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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ALEX GHIBAUDO,

Docket No.: 82248

Appellant,

vs.

TARA KELLOGG, et al.,

Respondent.

APPELLANT'S AMENDEND APPENDIX, VOLUME II

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2021, I served a true and correct copy of the foregoing *Appellant's Amended Appendix, Volume II*, via the Court designated electronic service and/or U.S. Mail, first class postage prepaid, addressed to the following:

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By: *//s//Alex B. Ghibaud.*

Appellant in Proper Person

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DOCKET NO. 82248

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1 out. There was a recommendation in the R case. Mr. Ghibaudo
2 filed an objection in the D case.

3 THE COURT: Yeah, there's no --

4 MR. READE: When --

5 THE COURT: I'm in the R case right now, and I have
6 the Master's recommendation that was filed September 2nd. The
7 next hearing in that case is in December, and it's a review on
8 the R case docket. So this may be a matter of semantics. But
9 there's no objection filed in the R case that I saw. And that
10 may be the -- that hearing date that I referenced when I went
11 over the procedural posture of the case at the beginning,
12 which is an objection to Hearing Master's recommendation.

13 You know, I just, for some reason, I thought that
14 was related to discovery. So you may -- you may want to make
15 a note to yourself, Mr. Smith, to clean that up before the
16 hearing next month. Okay? But I do have --

17 THE WITNESS: Well, yeah, I --

18 THE COURT: I do have --

19 THE WITNESS: I haven't --

20 THE COURT: I do have --

21 THE WITNESS: Your Honor, I --

22 THE COURT: a copy of the MROJ that was from the
23 August 12th hearing. It does have an aggregate of arrears,
24 penalties, and interest of about \$8,388. And there's a

1 nominal payment on the arrears since, I mean, 819. And that's
2 because the child's emancipated, right?

3 MR. READE: Yeah, Your Honor.

4 THE COURT: So, Mr. Smith, it does interest me as to
5 what you think the material relevance it is to this request
6 for relief and request for judgment, that this judgment be
7 entered. The principal sum is really small, it's like \$4,100
8 in relationship to the total judgment. Half the judgment is
9 --

10 MR. SMITH: Yeah, so --

11 THE COURT: -- interest and penalties.

12 MR. SMITH: So if we're, let's say, for example,
13 Your Honor, you -- you grant the motion and you decide that
14 the existing order should remain in place even after the time
15 of the, or prior to the emancipation of the child in those
16 months of -- if there were arrearages in the months preceding
17 the emancipation, because there's now an existing, at least
18 judgment.

19 And again, I want to state for the record I was not
20 involved in this objection, nor was involved in the plead --
21 the proceedings in the R case. I've only been hired to
22 address the matter that's now before the Court. The -- in
23 regard to that, Your Honor, I think the language in the decree
24 the way I read it is it seems very plain that the \$2,500 would

1 include the \$819 of support.

2 THE COURT: Okay. But I --

3 MR. SMITH: It's --

4 THE COURT: Okay. So you want the Court to say
5 there was some child support paid during this time. Of
6 course, he's in arrears which creates a whole other, you know,
7 math issue --

8 MR. SMITH: Well, what I --

9 THE COURT: -- for the Court. But -- but look, let
10 me just say this. Look, the evidence so far is developing
11 findings that in '17, he made 148. In '18, he made 180. And
12 in '19, he made 133. If the provisions of the decree prior to
13 filing this motion apply, I'm using math, it's over \$2,500 a
14 month, plus \$819.

15 So this is -- this appears to be nonsense to me as
16 it relates -- if the decree is enforceable, the amount is
17 going to be calculated at a much different number than the 25
18 figure. And --

19 MR. SMITH: But the --

20 THE COURT: And the amount of child support that --
21 what -- he would be paying, which is less than \$7,000 a year,
22 you know, let's assume that he paid all of it. You want the
23 Court to make a note, and I'm making a note to myself, that
24 you want to rule that we would back out the child support he

1 paid from the judgment on family support, right?

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: Okay. And that may be true if he was
4 making \$60,000 a year, or some number that would explain why
5 it would be below this -- this threshold. Okay? Look, I --
6 I've expressed my feelings about the decree many times. But
7 it's a judgment. It's a final judgment and stuck with it.
8 It's going to be enforced.

9 The issue, and where the lawyering in this case, and
10 the decision making is going to come in is what to do after
11 the receiving of this request. Do I terminate alimony, modify
12 alimony? Certainly do I fix it the way Mr. Ghibauda suggests.

13 But in either case, no matter what I do, there's
14 going to be a sound legal argument for both of you as to
15 whether I'm abusing discretion or whether or not I'm following
16 the law properly as far as how I deal with it. I think that
17 on your side, I'm going to hear an argument saying, Judge, we
18 have an alimony dispute, you need to apply the alimony law as
19 if we're looking at a modification.

20 But we can't go backwards. Okay? And I let all of
21 this stuff come in in context, because this is the first time
22 Mr. Ghibauda's been heard on this issue at this time. I
23 wanted to be able to lay out his process as far as through
24 this case, so that it's clearly on the record.

1 But when it really comes down to it, and he knows
2 this because he was in front of me on enforcement matters
3 before May 2019, he was required to put it on record that he
4 was asking for this relief in writing, which he did in May, in
5 May 2019. So before May '19, he's in trouble as far as
6 requesting relief.

7 But based on his income information, even -- if even
8 if -- if the Court finds that it's credible, it -- we're not
9 talking in terms of arranged where this child support payment
10 he makes is going to make any difference. Or not material
11 difference. I mean, if he paid his child support current,
12 then what the Court can do is make a ruling that the \$819
13 should be taken into consideration as an offset against a
14 portion of that payment, which is going to be a stretch based
15 on the language of the decree, you know, if I even consider
16 that.

17 I just wanted to know what --

18 MR. SMITH: Okay. So --

19 THE COURT: I wanted to know what you were talking
20 about. It looks like you paid substantially all of the
21 support that he still owes as of August, \$4,100. And it
22 sounds like he even objects to that. And, you know, that will
23 get sorted out some other time.

24 MR. SMITH: So, Your Honor --

1 THE COURT: But the -- at the most, he owes \$4,100
2 in principle sum, and statutory interest in penalty, right?

3 MR. SMITH: Yes, Your Honor. So the point I'm
4 making is, is what the Courts identified -- but I don't
5 understand how -- I truly don't. I see the language, it's
6 called family support. So, the entire amount was
7 contemplated, not just the \$2,500, the entire amount was
8 contemplated to include the determination of part of the child
9 support.

10 And I think that amount \$8,000 or what, \$9,600 per
11 year should be deducted from the amount of any obligation that
12 he has under the formula.

13 THE COURT: Yeah, but he --

14 MR. SMITH: And that's -- and that's --

15 THE COURT: You walked him through --

16 MR. SMITH: That's how I --

17 THE COURT: You walked him through pages 9 and 10.

18 And, you know, you didn't ask him about the two paragraphs
19 that just gut that argument. Okay? You didn't ask him about
20 five. You didn't ask them about three. So, you know, make --
21 make the case, put your evidence on, and then have the
22 argument with the Court. Okay? The --

23 MR. SMITH: Okay. Very good --

24 THE COURT: -- fact of the matter is that -- is that

1 there are other provisions in the decree which suggest that he
2 doesn't get any credit against support under support -- on his
3 financial support amount. Now --

4 MR. SMITH: Right. And if there's --

5 THE COURT: If we get --

6 MR. SMITH: -- included --

7 THE COURT: If we get above -- if we get above the
8 \$2,500 figure for this time period, then I will have to sort
9 of get my mind around what is the impact of the the support.
10 But I mean, not only, I mean, the upsetting part about this is
11 that it's a stipulated judgment. It's a contract. That's the
12 position of the Court.

13 But it's not approved as to form of content by
14 Mr. Ghibaudo. I -- it's hard to tell, you know, this language
15 is a final order. But they even give examples on how to apply
16 an enforcement of the order in the order. Those are things
17 that a judge would say, or that parties would agree to, on how
18 to interpret that. But, okay.

19 MR. SMITH: So, Your Honor, I would just point out
20 that this decree was drafted solely by Mr. Creel, and objected
21 to by --

22 THE COURT: Yeah. But the --

23 MR. SMITH: -- Mr. Ghibaudo.

24 THE COURT: But the terms of the decree that were

1 approved by the judge --

2 MR. SMITH: No. I understand, Judge. I --

3 THE COURT: -- you know, there's a provision in here
4 that, you know, it's a full and final agreement, and prior
5 negotiations to the agreement. I mean, there's all kinds of
6 recitals and findings in there that are contradict -- I mean
7 contradicted by that testimony from your client.

8 MR. SMITH: Well, Your Honor, we -- our point is
9 that if there's an ambiguity in the document, in other words
10 if it can be read more than one way, that would go against the
11 drafter of that agreement. So that's --

12 THE COURT: Yeah. I guess what --

13 MR. SMITH: -- the first part.

14 THE COURT: I guess what I'm trying to say is that I
15 don't really follow an ambiguity. I think it's clear as --
16 clear as mud --

17 MR. SMITH: Okay.

18 THE COURT: -- in three different provisions as to
19 what -- what it says. But that does not mean that you cannot
20 offer the evidence and make the argument to the Court. And
21 maybe by the time we're finished, I'll understand or be
22 persuaded by your point better. Okay?

23 MR. SMITH: The -- the other point, Your Honor, is
24 that I don't want to -- the Court has indicated that the

1 decree would hold. I want to point out, and I'm going to go
2 into that line of questioning, Your Honor. Well, I think I
3 have in regard to the breach of the covenant of good faith and
4 fair dealing that would apply to any agreement.

5 And that is the failure for Ms. Kellogg to meet her
6 end of the bargain, which included a good faith effort to seek
7 employment and become employed. And I don't -- I don't
8 believe that that has been -- I don't believe that --

9 THE COURT: Wait. That's a different piece of the
10 case.

11 MR. SMITH: Well, that's right. But --

12 THE COURT: You're --

13 MR. SMITH: But you had indicated that -- that the
14 the document was a contract. I'm just pointing out that that
15 claim is still before the Court as part of our defense to this
16 --

17 THE COURT: Yeah. It --

18 MR. SMITH: -- contract. It has been --

19 THE COURT: Well, where was it -- how else do you
20 explain what Judge Brown did than not to find that we have
21 stipulated judgment in this case? I mean --

22 MR. SMITH: Well, I don't -- I think the only way
23 that I can explain it is that she used a judgment that was
24 clearly, by its express terms, meant to only be a separation,

1 and was convinced by Mr. Willick that somehow not only was
2 that judgment binding on Mr. Ghibaudo in a -- a divorce
3 action, which is not so --

4 THE COURT: Well, let's not get --

5 MR. SMITH: -- and that --

6 THE COURT: Let's not get off on a tangent. You're
7 skipping over a bunch of steps, which are the motions to
8 enforce, and the motion for the entry of judgment, and the
9 motion for reconsideration. There's a series of hearings that
10 occurred between the time of the settlement conference and the
11 time the judgment got entered, which explain how you got
12 there. It wasn't like Mr. Willick walked across the street
13 and went in the Judge's office and made some sort of order
14 that they approved. There was one motion --

15 MR. SMITH: Yes. Yes, but --

16 THE COURT: -- practice that explains it. Okay?

17 MR. SMITH: But the motion -- I would submit, Your
18 Honor, the motion practice does not justify the entry of this
19 order. I think it's --

20 THE COURT: Well, okay. But --

21 MR. SMITH: -- failed on --

22 THE COURT: What I would say is that -- is that this
23 is the law of the case. This is --

24 MR. SMITH: No. I agree.

1 THE COURT: This is where we are.

2 MR. SMITH: I'm not disagreeing. But, Your Honor, I
3 think I have a reason to argue this. And that is the term.

4 THE COURT: All right. So --

5 MR. SMITH: The term is --

6 THE COURT: -- I don't --

7 MR. SMITH: -- it's still in effect.

8 THE COURT: I don't want to -- I've already spent
9 way much -- I shouldn't have interjected when we talked about
10 the R case. I regret it. But of course, you have every right
11 to present the case the way you want, and to make the
12 arguments and ask for the findings and orders that the Court
13 should make for you. Okay?

14 MR. SMITH: I understand that, Your Honor. Thank
15 you. I appreciate that. In regard to the -- I'm showing you
16 now what's been identified -- well, it hasn't been identified.
17 But, Your Honor, I would ask that you take judicial notice of
18 the -- is this the only schedule of arrears that's --

19 THE COURT: The last one was from October last year,
20 filed by prior Counsel in my --

21 MR. SMITH: October 2019?

22 THE COURT: Is that --

23 MR. SMITH: Okay. I've been handed one from 2017.
24 So I don't think I have the right one right now.

1 THE COURT: Well, let me -- let me -- I just had the
2 case in front of me. And I want to say that since he filed
3 this motion, there was a schedule that was filed by
4 Ms. Chattah. And I was just on it, and then I switched to the
5 D case, I mean the R case.

6 MR. SMITH: Your Honor, if I could just have a
7 couple of minutes to grab --

8 THE COURT: October 14, 2019. October 14th, 2019

9 MR. SMITH: Okay. Did you say December, Your Honor?

10 THE COURT: October 14th.

11 MR. SMITH: October, thank you.

12 THE COURT: 2019.

13 MR. SMITH: All right. I'll grab that real quick,
14 Your Honor. And I'll -- that'll be my last line of
15 questioning for Mr. Ghibaudo. Okay. I have that now, Your
16 Honor. I have the October 14th, 2019. I'm going to show that
17 to Mr. -- 19. It's a document called Plaintiff's schedule of
18 arrearage -- arrearages. And I'm going to show that to Mr.
19 Ghibaudo. And I would ask that the Court take judicial notice
20 of that document.

21 BY MR. SMITH:

22 Q Mr. Ghibaudo, is there -- I'm showing you what's
23 been filed in this action as a schedule of arrears by
24 Ms. Kellogg. Do you take issue with any of the arrearages

1 that were, or the payments that are identified in that
2 document? And let's -- let's start with the -- after the date
3 of decree of 2017. That's at the third page of the document,
4 though they're not numbered.

5 A I mean, I don't remember specifically monthly. I
6 mean, every month I was paying her, in 2017 especially because
7 she had Willick's office, and they were constantly threatening
8 litigation. I was paying her, like, \$1,000 a week at some
9 point. So, yeah, I take issue with this.

10 Q Okay. So at some point in time, you -- there was a
11 judgment entered against you on October 6th. And that's
12 referenced for \$29,752.27. Do you see that?

13 A Yeah.

14 Q Okay. And then there were payments.

15 A That's -- that's what Judge Ritchie asked Trevor
16 Creel and I to get together and come -- come to some kind of
17 numbers that we all agree on. And that's what the agreement
18 was.

19 Q Okay. And that amount was owed by you as of October
20 of 2017?

21 A Right.

22 Q Okay. And then there are payments after two
23 thousand -- it was appears to be November 2017 that are
24 identified. And it indicates that you paid, although you've

1 testified that you paid amounts in 2018, she's indicating you
2 did not pay amounts in January, February of 2018.

3 A Well, that's paid. I paid it in March after we had
4 contempt proceedings here in front of Judge Ritchie.

5 Q Okay. So even though there's arrearage statement of
6 \$2,500, you made that full payment in March of --

7 A Right.

8 Q That's reflected in her schedule.

9 A That's right.

10 Q And then you made payments of \$2,500 it appears
11 through December 1st of 2018, and then also through -- in
12 2019. However, beginning in November, actually of 2018, she's
13 indicating that you did not pay any additional payments toward
14 the support. Is that true?

15 A Another -- I mean, my recollection is that for 2018,
16 I paid her the entire amount that I owed her.

17 Q Well, looking at your -- I think one way we could be
18 -- we could figure that out is by looking at your 2018 return
19 because the document reflects the payment of a certain amount
20 of alimony.

21 A You may be correct. I just don't remember.

22 Q If you'll look to Exhibit, what is it, yeah, 18.

23 THE COURT: U.

24 BY MR. SMITH:

1 Q Exhibit U. It indicates that an amount of alimony
2 you've paid, the amount is -- where is it on the old form.
3 \$49,793. Is that your understanding of the amount that you
4 paid that year for alimony?

5 A Yeah, because I would just pay her every week some
6 amount that would add up to \$2,500 at the end of the day. I
7 calculated over the course of 52 weeks. I just paid her.

8 Q Okay. All right. And since January 1st, 2019, the
9 schedule of arrearages does not show any payments whatsoever.
10 Have you made any payments since January of 2019?

11 A I have, yeah. I've paid -- not a lot. And I do
12 acknowledge that I owe, for sure. And that's -- that
13 coincides with the additional hires and why it became
14 difficult again to -- to make the payments because now I took
15 on, you know, more employees.

16 Q So in 2019 --

17 A I had to.

18 Q -- your return indicates that you paid --

19 MR. SMITH: Looking at Exhibit B, Your Honor.

20 BY MR. SMITH:

21 Q It looks like the total alimony payments were --
22 where is it at. I don't think there's a deduction for
23 alimony. Do you see it here?

24 A I don't see that one.

1 Q In the form. Schedule 1, I don't think it's that
2 where it s. So I don't see any deductions for --

3 A I was --

4 Q -- alimony at that point.

5 A I was paying her primarily through the enforcement
6 action and child support court. So every time she dragged me
7 into court for child support, I would pay her. And that was a
8 lot. There's been a lot of hearings in child support.

9 Q Okay.

10 A Parallel hearings --

11 Q But you don't recall paying her outside of the child
12 support court action?

13 A No.

14 Q All right.

15 A I don't think I did.

16 Q All right.

17 A So they -- the order that was generated by the child
18 support court's probably the most accurate because that's
19 who's been dealing with this issue of non-payment since 2019.
20 What they determined was that I owe her like \$4,100, like
21 Judge Ritchie said.

22 Q Does your -- is your -- is the child support court,
23 to your knowledge, collecting your alimony as well?

24 A It is. They were doing both until she -- until

1 Nicole aged out. But they were collecting -- they were --
2 they were -- the enforcement was for \$2,500 that I recall.
3 Maybe I'm wrong.

4 MR. SMITH: I'll pass the witness, Your Honor.

5 THE COURT: Okay. Mr. Reade, I know we've been
6 going for a couple -- over an hour. So do you want to take a
7 short break, or do you want to just go in and begin your
8 cross?

9 MR. READE: Your Honor, if the Court needs a break,
10 I'm happy to break. Otherwise I'm prepared to let's just move
11 forward.

12 THE COURT: All right. Well, we only have another I
13 guess hour before we take a break anyway. So why don't --
14 Mr. Reade, why don't you begin your cross? If anybody needs a
15 break, let me know. Okay?

16 MR. READE: Thank you, Your Honor.

17 MR. SMITH: Thank you.

18 MR. READE: Mr. Ghibaudo --

19 MR. SMITH: Your Honor, if we could take a quick --
20 I need to just take a quick bathroom break.

21 THE COURT: All right. So, five minutes.

22 MR. READE: That's fine.

23 THE COURT: Five minutes?

24 MR. SMITH: Five minutes.

1 THE COURT: All right. See you in five.

2 MR. SMITH: Sure. Thank you, Your Honor.

3 (Recess from 10:51 a.m. to 10:58 a.m.)

4 THE COURT: We're here on 5P2043. Mr. Ghibaudo, do
5 you understand you're still under oath?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And, Mr. Reade, you're ready to go?

8 MR. READE: I'm ready to go. Thank you, Your Honor.

9 THE COURT: All right. Whenever you're ready.

10 CROSS EXAMINATION

11 BY MR. READE:

12 Q So, Mr. Ghibaudo, let's -- let's start where we
13 finished. Your Counsel ran you through your tax returns
14 regarding payment of the family support. You haven't provided
15 actually any payment records in this litigation, have you?

16 A I have. It's in the taxes.

17 Q No, no --

18 A It's in the --

19 Q No. You -- my question is --

20 A Everything that I -- it's reflected in either the
21 PayPal account or in the Chase bank statements because I never
22 paid her cash, ever.

23 Q But you've never prepared your own schedule of
24 arrearages in this case, correct?

1 A Why would I? What do you mean? She doesn't owe me
2 any money.

3 Q No, no, no. My point is you've never provided a
4 responsive accounting of the amounts that you claim you have
5 paid.

6 A I'm not obligated to.

7 Q But that would be a no, you have not?

8 A That's right, because I'm not obligated to.

9 Q Since 2017, are you able to tell the Court the total
10 dollars that you've paid?

11 A Yeah. I paid the minimum amount, \$30,000 in 2017,
12 and \$30,000 in 2018. And since then, the payments are going
13 to be reflected in the payments I made to get through the
14 child support court for the most part. So every single
15 payment I ever made her is reflected somewhere.

16 Q Okay. And so, Mr. Ghibaud, you have the --

17 A (indiscernible) --

18 Q -- exhibits in front of you.

19 A Let me finish the -- let me finish the -- the
20 question.

21 Q Sure.

22 A By answering it, that is. The DA's office did an
23 audit, and they determined that I owe whatever it is that I
24 owe. And I if you recall, at the hearing, I said I didn't

1 object to necessarily the amount. I objected to the fact that
2 of trying to get me suspended, which is ridiculous when you're
3 trying to collect money from a client for a client. But
4 that's your judgment. Good for you. But that's what I owe,
5 \$9,000, whatever the child support court said. That's what I
6 say I owe. Prove that I don't. But I don't see a different
7 amount.

8 Q Mr. Ghibaudo, but you agree that the child support
9 court indicated that it had terminated trying to calculate
10 family support, or collect family support as of the date of
11 the emancipation, correct?

12 A No. They said they're -- they're not going to
13 collect alimony because -- from after the point that Nicole
14 emancipated in June of 2019. So the collection after --

15 Q Correct. When you --

16 A -- is based on \$819 since then.

17 Q Okay. And -- and you also agree that that audit,
18 prior to that date, was based upon the \$2,500 figure as
19 opposed to the gross monthly income figure that we talked here
20 today, correct?

21 A Prior to two thousand and -- June of 2019, they were
22 taking into consideration the \$2,500, the full amount.

23 Q Correct. All right. Now, you indicated in your
24 testimony that when you hired these new employees, there is

1 evidence that shows that the revenue was going up. Can you
2 point us to the exhibit that shows the revenue going up after
3 the addition of the employees?

4 A Yeah. Last year's tax returns, 2019 reflects a
5 gross income of something like 550,000, which is more than the
6 year before. It's pretty simple.

7 Q And the reason why I asked you that, Mr. Ghibaud, so it's your understanding that the gross income for 2019 was
8 \$500,000?
9

10 A I believe so. I don't -- I don't know. But I
11 believe it was somewhere around there.

12 Q Okay. Now, I believe you testified that at the time
13 that you entered into the agreement, and correct me if I'm
14 wrong, that you were considering employment, and that the
15 amount that you were going to consider for employment would
16 have been \$120,000 a year, correct?

17 A You're incorrect. What I -- what - what I said if I
18 went out into the market now, I would expect to get paid
19 between 120 and 180,000. I don't -- at that time, no, I
20 wasn't worth that at all.

21 Q Okay.

22 A I've got a lot more experience now.

23 Q Okay. So -- so currently, you would have
24 anticipated a salary between \$10,000 and \$15,000 per month?

1 A Yeah. But that doesn't mean I'll get it, especially
2 not now. I think if I went out into the market to try to get
3 a job, you're lucky to -- to get a job making \$82,500 now.

4 Q Mr. Ghibaudo, you --

5 A Especially --

6 Q Sure. Mr. Ghibaudo, we talked about your -- we
7 talked about your tax returns. And I just want to go over
8 these briefly. Your 2017 tax return shows an adjusted gross
9 income of \$148,000, does it not?

10 A If that's what it shows. I'm not -- I don't have it
11 in front of me.

12 Q Sure. Let's go ahead and look at it. Can you look
13 at Exhibit 34, please?

14 A All right.

15 Q Okay. Are you there?

16 A Yeah.

17 Q And you look on line 22. It says you have an total
18 income of 148,258, doesn't it?

19 A Yeah. Line 22.

20 Q And when we look at Exhibit 35 for 2018.

21 MR. SMITH: So, Counsel, just for the record, Your
22 Honor, it might be easier for the record, since we utilized
23 the tax returns in the Defendant's books, just so we have
24 continuity, maybe we could use the tax returns, or are there

1 -- is there a difference, Mr. Reade?

2 THE COURT: Well, isn't -- isn't T --

3 MR. READE: No --

4 THE COURT: -- exactly the same as 34? I mean, I
5 don't -- I don't have any problem with Mr. Reade. He's
6 prepared using his exhibits. He can use his exhibits. It
7 looks like --

8 MR. SMITH: Okay. I don't have a problem --

9 THE COURT: -- T and 34 are the same.

10 MR. SMITH: -- with that, either. I just thought --
11 I don't have a problem. I was just saying for continuity's
12 sake, the record might be clearer if we were using the same
13 document. But we can -- we can fix that when we, you know --

14 THE COURT: Well, if you want to be more correct --

15 MR. SMITH: -- want to look at the record.

16 THE COURT: -- they are the same document. They're
17 just marked differently. That's all.

18 MR. SMITH: Yes. Thank you, Your Honor.

19 THE COURT: All right. Mr. Reade, go on.

20 MR. READE: I appreciate that, Your Honor.

21 BY MR. READE:

22 Q So in fact, Mr. Ghibaudo, when you look in your 2018
23 return, line 22 --

24 A What exhibit?

1 Q I'm sorry. If you look in Exhibit 35.

2 MR. SMITH: I have to grab the next book. Sorry.

3 Hold on. I had to break it apart.

4 THE WITNESS: All right.

5 BY MR. READE:

6 Q All right. If you look at line six, it has a total
7 income of \$180,285. Do you see that?

8 A Yeah.

9 Q Okay. And when we look at Exhibit 36, which is your
10 2019 return --

11 A Yeah.

12 Q Okay. And it has a total income of, I show 133,490.
13 Do you see that on line 7-A?

14 A That's right.

15 Q Okay. And so that's -- those numbers that we just
16 talked about, those would be your gross income for years 2017,
17 2018, and 2019, correct?

18 A As far as I know.

19 Q Okay. And those are, those are actually in excess
20 of the amount that you said, or I'm sorry -- let me strike
21 that. That's within the range of what you said you would
22 expect if you took a salary of between 10 and \$15,000 a month,
23 correct?

24 A Now. But at the time of divorce in 2016, I couldn't

1 get a job making 80,000. Then I was nobody. I didn't --
2 nobody knew me. They only knew this guy that was suspended.
3 There was no way that I could do that. But now I've
4 established myself to some extent, and people know me.

5 That's through no -- no help of your client, believe
6 me. She's done everything to make my life more difficult, not
7 easier. So that was my efforts entirely. What I was worth in
8 2016 reflects what she did to me. What I'm worth now reflects
9 me without her.

10 Q But, Mr. Ghibaudo, when you -- when the decree was
11 entered in 2017, the decree expressly contemplates that your
12 income is going -- has the ability to go up, but will never
13 drop below a minimum support of \$2,500. You'd agree with
14 that, wouldn't you?

15 A Well, yeah. I guess. I mean, it's set up so that
16 it's -- it's somewhat tied to my income.

17 Q Sure. Now, you told the Court that you had taken
18 out a PPP loan earlier this year.

19 A Yeah.

20 Q Okay. And you're aware there was a request for
21 production of documents for all loans that you've taken out.
22 Do you recall that?

23 A I don't see that as a loan, really. I don't think
24 I'm going to have to pay that back because I used it entirely

1 for the -- first of all, the 4,000 of it is the EIDL which I
2 do not have to pay back. That's just a grant from the
3 government. My understanding right now, I'm not required to
4 pay back that PPP at all. And there's still -- we're still
5 waiting to figure out if it's going to be forgiven. And I
6 think for a company my size, it will probably be forgiven
7 because the entirety of it was used to pay payroll in April
8 and in June. And rent.

9 Q You indicated to us that you've turned over your
10 bank statements since August of 2019. Can I get you to look
11 at the exhibit index at the front of any of Plaintiff's
12 binders?

13 A Okay. Yeah. Okay.

14 Q You're there?

15 A Yes.

16 Q And I will represent you, Mr. Ghibaudo, that we have
17 included as exhibits every document that's been produced in
18 this litigation.

19 A Are you testifying? I don't know. Is that a --

20 Q No, I'm --

21 A What's the question, Counsel?

22 Q The question is, can you point us to where in here
23 there are any bank statements after August of 2019?

24 A In your exhibits? You didn't put it in there. I

1 don't know why.

2 Q Okay. Mr. Ghibaudo, are -- as you sit here, is it
3 your testimony to this Court that bank statements after August
4 31, 2019 have been produced in this litigation?

5 A I gave them to my lawyer. Whether my lawyer's
6 office produced them to you is another question. But I gave
7 them -- I gave them authorization for my accounts. So they
8 had access to all of it.

9 Q Okay. But as you sit here, you're not aware --

10 A (indiscernible) suggesting that I'm trying to hide
11 something. I'm not. You have my taxes.

12 Q No. Mr. Ghibaudo, what I'm asking is, you're not
13 aware as you sit here of any bank statements after August 31,
14 2019, are you, being produced in this litigation?

15 A I'm telling you that my understanding is that they
16 were produced because I gave them access to my accounts, and I
17 wouldn't -- there's no reason why they would not be.

18 Q You were asked for all of the receipts that back up
19 any of these tax returns. You --

20 A I don't keep nothing like that.

21 Q You don't --

22 A I just don't --

23 Q -- keep receipts?

24 A No. The receipt is the bank account, sir. This

1 isn't 1982. When I go and pay for gas, I run my card, and
2 there it says gas station X amount of dollars. That's my
3 receipt. I'm not keeping paper receipts in my wallet. I
4 don't even have a wallet.

5 Q So, Mr. Ghibaud, you're -- you're an attorney.
6 Under Bobby Berosini, you understand that there are certain
7 recoverable expenses that you have to attach receipts for,
8 right?

9 A I have no idea what you just said. I'm a family
10 lawyer. I'm not an accountant.

11 Q Well, you file, I presume in your practice, motions
12 for attorneys fees and costs, have you not?

13 A Very rarely, actually. Very rarely.

14 Q And in the course of that, you've never attached any
15 receipts showing the expenses that you've incurred?

16 A So a motion for fees and costs in family court,
17 receipts, really? No, I haven't. If you -- if you ask for
18 attorneys fees and costs, you attach an invoice or billing
19 statement. You don't attach supporting documentation,
20 Mr. Reade.

21 Q Mr. Smith asked you some questions about at the time
22 of the decree. You did not file an appeal from the decree,
23 correct?

24 A Unfortunately not. I should have because that

1 decree's a, as the Judge once said, it's a timeshare contract
2 from hell. It's absurd. I would have never have agreed to
3 that. Permanently, that decree, that's a joke. If I was --
4 recommended to a client that you take that deal, I'd be
5 disbarred.

6 Q And in fact, I think you've testified that Judge
7 Brown actually went through the proceedings in this matter,
8 and she denied certain proceedings from ending up in the final
9 decree, correct?

10 A Well, they were asking for all sorts of provisions
11 that were never discussed or agreed to. So they filed a
12 motion to enforce, a motion to modify terms under the guise of
13 a motion enforce or to enter an order. And so I was disputing
14 that. A lot of this stuff that they were claiming, she didn't
15 allow, like, for example, \$500,000 life insurance policy, as I
16 would -- I would never have signed my own death warrant. I'd
17 be dead tomorrow if that happened. But they wanted to throw
18 that in there.

19 MR. READE: Your Honor, at this time, I don't have
20 any more questions for Mr. Ghibaud. I thank you for your
21 time today.

22 THE COURT: Okay. Mr. Smith, redirect?

23 MR. SMITH: So, yes, Your Honor.

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REDIRECT EXAMINATION

BY MR. SMITH:

Q So, Mr. Ghibaudo, you were relying on the firm to gather your records from authorizations that you provided us in 2019?

A That's right.

Q Okay. So in regard to the --

THE COURT: Hold on. Hold on a second. Mr. -- Mr. Reade, are you addressing the Court, or were you just talking offline?

MR. READE: Your Honor, I am so sorry. My computer showed I was on mute.

THE COURT: Yeah, what I'm --

MR. READE: So I do apologize.

THE COURT: What I'm saying is I saw your lips moving. I didn't know if you were trying to address the Court, or talking offline.

MR. READE: Your Honor, I do -- I do apologize. My client was vociferously --

THE COURT: Oh, okay. Thank you.

MR. READE: I was trying to respond to her.

THE COURT: That's a -- that's a consequence of the setup we have here. I just wanted to make sure that if you were stating some sort of objection, that you would be heard

1 on that. I'm sorry, Mr. Ghibaudo. Please complete your
2 answer.

3 MR. SMITH: I think he did, Your Honor. I think he
4 --

5 THE WITNESS: Well, I think --

6 THE COURT: All right.

7 THE WITNESS: -- it wasn't just the firm
8 optimization, but also the fact that when a bookkeeper and the
9 -- and the CPA completed their job, they forwarded everything
10 to my attorney's office, which in turn forwarded it to
11 Mr. Reade, which was my understanding.

12 BY MR. SMITH:

13 Q So by --

14 A If that didn't happen, it's not because I'm trying
15 to hide anything. If we want to continue this hearing so that
16 you could see that everything is straight, I'm more than happy
17 to.

18 Q In regard to the information you were referring to
19 that was provided by your accountant and bookkeeper, I want
20 you to turn to, let me see the index.

21 A Yeah.

22 Q If you look to Exhibit M, so let's get that in front
23 of Mr. -- Exhibit M. Do you recognize the -- the documents
24 that are contained in Exhibit M?

1 A Yeah. Those are payroll receipts or payroll
2 records.

3 Q Okay. And it also, according to the -- the -- can I
4 have the next one? Can you just hand it to me, please? It's
5 there. Thank you. In the document, there are also, there's
6 the payroll journals and the -- through 2019. Do you see
7 that?

8 A Yeah.

9 Q Okay. So it's your understanding that -- that the
10 accountant, when the bookkeeper was supposed to provide my
11 office with documents after these records that went through
12 the 2019 return was done?

13 A Right.

14 Q Okay. You don't have any idea whether they did
15 that, do you?

16 A I don't know. I was --

17 Q Okay.

18 A That was Dawn and a former associate, Helen.

19 Q All right.

20 A They were in communication.

21 MR. SMITH: Okay. But Ms. Tallerton (ph) was -- was
22 -- all right. Well, thank you on that. All right. No
23 further questions, Your Honor.

24 THE COURT: Okay. Mr. Reade, any follow up?

1 MR. READE: No. That's all. Thank you, Your Honor.

2 THE COURT: All right. Excellent. Then let's --
3 are you going to rest, Mr. Smith, or are you going to call
4 Plaintiff in your case?

5 MR. SMITH: We'll be calling Plaintiff in our case,
6 Your Honor.

7 THE COURT: So I guess that's next, right?

8 MR. SMITH: Yes.

9 THE COURT: Is Ms. Kellogg available with you, Mr.
10 Reade? All right.

11 THE PLAINTIFF: I am.

12 THE COURT: All right. Outstanding. Good. So,
13 Ms. Kellogg, we're going to give you an oath to tell the
14 truth. You don't need to stand, just raise your hand.

15 (Oath administered)

16 THE WITNESS: I do.

17 THE CLERK: Thank you.

18 THE COURT: Whenever you're ready, Mr. Smith.

19 MR. SMITH: Yes, Your Honor. I'm just gathering the
20 -- these trial binders are huge. So I just had to move them
21 around. All right.

22 TARA KELLOGG,
23 called as a witness on behalf of the Defendant, having first
24 been duly sworn, did testify upon her oath as follows on:

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DIRECT EXAMINATION

BY MR. SMITH:

Q Okay. So, Ms. Kellogg, do you go by Ms. Kellogg solely, or do you go by -- or do you use Kellogg-Ghibaudo? That was in one of the pleadings, but I didn't know whether you still go by that.

A I just go by Kellogg.

Q Kellogg? Okay. Very good. And it's okay to call you Ms. Kellogg?

A Yes.

Q Okay. If you'll look to, in our first volume, just let me know when that's in front of you.

A Oh, I'm sorry. You cut out. Can you repeat that?

Q Yes. Can you -- can you review the -- the volume one, Exhibit B, please?

A Okay.

Q And you now have that in front of you?

A I do.

Q And you recognize that to be the financial disclosure form that you -- you signed in this case, correct?

A That is correct.

Q All right. And page 7 of that document is your -- your signature, correct?

A It is.

1 Q And you read the lines prior to that regarding
2 swearing under penalty of perjury that you've read and
3 followed instructions, et cetera? You -- you read that --

4 A Yes.

5 Q -- right?

6 A Yes.

7 Q So is this-- has there been any material changes in
8 this, that the information that's contained in this document
9 since the time that you filed it in June of 2019?

10 A You're going to have to elaborate.

11 Q I asked if anything --

12 A I don't know -- material that --

13 Q Let me -- let me ask it a different way so it's --
14 it's plainer to you, I hope. Has anything changed in the
15 numbers that you included, or did not include in this
16 financial disclosure form? And please take the time to review
17 it.

18 A I believe when I filled this out -- are you -- are
19 you asking about income, are you asking about -- there's --

20 Q We can walk through page by page if you'd like,
21 ma'am. We can --

22 A Okay. Thank you.

23 Q That'd be easier?

24 A Yes.

1 Q Okay. So the first -- the first -- is there
2 anything on the -- the first page that has changed since you
3 have testified in this action? I mean, excuse me, since you
4 filed this financial --

5 A No.

6 Q -- disclosure?

7 A No.

8 Q Okay. The -- you have been -- since 2016, you have
9 been employed for certain -- I mean, you've had a job,
10 correct?

11 A In 2016?

12 Q Since that time.

13 A No.

14 Q So you've not made any income in 2016 for -- or and
15 further since from any kinds of employment, correct?

16 A That is correct.

17 Q You've completed a certain amount of college,
18 correct?

19 A I have.

20 Q What is the amount of college that you've completed?

21 A I now have an associate's degree, and I am seven
22 classes away from obtaining a bachelor's in psychology.

23 Q And you're still attending college for that purpose?

24 A Well, unfortunately --

1 Q Is the answer yes or no, ma'am?

2 A I am not.

3 Q When did you stop attending college?

4 A When Alex stopped paying me.

5 Q And so when was that?

6 A He stopped paying October 31st, 2018.

7 Q Okay. Since October 31st, 2018, you've not attended

8 any college courses?

9 A I was able to complete that semester.

10 Q Okay.

11 A And since then, no, I have not. So this is the

12 third semester I have been unable to attend school, which by

13 the way, I would have obtained my psychology degree.

14 Q Okay.

15 A But --

16 Q So, and what you're indicating is that -- when you

17 go to school, ma'am, you -- you go to classes, correct, prior

18 to the COVID period of time, right?

19 A Yes.

20 Q You drive to those classes?

21 A I -- it -- a couple classes, yes. Sometimes if it's

22 online, then no.

23 Q Okay. But -- but in -- on those classes that were

24 not online, you drove to the college, right?

1 A Correct.

2 Q You sat in classes and listened and -- and took
3 notes, correct?

4 A Yeah. Well, I have a note taker because I'm part of
5 the DRC, the Disability Resource Center. So I have a note
6 taker that takes notes for me.

7 Q Okay. And did you -- you actually completed those
8 classes successfully, correct.

9 A I did.

10 Q And you received an associate's degree since the
11 time that you were actually divorced from Mr. Ghibaudo,
12 correct?

13 A Correct.

14 Q And up until -- between the time of 2016 through
15 2018, you did attend college during that period, correct?

16 A Correct.

17 Q If you look at your -- you have not produced as part
18 of anything in this case anything that evidences that you've
19 searched for employment, correct?

20 A That's correct.

21 Q And in fact, you have not searched for employment
22 since 2016, correct?

23 A I did apply at the We Care Foundation in 2019, at
24 the end of 2019. I was hired. However, it was brought to my

1 attention that Mr. Ghibaudo was a regular occurrence at the We
2 Care Foundation. And due to his history of domestic violence,
3 and being that I would be caring for seven heroin addicts, and
4 Mr. Ghibaudo coming in whenever he'd want, and also seeing my
5 vehicle outside, and he's already done things to my vehicle in
6 the past --

7 MR. SMITH: I move to strike --

8 THE WITNESS: -- I said --

9 MR. SMITH: -- as unresponsive, Your Honor.

10 THE COURT: Yeah. This is -- this is an adverse
11 counsel asking you leading questions. And I want you to
12 carefully listen to his questions and just respond to his
13 questions. He asked if you --

14 THE WITNESS: Okay.

15 THE COURT: -- applied for a job, and you said you
16 applied at We Care, and that you were hired. He didn't ask
17 you to give me the --

18 THE WITNESS: Correct.

19 THE COURT: -- story about why you didn't go there,
20 or didn't take the job, or anything else. That's something
21 that if it's important, Mr. Reade can discuss with you. So
22 the witness is directed to just --

23 THE WITNESS: I understand.

24 THE COURT: -- listen to --

1 THE WITNESS: Yes.

2 THE COURT: -- the question and answer just the
3 question. Go ahead, Mr. Smith.

4 MR. SMITH: Thank you.

5 BY MR. SMITH:

6 Q Ms. Kellogg, did you -- the job that you applied for
7 at We Care, what was your understanding of your duties at that
8 job?

9 A Chairing meetings, caring for seven alcoholic
10 addicts. Basically a support staff person that would conduct
11 AA meetings, conduct the regular -- whatever the director
12 would put in front of me for the to dos, that's what I would
13 do.

14 Q What were the type of to dos that you anticipated
15 performing for the director at We Care?

16 A Monitoring the patients --

17 Q And how do you do that. Ms. Kellogg, how do you do
18 that?

19 A Visual. Visual. If they're having problems, if
20 they've complained of they need to go to a doctor, or if they
21 have high blood pressure, if I have to contact 911 because
22 somebody is complaining of chest pains. There's also a lot of
23 the -- the patients that are on some sort of probation or
24 parole, so they have an ankle monitoring bracelet.

1 So a lot of times the police will show up, or
2 sometimes the battery goes dead on their ankle monitoring
3 bracelet. So with that aspect, if there's outside meetings
4 that are on a specific day, then I then take the seven
5 patients to an outside AA meeting. And I'm the one
6 supervising all seven patients during that time. --

7 Q How do you --

8 A Any --

9 Q How do you take the seven patients? How do you do
10 that? Is it -- is there, like, a transportation bus?

11 A No. There's a minivan that --

12 Q Okay.

13 A -- is provided by We Care. And it holds seven
14 people safely with seatbelts.

15 Q And you would -- you would essentially drive them in
16 the minivan to the meeting, essentially?

17 A Correct.

18 Q Okay. And then I didn't mean to interrupt you, I
19 just wanted some clarification on that. You were describing
20 other duties that you understood that you would have, or the
21 things that would be provided to you by the director for you
22 to do.

23 A Correct.

24 Q Okay. What -- what are those things? You -- you

1 had described now the monitoring, and working with the police,
2 and being involved in meetings with the -- the participants in
3 the program. And then also transporting them to certain
4 meetings, overseeing meetings and AA, and conducting, I think,
5 I don't know if you used the word interviews, but discussions
6 with the -- with the individuals.

7 What other -- what other tasks would be involved in
8 your job?

9 Q Going through any steps that they may be missing
10 before their 30 day treatment is -- has been completed.

11 Q When you refer to steps, are those the steps that
12 are outlined in an AA program, or is that something else?

13 A That's correct. That's correct.

14 Q Okay. And so you would basically monitor them like
15 a sponsor so to speak, to determine whether or not they were
16 having trouble reaching their goal of meeting those steps. Is
17 that a fair statement?

18 A Well, the steps are not necessarily goals. They're
19 -- they're suggestions on how to remain sober. And so there's
20 a, you know, there's paperwork that's provided to all the
21 patients when they first come into We Care. And so it's a
22 packet. And the packet needs to be completed by the 30 days.
23 And so whether it's they're missing step five, or they're
24 missing step eight, then I need to go through whatever step

1 that the director has assigned for me to go through with a
2 particular patient.

3 Q Okay. So you look over the paperwork, look over the
4 director's direction, and then you help them prepare that
5 paperwork? Assist them --

6 A Correct.

7 Q -- to prepare that paperwork properly. Okay.

8 A Yeah.

9 Q And you -- now you've talked about the the work that
10 you did there, the things I mentioned earlier. What other
11 duties would be provided to you by the director, as you
12 anticipated, when you worked there?

13 A Administering any medications that the patients are
14 on.

15 Q What -- what would that entail? What would the
16 administration of those medications entail?

17 A Go through the paperwork from each individual
18 patient and see what medication they're on, if they're
19 supposed to take it twice a day, three times a day.

20 Q Okay.

21 A Check it, make sure they've taken their medication.
22 Some people -- headaches, Tylenol. At night, because I was a
23 nighttime worker, a lot of them had sleeping problems. So
24 melatonin was provided.

1 Q Okay. So -- so where did -- were there any other
2 duties that I haven't gone over with you that you would
3 anticipate doing as part of your work for We Care? And, you
4 know, maybe I should ask the preliminary question because I
5 thought in your original statements that you did not perform
6 work for We Care. You were just anticipating doing it. Do I
7 have that wrong? Did you actually work at We Care --

8 A Previously, I worked at We Care, as Mr. Ghibaudo had
9 stated.

10 Q Okay. And --

11 A So that was the job description. And I went back in
12 2019 because I'm broke. I have no money. And any money is
13 better than no money at this time. So I went back to
14 hopefully gain employment, but the risks outweighed what my
15 wage would be.

16 Q But they offered you a position, correct?

17 A Correct.

18 Q And the what was the -- what was the location that
19 you would perform your work for that position?

20 A Off Sahara on 6th.

21 Q So it was in a brick and mortar office. It wasn't
22 online or anything like that, right.

23 A Not an office. It's actual -- it's an actual house
24 that has --

1 Q Okay.

2 A -- three bedrooms. Two patients to two bedrooms,
3 one to one.

4 Q Okay. Very good. In regard to (indiscernible) that
5 you understood you would have in 2019? What were the terms?

6 A You mean the schedule?

7 Q Schedule, the amount of pay, what benefits --

8 A Okay.

9 Q I'll break those down. What was the schedule that
10 you were offered at We Care?

11 A I believe it was twice a week from 5:00 pm until
12 7:00 am.

13 Q And in that, what was your rate of pay that you
14 would expect to receive for that work?

15 A The pay was \$40.

16 Q \$40 per day, or \$40 per both days.

17 A Per day. So it would have been \$80 a week minus
18 taxes.

19 Q Okay. And you indicate that you were -- you did not
20 want to perform that job because you were advised that Alex
21 regularly came to We Care.

22 A That is correct.

23 Q And what was your understanding why Alex would come
24 to that facility?

1 A He would seek clients that needed legal
2 representation.

3 Q Okay. In regard to the -- other than this We Care
4 job, you did not apply for any --

5 MR. READE: I've lost Mr. Smith.

6 THE COURT: Yeah. I think he's buffering, or he's
7 going to have to rejoin us. So just sit tight. Hopefully
8 he'll be back in a minute.

9 MR. SMITH: Hello, am I back?

10 THE COURT: Yes, Mr. Smith.

11 MR. SMITH: All right.

12 THE COURT: Welcome back.

13 MR. SMITH: Same issue. Sorry.

14 THE COURT: That's fine.

15 MR. SMITH: In regards to -- yeah. I just want to
16 proceed forward. Is it time to break or anything like that?

17 THE COURT: No.

18 MR. SMITH: Are we --

19 THE COURT: No, we got 10 minutes.

20 THE WITNESS: I'm good.

21 MR. SMITH: No? Okay. Okay. Very good. What time
22 is it?

23 MR. READE: 11:30.

24 MR. SMITH: 11:30? Okay. We're good. All right.

1 BY MR. SMITH:

2 Q So my last question was you haven't applied for any
3 jobs of We Care, or other than We Care in the four years that
4 -- since the time of the divorce, correct?

5 A That's correct.

6 Q Okay. And can you tell me where you have resided
7 since that time?

8 A The address?

9 Q You can just tell me about the -- the location
10 itself. Just what it is, what the --

11 A It's a -- it's an apartment. And it's off Warm
12 Springs and Green Valley Parkway.

13 Q Ma'am, you have indicated, although the -- the
14 testimony was struck, that there was -- you were -- the reason
15 why you didn't take a job at We Care was that you were fearful
16 of Mr. Ghibaudo; is that correct?

17 A That's correct.

18 Q Well, isn't it true, ma'am, that you testified at
19 the reinstatement hearing that the claims of domestic abuse
20 that you made we're done at a time that you were intoxicated,
21 and that you indicated that you had not been truthful in that
22 -- those statements. Isn't that so, ma'am?

23 A My testimony was based on -- well, in psychology
24 (indiscernible) --

1 Q Okay. So --

2 A -- and things --

3 Q Ma'am, did you testify -- did you testify to words
4 of that effect, that you were intoxicated and your claims of
5 domestic abuse were not true? Did you state those things?

6 A No. I don't believe so.

7 Q Did you say anything in your recollection, and I
8 remind you, ma'am, you are under oath, in that hearing under
9 oath, in which you testified that your claims for, again for
10 domestic abuse against Mr. Ghibaudo were not true?

11 A No.

12 Q Did you in fact give an interview to the review
13 journal that indicated that you were intoxicated throughout
14 the time of -- many of the times through your marriage and
15 that your claims against Alex were not true?

16 A That's not true.

17 Q In regard to -- did you ever testify in any
18 capacity, either in the reinstatement hearing, or did you ever
19 state to the RJ reporter that the allegations of domestic
20 abuse were not correct in any manner?

21 A No.

22 Q Okay. Let's -- let's move on to the -- you said
23 you're -- you live in an apartment. And are you living in the
24 same apartment you've lived in since the time of the 2016

1 agreement?

2 A Correct. I -- actually I believe I moved there --
3 yeah, I think it was June 2016.

4 Q June 2016. Okay. Is anything -- if you'll turn to
5 page 4 of your financial disclosure form. Has anything in
6 that list changed since the time that you filed this financial
7 disclosure form?

8 A The credit card payments, I'm unable to make the
9 minimum payments due to insufficient funds.

10 Q What is the amount of money that you owe on credit
11 cards presently?

12 A I don't know. But you -- I believe that you had
13 requested my three credit reports from each individual credit
14 reporting system. So, I don't have that in front of me. But
15 my credit card debts I believe are approximately maybe
16 \$30,000.

17 There was also money that was -- per the divorce
18 decree, Alex was supposed to pay the marital debt. And so
19 those credit cards were part of marital debt. Well, they're
20 in my name. And so I'm trying to make payments on them. And
21 then I'm just making minimum payments, which is doing nothing
22 to the -- to lower the payments. So I'm just treading water.

23 Q Okay. Have you -- since the time of the divorce,
24 have you use those credit cards?

1 A Since the time of divo -- when he was paying me?

2 Q Since the time of the divorce, ma'am, in January, or

3 --

4 A Yes.

5 Q I believe it's January --

6 A Yes.

7 Q -- or February 2017 you've used those credit cards,
8 correct?

9 A Correct.

10 Q Have you taken any vacations in the time since the
11 divorce?

12 A Since February 1st, 2017?

13 Q Yes.

14 A No.

15 Q No vacations whatsoever?

16 A None.

17 Q Again, I think I asked you and I don't know if I
18 allowed you to complete your answer. Did you -- is there
19 anything on page 4 that is now different?

20 A My fuel has gone down due to obviously I'm not
21 driving to school. And I try to not leave my house as much as
22 possible due to the virus. My daughter, who I used to provide
23 transportation to her college, I would drive her to school and
24 pick her up daily. She's now on online classes. So I would

1 say that my fuel has gone down.

2 Q Anything else?

3 A I'm looking right now. My cable internet. I had to
4 eliminate some cable channels, so my bill is now \$205 rather
5 than 225. My membership fee I put on hold. However, it's
6 only guaranteed for three months. So that from \$10 is now a
7 zero. My mortgage rent is \$1,250. That's still correct. Pet
8 is still \$30. Pets is still \$75. I don't have a pool. I
9 don't pay the property taxes because I pay rent.

10 Q Okay. And so I'm just asking if there's any
11 differences, ma'am, between the --

12 A Okay.

13 Q -- the information that you've provided.

14 A It does not appear so, except for what I just went
15 down the list of.

16 Q If you look at page 6, you identify certain
17 obligations. Do you see that?

18 A Yes.

19 Q Has that -- has anything there changed?

20 A The -- are you referring to description of credit
21 card or other unsecured debt?

22 Q Yes.

23 A I believe that these numbers came off of the
24 Equifax, or the credit that you requested for me to provide

1 you.

2 Q Okay. So do you know whether that is a change since
3 you provided that information in June of --

4 A I'm sure that they've gone up with interest and
5 penalties. I don't know. The vehicle loan transmission for
6 \$4,000, a friend of mine loaned me that money. And so he's
7 not going to charge me interest or penalties. So that would
8 be a bill that's not. My parents loan, I don't know if
9 they're going to charge me interest and penalties on what
10 they've loaned me. Student loans, I believe that they've been
11 deferred because of COVID. My medical debt is -- remains the
12 same.

13 Q The -- how old are you, ma'am?

14 A I will be 47 years old at the --

15 Q When?

16 A On the 26th.

17 Q Of this month?

18 A Correct.

19 Q Thank you. Do you have any criminal -- criminal
20 record or any other record that would prevent you from seeking
21 or gaining employment?

22 A No.

23 MR. SMITH: All right. I'll pass the witness, Your
24 Honor.

1 THE COURT: Mr. Reade, I think that we'll break
2 since about 10 minutes to noon here. You can exceed the scope
3 of Mr. Smith's direct so that we don't have to call her more
4 than once.

5 MR. READE: I appreciate that, Your Honor.

6 MR. SMITH: If I may, and I hope it's not too late,
7 but there are a couple of questions that I didn't include on
8 my list that I didn't see.

9 THE COURT: Okay. Yeah --

10 MR. SMITH: If I could just ask those questions.

11 THE COURT: You can reopen. We got -- we have time.
12 Fine. Go ahead. Ms. Kellogg, you read?

13 THE WITNESS: I am.

14 THE COURT: All right. Go ahead, Mr. Smith.

15 BY MR. SMITH:

16 Q Ms. Kellogg, there was testimony by Mr. Ghibaudo
17 that lawyers on your behalf had filed bar complaints against
18 Mr. Ghibaudo. Do you recall that?

19 A That they filed the bar complaint?

20 Q Yes, ma'am.

21 A I do recall that they have filed -- that Sigal
22 Chattah and Marshal Willick, and/or Trevor Creel, I don't know
23 which one, filed bar complaints against Mr. Ghibaudo.

24 Q And -- and the information contained in those

1 complaints was information that in part was provided to the --
2 your lawyers and -- by you, correct?

3 A I -- if I can recall correctly, I believe --

4 Q Is the answer yes or no, ma'am?

5 A I don't know. I don't know what -- I'd have to have
6 it in front of me.

7 Q Okay. Very good.

8 A It wasn't my bar complaint.

9 Q Okay. The -- you seek to a psychology degree. Is
10 that correct? That's what you're working on?

11 A Well, yes.

12 Q And that is designed to provide you the ability to
13 perform work as a licensed social worker; is that the idea?

14 A No. A psychology degree would provide me
15 approximately a salary between 30 and \$40,000 I think, if I'm
16 lucky.

17 Q So what -- what is it that you anticipate doing with
18 your degree?

19 A I, you know, I would like to continue my education,
20 if I'm allowed to. I don't know if per the divorce decree, it
21 allows me.

22 Q So again, I'm --

23 A But I --

24 Q I'm asking you what -- what is the intent of getting

1 a psychology degree? What job do you hope to get from that
2 degree? Or is it just the study of psychology that interests
3 you?

4 A Oh. Well, I -- my intention was to continue to work
5 in drug and alcohol rehab.

6 Q Okay. And to perform work within a rehabilitation
7 center, similar to the idea that you -- or similar to what you
8 did prior to that time?

9 A Yes.

10 Q Do you -- do you know why the the center could pay
11 you \$40 for 14 hours of work per day? Isn't that a violation
12 of the minimum wage law?

13 A They -- it's a part time. It's also a volunteer --

14 Q I see.

15 A -- setting. So it's -- it was the only job that I
16 had without --

17 Q I'm just asking --

18 A -- having a --

19 Q -- if you know why --

20 A Okay.

21 Q -- they can pay you --

22 A Okay.

23 Q -- less than the minimum wage. Do you know? Is --

24 A It's because it's also -- it's volunteer.

1 Q All right. Very good. Have you done any other
2 volunteer work other than your work at We Care since the time
3 of the entry of --

4 A For pay?

5 Q No. At all, volunteer work.

6 A Since the signing of the divorce?

7 Q Yes, ma'am.

8 A Or before? Or --

9 Q 2017. Just --

10 A No, I have not

11 Q -- 2017.

12 A No, I have not.

13 Q Prior to 2017, how were you employed?

14 A Prior to 2017 was We Care. I believe I provided you
15 my tax returns that said how much I made, and the days that I
16 worked with my W-2.

17 Q So other than your work at We Care, in your adult
18 life, what have you done for employment?

19 A Oh. From 1995 to 2000, I was employed at Olympic
20 Gardens.

21 Q Okay. And what did you do after that time?

22 A Then I had -- Mr. Ghibaudo and I had a child, and --

23 Q I 'm just asking for work. What did you do, if
24 anything, after 2000?

1 A I was a housewife. I took care of the house. I
2 took care of the children.

3 Q Okay. I'm looking for -- and that's certainly a
4 very valuable and important job. I'm not -- I don't want to
5 sound like I'm dismissing that. But I was wondering if you
6 did any job for gainful employment after you married
7 Mr. Ghibaud.

8 A No.

9 Q Okay. In regards to the -- the -- when did you
10 first started attending college classes toward the degree that
11 you're working on now?

12 A After my associates?

13 Q No, no, no. When did you first start that
14 associate's degree, the courses for your associates degree?

15 A I believe it was 2014.

16 Q Okay. So you received your -- your associate's
17 degree in the time between 2014 and the time you received it.
18 When you did you receive your associate's degree?

19 A I believe it was '17.

20 Q Okay, so it took you approximately, what, four
21 semesters, five semesters to complete your associate's degree?

22 A It took me three years.

23 Q Okay. So -- so six semesters.

24 A Uh-huh (affirmative).

1 Q Do I have that right? Okay. Yes?

2 A Yes.

3 Q All right. And since 2017, you've gone to four more
4 semesters of school. Is that right? Or --

5 THE COURT: Mr. Smith, you already asked her about
6 this. And she talked about the hiatus in her education
7 already. This has been asked and answered.

8 MR. SMITH: It was after '18, Your Honor, I think
9 she said.

10 THE COURT: Right. So she went to -- she already
11 answered questions concerning when she last went to school and
12 how many credits she's short of her --

13 MR. SMITH: All right. Very good, Your Honor.

14 BY MR. SMITH:

15 Q The -- in regards to the -- you've indicated that
16 you want to get a psychology degree. And, I'm sorry, I didn't
17 -- you wanted to still do work in rehabilitation. And that's
18 that context, correct? Or that type --

19 A Correct.

20 Q -- of work. Okay.

21 A Correct.

22 Q What would be -- and the degree would just be in
23 psychology. Is it your understanding that that's a degree
24 that will land you that kind of job?

1 A Correct.

2 MR. SMITH: Okay. All right. That's all I have,
3 Your Honor.

4 THE COURT: Mr. Reade, did you want to ask her
5 anything before we break?

6 MR. READE: No, Your Honor. This is a great place
7 to break.

8 THE COURT: Okay, great. So I've got some things I
9 got to take care of. We need to get some lunch. 1:30?

10 MR. READE: 1:30.

11 THE COURT: Okay. We'll see you --

12 MR. READE: Thank you.

13 MR. SMITH: Thank you, Your Honor.

14 THE COURT: -- at 1:30.

15 (COURT RECESSED AT 11:55:33 A.M. TO 1:35:37 P.M)

16 (CONTINUATION OF PROCEEDINGS CONTAINED IN VOLUME II)

17 * * * * *

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

21 /s/ Michelle Rogan
22 Michelle Rogan
23
24

1 **TRANS**

2
3
4
5 **EIGHTH JUDICIAL DISTRICT COURT**
6 **FAMILY DIVISION**
7 **CLARK COUNTY, NEVADA**
8

9 TARA KELLOGG-GHIBAUDO,)
10 Plaintiff,) CASE NO. D-15-522043-D
11 vs.) DEPT. H
12 ALEX GHIBAUDO,) APPEAL NO. 82248
13 Defendant.) **(SEALED)**
14

15 BEFORE THE HONORABLE T. ARTHUR RITCHIE, JR.
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: EVIDENTIARY HEARING (VOL. 2)

18 THURSDAY, SEPTEMBER 17, 2020

19 APPEARANCES:

20 The Plaintiff: TARA KELLOGG GHIBAUDO
21 For the Plaintiff: R. CHRISTOPHER READE, ESQ.
1333 North Buffalo Dr. #210
Las Vegas, Nevada 89128
22
23 The Defendant: ALEX GHIBAUDO
24 For the Defendant: RADFORD J. SMITH, ESQ.
2470 St. Rose Parkway #206
Henderson, Nevada 89074

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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LARRY BIRCH	187	195	202	--
DEFENDANT'S WITNESSES:				
ALEX GHIBAUDO	22	90	102,181	--
TARA KELLOGG GHIBAUDO	106	134	170	--

* * * * *

I N D E X O F E X H I B I T S

<u>PLAINTIFF'S</u> <u>EXHIBITS:</u>	<u>ADMITTED</u>
(None presented)	
DEFENDANT'S EXHIBITS:	
A through Y No description given	9

1 LAS VEGAS, NEVADA

FRIDAY, OCTOBER 23, 2020

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

3 (COURT RESUMED AT 1:35:37 P.M.)

4

5 THE COURT: Okay. We are moving on to the second
6 session, or the afternoon session on the evidentiary
7 proceedings post judgment in this case. We have Mr. Reade
8 present with the Plaintiff, and Mr. Smith present with the
9 Defendant. We took a recess at noon. And at that time,
10 Mr. Smith passed the witness to Mr. Reade.

11 Ms. Kellogg, do you understand you're still under
12 oath?

13 THE WITNESS: I do.

14 THE COURT: Okay. Mr. Reade, whenever you're ready.

15 MR. READE: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. READE:

18 Q Ms. Kellogg, you heard Mr. Ghibaudo's testimony this
19 morning. And I kind of want to pick up where Mr. Smith asked
20 you some questions. So, and then we'll go back into the
21 broadened scope of -- of the examination.

22 So you were asked about your 2019 financial
23 disclosure form. Other than the support that was to be paid
24 in this matter, have you had any other income for the years

1 2019?

2 A No.

3 Q Have you had any other income for the year 2020?

4 A No.

5 Q Okay. Mr. Smith asked you questions regarding why
6 you're not currently attending college.

7 A I don't have the money to pay for college.

8 Q Obviously, you have living expenses. How are you
9 living to date?

10 A My parents are loaning me money for my bills.

11 Q Now, you talked about your -- your schooling. And I
12 think, correct me if I'm wrong, you testified it took you
13 about three years to get your associate's.

14 A Correct.

15 Q Okay. And you're seven credit -- seven classes --

16 A Classes.

17 Q -- short of your bachelor's?

18 A Correct.

19 Q Okay. As part of that education, do you have any
20 limitations in your ability to take classes other than the
21 financial?

22 A I am with the DRC, which is the Disability Resource
23 Center. They provide me with time and a half for tests,
24 quizzes, exams, and a quiet space to take the exam, and a note

1 taker. In addition to that, there are also outside sources
2 that are my responsibility, for example, Learning Ally, which
3 is fairly expensive, which are the textbooks on audio that I'm
4 allowed. And in addition to that, I don't get to determine
5 what credits I take per semester. My physician and the DRC
6 determine how many credits I take per semester.

7 Q And so when you talk about these disabilities,
8 there's actually an additional cost that you incur, beyond
9 what a normal student would incur --

10 A Correct.

11 Q -- for these accommodations?

12 A Yes.

13 Q Is there a reason, beyond the We Care Foundation,
14 that you haven't gone outside to try to seek income with your
15 AA?

16 A I've not finished school yet.

17 Q And in fact, you heard Mr. Ghibaudo's testimony
18 earlier regarding that it was contemplated at the time of the
19 settlement that you would get to finish school. Do you recall
20 that?

21 A Yes.

22 Q Was that your understanding, also?

23 A Yes.

24 Q Have you done your best to try to get through

1 school?

2 A Yes, absolutely. I am struggling and trying to
3 accomplish my degree.

4 Q Okay. Are you able to get -- have you tried to at
5 least look for positions in your field with an AA?

6 A I have.

7 Q And what have you found out?

8 A I need -- first off, I need my bachelor's degree,
9 and --

10 MR. SMITH: Judge, lack of foundation.

11 THE COURT: State your objection again. I didn't
12 understand it.

13 MR. SMITH: Foundation, Your Honor, for this --

14 THE COURT: Well, he's asking her what her -- what
15 her reasons are. What --

16 MR. SMITH: I think he's asking --

17 THE COURT: -- is the foundation --

18 MR. SMITH: I'm sorry. Excuse me.

19 THE COURT: What is the foundation you're -- you're
20 seeking?

21 MR. SMITH: The foundation as to the information
22 she's now going to provide about the job market. We don't
23 have -- I don't know why --

24 THE COURT: Well, she testified in response to your

1 question that she has never applied for a job in the last
2 couple years.

3 MR. SMITH: That's right. But now she's talking
4 about looking into one.

5 THE COURT: Yeah.

6 MR. SMITH: And --

7 THE COURT: That's fine. I mean, that's -- the
8 objection's overruled. Go ahead, Mr. Reade.

9 BY MR. READE:

10 Q Ms. Kellogg, beyond not formally applying for a job,
11 you said that you looked out in the job market.

12 A Prior to COVID, yes.

13 Q Okay. And what did you find?

14 A I found that I need a bachelor's degree.

15 Q Okay. When you say you need a bachelor's degree,
16 how did you ascertain that to be the case?

17 A That's what they said.

18 Q Who's they?

19 A I had a couple of referrals that directed me to some
20 rehabilitation facilities, and contacted them. And that's
21 what I was told.

22 Q And can you tell us who those facilities and/or --

23 MR. SMITH: Objection. Objection.

24 THE COURT: Yeah. The objection's sustained. All

1 of the answers to your questions elicit a hearsay response,
2 which are disregarded by the Court.

3 MR. READE: Understand.

4 THE WITNESS: Um --

5 MR. READE: No, hold on. Stop. Stop.

6 THE COURT: Next -- next question.

7 MR. READE: Yes. Thank you, Your Honor.

8 BY MR. READE:

9 Q So you were asked about your intention. Is your
10 intention to stop at a bachelor's with psychology?

11 A I would like to continue my education due to the
12 monies that would provide a good living rather than living
13 paycheck to paycheck, which would mean a -- going forward with
14 a graduate degree.

15 Q Okay. But you're not testifying here today, as I
16 understand it, that you're not going to look in the job market
17 once you have your bachelor's. You just -- your intention is
18 to go on a graduate?

19 A Yes. If I'm allowed to.

20 Q Okay. So earlier, Mr. Ghibaudo's testimony, you
21 heard his testimony here this morning, correct?

22 A I did.

23 Q Okay. He talked about the nature of your
24 relationship going into that settlement.

1 A Correct.

2 Q Okay. Were you together as of the date of the May
3 2016 settlement?

4 A Yes.

5 Q You say together. Were you living together?

6 A No.

7 Q You just had not gotten divorced yet?

8 A Correct.

9 Q Who proposed the terms for that settlement
10 conference?

11 A Mr. Ghibaudo suggested the terms of the settlement
12 conference.

13 Q And what were those terms?

14 A Fifteen years, fifty percent of his gross income.

15 Q And prior to the date of that settlement conference,
16 were there marital waste issues that had arisen in the
17 marriage?

18 A Absolutely.

19 Q And what were those issues?

20 A What was spent, or what was it spent on?

21 Q Well, what was spent?

22 A I calculated approximately \$1.6 million.

23 Q Okay. Did you understand as part of this marital
24 settlement, or the settlement agreement that you were entered

1 into, that you were waiving any and all claims related to it?

2 A Absolutely.

3 Q Did that go into your decision going into this
4 settlement?

5 A Yes.

6 Q Who came up with the 15 year term?

7 A Mr. Ghibauda.

8 Q And did he explain to you what was the rationale for
9 that term?

10 A Word for word, this is what he said. I owe it to
11 you and Nicole for everything that I have taken.

12 Q And who came up with the 50 percent concept?

13 A Fifty percent was due to -- fifty percent gross
14 income was due to Alex is one person, I am two people.

15 Q When you say you're two people, what do you mean?

16 A Oh, I'm sorry. I -- myself and our daughter,
17 Nicole.

18 Q At that time, was it contemplated that
19 Mr. Ghibauda's -- that we've talked about in the settlement
20 agreement, the \$2,500 floor. Was there ever discussed there
21 being a ceiling on the --

22 A Never.

23 Q Family support?

24 A Never.

1 Q Okay. Was it contemplated that Mr. Ghibauda would
2 only -- well, your -- your understanding, would only earn a
3 set amount of money?

4 A No. It was, as years go on your salary goes up. As
5 your experience increases, your salary goes up. That's what
6 was contemplated. But -- or that's what was discussed. So I
7 understand that -- well, what I would prefer is a flat fee so
8 that this doesn't continue.

9 Q When you say this doesn't continue, you understand
10 it would -- from your standpoint, as I understand it, easier
11 if we just have a set dollar value?

12 A Correct.

13 Q Okay. So you didn't come up with this 50 percent
14 concept?

15 A I did not.

16 Q Ultimately, after that settlement conference, did
17 you try to have those settlement terms reduced to an order
18 with the court?

19 A Yes.

20 Q Did Mr. Ghibauda ever sign any of those orders?

21 A No.

22 Q Okay. Ultimately, did you -- did Mr. Ghibauda ever
23 tell you that he intended to enforce that settlement?

24 A Absolutely. He even quoted Grisham versus Grisham

1 to enforce the set -- the settlement that he proposed and
2 wanting to move forward with.

3 Q Okay. Did he ever tell you, I don't think the
4 settlement is enforceable?

5 A No.

6 Q Did he ever say, I want to back out of this
7 settlement? Before this motion and all the --

8 A Before this motion?

9 Q Before -- before the motions we saw (indiscernible).

10 A I don't know. I don't -- I don't, I mean, there
11 were many things that -- I don't -- I don't know if he said
12 that verbatim. I don't know what he said. He said lots of
13 things that were not nice.

14 Q Not nice?

15 A Yeah.

16 Q Okay. Ultimately, though, it's your understanding
17 that the settlement terms were reduced to a decree, correct?

18 A Correct.

19 Q Okay. And those were going to be the terms between
20 the two of you?

21 A Yes.

22 Q Okay. I'll have you look at Exhibit 1 in our
23 exhibit book. And I won't even have you identify it because
24 it's -- I'll just tell everybody it's the decree of divorce.

1 You've seen this document before?

2 A Yes.

3 Q Okay. Ms. Kellogg, I'll refer you to exhibit -- or
4 I'm sorry, to page 5 of Exhibit 1.

5 A Okay.

6 Q You look at section two, it talks about medical
7 insurance. Do you see that?

8 A I do.

9 Q And Mr. Ghibaudo was going to pay the medical
10 insurance for the child so long -- up to the date of
11 emancipation, correct?

12 A Yes.

13 Q Did Mr. Ghibaudo ever pay for the medical insurance?

14 A He has never paid for medical insurance, not --
15 before the decree, not after the decree.

16 Q Okay.

17 A He's never paid for health insurance.

18 Q All right. When we look at page 9, the post divorce
19 family support. Are you there?

20 A I am.

21 Q Okay. And once again, the terms that we see on page
22 9 and page 10 under post divorce family support, were those
23 negotiated as part of the settlement in this case?

24 A Absolutely.

1 Q Okay. And if we look at paragraph 3, you understood
2 that once you became employed for more than 32 hours, that
3 that would be taken into account, correct?

4 A Correct.

5 Q Okay. Did you understand there was a set deadline
6 you had to be employed full time by?

7 A No. And that's the reason why it's not in here.

8 Q Was that ever discussed?

9 A It was never discussed.

10 Q Paragraph 5 on page 10. You've heard Mr. Ghibaudo
11 argue that child support was to be backed out of the marital
12 support. Was that ever discussed?

13 A Never.

14 Q Was it always agreed that there would be a floor of
15 at least \$2,500 for family support for the term?

16 A Which is -- yes, that's correct.

17 Q Is that what we see reflected in the decree in
18 paragraph 5?

19 A Absolutely.

20 Q Okay. Paragraph 6 talks about the provision of tax
21 returns every year. Just to clarify, you've never received
22 tax returns before the enforcement in this last month,
23 correct?

24 A Correct.

1 Q So in fact, when we've talked about previous arrear
2 calculations, you've never had any ability to calculate gross
3 income until last month.

4 A Correct.

5 Q And in fact, you've never had ability to calculate
6 gross income other than through this enforcement.

7 A Correct.

8 Q Now, Mr. Ghibaudo has talked about your work history
9 and said that you had bad drug addiction problems; is that
10 correct?

11 A I heard him say that. That's very incorrect.
12 That's called projection. And Mr. Ghibaudo would like to
13 project his own --

14 Q Let's just stop. Stop there. So the testimony,
15 though, that you had a drug problem, not accurate?

16 A Not accurate. Lies.

17 Q Ultimately, you brought an enforcement action in
18 2017. Do you recall that?

19 A I do.

20 Q Okay. And you heard Mr. Ghibaudo say that he had --
21 he paid you in 2017. Is that accurate?

22 A I heard that. Yes.

23 Q Okay. Did he actually pay you in full in 2017?

24 A No.

1 Q Are you able to tell this Court the amount that you
2 have actually been paid by Mr. Ghibaudo related to this decree
3 of divorce?

4 A Absolutely.

5 Q Okay. So in 2017, can you tell this Court how much
6 Mr. Ghibaudo actually paid you --

7 A Okay.

8 Q -- post decree?

9 A First off, there was an amount of \$29,752.27 that
10 was reduced to judgment on October 6, 2017.

11 Q Okay. And, Ms. Kellogg, if I look you -- if I look
12 you -- geez. Refer you to Exhibit 2 --

13 A Uh-huh (affirmative).

14 Q -- is that the judgment that you were referring to
15 that you said was reduced by the Court?

16 A Correct.

17 Q And that was in the amount of \$29,752.27, as of that
18 date?

19 A Correct.

20 Q Okay. After that was entered, how much in 2017 did
21 Mr. Ghibaudo pay you?

22 A This is when we were in court approximately every
23 six days on status checks. So in October, he paid \$3,500,
24 November \$3,500, December \$5,400. The total received \$12,400.

1 The amount owed was \$7,500. There was also insurance that --
2 health insurance to be paid. The health insurance was \$268
3 for the three months. They held -- Alex, Mr. Ghibauda did not
4 pay for the health insurance. The amount totaled was \$804,
5 which left Alex at a positive of \$4,096 in 2017 for those
6 three months.

7 Q And just to be clear, when you say he was positive,
8 that means that he paid his full family support?

9 A Correct.

10 Q And so \$4,096 could be credited against the judgment
11 that was previously entered.

12 A Absolutely. Correct.

13 Q Okay. Now, you heard Mr. Ghibauda say that he paid
14 --

15 A Minus the 25 minimum payment, though. So it's not
16 that full amount. So like, for example, the \$3,500, \$1,000
17 would go towards the judgment.

18 Q Understood. So during the period of October through
19 December of 2017, what he really did is pay down the
20 \$29,752.27 by \$4,096?

21 A Correct.

22 Q Now, you heard Mr. Ghibauda's testimony regarding
23 his payments in 2018.

24 A Yes.

1 Q And his testimony that he paid you in full. Is that
2 accurate?

3 A No.

4 Q Okay. Can you tell the Court, in 2018, did you
5 receive any payments in January of 2018?

6 A No.

7 Q Did you receive any payments in February of 2018?

8 A No.

9 Q Did you receive any payments in March of 2018?

10 A March 19th of 2018, Alex was held an indirect civil
11 contempt. If he paid the \$7,500 he could purge the contempt.
12 Therefore, Alex paid \$7,500 on March 26th, 2018.

13 Q Okay. And you received \$7,500 on March 26th, 2018.

14 A Correct.

15 Q Can you tell the Court what were -- how much did you
16 receive in April 2018?

17 A I have it listed by he would pay sporadically on
18 whatever day he felt like it. So April 7th, he paid \$577.
19 April 13th, he paid \$600. April 21st, \$577. April 29th,
20 \$577. April total, \$2,331. Failed to pay for health
21 insurance, which is now \$115 due to Obamacare.

22 Q So towards his minimum \$2,500 obligation --

23 A Uh-huh (affirmative).

24 Q -- he paid \$2,331?

1 A Correct.

2 Q But did not pay anything towards the health
3 insurance.

4 A Correct.

5 Q And when we talk about the contempt that was entered
6 in March, that also -- that did not contemplate the health
7 insurance of \$150.

8 A Correct.

9 Q Okay. Can you tell the Court how many payments did
10 you receive, number of payments, not amounts, did you receive
11 in May of 2018?

12 A Four.

13 Q And what was the total of those payments?

14 A \$2,108.

15 Q And did he pay anything towards the health
16 insurance?

17 A No.

18 Q How about in June of 2018, how many payments?

19 A Four.

20 Q And how much did they total?

21 A \$2,331.

22 Q Did he pay anything towards the health insurance?

23 A No.

24 Q Okay. So he didn't make the minimum payment, and he

1 didn't pay the health insurance.

2 A Correct.

3 Q How about in July? How many payments did you
4 receive?

5 A Four.

6 Q And what did they total?

7 A \$2,308.

8 Q Did he pay anything towards the health insurance?

9 A No.

10 Q How about an August? How many payments did you
11 receive?

12 A Five.

13 Q And how much did Mr. Ghibaudo pay?

14 A \$2,908.

15 Q Okay. So for August of 2018, he actually paid more
16 than the minimum support, correct?

17 A Correct.

18 Q Okay. But did he pay anything directly towards the
19 health insurance?

20 A No.

21 Q Did you provide him with the health insurance so he
22 knew that --

23 A Yes.

24 Q How about in September of 2018, how many payments

1 did you get?

2 A Five.

3 Q How much did they total?

4 A \$2,885.

5 Q Okay. So once again, he paid -- he paid more than
6 the minimum.

7 A Uh-huh (affirmative).

8 Q But he also didn't pay the health insurance.

9 A Correct.

10 Q How about in October? How many -- October of 2018,
11 how many payments did you receive?

12 A Four.

13 Q And what did they total?

14 A \$2,308?

15 Q And did he pay anything towards the health
16 insurance?

17 A No.

18 Q Okay. So he short paid for that month.

19 A Correct.

20 Q How about in November of 2018? How much did you
21 receive?

22 A Zero.

23 Q So no amount towards family support? Any amounts
24 towards insurance?

1 A Correct.

2 Q So any amounts towards insurance?

3 A No.

4 Q Okay. How about in December of 2018? How much did
5 the Defendant pay?

6 A Zero.

7 Q And that was towards either family support or health
8 insurance.

9 A Correct.

10 Q Are you able to tell the Court the total amount that
11 you received in 2018?

12 A Yes.

13 Q How much?

14 A \$24,879.

15 Q And if we use just the minimum \$2,500 a month, what
16 was the family support obligation for 2018?

17 A For the arrears? Oh, \$30,000.

18 Q Okay. And no amount was paid towards health
19 insurance in 2018?

20 A No. And that -- that amount accrued to \$1,380.

21 Q So how much was the total amount that 2018 was short
22 paid, if we just use \$2,500 as the figure?

23 A \$6,501.

24 Q Now, in 2019, can you tell the Court how much you

1 received in January of 2019?

2 A Zero.

3 Q How much did you receive in February of 2019?

4 A Zero.

5 Q How much did you receive in March of 2019?

6 A Zero.

7 Q How much did you receive in April of 2019?

8 A Zero.

9 Q How much did you receive in May of 2019?

10 A On May 17th, I received \$1,803.

11 Q Is -- that's an odd amount.

12 A Uh-huh (affirmative).

13 Q Are you able to tell the Court how that amount was
14 what it's related to?

15 A From what child support enforcement said that it was
16 a negotiated amount. And I further was -- it was further
17 determined that he paid May 17th this amount was to, again,
18 gain his driver's license because it had been previously
19 suspended.

20 Q So there was a suspension related to nonpayment of
21 support that this was related to.

22 A Correct.

23 Q Now, in May of 2019, that's when your daughter
24 became emancipated, correct?

1 A Yes.

2 Q Okay. Did you -- did he pay any health insurance
3 between January and May of 2019?

4 A No.

5 Q And how much were the amounts per month?

6 A \$115.

7 Q Per month for those months.

8 A Correct.

9 Q Okay. Have you calculated any health insurance
10 after May of 2019?

11 A No.

12 Q Because of the emancipation?

13 A Correct.

14 Q Okay. Though in June of 2019, did you receive any
15 payments?

16 A No.

17 Q How about July of 2019?

18 A No.

19 Q How about August of 2019?

20 A No.

21 Q How about September of 2019?

22 A No.

23 Q How about October 2019?

24 A No.

1 Q How about November 2019?

2 A No.

3 Q In December 2019, did you receive any payments?

4 A I received a \$2,000 payment after attending a
5 hearing at child support enforcement whereas a warrant was
6 issued for his arrest.

7 Q So can you tell the Court the total amount that you
8 received in 2019?

9 A \$3,803.

10 Q And was all of that paid through child support
11 enforcement?

12 A Correct.

13 THE COURT: Before you leave 2019, Mr. Reade, I
14 think that, if I'm tracking your testimony, she's correcting
15 her sworn scheduled arrears that was filed for her last fall
16 related to May and December -- or May anyway because this was
17 done in October with the payment of \$1,803. Is that right?

18 MR. READE: That is correct, Your Honor.

19 THE COURT: All right.

20 MR. READE: May we proceed, Your Honor.

21 THE COURT: Yes.

22 MR. READE: I just didn't want to -- there's a lot
23 of numbers --

24 THE COURT: Well, I wanted to make sure. I don't

1 want -- I don't want to have to patch up (indiscernible)
2 there. We've covered it on direct, and I wanted to -- and
3 since you didn't cover -- you didn't address it, I wanted to
4 make sure I was right. So, her schedule is -- needs to be
5 corrected as it relates to 2019.

6 MR. READE: Correct, Your Honor.

7 BY MR. READE:

8 Q Can you tell the Court what the total health
9 insurance arrearages were for 2019?

10 A \$575.

11 Q Okay, and if we use just the \$2,500 minimum, can you
12 tell the Court how short the payments were for 2019?

13 A For both received for the child support and the
14 health insurance?

15 A Yes.

16 Q Okay. So \$26,772.

17 Q All right. How about in 2020?

18 A Okay.

19 Q Have you been paid anything in 2020?

20 A Do you want me to just --

21 Q Yeah. Tell the Court the first payment you received
22 in 2020.

23 A February 18th, a hearing was held at child support
24 enforcement. Alex paid \$819 the morning of. April 17th, he

1 paid -- Mr. Ghibauda paid \$750.

2 Q Any other payments that have been received in 2020?

3 A No.

4 Q And what -- if we use just the minimum of a \$2,500
5 family support obligation, are you able to -- through
6 September of 2020, how much the arrearages would be for 2020?

7 A \$20,931.

8 Q So you heard Mr. Ghibauda's testimony that he paid
9 the 2017 judgment in full?

10 A I think I heard that, yes.

11 Q Can you tell the Court since 2017, the total amount
12 that Mr. Ghibauda has paid to you?

13 A After the judgment?

14 Q Yes.

15 A He paid \$12,400.

16 Q No, no. I'm sorry. If you add up the payments you
17 received post judgment 2017, 2018 --

18 A Oh.

19 Q -- 2019, and 2020, can you tell the Court what
20 amount those are?

21 A Total paid, \$34,044.

22 Q And that's without any consideration of penalties or
23 interest or anything?

24 A No penalties, no interest on the child support, on

1 the judgment, nothing. I don't know how to calculate it.

2 Q Okay. Mr. Ghibaudo had indicated, and if you heard
3 his testimony, but -- All right. That's a fair point. Fair
4 point. If we use just the \$2,500 family support, have you
5 calculated what the arrears would have been through September
6 2020.

7 A Yeah. And this, again, is without penalties or
8 interest. It's \$79,285.30.

9 Q And that's using just the \$2,500 figure, not
10 calculating gross income?

11 A Yes.

12 Q Now, Mr. Ghibaudo had talked about the fact that
13 you refuse to work. Is that true?

14 A No.

15 Q You said that you have no intention to work. Is
16 that true?

17 A No.

18 THE COURT: Mr. Reade, can I ask you to clarify
19 through her testimony, if necessary, what the framework is
20 because I'm -- I'm doing -- I'm trying to make sure that I
21 understand what all the benchmarks are, what the timeframes
22 are. You weren't the lawyer, but you saw that there was a --
23 there were proceedings in 2017, and specifically an order that
24 you referenced as Exhibit 2 November 9th, 2017 from the

1 October hearings.

2 At that hearing, the Court adjudicated arrears in
3 child support, arrears in spousal support, medical arrears,
4 unreimbursed medical expenses, all through October of that
5 year. So in looking at this dispute, those are judgments that
6 exist already. And so aren't we talking about what if any
7 obligation he has paid or not paid since October 2017?

8 MR. READE: That is absolutely correct, Your Honor.
9 I'm glad you brought this up --

10 THE COURT: Then why are you --

11 MR. READE: -- for clarification.

12 THE COURT: -- covering all this -- this payment
13 history and these disputes that predated the orders that are
14 entered back then?

15 MR. READE: Your Honor, I think what -- just to be
16 clear, Ms. Kellogg is assuming as of the date of the order in
17 October 2017, the amount owed is \$29,752.27.

18 THE COURT: I understand. And then she said that --
19 and then she offer testimony, which is really difficult for me
20 to get my arms around, that because of his payments at the end
21 of the year that were compelled with the contempt proceedings
22 we were having, that he actually overpaid and is entitled to a
23 \$4,000 credit against that judgment.

24 That's not -- that's not the -- the way that the

1 Court is trying to look at this, you know, the sky view is
2 that these rights and responsibilities under this order were
3 adjudicated through October 2017. Then there was a period of
4 time between that time and the time Mr. Ghibaudo reopened this
5 case in May of 2019.

6 And that the Court is -- is not going to be
7 adjudicating any of these claims that were already adjudicated
8 either by stipulation or Court order prior to October 2017.
9 So I've got a period of time between October 2017 and April
10 2019, and I have a period of time May 2019 to the present that
11 I'm dealing with, right? And we have --

12 MR. READE: Agreed, Your Honor.

13 THE COURT: And so in -- in looking at the payment
14 history, the schedules, I mean, I'm going to have to reconcile
15 the testimony from him and from her that, you know, he paid
16 30,000 each of those years and she says he paid 24 and things
17 like that.

18 But you know, I'm a little uncomfortable. These
19 judgments in the order that's Exhibit B are not going away,
20 they're not going to be subsumed into my judgment. They're
21 going to be standalone. And the order from me is going to be
22 to adjudicate what if anything he owes from after that to the
23 time of the filing of his motion, and then from the time that
24 he filed his motion to now. Right?

1 MR. READE: Absolutely, Your Honor. And I think
2 what Ms. Kellogg's testimony was is the amounts through
3 October 2017 were reduced to judgment. So she wanted to
4 testify to this Court the amounts that have been paid post
5 that judgment, but only post that judgment.

6 THE COURT: That's fine.

7 MR. READE: And so --

8 THE COURT: I mean, because we know that, I mean I'm
9 sure you've reviewed it. The Court's attempt to try to get
10 compliance with the order was basically to require us to come
11 in every month to get paid, which I tired of after about three
12 or four months. Okay?

13 MR. READE: Yeah.

14 THE COURT: So the -- so there was a significant
15 payment, in fact that she acknowledged an overpayment for that
16 block of time. But he was behind, so that overpayment simply
17 becomes some sort of credit against judgment. And it's really
18 a headache for you or for her in collecting these judgments as
19 to how to characterize the payments, which makes this Masters
20 recommendation and order and -- and all this stuff even more
21 of a headache for me as far as trying to figure out what to
22 do.

23 It's an easy situation for me to sort of evaluate
24 what we're dealing with between October 2017, when I made

1 these orders, and April 2019, because all of the same rules
2 apply. All the orders apply. It's more difficult challenge,
3 since both parties are asking me to modify the order, to go
4 from May 19 to the present.

5 But I just want to make sure that we're all talking
6 about the same thing so that Mr. Smith doesn't get confused
7 and I don't get confused. And we don't -- certainly -- we
8 certainly want to give him credit for every dollar he's paid.
9 And we don't want to accumulate judgments, because we've
10 entered more than one or 10, whatever. Okay? All right.

11 MR. READE: So -- and, Your Honor, I think your
12 point is -- is well taken. And -- and to the extent that
13 Ms. Kellogg testified what the judgment was before this Court,
14 I think we all can agree, as of that date, that is the
15 judgment that predates that. We're not revisiting that, we're
16 not setting that aside. That amount is frozen.

17 All we're talking about, and we want to make sure
18 we're clear about, is the amounts that have been paid since
19 that date, up through the date of Mr. Ghibaud's motion. And
20 then we can talk about the amounts that have been paid and may
21 have accrued after the filing of that motion. And so all we
22 wanted to do is get into the record --

23 THE COURT: Okay. Well, this is --

24 MR. READE: -- the amounts that have been paid.

1 THE COURT: This is what -- this is why I
2 interrupted, okay, because the schedule is what Mr. Smith
3 used. It's a tool that I'm using, it's a tool on comparison
4 (indiscernible) to her testimony. And in 2017, the way that
5 this was organized, and not by you, is that she's carrying
6 some sort of balance.

7 The Court cleared the debt on October of 2017. And
8 so really what the schedule should say is that he had an
9 obligation to pay \$2,500 in November and December, and he
10 wound up paying \$9,000 or \$8,900. Okay? And so he doesn't
11 have a total received \$20,000, \$30,000. He has \$5,000 owed
12 and \$8,900 paid for this schedule.

13 And the \$29,752.27, that's a judgment. It's a final
14 judgment. And so I'm trying to figure out what he's paid,
15 because we start with \$29,752, right?

16 MR. READE: Yeah.

17 THE COURT: And so then I have to determine whether
18 he owes stuff for the next period and the next period. And
19 then I got to -- I got to try to figure out what -- what type
20 of -- I mean, she helped me by saying look, the parallel
21 tracking of this is the DA's, you know, taking \$819 here and
22 \$750 here, and others.

23 I need to make sure that I give him credit for all
24 those payments that are not necessarily on the schedule,

1 because they happened after the schedule and it happened
2 during. You know? All right.

3 MR. SMITH: Your Honor, to give a certain metric,
4 Your Honor, we've calculated the amounts that are on that
5 schedule between November -- and -- November of 2017 through
6 the present time and what she testified as were the payments.
7 And right now it's, according to her testimony, it's \$42,651.

8 THE COURT: Well --

9 MR. SMITH: That's what we --

10 THE COURT: -- whatever --

11 MR. SMITH: -- come up with.

12 THE COURT: Whatever. I mean, look, he is -- he
13 basically said I paid 30,000 a year. You know, he's going to
14 -- he owns that testimony. And the Court's going to look at
15 her testimony, look at the evidence, and see whether it's
16 supported by that. So, we'll see.

17 MR. SMITH: Well, I mean, but, Your Honor, I was
18 answering your question. And I was giving that to Mr. Reade
19 as well. So one of the things you want us to do is be working
20 with the same numbers. So the number I'm working with, from
21 her testimony, as to the amount of money that was paid between
22 October of -- excuse me, yes, November of 2017 through today
23 is \$42,651. And I did that as a courtesy, Your Honor, so that
24 we could meet your need to have some sort of consensus.

1 THE COURT: Yeah. I worry about that, because we're
2 really talking about November '17, through April '19, and then
3 May 19 through the present. He clearly --

4 MR. SMITH: I agree with that, but --

5 THE COURT: He is -- his payment history is evidence
6 of him banking on this notion that the Court is going to
7 materially modify this order, okay, because he --

8 MR. SMITH: I think that's --

9 THE COURT: He --

10 MR. SMITH: I think that's right, Your Honor.

11 THE COURT: He made it -- he made a payment history
12 up until the time of filing his motion. And even by his own
13 admission, he's basically paid only when the DA was going to
14 take his driver's license or do whatever. You know, he --
15 we've had requests during the year, the arc of litigation for
16 enforcement that the Court has deferred to the evidentiary
17 hearing. You know, so --

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: So, yeah. So, it depends. I mean, if
20 he doesn't prevail on this notion of a material change, then
21 he's going to -- then most of that \$40,000-some is going to be
22 since 2019. So --

23 MR. SMITH: Well, that could be true. No, I'm not
24 talking -- I'm -- I just want to make sure we're talking about

1 apples and apples. These are the numbers that I've used from
2 Ms. Kellogg's arrearages and testimony as the amount he's paid
3 since November of 2017 forward. So that's the metric of what
4 he's paid.

5 After -- after that, I think he testified that his
6 view was that he paid \$30,000 in '17 and '18. But as the
7 Court has correctly pointed out, between October and
8 previously, that judgment has already been entered. So now
9 we're just dealing with those two periods you've identified
10 between November of '17 through May of 2019 and forward.

11 So, Your Honor, I'm just saying that I think we
12 could probably come to a consensus. I don't know that
13 Mr. Reade would disagree, that these are the amounts of monies
14 that were credited toward his payments. What the Court
15 ultimately does as to how much money he owes will be the
16 Court's determination. But I'm just saying that amount of
17 money should be credited. And of course, I've argued
18 previously that the -- the additional amount of the -- the
19 child support should be credited, as well, based on the
20 formula. But that's --

21 THE COURT: Right.

22 MR. SMITH: -- argument.

23 THE COURT: But look, the amount, the 17 months
24 between November 2017 and April 2019 at \$2,500 a month would

1 represent \$42,500. They're saying that that amount should be
2 higher based on income. You're saying that should be no more
3 than that. Right?

4 MR. SMITH: Well, that's right. No, look, Judge,
5 I'm not addressing the issue of whether or not the -- the
6 decree will be interpreted to require him to pay half of his
7 income to Ms. Kellogg. That's the determination that we're
8 here for today. Again, I was directed to your statement that
9 we want to be working on the same numbers. And I think you
10 made the correct observation that anything prior to October
11 2017 is adjudicated, and what the amount of payments are that
12 we can consider for purposes of payment in looking at the
13 overall judgment --

14 THE COURT: Well, my -- my interjection was that I
15 started to get lost in Mr. Reade's logic in presenting this
16 information that I wanted to make sure that I wasn't missing
17 something, and that I was tracking it the way that -- that he
18 would like me to to track it. So I think, Mr. Reade, do you
19 have any -- I mean, do you think that -- that the Court
20 understands the direct exam of your client properly?

21 MR. READE: Your Honor, I think -- I think you do
22 understand, which is taking as a baseline the amounts that
23 have been testified. And I don't know that I disagree with
24 what Mr. Smith said, which is Ms. Kellogg has put into

1 evidence her testimony of the dates and amounts of payment.

2 The Court has said from October/November 2017
3 through April/May 2019, we have a period of time in which the
4 minimum support would have accrued. But Ms. Kellogg has given
5 you a dollar amount that's been paid. How that gets applied,
6 I think we're -- we can at least agree on the math. And I'm
7 not questioning Mr. Smith's addition.

8 So I think -- I think we're in agreement that that
9 is the amount that's been paid and is in evidence as having
10 been paid. And in fact, Ms. Kellogg wants to make sure
11 Mr. Ghibaudo gets credit for every dollar that he's paid. And
12 then ultimately, if there are any amounts, because the amount
13 we just talked about is actually short of what would have even
14 been the minimum support during that period, any amounts that
15 are ultimately applied are going to be above that.

16 THE COURT: Okay. You can resume your exam, please.

17 MR. READE: Thank you very much, Your Honor.

18 MR. SMITH: And, by the way, I agree with you.

19 BY MR. READE:

20 Q So, Ms. Kellogg, you've done your calculation of all
21 those payments during that period?

22 A Yes, I have. I have.

23 Q And the reason, when you did these calculations, you
24 didn't use gross monthly income is you didn't have it.

1 A No.

2 Q Ultimately, you haven't done a calculation of what
3 the gross monthly income was during that for purposes of
4 today, correct?

5 A Correct. Even on top it says \$2,500 minimum support
6 obligation for -- sorry.

7 Q So the point is, you haven't calculated what gross
8 monthly income would have been. Just the amounts that you've
9 actually received?

10 A Correct.

11 Q Mr. Smith asked you have you taken vacations during
12 this time.

13 A I have not taken any vacations, whatsoever, during
14 -- at all.

15 Q You've gone out and lavishly spent -- bought any
16 luxury items during this time?

17 A No, I have not. In fact, I have a car in the shop
18 right now.

19 MR. READE: Okay. At this time, Ms. Kellogg, I'm
20 done. And I appreciate your time today. I will pass her back
21 to Mr. Smith.

22 THE COURT: Mr. Smith?

23 REDIRECT EXAMINATION

24 BY MR. SMITH:

1 Q Ms. Kellogg, you had indicated that you had a --
2 that there was a viable waste claim that was -- was settled by
3 the -- this action, and you identified that the waste claim
4 was \$1.6 million.

5 A Correct.

6 Q You would agree with me at the time of the
7 settlement conference, there was no mention in the final
8 settlement that was read into the minutes of the Court about
9 any resolution of any waste claim. You would agree with that?

10 A Well, it was an exchange.

11 Q Okay. But there was no -- there was nothing
12 referenced in the -- the mediation in regard to the waiver of
13 any --

14 A How much?

15 Q -- waste claim, was there? There was any waiver of
16 any waste claim. I'm sorry, did you hear me? I'm sorry. Did
17 I --

18 A Are you --

19 Q Were you able to hear me?

20 A Are you asking me if there was any amount that was
21 referenced in the settlement conference?

22 Q No, no. What I'm saying is that in the -- so at the
23 settlement conference -- let me just lay some foundation. At
24 the settlement conference, you and Mr. Ghibaudo and your

1 attorneys reached this settlement associated with the
2 separation agreement. Do you recall that?

3 A I do.

4 Q Okay. And there was specific reference to the terms
5 of that settlement that were actually read into the record of
6 the proceeding that was oversaw by Judge --

7 A Hardcastle.

8 Q -- Hardcastle. Do you recall that?

9 A Yes.

10 Q Do you recall that? Right. And do you recall that
11 in that recitation of the terms of that agreement, there was
12 no reference to any waiver or resolution of a waste claim.
13 You would agree with that, correct?

14 A I don't. I believe that there was specific language
15 about marital waste.

16 Q So --

17 A I know that there was specific language about
18 Mr. Ghibaudo when speaking about marital waste.

19 Q Okay. Your -- your -- are you referencing now,
20 instead of this the settlement agreement that you two reached
21 in regard to a separation agreement, are you now referencing
22 what the document was that your attorney prepared that include
23 that provision regarding waste? Is that what you're referring
24 to?

1 A No, I'm not. Are you -- I don't know if you're
2 asking me -- I believe that -- if I recall correctly, at the
3 settlement conference there was an assertion of marital
4 waste.

5 Q Okay. But there -- there's nothing -- okay, fine.
6 You're saying that that's -- so the record will speak for
7 itself as to what was agreed upon in that agreement. In
8 regard to the the -- this notion of \$1.6 million, was that
9 money that you had in the bank from Alex's earnings during
10 marriage? Is that what your testimony is?

11 A Alex didn't have any earnings. What happened is
12 that --

13 Q Okay. So the answer to my question is no. The \$1.6
14 million you're referring to was not earnings acquired by Alex
15 during the marriage. Correct? That's a yes?

16 A I'm including it as is in --

17 Q Okay. I'm going to ask you --

18 MR. SMITH: Your Honor, may we please direct the
19 witness --

20 THE COURT: Yes.

21 MR. SMITH: -- to give me a yes or no --

22 THE COURT: This is a -- I know that any witness in
23 the situation that's asked leading questions are tempted to
24 want to expand on their answer. But in this instance, he's

1 opposing Counsel crossing an adverse party. So he can ask the
2 question with an expectation that you'll just respond to his
3 question, instead of offering an explanation.

4 So again, after he's finished, Mr. Reade gets to ask
5 you questions. And if it's something that needs to be
6 explained, that's the opportunity to do it. So the witness is
7 directed to just answer Counsel's question.

8 THE WITNESS: I think I'm just confused on the
9 question. I apologize.

10 BY MR. SMITH:

11 Q Okay. Let me repeat the question. And if -- if
12 there's a part you don't understand, just tell me what part
13 you don't understand and I'll try to repeat or rephrase.
14 Okay?

15 A Thank you.

16 Q The -- my question was the \$1.6 million of waste
17 that you claim was an issue in your case that was resolved,
18 that money was not money that Alex earned or after the time of
19 marriage, correct?

20 A Correct.

21 Q So that money that you're referring to is money that
22 Alex received in the inheritance from his father, correct?

23 A No.

24 Q So --

1 A It's a portion of it.

2 Q Okay. So what was the other portion of it?

3 A I had --

4 Q You said a portion was inheritance, okay. And the
5 other portion you're going to tell me. Go ahead.

6 A The other portion is, is that I had a house, a 3,000
7 square foot house I paid cash for. I put in over \$100,000 in
8 upgrades. Alex demanded to be put on the deed of my home,
9 which he did in 2005. The next month, he took out a second
10 mortgage. Then he took out a third mortgage, totaling almost
11 \$400,000. After that, he sold the only car that I had, paid
12 in full. After that, he sold my engagement ring. After that
13 he sold all the furnishings in my home. My home was then
14 foreclosed.

15 Q Isn't it true, that the monies that were used in the
16 way that you described were used to pay for expenses
17 associated with your lifestyle, and in regard to the opening
18 of a business for Mr. Ghibaudo? Isn't that true?

19 A No.

20 Q Okay. The -- in regard to the -- the amount of
21 money that you're saying was -- was wasted was in part the
22 million -- or well, in part the money that he received in
23 inheritance, and in part \$400,000 from the equity contained in
24 your residence. Is that correct?

1 A In the home. Yes. For the --

2 Q I'm the home that was jointly owned by -- by you and
3 Mr. Ghibaudo?

4 A Yes. I put him on the deed.

5 Q Okay. And you know if -- after that time, and I'm
6 going to move to a different line of questioning, but it's
7 sort of related to it. You had indicated to us the reason why
8 you didn't take this one job that you applied for was because
9 that Mr. Ghibaudo was threatening you, or it was a threat in
10 the sense that you had incurred domestic violence. And so you
11 were aware, though, that at the time you took that position
12 with We Care, that you had -- that he was on the board of We
13 Care, correct?

14 A No.

15 Q Do you recall testifying at the -- remember I told
16 you about that hearing, the grievance hearing that you
17 testified in under oath in -- in Mr. Ghibaudo's reinstatement
18 hearing? Do you recall that?

19 A You're confusing years. I applied for a job at We
20 Care in 2019. You're going back to the time that I worked at
21 We Care previously, whereas I got -- whereas there was an
22 opening on the board. They were looking for a male figure. I
23 --

24 Q Okay. So if I understand --

1 A (indiscernible) --

2 Q If I understand your testimony then, he worked on
3 the board in 2011, but did not work on the board at the time
4 you claim that he would be a possible threat to you for not
5 taking the job, correct?

6 A Yeah. We were married --

7 Q You're -- you're saying his total contact at that
8 point was to elicit -- to seek clients I think is what you'd
9 indicated, correct?

10 A In -- in 2019, I was --

11 Q Yes.

12 A The director said that Alex was frequently a
13 presence at We Care.

14 Q Yeah. And you said it was so he could solicit
15 clients. That was your testimony. You recall that?

16 A Yes.

17 Q Yeah. Okay. So in regard to you said that you
18 weren't using drugs in response to a question of Mr. Reade.
19 Do you consider alcohol a drug?

20 A Actually, I do. Yes.

21 Q And do you -- did you have an alcohol addiction,
22 ma'am?

23 A I don't -- I don't know --

24 Q That's a yes or no.

1 A -- if it was an addiction. I don't -- I don't know.

2 Q Did you attend -- did you go to rehabilitation for
3 alcohol abuse?

4 A I did not.

5 Q Why did you go to rehabilitation?

6 A We Care is not --

7 Q You did go to rehabilitation, correct? You did go
8 to rehabilitation.

9 A No, I did not.

10 Q You've never been to rehabilitation through We Care?

11 A No.

12 Q That's your testimony?

13 A No.

14 Q Okay. So did you --

15 A No, no, no.

16 Q You said no.

17 A Okay. No.

18 Q Did you go to -- did you go to rehabilitation in any
19 other place?

20 A No.

21 Q So during the time that you -- so in regard to your
22 previous testimony, in regard to I asked you if you indicated
23 you lied, what you actually indicated is when you were asked
24 to describe the two incidences of domestic violence cases,

1 your answer, and tell me if I -- if you recollect this, you
2 said to the best of my recollection, I don't really remember.
3 Not only was I intoxicated, but I also had seizures. So a lot
4 of those situations I just don't remember. Do you recall
5 giving that testimony?

6 A I -- I vaguely remember the testimony, but it was
7 some -- something in that area.

8 Q Do you also recall testifying that in the incidences
9 that you refer to as domestic violence that, and it says,
10 quote, can you describe -- well, let me ask you if you recall
11 testifying this to this question. Can you describe generally
12 arguments and how they were. And you answered, I would start
13 a lot of fights, and it was the alcohol. It was alcohol
14 fueled arguments. Do you recall those -- that testimony?

15 A Yes.

16 Q The -- in regard to the -- the notion of you looking
17 at jobs, I just want to be sure, since that was kind of
18 general language. You didn't -- you didn't take any positions
19 of employment. You just learned generally that you needed a
20 degree to do what you wanted to do. Is that fair statement?

21 A No. I would contact rehabilitation centers,
22 including the hospitals, and ask them what was required. And
23 they said call back when you have a degree.

24 Q Okay. So you -- you don't believe presently that

1 there's any other position that you could have worked at or
2 were required to work at, or tried to work at other than
3 working for a rehabilitation center? Correct? Let me
4 rephrase that. Let me rephrase that. You don't believe that
5 you had to find any other kind of job, or even tried to find
6 any other job other than through a rehabilitation center,
7 correct?

8 A I just wanted to finish school.

9 Q Okay. That's not an answer to my question. I
10 understand --

11 A I apologize. Okay.

12 Q The question I've asked you, ma'am, is you didn't
13 believe that you needed to apply for any other job other than
14 the job at a rehabilitation center?

15 A I guess no. That's where I sought employment.

16 MR. SMITH: I'll pass the witness, Your Honor.

17 THE COURT: Anything else, Mr. Reade?

18 MR. READE: Nothing further at this time.

19 THE COURT: Thank you. All right. You have another
20 witness? Mr. Reade, did you say that you had another witness?

21 MR. READE: I'm so sorry, Your Honor. Yeah. If --
22 assuming, because Mr. Smith had called her in his case in
23 chief. I just wanted to make sure he had rested before we --

24 THE COURT: I guess. Mr. Smith, do you rest? Was

1 there any other evidence you --

2 MR. SMITH: Your Honor, just -- yeah. Just -- just
3 through Mr. Ghibaud, just a couple quick questions, Your
4 Honor.

5 THE COURT: Well, why don't you -- all right. Mr.
6 Ghibaud, do you understand you're still under oath?

7 MR. GHIBAUDO: Yes, Your Honor.

8 THE COURT: Okay.

9 ALEX GHIBAUDO,
10 called as a witness on his own behalf, having previously been
11 duly sworn, did testify upon his oath as follows on:

12 FURTHER REDIRECT EXAMINATION

13 BY MR. SMITH:

14 Q Mr. Ghibaud, you just heard testimony about there
15 was a waste claim that was resolved as part of this case. And
16 then it had to do with your use of the funds from a private
17 residence. Was there any discussion about that read into the
18 record at the time of any resolution of this case?

19 A Never.

20 Q Okay.

21 A Never read. And that's always -- she's always had a
22 bone to pick with me about that house. The house was mine,
23 too. We refinanced that house in like 2004.

24 Q Okay. So in regard to -- to the testimony that

1 there was some waste claim for \$1.6 million to resolve, that
2 was nowhere in the discussions that you had?

3 A No. I never made that much money.

4 Q In --

5 A Between the house and what I brought in it, that's
6 an insane statement to say that I spent \$1.6 million when
7 altogether the deal was 890,000 for my business, and 120,000
8 that I got from my house.

9 Q In regard to the -- in regard to her statement that
10 she --

11 A Just one --

12 Q Okay.

13 A She put \$40,000 down on that house. That house was
14 never paid off. So for her to act like she somehow paid that
15 house off, it's not true. She was a stripper when I met her.
16 She didn't make that much money.

17 Q In regard to the monies that were, or the -- the
18 allegation that she never attended rehabilitation, is that
19 true?

20 A That is insanely false. She attended We Care house
21 in October of 2011, after her mom tried to throw her out on
22 the street if she didn't. She -- that's how I came to know We
23 Care. But for the fact that she was there in rehabilitation,
24 I would have never known that place exists.

1 Q Did you ever go to We Care on a regular basis, or at
2 all, after her rehabilitation stints in 2011?

3 A I had a client that I referred there. I think it
4 was in 2018. And then my fiance's niece actually attended
5 there in 2018 as well. So since then, aside from those two
6 periods of time, I haven't either been there spoken to anybody
7 there at all.

8 Q You --

9 A I have no business there.

10 Q You were obviously present at your reinstatement
11 test -- hearing.

12 A Right.

13 Q Do you recall Ms. Kellogg's testimony and testifying
14 to the following: they asked about your relationship. And she
15 said that currently right now -- the question was yes, it's
16 absolutely wonderful. And then question was how long has it
17 been that way? And she said, answer, ever since I finished a
18 30 day stint in We Care Foundation, which is a rehabilitation
19 for alcoholism.

20 A That's right. That's exactly --

21 Q Do you recall that testimony?

22 A I absolutely do. That's why she just brazenly lied
23 to the Court.

24 Q Thank you.

1 A Which she often does.

2 MR. SMITH: Thank you, Your Honor. That's it.
3 That's all I have.

4 THE COURT: Mr. Reade?

5 MR. SMITH: Pass the witness.

6 THE COURT: Do you have any other questions?

7 MR. READE: Your Honor, we don't have any other
8 questions for Mr. Ghibaud.

9 THE COURT: All right. Good. You have more you
10 have no questions for him. Any other questions for -- or do
11 you rest, Mr. Smith?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: Thank you. Mr. Reade, do you have any
14 other evidence in your case?

15 MR. READE: Your Honor, the only other evidence we
16 have is that we have our expert witness, Larry Birch, who has
17 been in this proceeding. We would call Mr. Birch.

18 THE COURT: Okay. And what is the subject matter
19 that he's testifying about?

20 MR. READE: Your Honor, Mr. Birch has done an
21 accounting of the gross income pursuant to the family support
22 section of the decree, more specifically the gross income.

23 THE COURT: Well, okay. He's a forensic, or is he
24 offered for some other reason? What kind of opinions is he

1 going to give to the Court?

2 MR. READE: Your Honor, he's going to give us
3 forensic opinions. He is a -- was a former bankruptcy
4 trustee. He's an accountant, fraud examiner. He's going to
5 say that he's reviewed the financial documents that -- the
6 QuickBooks, and was going to calculate the gross income.

7 THE COURT: Okay. Is he going to be materially
8 different than \$148,000 for '17, \$180,000 for '18, and
9 \$133,000 for '19?

10 MR. SMITH: Your Honor, he is really not. Those are
11 in the ballpark of what he was going to testify to. And the
12 only other facts that he was going to testify to, was the
13 discrepancies in those financial records.

14 THE COURT: Okay. But look, I can understand you
15 had to have an expert. You didn't have the actual backup to
16 the -- to the business records that were sent to the account
17 for the tax returns. I get that completely, that you don't
18 know what you're going to get at trial. But at the trial, the
19 tax returns came in, and the income has been established.

20 If the expert is just going to come in and say yeah,
21 my forensic work is consistent with what the tax returns say,
22 even though you know, I'm sure that what he was retained to do
23 is look at the Chase accounts and line them up with the office
24 manager reports. Right?

1 And, but, you know, I'm more -- I'm more -- I'm
2 basically saying look, his -- the retention of the expert was
3 to make sure that that type of evidence would come in. It's
4 in. So if it's not -- if it's duplicative, then hit get it
5 quickly and move through it. Okay?

6 MR. READE: Your Honor --

7 THE COURT: As far as -- as far as like the current
8 situation, you know, I don't know. First of all, Mr. Smith,
9 this witness was identified. Do you -- are you going to be
10 contesting whether or not he's qualified as an expert to sort
11 of evaluate financial matters in that way?

12 MR. SMITH: I won't -- I won't say that he's not an
13 expert. Mr. Birch has been around for a very long time. And
14 I understand he was a bankruptcy trustee and he's an
15 accountant. I just don't think he could add any scientif --
16 scientifically technical knowledge to this situation because
17 we -- we have the income information.

18 THE COURT: Well --

19 MR. SMITH: And if he --

20 THE COURT: -- in a case like this where he has done
21 considerable work, and the Plaintiff retained him, even if
22 it's just to sort of give more weight to the records that were
23 just prepared and filed, I guess, in the last month, then I'm
24 going to allow it. I just want -- I just want you to know,

1 Mr. Reade, that -- that, you know, you never know what the
2 Court's looking to find.

3 I'm using that evidence as sort of a basis for a
4 finding. So you don't need to be worried that I need to have
5 his testimony to make those findings. But we're going to let
6 him testify. But keep in mind that it doesn't have to -- it's
7 not going to have to be a lengthy exercise like it might have
8 been if he had come in and said look, I make \$75,000 a year.
9 You know?

10 So, Mr. Birch, I see you there. You've been sitting
11 there patiently all day. You're ready to go?

12 MR. BIRCH: I am, Your Honor.

13 THE COURT: Excellent. Why don't you raise your
14 right hand? You don't have to stand, just take an oath to
15 tell the truth.

16 (Oath administered)

17 THE WITNESS: I do.

18 THE CLERK: Thank you.

19 THE COURT: Mr. Reade, you're up.

20 MR. READE: Thank you very much, Your Honor.

21 LARRY BIRCH,
22 called as a witness on behalf of the Plaintiff, having first
23 been duly sworn, did testify upon his oath as follows on:

24 DIRECT EXAMINATION

1 BY MR. READE:

2 Q Mr. Birch, I won't run through all of your
3 qualifications. You've been qualified as an expert. You
4 prepared two expert reports in this matter?

5 A Yes.

6 Q Mr. Birch, you're back on mute. There you go.

7 A Okay.

8 Q All right. So the first one is what we have
9 attached as Exhibit 7 in this matter. That's a copy of your
10 initial report, correct?

11 A Yes, it is.

12 Q And that was your report as of January 2020, that
13 was based upon some of the QuickBooks data that Mr. Ghibaudo
14 had provided, correct?

15 A That is correct.

16 Q Did you ultimately prepare a supplemental report?

17 A I did.

18 Q And when did you do that?

19 A Let's see. That was prepared, I believe, after the
20 tax returns.

21 Q Okay. And we look at Exhibit 8, is that a copy of
22 the supplemental report that you provided?

23 A It is.

24 Q And ultimately, you've heard Mr. Ghibaudo's

1 testimony regarding income of -- gross income of \$148,000 in
2 2017, \$180,000 in 2018, and \$133,000 in 2019. Are those
3 numbers consistent with the numbers that you found?

4 A They are, with a few exceptions that I need to talk
5 about.

6 Q Okay. And can you tell the Court what those
7 exceptions are?

8 A Okay. Basically, my work goes to page 8, number one
9 of the divorce decree stating there is no community property
10 to be divided between the parties with the exception of Alex's
11 interest in his law practice. His share of the law practice
12 shall remain community property. Should Alex be paid for any
13 portion of his share of his law practice, one half of the
14 amount he receives will be payable to Tara, representing her
15 one half interest of his law practice which was started during
16 the marriage.

17 At first, I did not have the information, because
18 they had not prepared the books. When the books were prepared
19 and given to me, I calculated what was the income and loss
20 based on since the firm started. We looked at revenues to
21 start because I had some bank statements. There were months
22 missing. But I found that the income was about \$1.4 million
23 he took in receipts.

24 The receipts were listed, but there were no

1 expenses. Then I received the QuickBooks, did come up with a
2 different amount when taking expenses into consideration. So
3 I used the QuickBooks and came up with what one half of this
4 would be.

5 If you go to Exhibit 7, it states in there my
6 conclusion based upon the revenues and what they ended up
7 being if we would annualize the missing months. Then in
8 getting the QuickBooks, we worked that out, and the income
9 from the QuickBooks was, to get the revenue, the QuickBooks
10 gave us a revenue of 569,000. That was Exhibit AA. That was
11 the tax return.

12 The revenues, meaning the net revenues, net income,
13 the amount that was taken by Mr. Ghibauda was 580,000. So
14 there was about a \$10,000 difference. That was from the tax
15 return and from the QuickBooks. The tax returns for filed by
16 David Deiterman. The expenses -- expenses were massaged by
17 the CPA firm in filing the tax returns. Now there's two tax
18 returns that we need to talk about.

19 THE COURT: If I could, I don't know what part of
20 Mr. Birch's report --

21 MR. READE: He's at --

22 THE COURT: -- that I have that --

23 MR. READE: Exhibit 8 under revenue and net income.
24 It's -- right, Mr. Birch?

1 THE WITNESS: Pardon me?

2 MR. READE: You're talking about the revenue and net
3 income. It's titled revenue and net income in Exhibit 8.

4 THE WITNESS: Well, if you go back through the
5 divorce decree, page 8 --

6 MR. READE: No, no, no. You quoted 580,683.71.
7 That was --

8 THE WITNESS: That's --

9 MR. READE: -- and the \$10,000 difference. That's
10 what -- Mr. Smith wants to get there.

11 MR. SMITH: Yeah.

12 MR. READE: You talked about the review of the work.
13 And after the tax returns, you did 8. Your summary, which is
14 not really in response to a question, we're just kind of
15 letting you go so you can get to the point of this exception
16 to these opinions. But, Mr. Smith, he's talking about a
17 paragraph called revenue and net income in Exhibit 8. This is
18 where --

19 MR. SMITH: Could you give me --

20 MR. READE: -- he shows that there was an aggregate
21 of 1.4 cash for personal use, the difference between 569 and
22 580. And then he is segueing into the two tax returns that he
23 wants to talk about. So is that the -- Mr. Birch, that's --
24 that's the context of what you're about to talk about.

1 MR. SMITH: He's referring to the report itself,
2 Your Honor, not a chart of --

3 MR. READE: No, he's doing both. But -- but when he
4 -- when you interjected, he had just talked about this
5 difference. And it just so happens that it's the paragraph
6 called revenue and net income. Okay. It's the context for
7 his segue to what he wants to talk about as far as the two tax
8 returns, apparently.

9 THE COURT: Okay. Very good. Thank you.

10 BY MR. READE:

11 Q All right. So, Mr. Birch, continue. You wanted to
12 say there's something about the two tax returns you want to
13 address?

14 A I want -- I want the Court to know, we're talking
15 about two tax returns. He filed an 1120-S tax return for the
16 business. This is a tax return that is a pass through that
17 goes into his personal tax return. So the income that is
18 made, the net income that's made off of the 1120 goes on to
19 his personal tax return. What we used here was the 1120
20 because he must pick up on his personal tax return any kind of
21 distribution that was made, and any salary that was paid to
22 him. That's what he made off of the 1120.

23 The difference between his records he gave me on the
24 QuickBooks, and the tax returns supplied by David Deiterman,

1 were \$10,000 apart, 569 versus 580. Therefore, during that
2 period of time, he had 569,000 or 580, depending on which one
3 you want to use. And that applies to this paragraph 1 of 8
4 saying she's entitled to one half of what he made off of the
5 company. That's where those figures came from.

6 However, in the preparation of the tax return, and
7 then looking at the 1120-S, I really question some of the
8 expenses that have been put on that tax return. For example,
9 they have auto expenses of 31,879.85. And what that means
10 that if you use \$3 per gallon, and 25 miles per gallon, they
11 drove 3,679 miles per month during that period of time.

12 I believe that that needs to be looked at because I
13 believe that the auto expense is too much on the tax return.
14 If you drive that kind of amount of miles per month, and let's
15 say that you drive at 50 mile an hour, that would be almost 79
16 hours per month you're out driving, and 500 miles a month.
17 You have excess cost there of about \$25,000.

18 The next thing I think we need to talk about is the
19 meals expense. During that period of time, they had \$52,469
20 in meal expense. Under Rule 375 of the IRS, you must have the
21 date, the amount, the place where you went, and the purpose of
22 the meeting. We've seen no receipts. We've been told there
23 are no receipts. But that seems quite excessive.

24 Outside services. On the outside services 136,133.

1 The IRS demands that you must file a 1099 -- a 1099 for other
2 new employees in order to get the deduction. If you don't
3 file 1099s, you're not allowed to take the deduction. We
4 asked for these 1099s so we can determine if the service was
5 really business related.

6 Payroll expense, I'd like to see the annual W-3s to
7 see if they were properly filed. Rent and lease, did not
8 receive the rent and lease agreements. Total travel expense,
9 25,343. No document to support if the travel was for business
10 purpose. The net income then the, tax show 504,000. However,
11 the balance sheet shows 515, which is in excess.

12 The other thing I would like to address is the trust
13 account, the IOLTA account. There were two IOLTA accounts.
14 There was money transferred to the IOLTA account to pay a
15 girlfriend to hide the transaction. This is not what the
16 IOLTA account is used for.

17 And the last, there was a vehicle purchase for
18 29,688. The law practice normally hires companies to make
19 deliveries and pickups. Such a purchase for a sole
20 practitioner is very unusual, and is unnecessary. These are
21 additional costs that ought to be considered in dividing the
22 profit for page 8, number 1. And that would be far in excess
23 of the \$2,500 that's required as a minimum. Questions?

24 Q Yeah. Mr. Birch, just briefly, based upon those

1 anomalies that you found, did you ultimately reach a
2 conclusion as to the amount that Ms. Kellogg was entitled to
3 and has not been paid?

4 A She would be entitled to -- I did not check that.
5 She would have been entitled to, under this, to receive one
6 half of the 504,000. And if they would look at some of these
7 others, if they have a problem, it would be more than that.
8 So she's entitled to about a quarter million dollars based
9 upon the books and records of the PC.

10 Q Mr. Birch, did you have any other opinions that you
11 reached as part of your expert analysis in this matter?

12 A I believe that some of the items I talked about
13 should be considered and adjusting the 504,000 figure. That's
14 how much he took out of the company during those period of
15 time.

16 MR. READE: Thank you, Mr. Birch. At this time, I'm
17 going to pass the witness.

18 THE COURT: Mr. Smith?

19 CROSS EXAMINATION

20 BY MR. SMITH:

21 Q The numbers that you were referring to are outlined
22 in your report at a Kellogg v Ghibaudo summary, right? That's
23 in -- in your report. It's not numbered. So it's -- it's
24 Exhibit AA of Exhibit 8. I think that's how that works. Are

1 you with me, Mr. Birch?

2 A Yeah. I'm trying to find it? Exhibit AA.

3 Q It's -- and then within --

4 A Oh, I found -- I found it now. Okay.

5 Q You found it? Okay. And so there's a chart there.

6 And on the top of it, it says Kellogg vs Ghibaudo summary.

7 You can see that?

8 A Right. Right.

9 Q And the numbers that you were referring to are
10 actually numbers for -- that you've -- you've taken the sum of
11 all of the years 2016 through 2019, correct?

12 A Correct.

13 Q And the numbers that you did not -- did not account
14 or any judgment that had already been entered in 2017, in
15 October of 2017, correct?

16 A I did not. This was from the summary of the tax
17 returns that were filed showing the net income of the
18 operations.

19 Q Yes. But I'm saying that you didn't account for --
20 in other words, these -- this period is significantly longer
21 of almost a year and 10 months longer than the amount of time
22 that is in question, that we've -- before the filing of this
23 motion.

24 A This was when he started the practice.

1 Q Okay. And --

2 A And it says the practice was started during
3 marriage.

4 Q Okay.

5 A So this -- this is the practice that he had.

6 A Yes. So, Mr. Birch, somebody is messing with your
7 microphone. So you're not contending that Mr. Ghibauda has
8 sold his practice, are you, and that Ms. Kellogg is entitled
9 to half of the value of that sale, are you?

10 A It represents her one half interest of the practice,
11 of the amount he took out of the law practice.

12 Q Okay. I think the answer to my question is yes,
13 you're not alleging that this is half of the value of the
14 practice of your -- of you're --

15 A I'm sorry. It's not value. It's the amount of
16 income he took out the practice of profits and payroll.

17 Q Right. And he would have to pay taxes on that
18 amount of income, correct?

19 A The agreement says that taxes are not taken into
20 consideration.

21 Q I'm just asking you that question, Mr. Birch. He
22 would have to pay taxes on the amount of income that he took,
23 correct?

24 A Right. But this calculation --

1 Q Mr. Birch, I just would like you to -- I want to get
2 through this, so I'd just like you to answer my questions.

3 Okay>

4 A Well, it depends on -- it passes on to his personal
5 return.

6 Q Mr. Birch, please, these are yes or no questions. I
7 know you've done this many times. So --

8 A Well, the answer is it depends on what he has on his
9 1040. He may have losses that he can offset. Therefore, this
10 would not be taxable.

11 Q But there are more losses that he could offset on
12 his 1040 in the years that you saw, correct?

13 A I did not -- I bet your pardon?

14 Q I'm sorry. We're getting a lot of interference. I
15 don't know what that is. I didn't hear your answer.

16 A I say I did not do his 1040. I only did the
17 business.

18 Q No. I didn't -- I didn't ask you if you did his
19 1040. I'm saying that in the review of his 1040, you did not
20 see any offsetting losses for Mr. Ghibaud.

21 A I did not do his 1040 return.

22 Q Okay. It's okay. Let's just move on. In regard to
23 the -- these are your opinions as to whether or not these
24 expenses were reasonable for the firm that Alex runs, correct?

1 A I felt the expenses I went through may be reduced,
2 because I did not feel in talking to those, that they -- they
3 should be further investigated with details to see if those
4 are proper amounts.

5 Q Okay. So at this point, you just don't know. You
6 just say that should be further investigated, correct?

7 A Yes. That's true.

8 Q Okay. In regard to --

9 A Go ahead.

10 Q In regard to the expenses, do you know what type of
11 practice that Mr. Ghibaudo has? What -- what --

12 A Yes.

13 Q -- kind of work he does? What is -- what kind of
14 work does he do?

15 A He -- the work he did was basically contract work.
16 And I looked -- basically, I looked at the IOLTA account. The
17 IOLTA account tells you a lot about a practice. These things
18 that were in the IOLTA accounts, and there were two of them,
19 did not purport and he had many retainers --

20 Q Right. So --

21 A -- for his practice.

22 Q So that's why you're saying contract work. But do
23 you know whether or not, for example, his practice requires
24 significant travel?

1 A In doing this and reviewing --

2 Q I'd like you to answer yes or no, please. Do you
3 whether or not this business requires significant travel?

4 A Can we look at the travel expenses?

5 Q No. Mr. Birch, please.

6 MR. SMITH: Your Honor, can we direct the witness to
7 just answer yes or no?

8 THE COURT: Yeah. I think the witness is reading
9 too much into the question. All he's asking you is whether --
10 what level of detail you know about the practice? Does it
11 require travel? And you either do or you don't? And so just
12 respond to the question, please.

13 THE WITNESS: I do not but, but the travel is, as we
14 looked at the records, the travel --

15 BY MR. SMITH:

16 Q Okay. The answer is --

17 A -- was on --

18 Q You said you do not. Thank you. In regard to the
19 -- the auto expenses, do you know if that's for one car? Does
20 he pay for the gas of employees as a perquisite? Do you know
21 what that's for? What the gas expense is for?

22 A I only have the total. And it seems excessive --

23 Q Okay. So the answer --

24 A -- based on my experience.

1 Q The answer is you don't know whether or not it's for
2 more than one car. Correct?

3 A He's a sole practitioner.

4 Q Okay. Mr. -- Mr. Birch, can you please just answer
5 my question? Do you know whether it's for more than one car?

6 A I would have to assume it's for more than one car.

7 Q In regard to the meals, do you know whether or not
8 he advertises in any -- in any other way other than by for
9 example, taking people to dinner or socializing?

10 A I don't know until I look at the receipts.

11 Q Would it -- let me ask you this. Would it be
12 unreasonable for someone to have an advertising expense of
13 approximately 47,000 on \$1.4 million dollar, or excuse me,
14 47,000 on approximately \$500,000 worth of -- excuse me. Let's
15 -- let's look at one year, for example, on 2018. Would it be
16 unusual for him to have a little bit over 10 percent as an
17 advertising budget for a firm? Would that be unusual of this
18 kind?

19 A Yes.

20 Q So it would be unusual to spend 10 percent to
21 advertise a law firm, in your view?

22 A Yes.

23 Q Okay.

24 A It's generally around three percent.

1 MR. SMITH: Three percent. All right, very good. I
2 don't have any other questions for this witness, Your Honor.

3 THE COURT: All right, thank you. Mr. Reade,
4 anything else?

5 MR. READE: Very, very briefly.

6 REDIRECT EXAMINATION

7 BY MR. READE:

8 Q Mr. Birch, do you still have your Exhibit AA on your
9 July supplemental report, which was Exhibit 8?

10 A Exhibit 8?

11 Q Yeah. Your summary that Mr. Smith just asked you
12 about.

13 A Oh, the summary on page AA. Yes, I do.

14 Q Okay. And so in fact, as Mr. Smith was asking you,
15 you actually did a calculation of the net income for years
16 2017, 2018, and 2019, which is the bottom line of that page,
17 isn't it?

18 A Yes. If you will see, the shareholders
19 distribution, which are the second line down, those are
20 distributions he took from that company, meaning excess
21 profits. That would be income to that company. See the 504
22 at the bottom, that income? He took distributions of 569,069.
23 And then we added in 2016, and '17, salaries that he got.
24 That would be income he received from this operation.

1 Q And so you actually did calculations of the amount
2 that Mr. Ghibauda took as distributions out of this company as
3 part of your analysis. And those are the numbers we see in
4 AA, correct?

5 A That is correct.

6 Q And that's based entirely upon review of his own
7 accounting records.

8 A That is correct.

9 Q I don't --

10 A And his tax -- and his tax returns.

11 MR. READE: And his tax returns. Thank you,
12 Mr. Birch. I don't have any further questions.

13 THE COURT: Anything else, Mr. Smith?

14 MR. SMITH: I think that I -- no, I'm good. Thank
15 you, Your Honor.

16 THE COURT: Thank you very much, Mr. Birch. You're
17 welcome to stay online. But we're going to wrap up the
18 evidence portion of this case, apparently. Right, Mr. Reade?

19 MR. READE: That's correct, Your Honor.

20 THE COURT: All right. It looks like the only
21 exhibits that you referred to had already been admitted as
22 Defendant's exhibits. Do you want to check to see if there's
23 anything that hasn't been offered or ruled on?

24 MR. READE: Your Honor, I believe everything that we

1 had referred to is duplicative of the documents that the
2 Defendant has in his binder. So on that, I don't believe
3 there's anything further to say.

4 THE COURT: Okay. We'll consider that evidence
5 portion of the case to be over. The Court has been taking
6 notes and reviewing the documentary proof. More than likely,
7 what's going to happen is that I'm going to hear your
8 argument, and then I'll be calling you this week. I don't
9 think I'm going to be writing a decision on the case, because
10 there's going to be some dialogue that I'm not -- if I was
11 writing it, I wouldn't write what I -- what I'm thinking.

12 So it'll be submitted. And I'll probably find a
13 time in the next week where we have a time to weigh out all
14 the findings and conclusions. I need to -- I need to crunch
15 the numbers and look at, you know, tie all the documents
16 together. Okay? But we've already talked before we started
17 with the evidence, and then in between, on how the Court is
18 compartmentalizing these issues.

19 And, Mr. Smith, basically for the first time in two,
20 three years, you finally -- you get to sort of crystallize
21 everything and tell the Court what type of remedies you think
22 are appropriate in this case. Right?

23 MR. SMITH: Okay. So -- so, Judge, I don't know
24 that based on the comments that were made within the, you

1 know, the proceeding, that you and I directly agree on -- on
2 what's contained in this decree. So I'm going to start with
3 it.

4 First of all, I think that, you know, the whole
5 notion of alimony is it's equitable alimony. And I can't
6 imagine how anybody could look at the scenario and think that
7 it was -- it was equitable to charge him with half of his pre-
8 tax income as a basis for an alimony award. I don't -- I
9 can't imagine anybody arguing that that was a fair, equitable
10 determination.

11 And I don't -- I don't -- I think it's a fair read,
12 Your Honor, that you know, Ms. Kellogg, who I believe lied
13 under oath today in regard to several things that she
14 testified earlier in a hearing under oath. I just think that
15 -- that this idea that there was a waste claim that justified
16 this amount is so completely unbelievable.

17 I mean, these parties had no money. He wasn't even
18 working. He was in law school for the period of time, and
19 then started working as an associate for 70,000 a year, and
20 then got suspended. I can't imagine why anybody would
21 possibly think that they had \$1.6 million, or there was any
22 waste claim.

23 The way that we can -- we know that that's not true
24 because if you look at the minutes, there's no reference to a

1 waste claim when lawyers as good as Mr. Creel and Mr. Willick
2 read into the record what the deal was. They said nothing
3 about any kind of waste claim. It just wasn't part of it.
4 And the reason why it was as high as because, as Mr. Ghibaudo
5 testified, without any contrary testimony, that they were
6 trying to reconcile, and that this was about a separation.

7 And, Your Honor, I -- I haven't spent a great deal
8 of time in regard to the pleadings that were before the Court
9 in relation to, you know, his challenges to the decree and his
10 challenge of the findings and so forth, and the fact that
11 there was no evidentiary hearing. All that's laid out in the
12 Court's record. And I think that's all within the view of the
13 Court as part of its judicial notice. But -- but frankly,
14 Your Honor, I think the real mistake that was made here was
15 Alex not appealing this.

16 And he gave us a reason why. I certainly, if he was
17 working for me, I wouldn't have accepted that as a reason.
18 But -- and I get it. And I just think that he missed the boat
19 on that. And so as a result, he's left with this order. But
20 to say that this order justified a finding that's nowhere to
21 be found in the -- the actual record upon which they claimed
22 this was based, that's really unfair.

23 I mean, talk about inequitable. He added in a
24 provision, put in a provision about this waste claim that was

1 never in the record or the minutes of the -- of the agreement.
2 And he did it for this reason, to try to say that, oh, there
3 was a reason why this amount was given. Who would -- first of
4 all, who would accept a waste claim in the form of that.

5 THE COURT: Well, let me --

6 MR. SMITH: But secondly --

7 THE COURT: Let me ask you this. And I know you're
8 on a roll here. But if you --

9 MR. SMITH: No, please. Please.

10 THE COURT: -- look at the agreement that they made,
11 which essentially was a \$2,500 agreement, and --

12 MR. SMITH: Right.

13 THE COURT: -- you look at the recitals and the
14 representations that were made concerning income, it does make
15 sense. It doesn't make sense now, when if you make 180,000 or
16 150,000. But he said that he was making \$6,700 or \$80,000 a
17 year. Now, he testified that he was really making 60. But
18 that was -- that was the context. So if you figure in a child
19 support obligation of 819, and you divide the income
20 basically, it's about \$2,500 a piece. Okay? So there's a --

21 MR. SMITH: Right.

22 THE COURT: -- logical starting point at \$2,500 --

23 MR. SMITH: There's a logical starting point.

24 THE COURT: What? So --

1 MR. SMITH: He wasn't -- he wasn't -- yeah.

2 THE COURT: I'm just saying that it's not -- it's
3 not -- you're saying that the where he finds himself today,
4 because his income materially changed after he made this
5 agreement, seems unfair. But at the time, he was setting the
6 bar as his income, whether it was 60 or 80. He said it was
7 80. \$6,666, that's on page 4, line 27. And that --

8 MR. SMITH: Yeah. I know.

9 THE COURT: -- 8,500 was the minimum. So you could
10 -- you could say that this was an agreement to share the
11 increase in his income. Okay. So they -- you say that he
12 stuck with the decree. I mean, how many times do I have to,
13 you know, comment on the decree? I have issues with the
14 decree. But I don't -- all I have is the power to consider
15 adjustment and enforcement. Okay?

16 MR. SMITH: I'm with you. And so I started this
17 argument, Judge, by saying that when we're looking at this, we
18 have to look at those portions of the decree that are
19 adjustable, because you've asked me to address three sort of
20 areas right?

21 First is, as the decree, the payments that were made
22 or not made prior to the time of his filing, and what impact
23 those have. And then the impact of the motion that addressed
24 both the the terms of the decree as unreasonable, and the

1 issue of her unemployment that we believe shows a breach of
2 the covenant of good faith and fair dealing. And frankly --

3 THE COURT: Okay. But let's --

4 MR. SMITH: -- I think that --

5 THE COURT: -- take that. Why are we spending so
6 much time on that? Let's say, you know, your argument is she
7 hasn't provided sufficient proof of disability. She has an
8 associate's degree. Her testimony isn't compelling that she
9 can't work, she can work. What are we talking about? \$24,000
10 a year to \$30,000 a year that would be imputed to her?

11 MR. SMITH: She said 30.

12 THE COURT: In comparison to --

13 MR. SMITH: She said --

14 THE COURT: In comparison to somebody who makes 120
15 to 150,000 a year. I am saying how material is that argument
16 really? Okay?

17 MR. SMITH: It's in the argument. Again, we're in
18 three sections here, Judge. I think that -- I'd have to do
19 the math to determine what that means in terms of it depends
20 on what your order is.

21 But let's say you find that the half of his income
22 is what the decree says. And therefore, we're going to
23 calculate as the -- Mr. Birch, did half of the income for the
24 years subsequent to November 2017 through May of 2019. What

1 I'm indicating is that had she worked, the formula becomes
2 different. It becomes a calculation of the difference between
3 --

4 THE COURT: Yeah, I know. But I've done --

5 MR. SMITH: -- the parties' --

6 THE COURT: -- that. And if you're making 180, and
7 she's making 30, the math doesn't result in any reduction. It
8 may result in some, you know, like the difference between 6000
9 and 5000. But it doesn't result in any kind of change the
10 \$2,500 figure.

11 MR. SMITH: No, it doesn't result in any change to
12 the \$2,500. But again, that depends on how you go with your
13 order, Judge. So maybe, and I hope I'm being clear, and maybe
14 I'm not. So let me just sort of walk you through my thinking.
15 And maybe I'm not thinking of this correctly.

16 But the -- my understanding is that the \$2,500 is a
17 minimum that I believe, included based on the language that we
18 cited earlier, the 819. So if you're going to find that the
19 amounts above that are also in play, I'm going to address that
20 in a minute. Then that requires that he pay up to 50 percent
21 of his income.

22 And I'm saying that there's also a portion of this
23 document, there's several formulas actually in this document,
24 one of which says that you compare the income of the parties.

1 And the way I do the math is that if she's going to get half
2 of let's say a \$70,000 overage, then that half would be
3 reduced by the amount of her income if there's a comparison of
4 income. That's all I'm saying.

5 But it's certainly relevant to now, four years after
6 the time of the entry of the, well three years after the time
7 of the entry of the decree, three years and nine months, as to
8 whether or not she has the ability to go to work. I -- since
9 we're on that, I think the evidence that she -- she gave in
10 regard to the things that she would be doing for We Care
11 strongly suggests he has the ability to work. She doesn't
12 want to do anything other than what she wants to do. And
13 she's saying that it was a right of hers to not work until she
14 received her degree.

15 I don't think that that's specifically said in the
16 agreement. I think that you'll see there was another addition
17 by Mr. Willick in the decree, this 32 hours business. That
18 was nowhere to be found in the recitation of the agreement
19 that is found in the minutes of this Court, or the testimony
20 that was given at that time. That's something that was just
21 added on. And I again, I just think that's so grossly unfair.
22 But it's Mr. Ghibaudo's fault for not challenging this.

23 In regard to the -- the -- I think the Court can
24 reasonably impute income to a person it finds willfully

1 unemployed in a divorce case. And I don't think I need to
2 cite the law on that. The Court's well aware of it. And that
3 would imply into an alimony award. And so for the timeframe
4 -- from the time of May 19 proceeding forward, we believe that
5 that's a reasonable consideration because if you impute an
6 income, and you look at Kogod for that period, Kogod stood for
7 the proposition that the the needs of the party needs to be
8 met, if on a lifestyle basis for the standard period of time
9 that was identified by the Court.

10 She's identified her expenses at about 4,200 and
11 change in her -- her decree. If she can meet her -- her needs
12 with an additional net on a 40,000 income of about \$3,500 per
13 month, then her needs are extremely low. And I believe the
14 only way to read -- to read Kogod, and trust me, Judge, I've
15 reviewed that case about 5,000 times since it was my client
16 whose alimony award was being reneged on -- or was being
17 changed by the the plurality decision.

18 In that analysis that was performed by Judge
19 Pickering, she basically said you don't get a metric higher
20 than your need, period. And that -- and certainly the 4,200
21 based upon what the parties' income was at 5,000 a month is --
22 is almost the full amount that they were making at the time.

23 So I think even that amount is excessive compared to
24 what the parties were actually earning after the time, or at

1 the time of the divorce. So, Your Honor, I believe an alimony
2 adjustment is absolutely justified, if not an elimination.
3 And I'll talk about why elimination now.

4 So in this decrease, if we could look at the terms
5 of the decree. Again, I've made my case in regard, or I've
6 stated my case in regard to why I think the child support
7 should be deducted in regard to that \$2,500. I also think
8 that if you look at line eight of the one through seven, it
9 indicates that Tara shall receive 50 percent of any bonuses
10 Alex may receive at his place of employment. And then they
11 give examples, and they use the term gross monthly income. So
12 in my view, there is a --

13 THE COURT: Have you looked at the tape in the
14 (indiscernible) 3G from May of 2016 to see if those words were
15 actually used?

16 MR. SMITH: The words you mean that are contained in
17 the examples?

18 THE COURT: No, I -- well, I mean, anything related
19 to that. I'm just wondering if anybody's done it. I'm going
20 to do it. But the -- you know, that's the record that is --
21 that is the source of the decree. It's an unusual discussion
22 to base anything besides child support on a gross income.
23 It's just not done.

24 MR. SMITH: Well, we have the -- I relied on the

1 minutes, Your Honor, to be --

2 THE COURT: Yeah. All right.

3 MR. SMITH: -- honest. And --

4 THE COURT: If there's a record of it, I'm going to
5 confirm it. I don't --

6 MR. SMITH: Okay.

7 THE COURT: I can't explain -- I can't explain those
8 type of terms. But it says gross, and it's an order of the
9 Court, and it's a problem because it's --

10 THE COURT: It says -- my point, Your Honor, is that
11 it indicated that Tara shall also receive 50 percent of any
12 bonuses Alex may receive in his place of employment. And then
13 it says as examples only of Alex's gross monthly income as
14 10,000. He should provide Tara with family support, et
15 cetera. In other words, they equate gross monthly income with
16 bonuses.

17 And what I'm saying is that that's because the
18 notion was Alex would be employed, and he would receive
19 additional bonuses above his employment income. And at the
20 time, as the Court has said, it wasn't lost on me that his
21 employment income at the time was about \$60,000 a year.

22 So \$2,500, with the -- with the child support is
23 within, you know, reason. So the idea was this was a specific
24 reference to the condition that he found himself in at the

1 time of the -- of the divorce decree, and that he was just
2 getting bonuses. And that's how they were defining gross
3 income.

4 And I think that that forms an ambiguity when they
5 later define gross income at number four. They say gross
6 monthly income means, well it says the income received from
7 month to month from source person who's not self employed, or
8 the gross income self employed person. Well, then bonuses
9 then becomes meaningless. Or, in other words, it's conflict
10 between what was contemplated at the time of the of the
11 divorce.

12 If you don't see that conflict, then you don't. But
13 I see it as a conflict that should be read in the favor of
14 Alex. So the only monies that we would determine would be the
15 basis for any kind of division over and above the \$2,500 would
16 be bonus money. And that's how I would review that.

17 The -- the other -- the other thing that I think is
18 important, Your Honor, is that the ultimate amount that he
19 paid 42,651, after the judgment in October, is consistent with
20 the amount that he would owe through May of 2019, even if that
21 amount was paid, a little bit of it was paid after May of '19.

22 So the -- in my view, the only way the Court finds
23 that there's money owed above the November, or the October
24 judgment of 2017 is if the Court finds that the total amount

1 of his gross monthly income is divided with the -- less the
2 \$819, to mean that that would be the amount of his -- his
3 alimony obligation.

4 And Your Honor, I just think that based upon the
5 facts of this case, that would be an inequitable finding.
6 There would be no way that the decree -- if his income is of
7 what it is now, that the decree would be written in that way.
8 But, and again, I think the Court -- I know the Court can't do
9 anything about the decree being written as it's written. But
10 it clearly wasn't intended to be a final decree of the Court
11 -- of the Court. But I understand that there's nothing we can
12 do about that now.

13 We certainly, though, can take that in consideration
14 with a couple of different factors. Judge, you have to define
15 if -- if you define that larger number, then basically she's
16 going to have received for a 14 year marriage an amount that
17 is one half of his income over the course of four years. And
18 it's in excess of the \$2,500 by about, I think they said it
19 was the amount -- if the amount is wrong that they said, but
20 it's somewhere in the neighborhood of 120 or 130.

21 Did we calculate that number. The number from
22 October through -- I don't think we did. It's by my
23 calculation somewhere in the neighborhood of \$130,000. Your
24 Honor, I just think that that -- if we're going to enter a

1 judgment against Mr. Ghibauda in that amount, that has to be
2 considered as what his ability to pay proceeding forward is
3 going to be because it's just -- it's just such an excessive
4 amount above what should have happened in that case.

5 In regard to the -- the amount of money that you
6 should proceed going forward, I just think that the Court
7 needs to look at the Kogod decision, needs to look at what her
8 justifiable needs are, needs to look at what her income level
9 is. She said she could make about 30 to \$40,000 was her
10 testimony, if she worked in a -- as a -- in her capacity as a
11 counselor in the rehabilitation field.

12 But there was a reason I went through all those
13 things that she could do, drive, counsel, work with records,
14 et cetera. I just think that record establishes, Judge, that
15 she -- there's many, many jobs that she would be available
16 for.

17 Now, one of the things I think you have to consider,
18 and for both parties, is the current market situation. Alex
19 testified that his income had gone way down. But -- and it
20 may make it more difficult for her to find a position. I
21 understand that. But it is what it is. And I think that's
22 the straight story for the Court.

23 In regard to any other kinds of arrearages for -- we
24 would have to consider what the R Court did, at least through

1 May of 2019, Your Honor, in regard to any obligation because
2 that would be another judgment that would be I think the Court
3 entered earlier was sort of the the amalgamation of the
4 judgments. That amount has to be considered. I'm sorry? I
5 beg your pardon?

6 THE COURT: I didn't -- I don't know where that --

7 MR. SMITH: Okay. Well, anyway.

8 THE COURT: -- came from.

9 MR. SMITH: I don't know where that came from
10 either. So in the in the amalgamation of -- I think that
11 judgment has to be part of the calculation of any amount that
12 Alex would be required to pay to Tara.

13 And again, Judge, what we're -- we have here is
14 really just a, you know, a guy who's who's, you know, picked
15 himself up after years of not being able to work. He went
16 back to work, and he built himself a practice.

17 THE COURT: Let me ask --

18 MR. SMITH: I just want to --

19 THE COURT: Let me ask you a question based on what
20 the -- see what -- just to address it, you know, based on what
21 the expert sort of brought up at the end. The exhibits that
22 were admitted by stipulation shows that he incorporated this
23 practice with the Secretary of State about six months after
24 the settlement conference with with the judge.

1 MR. SMITH: I think that's right.

2 THE COURT: So he was in -- he was in flux, or in
3 practice, he was working for somebody else or starting a
4 private practice around the time of the divorce settlement,
5 right?

6 MR. SMITH: That's right.

7 THE COURT: Yeah. Okay. So what, you know --

8 MR. SMITH: He didn't --

9 THE COURT: The Court --

10 MR. SMITH: -- He didn't --

11 THE COURT: The Court, I mean, the only way that the
12 Court could say there's no property, but we're going to divide
13 property that's created after the divorce, would be on a
14 contract, a marital settlement agreement, or some sort of
15 agreement. I have --

16 MR. SMITH: Right.

17 THE COURT: This provision, I'm going to have to
18 deal with if Mr. Reade argues it. But it's another one of
19 those things where there's no evidentiary source for it. I
20 don't know what to make of it. But --

21 MR. SMITH: Yeah, Judge. So -- so you've sort of
22 taken my last argument from me. But, thank you. So that was
23 the -- that was the position I was going to take in regard to
24 how we should deal with monies after the time of the --

1 especially a division of a practice after the time of the
2 divorce.

3 Your Honor, let me -- let me just note that, and
4 what I was going to say is that, look, Alex has worked hard.
5 He's built up a practice. He's been facing a lot of adverse
6 stuff from, you know, former attorneys from Tara. And,
7 frankly, even the -- Mr. Reade who I think is -- has done an
8 excellent job in this case.

9 But I think -- I didn't understand why he would
10 argue that Mr. Ghibaud's license should be suspended as part
11 of the the DA's position. Well --

12 THE COURT: I mean --

13 MR. SMITH: Or maybe --

14 THE COURT: I mean, look, he can do whatever --
15 whatever he wants to --

16 MR. SMITH: No, he can. But I'm just saying --

17 THE COURT: You can call it cutting his nose off to
18 spite his face. But from his client's point of view, it's
19 been a galling two years of non payment. And, you know, I --

20 MR. SMITH: Yeah, I agree. I don't -- I understand.
21 But I don't think that those payments should have gone beyond
22 a period of time that was reasonable under the term. And
23 that's the final issue, Your Honor.

24 THE COURT: Well, before you --

1 MR. SMITH: There is --

2 THE COURT: Your client testified that he wants the
3 decree to be modified to establish a specific sum and a
4 specific duration. And you -- no one's ever really said
5 anything about that. Both of them asked me to do it. So do
6 you want to make a pitch for any particular amount and
7 duration past the time --

8 MR. SMITH: I do, Your Honor. And that's what -- we
9 were just getting to the term, Your Honor. I think the term,
10 and again, this is -- is I think the common term for a 14 year
11 marriage, the term would be between probably three to five
12 years, at the most at five, and then probably more like two or
13 three years for a alimony award.

14 And I think that that should be a consideration of
15 the term that should have been entered in the initial section.
16 It's the idea that it goes on for 15 years is draconian. I
17 mean, it's just I've never -- and I'm -- well, I can't say.
18 You've probably handled more divorce cases than I have, Your
19 Honor. But I can -- I can tell you that I don't -- I would
20 doubt, and I'm not testifying, but I would doubt that there's
21 a Court record of a case in which there was a 15 year marriage
22 and a 15 year alimony duration.

23 THE COURT: Well, there is, but the finding is
24 there's a significant disability or significant health issue,

1 or a significant issue that would warrant it. And --

2 MR. SMITH: Okay. That makes sense.

3 THE COURT: -- so since there was --

4 MR. SMITH: That makes sense.

5 THE COURT: -- trial, no findings of the
6 (indiscernible) or that 125 and 150 factors, it's just lost to
7 history. You know. So it is a problem.

8 MR. SMITH: Well, we certainly --

9 THE COURT: It is a problem. The Court has
10 jurisdiction to modify or terminate support, which includes
11 amount and duration.

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: And the problem that we have here is
14 that there's no context for the duration other than the
15 allegation that it was a stipulated duration. So he -- he's
16 already presumably been responsible for what, three or four
17 years? May -- I mean, was it three or four years under the
18 decree, right?

19 MR. SMITH: It's from January -- January I think of
20 2017. Maybe February 1st, 2017. February 2nd? Okay.
21 February 2nd, 2017 until the filing of the motion on May 30th,
22 I think. On May 30th, 2019.

23 THE COURT: Yeah.

24 MR. SMITH: So those are the periods of time that he

1 would have been responsible for that obligation, Your Honor.

2 THE COURT: Well, it doesn't have to be exact
3 because remember, we're starting this analysis, from my point
4 of view, after the October 2017 hearing.

5 MR. SMITH: And it makes sense. That makes sense.
6 So in regards to the the -- the duration, Your Honor, our
7 request for a duration would be by no means longer than a two
8 year duration. And frankly, a one year duration we think
9 would be reasonable over and above from May 19th forward.

10 So we think that under one year duration, this
11 should have long stopped, and under a two year duration, there
12 should be a very short period of time. And that would be
13 based on whatever the Court found was just and equitable in
14 the award.

15 I would submit, Your Honor, that she is willfully
16 underemployed. There's going to be I assume an amount of
17 arrearage. One of the ways that we could provide for her is
18 to provide a payment by Alex that would give her some level of
19 income that may incentivize her to actually get a job, but in
20 the form of a payment to her that he could not -- that
21 wouldn't, you know, interfere with his ability to continue to
22 operate his practice.

23 So on that term, there's still money that could be
24 paid to her to pay down that arrearage. And then there would

1 be some reasonable amount of period of time of assessment of
2 what the amount would be from May 2019 until now. But, Your
3 Honor, I just, I don't -- I think it's hard to look at this
4 case. And I understand that the problem is both ways, and I
5 get it, and Alex's nonpayment.

6 But really, Judge, this should have never happened.
7 And if Alex had an attorney at the time that these issues were
8 made in the decree, it never would have. So --

9 THE COURT: Well, I don't know.

10 MR. SMITH: -- thank you, Your Honor.

11 THE COURT: I mean, he could be -- if this had been
12 tried, I think you -- if somebody came into your office and
13 they said okay, look, I got a 14 year marriage. I work as an
14 attorney making 130 to \$140,000 a year. My wife has been
15 going to school and hopes to get an associate's degree so she
16 can get a \$30,000 a year social worker job, you would say 5 to
17 10 years, \$2,500 a month alimony, and modifiable. That's
18 probably where you'd find yourself.

19 MR. SMITH: Not on 10 years, Judge, I don't know
20 what -- unless they had a 25 year --

21 THE COURT: Well, I mean, I'm saying it's within a
22 range. Usually half the duration of the marriage is sort of
23 rule of thumb, and the age of the parties and other things
24 suppress or increase those things.

1 MR. SMITH: Well, Judge, since you've asked, a third
2 or a half is the common standard that everybody uses in these
3 divorce cases. That's --

4 THE COURT: Unless there's an extenuating
5 circumstance. You know.

6 MR. SMITH: Unless there's an extenuating
7 circumstance.

8 THE COURT: And so --

9 MR. SMITH: Let me just say that in this case, Your
10 Honor --

11 THE COURT: Yeah, but so what I'm saying is --

12 MR. SMITH: -- she wasn't working.

13 THE COURT: -- that we're within that timeframe
14 right now. But the problem is --

15 MR. SMITH: But it wasn't --

16 THE COURT: The problem is that as soon as you're
17 done, Mr. Reade's going to go my math shows he owes her 100
18 grand for what he didn't pay her for the last whatever. Okay?
19 Or, you know, could be higher or lower, whatever. Depends on
20 how he walks me through that. And that's because of the
21 provisions that are included in the decree. Okay?

22 MR. SMITH: Right.

23 THE COURT: So --

24 MR. SMITH: And that --

1 THE COURT: He's making \$120,000 a year right now,
2 or his earning capacity, his true capacity is reasonable
3 compensation for someone of his experience is 120 to 180, like
4 you said. And she's imputed income to her of 25 to \$35,000,
5 which is, you know that -- that's the best finding that he can
6 get. There's a gap in financial circumstances that would
7 warrant a significant spousal support award. Not to --

8 MR. SMITH: But he's paying --

9 THE COURT: Yeah.

10 MR. SMITH: But by the time of the judgment, Your
11 Honor, he's paid spousal support for -- for at least three
12 years.

13 THE COURT: I understand. But what you're saying --
14 what you're saying basically is, for a myriad of reasons, he
15 finds himself in a circumstance where his alimony is about
16 \$8,000 a month for the period of time we're talking about.

17 MR. SMITH: Well, yes. Your Honor that's --

18 THE COURT: Yeah. Okay.

19 MR. SMITH: But again, I've given some --

20 THE COURT: I mean, if a judge had said the alimony
21 award is going to be \$6,500 a month when her need on her
22 financial is \$4,200 or \$4,400, and he's making \$140,000 a
23 year, that would -- that would not pass review.

24 MR. SMITH: You're right. But worse than that,

1 Judge, you keep using the figures he's making now. If this
2 was --

3 THE COURT: No, no, no. I'm going back to 180 and
4 140. Okay?

5 MR. SMITH: You're right. But --

6 THE COURT: 2017, 140. 2018, 180. Okay? And --

7 MR. SMITH: No, no, no. I understand.

8 THE COURT: And the tax returns, and the expert
9 testimony clearly shows that he's taking every advantage of
10 running his own business as it relates to how he's managing
11 his finances. I'm not worried about him in the least. Okay?
12 But, you know, you want the Court to reduce the duration for
13 15 years from the entry of the decree, or consider doing that,
14 and lock in a specific amount, right?

15 MR. SMITH: Yes. Right. I don't -- yeah. I want a
16 term that's consistent with what we had indicated, and then a
17 consistent amount. But, Your Honor, let me just say this,
18 that one of the things that we -- I think is lost in this
19 argument is that in Kogod, what the Court did was essentially
20 adopt the rules in Florida, which are the most draconian rules
21 in regard to support in the nation.

22 And one of the rules that's contained in Florida law
23 is that if you make money after the time of marriage, in other
24 words, if you increase your earning capacity greatly after the

1 time of marriage, that doesn't form the basis for a new order.
2 That forms the basis for continuing the same order. But it
3 can't be -- the additional income that somebody earns cannot
4 form the base.

5 So I'm not even sure if that's going to be the rule
6 anymore in terms of what -- in just the limits they had in
7 Kogod. I think it might expand those limits. But right now,
8 I think it would be fair for you to say look, if we had tried
9 this case when he was earning \$60,000 at the time of this
10 divorce, and when he objected to this, and the judge would
11 have tried it, he never would have paid even the \$2,500
12 amount, and it certainly wouldn't have been for 15 years.

13 THE COURT: Yeah. And the --

14 MR. SMITH: That's my view of it.

15 THE COURT: And the next year when I heard it in
16 '17, I would have upped his support the 3,000 because he's
17 making 180 or whatever. Okay? So let's not -- let's not --
18 that's not productive to really go there. He -- he finally
19 filed the paper and he finally has the basis to make an
20 argument to apply the equitable principles of alimony as it
21 relates to the award.

22 The decree, as bad as it is, specifically provides
23 in two different places that he can ask for relief as an -- as
24 an alimony award. And so that's where the jurisdictional

1 piece of it is for me. Okay?

2 MR. SMITH: Yes.

3 THE COURT: All right.

4 MR. SMITH: Very good.

5 THE COURT: You'll get to reply to Mr. Reade. He's
6 been sitting patiently here. Plaintiff's argument, please.

7 MR. READE: Briefly, Your Honor, without going
8 completely off. I mean, there were a lot of misstatements in
9 the Defendant's closing argument. At its core, this is a
10 simple accounting case. And -- and that's why I think the
11 Court said I don't even know if I need Mr. Birch, because it's
12 a simple accounting.

13 So to address the specific factors, Mr. Ghibaudo had
14 been a partner in a law firm before his suspension. He had
15 been a partner in Mr. Schwab's firm. That's been the
16 testimony here from Ms. Kellogg. He was a partner. And the
17 decree, and the settlement agreement, and then the decree
18 specifically anticipated that upside.

19 That's what page 9 says. It says we're going to
20 take the sum and totality of all of the money that he makes,
21 there's no inconsistency. It's the sum and totality of the
22 money he makes, whether it's called salary, whether it's
23 called bonus, whether it's called draw, however you do it,
24 we're taking that sum and totality.

1 And if you're self employed, we're going to take it
2 off those numbers. And then we're just going to divide it
3 with that 50 percent. And so Mr. Ghibauda has given us those
4 numbers. At the time that the decree was entered, while the
5 decree contemplates monthly, we don't have records that can
6 show us monthly. What we do know is that if we take
7 Mr. Ghibauda's tax return, it says he made \$12,333 a month in
8 2017, the month that -- the year that the decree was entered.

9 So for the last months of 2017 post judgment, this
10 Court can simply divide and say there's income of \$12,333 per
11 month, using Mr. Ghibauda's own numbers. For 2018, he said he
12 made 180,000. That's \$15,000 a month. The Court can use
13 Mr. Ghibauda's own numbers. And for 2019, he claims he made
14 133,490, which averages out to \$11,125 a month. The Court can
15 use Mr. Ghibauda's own numbers.

16 Mr. Birch said look, those numbers are suspect. And
17 -- and I think we've all seen, you know, the lack of
18 production of documents here casts doubt in aspersions on
19 those numbers. But at its core, if the Court looks just at
20 the tax return, based upon the deal that Mr. Ghibauda cut,
21 good, bad or indifferent, the Court knows exactly how much the
22 gross monthly income accrued.

23 And we can apply those numbers. And Ms. Kellogg has
24 said when we talk about the unfairness of the alimony award,

1 this was Mr. Ghibaudo's idea. That testimony is
2 uncontroverted. This is Mr. Ghibaudo's deal. She cut the
3 deal that he cut.

4 In addition to this idea of waste, there were
5 substantial issues that could have been tried, maybe on both
6 sides. But the parties signed a full and final release,
7 releasing all their claims.

8 THE COURT: No, they didn't. Nobody signed as --

9 MR. READE: Your Honor --

10 THE COURT: -- her lawyer, okay?

11 MR. READE: I'm sorry.

12 THE COURT: This was --

13 MR. READE: I'm sorry, Your Honor.

14 THE COURT: -- already litigated between the time of
15 the settlement conference and the time the judge entered the
16 judgment. And the Judge --

17 MR. READE: So --

18 THE COURT: -- refused -- refused at the request to
19 undo the settlement. So no, I don't have a marital settlement
20 agreement. I don't have a property settlement. I don't even
21 have signature on anyone on the Defendant's behalf approving
22 the form or content of the decree.

23 MR. READE: Sure.

24 THE COURT: The only thing he didn't do was file a

1 notice of appeal and carry it all up to make all those claims
2 to somebody else. Okay?

3 MR. READE: And I concur with you, Your Honor, that
4 the decree and the terms of the decree are full and final.
5 They weren't appealed. They are final. Like, we concur with
6 you entirely, Your Honor. That's the decree. That's the
7 terms that are entered now.

8 And so then the question is how do we know if we
9 were going to impose a sum certain, what that sum certain
10 should be. And Ms. Kellogg would posit to this Court that
11 this Court can simply use Mr. Ghibaudo's those numbers for the
12 last three years. They average out to \$12,819.33 per month of
13 income. If the Court were to round that down to \$6,000 or
14 \$6,500 a month, the Court would have a flat number that would
15 be fully enforceable.

16 As the Court has duly noted, there are extenuating
17 circumstances here of disability that are imputed into the
18 amount of the alimony that was agreed between the parties.
19 That's why it was agreed. That's how it was agreed. That's
20 what's being applied. So as to the term, the term matches
21 what was offered by Mr. Ghibaudo, accepted by Ms. Kellogg.
22 That's the term on the record.

23 So the term is that we have an amount, that's the
24 amount that should be applied in this case. You can't make it

1 any simpler than that, Your Honor. Ms. -- Ms. Ghibauda has
2 given Mr. -- I'm sorry, Ms. Kellogg has given Mr. Ghibauda the
3 benefit of every doubt on the payments. I think we agree
4 there's \$42,000 that's been paid.

5 That's less than even the base amount that was due
6 and owing. And the Court nailed it earlier. Mr. Ghibauda has
7 rolled the dice saying I'm not going to pay anything because
8 I'm, you know, going for broke on this modification. And it's
9 putting Ms. Kellogg in an adverse position. And equitably,
10 she never should have been put in this position.

11 But I want to clarify on this income, because
12 Mr. Smith has said well, she could go out and make 30 or
13 \$40,000. That's not the testimony. Testimony was if and when
14 she graduates, an entry level position using her degree might
15 make \$30,000. She doesn't have the degree today. She hasn't
16 been able to complete the schooling.

17 Mr. Ghibauda said it himself. We contemplated her
18 being able to complete her schooling. And then he didn't give
19 her the money to be able to do it. So with that, what we
20 would submit is the equitable thing to do is set this at the
21 flat amount based upon Mr. Ghibauda's income over the last
22 three years.

23 THE COURT: Okay. What's the punch line? What's
24 the amount? You don't want me to change the duration at all?

1 You want it to be 15 years. And what is the amount that you
2 think would be appropriate as the flat amount?

3 MR. READE: Your Honor, \$6,500 a month.

4 THE COURT: Okay. \$6,500 a month on the face of it
5 exceeds her need by \$2,000 a month. You seriously --

6 MR. READE: Well, Your Honor --

7 THE COURT: You're seriously asking me to order
8 that?

9 MR. READE: To be clear, Your Honor, the last --

10 THE COURT: It's also -- it's also greater than the
11 net difference between -- it's greater than one half of his
12 gross income for two out of the last three years. \$7,512 was
13 the difference in his income in 2018. But it was only \$6,177
14 and \$5,562 in the year before and after.

15 All right, that's fine. You're on record \$6,500 a
16 month for another 11 years. That's your ask. The -- I do
17 generally agree, and I've got to work this out in my head that
18 he stuck with the decree between the time it was entered and
19 the time he filed his motion. And for -- there's 29,000 plus
20 judgment that was entered for pre-October 2017 time.

21 I think we can -- I think we've established that his
22 income fluctuated both significantly higher than it was at the
23 time of the divorce from the years after that. And the Court
24 is going to have to find what he should have paid. And the

1 only variable is whether I impute income to her for any of
2 that period of time, and how much. And you've made your
3 argument there.

4 And then the Court has to determine that once you
5 made a request, should the Court modify the order. And both
6 parties say I should modify the order to make a sum certain.
7 He didn't give me a number. She says she wants to keep \$500 a
8 month. She doesn't want to modify the term. And he wants to
9 modify the term.

10 The Court is going to be walking through the
11 equitable considerations I'm required to make in that process.
12 You want to highlight any of the equitable terms concerning
13 the establishment of alimony that you think are appropriate in
14 this case? Let me ask --

15 MR. SMITH: Your Honor, I think you --

16 THE COURT: Don't worry thinking about that. Let me
17 ask this question. It is -- it is an interesting question for
18 the Court, that he would owe her half of his gross income,
19 pursuant to the agreement. And there would be recital saying
20 that there's no community property.

21 But if his practice in the future has value, she's
22 entitled to half of it. And there's no record of any of that
23 analysis. And your expert says that that value might be up
24 towards a half a million dollars. Right? So why would -- why

1 would awarding her anything of his separate property, which is
2 what we're talking about, the value that is created after the
3 marriage?

4 And why -- why wouldn't the application of the
5 agreement to require him to share that income supersede that
6 provision? I mean, I don't know. I mean, it's not in any of
7 your briefs, and it's not part of the argument. Until I heard
8 your expert's testimony, it wasn't even on my radar that she
9 was asking me to rule on some sort of, I guess -- it's
10 basically an adjudicated separate claim against separate
11 property.

12 Now, the other thing is, is that he testified that
13 he was practicing. But then he incorporated his firm after
14 the settlement agreement. You got anything to refute that?
15 He -- the Secretary of State's document that's been admitted
16 evidence shows that he incorporated his practice, the practice
17 that your expert evaluated, in November of 2016. Not at the
18 time of the settlement conference in May of 2016.

19 So the business that your expert is saying has a
20 significant value that needs to be accounted for based on the
21 provisions of the decree is -- didn't even exist in the form
22 that it currently exists at the time of settlement conference.

23 MR. READE: Your Honor, if I may address that. And
24 I think this is what's in Mr. Birch's report, and what we

1 talked about in Exhibit AA. Mr. Birch has broken down the
2 value of the firm.

3 THE COURT: Well, he's -- he's --

4 MR. READE: But he's also broken down --

5 THE COURT: He's in the business of evaluating the
6 returns and the value of assets. And so he sees an order.
7 And he sees a provision that he reads. It seems perfectly
8 reasonable to me. There's an asset issue that needs to be
9 valued. And so what do we do? We look at reasonable
10 compensation, we look at the tax returns.

11 And he goes based on, you know, I have concerns
12 about how the accountant has -- has characterized certain
13 expenses, but there's value there. And the decree says that
14 that's supposed to be accounted for. The only problem is I've
15 been involved in for years litigation on this case, this has
16 never been advanced as an argument to value.

17 And the provision is nonsensical. If I was a judge,
18 and I had that in front of me, and I didn't have a trial and
19 somebody says there's no property but we're going to divide
20 this property that comes down the pike two years, you know,
21 four years from 50/50 that has a value of a half a million,
22 I'd go you got to be kidding me. Right?

23 So I have a problem with that. I also looked, you
24 know, I'm looking, I'm the one who's making all the noise

1 because I keep clicking and moving my stuff over here by the
2 way, Mr. Smith. So I'm looking through his filings to see
3 where he's asked for a judgment on this provision of the
4 degree. I can't find it. It makes me crazy when I can't find
5 stuff like that.

6 So I'm wondering if you even advanced this argument
7 before you got your amended report from September?

8 MR. READE: Your Honor, the argument was not under
9 section one of the community -- division of community assets
10 and debts. It's been under the family support.

11 THE COURT: Right. Okay.

12 MR. READE: What Mr. Birch put --

13 THE COURT: If that's true, I mean, if that's true,
14 when we work through the -- I need to work through the
15 numbers. And they're -- because depending on how I go with
16 this thing, I mean, it could be, I mean, it could be -- it's
17 large. It's like a range of 80 to \$120,000, you know?

18 So I need to -- I need to spend some time on it.
19 But yes, that claim that's hanging over his head is
20 significant because -- and that gives him -- and that -- then
21 I have to dig into the payment history, your client's
22 testimony and schedule against his general testimony of
23 payments.

24 And I don't really think the DA support stuff is

1 that problematic because it's \$4,000. The other stuff is
2 penalty and interest. He's going to pay that because that's
3 adjudicated, and it's an order. And if there's an objection
4 to that application or recommendation, I'll hear that at
5 another time.

6 So I'm not really worried about the equities of it.
7 When you're talking about the numbers, we're talking \$4,000,
8 or \$4,100 here is not a big problem. But what is my
9 responsibility? My responsibility is to give him credit for
10 everything he's paid, and to account to your client for
11 everything she's entitled to under the order. Right?

12 So the -- let's say a judgment is entered. How do
13 you want me to deal with it? Do you have any suggestions as
14 far as how that's done?

15 MR. READE: Well, not to go back to how I first
16 appeared in this case, Your Honor, but his Court reduced it to
17 judgment in October 2017. If this Court reduces it to
18 judgment, I think it gets reduced to judgment.

19 THE COURT: Yeah.

20 MR. READE: To date --

21 THE COURT: I mean, she has -- she has statutory
22 rights as a judgment creditor. And that's probably how it
23 happened. Right? So --

24 MR. READE: I believe so, Your Honor.

1 THE COURT: So, you know, that's going to be an
2 issue. I mean, they're going to -- they're engaged in this --
3 in this dispute whether they want to or not. And the Court
4 is, you know, just as you can tell from my reaction to your
5 \$65,000 or \$6,500. figure, you know, the Court -- the Court's
6 unlikely to terminate the alimony award. There will be some
7 award. Okay>

8 I will have to analyze the term, and I need to make
9 findings. If I make findings that it's not altered in
10 duration, then I need to explain why. Okay? And it looks
11 like you touched on every one of the factors under 125 and
12 150. So I'm not relying on Kogod very -- all it basically
13 says if make the findings under the statute. But I got so
14 many problems with that -- I gave a lecture for an hour and a
15 half on that in March, and I'm like, you know, I can analyze
16 the alimony situation without really relying on that case.

17 MR. SMITH: Well, Your Honor, I agree with you. I
18 think it's a terrible decision. But unfortunately, it's the
19 law at the present moment. I'm waiting for the case in which
20 I can bring it back up.

21 THE COURT: Well, you may --

22 MR. SMITH: But let me just --

23 THE COURT: It may be brought back up in the likes
24 of the Lambert type cases and Rivera type cases and whatever.

1 I mean, I don't know for sure, but it's ripe for a hearing --
2 MR. SMITH: I just think that --
3 THE COURT: -- on a bunch of different things.
4 MR. SMITH: This is a different conversation. But,
5 Your Honor, let me just -- let me just address the numbers,
6 because I don't know that they're -- this is what our numbers
7 are. And I want to make sure that the Court understands.
8 THE COURT: Well, I don't know if Mr. Reade's done.
9 MR. SMITH: We can --
10 THE COURT: Why don't you wait to see if Mr. Reade's
11 -- Mr. Reade, are you done?
12 MR. SMITH: Oh, I thought he was. I'm sorry.
13 Excuse me, Mr. Reade. I'm sorry.
14 MR. READE: That's okay. Your Honor. We will go
15 ahead and conclude, and let Mr. Smith --
16 THE COURT: All right.
17 MR. READE: -- wrap this up so that we can --
18 THE COURT: Reply, please.
19 MR. SMITH: Yeah, it was just the numbers, Your
20 Honor. So we established earlier that we believe that
21 Mr. Ghibaudo has paid 42,651 since the time of the order of --
22 in October 2017. So that's a period of November through we
23 believe May of 2019 where there should be an adjustment at
24 that point.

1 THE COURT: All right. Hold on. Hold on. Between
2 November 2017 and May of 2020>

3 MR. SMITH: Well, that's the -- yeah, that's --
4 well, it's actually all the way through now. I mean, that's
5 the amount he's paid through -- through today. So that -- but
6 that amount would cover the \$2,500 amount that was between --

7 THE COURT: It wouldn't. That's 27 months. I mean,
8 that's 24 plus 5, 29 months at 2,500.

9 MR. SMITH: No, it's only three --

10 THE COURT: That's --

11 MR. SMITH: No, no, no. Judge, it's because I'm
12 only dealing with the May 19 order, you see. So that the May
13 19 order, I'm saying that there would be a revision, and that
14 amount would be added onto whatever the Court would find. But
15 I'm talking about through that period --

16 THE COURT: All right. So --

17 MR. SMITH: -- of May --

18 THE COURT: -- 11/17, that would be 17 months.

19 MR. SMITH: That's right. And it's about --

20 THE COURT: So 17 times 2,500 would be 42.5. And
21 he's saying he paid 4,261.

22 MR. SMITH: That's right.

23 THE COURT: 51.

24 MR. SMITH: It's 51.

1 THE COURT: Yeah.

2 MR. SMITH: All right. And, Your Honor, also during
3 that -- so for the period of the three years that we're
4 talking about through -- at least through May of 2019, our
5 numbers tell us that the total gross income during that period
6 of time for Mr. Ghibaudo would be, one half of it would be
7 130,296. So you double that number, and you have what the
8 total gross income would be during that period between
9 November of '17 and May of 2019. So the --

10 THE COURT: Well, I mean, you can't do it -- you
11 can't do it that way because most of '17 was already
12 adjudicated. So you have to use annual income.

13 MR. SMITH: I --

14 THE COURT: You got to do --

15 MR. SMITH: No, Judge, -- so what I did was I did
16 October, or November 2017 through May. And what I did was the
17 same thing that Mr. Reade did was I gave a pro rata number for
18 the two months in 2017 and for the five months in 2019 of that
19 period, and I came up with 100 -- the total number of 130,296.

20 But as I've argued previously, Your Honor, I believe
21 from that number, the child support has to be reduced. In
22 other words, it has to reduce that amount of money that she --
23 she would be entitled to, so that the total number is 98,727.
24 And as I indicated, he's paid 42,651. So it'd be the

1 difference in those two numbers that would be due as of --

2 THE COURT: Yeah, I --

3 MR. SMITH: -- as of May 2019.

4 THE COURT: You know, I don't -- give me a chance to
5 go through this because I've done -- I've been sitting here
6 for six hours going through it myself as the testimony comes
7 in. And that what you're basically saying is that the number
8 is a lot lower. Now what I need to account for is that we're
9 only dealing with two months in 2017, 12 months in 2018, and
10 four months of 2019 for that exercise. And that would be --

11 MR. SMITH: Right. But then --

12 THE COURT: That would be significantly less, about
13 --

14 MR. SMITH: Let's say after that point, you
15 terminate it, that would be the full amount. For whatever
16 amount you find is due subsequent to May of 2019, that would
17 have to be on a month, you know, per month added into whatever
18 total amount is obligated. So that's the -- that's the
19 numbers that I would propose are the numbers, if you gave full
20 weight to the decree as it's now written.

21 And as we've argued, Your Honor, I don't believe
22 that that should be done. I think there's equitable
23 considerations that both we have raised and the Court has
24 raised in regard to valuing of the business that needs to be

1 paid, the language of the decree itself, et cetera. And, of
2 course, the failure to find work.

3 Oh, and let me just make one more comment.
4 Mr. Reade had indicated that there was proof of disability.
5 That -- that never --

6 THE COURT: Well, they argued it. But I'll make
7 that finding. She said she's disabled. You read her
8 financial. It says right there on page one that she's
9 disabled.

10 MR. SMITH: Well, it must say that, but that's why I
11 tried to go through, Your Honor, all of the --

12 THE COURT: Whatever. Whatever. I know. I don't
13 think that it was meant -- there was no adjudication and no
14 sufficient proof to make a finding that she can't work. She
15 said I want to go to school, and she wants to go, and
16 apparently she wants a job in a very specific area, and she's
17 not willing to take another job that's not in that specific
18 area.

19 And if I'm going to be using his full income to the
20 full extent of the agreement, I'm going to be imputing income
21 to her. Okay? I'm not going to do one without the other.

22 Now, what I meant when I was talking about these
23 numbers that are shockingly high, you know, when we're talking
24 about, you know, 80, \$90,000, we're talking about if she

1 prevails on the difference between his actual earnings in the
2 \$2,500 and the \$29,000 in aggregate judgments that predated
3 the November 2017 proceedings. It's a lot of money.

4 MR. SMITH: Yeah, it is.

5 THE COURT: And it's -- it's all in the nature of
6 support. So this is what I want to do. You guys, I really
7 appreciate your organization. I was really dreading this
8 hearing, because it is so difficult to sort of get up to speed
9 with all of the variables that are going on in this case. But
10 there's a chance that we will be able to close this matter
11 with an order that says X amount of dollars is what you're
12 going to be obligated to pay, and that you owe X amount of
13 dollars that you got to deal with, which I see as a
14 significant improvement as to where we've been over the last
15 couple of years.

16 I have done a lot of work, but I don't want to
17 muddle through it. It's probably going to take me about half
18 an hour to lay out just what I need to say on the record and
19 direct an order. Do you know if you're available for an hour
20 with me sometime next week?

21 MR. SMITH: Let me run and grab my calendar, Your
22 Honor.

23 MR. READE: Is there a day in particular Your Honor
24 was looking at?

1 THE COURT: I've got a little flexibility. I just
2 got noticed that I had an evidentiary proceeding that resolved
3 in the afternoon on Wednesday, and I might be able to find an
4 hour on Thursday. I know if you have a hard conflict, I'm not
5 going to mess with that. But --

6 MR. SMITH: I'm going into an office that has my
7 calendar, Your Honor.

8 THE COURT: Yeah. Okay. That's fine. So if you
9 were listening, Mr. Reade, we're going to -- the three of us
10 are going to confirm a time that we can set up a video
11 connection for the Court to lay out its findings and orders
12 and direct a written order.

13 MR. SMITH: What were the dates that you had
14 indicated, Your Honor, that you had an hour?

15 THE COURT: Well, I have a hearing that is going to
16 go away on Wednesday afternoon at 1:30. I could give you 1:30
17 to 2:30 that day.

18 MR. SMITH: Wednesday afternoon, hold on. I've got
19 a trial that day. Sorry, Judge.

20 THE COURT: All right. How about Thursday morning
21 at 9:00 for an hour?

22 MR. READE: Your Honor, I have a hearing on Thursday
23 morning, but could do Thursday late morning. Or I could do
24 Thursday afternoon.

1 THE COURT: What do you think about 11:00 on
2 Thursday?

3 MR. READE: That would work, Your Honor.

4 MR. SMITH: That would work for me, as well, Your
5 Honor.

6 THE COURT: All right, so did -- we're not inviting
7 any argument or briefing or anything. Basically, what I'm
8 doing is I'm taking all this stuff, and I'm distilling it down
9 and trying to compare the contested issues so that I can make
10 specific findings. I think that once we call the case, I can
11 walk through the findings and orders and be done within the
12 hour.

13 So if you would -- I'm going to ask my clerk to
14 continue this matter to 11:00 on the 24th, Thursday morning.
15 And we will contact your office to give you the code so that
16 you can log in like you did today. Okay?

17 MR. SMITH: All right. Very good. Thank you, Your
18 Honor.

19 THE COURT: And who -- did you guys deliver paper to
20 us? Anybody? I got a cart --

21 MR. READE: We did.

22 THE COURT: -- full of paper here. All right.
23 Look, you don't have to do that --

24 MR. READE: Your Honor, we --

1 THE COURT: You don't have to do that anymore. I
2 mean, seriously, I mean, I've been using -- we get them in
3 email. You have hundreds if not 1,000s of pages of stuff.
4 And I can -- it's such an expense and a hassle to get stuff to
5 the Court that way.

6 THE CLERK: Judge?

7 THE COURT: Yeah.

8 THE CLERK: Can you tell him I will contact his
9 office about at least giving him those big notebooks back?

10 THE COURT: Yeah, those notebooks are \$10 a piece,
11 aren't they? The big ones?

12 MR. SMITH: At least.

13 THE COURT: So you -- you don't -- I mean, we're
14 fine with you contacting the clerk and delivering them. I'm
15 not worried about the safety stuff. Geez, if I'm not dead yet
16 from handling all this stuff, I mean, but anyway. But it's
17 fine to do it electronically when you're faced with a case
18 like this with this much volume of documentation.

19 And the more we use it, the better we get at it. So
20 just remember that the next time. You don't have to, you
21 know, marshal all that manpower to get all those books down
22 here.

23 MR. READE: Your Honor, with the understanding that
24 they're \$10 a piece, would it be the Court's preference that

1 we just come get them back from you?

2 THE COURT: Well, you know, it's funny because if
3 you look in my office, I probably have 30 empty notebooks that
4 are sitting on cabinets all over the place. Nobody seems to
5 want it back once they bring them in. But yeah, just have
6 somebody from your staff contact the clerk, and we'll arrange
7 for them to be able to get them.

8 Otherwise, we'll just recycle them. You know the
9 really big ones like the ones you use, the school kids can't
10 use. But believe it or not, the judges actually collect
11 these, donate them to schools and other folks. The one
12 inchers, the nice ones that you can actually use. You know?
13 But the five inchers, I think if you gave that to somebody in
14 fourth grade, they'd probably jump off -- so anyway, thank you
15 guys. Appreciate it.

16 MR. READE: Your Honor?

17 THE COURT: Yeah.

18 MR. READE: If we could address one more procedural
19 thing.

20 THE COURT: What's that.

21 MR. READE: We do have that hearing in the R case
22 that I believe is still on your calendar for October.

23 THE COURT: Yeah. This is -- this is the thing. If
24 he made an -- if he made an objection, but it got filed in the

1 D the case instead of the R case, it is proper that I hear
2 objections to R case filings.

3 It's basically the standard of review is, was there
4 due process, was there abuse of discretion, that kind of
5 thing. I don't even -- I didn't read it, and I look at it.
6 But just make a note. I know that you didn't do it,
7 Mr. Smith. But if your client filed it pro se, it's not in
8 the R case. So there's a problem there.

9 MR. SMITH: Yeah. And Mr. --

10 THE COURT: If you filed a timely request and just
11 filed into the wrong case number, I'm not likely to say it's
12 time barred or untimely. Okay? And I'm not --

13 MR. SMITH: Does he need to file that in the R case,
14 Your Honor?

15 THE COURT: Well, that's what he's objecting to,
16 apparently. He's not objecting to any order I made yet.

17 MR. SMITH: No. No, he is not.

18 THE COURT: So, you know, he --

19 MR. SMITH: So --

20 THE COURT: He should, yeah. And --

21 MR. SMITH: Your Honor --

22 THE COURT: -- I mean, it's just a miscommunication.

23 MR. SMITH: Well, maybe I can have a conference with
24 Mr. Reade, because I don't -- I don't think it's a benefit to

1 either party if Mr. Ghibaudo loses his law license or is
2 suspended from the practice?

3 THE COURT: Oh, did they -- did they suspended his
4 license?

5 MR. SMITH: Right. Well, that was the
6 recommendation? That's the -- that's what he's objecting to,
7 Your Honor. And --

8 THE COURT: All right.

9 MR. SMITH: -- I don't know why you would do that to
10 someone who is --

11 THE COURT: Well, I -- you know, --

12 MR. SMITH: But I wasn't there. Maybe Mr. Reade
13 could --

14 THE COURT: I mean, this is the problem. They have
15 discretion to do that if they want, if he's in arrears. But
16 I'm adjudicating all these things, and tying up all these
17 loose ends. You know, if -- why did you ask me, since I'm not
18 -- I don't know whether I'd leave it on. If I denied the
19 objection, I can still issue an order that directs that his
20 license be reinstated.

21 I mean, I have, I have authority over that case and
22 this case. And if I issue an order that he's got to pay your
23 client a significant sum, I'm also likely to not support this
24 notion that he's suspended from the practice of law. You

1 know, it's like it just -- I understand the policy behind it.

2 And frankly, in this case, I would perfectly

3 understand the judicial officer doing something like that.

4 But it doesn't serve anyone's purpose. But I would hear you

5 before I did anything. I would hear from you or you're -- not

6 you, but the DA or whoever is responding. But this is the

7 problem, the standard of review is so limited, that most of

8 these objections are denied without merit. They're given a

9 hearing. But if we're arguing over judgment calls within the

10 discretionary framework of the Hearing Master, they're going

11 to be -- they're going to be supported by the judge.

12 But what happens is, and Mr. Ghibaudo knows this,

13 he's a sophisticated lawyer in this area, is that if one way

14 doesn't work, you go another way. And all he has to do is ask

15 for the Court to intercede. And if they won't, then -- then

16 they ask in the D case. So --

17 MR. READE: Your Honor, the only -- the only reason

18 why I bring it up is twofold. And I think this may help

19 narrow the issues for Mr. Smith. Number one, because we have

20 two hearings on, would it make any sense to try to

21 consolidate?

22 THE COURT: Well, okay. let's hold that thought.

23 And we'll see where we are on Thursday when you find out what

24 the decision is. Okay?

1 MR. SMITH: Let me just be clear, Mr. Reade. I was
2 only contracted to this case. Don't jump me into that one.

3 MR. READE: I understand. The only second issue
4 was, to the extent that this was filed in the D case, the D
5 case cases a sealed matter. The district attorney has reached
6 out to us with some degree of concern as to their
7 participation in a sealed case, to which they are not
8 technically a party, and had asked us to bring it to the
9 Court's attention and ask how the Court wants to --

10 THE COURT: Listen --

11 MR. READE: -- handle that.

12 THE COURT: -- I deal with -- I deal with them every
13 week. They're not that timid, okay? They -- they have --
14 they're fine. I'll fix it for them. It should never have
15 been filed in the D case this way. And if it'll make them
16 feel better, and there's really something to argue over, I'll
17 -- I'll send it right back to them so that they can feel
18 comfortable in their own bailiwick down there. Okay?

19 MR. READE: And, Your Honor, we will just apprise
20 them that you will handle it with them directly.

21 THE COURT: Yeah, I'll get it. I hadn't really
22 given it a thought. But I will between now and next week.
23 So, good job, guys. I'll see you tomorrow. I mean, see you
24 next Thursday in this case.

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MR. READE: Thank you, Your Honor.
(PROCEEDINGS CONCLUDED AT 4:09:56 p.m.)

* * * * *

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

/s/ Michelle Rogan
Michelle Rogan

1 TRANS

2 ORIGINAL

FILED

SEP 29 2020

CLERK OF COURT

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

9 TARA KELLOGG-GHIBAUDO,)
10 Plaintiff,)
11 vs.)
12 ALEX BRIAN GHIBAUDO,)
13 Defendant.)

CASE NO. D-15-522043-D

DEPT. H

(SEALED)

14
15 BEFORE THE HONORABLE T. ARTHUR RITCHIE, JR.
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: FINDINGS AND ORDER

17 THURSDAY, SEPTEMBER 24, 2020
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1 APPEARANCES:

2 The Plaintiff:
3 For the Plaintiff:

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5 The Defendant:
6 For the Defendant:

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1 LAS VEGAS, NEVADA

THURSDAY, SEPTEMBER 24, 2020

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

3 (THE PROCEEDINGS BEGAN AT 11:01:44)

4
5 THE COURT: Well, let's -- let's see -- let's --
6 let's start. And the hope of the Court, I mean this has been
7 a difficult year and almost a half arc of litigation that
8 we're going to close with a decision and order today. The
9 Case Number is D-2015-522043. We have both counsel present,
10 the Plaintiff is present with Mr. Reade; and Mr. Smith, your
11 client should join us shortly otherwise we're on the record.

12 So, Mr. Reade will you state your appearance for
13 your client?

14 MR. READE: Yes, Christopher Reade, 6791, on behalf
15 of behalf of Tara Kellogg; I have Ms. Kellogg with me here
16 this morning.

17 THE COURT: Mr. Smith?

18 MR. SMITH: Radford Smith, Your Honor -- Radford
19 Smith, Your Honor, 2791, on behalf of Mr. Ghibaudo. My
20 understanding is that he will attend today and in -- while the
21 Court is reading, I'll try to contact him via text to make
22 sure that he knows that we've started.

23 THE COURT: Yeah, that's fine. And again this is
24 the findings, conclusions, and orders of the Court. It's not

1 requiring his appearance. He's invited if he's busy on other
2 matters, then it -- it's not like his presence would interfere
3 with the plan. Mr. Smith, are you there?

4 MR. SMITH: Yes, Your Honor. I was just texting
5 Mr. Ghibauda as I indicated.

6 THE COURT: Okay. All right. We're good. The way
7 I'm going to order the findings and conclusions is I'm going
8 to summarize the scope of the decisions, and then we'll go
9 into the specific findings and conclusions that the Court is
10 required to make and then direct Mr. Reade to prepare an
11 order.

12 The Court has jurisdiction over the parties and over
13 the subject matter in this case. We have jurisdiction to
14 enforce the provisions of the decree of divorce. The Court is
15 making findings and conclusions on the record that are
16 incorporated into the judgment by reference. I suppose if you
17 -- if you have to, you could probably, you know, create an
18 order that would be 20 -- 20 some pages long if you included
19 them all. But if this matter is reviewed as part of appellate
20 review, I want to make sure that all the findings and
21 conclusions that I'm laying out on the record are specifically
22 referenced in the order.

23 A judgment is going to be entered in favor of the
24 Plaintiff against the Defendant in an amount representing

1 family support owed between October 2017 and April 2019. Now,
2 as we know, there was an aggregate of judgments that were
3 entered prior to October 2017. All those judgments -- and I
4 didn't really add them all up -- they have an aggregate amount
5 of probably about \$29,000, but they're not the subject of this
6 hearing at all. Those judgments that were entered during the
7 course of this case for the various matters have already been
8 adjudicated.

9 The Defendant reopened this matter on May 30th,
10 2019, with a motion to modify the spousal support provisions
11 and that motion created this arc of litigation, and the Court
12 is going to -- oh, Mr. Ghibaud, welcome.

13 MR. GHIBAUDO: Good morning, Your Honor.

14 THE COURT: All right. I just want you to listen in
15 as if you were with your counsel, and I appreciate you
16 connecting.

17 MR. GHIBAUDO: Will do.

18 THE COURT: So, the Court has evaluated the motion,
19 the second major piece of this aside from deter -- determining
20 what the Defendant owes the Plaintiff for the period of
21 October 2017 to April 2019 is whether and to what extent his
22 motion to modify spousal support is granted. And it will be
23 granted to the extent that the Court describes.

24 The Court will be making findings concerning the

1 statutory factors that address the modification of support.
2 Both parties understand that the provisions in the decree is
3 untenable with an unknown amount each month. And I'll be
4 describing the context of that since the theme of this case
5 was presented that this case was settled on these terms; and
6 that the divorce decree is clear; and -- and that there's a
7 dispute as to how much the support should be and -- and
8 whether the duration should be modified. So, I'm going to
9 explain all that.

10 But there will be a granting of the motion
11 consistent with the order in the manner in which I find.
12 There is -- in granting the judgment against the Defendant in
13 favor of the Plaintiff for this period of time, I've covered
14 2017 to April 2019. Mr. Reade, the DA judgment that was filed
15 on September 2nd, 2020, was \$4,100 in child support and
16 another 4,000 aggregate in penalties and interest is basically
17 going to be superceded and satisfied. That's going to go
18 away, because we're talking about the same time.

19 So, we have this notion that these aggregate
20 judgments prior to October 2017, that's -- that they've
21 already been adjudicated; that were issuing a judgment against
22 the Defendant and in favor of the Plaintiff for the period of
23 October 2017 to April 2019; and we're dealing with the spousal
24 support obligation in a block of time of May 2019 through the

1 present.

2 All right. So, let's review. The theme of the case
3 was -- or we received testimony from the parties and we had
4 some expert testimony concerning the Defendant's tax returns
5 and his income which is relevant to some of the spousal
6 support findings that the Court is going to be making. But
7 the documentary proof and the testimony is sufficient for the
8 Court to be able to resolve this issue.

9 We had a decree of divorce that was filed on
10 February 1st, 2017. And that is the final judgment in this
11 case. It's enforceable, that gives the Court jurisdiction,
12 it's a starting point for all of our discussions concerning
13 what those obligations are. And the Court, you know, heard
14 evidence about the parties' feelings about their settlement
15 conference. That was sort of the seminal agreement that went
16 into the divorce decree. And the -- the Court wants to make
17 some specific findings since it's been discussed and we're
18 going to have to be making a record concerning, you know, how
19 we -- how that was created and how that affects the review of
20 -- of these issues. And I want to take the time to do it
21 since we have the hour set.

22 This request for judgment is to adjudicate spousal
23 or family arrears that are alleged between October 2017 and
24 April 2019; to adjudicate spousal arrears from May 2019 to the

1 present; and to resolve these motions. So, what -- what was
2 the settlement conference? We had a lot of testimony from the
3 Defendant saying that, you know, he objected to the terms
4 that, you know, there was consideration for, there were
5 allegations, there was consideration for the agreement that
6 was made and also that, you know, it was a -- it was a mistake
7 or injustice to enter the judgment in the first place.

8 Now, it was a settlement conference conducted by the
9 former chief judge as a senior judge that occurred on May
10 18th, 2016, that resolved the matter. And it was to get a
11 legal separation which explains some of the kind of curious
12 orders in that there was a general theme that the parties
13 would share income because they were still married. And both
14 parties had a right that they acknowledged that they could get
15 a divorce and turn this legal separation into a divorce.
16 There was no mention of any kind of waste claim or any other
17 consideration. It doesn't mean it wasn't there, but was just
18 -- it wasn't just -- it wasn't mentioned.

19 And the specific term was in (indiscernible) of
20 Mr. Ghibaudo which raised -- you know, he said that 15 years
21 would be a ridiculous term of alimony. And it is -- it is
22 unusual that you'd have a term of alimony that would be
23 greater than the duration of the marriage. But that was
24 specifically addressed. In fact it was so specifically

1 addressed that after they made the record, they took a recess
2 for a few minutes and came back on it and had another dialogue
3 about a minute later about it.

4 And so Mr. Ghibaudo in asking to modify the amount
5 of alimony and the term of alimony that's considered. By the
6 way, Mr. Reade, Mr. Smith, did you ever watch the settlement
7 conference record?

8 MR. READE: I did after last week's hearing, Your
9 Honor.

10 THE COURT: Yeah. So, you know what I'm talking
11 about, right? Mr. Smith?

12 MR. SMITH: No, I did not, Your Honor.

13 THE COURT: What hap -- well --

14 MR. SMITH: As I indicated -- okay.

15 THE COURT: All right. So, it's two sessions, one
16 is May 18th, 2016, at 2:26.

17 11:11:26

18 (Audio played)

19 11:21:35

20 THE COURT: Okay. That was worth eight minutes so
21 that we could talk about the different themes in the case.
22 This was an agreement for a legal separation. The terms were
23 incorporated into the decree, there was litigation concerning
24 the request for a judgment. They both agreed that a divorce

1 decree could be entered and the decree of divorce adopted the
2 agreements that were part of the settlement agreement and that
3 judgment is the law of the case. That is the judgment that is
4 under the continuing jurisdiction of the Court. It's
5 modifiable as spousal support.

6 So, there was a question about whether there was an
7 agreement and a binding order for the parties to share the
8 income. And the Court concludes that there was. The actual
9 obligation pursuant to the decree was not \$2,500. It was the
10 difference between the Plaintiff's earning potential and the
11 Defendant's actual earnings divided by two.

12 And there are spousal support findings that the
13 Court has to make as to the second part which is the pending
14 request to modify support that are -- some of those findings
15 overlap, but I'll reference them. The Court finds that the
16 Plaintiff is not employed; that she obtained an Associate's
17 degree in 2017; and that she doesn't have income. But the
18 Court further concludes that Ms. Kellogg did not present
19 sufficient proof to support any kind of finding that she's
20 disabled.

21 The Court finds that she can work and that her true
22 earning capacity is at least \$2,000 a month or 24,000 a year.
23 She talks about trying to get her Bachelor's degree and hopes
24 to have a job of 30- to 40,000 but does not have her

1 Bachelor's degree at this time. The Court finds that
2 Ms. Kellogg is willfully underemployed to maximize the spousal
3 support claim; that the income should be imputed to her for
4 this period of time between October 2017 and the present; so
5 that the Court can appropriately calculate the net support
6 that is due during this time; and the amount based on the
7 evidence that was presented is at least \$2,000 a month. So,
8 \$2,000 a month will be the number that the Court used.

9 Mr. Ghibauda is employed as an attorney. He
10 incorporated his law firm with the Nevada Secretary of State
11 about six months after the settlement conference on December
12 19th, 2016. He filed tax returns that showed income for '17,
13 '18, '19, and '20. He -- the documentary proof admitted and
14 the findings of the Court is that Mr. Ghibauda's gross income
15 for the purpose of calculating support in 2017 was \$148,256 or
16 \$12,355 a month. 2018, Mr. Ghibauda's gross income for the
17 purpose of calculating his support obligation is 180,285 or
18 15,024 a month. 2019, for a portion of January to April, his
19 income for that year was \$133,490 or \$11,124 a month. And
20 that would be for the purpose of calculating his support
21 obligation.

22 The Court finds that Mr. Ghibauda's income is at
23 least \$140,000 a month (sic) or at least \$12,000 a month in
24 gross income. His earning capacity -- his actual earning

1 capacity is consistent with that. And even with the pandemic,
2 he received PPP which substituted for his income, the expert's
3 testimony support the conclusion that his reasonable
4 compensation is at least that. He benefits from legal -- or
5 he benefits from how he organizes his business in that, you
6 know, his income or his taxable income also includes decisions
7 that he makes on how to expense certain business expenses
8 which benefit him personally.

9 So, for the purpose of calculating support, the
10 Court has used the income from those figures. So, we
11 essentially have from October 2017 to December 2017, that's
12 three months. If we take the annual income monthly that's
13 \$12,355 minus 2,000, that's \$10,355, that's divided by two.
14 He should've paid spousal support each month in 2017 for the
15 months of October, November, December; \$5,177. And so those
16 three months he should've paid \$15,532. That's since the last
17 judgment portion of 2017.

18 In 2018, he earned \$15,024 average per month. She
19 imputed income of 2,000, that's 13,024; divided by two is
20 \$6,515; 12 months is \$78,144. For the portion of 2019 which
21 is January, February, March, and April which is the months
22 prior to filing of this motion, his monthly gross was \$11,124;
23 minus the 2,000 imputed to the Plaintiff; \$9,124 divided by
24 two is \$4,562; times four months is \$18,248.

1 If you add those three years together, he should've
2 paid support pursuant to this judgment in the amount of
3 \$111,924. Now, the evidence supports a finding that he paid
4 \$42,000 since October 2017. I could have evaluated those
5 payments from the time of the motion forward, but I think what
6 I'm going to do is give him credit for the \$42,000 against
7 111,924 and a judgment will be entered in the amount of
8 \$69,924. And that closes the book on the judgment entered in
9 favor of Plaintiff against the Defendant in the amount of
10 \$69,924 representing the family support owed pursuant to the
11 decree between October 2017 and April 2019.

12 So, the second primary issue that the Court needs to
13 determine is the Defendant's motion to modify support. This
14 is modifiable support. In the nature of spousal support,
15 125.150 allows for the Court to modify support based on
16 operative events such as the death of either party or the
17 remarriage of the -- of the Plaintiff. That didn't occur.
18 The Court can terminate based on changes in financial
19 circumstances.

20 Now, this agreement that was incorporated into the
21 divorce decree, it was; but there was no trial on this matter.
22 While it makes some sense after looking at the settlement
23 conference that the decision to share income while they're
24 still married made some sense. Certainly spousal support is

1 what somebody pays from their separate property to their
2 former spouse.

3 And so in evaluating whether or not to modify the
4 spousal support award from May 2019 forward, the Court is
5 going to consider the required factors relevant in determining
6 the award of alimony and the amount of such award. The Court
7 considers the financial conditions of each spouse. Other than
8 the reported income, the Plaintiff states that she is
9 supported by charity of her family; and the Defendant is an
10 attorney who earns at least \$140,000 a year.

11 The nature and the value of the respective property
12 of each spouse. Neither party has significant assets. I
13 suppose you could say that the Defendant has a law practice
14 that's been developed over the last three years or four years.
15 The contribution of each spouse to any property held by the
16 spouses. That's not a factor that is material in this case.
17 The duration of the marriage is as I commented before, the
18 duration of the marriage was 13 years.

19 The income earning capacity, age, and health of each
20 spouse. My findings were already made that Mr. Ghibaudo is --
21 has an earning potential at this time of at least \$140,000 a
22 year; and the Plaintiff's earning potential is found to be at
23 least \$2,000 a month. The standard of living during the
24 marriage. We didn't have much evidence concerning that, but

1 it -- the testimony was that Mr. Ghibauda had some financial
2 issues and some personal issues; and that the Plaintiff may
3 have had some financial issues and personal issues.
4 Certainly, the standard of living is not a compelling
5 consideration in this case so there was not much evidence on
6 it.

7 Career before the marriage of the spouse who would
8 receive alimony. It looks like the Plaintiff has been taking
9 classes for years and got an Associate's degree and seeks a
10 Bachelor's degree and there's been efforts in that regard.
11 Contribution as a homemaker. There may have been some
12 testimony that reflected back on that. But again they've been
13 divorced for four -- almost four years.

14 The award of property granted in the decree of
15 divorce. There really was not much property granted in the
16 decree or divorce. Physical, mental condition of each party
17 as it relates to financial condition, health, and ability to
18 work. The Court finds that both parties have the ability to
19 work. And the Court should consider the need to grant alimony
20 for any kind of training or education. And that's -- that's
21 been addressed in this.

22 So, in -- in terms of those factors now that the
23 parties are divorced, now that this matter's been raised with
24 the Court, the Court has been asked to modify the amount. The

1 Plaintiff asked the Court to order \$6,500 a month in alimony
2 without really much context. If he makes \$12,000 a month and
3 he pays normal withholding, he probably nets about \$9,000.
4 And, you know, \$6,500 would be about 70 percent of his net
5 income which is not equitable or appropriate. Looking at the
6 settlement conference and looking at the imputed income, you
7 know, her need is about \$4,500. She lists other expenses, but
8 you know, she's really done nothing to support herself as it
9 relates to the last three years after the divorce.

10 The Court is going to conclude that based on
11 weighing all these factors that the appropriate amount of
12 support is \$2,500 a month. And that is an appropriate, just,
13 and equitable support amount that would reflect a spouse who
14 makes \$140,000 a year and a spouse who can make between 24-
15 and \$30,000 a year.

16 Now, there is a request to end the duration of
17 support, basically terminate it. That was the argument the
18 Defendant advanced. In looking at the settlement conference
19 not just the terms of the order, you know, there -- there's no
20 change in circumstance that would terminate the amount. The
21 amount was specifically addressed, it was insisted upon by
22 Mr. Ghibaudo in the context of the dialogue in the settlement
23 conference in which she was asking for a retention of
24 jurisdiction to extend the support period past 15 years. You

1 can't look at the settlement conference and you can't look at
2 the decree, the only -- the only way that the term would
3 change would be if there were material changes in financial
4 circumstance or if Ms. Kellogg remarried or if upon the death
5 of either party.

6 And so even though it would be hard-pressed to find
7 a judge that might order 15 years of alimony in this case, the
8 parties agreed to 15 years of alimony. And there's no
9 justification to terminate the term or to shorten the term.
10 Of course the term of alimony in this case remains under the
11 statutory -- in other words NRS 125.150 continues. The income
12 of either party or the financial need or changes in ability to
13 pay could warrant a modification in the amount and duration of
14 support. It's just been there's been no such change in
15 circumstances since May of 2019 that would warrant a reduction
16 in the term or a elimination or a termination of the term.

17 And so unfortunately what's going to happen is the
18 Court is going to confirm that 180 months which rides out
19 until April 1st I believe of 2031 is going to be when it would
20 end if there's no order or operative event. So, let me just
21 -- and so what's left since I've given credit to Mr. Ghibaudo
22 for all of the payments that he made against the support that
23 he owed between October 2017 and April 2019, he owes \$2,500 a
24 month from May 2019 through September 2020.

1 That's 19 months. Nineteen months times \$2,500 is
2 \$47,500. That's a separate judgment in favor of the Plaintiff
3 against the Defendant. These judgments will accrue interest
4 at the legal rate and may be collected by any lawful means.

5 So, we have aggregate judgments that are not the
6 subject of this hearing prior to October 2017. We have an
7 additional judgment representing monies owed on family support
8 between October 2017 and April 2019 in the amount of \$69,924.
9 And we have Defendant's May 30th, 2019, motion to modify
10 spousal support is granted. The specific amount of support is
11 to be \$2,500 retroactive to May 2019; that he owed \$2,500 from
12 May 2019 to September 2020 which is a period of 19 months.
13 There are no payments that can be credited against this
14 obligation and the judgment in the amount of \$47,500 is
15 entered against the Defendant.

16 So, going forward, he'll pay \$2,500 a month in
17 spousal support. Payments are due on the 1st of the month.
18 The first one pursuant to this order is the next payment which
19 is October 1st, 2020.

20 Mr. Reade, first -- oh, I did say this before, but I
21 want to make sure that we know this recent judgment that was
22 entered this month, September 2nd, 2020, if you indicated
23 that small amount in child support amount of \$4,105 or maybe
24 spousal arrears and penalties and interest. This has been a

1 look-back to October 2017. This order takes into
2 consideration all those financial obligations. And so an
3 order should be directed to the DA family support that that
4 judgment is essentially subsumed or superceded or satisfied by
5 the entry of the judgment in this case. And that there --
6 there will not be an obligation, or I don't expect that that
7 penalty and interest judgment or the -- or the principal sum
8 judgment to have any legal effect with the entry of this
9 judgment, because they deal with the exact same obligations.

10 There was not sufficient proof to enter any kind of
11 property orders. I think it's clear from the settlement
12 conference that at the time it was contemplated a legal
13 separation. There were some errors that were made -- and when
14 I say errors, just either misstatements or just a
15 misunderstanding of what a legal separation is. There was an
16 immediate request -- and when I say immediate within six
17 months -- a request for a divorce. A divorce separates or
18 recharacterizes the property of the parties, and I know that
19 there was some dialogue about whether Mr. Ghibauda had any
20 kind of property obligation to her. That's denied.
21 Insufficient proof from the Court to be able to issue an order
22 that way.

23 So, Mr. Reade, do you have any specific questions or
24 findings that you think I may have missed or you want me to

1 cover again?

2 MR. READE: Your Honor, the only area that I have
3 some question regarding is that as you referenced in the child
4 support order, child support also accrues penalties and
5 interest. You have indicated that this judgment will subsume
6 the principal sums due. Is it the Court's order also that it
7 subsumes the penalties and interest that would have been due
8 on the child support portion of that support?

9 MR. READE: Well, I guess that's a good point except
10 that I don't know, because I didn't review that hearing how
11 they calculated the penalties and interest. He paid \$42,000
12 since October 2017. If you characterize that as family --
13 because they put -- they blended family support and spousal
14 support together. I mean it would be -- I would leave the
15 penalties and interest in if they had said this is your
16 obligation under child support and this is your obligation
17 under spousal support. But they had this unusual agreement in
18 the degree that said all the money he pays are in the nature
19 of both, a blended order.

20 And so he essentially paid the support in my mind.
21 He underpaid. And this dispute resolved that in a judgment.
22 Now, penalty and interest judgment in child support should be
23 based on a finding that a payment was due at a particular time
24 and unpaid and interest began to accrue. Now, I may be -- I

1 -- I may be glossing over this, I understand. But we are
2 basically trying to tie up all the loose ends and adjudicate
3 these going back three years. And I'm not sure that there was
4 any kind of review to the depth that we've had in this case in
5 the DA family support judgment. I think that they credited
6 him with his payments, found about 4,000 behind and just ran a
7 -- you know, one of those mathematical formulas that are in
8 the computer to calculate the penalties and interest.

9 And so in looking at the bigger -- at sort of a
10 broader view, I used income and imputed income to your client
11 to figure out what he owed and what he should have paid. And
12 he underpaid obviously a significant amount. And that should
13 be adjudicated now. I think it would be improper to issue or
14 recognize judgments that involve the exact same obligation in
15 the exact same time.

16 So, I think that that's where I'm -- I -- I don't
17 think I'm going to move -- or the Court is satisfied that that
18 order's probably fair and appropriate to treat it that way.
19 Can you think of any other questions or clarification?

20 MR. READE: No other points of clarification at this
21 time, Your Honor.

22 THE COURT: All right. So, Mr. Smith, the motion
23 for judgment is granted, the motion to modify is granted.
24 These are the findings. Are there any specific findings that

1 you think need to be made for your client's benefit?

2 MR. SMITH: I -- I do believe, Your Honor, there are
3 -- we had argued in our motion that we filed in May of 2019
4 that 1 -- NRS 123.080 prevents the parties from entering into
5 any contract or agreement that would address support beyond
6 the parties' separation if it was contemplated that the
7 agreement was a separation agreement. As the Court has
8 indicated and I think is borne out by the -- from what I could
9 hear from the -- the tape that was entered and the minutes of
10 the Court, this was clearly contemplated to be a separation.

11 So, whether the Cou -- the parties or not ultimately
12 ended up with the decree, they clearly did not reach a valid
13 agreement regarding the term of the alimony --

14 THE COURT: No, wait, you --

15 MR. SMITH: -- they could not do that.

16 THE COURT: -- that argument isn't for me, it's for
17 down the street, okay? The -- the fact of the matter is, is
18 that the -- the time to fight about that was when there was a
19 request to enter a divorce decree and have the decree then.
20 They entered into an agreement. They entered into a legal
21 separation agreement. They also entered into an agreement the
22 exact same day that either party could get a divorce. There
23 was a request for a divorce. There was a hearing regarding
24 the en -- the entry of the divorce. The divorce decree was

1 entered. There was notice of entry.

2 That order is a valid order. I adjudicated
3 obligations under that order in 2017. Those judgments are
4 final orders. They are not appealable either. And so now the
5 Court has issued judgments since October 2017 on that decree.
6 And I suppose to the extent that you think the Court has
7 either erred or abused discretion in that -- those findings
8 and orders, this order will give your client rights to be able
9 to raise that issue.

10 But I'm not persuaded that -- that he's relieved
11 from these responsibilities otherwise I wouldn't have issued
12 the order the way I did.

13 MR. SMITH: Let -- let me skip one step further on
14 that, Your Honor, because it's -- it really goes to the term
15 issue and whether or not the Court is precluded from modifying
16 that issue even though it found that there was a basis for
17 modification of the amount. All of those considerations arise
18 from the same order. The order that I think we can agree did
19 not have a legal basis to enter a stipulated order. Because
20 Mr. Ghibaudo neither signed the order that was presented, and
21 he objected to the entry of the order that was presented.

22 He may have stated what is a truism and that is that
23 either party may seek a divorce at any time after entering
24 into a separation agreement. But Mr. Ghibaudo cannot by --

1 nor can the opposing party by fiat change the law that would
2 apply to a separation agreement which the Court has again
3 acknowledged that this was a separation agreement.

4 In regard to the modification, Your Honor, I believe
5 that this Court is almost segregating the notion of term
6 versus the notion of payment. I believe that all of the
7 factors once the Court finds that there's a basis for
8 modification are available to the Court to contemplate an
9 order (indiscernible) upon in a fair and equitable
10 determination of ongoing alimony.

11 I think that there are -- are both unpublished and
12 published cases that say that the Court has very broad
13 determination in addressing whether or not alimony is just and
14 equitable. The Court has done so in regard to the amount.
15 But almost from the statement of the the Court, the Court
16 feels that their -- the 15 years is in -- is an
17 extraordinarily excessive time but that the Court feels
18 constrained by the abilities to modify that portion of the
19 order simply because there were not sufficient change in
20 circumstances.

21 I would submit to You (sic) Honor -- Your Honor that
22 the right to modify an order is comprehensive. It's not by
23 factor. And the fair and equitable determination in this
24 case, I think by the Court's comments, suggest that there

1 should be a shorter term of support.

2 THE COURT: Well, I -- I would say that if the judge
3 had ordered that term or if -- yeah, I -- I don't necessarily
4 disagree that the Court has discretion to consider terminating
5 or reducing the term. But on this record how the agreement
6 was made, how the term was established, whether there was any
7 changes of circumstance three or four years after the divorce
8 that would warrant a termination of the term or a modification
9 of the term, the Court declines to reduce the term at this
10 time.

11 My commentary was that it's still under the
12 continued jurisdiction of the Court. And there may be events
13 that occur in the future that affect the amount or term of
14 alimony. And I -- I think I've been pretty clear throughout
15 the time I've held this case that it would have been very --
16 it's impossible for me to think that I would order 15 years of
17 alimony on a 13-year marriage under these facts. But that's
18 neither here nor there, okay?

19 And I -- I have a clear understanding of how the --
20 the term came about. Your client has an argument that he's
21 advanced that it was conditioned on him having -- being
22 legally married still and not getting divorced I guess.
23 That's the only explanation I can think of for his agreement
24 there. But that doesn't relieve him of the responsibility

1 simply because they get divorced, because divorce was
2 contemplated at that -- under those terms.

3 So, I -- I -- look, this is -- I -- I don't
4 necessarily disagree with your argument. I did consider
5 modifying the term, and I did consider and obviously did
6 modify the principal sum. Maybe it's the fact that we're only
7 three years in that the Court wouldn't terminate the term.
8 Maybe it's the fact that the term was specifically emphasized
9 by your client. I -- I don't -- I don't know -- I don't know
10 that you don't have some merit to ask, you know, I -- but I
11 don't think it's the law that says that if the Court modifies
12 the amount, it has to modify the term. I think we can do
13 either. So, I did what I thought was --

14 MR. SMITH: No, I'm not -- I'm not --

15 THE COURT: -- I did what I thought --

16 MR. SMITH: -- suggesting --

17 THE COURT: -- was appropriate in -- in the -- under
18 the circumstances and this record. And I respect that you may
19 see it differently, okay? But -- but that's not a basis to
20 change the order.

21 MR. SMITH: The only -- the only reas -- thing I
22 would ask, Your Honor, is that in Mr. Meade's (sic)
23 preparation -- Reade's excuse me -- Mr. Reade's preparation of
24 the order that those specific findings regarding the Court's

1 affirmance of the term be specifically stated based upon the
2 communication that we've had today in court in the event that
3 Mr. Ghibaudo would like to have that reviewed by the appellate
4 court.

5 THE COURT: Well, that's -- that's --

6 MR. SMITH: And I'm -- I just --

7 THE COURT: -- why -- that's why I emphasized this
8 notion that -- this fact-finding that I'm making on the record
9 which certainly wouldn't be written up in the order --

10 MR. SMITH: Yeah.

11 THE COURT: -- is part of the important record,
12 okay? And that's why I give counsel an opportunity to have
13 these dia -- this dialogue so they can put it in the best
14 light for whatever argument they might make. The fact is, is
15 that I did -- I'm not saying I don't have discretion to reduce
16 the term, the Court just determined that it wasn't just and
17 equitable to terminate the alimony or reduce the term at this
18 time.

19 So, Mr. Reade, you've got the important task of
20 writing up the order. Give Mr. Smith the opportunity to
21 review the form and content. I'd like to close this matter as
22 soon as I can. And, you know, I -- just stay healthy and good
23 luck to both parties.

24 MR. GHIBAUDDO: Your Honor --

1 THE COURT: And the Court will --
2 MR. GHIBAUDO: -- if -- if --
3 THE COURT: -- close --
4 MR. GHIBAUDO: -- I may before -- Your Honor if I
5 may before you close the proceedings, I just want to make one
6 point of clarification. I think the Court indicated that
7 during the settlement conference that -- that I was -- that --
8 that we were talking about sharing the income and law
9 practice. What was referred to was a law practice that I had
10 previously --
11 THE COURT: Yeah, I --
12 MR. GHIBAUDO: -- had just for --
13 THE COURT: -- yeah, that's --
14 MR. GHIBAUDO: -- clarific --
15 THE COURT: -- right. I -- I -- but remember -- I
16 don't want to get into a dialogue and get a tangent, you
17 really shouldn't talk even though you're a lawyer and you --
18 you want to mention --
19 MR. GHIBAUDO: I apologize. I just --
20 THE COURT: -- it. The Court --
21 MR. GHIBAUDO: -- wanted to make sure --
22 THE COURT: -- there was -- there was --
23 MR. GHIBAUDO: -- it was (indiscernible).
24 THE COURT: -- some testimony from the expert that

1 talked about whether or not there was value to the practice,
2 whether it was community. And you heard Judge Hardcastle
3 where she said the community continues, you know, regardless
4 of the legal separation. Which a legal separation is defined
5 rights and responsibilities concerning property. I think that
6 was a misstatement.

7 But it does -- it's neither here nor there. I --
8 Exhibit W that was admitted shows that the law firm that he's
9 operating now wasn't even incorporated at the time of the
10 settlement negotiation, okay? And so I wanted to address this
11 sort of aside that he might owe her a quarter of a million
12 dollars because his practice has a value -- a book value of
13 \$500,000. There was not sufficient evidence to issue a
14 judgment that way. I thought I said that. So -- so, yes,
15 there were --

16 MR. SMITH: Yes.

17 THE COURT: -- and -- and that wasn't really Mom's
18 case. She didn't file that request for judgment. But it
19 concerned me because the settlement -- look, you know, I only
20 had the case since 2017 -- '16 or '17, there's a lot of
21 regrets here. I'm sure the Plaintiff has, you know, been
22 horribly vetches about all the efforts she's had to make to
23 try to manage this obligation; and certainly the Defendant,
24 too. But, you know, I -- I think we're in a better place at

1 least knowing what our obligations are going forward. So --
2 MR. GHIBAUDO: Yeah.
3 THE COURT: -- and these are --
4 MR. SMITH: May -- may I make one more --
5 THE COURT: Yeah.
6 MR. SMITH: -- may I make one more point, Your
7 Honor? At the time that the decree was entered, the tax law
8 associated with alimony was different.
9 THE COURT: They had --
10 MR. SMITH: And I wanted to note --
11 THE COURT: -- it deducted. Again, it's a
12 curiosity, not a factor. The Court --
13 MR. SMITH: But I mean that --
14 THE COURT: -- the amount of the award --
15 MR. SMITH: -- I -- my only --
16 THE COURT: -- is appropriate. Yeah. I --
17 MR. SMITH: My only question --
18 THE COURT: -- it's not deductible --
19 MR. SMITH: -- was whether --
20 THE COURT: -- it's not deductible for him anymore.
21 Yeah.
22 MR. SMITH: But -- that you're aware -- I mean -- in
23 other words, that was contemplated in the determination of the
24 current order?

1 THE COURT: I -- I --
2 MR. SMITH: I just wanted to make sure that was
3 clear.
4 THE COURT: -- I didn't study his tax returns, but
5 it looks like he took it as a deduction. Right?
6 MR. SMITH: That's correct --
7 THE COURT: Yeah.
8 MR. SMITH: -- he did.
9 MR. READE: Yes, sir.
10 MR. SMITH: In the future he will not be able to do
11 so. And my only question, Your Honor, was did the Court
12 contemplate that tax difference in setting the alimony in that
13 -- its order today?
14 THE COURT: Oh, heck, yeah. I mean I -- I looked at
15 need, and I looked at sort of what -- what a just and
16 equitable award between somebody making a hundred and a half
17 and somebody making about 30- and that's about where we are.
18 So --
19 MR. SMITH: Okay. I think we just saved ourself an
20 issue, Your Honor.
21 THE COURT: All right.
22 MR. SMITH: So, thank you.
23 THE COURT: Thank you very much.
24 MR. GHIBAUDO: Thank you.

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MR. SMITH: All right. Thank you.

THE COURT: Uh-huh (affirmative).

MR. READE: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 11:51:17)

* * * * *

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



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**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

TARA KELLOGG-GHIBAUDO,

Plaintiff,

vs.

ALEX GHIBAUDO

Defendant.

CASE NO.: D-15-522043-D
DEPT NO.: H

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Date of Hearing: September 17, 2020
Time of Hearing: 9:00 a.m.

This matter having come on for an evidentiary hearing on the date and time indicated above regarding Defendant's Motion to Modify Spousal Support filed May 30, 2019. Plaintiff TARA KELLOGG-GHIBAUDO ("Tara"), being present and represented by her attorney of record, R. Christopher Reade, Esq., of Cory Reade Dows Shafer; Defendant ALEX GHIBAUDO ("Alex"), being present and represented by his attorney of record, Radford J. Smith, Esq., of the law firm of Radford J. Smith, Chartered; the Honorable T. Arthur Ritchie presiding.

The Court having heard the sworn testimony presented at the time of the hearing of this matter, read the papers and pleadings on file and presented as Exhibits at the time of trial, having

1 heard argument of counsel, and being otherwise fully advised in the premises, makes the following
2 Findings of Fact, Conclusions of Law, and Orders.

3 **FINDINGS OF FACT**

4 **THE COURT FINDS** that the parties were divorced by Decree of Divorce filed February
5 1, 2017.

6 **THE COURT FURTHER FINDS** that the Decree is a final, enforceable judgment in this
7 case.
8

9 **THE COURT FURTHER FINDS** that Defendant Alex Ghibauda (hereinafter “Alex”)
10 reopened this matter on May 30, 2019, through his motion to modify the spousal support provisions
11 of the Decree.

12 **THE COURT FURTHER FINDS** that Plaintiff Tara Kellogg (hereinafter “Tara”) seeks
13 enforcement of the provisions of the Decree of Divorce and alleges that Alex is delinquent in his
14 payments for family support due under the Decree.
15

16 **THE COURT FURTHER FINDS** that the Court retains jurisdiction to enforce the
17 alimony provisions in the Decree and has jurisdiction to modify those provisions.

18 **THE COURT FURTHER FINDS** that there was an aggregate of judgments that were
19 entered addressing Alex’s support obligations to October 2017, and those judgments are not the
20 subject matter of this hearing since they have already been adjudicated and reduced to judgment.

21 **THE COURT FINDS** that a settlement conference was conducted on May 18th, 2016 by
22 former Judge Kathy Hardcastle.
23

24 **THE COURT FURTHER FINDS** that the settlement conference was conducted so that
25 parties could obtain a legal separation, which explains the curious orders in that there was a general
26 theme that the parties would share income because they were still married.
27
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1 **THE COURT FURTHER FINDS** that both parties had a right, which they
2 acknowledged, to get a divorced and turn the terms of legal separation into a divorce.

3 **THE COURT FURTHER FINDS** that the parties agreed that a Decree of Divorce could
4 be entered and that the Decree of Divorce entered in this matter adopted the agreements that were
5 part of the settlement agreement which was reduced to judgment in the Decree.

6 **THE COURT FURTHER FINDS** that the Decree of Divorce is final judgment and is the
7 law of the case.

8 **THE COURT FURTHER FINDS** that the Decree is under the continuing jurisdiction of
9 this Court.
10

11 **THE COURT FURTHER FINDS** that there was an agreement and a binding order for
12 the parties to share the income. The actual obligation pursuant to the decree was not \$2,500.00
13 but was to be the difference between the Tara's earning potential and the Alex's actual earnings
14 divided by two.

15 **THE COURT FURTHER FINDS** that the Court finds that the Tara is not employed, that
16 Tara obtained an Associates' Degree in 2017 and that Tara does not have income.

17 **THE COURT FURTHER FINDS** Tara did not present sufficient proof to support any
18 kind of finding that she is disabled and unable to earn income.
19

20 **THE COURT FURTHER FINDS** that Tara testified that she hopes to get a job earning
21 \$30,000.00 to \$40,000.00 per year but does not yet have her bachelor's degree at this time.

22 **THE COURT FURTHER FINDS** that Tara is willfully underemployed to maximize her
23 spousal support claim, that the income should be imputed to her for the period of time between
24 October 2017 to present. The Court can appropriately calculate the net support that is due during
25 this time and that e amount based on the evidence that was presented is \$2,000.00 a month.
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1 **THE COURT FURTHER FINDS** that Alex is employed as an attorney who incorporated
2 his law firm with the Nevada Secretary of State about six months after the settlement conference
3 on December 19th, 2016.

4 **THE COURT FURTHER FINDS** that Alex filed tax returns that showed income for
5 2017, 2018 and 2019. The evidence admitted and the Court's findings are that Alex's gross income
6 for the purpose of calculating support (1) for 2017 was \$148,256.00, or \$12,355.00 a month; (2)
7 for 2018, is \$180,285.00, or \$15,024.00 a month; (3) for 2019 was \$133,490.00, or \$11,124.00 a
8 month from January through May of that year.
9

10 **THE COURT FURTHER FINDS** that Alex's income, for purposes of calculating his
11 support obligation is at least \$140,000.00 per month, or at least \$12,000.00 a month in gross
12 income. Tara's expert's testimony supports that conclusion.

13 **THE COURT FURTHER FINDS** that from October 2017 to December 2017, Alex's
14 income was \$12,355.00 per month for those three months. Applying Tara's imputed income of
15 \$2,000.00, the net income to be divided pursuant to the Decree of Divorce is \$10,355.00. This sum
16 divided by two equals \$5,177.00 per month due to Tara for the three (3) months in 2017 at issue,
17 totaling \$15,532.00.
18

19 **THE COURT FURTHER FINDS** that in 2018, Alex earned \$15,024.00 per month on
20 average. Imputing an income of \$2,000.00 to Tara, the net income to be divided pursuant to the
21 Decree of Divorce is \$13,024.00. This sum divided by two equals \$6,515.00 per month due to
22 Tara, multiplied by 12 months, equals \$78,144.00 due to Tara for that year.
23

24 **THE COURT FURTHER FINDS** that in 2019, the period to be considered is from
25 January to April, when Alex's motion was filed. For that four (4) month period, Alex's gross
26 monthly income was \$11,124.00 per month on average, minus the \$2,000.00 imputed to Tara. The
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1 net income to be divided pursuant to the Decree of Divorce is \$9,124.00. This sum divided by two
2 equals \$4,562.00 per month due to Tara, multiplied by the four months at issue totals \$18,248.00.

3 **THE COURT FURTHER FINDS** that by adding those three years together, Alex should
4 have paid family support pursuant to the Decree of Divorce in the amount of \$111,924.00.

5 **THE COURT FURTHER FINDS** that the evidence supports a finding that between
6 October 2017 to April 2019 that Alex paid to Tara approximately \$42,000.00.

7 **THE COURT FURTHER FINDS** that the \$42,000.00 actually paid will be credited
8 against the \$111,924.00 owed, for a total arrears amount of \$69,924.00, which represents the
9 family support owed pursuant to the decree between October 2017 and April 2019 and which sums
10 shall be and hereby are reduced to Judgment.
11

12 **THE COURT FURTHER FINDS** that the family support provisions in the Decree of
13 Divorce are modifiable.

14 **THE COURT FURTHER FINDS** that the Decree and NRS 125.150 allow the Court to
15 terminate alimony based on operative events such as the death of either party or the remarriage of
16 the Tara, neither of which occurred here, or modify or terminate alimony based upon a change in
17 financial circumstances.
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19 **THE COURT FURTHER FINDS** that the agreement concerning legal separation was
20 incorporated in the decree of divorce without a trial on the issue of divorce. Certainly, spousal
21 support is what somebody pays from their separate property to their former spouse. So, in
22 evaluating whether to modify the spousal support award from May 2019 forward, the Court is
23 going to consider the required factors relevant in determining the award of alimony and the amount
24 of such award. The Court considers the financial conditions of each spouse. Other than the reported
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1 income, the Tara states that she is supported by the charity of her family; and the Alex is an attorney
2 who earns at least \$140,000.00 a year.

3 **Findings regarding Alimony Factors Codified in NRS 125.150**

4 **THE COURT FURTHER FINDS** that the Court considers the nature and value of the
5 assets of each spouse. Here, neither party has significant assets, aside from Alex, who has a law
6 practice developed over the last four (4) years.

7 **THE COURT FURTHER FINDS** that the Court considers the contribution of each
8 spouse to any property held by the spouses. Here, that is not a material factor.

9 **THE COURT FURTHER FINDS** that the Court considers the duration of the marriage,
10 which was 13 years.

11 **THE COURT FURTHER FINDS** that the Court considers the earning capacity, age, and
12 health of each spouse. Alex has an earning capacity of \$140,000.00 per year; Tara's earning
13 capacity is \$24,000.00 per year.

14 **THE COURT FURTHER FINDS** that the Court considers the standard of living during
15 the marriage and finds that during the marriage, both parties had financial and personal issues, and
16 so this is not a compelling consideration in this case.

17 **THE COURT FURTHER FINDS** that the Court considers the career before the marriage
18 of the spouse who would receive alimony. Here, Tara has been taking college courses for years
19 and has received an Associate's Degree. She is currently seeking Bachelor's degree, and she has
20 made efforts in that regard.

21 **THE COURT FURTHER FINDS** that the Court considers the award of property granted
22 in the decree of divorce. There really was not much property granted in the Decree of Divorce to
23 either party.

1 **THE COURT FURTHER FINDS** that the Court must consider the physical and mental
2 condition of each party as it relates to financial condition, health, and ability to work. The Court
3 finds that both parties have the ability to work and that the Court should consider the need to grant
4 alimony for any kind of training or education, which has been addressed herein.

5 **THE COURT FURTHER FINDS** that in terms of those factors, now that the parties are
6 divorced, and now that this matter has been raised with the Court, the Court has been asked to
7 modify the amount. Tara asked the Court to order \$6,500.00 a month in alimony without much
8 context. If Alex makes \$12,000 a month and he pays normal withholding, he probably nets about
9 \$9,000.00. In that case, \$6,500.00 would be about 70 percent of his net income which is not
10 equitable or appropriate. Considering the settlement conference and the imputed income, Tara's
11 need is about \$4,500.00. Tara lists other expenses, but Tara has done nothing to support herself as
12 it relates to the last three years after divorce.
13

14 **THE COURT FURTHER FINDS** that the Court is going to conclude that based on
15 weighing all these factors that the appropriate amount of support is \$2,500.00 a month and that is
16 an appropriate and equitable support amount that would reflect a spouse who makes \$140,000 a
17 year and a spouse who can make between \$24,000 to \$30,000.00 a year.
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19 **THE COURT FURTHER FINDS** Alex has requests that the term of spousal support be
20 terminated or modified.

21 **THE COURT FURTHER FINDS** that, as indicated above, the Court has reviewed, and
22 played for the parties in open court, the relevant sections of the videotape transcript of the
23 settlement conference held in front of Judge Hardcastle on May 18, 2016. The Court relied on that
24 transcript to better understand the terms of the agreement of the parties that formed the basis of
25 the terms of the Decree of Divorce regarding alimony.
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1 **THE COURT FURTHER FINDS** that the video transcript of the May 18, 2016,
2 settlement conference reveals that Alex proposed the 15-year term of alimony that was then
3 incorporated into the Decree of Divorce.

4 **THE COURT FURTHER FINDS** that though the Court has discretion to reduce the term
5 as Alex has requested, the Court finds that it is not just and equitable to terminate the alimony or
6 reduce the term at this time. The Court does not find sufficient change in circumstances since
7 May of 2019 to support Alex's modification of the agreed upon term of alimony because the Alex
8 was the party that insisted upon the 15 year term when the agreement was read into the record at
9 the settlement conference and only three years have passed since the entry of the Decree of
10 Divorce.

11 **THE COURT FURTHER FINDS** that the Court is going to confirm that the term of
12 Alex's obligation of alimony to Tara shall continue through April 1, 2031.

13 **THE COURT FURTHER FINDS** that from May 2019 through September 2020 Alex
14 owes Tara another \$47,500.00 at the rate of \$2,500 per month, which shall be reduced to judgment
15 in favor of the Tara against the Alex.

16 **THE COURT FURTHER FINDS** that judgments will accrue interest at the legal rate and
17 may be collected by any lawful means.

18 **THE COURT FURTHER FINDS** that the law firm Alex operates was established after
19 the settlement conference at issue and so that practice is Alex's sole and separate property, to
20 which Tara has no claim or right.

21 The court incorporates its findings and conclusions made on the record at the
22 hearing on September 17, 2020, by reference. TAR

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CONCLUSIONS OF LAW

The court has continuing jurisdiction to modify unaccrued periodic alimony payments set forth in a Decree of Divorce upon a showing of change circumstances. NRS 125.150(8).

The court may consider, among other factors, a parties' earning capacity, not just income, when determining a fair and equitable award of alimony. NRS 125.150.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Tara's Motion for Enforcement of the Decree of Divorce and entry of Judgment is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex's Motion to Modify Spousal Support is hereby GRANTED IN PART.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex owes Tara \$69,924.00 in spousal support arrears for period of October 2017 through April 2019.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex owes Tara \$47,500.00 for spousal support from May 2019 through September 2020.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these sums so reduced to Judgment have accrued interest at the legal rate and may be collected by any lawful means.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Alex's spousal support obligation has been modified and that Alex is ordered to pay Tara \$2,500.00 per month in spousal support. Payments are due on the first of each month starting on October 1, 2020.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this order takes into consideration a look-back to October 2017 in terms of any child support arrears.

DATED AND DONE this ____ day of November, 2020.

Dated this 10th day of November, 2020


DISTRICT COURT JUDGE

66A 958 EDC0 129B
T. Arthur Ritchie
District Court Judge

Prepared by:

CORY READE DOWS AND SHAFER
/s/ R. Christopher Reade

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Tara Kellogg Ghibaud, Plaintiff | CASE NO: D-15-522043-D
7 vs. | DEPT. NO. Department H
8 Alex Ghibaud, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 11/10/2020

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