

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD

Appellant

v.

CATERINA ANGELA BYRD

Respondent

Supreme Court Electronically Filed  
Jul 06 2020 04:01 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX TO OPENING BRIEF – VOLUME II**

Submitted by:

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### **CERTIFICATE OF SERVICE**

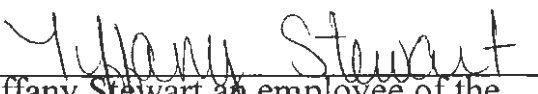
I HEREBY CERTIFY that on the 6<sup>th</sup> day of July, 2020, I caused to be served the instant **APPELLANT'S APPENDIX TO OPENING BRIEF- VOLUME II** to all interested parties as follows:

**BY MAIL:** Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, address as follows:

Anita A. Webster, Esq.  
WEBSTER & ASSOCIATES  
6882 Edna Avenue  
Las Vegas, Nevada 89146  
Attorneys for Respondent

**XX BY ELECTRONIC MAIL:** Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey, to the following e-mail address:

Anita Webster, Esq. - anitawebster@embarqmail.com

  
Tiffany Stewart an employee of the  
MILLS & ANDERSON

The index of Appellants Appendix to Opening Brief is as follows:

DOCUMENT	BATES NO.
Decree of Divorce filed on June 5, 2014	AA001-012
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 QDRO's, and for Attorney's Fees and Costs filed on October 16, 2018	AA013-034
Exhibit Appendix for Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide a Newly Discovered Asset, to Execute QDRO's, and for Attorney's Fees and Costs filed on October 16, 2018	AA035-063
Plaintiff's Errata to Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide a Newly Discovered Asset, to Execute QDRO's, and for Attorney's Fees and Costs filed on October 29, 2018	AA064-068
Order Striking Exhibits filed on November 14, 2018	AA069
Plaintiff's Opposition to Defendant's to Defendant's Ex Parte Motion for a Continuance of Plaintiff's Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide Newly Discovered Asset, to Execute QDRO's and for Attorney's Fees and Costs and Countermotion for Attorney Fees and Costs filed on December 19, 2018	AA070-091
Reply to Opposition and/or Countermotion filed on December 28, 2018	AA092-096
Transcript Re: Motion – January 23, 2019 filed on May 13, 2020	AA097-138
Order From the January 23, 2019 Hearing filed on April 5, 2019	AA139-147
Notice of Entry of Order From the January 23, 2019 Hearing filed on April 5, 2019	AA148-158
Defendant's Motion for Reconsideration filed on April 8, 2019	AA159-177
Appendix to Defendant's Motion for Reconsideration filed on April 8, 2019	AA178-198
Plaintiff's Opposition to Defendant's Motion for Reconsideration and Countermotion filed on April 23, 2019	AA199-237

Transcript Re: Status Check – May 2, 2019 filed on May 13, 2020	AA238-252
Defendant's Reply and Opposition filed on May 14, 2019	AA253-278
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Countermotion filed on May 17, 2019	AA279-308
Transcript Re: All Pending Motions – May 22, 2019 filed on May 13, 2020	AA309-353
Order of the Court filed on June 26, 2019	AA354-359
Notice to Appear Telephonically filed on June 27, 2019	AA360-361
Order From the July 18, 2019 Hearing filed on August 9, 2019	AA362-365
Notice of Entry of Order From the July 18, 2019 Hearing filed on August 9, 2019	AA366-371
Transcript Re: All Pending Motions – July 18, 2019 filed on May 13, 2020	AA372-399
Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on September 30, 2019	AA400-436
Schedule Arrearages for Support filed on October 9, 2019	AA437-440
Request to Appear by Audiovisual Transmission Equipment filed on October 10, 2019	AA441-448
Audiovisual Transmission Equipment Appearance Consent filed on October 10, 2019	AA449-450
Transcript Re: All Pending Motions – October 11, 2019 filed on May 13, 2020	AA451-477
Plaintiff's Objection to Defendant's Notice to Appear by Audiovisual Transmission Equipment at the Trial Scheduled for October 21, 2019 filed on October 14, 2019	AA478-489
Motion on Order Shortening Time to Reconsider Denial of Audiovisual Appearance Request filed on October 15, 2019	AA490-499
Appendix to Defendant's Motion for Order Time to Reconsider Denial of Audiovisual Appearance filed on October 15, 2019	AA500-507
Defendant's Pretrial Memo filed on October 16, 2019	AA508-517
Plaintiff's Opposition to Defendant's Motion on Order Shortening Time to Reconsider Denial of Defendant's Audiovisual Appearance Request and Countermotion for Attorney's Fees and Costs filed on October 16, 2019	AA518-536
Exhibit Appendix filed on October 16, 2019	AA537-541
Plaintiff's Pretrial memorandum filed on October 16, 2019	AA542-562

Opposition to Plaintiff's Motion for Reconsideration and Counter-motion for Fees filed on October 18, 2019	AA563-578
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on October 20, 2019	AA579-603
Transcript Re: All Pending Motions – October 21, 2019 filed on May 13, 2020	AA604-785
Defendant's Opposition to Plaintiff's Memorandum of Fees and Costs filed on December 4, 2019	AA786-789
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Second memorandum of Fees and Costs from July 19, 2019 through the Date of the Evidentiary Hearing on October 21, 2019 filed on December 16, 2019	AA790-802
Plaintiff's Motion for Attorney Fees and Costs for the Appeal filed on December 16, 2019	AA803-814
Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs for the Appeal filed on January 2, 2020	AA815-821
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs During the Appeal filed on January 9, 2020	AA822-832
Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA833-853
Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA854-876
Judgment for Attorney Fees filed on March 17, 2020	AA877-880
Notice of Entry of Judgment for Attorney Fees filed on March 18, 2020	AA881-886
Order From February 27, 2020 Hearing filed on March 26, 2020	AA887-889
Notice of Entry of Order From the February 27, 2020 Hearing filed on March 27, 2020	AA890-894
Request for Continuance filed on November 16, 2018	AA895-896
Order From the November 27, 2018 Hearing filed on December 17, 2019	AA897-900

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1 this problem so we don't have to come here. But now we're in  
2 front of you and he's in contempt of court. And she's paid  
3 thousands of dollars to come here. She's had to borrow money  
4 from friends and family to pay a mor -- the mortgage alone is  
5 \$1933. She's had to borrow that for five months, Your Honor.  
6 She's had no money for living expenses. And this all could  
7 have been prev -- prevented. We don't -- we shouldn't have to  
8 be here on these contemptuous thing. These documents should  
9 have been provided.

10 So we -- we respectfully are requesting attorney  
11 fees. I can do a memorandum of fees and costs with the  
12 Brunzell factors, Your Honor.

13 (COUNSEL AND CLIENT CONFER BRIEFLY)

14 MS. LAMBERTSEN: Okay. Thank you, Your Honor.

15 THE COURT: All right. Mr. Byrd?

16 MR. BYRD: Ma'am, good morning. I'm not that  
17 organized. I really don't know how to present it in such a  
18 manner. I'll just go down some of the notes.

19 First of all, we should not be here at all. This  
20 case is past the three year statute of limitations for  
21 reopening a divorce case and discussing this.

22 THE COURT: But this is to enforce the decree, so it  
23 is not past the statute of limitations.

24 MR. BYRD: If this -- yes, ma'am. I'm not disputing

1 anything you say. I'm just giving you my opinion for the  
2 record. If this case is past three years, which it is, it's  
3 been reopened --

4 THE COURT: I don't need argument on that. I've  
5 already told you it is not -- the -- the statute of  
6 limitations does not prevent her from coming back to enforce  
7 the provisions of the decree. That's what we're here on.  
8 Please move on to your next point.

9 MR. BYRD: Yes, ma'am. Shelton vs. Shelton was  
10 mentioned. Shelton vs. Shelton is -- is now moot. NRS  
11 125.150, 125.210, 125.165, all were past that date of Shelton  
12 v. Shelton and at that time the Nevada Legislature has already  
13 decreed that none of my disability benefits can be attached,  
14 levy, assigned --

15 THE COURT: There's --

16 MR. BYRD: -- or divided.

17 THE COURT: -- new case law. There's new case law.  
18 And yes, it can be attached because you have a continuing  
19 contracted obligation under the decree to pay her \$15 -- \$1500  
20 a month. And, oh, by the way, they haven't moved to set aside  
21 the decree based upon fraud and fraudulent misrepresentations.  
22 I don't know if they would prevail on that, but I can tell you  
23 that if they file it and do prevail, you're going to be paying  
24 her a lot more money than \$1500 because she was entitled to

1 half of the payments that you're receiving, not \$1500. You're  
2 getting a hundred and sixteen thousand a year?

3 MR. BYRD: Somewhere around that. Yes, ma'am.

4 THE COURT: She should have been receiving half of  
5 that.

6 MR. BYRD: Not according to the Supreme Court of the  
7 United States of America.

8 THE COURT: She should have been receiving half of  
9 that, sir. So we can go through this one-by-one --

10 MR. BYRD: Yes, ma'am.

11 THE COURT: -- but your obligation to pay that \$1500  
12 continues. You have to pay that. The only thing that was cut  
13 off was her ability to have the Army pay her directly. You  
14 also have an obligation to pay that \$1500 support that is  
15 alimony even though you tried to get around calling it  
16 alimony. And that will be paid until you come in with a  
17 proper motion to modify that payment based upon an improved  
18 financial condition which based on what I've seen you're not  
19 going to be able to show at this point because you've left her  
20 basically penniless. You don't get to do that. You have  
21 obligations under that decree and those obligations continue,  
22 sir. So we can enforce it. And one way we can enforce it is  
23 by putting you in jail until those payments are reinstated and  
24 continue to be made.

1           Now the other items, I'll hear your argument on the  
2 other items.

3           MR. BYRD: I'm not sure which ones are which. I'd  
4 like to --

5           THE COURT: The insurance.

6           MR. BYRD: The main thing I'd like to do is am I  
7 able to pass on documents to the Court here at this time?

8           THE COURT: What documents do you wish to pass on?

9           MR. BYRD: Every document that I have listed inside  
10 of any of my filings I am providing them right now to the  
11 Court.

12          MS. LAMBERTSEN: And --

13          MR. BYRD: They're available right now.

14          MS. LAMBERTSEN: And Your Honor, I would object. I  
15 -- I don't know what it is he intends to pass and I wouldn't  
16 have an opportunity to really, you know, defend her interest  
17 and whatever is contained in there.

18          THE COURT: You may provide a copy to the attorney.

19          MR. BYRD: I do have a copy. Every document there  
20 is listed in something that I filed. That's all my evidence  
21 that I have cited.

22          THE COURT: All right. Before we go further, swear  
23 in both parties.

24          THE CLERK: Please stand and raise your right hand.

1 You and each of you do solemnly swear the testimony you're  
2 about to give in this action shall be the truth, the whole  
3 truth, and nothing but the truth, so help you God?

4 MS. BYRD: Yes.

5 MR. BYRD: I do.

6 THE COURT: All right. You may continue, sir. I'll  
7 remind you you're under oath.

8 MR. BYRD: Yes, ma'am. Some of the money, I'm not  
9 sure if I said this, too much stuff for me to take in at one  
10 time. And they want reimbursements to them -- some of that  
11 money comes straight from the government, like these ins --

12 THE COURT: That's fine. You get it. It's your  
13 obligation to pay. You pay it.

14 MR. BYRD: You -- I'm saying I don't get it. It --  
15 it comes before I ever get it. To enroll in the program it  
16 automatically means it's deducted from the top.

17 THE COURT: Okay.

18 MR. BYRD: So I don't have that money to give the  
19 majority going before I get paid. But that's just the point I  
20 want to bring up.

21 I don't know how to say it. I don't know what I can  
22 say. I -- I know you say we moved along. I don't -- what the  
23 decree says does not say and prove circumstances. It says  
24 change circumstances. And change can mean a lot of things

1 which I'm sure we will get to that --  
2 THE COURT: When --  
3 MR. BYRD: -- at another time.  
4 THE COURT: -- it changes from 3,000 a month down to  
5 zero because you quit paying what she's entitled to under the  
6 decree, that is not going to give you relief from your  
7 obligations. It has to be an improved change.  
8 MR. BYRD: I don't really know what to say. I'll  
9 just -- I'll wait for my appeal.  
10 THE COURT: All right.  
11 MS. LAMBERTSEN: Your Honor, he -- you know, it  
12 would take me quite awhile to go through here, but since he  
13 put it together, can he direct us to which document talks  
14 about how much this \$225,000 Prudential life insurance is?  
15 What -- can he point to -- I'd be happy to look at it. What  
16 -- what in here is talking about this \$225 -- this is --  
17 THE COURT: That's --  
18 MS. LAMBERTSEN: -- the email attachment you gave  
19 me.  
20 MR. BYRD: There's nothing in there other than the  
21 fact that I am providing what you've asked for.  
22 MS. LAMBERTSEN: What --  
23 MR. BYRD: That's what she's asked for and I gave it  
24 to her.

1 THE COURT: You need a copy --  
2 MR. BYRD: That's --  
3 THE COURT: -- of the policy. That's not a copy of  
4 the policy. We need to know what the monthly payment is.  
5 MR. BYRD: Okay.  
6 THE COURT: Counsel, you need to --  
7 MR. BYRD: Yeah, just make another --  
8 THE COURT: -- contact the insurance company and  
9 find out if there's a way that she can be informed if payment  
10 is ever missed.  
11 MS. LAMBERTSEN: Okay. So I'm wondering if -- so is  
12 the Court inclined to have him give a release where we can  
13 communicate with the Prudential company?  
14 THE COURT: I can order that.  
15 MS. LAMBERTSEN: And -- and so she will know if it's  
16 being paid. Is the Court inclined to do that as opposed to  
17 adding the payment onto her al -- or alimony --  
18 THE COURT: Yes.  
19 MS. LAMBERTSEN: -- and letting -- okay. All right.  
20 THE COURT: Just call the insurance company. Find  
21 out what they require. If they require a release of  
22 information or a consent by the Defendant, then he is to sign  
23 that paper. If he refuses to sign the paper, we can hold him  
24 in contempt and we can also order the Clerk to sign the paper

1 on his --

2 MS. LAMBERTSEN: Okay.

3 THE COURT: -- behalf. Sir.

4 MS. LAMBERTSEN: I -- I don't know --

5 THE COURT: You may -- your ordered to get a copy of  
6 the policy, get a copy of the paperwork from the insurance  
7 company showing what the premium is and provide that to your  
8 exwife. You are also to cooperate in any matter needed in  
9 order for the insurance company to be able to keep her  
10 informed that the premiums are being paid. And that is an  
11 ongoing obligation on your part to pay that. If you fail to  
12 pay, you can be held in contempt for failure to pay that.

13 The Office of Personnel Management Death Benefits,  
14 is that being taken out of your check to keep the death  
15 benefits intact or is that just the survivor benefits that are  
16 being kept --

17 MR. BYRD: That is being --

18 THE COURT: -- out of your check?

19 MR. BYRD: -- taken off --

20 THE COURT: Do you have a copy of your last  
21 disability payment?

22 MR. BYRD: Yes, I -- I submitted it with all of my  
23 other documents and my financial disclosure form. I don't  
24 know if there's -- there's one -- there should be one in this



1 packet also. And then we have the issue of the omitted  
2 assets, the Federal Employees Retirement plan.

3 MS. LAMBERTSEN: Yes. Yes, Your Honor. That --  
4 that is the one when -- that -- that is not listed anywhere in  
5 the decree of divorce. And he went frm the army to the  
6 Department of Defense. And with that, there is the FERS  
7 Federal Employees -- Federal Employment Retirement System.  
8 She has no information on that. That was never divided. And  
9 he -- he kept -- kept that from her.

10 Now he -- in his reply, he's pointing to the fact  
11 that she knows what the words -- she sends in -- in an email I  
12 don't know what OPM means. And he says that means Office of  
13 Personnel Management. He then declares in his reply well that  
14 means that she knew about the Federal Employee Retirement  
15 System.

16 Your Honor, she -- she does not have the basis to  
17 even -- I --

18 THE COURT: So you received --

19 MS. LAMBERTSEN: -- wouldn't even think they would  
20 be the same, you know.

21 THE COURT: Have you received any documentation on  
22 the Federal Employment Retirement --

23 MS. LAMBERTSEN: None --

24 THE COURT: -- plan?

1 MS. LAMBERTSEN: -- Your Honor.  
2 THE COURT: Sir, you are to provide --  
3 (COUNSEL AND CLIENT CONFER BRIEFLY)  
4 THE COURT: -- those to her within 10 days.  
5 MR. BYRD: Ma'am, it's all right there.  
6 MS. LAMBERTSEN: No, it --  
7 MR. BYRD: I've given it to her before. This is  
8 not --  
9 MS. LAMBERTSEN: No.  
10 MR. BYRD: -- the first time. Everything is like  
11 the --  
12 THE COURT: Okay.  
13 MR. BYRD: -- third time.  
14 THE COURT: Handing those documents back and have  
15 him show you where --  
16 MS. LAMBERTSEN: Okay.  
17 THE COURT: -- that document is.  
18 MS. LAMBERTSEN: Show me where the Federal  
19 Employment Retirement System plan is. I'm -- and I'm  
20 wondering Your Honor on his financial disclosure form he has  
21 this -- it's not included -- this I wonder if he was getting  
22 \$1300 a month. Here it is. This -- I'm wondering if -- if on  
23 his -- on his financial disclosure form Your Honor he has  
24 something that he wrote on the top Department of Defense

1 retirement disability. But it's actually an annuity and he's  
2 getting paid 1315 a month on this annuity. I'm -- I'm curious  
3 if that is the FERS program. Way down at the bottom in the  
4 event of your death, 729 is payable to Caterin -- or Caterina.  
5 What -- we --

6 THE COURT: And --

7 MS. LAMBERTSEN: -- need to have this policy. What  
8 is this and what is this 1315 that he's getting a month ever  
9 -- she -- it was divided with her. She's not getting -- --  
10 she's not getting that. The only thing she's getting is the  
11 U.S. Army. She's not getting -- getting this. She's not  
12 getting the survivor benefits. She's not getting this CRSC  
13 where he gets 3,363 a month on that. What --

14 THE COURT: Okay. Further than conduct discovery  
15 here in the courtroom, I'm going to enter some interim orders.

16 MS. LAMBERTSEN: Thank you, Your Honor.

17 THE COURT: You will be allowed to --

18 MR. BYRD: The --

19 THE COURT: -- do your discovery, do a deposition of  
20 him. Sir, you are required to get copies of statements for  
21 the last year of all accounts that you are receiving monies  
22 from including the annuity payment and any documents to show  
23 where the monies originated before you purchase the annuity.  
24 Any other accounts that you have that you're receiving monies

1 from. Copies of any insurance policies and documentation  
2 showing payments on those policies.

3           Now in regards to the healthcare, the wife can't  
4 just walk in -- the exwife can't just walk in and throw up her  
5 hands and say I didn't know any of this information and she  
6 had an obligation to follow through on that. And if benefits  
7 were lost as a result of that, that's not necessarily going to  
8 be something that he's going to be responsible for. So I am  
9 not ruling today. I'm going to wait until you've done your  
10 discovery. We may need to do an evidentiary hearing. You may  
11 decide after you've done your discovery whether or not there's  
12 a basis to move to set aside the decree based upon fraud.  
13 That's a very high standard to me though and it's pretty hard  
14 to prove. But I think there is a possibility. But I'll leave  
15 that up to you.

16           And in the meantime, sir, your are ordered to pay  
17 the \$1500 a month that you are obligated to pay her as her  
18 share of the benefits that you're receiving. Should have been  
19 more. But unless you move to set aside the decree of divorce,  
20 I can't look behind that. You're ordered to pay the \$1500 per  
21 month in the support payments. And those past payments that  
22 you didn't pay are re-awarded in the amount of 7500 for the  
23 1500 you're not paying out of the benefits and 7500 for the  
24 1500 that you've quit paying on the support. And you may

1 reduce that to judgment.

2 And then as to the other issues, you need to get the  
3 proper documentation. And if he doesn't provide it, come in  
4 with your proper motion to hold him in contempt and we'll do  
5 it and contempt. And that situation will be sir, you'll sit  
6 in custody until you provide the proper documents that she's  
7 requested.

8 And any other documents regarding -- like I said,  
9 any other income that you've got including the Federal  
10 Employment Retirement plan and any other plans that you had  
11 set up at the time of the divorce. So the -- and attorney's  
12 fees in the amount of \$7,000 are to be paid to her within the  
13 next 45 days.

14 MR. BYRD: May I ask a question? Do you want these  
15 documents? This is everything I got. Everything that's been  
16 discussed here is there --

17 THE COURT: Then --

18 MR. BYRD: -- with the exception of policies.

19 THE COURT: Go get some more.

20 MS. LAMBERTSEN: I -- I'd be --

21 THE COURT: But got to be a --

22 MS. LAMBERTSEN: -- happy to --

23 THE COURT: -- matter of --

24 MS. LAMBERTSEN: -- take those. They're -- they're

1 probably deficient, Your Honor --

2 MR. BYRD: But --

3 MS. LAMBERTSEN: -- but I'd hap -- I'd be --

4 MR. BYRD: But I -- I'll just --

5 THE COURT: She'll take a look --

6 MS. LAMBERTSEN: -- I can take them.

7 MR. BYRD: Okay.

8 THE COURT: -- at it.

9 MR. BYRD: I'll just keep them.

10 MS. LAMBERTSEN: Okay. Your Honor, do we have a

11 ruling on the contempt there? He's not disputing that he did

12 not pay her. Do we have a --

13 THE COURT: I'm not going to hold him in contempt at

14 this point, but if he fails to get caught up on the payments

15 and pay the attorney's fees in a timely manner, then you may

16 renew your motion and we'll set it for a hearing at that time.

17 And --

18 MS. LAMBERTSEN: Because --

19 THE COURT: -- that can --

20 MR. BYRD: Yes, ma'am.

21 THE COURT: -- include jail time.

22 MR. BYRD: I understand.

23 MS. LAMBERTSEN: We -- because she needs that 7500

24 and 75 -- I mean, she is in desperate -- and so it's going --

1 THE COURT: When can you have that paid, sir?  
2 MS. LAMBERTSEN: That's -- she needs it like now.  
3 MR. BYRD: Ma'am, when am I going to pay that?  
4 THE COURT: \$15,000 plus another 7 is 22,000.  
5 MR. BYRD: Af -- after my appeal is when I'm going  
6 to pay it.  
7 THE COURT: No, sir. You're going to pay it before  
8 your appeal.  
9 MR. BYRD: Oh, I am?  
10 THE COURT: Or you're going to sit in jail.  
11 MR. BYRD: Well, I have -- if I can get the money  
12 up, I will pay it. I will do my best.  
13 THE COURT: How much do you get a month, sir?  
14 MR. BYRD: Approximately \$9,000 a month,  
15 approximately. I'm not sure the exact figures.  
16 THE COURT: And I'll remind you you're under oath.  
17 MR. BYRD: Yes, ma'am.  
18 THE COURT: You are to pay at least 4500 each month  
19 to her until that sum is paid. So half of what you're  
20 receiving is to be -- be paid to her. And if you fail to do  
21 so, we'll hold you in contempt --  
22 MR. BYRD: Yes, ma'am.  
23 THE COURT: -- and to put you in jail.  
24 MR. BYRD: When am I supposed to pay that?

1 THE COURT: By the 1st of each month.

2 MR. BYRD: I won't -- I won't have that money the  
3 1st of this month.

4 MS. LAMBERTSEN: Well, he -- he's sitting on 15,000  
5 that should have gone to her, you know. So to say he doesn't  
6 have 4500 plus her -- her payments doesn't seem --

7 THE COURT: How much do you --

8 MS. LAMBERTSEN: -- credible.

9 THE COURT: -- have in the bank right now, sir?

10 MR. BYRD: In the bank right now, I have a grand  
11 total of everything together is maybe \$2,000, maybe. And I've  
12 got to go home. So that's going to -- I got to pay my hotel  
13 bill.

14 THE COURT: And she's got to --

15 MR. BYRD: On the --

16 THE COURT: -- live. You left her penniless, sir.  
17 You don't get to do that.

18 MS. LAMBERTSEN: He can sell his car. He's got  
19 three cars. He only needs ones -- you know, sell the -- I --  
20 his spending is not -- his post-divorce spending is -- is out  
21 of control and -- and to her demise. And -- and Your Honor,  
22 he admitted he's going to go back to the Philippines. What do  
23 we have to guarantee this payment? I mean, I -- I -- how --  
24 he needs --



1 THE COURT: I'm --  
2 MS. LAMBERTSEN: -- to be able to --  
3 THE COURT: -- not going to put him in jail until he  
4 makes the payment, Counsel.  
5 MR. BYRD: I have surgery scheduled for Friday. I'm  
6 going in for my next surgery on Friday.  
7 THE COURT: Sir --  
8 MR. BYRD: And -- and --  
9 THE COURT: -- I don't feel sorry for you.  
10 MR. BYRD: Yes, ma'am.  
11 THE COURT: You left her penniless. You don't get  
12 to do that.  
13 MR. BYRD: I -- I --  
14 THE COURT: All right?  
15 MR. BYRD: -- didn't ask? I wouldn't ask her --  
16 THE COURT: You owe her the money.  
17 MR. BYRD: Yes, ma'am.  
18 THE COURT: She's having to get by bor -- borrowing  
19 from friends. You can do the same thing. Get the money put  
20 together, get her paid, or you're going to jail.  
21 MR. BYRD: I understand that, Your Honor.  
22 THE COURT: Now 4500 out of each pay that you  
23 receive per month is to be paid to her until that full amount  
24 is paid and -- and you continue to accrue the obligations so

1 you -- it'll be the 2200 plus the 3,000 per month --  
2 MR. BYRD: Yes, ma'am. The --  
3 THE COURT: -- that's supposed to go to her anyway.  
4 MR. BYRD: Yes, ma'am. May I clarify? You ordered  
5 me to pay her \$4500 a month. I -- I don't know for how long,  
6 but --  
7 THE COURT: Until you have paid the 2200. The -- or  
8 the 22,000 for the back support and payments that she was  
9 entitled to plus 7,000 for attorney's fees. That's 22,000.  
10 Plus you owe a monthly payment to her from this day going  
11 forward of 3,000.  
12 MR. BYRD: Yes, ma'am. Yes, ma'am.  
13 THE COURT: So you pay that 3,000. You pay the  
14 additional 1500 on top of that. That will go towards the  
15 22,000 that you've got -- now have an obligation to pay until  
16 that 22,000 is paid. Once you've paid the 22,000, it goes  
17 back down to 3,000 a month unless there's further order from  
18 the Court.  
19 MR. BYRD: Yes, ma'am. I -- I understand that. My  
20 -- my -- what I'm trying to get on the record is that you're  
21 ordering me to pay \$4500 from the amount of money which I  
22 collect every month which I have fully disclosed. And two,  
23 financial disclosure forms to this Court. All of that money  
24 is federal disability pay. You're --

1 THE COURT: It doesn't --  
2 MR. BYRD: -- ordering --  
3 THE COURT: -- matter.  
4 MR. BYRD: -- me to pay from that money.  
5 THE COURT: I can't order the Army to pay her half,  
6 but I can order you to pay that half, sir, because you owe it  
7 to her under the decree of divorce. Yes, that is my order.  
8 MR. BYRD: Yes, ma'am. I just needed that on the  
9 record.  
10 THE COURT: So -- and you are to provide  
11 documentation. Like I said, if any other accounts that you  
12 didn't disclose before and it didn't get properly adjudicated  
13 in the decree, if there was that one retirement plan and that  
14 accrued before the divorce, that was left out and that's going  
15 to get decided upon.  
16 MR. BYRD: That's -- everything that's being stated  
17 here today will -- is being -- is being recorded, so I can --  
18 THE COURT: There's a transcript.  
19 MR. BYRD: -- read it and see what all this --  
20 THE COURT: You'll have to --  
21 MR. BYRD: -- what I'm required to do?  
22 THE COURT: You'll have to pay to -- she'll prepare  
23 an order and if you want the transcript, you can pay to have  
24 the cran -- transcript --

1 MR. BYRD: Now I'm --  
2 THE COURT: -- prepared.  
3 MR. BYRD: -- I'm going to need something. I -- I  
4 don't know what all this stuff is. I -- I need -- I need  
5 it --  
6 THE COURT: Well, then --  
7 MR. BYRD: -- in writing.  
8 THE COURT: -- go hire an attorney yourself, sir.  
9 MR. BYRD: Do you know what -- how long I -- before  
10 I can get a transcript? I -- does that come out daily or --  
11 THE COURT: You can get a copy of the disc within a  
12 couple of days and you can take it to a transcriber to have it  
13 transcribed.  
14 MR. BYRD: Okay. Thank you.  
15 THE COURT: All right. So you do your discovery.  
16 MS. LAMBERTSEN: Yes, Your Honor.  
17 THE COURT: Bring any appropriate motions. If he  
18 fails to cooperate and provide the information needed, you  
19 make sure you do not miss one more payment of the \$3,000. If  
20 he doesn't make the payment of the 4500 next month and it's --  
21 when do you get paid, sir? By the 12th of each month?  
22 MR. BYRD: Oh, that's -- that was my reason I said  
23 I'm not going to have \$4500. Some of my pay is not paid until  
24 the third of the month. I won't have \$4500 before the third.

1 THE COURT: All right.  
2 MR. BYRD: So that --  
3 THE COURT: Well, that's going to happen.  
4 MR. BYRD: -- can be ordered, but you might as well  
5 put --  
6 THE COURT: And if --  
7 MR. BYRD: -- me in jail because I ain't going to  
8 have \$4500.  
9 THE COURT: By the February 15th -- or by the 15th  
10 of each month you are to pay her 4500.  
11 MS. LAMBERTSEN: Now he's going to get his -- he --  
12 THE COURT: But if you do not make that payment, if  
13 you miss one payment, she can come in on a motion to hold you  
14 in contempt and I'll put you in jail.  
15 MR. BYRD: I -- I understand that, Your Honor.  
16 THE COURT: All right.  
17 MR. BYRD: I understand, Your Honor.  
18 MS. LAMBERTSEN: Can we address the direct deposit?  
19 He was paying her by direct deposit into a checking account.  
20 And on September 1st he closed that account. Is he going to  
21 reopen that checking account so that's how she's going to  
22 receive her money? Because he's -- well, I kind of --  
23 THE COURT: It's to be --  
24 MS. LAMBERTSEN: -- need to know.

1 THE COURT: -- in her account by the 15th of each  
2 month.  
3 MR. BYRD: She --  
4 THE COURT: Not I mailed a check and oh, gee, I  
5 don't know where it went. So direct deposit into her account.  
6 MR. BYRD: Yes, Your Honor. She has an account  
7 there. The money that she is owed, I have paid her since  
8 September -- since October the 1st when my Army retirement pay  
9 changed. I have put her 50 percent of her money in her  
10 savings accounts since that time. I have informed them of  
11 that. This has been in all my filings.  
12 MS. LAMBERTSEN: What is --  
13 MR. BYRD: It's been in --  
14 MS. LAMBERTSEN: What dollar --  
15 MR. BYRD: -- my filings?  
16 MS. LAMBERTSEN: -- amount is he talking about?  
17 There has been no -- no --  
18 MR. BYRD: It's in -- it's in my filings. It's in  
19 my filings.  
20 MS. LAMBERTSEN: What -- what is the doc -- may --  
21 THE COURT: Yeah. How much? Do you have any  
22 documentation showing what you've paid?  
23 MR. BYRD: No, ma'am.  
24 THE COURT: That's what I thought.

1 MR. BYRD: I've -- I've got the latest copy. I've  
2 got the most latest copy where it just changed again. I  
3 brought a copy for the Court because it's not in my --  
4 THE COURT: Providing your --  
5 MR. BYRD: -- my financial --  
6 THE COURT: -- account number.  
7 MR. BYRD: -- disclosure form.  
8 MS. BYRD: Yeah, he --  
9 THE COURT: Providing your account number. You are  
10 to place it into the account at the bank --  
11 MS. BYRD: He put \$68.  
12 THE COURT: Is it \$68?  
13 MS. BYRD: That's what he was giving me.  
14 MS. LAMBERTSEN: What -- how -- how much -- how --  
15 for how many months?  
16 THE COURT: You are to pay that.  
17 MS. BYRD: Altogether --  
18 THE COURT: And she will --  
19 MS. BYRD: -- yeah, 200.  
20 THE COURT: -- provide you the account number. Do  
21 you have the account number with you?  
22 MS. BYRD: Yes.  
23 THE COURT: All right. Providing the account number  
24 so that we've got it on the record that he's received the

1 account numbers.

2 (COUNSEL AND CLIENT CONFER BRIEFLY)

3 THE COURT: Sir, you are to make -- you are to make

4 immediate steps to make arrangements to have that 4500

5 deposited in her account by the 15th of each month.

6 MS. LAMBERTSEN: Okay. So Your Honor --

7 MR. BYRD: She has an account, Your Honor.

8 MS. LAMBERTSEN: -- she has a -- a Bank of America

9 account.

10 MS. BYRD: You closed my checking account. All I

11 have is --

12 MS. LAMBERTSEN: Oh, no.

13 MS. BYRD: -- savings.

14 MS. LAMBERTSEN: No, don't talk to him directly,

15 please. Do I --

16 THE COURT: Okay.

17 MS. LAMBERTSEN: -- just write void on this and then

18 he has the routing --

19 THE COURT: Yes.

20 MS. LAMBERTSEN: -- and -- okay.

21 THE COURT: That way --

22 MS. LAMBERTSEN: So --

23 THE COURT: -- he'll have the bank.

24 MS. LAMBERTSEN: Okay.



1 THE COURT: He'll have the --  
2 MS. LAMBERTSEN: So --  
3 THE COURT: -- routing number. He'll have the  
4 account number.  
5 MS. LAMBERTSEN: For the record, the -- it's a Bank  
6 of America. The routing is 122400724. And the account is  
7 501017183024. And I'm handing him a copy of this, if I --  
8 THE COURT: You may.  
9 MR. BYRD: Okay. Good. Thank you.  
10 THE COURT: Madam, I would encourage you to go down  
11 to the V.A. and see what you can find out as take a copy of  
12 your divorce decree, see if there's someone down there who can  
13 help you understand what you need to do regarding any of the  
14 benefits you were entitled to under the decree. Time limits  
15 may have run. I don't know. The Army has -- the military has  
16 their own rules. So all right.  
17 MR. BYRD: Your Honor, I have provided them  
18 documentation showing that she's able to do all this; however,  
19 what I want to get on the record here --  
20 THE COURT: And you are to cooperate, sir, with her  
21 if it -- if there's anything that they need such as a release  
22 of information or a consent form or something like that for  
23 her to get the information she needs to know what her rights  
24 are in terms to those benefits, you are to cooperate and

1 provide that.

2 MR. BYRD: I'll be happy to cooperate.

3 THE COURT: All right.

4 MR. BYRD: For the -- for the Court record, I have a

5 -- this is the latest effective 1 February to pay my

6 retirement -- retiree account statement from the Department of

7 Defense. This shows that my pay has gone to zero again. It

8 had changed to a -- a couple hundred dollars, something like

9 that. I'm not sure what the numbers were. But it has gone to

10 zero again. And I'd like that to reflect in the --

11 MS. LAMBERTSEN: Well --

12 MR. BYRD: -- Court record that --

13 THE COURT: It doesn't matter.

14 MR. BYRD: -- my United States Army --

15 THE COURT: You're still receiving --

16 MR. BYRD: -- retirement is zero.

17 MS. LAMBERTSEN: No.

18 THE COURT: That may be retirement because you

19 changed it to disability. That does not negate your

20 obligation to pay her the 1500 that's in the decree. She just

21 can't collect it from the military. She has to collect it

22 from you. That's all that means.

23 MR. BYRD: Okay.

24 THE COURT: So --

1           MR. BYRD: I'll put this in a new FDF that I will  
2 file.  
3           THE COURT: All right. So do your deposition, do  
4 your request for documents, and you can put it -- do you want  
5 to set it for -- how long do you need to do all this? I'd  
6 like -- I always try and keep it future action date on the --  
7           MS. LAMBERTSEN: Yes.  
8           THE COURT: -- case so that --  
9           MS. LAMBERTSEN: Yes.  
10          THE COURT: -- it doesn't get lost.  
11          MS. LAMBERTSEN: A return hearing. I -- I would say  
12 60 days, maybe 60 days to do this infor -- get this  
13 information.  
14          THE COURT: Why don't we do 90?  
15          MS. LAMBERTSEN: 90.  
16          THE COURT: Like I --  
17          MS. LAMBERTSEN: Okay.  
18          THE COURT: -- said, if he doesn't make the February  
19 payments, you can file your motion to hold him in contempt --  
20          MS. LAMBERTSEN: Okay.  
21          THE COURT: -- and we'll go --  
22          MS. LAMBERTSEN: Okay.  
23          THE COURT: -- from there. If you don't show up at  
24 the hearing, there will be a no bail bench warrant issued for

1 your arrest. So if you come back into the country, that'll  
2 show up and they'll pick you up at the airport. All right?  
3 So make sure you --

4 MR. BYRD: Yes, ma'am.

5 THE COURT: -- show up, make sure you cooperate, and  
6 make sure you make those payments.

7 MS. LAMBERTSEN: One last thing, Your Honor. If we  
8 can kindly have you -- we're respectfully requesting it placed  
9 on the record that he's not to contact the mortgage company  
10 and change the mailing address of the mortgage payments. They  
11 go directly to her home. And I do have an exhibit where in --

12 MS. BYRD: Last month it changed.

13 MS. LAMBERTSEN: -- the last month she didn't get  
14 the payment and she became alarmed. And I provided as an  
15 exhibit where it's changed to his residence. If he wants to  
16 get his own, fine, but he can't meddle with her getting the  
17 statement going to her home. That seemed to be a -- an issue  
18 of harassment. I don't know what he was trying to do, but she  
19 didn't get it. It got mailed to the East Craig address. So  
20 have him please not do that.

21 THE COURT: And the other thing the parties can do  
22 is cooperate with each other, setup an online account so that  
23 both parties have access to the statements online. I'm sure  
24 the mortgage company allows that. And so she can see each

1 month what the --

2 MS. BYRD: It comes out of my --

3 THE COURT: -- statement is. You can see each month  
4 what the statement is.

5 MR. BYRD: She used that word harassment again. I  
6 have an email from the --

7 THE COURT: I --

8 MR. BYRD: -- Nationstar bank which specifically  
9 states I provided the Nationstar bank six -- what is it? 2120  
10 Lookout Point Circle, Las Vegas, Nevada 89117. That's from me  
11 to Nationstar in July of this year. I did not ask for any  
12 documents from anybody.

13 THE COURT: All right.

14 MR. BYRD: I got it in writing.

15 THE COURT: Setup the online account so both parties  
16 can have access and do not interfere with each other's ability  
17 to get a copy of the statements at any time. Is your name the  
18 only one on the loan?

19 MR. BYRD: No, ma'am.

20 THE COURT: So it's in both names?

21 MR. BYRD: Every document has --

22 THE COURT: All right.

23 MR. BYRD: -- her name on it.

24 THE COURT: You have a right to request a copy.

1 MS. BYRD: I get a bill every month for the past  
2 four years I've been paying it. It comes out of my bank  
3 account.

4 THE COURT: Okay.

5 (COUNSEL AND CLIENT CONFER BRIEFLY)

6 THE COURT: So set it up online so both of you can  
7 access it. And both of you will agree that you will not  
8 interfere with the other side having access. You'll provide  
9 the necessary usernames, passwords, and will not change the  
10 username or password without notice to the other party.

11 MR. BYRD: For the record, Your Honor, I don't know  
12 anything about that mortgage other than that it -- I signed  
13 for it. I don't want a copy of it, I'm not interested, and  
14 I've never requested anything. And I don't need an account.  
15 I don't know nothing about it. I don't want to know anything  
16 about it.

17 THE COURT: Okay.

18 MS. LAMBERTSEN: Well --

19 THE COURT: Then since your name's on the loan, you  
20 have a right to set it up, so --

21 MS. BYRD: Yeah. And I just didn't get it --

22 THE COURT: Okay.

23 MS. BYRD: -- in my statement and I called the bank  
24 and they said that he request the statement to go to his

1 address so I can --

2 THE COURT: Well --

3 MS. BYRD: -- change it over again.

4 THE COURT: -- we've resolved that. I don't --

5 MS. BYRD: Yeah.

6 THE COURT: -- need to hear more argument on that  
7 issue. All right. Anything else we need to resolve today  
8 besides give you a return date? And let's make it about 90  
9 days out other than 60.

10 THE CLERK: May 2nd at 11:00 a.m.

11 THE COURT: So we'll see you back here then.

12 MS. LAMBERTSEN: Thank you, Your Honor.

13 MS. BYRD: Thank you.

14 MR. BYRD: Yes.

15 (PROCEEDINGS CONCLUDED AT 11:23:45)

16 \* \* \* \* \*

17 ATTEST: I do hereby certify that I have truly and  
18 correctly transcribed the digital proceedings in the above-  
19 entitled case to the best of my ability.

20

21

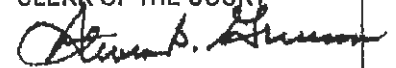
*Adrian Medrano*

22

23

Adrian N. Medrano

24



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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 23<sup>rd</sup> 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.  
9

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).  
20  
21

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.  
26

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).

11  
12  
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.  
24  
25

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 ///

28

CASE NO.: D-18-577701-Z  
Byrd, Caterina v. Byrd, Grady

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 3<sup>rd</sup> day of April 2019.

  
DISTRICT COURT JUDGE  
KATHY HARDCASTLE

Submitted by:  
WEBSTER & ASSOCIATES

Reviewed as to form and content:  
MILLS & ANDERSON

  
JEANNE F. LAMBERTSEN, ESQ.  
Nevada Bar No. 9460  
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Counsel for Plaintiff, unbundled

  
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Counsel for Defendant

Law Offices of  
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*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](mailto:anitawebster@embarqmail.com)  
12 e-mail: [jlambertsen@embarqmail.com](mailto: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 5<sup>th</sup> day of April, 2019, a copy of which is attached.

23 Dated this 5<sup>th</sup> day of April, 2019.

**WEBSTER & ASSOCIATES**

*Jeanne F. Lambertsen*  
JEANNE F. LAMBERTSEN, ESQ.  
Unbundled Attorney for Plaintiff

**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 5<sup>th</sup> 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**  
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@embargmail.com](mailto:anitawebster@embargmail.com)  
12 e-mail: [jlambertsen@embargmail.com](mailto:jlambertsen@embargmail.com)  
13 Attorney for Plaintiff, unbundled

9 DISTRICT COURT  
10 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

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

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

26 Argument by Attorney Lambertsen regarding Defendant's non-payment of  
27 the \$1,500.00 monthly Alimony, which is currently in arrears in the amount of  
28

W:\Family\Byrd, Caterina\Pleadings\Drafts\Order from 1.12.19 hearing 2 14.19.wpd

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.  
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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.  
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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  
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24 they require for the Plaintiff to communicate directly with Prudential Veterans'  
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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.  
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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.  
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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.  
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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),  
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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  
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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),  
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10 Halbrook, 114, Nev. 1455, 971 P.2d 1262 (1998).

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

22 **IT IS FURTHER ORDERED** that Defendant's arrears and attorneys' fees  
23 shall be reduced to judgment: arrearages in spousal support of \$7,500.00 from  
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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.  
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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  
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15 The Plaintiff's bank account was placed on the record. The plaintiff also provided  
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22 the Plaintiff for spousal support (\$1,500.00) and her interest in his United States  
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24 \$4,500.00 monthly payments are being made as described above.  
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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  
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1 attorney's fees, Plaintiff's Motion for Contempt of court may be renewed.

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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).  
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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).  
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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 ///

CASE NO.: D-18-577701-Z  
Byrd, Caterina v. Byrd, Grady

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 3<sup>rd</sup> day of April 2019.

  
DISTRICT COURT JUDGE  
KATHY HARDCASTLE

Submitted by:  
WEBSTER & ASSOCIATES

Reviewed as to form and content:  
MILLS & ANDERSON

  
JEANNE F. LAMBERTSEN, ESQ.  
Nevada Bar No. 9460  
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MOT  
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(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:

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 12<sup>th</sup> 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 12<sup>th</sup> day of March 2019

24 MILLS & ANDERSON  
25  
26 By:   
27 BYRON L. MILLS.ESQ.  
28 Nevada Bar No. 6745  
703 S. 8<sup>TH</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant

1 POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 GRADY EDWARD BYRD (hereinafter "Grady") and CATERINA  
5 ANGELA BYRD (hereinafter "Caterina") were divorced by Decree of Divorce  
6 dated June 5, 2014. The Decree of Divorce contained inter alia, an order that Grady  
7 pay Caterina 50% of his United States Army Retired Pay as long as he lives. The  
8 Decree also contained an order that Grady would continue to pay Caterina \$1500.00  
9 extra per month to assist with her home mortgage.<sup>1</sup> However, the Decree  
10 specifically stated that the \$1500.00 is not an alimony payment and it is not  
11 required. Additionally, the Decree included an agreement that neither party shall  
12 be required to pay spousal support to the other party.<sup>2</sup>

13 On October 16, 2018, Caterina filed a Motion to Enforce the Decree of  
14 Divorce. In her motion Caterina claimed that the \$1500.00 per month was truly  
15 spousal support despite the clear waiver in the Decree stating that neither party  
16 would pay alimony. Caterina further claimed that it was possible the other half of  
17 the \$3000.00 Grady had been depositing was Caterina's 50% share of Grady's  
18 retirement pay.

19 On January 23, 2019, the matter of Caterina's Motion to Enforce the Decree  
20 of Divorce came before the Court. The Court determined that the \$1500.00 per  
21 month voluntary payment was alimony. The Court also agreed with Caterina  
22 regarding the additional \$1500.00 that Grady had voluntarily been paying was one  
23 half of his military retired pay and ordered him to continue paying it.

24 According to the Court's findings, the amount of alimony was premised on  
25  
26  
27

28 <sup>1</sup> Exhibit A: Decree of Divorce pgs 2-3

<sup>2</sup> Exhibit A: Decree of Divorce pg 3

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.

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

## II

### ARGUMENT

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

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

**Rule 2.24. Rehearing of motions.**

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

(b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or 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.

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

NRCP 59:

(a) **Grounds.** A new trial may be granted to all or any of the parties 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).

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

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

23 Under § 1408(c)(1), the term "disposable retired or retainer pay," is used  
24 specifically to limit the extent to which state courts may treat military retirement  
25 pay as community property. *Id.* at 590. The Court noted that veterans who became  
26 disabled as a result of military service are eligible for disability benefits under Title  
27 38, *Id.* at 583, which are explicitly excluded from the definition of disposable retired  
28 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*<sup>3</sup> 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

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<sup>3</sup> *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.

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

3 DATED this 12<sup>th</sup> 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

**AFFIDAVIT OF GRADY EDWARD BYRD**

PROVINCE OF NEGROS ORIENTAL) ) ss:  
COUNTRY OF PHILIPPINES )

GRADY EDWARD BYRD, being first duly sworn according to law,  
deposes and says:

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 requested.

FURTHER AFFIANT SAYETH NAUGHT.

GRADY EDWARD BYRD

## ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES) ) S.S.  
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. 04 ;  
Series of 2019 .

**ATTY. RAYMUND A. MERCADO**  
NOTARY PUBLIC FOR CITY OF DUMAGUETE & THE MUN. OF  
SIBULAN, BACONG, VALENCIA, DAVIN, VANROANGUITA & SIATON  
UNTIL DECEMBER 31, 2020  
NOTARIAL COMMISSION NO. 2017-001  
PTR NO. 2102164 1-5-2019  
ROLL NO. 35548 / 1-29-89  
IBP NO. 01108 LIFETIME  
6TH MCLE COMPLIANCE NO. 00341, 8/18/16  
2ND FLR. RM BLDG. BANTAYAN, DUMAGUETE CITY

MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

Caterina Angela Byrd  
Plaintiff/Petitioner

Grady Edward Byrd  
Defendant/Respondent

Case No.

18-577701-2

Dept.

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

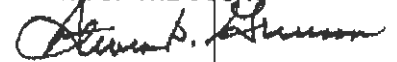
Date

4/8/19

Signature of Party or Preparer

LS/Byrd 2/1/15

AA177



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

**APPENDIX TO DEFENDANT'S MOTION FOR RECONSIDERATION**

Defendant, GRADY BYRD, by and through his attorney, BYRON L. MILLS, ESQ. of MILLS & ANDERSON hereby submits and files his Appendix to the Motion for Reconsideration.

EXHIBIT	BATE NO.	DESCRIPTION
A	106	Net Military Retired pay
B	80-85	VA Disability payments
C	125-128, 131	OPM Disability


///

///

D	120	Social Security Disability
E	151	DFS account statement 2/1/19

Submitted by:

MILLS & ANDERSON

 4/8/19  
 BYRON L. MILLS, ESQ. DATED  
 Nevada Bar No. 6745  
 703 S, 8<sup>TH</sup> STREET  
 Las Vegas, Nevada 89101  
 (702) 386-0030  
 Attorneys for Defendant



# **EXHIBIT “A”**

DEF106

AA181

VETSNET  
Award Error Worksheet (AEWS)  
CRSC/CRDP AEW VETSNET Award Appropriate Payment Due

VA FILE NUMBER: [REDACTED]				STIP NAME: STADY E BYRD				PO NUMBER: 338				DATE: DECEMBER 01, 2015			
End/Start Month	Gross Refund Pay	VA Waiver	Refund Rec Pay	CRSC or CRDP	CRSC or CRDP %	CRSC or CRDP Award	CRSC or CRDP Paid	VA Award	VA Paid	VA Withheld	Total Dual Payment Due	Due From Payment	Due From VA		
AUG-14	3,146.00	3,017.60	128.40	CRSC	60	3,017.60	3,007.60	3,017.60	2,858.24	139.36	169.36	10.00	159.36		
SEP-14	3,146.00	3,017.60	128.40	CRSC	60	3,017.60	3,007.60	3,017.60	2,858.24	139.36	169.36	10.00	159.36		
OCT-14	3,146.00	3,017.60	128.40	CRSC	60	3,017.60	3,007.60	3,017.60	2,858.24	139.36	169.36	10.00	159.36		
NOV-14	3,146.00	3,017.60	128.40	CRSC	60	3,017.60	3,007.60	3,017.60	2,858.24	139.36	169.36	10.00	159.36		
DEC-14	3,199.00	3,068.90	130.10	CRSC	60	3,068.90	3,058.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
JAN-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
FEB-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
MAR-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
APR-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
MAY-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
JUN-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		
JUL-15	3,199.00	3,068.83	292.17	CRSC	60	3,068.90	2,858.83	3,068.90	2,906.83	162.07	172.07	10.00	162.07		

# **EXHIBIT “B”**



DEPARTMENT OF VETERANS AFFAIRS

September 9, 2014

MR GRADY E BYRD  
PSC 517 BOX RCV  
FPO AP 96517

In Reply Refer To: 358/21

Dear Mr. Byrd:

We recently sent you an *Employment Questionnaire* asking whether you were employed by Department of Veterans Affairs (VA), others or self-employed during the past twelve months. We did not receive a response. Therefore, we propose to reduce your compensation payments.

**What We Propose to Do**

We propose to reduce your compensation benefits from the 100% rate to your current schedular 80% evaluation as of the day following the date of last payment as shown below:

From	To	Effective Date
\$3,017.60	\$1,652.55	December 1, 2014

We won't do anything to reduce your benefits until November 9, 2014, unless you ask us to reduce them now. We're giving you this time so that you can show us why we shouldn't reduce your compensation.

We have enclosed a copy of our Rating Decision for your review. It provides a detailed explanation about our proposal, the reason for it, and the evidence considered.

**When and Where Do You Send the Information or Evidence**

Complete each item that applies to you on the enclosed *Employment Questionnaire*. Please return the form *right away*. If we don't hear from you by November 9, 2014, we must reduce your payments from December 1, 2014.

As we've said, the only reason we're proposing to reduce your payments is that you haven't told us whether you were employed by VA, others or self-employed during the past twelve months. *The best way to show us why we shouldn't reduce your payments is to complete the questionnaire we've enclosed.*



DEF080

AA183



DEPARTMENT OF VETERANS AFFAIRS

Manila Regional Office  
1501 Roxas Blvd  
Pasay City 1302

GRADY E. BYRD

VA File Number  
[REDACTED]

Rating Decision  
December 02, 2014

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era, Peacetime and Gulf War Era. You served in the Army from November 26, 1973 to November 24, 1976 and from May 17, 1977 to June 30, 1999. Rating Decision dated September 5, 2014 proposed to discontinue entitlement to certain benefits. Since the last review of your claim, we received additional evidence on November 6, 2014 and November 10, 2014. Based on a review of the evidence listed below, we have made the following decisions.

DECISION

1. Entitlement to Individual Unemployability is continued.
2. Entitlement to Dependents' Educational Assistance under 38 USC Chapter 35 is continued.

EVIDENCE

- With reference to Rating Decision dated September 5, 2014.
- VA Letter dated September 9, 2014.
- VA Form 21-4140, Employment Questionnaire, received on November 6, 2014 and November 10, 2014.

DEF081

AA184

GRADY E. BYRD

2 of 2

### REASONS FOR DECISION

#### 1. Continued entitlement to individual unemployability.

Your continued entitlement to total disability based on individual unemployability is established.

Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. The VA Form 21-4140, Employment Questionnaire, initially received on November 6, 2014 noted that you have not been employed at any time during the past 12 months. Based on this information, your entitlement to total disability based on individual unemployability is continued.

If your employment status changes at any time, please inform the regional office nearest your residence right away.

#### 2. Continued entitlement to Dependents' Educational Assistance under 38 USC Chapter 35.

Your entitlement to Dependents' Education Assistance was established because the records on file noted your service-connected conditions are permanent and total, total disability being based on individual unemployability.

Since entitlement to total disability based on individual unemployability has been continued, eligibility requirements for entitlement to Dependents' Educational Assistance also continue to be met.

### REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, [www.va.gov](http://www.va.gov).

DEF082

AA185

### How Submitting Evidence May Affect Payments

Your payments will continue at the present rate for 60 days following the date of this notice so that you may, if you wish, submit evidence to show that the proposed action should not be taken. You may submit evidence in person, through the mail or through your accredited representative.

If you wait more than 60 days to submit evidence, we will carefully consider whatever you submit, but the adjustment of benefits described above will already have gone into effect and your adjusted benefits will continue while we review the additional evidence.

Be sure to send your evidence, with your full name and VA file number, to the address at the top of this letter.

### How to Obtain a Personal Hearing

If you desire a personal hearing to present evidence or argument on any point in your claim, notify this office and we will arrange a time and place for the hearing. If you want, you may bring witnesses and their testimony will be entered in the record. VA will furnish the hearing room and provide hearing officials. VA cannot pay for other expenses of the hearing since a personal hearing is held only on your request.

If, within 30 days from the date of this notice, VA receives your hearing request, we will continue payments at the present rate until we have held the hearing and reviewed the testimony. Continuing to receive the current rate of payment until a hearing is conducted could result in the creation of an overpayment, which you must repay. If you request a hearing but wish to minimize any overpayment which could result, you should submit a statement asking that we reduce or suspend your benefits beginning with your next check.

After 30 days, you may request a hearing, but we will have already adjusted your benefits as explained earlier in this notice.

### How to Obtain Representation

An accredited representative of a Veterans' organization or other service organization recognized by the Secretary of Veterans Affairs may represent you, without charge. An accredited agent or attorney may also represent you. However, under 38 U.S.C. 5904(c), an accredited agent or attorney may only charge you for services performed after the date you file a notice of disagreement. If you desire representation, let us know and we will send you the necessary forms. If you have already designated a representative, no further action is required on your part.

DEF083

AA186



DEPARTMENT OF VETERANS AFFAIRS

December 2, 2014

MR GRADY E BYRD  
PSC 517 BOX RS/CC  
FPO AP 96517

In Reply Refer To: 358/21  
[REDACTED]

Dear Mr. Byrd:

Our letter of September 9, 2014 told you that we planned to reduce your compensation benefits effective December 1, 2014.

We have reconsidered our proposed action based on your submitted VA Form 21-4140-1, Employment Questionnaire, received on November 6, 2014 and November 10, 2014.

Entitlement to Individual Unemployability is continued.

Entitlement to Dependents' Educational Assistance under 38 USC Chapter 35 is continued.

You will continue to receive \$3,068.90 monthly. This includes additional benefits due to the cost of living adjustment.

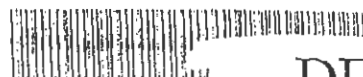
### What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, please download and complete VA Form 21-0958, "Notice of Disagreement". You can download the form at <http://www.va.gov/vaforms> or you can call us at 1-800-827-1000. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

### How Can You Contact Us?

If you have any questions or need assistance with this claim, you may contact us by telephone, email, or letter.

If you	Here is what to do
Telephone:	Call or visit the nearest American Embassy or Consulate for assistance. In Canada, call or visit the local office of Veterans Affairs Canada. From Guam, call us by dialing toll free, 475-387.



DEF084

AA187





	From American Samoa and N. Marianas, call us at 1-800-844-7928. If you use a Telecommunication Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet:	Send electronic inquires through the Internet at <a href="https://iris.va.gov">https://iris.va.gov</a> .
Write:	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail or fax all written correspondence to the appropriate address listed on the attached <i>Where to Send Your Written Correspondence</i> chart, below.

In all cases, be sure to refer to your VA file number CSS 424 80 0049.

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

We have no record of you appointing a service organization or representative to assist you with your claim. You can contact us for a listing of the recognized Veterans' service organizations and/or representatives. Veterans' service organizations, which are recognized or approved to provide services to the Veteran community, can also help you with any questions.

Sincerely yours,

Regional Office Director  
VA Regional Office

Enclosure(s): Rating Decision  
VA Form 4107  
Where to Send Your Written Correspondence

211B/336/nga

DEF085

AA188

# **EXHIBIT “C”**



United States  
**Office of**  
**Personnel Management** Washington, DC 20415-0001

November 12, 2010

Grady E. Byrd  
PSC-517, Box RCV  
FPO-AP 96517

CSA: 8454444

Dear Mr. Byrd:

This letter is to inform you that your application for disability retirement under the Federal Employees Retirement System (FERS) has been approved and to provide information that will be helpful in your transition from employment to retirement. It explains the steps that must be taken before you can begin receiving annuity payments. It provides important information on other factors that may have a major impact on your disability retirement.

**Interim Payments**

According to the information we received from your agency, you have not been separated from Federal service. We will notify your agency that your disability retirement has been approved and ask them to separate you from Federal service. We will also ask your agency to forward your final records to us, including your last day in a pay status. Once we are advised of your last day in a pay status we will authorize interim payments, which are usually about 80 percent of the amount of your actual monthly annuity payments. You should receive your first interim payment within 10 days of your agency certifying your last day in pay to us. You will continue to receive interim payments on the first business day of each month until we complete the processing of your application for a disability retirement.

**Social Security Administration Awards**

We cannot start your annuity payments until we receive confirmation that you have applied for Social Security disability benefits. If you have not already done so, you must apply for them now and send us a copy of the receipt that they will send to you. If you have already sent us a copy of the receipt, you do not need to take any action.

If the Social Security Administration awards you monthly benefits, you must immediately notify us of the amount and the effective date of the monthly benefit. You can do this by sending us a photocopy of their award notice or their statement showing the monthly benefit amount and the effective date they determined your eligibility began. We conduct periodic checks against Social Security records to discover unreported awards.

DEF125  
AA190

You should send their application receipt and notification that you have been approved for Social Security benefits to the U.S. Office of Personnel Management, Federal Employees Retirement System, Boyers, PA 16017.

We will continue processing your claim after we receive the final records from your employing agency and a receipt or other confirmation that you have applied for Social Security benefits.

If you are under age 62, your FERS disability benefits for the first 12 months will be equal to 60 percent of your high-three year average salary minus 100 percent of your Social Security benefit for any month in which you are entitled to Social Security disability benefits. After the first year, your disability annuity will be equal to 40 percent of your high-three year average salary minus 60 percent of your Social Security benefit for any month in which you are entitled to Social Security disability benefits. FERS disability benefits usually begin before the claim for Social Security benefits is fully processed. Because the FERS disability benefit must be reduced by 100 percent of any Social Security benefit payable for 12 months, Social Security checks should not be negotiated until the FERS benefit has been reduced. The Social Security checks will be needed to pay OPM for the reduction which should have been made in the FERS annuity.

**U.S. Dept. of Labor's Office of Workers' Compensation Program (OWCP) Benefits**  
In general, you may not receive annuity payments from both OPM and OWCP for the same period of time. However, if you are eligible to receive a civil service annuity and an OWCP Non-Scheduled Total or Partial Award for the same period of time, you may elect which benefit you want to receive. You may receive payments from both OPM and OWCP for the same period of time only if, (1) you are receiving OWCP payments for a Scheduled (loss of limb or function) Award, (2) you are receiving OWCP payments due to the death of another person and you are eligible for receiving an annuity on the basis of your own Federal service, or (3) in place of receiving an OWCP Non-Scheduled Total or Partial Award, you are receiving a Third Party Settlement from the party directly responsible for your injury. If you are receiving OWCP payments but not for one of the three reasons stated above and are also receiving payments from OPM, please contact us by calling 1(888) 767-6738, or by writing to the U.S. Office of Personnel Management, Retirement Operations Center, Boyers, PA 16017.

#### **Recovery Situations**

If you are under age 60, we may ask you from time to time to submit detailed medical evidence to show your condition continues to be disabling. If the medical evidence shows your condition has improved to the point where you can again perform the duties of your previous position, we will find that you are recovered from your disabling medical condition. With such a finding, annuity payments will stop on the first day of the month beginning one year after the date of the medical examination showing your recovery.

Furthermore, we will honor a written and signed statement of medical recovery that you voluntarily submit if the medical documentation on file does not demonstrate mental incompetency. Disability annuity payments will stop on the first day of the month beginning one year after the date of your voluntary statement.

If you are reemployed into a permanent position with the Federal Government at any time before age 60 at the same or higher grade/pay level and tenure as the position from which you retired, you will be found recovered. Disability annuity payments will stop on the first day of the month following the month of the recovery finding.

If you are found recovered from any of these situations, your former employing agency is not obligated to rehire you into your former position, or any other position. If your annuity payments are stopped because you are found medically recovered, you may be eligible for a deferred annuity at age 62, or at an earlier date if you meet the service criteria for a discontinued service retirement.

#### Restoration of Earning Capacity

If you are under age 60 and working in a non-federal position, there is a limit on the amount you can earn from wages and self-employment and still be entitled to your annuity payment. If your earnings in any calendar year equal at least 80 percent of the current salary of the position from which you retired, we will find your earning capacity to have been restored. Disability annuity payments will stop six months from the end of the calendar year in which your earning capacity is restored.

#### Medicare

If you believe you qualify for Medicare, you should contact the Social Security Administration promptly at 1-800-772-1213 to make arrangements for filing an application. A delay in filing could result in a delay in the date your Medicare entitlement may begin.

#### Reporting Responsibilities

Be sure to notify us if you are reemployed with the Federal Government, your marital status changes, or there is a change in either the address where your payments are sent or the address where you wish us to send correspondence and notices. You can report these events and ask questions concerning this letter to our Retirement Information Office at 1(888) 767-6738, or by writing to the U.S. Office of Personnel Management, Retirement Operations Center, Boyers, PA 16017. Be sure to include your Civil Service Annuity (CSA) claim number on any correspondence and keep this letter for future reference.

For more information about disability retirement you can visit our website at <http://www.opm.gov/retire>.

Sincerely,



Carla D. Stevenson  
Legal Administrative Specialist  
Disability Branch  
Disability, Reconsideration  
And Appeals Group

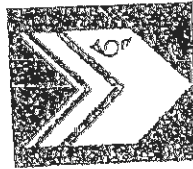
To Open • Remove side edges first then carefully open at top edge

U.S. OFFICE OF PERSONNEL MANAGEMENT  
Retirement Services Program  
PO Box 45  
Boyers, PA 16017-0045

OFFICIAL BUSINESS

RETURN SERVICE REQUESTED

AIR MAIL  
PAR AVI



Jersey Post

PRIORITY

POSTAGE PAID JERSEY POST  
SERIAL #17 351-21001

GRADY E BYRD  
PURDK 2 CANGMATING  
SIBULAN  
NEGROS ORIENTAL 8201  
PHILIPPINES

Revised July 2005  
MPS-23

The address is [www.servicesonline.opm.gov](http://www.servicesonline.opm.gov)

Take control of your retirement account.  
Check out our self service web site. With 'services online' you can:

- Start, change, or stop Federal and State income tax withholdings
- Request a duplicate tax-filing statement (1099R)
- Change your password accessing Services Online
- Establish, change, or stop an allotment to an organization
- Change your mailing address
- Start direct deposit of your payment or change the account or financial institution to which your payment is sent
- Set up or stop a checking or savings allotment
- See your annuity statement

DEF128  
AA193

PAID BY		OFFICE OF PERSONNEL MANAGEMENT RETIREMENT OPERATIONS P.O. BOX 45 BOYERS, PA 16017-0045		STATEMENT OF ANNUITY PAID Copy B - File with Federal tax return		2014	
PAYER's Federal Identification 52-6083699		Recipient's ID No. (Annuitant) [REDACTED]		Account Number (Retirement Claim No.) CSA84544440		1. Gross distribution 12692.64 2a. Taxable amount UNKNOWN 4. Federal Income Tax Withheld 1111.80	
5. Employee Contributions/ Designated ROTH Contributions or Insurance Premiums NONE		PAID TO →		GRADY E BYRD PSC 517 BOX RCV FPO AP 96517		12. State tax withheld NONE 13. State/ Payer's state no.	
7. Distribution Code(s) 3-DISABILITY						12. State tax withheld NONE 13. State/ Payer's state no.	
9b. Total Employee Contributions 4537.00							

Form CSA 1099R (Rev. 1/2015)  
This information is being furnished to the Department of Treasury - Internal Revenue Service

1095  
FT99A

PAID BY		OFFICE OF PERSONNEL MANAGEMENT RETIREMENT OPERATIONS P.O. BOX 45 BOYERS, PA 16017-0045		STATEMENT OF ANNUITY PAID Copy 2 - To be filed with annuitant's state or local return.		2014	
PAYER's Federal Identification 52-6083699		Recipient's ID No. (Annuitant) [REDACTED]		Account Number (Retirement Claim No.) CSA84544440		1. Gross distribution 12692.64 2a. Taxable amount UNKNOWN 4. Federal Income Tax Withheld 1111.80	
6. Employee Contributions/ Designated ROTH Contributions or Insurance Premiums NONE		PAID TO →		GRADY E BYRD PSC 517 BOX RCV FPO AP 96517		12. State tax withheld NONE 13. State/ Payer's state no.	
7. Distribution Code(s) 3-DISABILITY						12. State tax withheld NONE 13. State/ Payer's state no.	
9b. Total Employee Contributions 4537.00							

Form CSA 1099R (Rev. 1/2015)  
This information is being furnished to the Department of Treasury - Internal Revenue Service

1095  
FT99A

PAID BY		OFFICE OF PERSONNEL MANAGEMENT RETIREMENT OPERATIONS P.O. BOX 45 BOYERS, PA 16017-0045		STATEMENT OF ANNUITY PAID Copy C - For annuitant's records. This information is being furnished to the U.S. Internal Revenue		2014	
PAYER's Federal Identification 52-6083699		Recipient's ID No. (Annuitant) [REDACTED]		Account Number (Retirement Claim No.) CSA84544440		1. Gross distribution 12692.64 2a. Taxable amount UNKNOWN 4. Federal Income Tax Withheld 1111.80	
5. Employee Contributions/ Designated ROTH Contributions or Insurance Premiums NONE		PAID TO →		GRADY E BYRD PSC 517 BOX RCV FPO AP 96517		12. State tax withheld NONE 13. State/ Payer's state no.	
7. Distribution Code(s) 3-DISABILITY						12. State tax withheld NONE 13. State/ Payer's state no.	
9b. Total Employee Contributions 4537.00							

Form CSA 1099R (Rev. 1/2015)  
This information is being furnished to the Department of Treasury - Internal Revenue Service

1095  
FT99A

PAID BY		OFFICE OF PERSONNEL MANAGEMENT RETIREMENT OPERATIONS P.O. BOX 45 BOYERS, PA 16017-0045		STATEMENT OF ANNUITY PAID Copy 2A - To be filed with annuitant's state or local tax return.		2014	
PAYER's Federal Identification 62-6083699		Recipient's ID No. (Annuitant) [REDACTED]		Account Number (Retirement Claim No.) CSA84544440		1. Gross distribution 12692.64 2a. Taxable amount UNKNOWN 4. Federal Income Tax Withheld 1111.80	
5. Employee Contributions/ Designated ROTH Contributions or Insurance Premiums NONE		PAID TO →		GRADY E BYRD PSC 517 BOX RCV FPO AP 96517		12. State tax withheld NONE 13. State/ Payer's state no.	
7. Distribution Code(s) 3-DISABILITY						12. State tax withheld NONE 13. State/ Payer's state no.	
9b. Total Employee Contributions 4537.00							

Form CSA 1099R (Rev. 1/2015)  
This information is being furnished to the Department of Treasury - Internal Revenue Service

1095  
FT99A

DEF131  
AA194

# **EXHIBIT “D”**



FORM SSA-1099 -- SOCIAL SECURITY BENEFIT STATEMENT

**2014**

• PART OF YOUR SOCIAL SECURITY BENEFITS SHOWN IN BOX 5 MAY BE TAXABLE INCOME.  
• SEE FACTS ABOUT YOUR 2014 SOCIAL SECURITY BENEFIT STATEMENT AND NOTICE 703  
FOR MORE INFORMATION.

Box 1. Name GRADY E BYRD		Box 2. Beneficiary's Social Security Number [REDACTED]
Box 3. Benefits paid in 2014 \$31,014.80	Box 4. Benefits Repaid to SSA in 2014 NONE	Box 5. Net Benefits for 2014 (Box 3 minus Box 4) \$31,014.80

DESCRIPTION OF AMOUNT IN BOX 3		DESCRIPTION OF AMOUNT IN BOX 4
Paid by check or Direct deposit	\$29,756.00	NONE
Medicare Part B premiums deducted from your benefits	\$1,258.80	
Total Additions	\$31,014.80	
Benefits for 2014	\$31,014.80	
		Box 6. Voluntary Federal Income Tax Withheld NONE
		Box 7. Address GRADY E BYRD PSC 571 BOX RCV FPO AP 96517
		Box 8. Claim Number (Use this number if you need to contact SSA.) [REDACTED]

Form SSA-1099-R-OP1  
(01-2015)  
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**DEF120**  
AA196

# EXHIBIT "E"

RETIREE ACCOUNT STATEMENT					
STATEMENT EFFECTIVE DATE JAN 18, 2019		NEW PAY DUE AS OF FEB 01, 2019		SSN *****0049	
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES				DFAS-CL POINTS OF CONTACT	
CSM GRADY E BYRD USA RET 5330 E CRAIG ROAD LAS VEGAS NV 89115-2215				Defense Finance and Accounting Service US Military Retirement Pay 8899 E 66th Street Indianapolis, IN 46240-1200  COMMERCIAL (210) 522-5955 TOLL FREE 1-800-321-1080 TOLL FREE FAX 1-800-469-8559  myPay <a href="https://myPay.dfas.mil">https://myPay.dfas.mil</a>	
<b>PAY ITEM DESCRIPTION</b>					
ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	3,363.00	3,363.00			
VA WAIVER	3,227.58	3,227.58			
SBP COSTS	.00	135.42			
TAXABLE INCOME	135.42	.00			
			NET PAY	135.42	.00
PAYMENT ADDRESS			YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)		
DIRECT DEPOSIT ROUTING NUMBER - 101108319 ACCT NUMBER ENDING IN - 9025					
<b>TAXES</b>					
FEDERAL WITHHOLDING STATUS: MARRIED TOTAL EXEMPTIONS: 02					
<b>SURVIVOR BENEFIT PLAN (SBP) COVERAGE</b>					
SBP COVERAGE TYPE:		SPOUSE ONLY		ANNUITY BASE AMT	
SPOUSE ONLY COST:		219.36		0,374.79	
SPOUSE DOB:				MAR 19, 1953	
THE ANNUITY PAYABLE IS 55% OF YOUR ANNUITY BASE AMOUNT WHICH IS 1,056.13 YOU HAVE PAID 180 MONTHS TOWARD YOUR 360 MONTHS OF PAID UP RC/SBP COVERAGE. ONCE YOU HAVE PAID AT LEAST 360 MONTHS TOWARD YOUR COVERAGE AND TURN AGE 70, YOUR COSTS WILL BE TERMINATED BUT YOUR COVERAGE WILL REMAIN ACTIVE.					

DFAS-CL 7220/148 (Rev 03-01)

DEF151

AA198



1 **OPPC**  
2 **WEBSTER & ASSOCIATES**  
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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.*<sup>1</sup> This Opposition and  
24 Countermotion is made and based upon the pleadings and papers on file herein,  
25  
26

27  
28 <sup>1</sup>This 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.

28 **WEBSTER & ASSOCIATES**

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.<sup>2</sup> 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 2<sup>nd</sup> language. Grady

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<sup>2</sup> 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  
19  
20  
21 *"Grady E. Byrd will continue to pay Caterina A. Byrd 1500 dollars extra a*  
22 *month to assist with her home mortgage. If her financial situation changes*  
23 *or if the home is sold or paid off this payment may cease."*<sup>3</sup>

24 The plain language that Grady placed in the joint petition for summary  
25 decree of divorce clearly demonstrates that Grady was already making  
26 \$1,500.00 monthly payments to Caterina at the time of divorce (i.e. "continue to  
27

28 <sup>3</sup> Joint petition attached to the decree of divorce filed 06-05-14, pg 4. Ln 3-5.

1 pay") and that the \$1,500.00 a month is an ongoing financial obligation because  
2 its termination is conditional upon the occurrence of specific subsequent events.  
3 The specific subsequent events are that Caterina's financial situation changes  
4 or the home is sold or the home is paid off. Grady cannot cease the payments  
5 unless he proves a condition for cessation of the payments occurred. None of  
6 the cessation-triggering events occurred. The Court correctly found that Grady  
7 had no right to unilaterally stop the payments. The next sentence in the decree  
8 is "*This is not an alimony payment and is not required.*" The Court correctly  
9 found that the \$1,500.00 per month that Grady pays Caterina *is alimony*  
10 because it is financial assistance to his former wife consistent with applicable  
11 law defining what spousal support is and the purpose of spousal support. Grady  
12 arranged for all the financing of the home, threatened Caterina to not speak to  
13 the loan officers<sup>4</sup> and then 6 months after escrow closed, he announced he  
14 wanted a divorce. The mortgage was about \$1,933.07 per month.<sup>5</sup> It was  
15 extremely important to Caterina that she receive assistance with her home  
16 mortgage. She never would have signed the decree otherwise. Any language  
17 in the decree that the parties waived alimony correctly did not control the Court's  
18 decision when compared to the specific and unique language that Grady placed  
19 in the decree. A waiver requires a knowing and voluntary relinquishment of a  
20 right which Caterina did not do. Additionally, Grady was the drafter of the joint  
21 petition and any ambiguity must be held against the drafter. His e-mails to  
22  
23  
24  
25

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26  
27 <sup>4</sup> Exhibit "2".

28 <sup>5</sup> 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,"<sup>6</sup> 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."<sup>7</sup> 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."*<sup>8</sup>

11 Nothing in the 2017 U.S. Supreme Court case of Howell prohibits the  
12 principals of contract law described in Shelton<sup>9</sup> 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."<sup>10</sup> 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 <sup>6</sup> Exhibit "1".

25 <sup>7</sup> Exhibit "1".

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

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

28 <sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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 \$128.40<sup>14</sup> 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 <sup>11</sup>Grady's FDF filed 10-02-19 and testimony at 01-23-19 hearing, see order filed 04-  
25 05-19, pg. 2 ln 19.

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

27 <sup>13</sup>Defendant's Motion for Reconsideration, page 11, line 2.

28 <sup>14</sup>Defendant'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 **III. ARGUMENT**

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

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

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

Caterina's financial condition has not changed. She has \$3,745.13 in monthly expenses.<sup>15</sup> She provided Grady receipts showing that she now must pay \$102.97 per month for health insurance<sup>16</sup> (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).<sup>17</sup> Caterina's largest expense is the home mortgage of \$1,933.07 per month.<sup>18</sup> 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

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<sup>15</sup> Caterina's FDF filed 10-18-18.

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

<sup>17</sup> Exhibit "5"

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

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

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 1989<sup>19</sup> 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 Grady wrongfully claims that the Lake case stands only for the proposition  
23 that the trial court has legal discretion regarding the division of property, and  
24 erroneously claims that the Shydler case did nothing more than find that the trial  
25

26  
27 <sup>19</sup> 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.<sup>20</sup> 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.  
1082 (1920), Foy v. Estate of Smith, 58 Nev. 371, at 376, 81 P.2d 1065  
(1938), Herzog v. Herzog, 69 Nev. 286, at 290, 249 P.2d 533 (1952).

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

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

24 <sup>20</sup> In Johnson v. Johnson, 89 Nev. 244, 247, 510 P.2d 625, 626-627 (1973), the  
25 Nevada Supreme Court departed from the all-or-nothing approach to the division of  
26 separate and community property of Lake v. Bender, 18 Nev. 361, 7P.74 (1884) and  
27 announced the rule that the increase in the value of separate property during marriage  
28 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."<sup>21</sup> 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  
23  
24

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<sup>21</sup> 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."<sup>22</sup> 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 **No Error in the court order regarding the \$1,500.00 payments from Grady**  
5 **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.<sup>23</sup> 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 Howell involved state court orders requiring a service member to reimburse  
18 a former spouse the amount of retirement pay the former spouse was entitled  
19 to when thirteen (13) years after divorce, he waived his military pay to get tax  
20 free disability pay. Under Howell, such an order violates federal law. Howell v.  
21 Howell, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). The case at bar is  
22

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23 <sup>22</sup> Exhibit "2".

24 <sup>23</sup> Grady's Reply to Opposition and/or Countermotion filed 12-28-18, pg. 7, in 131-132  
25 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.<sup>24</sup> Rather, it is the assessment of the contract  
obligation between the parties that triggers a Shelton analysis. Shelton held that;

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<sup>24</sup> 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.

15 Grady may have divisible pay that is not precluded from division by Howell.  
16 For example, Title 10 assets are divisible under the Uniformed Services Former  
17 Spouses' Protection Act (USFSPA) 10 U.S.C. 1408(c)(1). Grady receives  
18 combat related special compensation (CRSC) 10 U.S.C. 1413a. This is a Title  
19 10 asset. CRSC is another form of military disability pay, separate from standard  
20 Veteran Administration disability benefits. Title 10 assets are distinguished from  
21 Title 38 assets. Military veterans generally are entitled to compensation for  
22 service connected disabilities under 38 U.S. C. 1101 et seq., and under Mansell  
23 v. Mansell, 490 U.S. 581, 594-595 (1989), a state cannot divide the waived  
24 portion of a veteran's retirement pay that is 38 U.S. C. 1101 et seq. disability pay.  
25 However, Grady has Title 10 assets which are not specifically addressed in  
26  
27  
28

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.

29  
30 Grady also receives annuity income. When he retired from the army in  
31 1999, he went to work for the federal government. He receives Federal  
32 Employees Retirement System income. This income is seen as his US Office of  
33 Personnel Management (hereafter "OPM") in the form of annuity income of  
34 \$1,315.00 per month.<sup>25</sup> This is not Title 5 or Title 38 income covered by the  
35 Howell and Mansell cases.

#### 36 IV. COUNTERMOTION

37  
38 <sup>25</sup> 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. 5<sup>th</sup> 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  
February 5, 2019 (N.J. Super. App. Div., 2019), not for publication.

10  
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  
greater than plaintiff's at the time of the divorce. Thus, there was  
valuable consideration given by plaintiff in exchange for the  
alimony waiver, and the **unforeseeable loss of the bargained for**  
**pension benefit was a substantial and permanent change in**  
**circumstances, which invalidated the waiver. Upholding the**  
**alimony waiver in these circumstances would be wholly**  
**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."<sup>26</sup> 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.<sup>27</sup> 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

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<sup>26</sup> Exhibit "1" and Exhibit "2".

<sup>27</sup> 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]

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

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

Parties divorced in 1988 and in 1992, the former wife, Madeline, filed a  
complaint in a district court of general jurisdiction, alleging that Anthony  
fraudulently induced her to waive alimony in return for lifetime employment with  
his medical practice. She asked the district court to reform the property  
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."<sup>28</sup>

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

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 <sup>28</sup> Exhibit "7"

28 <sup>29</sup> 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.<sup>30</sup> 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"<sup>31</sup>

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.<sup>32</sup> Regrettably, Grady refuses to voluntarily name her on the SBP.

24  
25  
26 <sup>30</sup> Exhibit "9"

27 <sup>31</sup> Exhibit "10"

28 <sup>32</sup> 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 15<sup>th</sup>  
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 15<sup>th</sup> 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 15<sup>th</sup>, March 15<sup>th</sup> and April 15<sup>th</sup> 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**

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

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

9 3. That I had been receiving payments of \$3,000.00 per month from the  
10 Defendant, Grady Byrd since before the filing of the Joint Petition for Summary  
11 Decree of Divorce on June 5, 2014. Around the time of divorce, in emails to me,  
12 Grady promised me that I would receive the \$3,000.00 per month. These  
13 payments ceased September 1, 2018. My last payment was August 2018.  
14

15 4. That on September 4, 2018, I learned that the checking account that  
16 Grady Byrd had deposited my monthly payment into was closed. It was a joint  
17 checking account that had been established for 31 years. At the hearing on  
18 January 23, 2019, I gave Grady Byrd my Bank of America routing number and  
19 account number so that he could make deposits into my account.  
20

21 5. That I did not receive a deposit of \$4,500.00 from Grady Byrd on or  
22 before February 15, 2019; I did not receive a deposit of \$4,500.00 from Grady  
23 Byrd on or before March 15, 2019; and I did not receive a deposit of \$4,500.00  
24 from Grady Byrd on or before April 15, 2019, as ordered at the January 23, 2019  
25 hearing.  
26

27 6. That I have not received any money from Grady since August 2018. I am  
28

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 Countermotion.

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

22 Executed this 23 day of April, 2019.

23  
24  
25   
CATERINA BYRD



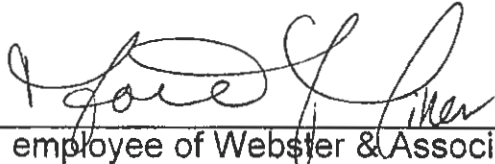
**Certificate of Service**

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of  
WEBSTER & ASSOCIATES, and that on this 23<sup>rd</sup> 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.

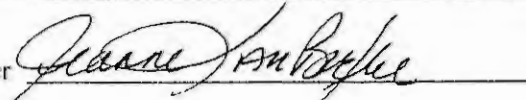
The total filing fee for the motion/opposition I am filing with this form is:

☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: JEANNE F. LAMBERTSEN

Date 4/23/2019

Signature of Party or Preparer



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FILED  
MAY 13 2020  
*John J. Quinn*  
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

IN THE MATTER OF THE )  
JOINT PETITION FOR ) CASE NO. D-18-577701-Z  
DIVORCE OF: )  
 ) DEPT. G  
CATERINA BYRD and )  
GRADY E. BYRD. ) APPEAL NO. 80548  
 )

BEFORE THE HONORABLE JAMES BIXLER  
DISTRICT COURT JUDGE

TRANSCRIPT RE: STATUS CHECK

THURSDAY, MAY 2, 2019

APPEARANCES:

The Petitioner:	CATERINA BYRD
For the Petitioner:	JEANNE F. LAMBERTSEN, ESQ.
	6882 Edna Avenue
	Las Vegas, Nevada 89146
	(702) 562-2300
 The Petitioner:	 GRADY E. BYRD (Not Present)
For the Petitioner:	BYRON L. MILLS, ESQ.
	703 S. Eighth Street
	Las Vegas, Nevada 89101
	(702) 386-0030

1 LAS VEGAS, NEVADA

THURSDAY, MAY 2, 2019

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

3 (THE PROCEEDINGS BEGAN AT 11:06:52)

4  
5 THE COURT: All right. We are on the record. This  
6 is the matter of the joint petition for divorce, Catherine  
7 (sic) Byrd, Grady Byrd, and this is case number D-18-577701-Z.  
8 Would everybody identify yourselves for the record,  
9 please.

10 MS. LAMBERTSEN: Yes. Good morning, Your Honor. My  
11 name is Jeanne Lambertsen, bar number 9460, on behalf of the  
12 Plaintiff, Caterina Byrd, who is present, Your Honor.

13 MR. MILLS: Good morning. Byron Mills, 6745, here  
14 on behalf of Mr. Byrd, Your Honor, who is not present.

15 THE COURT: And where are we here?

16 MS. LAMBERTSEN: Your Honor, I -- procedurally, I  
17 have a great concern regarding Mr. Byrd's absence. In the  
18 order from the January 23rd hearing, Judge Hardcastle was very  
19 clear that Mr. Byrd was to appear at the status check.

20 In fact, it's on page 8, line 22, 23 saying, "It is  
21 further ordered that the status check regarding discovery set  
22 on May 2nd, 2019, at 11:00 a.m. at Department G, if Defendant,  
23 Mr. Byrd, does not appear at the return hearing on May 2nd, a  
24 no bail bench warrant will be issued."

1           The court was very concerned regarding keeping his  
2 compliance, keeping his understanding of the severity of these  
3 orders that were being issued. And this matter today has to  
4 deal with discovery, discovery documents, things that he was  
5 to be producing and provide for us, and also follow-up on  
6 other matters which are set for later this month. But it was  
7 very clear he was to be here today.

8           We received from Mr. Mills a notice of telephonic  
9 appearance for the May 22nd hearing, and we filed an  
10 application that Mr. Byrd appear in person, even at that  
11 hearing. The reason we're very concerned about his non-  
12 appearance is that he is in the Philippines. He's resided  
13 there since 2008. And he made it quite clear that, you know,  
14 he may not, you know, comply with things. So the court wanted  
15 him physically present.

16           As an exhibit index, Your Honor, that we filed on  
17 April 23rd, he fraudulently obtained a driver's license using  
18 Ms. Byrd's address. He obtained that on July 2018. They've  
19 been divorced since June of 2014, Your Honor. He received  
20 that; he went out and bought a car. That car was found  
21 abandoned at the Los Angeles Airport around -- I think that's  
22 April 18th was the time of the report -- and the license  
23 plates had been taken off. That is Exhibit Number 2 to our  
24 request that he personally appear even on the 22nd.