

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD

Appellant

V.

CATERINA ANGELA BYRD

Respondent

Supreme Court No. 80548

Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

APPELLANT'S APPENDIX TO OPENING BRIEF – VOLUME III

Submitted by:

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### **CERTIFICATE OF SERVICE**

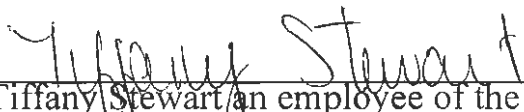
I HEREBY CERTIFY that on the 6<sup>th</sup> day of July, 2020, I caused to be served the instant **APPELLANT'S APPENDIX TO OPENING BRIEF- VOLUME III** to all interested parties as follows:

**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 Countermotion 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 Ms. Byrd is now also receiving papers that that  
2 vehicle is in some storage unit in Los Angeles. It's being  
3 charged a rate of \$41.50 a day. The towing and storage were  
4 \$565.

5 He is not paying on the car loan. That's Exhibit 4.  
6 He owes money on that car loan. That's Allied, a bill. And  
7 he has two loans with USAA, one for 13,000, one for 17,000.  
8 Those have gone into collections.

9 So his presence was really important, Your Honor,  
10 and he was actually ordered to be here. He was here on  
11 January 23rd when the court told him he needed to be here. So  
12 I'm very concerned as to why he's not here. I think -- I  
13 think there needs to be some orders issued regarding, you  
14 know, he didn't come to this one -- he needs to come on the  
15 22nd. He should have been here today.

16 MR. MILLS: And, Your Honor, I can address that.  
17 First of all, he was representing himself, so obviously he  
18 needed to be here if he was representing himself. He does  
19 live in the Philippines, and it's -- so it's not a drive --  
20 hop in the car and drive here, of course.

21 I expected him to come, but then got notice -- not  
22 yesterday, but the day before -- that he had a medical issue,  
23 going to the doctor, that kind of stuff, and was unable to  
24 come. I told him to get me some medical records and hopefully

1 we'll receive that with regards to today's hearing.

2 But today, why we're here today -- because we have a  
3 hearing on May 22nd to deal with a lot of dispositive issues.  
4 Today's is discovery. I got on the case not long after the  
5 hearing. I have responded to -- they've done interrogatories,  
6 requests for -- voluminous -- and I have responded to all of  
7 that. They received over 200 pages of documents.

8 They have now since gotten me a letter saying, hey,  
9 we need this information to further explain. I am in the  
10 process of gathering that. Discovery is being done. It's not  
11 complete. Again, I'm having to get stuff from him sending me  
12 things from there, and some of the things are here and he's  
13 having to request in the United States to get to me.

14 So it is taking a little time, but we have responded  
15 to everything, and they are wanting clarification on a few  
16 things. But we expect to fully respond to the rest of their  
17 requests as they've requested. But we've done everything.  
18 The discovery is proceeding and he is in compliance with  
19 regards to the discovery requests, Your Honor.

20 MS. LAMBERTSEN: Well, I can now address discovery,  
21 if you want, Your Honor, unless you need to --

22 THE COURT: Well, is her name on this car loan?

23 MS. LAMBERTSEN: Her name is not on the loan. He  
24 used her address for the loan; he used her address for the car

1 loan, for his driver's --

2 THE COURT: Right.

3 MS. LAMBERTSEN: You know, he's using her address,  
4 which is how she got the documents.

5 THE COURT: Okay. But she doesn't have any stake;  
6 she has --

7 MS. LAMBERTSEN: We're hoping not, Your Honor.  
8 We're hoping not. She's not participated in executing any of  
9 those loans, so.

10 THE COURT: Well, because I'm not going to be here  
11 for anything else that's going on in this case. Judge  
12 Forsberg takes the bench on Monday, and she'll have to deal  
13 with all of this.

14 Just out of morbid curiosity, what the hell is all  
15 this about if they've been divorced since 2014? What are they  
16 fighting over?

17 MS. LAMBERTSEN: He -- he was making \$3,000 a month  
18 payments to her, Your Honor, that he stopped in September of  
19 2018, leaving her destitute. It was \$3,000 a month and he  
20 stopped paying those. One portion Judge Hardcastle found was  
21 to be deemed alimony, and the other part was under contract  
22 paid --

23 THE COURT: Okay.

24 MS. LAMBERTSEN: So that's the subject of Mr.

1 Mills's reconsideration. We filed our opposition.

2 THE COURT: Right.

3 MS. LAMBERTSEN: But in the meantime, there was this  
4 hearing because, aside from those two issues, there's very  
5 important issues regarding the \$225,000 life insurance policy,  
6 another life insurance policy for \$95,000, survivor benefits  
7 to be paid to her, which have also vanished, and an annuity  
8 death benefit to be paid for her.

9 So those items were the subject of discovery because  
10 she didn't get -- the parties didn't exchange documents. They  
11 did the joint petition and she didn't have anything showing  
12 her name was on the policy, you know, the address, can she  
13 contact them. What happens when he dies? Who does she go  
14 talk to? And that initiated --

15 THE COURT: Do you feel comfortable that now that  
16 counsel is on board that you're beginning to get the  
17 information you need?

18 MS. LAMBERTSEN: Not necessarily, Your Honor,  
19 because the orders were really clear when Mr. Byrd was here.  
20 He heard -- like right in here it says, you know, provide  
21 from, you know, what happened in 2018. We need to go look on  
22 page 4 of the orders. We are -- we don't have, you know, the  
23 Veteran Group's Life Insurance or the Federal Employees for  
24 the year 2018.

1           Now, I'd like to believe that Mr. Mills has great  
2 client control and he can say you've got to go get this from  
3 these departments, but they're federal, they're not -- they  
4 would not respond to any kind of subpoena. We're being told  
5 that Mr. Byrd has to call them and -- for the release of  
6 things or we have to get a power of attorney. We can't get a  
7 power of attorney. We have Mr. Mills on board.

8           But I'm concerned, you know, I would like to trust  
9 him, but now his client has abandoned this car, he's not  
10 paying these loans, he's not paying --

11           MR. MILLS: But that's up to him. That has no  
12 bearing on her at all. Nothing.

13           MS. LAMBERTSEN: Well, he's -- he's --

14           MR. MILLS: Those aren't issues before the Court.  
15 They're red herrings trying to make my client look bad, and  
16 they have no meaning on this case.

17           MS. LAMBERTSEN: Well, it's showing why he should be  
18 here.

19           And Ms. Byrd is also addressing the orders that he  
20 is supposed to be paying her \$4500 a month that was supposed  
21 to commence February 15th. That order has not been stayed.  
22 He's not paid her a dime since that time. Understandably, he  
23 has a reconsideration on it, but he's paid her zero dollars  
24 since February 15th -- well, since September. He was ordered

1 to start on February 15th of this year, and he has refused to  
2 do that as well. And so that payment is critical.

3 She's left with no money. And that was part of the  
4 orders. That has not been set aside; there's no stay; there's  
5 no reason why he shouldn't be paying that \$4500. He should be  
6 doing that now.

7 THE COURT: Well, I don't want to get too far off in  
8 the weeds here. I mean, this is really a status check to see  
9 if he's producing the information that's required. The  
10 Court's not thrilled with two things, him not being here and  
11 the fact that there is so much difficulty.

12 Do you feel confident that you're going to be able  
13 to get this information?

14 MR. MILLS: Well, for example, they brought up the  
15 insurance, Your Honor, the 225. I provided the bill from  
16 Prudential showing he's paying it, the Certificate of  
17 Insurance, and the Prudential request for coverage. They have  
18 all that. I don't -- but they want more. So I'm providing  
19 things. I provided proof that the insurance coverage is still  
20 there. She's still covered. They want more. That's not my  
21 client not responding. We responded in full. We proved based  
22 on their thing -- we provided the certificates like they  
23 requested. It's not good enough.

24 MS. LAMBERTSEN: Well, not -- no.

1 MR. MILLS: Doing that type of thing. So, no, we  
2 have responded. Over 200 pages. We've responded to  
3 everything. There's not a single request that we said, no,  
4 you don't get it, that there was some kind of documentation --  
5 are some of them not as complete as they could be? Yes, and  
6 we're trying to get those, and I've already started the  
7 process.

8 Of all the interrogatories, there were four that she  
9 didn't like the an -- they didn't like the answers to, and  
10 I've already got the answers and going to be providing those.  
11 So, no, my client is completing -- and I'm trying to get the  
12 additional documents that they feel they need to -- to give  
13 more information.

14 THE COURT: Well, here's how it's going to go. He  
15 has to be present for the upcoming hearing, because  
16 consequences will be grave if he is not here. What we're  
17 going to do is we're going to continue the status check for  
18 this discovery. Whatever else you are missing -- I mean, he  
19 is providing information.

20 MS. LAMBERTSEN: He has provided some, yes. In all  
21 fairness, he's provided some, and we do appreciate that. But  
22 when Mr. Byrd was present at the hearing --

23 THE COURT: What's the most important information  
24 that you don't have?



1 MS. LAMBERTSEN: Well, the most important  
2 information has to do with documents directly from the Veteran  
3 Group's Life Insurance, the federal employees group life  
4 insurance.

5 In some cases Mr. Byrd has just printed things  
6 offline and one document looks like, you know, he could have  
7 generated it himself. I pointed that out to Mr. Mills. And  
8 I'm saying we need things directly from the company. So  
9 that's huge. That's the \$225,000 policy, and there's  
10 discrepancies over how much she gets.

11 The other thing is the military survivor benefit  
12 plan. We've asked for documents directly from the Department  
13 of Finance and Accounting Services, continuous years, from  
14 2014 to 2018, about that plan. So that's hugely important.  
15 We have not received those years, 2014 to 2018, directly from  
16 the Department of Finance and Accounting Services.

17 That would be very, very important because she's no  
18 longer on the plan. He's put his 25-year-old wife on the plan  
19 and there's now an option that he can voluntarily put her  
20 back, they -- you know, correspondence that he sent.

21 So we need that window of time for the documents to  
22 say when -- when did she drop off, when did the new one come  
23 on and why -- you know, voluntarily he can put her back on.  
24 So that correspondence. So that's critically important.



1           So it's hard for me to answer your question which  
2 exactly one thing. If I had to pick one out of the universe,  
3 would you say the survivor benefit?

4           MS. BYRD: (Nods head affirmatively.)

5           MS. LAMBERTSEN: I would say that would be the most  
6 critical one, those survivor benefit documents directly from  
7 the Department of Finance and Accounting Services, 2014 to  
8 present date. Those are enormously critical, Your Honor.

9           THE COURT: Do you feel like you're going to be able  
10 to get that kind of information? I don't know -- I don't know  
11 how you go about --

12           MR. MILLS: Yeah. You know, the normal rules of  
13 discovery means you provide what you have. We're already  
14 going well beyond that -- or what's easily accessible. He's  
15 in the Philippines. Nothing's really easily accessible. But  
16 he's provided all he has and I'm making him get more.

17           So we're -- in my opinion we've already gone above  
18 and beyond what is required by law and rules of discovery,  
19 because she does have subpoena power, but we're not wanting to  
20 make her do that. And if I can get more information regarding  
21 the survivor benefits, by all means I will do so.

22           MS. LAMBERTSEN: We've been told he just has to pick  
23 up a phone. They won't speak to her, and the federal  
24 government will not honor a state subpoena. So that's not

1 true that we can go out and get this stuff.

2 THE COURT: Yeah, it's just when you deal with those  
3 agencies, I mean, it is a nightmare. They are -- they are  
4 difficult, to say the least.

5 Well, I mean, I think they're making a good faith  
6 effort. What's the hearing date coming up?

7 MR. MILLS: May 22nd.

8 THE COURT: May 22nd. Accomplish what you can get  
9 accomplished between now and then.

10 MR. MILLS: Absolutely.

11 THE COURT: There will be an additional component to  
12 the hearing on the 22nd of May, which will be in regards to  
13 this information that needs to be generated. That's about the  
14 best I can do.

15 You better make sure that your client understands  
16 the necessity of being present --

17 MR. MILLS: You got it.

18 THE COURT: -- for the 22nd of May.

19 MS. LAMBERTSEN: So, Your Honor, does that re -- so  
20 there's an order that he is to appear on the 22nd, so that is  
21 a denial of his notice to appear telephonically?

22 THE COURT: I -- yes.

23 MS. LAMBERTSEN: Thank you.

24 THE COURT: Yes.

1 MS. LAMBERTSEN: Thank you.  
2 THE COURT: He needs to be here.  
3 MS. LAMBERTSEN: Thank you, Your Honor.  
4 THE COURT: Okay. All right. So what's ever left  
5 over on these issues of discovery will be before the Court on  
6 the 22nd of May.  
7 MS. LAMBERTSEN: Okay. Thank you, Your Honor.  
8 THE COURT: All right. All right. You have a good  
9 day.  
10 MS. LAMBERTSEN: Thank you.  
11 MR. MILLS: To satisfy your morbid curiosity, we  
12 have filed a motion to reconsider --  
13 THE COURT: Right.  
14 MR. MILLS: -- all those orders that are --  
15 THE COURT: Right.  
16 MR. MILLS: -- not valid, Your Honor.  
17 MS. LAMBERTSEN: Well, and we filed a very detailed  
18 objection and counter-motion.  
19 THE COURT: You guys have fun.  
20 MR. MILLS: Indeed.

21 (Proceedings concluded at 11:24:14)  
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\* \* \* \* \*

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

/s/ Lee Ann Nussbaum  
LEE ANN NUSSBAUM  
Certified Electronic Transcriber

*Steven D. Grierson*

1 BYRON L. MILLS, ESQ.  
2 State Bar #6745  
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4 703 S. 8th Street  
5 Las Vegas, Nevada 89101  
6 (702) 386-0030  
7 Attorney for Plaintiff

8 DISTRICT COURT  
9 FAMILY DIVISION  
10 CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD, )

12 Plaintiff, )

13 vs. )

14 GRADY EDWARD BYRD, )

15 Defendant, )

CASE NO.: D-18-577701-Z

DEPT. NO.: G

DATE OF HEARING: 05/22/2019

TIME OF HEARING: 9:00 a.m.

17 DEFENDANT'S REPLY AND OPPOSITION

18  
19 COMES NOW the Defendant, GRADY EDWARD BYRD, by and through  
20 his attorney, BYRON L. MILLS, ESQ., of MILLS & ANDERSON., and pursuant  
21 to the Nevada Revised Statutes and Eighth Judicial District Court Rules cited  
22 hereinbelow, hereby respectfully moves this Honorable Court for the following:

- 23  
24 1. An Order of the Court granting Defendant relief as more fully set forth in his  
25 original motion.  
26 2. An Order of the Court denying Plaintiff's requested relief;  
27 3. For attorney's fees associated with this motion in the amount of \$2,500;  
28

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

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

7  
8 DATED this 14<sup>th</sup> day of May, 2019.

9  
10 MILLS & ANDERSON.

11 BY: B. 2/1/22  
12 BYRON L. MILLS, ESQ.  
13 Bar No. 6745  
14 703 S. 8th Street  
15 Las Vegas, Nevada 89101  
16 Attorney for Defendant

17 **POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 GRADY EDWARD BYRD (hereinafter "Grady") and CATERINA  
21 ANGELA BYRD (hereinafter "Caterina") were divorced by Decree of Divorce  
22 dated June 5, 2014. The Decree of Divorce contained inter alia, an order that  
23 Grady pay Caterina 50% of his United States Army Retired Pay as long as he  
24 lives. The Decree also contained an order that Grady would continue to pay  
25 Caterina \$1500.00 extra per month to assist with her home mortgage. However,  
26 the Decree specifically stated that the \$1500.00 is not an alimony payment and it  
27 is not required. Additionally, the Decree included an agreement that neither party  
28 shall be required to pay spousal support to the other party.

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

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

12 On April 8, 2019, Grady filed a motion for reconsideration of the Court's  
13 Order, and the motion was set for hearing on May 22, 2019. On April 12, 2019,  
14 Grady filed a Notice to Appear Telephonically for the May 22<sup>nd</sup> hearing. Caterina  
15 then filed her opposition to Grady's motion for reconsideration on April 23, 2019.  
16 Both Grady's motion and Caterina's opposition are set for hearing on May 22,  
17 2019.

## 18 II.

### 19 REPLY TO OPPOSITION

20 The parties were married for 31 years and they divorced on June 5, 2014 by  
21 way of a Joint Petition to which both parties agreed. In her Opposition, Caterina  
22 begins by infusing the narrative with irrelevant information. Grady did remarry,  
23 but his current spouse is not a "girl." Caterina is attempting to make Grady seem  
24 like a man who left his wife for a younger woman, which is not true. Even if it  
25 were true, that does not create or increase Grady's obligation to Caterina. Grady is  
26 not attempting to eliminate any obligations to Caterina, and he is attempting to  
27 comply with all aspects of their Decree. What cannot be overlooked is that Grady  
28 and Caterina agreed to a Decree that unmistakably, unambiguously, and clearly

1 stated, "Husband and Wife agree that neither party shall be required to pay  
2 spousal support to the other party."

3 Caterina is attempting to have the interpretation of the Decree go only in  
4 her favor so as to create spousal support. When it is convenient to interpret intent,  
5 Caterina asks the Court to disregard express language. When it is convenient to  
6 use express language, Caterina asks the Court to disregard intent. Additionally,  
7 Caterina is attempting to segregate the language in the Decree to which she agreed  
8 in order to manipulate the meaning of the terms. For example, her opposition first  
9 only presents the following language:

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

13 Caterina asks that the Court interpret this language expressly, giving full credit to  
14 the conditions. However, the full provision in the Decree is as follows:

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

19 It is clear that the express terms of the decree, and the intended terms were that the  
20 payment of \$1500 for the home mortgage was not required and therefore could be  
21 terminated at any time. If something is not required at all, there cannot be  
22 thresholds or conditions that must be met before termination.

23 According to Caterina, it was extremely important that she received that  
24 \$1500 in assistance for the mortgage. However, she agreed to the full terms of the  
25 Decree, not just the parts of the Decree. The Decree is clear in that the \$1500 is  
26 not alimony and not required. Caterina signed that Decree, she did not attempt to  
27 have any portion of that language altered or removed. In fact, it took Caterina  
28



1 nearly 4 years to bring the matter to Court, and she moved to enforce the Decree  
2 that included express language where no spousal support was required.

3 Contrary to what Caterina claims, the visiting judge did order Grady to  
4 indemnify her. Caterina signed off on a Decree of Divorce that expressly stated  
5 that the \$1500 for the mortgage was not alimony and not required. The Decree  
6 also included an agreement that neither party shall be required to pay spousal  
7 support to the other party. It is difficult to understand how any of this language is  
8 unclear or how Caterina did not understand the terms if, by her own admission,  
9 the \$1500 payment was of extreme importance. The Court is asked to disregard  
10 that Caterina fully understood she would be receiving a \$1500 payment for the  
11 mortgage, but she did not understand that the payment was not required. The  
12 conclusion this Court is being asked to reach is that Caterina can only be given  
13 credit for understanding the portions of the Decree that benefit her. By giving  
14 Caterina the benefit of the doubt that she did not understand she was waiving her  
15 alimony when she signed the Decree, the Court is indemnifying Caterina.

16 Furthermore, the fact that the \$1500 payments were being made for her  
17 mortgage should not be an issue. These were voluntary payments made to  
18 Caterina by Grady. The vital point is that Grady had the option to terminate that  
19 voluntary payment because it was not required, as expressly stated in the Decree.  
20 Logically, the payment would have been made at some point in the past and  
21 subsequently terminated, otherwise the language in the Decree would be rather  
22 irrelevant. By ordering Grady to resume payments that he is not required to make  
23 under the Decree, the visiting judge essentially ordered an indemnification of  
24 Caterina. This is a game of semantics that Caterina is attempting to play. The law  
25 is on Grady's side and the Decree is entirely unambiguous in that there is no  
26 requirement of spousal support. The visiting judge was only able to justify the  
27 order for spousal support because the express language of the Decree was entirely  
28 disregarded.

1 Caterina claims that she only worked part-time jobs during the 31-year  
2 marriage, that is not true. Caterina had multiple full-time jobs and she refused to  
3 attain employment after her separation from Grady.<sup>1</sup> Caterina's state of destitution  
4 is not because Grady left her that way, it is because she outright refuses to find  
5 employment. Her concern was, "What happens if I do get hired, what happens if I  
6 get fired or let go! I do not want to loose the house, I need to feel secure and  
7 stable, I don't need all the anxieties of worrying." This does not read like Caterina  
8 had no options, it reads like Caterina not wanting the stresses of having  
9 employment. Have a fear of being fired and having anxieties of losing a house are  
10 stresses most people have. Grady is being held responsible because Caterina  
11 simply does not want to live like a normal person. She does not want to work, she  
12 wants a house but none of the responsibilities that come with such a purchase, and  
13 she does not want anxiety or fears. In other words, she wants to be taken care of  
14 for life. Meanwhile, Grady is a disabled military veteran who cannot even fly due  
15 to his health conditions. Grady's health is in such bad shape that he is unable to  
16 fly without suffering major swelling in his lower extremities due to yet at another  
17 surgery he has undergone.<sup>2</sup> However, Grady is expected to be the one who must  
18 carry the anxiety and fear. There is no concern for his fears and anxieties or his  
19 health whatsoever.

20 Grady never reassured Caterina that he could take care of her, both of the  
21 parties contributed to the household. Caterina keeps blaming Grady for this false  
22 state of destitution in which she claims to be. Somehow despite her alleged state  
23 of destitution, Caterina has been completely able to survive with her \$3,745 of  
24

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25 <sup>1</sup> Exhibit A: Emails dated February 24 and June 24 of 2014 showing that Caterina knew she could work if she so  
26 chose.

27 <sup>2</sup> Exhibit B: Doctor's note indicating Grady is medically restricted from flying due to complications after multiple  
28 surgeries.

1 monthly expenses since September 2018. That is not destitution, being destitute  
2 means not having the essential needs of life. While Caterina is technically single,  
3 she has a domestic partner, and she shares the home with him. Caterina submitted  
4 a false FDF when she omitted him and his financial contributions to the  
5 household. Caterina attempted to obscure the falsehood by claiming her domestic  
6 partner as a roommate.

7 Despite Caterina's unwarranted attacks against Grady, he has never  
8 retaliated against Caterina for requesting documents. Grady knew Caterina's  
9 intent when she requested the those documents, and he knew Caterina was  
10 intending to take him to court regardless. That is why Grady made all efforts to  
11 comply with all aspects of the Decree, including those that happened to not be  
12 convenient for Caterina. Grady was not threatening Caterina so she would not  
13 speak to loan officers, he simply wanted to help Caterina purchase the house she  
14 wanted. Grady wanted to be on the same page with Caterina because giving  
15 different information to loan officers hurt their chances at purchasing her desired  
16 house. Grady also told Caterina to ask a lawyer about what she wanted in the  
17 Decree.

18 There are no threats forcing Caterina's agreement to the terms of the  
19 Decree. After much debate about what would be included in the Decree, Grady  
20 snapped because Caterina asked about curtains and other things for the house.  
21 Grady is human, he had at one point lived in a tent to pay Caterina \$3000 per  
22 month because he felt bad for her, but Caterina kept demanding more from Grady.  
23 This is why Grady snapped at her, but ultimately, the parties agreed to the terms  
24 included in the Decree. Frustration on Grady's part cannot be held against him  
25 because the text is framed to appear as a threat. Grady is a disabled veteran and  
26 Caterina was requesting a lot from Grady while refusing to work herself. That  
27 would cause anybody a certain level of frustration. Caterina had plenty of  
28 participation and say-so in the terms of the Decree.

1 Furthermore, Caterina has failed to identify any fraudulent activity by  
2 Grady. There is overwhelming written evidence that Caterina was fully aware of  
3 Grady's federal disability benefits, his FERS plan, and of the existence of Grady's  
4 VA benefit income prior to their divorce.<sup>3</sup> Grady has complied with having  
5 Caterina as the sole beneficiary of the FEGLI insurance.<sup>4</sup> Caterina has provided no  
6 evidence of fraud or error occurred within the nearly 4 years since the divorce. To  
7 the contrary, Caterina submitted multiple statements to the Court alleging a newly  
8 discovered asset. These statements were unquestionably false as those same assets  
9 were discussed in writing various times in 2013 and 2014. She cannot request  
10 indemnification for things not working out entirely in her favor.

#### 11 12 **CLARITY REGARDING THE \$1500 FOR MORTGAGE PAYMENTS**

13 Caterina claims the Court correctly found that the Decree was clear and  
14 unambiguous in stating that Grady is required to pay Caterina \$1500 per month  
15 for her mortgage unless Caterina's financial condition changes or if her home is  
16 sold or paid off. If the contract language is clear, it will be enforced as written.  
17 *Buzz Stew, LLC v. City of N. Las Vegas*, 131 Nev., Adv. Op. 1, 341 P.3d 646, 650  
18 (2015). That is precisely what Grady is arguing. There is only one way to interpret  
19 the words, "This is not an alimony payment and is not required." The Decree is  
20 clear and unambiguous in that the \$1500 for the mortgage is not alimony **and not**  
21 **required**. Caterina cannot use the visiting judge's decision that the Decree is clear  
22 and unambiguous, but only in regards to the language that is favorable to the  
23 creation of an obligation.

24  
25 <sup>3</sup> Exhibit C: Uniform Residential Loan Application showing income, including VA benefits, and Caterina's  
26 participation in the application process.

27 <sup>4</sup> Exhibit D: FEGLI insurance information with letter from Grady to U.S. Office of Personnel Management naming  
28 Caterina the sole beneficiary of the insurance.

1 According to Nevada law, language used in a decree that mirrors standard  
2 alimony language leads to construing payments as alimony if the intent is  
3 ambiguous. *Parker v. Green*, 421 P.3d 281 (Nev. 2018). Standard alimony  
4 language is language along the lines of termination of payments upon death or  
5 remarriage. *Id.* Here, Grady and Caterina had an unambiguous agreement that the  
6 \$1500 mortgage payment was not alimony. Standard alimony language does not  
7 include an express statement that the payment is not alimony and is not required.  
8 Additionally, due to the payment not being required, termination was available at  
9 any time.

#### 11 **WAIVER AND DECREE LANGUAGE**

12 Caterina absolutely waived her alimony by agreeing to unequivocal and  
13 clear language in the Decree, which states, "Husband and Wife agree that neither  
14 party shall be required to pay spousal support to the other party." Caterina cannot  
15 claim she made no clear, unequivocal, and decisive act where she waived her right  
16 to alimony. She read and agreed to the terms of Decree. According to Caterina's  
17 opposition, when she signed the Decree, she needed financial support to pay her  
18 bills. However, she still signed an agreement where there is clear language stating  
19 there will not be a requirement of assistance with the mortgage payment and no  
20 requirement of spousal support.

21 By Caterina's own admission in page 5, lines 20-25 of her opposition, there  
22 is "specific and unique" language included in the Decree regarding spousal  
23 support. It cannot be more clear that Caterina fully understood the language in the  
24 Decree. The only ambiguity that can be found is because Caterina decided she  
25 does not want to acknowledge all of the language in the Decree, only that which  
26 benefits her. Caterina also helped draft the Decree. The only two participants in  
27 deciding the terms of the Decree were Caterina and Grady, and no legal counsel  
28 was involved. Caterina had her own demands and she gave the go ahead on the

1 language included.<sup>5</sup> The parties exchanged over 100 emails over a 4-month period  
2 discussing the divorce. It is completely disingenuous for Caterina to claim she was  
3 not involved in the process, or that she did not understand what she was giving up.  
4 Caterina's reliance on the *Williams v. Waldman* standard for holding the drafter of  
5 a contract to a higher standard does not work in here because the standard applies  
6 when 1) the contract is ambiguous and 2) a party had no voice in the selection of  
7 the language of the contract. That is not the case here because the language is not  
8 ambiguous and Caterina was a co-author of the wording of the Decree.

#### 9 10 **AMBIGUITY REGARDING THE \$1500 FOR MILITARY PAY**

11 Caterina's application of *Shelton* is incorrect because there was no  
12 ambiguity in the Decree between Caterina and Grady. In *Shelton*, the reason the  
13 Court interpreted the agreement in the Decree as a contractual agreement to pay  
14 the wife \$577 per month was because there was ambiguity.

15 "The property settlement agreement between Roland and Maryann is  
16 ambiguous. The agreement states that Roland's military disability is community  
17 property, but it awards the entire amount to Roland. The award of military  
18 retirement pay to Maryann describes the award as "[o]ne half of HUSBAND'S  
19 military retirement in the amount of \$577, until her demise," but the amount  
20 designated is more than one-half the amount of Roland's retirement pay at the  
21 time. Roland paid Maryann \$577 until the time he elected to take disability pay in  
22 lieu of retirement pay." *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510  
23 (2003).

24  
25  
26  
27 <sup>5</sup> Exhibit C: Emails from April 17, April 18, April 19, and April 21 of 2014 where Caterina participated in drafting  
28 divorce and was provided with knowledge about all of Grady's assets.

1        “It appears, therefore, that the agreement of the parties was that Roland pay  
2 Maryann \$577 each month for her portion of the community asset, rather than pay  
3 her one-half of his retirement pay, since \$577 is more specific than “one-half.” *Id.*

4        This is the opposite of the instant case. It is unnecessary to delve beyond the  
5 express terms of the Decree between Grady and Caterina because the intentions  
6 are clear from the language. The only reasons contract law was applied in *Shelton*  
7 were ambiguity and the expressed agreement to a specific amount. That is why a  
8 contractual obligation was found. The Court never addressed the issue of  
9 reimbursement of the wife for the reduction of military retirement pay for the  
10 purpose of alimony in an unambiguous Decree.

11        “A contract is ambiguous if it is reasonably susceptible to more than one  
12 interpretation.” *Margrave v. Dermody Props., Inc.*, 110 Nev. 824, 827, 878 P.2d  
13 291, 293 (1994). If, as Caterina claims, the Decree must be ambiguous before  
14 *Shelton* can apply, there must be something in the language that makes the Decree  
15 susceptible to more than one interpretation. There is only one way to interpret,  
16 “Husband and Wife agree that neither party shall be required to pay spousal  
17 support to the other party.”

18        Language used in a decree that mirrors standard alimony language leads to  
19 construing payments as alimony if the intent is ambiguous. *Parker v. Green*, 421  
20 P.3d 281 (Nev. 2018). Standard alimony language is language along the lines of  
21 termination of payments upon death or remarriage. *Id.* Here, Grady and Caterina  
22 had an unambiguous agreement stating, “Husband and Wife agree that neither  
23 party shall be required to pay spousal support to the other party.” Standard  
24 alimony language does not include an express statement where the parties agree  
25 no spousal support is required.

26  
27 **DIVISIBLE PAY NOT PRECLUDED BY TITLE 38 OR TITLE 5.**  
28

1 Even if Grady had divisible pay not precluded by *Howell* or *Mansell*, the  
2 Decree does not include any obligation of spousal support. The Decree  
3 unequivocally and clearly states that spousal support is not required. That is  
4 undoubtedly an agreement to forego spousal support entirely. Spousal support  
5 cannot be created after the Decree. Caterina had almost 4 years after the Decree  
6 was filed where she could have moved to set aside the Decree or file a different  
7 action for alimony. However, she did not do so within the allotted time under  
8 NRCP 60. She cannot request alimony now.

9 **III.**

10 **OPPOSITION TO COUNTERMOTION**

11 **A. This Court Should Deny Caterina's Request for an Increase in Spousal**  
12 **Support if the \$1500 payment for Grady's military pay is eliminated.**

13 There is a difference between recalculation of a spousal support award and  
14 a creation of spousal support. According to the Decree at issue, there was clearly  
15 an agreement that neither party shall pay spousal support to the other. Caterina  
16 cannot request an increase in spousal support where none existed. Caterina keeps  
17 making allegations that that the United States Retired Military Health Care  
18 vanished, but that is not the case. Caterina failed to comply with Federal Tricare  
19 Health Benefits regulations and she was no longer entitled to benefits she could  
20 have received. That is not Grady's fault. Caterina also lies about the Long Term  
21 Health Insurance. Grady has never made a payment to the Long Term Health  
22 Insurance plan, Caterina has always made the payment. If there was any danger of  
23 the plan "vanishing" it was because Caterina ceased making payments, just as she  
24 did with the VyStar Credit Union Accidental Death and Dismemberment plan.  
25 Even with all that being said, Caterina cannot use these facts to increase spousal  
26 support. There was never any agreement for spousal support, it does not exist,  
27 which means it cannot be increased.  
28



1 Furthermore, NRCP 60 is controlling in the instant case. Caterina had 6  
2 months from the granting of the divorce where she could have moved to set aside  
3 the Decree and have her day in court in Nevada. She chose not to do so. She  
4 should be precluded from doing so now. The court could have ordered Grady to  
5 pay alimony if Caterina had elected to appear in court and assert her claim for  
6 alimony. However, she did not do so, nor did she move to set aside her default  
7 within the 6 months provided by NRCP 60.

8 At common law, there is also no right to seek an amendment of a divorce  
9 decree regarding alimony. *Cavell v. Cavell*, 90 Nev. 334, 336, 526 P.2d 330, 331  
10 (1974). In *Cavell*, the former wife, after receiving a prompt notice of divorce, did  
11 nothing to modify its provisions for nearly 22 months, and she did not file a  
12 separate action seeking alimony until 10 months later. The court did not expressly  
13 retain jurisdiction regarding alimony and she was barred from seeking to modify  
14 the Decree to include alimony and from bringing independent an independent  
15 action for alimony against the former husband, *Id.*

16 “There is nothing peculiarly applicable to a divorce proceeding which  
17 gives a court jurisdiction to amend or alter a final judgment. A decree a vinculo is  
18 final, and the jurisdiction of the court over the parties is after the expiration of the  
19 term at an end; and just as there can be no grant of alimony after such a divorce,  
20 so there can be no change in the award of alimony, unless the right to make such a  
21 change is reserved by the court in its decree, as it may be, or is given by statute, as  
22 it often is. Stewart on Marriage and Divorce, ss 366, 376. But where there is no  
23 such statute (and we have none), and where the decree does not reserve  
24 the right to the court (as it does not here) to alter the decree for alimony, no such  
25 authority exists.” *Id.*

26 Here, Caterina waited nearly 4 years before initiating court proceedings  
27 against Grady, much longer than the wife in *Cavell*. Similar to the wife in *Cavell*,  
28 she waited even longer to seek alimony. Even after initiating court proceedings,

1 Caterina did not move to set aside the Decree. Instead, Caterina filed a motion to  
2 enforce the Decree that unmistakably stated, "Husband and Wife agree that  
3 neither party shall be required to pay spousal support to the other party." Nothing  
4 in the Decree expressly allows for the court to retain jurisdiction regarding  
5 alimony because there was never any alimony as agreed to by the parties. What  
6 Caterina is requesting is a modification of the Decree in order to create alimony  
7 and she is requesting it after nearly 4 years. Any award of spousal support would  
8 be in direct violation of Nevada Law.

9 Language used in a decree that mirrors standard alimony language leads to  
10 construing payments as alimony if the intent is ambiguous. *Parker v. Green*, 421  
11 P.3d 281 (Nev. 2018). Standard alimony language is language along the lines of  
12 termination of payments upon death or remarriage. *Id.* In *Parker*, the basis the  
13 Court used to award alimony was that 1) there were payments made, and 2) the  
14 decree included all the standard alimony language found in almost every decree.  
15 Here, Grady and Caterina had an unambiguous agreement stating, "Husband and  
16 Wife agree that neither party shall be required to pay spousal support to the other  
17 party." Standard alimony language does not include an express statement where  
18 the parties agree no spousal support is required.

19 Based on the foregoing, Grady respectfully requests that the Court denies  
20 Caterina's request for an increase in spousal support.

21  
22 **B. This Court Should Deny Caterina's Request to Modify the Joint**  
23 **Petition for Summary Decree of Divorce.**

24  
25 **i. The Parties did not have a Prenuptial Agreement.**

26 Under Nevada Law, "a prenuptial agreement is enforceable unless it is  
27 "unconscionable, obtained through fraud, misrepresentation, material  
28 nondisclosure or duress." *Buettner v. Buettner*, 89 Nev. 39, 45, 505 P.2d 600, 604

1 (1973). Under *Sogg*, one overcomes the presumption of invalidity by showing  
2 that the disadvantaged party: (1) had ample opportunity to consult an attorney,  
3 (2) was not coerced, (3) possessed substantial business acumen, and (4)  
4 understood the financial resources of the other party and the rights being forfeited  
5 under the agreement. *Sogg*, 108 Nev. at 312, 832 P.2d at 784.

6 Caterina cannot apply the standards above because this is not an issue of a  
7 prenuptial agreement. Additionally, Caterina had ample opportunity to consult an  
8 attorney, but she chose not to do so. Caterina was not coerced. While Caterina is  
9 attempting to characterize Grady's emails as threats, it is clear Caterina was fully  
10 able to make demands regarding the terms of the Decree, and she also gave the  
11 go-ahead on the language used. The only "threat" is that Grady said he would file  
12 the papers with an attorney and that Caterina should consult an attorney as well.  
13 That does not rise to the level of being coerced. Caterina was also aware of all of  
14 Grady's benefits, as evidenced by her request to include all of them in the  
15 Decree. Lastly, Caterina understood the financial resources Grady had, again  
16 evidenced by her demands that Grady should include them in the Decree before  
17 she agreed to the terms.

18 **ii. Nevada law applies, not New Jersey law.**

19 Caterina cites New Jersey case law to attempt to make her argument for a  
20 creation of alimony. However, the reality of the situation is that the parties did not  
21 get divorced in New Jersey, the parties divorced in Nevada. New Jersey's case  
22 law does not supersede Nevada's statutory authority. NRCP 60(b) states in  
23 pertinent part:

24 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered  
25 Evidence; Fraud, Etc. On motion and upon such terms as are just, the  
26 court may relieve a party or a party's legal representative from a final  
27 judgment, order, or proceeding for the following reasons: (1) mistake,  
28 inadvertence, surprise, or excusable neglect; (2) newly discovered  
evidence which by due diligence could not have been discovered in  
time to move for a new trial under Rule 59(b); (3) fraud (whether

1 heretofore denominated intrinsic or extrinsic), misrepresentation or  
2 other misconduct of an adverse party; (4) the judgment is void; or, (5)  
3 the judgment has been satisfied, released, or discharged, or a prior  
4 judgment upon which it is based has been reversed or otherwise  
5 vacated, or it is no longer equitable that an injunction should have  
6 prospective application. The motion shall be made within a reasonable  
7 time, and for reasons (1), (2), and (3) not more than 6 months after the  
8 proceeding was taken or the date that written notice of entry of the  
9 judgment or order was served. A motion under this subdivision (b)  
10 does not affect the finality of a judgment or suspend its operation.  
11 This rule does not limit the power of a court to entertain an  
12 independent action to relieve a party from a judgment, order, or  
13 proceeding, or to set aside a judgment for fraud upon the court. Writs  
14 of coram nobis, coram vobis, audita querela, and bills of review and  
15 bills in the nature of a bill of review, are abolished, and the procedure  
16 for obtaining any relief from a judgment shall be by motion as  
17 prescribed in these rules or by an independent action.

18 This rule allows the movant to request that the Court grant relief from its  
19 order upon such terms as are just if the movant demonstrates the existence of any  
20 one of five specified conditions prior to the entry of the original order. In the  
21 instant case, Caterina argues that there was coercion or misrepresentation present  
22 because Grady told her that he would contact an attorney and because he waived  
23 retirement pay. However, the record clearly reflects that Grady and Caterina both  
24 participated extensively in the preparation of the Decree. Caterina provides no  
25 reasonable explanation for her failure to seek alimony. Grady never lied to  
26 Caterina about there being spousal support. The Decree states that neither party  
27 shall pay spousal support to the other.

28 Furthermore, Caterina has failed to identify any fraudulent activity by  
Grady. There is overwhelming written evidence that Caterina was fully aware of  
Grady's federal disability benefits, his FERS plan, and that there was a VA benefit  
income. Caterina has provided no evidence of fraud or error occurred within the  
nearly 4 years since the divorce. To the contrary, Caterina submitted multiple

1 statements to the Court alleging a newly discovered asset. These statements were  
2 unquestionably false as those same assets were discussed in writing various times  
3 in 2013 and 2014.

4 Finally, Caterina failed to file her request for relief within a reasonable  
5 time. The Decree was filed on June of 2014. Caterina waited nearly 4 years to  
6 before initiating court proceedings against Grady, and she waited even longer to  
7 seek any alimony. Caterina's request does not come close to meeting the  
8 timeliness requirement.

9 The Nevada Supreme Court made this clear in *Union Petrochemical Corp.*  
10 *of Nevada v. Scott*, 609 P.2d 323, 96 Nev. 337 (Nev., 1980). Analyzing the  
11 timeliness of the Defendant's 60b motion in Union, the Nevada Supreme Court  
12 stated the following:

13 Union first contends that it has complied with this requirement  
14 because its motion was filed within the six-month period. To accept  
15 Union's reasoning would be to ignore the clear import of the rule. The  
16 Rhode Island Supreme Court, in passing upon that state's Rule 60(b),  
3 correctly perceived the rule's intention:

17 The plaintiff's claim that since their motion was filed just prior to  
18 the expiration of the one-year period referred to in Rule 60(b), the trial  
19 justice had jurisdiction to grant their motion. The plaintiffs had better  
20 take a closer look at the rule. Actually, the rule in pertinent part  
21 provides that a motion seeking relief from a final judgment or order  
22 on the grounds of mistake, inadvertence, surprise or excusable neglect  
23 'shall be made within a reasonable time, and not more than one year'  
after the judgment or order was taken. It is clear then that such a  
motion must be made within a reasonable time and the one-year  
period represents the extreme limit of reasonableness.

24 *Murphy v. Bocchio*, 114 R.I. 679, 338 A.2d 519, 523 (1975).

25 Union's contention is also rebutted by cases of this court which  
26 emphasize that want of diligence in seeking to set aside a judgment is  
27 ground enough for denial of such a motion. *Lentz v. Boles*, 84 Nev.  
28 197, 438 P.2d 254 (1968); see *Hotel Last Frontier v. Frontier Prop.*,  
79 Nev. 150, 380 P.2d 293 (1963).

1  
2 Id. at 323-324.

3 In the *Union* case, the Court specifically found that although the 60(b)  
4 motion had been filed just within the six-month time limit, the Defendant failed to  
5 file within a reasonable amount of time within the meaning of NRCp 60(b). The  
6 *Union* Defendant's failure to answer the complaint after being given a number of  
7 extensions and its failure to file its 60b motion until the 11th hour of the deadline  
8 demonstrated dilatory conduct and was grounds in and of itself to deny the motion  
9 to set aside the judgment.

10 When the *Union* Defendant claimed that its delay in seeking relief from the  
11 judgment should be excused, the Court stated:

12 As to the alleged ignorance of procedural requirements, we are not  
13 confronted here with some subtle or technical aspect of procedure,  
14 ignorance of which could readily be excused. The requirements of the  
15 rule are simple and direct. To condone the actions of a party who has  
16 sat on its rights only to make a last-minute rush to set aside judgment  
17 would be to turn NRCp 60(b) into a device for delay rather than the  
18 means for relief from an oppressive judgment that it was intended to  
19 be.

20 *Id.* In the instant case, and as in *Union*, Caterina is seeking relief from a nearly 4-  
21 year-old judgment based on her own conduct that can only be described as grossly  
22 negligent. At least in *Union*, the defendant did not wait years to seek relief. With  
23 only the smallest amount of due diligence, Caterina would have been able to seek  
24 a judgment to set aside the Decree, or seek alimony in a timely manner. Her claim  
25 that she did not understand the agreement in the Decree is ridiculous. She  
26 participated extensively in the drafting of the Decree, and if she had any  
27 misgivings about the wording, she was never prevented from seeking legal advice.  
28 She was aware of all of Grady's benefits at the time. Nothing was hidden from  
her. In fact, Grady even encouraged Caterina to speak to an attorney if she was not

1 satisfied with the Decree. Caterina was certainly able to find an attorney after she  
2 stopped receiving Grady's voluntary payments for the mortgage. Caterina  
3 promptly came after Grady for spousal support, his military benefits, life  
4 insurance, health insurance, and everything else under the sun, so there is no  
5 reason to believe she could not have done the same 4 years ago.

6 Based on the foregoing, Grady respectfully submits that Caterina has failed  
7 to meet the requirements of NRCP 60B. The Court should therefore deny  
8 Caterina's motion to set aside the Decree or modify the Decree in any way.  
9

10 **C. If this Court grants Caterina's request for Spousal Support, Caterina**  
11 **should receive rehabilitative alimony, not traditional alimony.**

12 "Traditional alimony" is payable for life or so long as a spouse is incapable  
13 of self-support. *In re Marriage of Olson*, 705 N.W.2d 312 (Iowa 2005).  
14 Conversely, "rehabilitative alimony" is a way of supporting an economically  
15 dependent spouse through a limited period of re-education or retraining following  
16 divorce, thereby creating incentive and opportunity for that spouse to become self-  
17 supporting. *Id.* Should this Court grant Caterina an award of spousal support, it  
18 should be rehabilitative. Caterina has not shown any valid reason why she is  
19 incapable of self-support. She has not shown why she is incapable of working full  
20 time. The fact that she is able to keep making her monthly payments of over  
21 \$3,700 per month shows she is entirely capable of self-support.

22 Grady is disabled because of his military service, while Caterina is not  
23 disabled and has elected to remain underemployed. Grady's health is in such bad  
24 shape that he is unable to fly without suffering major swelling in his lower  
25 extremities due to yet at another surgery he has undergone. Despite Grady having  
26 no obligation to pay spousal support under the terms of the Decree, he has been  
27 generous and nearly fully supported Caterina for approximately four (4) years.  
28 Caterina should be trying to improve her income, not rely solely on Grady's

1 voluntary payments that could be terminated at any time. Caterina should be able  
2 to attain full time employment and her income should be imputed into the alimony  
3 requirement, if any is awarded by this Court. Based on the foregoing, Grady  
4 requests that, if Caterina receives an award of spousal support, that the support be  
5 rehabilitative.

6  
7 **C. This Court Should Deny Caterina's Requests for Show Cause Orders.**

8 Caterina is requesting Show Cause Orders from the Court based on the  
9 visiting judge's orders that were made in error and Caterina's allegations based  
10 on half-truths. Grady did not reduce Caterina's Veteran's Group Life Insurance  
11 by 11% and he is not in arrears.

12 Grady is not in violation of the Decree. Caterina's has misrepresented the  
13 facts of the Veteran's Group Life Insurance (VGLI) to which she is entitled  
14 according to the Decree. The Decree includes no language stating Caterina was  
15 due 100% of the VGLI. Secondly, the VGLI policy was for \$200,000 at the time  
16 of the filing of the Decree. Caterina is aware of this as she has access to the VGLI.  
17 Grady increased the amount of the VGLI from \$200,000 by \$25,000. The  
18 additional \$25,000 is for Grady's current wife. Nothing in the Decree states that  
19 Grady has any obligation to keep increasing Caterina's portion of the VGLI, and  
20 her VGLI amount has not been reduced at all. In reality, Caterina continues to be  
21 the beneficiary of Grady's VGLI in the amount of \$200,000. If Grady decides to  
22 increase the total benefit dollar amount of the VGLI with an additional beneficiary  
23 for any increased amount, that should be allowed. Caterina is not entitled to  
24 increased benefits, nor is she entitled to being the sole beneficiary of all life  
25 insurance proceeds as long as the amount for which she initially bargained is not  
26 reduced.

27 Grady should not be held in contempt. NRS 22.010 defines the acts that  
28 constitute contempt in the State of Nevada:



1 NRS 22.010 provides:

2 22.010. The following acts or omissions shall be deemed contempts:

3  
4 1. Disorderly, contemptuous or insolent behavior toward the judge  
5 while he is holding court, or engaged in his judicial duties at  
6 chambers, or toward masters or arbitrators while sitting on a reference  
7 or arbitration, or other judicial proceeding.

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

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

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

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

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

22 7. Abusing the process or proceedings of the court or falsely  
23 pretending to act under the authority of an order or process of the  
24 court.

25 In the instant case, Caterina fails to show any disobedience in support of her  
26 request. Under the statute, the Court cannot hold Grady in contempt because he  
27 has not disobeyed the Decree. There was never a reduction of Caterina's VGLI  
28 benefit. Grady is also not in arrears. The visiting judge erred in creating alimony  
and ordering Grady to pay arrears. Grady and Caterina agreed in the Decree that

1 there would be no obligation of spousal support. Any arrears the visiting judge  
2 ordered are a consequence of a complete disregard for the unambiguous language  
3 included in the Decree to which both parties agree and in which both parties  
4 participated in drafting.

5 Furthermore, Grady adhered to his obligation in the Decree to provide  
6 Caterina with SBP benefits and the VYSTAR accidental death insurance to the  
7 extent the Decree required. Under the Decree, Grady is not required to pay for  
8 Caterina to receive Grady's benefits, if Caterina wanted Grady to pay for her  
9 insurance plans, she had plenty opportunity to request such language. Caterina  
10 also knew she had one year to apply for former-spouse SBP, but she failed to do  
11 so. There is no waiver of the SBP policy, but Caterina is no longer eligible for  
12 SBP due to her own lack of action. Additionally, Grady has already named  
13 Caterina the sole beneficiary of the FEGLI benefits.

14 Based on the foregoing, Caterina's requests for show cause orders should be  
15 denied.

16  
17 **D. The Court Should Deny Caterina's request for Attorney's Fees and**  
18 **Award Grady with Attorney's Fees.**

19 This Court may award attorney's fees and costs to Grady as the prevailing  
20 party in this matter pursuant to NRS 18.010 and/or as sanctions against Caterina  
21 under EDCR 7.60 for filing a frivolous and unwarranted opposition and  
22 counter-motion. Grady has shown he is not obligated to pay spousal support, but  
23 Caterina is attempting to jump at the opportunity presented to her by the visiting  
24 judge's error in ignoring the terms of the Decree and the applicable law.

25 Caterina chose to proceed with further filings even though her opposition  
26 and counter-motion are clearly unwarranted. Grady should therefore receive an  
27 award of attorney's fees.

28 Grady's request for fees is supported by the following *Brunzell* factors:

1       (1) *The advocate's qualities, including ability, training, education,*  
2 *experience, professional standing, and skill;*

3       The attorneys at Mills & Anderson have over 45 years of collective  
4 experience practicing in family law and regularly participate in CLE to improve  
5 their skills and the practice area as a whole. All the firm's attorneys remain in  
6 good standing with all Bar associations, and no disciplinary action of any kind has  
7 ever been taken against the firm's partners. All attorneys have worked at various  
8 times on this case.

9       (2) *The character of the work, including its difficulty, intricacy importance*  
10 *as well as the time and skill required, the responsibility imposed and the*  
11 *prominence and character of the parties when affecting the importance of the*  
12 *litigation;*

13       See below

14       (3) *The work actually performed, including the skill, time and attention*  
15 *given to the work;*

16       The firm has provided professional legal services to the client; all pleadings  
17 and substantive documents submitted to the Court were done professionally and in  
18 compliance with court rules. All documents were timely filed containing  
19 supported legal arguments with correct citations, and one of the firm's partners  
20 will be present for hearing on this matter.

21       (4) *The result—whether the attorney was successful and what benefits were*  
22 *derived.*

23       Grady has been forced to defend himself from countless baseless allegations  
24 made by Caterina. Caterina's continued requests are nothing short of harassment.  
25 Grady and Caterina both bargained for the terms of the Decree, and the visiting  
26 judge erred in failing to apply the law and the unambiguously express terms of the  
27 Decree. Caterina is attempting to take advantage of the error in order to force  
28 Grady into payments he is not obligated to make.

1 Upon a favorable decision by the Court, Grady should be awarded fees for  
2 having to file this Reply and Opposition. At no point in her opposition does  
3 Caterina state why Grady should not be granted his motion to reconsider. Based  
4 on Grady's original motion to reconsider, the foregoing statement, and Grady's  
5 affidavit attached hereto, Grady respectfully requests that the Court grant him  
6 relief as more fully set forth in his original motion.


7  
8 III  
9 CONCLUSION

10 Wherefore, based on the above and foregoing, the Defendant respectfully  
11 requests the following:

- 12 1. For an order of the Court denying the Plaintiff's opposition in its entirety;  
13 2. For an order of the Court denying the Plaintiff's countermotion in its  
14 entirety;  
15 3. For an order of the Court granting the Defendant's motion to reconsider;  
16 4. For Attorney's Fees and Costs; and  
17 5. For any further relief that the court deems just and equitable under the  
18 premises.

19 DATED this 14<sup>th</sup> day of May, 2019.

20 MILLS & ANDERSON,

21   
22 \_\_\_\_\_  
23 BYRON L. MILLS, ESQ.  
24 Nevada Bar #6745  
25 703 S. 8th Street  
26 Las Vegas NV 89101  
27 Attorney for Defendant  
28

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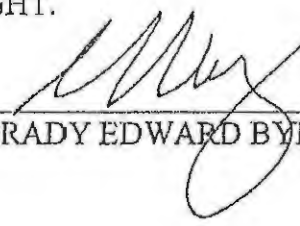
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1 3. That based on my knowledge, belief and information and as though  
2 repeated herein by my affidavit, I incorporate the facts and incidents of  
3 the opposition as though fully reprinted in this affidavit.


4 WHEREFORE, I respectfully request that this Court grant the relief  
5 requested.

6 FURTHER AFFIANT SAYETH NAUGHT.

7  
8   
9 GRADY EDWARD BYRD

10 SUBSCRIBED and SWORN to before me  
11 this 14th day of May, 2019.

12   
13 **ATTY. RAYMOND J. MERCADO**  
14 NOTARY PUBLIC FOR CITY OF DONAGUETE & THE MUN.  
15 COUNCIL OF BACONG, VALENCIA, DAVIN, ZAMBANGUITA & S.  
16 NOTARIAL COMMISSION NO. 2017-001  
PTR NO. 2109164 / V-5-2019  
ROLL NO. 35548 / 4-29-89  
IBP NO. 01108 LIFETIME /  
4TH MOLE COMPLIANCE NO. 00341, 8/10/10  
2ND FLR. 120 RIDE, SANTAYAN DONAGUETE CITY



1 **ROPP**  
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  
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12 e-mail: [jlambertsen@embarqmail.com](mailto:jlambertsen@embarqmail.com)  
13 Attorney for Plaintiff, Unbundled

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 CATERINA ANGELA BYRD,  
18  
19 Plaintiff,

20 v.

21 GRADY EDWARD BYRD,  
22  
23 Defendant.

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

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

Hearing Requested: Yes

24 **Plaintiff's Reply to Defendant's Opposition to Plaintiff's Countermotion**

25 COMES NOW Plaintiff, CATERINA ANGELA BYRD (hereafter "Caterina"),  
26 by and through her attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F.  
27 LAMBERTSEN, ESQ., of the law offices of WEBSTER & ASSOCIATES, in an  
28 Unbundled Capacity, and does hereby file *Plaintiff's Reply to Defendant's*  
*Opposition to Plaintiff's Countermotion*. This Reply is made and based upon the  
pleadings and papers on file herein, the following Points and Authorities and  
upon such oral argument as the Court may allow at the time of the hearing.

Caterina respectfully requests the following relief:

1. Deny Grady's Motion for Reconsideration in its entirety;

W:\Family\Byrd, Caterina\Pleadings\Drafts\Reply to Opp to Cntr Mtn 5.17.19.wpd

2. That Grady continue the \$1,500.00 per month payment to Caterina to assist her with her home mortgage because this is spousal support;
3. That Grady continue the \$1,500.00 per month payment to Caterina to satisfy his contractual obligations to Caterina for Caterina's interest in Grady's military income;
4. For an Order to Show Cause why Grady Should Not Be Held In Contempt Of Court for Failing to Comply with the Court's order from the January 23, 2019 Hearing, filed on or about April 5, 2019, and pay to Caterina \$4,500.00 by February 15, 2019; \$4,500.00 by March 15, 2019; \$4,500.00 by April 15, 2019; and \$4,500.00 by May 15, 2019;
5. For an Order to Show Cause why Grady Should Not Be Held In Contempt Of Court for unilaterally reducing Caterina from 100% Beneficiary of the Veteran's Group Life Insurance awarded to her in the divorce to 89% and naming his new 25 year old wife an 11% beneficiary;
6. For An Order to Show Cause why Grady Should Not Be Held In Contempt Of Court for refusing to Voluntarily Designate Caterina the Beneficiary of his Military Survivor Benefit Plan (hereafter "SBP"), which was awarded to Caterina in the divorce, but he put his new 25 year old wife as beneficiary;
7. For Attorney's Fees and Costs; and
8. For any further orders that the court deems just and equitable under the premises.

Dated: May 17, 2019.

**WEBSTER & ASSOCIATES**

By: 

JEANNE LAMBERTSEN, ESQ.  
Attorneys for Plaintiff, Unbundled

**POINTS AND AUTHORITIES**

**I.  
FACTUAL HISTORY**

Plaintiff, CATERINA BYRD and Defendant, GRADY BYRD (hereinafter "Grady") were married for 31 years, divorcing on June 5, 2014, by way of a Joint Petition



1 that Grady arranged to have prepared. During the marriage, Grady was in the  
2 U. S. Army. He retired from the U.S. Army in 1999 and went to work for the  
3 Department of Defense. Grady retired from the Department of Defense. He  
4 earns more than \$116,000.00 annually, earned two master degrees and became  
5 a high ranking officer. Grady is 63, lives in the Philippines, married a 25-year old  
6 girl, has two household servants and is trying to eliminate his financial obligations  
7 to Caterina.  
8

9 Caterina supported Grady as he furthered his education and career. She  
10 moved approximately 16 times as a military wife, which prevented her from  
11 advancing beyond her high school education, holding a job, gaining work skills,  
12 or to put down roots or have any lasting friends. Caterina relied on Grady's  
13 promises to take care of her. She depends on the \$3,000.00 per month that  
14 Grady deposited directly into her bank account. After his death, she will rely on  
15 the military SBP and Life Insurance that Grady gave her in the divorce. She is  
16 55 years old, single, and remains in the marital residence. Her expenses are  
17 more than \$3,745 a month. Grady left Caterina financially destitute when, on  
18 September 1, 2018, he stopped paying her \$3,000.00 per month, and listed his  
19 new wife as the beneficiary of the military SBP. Grady did this in retaliation for  
20 Caterina asking for copies of the various life insurance plans, SBP plan, and  
21 retirement plans that Grady gave her in the divorce so that she knew who to  
22 contact in the event something happened to Grady. He refused to respond to her  
23 e-mails and letters. He admits that he blocked Caterina's and the undersigned  
24  
25  
26  
27  
28

1 counsel's e-mails.<sup>1</sup> Caterina had to borrow money and took in a roommate to  
2 make ends meet. The instant litigation followed. Contrary to Grady's claim that  
3 "it took Caterina nearly 4 years to bring the matter to Court"<sup>2</sup>, she was forced to  
4 seek the court's assistance promptly after Grady ignored her attempts to resolve  
5 his unilateral termination of the \$3,000.00.  
6

## 7 II.

### 8 PROCEDURAL HISTORY

#### 9 1. Caterina's August 2018 EDCR 5.501 Compliance

10 Letters and e-mails were sent to Grady on August 7, 2018, and August 13,  
11 2018, asking Grady for copies of documents, to sign a QDRO for the military  
12 pension and to please stipulate to change venue from Churchill County to Clark  
13 County so that the QDRO could be filed in Clark County.<sup>3</sup> The parties never lived  
14 in Churchill County. The people Grady hired to file the decree chose this  
15 location. No response was received. On September 4, 2018, Caterina e-mailed  
16 Grady asking when her September 1, 2018, support would be deposited.<sup>4</sup> No  
17 response was received.  
18  
19

#### 20 2. Change Venue from Churchill County to Clark County

21 On August 27, 2018, Caterina filed her Motion in Churchill County to Clark  
22 County. The Order for Change of Venue was filed on October 12, 2018.  
23  
24

---

25 <sup>1</sup>Grady's Reply to Opposition and/or Countermotion filed 12/28/18, pg. 3, ln 38-40,

26 <sup>2</sup>Grady's Reply and Opposition, page 4 ,line 27 - pg. 5, ln 1.

27 <sup>3</sup>Exhibit "1" EDCR 5.501 letters and e-mail 08/07/18 and 08/13/18

28 <sup>4</sup>Exhibit "2" Email from Caterina to Grady 09/04/18.

1           3. Motion to Enforce the Decree of Divorce

2           On October 16, 2018, Caterina filed her motion. The hearing was set for  
3 November 27, 2018. On November 16, 2018, Grady filed a letter asking for a  
4 continuance to retain an attorney. His letter mentioned that he would be in Las  
5 Vegas on December 4, 2018, and December 19, 2018. Caterina appeared at the  
6 November 27, 2018 hearing; Grady did not. The court continued the hearing until  
7 December 18, 2018, when Grady would be in town.  
8

9           On December 10, 2018, and December 13, 2018, Grady filed a motion for  
10 a continuance of the December 18, 2018 hearing. On December 18, 2018, an  
11 order was filed granting a continuance of the December 18, 2018, hearing until  
12 February 5, 2019. On December 19, 2018, Caterina filed an opposition to  
13 Grady's motion for a continuance and application for an order shortening time  
14 because she was financially destitute. The hearing was shortened to January 23,  
15 2019.  
16

17           On December 28, 2018, Grady filed a reply to opposition and/or  
18 countermotion. On January 15, 2019, Caterina filed a reply to Grady's  
19 opposition. Grady filed a reply on January 18, 2019.  
20

21           At the January 23, 2019, hearing on Caterina's motion and Grady's  
22 opposition, both parties were present. The Court<sup>5</sup> issued orders which are  
23

24 \_\_\_\_\_  
25           <sup>5</sup>Grady repeatedly refers to the Honorable Kathy Hardcastle as "the visiting judge" in  
26 an attempt to minimize or somehow lessen the validity of the court orders. This is shameful.  
27 Public records show that the Honorable Kathy Hardcastle was a deputy public defender  
28 before taking the bench in 1997. She served as a District Court Judge and Chief Judge for  
the Eighth Judicial District Court. In 2012, she retired and now serves as a Senior District  
Judge. She presides over complex litigation such as John Matthias Watson, III v. The State  
of Nevada 130 Nev. 764, 335 P.3d 157 ( 2014) judgment of conviction, death penalty case.

1 consistent with Nevada law and should be upheld.

2 **III.**

3 **REBUTTAL FACTS**

- 4  
5 **1. There is ambiguity in the language that Grady placed in the Joint**  
6 **Petition/decreed and the ambiguity must be interpreted against the**  
7 **drafter, Grady**

8 The Court did not abuse its discretion and no error occurred when Grady  
9 was found to have wrongfully terminated the \$1,500.00 payments to Caterina to  
10 assist her with her home mortgage on September 1, 2018 and that these  
11 payments are alimony.

12 Grady wrongfully claims that no ambiguity exist in the following paragraph  
13 from the Joint Petition for Summary Decree of Divorce:

14 *"Grady E. Byrd will continue to pay Caterina A. Byrd 1500*  
15 *dollars extra a month to assist with her home mortgage.*  
16 *If her financial situation changes or if the home is sold or*  
17 *paid off this payment may cease."This is not an alimony*  
18 *payment and is not required."*<sup>6</sup>

19 The ambiguity is seen between the two conflicting statements in the  
20 paragraph:

21 If her financial situation changes or if  
22 the home is sold or paid off this  
23 payment may cease.

is not required.

24  
25 Both parties are relying on Buzz Stew, LLC v. City of N. Las Vegas, 131  
26

27  
28 <sup>6</sup> Joint petition attached to the decree of divorce filed 06-05-14, pg 4. Ln 3-5.

1 Nev., Adv. Op. 1, 341 P.3d 646, 650 (2015) which states that if contract language  
2 is clear, it will be enforced as written. Grady, however, fails to acknowledge the  
3 clear language that termination of his payment to Caterina is conditional upon the  
4 occurrence of specific subsequent events. These payments are not voluntary.  
5 The specific subsequent events are if Caterina's financial situation changes or the  
6 home is sold or the home is paid off. None of the cessation-triggering events  
7 occurred. Further, termination of the payments is not mandatory. Grady placed  
8 in the Joint Petition that the payment *may* cease. Not that payments *must* cease  
9 or *will* cease. Grady's words "is not required" could mean that the payment is not  
10 required other than what is expressly stated, namely that the payment may cease  
11 only if Caterina's financial situation changes or the home is sold or the home is  
12 paid off. Grady's claim that the language is not ambiguous is wrong.<sup>7</sup>  
13 Ambiguity must be interpreted against the drafter, Grady. He provided the  
14 language. Grady even agrees that a contract is ambiguous if it is reasonably  
15 susceptible to more than one interpretation.<sup>8</sup>

16  
17  
18  
19 Grady also had a fiduciary duty to Caterina. He took advantage of her role  
20 as a wife, mother and housewife who routinely followed his orders regarding  
21 finances. He has two master's degrees, a war college certificate, FEMA  
22 certificate and became a high ranking officer, whereas Caterina has a high school  
23 education. A fiduciary relationship arises from the existence of the marriage  
24 itself, thus precipitating a duty to disclose pertinent assets and factors relating to  
25

26  
27 <sup>7</sup>Grady's Reply and Opposition filed 05/14/19, pg. 3, ln. 28.

28 <sup>8</sup>Grady's Reply and Opposition filed 05/14/19, pg. 11, ln. 11.

1 those assets. Cook v. Cook, 112 Nev. 179, 912 P.2d, 264 (1996) citing Williams  
2 v. Waldman, 108 Nev. 466, 836 P.2d 614 (1992) at 471-72, 836 P.2d at 618.

3 Grady was always in control of all things financial.

4 On April 2, 2013, regarding the purchase and financing of the marital  
5 residence, Grady gave her strict orders to follow which included:  
6

7 **"DO NOT** talk to USAA for any reason about this approval process.

8 **"DO NOT** tell USAA you are not going to talk to them.

9 If they try to contact you just **ignore them**. Do not answer them. Just tell  
10 me.

11 The last time I did this we were telling them different information and it hurt  
12 us.

13 "I will have to **MAKE UP SOME INFORMATION ON MONEY** to get you the  
14 money that you need.

15 Do not tell your real estate agent anything except you are trying to get 400k"<sup>9</sup>

16 Regarding the divorce, Grady had multiple instructions for Caterina:

17 On April 7, 2018 Grady told Caterina that:

18 **"I will have** the following statements entered on the  
19 divorce statement".....<sup>10</sup>

20 On April 8, 2018 Grady told Caterina that:

21 **I will always give the money to you** but I do it because  
22 I want to not because anybody can make me do it. ...

23 **I will send you the papers. If you do not sign I will**  
24 **only pay you what I owe you and I will hire a lawyer to**  
25 **file the papers in court."**<sup>11</sup>

[emphasis added]

26 On April 10, 2014 Grady told Caterina that:

27 **I will give you the extra money as long as I live.**

28 <sup>9</sup> Exhibit "3" Grady orders Caterina to not talk to USAA loan agents.

<sup>10</sup> Exhibit "4" Grady stating what he is putting in the divorce papers.

<sup>11</sup> Exhibit "5" Grady's April 8, 2014 email to Caterina about signing the papers.

1           **"...This is your last warning, take the deal I'm offering**  
2           **or you can ask a lawyer to try and get me to put what you**  
3           **want in writing. I guarantee you your lawyer will tell you**  
4           **that you should have taken what I was offering.**  
5           **Last Chance."**<sup>12</sup>  
6           [emphasis added].

7           About March 26, 2014, Caterina informed Grady that she made an  
8           appointment for an attorney. Grady retaliated and told Caterina that:

9           **"Well why are you going to lawyer"**  
10          **"You think you going to get more from me?"**  
11          **"Just sign the papers and you get all I said you would**  
12          **get forever"**<sup>13</sup>

13          "The first time I hear from your lawyer this is the action I will take:  
14          1. **I will stop communicating with you at all.**  
15          2. I will not communicate with your lawyer at all.  
16          3. I will hire my own lawyer.  
17          4. **I will cease providing you any payments at all.** You can take  
18          money from the TSP account money that you did not use for the  
19          down payment.  
20          5. I will ask for a 50 50 split of all our assets.  
21          6. When divorce complete I will only pay 50% of army retirement.  
22          You think you are going to get more from me than I am already giving  
23          you. **Good luck.**  
24          I am glad you are trying to stick it to me. It reminds me of why I left  
25          you. You make it easy for me to treat you the same way you treat  
26          me."<sup>14</sup>

27          **"You are not entitled to anymore money..."**<sup>15</sup>  
28          [emphasis added].

Caterina even tells Grady that she is feeling very nervous, and that all of this

---

<sup>12</sup> Exhibit "6" Grady e-mails Caterina "last warning" "last chance".

<sup>13</sup> Exhibit "7" Grady's e-mail to Caterina discouraging her from seeing a lawyer.

<sup>14</sup>Exhibit "8", Grady's e-mail to Caterina threatening to stop communicating with her.

<sup>15</sup>Exhibit "5", Email from Grady to Caterina saying she is not entitled to more money

1 information is scaring her<sup>16</sup> and what happens if he gets mad and stops  
2 everything down the road, and what happens if he gets sick and cannot put the  
3 money in the bank every month.<sup>17</sup> Relying on Grady's reassurances, she signed  
4 the decree.

5  
6 Because the language that Grady placed in the decree regarding the  
7 \$1,500.00 payments to Caterina to assist her with her home mortgage is  
8 ambiguous, and because Grady failed his fiduciary duty to Caterina, the ambiguity  
9 must be held against Grady in favor of Caterina. The Court did not abuse it's  
10 discretion when it found that Grady had no right to unilaterally stop the \$1,500.00  
11 payments to Caterina to assist her with her home mortgage and deemed these  
12 payments alimony.

13  
14 Grady continues to argue that Caterina waived her right to alimony. This is  
15 false. She could not have waived her right to alimony while simultaneously  
16 accepting \$1,500.00 in support to pay her necessities, namely the home  
17 mortgage. There is absolutely no evidence of her intentional relinquishment of  
18 her right to alimony. Rather, she relied on Grady's continued promises that he  
19 would always give her the money and that he would give her the money as long  
20 as he lives.

21  
22 ///

23  
24  
25 <sup>16</sup>Exhibit "4", Email from Caterina to Grady feeling very nervous and scared.

26 <sup>17</sup> Exhibit "7", Email from Caterina to Grady asking what if he gets sick and can't put  
27 her money in the bank.



**2. Caterina had a job as a mother, wife and homemaker**

It is appalling to see Grady claim that leaving Caterina destitute since September 1, 2018, is not his problem and that she should simply go get a job. She had a job for 31 years; as a mother to their son, wife and homemaker. She packed and un-packed the household belongings as Grady moved the family 16 times in 31 years to places such as Germany, Hawaii, Korea, Georgia, North Carolina, Florida, Virginia and Nevada.<sup>18</sup> Grady was fully aware that Caterina was young when they married, had only a high school education, that English was her second language, that she could not sustain employment long enough in any of the places that they lived to further her education, work full time or develop a pension plan on her own accord. Grady earns over \$116,000.00 annually, receives free medical care, has a 25 year old wife and employs two servants at his home. One servant washes Grady's cars and maintains the landscape while the other servant does housekeeping, cooking and child care of his wife's child.<sup>19</sup> If Grady lived in a tent, it was not because he paid Caterina \$3,000.00 per month out of his \$116,000.00 annual income. His income stream is steady. Grady explained that he lived in a tent at the Naval Station in Key West, Florida about April 2008.<sup>20</sup>

Grady's disposable income increased because he recently reduced his

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<sup>18</sup>Exhibit "9" Places the parties' lived during marriage.

<sup>19</sup> Exhibit "10" Grady's description of his 2 employees; Answer No. 4, pg. 2, ln 4.

<sup>20</sup> Exhibit "11" Grady's responses to Caterina's 1<sup>st</sup> Requests for Admissions, No. 18.

1 debt. About April 2019, he eliminated over \$51,721.00 in debt listed on his FDF.<sup>21</sup>  
2 Figuring that he is exempt from creditors, he stopped paying his debts. He falsely  
3 used Caterina's address in Las Vegas to obtain a Nevada Drivers License on July  
4 3, 2018, purchased a new Chevy Cruz, stopped paying the car loan to Ally  
5 Financial, removed the license plates & abandoned the Chevy Cruz at the Los  
6 Angeles Airport, it was towed, accrued storage fees, was repossessed by Ally  
7 Financial, Grady stopped paying USAA Federal Savings Bank loan for  
8 \$13,399.11 and stopped paying his USAA Savings Bank loan for \$17,882.25.<sup>22</sup>  
9

10 Caterina's expenses have not diminished. They have increased. She must  
11 pay for her own health insurance. She has been forced to borrow money from  
12 friends and family and take in a roommate to make ends meet. Contrary to what  
13 Grady claims, Caterina listed this roommate's \$900 monthly payment on her FDF  
14 filed on October 18, 2018.  
15

16 Grady is wrongfully suggesting that the parties' e-mails about the newly  
17 purchased home somehow show that Caterina does not want to work. About  
18 March 2008, Grady rented a townhouse located at 9999 W Katie Ave #1008 Las  
19 Vegas Nevada, 89147 for the family. About 1 month later, April 2008, Grady left  
20 for work and never returned. About October 2013, Grady arranged for the  
21 purchase of a house in Las Vegas Nevada. A mere 4 months later, in February,  
22 Grady begins to tell Caterina that he "must move along" and he began pushing  
23  
24

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25  
26 <sup>21</sup>Grady's FDF filed 01/18/19, page 6; Chevrolet auto and 2 USAA Personal Loans.

27 <sup>22</sup> Exhibit "12 " Debts in collection that Grady isn't paying.  
28

1 for the divorce. They divorced about 8 months after purchasing the house. The  
2 equity in the house was minimal at the time of divorce. The mortgage payment is  
3 about \$1,933.07 per month. The February 2014 e-mails Grady refers to, show  
4 that Caterina is worried about making the mortgage payment. She explains that  
5 she does not want to loose the house. Grady tells Caterina to get a job so that  
6 she would have a life with friends and not be alone and depressed.

8 **3. States are not precluded form applying state contract law, even when**  
9 **disability benefits are involved, under Shelton.**

10 Grady claims that his offer to pay Caterina 50% of his military pay in the  
11 decree is not ambiguous. This is false. One example of the ambiguity is the fact  
12 that the dollar amount that Grady is to pay Caterina each month is missing from  
13 the decree: "*Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States*  
14 *Army Retired Pay as long as he lives.*" This language in the decree is ambiguous,  
15 as such, under Shelton, the Court looks to the subsequent conduct of the parties  
16 and applies contract principles. Grady ratified the terms of the agreement by  
17 performing his obligations under the decree for a period of over four years and  
18 paid Caterina a total of \$3,000.00 each month, of which \$1,500.00 was for  
19 support with her mortgage payment. At the time of divorce, he was already  
20 receiving disability pay, not retired military pay. In addition, the interpretation that  
21 the parties had a contractual agreement that Grady is to pay Caterina \$3,000.00  
22 each month yields a fair and reasonable result, as oppose to a harsh and unfair  
23 result. Shelton v. Shelton, 78 P. 3d 507, 119 Nev. 4592 (2003). Nothing in the  
24 2017 U.S. Supreme Court case of Howell prohibits the principals of contract law  
25  
26  
27  
28

1 described in Shelton from applying.

2 **4. Grady doctor's note is insufficient to draw any conclusions about his**  
3 **health.**

4 1. The note is dated May 9, 2019, which is *after* the May 2, 2019 hearing.  
5 On January 23, 2019, the court ordered Grady to appear at the May 2, 2019,  
6 hearing or else a "*no bail bench warrant would be issued for his arrest*".<sup>23</sup> Grady  
7 knew that his appearance was mandatory, as such, he should have provided  
8 records that pre-date the May 2, 2019, hearing.  
9

10 2. The note does not state the date that Grady was examined by the doctor.  
11 In fact, the note does not state that Grady was examined at all.  
12

13 3. The note does not mention any surgeries. It mentions that Grady claims  
14 that he had "yet at [sic] another surgery".<sup>24</sup>

15 4. The note states that Grady sought a consult. Further information and  
16 medical records are needed. Travel may actually not be a problem. Grady  
17 traveled to Las Vegas in July 2018 (to buy a car), September 2018, December  
18 2018 and January 2019. Grady never raised any difficulty in traveling due to  
19 health problems at the January 23, 2019 hearing.  
20

21 Grady's doctor's note and non-appearance at the court hearings may be  
22 more about the creditors that are after him, the "no-bail bench warrant" and his  
23 refusal to comply with court orders than debilitating health matters.  
24

25 ///

26  
27 <sup>23</sup>Grady's letter filed 11/16/18, paragraph 3.

28 <sup>24</sup>Grady's Reply and Opposition filed 05/14/19, pg. 6, In 16-17.

IV.

REPLY

LEGAL ARGUMENT

**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 Court did not abuse its discretion in finding that Grady cannot unilaterally terminate his \$1,500.00 monthly payment to Caterina to assist with her mortgage payment and that this payment is deemed alimony. As such, should Caterina suffer the harsh consequences of a loss of income due to Grady electing to waive his retirement pay for disability pay, her spousal support should be increased to \$3,745.13 per month. 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. 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).

Caterina's alimony should be increased to \$3,745.13 per month.

///

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

4             The alimony waiver should not be upheld if the Court also eliminates  
5     Caterina's interest in the parties' community property: the military pension. The  
6     unforeseeable loss of the pension benefit should invalidate the alimony waiver.  
7     Upholding the alimony waiver would be unjust as was found in the following  
8     persuasive case:

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

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

28            If this court deems that Grady is not obligated to continue his contractual  
29     obligation to pay Caterina \$1,500.00 per month for her interest in his military  
30     income, then this court should find that the alimony waiver is not a bar to  
31     consideration of a post-judgment award of alimony to Caterina because she gave  
32     valuable consideration for the waiver of alimony in exchange for the promise of  
33     the future ability to share in Grady's military pension.

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

This court can grant Caterina relief from judgment under NRCP 60(b)(6). Grady spends time on other subsections of 60(b), but does not mention subsection (6).

**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]

Federal Rule 60(b)(6) provides guidance in this matter:

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

Court should find that extraordinary circumstances exist to grant Caterina relief from judgment under 60(b)(6).

1. Grady misinformed Caterina and led her to believe that he would always

1 give her the \$3,000.00, and that she would receive the \$3,000.00 for his lifetime;  
2 Grady paid Caterina \$3,000.00 per month (of which \$1,500.00 is for mortgage  
3 assistance) for over 4 years. Grady abruptly stopped paying her \$3,000.00 per  
4 month on September 1, 2018;  
5

6 2. Grady claims that Caterina is only entitled to \$62.00 per month from his  
7 military pay and nothing else; Caterina did not foresee this event because Grady  
8 did not tell her that he was electing the waiver of his military pay to receive  
9 disability pay. Grady misrepresented the value of his army pension to Caterina at  
10 the time of divorce. It was not \$3,017.00 a month, rather it was only \$128.40 per  
11 month of which, she would receive 1/2 (\$62.00). This is a unforeseeable loss of  
12 the bargained for pension benefit ;  
13

14 3. Grady cutting off paying Caterina \$1,500.00 per month in mortgage  
15 assistance brutally claiming that "it wasn't required", when in fact her mortgage  
16 is \$1,933.07 each month and the \$1,500.00 payment is to continue until her  
17 financial situation changes or if the home is sold or paid off, is an extraordinary  
18 circumstance;  
19

20 4. Grady had a responsibility to act with good faith and fairness to Caterina  
21 because he shares a confidential, fiduciary relationship with Caterina. Such a  
22 responsibility contemplates that Grady will make a full and fair disclosure prior to  
23 the execution of the divorce documents. Grady shirked this responsibility.  
24 Caterina could not have known the full magnitude of Grady's assets and  
25 obligations because the parties had been separated for over 6 years prior to  
26 divorce, and Grady lived in the Philippines and she lived in Nevada.  
27  
28



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

3                **Caterina Should Receive Lifetime Alimony, Not Rehabilitative**

4        Caterina should receive lifetime alimony. She was a wife, mother, and  
5  
6 homemaker for 31 years, putting her education and career on hold while Grady  
7 earned two master's degrees, a war college certificate, FEMA certificate and  
8 became a high ranking officer.

9        Caterina was young when they married, had only a high school education,  
10 English was her second language, she could not sustain employment long  
11 enough in any of the places that they lived to further her education, could not  
12 work full time or develop a retirement plan on her own accord. Grady earns over  
13 \$116,000.00 annually, receives free medical care and reduced his debt. She  
14 moved approximately 16 times as a military wife which prevented her from  
15 advancing beyond her high school education, holding a job, gaining work skills,  
16 or put down roots or have any lasting friends. She should receive lifetime alimony  
17 based on her \$3,745.13 per month need and Grady's \$116,000.00 annual income  
18 ability to pay. The income gap needs to be closed so that Caterina can maintain  
19 a standard of living that she had during marriage.  $\$116,000.00 - \$44,941 =$   
20  $\$71,059$  that Grady will have to spend. Grady's monthly expenses are only about  
21  $\$4,060$  per month ( $\$48,696$  per year) after reductions are made for debts he  
22 eliminated such as  $\$1,080$ /month for hotel and the other  $\$51,721.00$  in debt he  
23 eliminated by abandoning his new Chevy Cruz, and not paying the car loan or two  
24 other personal loans to USAA seen on his FDF filed on January 18, 2019.  
25  
26  
27  
28

1 Kogod v. Cioffi-Kogod, 135 Nev., Adv. Op. 9 (April 25, 2019)

2 "our case law makes clear that a district court may award  
3 alimony to ensure that an economically powerless spouse  
4 receives sufficient support to meet his or her needs. See  
5 Gilman v. Gilman, 114 Nev. 416, 423-24, 956 P.2d 761,  
6 765 (1998) ("The Nevada legislature created spousal  
support awards to, inter alia, keep recipient spouses off  
the welfare rolls.").

7 In addition to economic need, alimony may also be  
8 awarded to compensate for economic loss as the result  
9 of a marriage and subsequent divorce, particularly one  
spouse's loss in standard of living or earning capacity.

10 Our case law's concern for maintaining a spouse's  
11 standard of living post-divorce is reflected in this rationale  
12 for alimony. Enabling the lower-income-earning spouse  
13 to maintain a lifestyle as close as possible to the lifestyle  
14 enjoyed during the marriage has consistently been an  
important aim of this court. See, e.g., Wright v. Osburn,  
114 Nev. 1367 1369, 970 P.2d 1071, 1072 (1998)  
15 (deeming the spousal support award insufficient because  
the wife would not be able to "maintain the lifestyle she  
16 enjoyed during the marriage or a lifestyle commensurate  
with" her former husband); Sprenger v. Sprenger, 110  
Nev. 855, 860, 878 P.2d 284, 287 (1994) (remanding with  
17 instructions to award alimony such that the spouse may  
"live as nearly as fairly possible to the station in life she  
18 enjoyed before the divorce") (internal quotation marks  
omitted); Gardner v. Gardner, 110 Nev. 1053 1058, 881  
19 P.2d 645, 648 (1994) (increasing alimony by ten years  
because the wife's "contribution to the community over  
20 many years [was] not fairly recognized by the two-year  
alimony award"); Rutar v. Rutar, 108 Nev. 203, 208, 827  
21 P.2d 829, 832 (1992) (increasing the alimony award  
where the previous award only provided "a standard of  
22 living far below that to which [the wife and children] have  
been accustomed"). This court reaffirmed this goal in  
23 Shydler v. Shydler, 114 Nev. 192, 954 P.2d 37 (1998), by  
24 noting that two of the primary purposes of alimony "are to  
25 narrow any large gaps between the post-divorce earning  
capacities of the parties and to allow the recipient spouse  
26 to live 'as nearly as fairly possible to the station in life [ ]  
27 enjoyed before the divorce.'" *Id.* at 198, 954 P.2d at 40  
28 (alteration in original) (citations omitted) (quoting

1           Sprenger, 110 Nev. at 860, 878 P.2d at 287-88).

2 Consistent with Kogod, Caterina's alimony should be lifetime since she has a  
3 need for support, Grady has the ability to pay, and she should be allowed to  
4 maintain the lifestyle they had during marriage.  
5

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

9           Grady should be held in contempt of court for failing to follow the Court's  
10 orders to deposit \$18,000.00 into her bank account for the time period of  
11 February 15, 2019, through May 15, 2019. There is no "stay" of the court's  
12 orders. Letters were sent to Grady on February 19, 2019, April 5, 2019, April 17,  
13 2019, and May 10, 2019, requesting the deposits. At the May 2, 2019 hearing,  
14 Caterina again requested the \$4,500.00 payments. Grady refused and continues  
15 to refuse. He earns \$116,000 annually, has monthly expenses of about  
16 \$4,050.00 per month and eliminated about \$51,721.00 in debt recently. He has  
17 the ability to pay. His refusal to pay is intentional, which is harming Caterina. He  
18 should be found in contempt of court, sanctioned \$500 for each month he failed  
19 to pay and Caterina should be awarded attorney fees.  
20

21           **Grady Is In Contempt Of Court For Failing To Keep Caterina As The**  
22 **Sole Beneficiary of the Military Survivor Benefit Plan**

23           Grady and Caterina took out the SBP for Caterina the day he retired in  
24 1999. Caterina is relying on the SBP to survive. Grady promised her the SBP in  
25 the divorce. However, because neither party sent a copy of the decree to the  
26 DFAS within 1 year of divorce, Caterina's name is no longer listed as the  
27  
28

1 beneficiary.

2 About September 28, 2018, Grady received a letter from the DFAS advising  
3 him that:

4 **"If you want to keep your Former Spouse on you will have to volunteer**  
5 **to keep her on the SBP on form DD2656-1 [emphasis added].**

6  
7 Grady did not give Caterina this letter until about April 2, 2019. Grady  
8 should have given Caterina the letter in September 2018 and added her back on  
9 to the SBP because September 2018 was the time period Caterina was asking  
10 Grady for copies of documents about the benefits that she received in the decree  
11 of divorce. He wrongfully withheld the information in the letter from Caterina and  
12 continued to tell her that she was out of luck, she wasn't getting the SBP  
13 anymore. He never disclosed the information in the letter.

14  
15 On April 5, 2019, Caterina sent correspondence to Grady and asked Grady  
16 to voluntarily keep her on the SBP. Grady refused. On May 2, 2019, at the  
17 hearing, she asked him to keep her on the SBP. He refused. Instead, Grady  
18 listed his new 25 year old wife as the beneficiary. This is a harsh, unjust and  
19 extraordinary result harming Caterina. It was Caterina, not the new 25 year old  
20 wife who was married to Grady for 31 years as a mother, wife and homemaker,  
21 supporting Grady in his education and career. Further, Grady's refusal to list  
22 Caterina is costing Caterina additional attorney fees and costs to litigate the  
23 matter. Grady should be found in contempt of court, sanctioned and Caterina  
24 awarded attorney fees.

25  
26  
27 **Grady Is In Contempt Of Court For Unilaterally Reducing Caterina's**  
28

**100% Benefit of the Veterans Group Life Insurance**

Caterina was awarded the Veterans Group Life Insurance in the decree of divorce. As of the date of divorce, the plan had a value of \$225,000.00, Caterina was listed as 100% beneficiary and she was to receive a lump-sum payment.<sup>25</sup> Grady, however, changed the beneficiary status. He listed his new wife, gave her 11% interest in the amount of \$25,000.00 and reduced Caterina's interest to 89% and \$200,000.00. Grady cannot unilaterally change Caterina's beneficiary status. In correspondence to Grady dated April 5, 2019, Caterina asked Grady to restore her status to 100% of the \$225,000.00. Grady refused. Grady is in contempt of court. He should be sanctioned \$500.00 for this event and Caterina should be awarded attorney fees and costs.

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

Grady is in Contempt of Court for:

1. Refusing to deposit \$18,000.00 into Caterina's bank account for the time period of February 15, 2019,, through May 15, 2019.
2. Refusing to list Caterina as the beneficiary of the military Survivor Benefit Plan when he can voluntarily do so; and
3. Refusing to restore Caterina's status to 100% of the \$225,000.00 Veteran's Group Life Insurance plan.

Grady's harmful behavior is causing Caterina increased attorney fees, costs and anguish.

On April 23, 2019, Caterina filed a Memorandum of Fees and Costs for the

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<sup>25</sup> Exhibit "13" Certificate of Insurance for Veterans Group Life Ins. 12/21/2000.

1 time period from the commencement of this litigation until the January 23, 2019,  
2 hearing. The total fees were \$11,580.00 and total costs were \$706.18. At the  
3 January 23, 2019 hearing, Caterina was awarded \$7,000.00 in attorney fees and  
4 costs. The payment of the \$7,000.00 is included in the \$4,500.00 per month that  
5 Grady was to begin paying starting on February 15, 2019. Grady refuses to pay  
6 the \$4,500.00 per month to Caterina.  
7

8 Since January 23, 2019, Caterina has incurred additional fees and costs  
9 defending herself against Grady's wrongful behavior. She can file a current  
10 Memorandum of Fees and Costs should the court desire.  
11

12 NRS 125.040:

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

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

19 2. The court may make any order affecting property of the parties, or either  
20 of them, which it may deem necessary or desirable to accomplish the  
21 purposes of this section. Such orders shall be made by the court only after  
22 taking into consideration the financial situation of each of the parties.  
23

24 NRS 18.010(2): a) When the prevailing party has not recovered more than  
25 \$20,000; or (b) Without regard to the recovery sought, when the court finds that  
26 the claim, counterclaim, cross-claim or third-party complaint or defense of the  
27 opposing party was brought or maintained without reasonable ground or to  
28 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 1. Upon the answer and evidence taken, the court or judge or jury, as the  
2 case may be, shall determine whether the person proceeded against is guilty  
3 of the contempt charged.

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

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

12 Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). Equal  
13 footing so don't have to liquidate savings. The Nevada Supreme Court held  
14 that the district court did not abuse its discretion in awarding approximately  
15 \$50,000.00 in attorney fees to the wife in a divorce proceeding. The Court  
16 noted that without the district court's assistance, the wife would have been  
17 required to liquidate her savings and jeopardize her financial future in order  
18 to meet her adversary in court on an equal basis.

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

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

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

31 Awards of attorney fees are within the sound discretion of the Court.  
32 See Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher,  
33 89 Nev. 540, 542-43, 516 P.2d. 103, 104 (1973), Leeming v. Leeming, 87 Nev.  
34 530, 532, 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev.  
35 1455, 971 P.2d 1262 (1998).

36 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the  
37 Court should take into consideration the following factors when determining an  
38 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has

1 been practicing law for 34 years and Ms. Lambertsen has been practicing law for  
2 14 years; the law firm's practice is dedicated to family law. (2) The character and  
3 difficulty of the work performed: The intricacy, importance, time and skill required  
4 to prepare this Reply and Exhibit Index is moderate to high. (3) The work actually  
5 performed by the attorneys and legal assistants: Approximately 10 hours were  
6 spent by counsel and legal assistants in fees (4) The result obtained is unknown  
7 but the Opposition and Countermotion demonstrates Grady's, contempt, lack of  
8 cooperation and continuing control of Caterina.  
9

10  
11 **V.**

12 **CONCLUSION**

13 Plaintiff, Caterina Byrd, respectfully requests the following relief:


- 14 1. Deny Grady's Motion for Reconsideration in its entirety;
- 15 2. That Grady continue the \$1,500.00 per month payment to Caterina to assist  
16 her with her home mortgage, because this is spousal support;
- 17 3. That Grady continue the \$1,500.00 per month payment to Caterina to satisfy  
18 his contractual obligations to Caterina for Caterina's interest in Grady's  
19 military income;
- 20 4. For an Order to Show Cause why Grady Should Not Be Held In Contempt Of  
21 Court for Failing to Comply with the Court's order from the January 23, 2019  
22 Hearing, filed on or about April 5, 2019, and pay to Caterina \$4,500.00 by  
23 February 15, 2019, \$4,500.00 by March 15, 2019, \$4,500.00 by April 15,  
24 2019 and \$4,500.00 by May 15, 2019;
- 25 5. For an Order to Show Cause why Grady Should Not Be Held In Contempt Of  
26  
27  
28



- 1 Court for unilaterally reducing Caterina from 100% Beneficiary of the  
2 Veteran's Group Life Insurance awarded to her in the divorce to 89% and  
3 naming his new 25 year old wife an 11% beneficiary;  
4  
5 6. For An Order to Show Cause why Grady Should Not Be Held In Contempt Of  
6 Court for refusing to Voluntarily Designate Caterina the Beneficiary of his  
7 Military Survivor Benefit Plan (hereafter "SBP"), which was awarded to  
8 Caterina in the divorce, but he put his new 25 year old wife as beneficiary;  
9  
10 7. For Attorney's Fees and Costs; and  
11  
12 8. For any further orders that the court deems just and equitable under the  
13 premises.

14 DATED this 17th day of May, 2019.

15 WEBSTER & ASSOCIATES

16  
17   
18 JEANNE F. LAMBERTSEN, ESQ.  
19 Attorney for Plaintiff, Unbundled  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 Grady  
16 Byrd had deposited my monthly payment into was closed. It was a joint checking  
17 account that had been established for 31 years. At the hearing on January 23,  
18 2019, I gave Grady Byrd my Bank of America routing number and account number  
19 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 before  
22 February 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd on or  
23 before March 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd  
24 on or before April 15, 2019, and I did not receive a deposit of \$4,500.00 from Grady  
25 Byrd on or before May 15, 2019, as ordered at the January 23, 2019 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 that  
6 the army pension was only about \$128.00 and my portion would be only about  
7 \$62.00. Based on what Grady did tell me, I believed the army pension that Grady  
8 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 am  
13 devastated that simply because neither one of us sent the decree to the military  
14 finance office within the 12 month deadline to do so, that he is refusing to  
15 voluntarily list me as the beneficiary. We were married for 31 years and he  
16 promised me the SBP.

17  
18 9. That I should be restored to 100% beneficiary of the \$225,000.00  
19 Veterans Group Life Insurance policy.

20 10. Based upon the foregoing, I respectfully request that this Court grant  
21 the relief requested by me in this Opposition and Countermotion.

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

24 Executed this 17 day of May, 2019.

25  
26  
27   
28 CATERINA BYRD

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 17 day of May, 2019, I caused the above and foregoing to be served as follows:

☒ [X] Electronic Service

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

Byron L. Mills, Esq.

Modonnell@millsnv.com (As listed on the service list)

  
An employee of Webster & Associates

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FILED

MAY 13 2020

*Ann L. Williams*  
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: )  
CATERINA BYRD and ) DEPT. G  
GRADY E. BYRD. ) APPEAL NO. 80548  
\_\_\_\_\_ )

BEFORE THE HONORABLE RHONDA K. FORSBERG  
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, MAY 22, 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

WEDNESDAY, MAY 22, 2019

2

P R O C E E D I N G S

3

(THE PROCEEDINGS BEGAN AT 9:50:24)

4

5 THE COURT: Good morning. We're on the record in  
6 case D-18-577701, Caterina Byrd versus Grady Byrd.

7

Counsel, your appearances for the record.

8

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

12

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

15

16 THE COURT: Okay. I do note that he was actually  
17 ordered to be here, Counsel.

18

19 MR. MILLS: That's correct, Your Honor. And as the  
20 Court is probably aware, he is a disabled veteran. He --

21

22 THE COURT: Living in the Philippines.

23

24 MR. MILLS: -- actually had come in January to  
court, when he didn't have an attorney, and on the return home  
his legs both swelled up badly, and so doctor's orders were  
not to fly.

25

THE COURT: Okay.

26

27 MR. MILLS: And I submitted actually a doctor's note  
28 saying can't fly until we figure this out --

1 THE COURT: Okay.

2 MR. MILLS: -- they're running tests. That kind of  
3 stuff. If we end up in a trial or anything in later August or  
4 something, hopefully that will be resolved and we can proceed.  
5 But as of right now he was unable to travel.

6 THE COURT: Okay. This is how the Court's going to  
7 view it. So long as he has counsel, we are okay with that.  
8 But I'm not going to have him appear telephonically long  
9 distance and him then say he didn't understand something,  
10 because I understand that was the problem --

11 MR. MILLS: That was the concern.

12 THE COURT: -- with the previous judge. So that was  
13 the concern. So the Court is going to waive his appearance  
14 today, but understand that if he no longer -- if you no longer  
15 are representing him he's in proper person. He will have to  
16 be here for every hearing.

17 MR. MILLS: Okay.

18 THE COURT: Okay?

19 MS. LAMBERTSEN: May I --

20 MR. MILLS: And I am retained, not to -- not  
21 unbundled or anything like that.

22 THE COURT: Okay.

23 MS. LAMBERTSEN: May I put our objection on the  
24 record, Your Honor?

1 THE COURT: Of course.

2 MS. LAMBERTSEN: We responded to his note. It was  
3 dated after the May 2nd hearing. The note does not indicate  
4 that he was examined; it doesn't say that there was a finding  
5 of anything. It just talks about his complaints. And so we  
6 have real problems with that note being justification for not  
7 being here when he wasn't here on May 2nd and now he's not  
8 here again today.

9 Secondly, we're concerned that he has no intention  
10 of following the Court's orders. And this is a blatant  
11 disregard. He has behaved in a manner since the January 23rd  
12 hearing of showing he has no intention of coming back. He  
13 abandoned his car -- found abandoned with the license plates  
14 removed at the LAX Airport. He's not paying the \$20,000 loan  
15 on that car. It's been repossessed by the financial company,  
16 and a \$17,000 loan and a \$13,000 loan, he's not paying those  
17 either. He's walking away from \$51,000 in debt.

18 We know that because he then changed the mailing  
19 address to her home, saying, you know, I'm not here. So those  
20 two things weigh really heavily with us, and his non-  
21 compliance to orders from the January 23rd hearing, which I  
22 know are subject to discussion today. We can get into more  
23 detail later, but I really have great concerns about his  
24 absence and that little note --



1 THE COURT: I understand, Counsel. But if we have  
2 an evidentiary hearing, which we'll talk about after, he will  
3 be required to be here. If he is not here then he will have  
4 failed to meet his obligation and it would be found in  
5 Plaintiff's behalf.

6 MS. LAMBERTSEN: Thank you.

7 THE COURT: Mr. Mills, this is your motion.

8 MR. MILLS: Thank you, Judge.

9 THE COURT: It's your motion for reconsideration, so  
10 if you'll proceed.

11 MR. MILLS: And I know you've read everything so I'm  
12 going to --

13 THE COURT: I have and then some.

14 MR. MILLS: I'll just highlight a few things and be  
15 brief. First of all, this is a motion to set aside. We filed  
16 it promptly, as soon as the order came in, so it's timely  
17 filed. We are seeking a reconsideration based on the Arab law  
18 and abuse of discretion by kind of your predecessor. We had  
19 rotating judges at that point.

20 But another thing I wanted to make sure we -- we  
21 tried to paint her as such a sympathetic person, needing this  
22 Court's -- to ride in on a white pony and save her. She could  
23 work. She worked throughout the marriage. It was only after  
24 separation that she decided that she wasn't going to work

1 anymore. And she is living with her significant other, has  
2 been for a long time. I assume that significant other is  
3 probably carrying all the bills right now; otherwise, she  
4 could -- and she could still go back to work. There's no  
5 reason why she can't work. None. So she's not the  
6 sympathetic creature that they would have her -- I mean, she  
7 has not been left destitute. She has someone to help and she  
8 could go work if she chose. There's no reason why she can't.

9           So back onto the facts. You know, we were  
10 requesting reconsideration on a couple issues, one of course  
11 is the issue of turning something that wasn't spousal support  
12 into spousal support. Okay. Their position is that it's  
13 vague, that the decree is vague. The decree can't be anymore  
14 clear. When it says -- we're talking about the part where it  
15 says \$1500 to assist with the mortgage. But it says right --  
16 right there it is not required and it is not alimony. Right  
17 -- right on there.

18           And then later, just a little bit down, it says both  
19 parties hereby agree to waive spousal support. I don't know  
20 how that can get anymore clear. That -- two different parts  
21 it says this isn't required and this is not alimony. Two  
22 different places. And by law, once alimony is waived there is  
23 no creating alimony after the decree of divorce is entered.  
24 If it wasn't granted at the time of the divorce decree, the

1 Court -- there is no alimony to modify and you can't create  
2 it. It has to be done during the pendency of the divorce.

3 And so the fact that he was making payments all this  
4 time, again, he made it real clear -- they made it real clear,  
5 again, they -- it was a joint petition that took months to get  
6 submitted -- that this was -- that they were not required  
7 payments, meaning they're voluntary payments. They're  
8 voluntary payments. She knew it said that. She reviewed it;  
9 she signed it. It said right on there these payments are not  
10 required; it is not alimony, meaning they're voluntary  
11 payments.

12 And often the court will -- a court can look at it  
13 and say, hey, look, smells like -- walks like a duck, quacks  
14 like a duck, it's a duck. And they look at the language.  
15 Well, this language -- the language that -- mere standard  
16 alimony provisions isn't here. Those cases that say that  
17 require standard alimony provisions.

18 For example, the language that everyone puts in to  
19 end upon marriage or upon the death of either party, that's  
20 the big example they use. That language isn't here. Why?  
21 It's not a required payment. So it doesn't mirror any -- the  
22 standard alimony language. It just doesn't. It's not there.  
23 In fact, again, it specifically says "not alimony."

24 So any -- and so then they want to look at, well, he

1 promised he would keep paying it. Well, based on family law  
2 and contract law, we look at the document and no promises made  
3 outside are -- carry any weight. They just don't. He could  
4 say "I'm paying you for the rest of my life." That doesn't  
5 matter, if the decree of divorce says otherwise.

6           And the parties are bound by the document, the  
7 decree of divorce that they both signed, they both agreed to.  
8 If she had second thoughts or misunderstandings, that's where  
9 60(b) is required, a 60(b) that was required, you know, within  
10 a reasonable time, which the court says -- the Supreme Court  
11 says, hey, not even six months, but it could even be less than  
12 six months.

13           Here we've got over four years before she actually  
14 filed, and she didn't file a 60(b) motion. In fact, she  
15 didn't even request or bring up 60(b) until I filed my motion  
16 to reconsider. Their motion was to enforce a decree. And so  
17 they clearly have not, you know, filed it timely. And then  
18 what basis? There is no basis for a 60(b) here. There's no  
19 mistake, there's no neglect, there's nothing other than wait a  
20 minute, I think I should get it because I've been left  
21 destitute. Because she can't say I didn't understand that  
22 this wasn't alimony, because it says it so clearly that it's  
23 not alimony.

24           Which takes us to the other one, which is the one

1 where the Court -- the other thing that we want the Court to  
2 reconsider is the Court requiring the additional \$1500 payment  
3 for the retirement pay. The Court specifically found that,  
4 yes -- acknowledged that, okay, disability pay is not  
5 divisible. That's fine. But as soon as it hits your bank  
6 account I can. Well, no, you can't.

7 By federal law and by the Howell (phonetic) case and  
8 other cases that I address, you can't go around that. You  
9 can't say it's non-divisible, but once it hits your account I  
10 can hit it. Unless, of course, if we're during the pendency a  
11 judge can consider it income and deal with it in alimony. But  
12 we're not there. It wouldn't be.

13 In this situation it would be, again, a violation of  
14 federal law to try to divide that \$3,000 -- or to make her pay  
15 15 -- him pay \$15,000 for -- for disability pay. Again, I'm  
16 not going to go through each case cite. You know, we put a  
17 lot of cases in here showing the federal law and all that fun  
18 stuff.

19 So, and again, the fact that -- what she's entitled  
20 to is half the retirement pay. Okay? And there is no  
21 retirement pay now. It was \$128. He was voluntarily paying  
22 \$1500. He can pay 5,000, 2,000, he could pay whatever he  
23 wants if it's voluntary. It does -- and a voluntary payment  
24 does not create an obligation. Okay? It just doesn't. And

1 so -- and he, again, could have promised all day long before  
2 the decree was signed. That does not mean -- again, we look  
3 at the decree. The decree says military retired pay, and that  
4 was \$128 at the time.

5 So, again, and I've already addressed the 60(b)  
6 issue, you know, Union, Petro Chemical, all those -- you know,  
7 there's several cases that deal with that and say you can't  
8 create an alimony award afterwards to -- to make up for -- for  
9 lost income from disability pay.

10 And keep in mind, these parties -- it wasn't, "Here,  
11 sign this," situation. They did emails back and forth;  
12 they've submitted some, we've submitted some. There's a lot  
13 of discussion about this decree between the two of them.  
14 Neither of them are attorneys. They both -- they drafted it,  
15 made sure it was what they wanted, and they ultimately signed  
16 it.

17 They said, well, she -- he threatened her. The only  
18 threat she -- he ever said was, okay, then I'm going to file  
19 the complaint and we'll go to court. Well, that's not grounds  
20 to set anything aside. And that's not duress, that's not  
21 fraud, that's no threat. I mean, we have a right to file --  
22 he had a right to file a complaint and proceed to court if he  
23 -- if she didn't want to sign. And what's her -- and she  
24 could have just hired an attorney and fought it, if she

1 wanted, or fought it herself. Neither of them were -- neither  
2 of them were represented at that point, Your Honor.

3 The remain -- so, Your Honor, so we'd ask you to  
4 reverse the last order, not require him to pay anything deemed  
5 that the spouse -- that is not spousal support, that he owes  
6 no money at this point, Your Honor, because it was all  
7 voluntary pay -- voluntary payments.

8 I can address my responses to her contempt issues  
9 now or I can wait, let her go, and then respond, whichever the  
10 Court would --

11 THE COURT: I will let Ms. Lambert speak and then  
12 respond.

13 MR. MILLS: Okay. Yeah.

14 MS. LAMBERTSEN: Thank you, Your Honor. There was  
15 no abuse of discretion by Judge Hardcastle, which I have to  
16 say, the document that was supplied by the Defendant  
17 shamelessly calls her "visiting judge." She was a senior  
18 judge. She was fully qualified to be able to adjudicate this  
19 issue. There's no abuse of discretion, no error in the law,  
20 and the motion to reconsider should be denied.

21 There was no error in finding that the \$1500 a month  
22 payment for mortgage assistance could not be unilaterally  
23 terminated, and that is very clear in the language that Mr.  
24 Byrd put in. On one side it may terminate if her financial

1 condition changes, the house is sold, or it's paid off, and  
2 that has to be reconciled with the ambiguous language of it's  
3 not required. Right there is a blatant ambiguity.

4           And when you look at ambiguities, the court then  
5 relied on contract interpretation, the -- looking beyond the  
6 paper, look at the conduct of the parties and what is going  
7 on. It is not true that she was an equal participant in the  
8 drafting of this document. She has a high school education,  
9 she was a wife, a mother, a homemaker. Mr. Byrd went and got  
10 two Master's degrees, a work college certification, a FEMA  
11 certification. He continued his career. He handled the  
12 finances. He told her things such as, you know, such as "I  
13 will have the following statement entered; I will find an  
14 online company that does it for cheap; I will send you the  
15 papers. If you do not sign, I will only pay you what I owe  
16 you and I will hire a lawyer to file the papers. You're not  
17 entitled to anymore money. This is your last warning. Take  
18 the deal. Last chance."

19           And when she says she's nervous, she doesn't  
20 understand what's going on, the papers seem complicated, that  
21 maybe she should talk to a lawyer, he threatens her. "Well,  
22 why you going to a lawyer? You think you're going to get more  
23 from me? Just sign the papers."

24           So under Williams, any ambiguity should be



1 interpreted against the person who provided the preparation of  
2 this document, and that would be against him.

3 He also failed his fiduciary duty, Your Honor.  
4 Under Cook, as a husband, he had a fiduciary duty to provide  
5 the documents and show her so she can make a reasonable  
6 assessment of what she's being asked to sign.

7 And on those same terms, there was no waiver of  
8 alimony in the sense that a waiver is a knowing, voluntary  
9 relinquishment of a right where you offer valuable  
10 consideration. How on earth can you say she waived alimony  
11 when she is desperate -- saying she needs the \$1500? He knew  
12 the mortgage was \$1,933 because he did all the financing. He  
13 told her, "Don't talk to anybody regarding the mortgage.  
14 Don't say anything to them. I will make up some information  
15 on the money." So he did not provide dollar numbers for her  
16 to look at.

17 So he did the loan, he sent her the documents, she  
18 signed them, sent them back to him, and he didn't -- there was  
19 no waiver. The Court correctedly (sic) under Lake and under  
20 Schindler (phonetic) and even looking at the newest case -- I  
21 think it's Godkill (phonetic) --

22 MR. MILLS: Cogod (phonetic).

23 MS. LAMBERTSEN: Yes. I'm trying to -- that, you  
24 know, alimony and spousal support are words of broad usage.

1 It's necessities, it's life requirements, it's things that a  
2 person needs to live on.

3 The court correctly found that \$1500 mortgage  
4 payment was definitely a necessity, definitely fell with --  
5 under Lake and Schindler descriptions, and even Buchanan  
6 (phonetic). It's an inexhaustible list of things to consider  
7 when you're discussing the term "alimony." So most definitely  
8 there was no abuse of discretion in considering that that item  
9 was alimony.

10 Under Gardner (phonetic) and Larimore (phonetic),  
11 the district court has wide discretion in determining alimony.  
12 She took his sworn statement; she looked at the volumes of  
13 pleadings. I put it in our reply, Your Honor, because it  
14 really hasn't been brought to this Court's attention how long  
15 this has been going on or how many documents were filed, how  
16 the efforts were made to try to resolve this before we got  
17 here.

18 And in considering all that, the Garnder, Larimore,  
19 wide -- wide discretion determining alimonies. And those  
20 findings would be upheld if supported by substantial evidence  
21 in the record and substantial evidence what a sensible person  
22 may accept as adequate.

23 And it's just inequitable. They're married 31  
24 years, moved 16 times, she's packing, unpacking the home. The

1 most she ever earned in the entire marriage was \$17,000, which  
2 pales in comparison to his 116.

3           The biggest -- one of the huge pieces of evidence in  
4 support is his request -- his responses to our request for  
5 admissions. He admitted that he tells her that he's going to  
6 get 3,017 a month -- excuse me -- \$3,017 a month, which she's  
7 entitled to half, which is \$1508, that he's going to give her  
8 that money as long as he lives; that he -- when he dies she's  
9 getting the survivor benefits. "Just sign the papers and you  
10 get all I said you would get forever." So clearly he was in  
11 control of doing this. There was no abuse of discretion.

12           The analysis of the retirement benefit under Shelton  
13 (phonetic), Shelton is not superseded or overturned by Howell.  
14 In fact, a case that came out subsequent to Howell is the Lesh  
15 (phonetic) case. It's not a Nevada case. I give you that.  
16 But it's out of North Carolina. It says nothing in Howell  
17 prohibits a state court from enforcing an agreement by  
18 ordering a service member who unilaterally stops making  
19 payments -- he was legally obligated to make -- to resume.

20           And also upheld, an Alaska case under Gross v.  
21 Wilson. When you look at what happened in this case, he  
22 didn't -- he didn't just, you know, way down the road, four  
23 years later, start to become disabled. It was at the time of  
24 divorce. He mislead her into thinking that she was -- that he

1 was getting \$3,017. But when you look at the exhibit they  
2 provided, that was actually -- there's an exhibit that they  
3 provided called B.

4           At the time of the divorce he wasn't getting the  
5 \$3,107. He was only getting 128. He mislead her into  
6 believing that half of the 3,000 is going to be hers; he's  
7 going to pay her the 1500. And he continued to pay her that  
8 from the divorce until September 1st of '18. This is  
9 misrepresentation right here.

10           Under the analysis that we did in our counter-motion,  
11 while the court did not consider a 60(b), there is a 60(b)(6)  
12 which would allow the Court to find that there's any reason  
13 that justifies relief. Now, we're not saying we need to get  
14 to that place because we believe that the order is valid.  
15 There was no abuse of discretion. The record substantially  
16 supports what the court's findings were.

17           If this Court's inclined to not do that, then  
18 60(b)(6) definitely allows relief for Ms. Byrd for a loss of  
19 alimony, a loss of this \$1500 contract payment under Shelton,  
20 to now be destitute? He has not paid her a dime. There's no  
21 stay in that payment. He just doesn't pay her. He hasn't  
22 given her a penny. She's relied on friends, family, \$900 from  
23 her roommate to help make ends meet. She -- this has gone on  
24 way too long. We have repeatedly asked, I think in four

1 different correspondence, there's no stay. Please provide the  
2 money. She needs that to live on. And he's absolutely  
3 refused.

4 But if the Court does entertain this, it's not --  
5 it's any other reason that justifies relief, and there are  
6 extraordinary circumstances. We cite the Federal District  
7 Court cases that support the extraordinary circumstances.

8 But I -- we don't even -- you know, unless we're  
9 going to be hearing argument that would support that, Judge  
10 Hardcastle didn't abuse discretion under Lake, Bender,  
11 Schindler, and the new case, this is certainly walks like a  
12 duck, talks like a duck, is a -- and there was no waiver,  
13 knowingly, voluntary. What did she give up in consideration  
14 for waiving alimony? It didn't happen because she got the  
15 1500 to pay for the mortgage. So there's an ambiguity there.  
16 It goes in her favor.

17 We are requesting attorney fees for today. We did  
18 -- you know, she was awarded them on January 23rd and he's not  
19 paying any of those either. Those were up till the 23rd of  
20 January. And of course she's now here trying to have her --  
21 defend herself here and paying fees. He's got 116,000. She's  
22 had zero, zero since September 1st. He needs to be held  
23 accountable and pay that.

24 I think that's why he's not here. I really think he

1 knows he's supposed to pay that. And he would have been held  
2 in contempt and put into jail for failure to pay. What he's  
3 doing is causing her great, great harm.

4 We provided emails; he's admitted to them that he,  
5 you know, first time I hear from your lawyer I'm going to stop  
6 communicating with you. I will not communicate with you --  
7 your lawyer. She was not in the driver's seat. He said good  
8 luck. He was the one that did this. The ambiguity needs to  
9 be in her favor. Thank you, Your Honor.

10 THE COURT: Counsel, rebuttal?

11 MR. MILLS: Briefly, Your Honor. Again, just to  
12 correct something, actually while they were together -- before  
13 separation she actually did run the books. She was the one  
14 handling all the finances. She was well aware of what income  
15 was whose and that kind of stuff.

16 And Counsel kind of blends things a little bit in  
17 her argument, like she brings up the loan to get the house,  
18 and that's -- she said he said, "I'll just take care of it."  
19 That is not the decree. Those are two different things. She  
20 had the decree for months. She had -- I mean, they went back  
21 and forth. She raised concerns. He said sign -- I mean,  
22 those are two different issues. She -- it wasn't a situation  
23 where he said, "You need to sign this right now." That took  
24 over -- that was over an extended period of time.

1           And she says she has -- again, him saying I'm not  
2 going to talk to you if you get an attorney -- we'll go  
3 through attorney -- that's not grounds to set aside. That's  
4 not a threat. It's -- it's what it is. You can say either we  
5 work together or we'll both get attorneys and file. And he  
6 can say you're not going to get any better. That again isn't  
7 a threat. That's not duress. It's not any of the grounds  
8 which the Court can use to set aside a decree of divorce  
9 that's now five years old.

10           And she brings -- I'll keep it -- Codod (phonetic)  
11 when she -- or Cogod (ph), when we were talking about spousal  
12 support. Cogod, Buchanan, those aren't relevant to this case.  
13 She's trying to use them to say, see, she should be entitled  
14 to alimony. And if this were the original divorce case, then,  
15 yes, Cogod all of a sudden becomes relevant. But Cogod's not  
16 relevant. It's how we create alimony, what she's entitled to  
17 in making alimony. We can't -- we're not there at this point  
18 -- or I guess as long as we reconsider and reverse the prior  
19 judge's decision -- and I meant no disrespect by calling her a  
20 visiting judge.

21           THE COURT: No, I understand. I didn't take it at  
22 that.

23           MR. MILLS: Okay, good.

24           She -- Cogod and that doesn't apply because there is

1 no alimony. And, again, she says it's vague. It's not vague.  
2 It says it's not required. It says that it's not alimony.  
3 And waiving alimony there doesn't have to be consideration.  
4 There is not a situation where you have to say "I'm waiving  
5 alimony in response to this." Well, she is getting things.  
6 She is getting other things. I mean, there's other life  
7 insurance policies she's still on. There's lots that she got  
8 out of this. But consideration, technically not required with  
9 a waiver. Anyone can waive alimony, and she had every right  
10 to and did. That's real clear.

11 And she had the -- she recognized that she had the  
12 right to go get an attorney. She threatened it. She  
13 threatened it and chose not to. That's waiver. That's her  
14 waiving the right to an attorney.

15 So she's argued that she should be entitled to  
16 alimony, but alimony has not been ordered. Promises out --  
17 again, promises outside the decree are not relevant. He could  
18 promise all he wants. That's not grounds to set aside the  
19 decree. We look -- it's contract law. We look at -- we look  
20 at the contract and we look at that -- and family law. This  
21 is the decree. That's what we are following.

22 She cites a -- and when we get to the distribution  
23 of any retirement or disability, she cites a non Nevada case  
24 that's not -- not relevant in Nevada and, frankly, flies in



1 the face of all the Supreme Court cases that say -- and I can  
2 quote them -- that specifically say you can't say -- you can't  
3 all of a sudden say this is alimony or this is a payment  
4 that's required. And it looks like that which was not allowed  
5 during the -- because it's disability pay under Howell. It  
6 just doesn't fly.

7 60(b)(6) she talked about. 60(b)(6) has a new one  
8 that says and anytime for any just reason.

9 THE COURT: It's a catch-all.

10 MR. MILLS: It's a catch-all.

11 THE COURT: Uh-huh.

12 MR. MILLS: But it's still subject to reasonable  
13 time. It's still subject -- it's not outside of it. Nowhere  
14 in there does it say except for item 6, which doesn't require  
15 reasonable time.

16 We are now five years later. She had the right to  
17 an attorney, she had the right to review it, she had the right  
18 to set it aside. Did not take that time and did not exercise  
19 that right. And so we're asking that our motion be granted,  
20 Your Honor.

21 THE COURT: Okay. The Court has reviewed all of the  
22 documents in this action very carefully, until two in the  
23 morning last night, to be exact, including that.

24 MR. MILLS: Oh, dear.

1           THE COURT: So, the Court was very clear. I've  
2 reviewed the marital settlement agreement and the divorce --  
3 decree of divorce. On page 3 the Court actually finds that  
4 there is grounds to set aside the order, but it's a little  
5 different than what I believe Mr. Mills believes. The Court,  
6 when I've read -- when I read the provision that we're talking  
7 about in number 4, it says Grady will pay to Caterina \$1500  
8 extra a month to assist her with mortgage. If her finan --  
9 with the home mortgage. If -- period. If her financial  
10 situation changes or if the home is sold or paid off, this  
11 payment may cease. So it gave a change of circumstance that  
12 could make it go away.

13           The next sentence says this is not alimony. That's  
14 the part that I agree with counsel, but it's not alimony. You  
15 specifically said and repeated but it's a property division  
16 that they agreed to and then you're -- the complaint that  
17 Counsel has on this side, that Mr. Mills has for Defendant, is  
18 that "and is not required." That is in the sentence with  
19 alimony.

20           Because they're restated that alimony is not going  
21 to be paid to either (indiscernible) it isn't required under  
22 this decree, but it doesn't make that not a property division.  
23 The way to -- for the property division to end was if there's  
24 a change, a financial situation change, the home is sold or

1 it's paid off. Those are the three requirements in order --  
2 had that not been situated then I could maybe agree with Mr.  
3 Mills that it could be extrapolated to that fact.

4           The fact that that part is not required is in the  
5 alimony payment sentence tells me that that is the case. So  
6 this is a property division, whether it was given property in  
7 lieu of alimony this was a very long marriage. I recognize  
8 that. I believe 1983. This was a very long marriage. It's I  
9 guess (indiscernible) any longer had it been today.

10           However, so the Court orders that -- that it finds  
11 that Judge Hardcastle's ruling that it's alimony is not  
12 correct. But the property division is still going to occur  
13 and she's entitled to \$1500 unless the Court can -- unless  
14 Defendant can prove that its financial situation has changed,  
15 the home is sold or it's paid off. That's going to be my  
16 ruling on that issue.

17           As far as the other issue that gave me more pause,  
18 the issue about disability in military retirement has been --  
19 there's a lot of case law that goes onto it. I mean, I've  
20 read through all of it -- most all of it anyway, I should say.  
21 I'm sure there's some I missed. The Court finds that the  
22 parties have an enforceable agreement as to the military pay.  
23 The question is kind of twofold.

24           First of all, when the parties agreed to it were

1 they agreeing to it being the entirety of the payment?  
2 Because that's what he made for years. Under Shelton vs.  
3 Shelton, which is 119 Nev. 492, it specifically states that  
4 although states cannot divide payments as community property,  
5 states are not preempted from enforcing orders that are res  
6 judicata or from enforcing contracts or from reconsidering  
7 divorce decrees, even when disability pay is involved.

8           So Shelton -- I mean, the part that Mr. Mills was  
9 citing starting at Mancell (phonetic), how the Mancell case  
10 went all the way down, the concern is that these parties  
11 entered an agreement. The question becomes he was making a  
12 payment, to my knowledge, of \$1500. Everybody's admitting  
13 that he's made a payment of \$1500 out of the retirement pay.  
14 So the -- the due -- the problem for Mr. Mills's client is how  
15 -- you're -- the question becomes is was that agreement in the  
16 -- the marital settlement agreement, the way they cited it was  
17 -- let me get to that page. I believe it's before that one.  
18 It states, under number 1, it states Caterina is entitled to  
19 50 percent of his retired pay as long as he lives.

20           The question becomes twofold: one was that \$1500  
21 and then he reduced it by disability, which has been found to  
22 be not appropriate under Gema vs. Gema (ph). It cites that  
23 you cannot go in and reduce your amount that you owe a spouse  
24 by now claiming it's disability. So that's the first question

1 for the Court that the Court does not know the answer to.

2 And the second question is, is the amount that he --  
3 so the other question is, is did he agree to this by -- either  
4 by action or by statement in here that retired pay includes  
5 disability.

6 So, Mr. Mills, you clearly have an uphill battle  
7 with this Court to prove that that wasn't what has happened  
8 for this many years. But the Court is going to set an  
9 evidentiary hearing and going to -- and going to order that  
10 that portion of it is going to be set for trial, because I  
11 think that that's the questions that the Court has. How did  
12 those two things happen? Because parties can contract  
13 disability pay. It's stated in Gema; it's also stated in  
14 Shelton. Shelton also refers to Hisgin vs. Hisgin (ph), which  
15 is a South Dakota case. But those are the two cases that  
16 cited that, and cert was denied on Shelton on that issue for  
17 federal law.

18 So that hasn't been overturned. That is the current  
19 -- that they can contract disability. The Court couldn't have  
20 found that if that was the issue already. But also your  
21 client couldn't have made an agreement, then after he starts  
22 collecting, "Oh, I want to reduce it," by his own action.  
23 Because Gema vs. Gema states that --

24 MR. MILLS: Understand.

1           THE COURT: -- that he couldn't have done that. I  
2 mean, I believe both counsel understand the law on that. So  
3 the Court's going to set an evidentiary hearing on that issue  
4 to determine if, one, what they had agreed to, because the  
5 ambiguity is that -- what was he paying? Part of it's going  
6 to be whether he -- the burden that Mr. Mills's client's going  
7 to have to be is if that's what he's paid all along was that  
8 the agreement? So that's the one thing, because then it's a  
9 contractual question.

10           And I agree with Mr. Mills that the contract has to  
11 be enforced, and that's why I also said that the previous part  
12 that no alimony is -- unfortunately I don't know how that  
13 helps your client because this would have been an old contract  
14 prior to the 2018 tax change. So the Court's going to set an  
15 evidentiary hearing as to that issue.

16           As far as payments being made currently, Counsel, I  
17 expect your client to be making the payments that he's  
18 ordered. That has not changed. He's been making it for that  
19 many years. He doesn't get to come in here and say, "Oh, now  
20 I changed my mind," and do that until the Court has had an  
21 opportunity to hear evidence. The Court is going to consider  
22 that in his good faith in dealing with this matter.

23           And he needs to be making the payments, first of  
24 all, to Plaintiff as for the \$1500 towards the mortgage

1 because that was a property issue, and he is to make --  
2 continue to make the retirement pay that he's been making.  
3 You can't just all of a sudden say, "Oh, now I changed my  
4 mind." The Court's going to expect that to be paid until it's  
5 ordered otherwise. So the burden is actually going to be on  
6 Defendant to determine what his -- the contract actually says  
7 and how it's been paid historically.

8           As far as attorney's fees, I'm going to reserve that  
9 for trial because I think that's going to become a deciding  
10 issue. But both counsel need to strongly advise -- especially  
11 Mr. Mills -- strongly advise your client that I am going to  
12 consider attorney's fees if it's found that he's just changed  
13 his mind after he entered this agreement, he's been doing it  
14 all along, and that it was a contract that included all of his  
15 pay, including disability.

16           So we are going to set -- when is our next -- do you  
17 think you will need a half day or full day, Counsel?

18           MS. LAMBERTSEN: Probably --

19           MR. MILLS: Half day. I don't think -- unless --

20           MS. LAMBERTSEN: Well, it's the one --

21           MR. MILLS: It's just the two parties and what they  
22 agree.

23           MS. LAMBERTSEN: -- the one issue, right, narrow it  
24 down to the one issue [cross-talk] --

1 THE COURT: Yes. And attorney's fees of course.  
2 MS. LAMBERTSEN: Yeah, and attorney's -- so I think  
3 a half day should suffice.  
4 MR. MILLS: I think so.  
5 THE COURT: Okay.  
6 THE CLERK: Okay. I was looking for a full day  
7 because I wasn't sure.  
8 THE COURT: Yeah.  
9 THE CLERK: Let me see what I can find in half days.  
10 THE COURT: I believe we have a half day in August.  
11 Look at August 12th.  
12 THE CLERK: Okay.  
13 MR. MILLS: If it could be later in August --  
14 THE COURT: Later in August is better.  
15 MR. MILLS: -- because I know he's got his medical  
16 stuff set up --  
17 THE COURT: Okay.  
18 MR. MILLS: -- for earlier in August.  
19 THE COURT: Because he will need to be here. But  
20 the rest of the order is that order is set aside under those  
21 two -- under those two -- the contract's going to control for  
22 right now until I have an evidentiary hearing.  
23 MR. MILLS: Okay.  
24 THE COURT: So I agree with you that that portion



1 needs to be set aside because it did add alimony when alimony  
2 was specifically reiterated several times in the agreement  
3 that it's not, but it is still a property division that she is  
4 entitled to.

5 MS. LAMBERTSEN: While she's searching for a date,  
6 may I ask for some clarification? We've gone -- if we're  
7 looking at the 1500 -- the 1500 that he's been paying and he  
8 stopped that September 1st, that's nine months now, Your  
9 Honor. So September, October, November, December, January,  
10 February, March, April, May, nine months times three is  
11 \$27,000 that she's been deprived of. He's -- he needs to give  
12 her a lump sum and then get, you know, caught up. She's --

13 THE COURT: Okay. I'm going to reserve the lump sum  
14 portion for trial, but it is -- he's going to make the first  
15 payment by June 1st, start paying immediately, so she is not  
16 required to go seek help from everybody to help pay for the  
17 bills that's she's agreed to.

18 MS. LAMBERTSEN: And then on a secondary note,  
19 because she's so behind, 27,000 in the hole, she doesn't have  
20 attorney fees for trial. Do I need to bring a motion for  
21 temporary -- or not temporary fees, but attorney fees to  
22 prepare for trial? He's got 116,000. She's now in the hole.

23 THE COURT: Counsel, Ms. Lambertsen makes a good  
24 point. Because of the fact that he didn't pay, then the Court

1 would -- he just can't unilaterally do that. He did  
2 unilaterally do it with -- he's been doing it for all these  
3 years before he came to court.

4 My concern is that I do want both parties to have  
5 counsel. I'm going to order that \$5,000 be paid to Ms.  
6 Lambertsen to -- just so that counsel can move forward,  
7 because there was attorney's fees pled in all the other  
8 pleadings to move forward in this action, since we're setting  
9 aside that and moving forward, to determine that amount.

10 So that will be -- also be counted against what he  
11 believes he -- that he wasn't paying her. If it's found -- if  
12 it's found that he should have been paying it, that will be  
13 credited to that amount. In the meantime --

14 MS. LAMBERTSEN: And can those please --

15 THE COURT: And then I'll withhold the whole issue  
16 of attorney's fees at -- for trial.

17 MR. MILLS: Okay.

18 MS. LAMBERTSEN: Can they be paid soon? Because  
19 we're going to have to start working on --

20 THE COURT: I want the 5,000 -- \$5,000 to be paid  
21 within the next two weeks.

22 MS. LAMBERTSEN: Thank you.

23 THE CLERK: Okay. So I have two different trial  
24 dates available, August 12th at 9 a.m. or October 21st at 9

1 a.m.?

2 THE COURT: No, we need October because he has  
3 medical stuff in August.

4 MR. MILLS: Right.

5 THE COURT: It will have to be October.

6 THE CLERK: Okay. So October 21st at 9 a.m.

7 MR. MILLS: What -- I'm sorry. What date was that?

8 THE CLERK: October 21, 9 a.m.

9 THE COURT: Is that staff one, Counsel -- or Madam  
10 Clerk?

11 THE CLERK: Yeah, it's staff one.

12 THE COURT: Okay. That's staff one.

13 THE CLERK: But it's --

14 THE COURT: And understand he's going to be making  
15 the payments to you. He is ordered to make those payments to  
16 you moving forward. So if that doesn't occur, I expect a  
17 motion brought before this Court under emergency situation.

18 MS. LAMBERTSEN: Yes, yes, yes.

19 THE COURT: I don't want her to be in that --

20 MS. LAMBERTSEN: Okay.

21 THE COURT: -- since unfortunately my calendar --  
22 it's getting better. If you noticed we actually had some in  
23 August that I cleaned -- cleared off, so we're getting there.

24 MR. MILLS: I appreciate that. What time was that

1 now?

2 THE CLERK: It's 9 a.m. and it is half day.

3 MR. MILLS: Okay.

4 MS. LAMBERTSEN: The issue of our countermotion,  
5 Your Honor, I understand that some items are being deferred  
6 till trial, namely the contempt of court.

7 THE COURT: Uh-huh (affirmative).

8 MS. LAMBERTSEN: There's a huge one in -- Your  
9 Honor, that I am hoping we can rectify today. When it has to  
10 do with the survivor benefit plan, when Mr. Byrd retired in  
11 1999 Ms. Byrd was present, they signed a retired survivor  
12 benefit plan and she was one hundred percent beneficiary of  
13 the survivor benefit.

14 THE COURT: Are you talking about the new wife?

15 MS. LAMBERTSEN: Yes, Your Honor.

16 THE COURT: Okay. You haven't argued that. Go  
17 ahead and argue that. I'll let you both have -- you'll have  
18 an opportunity to be heard, Mr. Mills.

19 MR. MILLS: Thank you.

20 MS. LAMBERTSEN: The -- neither party, you know --  
21 of course he's pointing the finger at her. She is not the  
22 military person in the know, and I will just say for  
23 minimizing the argument neither party sent it to the  
24 Department of Finance and Accounting Services. So during the

1 period of time in August of last year, when we were reaching  
2 out to him to try to get copies of documents when she realized  
3 she doesn't have anything in the event of his -- if he passes,  
4 we didn't get feedback on the survivor benefit.

5           What we learned in documents that were produced  
6 recently is that on September 28th Mr. Byrd had had  
7 correspondence with the survivor benefit people and said I  
8 didn't terminate this on Caterina, you know, I wanted to  
9 reinstate it. And on September 28th, they sent him  
10 correspondence saying, Mr. Byrd, you can voluntarily put her  
11 back on as a survivor benefit by filling out this particular  
12 form.

13           We got that information on April 2nd. Three days  
14 later I'm corresponding with Mr. Byrd's counsel saying this is  
15 great news. Great news. He can voluntarily do it --

16           THE COURT: Get it filled out, uh-huh.

17           MS. LAMBERTSEN: He can put her back on. This is  
18 something that was awarded to her in the decree. She was  
19 there. She was the military wife. She was there for the 31  
20 years. He's refused. He's refused.

21           We would like an order that pursuant to the  
22 September 28th letter, the correspondence, and pursuant to  
23 what was in the decree of divorce that he voluntarily put her  
24 back on. That -- it's -- there is no reason to deprive her of

1 this asset that was in the decree. There's no reason to not  
2 do it voluntarily. And the fact that he sat on this and never  
3 gave us this information until April 2nd is shameful.

4 THE COURT: Counsel?

5 MR. MILLS: Your Honor, and she correctly states  
6 that it was both their fault. She had a year to submit the  
7 paperwork and didn't, and by federal law that's it. There is  
8 this letter -- or email she talks about that says, hey, do you  
9 want to reinstate her? I don't know if that -- whoever was  
10 talking could really do it or not because the law required it  
11 to be done within one year. She --

12 THE COURT: Counsel, he had a contract though. He  
13 contracted with her that she would get the survivor benefits.

14 MR. MILLS: That's correct.

15 THE COURT: And he is the one in the know. He would  
16 have more of the duty to -- to move forward on that agreement  
17 that he has agreed to with her. I'm not seeing why he hasn't  
18 done this already.

19 MR. MILLS: Why he hasn't --

20 THE COURT: He knew that he wasn't supposed to put  
21 this new wife on. He knew that, because he entered this  
22 agreement. So he went and did something against this  
23 agreement.

24 MR. MILLS: That is correct, Your Honor.

1 THE COURT: So I wouldn't rectify it --

2 MR. MILLS: The way he looked at is that she didn't  
3 do what she was obligated to do and that was reach out and  
4 provide her information within the year, and then --

5 THE COURT: The Court's going to order he fill out  
6 the paper, that's -- that that's filled out immediately. I  
7 would like it prepared and submitted to -- submitted within 30  
8 days.

9 MS. LAMBERTSEN: Thirty days. Thank you, Your  
10 Honor.

11 THE COURT: Anything else I missed, Counsel?  
12 Understand your guys's motions were very lengthy so --

13 MS. LAMBERTSEN: Yes, yes.

14 THE COURT: -- on different things. So I'm trying  
15 to make sure I covered everything.

16 MS. LAMBERTSEN: Your Honor, it's very reflective of  
17 a great deal of thought that went into this.

18 The other item in the countermotion has to do with a  
19 life insurance plan.

20 THE COURT: Life insurance, \$1,000 free life  
21 insurance --

22 MS. LAMBERTSEN: Yes.

23 THE COURT: -- on D's life that was awarded to --

24 MS. LAMBERTSEN: Yes.

1 THE COURT: Okay.

2 MS. LAMBERTSEN: And we provided as an exhibit --  
3 and I don't know if Mr. Mills has seen the totality of these  
4 exhibits. They're -- okay. And we actually got them from  
5 him, from his client. So there is an exhibit in our exhibits,  
6 Exhibit 13, where Defendant's -- it's a Defendant document,  
7 DEF-193. It's showing effective date December 21, 2000, the  
8 coverage amount is 225,000.

9 THE COURT: Is this the VyStar Credit Union  
10 accidental death insurance --

11 MS. LAMBERTSEN: This is --

12 THE COURT: -- or is this the Veterans' Group Life  
13 Insurance after [cross-talk] --

14 MS. LAMBERTSEN: The Veterans' Group Life Insurance.

15 THE COURT: Okay. And that's the one under -- under  
16 paragraph (3) was agreed that would be -- she would be  
17 entitled to all death benefits under those policies?

18 MS. LAMBERTSEN: Yes, Your Honor. And so --

19 THE COURT: Counsel, is there a reason that was --  
20 that's not been so?

21 You're saying that hasn't been done either?

22 MS. LAMBERTSEN: Well, no, he went --

23 MR. MILLS: That's a question here.

24 MS. LAMBERTSEN: -- he went and changed it.



1 THE COURT: Okay. I want to make sure what we've  
2 got going on.  
3 MS. LAMBERTSEN: Okay. So he --  
4 THE COURT: I'm not -- I just -- the bottom line is  
5 what happened?  
6 MS. LAMBERTSEN: Okay. So if you look at DEF-193,  
7 as of January 14th, 2019, this year, Caterina is the primary  
8 beneficiary, 100 percent lump sum payment of this 225.  
9 THE COURT: Okay.  
10 MS. LAMBERTSEN: You -- there's a certificate on the  
11 next page, still talking about the 225, the issue date,  
12 December 21, 2000 --  
13 THE COURT: So she still gets it, correct, Counsel?  
14 MS. LAMBERTSEN: Yes.  
15 MR. MILLS: She still gets the 200,000. That's  
16 never changed.  
17 THE COURT: Okay.  
18 MS. LAMBERTSEN: No, no, no, no, 225.  
19 THE COURT: It's the one thousand -- it's the 1,003  
20 life insurance? It's the one thousand --  
21 MS. LAMBERTSEN: 225. If you look at DEF-194, he  
22 handwrites this. So now the date -- this date is March 14th  
23 of 2019. So on March 14th --  
24 THE COURT: Okay.

1 MS. LAMBERTSEN: -- he has added -- he's reduced her  
2 to 89 percent, reduced her down to 200, put his new wife on,  
3 and that's contrary -- that -- he cannot unilaterally go in  
4 and change an asset in a decree, something she's getting, by  
5 -- on his own.

6 THE COURT: Counsel, is that your understanding, he  
7 reduced it to 89 percent?

8 MR. MILLS: No, no, no, no, no.

9 THE COURT: Okay. I'm just trying to make sure  
10 we're (indiscernible) because --

11 MR. MILLS: Her benefit hasn't changed. At the time  
12 -- and I provided this documentation to her already, DEF-205,  
13 that at the time of the divorce her coverage amount was  
14 \$200,000.

15 THE COURT: But in this, this agreement, Counsel, it  
16 doesn't say an amount. It says she's entitled to this policy  
17 and this policy and this policy. Period.

18 MR. MILLS: I understand that.

19 THE COURT: If things change for color adjustment,  
20 it doesn't say she doesn't get it. It doesn't say -- so is it  
21 that she gets -- he gets more so she only still gets that  
22 portion?

23 MR. MILLS: Well, yeah, what she's wanting to get  
24 is --

1 THE COURT: Is that what your argument is?

2 MR. MILLS: It's 200,000. And then he has the right  
3 over time, and there's certain periods he can do it, so many  
4 years, he can go in and increase it by \$25,000. So after the  
5 divorce he went in and increased it by \$25,000 and named --

6 THE COURT: How does he do that? How does he do  
7 that? Does he make a payment? Does he --

8 MR. MILLS: It's a -- it's a paper -- it's paperwork  
9 that he submits.

10 THE COURT: So it doesn't change -- it doesn't  
11 change --

12 MR. MILLS: It's a request for coverage change.

13 THE COURT: Okay. So --

14 MR. MILLS: And so her 200 is still there.

15 THE COURT: Okay.

16 MR. MILLS: She's still a policyholder of \$200,000.  
17 He wanted to give his new wife some retirement -- or not  
18 retirement -- some coverage, too, so he added \$25,000 and made  
19 her the beneficiary of that \$25,000.

20 The Plaintiff is still the beneficiary of the  
21 hundred percent, 200,000 that she got at the time of the  
22 divorce. That has never changed.

23 THE COURT: My question -- the question for the  
24 Court becomes was there a cost entailed for him to add this

1 \$25,000?

2 MR. MILLS: Is he paying more? Yes.

3 THE COURT: Yes.

4 MR. MILLS: He gets to raise it, but then he has to

5 pay more to get that additional \$25,000.

6 THE COURT: Okay. Counsel, we're going to reserve

7 that for trial to see what that amount is. Because if he's at

8 a new -- a separate -- it's almost like he added an addendum

9 to increase it from the amount she had. That becomes a

10 question.

11 But I do agree with you, it didn't say that it's

12 only partial, partial. Could he have done it in a better way?

13 Perhaps. Perhaps. But maybe --

14 MR. MILLS: He could have gotten a separate one.

15 THE COURT: -- it was a cheaper way to do it. He

16 could have.

17 MS. LAMBERTSEN: But -- but, Your Honor, please

18 look. On this paper we got from him they were still married

19 December 21 of the year 2000. They were still married. They

20 didn't divorce until --

21 THE COURT: I understand.

22 MS. LAMBERTSEN: So at the time of divorce --

23 MR. MILLS: The request change was -- it was 2015.

24 November 1st, 2015.

1 MS. LAMBERTSEN: No. She -- no. This -- this --

2 MR. MILLS: Counsel, I provided this form to you.

3 MS. LAMBERTSEN: This states right here --

4 MR. MILLS: That's the request for change, right  
5 here.

6 MS. LAMBERTSEN: Okay. Well, then he changed -- but  
7 it's not the amount she's getting. He may go up to 250,000,  
8 300,000, whatever he wants, but as of the date of divorce --

9 THE COURT: Okay. Because -- because I believe  
10 she's being protected, at least the amount that was agreed to,  
11 without knowing whether extra money was going to be paid to  
12 get this extra insurance -- there's a difference if he had to  
13 pay more money to have like a separate amount of insurance  
14 above the amount they agreed to. That's what Counsel is  
15 stating.

16 MR. MILLS: Yes, Your Honor.

17 THE COURT: So Court's going to reserve that issue  
18 for trial because I don't know the answer because I don't know  
19 what he paid for it. So that will be -- so it will be a trial  
20 issue -- will be -- that one will be included in the trial  
21 issue.

22 MR. MILLS: Okay.

23 MS. LAMBERTSEN: I'm wondering --

24 THE COURT: So she's still getting the benefit, at

1 least, the 200 of what she originally thought she was getting  
2 to begin with, so I don't think there's a harm if something  
3 happens --

4 MS. LAMBERTSEN: Well the --

5 THE COURT: -- right now.

6 MS. LAMBERTSEN: What she got is the certificate,  
7 this -- which is also in this exhibit that talks about the  
8 225,000 and the issue -- in the year 2000 during marriage, so.

9 THE COURT: That will be a trial issue, Counsel.  
10 I'm not -- I'm not taking away from but I need to know how  
11 that occurred, what was the amount, her understanding, and  
12 what was -- what is he paying extra to have this added extra.

13 MS. LAMBERTSEN: Okay.

14 THE COURT: If he's paying an extra amount for an  
15 extra benefit, then that should be his benefit and his  
16 separate -- because he's paying for it with his own funds  
17 then.

18 MS. LAMBERTSEN: Can we then ask for an order that  
19 he produce all documents and correspondence with this?

20 THE COURT: Discovery is going to be open, and I'm  
21 going to order that you produce that, Counsel, already --

22 MR. MILLS: And I have.

23 THE COURT: And you're doing that. If you've done  
24 it all --

1 MS. LAMBERTSEN: Well, here's the thing --  
2 THE COURT: If you have.  
3 MS. LAMBERTSEN: -- I'm worried that they cherry  
4 pick what they get. Because it's a federal entity --  
5 THE COURT: Okay.  
6 MS. LAMBERTSEN: -- we can't issue a subpoena for  
7 it. So I need everything --  
8 THE COURT: Counsel, discovery is open. You can  
9 request the request for production documents, especially since  
10 I granted you attorney's fees it will give you some leeway to  
11 do that.  
12 MS. LAMBERTSEN: I haven't. We haven't gotten every  
13 single thing.  
14 THE COURT: I understand.  
15 MS. LAMBERTSEN: What he gave me is --  
16 MR. MILLS: [Cross-talk] --  
17 THE COURT: I understand part of the order from --  
18 from Judge Bixler was he had to make reasonable efforts to be  
19 doing this. But if you've done it, I would like -- you know,  
20 you're going to have to file a motion to compel if that's a  
21 problem, if he hasn't complied. Okay?  
22 MS. LAMBERTSEN: Okay. All right. Thank you.  
23 THE COURT: We'll leave it for that.  
24 Anything else I haven't covered? I think we've