

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY BYRD,

Appellant,

vs.

CATERINA ANGELA BYRD,

Respondent.

Supreme Court Case No. 80548
Electronically Filed
Aug 13 2020 02:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S APPENDIX
TO ANSWERING BRIEF
VOLUME XVI**

Submitted By:

/s/ Jeanne F. Lambertsen

ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1211
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Avenue
Las Vegas, Nevada 89146
Attorneys for Respondent
Caterina Angela Byrd

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CHRONOLOGICAL LISTING

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| 2. | 10/18/18 | Financial Disclosure Form, Plaintiff, filed 10/18/18. | RA000004 - RA000011 |
| 3. | 11/27/18 | Transcript re: Motion, November 27, 2018. | RA000012 - RA000032 |
| 4. | 12/13/18 | Ex parte Motion for Continuance, Defendant, filed 12/13/18. | RA000033 - RA000035 |
| 5. | 12/18/18 | Order Granting Continuance, Defendant, filed 12/18/18. | RA000036 |
| 6. | 12/19/18 | Plaintiff's Opposition 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 a Newly Discovered Asset, to Execute QDROs and for Attorney fees and Costs and Counter motion for Attorney Fees and Costs, filed 12/19/18. | RA000037 - RA000058 |
| 7. | 12/27/18 | Notice of Entry of Order for the Order Shortening Time on Plaintiff's Motion filed 12/27/18. | RA000059 - RA000062 |
| 8. | 12/28/18 | Reply to Opposition and/or Counter motion, Defendant, filed 12/28/18. | RA000063 - RA000087 |
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| 11. | 01/15/19 | First Supplement to Exhibit Appendix, Plaintiff, in support of her Reply filed 01/15/19. | RA000127 - RA000183 |
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| 14. | 04/23/19 | Plaintiff's Ex Parte Application for An Order for Defendant to Appear In Person, filed 04/23/19. | RA000238 - RA000244 |
| 15. | 04/23/19 | Exhibit Appendix to Plaintiff's Ex Parte Application For an Order For Defendant To Appear In Person, Plaintiff, filed 04/23/19. | RA000245 - RA000264 |
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| 18. | 09/10/19 | Plaintiff's Motion to Compel Defendant's Responses to Discovery and Request for Sanctions and Attorney Fees, filed 09/10/19. | RA000338 - RA000360 |
| 19. | 09/17/19 | Defendant's Motion for a Protective Order pursuant to NRCP 26(C) and for Attorney Fees, filed 09/17/19. | RA000361 - RA000372 |
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| 22. | 10/17/19 | Minutes re: Calendar Call held on 10/17/19. | RA000422 - RA000423 |
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| 24. | 10/21/19 | Exhibit 4, Plaintiff's, admitted at Evidentiary Hearing, Notice of Entry of Order from the May 2, 2019 hearing, filed on 05/28/19. | RA000438 - RA000443 |
| 25. | 10/21/19 | Exhibit 7, Plaintiff's, admitted at Evidentiary Hearing, Notice of Entry of Order to Show Cause, Grady to Appear On October 21, 2019, filed on 07/29/19. | RA000444 - RA000447 |
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| | | Disclosure Form, Amended, filed on 07/15/19. | |
| 27. | 10/21/19 | Exhibit 9, Plaintiff's, admitted at Evidentiary Hearing, Grady's Financial Disclosure Form, Amended, filed 01/18/19. | RA000456 - RA000468 |
| 28. | 10/21/19 | Exhibit 10, Plaintiff's, admitted at Evidentiary Hearing, Grady's Financial Disclosure Form, filed on 06/18/19. | RA000469 - RA000478 |
| 29. | 10/21/19 | Exhibit 13, Plaintiff's, admitted at Evidentiary Hearing: Emails Bates 522-523. E-mail from Defendant to Plaintiff promising the Plaintiff that she will receive the same benefits whether he is married or not, including Survivor Benefit Plan, dated February 20, 2014 and Emails between Defendant and Plaintiff, Defendant writing it is time for a divorce and promising Plaintiff \$3000 a month email dated, February 20 & 21, 2014. | RA000479 - RA000481 |
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| 37. | 10/21/19 | Exhibit 22, Plaintiff's, admitted at Evidentiary Hearing: Email from Defendant to Plaintiff stating that Plaintiff is not entitled to any more money in the decree of divorce, retire pay is 3017, dated April 8, 2014. Bates13, and "this is your last warning," and Plaintiff asking for \$3000/mo., dated April 10, 2014. | RA000496 - RA000498 |

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| 38. | 10/21/19 | Exhibit 23, Plaintiff's, admitted at Evidentiary Hearing: Email from Plaintiff to Defendant, regarding Plaintiff's health insurance denial, dated July 29, 2016, to August 13, 2016. | RA000499 - RA000502 |
| 39. | 10/21/19 | Exhibit 25, Plaintiff's, admitted at Evidentiary Hearing: Email from Defendant to Plaintiff regarding Car insurance and cancer surgery, dated July 16, 2018. | RA000503 |
| 40. | 10/21/19 | Exhibit 27, Plaintiff's, admitted at Evidentiary Hearing: Defendant's retirement from Army, beneficiaries, Survivor Benefit Plan, Form DD 2656, dated March 10, 1999. | RA000504 - RA000505 |
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| 53. | 10/21/19 | Exhibit A, Defendant's, admitted at Evidentiary Hearing: Dept. Of Army (CRSC) decision letter dated 6/20/11. Bates. | RA000536 - RA000538 |
| 54. | 10/21/19 | Exhibit B, Defendant's, admitted at Evidentiary Hearing, CRSC payment history from August 2014 - July 2015 (VA Waiver 3017.60, Retire net pay 128.40). | RA000539 |
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| 56. | 10/21/19 | Exhibit D, Defendant's, admitted at Evidentiary Hearing, VA letter for disability benefits dated 10/16/12 (disability benefit effective 12/01/2011). | RA000541 |
| 57. | 10/21/19 | Exhibit E, Defendant's, admitted at Evidentiary Hearing, Grady's VA payment history from April 1, 2019 - May 31, 2019. | RA000542 |
| 58. | 10/21/19 | Exhibit F, Defendant's, admitted at Evidentiary Hearing, Office of Personnel Management (OPM) letter re: disability application dated 11/12/2010. | RA000543 - RA000545 |
| 59. | 10/21/19 | Exhibit G, Defendant's, admitted at Evidentiary Hearing . OPM letter dated 04/29/2018 re: FERS disability annuity adjustment. | RA000546 |
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| 62. | 10/21/19 | Exhibit J, Defendant's, admitted at Evidentiary Hearing: Defendant's Social Security Decision dated September 12, 2012. | RA000549 - RA000554 |
| 63. | 10/21/19 | Exhibit K, Defendant's, admitted at Evidentiary Hearing: Defendant's 2014 Social Security Benefit 2014 (Form SSA-1099). | RA000555 |
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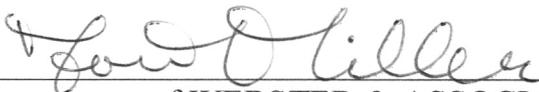
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| 69. | 04/10/20 | Plaintiff's Reply to Defendant's Opposition to Plaintiff's Ex Parte Application for an Income Withholding Order, filed 04/10/20. | RA000626 - RA000655 |
| 8. | 12/28/18 | Reply to Opposition and/or Counter motion, Defendant, filed 12/28/18. | RA000063 - RA000087 |
| 3. | 11/27/18 | Transcript re: Motion, November 27, 2018. | RA000012 - RA000032 |

Certificate of Service

Pursuant to NRAP 25(c)(1)(E), I hereby certify, under penalty of perjury, that I am an employee of Webster & Associates and that on the 13th day of August, 2020, I caused to be served the foregoing document by way of NEFCR 9 Notice of Electronic Filing to the following:

Daniel W. Anderson
Mills & Anderson
Counsel for Appellant, Grady Edward Byrd



An employee of WEBSTER & ASSOCIATES



1 **NEO**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
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 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 CATERINA ANGELA BYRD)

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

17 Plaintiff,)

18 v.)

**NOTICE OF ENTRY OF ORDER ON
DISCOVERY COMMISSIONER'S
REPORT and RECOMMENDATIONS**

19 GRADY EDWARD BYRD)

20 Defendant.)

21 PLEASE TAKE NOTICE that an Order on Discovery Commissioner's
22 Report and Recommendations was entered in the above-entitled action on the
23 3rd day of December, 2019, a copy of which is attached.

24 Dated this 3rd day of December, 2019.

25 **WEBSTER & ASSOCIATES**

26 
27 JEANNE F. LAMBERTSEN, ESQ.
28 Unbundled Attorney for Plaintiff

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
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Certificate of Service

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

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

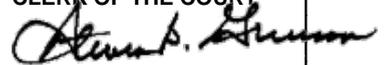
To the attorney(s)/person(s) listed below at the address, email address, and/or facsimile number indicated below:

Byron Mills, Esq.
Modonnell@millsnv.com



An employee of Webster & Associates

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



1 **ORDR**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
7 6882 Edna Ave.
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0 Fax No: (702) 562-2303
1 e-mail: anitawebster@embarqmail.com
2 e-mail: jlambertsen@embarqmail.com
3 Attorney for Plaintiff, unbundled

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CATERINA ANGELA BYRD,)
13 Plaintiff,) CASE NO.: D-18-577701-Z
14) DEPT NO.: Discovery Commissioner
15 v.) **ORDER ON DISCOVERY**
16 GRADY EDWARD BYRD,) **COMMISSIONER'S REPORT and**
17 Defendant.) **RECOMMENDATIONS**

18 The Court, having reviewed the above report and recommendations
19 prepared by the Discovery Commissioner and,
20

21 _____ No timely objection having been filed.

22 _____ After reviewing the objections to the Report and
23 recommendations and good cause appearing,

24 ***

25 AND

26 X IT IS HEREBY ORDERED the Discovery Commissioner's
27 Report and Recommendations are **affirmed** and adopted.

28 _____ IT IS HEREBY ORDERED the Discovery Commissioner's
Report and Recommendations are affirmed and adopted as

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modified in the following manner. (Attached hereto)

IT IS HEREBY ORDERED this matter is remanded to the
Discovery Commissioner for reconsideration or further
action.

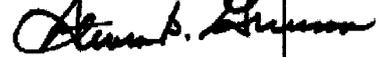
IT IS HEREBY ORDERED the Discovery Commissioner's
Report and Recommendations are **reversed**.

IT IS HEREBY ORDERED that a **hearing** on the Discovery
Commissioner's Report is set for _____, 2018 at
_____:____ a.m.

Dated this 26 day of November, 2019.



DISTRICT COURT JUDGE
Rhonda K. Forsberg



1 DCRR
2 WEBSTER & ASSOCIATES
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
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12 e-mail: jlambertsen@embarqmail.com
13 Attorney for Plaintiff, unbundled

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD,
12 Plaintiff,

13 v.

14 GRADY EDWARD BYRD,
15 Defendant.

CASE NO.: D-18-577701-Z
DEPT NO.: Discovery Commissioner

Discovery Commissioner's Report
and Recommendations

16 HEARING DATE: October 11, 2019
17 HEARING TIME: 1:00 p.m.

18 Attorney for Plaintiff: Jeanne F. Lambertsen, Esq., for Plaintiff; and
19 Attorney for Defendant: Byron Mills, Esq., for Defendant.

20 I.

21 FINDINGS

22 This case came on for hearing before the Discovery Commissioner on
23 Defendant's Motion for Protective Order Pursuant to NRCP 26(C) and for
24 Attorney Fees; Plaintiff's Re-Notice of Motion to Compel Defendant's Responses
25

26 W:\Family\Byrd, Caterina\Pleadings\Drafts\DCRR.wpd

Law Office of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2300 • Facsimile (702) 562-2301

RECEIVED
OCT 29 2019
DISCOVERY

1 to Discovery and Request for Sanctions and Attorney Fees; Plaintiff's Opposition
2 to Defendant's Motion for Protective Order Pursuant to NRCP 26(C) and for
3 Attorney Fees; Plaintiff's Countermotion to Compel Defendant's Responses to
4 Discovery, and Sanctions and Attorney Fees; Defendant's Reply to Plaintiff's
5 Opposition to Defendant's Motion for Protective Order; Defendant's Opposition
6 to Plaintiff's Motion to Compel Discovery; and Plaintiff's Reply to Defendant's
7 Opposition to Plaintiff's Motion to Compel Discovery.
8

9
10 Counsel advised they are trying to resolve the Veterans Group Life
11 Insurance issue. Based on arguments of counsel and the papers filed herein,
12 the Discovery Commissioner issues the following recommendations:

13
14 **II.**

15 **RECOMMENDATIONS**

16 **IT IS THEREFORE RECOMMENDED** the Defendant's medical records are
17 relevant for the month of June 2014, at the time of signing the Joint Petition
18 because of the Defendant's claims of disability versus retirement contemplation
19 issue that are before the court. Defendant's medical records post divorce are not
20 relevant up until September 1, 2018, forward because of the imitation of issues
21 before the court, the Defendant's continuances and non-appearances based on
22 his claims of medical issues, and that the Defendant's medical records are
23 relevant to the issue of attorney's fees.
24

25 **IT IS FURTHER RECOMMENDED** that pursuant to reading of the January
26 23, 2019 court hearing minutes, the Defendant's medical records are relevant for
27 the month of June 2014, at the time of signing the joint petition, and from
28

1 September 1, 2018 forward, the medical records are relevant as to the attorney
2 fees. The Defendant's financial records are relevant from January 2018, forward.
3 (VT 1:17:14 to 1:18:00) Financial accounts of the Defendant's wife and/or wife's
4 daughter are only relevant if the Defendant's name is on the accounts or if his
5 name was on the accounts and he removed his name.
6

7 **IT IS FURTHER RECOMMENDED** that Defendant's counsel is to endeavor
8 to get all documents listed above to Plaintiff's counsel by October 17, 2019.
9 Everything may be kept for attorneys' eyes only if there are concerns about
10 dissemination.
11

12 **IT IS FURTHER RECOMMENDED** that the issue of attorney fees is
13 deferred to the time of trial.
14

15 **COURT FINDS** that both sides had valid arguments. Each side reserves
16 the right to request attorney's fees for having to litigate today's discovery matters
17 based on what the judge decides and looks at.
18

19 **IT IS FURTHER RECOMMENDED** that Plaintiff's counsel is to prepare the
20 Report and Recommendation and send it to Defendant's counsel to review and
21 sign off. A status check is set for November 1, 2019, at 1:30 p.m., if the Report
22 and Recommendation is not submitted by October 30, 2019.
23

24 ///

25 ///

26 ///

27

28 W:\Family\Byrd, Caterina\Pleadings\Drafts\DCRR.wpd

1 The Discovery Commissioner met with counsel for the parties, having
2 discussed the issues noted above, having reviewed any materials proposed in
3 support thereof, hereby submits the above recommendations.

4 DATED this 1st day of November, 2019.

5
6 
7 _____
8 DISCOVERY COMMISSIONER

9 Submitted by:
10 WEBSTER & ASSOCIATES
11
12 
13 ANITA A. WEBSTER, ESQ.
14 Nevada Bar No. 1221
15 JEANNE F. LAMBERTSEN, ESQ.
16 Nevada Bar No. 9460
17 6882 Edna Ave.
18 Las Vegas, NV 89146
19 (702) 562-2300
20 Attorneys for CATERINA BYRD
21 unbundled

Approved as to form and content by:
22 MILLS AND ANDERSON LAW
23 GROUP
24
25 
26 BYRON L. MILLS, ESQ.
27 Nevada Bar No. 6745
28 703 South Eighth Street
Las Vegas, Nevada 89101
Tel: (702) 386-0030
Fax: (702) 386-0208
Attorneys@millsnv.com
Attorney for Defendant
GRADY BYRD

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NOTICE (THIS MUST BE ON A SEPARATE PAGE)

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within 14 (14) days after being served with a report any party may file and serve written objections to recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on November 18, 2019, 2019.

A copy of the foregoing Discovery Commissioner's Report was:

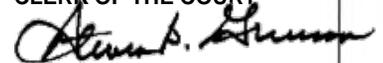
_____ Mailed to Plaintiff/Defendant at the following address on the ___ day of _____, 2019.

_____ Placed in the folder of Plaintiff's & Defendant's Counsel in the Clerk's office on the ___ day of _____, 2019.

MB Electronically filed and served counsel on the 4th day of November, 2019. Pursuant to N.E.F.C.R. Rule 9.
Anita A. Webster Esq Bryan Mills, Esq
Jeanne F. Lambertsen, Esq

The Commissioner's Report is deemed received at the time it is e-served to a party or the party's attorney. Alternatively, the Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerks office. E.D.C.R. 2.34(f).

By: Mary Brecha
COMMISSIONER'S DESIGNEE



1 EPAP
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

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

12 CATERINA ANGELA BYRD) CASE NO.: D-18-577701-Z
13 Plaintiff,) DEPT NO.: G
14 v.) Hearing Requested: No
15 GRADY EDWARD BYRD)
16 Defendant)

17
18 **Plaintiff's Ex Parte Application**
19 **For The Income Withholding Order**

20 COMES NOW Plaintiff, CATERINA ANGELA BYRD, by and through her
21 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
22 of the law offices of WEBSTER & ASSOCIATES, does hereby file her *Ex Parte*
23 *Application For the Income Withholding Order.*

24 This Ex Parte Application is made and based upon the pleadings and
25 papers on file herein and the following Points and Authorities.
26

27 ///
28 ///

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

1 Dated: March 10, 2020.

WEBSTER & ASSOCIATES

By: _____

ANITA A. WEBSTER, ESQ.

Nevada Bar No. 1221

JEANNE LAMBERTSEN, ESQ.

Nevada Bar No. 9460

6882 Edna Ave.

Las Vegas, Nevada 89146

Attorneys for Plaintiff

POINTS AND AUTHORITIES

10 This matter having come before the court on October 21, 2019, at 9:00
11 a.m., for an Evidentiary Hearing regarding the mortgage payment and the military
12 retirement payment, hearing on the Plaintiff's Order to Show Cause why the
13 Defendant should not be held in contempt of court, hearing on Plaintiff's Motion
14 for Reconsideration, Summary Judgment, and Fees; and Defendant's Opposition
15 to Plaintiff's Motion for Reconsideration and Countermotion for Fees, hearing on
16 Defendant's Motion on Order Shortening Time to Reconsider Denial of
17 Audiovisual Appearance Request, Plaintiff's Opposition to Defendant's Motion on
18 Order Shortening Time to Reconsider Denial of Defendant's Audiovisual
19 Appearance Request, and Countermotion for Fees. Plaintiff, Caterina Angela
20 Byrd (hereinafter "Caterina" or "Plaintiff"), appearing by and through her
21 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
22 of the law firm of WEBSTER & ASSOCIATES and Defendant, Grady Edward
23 Byrd (hereinafter "Grady" or "Defendant"), not present and appearing by and
24 through his attorney, BYRON L. MILLS, ESQ., of MILLS & ANDERSON LAW
25 GROUP.
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The Findings of Fact, Conclusions of Law and Order from the October 21, 2019 Evidentiary Hearing was filed on or about January 23, 2020.

The Order, contained among other orders, the following¹;

.....
.....

IT IS FURTHER ORDERED that should Defendant file an Appeal, there will be **no stay** in this case until Defendant posts a supersedeas bond in an amount of not less than \$64,000.00.

IT IS FURTHER ORDERED that Grady's order to pay Caterina \$42,000.00 in spousal support arrears and an additional \$1,000.00 in Contempt sanctions for non-payment of spousal support that is not subject to discharge in bankruptcy **and is collectable by any lawful means, including against Grady's disability income. The government is to withhold money from Defendant, Grady Edward Byrd's, income and remit payments to the Plaintiff, Caterina Angela Byrd, to satisfy the support obligation and support arrears. Caterina may prepare a separate order, if necessary, to effectuate the remittance of her alimony payments directly from Grady's Army disability and CRSC,**

¹ Findings of Fact, Conclusions of Law and Order, pg. 19, ln. 20 to pg. 20 ln. 7.

1 **Veteran Administration benefits and Department of**
2 **Defense retirement disability.**

3 [emphasis added].

4
5 Grady has appealed the Findings of Fact, Conclusions of Law and Order
6 and has refused to pay Caterina spousal support. Caterina is in desperate need
7 of support. She is relying on friends and family to pay her mortgage so that she
8 does not loose her home, to buy groceries and pay her utility bills.

9 Attached hereto is Caterina's proposed Income Withholding Order so that
10 she can effectuate the remittance of her alimony payments directly from Grady's
11 Army disability and CRSC, Veteran Administration benefits and Department of
12 Defense retirement disability. Grady has not provided any evidence of a
13 supersedeas bond in an amount of not less than \$64,000.00. As such, Caterina
14 is respectfully requesting that the court sign the Income Withholding Order.

15
16 Given the fact that a Judgment for Attorney fees and Costs in favor of
17 Caterina was filed on or about March 17, 2020 in the amount of \$42,031.75 and
18 that this dollar amount is in addition to the amount of money that the court used
19 to calculate the dollar amount for the \$64,000 superseades bond back on
20 October 21, 2019, Caterina respectfully requests that should Grady attempt to
21 stay the court orders preventing her from receiving spousal support by filing a
22 supersedeas bond, that the Court require a supersedeas bond in the amount of
23
24
25 $\$64,000 + \$42,031.75 = \$106,031.75$.

26 Rule 5.522. Construction of orders requiring payment of
27 money. Unless otherwise specified, any order calling for
28 the payment of a sum from a party to any other person or
entity shall be construed as having been reduced to

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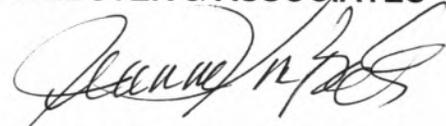
judgment and made collectible by all lawful means.

CONCLUSION

Caterina is respectfully requesting that the court grant her request for an
Income Withholding Order.

Dated: March 18, 2020

WEBSTER & ASSOCIATES



ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Attorneys for Plaintiff

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DECLARATION OF CATERINA BYRD

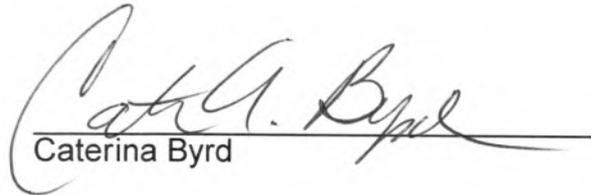
1. I, Caterina Byrd am the Plaintiff in the above-entitled action.

2. I have read the foregoing Ex Parte Application for Request for an Income Withholding Order, 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 an Income Withholding Order.

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

Executed this 10th day of March 2020.


Caterina Byrd

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Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 18th day of March, 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; and

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

Byron L. Mills, Esq.
Mills & Anderson
Modonnell@millsnv.com



An employee of Webster & Associates

EXHIBIT "1"

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

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

13 CATERINA ANGELA BYRD)

14 Plaintiff,)

15 v.)

16 GRADY EDWARD BYRD)

17 Defendant.)
18 _____)

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

INCOME WITHHOLDING ORDER

19
20 This matter came before the court upon Plaintiff's Ex Parte Application for
21 an Income Withholding Order in regard to enforcement of the orders of this court,
22 including the order filed on or about January 23, 2020, for payment of arrears by
23 Defendant, Grady Edward Byrd to the Plaintiff, Caterina Angela Byrd. Plaintiff
24 was represented by Jeanne F. Lambertsen and Anita A. Webster, Esq.
25 Defendant was represented by Byron L. Mills, Esq.

26
27 Defendant's Social Security Number (SSN) is XXX-XX-[redacted for use as
28 an Exhibit to the Ex Parte Application]. The full SSN will be shown in the cover

1 letter which shall accompany this order when presented to each government
2 agency shown below, to allow the implementation of garnishment of Defendant's
3 income for the purpose of enforcing this court's orders.

4
5 The court has found that Defendant owes Plaintiff \$42,000 in alimony
6 arrears (Sept. 1, 2018 - Oct. 31, 2019, at \$3,000 per month for 14 months), said
7 sum has been reduced to judgment, and it is subject to interest at the legal rate.
8 This court has ordered Defendant to pay alimony at \$3,110 per month to the
9 Plaintiff. This court has determined that the attorney's fees arrears which he
10 owes are \$13,500 plus interest.

11
12 The defendant has several sources of income as shown on the General
13 Financial Disclosure Form which he completed. These are subject to attachment
14 by means of an income-withholding order, so as to start payments to the Plaintiff
15 for enforcement of the arrears due by Defendant. The following are sources of
16 such income:

17
18 a) A disability pay annuity through the U.S. Office of Personnel
19 Management, in the amount of about \$1,315 per month (before deductions) (a
20 copy of the statement is attached as Exhibit 1);

21
22 b) Disability compensation from the U.S. Department of Veterans Affairs
23 (VA) of about \$3,200 per month;

24
25 c) Combat-Related Special Compensation (CRSC) in the amount of
26 \$3,227 per month as of December 31, 2018, paid by the Department of Defense
27 through DFAS (Defense Finance and Accounting Service) (a copy of the
28 statement is attached as Exhibit 2);

d) Military retired pay through DFAS at about \$135 per month; and

1 e) Social Security payments of over \$2,100 per month (before
2 deductions) ("Your New Benefit Amount" statement is attached as Exhibit 3);

3 The court finds and concludes that the Plaintiff is entitled to an
4 income-withholding order that attaches the maximum amount available from each
5 of these sources, and that the Defendant has the ability to comply with this order.
6

7 IT IS THEREFORE ORDERED that:

8 1. Service of Legal Process. A copy of this order will be served
9 promptly upon the following government agencies.

10 2. Withholding Requirements.

11 a. The U.S. Office of Personnel Management, Court Ordered
12 Benefits Branch, P.O. Box 17, Washington, DC 20044, will
13 immediately withhold the maximum amount from the
14 Defendant's disability pay for remittance and disbursement as
15 shown below.
16

17 b. The Department of Veterans Affairs, Claims Intake Center,
18 Attn: Philadelphia Pension Center, P.O. Box 5206, Janesville,
19 WI 53547, pursuant to 42 U.S.C. § 659, will promptly withhold
20 from the disability compensation of Defendant the maximum
21 amount allowable by law, for payment and disbursement as set
22 out below;
23

24 c. The Defense Finance and Accounting Service, Garnishment
25 Law Directorate-HGA, P.O. Box 998002, Cleveland, OH 44199,
26 pursuant to Para. 630101.C.2, Chapter 63, Vol. 7b of the
27 Department of Defense Financial Management Regulation
28

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(DoDFMR), will immediately withhold the maximum amount from the Combat-Related Special Compensation payable to Defendant, and it shall remit and disburse same to the Plaintiff as set out below;

- d. The Defense Finance and Accounting Service, Garnishment Law Directorate-HGA, P.O. Box 998002, Cleveland, OH 44199, will also immediately withhold the maximum amount from the Defendant's military retired pay, remitting and paying same to the Plaintiff as set out below;
- e. The Social Security Administration, 1500 Woodlawn Drive, Woodlawn, MD 21207, will promptly begin withholding the maximum amount from any payments due to the Defendant, and it will pay and disburse same to Plaintiff as set out below.

3. Disbursement Requirements. The amounts that are withheld by the above government agencies will be promptly paid to the Plaintiff, Caterina Angela Byrd, by direct deposit as set out in the cover letters submitted to each agency.

4. Continuing Obligations. The requirements above for withholding and disbursement set out above shall continue until further order of this court. At such time as the Defendant has become current in his arrears and his present monthly payments of \$3,110, he may apply to the court for a modification of this order.

DATED this ____ day of _____ 2020.

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DISTRICT COURT JUDGE

Submitted by:
WEBSTER & ASSOCIATES

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8 **DISTRICT COURT**
9 **FAMILY DIVISION**
10 **CLARK COUNTY, NEVADA**

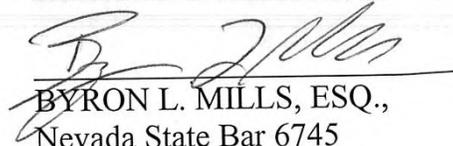
11 CATERINA ANGELA BYRD) CASE NO. D-18-577701-Z
12 Plaintiff,) DEPT. G
13 vs)
14 GRADY EDWARD BYRD)
15 Defendant.)

16
17 **OPPOSITION TO PLAINTIFF'S EX-PARTE APPLICATION FOR**
18 **INCOME WITHHOLDING ORDER.**

19 COMES NOW, GRADY BYRD, by and through BYRON L. MILLS, ESQ.
20 of MILLS & ANDERSON, his attorneys, and hereby opposes the Plaintiff's request
21 for an income withholding order pursuant to NRS 125.165.

22 DATED this 3rd day of April, 2020.

23 MILLS & ANDERSON



24 BYRON L. MILLS, ESQ.,
25 Nevada State Bar 6745
26 703 S. 8th Street
27 Las Vegas, Nevada 89101
28

POINTS AND AUTHORITIES
I
STATEMENT OF FACTS

GRADY EDWARD BYRD (hereinafter “Grady”) and CATERINA ANGELA BYRD (hereinafter “Caterina”) were divorced by Decree of Divorce dated June 5, 2014. On March 18, 2020, Caterina filed an ex-parte application for foreign income withholding order, seeking to attach a portion of Grady’s disability pay from the Department of Veteran Affairs and from his combat-related special compensation (“CRSC”).

Grady’s military retired pay shortly after the Decree was entered was only \$128.40 per month. This was the sole divisible retirement asset at the time the Decree was entered. The other payments that Grady was receiving were all from sources of federal retirement disability pay that, under federal law, cannot be divided as a community asset under any state law. Below is a table that shows all of Grady’s income and whether it was a divisible asset in 2014:

| Description | Amount | Divisible/non-divisible |
|--|------------|--|
| Net Military Retired Pay (Ex. A) | \$128.40 | Divisible under state law and 10 USC § 1408 |
| Combat Related Special Compensation (Ex. A) | \$3,007.60 | Non-divisible pursuant to 38 USC § 5301 |
| VA Disability Payments (Ex. A and B) | \$2,858.24 | Non-divisible pursuant to 10 USC § 1408, 38 USC 5301, <i>Mansell v. Mansell</i> , 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) and <i>Howell v. Howell</i> , 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). |
| OPM (Department of Defense) disability (Ex. C) | \$1,057.72 | 2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 29 * June 2017 29-1 VOLUME 7B, CHAPTER 29: |

| | | |
|------------------------------------|------------|---|
| | | “FORMER SPOUSE PAYMENTS FROM RETIRED PAY” |
| Social Security Disability (Ex. D) | \$2,584.56 | Non-divisible pursuant to 42 U.S.C. § 407 |

Because Grady’s income was almost entirely sourced from federal disability payments at the time of the divorce, the Court’s finding that Grady owed \$1,500 as one half of his military retired pay to Caterina was clearly erroneous. The only divisible retired pay that Grady has received since the divorce is military retired pay of between \$128.40 (2014) and, as of February 1, 2019, his pay is -0-. Under the terms of the decree of divorce, 50% this amount is all that Caterina was entitled to. Indeed, as more fully explained below, 50% of the military retired pay is all that the Court could have ordered then, because the balance of the pay that Grady was receiving was federal disability pay.

That fact remains true today. Below is a chart showing all of Grady’s sources of income as they exist today:

| Description | Amount | Divisible/non-divisible |
|---|------------|--|
| Net Military Retired Pay (Exhibit E) | -0- | Divisible under state law and 10 USC § 1408 |
| Combat Related Special Compensation (Grady’s FDF) | \$3,227.58 | Non-divisible pursuant to 38 USC § 5301 |
| VA Disability Payments (Grady’s FDF) | \$2,896.67 | Non-divisible pursuant to 10 USC § 1408, 38 USC 5301, <i>Mansell v. Mansell</i> , 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) and <i>Howell v. Howell</i> , 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). |

| | | |
|--|------------|---|
| OPM (Department of Defense) disability (Grady's FDF) | \$1,315.00 | Non-divisible pursuant to 2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 29 * June 2017 29-1 VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY" |
| Social Security Disability (Grady's FDF) | \$2,176.00 | Non-divisible pursuant to 42 U.S.C. § 407 |

While Grady maintains that none of these sources are eligible for withholding under federal law, Nevada law also specifically prohibits garnishment of compensation payments for a service-connected disability:

NRS 125.165 Federal disability benefits awarded to veteran for service-connected disability: Attachment, levy, seizure, assignment and division prohibited. Unless the action is contrary to a premarital agreement between the parties which is enforceable pursuant to chapter 123A of NRS, in making a disposition of the community property of the parties and any property held in joint tenancy by the parties, and in making an award of alimony, the court shall not:

1. Attach, levy or seize by or under any legal or equitable process either before or after receipt by a veteran, any federal disability benefits awarded to a veteran for a service-connected disability pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

2. Make an assignment or otherwise divide any federal disability benefits awarded to a veteran for a service-connected disability pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

At a minimum both Grady's VA payments and CRSC payments are compensation for a service-connected disability under federal law. As such, Caterina's proposed income withholding order is illegal as it pertains to these sources of income. Additionally, as is detailed in Grady's motion for reconsideration filed on April 8,

1 2019, it is very likely none of the federal departments will honor Caterina's request
2 because all of Grady's sources of income are in the nature of federal disability pay.

3 II

4 ARGUMENT

5 A. The Court Should Deny Caterina's Motion for Income Withholding for 6 the Purpose of Spousal Support.

7 Net military retired pay is divisible under state law and 10 USC § 1408.
8 However, federal law clearly states that VA Disability Payments are non-divisible
9 pursuant to 10 USC § 1408 and 38 USC § 5301. Furthermore, CRSC pay is also
10 non-divisible pursuant to USC § 5301, and Social Security Disability is non-
11 divisible pursuant to 42 USC § 407. Nevada law also specifically prohibits
12 garnishment of compensation payments for a service-connected disability:

13
14 NRS 125.165 Federal disability benefits awarded to veteran for
15 service-connected disability: Attachment, levy, seizure, assignment and
16 division prohibited. Unless the action is contrary to a premarital
17 agreement between the parties which is enforceable pursuant to chapter
18 123A of NRS, in making a disposition of the community property of
19 the parties and any property held in joint tenancy by the parties, and in
20 making an award of alimony, the court shall not:

21 1. Attach, levy or seize by or under any legal or equitable process
22 either before or after receipt by a veteran, any federal disability benefits
23 awarded to a veteran for a service-connected disability pursuant to 38
24 U.S.C. §§ 1101 to 1151, inclusive.

25 2. Make an assignment or otherwise divide any federal disability
26 benefits awarded to a veteran for a service-connected disability
27 pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

28 The only divisible community asset from which Caterina can receive a portion of
Grady's income is the military retired pay, which is currently in the amount of -0-.

Various courts have been clear on the issue of VA Disability Payments and
CRSC in cases of dissolution of marriage. In the State of Louisiana, Shirley

1 Brouillette (“Ex-Wife”) and Kendrick Brouillette (Ex-Husband) divorced in 1986.
2 *Brouillette v. Brouillette*, 2010-357 (La. App. 3 Cir. 11/24/10), 51 So. 3d 898, 899.
3 The parties agreed to and signed a community property settlement that provided
4 Ex-Wife would receive 47% of Ex-Husband’s military retirement benefits. *Id.* Ex-
5 Wife received monthly payments from the retirement benefit, which we paid
6 through garnishment of Ex-Husband’s check from the Department of Veteran’s
7 Affairs. *Id.* at 900. In 2004, Ex-Husband applied for CRSC and because CRSC is
8 not considered a retirement benefit, Ex-Wife stopped receiving monthly payments.
9 *Id.* At trial, the court held that Ex-Husbands military benefit did not qualify as
10 retirement and that the state had no right to intervene and demand garnishment for
11 Ex-Wife’s benefit. *Id.*

12 On appeal, Ex-Wife asserted that the trial court erred because Ex-Husband
13 would still owe alimony pursuant to the court’s decision in *Poullard v.*
14 *Poullard*, 00–1121 (La.App. 3 Cir. 01/31/01), 780 So.2d 498. *Id.* In *Poullard*, the
15 court held that the ex-spouse owed alimony despite a change from retirement
16 benefits to disability benefits. *Id.* However, in *Poullard*, the parties dissolved their
17 marriage by consent judgment in which provided permanent alimony for the ex-
18 wife. Because of that, it was clear that permanent alimony was due to the ex-wife
19 irrespective of the source for that alimony. *Id.*

20 However, the *Bouillard* court noted that Ex-Wife and Ex-Husband agreed
21 that Ex-Wife was to receive 47% of Ex-Husband’s the retirement benefits. Ex-
22 Wife and Ex-Husband also stipulated that the 47% was not granted to Ex-Wife for
23 waiver of any future alimony. *Id.* Thus, the parties in *Bouillard* were clearly
24 dividing community interests, not apportioning Ex-Husband’s military retirement
25 benefits to alimony. *Id.*

26 The *Bouillard* court noted that, pursuant to the Supremacy Clause of the
27 United States Constitution, federal law may preempt state law when Congress
28 shows clear intent when enacting a law. *Id.* at 901. The *Brouillette* Court stated that,
within the CRSC statute (10 USC § 1413a(g)), Congress expressed that CRSC pay

1 was not military retired pay. *Id.* The court recognized that generally, a spouse is
2 entitled to their share of community assets acquired during marriage, including
3 retirement plans and pensions. However, the court held that recipients of military
4 disability benefits own the sole interest in those benefits. *Id.* Thus, because CRSC
5 pay is a disability benefit, the Louisiana Court of Appeals affirmed the Trial Court's
6 decision that the state had no right to demand garnishment for the benefit of the
7 recipient's ex-wife. *Id.*

8 Here, the Decree of Divorce indicates that Grady and Caterina agreed that
9 Caterina was entitled to 50% of Grady's U.S. Army retired pay. The parties further
10 agreed that the \$1500 extra per month would be paid by Grady to assist Caterina
11 and that the said \$1500 was not alimony and not required. The parties also agreed
12 that neither party shall be required to pay spousal support to the other party.
13 Similarly to the agreement between the parties in *Bouillard*, Grady and Caterina
14 agreed to divide the community assets and they agreed that there would be no
15 alimony. In *Bouillard*, Ex-Husband applied for CRSC and because CRSC is not
16 considered a retirement benefit, Ex-Wife stopped receiving monthly payments.
17 Here, Grady's military disability benefits make up his income, and such benefits
18 are not retirement benefits.

19 Based on the foregoing, Grady respectfully request that the Court deny
20 Caterina's request for garnishment or withholding of Grady's military disability
21 payments.

22 **B. The Court Should Deny Caterina's Motion as to Attorney's Fees.**

23 Under federal law, an award of attorney fees in a dissolution action may not
24 be executed against exempt Veteran's Administration (VA) disability benefits. 38
25 U.S.C.A. § 5301. State courts have followed federal law in prohibiting garnishment
26 of VA disability benefits for the purpose of paying attorney's fees in dissolution
27 actions. In *Marriage of Strong v. Strong*, the Supreme Court of Montana held that
28 further hold that both Montana law and federal law prohibit an award of attorney's

1 fees from being executed upon VA disability benefits. 2000 MT 178, ¶ 52, 300
2 Mont. 331, 347, 8 P.3d 763, 772.

3 The *Strong* Court noted that an award of attorney's fees in a dissolution
4 action amounts to a judgment debt. *Id.* at 345. The court further noted that if there
5 were to be any logic in allowing the garnishment of disability pay, it would be in
6 the interest of subsistence. *Id.* at 347. Garnishment for the purpose of child support
7 is for the subsistence of a child, while attorney's fees are not. The *Strong* Court
8 held that the separate statutory provisions for an award of attorney's fees and an
9 award of maintenance or support in a dissolution action express a legislative intent
10 that a judgment for attorney's fees not be characterized as a form of maintenance
11 or support. *Id.* Thus, an award of attorney's fees could not be executed upon VA
12 disability benefits. *Id.*

13 Here, Caterina argues that she should be allowed to garnish Grady's VA
14 disability payments and CRSC, which is also a military disability payment in the
15 interest of paying attorney's fees. However, much like the *Strong* case, Grady's
16 VA disability payments should not be garnished to pay Caterina's attorney's fees.
17 Such an order would benefit Caterina's attorney, defeating the purpose the Court
18 is attempting to achieve, which is to indemnify Caterina and create spousal support
19 where none existed. The reason Caterina is allegedly in need of spousal support is
20 because she claims she is destitute. There may very well be a limited exception for
21 garnishment of VA disability for the purpose of maintenance. However, because
22 attorney's fees are not awarded in the interest of maintenance, there is no statutory
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exception for the garnishment of attorney's fees from disability payments.

Based on the foregoing, Grady respectfully requests that the Court decline approval of Caterina's ex parte application for an income withholding order.

DATED this 3rd day of April, 2020.

Respectfully submitted,

MILLS & ANDERSON



BYRON L. MILLS, ESQ.,
Nevada State Bar 6745
703 S 8th Street
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(702) 386-0030
Attorney for Defendant

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AFFIDAVIT OF GRADY BYRD IN SUPPORT OF MOTION

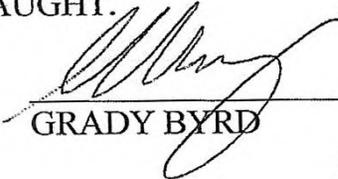
COUNTRY OF PHILLIPINES

I, GRADY BYRD, being first duly sworn according to law, deposes and says:

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

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

FURTHER AFFIANT SAYETH NAUGHT.

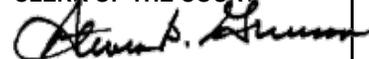


 GRADY BYRD

~~SUBSCRIBED and SWORN to before me
 this _____ day of _____, 2020.~~

~~Not Available Due to Covid 19

 NOTARY PUBLIC in and for Said
 County and State~~



1 **ROPP**
2 **WEBSTER & ASSOCIATES**
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13 Attorney for Plaintiff

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11
12 CATERINA ANGELA BYRD)
13 Plaintiff,) CASE NO.: D-18-577701-Z
14 v.) DEPT NO.: G
15 GRADY EDWARD BYRD)
16 Defendant) Hearing Requested: No
17

18 **Plaintiff's Reply to Defendant's Opposition to Plaintiff's Ex Parte**
19 **Application for the Income Withholding Order**

20 COMES NOW Plaintiff, CATERINA ANGELA BYRD, by and through her
21 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
22 of the law offices of WEBSTER & ASSOCIATES, and does hereby file her *Reply*
23 *to Defendant's Opposition to Plaintiff's Ex Parte Application For the Income*
24 *Withholding Order.*

25 ///

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1 This Reply is made and based upon the pleadings and papers on file herein
2 and the following Points and Authorities.

3 Dated: April 10, 2020.

4
5 **WEBSTER & ASSOCIATES**
6 By: 
7 ANITA A. WEBSTER, ESQ.
8 Nevada Bar No. 1221
9 JEANNE LAMBERTSEN, ESQ.
10 Nevada Bar No. 9460
11 6882 Edna Ave.
12 Las Vegas, Nevada 89146
13 Attorneys for Plaintiff

14 **POINTS AND AUTHORITIES**

15 **REPLY**

16 Caterina is seeking her *alimony* through income withholding, which was
17 granted in the court's orders filed on or about January 23, 2020. Grady
18 mistakenly refers to property division, dividing community assets, and divisible
19 asset¹. Grady is wrongfully attempting to re-litigate the court's award of alimony
20 to Caterina and misleading the court with discussions about assets when this is
21 an alimony/spousal support issue.

22 Further, contrary to Grady's argument, Federal law allows garnishment of
23 all sources of Grady's income for spousal support. However, Nevada state law,
24 NRS 125.165, arguably bars the garnishment of one of Grady's sources of
25 income, the VA disability benefit. As such, Caterina revised the Income
26 Withholding Order, removing garnishment of Grady's VA disability benefit.

27
28 ¹ See Grady's Opposition filed 04/03/2020, pg. 2, ln. 11- pg. 4, ln. 8.

1 Additionally, language regarding Grady's \$13,500 in attorney fees arrears was
2 removed from the Income Withholding Order, since the focus of this Income
3 Withholding Order is for payment of the alimony/spousal support that Grady is
4 ordered to pay Caterina, but refuses.
5

6 I.

7 **FEDERAL LEGISLATION AND EXECUTIVE LAWS ALLOW GARNISHMENT**
8 **OF FEDERAL INCOME FOR SPOUSAL SUPPORT**

9 1. **Federal Law Allows Garnishment of VA Disability Benefits for**
10 **Spousal Support up to the amount of his waiver of retired pay**

11 One of Grady's income sources is Grady's VA disability benefit. Grady was
12 receiving about \$3,017 in military retirement pay. He waived all but about \$128
13 in order to get VA disability benefits. Grady mistakenly states that 38 U.S. C. §
14 5301 prohibits spousal support from being garnished from his VA disability
15 benefit. It does not. Grady fails to point out that there are exceptions to the non-
16 garnishment rule:
17

18 38 U.S. C. § 5301. Nonassignability and exempt status of
19 benefits.

20 (a)(1) Payments of benefits due or to become due under
21 any law administered by the Secretary shall not be
22 assignable **except to the extent specifically authorized**
23 **by law**, and such payments made to, or on account of, a
24 beneficiary shall be exempt from taxation, shall be
25 exempt from the claim of creditors, and shall not be liable
26 to attachment, levy, or seizure by or under any legal or
27 equitable process whatever, either before or after receipt
28 by the beneficiary. The preceding sentence shall not
apply to claims of the United States arising under such
laws nor shall the exemption therein contained as to
taxation extend to any property purchased in part or
wholly out of such payments. The provisions of this
section shall not be construed to prohibit the assignment

1 of insurance otherwise authorized under chapter 19 of
2 this title, or of servicemen’s indemnity. (Emphasis added)

3 Grady argues that his VA disability benefit payments can’t be garnished for
4 alimony. He is wrong. One of the exceptions to the no-garnishment rule is that
5 **alimony can be garnished** from retired service members disability income
6 pursuant to 42 U.S.C. § 659:

7
8 42 U.S.C. § 659. **Consent by United States to income**
9 **withholding, garnishment,** and similar proceedings **for**
10 **enforcement of** child support and **alimony** obligations states in
11 pertinent part:

12
13

14 (H)(1)(A)(ii)(v) by the Secretary of Veterans Affairs as
15 compensation for a **service-connected disability paid**
16 by the Secretary to a former member of the Armed
17 Forces who is in receipt of retired or retainer pay **if the**
18 **former member has waived a portion of the retired or**
19 **retainer pay in order to receive such compensation.**
20 (Emphasis added)

21 Grady’s income *can be garnished for alimony* since he “waived” a portion
22 of his retirement pay to get the VA disability benefit.

23 The regulations and procedures for garnishing Grady’s service-connected
24 disability pay are promulgated in 5 CFR § 581.

25 5 CFR Section 581.103(b)(4) states in pertinent part:

26
27

28 (iv) Any payments by the **Veterans**
Administration as compensation for a
service-connected disability or death.
except any compensation paid by the
Veterans Administration to a former
member of the Armed Forces who is in
receipt of retired or retainer pay If such
former member has waived a portion of

1 his/her retired pay in order to receive such
2 compensation. In this case, only **that part**
3 **of the Veterans Administration payment**
4 **which is in lieu of the waived**
5 **retired/retainer pay is subject to**
6 **garnishment.**

7 2. **Federal Law Allows Garnishment of CRSC Benefits for**
8 **Spousal Support:**

9 10 U.S.C. § 1413a, is the statute authorizing CRSC and prescribing
10 entitlement to CRSC benefits. To be eligible for CRSC, a veteran must be eligible
11 for both retired pay and disability benefits. (10 U.S.C. § 1413a(c)(1), (e)). It
12 follows that, under the rule against double-dipping (38 U.S.C. §§ 5304 - 5305),
13 the veteran must waive all retired pay up to the amount of the disability benefits.
14 CRSC then basically restores the waived amount of retired pay (10 U.S.C. §
15 1413a(b)(1), (b)(2))—but as "special compensation," and not as retired pay. (See
16 10 U.S.C. § 1413a(g).) CRSC provides an additional tax-free benefit to the
17 retiree. (26 U.S.C. § 104(a)(4); Dept. of Def. Fin. Mgmt. Reg. 7000.14–R, Vol.
18 7B, Ch. 63 § 630101(D) (Nov. 2019).

19 Contrary to Grady’s assertions, **CRSC can be garnished for alimony:**

20 Dept. of Def. Fin. Mgmt. Reg. 7000.14–R, Vol. 7B, Ch. 63 § 630101 C.2
21 states:

22 **CRSC is subject to** a Treasury offset to recover a debt
23 **owed to the United States as well as to garnishment**
24 **for child support or alimony.** In addition, debts due the
25 government may be collected from CRSC, including
26 overpayments of retired pay or erroneous payments of
27 CRSC, by means of an administrative offset. An
28 administrative offset of CRSC to collect a debt due the
government is subject to the due process requirements
of 31 U.S.C. § 3716 and 31 Code of Federal Regulations
(CFR), part 901. Claims for overpayments of CRSC may

1 be considered for waiver in accordance with 10 U.S.C. §
2 2774. Finally, CRSC payments are not subject to Chapter
3 13 bankruptcy court orders to pay a Chapter 13 trustee.
(Emphasis added)

4
5 **3. Federal Law Allows Garnishment of FERS Disability Annuity**
6 **Benefits for Spousal Support:**

7 Grady is paid by the Office of Personnel management for an annuity for civil
8 service work performed after Grady retired from the military. This money came
9 from Grady's Federal Employees Retirement System (FERS) account. FERS
10 retirement system is administered through the Office of Personnel Management
11 (OPM). Federal civil service payments are not made under Title 38, which
12 governs payments made to veterans due to service-connected disabilities. The
13 payments for federal employees are made pursuant to Title 5, U.S. Code. The
14 authority that Grady mentions, Former Spouse Payments From Retired Pay,
15 deals with a division of military retired pay. Civil service pay is totally different
16 from military retired pay; the former is found at Title 5, U.S. Code, and the latter
17 is found at Chapter 71 of Title 10, U.S. Code.

18
19 5 U.S. Code § 8345. Payment of benefits; commencement, termination, and
20 waiver of annuity, section (j) states:
21

22 (1) Payments under this subchapter which would
23 otherwise be made to an employee, Member, or
24 annuitant based on service of that individual **shall be**
25 **paid (in whole or in part) by the Office to another**
26 **person** if and to the extent expressly provided for in the
27 terms of—

28 (A) any court decree of divorce, annulment, or legal
separation, or **the terms of any court order** or
court-approved property settlement agreement incident
to any court decree of divorce, annulment, or legal
separation”

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(Emphasis Added).

4. Federal Law Allows Garnishment of Social Security Benefits for Spousal Support

Social Security benefits can be garnished for spousal support pursuant to 42 U.S.C. §§ 659(a), 659(h)(1)(A)(ii)(I). Title 42 - The Public Health and Welfare, Chapter 7 - Social Security, Subchapter IV - grants to states for aid and services to needy families with children and for child-welfare services, Part D - child support and establishment of paternity, sec. 659 - consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations.

5. Federal Law Allows Garnishment of Military Retired Pay for Spousal Support

Retired pay is disbursed to retirees from the Army (10 U.S.C. §1401). As referenced above, Grady's military retire pay can be garnished for spousal support pursuant to 42 U.S.C. § 659 which is "Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations."

JUDICIAL DECISIONS ALLOW GARNISHMENT OF FEDERAL INCOME FOR SPOUSAL SUPPORT

The United States Supreme Court and multiple state courts have held that veteran disability compensation pay is available for the determination of family support and its enforcement. In Rose, the U.S. Supreme Court reviewed a contempt judgment against a veteran whose sole source of income was his VA disability benefit. Rose v. Rose, 481 U.S. 619, 625, 107 S. Ct. 2029, 95 L. Ed.2d

1 599 (1987). The veteran had refused to pay the child support he was ordered to
2 pay, claiming that he was constitutionally allowed to keep all VA benefits for
3 himself. In a thorough review of the relevant statutes and rules, the Court held
4 that “these benefits are not provided to support [the veteran] alone.” Explaining,
5 the Court stated:
6

7
8 “Veterans’ disability benefits compensate for impaired
9 earning capacity, H.R. Rep. No. 96-1155, p.4 (1980), and
10 are intended to “provide reasonable and adequate
11 compensation for disabled veterans **and their families.**”
12 S. Rep. No. 98-604, p.24 (1984) (emphasis added).
13 Additional compensation for dependents of disabled
14 veterans is available under 38 U.S.C. § 315, and in this
15 case totaled \$90 per month for appellant’s two children.
16 But the paucity of the benefits available under § 315 [now
17 38 U.S.C. § 1115] belies any contention that Congress
18 intended these amounts alone to provide for the support
19 of the children of disabled veterans. Moreover, as
20 evidenced by § 3107(a)(2) [now 38 U.S.C. § 5307] . . .
21 Congress clearly intended veterans’ disability benefits to
22 be used, in part, for the support of veterans’ dependents.

23
24 Where a VA disability benefit exists at the time of divorce, the court cannot
25 divide those benefits as property², but the cash flow “may be considered as a
26 resource for purposes of determining [one’s] ability to pay alimony.” See Womack
27 v. Womack, 307 Ark. 269, 818 S.W.2d 958 (1991); In re Marriage of Bahr, 29 Kan.
28 App. 2d 846, 32 P.3d 1212 (2001);(1990); Weberg v. Weberg, 158 Wis. 2d 540,
463 N.W.2d 382 (Ct. App. 1990); Riley v. Riley, 571 A.2d 1261 (Md. Ct. Spec.
App. 1990); In re Marriage of Howell, 434 N.W.2d 629, 633 (Iowa 1989), In Re

27
28 ²Grady continues to argue this point, however, this point is not relevant since the
income withholding order is for spousal support that Grady owes Caterina.

1 Marriage of Priessman, 228 AZ 336, 266 P.3d 362 (Nov. 2011) and Cassinelli v.
2 Cassinelli (In re Cassinelli), 229 Cal.Rptr.3d 801, 20 Cal.App.5th 1267 (Cal. App.,
3 2018).

4 Further, VA disability benefits can be garnished for spousal support. In U.S.
5 v. Murray, the Georgia Court of Appeals reviewed a case brought by the ex-wife
6 of a veteran who sought to garnish the Veteran's VA disability compensation for
7 alimony. The Court held that VA disability payments are subject to garnishment
8 for alimony to the extent that they replace "waived retired pay." U.S. v. Murray,
9 158 Ga. App. 781, 282 S.E.2d 372 (1981).

10 Multiple other states have found that spousal support can be garnished from
11 military disability income. Case v. Dubaj, ___ F. Supp. ___ (W.D. Pa. No. 08-347,
12 Aug. 29, 2011) (no 42 U.S.C. § 1983 violation could be asserted against county
13 support enforcement workers who seized or froze a bank account consisting
14 entirely of veterans' disability benefits, because 38 U.S.C. § 5301 does not apply
15 to claims for spousal and child support); Annotation, Enforcement of Claim for
16 Alimony or Support, or for Attorneys' Fees and Costs Incurred in Connection
17 Therewith, Against Exemptions, 52 A.L.R. 5th 221 §28[a] ("With few exceptions,
18 the cases hold that payments arising from service in the Armed Forces . . . ,
19 though exempt as to the claims of ordinary creditors, are not exempt from a claim
20 for alimony, support, or maintenance . . ."); Commonwealth ex. rel. Caler v. Caler,
21 1981 WL 207422 (Pa. Com. Pl. 1981) (exemption statutes such as § 5301(a) "are
22 generally held to apply only to claims arising from the debtor-creditor relation and
23 have no application to claims for family support absent clear statutory language
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1 to the contrary”); In re Marriage of Dora Pope-Clifton, 823 N.E.2d 607 (Ill. App.
2 2005) (veteran’s bank account could be frozen to satisfy his support obligations
3 despite the fact that the proceeds in the account consisted of veterans’ disability
4 funds because “veterans’ benefits are not for the sole benefit of disabled
5 veterans,” but rather, “[are] intended to benefit both veterans and their families”)
6 and Urbaniak v. Urbaniak, 807 N.W.2d 621, 626 (S.D. 2011) (“An overwhelming
7 majority of courts have held that [federal veterans’] disability payments may be
8 considered as income in awarding spousal support.”).

9
10 In the California case of Cassinelli, the former husband, Robert, claimed that
11 his VA disability benefit, CRSC income, social security income and state teacher’s
12 disability benefit are all exempt from creditor’s claims. As such, he argued that his
13 former wife is not entitled to garnish any of his income. The California Court of
14 Appeals, disagreed and found:
15

16
17 “As already noted, Robert’s income consists of veteran’s
18 disability benefits, state teacher’s disability benefits,
19 Social Security, and CRSC. **Arguably some or all of**
20 **these funds would be exempt from an ordinary money**
21 **judgment. However, they are not exempt from a**
22 **spousal support order.** Specifically, a spousal support
23 order would be enforceable against Robert’s:

24 1. Veteran’s disability benefits (although only up to the
25 amount of his waiver of retired pay). (42 U.S.C. §§
26 659(a), 659(h)(1)(A)(ii)(V), 659(h)(1)(B)(iii) ; 5 C.F.R. §
27 581.103 ; United States v. Murray (1981) 158 Ga.App.
28 781, 785, 282 S.E.2d 372, 375.)

2. CRSC. (Fin. Mgmt. Reg., supra , § 630101(C)(2).)

3. Social security benefits. (42 U.S.C. §§ 659(a),
659(h)(1)(A)(ii)(I) ; DeTienne v. DeTienne (D.Kan. 1993)
815 F.Supp. 394, 396-397.)

1 4. State teacher's disability benefits. (Code Civ. Proc., §
2 704.110, subd. (c) ; Ed. Code, § 22006.).

3 Similarly, Federal law allows the garnishment of Grady's VA disability
4 compensation, CRSC, Social Security disability benefits and his civilian annuity
5 benefits from the Office of Personnel management for Caterina's spousal support
6 obligation.

7
8 **NEVADA LAW ALLOWS CATERINA TO SEEK GARNISHMENT OF**
9 **GRADY'S MILITARY RETIREMENT PAY, CRSC, OPM AND SOCIAL**
10 **SECURITY INCOME**

11 Contrary to Grady's assertion, Nevada Revised Statute, 125.165 does not
12 block spousal support garnishment of *all* of Grady's income sources. This is
13 because NRS 125.165 only applies to 38 U.S.C. §§ 1101 to 1151. Statutes are
14 subject to strict interpretation:

15 Where the language of a statute is plain and unambiguous, and its
16 meaning clear and unmistakable, there is no room for construction,
17 and the courts are not permitted to search for its meaning beyond the
18 statute itself. Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908
19 P.2d 1367, 1369 (1995) (quoting Charlie Brown Constr. Co. v. Boulder
20 City, 106 Nev. 497, 503, 797 P.2d 946, 949 (1990) (quoting State v.
21 Jepsen, 46 Nev. 193, 196, 209 P. 501, 502 (1922), "We conclude that
22 the statute is clear and unambiguous. That being the case, no further
23 interpretation is required or permissible"(quoting Pro-Max Corp. v.
24 Feenstra, 16 P.3d 1074 (Nev. 2001). When the language in a statute
25 is plain and unambiguous, the court will look no further, and it is a
26 universal rule that courts will not enlarge, stretch, expand, or extend
27 a statute to matter not falling within its express provisions.

28 NRS 125.165 is strictly limited to 38 U.S.C. §§ 1101 to 1151 :

... "federal disability benefits awarded to a veteran for a
service-connected disability pursuant to **38 U.S.C. §§**
1101 to 1151, inclusive."
(Emphasis added)

Thus, non-title 38 benefits do not fall under the NRS 125.165 garnishment

1 prohibition. Benefits outside 38 U.S.C. §§ 1101 to 1151 are not barred from
2 garnishment by NRS 125.165. Arguably, Grady’s veterans administration monthly
3 payment of \$2,896.67 is Title 38 related and therefore, barred by NRS 125.165
4 from garnishment for alimony. However, the remainder of his income sources are
5 not barred by NRS 125.165.
6

7 1. CRSC is not funded under Title 38, U.S. Code, rather it is funded under
8 Title 10, U.S. Code; 10 U.S.C. § 1413 a. Grady’s CRSC income is non-title 38
9 and falls outside the scope of the NRS 125.165 prohibition for garnishment.
10 Hence, NRS 125.165 does not bar garnishment.
11

12 In the Arizona case of Priessman, the former military member, former
13 husband, Kurt, received monthly income of \$1,607 from CRSC, \$645 in civil
14 service retirement pay and \$1,865 in social security disability pay. Like Grady,
15 Kurt had a spousal support obligation to his former wife, which he refused to pay.
16 Kurt accrued an alimony arrearage in the amount of \$63,851.79. Similarly, Grady’s
17 alimony arrearage exceeds \$42,000.00. Kurt argued that the trial court improperly
18 considered his CRSC income in calculating spousal support pursuant to Arizona
19 law, ARS 25-530, which states that “[i]n determining whether to award spousal
20 maintenance or the amount of any award of spousal maintenance, the court shall
21 not consider any federal disability benefits awarded to the other spouse for
22 service-connected disabilities pursuant to 38 United States Code chapter 11.” The
23 Arizona Court of Appeals found that:
24
25

26 “However, the trial court found that Kurt “[was] not
27 receiving federal disability benefits pursuant to 38 U.S.C.
28 [chapter] 11,” rather, “[h]e ha[d] been awarded [CRSC]
benefits pursuant to 10 U.S.C. § 1413a.” The court

1 therefore concluded that A.R.S. § 25-530 did not apply.

2 38 U.S.C. Chapter 11 contains § 1101 - 1151.

3 Kurt next argued that even though CRSC benefits are authorized under
4 Title 10, U.S. Code, the trial court nevertheless was prohibited from considering
5 such benefits as income pursuant to A. R. S. § 25-530. Kurt reasoned that both
6 his eligibility for CRSC and his CRSC benefit amounts were determined in part by
7 his qualification in the first instance to receive benefits under Title 38, U.S. Code,
8 Chapter 11, and that A. R. S. § 25-530 prohibited consideration of benefits
9 awarded pursuant to Chapter 11 of Title 38, U.S. Code. The Arizona Court of
10 Appeals disagreed and held:
11
12

13 Title 38, chapter 11 of the United States Code authorizes,
14 among other benefits, wartime and peacetime disability
15 compensation. See 38 U.S.C. §§ 1110, 1131. But title 38,
16 chapter 11 neither authorizes nor refers to CRSC, which
17 is authorized in title 10, chapter 71. In contrast, 10 U.S.C.
18 § 1413a, the statute authorizing CRSC and prescribing
19 entitlement to CRSC benefits, refers to certain provisions
20 of title 38. But despite these references, Kurt's eligibility
21 to receive CRSC benefits is determined by, and CRSC is
22 paid pursuant to, title 10, which has its own requirements
23 separate from those contained in title 38. See 10 U.S.C.
24 § 1413a(e) (defining "combat-related disability" for
25 purposes of benefits eligibility). The plain language of §
26 25-530 prohibits trial courts from considering disability
27 benefits awarded "pursuant to 38 United States Code
28 chapter 11." Thus, in determining whether to award
spousal maintenance or the amount of an award, trial
courts are prohibited from considering disability benefits
awarded pursuant to title 38, see 38 U.S.C. §§
1110,1131; they are not, however, prohibited from
considering CRSC benefits awarded pursuant to title 10,
see 10 U.S.C. § 1413a.
(Emphasis Added).

27 The Arizona Court of Appeals held that the trial court did not err by including
28

1 Kurt's CRSC benefits in determining the spousal support award nor did the trial
2 court abuse its discretion by denying Kurt's request to reduce or eliminate his
3 alimony arrearage.

4 2. Office of Personnel Management (OPM); The payments received by
5 Grady for his service as a federal employee are made under FERS, the Federal
6 Employees Retirement System. The work he performed was done after he retired
7 from military service. The funding is under Title 5, U.S. Code, not Title 38. Thus
8 the funds received are subject to garnishment for support and attorney fees. NRS
9 125.165 is no bar to attachment of the money paid to him.

10 3. Social Security Disability Payments can be garnished for spousal support
11 because this is non-Title 38 income. Further, garnishment is possible pursuant to
12 42 U.S.C. §§ 659(a), 659(h)(1)(A)(ii)(I). Title 42 - The Public Health and Welfare,
13 Chapter 7 - Social Security, Subchapter IV - grants to states for aid and services
14 to needy families with children and for child-welfare services, Part D - child
15 support and establishment of paternity, sec. 659 - *consent by United States to*
16 *income withholding, garnishment, and similar proceedings for enforcement of child*
17 *support and alimony obligations.*

18 4. Military retired pay can be garnished for Spousal Support pursuant to 10
19 U.S.C. 1408 (a)(2)(B)(ii). Retired pay is disbursed to retirees from the Army (10
20 U.S.C. §1401). This is non-Title 38 income. Further, garnishment is possible
21 pursuant to 42 U.S.C. § 659 which is "Consent by United States to income
22 withholding, garnishment, and similar proceedings for enforcement of child
23 support and alimony obligations".

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CONCLUSION

Caterina is respectfully requesting that the court grant her request for an Income Withholding Order and a Revised Income Withholding Order is attached hereto as an Exhibit. The original Revised Income Withholding Order will be provided to the Court. Further, Caterina renews her request for attorney fees and costs for having to defend against Grady Byrd's Opposition to her Ex Parte Application for the Income withholding Order.

Dated: April 10, 2020

WEBSTER & ASSOCIATES



ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Attorneys for Plaintiff

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Telephone (702) 562-2300 • Facsimile (702) 562-2303

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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 Reply to Grady Byrd’s Opposition to the Ex Parte Application for Request for an Income Withholding Order, 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 an Income Withholding Order.

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

Executed this 10 day of April 2020.

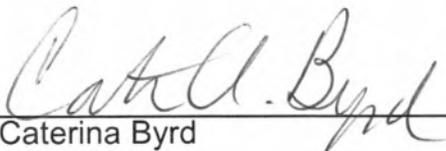

Caterina Byrd

EXHIBIT "1"

1 **ORDR**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
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13 Attorney for Plaintiff, unbundled

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

13 CATERINA ANGELA BYRD) CASE NO.: D-18-577701-Z
14 Plaintiff,) DEPT NO.: G
15 v.)
16 GRADY EDWARD BYRD) **INCOME WITHHOLDING ORDER**
17 Defendant.)
18 _____)

19
20 This matter came before the court upon Plaintiff's Ex Parte Application for
21 an Income Withholding Order in regard to enforcement of the orders of this court,
22 including the order filed on or about January 23, 2020, for payment of arrears by
23 Defendant, Grady Edward Byrd to the Plaintiff, Caterina Angela Byrd. Plaintiff
24 was represented by Jeanne F. Lambertsen and Anita A. Webster, Esq.
25 Defendant was represented by Byron L. Mills, Esq.
26

27 Defendant's Social Security Number (SSN) is XXX-XX-[redacted for use as
28 an Exhibit to the Plaintiff's Reply]. The full SSN will be shown in the cover letter

1 which shall accompany this order when presented to each government agency
2 shown below, to allow the implementation of garnishment of Defendant's income
3 for the purpose of enforcing this court's orders.

4
5 The court has found that Defendant owes Plaintiff \$42,000 in alimony
6 arrears (Sept. 1, 2018 - Oct. 31, 2019, at \$3,000 per month for 14 months), said
7 sum has been reduced to judgment, and it is subject to interest at the legal rate.
8 This court has ordered Defendant to pay alimony at \$3,110 per month to the
9 Plaintiff.

10
11 The defendant has several sources of income as shown on the General
12 Financial Disclosure Form which he completed. These are subject to attachment
13 by means of an income-withholding order, so as to start payments to the Plaintiff
14 for enforcement of the arrears due by Defendant. The following are sources of
15 such income:

16 a) A disability pay annuity through the U.S. Office of Personnel
17 Management, in the amount of about \$1,315 per month (before deductions) (a
18 copy of the statement is attached as Exhibit 1);

19
20 b) Combat-Related Special Compensation (CRSC) in the amount of
21 \$3,227 per month as of December 31, 2018, paid by the Department of Defense
22 through DFAS (Defense Finance and Accounting Service) (a copy of the
23 statement is attached as Exhibit 2);

24
25 c) Military retired pay through DFAS at about \$135 per month (a copy
26 of the statement is attached as Exhibit 3) ; and

27
28 d) Social Security payments of over \$2,100 per month (before
deductions) ("Your New Benefit Amount" statement is attached as Exhibit 4);

1 The court finds and concludes that the Plaintiff is entitled to an
2 income-withholding order that attaches the maximum amount available from each
3 of these sources, and that the Defendant has the ability to comply with this order.

4 IT IS THEREFORE ORDERED that:

5
6 1. Service of Legal Process. A copy of this order will be served
7 promptly upon the following government agencies.

8 2. Withholding Requirements.

9
10 a. The U.S. Office of Personnel Management, Court Ordered
11 Benefits Branch, P.O. Box 17, Washington, DC 20044, will
12 immediately withhold the maximum amount from the
13 Defendant's disability pay for remittance and disbursement as
14 shown below.

15
16 b. The Defense Finance and Accounting Service, Garnishment
17 Law Directorate-HGA, P.O. Box 998002, Cleveland, OH 44199,
18 pursuant to Para. 630101.C.2, Chapter 63, Vol. 7b of the
19 Department of Defense Financial Management Regulation
20 (DoDFMR), will immediately withhold the maximum amount
21 from the Combat-Related Special Compensation payable to
22 Defendant, and it shall remit and disburse same to the Plaintiff
23 as set out below;

24
25 c. The Defense Finance and Accounting Service, Garnishment
26 Law Directorate-HGA, P.O. Box 998002, Cleveland, OH 44199,
27 will also immediately withhold the maximum amount from the
28 Defendant's military retired pay, remitting and paying same to

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the Plaintiff as set out below;

d. The Social Security Administration, 1500 Woodlawn Drive, Woodlawn, MD 21207, will promptly begin withholding the maximum amount from any payments due to the Defendant, and it will pay and disburse same to Plaintiff as set out below.

3. Disbursement Requirements. The amounts that are withheld by the above government agencies will be promptly paid to the Plaintiff, Caterina Angela Byrd, by direct deposit as set out in the cover letters submitted to each agency.

4. Continuing Obligations. The requirements above for withholding and disbursement set out above shall continue until further order of this court. At such time as the Defendant has become current in his spousal support arrears and his present monthly spousal support payments of \$3,110, he may apply to the court for a modification of this order.

DATED this ____ day of _____ 2020.

DISTRICT COURT JUDGE

Submitted by:
WEBSTER & ASSOCIATES

ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Attorney for Plaintiff

EXHIBIT "1"

~~DEPT OF VETERANS AFFAIRS~~
DEPT OF DEFENSE RETIREMENT DISABILITY

MENU

- 🏠 Dashboard
- 👤 Profile
- 💰 Direct Deposit
- 📄 Chk/Sav Allotment
- 📄 Form 1099R
- 👤 Org Allotments
- 👤 Federal Tax
- 👤 Life Insurance
- 👤 Annuity Statement
- 👤 State Tax
- 👤 View / Print ID Card
- 👤 Overpayment
- 👤 Summary Of Payment
- 👤 Transaction History
- 👤 On Demand Docs

ANNUITY STATEMENT



This statement is for your payment dated 1/2/2019.

Annual Notice and Instructions

Payment Dated:

1/2/2019

ANNUITY FOR PAYMENT DATED: 1/2/2019

Employee Info

Claim Number:

A84544440

Name:

GRADY E BYRD

Address:

PUROK 2 CANGMATING
SIBULAN
NEGROS ORIENTAL 6201
PHILIPPINES

Deductions/Additions

| Description | Amount |
|-----------------------------------|------------|
| Gross Amount of Annuity | \$1,315.00 |
| Basic Life Insurance Premiums | -\$30.88 |
| Collection of Annuity Overpayment | -\$193.15 |
| Collection of Annuity Overpayment | -\$463.13 |
| Net Amount of Annuity | \$627.84 |

Comments

YOUR NEW GROSS MONTHLY ANNUITY REFLECTS A 2.0%

COST-OF-LIVING ADJUSTMENT. BY LAW, THE INCREASE IS

ROUNDED DOWN TO THE NEXT WHOLE DOLLAR.

THE MONTHLY SURVIVOR ANNUITY CURRENTLY PAYABLE IN THE

EVENT OF YOUR DEATH IS \$729 PAYABLE TO CATERIN A.

EXHIBIT "2"

Text Version

CRSC Pay Statement

Help

Main

Exit

Printer Friendly Version

View other pay statements

Dec 15, 2018

Go

CRSC Pay Statement

| | | | |
|--|--------------|--|---------------------------|
| STATEMENT EFFECTIVE DATE DEC 15, 2018 | | PAYMENT DATE DEC 31, 2018 | SSN ***-**-0049 |
| RETIREE'S NAME AND ADDRESS | | HOW TO CONTACT US | |
| PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES GRADY E BYRD PUROK 2 CANGMATING SIBULAN NEGROS ORIENTAL DUMAQUETE PHILIPPINES PAYMENT ADDRESS DIRECT DEPOSIT | | Defense Finance and Accounting Service US Military Retirement Pay 8899 E 56TH Street Indianapolis, IN 46249-1200 COMMERCIAL (216) 522-5955 TOLL FREE 1-800-321-1080 TOLL FREE FAX 1-800-469-6559 myPay https://myPay.dfas.mil | |
| PAYMENT INFORMATION | | ENTITLEMENT INFORMATION | |
| CRSC Amount | 3,227.58 | Retired Pay Before Deductions | 3,363.00 |
| CRSC Debt Deduction | 0.00 | Retired Pay Offset by DVA Compensation | 3,227.58 |
| CRSC Garnishment Deduction | 10.00 | CRSC Debt Balance | 0.00 |
| CRSC Net Pay | 3,217.58 | Branch of Military Service | ARMY |
| | | Garnishment Being Withheld | YES |
| THE DVA OR YOUR BRANCH OF SERVICE PROVIDED THE FOLLOWING | | | |
| CRSC Special Monthly Compensation Code | 00 | | |
| Unemployable | YES | | |
| DVA Disability % | 90 | | |
| Combat Related Disability % | 60 | | |
| Purple Heart % | 00 | | |
| CRSC Start Date | JAN 01, 2004 | | |
| Special Monthly Compensation Start Date | | | |
| REMARKS | | | |
| Please refer to DFAS.mil for information about CRSC and this statement. | | | |



- The Printer Friendly Version of Your CRSC statement is available by clicking the "Printer Friendly" button at the top of this page. It requires Adobe Acrobat Reader. ^{Top} If Acrobat Reader is already added to web browsers. If you don't have Adobe Reader and applicable security policies allow you to install it, it can be downloaded at <http://www.adobe.com/products/acrobat/readermain.html>.
- If Acrobat Reader is not available to you or you prefer HTML, you can print the HTML version of your CRSC Pay statement. For best results, you should reset your margins on your Browser's Print Page Setup. The Top and Bottom margins should be set at ".75" inches, and the Right and Left margins should be set at ".25" inches.
- For Internet Explorer if you see a URL, page number, etc. on your printed copy, use Page Setup to clear out the

EXHIBIT “3”



RAS

Main | Exit

Turn On/Off Hard Copy Annual RAS

View other RAS

DEC 17, 2018

Go

| RETIREE ACCOUNT STATEMENT | | | | | |
|---|----------|--|--|---|--------|
| STATEMENT EFFECTIVE DATE DEC 17, 2018 | | NEW PAY DUE AS OF FEB 01, 2019 | | SSN *****0049 | |
| <p>PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES</p> <p>CSM GRADY E BYRD USA RET PUROK 2 CANGMATING SIBULAN NEGROS ORIENTAL DUMAQUETE PHILIPPINES</p> | | | | <p>DFAS-CL POINTS OF CONTACT</p> <p>Defense Finance and Accounting Service US Military Retirement Pay 8899 E 56TH Street Indianapolis, IN 46249-1200</p> <p>COMMERCIAL (216) 522-5955 TOLL FREE 1-800-321-1080 TOLL FREE FAX 1-800-469-6559</p> <p>myPay https://myPay.dfas.mil</p> | |
| PAY ITEM DESCRIPTION | | | | | |
| ITEM | OLD | NEW | ITEM | OLD | NEW |
| GROSS PAY | 3,363.00 | 3,363.00 | NET PAY | 135.42 | 135.42 |
| VA WAIVER | 3,227.58 | 3,227.58 | | | |
| TAXABLE INCOME | 135.42 | 135.42 | | | |
| PAYMENT ADDRESS | | | YEAR TO DATE SUMMARY (FOR INFORMATION ONLY) | | |
| DIRECT DEPOSIT ROUTING NUMBER - 101108319 ACCT NUMBER ENDING IN - 9025 | | | TAXABLE INCOME: 532.41 FEDERAL INCOME TAX WITHHELD: .00 | | |
| TAXES | | | | | |
| FEDERAL WITHHOLDING STATUS: | | MARRIED 02 | | | |
| TOTAL EXEMPTIONS: | | | | | |
| SURVIVOR BENEFIT PLAN (SBP) COVERAGE | | | | | |

EXHIBIT “4”

Your New Benefit Amount

SOCIAL SECURITY

BENEFICIARY'S NAME: GRADY E BYRD

Your Social Security benefits will increase by 2.0% in 2018 because of a rise in the cost of living.

How Much Will I Get And When?

- Your monthly amount (before deductions) is \$2,176.00
- The amount we deduct for Medicare medical insurance is \$134.00
(If you did not have Medicare as of November 17, 2017, or if someone else pays your premium, we show \$0.00.)
- The amount we deduct for your Medicare prescription drug plan is \$0.00
(We will notify you if the amount changes in 2018. If you did not elect withholding as of November 1, 2017, we show \$0.00.)
- The amount we deduct for U.S. Federal taxes is \$0.00
- The amount we deduct for voluntary U.S. Federal tax withholding is \$0.00
(If you did not elect voluntary tax withholding as of November 17, 2017, we show \$0.00.)
- After we take any other deductions, you will receive \$2,042.00
on or about January 3, 2018.

If you disagree with any of these amounts, you must write to us within 60 days from the date you receive this letter. We would be happy to review the amounts.

If you receive a paper check and want to switch to an electronic payment, please visit the Department of the Treasury's Go Direct website at www.godirect.org online.

What If I Have Questions?

- Visit our website at www.socialsecurity.gov.
- Contact any United States embassy or consulate office when outside the United States. To find one that services the country where you live, visit www.socialsecurity.gov/foreign/foreign.htm.
- If inside the United States, call us toll-free at 1-800-772-1213 (TTY 1-800-325-0778) or visit your nearest office.