

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY EDWARD BYRD

Appellant

v.

CATERINA ANGELA BYRD

Respondent

Supreme Court No. 80548

Electronically Filed
Jul 06 2020 04:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX TO OPENING BRIEF – VOLUME V

Submitted by:

DANIEL W. ANDERSON, ESQ.

Nevada Bar No.: 9955

BYRON L. MILLS, ESQ.

Nevada Bar No.: 8191

MILLS & ANDERSON

703 S. 8th Street

Las Vegas, Nevada 89101

(702) 386-0030

attorneys@millsnv.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

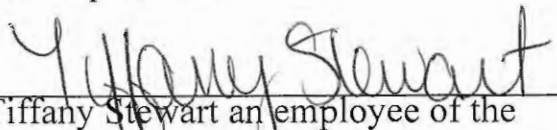
I HEREBY CERTIFY that on the 6th day of July, 2020, I caused to be served the instant **APPELLANT'S APPENDIX TO OPENING BRIEF- VOLUME V** to all interested parties as follows:

BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, address as follows:

Anita A. Webster, Esq.
WEBSTER & ASSOCIATES
6882 Edna Avenue
Las Vegas, Nevada 89146
Attorneys for Respondent

XX BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey, to the following e-mail address:

Anita Webster, Esq. - anitawebster@embarqmail.com


Tiffany Stewart an employee of the
MILLS & ANDERSON

The index of Appellants Appendix to Opening Brief is as follows:

DOCUMENT	BATES NO.
Decree of Divorce filed on June 5, 2014	AA001-012
Notice of Motion and Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide a Newly Discovered Asset, to Execute QDRO's, and for Attorney's Fees and Costs filed on October 16, 2018	AA013-034
Exhibit Appendix for Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide a Newly Discovered Asset, to Execute QDRO's, and for Attorney's Fees and Costs filed on October 16, 2018	AA035-063
Plaintiff's Errata to Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide a Newly Discovered Asset, to Execute QDRO's, and for Attorney's Fees and Costs filed on October 29, 2018	AA064-068
Order Striking Exhibits filed on November 14, 2018	AA069
Plaintiff's Opposition to Defendant's to Defendant's Ex Parte Motion for a Continuance of Plaintiff's Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide Newly Discovered Asset, to Execute QDRO's and for Attorney's Fees and Costs and Countermotion for Attorney Fees and Costs filed on December 19, 2018	AA070-091
Reply to Opposition and/or Countermotion filed on December 28, 2018	AA092-096
Transcript Re: Motion – January 23, 2019 filed on May 13, 2020	AA097-138
Order From the January 23, 2019 Hearing filed on April 5, 2019	AA139-147
Notice of Entry of Order From the January 23, 2019 Hearing filed on April 5, 2019	AA148-158
Defendant's Motion for Reconsideration filed on April 8, 2019	AA159-177
Appendix to Defendant's Motion for Reconsideration filed on April 8, 2019	AA178-198
Plaintiff's Opposition to Defendant's Motion for Reconsideration and Countermotion filed on April 23, 2019	AA199-237

Transcript Re: Status Check – May 2, 2019 filed on May 13, 2020	AA238-252
Defendant's Reply and Opposition filed on May 14, 2019	AA253-278
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Countermotion filed on May 17, 2019	AA279-308
Transcript Re: All Pending Motions – May 22, 2019 filed on May 13, 2020	AA309-353
Order of the Court filed on June 26, 2019	AA354-359
Notice to Appear Telephonically filed on June 27, 2019	AA360-361
Order From the July 18, 2019 Hearing filed on August 9, 2019	AA362-365
Notice of Entry of Order From the July 18, 2019 Hearing filed on August 9, 2019	AA366-371
Transcript Re: All Pending Motions – July 18, 2019 filed on May 13, 2020	AA372-399
Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on September 30, 2019	AA400-436
Schedule Arrearages for Support filed on October 9, 2019	AA437-440
Request to Appear by Audiovisual Transmission Equipment filed on October 10, 2019	AA441-448
Audiovisual Transmission Equipment Appearance Consent filed on October 10, 2019	AA449-450
Transcript Re: All Pending Motions – October 11, 2019 filed on May 13, 2020	AA451-477
Plaintiff's Objection to Defendant's Notice to Appear by Audiovisual Transmission Equipment at the Trial Scheduled for October 21, 2019 filed on October 14, 2019	AA478-489
Motion on Order Shortening Time to Reconsider Denial of Audiovisual Appearance Request filed on October 15, 2019	AA490-499
Appendix to Defendant's Motion for Order Time to Reconsider Denial of Audiovisual Appearance filed on October 15, 2019	AA500-507
Defendant's Pretrial Memo filed on October 16, 2019	AA508-517
Plaintiff's Opposition to Defendant's Motion on Order Shortening Time to Reconsider Denial of Defendant's Audiovisual Appearance Request and Countermotion for Attorney's Fees and Costs filed on October 16, 2019	AA518-536
Exhibit Appendix filed on October 16, 2019	AA537-541
Plaintiff's Pretrial memorandum filed on October 16, 2019	AA542-562

Opposition to Plaintiff's Motion for Reconsideration and Countermotion for Fees filed on October 18, 2019	AA563-578
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on October 20, 2019	AA579-603
Transcript Re: All Pending Motions – October 21, 2019 filed on May 13, 2020	AA604-785
Defendant's Opposition to Plaintiff's Memorandum of Fees and Costs filed on December 4, 2019	AA786-789
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Second memorandum of Fees and Costs from July 19, 2019 through the Date of the Evidentiary Hearing on October 21, 2019 filed on December 16, 2019	AA790-802
Plaintiff's Motion for Attorney Fees and Costs for the Appeal filed on December 16, 2019	AA803-814
Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs for the Appeal filed on January 2, 2020	AA815-821
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs During the Appeal filed on January 9, 2020	AA822-832
Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA833-853
Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA854-876
Judgment for Attorney Fees filed on March 17, 2020	AA877-880
Notice of Entry of Judgment for Attorney Fees filed on March 18, 2020	AA881-886
Order From February 27, 2020 Hearing filed on March 26, 2020	AA887-889
Notice of Entry of Order From the February 27, 2020 Hearing filed on March 27, 2020	AA890-894
Request for Continuance filed on November 16, 2018	AA895-896
Order From the November 27, 2018 Hearing filed on December 17, 2019	AA897-900

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Exhibit Appendix for Motion to Enforce the Decree of Divorce, for an Order to Show Cause, to Divide a Newly Discovered Asset, to Execute QDRO's, and for Attorney's Fees and Costs filed on October 16, 2018	AA035-063
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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.

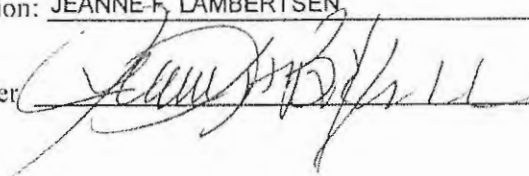
The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: JEANNE F. LAMBERTSEN

Date 9/30/19

Signature of Party or Preparer





1 SCH
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 Caterina A. Byrd

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD,
12
13 Plaintiff,

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

14 v.

15 GRADY EDWARD BYRD,
16
17 Defendant.

Schedule of Arrearages for Support

19 I, CATERINA ANGELA BYRD, Plaintiff, declare under penalty of perjury
20 under the laws of the State of Nevada that the foregoing is true and correct.

21 Defendant, GRADY EDWARD BYRD is to pay me support pursuant to the
22 Decree of Divorce filed with the Court on or about June 5, 2014. GRADY
23 EDWARD BYRD has failed to make those payments when due as set forth herein
24 for mortgage assistance in the dollar amount of \$1,500.00 per month. Also,
25 GRADY EDWARD BYRD is to pay me an additional dollar amount of \$1,500.00
26 for my interest in his military pay; a total dollar amount of \$3,000.00 per month.


28 I declare under penalty of perjury under the laws of the State of Nevada NRS

W:\Family\Byrd, Caterina\Pleadings\Drafts\Schedule of Arrears \$3,000 per month 10-09-19.wpd

53.045, that the following schedule is a true and accurate statement of all payment due dates and of any payments received by me during the months noted.

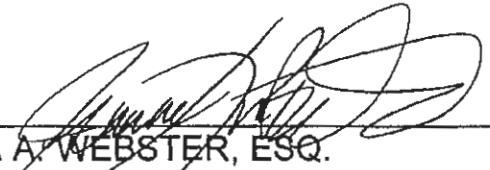
Due Date	Amt. Due support	Amt. Due Military pay	Date Rec'd	Amt. Rec.'d	Arrears	Total Arrears
09/01/18	\$1,500	\$1,500	0	0	\$3,000	\$3,000
10/01/18	\$1,500	\$1,500	0	0	\$3,000	\$6,000
11/01/18	\$1,500	\$1,500	0	0	\$3,000	\$9,000
12/01/18	\$1,500	\$1,500	0	0	\$3,000	\$12,000
01/01/19	\$1,500	\$1,500	0	0	\$3,000	\$15,000
02/01/19	\$1,500	\$1,500	0	0	\$3,000	\$18,000
03/01/19	\$1,500	\$1,500	0	0	\$3,000	\$21,000
04/01/19	\$1,500	\$1,500	0	0	\$3,000	\$24,000
05/01/19	\$1,500	\$1,500	0	0	\$3,000	\$27,000
06/01/19	\$1,500	\$1,500	0	0	\$3,000	\$30,000
07/01/19	\$1,500	\$1,500	0	0	\$3,000	\$33,000
08/01/19	\$1,500	\$1,500	0	0	\$3,000	\$36,000
09/01/19	\$1,500	\$1,500	0	0	\$3,000	\$39,000
10/01/19	\$1,500	\$1,500	0	0	\$3,000	\$42,000

It is respectfully requested that the Court enter Judgment for the total arrears against the Defendant, GRADY EDWARD BYRD, plus statutory interest, collectable by any lawful means.


CATERINA BYRD
9-4-2019
Date

//

1 Submitted By:
2 **WEBSTER & ASSOCIATES**

3
4 
5 By: _____
6 ANITA A. WEBSTER, ESQ.
7 Nevada Bar No. 1221
8 JEANNE F. LAMBERTSEN, ESQ.
9 Nevada Bar No. 9460
10 6882 Edna Avenue
11 Las Vegas, Nevada 89146
12 Attorneys for Plaintiff
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Certificate of Service

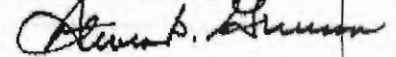
Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER ASSOCIATES, and that on the 9th day of **October, 2019**, I caused the above and foregoing document to be served as follows:

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

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

Byron Mills, Esq.
Modonnell@millsnv.com

Gillian Brand
An employee of Webster & Associates



1 **ATEAR**
2 BYRON L. MILLS, ESQ.
3 Nevada State Bar #6745
4 DANIEL W. ANDERSON, ESQ.
5 Nevada State Bar #9955
6 MILLS & ANDERSON
7 703 S. 8th Street
8 Las Vegas, Nevada 89101
9 (702) 386-0030
10 Attorney Defendant

11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**

14 CATERINA ANGELA BYRD,)

15 Plaintiff,)

16 vs.)

17 GRADY EDWARD BYRD,)

18 Defendant,)

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

19 **REQUEST TO APPEAR BY AUDIOVISUAL TRANSMISSION**
20 **EQUIPMENT**

21 Pursuant to Rule 4 of the Nevada Supreme Court's RULES GOVERNING
22 APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, GRADY
23 BYRD, by and through his counsel of record, BYRON L. MILLS, ESQ., of the law
24 offices of MILLS & ANDERSON, requests that GRADY BYRD be permitted to
25 testify by remote court appearance via video conference for the trial scheduled to
26 begin on October 21, 2019 at 9:00 a.m. in Courtroom No. 9 of the above-entitled
27 Court.

28 ///

1 Defendant, GRADY BYRD, by executing the Audiovisual Transmission
2 Equipment Appearance Consent, a copy of which is attached as Exhibit "1", GRADY
3 BYRD agrees to be bound by the oath given by the Court Clerk, Eighth Judicial
4 District Court and to be subject to the jurisdiction of this Court for purposes related to
5 this testimony.

6 BYRON L. MILLS, ESQ., counsel to GRADY BYRD agrees to provide all
7 exhibits to GRADY BYRD in advance in the same form as have been or will be
8 submitted to the Court Clerk.

9 Mr. Byrd has health issues prevent him from flying from the Philippines to the
10 United States for the Trial. Attached as Exhibit "2" is a copy of the Medical Certificate
11 filed by Mayden Tagulo, Nursing Attendant, that explains Mr. Byrd's medical
12 conditions and restrictions. Based upon the information provided, there is good cause
13 for Mr. Byrd's request to appear by audio.

14 Any objection to this request must be made in writing within two (2) judicial
15 days of service of this request.

16 BYRON L. MILLS, ESQ., counsel to GRADY BYRD, agrees that by
17 submitting this request, the party and witness (or their respective representatives) will
18 test and verify the functionality of video conference connectivity with the Court's IT
19 department at least two (2) judicial days before the scheduled appearance. Contact
20 information for the test is:

21 **Name of Counsel/Party:** MILLS & ANDERSON

22 **Email Address:** attorneys@millsnv.com

23 **Phone Number:** 702-386-0030

24 **Name of Party:** Grady Byrd

25 **Skype:** eddieusa2008

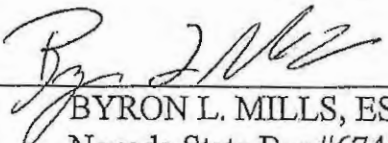
26 **Phone Number:** 063-927-626-2513

27 BYRON L. MILLS, ESQ., counsel to GRADY BYRD certifies that the video
28

1 BYRON L. MILLS, ESQ., counsel to GRADY BYRD certifies that the video
2 connection has been successfully tested at Depo International, prior to submitting
3 this application.

4 Dated this 10th day of October, 2019.

5 MILLS & ANDERSON

6 
7 BYRON L. MILLS, ESQ.

8 Nevada State Bar #6745

9 DANIEL W. ANDERSON, ESQ.

10 Nevada State Bar #9955

11 703 S. 8th Street

12 Las Vegas, Nevada 89101

13 (702) 386-0030

14 Attorney Defendant

15 **CERTIFICATE OF ELECTRONIC SERVICE**

16 I hereby certify that on the 10th day of October, 2019, service of the
17 above and foregoing **Audiovisual Transmission Equipment Appearance Request**
18 was made by Electronic service on Wiznet addressed to:

19 **XX** anitawebster@embarqmail.com


20 
21 MARY O'DONNELL, an Employee
22 of Mills & Anderson
23
24
25
26
27
28

EXHIBIT “1”

1 **ATEAR**
2 BYRON L. MILLS, ESQ.
3 Nevada State Bar #6745
4 MILLS & ANDERSON
5 703 S. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 386-0030
8 Attorney Defendant

9
10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 CATERINA ANGELA BYRD,)

14 Plaintiff,)

15 vs.)

16 GRADY EDWARD BYRD,)

17 Defendant,)

CASE NO.: D-18-577701-Z

DEPT. NO.: G

18
19 **AUDIOVISUAL TRANSMISSION EQUIPMENT**
20 **APPEARANCE CONSENT**

21 By making this request for Audiovisual Transmission Equipment
22 Appearance, the undersigned agrees to be bound by the oath given by the Court
23 Clerk over the video conference connection and to be subject to the jurisdiction of
24 this Court for purposes related to this testimony.

25 **Date:** October 21, 2019

26 **Time:** 9:00 a.m.

27 **Courtroom No.:** 9

28 ///

///

///

1 D-18-577701-Z

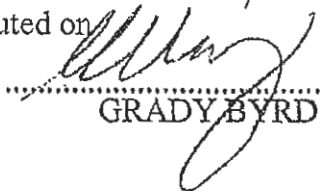
2 Print Name: Grady Byrd

3 Date: **October 21, 2019 at 9:00 a.m.**

4 Skype: **eddiensa2008**

5 Phone Number: **063-927-626-2513**

6 I, Grady Byrd, declare under penalty of perjury under the law of the State of
7 Nevada that the foregoing is true and correct.

8 Executed on OCT 9, 2019 (date)
9 
10
11 GRADY BYRD
12

13 **CERTIFICATE OF ELECTRONIC SERVICE**

14 I hereby certify that on the 10th day of October, 2019, service of the
15 above and foregoing **Audiovisual Transmission Equipment Appearance**
16 **Consent**

17 was made by Electronic service on Wiznet addressed to:

18 **XX** anitawebster@embarqmail.com

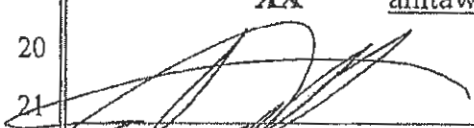
19 
20
21 MARY O'DONNELL, an Employee
22 of Mills & Anderson
23
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EXHIBIT “2”

COMMUNITY MEDICAL SERVICES

MEDICAL CERTIFICATE

To Whom It May Concern:

This is to certify that Mr. Grady E. Byrd, 63 years old, a resident of Purok 2, Cangmating, Sibulan, Negros Oriental, Philippines has been examined and is being treated for Blood Clotting and Pulmonary disorders.

Diagnosis:

Deep Vein Thrombosis with accompanying Pulmonary Embolism Symptoms

Treatment / Medication:

Warfarin 2.5 mg daily

Treatment continues until conditions resolved

Monthly INR test

Recommendations / Restrictions:

1. No alcohol due to interference with Warfarin.
2. No Flying due to high risk of pulmonary incident.
3. Wear compression socks daily to reduce post-thrombotic syndrome.
4. Walk 30 minutes daily if possible to assist in reducing overall risk factors.

Follow-up:

Refer to United States Department of Veterans Affairs Appointment 03/16/2020, 1 p.m.

This certificate was issued at request of Grady E. Byrd and may be used for the purposes he determines.

mtagulo
MAYDEN TAGULO
NURSING ATTENDANT
09562103541

0111-7191323-2

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF OCT 04 2019 AT
DUMAGUETE CITY, PHILIPPINES.

ATTY. RAYMUNDO A. MERCADO
NOTARY PUBLIC FOR CITY OF DUMAGUETE & THE MUN. OF
SIBULAN, BACONG, VILLALBA, SAN ZAN, SOANGUITA & SIATON
UNTIL DECEMBER 31, 2020
NOTARIAL COMMISSION NO. 2019-001
PTR No. 2109181 / 1/3-2019
RDLL No. 35548/4-29-89
IBP No. 0108 LIFETIME
6TH MCLE COMPLIANCE No. 00344, 8/18/10
2ND FLR, RM BLDG., BANTAYAN, DUMAGUETE CITY



1 ATEAR
2 BYRON L. MILLS, ESQ.
3 Nevada State Bar #6745
4 MILLS & ANDERSON
5 703 S. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 386-0030
8 Attorney Defendant

9
10 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 CATERINA ANGELA BYRD,)

14 Plaintiff,)

15 vs.)

16 GRADY EDWARD BYRD,)

17 Defendant,)

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

18
19 **AUDIOVISUAL TRANSMISSION EQUIPMENT**
20 **APPEARANCE CONSENT**

21 By making this request for Audiovisual Transmission Equipment
22 Appearance, the undersigned agrees to be bound by the oath given by the Court
23 Clerk over the video conference connection and to be subject to the jurisdiction of
24 this Court for purposes related to this testimony.

25 **Date:** October 21, 2019

26 **Time:** 9:00 a.m.

27 **Courtroom No.:** 9

28 ///

///

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1 D-18-577701-Z

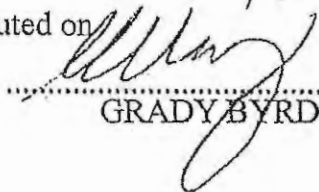
2 Print Name: Grady Byrd

3 Date: October 21, 2019 at 9:00 a.m.

4 Skype: eddieusa2008

5 Phone Number: 063-927-626-2513

6 I, Grady Byrd, declare under penalty of perjury under the law of the State of
7 Nevada that the foregoing is true and correct.

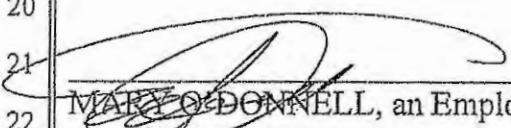
8 Executed on Oct 9, 2019 (date)
9 
10
11 GRADY BYRD

12
13 **CERTIFICATE OF ELECTRONIC SERVICE**

14
15 I hereby certify that on the 10th day of October, 2019, service of the
16 above and foregoing **Audiovisual Transmission Equipment Appearance**
17 **Consent**

18 was made by Electronic service on Wiznet addressed to:

19 **XX** anitawebster@embarqmail.com

20
21 
22 MARY O'DONNELL, an Employee
23 of Mills & Anderson
24
25
26
27
28

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MAY 13 2020

Shirley L. Johnson
CLERK OF COURT

1 TRANS

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3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8

9 IN THE MATTER OF THE)
JOINT PETITION FOR) CASE NO. D-18-577701-Z
10 DIVORCE OF:)
DEPT. G
11 CATERINA BYRD and)
GRADY E. BYRD.) APPEAL NO. 80548
12)

13 BEFORE THE HONORABLE HOLLY FIC
DISTRICT COURT COMMISSIONER

14 TRANSCRIPT RE: ALL PENDING MOTIONS

15 FRIDAY, OCTOBER 11, 2019
16

17 APPEARANCES:

18 The Petitioner: CATERINA BYRD (Not Present)
For the Petitioner: JEANNE F. LAMBERTSEN, ESQ.
19 ANITA A. WEBSTER, ESQ.
6882 Edna Avenue
20 Las Vegas, Nevada 89146
(702) 562-2300
21

22 The Petitioner: GRADY E. BYRD (Not Present)
For the Petitioner: BYRON L. MILLS, ESQ.
23 703 S. Eighth Street
Las Vegas, Nevada 89101
24 (702) 386-0030

1 LAS VEGAS, NEVADA

FRIDAY, OCTOBER 11, 2019

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 12:57:01)

4
5 THE COURT: This is case number D-18-577701-Z, in
6 the matter of Caterina Byrd versus Grady Byrd.

7 Welcome, Counsel. Please state your name for the
8 record.

9 MS. LAMBERTSEN: Good afternoon, Your Honor. Jeanne
10 Lambertsen, bar number 9460, on behalf of Caterina Byrd, and
11 also present is Anita Webster. Let me see. Is it 1221?

12 MS. WEBSTER: That's it.

13 THE COURT: Counsel?

14 MR. MILLS: Good afternoon. Byron Mills, 6745, here
15 on behalf of Grady Byrd, Your Honor.

16 THE COURT: Okay. Welcome. I will let you know I
17 have reviewed everything extensively, so if you want to --
18 like I said, I know the arguments. I've got my sense of what
19 I want to do. If there's anything additional that you want to
20 add to it, I'm open to that. And I will let you all -- you,
21 since it's your motion, but -- and I'll just tell you my
22 inclination is in reviewing this that definitely the medical
23 is relevant because of the attorney fee issue. So I would say
24 his records from September of 2018 -- is that what we're

1 talking about -- it's relevant to the attorney fee issue
2 because he was claiming certain things and you guys have taken
3 delays and he hasn't appeared at those kind of things. So I
4 think -- I think that is definitely relevant. I don't think
5 anything beforehand -- I actually think the June, when they
6 got divorced, which was June 2014?

7 MR. MILLS: Uh-huh (affirmative).

8 MS. LAMBERTSEN: Yes.

9 THE COURT: I think that's relevant because of the
10 disability versus retirement, but I don't think anything after
11 that. So just about the time of the joint petition because if
12 the disability retirement -- I know that question's going to
13 be resolved by the judge. If he was disabled at the time, I
14 feel like those medical records would be relevant, but nothing
15 post-divorce until September of 2018. So that's what my
16 inclination is that I'm looking at.

17 The other thing is, is that -- the life insurance
18 and that he did not make payments. And there are court
19 minutes that say the financials are relevant. So I think
20 those --

21 MR. MILLS: I think we resolved the life insurance
22 issue though.

23 MS. LAMBERTSEN: Yeah.

24 THE COURT: Okay. That's why. Because I was

1 struggling with the bank issues because in light of the fact
2 that he's not disputing that he owes this money and he's not
3 disputing that he's, you know, not paid it in accordance, why
4 would you need to dig into his financials, but in the sense
5 that I reviewed the court minutes and they were saying that
6 he's making a claim to the life insurance because he made the
7 payments on it. So that -- that's where I saw that it would
8 be relevant. So if you guys want to address that, and then
9 you can do the medical as well, I'm just -- that's where I'm
10 at.

11 MS. LAMBERTSEN: Okay. If -- so talking -- so we
12 appreciate the assessment on the medical. That's even come to
13 light more recently because he's still trying to assert
14 medical conditions. So we appreciate the Court's recognition
15 that it's very relevant to our case and really the onset of
16 the case when he first declared to her in July of 2018 "I've
17 got cancer. I have to get surgery." I mean, he's put it out
18 there.

19 THE COURT: Right.

20 MS. LAMBERTSEN: Now, regarding -- regarding the
21 financials, Mr. Mills is correct. We are trying to resolve --
22 that has yet to be viewed by them and accepted that there is a
23 \$225,000 life insurance benefit policy. Our client, Caterina,
24 is willing to be the beneficiary of 200,000, which is 89

1 percent.

2 THE COURT: Okay.

3 MS. LAMBERTSEN: Because Mr. Byrd has listed his new
4 wife as the beneficiary of the 25,000.

5 THE COURT: Right.

6 MS. LAMBERTSEN: The reason I am hesitant to say
7 this is totally resolved is because Mr. Mills hasn't seen the
8 stipulation order. We're asking that he give Prudential, the
9 administrator of the plan, permission to speak to Caterina to
10 note the payments are being paid timely and to just ensure
11 that he hasn't fiddled with the percentages and that she still
12 stays 200 percent [sic].

13 Mr. Mills has not seen that, and of course Mr. Byrd
14 has not seen it, and we're asking him to sign an authorization
15 that Prudential can have a limited scope to do these things.
16 If that falls apart, then this issue could be right there in
17 front of the judge for trial.

18 THE COURT: Well, and the other reason I saw the
19 bank and financ -- because and I don't know if all of the --
20 it was Kathy Hardcastle. I don't know -- I know there was a
21 motion for reconsideration, but in her -- in those orders it
22 says Defendant shall provide copies of statements from last
23 year of all accounts in which he received money, and the
24 annuity was an issue.

1 So to me -- and I don't know if that was set aside.
2 I didn't track it that close. But if that is still an issue,
3 then that -- the financials are definitely relevant.

4 So, like I said, I was struggling on the bank
5 records because of the admissions -- or the bank and the
6 financials because of the admissions that he's -- owes this.
7 He's not disputing that he owes it and because, you know,
8 he's, you know, he's making these admissions, but at the same
9 time there's court orders addressing the financials. So
10 that's where I was --

11 MS. LAMBERTSEN: Right. And another court order, if
12 I may, Your Honor, that addresses the financials -- I have it.
13 I know there's like six pleadings I know that you're viewing
14 for today.

15 THE COURT: Yeah.

16 MS. LAMBERTSEN: But ours filed October 4th. It's a
17 reply, and it is --

18 THE COURT: Yes, I did. I have that.

19 MS. LAMBERTSEN: -- on page 4. We have two
20 significant financial concerns. One has to do with the order
21 to show cause. Now, that is true that he had -- has made an
22 admission that he has the funds to do it; he just hasn't, you
23 know, paid per orders.

24 But if you look at the top of page 5, we're

1 addressing part of the order that says if counsel can
2 determine the bank where the annuity originates or any other
3 source of money for the Defendant, Mr. Byrd, counsel may
4 obtain garnishment for the totality of the arrears.

5 Mr. Byrd right now is refusing to release
6 information on the banks that he has in the Philippines. He
7 provided us information in one of his -- let's see where it is
8 here -- in his response to our first request for production of
9 documents back in April of this year, and he very kindly
10 provided a sheet that looks like this.

11 Byron, do you remember this sheet?

12 MR. MILLS: No.

13 MS. LAMBERTSEN: But this is a sheet that he
14 provided that lists a number of banks and the ones that he did
15 provide -- a couple that are here in the United States have a
16 balance of maybe a thousand dollars or so. It's the ones in
17 the Philippines that we have not received, you know, anything
18 on. And then there's a couple others that we haven't
19 received. You know, he has multiple accounts at one
20 particular bank and we only got a few of the accounts.

21 So given this language regarding what the Court
22 ordered, given that arrears are a trial issue, funds, what's
23 in the bank account, and can we go garnish? We already have
24 an order to go get this \$11,000.

1 THE COURT: Right.

2 MS. LAMBERTSEN: We need the bank account

3 information.

4 THE COURT: Right.

5 MS. WEBSTER: Well, and then it's another added

6 thing -- just real quickly. Because this is all disability

7 income, we cannot directly garnish from the military.

8 THE COURT: Right.

9 MS. WEBSTER: So the only recourse that we have with

10 bank accounts --

11 THE COURT: To see what's out there.

12 MS. WEBSTER: -- the only recourse, yeah, we cannot

13 get it directly from his military pay --

14 THE COURT: Right.

15 MS. WEBSTER: -- because it is all disability

16 income.

17 THE COURT: Right.

18 MS. WEBSTER: We can't get it from his Social

19 Security, because that's protected.

20 THE COURT: Right.

21 MS. WEBSTER: So really the only recourse we have

22 are the banks, and I guess he's got these very minuscule

23 amounts and it's in a bank in Florida.

24 MS. LAMBERTSEN: Yes, I think one them is in Florida

1 and one's in Kentucky.

2 MS. WEBSTER: They're very minuscule amounts.

3 MS. LAMBERTSEN: Right. Uh-huh (affirmative).

4 MS. WEBSTER: And then all -- it looks like the bulk
5 of his money is in the Philippines, and that's where we have
6 zero information about -- aside from what was provided, but
7 zero information about what's in there, you know, and being
8 able to go after that and being able to garnish. Because he's
9 not paid since September of 2018 and apparently has no
10 intention of paying.

11 THE COURT: Yeah, I'm --

12 MS. WEBSTER: For the foreseeable future, so.

13 THE COURT: Yeah, I see.

14 MS. WEBSTER: You know, so that's a problem. And
15 then with the medical, you know, where that stands right now
16 is Byron has asked that his client be able to appear by
17 telephonic equipment. The Court has said, no, he has to be
18 here. And the basis for saying that he has to -- you know,
19 wants to appear by telephonic is a letter from a nurse
20 practitioner saying that he can't appear because of some
21 medical conditions.

22 You know, our problem is that if Byron challenges
23 this and says, no, he shouldn't have to go, we don't know, is
24 this a long-standing -- I mean, all we have is this one sheet

1 from --

2 THE COURT: And it's a nurse practitioner. It's not
3 even --

4 MS. WEBSTER: It's a nursing attendant actually.

5 MS. LAMBERTSEN: Attendant.

6 THE COURT: Yeah.

7 MS. WEBSTER: Nursing attendant. So, I mean, we
8 have --

9 THE COURT: [Cross-talk] physician's certificate,
10 so.

11 MS. WEBSTER: We can't even address it because we
12 have zero medical records. Is this something ongoing? Is
13 this somebody that he just saw to get this medical excuse? Is
14 this somebody that he's seen for a long period of time?

15 THE COURT: And here's the thing. If we're
16 concerned about dissemination, I can make it for attorneys'
17 eyes only. I mean, that's the thing. I understand the
18 medical and the financial, we don't want it, and they are
19 post-divorce. So I can make it for attorneys' eyes only so
20 they can at least view and assess those type of things if
21 we're concerned about, you know, post-divorce, you know,
22 vengeance, dissemination type things. So I could do that.

23 And just to clarify for the clerk's records, we're
24 here -- there's two motions on for today. So right now we're

1 hearing Plaintiff's motion to compel. So and Defendant has a
2 motion for protective order on for today. So just to -- so
3 that we're on part one. I just grabbed it. I'm like, oh,
4 yeah, there's two parts. Because I'm like all this -- I'm
5 trying to keep everything together, even though all the issues
6 are related.

7 I mean, so with that argument and with everything, I
8 mean, it just -- I do. I'm inclined to say that the medical
9 -- for the period of the June 14th, nothing post-divorce up
10 until the September 2018 surgery that I see, you know, going
11 forward that's -- I think that's relevant. And then I do
12 think the financials are relevant and I can hold it for
13 attorneys' eyes only.

14 So, Counsel, if you want to address --

15 MR. MILLS: No, yeah, I'm definitely going to be
16 able to address, Your Honor, because --

17 THE COURT: Yes.

18 MR. MILLS: -- first of all, the accounts were
19 requesting not just on his bank accounts --

20 THE COURT: Right.

21 MR. MILLS: -- the -- if you looked at what they
22 requested, they requested not only his bank accounts but his
23 wife's bank accounts, his stepdaughter's bank accounts.
24 Really? How is that even --

1 THE COURT: Because he could be fun --

2 MR. MILLS: -- in the realm of --

3 THE COURT: He could be funneling money through
4 there --

5 MR. MILLS: Who cares?

6 THE COURT: -- and somehow they can --

7 MR. MILLS: They can't. And I know you don't have
8 all my documents for all my other pleadings.

9 THE COURT: Right. Right.

10 MR. MILLS: They can say they need it to be able to
11 go garnish. They can't pursuant to federal law. You can't
12 get around the disability law by going and taking the money
13 out of the bank account once it gets there. You can't. And
14 so -- and he's provided bank accounts, he's provided things,
15 but it's really not reas -- relevant.

16 The bank accounts just aren't relevant. And they're
17 not because the only issue before the Court -- well, there's a
18 couple, but the main issue is was there a contract? And the
19 Court's right. That's everything around 2014. Not current,
20 not since then.

21 And then his ability to pay. We're not making an
22 argument that he doesn't have the ability to pay. We've never
23 made that argument that he doesn't have the ability to pay.
24 So then why would any bank records be necessary? Why would

1 any --

2 THE COURT: Because if --

3 MR. MILLS: -- I mean, they're asking for not just
4 bank records but all kinds of information but --

5 THE COURT: The concern is, I can see, is about the
6 garnishment issue. Because if he's not disputing that -- that
7 was -- I was thinking that, too, is that he's admitting that
8 he's -- he has the ability to pay, but he hasn't paid
9 anything. And I get there's questions out there --

10 MR. MILLS: Yeah, but this is not a judgment debtor
11 examination pack.

12 THE COURT: Right.

13 MR. MILLS: That would happen later.

14 THE COURT: Right.

15 MR. MILLS: That's not relevant now. I mean, if
16 they want to do a judgment debtor examination later to try to
17 collect, they can, but that's not relevant to the trial that
18 we've got going, and that is does he -- you know, is he in
19 contempt for not paying and was there a contract? And none of
20 those records are needed for that, for those issues.

21 Again, if they want to do the whole try to collect
22 later, that's a whole 'nother case, a whole 'nother issue, a
23 whole 'nother event. They can do the judgment debtor
24 examination. They're trying to squeeze this judgment debtor

1 examination in now and it's not timely. This isn't the time
2 to do a judgment debtor examination, and that's what they're
3 trying to do.

4 As to the medical, we understand we've got to
5 provide and have and are trying to provide all the medical
6 records from the Philippines regarding his current situation.

7 THE COURT: Okay.

8 MR. MILLS: He does -- and we've provided more than
9 just the letter that was prior productions, the original
10 documents that came in May when it was first diagnosed. What
11 we don't think is relevant is anything that happened before
12 this incident that caused him now not to fly. Because again,
13 we're not saying, hey, he's not paying because of his health.

14 THE COURT: Right.

15 MR. MILLS: We're not saying that either.

16 THE COURT: Right.

17 MR. MILLS: So how is his cancer, for example, they
18 want -- why is that relevant? Why is any medical records
19 related to his cancer relevant to this case?

20 THE COURT: Because he's delayed the proceedings and
21 he's used this as an excuse not to appear and it's got to -- I
22 find that that's -- the medical, I'm going to find that the
23 medical is relevant, like I said, for June 2014 and from
24 September 2018 forward because that was -- it's an issue of

1 attorney's fees.

2 MR. MILLS: Okay.

3 THE COURT: That's how I see that, so.

4 MR. MILLS: All right.

5 THE COURT: I'm also -- I'm going to find that -- I
6 appreciate -- I get the judgment debtor. But from reviewing
7 the entirety of the file, the life insurance we don't have --
8 as it stands today, I understand you're going to resolve that
9 issue, but it said, you know, there was an issue about the
10 payments made and that they could look into the financials for
11 that. I will make it attorneys' eyes only.

12 MR. MILLS: Well, for that issue, Your Honor, that's
13 my burden. If I don't prove it then they win that issue. The
14 judge made that clear. It's my burden to prove that he's
15 making a separate payment for the 25,000.

16 THE COURT: True.

17 MR. MILLS: Which I believe we've already provided
18 those records to counsel. So if -- again, they're not trying
19 to get it for that.

20 THE COURT: Yeah.

21 MR. MILLS: They're doing a fishing expedition, not
22 just trying to prove whether the extra 25,000 there's been a
23 separate payment.

24 THE COURT: Well, I'm just saying, because I know

1 Kathy Hardcastle said that he had to provide copies -- I mean,
2 this is back to January, and I know you guys filed a motion
3 for reconsideration and it's --

4 MR. MILLS: Yeah, he represented himself at that
5 point.

6 THE COURT: Yeah. And it said provide copies of
7 statements from the last year of all accounts in which
8 Defendant had received money, including annuity payments. So,
9 I mean, that to me -- it might not be admissible at trial, but
10 I think it's discoverable because it's -- this foundation is
11 out there about the financials.

12 Now, as to the wife and daughter's accounts --

13 MS. LAMBERTSEN: Oh, may I address that, Your Honor?

14 THE COURT: Yeah.

15 MS. LAMBERTSEN: I'm not sure where Mr. Mills is
16 getting that because in our request to produce, number 36, it
17 talks about a joint owner or have a --

18 THE COURT: If his name is on something, yes.

19 MS. LAMBERTSEN: -- a joint -- yeah, with Pinky
20 Byrd, also known as Pinky Noble (phonetic) or Ashley Mae Noble
21 (phonetic) from June of 2014. So I'm not certain -- your
22 representation was that we were solely going after Pinky
23 Byrd's accounts. But this is where --

24 THE COURT: No. I would say if his name is on

1 something --

2 MS. LAMBERTSEN: This is joint. This is joint.

3 MR. MILLS: Okay.

4 THE COURT: Yeah, no.

5 MS. LAMBERTSEN: Joint. And --

6 THE COURT: If his name is not on the wife's or
7 daughter's account and he's funneling money through there,
8 that's something --

9 MS. LAMBERTSEN: Yeah.

10 THE COURT: You'll have to figure that out. But if
11 he -- his name is on something -- now, if he goes back and
12 tries to take it off real quick, no. I mean, like if his name
13 was on it since this started and he's removed his name he
14 should still produce it because that's almost -- that's not --
15 destruction of evidence --

16 MR. MILLS: And from what time frame then are you
17 wanting?

18 THE COURT: God --

19 MR. MILLS: Just what was ordered in January?

20 THE COURT: Because it doesn't -- it just -- okay.
21 "Defendant shall provide copies of statements from the last
22 year of all accounts." So 20 -- so this was in 2019 so --

23 MS. LAMBERTSEN: So 2018.

24 MR. MILLS: So all of 2018.

1 THE COURT: 2018, uh-huh.
2 MS. LAMBERTSEN: And may I ask --
3 MS. WEBSTER: Well, all of 2018 and then going
4 forward to the present?
5 THE COURT: Forward, yes.
6 MS. LAMBERTSEN: Forward, yes.
7 THE COURT: January 2018 --
8 MS. LAMBERTSEN: Forward.
9 THE COURT: -- going forward.
10 MS. WEBSTER: And then do we have a date certain
11 when that would be produced? Because we've got the trial
12 coming up. October 21st is our trial date.
13 THE COURT: Yeah.
14 MR. MILLS: Again, that's tough. My guy's in the
15 Philippines, right?
16 THE COURT: Yeah.
17 MR. MILLS: I don't know.
18 MS. LAMBERTSEN: These were requested in June.
19 THE COURT: And so --
20 MS. LAMBERTSEN: And he can go online.
21 THE COURT: Right. Here's the thing. And I know
22 I'm falling in Erin Truman's steps. She gives one week and
23 that's the -- you know, and you guys are up against trial. So
24 I'll give you the 18th and then what's that? Monday you're in

1 trial.

2 MS. LAMBERTSEN: But our trial notebooks are due on
3 the 17th. Can we --

4 THE COURT: God, I know this is -- wow. I know.
5 I'm up against a -- well, counsel will endeavor his best to
6 get everything to you by the 17th and then let the judge
7 address if you guys don't have whatever else is out there.

8 MR. MILLS: And I understand you've got a motion to
9 continue, and obviously if my guy who wants to go forward
10 doesn't provide --

11 THE COURT: Yes.

12 MR. MILLS: -- then you're likely to get that
13 granted, so.

14 THE COURT: I would just say you'd need a short
15 continuance just to get those financials in, because you don't
16 want to delay it anymore and you guys have been going at it
17 almost a full year.

18 MS. LAMBERTSEN: May I ask another clarification,
19 Your Honor?

20 THE COURT: Sure. Sure.

21 MS. LAMBERTSEN: Regarding the time frame of the
22 medical records, we're going to respectfully ask July 16th of
23 2018, you mentioned another date but --

24 THE COURT: Because I said September --

1 MS. LAMBERTSEN: But July --

2 THE COURT: -- because that was the surgery.

3 What --

4 MS. LAMBERTSEN: Yeah, July was the date -- and Mr.
5 Mills -- it was the email that precipitated this whole
6 existence of this case where on July 16th, 2018, he says to
7 Caterina, you know, I hate to bother you. I'm having some
8 serious health issues. I have to have cancer surgery -- I
9 have -- I had -- I had to have cancer surgery earlier this
10 year and now I need two more surgeries. I can't afford to
11 pay.

12 It was this email that made her say I don't have
13 insurance polices. I don't know what to do --

14 THE COURT: I get that, but he's not admitting --
15 he's not admitting he doesn't owe this money. I mean, he
16 admits he owes this money. I don't want to say it in the
17 negative.

18 MR. MILLS: Pursuant to the current orders what he
19 admits.

20 THE COURT: Yeah. So, I mean, the thing is I only
21 see relevant is the September surgery, which he didn't come to
22 the first hearing or something to that effect. So I get that
23 he stopped paying at that time, but the admission is there
24 that he's supposed to -- that he's not disputing that he

1 doesn't owe the money, correct? I mean --
2 MS. LAMBERTSEN: Well, he just --
3 MR. MILLS: He's not disputing that --
4 MS. LAMBERTSEN: Yeah.
5 MR. MILLS: -- if the orders stand he will owe the
6 money. He's not disputing that he didn't pay --
7 THE COURT: So that's --
8 MS. LAMBERTSEN: Well, I was just saying this as to
9 the medical record condition. Because he says I must come to
10 Las -- to LV to use the VA. So it seems to be around this
11 time he's starting to put his medical condition and why he can
12 or can't appear. So if the medical records stop in September
13 but he came here in August, we're missing a critical possible
14 surgical event that may or may not have happened.
15 THE COURT: It says this letter -- in your -- his
16 letter mentioned that he had surgery in Las Vegas in September
17 2018 and three follow-up examinations. Let's see. And that
18 he'd need --
19 MR. MILLS: What was the hearing date that he
20 missed?
21 MS. LAMBERTSEN: Our motion was filed in October. I
22 think it was November.
23 MR. MILLS: Okay. I just know about the January
24 one. Okay.

1 MS. LAMBERTSEN: And it was because of -- I think --
2 yeah. And then there was -- and then it was reset to December
3 and he didn't come to that either, even though he was I think
4 in town.

5 MR. MILLS: Gotcha.

6 THE COURT: He didn't stop paying though until
7 September.

8 MR. MILLS: That's correct.

9 THE COURT: So Grady left Caterina --

10 MS. LAMBERTSEN: He stopped paying September 1.

11 THE COURT: September 1. Yeah. So I'm -- yeah, I'm
12 not going to go back because -- I'm going to say September
13 2018 forward's relevant --

14 MR. MILLS: Okay.

15 THE COURT: -- because, you know, I get that there
16 was communications before then, but he paid those. And so
17 that's why I felt that was -- that was in line with it,
18 because he stopped paying there and then he said he had a
19 surgery and that's what prevented him from -- does he appear
20 telephonically? I think that was for -- was that Bixler's
21 or --

22 MS. LAMBERTSEN: That was in May, uh-huh, with the
23 new judge. It was a status check they set with Bixler.

24 THE COURT: I mean, it was like a trickle down.

1 Yeah, I'm going to say September.

2 MS. LAMBERTSEN: Okay. Thank you, Your Honor.

3 THE COURT: Okay. And then on the protective order,
4 Counsel, if you want to argue, but I pretty much covered that.

5 MR. MILLS: You covered all my arguments, so.

6 THE COURT: Yes. So that's what the findings are
7 going to be. So for the medical I find that the June 2014, at
8 the time of signing the joint petition, his medical
9 condition's relevant because of that ominous whether it's
10 disability, retirement, however it was called, because he was
11 calling it disability but it was retirement and that's
12 relevant to your trial going forward.

13 And that from September 1st, 2018 forward the
14 medical records are relevant as to the attorney fee issue and
15 that I will -- I'm finding that the financials are relevant
16 pursuant to reading the January 23rd court minutes, and we're
17 going to go from January 2018 forward on the financials, and
18 we can keep that for -- everything can be kept for attorneys'
19 eyes only if we're concerned about dissemination.

20 And then I'm not going to award attorney's fees on
21 either side because you each had valid -- I struggled and I
22 tried to review everything and did want to hear oral argument
23 and you guys -- I see that you're trying to resolve these
24 issues, but there were valid arguments.

1 MR. MILLS: Okay.

2 THE COURT: Okay.

3 MS. WEBSTER: And, Your Honor, it was -- I'm sorry.

4 It was September 1st, 2018 forward to the present date on the

5 financials?

6 THE COURT: January --

7 MS. WEBSTER: I'm sorry, on the medical.

8 THE COURT: January.

9 MS. WEBSTER: On the medical.

10 THE COURT: Medical.

11 MS. WEBSTER: Yes.

12 THE COURT: Medical is September 1st, 2018 forward,

13 yes, forward.

14 MS. WEBSTER: Thank you.

15 MS. LAMBERTSEN: As well as June -- the month of

16 June of 2014?

17 THE COURT: Oh, yes. Yes. Because at the time of

18 contemplating it -- because I know you guys are -- the whole

19 disability, retirement thing, that he was calling it

20 disability back then, so if he was disabled at the time and

21 the retirement -- I just -- I know that's the up-in-the-air

22 issue, so that's -- that would be relevant for the month of

23 June, yes.

24 MS. LAMBERTSEN: Okay.

1 THE COURT: Because that was what they contemplated,
2 what their meaning of disability versus retirement was
3 contemplated during the time of June 2014.

4 MS. LAMBERTSEN: Okay.

5 THE COURT: Yep. Is that everything? Okay.

6 MR. MILLS: I think that will cover it.

7 THE COURT: All right. Report and Recommendations,
8 who wants to prepare? Because you guys are --

9 MS. WEBSTER: Want to go ahead and do it then?

10 MS. LAMBERTSEN: Yep.

11 THE COURT: Okay. All right. Plaintiff's counsel
12 will prepare the Report and Recommendations. We'll put you on
13 a status check for two weeks. You'll be done with trial,
14 maybe, or continued. We'll put you on our 1:30 calendar just
15 for the status of preparing the Report and Recommendations.
16 Go ahead and pass it by Counsel for his review and as to
17 approval to form and content. And, all right. Good luck.

18 THE CLERK: Actually it'll be three weeks because of
19 the [cross-talk] --

20 THE COURT: Oh, three weeks, yes. November 1st.
21 Everything's getting kicked to November 1st at 1:30.

22 MR. MILLS: Okay. Deal.

23 THE COURT: So that's just a status check. And if
24 you submit your Report and Recommendations the Wednesday

1 before then we'll vacate that date.

2 MS. LAMBERTSEN: Your Honor, I understand that
3 you've made a recommendation that neither party be awarded
4 fees.

5 THE COURT: Yeah.

6 MS. LAMBERTSEN: But the findings and the rulings
7 were clearly in favor of our motion and denial of
8 [cross-talk] --

9 THE COURT: Okay. So what I'll do -- I'm -- I'll --

10 MR. MILLS: Remember, they requested everything from
11 2014 on.

12 THE COURT: Yeah. And there was --

13 MR. MILLS: And '15, '16, and '17, and they didn't
14 get that.

15 THE COURT: Here's what I'll do. I'll let you each
16 reserve the right for attorney's fees for having to deal with
17 the discovery based on whatever the judge is -- looks at,
18 decides and whatnot with you guys having to do it. I'll let
19 you -- because you both had -- you had valid arguments and I
20 did cut it down somewhat so -- okay. I won't -- so taking
21 that back, I won't deny attorney's fees.

22 You'll each reserve it till the time of trial, since
23 you'll be in trial, on each of yours, on your motion for
24 protective order and your opposition, and then also for your

1 motion to compel. Because the judge knows more about the
2 issues and what she'll need, and maybe even though I'm saying
3 the financials are discoverable they might not be admissible
4 or relevant at trial. I don't know. So that's an issue you
5 all can reserve for the trial.

6 MR. MILLS: Okay. Deal.

7 THE COURT: Okay. I'll do that.

8 MR. MILLS: Thank you, Your Honor.

9 THE COURT: All right. Thank you.

10 (Proceedings concluded at 1:21:00)

11

12 * * * * *

13 ATTEST: I do hereby certify that I have truly and
14 correctly transcribed the digital proceedings in the
15 above-entitled case to the best of my ability.

16

17

18

/s/ Lee Ann Nussbaum
LEE ANN NUSSBAUM
Certified Electronic Transcriber

19

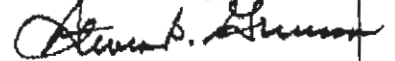
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21

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23

24



1 OBJ
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

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

22 DEPT NO.: G

23 Trial: 10/21/19

24 Time: 9:00 a.m.

25 **Plaintiff's Objection to Defendant's Notice to Appear by Audiovisual**
26 **Transmission Equipment at the Trial Scheduled for October 21, 2019**

27 COMES NOW Plaintiff, CATERINA ANGELA BYRD, by and through her
28 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
of the law offices of WEBSTER & ASSOCIATES, and hereby objects to
Defendant's Notice to Appear by Audiovisual Transmission Equipment at the Trial
Scheduled for October 21, 2019, or such other date if the hearing is
rescheduled.

///

///

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

3 Dated: October 14, 2019.

4
5 **WEBSTER & ASSOCIATES**

6
7
8 By: 

9 ANITA A. WEBSTER, ESQ.
10 Nevada Bar No. 1221
11 JEANNE LAMBERTSEN, ESQ.
12 Nevada Bar No. 9460
13 6882 Edna Ave.
14 Las Vegas, Nevada 89146
15 Attorneys for Plaintiff, Unbundled

16 **POINTS AND AUTHORITIES**

17 The parties divorced after 31 years of marriage on or about June 5, 2014.
18 Grady has resided in the Philippines since 2008. He's 63 years old and recently
19 married a 25-year-old women. Caterina has resided in the martial residence
20 awarded to her in the decree and relies on monthly support from Grady. On
21 September 1, 2018, Grady stopped paying Caterina \$3,000.00 per month for
22 assistance with her house mortgage and for her interest in his military pay. He
23 did this in retaliation for Caterina asking for copies of the life insurance, Survivor
24 Benefit Plan and other assets awarded to her in the joint petition for summary
25 decree of divorce. She is emotionally and financially destitute.

26 At the hearing on or about January 23, 2019, with Senior Judge K.
27 Hardcastle, the \$1,500.00 per month payments that Grady was making to
28 Caterina for her home mortgage assistance was deemed alimony, Grady was

1 ordered to pay her arrears and ongoing payments. The other \$1500.00 per month
2 that Grady was paying Caterina was deemed her interest in his military pay,
3 Grady was ordered to pay her arrears and ongoing payments. Attorney fees of
4 \$7,000 were also awarded to Caterina. A status check was set for May 2, 2019,
5 in part to assess his compliance with Court orders. The Court ordered that Grady
6 appear at the May 2, 2019, hearing or a no-bail bench warrant would be issued.
7 Grady did not pay Caterina as ordered and he did not appear at the May 2, 2019
8 status check hearing before Senior Judge Bixler. Grady submitted a single sheet
9 of paper, a prescription pad type paper from the Philippines, saying that he could
10 not fly in an airplane due to leg issues. No other medical records, proof of
11 ongoing care or authentication on the medical person's letter head stationary was
12 provided. Caterina objected to his absence.

15 Grady filed a motion for reconsideration of Senior Judge K. Hardcastle's
16 orders issued at the January 23, 2019 hearing, and Caterina filed an opposition
17 and countermotion to enforce the orders. At the hearing on May 22, 2019, Judge
18 R. Forsberg overturned Senior Judge K. Hardcastle's ruling as to the
19 characterization of the \$1,500 house assistance payment. Judge R. Forsberg
20 found that the \$1,500.00 house assistance was a property settlement, not
21 alimony and ordered Grady to continue paying Caterina \$3,000 per month
22 pending an Evidentiary Hearing on Grady's burden to show that Caterina's
23 financial condition changed so that he does not have to pay her the \$1,500.00 per
24 month for her home mortgage assistance and Grady's burden to show that the
25 parties did not form a contract as to the payment of the \$1,500 military payment
26
27
28

1 amount until he dies. Caterina filed a motion for reconsideration of Judge R.
2 Forsberg's ruling wherein she overturned Senior Judge K. Hardcastle's ruling that
3 the \$1,500.00 for Caterina's mortgage assistance was deemed alimony. This is
4 set for a hearing on October 21, 2019.

5
6 Meanwhile, Grady continues to refuse to comply with court orders requiring
7 him to pay Caterina as ordered at the January 23, 2019 hearing, as ordered at
8 the May 22, 2019 hearing, and as ordered at the July 18, 2019 hearing. On
9 October 21, 2019, Caterina's Order to Show Cause why Grady Should Not be
10 Held In Contempt of Court is set to be heard. Grady has admitted that he has the
11 funds to pay Caterina (he earns over \$116,000.00 annually) and admits that he
12 has refused to do so. As such, on October 21, 2019, Caterina is seeking that the
13 Court:
14

15 Summarily find that Grady Byrd is in Contempt of Court
16 for failure to pay Caterina Byrd as ordered and that he be
17 sanctioned based on the following:

- 18 i. \$3,000 per month from September 1, 2018 to
October 1, 2019 (14 months, \$42,000);
- 19 ii. \$7,000 in attorney fees ordered April 5, 2019;
- 20 iii. \$5,000 in attorney fees ordered June 26, 2019;
- 21 iv. \$1,500 in attorney fees ordered August 9, 2019;
- 22 v. Sanction \$500 for each month (14, \$7,000);
- 23 vi. Sanction \$500 for each incident of failing to pay
attorney fees (3, \$1,500); and
- 24 vii. That a warrant for Grady Byrd's arrest be issued
and that he be let go for his appearance on a
25 hearing on the warrant in the amount for his
26 release set at no less than \$64,000.

27 **II.** 28 **Argument**

There are multiple reasons why Grady should appear in person at the

1 October 21, 2019 Evidentiary Hearing;

2 1) The medical paper Grady provided in his Notice of Appearance by
3 Audiovisual Equipment is unreliable; it is not on letterhead, it is not signed by a
4 physician, no other medical records accompany the paper to explain the onset,
5 the diagnosis, the testing, the treatment, Grady's compliance to treatment, if this
6 is an acute or chronic condition, how long he is expected to remain in this
7 condition, or his prognosis. Caterina requested medical records from Grady
8 through Discovery back on June 17, 2019, and he has refused to provide his
9 medical records. If his claims of poor health are to be believed, he should have
10 eagerly produced the records. He did not. It is also curious that Grady could fly
11 to Las Vegas Nevada in July 2018, January 2019 and other times, travel in
12 Nevada, and California where he abandoned his Chevrolet Cruze at the Los
13 Angeles International Airport. Grady is not credible and his alleged medical
14 paper should not be trusted;
15

16 2) Grady has threatened Caterina "good luck finding me" referring to her
17 ability to obtain any money that he owes her;
18

19 3) Per Supreme Court Rules, he is required to be present for the
20 adjudication of an Order to Show Cause;
21

22 4) Grady is simply trying to avoid his responsibilities and he is using federal
23 government money to evade his payments to Caterina;
24

25 5) Grady was ordered by Judge R. Forsberg to appear at the Trial on
26 October 21, 2019; and

27 6) Grady is behaving as if he has no intention of returning to Las Vegas
28

1 Nevada, for the Court or anybody else. For example, on or about April 15, 2019,
2 Caterina received mail for Grady. The Airport Police, Los Angeles California sent
3 a "Notice of stored vehicle" that Grady's 2018 Chevy Cruze was found at the L.A.
4 Airport with no license plates attached. Another piece of mail was from Clear
5 Choice Lien Service, Inc. Grady's Chevrolet Chevy is being stored by Bruffy's Del-
6 Rey Tow, Los Angeles California. Past due notices are also coming to her home
7 showing that Grady is not paying his loans. Combined, it appears that Grady has
8 walked away from over \$51,000.00 in loan debt.

9
10 It is important that Grady personally appear to ascertain his understanding
11 of the Court's orders, to obtain compliance and that communications are clear
12 and there is no "lost in translation" problems or other communication problems.

13
14 Essential to the Order to Show Cause issue, Grady must appear so that the
15 Court has full access to all available NRS 22. 0100 penalties for contempt, such
16 as imprisonment:

17
18 2. Except as otherwise provided in NRS 22.110, if a
19 person is found guilty of contempt, a **fine may be**
20 **imposed on the person not exceeding \$500 or the**
21 **person may be imprisoned not exceeding 25 days, or**
22 **both.**

23
24 Supreme Court Rule, Part IX-B

25
26 (B) Rules Governing Appearance by Simultaneous
27 Audiovisual Transmission Equipment for Civil and Family
28 Court Proceedings, in pertinent part:

2. In addition, except as provided in Rule 4(1), a
personal appearance is required for the following
persons or parties:

.....
.....

1 (b) Persons ordered to appear to show cause why
2 sanctions should not be imposed for violation of a
court order or a rule; or

3 (c) Persons ordered to appear in an order or citation
4 issued under NRS Title 12 or Title 13.

5 **3. Court discretion to modify rule.**

6 (a) Applicable cases. In exercising its discretion
7 under this provision, the court should consider the
8 general policy favoring simultaneous audiovisual
9 transmission equipment appearances in family court
proceedings.

10 (b) **Court may require personal appearances.**
11 **Upon a showing of good cause** either by motion of a
12 party or upon its own motion, the court may require a
13 party or witness to appear in person at a proceeding
14 listed in Rule 4(1) or (2) **if the court determines on a**
15 **hearing-by-hearing basis that a personal appearance**
16 **would materially assist in the resolution of the**
17 **particular proceeding** or that the quality of the
18 simultaneous audiovisual transmission equipment is
inadequate.

19 6. "Good cause" may consist of one or more of the
20 following factors as determined by the court:

21 (a) *Whether a timely objection has been made to*
22 *parties or witnesses appearing through the use of*
23 *simultaneous audiovisual transmission equipment:*

24 Caterina has timely objected to Grady's appearance
25 through use of simultaneous audiovisual equipment.

26 (b) *Whether any undue surprise or prejudice would*
27 *result:*

28 Undue prejudice would result for Caterina because the
court is unable to fully exercise all the penalties for
Contempt that are available under Nevada law.

1 (c) *The convenience of the parties, counsel, and the*
2 *court:*

3 It is not convenient for Caterina's counsel, Caterina or the
4 Court to determine Grady's demeanor, if there are
5 interferences in the room where he is sitting, who else is
6 present, who else is with him, who may be influencing or
7 tampering with this sworn statements and what else
8 Grady may be looking at during trial examination or
9 cross-examination.
10

11 (d) *The cost and time savings:* Grady travels to Clark
12 County Nevada for medical treatment that is free of
13 charge to him at the VA hospital which he had been
14 doing regularly until this instant litigation.
15

16 (e) *The importance and complexity of the proceeding:*
17 This Trial is extremely important to Caterina since she
18 has been deprived of Grady's support since September
19 1, 2018. The issues of alimony and contract formation
20 are complex.
21

22 (f) *Whether the proponent has been unable, after due*
23 *diligence, to procure the physical presence of a witness:*

24 Caterina has diligently maintained that Grady's presence
25 is needed. On April 23, 2019, she even filed a Ex parte
26 Application for Grady's appearance at the May 2, 2019
27
28

1 hearing, his request to appear telephonically was denied
2 and he still failed to appear. The Court has even ordered
3 him to appear at the October 21, 2019 trial.
4

5 *(g) The convenience to the parties and the proposed*
6 *witness, and the cost of producing the witness in relation*
7 *to the importance of the offered testimony:*

8 Grady is the Defendant in this action. He has the burden
9 of proving the issues for Trial, his testimony is important
10 and he must be present for adjudication of the Order to
11 Show cause against him.
12

13 *(h) Whether the procedure would allow effective*
14 *cross-examination, especially where documents and*
15 *exhibits available to the witness may not be available to*
16 *counsel:*

17 Cross-examination of Grady will be less effective with
18 audiovisual equipment. Caterina's interest is harmed by
19 this.
20

21 *(i) The importance of presenting the testimony of*
22 *witnesses in open court, whether the finder of fact may*
23 *observe the demeanor of the witness, and where the*
24 *solemnity of the surroundings will impress upon the*
25 *witness the duty to testify truthfully:*

26 Open court is important to the presentation of Grady's
27 testimony, his demeanor, who else is in the room with
28 him, what other factors are influencing him, the ability of
counsel to cross-examine him and fully see his demeanor

1 and responses are important.

2
3 *(j) Whether the quality of the communication is*
4 *sufficient to understand the offered testimony:*

5 The court has tried to connect with Grady in the
6 Philippines twice before by telephone and neither
7 connection worked; at the hearing on May 22, 2019 and
8 again on July 18, 2019. Caterina has withstood terrific
9 financial and emotional hardship by repeated delays by
10 Grady and this case is now a year old. An equipment
11 malfunction or poor connections cannot be tolerated.
12

13 *(k) Such other factors as the court may, in each*
14 *individual case, determine to be relevant:*

15 Grady's blatant non-compliance with Court orders dating
16 back to the hearing on January 23, 2018, reinforce that
17 Grady's personal appearance is necessary.
18

19 **CONCLUSION**

20 Caterina is respectfully requesting that the court Deny the Defendant's
21 notice/request to appear by simultaneous audiovisual equipment at the Trial and
22 Order to Show Cause hearing scheduled for October 21, 2019, or other such date
23 if the hearing is moved, and order the Defendant's personal appearance.

24 Dated: October 14, 2019.

25 **WEBSTER & ASSOCIATES**
26 

27 **JEANNE F. LAMBERTSEN, ESQ.**
28 Attorney for Plaintiff

DECLARATION OF CATERINA BYRD

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

3 2. I have read the foregoing *Plaintiff's Objection to Defendant's Notice to*
4 *Appear by Audiovisual Transmission Equipment* at the Trial Scheduled for
5 October 21, 2019. The factual averments contained therein and incorporated
6 herein as if set forth in full, are true and correct to the best of my knowledge,
7 except as to those matters based on information and belief, and as to those
8 matters, I believe them to be true.

9
10 3. I do not believe that Grady can be trusted to follow any of the court
11 rulings if not physically present due to Grady's untrustworthy behavior and not
12 complying with the court orders to pay me; his fraudulently obtaining an official
13 NV Drivers License; abandoning his personal vehicle at LAX and removing the
14 license plates to conceal his identity as the owner of the Chevrolet Cruze vehicle;
15 and use of my home address as his official residence, which is the reason I
16 received communications from the police as well as the company he financed the
17 car through.
18

19
20 4. Based upon the foregoing, I respectfully request an Order that the
21 Defendant personally appear at the hearing on October 21, 2019, or other such
22 date if the hearing is moved.

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

25
26 Executed this 14 day of October, 2019.

27
28 
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 14th day of October, 2019, I caused the above and foregoing to be served as follows:

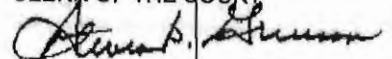
☒ [X] Electronic Service through the Eighth Judicial District Court's electronic filing system; and

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

Byron Mills
Counsel for Defendant, Grady Byrd
Modonnell@millsnv.com


An employee of Webster & Associates

Law Offices of
WEBSTER & ASSOCIATES
6882 Edna Avenue • Las Vegas, Nevada 89146
Telephone (702) 562-2000 • Facsimile (702) 562-2003



1 BYRON L. MILLS, ESQ.
2 Nevada Bar #6745
3 MILLS & ANDERSON
4 703 S. 8th Street
5 Las Vegas NV 89101
6 (702) 386-0030
7 Attorney for Defendant

8 DISTRICT COURT
9 FAMILY DIVISION
10 CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD,)

12 Plaintiff,)

13 vs.)

14 GRADY EDWARD BYRD,)

15 Defendant.)

ORAL ARGUMENT REQUESTED

CASE NO.: D-18-577701-Z

DEPT. NO.: G

DATE OF HEARING: 10/21/19

TIME OF HEARING: 9:00 A.M.

16
17
18 **MOTION ON ORDER SHORTENING TIME TO RECONSIDER DENIAL**
19 **OF AUDIOVISUAL APPEARANCE REQUEST**

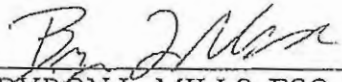
20 COMES NOW the Defendant, GRADY EDWARD BYRD, by and through
21 his attorney, BYRON L. MILLS, ESQ., of the law firm of MILLS & ANDERSON,
22 and moves this honorable court for the following:

- 23 1. An Order of the Court reconsidering its denial of Defendant's request to
24 appear for trial on October 21, 2019 via audiovisual equipment.
25
26
27
28

1 2. For such other relief as the Court deems appropriate in the premises.

2 DATED this 15th day of October 2019.

3 MILLS & ANDERSON

4
5 
6 BYRON L. MILLS, ESQ.
7 Nevada Bar #6745
8 703 S. 8th Street
9 Las Vegas NV 89101
Attorney for Defendant

10 POINTS AND AUTHORITIES

11 I.

12 STATEMENT OF FACTS

13 GRADY EDWARD BYRD (hereinafter "Grady") and CATERINA
14 ANGELA BYRD (hereinafter "Caterina") were divorced by Decree of Divorce
15 dated June 5, 2014. The parties currently have a trial in this matter set for October
16 21, 2019. As the Court is aware, Grady currently resides in the Philippines, making
17 the cost and time needed to travel to Nevada for the trial prohibitive. Additionally,
18 Grady has health issues that prevent him from taking long flights. These are
19 documents in Medical notes from Grady's physician in May 9, 2019 (Exhibit A) a
20 letter from his Nursing Attendant dated October 4, 2019 (Exhibit B) and a
21 subsequent letter from his Physician dated October 10, 2019. All three documents
22 indicated Grady is prohibited or should refrain from long flights due to the risk of a
23 "pulmonary incident".

24 On October 10, 2019, Grady submitted a request/notice to appear by
25 audiovisual equipment for the trial. On October 11, 2019, the law clerk sent an email
26 to counsel stating: "please be advised that Mr. Byrd is not allowed to appear by
27 audiovisual equipment for trial. Thank you." No reasoning or explanation was
28 provided for the denial.

1 As more fully stated below, the Court should reconsider its denial of Mr.
2 Byrd's timely request to appear by audiovisual equipment. The rules governing his
3 requested appearance are clear in stating that the Court should accommodate the
4 request when possible and should favor such appearances in family law
5 proceedings. Grady therefore requests that the Court reconsider its denial of Mr.
6 Byrd's request as more fully set forth below.

7 II 8 ARGUMENT

9 A. The Court should Reconsider its Order denying Grady's Audiovisual 10 Request and Allow him To Appear Via Audiovisual Communication at 11 Trial.

12 This Court has the authority to reconsider its previous orders pursuant to
13 EDCR 2.24, and NRCP 59e, which read as follows:

14 Rule 2.24. Rehearing of motions.

15 (a) No motions once heard and disposed of may be renewed in the
16 same cause, nor may the same matters therein embraced be reheard,
17 unless by leave of the court granted upon motion therefor, after notice
of such motion to the adverse parties.

18 (b) A party seeking reconsideration of a ruling of the court, other
19 than any order which may be addressed by motion pursuant to N.R.C.P.
20 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days
21 after service of written notice of the order or judgment unless the time
22 is shortened or enlarged by order. A motion for rehearing or
23 reconsideration must be served, noticed, filed and heard as is any other
motion. A motion for reconsideration does not toll the 30-day period
for filing a notice of appeal from a final order or judgment.

24 (c) If a motion for rehearing is granted, the court may make a final
25 disposition of the cause without reargument or may reset it for
26 reargument or resubmission or may make such other orders as are
deemed appropriate under the circumstances of the particular case.

27 NRCP 59:

28 (a) **Grounds.** A new trial may be granted to all or any of the parties
and on all or part of the issues for any of the following causes or

1 grounds materially affecting the substantial rights of an aggrieved
2 party: (1) Irregularity in the proceedings of the court, jury, master, or
3 adverse party, or any order of the court, or master, or abuse of discretion
4 by which either party was prevented from having a fair trial; (2)
5 Misconduct of the jury or prevailing party; (3) Accident or surprise
6 which ordinary prudence could not have guarded against; (4) Newly
7 discovered evidence material for the party making the motion which
8 the party could not, with reasonable diligence, have discovered and
9 produced at the trial; (5) Manifest disregard by the jury of the
10 instructions of the court; (6) Excessive damages appearing to have been
11 given under the influence of passion or prejudice; or, (7) Error in law
12 occurring at the trial and objected to by the party making the motion.
On a motion for a new trial in an action tried without a jury, the court
may open the judgment if one has been entered, take additional
testimony, amend findings of fact and conclusions of law or make new
findings and conclusions, and direct the entry of a new judgment.

...

13 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend
14 the judgment shall be filed no later than 10 days after service of written
15 notice of entry of the judgment.

16 Grady respectfully submits that this Court should reconsider its decision
17 denying Grady's request to appear by audiovisual communication pursuant to
18 EDCR 2.24c based on a clear error in application of the law governing such
19 requests. The rules governing such requests are states as follows:

20 **Rule 2. Policy favoring simultaneous audiovisual transmission**
21 **equipment appearances.** The intent of this rule is to promote
22 uniformity in the practices and procedures relating to simultaneous
23 audiovisual transmission equipment appearances. To improve access to
24 the courts and reduce litigation costs, courts shall permit parties, to the
extent feasible, to appear by simultaneous audiovisual transmission
equipment at appropriate proceedings pursuant to these rules.

...

25 **Rule 4. Appearance by simultaneous audiovisual transmission**
26 **equipment.**

27 1. Appearances by parties or witnesses through the use of
28 simultaneous audiovisual transmission equipment may be made as
follows:

1
2 (a) Trials, hearings at which witnesses are expected to testify, or
3 hearings on preliminary injunction motions provided there is good
4 cause as determined by the court in accordance with Rule 1(6);

5 ...

6
7 **3. Court discretion to modify rule.**

8 (a) Applicable cases. In exercising its discretion under this
9 provision, the court should consider the general policy favoring
10 simultaneous audiovisual transmission equipment appearances in
11 family court proceedings.

12 The foregoing rules clearly state that 1) parties may appear for trial via audiovisual
13 equipment 2) the Court should use the rule to permit access to the court, and 3) the
14 policy of the Court should be to favor audiovisual appearances in family court
15 proceedings. As the request is for Grady to appear at trial via audiovisual
16 appearance, the Court should consider if good cause exists to allow or deny the
17 appearance based on the factors outlined under Rule 1(6) as follows:

18 6. "Good cause" may consist of one or more of the following factors as
19 determined by the court:

20 (a) *Whether a timely objection has been made to parties or witnesses appearing
21 through the use of simultaneous audiovisual transmission equipment;*

22 Opposing party submitted her objection within the time allowed.

23 (b) *Whether any undue surprise or prejudice would result;*

24 Grady's appearance in these proceedings has been an issue for consideration
25 from its outset. Counsel has informed the Court multiple times that Grady has health
26 issues that preclude him flying long distances without jeopardizing his health. There
27 is no element of surprise or prejudice that should prevent the Court from allowing
28 Grady's request.

1 (c) *The convenience of the parties, counsel, and the court;*

2
3 It is clearly vastly more convenient for Grady to appear by audiovisual
4 equipment. His health precludes the necessary travel, which is expensive and
5 incredibly time consuming. Conversely, whether Grady is present physically or via
6 audiovisual has no impact on the convenience of the opposing party or the Court.

7 (d) *The cost and time savings;*

8 With a minimum travel time of over 20 hours in the air and the cost associated
9 with such travel, requiring Grady to appear personally will have a significant impact
10 on him in terms of costs and time savings.

11
12 (e) *The importance and complexity of the proceeding;*

13 There is nothing particularly complex about the proceedings before the
14 Court. There are only two principle issues before the Court 1) Whether the parties
15 have a contract for Grady to pay a portion of his disability to Caterina and 2)
16 whether Grady is in contempt of court for failing to pay.

17 (f) *Whether the proponent has been unable, after due diligence, to procure the*
18 *physical presence of a witness;*

19 There is nothing that Grady can do to change his current health status that
20 would allow him to travel without significantly jeopardizing his health.

21
22 (g) *The convenience to the parties and the proposed witness, and the cost of*
23 *producing the witness in relation to the importance of the offered testimony;*

24 Again, there is nothing particularly unique about the testimony that Grady
25 will offer that would be any different if he was present in the courtroom.

26 ///

27 ///

28

1 (h) *Whether the procedure would allow effective cross-examination, especially*
2 *where documents and exhibits available to the witness may not be available to*
3 *counsel;*

4 The only physical evidence necessary will be documents, which can easily
5 be provided via email and marked for ease of reference by both Grady and counsel.

6
7 (i) *The importance of presenting the testimony of witnesses in open court,*
8 *whether the finder of fact may observe the demeanor of the witness, and where the*
9 *solemnity of the surroundings will impress upon the witness the duty to testify*
10 *truthfully;*

11 Grady will appear via audiovisual equipment, allowing the Court and counsel
12 to view his demeanor during the trial and during his testimony.

13 (j) *Whether the quality of the communication is sufficient to understand the*
14 *offered testimony; and*

15 Counsel has tested the connection and Grady is able to be seen and heard
16 clearly.

17
18 (k) *Such other factors as the court may, in each individual case, determine to*
19 *be relevant.*

20 It is no exaggeration to say that Grady's life will be in danger if he is forced
21 to take a 16 plus transpacific flight to appear at the trial. Grady's swelling in his
22 legs could easily result in a life-threatening blood clot. There is absolutely no
23 justification for requiring him to appear under these circumstances. While the
24 foregoing rules "require" appearances on show cause orders, the Court still has the
25 discretion to modify the rules under rule 3 and should do so in this case based on
26 Grady's health. As such, Grady requests that the Court reconsider its denial of his
27 request and allow him to appear at trial via audiovisual transmission.

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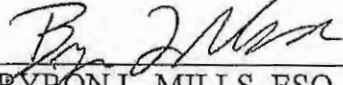
III
CONCLUSION

Wherefore, based on the above and foregoing, the Defendant respectfully requests the following:

1. An Order of the Court reconsidering its denial of Defendant's request to appear for trial on October 21, 2019 via audiovisual equipment.
2. For such other relief as the Court deems appropriate in the premises.

DATED this 15th day of October 2019.

MILLS & ANDERSON.



BYRON L. MILLS, ESQ.
Nevada Bar #6745
703 S. 8th Street
Las Vegas NV 89101
Attorney for Defendant

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STATE OF _____)

) SS:

COUNTY OF _____)

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

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

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

FURTHER AFFLANT SAYETH NAUGHT.

GRADY EDWARD BYRD

SUBSCRIBED and SWORN to before me
this 15 day of OCT, 2019.

NOTARY PUBLIC in and for Said

County of San Diego and

State of IBF No. 0108 LIFETIME
MCMLE CABLE INC. NO. 00341, 8/18/10
2ND FLR. RM BLDG., SANTAYAN, DUMAGUETE CITY

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Cabrera Byrd
Plaintiff/Petitioner

Gaddy Byrd
Defendant/Respondent

Case No.

18 577701-2

Dept.

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) Reconsideration

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:

Gaddy Byrd

Date

10/15/18

Signature of Party or Preparer

151 Bryan Smith