

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD, Appellant, vs. CATERINA ANGELA BYRD, Respondent.	Supreme Court No. 80548 District Court Case No. D57770 Electronically Filed Mar 03 2020 09:25 a.m. Elizabeth A. Brown Clerk of Supreme Court
--	--

RESPONDENT'S RESPONSE TO DOCKETING STATEMENT

DANIEL W. ANDERSON, ESQ. Nevada Bar No. 9955 Attorney for Appellant Mills & Anderson 703 S. 8 th Street Las Vegas, Nevada 89101 702-386-0030	ANITA A. WEBSTER, ESQ. Nevada Bar No. 1221 JEANNE F. LAMBERTSEN, ESQ. Nevada Bar No. 9460 Attorneys for Respondent Webster & Associates 6882 Edna Ave. Las Vegas, NV 89146 702-562-2300
---	--

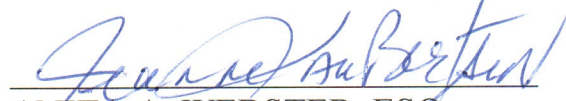
1. Number 4. Appellant failed to included “Modification” of the Decree of Divorce. Respondent’s Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed about 09/30/19, asked for a modification of the decree. Respondent’s Opposition and Countermotion filed about 04/23/19, also asked for modification of the decree.

2. Number 9. The district court did not err as a matter of law. There was no abuse of discretion. The district court’s factual findings were supported by substantial evidence in the record that a sensible person may accept as adequate to sustain the district court’s orders and that this Court generally defers to the district court’s ruling regarding witness credibility and will not reweigh evidence. *Gepford v. Gepford*, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000); *Schmanski v. Schmanski*, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999); *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004).

3. Number 14. The Bench Trial lasted a full day. It began about 9:00 a.m., recessed for lunch, resumed, and concluded about 2:45 p.m.

4. Number 27. Additional Pertinent documents attached hereto.

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

Phone: 702-562-2300

Fax: 702-562-2303

anitawebster@embarqmail.com

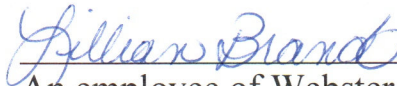
jlambertsen@embarqmail.com

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 3rd day of March, 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.



An employee of Webster & Associates

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD, Appellant, vs. CATERINA ANGELA BYRD, Respondent.	Supreme Court No. 80548 District Court Case D-18-577701-Z RESPONDENT'S APPENDIX TO RESPONSE TO DOCKETING STATEMENT
--	--

TABLE OF CONTENTS

1. Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing, filed 9/30/2019;
2. Notice of Change in Requested Relief in Plaintiff's Motion for Reconsideration, et.al. Filed on 9/30/2019, filed 10/11/19;
3. Notice of Entry of Order on Discovery Commissioner's Report and Recommendations, filed on 12/5/19; and
4. Court minutes for the hearing on August 12, 2019.

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

Phone: 702-562-2300

Fax: 702-562-2303

anitawebster@embarqmail.com

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 3rd day of March, 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.

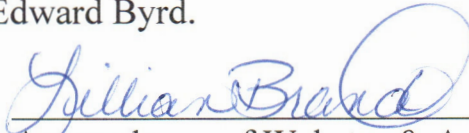
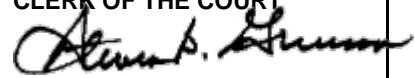

An employee of Webster & Associates

EXHIBIT "1"



MRCN
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
Fax No: (702) 562-2303
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

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.
11 Nevada Bar No. 9460
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
19 Caterina complied with EDCR 5.501 in her efforts to resolve this matter
20 without seeking the Court's assistance back in about August 2018. Grady
21 refused. Grady even refused to Stipulate to move the case from Churchill County
22 Nevada, where neither party ever lived, to Clark County Nevada, thereby causing
23 Caterina to unnecessarily incur additional cost and fees.
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 Grady failed to pay Caterina as ordered above, and her Motion for an Order to
5 Show Cause was Granted at the July 18, 2019 hearing. The Order from this
6 hearing and the Order to Show Cause were filed on August 9, 2019.

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

20 In Grady's pleadings filed on September 12, 2019, and September 17,
21 2019, Grady admits that he has not paid Caterina and that he has sufficient
22 money to pay Caterina.

23
24
25
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
8 In general, “judges who sit in the same court should not attempt to
9 overrule the decisions of each other.” Castner v. First Nat’l Bank of
10 Anchorage, 278 F.2d 376, 379 (9th Cir. 1960) (citation and quotation
11 marks omitted). “[J]udges must, in light of the overarching `principles
12 of comity and uniformity,’ make every effort `to preserve the orderly
functioning of the judicial process’ when reconsidering an order of a
prior judge in the same case.”(quoting Castner, 278 F.2d at 379-80).

13 In Cosby v. Autozone, Inc., No. 2:08-cv-00505-KJM-DAD.

14 United States District Court, E.D. California (2016), held that

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

16 Like the husband in Carlson, Grady's misrepresentation of his military pay
17 is grounds for Caterina's relief from judgment.
18

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

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

28 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 ///

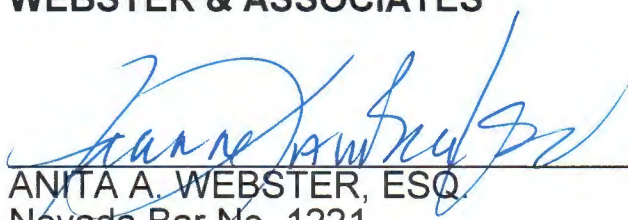
28 ///

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

10 ANITA A. WEBSTER, ESQ.
11 Nevada Bar No. 1221
12 JEANNE F. LAMBERTSEN, ESQ.
13 Nevada Bar No. 9460
14 6882 Edna Ave.
15 Las Vegas, Nevada 89146
16 Tel No: (702) 562-2300
17 Attorney for Plaintiff, Unbundled
18
19
20
21
22
23
24
25
26
27
28

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.

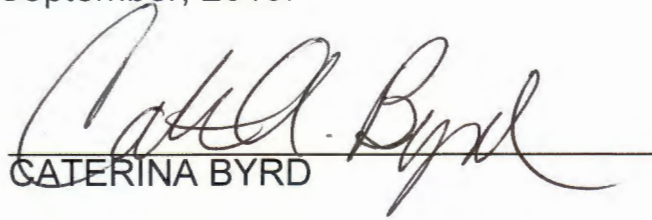
17 9. That because the \$3,000.00 per month payments from Grady will cease
18 upon his death, I will rely on the Military SBP to pay my bills once he passes. I am
19 devastated that simply because neither one of us sent the decree to the military
20 finance office within the 12 month deadline to do so. 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

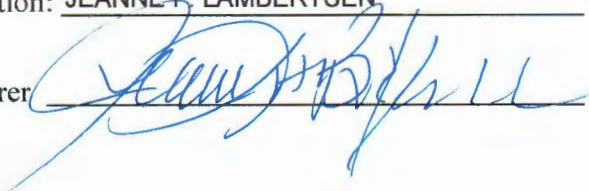
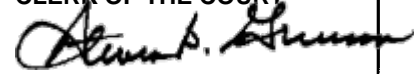


EXHIBIT “2”



NOTC
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
Fax No: (702) 562-2303
e-mail: anitawebster@embarqmail.com
e-mail: jlambertsen@embarqmail.com
Attorney for Caterina Byrd, unbundled

DISTRICT COURT

CLARK COUNTY, NEVADA

CATERINA ANGELA BYRD,
Plaintiff,

v.

GRADY EDWARD BYRD,
Defendant.

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

**NOTICE OF CHANGE IN
REQUESTED RELIEF IN
PLAINTIFF'S MOTION FOR
RECONSIDERATION, ET. AL.
FILED ON 09/30/2019**

TO: GRADY EDWARD BYRD; and

TO: BYRON L. MILLS, ESQ, his attorney:

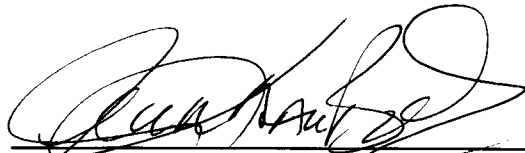
COMES NOW, Plaintiff, CATERINA A. BYRD, by and through her counsel of record, ANITA A. WEBSTER, Esq., and JEANNE F. LAMBERTSEN, Esq., of the law firm of WEBSTER AND ASSOCIATES in an unbundled capacity, and hereby gives notice of the following withdrawal of certain requested relief contained in *Plaintiff's Motion for Reconsideration, Motion for Summary Judgment, Motion for Joinder and Motion to Continue the Evidentiary Hearing*, filed on September 30, 2019, and set for hearing on an Order Shortening Time on October 21, 2019, at 9:00 a.m.

1. That said Motion contained the following requested relief, among other requests, that the Court:
 - 1...
 - 2...
 - 3...
 - 4...
 5. Continue the Calendar Call, Evidentiary Hearing and related deadlines;
 6. Continue the Plaintiff's 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 with the ability to be re-noticed at a later date;
 - 7...
 - 8...
2. The Plaintiff's Motion to Compel Production of Discovery and Defendant's Motion for a Protective Order scheduled to be heard on October 11, 2019, was heard and a Discovery Commissioner Report and Recommendation is forthcoming. As such, the Plaintiff withdraws her request that the hearing before the Discovery Commissioner on October 11, 2019, be continued and re-noticed at a later date;
3. That the Plaintiff desires adjudication of her requested relief without delay. As such, the Plaintiff withdraws her request that the Calendar Call, Evidentiary Hearing and related deadlines be continued;
4. That pursuant to the Senior Judge Calender, Senior Judge K.

Hardcastle is scheduled to preside in Department G on the dates of the Calendar Call on October 17, 2019, the Trial on October 21, 2019, and the aforementioned Plaintiff's Motion filed on September 30, 2019, and that the Plaintiff has no objection to Senior Judge K. Hardcastle presiding. As such, the Plaintiff withdraws her request that the Calendar Call, Evidentiary Hearing and related deadlines be continued;

5. That all of the other requested relief in Plaintiff's Motion for Reconsideration, Motion for Summary Judgment, Motion for Joinder and Motion to Continue the Evidentiary Hearing filed on September 30, 2019, and set for hearing on an Order Shortening Time to October 21, 2019, remain;
6. That the Plaintiff's Motion for Reconsideration, Motion for Summary Judgment, Motion for Joinder and Motion to Continue the Evidentiary Hearing filed on September 30, 2019, and set for hearing on an Order Shortening Time to October 21, 2019, was duly served and no opposition has been filed as of this date; and
7. That this Notice is made in good faith and for no other purpose.

DATED this 11 day of October, 2019.



ANITA A. WEBSTER, ESQ.

Nevada Bar No. 1221

JEANNE F. LAMBERTSEN, ESQ.

Nevada Bar No. 9460

Attorneys for Plaintiff, unbundled

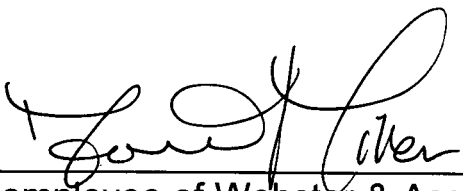
Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 11th day of October, 2019, I caused the above and foregoing to be served as follows:

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

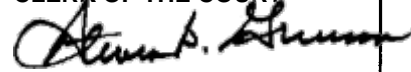
To the Defendant listed below at the address, email address, and/or facsimile number indicated:

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



An employee of Webster & Associates

EXHIBIT “3”



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

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 CATERINA ANGELA BYRD)

17 Plaintiff,)

18 v.)

19 GRADY EDWARD BYRD)

20 Defendant.)

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

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

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

24 Dated this 3rd day of December, 2019.

25 **WEBSTER & ASSOCIATES**

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

Certificate of Service

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

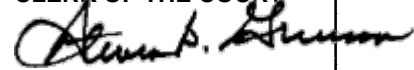
☒ [X] by mandatory electronic service through the Eighth Judicial District
Court's electronic filing system;

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

Byron Mills, Esq.
Modonnell@millsnv.com



An employee of Webster & Associates



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

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 CATERINA ANGELA BYRD,

17 Plaintiff,

18 v.

19 GRADY EDWARD BYRD,

20 Defendant.

) CASE NO.: D-18-577701-Z

) DEPT NO.: Discovery Commissioner

) **ORDER ON DISCOVERY**

) **COMMISSIONER'S REPORT and**
) **RECOMMENDATIONS**

21 The Court, having reviewed the above report and recommendations
22 prepared by the Discovery Commissioner and,
23

24 _____ No timely objection having been filed.

25 _____ After reviewing the objections to the Report and
26 recommendations and good cause appearing,
27

28 ***

29 AND

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

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

1 **modified** in the following manner. (Attached hereto)

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

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

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

10 Dated this 26 day of November, 2019.

11 
12 _____
13 DISTRICT COURT JUDGE
14 Rhonda K. Forsberg



1 **DCRR**
2 **WEBSTER & ASSOCIATES**
3 ANITA A. WEBSTER, ESQ.
4 Nevada Bar No. 1221
5 JEANNE F. LAMBERTSEN, ESQ.
6 Nevada Bar No. 9460
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,
12 Plaintiff,

13 v.

14 GRADY EDWARD BYRD,
15 Defendant.

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

Discovery Commissioner's Report
and Recommendations

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

19 Attorney for Plaintiff: Jeanne F. Lambertsen, Esq., for Plaintiff; and

20 Attorney for Defendant: Byron Mills, Esq., for Defendant.

21 I.

22 FINDINGS

23 This case came on for hearing before the Discovery Commissioner on
24 Defendant's Motion for Protective Order Pursuant to NRCP 26(C) and for
25 Attorney Fees; Plaintiff's Re-Notice of Motion to Compel Defendant's Responses
26
27
28

W:\Family\Byrd, Catarina\Fleadings\Drafts\DCRR.wpd

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

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

13
14 **II.**

15 **RECOMMENDATIONS**

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

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

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

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

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

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

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

24 ///

25 ///

26 ///

27 ///

28

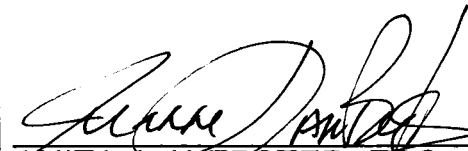
1 The Discovery Commissioner met with counsel for the parties, having
2 discussed the issues noted above, having reviewed any materials proposed in
3 support thereof, hereby submits the above recommendations.

4
5 DATED this 1st day of November, 2019.

6
7 
8 DISCOVERY COMMISSIONER

9 Submitted by:

10 WEBSTER & ASSOCIATES

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

Approved as to form and content by:

21 MILLS AND ANDERSON LAW
22 GROUP

23 
24 BYRON L. MILLS, ESQ.
25 Nevada Bar No. 6745
26 703 South Eighth Street
27 Las Vegas, Nevada 89101
28 Tel: (702) 386-0030
Fax: (702) 386-0208
Attorneys@millsnv.com
Attorney for Defendant
GRADY BYRD

NOTICE (THIS MUST BE ON A SEPARATE PAGE)

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

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

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

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

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

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

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

By: Mary Brecha
COMMISSIONER'S DESIGNEE

EXHIBIT “4”

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Joint Petition

COURT MINUTES

August 12, 2019

D-18-577701-Z In the Matter of the Joint Petition for Divorce of:
Caterina Byrd and Grady E Byrd

August 12, 2019 11:30 AM Minute Order

HEARD BY: Forsberg, Rhonda K.

COURTROOM: Courtroom 09

COURT CLERK: Victoria Pott

PARTIES:

Caterina Byrd, Petitioner, not present
Grady Byrd, Petitioner, not present

Jeanne Lambertsen, Attorney, not present
Byron Mills, Attorney, not present

JOURNAL ENTRIES

- After a review of the file, the Court failed to issue deadlines for the upcoming October 21, 2019 Order to Show Cause non-jury trial scheduled for 9:00 A.M.

NOW THEREFORE; IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the discovery deadline for the upcoming October 21, 2019 Order to Show Cause non-jury trial at 9:00 AM will be two (2) weeks before trial, or October 7, 2019. Exhibits and pre-trial memorandums will be due at the time of the Calendar Call on October 17, 2019 at 10:00 AM. The clerk will send a copy of this Minute Order to both parties.

CLERK'S NOTE: On 8/12/19, a copy of this Minute Order was mailed to the parties at their respective address on record and placed in the attorney folder of Jeanne Lambertsen and Byron Mills.
(vp)

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	08/12/2019	Page 1 of 2	Minutes Date:	August 12, 2019
-------------	------------	-------------	---------------	-----------------

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Canceled: October 17, 2019 11:00 AM Calendar Call

October 17, 2019 10:00 AM Calendar Call
Forsberg, Rhonda K.
Courtroom 09
Duncan, Annette

October 21, 2019 9:00 AM Non-Jury Trial
Forsberg, Rhonda K.
Courtroom 09
Duncan, Annette

October 21, 2019 9:00 AM Hearing
Forsberg, Rhonda K.
Courtroom 09
Duncan, Annette

PRINT DATE:	08/12/2019	Page 2 of 2	Minutes Date:	August 12, 2019
-------------	------------	-------------	---------------	-----------------