

CERTIFICATE OF SERVICE

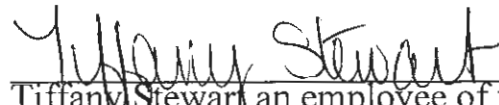
I HEREBY CERTIFY that on the 6th day of July, 2020, I caused to be served the instant **APPELLANT'S APPENDIX TO OPENING BRIEF- VOLUME IV** to all interested parties as follows:

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

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

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Appendix to Defendant's Motion for Order Time to Reconsider Denial of Audiovisual Appearance filed on October 15, 2019	AA500-507
Appendix to Defendant's Motion for Reconsideration filed on April 8, 2019	AA178-198
Audiovisual Transmission Equipment Appearance Consent filed on October 10, 2019	AA449-450
Decree of Divorce filed on June 5, 2014	AA001-012
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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
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Plaintiff's Opposition to Defendant's Motion for Reconsideration and Countermotion filed on April 23, 2019	AA199-237
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

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
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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
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Transcript Re: Motion – January 23, 2019 filed on May 13, 2020	AA097-138
Transcript Re: Status Check – May 2, 2019 filed on May 13, 2020	AA238-252

1 covered everything. Okay.

2 Ms. Lambertsen, if you'll prepare the order -- or,

3 no, Mr. Mills, you actually requested the reconsideration.

4 MR. MILLS: I did.

5 THE COURT: It was granted in part but denied in

6 part.

7 MR. MILLS: Got it.

8 THE COURT: So if you will prepare the order from

9 today and submit it to Counsel for her signature.

10 MR. MILLS: You got it.

11 THE COURT: So we have a calendar call day for a

12 trial, Madam Clerk? We need a calendar call as well.

13 THE CLERK: Right.

14 MR. MILLS: Oh, okay.

15 THE CLERK: The calendar call will be October 17th

16 at 11 a.m.

17 THE COURT: Your client does not need to be here for

18 the calendar call, but he does need to be here for the

19 evidentiary, of course.

20 MR. MILLS: Okay.

21 THE COURT: Thank you, Counsel.

22 MS. LAMBERTSEN: Thank you.

23 (Proceedings concluded at 10:40:16)

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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

AA354

1 is waived for today (VT 9:51:49). However, he is not going to appear
2 telephonically (VT 9:51:33). If he is Pro Se, his appearance at hearings is
3 mandated.

4 Notwithstanding, he will be required to appear at the Evidentiary Hearing set by
5 the Court. Attorney Mills advised the court of the doctor's note explaining the
6 Defendant's absence. Attorney Lambertsen noted her objections regarding
7 Defendant's non-appearance.

8 **THE COURT FURTHER FINDS** that after review of the pleadings on
9 file, including the Decree of Divorce and Marital Settlement Agreement, there are
10 grounds to set Aside the order filed about April 5, 2019 relating to the \$1,500 per
11 month payments by the Defendant to the Plaintiff to assist with Plaintiff's home
12 mortgage being deemed alimony.

13 **THE COURT FURTHER FINDS** that the monthly payment to Caterina
14 in the amount of \$1,500 was a property distribution, not alimony. The Court's
15 determination was based upon the following facts:

16 1. No. 4 of the Decree of Divorce (pages 2&3) states:

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

22 The Decree/Property Settlement Agreement specifically stated the payment of
23 \$1,500 was not alimony and the words "is not required" is in the sentence with
24 alimony (VT 10:18:20, 10:18:50), and this agreement of the parties was restated
25 under alimony. Thus, Judge Hardcastle's prior ruling that that the payment of
26 \$1,500 was for alimony was incorrect, this is a property distribution only.

27 **THE COURT FURTHER FINDS** that the obligation of \$1,500 per month
28 payment from the Defendant to the Plaintiff as a property distribution ends if one
of the three financial situations occurs. As a change of financial circumstances

1 has not been proven, the property division will still occur and Grady is obligated
2 to pay \$1,500 per month, unless he can prove Plaintiff's financial situation
3 changes or the house was paid off or sold. The court recognizes that this was a
4 very long marriage, 31 years. (VT 10:19:00)

5 **THE COURT FURTHER FINDS** that the parties may have an enforceable
6 agreement as to the military pay. The question in this case is two-fold,

7 1. Were the parties agreeing to the payment being the entirety of the
8 payments because that is what he made for years? In *Shelton v. Shelton*, 119
9 Nev. 492 (Nev. 2003) it states, although states can't divide payments as
10 community property, states are not preempted from enforcing orders that are Res
11 Judicata or from enforcing contracts or from reconsidering Decrees, even when
12 disability pay is involved. The concern is that these parties entered an agreement,
13 the parties admit that the Defendant made \$1,500 per month payments to the
14 Plaintiff for years. (VT 10:21:17). On Page 2. #1 of the Decree of Divorce, it
15 states:

16 "Caterina Byrd is entitled to 50% of Grady's Byrd's United
17 Statements Army Retired Pay as long he lives." (Decree page 2 #1)."

18 The question becomes two-fold:

19 1. Was it \$1,500 and then Grady reduced it by disability, which has been
20 found to be inappropriate pursuant to *Gemma v. Gemma*? In that case, it cites that
21 you cannot reduce the amount you owe your spouse by now claiming it is
22 disability.

23 2. Did Grady agree to this payment by his own action or by a statement
24 that retired pay includes disability pay?

25 The Court is going to set an Evidentiary Hearing to determine 1) what was
26 the agreement of the parties, 2) if Grady was paying the amount all along, was that
27 the agreement.

28 **THE COURT FURTHER FINDS** that the Defendant has the burden of
proving that the above two questions is not what has been happening for all these

1 years (VT 10:23:10). Grady has the burden to determine the intent of the
2 agreement and how it has been paid historically. Parties can contract disability pay.
3 (VT 10:22:16).

4 **THE COURT FURTHER FINDS** that until this Court hears evidence and
5 orders otherwise, Grady is obligated to pay the \$1,500.00 per month for the
6 mortgage because this was a property issue and he needs to continue the \$1,500.00
7 military payment. (10:23:54). After making payments for many years, he does not
8 get to change his mind and not make the payments. In making the payments, the
9 Court will consider it in his good faith dealing with this matter.

10 **THE COURT FURTHER FINDS** that the issue of attorney's fees is
11 deferred until trial. However, it will consider an award of attorney's fees to
12 Caterina if it is found that Grady just changed his mind after he had been paying
13 along.

14 **THE COURT FURTHER FINDS** that, in the interim, there should be an
15 award of \$5,000 to Caterina's for attorney's fees to assist with the trial. If the
16 Court rules in favor of Caterina and awards a lump sum, then this payment will be
17 credited against the amount owed by Grady.

18 Based on the foregoing,

19 **IT IS HEREBY FURTHER ORDERED** that the Defendant's Motion to
20 for Reconsideration of the Court's order filed about April 5, 2019 is granted in
21 part and denied in part (VT 10:39:07). The payment of \$1,500 to Plaintiff shall
22 not be designated as alimony. However, the \$1,500 is part of the property
23 distribution with specific terms as to when the payment is to end. The Defendant
24 shall continue to pay the \$1,500 payment to Plaintiff to assist her with her house
25 payment until such time as he can prove her financial situation changed, the house
26 has been sold or paid off.

27 **IT IS FURTHER ORDERED** that this matter is set for an Evidentiary
28 Hearing to determine what the agreement was between the parties relating to
payment of retirement/disability pay and whether the parties formed a contract



1 obligating Defendant to pay a portion of his disability pay to the Plaintiff.
2 Pending the Evidentiary Hearing, Defendant is to continue to pay the additional
3 \$1,500 payment related to military retirement pay.

4 **IT IS FURTHER ORDERED** that the Defendant must be present for the
5 Evidentiary Hearing. (VT 10:25:20, 10:40:04).

6 **IT IS FURTHER ORDERED** that the above mentioned \$3,000 payment
7 from the Defendant to the Plaintiff shall be made by June 1, 2019 and continue
8 each month until further order of this Court. Any issue related to potential
9 arrears is deferred until the Evidentiary Hearing.

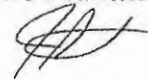
10 **IT IS FURTHER ORDERED** that the Plaintiff's Countermotion issue
11 regarding the \$225,000 Veterans Group life insurance is deferred until trial (VT
12 10:32:54). Plaintiff argues that she receives the full \$225,000 and Defendant
13 argues that the Plaintiff only receives \$200,000. The Court will be looking to see if
14 the Defendant is paying extra or an additional fee for the additional \$25,000 life
15 insurance. That the decree of divorce does not list a dollar amount, rather, it states
16 that the Plaintiff is entitled to the life insurance. (VT 10:35:11).

17 **IT IS FURTHER ORDERED** that the issue of attorney's fees is deferred
18 until the Evidentiary Hearing. However, the Plaintiff is awarded interim attorney
19 fees in the amount of \$5,000 and Defendant is ordered to pay those fees within two
20 weeks of this hearing. If the Court determines that the Defendant should have
21 been paying the \$1,500 per month and he just changed his mind and did not pay, it
22 will consider an award of attorney fees to the Plaintiff.

23 **IT IS FURTHER ORDERED** that if the Defendant fails to pay the
24 amounts as ordered, then Plaintiff's counsel may file an Emergency Motion for
25 Contempt.

26 **IT IS FURTHER ORDERED** that if needed, the Plaintiff's counsel may
27 file a Contempt Motion for Discovery.

28 **IT IS FURTHER ORDERED** that the Plaintiff's Countermotion is granted
in part. The Defendant shall complete the paperwork needed so that the Plaintiff is



1 the beneficiary of the Defendant's military Survivor Benefit Plan within 30 days of
2 this date. That the Defendant had an agreement in the decree of divorce that the
3 Plaintiff would get the Survivor Benefit that he did something against the decree
4 by placing his new wife on the Survivor Benefit Plan and the court wants this
5 rectified. (VT 10:31:45)

6 **IT IS FURTHER ORDERED** that the following dates were set by the
7 Court:

- 8 1. Calendar Call- October 17, 2019 at 11:00 a.m.
- 9 2. Trial- October 21, 2019 at 9:00 a.m.

10 The Defendant's presence at the Calendar Call will not be required, but he must
11 be in attendance for the trial.

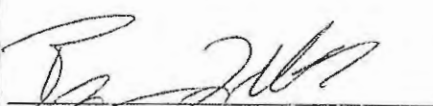
12 **IT IS FURTHER ORDERED** that Mr. Mills is to prepare the Order from
13 today's hearing and submit to Ms. Lambertsen for review and signature.

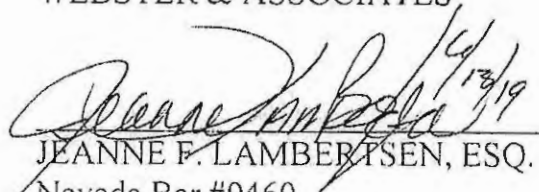
14 DATED this 24th day of June, 2019

15
16 
17 DISTRICT JUDGE

18 Rhonda K. Forsberg
WEBSTER & ASSOCIATES

19 MILLS & ANDERSON

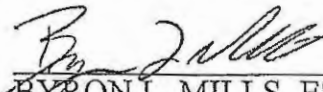
20 
21 BYRON L. MILLS, ESQ.
22 Nevada Bar No. 6745
23 502 South Ninth Street
24 Las Vegas, Nevada 89101
Attorney for Defendant

25 
26 JEANNE F. LAMBERTSEN, ESQ.
27 Nevada Bar #9460
28 6882 Edna Avenue
Las Vegas, Nevada 89146
Attorney for Plaintiff

1 ensure that he is available at this telephone number on the date and time of the
2 hearing. He further understands that due to the unpredictable nature of the court
3 proceedings, his hearing may be called at a time, other than the scheduled time. It
4 is further understood that his failure to be available at the above stated telephone
5 number will constitute a non-appearance.

6 DATED this 27th day of June, 2019.

7 MILLS & ANDERSON

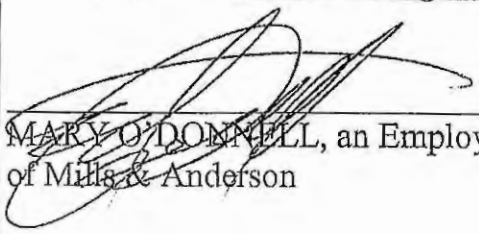
8 
9 BYRON L. MILLS, ESQ.
10 Bar No. 6745
11 703 S. 8th Street
12 Las Vegas, Nevada 89101
13 Attorney for Plaintiff

14 **CERTIFICATE OF ELECTRONIC SERVICE**

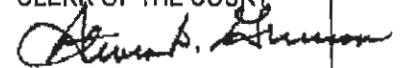
15 I hereby certify that on the 27th June, 2019, service of the **NOTICE OF**
16 **TELEPHONIC APPEARANCE** were made by the following means:

17 Electronic service on Wiznet addressed to:¹

18 XX anitawebster@embarqmail.com

19 
20 MARY O'DONNELL, an Employee
21 of Mills & Anderson
22
23
24
25
26
27
28

¹ -e-service details attached



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

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD

12 Plaintiff,

13 v.

14 GRADY EDWARD BYRD

15 Defendant.

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

ORDER FROM THE JULY 18, 2019
HEARING

16 This matter having come before the court on the 18th day of July 2019, for
17 the Plaintiff's Emergency Motion for an Order to Show Cause why the Defendant
18 should not be Held in Contempt of Court and for Attorney's Fees and Costs,
19 Plaintiff, CATERINA ANGELA BYRD (hereinafter "Plaintiff"), present with her
20 unbundled attorney, JEANNE F. LAMBERTSEN, ESQ., of the law firm of
21 WEBSTER & ASSOCIATES and Defendant, GRADY EDWARD BYRD
22 (hereinafter "Defendant"), not present, Defendant's attorney, BYRON MILLS,
23 ESQ., of the law firm of MILLS & ANDERSON, present, the Court having heard
24 the argument of counsel, finds and orders the following:
25
26
27
28

W:\Family\Byrd, Caterina\Pleadings\Drafts\Order from 7.18.19 hearing V2.wpd

RECEIVED

AUG 01 2019

Department G

AA362

1 **COURT NOTES** that no opposition has been filed by the Defendant.

2 **COURT FURTHER NOTED** that the Court Clerk attempted to reach the
3 Defendant at the phone number he provided to the Court, but the call failed to go
4 through to the international number.
5

6 Ms. Lambertsen requested an Order to Show Cause for Defendant's failure
7 to pay Plaintiff \$3,000.00 per month pending the Evidentiary Hearing and
8 \$5,000.00 in attorney's fees, which was due on June 6, 2019. Defendant is
9 \$6,000.00 in arrears in the amount of \$3,000.00 for June 2019 and \$3,000.00 for
10 July 2019.
11

12 Ms. Lambertsen requested sanctions in the amount of \$500.00 for each
13 violation (failure to pay \$3,000.00 for June 2019, failure to pay \$3,000.00 for July
14 2019, and failure to pay \$5,000.00 attorney's fees by June 6, 2019) for a total of
15 \$1,500.00 in sanctions
16

17 Ms. Lambertsen requested Defendant be ordered to pay the additional
18 \$1,500.00 that Defendant was ordered to pay at the January 23, 2019 hearing
19 towards the mortgage starting on February 1, 2019. Defendant is in arrears in
20 the amount of \$6,000.00 for February, 2019 through May, 2019.

21 Ms. Lambertsen argued that the arrears the Court was deferring until the
22 time of the Evidentiary Hearing were for the period from September, 2018 through
23 January of 2019 (the prior Court Order from the January 23, 2019 hearing). Ms.
24 Lambertsen requested additional sanctions in the amount of \$2,000.00 for each
25 instance of nonpayment (February 2019, March 2019, April 2019 and May 2019).
26

27 Ms. Lambertsen requested additional fees and costs for having to bring the
28

1 Motion before the Court.

2 Mr. Mills stated Defendant informed him that he is not going to pay the
3 Plaintiff as ordered until the Evidentiary Hearing.

4 **IT IS HEREBY ORDERED** that Plaintiff's Order to Show Cause is granted.
5 Defendant shall show cause as why he should not be held in Contempt of Court
6 for his blatant disregard of the Court's Orders. The Order to Show Cause shall
7 be set for October 21, 2019, at 9:00 a.m., to be heard at the time of the
8 Evidentiary Hearing. If counsel can determine the bank where the annuity
9 originates, or any other source of money for the Defendant, counsel may obtain
10 a garnishment for the totality of the arrears in the amount of \$11,000.00
11 (\$3,000.00 due June 2019, \$3,000.00 due July 2019 and \$5,000.00 attorney fees
12 due June 6, 2019) collectible by any lawful means. In the alternative, the issue
13 shall be deferred to the time of Trial.
14

15 **IT IS FURTHER ORDERED** that Plaintiff's requests for arrears from
16 September 1, 2018 to May 31, 2019 (9 months x \$3,000 = \$27,000.00) and
17 sanctions is deferred until the Non-Jury Trial October 21, 2019;
18

19 **IT IS FURTHER ORDERED** that additional attorney fees are awarded in
20 favor of Plaintiff against Defendant in the amount of \$1,500.00, collectible by any
21 lawful means.
22

23 ///

24 ///

25 ///

26 ///

27

28

1 **IT IS FURTHER ORDERED** that Ms. Lambertsen shall prepare the Order
2 to Show Cause.

3 **IT IS FURTHER ORDERED** Calendar call is set for October 17, 2019, at
4 10:00 a.m.; and the Order to Show Cause and Non-Jury Trial is set for October
5 21, 2019, at 9:00 a.m.
6


7 **DATED** this 8th day of August 2019.


8
9
10
11 
12 **DISTRICT COURT JUDGE** *VP*

Rhonda K. Forsberg

13 Submitted by:
14 **WEBSTER & ASSOCIATES**

Reviewed as to form and content:
15 **MILLS & ANDERSON**

16 
17 **JEANNE F. LAMBERTSEN, ESQ.**
18 Nevada Bar No. 9460
19 6882 Edna Ave.
20 Las Vegas, Nevada 89146
21 Counsel for Plaintiff, unbundled

22 
23 **BYRON L. MILLS, ESQ.**
24 Nevada Bar No. 006745
25 703 S. 8th Street
26 Las Vegas, Nevada 89101
27 Counsel for Defendant
28

Steven D. Grierson

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

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 CATERINA ANGELA BYRD

17 Plaintiff,

18 v.

19 GRADY EDWARD BYRD

20 Defendant.

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

**NOTICE OF ENTRY OF ORDER FROM
THE JULY 18, 2019 HEARING**

21 PLEASE TAKE NOTICE that an Order from July 18, 2019 Hearing was
22 entered in the above-entitled action on the 9th day of August, 2019, a copy of
23 which is attached.

24 Dated this 9th day of August, 2019.

WEBSTER & ASSOCIATES

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

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

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
WEBSTER & ASSOCIATES, and that on this 9th day of August, 2019, I
caused the above and foregoing document to be served as follows:

- ☒ [X] by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26 to be sent via facsimile, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

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

Byron Mills, Esq.
Modonnell@millsnv.com



An employee of Webster & Associates



1 **ORDR**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
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12 e-mail: jlambertsen@embargmail.com
13 Attorney for Plaintiff, unbundled

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 CATERINA ANGELA BYRD
18 Plaintiff,

19 v.

20 GRADY EDWARD BYRD
21 Defendant.

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

ORDER FROM THE JULY 18, 2019
HEARING

22 This matter having come before the court on the 18th day of July 2019, for
23 the Plaintiff's Emergency Motion for an Order to Show Cause why the Defendant
24 should not be Held in Contempt of Court and for Attorney's Fees and Costs,
25 Plaintiff, CATERINA ANGELA BYRD (hereinafter "Plaintiff"), present with her
26 unbundled attorney, JEANNE F. LAMBERTSEN, ESQ., of the law firm of
27 WEBSTER & ASSOCIATES and Defendant, GRADY EDWARD BYRD
28 (hereinafter "Defendant"), not present, Defendant's attorney, BYRON MILLS,
ESQ., of the law firm of MILLS & ANDERSON, present, the Court having heard
the argument of counsel, finds and orders the following:

W:\Family\Byrd, Caterina\Pleadings\Drafts\Order from 7.18.19 hearing V2.wpd

RECEIVED

AUG 01 2019

Department G

AA368

1 **COURT NOTES** that no opposition has been filed by the Defendant.

2 **COURT FURTHER NOTED** that the Court Clerk attempted to reach the
3 Defendant at the phone number he provided to the Court, but the call failed to go
4 through to the international number.

5
6 Ms. Lambertsen requested an Order to Show Cause for Defendant's failure
7 to pay Plaintiff \$3,000.00 per month pending the Evidentiary Hearing and
8 \$5,000.00 in attorney's fees, which was due on June 6, 2019. Defendant is
9 \$6,000.00 in arrears in the amount of \$3,000.00 for June 2019 and \$3,000.00 for
10 July 2019.

11
12 Ms. Lambertsen requested sanctions in the amount of \$500.00 for each
13 violation (failure to pay \$3,000.00 for June 2019, failure to pay \$3,000.00 for July
14 2019, and failure to pay \$5,000.00 attorney's fees by June 6, 2019) for a total of
15 \$1,500.00 in sanctions

16
17 Ms. Lambertsen requested Defendant be ordered to pay the additional
18 \$1,500.00 that Defendant was ordered to pay at the January 23, 2019 hearing
19 towards the mortgage starting on February 1, 2019. Defendant is in arrears in
20 the amount of \$6,000.00 for February, 2019 through May, 2019.

21 Ms. Lambertsen argued that the arrears the Court was deferring until the
22 time of the Evidentiary Hearing were for the period from September, 2018 through
23 January of 2019 (the prior Court Order from the January 23, 2019 hearing). Ms.
24 Lambertsen requested additional sanctions in the amount of \$2,000.00 for each
25 instance of nonpayment (February 2019, March 2019, April 2019 and May 2019).

26 Ms. Lambertsen requested additional fees and costs for having to bring the
27
28

1 Motion before the Court.

2 Mr. Mills stated Defendant informed him that he is not going to pay the
3 Plaintiff as ordered until the Evidentiary Hearing.

4 **IT IS HEREBY ORDERED** that Plaintiff's Order to Show Cause is granted.
5 Defendant shall show cause as why he should not be held in Contempt of Court
6 for his blatant disregard of the Court's Orders. The Order to Show Cause shall
7 be set for October 21, 2019, at 9:00 a.m., to be heard at the time of the
8 Evidentiary Hearing. If counsel can determine the bank where the annuity
9 originates, or any other source of money for the Defendant, counsel may obtain
10 a garnishment for the totality of the arrears in the amount of \$11,000.00
11 (\$3,000.00 due June 2019, \$3,000.00 due July 2019 and \$5,000.00 attorney fees
12 due June 6, 2019) collectible by any lawful means. In the alternative, the issue
13 shall be deferred to the time of Trial.

14 **IT IS FURTHER ORDERED** that Plaintiff's requests for arrears from
15 September 1, 2018 to May 31, 2019 (9 months x \$3,000 = \$27,000.00) and
16 sanctions is deferred until the Non-Jury Trial October 21, 2019;

17 **IT IS FURTHER ORDERED** that additional attorney fees are awarded in
18 favor of Plaintiff against Defendant in the amount of \$1,500.00, collectible by any
19 lawful means.

20 ///

21 ///

22 ///

1 **IT IS FURTHER ORDERED** that Ms. Lambertsen shall prepare the Order
2 to Show Cause.

3 **IT IS FURTHER ORDERED** Calendar call is set for October 17, 2019, at
4 10:00 a.m.; and the Order to Show Cause and Non-Jury Trial is set for October
5 21, 2019, at 9:00 a.m.
6


7 **DATED** this 8th day of August 2019.
8


9
10
11 
12 **DISTRICT COURT JUDGE** *VP*

Rhonda K. Forsberg

13 Submitted by:
14 **WEBSTER & ASSOCIATES**

Reviewed as to form and content:
15 **MILLS & ANDERSON**

16 
17 **JEANNE F. LAMBERTSEN, ESQ.**
18 Nevada Bar No. 9460
19 6882 Edna Ave.
20 Las Vegas, Nevada 89146
21 Counsel for Plaintiff, unbundled

22 
23 **BYRON L. MILLS, ESQ.**
24 Nevada Bar No. 006745
25 703 S. 8th Street
26 Las Vegas, Nevada 89101
27 Counsel for Defendant
28

FILED 1

MAY 13 2020

Ann L. Lamb
CLERK OF COURT

TRANS

COPY

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

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

BEFORE THE HONORABLE RHONDA K. FORSBERG
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

THURSDAY, JULY 18, 2019

APPEARANCES:

The Petitioner: CATERINA BYRD
For the Petitioner: JEANNE F. LAMBERTSEN, ESQ.
6882 Edna Avenue
Las Vegas, Nevada 89146
(702) 562-2300

The Petitioner: GRADY E. BYRD (Not Present)
For the Petitioner: BYRON L. MILLS, ESQ.
703 S. Eighth Street
Las Vegas, Nevada 89101
(702) 386-0030

1 LAS VEGAS, NEVADA

THURSDAY, JULY 18, 2019

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

3 (THE PROCEEDINGS BEGAN AT 09:13:59)

4
5 THE COURT: Good morning, we are on the record in
6 the case D-577701, Caterina Byrd v. Grady Byrd. Counsel
7 your appearances for the record.

8 MS. LAMBERTSEN: Yes, good morning, Your Honor.

9 Jeanne Lambertsen, Bar Number 9460, on behalf of
10 the plaintiff, Ms. Caterina Byrd, who is present, Your
11 Honor.

12 MR. MILLS: And good morning. Byron Mills, 6745
13 here on behalf of Grady Byrd, Your Honor.

14 THE COURT: Okay. This is on today for wife's
15 emergency motion for order to show cause why husband should
16 not be held in contempt for fees and costs. There's been no
17 opposition filed; is that correct, Counsel?

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

19 THE COURT: All right. Ms. Lambertsen, this is
20 actually your client's motion. I have read everything here
21 on it and I'm a little perplexed of what's going on here
22 with Mr. Byrd, but I will allow Mr. Mills to address that at
23 his turn, okay?

24 MS. LAMBERTSEN: All right, thank you. May she

1 sit?

2 THE COURT: She can have a seat, please.

3 MS. BYRD: Thank you.

4 MS. LAMBERTSEN: Your Honor, I have procedural
5 items I would like to place on the record substantive.

6 THE COURT: Uh-huh (affirmative).

7 MS. LAMBERTSEN: Procedurally, under EDCR Chapters
8 2 and 5, this Court is able to grant our motion because of
9 the failure to provide an opposition can be found --

10 THE COURT: Understand.

11 MS. LAMBERTSEN: -- to understand that this motion
12 has merit. That being said, substantively, we have really
13 two -- three big categories of relief that we are
14 requesting.

15 THE COURT: Uh-huh (affirmative)

16 MS. LAMBERTSEN: The most easy to discuss is this
17 Court's orders from the May 22 hearing --

18 THE COURT: Uh-huh (affirmative).

19 MS. LAMBERTSEN: -- where Mr. Byrd had a duty to
20 continue the \$3,000 a month ongoing obligation pending the
21 evidentiary hearing or further orders of Court. That 3,000
22 was to be deposited on June 1, the first of each month until
23 the hearing. That did not happen. Counsel and I had
24 requisite EDCR 5.502 telephone conference and that's the

1 motion. We are asking that he be -- those 3,000 plus 3,000
2 for July be -- that he has to immediately pay.

3 The other order that the Court had -- this is
4 another category -- was the \$5,000 in attorney's fees.

5 THE COURT: Uh-huh (affirmative).

6 MS. LAMBERTSEN: And that was to be paid 14 days
7 after the May 22nd hearing, which was June 6th, which
8 discussed that as well. The client did not receive that, so
9 that is another sanctionable failure to pay violation of the
10 Court order. We are asking for that amount.

11 So right now, I have identified at least three
12 failures to comply with the Court orders, \$500 for each that
13 we are asking for the \$1500 in sanctions.

14 There is another category that I wanted -- that I
15 raised in the motion from the May 22nd hearing wherein this
16 Court found that the \$1500 a month that was paid toward the
17 mortgages pending the home being saled -- sold, paid off or
18 her finances changed, that's ongoing. He can't unilaterally
19 stop that.

20 THE COURT: Uh-huh (affirmative).

21 MS. LAMBERTSEN: And as well as the other \$1500
22 because it's undisputed that he had been paying her that and
23 that needs to be ongoing pending the evidentiary. He needs
24 to show that -- you know, why that shouldn't happen under

1 contract principles.

2 Those -- when Judge Hardcastle made orders that,
3 commencing February 1, the orders of Judge Hardcastle said
4 the \$3,000 must be ongoing, that 3,000 has to be ongoing and
5 he is not to stop that and that's supposed to be February 1
6 and then it would be March, April, May and then we were
7 here, you know, for May.

8 THE COURT: Uh-huh (affirmative).

9 MS. LAMBERTSEN: So it's our position that this
10 Court, while it was deemed incorrectly, Hardcastle did label
11 it as alimony, this Court found that this ongoing needs to
12 continue. So since there was an order, an order of the
13 Court, that effective February 1 he was to do that, we are
14 asking for the February, March, April and May. That's
15 another four months of the \$3,000.

16 I do know this Court made orders that arrears are
17 deferred until trial. So it's our position that those
18 arrears really cover the section of time, you know,
19 outside -- you know, pending the evidentiary hearing,
20 September 1st when he stopped -- and he admitted he stopped
21 September 1 -- until the Court made these orders to start
22 February 1. We are looking at that September, October,
23 November, December, January as the arrears period. That is
24 -- that is a section that was, you know, deemed arrears in

1 the prior Court order.

2 So we are looking at those four months that is the
3 \$3,000 ongoing that he should do because of this Court
4 finding that, you know, the first 1500 was property. He has
5 a duty, he can't unilaterally just terminate it, absent her
6 consent or an order of the Court. And then he has a
7 contract under -- obligation under the second 15 that he
8 should continue pending the hearing.

9 So we are asking for some -- you know, relief
10 under substantive matters, the Court look at the order that,
11 the February one, to make orders were in full force and
12 effect. There was no stay of them. There was no setting
13 aside of them; that it was a categorization of, you know, it
14 can't be alimony, but a finding that they did apply in the
15 property settlement agreement. Then we got the June one to
16 July and then we have the attorney fees.

17 So in totality, there are seven events of not
18 payment. There are four from February to May, that's four
19 months there. That would be 500 sanction for each one of
20 those. This Court's June one and July, that's another two,
21 and then the \$5,000 for attorney's fees is the other
22 sanctionable.

23 I got seven failures to comply with the orders.
24 And that 7 times \$500, \$3500 and we are asking for fees and

1 costs. We can do a memorandum of fees and costs for the
2 Court.

3 Ms. Byrd is -- is -- her financial condition has
4 deteriorated even more so. She is out of position work, we
5 don't know if we could stay on case. She has maxed out her
6 credit card at \$24,000. We have provided a copy to
7 defendant's counsel through our discovery process. He has
8 requested documents.

9 The other set of documents he has asked for is a
10 lot of information on the tenant that is in her home that
11 she is renting to, the \$900 --

12 THE COURT: Uh-huh (affirmative).

13 MS. LAMBERTSEN: -- wanted his bank accounts and
14 itemization of how he is spending his grocery -- grocery
15 money, are they commingling of groceries. He became so
16 frustrated with even having to deal this, he doesn't want to
17 rent from a home where he has subjected to having to do
18 these things. We did object, we didn't produce those, and
19 her stress level is off the charts in the house.

20 He said, I'm going to go find another place to
21 live where I don't have to deal with this. And he moved out
22 June. So, now she has lost her tenant, she's trying to find
23 another one to help offset these costs. But she is a wreck
24 and trying to find someone that will live in a home and, you

1 know, rent out a room has been increasingly difficult.

2 So everything's going on credit cards. She is
3 borrowing the money from her mom. I know Mr. Mills want an
4 accounting of how much she has come from the mom --

5 THE COURT: Uh-huh (affirmative).

6 MS. LAMBERTSEN: -- and we trying to, you know,
7 get that. But she -- if you can wrap your head around the
8 fact that since September 1st, she has been coming to court,
9 she's been doing the right thing, trying to get relief from
10 this Court. Help, you know, keep this ongoing. And he has
11 blatantly refused since September 1.

12 And I -- you can look at the record we have, at
13 least orders for the February to May, and this one is in
14 June to July. Our hope -- we put in our motion our hope is
15 that he would be here present for this hearing because one
16 of the things that we think that is going on --

17 THE COURT: Counsel, I do have a note here that
18 says it is possible for us to get him on the phone
19 telephonically.

20 What are we doing with your client? Why is he not
21 here again? I mean --

22 MR. MILLS: Well, he's not coming --

23 THE COURT: I'm sure he's in the Philippines.

24 MR. MILLS: -- and he won't likely come.

1 THE COURT: He probably will never come here, he
2 has no choice but to be here for an evidentiary hearing. He
3 understands.

4 MR. MILLS: And I made that clear to him, Your
5 Honor, and this -- that --

6 THE COURT: You can only --

7 MR. MILLS: I can't tell --

8 THE COURT: -- tell him, I know.

9 MR. MILLS: I can't tell you whether he's going to
10 even be able to make it for that or not.

11 THE COURT: Well, it's not be able to make it,
12 he's ordered to make it.

13 MR. MILLS: I don't -- I understand that, Your
14 Honor. I understand, and I understand the Court's orders.
15 I have told him this Court's orders and his
16 responsibilities.

17 I did not prepare an opposition because I don't
18 have one. He informed me that he is not going to pay until
19 after the -- until the evidentiary hearing, basically.

20 Like counsel, I don't know if my -- what -- if my
21 status as counsel will continue until then, but -- we are
22 having communi -- a little bit of communication issues.
23 But if -- if I stay on, I will do my best to make sure --
24 well, no. He is aware of the Court's orders, Your Honor.

1 THE COURT: Okay. I understand, Counsel. That is
2 all of the representations you could clearly make on the
3 issue.

4 MR. MILLS: Thank you.

5 THE COURT: Okay.

6 MR. MILLS: And we tried -- I did do a telephonic
7 appearance notice. We did try to get ahold of him this
8 morning and, for whatever reason, it did not go through.

9 THE COURT: Okay.

10 MR. MILLS: We tried a couple of different things
11 and we couldn't get it to go through. I usually, to get
12 ahold of him when we can, make him call me.

13 THE COURT: Counsel, how is your client -- I'm
14 kind of interrupting, Ms. Lambertsen --

15 MS. LAMBERTSEN: Oh.

16 THE COURT: -- but I'm trying to be find a
17 solution here for your client --

18 MS. LAMBERTSEN: Thank you.

19 THE COURT: -- as well. Because him saying, I'm
20 just not going to pay is not going to be acceptable to this
21 Court.

22 How does he receive his funds to live, sir --
23 Mr. Mills? I'm going to look at your client's financial
24 disclosure form.

1 MR. MILLS: Yeah. He -- he receives -- he has
2 three different disability payments that come from the
3 military, different departments of the military.

4 THE COURT: And he receives retirement from the
5 military, as well; is that correct?

6 MR. MILLS: Like \$118 or something like that. The
7 retirement is almost nothing. It's all disability and he
8 receives it directly into his accounts, I assume. I have
9 never asked him that, but I assume it's a direct deposit. I
10 don't know that for sure.

11 MS. LAMBERTSEN: There was -- if I may. There was
12 a financial disclosure form he filed in January, I think it
13 was, and it had more information. This amended one, he only
14 attached one source. There is an annuity. There's a
15 1,100-and-something dollar annuity. And my --
16 unfortunately, my pleadings don't --

17 MR. MILLS: And I didn't bring all of that.

18 THE COURT: -- go back that far.

19 MR. MILLS: I'm sorry, Counsel. I didn't bring
20 all of that either.

21 THE COURT: I can look at that in the file.

22 MR. MILLS: The file has become voluminous.

23 MS. LAMBERTSEN: Yeah. And -- and my -- my only
24 -- and then through discovery, there was, you know, bank

1 rec -- you know, there was a statement that listed some
2 banks where I think -- but --

3 MR. MILLS: I know we have provided all of our --

4 THE COURT: It looks like he gets --

5 MR. MILLS: -- bank records --

6 THE COURT: -- Social Security disability of
7 \$2237. He get VA of 2984 -- VA disability. He gets
8 department -- I think you are talking about CRSC monthly
9 3 --

10 MS. LAMBERTSEN: No, it's something out of --

11 THE COURT: -- 227.

12 MR. MILLS: That's also a --

13 MS. LAMBERTSEN: It's a thousand -- \$1100 --

14 THE COURT: That's all I'm seeing --

15 MS. LAMBERTSEN: Oh.

16 MS. BYRD: It's part of the (indiscernible).

17 MS. LAMBERTSEN: Yeah. It was from the Department
18 Vets --

19 THE COURT: Okay.

20 MR. MILLS: And I only know --

21 MS. LAMBERTSEN: -- I think it's --

22 MR. MILLS: -- the three sources you just
23 mentioned, Your Honor.

24 THE COURT: That's what I'm seeing on this last

1 one.

2 MS. LAMBERTSEN: But if you go look at the
3 attachments to the January one --

4 THE COURT: The January --

5 MS. LAMBERTSEN: The attachment --

6 THE COURT: I was looking at your -- I was looking
7 at June when you were looking at January.

8 MS. LAMBERTSEN: Yeah. The June one, he doesn't
9 have much as far as -- as far as the attachments. January
10 he put all of his attachments on there. And there is
11 something -- is it Prudential?

12 MR. MILLS: I don't -- I'm sorry, I don't look at
13 all of that either, Counsel.

14 THE COURT: I can look at January, Counsel. I
15 found it. January 18, I'll look at that.

16 My concern is there are accounts.

17 (Telephone rings)

18 THE COURT: Or, sorry, that is me and it shouldn't
19 be.

20 MS. BYRD: Oh, I thought it was mine.

21 THE COURT: That's okay, it's me for a change. I
22 even jumped. I usually jump when it comes from that side.

23 MR. MILLS: Yes.

24 THE COURT: Even back here I jumped because I'm

1 usually turn it off, but -- okay.

2 I'm looking in his current financial disclosure
3 form, Counsel. I still show OPM USARMY 1,315. I show Social
4 Security disability 2176. VACRSC is -- it has two numbers,
5 but it's 2897, plus 3228. Those are numbers I'm seeing on
6 here, Counsel.

7 MS. LAMBERTSEN: Uh-huh (affirmative).

8 THE COURT: My concern is where are the bank
9 accounts. Look, if he wants to be blatant about this, he's
10 going to find himself in trouble, Counsel. Because, look,
11 he can't disregard orders like that and think that he can
12 stay in the Philippines and hide from this -- this Court.
13 That's not going to be allowed.

14 I'm looking at the rest of his affidavit --
15 Counsel. I see no bank accounts listed on any of his
16 financials disclosure form. Clearly, if he has got direct
17 deposit, he has got --

18 MR. MILLS: And I -- I was guessing, Your Honor --

19 THE COURT: -- financial accounts.

20 MR. MILLS: -- because I don't know -- I don't
21 know that.

22 THE COURT: I understand. I'm looking at the
23 actual one, even I'm going from January.

24 MR. MILLS: -- I don't know facts.

1 THE COURT: I show loans. I don't show -- I'm
2 showing the Hyundai, a Chevrolet, a Ford. This is his
3 entire assets he lists: A Ford automobile, a Hyundai and a
4 Chevy automobile, this is on the January one. Clearly, he
5 has other assets because, by your own statement, he gets
6 direct deposit on these things to a bank account.

7 MR. MILLS: Again, you asked me and I didn't know
8 that question --

9 THE COURT: I understand.

10 MR. MILLS: -- so I'm guessing that --

11 MS. LAMBERTSEN: He -- he --

12 MR. MILLS: -- maybe he --

13 MS. LAMBERTSEN: He --

14 MR. MILLS: -- he gets -- I don't know. I'm
15 sorry, Your Honor.

16 THE COURT: Well, I'm looking at his check. Let's
17 see how it goes. I can look and see how -- how it's
18 deposited. My concern is he can't keep doing this, Counsel,
19 and his attitude to this Court is -- is really appalling.

20 I'm granting him an order to show cause that'll be
21 -- have to be held at the evidentiary, Ms. Lambertsen. I
22 mean, it -- you still have to go through and prove whether
23 he has got -- if it's a willful thing. We still have to go
24 through the Awad issu- -- you know, Awad factors of whether

1 it's willful, his ability to pay and all of that kind of
2 stuff still has to be met under due process, I'm required to
3 that. But the fact that his thing is -- I'm not paying, and
4 I'm not going to pay counsel, I know that puts you in a very
5 bad position --

6 MR. MILLS: It does.

7 THE COURT: -- but -- and the Court appreciates
8 that. I certainly don't find that to be -- with the annuity
9 that you are talking about, I'm looking at the attachment.

10 He is receiving \$1315 -- I'm just looking to see
11 if this is a -- oh, this is deductions. Hold on. He is
12 getting payments on an annuity, according to his January
13 collection of annuity overpayment, collection of annuity
14 overpayment. It looks -- it appears from his attachments to
15 his January that he has an annuity. The concern I have,
16 Counsel, is it's really not clear who this annuity is with.

17 MS. LAMBERTSEN: Uh-huh (affirmative).

18 THE COURT: I can give you an order to go ahead
19 and garnishee that. The problem is I don't know how you are
20 going to do when --

21 MS. LAMBERTSEN: Right.

22 THE COURT: -- we don't know when -- where it
23 goes. It looks it has an address in Philippines to him. It
24 shows 1315 is the amount in January that was being paid.

1 MS. LAMBERTSEN: What if we had the bank accounts?
2 Because Mr. Mills -- actually, maybe it was one of the
3 discovery responses, we did get a list of some bank accounts
4 in Florida and bank accounts in Texas. There are some in
5 the Philippines, but there were some -- was it other ones
6 here in the United States?

7 MS. BYRD: Yeah, the one we had for 30 years.

8 MS. LAMBERTSEN: What -- that's in Florida --
9 yeah.

10 THE COURT: That's a joint account, ma'am?

11 MS. BYRD: Not no more but --

12 THE COURT: Oh, he took your name off of the joint
13 account.

14 MS. BYRD: -- but that's how he used to send me my
15 money -- I'm sorry. He used to transfer the money out of
16 this account into my account.

17 THE COURT: I'm going to allow the garnishment on
18 it as far as the -- since I heard it in May, I'm going to
19 have to reserve the arrears, Counsel. I meant
20 all arrears -- I'm not going to go back, we are going to
21 have to deal with all of arrears on that. But this is
22 ridiculous and Mr. Byrd needs to be held accountable for his
23 blatant disregard of this Court's order. And that is what
24 is an order to show cause is to do. If I -- if I find that

1 he has -- he has not met his burdens to prove that it wasn't
2 willful or they just didn't -- and if there is bank
3 accounts.

4 But I'm going to allow you to proceed with
5 garnishment of that bank account for the amounts that are
6 currently reported including the -- the \$6,000 when we had
7 the June and July, and then moving forward, plus the \$5,000
8 in attorney's fees, Counsel --

9 MS. LAMBERTSEN: Uh-huh.

10 THE COURT: -- it should move us forward, but I am
11 going to allow you to issue an order to show cause that will
12 also be heard at the same time as the evidentiary hearing.

13 MS. LAMBERTSEN: I believe you have that. We did
14 send it to --

15 THE COURT: Okay.

16 MS. LAMBERTSEN: -- the court and you should have
17 a copy of --

18 THE COURT: I'm sure I do.

19 MS. LAMBERTSEN: -- our order to show cause.

20 Well, the -- then that -- that patches a hole
21 for, you know, months of May and June, I'm very concerned
22 about her ability to keep me.

23 THE COURT: I understand.

24 MS. LAMBERTSEN: This is --

1 THE COURT: That's why I'm allowing you to do
2 this. Hopefully, we can get a garnishment where you can get
3 that done right away.

4 MS. LAMBERTSEN: Yeah.

5 THE COURT: File a garnishment order. And you
6 will have to move forward on that, Counsel. I'm not going
7 to advise you how to proceed on that.

8 MS. LAMBERTSEN: Uh-huh (affirmative).

9 THE COURT: But you get an order of the Court, I
10 will allow you to garnish those -- those amounts from that
11 account --

12 MS. LAMBERTSEN: Okay.

13 THE COURT: -- any account that you can find with
14 him right now. Because, look, at least on the orders,
15 Counsel, that he says, I'm just not going to pay, we made
16 that order, we were back here at a previous hearing. I'm
17 not going to worry about -- I'm not going to look about the
18 arrears right now. Those will be part of the order to show
19 cause.

20 But she needs support right now. He doesn't get
21 to flit off to the Philippines and think that all of his
22 responsibilities to his current spouse are not -- not here.

23 MR. MILLS: Understand, Your Honor.

24 THE COURT: So --

1 MR. MILLS: Just to protect myself --

2 THE COURT: Yes, go ahead.

3 MR. MILLS: -- I better just mention --

4 THE COURT: Please. Ms. Lambertsen, I'm going to
5 let him --

6 MR. MILLS: -- and I'm going to lay this out --

7 THE COURT: -- I'm going to let him and then we
8 can go into an --

9 MS. LAMBERTSEN: Can I do one more thing,
10 please --

11 MR. MILLS: Okay.

12 THE COURT: Please.

13 MR. MILLS: No problem, no problem.

14 MS. LAMBERTSEN: -- before he goes into argument?

15 MR. MILLS: Go ahead.

16 MS. LAMBERTSEN: Procedurally, no opposition --

17 THE COURT: I understand, uh-huh (affirmative).

18 MS. LAMBERTSEN: -- our attendance here, can we
19 get an order of attorney's fees for today?

20 THE COURT: Yes, Counsel. I think that that's
21 warranted. I'm going to grant you \$1500 for today --

22 MS. LAMBERTSEN: Okay.

23 THE COURT: -- for having to file the motion,
24 having to even be here --

1 MS. LAMBERTSEN: Fine.

2 THE COURT: -- that that just goes, I think. But
3 the problem is, I can grant you all kinds of stuff, it's
4 collection that's going to be the problem --

5 MS. LAMBERTSEN: Yes, yes, yes, yes.

6 THE COURT: -- in this case, clearly.

7 MS. LAMBERTSEN: Yes.

8 MR. MILLS: Yeah. And the problem is -- and we
9 have made it clear in all of our prior briefs is, if it is
10 all disability, pursuant to federal law -- and I'm not going
11 to go into all --

12 THE COURT: Uh-huh (affirmative).

13 MR. MILLS: -- I don't know if you have the
14 ability to do a garnishment.

15 THE COURT: Well, it's a bank account that was --
16 her name was on it and he -- according to her testimony, he
17 took you off of that during this action; is that correct,
18 ma'am?

19 MS. LAMBERTSEN: Since.

20 THE COURT: When did he --

21 MS. BYRD: This account --

22 THE COURT: -- take you off?

23 MR. MILLS: She's been --

24 MS. BYRD: -- here, he has been using this account

1 to put it into another account. He was giving me \$3,000.

2 It was coming --

3 THE COURT: Okay.

4 MS. BYRD: -- out of this account. It's not
5 joint, but we have, like, a joint savings where he can just
6 -- he was putting the money into that account.

7 THE COURT: I understand.

8 MR. MILLS: They haven't had a joint account since
9 the divorce --

10 THE COURT: Counsel, I agree that that -- in a
11 prospective alimony situation, but in their current joint
12 income --

13 MR. MILLS: Well, there is no current joint
14 income.

15 THE COURT: I understand. But he is --

16 MR. MILLS: They've been divorced --

17 THE COURT: But he is receiving something.

18 MR. MILLS: -- since 2011 --

19 THE COURT: Right, right, right, right, I
20 understand.

21 MR. MILLS: -- so there is no joint income.

22 MS. LAMBERTSEN: (Indiscernible)

23 THE COURT: This is the problem. This --

24 MR. MILLS: There's no joint accounts.

1 THE COURT: -- is the problem.

2 MS. LAMBERTSEN: (Indiscernible)

3 THE COURT: I understand. This is enforcing the
4 order that they agreed to --

5 MR. MILLS: Correct.

6 THE COURT: -- the property order that they agreed
7 to.

8 MR. MILLS: And I just worry that --

9 THE COURT: The difference is --

10 MR. MILLS: -- because it's --

11 THE COURT: Uh-huh.

12 MR. MILLS: -- because it's federal --

13 THE COURT: I understand.

14 MR. MILLS: -- disability --

15 THE COURT: I understand.

16 MR. MILLS: -- federal law says no --

17 THE COURT: Well, this isn't the issue. I'm
18 granting --

19 MR. MILLS: -- you can't take that take --

20 THE COURT: I'm granting her the order --

21 MR. MILLS: -- that disability payments.

22 THE COURT: -- and he can -- he can fight that.

23 He kind of thumbing his nose up to this Court, he is not
24 bothering to come. So certainly, he has an appeal thing, he

1 can appear before me, and he can certainly argue that.

2 MR. MILLS: Understood.

3 THE COURT: But he's not -- he's failing to
4 provide you, as his counsel, even information for you to
5 file a proper opposition. It's obviously hard, because I
6 know your firm well enough, Mr. Mills, that you would have
7 filled an opposition if you had the ability to do so.

8 MR. MILLS: Yes, sir -- yes, Your Honor.

9 THE COURT: So I am -- I'm --

10 MR. MILLS: Sorry.

11 THE COURT: -- saying that, look, I agree with you
12 these might be problematic, but these are also attorney's
13 fees that he is disregarding and that's going to be my
14 current order.

15 MS. LAMBERTSEN: Okay.

16 THE COURT: That's the best I can do, Counsel. I
17 mean, but -- other than an order to show cause, he is going
18 to be -- I -- I -- I don't see it attached here.

19 MS. LAMBERTSEN: Oh.

20 THE COURT: But if it is -- will you just get it
21 to my court --

22 MS. LAMBERTSEN: Yes.

23 THE COURT: -- another copy of it --

24 MS. LAMBERTSEN: Yes.

1 THE COURT: -- just to make sure --

2 MS. LAMBERTSEN: Yes.

3 THE COURT: -- I have it.

4 MS. LAMBERTSEN: Yes, absolutely.

5 THE COURT: And I will sign the order to show
6 cause. Make sure it's properly served because I won't hold
7 him in contempt if we don't meet all of the requirements. I
8 have already had that problem in a few issues, so -- before
9 me so.

10 MS. LAMBERTSEN: Yeah.

11 THE COURT: Not with you guys.

12 MS. LAMBERTSEN: The order to show cause, is that
13 a personal service issue? He's in the --

14 THE COURT: He's in the Philippines.

15 MS. LAMBERTSEN: Okay.

16 THE COURT: He has counsel.

17 MS. LAMBERTSEN: Yes, so.

18 THE COURT: He has counsel.

19 MR. MILLS: So I need to withdraw today, is what
20 you are saying?

21 MS. LAMBERTSEN: Um-hmm, no.

22 MR. MILLS: I'm just kidding.

23 MS. LAMBERTSEN: No.

24 THE COURT: Counsel, I expect since your -- since

1 your client doesn't live here, you will accept service on
2 his order to show cause, let him know that that has been the
3 Court's order.

4 MR. MILLS: I am still counsel, Your Honor.

5 THE COURT: He was ordered to be here that. You
6 are still counsel, so that will be my order.

7 MS. LAMBERTSEN: Okay, thank you.

8 THE COURT: Okay. All right. Anything else I
9 need to address?

10 MS. LAMBERTSEN: Oh, well, this -- this is an
11 ongoing thing. The Court did order at the last hearing that
12 she is to be placed back on the survivor benefit plan
13 that --

14 THE COURT: Correct.

15 MS. LAMBERTSEN: -- he unilaterally took her off
16 and stuck his new wife on.

17 THE COURT: Has that occurred?

18 MR. MILLS: Not quite true. Not -- he didn't take
19 her off. Remember, it just, for whatever reason --

20 MS. LAMBERTSEN: Okay, okay. Yes, yes, I --

21 THE COURT: He -- it did occur on --

22 MS. LAMBERTSEN: It occurred --

23 THE COURT: Uh-huh (affirmative).

24 MS. LAMBERTSEN: It occurred where she is no

1 longer on it. The first request to reinstate her to the
2 Government Department of Financial Accounting Services was
3 rejected.

4 THE COURT: Okay.

5 MS. LAMBERTSEN: So we have tried to bolster
6 the -- fortify the information for them and that has gone
7 back out.

8 THE COURT: So you guys are attempting to do that?

9 MR. MILLS: We are trying, yes. I do have
10 cooperation with regards to that, signing that document.

11 THE COURT: Okay.

12 MS. LAMBERTSEN: Yes. So I may have to reserve
13 that -- that issue --

14 THE COURT: I understand, it might come back to be
15 part of the issues is what we are saying, if we can't get
16 the government to do it.

17 MS. LAMBERTSEN: Correct, correct.

18 THE COURT: The Court -- the Court -- that duly
19 noted.

20 MS. LAMBERTSEN: All right, all right.

21 THE COURT: Duly noted. Okay?

22 MS. LAMBERTSEN: Thank you, Your Honor.

23 THE COURT: All right. Prepare the order for
24 today, Counsel.

MS. LAMBERTSEN: Yes, yes, Your Honor.

THE COURT: Thank you.

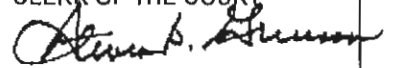
(PROCEEDINGS CONCLUDED AT 9:32:36)

* * * * *

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/ Carol Patterson

Carol Patterson



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14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 CATERINA ANGELA BYRD,
17
18 Plaintiff,

19 v.

20 GRADY EDWARD BYRD,
21
22 Defendant.

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

25 Hearing Requested: Yes

26 **PLAINTIFF'S MOTION FOR**
27 **RECONSIDERATION, SUMMARY**
28 **JUDGMENT, JOINDER AND TO**
CONTINUE THE EVIDENTIARY
HEARING

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

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 Motion for Reconsideration,*
Motion for Summary Judgment, Motion for Joinder and Motion to Continue the

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1 *Evidentiary Hearing.*¹ This Motion is made and based upon the pleadings and
2 papers on file herein, the following Points and Authorities and upon such oral
3 argument as the Court may allow at the time of the hearing.

4 Caterina respectfully requests the following relief:

- 5 1. Set Aside the Order filed June 26, 2019 as to the finding that Caterina
6 waived spousal support in the Decree of Divorce;
- 7 2. That Orders filed on or about April 5, 2019 remain in full force and effect
8 pending further orders of the court;
- 9 3. That Grady Byrd's wife, Pinky Byrd, be joined as a party to this action;
- 10 4. Summarily find that Grady Byrd is in Contempt of Court for failure to pay
11 Caterina Byrd as ordered and that he be sanctioned based on the
12 following:
 - 13 i. \$3,000 per month from September 1, 2018 to October 1, 2019
14 (14 months, \$42,000);
 - 15 ii. \$7,000 in attorney fees ordered April 5, 2019;
 - 16 iii. \$5,000 in attorney fees ordered June 26, 2019;
 - 17 iv. \$1,500 in attorney fees ordered August 9, 2019;
 - 18 v. Sanction \$500 for each month (14, \$7,000);
 - 19 vi. Sanction \$500 for each incident of failing to pay attorney fees
20 (3, \$1,500); and
 - 21 vii. That a warrant for Grady Byrd's arrest be issued and that he be
22 let go for his appearance on a hearing on the warrant in the
23 amount for his release set at no less than \$64,000.
- 24 5. Continue the Calendar Call, Evidentiary Hearing and related deadlines;
- 25 6. Continue the Plaintiffs Motion to Compel Production of Discovery and
26 Defendant's Motion for a Protective Order scheduled to be heard on
27 October 11, 2019, without prejudice and able to be re-noticed at a later
28 date;
- 29 7. Schedule Defendant's Motion for Reconsideration filed April 8, 2019, on the
30 Notice of Entry of Order from the January 23, 2019 hearing filed about April
31 5, 2019 be heard by the judge presiding at the January 23, 2019 hearing;

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

1 8. For Attorney's Fees and Costs; and

2 9. For any further orders that the court deems just and equitable under the
3 premises.

4 Dated: September 30, 2019.

5 **WEBSTER & ASSOCIATES**

6
7 By: 

8 ANITA A. WEBSTER, ESQ.
9 Nevada Bar No. 1221
10 JEANNE F. LAMBERTSEN, ESQ.
11 Nevada Bar No. 9460
12 6882 Edna Ave.
13 Las Vegas, Nevada 89146
14 Tel No: (702) 562-2300.
15 Attorneys for Plaintiff, Unbundled

16 I.
17 **FACTUAL HISTORY**

18 Plaintiff, CATERINA BYRD and Defendant, GRADY BYRD (hereinafter
19 "Grady) were married for 31 years, divorcing on June 5, 2014, by way of a Joint
20 Petition that Grady arranged to have prepared. During the marriage, Grady was
21 in the U. S. Army. He retired from the U.S. Army in 1999 and went to work for the
22 Department of Defense. Grady retired from the Department of Defense about
23 2008. Grady ceased returning home to Caterina about 2008.

24 Grady currently earns more than \$116,000.00 annually in the form of
25 disability, social security and about \$128/month non-disability. During the
26 marriage, he earned two master degrees and became a high ranking officer.
27 Grady age 63, lives in the Philippines, married a 25-year old woman as soon as
28 he divorced Caterina in 2014, has two household servants and is seeking to
eliminate his financial obligations to Caterina.

1 Caterina supported Grady as he furthered his education and career. She
2 moved approximately 16 times as a military wife, which prevented her from
3 advancing beyond her high school education, holding a job, gaining work skills,
4 putting down roots, or have any lasting friends. Caterina relied on Grady's
5 promises that he would take care of her. He admitted that he would pay her
6 \$3,000 per month as long as he lived, that he is giving her \$3,000 per month
7 because it is the right thing to do, that Caterina was entitled to the dollar amount
8 of \$1,508 per month from his military retirement pay, that he paid her \$3,000
9 each month, and that he closed the joint checking account that he deposited the
10 \$3,000 for Caterina that had been opened for about 30 years.² She depends on
11 the \$3,000.00 per month that Grady deposited directly into her bank account.
12 After his death, she planned to rely on the military SBP and Life Insurance that
13 she was awarded in the divorce. She is 55 years old, single, and remains in the
14 marital residence that Grady gave to her in the divorce. Her expenses are more
15 than \$3,745 per month.
16
17
18

19 Grady left Caterina financially destitute when, on September 1, 2018, he
20 stopped paying her \$3,000.00 per month. He also listed his new wife as the
21 beneficiary of his military Survivor Benefits. Grady did this in retaliation for
22 Caterina asking for copies of the various life insurance plans, SBP plan, and
23
24

25 ²Exhibit "1" Plaintiff's Requests for Admissions to Defendant served 03/05/19 and
26 Exhibit "2" Defendant's Response to Plaintiff's First Request for Admissions served
27 03/19/19.
28

1 retirement plans that Grady gave her in the divorce so that she knew who to
2 contact in the event something happened to Grady. He refused to respond to her
3 e-mails and letters. He admits that he blocked Caterina's and the undersigned
4 counsel's e-mails. Caterina had to borrow money and took in a roommate to
5 make ends meet. Caterina's financial and emotional stress led to the roommate
6 moving out. She was forced to seek the court's assistance promptly after Grady
7 ignored her attempts to resolve his unilateral termination of her \$3,000.00 per
8 month payment. She learned that he misled her with his promise that his military
9 retirement pay at the time of divorce was \$3,017. Actually, his retirement pay at
10 the time of divorce was only \$128.60. He converted his retirement pay to
11 disability pay in the amount of \$3,017.³ He cannot be allowed to take advantage
12 of his lies, misrepresentations, threats and manipulation to eliminate all of his
13 financial obligations to her.
14
15

16 II.

17 PROCEDURAL BACKGROUND

18
19 Caterina complied with EDCR 5.501 in her efforts to resolve this matter
20 without seeking the Court's assistance back in about August 2018. Grady
21 refused. Grady even refused to Stipulate to move the case from Churchill County
22 Nevada, where neither party ever lived, to Clark County Nevada, thereby causing
23 Caterina to unnecessarily incur additional cost and fees.
24

25 On October 16, 2018, Caterina filed her motion to enforce the Decree of
26 Divorce. The hearing was set for November 27, 2018 but the hearing was
27

28 ³Exhibit "3", Grady's Veteran's monthly payments August 2014 - July 2015.

1 continued several times based on Grady's claims that he was unable to attend
2 based on his medical condition(s). The hearing was eventually heard on January
3 23, 2019.

4
5 At the January 23, 2019 hearing, both parties were present. Judge Kathy
6 Hardcastle found that Grady wrongfully had terminated the \$1,500.00 per month
7 payments for the home mortgage (hereinafter "home mortgage payment") and
8 that the home mortgage payments are alimony. Judge Hardcastle ruled that
9 Grady had a contractual obligation to continue the \$1,500.00 per month
10 payments to Caterina as and for her interest in his military income. A status
11 check hearing was set for May 2, 2019, regarding Grady's compliance with
12 continuing to make these payments and paying arrears. A "no bail bench warrant"
13 was to be issued if he failed to comply.

14
15 Grady filed a Motion for Reconsideration. In the interim, he refuses to pay
16 Caterina, despite the fact that no "stay" was issued on the Orders.

17
18 At the May 2, 2019, Status Check Hearing (Judge Bixler presiding), the
19 Court noted that it was not pleased with Grady's absence, ordered him to be
20 present at his motion for reconsideration hearing on May 22, 2019, and his
21 request for a telephonic appearance was denied.

22
23 At the May 22, 2019, hearing on Grady's Motion for Reconsideration and
24 Caterina's Opposition and Countermotion, Grady was not present, Judge
25 Forsberg ordered that the \$1,500 home mortgage payment that Grady pays
26 Caterina was not alimony but instead is part of a property distribution. Grady was
27 ordered to continue paying this \$1,500 per month payment plus the other \$1,500
28

1 payment to Caterina based on contract principles for her interest in his military
2 pay pending an evidentiary hearing.

3 The Non-Jury Trial was then scheduled for October 21, 2019.

4
5 Grady failed to pay Caterina as ordered above, and her Motion for an Order to
6 Show Cause was Granted at the July 18, 2019 hearing. The Order from this
7 hearing and the Order to Show Cause were filed on August 9, 2019.

8 Grady continues to willfully, deliberately and intentionally refuse to pay
9 Caterina \$3,000 per month or the attorney fees awarded. At the July 18, 2019,
10 hearing, he informed the Court that he does not intend to comply with court
11 orders until after the Evidentiary Hearing. The Court ordered that Caterina may
12 garnish the arrears in the amount of \$11,000.00 if she can determine any source
13 of money or bank for Grady. Caterina discovered that Grady's United States bank
14 accounts only contain a few hundred dollars. Further, he receives only disability
15 payments and social security payments (except about \$128 per month). Neither
16 his disability income nor his social security income can be garnished. She is
17 therefore unable to obtain any of the money that Grady owes her. Grady refuses
18 to provide his Philippines bank account information to Caterina. Once again, she
19 had to seek the court's assistance and her Motion to Compel production of
20 documents is scheduled for hearing with the Discovery Commissioner.
21
22

23 In Grady's pleadings filed on September 12, 2019, and September 17,
24 2019, Grady admits that he has not paid Caterina and that he has sufficient
25 money to pay Caterina.
26

27 ///

III.

POINTS AND AUTHORITIES

Rule 5.512. Reconsideration and/or rehearing of motions.

(a) A party seeking reconsideration and/or rehearing of a ruling (other than an order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60), must file a motion for such relief within 14 calendar days **after service of notice of entry of the order** unless the time is shortened or enlarged by order. A motion for reconsideration does not toll the period for filing a notice of appeal.

NRCP 59(a)

Rule 59. New Trials; Amendment of Judgments

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.

(f) No Extensions of Time. The 28-day time periods specified in this rule cannot be extended under Rule 6(b).

NRCP 60(b)(1)

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;

.....
.....

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time — and for reasons

(1), (2), and (3) no more than 6 months after the date of the proceeding or the **date of service of written notice of entry of the judgment or order**, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

Caterina requests that this court reconsider the order from June 26, 2019. Her request is timely in that Grady failed to serve Caterina with a Notice of Entry of the June 26, 2019 Order.

MOTION FOR RECONSIDERATION

At the hearing on January 23, 2019, Senior Judge Kathy Hardcastle found that Grady had wrongfully terminated his home mortgage assistance payments of \$1,500.00 per month to Caterina on September 1, 2018, and that these payments are alimony. Judge Hardcastle also found that Grady had a contractual obligation to continue paying her another \$1,500.00 per month as and for her interest in his military income. Subsequently, Grady filed a Motion for Reconsideration.

At the May 22, 2019, hearing on Grady's Motion for Reconsideration and Caterina's Opposition and Countermotion, the Honorable Judge Forsberg ordered that the \$1,500 payment from Grady to Caterina is not alimony, but instead is part of a property distribution with terms as to when the payment is to end. Grady was ordered to continue paying the \$1,500 per month home mortgage contribution payment. He was also ordered to continue paying the \$1,500 per month payment to Caterina based on contract principles for her interest in his military pay pending an evidentiary hearing.

Caterina seeks reversal of that portion of the Court's Finding on May 23,

2019: that the \$1,500 per month home mortgage contribution payment is a property settlement and not alimony. Caterina seeks reversal of this ruling based on the following:

1. **The law-of-the-case doctrine:** The law of the case doctrine holds that one district court judge should not overturn another district court's ruling. Judge Hardcastle's ruling that the \$1,500 per month house contribution payment is alimony should stand;
2. **The payment is alimony:** The payment is alimony because Grady's payments to Caterina are indefinite, can continue until he dies, and there is no defined dollar amount being paid towards satisfaction of a particular amount. The nature of the payment supports an alimony interpretation rather than a property settlement interpretation because the payments are based on financial need, there's no identifiable lump sum owed and the payments continue for an indefinite time into the future. See e.g. Parker v. Green, No. 73176 (Nevada 2018);
3. **There was no alimony waiver because:**
 - a. The "waiver" language in the Decree of Divorce was ambiguous in that it is reasonably susceptible to more than one interpretation. Grady's payment to Caterina of "*\$1500 dollars extra a month to assist with her home mortgage*" may cease if "*her financial situation changes*". Since Grady's assistance to Caterina may cease based on Caterina's financial situation, this

- 1 is consistent with the NRS 125.150 considerations for alimony.
- 2 b. Caterina didn't knowingly waive alimony. Caterina relied on
- 3 Grady's promise that he would pay her \$3,000 per month until he
- 4 died. She could not have waived her right to alimony while
- 5 simultaneously accepting support to pay her necessities.
- 6
- 7 c. Grady violated his fiduciary duty to Caterina. She trusted Grady
- 8 when he told her he would take care of her for the rest of her life,
- 9 he admits that he promised to pay her \$3,000 per month as long
- 10 as he lives. A fiduciary relationship arises from the existence of
- 11 the marriage itself, thus precipitating a duty to disclose pertinent
- 12 assets and factors relating to those assets. Cook v. Cook, 112
- 13 Nev. 179, 912 P.2d, 264 (1996) citing Williams v. Waldman, 108
- 14 Nev. 466, 836 P.2d 614 (1992) at 471-72, 836 P.2d at 618.
- 15
- 16 d. Pursuant to Parker v. Green, No. 73176 (Nevada June 25, 2018),
- 17 the court should examine the circumstances surrounding the
- 18 parties' alimony waiver in order to determine the true intentions
- 19 of the parties.
- 20
- 21 e. The present orders are uncollectible unless they are considered
- 22 alimony. Under federal law, disability and social security income
- 23 cannot be garnished, but spousal support is eligible for
- 24 garnishment from military disability income and social security.
- 25 42 U.S.C. §§ 659.
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I.

THE LAW-OF-THE-CASE DOCTRINE HOLDS THAT ONE DISTRICT COURT JUDGE SHOULD NOT OVERTURN ANOTHER DISTRICT COURT'S RULING

The law-of-the-case doctrine "refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open a ruling by that court or a higher one in earlier phases." Crocker v. Piedmont Aviation, Inc., 49 F.3d 735, 739 (D.C.Cir.1995); "the power of one judge of the superior court is equal to and coordinate with another." See also Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 670, 151 S.E.2d 579, 580 (1960); "it is well established in our jurisprudence 'that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.' Calloway v. Ford Motor Co., 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972)." State v. Woodridge, 357 N.C. 544, 549 (2003). "One superior court judge may only modify, overrule or change the order of another superior court judge where the original order was (1) interlocutory, (2) discretionary, and (3) there has been a substantial change of circumstances since the entry of the prior order. Stone v. Martin, 69 N.C. App. 650, 652, 318 S.E.2d 108, 110 (1984). A substantial change in circumstances exists if since the entry of the prior order, there has been an 'intervention of new facts which bear upon the propriety' of the previous order. See Calloway v. Motor Co., 281 N.C. 496, 505, 189 S.E.2d 484,

1 490 (1972).” First Fin. Ins. Co. v. Commercial Coverage Inc., 154 N.C. App. 504,
2 507 (2002). “The power of one judge of the superior court is equal to and
3 coordinate with another.” Michigan Nat’l Bank v. Hanner, 268 N.C. 668, 670, 151
4 S.E.2d 579, 580 (1960).

5
6 In Baldwin v. United States, 823 F. Supp. 2d 1087, 1099 (D. N. Mar. 1.,
7 2011) the court stated:

8 In general, “judges who sit in the same court should not attempt to
9 overrule the decisions of each other.” Castner v. First Nat’l Bank of
10 Anchorage, 278 F.2d 376, 379 (9th Cir. 1960) (citation and quotation
11 marks omitted). “[J]udges must, in light of the overarching ‘principles
12 of comity and uniformity,’ make every effort ‘to preserve the orderly
13 functioning of the judicial process’ when reconsidering an order of a
14 prior judge in the same case.”(quoting Castner, 278 F.2d at 379-80).

15 In Cosby v. Autozone, Inc., No. 2:08-cv-00505-KJM-DAD.

16 United States District Court, E.D. California (2016), held that

17 **In general, “judges who sit [on the same case] should not attempt**
18 **to overrule the decisions of each other.”** Castner v. First Nat’l Bank
19 of Anchorage, 278 F.2d 376, 379 (9th Cir. 1960) (citation and
20 quotation marks omitted). “[J]udges must, in light of the overarching
21 ‘principles of comity and uniformity,’ make every effort ‘to preserve the
22 orderly functioning of the judicial process’ when reconsidering an order
23 of a prior judge in the same case.” Baldwin v. United States, 823 F.
24 Supp. 2d 1087, 1099 (D. N. Mar. 1, 2011) (quoting Castner, 278 F.2d
25 at 379-80). **While a second judge has discretion to review the**
26 **decision of a predecessor in the same case, the law of the case**
27 **doctrine can limit that discretion.** Delta Savings Bank v. United
28 States, 265 F.3d 1017, 1027 (9th Cir. 2001) (quoting Jeffries v. Wood,
114 F.3d at 1484, 1489 (9th Cir. 1997)). **Indeed, “the prior decision**
should be followed unless (1) the decision is clearly erroneous
and its enforcement would work a manifest injustice, (2)
intervening controlling authority makes reconsideration
appropriate, or (3) substantially different evidence was adduced
at a subsequent trial.” Id. (Emphasis Added).

29 Judge Hardcastle’s ruling that the \$1,500 house assistant payments are
30 alimony payments was not “clearly erroneous” and its enforcement would not

1 work a manifest injustice to Grady. In fact, the opposite is true. If the payments
2 are not considered alimony, there is no way for Caterina to collect against Grady
3 since Grady's income is primarily disability pay and social security income which
4 cannot be garnished unless the payments are recognized as alimony. To date,
5 Grady is not paying his obligations to Caterina and Caterina is left without any
6 viable enforcement options.
7

8 There was no intervening controlling authority that made reconsideration of
9 Judge Hardcastle's ruling appropriate, and no substantially different evidence
10 was adduced at a subsequent hearing or trial and therefore, there is no basis to
11 set aside Judge Hardcastle's decision finding that Grady's house assistance
12 payment is alimony.
13

14 The "mistake" component of Rule 60(b)(1) allows this court to correct its
15 prior ruling based on "mistake" of law. Branch Banking & Trust Co., v. Frank
16 (2:11-CV-1366 JCM (CWH) (D. Nev., 2012). Caterina is requesting that Judge
17 Hardcastle's ruling, that the \$1,500 per month home assistance payments are
18 alimony, be reinstated so that Caterina will be able to garnish those payments
19 from Grady's disability and social security income.
20

21 II.

22 **A WAIVER OF ALIMONY MUST BE EXAMINED IN LIGHT OF THE FACTS**
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24 In Parker v. Green, No. 73176 (Nevada June 25, 2018), the Decree of
25 Divorce contained an express waiver of alimony. The Nevada Supreme Court
26 found that the waiver was ambiguous; that the language used in the decree
27 mirrored standard alimony language; and that as a result it was necessary to
28

1 delve beyond the terms of the Decree of Divorce and “examine the circumstances
2 surrounding the parties’ agreement in order to determine the true intentions of the
3 parties”. In the Parker case the court did not uphold the alimony waiver.

4 So, too, in this instance, the alleged alimony “waiver” is not the end of the
5 inquiry in this case. The nature of the payments creates an ambiguity, the
6 language of support is similar to the alimony language in NRS 125.150(9)(a) and
7 the facts of the case show that, based on what Grady told Caterina before and
8 at the time of the divorce, Caterina reasonably expected that Grady would
9 support her for the remainder of her life and that upon his death she would
10 continue to be supported based on her receipt of his Survivor benefits.
11

12
13 III.

14 **CATERINA SHOULD BE ALLOWED TO REOPEN THE JOINT PETITION/
15 SUMMARY DECREE OF DIVORCE TO REINSTATE ALIMONY**

16 CATERINA should be allowed to modify the joint petition/ summary decree
17 of divorce to allow her to seek alimony with regard to the \$1,500 house
18 assistance payment and the \$1,500 military disability payment.
19

20 In Fattore v. Fattore Docket No. A-3727-16T1 Argued January 16, 2019 and
21 February 5, 2019 (N.J. Super. App. Div., 2019), (not for publication), the court
22 found that the wife waived alimony. “But for” her receipt of an interest in her
23 husband’s pension, the wife would not have waived alimony. So, too, in this
24 instance, Caterina, waived alimony in return for her receipt of \$1,500 per month
25 as and for the mortgage assistance payment plus \$1,500 per month for her
26 interest in Grady’s pension payment.
27

28 In Fattore, supra, the court explained:

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

18 The waiver of alimony should not be an obstacle to Caterina receiving
19 alimony in this instance given the facts of this case. The consideration for the
20 alimony waiver was in exchange for the promise that Grady would pay her for her
21 interest in his military pension and receipt of \$1,500 as a house assistance
22 payment.

23 This court can grant Caterina relief from judgment under NRCP 60(b)(6).

24 Grady spends time on other subsections of 60(b), but does not mention
25 subsection (6).

26 Rule 60. Relief From a Judgment or Order

27 (b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On
28 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:

.....
.....
(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

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

15 Caterina requests that this court should find that extraordinary
16 circumstances exist to grant Caterina relief from judgment under 60(b)(6) based
17 on the following:

18 1. Grady misinformed Caterina and led her to believe that he would give her
19 \$3,000.00 per month for his lifetime; for the last 4 years Grady has paid Caterina
20 \$3,000.00 per month (\$1,500.00 mortgage assistance and \$1,500 military
21 pension). Grady abruptly stopped paying her \$3,000.00 per month on September
22 1, 2018;

23 2. Grady claims that Caterina is only entitled to \$64.20 per month from his
24 military pay and nothing else. At the time of the divorce, Grady did not tell
25 Caterina that he had elected waiver of his military pay in order to receive disability
26 pay and Grady misrepresented the value of his army pension. He admits that he
27 informed Caterina that his retired pay was \$3,017.00 per month and that she was
28 entitled to \$1,508.00 per month. His Military pay was not \$3,017.00 per month
at the time of divorce, rather it was only \$128.40 per month of which, she would

1 receive 1/2 (\$64.20)⁴;

2 3. Grady cut off paying Caterina \$1,500.00 per month in mortgage
3 assistance brutally claiming that "it wasn't required" anymore, when in fact her
4 mortgage remains \$1,933.07 per month. Per the divorce pleadings the \$1,500.00
5 per month payment is to continue until her financial situation changes or until the
6 home is sold or paid off. This constitutes an extraordinary circumstance;

7 4. Grady had a responsibility to act with good faith and fairness to Caterina
8 because he shares a confidential, fiduciary relationship with Caterina. Such a
9 responsibility contemplates that Grady will make a full and fair disclosure prior to
10 the execution of the divorce documents. Grady shirked this responsibility.
11 Caterina could not have known the full magnitude of Grady's assets and
12 obligations because the parties had been separated for over 6 years prior to
13 divorce, and Grady lived in the Philippines while she lived in Nevada.

14 5. Caterina's request is timely. As soon as she became aware of the
15 problem on September 1, 2018, when Grady stopped paying her and refused to
16 communicate with her, she sought the assistance of the court.

17 6. Caterina has no means to garnish or obtain money directly from the
18 federal government unless she receives an order for spousal support because
19 all of Grady's money is disability or social security except approximately \$128.40
20 per month.

21 These circumstances should be considered extraordinary circumstances
22 sufficient to grant Caterina relief from the judgment.
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⁴ Exhibit "3", Grady's Veteran's monthly payments August 2014 - July 2015.

1 In Carlson v. Carlson, 832 P.2d 380, 108 Nev. 358 (Nev., 1992), the court
2 determined that husband and his counsel either deceived the wife as to the
3 value of his pension (fraud) or both husband and wife were mistaken as to the
4 value of the pension (mutual mistake). Under either circumstances the court held
5 it was sufficient to set aside the Decree of Divorce.
6

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

10 [t]he record clearly demonstrates that the representations were the result of
11 either mistake or fraud. If both Austin and Trudy were mistaken about the
12 pension's value, the parties entered the property settlement based upon a
13 mutual mistake, namely, that they had essentially split their property equally.
14 A mutual mistake entitles a party to relief from a judgment. NRCP 60(b)(1).
15 **If, however, Austin or his counsel knew the value of the pension, they**
16 **fraudulently misrepresented the value of Austin's pension. Such fraud**
17 **is grounds for relief from the judgment pursuant to NRCP 60(b)(2).**
18 Therefore, we conclude that Trudy was entitled to relief from the judgment.
19 (emphasis added)

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

22 In Barelli v. Barelli, 944 P.2d 246, 113 Nev. 873 (Nev., 1997), Wife waived
23 alimony in return for lifetime employment with husband's medical practice. When
24 Husband stopped paying her, wife sought judicial relief.
25

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

We hold that actions regarding the resolution of the marriage filed independent

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

13 Based on the foregoing, Caterina should be allowed to set aside the Decree
14 of Divorce/Property Settlement Agreement and make a claim for life time alimony
15 at the rate of at least \$3,000 per month.

16 **7. Caterina Should Receive Lifetime Alimony** Caterina should receive
17 lifetime alimony. Caterina was a wife, mother, and homemaker for **31**
18 **years.** Caterina was young when they married, had only a high
19 school education and English was her second language, she had no
20 chance to get additional education, could not sustain employment long
21 enough in any of the places they lived to further her career, could not
22 work full time or develop a retirement plan on her own accord. Grady
23 on the other hand, earned two master's degrees, a war college
24 certificate, FEMA certificate and became a high ranking officer. Grady
25 currently receives over \$116,000.00 annually in largely tax free
26 income, receives free medical care and was able to reduce his debt.

27 The income gap needs to be closed so that Caterina can maintain the
28 standard of living that she had during marriage. If Caterina is awarded \$3,745
per month in alimony from Grady, this equals \$44,941 per year. Grady's income

1 of \$116,000.00 less spousal support of \$44,941 to Caterina = \$71,059 net
2 remaining for Grady to live on. Grady's monthly expenses are approximately
3 \$4,060 per month (\$48,696 per year)⁵.

4 In Kogod v. Cioffi-Kogod, 135 Nev., Adv. Op. 9 (April 25, 2019) the court
5 held that:
6

7 Our case law makes clear that a district court may award alimony to
8 ensure that an economically powerless spouse receives sufficient
9 support to meet his or her needs. See Gilman v. Gilman, 114 Nev.
10 416, 423-24, 956 P.2d 761, 765 (1998) ("The Nevada legislature
11 created spousal support awards to, inter alia, keep recipient spouses
12 off the welfare rolls.").

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

⁵ after reductions are made for debts he eliminated such as \$1,080 per month for hotel, \$51,721.00 in debt he eliminated by abandoning his new Chevy Cruz, and not paying the car loan or two other personal loans to USAA seen on his FDF filed on January 18, 2019

1 Shydler, 114 Nev. 192, 954 P.2d 37 (1998), by noting that two of the
2 primary purposes of alimony "are to narrow any large gaps between
3 the post-divorce earning capacities of the parties and to allow the
4 recipient spouse to live 'as nearly as fairly possible to the station in life
5 [] enjoyed before the divorce.'" Id. at 198, 954 P.2d at 40 (alteration
6 in original) (citations omitted) (quoting Sprengr, 110 Nev. at 860, 878
7 P.2d at 287-88).

8 Consistent with Kogod, Caterina' should receive life time alimony since she
9 has a need for support, Grady has the ability to pay, and she should be allowed
10 to maintain the lifestyle they had during marriage.

11 **B. GRADY SHOULD BE SUMMARILY FOUND IN CONTEMPT OF COURT**
12 **FOR FAILING TO PAY CATERINA \$3,000 PER MONTH**

13 Grady should be summarily held in contempt of court for failing to follow the
14 Court's orders to deposit \$3,000 per month into Caterina's bank account for the
15 time period of September 1, 2018 through October 1, 2019.

16 Letters were sent to Grady on February 19, 2019, April 5, 2019, April 17,
17 2019, and May 10, 2019, requesting the deposits. At the May 2, 2019 hearing,
18 Caterina again requested the payments Grady owes her. Grady refused, and
19 continues to refuse to pay. Caterina's Emergency Motion for an Order to Show
20 Cause Why the Defendant Should Not be Held in Contempt of Court and for
21 Attorney Fees and Costs was granted. The Notice of Entry of Order to Show
22 Cause was filed and served on August 9, 2019.

23 On or about September 12, 2019, in Grady's Motion set before the
24 discovery commissioner, and again on September 17, 2019, in his response to
25 Caterina's Motion set before the discovery commissioner, Grady admitted:
26

27 "..... the following facts are undisputed

28 1. Grady has not paid any money toward the \$3,000 obligation since

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1 endorsement on warrant of attachment. Whenever a
2 warrant of attachment is issued pursuant to this chapter,
3 the court or judge shall direct, by an endorsement on
4 such warrant, that the person charged may be let to bail
for his or her appearance, in an amount to be specified
in such endorsement.

5 NRS 22.100 Penalty for contempt.

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

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

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

17 Caterina's Motion for Summary Judgment should be granted and Grady
18 should summarily be found in Contempt of Court for failure to pay Caterina Byrd
19 as ordered.

20 **There are no material facts in dispute:** Grady is obligated to pay Caterina
21 (per the Decree of Divorce and again per the court's orders from April 5, 2019,
22 June 26, 2019 and August 9, 2019), he has admittedly not paid her (see
23 pleadings referenced above) and he has the ability to pay her (see pleadings
24 referenced above). As such, Grady should summarily be found in contempt and
25 sanctioned as follows:
26

- 27 i. \$3,000 per month from September 1, 2018 to October 1, 2019
28 (14 months, \$42,000);

- ii. \$7,000 in attorney fees ordered April 5, 2019;
- ii. \$5,000 in attorney fees ordered June 26, 2019;
- iii. \$1,500 in attorney fees ordered August 9, 2019;
- iv. \$500 sanction for each month he failed to pay (14, \$7,000);
- v. \$500 sanction for each incident of failing to pay attorney fees (3, \$1,500);
- vi. A warrant for Grady Byrd's arrest be issued and that his release be set at no less than the total amount sought herein above, namely \$64,000.

C. GRADY BYRD'S WIFE, PINKY BYRD, NEEDS TO WAIVE HER INTEREST IN GRADY'S MILITARY SURVIVOR BENEFIT PLAN AND AGREE THAT CATERINA IS THE BENEFICIARY OF THE MILITARY SURVIVOR BENEFIT PLAN OR BE JOINED TO THIS ACTION.

Grady and Caterina took out the SBP for Caterina the day he retired in 1999. Caterina is relying on the SBP for her support and Grady promised her the SBP in the divorce. However, because neither party sent a copy of the decree to the DFAS within 1 year of divorce, Caterina's name is no longer listed as the beneficiary. On or about September 28, 2018, Grady received a letter from the DFAS advising him that:

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

Grady should have given Caterina the letter in September 2018 and added her back on to the SBP. Grady withheld the letter from Caterina until almost 6 months later.

On April 5, 2019, Caterina sent correspondence to Grady and asked Grady to voluntarily keep her on the SBP. Grady refused. On May 2, 2019, at the hearing, she asked him to keep her on the SBP. He refused. Instead, Grady listed his new 25 year old wife as the beneficiary. It was Caterina, not his 25 year old wife, who was married to Grady for 31 years and supported his career. Caterina now has to pay additional attorney's fees and costs in her efforts to

1 reinstate a benefit that was awarded to her in the decree of divorce.

2 On June 26, 2019, this Court ordered Grady to complete the paperwork
3 necessary to reinstate Caterina as the beneficiary of the Survivor Benefit Plan.
4 DFAS has refused to reinstate Caterina. She is now appealing to the Army Board
5 for the Correction of Military Records. For purposes of her appeal, since Grady's
6 new wife is listed as the beneficiary, Caterina needs a consent from Grady's wife,
7 Pinky. Grady was asked to cooperate and obtain Pinky's consent.⁶ On
8 September 25, 2019, Caterina received a letter from Grady advising he will not
9 cooperate and have Pinky sign the consent.⁷

10
11 Pinky must now be joined to this instant action. See Ellison v. Ellison, 776
12 SE 2d 522 Court of Appeals of North Carolina (August 4, 20125).

13
14 Rule 19. Required Joinder of Parties

15 (a) Persons Required to Be Joined if Feasible.

16 (1) Required Party. A person who is subject to service of process and
17 whose joinder will not deprive the court of subject-matter jurisdiction
18 must be joined as a party if:

19 (A) in that person's absence, the court cannot accord complete relief
20 among existing parties; or

21 (B) that person claims an interest relating to the subject of the action
22 and is so situated that disposing of the action in the person's
23 absence may:

24 (i) as a practical matter impair or impede the person's ability
25 to protect the interest; or

26 ⁶ Exhibit "4" Letter dated September 24, 2019 with consent form sent to Grady's
27 counsel.

28 ⁷Exhibit "5" Letter dated September 25, 2019 from Grady's counsel.

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

In addition, NRCP 20 provides authority for permissive joinder. It states, in pertinent part, (a)(2) Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

Accordingly, Caterina seeks joinder of Grady's wife as a necessary party should she remain unwilling to sign the necessary release.

REQUEST TO CONTINUE THE PENDING MOTION TO COMPEL AND EVIDENTIARY HEARING

Pursuant to EDCR 7.30, the court may order that the date set for trial be continued. Specifically, Rule 7.30 provides that:

Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial shall be supported by affidavit except where it shall appear to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as hereinafter required for an affidavit. Counter-affidavits may be used in opposition to the motion.

Should the court see fit to grant Caterina's Motion herein, Caterina respectfully requests that the court continue the Motion to Compel and the Evidentiary hearing. If the court finds that Caterina is entitled to alimony, then that would be another basis for finding that Grady's bank statements, which are

1 the subject of the motion to compel, are relevant.

2 Further, there are additional issues in this case to adjudicate which may
3 impact the Evidentiary Hearing, which include Grady's non-compliance with the
4 court orders that he complete whatever paperwork is necessary to reinstate
5 Caterina as the beneficiary of the Survivor Benefit Plan. Because Grady gave the
6 Survivor Benefit Plan to his new wife on or about September 2018, his wife needs
7 to be joined to this action. Caterina is now deprived of an asset awarded to her
8 in the decree of divorce. The totality of the case is not ripe for an evidentiary
9 hearing and holding a evidentiary hearing on partial elements of the case may
10 deprive the court of additional facts and circumstances needed to adjudicate
11 related issues in the case. Caterina supports this instant Motion and continuance.
12 It is respectfully requesting that the pending Motion and Evidentiary Hearing
13 scheduled for October 21, 2019, and the related deadlines, be continued.
14
15

16 **V.**

17 **CATERINA IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES**

18 On April 23, 2019, Caterina filed a Memorandum of Fees and Costs for the
19 time period from the commencement of this litigation until the January 23, 2019,
20 hearing. The total fees were \$11,580.00 and total costs were \$706.18. At the
21 January 23, 2019 hearing, Caterina was awarded \$7,000.00 in attorney fees and
22 costs. The payment of the \$7,000.00 is included in the \$4,500.00 per month
23 payment that Grady was to begin paying starting on February 15, 2019. Grady
24 refuses to pay.
25
26

27 Since January 23, 2019, Caterina has incurred additional fees and costs
28 defending herself against Grady's wrongful behavior. She has been forced to file

1 motions and seek the court's assistance since then. At the May 22, 2019, hearing
2 (order filed June 26, 2019), Caterina was awarded \$5,000 in attorney fees and
3 at the July 18, 2019 hearing (order filed August 9, 2019), Caterina was awarded
4 \$1,500 in attorney fees. Grady has refused to pay these fees. Caterina will file
5 a current Memorandum of Fees and Costs for the fees requested herein.
6

7 Caterina requests fees pursuant to NRS 125.040 and NRS 18.010(2)(a) and/or
8 (b).

9 Pursuant to NRS 22.100 Penalty for contempt.

- 10 2. Except as otherwise provided in NRS 22.110, if a person is found
11 guilty of contempt, a fine may be imposed on the person not
12 exceeding \$500 or the person may be imprisoned not exceeding 25
13 days, or both.
- 14 3. In addition to the penalties provided in subsection 2, if a person is
15 found guilty of contempt pursuant to subsection 3 of NRS 22.010,
16 the court may require the person to pay to the party seeking to
17 enforce the writ, order, rule or process the reasonable expenses,
including, without limitation, attorney's fees, incurred by the party as
a result of the contempt.

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

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

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

27 Hornwood v. Smith Food King, attorney fees to prevailing party if that party
28 succeeds on a significant number of issues. This court has held that "[a]
plaintiff may be considered the prevailing party for attorney's fee purposes if it

succeeds on any significant issue in litigation which achieves some of the benefit is sought in bringing the suit." Hornwood v. Smith's Food King, 105 Nev. 188, 192, 772 P.2d 1284 (1989) (quoting Women's Federal S & L Ass'n. v. Nevada Nat. Bank, 623 F.Supp. 469, 470 (D.Nev.1985)).

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

Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the Court should take into consideration the following factors when determining an award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has been practicing law for over 34 years and Ms. Lambertsen has been practicing law for 14 years; the law firm's practice is dedicated to family law. (2) The character and difficulty of the work performed: The intricacy, importance, time and skill required to prepare this Reply and Exhibit Index is moderate to high. (3) The work actually performed by the attorneys and legal assistants: Approximately 10 hours were spent by counsel and legal assistants in fees (4) The result obtained is unknown but the Opposition and Countermotion demonstrates Grady's, contempt, lack of cooperation and continuing control of Caterina.

V.

CONCLUSION

Caterina respectfully requests the following relief:

1. Set Aside the Order filed June 26, 2019 as to the finding that Caterina waived spousal support in the decree of divorce;
2. Continue the Calendar Call, Evidentiary Hearing and related deadlines;
3. Continue the Plaintiffs Motion to Compel Production of Discovery and

1 Defendant's Motion for a Protective Order scheduled to be heard on October
2 11, 2019 without prejudice and able to be re-noticed at a later date;

3 4. Schedule Defendant's Motion for Reconsideration filed April 8, 2019 on the
4 Notice of Entry of Order from the January 23, 2019 hearing filed about April
5 5, 2019 be heard by the judge presiding at the January 23, 2019 hearing;

6
7 5. Orders filed on or about April 5, 2019 remain in full force and effect pending
8 further orders of the court;

9 6. Order that Grady Byrd's wife, Pinky Byrd, is joined as a party to this action;

10 7. Summarily find that Grady Byrd is in Contempt of Court for failure to pay
11 Caterina Byrd as ordered and that he be sanctioned based on the following:

- 12 i. \$3,000 per month from September 1, 2018 to October 1, 2019 (14
13 months, \$42,000);
- 14 ii. \$7,000 in attorney fees ordered April 5, 2019;
- 15 iii. \$5,000 in attorney fees ordered June 26, 2019;
- 16 iv. \$1500 in attorney fees ordered August 9, 2019;
- 17 v. Sanction \$500 for each month (14, \$7,000);
- 18 vi. Sanction \$500 for each incident of failing to pay attorney fees (3,
19 \$1,500);
- 20 vii. That a warrant for Grady Byrd's arrest be issued and that he be let
21 go for his appearance on a hearing on the warrant in the amount
22 for his release set at no less than \$64,000;
- 23
- 24
- 25

26 ///

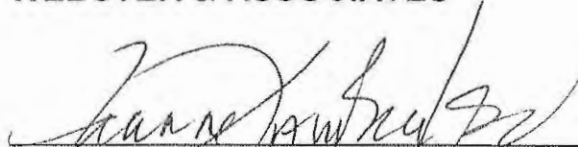
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28 ///

- 1 8. For Attorney's Fees and Costs; and
2 9. For any further orders that the court deems just and equitable under the
3 premises.

4 DATED this 30 day of September, 2019.
5
6

7 **WEBSTER & ASSOCIATES**

8 
9

10 ANITA A. WEBSTER, ESQ.
11 Nevada Bar No. 1221
12 JEANNE F. LAMBERTSEN, ESQ.
13 Nevada Bar No. 9460
14 6882 Edna Ave.
15 Las Vegas, Nevada 89146
16 Tel No: (702) 562-2300
17 Attorney for Plaintiff, Unbundled
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DECLARATION OF CATERINA BYRD

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

3 2. I have read the foregoing Motion for Reconsideration, Summary Judgment,
4 Joinder and attorney fees and costs, and the factual averments contained therein
5 are true and correct to the best of my knowledge, except as to those matters based
6 on information and belief, and as to those matters, I believe them to be true. Those
7 factual averments contained in the preceding are incorporated herein as if set forth
8 in full.
9

10 3. That I had been receiving payments of \$3,000.00 per month from the
11 Defendant, Grady Byrd since before the filing of the Joint Petition for Summary
12 Decree of Divorce on June 5, 2014. Around the time of divorce, in emails to me,
13 Grady promised me that I would receive the \$3,000.00 per month until he died.
14 Then, the life insurances and military survivor benefit plan would be paid to me.
15 Grady ceased paying me \$3,000 per month on September 1, 2018. My last
16 payment was August 2018.
17

18 4. That on September 4, 2018, I learned that the checking account that Grady
19 Byrd had deposited my monthly payment into was closed. It was a joint checking
20 account that had been established for 31 years. At the hearing on January 23,
21 2019, I gave Grady Byrd my Bank of America routing number and account number
22 so that he could make deposits into my account.
23

24 5. That I did not receive a deposit of \$4,500.00 from Grady Byrd on or before
25 February 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd on or
26 before March 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd
27 on or before April 15, 2019, and I did not receive a deposit of \$4,500.00 from Grady
28

1 Byrd on or before May 15, 2019, as ordered at the January 23, 2019 hearing. I did
2 not receive \$3,000.00 from Grady for each of the months of June 2019, July 2019,
3 August 2019, September 2019 or October 2019.

4 6. That I did not receive \$5000 in attorney fees as ordered on June 26, 2019
5 and I did not receive \$1500 in attorney fees as ordered on August 9, 2019.

6 7. That I have not received any money from Grady since August 2018. I am
7 struggling to pay my bills and living expenses. I have had to borrow money from
8 my friends and family. I took in a roommate to help pay expenses, but the
9 roommate moved out due to the stress and anxiety I am experiencing with this
10 case. I fear that I may lose my house because paying the mortgage is financially
11 difficult.
12

13 8. That at the time of divorce, I was never told by Grady and never knew that
14 the army pension was only about \$128.00 and my portion would be only about
15 \$62.00. Based on what Grady did tell me, I believed the army pension that Grady
16 was receiving was about \$3,017.00 per month and Grady was paying me
17 \$1,500.00 per month since the time of divorce because of this.
18

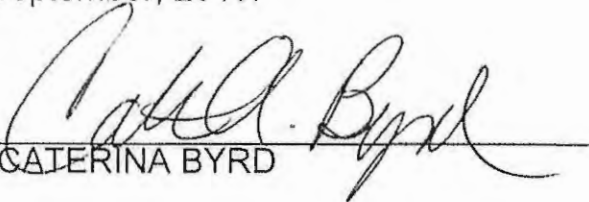
19 9. That because the \$3,000.00 per month payments from Grady will cease
20 upon his death, I will rely on the Military SBP to pay my bills once he passes. I am
21 devastated that simply because neither one of us sent the decree to the military
22 finance office within the 12 month deadline to do so. The Department of Finance
23 and Accounting Services is not reinstating me as the beneficiary. I am submitting
24 forms to the army board of corrections to reinstate me. We were married for 31
25 years and he promised me the SBP.
26

27 10. Based upon the foregoing, I respectfully request that this Court grant the
28

1 relief requested by me in this Motion.

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

4 Executed this 30 day of September, 2019.

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7 
8 CATERINA BYRD
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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 30th day of September, 2019, I caused the above and foregoing to be served as follows:

☒ 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)

William Brund
An employee of Webster & Associates