

GRADY EDWARD BYRD

V.

CATERINA ANGELA BYRD

Respondent

) Supreme Court No. 80548

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Elizabeth A. Brown
Clerk of Supreme Court

Docket 80548 Document 2020-24831

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 VII** to all interested parties as follows:

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

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

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

Anita Webster, Esq. - anitawebster@embarqmail.com


Tiffany Stewart an employee of the
MILLS & ANDERSON

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

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

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

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

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD)	CASE NO. D-18-577701-Z
Plaintiff,)	DEPT. G
vs)	
)	
GRADY EDWARD BYRD)	DATE: 10/21/2019
Defendant.)	TIME: 9:00 AM

**OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION
AND COUNTERMOTION FOR FEES**

COMES NOW, GRADY BYRD, by and through DANIEL W. ANDERSON, ESQ. of MILLS & ANDERSON, his attorneys, and hereby opposes the Plaintiff's motion for reconsideration and countermoves the Court for an award of fees in the amount of \$2,500.00. This Opposition is made and based upon the papers and pleadings on file herein, the affidavit attached hereto, the points and authorities cited below, and any oral argument entertained at the time of hearing.

DATED this 17th day of October 2019.

MILLS & ANDERSON

Byron L. Mills
BYRON L. MILLS, ESQ.

Nevada State Bar 6745
703 S. 8th Street
Las Vegas, Nevada 89101

1
2 **POINTS AND AUTHORITIES**

3 **I**

4 **STATEMENT OF FACTS**

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

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

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

25 On April 8, 2019, Grady filed a motion for reconsideration of the Court's
26 Order, and the motion was set for hearing on May 22, 2019. On April 12, 2019,
27 Grady filed a Notice to Appear Telephonically for the May 22nd hearing. Caterina
28 then filed her opposition to Grady's motion for reconsideration on April 23, 2019.
Both Grady's motion and Caterina's opposition were set for hearing on May 22,

1
2 2019.

3 At the hearing of May 22, 2019, Judge Forsberg ordered that the \$1,500 home
4 mortgage payment that Grady pays Caterina was not alimony but instead is part of
5 a property distribution. Grady was ordered to continue paying this \$1,500 per month
6 in addition to the other \$1,500 payment to Caterina based on contract principles for
7 her interest in Grady's military pay pending an evidentiary hearing. The Non-Jury
8 Trial was scheduled for October 21, 2019.

9 On September 30, 2019, Caterina filed a Motion for Reconsideration,
10 Summary Judgment, Joinder, and to Continue Evidentiary hearing. In her Motion,
11 Caterina attempts to damage Grady's reputation by stating that he married a 25-year
12 old woman after divorcing Caterina. Grady's wife's age is completely irrelevant. In
13 fact, by Caterina's own admission, Grady and her had been living apart for six (6)
14 years before their divorce. Grady did not leave Caterina for his current wife.
15 Secondly, Grady did not cease returning home, Caterina and him separated but
16 stayed married.

17 In her motion, Caterina blames Grady for her not being able to have a full-
18 time job. She mostly blames the constant moving as an impediment to her not
19 holding a steady job. Additionally, Caterina began living in Nevada in 2007 and she
20 has not moved since. That means she has been in one place for twelve (12) years,
21 since age 43, and yet she continues to not have full-time employment. There has
22 been nothing holding her back from finding a full time job for over a decade.
23 Caterina is not the only person without a post-high school education, but she uses
24 that as an excuse to not have a full-time job. Caterina is not the only person who
25 speaks English as a second language, certainly not in Nevada, but she uses that as
26 an excuse to not have a full-time job as well. Even when faced with a state of
27 "destitution" as she claims, she does not work. The history of this case shows that
28 Caterina simply does not want the stress of having a job. She has even sent messages
to Grady in which she asks, "What happens if I do get hired, what happens if I get

1 fired or let go! I do not want to loose the house, I need to feel secure and stable, I
2 don't need all the anxieties of worrying." Caterina stated she does not "need" the
3 anxieties. That does not read like the statement of a person who has no ability to
4 obtain employment, it reads like the statement of a person who does not want to live
5 like a normal person, with anxiety and with a job. Meanwhile, Grady is a disabled
6 veteran who cannot even fly due to his severe health conditions. Grady's health is
7 in such bad shape that he is forced to take a 20-hour ferry to visit his doctor because
8 he cannot fly to the location due to health risks. Caterina's aim is to make this Court
9 believe that Grady has to live with his anxieties and worries, but Caterina does not.

10 In her motion, Caterina once again claims that Grady left her destitute in
11 September 1, 2018, and that her expenses are in excess of \$3,745 per month. There
12 is no believable explanation as to how she has been managing to pay those expenses
13 for over a year. Caterina states that she had a roommate and borrowed money.
14 However, by her own admission, her roommate quickly moved out, and her
15 mortgage is \$1,933.07 per month. Caterina continues to evade explaining just how
16 she is able to pay her reported monthly expenses. Somehow, even without a
17 roommate or a full time job, Caterina comes up with over \$3,745 per month by
18 herself.

19 In her motion, Caterina keeps attempting to paint a picture as if she was
20 manipulated and powerless. She claims Grady listed his current wife as the
21 beneficiary of his military Survivor Benefit Plan ("SBP") but she frames it as if he
22 replaced Caterina with his current wife. However, that is not the case. There is no
23 reason for Grady's wife to be joined in this suit because the SBP for Caterina ended
24 prior to Grady's wife being listed as the beneficiary. Caterina failed to follow the
25 procedures of the Defense Finance and Accounting Service ("DFAS") in order to
26 remain listed as the beneficiary. That was not Grady's fault. DFAS added Grady's
27 current wife as the beneficiary only after Caterina was no longer eligible for the
28 SBP due to her failure to follow DFAS procedures. There was no retaliation on

1 Grady's part. Grady sent multiple requests to DFAS in order to continue coverage
2 for Caterina.¹ Caterina did not do what she was supposed to do in order to remain
3 listed on the SBP. He never withheld DFAS letters from Caterina. At some point,
4 Caterina has to take responsibility to ensuring her own financial well-being, and she
5 failed to do so in this case.

6 Allegedly, Caterina is appealing the issue of the SBP to the Army board for
7 the Correction of Military Records ("Army Board"). However, the Army Board
8 does not correct mistakes not made by the government. The mistake was on
9 Caterina's part. The only purpose of Caterina's appeal is to continue arguing this
10 case yet again despite her clearly having no right to the SBP anymore. Grady's
11 current wife has every right to be listed on the SBP and any attempt to join her in
12 this action is capricious.

13 In her motion, Caterina argues that she did not waive alimony. However,
14 Caterina did waive her alimony by agreeing to unequivocal and clear language in
15 the Decree, which states, "Husband and Wife agree that neither party shall be
16 required to pay spousal support to the other party." The Decree also clearly states
17 the following:

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

22 This is clear language that specifically shows there is no alimony. Caterina also
23 claims that Grady did not make full and fair disclosure of his finances prior to the
24 execution of the divorce documents. However, Caterina has failed to identify any
25 fraudulent activity by Grady. There is overwhelming written evidence that Caterina
26 was fully aware of Grady's federal disability benefits, his FERS plan, and of the
27 existence of Grady's VA benefit income prior to their divorce. Caterina knew of
28

¹ Exhibit A: Messages sent by Grady to DFAS to reinstate SBP coverage for Caterina.

1 all of Grady's assets and obligations, she cannot feign ignorance now. The only
2 two participants in deciding the terms of the Decree were Caterina and Grady, and
3 no legal counsel was involved. Caterina had her own demands and she gave the go
4 ahead on the language included. The parties exchanged over 100 emails over a 4-
5 month period discussing the divorce. Caterina had plenty of participation and say-
6 so in the terms of the Decree.

7 Caterina has provided no evidence of fraud or error occurred within the
8 nearly 4 years since the divorce. To the contrary, Caterina submitted multiple
9 statements to the Court alleging a newly discovered asset. These statements were
10 unquestionably false as those same assets were discussed in writing various times
11 in 2013 and 2014. She cannot request indemnification for things not working out
12 entirely in her favor.

13 II

14 ARGUMENT

15 A. The Court Should Deny Caterina's Motion for Reconsideration.

16 It is plainly clear that Caterina's motion for reconsideration has no basis.
17 Caterina seeks reversal of this Court's finding on May 23, 2019 based on her claims
18 that:

- 19 1. The law-of-the-case doctrine applies, and it holds that one district
20 court judge should not overturn another district court's ruling.
- 21 2. The payment of \$1,500 is actually alimony and not a property
22 settlement.
- 23 3. There was no alimony waiver.

24 However, none of Caterina's arguments apply in this case. For the reasons set forth
25 below, Caterina's motion for reconsideration should be summarily denied.

26 B. The law-of-the-case doctrine does not apply to this case.

27 Caterina claims that Judge Hardcastle's ruling that the \$1,500 monthly house
28 contribution payment is alimony should stand under the law of the case doctrine.
The Ninth Circuit has held that a district court may reconsider its prior rulings so

1 long as it retains jurisdiction over the case. *United States v. Smith*, 389 F.3d 944,
2 948 (9th Cir. 2004). The Court in *United States v. Smith* also noted that the law of
3 the case doctrine must not be conceived as “straightjackets on the informed
4 discretion and sound practical judgment of the judge.” *Id.* at 949. The law of the
5 case doctrine is not an inexorable command. *Hanna Boys Center v. Miller*, 853
6 F.2d 682, 686 (9th Cir. 1988). It is also not limit to a court’s power. *United States*
7 *v. Houser*, 804 F.2d 565, 567 (9th Cir. 1986). Furthermore, other circuit courts
8 have agreed in that the law of the case doctrine is not to be used as a limitation on
9 the court. The Seventh Circuit noted that, “[a] judge may reexamine his earlier
10 ruling... if he has a conviction at once strong and reasonable that the earlier ruling
11 was wrong, and if rescinding it would not cause undue hard to the party that
12 benefitted from it.” *Avitia v. Metro. Club of Chicago, Inc.*, 49 F.3d 1219, 1227 (7th
13 Cir. 1995). The Seventh Circuit stated that, “the doctrine is highly flexible.” *Pickett*
14 *v. Prince*, 207 F.3d 402, 407 (7th Cir. 2000).

15 The Second Circuit stated, “[t]he doctrine of the law of the case is not an
16 inviolate rule in this Circuit. *United States v. Birney*, 686 F.2d 102, 107 (2d Cir.
17 1982). The Court further stated that there is a, “long-established view that the law
18 of the case is, at best, a discretionary doctrine,” and that the doctrine “does not
19 constitute a limitation on the court’s power but merely expresses the general
20 practice of refusing to open what has been decided.” *Id.* The Court also stated that
21 judges of coordinate jurisdiction are not bound by each other’s rulings but are free
22 to disregard them if they so choose. *Id.* Furthermore, the Court stated that the only
23 limitation on a trial judge’s decision to disregard a previous ruling by a judge of
24 coordinate jurisdiction is that prejudice does not occur to the party seeking the
25 benefit of the doctrine. *Id.* The Court specified that in this context, prejudice does
26 *not* mean harm resulting from a failure to apply the doctrine, but rather prejudice
27 resulting from a lack of sufficiency of notice and opportunity to prepare with the
28 knowledge that one judge is disregarding the ruling of another judge. *Id.* The
Second Circuit noted that a district court can clearly depart from it prior ruling in

1 order to correct an error of law because it is obviously a valid reason for such a
2 departure. *Prisco v. A & D Carting Corp.*, 168 F.3d 593, 607 (2d Cir. 1999).

3 Caterina cited *Castner v. First National Bank of Anchorage*, where the Court
4 actually stated that it was "aligned with those holding that the power of each judge
5 of a multi-judge court is equal and coextensive." 278 F.2d 376, 380 (9th Cir. 1960).
6 The *Castner* Court stated that the doctrine permits one judge to overrule the order
7 of another under proper circumstances. *Id.* The Court ultimately determined that
8 the second judge did not abuse his discretion in overruling the prior judge. *Id.* In
9 fact, the *Castner* Court specifically stated that the second judge examined the
10 record and was convinced that an error of law had been committed. *Id.* The second
11 judge had the option to adhere to the law of the case doctrine and defer to the
12 erroneous ruling of the first judge, or to reverse the prior ruling. Under the
13 circumstances, the *Castner* Court noted that there was no abuse of discretion
14 because the second judge must conscientiously carry out his judicial function in a
15 case over which he is presiding. *Id.* A judge cannot carry out his judicial function
16 if he permits what he believes to be a prior erroneous ruling to control the case. *Id.*
17 The *Castner* Court did not consider whether the second judge's ruling was correct
18 or not, it simply determined that the second judge had the right, the power, and was
19 "perfectly justified" in his ruling as a matter of discretion. *Id.*

20 Here, Caterina argues that Judge Forsberg should not have reversed Judge
21 Hardcastle's order based on the law of the case doctrine. However, multiple
22 jurisdictions, including the Ninth Circuit have stated that courts are not bound by
23 the law of the case doctrine because it is merely optional, not mandatory. Thus,
24 Judge Forsberg was not bound by Judge Hardcastle's prior ruling. Additionally,
25 Caterina claims that Judge Hardcastle's ruling should stand because it was not
26 clearly erroneous and it would not work a manifest injustice against Grady. That is
27 not true. The ruling was absolutely erroneous as there is no reason the \$1,500
28 payment should be deemed alimony. Furthermore, Grady having to pay Caterina
more money than what he is legally obligated to pay is a manifest injustice in itself.

1 The reason Caterina seeks a reversal of Judge Forsberg's order is because she
2 cannot garnish those payments from Grady unless they are deemed alimony.
3 However, that is not a legally valid basis for reconsideration. Caterina aims to
4 change the character of the \$1,500 in order to collect the payments, not because the
5 payments are actually alimony. Caterina is not claiming there is an error of law,
6 only that Judge Forsberg's application of the correct law yielded an unfavorable
7 result for her. Thus, there is no reason to reverse Judge Forsberg's order based on
8 the law of the case doctrine.

9 **C. The mortgage payment of \$1,500 is not alimony.**

10 Caterina claims that she did not waive alimony and that the waiver language
11 in the Decree of Divorce was ambiguous. Caterina did waive her alimony by
12 agreeing to unequivocal and clear language in the Decree, which states, "Husband
13 and Wife agree that neither party shall be required to pay spousal support to the
14 other party."

15 Caterina cites to the Decree's language stating that Grady's payment to
16 Caterina of "\$1500 dollars extra a month to assist with her home mortgage" may
17 cease if "her financial situation changes." Caterina argues that this language is
18 consistent with alimony language because there is no defined amount being paid
19 towards the satisfaction of a particular amount and that the continued assistance
20 from Grady is based on Caterina's financial need.

21 In her motion, Caterina cites to the case of *Parker v. Green*, where the
22 agreement between the parties stated that Bryan Parker would pay Mary Green
23 \$2,500 per month "for the rest of her life, or until she marries someone in the
24 future." 421 P.3d 281 (Nev. 2018). The agreement further states, "[i]f our
25 relationship were to end per the stipulation in this agreement, and payments are
26 being made, and in the future we decided to get back together again, payments
27 would then cease." *Id.* at 2. The Court stated that the aforementioned language was
28 what plainly supported an alimony interpretation. The Court also noted that the
language evidenced the parties' intent that the payments would end upon death,

1 remarriage, or reconciliation. *Id.* at 3. Thus, the Court found that the language of
2 the agreement mirrored standard alimony language. *Id.* at 2.

3 This case is not analogous to the *Parker v. Green* case because here, there is
4 no standard alimony language. The Decree clearly states the following:

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

9 Unlike the case of *Parker v. Green*, there is also no language stating that death or
10 remarriage will terminate the payments. The Decree does state a defined amount
11 being paid, which is \$1,500 per month. The Decree also states that if the house is
12 paid off, the payment may cease. The house is not paid off at an uncertain amount;
13 there is a specified payoff amount on a mortgage. Furthermore, the Decree is clear
14 in that the payment may cease in ways that are inconsistent with alimony language.
15 There is no language included regarding re-marriage or death. Lastly and most
16 importantly, the Decree expressly states, "[t]his is not an alimony payment and is
17 not required." It is also clear that the express terms of the decree, and the intended
18 terms were that the payment of \$1500 for the home mortgage was not required and
19 therefore could be terminated at any time.

20 If the contract language is clear, it will be enforced as written. *Buzz Stew,*
21 *LLC v. City of N. Las Vegas*, 131 Nev., Adv. Op. 1, 341 P.3d 646, 650 (2015). That
22 is precisely what Grady is arguing. There is only one way to interpret the words,
23 "This is not an alimony payment and is not required." In order to delve beyond the
24 express terms of the decree, the language must be ambiguous. There is nothing
25 ambiguous about clear express language stating a payment is not alimony.
26 Caterina's ignorance in signing an agreement that states that a payment is not
27 alimony does not create ambiguity in the agreement. The nature of the payments
28 does not create alimony either. When there is an express statement where a
payment is clearly definite as not being alimony, there is no alimony.

1 **D. The Court should deny Caterina's request for 60(b) relief.**

2 Caterina should not be allowed to modify the joint petition/summary decree
3 of divorce in order to seek alimony. There is no basis to modify the decree here as
4 there was never any existing alimony; there was no fraud or mutual mistake, and
5 she waited almost 4 years before requesting to set aside the Decree. Spousal support
6 cannot be created after the Decree. Caterina had almost 4 years after the Decree was
7 filed where she could have moved to set aside the Decree or file a different action
8 for alimony. However, she did not do so within the allotted time under NRCP 60.
9 She cannot request alimony now.

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

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

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

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

9 Caterina also alleges that Grady did not make full and fair disclosure of his
10 finances prior to the execution of the divorce documents Caterina failed to identify
11 any fraudulent activity by Grady. There is overwhelming written evidence that
12 Caterina was fully aware of Grady's federal disability benefits, his FERS plan, and
13 of the existence of Grady's VA benefit income prior to their divorce. Caterina knew
14 of all of Grady's assets and obligations, she cannot feign ignorance now. Caterina
15 had plenty of participation and say-so in the terms of the Decree.

16 Caterina has provided no evidence of fraud or error occurred within the
17 nearly 4 years since the divorce. To the contrary, Caterina submitted multiple
18 statements to the Court alleging that she discovered new assets. Her statements were
19 unquestionably false as those same assets were discussed in writing various times
20 in 2013 and 2014. Caterina was not deceived by Grady, she participated in the
21 process of drafting the terms of the Decree.

22 Based on the foregoing, Grady respectfully requests that the Court denies
23 Caterina's request for 60(b) relief.

24 **E. Grady's current wife should not be joined in this action.**

25 Grady's wife is not a necessary party to this action. The asset, or SBP, given
26 to Caterina as part of the Decree ceased to be Caterina's before Grady's new wife
27 was added to the SBP. Caterina claims Grady listed his current wife as the
28 beneficiary of his SBP, but she frames it as if he replaced Caterina with his current
wife. However, that is not the case. There is no reason for Grady's wife to be joined

1 in this suit because the SBP for Caterina ended prior to Grady's wife being listed as
2 the beneficiary.

3 Allegedly, Caterina is appealing the issue of the SBP to the Army Board.
4 However, the Army Board does not correct mistakes not made by the government.
5 The mistake was on Caterina's part. The only purpose of Caterina's appeal is to
6 continue arguing this case yet again despite her clearly having no right to the SBP
7 anymore. Grady's current wife has every right to be listed on the SBP and any
8 attempt to join her in this action is capricious.

9 Caterina failed to follow the DFAS procedures in order to remain listed as
10 the beneficiary. That was not Grady's fault. DFAS added Grady's current wife as
11 the beneficiary only after Caterina was no longer eligible for the SBP due to her
12 failure to follow DFAS procedures. There was no retaliation on Grady's part. He
13 On the contrary, Grady sent multiple requests to DFAS in order to continue
14 coverage for Caterina. Caterina did not do what she was supposed to do in order to
15 remain on the SBP. For the foregoing reasons, Grady's wife should not be joined to
16 this action.

17 **F. The Court Should Award Grady with Attorney's Fees and Costs in the**
18 **Amount of \$2,500.00.**

19 Again, Grady has been forced to expend attorney's fees to defend what is a
20 clearly deficient claim by Caterina. Grady should therefore be awarded fees under
21 NRS 18.010 and based on Caterina filing her complaint in Nevada without
22 reasonable grounds. Grady therefore requests a fees award in the amount of
23 \$2,500.00.

24 In support of Grady's request, the following is an analysis of the *Brunzell*
25 factors:

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

28 Mills & Anderson has collectively approximately 50 years of practice

1 experience, and each regularly participates in continuing education to improve his
2 own skills and the practice area as a whole. All members of the firm remain in
3 good standing with all bar associations in which they are No disciplinary action of
4 any kind has ever been taken against the firm's members. All of the attorneys work
5 together on each case.

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

10 Mr. Mills was required to spend a significant amount of time opposing this
11 legally deficient motion by Caterina based on absolutely no new facts. Mr. Mills
12 provided a detailed and legally supported opposition that sets forth the exact legal
13 grounds in support of Grady's request and applied correctly to the facts of this case.

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

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

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

23 Upon a favorable decision by the Court, Grady should be awarded fees and
24 costs in the amount of \$2,500.00.

25 **III** 26 **CONCLUSION**

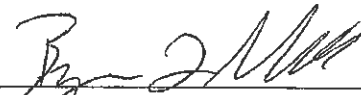
27 **WHEREFORE**, based on the above and foregoing, the Defendant
28

1 respectfully requests that this Court:

- 2 1. An Order of the Court denying Plaintiff's requested relief;
- 3 2. For attorney's fees associated with this motion in the amount of \$2,500;
- 4 3. For such other and further relief as this Court deems appropriate in the
- 5 premises.

6 Respectfully submitted,

7
8 MILLS & ANDERSON

9
10 
11 BYRON L. MILLS, ESQ.,
12 Nevada State Bar 6745
13 703 S 8th Street
14 Las Vegas, Nevada 89101
15 (702) 386-0030
16 Attorney for Defendant
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I, GRADY BYRD, being first duly sworn according to law, deposes and says:

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

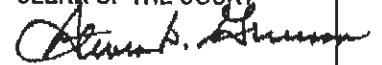
WHEREFORE, I respectfully request that this Court grant the relief requested.

FURTHER AFFIANT SAYETH NAUGHT

UJHT.

GRADY BYRD

SUBSCRIBED and SWORN to before me
this 18 day of OCT, 2019.

ATTY RAYMOND J. MERTADO
NOTARY PUBLIC in and for Said
County and State
PTR No. 21092671-5 2019
ROLL No. 555487-5 29-89
IBP No. 0000 LIFETIME
6TH MCLE COMPLIANCE No. 00541, 8/28/10
2ND FLR, RM BLDG., BANTAYAN, DUMAQUETE CITY



1 RPY
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12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, Unbundled

DISTRICT COURT
CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD,
12
13 Plaintiff,

14 v.

15 GRADY EDWARD BYRD,
16
17 Defendant.

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

) Hearing Requested: Yes

) **PLAINTIFF'S REPLY TO**
) **DEFENDANT'S OPPOSITION TO**
) **PLAINTIFF'S MOTION FOR**
) **RECONSIDERATION, SUMMARY**
) **JUDGMENT, JOINDER AND TO**
) **CONTINUE THE EVIDENTIARY**
) **HEARING**

18
19 COMES NOW Plaintiff, CATERINA ANGELA BYRD (hereafter "Caterina"),
20 by and through her attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F.
21 LAMBERTSEN, ESQ., of the law offices of WEBSTER & ASSOCIATES, in an
22 Unbundled Capacity, and does hereby file *Plaintiff's Reply to Defendant's*
23 *Opposition to Plaintiff's Motion for Reconsideration, Motion for Summary*
24 *Judgment, Motion for Joinder and Motion to Continue the Evidentiary Hearing.*
25 This Motion is made and based upon the pleadings and papers on file herein, the
26 following Points and Authorities and upon such oral argument as the Court may
27
28

W:\Family\Byrd, Caterina\Pleadings\Drafts\RPPLY to Opp to our Reconsideration 10 20 19.wpd

1 allow at the time of the hearing.

2 Caterina respectfully requests the following relief:

- 3 1. Caterina respectfully requests the following relief:
- 4 2. Grant Caterina's motion based on Defendant's untimely Opposition and
- 5 Counter-motion.
- 6 3. Deny the relief requested in Defendant's Counter-motion.
- 7 4. Set Aside the Order filed June 26, 2019 as to the finding that Caterina
- 8 waived spousal support in the decree of divorce and reinstate Judge
- 9 Hardcastle's order finding that the \$1,500 mortgage assistance payment is
- 10 alimony;
- 11 5. That the orders filed on or about April 5, 2019 remain in full force and effect
- 12 pending further orders of the court;
- 13 6. The Grady Byrd's wife, Pinky Byrd, be joined as a party to this action;
- 14 7. Summarily find that Grady Byrd is in Contempt of Court for failure to pay
- 15 Caterina Byrd as ordered and that he be sanctioned based on the following:
- 16
 - 17 i. \$3,000 per month from September 1, 2018 to October 1, 2019
 - 18 (14 months, \$42,000);
 - 19 ii. \$7,000 in attorney fees ordered April 5, 2019;
 - 20 iii. \$5,000 in attorney fees ordered June 26, 2019;
 - 21 iv. \$1500 in attorney fees ordered August 9, 2019;
 - 22 v. Sanction \$500 for each month (14, \$7,000);
 - 23 vi. Sanction \$500 for each incident of failing to pay attorney fees (3,
 - 24 \$1,500);
 - 25 vii. That a warrant for Grady Byrd's arrest be issued and that he be
 - 26 let go for his appearance on a hearing on the warrant in the
 - 27 amount for his release set at no less than \$64,000;
- 28 8. For Attorney's Fees and Costs; and

///

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

Dated: October 20th, 2019.

WEBSTER & ASSOCIATES

By: 

ANITA A. WEBSTER, ESQ.

Nevada Bar No. 1221

JEANNE F. LAMBERTSEN, ESQ.

Nevada Bar No. 9460

6882 Edna Ave.

Las Vegas, Nevada 89146

Tel No: (702) 562-2300.

Attorneys for Plaintiff, Unbundled

Defendant's Opposition is Untimely

Defendant was served with Caterina's Motion for Reconsideration on September 30, 2019. Defendant failed to respond to Caterina's Motion within 10 days pursuant to EDCR 5.502(d). Defendant did not respond until October 18, 2019. Defendant's Opposition is untimely. Pursuant to EDCR 5.502 (d), failure to serve and file a written opposition can be construed as an admission that the motion is meritorious and a consent to the granting of the same.

Based on Defendant's untimely Opposition, Caterina requests that her Motion for Reconsideration be granted.

BACKGROUND

September Defendant admits that he promised Caterina that he would pay her \$3,000 for the rest of her life and when he died she would get life insurance to pay off her house and his survivor benefits. Post divorce he paid her \$3,000 per month for more than 4 years and suddenly stopped. He has

1 left her without the necessary funds to support herself.

2 The parties were married 31 years, Defendant advanced his career and
3 was earning \$9,636.52 at the time of the divorce, whereas Caterina was not
4 working when the parties divorced and is not presently working. In order to
5 advance Defendant's military career, Caterina moved multiple times. She
6 worked on sporadically and not at all since 1999.

8 At the time of the divorce, Defendant drafted the divorce documents. He
9 actively discouraged Caterina from getting an attorney by threatening that she
10 would get far less. He also promised he would always take care of her and
11 support her at the rate of not less than \$3,000 per month. He told her that his
12 military pension was \$3,017 per month and he would pay her half which is
13 \$1,508 per month. He told her he couldn't get a loan if he added certain
14 language/amounts to the decree and he misrepresented his financial condition
15 claiming he had substantial debt and had to file bankruptcy after the divorce.
16 As a result Caterina did not retain an attorney and relied on Defendant's
17 representations that he would support her at the rate of \$3,000 per month for
18 the rest of her life.

21 By way of this Motion, Caterina is requesting that the prior court order
22 recognizing her house assistance payment as alimony be reinstated.
23 Pursuant to NRCP 60(b)96), she is requesting that the Decree of Divorce be
24 reopened for the purpose of awarding her alimony since Defendant has
25 converted all but \$128.40 of his military pension to disability pay.

27 ///

ARGUMENT

MOTION FOR RECONSIDERATION

Judge Hardcastle ruled that the mortgage assistance payment is alimony. This ruling was subsequently overturned by Judge Forsberg who found that the payments are a property settlement. In this Motion, Caterina is requesting that Judge Hardcastle's ruling be upheld, namely, that the mortgage assistance payment is alimony. In support of her request that Judge Hardcastle's ruling should not have been overruled, Caterina cited 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. Defendant argues that the "law of the case doctrine" is not inviolate and that one district court judge can overrule another district court judge in the same proceedings. In general the courts have discouraged one district court over ruling another district court judge. For example in the United States v. Smith 389 F.3d 944 cited by Defendant, the court states that "reconsideration of legal questions previously decided should be avoided," and that if a prior decision is reconsidered the second judge must have a [C]onviction at once strong and reasonable that the earlier ruling was wrong, and if rescinding it would not cause undue harm to the party that had benefitted from it."

1
2
3 In this instance, Judge Forsberg did explain the reason for rescinding the
4 earlier decision that the \$1,500 mortgage assistance payment is a
5 property settlement as opposed to alimony. Further, rescinding the
6 earlier decision (that the payment is alimony) does cause undue harm to
7 Caterina, since calling the payment a property settlement makes her
8 award uncollectible. Under federal law, Defendant's disability and social
9 security income cannot be garnished, but spousal support is eligible for
10 garnishment.

11
12 In Castner v. First National Bank of Anchorage, 278 F.2d 376 (9th Cir.
13 1960) the court examined the law of the case and explained that the
14 court has not frequently considered the problem and cited several
15 examples of 9th Circuit cases wherein the court reversed the order of a
16 second judge as an abuse discretion. Specifically, the court explained as
17 follows:
18

19 This court has not considered the problem frequently. In Hardy v.
20 North Butte Mining Co., 9 Cir., 1927, 22 F.2d 62, we reversed an
21 order of a second judge discharging receivers appointed by a prior
22 judge in a case where the appointment had been made in the
23 exercise of judicial discretion. In Carnegie National Bank v. City of
24 Wolf Point, 9 Cir., 1940, 110 F.2d 569, we held it was an abuse of
25 discretion for a second judge to dismiss an action after it had been
26 heard and submitted to another judge of the same court and no
27 reason was shown why the second judge entered into the case. We
28 cited Shreve v. Cheesman, *supra*, for the proposition that one judge
should not overrule another " * * * except for the most cogent
reasons."

The court in Castner found that the second judge in that case had not

1 abused his discretion there were "*exceptional circumstances*" which
2 justified a reversal of the prior judge's ruling.

3
4 In Baldwin v. United States, 823 F. Supp. 2d 1087, 1099 (D. N. Mar. 1,
5 2011) the court stated:

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

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

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

16 In general, "judges who sit [on the same case] should not
17 attempt to overrule the decisions of each other." Castner v. First
18 Nat'l Bank of Anchorage, 278 F.2d 376, 379 (9th Cir. 1960) (citation
19 and quotation marks omitted). "[J]udges must, in light of the
20 overarching 'principles of comity and uniformity,' make every effort
21 'to preserve the orderly functioning of the judicial process' when
22 reconsidering an order of a prior judge in the same case." Baldwin
23 v. United States, 823 F. Supp. 2d 1087, 1099 (D. N. Mar. 1, 2011)
24 (quoting Castner, 278 F.2d at 379-80). **While a second judge has
25 discretion to review the decision of a predecessor in the same
26 case, the law of the case doctrine can limit that discretion.**
27 Delta Savings Bank v. United States, 265 F.3d 1017, 1027 (9th Cir.
28 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).**

Judge Hardcastle's decision should not have been reversed as the
subsequent ruling did not meet the criteria for reversal. Judge
Hardcastle's ruling was not (1) clearly erroneous, (2) no intervening

1 authority made reconsideration appropriate, and (3) no substantially
2 different evidence was provided by Defendant.

- 3
4 2. **The house assistance payment is in the nature of alimony:** The
5 nature of the payment supports an alimony interpretation rather than a
6 property settlement interpretation because the payments are based on
7 Caterina's financial need and the payments continue for an indefinite
8 time into the future. See e.g. Parker v. Green, No. 73176 (Nevada 2018);
9 In Parker v. Green, No. 73176 (Nevada June 25, 2018), despite the
10 decree containing an alimony waiver, the court agreed that the language
11 in the decree was ambiguous which required the court to examine the
12 circumstances surrounding the parties' alimony waiver in order to
13 determine the true intentions of the parties. In the Parker case the court
14 rescinded the alimony waiver in the Decree of Divorce and designed the
15 payments as alimony payments.
16
17 In Holyoak v. Holyoak, No. 67490 (Nevada 2016), the parties entered
18 into a Memorandum of Understanding. The Memorandum of
19 Understanding provided that a QDRO will direct the trustee of PERS to
20 pay to each party their proportionate share of the pension at the time
21 [husband] retires. The parties disputed what this meant. Wife argued
22 she was entitled to the benefits when husband was first eligible to retire.
23 Husband argued that Wife would not receive any benefits until he retired.
24 The court found the provision ambiguous and ultimately interpreted it to
25 mean that Wife was entitled to the benefits when Husband was first
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27
28

1 eligible to retire. In so holding the court explained:

2 [T]his court views a contract as "ambiguous if it is reasonably
3 susceptible to more than one interpretation." Shelton v. Shelton,
4 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (internal quotation and
5 footnote omitted). When interpreting an ambiguous contract, this
6 court looks beyond the express terms and analyzes the
7 circumstances surrounding the contract to determine the true
8 mutual intentions of both parties. *Id.* (footnote omitted). **Finally, this**
9 **court has recognized that an interpretation that "results in a**
10 **fair and reasonable contract is preferable to one that results in**
11 **a harsh and unreasonable contract."** *Id.* (internal quotation and
12 footnote omitted). Holyoak v. Holyoak, No. 67490, at *3-5 (Nev. May.
13 19, 2016)(Emphasis Added).

14 So, too, in this instance, the alleged "alimony waiver" is not the end of the
15 inquiry in this case. The nature of the payments creates an ambiguity,
16 the language of the mortgage assistance support is similar to the alimony
17 language in NRS 125.150(9)(a) and the facts of the case show that,
18 based on what Defendant told Caterina before and at the time of the
19 divorce, Caterina reasonably expected that Grady would support her for
20 the remainder of her life and that upon his death, she would continue to
21 be supported based on her receipt of his survivor benefits. Here, in the
22 months leading up to the divorce, Grady repeatedly assured Caterina
23 that she would receive \$3,000 per month for as long as he lived, that he
24 could not have the support language in the decree of divorce because
25 he would not qualify for a loan, and that he was fully aware that Caterina
26 needed support because her mortgage alone was over \$1,933 per
27 month, since the house was purchased just a few months before he told
28 her he wanted a divorce. Thereafter, he paid her \$3,000 per month for
more than 4 years.

1 Further, were the court to interpret the Decree of Divorce as a property
2 settlement, it would lead to the harsh results because the Defendant has
3 demonstrated that he will not make the payments. If the payments are
4 alimony, Caterina can garnish her payments from his disability pay.
5

6 **3. Caterina paid taxes on the house assistance alimony payments:**

7 Caterina claimed the \$1,500 per month mortgage assistance payments
8 as alimony on her taxes for 4 years. 42 U.S.C. §659 (2)(i)(3) definition of
9 alimony means periodic payments of funds for the support and
10 maintenance of another.
11

12 **4. There was no alimony waiver because:**

- 13 a. As explained herein above, the "waiver" language in the Decree of
14 Divorce was ambiguous. Pursuant to Parker v. Green, No. 73176
15 (Nevada June 25, 2018), the court should examine the
16 circumstances surrounding the parties' alimony waiver in order to
17 determine the true intentions of the parties. In this case the true
18 intentions demonstrate that Caterina was receiving support.
19
20 b. Any ambiguity must interpreted against the drafter (Defendant had
21 the documents prepared). Any vagueness or ambiguity must be
22 interpreted against the drafter. Basic principles of contract law hold
23 the drafter to a higher standard. Williams v. Waldman, 108 Nev.
24 466, 473, 836 P.2d 614, 619 (1992).
25
26 c. Caterina could not have waived her right to alimony while
27
28

1 simultaneously accepting support to pay her necessities.

2
3 d. Grady violated his fiduciary duty to Caterina. He admits that he
4 promised to pay her \$3,000 per month as long as he lives. He told
5 her that he couldn't put the support language she wanted into the
6 decree because he wouldn't be able to get a loan. A fiduciary
7 relationship arises from the existence of the marriage itself. Cook v.
8 Cook, 112 Nev. 179, 912 P.2d, 264 (1996) citing Williams v.
9 Waldman, 108 Nev. 466, 836 P.2d 614 (1992) at 471-72, 836 P.2d
10 at 618.
11

12 e. There was unequal bargaining power between the parties:

- 13 i. Defendant has two master's degrees. Caterina has a high
14 school education and speaks English as a second language.
15
16 ii. Grady threatened that if she went to an attorney she would get
17 substantially less because of his precarious financial situation.
18 He represented to her that he was going to have to file
19 bankruptcy after the divorce.

20 Based on the foregoing, the \$1,500 per month mortgage assistance
21 payment should remain an alimony payment.
22

23 **CATERINA IS ENTITLED TO 60(b)(6) RELIEF**

24 This court can grant Caterina relief from judgment under NRCP 60(b)(6).
25 Rule 60. Relief From a Judgment or Order

26 (b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On
27 motion and just terms, the court may relieve a party or its legal
28

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

Caterina requests that this court should find that extraordinary circumstances exist to grant Caterina relief from the alimony waiver in the Decree of Divorce and award Caterina alimony to address the loss of Defendant's military pension payment pursuant to NRCP 60(b)(6).

In Fattore v. Fattore Docket No. A-3727-16T1 argued January 16, 2019 and February 5, 2019 (N.J. Super. App. Div., 2019), the court found that the wife waived alimony in anticipation of her receipt of her interest in the husband's military pension. In Fattore, the court explained:

"Here, we hold ***the alimony waiver was not a bar to a consideration of a post-judgment award of alimony to plaintiff.*** Although the waiver of alimony was mutual, we need not

1 speculate what defendant's reasons for waiving it were because
2 his waiver stands separate, and presumably had separate
3 consideration, from plaintiff's waiver. **However, the record**
4 **readily demonstrates plaintiff gave valuable consideration**
5 **for the waiver of alimony in exchange for the promise of the**
6 **future ability to share in defendant's military pension.**
7 Moreover, as defendant notes in his reply brief, his earnings were
8 approximately thirty-four percent greater than plaintiff's at the time
9 of the divorce. Thus, there was valuable consideration given by
10 plaintiff in exchange for the alimony waiver, and **the**
11 **unforeseeable loss of the bargained for pension benefit was**
12 **a substantial and permanent change in circumstances, which**
13 **invalidated the waiver. Upholding the alimony waiver in**
14 **these circumstances would be wholly unfair."**
15 (Emphasis Added).

16 In Cassinelli v. Cassinelli, 229 Cal. Rptr. 3d 801 (2018), Wife received
17 her share of husband's military pension for 26 years. Then after 26 years of
18 payment, Husband converted his military pension pays from to VA benefits
19 and CRSC payments. Wife lost all income from husband's military pension as
20 a result. The appellate court found that as a result of the ruling in Howell v.
21 Howell, 137 S. Ct. 1400 (2017), the court could not indemnify Wife dollar for
22 dollar for the amounts that she lost from Husband's military pension but the
23 court could award her spousal support since her income had drastically
24 changed.

25 In this instance, without the payments from Defendant, Caterina has no
26 income. Caterina also has no means to garnish or obtain money directly from
27 the Defendant unless she receives an order for spousal support because all of
28 Defendant's income is from disability or social security except approximately
\$128.40 per month.

Caterina should be allowed to reopen the Decree of Divorce to be

1 awarded life time alimony based on her complete loss of income and based
2 upon Defendant's representations at the time of the divorce that he would
3 support her at the rate of \$3,000 per month until his death.

4 Defendant cites Cavell v. Cavell, 90 Nev. 334, 526 P.2d 330 (1974) for
5 the proposition that Caterina cannot amend the Decree of Divorce to seek
6 alimony. Cavell is distinguishable in many respects. It was decided before the
7 adoption of NRCP 60(b)(6), there were no extraordinary circumstances in
8 Cavell and the wife in Cavell waited almost two years before seeking relief after
9 entry of a default judgement against her although admittedly having been
10 property served and having received a copy of the final decree. In this
11 instance, Caterina promptly filed for relief after Defendant stopped paying her,
12 NRCP 60(b)(6) allows relief, and pursuant to NRCP 60(b)(6), there are
13 extraordinary circumstances in that Defendant has converted almost his entire
14 pension to disability pay. Defendant has stopped paying her entirely, has
15 moved to the Philippines and has ignored this court's orders to pay Caterina
16 ongoing support in the amount of \$3,000 per month. Caterina has no
17 recourse unless her payments are characterized as alimony since only
18 alimony can be garnishment from Defendant's disability pay and social
19 security. After 31 years of marriage and Defendant's promises of life time
20 support, Caterina is not receiving any financial support from Defendant.

21 Based on the foregoing, Caterina should be allowed to set aside the
22 Decree and make a claim for life time alimony.

23 ///

24 ///

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

Defendant didn't doesn't deny that Defendant should be summarily held in contempt of court for failing to follow the Court's orders to deposit \$3,000 per month into Caterina's bank account for the time period of September 1, 2018 through October 1, 2019.

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

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

"..... the following facts are undisputed

- 1. Grady has not paid any money toward the \$3,000 obligation since just before Caterina filed her motion.**
- 2. Grady has income sufficient to cover this obligation."**

Grady's Motion filed 09/12/19, page 4, line 22 - 25; Grady's Opposition filed 09/17/19, page 3, line 22- 25.

Grady's refusal to pay is intentional, willful and deliberate.

Rule 56. Summary Judgment

1 (a) Motion for Summary Judgment or Partial
2 Summary Judgment. A party may move for summary
3 judgment, identifying each claim or defense — or the
4 part of each claim or defense — on which summary
5 judgment is sought. **The court shall grant summary
6 judgment if the movant shows that there is no
7 genuine dispute as to any material fact and the
8 movant is entitled to judgment as a matter of law.**
9 The court should state on the record the reasons for
10 granting or denying the motion.

11 NRS 22.030
12
13

14 2. If a contempt is not committed in the immediate
15 view and presence of the court or judge at chambers,
16 an affidavit must be presented to the court or judge of
17 the facts constituting the contempt, or a statement of
18 the facts by the masters or arbitrators.
19

20 NRS 22.040 Issuance of warrants of attachment and
21 commitment. When the contempt is not committed in
22 the immediate view and presence of the court or judge,
23 a warrant of attachment may be issued to bring the
24 person charged to answer, or, without a previous arrest,
25 a warrant of commitment may, upon notice, or upon an
26 order to show cause, be granted; and no warrant of
27 commitment shall be issued without such previous
28 attachment to answer, or such notice or order to show
cause.

21 NRS 22.050 Amount of bail may be fixed by
22 endorsement on warrant of attachment. Whenever a
23 warrant of attachment is issued pursuant to this
24 chapter, the court or judge shall direct, by an
25 endorsement on such warrant, that the person charged
26 may be let to bail for his or her appearance, in an
27 amount to be specified in such endorsement.

26 NRS 22.100 Penalty for contempt.

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

1 contempt charged.

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

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

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

17 **There are no material facts in dispute:** Grady is obligated to pay
18 Caterina (per the Decree of Divorce and again per the court's orders from April
19 5, 2019, June 26, 2019 and August 9, 2019), he has admittedly not paid her
20 (see pleadings referenced above) and he has the ability to pay her (see
21 pleadings referenced above). As such, Grady should summarily be found in
22 contempt and sanctioned as follows:

- 23 i. \$3,000 per month from September 1, 2018 to October 1, 2019
24 (14 months, \$42,000);
- 25 ii. \$7,000 in attorney fees ordered April 5, 2019;
- 26 ii. \$5,000 in attorney fees ordered June 26, 2019;
- 27 iii. \$1,500 in attorney fees ordered August 9, 2019;
- 28 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.

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

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

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

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

16 On April 5, 2019, Caterina sent correspondence to Grady and asked
17 Defendant to voluntarily keep her on the SBP. Grady refused. On May 2,
18 2019, at the hearing, she asked him to keep her on the SBP. He refused.
19 Instead, Defendant listed his new 25 year old wife as the beneficiary. It was
20 Caterina, not his 25 year old wife, who was married to Defendant for 31 years
21 and supported his career. Caterina now has to pay additional attorney's fees
22 and costs in her efforts to reinstate a benefit that was awarded to her in the
23 decree of divorce.
24

25 On June 26, 2019, this Court ordered Defendant to complete the
26 paperwork necessary to reinstate Caterina as the beneficiary of the Survivor
27 Benefit Plan. DFAS has refused to reinstate Caterina. She is now appealing to
28

1 the Army Board for the Correction of Military Records. For purposes of her
2 appeal, since Defendant's new wife is listed as the beneficiary, Caterina needs
3 a consent from Grady's wife, Pinky. Grady was asked to cooperate and obtain
4 Pinky's consent.¹ On September 25, 2019, Caterina received a letter from
5 Grady advising he will not cooperate and have Pinky sign the consent.²

6
7 Pinky must now be joined to this instant action. See Ellison v. Ellison,
8 776 SE 2d 522 Court of Appeals of North Carolina (August 4, 20125).

9 Rule 19. Required Joinder of Parties

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

11
12 (1) Required Party. A person who is subject to service of process and
13 whose joinder will not deprive the court of subject-matter jurisdiction
14 must be joined as a party if:

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

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

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

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

25 (2) Joinder by Court Order. If a person has not been joined as
26 required, the court must order that the person be made a party.

27
28 ¹ Exhibit "4" to the Motion for Reconsideration--Letter dated September 24, 2019 with
consent form sent to Grady's counsel.

²Exhibit "5" to the Motion for Reconsideration--Letter dated September 25, 2019 from
Grady's counsel.

1 A person who refuses to join as a plaintiff may be made either
2 a defendant or, in a proper case, an involuntary plaintiff.

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

- 5 (A) any right to relief is asserted against them jointly,
6 severally, or in the alternative with respect to or arising out
7 of the same transaction, occurrence, or series of
8 transactions or occurrences; and
- 9 (B) any question of law or fact common to all defendants will
10 arise in the action.

11 Caterina has retained Mark Sullivan, Esq., an attorney with an expertise
12 in military divorces and the author of "The Military Divorce Handbook" (ABA,
13 3rd Ed. 2019). He is currently assisting her with the appeal to the military
14 board. One of his requirements was that Caterina's current counsel do the
15 following:

16 communicate with SM [Service member] /retiree [Defendant] and
17 new spouse about signing the waiver/release, which would allow the
18 Board to consider the case since new wife's rights have been
19 extinguished by her release of same in favor of ex-wife; and

20 *if NO release/waiver, then application to the court to
21 -join new spouse as party - motion for joinder, preparation of new
22 complaint, notice of hearing, dealing with objections and motions to
23 dismiss, conducting the hearing, preparing the order and serving the
24 new complaint.

25 Defendant has already been ordered to take the necessary actions to
26 reinstate Caterina's SBP but when Defendant's counsel advised that Pinky
27 Byrd would not sign the waiver of the Survivor Benefits, Caterina's only
28 recourse was to file a Motion seeking to add her to these proceedings.
Accordingly, Caterina seeks joinder of Grady's wife as a necessary party
should she remain unwilling to sign the necessary release.

CATERINA IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES

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

Since January 23, 2019, Caterina has incurred additional fees and costs defending herself against Grady's wrongful behavior. She has been forced to file motions and seek the court's assistance since then. At the May 22, 2019, hearing (order filed June 26, 2019), Caterina was awarded \$5,000 in attorney fees and at the July 18, 2019 hearing (order filed August 9, 2019), Caterina was awarded \$1,500 in attorney fees. Grady has refused to pay these fees. Caterina will file a current Memorandum of Fees and Costs for the fees requested herein.

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

Pursuant to NRS 22.100 Penalty for contempt.

2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned not exceeding 25 days, or both.
3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable

1 expenses, including, without limitation, attorney's fees, incurred
2 by the party as a result of the contempt.

3 Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972).
4 Spouses should be on an equal footing so that one spouse doesn't have to
5 liquidate her savings. The Nevada Supreme Court held that the district court
6 did not abuse its discretion in awarding approximately \$50,000.00 in
7 attorney fees to the wife 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.

8 In Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016) the
9 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.

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

12 Hornwood v. Smith Food King, attorney fees to prevailing party if that party
13 succeeds on a significant number of issues. This court has held that "[a]
14 plaintiff may be considered the prevailing party for attorney's fee purposes if
15 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
16 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).

17 Awards of attorney fees are within the sound discretion of the Court. See
18 Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher, 89
19 Nev. 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev.
20 530, 532, 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev.
21 1455, 971 P.2d 1262 (1998).

22 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
23 Court should take into consideration the following factors when determining an
24 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
25 been practicing law for over 34 years and Ms. Lambertsen has been practicing
26 law for 14 years; the law firm's practice is dedicated to family law. (2) The
27 character and difficulty of the work performed: The intricacy, importance, time
28 and skill required to prepare this Reply and Exhibit Index is moderate to high.

1 (3) The work actually performed by the attorneys and legal assistants:
2 Approximately 20 hours were spent by counsel and legal assistants in fees (4)
3 The result obtained is unknown but the Opposition and Countermotion
4 demonstrates Defendant's, contempt, lack of cooperation and failure to follow
5 this court's orders.
6

7 CONCLUSION


8 Caterina respectfully requests the following relief:

- 9 1. Grant Caterina's motion based on Defendant's untimely Opposition and
10 Countermotion.
- 11 2. Deny the relief requested in Defendant's Countermotion.
- 12 3. Set Aside the Order filed June 26, 2019 as to the finding that Caterina
13 waived spousal support in the decree of divorce and reinstate Judge
14 Hardcastle's order finding that the \$1,500 mortgage assistance payment is
15 alimony;
16
- 17 4. That the orders filed on or about April 5, 2019 remain in full force and
18 effect pending further orders of the court;
19
- 20 5. The Grady Byrd's wife, Pinky Byrd, be joined as a party to this action;
- 21 6. Summarily find that Grady Byrd is in Contempt of Court for failure to pay
22 Caterina Byrd as ordered and that he be sanctioned based on the
23 following:
24
 - 25 i. \$3,000 per month from September 1, 2018 to October 1, 2019
26 (14 months, \$42,000);
 - 27 ii. \$7,000 in attorney fees ordered April 5, 2019;
 - 28 iii. \$5,000 in attorney fees ordered June 26, 2019;

- iv. \$1500 in attorney fees ordered August 9, 2019;
 - v. Sanction \$500 for each month (14, \$7,000);
 - vi. Sanction \$500 for each incident of failing to pay attorney fees (3, \$1,500);
 - vii. That a warrant for Grady Byrd's arrest be issued and that he be let go for his appearance on a hearing on the warrant in the amount for his release set at no less than \$64,000;
8. For Attorney's Fees and Costs; and
 9. For any further orders that the court deems just and equitable under the premises.

DATED this 20 day of October, 2019.

WEBSTER & ASSOCIATES


ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Tel No: (702) 562-2300
Attorney for Plaintiff, Unbundled

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 20th day of October, 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)


An employee of Webster & Associates

1 TRANS

COPY

FILED

MAY 13 2020

Ann L. Sullivan
CLERK OF COURT

5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8

9 IN THE MATTER OF THE)
10 JOINT PETITION FOR) CASE NO. D-18-577701-2
DIVORCE OF:)
11 CATERINA BYRD) DEPT. G
12 AND GRADY E. BYRD) APPEAL NO. 80548

13 BEFORE THE HONORABLE KATHY HARDCASTLE
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: ALL PENDING MOTIONS

16 MONDAY, OCTOBER 21, 2019

17 APPEARANCES:

18 The Plaintiff: CATERINA BYRD
For the Plaintiff: JEANNE LAMBERTSEN, ESQ.
ANITA WEBSTER, ESQ.
19 6882 Edna Ave.
20 Las Vegas, Nevada 89146
(702) 562-2300

21 The Defendant: NOT PRESENT
22 For the Defendant: BYRON MILLS, ESQ.
703 S. Eighth St.
23 Las Vegas, Nevada 89101
(702) 386-0030
24

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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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CATERINA BYRD	14	102	138	--
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DEFENDANT'S
WITNESSES:

(None presented)

* * * * *

I N D E X O F E X H I B I T S

<u>PLAINTIFF'S EXHIBITS:</u>	<u>ADMITTED</u>
----------------------------------	-----------------

1-7, 9-11 - Various pleadings	85
8 - Ms. Byrd financial disclosure form	24
13, Bates 522-523 - Email	41
14 - Email	49
15 - Email	51
16 - Various emails	63
17, Bates 7 - Email	54
18 - Email	67
20, Bates 9 - Email	57
21, Bates 11 - Email	60

1	22 - Email	69
2	23 - Email	142
3	25 - Email	89
4	27 - 3/10/99 document	96
5	28 - Mr. Byrd retirement account	98
6	30-33 - 2015-2018 tax returns	72
7	34 - Mortgage loan statement	78
8	35 - Loan care statement	82
9	36 - HOA	79
10	38, Bates 375 - Ms. Byrd doctor visit	28
11	42 - Ms. Byrd social security statement	21
12	63 - Letter	101
13	64 - Email	102
14		
15	DEFENDANT'S	
16	<u>EXHIBITS:</u>	
17	A-L - Various exhibits	127
18		
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1 LAS VEGAS, NEVADA

MONDAY, OCTOBER 21, 2019

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

3 (THE PROCEEDINGS BEGAN AT 09:20:42)

4
5 THE COURT: All right. This will be in D-577701,
6 Byrd versus Byrd. You may state your appearances, for the
7 record.

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

11 MS. WEBSTER: Good morning, Your Honor. Anita
12 Webster. Present also for the Plaintiff. Bar number 1221

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

15 THE COURT: Good morning. All right. This is here
16 on your motion an order to show cause. Either side wish to
17 make opening statements?

18 MS. WEBSTER: Yes, Your Honor. And Your Honor, we
19 do have some housekeeping matters. We do have a motion for
20 reconsideration that is before Your Honor. I know Counsel --
21 Defendant's Counsel also brought a motion regarding the denial
22 of his client's appearance by audio equipment. I didn't know
23 if Your Honor's pleasure would be to hear those matters first
24 before we --

1 THE COURT: I think I denied his motion to appear
2 telephonically. We've never seen a doctor's note. He's
3 raised that before, ever presented a doctor's note.

4 MR. MILLS: Your Honor, I presented three. They
5 were attached to the -- both the request and the motion.

6 THE COURT: I didn't see them. Can you show them to
7 me?

8 MR. MILLS: Sure. They're --

9 THE COURT: But he is in the Philippines.

10 MR. MILLS: That's correct. They're attached to my
11 motion. They're also Exhibits N, O -- or I'm sorry, M, N, and
12 O on my exhibit book. I can give you the motion or I can give
13 you -- or you can just look at the exhibit book that's there.
14 They're the same thing. M, N, and O.

15 MS. LAMBERTSEN: And Your Honor, we -- we have seen
16 those notes and we have objected to them being sufficient to
17 warrant his absence today. And they were covered in our
18 opposition to his request to appear telephonically.

19 THE COURT: Okay. And I note that he is on military
20 disability. And he was referred in one of the medicals to --
21 and all of these notes are from community services and doctors
22 in the Philippines.

23 MS. LAMBERTSEN: Yes.

24 THE COURT: Not military doctors. Not doctors

1 through the Department of Veterans Affairs.

2 MS. LAMBERTSEN: And Your Honor, the first one on
3 May 2nd --

4 THE COURT: There's a referral to -- or there's a
5 referred to -- he's supposed to follow up with the Department
6 of Veterans Affairs. And we don't have anything from the
7 Department of Veterans Affairs. So I find that somewhat
8 suspicious that he is going to community doctors in the
9 Philippines, not to the Department of Veterans Affairs.
10 Nothing has been provided from the Department of Veterans
11 Affairs. So I don't believe these notes. So we will proceed
12 without him.

13 MS. LAMBERTSEN: Thank you, Your Honor.

14 THE COURT: All right. We've dealt with that issue.
15 As to the motion for reconsideration.

16 MS. WEBSTER: Yes, Your Honor.

17 THE COURT: The setting aside -- this is the
18 evidentiary hearing. We're going to make the determination
19 today on the evidentiary hearing of whether or not the
20 agreement entered into between the parties what was meant by
21 the language of it and whether or not it constituted a waiver
22 of alimony. And I think you've pointed out case law in there
23 that would indicate that it's probably not a waiver of alimony
24 or that the statement regarding this is not alimony is of no

1 effect in regards to the agreement because it clearly provides
2 for her support. And after a 31 year marriage, it's clearly
3 unconscionable to leave her with nothing after a 31 year
4 marriage and leave total discretion to him of whether or not
5 to pay, when to pay, and when to be able to quit paying. So
6 it could be that this whole thing can just be set aside and
7 the parties can still be considered married and we go through
8 this all over again.

9 So I will listen to the evidentiary portion of it.
10 You will make your record. I'm assuming that Mr. Grady if he
11 loses will appeal. He will need to post a supersedeas bond to
12 stop any collection of any awards that may be ordered today.
13 So he needs to understand that. All right.

14 MS. WEBSTER: And Your Honor, just real briefly on
15 the motion for reconsideration. And I -- I appreciate Your
16 Honor has obviously read everything and summarized it very
17 well. The other relief that we had asked for on the motion
18 for reconsideration is we had also asked that Pinky Byrd (ph)
19 who is the Defendant's --

20 THE COURT: Under what basis would this Court -- the
21 state have jurisdiction over?

22 MS. WEBSTER: Well, the -- the jurisdiction --

23 THE COURT: I got to be able to exercise personal
24 jurisdiction in order to be able to joinder.

1 MS. WEBSTER: True. I understand, Your Honor. And
2 -- and what we're looking at is the fact that part of the
3 order was that he was supposed to do everything necessary to
4 get her the survivor benefits. Part of what's necessary is
5 that his present wife execute this waiver. She has retained
6 counsel. Literally the gentleman who wrote the book, Mark --
7 Mark Solomon (ph), and he is currently doing an appeal to the
8 Army Board of Review for her. And one of the conditions and
9 one of the things that he asked us to get and said absolutely
10 mandatory that we had to get was the new wife's waiver since
11 what Mr. Byrd -- Byrd did was he named her as his survivor for
12 purposes of the survivor benefit, even though per the decree
13 my client is the one who is supposed to get their survivor
14 benefits. So to unravel that and for her to now have an
15 opportunity in front of the -- the Board, that needs to be
16 unraveled and she does need to sign this release.

17 We tried to do it. We tried -- we contacted
18 Counsel --

19 THE COURT: The best I can do is affirm -- I mean,
20 if -- it's either set aside the full agreement between the
21 parties or just that portion that is unconscionable or
22 invalid. The Court determines that or if there's an award of
23 alimony and then upholds the awarding of the benefits. That's
24 probably the best I can do. I don't see a basis for this

1 Court to be able to exercise any personal jurisdiction --
2 MS. WEBSTER: Well, you can go ahead.
3 THE COURT: -- over the new --
4 MS. WEBSTER: You -- you can
5 THE COURT: -- wife.
6 MS. LAMBERTSEN: Well, Your Honor, looking at long
7 arm statutes, looking at what --
8 THE COURT: Has she --
9 MS. LAMBERTSEN: -- is --
10 THE COURT: -- ever lived here?
11 MS. LAMBERTSEN: Not to our knowledge. But --
12 THE COURT: All right.
13 MS. LAMBERTSEN: -- by taking something that
14 belonged to somebody else who does belong here --
15 THE COURT: That doesn't --
16 MS. LAMBERTSEN: -- she can have --
17 THE COURT: -- give long arm jurisdiction. You may
18 have jurisdiction in the Philippines if that's where she
19 lives. You may have jurisdiction through the military courts,
20 but I don't see a basis for personal jurisdiction and for this
21 Court to be able to exercise jurisdiction over her. I do have
22 jurisdiction over him. And we can impose sanctions over him.
23 But other than that, that's the best I can do. I just don't
24 see a basis for exercising jurisdiction over the new wife.

1 MS. WEBSTER: Understood, Your Honor. The -- the
2 other portion of our -- our request was summarily deciding the
3 order to show cause on Mr. Byrd. Counsel did not oppose that.
4 We do -- we are prepared to do a prove up today if that would
5 be Your Honor's preference. He has in pleadings acknowledged
6 that he makes sufficient money, that he can pay it, that he
7 has chosen not to pay it. And he was ordered by Your Honor
8 back in January to continue paying the 1500 for the house,
9 mortgage assistance, and the 1500 for the military pension.
10 subsequently, Judge Forsberg likewise ordered him to do that.
11 And he has just ignored all of the Court's orders and has
12 continued to not pay -- well, he stopped paying in September
13 of last year and has continued not to pay even after Your
14 Honor and Judge Forsberg ordered it.

15 So we did ask that that be decided summarily.
16 Again, we are prepared to prove it up. It is your -- is Your
17 Honor's preference. In our motion for reconsideration, that
18 was not opposed as far as summarily saying that that should
19 happen today based upon admissions that he has made in
20 pleadings.

21 THE COURT: All right. Mr. Mills?

22 MR. MILLS: Your Honor, we're of course only before
23 the Court on that issue with regards to what's contained in
24 the order to show cause. And -- and the order to show cause

1 based on their application is from the June -- May or June --
2 filed in June from the May hearing forward, not from your
3 order. So any -- any decisions for this Court for contempt
4 should only based upon what was requested in that motion and
5 put in the order to show cause --
6 THE COURT: Okay.
7 MR. MILLS: -- can't be outside of that, of course.
8 THE COURT: As far --
9 MR. MILLS: I do not --
10 THE COURT: -- as sanctions --
11 MR. MILLS: -- have a client -- I do not have a --
12 THE COURT: -- and his failure --
13 MR. MILLS: -- client to --
14 THE COURT: -- to pay those two months as far as a
15 judgment for the amounts that he has that paid.
16 MR. MILLS: Of course. I'm talking just --
17 THE COURT: And attorney's --
18 MR. MILLS: -- about the contempt.
19 THE COURT: -- fees for the amount. So --
20 MS. LAMBERTSEN: And I think it's -- I -- con --
21 adding to this, part of the order to show cause at the hearing
22 where it was granted, we did ask for the arrears going back to
23 September 1st because it's undisputed he hadn't paid. And
24 that issue whether -- we're just going back to September 1st

1 are -- included was something that was deferred to today to
2 trial.

3 So I'm -- I'm not looking that that order to show
4 cause narrowed the scope to just June 1 going forward because
5 at that hearing when all of this discussed the id -- the idea
6 of going back to September 1st was still on the table and was
7 to be decided today.

8 MR. MILLS: And I understand that for arrears and --
9 and that. I'm just talking about the actual penalty side of
10 contempt can only be what's included in the affidavit and
11 request --

12 THE COURT: Well, since he's --

13 MR. MILLS: -- and order to show cause.

14 THE COURT: -- not here, most likely the penalty
15 portion of it is going to be pushed off because there's
16 probably going to be a no bail bench warrant issued for him.
17 So if he ever wants to come back to the country, immigration
18 will pick him up at the time he reenters the country as long
19 as you take appropriate steps to notify immigration of the
20 warrant. And I've seen them do that. I've actually had
21 people pulled out of line in front of me going through customs
22 and picked up on warrants.

23 MR. MILLS: Okay.

24 THE COURT: And not just criminal, warrants, so --

1 MS. LAMBERTSEN: All righty.

2 THE COURT: All right.

3 MS. WEBSTER: Your Honor, just real briefly.

4 THE COURT: I think the -- the best thing you can do
5 is put your client on the stand, make your record, because I
6 assume he will probably want to appeal this --

7 MS. WEBSTER: I understand, Your Honor.

8 THE COURT: -- and you'll want the Appellate Court
9 to have a clear record.

10 MS. WEBSTER: Yes, Your Honor. Understood. One
11 other thing Your Honor was sanctions related to his
12 nonappearance today. Obviously, he had been ordered to be
13 here. Your Honor knows that he isn't -- hasn't been here.
14 And under 7. -- EDCR 7.60, anybody that fails to comply with
15 the rules or fails or refuses to comply with an order of the
16 court can be found in contempt. And so as part of our
17 proceedings in addition to the other relief that we had
18 requested, attorney's fees, the order to show cause sanctions,
19 that would be sanctioned based upon his failure to follow the
20 Court's order that he be here today. And without further
21 ado --

22 THE COURT: I think I would also have the discussion
23 to be able to strike all of his pleadings and just enter a
24 summary motion, but I think to protect the record, again, it

1 would be best to have your client testify. So we will take
2 testimony.
3 MS. WEBSTER: All right. Thank you, Your Honor.
4 THE COURT: And --
5 MS. LAMBERTSEN: Thank you.
6 THE COURT: -- then we'll enter any rulings the
7 Court feels appropriate based upon the testimony.
8 MS. LAMBERTSEN: Thank you.
9 THE COURT: All right. Go ahead.
10 MS. LAMBERTSEN: Thank you. Your Honor, we call
11 Caterina Byrd as a witness, please.
12 (WITNESS SUMMONED)
13 THE CLERK: Ma'am, please remain standing and raise
14 your right hand. You do solemnly swear the testimony you're
15 about to give in this action shall be the truth, the whole
16 truth, and nothing but the truth, so help you God?
17 MS. BYRD: Yes.
18 THE CLERK: You may be seated.
19 CATERINA BYRD
20 called as a witness on her own behalf, having been first duly
21 sworn, testified upon her oath as follows on:
22 DIRECT EXAMINATION
23 BY MS. LAMBERTSEN:
24 Q Good morning.

1 A Good morning.
2 Q Please state your name and address, for the record.
3 A Caterina Angela Byrd, 2120 Lookout Point Circle, Las
4 Vegas, Nevada 89117.
5 Q And about how long have you resided here --
6 A Since --
7 Q -- in Nevada?
8 A -- 2008, 11 years.
9 Q And how do you know the Defendant?
10 A He's my husband -- my exhusband.
11 Q And what date did you and Mr. Byrd marry?
12 A We married September the 10th, 1983.
13 Q And what date did you divorce?
14 A June 5th, 19 -- no, 2014.
15 Q And are there any children?
16 A We have one son.
17 Q And about how old is he?
18 A He'll be 35 in two days.
19 Q Oh, congratulations.
20 A Yeah.
21 Q What was Mr. Byrd's career during your marriage?
22 A So he was active Army until '99. And then he went
23 into the Department of Defense.
24 MS. LAMBERTSEN: Do you -- excuse me. Your Honor,

1 may I see if she has any Kleenex up there?
2 THE COURT: All right.
3 MS. LAMBERTSEN: I have --
4 MS. WEBSTER: I'll be right there.
5 MS. LAMBERTSEN: -- a box here. May I approach?
6 THE COURT: You may.
7 A Well, he went to work for the Army as a GS-14
8 Department of Defense.
9 Q Okay. And what is his education?
10 A He has two masters degrees in work college, pretty
11 much he has a lot of certificates because he went to school a
12 lot when we were married.
13 Q And what about your education? What do you have?
14 A I have a high school.
15 Q What is your native language?
16 A I'm Italian.
17 Q So you had to learn English?
18 A Yes.
19 Q Where did you live during your marriage?
20 A We have lived -- so when we first got married we
21 lived in Hawaii for two years. And after that, we went to
22 North Carolina for about a year or so. And then went to Korea
23 for one year. Then from Korea, we were -- we got stationed I
24 believe in Orange Park, Florida. He was teaching ROTC there

1 at University of North Florida. We bought a home. We stayed
2 there for two years. He got orders to go back to German --
3 and to -- to Hawaii. We didn't have housing, so I had to stay
4 with my mother for six months. And then he got a house as
5 soon as we went to Hawaii. From Hawaii, we stayed there three
6 years. After that, we went to Vil -- Baumholder, Germany in
7 '94. We stayed there one year, I believe. Then after that,
8 we went to -- I think -- I think first was Vilseck, Germany.
9 Then we went to Baumholder. If Germany -- a different place.

10 And then from Germany, he got orders to go to
11 Virginia. We went to Virginia for one year. And then after
12 one year we went to Columbus, Georgia for another year. That
13 was in '99 he decided to retire. So then we moved to
14 LaGrange. He got a job working for the Census Bureau while he
15 was waiting to get picked up from the -- the Army again. So
16 we stayed in LaGrange for about two months. He didn't like it
17 there, so we moved to Atlanta because he worked in Atlanta.
18 We stayed there for three months. My son started ninth grade
19 in Atlanta.

20 And then we moved to Germany in December of '99.
21 And we stayed in -- in an apartment for three months until we
22 found housing. And then we had to move out of there to a
23 different place. So we stayed there until 2000 and -- we --
24 we moved all our stuff here was 2007 December. Stayed with my

1 mother. And we came here in March '08 together. He rented a
2 -- a townhome house for me for nine months because we had all
3 our stuff shipped from Germany, the cars and everything from
4 there to here.

5 So he came. We -- he -- he got me a -- rented a --
6 a townhome for nine months because he said for me to see if I
7 like it here since my son lived here, then we would buy a home
8 here. So he took -- my son was living here. He took my son
9 out of the apartment and my son moved in with me and he stayed
10 with me throughout until about a year-and-a-half ago.

11 I stay in a townhouse. It's supposed to have only
12 been nine months. I stayed there for six-and-a-half years
13 without any of my things. So finally after years of going
14 back and forth buying me a house, we bought a house in
15 October. And I -- and I got all my stuff that came from
16 Germany. Of course I was leaving my house that was 5,000
17 square feet with an indoor pool and a gym. I was only able to
18 buy a house that was old, '89. And all my things were all
19 over the place, because through our marriage, we never had
20 really a place to live and we always said we're going to have
21 a beautiful home once we were retired.

22 If I can just help him to get to where he want to be
23 so it was always -- he -- you know, stay in a home while he
24 was going to school at night. And he was -- you know, to get

1 where he was, he had to do a lot of schooling. And I stayed
2 home to care the child.

3 Q Caterina, you discussed a lot of different places
4 you lived.

5 A Yeah.

6 Q Do you have an idea about how many? I kind of --

7 A I think about 17.

8 Q 17 different places. And -- and they were rental.

9 A Yeah.

10 Q Yeah.

11 A Rental --

12 Q Okay.

13 A -- or housing.

14 Q Okay.

15 A But the military --

16 Q And that --

17 A -- has housing.

18 Q Okay.

19 A And then when he became a civilian working for the
20 military, then we had -- we were able to not live on base
21 anymore. We lived off base.

22 Q Okay. Well, thank you very much. Thank you.

23 A And he was also -- excuse me.

24 Q Oh.

1 A He was also in Kosovo in 2006 and '7. He was
2 stationed down there. So he was -- he was gone a lot for
3 training and everything. So I always had to be at home, take
4 care of the house, take care of him.

5 Q Okay. What effect did moving have on your ability
6 to work, if any?

7 A Well, it was hard to start anything because it
8 seemed like every year we were going somewhere else. And he
9 always told me my job really didn't matter as long as I, you
10 know, help him to achieve his career. And we would have a --
11 a good life at the end.

12 MS. LAMBERTSEN: Your Honor, may I show her an
13 exhibit -- is it okay to approach --

14 THE COURT: You may.

15 MS. LAMBERTSEN: -- to show exhibits?

16 Q I'm going -- I'm going to show you exhibit marked
17 number 42.

18 A Okay.

19 Q Do you got that?

20 A Yeah.

21 Q What -- what is this -- this -- these papers? What
22 are -- is this?

23 A So this a doc -- is my social security statement.

24 Q And whose --

1 A My earning.
2 Q -- whose name is on it?
3 A It's mine, Caterina.
4 Q And whose address?
5 A Mine, 2120 Lookout Point Circle.
6 MS. LAMBERTSEN: I move to admit Exhibit 42.
7 THE COURT: All right. Any objection?
8 MR. MILLS: Excuse me, Your Honor. No objection to
9 Exhibit 42.
10 THE COURT: Thank you.
11 (PLAINTIFF'S EXHIBIT 42 ADMITTED)
12 BY MS. LAMBERTSEN:
13 Q Looking at page marked on the lower right corner, it
14 has the numbers 274. When were you last employed?
15 A So I was -- '99.
16 Q Are you -- are you -- and how much did you earn that
17 year?
18 A \$6,581.
19 Q And are you currently working?
20 A No.
21 Q Were you working at the time you and Grady divorced?
22 A No.
23 Q I'd like to show Exhi -- you Exhibit B. Can you --
24 kind of hard --

1 A Exhibit --
2 Q -- for me to flip. If you can turn to Exhibit 8.
3 MR. MILLS: Counsel, what was that exhibit?
4 MS. LAMBERTSEN: 8, please. I'm sorry, know I'm
5 turned the wrong way. 8.
6 Q Okay. What is -- what is Exhibit 8?
7 A Oh, it look -- it's my financial disclosure.
8 Q Yes. Okay. And looking at the bottom of --
9 MS. LAMBERTSEN: Oh. Your Honor, we move to admit
10 Exhibit 8.
11 MR. MILLS: I don't know if that's necessary. It's
12 part of the record.
13 MS. LAMBERTSEN: Well --
14 MR. MILLS: It's her Plaintiff -- it's her filed
15 financial disclosure form, Your Honor.
16 MS. LAMBERTSEN: And -- and for procedural, if I may
17 step back and just ask about pleadings and papers that are
18 already a record of the court, do I need to go and ask for
19 admission? We have --
20 THE COURT: You can just ask that we take judicial
21 notice of the document.
22 MS. LAMBERTSEN: Okay.
23 THE COURT: It's easier though if they have it as an
24 exhibit and we can refer to it so we don't --

1 MR. MILLS: Oh, yeah.
2 THE COURT: -- have the --
3 MR. MILLS: I agree. It's easier in the process. I
4 just --
5 MS. LAMBERTSEN: Okay.
6 MR. MILLS: You generally don't have --
7 MS. LAMBERTSEN: Okay.
8 MR. MILLS: -- judges --
9 MS. LAMBERTSEN: Okay.
10 MR. MILLS: -- make them --
11 MS. LAMBERTSEN: All right.
12 THE COURT: All right.
13 MS. LAMBERTSEN: I'll just --
14 THE COURT: So we'll --
15 MR. MILLS: It was, but whatever.
16 THE COURT: -- just --
17 MS. LAMBERTSEN: -- say please take judicial notice.
18 THE COURT: Let's -- let's go ahead and --
19 MS. WEBSTER: And --
20 THE COURT: -- admit it. It's just makes it easier
21 if -- when you're referring to it to refer to the actual
22 exhibit and Bate -- page --
23 MS. LAMBERTSEN: Got it. Okay. Thank you.
24 THE COURT: -- Bates stamp number.

1 MS. LAMBERTSEN: All right.

2 (PLAINTIFF'S EXHIBIT 8 ADMITTED)

3 BY MS. LAMBERTSEN:

4 Q So Caterina, at the bottom, it talks a little bit
5 that the bottom of this page. That's -- what's the Bates --
6 down the very first page there.

7 A Right here?

8 Q Yes. It says self-employees. What -- now we just
9 looked at the social security. It said 1999.

10 A Right.

11 Q And nothing -- nothing's happened since then.

12 A Right.

13 Q These are current. So what -- what is going on
14 here?

15 A So this was in Germany. I wanted to do something,
16 so I opened up a little shop for myself as a manicurist. And
17 I was working for the Germans. Well, I was working for
18 myself, but it was in Germany. And just to get me out of the
19 house and -- and mingle with people. I did that. And he --
20 he didn't like it because first it was demeaning for him. The
21 -- he was in charge of three bases that I was working. But it
22 was a hobby and I liked it. I didn't make any money.

23 Q And -- and why did you not --

24 A Well --

1 Q -- make --
2 A -- I had to pay rent. I had to pay for the supplies
3 and --
4 Q So at the end of the day, there wasn't --
5 A No.
6 Q -- wasn't enough --
7 A It was just something for me to do.
8 Q Okay. All right. Thank you. So you divorced in
9 2014, correct? What was your state of mind in 2014?
10 A Well, my state of mind has been really bad for --
11 since he left because he just kind of left and never came
12 back. And I just thought that -- that he was going to come
13 home eventually. So I've been dealing with -- with depression
14 and I went to the -- I went to the mental hospital for a week
15 because my life is nothing like he promised me. So I just --
16 I just -- you know, you spend your whole life with someone and
17 you work so hard --
18 Q I know. I --
19 A -- to get where you are at the end and I don't know.
20 He just left to go to work and never --
21 MR. MILLS: Objection --
22 A -- came back.
23 MR. MILLS: -- Your Honor. She's --
24 MS. LAMBERTSEN: Okay.

1 MR. MILLS: -- not answering the question.
2 THE COURT: All right.
3 THE WITNESS: He -- he --
4 MS. LAMBERTSEN: Well --
5 THE WITNESS: -- just never came back.
6 MS. LAMBERTSEN: -- Your Honor, just act a little --
7 I'm trying to walk her through this.
8 THE WITNESS: Okay.
9 MS. LAMBERTSEN: This is kind of hard.
10 THE COURT: I'll give you --
11 THE WITNESS: I'm sorry.
12 THE COURT: -- a little leeway.
13 MS. LAMBERTSEN: Okay. Please. Thank you.
14 BY MS. LAMBERTSEN:
15 Q Let's look. Caterina, let me show you Exhibit 38.
16 Can you please look at 38? Okay. Now let's go to the page
17 with the number 375 at the bottom right corner. That's the
18 next one here. Okay. Who -- what is this page?
19 A This is -- I went to a doctor. It was a doctor
20 visit. And --
21 Q And --
22 A And I've been dealing with, you know, depression on
23 my own.
24 Q Okay. So --

1 MR. MILLS: Objection, Your Honor. I don't want her
2 to --
3 MS. LAMBERTSEN: Okay.
4 MR. MILLS: -- publish what's on the document since
5 it's not been admitted at this point.
6 BY MS. LAMBERTSEN:
7 Q So this is your name on this document?
8 A Yes.
9 Q And -- and this is your doctor?
10 A Yes.
11 Q And this was a visit pay -- payment.
12 A It was a visit.
13 MS. LAMBERTSEN: I move to admit Exhibit 38 with the
14 PLA375 at the lower right corner.
15 MR. MILLS: Your Honor, I -- I would object.
16 Hearsay, authentication. It would have to be the doctor here
17 to authenticate this, not her. And it's a hearsay document.
18 MS. LAMBERTSEN: This is something that she got as a
19 receipt for her visit. It's called a --
20 THE WITNESS: They give you a printout when you go
21 there. They give you a printout --
22 MS. LAMBERTSEN: When you --
23 THE WITNESS: -- of -- as a summary of today's
24 visit.

1 MS. LAMBERTSEN: So it's not -- it's something in
2 the ordinary course that she gets when she sees it.

3 THE COURT: Well, I think she can testify as to what
4 medication she received, what testing was done. This is just
5 a documentation of that. And so I'm going to go ahead and
6 admit it. It's -- it's not expert testimony regarding the
7 treatment and care that she couldn't otherwise testify to
8 herself.

9 (PLAINTIFF'S EXHIBIT 38, BATES 375 ADMITTED)
10 BY MS. LAMBERTSEN:

11 Q So Cat -- Caterina, so what -- why were you -- what
12 was this visit about? What were you seeing the doctor for?

13 A I was not feeling well and -- and I was going there
14 for, you -- you know, for a checkup and things.

15 Q And what diagnosis? Or what are your illnesses?

16 A So then I was diagnosed with major depression and
17 anxiety.

18 Q Okay. And what is the date of this visit?

19 A And this was April 16, 2012.

20 Q Okay. And who -- do you have these same illnesses
21 now?

22 A Yes, I'm still on medication.

23 Q Okay. And who is Omega Galliono (ph)?

24 A She was my therapist.

1 Q And how long had you been seeing her?
2 A I was seeing her from 2012 til 2016 and then I lost
3 my medical.
4 Q Okay. Were you under her treatment in -- in 2014?
5 A Yes.
6 Q And looking at this page, PLA374, does this assist
7 you in remember, you know, what your illnesses were and --
8 A Oh, I knew already. Yes. It's just depression.
9 Q What medical treatment if any did you receive in
10 2016?
11 A 2016, I was admitted to -- to MountainView Hospital.
12 Q Okay. Can we look at Exhibit 39, please?
13 A 39?
14 Q 39.
15 THE COURT: All right. We need to take just a short
16 recess.
17 MS. LAMBERTSEN: Okay.
18 (COURT RECESSED AT 9:50 AND RESUMED AT 9:56)
19 THE COURT: All right. You may proceed.
20 MS. LAMBERTSEN: I'd like to just back up for one
21 moment, Your Honor. I have been discussing Exhibit 38 with a
22 Bates stamp number in -- in the righthand corner, 374. And I
23 forgot to ask for admission of this exhibit.
24 BY MS. LAMBERTSEN:

1 Q So go back to Caterina 3 -- Exhibit 38.
2 MR. MILLS: I thought that the Court already
3 admitted 38.
4 MS. LAMBERTSEN: Okay. All right. Thank you. All
5 right. I just wanted to be clear, because --
6 MS. WEBSTER: Oh, just one portion of 38. I don't
7 think that --
8 MS. LAMBERTSEN: Yeah, we admitted 375. I want to
9 make sure we admit 374 as well, but two pages in the exhibit.
10 MR. MILLS: My objection is the same, Your Honor.
11 It's a hearsay document. It's a letter written 374.
12 THE COURT: And I'll sustain the objection to 374.
13 The 375 which is just a summary of the visit that she has
14 personal knowledge of, she can testify to it. It doesn't take
15 medical expertise to be able to testify as to what she was --
16 what course of treatment she was to follow and what medication
17 she was to take.
18 MS. LAMBERTSEN: Okay. Thank you, Your Honor.
19 BY MS. LAMBERTSEN:
20 Q Okay. Caterina, let's go to 3 -- Exhibit 39. Now
21 just without looking at the document for a minute, just from
22 your recollection, if you can. What medical treatment did you
23 get in 2016?
24 A 2016, I went to Spring Mountain Treatment Center.

1 Q Okay. All right. Now looking at page starting with
2 the 442 in the lower -- lower --
3 A Yeah.
4 Q -- right corner. Whose name is on this?
5 A My name, Caterina Byrd.
6 Q And whose address?
7 A 20 -- mine, 2120 Lookout Point Circle.
8 Q And what is this?
9 A This -- my -- my therapist Omega send me here. And
10 I thought I was going to go there just to talk to the people.
11 Q But this is --
12 A And they kept me there.
13 Q Who's this from?
14 A That's TRICARE. That --
15 Q This is from --
16 A This is TRICARE. They checked my -- my -- to see if
17 I had insurance.
18 Q Okay. So this is --
19 A So it might be TRICARE.
20 Q -- from your insurance company?
21 A Yes. They authorized --
22 Q Oh, okay.
23 A They authorized me to stay for six days.
24 MS. LAMBERTSEN: Okay. I move to admit Pages 442 to

1 443. We're going to talk about those. This is her -- so what
2 dates were --

3 MR. MILLS: Again, Your Honor, I object. It's --

4 THE WITNESS: 19 --

5 MR. MILLS: -- hearsay documents. And -- and
6 Counsel, there appears to be many pages. Are you only --

7 MS. LAMBERTSEN: Well, I'm talking right now 442 to
8 443. This is a -- a letter she got in the mail from her
9 insurance company. It's not -- it's not -- it's something
10 talking about her benefit, you know, her length of stay.
11 Something an insurance company sent her. This came from
12 United Healthcare.

13 MR. MILLS: I guess my objection is multiple then,
14 Your Honor. Not just hearsay, but also I object to the
15 direction we're going. I'm -- I'm not sure why this would be
16 relevant. We're here on trial today to determine whether a
17 contract was created in 2014 at the time of the divorce to --
18 for spousal support. I'm not sure what her mental health in
19 2016 or -- or any other time it -- why it would be relevant to
20 today's proceedings.

21 MS. LAMBERTSEN: Mental state and contract formation
22 is fundamental and there needs to be an offer and acceptance
23 and she is describing what her mental state was at the time of
24 these things going on and that that mental state is continued

1 because he's also made claims --
2 THE COURT: Well --
3 MS. LAMBERTSEN: -- that she should be working.
4 THE COURT: -- she can testify as to what her mental
5 state was, what treatment she sought, what dates she sought.
6 If she needs help remembering what dates and where she went,
7 she can refer to the exhibits, but the exhibits themselves
8 aren't admissible without further foundation and -- and then
9 she can talk about some of the cost if it's relevant to the
10 case. But just -- we don't need to spend four hours here --
11 MS. LAMBERTSEN: Okay.
12 THE COURT: -- going through every document of her
13 mental health. Just have her testify as to --
14 MS. LAMBERTSEN: Okay.
15 THE COURT: -- what was going on at the time what
16 treatment she sought and why.
17 MS. LAMBERTSEN: Okay.
18 BY MS. LAMBERTSEN:
19 Q So Caterina, just to --
20 THE COURT: Denied.
21 Q -- talk about -- you already went through and talked
22 about that you were on treatment from a time period starting
23 in 2012.
24 A Yes.

1 Q Is that -- is my --
2 A Yes.
3 Q Okay. And how long did that treatment continue?
4 A It continued until 2016.
5 Q Are you in treatment now?
6 A No. I don't have the insurance anymore.
7 Q So what's happened with your treatment?
8 A Just take my medication.
9 Q Okay. All right. Let's see. There -- go to 448,
10 449 in here.
11 A Okay.
12 Q Let's see. Is that the first one? Okay. Going to
13 Page 446.
14 A Uh-huh (affirmative).
15 Q In the lower righthand corner. What is this?
16 A This is a bill --
17 MR. MILLS: Again --
18 A -- for my stay.
19 MR. MILLS: -- Your Honor, object. You just ruled
20 that she can testify.
21 MS. LAMBERTSEN: Oh.
22 MR. MILLS: She can use these to refresh her
23 recollection, but there's been no question yet.
24 MS. LAMBERTSEN: But there is -- what we can do is

1 talk about expenses that she's incurred for her care. Am --
2 am I misunderstanding that?

3 THE COURT: But we don't need to go through every
4 billing. She can testify at the end that this has cost me
5 this amount of money and it wasn't covered by insurance.

6 MS. LAMBERTSEN: Okay. All right.

7 THE COURT: He's not here to controvert it.

8 MS. LAMBERTSEN: Okay.

9 THE COURT: But I -- you can't just bring in the
10 documents and ask me to admit the documents without further
11 foundation and -- and not showing medical necessity on the
12 documents themselves. She can testify as to what's happened
13 and I can determine whether or not her testimony is credible
14 or not.

15 MS. LAMBERTSEN: Okay.

16 BY MS. LAMBERTSEN:

17 Q When you received treatment here in 2016, was -- was
18 there a bill?

19 A I started getting the bills because when I went
20 through the treatment I thought I had TRICARE. And then I
21 found out that my exhusband never told the Army that we were
22 divorced. So ever treatment from 2004 -- from the day we were
23 divorced until 2016 I have to pay back.

24 Q Okay. And do you have an approximate dollar amount

1 of these medical bills that have gone unpaid or -- excuse me.
2 What -- what are the medical bills that you --
3 A So I have --
4 Q -- have received?
5 A -- \$7,000 that hasn't been paid. I paid my
6 psychiatrist \$200 a month. That was \$2700. I was able to pay
7 her a little bit of time. So that hers -- hers was 2700. And
8 everybody else is coming back because when I went to the
9 hospital I -- they thought I had TRICARE. They ran it through
10 I had TRICARE. But then I went on base in July of that year
11 to renew my I.D. card. And the -- the man says, you know,
12 your husband never put in that you were divorced. And what
13 happens now is that from the day you were divorced to this day
14 you had to pay back every cent back --
15 Q Okay.
16 A -- because he -- he says I don't have medical
17 anymore.
18 Q Okay. All right. Let's see. We're going to -- was
19 there -- so you had -- you were talking about this bill in
20 2016 with -- and there was bills in 2017 -- or were there
21 bills in 2017?
22 A Yes, there were bills in 2017.
23 Q Okay.
24 A I owe the ambulance that took me from Spring

1 Mountain Hospital and back. And then I owe for six days when
2 I stay at the ho -- and the Spring Mountain Treatment Center.
3 Q Okay. Let's talk about the divorce. What paperwork
4 if any did Grady take care of during the marriage?
5 A During the marriage, he did everything that had to
6 do with the military. He would do our moves. He would get us
7 housing. He would get -- or flights. He would get reimbursed
8 from the Army. He would -- actually took care of everything
9 that has to do with the military, because that's all he -- you
10 know, he was in the military since he was 17, so that's all he
11 knew was the military.
12 Q Were you aware of how much Grady was earning at the
13 time of divorce in 2014?
14 A I thought we were sharing half. He -- you know, he
15 was getting the -- I thought he was getting \$6,000 and he was
16 giving me three and he was keeping three.
17 Q Okay. And you testified that you last resided
18 together was in 2008, is that correct?
19 A Yes.
20 Q How did you support yourself in those six years
21 between the 2008 and that --
22 A He supported me.
23 Q And by what means? How did he --
24 A Oh, he would -- he would -- we had a checking