

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD

Appellant

v.

CATERINA ANGELA BYRD

Respondent

) Supreme Court No. 80548

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Electronically Filed
Jul 06 2020 04:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX TO OPENING BRIEF – VOLUME X

Submitted by:

DANIEL W. ANDERSON, ESQ.

Nevada Bar No.: 9955

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Nevada Bar No.: 8191

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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 X** 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

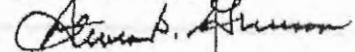
Opposition to Plaintiff's Motion for Reconsideration and Countermotion for Fees filed on October 18, 2019	AA563-578
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on October 20, 2019	AA579-603
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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Appendix to Defendant's Motion for Order Time to Reconsider Denial of Audiovisual Appearance filed on October 15, 2019	AA500-507
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7 (702) 386-0030
8 Attorney for Defendant

9 DISTRICT COURT
10 FAMILY DIVISION
11 CLARK COUNTY, NEVADA

12 CATERINA ANGELA BYRD,)
13)
14 Plaintiff,)
15)
16 vs.)
17)
18 GRADY EDWARD BYRD,)
19)
20 Defendant.)

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

21 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MEMORANDUM OF**
22 **FEES AND COSTS.**

23 COMES NOW, the Defendant, GRADY BYRD and hereby submits his
24 response to the Plaintiff's Memorandum of Fees and Costs.

25 **POINTS AND AUTHORITIES**

26 The Defendant GRADY EDWARD BYRD (hereinafter "Grady") has
27 already been ordered to pay \$13,500 in this case to CATERINA ANGELA BYRD
28 (hereinafter "Caterina") for attorney's fees and costs that she incurred asking the
Court reform the parties' Decree of Divorce so that she could have a continued

1 income stream from Grady of \$3,000 per month. From the outset of the case, Grady
2 took the legally reasonable and factually supported position that he was no longer
3 required to make any payments to Caterina based on the plain, unambiguous
4 language in the decree. While Caterina ultimately prevailed at trial, there was
5 nothing unreasonable or meritless about the defense Grady mounted.

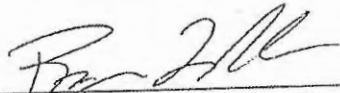
6 Additionally, the attorney's fees incurred by Caterina seem excessive given
7 the limited scope of the Court's inquiry, specifically: whether Caterina should
8 receive something more than what the terms of the Decree of Divorce required.
9 Excluding all time spent prior to July 18, 2019, Caterina's counsel billed an
10 additional 135 hours of time conducting discovery and preparing for a trial that was
11 over in less than a day. Approximately 15 hours of that time was spent on a motion
12 to compel seeking discovery that the Commissioner determined was largely
13 unwarranted and irrelevant. While Grady was ordered to produce some discovery
14 as result of the motion, he was granted a protection order denying the bulk of what
15 Caterina was seeking. In fact, the discovery commissioner's report and
16 recommendations specifically state that "both sides had valid arguments. Each side
17 reserves the right to request attorney's fees for having to litigate today's discovery
18 matters." While Grady has the right to pursue fees for defending against the
19 unwarranted requests, he is simply requesting that the Court award no additional
20 fees to Caterina, at a minimum, associated with her unwarranted discovery efforts.

21 For Grady's part, he has incurred his own fees of nearly \$40,000 in the good
22 faith defense of his position, which was based all along on the plain language and
23 requirements of the Decree. While the Court ultimately ruled in Caterina's favor,¹
24
25
26
27
28

¹ Grady will be filing a notice of appeal upon notice of entry of the final order.

1 Grady had a good faith basis for defending against Caterina's claims. As such,
2 Grady submits that no further award of attorney's fees to Caterina is warranted.

3
4 DATED this 4th day of December 2019.
5 MILLS & ANDERSON

6
7 
8 BYRON L. MILLS, ESQ.
9 Nevada Bar #6745
10 703 S. 8th Street
11 Las Vegas NV 89101
12 Attorney for Defendant
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Caterina Byrd
Plaintiff/Petitioner

Grady Byrd
Defendant/Respondent

Case No. 18577701-2

Dept. 9

MOTION/OPPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
- OR-
- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
- ☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

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

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition:

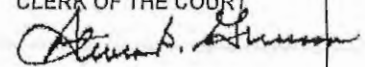
Grady Byrd

Date

12/4/17

Signature of Party or Preparer

LS/Byrd-mills



1 **RPLY**
2 **WEBSTER & ASSOCIATES**
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12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, unbundled

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 CATERINA ANGELA BYRD

13 Plaintiff,

14 v.

15 GRADY EDWARD BYRD

16 Defendant.

CASE NO.: D-18-577701-Z

DEPT NO.: G

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.

19 COMES NOW Caterina Angela Byrd (hereinafter "Caterina"), by and
20 through her attorneys, Anita A. Webster, Esq., and Jeanne F. Lambertsen,
21 Esq., of the law firm WEBSTER and ASSOCIATES, and hereby submits her
22 *Reply to the Defendant's Opposition to Plaintiff's Second Memorandum of*
23 *Attorney's Fees and Costs* filed on November 25, 2019.

25 This Reply is made and based upon the pleadings and papers on file
26 herein, and the following Points and Authorities.

27 ///

28 ///

W:\Family\Byrd, Caterina\Pleadings\Drafts\REPLY to fees and costs 12.16.19.wpd

MEMORANDUM OF POINTS AND AUTHORITIES

Attorney Fees and Costs

The following fees and costs incurred by the Plaintiff, CATERNIA BYRD, ("Caterina" or "Plaintiff") are from **July 19, 2019** through the date of the Evidentiary Hearing on **October 21, 2019**. The preparation of the Findings of Fact, Conclusions of Law and Order from the hearing and her Second Memorandum of fees and costs are not included.

53.30 hours for Sr. Attorney, Ms. Webster at \$350 per hour . . .	\$18,655.00
72.00 hrs for Assoc. Attorney, Ms. Lambertsen at \$295 per hour	\$21,240.00
9.70 hours of paralegal time at \$125.00 per hour	\$1,212.50
TOTAL FEES	\$41,107.50
TOTAL COSTS	\$924.75

Plaintiff's redacted billing statement is attached to her Memorandum of Fees and Costs filed on November 25, 2019 as **Exhibit 1**.

Grady's Conduct During the Case Justifies Fees to Caterina

Defendant, GRADY BYRD ("Grady" or "Defendant") admits that Caterina prevailed at Trial.¹ Caterina not only prevailed at Trial, but she prevailed on multiple issues before the court, including the fact that Grady was found in contempt of court for failing to comply with court orders issued at prior hearings.

From the outset of the case, Grady's position was completely unreasonable, not factually supported and he blatantly refused to cooperate

¹ Grady's Opposition filed 12/04/19, pg. 2, ln. 4 and pg. 2, ln 23.

1 and comply with court orders for the entire year that this matter has been
2 before the court.

3 Grady falsely claims that the Discovery Commissioner determined that
4 Caterina's Motion to Compel Discovery was largely "unwarranted and
5 irrelevant."² Caterina's motion to compel Grady to produce medical and
6 financial records was granted as to the documents that she was requesting.
7 Her request for all documents was granted - only the time frame was reduced.³
8 Grady was ordered to provide the medical records and financial records by
9 October 17, 2019, and he did not. His production was irrelevant to the requests
10 and incomplete.
11

12 It is Grady's unreasonable, contemptuous, non-participating and
13 uncooperative conduct that resulted in the attorney's fees and costs Caterina
14 is seeking. The dollar amount is not excessive given the multiple hearings, the
15 preparation for Trial and issues presented at Trial. The Trial took the entire day
16 (concluded about 3:00 p.m.).
17

18 ARGUMENT

19 **Procedural Law**

20 **Rule 54. Judgments; Attorney Fees**

21
22
23

24 **(2) Attorney Fees.**

25
26 ²Grady's Opposition, pg. 2, ln. 12.

27 ³ See Order on Discovery Commissioner's Report and Recommendation filed

28 12/03/19.

W:\Family\Byrd, Caterina\Pleadings\Drafts\REPLY to fees and costs 12.10.19.wpd

1 (A) Claim to Be by Motion. A claim for attorney
2 fees must be made by motion. The court may decide a
3 postjudgment motion for attorney fees despite the
4 existence of a pending appeal from the underlying final
5 judgment.

6 (B) Timing and Contents of the Motion. Unless
7 a statute or a court order provides otherwise, the
8 motion must:

9 (i) be filed no later than 21 days after
10 written notice of entry of judgment is served;

11 (ii) specify the judgment and the statute,
12 rule, or other grounds entitling the movant to the award;

13 (iii) state the amount sought or provide a
14 fair estimate of it;

15 (iv) disclose, if the court so orders, the
16 nonprivileged financial terms of any agreement about
17 fees for the services for which the claim is made; and

18 (v) be supported by:

19 (a) counsel's affidavit swearing that the
20 fees were actually and necessarily incurred and were
21 reasonable;

22 (b) documentation concerning the
23 amount of fees claimed; and

24 (c) points and authorities addressing
25 the appropriate factors to be considered by the court in
26 deciding the motion.

27 (C) Extensions of Time. The court may not
28 extend the time for filing the motion after the time has
expired.

[Amended; effective March 1, 2019.]

Rule 2.20. Motions; contents; responses and replies;
calendaring a fully briefed matter.

.....
.....

1 (h) A moving party may file a reply memorandum
2 of points and authorities not later than 5 days before
3 the matter is set for hearing. A reply memorandum
4 must not be filed within 5 days of the hearing or in open
5 court unless court approval is first obtained.

6 Caterina has satisfied the procedural requirements for an award of attorney
7 fees and costs incurred in this matter. She timely filed her Memorandum of Fees
8 and Costs pursuant to NRCP 54 and also timely filed this instant Reply pursuant
9 to EDCR 2.20.

10 Grady's Opposition is devoid of any cites and is without merit. Rule 5.502
11 provides in pertinent party that:

- 12 (g) A memorandum of points and authorities that consists of bare
13 citations to statutes, rules, or case authority does not comply with this
14 rule, **and the court may decline to consider it. Supplemental
15 submissions will only be permitted by order of the court.**

16 (Emphasis added).

17 POINTS AND AUTHORITIES

18 Attorney fees may be awarded pursuant to:

19 NRS 125.040:

- 20 1. In any suit for divorce the court may, in its discretion, upon
21 application by either party and notice to the other party, require
22 either party to pay moneys necessary to assist the other party in
23 accomplishing one or more of the following:
24 (a) To provide temporary maintenance for the other party;
25 (b) To provide temporary support for children of the parties; or
26 (c) To enable the other party to carry on or defend such suit.
27 2. The court may make any order affecting property of the parties, or
28 either of them, which it may deem necessary or desirable to
accomplish the purposes of this section. Such orders shall be
made by the court only after taking into consideration the financial
situation of each of the parties.

NRS 125.150(3) the court may award a reasonable
attorney's fee to either party to an action for divorce.

NRS 18.010(2):

1 (a) When the prevailing party has not recovered more
2 than \$20,000; or

3 (b) Without regard to the recovery sought, when the court
4 finds that the claim, counterclaim, cross-claim or
5 third-party complaint or defense of the opposing party
6 was brought or maintained without reasonable ground or
7 to harass the prevailing party. The court shall liberally
8 construe the provisions of this paragraph in favor of
9 awarding attorney's fees in all appropriate situations. It is
10 the intent of the Legislature that the court award
11 attorney's fees pursuant to this paragraph and impose
12 sanctions pursuant to Rule 11 of the Nevada Rules of
13 Civil Procedure in all appropriate situations to punish for
14 and deter frivolous or vexatious claims and defenses
15 because such claims and defenses overburden limited
16 judicial resources, hinder the timely resolution of
17 meritorious claims and increase the costs of engaging in
18 business and providing professional services to the
19 public.

20 NRS 7.085 Payment of additional costs, expenses and
21 attorney's fees by attorney who files, maintains or
22 defends certain civil actions or extends civil actions in
23 certain circumstances.

24 1. If a court finds that an attorney has:

25 (a) Filed, maintained or defended a civil action or
26 proceeding in any court in this State and such action or
27 defense is not well-grounded in fact or is not warranted by
28 existing law or by an argument for changing the existing
law that is made in good faith; or

(b) Unreasonably and vexatiously extended a civil
action or proceeding before any court in this State, the
court shall require the attorney personally to pay the
additional costs, expenses and attorney's fees reasonably
incurred because of such conduct.

2. The court shall liberally construe the provisions of
this section in favor of awarding costs, expenses and
attorney's fees in all appropriate situations. It is the intent
of the Legislature that the court award costs, expenses
and attorney's fees pursuant to this section and impose
sanctions pursuant to Rule 11 of the Nevada Rules of
Civil Procedure in all appropriate situations to punish for
and deter frivolous or vexatious claims and defenses
because such claims and defenses overburden limited
judicial resources, hinder the timely resolution of
meritorious claims and increase the costs of engaging in

business and providing professional services to the public.

Rule 7.60. Sanctions.

(a) If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, at the time set for the hearing of any matter, at a pre-trial conference, or on the date of trial, the court may order any one or more of the following:

(1) Payment by the delinquent attorney or party of costs, in such amount as the court may fix, to the clerk or to the adverse party.

(2) Payment by the delinquent attorney or party of the reasonable expenses, including attorney's fees, to any aggrieved party.

(3) Dismissal of the complaint, cross-claim, counter-claim or motion or the striking of the answer and entry of judgment by default, or the granting of the motion.

(4) Any other action it deems appropriate, including, without limitation, imposition of fines.

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

(1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.

(2) Fails to prepare for a presentation.

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

(4) Fails or refuses to comply with these rules.

(5) Fails or refuses to comply with any order of a judge of the court.

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

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

In Griffith v. Gonzales-Alpizar, 373 P.3d 86, 132 Nev. Adv. Op. 38 (Nev. 2016), the Nevada Supreme Court held that: Pursuant to NRS 125.040 the court can award attorney's fees from the start of the action through the appeal.

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

The Court of Appeals of the State of Nevada in Kidder-Moore v. Moore (Nev. App. 2016) upheld the award of attorney fees holding:

.."we conclude the district court acted within its allowed discretion in awarding attorney fees, and in the full amount, regardless of whether we agree with the amount. See Leavitt v. Simms, 130 Nev. ___, ___, 330 P.3d 1, 5 (2014) (stating an abuse of discretion only occurs "when no reasonable judge could reach a similar conclusion under the same circumstances."); Applebaum v. Applebaum, 93 Nev. 382, 387, 566 P.2d 85, 89 (1977) (stating a district court has a broad range of discretion when deciding attorney fees).

The Nevada Supreme Court affirmed the district court's postjudgment order awarding attorney fees and costs under NRS 18.010(2)(b). Katz v. Incline Vill. Gen. Improvement Dist. No. 71493, November 21, 2019, (Nev. 2019):

"[w]e conclude that the district court relied on sufficient evidence to calculate a reasonable amount for Brooke's services. See O'Connell v. Wynn Las Vegas, LLC, 134 Nev. 550, 557-58, 429 P.3d 664, 670 (Ct. App. 2018) (holding that billing records are not required to support an award of attorney fees so long as the court can calculate a reasonable fee); see also Shuette, 121 Nev. at 864, 124 P.3d at 549 (emphasizing that "in determining the amount of fees to award, the court is not limited to one specific approach").

Specifically, the district court relied on a sworn statement from IVGID's attorney of record, Thomas P. Beko, that "Brooke's involvement was necessary to the defense of this matter, and the fees he charged are believed by Affiant to be reasonable and necessary in his capacity of official attorney for [IVGID]." The district court

1 also relied on its familiarity with the lawyers involved in
2 the litigation and the quality of their work. We have
3 previously upheld awards of attorney fees based on
4 similar evidence. See, e.g., Herbst v. Humana Health Ins.
5 of Nev., Inc., 105 Nev. 586, 591, 781 P.2d 762, 765
6 (1989) (holding that an affidavit documenting the hours of
7 work performed, the length of litigation, and the number
8 of volumes of appendices on appeal was sufficient
9 evidence to enable the court to make a reasonable
10 determination of attorney fees, even in the absence of a
11 detailed billing statement); Cooke v. Gove, 61 Nev. 55,
12 57, 114 P.2d 87, 88 (1941) (upholding an award of
13 attorney fees based on, among other evidence, two
14 depositions from attorneys testifying about the value of
15 the services rendered). We therefore conclude that the
16 district court did not abuse its discretion when it awarded
17 IVGID attorney fees for Brooke's services, even though
18 IVGID did not provide a detailed breakdown of Brooke's
19 fees.

20 Katz also argues that the district court abused its
21 discretion in awarding costs because IVGID's verified
22 memorandum of costs was insufficient. District courts
23 have broad discretion to award costs. Cadle Co. v.
24 Woods & Erickson, LLP, 131 Nev. 114, 120, 345 P.3d
25 1049, 1054 (2015). Before awarding costs, however, a
26 court must determine that the costs were reasonable,
27 necessary, and actually incurred. *Id.* Katz's primary
28 argument on appeal is that IVGID failed to explain that its
costs were "necessarily incurred." In support of its
request for costs, however, IVGID listed every cost it
incurred and attached receipts and documentation
(including receipts for the clerk's fees, court reporter fees,
photocopies, postage, and other necessary expenses,
like transcription of IVGID's utility rate meetings).
Although IVGID did not explicitly state that the costs were
"necessarily incurred" in its motion for fees and costs, it
stated that it submitted its motion "pursuant to NRS
Chapter 18." To the extent that this statutory reference is
insufficient, we conclude that IVGID cured any defect in
its opposition to Katz's motion to retax costs by
thoroughly explaining how each cost was necessary.
Further, we conclude that Katz, by failing to provide
relevant legal authority, has failed to demonstrate that the
district court abused its discretion in reviewing these
explanations (which IVGID provided after it filed its
verified memorandum of costs).

1 We therefore conclude that the district court did not
2 abuse its discretion when it awarded IVGID \$226,466.80
3 in attorney fees and \$2,925.95 in costs, and therefore
4 affirm the district court's order."

5 Similar to the cases of Kidder-Moore and Katz, the attorney fees and costs
6 that Caterina incurred are supported by her Memorandum of Fees and Costs, the
7 affidavit of her counsel, the costs were reasonable, necessary, and actually
8 incurred and that she should be awarded the full amount of the cost and fees.

9 CONCLUSION

10 Caterina's request for attorney fees in her Pre Trial Memorandum, her
11 Motion to Compel Grady's Discovery Responses, her Motion for
12 Reconsideration, and her Countermotions, Oppositions and Replies are
13 justified. As fully detailed in her Memorandum of Fees and Costs filed on
14 November 25, 2019, between July 19, 2019 and October 21, 2019, she incurred
15 attorney's fees in the amount of \$41,107.50 and costs in the amount \$924.75.

16 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
17 Court should take into consideration the following factors when determining an
18 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
19 been practicing law for more than 34 years, was a member of Law Review, has
20 written articles for legal publications, taught courses in family law for NBI and
21 completed more than 40 hours of Mediation training and Collaborative Law
22 training; Ms. Lambertsen has been practicing law for more than 14 years and
23 graduated Magna Cum Laude from the William S. Boyd School of Law and
24 volunteers as a Pro Bono attorney for the Legal Aid Center of Southern Nevada;
25 the law firm's practice is dedicated to family law. (2) The character and difficulty
26
27
28

1 of the work performed: The intricacy, importance, time and skill required to
2 prepare the EDCR 5.501 and EDCR 5.602 letters and conferences, obtain
3 records, prepare and file the underlying motions, the oppositions, replies, exhibit
4 indexes and attend three (3) hearings were moderate to difficult. (3) The work
5 actually performed by the attorneys and legal assistants: Approximately 135
6 hours were spent by counsel and legal assistants in fees (4) The result obtained
7 was in favor of Caterina.
8

9 DATED this 16th day of December, 2019.

WEBSTER & ASSOCIATES

By: _____

Jeanne F. Lambertsen, Esq.
Attorneys for Plaintiff

16 ///

17 ///

18 ///

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27 ///

28 ///

Declaration of Jeanne F. Lambertsen, Esq. In Support of the
Plaintiffs' Reply to the Defendant's Opposition to the Plaintiff's Second
Memorandum of Fees and Costs

I, JEANNE F. LAMBERTSEN, ESQ., state under penalty of perjury in the
State of Nevada:

That Affiant is an Associate Attorney for the law firm of Webster and
Associates; counsel for Caterina Angela Byrd, and has personal knowledge of
the above costs and disbursements expended; that the items contained in the
above Reply are true and correct to the best of the Affiant's knowledge and
belief; and that the said disbursements have been necessarily incurred and paid
in this action.

December 14, 2019
Date

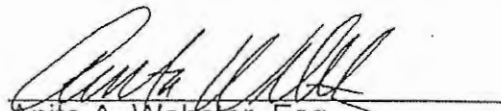

Jeanne F. Lambertsen, Esq.

Declaration of Anita A. Webster, Esq. In Support of the
Plaintiffs' Reply to the Defendant's Opposition to the Plaintiffs' Second
Memorandum of Fees and Costs

I, ANITA A WEBSTER, ESQ., state under penalty of perjury in the State
of Nevada:

That Affiant is a partner for the law firm of Webster and Associates;
counsel for Caterina Angela Byrd, and I have personal knowledge of the above
costs and disbursements expended; that the items contained in the above Reply
are true and correct to the best of the Affiant's knowledge and belief; and that
the said disbursements have been necessarily incurred and paid in this action.

12/16/19
Date


Anita A. Webster, Esq.

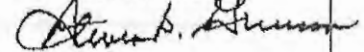
Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
WEBSTER & ASSOCIATES, and that on this 16th day of December, 2019,
I caused the above and foregoing document to be served as follows:

☒ [X] electronic service through the Eighth Judicial District Court's
electronic filing system;

Byron Mills, Esq.
Counsel for Defendant, Grady Byrd
Modonnell@millsnv.com


An employee of Webster & Associates



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

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 CATERINA ANGELA BYRD
18
19 Plaintiff,

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

22 v.

23 Oral Argument Requested: Yes

24 GRADY EDWARD BYRD

25 Defendant.

26
27 **NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS**
28 **MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE**
29 **UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN**
30 **(14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A**
31 **WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN**
32 **FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT**
33 **IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT**
34 **HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

35 **Plaintiff's Motion For Attorney Fees and Costs for the Appeal**

36 Plaintiff, CATERINA ANGELA BYRD, by and through her attorneys, ANITA
37 A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ., of the law offices
38 of WEBSTER & ASSOCIATES, does hereby move this Honorable Court For
39 Attorney's Fees and Costs During Appeal.

40 W:\Family\Byrd, Caterina\Pleadings\Drafts\Motion for Appeal Fees 12-16-19.wpd

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

4 Caterina respectfully requests the following relief:

- 5
6 1. For Attorney's Fees and Costs during the Appeal process; and
7 2. For any further orders that the court deems just and equitable under the
8 premises.

9 DATED this 16th day of December, 2019.

11 WEBSTER & ASSOCIATES

12
13 By: 

14 ANITA A. WEBSTER, ESQ.
15 Nevada Bar No. 1221
16 JEANNE LAMBERTSEN, ESQ.
17 Nevada Bar No. 9460
18 6882 Edna Ave.
19 Las Vegas, Nevada 89146
20 Attorneys for Plaintiff, unbundled

21 **POINTS AND AUTHORITIES**

22 **Factual Background**

23 After 31 years of marriage, the parties divorced on or about June 5, 2014,
24 by way of a Joint Petition that the Defendant, Grady Byrd, ("Grady") prepared or
25 arranged to have prepared. During marriage, Grady was a Master Sergeant in
26 the U.S. Army, retiring in 1999, then he worked as a civilian for the Department
27 of Defense, retiring about 2010. Grady's work required the parties to relocate
28 frequently, approximately 17 times over the course of his career. As a result of
the parties' frequent moves and because Grady didn't want Caterina to work,

1 Caterina was frequently unemployed during the parties' 31 year marriage. She
2 remains unemployed. The parties last resided together in 2008 wherein the
3 Plaintiff, Caterina Byrd, ("Caterina") resided in Las Vegas, Nevada and Grady
4 was overseas. About October 2013, the parties purchased a home in Las Vegas.
5 A mere 4 months later, about February 2014, Grady told Caterina that he wanted
6 a divorce. Grady earns more than \$116,000.00 annually. Grady is 63, and lives
7 in the Philippines. Caterina is 55 years old, single, unemployed and has remained
8 in the marital residence. She has borrowed money from family and friends to pay
9 her bills. She took in a roommate, however, the roommate moved out.
10

11 Grady paid Caterina \$3,000.00 per month for approximately 4 years post
12 divorce and then announced he didn't have to pay anymore and stopped paying.
13 Grady has defied this court's orders that he resume paying her. Caterina had
14 already lost the TriCare health insurance promised to her in the Decree of
15 Divorce, lost the VyStar life insurance because of Grady's non-payment, and lost
16 the survivor benefits she had been promised in the Decree of Divorce.
17

18 Based on Grady's claims, promises and statements that he made in e-mails
19 to Caterina at the time of divorce, he lead her to believe that she would receive
20 \$3,000.00 for life and then receive survivor benefits after his death. Grady failed
21 to realize that he has a fiduciary relationship to his spouse not to make
22 misrepresentations to her. Grady claimed that he was not obligated to pay her
23 \$1,500.00 for the mortgage payment and that her only interest in his U.S. Army
24 pension was \$64.20 because he converted the rest to disability pay and that she
25 waived alimony.
26
27
28

1 On October 21, 2019, at the time of the Evidentiary Hearing, this court
2 found that it would be unconscionable that after 31 years of marriage that Plaintiff
3 would receive no support from the Defendant and Defendant would have total
4 discretion as to what, when, and for how long to pay the Plaintiff. All of the
5 foregoing was decided after testimony and evidence was presented. The Court
6 entered appropriate rulings based on the testimony and evidence from the
7 hearing. Grady was found, among other things, to be in contempt of court, to
8 have violated his fiduciary duty to his wife, and the decree of divorce was found
9 be ambiguous and unconscionable. Orders included that Grady was to pay
10 Caterina \$3,110.00 per month alimony and that Caterina may seek payment
11 directly from the government. \$42,000.00 in alimony arrears were reduced to
12 judgment, collectable by any lawful means.

13 On or about December 4, 2019, Caterina received an announcement from
14 Grady that he "will be filing a notice of appeal upon notice of entry of the final
15 order." See Grady's Opposition to Caterina's Memorandum of Fees and Costs,
16 filed on December 4, 2019, pg. 2 line 28.

17 Caterina is not employed and Grady continues to defy this court's order to
18 pay Caterina. Grady continues to live in the Philippines and collects \$116,000
19 per year. Caterina files this instant motion seeking attorney fees and costs to
20 defend herself against Grady's appeal.

21 **The District Court Retains Jurisdiction to Award Attorney Fees to Defend**
22 **Against an Appeal**

23 The district court retains jurisdiction to award Caterina attorneys fees
24 pendent lite so that Caterina can pay her attorney's fees without destroying her
25

1 financial position. She has no income, is borrowing money from family and
2 friends and Grady has defied and continues to defy this court's orders that he pay
3 Caterina ongoing support.

4 NRS 125.040:

5
6 1. In any suit for divorce the court may, in its
7 discretion, upon application by either party and notice to
8 the other party, require either party to pay moneys
9 necessary to assist the other party in accomplishing one
10 or more of the following:

11 (a) To provide temporary maintenance for the other
12 party;

13 (b) To provide temporary support for children of the
14 parties; or

15 (c) To enable the other party to carry on or defend
16 such suit.

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

23 NRS 125.150 provides:

24

25

26 4. Except as otherwise provided in NRS 125.141,
27 whether or not application for suit money has been made
28 under the provisions of NRS 125.040, the court may
award a reasonable attorney's fee to either party to an
action for divorce.

24 The Nevada Supreme Court Case of Sargeant v. Sargeant, 88 Nev. 223,
25 227, 495 P.2d 618, 621 (1972), also supports an award of attorney fees to
26 Caterina. In Sargeant, the court found that wife does not have to liquidate her
27 savings. The Nevada Supreme Court held that the district court did not abuse its
28

1 discretion in awarding approximately \$50,000.00 in attorney fees to the wife in a
2 divorce proceeding. The Court noted that without the district court's assistance,
3 the wife would have been required to liquidate her savings and jeopardize her
4 financial future in order to meet her adversary in court on an equal basis.
5 Caterina too, should not jeopardize her financial future. Caterina should not have
6 to chose between paying her mortgage or paying the fees to defend herself from
7 Grady's appeal.
8

9 In Griffith v. Gonzales-Alpizar, 373 P.3d 86, 132 Nev. Adv. Op. 38 (Nev.
10 2016), the Nevada Supreme Court held that: Pursuant to NRS 125.040 the court
11 can award attorney's fees from the start of the action through the appeal.
12 Gonzales-Alpizar filed a motion for attorney fees pendente lite in the district court
13 to enable her to defend the appeal in Docket No. 66954. The district court
14 granted Gonzales-Alpizar's motion and awarded her \$15,000 for attorney fees
15 pendente lite for her defense during the appeal. The Supreme Court held that
16 NRS 125.040 grants the district court subject matter jurisdiction to award attorney
17 fees pendente lite for the costs of an appeal. Furthermore, the Court concluded
18 that the district court did not abuse its discretion in awarding such fees in this
19 case. Accordingly, the Court affirmed the order of the district court.
20

21
22 Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998). Disparity in
23 income is a factor to be considered in awarding attorney fees. Grady receives
24 more than \$116,000.00 nearly entirely tax free annual income. Caterina receives
25 no income.
26

27 Hornwood v. Smith Food King, attorney fees shall be paid to the prevailing
28

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

8 Awards of attorney fees are within the sound discretion of the Court. See
9 Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher, 89 Nev.
10 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev. 530, 532,
11 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev. 1455, 971 P.2d
12 1262 (1998).

14 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
15 Court should take into consideration the following factors when determining an
16 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
17 been practicing law for more than 34 years, was a member of Law Review, has
18 written articles for legal publications, taught courses in family law for NBI and
19 completed more than 40 hours of Mediation training and Collaborative Law
20 training; Ms. Lambertsen has been practicing law for more than 14 years and
21 graduated Magna Cum Laude from the William S. Boyd School of Law and
22 volunteers as a Pro Bono attorney for the Legal Aid Center of Southern Nevada;
23 the law firm's practice is dedicated to family law. (2) The character and difficulty
24 of the work performed: The intricacy, importance, time and skill required to
25 prepare this Motion is moderate. (3) The work actually performed by the attorneys
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1 and legal assistants: Approximately 4 hours were spent by counsel and legal
2 assistants in fees (4) The result obtained is unknown but the Motion
3 demonstrates Grady's lack of cooperation and continuing harassment of Caterina
4 and the need for additional fees for the appeal.
5

6 **Caterina's Financial Condition Remains Unchanged**

7 In compliance with EDCR 5.506, Caterina is not required to file a Financial
8 Disclosure Form at this time since her financial condition has remained
9 unchanged since the Evidentiary Hearing on October 21, 2019, and has not
10 significantly changed since her Financial Disclosure Form filed on or about July
11 15, 2019.
12

13 **EDCR 5.501 Statement**

14 No attempt was made to resolve the issue of Grady providing Caterina
15 attorney fees and cost for the appeal that he will be filing because of the futility
16 and impracticability of an attempt at resolution in advance of filing this instant
17 Motion. Grady has willfully disregarded the court's orders since the onset of this
18 matter in October 2018, has been found in contempt of court, has refused to pay
19 Caterina the attorney fees and costs previously awarded and has announced that
20 he is not paying her a dime.
21

22 **Conclusion**

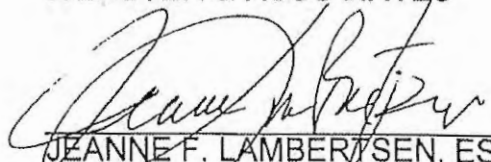
23 Caterina respectfully requests the following relief:
24

- 25 1. For Attorney's Fees and Costs in the amount of \$30,000 during the
26 Appeal process; and
- 27 2. For any further orders that the court deems just and equitable under
28

1 the premises.

2 DATED this 16th day of December, 2019.

3
4
5 WEBSTER & ASSOCIATES

6
7 
8 JEANNE F. LAMBERTSEN, ESQ.
9 Attorney for Plaintiff, Unbundled
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DECLARATION OF CATERINA BYRD

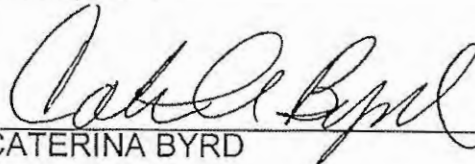
1. I, Caterina Byrd am the Plaintiff in the above-entitled action.

2. I have read the foregoing Motion For Attorney Fees For the Appeal, and the factual averments contained therein are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the preceding are incorporated herein as if set forth in full.

3. Based upon the foregoing, I respectfully request that this Court grant the relief requested by me in this Motion.

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

DATED this 16th day of December, 2019.


CATERINA BYRD

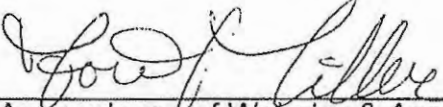
Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 16th day of December, 2019, I caused the above and foregoing to be served as follows:

☒ Electronic Service

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

Byron Mills, Esq.
Counsel for Defendant, Grady Byrd
Modonnell@millsnv.com


An employee of Webster & Associates

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff/Petitioner

v.

GRADY EDWARD BYRD

Defendant/Respondent

Case No. D-18-577701-Z

Dept. G

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
- OR-
- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☒ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☒ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
- ☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

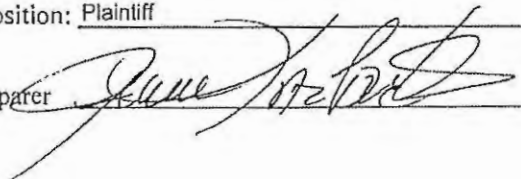
The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Plaintiff

Date 12/16/19

Signature of Party or Preparer



Steven D. Grierson

1 OPP
2 BYRON L. MILLS, ESQ.
3 State Bar #6745
4 DANIEL W. ANDERSON, ESQ.
5 State Bar #9955
6 MILLS & ANDERSON
7 703 S. 8th Street
8 Las Vegas, Nevada 89101
9 (702) 386-0030
10 Attorney for Defendant
11 attorneys@milsnv.com

12 DISTRICT COURT
13 FAMILY DIVISION
14 CLARK COUNTY, NEVADA

15 CATERINA ANGELA BYRD,
16 Plaintiff,

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

Date of Hearing: 2/27/19
Time of Hearing: 10:00 a.m.

17 GRADY EDWARD BYRD,
18 Defendant.

19 DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR
20 ATTORNEY'S FEES AND COSTS FOR THE APPEAL

21 ORAL ARGUMENT REQUESTED: YES NO _____

22 COMES NOW, the Defendant, GRADY EDWARD BYRD, by and through
23 BYRON L. MILLS, ESQ. and DANIEL W. ANDERSON, ESQ. of the law firm of
24 MILLS & ANDERSON his attorneys, and pursuant to the Nevada Revised Statutes and
25 Eighth Judicial District Court Rules cited hereinbelow, hereby respectfully moves this
26 honorable court for the following:

- 27 1. An Order of the Court denying the Defendant's request for attorney's fees
28 and costs.


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

3 This Opposition is made and based upon Points and Authorities cited below and
4 any oral argument entertained by the Court at the time of hearing.

5 DATED this 2nd day of January, 2020.

6 MILLS & ANDERSON

7
8 By:


BYRON L. MILLS, ESQ.

Nevada Bar No. 6745

DANIEL W. ANDERSON, ESQ.

Nevada Bar No. 9955

703 S. 8th Street

Las Vegas, Nevada 89101

(702) 386-0030

Attorneys for Defendant

15 POINTS AND AUTHORITIES

16 I.

17 STATEMENT OF FACTS

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

27 This matter was last before the court at on an evidentiary hearing held October 21,
28 2019. This Court ordered that Grady was to pay Caterina \$3,110.00 per month in

1 alimony effective on November 1, 2019. The Court further ordered that the alimony
2 payments are reduced to judgment and collectible by all lawful means. The Court also
3 found that Grady is in arrears for alimony and support in the amount of \$42,000.00 plus
4 previously awarded attorney's fees, and for sanctions in the amount of \$1,000.00. Grady
5 has advised Caterina that he will be filing an appeal.

6 On December 16, 2019 Caterina filed a Motion for Attorney's Fees and Costs to
7 Defend the Appeal. In her motion, Caterina retells the facts of the parties' marriage and
8 separation in a way that is simply untrue.

9 Caterina continues to attempt to frame the parties' separation as a sudden event.
10 It was far from that. Grady and Caterina had been living apart for six (6) years before
11 their divorce. Caterina also continues to claim that she only worked part-time jobs
12 during the 31-year marriage, which is not true. Caterina had multiple full-time jobs and
13 she refused to attain employment after her separation from Grady. Caterina's state of
14 destitution is not because Grady left her that way, it is because she outright refuses to
15 find employment. Grady is being held responsible because Caterina simply does not
16 want to work. She does not want to work, she wants a house but none of the
17 responsibilities that come with such a purchase, and she does not want anxiety or fears.
18 In other words, she wants to be taken care of for life.

19 Caterina keeps blaming Grady for this false state of destitution in which she claims
20 to be. Somehow, despite her alleged state of destitution, Caterina has been completely
21 able to survive with her \$3,745 of monthly expenses since September 2018. That is not
22 destitution, being destitute means not having the essential needs of life. While Caterina
23 is technically single, she has had a domestic partner, and she shared the home with him.
24 Caterina even submitted a false FDF when she omitted him and his financial
25 contributions to the household. Caterina attempted to obscure the falsehood by claiming
26 her domestic partner as a roommate.

27 The core issue in this case is that Grady simply does not have the income or the
28

1 ability to pay attorney's fees. In her motion, Caterina fails to take into account that
2 Grady is a disabled veteran and that the pay he receives is largely to compensate for his
3 deteriorated health. Grady is a disabled military veteran who cannot even fly due to his
4 health conditions. Grady's health is in such bad shape that he is unable to fly without
5 suffering major swelling in his lower extremities. Meanwhile, Caterina has been
6 unencumbered in her ability to find employment, but continues to willfully remain
7 unemployed at a full time job.

8 For Grady's part, he has incurred his own attorney's fees of over \$52,000 in the
9 good faith defense of his position, which was based all along on the plain language and
10 requirements of the Decree. While the Court ultimately ruled in Caterina's favor, Grady
11 had a good faith basis for defending against Caterina's claims.

12 At this time, neither party has a financial advantage. If anything, Grady is at a
13 massive disadvantage because he has been saddled with \$42,000 in arrears, a \$3,110
14 alimony payment, and Caterina's attorney's fees. Grady's inability to pay is evident in
15 that he has not even paid all of his own attorney's fees, for which he continues to owe
16 over \$25,000.

17 Based on the foregoing, Grady respectfully moves this Court for an order denying
18 Caterina's request for attorney's fees and costs.

19 II

20 ARGUMENT

21 A. This Court Should Deny Caterina's Motion for Attorney's Fees and Costs 22 Associated with Defense of the Appeal.

23 Under NRS §125.040, which, in pertinent part, states as follows:

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

1 The foregoing statute clearly states that the court must first take into consideration the
2 finances of the parties. Caterina makes no mention of the fact that she is not working
3 up to her full potential. She is willingly deciding to not work and she is receiving help
4 that she claims is from friends and family. Somehow her friends and family have been
5 able to pay for Caterina's \$3,745 in monthly expenses for more than a year. Which is
6 highly suspicious. Furthermore, Caterina does not carry the burden of paying off
7 \$42,000 in arrears, the additional \$3,110 in alimony, or her own attorney's fees. Grady
8 has paid over \$28,000 in his own attorney's fees and costs to defend this lawsuit, and
9 he currently owes an additional \$25,000 in his own attorney's fees and costs.

10 In her motion, Caterina cited, *Griffith v. Gonzalez-Alpizar*, 373 P.3d 86, 132 Nev.
11 Adv. Op. 38 (Nev. 2016), where the Nevada Supreme Court held that the court can
12 award attorney's fees from the start of the action through the appeal. However, in
13 *Griffith*, the divorce litigation had been ongoing for almost ten years. *Id.* at 393. The
14 wife in *Griffith* had shown evidence that she earned \$200 per month. *Id.* at 395. Here,
15 Caterina merely claims she does not have money, but she does come up with \$3,745
16 every month. Additionally, this lawsuit has not been ongoing for nearly as long as the
17 *Griffith* case. Furthermore, the husband in *Griffith* did not appear to be a disabled
18 veteran and no financial difficulties were cited by the husband, which is a sharp contrast
19 with Grady's situation.

20 Based on the present circumstances, Grady respectfully request an order of the
21 court denying Caterina's motion in its entirety.

22 III

23 CONCLUSION

24 WHEREFORE, the Defendant, GRADY BYRD, respectfully requests that this
25 Court enter the following orders:

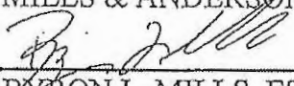
- 26 1. An Order of the Court denying the Plaintiff's request for attorney's fees and
27 costs.
28

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

3 DATED this 2nd day of January, 2020.
4

5 MILLS & ANDERSON

6
7 By:


BYRON L. MILLS, ESQ.

Nevada Bar No. 6745

DANIEL W. ANDERSON, ESQ.

Nevada Bar No. 9955

703 S. 8th Street

Las Vegas, Nevada 89101

(702) 386-0030

Attorneys for Defendant
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Caterina Byrd
Plaintiff/Petitioner

Grady Byrd
Defendant/Respondent

Case No. D18 577701-2

Dept. 9

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
- OR-
- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☒ Other Excluded Motion (must specify) Pending CASE

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
- ☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

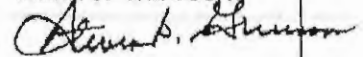
The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Grady Byrd

Date 12/19

Signature of Party or Preparer: ISI Byron Mads



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

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 CATERINA ANGELA BYRD

18 Plaintiff,

19 v.

20 GRADY EDWARD BYRD

21 Defendant.

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

24 Hearing Date: 02/27/2020
25 Hearing Time: 10:00 a.m.

26 Oral Argument Requested: Yes

27 **Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion For**
28 **Attorney Fees and Costs During the Appeal**

29 COMES NOW, Plaintiff, CATERINA ANGELA BYRD, by and through her
30 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
31 of the law offices of WEBSTER & ASSOCIATES, and hereby submits her *Reply*
32 *to Defendant's Opposition to Plaintiff's Motion For Attorney Fees and Costs*
33 *During Appeal.*

34 This Reply is made and based upon the pleadings and papers on file
35 herein, the following Points and Authorities and upon such oral argument as the
36 Court may allow at the time of the hearing.

37 W:\Family\Byrd, Caterina\Pleadings\Drafts\Reply to Oppos to Mtn for Appeal Fees .wpd

1 Caterina respectfully requests the following relief:

- 2 1. For Attorney's Fees and Costs during the Appeal process;
3 2. Deny the Defendant's requested relief; and
4 3. For any further orders that the court deems just and equitable under the
5 premises.
6

7 DATED this 9th day of January, 2020.

8 WEBSTER & ASSOCIATES

9
10 By: 

11 ANITA A. WEBSTER, ESQ.

12 Nevada Bar No. 1221

13 JEANNE LAMBERTSEN, ESQ.

14 Nevada Bar No. 9460

15 6882 Edna Ave.

16 Las Vegas, Nevada 89146

17 Attorneys for Plaintiff, unbundled

18 **POINTS AND AUTHORITIES**

19 **REPLY FACTUAL BACKGROUND**

20 After approximately one year of litigation, at the Evidentiary Hearing on
21 October 21, 2019, this Honorable Court, among other things, found that the
22 decree of divorce that Grady prepared or arranged to have prepared was vague,
23 ambiguous, susceptible to more than one interpretation, unconscionable and that
24 Grady violated his fiduciary duty to be honest to Caterina. Grady was also found
25 in contempt of court for violating this court's orders to pay Caterina spousal
26 support and attorney's fees pending the Evidentiary Hearing. At the Evidentiary
27 Hearing, the Court ordered Grady to pay Caterina monthly spousal support,
28 spousal support arrears and attorney fees. He continues to refuse to pay

1 Caterina anything and threatened Caterina that he is filing an appeal of the
2 orders from the October 21, 2019 Evidentiary Hearing.

3 Caterina has been devastated emotionally, financially and physically by
4 Grady's behavior. Since 2012, Caterina has suffered from anxiety and
5 depression. Grady's bullying and control has deepened her suffering. Caterina
6 was married to Grady for 31 years. Caterina didn't work for the majority of the
7 marriage because the parties moved frequently and because Grady didn't want
8 her work. Caterina is currently unemployed while Grady receives income from
9 his various pensions in excess of \$116,000 per year, largely tax free.
10

11 The following is Caterina's response to Grady's false allegations in his
12 Opposition:
13

- 14 1. Contrary to Grady's claim, his request for a divorce was shocking and
15 unexpected. In October 2013, the parties closed escrow on a home in Las
16 Vegas, Nevada and a mere 4 months later, about February 20, 2014 (trial
17 exhibit 13) Grady told Caterina that he didn't want to be married anymore.
18 The mortgage, tax and insurance on the home is approximately \$1,933 per
19 month. Caterina reasonably believed that they would remain married since
20 they had just purchased the home. There was less than \$20,000 equity in
21 the home at that time, not enough to cover sales cost if she was forced to
22 sell.¹
23
- 24 2. Caterina has little to no job skills. Her Social Security Statement dated June
25 11, 2019 shows that Caterina was last gainfully employed in 1999. (Trial
26
27

28 ¹Grady's Opposition, pg. 3, line 9.

1 exhibit 42). Grady did not want his wife to work, she had to take care of him
2 and their son as he moved the family throughout the world about 17 times
3 as he advanced his career. These frequent moves prevented Caterina from
4 holding a full time job or developing any kind of retirement on her own.²
5

6 3. Grady wrongfully claims that Caterina "simply does not want to work."³
7 Since 2012, Caterina has been treated for anxiety and depression and
8 Grady's deceit has deepened her suffering. During the divorce process,
9 Grady repeatedly promised Caterina that he would continue to support her
10 until his death and thereafter she would receive his survivor benefits.
11 Caterina relied on his promises.
12

13 4. Grady has left Caterina destitute.⁴ Her responses to Grady's Requests for
14 Admissions, trial testimony and pleadings and papers describe her
15 destitute state including the fact that she does not have the money to pay
16 her mortgage and living expenses because Grady unilaterally stopped
17 paying her \$3,000.00 per month on September 1, 2018. To prevent
18 foreclosure on her home, to buy food and pay health insurance and other
19 living expenses, she has relied on money from family and friends.
20

21 5. Caterina never had a domestic partner.⁵ She took in a roommate to help
22 pay her bills. Caterina's Financial Disclosure Form was not "false."
23
24

25 ²Grady's Opposition, pg. 3, ln. 12.

26 ³Grady's Opposition, pg. 3, ln. 16 - 17.

27 ⁴Grady's Opposition, pg. 3, ln. 20.

28 ⁵Grady's Opposition, pg. 3, ln. 24.

1 Caterina has a high school education. Throughout the marriage Grady
2 handled all the parties' financial matters. Once the inadvertence of not
3 listing her roommate was discovered, Caterina filed an amended Financial
4 Disclosure Form but Caterina having a roommate is a moot point since her
5 roommate moved out shortly thereafter due to Caterina's worsening anxiety
6 and depression
7

8 6. Grady has the financial advantage, the income and the ability to pay
9 Caterina's request for attorney fees. He has "pocketed" the \$3,000 per
10 month that he was to pay Caterina since September 1, 2018. He
11 discharged about \$51,000 in automobile and personal loan debt in 2019
12 when he abandoned his newly purchased Chevrolet at the Los Angeles
13 Airport and it was repossessed, he stopped paying the automobile loan and
14 stopped paying two bank loans. Because he converted all of his income to
15 "disability" income, creditors cannot garnish his income. The automobile
16 loan company and banks cannot collect the \$51,000. Further, because all
17 of his income is "disability," he pays no federal tax on it. He earns more
18 than \$116,000 tax-free annual income, with annual cost of living increases,
19 and his monthly expenses are less than \$3,000 per month. For example,
20 his residence lease/rent is only \$100.00 per month.⁶
21
22

23 7. Grady has not proved that he cannot fly "without suffering major swelling
24 in his lower extremities." ⁷ On October 21, 2019, this Honorable Court
25
26

27 ⁶See Grady's FDFs filed 01/18/19 & 06/18/19

28 ⁷Grady's Opposition, pg. 4, ln. 4.

1 reviewed the doctor notes that Grady provided and noted: "that upon a
2 review of the Medical Certificates submitted by Defendant that Defendant
3 is on military disability; and the certificates submitted are from doctors from
4 the Philippines rather than from Defendant's doctor at the Department of
5 Veteran's Affairs. Defendant was referred to the Department of Veteran's
6 Affairs for follow-up, and Defendant failed to do so." Grady provided no
7 documentation to Caterina, despite her discovery requests, showing any
8 testing and follow-up. His excuses are not credible. The real reason that he
9 does not want to fly to Nevada is that this court has informed Grady that a
10 "no bail bench warrant for his arrest" could be issued for his noncompliance
11 with this court's orders.
12

13
14 For all the foregoing reasons, and the arguments Caterina provided in her
15 motion, Grady should be ordered to pay her attorney fees during the appeal
16 process.
17

18 ARGUMENT

19 Considering the foregoing and the financial condition of the parties, Grady
20 has the financial advantage and ability to pay Caterina's attorney fees during the
21 appeal process. Caterina's motion should be granted.
22

23 Grady admits that the Nevada Supreme Court held that the district court
24 can award attorney's fees from the start of the action through the appeal.⁸ Griffith
25 v. Gonzales-Alpizar, 373 P.3d 86, 132 Nev. Adv. Op. 38 (Nev. 2016). Grady tries
26 to distinguish the case at bar from the Griffith case and somehow imply that the
27

28 ⁸Grady's Opposition, pg. 5, ln 11.

1 holding does not apply here. This is incorrect. The holding does apply here and
2 Caterina should be granted attorney fees like the wife in Griffith. Nowhere in the
3 Griffith holding is there any requirement that the litigation must have existed for
4 a specific time period or certain sources of income are required.

5
6 In Griffith v. Gonzales-Alpizar, 373 P.3d 86, 132 Nev. Adv. Op. 38 (Nev.
7 2016), the Nevada Supreme Court held that: Pursuant to NRS 125.040 the court
8 can award attorney's fees from the start of the action through the appeal.
9 Gonzales-Alpizar filed a motion for attorney fees pendente lite in the district court
10 to enable her to defend the appeal in Docket No. 66954. The district court
11 granted Gonzales-Alpizar's motion and awarded her \$15,000 in attorney fees
12 pendente lite for her defense during the appeal. The Supreme Court held that
13 NRS 125.040 grants the district court subject matter jurisdiction to award
14 attorney fees pendente lite for the costs of an appeal. Furthermore, the Court
15 concluded that the district court did not abuse its discretion in awarding such fees
16 in this case. Accordingly, the Court affirmed the order of the district court.

17
18
19 Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998). Disparity in
20 income is a factor to be considered in awarding attorney fees. Grady receives
21 more than \$116,000 per year in income, virtually all of it tax free. Caterina
22 receives no income.

23
24 Hornwood v. Smith Food King, attorney fees shall be paid to the prevailing
25 party if that party succeeds on a significant number of issues. This court has held
26 that "[a] plaintiff may be considered the prevailing party for attorney's fee
27 purposes if [that party] succeeds on any significant issue in litigation which
28

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

4 Awards of attorney fees are within the sound discretion of the Court. See
5 Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher, 89 Nev.
6 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev. 530, 532,
7 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev. 1455, 971 P.2d
8 1262 (1998).

9 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
10 Court should take into consideration the following factors when determining an
11 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
12 been practicing law for more than 34 years, was a member of Law Review, has
13 written articles for legal publications, taught family law courses for NBI and
14 completed more than 40 hours of Mediation training and Collaborative Law
15 training; Ms. Lambertsen has been practicing law for more than 14 years and
16 graduated Magna Cum Laude from the William S. Boyd School of Law and
17 volunteers as a Pro Bono attorney for the Legal Aid Center of Southern Nevada;
18 the law firm's practice is dedicated to family law. (2) The character and difficulty
19 of the work performed: The intricacy, importance, time and skill required to
20 prepare this Motion is moderate. (3) The work actually performed by the attorneys
21 and legal assistants: Approximately 4 hours were spent by counsel and legal
22 assistants in fees (4) The result obtained is unknown but the Motion
23 demonstrates Grady's lack of cooperation and continuing harassment of Caterina
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1 and the need for additional fees for the appeal.

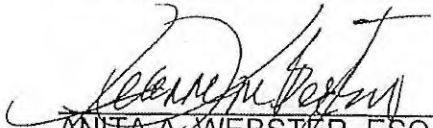
2 **Conclusion**

3 Caterina respectfully requests the following relief:

- 4
- 5 1. For Attorney's Fees and Costs during the Appeal process;
 - 6 2. Deny the Defendant's requested relief; and
 - 7 3. For any further orders that the court deems just and equitable under
- 8 the premises.

9 DATED this 9th day of January, 2020.

12 **WEBSTER & ASSOCIATES**

13 
14 ANITA A. WEBSTER, ESQ.
15 JEANNE F. LAMBERTSEN, ESQ.
16 Attorneys for Plaintiff, Unbundled

DECLARATION OF CATERINA BYRD

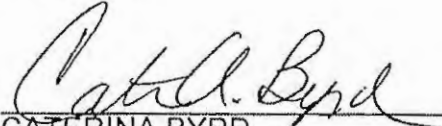
1. I, Caterina Byrd am the Plaintiff in the above-entitled action.

2. I have read the foregoing *Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion For Attorney Fees and Costs During the Appeal*, and the factual averments contained therein are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the preceding are incorporated herein as if set forth in full.

3. Based upon the foregoing, I respectfully request that this Court grant the relief requested by me in this Reply and my Motion.

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

DATED this 9 day of January, 2020.


CATERINA BYRD

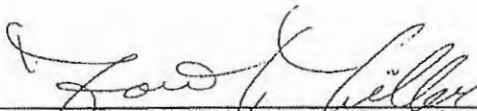
Certificate of Service

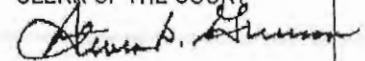
Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
WEBSTER & ASSOCIATES, and that on this 9th day of January, 2020, I
caused the above and foregoing to be served as follows:

☒ [X] by mandatory electronic service through the Eighth Judicial District
Court's electronic filing system;

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

Byron Mills, Esq.
Modonnell@millsnv.com
Attorney for Defendant


An employee of Webster & Associates



1 **FFCL**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
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13 Attorney for Plaintiff, unbundled

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA
17

18 CATERINA ANGELA BYRD
19 Plaintiff,

20 v.

21 GRADY EDWARD BYRD
22 Defendant.

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

25 **FINDINGS OF FACT,**
26 **CONCLUSIONS OF LAW AND**
27 **ORDER**
28

19 This matter having come before the court on October 21, 2019, at 9:00
20 a.m., for an Evidentiary Hearing regarding the mortgage payment and the military
21 retirement payment, hearing on the Plaintiff's Order to Show Cause why the
22 Defendant should not be held in contempt of court, hearing on Plaintiff's Motion
23 for Reconsideration, Summary Judgment, and Fees; and Defendant's Opposition
24 to Plaintiff's Motion for Reconsideration and Countermotion for Fees, hearing on
25 Defendant's Motion on Order Shortening Time to Reconsider Denial of
26 Audiovisual Appearance Request, Plaintiff's Opposition to Defendant's Motion on
27 Order Shortening Time to Reconsider Denial of Defendant's Audiovisual
28

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1 Appearance Request, and Countermotion for Fees. Plaintiff, Caterina Angela
2 Byrd (hereinafter "Caterina" or "Plaintiff"), appearing by and through her
3 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
4 of the law firm of WEBSTER & ASSOCIATES and Defendant, Grady Edward
5 Byrd (hereinafter "Grady" or "Defendant"), not present and appearing by and
6 through his attorney, BYRON L. MILLS, ESQ., of MILLS & ANDERSON LAW
7 GROUP.
8

9 Argument by Ms. Lambertsen regarding Plaintiff's Opposition to
10 Defendant's Motion to Reconsider Denial of Audiovisual Appearance citing that
11 the Defendant's doctor excuses are from doctor that are all in the Philippines, not
12 from the Veteran's Administration and one of the excuses even states that the
13 certificate is not for legal matters.
14

15 Argument by Ms. Webster regarding sanctions for Defendant's failure to
16 appear today and argument for the Plaintiff's Motion for Reconsideration,
17 Summary Judgment on the Order to Show Cause, to Set Aside the Decree, and
18 Motion to join Defendant's wife as a party to this action.
19

20 Argument by Mr. Mills regarding the Order to Show Cause and that the
21 Defendant should not be subject to the penalty of contempt for months other than
22 from June 1, 2019, to the present date.
23

24 Argument by Ms. Lambertsen regarding the hearing on July 18, 2019, on
25 Plaintiff's Motion for an Order to Show Cause sought arrears going back to the
26 date the Defendant ceased payment on September 1, 2018, and these arrears
27 were deferred to the Evidentiary Hearing this date.
28

THE COURT NOTES that upon a review of the Medical Certificates

1 submitted by Defendant, that Defendant is on military disability; and the
2 certificates submitted are from doctors from the Philippines rather than from
3 Defendant's doctor at the Department of Veteran's Affairs. Defendant was
4 referred to the Department of Veteran's Affairs for follow-up, and Defendant
5 failed to do so.
6

7 **THE COURT FINDS** that it is suspicious that the Defendant is going to
8 community doctors in the Philippines, did not follow-up with the Department of
9 Veteran's Affairs, and has provided nothing from the Department of Veteran's
10 Affairs regarding medical issues. Further the court finds that the medical notes
11 from the Philippines provided by the Defendant are not believable.
12

13 Having heard the argument of counsel and good cause appearing
14 therefore,
15

16 **IT IS HEREBY ORDERED** that Defendant's Motion to Reconsider Denial
17 of Audiovisual Appearance Request is Denied.
18

19 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment
20 that the Defendant be found in Contempt of Court is Denied. That the Court will
21 enter appropriate rulings based on the testimony and evidence to follow in this
22 Evidentiary Hearing.
23

24 **IT IS FURTHER ORDERED** that the Evidentiary Hearing will proceed today
25 in Defendant's absence.
26

27 **IT IS FURTHER ORDERED** that the Plaintiff's Motion for Reconsideration
28 and Request to Set Aside the Order from the hearing on May 22, 2019, order filed
June 26, 2019, is part of the court's consideration in this Evidentiary Hearing and
a determination will be made by this court as to the agreement entered into

1 between the parties, what was meant by the language of the agreement, whether
2 or not it constituted a waiver of alimony, or whether the waiver of alimony was of
3 no effect because the decree provides for her support and it would be
4 unconscionable that after 31 years of marriage that Plaintiff would receive no
5 support from the Defendant and Defendant would have total discretion as to
6 what, when, and for how long to pay the Plaintiff. All of the foregoing shall be
7 decided after testimony and evidence is presented. That the Court will enter
8 appropriate rulings based on the testimony and evidence from the hearing.
9

10 **IT IS FURTHER ORDERED** that Plaintiff's request that Defendant's wife be
11 joined in this action and ordered to sign a waiver of her interest in the Survivor
12 Benefit Plan awarded to the Plaintiff in the decree of divorce is denied as this
13 Court has no personal jurisdiction over the Defendant's wife.
14

15 Plaintiff, Caterina Angela Byrd, was sworn and testified under oath.
16

17 **THE COURT ADMITTED** Plaintiff's Exhibits 1 through 11; 13 through 18;
18 20 through 23; 25 through 28; 30 through 36; 42 (VT 9:42:52) 43, 63, and 64
19 were admitted. Based upon the parties' stipulation, Defendant's Exhibits A
20 through L, were admitted into evidence.
21

22 The court having reviewed the pleadings and papers on file herein including
23 the *Pre-Trial Memorandums* filed by the parties prior to Trial, after considering
24 and weighing the credibility of the witness and the exhibits admitted into
25 evidence, and after further considering the closing arguments of counsel, and
26 good cause appearing, the Court hereby makes the following Findings of Fact,
27 Conclusions of Law, and Order as set forth herein.
28

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FINDINGS OF FACT

1. To the extent any Finding of Fact is more appropriately stated as a Conclusion of Law, it should be so deemed.
2. The parties were divorced in Nevada on June 5, 2014, after a 31-year marriage by way of a Joint Petition that Grady arranged to have prepared.
3. Caterina is 56 years old and resides in Clark County Nevada. Grady is 63 years old and resides in the Philippines.
4. Caterina has a high school education and English is her second language. Grady has two Master Degrees, war college degree and certificates.
5. Grady retired from the Army in 1999. Caterina was named the beneficiary of Grady's Army Survivor Benefit Plan upon his retirement. After retiring from the Army, Grady worked for the Department of Defense until about 2010.
6. The parties moved 17 different places throughout the marriage making it difficult for Caterina to establish a career. The parties last resided together in about 2008 with Caterina remaining in Nevada and Grady residing out of the country and Caterina believing that he lived in either Kosova or the Philippines.
7. Caterina was not working at the time of divorce and is not currently working. Caterina had not worked during the marriage except sporadically because Grady got upset when she had tried to work.
8. Caterina was in treatment for mental health issue, anxiety and depression from about 2012 to 2016.
9. Grady's current gross annual income is about \$116,000.00 per year.

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- 1 10. Since September 1, 2018, Caterina has borrowed money from her parents
2 to pay her monthly expenses. She paid her attorney fees by credit card and
3 the credit card is maxed out. She has an outstanding balance with her
4 attorney. That using a credit card to hire an attorney does not mean that
5 Caterina was not destitute. (VT 2:26:28)
6
- 7 11. The Decree of Divorce provides that Grady is to pay Caterina \$1,500 per
8 month for mortgage assistance. The Decree of Divorce further provides
9 that the mortgage assistance is not alimony and that it can be terminated
10 at any time. This is vague and ambiguous and susceptible to more than
11 one interpretation especially in light of Grady paying Caterina \$1,500 for
12 mortgage assistance for over 4 years following the divorce. Based on all
13 the facts above and despite the statement in the decree that this is not
14 alimony, these facts support that it was, in fact, alimony. (VT 2:23:43,
15 2:16:30, 2:19:03).
16
- 17 12. The Decree of Divorce contains ambiguities. Grady was making periodic
18 payments to Caterina on a monthly basis for her support. This is alimony,
19 yet the agreement purports that it is not alimony, creating an ambiguity.
20
- 21 13. The court must examine the circumstances surrounding the parties' alimony
22 waiver in order to determine the true intentions of the parties.
23
- 24 14. That the Decree of Divorce provides that Caterina is entitled to 50% of
25 Grady's military retired pay. This is vague since there was no dollar amount
26 provided in the Decree of Divorce and Grady represented to Defendant that
27 50% of his military pay is \$1,500 per month. Further, Grady paid Caterina
28 \$1,500 per month for more than 4 years following entry of the Decree of

1 Divorce.

2 15. Grady drafted the agreement or had it drafted. It is a well- settled rule that
3 "[i]n cases of doubt or ambiguity, a contract must be construed most
4 strongly against the party who prepared it, and favorably to a party who had
5 no voice in the selection of its language." As a result, in this case, any
6 ambiguity must be interpreted against Grady.
7

8 16. The house she was awarded in the Decree of Divorce had little to no equity.
9 The equity in the house at the time of divorce was less than \$20,000, and
10 would not likely cover the closing costs had she sold the house at the time
11 of the divorce. The periodic payments on a monthly basis until the house
12 was sold or paid off are indeed based on financial need and are therefore
13 alimony. The payments were conditioned on the house not selling and not
14 being paid off. The house has not been sold and is not paid off. The
15 mortgage payments are over \$1,900 per month. (VT 2:26:58). Based on
16 what Grady told Caterina before and at the time of the divorce, Caterina
17 reasonably expected that Grady would support her at the rate of at least
18 \$3,000 per month for the remainder of her life and that upon his death, she
19 would continue to be supported by Grady based on her receipt of his Army
20 Survivor Benefits in a comparable amount. (VT2:27:56). Grady had a
21 fiduciary duty to Caterina to be honest with her. He failed to meet his
22 fiduciary duty.
23
24
25

26 17. During the marriage, Grady is the one who ran made the decisions in the
27 marriage and controlled the finances in the marriage. Grady discouraged
28 Caterina from being involved in these decisions. When Caterina did try to

1 work, he discouraged her from working and told her he did not want her to
2 work. Once he moved to the Philippines, he decided that he did not want
3 to be married anymore and claimed to have so many bills that he would
4 have to file bankruptcy, that he was living in a tent, that he could barely get
5 by, and that they were only getting \$3,017 per month in Army retirement
6 pay. Grady told Caterina that he cannot call the money he was going to
7 pay her per the Decree of Divorce "alimony" because if that money was
8 called "alimony", he would not be able to get the loan that he needs, he
9 would never be able to get ahead in his present life and he would have to
10 live poor until he dies. Grady failed to realize that he has a fiduciary
11 relationship to his spouse not to make misrepresentations to her.

- 12
13
14 18. Grady violated his fiduciary duty to his wife, Caterina, by wrongfully telling
15 her how much money she would receive each month and for how long. He
16 told her that his military pay was \$3,017 per month, and that she was
17 entitled to \$1,508 per month and that he would pay her \$1,500 per month
18 or more until he died. In actuality, his military pay was only \$128.40 per
19 month and 50% of this is \$64.20 per month. Long before he asked
20 Caterina for a divorce, Grady had applied for and received a waiver of his
21 military pay to receive it as disability pay. A fiduciary relationship arises
22 from the existence of the marriage itself, thus precipitating a duty to
23 disclose pertinent assets and income. Grady was not receiving \$3,017 in
24 military retirement pay as he represented to Caterina, rather, he was
25 receiving \$3,146 in VA disability pay. He had waived \$3,017 of his retired
26 pay for disability pay, and had only \$128.40 left as his military retired pay.

- 1 50% of Grady's United States Army Retired Pay was \$64.20. Grady
2 engaged in deceit upon his spouse that he owed a fiduciary duty to.
- 3 19. That prior to divorce, Grady applied for and received approval from the
4 Department of the Army for Combat Related Special Compensation
5 (CRSC) disability pay on or about June 20, 2011, to be paid through the
6 Defense Finance and Accounting Service (DFAS).
- 7 20. That prior to divorce, about December 1, 2011, Grady had waived a portion
8 of his Army Retirement pay to receive disability compensation.
- 9 21. That prior to divorce, Grady applied for and received approval on or about
10 November 12, 2010 from the Office of Personnel Management to receive
11 his Federal Employee's Retirement System (FERS) money in the form of
12 disability retirement. That his disability annuity gross payment is \$1,315.00
13 per month.
- 14 22. That prior to divorce, on or about September 19, 2012, upon Grady's June
15 19, 2009 application to the Social Security Administration for disability and
16 disability insurance benefits, Grady was determined to be disabled. Grady
17 was paid \$31,014 in Social Security Benefits in 2014.
- 18 23. Around the time of divorce, Grady did not provide Caterina documentation
19 showing the amount of his military retirement pay, the amount of his
20 Veteran's Administration Disability pay, the amount of his Office of
21 Personnel Management Disability Annuity Income, or the amount of his
22 Social Security Disability Income.
- 23 24. Grady paid Caterina \$3,000 per month for a number of years, from June
24 2014 until September 1, 2018, to keep her quiet, to keep her complacent,

1 then he decided that he did not need to pay her anymore. When Grady
2 claimed that he was receiving treatment for cancer, Caterina started asking
3 questions about his Army Survivor Benefits. Then, she saw an attorney,
4 and Grady informed her that he is not paying her anything and will not even
5 show up for court. Grady provides notes from doctors in the Philippines,
6 claiming that he cannot come to court. The court is not sure they are
7 actually doctors. The notes do not come from the Veteran's Administration
8 doctors, where Grady is treating.

10 25. Grady did everything in his power to keep Caterina from recognizing what
11 her rights were and to leave her in a position where she would receive only
12 \$64.20 per month from his Army Retirement pay. This is unconscionable.
13 It is unenforceable. Were the provision in the Decree of Divorce interpreted
14 to give Caterina 50% of Grady's Military pay, so that she would receive only
15 \$64.20 per month for her interest in his military pay, after 31 years of
16 marriage, this would be so unconscionable, as to be unenforceable.

19 26. That Caterina's request for the court's assistance is timely pursuant to
20 NRCP 60(b)(6) in that she sought the court's assistance on or about
21 October 2018, shortly after Grady stopping the \$3,000 per month payments
22 to her on September 1, 2018.

23 27. Grady's breach of fiduciary duty, the vagueness and unconscionability of
24 the agreement gives the court discretion to reopen a division of the
25 marital/community property when extraordinary circumstances arise.

26 28. That Grady threatened Caterina that she was not to seek the assistance of
27 counsel to review the language that Grady proposed for the Decree of
28

1 Divorce or she would regret it. Caterina was suffering from depression at
2 the time of the divorce, the parties had just purchased a home 4 months
3 prior to Grady asking for a divorce, the mortgage was over \$1,900 per
4 month, and Caterina was fearful that if she failed to follow his orders, he
5 would stop providing money for her living expenses, and disappear. He
6 was living in the Phillippines at that time.
7

8 29. Grady represented to Caterina that her share of Grady's military retirement
9 money was \$1,508.00 per month for his life and that she would get
10 increases over time. Grady performed on this agreement from June 5,
11 2014 until September 1, 2018. Therefore, Caterina is awarded \$1,508 per
12 month in alimony, subject to upward modification. The additional \$1,500.00
13 per month that Grady agreed to pay Caterina for mortgage assistance for
14 her house is also designated as alimony.
15

16 30. Grady has multiple sources of income which are not exempt from a spousal
17 support order. All of this income, which comprises Grady's approximate
18 \$116,000.00 annual income, can be considered when a spousal support
19 obligation to Caterina is calculated.
20

21 31. Grady agreed to keep the military health insurance intact for Caterina but
22 Caterina is no longer covered by the military health insurance and has
23 replaced the health insurance plan. That the amount of her health
24 insurance, \$102.00 per month, is a factor toward her financial need.
25

26 32. As Grady agreed to keep Caterina's health insurance coverage in tact, the
27 \$102.00 per month that Caterina pays for health insurance shall be added
28 to the monthly alimony amount owed by Grady to Caterina, retroactive to

1 the time Caterina ceased receiving Tricare health insurance benefits which
2 was on or about June 6, 2015.

3 33. Grady agreed to keep Caterina as the beneficiary of his Military Survivor
4 Benefit Plan, that Caterina is no longer the beneficiary of the Survivor
5 Benefit Plan; and that she is going to have to replace the value of the
6 Survivor Benefit Plan. That she may have to obtain an annuity if she is not
7 successful in her appeal to the U.S. Army Board of Corrections. That this
8 dollar amount is a factor toward her financial need when she seeks to
9 modify the alimony award.

10 34. Pursuant to NRS 22.010 et. al., Grady is found in contempt of court, for two
11 months, and in arrears for failure to pay as ordered at the May 22, 2019
12 hearing order filed on or about June 26, 2019, wherein Grady was ordered
13 to resume paying Caterina \$3,000.00 per month starting June 1, 2019,
14 pending the Evidentiary Hearing held on October 21, 2019.

15 35. That there was new evidence presented to support the Caterina's Motion
16 for Reconsideration of the order from the May 22, 2019 hearing, because
17 there was no indication that Judge Forsberg realized that there was no
18 equity in the marital residence at the time of divorce based on Grady stating
19 in the decree that the residence was worth \$365,000. This was the
20 purchase price of the house and just a little over what was owed on the
21 house, not equity. Also, Grady listed that he had no assets, so there is no
22 indication that Judge Forsberg knew what Grady had available to him at
23 that time. She looked at the face of the document, this is why an evidentiary
24 hearing was held. (VT 2:15:35).

36. That Caterina did not obtain counsel at the time of divorce because Grady threatened her. He was in the Phillippines and she feared he would disappear. Grady knew that he was dealing with a person who is dealing with depression. As soon as she mentioned seeing an attorney, he came down on her and stopped paying. (VT 2:25:00)

37. That there is cause to set aside the decree based on Grady's breach of his fiduciary duty to Caterina and that this was timely because Caterina came to court to try to get what was entitled to her upon Grady stopping his monthly payments to her. (VT 2:19:44).

CONCLUSIONS OF LAW

Personal Jurisdiction over the Parties

By way of their pleadings, each of the parties submitted to the jurisdiction of this Court, accordingly, the Court concludes that it has personal jurisdiction over the parties.

Subject Matter Jurisdiction

This court has subject matter jurisdiction pursuant to NRS 125.070, which provides that the judge of the court shall determine all questions of law and fact arising in any divorce proceeding under the provisions of this chapter.

Ambiguity, Unconscionable and Unenforceable, Violation of Fiduciary Duty, Invalidation of Spousal Support Waiver, Award of Life Time Alimony to Caterina, Grady in Contempt of Court

1. Grady's interpretation of the terms of the Decree of Divorce would mean that he can unilaterally stop paying Caterina \$1,500 per month in support for the house and that Caterina would receive just \$64.20 per month for her interest in his military pay after 31 years of marriage.

1 This is unconscionable and unenforceable.

- 2 2. Grady represented to Caterina that she would receive 50% of his
3 military pay and that this amounted to \$1,500 per month and more for
4 the rest of his life. Grady waived his military pay for disability pay.
5 Grady has a contractual obligation to pay Caterina \$1,500 per month
6 from his military disability pension. Grady cannot reduce his payment
7 to Caterina by claiming it is disability pay. See Shelton v. Shelton, 119
8 Nev. 492 (Nev. 2003) and Gemma v. Gemma, 105 Nev. 458, 778 P.2d
9 429 (1989).
10
11 3. The court finds that the alimony waiver in the Decree of Divorce is not
12 enforceable because: 1) Caterina did not knowingly waive alimony.
13 Caterina relied on Grady's promise that he would pay her \$3,000 per
14 month until he died. She could not have waived her right to alimony
15 while simultaneously accepting support to pay her necessities, Fattore
16 v. Fattore, 458 NJ Super. 75, 83 (App. Div. 2019) and Parker v.
17 Green, No. 73176 (Nevada June 25, 2018); and 2) The payments
18 Grady is making to Caterina are in the nature of alimony. Grady's
19 payment to Caterina of "\$1500 dollars extra a month to assist with her
20 home mortgage" may cease if "her financial situation changes." Since
21 Grady's assistance to Caterina may cease based on Caterina's
22 financial situation, this is consistent with the NRS 125.150
23 considerations for alimony.
24
25 4. NRCP 60(b)(6) Relief From a Judgment or Order (6) any other reason
26 that justifies relief in this instance. Caterina's request for the court's
27
28