

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD

Appellant.

v.

CATERINA ANGELA BYRD

Respondent.

Supreme Court Case No. 80548

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**APPELLANT'S REPLY BRIEF**

Appeal from the Honorable Judge Rhonda K. Forsberg's Order

Filed January 23, 2020.

Submitted by:

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### **RULE 26.1 DISCLOSURE**

Mills & Anderson represents Grady Edward Byrd. There are no corporations involved in this case that should be disclosed pursuant to this rule. Daniel W. Anderson, Esq., and Byron L. Mills, Esq. have appeared or may appear in this case on appeal. Anita A. Webster, Esq., and Jeanne F. Lambersten, Esq. appeared on behalf of Respondent Caterina Angela Byrd at the district court level.

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES .....	iv
I. ARGUMENT IN REPLY.....	1
1. This Court Should Disregard Facts Alleged by Caterina that are Unsupported by the Record.....	1
II. CERTIFICATE OF COMPLIANCE .....	6

## **I. ARGUMENT IN REPLY**

### **1. This Court Should Disregard Facts Alleged by Caterina that are Unsupported by the Record.**

NRAP 28(e) states the following:

#### **(e) References in Briefs to the Record.**

(1) Except as provided in Rule 28(e)(3), every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

Caterina makes several statements of fact in her brief that are either not cited to the record or are significant distortion of what the record reflects. While most of these statements have marginal relevance to the issues framed before the Court, several of Caterina's claims warrant correction.

Caterina claims on page 13 of her brief that Grady told her the Decree could not require alimony and had to contain an alimony waiver or he would not qualify for a loan to pay his debts. Caterina fails to cite to the record where this information appears. None of the negotiation emails between the parties show that Grady told Caterina he could not put alimony in the Decree. On RA000496, Grady states, "If I put everything in writing that you want I will never be able to get a loan in my own name." This statement by Grady is in reference to Caterina request that the Decree

state that Grady would pay her \$3,000 per month.<sup>1</sup> Grady did not say that he had to include an alimony waiver. Even if Caterina's claim was true, it has no bearing on the issues on appeal and is only presented to prejudice Grady. Additionally, the statement should not be considered at all given the district court's error in admitting the emails in violation of the parol evidence rule as detailed in Grady's opening brief.

Caterina claims on page 20 that Grady hired a legal staff to prepare the Joint Petition and Decree of Divorce, which she cites to RA000489-RA000498. This is misleading at best. The record does not show that Grady hired a legal staff for this purpose, and in the emails Caterina cites there is clearly language that shows Grady had no legal staff drafting for him at the time the parties were negotiating the terms of the Decree. In RA000491, Grady wrote, "You sign or I will hire a lawyer and take you to court." In RA000496, Grady wrote, "If you do not sign I will only pay you what I owe you and I will hire a lawyer to file the papers in court." Grady only had an online firm finalize the divorce packet after the parties had already spent several months negotiating the terms of the Decree.<sup>2</sup> Caterina is embellishing by stating that Grady had a legal staff prepare the Joint Petition and Decree of Divorce. There was minimal, if any, involvement of any legal professionals in the drafting of the terms of the Decree at issue in this case.

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<sup>1</sup> RA000497.

<sup>2</sup> RA000493.

Caterina claims on page 21 that she did not have a voice as to the terms of the Decree of Divorce because Grady refused to let her have a voice. This claim is directly contradicted by the emails provided in RA000479-RA000503, which show the parties' back and forth negotiation on the terms of the Decree over several months. Caterina clearly knew what she wanted, and she made her requests to Grady. Grady even told Caterina to hire an attorney if she wanted and Caterina stated that she had contacted an attorney on March 26, 2014.<sup>3</sup> Caterina was aware that she could have acquired legal representation.

Caterina claims on page 21 that Grady agrees that the mortgage assistance provision is ambiguous because the statement he drafted "this is not required" contradicts Grady's obligation to pay Caterina until certain conditions are met. While the statement "this is not required" contradicts Grady's obligation to continue to pay until certain conditions are met, this contradiction does not create any ambiguity as to the waiver of alimony, which is expressly set forth three separate times in the Decree. While Caterina claims that the home mortgage provision cannot be voluntary and continue until certain conditions are met, she does not cite any law to support her conclusion that having conditions makes the mortgage assistance alimony.

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<sup>3</sup> RA000483.

Caterina claims on page 22 that, in his previous pleadings, Grady never made the argument that his mortgage assistance payments to Caterina were a property settlement. Caterina argues that the issue should not be considered on appeal. However, Grady has consistently pointed to Judge R. Forsberg's orders filed on June 26, 2019, which clearly state in pertinent part:

THE COURT FURTHER FINDS that the monthly payment to Caterina in the amount of \$1,500 was a property distribution, not alimony.<sup>4</sup>

Grady has been arguing that he agrees with Judge R. Forsberg's orders. As such, it is untrue that he never made the argument that his mortgage assistance payments to Caterina were a property settlement.

On page 23 of her brief, Caterina argues that Grady falsely claims that his waiver of military retired pay for disability benefits did not occur until late 2014 when it actually occurred in 2011. Assuming *arguendo* that Caterina is correct, her claim works in Grady's favor because he was already receiving disability pay at the time of the divorce. This means that Caterina was never entitled to a portion of that pay in the first place. This shows that Grady did not reduce his Army Retired Pay by converting it to disability after the divorce to avoid paying Caterina her share.

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<sup>4</sup> AA355 ln 13-14.

Rather, Caterina was only entitled to a portion of the Army Retired Pay that Grady was receiving at the time the Decree was entered, which was a nominal amount.

Dated this 9<sup>th</sup> day of September 2020

Respectfully submitted by  
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## **II. CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.
2. I certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it is 5 pages in length.
3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable



Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

4. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9<sup>th</sup> day of September 2020

Respectfully submitted by  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9<sup>th</sup> day of September, 2020, I caused to be served the instant “APPELLANT’S REPLY BRIEF” to all interested parties as follows:

**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](mailto:anitawebster@embarqmail.com)

\_\_\_\_\_  
Tiffany Stewart an employee of the  
MILLS & ANDERSON