IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDSEY SHARRON ANTEE, A/K/A LINDSEY LICARI, Appellant, vs. BOBBY DEE ANTEE, A/K/A BOBBY LEE ANTEE, Respondent.	**Case No. 81635-COA**

RESPONDENT'S MOTION TO PARTIALLY LIFT STAY

Respondent Bobby Dee Antee a/k/a Bobby Lee Antee ("Mr. Antee") hereby submits this Motion to lift the Stay of the Sale of Marital Home[1] issued by this court on December 23, 2020. This motion is made and based upon the points and authorities recited below, the Declaration of Mr. Antee attached hereto as Exhibit 1, the other exhibits attached hereto and referenced herein, and the pleadings and records before this Court.

Mr. Antee faces imminent damages and prejudice and can therefore offer a showing of good cause for the requested order to lift the previously entered stay, and under the circumstances, this Motion to lift the Stay should be granted. More specifically, maintaining the current stay risks foreclosure of the Marital Home

[1] The "Marital Home" shall refer to the property located at 9564 Scorpion Track Ct., Las Vegas, NV 89178.

which would cause substantial diminution of the potential equity available to Mr. Antee and Appellant Lindsey Licari ("Appellant"). Additionally, Mr. Antee continues to suffer serious harm the longer that the stay preventing the sale of the Marital Home remains in effect because Appellant continues to refuse to make the mortgage payments as required by the Decree of Divorce. Accordingly, and as set forth more particularly below, this Court should lift the stay as to the sale of the Marital Home.

1. Legal Standard

Nevada Rule 8 (c) of Appellate Procedure says, "In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. NRAP 8(c).

2. Brief Statement of Relevant Factual and Procedural History.

This appeal stems from divorce proceedings involving Mr. Antee and Appellant. The Decree of Divorce was filed in this case on August 20, 2021 (the

"Decree"), after a trial on the merits.[2] Pursuant to the Decree, the Marital Home was to be listed for sale, and Appellant was to be "solely responsible for the mortgage, HOA, utilities, and expenses associated with the martial [sic] residence" based on her retention of exclusive possession of the residence.[3] Appellant filed her notice of appeal and this appeal was docketed as Supreme Court case no. 81635 on August 14, 2020, prior to the Decree being entered by the Court. On September 1, 2020, Appellant filed her Motion for Stay of Execution of Divorce Decree with this Court, which was initially denied on September 11, 2020.

After unsuccessfully seeking similar relief in the Family Court, Appellant filed a second Motion to Stay on November 3, 2020. This Motion was again denied on November 10, 2020 as the Family Court had not resolved Appellant's pending motion to stay. Appellant then filed numerous motions requesting various relief including extraordinary writs and injunctive relief between November 17 and November 20, 2020. These motions were summarily denied on November 19, 2020, and November 30, 2020. On December 23, 2020, this Court granted Appellant's second Motion to Stay "of the divorce decree and of any sale of the martial [sic]

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[2] Decree of Divorce, August 5, 2020, attached hereto as Exhibit 2.

[3] Ex. 2 at p. 15:14-18.

property pending resolution of this appeal." This case was transferred to the Court of Appeals on March 16, 2021.

Mr. Antee applied for a forbearance of the mortgage in June of 2020, prior to the Decree, based on the dispute concerning title to the Marital Home and his inability to financially support the mortgage payments at that time.[4] At no time did Appellant make any effort to pay the mortgage or other property expenses as required by the Decree.[5] The forbearance expires on October 1, 2021, leaving a balance due of approximately $22,500 for missed payments.[6] Recently, Appellant has made public indications that she is no longer occupying the Marital Home, and has relocated to Georgia.[7]

3. Appellant's Continued Failure to Pay Mortgage Risks Foreclosure and Diminution of its Value.

The primary reason that this Court should grant this Motion and allow Mr. Antee to sell the Marital Home is that Appellant's continued failure to pay the

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[4] Ex. 1 at ¶ 4.

[5] Id. at ¶ 5.

[6] Id. at ¶¶ 5-7.

[7] See Instagram posts dated July 24, 2021 through August 27, 2021 available at: https://www.instagram.com/tv/CRuGsDTgl5w/?utm_medium=copy_link; https://www.instagram.com/tv/CS2b0znAMxM/?utm_medium=copy_link; and https://www.instagram.com/tv/CTF8amPgR3w/?utm_medium=copy_link.

mortgage, in violation of the terms of the original Decree of Divorce,[8] result in ongoing harm to Mr. Antee and have created the risk of a foreclosure of the Marital Home that would diminish the potential equity that the parties to this litigation and the underlying divorce proceedings are litigating over. Under the circumstances, relief from this Court's stay to allow Mr. Antee to sell the home would preserve the Marital Home's value. Additionally, Mr. Antee could lodge the funds resulting from the sale with the Court or maintain them in counsel's IOLTA account until the remainder of this appeal and the underlying divorce matter were resolved, and then distribute them according to a relevant order from the Court. This requested relief would preserve the position of the parties, maximize the available equity in the Marital Home, and avoid diminution of that equity by a nonjudicial foreclosure sale which is looming in the near future.[9]

In both the original Decree of Divorce, as well as the Order from the hearing on October 19, 2018, the Family Court required Appellant to make mortgage payments for the Marital Home based on her retaining possession of the Marital Home. Despite Mr. Antee regularly describing to the Family Court how Appellant has shirked this responsibility, nothing has been done to address the contempt based

[8] Ex. 2.

[9] Ex. 1 at ¶ 6.

partially on her numerous appeals.[10] As of the filing of this Motion, the total amount due on the mortgage is approximately $22,500.00.[11] This amount demonstrates, and is based on, the fact that payments have not been made towards the mortgage since June 2020. While Mr. Antee was able to obtain a temporary forbearance for the relevant mortgage through COVID-19 relief programs, the forbearance has expired. Without the forbearance and based on the substantial balance created by Appellant's refusal to make mortgage payments in violation of the Decree of Divorce, the Marital Home is facing the threat of imminent foreclosure. A nonjudicial foreclosure sale will dramatically reduce the amount that could otherwise be obtained for the Marital Home through a traditional sale. Additionally, and as described further below, Appellant is no longer residing in the Marital Home. Thus, maintaining the stay creates the potential to cause substantial harm to both parties in the event the Marital Home is foreclosed on.

Furthermore, because Mr. Antee is the only party listed on the mortgage, he is also being harmed by Appellant's refusal to make the court-ordered mortgage payments, in the form of ongoing damage to his credit score. In addition to maximizing the equity funds in the Marital Home, granting this Motion and lifting

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[10] In addition to this appeal, Lindsey filed various other appeals including case numbers 81292, 82166, 82521, 82887.
[11] Ex. 1.

the stay would prevent Mr. Antee from incurring further damage to his credit as a result of Appellant's willful noncompliance with the Decree of Divorce. Therefore, this Court should grant this Motion and lift the stay previously entered as it pertains to the Marital Home.

3. Appellant No Longer Lives in the Marital Home.

As briefly noted above, Appellant has made numerous representations on social media that she is no longer living in the Marital Home. For example, Appellant shared a video on July 24, 2021 that begins with her saying, "Alright Aiden's Army of Angels, so, I am back in Georgia, we are looking for a new office."[12] More recently, in a post shared on August 27, 2021, Appellant reiterates, "Alright Aiden's Army of Angels, alright so we are getting a great start here in Georgia and we are proud to announce some new things for Aiden's Army of Angels."[13] Appellant has even planned the next "Angel Gala" in 2022 to be located in Atlanta Georgia.[14] These statements support that Appellant has permanently moved and now resides in

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[12] Instagram post dated July 24, 2021 available at: https://www.instagram.com/tv/CRuGsDTgl5w/?utm_medium=copy_link.

[13] Instagram post dated August 27, 2021 available at: https://www.instagram.com/tv/CTF8amPgR3w/?utm_medium=copy_link.

[14] Instagram post dated August 21, 2021 available at: https://www.instagram.com/tv/CS2b0znAMxM/?utm_medium=copy_link.

Georgia. With the Marital Home vacant, there is no reason to delay its sale or risk foreclosure, and this Court should grant this Motion and lift its stay accordingly.

4. Conclusion

Therefore, and for the foregoing reasons, Respondent Mr. Antee respectfully requests that this Court lift its stay with regard to the Marital Home and explicitly allow Mr. Antee to list and prepare the Marital Home for sale. While this Motion is not made on an emergency basis under NRAP 27(e), Mr. Antee notes that the looming threat of foreclosure may warrant expedited relief in the near future and reserves the right to supplement this Motion as necessary and appropriate based on the status of any noticed foreclosure.

DATED this 28th day of September, 2021.

SHUMWAY VAN

By: /s/ Garrett R. Chase
Garrett R. Chase, Esq.
Nevada Bar No. 14498
8985 S. Eastern Ave, Suite 100
Las Vegas, NV 89123
Attorneys for Respondent
Bobby Antee

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On September 28, 2021, I caused to be served a true and correct copy of the foregoing RESPONDENT'S MOTION TO PARTIALLY LIFT STAY upon the following by the method indicated:

[X] BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

[ ] BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

/s/ Marina Scott
An Employee of Shumway Van

EXHIBIT 1

EXHIBIT 1

SHUMWAY • VAN
8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

DECLARATION OF BOBBY ANTEE

I, BOBBY ANTEE, declare under the penalty of perjury the following:

1. I am the Respondent/Defendant in this appeal.

2. The documents attached to this Motion to Lift the Stay of the Sale of the Marital Home are true and correct copies of court documents and links to social media posts that I provided, or which relate to Plaintiff's social media account.

3. I am the only party listed on the mortgage loan for the Marital Property.

4. I applied for a forbearance in June of 2020 to avoid foreclosure of the Marital Property.

5. Lindsey's continued refusal to pay the mortgage despite being ordered to within the Decree of Divorce has resulted in a current balance of approximately $22,500.

6. The COVID-19 forbearance expired on October 1, 2021 and is no longer in effect for the Marital Home.

7. I do not have the financial ability to make payments on the mortgage for the Marital Property.

8. Upon information and belief, based on Lindsey's recent social media posts, I believe that she has completely vacated the Marital Home and that it is currently vacant.

9. I declare, under penalty of perjury under the laws of the state of Nevada (NRS 53.045), the foregoing is true and correct to the best of my knowledge.[1]

EXECUTED this 23rd day of September, 2021.

BOBBY ANTEE

[1] **NRS 53.045** Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form.

EXHIBIT 2

EXHIBIT 2

ELECTRONICALLY SERVED
8/5/2020 10:41 AM

Electronically Filed
08/05/2020 10:41 AM
CLERK OF THE COURT

DECD

DISTRICT COURT – FAMILY DIVISION
CLARK COUNTY, NEVADA

LINDSEY SHARRON ANTEE, Plaintiff, vs. BOBBY DEE ANTEE, Defendant.	Case No.: D-18-573154-D Dept. No.: J Date of Hearing: 2/12/2020 Time of Hearing: 9:00 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE OF DIVORCE

This matter came on for trial on the 7th day of February, 2020 at 9:00 a.m. lasting one half day, and then continuing on the 12th day of February, 2020 at 9:00 a.m., lasting a whole day; Plaintiff LINDSEY ANTEE ("Lindsey") being present and represented by her counsel JARED B. JENNINGS, ESQ. and LOGAN G. WILLSON, ESQ. of the law firm JENNINGS & FULTON, LTD., and Defendant BOBBY ANTEE ("Bobby") being present and represented by her counsel GRAYSON J. MOULTON, ESQ. of the law firm SHUMWAY VAN. The Court having heard the evidence presented, including the testimony of witnesses, exhibits, and arguments of counsel, and after taking the matter under advisement, finds and orders as follows.

PROCEDURAL HISTORY

This Court has jurisdiction over the parties and that the parties are entitled to a full and final Decree of Divorce, consistent with the terms

and conditions contained herein, and that the parties are restored to the status of single, unmarried persons.

This is a short-term marriage. The parties were married on November 25, 2017 in Las Vegas, Nevada. The parties do not have any minor children and Lindsey is not now pregnant. Lindsey filed her Complaint for Divorce on June 26, 2018, and Bobby filed his Answer and Counterclaim on July 23, 2018.

The parties first came before the Court on October 19, 2018 for their Case Management Conference and hearing on Plaintiff's Motion for Orders of Temporary Spousal Support and Exclusive Possession. The Court entered temporary orders including: 1) granting Lindsey exclusive possession of the marital home; 2) ordering Lindsey to pay the mortgage associated with the marital home; 3) ordering Bobby to provide Lindsey with the name of the mortgage company; 4) ordering Bobby to pay all utilities in his name, whereupon payment being made Bobby could present Lindsey with a copy of the bills paid and Lindsey would be required to reimburse him; and 5) ordering Lindsey to pay all past due utility bills. An evidentiary hearing was scheduled for March 26, 2019. The Order for this hearing was entered on December 18, 2018.

On December 20, 2018, Lindsey filed a Complaint for Separate Maintenance in a separate action, case number D-18-581756-S. On January 10, 2019, Bobby filed a Motion to Dismiss or in the Alternative Motion to Consolidate. A hearing on the Motion was held on February 13, 2019. At that hearing, the parties stipulated to grant Bobby's request to dismiss Lindsey's Complaint for Separate Maintenance. The Court

denied Bobby's request for attorney's fees and ordered the trial in the above-titled case to remain as scheduled.

On March 26, 2019, the parties stipulated to continue trial to a later time. The Court then issued an Amended Case Management Order setting trial for August 2019. On June 11, 2019, the parties again stipulated to extend discovery deadlines and the trial date. A second Amended Case Management Order was issued, setting trial for February 7, 2020.

On January 8, 2020, Lindsey filed a Motion for Partial Summary Judgment requesting summary judgment as to the amount of money Lindsey could claim as separate property. Lindsey filed a request for Order Shortening Time to allow the matter to be heard concurrently with the scheduled trial on February 7, 2020. The Court granted Lindsey's request. Bobby filed his Opposition to the Motion for Partial Summary Judgment on January 24, 2020. The Court found at the outset of trial that there were material questions of fact, and denied Lindsey's Motion for Partial Summary Judgment.

Counsel for Plaintiff was ordered to prepare the Findings of Fact and Conclusions of Law ("FFCL") but withdrew from the case. Counsel for Defendant prepared proposed FFCL from the Court's journal entry. The Court substantially modified the proposed FFCL submitted by Defendant.

The majority of issues in dispute for trial stemmed from the purchase of the marital home. Shortly after the marriage of the parties, they purchased a residence. Lindsey did not have a good credit rating as she had not held a paying job in some time, but did have cash on hand

from her foundation. Bobby had good credit, but had some debt and little cash on hand.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Student Loans

The Court finds Bobby did not commit marital waste by paying the balance on his pre-marriage student loan of $8,374.03 with funds Lindsey provided and subsequently, Lindsey is not entitled to reimbursement. The Court further finds the parties purchased their home in January 2018 and began the process of looking for a home sometime in November 2017. Both parties were aware the student loans would need to be paid in order for Bobby to qualify for the mortgage necessary to purchase the home. Both parties were achieving their goal of obtaining a community property residence. Lindsey had knowledge that Bobby would need to pay off student loans and agreed to provide the funds necessary. The Court further finds the parties' realtor, Linda Naw, emailed a closing disclosure to the parties. On the closing disclosure admitted as evidence, the payoffs for the student loans were listed.

The Court further finds that Lindsey did not meet her burden of proof on the claim of marital waste under *Putterman v. Putterman*, 113 Nev. 606 (1997). Lindsey presented no evidence of compelling reasons for the Court to find waste such as Bobby hiding, wasting, misappropriating, or otherwise using the funds Lindsey contributed for his own personal interest. It was the lender who required Bobby's student loans to be paid in order to qualify to purchase a community

property asset. Almost all marriages involve some disproportion in contribution or consumption of community property. Such retrospective considerations are not and should not be relevant to community property allocation, and do not present compelling reasons for unequal distribution (hiding, wasting, or misappropriation of community assets) found in *Putterman*.

The Court further finds that Lindsey's testimony is not credible when she says that she had no knowledge that Bobby's student loans would need to be paid in order to qualify for the mortgage to purchase the marital residence. The Court further finds over a month before closing, Bobby was aware that he would have to pay his student loans at closing. Bobby and Lindsey discussed this very issue. They were both aware that the lender required Bobby's debts, including student loans, credit cards, and car loans, to be paid off prior to close or at closing. When Bobby ended up paying off certain debts prior to closing, it caused the lender to require an explanation into why he was conducting the transaction ahead of time, rather than at closing. Both parties were frustrated with the lenders requirements throughout the qualification and closing processes, because they did not understand why the lender was requiring explanations of their numerous financial transactions.

The Court further finds that the lender required Bobby to pay off the student loans in order to close on the purchase of the marital home. When the loan closed, the parties agreed that Lindsey would be repaid a certain amount in exchange for contributing her separate property funds towards the purchase, as will be described in detail herein.

2. Funds for the Marital Home

The Court finds Lindsey did not intend to gift her sole and separate property to the community when she executed gift letters for the purpose of Bobby qualifying for a mortgage to purchase the marital residence. The Court further finds that both parties intended and agreed that Lindsey would provide the funds for the down payment, escrow deposit, and to pay off certain pre-marriage debts owed by Bobby. Lindsey's sole and separate property funds were exclusively used for the down payment, escrow deposit, Bobby's auto loan payoff, and student loan payoff. All funds are traceable to Lindsey's separate property.

The Court further finds that during the closing process on the purchase of the martial home, that Lindsey signed multiple gift letters. However, the Court finds that the sole purpose for the gift letters was to help Bobby qualify for the mortgage to purchase the marital residence that would serve as community property. While Lindsey did add Bobby to her bank accounts as a joint holder in 2017, she then closed those accounts and opened a new account in her name only. It was from this account that the funds associated with closing were wired. Lindsey evidenced her intent that the funds would not be gifted multiple times. First, Lindsey evidenced her intent not to gift the funds when she attempted to cancel the purchase, even though she was not a party to the contract. Second, Lindsey required Bobby to sign a Letter of Agreement acknowledging the funds were not a gift before she would wire the funds to complete the purchase.

The Court further finds Lindsey drafted and signed the Letter of Agreement on the date of closing, January 17, 2018. The Letter of Agreement stated in pertinent part:

> "Lindsey Antee and Bobby Dee Antee are in agreement to the following with regards to: If divorce takes place $75,000 is returned to Lindsey Antee and the remaining equity will be split 50/50. I am aware of the community property law and upon divorce the property will be sold and $75,000 will be returned to Lindsey prior to our 50/50 split."

The Court further finds Lindsey sent this Agreement to Bobby while he waited at the title company to finalize the purchase transaction, and the parties had not discussed this agreement prior to Lindsey sending the same to Bobby that day. Lindsey's handwritten signature appears on this agreement.

The Court further finds that there was a second draft of the Letter of Agreement. Lindsey claims she never saw the second version except through discovery in litigation. This second version does not contain Lindsey's signature. The second version of the letter agreement contains a different format, but the operative terms only differ slightly. The second version states, in pertinent part:

> "Lindsey Antee and Bobby Dee Antee are in agreement to the following with regards to: If Divorce takes place $75,000 is returned to Lindsey Antee and the remaining equity will be split 50/50."

The Court further finds Lindsey's testimony that she wasn't aware of the second letter agreement, and hadn't seen it prior to discovery, is not credible. Lindsey sent a text message to Bobby asking if he was

going to sign the updated agreement. It is clear that Lindsey knew there were two agreements, but it is unclear which was first, and which was second in time. Even so, Lindsey had knowledge of two letter agreements.

The Court further finds that the operative terms in common are that, in the event of divorce, Lindsey would receive $75,000, with the remaining equity divided 50/50. The only operative term not in common is that the home would be sold. In her Complaint, Lindsey requested that the marital residence be awarded solely to her, and that Bobby should repay a loan of $75,000 to her.

The Court further finds that, concerning the common terms that Lindsey would receive $75,000 from the equity of the home and the remaining equity would be divided 50/50, there was a meeting of the minds and a contract was made. The Court further finds Lindsey communicated to Bobby that she would not wire the funds to close the sale if he did not sign the Letter of Agreement. As a result, the Court finds that Lindsey is entitled to $75,000 from the equity of the marital residence. The parties will divide the remaining equity 50/50.

The Court further finds Lindsey's testimony that she did not know she was wiring funds to close the sale is not credible. First, Lindsey went to a bank by herself and wired funds, utilizing instructions provided by the escrow company. By filling out a wire transfer form at the bank, her actions completed the process necessary for the purchase of the marital home. Second, Lindsey sent a text message to Bobby that she was sending the money, that she would sign a quitclaim deed for the home, and go to heaven to be with her son. Yet, at trial, Lindsey claimed she

did not wire the funds. Lindsey asked for a divorce the same day she drafted and signed the letter agreement, and wired the funds to the title company to close the transaction. Lindsey then claims she was shocked a few days later when she saw that funds were transferred from her account. It is difficult to find Lindsey's testimony credible, and this Court does not.

3. Misappropriation of $26,100.00

The Court finds Lindsey did not meet her burden of proof that the funds she gave to Bobby in the amount of $26,100 to place into his Goldman Sachs savings account, constituted community waste, or conversion of her sole and separate property. The Court further finds that prior to the parties' marriage, Lindsey gave Bobby $26,100.00 in cash to deposit into his savings account. This was an account Bobby held before marriage and had a balance of approximately $13,084.00 prior to the deposit of Lindsey's funds.

The Court further finds Bobby's wages were regularly deposited into this same account. There was a co-mingling of the parties' pre-marriage, and sole and separate funds once they were combined in Bobby's Goldman Sachs account.

The Court further finds Lindsey did not meet her burden of proof that when she gave Bobby the funds to deposit in his existing bank account, she did not intend a gift to the community of her sole and separate funds.

The Court further finds Lindsey did not meet her burden of proof that Bobby misappropriated her sole and separate funds for his own use. The managing spouse must keep the community and sole and separate

property segregated. See, *Todkill v. Todkill*, 85 Nev. 231, 495 P.2d 629 (1972). If community and separate property becomes intermingled, it is the managing spouse's burden to prove the separate nature of the property so claimed. See, *Lucini v. Lucini,* 97 Nev. 214, 626 P.2d 270 (1981).

The Court further finds Lindsey was the managing spouse of her own separate funds and provided no evidence that she intended to keep them separate, did not intend to gift them to the community, or that Bobby misappropriated them.

The Court further finds the parties' testimony and exhibits admitted into evidence showed that Bobby would transfers funds as needed from his Goldman Sachs account to his Bank of America account in order to pay community expenses. The Court further finds when Lindsey gave money to Bobby, Bobby would place the funds into his Bank of America account, and then transfer the funds to his online-only savings account with Goldman Sachs.

Separate property placed into joint tenancy is presumed to be a gift of half interest to the other party, unless the presumption is overcome by clear and convincing evidence. The opinion of either spouse is of no weight; the party who wishes to overcome the presumption must do so by presenting substantial evidence of conduct, expressions or intent at the time of taking, or during the holding of the property. *See Schmanski v. Schmanski*, 115 Nev. 247 (1999) and *Graham v. Graham*, 104 Nev. 473 (1988).

The Court further finds Lindsey failed to meet her burden of proof that the giving of the funds to Bobby to deposit to his account, did not

constitute a gift. Lindsey agreed to co-mingle her funds with Bobby's funds already in the account, and to use these combined funds for their use and benefit. It was the parties' intent to co-mingle these funds as joint savings, to be maintained as a community asset.

The Court further finds that the parties regularly used Bobby's American Express credit card for multiple purchases and entertainment expenses. Bobby would then pay off his credit card from the co-mingled funds. NRS 123.170 is clear that either spouse may, without the consent of the other spouse, convey, charge, encumber, or otherwise dispose of his or her separate property. Bobby did not commit waste or misappropriate the funds for his own benefit as the charges to his card were community in nature.

4. Fraud in the Purchase of the Marital Home

The Court further finds Lindsey did not meet her burden of proof by clear and convincing evidence that Bobby committed fraud against Lindsey by having the marital home placed solely into his name at the time of purchase. In order to demonstrate fraud, Lindsey was required to prove by clear and convincing evidence that 1) Bobby made a false representation or misrepresentations as to a past or existing fact; 2) that Bobby had knowledge or belief that such representation was false or that he lacked a sufficient basis of information to make the representation; 3) that Bobby intended to induce Lindsey to act in reliance upon the representation; 4) that Lindsey justifiably relied upon the representation; and 5) that Lindsey's reliance upon Bobby's representations was the cause of some damages. *See J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290-91 (2004).

This Court further finds Lindsey failed to meet her burden of proof of fraud. Bobby did not commit fraud upon Lindsey when he purchased the martial home in his name alone. The Grant, Bargain, and Sale deed Lindsey signed at the closing transaction was required by the lender in order to vest title in Bobby's name, as Bobby was the only one appearing on the mortgage. Lindsey claims she did not sign the deed, but her testimony is not credible. The Grant, Bargain, and Sale Deed was signed by Lindsey and stamped by a notary. Lindsey has since sued the notary (Nikki Bott) and the realtor (Linda Naw) involved in the transaction.

The Court further finds it was the intent of the parties that title would vest in both Bobby and Lindsey's names after the transaction closed, because the marital home would be a community asset. The Court further finds Bobby never intended to exclude Lindsey from ownership in the home, and that he always considered it their home. The Court finds his testimony credible.

The Court further finds the title was never changed to list Lindsey's name due to the serious marital discord that existed from the time the transaction closed, in large part due to Lindsey's distrust over how the transaction was conducted, although there was nothing illicit or fraudulent that occurred in the transaction. The terms of the transaction were not dictated by Bobby, but by the lender and the title company. However, Lindsey continues to blame Bobby and the realtor.

The Court further finds that Bobby made no material misrepresentations to Lindsey to obtain her signature on the deed. The lender required the deed in order to keep title to the property clear and to

avoid any community property or spousal claim of interest. However, as between the parties, they agreed it was community property. The single fact that Bobby did not execute a deed to convey a written community property interest to Lindsey was not fraud. Bobby always acknowledged that Lindsey owned an equal interest in the home.

5. 2017 Joint Federal Tax Return

The Court further finds both parties offered testimony concerning issues stemming from the joint tax return they filed for the year 2017. Lindsey provided evidence that $1,300.00 was garnished from the parties' tax refund due to Bobby's past-due child support obligations. Bobby provided evidence that Lindsey under-reported her income in 2017 which resulted in an IRS tax obligation of $10,170.00, levied against the parties jointly in 2019.

The Court further finds that Lindsey did not agree to pay Bobby's pre-marital child support obligation from the community funds they were to receive through their tax refund. As a result, Bobby owes Lindsey reimbursement for 100% of the funds taken or $1,300.00.

The Court finds that Lindsey under-reported her income for the year 2017. As a result, the IRS tax debt in the amount of $10,170.00 shall belong to Lindsey as her sole and separate obligation, and reimburse Bobby.

6. Reimbursements

The Court finds at the Case Management Conference on October 19, 2018, this Court ordered Lindsey to reimburse Bobby for any and all utilities he paid while she had exclusive possession of the marital home. At trial, the parties provided evidence that Lindsey had been the sole

occupant of the marital home since Bobby moved out in June 2018. From July 2018 on, Lindsey was the only party living in the home. Bobby requested reimbursement for all expenses he covered for the martial home while Lindsey lived there exclusively. Additionally, Bobby requested reimbursement from Lindsey for a July 2018 charge on his Bank of America credit card to her non-profit, "Ayden's Army."

This Court further finds that Lindsey shall be solely responsible for the expenses for the marital residence while she lived there exclusively. Additionally, Lindsey shall reimburse Bobby all mortgage payments, HOA fees, and utilities he paid after October 2018, pursuant to the Court order at that time. Bobby shall be reimbursed from Lindsey's share of the equity proceeds of sale of the marital residence, after she receives her initial $75,000.00.

This Court further finds that the charge Lindsey made on Bobby's credit card to "Ayden's Army" was not spent for the community, but was a contribution to her separate property foundation, for which she should reimburse Bobby. Bobby shall be reimbursed from Lindsey's share of the equity proceeds of sale of the marital residence, after she receives her initial $75,000.00. The Court shall retain jurisdiction to determine the distribution of the sale proceeds in accordance with this order.

7. Damages to the Marital Home and Lindsey's personal property

At trial, Lindsey claimed Bobby caused damage to her personal property when he removed his items from storage, and to the marital residence when he moved out.

This Court finds that Lindsey provided insufficient evidence at trial of these damages, so this claim must be denied for failure to meet her burden of proof.

8. Health Insurance

At trial, Lindsey claimed that she was owed reimbursement for medical expenses incurred as a result of Bobby removing her from his health insurance.

This Court finds that Lindsey provided insufficient evidence at trial of these expenses, so this claim must be denied for failure to meet her burden of proof.

9. Pre-Marital Debts

At trial, Lindsey sought reimbursement from Bobby for a fee associated with breaking her lease agreement for an apartment she rented prior to marriage.

This Court finds that this debt was Lindsey's sole and separate debt, and she shall be solely responsible for this obligation.

10. Attorney's Fees and Costs

At trial, both parties requested attorney's fees and costs from the other under various claims at law. This Court finds that each party may file a Motion for Attorney's Fees and Costs within thirty (30) days of this decision and the Court will determine the matter on the papers, in chambers.

DECISION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the parties are granted a full and final Decree of Divorce and returned to the status of single, unmarried persons.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither party is entitled to receive, nor shall receive, alimony from the other. Neither party put on evidence of financial need, nor requested alimony.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the marital residence located at 9564 Scorpion Track Court, Las Vegas, NV 89178 shall be listed for sale. Within ten (10) days of this Decree, Lindsey shall provide the names of three (3) realtors to Bobby. Bobby shall then have ten (10) days to select a realtor from the three (3) names provided. The parties shall sign a listing agreement with the realtor within ten (10) days of Bobby's selection. Both parties must approve any contract to sell.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, until such time as the property is sold, Lindsey shall continue to have exclusive possession of the martial residence and shall be solely responsible for the mortgage, HOA, utilities, and expenses associated with the martial residence.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from the proceeds of the sale of the marital home, Lindsey shall receive from the net sale proceeds the contracted amount of $75,000.00. The remaining equity shall be disbursed from escrow and divided equally between the parties, less the listed reimbursements to follow.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from Lindsey's share of the equity, after she receives the first $75,000, the proceeds shall be allocated equally, and from Lindsey's share, Bobby shall receive the following reimbursements:

- Mortgage payments from July-October 2018: $4,828.96;
- Republic Services payments: $292.15;
- Homeowners' Association payments: $451.00;
- Charge for Ayden's Army: $541.25;

In sum, Bobby shall receive a total reimbursement of $6,113.36. These funds shall come from Lindsey's share of the equity after receipt of the contracted $75,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Bobby shall reimburse Lindsey a total of $1,300.00 for funds garnished from the parties' joint tax filing in 2017. Bobby shall pay Lindsey from his share of the marital home sale proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lindsey shall be solely responsible for the IRS debt associated with the parties' joint tax filing in 2017, totaling $10,170.00, and shall hold Bobby harmless for the same. Lindsey shall pay Bobby from her share of the marital home sale proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lindsey shall be solely responsible for the costs associated with breaking her lease agreement, entered into before marriage, and shall hold Bobby harmless therefrom.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall retain his or her own personal property acquired prior to the marriage.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an A/B list shall be drafted by Bobby within ten (10) days of this Decree of Divorce. Lindsey shall then have ten (10) days to choose A or

B, as a division of the parties' personal property acquired during the marriage.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court will maintain jurisdiction over all matters regarding property to settle disputes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party may file a Motion for Attorney's Fees and Costs within thirty (30) days of this decision and the Court will determine the matter in chambers.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lindsey shall have her former name, Licari, restored to her if she so chooses.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall execute any and all legal documents, certificates of title, bills of sale, deeds or other evidence of transfer necessary to effectuate this Decree within five (5) days of being presented with such transfer documentation. Should either party fail to execute any of said documents to transfer interest to the other, then it is agreed that this Decree shall constitute a full transfer of the interest of one to the other, as herein provided, and it is further agreed that pursuant to NRCP 70, the Clerk of the Court, shall be deemed to have hereby been appointed and empowered to sign, on behalf of the non-signing party, any of the said documents of transfer which have not been executed by the party otherwise responsible for such.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if any claim, action or proceeding is brought seeking to hold the one

of the parties hereto liable on account of any debt, obligation, liability, act or omission assumed by the other party, the responsible party shall, at his or her sole expense, defend and hold harmless the innocent party.

Dated this 5th day of August, 2020

Rena G. Hughes

DISTRICT COURT JUDGE

EE8 985 8466 D051
Rena G. Hughes
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Lindsey Sharron Antee, Plaintiff	CASE NO: D-18-573154-D
vs.	DEPT. NO. Department J
Bobby Lee Antee, Defendant.	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Decree of Divorce was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/5/2020

Grayson Moulton	grayson@shumwayvan.com
Paula Lamprea	paulal@shumwayvan.com
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