

5. That I did not receive a deposit of \$4,500.00 from Grady Byrd on or before February 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd on or before March 15, 2019; and I did not receive a deposit of \$4,500.00 from Grady Byrd on or before April 15, 2019, as ordered at the January 23, 2019 hearing.

6. That I have not received any money from Grady since August 2018. I am

1 struggling to pay my bills and living expenses. I have had to borrow money from
2 my friends, family and took in a roommate to help pay expenses. I fear that I may
3 lose my house because paying the mortgage is financially difficult.
4

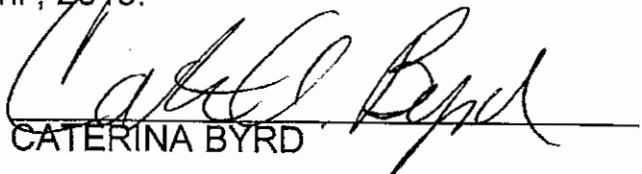
5 7. That at the time of divorce, I was never told by Grady and never knew
6 that the army pension was only about \$128.00 and my portion would be only
7 about \$62.00. Based on what Grady did tell me, I believed the army pension that
8 Grady was receiving was about \$3,017.00 per month and Grady was paying me
9 \$1,500.00 per month since the time of divorce because of this.
10

11 8. That because the \$3,000.00 per month payments from Grady will cease
12 upon his death, I will rely on the Military SBP to pay my bills once he passes. I
13 am devastated that simply because neither one of us sent the decree to the
14 military finance office within the 12 month deadline to do so, that he is refusing
15 to voluntarily list me as the beneficiary. We were married for 31 years and he
16 promised me the SBP.
17

18 9. Based upon the foregoing, I respectfully request that this Court grant the
19 relief requested by me in this Opposition and Counter-motion.
20

21 I declare under penalty of perjury in the State of Nevada that the foregoing
22 is true and correct.
23

24 Executed this 23 day of April, 2019.
25

26
27
28

CATERINA BYRD

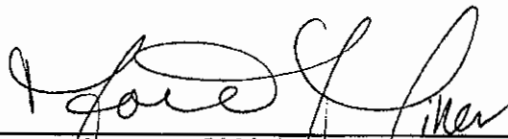
Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 23rd day of April, 2019, I caused the above and foregoing to be served as follows:

☒ Electronic Service

To the Defendant listed below at the address, email address, and/or facsimile number indicated:

Byron L. Mills, Esq.
attorneys@millsnv.com



An employee of Webster & Associates

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff/Petitioner

v.

GRADY EDWARD BYRD

Defendant/Respondent

Case No. D-18-577701-Z

Dept. G

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☒ Other Excluded Motion (must specify) No Final Order

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☒ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: JEANNE F. LAMBERTSEN

Date 4/23/2019

Signature of Party or Preparer



Steven D. Grierson

1 **NEO**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
7 6882 Edna Ave.
8 Las Vegas, Nevada 89146
9 Tel No: (702) 562-2300
10 Fax No: (702) 562-2303
11 e-mail: anitawebster@embarqmail.com
12 e-mail: jlambertsen@embarqmail.com
13 Unbundled Attorney for Plaintiff

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 CATERINA ANGELA BYRD

17 Plaintiff,

18 v.

19 GRADY EDWARD BYRD

20 Defendant.

CASE NO.: D-18-577701-Z
DEPT NO.: G

**NOTICE OF ENTRY OF ORDER FROM
THE MAY 2, 2019 HEARING**

21 PLEASE TAKE NOTICE that an Order was entered in the above-entitled
22 action on the 28th day of May, 2019, a copy of which is attached.

23 Dated this 28 day of May, 2019.

WEBSTER & ASSOCIATES

Jeanne F. Lambertsen
JEANNE F. LAMBERTSEN, ESQ.
Unbundled Attorney for Plaintiff

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2300 • Facsimile (702) 562-2303

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 28 day of May, 2019, I caused the above and foregoing document to be served as follows:

- ☒ [X] by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26 to be sent via facsimile, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

To the attorney(s)/person(s) listed below at the address, email address, and/or facsimile number indicated below:

Byron Mills, Esq.
Modonnell@millsnv.com


An employee of Webster & Associates

Electronically Filed
5/24/2019 2:26 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
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9 Tel No: (702) 562-2300
10 Fax No: (702) 562-2303
11 e-mail: anitawebster@embarqmail.com
12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, unbundled

DISTRICT COURT

CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff,

v.

GRADY EDWARD BYRD

Defendant.

CASE NO.: D-18-577701-Z
DEPT NO.: G

ORDER FROM THE MAY 2, 2019
HEARING

18 This matter having come before the court on the 2nd day of May 2019, for
19 the Status Check regarding Discovery, Plaintiff, CATERINA ANGELA BYRD
20 (hereinafter "Plaintiff"), present with her unbundled attorney, JEANNE F.
21 LAMBERTSEN, ESQ., of the law firm of WEBSTER & ASSOCIATES and
22 Defendant, GRADY EDWARD BYRD (hereinafter "Defendant"), not present,
23 Defendant's attorney, BYRON MILLS, ESQ., of the law firm of MILLS &
24 ANDERSON, present, the Court having heard the argument of counsel, finds
25 and orders the following:
26

27 Ms. Lambertsen noted her concerns regarding the Defendant's absence
28

RECEIVED

MAY 21 2019

Department G

W:\Family\Byrd, Caterina\Pleadings\Drafts\Order from 5.2.19 hearing.wpd

Law Office of
WEBSTER & ASSOCIATES
6821 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2300 • Fax (702) 562-2303

1 today, and that the Defendant filed a Notice of Intent to Appear Telephonically for
2 the May 22, 2019 hearing. Ms. Lambertsen noted that the Order from the January
3 23, 2019 hearing, which the Defendant attended, states that "If Defendant does
4 not appear at the return hearing on May 2, 2019, a no-bail bench warrant will be
5 issued for his arrest" also, the Plaintiff objected to the Defendant appearing
6 telephonically at the May 22, 2019 hearing, that he needs to be present and his
7 recent behavior is concerning as the Defendant used the Plaintiff's address to
8 obtain a Nevada Drivers license, the Los Angeles Airport Police found his Chevy
9 Cruze vehicle abandoned with the license plates removed, it was towed to
10 storage where daily fees are accruing, his vehicle loan with Ally Financial is not
11 being paid, and his loans, one for \$13,399.11 and another for \$17,882.25 are in
12 collections. (VT 11:07:45, 11:13:00).

15 Mr. Mills noted he received a notice two days ago that the Defendant has
16 a medical issue and is unable to be here today. Mr. Mills advised the Defendant
17 to send him the medical records.

19 Mr. Mills advised that he has responded to everything and discovery is
20 being done. Mr. Mills advised that he expects to respond to the Plaintiff's
21 requests for clarification and any further requests.

22 Ms. Lambertsen advised that she is seeking information from federal
23 departments, a state subpoena will not work, and was informed that the
24 Defendant can call them and allow them to release records or that the Plaintiff
25 needs to get a Power of Attorney. (VT 11:15:46).

27 Upon the Court's inquiry, Mr. Mills advised that he has responded to
28

1 everything and if he can get more information, he will.

2 Upon the Court's inquiry as to the most important information that the
3 Plaintiff does not have, Ms. Lambertsen advised it would be the 2014 - present
4 date documents regarding the Survivor Benefit Plan because the Plaintiff is no
5 longer on the Survivor Benefit Plan and the Defendant has an option to voluntarily
6 place her back on the Survivor Benefit Plan. (VT 11:19:25, VT 11:21:20).

7
8 **COURT NOTES** that it is not pleased that the Defendant is not present
9 today.

10 **IT IS HEREBY ORDERED** that the Defendant is required to be present in
11 person for the May 22, 2019, hearing. The consequences will be grave if he is
12 not. Request for a telephonic appearance is denied.

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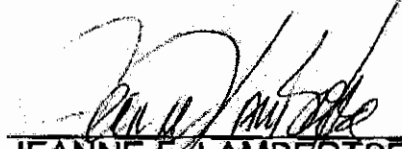
1 IT IS FURTHER ORDERED that the Court finds the Defendant is making
2 a good faith effort to comply with discovery. Mr. Mills is to accomplish what he
3 can between now and the May 22, 2019, hearing. Any issues left over with regard
4 to discovery will be before the Court on May 22, 2019 at 9:00 A.M.
5


6 DATED this 22nd day of May 2019.
7

8 
9
10 DISTRICT COURT JUDGE
11 Rhonda K. Forsberg

12 Submitted by:
13 WEBSTER & ASSOCIATES

Reviewed as to form and content:
MILLS & ANDERSON

14 
15
16 JEANNE F. LAMBERTSEN, ESQ.
17 Nevada Bar No. 9460
18 6882 Edna Ave.
19 Las Vegas, Nevada 89146
20 Counsel for Plaintiff, unbundled

21 
22
23 BYRON L. MILLS, ESQ.
24 Nevada Bar No. 006745
25 703 S. 8th Street
26 Las Vegas, Nevada 89101
27 Counsel for Defendant
28

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BYRON L. MILLS, ESQ.
State Bar #6745
MILLS & ANDERSON
703 S. 8th Street
Las Vegas, Nevada 89101
(702) 386-0030
Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD,

Plaintiff,

VS.

GRADY EDWARD BYRD,

Defendant.

CASE NO.: D-18-577701-Z

DEPT. NO.: G

) Date of Hearing: 05/22/19

) Time of Hearing: 9:00 a.m.

ORDER OF THE COURT

This matter having come on for hearing on the parties' respective Motions and the Plaintiff, CATERINA BYRD, appearing personally and being represented by her attorney, JEANNE F. LAMBERTSEN, ESQ. of WEBSTER & ASSOCIATES and the Defendant, GRADY BYRD, not appearing personally, but being represented by his attorney, BYRON L. MILLS, ESQ. of MILLS & ANDERSON.

THE COURT FINDS that it has personal jurisdiction over the parties and subject matter jurisdiction.

THE COURT FINDS as long as the Defendant has counsel, his appearance

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Department G

1 is waived for today (VT 9:51:49). However, he is not going to appear
2 telephonically (VT 9:51:33). If he is Pro Se, his appearance at hearings is
3 mandated.

4 Notwithstanding, he will be required to appear at the Evidentiary Hearing set by
5 the Court. Attorney Mills advised the court of the doctor's note explaining the
6 Defendant's absence. Attorney Lambertsen noted her objections regarding
7 Defendant's non-appearance.

8 **THE COURT FURTHER FINDS** that after review of the pleadings on
9 file, including the Decree of Divorce and Marital Settlement Agreement, there are
10 grounds to set Aside the order filed about April 5, 2019 relating to the \$1,500 per
11 month payments by the Defendant to the Plaintiff to assist with Plaintiff's home
12 mortgage being deemed alimony.

13 **THE COURT FURTHER FINDS** that the monthly payment to Caterina
14 in the amount of \$1,500 was a property distribution, not alimony. The Court's
15 determination was based upon the following facts:

16 1. No. 4 of the Decree of Divorce (pages 2&3) states:

17 "4." Grady E. Byrd will continue to pay Caterina A. Byrd 1500
18 dollars extra a month to assist with her home mortgage. If her
19 financial situation changes or if the home is sold or paid off this
20 payment may cease. This is not an alimony payment and is not
21 required."

22 The Decree/Property Settlement Agreement specifically stated the payment of
23 \$1,500 was not alimony and the words "is not required" is in the sentence with
24 alimony (VT 10:18:20, 10:18:50), and this agreement of the parties was restated
25 under alimony. Thus, Judge Hardcastle's prior ruling that that the payment of
26 \$1,500 was for alimony was incorrect, this is a property distribution only.

27 **THE COURT FURTHER FINDS** that the obligation of \$1,500 per month
28 payment from the Defendant to the Plaintiff as a property distribution ends if one
of the three financial situations occurs. As a change of financial circumstances

1 has not been proven, the property division will still occur and Grady is obligated
2 to pay \$1,500 per month, unless he can prove Plaintiff's financial situation
3 changes or the house was paid off or sold. The court recognizes that this was a
4 very long marriage, 31 years. (VT 10:19:00)

5 **THE COURT FURTHER FINDS** that the parties may have an enforceable
6 agreement as to the military pay. The question in this case is two-fold,

7 1. Were the parties agreeing to the payment being the entirety of the
8 payments because that is what he made for years? In Shelton v. Shelton, 119
9 Nev. 492 (Nev. 2003) it states, although states can't divide payments as
10 community property, states are not preempted from enforcing orders that are Res
11 Judicata or from enforcing contracts or from reconsidering Decrees, even when
12 disability pay is involved. The concern is that these parties entered an agreement,
13 the parties admit that the Defendant made \$1,500 per month payments to the
14 Plaintiff for years. (VT 10:21:17). On Page 2. #1 of the Decree of Divorce, it
15 states:

16 "Caterina Byrd is entitled to 50% of Grady' Byrd's United
17 Statements Army Retired Pay as long he lives." (Decree page 2 #1)."

18 The question becomes two-fold:

19 1. Was it \$1,500 and then Grady reduced it by disability, which has been
20 found to be inappropriate pursuant to Gemma v. Gemma? In that case, it cites that
21 you cannot reduce the amount you owe your spouse by now claiming it is
22 disability.

23 2. Did Grady agree to this payment by his own action or by a statement
24 that retired pay includes disability pay?

25 The Court is going to set an Evidentiary Hearing to determine 1) what was
26 the agreement of the parties, 2) if Grady was paying the amount all along, was that
27 the agreement.

28 **THE COURT FURTHER FINDS** that the Defendant has the burden of
proving that the above two questions is not what has been happening for all these

1 years (VT 10:23:10). Grady has the burden to determine the intent of the
2 agreement and how it has been paid historically. Parties can contract disability pay.
3 (VT 10:22:16).

4 **THE COURT FURTHER FINDS** that until this Court hears evidence and
5 orders otherwise, Grady is obligated to pay the \$1,500.00 per month for the
6 mortgage because this was a property issue and he needs to continue the \$1,500.00
7 military payment. (10:23:54). After making payments for many years, he does not
8 get to change his mind and not make the payments. In making the payments, the
9 Court will consider it in his good faith dealing with this matter.

10 **THE COURT FURTHER FINDS** that the issue of attorney's fees is
11 deferred until trial. However, it will consider an award of attorney's fees to
12 Caterina if it is found that Grady just changed his mind after he had been paying
13 along.

14 **THE COURT FURTHER FINDS** that, in the interim, there should be an
15 award of \$5,000 to Caterina's for attorney's fees to assist with the trial. If the
16 Court rules in favor of Caterina and awards a lump sum, then this payment will be
17 credited against the amount owed by Grady.

18 Based on the foregoing,

19 **IT IS HEREBY FURTHER ORDERED** that the Defendant's Motion to
20 for Reconsideration of the Court's order filed about April 5, 2019 is granted in
21 part and denied in part (VT 10:39:07). The payment of \$1,500 to Plaintiff shall
22 not be designated as alimony. However, the \$1,500 is part of the property
23 distribution with specific terms as to when the payment is to end. The Defendant
24 shall continue to pay the \$1,500 payment to Plaintiff to assist her with her house
25 payment until such time as he can prove her financial situation changed, the house
26 has been sold or paid off.

27 **IT IS FURTHER ORDERED** that this matter is set for an Evidentiary
28 Hearing to determine what the agreement was between the parties relating to
payment of retirement/disability pay and whether the parties formed a contract

1 obligating Defendant to pay a portion of his disability pay to the Plaintiff.
2 Pending the Evidentiary Hearing, Defendant is to continue to pay the additional
3 \$1,500 payment related to military retirement pay.

4 **IT IS FURTHER ORDERED** that the Defendant must be present for the
5 Evidentiary Hearing. (VT 10:25:20, 10:40:04).

6 **IT IS FURTHER ORDERED** that the above mentioned \$3,000 payment
7 from the Defendant to the Plaintiff shall be made by June 1, 2019 and continue
8 each month until further order of this Court. Any issue related to potential
9 arrears is deferred until the Evidentiary Hearing.

10 **IT IS FURTHER ORDERED** that the Plaintiff's Countermotion issue
11 regarding the \$225,000 Veterans Group life insurance is deferred until trial (VT
12 10:32:54). Plaintiff argues that she receives the full \$225,000 and Defendant
13 argues that the Plaintiff only receives \$200,000. The Court will be looking to see if
14 the Defendant is paying extra or an additional fee for the additional \$25,000 life
15 insurance. That the decree of divorce does not list a dollar amount, rather, it states
16 that the Plaintiff is entitled to the life insurance. (VT 10:35:11).

17 **IT IS FURTHER ORDERED** that the issue of attorney's fees is deferred
18 until the Evidentiary Hearing. However, the Plaintiff is awarded interim attorney
19 fees in the amount of \$5,000 and Defendant is ordered to pay those fees within two
20 weeks of this hearing. If the Court determines that the Defendant should have
21 been paying the \$1,500 per month and he just changed his mind and did not pay, it
22 will consider an award of attorney fees to the Plaintiff.

23 **IT IS FURTHER ORDERED** that if the Defendant fails to pay the
24 amounts as ordered, then Plaintiff's counsel may file an Emergency Motion for
25 Contempt.

26 **IT IS FURTHER ORDERED** that if needed, the Plaintiff's counsel may
27 file a Contempt Motion for Discovery.

28 **IT IS FURTHER ORDERED** that the Plaintiff's Countermotion is granted
in part. The Defendant shall complete the paperwork needed so that the Plaintiff is

1 the beneficiary of the Defendant's military Survivor Benefit Plan within 30 days of
2 this date. That the Defendant had an agreement in the decree of divorce that the
3 Plaintiff would get the Survivor Benefit that he did something against the decree
4 by placing his new wife on the Survivor Benefit Plan and the court wants this
5 rectified. (VT 10:31:45)

6 **IT IS FURTHER ORDERED** that the following dates were set by the
7 Court:

- 8 1. Calendar Call- October 17, 2019 at 11:00 a.m.
- 9 2. Trial- October 21, 2019 at 9:00 a.m.

10 The Defendant's presence at the Calendar Call will not be required, but he must
11 be in attendance for the trial.

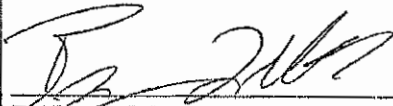
12 **IT IS FURTHER ORDERED** that Mr. Mills is to prepare the Order from
13 today's hearing and submit to Ms. Lambertsen for review and signature.

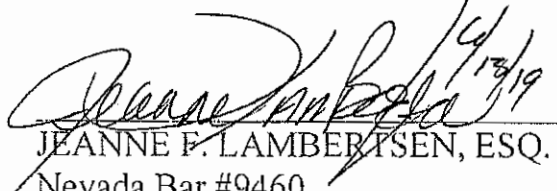
14 DATED this 24th day of June, 2019.

15
16 
17 DISTRICT JUDGE

18 Rhonda K. Forsberg
WEBSTER & ASSOCIATES

19 MILLS & ANDERSON

20 
21 BYRON L. MILLS, ESQ.
22 Nevada Bar No. 6745
23 502 South Ninth Street
24 Las Vegas, Nevada 89101
Attorney for Defendant

25 
26 JEANNE F. LAMBERTSEN, ESQ.
27 Nevada Bar #9460
28 6882 Edna Avenue
Las Vegas, Nevada 89146
Attorney for Plaintiff

Steven D. Grierson

1 **NEO**
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5 JEANNE F. LAMBERTSEN, ESQ.
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10 Fax No: (702) 562-2303
11 e-mail: anitawebster@embarqmail.com
12 e-mail: jlambertsen@embarqmail.com
13 Unbundled Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

12 CATERINA ANGELA BYRD

13 Plaintiff,

14 v.

15 GRADY EDWARD BYRD

16 Defendant.

CASE NO.: D-18-577701-Z
DEPT NO.: G

**NOTICE OF ENTRY OF ORDER FROM
THE JULY 18, 2019 HEARING**

18 PLEASE TAKE NOTICE that an Order from July 18, 2019 Hearing was
19 entered in the above-entitled action on the 9th day of August, 2019, a copy of
20 which is attached.

21
22 Dated this 9th day of August, 2019.

23 **WEBSTER & ASSOCIATES**

24
25 *Jeanne F. Lambertsen*
26 JEANNE F. LAMBERTSEN, ESQ.
27 Unbundled Attorney for Plaintiff
28

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2300 • Facsimile (702) 562-2303

1 **Certificate of Service**

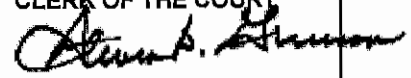
2 Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
3 WEBSTER & ASSOCIATES, and that on this 9th day of August, 2019, I
4 caused the above and foregoing document to be served as follows:
5

- 6
- 7 ☒ [X] by mandatory electronic service through the Eighth Judicial District
8 Court's electronic filing system;
- 9 ☐ [] by placing the same to be deposited for mailing in the United States
10 Mail, in a sealed envelope upon which first class postage was prepaid
11 in Las Vegas, Nevada;
- 12 ☐ [] pursuant to EDCR 7.26 to be sent via facsimile, by duly executed
13 consent for service by electronic means;
- 14 ☐ [] by hand-delivery with signed Receipt of Copy.

15 To the attorney(s)/person(s) listed below at the address, email address, and/or
16 facsimile number indicated below:

17 Byron Mills, Esq.
18 Modonnell@millsnv.com

19 
20 An employee of Webster & Associates
21
22
23
24
25
26
27
28



1 **ORDR**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
7 6882 Edna Ave.
8 Las Vegas, Nevada 89146
9 Tel No: (702) 562-2300
10 Fax No: (702) 562-2303
11 e-mail: anitawebster@embarqmail.com
12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, unbundled

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 CATERINA ANGELA BYRD
17 Plaintiff,

18 v.

19 GRADY EDWARD BYRD
20 Defendant.

CASE NO.: D-18-577701-Z
DEPT NO.: G

ORDER FROM THE JULY 18, 2019
HEARING

21 This matter having come before the court on the 18th day of July 2019, for
22 the Plaintiff's Emergency Motion for an Order to Show Cause why the Defendant
23 should not be Held in Contempt of Court and for Attorney's Fees and Costs,
24 Plaintiff, CATERINA ANGELA BYRD (hereinafter "Plaintiff"), present with her
25 unbundled attorney, JEANNE F. LAMBERTSEN, ESQ., of the law firm of
26 WEBSTER & ASSOCIATES and Defendant, GRADY EDWARD BYRD
27 (hereinafter "Defendant"), not present, Defendant's attorney, BYRON MILLS,
28 ESQ., of the law firm of MILLS & ANDERSON, present, the Court having heard
the argument of counsel, finds and orders the following:

W:\Family\Byrd, Caterina\Pleadings\Drafts\Order from 7.18.19 hearing V2.wpd

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1 **COURT NOTES** that no opposition has been filed by the Defendant.

2 **COURT FURTHER NOTED** that the Court Clerk attempted to reach the
3 Defendant at the phone number he provided to the Court, but the call failed to go
4 through to the international number.

5 Ms. Lambertsen requested an Order to Show Cause for Defendant's failure
6 to pay Plaintiff \$3,000.00 per month pending the Evidentiary Hearing and
7 \$5,000.00 in attorney's fees, which was due on June 6, 2019. Defendant is
8 \$6,000.00 in arrears in the amount of \$3,000.00 for June 2019 and \$3,000.00 for
9 July 2019.

10 Ms. Lambertsen requested sanctions in the amount of \$500.00 for each
11 violation (failure to pay \$3,000.00 for June 2019, failure to pay \$3,000.00 for July
12 2019, and failure to pay \$5,000.00 attorney's fees by June 6, 2019) for a total of
13 \$1,500.00 in sanctions

14 Ms. Lambertsen requested Defendant be ordered to pay the additional
15 \$1,500.00 that Defendant was ordered to pay at the January 23, 2019 hearing
16 towards the mortgage starting on February 1, 2019. Defendant is in arrears in
17 the amount of \$6,000.00 for February, 2019 through May, 2019.

18 Ms. Lambertsen argued that the arrears the Court was deferring until the
19 time of the Evidentiary Hearing were for the period from September, 2018 through
20 January of 2019 (the prior Court Order from the January 23, 2019 hearing). Ms.
21 Lambertsen requested additional sanctions in the amount of \$2,000.00 for each
22 instance of nonpayment (February 2019, March 2019, April 2019 and May 2019).

23 Ms. Lambertsen requested additional fees and costs for having to bring the
24
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1 Motion before the Court.

2 Mr. Mills stated Defendant informed him that he is not going to pay the
3 Plaintiff as ordered until the Evidentiary Hearing.

4 **IT IS HEREBY ORDERED** that Plaintiff's Order to Show Cause is granted.
5 Defendant shall show cause as why he should not be held in Contempt of Court
6 for his blatant disregard of the Court's Orders. The Order to Show Cause shall
7 be set for October 21, 2019, at 9:00 a.m., to be heard at the time of the
8 Evidentiary Hearing. If counsel can determine the bank where the annuity
9 originates, or any other source of money for the Defendant, counsel may obtain
10 a garnishment for the totality of the arrears in the amount of \$11,000.00
11 (\$3,000.00 due June 2019, \$3,000.00 due July 2019 and \$5,000.00 attorney fees
12 due June 6, 2019) collectible by any lawful means. In the alternative, the issue
13 shall be deferred to the time of Trial.

14 **IT IS FURTHER ORDERED** that Plaintiff's requests for arrears from
15 September 1, 2018 to May 31, 2019 (9 months x \$3,000 = \$27,000.00) and
16 sanctions is deferred until the Non-Jury Trial October 21, 2019;

17 **IT IS FURTHER ORDERED** that additional attorney fees are awarded in
18 favor of Plaintiff against Defendant in the amount of \$1,500.00, collectible by any
19 lawful means.

20 ///

21 ///

22 ///

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24

1 **IT IS FURTHER ORDERED** that Ms. Lambertsen shall prepare the Order
2 to Show Cause.

3 **IT IS FURTHER ORDERED** Calendar call is set for October 17, 2019, at
4 10:00 a.m.; and the Order to Show Cause and Non-Jury Trial is set for October
5 21, 2019, at 9:00 a.m.
6


7 **DATED** this 8th day of August 2019.


8
9
10
11 
12 **DISTRICT COURT JUDGE** VP

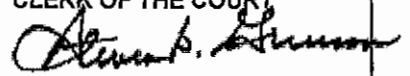
Rhonda K. Forsberg

13 Submitted by:
14 **WEBSTER & ASSOCIATES**

Reviewed as to form and content:
MILLS & ANDERSON

15
16 
17 **JEANNE F. LAMBERTSEN, ESQ.**
18 Nevada Bar No. 9460
19 6882 Edna Ave.
20 Las Vegas, Nevada 89146
21 Counsel for Plaintiff, unbundled

22
23 
24 **BYRON L. MILLS, ESQ.**
25 Nevada Bar No. 006745
26 703 S. 8th Street
27 Las Vegas, Nevada 89101
28 Counsel for Defendant



1 **FFCL**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
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12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, unbundled

14
15 DISTRICT COURT
16
17 CLARK COUNTY, NEVADA
18

19 CATERINA ANGELA BYRD

20 Plaintiff,

21 v.

22 GRADY EDWARD BYRD

23 Defendant.

24 CASE NO.: D-18-577701-Z
25 DEPT NO.: G

26 **FINDINGS OF FACT,**
27 **CONCLUSIONS OF LAW AND**
28 **ORDER**

29 This matter having come before the court on October 21, 2019, at 9:00
30 a.m., for an Evidentiary Hearing regarding the mortgage payment and the military
31 retirement payment, hearing on the Plaintiff's Order to Show Cause why the
32 Defendant should not be held in contempt of court, hearing on Plaintiff's Motion
33 for Reconsideration, Summary Judgment, and Fees; and Defendant's Opposition
34 to Plaintiff's Motion for Reconsideration and Countermotion for Fees, hearing on
35 Defendant's Motion on Order Shortening Time to Reconsider Denial of
36 Audiovisual Appearance Request, Plaintiff's Opposition to Defendant's Motion on
37 Order Shortening Time to Reconsider Denial of Defendant's Audiovisual

1 Appearance Request, and Countermotion for Fees. Plaintiff, Caterina Angela
2 Byrd (hereinafter "Caterina" or "Plaintiff"), appearing by and through her
3 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
4 of the law firm of WEBSTER & ASSOCIATES and Defendant, Grady Edward
5 Byrd (hereinafter "Grady" or "Defendant"), not present and appearing by and
6 through his attorney, BYRON L. MILLS, ESQ., of MILLS & ANDERSON LAW
7 GROUP.
8

9 Argument by Ms. Lambertsen regarding Plaintiff's Opposition to
10 Defendant's Motion to Reconsider Denial of Audiovisual Appearance citing that
11 the Defendant's doctor excuses are from doctor that are all in the Philippines, not
12 from the Veteran's Administration and one of the excuses even states that the
13 certificate is not for legal matters.
14

15 Argument by Ms. Webster regarding sanctions for Defendant's failure to
16 appear today and argument for the Plaintiff's Motion for Reconsideration,
17 Summary Judgment on the Order to Show Cause, to Set Aside the Decree, and
18 Motion to join Defendant's wife as a party to this action.
19

20 Argument by Mr. Mills regarding the Order to Show Cause and that the
21 Defendant should not be subject to the penalty of contempt for months other than
22 from June 1, 2019, to the present date.
23

24 Argument by Ms. Lambertsen regarding the hearing on July 18, 2019, on
25 Plaintiff's Motion for an Order to Show Cause sought arrears going back to the
26 date the Defendant ceased payment on September 1, 2018, and these arrears
27 were deferred to the Evidentiary Hearing this date.
28

THE COURT NOTES that upon a review of the Medical Certificates

1 submitted by Defendant, that Defendant is on military disability; and the
2 certificates submitted are from doctors from the Philippines rather than from
3 Defendant's doctor at the Department of Veteran's Affairs. Defendant was
4 referred to the Department of Veteran's Affairs for follow-up, and Defendant
5 failed to do so.
6

7 **THE COURT FINDS** that it is suspicious that the Defendant is going to
8 community doctors in the Philippines, did not follow-up with the Department of
9 Veteran's Affairs, and has provided nothing from the Department of Veteran's
10 Affairs regarding medical issues. Further the court finds that the medical notes
11 from the Philippines provided by the Defendant are not believable.
12

13 Having heard the argument of counsel and good cause appearing
14 therefore,

15 **IT IS HEREBY ORDERED** that Defendant's Motion to Reconsider Denial
16 of Audiovisual Appearance Request is Denied.
17

18 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment
19 that the Defendant be found in Contempt of Court is Denied. That the Court will
20 enter appropriate rulings based on the testimony and evidence to follow in this
21 Evidentiary Hearing.

22 **IT IS FURTHER ORDERED** that the Evidentiary Hearing will proceed today
23 in Defendant's absence.
24

25 **IT IS FURTHER ORDERED** that the Plaintiff's Motion for Reconsideration
26 and Request to Set Aside the Order from the hearing on May 22, 2019, order filed
27 June 26, 2019, is part of the court's consideration in this Evidentiary Hearing and
28 a determination will be made by this court as to the agreement entered into

1 between the parties, what was meant by the language of the agreement, whether
2 or not it constituted a waiver of alimony, or whether the waiver of alimony was of
3 no effect because the decree provides for her support and it would be
4 unconscionable that after 31 years of marriage that Plaintiff would receive no
5 support from the Defendant and Defendant would have total discretion as to
6 what, when, and for how long to pay the Plaintiff. All of the foregoing shall be
7 decided after testimony and evidence is presented. That the Court will enter
8 appropriate rulings based on the testimony and evidence from the hearing.
9

10 **IT IS FURTHER ORDERED** that Plaintiff's request that Defendant's wife be
11 joined in this action and ordered to sign a waiver of her interest in the Survivor
12 Benefit Plan awarded to the Plaintiff in the decree of divorce is denied as this
13 Court has no personal jurisdiction over the Defendant's wife.
14

15 Plaintiff, Caterina Angela Byrd, was sworn and testified under oath.

16 **THE COURT ADMITTED** Plaintiff's Exhibits 1 through 11; 13 through 18;
17 20 through 23; 25 through 28; 30 through 36; 42 (VT 9:42:52) 43, 63, and 64
18 were admitted. Based upon the parties' stipulation, Defendant's Exhibits A
19 through L, were admitted into evidence.
20

21 The court having reviewed the pleadings and papers on file herein including
22 the *Pre-Trial Memorandums* filed by the parties prior to Trial, after considering
23 and weighing the credibility of the witness and the exhibits admitted into
24 evidence, and after further considering the closing arguments of counsel, and
25 good cause appearing, the Court hereby makes the following Findings of Fact,
26 Conclusions of Law, and Order as set forth herein.
27

28 ///

FINDINGS OF FACT

1. To the extent any Finding of Fact is more appropriately stated as a Conclusion of Law, it should be so deemed.
2. The parties were divorced in Nevada on June 5, 2014, after a 31-year marriage by way of a Joint Petition that Grady arranged to have prepared.
3. Caterina is 56 years old and resides in Clark County Nevada. Grady is 63 years old and resides in the Philippines.
4. Caterina has a high school education and English is her second language. Grady has two Master Degrees, war college degree and certificates.
5. Grady retired from the Army in 1999. Caterina was named the beneficiary of Grady's Army Survivor Benefit Plan upon his retirement. After retiring from the Army, Grady worked for the Department of Defense until about 2010.
6. The parties moved 17 different places throughout the marriage making it difficult for Caterina to establish a career. The parties last resided together in about 2008 with Caterina remaining in Nevada and Grady residing out of the country and Caterina believing that he lived in either Kosova or the Philippines.
7. Caterina was not working at the time of divorce and is not currently working. Caterina had not worked during the marriage except sporadically because Grady got upset when she had tried to work.
8. Caterina was in treatment for mental health issue, anxiety and depression from about 2012 to 2016.
9. Grady's current gross annual income is about \$116,000.00 per year.

- 1 10. Since September 1, 2018, Caterina has borrowed money from her parents
2 to pay her monthly expenses. She paid her attorney fees by credit card and
3 the credit card is maxed out. She has an outstanding balance with her
4 attorney. That using a credit card to hire an attorney does not mean that
5 Caterina was not destitute. (VT 2:26:28)
6
- 7 11. The Decree of Divorce provides that Grady is to pay Caterina \$1,500 per
8 month for mortgage assistance. The Decree of Divorce further provides
9 that the mortgage assistance is not alimony and that it can be terminated
10 at any time. This is vague and ambiguous and susceptible to more than
11 one interpretation especially in light of Grady paying Caterina \$1,500 for
12 mortgage assistance for over 4 years following the divorce. Based on all
13 the facts above and despite the statement in the decree that this is not
14 alimony, these facts support that it was, in fact, alimony. (VT 2:23:43,
15 2:16:30, 2:19:03).
16
- 17 12. The Decree of Divorce contains ambiguities. Grady was making periodic
18 payments to Caterina on a monthly basis for her support. This is alimony,
19 yet the agreement purports that it is not alimony, creating an ambiguity.
20
- 21 13. The court must examine the circumstances surrounding the parties' alimony
22 waiver in order to determine the true intentions of the parties.
23
- 24 14. That the Decree of Divorce provides that Caterina is entitled to 50% of
25 Grady's military retired pay. This is vague since there was no dollar amount
26 provided in the Decree of Divorce and Grady represented to Defendant that
27 50% of his military pay is \$1,500 per month. Further, Grady paid Caterina
28 \$1,500 per month for more than 4 years following entry of the Decree of

Divorce.

15. Grady drafted the agreement or had it drafted. It is a well- settled rule that "[i]n cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it, and favorably to a party who had no voice in the selection of its language." As a result, in this case, any ambiguity must be interpreted against Grady.

16. The house she was awarded in the Decree of Divorce had little to no equity. The equity in the house at the time of divorce was less than \$20,000, and would not likely cover the closing costs had she sold the house at the time of the divorce. The periodic payments on a monthly basis until the house was sold or paid off are indeed based on financial need and are therefore alimony. The payments were conditioned on the house not selling and not being paid off. The house has not been sold and is not paid off. The mortgage payments are over \$1,900 per month. (VT 2:26:58). Based on what Grady told Caterina before and at the time of the divorce, Caterina reasonably expected that Grady would support her at the rate of at least \$3,000 per month for the remainder of her life and that upon his death, she would continue to be supported by Grady based on her receipt of his Army Survivor Benefits in a comparable amount. (VT2:27:56). Grady had a fiduciary duty to Caterina to be honest with her. He failed to meet his fiduciary duty.

17. During the marriage, Grady is the one who ran made the decisions in the marriage and controlled the finances in the marriage. Grady discouraged Caterina from being involved in these decisions. When Caterina did try to

1 work, he discouraged her from working and told her he did not want her to
2 work. Once he moved to the Philippines, he decided that he did not want
3 to be married anymore and claimed to have so many bills that he would
4 have to file bankruptcy, that he was living in a tent, that he could barely get
5 by, and that they were only getting \$3,017 per month in Army retirement
6 pay. Grady told Caterina that he cannot call the money he was going to
7 pay her per the Decree of Divorce "alimony" because if that money was
8 called "alimony", he would not be able to get the loan that he needs, he
9 would never be able to get ahead in his present life and he would have to
10 live poor until he dies. Grady failed to realize that he has a fiduciary
11 relationship to his spouse not to make misrepresentations to her.
12

- 13
14 18. Grady violated his fiduciary duty to his wife, Caterina, by wrongfully telling
15 her how much money she would receive each month and for how long. He
16 told her that his military pay was \$3,017 per month, and that she was
17 entitled to \$1,508 per month and that he would pay her \$1,500 per month
18 or more until he died. In actuality, his military pay was only \$128.40 per
19 month and 50% of this is \$64.20 per month. Long before he asked
20 Caterina for a divorce, Grady had applied for and received a waiver of his
21 military pay to receive it as disability pay. A fiduciary relationship arises
22 from the existence of the marriage itself, thus precipitating a duty to
23 disclose pertinent assets and income. Grady was not receiving \$3,017 in
24 military retirement pay as he represented to Caterina, rather, he was
25 receiving \$3,146 in VA disability pay. He had waived \$3,017 of his retired
26 pay for disability pay, and had only \$128.40 left as his military retired pay.
27
28

- 1 50% of Grady's United States Army Retired Pay was \$64.20. Grady
2 engaged in deceit upon his spouse that he owed a fiduciary duty to.
- 3 19. That prior to divorce, Grady applied for and received approval from the
4 Department of the Army for Combat Related Special Compensation
5 (CRSC) disability pay on or about June 20, 2011, to be paid through the
6 Defense Finance and Accounting Service (DFAS).
- 7
- 8 20. That prior to divorce, about December 1, 2011, Grady had waived a portion
9 of his Army Retirement pay to receive disability compensation.
- 10
- 11 21. That prior to divorce, Grady applied for and received approval on or about
12 November 12, 2010 from the Office of Personnel Management to receive
13 his Federal Employee's Retirement System (FERS) money in the form of
14 disability retirement. That his disability annuity gross payment is \$1,315.00
15 per month.
- 16
- 17 22. That prior to divorce, on or about September 19, 2012, upon Grady's June
18 19, 2009 application to the Social Security Administration for disability and
19 disability insurance benefits, Grady was determined to be disabled. Grady
20 was paid \$31,014 in Social Security Benefits in 2014.
- 21
- 22 23. Around the time of divorce, Grady did not provide Caterina documentation
23 showing the amount of his military retirement pay, the amount of his
24 Veteran's Administration Disability pay, the amount of his Office of
25 Personnel Management Disability Annuity Income, or the amount of his
26 Social Security Disability Income.
- 27
- 28 24. Grady paid Caterina \$3,000 per month for a number of years, from June
2014 until September 1, 2018, to keep her quiet, to keep her complacent,

1 then he decided that he did not need to pay her anymore. When Grady
2 claimed that he was receiving treatment for cancer, Caterina started asking
3 questions about his Army Survivor Benefits. Then, she saw an attorney,
4 and Grady informed her that he is not paying her anything and will not even
5 show up for court. Grady provides notes from doctors in the Philippines,
6 claiming that he cannot come to court. The court is not sure they are
7 actually doctors. The notes do not come from the Veteran's Administration
8 doctors, where Grady is treating.

10 25. Grady did everything in his power to keep Caterina from recognizing what
11 her rights were and to leave her in a position where she would receive only
12 \$64.20 per month from his Army Retirement pay. This is unconscionable.
13 It is unenforceable. Were the provision in the Decree of Divorce interpreted
14 to give Caterina 50% of Grady's Military pay, so that she would receive only
15 \$64.20 per month for her interest in his military pay, after 31 years of
16 marriage, this would be so unconscionable, as to be unenforceable.

18 26. That Caterina's request for the court's assistance is timely pursuant to
19 NRCP 60(b)(6) in that she sought the court's assistance on or about
20 October 2018, shortly after Grady stopping the \$3,000 per month payments
21 to her on September 1, 2018.

23 27. Grady's breach of fiduciary duty, the vagueness and unconscionability of
24 the agreement gives the court discretion to reopen a division of the
25 marital/community property when extraordinary circumstances arise.

26 28. That Grady threatened Caterina that she was not to seek the assistance of
27 counsel to review the language that Grady proposed for the Decree of
28

1 Divorce or she would regret it. Caterina was suffering from depression at
2 the time of the divorce, the parties had just purchased a home 4 months
3 prior to Grady asking for a divorce, the mortgage was over \$1,900 per
4 month, and Caterina was fearful that if she failed to follow his orders, he
5 would stop providing money for her living expenses, and disappear. He
6 was living in the Phillippines at that time.
7

8 29. Grady represented to Caterina that her share of Grady's military retirement
9 money was \$1,508.00 per month for his life and that she would get
10 increases over time. Grady performed on this agreement from June 5,
11 2014 until September 1, 2018. Therefore, Caterina is awarded \$1,508 per
12 month in alimony, subject to upward modification. The additional \$1,500.00
13 per month that Grady agreed to pay Caterina for mortgage assistance for
14 her house is also designated as alimony.
15

16 30. Grady has multiple sources of income which are not exempt from a spousal
17 support order. All of this income, which comprises Grady's approximate
18 \$116,000.00 annual income, can be considered when a spousal support
19 obligation to Caterina is calculated.
20

21 31. Grady agreed to keep the military health insurance intact for Caterina but
22 Caterina is no longer covered by the military health insurance and has
23 replaced the health insurance plan. That the amount of her health
24 insurance, \$102.00 per month, is a factor toward her financial need.
25

26 32. As Grady agreed to keep Caterina's health insurance coverage in tact, the
27 \$102.00 per month that Caterina pays for health insurance shall be added
28 to the monthly alimony amount owed by Grady to Caterina, retroactive to

1 the time Caterina ceased receiving Tricare health insurance benefits which
2 was on or about June 6, 2015.

3 33. Grady agreed to keep Caterina as the beneficiary of his Military Survivor
4 Benefit Plan, that Caterina is no longer the beneficiary of the Survivor
5 Benefit Plan; and that she is going to have to replace the value of the
6 Survivor Benefit Plan. That she may have to obtain an annuity if she is not
7 successful in her appeal to the U.S. Army Board of Corrections. That this
8 dollar amount is a factor toward her financial need when she seeks to
9 modify the alimony award.
10

11 34. Pursuant to NRS 22.010 et. al., Grady is found in contempt of court, for two
12 months, and in arrears for failure to pay as ordered at the May 22, 2019
13 hearing order filed on or about June 26, 2019, wherein Grady was ordered
14 to resume paying Caterina \$3,000.00 per month starting June 1, 2019,
15 pending the Evidentiary Hearing held on October 21, 2019.
16

17 35. That there was new evidence presented to support the Caterina's Motion
18 for Reconsideration of the order from the May 22, 2019 hearing, because
19 there was no indication that Judge Forsberg realized that there was no
20 equity in the marital residence at the time of divorce based on Grady stating
21 in the decree that the residence was worth \$365,000. This was the
22 purchase price of the house and just a little over what was owed on the
23 house, not equity. Also, Grady listed that he had no assets, so there is no
24 indication that Judge Forsberg knew what Grady had available to him at
25 that time. She looked at the face of the document, this is why an evidentiary
26 hearing was held. (VT 2:15:35).
27
28

1 36. That Caterina did not obtain counsel at the time of divorce because Grady
2 threatened her. He was in the Phillippines and she feared he would
3 disappear. Grady knew that he was dealing with a person who is dealing
4 with depression. As soon as she mentioned seeing an attorney, he came
5 down on her and stopped paying. (VT 2:25:00)
6

7 37. That there is cause to set aside the decree based on Grady's breach of his
8 fiduciary duty to Caterina and that this was timely because Caterina came
9 to court to try to get what was entitled to her upon Grady stopping his
10 monthly payments to her. (VT 2:19:44).
11

12 CONCLUSIONS OF LAW

13 Personal Jurisdiction over the Parties

14 By way of their pleadings, each of the parties submitted to the jurisdiction
15 of this Court, accordingly, the Court concludes that it has personal jurisdiction
16 over the parties.
17

18 Subject Matter Jurisdiction

19 This court has subject matter jurisdiction pursuant to NRS 125.070, which
20 provides that the judge of the court shall determine all questions of law and fact
21 arising in any divorce proceeding under the provisions of this chapter.
22

23 Ambiguity, Unconscionable and Unenforceable, Violation of Fiduciary 24 Duty, Invalidation of Spousal Support Waiver, Award of Life Time 25 Alimony to Caterina, Grady in Contempt of Court

26 1. Grady's interpretation of the terms of the Decree of Divorce would
27 mean that he can unilaterally stop paying Caterina \$1,500 per month
28 in support for the house and that Caterina would receive just \$64.20
per month for her interest in his military pay after 31 years of marriage.

1 This is unconscionable and unenforceable.

2 2. Grady represented to Caterina that she would receive 50% of his
3 military pay and that this amounted to \$1,500 per month and more for
4 the rest of his life. Grady waived his military pay for disability pay.
5 Grady has a contractual obligation to pay Caterina \$1,500 per month
6 from his military disability pension. Grady cannot reduce his payment
7 to Caterina by claiming it is disability pay. See Shelton v. Shelton, 119
8 Nev. 492 (Nev. 2003) and Gemma v. Gemma, 105 Nev. 458, 778 P.2d
9 429 (1989).

10
11
12 3. The court finds that the alimony waiver in the Decree of Divorce is not
13 enforceable because: 1) Caterina did not knowingly waive alimony.
14 Caterina relied on Grady's promise that he would pay her \$3,000 per
15 month until he died. She could not have waived her right to alimony
16 while simultaneously accepting support to pay her necessities, Fattore
17 v. Fattore, 458 NJ Super. 75, 83 (App. Div. 2019) and Parker v.
18 Green, No. 73176 (Nevada June 25, 2018); and 2) The payments
19 Grady is making to Caterina are in the nature of alimony. Grady's
20 payment to Caterina of "\$1500 dollars extra a month to assist with her
21 home mortgage" may cease if "her financial situation changes." Since
22 Grady's assistance to Caterina may cease based on Caterina's
23 financial situation, this is consistent with the NRS 125.150
24 considerations for alimony.

25
26
27 4. NRCP 60(b)(6) Relief From a Judgment or Order (6) any other reason
28 that justifies relief in this instance. Caterina's request for the court's

1 assistance and relief from judgement is timely pursuant to NRCP
2 60(b)(6) in that Caterina brought her action within 30 days of Grady
3 ceasing his payments to her.
4

- 5 5. Pursuant to NRS 125.150 (4), the court may set apart a portion of the
6 Grady's separate property for Caterina's support as is deemed just and
7 equitable. Based on the facts of this case, Grady's disability pension
8 income is considered a source of income for purposes of awarding
9 alimony to Caterina. The court invalidates the alimony waiver and
10 awards alimony from Grady's military pension disability payments to
11 Caterina as it would be unconscionable that Caterina receive no
12 support after 31 years of marriage. See Fattore v. Fattore, 458 NJ
13 Super. 75, 83 (App. Div. 2019) and Parker v. Green, No. 73176
14 (Nevada June 25, 2018).
15
16 6. A fiduciary relationship arose from the existence of the marriage itself,
17 thus precipitating Grady's duty to not misrepresent his income and
18 assets. Cook v. Cook, 112 Nev. 179, 912 P.2d, 264 (1996) citing
19 Williams v. Waldman, 108 Nev. 466, 836 P.2d 614 (1992) at 471-72,
20 836 P.2d at 618. Grady violated his fiduciary duty to Caterina by
21 wrongfully telling Caterina that his military pay was \$3,017 per month,
22 and that she was entitled to 50%, namely \$1,508 per month. He told
23 her he would pay her \$1,500 per month with periodic increase until he
24 died. When Grady made this representation to Caterina he had
25 previously waived his military pay for disability pay and was receiving
26 only \$128.40 per month in military pay with 50% being equal to \$64.20
27
28

1 per month. Therefore, Grady must pay Caterina \$3,110.00 per month
2 in modifiable alimony.

- 3 7. A contract is "ambiguous if it is reasonably susceptible to more than
4 one interpretation." Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d
5 507, 510 (2003). When interpreting an ambiguous contract, this Court
6 can look beyond the express terms and analyze the circumstances
7 surrounding the contract to determine the true mutual intentions of
8 both parties. Id. Finally, this court has recognized that an
9 interpretation that "results in a fair and reasonable contract is
10 preferable to one that results in a harsh and unreasonable contract."
11 Id. In this case, the Decree of Divorce provides that Grady is to pay
12 Caterina \$1,500 per month for mortgage assistance. The Decree of
13 Divorce further provides that the mortgage assistance is not alimony
14 and that it can be terminated at any time. This is vague and
15 ambiguous and susceptible to more than one interpretation especially
16 in light of Grady paying Caterina \$1,500 per month in mortgage
17 assistance for over 4 years following the divorce. The Decree of
18 Divorce is also ambiguous as to the military retired pay. The Decree
19 of Divorce provides that Caterina is entitled to 50% of Grady's military
20 retired pay. This is vague since there was no dollar amount provided
21 in the Decree of Divorce and Grady represented to Defendant that
22 50% of his military pay is \$1,500 per month. Further, Grady paid
23 Caterina \$1,500 per month for more than 4 years following entry of the
24 Decree of Divorce. When a contract is ambiguous, the court should
25
26
27
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1 examine the circumstances leading up to the Decree of Divorce to
2 determine the true intentions of the parties. Parker v. Green, No.
3 73176 (Nevada June 25, 2018). In this case, in communications
4 between the parties leading up to the Decree of Divorce, Grady
5 misrepresented his income and assets to Caterina.
6

- 7 8. Ambiguity in the decree must be interpreted against Grady as he was
8 the drafter or had it drafted. It is a well-settled rule that "[i]n cases of
9 doubt or ambiguity, a contract must be construed most strongly
10 against the party who prepared it, and favorably to a party who had no
11 voice in the selection of its language." As a result, in this case, any
12 ambiguity must be interpreted against Grady. Williams v. Waldman,
13 108 Nev. 466, 836 P.2d 614 (Nev., 1992) citing Jacobson v. Sassower,
14 66 N.Y.2d 991, 499 N.Y.S.2d 381, 489 N.E.2d 1283, 1284 (1985).
15
16 9. The periodic payments on a monthly basis that Grady paid Caterina
17 until the house was sold or paid off are indeed based on financial need
18 and are therefore alimony. NRS 125.150(9)(a).
19
20 10. Caterina should receive lifetime alimony based on Grady's waiver of
21 military pension for disability payments: as a military wife, she set
22 aside her education and career to follow her husband around the
23 world. Grady currently receives over \$116,000.00 annually in largely
24 tax free income. Caterina has the need for support, she must be
25 compensated for economic loss and Grady has the ability to pay.
26 Kogod v. Cioffi-Kogod, 135 Nev., Adv. Op. 9 (April 25, 2019).
27
28 11. Caterina is entitled to an award of attorney fees and costs. Pursuant

1 to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the Court
2 should take into consideration the following factors when determining
3 an award of attorney's fees. (1) The qualities of the advocate(s): Ms.
4 Webster has been practicing law for 34 years and Ms. Lambertsen for
5 14 years; the law firm's practice is dedicated to family law. (2) The
6 character and difficulty of the work performed: moderate to moderately
7 high. (3) The work actually performed by the attorney: Many hours
8 were spent litigating and preparing this case for Trial. (4) The result
9 obtained: is yet to be determined.
10
11

12 **ORDERS**

13 **THE COURT HEREBY ORDERS** that based on the evidence presented
14 and in weighing the credibility of the witness, the Court finds there is a basis for
15 partial modification of the Decree of Divorce filed on or about June 5, 2014.
16

17 **IT IS FURTHER ORDERED** that effective November 1, 2019, Defendant
18 shall pay Plaintiff life time alimony in the amount of \$3,110.00 per month, payable
19 on or before the first day of each month. This alimony is modifiable.

20 **IT IS FURTHER ORDERED** that should Plaintiff find it necessary to obtain
21 an annuity or other vehicle for income in lieu of the survivor benefits, the cost can
22 go toward Plaintiff's financial need when she seeks to modify alimony.
23

24 **IT IS FURTHER ORDERED** that the attorney's fees that were previously
25 awarded to Plaintiff shall be reduced to judgment, collectible by all lawful means.
26 Defendant is in arrears for the attorney's fees previously awarded; \$7,000.00
27 order filed April 5, 2019; \$5,000.00 order filed June 26, 2019; and \$1,500.00,
28 order filed August 9, 2019, for a total of \$13,500.00, which sum is reduced to

1 judgment, subject to interest at the legal rate and collectable by any lawful
2 means.

3 **IT IS FURTHER ORDERED** that Plaintiff is entitled to additional fees not
4 previously awarded. Counsel for Plaintiff shall submit a Memorandum of Fees
5 and Costs for the additional amount. Counsel for Defendant, Mr. Mills, shall have
6 an opportunity to file an objection.
7

8 **IT IS FURTHER ORDERED** that Grady is in contempt of court for failure to
9 pay Caterina the \$1,500.00 monthly house payment for two months, that this is
10 alimony, and Caterina is awarded sanctions in the amount of \$1,000.00 (\$500.00
11 per month for two months). The sum of \$1,000.00 is reduced to judgment,
12 subject to interest at the legal rate and collectable by any lawful means.
13

14 **IT IS FURTHER ORDERED** that Defendant is in arrears for alimony and
15 support payments in the amount of \$42,000.00 from September 1, 2018 through
16 October 31, 2019 (\$3,000.00 per month for 14 months). The sum of \$42,000.00
17 in accrued spousal support arrears is reduced to judgment, subject to interest at
18 the legal rate, and collectible by any lawful means.
19

20 **IT IS FURTHER ORDERED** that should Defendant file an Appeal, there will
21 be no stay in this case until Defendant posts a supersedeas bond in an amount
22 of not less than \$64,000.00.
23

24 **IT IS FURTHER ORDERED** that Grady's order to pay Caterina \$42,000.00
25 in spousal support arrears and an additional \$1,000.00 in Contempt sanctions for
26 non-payment of spousal support that is not subject to discharge in bankruptcy
27 and is collectable by any lawful means, including against Grady's disability
28 income. The government is to withhold money from Defendant, Grady Edward

1 Byrd's, income and remit payments to the Plaintiff, Caterina Angela Byrd, to
2 satisfy the support obligation and support arrears. Caterina may prepare a
3 separate order, if necessary, to effectuate the remittance of her alimony
4 payments directly from Grady's Army disability and CRSC, Veteran Administration
5 benefits and Department of Defense retirement disability.
6

7 **IT IS FURTHER ORDERED** that should Grady fail to comply with the Court's
8 orders, Caterina may file a Motion for an Order To Show Cause why Grady
9 Should Not be Held in Contempt of Court, and if Grady fails to attend the hearing,
10 or fails to respond, or fails to pay as ordered, Caterina can seek a no-bail bench
11 warrant for his arrest and notify the appropriate authorities, such as Immigration
12 and Customs, should Grady attempt to enter the United States.
13

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1 **IT IS FURTHER ORDERED** that Ms. Lambertsen shall prepare the Findings
2 of Fact, Conclusion of Law and Order from today's hearing as well as submit a
3 Memorandum of Fees and Costs which Mr Mills can object to within 14 calendar
4 days; Mr. Mills shall review and sign off. Mr. Mills may propose additional findings
5 he believes are appropriate.
6

7 DATED this 25 day of January 2019.

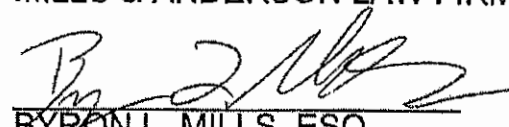
8
9 
10 DISTRICT COURT JUDGE *RP*

11 Rhonda K. Forsberg

12 Submitted by:
13 WEBSTER & ASSOCIATES

14 
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