

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD

Appellant

V.

CATERINA ANGELA BYRD

Respondent

Supreme Court No. 80548

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

APPELLANT'S APPENDIX TO OPENING BRIEF – VOLUME IX

Submitted by:

DANIEL W. ANDERSON, ESQ.

Nevada Bar No.: 9955

BYRON L. MILLS, ESQ.

Nevada Bar No.: 8191

MILLS & ANDERSON

703 S. 8th Street

Las Vegas, Nevada 89101

(702) 386-0030

attorneys@millsnv.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

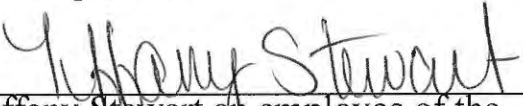
I HEREBY CERTIFY that on the 6th day of July, 2020, I caused to be served the instant **APPELLANT'S APPENDIX TO OPENING BRIEF- VOLUME IX** to all interested parties as follows:

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

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

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

Anita Webster, Esq. - anitawebster@embarqmail.com



Tiffany Stewart an employee of the
MILLS & ANDERSON

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

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

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

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

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

DOCUMENT	BATES NO.
Appendix to Defendant's Motion for Order Time to Reconsider Denial of Audiovisual Appearance filed on October 15, 2019	AA500-507
Appendix to Defendant's Motion for Reconsideration filed on April 8, 2019	AA178-198
Audiovisual Transmission Equipment Appearance Consent filed on October 10, 2019	AA449-450
Decree of Divorce filed on June 5, 2014	AA001-012
Defendant's Motion for Reconsideration filed on April 8, 2019	AA159-177
Defendant's Opposition to Plaintiff's Memorandum of Fees and Costs filed on December 4, 2019	AA786-789
Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs for the Appeal filed on January 2, 2020	AA815-821
Defendant's Pretrial Memo filed on October 16, 2019	AA508-517
Defendant's Reply and Opposition filed on May 14, 2019	AA253-278
Exhibit Appendix filed on October 16, 2019	AA537-541
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
Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA833-853
Judgment for Attorney Fees filed on March 17, 2020	AA877-880
Motion on Order Shortening Time to Reconsider Denial of Audiovisual Appearance Request filed on October 15, 2019	AA490-499
Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA854-876
Notice of Entry of Judgment for Attorney Fees filed on March 18, 2020	AA881-886
Notice of Entry of Order From the February 27, 2020 Hearing filed on March 27, 2020	AA890-894
Notice of Entry of Order From the January 23, 2019 Hearing filed on April 5, 2019	AA148-158

Notice of Entry of Order From the July 18, 2019 Hearing filed on August 9, 2019	AA366-371
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
Notice to Appear Telephonically filed on June 27, 2019	AA360-361
Opposition to Plaintiff's Motion for Reconsideration and Countermotion for Fees filed on October 18, 2019	AA563-578
Order From February 27, 2020 Hearing filed on March 26, 2020	AA887-889
Order From the January 23, 2019 Hearing filed on April 5, 2019	AA139-147
Order From the July 18, 2019 Hearing filed on August 9, 2019	AA362-365
Order From the November 27, 2018 Hearing filed on December 17, 2019	AA897-900
Order of the Court filed on June 26, 2019	AA354-359
Order Striking Exhibits filed on November 14, 2018	AA069
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
Plaintiff's Motion for Attorney Fees and Costs for the Appeal filed on December 16, 2019	AA803-814
Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on September 30, 2019	AA400-436
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
Plaintiff's Opposition to Defendant's Motion for Reconsideration and Countermotion filed on April 23, 2019	AA199-237
Plaintiff's Opposition to Defendant's Motion on Order Shortening Time to Reconsider Denial of Defendant's Audiovisual Appearance Request and Countermotion for Attorney's Fees and Costs filed on October 16, 2019	AA518-536

Plaintiff's Opposition to Defendant's to Defendant's Ex Parte Motion for a Continuance of Plaintiff's Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide Newly Discovered Asset, to Execute QDRO's and for Attorney's Fees and Costs and Countermotion for Attorney Fees and Costs filed on December 19, 2018	AA070-091
Plaintiff's Pretrial memorandum filed on October 16, 2019	AA542-562
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Countermotion filed on May 17, 2019	AA279-308
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
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
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
Reply to Opposition and/or Countermotion filed on December 28, 2018	AA092-096
Request for Continuance filed on November 16, 2018	AA895-896
Request to Appear by Audiovisual Transmission Equipment filed on October 10, 2019	AA441-448
Schedule Arrearages for Support filed on October 9, 2019	AA437-440
Transcript Re: All Pending Motions – July 18, 2019 filed on May 13, 2020	AA372-399
Transcript Re: All Pending Motions – May 22, 2019 filed on May 13, 2020	AA309-353
Transcript Re: All Pending Motions – October 11, 2019 filed on May 13, 2020	AA451-477
Transcript Re: All Pending Motions – October 21, 2019 filed on May 13, 2020	AA604-785
Transcript Re: Motion – January 23, 2019 filed on May 13, 2020	AA097-138
Transcript Re: Status Check – May 2, 2019 filed on May 13, 2020	AA238-252

1 MS. LAMBERTSEN: -- what -- what is the relevance of
2 where she's going to gamble?

3 MR. MILLS: That's fine. I -- I'll move on.

4 THE COURT: All right.

5 MR. MILLS: That -- so --

6 MS. LAMBERTSEN: Or the gambling at all?

7 MR. MILLS: You -- you opened the door on her
8 income, Counsel. I'm -- I'm asking her about income and how
9 much money she has and -- and her ability to pay --

10 THE COURT: I'll allow --

11 MR. MILLS: -- her bills.

12 THE COURT: -- some limited --

13 MR. MILLS: Okay.

14 THE COURT: -- cross examination on this.

15 BY MR. MILLS:

16 Q So how often were you gambling at the time of
17 divorce?

18 A I don't remember.

19 Q I noticed you did not report your winnings in pa --
20 in -- in tax returns. Why didn't you report your winnings?

21 A The only reported winnings if you win over 1200.
22 Anything under 1200 is -- is free.

23 Q Each time you gamble, you mean?

24 A Yes.

1 Q Okay. So if you went to gamble one night and made
2 \$800, you wouldn't have to report --
3 A Right.
4 Q -- that?
5 A Correct.
6 Q So you were winning, just not sufficient enough each
7 night to report.
8 A Each night? What do you mean each night? I didn't
9 go --
10 Q Or when you were gambling.
11 A Right.
12 Q So at the time of the divorce, you knew Grady was
13 disabled, correct?
14 A I knew that he was going to doctors, he would tell
15 me.
16 Q But you knew he wasn't actively working anymore,
17 correct?
18 A I knew he retired.
19 Q Okay. And he was receiving disability pay?
20 A He was getting Army pay and then V.A. disability and
21 then combat pay which is two different things. He had Army
22 pay which was \$3,000. And then he had disability. I really
23 didn't know how much that was.
24 Q Do you know when he became disabled from the

1 military -- or from the Army when they declared him disabled?
2 A No.
3 MR. MILLS: Your Honor, if I may approach.
4 THE COURT: You may.
5 MR. MILLS: Okay.
6 MS. LAMBERTSEN: Your Honor, if those are
7 Defendant's exhibits, we're objecting. He's not here and
8 we're not -- we're asking that his exhibits not be admitted.
9 THE COURT: Well, I'll just -- may have trouble
10 authenticating some of these documents, but --
11 MR. MILLS: I haven't offered them yet, Your Honor.
12 And at the very least I assume I can --
13 THE COURT: Yes.
14 MR. MILLS: -- refresh her recollection of when he
15 became disabled.
16 THE COURT: You may.
17 MS. LAMBERTSEN: Put --
18 MR. MILLS: That was one of the specific questions
19 that Judge Fordberg -- Forsberg said that we needed to
20 address --
21 THE COURT: Well --
22 MR. MILLS: -- today.
23 THE COURT: -- I think a determination of him
24 knowing went -- what his retirement pay was going to be and

1 what is going to be changed over to his disability pay as to
2 the truth and veracity and possibly misrepresentations in
3 violation of his fiduciary relationship with his wife and
4 telling her that she was going to be -- that his retirement
5 pay was at least \$3,015 per month and would go up from there.
6 If he knew before that that was a lie, that's going to go a
7 long way with the Court in determining whether or not portions
8 of this marital settlement agreement are valid or enforceable
9 or not. So go ahead.

10 Q I'd like you to turn to Exhibit A, please. If you
11 will just take a look at this document real quick. There's
12 three --

13 A Uh-huh (affirmative).

14 Q -- pages.

15 A Uh-huh (affirmative).

16 Q Do you know what this is?

17 A This show -- this says combat related special
18 compensation branch.

19 Q Have you seen this document before?

20 A No, we were separated in 2011. I never received any
21 of this.

22 Q Okay. Do you -- let's see. You recognize this from
23 the Army, is that correct, Department of Army at the top?

24 A Well, that's the stamp says, yes.

1 Q Okay. And if you'll look at this, would it refresh
2 your recollection as to whether he was disabled as of 2 --
3 2011?

4 A I never seen any of this because we were separated.

5 MR. MILLS: Your Honor, I would offer Exhibit A. It
6 is a document provided from the military regarding his --
7 Grady's disability.

8 MS. LAMBERTSEN: I'm in a quandary Your Honor
9 honestly about admitting because she can't -- she can't -- she
10 doesn't recognize this. She hasn't seen it. But if it goes
11 to -- to her defense that, you know, he was disabled and yet
12 he's telling her the 3,017 --

13 THE COURT: Well, decide. Are you going to object
14 or not object?

15 MS. LAMBERTSEN: What -- what is the representation
16 that this is showing? I guess if -- if Mr. Mills --

17 THE COURT: Well, I'll tell you what.

18 MS. LAMBERTSEN: -- can shed some clarity --

19 THE COURT: It's 15 til 12:00. Why don't we break
20 for lunch. Why don't the two of you get together and see what
21 you can agree upon as to stipulating or not stipulating to
22 either foundation or admission of his documents. I think that
23 would save us a lot of time this afternoon. So we'll break
24 until 1:30.

1 MR. MILLS: Okay.
2 MS. WEBSTER: Thank you, Your Honor.
3 (COURT RECESSED AT 11:42 AND RESUMED AT 1:34)
4 THE COURT: All right. We're back on the record.
5 Both parties are present. Counsel for both sides are present
6 -- or one party is present. Counsel for both sides are
7 present. And Mr. Grady is not present. All right. Counsel,
8 you -- you may -- where are we at?
9 MR. MILLS: We're continuing the cross.
10 THE COURT: All right. If you'll retake the stand.
11 MS. WEBSTER: We were talk about those exhibits.
12 MR. MILLS: That's correct, Your Honor. And we have
13 chatted. And I believe they have agreed to the admittance of
14 A through L.
15 MS. WEBSTER: That's correct, Your Honor.
16 MS. LAMBERTSEN:
17 THE COURT: All right.
18 THE CLERK: Thank you.
19 THE COURT: Thank you.
20 (DEFENDANT'S EXHIBITS A-L ADMITTED)
21 (COUNSEL CONFER BRIEFLY)
22 BY MR. MILLS:
23 Q And ma'am, when you're negotiating this settlement
24 -- divorce, you were aware of his finances, correct?

1 A I was aware of what he told me he was getting.
2 Q Okay.
3 A The --
4 Q And you --
5 A -- retirement pay.
6 Q -- were aware of certain benefits like the survivor
7 benefits because you addressed that.
8 A Oh, yeah. I knew that since '99.
9 Q Okay. And you knew about his different -- about his
10 retirement or disability payments that he was receiving,
11 correct?
12 A I knew he was getting his retirement pay he was
13 telling me from one department and then separate I think he
14 was getting the disability pay, but I didn't know what it was,
15 how much it was. It -- he just told me they're two different
16 things. You just worry about my retirement pay.
17 Q Okay. And you were -- let's see. And you sound
18 like you understand and speak English pretty well. It's your
19 second --
20 A I do.
21 Q -- language.
22 A Yes.
23 Q Do you read and write it pretty well?
24 A No.

1 Q I have a whole lot of emails you were able --
2 A Well, you can see --
3 Q -- to write.
4 A -- there's some misspelling, but I mean, it's not
5 perfect, but I can write. He understands me.
6 Q Okay. And -- and you can understand him when he --
7 when he --
8 A Well --
9 Q wrote or talk to you?
10 A Yeah.
11 Q And you -- you mentioned on direct examination that
12 you had concerns about the language of -- of -- the -- I mean,
13 the terms of the divorce, correct?
14 A Yeah, I was concerned, because I didn't know what he
15 meant by he had to word it that way. And it --
16 Q In fact, you specifically testified that you wanted
17 him to say that he -- he was going to pay you 3,000 a month,
18 correct?
19 A And just like he promised.
20 Q And that you were worried that -- that based on the
21 language of the -- in the joint petition and the post decree
22 that he could end up paying you only 1500 I think you
23 specifically mentioned, is that correct?
24 A Well, no. I never agreed to that.

1 Q No, I'm not -- I'm not saying you agreed..
2 A Oh, okay.
3 Q I'm -- I'm saying that was one of your concerns if
4 that he can drop you to \$1500.
5 A What I -- what I got from him, he promised me I've
6 been giving you \$3,000 for six-and-a-half years. You will get
7 \$3,000 because my retirement pay is 3,000 and I believe it was
8 17 or something and -- and I would get 1508 out of that one.
9 Q Hold on one second. Let me make sure I have the --
10 A So they're like two -- two separate things, the
11 retirement --
12 Q I know. Let me ask you a question.
13 A Okay.
14 Q So let's see. In Number -- what number is this --
15 20 -- 21.
16 A 21?
17 Q Yeah. If you'll go to your Exhibit 21.
18 A Okay.
19 Q Nevermind. I think you've already testified about
20 that. I will move --
21 A Okay.
22 Q -- on. Now if you'll go to your Exhibit 1 please
23 though.
24 A Exhibit 1?

1 Q Yeah. You recognize this as the joint petition,
2 correct?
3 A Yes.
4 Q And on Page -- and I'm going to call it the Bates
5 stamp page.
6 A Oh, okay.
7 Q So it's Plaintiff's 007002.
8 A 002.
9 Q I think that's probably the third page in.
10 A Three -- is it 006?
11 Q 007002. Do you see that?
12 A I -- I got 006007.
13 Q Okay. So are -- are you on Exhibit 1? So it's the
14 third page of --
15 A It says --
16 Q -- the joint petition.
17 A -- Exhibit A. Is that 1? Is that what --
18 Q No, 1. So you're in -- in their exhibits, the big
19 book.
20 A Oh, the big book.
21 Q Yeah.
22 A Okay.
23 Q Mine are letters, theirs are numbers.
24 A Numbers.

1 Q So if I say numbers, we're in their big book.
2 A Okay. I got it --
3 Q So --
4 A -- now.
5 Q -- go to Exhibit 1, please.
6 A Okay.
7 Q And on the third page of that, 007002, that -- your
8 -- is your signature, is that correct?
9 A What was it, 70 --
10 Q 2.
11 THE COURT: Just the third page from the --
12 THE WITNESS: Okay.
13 THE COURT: -- front of the document.
14 A Yes.
15 Q Okay. And -- and I want you to move two more
16 pages --
17 A Uh-huh (affirmative).
18 Q -- to 004, 004.
19 A Yes.
20 Q And that again is your signature, correct?
21 A Correct.
22 Q And that you understand -- so that you understood
23 what you were signing when you signed this, I assume?
24 A I was actually understanding what he was telling me,

1 that -- that -- what this was.

2 Q Well --

3 A Do you know what I mean?

4 Q -- it says you've read the document. You have read

5 it, correct?

6 A Yes.

7 Q Okay. And -- and you know the contents it says.

8 Was that a true statement that -- that you put there, that I

9 know the contents of the petition?

10 A Yes.

11 Q Okay.

12 A I think so. I -- I mean, I don't know. It -- I

13 just know that I was signing to -- he told me \$3,000 a month

14 and then all the benefits.

15 Q Ma'am, I don't have a question.

16 A Okay.

17 Q Now I want you to go to Page 007011. So it's still

18 in -- in Exhibit 1 --

19 A Okay.

20 Q -- but it's further back. So it's Page 007011.

21 A 011. Okay. I have that.

22 Q Now I want you to go down to Number 11 where it says

23 miscellaneous provisions.

24 A Yes.

1 Q Well, 9 first. 9 says this agreement shall be
2 binding upon and entered to the benefit of both parties and to
3 the heirs, executors, administrators. You understood that
4 this was going to be a binding agreement, correct?

5 A Yes, because he promised me 3,000. I was --

6 Q Okay.

7 A -- signing to an agreement of 3,000 plus all my
8 benefits.

9 Q And -- and in 11A, both husband and wife
10 acknowledged that they have entered in this agreement openly
11 and freely after a full disclosure of -- by each of them after
12 an opportunity to obtain, seek, and have independent
13 consultations with the advice of Counsel, you signed that this
14 is a true statement. Would you agree that that's a true
15 statement?

16 THE COURT: Counsel, you've established that she
17 signed the document. I can read what's in the document.

18 MR. MILLS: All right. I'll move on, Your Honor.
19 Thank you.

20 Q Now you mentioned you came to Las Vegas in 2008.

21 A Yes.

22 Q You were 43 at the time?

23 A I guess, so yeah.

24 Q Okay.

1 A I mean, I --

2 Q And you could have gotten a job at any time since

3 that time, correct?

4 A I wasn't sure if we had to move. He didn't tell me

5 to get a job. It was not like you have to go get a job. He

6 was giving me all the money I needed to live on. There was

7 never -- you know, if I needed something, I would email him

8 and I said, you know, I need this and he would put the money

9 in the bank.

10 Q Okay.

11 A So --

12 Q And since you guys got divorced --

13 A I think I was 45, right? 2008? I don't remember.

14 But anyway, go ahead. Since we got divorced?

15 Q Since you were divorced in 2014, you could have got

16 a job at any time between then and now, correct?

17 A I could have, but --

18 Q I know you didn't want a job.

19 A I didn't want a -- but he -- he made it where if my

20 financial -- if my financial money changes, then he can seize

21 my house payment and give me an extra \$1500.

22 Q Oh, so you were worried that if you went and got a

23 job, he wouldn't have to pay the \$1500 anymore.

24 A Well, he told me, you know, if your life changes in

1 any way and I always thought if I get remarried, but I think
2 he meant if I have any extra money.

3 Q Okay. And in fact, that's --

4 A But I've been -- I've been under so much medication
5 and vertigo and depression that I really didn't even leave the
6 house.

7 Q Well, except to go gamble.

8 A Yeah, I will go gamble with my friends. It would
9 give me an outlet away from this because every time I get an
10 email from him, I would vomit.

11 Q And you had your son living with you for a time too,
12 correct?

13 A Yes. My husband took him out of his apartment to
14 stay with me. That way I won't be alone.

15 Q And then after your son moved out, your -- you had
16 a friend move in.

17 A Later when all this stuff started and I thought,
18 well, you know, I'll take a -- a roommate. But I was such in
19 bad shape that he left.

20 Q Now since September when Grady quit paying the
21 payments --

22 A Yes.

23 Q -- you said you were getting help -- you used your
24 savings and that you got some help from your family --

1 A And I ma --
2 Q -- to pay your bills.
3 A And I maxed my credit card.
4 Q Maxed your credit card.
5 A 25,000.
6 Q I thought you maxed your credit card to pay
7 attorney's fees.
8 A Well, that's part of it. All of it, I mean, it's
9 money that I had to put towards attorney fees and then the
10 other money I had to live on. So my --
11 Q Okay.
12 A -- mother and father helped me.
13 Q All right. But the credit card, I think you said
14 you paid 25,000 all to your attorney's fees, is that correct?
15 A I pay some to that, to pay my gas, to get groceries.
16 I mean, I -- I didn't keep him -- you know, it's just -- I --
17 I didn't keep a receipt for every little thing, but --
18 Q How much have you paid in attorney's fees to date,
19 do you know?
20 A I think -- I haven't paid her.
21 Q Do you know how much?
22 A I think it was -- was it 40? I don't remember. I
23 -- I stopped paying it because I couldn't afford it.
24 Q But you think -- the -- you were mumbling a little

1 bit. Did I hear you say you paid 40?
2 A I think I paid about 30 or 40, yes.
3 Q Okay. And where did you get the money to pay 30 or
4 \$40,000 to your attorneys?
5 A My parents helped me --
6 Q Okay.
7 A -- to get through this.
8 MS. LAMBERTSEN: Your Honor, this is repetitive and
9 we even asked this on direct and he's asking multiple -- the
10 same questions about where the money come from even before we
11 broke for lunch. It's the same. It's been asked and answered
12 multiple, multiple times, Your Honor.
13 MR. MILLS: Not even close, Your Honor. I haven't
14 -- I had not --
15 THE COURT: All right.
16 MR. MILLS: -- asked a single --
17 THE COURT: Well --
18 MR. MILLS: -- question about --
19 THE COURT: -- now you know approximately how much
20 in attorney's fees. Move on.
21 MR. MILLS: Right.
22 BY MR. MILLS:
23 Q So how much are -- per month are -- are your parents
24 paying you?

1 A My parents are paying me \$4,000, whatever I need,
2 because my bills are 39. And that -- that was hard to get.

3 MR. MILLS: Your Honor, I have nothing further at
4 this time.

5 THE COURT: All right.

6 MS. LAMBERTSEN: May I come -- redirect, Your Honor?

7 THE COURT: You may.

8 REDIRECT EXAMINATION

9 BY MS. LAMBERTSEN:

10 Q Caterina, what -- what happened to you on our way
11 when you turned back here into the courtroom?

12 A I vomit outside.

13 Q And -- and why did that happened?

14 A I just been upset about this whole thing with --
15 I --

16 Q And --

17 A The way he just left me like this, but I -- I would
18 never, ever thought he would do this to me. And I'm just
19 sick.

20 Q Did -- and we -- we asked questions prior to our
21 break for lunch and -- and Mr. Mills has asked about why you
22 haven't gone to work. Do you -- what is your feeling about
23 your mental health as far as being able to work?

24 A I'm -- I'm just a mess. I'm -- I'm just so

1 emotionally down. I just feel so down, that I feel -- I feel
2 -- I have nothing to live for. He cut me off.

3 Q Is --

4 A I got no money.

5 Q Would you -- would you say not working is -- is more
6 due to health reasons --

7 A Yeah.

8 Q -- rather than -- okay. Thank you. What was your
9 understanding when you went and signed the -- the decree of
10 divorce as to -- why did you signed it? What kind of money
11 would you be getting when you signed it?

12 A I signed it because he told me over and over I would
13 get \$3,000 a month until he dies and after that when he dies I
14 would get the -- the insurance money and for me to take that
15 money and pay down on the house. Then I have to live off the
16 survivor benefit plan --

17 Q When we --

18 A -- which is \$1800.

19 Q Okay. When -- when this divorce process was going
20 on, roughly the -- the February 2014 through June, where do
21 you think he was living?

22 A In the Philippines.

23 Q And was that a worry if any at all to you?

24 A I was worried that if I didn't do what he told me he

1 would just disappear and I would go through the same thing I'm
2 doing now.

3 Q Okay. Was -- was the issue about hiring an attorney
4 more about not having money to do it or was it more about
5 something --

6 MR. MILLS: Objection, leading.

7 Q -- else.

8 BY MS. LAMBERTSEN:

9 Q Mr. Mills made references to your finances at the
10 time of divorce.

11 A Yeah.

12 Q What factor did finances play in you hiring an
13 attorney, if any?

14 A Well, I was afraid that he would just -- I just
15 bought a house. I got all my things. And I thought he would
16 disappear and I would not be able to find him for years. And
17 this has been going on for a year-and-a-half and --

18 Q Okay.

19 A I don't know what to do. So I thought since he had
20 been paying me all these years and he bought me a house, I --
21 I trusted him. Why wouldn't I? Because if he -- he didn't
22 want me, why didn't he let me go a long time ago and -- and
23 not buy me a house? He could have just left me a long time
24 ago.

1 Q Can we -- Mr. Mills made a -- a remark your TRICARE
2 insurance. And you talked about a 20/20/20 on your insurance.
3 I'd like to have you look at Exhibit 23 in the big book,
4 please. Okay. And the lower righthand of -- this Exhibit 23
5 is -- what is this page?

6 A And so this --

7 Q These pages.

8 A -- Page -- so this is an email from Grady to me
9 about the military retirees I.D. card.

10 Q And about what time -- what dates are these?

11 A August 1st, 2016.

12 MS. LAMBERTSEN: Move to admit Exhibit 23, please.

13 MR. MILLS: Objection, relevance.

14 MS. LAMBERTSEN: It goes to response to a question
15 you had asked her. So it's directly relevant to something you
16 spoke to her about regarding insurance. And our understanding
17 of what she had at the time of divorce. In particular,
18 PLA0018.

19 THE WITNESS: 018? Okay.

20 MS. LAMBERTSEN: Hang on. Hang on.

21 THE WITNESS: Okay.

22 MS. LAMBERTSEN: She hasn't ruled.

23 THE COURT: All right. I'll admit it.

24 (PLAINTIFF'S EXHIBIT 23 ADMITTED)

1 BY MS. LAMBERTSEN:
2 Q Mr. Mills made a representation during his cross
3 examination about the coverage that you had under TRI --
4 TRICARE. He said --
5 A Right.
6 Q 20/20/20.
7 A Right.
8 Q Was that your understanding at the time of divorce?
9 A Yes.
10 Q Okay. So what is happening here in this email?
11 What are you actually getting -- or had you actually gotten?
12 A So -- so that -- so I asked him about it. Will you
13 make me -- so he wrote back. He says you are what is
14 called --
15 Q Excuse me. Who -- who's writing this email?
16 A Oh, Grady Byrd --
17 Q To whom?
18 A -- on August 12th, 2016. To me.
19 Q Okay.
20 A And he said to me you are -- you are what is called
21 20/20/15 former spouse. I was in the army more than 20 years.
22 We were married more than 20 years. And our marriage
23 overlapped by my fi -- by my service by 15 years. I checked
24 and you are not entitled to any benefits after one year of

1 divorce. Nothing to be done. That is the law.
2 Q Was that your understanding at --
3 A No.
4 Q -- the time when you signed the decree of divorce?
5 A No, I thought -- I -- no, I thought I'd get medical
6 forever.
7 Q Okay. Thank you. Did he ever provide you at the
8 time of divorce any documents showing how much medical and how
9 long you would get them?
10 A No.
11 Q Any of this information? Did he ever show you at
12 the time of divorce he wasn't going through bankruptcy
13 documents --
14 A No.
15 Q -- showing any documents?
16 A No.
17 Q Did he ever show you -- give you any income
18 statements so you can see what he was earning (indiscernible)?
19 A No.
20 Q Did you ever see anything that he was getting a
21 disability pay?
22 A No.
23 MS. LAMBERTSEN: I have no further questions, Your
24 Honor.

1 MR. MILLS: I don't have anything further.
2 THE COURT: All right. Thank you. You may step
3 down.
4 (WITNESS EXCUSED)
5 THE COURT: Any further testimony?
6 MS. WEBSTER: No, Your Honor.
7 MS. LAMBERTSEN: May I give her a Kleenex box?
8 THE COURT: You may.
9 MS. WEBSTER: And the water.
10 MS. BYRD: Thank you.
11 THE COURT: So are we ready for closing arguments?
12 MS. WEBSTER: Thank you, Your Honor. And Your
13 Honor, just to -- just to clarify real quickly, there was --
14 there was some discussion based on Judge Forsberg's comments.
15 And she had made certain decisions regarding the alimony. You
16 had indicated in January and in -- in your ruling that the --
17 the alimony -- I mean, the \$1500 per month house mortgage
18 payment was alimony. Judge Forsberg had indicated in a
19 subsequent motion for rehearing in response to opposing
20 Counsel, but it wasn't. We had --
21 THE COURT: But it was --
22 MS. WEBSTER: -- some testimony today.
23 THE COURT: And it was --
24 MS. WEBSTER: Yeah.

1 THE COURT: -- before evidence was taken, so --
2 MS. WEBSTER: All righty. So I just --
3 THE COURT: -- I'll make --
4 MS. WEBSTER: -- want to make sure that --
5 THE COURT: -- a ruling based on the evidence.
6 MS. WEBSTER: Okay. All right. So I just want to
7 make sure that that's what we're doing today. All right.
8 Very good. All righty. All righty, Your Honor. We've heard
9 testimony today about Caterina, her history with the Defendant
10 in this case. She's indicated that -- and now through her
11 testimony she's shown that she was a loyal and supportive wife
12 and mother for 31 years. She advanced the Defendant's career
13 while having none of her own. He got two masters degrees, was
14 very successful in his career at the same time that she works
15 sporadically, if at best. And subsequently had no income --
16 essentially no income from 9 -- bef -- 1999 on.
17 She was completely dependent upon him and he told
18 her what his income was at the time of the divorce, told her
19 what he was willing to pay her. And what happened in six
20 years prior to that was that he had left the home. They were
21 not together from 2008 on, but he continued to support her a
22 hundred percent for everything that she needed and bought a
23 house in 2014.
24 And in 2014 when it came to the divorce, he made

1 certain representations to her. He told her that he was
2 getting his Army benefit pay. Her told her the exact amount
3 of that pay and told her that she was entitled to half of it
4 and that that's what he would be paying her. He also
5 indicated to her that because she had the house and he wanted
6 to continue to support her, that he would pay her \$1500 a
7 month towards the house plus the \$1500 a month that she was
8 going to get from his military pay and that 3,000 total is
9 what he would pay her and he said that repeatedly in his
10 emails. It came in as evidence. Repeatedly told her that
11 that -- he would pay that to her for the rest of her life,
12 that she would then get his benef -- his insurance which would
13 pay -- would pay 200,000 and -- and we did by the way
14 stipulate that with Mr. Mills, that that 200,000 stays intact
15 because there had been some --

16 THE COURT: And I --

17 MS. WEBSTER: -- questions as to how much went to
18 exwife -- or --

19 THE COURT: I --

20 MS. WEBSTER: -- to her wife.

21 THE COURT: -- signed that order this morning.

22 MS. WEBSTER: Yes. So that 200,000 would then go
23 for her to pay off her house and then she would get his
24 survivor benefits and that she would basically be set for

1 life. And she would have a house, a car, and support from
2 him.

3 And based upon that, that is what she -- what she
4 signed. If the documents that we've been provided with from
5 Defendant's trial exhibits, it looks like he was actually
6 getting disability pay at the time that he represented to her
7 that he was getting U.S. Army pay. So when you look at the
8 Defendant's exhibits, the V.A. disability letter, Exhibit D,
9 effective date December 1, so when he was telling her in
10 emails and elsewhere I am getting -- military pay of \$3,017
11 per month and you're entitled to 3,008, he was actually
12 getting disability pay. Now can he contract to give her
13 disability pay? He absolutely can. And there's case law that
14 we've quoted in our pretrial memorandum.

15 But what we're really looking at is we're looking at
16 an ambiguous contract which then gives us the ability as Your
17 Honor as ruled to be able to look at the emails and to look at
18 the situation surrounding this. We have the -- the Parker
19 decision and even in the decision where the Court -- the
20 Shelton (ph) decision where the Court found a contract for the
21 continued payment of military pay, the Court said it's an
22 ambiguous contract and we have to look at the -- the situation
23 surrounding everything, even though in there it has a specific
24 dollar amount, but the dollar amount was not consistent with

1 what she should have gotten had he -- were he doing an actual
2 50/50 division of his way.

3 But anyway, what Shelton looked at and what was so
4 important and what's relevant to this case Your Honor is they
5 looked at the fact that in Shelton he paid it for two years
6 before he tried to pull back on it. In this case, he paid it
7 since 2004. So he paid it for four years, paid her the
8 \$3,000. And the minute that he stopped paying, she took it
9 back to court and said we need to look at this and we need to
10 reexamine this.

11 Also, Your Honor, from looking at this, we've asked
12 for 60(B)(6) relief and because what we are looking at is a
13 situation where the contract really cannot -- or the agreement
14 as it was written really cannot stay in place. We cited the
15 Fitori (ph) decision. What that was was a waiver of alimony
16 was invalidated by the unforeseeable loss of the pension
17 benefits. In that case, the wife had waived alimony just as
18 Caterina did in this case with the anticipation that she was
19 going to get \$3,000 per month.

20 In the Casselini (ph) decision, the same thing. She
21 had waived the alimony in anticipation -- well, she didn't
22 waive the alimony, but she was -- she was -- she didn't get
23 alimony in return for which she was getting the -- the
24 pension. And they said we really have to look at these -- or

1 the decisions in the -- in those cases said we really have to
2 look at it and we have to come out with a decision that's fair
3 and something that -- let's see. It says the unforeseen loss
4 of the bargained for pension benefit was a substantial and
5 permanent change in circumstances which invalidated the waiver
6 of holding the alimony waiver and these circumstances would be
7 wholly unfair. That was in the Fitori case.

8 And in the Parker vs. Green (ph) case, which is a
9 Nevada case, there was an expressed waiver of alimony. And
10 the Supreme Court found in that case that the waiver was
11 ambiguous, looked at the terms and what really was going on,
12 examine the circumstances surrounding the parties' agreement.
13 In order to determine the true intentions of the parties.

14 In here, the true intentions of the parties couldn't
15 be any clear. He promised \$3,000 a month, he paid \$3,000 per
16 month and as far as she knew that was what she was going to
17 get for the -- for the rest of her life.

18 And -- and in the -- in the Winters (ph) case,
19 another one that we cited in our pretrial memorandum, that was
20 a gentleman that was getting his disability pay and I said
21 just on res judicata they were looking it from a standpoint of
22 you can't -- you can't give something and then try to take it
23 back again. He at the time had already converted his benefits
24 just like in this situation, convert his benefits from U.S.

1 Army pay to CRCS -- CRSC pay. And -- and the Court said in
2 those circumstances basically it was a res judicata.

3 The other Your Honor is the extraordinary remedy
4 which we indicated under 60(B)(6) which is to reopen the -- or
5 at least partially reopen it for the purposes of awarding her
6 alimony. And the Guerro vs. Guerro (ph) which was an Alaskan
7 case cited in our pretrial memorandum, the Appellate Court
8 held that the lower court had abused its discretion by
9 refusing to open -- reopen the parties' property settlement
10 agreement and re-look at the situation in that case.

11 So what we're looking for Your Honor at this point
12 is a partial reopening, looking at the situation that it was
13 labeled two different things which was she was supposed to get
14 a share of his military pay and she was supposed to get this
15 ongoing payment for the house which looks like alimony. She
16 took it as a deduction on her taxes. It's alimony. She
17 understood that it was a support provision as alimony and that
18 both -- that both of these need to be categorized as alimony.
19 Obviously, that under the circumstances it is the fair thing
20 to do.

21 It is an extraordinary circumstance that he did not
22 tell her the truth. He made misrepresentations to her as far
23 as what this payment was and led her to believe it was U.S.
24 Army pay, that she was entitled to half of it. She had an

1 obligation pursuant to Waldman vs. Waldman to tell her the
2 truth and to be honest with her and to let her know what's
3 going on.

4 We also have the Carlyle case. That was a case
5 where wife depended upon opposing counsel and husband to tell
6 her what the pension and they had lied to her and they said
7 well, under those circumstances either husband was
8 misrepresenta -- misrepresenting, in which case they had to
9 set aside the decree of divorce or husband had lied in which
10 case it was a misrepresentation -- or I'm sorry, a mutual
11 mistake. So it was -- in -- in this case, it was either he
12 was mistaken as -- or they were both were mistaken as to what
13 the entitlement was which would have -- which would allow the
14 set aside or he was misrepresenting to her, more than likely
15 misrepresenting because he knew that he had been getting this
16 disability pay since 2011. But let's say on the off chance
17 that he just was mistaken, you know, and that she could
18 actually get half of this disability pay. That was her
19 assumption as well and what he led her to believe.

20 He also gave her the impression that she was going
21 to have all these other benefits. You're going to have your
22 medical insurance is going to get paid which turned out not to
23 be the truth. He let the insurance that he was supposed to
24 continue to pay. He let that lapse. So there were a lot of

1 things that were going on.

2 And one of her fears, which has come true now, was
3 he was already in the Philippines in 2014 when they went
4 through the divorce and he basically said take it or leave it.
5 I'm going to give you this. I've supported you in the past.
6 You can believe me. I will continue to pay her. And her fear
7 was well, he's in the Philippines and, you know, I'm going to
8 have no luck trying to go after him if I don't go along with
9 what he's proposing. And so she did with the understanding
10 that this is what he was going to do for her. And, again, he
11 did it for four years. I mean, if you look at the situation,
12 he only stopped when she retained Counsel. He got sick in
13 2018, went to the hospital. And she retained Counsel at that
14 point to find out what was going on with the -- with his
15 survivor benefits and with his insurance.

16 And at that point he wouldn't communicate with
17 Caterina anymore. He wouldn't communicate with Ms.
18 Lambertsen. And he did the very thing which he had told
19 Caterina he would do if she ever got an attorney and that was
20 he would cut off everything and not talk to her and have no
21 communication with her attorney. So he did exactly what he
22 had threatened he would do in 2014 and 2018.

23 So we're looking at a situation where under multiple
24 theories this is something that needs to be adjusted and

1 rectified. And the Court is always in favor of coming up with
2 a solution that leads to a just and equitable result. And
3 certainly in this situation leaving a woman after 31 years of
4 marriage with absolutely no income. As he indicated, she had
5 moved 17 times, had done everything to advance his career.
6 He's where he's at now with a hundred and sixteen thousand
7 dollars a year. And she's in a situation right now where
8 after 31 years of marriage she's getting absolutely nothing.
9 So obviously very unjust and just as Family Court is a court
10 of equity where the Court can look at the surrounding
11 circumstances and what the parties' understanding was of what
12 was supposed to happen in this case based upon all of that and
13 the case law that we have cited in your pretrial memorandum.

14 There's no doubt that under these circumstances that
15 the decree of divorce at least at to those two items needs to
16 be set aside and that she needs to be awarded lifetime alimony
17 of -- of her expenses per her financial disclosure form of
18 \$3900 a month and that that should be the amount -- amount of
19 alimony that would be payable from Defendant to Caterina.

20 He certainly has the income as we've shown on his
21 financial disclosure form, again, a hundred and sixteen
22 thousand dollars per -- per year, all of which is tax free.
23 He doesn't pay a dime of taxes on any of it. And so certainly
24 he has the financial resources. And looking at his financial

1 disclosure form, his expenses are very low in the Philippines
2 and he certainly has the ability after the payment of his
3 expenses to more than meet an alimony obligation to Caterina.
4 And that would be justified in this case.

5 Your Honor, we had also talked about attorney's
6 fees, sanctions, and the order to show cause. We certainly
7 have proven through the documentation that the order to show
8 cause should be effectuated. The schedule of arrearages
9 should be reduced to judgment and she should be awarded the
10 attorney's fees that were previously awarded by this Court and
11 she should be awarded attorney's fees related to -- and
12 sanctions, the \$500 sanctions, for each time that he failed to
13 pay because he was supposed to have paid. The Court awarded
14 \$7,000 in attorney's fees. That was ordered April 5th -- 5.
15 None of which was paid.

16 She testified that the attorney's fees ordered June
17 26th of \$5,000, none of that was paid, nor the 1500 in
18 attorney's fees ordered on August 8th -- I'm sorry, August 9th
19 of 2019, that none of that was paid. And Your Honor can
20 sanction him \$500 for each month that he failed to pay 14
21 months in this case so far. \$500 for each incident of failing
22 to pay attorney's fees which is three incidences, so another
23 1500, and that we're looking at a grand total of \$64,000 which
24 should be reduced to judgment.

1 And attorney's fees for these proceedings. There is
2 no doubt that there is a huge disparity in income between the
3 parties with his income versus hers which we've talked about.
4 And we've also asked that he be found in contempt on an order
5 to show cause. He has indicated in pleadings that he has the
6 ability to pay and -- and in the pleadings that he filed, this
7 is Exhibit 50, it says in relation to the forgoing issues, the
8 following facts are undisputed. This is in a pleading that
9 was filed by his Counsel. Grady has not paid any money
10 towards the \$3,000 obligation since just before Caterina filed
11 her motion and Grady has sufficient income to cover the
12 obligation.

13 So for purposes of our order to show cause, Exhibit
14 50, is a document that was prepared by his Counsel wherein it
15 is admitted that he is capable of paying with this \$116,000
16 obli -- income, there's no doubt that he's capable of paying.
17 And there's also no doubt has Caterina has testified to that
18 he hasn't paid and that the order to show cause should be
19 granted under those circumstances, Your Honor.

20 THE COURT: All right.

21 MS. WEBSTER: Thank you, Your Honor.

22 THE COURT: Thank you. Counsel.

23 MR. MILLS: Thank you. I'm going to do this in two
24 different parts, because we have of course the motion to recon

1 -- for reasonable compensation, set aside that one, and then
2 we have what was before the Court on the trial issues. I'm
3 going to start the -- with the opposition -- or in their
4 motion for reconsideration, because the Court made a decision
5 in -- in May deeming that not -- they -- she reversed your
6 position -- your situation -- your --

7 THE COURT: I --

8 MR. MILLS: -- order and made it so that --

9 THE COURT: Again, without it --

10 MR. MILLS: -- it was not spousal support.

11 THE COURT: Both were without evidentiary hearings.

12 MR. MILLS: As was your initial --

13 THE COURT: You may --

14 MR. MILLS: -- decision.

15 THE COURT: Preliminary rulings. We're now at trial
16 and we're going to make it based upon the evidence that was
17 presented today.

18 MR. MILLS: Unfortunately, today that wasn't before
19 the Court today.

20 THE COURT: Yes, it is.

21 MR. MILLS: Well, not pursuant to the orders.
22 Today's issue was -- was a contract created. And I kept --

23 THE COURT: You can try that argument.

24 MR. MILLS: -- saying that during the --

1 THE COURT: You can try that argument.
2 MR. MILLS: I know. I -- and I --
3 THE COURT: Good luck on appeal on that argument.
4 MR. MILLS: I know. I know. And (indiscernible) --
5 don't consider anything I make a threat or I'm not trying to
6 do that.
7 THE COURT: I -- I -- no.
8 MR. MILLS: I'm just trying to make a record, Your
9 Honor.
10 THE COURT: I understand.
11 MR. MILLS: So for the -- for her motion to
12 reconsider the -- the prior decision of Judge Forsberg, she --
13 their argument is one thing really, the law case doctrine.
14 That's the only grounds taht they are requesting that you able
15 -- are able to reconsider a judge's decision to -- that that
16 was not alimony.
17 THE COURT:- She reconsidered mine, so the argument
18 is she couldn't reconsider mine. If you're going to try and
19 make the argument that she should recon -- I -- that I can't
20 reconsider hers.
21 MR. MILLS: No, that's --
22 THE COURT: All right?
23 MR. MILLS: That's their argument, not mine. Their
24 argument --

1 THE COURT: And so --
2 MR. MILLS: -- is law of the case, you should have
3 been the one to come back. That's not the law. The law that
4 the -- the law of the case does not require a visiting judge
5 to come back and do trials --
6 THE COURT: Okay. Well --
7 MR. MILLS: -- or to do anything in that nature.
8 THE COURT: -- you filed --
9 MR. MILLS: It's just not the law.
10 THE COURT: -- you filed your motion. We don't need
11 argument on it on the record.
12 MR. MILLS: Well, yeah, I do, actually. And yes, my
13 opposition is there. So in my opinion, Your Honor, there is
14 no basis to -- for you to reconsider the decision of Judge
15 Forsberg at this point. We shouldn't even get into it unless
16 they meet the burden of resetting -- setting aside. There was
17 no new evidence. There is no error. They didn't even argue
18 error of law.
19 THE COURT: There was no evidence as far as I'm
20 concerned.
21 MR. MILLS: Not alleged in their brief.
22 THE COURT: There's no indication at the time that
23 Judge Forsberg looked at it that she realized that there was
24 no equity in the house at the time because they kept listing

1 the house at 364,000 or 374 or whatever it was. When that was
2 just a little bit over what was owed on the house.

3 MR. MILLS: The --

4 THE COURT: That was the purchase price of the
5 house. That wasn't the value of the house. That wasn't the
6 equity of the house. And then he listed he had no assets. So
7 there's no indication that she knew of what he had available
8 to him at the time. She just looked at the face of the
9 document. That's why we have the evidentiary hearing is to
10 look at it and on its face a 31 year marriage where you leave
11 a woman with a hundred and twenty-eight dollars retirement pay
12 because you've converted the rest without telling her to
13 disability and a house that has no equity in it who hasn't
14 worked during the marriage except sporadically at -- according
15 to her testimony, the one time she did try to work, he got
16 upset about it. There's -- and then we've got all of the
17 emails.

18 This meets the classic case --

19 MR. MILLS: The -- and --

20 THE COURT: -- that all these other cases address.

21 MR. MILLS: Not even close and I'll address everyone
22 of those cases. They're misinterpreted, but I'll get through
23 -- I'll get to that.

24 THE COURT: All right.

1 MR. MILLS: Again, in my --
2 THE COURT: But we're not going to leave a woman
3 after 31 years of marriage with a guy who has a fiduciary
4 relationship to her showing in those emails what he was
5 promising, what he was leading her to believe she was going to
6 get, and what it actually said in the property settlement
7 agreement she was supposed to get. And then you have the one
8 little statement in there saying oh, this isn't alimony. If
9 it looks like a duck, it quacks like a duck, it's a duck.
10 MR. MILLS: Okay. And I agree with you. But this
11 one quacks like -- doesn't like a duck. It flies like a
12 goose. You got to look at the words. And when you look at
13 the case, Your Honor, and we say -- and for example, they
14 cited the case that says, hey, there's -- Parker versus --
15 I'll jump to that real quick.
16 THE COURT: Okay. You can --
17 MR. MILLS: Parker vs. Green.
18 THE COURT: -- make this argument on appeal.
19 MR. MILLS: Deal. Parker vs. Green.
20 THE COURT: But make your argument here brief this
21 afternoon.
22 MR. MILLS: Okay. Deal.
23 THE COURT: We've got all this in your brief.
24 MR. MILLS: Okay. Again, it -- Parker vs. Green,

1 there was specific language that it real clear that it ends at
2 the end of a divor -- or at the time of remarriage. It ends
3 upon a reconciliation. It ends upon death. The language of
4 alimony. It looked -- you're right. In Parker, it quacked
5 like a duck. This one's completely opposite. It does not say
6 that. There is no -- none of that language. There is nothing
7 that says it ends at the end time of a remarriage of
8 reconciliation or anything. It doesn't say that at all. What
9 it says is if you sell the house it ends.

10 THE COURT: That's not the --

11 MR. MILLS: If you ref --

12 THE COURT: -- only thing it says.

13 MR. MILLS: If -- if you refinance the house, it
14 ends.

15 THE COURT: And need.

16 MR. MILLS: Or -- or sure, any -- but that's not
17 alone.

18 THE COURT: So you used --

19 MR. MILLS: That's not enough.

20 THE COURT: -- different terminology. That doesn't
21 change --

22 MR. MILLS: So --

23 THE COURT: -- the definition.

24 MR. MILLS: -- one little category and you're going

1 to say oh, that looks and -- and quacks like a duck? I can
2 quack like a duck. It doesn't make a duck.

3 THE COURT: This is alimony.

4 MR. MILLS: You have to look at all the
5 circumstances, Your Honor. And this one there isn't
6 circumstances such as that. There's one little turn. And --
7 and the Judge act -- she correctly determined, they -- you're
8 right. This is a property settlement issue, not a -- an
9 alimony issue. It's not alimony. And -- and frankly, again,
10 they didn't even meet the basis of law to get you to even re
11 -- reconsider what --

12 THE COURT: Disagree, Counsel.

13 MR. MILLS: -- the Judge's decision.

14 THE COURT: You've made your record on that. Move
15 on.

16 MR. MILLS: Okay. Going on then, let me jump into
17 their 60(B) motion. In their 60(B) motion, Your Honor, they
18 say hey, we can set this aside. I'm not sure based on what.
19 You have a --

20 THE COURT: Breach of --

21 MR. MILLS: -- misstate --

22 THE COURT: -- fiduciary rel -- relationship --

23 MR. MILLS: Six months.

24 THE COURT: -- duties that you have.

1 MR. MILLS: Six months.
2 THE COURT: Breach of --
3 MR. MILLS: There is a --
4 THE COURT: -- duties.
5 MR. MILLS: -- limit, Your Honor.
6 THE COURT: He paid. She did it within six months
7 of him stopping payment.
8 MR. MILLS: Oh, no, she didn't. No, she didn't,
9 Your Honor. They didn't file their 60(B) motion until over a
10 year, over a year. They filed a motion to enforce.
11 THE COURT: That's fine. She came into court to try
12 and get what was entitled to her.
13 MR. MILLS: Still untimely, Your Honor. She filed a
14 motion to enforce, not a motion to amend -- to set aside.
15 There is no motion, a 60(B) motion to set aside in her initial
16 -- in her initial motion. It -- she supposedly or should have
17 known if you're going to take the position there may have been
18 fraud or breach of fiduciary duty, she recognized that I guess
19 in July of 2018 when she hired these folks. And then she --
20 her time started clicking at least then, if not at the time of
21 the divorce. She didn't file the motion until September of
22 2019, over a year later. It's an untimely motion. The motion
23 should be granted because it's untimely -- or if -- not
24 granted because it's untimely. The 60(B) motion, Your Honor.

1 She cites several cases that I want to address.
2 One, she first addressed Fitori. Okay. It is an un -- and --
3 and she does this because it's -- it's a great case for her.
4 It's an unpublished New Jersey Appellate Court decision.
5 That's what they cite. That's their primary case for their
6 argument. It doesn't apply. It's an unpublished. We can't
7 even cite unpublished here until recently and that's only
8 Nevada. We can't cite unpublished decisions from other courts
9 in the country.

10 The -- and then they jump to Barelli (ph). Well, in
11 Barelli, the Court didn't -- they -- they say this is what the
12 Court -- what they wanted. But the Supreme Court did not
13 grant their request. The Supreme Court dismissed the reci --
14 and ref -- reformation claim. And -- and un -- because it was
15 a property settlement agreement and they were trying to
16 enforce the property settlement agreement, there wasn't a
17 situation where they set aside the decree and awarded alimony.
18 It -- she didn't win. Barelli does not help them. They
19 misstate it because they say what she requests, not what the
20 Court ordered.

21 In Carlston (ph), it's not timely either, because in
22 -- in Carlston they -- she timely within the time frame within
23 a reasonable time, six months. I know six months isn't the
24 time, within a reasonable time. That --

1 THE COURT: You've --
2 MR. MILLS: They --
3 THE COURT: -- got about seven minutes --
4 MR. MILLS: They did it --
5 THE COURT: -- to make your case.
6 MR. MILLS: -- within that time, Your Honor. They
7 did it within that time. Here, it is five years later. In
8 Shelton, Your Honor, which is a big one, and we'll move to the
9 other issue which is do we look -- it -- on the -- so the main
10 issue here for trial was is the contract --- was there a
11 contract created to require him to pay an initial \$1500.
12 Well, to -- and you can look at that and you have to look at
13 the -- at whether this -- the terms of the decree are
14 ambiguous. and they look -- they quote Shelton. The Court
15 knows Shelton, of course.
16 Here's the difference in why Shelton got looked at
17 though. Shelton was ambiguous because it said half the
18 retirement and 5 -- and \$577. They called 5 -- half of the
19 retirement 577. The problem was the -- they're not the same
20 thing. Half the retirement wasn't 577. So he tried to pay
21 the half because it was less. They go up and they say okay,
22 this is ambiguous because it says both. You got to pay this
23 for retirement and you have to pay this for retirement. And
24 they have to look at what -- what the agreement was. And

1 that's why they looked back. That's why I made all my
2 objections.

3 They look back here because there is ambiguous
4 language. In our case. It can't be clearer. She gets
5 one-half of the retirement pay. There is no \$1500 mentioned.
6 And she knew it. She knew it. She erased it in her emails.
7 The -- and --

8 THE COURT: So what was the one-half of the
9 retirement pay at the time of the (indiscernible)?

10 MR. MILLS: A hundred and twenty-eight dollars, so
11 she -- she should have got 64. Any payment above that is
12 generosity.

13 THE COURT: You know, you've heard of the fact that
14 there are some contract provisions that are so unconscionable
15 as to the unenforceable. That's the situation bottom line
16 here that we have. You do not tell your spouse that you have
17 a fiduciary duty to that the amount is much, much higher when
18 you know it's much, much lower and then walk away patting
19 yourself on the back that you got one over on her and expect
20 the Court to look at it and say hm, our hands are tied.
21 That's why we have those type of legal theorems that we look
22 at, we deal with. This is so unconscionable under that
23 argument, it is unenforceable.

24 MR. MILLS: And I understand the -- the Court's

1 position. There is still timeliness. There is still
2 timeliness. The law still has to be applied. And here, it --
3 she could have had an attorney. She had the means. We found
4 out she has significant funds in her bank account.
5 THE COURT: And she was threatened to retire.
6 MR. MILLS: Your Honor --
7 THE COURT: I've read the emails.
8 MR. MILLS: -- threats -- threats of I'm going to
9 hire an attorney isn't a threat.
10 THE COURT: When you're in --
11 MR. MILLS: Threats of --
12 THE COURT: -- in the Philippines, when you know
13 you're dealing with a person who is dealing with depression,
14 all of that expressed in the emails. And as soon as she
15 mentions seeing an attorney, he comes right down on her.
16 MR. MILLS: And if that's grounds for appeal, you
17 can probably appeal every single case in this court.
18 THE COURT: No, you look at each --
19 MR. MILLS: Because they all --
20 THE COURT: -- case and you --
21 MR. MILLS: -- probably do that, Your Honor.
22 THE COURT: -- look at the ultimate agreement that's
23 entered into and then you look at -- you look at all the
24 circumstances. And looking at all the circumstances here, a

1 31 year marriage, lying to the other party about what they're
2 entitled to receive and what they will receive and how long
3 they will receive it --

4 MR. MILLS: The promises made outside aren't upheld,
5 Your Honor. They're all merged into the agreement.

6 THE COURT: It's fraud. It's --

7 MR. MILLS: She has -- you have a fraud required --

8 THE COURT: -- fraud, any --

9 MR. MILLS: -- timeliness.

10 THE COURT: -- inducement --

11 MR. MILLS: It --

12 THE COURT: -- unconscionability. This meets all
13 those tests.

14 MR. MILLS: If she was timely, but she's not. The
15 problem is --

16 THE COURT: She's timely enough.

17 MR. MILLS: -- she has no legal basis to set aside
18 this decree, Your Honor. She -- she had the ability to --
19 mental health -- I understand she's upset. She cried a lot.
20 But that's not grounds to set it aside either. And she had
21 the ability to go gamble with friends but couldn't --

22 THE COURT: And --

23 MR. MILLS: -- hire an attorney?

24 THE COURT: -- you got three more minutes.

1 MR. MILLS: She wasn't left destitute at the time.
2 She could have definitely hired her attorney. She had the
3 ability. And --

4 THE COURT: So the credit card -- using a credit
5 card to hire an attorney doesn't mean you're not destitute.

6 MR. MILLS: She had -- she testified 15 -- 25,000 as
7 of 2018, Your Honor, in the bank account. She had been given
8 just a year before \$90,000.

9 THE COURT: You try living on 25,000 when you've got
10 a 1900 a month mortgage.

11 MR. MILLS: That's later. We're talking at the time
12 of the divorce in 2014. In 2014, Your Honor, she had -- she
13 wasn't sure. It was anywhere from 15 to \$40,000 in the bank
14 account. And all this jewelry she ends up later selling. She
15 had plenty of means to go get an attorney. She chose not to.
16 She chose to trust him which that's her choice. She chose not
17 to investigate. She chose not to get documents to find out
18 what his income is or if it was different than what he
19 claimed. Those are things she had the ability to do. She
20 made the decision not to.

21 She -- and -- and Your Honor, it's not like she
22 forced him to sign. There were four months of negotiations,
23 hundreds of emails going back and forth talking about it. She
24 was well aware of what she was getting, what she needed. She

1 raised those concerns in her --
2 THE COURT: She --
3 MR. MILLS: -- emails.
4 THE COURT: -- didn't get what she was promised.
5 MR. MILLS: She stated in 21, like I said, that --
6 THE COURT: She didn't get what --
7 MR. MILLS: -- you can quit paying me --
8 THE COURT: -- she was promised.
9 MR. MILLS: -- the 1500.
10 THE COURT: For the rest of my life.
11 MR. MILLS: And I'll be stuck with 1500.
12 THE COURT: She was promised for the rest of your
13 life. You will get this --
14 MR. MILLS: She -- so she knew --
15 THE COURT: -- and at my death --
16 MR. MILLS: -- it was a concern --
17 THE COURT: -- you will get this.
18 MR. MILLS: -- and still -- and still decided to
19 sign the decree, Your Honor. And then finally just on the
20 contempt, I just want to make it real clear because she asked
21 for contempt for 14 months. Per law of course you have to do
22 it based on the order to show cause. That's the only time you
23 can do contempt sanctions. Attorney's fees I know is
24 different. But on the sanctions, this -- the -- the order to

1 show cause specifically says from June 1st til this trial date
2 are the only months that he can be held accountable for -- or,
3 I mean, sanctioned for contempt, Your Honor. The rest of
4 those months you cannot because there was no order to show
5 cause with regards to prior months. And so that's my issue on
6 the contempt.

7 Submitted, Your Honor.

8 THE COURT: Okay. All right. This was a 31 year
9 marriage. This was a a marriage, a very -- one where we see
10 it all the time where one spouse is the one who -- is the one
11 who runs the marriage, who makes the decisions in the
12 marriage, who controls the finances in the marriage, who makes
13 the decisions in the marriage and encourages the other party
14 not to be involved in those decisions. And then when she did
15 try to work, he discouraged her from working. He didn't want
16 her working. And for 31 years this went on.

17 And then when he -- in the Philippines, he decides
18 he doesn't want to be married anymore. It's oh, I have so
19 many bills, I'm going to have to file bankruptcy, I'm living
20 in a tent, I can barely get by, we're only getting \$3,018 in
21 retirement. Poor me, poor me, poor me. And oh, please don't
22 call this alimony because if you call it alimony I'm not going
23 to be able to get the loan that I need and it's just going to
24 cause so much problems for me. This is not a person who

1 recognized that he had a fiduciary relationship with the
2 person -- the other person in the marriage. He was the one
3 who drafted up the agreement. The person proposing the
4 agreement and having the -- the agreement drafted up, we look
5 at it and any ambiguities goes against him.

6 There are ambiguities in here. Like I said, you
7 have periodic payments being made on a monthly basis for
8 support. By any other name, that is alimony. I don't care
9 what term you use for it. That by definition is alimony.

10 The same thing with the house. The periodic
11 payments on the house for her to live in that had no equity in
12 it at the time of the divorce maybe had 20,000 which wouldn't
13 even cover closing costs if she had to sell it. But the
14 periodic payments on a monthly basis until the house was paid
15 for or she had sold it are to need -- financial need by any
16 other name is alimony.

17 He didn't want to use the term because he knew he
18 would have to have a QDRO or he knew that he would have to
19 disclose to her ahead of time that it wasn't 3,000 a month on
20 the retirement because he had already converted to disability.
21 So he's engaging in all kinds of deceit on his spouse to whom
22 he owed a fiduciary relation.

23 And he pays for a number of years to keep her quiet,
24 to keep her complacent. And then all of a sudden he decides

1 oh, I don't have to pay anymore. She found out she wasn't
2 entitled to health benefits. She started asking questions.
3 Then she goes to use an attorney. I'm not going to pay
4 anything. Then he won't even show up for court. And then we
5 started getting doctors notes from some Filipino doctor we're
6 not even sure is a Filipino doctor. We don't get it from the
7 V.A., that he can't come to court. He's done everything in
8 his position to keep her from recognizing what her rights were
9 and to leave her in a position after 31 years where she would
10 get maybe a hundred and twenty-eight dollars a month?

11 Seriously,

12 As I said, there are some contracts, provisions that
13 you looked at that are so unconscionable as to be
14 unenforceable and this is one of those. So the decision is is
15 that the payments that he agreed to make to her in the amount
16 of \$1500 was in fact alimony

17 MR. MILLS: Which one? Will you just specify?

18 THE COURT: The first 1500.

19 MR. MILLS: Of the house payments?

20 THE COURT: Her -- her half of the military
21 retirement. He had told her that it was 1500. So now that
22 he's converted it to disability, that's not going to defeat
23 her right because she can still at -- with alimony collect
24 against it. So --

1 MR. MILLS: So -- and I'm sorry, I'm just trying
2 clarify so I can make sure.

3 THE COURT: The 1500 -- the money that she was to
4 receive is her share of the military retirement. He
5 represented to her was going to be \$1508 per month plus she
6 would get increases as it went up. So alimony is set in the
7 \$1508 per month. It can be subject to modification upward.
8 The 1500 he agreed to pay on the house is also alimony.

9 (COURT RECESSED AT 2:34 AND RESUMED AT 2:34)

10 THE COURT: He also agreed to keep the health
11 insurance intact and to keep the survivor benefits for her.
12 She's going to have to go out and make a provision to find
13 some other way to replace the value of that. So it's going to
14 cost her some money. She's probably going to have to get an
15 annuity or something if she's not successful in her appeal.
16 So that can go into her financial need when she seeks to
17 modify the alimony award.

18 The amount of the health insurance that she's paying
19 I believe was a hundred and -- 200 and --

20 MS. LAMBERTSEN: Is it 102?

21 MS. BYRD: 102.

22 THE COURT: 1 -- 102 per month --

23 MS. LAMBERTSEN: Yes. Yes, Your Honor.

24 THE COURT: -- is added into the alimony. So now

1 it's \$3,133 per month.

2 MR. MILLS: Your Honor, I don't think there's a
3 motion to modify alimony.

4 THE COURT: Well, there was a provision --

5 MR. MILLS: Nor was --

6 THE COURT: -- that he was supposed to provide.
7 It's not being provided. So the Court is adding it in for
8 purposes of alimony going forward. It's for purposes of back
9 alimony from the time he quit paying through this month. That
10 month -- that amount will be reduced to judgment. And it is
11 to be clearly set forth as reduced to judgment for alimony and
12 support payments. Plus the attorney's fees that were
13 previously ordered. And he is in contempt for failure to pay
14 the 1500 on the house payment. And the reasonable attorney's
15 fees already set for that.

16 MS. LAMBERTSEN: Your Honor, the --

17 MR. MILLS: 7500? Is that what was awarded?

18 MS. LAMBERTSEN: The -- and the -- at the January
19 hearing, Your Honor, that was 7,000 that was awarded at
20 January. In May for the -- was another 5,000. And then in --
21 at the July 18th hearing for having to file the motion for an
22 order to show cause we got 1500 at that hearing. So --

23 THE COURT: All right.

24 MS. LAMBERTSEN: -- those three hearings. And that

1 does not include today and the multiple issues that were on
2 with the opposition for the audio/visual and the -- the
3 other --

4 THE COURT: And --

5 MS. LAMBERTSEN: -- thing -- may I also ask that the
6 Discovery Commissioner, we were before the Discovery
7 Commissioner on October 11th. The Discovery Commissioner
8 ordered certain documents to be produced by the 17th. We got
9 very incomplete documents at all. And those attorney fees
10 were deferred to today as well before Your Honor.

11 THE COURT: All right. So all reasonable attorney's
12 fees that have not already been awarded, you may submit your
13 memorandum on it and I'll determine what amount to award for
14 that. But you had requested a total of 64,000 for the -- the
15 past payments that weren't made.

16 MS. LAMBERTSEN: Correct. Yes.

17 THE COURT: That -- that we are -- that the Court
18 has designated are support and alimony payments.

19 MS. WEBSTER: Actually, the -- Your Honor, that
20 64,000 was a combination of --

21 THE COURT: I -- and -- I just --

22 MS. WEBSTER: Yeah.

23 THE COURT: And the -- the accommodation of the
24 attorney's fees which were previously awarded plus -- what

1 else did they include?

2 THE WITNESS: It was a \$500 sanction for each time
3 that he failed -- for each month that he had failed to pay
4 since September and the -- each time he had failed to pay the
5 attorney's fees that were ordered.

6 THE COURT: Okay.

7 MS. WEBSTER: So with --

8 MR. MILLS: Which --

9 MS. WEBSTER: -- 1500 --

10 MR. MILLS: -- you can't do that though. Again, you
11 can only do June 1st --

12 THE COURT: I can --

13 MR. MILLS: -- but --

14 THE COURT: I can do two months of sanctions. So
15 reduce to 64,000 by backing out the other sanctions.

16 MS. WEBSTER: All right. Thank you, Your Honor.

17 THE COURT: So that would --

18 MS. WEBSTER: So it would be --

19 THE COURT: -- give you your --

20 MS. WEBSTER: -- June, July, August, September. So
21 basically four months?

22 MS. LAMBERTSEN: June, July, August, September,
23 October.

24 MS. WEBSTER: Well, in October --

1 THE COURT: So --
2 MS. WEBSTER: -- so five months.
3 THE COURT: -- 62,000.
4 MS. WEBSTER: Yeah. So it'll be five months of
5 sanctions then for nonpayment.
6 THE COURT: I'm just awarded two months of
7 sanctions.
8 MS. LAMBERTSEN: Oh, okay.
9 MS. WEBSTER: Oh, I see. I'm sorry.
10 MS. LAMBERTSEN: Oh.
11 MS. WEBSTER: Okay. I --
12 MS. LAMBERTSEN: Oh.
13 MS. WEBSTER: -- misunderstood.
14 THE COURT: Okay.
15 MS. WEBSTER: Okay. Thank you.
16 THE COURT: All right. And then submit the -- and I
17 do find that he was in contempt. And then submit your
18 memorandum of -- on the remaining attorney's fees on the
19 discovery as well as for the other reasonable fees incurred
20 that have already not been addressed by the Court.
21 MS. LAMBERTSEN: All right. Thank you.
22 MR. MILLS: And I -- I haven't seen the memorandum.
23 May I respond to the memorandum if --
24 THE COURT: Yes.

1 MR. MILLS: -- if needed? Thank you.
2 THE COURT: Thank you.
3 MS. LAMBERTSEN: And Your Honor, may I -- I just
4 clarify a couple of the dollar amounts? I do understand
5 alimony of today is the \$3,110 to cover the 1508, the 1500,
6 and the 102 for health insurance. Is -- and you -- I believe
7 you did say she can come back into court if she's having to
8 expend --
9 THE COURT: Alimony --
10 MS. LAMBERTSEN: -- funds.
11 THE COURT: -- is modifiable.
12 MS. LAMBERTSEN: Okay. Okay. And then on this
13 schedule of arrears are -- that she filed that \$42,000 of
14 arrears money is alimony arrears for her. Is --
15 THE COURT: Yes.
16 MS. LAMBERTSEN: -- that correct? Okay. Thank you.
17 MS. WEBSTER: And Your Honor, the -- the new alimony
18 amount going forward, when -- when does that start and what
19 time of the month?
20 THE COURT: That will start November 1st. So the
21 judgment should include October --
22 MS. WEBSTER: Okay.
23 THE COURT: -- for past alimony that wasn't paid.
24 MS. WEBSTER: And is it always payable on the 1st of

1 the month, Your Honor?

2 THE COURT: Yes.

3 MS. WEBSTER: From -- okay.

4 THE COURT: And if he's going to file a notice of
5 appeal, there will be no stay in this case until he's posted a
6 -- a supersedeas bond. And it's going to have to be at least
7 64,000, if not, more.

8 MR. MILLS: Okay.

9 THE COURT: Okay. Otherwise, there's no stay and
10 that he can go forward with trying to collect on their
11 judgment. And since it's a judgment for support, it's not
12 subject to discharge and bankruptcy. And I believe you can
13 collect against his disability payments.

14 MS. WEBSTER: Correct. We can, Your Honor. Thank
15 you.

16 MS. LAMBERTSEN: And -- and Your Honor, as far as a
17 no bail warrant for his arrest, what -- does that come into
18 play if he fails to post this bond? I'm trying to find out --

19 THE COURT: No. That's -- the supersedeas bond is
20 for purposes of appeal.

21 MS. LAMBERTSEN: Okay.

22 THE COURT: If you're going to -- if he's going to
23 appeal it, he's going to have to post a bond in order to get a
24 stay.

1 MS. LAMBERTSEN: Okay.

2 THE COURT: I'm not -- I addressed the issue of his
3 contempt today. I imposed sanctions. I'm awarding attorney's
4 fees. If he fails to pay in the future, you'll need to file
5 another order to show cause. And at that point, we can issue
6 -- if he doesn't respond, doesn't show up, doesn't pay, then
7 we can issue a bench warrant.

8 MS. LAMBERTSEN: Okay. So that would be a --
9 another motion before -- okay. All right. Thank you, Your
10 Honor.

11 THE COURT: It would have been a whole lot cheaper
12 for him to have just continued to meet his obligations.
13 Because I'm sure you aren't free either.

14 MR. MILLS: No, this was not a pro bono, Your Honor.

15 MS. WEBSTER: All righty. Thank you, Your Honor. I
16 appreciate.

17 MR. MILLS: Thank you.

18 MS. LAMBERTSEN: Thank you.

19 (COURT RECESSED AT 2:43 AND RESUMED AT 2:44)

20 THE COURT: All right.

21 (PROCEEDINGS CONCLUDED AT 2:44:08)

22

23

24

* * * * *

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

Adrian Medrano

Adrian N. Medrano

D-18-577701-Z BYRD 10/21/19 TRANSCRIPT
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7356