

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 04:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX TO OPENING BRIEF – VOLUME VI

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

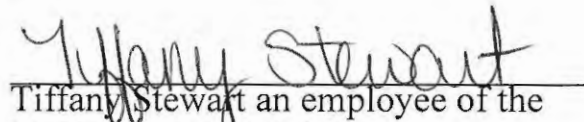
I HEREBY CERTIFY that on the 6th day of July, 2020, I caused to be served the instant **APPELLANT'S APPENDIX TO OPENING BRIEF- VOLUME VI** to all interested parties as follows:

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

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

DOCUMENT	BATES NO.
Appendix to Defendant's Motion for Order Time to Reconsider Denial of Audiovisual Appearance filed on October 15, 2019	AA500-507
Appendix to Defendant's Motion for Reconsideration filed on April 8, 2019	AA178-198
Audiovisual Transmission Equipment Appearance Consent filed on October 10, 2019	AA449-450
Decree of Divorce filed on June 5, 2014	AA001-012
Defendant's Motion for Reconsideration filed on April 8, 2019	AA159-177
Defendant's Opposition to Plaintiff's Memorandum of Fees and Costs filed on December 4, 2019	AA786-789
Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs for the Appeal filed on January 2, 2020	AA815-821
Defendant's Pretrial Memo filed on October 16, 2019	AA508-517
Defendant's Reply and Opposition filed on May 14, 2019	AA253-278
Exhibit Appendix filed on October 16, 2019	AA537-541
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
Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA833-853
Judgment for Attorney Fees filed on March 17, 2020	AA877-880
Motion on Order Shortening Time to Reconsider Denial of Audiovisual Appearance Request filed on October 15, 2019	AA490-499
Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on January 23, 2020	AA854-876
Notice of Entry of Judgment for Attorney Fees filed on March 18, 2020	AA881-886
Notice of Entry of Order From the February 27, 2020 Hearing filed on March 27, 2020	AA890-894
Notice of Entry of Order From the January 23, 2019 Hearing filed on April 5, 2019	AA148-158

Notice of Entry of Order From the July 18, 2019 Hearing filed on August 9, 2019	AA366-371
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
Notice to Appear Telephonically filed on June 27, 2019	AA360-361
Opposition to Plaintiff's Motion for Reconsideration and Countermotion for Fees filed on October 18, 2019	AA563-578
Order From February 27, 2020 Hearing filed on March 26, 2020	AA887-889
Order From the January 23, 2019 Hearing filed on April 5, 2019	AA139-147
Order From the July 18, 2019 Hearing filed on August 9, 2019	AA362-365
Order From the November 27, 2018 Hearing filed on December 17, 2019	AA897-900
Order of the Court filed on June 26, 2019	AA354-359
Order Striking Exhibits filed on November 14, 2018	AA069
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
Plaintiff's Motion for Attorney Fees and Costs for the Appeal filed on December 16, 2019	AA803-814
Plaintiff's Motion for Reconsideration, Summary Judgment, Joinder and to Continue the Evidentiary Hearing filed on September 30, 2019	AA400-436
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
Plaintiff's Opposition to Defendant's Motion for Reconsideration and Countermotion filed on April 23, 2019	AA199-237
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

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
Plaintiff's Pretrial memorandum filed on October 16, 2019	AA542-562
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Countermotion filed on May 17, 2019	AA279-308
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
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
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
Reply to Opposition and/or Countermotion filed on December 28, 2018	AA092-096
Request for Continuance filed on November 16, 2018	AA895-896
Request to Appear by Audiovisual Transmission Equipment filed on October 10, 2019	AA441-448
Schedule Arrearages for Support filed on October 9, 2019	AA437-440
Transcript Re: All Pending Motions – July 18, 2019 filed on May 13, 2020	AA372-399
Transcript Re: All Pending Motions – May 22, 2019 filed on May 13, 2020	AA309-353
Transcript Re: All Pending Motions – October 11, 2019 filed on May 13, 2020	AA451-477
Transcript Re: All Pending Motions – October 21, 2019 filed on May 13, 2020	AA604-785
Transcript Re: Motion – January 23, 2019 filed on May 13, 2020	AA097-138
Transcript Re: Status Check – May 2, 2019 filed on May 13, 2020	AA238-252

Steven D. Grierson

1 BYRON L. MILLS, ESQ.
2 State Bar #6745
3 MILLS & ANDERSON
4 703 S. 8th Street
5 Las Vegas, Nevada 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,

16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
CASE NO.: D-18-577701-Z
DEPT. NO.: G

17 APPENDIX TO DEFENDANT'S MOTION FOR ORDER TIME TO
18 RECONSIDER DENIAL OF AUDIOVISUAL APPEARANCE

19 Defendant, GRADY BYRD, by and through his attorney, BYRON L.
20 MILLS, ESQ. of MILLS & ANDERSON hereby submits and files his Appendix to
21 the Motion for Reconsideration.
22

EXHIBIT	BATE NO.	DESCRIPTION
A	237	Medical Certificate from Dr. Arco
B	511	Medical Certificate from Mayden Taulo, Nursing Attendant

27 ///

28 ///

C	490	Medical Certificate from Dr. Regaldo
---	-----	--------------------------------------

Submitted by:

MILLS & ANDERSON



10/15/19

BYRON L. MILLS, ESQ.
Nevada Bar No. 6745
703 S. 8TH STREET
Las Vegas, Nevada 89101
(702) 386-0030
Attorneys for Defendant

DATED

EXHIBIT “A”

ROY DIAMOND M. ARCO, MD
Specialist in Internal Medicine & Kidney Diseases
Diplomate, Philippine Society of Nephrology
Diplomate, Philippine College Physicians

SILLIMAN MEDICAL CENTER
Rm 101, Medical Arts Building
Tel. No. 420-2101

Mon. to Fri. 12:00NN to 5:00 PM
Tue. Wed. Thurs. & Sat 12:00NN to 3:00 PM

Name: _____ Age _____
Address _____ Sex _____
Date: 5-9-69

Rx

MEDICAL CERTIFICATE

This is to certify that Mr. Grady Edward
Byrd 62y/o suffer with an on and off bilateral
edema and leg pain. He is known to have similar
episodes last year and few February.

He is advised not to travel by plane for
prolonged time until further work up to rule out
venous thrombosis.

Thank you

Lic. No. 103619 M.D.
PTR No. 2116064
S2 No. _____

DEF237

AA503

EXHIBIT “B”

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

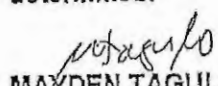
Recommendations / Restrictions:

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.


MAYDEN TAGULO
NURSING ATTENDANT
09562103541

011-7191323-2

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


ATTY. RAYMOND A. MERCADO
NOTARY PUBLIC FOR CITY OF DUMAGUETE & THE MUN. OF
SIBULAN, BACONG, VIJAY, CALA, DA, P.N. ZAMBOANGUA & SIATON
UNTIL DECEMBER 31, 2020
NOTARIAL COMMISSION NO. 2019-001
PTR No. 2/09164 / 1/3-2019
ROLL No. 25548 / 12-27-89
IBP No. 0108 LIFETIME
6TH MCLE COMPLIANCE No. 003418/18/10
2ND FLR RM BLDG. BARTAYAN, DUMAGUETE CITY

DEF511

AA505

EXHIBIT “C”

MOM'S MEDICAL CLINIC
PERDICES ST., DUMAGUETE CITY
MEDICAL CERTIFICATE

To whom it may concern:

This is to certify that Mr./Ms./Mrs. GRACY PAUL
age/sex 63 yrs. of ORIENTAL, NEGROS ORIENTAL was seen

and examined on 10/9/19 and was diagnosed to have
HYPERTENSION; DIABETES MELLITUS; POST DVT.

I therefore recommend CONTINUE YOUR MEDICATION;
REFRAIN FROM TRAVELING ON A LONG FLIGHT

This certificate is being issued upon the request of GRACY PAUL

_____ for whatever purpose it may serve
(excluding legal matters).

Yours truly,

MEDICAL CONSULTANT/CLINIC PHYSICIAN

DR. FE L. BESARIO

Lic. No. 42207

PTR No. _____

S2 No. _____

Regalado
DR. PEDRITO E. REGALADO

Lic. No. 0050514

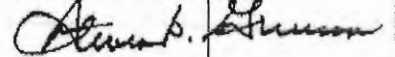
PTR No. 61855220A

S2 No. _____

Date: 10/10/19

DEF 490

AA507



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

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

11 CATERINA ANGELA BYRD,)

12 Plaintiff,)

14 vs.)

CASE NO.: D-18-577701-Z

DEPT. NO.: G

15 GRADY EDWARD BYRD,)

17 Defendant.)

DATE OF HEARING: 10/21/19

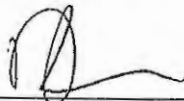
TIME OF HEARING: 9:00 A.M.

18 **DEFENDANT'S PRETRIAL MEMO**

19
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 submits his pretrial memo.

23 DATED this 16 day of October, 2019.

24 MILLS & ANDERSON

25 

26
27 BYRON L. MILLS, ESQ.
28 Nevada Bar #6745
703 S. 8th Street
Las Vegas NV 89101
Attorney for Defendant

1
2
3 **POINTS AND AUTHORITIES**

4 **I.**

5 **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

6 GRADY EDWARD BYRD (hereinafter "Grady") and CATERINA
7 ANGELA BYRD (hereinafter "Caterina") were divorced by Decree of Divorce
8 dated June 5, 2014. The Decree of Divorce contained inter alia, an order that Grady
9 pay Caterina 50% of his United States Army Retired Pay as long as he lives. The
10 Decree also contained an order that Grady would continue to pay Caterina \$1500.00
11 extra per month to assist with her home mortgage.¹ However, the Decree
12 specifically stated that the \$1500.00 is not an alimony payment and it is not
13 required. Additionally, the Decree included an agreement that neither party shall
14 be required to pay spousal support to the other party.²

15 On October 16, 2018, Caterina filed a Motion to Enforce the Decree of
16 Divorce. In her motion Caterina claimed that the \$1500.00 per month was truly
17 spousal support despite the clear waiver in the Decree stating that neither party
18 would pay alimony. Caterina further claimed that it was possible the other half of
19 the \$3000.00 Grady had been depositing was Caterina's 50% share of Grady's
20 United States Army Retired pay.

21 On January 23, 2019, the matter of Caterina's Motion to Enforce the Decree
22 of Divorce came before the Court. The Court determined that the \$1,500.00 per
23 month voluntary payment was alimony. The Court also agreed with Caterina
24 regarding the additional \$1500.00 that Grady had voluntarily been paying was one
25 half of his military retired pay and ordered him to continue paying it.

26 Grady then filed a motion to reconsider the Court's decision regarding the
27 alimony and the Court's order that Grady continue to pay \$1,500 as Caterina's share

28 ¹ Decree of Divorce pgs 2-3

² Decree of Divorce pg 3

1 of Grady's military retired pay. At the hearing on May 22, 2019, the Court
2 determined that the previous ruling regarding the alimony was incorrect and that
3 the first \$1,500 payment was actually part of the property settlement agreement. As
4 to the second issue, the Court set an evidentiary hearing to determine whether there
5 was a contract for Grady to pay \$1,500 per month or whether there was a contract
6 for Caterina to receive 50% of Grady's United States Army Retired Pay.

7 On July 18, 2019 the Court granted Caterina's request for an order to show
8 cause as to why Grady should not be held in contempt for failing to pay the
9 previously ordered attorney's fees and monthly payments to Caterina. This issue is
10 also set for trial on October 21, along with the determination regarding Grady's
11 retired pay.

12 **UNRESOLVED ISSUES:**

- 13 **1. The Divorce Decree is NOT a contract for Grady to pay Caterina \$1,500**
14 **per month indefinitely.**

15 The divorce decree states the following with respect to Grady's military benefits:

- 16 1. Caterina A. Byrd is entitled to 50% of Grady E. Byrd's United States Army
17 Retired Pay as long as he lives.

18 Decree of Divorce filed June 5, 2014, page 2, ll. 21 and 22. The foregoing language
19 is preceded by this statement: "I request the following statements be added to the
20 papers:" This statement was made by Caterina. She specifically requested the
21 language unambiguously identifying her as a 50% beneficiary of "Grady E. Byrd's
22 United States Army Retired Pay." This language could not possibly be any clearer.

23 Grady's U.S. Army Retired Pay shortly after the Decree was entered was
24 only \$128.40 per month. This was the sole divisible retirement asset at the time the
25 Decree was entered. The other payments that Grady was receiving were all from
26 sources of federal retirement disability pay that, under federal law, CANNOT be
27 divided as a community asset under any state law. Below is a table that shows all
28 of Grady's income and whether it was a divisible asset in 2014:

Description	Amount	Divisible/non-divisible
Net Military Retired Pay (Ex. A)	\$128.40	Divisible under state law and 10 USC § 1408
Combat Related Special Compensation (Ex. A)	\$3,007.60	Non-divisible pursuant to 38 USC § 5301
VA Disability Payments (Ex. A and B)	\$2,858.24	Non-divisible pursuant to 10 USC § 1408, 38 USC 5301, <i>Mansell v. Mansell</i> , 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) and <i>Howell v. Howell</i> , 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017).
OPM (Department of Defense) disability (Ex. C)	\$1,057.72	Non-Divisible: 2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 29 * June 2017 29-1 VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY"
Social Security Disability (Ex. D)	\$2,584.56	Non-divisible pursuant to 42 U.S.C. § 407

Because Grady's income was almost entirely sourced from federal disability payments at the time of the divorce, the Court cannot find that Grady owed \$1,500 as one half of his United States Army Retired Pay to Caterina. The only divisible retired pay that Grady has received since the divorce is military retired pay of between \$128.40 (2014) and, as of February 1, 2019, -0-. Under the terms of the decree of divorce, 50% of this amount is all that Caterina is entitled to receive. Indeed, as more fully explained below, 50% of the military retired pay is all that the Court could have ordered then, because the balance of the pay that Grady was receiving was federal disability pay.

That fact remains true today. Below is a chart showing all of Grady's sources of income as they exist today:

Description	Amount	Divisible/non-divisible
Net Military Retired Pay (Exhibit E)	-0-	Divisible under state law and 10 USC § 1408
Combat Related Special Compensation (Grady's FDF)	\$3,227.58	Non-divisible pursuant to 38 USC § 5301
VA Disability Payments (Grady's FDF)	\$2,896.67	Non-divisible pursuant to 10 USC § 1408, 38 USC 5301, <i>Mansell v. Mansell</i> , 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) and <i>Howell v. Howell</i> , 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017).

OPM (Department of Defense) disability (Grady's FDF)	\$1,315.00	Non-divisible pursuant to 2BDoD 7000.14-R Financial Management Regulation Volume 7B, Chapter 29 * June 2017 29-1 VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY"
Social Security Disability (Grady's FDF)	\$2,176.00	Non-divisible pursuant to 42 U.S.C. § 407

Again, the only divisible community asset from which Caterina could receive a portion of Grady's benefits is the United States Army Retired Pay, which is currently in the amount of -0-.

The payments that Grady has made to Caterina since the decree of divorce above 50% of -0- have been completely voluntary. United States Army Retired Pay, which is specifically and unambiguously identified, is the sole divisible benefit divided by the Decree. Even more important, there is NO SPECIFIC AMOUNT STATED that Grady would be paying to Caterina. As such, any payments Grady made to Caterina above the 50% threshold were not obligatory in any way.

There is no federal or state authority that would allow this Court to order Grady to pay any portion of his VA/disability benefits to Caterina as part of a community property division unless Grady voluntarily contracted to do so. He did not. The language of the Decree clearly identifies the benefit being divided as 50% of Grady's "United States Army Retired Pay." This language is unambiguous and cannot be interpreted to mean a specific amount.

Caterina will no doubt attempt to introduce evidence of statements by Grady or Caterina outside the four corners of the Decree to show that the unambiguous statement regarding the United States Army Retired Pay means something other than exactly what it says. This is not allowed under Nevada law:

Extrinsic or parol evidence is *not admissible* to contradict or vary the terms of an unambiguous written instrument, "since all prior negotiations and agreements are deemed to have been merged therein." *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (quoting *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)).

1
2 *Frei v. Goodsell*, 305 P.3d 70, 73, 129 Nev. Adv. Op. 43 (Nev. 2013). This clear
3 statement of law regarding the use of parol evidence has been reaffirmed several
4 times by the Nevada Supreme Court. Caterina CANNOT use emails, texts,
5 statements, pictures or anything else to try to create ambiguity as to the meaning of
6 a specific term of a contract (in this case “50% of Grady E. Byrd’s United States
7 Army Retired Pay”) when the term itself is unambiguous on its face. The reason
8 this is true is because, as stated above, “all prior negotiations and agreements are
9 deemed to have been merged” in the parties’ decree of divorce. Therefore, anything
10 that Grady or Caterina did or said prior to signing the Decree is irrelevant to the
11 meaning of the Decree’s terms unless it is necessary to *resolve* an ambiguity. It is
12 NOT admissible to *create* an ambiguity where none exists.

13 In this case, the term in question is “50% of Grady E. Byrd’s United States
14 Army Retired Pay”. There is nothing ambiguous about this statement. It identifies
15 the community asset being divided as “United States Army Retired Pay”. The
16 United States Supreme Court has made it clear that retired pay does NOT include
17 disability benefits paid to former services members for their military service.
18 *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989).

19 In *Mansell v. Mansell*, the U.S. Supreme Court held that military retirement
20 pay that had been waived by the former husband in order to receive veterans’
21 disability benefits was not community property divisible upon divorce. The Court
22 held that federal law completely pre-empted the States from treating waived military
23 retirement pay as divisible community property. *Id.*, at 594-595. The Court
24 acknowledged that Title 10 had the capacity to inflict economic harm on former
25 spouses, but it refused to overlook the legislative history which, read as a whole,
26 indicates the intent by Congress to protect military retirees. *Id.* Furthermore, even
27 in the absence of legislative history, the plain and precise language of the statute is
28 enough to make the intent of Congress clear.

1 Under § 1408(c)(1), the term “disposable retired or retainer pay,” is used
2 specifically to limit the extent to which state courts may treat military retirement
3 pay as community property. *Id.* at 590. The Court noted that veterans who became
4 disabled as a result of military service are eligible for disability benefits under Title
5 38, *Id.* at 583, which are explicitly excluded from the definition of disposable retired
6 pay and therefore could not be divided by a state court.

7 The *Mansell* Court’s holding was recently confirmed in *Howell v. Howell*,
8 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017). The *Howell* decision reaffirms that under
9 the *McCarty*³ holding, federal retirement benefits are not divisible unless
10 specifically authorized by federal statute. While federal law was amended
11 subsequent to *McCarty* to allow states to divide military retired pay under 10 USC
12 § 1408, that statute specifically exempted VA pay. This was confirmed in *Mansell*
13 and again in *Howell*.

14 The facts and decision in the *Howell* case are particularly relevant. In *Howell*,
15 the Arizona court attempted to “restore” a portion of the wife’s retirement payment
16 by ordering the husband to repay her the amount she was receiving that was reduced
17 after the husband’s military retired pay was reduced in lieu of receiving tax free VA
18 pay. The *Howell* court held that such an order was a violation of federal law, stating
19 the following:

20 Neither can the State avoid *Mansell* by describing the family court
21 order as an order requiring John to “reimburse” or to “indemnify”
22 Sandra, rather than an order that divides property. The difference is
23 semantic and nothing more. The principal reason the state courts have
24 given for ordering reimbursement or indemnification is that they wish
25 to restore the amount previously awarded as community property, i.e.,
26 to restore that portion of retirement pay lost due to the post divorce
27 waiver. And we note that here, the amount of indemnification mirrors
28 the waived retirement pay, dollar for dollar. Regardless of their form,
such reimbursement and indemnification orders displace the federal
rule and stand as an obstacle to the accomplishment and execution of

³ *McCarty v. McCarty*, 453 U.S. 210, 211–215, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981)

1 the purposes and objectives of Congress. All such orders are thus pre-
2 empted.

3 The basic reasons *McCarty* gave for believing that Congress intended
4 to exempt military retirement pay from state community property laws
5 apply a fortiori to disability pay. See 453 U.S., at 232–235, 101 S.Ct.
6 2728 (describing the federal interests in attracting and retaining military
7 personnel). And those reasons apply with equal force to a veteran's
8 post-divorce waiver to receive disability benefits to which he or she has
9 become entitled.

9 We recognize, as we recognized in *Mansell*, the hardship that
10 congressional pre-emption can sometimes work on divorcing spouses.
11 See 490 U.S., at 594, 109 S.Ct. 2023. But we note that a family court,
12 when it first determines the value of a family's assets, remains free to
13 take account of the contingency that some military retirement pay might
14 be waived, or, as the petitioner himself recognizes, take account of
15 reductions in value when it calculates or recalculates the need for
16 spousal support. See *Rose v. Rose*, 481 U.S. 619, 630–634, and n. 6,
17 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987) ; 10 U.S.C. § 1408(e)(6).

16 *Howell* at 137 S.Ct. at 1406. While the *Howell* case leaves open the
17 possibility that a reduction in retired pay could trigger a review of prospective
18 alimony, that is impossible in this case because, 1) Grady's military retired pay has
19 never substantially changed: it was \$128 in 2014 and is -0- now, and 2) there is no
20 alimony order that can be modified. The decree of divorce specifically states that
21 neither party will receive alimony and that Grady's contributions toward Caterina's
22 mortgage were completely voluntary.

23 Finally, Nevada's law is also explicit in preventing the Court from awarding
24 any portion of disability pay to Caterina AND prohibiting the assignment of the pay
25 to Caterina after Grady receives it.

26 NRS 125.165 states the following:

27 Federal disability benefits awarded to veteran for service-connected
28 disability: Attachment, levy, seizure, assignment and division
prohibited.

1 Unless the action is contrary to a premarital agreement between the
2 parties which is enforceable pursuant to chapter 123A of NRS, in
3 making a disposition of the community property of the parties and any
4 property held in joint tenancy by the parties, and in making an award of
alimony, the court shall not:

5 1. Attach, levy or seize by or under any legal or equitable process
6 either before or after receipt by a veteran, any federal disability benefits
7 awarded to a veteran for a service-connected disability pursuant to 38
U.S.C. §§ 1101 to 1151, inclusive.

8 2. Make an assignment or otherwise divide any federal disability
9 benefits awarded to a veteran for a service-connected disability
10 pursuant to 38 U.S.C. §§ 1101 to 1151, inclusive.

11 NRS 125.165 (emphasis added). Even Nevada law clearly confirms that this Court
12 cannot make any order or assignment affecting Grady's disability pay. The ONLY
13 way that Caterina could receive any portion of Grady's disability pay from any
14 source would be if Grady voluntarily contracted to pay her. As is clearly shown
15 above, he did no such thing. The contract was for 50% of Grady's U.S. Army
16 Retired Pay, nothing more and nothing less. The Court is powerless to change this
17 agreement and should therefore deny Caterina's request to interpret the agreement
18 as anything other than what it says. The Court must therefore deny Caterina's
19 request for an order directing Grady to pay \$1,500 per month as her share of Grady's
20 retired pay.

21 II. LIST OF WITNESSES

22 Other than the parties, the Defendant does not intend on calling any
23 witnesses.

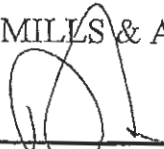
24 III. LIST OF EXHIBITS

25		
26	A	6-8
27	B	106
28	C	225
	D	79
		Dept. of Army (CRSC) decision letter dated 6/20/11
		CRSC payment history 8/2014-7/2015
		CRSC pay statement April 22, 2019
		VA letter for disability benefits dated 10/16/12

E	236	VA payment history April – May 2019
F	125-127	OPM letter re: disability application dated November 12, 2010
G	512	OPM letter dated 4/29/18 regarding FERS disability annuity adjustment
H	132	OPM Notice of Annuity adjustment 7/2018
I	136	OPM Annuity statement March 2019
J	108-113	Social Security Decision dated 9/12/12
K	120	2014 Social Security Benefit 2014
L	121	Social Security benefits 2018
M	237	Medical certificate from Dr. Arco
N	511	Medical certificate from Nursing Attendant, Mayden Tagulo dated 10/4/19
O	490	Medical Certificate from Dr. Regalado dated 10/10/19

Submitted by:

MILLS & ANDERSON


 BYRON L. MILLS, ESQ.
 Nevada Bar No. 6745
 703 S, 8TH STREET
 Las Vegas, Nevada 89101
 (702) 386-0030
 Attorneys for Defendant

10/16/19
DATED



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

9 DISTRICT COURT

10 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.: G

Trial: 10/21/19

Time: 9:00 a.m.

16
17
18 **Plaintiff's Opposition to Defendant's Motion On Order Shortening Time**
19 **to Reconsider Denial of Defendant's Audiovisual Appearance Request**
20 **And Countermotion for Attorney Fees and Costs**

21 COMES NOW Plaintiff, CATERINA ANGELA BYRD, by and through her
22 attorneys, ANITA A. WEBSTER, ESQ., and JEANNE F. LAMBERTSEN, ESQ.,
23 of the law offices of WEBSTER & ASSOCIATES, and hereby submits her
24 Opposition to Defendant's Motion On Order Shortening Time to Reconsider
25 Denial of Defendant's Audiovisual Appearance Request and Countermotion for
26 Attorney Fees and Costs.

27 This Opposition and Countermotion is made and based upon the pleadings
28

W:\Family\Byrd, Caterina\Pleadings\Drafts\Opp to to OP Mtn to appear by Audio Visual 10-16-19.wpd

1 and papers on file herein and the following Points and Authorities.

2 Dated: October 16, 2019.

3 **WEBSTER & ASSOCIATES**

4
5
6 By: 

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

14 **POINTS AND AUTHORITIES**

15 **INTRODUCTION**

16 Plaintiff, Caterina Byrd (hereafter "Caterina") respectfully requests that this
17 court deny the Defendant's, Grady Byrd's (hereinafter "Grady") request to
18 reconsider the court's denial of Grady's request to appear for trial on October 21,
19 2019 via audiovisual equipment as there was no "clear application of the law"
20 governing such requests as Grady claims.¹

21 Grady's medical excuses are suspect and Grady appears to be "doctor
22 shopping."²

23 In a six-month period, Grady went to three different places to get his alleged
24 medical excuses; *Sillman Medical Center, Community Medical Services, and*

25 _____
26 ¹Grady's Motion, page 4, line 18, filed 10/15/19

27 ²Grady's Appendix to Defendant's Motion for Order Time to Reconsider Denial of
28 Audiovisual Appearance, filed 10/15/19.

1 *Mom's Medical Clinic*. Only one, the prescription pad note, had any contact
2 information. The other two papers have no address, telephone number or any
3 other contact information on it. This lack of information and the lack of medical
4 records supporting Grady's claims renders his excuses not-credible.
5

6 1. The May 2, 2019 prescription pad note from a doctor with *Sillman*
7 *Medical Center* in the Philippines states that "further work up" is needed to rule
8 out venous thrombosis. Note: no diagnosis of venous thrombosis was made on
9 this note. Despite Caterina's discovery requests served on June 17, 2019, Grady
10 has refused to provide any medical records that show testing and diagnosis of
11 deep vein thrombosis. Grady failed to provide any "further work up" medical
12 documents that are noted on the pad.
13

14 2. The October 4, 2019, paper titled *Community Medical Services* is not on
15 letter head paper, does not have an address, telephone number or any contact
16 information for this place and was allegedly signed by a "nursing attendant" not
17 a physician. Again, absolutely no medical records of any kind support this paper;
18 no testing for Deep Vein Thrombosis, no test results or lab test results for
19 Pulmonary Embolism Symptoms, no test showing the onset, prognosis, is it acute
20 or chronic, or any other supporting information. There are no records or any test
21 results for the "pulmonary issues" he alleges.
22

23 3. October 10, 2019 paper is titled *Mom's Medical Clinic* and specifically
24 states that this paper is not for the purpose of legal matters: "for whatever
25 purpose it may serve excluding legal matters". As such, it should be disregarded
26 since Grady is using it for a legal purpose. This paper makes no mention of the
27
28

1 "Pulmonary Embolism Symptoms" Grady claimed and also states Post DVT
2 (Deep Vein Thrombosis). Being "post" has a meaning of its own, however, it is
3 not explained. Again, Grady fails to provide any supporting medical records,
4 testing results, ongoing treatment results or anything supporting his claims.
5

6 In response to Caterina's June 17, 2019, requests that Grady provide
7 medical records, Grady provided medical records for September 2019 Veterans'
8 Administration medical visit that Grady redacted with a black marker and
9 blackened out nearly all of the useful information. Two pages are provided with
10 this instant Opposition because they provide a little information on Grady's claim
11 of having pulmonary issues.³ The record states that Grady claimed to have been
12 diagnosed with DVT and that Grady claimed that he only took the warfarin
13 medicine from May-June 2019. What is troubling, is that nowhere in anything that
14 Grady provided is there a test and bonafide diagnosis of DVT or/and pulmonary
15 issues. Additionally, if he voluntarily stopped the DVT medicine in June 2019,
16 after taking it only 1-2 months, then how reliable is his claim that he has DVT
17 and/or pulmonary issues?
18
19

20 If Grady is to be believed that there is a concern for his health with a
21 prolonged flight, then Grady should start his trip to Nevada now and break it up
22 into small segments. He even mentions in his September 2019 VA record that
23 he prefers to take boats. Grady is the one who selected this October 2019 time
24 period for the Trial. He knew back in May 2019 of the Evidentiary Hearing date.
25

26 _____
27 ³Exhibit "1" Grady's September 2019 VA medical record, 2 pages, DEF 424 and DEF
28 417.

1 He should have started his trip here already.

2 **FACTUAL BACKGROUND**

3 The parties divorced after 31 years of marriage on or about June 5, 2014.
4 Grady has resided in the Philippines since 2008. He's 63 years old and recently
5 married a 25-year-old woman. Caterina has resided in the martial residence
6 awarded to her in the decree and relies on monthly support from Grady. On
7 September 1, 2018, Grady stopped paying Caterina \$3,000.00 per month for
8 assistance with her house mortgage and for her interest in his military pay. He
9 did this in retaliation for Caterina asking for copies of the life insurance, Survivor
10 Benefit Plan and other assets awarded to her in the joint petition for summary
11 decree of divorce. She is emotionally and financially destitute.
12

13
14 At the hearing on or about January 23, 2019, with Senior Judge K.
15 Hardcastle, the \$1,500.00 per month payments that Grady was making to
16 Caterina for her home mortgage assistance was deemed alimony, Grady was
17 ordered to pay her arrears and ongoing payments. The other \$1500.00 per month
18 that Grady was paying Caterina was deemed her interest in his military pay,
19 Grady was ordered to pay her arrears and ongoing payments. Attorney fees of
20 \$7,000 were also awarded to Caterina. A status check was set for May 2, 2019,
21 in part to assess his compliance with Court orders. The Court ordered that Grady
22 appear at the May 2, 2019, hearing or a no-bail bench warrant would be issued.
23 Grady did not pay Caterina as ordered and he did not appear at the May 2, 2019
24 status check hearing before Senior Judge Bixler. Grady submitted a single sheet
25 of paper, a prescription pad type paper from the Philippines, saying that he could
26
27
28

1 not fly in an airplane due to leg issues. No other medical records, proof of
2 ongoing care or authentication on the medical person's letter head stationary was
3 provided. Caterina objected to his absence.

4
5 Grady filed a motion for reconsideration of Senior Judge K. Hardcastle's
6 orders issued at the January 23, 2019 hearing, and Caterina filed an opposition
7 and countermotion to enforce the orders. At the hearing on May 22, 2019, Judge
8 R. Forsberg overturned Senior Judge K. Hardcastle's ruling as to the
9 characterization of the \$1,500 house assistance payment. Judge R. Forsberg
10 found that the \$1,500.00 house assistance was a property settlement, not
11 alimony and ordered Grady to continue paying Caterina \$3,000 per month
12 pending an Evidentiary Hearing on Grady's burden to show that Caterina's
13 financial condition changed so that he does not have to pay her the \$1,500.00 per
14 month for her home mortgage assistance and Grady's burden to show that the
15 parties did not form a contract as to the payment of the \$1,500 military payment
16 amount until he dies. Caterina filed a motion for reconsideration of Judge R.
17 Forsberg's ruling wherein she overturned Senior Judge K. Hardcastle's ruling that
18 the \$1,500.00 for Caterina's mortgage assistance was deemed alimony. This is
19 set for a hearing on October 21, 2019.

20
21
22 Meanwhile, Grady continues to refuse to comply with court orders requiring
23 him to pay Caterina as ordered at the January 23, 2019 hearing, as ordered at
24 the May 22, 2019 hearing, and as ordered at the July 18, 2019 hearing. On
25 October 21, 2019, Caterina's Order to Show Cause why Grady Should Not be
26 Held In Contempt of Court is set to be heard. Grady has admitted that he has the
27
28

1 funds to pay Caterina (he earns over \$116,000.00 annually) and admits that he
2 has refused to do so. As such, on October 21, 2019, Caterina is seeking that the
3 Court:

4
5 Summarily find that Grady Byrd is in Contempt of Court
6 for failure to pay Caterina Byrd as ordered and that he be
sanctioned based on the following:

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

19 II. 20 ARGUMENT

21 In addition to the items listed above, there are multiple reasons why Grady
22 should appear in person at the October 21, 2019, Evidentiary Hearing that
23 Caterina listed in her Objection to Grady's appearance by audiovisual equipment;

24 1) The medical papers Grady provided in his Notice of Appearance by
25 Audiovisual Equipment and his Motion for Reconsideration of the court's denial
26 to appear via audio-visual equipment on October 21, 2019, are unreliable; two are
27 missing the address, telephone and other contact information; one is not signed
28 by a physician; and importantly, no medical records accompany the papers to
explain the "work up" done to diagnose Grady's claim of DVT, the onset, the
diagnosis, the testing, the treatment, Grady's compliance to treatment, if this is

1 an acute or chronic condition, how long he is expected to remain in this condition,
2 or his prognosis.

3 Caterina requested medical records from Grady through discovery back on
4 June 17, 2019, and he has refused to provide his medical records. If his claims
5 of poor health are to be believed, he should have eagerly produced the records.
6 He did not. The Discovery Commissioner recommended that he produce his
7 records and to date, he has not.⁴ It is also curious that Grady could fly to Las
8 Vegas Nevada in July 2018, January 2019 and other times, travel in Nevada, and
9 California, and where he abandoned his Chevrolet Cruze at the Los Angeles
10 International Airport. Grady is not credible and his alleged medical paper should
11 not be trusted;
12

13
14 2) Grady has threatened Caterina "good luck finding me" referring to her
15 ability to obtain any money that he owes her;
16

17 3) Per Supreme Court Rules, Grady is required to be present for the
18 adjudication of the Order to Show Cause;
19

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

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

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

⁴Records produced are referenced herein regarding the September 2019 VA records that Grady Byrd took a black marker and blackened the pages so that they are nearly illegible. Two pages are provided as Exhibits. No other medical records were produced for June 2014 and the September 1, 2018 - present date as the Discovery Commissioner Recommended on 10/11/19.

1 Nevada, for the Court or any other time. 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 is being stored by Bruffy's Del Rey
6 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 Supreme Court Rule, Part IX-B

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

27 2. In addition, except as provided in Rule 4(1), a
28 **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**
3 **court order or a rule; or**

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

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

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

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

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

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

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

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

Undue prejudice would result for Caterina because the
court is unable to fully exercise all the penalties for

1 Contempt that are available under Nevada law.

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

4 It is not convenient for Caterina's counsel, Caterina or the
5 Court to determine Grady's demeanor, if there are
6 interferences in the room where he is sitting, who else is
7 present, who else is with him, who may be influencing or
8 tampering with this sworn statements and what else
9 Grady may be looking at during trial examination or
10 cross-examination.
11

12 (d) *The cost and time savings:* Grady has the
13 audacity to complain about the cost of travel while he
14 simultaneously deprives Caterina of \$42,000 since
15 September 1, 2018 for monthly support and \$13,500 in
16 attorney fees and costs awarded since the January 23,
17 2019 hearing. Grady travels to Clark County Nevada for
18 medical treatment that is free of charge to him at the VA
19 hospital which he had been doing regularly until this
20 instant litigation.
21

22 (e) *The importance and complexity of the proceeding:*
23 This Trial is extremely important to Caterina since she
24 has been deprived of Grady's support since September
25 1, 2018. The issues of alimony, contract formation,
26
27
28

1 support arrears, and Grady's contempt of court are
2 complex.

3
4 *(f) Whether the proponent has been unable, after due
5 diligence, to procure the physical presence of a witness:*

6 Caterina has diligently maintained that Grady's presence
7 is needed. On April 23, 2019, she even filed an Ex parte
8 Application for Grady's appearance at the May 2, 2019
9 hearing, his request to appear telephonically was denied
10 and he still failed to appear. The Court has even ordered
11 him to appear at the October 21, 2019 trial. Grady has
12 produced no medical tests to support his "pulmonary
13 issues" and his medical excuses are suspect.
14

15
16 *(g) The convenience to the parties and the proposed
17 witness, and the cost of producing the witness in relation
18 to the importance of the offered testimony:*

19 Grady is the Defendant in this action. He has the burden
20 of proving the issues for Trial, his testimony is important
21 and he must be present for adjudication of the Order to
22 Show cause against him.

23
24 *(h) Whether the procedure would allow effective
25 cross-examination, especially where documents and
26 exhibits available to the witness may not be available to
27 counsel:*

28 Cross-examination of Grady will be less effective with
audiovisual equipment. Caterina's interest is harmed by

1 this.

2
3 (l) *The importance of presenting the testimony of*
4 *witnesses in open court, whether the finder of fact may*
5 *observe the demeanor of the witness, and where the*
6 *solemnity of the surroundings will impress upon the*
7 *witness the duty to testify truthfully:*

8 Open court is important to the presentation of Grady's
9 testimony, his demeanor, who else is in the room with
10 him, what other factors are influencing him, the ability of
11 counsel to cross-examine him and fully see his demeanor
12 and responses are important.

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

15 The court has tried to connect with Grady in the
16 Philippines twice before by telephone and neither
17 connection worked; at the hearing on May 22, 2019 and
18 again on July 18, 2019. Caterina has withstood terrific
19 financial and emotional hardship by repeated delays by
20 Grady and this case is now a year old. An equipment
21 malfunction or poor connections cannot be tolerated.
22

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

25 Grady's blatant non-compliance with Court orders dating
26 back to the hearing on January 23, 2018, reinforce that
27 Grady's personal appearance is necessary. Grady does
28

1 not have to make the trip in one day. Grady should start
2 his trip to Nevada now and break it up into small
3 segments since the alleged concern is the prolonged
4 time.

5 **COUNTERMOTION**

6
7 Caterina is requesting an award of attorney fees and costs. On April 23,
8 2019, Caterina filed a Memorandum of Fees and Costs for the time period from
9 the commencement of this litigation until the January 23, 2019, hearing. The total
10 fees were \$11,580.00 and total costs were \$706.18. At the January 23, 2019
11 hearing, Caterina was awarded \$7,000.00 in attorney fees and costs. The
12 payment of the \$7,000.00 is included in the \$4,500.00 per month payment that
13 Grady was to begin paying starting on February 15, 2019. Grady refuses to pay.

14
15 Since January 23, 2019, Caterina has incurred additional fees and costs
16 defending herself against Grady's wrongful behavior. She has been forced to file
17 motions and seek the court's assistance since then. At the May 22, 2019, hearing
18 (order filed June 26, 2019), Caterina was awarded \$5,000 in attorney fees and
19 at the July 18, 2019 hearing (order filed August 9, 2019), Caterina was awarded
20 \$1,500 in attorney fees. Grady has refused to pay these fees. Caterina will file
21 a current Memorandum of Fees and Costs for the fees requested herein.

22
23 Caterina requests fees pursuant to NRS 125.040 and NRS 18.010(2)(a) and/or
24 (b).

25
26 Pursuant to NRS 22.100 Penalty for contempt.

27
28 2. Except as otherwise provided in NRS 22.110, if a person is found
guilty of contempt, a fine may be imposed on the person not exceeding \$500 or

1 the person may be imprisoned not exceeding 25 days, or both.

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

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

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

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

19
20 Hornwood v. Smith Food King, holds that attorney fees should be awarded to the
21 prevailing party if that party succeeds on a significant number of issues. This
22 court has held that "[a] plaintiff may be considered the prevailing party for
23 attorney's fee purposes if it succeeds on any significant issue in litigation which
24 achieves some of the benefit is sought in bringing the suit." Hornwood v. Smith's
25 Food King, 105 Nev. 188, 192, 772 P.2d 1284 (1989) (quoting Women's Federal
26 S & L Ass'n. v. Nevada Nat. Bank, 623 F.Supp. 469, 470 (D.Nev.1985).
27
28

1 Awards of attorney fees are within the sound discretion of the Court. See Love
2 v. Love, 959 P.2d 523, 114 Nev. 572 (1998), Fletcher v. Fletcher, 89 Nev. 540,
3 542-43, 516 P.2d. 103,104 (1973), Leeming v. Leeming, 87 Nev. 530, 532, 490
4 P.2d 342, 343 (1971), and Halbrook v. Halbrook, 114, Nev. 1455, 971 P.2d 1262
5 (1998).
6

7 Further, there are no other circumstances that make an award of attorney
8 fees unjust; Grady receives more than \$116,000.00 annually from the federal
9 government, he does not have to pay any federal or state taxes and has
10 eliminated more than \$51,000 in debt when he abandoned the Chevrolet Cruze
11 vehicle at the Los Angeles, California airport, and he is not paying his USAA
12 credit cards/loans. He earns sufficient money to employ two servants. It is also
13 highly likely that his household income exceeds \$116,000.00 because he may be
14 receiving dependent benefits for his wife and/or her child. Meanwhile, Caterina
15 has been borrowing money from friends and family to pay her bills since
16 September 1, 2018.
17

18 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
19 Court should take into consideration the following factors when determining an
20 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
21 been practicing law for 34 years and Ms. Lambertsen has been practicing law for
22 14 years; the law firm's practice is dedicated to family law. (2) The character and
23 difficulty of the work performed: The intricacy, importance, time and skill required
24 to prepare this Opposition and Exhibit Index is moderate to high. (3) The work
25 actually performed by the attorneys and legal assistants: Approximately 3 hours
26
27
28

1 were spent by counsel and legal assistants in fees (4) The result obtained is
2 unknown but the Opposition and Countermotion demonstrates Grady's, contempt,
3 lack of cooperation and continuing control of Caterina.

4
5 **CONCLUSION**

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

10 Dated: October 16, 2019.

WEBSTER & ASSOCIATES

11
12
13 ANITA A. WEBSTER, ESQ.
14 Attorney for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

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

William Brand
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: Plaintiff

Date 10/16/19

Signature of Party or Preparer



Steven D. Grierson

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

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 CATERINA ANGELA BYRD

11 Plaintiff,

12 v.

13 GRADY EDWARD BYRD

14 Defendant.

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

EXHIBIT APPENDIX

15 COMES NOW, Caterina Angela Byrd, by and through her attorneys of record,
16 Anita A. Webster, Esq., and Jeanne F. Lambertsen, Esq., of Webster & Associates,
17 and hereby submits the following exhibits in support of her *Plaintiff's Opposition to*
18 *Defendant's Motion On Order Shortening Time to Reconsider Denial of Defendant's*
19 *Audiovisual Appearance Request And Countermotion for Attorney Fees and Costs.*
20 Pursuant to EDCR 5.205(g) Exhibits may be deemed offers of proof but shall not
21 be considered substantive evidence until admitted.

22 ///

23 ///

24 ///

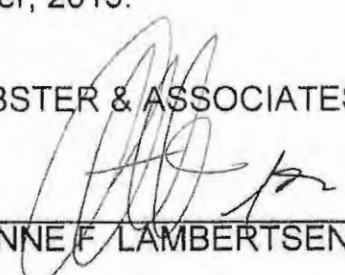
W:\Family\Byrd, Caterina\Pleadings\Drafts\Exhibit Index to Opposition to Motion for Audiovisual 10.16.19.wpd

1 **Table of Contents:**

2 1. Grady's September 2019 VA medical record, 2 pages, DEF424 and DEF 417.

3 DATED this 16th day of October, 2019.

5 WEBSTER & ASSOCIATES

7 
JEANNE F. LAMBERTSEN, ESQ.

9 **Certificate of Service**

10 Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of
11 WEBSTER ASSOCIATES, and that on this 16th day of October, 2019, I caused
12 the above and foregoing document to be served as follows:

13 ☒ by electronic service through the Eighth Judicial District Court's
14 electronic filing system; and

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

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

18 Byron L. Mills, Esq.
19 Modonnell@millsnv.com
Counsel for Defendant, Grady Byrd

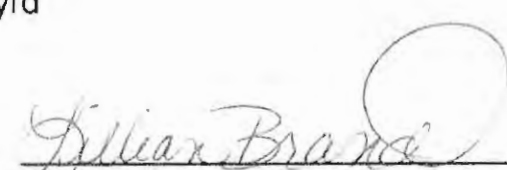
21 
22 An employee of Webster & Associates

EXHIBIT “1”

- > with worsening [REDACTED] pains, attributed to [REDACTED]
- taking [REDACTED] at least daily, max of 4 tab/day, requesting refill/issuance
- > not amenable to any [REDACTED] surgery anymore, gets his wife to help with his

usual ADLs

- > related that he took warfarin from May to June 2019 for DVT of left LE noted

after air travel to the US, stopped intake since Tricare does not cover the tests and medication in Cebu/no accredited provlder as stated, amenable to start

at present and will do PT/INR monitoring and send results here

- > not riding airplane anymore due to above and prefers to take ferry/boat
- > also recommended to wear compression stockings
- > did not receive supply of [REDACTED] as replacement for [REDACTED] ever, [REDACTED]
- > requesting additional/90 days supply of [REDACTED] since he is taking it daily/night time
- > inquiring if he can stop intake of [REDACTED] and [REDACTED] since it seems to be

[REDACTED] at present

- > [REDACTED]
- [REDACTED] daily basis

SOURCE(S) OF HISTORY: Patient

ALLERGIES AS DISPLAYED IN VISTA: Patient has answered NKA

Patient/family state(s): No new allergies

MEDICATIONS (as listed in Vista):

Active Outpatient Medications (including Supplies):

Active Outpatient Medications	Status
1) [REDACTED] 25MG TABLET TAKE ONE TABLET BY MOUTH EVERYDAY FOR DIABETES, REPLACES [REDACTED]	ACTIVE (S)
2) [REDACTED] 10MG TABLET TAKE ONE TABLET BY MOUTH EVERYDAY FOR [REDACTED]	ACTIVE
3) [REDACTED] 10MG TABLET TAKE ONE-HALF TABLET BY MOUTH EVERYDAY FOR [REDACTED], REPLACEMENT FOR [REDACTED]	ACTIVE
4) [REDACTED] 2MG CAPSULE TAKE TWO CAPSULES BY MOUTH EVERYDAY MAY CAUSE DROWSINESS FOR DIARRHEA/IBS	ACTIVE
5) [REDACTED] 100MG TABLET TAKE ONE TABLET BY MOUTH AFTER BREAKFAST FOR [REDACTED] INCREASED DOSE	ACTIVE
6) [REDACTED] 500MG TABLET TAKE ONE TABLET BY MOUTH THREE TIMES A DAY FOR CONTROL OF [REDACTED] LEVELS RESUME ONCE [REDACTED] CONSUMED	ACTIVE
7) [REDACTED] 150MG CAPSULE TAKE ONE CAPSULE BY MOUTH AT BEDTIME FOR [REDACTED] PAIN	ACTIVE
8) [REDACTED] 40MG TAB TAKE ONE TABLET BY MOUTH AT BEDTIME FOR ELEVATED [REDACTED]	ACTIVE

Active Non-VA Medications

Status

DEF417

AA540



1 **PMEM**
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.: G

Trial Date: 10/21/19
Trial Time: 9:00 a.m.

16
17 **PLAINTIFF'S PRETRIAL MEMORANDUM**

18 CATERINA ANGELA BYRD (hereinafter "Caterina"), by and through her
19 attorneys, Anita A. Webster, Esq., and Jeanne F. Lambertsen, Esq., of Webster
20 & Associates, hereby submits the following Pretrial Memorandum.
21

22 I.

23 **STATEMENT OF ESSENTIAL FACTS**

24 A. **Names and Ages of the parties:** Plaintiff, herein, Caterina is 56 years old
25 and the Defendant, herein, GRADY EDWARD BYRD, (hereinafter "Grady")
26 is 63 years old.
27

28 B. **Date of Divorce:** The parties were divorced on June 5, 2014, after a 31-

1 year marriage.

2 **C. Issues For Trial:**

3 Grady agreed to pay Caterina \$1,500 per month for her mortgage payment
4 and he agreed to pay her 50% of his Army retirement, which he paid to Caterina
5 at the rate of \$1,500 per month for a total of \$3,000 from entry of the Decree of
6 Divorce on June 5, 2014 to September 1, 2018, at which time Grady stopped
7 paying Caterina. Grady is claiming he no longer is obligated to pay these sums.

8 To date the court has found that pending the Evidentiary Hearing:

- 9
- 10 1. The \$1,500 mortgage assistant payment continues. (Order from June
 - 11 26, 2019)
 - 12
 - 13 2. The \$1,500 for retirement payment continues. (Order from June 26,
 - 14 2019).

15 On June 26, 2019, the court ruled that:

- 16
- 17 1. The \$1,500 mortgage assistance is a property settlement that Grady
 - 18 is obligated to continue to pay at the same rate, unless he can prove
 - 19 Caterina's financial condition has changed, the house has been paid
 - 20 off or the house has been sold. Caterina has filed a Motion for
 - 21 Reconsideration to ask to have this obligation be identified as alimony.
 - 22
 - 23 2. Grady has a contractual obligation to pay Caterina \$1,500 per month
 - 24 from his military disability pension pursuant to Shelton v. Shelton, 119
 - 25 Nev. 492 (Nev. 2003) and cannot reduce his payment to her by
 - 26 claiming it is disability pay pursuant to Shelton v. Shelton, 119 Nev.
 - 27 492 (Nev. 2003) and Gemma v. Gemma, 105 Nev. 458, 778 P.2d 429
 - 28

(1989). Grady is obligated to pay Caterina \$1,500 per month pending the Evidentiary Hearing. At the Evidentiary Hearing, the burden is on Grady to prove that he does not have an ongoing obligation to pay Caterina \$1,500 per month.

THE ISSUES FOR TRIAL ARE:

1. **Military Pension:** Caterina is entitled to receive ongoing payments of \$1,500 from Grady's military pension based on the following:

a. **Contractual obligation:** Grady formed a contract with Caterina to pay to her \$1,500 from his disability pay, and he performed on the contract to pay her \$1,500 per month for more than four (4) years. Shelton v. Shelton, 119 Nev. 492 (Nev. 2003). In Shelton the court explained that:

Although states cannot divide disability payments as community property, states are not preempted from enforcing orders that are res judicata or from enforcing contracts or from reconsidering divorce decrees, even when disability pay is involved.

Grady agreed to pay Caterina 50% of his United State Army Retired Pay for as long as he lives. In emails predating the parties' divorce, he represented to Caterina that 50% came to \$1,508 per month. He paid Caterina \$1,500 per month for over 4 years and abruptly ceased paying on September 1, 2018, claiming that he no longer has an obligation to pay her. The facts show that a contract was formed. In Shelton the court held:

It appears, therefore, that the agreement of the parties was that Roland pay Maryann \$577 each month for her portion

1 of the community asset, rather than pay her one-half of his
2 retirement pay, since \$577 is more specific than "one-half."
3 **Moreover, the parties' subsequent conduct reinforces**
4 **this conclusion, in that Roland ratified the terms of the**
5 **agreement by performing his obligations under the**
6 **decree for a period of two years.** In addition, this
7 interpretation yields a fair and reasonable result, as
8 opposed to a harsh and unfair result. Roland cannot
9 escape his contractual obligation by voluntarily choosing to
10 forfeit his retirement pay. [Emphasis Added].

- 11 b. **Alimony:** Disability pension benefits can be considered a source of
12 income for purposes of awarding alimony, the court can invalidate an
13 alimony waiver and the court can award alimony when military pension
14 benefits are converted to disability payments. Fattore v. Fattore, 458
15 NJ Super. 75, 83 (App. Div. 2019) and Parker v. Green, No. 73176
16 (Nevada June 25, 2018). In Fattore, the wife waived alimony. The
17 court found that "but for" her receipt of an interest in her husband's
18 pension, the wife would not have waived alimony. So, too, in this
19 instance, Caterina, waived alimony in return for her receipt of \$1,500
20 per month as and for the mortgage assistance payment, plus \$1,500
21 per month for her interest in Grady's pension payment. Grady paid
22 \$3,000 per month for more than 4 years.

23 In Fattore, supra, the court explained:

24 "Here, we hold ***the alimony waiver was not a bar to a***
25 ***consideration of a post-judgment award of alimony to***
26 ***plaintiff. However, the record readily***
27 ***demonstrates plaintiff gave valuable consideration***
28 ***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,

1 there was valuable consideration given by plaintiff in
2 exchange for the alimony waiver, and ***the unforeseeable***
3 ***loss of the bargained for pension benefit was a***
4 ***substantial and permanent change in circumstances,***
5 ***which invalidated the waiver. Upholding the alimony***
6 ***waiver in these circumstances would be wholly***
7 ***unfair.*** (Emphasis Added).

8 In Parker v. Green, No. 73176 (Nevada June 25, 2018), the
9 Decree of Divorce contained an express waiver of alimony.
10 The Nevada Supreme Court found that the waiver was
11 ambiguous; that the language regarding payments to wife
12 used in the decree mirrored standard alimony language; and
13 that as a result it was necessary to delve beyond the terms of
14 the Decree of Divorce and “examine the circumstances
15 surrounding the parties’ agreement in order to determine the
16 true intentions of the parties”. In Parker the court did not
17 uphold the alimony waiver. So, too, in this instance, the court
18 must examine the true intentions of the parties regarding the
19 alimony waiver. Those intentions are demonstrated by the
20 pre- decree communications and Grady’s post decree
21 payments for more than 4 years.

- 22 c. **Res Judicata**: If military and/or disability benefits were divided and the
23 Order is final (i.e. there was no appeal), then the benefits at issue
24 were lawfully and validly divided. The Howell decision doesn’t suggest
25 that the United States Supreme Court intended to invalidate the terms
26 of Decrees that predated the Howell decision. In Winters v. Winters,
27
28

1 No. 5-16-0217, 2017 WL 3276408 (Ill. App. Ct. July 31, 2017) husband
2 never appealed from earlier rulings dividing his disability compensation
3 and subsequently he agreed to pay his former spouse a portion of his
4 disability compensation. The court ruled that the husband's post-
5 retirement agreement to pay his former wife a share of his military
6 pension, together with the doctrine of res judicata, barred his later
7 claim that he did not have continue paying her. See also, Bloom v.
8 Bloom No. 1443 WDA 2016, 2017 WL 3225862 (Pa. Super. Ct. July
9 31, 2017), wherein the parties' settlement agreement, incorporated in
10 a divorce decree provided that the former wife would receive 50% of
11 the retired former husband's "retirement pay from the U.S. Army for as
12 long as she lives." He subsequently converted his pension to CRSC
13 and his former wife no longer received any portion of the pension. The
14 court reasoned that the election of CRSC in lieu of military retired pay
15 amounted to "a 'unilateral and extrajudicial modification of the decree,'
16 depriving [former wife] of the bargained-for benefits included in the
17 divorce decree. On appeal, the court determined that the retiree's
18 post-retirement agreement to pay his former wife a share of his military
19 pension, together with the doctrine of res judicata, barred his later
20 claim that he did not have to pay his former wife the amount previously
21 agreed upon.
22
23
24
25

- 26 d. **Extraordinary remedy**: Although property division is generally fixed
27 and final, a court has discretion to reopen a division of
28

1 marital/community property when extraordinary circumstances arise.
2 NRCP 60(b)(6). In Guerrero v. Guerrero, 362 P.3d 432, 445 (Alaska
3 2015), the appellate court held that the lower court abused its
4 discretion by refusing to reopen the parties' property settlement
5 agreement and conduct a full equitable division analysis when he
6 converted his pension to disability pay.
7

8 Based on the foregoing, Grady is obligated to continue to pay Caterina
9 \$1,500 per month for his life for the military pension. Grady has the burden to
10 prove otherwise.
11

12 2. **Mortgage Assistance**: Grady agreed to pay Caterina \$1,500 per month
13 until her financial situation changed, her house was paid off or she no
14 longer owned the house. The court held that the burden is on Grady to
15 show that one of these conditions has been met. Although the court held
16 that the payments are a property settlement payment, Caterina is
17 requesting that the mortgage assistance payments be identified as alimony
18 payments as explained more fully in her Motion for Reconsideration and
19 briefly herein below.
20

21 3. **Order to Show Cause**: Caterina requests that this court summarily find that
22 Grady is in Contempt of Court for failure to pay Caterina \$1,500 in mortgage
23 assistance and \$1,500 in military benefits, as ordered by the court. Grady
24 admits that he has sufficient funds to pay Caterina and admits that he has
25 refused to pay Caterina. Grady should be sanctioned based on the
26 following amounts:
27
28

- 1 I. \$3,000 per month from September 1, 2018 to October 1,
2 2019 (14 months, \$42,000);
3 ii. \$7,000 in attorney fees ordered April 5, 2019;
4 iii. \$5,000 in attorney fees ordered June 26, 2019;
5 iv. \$1,500 in attorney fees ordered August 9, 2019;
6 v. Sanction \$500 for each month (14, \$7,000);
7 vi. Sanction \$500 for each incident of failing to pay attorney
8 fees (3, \$1,500); and
9 vii. That a warrant for Grady Byrd's arrest be issued and that
10 he be let go for his appearance on a hearing on the warrant
11 in the amount for his release set at no less than \$64,000;
12
13
14 4. **Arrearages Reduced to Judgment:** That Judgment be entered against
15 Grady for non-payment of the military benefits and mortgage assistance
16 benefits from when he stopped paying on September 1, 2018, to the
17 present date.
18
19 5. **Attorney Fees:** That Caterina be awarded her Attorney's Fees and Costs
20 previously awarded, fees and costs associated with the Order to Show
21 Cause, fees and costs associated with this ongoing action, including the
22 fees and costs reserved by the Discovery Commissioner at the hearing
23 October 11, 2019.
24
25 6. **Additional Issues:**
26 a. **Survivor Benefits:** That if Grady's current spouse, Pinky Byrd,
27 continues to refuse to sign a waiver of her interest in the military
28

Survivor Benefit Plan awarded to Caterina in the divorce decree, that Pinky Byrd be joined as a party to this action. By taking Caterina's Survivor Benefit Plan that was awarded to Caterina in the Decree of Divorce, and refusing to consent to a waiver of her interest, Pinky Byrd could have reasonably anticipated being haled into court in this state from the consequences of her actions. Trump v. District Court, 857 P. 2d 740 - Nev: Supreme Court 1993;

- b. **Motion for Reconsideration**: The Order filed June 26, 2019, as to the finding that Caterina waived spousal support in the Decree of Divorce, should be set aside based on the following:
- i. 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, filed April 5, 2019, that the \$1,500 per month house contribution payment is alimony, should stand. Judges who sit [on the same case] should not attempt to overrule the decisions of each other. United States District Court, E.D. California(2016). Further, Grady's motion for reconsideration of the order filed April 5, 2019, raised no new issues of law and made reference to no new or additional facts. The motion was superfluous and it was an abuse of discretion for the district court to entertain it.

1 Moore v. City of Las Vegas, 551 P1 2d 244 (1976);

2 ii. The mortgage assistance payment is alimony: The
3 mortgage assistance payment is alimony because Grady's
4 payments to Caterina are indefinite. Per emails leading up
5 to the divorce, all payments were to continue until Grady
6 dies, and there is no defined dollar amount being paid
7 towards satisfaction of a particular amount, and the
8 mortgage assistance payments are based on financial
9 need. See e.g. Parker v. Green, No. 73176 (Nevada 2018);

10 iii. There was no alimony waiver because:

11 (1) Caterina didn't knowingly waive alimony. Caterina
12 relied on Grady's promise that he would pay her
13 \$3,000 per month until he died. She could not have
14 waived her right to alimony while simultaneously
15 accepting support to pay her necessities.

16 (2) The payments are in the nature of alimony. Grady's
17 payment to Caterina of "\$1500 dollars extra a month
18 to assist with her home mortgage" may cease if "her
19 financial situation changes." Since Grady's assistance
20 to Caterina may cease based on Caterina's financial
21 situation, this is consistent with the NRS 125.150
22 considerations for alimony.

23 (3) The monthly assistance with mortgage payments is
24
25
26
27
28

1 also consistent with the federal definition of alimony

2 42 U.S.C. §659 (2)(i)(3):

3 The term "alimony", when used in reference to the
4 legal obligations of an individual to provide the
5 same, means periodic payments of funds for the
6 support and maintenance of the spouse (or former
7 spouse) of the individual, and (subject to and in
8 accordance with State law) includes separate
9 maintenance, alimony pendente lite, maintenance,
10 and spousal support, and includes attorney's fees,
11 interest, and court costs when and to the extent that
12 the same are expressly made recoverable as such
13 pursuant to a decree, order, or judgment issued in
14 accordance with applicable State law by a court of
15 competent jurisdiction."

16 (4) Caterina claimed the payments as alimony on her
17 taxes.

18 iv. Grady violated his fiduciary duty to Caterina. She trusted
19 Grady when he told her he would take care of her for the
20 rest of her life. He admits that he promised to pay her
21 \$3,000 per month as long as he lives. A fiduciary
22 relationship arises from the existence of the marriage itself,
23 thus precipitating a duty to disclose pertinent assets and
24 income. Cook v. Cook, 112 Nev. 179, 912 P.2d, 264 (1996)
25 citing Williams v. Waldman, 108 Nev. 466, 836 P.2d 614
26 (1992) at 471-72, 836 P.2d at 618.

27 v. Pursuant to Parker v. Green, No. 73176 (Nevada June 25,
28 2018), the court should examine the circumstances
surrounding the parties' alimony waiver in order to

1 determine the true intentions of the parties. The Nevada
2 Supreme Court in Parker, found that the waiver was
3 ambiguous; that the language used in the decree mirrored
4 standard alimony language; and that as a result it was
5 necessary to delve beyond the terms of the Decree of
6 Divorce and "examine the circumstances surrounding the
7 parties' agreement in order to determine the true intentions
8 of the parties". In the Parker case the court did not uphold
9 the alimony waiver. So, too, in this instance, the alleged
10 alimony "waiver" is not the end of the inquiry in this case.
11 The nature of the payments creates an ambiguity, the
12 language of support is similar to the alimony language in
13 NRS 125.150(9)(a) and the facts of the case show that,
14 based on what Grady told Caterina before and at the time
15 of the divorce, Caterina reasonably expected that Grady
16 would support her for the remainder of her life and that
17 upon his death, she would continue to be supported based
18 on her receipt of his Survivor benefits. Here, in the months
19 leading up to the divorce, Grady repeatedly assured
20 Caterina that she would receive \$3,000 per month for as
21 long as he lived, that he could not have alimony language
22 in the decree of divorce because he would not qualify for a
23 loan, and that he was fully aware that Caterina needed
24
25
26
27
28

1 support because her mortgage alone was over \$1,933 per
2 month, since the house was purchased just a few months
3 before he told her he wanted a divorce.

4
5 vi. The present orders for military pay and mortgage
6 assistance are uncollectible unless they are considered
7 alimony. Grady has not paid Caterina since September 1,
8 2018, despite being ordered to continue making the \$3,000
9 per month payments by this court. Under federal law,
10 disability and social security income cannot be garnished,
11 but spousal support is eligible for garnishment from military
12 disability income and social security. 42 U.S.C. §§ 659. As
13 such, under NRCP 60(b)(6), Caterina should be granted
14 relief from the decree of divorce and the payments to her
15 should be deemed alimony;

16
17
18 vii. Cassinelli v. Cassinelli, 229 Cal Rptr. 3d 801, 20 Cal App.
19 5th 1267 (Cal. App. 2018), the court confirmed that spousal
20 support is enforceable against Veteran's benefits, CRSC,
21 and social security benefits. Similar to the husband in
22 Cassinelli, Grady has multiple sources of income which are
23 not exempt from a spousal support order. All of this
24 income, which comprises Grady's approximate \$116,000.00
25 annual income, can be considered when a spousal support
26 obligation to Caterina is calculated. Pursuant to NRS
27
28

1 125.150 (4), the court may set apart a portion of the
2 husband's separate property for the wife's support as is
3 deemed just and equitable.

- 4
5 viii. Caterina should receive lifetime alimony based on Grady's
6 waiver of military pension for disability payments: as a
7 military wife, she set aside her education and career to
8 follow her husband around the world. Because she moved
9 multiple times for Grady's career, she could not sustain
10 employment long enough to develop a retirement plan of
11 her own, she raised the parties' son and supported Grady
12 as he earned two master's degrees, a war college
13 certificate, FEMA certificate and became a high ranking
14 officer. Grady currently receives over \$116,000.00 annually
15 in largely tax free income, receives free medical care and
16 was able to reduce his debt. Caterina has the need for
17 support, she must be compensated for economic loss and
18 Grady has the ability to pay. Kogod v. Cioffi-Kogod, 135
19 Nev., Adv. Op. 9 (April 25, 2019).

20
21
22 **ATTORNEY FEES**

23 The court has awarded Caterina attorney's fees in these proceedings as set
24 forth herein below. Further, the Discovery Commissioner reserved attorney's
25 fees at the hearing on Caterina's Motion to Compel and Grady's Motion for
26 Protective Order heard on October 11, 2019.
27
28

1 Grady should pay Caterina's attorney fees and costs in full.

2 In Sargeant, we concluded that the district court had not abused its
3 discretion in awarding approximately \$50,000 in attorney fees to the wife in
4 a divorce proceeding. We noted that without the district court's assistance,
5 the wife would have been required to liquidate her savings and jeopardize
6 her financial future in order to meet her adversary in court on an equal
7 basis. Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005).

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

11 Grady makes approximately \$116,000.00 per year. Caterina is unemployed
12 and has no income. Grady has refused to pay Caterina attorney fees as ordered
13 to date and has refused to pay the ongoing payment of \$3,000 ordered to date.

14 Grady was ordered to pay Caterina:

- 15 1. \$7,000.00 in attorney fees at the hearing on January 23, 2019;
- 16 2. \$5,000.00 in attorney fees at the hearing on May 22, 2019; and
- 17 3. \$1,500.00 in attorney fees at the hearing on July 18, 2019.

18 Caterina placed attorney fees on credit cards, maxing out the available
19 balances. She owes attorney's fees which she is unable to pay. Caterina has
20 borrowed money from family to pay her bills. Grady should be ordered to pay
21 Caterina's attorney's fees.

22 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969), the
23 Court should take into consideration the following factors when determining an
24 award of attorney's fees. (1) The qualities of the advocate(s): Ms. Webster has
25 been practicing law for 34 years and Ms. Lambertsen for 14 years; the law firm's
26 practice is dedicated to family law. (2) The character and difficulty of the work
27
28

1 performed: moderate to moderately high. (3) The work actually performed by the
2 attorney: Many hours were spent litigating and preparing this case for Trial. (4)
3 The result obtained: is yet to be determined.

4
5 **Extenuating circumstances surrounding attorney fees:** Caterina has
6 attempted to communicate directly with Grady without the intervention of counsel.
7 Time and again, Caterina is met by Grady with disdain, and bullying, and threats
8 to not communicate with her at all, telling her "good luck finding me". Caterina
9 had no choice but to involve counsel. Grady then refused to stipulate to change
10 venue from Churchill county, Nevada to Clark county Nevada, causing Caterina
11 to incur additional legal fees and costs.

12
13 **Resolved issue:**

14 1. The following issue may be resolved:

15 Grady's Veterans Group Life Insurance naming Caterina beneficiary of the
16 policy wherein Caterina agrees that she receives \$200,000.00 and his new wife
17 receives \$25,000.00 of the total policy in the amount of \$225,000.00.

18
19 **II.**

20 **WITNESSES**

- 21 1. Caterina Byrd, Plaintiff, c/o Webster & Associates. The Plaintiff will testify
22 regarding all aspects of this case.
- 23 2. Grady Byrd, Defendant, c/o Byron Mills, Esq. The Defendant will testify
24 regarding all aspects of this case.
- 25 3. Persons Most Knowledgeable/Custodian of Records, financial institutions.
26 These witnesses will testify regarding the parties' financial institution
accounts.
- 27 4. Person Most Knowledgeable/Custodian of Records, various credit card
28 companies. These witnesses will testify regarding the parties' debt.

- 1
- 2 5. Person Most Knowledgeable/Custodian of Records, IRA's, 401k's, Stocks,
- 3 Bonds, Life Insurance Policies and other investments. These witnesses will
- 4 testify regarding these assets.
- 5 6. All witness identified by the Defendant.
- 6 7. Rebuttal and/or impeachment witnesses.

7
8 **III.**

9 **EXHIBITS**

- 10 1. Joint Petition for Summary Divorce, filed June 4, 2014. (PLA007000 -
- 11 PLA007013)
- 12 2. Decree of Divorce, filed June 5, 2014. (PLA007014 - PLA007025)
- 13 3. Notice of Entry of Order from the January 23, 2019 Hearing, filed April 5,
- 14 2019. (PLA007026 - PLA007036)
- 15 4. Notice of Entry of Order from the May 2, 2019 Hearing, filed May 28, 2019.
- 16 (PLA007037 - PLA007042)
- 17 5. Order of the Court from the May 22, 2019 Hearing, filed June 26, 2019.
- 18 (PLA0007043 - PLA007048)
- 19 6. Notice of Entry of Order from the July 18, 2019, filed August 9, 2019.
- 20 (PLA0007049 - PLA007054)
- 21 7. Notice of Entry of Order to Show Cause to Appear on October 21, 2019,
- 22 filed July 29, 2019. (PLA007055 - PLA007058)
- 23 8. Caterina's Financial Disclosure Form Amended, filed July 15, 2019.
- 24 (PLA007059 - PLA007066)
- 25 9. Grady's Financial Disclosure Form Amended, filed January 18, 2019.
- 26 (PLA007067 - PLA007079)
- 27 10. Grady's Financial Disclosure Form, filed June 18, 2019. (PLA007080 -
- 28 PLA007089)
11. Schedule of Arrearages for Support, filed October 9, 2019. (PLA007090 -
12. Email from Defendant to Plaintiff, making up information on money to get
13. the home loan approved, dated April 2, 2013. (PLA000002)
14. E-mail from Defendant to Plaintiff promising the Plaintiff that she will receive
15. the same benefits whether he is married or not, including Survivor Benefit
16. Plan, dated February 20, 2014 and Emails between Defendant and Plaintiff,
17. Defendant writing it is time for a divorce and promising Plaintiff \$3000 a
18. month, email dated, February 20 & 21, 2014. (PLA000001 and PLA000522
19. - PLA000523)
20. 14. Email from Defendant to Plaintiff promising Plaintiff \$3,000 a month as long
21. as he lives, et. al, dated March 23, 2014. (PLA000003)
22. 15. Email from Defendant to Plaintiff threatening to stop communicating with
23. her, dated March 26, 2014. (PLA000004)

- 1 16. Emails between Plaintiff and Defendant, regarding Survivor Benefit
- 2 Coverage, dated February 2014 - April 2014. (PLA000431 - PLA000435)
- 3 17. Emails from Defendant to Plaintiff regarding "this is your last warning..." and
- 4 "just sign the [divorce] papers..." dated March 27, 2014 and April 10, 2014.
- 5 (PLA000006 - PLA000007)
- 6 18. Emails between Plaintiff and Defendant regarding Benefits, dated April 9,
- 7 2014 and April 15, 2014. (PLA000489 - PLA000490)
- 8 19. Email from Defendant to Plaintiff discouraging her from seeing a lawyer,
- 9 dated March 27, 2014. (PLA000008)
- 10 20. Email from Plaintiff to Defendant stating that she has no idea what OPM is,
- 11 and Defendant mad that she wants to see lawyer, dated March 27, 2014.
- 12 (PLA000009)
- 13 21. Emails from Plaintiff to Defendant telling the Defendant that she is feeling
- 14 very nervous and scared, dated February 20, 2014 and April 8, 2014.
- 15 (PLA000011 - PLA000012)
- 16 22. Email from Defendant to Plaintiff stating that Plaintiff is not entitled to any
- 17 more money in the decree of divorce, dated April 9, 2014. (PLA000013) and
- 18 Emails between Defendant and Plaintiff regarding benefits, dated April 10,
- 19 2014. (PLA000524 - PLA000525)
- 20 23. Email from Plaintiff to Defendant, regarding Plaintiff's health insurance
- 21 denial, dated July 29, 2016, to August 1, 2016. (PLA000015 - PLA000018)
- 22 24. Emails between the parties regarding Vystar insurance policy, dated
- 23 December 11, 2017 through December 15, 2017. (PLA000019 -
- 24 PLA000021)
- 25 25. Email from Defendant to Plaintiff regarding Car insurance and cancer
- 26 surgery, dated July 16, 2018. (PLA000491)
- 27 26. E- Mail from Plaintiff to Defendant asking about the bank account and her
- 28 monthly payment from the Defendant, dated September 4, 2018.
- (PLA000023)
27. Form DD 2656, dated March 10, 1999. (PLA000436 - PLA000437)
28. DFAS Retiree Account Statement, dated December 3, 2017. (PLA000037)
29. 2014 Individual Tax Return for Plaintiff with form 1040 attached.
- (PLA000249-PLA000253)
30. 2015 Individual Tax Return for Plaintiff. (PLA000254 - PLA000255)
31. 2016 Individual Tax Return for Plaintiff. (PLA00256 - PLA000257)
32. 2017 Individual Tax Return for Plaintiff with form W-2G attached.
- (PLA000258 - PLA000260)
33. 2018 Individual Tax Return for Plaintiff. (PLA000261 - PLA000263)
34. USAA Mortgage Loan Statement, dated July 1, 2019. (PLA000366)
35. Long Term Care Partners letter to Plaintiff dated November 1, 2017.
- (PLA000026 - PLA000029)
36. Canyon Gate Master Association billing statements, dated October 20,
- 2017, October 18, 2019 and May 13, 2019. (PLA000369 - PLA000371)
37. Plaintiff's January 2019 health insurance premium. (PLA000039)
38. Summary letter from Caterina's counselor, dated September 3, 2019, and
- summary of visit date April 16, 2012. (PLA000374 - PLA000375)

- 1 39. Plaintiff's Health care information and statements, dated 2016 - 2017.
(PLA000442 - PLA000457)
- 2 40. UMC care documents, dated March 9, 2017. (PLA000481 - PLA000483)
- 3 41. Places the parties lived during the marriage. (PLA000353 - PLA000356)
- 4 42. Social Security Statement for Plaintiff, dated June 11, 2019. (PLA000270
- PLA000275)
- 5 43. Letter from the DMV with Defendant's Nevada Driver's License sent to
Plaintiff's address, dated July 3, 2018. (PLA000063)
- 6 44. "Notice of stored vehicle" sent to Plaintiff's address from Los Angeles,
California Airport Police, regarding Defendant's 2018 Chevy Cruze that was
7 found at the L.A. Airport with no license plates attached, dated April 8,
2019. (PLA000064 - PLA000066)
- 8 45. Letter from Clear Choice Lien Service, Inc., sent to Plaintiff's address
9 regarding the lien on Defendant's 2018 Chevy Cruz. (PLA000067 -
PLA000068)
- 10 46. Past due notices, sent to Plaintiff's address showing that Defendant is not
paying his loans, dates from 2019. (PLA000069 - PLA000073)
- 11 47. Ally Financial letter to Defendant regarding deficiency for Chevy Cruze,
dated June 18, 2019. (PLA000358)
- 12 48. Plaintiff's Opposition 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 a Newly Discovered Asset, to Execute QDROs, and for
13 Attorney's Fees and Costs and Countermotion for Attorney Fees and Costs
(PLA008000 - PLA008021)
- 14 49. Reply to Opposition and/or Countermotion, filed December 28, 2018.
(PLA007094 - PLA007118)
- 15 50. Plaintiff's Request for Admissions to Defendant, served March 5, 2019.
(PLA000495 - PLA000521)
- 16 51. Defendant's Response to Plaintiff's First Request for Admissions, served
March 19, 2019. (PLA000075 - PLA000080)
- 17 52. Defendant's description of his two employees in Defendant's response to
Second Set of Interrogatories; Answer No. 4, pg 2, ln. 4. (PLA000089 -
18 PLA000092)
- 19 53. Defendant's Opposition to Plaintiff's Motion to Compel Discovery, filed
September 17, 2019. (PLA007133 - PLA007140)
- 20 54. Armed Forces bank statements March - May 2019. (DEF281 - DEF288)
- 21 55. Letter dated November 30, 2017, regarding decision for VA benefits.
(DEF084 - DEF085 and DEF096 - DEF105)
- 22 56. Payment history July 2015 - August 2014. (DEF106)
- 23 57. Defendant's Statement of Annuity paid as Disability 2014 1099. (DEF131)
- 24 58. Armed Forces Bank statement, acct #25, August 2019. (DEF336)
- 25 59. Armed Forces Bank statements, acct #76, October 2018 - August 2019.
(DEF380)
- 26 60. Vystar 180 History March 2019 - August 2019. (DEF399)
- 27 61. VA appointment calendar. (DEF406 - DEF408)
- 28 62. School records for Defendant, dated 1989 - 2003. (PLA000337 -

- 1 PLA000352)
2 63. Correspondence to Defendant's counsel, regarding SBP, dated September
3 24, 2019. (PLA000492 - PLA000493)
4 64. Correspondence from Defendant's counsel, regarding response to 9/24/19
5 letter, dated September 25, 2019. (PLA000494)
6

7 **IV.**

8 **LENGTH OF TRIAL**

9 One half day.

10 Dated this 10 day of October, 2019.

11 **WEBSTER & ASSOCIATES**

12 By: 

13 ANITA A. WEBSTER, ESQ.
14 Nevada Bar No. 1221
15 JEANNE F. LAMBERTSEN, ESQ.
16 Nevada Bar No. 9460
17 6882 Edna Ave.
18 Las Vegas, Nevada 89146
19 Tel No: (702) 562-2300
20 Fax No: (702) 562-2303
21 Attorney for Plaintiff
22
23
24
25
26
27
28

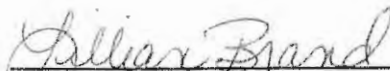
Certificate of Service

Pursuant to NRCP 5(b), I certify that I am employed in the Law Offices of WEBSTER & ASSOCIATES, and that on this 16th 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
Counsel for Defendant, Grady Byrd
Modonnell@millsnv.com


An employee of Webster & Associates