

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY BYRD,

Appellant

– v –

CATERNIA ANGELA BYRD,

Respondent

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
District Court Case Number D-18-577701-Z

RESPONDENT’S ANSWERING BRIEF

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21
22
23

1 I

2 **Statement of the Issues**

- 3 1. Did the district court err as a matter of law or abuse its discretion by finding
4 that the Decree of Divorce was ambiguous and vague with regard to the home
5 mortgage assistance provision and military pay payment provision?
- 6 2. Having determined that the Decree of Divorce was ambiguous, did the District
7 Court err as a matter of law or abuse its discretion by considering the facts and
8 circumstances at the time of the divorce to determine the parties' intent?
- 9 3. Did the District Court err as a matter of law or abuse its discretion by
10 determining that the Appellant had a fiduciary duty to the Respondent that
11 arose from the existence of the marriage and that the Appellant breached that
12 duty when he misrepresented his income and assets to the Respondent at the
13 time of the divorce?
- 14 4. Did the District Court err as a matter of law or abuse its discretion by awarding
15 Respondent alimony based on Respondent's financial need, in an amount that
16 is commensurate with the amount the Appellant promised Respondent at the
17 time of the divorce and paid Respondent for four (4) years following entry of
18 the Decree of Divorce?
- 19 5. Did the District Court err as a matter of law or abuse its discretion by
20 determining that the Respondent timely sought the District Court's assistance
21 for relief pursuant to NRCPC 60(b)(6)?
- 22 6. Did the District Court err as a matter of law or abuse its discretion in
23 determining that the Decree of Divorce was so unconscionable as to be

1 unenforceable given the length of the parties' marriage and the nature of the
2 Appellant's misrepresentations, which Respondent relied on in executing the
3 Decree of Divorce?

- 4 7. Did the District Court err as a matter of law or abuse its discretion by denying
5 Appellant's motion for reconsideration to appear by audio visual means when
6 Appellant sought to rely on questionable "medical professionals" who were not
7 his treating doctor(s) and good cause existed for the Appellant to appear in
8 person at the Evidentiary Hearing?

9 **II**

10 **STATEMENT OF THE CASE**

11 Respondent, Caterina Byrd (hereinafter "Caterina") and Appellant, Grady
12 Byrd's (hereinafter "Grady") divorced on June 5, 2014, after 31 years of marriage.

13 After the parties' divorce, Grady paid Caterina \$3,000 per month for four (4)
14 years, until September 1, 2018. On October 16, 2018, when Grady stopped paying
15 her, Caterina filed a motion to enforce the Decree of Divorce, an Order to Show
16 Cause, to divide a newly discovered asset, to execute QDRO's, and for attorney fees
17 and costs and errata to clarify that Grady had stopped paying as of September 1,
18 2018.¹ Caterina filed a Financial Disclosure Form showing that she relied on Grady's
19 payment of \$3,000 per month to cover her \$3,745.13 in monthly expenses.²

20 On November 16, 2018, Grady filed a request for a continuance, claiming that
21 he had consulted with a law firm, but had not yet retained the law firm, that he had

22 _____
23 ¹Appellants Appendix hereinafter "AA", AA013-034

²Respondent's Appendix, hereinafter "RA", RA 000004-000011

1 surgery in Las Vegas, Nevada in September 2018, and was returning to Las Vegas
2 Nevada from the Philippines in December 2018 for doctor appointments.³ Grady's
3 request for a continuance was granted.⁴ Caterina's motion hearing was continued to
4 December 18, 2019, the date Grady said he would be in town for his doctor
5 appointments. Grady was to provide Caterina documents verifying his income.⁵

6 On December 13, 2018, Grady filed another request to continue.⁶ Grady's
7 second request to continue was granted. The hearing was continued to February 5,
8 2019.⁷ Caterina opposed the continuance.⁸ Her Order Shortening Time was granted.
9 The hearing on Caterina's motion was scheduled for January 23, 2019.⁹

10 On December 28, 2018, Grady filed a Reply to Caterina's Opposition¹⁰ to
11 continue the hearing. In his Reply, Grady claimed that he blocked her e-mails, he was
12 not obligated to pay Caterina anything, he had no army retirement pay as of
13 September 1, 2018, he did not submit the Decree of Divorce to the Department of
14 Defense to ensure her receipt of his Survivor Benefit Plan, and that Caterina cannot

17 ³AA892 - 893

18 ⁴ AA895 ln 26-28

19 ⁵AA895 ln 10-23

20 ⁶RA000033 - RA000035

21 ⁷RA000036

22 ⁸RA000037 - RA000058

23 ⁹RA000059 - RA000062

¹⁰RA000063 - RA000087

1 touch any of his disability benefits.¹¹

2 On January 2, 2019, Grady filed his Financial Disclosure Form with income
3 statements showing that his gross monthly income of \$9,662 was comprised of
4 Department of Army Retirement gross pay of \$3,363.00, CRSC pay of \$3,227.58,
5 Department of Veteran Affairs benefits of \$2,896.67, Department of Defense annuity
6 pay of \$1,315.00 and Social Security pay of \$2,176.00.¹² Grady's appellate brief
7 falsely claims there was no proof provided to the District Court of Grady's monthly
8 income and the sources of that income.¹³ Caterina's exhibits in support of her motion,
9 admitted at trial, also demonstrated Grady's representations to her at the time of the
10 divorce, that his Army Retirement Pay was \$3,017 per month and she would get half,
11 namely \$1,500 per month.¹⁴

12 On January 15, 2019, Caterina filed a Reply to Grady's Opposition¹⁵ and Grady
13 filed a Reply to Caterina's Reply.¹⁶ Grady attended the hearing January 23, 2019, on
14 Caterina's motion. Both parties were sworn and answered under oath.¹⁷ Senior Judge
15 K. Hardcastle reviewed the provisions in the Joint Petition for Summary Decree of
16

17 ¹¹RA 00065 ln 39, RA00066 ln 51, RA 00069 ln 122-126, 135, RA 0070 ln
18 144-145

19 ¹²RA000088 - RA000100

20 ¹³ Appellants Opening Brief hereinafter "AOB", AOB pg 3 ln 11

21 ¹⁴ RA000127 - 000183, RA 139, RA000484 - RA000488, RA000496

22 ¹⁵ RA000101 - RA000183

23 ¹⁶ RA000184 - RA000197

¹⁷AA111 ln 22

1 Divorce and ordered Grady to continue paying Caterina \$1,500 per month in
2 mortgage assistance and \$7,500 in arrears for missed payments to date. He was also
3 ordered to continue paying \$1,500 per month in military payments and \$7,500 for
4 missed payments to date. Grady informed the court that he would not follow the
5 court's order pending his appeal.¹⁸ Grady was ordered to appear at the May 2, 2019
6 status check hearing or a no-bail bench warrant would be issued for his arrest.¹⁹

7 On April 8, 2019, Grady filed a Motion for Reconsideration of Judge K.
8 Hardcastle's orders and the hearing was set for May 22, 2019.²⁰ On April 23, 2019,
9 Caterina filed an Opposition and Countermotion²¹, Grady filed an Opposition to
10 Caterina's Countermotion and Caterina filed a Reply to Grady's Opposition²². Grady
11 filed a notice to appear telephonically for the May 22, 2020 hearing and Caterina filed
12 a Ex Parte Application for An Order For Defendant to Appear In Person²³ and an
13 Exhibit Appendix in support of her request.²⁴

14 Grady did not appear at the May 2, 2019 status check hearing before Senior
15 Judge James Bixler.²⁵ Grady's counsel argued that Grady had a medical issue.

17 ¹⁸AA122 ln 5

18 ¹⁹AA157 ln 23-26

19 ²⁰AA159,

20 ²¹AA199, RA000198 - RA000237

21 ²²AA279 - 308, RA000265 - RA000322

22 ²³ RA000238 - RA000244

23 ²⁴RA000245 - RA000264

²⁵RA000438 - RA000443, AA238-252

1 Caterina objected and argued that his non-appearance was likely due to his non-
2 compliance with the court's orders and Judge Hardcastle warning Grady he would be
3 subject to a no-bail bench warrant for his arrest.²⁶ Judge J. Bixler informed counsel
4 that he was not pleased that Grady was not present. Grady was ordered to be present
5 in person for the May 22, 2020 hearing.²⁷

6 At the hearing on May 22, 2019, Judge Forsberg excused Grady's appearance
7 for that hearing but ordered Grady to be present for the Evidentiary Hearing set for
8 October 21, 2019.²⁸ Grady was ordered to continue paying Caterina \$3,000 per
9 month and the Court advised that Caterina could file an Emergency Motion for
10 contempt if Grady failed to pay.²⁹ Caterina was also awarded \$5,000 in attorney
11 fees.³⁰

12 On June 17, 2019, Caterina filed an Emergency Motion for Order to Show
13 Cause for Grady's failure to pay her \$3,000 per month and \$5,000 in attorney fees.³¹
14 Grady's counsel informed Judge R. Forsberg at the July 18, 2019 hearing that no
15 opposition was filed because Grady would not be complying with her orders pending
16 the evidentiary hearing.³² Grady was not present at that hearing, and his counsel

18 ²⁶AA239 ln 16 - 24, AA240 ln 11-15, AA241 ln 9-15

19 ²⁷RA 00442 ln 8 - 14, ln RA000438 - RA000443

20 ²⁸AA358 ln 4-5, AA359 ln 6-11

21 ²⁹AA358 ln 2-28

22 ³⁰AA358 ln 17-22

23 ³¹RA000323 - RA000337

³²AA 370 ln 2-3, AA380 ln 17-19

1 advised the court that Grady is not coming, and that he would likely not come despite
2 counsel informing Grady of the court's orders.³³ Judge R. Forsberg informed counsel
3 that Grady's "thumbing his nose" at her orders and his hiding in the Philippines was
4 completely unacceptable.³⁴ Caterina was awarded \$1,500 in attorney fees. An Order
5 to Show Cause was issued ordering Grady to appear on October 21, 2019 and a
6 warrant for his arrest would issue if he failed to appear.³⁵

7 On September 10, 2019, Caterina filed a Motion to Compel Production of
8 Grady's medical records and financial records,³⁶ Grady filed a Motion for a Protective
9 Order³⁷. The Discovery Commissioner recommended that Grady produce medical
10 records for the June 2014 time frame when the joint petition for divorce was signed
11 because of Grady's claims of disability versus retirement pay and then again for the
12 time period starting September 1, 2018, because of Grady's court continuances and
13 non-appearances based on his health claims.³⁸

14 On September 30, 2019, Caterina filed a Motion for Reconsideration of Judge
15 R. Forsberg's ruling that the \$1,500.00 per month that Grady was ordered to pay
16 Caterina for mortgage assistance is a property settlement, not alimony. Caterina
17 argued that the payments are alimony because they are for an indefinite period of
18

19 ³³AA379 ln 20 - 24, AA380 ln 1-16, AA368-371

20 ³⁴AA 388 ln 21 - 23, AA386 ln 18-19, AA 385 ln 11-13, AA394 ln 23-24

21 ³⁵RA000444 - RA000447

22 ³⁶ RA000338 - RA000360

23 ³⁷RA000361 - RA000372

³⁸RA000594 - RA000602, AA473 ln 6-19

1 time, they can continue until Grady dies, that a property settlement would need to be
2 an amount certain, that the alimony waiver in the Decree of Divorce should be set
3 aside, and that Grady's wife should be joined to the divorce action because Grady had
4 named her to receive his military Survivor Benefit Plan awarded to Caterina in the
5 Decree of Divorce .³⁹ Caterina also argued that there was no alimony waiver or it
6 should be set aside pursuant to NRCP 60(b)(6), because Grady deliberately
7 misinformed her and violated his fiduciary duty to Caterina.⁴⁰ The hearing on this
8 motion was set for the Evidentiary Hearing.

9 On October 10, 2019, Grady filed a request to appear by audio visual
10 equipment at the Evidentiary Hearing which Caterina timely objected to on grounds
11 that he was required to be present for the Order to Show Cause pursuant to Supreme
12 Court Rule, Part IX-B (B)(2), that the court may require personal appearances for
13 good cause, that Grady was already granted continuances and waived appearances for
14 prior hearings, and that Judge R. Forsberg admonished and ordered him to appear at
15 the Evidentiary Hearing.⁴¹ Caterina argued that Grady's medical excuses could not
16 be trusted.⁴² Grady's request was denied and he filed a Motion for Reconsideration,
17 which Caterina opposed. ⁴³

19 ³⁹AA400-436, AA579-603

20 ⁴⁰AA413-421, RA000373 - RA000421, AA588-592

21 ⁴¹AA 355 ln 4, AA 359 ln 10-11, AA379 ln 20- AA380 19, AA379,
22 RA000444 - RA000447, AA 478-489

23 ⁴²AA482

⁴³AA518-AA536

1 At the Calendar Call, Senior Judge K. Hardcastle noted that Grady left the
2 country a long time ago with no intention of coming back and ordered that the
3 Evidentiary Hearing would proceed without Grady's appearance, should Grady
4 choose not to come, that Caterina should be prepared to request appropriate sanctions
5 based on Grady's non-appearance, and that the Court would issue its decision at the
6 Evidentiary Hearing⁴⁴

7 On October 21, 2019, Judge K. Hardcastle denied Grady's request to appear
8 by audiovisual means after determining that Grady's medical excuses were suspicious
9 and not believable because the medical excuses were not from the doctors who were
10 treating him at the Department of Veteran's Affairs. Instead, the medical excuses
11 were from community services and/or doctors in the Philippines and the excuse notes
12 specifically stated they were not to be used for purposes of a legal proceeding.⁴⁵

13 Following the Evidentiary hearing, Judge K. Hardcastle ruled that the provision
14 in the Decree of Divorce for payment of Caterina's mortgage is vague in that it stated
15 it was not alimony, but then provided that it could be modified based on a change in
16 Caterina's financial condition, that it could be terminated at any time, and because
17 Grady paid her for 4 years. The military pay provision was found to be vague since
18 it mentioned no amount and Grady had paid Caterina \$1,500 per month for 4 years
19 post divorce based on this provision. The court therefore allowed extrinsic evidence.
20 The extrinsic evidence showed that Grady represented to Caterina that he received
21 military retirement pay of \$3,017 per month and that she would receive 50% of this

22 ⁴⁴RA000422 - RA000423

23 ⁴⁵AA605 ln 1-24, AA606 ln 1-12, AA854 ln 28 - AA855 ln 17

1 amount.⁴⁶ He then paid her \$1,500 per month for more than 4 years following the
2 entry of the Decree of Divorce.⁴⁷ Extrinsic evidence also showed that Grady
3 promised Caterina that between his military retired pay and his mortgage assistance
4 payment, Caterina would receive \$3,000 per month while Grady was alive and a
5 comparable amount from his survivor benefits upon his death.⁴⁸

6 Judge K. Hardcastle found that the parties' Decree of Divorce is unconscionable
7 and unenforceable, that Grady breached his fiduciary duty arising out of the marriage,
8 that the alimony waiver is unenforceable, that the \$1,500 mortgage assistance
9 provision is based on financial need, is a periodic payment and is therefore alimony
10 pursuant to NRS 125.150(9)(a).⁴⁹ Judge K. Hardcastle found that the ambiguities in
11 the Decree are interpreted against Grady as he was the drafter of the divorce
12 documents. Pursuant to NRS 125.150(4), the court found that it can set aside a
13 portion of Grady's separate property for Caterina's support and that Grady receives
14 about \$116,000 annually in largely tax free income.⁵⁰ The court also found that
15 Caterina is in need of support, that she must be compensated for economic loss, that
16 Grady has the ability to pay and that Caterina is entitled to attorney fees.⁵¹ The Court

18 ⁴⁶RA000484 - RA000488, RA000496 - RA000498

19 ⁴⁷AA858 ln 7 - AA 859 ln 7, AA860 ln 14 - AA861 ln 1-3

20 ⁴⁸RA000482, RA000484 - RA000492, RA000496 - RA000498

21 ⁴⁹AA859 ln 8 - AA862 ln 18, AA865 ln 1-6, AA866 ln 12-26, AA 867 ln 5-

22 28

23 ⁵⁰AA862 ln 23 - AA 864 ln 11

⁵¹AA857 ln 1 - AA870 ln 10, RA000507 - RA000524, RA000533 -

1 found that 60(b)(6) relief was appropriate and timely since Grady paid Caterina
2 \$3,000 for 4 years and that within one month of Grady stopping payment, Caterina
3 filed her motion then filed a Countermotion pursuant to NRCPP 60(b)(6) upon learning
4 of Grady's deceit.⁵² Grady was ordered to pay Caterina \$3,110 per month as life time
5 alimony, \$42,000 in accrued support arrearages, \$1,000 in contempt sanctions and
6 that the \$42,000 and \$1,000 are not subject to discharge in bankruptcy and are
7 collectable by any lawful means, including from Grady's disability income. The court
8 ordered that the \$13,500 in previously awarded attorney fees were reduced to
9 judgment. Caterina was to submit a Memorandum of Fees and Costs for additional
10 attorney fees and costs, and should Grady file an Appeal, there was to be no stay in
11 this case until he posted a supersedeas bond in an amount of not less than \$64,000.
12 Further, should Grady continue to fail to comply with the Court's orders, Caterina
13 could file a Motion for an Order to Show Cause and if Grady failed to attend, or
14 failed to pay, Caterina could seek a no bail bench warrant for his arrest.⁵³ Judge K.
15 Hardcastle's Findings of Fact, Conclusions of Law and Orders were filed on January
16 23, 2020.⁵⁴

17 III

18 STATEMENT OF THE FACTS

19 Caterina was 18 years old when the parties met and soon married on September
20

21 RA000535

22 ⁵²AA864 ln 18 - 27, AA 866 ln 27 - AA 867 ln 4

23 ⁵³AA872 ln 7 - 13

⁵⁴AA851-AA873

1 10, 1983. Grady was in the military, and during the marriage, earned two master's
2 degrees, a war college certificate and a FEMA certificate. He became a high ranking
3 officer and moved the parties approximately 17 times as he pursued his career. As
4 a result of the parties' constant moves for Grady's career, Caterina had no career or
5 pension. After leaving the military in 1999, he worked as a civilian for the
6 Department of Defense and became a high-ranking Department of Defense GS-14
7 in charge of three (3) military bases overseas until about 2010. Caterina raised the
8 parties' son and supported Grady as he pursued his career.

9 The parties last resided together in 2008 in Las Vegas Nevada. From 2008
10 until the parties' divorce in 2014, Grady deposited money each month into the
11 parties' joint bank account for Caterina's living expenses. In October 2013, Grady
12 arranged for the purchase and financing of a home in Las Vegas for Caterina. Grady
13 instructed Caterina to not speak to anyone about the financing.⁵⁵ Caterina was
14 obedient and complied. In February 2014, Grady told Caterina that he wanted a
15 divorce.⁵⁶ He told her he may have to declare bankruptcy but that he would take care
16 of her like he always had.⁵⁷ He told her that his military retired pay was \$3,017 per
17 month and she would receive 50% of that amount.⁵⁸ Grady failed to reveal to Caterina
18 that several years prior to the divorce he had opted for disability pay which dropped
19

21 ⁵⁵AA 675 ln 1-20, AA835 ln 26 -28

22 ⁵⁶RA000479 - RA000481

23 ⁵⁷RA000482

⁵⁸RA000484 - RA000488, RA000496 - RA000498

1 his military retired pay from \$3,017 per month to about \$128.40 per month.⁵⁹ Grady
2 said all she had to do was sign the divorce paperwork he was sending her and he
3 would pay her \$1,500 from the military pension and \$1,500 for the mortgage payment
4 for a total of \$3,000 monthly for as long as he lived. He warned her not to see an
5 attorney or things would be worse for her.⁶⁰ Grady's tactic during the divorce process
6 was to repeatedly assure Caterina that she would receive \$3,000 per month for
7 Grady's life and that she would receive that amount or more from his survivor
8 benefits upon his death. Grady told Caterina that the decree couldn't require alimony
9 and had to contain an alimony waiver or he would not qualify for a loan to pay his
10 debts. Grady was fully aware that Caterina needed support as she had not worked
11 since 1989, suffered from depression, and her mortgage and Home Owner's
12 Association dues alone totaled \$2,132.20 per month.⁶¹ He paid her \$3,000 monthly
13 from June 2014 until September 1, 2018. On September 1, 2018 Grady stopped
14 depositing \$3,000 into the parties' joint bank account they had shared for nearly 31
15 years and these proceedings ensued.

16 IV.

17 SUMMARY OF THE ARGUMENT

18 This is an appeal from a post-divorce evidentiary hearing. This court has
19 generally upheld District Court rulings that were supported by substantial evidence

20
21 ⁵⁹RA000536 - RA000539, RA000541

22 ⁶⁰RA000483 - RA000498

23 ⁶¹ AA835 ln 23 - AA836 ln 1, RA000484 - RA000488, RA000527 -
RA000532

1 and were otherwise free of a plainly appearing abuse of discretion. *See Buchanan v.*
2 *Buchanan*, 90 Nev. 209, 216, 523 P.2d 1, 5 (1974). Substantial evidence supports the
3 District Court's finding that the Decree of Divorce that Grady drafted was ambiguous
4 as to \$1,500 per month mortgage assistance and the \$1,500 per month military pay
5 provisions, respectively. The home mortgage support provision is ambiguous in that
6 it states the payment is voluntary, but requires payment until certain specific
7 conditions are met, such as Caterina's financial condition changing, but also says it's
8 not required. The military retirement pay provision is ambiguous because it states
9 that Caterina will receive 50% of Appellant's military retirement. No amount was
10 stated in the Decree, but Grady advised Caterina that he was receiving \$3,017
11 monthly from his military retirement with her share being \$1,508. Then, from entry
12 of the Decree and for four (4) years thereafter, Grady paid her \$1,500 monthly for her
13 share of his military pension.

14 Any ambiguity must be interpreted against the drafter. Basic principles of
15 contract law hold the drafter to a higher standard. *Williams v. Waldman*, 108 Nev.
16 466, 473, 836 P.2d 614, 619 (1992) This court views a contract as "ambiguous if it
17 is reasonably susceptible to more than one interpretation". *Shelton v. Shelton* 119
18 Nev. 492, 497, 78 P.3d 507, 510 (2003). When interpreting an ambiguous contract,
19 this court looks beyond the express terms and analyzes the circumstances surrounding
20 the contract to determine the true mutual intentions of both parties. *Id.*

21 Finding that ambiguities exist, the District Court correctly admitted parole
22 evidence to determine the parties' intent at the time of the divorce. Parole evidence
23 is not barred to resolve ambiguities or to show misrepresentations and deceit. *Lowden*

1 inv. co. V. Gen. Elect Credit Co., 103 Nev. 374, 741,P.2d 806; Sierra Diesel Injection
2 Serv. V. Burroughs Corp. Inc., 651 F. Supp 1371, 1377 (D. Nev 1987). It became
3 apparent that Grady deliberately misled Caterina about his income, the amount of his
4 military pension and the amount that Caterina would therefore realize from his
5 military pension. Grady also misled Caterina about the parties' debts and his possible
6 bankruptcy filing.

7 The District Court found that Grady's interpretation of the Decree of Divorce
8 is so unconscionable as to be unenforceable. Under the circumstances, the District
9 Court found that the mortgage assistance payments were indeed alimony, and that
10 Grady had a contractual obligation to pay Caterina for the military retirement funds.
11 Judge K. Hardcastle did not indemnify Caterina for the military pension, rather,
12 enforced the contractual agreement based on Grady's promises and performance.
13 Nothing prevents Grady from using his disability payments to satisfy his contractual
14 obligation currently. Id at 78 P.3d 510. Howell does not prevent a state district court
15 from enforcing an alimony payment and ordering a service member to resume making
16 payments he was legally obligated to make and to pay arrearages. Gross v. Wilson,
17 424 P.3d 399, 401 (Alaska S. Ct. 2018); Howell v. Howell, 137 S.Ct. 1400, 197
18 L.Ed.2d 781 (2017).

19 Grady violated his fiduciary duty to Caterina to disclose pertinent assets and
20 income. A fiduciary relationship to disclose assets and income arises from the
21 existence of the marriage itself. Cook v. Cook, 112 Nev. 179, 912 P.2d, 264, 266
22 (1996).

23 The District Court found that Caterina did not knowingly waive alimony.

1 Caterina is entitled to alimony commensurate with her financial needs in the amount
2 Grady promised her and paid her for four (4) years following entry of the Decree of
3 Divorce before he unilaterally stopped paying on September 1, 2018. Disability
4 pension benefits can be considered a source of income for purposes of awarding
5 alimony and the court can invalidate an alimony waiver to do so. Fattore v. Fattore
6 Docket No. A-3727-16T1 Argued January 16, 2019 and February 5, 2019 (N.J.
7 Super. App. Div., 2019).

8 Ambiguity and deceit can invalidate an alimony waiver and the alimony waiver
9 was properly set aside pursuant to NRCPP 60(b)(6). Parker v. Green, No. 73176
10 (Nevada June 25, 2018), Carlson v. Carlson, 108 Nev. 358, 832 P.2d 380 (1992). A
11 motion pursuant to NRCPP 60(b)(6) is timely if made within a reasonable period of
12 time. The District Court found that Caterina timely sought the court's assistance and
13 filed her motion one month after Grady stopped paying her. She timely filed for
14 NRCPP 60(b)(6) relief.

15 Denying Grady's request to appear via Audiovisual means was within the sound
16 discretion of the District Court, and should be upheld as there was no abuse of
17 discretion. Barry v. Lindner, 119 Nev. 661, 81 P.3d 537 (Nev. 2003). Supreme Court
18 rule, Part IX-B (B) mandates that a personal appearance is required for persons
19 ordered to appear and show cause why sanctions should not be imposed for violation
20 of a court order. The District Court had issued an Order to Show Cause for Grady's
21 violation of court orders requiring his appearance at the Evidentiary Hearing. Further,
22 good cause existed to require Grady's appearance and his excuses for not appearing
23 in person were not credible. The District Court's order entered on January 23, 2020

1 should be upheld.

2 V.

3 ARGUMENT

4 **1. The District Court Set Forth the Proper Basis for its Finding that the**
5 **Provisions in the Decree of Divorce Regarding Home Mortgage Assistance,**
6 **and the Retired Military Pay are Vague and Ambiguous and that the**
7 **Alimony Waiver is Invalid**

8 **a. Standard of Review**

9 A trial court has inherent authority to construe and interpret its own orders.
10 This court has generally upheld district courts' rulings that were supported by
11 substantial evidence and were otherwise free of a plainly appearing abuse of
12 discretion. *See* Buchanan v. Buchanan, 90 Nev. 209, 216, 523 P.2d 1, 5 (1974).
13 Where a trial court, sitting without a jury, has made a determination upon the basis
14 of conflicting evidence, that determination should not be disturbed on appeal if it is
15 supported by substantial evidence. Lubbe v. Barba, 91 Nev. 596, 600, 540 P.2d 115,
16 118 (1975); Fletcher v. Fletcher, 89 Nev. 540, 542, 516 P.2d 103, 104 (1973).
17 Williams v. Waldman, 108 Nev. 466, 836 P.2d 614 (Nev. 1992). This court will
18 affirm the district court if it applied the correct legal standard and its ruling is
19 supported by substantial evidence. Doan v. Wilkerson, 130 Nev. 449, 453, 327 P.3d
20 498, 501 (2014); Gepford v. Gepford, 116 Nev. 1033 1036, 13 P.3d 47, 49 (2000).
21 (Substantial evidence is that which a sensible person may accepts as adequate to
22 sustain a judgment); *See* Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752,
23 755 (1999). This court generally defers to the district court regarding witness
credibility and will not reweigh evidence. Lawrimore v. Lawrimore, 381 P.3d
632(Table) (Nev., 2012). *See* Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042,

1 1046 (2004) (noting that this court "will not reweigh the credibility of witnesses on
2 appeal; that duty rests within the trier of fact's sound discretion").

3 A de novo review of Judge K. Hardcastle's interpretation of the parties' Decree
4 of Divorce reveals that the Court's factual findings and orders are supported by
5 substantial evidence in the record below and should be upheld. A sensible person
6 would accept that the evidence as adequate to sustain the District Court's orders in
7 this instance.

8 **b. The Decree of Divorce is Ambiguous and Grady's interpretation is so**
9 **unconscionable as to be unenforceable**

10 This Court views a contract as "ambiguous if it is reasonably susceptible to
11 more than one interpretation." Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507,
12 510 (2003). The best approach for interpreting an ambiguous contract is to delve
13 beyond its express terms and "examine the circumstances surrounding the parties'
14 agreement in order to determine the true mutual intentions of the parties." Id. This
15 examination includes not only the circumstances surrounding the contract's execution,
16 but also subsequent acts and declarations of the parties. Id. This court has recognized
17 that an interpretation that "results in a fair and reasonable contract is preferable to one
18 that results in a harsh and unreasonable contract." Id. *See also* Holyoak v. Holyoak
19 No. 67490, page 6 (Nev., 2016)(appellant's interpretation ultimately lacks merit
20 because it results in a harsh and unreasonable contract). *See also* Mizrachi v.
21 Mizrachi, 132 Nev.Adv. Op. 66, 385 P.3d 982, 987 (Nev. App. 2016) (explaining that
22 a provision in a divorce decree "is ambiguous if it is capable of more than one
23 reasonable interpretation"). In contract interpretation cases, a court that is called upon

1 to clarify the meaning of a disputed term in an agreement-based decree must consider
2 the intent of the parties in entering into the agreement. *See* Murphy v Murphy, 64
3 Nev. 440, 453, 183 P.2d 632, 638 (1947); Aseltine v. Second Judicial District Court,
4 57 Nev. 269, 274, 62 P.2d 701, 702 (1936). When interpreting a decree of divorce,
5 the court may look to the record as a whole and the surrounding circumstances to
6 interpret the parties' intent. *See* Aseltine, 57 Nev. at 273, 62 P.2d at 702. A contract
7 is ambiguous if reasonably interpreted in more than one way. Anvui, LLC v. G.L.
8 Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007).

9 Grady cites Galardi v. Naples Polaris, LLC, 129 Nev. 306, 309, 301 P.3d 364,
10 366 (2013) to support of his argument that there is no ambiguity in the Decree of
11 Divorce.⁶² However, Galardi provides that "[a] contract is ambiguous if its terms
12 may reasonably be interpreted in more than one way".

13 Grady's interpretation of the Decree of Divorce is so unreasonable as to be
14 unconscionable.⁶³ To the extent Grady sets forth reasons why he believes that the
15 Decree of Divorce is not ambiguous, he essentially reargues⁶⁴ the facts of the case,
16 reargues Judge R. Forsberg's orders from the May 22, 2019 motion hearing⁶⁵ and
17 disagrees with the weight Judge K. Hardcastle gave to the evidence before her at the
18 Evidentiary Hearing, which this Court has held it will not reevaluate on appeal. *See*
19 Quintero v. McDonald, 116 Nev. 1181 1183, 14 P.3d 522, 523 (2000) (refusing to

21 ⁶²AOB pg 17

22 ⁶³AA865 ln 22- AA866 ln 1

23 ⁶⁴AOB pg 18 - 21

⁶⁵AA354

1 reweigh evidence on appeal). Judge K. Hardcastle advised counsel that the prior
2 orders from the January 23, 2019 motion hearing and the May 22, 2019 motion
3 hearing were orders made without the benefit of an Evidentiary Hearing, that they
4 were preliminary rulings, that we are now at trial, and rulings will be based upon the
5 evidence that was presented at trial.⁶⁶The District Court's findings of ambiguity and
6 subsequent orders should be affirmed.

7 **c. Ambiguity is Interpreted Against Grady**

8 Any vagueness or ambiguity must be interpreted against the drafter. Basic
9 principles of contract law hold the drafter to a higher standard. Williams v. Waldman,
10 108 Nev. 466, 473, 836 P.2d 614, 619 (1992) ("[I]t is a well settled rule that '[i]n
11 cases of doubt or ambiguity, a contract must be construed most strongly against the
12 party who prepared it, and favorably to a party who had no voice in the selection of
13 its language.' " (quoting Jacobson v. Sassower, 66 N.Y.2d 991, 499 N.Y.S.2d 381,
14 489 N.E.2d 1283, 1284 (1985))). Golden Rd. Motor Inn, Inc. v. Islam, 376 P.3d 151,
15 132 Nev. Adv. Op. 49 (Nev., 2016).

16 Grady is the drafter of the Joint Petition and Decree of Divorce; he selected the
17 terms for the Decree of Divorce, hired the legal staff to prepare the Joint Petition and
18 Decree of Divorce and Grady e-mailed it to Caterina to sign.⁶⁷ Caterina asked for
19 alimony language and Grady refused to make the revision, assuring Caterina that he
20 has always taken care of her and will continue to do so, that she will be worse off if
21 she tries to fight him, and other claims that were untrue, including misrepresentations

22 ⁶⁶AA756 ln 11 - 17

23 ⁶⁷RA000489 - RA000498

1 about his income and assets.⁶⁸ The evidence shows that he assured Caterina that he
2 would continue pay her \$3,000 monthly until he died. During their marriage, Grady
3 is the one who made the decisions and controlled the parties' finances⁶⁹ Caterina did
4 not have a voice as to the terms of the Decree of Divorce because Grady refused to
5 let her have a voice.

6 **d. Monthly Mortgage Assistance Provision is Ambiguous and these**
7 **Payments are Alimony**

8 Grady claims that his payments for Caterina's mortgage assistance were
9 completely voluntary and he does not have to continue to pay.⁷⁰ Grady then agrees
10 that the mortgage assistance provision is ambiguous because the statement he drafted
11 "this is not required" contradicts Grady's obligation to pay Caterina until certain
12 conditions are met⁷¹ i.e. "Grady E. Byrd will continue to pay Caterina A. Byrd 1500
13 dollars extra a month to assist with her home mortgage. If her financial situation
14 changes or if the home is sold or paid off this payment may cease. This is not an
15 alimony payment and is not required".⁷² Clearly, the home mortgage provision cannot
16 be voluntary and continue until certain conditions are met. Judge Kathy Hardcastle
17 determined that since the periodic payments of \$1,500 per month can change if
18 Caterina's financial condition improves or if the house is sold, it is actually

19
20 ⁶⁸RA000479 - RA000498

21 ⁶⁹AA859 ln 26 - 28

22 ⁷⁰AOB pg 35 ln 9

23 ⁷¹AOB pg 19, ln 1-3

⁷²AA002 ln 28 - AA003 ln 2, AA008 ln 3-5

1 alimony.⁷³

2 In, Lake, this court held that "support" is a word of broad signification. Lake
3 v. Bender, 18 Nev. 361, 4 Pac. 711, 7 Pac. 74 (1884) It includes everything,
4 necessities and luxuries, which the wife in like circumstances is entitled to have and
5 enjoy. Paying the mortgage on a home is a necessity. The court correctly found that
6 Grady's \$1,500.00 per month payments to Caterina for her mortgage is alimony.
7 Grady argues that this payment is actually a property settlement.⁷⁴ However, at no
8 point in any of his previous pleadings did he make this argument. Thus, it should not
9 be considered on appeal; "A point not urged in the trial court, unless it goes to the
10 jurisdiction of that court, is deemed to have been waived and will not be considered
11 on appeal." Britz v. Consolidated Casinos Corp., 87 Nev. 441, 447, 488 P.2d 911
12 (1971); Harper v. Lichtenberger, 59 Nev. 495, 92 P.2d 719 (1939).

13 **e. The Amount of Money Caterina Receives for her Interest in the Military**
14 **Retirement is Ambiguous and Contractually, Caterina is Entitled to Payment**

15 The Decree of Divorce provides that "Caterina A. Byrd is entitled to 50% of
16 Grady E. Byrd's United States Army Retired Pay as long as he lives." The District
17 Court properly determined that this provision is vague and ambiguous since there was
18 no dollar amount provided in the Decree of Divorce and Grady paid Caterina \$1,500
19 per month for 4 years post divorce. The communications between the parties show
20 that at the time of the divorce, Grady lied to Caterina and told her that he was
21 receiving military retirement pay of \$3,017 per month and that her 50% share is

22 ⁷³AA859 ln 8-25

23 ⁷⁴AOB pg 21 ln 14

1 \$1,508 per month. In reality, at the time of the divorce, Grady had already waived his
2 military retired pay for largely tax-free disability benefits. Grady falsely claims that
3 the waiver did not occur until late 2014,⁷⁵ when in actuality, Grady waived his retired
4 pay in 2011.⁷⁶ Around the time of the divorce in 2014, Grady was receiving \$128.40
5 in military retired pay, not \$3,017.⁷⁷ He even started receiving Federal Employees
6 Retirement System disability retirement funds in 2010, which Caterina was never
7 made aware.⁷⁸ Grady's current interpretation is that Caterina is only entitled to \$64.20
8 per month for her interest in his military pay. This is unconscionable and
9 unenforceable. Holyoak v. Holyoak No. 67490, page 6 (Nev., 2016)(appellant's
10 interpretation ultimately lacks merit because it results in a harsh and unreasonable
11 contract).

12 Consistent with Shelton, Judge K. Hardcastle determined that the best approach
13 for interpreting an ambiguous contract is to delve beyond its express terms and
14 examine the circumstances surrounding the parties' agreement in order to determine
15 the true mutual intentions of the parties. Judge Hardcastle determined that this
16 examination includes, not only the circumstances surrounding the contract's
17 execution, but also subsequent acts and declarations of the parties.

18 Similar to this Court's decision in Shelton, Judge K. Hardcastle deemed the
19 military retired pay provision ambiguous and, under contract law, Grady ratified the

21 ⁷⁵AOB pg 25 ln 7

22 ⁷⁶RA000536 - RA000539, RA000541

23 ⁷⁷RA000539

⁷⁸RA000541, RA000543 - RA000545

1 terms of the agreement by performing and paying Caterina \$1,500 for four years post
2 divorce. Grady cannot escape his contractual obligation. He possesses ample other
3 assets from which to pay his obligation. Nothing prevents him from using his
4 disability pay to satisfy his contractual obligation. Grady's interpretation of the
5 agreement would lead to a harsh and unreasonable result and would reward Grady for
6 lying to Caterina. Were the provision in the Decree of Divorce interpreted to give
7 Caterina 50% of Grady's Military pay, so that she would receive only \$64.20 per
8 month for her interest in his military pay after 31 years of marriage, this would also
9 be so unconscionable, as to be unenforceable. Judge Hardcastle found that Grady's
10 breach of fiduciary duty, the vagueness of the provision, his unconscionable
11 interpretation, and extraordinary circumstances gives the Court discretion to reopen
12 the division of the marital/community property.

13 Judge K. Hardcastle's determinations are consistent with Shelton and should
14 be upheld. Shelton v. Shelton, 78 P.3d 507, 510, 119 Nev. 492 (Nev. 2003). In
15 Shelton, supra, the parties' property settlement agreement was deemed ambiguous
16 because the agreement stated that the award of military retirement pay to wife
17 consisted of "[o]ne half of HUSBAND'S military retirement in the amount of \$577,
18 until her demise," but \$577 was more than one-half the amount of husband's
19 retirement pay at the time of divorce. Husband paid wife \$577 for two years after the
20 divorce until he elected to take disability pay in lieu of retirement pay. This Court's
21 findings included:

22 **Moreover, the parties' subsequent conduct reinforces**
23 **this conclusion, in that Roland ratified the terms of the**
agreement by performing his obligations under the
decree for a period of two years. In addition, this

1 interpretation yields a fair and reasonable result, as
2 opposed to a harsh and unfair result. Roland cannot escape
3 his contractual obligation by voluntarily choosing to forfeit
4 his retirement pay. It appears that Roland possesses ample
5 other assets from which to pay his obligation without even
touching his disability pay. Even if he lacks these assets,
nothing prevents him from using his disability payments to
satisfy his contractual obligation. Id at 78 P.3d 510
(Emphasis Added).

6 This Court also concluded that:

7 “Although states are precluded by federal law from treating
8 disability benefits as community property, states are not
precluded from applying state contract law, even when
9 disability benefits are involved.” Id at 78 P.3d 511

10 Consistent with the conclusion in Shelton, under contract law principles,
11 Grady is legally obligated to make the \$1,500.00 monthly payments to Caterina and
12 he wrongfully terminated the payments to her on September 1, 2018. Shelton v.
13 Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

14 Grady claims that pursuant to Howell, the District Court cannot order him to
15 indemnify Caterina for the loss of her interest in Grady’s military retired pay because
16 he waived it for largely tax free disability pay.⁷⁹ Howell v. Howell, 137 S.Ct. 1400,
17 197 L.Ed.2d 781 (2017). However, Judge K. Hardcastle did not indemnify Caterina,
18 but enforced the contractual agreement based on Grady’s promises and performance.
19 Grady waived his military pay for disability pay in 2011,⁸⁰ but misled Caterina at the
20 time of divorce in 2014, telling her that her 50% portion was \$1,500 per month. He
21 then paid her \$1,500 per month for four years. Grady’s behavior is distinguished from

22 ⁷⁹AOB pg 32.

23 ⁸⁰RA000536 - RA000538, RA000541

1 Howell because in Howell, the military member applied for disability benefits thirteen
2 years after the divorce. Howell, 137 S.Ct. At 1404. Further, Howell does not hold that
3 a state court cannot enforce a property division and order a service member to resume
4 payments and pay arrears after he unilaterally stops making payments he is legally
5 obligated to make. Gross v. Wilson, 424 P.3d 399, 401 (Alaska S. Ct. 2018). See also
6 Gemma v. Gemma, 105 Nev. 458, 778 P.2d 429 (1989)(husband cannot dictate when
7 wife will receive her benefits).

8 There is nothing in the Howell decision that bars the application of *res*
9 *judicata*. In Winters v. Winters, No. 5-16-0217, 2017 WL 3276408 (Ill. App. Ct.
10 July 31, 2017) husband never appealed from earlier rulings dividing his disability
11 compensation and subsequently he agreed to pay his former spouse a portion of his
12 disability compensation. The court ruled that the husband's post-retirement agreement
13 to pay his former wife a share of his military pension, together with the doctrine of
14 *res judicata*, barred his later claim that he did not have to continue paying her. *See*
15 *also*, Bloom v. Bloom No. 1443 WDA 2016, 2017 WL 3225862 (Pa. Super. Ct. July
16 31, 2017), wherein the parties' settlement agreement, incorporated in a divorce decree,
17 provided that the former wife would receive 50% of the retired former husband's
18 "retirement pay from the U.S. Army for as long as she lives." He subsequently
19 converted his pension to CRSC and his former wife no longer received any portion
20 of the pension. *Id.* The court reasoned that the election of CRSC in lieu of military
21 retired pay amounted to "a 'unilateral and extrajudicial modification of the decree,'
22 depriving [former wife] of the bargained-for benefits included in the divorce decree.
23 On appeal, the court determined that the retiree's post-retirement agreement to pay his

1 former wife a share of his military pension, together with the doctrine of *res judicata*,
2 barred his later claim that he did not have to pay his former wife the amount
3 previously agreed upon. While Grady elected to waive his retired pay for disability
4 pay prior to divorce, what is similar in Winters and Bloom to the case at bar is that
5 Grady promised Caterina that he would pay her \$1,500 monthly and continued to pay
6 her \$1,500 monthly through the divorce process and for four years after the divorce.
7 During this time, his payment included disability pay, because his retired pay was
8 only \$128.40 monthly.

9 **f. Alimony Waiver Properly Deemed Invalid**

10 In the context of family law, parties are free to contract, and the courts will
11 enforce their contracts if they are not unconscionable, illegal, or in violation of public
12 policy. Rivero v. Rivero, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). An
13 enforceable contract requires "an offer and acceptance, meeting of the minds, and
14 consideration." May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

15 This Court has held that a waiver is the intentional relinquishment of a known
16 right and in order to be effective, a *waiver must occur with full knowledge of all*
17 *material facts*. Friendly Irishman v. Ronnow, 74 Nev. 316, 319, 330 P.2d 497, 499
18 (1958). A party cannot waive something unknown to her because an essential
19 requirement of waiver is: knowledge of the material facts by the party making the
20 waiver. See Thompson v. City of North Las Vegas, 108 Nev. 435, 439, 833 P.2d
21 1132, 1134 (1992)(A party cannot waive something that is unknown to her). Grady
22 assured Caterina that she would receive \$3,000 per month until he died, but that he
23 could not put alimony language in the Decree of Divorce for a variety of untrue

1 reasons. Caterina did not have knowledge of all the material facts because of Grady's
2 misrepresentations. Accordingly, she could not knowingly and voluntarily waive
3 alimony.

4 Disability pension benefits can be considered a source of income for purposes
5 of awarding alimony. Further, the court can invalidate an alimony waiver when wife
6 waived alimony in return for an interest in husband's military pension. Fattore v.
7 Fattore Docket No. A-3727-16T1 Argued January 16, 2019 and February 5, 2019
8 (N.J. Super. App. Div., 2019). The court found that "but for" wife's receipt of an
9 interest in her husband's pension, the wife would not have waived alimony. So, too,
10 in this instance, but for Caterina's receipt of \$3,000 per month, she would not have
11 waived alimony.

12 In Fattore, supra, the court explained:

13 Here, we hold the **alimony waiver was not a bar to a**
14 **consideration of a post-judgment award of alimony to plaintiff.**
15 **..., the record readily demonstrates plaintiff gave valuable**
16 **consideration for the waiver of alimony in exchange for the**
17 **promise of the future ability to share in defendant's military**
18 **pension.** Moreover, as defendant notes in his reply brief, his
19 earnings were approximately thirty-four percent greater than
20 plaintiff's at the time of the divorce. Thus, there was valuable
21 consideration given by plaintiff in exchange for the alimony waiver,
22 and **the unforeseeable loss of the bargained for pension benefit**
23 **was a substantial and permanent change in circumstances,**
which invalidated the waiver. Upholding the alimony waiver in
these circumstances would be wholly unfair." (Emphasis Added).

20 Judge K. Hardcastle's decision is consistent with this Court's invalidation of
21 the alimony waiver in Parker. Parker v. Green, No. 73176 (Nevada June 25, 2018).
22 In Parker, the decree of divorce contained an express waiver of alimony. This Court
23 found that the waiver was ambiguous; that the language regarding payments to wife

1 used in the decree mirrored standard alimony language; and that as a result it was
2 necessary to delve beyond the terms of the decree of divorce and "examine the
3 circumstances surrounding the parties' agreement in order to determine the true
4 intentions of the parties". Id. See also Fick v. Fick, 109 Nev. 458, 851 P.2d 445,
5 (1993)(Where the Nevada Supreme Court upheld the trial court's invalidation of the
6 parties' alimony waiver provision of their prenuptial agreement).

7 Judge K. Hardcastle properly determined that it was unconscionable that
8 Caterina would receive no spousal support after a 31 year marriage, while Grady
9 receives largely tax free income of \$116,000 per year. Further, Grady had no debts⁸¹
10 at the time of divorce but told Caterina he needed to get a loan and might have to file
11 bankruptcy. He told her that if the Decree contained an alimony provision he
12 wouldn't get a loan to pay his debts, plus various other lies. He also promised to pay
13 her \$3,000 monthly until he dies.⁸² The parties had just purchased a home 4 months
14 prior to Grady asking for a divorce, the mortgage was over \$1,900 per month, and
15 Caterina was fearful that if she failed to follow his orders, and sign the Decree, he
16 would stop providing money for her living expenses and disappear—which is what he
17 threatened to do if she didn't sign the decree.⁸³ He assured that if she signed the
18 Decree he would continue to support her at the rate of \$3,000 per month.⁸⁴ Caterina
19 felt she had no choice but to sign. Pursuant to NRS 125.150 (4), the court may set

21 ⁸¹AA003 ln 4

22 ⁸²AA837 ln 2 - 13, RA000482, RA000484 - RA000490

23 ⁸³RA000483, RA000489 -RA000498

⁸⁴RA000479 - RA000482, RA000484 - RA000488

1 apart a portion of the Grady's separate property for the Caterina's support. The
2 California Appeals Court in Cassinelli held in pertinent part: .

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

- 8 1. Veteran's disability benefits (although only up to the
9 amount of his waiver of retired pay). (42 U.S.C. §§
10 659(a), 659(h)(1)(A)(ii)(V), 659(h)(1)(B)(iii) ; 5
11 C.F.R. § 581.103 ; United States v. Murray (1981)
12 158 Ga.App. 781, 785, 282 S.E.2d 372, 375.)
- 13 2. CRSC. (Fin. Mgmt. Reg., supra , § 630101(C)(2).)
- 14 3. Social security benefits. (42 U.S.C. §§ 659(a),
15 659(h)(1)(A)(ii)(I) ; DeTienne v. DeTienne (D.Kan.
16 1993) 815 F.Supp. 394, 396-397.).
- 17 4. State teacher's disability benefits. (Code Civ. Proc.,
18 § 704.110, subd. (c) ; Ed. Code, § 22006.).

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

20 Similar to the husband in Cassinelli, Grady has multiple sources of income that
21 are not exempt from a spousal support order. All of this income, around \$116,000.00
22 per year, can be considered when calculating a spousal support obligation to Caterina.

23 **2. The District Court Properly Admitted Evidence to Resolve the Ambiguities**

When contract ambiguities exist, parole evidence is permitted to resolve the
ambiguities. Lowden inv. co. V. Gen. Elect Credit co., 103 Nev. 374, 741,P.2d 806
(1987)(Parole evidence permitted to resolve ambiguities in the contract); Golden
Press v. Pac. Freeport Warehouse, 97 Nev. 163, 625 P.2d 578 (1981)(when contract
is silent as to the matter addressed in the Parole evidence); See also Huber v. Huber,
27 Cal 2.d 784, 788, 167 P.2d 708 (Cal. Sup. Ct. 1946)(to show the absence of an
intention to make a gift of either separate or community property although the

1 instrument of conveyance is made by Husband to Wife alone, or as joint tenant with
2 him).

3 Parole evidence is also admitted to show fraud such that no binding contract
4 has been legally made, that it may be declared null and void in an equitable action.
5 See Sierra Diesel Injection Serv. V. Burroughs Corp. Inc., 651 F. Supp 1371, 1377
6 (D. Nev 1987)(to show execution of the contract was induced by a promise made
7 without any intention of performing it).

8 Judge K. Hardcastle ruled that parole evidence was being admitted to show the
9 parties' state of mind and what representations were being made that led to the
10 agreement in order to help the court to determine what the parties meant by the
11 agreement.⁸⁵ Further, it might establish that one of the parties made
12 misrepresentations or engaged in fraud, which could invalidate the agreement.

13 Grady's reliance on Builders is misplaced because parole evidence can be
14 admitted under circumstances such as the case at bar.⁸⁶ Rd. & Highway Builders v.
15 N. Nev. Rebar, Inc., 284 P.3d 377, 128 Nev. Adv Op. 36 (Nev. 2012). In Builders,
16 the contract was not alleged nor determined by the Court to contain any ambiguities.
17 This is distinguished from the parties' Decree of Divorce where multiple ambiguities
18 exist. When ambiguities exist, parole evidence is allowed to resolve the ambiguities.
19 Nevada case law also holds that the parol evidence rule may not operate to exclude
20 evidence of fraud in the inducement of a contract, even where the court finds an
21 integrated agreement. Sierra Diesel Injection Service v. Burroughs Corp., 651

22 ⁸⁵AA646 ln 1-18, AA832 ln 25 - AA833 ln 10

23 ⁸⁶AOB pg 30

1 F.Supp. 1371, 1377 (D. Nev. 1987) citing; Havas v. Haupt, 94 Nev. 591, 583 P.2d
2 1094, 1095 (1978); Oak Industries, Inc. v. Foxboro Co., 596 F.Supp. 601, 607
3 (S.D.Cal.1984). The court in Sierra Diesel held that ... “ parole evidence may always
4 be used to show fraud in the inducement of the contract, even if there has been a valid
5 integration, in that fraud in the inducement invalidates the entire contract.” Id. The
6 plaintiff must therefore be allowed to present evidence of fraud regardless of the
7 possible integration of the writing.” Id. Based on the facts in this instance, Caterina’s
8 execution of the Decree of Divorce was induced by Grady’s misinformation,
9 misrepresentations and deceit.

10 At the time of divorce in 2014, Grady lied to Caterina about the amount of his
11 military pension. Consistent with Sierra Diesel Injection Serv. this constitutes fraud
12 in obtaining the Decree of Divorce, such that it may be declared null and void in an
13 equitable action. Judge K. Hardcastle properly determined that the provisions
14 regarding the monthly mortgage assistance, the military retired pay and the alimony
15 waiver were ambiguous and that parole evidence was allowed. Judge K. Hardcastle’s
16 interpretation resulted in a fair and reasonable contract that is preferable to one that
17 results in a harsh and unreasonable contract. See Shelton v. Shelton, 119 Nev. 492,
18 497, 78 P.3d 507, 510 (2003); Holyoak v. Holyoak No. 67490, page 6 (Nev., 2016).

19 **3. The District Court Properly Determined that the Appellant had a**
20 **Fiduciary Duty to the Respondent that arose from the Existence of the**
21 **Marriage and that he Breached that Duty due to Misrepresentations and**
22 **Deceit**

23 A fiduciary relationship arises from the existence of the marriage itself, thus
precipitating a duty to disclose pertinent assets and income. Cook v. Cook, 112 Nev.
179, 912 P.2d, 264, 266 (1996) citing Williams v. Waldman, 108 Nev. 466, 836 P.2d

1 614 (1992) at 471-72, 836 P.2d at 618.)

2 Grady contends that a fiduciary duty did not arise because Grady is not an
3 attorney like the husbands in Williams and Cook,⁸⁷ Grady fails to recognize this
4 Court’s holding in each of these cases that “*a fiduciary relationship also arises from*
5 *the existence of the marriage itself*”. Cook, at 912 P.2d 266. Grady then contends that
6 no fiduciary duty existed between Grady and Caterina because she should have
7 known that their interest are adverse.⁸⁸ Applebaum v. Applebaum, 93 Nev. 382, 566
8 P.2d 85 (1977). However, at no point in any of his previous pleadings did he make
9 this argument. Thus, it should not be considered on appeal; “A point not urged in the
10 trial court, unless it goes to the jurisdiction of that court, is deemed to have been
11 waived and will not be considered on appeal.” Britz v. Consolidated Casinos Corp.,
12 87 Nev. 441, 447, 488 P.2d 911 (1971); Harper v. Lichtenberger, 59 Nev. 495, 92
13 P.2d 719 (1939). Should this Court consider his argument, Caterina responds that the
14 facts of the instant matter are distinguished from Applebaum. In Applebaum, this
15 Court stated in *dictum* that once a spouse announces an intention to seek a divorce,
16 the other spouse is on notice that their interests are adverse. Id. at 384-85, 566 P.2d
17 at 87. The issue of whether a confidential relationship survives an announcement of
18 an intention to seek a divorce necessarily depends on the circumstances of each case.
19 The circumstances of the case at bar show that Grady’s fiduciary duty to Caterina
20 survived his divorce announcement. In Applebaum, the marriage was of brief
21 duration and without children. Id. at 383, 566 P.2d at 86. Further, the wife in

22 ⁸⁷AOB pg 26

23 ⁸⁸AOB pg 27 ln 1-3

1 Applebaum was advised by her husband to retain her own lawyer and he agreed to
2 pay the expense. Id. at 385, 566 P.2d at 87. The facts at bar are quite different; the
3 parties were married for 31 years and had a child together. Grady arranged to have
4 the documents drafted, he was significantly more educated than Caterina, English was
5 Caterina's second language, he controlled all the financial resources and Caterina was
6 financially dependent on him. Grady resided out of the country, he deposited money
7 into their joint bank account for Caterina's living expenses and he promised her that
8 he would continue to take care of her by paying her \$3,000 each month until he died,
9 after which she would receive his military survivor benefits and life insurance. Grady
10 failed to provide Caterina any financial documents at the time of divorce and
11 threatened that things would be worse for her if she got an attorney. Caterina lost the
12 military Survivor Benefit awarded her in the Decree, didn't qualify for the military
13 medical insurance awarded her, and lost the VyStar life insurance.⁸⁹ Judge K.
14 Hardcastle properly determined that Grady breached his fiduciary duty to Caterina.

15 **4. The District Court Did Not Abuse Its Discretion and Properly Determined**
16 **that the Respondent Timely Filed a Motion Seeking the District Court's**
Assistance for Relief under NRCP 60(b)(6) and in Equity

17 The district court has wide discretion in deciding whether to grant or deny a
18 motion to set aside a judgment under NRCP 60(b) and its determination will not be
19 disturbed on appeal absent an abuse of discretion. Cook v. Cook, 912 P.2d 264, 112
20 Nev. 179 (Nev. 1996) citing Stoecklein v. Johnson Electric, Inc., 109 Nev. 268, 271,
21 849 P.2d 305, 307 (1993). See also Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213
22 (2009); In re Marriage of Economou, 274 Cal.Rptr. 473, 480 (Ct.App.1990) (holding

23 ⁸⁹RA000533 -RA000535, RA000499 - RA000502, AA840 ln - AA841 ln 6

1 that “where special circumstances exist rendering it unjust to enforce the stipulation,”
2 a court has the power to set aside a fraudulently induced stipulation).

3 NRCP 60(b) (6) grants relief from a judgment or order for “any other reason
4 that justifies relief.” The timing requirement for a motion under subsection (6) is that
5 is that it “must be made within a reasonable time”.

6 Grady incorrectly states that Caterina never argued in any of her pleadings that
7 the Decree of Divorce should be set aside pursuant to NRCP60 or for any other
8 reason.⁹⁰ Caterina's motion⁹¹ and countermotion⁹² and reply⁹³ all sought to enforce
9 Judge K. Hardcastle's orders and to set aside portions of the Decree of Divorce based
10 on Grady's misrepresentations and breach of his fiduciary duty to Caterina and award
11 her lifetime alimony. She sought relief pursuant to NRCP 60(b)(6) and Cook v.
12 Cook, 112 Nev. 179, 912 P.2d, 264 (1996) citing Williams v. Waldman, 108 Nev.
13 466, 471-472, 836, P.2d 614, 618 (1992), Shelton v. Shelton, 119 Nev. 492, 497, 78
14 P3d 507, 510 (2003), Carlson v. Carlson, 108 Nev. 358, 832 P.2d 380 (1992), Barelli
15 v. Barelli, 113 Nev. 873, 944 P.2d 246 (1997), Kogod v. Cofi-Kogod, 135 Nev., Adv.
16 Op. 9 (April 25, 2019), Henson v. Henson, 130 Nev. Ad. Op. 79, 334 P.3d 933, 936
17 (2014), Fattore v. Fattore, 203 A.3d 151, 458 N.J. Super. 75 (2019), and Naylon v.
18 Wittrig, No. 3:08-cv-00625-LRH-GC, U.S. Dist. Ct., D. Nev. (May 3, 2017).

19 Caterina sought the assistance of the Court within one month after Grady

21 ⁹⁰AOB pg 7 ln 9

22 ⁹¹AA400-436

23 ⁹²AA199-237

⁹³AA579-603

1 stopped paying her \$3,000 per month.⁹⁴ She also timely sought the Court's assistance
2 to set aside provisions of the Decree of Divorce when she learned of Grady's deceit
3 during this instant litigation. Special circumstances exist in this matter. Nevada law
4 provides that under Rule 60(b)(6), a district court "may relieve a party or its legal
5 representative from a final judgment, order, or proceeding for . . . any . . . reason that
6 justifies relief." However, such relief is generally warranted only under "extraordinary
7 circumstances." Naylon v. Wittrig, No. 3:08-cv-00625-LRH-WGC, U.S. Dist. Ct., D.
8 Nev (May 3, 2017) citing; Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union
9 162, 937 F.2d 408, 410 (9th Cir. 1991) (citing United States v. Sparks, 685 F.2d
10 1128, 1129 (9th Cir. 1982)). In Keeling, the Ninth Circuit held that "repudiation" or
11 "complete frustration" "of a settlement agreement that terminated litigation pending
12 before a court constitutes an extraordinary circumstance" Id. at 410-11. The
13 court ultimately deferred to the district court's conclusion that the defendant's
14 "specific acts" of "bad faith noncompliance" with the settlement agreement caused
15 its complete frustration and thus warranted Rule 60 relief. *See e.g.* Carlson v.
16 Carlson, 832 P.2d 380, 108 Nev. 358 (Nev., 1992)(fraudulent misrepresentation of
17 the value of husband's pension is grounds for relief from the divorce decree).

18 Judge K. Hardcastle properly determined that extraordinary circumstances
19 existed to grant Caterina relief from judgment under 60(b)(6). At the time of divorce,
20 Grady misinformed Caterina about his military pension and his monthly payments.
21 Like Naylon, Grady's "specific acts" of "bad faith noncompliance" with the Decree
22 of Divorce caused its complete frustration and thus warranted Rule 60(b)(6) relief.

23 ⁹⁴AA843 ln 27 - AA844 ln 4

1 In this case, Grady falsely claimed he had a military pension worth \$3,017, that
2 he was poor, had no assets and that he had to file bankruptcy while receiving
3 \$116,000 annually in largely tax free income. Grady warned Caterina not to get an
4 attorney and promised to support her for life. When Grady terminated his payments
5 to Caterina based on ambiguities in the Decree of Divorce and his unconscionable
6 interpretation of those ambiguities, this constituted a substantial and permanent
7 change in circumstances. These circumstances were considered extraordinary
8 circumstances sufficient to grant Caterina relief from judgment pursuant to NRCP
9 60(b)(6) since it left Caterina destitute after a 31 year marriage while Grady enjoyed
10 an income of \$116,000 per year.

11 Judge K. Hardcastle determined that Judge R. Forsberg's prior determinations
12 were preliminary in nature and without the benefit of the evidence that came to light
13 at the Evidentiary Hearing.⁹⁵ Further, Judge K. Hardcastle's decision is consistent
14 with this Court's ruling in Barelli v. Barelli, 944 P.2d 246, 113 Nev. 873 (Nev.,
15 1997). In Barelli, four years after divorcing, the wife alleged that the husband
16 fraudulently induced her to waive alimony in return for lifetime employment with his
17 medical practice. She asked the district court to invalidate the alimony waiver and
18 grant her monthly alimony. This Court determined that whether the property
19 settlement agreement could be reformed or rescinded based on allegations of fraud
20 was dependent on whether, in fact, there was a contract *ab initio*. Because the
21 reformation/rescission claim to invalidate the alimony waiver was dependent upon
22 the existence of the oral contract, and because a favorable ruling on the

23 ⁹⁵AA841 ln 17 - 28

1 reformation/rescission had a potential for resurrecting claims for alimony and
2 community property, the family court also had jurisdiction to adjudicate its existence.

3 Id.

4 Judge K. Hardcastle properly determined that there had been no alimony
5 waiver based on the totality of the circumstances: such as Grady's breach of his
6 fiduciary duty, his misrepresentation about the amount of his military pension and
7 Caterina's share of that pension; Grady promises to pay Caterina \$3,000 monthly
8 until he dies; his monthly payments of \$3,000 for four years after the divorce;
9 Caterina's reliance on the \$3,000 payments to pay her living expenses; the fact that
10 the parties were married for 31 years, and that Caterina has not been gainfully
11 employed since 1989 to the present date. The Court's decision was also based on
12 Grady's awareness that Caterina was being treated for anxiety and depression at the
13 time of divorce, that she had and has no income and no other means of support, that
14 her mortgage and HOA exceed \$1,900 per month while Grady received \$116,000 per
15 year largely tax free and lived in the Philippines.

16 **5. The District Court did not Abuse Its Discretion and Properly Denied**
17 **Grady's Motion for Reconsideration to Appear by Audio Visual Means**

18 The decision whether to permit a witness to testify is within the sound
19 discretion of the district court, and that determination will not be disturbed on appeal
20 absent an abuse of discretion. Barry v. Lindner, 119 Nev. 661, 81 P.3d 537 (Nev.
21 2003).

22 There was no abuse of discretion when Judge K. Hardcastle enforced court
23 orders that were issued on June 26, 2019, on July 29, 20219 and on October 17, 2019,
for Grady to appear at the Evidentiary Hearing. Importantly, the July 29, 2019 order

1 to appear was the Order to Show Cause, which pursuant to Supreme Court rule, Part
2 IX-B (B), Grady must appear. Judge K. Hardcastle properly determined that good
3 cause existed for Grady to appear in person and properly denied his request to appear
4 by Audiovisual means.

5 Grady had no legitimate reason for his failure to appear. The Court found his
6 medical reasons suspicious. Most likely, Grady did not appear because he feared
7 incarceration. The court informed Grady in person on January 23, 2019, that a “no
8 bail bench warrant for his arrest would be issued if he did not comply with court
9 orders to continue the \$3,000 monthly payment to Caterina, plus payment on the
10 arrears, during the pendency of these proceedings.”⁹⁶ Grady, under oath, informed the
11 Court that he was not paying and had no intention of paying.⁹⁷ At the status check
12 hearing on May 2, 2019, Grady’s counsel appeared, but not Grady. Grady was
13 ordered to appear at the May 22, 2019 hearing.⁹⁸ At the May 22, 2019 hearing on
14 Grady’s motion for reconsideration, Grady’s appearance was waived, but he was
15 again ordered to comply with court orders and appear at the Evidentiary Hearing.⁹⁹
16 Judge R. Forsberg informed counsel “I’m not going to have him appear
17 telephonically, long distance and him then say he didn’t understand something”¹⁰⁰.

18 Caterina filed an emergency motion to hold Grady in contempt of court for
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20 ⁹⁶AA146 ln 22 - 26

21 ⁹⁷AA111 ln 22, AA122 ln 5, AA124 ln 18 - 21, AA128 ln 12-18

22 ⁹⁸AA250 ln 11- 22, RA000438 - RA000443

23 ⁹⁹AA 355 ln 4, 358 ln4, ln 23

¹⁰⁰AA311 ln 8-9

1 failing to pay her as ordered.¹⁰¹ Caterina was also worried about her ability to collect
2 payment from Grady because of his residency in the Philippines. Grady had even
3 abandoned a newly purchased Chevy Cruze at the Los Angeles International Airport.
4 Caterina received a copy of a bill from the tow yard demanding payment, and she
5 learned that Grady owed payment on the loans for the vehicle plus two other loans
6 were in collections in the amount of about \$17,000 and \$13,000.¹⁰² At that hearing,
7 the court clerk attempted to reach Grady though the phone number that he provided,
8 but the call failed to go through.¹⁰³ Grady did not file an opposition and his counsel
9 again told the Court that he had not been paying and has no intention of paying
10 Caterina as ordered.¹⁰⁴ The Court expressed concern that Grady was “thumbing his
11 nose up to this Court, he is not bothering to come.”¹⁰⁵ Judge R. Forsberg issued an
12 Order to Show Cause to Appear at the Evidentiary Hearing on October 21, 2019.¹⁰⁶
13 Additionally, at the Calendar Call on October 17, 2019, Judge K. Hardcastle advised
14 counsel that Grady must appear at the Evidentiary Hearing on October 21, 2019.¹⁰⁷

15 Further support of Judge K. Hardcastle’s denial of Grady’s motion for
16 reconsideration to appear by audiovisual means is seen in the following:

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¹⁰¹RA000323 - RA000337

¹⁰²RA 327 ln 3-22, AA693 ln 15 - AA694 ln 24

¹⁰³AA363 ln 2-4

¹⁰⁴AA 369 ln 1, AA370 ln 2-4

¹⁰⁵AA394 ln 23-24

¹⁰⁶RA000444 - RA000447

¹⁰⁷RA000422 - RA000423

- 1 1. Grady must appear so that the Court has full access to all available NRS
2 22. 0100 penalties for contempt, such as imprisonment. NRS 22.100 (2):
3 Except as otherwise provided in NRS 22.110, if a person is found guilty
4 of contempt, a fine may be imposed on the person not exceeding \$500
5 or the person may be imprisoned not exceeding 25 days, or both, and;
- 6 2. Supreme Court rule, Part IX-B (B) mandates that:
- 7 a. Personal appearance is required for persons ordered to appear to
8 show cause why sanctions should not be imposed for violation of
9 a court order or a rule; and
- 10 b. The court may require personal appearances for good cause.
- 11 6. "Good cause" may consist of one or more of the following factors as
12 determined by the court:
- 13 (a) Whether a timely objection has been made to parties or witnesses
14 appearing through the use of simultaneous audiovisual transmission
15 equipment:
16 Caterina timely objected to Grady's appearance through use
17 of simultaneous audiovisual equipment.
- 18 (b) Whether any undue surprise or prejudice would result:
19 Undue prejudice would result for Caterina because the court is
20 unable to fully exercise all the penalties for Contempt that are
21 available under Nevada law without Grady's presence.
- 22 (c) The convenience of the parties, counsel, and the court:
23 It is not convenient for Caterina's counsel, Caterina or the Court
 in determining Grady's demeanor, if there are interferences in the
 room where he is sitting, who else is present, who else is with
 him, who may be influencing or tampering with this sworn
 statements and what else Grady may be looking at during trial
 examination or cross-examination.
- (d) The cost and time savings:

1 Grady has the audacity to complain about the cost of travel while
2 he simultaneously deprives Caterina of \$42,000 since September
3 1, 2018 for monthly support and \$13,500 in attorney fees and
4 costs awarded since the January 23, 2019 hearing. Grady was in
5 Clark County Nevada for free medical treatments provided to him
6 at the VA hospital around August 2018.

7 (e) The importance and complexity of the proceeding:

8 This trial is extremely important to Caterina since she has been
9 deprived of Grady's support since September 1, 2018. The issues
10 of alimony, contract formation, support arrears, and Grady's
11 contempt of court are complex.

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

14 Caterina has diligently maintained that Grady's presence is
15 needed. On April 23, 2019, she even filed an Ex parte
16 Application for Grady's appearance at the May 2, 2019 hearing,
17 his request to appear telephonically was denied and he still failed
18 to appear. At the May 22, 2019 hearing, the 07/29/10 Order to
19 Show Cause to appear and at the October 17, 2020 Calendar Call,
20 the Court ordered him to appear at the October 21, 2019 trial.
21 Grady has produced no credible medical excuse.

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

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

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

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

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

1 Open court is important to the presentation of Grady's testimony
2 to impress upon Grady to testify truthfully, his demeanor, who
3 else is in the room with him, what other factors are influencing
4 him, the ability of counsel to cross-examine him and fully see his
5 demeanor and responses are important.

6 (j) Whether the quality of the communication is sufficient to understand
7 the offered testimony:

8 The court has tried to connect with Grady in the Philippines by
9 telephone and no connection was made on July 18, 2019. An
10 equipment malfunction or poor connections cannot be tolerated.

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

13 Judge R. Forsberg's concern that Grady is "thumbing his nose up
14 at the court".

15 VI.

16 CONCLUSION

17 The District Court based its findings and orders on applicable statutes, long
18 standing precedent and court rules and issued orders that are just and equitable.
19 There was no error of law or abuse of discretion. Grady ignores the fact that the
20 Decree of Divorce that he had prepared is ambiguous as to the mortgage assistance
21 payment and military retired pay. His interpretation would lead to an unconscionable
22 result. Grady seeks the reversal of the holdings in Shelton v. Shelton, 119 Nev (Nev.
23 2003), Cook v. Cook, 112 Nev. 179, 912 P.2d, 264 (1996), and Parker v. Green, No.
73176 (Nevada June 25, 2018) when Grady argues that he is only obligated to pay
Caterina \$64.20 a month. Given his argument, after 31 years of marriage, Grady
would receive a largely tax free annual income of \$116,000 and would be rewarded
for his lies and deceit while Caterina would be left destitute. Shockingly, Grady
believes that he owed no fiduciary duty to his wife of 31 years and that he should be

1 rewarded for his deceit. The Court held an Evidentiary Hearing wherein it was
2 determined that the terms in the Decree of Divorce are ambiguous. The court
3 enumerated the reasons for invalidating the alimony waiver language and ordering
4 Grady to pay Caterina \$3,110 monthly in modifiable alimony along with alimony
5 arrears, sanctions for contempt of court and attorney's fees and costs. Grady has
6 failed to show that the District Court abused its discretion or that there was a error of
7 law. As such, the January 23, 2019 order must stand.

8 DATED this 13th day of August, 2020.

9 /s/ Jeanne F. Lambertsen

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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this Brief complies with the formatting requirements of
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because:

5 This brief has been prepared in a proportionally spaced typeface, using Times Roman
6 type face provided in the WordPerfect X6 word processing program. This brief has
7 further been prepared using a 14-point type face style excepting any italics and
8 bolding.

9 2. I further certify that this brief complies with the page-or type volume
10 limitations of NRAP 32(A)(7)(ii) because, excluding the parts of the Brief exempted
11 by NRAP 32(a)(7)(C), it contains 11,974 words.

12 3. Finally, I certify that I have read this Respondent's Answering Brief, and to the
13 best of my knowledge, information and belief, it is not frivolous or interposed for any
14 improper purpose. I further certify that this brief complies with all applicable Nevada
15 Rules of Appellate Procedure, in particular Nev. R. App. Pro. 28(e)(1), which
16 requires every assertion in the Brief regarding matters in the record to be supported
17 by a reference to the page and volume number, if any, of the transcript or appendix
18 where the matter relied on is to be found. I understand that I may be subject to
19 sanctions in the event that the accompanying brief is not in conformity with the
20 Nevada Rules of Appellate Procedure.

21 Respectfully submitted this 13th day of August, 2020.

22 /s/ Jeanne F. Lambertsen

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1 Certificate of Service

2 Pursuant to NRAP 25(c)(1)(E), I hereby certify, under penalty of perjury, that
3 I am an employee of Webster & Associates and that on the 14th day of August, 2020,
4 I caused to be served the foregoing document by way of NEFCR 9 Notice of
5 Electronic Filing to the following:

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10 
11 _____
An employee of WEBSTER & ASSOCIATES