

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD, Appellant, vs. CATERINA ANGELA BYRD, Respondent.	Supreme Court No. 81199 District Court Case No. D577701 EXHIBITS TO RESPONDENT'S RESPONSE TO DOCKETING STATEMENT
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Electronically Filed
JUN 25 2020 03:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1. (Appellant's)Defendant's Ex Parte Motion for Continuance filed 12/13/18;
2. Notice of Entry of Order from the November 27, 2018 Hearing filed 12/17/18;
3. Order Granting Continuance filed 12/18/18;
4. (Respondent's) Plaintiff's Opposition to (Appellant's) Defendant's Motion for Reconsideration and Countermotion, filed 4/23/19;
5. (Respondent's) Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing, filed 9/30/19; and
6. (Respondent's) Plaintiff's Reply to (Appellant's) Defendant's Opposition to (Respondent's) Plaintiff's Ex Parte Application for the Income Withholding Order, filed 4/10/20.

WEBSTER & ASSOCIATES

/s/ Jeanne F. Lambertsen

ANITA A. WEBSTER, ESQ.

Nevada Bar No. 1221

JEANNE F. LAMBERTSEN, ESQ.

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6882 Edna Ave.

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jlambertsen@embarqmail.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify, under penalty of perjury, that I am an employee of Webster & Associates and that on the 25th day of June, 2020, I caused to be served the foregoing document by way of Notice of Electronic Filing to the following:

Daniel W. Anderson
Mills & Anderson
703 S. 8th Street
Las Vegas, NV 89101
Counsel for Appellant, Grady Edward Byrd.

/s/ Lillian Brand
An employee of Webster & Associates

EXHIBIT "1"

Heather S. Lemin
CLERK OF THE COURT

EXMT

Name: GRADY EDWARD BYRD

Address: 5330 E. CRAIG RD.

LAS VEGAS NV 89115

Telephone: 7029184712

Email Address: CBSMAIL2006@YAHOO.COM

In Proper Person

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CATERINA ANGELA BYRD

Plaintiff,

vs.

GRADY EDWARD BYRD

Defendant.

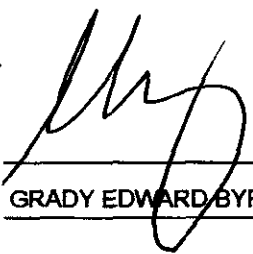
CASE NO.: D-18-577701-Z

DEPT: G

EX PARTE MOTION FOR CONTINUANCE

(Your name) GRADY EDWARD BYRD, the (☒ check one) ☐ Plaintiff
/ ☒ Defendant in Proper Person, moves this Honorable Court for an Order granting a
continuance. This motion is brought in good faith and is based on the attached Points and
Authorities, Declaration of Movant, the papers and pleadings on file herein, and such further
evidence and argument that may be requested.

DATED 7 DECEMBER, 2018.

Submitted By: (your signature) 

(print your name) GRADY EDWARD BYRD

DEC 10 2018
Peggy

POINTS AND AUTHORITIES

A party may request a continuance of a hearing through an ex parte motion. EDCR 5.514(c). This ex parte motion seeks to continue a hearing on the court's calendar.

FACTS AND ARGUMENT

1. **Current Court Date.** There is a court date set for (*date of hearing*) 18 DECEMBER 2018
at (*time of hearing*) 3:30 ☐ am / ☒ pm.

2. **Prior Requests.** (☒ *check one*)

☒ This is my first request to change the court date.

☐ This is my (*insert number, i.e., "2nd" "3rd" etc.*) _____ request to change the court date.

3. **Attempt to Resolve.** The other party will not agree to continue the hearing date because (*explain why the other party will not agree to change the court date*):

The plaintiff wants me to provide money, information, and documents that I either do not agree with or I do not have.

4. **Reason for Continuance.** I would like to change the court date because (*explain why you want to change the court date*):

1. Attorney John R. Gordon has agreed to take my case. However due to the short time to respond his fees are more than I can afford. An extension will allow me to save enough money to obtain legal representation.

2. I cannot produce the court ordered documents in the time allotted. I am contacting the appropriate agencies and I await their response.

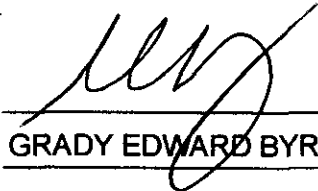
3. Plaintiff has had more than 4 years to prepare for this case. I am being given days to respond.

I am going to defend myself against every accusation in plaintiff's motion. I have no doubt I will prevail because I have kept records that will prove my defense. I live in the Philippines where I was at recovering from surgery I had in September 2018. I have spent thousands of dollars returning to and residing in Las Vegas to defend myself against these accusations. I need a short period of time to save my money so I can obtain legal representation, obtain documents and evidence, continue to heal from surgery, and prepare for court.

5. **New Date Requested.** If granted, I ask the court to reschedule the court date for *(give a month/week/date that you suggest for the new court date)* February 2019.

I respectfully ask the Court to continue the court date as requested above, and any other relief the Court finds appropriate.

DATED 7 December, 2018.

Submitted By: *(your signature)* 

(print your name) GRADY EDWARD BYRD

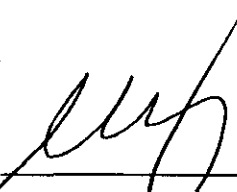
DECLARATION IN SUPPORT OF MOTION

I declare, under penalty of perjury:

- a. I have read the foregoing motion, and the factual averments it contains 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 referenced filing are incorporated here as if set forth in full.
- b. Additional facts to support my requests include: *(write anything else that the judge should know to make a decision about your case, or write "N/A" if there is nothing else to add)*
N/A
- c. Any Exhibit(s) in support of this Motion will be filed separately in an Exhibit Appendix.

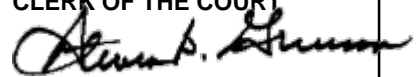
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED 7 DECEMBER, 2018.

Submitted By: *(your signature)* 

(print your name) GRADY EDWARD BYRD

EXHIBIT “2”



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 Unbundled Attorney for Plaintiff

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 FROM
THE NOVEMBER 27, 2018 HEARING**

19 GRADY EDWARD BYRD)

20 Defendant.)

21 PLEASE TAKE NOTICE that an Order from the November 27, 2018
22 Hearing was entered in the above-entitled action on the 17th day of December
23 2018, a copy of which is attached.

24 Dated this 17th day of December 2018.

25 **WEBSTER & ASSOCIATES**

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

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 17th day of December, 2018, I caused the above and foregoing document to be served as follows:

☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f) NRCP (b)(2)(D) and Administrative Order 14-2 Captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court." by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☒ [X] by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ [] pursuant to EDCR 7.26 to be sent via facsimile, by duly executed consent for service by electronic means;

☐ [] by hand-delivery with signed Receipt of Copy.

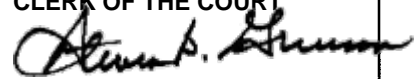
To the attorney(s)/person(s) listed below at the address, email address, and/or facsimile number indicated below:

Grady E. Byrd
5330 E. Craig Rd.
Las Vegas, NV 89115

E-mail: cbsmail2006@yahoo.com



An employee of Webster & Associates



ORDR
WEBSTER & ASSOCIATES
ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
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e-mail: anitawebster@embarqmail.com
e-mail: jlambertsen@embarqmail.com
Attorney for Plaintiff, unbundled

DISTRICT COURT
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff,

v.

GRADY EDWARD BYRD

Defendant.

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

ORDER FROM THE NOVEMBER
27, 2018 HEARING

This matter having come before the court on the 27th day of November, 2018, for Plaintiff's Motion to Enforce the Decree of Divorce, Plaintiff, CATERINA ANGELA BYRD (hereinafter "Plaintiff"), by and through her unbundled attorney, JEANNE F. LAMBERTSEN, ESQ., of the law firm of WEBSTER & ASSOCIATES and Defendant, GRADY EDWARD BYRD (hereinafter "Defendant"), not appearing, the Court having heard the argument of counsel, finds and orders the following:

COURT NOTES that for purposes of the Minute Order, Petitioner Caterina Byrd, will be referred to as the Plaintiff and Grady Byrd as the Defendant.

1 The Court heard the matters on calendar today.

2 **COURT FURTHER NOTED** that there has been no response from
3 Defendant. Attorney Lambertsen advised this matter was filed in Churchill
4 County, even though the parties live in Clark County, and advised the Court that
5 this is a post divorce action. Court heard the matters on calendar. Attorney
6 Lambertsen requested temporary Orders.
7

8 **COURT FURTHER NOTED** that the exhibits filed with the Motion were
9 stricken.

10 **IT IS HEREBY ORDERED** that for December 18, 2018 hearing, the
11 Defendant shall provide all documents that support all aspects of his version of
12 his income, including but not limited to, his monthly statements from the following;
13 Department of Finance and Accounting Services statement, the Department of
14 Veterans Affairs statement, Social Security Administration statement, and the
15 Federal Employee Retirement System statement. (VT 12:02:38, 12:06:12 and
16 12:06:39). In addition, statements from the assets listed on page 2, line 25 - 27
17 of the Decree of Divorce which are the U.S. Retired Military health care, the long
18 term health insurance, VYSTAR Credit Union Accidental Death Insurance, and
19 Veteran's Group Life Insurance, and the Department of Finance and Accounting
20 Services pension monthly statement. (VT 12:02:38, 12:06:12 and 12:06:39).
21

22 **IT IS FURTHER ORDERED** that Request for Attorney Fees for today's
23 hearing is reserved until time of the December 28, 2018, hearing.
24

25 **IT IS FURTHER ORDERED** that this matter is continued to December 18,
26 2018, at 3:30 p.m. in Department G.
27
28

1 **IT IS FURTHER ORDERED** that the unbundled Order is filed in open court.

2 **IT IS FURTHER ORDERED** that Attorney Lambertsen shall prepare an
3 appropriate Order, obtain approval from opposing Counsel, and submit it to the
4 Court pursuant to Rule 7.21 and Rule 7.24.
5

6 **IT IS FURTHER ORDERED** that pursuant to Rule 7.21, the counsel
7 obtaining any order, judgment or decree must furnish the form of the same to the
8 clerk or judge in charge of the court within 10 days after counsel is notified of the
9 ruling, unless additional time is allowed by the court.
10

11 **IT IS FURTHER ORDERED** that pursuant to Rule 7.24, any order,
12 judgment or decree which has been signed by a judge must be filed with the clerk
13 of the court promptly. No attorney may withhold or delay the filing of any such
14 order, judgment or decree for any reason, including the nonpayment of attorneys
15 fees. If there is a conflict regarding the wording of the Minute Order, the video
16 record prevails as the official record.
17

18 NRS 3.380 (6) In civil and criminal cases when the court has ordered the
19 use of such sound recording equipment, any party to the action, at the party's
20 own expense, may provide a certified court reporter to make a record of and
21 transcribe all the matters of the proceeding. In such a case, the record prepared
22 by sound recording is the official record of the proceedings, unless it fails or is
23 incomplete because of equipment or operational failure, in which case the record
prepared by the certified court reporter shall be deemed, for all purposes, the
official record of the proceedings. [emphasis added] [7:52:1907; added 1949,
506; 1943 NCL 8460.01] (NRS A 1995, 1594; 2007, 1036; 2011, 673).e

24 **IT IS FURTHER ORDERED** that the Preparation Order is filed in open
25 court.

26 ///

27 ///


28

1 IT IS FURTHER ORDERED that there will be an in chamber review set for
2 December 26, 2018 at 2:00 a.m., regarding the Order from today's hearing.

3
4 DATED this 13 day of Dec 2018.

5
6 
7 DISTRICT JUDGE
8 C. DIANNE STEEL
9
10 

11 Submitted by:
12 WEBSTER & ASSOCIATES

13 
14 ANITA A. WEBSTER, ESQ.

15 Nevada Bar No. 1221

16 JEANNE F. LAMBERTSEN, ESQ.

17 Nevada Bar No. 9460

18 6882 Edna Avenue

19 Las Vegas, NV 89146

20 702-562-2300

21 Attorney for Plaintiff, unbundled
22
23
24
25
26
27
28

EXHIBIT “3”

Heather S. Hemin
CLERK OF THE COURT

ORDR

Name: GRADY EDWARD BYRD

Address: 5330 E. CRAIG RD.

LAS VEGAS, NV 89115

Telephone: 702 918 4712

Email Address: CBSMAIL2006@YAHOO.COM

In Proper Person

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CATERINA ANGELA BYRD

Plaintiff,

vs.

GRADY EDWARD BYRD

Defendant.

CASE NO.: D-18-577701-Z

DEPT: G

ORDER GRANTING CONTINUANCE

The Court having considered the ex parte motion for a continuance and good cause appearing,

IT IS HEREBY ORDERED that the hearing presently scheduled for (*current court date*) 18 DECEMBER 2018 at (time) 3:30 ☐ am / ☒ pm SHALL BE CONTINUED to (*judge will fill in new court date*) February 5th at (time) 9:30 ☒ am / ☐ pm.

The moving party shall serve a copy of this order on the opposing party / opposing counsel and file a Notice of Entry of Order.

DATED this 14 day of Dec, 2018.

Dianne Spaul
DISTRICT COURT JUDGE

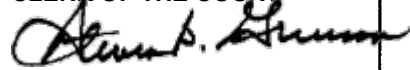
Respectfully Submitted:

(Your signature)

(Your name)

Grady Edward Byrd
GRADY EDWARD BYRD

EXHIBIT “4”



1 **OPPC**
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

DISTRICT COURT
CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD)	CASE NO.: D-18-577701-Z
)	DEPT NO.: G
12 Plaintiff,)	
)	Hearing Date: May 22, 2019
13 v.)	Hearing Time: 9:00 a.m.
)	
14 GRADY EDWARD BYRD)	Hearing Requested: Yes
)	
15 Defendant.)	
16)	

**Plaintiff's Opposition to Defendant's Motion for
Reconsideration and Countermotion**

19 COMES NOW Plaintiff, CATERINA ANGELA BYRD (hereafter "Caterina"),
20 by and through her attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F.
21 LAMBERTSEN, ESQ., of the law offices of WEBSTER & ASSOCIATES, in an
22 Unbundled Capacity, and does hereby file *Plaintiff's Opposition to Defendant's*
23 *Motion for Reconsideration and Countermotion*.¹ This Opposition and
24 Countermotion is made and based upon the pleadings and papers on file herein,
25
26
27

28 ¹This constitutes our request to file a motion, opposition or reply in excess of 30
pages pursuant to EDCR 5.503(4) due to the number of issues in this matter.

the following Points and Authorities and upon such oral argument as the Court may allow at the time of the hearing.

Caterina respectfully requests the following relief:

1. Deny Grady's Motion for Reconsideration in its entirety;
2. That Grady continue the \$1,500.00 per month payment to Caterina to assist her with her home mortgage because this is spousal support;
3. That Grady continue the \$1,500.00 per month payment to Caterina to satisfy his contractual obligations to Caterina for Caterina's interest in Grady's military income;
4. For an Order to Show Cause why Grady Should Not Be Held In Contempt Of Court for Failing to Comply with the Court's order from the January 23, 2019 Hearing, filed on or about April 5, 2019, and pay to Caterina \$4,500.00 by February 15, 2019, \$4,500.00 by March 15, 2019, and \$4,500.00 by April 15, 2019;
5. For an Order to Show Cause why Grady Should Not Be Held In Contempt Of Court for unilaterally reducing Caterina from 100% Beneficiary of the Veteran's Group Life Insurance awarded to her in the divorce to 89% and naming his new 25 year old wife an 11% beneficiary;
6. For An Order that Grady Voluntarily Designate Caterina the Beneficiary of his Military Survivor Benefit Plan (hereafter "SBP"), which was awarded to Caterina in the divorce;
7. That Grady name Caterina 100% Beneficiary of the VyStar \$1,000.00 free life insurance on Grady's life that was awarded to Caterina in the divorce;
8. For Attorney's Fees and Costs; and
9. For any further orders that the court deems just and equitable under the premises.

Dated: April 23, 2019.

WEBSTER & ASSOCIATES

By: 

JEANNE LAMBERTSEN, ESQ.

Attorneys for Plaintiff, Unbundled

POINTS AND AUTHORITIES

I. INTRODUCTION

The Court's findings and orders filed on April 8, 2019, are based on the totality of the papers and pleadings on file, oral argument, Grady's sworn testimony, and applicable law. The Court's findings and orders are just and proper and should remain. Grady's request that no alimony is due to Caterina should be denied. His request that he does not have to follow the principles of contract law and continue the other \$1,500.00 payments to Caterina for his military pay, should also be denied. He admitted he had been giving Caterina \$3,000.00 per month because it is the right thing to do.² Grady must continue to do the right thing.

II. OPPOSITION

The parties were married for 31 years, divorcing on June 5, 2014, by way of a Joint Petition that Grady arranged to have prepared. The last time they resided together was in 2008 in Las Vegas, Nevada. Caterina was about 19 years old when the parties met and married shortly thereafter. During marriage, Grady was in the U. S. Army, and after retiring from the U.S. Army in 1999 as a CSM E-9, he became a high-ranking Department of Defense GS-14, in charge of 3 military bases. Grady retired from the Department of Defense and earns more than \$116,000.00 annually. Grady is 63, lives in the Phillippines, married a 25-year old girl, and is trying to eliminate his financial obligations to Caterina.

Caterina has a high school education. English is her 2nd language. Grady

² Exhibit "1".

1 took care of all financial matters, especially all things military. During the
2 marriage, Caterina supported Grady as he earned two Masters Degrees, a "War
3 College" degree, a FEMA certification education and furthered his career. She
4 moved approximately 16 times as a military wife. She only worked part-time
5 during the parties' 31 years of marriage. The most she ever earned was
6 \$17,084.00 in 1989. The last time she worked was in 2006 as a nail manicurist.
7 The military base in Germany closed and they moved again. The money that she
8 earned barely covered her supplies and leased space. She couldn't hold a job
9 and earn a retirement on her own. Grady reassured her that he was advancing
10 his career so he could take care of her. She relies on the \$3,000.00 per month
11 that Grady pays her. After his death, she will rely on the military SBP and Life
12 Insurance that Grady gave her in the divorce. She is 55 years old, single, and
13 remains in the marital residence. Her expenses are more than \$3,745 a month.
14 Grady left Caterina completely destitute when, on September 1, 2018, he
15 stopped paying her \$3,000.00 per month in retaliation for Caterina asking him
16 for copies of the life insurances and benefits he gave her in the decree. She had
17 no choice but to seek the Court's assistance.

18 *"Grady E. Byrd will continue to pay Caterina A. Byrd 1500 dollars extra a*
19 *month to assist with her home mortgage. If her financial situation changes*
20 *or if the home is sold or paid off this payment may cease."*³

21 The plain language that Grady placed in the joint petition for summary
22 decree of divorce clearly demonstrates that Grady was already making
23 \$1,500.00 monthly payments to Caterina at the time of divorce (i.e. "continue to
24
25
26
27

28 ³ Joint petition attached to the decree of divorce filed 06-05-14, pg 4. Ln 3-5.

pay”) and that the \$1,500.00 a month is an ongoing financial obligation because its termination is conditional upon the occurrence of specific subsequent events. The specific subsequent events are that Caterina’s financial situation changes or the home is sold or the home is paid off. Grady cannot cease the payments unless he proves a condition for cessation of the payments occurred. None of the cessation-triggering events occurred. The Court correctly found that Grady had no right to unilaterally stop the payments. The next sentence in the decree is “*This is not an alimony payment and is not required.*” The Court correctly found that the \$1,500.00 per month that Grady pays Caterina *is alimony* because it is financial assistance to his former wife consistent with applicable law defining what spousal support is and the purpose of spousal support. Grady arranged for all the financing of the home, threatened Caterina to not speak to the loan officers⁴ and then 6 months after escrow closed, he announced he wanted a divorce. The mortgage was about \$1,933.07 per month.⁵ It was extremely important to Caterina that she receive assistance with her home mortgage. She never would have signed the decree otherwise. Any language in the decree that the parties waived alimony correctly did not control the Court’s decision when compared to the specific and unique language that Grady placed in the decree. A waiver requires a knowing and voluntary relinquishment of a right which Caterina did not do. Additionally, Grady was the drafter of the joint petition and any ambiguity must be held against the drafter. His e-mails to

⁴ Exhibit “2”.

⁵ Exhibit “3”, (also previously submitted as Exhibit “21” on 01/15/19).

Caterina around the time of divorce include: "I'm sending you the papers. You sign or I will hire a lawyer and take you to court,"⁶ and "This is your last warning, take the deal I'm offering or you can ask a lawyer to try and get me to put what you want in writing. I gurantee [sic] you your lawyer will tell you that you should have taken what I was offering. Last chance."⁷ The Court orders regarding Grady's ongoing obligation to pay Caterina alimony are just and proper and should not be reconsidered. Grady's motion should be denied.

*"Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States Army Retired Pay as long as he lives."*⁸

Nothing in the 2017 U.S. Supreme Court case of Howell prohibits the principals of contract law described in Shelton⁹ from applying. *At the time of divorce*, Grady admits that he advised Caterina that "My retired pay is 3017 a month after they deduct the payment for SBP [Survivor Benefit Plan]. You are entitled to half of that which is 1508. You are not entitled to any more money. I give you 3000 a month because I think it is the right thing to do. If I was only going to give you 1500, I would not be giving you 3000 all these years."¹⁰ Thus, Grady informed Caterina that she was entitled to the amount of \$1,508.00 from his retirement pay, he paid her a total of \$3,000.00 each month, of which \$1,500.00 was for assistance with her home mortgage. She relied on these

⁶ Exhibit "1".

⁷ Exhibit "1".

⁸ Joint Petition decree of divorce filed 06-05-14, attachment, pg 3. Ln 24-25.

⁹Shelton v. Shelton 78, P.3d 507, 119 Nev. 492 (2003).

¹⁰ Exhibit "2" and Exhibit "1".

1 funds to pay her bills and when he unilaterally terminated the payments on
2 September 1, 2018, he left her destitute. Grady can continue to pay Caterina
3 \$3,000.00 per month when he testified that he earns more than \$116,000.00
4 annually.¹¹ Grady then argues that *in September 2018, his army retire pay*
5 *changed* to disability and because he doesn't have to give her any of his
6 disability money, he stopped paying Caterina.¹² Now, *in his Motion for*
7 *Reconsideration*, Grady claims that he already waived his army retirement pay
8 to receive it as disability pay at the time the decree was entered.¹³ This new
9 information actually fortifies the Court's order that Grady must continue the
10 \$1,500.00 payments under contract principles. By claiming that his army retire
11 pay was only \$128.40 around the time of divorce, he misled Caterina. The
12 \$3,017.00 pay that Grady said that he received each month at the time of
13 divorce was not retired pay. The \$3,017 that Grady received each month was
14 disability pay. Contract principal analysis would include: If his only dividable
15 retired pay at the time of divorce is \$128.40¹⁴ and she gets 50% (\$64.20), then
16 why was Grady paying Caterina a total of \$3,000.00 per month for over 4 years?
17 Because \$1,500.00 is what he agreed to pay Caterina, she accepted, he
18 performed and he has wrongfully breached the contract. The Court correctly
19 found that under contract principles of law that Grady must continue these
20
21
22
23

24 ¹¹Grady's FDF filed 10-02-19 and testimony at 01-23-19 hearing, see order filed 04-
25 05-19, pg. 2 ln 19.

26 ¹² Grady's Reply to Opposition and Countermotion filed 12-28-18, pg. 7, ln 131-132.

27 ¹³Defendant's Motion for Reconsideration, page 11, line 2.

28 ¹⁴Defendant's Exhibit "A", page number DEF 106.

\$1,500.00 per month payments and that he wrongfully terminated the payments in September 2018. Nothing in the 2017 U.S. Supreme Court case of Howell v. Howell prohibits a state court from enforcing an agreement by ordering a service member, who unilaterally stops making payments the service member was legally obligated to make, to resume those payments and pay arrearages. Lesh v. Lesh, 809 S.E. 2d 890 (N.C.Appl. 2018). The Court did not order Grady to indemnify Caterina. The Court did not divide disability pay. The Court did not assign disability benefits. The Court did not arbitrarily order Grady to pay \$1,500.00 per month to Caterina. Rather, the Court ordered Grady to resume monthly payments to Caterina that he was already making. There was no error of law. Grady's Motion for Reconsideration should be denied.

III. ARGUMENT

No Error in the Court order that Grady wrongfully terminated the \$1,500.00 monthly payments to Caterina to assist with her home mortgage

Grady wrongfully continues to assert the reason that he stopped the \$1,500.00 payment to Caterina is that he can stop it any time that he wants to because it is not required. The Court correctly found that the Joint Petition for a Summary Decree of Divorce clearly and unambiguously states that he is required to pay it unless Caterina's financial condition changes or if her home is sold or paid off. Grady never addresses these precedents that must occur before assistance can be terminated.

If contract language is clear, it will be enforced as written. Buzz Stew, LLC v. City of N. Las Vegas, 131 Nev., Adv. Op. 1, 341 P.3d 646, 650 (2015).

1 Caterina's financial condition has not changed. She has \$3,745.13 in
2 monthly expenses.¹⁵ She provided Grady receipts showing that she now must
3 pay \$102.97 per month for health insurance¹⁶ (she previously was covered for
4 free under military TriCare), and that she now must pay \$128.01 for Federal
5 Long Term Care Insurance (Grady previously paid it).¹⁷ Caterina's largest
6 expense is the home mortgage of \$1,933.07 per month.¹⁸ Grady is fully aware
7 that the home has not been sold because he is listed on the mortgage statement
8 and can view the statement anytime he wants. When Caterina asked for the
9 Court's assistance that Grady cease changing the mailing address for the
10 mortgage statements from her home to his address because she was worried
11 about missing a payment, the Court issued orders allowing Grady continued
12 access to view the mortgage statement:
13
14

15 **IT IS FURTHER ORDERED** that parties shall not change any information
16 relating to the mortgage account for the Plaintiff's residence and both
17 parties shall have online access to the mortgage statements, and neither
18 party shall interfere with the other parties' ability to have on-line access to
the mortgage account; user names and passwords shall not be changed
by either party. (VT 11:21:07).

19 The court correctly found that Grady cannot unilaterally terminate the \$1,500.00
20 payments to Caterina to assist with her home mortgage. Grady wrongfully
21 terminated these payments September 2018 and owed Caterina 5 months of
22 arrears which was \$7,500.00. He was ordered to begin resuming the payments
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25 ¹⁵ Caterina's FDF filed 10-18-18.

26 ¹⁶ Exhibit "4" (also previously submitted as Exhibit "16" on 01/15/19)

27 ¹⁷ Exhibit "5"

28 ¹⁸ Exhibit "3"

1 on February 15, 2019, which he failed to do. As discussed below, Caterina is
2 seeking an order to show cause why he should not be held in contempt of court.

3 **No Error in the Court order that the \$1,500.00 payments from Grady to**
4 **Caterina to assist with her home mortgage is alimony**

5 The Court did not err in finding that Grady's \$1,500.00 monthly payments
6 to Caterina to assist with her home mortgage are deemed alimony. Lake offers
7 guidance in defining alimony and Shydler explains that alimony is an economic
8 right that arises out of the marital relationship and provides the dependent
9 spouse with a level of support and standard of living similar to the quality of
10 economic life that existed during the marriage. Lake v. Bender, 18 Nev. 361, 4
11 Pac. 711, 7 Pac. 74 (1884), and Shydler v. Shydler, 114 Nev. 192, 954 P.2d 37
12 (1998). Under Lake and Shydler, an analysis, Grady's \$1,500.00 monthly
13 payments to Caterina to assist with her home mortgage is alimony. The monthly
14 assistance with mortgage payments is even consistent with the federal definition
15 of alimony 42 U.S.C. §659 (2)(i)(3):
16
17

18 The term "alimony", when used in reference to the legal obligations
19 of an individual to provide the same, means periodic payments of
20 funds for the support and maintenance of the spouse (or former
21 spouse) of the individual, and (subject to and in accordance with
22 State law) includes separate maintenance, alimony pendente lite,
23 maintenance, and spousal support, and includes attorney's fees,
24 interest, and court costs when and to the extent that the same are
expressly made recoverable as such pursuant to a decree, order, or
judgment issued in accordance with applicable State law by a court
of competent jurisdiction."

25 The Nevada Supreme Court held in Lake, that "support" is a word of broad
26 signification. It includes everything, necessities and luxuries, which the wife in
27
28

1 like circumstances is entitled to have and enjoy. In determining the amount
2 necessary for such support, all of the circumstances surrounding the parties,
3 including the financial condition of the husband and the requirements of the wife,
4 should be considered. Lake v. Bender, 18 Nev. 361, 4 Pac. 711, 7 Pac. 74
5 (1884). Paying the mortgage on a home is a necessity. The Nevada Supreme
6 Court held in Shydler, that the two primary purposes of spousal support are to
7 narrow any large gaps between the post-divorce earning capacities of the
8 spouses and to allow the recipient spouse to live as nearly as possible to the
9 station in life enjoyed before the divorce. Shydler v. Shydler, 114 Nev. 192, 954
10 P.2d 37 (1998).
11
12

13 The papers and pleadings that the Court reviewed for the January 23,
14 2019, hearing revealed that Caterina and Grady were married for nearly twice
15 the length of time as the parties in Shydler, hence, they had a marriage of
16 significant length. Like the husband in Shydler, Grady earns more than
17 \$100,000 per year. Grady testified to annual earnings around \$116,000.00.
18 Caterina's earning capacity was only \$17,084 in 1989¹⁹ which is far less than
19 the wife in Shydler. Grady admits that he paid Caterina \$36,000.00 per year.
20 This is only about 30% of Grady's income.
21
22

23 Grady wrongfully claims that the Lake case stands only for the proposition
24 that the trial court has legal discretion regarding the division of property, and
25 erroneously claims that the Shydler case did nothing more than find that the trial
26

27 ¹⁹ Exhibit "6" (also previously submitted as Exhibit "17" on 01/15/19)
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1 court abused its discretion in denying the wife alimony. Grady cannot cherry-
2 pick the Nevada Supreme Court's findings and rulings in Lake and Shydler.
3 These cases stand for more than what Grady describes. The definition and
4 purpose of spousal support discussed in Lake and Shydler has not been
5 overruled and is relevant to the case at bar.²⁰ Grady also complains that Lake
6 was decided over 100 years ago, as if this somehow reduces the legal authority
7 of the case. The fact that Lake was decided over 100 years ago actually fortifies
8 the Court's order that his assistance with the home mortgage is alimony. This is
9 because Lake demonstrates that alimony is not a new concept to Nevada law,
10 rather, it is a long-standing law and Lake has been cited as authority since it was
11 decided.
12

13
14 [t]he amount which may be awarded in divorce action to the wife from the
15 husband's separate property for her support and that of the children is left
16 to the legal discretion of the trial court and its award should not be disturbed
17 upon appeal in the absence of abuse of discretion. Lake v. Bender, 18 Nev.
18 361, 4 Pac. 711, 7 Pac. 74 (1884), cited, Powell v. Campbell, 20 Nev. 232,
19 at 238, 20 Pac. 156 (1988), Phillips v. Phillips, 42 Nev. 460, at 466, 180
20 Pac. 907 (1919), Greinstein v. Greinstein, 44 Nev. 174, at 178, 191 Pac.
21 1082 (1920), Foy v. Estate of Smith, 58 Nev. 371, at 376, 81 P.2d 1065
22 (1938), Herzog v. Herzog, 69 Nev. 286, at 290, 249 P.2d 533 (1952).

23
24 Gardner v. Gardner, 881 P.2d 645, 110 Nev. 1053 (Nev., 1994):

25
26 " In Heim we stated that in **deciding matters concerning alimony, the**
27 **judge must "form a judgment as to what is equitable and just, having**

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29
30 ²⁰ In Johnson v. Johnson, 89 Nev. 244, 247, 510 P.2d 625, 626-627 (1973), the
31 Nevada Supreme Court departed from the all-or-nothing approach to the division of
32 separate and community property of Lake v. Bender, 18 Nev. 361, 7P.74 (1884) and
33 announced the rule that the increase in the value of separate property during marriage
34 should be apportioned between the separate property of the owner and the community
35 property of the spouses. The description of spousal support in Lake was not altered.

1 regard to the respective merits of the parties and to the condition in
2 which they will be left by the divorce." Id. at 609, 763 P.2d at 680.
3 Moreover, we noted that the " 'Buchanan guidelines' (Buchanan v.
4 Buchanan, 90 Nev. 209, 215, 523 P.2d 1, 5 (1974)) are simply an
5 inexhaustive list of such common sense considerations as the financial
6 condition of the parties (property, income, relative earning capacity), duration
7 of the marriage, age and health of the parties" and the contribution each has
8 made to the property owned by the community. Id. at 608-09, 763 P.2d at
9 680. Finally, in Heim, we emphasized that an award of alimony must be fair.
10 Id. at 610, 763 P.2d at 681.

11 Our case law thus reflects the clear legislative mandate that authorizes the
12 district courts to award alimony to the wife or husband in an amount that
13 "appears just and equitable." NRS 125.150(1)(a).

14 Lawrimore v. Lawrimore, 381 P.3d 632(Table) (Nev., 2012):

15 "The district court has wide discretion in determining spousal support
16 issues, and this court will not disturb the district court's award of alimony
17 absent an abuse of discretion. Lawrimore citing: Wolff v. Wolff, 112 Nev.
18 1355 1359, 929 P.2d 916, 918–19 (1996) (explaining that an award of
19 spousal support will not be disturbed on appeal unless it appears from the
20 record that the district court abused its discretion). The court "[m]ay award
21 such alimony to the wife or to the husband, in a specified principal sum or as
22 specified periodic payments, as appears just and equitable." NRS
23 125.150(1)(a). A district court's factual findings will be upheld if
24 supported by substantial evidence in the record. Gepford v. Gepford, 116
25 Nev. 1033 1036, 13 P.3d 47, 49 (2000). Substantial evidence is that which
26 a sensible person may accept as adequate to sustain a judgment. See
27 Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999). This
28 court generally defers to the district court regarding witness credibility and will
not reweigh evidence. Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042,
1046 (2004) (noting that this court "will not reweigh the credibility of
witnesses on appeal; that duty rests within the trier of fact's sound
discretion")." [emphasis added]

Consistent with Lake and Buchanan, alimony includes an inexhaustible list
of everything, necessities and luxuries, which Caterina is entitled to have and
enjoy. Mortgage payments are a necessity for Caterina. Consistent with Gepford,
the Court's factual findings and orders are supported by substantial evidence in
the record and should be upheld. Substantial evidence is that which a sensible

1 person may accept as adequate to sustain a judgment. Schmanski. A sensible
2 person would accept the evidence is adequate to sustain the Court's orders. The
3 Court used common sense principles in deeming Grady's financial assistance
4 with Caterina's home mortgage alimony, consistent with Gardner and Lawrimore.
5 Further, Grady is the drafter of the decree, he selected the terms for the decree,
6 hired the legal staff to prepare the decree, and sent it to Caterina to sign telling
7 her "I will always give the money to you but I do it because I want to not because
8 anybody can make me do it. If I put everything in writing that you want I will never
9 be able to get a loan in my own name. I will never be able to get ahead of my
10 present life. I will have to live poor until I die" and "I will always keep my word" and
11 "I am ensuring that you are taken care of for your entire life I do not understand
12 why you are not satisfied."²¹ Any vagueness or ambiguity must be interpreted
13 against the drafter. Basic principles of contract law hold the drafter to a higher
14 standard. Williams v. Waldman, 108 Nev. 466, 473, 836 P.2d 614, 619 (1992)
15 ("[I]t is a well settled rule that '[i]n cases of doubt or ambiguity, a contract must be
16 construed most strongly against the party who prepared it, and favorably to a
17 party who had no voice in the selection of its language.' " (alteration in original)
18 (quoting Jacobson v. Sassower, 66 N.Y.2d 991, 499 N.Y.S.2d 381, 489 N.E.2d
19 1283, 1284 (1985))). Golden Rd. Motor Inn, Inc. v. Islam, 376 P.3d 151, 132 Nev.
20 Adv. Op. 49 (Nev., 2016).

21 Also, NRS 125.150(9)(e) analysis of income of the parties supports the
22 \$1,500.00 per month is alimony. Grady earns about \$116,000.00 annually, was
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²¹ Exhibit "1" and Exhibit "2"

1 paying Caterina about 30% of this amount.

2 The Nevada Supreme Court held "this court generally defers to the district
3 court regarding witness credibility and will not reweigh evidence" Castle and "this
4 court "will not reweigh the credibility of witnesses on appeal; that duty rests within
5 the trier of fact's sound discretion." Lawrimore. This Court properly considered
6 Grady's sworn testimony at the hearing in determining that the \$1,500.00 per
7 month payments are alimony.
8

9 **Caterina Did Not Waive Her Right To Alimony**

10 Contrary to Grady's assertions, Caterina did not waive her right to alimony.
11

12 A waiver "is the intentional relinquishment of a known right. It is a voluntary
13 act, "and implies an election by the party to dispense with something of value,
14 or to forego some advantage which he might at his option have demanded and
15 insisted on." It is requisite to waiver of a legal right that there be "a clear,
16 unequivocal, and decisive act of the party showing such a purpose or acts
17 amounting to an estoppel on his part"; "A waiver, to be operative, must be
18 supported by an agreement founded on a valuable consideration[.]"

19 In order to establish a waiver, the intention to waive must clearly appear, Afriat
20 v. Afriat, 61 Nev. 321, 117 P.2d 83, 119 P.2d 883, and the party relying upon
21 216*216 the waiver must have been misled to his prejudice. Union Central Life
22 Ins. Co. v. Schultz, 45 Ida. 185, 261 P. 235; Universal Gas Co. v. Central
23 Illinois Public Service Co., 7 Cir., 102 F.2d 164. Melahn v. Melahn, 370 P. 2d
24 213 - Nev: Supreme Court 1962.

25 Caterina agreed to receive assistance with her home mortgage. She did
26 not knowingly and voluntarily agree to not receive any assistance. There was no
27 clear, unequivocal, and decisive act by Caterina to waive alimony. Rather, the
28 complete opposite occurred. She needed financial support to pay her bills. Her
mortgage alone is \$1,933.07 per month, and Grady was fully aware at the time
of divorce what her mortgage payment was. He arranged for all the financing
and instructed Caterina to not talk to the loan agents, to ignore them and that he

1 will "make up some information on money."²² The parties had been married 31
2 years. Grady paid her \$1,500.00 per month from June 2014 to August 2018.
3 There was no waiver of alimony, given the parties conduct.

4
5 **No Error in the court order regarding the \$1,500.00 payments from Grady**
6 **to Caterina for her interest in his military pay**

7 Grady initially claimed that in September 2018 he began to receive his U.S.
8 Army military retirement funds via tax-free disability, therefore he can unilaterally
9 cut off the \$1,500 that he was paying Caterina.²³ Now, in his Motion for
10 Reconsideration, he states that at the time of divorce, he actually began
11 receiving his disability pay. This new information actually fortifies the Court's
12 application of contract law and the Court's order that Grady continue the
13 \$1,500.00 per month payments to Caterina. This is because Grady willfully and
14 knowingly applied for and received his disability pay around the time of divorce,
15 and yet he continued to pay Caterina the dollar amount that he promised
16 because "it is the right thing to do", which is in compliance with their contractual
17 agreement.
18

19 Howell involved state court orders requiring a service member to reimburse
20 a former spouse the a mount of retirement pay the former spouse was entitled
21 to when thirteen (13) years after divorce, he waived his military pay to get tax
22 free disability pay. Under Howell, such an order violates federal law. Howell v.
23 Howell, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). The case at bar is
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27 ²² Exhibit "2".

28 ²³Grady's Reply to Opposition and/or Countermotion filed 12-28-18, pg. 7, In 131-132
and Grady's Exhibit "A" showing that the dollar amount was \$62.50.

1 distinguished from Howell.

2 We now learn in Grady's Motion for Reconsideration, that around the time
3 of divorce, he had *already waived his retired pay* and was receiving disability
4 pay. He did not make a post-divorce waiver 13 years after divorce that reduced
5 retirement to receive disability pay. Nothing in Howell prohibits a state court from
6 enforcing an agreement by ordering a service member, who unilaterally stops
7 making payments the service member was legally obligated to make, to resume
8 those payments and pay arrearages. Lesh v. Lesh, 809 S.E. 2d 890 (N.C.Appl.
9 2018). Also held by Gross v. Wilson, 424 P.3d 399 (Alaska 2018):

12 Under Howell a state court may not circumvent Mansell by ordering a service
13 member to "indemnify" a former spouse for retirement benefits waived to
14 receive disability pay. **But Howell does not hold that a state court cannot
15 enforce a property division by ordering a service member who
16 unilaterally stops making payments the service member was legally
17 obligated to make to resume those payments and pay arrearages.
18 [emphasis added].**

19 Under contract law principles, Grady was legally obligated to make the
20 \$1,500.00 payments to Caternia and he must resume paying her.

21 Henson v. Henson, 130 Nev., Adv. Op. 79, 334 P.3d 933, 936 (2014):

22 An agreement to settle pending divorce litigation constitutes a contract and
23 is governed by the general principles of contract law. Grisham v. Grisham,
24 128 Nev., Adv. Op. 60, 289 P.3d 230, 234 (2012). In the context of family law,
25 parties are permitted to contract in any lawful manner. See Rivero v. Rivero,
26 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). "Parties are free to contract,
27 and the courts will enforce their contracts if they are not unconscionable,
28 illegal, or in violation of public policy." *Id.* An enforceable contract requires "an
offer and acceptance, meeting of the minds, and consideration." May v.
Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Further, this court
views a contract as "ambiguous if it is reasonably susceptible to more than
one interpretation." Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510
(2003) (internal quotation and footnote omitted). When interpreting an
ambiguous contract, this court looks beyond the express terms and
analyzes the circumstances surrounding the contract to determine the

1 **true mutual intentions of both parties.** Id. (footnote omitted). Finally, this
2 court has recognized that an interpretation that **"results in a fair and**
3 **reasonable contract is preferable to one that results in a harsh and**
4 **unreasonable contract."** Id. (internal quotation and footnote omitted).
5 Holyoak v. Holyoak (Nev., 2016). [emphasis added]

6 Shelton v. Shelton, 78 P.3d 507, 119 Nev. 492 (Nev., 2003):

7 The property settlement agreement between Roland and Maryann is
8 ambiguous. The agreement states that Roland's military disability is community
9 property, but it awards the entire amount to Roland. The award of military
10 retirement pay to Maryann describes the award as "[o]ne half of HUSBAND'S
11 military retirement in the amount of \$577, until her demise," but the amount
12 designated is more than one-half the amount of Roland's retirement pay at the
13 time. Roland paid Maryann \$577 until the time he elected to take disability pay
14 in lieu of retirement pay.

15 It appears, therefore, that the agreement of the parties was that Roland pay
16 Maryann \$577 each month for her portion of the community asset, rather than
17 pay her one-half of his retirement pay, since \$577 is more specific than
18 "one-half." **Moreover, the parties' subsequent conduct reinforces this**
19 **conclusion, in that Roland ratified the terms of the agreement by**
20 **performing his obligations under the decree for a period of two years.**
21 **In addition, this interpretation yields a fair and reasonable result, as**
22 **opposed to a harsh and unfair result.** Roland cannot escape his contractual
23 obligation by voluntarily choosing to forfeit his retirement pay. It appears that
24 **Roland possesses ample other assets from which to pay his obligation**
25 **without even touching his disability pay.** Even if he lacks these assets,
26 nothing prevents him from using his disability payments to satisfy his
27 contractual obligation.

28 Although states are precluded by federal law from treating disability benefits
as community property, states are not precluded from applying state contract
law, even when disability benefits are involved. The district court's order is
reversed and this matter is remanded to the district court for further
proceedings consistent with this opinion.

Grady's analysis of Shelton is incorrect. A Shelton analysis is not triggered by a
reduction in retirement pay.²⁴ Rather, it is the assessment of the contract
obligation between the parties that triggers a Shelton analysis. Shelton held that;

²⁴ Defendant's Motion for Reconsideration, page 11, line 4.

1 “The best approach for interpreting an ambiguous contract is to delve beyond its
2 express terms and “examine the circumstances surrounding the parties’
3 agreement in order to determine the true mutual intentions of the parties”. This
4 Court’s analysis under Shelton was proper. Grady offered to pay Caterina
5 \$3,000.00 per month (of which \$1,500.00 is for mortgage assistance), Caterina
6 accepted, Grady paid from before June 2014 until September 1, 2018 and
7 Caterina was harmed by the loss of payments. The Court did not order Grady
8 to “indemnify” Caterina \$1,500.00 per month for the reduction in U.S. Military
9 retirement pay. Rather, the Court applied state law of contract, which is not
10 preempted by federal law. Grady was ordered to satisfy his contractual
11 obligations to Caterina to pay her the \$1,500.00 that he unilaterally ceased
12 paying her on September 1, 2018 from his other assets.

13 Grady may have divisible pay that is not precluded from division by Howell.
14 For example, Title 10 assets are divisible under the Uniformed Services Former
15 Spouses’ Protection Act (USFSPA) 10 U.S.C. 1408(c)(1). Grady receives
16 combat related special compensation (CRSC) 10 U.S.C. 1413a. This is a Title
17 10 asset. CRSC is another form of military disability pay, separate from standard
18 Veteran Administration disability benefits. Title 10 assets are distinguished from
19 Title 38 assets. Military veterans generally are entitled to compensation for
20 service connected disabilities under 38 U.S. C. 1101 et seq., and under Mansell
21 v. Mansell, 490 U.S. 581, 594-595 (1989), a state cannot divide the waived
22 portion of a veteran’s retirement pay that is 38 U.S. C. 1101 et seq. disability pay.
23 However, Grady has Title 10 assets which are not specifically addressed in
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Mansell or Howell as prohibited from being divided. The division of CRSC income was upheld the case of Foster v. Foster, No. 324853, unpublished (Mich. App, March 22, 2018):

Howell involved general service-connected disability benefits, and the Supreme Court's opinion rested squarely on the language in former 10 USC 1408(a)(4)(B), which provided and still provides in 10 USC 1408(a)(4)(A)(ii), that "disposable retired pay" means a member's total monthly retired pay less amounts that "are deducted from the retired pay . . . as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38[.]" Howell, 137 S Ct at 1402-1404. CRSC (combat-related special disability pay), at issue in this appeal, is compensation under Title 10, not Title 5 or Title 38 as referenced when arriving at "disposable retired pay." In our earlier opinion, we relied on this Court's opinion in Megee, 290 Mich App 551, which distinguished CRSC from general service-connected disability pay found in title 38 on the basis that the panel was addressing a waiver of retirement pay in favor of title 10 CRSC compensation. Given that CRSC is at issue in the instant case, that Howell did not concern or analyze a waiver of retirement pay in favor of CRSC disability pay, and that Megee is on point and remains binding precedent, MCR 7.215(J)(1), we again affirm the trial court's ruling.

FN 1. The contempt order does not require payment from CRSC funds, nor do we construe the divorce judgment's offset provision as ordering payment from CRSC funds, and any such construction must be avoided.

Grady also receives annuity income. When he retired from the army in 1999, he went to work for the federal government. He receives Federal Employees Retirement System income. This income is seen as his US Office of Personnel Management (hereafter "OPM") in the form of annuity income of \$1,315.00 per month.²⁵ This is not Title 5 or Title 38 income covered by the Howell and Mansell cases.

IV. COUNTERMOTION

²⁵ Defendant's FDF filed on 01-02-19, proof of income attachments.

**If, For The Sake Of Argument, the Court is inclined to eliminate the
\$1,500.00 Payment for Caterina's interest in Grady's military pay,
Caterina's Spousal Support Should Be Increased**

The Supreme Court cases of Howell and Rose unequivocally stand for the premise that the harsh consequences of a former spouse's loss of income due to a military member electing to waive his retirement pay for disability pay, can be addressed by recalculating the former spouse's spousal support award. In recalculating Caterina's spousal support, all of Grady's income is eligible to be considered in determining his annual income. Under federal law, all of his income is eligible for garnishment of a spousal support order. 42 U.S.C. §§ 659. Grady knows this and that is why he is desperate to prevent this court from awarding spousal support. He should not be allowed to leave Caterina destitute.

Howell v. Howell, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017)

We recognize, as we recognized in Mansell, the hardship that congressional pre-emption can sometimes work on divorcing spouses. See 490 U.S., at 594, 109 S.Ct. 2023. **But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support.** See Rose v. Rose, 481 U.S. 619, 630–634, and n. 6, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987) ; 10 U.S.C. § 1408(e)(6).

n.6 . Consistent with the distinction suggested in Wissner v. Wissner, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 (1950), Congress had amended the Social Security Act to **authorize garnishment** of certain federal benefits, including railroad retirement annuities, **for spousal and child support** but not for community property divisions. 42 U.S.C. §§ 659 and 662. **We construed these amendments to "expressly override" the anti-attachment provision for support claims, finding it "logical to conclude that Congress . . . thought that a family's need for support could justify garnishment, even though it deflected other federal benefit programs from their intended goals, but that**

community property claims, which are not based on need, could not do so." Hisquierdo v. Hisquierdo, 439 U.S., at 587, 99 S.Ct., at 811; see also McCarty v. McCarty, 453 U.S., at 230, 101 S.Ct., at 2740. Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

Rose v. Rose, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987)

Veterans' disability benefits compensate for impaired earning capacity, H.R.Rep. No. 96-1155, p. 4 (1980), U.S. Code Cong. & Admin.News 1980, p. 3307, and are intended to "provide reasonable and adequate compensation for disabled veterans **and their families**." S.Rep. No. 98-604, p. 24 (1984) (emphasis added), U.S.Code Cong. & Admin.News 1984, pp. 4479, 4488.

..[s]tate contempt proceedings to enforce a valid child support order coincide with Congress' intent to provide veterans' disability compensation for the benefit of both appellant and his dependents. Moreover, in reaching what was clearly an alternative holding in Wissner that a community property division of the insurance proceeds would constitute a "seizure" in violation of a provision against "attachment, levy, or seizure," the **Court was careful to identify a possible exception for alimony** and child support cases. *Id.*, at 659-660, 70 S.Ct., at 400. The suggested basis for this exception was that **family support obligations are deeply rooted moral responsibilities**, while the community property concept is more akin to an amoral business relationship. *Id.*, at 660, 70 S.Ct., at 400.

Cassinelli v. Cassinelli, 229 Cal Rptr. 3d 801, 20 Cal App. 5th 1267 (Cal. App. 2018):

"Arguably some or all of these funds would be exempt from an ordinary money judgment. **However, they are not exempt from a spousal support order. Specifically, a spousal support order would be enforceable against Robert's:**

1. Veteran's disability benefits (although only up to the amount of his waiver of retired pay). (42 U.S.C. §§ 659(a), 659(h)(1)(A)(ii)(V), 659(h)(1)(B)(iii) ; 5 C.F.R. § 581.103 ; United States v. Murray (1981) 158 Ga.App. 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.).
4. State teacher's disability benefits. (Code Civ. Proc., § 704.110, subd. (c) ; Ed. Code, § 22006.).

1 Similar to the husband in Cassinelli, Grady has multiple sources of income
2 and they are *not exempt from a spousal support order*. All of this income, which
3 comprises Grady's approximate \$116,000.00 annual income, can be considered
4 when a spousal support obligation to Caterina is calculated. Pursuant to NRS
5 125.150 (4), the court may set apart a portion of the husband's separate property
6 for the wife's support as is deemed just and equitable.
7

8
9 Should this Court eliminate Grady's \$1,500 per month payments to Caterina
10 as a result of her interest in his military pay, then an increase in spousal support
11 to Caterina is justified based on her \$3,745.13 per month living expenses. Her
12 mortgage is \$1,933.07. Grady knows this because he solely handled the financing
13 of the home then asked for a divorce 6 months later. The United States Retired
14 Military Health Care that Grady promised to Caterina vanished in 2016,
15 unbeknownst to Caterina. She was left with thousands of dollars in uncovered
16 medical bills and had to purchase insurance. She pays \$102.97 per month. The
17 Long Term Health Insurance also promised to Caterina was about to vanish, but
18 Caterina stepped in to make the payments. They are \$128.00 per month. Her
19 spousal support should be increased.
20
21

22 **Should this Court find that Caterina Waived Alimony and She also Lost**
23 **Grady's Contractual Obligation to Pay Her the Pension, then the**
24 **Unforeseeable loss of the Bargained-for Pension Invalidates the Waiver**

25 If this Court finds that Caterina waived her right to alimony, then the alimony
26 waiver should not be upheld if the Court also eliminates Caterina's interest in the
27 parties' community property: the military pension. Grady left her destitute by
28 stopping the payments. If the Court is inclined to eliminate these funds because

1 Grady waived his military pension to receive disability funds, then the
2 unforeseeable loss of the pension benefit should invalidate the alimony waiver.
3 Upholding the alimony waiver would be unjust.
4

5 Fick v. Fick, 851 P.2d 445, (1993)

6 Where the Nevada Supreme Court upheld the trial Court's
7 invalidation of the parties alimony waiver provision of their prenuptial
8 agreement.

9 Fattore v. Fattore Docket No. A-3727-16T1 Argued January 16, 2019 and
10 February 5, 2019 (N.J. Super. App. Div., 2019), not for publication.

11 **"Here, we hold the alimony waiver was not a bar to a**
12 **consideration of a post-judgment award of alimony to**
13 **plaintiff.** Although the waiver of alimony was mutual, we need not
14 speculate what defendant's reasons for waiving it were because
15 his waiver stands separate, and presumably had separate
16 consideration, from plaintiff's waiver. However, the record readily
17 demonstrates plaintiff gave valuable consideration for the waiver
18 of alimony in exchange for the promise of the future ability to share
19 in defendant's military pension. Moreover, as defendant notes in
20 his reply brief, his earnings were approximately thirty-four percent
21 greater than plaintiff's at the time of the divorce. Thus, there was
22 valuable consideration given by plaintiff in exchange for the
23 alimony waiver, and **the unforeseeable loss of the bargained for**
24 **pension benefit was a substantial and permanent change in**
25 **circumstances, which invalidated the waiver. Upholding the**
26 **alimony waiver in these circumstances would be wholly**
27 **unfair."**

28 **Caterina Should be Allowed to Modify the Joint Petition for Summary
Decree of Divorce due to Grady's Misrepresentations**

23 Grady admits that he advised Caterina at the time of divorce that "My retired
24 pay is 3017 a month after they deduct the payment for SBP [Survivor Benefit
25 Plan]. You are entitled to half of that which is 1508. You are not entitled to any
26 more money. I give you 3000 a month because I think it is the right thing to do.
27 If I was only going to give you 1500, I would not be giving you 3000 all these
28

years."²⁶ Grady informed Caterina that she was entitled to the amount of \$1,508.00 from his retirement pay. He paid her a total of \$3,000.00 each month, (of which \$1,500.00 was for assistance with her home mortgage), and she relied on these funds to pay her bills. When Grady unilaterally terminated the payments on September 1, 2018, he left Caterina destitute. Grady now claims that he was already receiving disability benefits at the time the Decree was entered. Grady claims that his army retire pay actually was only \$128.40 around the time of divorce.²⁷ Caterina should be allowed to modify the Decree of Divorce due to Grady's misrepresentations to Caterina and increase her spousal support.

Rule 60. Relief From a Judgment or Order

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.
[emphasis added]

Caterina should be granted NRCP 60(b)(6) relief from the Decree of Divorce. Subsection (b)(6) of this rule was enacted March 1, 2019. However, subsection (b)(6) has been active in Nevada Federal District Court for years and offer persuasive authority and guidance to its application to the instant case such

²⁶ Exhibit "1" and Exhibit "2".

²⁷ Defendant's Appendix to Motion for Reconsideration, Exhibit A.

as the following:

Under Rule 60(b)(6), a district "court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . any . . . reason that justifies relief." However, such relief is generally warranted only under "extraordinary circumstances." Naylon v. Wittrig, No. 3:08-cv-00625-LRH-WGC, U.S. Dist. Ct., D. Nev (May 3, 2017) citing; Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union 162, 937 F.2d 408, 410 (9th Cir. 1991) (citing United States v. Sparks, 685 F.2d 1128, 1129 (9th Cir. 1982)). In Keeling, the Ninth Circuit held that "repudiation" or "complete frustration" "of a settlement agreement that terminated litigation pending before a court constitutes an extraordinary circumstance . . ." *Id.* at 410-11. The court ultimately deferred to the district court's conclusion that the defendant's "specific acts" of "bad faith noncompliance" with the settlement agreement caused its complete frustration and thus warranted Rule 60 relief.

Carlson v. Carlson, 832 P.2d 380, 108 Nev. 358 (Nev., 1992).

Trudy argues that Austin improperly received the bulk of the community property because he misrepresented the value of his pension. Trudy contends that she demonstrated that the divorce decree should be set aside based on either mutual mistake or fraud. We agree.

[t]he record clearly demonstrates that the representations were the result of either mistake or fraud. If both Austin and Trudy were mistaken about the pension's value, the parties entered the property settlement based upon a mutual mistake, namely, that they had essentially split their property equally. A mutual mistake entitles a party to relief from a judgment. NRCP 60(b)(1). **If, however, Austin or his counsel knew the value of the pension, they fraudulently misrepresented the value of Austin's pension. Such fraud is grounds for relief from the judgment pursuant to NRCP 60(b)(2).** Therefore, we conclude that Trudy was entitled to relief from the judgment.

[emphasis added]

Like the husband in Carlson, Grady's misrepresentation of his military pay is grounds for Caterina's relief from judgment.

Barelli v. Barelli, 944 P.2d 246, 113 Nev. 873 (Nev., 1997).

Parties divorced in 1988 and in 1992, the former wife, Madeline, filed a complaint in a district court of general jurisdiction, alleging that Anthony fraudulently induced her to waive alimony in return for lifetime employment with his medical practice. She asked the district court to reform the property settlement agreement so that she could receive monthly alimony and an additional \$250,000 in community property. Madeline has filed an action to

reform (or, by seeking alimony, to rescind) the agreement.

We hold that actions regarding the resolution of the marriage filed independent of the divorce proceeding to reform or rescind unmerged property settlements fall within the jurisdiction of the family court pursuant to article 6, section 6(2)(b) of the Nevada Constitution, and NRS 3.223(1)(a). Even though Madeline brought a separate claim for contractual damages, the resolution of whether the property settlement agreement could be reformed or rescinded based on allegations of fraud was dependent on the resolution of whether, in fact, there was a contract ab initio (the oral side agreement). **Therefore, because the reformation/rescission claim was dependent upon the existence of the oral contract, and because a favorable ruling on the reformation/rescission had a potential for resurrecting claims for alimony and community property, the family court also had jurisdiction to adjudicate its existence. [emphasis added]**

Caterina did not knowingly and voluntarily waive alimony. He promised her \$3,000.00 per month like he had been paying. If Grady intended to get Caterina to waive alimony, then like the wife in Barelli, Grady fraudulently induced Caterina to waive alimony in return for \$1,500.00 monthly assistance with her home mortgage and \$1,500 per month for her interest in his military monthly pay. He misrepresented the value of his pension at the time of divorce and he misrepresented that he applied for and was receiving disability pay in lieu of military pay. Caterina should be allowed to resurrect her right to alimony.

NRS 125.040 Orders for support and cost of suit during pendency of action.

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

NRS 125.150 Alimony and adjudication of property rights; award of attorney's fee; postjudgment motion; subsequent modification by court:

1. In granting a divorce, the court:

1 (a) May award such alimony to either spouse, in a specified
2 principal sum or as specified periodic payments, as appears just
3 and equitable;

4 If this Court is inclined to find that Caterina is not entitled to Grady's
5 community property military funds under principles of contract law, then the Court
6 should find that extraordinary circumstances exist to grant Caterina relief from
7 judgment under 60(b)(6). Grady misinformed Caterina and led her to believe that
8 she would receive her community interest in his army pension for his lifetime;
9 Grady paid Caterina \$3,000.00 per month (of which \$1,500.00 is for mortgage
10 assistance) for over 4 years; Grady abruptly stopped paying her \$3,000.00 per
11 month, claiming that she was only entitled to \$62.00 per month from his military
12 pay; Caterina did not foresee this event because Grady did not tell her that he
13 was electing the waiver of his military pay to receive disability pay; and Grady left
14 her destitute since he also abruptly terminated her monthly assistance with her
15 mortgage.
16

17
18 A favorable ruling on the recession of any alimony waiver can resurrect
19 Caterina's claim for alimony. This Court has jurisdiction to adjudicate the
20 existence of Grady's agreement to pay Caterina alimony in the form of \$1,500.00
21 per month to assist Caterina with her home mortgage (which is \$1,933.07/month).
22 Like the case of Carlson, Grady misrepresented the value of his army pension to
23 Caterina. It was not \$3,017.00 a month, rather it was only \$128.40 per month of
24 which, she would receive 1/2 (\$62.00). The unforeseeable loss of the bargained
25 for pension benefit plus Grady cutting off the \$1,500.00 mortgage assistance
26 brutally claiming that "it wasn't required", was a substantial and permanent
27
28

change in circumstances. These circumstances should be considered extraordinary circumstances sufficient to grant Caterina relief from judgment.

Grady Should Immediately Complete Documents Necessary to Voluntarily Keep Caterina as the Sole Beneficiary of the Survivor Benefit Plan

Caterina also received terrible news from the U.S. Military DFAS that she would not receive the SBP because the Decree of Divorce was not submitted to them within 12 months of the divorce. Grady promised her this benefit and told her that it was to be her income after he died. Her sporadic and part time work during marriage prevented her from acquiring a pension on her own. Caterina relied on this promise during marriage. Grady told Caterina:

"I have kept all of my promises to you and I will continue to do so while I live and after my death.You will receive \$3,000 a month as long as I live. After my death you will get SBP [Survivor benefit Plan] and all other payments you are entitled to."²⁸

"You get the same benefits whether we are married are not [sic]. SBP, SS, and insurance. There is no difference."²⁹

The approximate \$1,860.00 SBP Caterina would receive after Grady passed away would be a monthly income for her. The military recognizes spouses' sacrifices by offering the SBP on the day the military member retires to provide income for surviving spouses or ex-spouses. Grady took out the SBP for Caterina the day he retired in 1999, he continues to pay the approximate \$219 per month for it, has paid about 180 payments and in about 7 years, when Grady turns age 70, the \$219 payments cease. Knowing that the \$3,000.00 per month

²⁸ Exhibit "7"

²⁹ Exhibit "8"

1 Grady was paying her would end when he passes, Caterina was relying on the
2 SBP to survive on. Because Grady was always in charge of the parties financial
3 matters, particularly all things military, Caterina had no clue that the decree
4 needed to be sent to DFAS for processing. Apparently Grady didn't know either
5 He wrote the DFAS on September 20, 2018 stating that he did not request a
6 change, that this plan has been in effect for 20 years, it's mandated in the decree
7 and to reinstate it.³⁰ The 12 months lapsed and Caterina is no longer listed as the
8 beneficiary. Recently he sent correspondence to DFAS to reinstate Caterina.
9 Luckily, he can.

10
11
12 In a document that Grady provided Caterina on or about April 2, 2019, a
13 DFAS Representative, on states that:

14 "If you want to keep your Former Spouse on you will have to volunteer to keep
15 her on the SBP on form DD2656-1"³¹

16 Thrilled with the news that Caterina could still receive her military SBP,
17 about April 5, 2019, her counsel sent a written request to Grady's counsel to
18 please have Grady complete the documents necessary to voluntarily keep
19 Caterina as the sole beneficiary of the SBP and provide documents evidencing
20 that she is the beneficiary. Just because the parties missed the 12 month
21 deadline to submit the decree to DFAS does not mean that her right to the SBP
22 is extinguished. She was awarded the SBP in the decree and this has not
23 changed.³² Regrettably, Grady refuses to voluntarily name her on the SBP.
24
25

26 ³⁰ Exhibit "9"

27 ³¹ Exhibit "10"

28 ³² Exhibit "11"

1 Grady has once again forced Caterina to seek the Court's assistance for orders.

2 **Grady Should List Caterina Beneficiary of the VyStar Credit Union**
3 **Accidental Death Insurance**

4 The VyStar Credit Union Accidental Death Insurance awarded to Caterina
5 in the Divorce vanished. Caterina believed that Grady was to make the
6 payments. Grady believes otherwise. Fortunately, Grady has a "free" \$1,000.00
7 policy that currently exists. On or about April 5, 2019, Caterina's counsel sent
8 Grady's counsel a written request that Grady list her as the sole beneficiary of the
9 \$1,000.00 "free" VyStar life insurance plan and provide her a copy of the plan and
10 proof that she is the beneficiary. Grady refused.
11

12 **Federal Employees Group Life Insurance Proof of Beneficiary**

13 Grady told Caterina that "when I die you [will] get my annuity just like sbp
14 which will be around 50%." In the Decree, Grady gave her his OPM death
15 benefits. She is concerned that he will unilaterally alter her beneficiary status.
16 She has requested proof that she is the sole beneficiary. Grady provided a
17 "Designation of Beneficiary" for the Federal Employees Group Life Insurance
18 program that indicates the form was received by the OPM January 22, 2019.
19 Grady has not provided Caterina any further documents proving that the form has
20 been processed, that she is indeed listed as the sole beneficiary and confirmation
21 of the dollar amount that she will receive.
22
23

24 **Grady Is In Contempt Of Court For Failing To Deposit \$4,500.00 by**
25 **February 15, 2019, \$4,500.00 by March 15, 2019, and \$4,500.00 by April**
26 **15, 2019, into Caterina's Bank of America Account**

27 At the January 23, 2019, hearing, Grady was found to be in arrears of
28 \$7,500.00 for spousal support from September 1, 2018, to January 30, 2019, and

\$7,500.00 in arrears for Caterina's interest in retirement pay from the same time period. Attorney fees of \$7,000.00 were awarded to Caterina. The total amount of \$22,000.00 was reduced to judgment, payable at the rate of \$4,500.00 per month with the first \$4,500.00 payment due by February 15, 2019, and the 15th of each month thereafter until \$22,000.00 is paid in full. Grady was also ordered to continue the \$1,500.00 per month for spousal support and the \$1,500.00 per month for Caterina's interest in retirement pay. The \$4,500.00 is the sum of Grady's \$3,000.00 per month obligation to Caterina plus \$1,500.00 toward the arrears. Once the \$22,000.00 is paid, Grady's monthly payment to Caterina goes back down to \$3,000.00 per month, unless further order from the Court. Grady shall deposit the \$4,500.00 into Caterina's Bank of America account such that the \$4,500.00 is to be in Caterina's bank account by the 15th of each month. Caterina's bank account was placed on the record. Caterina also provided Grady a voided check in open court to set up automatic deposits. Grady failed to make the deposits. There is no "stay" of the court's orders. A letter was sent to Grady on February 19, 2019, April 5, 2019, and April 17, 2019, requesting the deposits. Grady refuses.

Caterina is Entitled to An Award of Attorney's Fees

Grady is in Contempt of Court for failing to pay Caterina \$4,500.00 February 15th, March 15th and April 15th of 2019. Grady has also not provided proof from the Federal OPM that Caterina is the beneficiary of his death benefits. They will not speak to Caterina. They want a Power of Attorney or for Grady to call. He hasn't. He claims that the form showing that they received the form is sufficient. His

behavior is causing her increased attorney fees.

NRS 125.040:

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

- (a) To provide temporary maintenance for the other party;
- (b) To provide temporary support for children of the parties; or
- (c) To enable the other party to carry on or defend such suit.

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

NRS 18.010(2): a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 22.100 Penalty for contempt.

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

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

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

Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). Equal footing so don't have to liquidate savings. The Nevada Supreme Court held that the district court did not abuse its discretion in awarding approximately

1 \$50,000.00 in attorney fees to the wife in a divorce proceeding. The Court
2 noted that without the district court's assistance, the wife would have been
3 required to liquidate her savings and jeopardize her financial future in order
to meet her adversary in court on an equal basis.

4 In Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016) the
5 Appellate Court held that: Pursuant to NRS 125.040 the court can award
attorney's fees from the start of the action through the appeal.

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

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

13 Awards of attorney fees are within the sound discretion of the Court.
14 See Love v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher,
89 Nev. 540, 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev.
15 530, 532, 490 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev.
1455, 971 P.2d 1262 (1998).

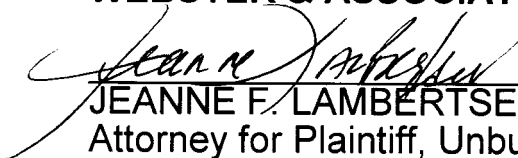
16 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
17 Court should take into consideration the following factors when determining an
18 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
19 been practicing law for 33 years and Ms. Lambertsen has been practicing law for
20 14 years; the law firm's practice is dedicated to family law. (2) The character and
21 difficulty of the work performed: The intricacy, importance, time and skill required
22 to prepare this Opposition and Countermotion and Exhibit Index is moderate to
23 high. (3) The work actually performed by the attorneys and legal assistants:
24 Approximately 15 hours were spent by counsel and legal assistants in fees (4) The
25 result obtained is unknown but the Opposition and Countermotion demonstrates
26
27
28

1 Grady's, contempt, lack of cooperation and continuing control of Caterina.

2 Plaintiff, Caterina Byrd, respectfully requests the above relief.

3 Dated: April 23, 2019.

WEBSTER & ASSOCIATES


JEANNE F. LAMBERTSEN, ESQ.
Attorney for Plaintiff, Unbundled

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DECLARATION OF CATERINA BYRD

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

3
4 2. I have read the foregoing Opposition and Countermotion, and the factual
5 averments contained therein are true and correct to the best of my knowledge,
6 except as to those matters based on information and belief, and as to those
7 matters, I believe them to be true. Those factual averments contained in the
8 preceding are incorporated herein as if set forth in full.

9
10 3. That I had been receiving payments of \$3,000.00 per month from the
11 Defendant, Grady Byrd since before the filing of the Joint Petition for Summary
12 Decree of Divorce on June 5, 2014. Around the time of divorce, in emails to me,
13 Grady promised me that I would receive the \$3,000.00 per month. These
14 payments ceased September 1, 2018. My last payment was August 2018.

15
16 4. That on September 4, 2018, I learned that the checking account that
17 Grady Byrd had deposited my monthly payment into was closed. It was a joint
18 checking account that had been established for 31 years. At the hearing on
19 January 23, 2019, I gave Grady Byrd my Bank of America routing number and
20 account number so that he could make deposits into my account.

21
22 5. That I did not receive a deposit of \$4,500.00 from Grady Byrd on or
23 before February 15, 2019; I did not receive a deposit of \$4,500.00 from Grady
24 Byrd on or before March 15, 2019; and I did not receive a deposit of \$4,500.00
25 from Grady Byrd on or before April 15, 2019, as ordered at the January 23, 2019
26 hearing.

27
28 6. That I have not received any money from Grady since August 2018. I am

1 struggling to pay my bills and living expenses. I have had to borrow money from
2 my friends, family and took in a roommate to help pay expenses. I fear that I may
3 lose my house because paying the mortgage is financially difficult.
4

5 7. That at the time of divorce, I was never told by Grady and never knew
6 that the army pension was only about \$128.00 and my portion would be only
7 about \$62.00. Based on what Grady did tell me, I believed the army pension that
8 Grady was receiving was about \$3,017.00 per month and Grady was paying me
9 \$1,500.00 per month since the time of divorce because of this.
10

11 8. That because the \$3,000.00 per month payments from Grady will cease
12 upon his death, I will rely on the Military SBP to pay my bills once he passes. I
13 am devastated that simply because neither one of us sent the decree to the
14 military finance office within the 12 month deadline to do so, that he is refusing
15 to voluntarily list me as the beneficiary. We were married for 31 years and he
16 promised me the SBP.
17

18 9. Based upon the foregoing, I respectfully request that this Court grant the
19 relief requested by me in this Opposition and Countermotion.

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

22 Executed this 23 day of April, 2019.

23
24 
25 CATERINA BYRD
26
27
28

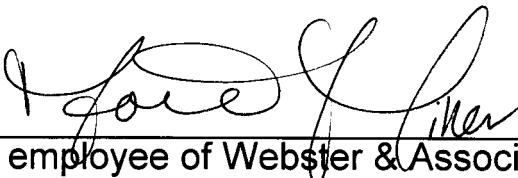
Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 23rd day of April, 2019, I caused the above and foregoing to be served as follows:

☒ [X] Electronic Service

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

Byron L. Mills, Esq.
attorneys@millsnv.com


An employee of Webster & Associates

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff/Petitioner

v.

GRADY EDWARD BYRD

Defendant/Respondent

Case No. D-18-577701-Z

Dept. G

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

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

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

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☒ Other Excluded Motion (must specify) No Final Order.

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

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

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

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

☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

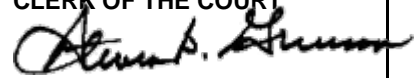
Party filing Motion/Opposition: JEANNE F. LAMBERTSEN

Date 4/23/2019

Signature of Party or Preparer



EXHIBIT “5”



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DISTRICT COURT
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD,
Plaintiff,

v.

GRADY EDWARD BYRD,
Defendant.

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

Hearing Requested: Yes

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

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE

COMES NOW Plaintiff, CATERINA ANGELA BYRD (hereafter "Caterina"),
by and through her attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F.
LAMBERTSEN, ESQ., of the law offices of WEBSTER & ASSOCIATES, in an
Unbundled Capacity, and does hereby file *Plaintiff's Motion for Reconsideration,*
Motion for Summary Judgment, Motion for Joinder and Motion to Continue the

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

Caterina respectfully requests the following relief:

1. Set Aside the Order filed June 26, 2019 as to the finding that Caterina waived spousal support in the Decree of Divorce;
2. That Orders filed on or about April 5, 2019 remain in full force and effect pending further orders of the court;
3. That Grady Byrd's wife, Pinky Byrd, be joined as a party to this action;
4. Summarily find that Grady Byrd is in Contempt of Court for failure to pay Caterina Byrd as ordered and that he be sanctioned based on the following:
 - i. \$3,000 per month from September 1, 2018 to October 1, 2019 (14 months, \$42,000);
 - ii. \$7,000 in attorney fees ordered April 5, 2019;
 - iii. \$5,000 in attorney fees ordered June 26, 2019;
 - iv. \$1,500 in attorney fees ordered August 9, 2019;
 - v. Sanction \$500 for each month (14, \$7,000);
 - vi. Sanction \$500 for each incident of failing to pay attorney fees (3, \$1,500); and
 - vii. That a warrant for Grady Byrd's arrest be issued and that he be let go for his appearance on a hearing on the warrant in the amount for his release set at no less than \$64,000.
5. Continue the Calendar Call, Evidentiary Hearing and related deadlines;
6. Continue the Plaintiffs Motion to Compel Production of Discovery and Defendant's Motion for a Protective Order scheduled to be heard on October 11, 2019, without prejudice and able to be re-noticed at a later date;
7. Schedule Defendant's Motion for Reconsideration filed April 8, 2019, on the Notice of Entry of Order from the January 23, 2019 hearing filed about April 5, 2019 be heard by the judge presiding at the January 23, 2019 hearing;

¹This constitutes Plaintiffs' request to file a motion, opposition or reply in excess of 30 pages pursuant to EDCR 5.503(4) due to the number of issues in this matter.

- 1 8. For Attorney's Fees and Costs; and
2 9. For any further orders that the court deems just and equitable under the
3 premises.

4 Dated: September 30, 2019.

5 **WEBSTER & ASSOCIATES**

6
7 By: 

8 ANITA A. WEBSTER, ESQ.
9 Nevada Bar No. 1221
10 JEANNE F. LAMBERTSEN, ESQ.
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12 6882 Edna Ave.
13 Las Vegas, Nevada 89146
14 Tel No: (702) 562-2300.
15 Attorneys for Plaintiff, Unbundled

16 **I.**
17 **FACTUAL HISTORY**

18 Plaintiff, CATERINA BYRD and Defendant, GRADY BYRD (hereinafter
19 "Grady) were married for 31 years, divorcing on June 5, 2014, by way of a Joint
20 Petition that Grady arranged to have prepared. During the marriage, Grady was
21 in the U. S. Army. He retired from the U.S. Army in 1999 and went to work for the
22 Department of Defense. Grady retired from the Department of Defense about
23 2008. Grady ceased returning home to Caterina about 2008.

24 Grady currently earns more than \$116,000.00 annually in the form of
25 disability, social security and about \$128/month non-disability. During the
26 marriage, he earned two master degrees and became a high ranking officer.
27 Grady age 63, lives in the Philippines, married a 25-year old woman as soon as
28 he divorced Caterina in 2014, has two household servants and is seeking to
eliminate his financial obligations to Caterina.

Caterina supported Grady as he furthered his education and career. She moved approximately 16 times as a military wife, which prevented her from advancing beyond her high school education, holding a job, gaining work skills, putting down roots, or have any lasting friends. Caterina relied on Grady's promises that he would take care of her. He admitted that he would pay her \$3,000 per month as long as he lived, that he is giving her \$3,000 per month because it is the right thing to do, that Caterina was entitled to the dollar amount of \$1,508 per month from his military retirement pay, that he paid her \$3,000 each month, and that he closed the joint checking account that he deposited the \$3,000 for Caterina that had been opened for about 30 years.² She depends on the \$3,000.00 per month that Grady deposited directly into her bank account. After his death, she planned to rely on the military SBP and Life Insurance that she was awarded in the divorce. She is 55 years old, single, and remains in the marital residence that Grady gave to her in the divorce. Her expenses are more than \$3,745 per month.

Grady left Caterina financially destitute when, on September 1, 2018, he stopped paying her \$3,000.00 per month. He also listed his new wife as the beneficiary of his military Survivor Benefits. Grady did this in retaliation for Caterina asking for copies of the various life insurance plans, SBP plan, and

²Exhibit "1" Plaintiff's Requests for Admissions to Defendant served 03/05/19 and Exhibit "2" Defendant's Response to Plaintiff's First Request for Admissions served 03/19/19.

1 retirement plans that Grady gave her in the divorce so that she knew who to
2 contact in the event something happened to Grady. He refused to respond to her
3 e-mails and letters. He admits that he blocked Caterina's and the undersigned
4 counsel's e-mails. Caterina had to borrow money and took in a roommate to
5 make ends meet. Caterina's financial and emotional stress led to the roommate
6 moving out. She was forced to seek the court's assistance promptly after Grady
7 ignored her attempts to resolve his unilateral termination of her \$3,000.00 per
8 month payment. She learned that he misled her with his promise that his military
9 retirement pay at the time of divorce was \$3,017. Actually, his retirement pay at
10 the time of divorce was only \$128.60. He converted his retirement pay to
11 disability pay in the amount of \$3,017.³ He cannot be allowed to take advantage
12 of his lies, misrepresentations, threats and manipulation to eliminate all of his
13 financial obligations to her.
14
15

16 II.

17 PROCEDURAL BACKGROUND

18 Caterina complied with EDCR 5.501 in her efforts to resolve this matter
19 without seeking the Court's assistance back in about August 2018. Grady
20 refused. Grady even refused to Stipulate to move the case from Churchill County
21 Nevada, where neither party ever lived, to Clark County Nevada, thereby causing
22 Caterina to unnecessarily incur additional cost and fees.
23
24

25 On October 16, 2018, Caterina filed her motion to enforce the Decree of
26 Divorce. The hearing was set for November 27, 2018 but the hearing was
27

28 ³Exhibit "3", Grady's Veteran's monthly payments August 2014 - July 2015.

1 continued several times based on Grady's claims that he was unable to attend
2 based on his medical condition(s). The hearing was eventually heard on January
3 23, 2019.

4
5 At the January 23, 2019 hearing, both parties were present. Judge Kathy
6 Hardcastle found that Grady wrongfully had terminated the \$1,500.00 per month
7 payments for the home mortgage (hereinafter "home mortgage payment") and
8 that the home mortgage payments are alimony. Judge Hardcastle ruled that
9 Grady had a contractual obligation to continue the \$1,500.00 per month
10 payments to Caterina as and for her interest in his military income. A status
11 check hearing was set for May 2, 2019, regarding Grady's compliance with
12 continuing to make these payments and paying arrears. A "no bail bench warrant"
13 was to be issued if he failed to comply.

14
15 Grady filed a Motion for Reconsideration. In the interim, he refuses to pay
16 Caterina, despite the fact that no "stay" was issued on the Orders.

17
18 At the May 2, 2019, Status Check Hearing (Judge Bixler presiding), the
19 Court noted that it was not pleased with Grady's absence, ordered him to be
20 present at his motion for reconsideration hearing on May 22, 2019, and his
21 request for a telephonic appearance was denied.

22
23 At the May 22, 2019, hearing on Grady's Motion for Reconsideration and
24 Caterina's Opposition and Countermotion, Grady was not present, Judge
25 Forsberg ordered that the \$1,500 home mortgage payment that Grady pays
26 Caterina was not alimony but instead is part of a property distribution. Grady was
27 ordered to continue paying this \$1,500 per month payment plus the other \$1,500
28

1 payment to Caterina based on contract principles for her interest in his military
2 pay pending an evidentiary hearing.

3 The Non-Jury Trial was then scheduled for October 21, 2019.

4
5 Grady failed to pay Caterina as ordered above, and her Motion for an Order to
6 Show Cause was Granted at the July 18, 2019 hearing. The Order from this
7 hearing and the Order to Show Cause were filed on August 9, 2019.

8 Grady continues to willfully, deliberately and intentionally refuse to pay
9 Caterina \$3,000 per month or the attorney fees awarded. At the July 18, 2019,
10 hearing, he informed the Court that he does not intend to comply with court
11 orders until after the Evidentiary Hearing. The Court ordered that Caterina may
12 garnish the arrears in the amount of \$11,000.00 if she can determine any source
13 of money or bank for Grady. Caterina discovered that Grady's United States bank
14 accounts only contain a few hundred dollars. Further, he receives only disability
15 payments and social security payments (except about \$128 per month). Neither
16 his disability income nor his social security income can be garnished. She is
17 therefore unable to obtain any of the money that Grady owes her. Grady refuses
18 to provide his Philippines bank account information to Caterina. Once again, she
19 had to seek the court's assistance and her Motion to Compel production of
20 documents is scheduled for hearing with the Discovery Commissioner.
21
22

23 In Grady's pleadings filed on September 12, 2019, and September 17,
24 2019, Grady admits that he has not paid Caterina and that he has sufficient
25 money to pay Caterina.
26

27 ///

III.

POINTS AND AUTHORITIES

Rule 5.512. Reconsideration and/or rehearing of motions.

(a) A party seeking reconsideration and/or rehearing of a ruling (other than an order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60), must file a motion for such relief within 14 calendar days **after service of notice of entry of the order** unless the time is shortened or enlarged by order. A motion for reconsideration does not toll the period for filing a notice of appeal.

NRCP 59(a)

Rule 59. New Trials; Amendment of Judgments

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.

(f) No Extensions of Time. The 28-day time periods specified in this rule cannot be extended under Rule 6(b).

NRCP 60(b)(1)

Rule 60. Relief From a Judgment or Order

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) **mistake**, inadvertence, surprise, or excusable neglect;

.....
.....

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time — and for reasons

(1), (2), and (3) no more than 6 months after the date of the proceeding or the **date of service of written notice of entry of the judgment or order**, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

Caterina requests that this court reconsider the order from June 26, 2019. Her request is timely in that Grady failed to serve Caterina with a Notice of Entry of the June 26, 2019 Order.

MOTION FOR RECONSIDERATION

At the hearing on January 23, 2019, Senior Judge Kathy Hardcastle found that Grady had wrongfully terminated his home mortgage assistance payments of \$1,500.00 per month to Caterina on September 1, 2018, and that these payments are alimony. Judge Hardcastle also found that Grady had a contractual obligation to continue paying her another \$1,500.00 per month as and for her interest in his military income. Subsequently, Grady filed a Motion for Reconsideration.

At the May 22, 2019, hearing on Grady's Motion for Reconsideration and Caterina's Opposition and Countermotion, the Honorable Judge Forsberg ordered that the \$1,500 payment from Grady to Caterina is not alimony, but instead is part of a property distribution with terms as to when the payment is to end. Grady was ordered to continue paying the \$1,500 per month home mortgage contribution payment. He was also ordered to continue paying the \$1,500 per month payment to Caterina based on contract principles for her interest in his military pay pending an evidentiary hearing.

Caterina seeks reversal of that portion of the Court's Finding on May 23,

2019: that the \$1,500 per month home mortgage contribution payment is a property settlement and not alimony. Caterina seeks reversal of this ruling based on the following:

1. **The law-of-the-case doctrine:** The law of the case doctrine holds that one district court judge should not overturn another district court's ruling. Judge Hardcastle's ruling that the \$1,500 per month house contribution payment is alimony should stand;
2. **The payment is alimony:** The payment is alimony because Grady's payments to Caterina are indefinite, can continue until he dies, and there is no defined dollar amount being paid towards satisfaction of a particular amount. The nature of the payment supports an alimony interpretation rather than a property settlement interpretation because the payments are based on financial need, there's no identifiable lump sum owed and the payments continue for an indefinite time into the future. See e.g. Parker v. Green, No. 73176 (Nevada 2018);
3. **There was no alimony waiver because:**
 - a. The "waiver" language in the Decree of Divorce was ambiguous in that it is reasonably susceptible to more than one interpretation. Grady's payment to Caterina of "\$1500 dollars extra a month to assist with her home mortgage" may cease if "her financial situation changes". Since Grady's assistance to Caterina may cease based on Caterina's financial situation, this

- 1 is consistent with the NRS 125.150 considerations for alimony.
- 2 b. Caterina didn't knowingly waive alimony. Caterina relied on
- 3 Grady's promise that he would pay her \$3,000 per month until he
- 4 died. She could not have waived her right to alimony while
- 5 simultaneously accepting support to pay her necessities.
- 6
- 7 c. Grady violated his fiduciary duty to Caterina. She trusted Grady
- 8 when he told her he would take care of her for the rest of her life,
- 9 he admits that he promised to pay her \$3,000 per month as long
- 10 as he lives. A fiduciary relationship arises from the existence of
- 11 the marriage itself, thus precipitating a duty to disclose pertinent
- 12 assets and factors relating to those assets. Cook v. Cook, 112
- 13 Nev. 179, 912 P.2d, 264 (1996) citing Williams v. Waldman, 108
- 14 Nev. 466, 836 P.2d 614 (1992) at 471-72, 836 P.2d at 618.
- 15
- 16 d. Pursuant to Parker v. Green, No. 73176 (Nevada June 25, 2018),
- 17 the court should examine the circumstances surrounding the
- 18 parties' alimony waiver in order to determine the true intentions
- 19 of the parties.
- 20
- 21 e. The present orders are uncollectible unless they are considered
- 22 alimony. Under federal law, disability and social security income
- 23 cannot be garnished, but spousal support is eligible for
- 24 garnishment from military disability income and social security.
- 25 42 U.S.C. §§ 659.
- 26
- 27
- 28

I.

THE LAW-OF-THE-CASE DOCTRINE HOLDS THAT ONE DISTRICT COURT JUDGE SHOULD NOT OVERTURN ANOTHER DISTRICT COURT'S RULING

The law-of-the-case doctrine "refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open a ruling by that court or a higher one in earlier phases." Crocker v. Piedmont Aviation, Inc., 49 F.3d 735, 739 (D.C.Cir.1995); "the power of one judge of the superior court is equal to and coordinate with another." See also Michigan Nat'l Bank v. Hanner, 268 N.C. 668, 670, 151 S.E.2d 579, 580 (1960); "it is well established in our jurisprudence 'that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.' Calloway v. Ford Motor Co., 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972)." State v. Woodridge, 357 N.C. 544, 549 (2003). "One superior court judge may only modify, overrule or change the order of another superior court judge where the original order was (1) interlocutory, (2) discretionary, and (3) there has been a substantial change of circumstances since the entry of the prior order. Stone v. Martin, 69 N.C. App. 650, 652, 318 S.E.2d 108, 110 (1984). A substantial change in circumstances exists if since the entry of the prior order, there has been an 'intervention of new facts which bear upon the propriety' of the previous order. See Calloway v. Motor Co., 281 N.C. 496, 505, 189 S.E.2d 484,

1 490 (1972).” First Fin. Ins. Co. v. Commercial Coverage Inc., 154 N.C. App. 504,
2 507 (2002). “The power of one judge of the superior court is equal to and
3 coordinate with another.” Michigan Nat’l Bank v. Hanner, 268 N.C. 668, 670, 151
4 S.E.2d 579, 580 (1960).

5 In Baldwin v. United States, 823 F. Supp. 2d 1087, 1099 (D. N. Mar. I.,
6 2011) the court stated:

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

14 In Cosby v. Autozone, Inc., No. 2:08-cv-00505-KJM-DAD.
15 United States District Court, E.D. California (2016), held that

16 **In general, “judges who sit [on the same case] should not attempt**
17 **to overrule the decisions of each other.”** Castner v. First Nat’l Bank
18 of Anchorage, 278 F.2d 376, 379 (9th Cir. 1960) (citation and
19 quotation marks omitted). “[J]udges must, in light of the overarching
20 `principles of comity and uniformity,’ make every effort `to preserve the
21 orderly functioning of the judicial process’ when reconsidering an order
22 of a prior judge in the same case.” Baldwin v. United States, 823 F.
23 Supp. 2d 1087, 1099 (D. N. Mar. 1, 2011) (quoting Castner, 278 F.2d
24 at 379-80). **While a second judge has discretion to review the**
25 **decision of a predecessor in the same case, the law of the case**
26 **doctrine can limit that discretion.** Delta Savings Bank v. United
27 States, 265 F.3d 1017, 1027 (9th Cir. 2001) (quoting Jeffries v. Wood,
28 114 F.3d at 1484, 1489 (9th Cir. 1997)). **Indeed, “the prior decision**
should be followed unless (1) the decision is clearly erroneous
and its enforcement would work a manifest injustice, (2)
intervening controlling authority makes reconsideration
appropriate, or (3) substantially different evidence was adduced
at a subsequent trial.” Id. (Emphasis Added).

Judge Hardcastle’s ruling that the \$1,500 house assistant payments are
alimony payments was not “clearly erroneous” and its enforcement would not

1 work a manifest injustice to Grady. In fact, the opposite is true. If the payments
2 are not considered alimony, there is no way for Caterina to collect against Grady
3 since Grady's income is primarily disability pay and social security income which
4 cannot be garnished unless the payments are recognized as alimony. To date,
5 Grady is not paying his obligations to Caterina and Caterina is left without any
6 viable enforcement options.
7

8 There was no intervening controlling authority that made reconsideration of
9 Judge Hardcastle's ruling appropriate, and no substantially different evidence
10 was adduced at a subsequent hearing or trial and therefore, there is no basis to
11 set aside Judge Hardcastle's decision finding that Grady's house assistance
12 payment is alimony.
13

14 The "mistake" component of Rule 60(b)(1) allows this court to correct its
15 prior ruling based on "mistake" of law. Branch Banking & Trust Co., v. Frank
16 (2:11-CV-1366 JCM (CWH) (D. Nev., 2012). Caterina is requesting that Judge
17 Hardcastle's ruling, that the \$1,500 per month home assistance payments are
18 alimony, be reinstated so that Caterina will be able to garnish those payments
19 from Grady's disability and social security income.
20

21 II.

22 **A WAIVER OF ALIMONY MUST BE EXAMINED IN LIGHT OF THE FACTS**
23

24 In Parker v. Green, No. 73176 (Nevada June 25, 2018), the Decree of
25 Divorce contained an express waiver of alimony. The Nevada Supreme Court
26 found that the waiver was ambiguous; that the language used in the decree
27 mirrored standard alimony language; and that as a result it was necessary to
28

1 delve beyond the terms of the Decree of Divorce and “examine the circumstances
2 surrounding the parties’ agreement in order to determine the true intentions of the
3 parties”. In the Parker case the court did not uphold the alimony waiver.

4 So, too, in this instance, the alleged alimony “waiver” is not the end of the
5 inquiry in this case. The nature of the payments creates an ambiguity, the
6 language of support is similar to the alimony language in NRS 125.150(9)(a) and
7 the facts of the case show that, based on what Grady told Caterina before and
8 at the time of the divorce, Caterina reasonably expected that Grady would
9 support her for the remainder of her life and that upon his death she would
10 continue to be supported based on her receipt of his Survivor benefits.
11

12
13 III.

14 **CATERINA SHOULD BE ALLOWED TO REOPEN THE JOINT PETITION/
15 SUMMARY DECREE OF DIVORCE TO REINSTATE ALIMONY**

16 CATERINA should be allowed to modify the joint petition/ summary decree
17 of divorce to allow her to seek alimony with regard to the \$1,500 house
18 assistance payment and the \$1,500 military disability payment.
19

20 In Fattore v. Fattore Docket No. A-3727-16T1 Argued January 16, 2019 and
21 February 5, 2019 (N.J. Super. App. Div., 2019), (not for publication), the court
22 found that the wife waived alimony. “But for” her receipt of an interest in her
23 husband’s pension, the wife would not have waived alimony. So, too, in this
24 instance, Caterina, waived alimony in return for her receipt of \$1,500 per month
25 as and for the mortgage assistance payment plus \$1,500 per month for her
26 interest in Grady’s pension payment.
27

28 In Fattore, supra, the court explained:

“Here, we hold ***the alimony waiver was not a bar to a consideration of a post-judgment award of alimony to plaintiff.*** Although the waiver of alimony was mutual, we need not speculate what defendant's reasons for waiving it were because his waiver stands separate, and presumably had separate consideration, from plaintiff's waiver. ***However, the record readily demonstrates plaintiff gave valuable consideration for the waiver of alimony in exchange for the promise of the future ability to share in defendant's military pension.*** Moreover, as defendant notes in his reply brief, his earnings were approximately thirty-four percent greater than plaintiff's at the time of the divorce. Thus, there was valuable consideration given by plaintiff in exchange for the alimony waiver, and ***the unforeseeable loss of the bargained for pension benefit was a substantial and permanent change in circumstances, which invalidated the waiver. Upholding the alimony waiver in these circumstances would be wholly unfair.*** (Emphasis Added).

The waiver of alimony should not be an obstacle to Caterina receiving alimony in this instance given the facts of this case. The consideration for the alimony waiver was in exchange for the promise that Grady would pay her for her interest in his military pension and receipt of \$1,500 as a house assistance payment.

This court can grant Caterina relief from judgment under NRCP 60(b)(6).

Grady spends time on other subsections of 60(b), but does not mention subsection (6).

Rule 60. Relief From a Judgment or Order

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

.....

.....

(6) any other reason that justifies relief.

[Emphasis added]

Federal Rule 60(b)(6) provides guidance in this matter:

Under Rule 60(b)(6), **a district "court may relieve a party or its legal**

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

Caterina requests that this court should find that extraordinary circumstances exist to grant Caterina relief from judgment under 60(b)(6) based on the following:

1. Grady misinformed Caterina and led her to believe that he would give her \$3,000.00 per month for his lifetime; for the last 4 years Grady has paid Caterina \$3,000.00 per month (\$1,500.00 mortgage assistance and \$1,500 military pension). Grady abruptly stopped paying her \$3,000.00 per month on September 1, 2018;

2. Grady claims that Caterina is only entitled to \$64.20 per month from his military pay and nothing else. At the time of the divorce, Grady did not tell Caterina that he had elected waiver of his military pay in order to receive disability pay and Grady misrepresented the value of his army pension. He admits that he informed Caterina that his retired pay was \$3,017.00 per month and that she was entitled to \$1,508.00 per month. His Military pay was not \$3,017.00 per month at the time of divorce, rather it was only \$128.40 per month of which, she would

1 receive 1/2 (\$64.20)⁴;

2 3. Grady cut off paying Caterina \$1,500.00 per month in mortgage
3 assistance brutally claiming that “it wasn’t required” anymore, when in fact her
4 mortgage remains \$1,933.07 per month. Per the divorce pleadings the \$1,500.00
5 per month payment is to continue until her financial situation changes or until the
6 home is sold or paid off. This constitutes an extraordinary circumstance;

7 4. Grady had a responsibility to act with good faith and fairness to Caterina
8 because he shares a confidential, fiduciary relationship with Caterina. Such a
9 responsibility contemplates that Grady will make a full and fair disclosure prior to
10 the execution of the divorce documents. Grady shirked this responsibility.
11 Caterina could not have known the full magnitude of Grady's assets and
12 obligations because the parties had been separated for over 6 years prior to
13 divorce, and Grady lived in the Philippines while she lived in Nevada.

14 5. Caterina’s request is timely. As soon as she became aware of the
15 problem on September 1, 2018, when Grady stopped paying her and refused to
16 communicate with her, she sought the assistance of the court.

17 6. Caterina has no means to garnish or obtain money directly from the
18 federal government unless she receives an order for spousal support because
19 all of Grady’s money is disability or social security except approximately \$128.40
20 per month.

21 These circumstances should be considered extraordinary circumstances
22 sufficient to grant Caterina relief from the judgment.
23
24
25
26

27
28

⁴ Exhibit “3”, Grady’s Veteran’s monthly payments August 2014 - July 2015.

1 In Carlson v. Carlson, 832 P.2d 380, 108 Nev. 358 (Nev., 1992), the court
2 determined that husband and his counsel either deceived the wife as to the
3 value of his pension (fraud) or both husband and wife were mistaken as to the
4 value of the pension (mutual mistake). Under either circumstances the court held
5 it was sufficient to set aside the Decree of Divorce.
6

7 Trudy argues that Austin improperly received the bulk of the community
8 property because he misrepresented the value of his pension. Trudy
9 contends that she demonstrated that the divorce decree should be set aside
based on either mutual mistake or fraud. We agree.

10 [t]he record clearly demonstrates that the representations were the result of
11 either mistake or fraud. If both Austin and Trudy were mistaken about the
12 pension's value, the parties entered the property settlement based upon a
13 mutual mistake, namely, that they had essentially split their property equally.
14 A mutual mistake entitles a party to relief from a judgment. NRCP 60(b)(1).
15 **If, however, Austin or his counsel knew the value of the pension, they**
16 **fraudulently misrepresented the value of Austin's pension. Such fraud**
17 **is grounds for relief from the judgment** pursuant to NRCP 60(b)(2).
18 Therefore, we conclude that Trudy was entitled to relief from the judgment.
19 (emphasis added)

20 Like the husband in Carlson, Grady's misrepresentation of his military pay
21 is grounds for Caterina's relief from judgment.

22 In Barelli v. Barelli, 944 P.2d 246, 113 Nev. 873 (Nev., 1997), Wife waived
23 alimony in return for lifetime employment with husband's medical practice. When
24 Husband stopped paying her, wife sought judicial relief.
25

26 Parties divorced in 1988 and in 1992, the former wife, Madeline, filed a
27 complaint in a district court of general jurisdiction, alleging that Anthony
28 fraudulently induced her to **waive alimony in return for lifetime employment**
with his medical practice. She asked the district court to reform the
property settlement agreement so that she could receive monthly
alimony and an additional \$250,000 in community property. Madeline has
filed an action to reform (or, by seeking alimony, to rescind) the
agreement.

We hold that actions regarding the resolution of the marriage filed independent

of the divorce proceeding to reform or rescind unmerged property settlements fall within the jurisdiction of the family court pursuant to article 6, section 6(2)(b) of the Nevada Constitution, and NRS 3.223(1)(a). Even though Madeline brought a separate claim for contractual damages, the resolution of whether the property settlement agreement could be reformed or rescinded based on allegations of fraud was dependent on the resolution of whether, in fact, there was a contract ab initio (the oral side agreement). Therefore, because the reformation/rescission claim was dependent upon the existence of the oral contract, and because a favorable ruling on the reformation/rescission had a potential for resurrecting claims for alimony and community property, **the family court also had jurisdiction to adjudicate its existence.** [emphasis added]

Based on the foregoing, Caterina should be allowed to set aside the Decree of Divorce/Property Settlement Agreement and make a claim for life time alimony at the rate of at least \$3,000 per month.

7. Caterina Should Receive Lifetime Alimony Caterina should receive lifetime alimony. Caterina was a wife, mother, and homemaker for **31 years**. Caterina was young when they married, had only a high school education and English was her second language, she had no chance to get additional education, could not sustain employment long enough in any of the places they lived to further her career, could not work full time or develop a retirement plan on her own accord. Grady on the other hand, earned two master's degrees, a war college certificate, FEMA certificate and became a high ranking officer. Grady currently receives over \$116,000.00 annually in largely tax free income, receives free medical care and was able to reduce his debt.

The income gap needs to be closed so that Caterina can maintain the standard of living that she had during marriage. If Caterina is awarded \$3,745 per month in alimony from Grady, this equals \$44,941 per year. Grady's income

of \$116,000.00 less spousal support of \$44,941 to Caterina = \$71,059 net remaining for Grady to live on. Grady's monthly expenses are approximately \$4,060 per month (\$48,696 per year)⁵.

In Kogod v. Cioffi-Kogod, 135 Nev., Adv. Op. 9 (April 25, 2019) the court held that:

Our case law makes clear that a district court may award alimony to ensure that an economically powerless spouse receives sufficient support to meet his or her needs. See Gilman v. Gilman, 114 Nev. 416, 423-24, 956 P.2d 761, 765 (1998) ("The Nevada legislature created spousal support awards to, inter alia, keep recipient spouses off the welfare rolls.").

In addition to economic need, alimony may also be awarded to compensate for economic loss as the result of a marriage and subsequent divorce, particularly one spouse's loss in standard of living or earning capacity. Our case law's concern for maintaining a spouse's standard of living post-divorce is reflected in this rationale for alimony. Enabling the lower-income-earning spouse to maintain a lifestyle as close as possible to the lifestyle enjoyed during the marriage has consistently been an important aim of this court. See, e.g., Wright v. Osburn, 114 Nev, 1367 1369, 970 P.2d 1071, 1072 (1998) (deeming the spousal support award insufficient because the wife would not be able to "maintain the lifestyle she enjoyed during the marriage or a lifestyle commensurate with" her former husband); Sprenger v. Sprenger, 110 Nev. 855, 860, 878 P.2d 284, 287 (1994) (remanding with instructions to award alimony such that the spouse may "live as nearly as fairly possible to the station in life she enjoyed before the divorce") (internal quotation marks omitted); Gardner v. Gardner, 110 Nev. 1053 1058, 881 P.2d 645, 648 (1994) (increasing alimony by ten years because the wife's "contribution to the community over many years [was] not fairly recognized by the two-year alimony award"); Rutar v. Rutar, 108 Nev. 203, 208, 827 P.2d 829, 832 (1992) (increasing the alimony award where the previous award only provided "a standard of living far below that to which [the wife and children] have been accustomed"). This court reaffirmed this goal in Shydler v.

⁵ after reductions are made for debts he eliminated such as \$1,080 per month for hotel, \$51,721.00 in debt he eliminated by abandoning his new Chevy Cruz, and not paying the car loan or two other personal loans to USAA seen on his FDF filed on January 18, 2019

1 Shydler, 114 Nev. 192, 954 P.2d 37 (1998), by noting that two of the
2 primary purposes of alimony "are to narrow any large gaps between
3 the post-divorce earning capacities of the parties and to allow the
4 recipient spouse to live 'as nearly as fairly possible to the station in life
5 [] enjoyed before the divorce.'" Id. at 198, 954 P.2d at 40 (alteration
6 in original) (citations omitted) (quoting Sprenger, 110 Nev. at 860, 878
7 P.2d at 287-88).

8 Consistent with Kogod, Caterina' should receive life time alimony since she
9 has a need for support, Grady has the ability to pay, and she should be allowed
10 to maintain the lifestyle they had during marriage.

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

13 Grady should be summarily held in contempt of court for failing to follow the
14 Court's orders to deposit \$3,000 per month into Caterina's bank account for the
15 time period of September 1, 2018 through October 1, 2019.

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

23 On or about September 12, 2019, in Grady's Motion set before the
24 discovery commissioner, and again on September 17, 2019, in his response to
25 Caterina's Motion set before the discovery commissioner, Grady admitted:
26

27 "..... the following facts are undisputed

28 **1. Grady has not paid any money toward the \$3,000 obligation since**

1 just before Caterina filed her motion.

2 **2. Grady has income sufficient to cover this obligation.”**

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

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

6 Rule 56. Summary Judgment

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

18 NRS 22.030

19
20

21 2. If a contempt is not committed in the immediate
22 view and presence of the court or judge at chambers, an
23 affidavit must be presented to the court or judge of the
24 facts constituting the contempt, or a statement of the
25 facts by the masters or arbitrators.

26

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

 NRS 22.050 Amount of bail may be fixed by

1 endorsement on warrant of attachment. Whenever a
2 warrant of attachment is issued pursuant to this chapter,
3 the court or judge shall direct, by an endorsement on
4 such warrant, that the person charged may be let to bail
for his or her appearance, in an amount to be specified
in such endorsement.

5 NRS 22.100 Penalty for contempt.

6 1. Upon the answer and evidence taken, the court or
7 judge or jury, as the case may be, shall determine
8 whether the person proceeded against is guilty of the
contempt charged.

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

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

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

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

- 27 i. \$3,000 per month from September 1, 2018 to October 1, 2019
28 (14 months, \$42,000);

- ii. \$7,000 in attorney fees ordered April 5, 2019;
- ii. \$5,000 in attorney fees ordered June 26, 2019;
- iii. \$1,500 in attorney fees ordered August 9, 2019;
- iv. \$500 sanction for each month he failed to pay (14, \$7,000);
- v. \$500 sanction for each incident of failing to pay attorney fees (3, \$1,500);
- vi. A warrant for Grady Byrd's arrest be issued and that his release be set at no less than the total amount sought herein above, namely \$64,000.

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

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

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

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

On April 5, 2019, Caterina sent correspondence to Grady and asked Grady to voluntarily keep her on the SBP. Grady refused. On May 2, 2019, at the hearing, she asked him to keep her on the SBP. He refused. Instead, Grady listed his new 25 year old wife as the beneficiary. It was Caterina, not his 25 year old wife, who was married to Grady for 31 years and supported his career. Caterina now has to pay additional attorney's fees and costs in her efforts to

1 reinstate a benefit that was awarded to her in the decree of divorce.

2 On June 26, 2019, this Court ordered Grady to complete the paperwork
3 necessary to reinstate Caterina as the beneficiary of the Survivor Benefit Plan.
4 DFAS has refused to reinstate Caterina. She is now appealing to the Army Board
5 for the Correction of Military Records. For purposes of her appeal, since Grady's
6 new wife is listed as the beneficiary, Caterina needs a consent from Grady's wife,
7 Pinky. Grady was asked to cooperate and obtain Pinky's consent.⁶ On
8 September 25, 2019, Caterina received a letter from Grady advising he will not
9 cooperate and have Pinky sign the consent.⁷

10
11 Pinky must now be joined to this instant action. See Ellison v. Ellison, 776
12 SE 2d 522 Court of Appeals of North Carolina (August 4, 20125).

13
14 Rule 19. Required Joinder of Parties

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

- 16 (1) Required Party. A person who is subject to service of process and
17 whose joinder will not deprive the court of subject-matter jurisdiction
18 must be joined as a party if:
- 19 (A) in that person's absence, the court cannot accord complete relief
20 among existing parties; or
 - 21 (B) that person claims an interest relating to the subject of the action
22 and is so situated that disposing of the action in the person's
23 absence may:
 - 24 (i) as a practical matter impair or impede the person's ability
25 to protect the interest; or

26 ⁶ Exhibit "4" Letter dated September 24, 2019 with consent form sent to Grady's
27 counsel.

28 ⁷Exhibit "5" Letter dated September 25, 2019 from Grady's counsel.

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

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

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

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

Accordingly, Caterina seeks joinder of Grady's wife as a necessary party should she remain unwilling to sign the necessary release.

REQUEST TO CONTINUE THE PENDING MOTION TO COMPEL AND EVIDENTIARY HEARING

Pursuant to EDCR 7.30, the court may order that the date set for trial be continued. Specifically, Rule 7.30 provides that:

Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial shall be supported by affidavit except where it shall appear to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as hereinafter required for an affidavit. Counter-affidavits may be used in opposition to the motion.

Should the court see fit to grant Caterina's Motion herein, Caterina respectfully requests that the court continue the Motion to Compel and the Evidentiary hearing. If the court finds that Caterina is entitled to alimony, then that would be another basis for finding that Grady's bank statements, which are

1 the subject of the motion to compel, are relevant.

2 Further, there are additional issues in this case to adjudicate which may
3 impact the Evidentiary Hearing, which include Grady's non-compliance with the
4 court orders that he complete whatever paperwork is necessary to reinstate
5 Caterina as the beneficiary of the Survivor Benefit Plan. Because Grady gave the
6 Survivor Benefit Plan to his new wife on or about September 2018, his wife needs
7 to be joined to this action. Caterina is now deprived of an asset awarded to her
8 in the decree of divorce. The totality of the case is not ripe for an evidentiary
9 hearing and holding a evidentiary hearing on partial elements of the case may
10 deprive the court of additional facts and circumstances needed to adjudicate
11 related issues in the case. Caterina supports this instant Motion and continuance.
12 It is respectfully requesting that the pending Motion and Evidentiary Hearing
13 scheduled for October 21, 2019, and the related deadlines, be continued.
14
15

16 **V.**

17 **CATERINA IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES**

18 On April 23, 2019, Caterina filed a Memorandum of Fees and Costs for the
19 time period from the commencement of this litigation until the January 23, 2019,
20 hearing. The total fees were \$11,580.00 and total costs were \$706.18. At the
21 January 23, 2019 hearing, Caterina was awarded \$7,000.00 in attorney fees and
22 costs. The payment of the \$7,000.00 is included in the \$4,500.00 per month
23 payment that Grady was to begin paying starting on February 15, 2019. Grady
24 refuses to pay.
25
26

27 Since January 23, 2019, Caterina has incurred additional fees and costs
28 defending herself against Grady's wrongful behavior. She has been forced to file

1 motions and seek the court's assistance since then. At the May 22, 2019, hearing
2 (order filed June 26, 2019), Caterina was awarded \$5,000 in attorney fees and
3 at the July 18, 2019 hearing (order filed August 9, 2019), Caterina was awarded
4 \$1,500 in attorney fees. Grady has refused to pay these fees. Caterina will file
5 a current Memorandum of Fees and Costs for the fees requested herein.

6
7 Caterina requests fees pursuant to NRS 125.040 and NRS 18.010(2)(a) and/or
8 (b).

9 Pursuant to NRS 22.100 Penalty for contempt.

- 10 2. Except as otherwise provided in NRS 22.110, if a person is found
11 guilty of contempt, a fine may be imposed on the person not
12 exceeding \$500 or the person may be imprisoned not exceeding 25
13 days, or both.
- 14 3. In addition to the penalties provided in subsection 2, if a person is
15 found guilty of contempt pursuant to subsection 3 of NRS 22.010,
16 the court may require the person to pay to the party seeking to
17 enforce the writ, order, rule or process the reasonable expenses,
including, without limitation, attorney's fees, incurred by the party as
a result of the contempt.

18 Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972). Spouses
19 should be on an equal footing so that one spouse doesn't have to liquidate her
20 savings. The Nevada Supreme Court held that the district court did not abuse
21 its discretion in awarding approximately \$50,000.00 in attorney fees to the wife
22 in a divorce proceeding. The Court noted that without the district court's
assistance, the wife would have been required to liquidate her savings and
jeopardize her financial future in order to meet her adversary in court on an
equal basis.

23 In Griffith v. Gonzales-Alpizar, 132 Nev. Adv. Op. 38 (May 26, 2016) the
24 Appellate Court held that: Pursuant to NRS 125.040 the court can award
attorney's fees from the start of the action through the appeal.

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

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

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

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

Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the Court should take into consideration the following factors when determining an award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has been practicing law for over 34 years and Ms. Lambertsen has been practicing law for 14 years; the law firm's practice is dedicated to family law. (2) The character and difficulty of the work performed: The intricacy, importance, time and skill required to prepare this Reply and Exhibit Index is moderate to high. (3) The work actually performed by the attorneys and legal assistants: Approximately 10 hours were spent by counsel and legal assistants in fees (4) The result obtained is unknown but the Opposition and Countermotion demonstrates Grady's, contempt, lack of cooperation and continuing control of Caterina.

V.

CONCLUSION

Caterina respectfully requests the following relief:

1. Set Aside the Order filed June 26, 2019 as to the finding that Caterina waived spousal support in the decree of divorce;
2. Continue the Calendar Call, Evidentiary Hearing and related deadlines;
3. Continue the Plaintiffs Motion to Compel Production of Discovery and

1 Defendant's Motion for a Protective Order scheduled to be heard on October
2 11, 2019 without prejudice and able to be re-noticed at a later date;

3 4. Schedule Defendant's Motion for Reconsideration filed April 8, 2019 on the
4 Notice of Entry of Order from the January 23, 2019 hearing filed about April
5 5, 2019 be heard by the judge presiding at the January 23, 2019 hearing;

6 5. Orders filed on or about April 5, 2019 remain in full force and effect pending
7 further orders of the court;

8 6. Order that Grady Byrd's wife, Pinky Byrd, is joined as a party to this action;

9 7. Summarily find that Grady Byrd is in Contempt of Court for failure to pay
10 Caterina Byrd as ordered and that he be sanctioned based on the following:
11

12 i. \$3,000 per month from September 1, 2018 to October 1, 2019 (14
13 months, \$42,000);

14 ii. \$7,000 in attorney fees ordered April 5, 2019;

15 iii. \$5,000 in attorney fees ordered June 26, 2019;

16 iv. \$1500 in attorney fees ordered August 9, 2019;

17 v. Sanction \$500 for each month (14, \$7,000);

18 vi. Sanction \$500 for each incident of failing to pay attorney fees (3,
19 \$1,500);

20 vii. That a warrant for Grady Byrd's arrest be issued and that he be let
21 go for his appearance on a hearing on the warrant in the amount
22 for his release set at no less than \$64,000;
23
24
25

26 ///

27 ///

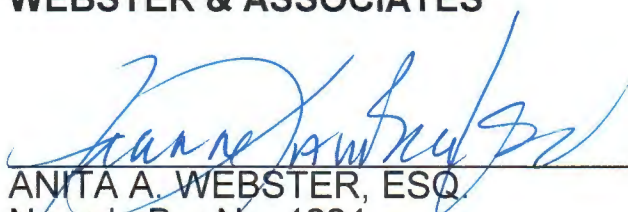
28 ///

1 8. For Attorney's Fees and Costs; and

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

4 DATED this 30 day of September, 2019.
5
6

7 **WEBSTER & ASSOCIATES**

8 
9

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DECLARATION OF CATERINA BYRD

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

3 2. I have read the foregoing Motion for Reconsideration, Summary Judgment,
4 Joinder and attorney fees and costs, and the factual averments contained therein
5 are true and correct to the best of my knowledge, except as to those matters based
6 on information and belief, and as to those matters, I believe them to be true. Those
7 factual averments contained in the preceding are incorporated herein as if set forth
8 in full.
9

10 3. That I had been receiving payments of \$3,000.00 per month from the
11 Defendant, Grady Byrd since before the filing of the Joint Petition for Summary
12 Decree of Divorce on June 5, 2014. Around the time of divorce, in emails to me,
13 Grady promised me that I would receive the \$3,000.00 per month until he died.
14 Then, the life insurances and military survivor benefit plan would be paid to me.
15 Grady ceased paying me \$3,000 per month on September 1, 2018. My last
16 payment was August 2018.
17

18 4. That on September 4, 2018, I learned that the checking account that Grady
19 Byrd had deposited my monthly payment into was closed. It was a joint checking
20 account that had been established for 31 years. At the hearing on January 23,
21 2019, I gave Grady Byrd my Bank of America routing number and account number
22 so that he could make deposits into my account.
23

24 5. That I did not receive a deposit of \$4,500.00 from Grady Byrd on or before
25 February 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd on or
26 before March 15, 2019; I did not receive a deposit of \$4,500.00 from Grady Byrd
27 on or before April 15, 2019, and I did not receive a deposit of \$4,500.00 from Grady
28

1 Byrd on or before May 15, 2019, as ordered at the January 23, 2019 hearing. I did
2 not receive \$3,000.00 from Grady for each of the months of June 2019, July 2019,
3 August 2019, September 2019 or October 2019.

4 6. That I did not receive \$5000 in attorney fees as ordered on June 26, 2019
5 and I did not receive \$1500 in attorney fees as ordered on August 9, 2019.

6 7. That I have not received any money from Grady since August 2018. I am
7 struggling to pay my bills and living expenses. I have had to borrow money from
8 my friends and family. I took in a roommate to help pay expenses, but the
9 roommate moved out due to the stress and anxiety I am experiencing with this
10 case. I fear that I may lose my house because paying the mortgage is financially
11 difficult.

12 8. That at the time of divorce, I was never told by Grady and never knew that
13 the army pension was only about \$128.00 and my portion would be only about
14 \$62.00. Based on what Grady did tell me, I believed the army pension that Grady
15 was receiving was about \$3,017.00 per month and Grady was paying me
16 \$1,500.00 per month since the time of divorce because of this.

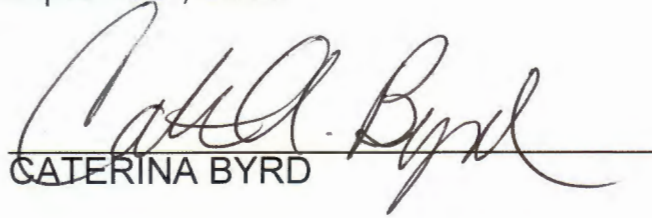
17 9. That because the \$3,000.00 per month payments from Grady will cease
18 upon his death, I will rely on the Military SBP to pay my bills once he passes. I am
19 devastated that simply because neither one of us sent the decree to the military
20 finance office within the 12 month deadline to do so. The Department of Finance
21 and Accounting Services is not reinstating me as the beneficiary. I am submitting
22 forms to the army board of corrections to reinstate me. We were married for 31
23 years and he promised me the SBP.

24 10. Based upon the foregoing, I respectfully request that this Court grant the
25
26
27
28

1 relief requested by me in this Motion.

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

4 Executed this 30 day of September, 2019.

5
6
7
8 
CATERINA BYRD

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 30th day of September, 2019, I caused the above and foregoing to be served as follows:

☒ Electronic Service

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

Byron L. Mills, Esq.

Modonnell@millsnv.com (As listed on the service list)



An employee of Webster & Associates

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff/Petitioner

v.

GRADY EDWARD BYRD

Defendant/Respondent

Case No. D-18-577701-Z

Dept. G

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

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

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

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

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

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

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

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

☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: JEANNE F. LAMBERTSEN Date 9/30/19

Signature of Party or Preparer

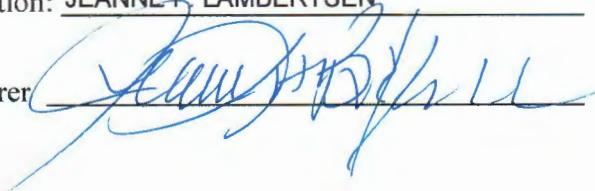
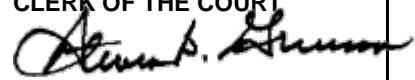


EXHIBIT “6”



ROPP
WEBSTER & ASSOCIATES
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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

///

///

///

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: 

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

11 **POINTS AND AUTHORITIES**

12 **REPLY**

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

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

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

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

19 Grady's income *can be garnished for alimony* since he "waived" a portion
20 of his retirement pay to get the VA disability benefit.

21 The regulations and procedures for garnishing Grady's service-connected
22 disability pay are promulgated in 5 CFR § 581.

23 5 CFR Section 581.103(b)(4) states in pertinent part:
24

25 (iv) Any payments by the **Veterans**
26 **Administration as compensation for a**
27 **service-connected disability** or death.
28 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

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

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

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

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

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

CRSC is subject to a Treasury offset to recover a debt owed to the United States **as well as to garnishment for child support or alimony.** In addition, debts due the government may be collected from CRSC, including overpayments of retired pay or erroneous payments of CRSC, by means of an administrative offset. An 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

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

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

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

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

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

(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”

(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

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

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

Where a VA disability benefit exists at the time of divorce, the court cannot divide those benefits as property², but the cash flow “may be considered as a resource for purposes of determining [one’s] ability to pay alimony.” See Womack v. Womack, 307 Ark. 269, 818 S.W.2d 958 (1991); In re Marriage of Bahr, 29 Kan. 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

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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to the contrary”); In re Marriage of Dora Pope-Clifton, 823 N.E.2d 607 (Ill. App. 2005) (veteran’s bank account could be frozen to satisfy his support obligations despite the fact that the proceeds in the account consisted of veterans’ disability funds because “veterans’ benefits are not for the sole benefit of disabled veterans,” but rather, “[are] intended to benefit both veterans and their families”) and Urbaniak v. Urbaniak, 807 N.W.2d 621, 626 (S.D. 2011) (“An overwhelming majority of courts have held that [federal veterans’] disability payments may be considered as income in awarding spousal support.”).

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

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

1. Veteran’s disability benefits (although only up to the amount of his waiver of retired pay). (42 U.S.C. §§ 659(a), 659(h)(1)(A)(ii)(V), 659(h)(1)(B)(iii) ; 5 C.F.R. § 581.103 ; United States v. Murray (1981) 158 Ga.App. 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.)

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

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

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

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

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

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
benefits awarded "pursuant to 38 United States Code
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

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

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

3. Social Security Disability Payments can be garnished for spousal support because this is non-Title 38 income. Further, garnishment is possible 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.*

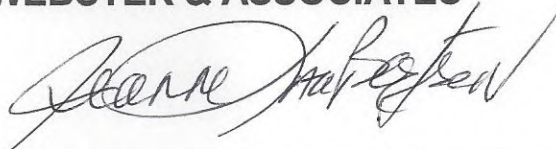
4. Military retired pay can be garnished for Spousal Support pursuant to 10 U.S.C. 1408 (a)(2)(B)(ii). Retired pay is disbursed to retirees from the Army (10 U.S.C. §1401). This is non-Title 38 income. Further, garnishment is possible pursuant to 42 U.S.C. § 659 which is "Consent by United States to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

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

DECLARATION OF CATERINA BYRD

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

3 2. I have read the foregoing Reply to Grady Byrd's Opposition to the Ex
4 Parte Application for Request for an Income Withholding Order, and the factual
5 averments contained therein are true and correct to the best of my knowledge,
6 except as to those matters based on information and belief, and as to those
7 matters, I believe them to be true. Those factual averments contained in the
8 preceding are incorporated herein as if set forth in full.
9

10 3. Based upon the foregoing, I respectfully request an Income Withholding
11 Order.
12

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

15 Executed this 10 day of April 2020.
16

17
18 
19 Caterina Byrd
20
21
22
23
24
25
26
27
28

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 10th day of April, 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"

ORDR
WEBSTER & ASSOCIATES
ANITA A. WEBSTER, ESQ.
Nevada Bar No. 1221
JEANNE F. LAMBERTSEN, ESQ.
Nevada Bar No. 9460
6882 Edna Ave.
Las Vegas, Nevada 89146
Tel No: (702) 562-2300
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e-mail: jlambertsen@embarqmail.com
Attorney for Plaintiff, unbundled

DISTRICT COURT
CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD

Plaintiff,

v.

GRADY EDWARD BYRD

Defendant.

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

INCOME WITHHOLDING ORDER

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

Defendant's Social Security Number (SSN) is XXX-XX-[redacted for use as 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 The defendant has several sources of income as shown on the General
11 Financial Disclosure Form which he completed. These are subject to attachment
12 by means of an income-withholding order, so as to start payments to the Plaintiff
13 for enforcement of the arrears due by Defendant. The following are sources of
14 such income:

15
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 d) Social Security payments of over \$2,100 per month (before
28 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

5 IT IS THEREFORE ORDERED that:

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

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

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

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. ~~Can~~, 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	
PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES CSM GRADY E BYRD USA RET PUROK 2 CANGMATING SIBULAN NEGROS ORIENTAL DUMAQUETE PHILIPPINES				DFAS-CL POINTS OF CONTACT	
				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	
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.