

IN THE SUPREME COURT OF THE STATE OF NEVADA

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JESUS AREVALO,

Appellant,

vs.

CATHERINE MARIE AREVALO N/K/A
CATHERINE MARIE DELAO,

Respondent.

S.C. No.:

D.C. Case No.:

Electronically Filed
Sep 03 2020 09:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
81359

D-11-448514-D

OPPOSITION TO

**“MOTION TO STAY FINANCIAL ORDERS PENDING APPEAL AND TO
RECONSIDER/CORRECT CHILD SUPPORT CALCULATION”**

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Appellant in Proper Person:

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POINTS AND AUTHORITIES

The request made by Appellant Jesus Arevalo (“Jesus”) misrepresents the procedural history, the facts, and the applicable law. Respondent Catherine Marie Delao (“Catherine”) opposes any stay; if one is granted, it should be conditioned on an adequate bond.

It is true that the parties have consistently litigated since the divorce 6 years ago – because of Jesus’ vexatious and duplicative filings, and consistent refusal to follow court orders to the point of his grudging partial compliance when threatened with imminent incarceration.

Accordingly, Catherine submits this *Opposition* and requests that the Court deny the request for any stay or purported “correction” of child support orders.

I. THE MOTION TO STAY SHOULD BE DENIED

This Court has the inherent authority to stay enforcement of any judgment; Jesus’ bare-bones filing does not provide a valid reason to do so. Stays are not preferred, and are not to be presumptively granted. As detailed below, Jesus’ filing is mainly just a continuation of his years-long evasion and refusal to follow repeated court orders for as long as possible.

Any stay request involves four factors as outlined in NRAP 8(c): 1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; 2) Whether appellant will suffer irreparable or serious injury if the stay or injunction is denied; 3) Whether the respondent will suffer irreparable or serious injury if the stay or injunction is granted; and 4) Whether appellant is likely to prevail on the merits in the appeal or writ petition.

The actual orders at issue here are: 1) Obtaining a life insurance policy on himself for Catherine's benefit, as ordered in the *Decree* and several times since then; 2) Proceeding with a QDRO to divide the pension payments as called for in the *Decree*; 3) Attorney's fees and costs previously ordered; and 4) reimbursement to Catherine of the payment she made relating to the 2017 taxes. As set forth below, Jesus' requests to stay his obligations should be denied for all issues pursuant to the factors set forth in NRAP 8(c).

A. The Life Insurance

The *Order from the May 6 Hearing* required Jesus to obtain the stipulated and long-ordered life insurance policy in place of Catherine's survivor benefits in the PERS benefits. He had repeatedly ignored and refused to obtain it. Jesus was given

until May 6 to either secure the life insurance policy for \$185,000, or produce an actuary's report indicating that some other number was the correct sum; he did neither.

Both Jesus' *Notice of Appeal* and the instant *Motion* were filed after expiration of the time within which he was ordered to get an actuary to suggest some other value to be secured, or get the life insurance policy. He has waived any disagreement with the sum to be secured.

In the unlikely event Jesus prevails on appeal, nothing would be "defeated." The issues on appeal are strictly monetary: whether the district court properly determined that Catherine was entitled to receive certain benefits (life insurance and QDRO) and multiple money judgments, as provided by multiple holdings of this Court. Providing the ordered security during the pendency of the appeal simply preserves the award in question.

Jesus will not suffer any harm of any kind if the stay is denied; in the unlikely event he ends up paying for some insurance that the ultimate decision of the appeal says should not have been purchased, the trial court can easily reimburse for those premiums out of Catherine's future pension payments. However, Catherine certainly *could* suffer irreparable or serious injury if the stay is granted, if anything happens

to Jesus causing a loss of payments with no security in place. Should he die with no payments being made and no insurance in place, Catherine will lose the entirety of the benefits ordered paid to her under the *Decree*.

Jesus should lose on appeal. As stated in the findings, Jesus cannot make a statute of limitations argument about a continuing obligation to provide insurance as long as he continues to receive payments from PERS. He already agreed to the life insurance policy, and reconfirmed it by obtaining an (insufficient) \$5,000 policy.

B. The QDRO and Payments to Catherine of Her Share of the PERS Retirement

The trial court *invited* Jesus to pick a QDRO preparer and engage the QDRO preparer by May 16, with QDRO Masters to be the default preparer if Jesus did *not* engage another company. Jesus did not do so. The trial court restricted arrears to 6 years since payments began, in accordance with this Court's holdings on the issue.

Nothing will be "defeated" if the stay is denied; the issue of whether Catherine is entitled to her time-rule share of the PERS payments remains before the Court for decision. Jesus does not make any arguments that would affect Catherine's right to collect Jesus' pension that she was ordered to receive in the *Decree*; he does not

identify anything wrong with the QDRO prepared and submitted. He simply argues (at 6) that he needs Catherine's time-rule interest in the monthly PERS benefits more than she does, which would be irrelevant even if it was true (and it isn't).

Every month that the PERS QDRO is not entered causes Catherine further injury because she is not receiving anything for her portion of the PERS pension.

At the last hearing before the district court, Jesus flatly refused to even apply for a bond to secure the judgment, as required for anyone seeking a stay. Granting a stay might cause Catherine irreparable injury because Jesus has made himself judgment proof, and has refused to pay prior judgments. Further lapse of time will only make collections more difficult.

Jesus should lose on appeal. All sums at issue were payable within the last six years. This Court's rulings on such installment payments are clear.¹ The great weight of authority recognizes that the divorce decree constitutes the actual "division" of the asset as between the parties, and entry of a QDRO is merely a ministerial act directing a third party to pay, in recognition of the spouse's already-adjudicated right to the

¹ *Bongiovi v. Bongiovi*, 94 Nev. 321, 579 P.2d 1246 (1978); *Clayton v. Gardner*, 107 Nev. 468, 813 P.2d 997 (1991); *see also Biel v. Godwin*, 69 Nev. 189, 245 P.2d 997 (1952).

benefits.² Even *Davidson*³ specifically acknowledged the earlier authority holding that a statute of limitations runs against installment payments as they becomes due.⁴

C. Attorney's fees and costs previously ordered

Below, Jesus requested a stay on “all” attorney’s fees and costs previously ordered, but did not specify which ones, or under what authority he requests a stay; the point is not coherently addressed in the motion filed in this Court.

Most of those fee awards are long-final and unappealable. The only order that *could* now be appealed is the *Order From May 6, 2020 Hearing*, which ordered Jesus to pay Catherine \$2,850 in attorney’s fees, and even as to that one, Jesus has not articulated a single basis to avoid his obligations to pay attorney’s fees.

Jesus has not even tried to identify any way in which the object of the appeal could be “defeated” by the lack of a stay. He has shown no irreparable harm. He should lose on appeal on this issue as well.

² See, e.g., *Gilmore v. Gilmore*, 227 P.3d 115 (NM 2009) (statute of limitations runs from each installment payment of pension benefits, not from divorce); the record contains citations from many states on this question.

³ *Davidson v. Davidson*, 132 Nev. 709, 382 P.3d 880 (2016).

⁴ *Bongiovi v. Bongiovi*, 94 Nev. 321, 579 P.2d 1246 (1978).

D. The payment relating to the 2017 taxes.

This issue analyzes the same way. Nothing would be defeated, Jesus has shown no irreparable harm, and he is unlikely to succeed. He just does not want to pay the judgment.

II. OPPOSITION TO MOTION TO MODIFY CHILD SUPPORT

The district court modified child support at the May 6, 2020, hearing upon *Jesus*' request, using the income from the parties' *Financial Disclosure Forms*, that were current as of the date they were filed.

After that date, temporary pandemic relief and unemployment benefits came and went. This is the wrong forum for any such request; no *Huneycutt* motion has been filed, and those procedures have not been complied with.

III. COUNTERMOTION

Under NRCP 62(d) and NRAP 8, a party requesting a stay is required to obtain a supersedeas bond to protect the prevailing party's interests. For decades, the

applicable case law has succinctly noted that “a supersedeas bond . . . should usually be set in an amount that will permit full satisfaction of the judgment.”⁵

Here, we have established what Catherine’s time-rule interest in the pension is, and have shown with simple math how over the course of her estimated lifetime, the minimum sum at issue is \$185,000. Jesus has also asked to stay several other financial orders, totaling \$189,270.

There are only a few possible outcomes. If Jesus prevails, the bond will be relinquished. If, as expected, this Court affirms the decision below, and Jesus is still alive, a stay issued without a bond would result in Catherine being out whatever she should have been paid from the date of the Court’s order to the end of the appeal. And if Jesus dies before the end of the appeal, with no insurance policy in place, and no bond securing Catherine’s interest, Catherine would lose her entire lifetime interest in the pension.

For all the reasons set out above, no stay should issue in this case. However, if this Court nevertheless elects to grant a stay as to the pension payments *or* the insurance requirement, a supersedeas bond in the sum of \$189,270 should be required

⁵ *McCulloch v. Jeakins*, 99 Nev. 122, 659 P.2d 302 (1983) (the purpose of a supersedeas bond is to protect the prevailing party from loss resulting from any stay of execution).

as a condition prior to any stay being made effective, to permit “full satisfaction of the judgment,” and any arrears accruing during the appeal should explicitly be recoverable from the bond amount.

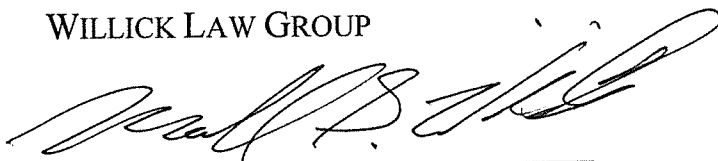
CONCLUSION

For the reasons stated above, Catherine respectfully requests the Court issue the following orders:

1. Deny Jesus’ *Motion* in its entirety.
2. If the court does order a stay, order Jesus to first post a supersedeas bond in the sum of \$189,270.

DATED September 2, 2020.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 3rd day of September, 2020, a document entitled *Opposition to "Motion for Extension of Time to Submit Docketing Statement; Transcript Request Form and Fast Track Brief"* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorney's listed below at the address, email address, and/or facsimile number indicated below:

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Appellant in Proper Person

/s/Justin K. Johnson

An Employee of the Willick Law Group