

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Apr 08 2021 04:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MICHAEL FOLEY,
Appellant(s),

vs.

CLARK COUNTY DISTRICT
ATTORNEY,
Respondent(s),

Case No: R-11-162425-R

Docket No: 82569

RECORD ON APPEAL VOLUME 2

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PROPER PERSON
P.O. BOX 777972
HENDERSON, NV 89077-7972

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
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LAS VEGAS, NV 89119-5168

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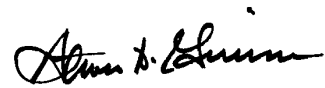
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CLERK OF THE COURT

NEMR
Steven B. Wolfson, District Attorney
Nevada Bar No. 001565
Family Support Division
1900 East Flamingo Road, Suite 100
Las Vegas, Nevada 89119-5168
(702) 671-9200 - TDD (702) 385-7486 (for the hearing impaired)
294910200A

DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Foley,

Petitioner,

vs.

Michael Foley,

Respondent.)

Case no. R-11-162425-R
Dept. no. CHILD SUPPORT

NOTICE OF ENTRY OF MASTER'S RECOMMENDATIONS

To: Michael Foley, Respondent or Respondent's Attorney

To: Patricia Foley, Petitioner or Petitioner's Attorney

Please take notice that the enclosed Master's Recommendations were entered in the above-entitled matter on July 13, 2016.

1 CERT

Case no. R-11-162425-R

2 CERTIFICATE OF MAILING

3 The foregoing Notice of Entry of Master's Recommendations for the Master's
4 Recommendation entered on July 13, 2016, was served upon Michael Anthony Foley by mailing a copy
5 thereof, first class mail, postage prepaid to:

6
7 Michael Anthony Foley
8 209 S Stephanie St Suite B-191
9 Henderson, NV 89012

10 on July 14, 2016.

11
12 /s/ Katherine Yonashiro
13 Employee, District Attorney's Office
14 Family Support Division
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NEMREC

1 CERT

Case no. R-11-162425-R

2 CERTIFICATE OF MAILING

3 The foregoing Notice of Entry of Master's Recommendations for the Master's
4 Recommendation entered on July 13, 2016, was served upon Patricia Foley by mailing a copy thereof,
5 first class mail, postage prepaid to:

6 Patricia Foley
7 8937 Austin Ridge Ave
8 Las Vegas NV 89178

8

9 on July 14, 2016.

10

11 /s/ Katherine Yonashiro
12 Employee, District Attorney's Office
13 Family Support Division

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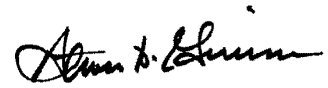
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NEMREC



CLERK OF THE COURT

1 **OBJ**

2 MICHAEL FOLEY
3 209 S. Stephanie St. Ste B-191
4 Henderson, NV 89012
5 Telephone: (702) 771-9725
6 Defendant in Proper Person

7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 PATRICIA FOLEY

11 Petitioner,

12 vs.

13 MICHAEL FOLEY,

14 Respondent.

Case No. R-11-162425
Dept. No. "Child Support"

Date of Hearing: June 17, 2015

15
16
17 **OBJECTION TO HEARING MASTER'S RECOMMENDATION**
18

19 COMES NOW, Respondent Michael Foley, in Proper Person, and hereby files this
20 OBJECTION to the Hearing Master's Recommendation that was filed in this action on or
21 about July 13, 2016, and mailed on July 14, 2016. This OBJECTION is filed pursuant to
22 E.D.C.R. 1.40 out of an abundance of caution, since this lower court has disregarded the
23 jurisdiction and authority of the Nevada Supreme Court, which presently has exclusive
24 jurisdiction over this matter.

25 This OBJECTION will be filed and hopefully accepted one day *after* the
26 Respondent's first attempts to file it on July 25, 2016.

27 //

28 //

1 DATED this 25th day of June, 2016.

2 
3 /s/ Michael Foley /

4 Michael Foley, Respondent in Pro Per
5 209 S. Stephanie St. Ste. B-191
6 Henderson, Nevada 89012
7 702-771-9725
8

9 See the attached Appeal Brief, filed on July 14, 2016, in the Nevada Supreme Court.
10

11 **CERTIFICATE OF MAILING**
12

13 The foregoing OBJECTION TO HEARING MASTER'S RECOMMENDATION
14 was served upon Respondent Patricia Foley, via first class mail, postage prepaid to:
15

16 Patricia Foley
17 8937 Austin Ridge Ave.
18 Las Vegas, Nevada 89178
19

20 DATED this 26th day of July, 2015.

21 
22 /s/ Michael Foley /

23 Michael Foley, Respondent in Pro Per
24 209 S. Stephanie St. Ste. B-191
25 Henderson, Nevada 89012
26 702-771-9725
27

28 //

EXHIBIT “A”

IN THE SUPREME COURT OF THE STATE OF NEVADA

Michael Foley

Appellant,

vs.

Patricia Foley

Respondent.

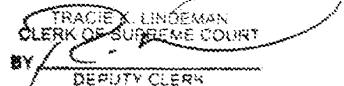
Supreme Court No. 69997

District Court No. R-11-182425

FILED

JUL 19 2016

APPELLANT'S INFORMAL BRIEF

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may file your brief in person or by mail.

To file your brief in person: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00 p.m.



Informal Brief Form October 2015

1

16-22400

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
February 8, 2016	Notice of Entry of "Order/Judgment" (
February 22, 2016	Notice of Entry of (Amended?) Order/Judgment (

Notice of Appeal. Give the date you filed your notice of appeal in the district court: March 9, March 14 (rejected), March 17, 2016 (accepted after much resistance)

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
D-08-403071-D	Foley v. Foley	8th District - Clark County

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

This case arises from a divorce action that was filed by the Petitioner in the lower court action case No. R-11-162425-R, which appears to be a derivative action that violates NRCP 7(a), which prohibits the filing pleadings other than complaints, answers, replies, cross-claims, and answers thereto for every action. The Appellant complains to this Court that the District Court does NOT follow the Eighth District Court Rules, nor does it follow the NRCP with regard to how the powers of child support hearing masters are to be limited under said rules, and that because the District Court does not follow the U.S.

Constitution, nor does it follow the Constitution of the State of Nevada, which specifically prohibits imprisonment for debts, other than for fraud, libel or slander. There IS NO EXCEPTION for child support, although the District Court does in fact imprison indigent litigants who are unable to pay child support debts, and this is a violation of the 14th Amendment to the U.S. Constitution, as interpreted by the U.S. Supreme Court in the case Turner v. Rogers, 564 U.S. 431 (2011). The District Court is complicit in a major fraud perpetrated by Clark County District Attorney Steven Wolfson, who is raiding the U.S. Taxpayers' Social Security fund, by making countless false claims pursuant to Title IV-D of the Social Security Act. As of the year 2014, DA Wolfson collect nearly \$19 million dollars from this fund by violating the liberty rights of mostly fathers who are unable to meet child support obligations that have been imposed upon them in custody and divorce actions, as well as actions for support in the family division of the 8th District Court. Since the year 2008, this Appellant has suffered fraud after fraud by the District Attorney and his deputies. First, the Appellee Patricia Foley was compelled by the DA to divorce the Appellant when she was facing bad check charges stemming from her gambling addiction. Patricia was manipulated and controlled by the Appellant's evil sister Michelle Pont, who, with Clark County DFS, created a false CPS case against the Appellant, as part of a massive and elaborate scheme to defraud the Appellant of his family, children and property. This controversy is being litigated in Federal Court, and is now before the 9th Circuit Court of Appeals. Briefing in that appeal ended more than a year ago, and a decision is not expected for several more months. Meanwhile, the Appellant has been substantially disabled from having normal employment because Clark County DFS decided to deprive him of due process, and place his name in a State registry that substantially prevents him from returning to his prior work as a technology profession working for Cox Communications in Las Vegas. The government of the County and State is opposed to the Appellant having a driver's license, a real estate license, or any other professional business license until such time that the Appellant pays the Appellee a sum

of no less than \$2,000. As the record shows, the "child support" court has compelled the Appellant to pay this very high sum in order for him to maintain his freedom. This is absolutely contrary to the designs of our founding fathers, who authored our Constitution, the very precious document that made Nevada a State, and that actually freed the black slaves of 1863, with the passage of the 14 Amendment to the U.S. Constitution. Ironically, the District Court's blatant disregard for said constitutional amendment results in the arrest and false imprisonment of many, many African-American Nevada citizens, who are necessarily citizens of the United States, and deserving and entitled to the protections of the 14th Amendment as declared by the U.S. Supreme Court in Turner v. Rogers (2011). If the Court views the video transcript of the lower court proceedings, it will find that the hearing masters are exercising powers against this appellant, and MANY other citizens mostly of African-American heritage, that the masters simply do not have. Now that the District and this Supreme Court recognizes the Appellants indigence, justice might be delivered at long last.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

First, E.D.C.R. requires that the child support masters meet with the Presiding judge of Family Division of the 8th District Court. If that rule was being followed, and if the Presiding Judge was doing his or her job, these "Master's Recommendations" would be getting reviewed by said Presiding Judge, and said judge would be either approving, denying, or modifying said Masters' Recommendations prior to their filing in the District Court docket. That simply is NEVER happening in the 8th District. The child support hearing masters have assumed the power of the District Court judges, with the non-objection of the Presiding Judge, and therefore, the elected District Court judges seldom, if EVER have to sign their names to these unconstitutional "recommendations" to incarcerate poor citizens who don't have the means to pay domestic judgments. This fraud continues

without ANY action by this or any Court because there are millions of dollars and scores of jobs at stake if the U.S. Constitution were followed, applied, observed or enforced. A jurist with above-average intelligence would be able to deduce that the Courts must necessarily appoint legal counsel for unrepresented respondents in these hearings. The hearing masters are threatening and actually imposing and ORDERING that jail sentences be carried out by the local Clark County Sheriff. Sheriff Lombardo is also violating the Appellant's and every other child support respondent's right to due process and equal protection and justice under the laws because he and his predecessors are not just arresting, but hand-cuffing and depriving of personal liberty individuals like the Appellant, in violation of NRS 22.140. In no other "civil" action is a party lawfully hand-cuffed and jailed when he or she is the subject of a "civil" bench warrant. See NRS 22.140. "the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him or her of personal liberty, except so far as may be necessary to secure his or her personal attendance." NEVER has it been necessary to hand-cuff this Appellant or confine him in a prison, Clark County Detention Center (NRS 208.075), because he has never refused a command given to him by a peace officer. He has no record of resisting arrest, and no record of obstructing justice, yet he is treated like a criminal, actually worse, because convicted criminals have the right to appeal at no cost. Under the regime of Clark County District Attorney Steven Wolfson, civil defendants are purposely arrested, hand-cuffed and imprisoned for no less than 3 days before they get a hearing, despite the law that says under NRS 22, such litigants must not be confined in a prison, or otherwise deprived of personal liberty. The only exception to this protection is that an officer may deprive a person of personal liberty and confine him in a prison if he or she physically resists the officer's command to go to court with him, and/or he or she tries to evade the warrant by refusing to get into the officer's vehicle and peaceably proceed to court to attend to the civil matter that awaits the subject's attendance and participation. These civil rights violations occur on a daily basis because the District

Court is complicit with the District Attorney's objectives to maximize incentive dollars under 42 U.S.C. 658a. If the District Court followed E.D.C.R. 1.31(b)(5)(ii), then the DA would NOT be able to crank out nearly as many cases, as each of the dozens of Masters' recommendations would actually have to be read by the Presiding Judge, and there is only one Presiding Judge, so it just cannot be done the correct, lawful and constitutional way if the DA is going to meet and exceed his goals and previous year records that earn him awards and recognition for collecting better than any other Child Support Enforcement entity in the nation. One need only Google the terms Steven Wolfson and "Child Support" to find that he is the recipient of a number of awards for his outstanding success collecting child support debts. Well of course he is going to be more successful than other authorities that follow the law. If or when this Court views not just the video transcript of this Appellant's proceedings, but also of the proceedings of the litigants who were heard before and after him, the Court would see that the Appellant's fellow debtor-prisoners were treated just as harshly, and very much as though they were characters in a Charles Dickens novel like Oliver Twist. The Deputy District Attorneys who shamelessly represent the mothers (primary custodial parents) in these hearing are ruthless. They demand that the debtor-prisoners contact their friends and relatives to beg that they be lent money so that they can get the money they seek, and threaten us debtor-prisoners with continued incarceration if we are unsuccessful in begging or borrowing enough money to be released from Clark County's unlawful, unconstitutional and archaic debtors' prison. This status quo will not likely be ruled unconstitutional by this Court because there is simply too many millions of dollars at stake, and too many jobs that will have to be eliminated by the District Attorney if he were to follow the Constitutions, and NOT prosecute and seek imprisonment of unrepresented debtors. IF the District Court would follow the U.S. Constitution, and the authority mandated by the U.S. Supreme Court in Turner v. Rogers, then the District Attorney (and money-hungry divorcees) would not get nearly as much money as they get now. The divorce industry

would failer because there would no longer be that satisfaction that is sought by many, which is to incarcerate ex-spouses if they don't pay. If this paradigm were an experiment by social and population-controlling engineers, the model in Clark County would be the one to follow because not only has the Appellant's 15-year-old son decided that he is never going to have children, likewise at least one of the agents who last arrested this Appellant is resigned to never having children, due to the inherent risks created by corrupt District Attorney Steven Wolfson and his accomplices within the 8th District Court. The District Attorney and his accomplices are undeniably corrupt because they are well educated in the law, and despite recent Supreme Court rulings, particularly Turner, they continue to not just prosecute and seek unlawful imprisonment of innocent, non-threatening citizens like this Appellant, they INTIMIDATE and OBLIGATE WOMEN to divorce their husbands every chance they get, whether it is a supposed domestic violence situation, or as in the Appellant's wife's case, bad check activity that could either be prosecuted according to criminal statute, or CONVERTED to a civil domestic action that will necessarily lead to a stream of child support incentive revenues for years and years. This Court MUST vacate the lower Court's judgment, but probably won't, just to maintain the status quo and multi-million dollar federal cash flow in Clark County.

DATED this 14th day of July, 2016.


Signature of Appellant

Michael Foley
Print Name of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

☐ By personally serving it upon him/her; or

☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

Patricia Foley 8937 Austin Ridge Ave Las Vegas, Nevada 89178

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

DATED this 14th day of July, 2016.



Signature of Appellant

Michael Foley

Print Name of Appellant

209 S. Stephanie St.

Address Ste B-191

Henderson, NV 89012

City/State/Zip

702-771-9725

Telephone

EXHIBIT “1”



U.S. Department of Justice

Civil Rights Division

Office for Access to Justice

Washington, D.C. 20530

March 14, 2016

Dear Colleague:

The Department of Justice ("the Department") is committed to assisting state and local courts in their efforts to ensure equal justice and due process for all those who come before them. In December 2015, the Department convened a diverse group of stakeholders—judges, court administrators, lawmakers, prosecutors, defense attorneys, advocates, and impacted individuals—to discuss the assessment and enforcement of fines and fees in state and local courts. While the convening made plain that unlawful and harmful practices exist in certain jurisdictions throughout the country, it also highlighted a number of reform efforts underway by state leaders, judicial officers, and advocates, and underscored the commitment of all the participants to continue addressing these critical issues. At the meeting, participants and Department officials also discussed ways in which the Department could assist courts in their efforts to make needed changes. Among other recommendations, participants called on the Department to provide greater clarity to state and local courts regarding their legal obligations with respect to fines and fees and to share best practices. Accordingly, this letter is intended to address some of the most common practices that run afoul of the United States Constitution and/or other federal laws and to assist court leadership in ensuring that courts at every level of the justice system operate fairly and lawfully, as well as to suggest alternative practices that can address legitimate public safety needs while also protecting the rights of participants in the justice system.

Recent years have seen increased attention on the illegal enforcement of fines and fees in certain jurisdictions around the country—often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions.¹ Typically, courts do not sentence defendants to incarceration in these cases; monetary fines are the norm. Yet the harm

¹ See, e.g., Civil Rights Division, U.S. Department of Justice, *Investigation of the Ferguson Police Department* (Mar. 4, 2015), http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf (finding that the Ferguson, Missouri, municipal court routinely deprived people of their constitutional rights to due process and equal protection and other federal protections); Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (reporting on fine and fee practices in fifteen states); American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (2010), available at https://www.aclu.org/files/assets/InForAPenny_web.pdf (discussing practices in Louisiana, Michigan, Ohio, Georgia, and Washington state).

caused by unlawful practices in these jurisdictions can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community²; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape.³ Furthermore, in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.⁴

To help judicial actors protect individuals' rights and avoid unnecessary harm, we discuss below a set of basic constitutional principles relevant to the enforcement of fines and fees. These principles, grounded in the rights to due process and equal protection, require the following:

- (1) Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;
- (2) Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;
- (3) Courts must not condition access to a judicial hearing on the prepayment of fines or fees;
- (4) Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
- (5) Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;
- (6) Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and
- (7) Courts must safeguard against unconstitutional practices by court staff and private contractors.

In court systems receiving federal funds, these practices may also violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, when they unnecessarily impose disparate harm on the basis of race or national origin.

² Nothing in this letter is intended to suggest that courts may not preventively detain a defendant pretrial in order to secure the safety of the public or appearance of the defendant.

³ See Council of Economic Advisers, Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor*, at 1 (Dec. 2015), available at https://www.whitehouse.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf (describing the disproportionate impact on the poor of fixed monetary penalties, which "can lead to high levels of debt and even incarceration for failure to fulfil a payment" and create "barriers to successful re-entry after an offense").

⁴ See Conference of State Court Administrators, 2011-2012 Policy Paper, *Courts Are Not Revenue Centers* (2012), available at <https://csgjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf>.

As court leaders, your guidance on these issues is critical. We urge you to review court rules and procedures within your jurisdiction to ensure that they comply with due process, equal protection, and sound public policy. We also encourage you to forward a copy of this letter to every judge in your jurisdiction; to provide appropriate training for judges in the areas discussed below; and to develop resources, such as bench books, to assist judges in performing their duties lawfully and effectively. We also hope that you will work with the Justice Department, going forward, to continue to develop and share solutions for implementing and adhering to these principles.

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.

The due process and equal protection principles of the Fourteenth Amendment prohibit “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). Accordingly, the Supreme Court has repeatedly held that the government may not incarcerate an individual solely because of inability to pay a fine or fee. In *Bearden*, the Court prohibited the incarceration of indigent probationers for failing to pay a fine because “[t]o do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.” *Id.* at 672-73; *see also Tate v. Short*, 401 U.S. 395, 398 (1971) (holding that state could not convert defendant’s unpaid fine for a fine-only offense to incarceration because that would subject him “to imprisonment solely because of his indigency”); *Williams v. Illinois*, 399 U.S. 235, 241-42 (1970) (holding that an indigent defendant could not be imprisoned longer than the statutory maximum for failing to pay his fine). The Supreme Court recently reaffirmed this principle in *Turner v. Rogers*, 131 S. Ct. 2507 (2011), holding that a court violates due process when it finds a parent in civil contempt and jails the parent for failure to pay child support, without first inquiring into the parent’s ability to pay. *Id.* at 2518-19.

To comply with this constitutional guarantee, state and local courts must inquire as to a person’s ability to pay prior to imposing incarceration for nonpayment. Courts have an affirmative duty to conduct these inquiries and should do so sua sponte. *Bearden*, 461 U.S. at 671. Further, a court’s obligation to conduct indigency inquiries endures throughout the life of a case. *See id.* at 662-63. A probationer may lose her job or suddenly require expensive medical care, leaving her in precarious financial circumstances. For that reason, a missed payment cannot itself be sufficient to trigger a person’s arrest or detention unless the court first inquires anew into the reasons for the person’s non-payment and determines that it was willful. In addition, to minimize these problems, courts should inquire into ability to pay at sentencing, when contemplating the assessment of fines and fees, rather than waiting until a person fails to pay.

Under *Bearden*, standards for indigency inquiries must ensure fair and accurate assessments of defendants' ability to pay. Due process requires that such standards include both notice to the defendant that ability to pay is a critical issue, and a meaningful opportunity for the defendant to be heard on the question of his or her financial circumstances. *See Turner*, 131 S. Ct. at 2519-20 (requiring courts to follow these specific procedures, and others, to prevent unrepresented parties from being jailed because of financial incapacity). Jurisdictions may benefit from creating statutory presumptions of indigency for certain classes of defendants—for example, those eligible for public benefits, living below a certain income level, or serving a term of confinement. *See, e.g.*, R.I. Gen. Laws § 12-20-10 (listing conditions considered “prima facie evidence of the defendant’s indigency and limited ability to pay,” including but not limited to “[q]ualification for and/or receipt of” public assistance, disability insurance, and food stamps).

2. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.

When individuals of limited means cannot satisfy their financial obligations, *Bearden* requires consideration of “alternatives to imprisonment.” 461 U.S. at 672. These alternatives may include extending the time for payment, reducing the debt, requiring the defendant to attend traffic or public safety classes, or imposing community service. *See id.* Recognizing this constitutional imperative, some jurisdictions have codified alternatives to incarceration in state law. *See, e.g.*, Ga. Code Ann. § 42-8-102(f)(4)(A) (2015) (providing that for “failure to report to probation or failure to pay fines, statutory surcharges, or probation supervision fees, the court shall consider the use of alternatives to confinement, including community service”); *see also Tate*, 401 U.S. at 400 n.5 (discussing effectiveness of fine payment plans and citing examples from several states). In some cases, it will be immediately apparent that a person is not and will not likely become able to pay a monetary fine. Therefore, courts should consider providing alternatives to indigent defendants not only after a failure to pay, but also in lieu of imposing financial obligations in the first place.

Neither community service programs nor payment plans, however, should become a means to impose greater penalties on the poor by, for example, imposing onerous user fees or interest. With respect to community service programs, court officials should consider delineating clear and consistent standards that allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals’ work and family obligations. In imposing payment plans, courts should consider assessing the defendant’s financial resources to determine a reasonable periodic payment, and should consider including a mechanism for defendants to seek a reduction in their monthly obligation if their financial circumstances change.

3. Courts must not condition access to a judicial hearing on prepayment of fines or fees.

State and local courts deprive indigent defendants of due process and equal protection if they condition access to the courts on payment of fines or fees. *See Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) (holding that due process bars states from conditioning access to

compulsory judicial process on the payment of court fees by those unable to pay); *see also Tucker v. City of Montgomery Bd. of Comm'rs*, 410 F. Supp. 494, 502 (M.D. Ala. 1976) (holding that the conditioning of an appeal on payment of a bond violates indigent prisoners' equal protection rights and "'has no place in our heritage of Equal Justice Under Law'" (citing *Burns v. Ohio*, 360 U.S. 252, 258 (1959))).⁵

This unconstitutional practice is often framed as a routine administrative matter. For example, a motorist who is arrested for driving with a suspended license may be told that the penalty for the citation is \$300 and that a court date will be scheduled only upon the completion of a \$300 payment (sometimes referred to as a prehearing "bond" or "bail" payment). Courts most commonly impose these prepayment requirements on defendants who have failed to appear, depriving those defendants of the opportunity to establish good cause for missing court. Regardless of the charge, these requirements can have the effect of denying access to justice to the poor.

4. Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *see also Turner*, 131 S. Ct. at 2519 (discussing the importance of notice in proceedings to enforce a child support order). Thus, constitutionally adequate notice must be provided for even the most minor cases. Courts should ensure that citations and summonses adequately inform individuals of the precise charges against them, the amount owed or other possible penalties, the date of their court hearing, the availability of alternate means of payment, the rules and procedures of court, their rights as a litigant, or whether in-person appearance is required at all. Gaps in this vital information can make it difficult, if not impossible, for defendants to fairly and expeditiously resolve their cases. And inadequate notice can have a cascading effect, resulting in the defendant's failure to appear and leading to the imposition of significant penalties in violation of the defendant's due process rights.

Further, courts must ensure defendants' right to counsel in appropriate cases when enforcing fines and fees. Failing to appear or to pay outstanding fines or fees can result in incarceration, whether through the pursuit of criminal charges or criminal contempt, the imposition of a sentence that had been suspended, or the pursuit of civil contempt proceedings. The Sixth Amendment requires that a defendant be provided the right to counsel in any criminal proceeding resulting in incarceration, *see Scott v. Illinois*, 440 U.S. 367, 373 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), and indeed forbids imposition of a suspended jail sentence on a probationer who was not afforded a right to counsel when originally convicted and sentenced,

⁵ The Supreme Court reaffirmed this principle in *Little v. Streater*, 452 U.S. 1, 16-17 (1981), when it prohibited conditioning indigent persons' access to blood tests in adversarial paternity actions on payment of a fee, and in *M.L.B. v. S.L.J.*, 519 U.S. 102, 107 (1996), when it prohibited charging filing fees to indigent persons seeking to appeal from proceedings terminating their parental rights.

see *Alabama v. Shelton*, 535 U.S. 654, 662 (2002). Under the Fourteenth Amendment, defendants likewise may be entitled to counsel in civil contempt proceedings for failure to pay fines or fees. See *Turner*, 131 S. Ct. at 2518-19 (holding that, although there is no automatic right to counsel in civil contempt proceedings for nonpayment of child support, due process is violated when neither counsel nor adequate alternative procedural safeguards are provided to prevent incarceration for inability to pay).⁶

5. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.

The use of arrest warrants as a means of debt collection, rather than in response to public safety needs, creates unnecessary risk that individuals' constitutional rights will be violated. Warrants must not be issued for failure to pay without providing adequate notice to a defendant, a hearing where the defendant's ability to pay is assessed, and other basic procedural protections. See *Turner*, 131 S. Ct. at 2519; *Bearden*, 461 U.S. at 671-72; *Mullane*, 339 U.S. at 314-15. When people are arrested and detained on these warrants, the result is an unconstitutional deprivation of liberty. Rather than arrest and incarceration, courts should consider less harmful and less costly means of collecting justifiable debts, including civil debt collection.⁷

In many jurisdictions, courts are also authorized—and in some cases required—to initiate the suspension of a defendant's driver's license to compel the payment of outstanding court debts. If a defendant's driver's license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay. See *Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that driver's licenses "may become essential in the pursuit of a livelihood" and thus "are not to be taken away without that procedural due process required by the Fourteenth Amendment"); cf. *Dixon v. Love*, 431 U.S. 105, 113-14 (1977) (upholding revocation of driver's license after conviction based in part on the due process provided in the underlying criminal proceedings); *Mackey v. Montrym*, 443 U.S. 1, 13-17 (1979) (upholding suspension of driver's license after arrest for driving under the influence and refusal to take a breath-analysis test, because suspension "substantially served" the government's interest in public safety and was based on "objective facts either within the personal knowledge of an impartial government official or readily ascertainable by him," making the risk of erroneous deprivation low). Accordingly, automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process.

⁶ *Turner's* ruling that the right to counsel is not automatic was limited to contempt proceedings arising from failure to pay child support to a custodial parent who is unrepresented by counsel. See 131 S. Ct. at 2512, 2519. The Court explained that recognizing such an automatic right in that context "could create an asymmetry of representation." *Id.* at 2519. The Court distinguished those circumstances from civil contempt proceedings to recover funds due to the government, which "more closely resemble debt-collection proceedings" in which "[t]he government is likely to have counsel or some other competent representative." *Id.* at 2520.

⁷ Researchers have questioned whether the use of police and jail resources to coerce the payment of court debts is cost-effective. See, e.g., Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 505, 527-28 (2011). This strategy may also undermine public safety by diverting police resources and stimulating public distrust of law enforcement.

Even where such suspensions are lawful, they nonetheless raise significant public policy concerns. Research has consistently found that having a valid driver's license can be crucial to individuals' ability to maintain a job, pursue educational opportunities, and care for families.⁸ At the same time, suspending defendants' licenses decreases the likelihood that defendants will resolve pending cases and outstanding court debts, both by jeopardizing their employment and by making it more difficult to travel to court, and results in more unlicensed driving. For these reasons, where they have discretion to do so, state and local courts are encouraged to avoid suspending driver's licenses as a debt collection tool, reserving suspension for cases in which it would increase public safety.⁹

6. Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.

When indigent defendants are arrested for failure to make payments they cannot afford, they can be subjected to another independent violation of their rights: prolonged detention due to unlawful bail or bond practices. Bail that is set without regard to defendants' financial capacity can result in the incarceration of individuals not because they pose a threat to public safety or a flight risk, but rather because they cannot afford the assigned bail amount.

As the Department of Justice set forth in detail in a federal court brief last year, and as courts have long recognized, any bail practices that result in incarceration based on poverty violate the Fourteenth Amendment. See Statement of Interest of the United States, *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC, at 8 (M.D. Ala., Feb. 13, 2015) (citing *Bearden*, 461 U.S. at 671; *Tate*, 401 U.S. at 398; *Williams*, 399 U.S. at 240-41).¹⁰ Systems that rely primarily on secured monetary bonds without adequate consideration of defendants' financial means tend to result in the incarceration of poor defendants who pose no threat to public safety solely because they cannot afford to pay.¹¹ To better protect constitutional rights while ensuring defendants' appearance in court and the safety of the community, courts should consider transitioning from a system based on secured monetary bail alone to one grounded in objective risk assessments by pretrial experts. See, e.g., D.C. Code § 23-1321 (2014); Colo. Rev. Stat. 16-

⁸ See, e.g., Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility*, 22 J. PLAN. EDUC. & RES. 50 (2002); Alan M. Voorhees, et al., *Motor Vehicles Affordability and Fairness Task Force: Final Report*, at xii (2006), available at http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf (a study of suspended drivers in New Jersey, which found that 42% of people lost their jobs as a result of the driver's license suspension, that 45% of those could not find another job, and that this had the greatest impact on seniors and low-income individuals).

⁹ See Am. Ass'n of Motor Veh. Adm'rs, *Best Practices Guide to Reducing Suspended Drivers*, at 3 (2013), available at <http://www.aamva.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=3723&libID=3709> (recommending that "legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations" and citing research supporting view that fewer driver suspensions for non-compliance with court requirements would increase public safety).

¹⁰ The United States' Statement of Interest in *Varden* is available at http://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/02/13/varden_statement_of_interest.pdf.

¹¹ See *supra* Statement of the United States, *Varden*, at 11 (citing Timothy R. Schnacke, U.S. Department of Justice, National Institute of Corrections, *FUNDAMENTALS OF BAIL: A RESOURCE GUIDE FOR PRETRIAL PRACTITIONERS AND A FRAMEWORK FOR AMERICAN PRETRIAL REFORM*, at 2 (2014), available at <http://nicic.gov/library/028360>).

4-104 (2014); Ky. Rev. Stat. Ann. § 431.066 (2015); N.J. S. 946/A1910 (enacted 2015); *see also* 18 U.S.C. § 3142 (permitting pretrial detention in the federal system when no conditions will reasonably assure the appearance of the defendant and safety of the community, but cautioning that “[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person”).

7. Courts must safeguard against unconstitutional practices by court staff and private contractors.

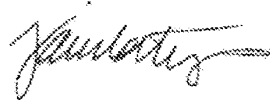
In many courts, especially those adjudicating strictly minor or local offenses, the judge or magistrate may preside for only a few hours or days per week, while most of the business of the court is conducted by clerks or probation officers outside of court sessions. As a result, clerks and other court staff are sometimes tasked with conducting indigency inquiries, determining bond amounts, issuing arrest warrants, and other critical functions—often with only perfunctory review by a judicial officer, or no review at all. Without adequate judicial oversight, there is no reliable means of ensuring that these tasks are performed consistent with due process and equal protection. Regardless of the size of the docket or the limited hours of the court, judges must ensure that the law is followed and preserve “both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done.” *Marshall v. Jerico, Inc.*, 446 U.S. 238, 242 (1980) (internal quotation marks omitted); *see also* American Bar Association, MODEL CODE OF JUDICIAL CONDUCT, Canon 2, Rules 2.2, 2.5, 2.12.

Additional due process concerns arise when these designees have a direct pecuniary interest in the management or outcome of a case—for example, when a jurisdiction employs private, for-profit companies to supervise probationers. In many such jurisdictions, probation companies are authorized not only to collect court fines, but also to impose an array of discretionary surcharges (such as supervision fees, late fees, drug testing fees, etc.) to be paid to the company itself rather than to the court. Thus, the probation company that decides what services or sanctions to impose stands to profit from those very decisions. The Supreme Court has “always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty.” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810 (1987). It has expressly prohibited arrangements in which the judge might have a pecuniary interest, direct or indirect, in the outcome of a case. *See Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (invalidating conviction on the basis of \$12 fee paid to the mayor only upon conviction in mayor’s court); *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 61-62 (1972) (extending reasoning of *Tumey* to cases in which the judge has a clear but not direct interest). It has applied the same reasoning to prosecutors, holding that the appointment of a private prosecutor with a pecuniary interest in the outcome of a case constitutes fundamental error because it “undermines confidence in the integrity of the criminal proceeding.” *Young*, 481 U.S. at 811-14. The appointment of a private probation company with a pecuniary interest in the outcome of its cases raises similarly fundamental concerns about fairness and due process.

* * * * *

The Department of Justice has a strong interest in ensuring that state and local courts provide every individual with the basic protections guaranteed by the Constitution and other federal laws, regardless of his or her financial means. We are eager to build on the December 2015 convening about these issues by supporting your efforts at the state and local levels, and we look forward to working collaboratively with all stakeholders to ensure that every part of our justice system provides equal justice and due process.

Sincerely,



Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division



Lisa Foster
Director
Office for Access to Justice

EXHIBIT “B”

Details of filing: Objection to Hearing Master's Recommendation
Filed in Case Number: R-11-162425-R

E-File ID: 8415250

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Case Title: R-11-162425-R

Case Name: Patricia Foley, Petitioner(s), vs. Michael A Foley, Respondent(s).

Filing Title: Objection to Hearing Master's Recommendation

Filing Type: EFC

Filer's Name: Michael Foley

Filer's Email: paraleagle@hotmail.com

Account Name: Walmart

Filing Code: OBI

Amount: \$ 3.50

Court Fee: \$ 0.00

Card Fee: \$ 0.00

Payment: No payment was made because there was a billing error.

Comments: Filed remotely. CLERK, PLEASE NOTE that the filer has been granted in forma pauperis status, therefore no charge for this filing. Thank you.

Courtesy Copies: foley403071@live.com

Firm Name: Michael Foley

Your File Number:

Status: Error - (X)

Date Accepted:

Review Comments:

Reviewer:

File Stamped Copy:

Cover Document:

Documents: Lead Document: OBJECTION TO HEARING MASTERS RECOMMENDATION 7-25-16.pdf 88573 bytes

Attachment # 1: 16-22400.pdf 1037546 bytes

Data Reference ID:

Credit Card System Response: AR0CD888E681

Response: Reference:

EXHIBIT “C”

Details of filing: Objection to Hearing Master's Recommendation
Filed in Case Number: R-11-162425-R

E-File ID: 8415756

Lead File Size: 88573 bytes

Date Filed: 2016-07-25 18:39:18.0

Case Title: R-11-162425-R

Case Name: Patricia Foley, Petitioner(s), vs. Michael A Foley, Respondent(s),

Filing Title: Objection to Hearing Master's Recommendation

Filing Type: EFO

Filer's Name: Michael Foley

Filer's Email: paraleagle@hotmail.com

Account Name: Kaiku

Filing Code: O80

Amount: \$ 3.50

Court Fee: \$ 0.00

Card Fee: \$ 0.00

Payment: No payment was made because there was a billing error.

Comments: IN FORMA PAUPERIS. NO FEE REQUIRED!

Courtesy Copies: foley403071@live.com

Firm Name: Michael Foley

Your File Number:

Status: Error - (X)

Date Accepted:

Review Comments:

Reviewer:

File Stamped Copy:

Cover Document:

Documents: Lead Document: [OBJECTION TO HEARING MASTERS RECOMMENDATION 7-25-16.pdf](#) 88573 bytes
Attachment # 1: [16-22400.pdf](#) 1037546 bytes

Data Reference ID:

Credit Card Response: System Response: AP0CD6A8758C
Reference:

FILED

JAN 04 2017

Sherry Justice
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,) CASE NO. R-11-162425-R
Petitioner,) DEPT. C
vs.)
MICHAEL A. FOLEY,) APPEAL NO. 69997
Respondent.) ESTIMATED COST
of TRANSCRIPT

The office of Transcript Video Services received a request for transcripts estimate from Abraham G. Smith, on January 03, 2017, for the following proceedings in the above-captioned case:

APRIL 24, 2012; AUGUST 28, 2012; OCTOBER 30, 2013; FEBRUARY 19, 2014;
AUGUST 08, 2014; AUGUST 11, 2014; DECEMBER 09, 2014; JANUARY 28, 2015;
APRIL 15, 2015; JUNE 17, 2015; NOVEMBER 16, 2015; JANUARY 15, 2016;
JANUARY 20, 2016; MAY 17, 2016; JULY 13, 2016; (August 31, 2016 - off calendar)

for original transcripts and one copy of each.

The estimated cost of the transcripts is \$319.20 - FEES WAIVED or paid at County expense.

DATED this 4th day of January, 2017

Sherry Justice
SHERRY JUSTICE
Transcript Video Services

Transcript ESTIMATE amount of _____ Check# _____ CLERK _____
Received this _____ day of _____, 2017.

This is only an estimate. Upon completion of transcript(s), a balance may be due, or you may receive a refund of your deposit if overpayment is greater than \$15.00.

NOTE: STATUTORY FEES ARE SUBJECT TO CHANGE PER LEGISLATIVE SESSION.

ITEMS LEFT BEYOND NINETY DAYS ARE SUBJECT TO DISPOSAL WITHOUT REFUND.

COUNTY RETENTION POLICY APPROVED BY INTERNAL AUDIT.

REQT

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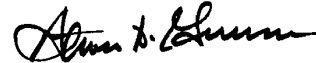
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CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY,

Petitioner,

vs.

MICHAEL A. FOLEY,

Respondent.

Case No. R-11-162425-R

Dept. No C

REQUEST FOR TRANSCRIPTS

Respondent Michael A. Foley requests preparation of transcripts of the following proceedings before the district court, Hearing Masters Sylvia Teuton, James Davis, Merle K. Lok, Lynn Conant, Elliot Yug, and the Honorable Rebecca L. Burton:

<u>Date</u>	<u>Hearing</u>
04/24/12	Order to Show Cause (Hearing Master Sylvia Teuton)
08/28/12	Motion for Review and Adjustment of Child Support (Hearing Master Sylvia Teuton)
10/30/13	In Custody Hearing (Hearing Master James Davis)
02/19/14	Order to Show Cause – Pay or Stay (Hearing Master Merle K. Lok)
08/08/14	In Custody Hearing (Hearing Master Sylvia Teuton)
08/11/14	In Custody Hearing (Hearing Master Sylvia Teuton)
12/09/14	Motion for Review and Adjustment of Child Support (Hearing Master Sylvia Teuton)

01/28/15	Motion for Review and Adjustment of Child Support (Hearing Master James Davis)
04/15/15	In Custody Hearing (Hearing Master Sylvia Teuton)
06/17/15	Order to Show Cause – Pay or Stay (Hearing Master Lynn Conant)
11/16/15	In Custody Hearing (Hearing Master Merle K. Lok)
01/15/16	AM Pay Stays (Hearing Master Sylvia Teuton)
01/20/16	Objection – UIFSA (Judge Rebecca L. Burton)
05/17/16	Motion for Review and Adjustment of Child Support (Hearing Master Sylvia Teuton)
07/13/16	Review – HM (Hearing Master Elliot Yug)
08/31/16	Objection – UIFSA (Judge Rebecca L. Burton)

Copies Required


One.

I hereby certify that I ordered these transcripts from the Family Court
Transcript Video Services on January 3, 2017 and that no deposit is necessary.

Dated this 4th day of January, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

BY:


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PATRICIA FOLEY
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Family Court Transcript Video Services: (702) 455-2352


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FEB -7 2017

Ann L. Sullivan
CLERK OF COURT

1 TRANS

2
3 ORIGINAL

4
5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8
9 PATRICIA FOLEY,) CASE NO. R-11-162425-R
10 Petitioner,) DEPT. C
11 vs.)
12 MICHAEL A. FOLEY,) APPEAL NO. 69997
13 Respondent.)
14

15 BEFORE THE HONORABLE SYLVIA TEUTON

16 TRANSCRIPT RE: ORDER TO SHOW CAUSE

17 TUESDAY, APRIL 24, 2012

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APPEARANCES:

For the Public by DAFS EDWARD W. EWERT, ESQ.
Chief Deputy D.A. - Family Support
1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

The Petitioner: PATRICIA FOLEY
For the Petitioner: Pro se

The Respondent: MICHAEL FOLEY
For the Respondent: Pro se

1 LAS VEGAS, NEVADA

TUESDAY, APRIL 24, 2012

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

3 (THE PROCEEDING BEGAN AT 15:38:56.)

4 THE MARSHAL: Foley, the parties are present.

5 THE COURT: This is Case Number R-11-162425.

6 THE CLERK: Please raise your right hands. You and each of you do
7 solemnly swear that the testimony you're about to give in this action
8 shall be the truth, the whole truth and nothing but the truth, so help you
9 God?

10 MR. FOLEY: Yes.

11 MS. FOLEY: Yes.

12 THE CLERK: Thank you.

13 THE COURT: All right. Good afternoon.

14 Do you know why the D.A. asked you to be here today, sir?

15 MR. FOLEY: I think so, Your Honor.

16 THE COURT: All right. This is for Michael, Elizabeth and Therese.
17 And it looks like the D.A. hasn't received adequate payments. That's why
18 they want you to answer as to why that you haven't been doing that. So
19 let me hear from the D.A. first. And I'll hear from both of you.

20 MR. EWERT: All right. Today's credit, he was paying through wage
21 withholding with the most recent payment October 11, 2011.

22 So is that about the time you lost your job?

23 MR. FOLEY: That's -- that was around the time I last got a
24 paycheck, sir.

25 MR. EWERT: And now you're showing this temp services?

1 MR. FOLEY: It's a company that does political surveys over the
2 phone and it -- they call themselves an employment service, but they're in
3 the business exclusively of doing political opinion polls. And I got my
4 first paycheck stub yesterday.

5 THE COURT: Have you thought about requesting a modification of your
6 child support?

7 MR. FOLEY: Your Honor, the family court won't allow that. The last
8 hearing we had, the Court ordered that there won't be anymore orders from
9 the case; and it was the third time he closed the case. I've been trying
10 to change custody to joint custody. Patricia's been ordered not to have
11 our oldest child babysit overnight. But that's what's been happening for
12 the past three years. And despite evidence that I've produced in that
13 case, the Judge disregards it. So there's really nothing I can do.

14 MR. EWERT: Well, may I respond, Your Honor?

15 From what -- what I saw, it was custody disagreement. The
16 Court cannot preclude you from at least making a Request for Modification
17 of Child Support if circumstances change. Perhaps the Court doesn't
18 believe what you say and denies the request. But you can always make the
19 request if you can show grounds. He's showing me his pay stub here. It's
20 showing 5.75 an hour, and this one has only nine hours on it.

21 MR. FOLEY: That's not...

22 THE COURT: I'm looking at the last order. There's nothing here
23 denying your request to modify. It talks about the babysitting the
24 overnights, statements about each other, custody, visitation. There's
25 nothing about child support here.

1 MR. EWERT: Yeah, in fact, the last order affecting child support
2 was back in -- it was the Divorce Decree of September 25, '09.

3 THE COURT: I'm gonna give you a modification packet. I'm gonna ask
4 that you fill that out and turn it back in.

5 MR. FOLEY: Well, just so that you have a better understanding, Your
6 Honor. I did argue in the -- before the last hearing for a change of
7 custody. And it looked as though the judge was going to entertain a
8 change of custody, but there was a family therapist who gave an opinion
9 that was very prejudicial to me, and that was enough for the judge.

10 THE COURT: Sir, I'm trying to help you out. If -- if you have
11 reduced income and then you're entitled to -- to have the Court review
12 your child support. Otherwise, we're gonna hold you to 700 a month,
13 whether you're capable of making it or not.

14 MR. FOLEY: I -- I appreciate that. And I just want the Court to
15 know that I don't want to burden the courts unnecessarily. And I've tried
16 to get a amicable change of custody by stipulation.

17 THE COURT: If you want to fill that out, you can. You drop it out
18 front.

19 MR. FOLEY: Okay.

20 THE COURT: What's the D.A.'s request today?

21 MR. EWERT: We would like the show cause ordered continued. Let me
22 just ask a couple questions.

23 Since you lost that job in November...

24 MR. FOLEY: Mm-hm.

25 MR. EWERT: ...how seriously have you been looking for employment?

1 MR. FOLEY: Very seriously. I've been trying to get back into the
2 telecommunications field. I used to work for Cox Communications. And
3 I've also worked for (indiscernible)...

4 MR. EWERT: Were you laid off or fired for cause or what?

5 MR. FOLEY: I...

6 MR. EWERT: I'm trying to find out how difficult it is for you...

7 MR. FOLEY: The last time I worked...

8 MR. EWERT: ...to find new employment.

9 MR. FOLEY: ...for Cox, it was in 2001. I reapplied since the
10 divorce. I was first offered work out of state by an airline. That job
11 unfortunately only lasted a week. After that, I found employment with an
12 internet company. It was a sales job. It had an hourly plus commission.
13 And that only lasted about five or six months.

14 MR. EWERT: Li- listen carefully to my question. Is there anything
15 in your background that -- that makes it very difficult for you to get
16 hired? For example, you know, like a felony conviction...

17 MR. FOLEY: No.

18 MR. EWERT: ...would make it harder; if you were fired for cause.

19 MR. FOLEY: Just the sporadic employment history is probably my
20 biggest impediment and not being able to renew my real estate license also
21 because there are jobs that I could apply for, but I don't apply for them
22 because I can't renew my real estate license until the -- until the child
23 support arrearage is cured.

24 THE COURT: The D.A. have anything else?

25 MR. EWERT: No. We'd ask for a review in -- probably around 90 to

1 120 days.

2 THE COURT: Ma'am, is there anything you want to say?

3 MS. FOLEY: Yes, Your Honor. I have some proofs and all the
4 lawsuits he's been (indiscernible) me and people who I know. And I
5 just...

6 THE COURT: That he's been what?

7 MS. FOLEY: He's been suing me in different courts.

8 THE COURT: Okay.

9 MS. FOLEY: And I just got a paper with -- last week, one of the
10 interrogations -- questions they're asking...

11 THE COURT: Interrogatories.

12 MS. FOLEY: Yes. He's claiming he spend over \$10,000, you know,
13 just in the lawsuits he's been doing. So...

14 THE COURT: What's he suing you for?

15 MS. FOLEY: He's suing me for different -- he sue -- he's suing me
16 in bankruptcy court for fraud. He's suing me in district court for -- for
17 damaging. He's asking for \$5.9 million. And he's spending a lot of
18 money. I know these last weeks, he's -- he's been -- I have all this
19 paperwork to prove.

20 THE COURT: And have you filed answers or countersued?

21 MS. FOLEY: Well, I file an answer. I don't have \$5000 retainer to
22 pay my attorney for the lawsuits. But, you know, like he says in his own
23 words, he spend \$10,000 in the past...

24 THE COURT: So you're...

25 MS. FOLEY: ...months.

1 THE COURT: You're implying that he should've spent that on -- on
2 his children instead of paying...
3 MS. FOLEY: Correct.
4 THE COURT: ...for something that...
5 MS. FOLEY: Correct.
6 THE COURT: ...you deem to be frivolous?
7 MS. FOLEY: Yes.
8 THE COURT: Okay.
9 MS. FOLEY: So...
10 THE COURT: Do you have an answer, sir?
11 MR. FOLEY: Yes, Your Honor. The \$10,000 that she's referring to is
12 what I had to spend to defend the divorce claim and the CPS claim that she
13 along with my sister, who offered her money to pay off her gambling debt
14 -- but this -- Your Honor, really this shouldn't be argued here. It's --
15 it's being heard in a -- in a different court.
16 The U.S. District Court has granted me leave to proceed in
17 forma pauperis. This is not gonna interfere with my ability to look for
18 and find work. And the Court has made for favorable orders for me. And I
19 expect the -- the Court to be entering judgment against the CPS agent, as
20 well as the family therapist, for not answering the complaints. I do
21 expect a full judgment to be entered in those cases. But I don't really
22 see the relevance of that. And I don't think that those issues should
23 really be argued here. I mean, at least for the sake of the children.
24 THE COURT: All right. Well, first of all, if you haven't paid
25 since October, I do find contempt. Do you have any money with you today?

1 MR. FOLEY: I have \$27, Your Honor. I only got \$48 from my check...

2 THE COURT: And I do find...

3 MR. FOLEY: ...and that was my first paycheck.

4 THE COURT: ...contempt. I am going to sentence you to 25 days in
5 jail. And that will be hanging over your head in the event that you don't
6 follow through with what I ask you to do between now and next time I see
7 you.

8 MR. FOLEY: Your Honor...

9 THE COURT: And this is what I'm asking you to do. I'm gonna ask
10 you to pay a minimum of \$325 a month...

11 MR. FOLEY: Your Honor, I can do that.

12 THE COURT: ...to avoid contempt.

13 MR. FOLEY: I...

14 THE COURT: It's strictly to avoid contempt, starting in May,
15 starting next month. And all the payments have to be made through this
16 court. So you pay right out front here. The modification packet that I
17 gave you, I'm gonna ask that you fill that out today before you leave.
18 And you drop it out front at the front desk. When we come back to court,
19 and it's gonna be in four months on a modification, I'm gonna ask that you
20 bring a pay stub. And we'll take a look at what you're making and we'll
21 consider a modification at that time. But in the meantime, you must pay
22 at least \$325 a month to avoid jail time. I'll have the D.A. tell you how
23 much you owe right now.

24 MR. EWERT: And we're working off the affidavit of arrears, carrying
25 that forward, we have child support arrears of 13,711.22, with interest

1 and penalties, 16,739.98. And that's through March 31.

2 THE COURT: What else did you wanna say, sir?

3 MR. FOLEY: I don't -- I really don't have much to say, Your Honor,

4 here.

5 THE COURT: So the return date will be...

6 THE CLERK: August the 28th, 2012, at 9:00 a.m.

7 THE COURT: Is there anything else, ma'am?

8 MS. FOLEY: He's -- he's got a job. I don't know how he's hide the

9 money. But I know...

10 THE COURT: Okay. Well, first of all, we need...

11 MS. FOLEY: ...he's been working (indiscernible)...

12 THE COURT: ...more information, like, where he's working...

13 MS. FOLEY: He was working at Cox...

14 THE COURT: ...or anything like that.

15 MS. FOLEY: ...lately.

16 THE COURT: Okay. You need to give all that information to your

17 caseworker so when we come back to court, the D.A. can present that to me.

18 MS. FOLEY: Okay. All right. And also let him know, just my

19 insurance payment for my -- the kids medical...

20 THE COURT: Bring that information with you.

21 MS. FOLEY: Okay.

22 THE COURT: Please do that, too.

23 MS. FOLEY: Okay.

24 MR. FOLEY: Do you have a (indiscernible) slip for the date?

25 THE MARSHAL: If you have time for the order...

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MR. FOLEY: Oh.

THE MARSHAL: ...we can give you the order today.

Here you go. If you can copy that (indiscernible).

MS. FOLEY: Okay. Thank you.

THE MARSHAL: You're welcome.

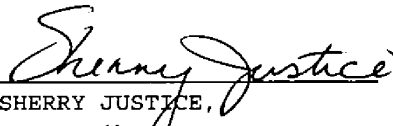
MR. EWERT: Thank you for coming.

MS. FOLEY: Okay.

(THE PROCEEDING ENDED AT 15:49:48.)

* * * * *

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.


SHERRY JUSTICE,
Transcriber II

FILED

FEB -7 2017

Ann L. Blum
CLERK OF COURT

ORIGINAL

1 TRANS

5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8
9 PATRICIA FOLEY,) CASE NO. R-11-162425-R
10 Petitioner,) DEPT. C
11 vs.)
12 MICHAEL A. FOLEY,) APPEAL NO. 69997
13 Respondent.)
14

15 BEFORE THE HONORABLE SYLVIA TEUTON

16 TRANSCRIPT RE: MOTION FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT

17 TUESDAY, AUGUST 28, 2012

1 LAS VEGAS, NEVADA

TUESDAY, AUGUST 28, 2012

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

3 (THE PROCEEDING BEGAN AT 09:30:33.)

4 THE MARSHAL: Foley v Foley. Petitioner only is present.

5 THE COURT: This is Case Number R-11-162425.

6 THE CLERK: Ma'am, raise your right hand. You do solemnly swear the
7 testimony you will give in this action shall be the truth, the whole truth
8 and nothing but truth, so help you God?

9 MS. FOLEY: Yes, I do.

10 THE CLERK: Thank you.

11 THE COURT: Good morning.

12 MS. FOLEY: Good morning.

13 THE COURT: Let's see. We were here on April 24th. Okay. Well,
14 let's see. I'll hear from the D.A. He turned in his modification packet.
15 But he isn't here today.

16 Do you know where Michael is?

17 MS. FOLEY: Probably in his house.

18 THE COURT: All right. I hear from the D.A.

19 MR. CONSTANTIAN: Yes, Your Honor. This is at the request of
20 Respondent. It's a Motion for Modification of the Clark County Divorce
21 Decree from September 25, '09. Child support should be set at 29 percent
22 of his gross monthly income. However, he's not here. And I really wanted
23 him to be here to talk about his income. I ask that we deny his motion.

24 THE COURT: Do you know anything about his income?

25 MR. CONSTANTIAN: Well, the last we heard was \$9.00 an hour. And as

1 a matter of fact...

2 THE COURT: Did you verify?

3 MR. CONSTANTIAN: ...he's still at the same place...

4 THE COURT: Did...

5 MR. CONSTANTIAN: ...because we just got an income withholding on
6 August 23rd. But...

7 THE COURT: Do you have an employer wage verification?

8 MR. CONSTANTIAN: No, it wasn't done. To my knowledge, it wasn't
9 done, Your Honor. All we had was the testimony last court date. And,
10 well, somehow -- somehow we got information it was \$9.00 an hour at this
11 temp agency. But again, I would need to ask him -- query...

12 THE COURT: Okay.

13 MR. CONSTANTIAN: ...him on -- on his income.

14 THE COURT: Has he paid anything?

15 MR. CONSTANTIAN: Yeah, well, we're getting it through this temp
16 agency. We're getting money through the temp agency. But it's very --
17 we're getting very little.

18 THE COURT: Do you have health insurance information?

19 MS. FOLEY: I do. Well, I have my paycheck stub, how much I pay for
20 insurance.

21 THE COURT: I think the D.A. needs a little bit more than that. But
22 I'll have the D.A. ask you some questions on that.

23 MR. CONSTANTIAN: Sure.

24 This is through your employer?

25 MS. FOLEY: Yes.

1 MR. CONSTANTIAN: Okay. And may I see your pay stub, please?
2 MS. FOLEY: Yeah.
3 MR. CONSTANTIAN: You're not culinary? Are you?
4 MS. FOLEY: No.
5 MR. CONSTANTIAN: Okay. All right. Well, it looks like -- one
6 moment, Your Honor.
7 This is health insurance?
8 MS. FOLEY: Yeah.
9 MR. CONSTANTIAN: Okay.
10 MS. FOLEY: (Indiscernible).
11 MR. CONSTANTIAN: Okay.
12 MS. FOLEY: (Indiscernible).
13 MR. CONSTANTIAN: All right. Okay.
14 MS. FOLEY: These three.
15 MR. CONSTANTIAN: Okay. It's 72.50 every two weeks?
16 MS. FOLEY: Correct.
17 MR. CONSTANTIAN: You get paid every two weeks?
18 MS. FOLEY: Yes.
19 MR. CONSTANTIAN: Okay. And who does the health insurance cover?
20 MS. FOLEY: It's Sierra Health. Oh I'll tell you. Hold on.
21 MR. CONSTANTIAN: Who -- who does it cover? Does it cover you?
22 Does it cover all four chil- three children?
23 MS. FOLEY: Three -- three children.
24 MR. CONSTANTIAN: Anybody else?
25 MS. FOLEY: Three children and me.

1 MR. CONSTANTIAN: Three children and you. Okay. Would there be a
2 cost if you were the only person on the health insurance and you had no
3 children?

4 MS. FOLEY: I can get a free one.

5 MR. CONSTANTIAN: You cannot or can?

6 MS. FOLEY: I can. I can.

7 MR. CONSTANTIAN: You can get free?

8 MS. FOLEY: Yes.

9 MR. CONSTANTIAN: Okay. So it looks like it's 72.50 biweekly just
10 for the children only. And that amounts to 157 per month. Divide that by
11 two. Looking at \$78.54.

12 THE COURT: Okay. So the -- his request actually changed. The
13 child support amount is denied. It's -- it's still gonna be a temporary
14 amount. So it's gonna -- he has the burden of proof to come forward,
15 prove his income if he wants it changed. Since we already put him on
16 notice, though, that we were going to add health insurance, contributing
17 to what your cost is, we're gonna go ahead and add that today. And the
18 effective date is going to be back to April. So as of April, he's gonna
19 owe you an additional \$79 per month. So if he...

20 MS. FOLEY: Only 300?

21 THE COURT: What was that?

22 MS. FOLEY: Is it 300 he's supposed to pay, plus the 79?

23 THE COURT: Well, his actual obligation is 700 a month. That hasn't
24 changed. I only gave him an amount to avoid contempt. But if he doesn't
25 make enough money to cover the 700, you'll never get it. I mean, that's

1 -- even though he has a responsibility to pay it. But if he doesn't make
2 enough, the -- the D.A. can't withhold more than 50 percent of his pay --
3 paycheck.

4 MS. FOLEY: Yeah, last -- last pay I got \$3.66 pay.

5 THE COURT: Well, I'm going to issue a bench warrant for his arrest
6 today because...

7 MR. CONSTANTIAN: You -- you want a -- you -- we are getting a small
8 income withholding.

9 THE COURT: Yeah, very small. I'm sure.

10 MR. CONSTANTIAN: Okay. All right.

11 THE COURT: That's why I'm going to -- and he should have been here
12 today.

13 MR. CONSTANTIAN: He actually should've.

14 THE COURT: And this was to help him, too. So because of that, I am
15 gonna issue no bail bench warrant. The release amount's gonna be \$500.
16 So what's gonna happen at -- is in ten days a bench warrant will go out.
17 The D.A. will contact him. And if he just pays the 500, he can make this
18 go away. If he doesn't, they will go and arrest him. And they'll take
19 him to jail. Now if that happens, do you want to be notified?

20 MS. FOLEY: Yes, I guess. (Indiscernible)...

21 THE COURT: Because the D.A. will need to call you because there --
22 there won't be enough time. If he's arrested, it -- it happens so quickly
23 that they can't send you notice by mail. They'll need to call you.
24 That's why I'm asking. Because if you do, if you want to be notified, the
25 D.A. will call you and let you know.

1 MS. FOLEY: Yes, that's fine. Because...

2 THE COURT: Okay.

3 MS. FOLEY: ...he's still not even visiting the kids and, you know

4 -- but he talk to the kids. Well, the kids call him on Sunday. What's

5 today?

6 THE COURT: Tuesday.

7 MS. FOLEY: (Indiscernible) it's Sun- it's Sundays, yeah. He -- he

8 call them on Sunday. And he wants to know if the kids are ready for

9 school, if they have all their stuff.

10 THE COURT: Did he help you with any of that?

11 MS. CONSTANTIAN: Nothing, no.

12 THE COURT: No. He's just asking. He doesn't help, huh?

13 MS. CONSTANTIAN: Yeah, he was, like, kind of upset. Are you sure

14 you got new shoes, you got new backpacks and new clothes? And the kids,

15 yeah.

16 THE COURT: So let me ask the D.A. Has he failed to pay minimum

17 amount requested to avoid contempt?

18 MR. CONSTANTIAN: It -- one moment, Your Honor. Yes, that would be

19 true.

20 THE COURT: Okay. Okay. Thank you, ma'am. On your way out, just

21 check with the clerk about a phone number.

22 MS. FOLEY: Okay. Thank you so much.

23 (THE PROCEEDING ENDED AT 09:37:44.)

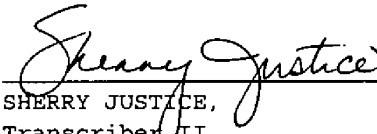
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ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.


SHERRY JUSTICE,
Transcriber III

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TRANS

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FILED
FEB -7 2017
Ann L. Hill
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	
)	

BEFORE THE HONORABLE JAMES DAVIS

TRANSCRIPT RE: IN CUSTODY HEARING

WEDNESDAY, OCTOBER 30, 2013

1 APPEARANCES:
2 For the Public by DAFS EDWARD W. EWERT, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
5 Las Vegas, Nevada 89119
6
7 The Petitioner: PATRICIA FOLEY (Not present)
8 For the Petitioner: Pro se
9
10 The Respondent: MICHAEL FOLEY
11 (Present via video conference
12 from Clark County Detention Center)
13 For the Respondent: Pro se
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1 LAS VEGAS, NEVADA

WEDNESDAY, OCTOBER 30, 2013

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

3 (THE PROCEEDING BEGAN AT 13:32:38.)

4 THE COURT: Call Case R162425. Respondent only, in custody. Looks
5 like three children here.

6 MR. FOLEY: Yes, Your Honor.

7 MR. EWERT: Yes, all under 18. There is a parallel fal- family court
8 case. It's D403071. It has a hearing on November 4, on the mother's -- on
9 the petition, mother's Request for -- for an Order to Show Cause for
10 Contempt. So he's gonna be a busy man.

11 THE CLERK: (Indiscernible).

12 THE COURT: What?

13 THE CLERK: (Indiscernible).

14 THE COURT: Okay. I -- I understand the November 4th date was
15 vacated.

16 MR. EWERT: Oh was it? Okay.

17 THE COURT: They probably kicked it over here, seeing it was on here.

18 MR. EWERT: I don't have any arrest information on any of the in-
19 custodies today.

20 Mr. Foley, when were you arrested?

21 MR. FOLEY: Sunday.

22 THE COURT: That was October 27th?

23 MR. FOLEY: That sounds correct.

24 MR. EWERT: Are you in custody on any of the charges?

25 MR. FOLEY: No, sir.

1 MR. EWERT: Do you have any money on the books?
2 MR. FOLEY: I believe it's almost over \$80.
3 MR. EWERT: I -- I see that the last payment we got was Jan- July
4 12th, 2013, wage withholding. Looks like you were employed most of the
5 beginning of this year. Is that correct?
6 MR. FOLEY: That sounds correct, yes.
7 MR. EWERT: What happened in about July? What happened to the job?
8 MR. FOLEY: Well, the company went through some transitions and the
9 -- they changed names; and they also changed locations. And so we had some
10 downtime for almost a month. And in the meantime, I was lookin' for other
11 work. But I'm still employed by the -- the same company. It's just a
12 different name now.
13 THE COURT: What's the new name?
14 MR. FOLEY: It's called McGuire Research Services.
15 THE COURT: Do you know the address?
16 MR. FOLEY: It's 3220 West Sahara Avenue.
17 MR. EWERT: McGuire Research. What was the last word?
18 MR. FOLEY: Services.
19 MR. EWERT: Services. (Indiscernible)...
20 THE COURT: Sir, do you have any means of -- or anybody on the
21 outside that can bring down some cash for you today?
22 MR. FOLEY: I -- I do believe I do. But I don't have any way of
23 contacting them because I don't have my phone. I mean, it's here; but I
24 don't have access to it.
25 THE COURT: I'm sure the C.O.s down there can help you out with that.

1 MR. FOLEY: If -- if that's possible, then I -- I -- I'm pretty sure
2 I can get about \$200 if that's -- if I can get my phone.
3 MR. EWERT: May I ask another question?
4 THE COURT: Sure.
5 MR. EWERT: Sir, you -- you say you're employed. When was the last
6 time you received a paycheck?
7 MR. FOLEY: I'd say about four to six weeks ago. It's -- it's still
8 like a temporary agency. We have to call in and if there's hours
9 available, we...
10 MR. EWERT: So you're not -- so the point is, you're not actively
11 working to- today; correct?
12 MR. FOLEY: I am. I have -- I have other work. I -- I do work for
13 other people. I do word processing, and I do proofreading.
14 MR. EWERT: Okay. You're working on the side, on your own?
15 MR. FOLEY: For -- yes, for -- for a private party.
16 MR. EWERT: Okay.
17 THE COURT: How much do you get paid with them?
18 MR. FOLEY: I make about 100, \$150 a week doin' that.
19 THE COURT: Then why aren't you paying child support?
20 MR. FOLEY: I do. I pay -- I pay cash directly.
21 THE COURT: Directly to mom?
22 MR. FOLEY: Correct.
23 THE COURT: Okay. I need you to listen. You don't get credit for
24 that in this court. You're under a Court order to pay the District
25 Attorney's Office, Child Enforcement Division, over, let's see, \$804 a

1 month. I don't care if you give \$1000 to mom directly. You don't get
2 credit for that. And guess what happens?
3 MR. FOLEY: I don't get credit for it.
4 THE COURT: You don't get credit. And go to jail.
5 MR. EWERT: Your Honor, may I ask another question?
6 THE COURT: Of course.
7 MR. EWERT: Mr. Foley, if you're not actively working for an
8 employer, have you applied for unemployment benefits?
9 MR. FOLEY: No, I'm not eligible for unemployment.
10 MR. EWERT: And why are you not eligible?
11 MR. FOLEY: I can't -- because I don't believe I had enough -- I
12 don't think I've earned enough money to qualify. I think you have to have
13 so much earnings in the past.
14 MR. EWERT: Well, Mr. Foley, I -- I suggest you apply.
15 MR. FOLEY: I'd love to apply if -- if I'm eligible. I didn't know I
16 would be eligible.
17 MR. EWERT: Well, apply; and they'll let you know whether you're
18 eligible.
19 MR. FOLEY: I'd be happy to apply.
20 THE COURT: Okay.
21 MR. EWERT: Because it looks like from what we see from the
22 Department of Employment and Rehabilitation that he may have benefits
23 available.
24 MR. FOLEY: Well, I appreciate -- I appreciate that information.
25 THE COURT: Okay, sir. You haven't paid your child support. I am

1 gonna find you in contempt of court, sentence you to 25 days in the Clark
2 County Detention Center. That sentence will be stayed until the next court
3 date. I'm gonna impose five days today -- five additional days. You can
4 be released from cu- custody on November 4th, 2013, or immediately upon the
5 payment of \$300.

6 MR. FOLEY: May I have my -- could you also authorize the release of
7 my phone to be able to contact somebody to produce that?

8 THE COURT: I don't think I have the authority to release -- to give
9 you that -- those permissions. And, sir, I -- I also notice that your
10 child support's a temporary order. Is that -- is it up for modification?

11 MR. FOLEY: I've asked for modification but never have been able to
12 get modification.

13 MR. EWERT: Looks like they've had some very recent activity in their
14 family court case.

15 Mr. Foley, if you get a new order from family court that
16 reduces your child support, please get a copy to the D.A.'s office
17 immediately so we can conform to that.

18 MR. FOLEY: Sure.

19 THE COURT: Okay. I'm gonna bring you back on the pay stay calendar
20 also. And that date is?

21 THE CLERK: Going to be on February 19th, 2014, at 9:00 a.m.

22 UNIDENTIFIED SPEAKER: To you.

23 THE COURT: Sir, you have three kids to take care of. That pay
24 stay's gonna be for \$500. If you haven't paid 500, an additional 500, or
25 don't bring it with you that day, you'll be going back to jail. Is that

1 clear?

2 MR. FOLEY: Are you saying November -- which -- which date?

3 THE COURT: February 19th.

4 MR. FOLEY: Okay. And will I get a copy of this some- sometime?

5 THE COURT: Yes. That will be the order today.

6 (THE PROCEEDING ENDED AT 13:39:54.)

7

8 * * * * *

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

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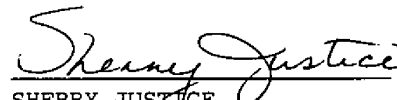
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SHERRY JUSTICE,
Transcriber II

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TRANS

ORIGINAL

FILED
FEB -7 2017
Alvin L. Williams
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	
)	

BEFORE THE HONORABLE MERLE K. LOK
TRANSCRIPT RE: ORDER TO SHOW CAUSE - PAY OR STAY
WEDNESDAY, FEBRUARY 19, 2014

1 APPEARANCES:

2 For the Public by DAFS VIVECA MONET WOODS, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY (Not present)
8 For the Respondent: Pro se
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1 LAS VEGAS, NEVADA

WEDNESDAY, FEBRUARY 19, 2014

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

3 (THE PROCEEDING BEGAN AT 09:19:59.)

4 THE COURT: Okay. We're calling Case R162425.

5 THE CLERK: And please raise your right hand? You do solemnly swear
6 the testimony you're about to give in this action, shall be the truth, the
7 whole truth and nothing but the truth, so help you God?

8 MS. FOLEY: Yes, I do.

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: And, counsel.

11 MS. WOODS: Last date was October 30th, 2013, the Respondent was in
12 custody. He was given this date to bring \$500. His order is from family
13 court. It is for \$700 support per month. It has been, at least on the
14 last Master's report, an order, made temporary. I -- I wasn't -- I -- I
15 don't know why it was made temporary. But \$700 current support, \$79
16 medical cash and \$25 on arrears. And today, the Respondent was to pay
17 \$500. And nothing has been paid since July 12th, 2013, when wage
18 withholding ended; and \$28 dollars was paid that date.

19 THE COURT: Okay.

20 Ma'am, is there anything you'd like to say?

21 MS. FOLEY: Me? I -- I just wondering, you know, what's gonna
22 happen. He keeps suing me in family court. We actually have a hearing on
23 February 26, this month coming up. And I would like to ask -- I don't know
24 if -- if I want to ask for full custody of my three kids if it will be in
25 family court or here or...

1 THE COURT: Right. That would be in family court. This court only
2 deals with child support. So all other issues has to be taken care of in
3 family court. Okay?

4 MS. FOLEY: Okay.

5 MS. WOODS: There -- there also was a show cause filed September 26,
6 2013. And I did not see an order that showed a result of that hearing in
7 the D Case. That's D403071. So I suspect that they have other hearings
8 scheduled and maybe will also cover the fact that the Respondent is not
9 paying child support as ordered by that Court.

10 THE COURT: Okay. Are you requesting a bench warrant today?

11 MS. WOODS: Yes.

12 THE COURT: So we'll issue a bench warrant for his arrest. I'm going
13 to find contempt, 25 days stay. And how much are you requesting?

14 MS. WOODS: Well, the order is \$700 plus \$25 on arrears, so \$725.

15 THE COURT: Okay. I'll grant the D.A.'s request.

16 MS. WOODS: His -- I also looked for additional orders. There seems
17 to have been miss a lot of hearings. Is that still the valid order, \$700
18 current support; or has that been changed?

19 MS. FOLEY: No, it's -- it's a valid one.

20 MS. WOODS: Okay.

21 MS. FOLEY: I believe it's 779, with the medical insurance.

22 MS. WOODS: Was the medical insurance in the family court's order
23 or...

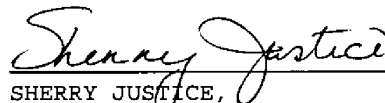
24 MS. FOLEY: It was here.

25 MS. WOODS: ...with this court?

1 MS. FOLEY: It was this one.
2 MS. WOODS: It was in this court that...
3 MS. FOLEY: Yes.
4 MS. WOODS: ...ord- ordered the additional.
5 MS. FOLEY: Correct.
6 MS. WOODS: Okay. I see.
7 THE COURT: Okay. Did you want to change your request, counsel? 804
8 is his entire obligations for the month.
9 MS. WOODS: I was actually -- if it's the custodian's wish, yes; but
10 I was just looking at what the family court had ordered. So, yes, 804
11 would be fine, Your Honor.
12 THE COURT: Okay. So we'll make it 804, okay, for the jail release?
13 All right. You're free to go.
14 MS. FOLEY: Okay. Thank you so much.
15 (THE PROCEEDING ENDED AT 09:24:00.)
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18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the digital proceedings in the above-entitled case to the best
20 of my ability.

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22 SHERRY JUSTICE,
23 Transcriber II
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FILED

FEB -7 2017

Alvin L. Williams
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE SYLVIA TEUTON

TRANSCRIPT RE: IN CUSTODY HEARING

FRIDAY, AUGUST 08, 2014

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APPEARANCES:

For the Public by DAFS ALEC JASON RAPHAEL, ESQ.
Chief Deputy D.A. - Family Support
1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

The Petitioner: PATRICIA FOLEY (Not present)
For the Petitioner: Pro se

The Respondent: MICHAEL FOLEY (Not present)
For the Respondent: Pro se

1 LAS VEGAS, NEVADA

FRIDAY, AUGUST 08, 2014

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

3 (THE PROCEEDING BEGAN AT 14:06:25.)

4 THE COURT: Yeah, but can he be back on Monday or not?

5 UNIDENTIFIED SPEAKER: If you make the order (indiscernible).

6 THE COURT: Okay. We'll -- we'll continue it.

7 Is that all right with the D.A.?

8 MR. RAPHAEL: Absolutely.

9 THE COURT: I'll just find, he's in custody and not produced. So
10 we'll continue it to Monday. That will be -- is that the 11th?

11 THE CLERK: Yes, August 11th, 2014...

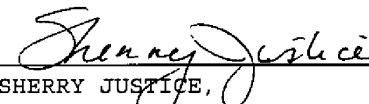
12 THE COURT: At 1:15.

13 THE CLERK: ...at 1:15.

14 (THE PROCEEDING ENDED AT 14:07:23.)

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

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20 SHERRY JUSTICE,
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FILED
FEB -7 2017
Ann L. ...
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	
_____)	

BEFORE THE HONORABLE SYLVIA TEUTON
TRANSCRIPT RE: IN CUSTODY HEARING
MONDAY, AUGUST 11, 2014

1 APPEARANCES:

2 For the Public by DAFS VIVECA MONET WOODS, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY (Not present)
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY
8 (Present via video conference
from Clark County Detention Center)
9 For the Respondent: AURORA MARIE MASKALL, ESQ.
Lee, Hernandez, Landrum & Garofalo,
10 Attorneys at Law
7575 Vegas Dr., #150
11 Las Vegas, Nevada 89128
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1 LAS VEGAS, NEVADA

MONDAY, AUGUST 11, 2014

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

3 (THE PROCEEDING BEGAN AT 13:29:11.)

4 UNIDENTIFIED SPEAKER: Go ahead (indiscernible) step over here
5 (indiscernible) not you (indiscernible). Step over here, please. The
6 marshal's (indiscernible).

7 THE CLERK: Please raise your right hand. You do solemnly swear the
8 testimony you're about to give in this action shall be the truth, the whole
9 truth and nothing but the truth, so help you God?

10 UNIDENTIFIED SPEAKER: Yes, Your Honor.

11 UNIDENTIFIED SPEAKER: Yes.

12 UNIDENTIFIED SPEAKER: I swear.

13 THE CLERK: Thank you.

14 THE MARSHAL: Okay. Mr. Foley, go ahead and remain at the
15 microphone.

16 Everybody else have a seat.

17 Let's start with seven two, Your Honor, Foley v Foley. Foley
18 only is present with his attorney, Ms. Maskall, Bar Number 6410.

19 MS. MASKALL: Your Honor, Ms. Marie Maskall, Bar Number 6410, on
20 behalf of Mr. Foley.

21 THE COURT: This is Case Number R-11-162425.

22 You missed a court date on February 19th. The Petitioner was
23 here on that date. Let me hear from the D.A. first, and I'll hear from
24 your attorney.

25 MS. WOODS: The Respondent was present October 30th, 2013, in custody

1 and was given the February 19th, 2014, date in which he failed to appear.

2 THE COURT: And this is the second time I've seen him in custody. Is
3 that what you're saying?

4 MS. WOODS: It may have been more but just the most recent two times.
5 The Respondent has an order for \$700 out of the Clark County Family Court.
6 And from 11/1 of 2013 through today, with the med cash and the child
7 support order and the \$25 on arrears, \$7236 became due. \$3000 was an
8 execution. And that's the only payment that's been made since the
9 Respondent's last wage withholding payment, July 12th, 2013. So the last
10 payment has been dated June 6th, 2014. Then the Respondent was told to
11 return to court. He was told to bring \$500 for the February 19th, 2014,
12 court date that he failed to appear in. There is numerous sanctions stayed
13 from prior dates. And the bench warrant was for \$804.

14 MS. MASKALL: Your Honor, my client doesn't have any money.
15 Unfortunately, I think that he's been going about this the wrong way and
16 has been attempting to avoid coming to court to tell you that he didn't
17 have any money. I've been retained at the very last second and not yet met
18 him except through this video. I'm acting unbundled and in a pro bono
19 capacity right now. I would like the opportunity to speak with Mr. Foley
20 once he's out of jail in order to sort this out and to get him on the right
21 track. If he can't afford it, we'll go back in the D Case and request that
22 his child support obligation be reduced.

23 THE COURT: It can be done now. It's a temporary order, which means
24 I'm free to reset it at any time.

25 MS. MASKALL: Well, then we'd ask that you -- that you invest it or

1 that we -- that you lower his child support payment at this point. I'm not
2 sure that...

3 THE COURT: Does he work?

4 MS. MASKALL: ...he has the financial disclosure...

5 THE COURT: Does he work? I don't have a -- what -- on what basis?
6 Is he unemployed?

7 MS. MASKALL: Your Honor, I believe that he has his own business; and
8 that it's -- the money fluctuates; and he's not steady. He doesn't have a
9 steady flow of income at this particular moment. Obviously, I'll let him
10 address that with you.

11 THE COURT: Well, what's his income every month? What -- what should
12 we reduce it to?

13 MS. MASKALL: Mr. Foley, what is your current monthly income?

14 MR. FOLEY: It's 800 to \$1000 a month.

15 THE COURT: All right. How would he be able to prove that, if he had
16 to bring documents to court?

17 MS. MASKALL: Oh I'm gonna have to defer to him again, Your Honor.

18 Mr. Foley, how could you prove that you earned 800 to \$1000 a
19 month?

20 MR. FOLEY: I can bring my records.

21 THE COURT: What -- what kind of records is the D.A. looking for?

22 MS. WOODS: Well, Your Honor, the -- the custodian was present
23 February 19th, 2014, because that was supposed to be the modification or
24 considerate -- a Consideration of a Modification. And now that she's not
25 present, I would feel that it would be unfair to modify an order when he

1 didn't appear when she was here. And he would need to bring tax returns,
2 profit and loss statements...

3 THE COURT: For 1a- for -- for which years?

4 MS. WOODS: He -- it would be appropriate, according to statute for
5 the last three years. But for R and A's sake, we just need 2013 and...

6 MS. MASKALL: When...

7 MS. WOODS: ...so far for 2014.

8 MS. MASKALL: When was the decree entered?

9 MS. WOODS: The decree was entered in 2009, September 25th, 2009.

10 MS. MASKALL: Okay. So there's no objection to the last three years,
11 Your Honor.

12 THE COURT: The last two would be fine.

13 MS. MASKALL: Okay.

14 THE COURT: But we -- I think what the -- we look at, what seems to
15 be more relevant for current income is a profit and loss statement. If
16 it's certified by his accountants, that would be acceptable as well. So he
17 needs 2012, 2013 IRS tax returns and a recent profit and loss statement.
18 What can he pay to get out?

19 MS. MASKALL: Your Honor, as far as I --and again, I --I'll have to
20 defer to him. I believe that he did have some money in his pocket when
21 they arrested him. We'd like to apply that. I'm not sure that he has any
22 other money because I know that he was looking at -- at asking people to
23 gather up money to release him from bail and -- or from jail and nothing
24 happened.

25 Mr. Foley, do you have any additional money other than the \$50

1 that was in your pocket?

2 MR. FOLEY: \$17 in the bank.

3 MS. MASKALL: \$17...

4 MR. FOLEY: In the bank.

5 MS. MASKALL: ...in the bank.

6 THE COURT: What's the D.A.'s request?

7 MS. WOODS: Your Honor, the Respondent was allowed to pay \$500 for
8 the February 19th, 2014, court date, which is less than the bench warrant
9 of 804. So my position is, at the very least, half of the pay or stay
10 amount that he was supposed to bring. His arrest date was the 6th of
11 August.

12 MS. MASKALL: And, Your Honor, it's my understanding that my client
13 had filed a -- an appeal with the supreme court because of this particular
14 case. That appeal was denied. And I'm just asking that he be released so
15 that I can explain to him how to get what he wants from the Court, i.e., a
16 reduction in his child support. And I don't believe -- if he's got \$17 in
17 his -- in his bank account right now, \$50 on him, he didn't have the \$500
18 to come to court in February. I don't know why he didn't make it to court
19 in February.

20 THE COURT: This is the problem. You don't pay. Not only do you not
21 come to court month after month after month goes by, and the only -- I
22 heard the D.A. just tell me that the only payment in 2014 was...

23 What, Ms. D.A.?

24 MS. WOODS: It was...

25 THE COURT: An involuntary payment, right?

1 MS. WOODS: Yes, it was an involuntary payment.
2 THE COURT: Something the D.A. had to snatch from your bank account.
3 And how much did they snatch?
4 MS. WOODS: \$3000 and it...
5 THE COURT: So he did have some money to pay, but he chose not to.
6 And the D.A. had to go get it.
7 I mean, that's -- that's what it looks like, sir. So January
8 came by. You paid zero child support. February came by. You paid zero.
9 You could've paid \$100 a month. You could've paid \$50 a month. And if you
10 were struggling, we would have accepted that. I would've accepted that.
11 But deciding to pay zero, waiting to get arrested, it's not helping your
12 case at all, sir. These are three children that you have.
13 MR. FOLEY: I'm sup-...
14 THE COURT: They do deserve...
15 MR. FOLEY: ...my children tomorrow.
16 THE COURT: your financial support. Three children.
17 MR. FOLEY: I'm supposed to see...
18 THE COURT: All right.
19 MR. FOLEY: ...my children tomorrow. And I've been denied my
20 visitation consistently.
21 THE COURT: All right. You have a good lawyer...
22 MR. FOLEY: Last month...
23 THE COURT: ...here. She can advise you on that. But just because
24 you don't see your kids, sir, it's not a reason to decide you're not gonna
25 pay child support. All right? But if you're not paying, it's not a reason

1 for the mother to say you can't see the kids either. But that's...

2 MR. FOLEY: That's what's happening.

3 THE COURT: ...one thing that has to be taken up in a different
4 court.

5 (UNIDENTIFIED BACKGROUND MULTI-SPEAKING)

6 THE COURT: All right?

7 All right. What I'm gonna do today over the D.A.'s objection
8 because we have a temporary order, I'm gonna reduce it to \$300 a month.
9 That's the minimum for three children. This is temporary. All right? And
10 the effective date will be this month.

11 MS. WOODS: Your Honor...

12 THE COURT: I see that the Petitioner is also providing health
13 insurance, and you were contributing an amount to that. When we come back
14 next date, I am gonna ask the D.A. to contact her and bring an updated
15 information on how much she pays for the children's health insurance; and
16 that will be addressed.

17 MS. WOODS: Your Honor, the involuntary payment was actually a split.
18 The Respondent was to receive \$3000 and Clark County \$3000. The most
19 recent letter referring to that settlement was June 2nd, 2014. So I'm
20 assuming the Respondent had \$3000 at some point after June 2nd.

21 MS. MASKALL: I'm not sure that I even understand that. So...

22 MS. WOODS: It was -- it was something that Hennepin County,
23 Minnesota -- it was a lawsuit apparently or...

24 MS. MASKALL: Your Honor, we'll do an accounting. Is that good?
25 We'll do an accounting of the money.

1 THE COURT: I'm not sure that's what the D.A.'s stating.
2 MS. WOODS: What -- I'm saying that he received \$3000 following the
3 court matter in Minnesota, but didn't pay any child support, except...
4 MS. MASKALL: Well, and...
5 MS. WOODS: ...for what was taken.
6 MS. MASKALL: We have no -- well, I don't have any proof then he
7 actually received it. So what I'm saying is, we will provide the Court
8 with an accounting. If he did receive it, we'll provide the Court with an
9 accounting as to where the money went if he received it; or if he didn't
10 receive it...
11 THE COURT: I thought that was...
12 MS. MASKALL: ...we'll explain that.
13 THE COURT: ...the money the D.A. got. I don't know.
14 MS. WOODS: We received three -- one-half. So we received 3000. He
15 would've receive 3000, so.
16 THE COURT: Oh I see.
17 MS. WOODS: Oh.
18 THE COURT: I gotcha. Okay.
19 MS. WOODS: Okay. That's...
20 THE COURT: All right. Gotcha.
21 MS. WOODS: ...why I'm saying that.
22 THE COURT: So you're saying -- the D.A.'s saying, he got his
23 settlement; and the D.A. got three -- half of it.
24 MS. WOODS: Yes.
25 MS. MASKALL: Now I understand.

1 THE COURT: Okay.

2 MS. MASKALL: Okay.

3 THE COURT: I didn't understand either. Okay. So it's -- going
4 forward, it's 300 current; 25 on arrears; the \$79 contribution towards the
5 medical, stays at 79. It's 404. We'll come back in a few months to
6 address your request to modify. You need to, you know, bring your
7 documents. I am asking that five more days be served unless you come up
8 with \$200. It's a minimal amount of money, 200. 200 will get you out
9 today, sir; otherwise, you won't be released until...

10 THE CLERK: August 16th, 2014.

11 THE COURT: All right. The 200 is from 9/19 of 2012, stay jail time.
12 The rest is stay. Just so his attorney knows, he has a total of, excluding
13 the five days from today, he has six- 70 -- sev- 70 days of stay jail time
14 hanging over his head.

15 MS. MASKALL: 70?

16 THE COURT: 70.

17 MS. MASKALL: Okay.

18 (UNIDENTIFIED BACKGROUND MULTI-SPEAKING)

19 MS. MASKALL: Thank you, Your Honor.

20 THE COURT: And the return date will be?

21 THE CLERK: December 9th, 2014, 9:15 a.m.

22 THE COURT: All right. December 9. At what time?

23 THE CLERK: 9:15 a.m., Your Honor.

24 THE COURT: Okay.

25 All right. Thank you.

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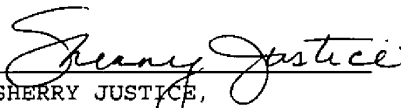
MS. MASKALL: Thank you, Your Honor.

MR. FOLEY: Thank you, Ms. Maskall, and, Your Honor.

(THE PROCEEDING ENDED AT 13:40:29.)

* * * * *

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.


SHERRY JUSTICE,
Transcriber II

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FEB -7 2017

Alvin L. Williams
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE SYLVIA TEUTON

TRANSCRIPT RE: MOTION FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT

TUESDAY, DECEMBER 09, 2014

1 APPEARANCES:

2 For the Public by DAFS ALEC JASON RAPHAEL, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY (Not present)
8 For the Respondent: Pro se

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1 LAS VEGAS, NEVADA

TUESDAY, DECEMBER 09, 2014

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

3 (THE PROCEEDING BEGAN AT 09:53:18.)

4 THE MARSHAL: Just go ahead and have a seat right there.

5 THE CLERK: Please raise your right hand. Do you solemnly swear the
6 testimony you're about to give in this action shall be the truth, the whole
7 truth and nothing but the truth, so help you God?

8 MS. FOLEY: Yes.

9 THE CLERK: Okay.

10 THE COURT: This is Case Number R-11-162425.

11 Let me ask the D.A. It looks like Mr. Foley did file a
12 response to the request to modify and said he had to appear in U.S.
13 District Court. Let me hear from the D.A.

14 MR. RAPHAEL: Thank you for coming to court, ma'am. You can have a
15 seat.

16 MS. FOLEY: Okay. Thank you.

17 MR. RAPHAEL: The Respondent's unbundled attorney withdrew. The
18 Court initiated this modification. He's self-employed. He filed a
19 response yesterday pro per. He did request a continuance.

20 THE COURT: He attached the notice from district court...

21 MR. RAPHAEL: He...

22 THE COURT: ...that did...

23 MR. RAPHAEL: He did.

24 THE COURT: ...say he was due there...

25 MR. RAPHAEL: He -- he -- he did.

1 THE COURT: ...today.

2 MR. RAPHAEL: He did wait till yesterday to tell us but that...

3 THE COURT: Yes, he did.

4 MR. RAPHAEL: That's a separate matter on -- okay. Two -- two

5 issues. One, we're here on a modification.

6 THE COURT: 30 days. (Indiscernible).

7 MR. RAPHAEL: He self-reported his gross monthly income. But I don't

8 mind continuing it.

9 THE COURT: Well, do you have any independently verified...

10 MR. RAPHAEL: No.

11 THE COURT: ...income? Why? Is he self-employed?

12 MR. RAPHAEL: Yes, he is.

13 THE COURT: Is he self-employed, ma'am?

14 MS. FOLEY: I do have a ad he put in on Craigslist. That's where

15 he's working.

16 THE COURT: Did you give that to your caseworker yet?

17 MS. FOLEY: No.

18 THE COURT: All right. Do you have it with you to give to the D.A.?

19 MS. FOLEY: I can give him the copy I printed from Craigslist.

20 THE COURT: Okay. Because he has to be in district court. And that

21 will su- that supersedes this court.

22 MS. FOLEY: So is district court today is for child support also?

23 THE COURT: It's probably a criminal or a civil matter. I have no

24 idea what that's for.

25 MR. RAPHAEL: He -- he's suing DFS.

1 THE COURT: Oh is that what he's doing?
2 MR. RAPHAEL: Yeah.
3 THE COURT: Okay. Well, I'll print out -- I don't think you got a
4 copy. He mailed a copy to the D.A. for you. But I'll print it out so you
5 can read it.
6 MS. FOLEY: Okay.
7 THE COURT: Okay. He just filed it yesterday. And he did file an
8 income and an expense report.
9 MS. FOLEY: Thank you.
10 THE COURT: (Indiscernible) put it on the conflict calendar
11 (indiscernible).
12 THE CLERK: In 30 days?
13 THE COURT: Mm-hm.
14 THE CLERK: Okay.
15 THE COURT: He hasn't been paying, huh? Are you gonna...
16 MR. RAPHAEL: No.
17 THE COURT: ...start a contempt show cause or...
18 MR. RAPHAEL: He is under an order to show cause.
19 THE COURT: He is? All right.
20 MR. RAPHAEL: So I -- I...
21 THE COURT: Okay.
22 MR. RAPHAEL: ...was gonna -- so I'm gonna request the contempt and a
23 bench warrant.
24 THE COURT: Well, I'm not, Mr. D.A. Otherwise, if he didn't have
25 that appearance in district court, I absolutely...

1 MR. RAPHAEL: Okay.

2 THE COURT: ...would.

3 MR. RAPHAEL: That's fine.

4 THE COURT: But I'll find that he needs to pay monthly or face

5 imposition of contempt; continue, as he has a documented appearance in U.S.

6 District Court on another matter scheduled for today at 10:00 - 10:00 a.m.

7 Okay. Respondent is self-employed, you said?

8 MR. RAPHAEL: That's his self -- that's his self-report. I don't

9 have...

10 THE COURT: He is.

11 MR. RAPHAEL: ...the other info.

12 THE COURT: What type of work does he do?

13 MS. FOLEY: He's do computer repairs.

14 THE COURT: Okay. He is to bring copies of filed tax returns next

15 court date for years 2012 and 2013, per 125B.080 -- NRS 125B.080. Okay.

16 Return date is...

17 THE CLERK: January 28, 2015, at 1:45 p.m.

18 THE COURT: Okay. We will proceed on that date. Thank you.

19 THE MARSHAL: You can...

20 (THE PROCEEDING ENDED AT 09:59:06.)

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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.


SHERRY JUSTICE,
Transcriber II

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FILED
FEB -7 2017
[Signature]
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	
)	

BEFORE THE HONORABLE JAMES DAVIS
TRANSCRIPT RE: MOTION FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT
WEDNESDAY, JANUARY 28, 2015

1 APPEARANCES:

2 For the Public by DAFS ALEC JASON RAPHAEL, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY (Not present)
8 For the Respondent: Pro se
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1 LAS VEGAS, NEVADA

WEDNESDAY, JANUARY 28, 2015

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

3 (THE PROCEEDING BEGAN AT 14:06:28.)

4 THE COURT: We'll call R162425, Resp- or Petitioner only.

5 THE CLERK: Please raise your right hand. You solemnly swear the
6 testimony you're about to give in this action shall be the truth, the whole
7 truth and nothing but the truth, so help you God?

8 MS. FOLEY: Yes.

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: Mr. District Attorney.

11 MR. RAPHAEL: Okay. This is actually -- it's -- it's -- it's a
12 review and adjustment and an enforcement review. And we have enough
13 information to proceed.

14 Last hearing, the Respondent requested a continuance of his
15 review and adjustment because he -- he -- he had submitted proof that he
16 had a -- a hearing in federal court that day. So the Court granted that.
17 However, in the response that he filed on December 8th, he self-reported
18 his gross monthly income.

19 UNIDENTIFIED SPEAKER: Yeah.

20 MR. RAPHAEL: So we are able to proceed with the modification today.

21 THE COURT: And his gross monthly income was?

22 MR. RAPHAEL: \$2,512.95. We're gonna request 29 percent of that for
23 the support of the three children in this case.

24 And, Ms. Clerk, this is not a conflict case.

25 THE CLERK: Thank you.

1 THE COURT: Okay. And it says child support at 729. A round up
2 there.

3 MR. RAPHAEL: And, Your Honor, previously medical cash in lieu of
4 health insurance was set at \$79.

5 Ma'am, do you still have health insurance for your children?

6 MS. FOLEY: Yes, I do.

7 MR. RAPHAEL: And is it approximately the same cost?

8 MS. FOLEY: Correct.

9 MR. RAPHAEL: Okay. Your Honor, we're gonna ask that that \$79 a
10 month continue as medical cash in lieu of health insurance.

11 THE COURT: Very well.

12 MR. RAPHAEL: In addition, this was already found that it was going
13 to be effective August 1st. So that's our request for today. Modification
14 effective 8/1/14. And it was pre- it was pre-filled in on the next page.

15 Getting to the enforcement part of this case, last hearing, the
16 Respondent was admonished in writing by the Court to start making monthly
17 payments or face contempt. He bailed out two hearings ago on August 13th,
18 but he's not paid anything since. So he's made his choice. Now there was
19 a review hearing already set for February 18th, but giving him another
20 month really isn't gonna make a difference. I'm gonna ask that that be
21 vacated and that a bench warrant be issued. Thank you.

22 THE COURT: Okay. Madam clerk, we're gonna go ahead and vacate the
23 February 18th hearing and issue a bench warrant for his nonappearance.

24 Okay. I find the Respondent in contempt of court for failing
25 to pay his child support; therefore, sentence him to the 25 days in the

1 Clark County Detention Center. That sentence will be stayed until the next
2 court hearing. Issue a no-bail bench warrant, whereby the Respondent can
3 be released upon the payment of \$1000. We'll vacate the February hearing.

4 Anything else, ma'am?

5 MS. FOLEY: No, Your Honor.

6 THE COURT: All right. Thank you for coming in. You're always
7 welcome, but you don't have to come if you don't want to.

8 MS. FOLEY: Okay.

9 THE COURT: All right. Thank you.

10 MS. FOLEY: Thank you.

11 (THE PROCEEDING ENDED AT 14:11:48.)

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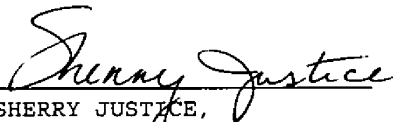
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14 ATTEST: I do hereby certify that I have truly and correctly
15 transcribed the digital proceedings in the above-entitled case to the best
16 of my ability.

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SHERRY JUSTICE,
Transcriber II

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FILED

FEB -7 2017

Ann L. Blum
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE SYLVIA TEUTON

TRANSCRIPT RE: IN CUSTODY HEARING

WEDNESDAY, APRIL 15, 2015

1 APPEARANCES:

2 For the Public by DAFS PATRICIA A. ROSS, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY (Not present)
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY
8 (Present via video conference
from Clark County Detention Center)
9 For the Respondent: Pro se

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1 LAS VEGAS, NEVADA

WEDNESDAY, APRIL 15, 2015

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

3 (THE PROCEEDING BEGAN AT 13:38:10.)

4 THE COURT: This is R-11-162425.

5 You're still under oath, sir. This is for your children
6 Michael, Elizabeth and Therese. And it looks like you missed a court date
7 a couple months ago, January 28. Now Patricia, she was here. All right.
8 We -- it was a motion to modify your child support. It looks like we used
9 your self-reported monthly income, and we set it at 729 temporarily. Is
10 there a reason why you weren't here?

11 MR. FOLEY: On the 28th, I never received a summons, Your Honor, or
12 an order to appear. And I did try to file a -- an objection after I
13 received the notice that -- of the Master's Recommendation. And the court
14 clerk would not let me file it. The court clerk refused the filing of my
15 objection saying that I needed to fi- pay a \$240 filing fee, an initial
16 appearance fee; and I don't find anywhere in NRS that says I have to file a
17 -- an initial appearance, file...

18 THE COURT: It's not in NRS. It's in -- in the Civil Rules of Civil
19 Procedure. It's a...

20 MR. FOLEY: I didn't find anything in...

21 THE COURT: All right.

22 MR. FOLEY: ...NRCP either, Your Honor that requires...

23 THE COURT: So -- well, there is a...

24 MR. FOLEY: ...a filing fee.

25 THE COURT: ...filing fee. And each -- each -- every county has a

1 right to set their own fees. And that's what Clark County's fees are.

2 MR. FOLEY: And I don't...

3 THE COURT: All right. I do -- I'm looking at a notice of hearing.

4 It was filed December 24th of 2014. And it is a certificate of mailing.

5 I'm looking at Michael Anthony Foley, 209 Stephanie Street, B191.

6 MR. FOLEY: Okay.

7 THE COURT: It was mailed -- at Henderson, Nevada, 89012. It was

8 mailed December 24th.

9 MR. FOLEY: I did not see that as an order to appear or as a summons,

10 Your Honor.

11 THE COURT: It's diffi-

12 MR. FOLEY: And I...

13 THE COURT: Sir...

14 MR. FOLEY: I would...

15 THE COURT: Sir, it's not -- okay. I don't know why you think it has

16 to be because it doesn't. It's a -- simply a notice of hearing letting you

17 know we're gonna have the whole court hearing to modify your child support.

18 There doesn't have...

19 MR. FOLEY: But I didn't ask for a hearing, Your Honor.

20 THE COURT: ...to be a summons, sir. You don't have to be served in

21 person for a subsequent appearances like that. All right.

22 So let me hear from the D.A.

23 MS. ROSS: Thank you, Your Honor. The Respondent was arrested on

24 April 9th on a bench warrant from January 2015. The bench warrant is for

25 \$1000. Our investigator who arrested Mr. Foley, found him by way of

1 Craigslist. Mr. Foley has several ads on Craigslist advertising computer
2 work -- extensive computer work that he does. And within all of his
3 advertisements, he states, my long list of clients keeps me busy. So
4 apparently he is making money. He is working. However, the last payment
5 we received was August 2014 for only \$200. It appears that Mr. Foley puts
6 a lot of effort into not paying. If he only put half as much effort, maybe
7 this child could be supported. We're asking for a finding of contempt,
8 imposition of time with the release amount of the bench warrant in the
9 amount of \$1000.

10 THE COURT: Is there anything you want to say?

11 MR. FOLEY: Yes, Your Honor. I'd like to invoke my 14th Amendment
12 Right to appointed counsel. The 14th Amendment to the U.S. Constitution as
13 interpreted by the United States Supreme Court in Turner versus Rogers, I
14 am entitled to Court-appointed counsel because the opposing party is
15 represented by counsel, the State is represented by counsel. I do not...

16 THE COURT: Well, first of all...

17 MR. FOLEY: ...have counsel.

18 THE COURT: ...that's incorrect. The opposing party is not
19 represented by counsel.

20 MR. FOLEY: The State is represented by (indiscernible).

21 THE COURT: The Sta- the -- the State represents the interest of the
22 State. And the D.A. can tell you that.

23 MR. FOLEY: Okay. And therefore...

24 THE COURT: But let me hear from -- let me hear a reply from the D.A.

25 MR. FOLEY: Your Honor, I'm not done with my legal argument. It's

1 the -- if -- if you're gonna have...

2 THE COURT: You want -- you want an appointment of...

3 MR. FOLEY: ...a D.A. reply...

4 THE COURT: ...counsel. Let me have the D.A. reply, and then I'll
5 hear from you again.

6 MR. FOLEY: Thank you.

7 MS. ROSS: Your Honor, there is no right to appointment of counsel in
8 these types of civil cases. As you stated, we do not represent the
9 Petitioner. We don't represent any parties. We represent the interests of
10 the State. So this is not a situation that is similar to Turner v Rogers.

11 MR. FOLEY: Your Honor, this proceeding is criminal in nature. I've
12 been chained. I've been confined. And even though you may want to label
13 it as a civil action, it is a de facto criminal proceeding. And therefore,
14 I am entitled under -- under the U.S. Constitution to have appointed
15 counsel. If the Court wishes to not -- to deny my request for appointed
16 counsel, then that's an issue that can be addressed later on in -- in the
17 appeals process. And then I have other legal arguments to make, as well,
18 and other facts to state for the record.

19 THE COURT: Anything else?

20 MR. FOLEY: From me, Your Honor?

21 THE COURT: Yes, sir.

22 MR. FOLEY: Yes, Your Honor. I have seven reasons why I should be
23 released today. Number 1, I haven't seen my daughter, Elizabeth, in three
24 weeks. Number 2, I haven't seen my son, Michael, in two weeks. And number
25 3, I have not -- I've only seen my daughter, Therese, once in the last

1 three years. And that's all because of the Petitioner's efforts to deprive
2 me of my fundamental constitutional right to be a parent to my child.

3 Number 4, I try to -- I need to change out my contact lenses.
4 I'm a contact lens user. I'm dependent of contact lenses to be able to
5 see. If I take them out, the I won't be able to take them back in without
6 storage solution, which I believe that this facility should provide, given
7 that it's a -- a -- a health issue.

8 And then also I need to get back to work as the district
9 attorney pointed out. I do try to keep busy, as -- as best I can. I do
10 not charge very much for the work that I do, which helps me keep busy.
11 There are a number of people who depend on me, including seniors and some
12 disabled people that depend on me for the services that I provide.

13 And -- and if I'm not allowed to be released to resume my
14 occupation and my vocation, then I'll have to apply for public assistance;
15 and that's -- that would be unfair to the -- to the taxpayer if I have to
16 apply for public assistance, when I am capable of supporting myself by the
17 work that I do. And I do fully support my children. Money is not the only
18 way to support a child. Time is just as good as money.

19 Number 7, at least two of my children want their father to be
20 free and available to them. I've missed several visits because of this
21 incidents and incarceration.

22 And these are my legal arguments. Number 1, jurisdiction is
23 with the district court. I think...

24 THE COURT: All right. Just a moment. Let me address some of your
25 allegations and statements and arguments. First of all, I don't want this

1 personally to be a criminal proceeding, like you indicate. I'm merely
2 following the law. And the law has already established that child support
3 cour- court is a civil proceeding. It is not criminal. Under our laws,
4 you do not have a constitutional right for me to appoint a free lawyer to
5 you. So your request is therefore denied.

6 Second of all you say that I should let you out because you
7 haven't seen your children. Well, sir, I really sympathize with that. I
8 think it's wrong for parents to hold children over each other's heads and
9 treat them like property to get them to do things or not do things. But
10 that has nothing to do with child support. The U.S. Supreme Court, many
11 years ago saw fit to separate those two issues. So whether or not you pay
12 your child support has nothing to do with whether or not you get to see
13 your children. That is why we have a higher court than this court. We
14 have family district court. You have always been free to file motions. I
15 -- I see that you were recently there. There's a family court order from
16 November of 2014. So you know what the procedures are. You know...

17 MR. FOLEY: I have no...

18 THE COURT: ...how to follow those rules. I just saw the -- I just
19 saw the -- the...

20 MR. FOLEY: I have no knowledge of...

21 THE COURT: ...the actual motion...

22 MR. FOLEY: ...a family court proceeding.

23 THE COURT: ...and order.

24 MR. FOLEY: November...

25 THE COURT: You say you need to get...

1 MR. FOLEY: ...can you please describe it to me? I have no idea.

2 THE COURT: ...back to work because people depend on you. Well, what
3 about your kids, sir? Your -- your kids...

4 MR. FOLEY: They depend on me every...

5 THE COURT: ...should depend on you.

6 MR. FOLEY: ...Tuesday and Thursday.

7 THE COURT: I didn't interrupt you. I don't expect you to interrupt
8 me. Thank you.

9 So first of all, you say you have all these people that depend
10 on you, like, seniors and people that rely on your work. Well, what about
11 your kids, sir? Your kids come first. Your kids should be...

12 MR. FOLEY: They do.

13 THE COURT: ...depend -- should be able to financially depend on you.
14 All right? And that's not something that you've stepped up to the plate to
15 do. And then you say that money isn't the only way to support a child. I
16 appreciate that, sir. I'm a mother. So I understand that. Kids need love
17 and attention, as well as money, because they -- you need to buy food. You
18 need to have a roof over their head. But you are under a Court order to
19 pay support. Unless I have an order that says you pay zero, I'm gonna
20 enforce the prior orders that obligate you to pay.

21 And what I have in front of me, sir, is that you have refused
22 to pay any amount since August of 2014. Now, if you've given money
23 directly to Patr- Patricia, that is going against the Court order; and you
24 won't get credit for it. You have to pay through the court. All right?

25 So based on all those things, sir...

1 MR. FOLEY: I still have legal arguments to make. And under
2 Nevada...
3 THE COURT: All right, sir.
4 MR. FOLEY: Code of (indiscernible)...
5 THE COURT: I -- we're -- we're done.
6 MR. FOLEY: ...I must be heard.
7 THE COURT: I find that you are in contempt of Court. You are -- how
8 many days has he been in jail?
9 MS. ROSS: He was arrested on the 9th.
10 THE COURT: Okay.
11 MR. FOLEY: Your Honor, I still have a legal argument to make.
12 THE COURT: Oh I've heard enough, sir.
13 All right. You will be in -- remanded into custody for 19 days
14 from now. I've considered the time you've already been in jail.
15 MR. FOLEY: Your Honor, I...
16 THE COURT: That's from May...
17 MR. FOLEY: ...I would like my objection...
18 THE COURT: ...15th of 2012. There's 20 days there. You've been in
19 -- found in contempt many times before. This is nothing new to you. So...
20 MR. FOLEY: But I'd like to -- my objection to go on the record.
21 THE COURT: So the rest of the time -- you -- you've made sufficient
22 record, sir.
23 MR. FOLEY: No, I want my objection within a ten-day period as
24 required by EDCR 1 (indiscernible) one.
25 THE COURT: I don't have -- I'm not your personal lawyer, sir. I

1 don't have an obligation to -- to do that...

2 MR. FOLEY: Your Honor...

3 THE COURT: ...for you. Okay?

4 MR. FOLEY: ...(indiscernible) can't tell the...

5 THE COURT: I'm not...

6 MR. FOLEY: ...truth (indiscernible)...

7 THE COURT: ...gonna object to myself. You need to figure out a way

8 to that.

9 MR. FOLEY: The Court must accept my objection.

10 THE COURT: Okay. So...

11 MR. FOLEY: Under the (indiscernible) objection...

12 THE COURT: 19 days are imposed. This -- this is previously approved

13 jail time. You've been found in contempt many times before...

14 MR. FOLEY: Your Honor...

15 THE COURT: ...sir. I can go...

16 MR. FOLEY: ...no district court judge has...

17 THE COURT: ...through the dates if you want.

18 MR. FOLEY: ...endorsed a single recommendation of yours. The

19 presiding judge must sign your recommendation.

20 THE COURT: And they have, sir.

21 MR. FOLEY: You even in your own language...

22 THE COURT: Sir, I'm not gonna...

23 MR. FOLEY: ...in your own words...

24 THE COURT: ...argue with you anymore. I'm not here...

25 MR. FOLEY: ...this is not an order or a judgment...

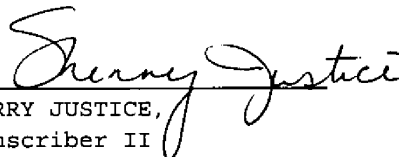
1 THE COURT: ...to argue with you, sir.
2 MR. FOLEY: ...unless signed by a judge. I'm making...
3 THE COURT: I am...
4 MR. FOLEY: ...pointing out your words. It says...
5 THE COURT: I am not...
6 MR. FOLEY: ...not an order...
7 THE COURT: ...gonna argue with you...
8 MR. FOLEY: ...or a judgment...
9 THE COURT: ...anymore, sir.
10 MR. FOLEY: ...unless it's signed by a judge. It was never signed by
11 a judge. It's only signed by you...
12 THE COURT: Well, that's what you...
13 MR. FOLEY: ...and the district attorney.
14 THE COURT: ...say.
15 MR. FOLEY: (Indiscernible) about...
16 THE COURT: But that's not...
17 MR. FOLEY: Well, no, that's what...
18 THE COURT: ...that's not the truth...
19 MR. FOLEY: ...you say...
20 THE COURT: ...of it.
21 MR. FOLEY: ...in your order, Your Honor.
22 THE COURT: That's what you say. That's not the truth.
23 MR. FOLEY: (Indiscernible) the last order. Read it. It says
24 this...
25 THE COURT: Okay. The last order was signed by the...

1 MR. FOLEY: ...(indiscernible).
2 THE COURT: ...family court judge. So anyway...
3 MR. FOLEY: Which family court judge? What order was that?
4 Communicate, please.
5 THE COURT: Okay. You had \$1000 release amount. I'll reduce...
6 MR. FOLEY: Which family court...
7 THE COURT: ...it to...
8 MR. FOLEY: ...judge? It was blank.
9 THE COURT: ...\$900.
10 MR. FOLEY: It's blank, Your Honor. No family...
11 THE COURT: So the release date...
12 MR. FOLEY: ...court judge ever signed it.
13 THE COURT: Sir...
14 THE CLERK: It will be May 4th...
15 THE COURT: ...you need to stop talking.
16 THE CLERK: ...two-thousand four -- 2015.
17 THE COURT: What was that again? I couldn't hear over him.
18 THE CLERK: May 4th, 2015.
19 THE COURT: All right.
20 We'll -- we're gonna have a pay stay, Ms. Clerk, for June. You
21 can overbook.
22 All right. You must bring or have paid two months' worth of
23 child support. So for you that's \$1666.
24 MR. FOLEY: May I please have the name of the judge who signed the
25 last Court order, Your Honor?

1 THE COURT: The return date, when the clerk's ready.
2 THE CLERK: June 17th, 2015 at 9:00 a.m.
3 THE COURT: You be seated, sir.
4 MR. FOLEY: May I please have the name of the family...
5 UNIDENTIFIED SPEAKER: Have a seat.
6 THE COURT: You can be seated. Thank you.
7 MR. FOLEY: (Indiscernible) court.
8 UNIDENTIFIED SPEAKER: William...
9 (THE PROCEEDING ENDED AT 13:50:10.)
10

11 * * * * *

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

15 
16 SHERRY JUSTICE,
17 Transcriber II
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FILED
FEB -7 2017
John L. Williams
CLERK OF COURT

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TRANS

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	

BEFORE THE HONORABLE LYNN CONANT
TRANSCRIPT RE: ORDER TO SHOW CAUSE - PAY OR STAY
WEDNESDAY, JUNE 17, 2015

1 APPEARANCES:
2 For the Public by DAFS PATRICIA A. ROSS, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
5 Las Vegas, Nevada 89119
6
7 The Petitioner: PATRICIA FOLEY (Not present)
8 For the Petitioner: Pro se
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1 LAS VEGAS, NEVADA

WEDNESDAY, JUNE 17, 2015

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

3 (THE PROCEEDING BEGAN AT 11:34:59.)

4 THE COURT: Okay. This is the matter of Foley versus Foley. And
5 that's R162425.

6 I'll hear from the D.A.

7 MS. ROSS: Your Honor, this is on for a pay or stay review. The last
8 hearing was April 15th, 2015. The Respondent was to pay or bring \$1666.
9 That has not been paid. At the last hearing the Respondent was
10 belligerent, argumentative, was very, very difficult and rude to this
11 Court. He kind of indicated he had no intentions of complying with this
12 Court's order. I am asking for a finding of contempt and am asking for a
13 bench warrant of \$2000.

14 THE COURT: All right. The Court finds the Respondent in contempt of
15 court for failing to appear and failing to pay; sentences him to 25 days
16 stay jail time in the Clark County Detention Center. The Court will take
17 the recommendation of the district attorney and a bench warrant will issue
18 at the release amount of \$2000.

19 MS. ROSS: Thank you.

20 (THE PROCEEDING ENDED AT 11:36:18.)

21 * * * * *

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

25 
SHERRY JUSTICE,
Transcriber II

FILED
FEB -7 2017

Ann L. Williams
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE MERLE K. LOK

TRANSCRIPT RE: IN CUSTODY HEARING

MONDAY, NOVEMBER 16, 2015

1 APPEARANCES:

2 For the Public by DAFS EDWARD W. EWERT, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY (Not present)
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY
8 (Present via video conference
9 from the Clark County Detention
Center)
10 For the Respondent: Pro se

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1 LAS VEGAS, NEVADA

MONDAY, NOVEMBER 16, 2015

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

3 (THE PROCEEDING BEGAN AT 13:41:37.)

4 THE COURT: We're calling Case R162425.

5 MR. EWERT: All right. For Mr. Foley, our information is that he
6 was arrested on November 12.

7 Is that correct, sir?

8 MR. FOLEY: At my daughter's elementary school. That's correct.

9 MR. EWERT: And you -- it looks like you had several traffic
10 offenses. Have those been resolved?

11 MR. FOLEY: I wouldn't say they were several. They have been
12 resolved.

13 MR. EWERT: Well, what's your status? Are you free on those or
14 what?

15 MR. FOLEY: I am.

16 MR. EWERT: So you're only being held on this child support case?

17 MR. FOLEY: Correct.

18 MR. EWERT: All right. It looks like it involves three children.
19 But Therese turns 18 later this month on the 23rd. Do you know if Therese
20 is gonna graduate in June or...

21 MR. FOLEY: From my information it seems as though she's dropped out
22 of high school and is -- is attending school on line, which is a great
23 disappointment because I've done a lot to be involved in her education and
24 I was denied by the Petitioner, Patricia Foley, as well as her high
25 school, unjustifiably I would say.

1 MR. EWERT: Okay. Let's -- let's take a look at your financial
2 responsibilities here. Your prior hearing was June 17. You didn't show
3 up. So a bench warrant issued for \$2000. What's falling due under your
4 order for June through October, that's five months, 4165 fell due. The
5 last payment we received was -- looks like \$200 jail release in August of
6 2014. So we're looking at, what, 15, 16 months without a payment? Mr.
7 Foley, when was the last time you worked?

8 MR. FOLEY: I would say Wednesday.

9 MR. EWERT: What do you do?

10 MR. FOLEY: I do technical support.

11 MR. EWERT: Software, computer, that's what you're talking about?

12 MR. FOLEY: Generally, that kind of stuff, yes.

13 MR. EWERT: Is that on your own?

14 MR. FOLEY: Yes.

15 MR. EWERT: When was the last time you were -- well, let me ask. If
16 you do that on your own, how much -- are you still doing that?

17 MR. FOLEY: Yes.

18 MR. EWERT: And what do you on average earn through that per month?

19 MR. FOLEY: Generally about \$275 a week.

20 MR. EWERT: 275 a week?

21 MR. FOLEY: Yes.

22 MR. EWERT: Do you have any other source of income?

23 MR. FOLEY: No.

24 MR. EWERT: How do you survive on 275 a week?

25 MR. FOLEY: I don't gamble. I go by -- live within my means on a

1 budget; and I just keep a low, you know, consumption footprint.

2 MR. EWERT: What about...

3 MR. FOLEY: I don't buy (indiscernible)...

4 MR. EWERT: ...taking care of -- what about taking care of your

5 three children financially?

6 MR. FOLEY: I take care of them every time I see them.

7 MR. EWERT: Well, you're under an order to pay through the D.A.'s

8 office, why aren't you obeying that?

9 MR. FOLEY: I cannot afford. My budget, my income does not allow

10 for it.

11 MR. EWERT: Did anybody ever tell you, you should pay something even

12 if you can't pay the full amount of your order?

13 MR. FOLEY: Nope.

14 MR. EWERT: You've assumed all this time, if you can't pay the full

15 amount just pay nothing?

16 MR. FOLEY: I'm always -- sir, I'm always behind in my rent. I'm

17 always behind in my bills and my obligations. It's a real struggle. I no

18 longer...

19 MR. EWERT: The...

20 MR. FOLEY: ...have the love or support of my wife. I no longer

21 have the company of my children. And it's very difficult. I make less

22 money now that I have less support...

23 MR. EWERT: Then why...

24 MR. FOLEY: ...as when I was...

25 MR. EWERT: Why...

1 MR. FOLEY: ...when I was a -- when I was -- as when I was married.

2 MR. EWERT: If you're not making enough, why aren't you out there
3 lookin' for work in your field?

4 MR. FOLEY: Well, I'm only allowed to see my children, twice a week
5 on Tuesdays and Thursdays between 12:00 and 7:00; and there are not very
6 many employers who are willing to -- to work with that schedule. And
7 therefore, it's better for me to just work for my clients and -- and serve
8 them when they need me.

9 MR. EWERT: So you're foregoing higher pay and income so that you
10 can see your children on those days. Is that correct?

11 MR. FOLEY: Well, I would say yes and no. And the reason why is
12 because I had to file a lawsuit in federal court against Clark County and
13 its Department of Family Services because they maliciously and unlawfully
14 put my name in a child abuser database. I was in federal court on
15 September 21st, when the County tried to get the case dismissed, the
16 federal judge, Judge Boulware, denied their motion to dismiss. The case
17 is going on. Discovery is set to begin. I have a November 20th date by
18 which I must file a certain petition that I took an electronic filing
19 class. I have a lot of obligations related to me in proving my job -- job
20 prospects. And one of the issues that inspired the federal judge was that
21 I was de- denied due process. My name was stigmatized by...

22 MR. EWERT: Mis- Mr. Foley...

23 MR. FOLEY: ...being put into the child abuse database.

24 MR. EWERT: ...that -- that all sounds very interesting. But we're
25 -- we're talking about a child support order here that you're supposed to

1 pay. It's a local order out of family court here, correct, Clark County
2 Divorce Decree. Have you not filed in family court to modify...
3 MR. FOLEY: I have.
4 MR. EWERT: ...to lower it?
5 MR. FOLEY: I have, Your Honor. But the judges are very biased for
6 Patricia because she's a female. And I produced all kinds of evidence
7 (indiscernible) know Patricia's a pathological gambler. I have bank
8 records up the wazoo that show that she spends thousands of dollars in the
9 casinos...
10 MR. EWERT: So -- so you're not...
11 MR. FOLEY: ...while my children are (indiscernible).
12 MR. EWERT: You're not obeying this order because you think the
13 mother's going to squander the money on gambling?
14 MR. FOLEY: No, that's not what I said. It's strictly inability to
15 pay.
16 MR. EWERT: All right. I've heard enough, Your Honor.
17 MR. FOLEY: What -- what I'm saying is that the family court does
18 not regard any evidence that I produce to show -- and as a matter of fact,
19 I have video...
20 THE COURT: Sir...
21 MR. FOLEY: ...from (indiscernible) 3rd...
22 THE COURT: ...this is child support court. We defer to the family
23 court rulings and findings. So right now I have an order to enforce at
24 \$833 per month. So is there anything else related to the issues of child
25 support before I make my ruling?

1 MR. FOLEY: Yes, there is. And I have \$119 on the books. That was
2 going to go towards paying my rent. This Court wants to take \$100. So
3 I'll have \$19 to get home, and release me today. That would be just fine.
4 I'll forego legal argument. If the Court doesn't -- is not inclined to
5 take the \$100 I have on the book, then I'd like to make my legal argument
6 and put it on the record.

7 THE COURT: All right. Go ahead. We'll accept your legal argument.
8 Go ahead.

9 MR. FOLEY: The Eighth District Court has exclusive jurisdiction
10 over custody and child support. I've never been served with an order
11 referring child support to a hearing master. Under -- and under Nevada
12 case law, matters cannot be tried under more than one action. This is
13 know as the one-action rule.

14 The separate action R-11-162425 runs afoul of the one-action
15 rule because it is a second action trying the issue of child support
16 already decided and under the jurisdiction of the District Court,
17 Department C.

18 Moreover, NRCP dictates that for every action, there shall be
19 a complaint and an answer. I've never been served with a complaint in
20 this action, R-11-162425. And therefore, I'm unable to properly respond
21 to this action.

22 In or about July of this year, I was granted in former
23 pauperis status in this case. This means that the Court has found me to
24 be indigent, too poor to pay even a filing fee in this action. Because
25 this Court has found me to be too poor to pay an initial appearance fee of

1 approximately \$200, this tribubal [sic] -- this tribunal must necessarily
2 find that I am unable to pay the proposed \$2000 to secure my release.

3 Under well-established U.S. Supreme Court case law, Hicks
4 versus Feiock and Turner versus Rogers, decided in 2011, a person who is
5 subjected to contempt proceedings cannot be deprived of liberty unless he
6 is allowed to have his -- the keys to his prison in his own pocket. This
7 means that a Court cannot hold a person in contempt and confine that
8 person if he doesn't have the ability to pay to be released.

9 At present, I am under a federal court order to complete
10 electronic filing training by November 20th, 2015, and also to -- to
11 commence discovery in a civil action that I filed to have my name removed
12 from the child abuser registry.

13 MR. EWERT: Mr. Foley...

14 MR. FOLEY: I am not able to...

15 MR. EWERT: Mr. Foley...

16 MR. FOLEY: ...(indiscernible) to...

17 MR. EWERT: Sorry to interrupt. I just have a question. How many
18 more pages are you going to read?

19 MR. FOLEY: Just the half.

20 MR. EWERT: All right. Thank you.

21 MR. FOLEY: I have not been able to return to my former employment
22 or have a good job because of this injustice.

23 Finally, the Petitioner, Patricia Foley, has been frustrating
24 my custody rights by having certain individuals show up on my visitation
25 days and preventing me from being with my children. On November 3rd, I

1 was assaulted with a stun gun and prevented from being with my children.
2 Every time violence like this is used against me, it makes my children
3 cry.

4 I will object to the Master's recommendation if I cannot be
5 released today. And of course, the Master's recommendation is not an
6 order or a judgment unless it's signed by a district court judge. With my
7 objection that I'm gonna file, the -- the Master's recommendation will not
8 be an order until the matter is heard by the district court.

9 THE COURT: All right.

10 MR. FOLEY: That concludes my argument, Your Honor. Thank you.

11 THE COURT: All right. Thank you.

12 So based on what I'm hearing, this is what the Court will do.
13 I will recommend ten days be imposed. So can I get a release date with
14 credit for time served?

15 THE CLERK: November 22nd, 2015.

16 THE COURT: All right. And I will go ahead and set the jail release
17 at the bench warrant amount of \$2000. And let's come back on a pay stay
18 calendar in January.

19 THE CLERK: That will be January 15, 2016, at 8:30.

20 THE COURT: And, sir, when you come back for the January 15th date,
21 I want you to pay \$833 for the December payment to avoid contempt. All
22 right. Thank you. You can be seated.

23 (THE PROCEEDING ENDED AT 13:51:50.)


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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.


SHERRY JUSTICE
Transcriber II

FILED

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Alma L. Williams
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE SYLVIA TEUTON

TRANSCRIPT RE: AM PAY STAYS

FRIDAY, JANUARY 15, 2016

1 APPEARANCES:

2 For the Public by DAFS EDWARD W. EWERT, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY (Not present)
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY
8 For the Respondent: Pro se

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1 LAS VEGAS, NEVADA

FRIDAY, JANUARY 15, 2016

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 11:37:28.)

4 THE MARSHAL: 22 is Foley.

5 MR. EWERT: Well, this one, we shouldn't hear. He filed an
6 objection. That's set for a hearing before Judge Hughes on January 20th --
7 Bur- Burton, I mean. Judge Burton.

8 THE COURT: Should we just continue it?

9 MR. EWERT: Well, let's see. How did we get on calendar? Was that
10 -- that was the prior order, correct?

11 THE COURT: Right.

12 MR. EWERT: Okay. Then -- so somehow we should've been -- this
13 hearing should have been...

14 THE COURT: He -- how much -- he was supposed to pay 833 by today,
15 right? Has he paid?

16 MR. EWERT: Frankly, Your Honor, I don't want to get into the merits
17 since he did file an objection.

18 THE COURT: All right. We'll continue this, regular calendar, six
19 months.

20 THE CLERK: (Indiscernible) July 13th, 2016, at 2:15.

21 THE COURT: At what time?

22 THE CLERK: At 2:15, Your Honor.

23 (THE PROCEEDING ENDED AT 11:38:43.)

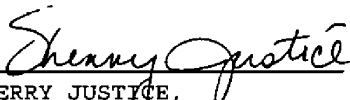
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ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.


SHERRY JUSTICE,
Transcriber II

FILED
FEB -7 2017
Clerk of Court
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE REBECCA L. BURTON

TRANSCRIPT RE: OBJECTION - UIFSA

WEDNESDAY, JANUARY 20, 2016

1 APPEARANCES:

2 For the Public by DAFS ROBERT GARDNER, ESQ.
3 (Telephonic appearance)
4 Chief Deputy D.A. - Family Support
5 1900 E. Flamingo Rd., #100
6 Las Vegas, Nevada 89119

7 The Petitioner: PATRICIA FOLEY (Not present)
8 For the Petitioner: Pro se

9 The Respondent: MICHAEL FOLEY (Not present)
10 For the Respondent: Pro se
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1 LAS VEGAS, NEVADA

WEDNESDAY, JANUARY 20, 2016

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

3 (THE PROCEEDING BEGAN AT 10:45:04.)

4 THE CLERK: Mr. Gardner, can you hear me?

5 MR. GARDNER: Yes, thank you.

6 THE COURT: Hi, Mr. Gardner. This is Judge Burton in the courtroom.

7 Can you hear me?

8 MR. GARDNER: Yes, Judge. Thank you.

9 THE COURT: All right.

10 This is Case R-11-162425-R. It is Patricia Foley versus
11 Michael Foley. And it's the case arising out of the child support action
12 in the R Case. And I see that -- that there was a Master's Recommendation
13 that was from Novem- a hearing held November 16th, 2015. I see that there
14 was a Notice of Entry of Master's Recommendation that was filed November
15 17th, 2015. And it indicates that both parties were served with a copy of
16 the Master's Recommendation as required by the rules. I know that -- well,
17 Mr. Foley -- Michael Foley filed a -- it was -- it's a handwritten
18 Objection to Master's Recommendation. I'm not certain why it says February
19 17th at 3:00 p.m.

20 Mr. Gardner, do you have anything on your calendar for that
21 date?

22 MR. GARDNER: I think that was the original date scheduled, Judge.
23 And then the Court did a Notice of Change of Hearing. And that was filed
24 on December 9th.

25 THE COURT: Oh okay. So we changed it then. All right.

1 All right. And in the objection, it's a little difficult
2 because there's not much. It's a one-page handwritten objection, so there
3 isn't a whole lot on here. But it looks like that -- and on...

4 And for the record, Mr. Foley is not present. He's provided a
5 notice. And I'll get to that in a minute. Mr. Foley indicates that he's
6 found to be indigent, and so he's unable to pay child support. And because
7 of that, it's unconstitutional basically to incarcerate him. That's the
8 gist I'm getting from his objection.

9 He -- he's filed a typed objection, November 26th, 2015. And
10 it says, he's -- objects on a few more grounds. He says that Patricia
11 failed to appear in child support court. So that means the action
12 should've been just simply not heard, that he was not furnished the
13 Master's Recommendation because his interpretation of the statute EDCR 1.40
14 means he's supposed to receive it at the end of the hearing. And that's
15 not true. He did receive Notice of Entry. So he did receive notice.

16 He said that he was deprived of the required procedural
17 safeguards pursuant to the U.S. Supreme Court in Turner versus Rogers, that
18 he was not given his ability to pay is a critical issue in the contempt
19 proceeding.

20 I think with a proceeding that goes back -- in fact, I've
21 printed off the case summary. It goes some nine pages. There's been
22 numerous hearings. There's been several bench warrants and Order to Show
23 Causes. And he's been in front of the Court on many, many occasions. It's
24 absurd to say his ability to pay is not at issue. And to even make that
25 argument is absurd.

1 The Hearing Master did not make an express finding that he has
2 the ability to pay. You know, it isn't just -- it's -- it's ability to
3 pay. We also take into consideration willful unemployment or
4 underemployment. And I'll let the D.A. speak in a minute. But I know that
5 that's taken into consideration as well.

6 So someone can't not be working and say, well, you didn't find
7 that I -- that I don't have the -- I don't have the ability to pay because
8 I don't have an income. I -- I -- that's contrary to what Nevada law
9 allows under cases such as Minnear versus Minnear that we can take into
10 consideration willful underemployment or unemployment.

11 He also argues that the -- that he was deprived of personal
12 liberty and confined in prison in violation of NRS 22.140 and therefore,
13 not afforded the opportunity to call witnesses or present relevant
14 evidence. He was not appointed counsel. And this is civil contempt not
15 criminal contempt. And there's -- I think that his request for counsel in
16 a civil contempt proceeding is not well founded under the law. He knew
17 what was going on.

18 He filed a notice January 13, 2016, saying he wasn't going to
19 be present here. He says that a voluntary appearance would violate the
20 one-action rule. And he cites NRS 40.430, which the Court looked up, which
21 has to do with actions for foreclosure of real mortgage -- of real
22 mortgages. So I'm not really certain why he cited that statute. And then
23 once again, he reflects Turner versus Rogers.

24 And basically he says that the State's interest in collecting
25 child support under IV-D should not prevail; that his reasonable, rightful

1 and proper will to protect his children's need to be supervised and not
2 left alone or in the custody of an illegal alien, which is what happens
3 when the State incarcerates him and seizes his assets and gives those
4 monies to - to mom, who is helplessly addicted to gambling.

5 So there's a lot of little leaps there, I guess, in logic that
6 seems to take away responsibility that should be directed to him about
7 child support and what is - what's -- he's doing to look for work and
8 whether he is or isn't paying his child support obligation. Again, I see
9 that there's been quite a few times that he's been brought before the
10 Court.

11 So, Mr. D.A., go ahead.

12 MR. GARDNER: Thank you, Judge. I would refer the Court to the
13 district attorney's opposition that was filed on December 8th, 2015, by a
14 seasoned attorney in our office, Mr. Ed Ewert. I think he addresses all of
15 those issues, as well.

16 THE COURT: He does.

17 MR. GARDNER: And we would ask...

18 THE COURT: I did see that, yes.

19 MR. GARDNER: Thank you, Judge. We'd ask the Court to deny
20 Respondent's objections, both of them, since he did file the two separate
21 objections. And we do have a return court date set in July, I believe, in
22 the child support court.

23 THE COURT: All right. Well, based upon the points and authorities
24 that are set forth in great detail in the response filed by the D.A.'s
25 office, those shall be adopted by the Court. And Mr. Foley's two

1 objections, the ones that was filed on November 24th, as well as the
2 objection that was filed on November 26th, are both denied. Okay.

3 And, Mr. D.A., you'll be submitting paperwork to this Court?

4 MR. GARDNER: Judge, we would ask you to sign the -- the order if you
5 have it there available. If not, we can prepare an order.

6 THE COURT: Yeah, you need to send it. I don't have one.

7 MR. GARDNER: Okay. We will prepare that and send it for the Court's
8 signature.

9 THE COURT: All right. Thank you.

10 THE CLERK: You should've (indiscernible).

11 MR. GARDNER: Thank you, Judge.

12 THE CLERK: Your JEA should have sent...

13 THE COURT: Oh you -- you know what? I could have it. It could be
14 on my desk or something. I just haven't seen it. 'Cause, you know what?
15 It probably is because Donna is on vacation...

16 THE CLERK: Okay.

17 THE COURT: ...for a couple of -- or yesterday.

18 THE CLERK: (Indiscernible).

19 THE COURT: And probably...

20 (THE PROCEEDING ENDED AT 10:52:52.)

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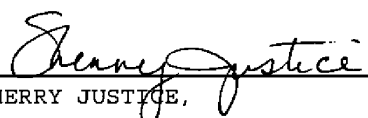
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ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.


SHERRY JUSTICE,
Transcriber II

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Ann L. Blum
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	

BEFORE THE HONORABLE SYLVIA TEUTON

TRANSCRIPT RE: MOTION FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT

TUESDAY, MAY 17, 2016

1 APPEARANCES:

2 For the Public by DAFS KAREN CLIFFE, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY (Not present)
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY (Not present)
8 For the Respondent: Pro se

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1 LAS VEGAS, NEVADA

TUESDAY, MAY 17, 2016

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

3 (THE PROCEEDING BEGAN AT 10:57:05.)

4 THE COURT: This is R-11-162425. Neither party is present. I see
5 there's a -- there's an appeal pending. Let's see. Let's see what this
6 says.

7 Let me hear from the D.A.

8 MS. CLIFFE: Yes, Your Honor, this -- I saw that the objection was
9 denied. It was on today just for the modification. He was to bring his
10 tax returns, profit and loss statements. He's not paying. He's not
11 receiving any kind of State assistance. I know he plead his income at 800
12 a month; but quite frankly, without him being here, I'm not -- I'm not sure
13 what his income is.

14 THE COURT: Okay. Does he have a bench warrant out or not? I can't
15 tell. Is there a bench warrant out for him?

16 MS. CLIFFE: I was just looking at the filed orders on objection and
17 I didn't see that listed.

18 THE COURT: Because, you know, when you -- when there's an objection,
19 I have no way of seeing the underlying order because it's never filed. And
20 I don't have access to anything, so. All right. So Respondent's Request
21 to Modify is hereby denied.

22 THE CLERK: And, Your Honor, I don't see a bench warrant.

23 THE COURT: Okay. There's failure to appear today and provide proof
24 of income and 2015 tax returns.

25 You said that was ordered?

1 MS. CLIFFE: I didn't see it. I -- I do see that -- it was ordered.
2 And I do see that in the order after objection, there was a finding,
3 Respondent has the ability to pay. And there is no indication of willful
4 underemployment. And that it just states the return hearing is set for
5 July 13th, at 2016.

6 THE COURT: That'll stay. July 13th, 2016, at 2:15.

7 THE CLERK: Yes.

8 THE COURT: All right. And I'll find that his Request to Modify is
9 denied for failure to appear today and provide proof of income and 2015 tax
10 returns as previously ordered. But I'll keep the temporary in case he
11 comes up with something later. He owes \$57,168.39. That's through
12 1/31/2016. That is a judgment. The Petitioner has the health insurance.
13 If available, that will continue. He has quite a bit of stay jail time.
14 That will also st- be stayed. Okay.

15 THE CLERK: That's it.

16 THE COURT: Is that it?

17 THE MARSHAL: Mm-hm.

18 THE COURT: Thank you.

19 (THE PROCEEDING ENDED AT 11:00:27.)

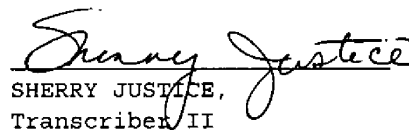
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22 ATTEST: I do hereby certify that I have truly and correctly
23 transcribed the digital proceedings in the above-entitled case to the best
24 of my ability.

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SHERRY JUSTICE,
Transcriber II

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Alma J. L. L...
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
vs.)	
MICHAEL A. FOLEY,)	APPEAL NO. 69997
Respondent.)	

BEFORE THE HONORABLE ELLIOT YUG

TRANSCRIPT RE: REVIEW - HM

WEDNESDAY, JULY 13, 2016

1 APPEARANCES:

2 For the Public by DAFS KAREN CLIFFE, ESQ.
3 Chief Deputy D.A. - Family Support
4 1900 E. Flamingo Rd., #100
Las Vegas, Nevada 89119

5 The Petitioner: PATRICIA FOLEY (Not present)
6 For the Petitioner: Pro se

7 The Respondent: MICHAEL FOLEY (Not present)
8 For the Respondent: Pro se

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1 LAS VEGAS, NEVADA

WEDNESDAY, JULY 13, 2016

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

3 (THE PROCEEDING BEGAN AT 14:36:34.)

4 THE COURT: This is 24 1, Foley v. Foley, Case Number R-11-162 --
5 excuse me, R-11-162425. Neither party is present. Last payment was 2014.
6 Okay. And there's an Order to Show Cause.

7 Madam D.A., I assume you want contempt and a bench warrant.

8 MS. CLIFFE: Yes, Your Honor. He has not paid since August of 2014.
9 So I am requesting a bench warrant today.

10 THE COURT: Okay. \$2000. And that is because his monthly payments
11 are \$833. And he has not made a payment in over a year. Okay. That takes
12 care of Foley.

13 (THE PROCEEDING ENDED AT 14:37:41.)

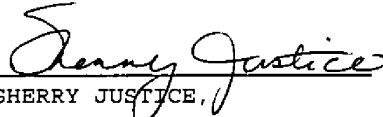
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16 ATTEST: I do hereby certify that I have truly and correctly
17 transcribed the digital proceedings in the above-entitled case to the best
of my ability.

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SHERRY JUSTICE,
Transcriber II

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FEB -7 2017

3 *John L. Smith*
CLERK OF COURT

4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7
8 PATRICIA FOLEY,) CASE NO. R-11-162425-R
9 Petitioner,) DEPT. C
10 vs.)
11 MICHAEL A. FOLEY,) APPEAL NO. 69997
12 Respondent.)
_____)

13 CERTIFICATION OF TRANSCRIPTS/NOTIFICATION OF COMPLETION

14 The office of Transcript Video Services received a request for
15 original transcripts and one copy of each from Abraham G. Smith, Esq., on
16 January 03, 2017, for the following proceedings in the above-captioned
17 case:

18 APRIL 24, 2012; AUGUST 28, 2012; OCTOBER 30, 2013; FEBRUARY 19, 2014;
19 AUGUST 08, 2014; AUGUST 11, 2014; DECEMBER 09, 2014; JANUARY 28, 2015;
APRIL 15, 2015; JUNE 17, 2015; NOVEMBER 16, 2015; JANUARY 15, 2016;
JANUARY 20, 2016; MAY 17, 2016; JULY 13, 2016; (August 31, 2016 - off calendar)

20 I do hereby certify that true and accurate copies of the transcripts
21 requested in the above-captioned case were filed with the Eighth Judicial
22 District Court on February 07, 2017.

23 DATED this 7th day of February, 2017.

24 SHERRY JUSTICE
TRANSCRIPT VIDEO SERVICES

Sherry Justice

FILED

FEB -7 2017

[Signature]
CLERK OF COURT

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EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,)	CASE NO. R-11-162425-R
Petitioner,)	DEPT. C
)	
vs.)	
)	APPEAL NO. 69997
MICHAEL A. FOLEY,)	
Respondent.)	
_____)	

RECEIPT OF COPY

RECEIPT OF COPY of transcripts and certifications of the
APRIL 24, 2012; AUGUST 28, 2012; OCTOBER 30, 2013; FEBRUARY 19, 2014;
AUGUST 08, 2014; AUGUST 11, 2014; DECEMBER 09, 2014; JANUARY 28, 2015;
APRIL 15, 2015; JUNE 17, 2015; NOVEMBER 16, 2015; JANUARY 15, 2016;
JANUARY 20, 2016; MAY 17, 2016; JULY 13, 2016; (August 31, 2016 - off calendar),
hearings in the above-captioned case that were filed February 07, 2017,
for Abraham G. Smith, Esq., is acknowledged this 8 day of Feb, 2017.

BY

[Signature: F. Roca]
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
702-949-8335

FILED

FEB -7 2017

Ann L. Williams
CLERK OF COURT

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EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

PATRICIA FOLEY,) CASE NO. R-11-162425-R
Petitioner,) DEPT. C
vs.)
MICHAEL A. FOLEY,) APPEAL NO. 69997
Respondent.)
_____)

FINAL BILLING OF TRANSCRIPTS

The office of Transcript Video Services filed transcripts for Abraham G. Smith, Esq., on February 07, 2017, for the following proceedings in the above-captioned case:

APRIL 24, 2012; AUGUST 28, 2012; OCTOBER 30, 2013; FEBRUARY 19, 2014;
AUGUST 08, 2014; AUGUST 11, 2014; DECEMBER 09, 2014; JANUARY 28, 2015;
APRIL 15, 2015; JUNE 17, 2015; NOVEMBER 16, 2015; JANUARY 15, 2016;
JANUARY 20, 2016; MAY 17, 2016; JULY 13, 2016; (August 31, 2016 - off calendar)

Original transcripts and one copy of each were requested. Fees are waived.

DATED this 7th day of February, 2017.

SHERRY JUSTICE
TRANSCRIPT VIDEO SERVICES

Received by *F. Rosum* this *8th* day of *Feb*, 2017.

ITEMS LEFT BEYOND NINETY DAYS ARE SUBJECT TO DISPOSAL WITHOUT REFUND.
COUNTY RETENTION POLICY APPROVED BY INTERNAL AUDIT.


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Foley, Petitioner(s). vs. Michael A
Foley, Respondent(s).

Case No.: R-11-162425-R

Department C

NOTICE TO STATISTICALLY CLOSE CASE USJR PHASE II

Upon review of this matter and good cause appearing, the Clerk of the Court is hereby directed to statistically close this case for the following reason:

- ☐ Other
☐ Default by Judgment
☐ Judgment by Trial
☐ Settled/Withdrawn
☒ With Judicial Conf/Hrg
☐ Without Judicial Conf/Hrg

DATED this 14th day of October, 2017.



CHARLES J. HOSKIN
PRESIDING JUDGE



1 **DECL**
2 MICHAEL FOLEY
3 209 S. Stephanie St. Ste B-191
4 Henderson, NV 89012
5 Telephone: (702) 771-9725
6 Defendant in Proper Person

7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 PATRICIA FOLEY

11 Petitioner,

Case No. R-11-162425

12 vs.

Dept. No. "Child Support"

13 MICHAEL FOLEY,

14 Respondent.

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16
17 **DECLARATION**

18
19 The Respondent Michael Foley hereby submits the attached statements, Exhibit "1,"
20 to demonstrate that he fully supports his children, even financially, contrary to what the
21 Petitioner and District Attorney would have this tribunal believe.

22 Since the Respondent invoked the jurisdiction of the Nevada Supreme Court, he has
23 taken the opportunity to have freedom from bodily restraint to exercise his right to provide
24 dental and other necessary care for his children during his extremely limited custody times
25 on Tuesday and Thursday afternoons. Although this form of care does not at all satisfy the
26 Petitioner's and the government's expectations of the delivery of liquid currency, the
27 Respondent, as a fit parent who knows what is in his children's best interests, provides a
28 broad array of support for his children that cannot be measured in terms of dollars or cents,

1 and will continue to support his children temporally and spiritually, according to their
2 needs, as long as the Petitioner and government don't confine him or otherwise disable him
3 from doing so.

4

5 DATED this 16th day of January, 2018.

6

7 /s/ Michael Foley /

8 Michael Foley, Respondent in Proper Person

9

10

11 **CERTIFICATE OF SERVICE**

12 The undersigned hereby certifies that the foregoing DECARATION will have been
13 mailed first class via the U.S. Postal Service on January 17, 2018 to the following:

14

15 Patricia Foley
16 8937 Austin Ridge Avenue
17 Las Vegas, Nevada 89178

18

19 DATED this 16th day of January, 2018.

20

21 /s/ Michael Foley /

22 Michael Foley, Respondent in Proper Person

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EXHIBIT “A”

Ledger Copy
By Responsible Party

Michael Foley (826401)
for Responsible Party: Michael Foley

Date	Patient	Dr	Cl	Description of Service	Amount	Charges	Payments	Current	Total
Michael Foley									
4/12/2016	Michael	1	9	Cash	-200.00		-200.00	-200.00	-200.00
4/26/2016	Michael	1	9	full ortho TX - Contract	2,640.00			-200.00	2,440.00
4/26/2016	Michael	1	9	full ortho TX - Initial Fee (Contract)	640.00	640.00		440.00	2,440.00
4/26/2016	Michael	1	48	Credit Card: 9932	-235.00		-235.00	205.00	2,205.00
4/26/2016	Michael	1	48	Credit Card: 0247	-205.00		-205.00	0.00	2,000.00
6/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	2,000.00
6/7/2016	Michael	1	9	Credit Card: 9932	-125.00		-125.00	0.00	1,875.00
7/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	1,875.00
7/14/2016	Michael	1	48	Credit Card: 9932	-125.00		-125.00	0.00	1,750.00
8/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	1,750.00
8/25/2016	Michael	1	9	Cash	-125.00		-125.00	0.00	1,625.00
9/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	1,625.00
10/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		250.00	1,625.00
10/6/2016	Michael	1	48	Credit Card: 0247	-150.00		-150.00	100.00	1,475.00
10/11/2016	Michael	1	9	Cash	-100.00		-100.00	0.00	1,375.00
11/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	1,375.00
11/17/2016	Michael	1	9	Credit Card: 0247	-125.00		-125.00	0.00	1,250.00
12/1/2016	Michael	1	4	Credit Card: xxxxxxxxxxxx0247 VISA	-125.00		-125.00	-125.00	1,125.00
12/1/2016	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		0.00	1,125.00
1/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	1,125.00
1/19/2017	Michael	1	48	Credit Card: 4511	-250.00		-250.00	-125.00	875.00
2/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		0.00	875.00
2/23/2017	Michael	1	48	Credit Card: 4511	-125.00		-125.00	-125.00	750.00
3/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		0.00	750.00
4/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	750.00
4/6/2017	Michael	1	9	Cash	-125.00		-125.00	0.00	625.00
5/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	625.00
5/11/2017	Michael	1	9	Credit Card: 4511	-125.00		-125.00	0.00	500.00
6/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	500.00
6/29/2017	Michael	1	48	Credit Card: 4511	-125.00		-125.00	0.00	375.00
7/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	375.00
7/27/2017	Michael	1	48	Cash	-125.00		-125.00	0.00	250.00
8/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	250.00
8/15/2017	Michael	1	48	Credit Card: 4511	-125.00		-125.00	0.00	125.00
9/1/2017	Michael	1	4	full ortho TX - Contract Charge	125.00	125.00		125.00	125.00
9/7/2017	Michael	1	9	Cash	-125.00		-125.00	0.00	0.00
Ledger Totals as of 12/5/2017					2,640.00	-2,640.00		0.00	0.00

All Dates

CS OrthoTrac

End of Report

Page 1

Ledger Copy
By Responsible Party

Elizabeth Foley (827206)
for Responsible Party: Patricia Foley

Date	Patient	Dr Cl	Description of Service	Amount	Charges	Payments	Current	Total
Patricia Foley								
9/21/2017	Elizabeth	1 9	Cash	-540.00		-540.00	-540.00	-540.00
9/26/2017	Elizabeth	1 48	Full ortho TX w/ Herbst - Contract	2,840.00			-540.00	2,300.00
9/26/2017	Elizabeth	1 48	Full ortho TX w/ Herbst - Initial Fee (540.00	540.00		0.00	2,300.00
9/26/2017	Elizabeth	1 9	Cash	-115.00		-115.00	-115.00	2,185.00
10/1/2017	Elizabeth	1 4	Full ortho TX w/ Herbst - Contract Ch	115.00	115.00		0.00	2,185.00
11/1/2017	Elizabeth	1 4	Full ortho TX w/ Herbst - Contract Ch	115.00	115.00		115.00	2,185.00
12/1/2017	Elizabeth	1 4	Full ortho TX w/ Herbst - Contract Ch	115.00	115.00		230.00	2,185.00
12/5/2017	Elizabeth	1 48	Credit Card: 0236	-20.00		-20.00	210.00	2,165.00
12/5/2017	Elizabeth	1 48	Credit Card: 4511	-95.00		-95.00	115.00	2,070.00
Ledger Totals as of 12/5/2017					885.00	-770.00	115.00	2,070.00



DISTRICT COURT
CLARK COUNTY, NEVADA

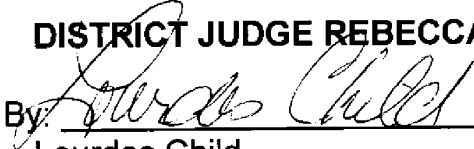
Patricia Foley, Petitioner(s).
vs.
Michael A Foley, Respondent(s).

R-11-162425-R
Department C

NOTICE OF HEARING

Please be advised that the above-entitled matter has been scheduled for **Hearing re: Remand** to be heard by the Honorable Rebecca L. Burton at the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada, on the **17th day of January, 2019** at the hour of **10:00 AM** in **Department C, Courtroom 08**. **YOUR PRESENCE IS NECESSARY.**

DISTRICT JUDGE REBECCA L. BURTON

By: 
Lourdes Child
Judicial Executive Assistant
Department C

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CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

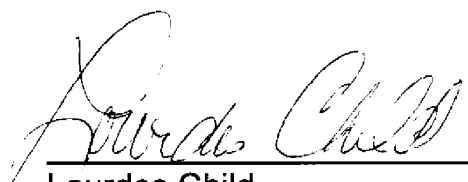
☒ I mailed, via first-class mail, postage fully prepaid, the foregoing NOTICE OF HEARING to:

Michael A. Foley
209 S. Stephanie St., STE B-191
Henderson, NV 89012

Patricia Foley
8937 Austin Ridge Avenue
Las Vegas, NV 89178

Steven B. Wolfson, Esq.
Family Support Division - District Attorney's Office
1900 E. Flamingo Road
Las Vegas, NV 89119

Abraham Smith, Esq.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169



Lourdes Child
Judicial Executive Assistant
Department C

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY,
Appellant,
vs.
PATRICIA FOLEY,
Respondent.

Supreme Court No. 69997
District Court Case No. R162425

FILED

OCT 18 2019

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the February 22, 2016, order AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 21st day of December, 2018.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We deny rehearing in part as to the issue regarding NRS 425.3844."

Judgment, as quoted above, entered this 10th day of May, 2019.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We deny the remaining issues in the petition for rehearing"

Judgment, as quoted above, entered this 20th day of September, 2019.

R - 11 - 162425 - R
CCJA
NV Supreme Court Clerks Certificate/Judgn
4870628



IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
October 15, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY,
Appellant,
vs.
PATRICIA FOLEY,
Respondent.

No. 69997

FILED

DEC 21 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, VACATING IN PART, AND
REMANDING*

This is an appeal from a district court order affirming a special master's recommendations to deny appellant's request to modify his child support obligation and find him in contempt for nonpayment of support in a child support enforcement matter. Eighth Judicial District Court, Clark County; Rebecca Burton, Judge.

In 2012, Michael Foley and Patricia Foley divorced, and the district court ordered Michael to pay child support for their three minor children. Michael failed to pay, and he was subject to an enforcement action assigned to a special master. From 2012 through 2015, Michael was the subject of several civil contempt orders—and incarcerated four times—for his failure to pay child support. Michael frequently failed to attend the contempt proceedings, and each contempt order during that time was entered pursuant to NRS 425.3844(3)(a), allowing judgment to be entered on a special master's recommendation where there is no objection to the recommendation within 10 days.

On November 12, 2015, Michael was arrested pursuant to a civil contempt order and bench warrant after failing to pay child support. During an in-custody hearing four days later, Michael disputed his child support obligation of \$833 per month, stating that he possessed only \$119. The master refused to modify Michael's support obligation, recommended a purge amount of \$2,000 for the contempt, and imposed a sentence of ten days incarceration. While serving this sentence, Michael filed two objections to the recommendation, arguing that the master failed to make a finding that he had the ability to pay the purge amount before ordering his imprisonment for contempt, and the court was constitutionally required to appoint counsel under these circumstances.

The State filed an opposition, arguing that Michael's willful underemployment and lack of evidence demonstrating his indigence were sufficient for the master to find Michael in contempt. The State further noted that the monthly support obligation was calculated based on Michael's own representations in his December 2014 response to the State's motion to modify support, and Michael had failed to file a motion to reduce his child support based on changed circumstances. The State asserted that Michael's in forma pauperis status had no bearing on whether he has an ability to pay an established child support obligation, as applying for indigence status for document filing purposes is an ex parte proceeding that may be granted based on the applicant's affidavit regarding means to prosecute or defend an action, and without an evidentiary hearing. On February 22, 2016, the district court entered an order affirming the master's recommendation, explicitly adopting the points and authorities in the State's opposition and stating generally that Michael, "ha[d] the ability to pay and there is an indication of possible willful underemployment."

The district court appropriately affirmed the special master's refusal to modify Michael's child support obligation

Michael argues that the district court erroneously affirmed the special master's refusal to modify his child support obligation. We disagree.

Once a court has established an obligation for support, a parent can file a request for review and modification by a district court based on changed circumstances. See NRS 125B.080(3); NRS 125B.145(1); *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009). Here, Michael only made an oral objection to his child support obligation during his in-custody contempt hearing with the special master in the context of support enforcement proceedings. Because child support modification requests must be made by proper motion to the district court, upon which a factual record may be made regarding any changed circumstances, we conclude that the district court properly affirmed the special master's refusal in this regard. See *Rivero*, 125 Nev. at 431, 216 P.3d at 228 (reviewing a district court's decision resolving a motion to modify child support for abuse of discretion). Accordingly, we affirm the district court's order as it pertains to Michael's request to modify his child support obligation.

The district court contempt proceedings did not comport with due process requirements

Michael challenges the February 2016, order, arguing that the district court proceedings failed to comport with due process requirements because the district court imposed a term of incarceration for contempt without first determining that he was able to pay the purge amount.¹ We agree.

¹Michael also argues that the earlier contempt orders should be vacated for various reasons. However, because Michael failed to timely object to the master's recommendations on which the contempt orders were

We review an order of contempt for an abuse of discretion. *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016). An abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination, *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004), or disregards controlling law, *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

District courts maintain contempt power to address “[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.” NRS 22.010(3). Contempt proceedings may be criminal or civil in nature. *Lewis*, 132 Nev. at 457, 373 P.3d at 880. A civil contempt action is remedial in nature because it is meant to secure compliance with the court order. *Id.*; see also NRS 22.110. However, “consistent with due process, a party cannot be found guilty of failing to pay child support and sentenced to jail conditional upon his payment of arrearages unless the trial court first determines that the individual (1) has the ability to make the payment and (2) willfully refuses to pay.” *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 809, 102 P.3d 41, 49 (2004).

In *Rodriguez*, we examined whether a district court appropriately set the purge amount for the defendant’s release from a 25-

entered, those earlier orders are not properly considered within the context of this appeal, and we, therefore, will not consider his arguments as to those orders. See NRS 425.3844(2) (providing that “[w]ithin 10 days after receipt of the recommendation, any party may file with the district court and serve upon the other parties a notice of objection to the recommendation”). Indeed, Michael challenged one of those orders in an earlier writ petition before this court and we denied that petition based on Michael’s failure to “demonstrate that he timely objected to the master’s recommendation to hold him in contempt.” See *Foley v. Gillespie*, Docket No. 64351 (Order denying Petition for Extraordinary Writ Relief, May 14, 2014).

day jail sentence for civil contempt. *Id.* at 814, 102 P.3d at 51-52. The district court directed Rodriguez to pay \$10,000 in order to secure his release from his sentence but did not indicate why it set the purge amount at that level. *Id.* at 814, 102 P.3d at 51. This court ordered a temporary stay on his incarceration pending consideration of his writ petition, *id.* at 804, 102 P.3d at 45, and ultimately granted the petition in part with instruction to the district court "to make specific findings concerning Rodriguez's indigency, to hold a further hearing if necessary, and thereafter to determine whether Rodriguez is in contempt of court, the penalty for such contempt, and the amount that will be necessary to purge that contempt," *id.* at 814, 102 P.3d at 52.

Here, in regard to the district court's February 22 order, despite Michael's statement that he possessed only \$119, the special master recommended a purge amount of \$2,000 and imposed ten days' incarceration. After Michael timely objected, the district court affirmed, finding generally that Michael "ha[d] the ability to pay and there is an indication of possible willful underemployment." As in *Rodriguez*, the district court failed to make specific findings regarding Michael's present ability to pay the purge amount. Therefore, the district court deprived Foley of his due process rights by affirming the special master's recommendation of civil contempt without specific findings of his ability to pay the \$2,000 purge amount. Accordingly, we

ORDER the February 22, 2016, order AFFIRMED IN PART AND VACATED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.²

<u>Cherry</u> , J. Cherry	<u>Douglas</u> , C.J. Douglas	<u>Gibbons</u> , J. Gibbons
<u>Pickering</u> , J. Pickering		<u>Hardesty</u> , J. Hardesty
<u>Parraguirre</u> , J. Parraguirre		<u>Stiglich</u> , J. Stiglich

²Michael further argues that (1) the district court erred by incarcerating him while he awaited in-custody hearings, (2) due process should compel counsel for child support contempt proceedings where the obligor is indigent, (3) “[p]unishment is [n]o [l]onger an [a]ppropriate [b]asis for [i]mposing [c]ivil contempt” for inability to pay child support, and (4) on remand, the matter should be reassigned from Master Sylvia Teuton. As to his first argument, given Michael’s failure to appear at multiple hearings prior to the issuance of the bench warrants, his arrest was necessary to secure his personal attendance. See NRS 22.140. Second, Michael offers no compelling reason as to why this court should depart from established precedent and find a categorical right to counsel in every civil contempt proceeding where the contemnor is indigent. See, e.g., *Turner v. Rogers*, 564 U.S. 431, 448 (2011) (“[T]he Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration . . .” (emphasis omitted)). Third, while we agree that “punishment may not be imposed in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order,” *Hicks v. Feiock*, 485 U.S. 624, 638 n.9 (1988), it has not been established whether Michael is unable to comply and the lack of specific findings in this regard will be addressed on remand. Fourth and finally, we decline to consider Michael’s argument regarding Master Teuton, as he did not file a motion to disqualify below, and such requests typically implicate factual issues that should be presented to the district court in the first instance.

cc: Hon. Rebecca Burton, District Judge
Lewis & Roca, LLP
Patricia Foley
American Civil Liberties Union of Nevada
Clark County District Attorney's Office
Greenberg Traurig, LLP
National Coalition for a Civil Right to Counsel
Barbara Buckley
Snell & Wilmer
Anne R. Traum
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: OCTOBER 15, 2019
Supreme Court Clerk, State of Nevada

By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY,
Appellant,
vs.
PATRICIA FOLEY,
Respondent.

No. 69997
FILED

MAY 10 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER DENYING IN PART PETITION FOR REHEARING AND
INVITING PARTICIPATION BY AMICUS CURIAE*

Appellant has petitioned this court for partial rehearing of the order entered on December 21, 2018. Having reviewed the petition, we deny rehearing in part as to the issue regarding NRS 425.3844. NRAP 40(c). It appears, however, that the participation of amicus curiae will assist the court in deciding whether to grant rehearing on the appointment-of-counsel issue.¹ We therefore invite the Clark County District Attorney's Office, Family Support Division (CCDA) to file a brief addressing the appointment-of-counsel issue raised in the rehearing petition. NRAP 29. If CCDA agrees, it shall have 28 days from the date of this order to file and serve an amicus brief that complies with NRAP 40(b) (governing form of petition and answer). Appellant shall have 14 days from service of CCDA's answer to file and serve any reply. We defer ruling on appellant's request for oral argument.

It is so ORDERED.

 C.J.

¹Respondent Patricia Foley, who is proceeding pro se, did not file an answering brief. The Clark County District Attorney was allowed to participate as amicus curiae and filed a brief addressing appellant's arguments on appeal.

cc: Lewis Roca Rothgerber Christie LLP/Las Vegas
Patricia Foley
Clark County District Attorney/Family Support Division
American Civil Liberties Union of Nevada/Las Vegas
Greenberg Traurig, LLP/Las Vegas

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: October 15, 2019
Supreme Court Clerk, State of Nevada

By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY,
Appellant,
vs.
PATRICIA FOLEY,
Respondent.

No. 69997

FILED

SEP 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 12 DEPUTY CLERK

ORDER DENYING REHEARING

Appellant petitioned this court for partial rehearing of this court's order affirming in part, vacating in part and remanding entered on December 21, 2018. On May 10, 2019, we denied rehearing in part as to the issue regarding NRS 425.3844. Further, we invited the Clark County District Attorney's Office, Family Support Division (CCDA) to participate as amicus curiae and file a brief addressing the appointment-of-counsel issue raised in the rehearing petition.

Having reviewed the petition, the briefs of amicus curiae, and the reply to the amicus curiae brief of the CCDA, we deny the remaining issues in the petition for rehearing. In this court's order affirming in part, vacating in part, and remanding, we noted Michael's failure to offer any compelling reason to find a categorical right to counsel in every civil contempt proceeding where the contemnor is indigent. *See Foley v. Foley*, Docket No. 69997 (Order Affirming in Part, Vacating in Part, and Remanding, December 21, 2018, at 6 n.2). In vacating and remanding the district court's contempt order, we did not decide, and therefore left open,

SUPREME COURT
OF
NEVADA

(O) 1947A 

19-39321

the question of Michael's right to appointed counsel. Consideration of this issue should be developed by the district court in the first instance.

It is so ORDERED.

L. Gibbons, C.J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. Rebecca Burton, District Judge, Family Court Division
Lewis Roca Rothgerber Christie LLP/Las Vegas
Patricia Foley
Clark County District Attorney/Family Support Division
American Civil Liberties Union of Nevada/Las Vegas
Greenberg Traurig, LLP/Las Vegas
Eighth District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: DECEMBER 15, 2019
Supreme Court Clerk, State of Nevada
By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL FOLEY,
Appellant,
vs.
PATRICIA FOLEY,
Respondent.

Supreme Court No. 69997
District Court Case No. R162425

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 15, 2019

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Rebecca Burton, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
American Civil Liberties Union of Nevada/Las Vegas
Greenberg Traurig, LLP/Las Vegas
Clark County District Attorney/Family Support Division
Barbara Buckley, Executive Director
Anne R. Traum
Snell & Wilmer, LLP/Las Vegas \ Kelly H. Dove
Patricia Foley

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on OCT 18 2019.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

OCT 18 2019

CLERK OF THE COURT

1

19-42547



1 ORDR

2 DISTRICT COURT, FAMILY DIVISION

3 CLARK COUNTY, NEVADA

4 PATRICIA FOLEY,)

5 Plaintiff,)

6 vs.)

7 MICHAEL A. FOLEY,)

8 Defendant.)

CASE NO. R-11-162425-R
DEPT NO. C

9
10 ORDER AFTER REMAND

11 THIS MATTER having come before the Court on remand from the
12 Nevada Supreme Court, remittitur received on October 18, 2019, and
13 consistent with the *Order Affirming in Part, Vacating in Part, and*
14 *Remanding* filed December 21, 2018; the *Order Denying in Part Petition*
15 *for Rehearing and Inviting Participation by Amicus Curiae* filed May 10,
16 2019; and the *Order Denying Rehearing* filed September 20, 2019; and
17 consistent with the orders stated therein and for good cause appearing
18 therefor,

19 ////


20 ////

1 NOW, THEREFORE, IT IS HEREBY ORDERED that the *Order*
2 *Following Objection* adopting the *Master's Recommendation* entered
3 February 22, 2016 is hereby vacated.

4 IT IS FURTHER ORDERED that this matter shall be set for hearing
5 on the Hearing Master's calendar on **DECEMBER 6, 2019 at 9:30 a.m.**
6 **in Courtroom 1, Child Support Center of Southern Nevada, 1900**
7 **E. Flamingo Road, Las Vegas, Nevada 89119**, for the purpose of
8 making specific findings concerning Michael's present ability to pay the
9 ordered child support, to hold an evidentiary hearing if necessary, and
10 thereafter to determine whether Michael is in contempt of court, the
11 penalty for such contempt, and the amount that will be necessary to purge
12 that contempt.

13 IT IS FURTHER ORDERED that no later than ten days before the
14 hearing, Michael shall complete and file a *Financial Disclosure Form* to
15 which he shall attach his last three paystubs or other verification of his
16 income together with proof of service.

17 DATED October 28, 2019.

18 
19 REBECCA L. BURTON
20 DISTRICT COURT JUDGE
21 DEPARTMENT C

Page 2 of 2

NEO

Electronically Filed
10/28/2019 4:38 PM
Steven D. Grierson
CLERK OF THE COURT



**DISTRICT COURT
CLARK COUNTY, NEVADA**

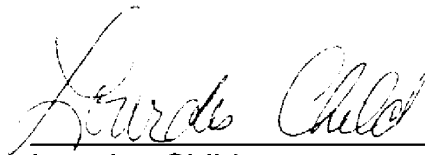
Patricia Foley, Petitioner(s).
vs.
Michael A Foley,
Respondent(s).

Case No: R-11-162425-R
Department C

NOTICE OF ENTRY OF ORDER

Please take notice that an ORDER AFTER REMAND was entered in
the foregoing action and the following is a true and correct copy
thereof.

Dated: October 28, 2019



Lourdes Child
Judicial Executive Assistant
Department C

NEO

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

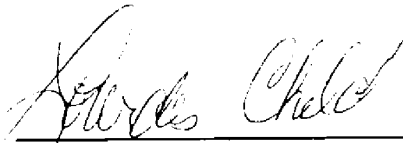
☒ I mailed, via first-class mail, postage fully prepaid, the foregoing
NOTICE OF ENTRY OF ORDER to:

Michael A. Foley
209 S. Stephanie Street, STE B-191
Henderson, NV 89012

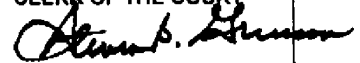
Abraham Smith, Esq.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Patricia Foley
8937 Austin Ridge Avenue
Las Vegas, NV 89178

Steven B. Wolfson, Esq.
Family Support Division - District Attorney's Office
1900 E. Flamingo Road
Las Vegas, NV 89119



Lourdes Child
Judicial Executive Assistant
Department C



1 ORDR

2

DISTRICT COURT, FAMILY DIVISION

3

CLARK COUNTY, NEVADA

4

PATRICIA FOLEY,

)

)

5

Plaintiff,

)

)

6

vs.

)

CASE NO. R-11-162425-R

)

DEPT NO. C

7

MICHAEL A. FOLEY,

)

)

8

Defendant.

)

)

9

10

ORDER AFTER REMAND

11

THIS MATTER having come before the Court on remand from the

12

Nevada Supreme Court, remittitur received on October 18, 2019, and

13

consistent with the *Order Affirming in Part, Vacating in Part, and*

14

Remanding filed December 21, 2018; the *Order Denying in Part Petition*

15

for Rehearing and Inviting Participation by Amicus Curiae filed May 10,

16

2019; and the *Order Denying Rehearing* filed September 20, 2019; and

17

consistent with the orders stated therein and for good cause appearing

18

therefor,

19

////

20

////

21

Page 1 of 2

1 NOW, THEREFORE, IT IS HEREBY ORDERED that the *Order*
2 *Following Objection* adopting the *Master's Recommendation* entered
3 February 22, 2016 is hereby vacated.


4 IT IS FURTHER ORDERED that this matter shall be set for hearing
5 on the Hearing Master's calendar on **DECEMBER 6, 2019 at 9:30 a.m.**
6 **in Courtroom 1, Child Support Center of Southern Nevada, 1900**
7 **E. Flamingo Road, Las Vegas, Nevada 89119**, for the purpose of
8 making specific findings concerning Michael's present ability to pay the
9 ordered child support, to hold an evidentiary hearing if necessary, and
10 thereafter to determine whether Michael is in contempt of court, the
11 penalty for such contempt, and the amount that will be necessary to purge
12 that contempt.

13 IT IS FURTHER ORDERED that no later than ten days before the
14 hearing, Michael shall complete and file a *Financial Disclosure Form* to
15 which he shall attach his last three paystubs or other verification of his
16 income together with proof of service.

17 DATED October 28, 2019.

18 

19 REBECCA L. BURTON
20 DISTRICT COURT JUDGE
21 DEPARTMENT C


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Patricia Foley, Petitioner(s).

vs.

Michael A Foley, Respondent(s).

Case No.: R-11-162425-R

Department C

NOTICE TO STATISTICALLY CLOSE CASE USJR PHASE II

Upon review of this matter and good cause appearing, the Clerk of the Court is hereby directed to statistically close this case for the following reason:

☐

Other

☐

Default by Judgment

☐

Judgment by Trial

Settled/Withdrawn


☒

With Judicial Conf/Hrg

☐

Without Judicial Conf/Hrg

DATED this 23rd day of November, 2019.



BRYCE C. DUCKWORTH
PRESIDING JUDGE



OBJT

MICHAEL FOLEY
209 S. Stephanie St. Ste B-191
Henderson, NV 89012
Telephone: (702) 771-9725
Defendant in Proper Person

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

PATRICIA FOLEY

Petitioner,

vs.

MICHAEL FOLEY,

Respondent.

Case No. R-11-162425
Dept. No. "Child Support"

Date of Hearing: December 6, 2019

OBJECTION

COMES NOW, Respondent Michael Foley, in Proper Person, and hereby files this OBJECTION to the Court's Order setting a hearing and requiring the filing of a financial disclosure statement. This objection is filed under NRCP 53, as well as the 5th and 6th Amendments to the U.S. Constitution.

FACTS

Inasmuch as the Court's order setting the above-referenced hearing on calendar might require a response from the respondent, Michael Foley states the following facts:

The respondent has not been served with a complaint with the above referenced case number, R-11-162425. Due process and fairness dictates that a person against whom legal

1 proceedings have commenced must be informed of the allegations pending against him, at
2 least so he can know how to prepare and defend against any adverse action against him.

3 There is no motion filed or served to justify the Court's "order" that has been filed
4 and mailed to the respondent. The respondent is not adequately informed of the matter that
5 is set for hearing.

6 ARGUMENT

7 The respondent can only assume that the above-entitled action is somehow related
8 to the divorce action D-08-403071-D, over which Judge Rebecca Burton has jurisdiction.
9 Without personal service of a complaint naming Michael Foley as the respondent, this
10 party can only guess what the hearing is about. The respondent named above respectfully
11 requests that the "Court" not order hearings without formal notice of the nature of the
12 action, without a motion and notice of motion, and without personal service of the
13 complaint that initiated case number R-11-162425.

14 Since the order has been noticed to the respondent's wife, Patricia Foley, and the
15 District Attorney, the respondent speculates that the hearing pertains to the enforcement of
16 child support payments. The respondent hereby invokes his right under the 5th Amendment
17 to the U.S. Constitution to not incriminate himself, therefore he will not file a financial
18 disclosure for the review of any party or the District Attorney, who has a long history of
19 violating the respondent's right to liberty and due process. The respondent also invokes his
20 6th Amendment right to face his accuser. Since the Court (Rebecca Burton) has a history of
21 consistently ruling against this litigant and in favor of Patricia Foley, even with Patricia
22 absent from the previous divorce Court proceeding in March 2018, the respondent will not
23 participate in yet another kangaroo court proceeding where the accuser is absent and the
24 defendant is left defenseless without his right to an attorney, since this litigant cannot
25 afford one. Without a motion by a complaining party, and without notice thereof, and
26 absent a summons, subpoena, or order to appear, the respondent elects to not engage in
27 such a constitutionally defective and unlawful activity, especially in light of the fact that
28 there is no proper order referring a distinct matter to a hearing master. If the October 28,

1 2019 order is intended to be an order referring some matter to a master under NRCP 53,
2 then this respondent **OBJECTS** to the order as it is defective and does not conform to the
3 requirements under NRCP 53. This party does NOT CONSENT to ANY MATTER being
4 referred to a master. NRCP 53(a)(2)(A). If the District Court wants the respondent to
5 personally appear before a hearing master, then the Court should wait for a controversy to
6 arise, or for a complaint or motion to be brought before the court, and be properly and
7 personally served upon the respondent. Since there is no complaint filed or served against
8 this named respondent under the above captioned case number, he hereby moves that the
9 "Court" dismiss the action *with prejudice*.

10 **CONCLUSION**

11 Because the respondent has not been noticed of the substance of the complaint that
12 may or may not exist under the above-referenced case number, and because there is no
13 proof of service showing that the respondent has been noticed of the substance of the
14 allegation(s) pending against him, the 4th and 14th Amendments to the U.S. Constitution
15 rightfully demand that the above-referenced matter be *dismissed with prejudice*.

16 DATED this 4th day of December, 2019.

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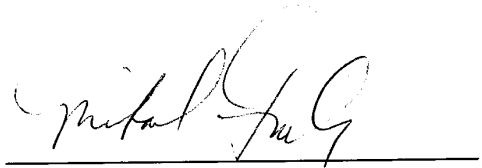
19 Michael Foley, Respondent in Pro Per
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CERTIFICATE OF MAILING

The foregoing OBJECTION was served upon Petitioner Patricia Foley on or about December 4, 2019, electronically (patygastelum@hotmail.com and patyfoley@hotmail.com) and/or via first class mail, postage prepaid to:

Patricia Foley
8937 Austin Ridge Ave
Las Vegas, Nevada 89178

DATED this 4th day of June, 2019.

A handwritten signature in cursive script, appearing to read "Michael Foley", is written over a horizontal line.

Michael Foley, Respondent in Pro Per



MOT
MICHAEL FOLEY
209 S. Stephanie St. Ste B-191
Henderson, NV 89012
Telephone: (702) 771-9725
Defendant in Proper Person

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY

Petitioner,

vs.

MICHAEL FOLEY,

Respondent.

Case No. R-11-162425
Dept. No. "Child Support"

Date of Hearing: December 6, 2019
Time of Hearing: 9:30 a.m.

MOTION FOR APPOINTMENT OF COUNSEL

NOTICE OF MOTION

PLEASE TAKE NOTICE that the following motion will be heard by the District Court on December 6, 2019, at 9:30 a.m. at 1900 E. Flamingo Road Ste. 100 Las Vegas, Nevada 89119.

COMES NOW, Respondent Michael Foley, in Proper Person, and hereby moves the court to appoint counsel at no cost to the respondent. This motion is made pursuant to the 14th Amendment to the U.S. Constitution.

1 **FACTS**

2 It appears as though the District Court (Judge Rebecca Burton) and the District
3 Attorney are advocating for the money interests of Patricia Foley, without her consent. The
4 Respondent Michael Foley opposes the government's efforts to arrest and imprison him for
5 being unable to pay the money debt that Patricia Foley won by fraud in September 2009.

6 **ARGUMENT**

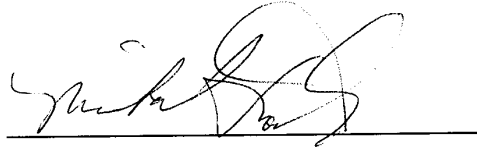
7 Inasmuch as proceedings appear to have commenced to return the respondent to jail
8 for exercising his right to not be imprisoned for a money debt, as guaranteed by the Nevada
9 Constitution, Article I, Sec. 14, as he has never been convicted or found liable for fraud,
10 libel or slander, and since the 14th Amendment has been interpreted by the U.S. Supreme
11 Court (and the Supreme Courts of many States) to guarantee the right to counsel for
12 unrepresented parties who are facing the loss of liberty, while being prosecuted by a
13 government attorney, regardless of whether the action is civil or criminal, and since the
14 hearing masters who serve at the pleasure of the District Court have demonstrated that they
15 are not adequately trained to understand or follow U.S. Supreme Court rulings like Turner
16 v. Rogers, 564 U.S. 431 (2011), and since this respondent had to wait 4 years for the
17 Nevada Supreme Court to recognize and declare that the District Court violated his
18 Constitutional right to due process in this action, and since the Supreme Court would rather
19 have the District Court rule that the respondent and every indigent child support alleged
20 debtor is entitled to free representation (see Exhibit "B,") the respondent hereby submits
21 the arguments already made to the Nevada Supreme Court to support this motion for
22 appointed counsel. Exhibit "A."

23 **CONCLUSION**

24 The arguments already submitted in the Nevada Supreme Court case no. 59997 by
25 pro bono counsel, as well as the amicus curiae briefs submitted by counsel for the ACLU
26 of Nevada and University of South Carolina Law Professor Elizabeth Patterson support the
27 respondent's request for appointment of counsel to defend him against the attacks on his
28

1 liberty. If necessary, the respondent is prepared and will file proof of his indigence upon
2 the Court's granting of this motion.

3 DATED this 4th day of December, 2019.

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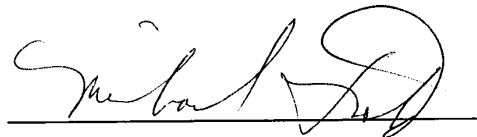
6 Michael Foley, Respondent in Pro Per

7
8 **CERTIFICATE OF SERVICE**

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11 Petitioner Patricia Foley on or about December 4, 2019, electronically
12 (patygastelum@hotmail.com and patyfoley@hotmail.com) and/or via first class mail,
13 postage prepaid to:

14
15 Patricia Foley
16 8937 Austin Ridge Ave
17 Las Vegas, Nevada 89178

18
19 DATED this 4th day of December, 2019.

20
21 

22 Michael Foley, Respondent in Pro Per
23
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25
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1 **SUPP**
2 MICHAEL FOLEY
3 209 S. Stephanie St. Ste B-191
4 Henderson, NV 89012
5 Telephone: (702) 771-9725
6 Defendant in Proper Person

7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 PATRICIA FOLEY

11 Petitioner,

12 vs.

13 MICHAEL FOLEY,

14 Respondent.

Case No. R-11-162425
Dept. No. "Child Support"

Date of Hearing: December 6, 2019
Time of Hearing: 9:30 a.m.

15
16
17 **SUPPLEMENT TO RESPONDENT'S OBEJECTION**

18 COMES NOW, Respondent Michael Foley, in Proper Person, and hereby
19 supplements the objection filed in response to the order filed October 28, 2019.

20 The supplement consists of statements written by the respondent's and petitioner's
21 children Michael and Elizabeth Foley. See Exhibit "A." These statements are submitted so
22 that the Court and the District Attorney will know how their harsh, insensitive and unfair
23 actions, in the pursuit of money for gambling-addicted petitioner Patricia Foley, harms the
24 parties' children.

25 DATED this 5th day of December, 2019.

26
27 /s/ Michael Foley /

28 Michael Foley, Respondent in Pro Per

1 **CERTIFICATE OF SERVICE**

2

3 The foregoing MOTION FOR APPOINTMENT OF COUNSEL was served upon

4 Petitioner Patricia Foley on or about December 5, 2019, electronically

5 (patygastelum@hotmail.com and patyfoley@hotmail.com) and/or via first class mail,

6 postage prepaid to:

7

8 Patricia Foley

9 8937 Austin Ridge Ave

10 Las Vegas, Nevada 89178

11

12 DATED this 5th day of December, 2019.

13

14 /s/ Michael Foley /

15 Michael Foley, Respondent in Pro Per

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28 **EXHIBIT “A”**

12/4/19

Dear Court,

I'm writing this letter to tell you how important my dad is to me. My dad is very important to me and he does lots of things for us.

For example, he always takes me to the orthodontist for my braces. That I really appreciate. My dad is very smart and helped always helping me with my homework assignments. Whenever I want new shoes he will always try to buy them for me. I don't think jail is the answer. I love my dad and he

loves me! Thank you for taking the time to read my letter. Happy Holidays!

Sincerely,
Elizabeth Foley

12-5-14

Dear Court,

I am writing this letter because I heard you are planning to throw my dad in jail, and I hope this can convince you to not take him to jail. I don't want him in jail because he's helping me transition into my adult life. Just recently, he helped me payed off a loan and now I have a good enough credit score to buy a car or even an apartment. Another example is helping me get a job. He has helped me write my resume, find a job that works for me, and he even helped me get to the places for the interview. If you take him away from me, I'd be lost and confused with no idea what to do with my life. He's also willing to do anything for me, no matter what it may be. Around this time last year, he forgot to pre order a game I wanted that was just about to come out. When he realized that he went to every store just so I can play that game day one. Lastly, if you take away my dad, I won't be able to spend Christmas with him. It's been a tradition of mine to see dad at least once around Christmas. I hope this letter convinces you to not throw my dad in jail and I hope you have a good day.

Sincerely,
Michael Foley (son)



MOT
MICHAEL FOLEY
209 S. Stephanie St. Ste B-191
Henderson, NV 89012
Telephone: (702) 771-9725
Defendant in Proper Person

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA FOLEY

Petitioner,

vs.

MICHAEL FOLEY,

Respondent.

Case No. R-11-162425
Dept. No. "Child Support"

Date of Hearing: December 6, 2019
Time of Hearing: 9:30 a.m.

MOTION FOR APPOINTMENT OF COUNSEL

NOTICE OF MOTION

PLEASE TAKE NOTICE that the following motion will be heard by the District Court on December 6, 2019, at 9:30 a.m. at 1900 E. Flamingo Road Ste. 100 Las Vegas, Nevada 89119.

COMES NOW, Respondent Michael Foley, in Proper Person, and hereby moves the court to appoint counsel at no cost to the respondent. This motion is made pursuant to the 14th Amendment to the U.S. Constitution.

1 **FACTS**

2 It appears as though the District Court (Judge Rebecca Burton) and the District
3 Attorney are advocating for the money interests of Patricia Foley, without her consent. The
4 Respondent Michael Foley opposes the government's efforts to arrest and imprison him for
5 being unable to pay the money debt that Patricia Foley won by fraud in September 2009.

6 **ARGUMENT**

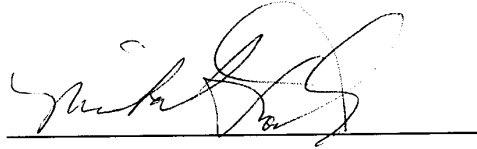
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9 Constitution, Article I, Sec. 14, as he has never been convicted or found liable for fraud,
10 libel or slander, and since the 14th Amendment has been interpreted by the U.S. Supreme
11 Court (and the Supreme Courts of many States) to guarantee the right to counsel for
12 unrepresented parties who are facing the loss of liberty, while being prosecuted by a
13 government attorney, regardless of whether the action is civil or criminal, and since the
14 hearing masters who serve at the pleasure of the District Court have demonstrated that they
15 are not adequately trained to understand or follow U.S. Supreme Court rulings like Turner
16 v. Rogers, 564 U.S. 431 (2011), and since this respondent had to wait 4 years for the
17 Nevada Supreme Court to recognize and declare that the District Court violated his
18 Constitutional right to due process in this action, and since the Supreme Court would rather
19 have the District Court rule that the respondent and every indigent child support alleged
20 debtor is entitled to free representation (see Exhibit "B,") the respondent hereby submits
21 the arguments already made to the Nevada Supreme Court to support this motion for
22 appointed counsel. Exhibit "A."

23 **CONCLUSION**

24 The arguments already submitted in the Nevada Supreme Court case no. 59997 by
25 pro bono counsel, as well as the amicus curiae briefs submitted by counsel for the ACLU
26 of Nevada and University of South Carolina Law Professor Elizabeth Patterson support the
27 respondent's request for appointment of counsel to defend him against the attacks on his
28

1 liberty. If necessary, the respondent is prepared and will file proof of his indigence upon
2 the Court's granting of this motion.

3 DATED this 4th day of December, 2019.

4
5 

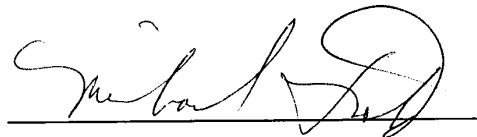
6 Michael Foley, Respondent in Pro Per

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8 **CERTIFICATE OF SERVICE**

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10 The foregoing MOTION FOR APPOINTMENT OF COUNSEL was served upon
11 Petitioner Patricia Foley on or about December 4, 2019, electronically
12 (patygastelum@hotmail.com and patyfoley@hotmail.com) and/or via first class mail,
13 postage prepaid to:

14
15 Patricia Foley
16 8937 Austin Ridge Ave
17 Las Vegas, Nevada 89178

18
19 DATED this 4th day of December, 2019.

20
21 

22 Michael Foley, Respondent in Pro Per

Exhibit “A”

Case No. 69997

In the Supreme Court of Nevada

MICHAEL FOLEY,
Appellant,

vs.
PATRICIA FOLEY,
Respondent.

Electronically Filed
Mar 27 2019 05:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable REBECCA L. BURTON, District Judge
District Court Case No. R-11-162425-R

PETITION FOR LIMITED REHEARING

DANIEL F. POLSENBERG (SBN 2376)
ABRAHAM G. SMITH (SBN 13,250)
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Las Vegas, Nevada 89169
(702) 949-8200

Pro Bono Attorneys for Appellant

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PETITION FOR REHEARING

Appellant Michael Foley seeks limited rehearing. This Court correctly vacated the February 2016 order approving a hearing master's decision to imprison Michael for not paying child support: "the district court deprived Foley of his due process rights by affirming the special master's recommendation of civil contempt without specific findings of his ability to pay" the amount set to purge the contempt and secure his release from jail. (Order 5.) This Court left unresolved, however, two issues that affect Michael's rights going forward: first, whether a child-support hearing master can exercise judicial power without notice to the district court; and second, whether Michael can continue to be denied counsel despite (a) this Court's finding that the district court is not policing the line between civil and criminal contempt, (b) the imbalance of Michael's having to oppose the state's attorneys who are driving these proceedings, and (c) the repeated entry of sentences that, without purge clauses, constitute criminal contempt.¹

¹ Michael's *pro bono* appellate counsel cannot represent him on remand, so the only way for Michael as an indigent party to get representation is through court appointment.

This Court overlooked those issues for four reasons, NRAP 40(a)(2): First, this Court did not have the benefit of an answering brief² or oral argument, so the finding that the constitutionality of NRS 425.3844 is unreviewable without following that statute’s objection requirement (Order 3 n.1) was not advanced by any party or tested adversarially, and Michael could not address concerns of which he was unaware. Second, the Court overlooked the systemic barriers that obstruct an indigent party’s ability to object under NRS 425.3844(2) and that ensnared Michael. Third, this Court misunderstood Michael to be seeking “a categorical right to counsel in every civil contempt proceeding where the contemnor is indigent” (Order 6 n.2); the right here arises because the proceedings violated the very conditions that the U.S. Supreme Court and this Court set for avoiding the appointment of counsel. And fourth, as this Court was already vacating the sentence of contempt, this Court did not appreciate that these constitutional questions still need to be resolved.

² Respondent Patricia Foley elected not to have *pro bono* counsel (Notice of Determination, filed Nov. 15, 2016) or to file an answering brief.

This Court should grant rehearing and set the petition for oral argument.

ISSUES ON REHEARING

1. Separation of Powers.

a. This Court can consider a constitutional question at any time. Michael also raised the issue of NRS 425.3844(3)(a)'s constitutionality below and even tried to follow the objection procedure that he considered unconstitutional. Can this Court consider NRS 425.3844(3)(a)'s constitutionality?

b. NRS 425.3844(3)(a) lets a child-support hearing master enter orders of contempt and imprison child-support debtors without notice to the district judge, unless an objection is filed. Does the transfer of decisional power from a district judge to a hearing master violate the separation of powers?

2. Appointment of Counsel.

a. Should the court appoint counsel for a child-support debtor in the narrow circumstance where the court imprisons the debtor without a finding of the debtor's ability to pay and where the state, rep-

resented by its attorneys, directly opposes the debtor without participation from the custodial parent?

b. Is a stayed but unconditional sentence of imprisonment a criminal sentence that calls for appointed counsel?

BACKGROUND ON REHEARING

The recommendations of nonconstitutional child-support hearing masters were repeatedly treated as judicial orders and used to justify arresting and jailing Michael for more than 50 days.

The Hearing Masters Make their Sentences Unconditional but Never Appoint Counsel

In April 2012, Michael presented unrebutted evidence to a hearing master that his job loss left him unable to meet his child-support obligation. (1 App. 3:20–4:4.) Nonetheless, acting without judicial oversight, the master found Michael in contempt and sentenced him to 25 days in jail. (1 App. 9:4–7; 1 ROA 27–28.) Though the sentence was temporarily stayed, it was unconditional in that it contained no “purge clause”—an amount that Michael could pay to secure his release if the stay were lifted and he were arrested. (1 ROA 28:17–26.)

This is typical. The hearing master enters (or reenters) a sentence

of contempt at every hearing—even those that should not be happening at all—and unless Michael is incarcerated, the master omits a purge clause. At one hearing, Michael was sentenced to 75 days even though the warden would not let Michael attend. (1 ROA 77:2–12; 1 App. 171:9–10.) At another, Michael was sentenced to 70 days even though Michael had a conflicting hearing in federal court. (1 ROA 97:23–98:5; 1 App. 193:20–195:18.) At a third, Michael was sentenced to 91 days even though the hearing master had lost jurisdiction because of a pending objection before District Judge Burton. (1 ROA 200:23–201:5; 1 App. 238:5–19.)

The Contempt Sentences of Child-Support Hearing Masters Do Not Clearly State that They Are Court Orders

After the April 2012 hearing, Michael thought that the recommendation would go to the district court for review. Michael had been told that the child-support hearing master would report its recommendation to the district court “in the manner provided in Eighth Judicial District Court Rule 1.40” (1 ROA 12:25–28), which requires a referral to the presiding judge even if no one objects to the recommendation. *See* EDCR 1.40(e). And while the recommendation noted that NRS 425.3844 ena-

bled it to be “deemed approved” by the district court after ten days without objection, the recommendation specifically disclaimed that it would be so treated: “the Master’s Recommendation is not an Order/Judgment unless signed and filed by a Judge.” (1 ROA 29:20–21; *see also, e.g.*, 1 ROA 38:6–7.) With the signature line for “District Court Judge, Family Division” blank, Michael understood that the recommendation did not have the power of a district-court order.

Michael Is Jailed under the Recommendation, and this Court Alerts Him to NRS 425.3844, which Bypasses the District Judge

Michael later discovered, when he was arrested and incarcerated, that the court clerk and sheriff’s office treated these unsigned recommendations as judicial decrees. When Michael filed an emergency writ petition asking for his release (1 App. 80), this Court pointed him to NRS 425.3844(3)(a) and (9), authorizing child-support hearing masters to issue judicial decrees without notice to the district court—unless the parties object within ten days of the recommendation. (1 App. 166.)

The First Objection: The Clerk Turns Michael Away because of Poverty

So the next time a hearing master sentenced him to 25 days in jail over testimony that he could not afford his payment obligation, Michael

tried to object. (1 App. 200:24–201:3, 204:11–17.) But the clerk refused to file the objection without a \$240 filing fee, which Michael could not afford. (1 App. 204:11–17.)

The Second Objection: The Master Won’t Recognize Michael’s Oral Objection and Won’t Appoint Counsel to Help Him File One

At the in-custody hearing after Michael’s next arrest, Michael tried to object on the record under EDCR 1.40(e), but the hearing master cut him off, saying, “I’m not your personal lawyer,” so “You need to figure out a way to [do] that.” (1 App. 211:25, 212:7–8.) The recommendation was enforced as though an order from the court, even though this one, too, provided that “the Master’s Recommendation is not an Order/Judgment unless signed and filed by a Judge.” (1 ROA 116:7–8.)

The Third Objection: The District Judge Is Bypassed While It Considers Michael’s Poverty Waiver

Finally, although the court refused to give Michael counsel to navigate the process (1 App. 209:2–5), Michael realized that he needed to apply for a poverty waiver—an application to proceed *in forma pauperis*—to file his written objection. (1 ROA 122.) So less than ten days after this recommendation, Michael timely filed the application and attached his objection. (1 ROA 122, 137–139.)

But although Judge Burton granted the waiver in recognition of Michael's poverty (1 ROA 151), by that time the clerk had already—without notifying the district judge—entered judgment on the unsigned recommendation as though it had not been objected to. (1 ROA 147.)

The Fourth Objection: This Court Sustains the Objection for Due Process Violations

After Michael's fourth arrest, Michael testified from jail about his inability to pay and argued that "the Master's recommendation is not an order or judgment unless it's signed by a district court judge." (1 App. 223:16–18, 225:14–15, 226:1–3, 228:4–8.)

Even though Michael was not served with the recommendation that kept him in jail (1 ROA 161:1–2), he objected. (1 ROA 230, 233.) This was the first that the clerk actually filed. Michael served his entire sentence before the district court heard his objection. (1 App. 228:12–15; 1 ROA 172:8, 190:15.) And although the district court rejected the objection, this Court sustained it for the violation of Michael's due process rights. (1 App. 230, 233, 1 ROA 205–06; Order 3–6.)

SUMMARY OF THE ARGUMENT

This Court should grant rehearing to make clear that just because

indigent parties face systemic obstacles, this Court will still hear and decide their appeals—including the pressing constitutional questions that they present. This Court overlooked part of Michael’s appeal supposedly because Michael had not timely objected. In fact, Michael tried to object but was repeatedly turned away because of his poverty and lack of legal expertise. Regardless, this Court can address constitutional issues raised at any time, particularly when those issues will continue to plague future proceedings.

Here, two constitutional defects cry out for rehearing. First, Michael faces imprisonment based on contempt sentences that no district judge saw or approved. The statute that strips the decisional power from district judges and gives it to nonconstitutional hearing masters violates the separation of powers. Second, while Michael does not contend that a child-support debtor is entitled to counsel in every case, the undisputed and repeated violations of *Turner v. Rogers*, 564 U.S. 431 (2011) and *Lewis v. Lewis*, 132 Nev., Adv. Op. 46, 373 P.3d 878 (2016) entitle Michael to a lawyer on remand.

ARGUMENT

I.

THE CONTEMPT SENTENCES—ALL ENTERED WITHOUT NOTICE TO THE DISTRICT COURT—ARE VOID

A. The Constitutional Question is Properly Presented

This Court refused to consider the constitutionality of NRS 425.3844(3)(a) on the misconception that “Michael failed to timely object to the master’s recommendations on which the contempt orders were entered.” (Order 3 n.1.) The question is properly presented for this Court’s review, and resolving it would provide crucial guidance.

1. Constitutional Questions May Be Raised at Any Time

A constitutional question can be raised by the parties or the court at any stage of the proceedings, including by this Court on appeal. *Barrett v. Baird*, 111 Nev. 1496, 1511–12, 908 P.2d 689, 699–700 (1995), *overruled on other grounds by Lioce v. Cohen*, 122 Nev. 1377, 149 P.3d 916 (2006). That includes questions about separation of powers. *Id.*

Parties can even challenge procedures that they had stipulated to, *Gordon v. Geiger*, 133 Nev., Adv. Op. 69, 402 P.3d 671, 674 (2017); *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983), so

“failure to follow the unconstitutional procedure” does not foreclose this Court’s review. *See Spooner v. E. Baton Rouge Par. Sheriff Dep’t*, 835 So. 2d 709, 711, 713 (La. Ct. App. 2002) (invalidating an administrative remedy based on an unconstitutional statute).

Here, even if it were true that Michael did not try to object to the recommendations, this Court should still consider Michael’s constitutional objection to that procedure.

2. *Michael Repeatedly Raised the Issue*

Michael, in any case, raised the issue timely and repeatedly: the recommendation of a child-support hearing master, unless signed by a district judge, is not a valid court order. (1 App. 212:9–215:4, 228:4–8; *see also* 1 App. 212:9–215:4.) *See* NRCp 60(b)(4).

3. *Despite Systemic Obstacles, Michael Tried to Object*

And even if a party had to try to follow an unconstitutional procedure in order to challenge it, Michael did so. Michael’s first objection was rejected because he was too poor to pay the filing fee. (1 App. 204:11–17.) His second, made from jail, was rejected because it was oral. (1 App. 211:25, 212:7–8.) His third was ignored because the clerk

entered the recommendation without notice to the district court that was then considering—and ultimately granted—Michael’s *in forma pauperis* application that attached his objection. (1 ROA 122, 137–139, 147, 151.) And as this Court recognized, his final objection was timely filed. (Order 2.)

The problem is that the contradictory language of the recommendations and the restrictions on filing objections create systemic obstacles for impoverished, unrepresented parties. That only one of Michael’s four objections made it to a district judge for consideration underscores the due process violation. It is not a reason to shut the door on Michael’s petition.

4. Going Forward, Michael Needs to Know whether the Statute is Constitutional

Most important, the issue is not moot. In vacating the last contempt order, this Court sent Michael back to the same system that violates the constitutional separation of powers. All parties need to know whether the district court can continue to be barred from overseeing cases before a child-support hearing master except upon a party’s filed

objection.³

B. NRS 425.3844(3) Is Unconstitutional

As Michael discussed in the briefs (at AOB 29–40, ARB 2–10), the statute that eliminates notice to the district court for unobjected-to recommendations usurps judicial power and is facially unconstitutional.

1. *The Legislature Cannot Limit District-Court Review of a Hearing Master’s Decision*

The separation of powers prohibits a nonconstitutional referee, such as a hearing master, from exercising the decisional power of a district judge. *Cosner v. Cosner*, 78 Nev. 242, 245, 371 P.2d 278, 279 (1962). That is because “a master does not possess the same powers conferred to a . . . judge through Article 6, Section 6 of the Nevada Constitution.” *In re A.B.*, 128 Nev., Adv. Op. 70, 291 P.3d 122, 127 (2012). Only the judge “makes the dispositional decision in a matter.” *Id.* So a master’s determination of the issue is “advisory only”; as a matter of constitutional principle “the trial judge has the right to disregard it.” *Conser*, 78 Nev. at 246, 371 P.2d at 280.

³ While this Court alluded to the denial of Michael’s writ petition in Docket No. 64351 (Order 4 n.1), that summary denial merely alerted Michael to NRS 425.3844(3)(a) without address its constitutionality.

This Court has rejected efforts to limit the district court’s review of a master’s decisions, such as a rule that would bind the district court to the master’s findings unless clearly erroneous. *In re A.B.*, 128 Nev., Adv. Op. 70, 291 P.3d at 127. The Constitution does not let a master’s decision become a binding order without express judicial approval. *Id.*⁴

Requiring parties to object to trigger district-court review still offends separation of powers. *Jansen v. Blissenbach*, 217 S.W.2d 849, 851 (Ark. 1949); *cf. also Opinion of the Justices*, 509 A.2d 746, 748 (N.H. 1986) (“orders and decrees” of masters “would have no legal effect, without approval and adoption by” a judge). The line between recommending and deciding marks the boundary of judicial authority, which must be exercised by one properly appointed and tenured. *Opinion of the Justices*, 509 A.2d at 748. Parties cannot by mere waiver or forfeiture

⁴ *Henry v. Nev. Comm’n on Judicial Discipline*, 135 Nev., Adv. Op. 5, ___ P.3d ___ (Feb. 28, 2019) involved the opposite issue: whether hearing masters’ powers can be legislatively *limited*. Because the Legislature has express constitutional authority to “provide by law for . . . [r]eferees in district courts,” NEV. CONST. art. 6, § 6(2)(a), the Legislature can also enable the Commission on Judicial Discipline to regulate those same referees. *Henry*, 135 Nev., Adv. Op. 5, at 4–5, ___ P.3d. at _____. That is quite different from the Legislature’s stripping decisional power from the district courts, which the Legislature is not authorized to create or eliminate, and giving it to hearing masters.

keep the district judge from ensuring the propriety of the court's decrees. *Cf. Garner v. State*, 78 Nev. 366, 372–73, 374 P.2d 525, 529 (1962) (the court has an independent duty to see that a defendant gets a fair trial).

2. *The District Court Tried to Preserve Judicial Oversight by Rule*

Here, before the Legislature's interference, district judges had the power under local rule to "[r]eview and sign off on recommendations of the child support masters with respect to disposition of all child support petitions." EDCR 1.31(b)(5)(iii). This was true regardless of whether any party objected: "If no objection is filed, the report *will be referred to the presiding judge* and without further notice, judgment entered thereon." EDCR 1.40(e) (emphasis added). Although the parties in this situation were not entitled to further notice, at least one judicial officer had to actually see the recommendation, approve it, and direct the clerk to enter judgment.

3. *The Statute Bypassing the District Court Violates the Separation of Powers*

As read to let the passage of time transform a master's recommendation into a judgment, NRS 425.3844(3)(a) violates the separation of

powers and the due process rights of child-support debtors such as Michael. The statute states that if no objection is filed within ten days of a hearing master's recommendation, it "shall be deemed approved by the district court" and "judgment may be entered thereon." The district judge has no right even to *notice* of the recommendation or its deemed approval. NRS 425.3844(6). And the unsupervised recommendation gets "the force, effect and attributes of an order or decree of the district court." NRS 425.3844(9).

The exercise of judicial power without notice to any judicial officer is more egregious than the "clearly erroneous" standard of review rejected in *In re A.B.* A child-support hearing master is not "the duly constituted judge." *Cosner*, 78 Nev. at 245, 371 P.2d at 279; NRS 425.381(2)(b); NEV. CONST. art. 6, § 5. In fact, cutting out the district judge was the point:

Today the requirement is that once the master's recommendation is presented to the District Court ***it requires their action***. By having a provision where, if there are no objections within ten days, the recommendations are approved, will, we believe, help facilitate the program.

Minutes, Ass'y Comm. on Health & Human Servs., Feb. 23, 2009, at 11 (statement by Romaine Gilliland) (emphasis added); *see also* Minutes,

Sen. Comm. on Health & Educ., May 1, 2009, at 14, 22 (statement of Romaine Gilliland) (“Currently, the master’s recommendations require a court signature with no time limit, so it is possible that a recommendation could sit for a lengthy period of time. This provision is designed to move the process forward in a timely manner.”). NRS 425.3844(3)(a) is indistinguishable from the statute invalidated in *Jansen*.

Conditioning review on a “filed” objection is no cure to the constitutional intrusion. First, most child-support debtors who languish in jail cannot afford the sums required for their immediate release. (Patterson Br. 2, 6–9.) Indigent, unrepresented child-support debtors face insuperable obstacles to correcting an unlawful determination: as Michael demonstrated, one can try over and over to object but not have the objection considered because of poverty and the lack of guidance. Second, judicial power and the duty of a district court to protect parties’ constitutional rights cannot be conditioned on the parties’ acts to protect that power. *Garner*, 78 Nev. at 372–73, 374 P.2d at 529.

Under this statute, many Nevadans are going to jail notwithstanding overwhelming and un rebutted evidence of the debtor’s inabil-

ity to pay—a gross violation of due process, *see Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 809, 102 P.3d 41, 49 (2004)—merely because an unlawful sentence of contempt was entered upon the recommendation of a hearing master without judicial notice or approval.

**4. Past or Future Contempt Recommendations
Entered without Judicial Authority Are Void**

“One may not be held in contempt of a void order.” *Daines v. Markoff*, 92 Nev. 582, 587, 555 P.2d 490, 493–94 (1976) (citing *Ex Parte Gardner*, 22 Nev. 280, 39 P. 570 (1895); *Cline v. Langan*, 31 Nev. 239, 101 P. 553 (1909); *Culinary Workers v. Eighth Judicial Dist. Court*, 66 Nev. 166, 207 P.2d 990 (1949)).

The invalidity of NRS 425.3844(3)(a) leaves the recommendations without the authority of a judicial decree until approved by a district judge. The contempt orders against Michael based solely on NRS 425.3844(3)(a) are void.

C. The Orders are Contradictory and Ambiguous

1. An Ambiguous Contempt Order is Void

“An order on which a judgment of contempt is based must be clear

and unambiguous” *Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 454–55, 92 P.3d 1239, 1245 (2004) (quoting *Cunningham v. Eighth Judicial Dist. Court*, 102 Nev. 551, 559–60, 729 P.2d 1328, 1333-34 (1986)). So, too, must the written order of contempt “contain a specific description of the conduct held to be contemptuous.” *Houston v. Eighth Judicial Dist. Court*, 122 Nev. 544, 555, 135 P.3d 1269, 1276 (2006) (interpreting NRS 22.030). A civil contempt order must be “clear and specific” so as to “yield[] only one reasonable interpretation.” *Ex parte Durham*, 921 S.W.2d 482, 486 (Tex. App. 1996) (citing *Ex parte Johns*, 807 S.W.2d 768, 773 (Tex. App. 1991)). “Any ambiguity in a decree or order must be resolved in favor of an alleged contemnor.” *In re Blaze*, 76 Cal. Rptr. 551, 553 (Cal. Ct. App. 1969)).

2. *The Recommendations Do Not Clearly State that They Are Orders*

Here, the recommendations that were treated as orders were far from clear that they constituted orders without a district judge’s signature. Michael had been told that, regardless of whether any party objection, the recommendations would ultimately be reported to an Article 6 district judge “in the manner provided in Eighth Judicial District Court Rule 1.40.” (1 ROA 12:25–28.) In fact, despite the reference to

NRS 425.3844(3)(a) at the end of each recommendation, the recommendation had earlier stated that “the Master’s Recommendation is not an Order/Judgment unless signed and filed by a Judge.” (1 ROA 29:20–21; 1 ROA 38:6–7.)

Even if NRS 425.3844(3)(a) were not unconstitutional, the vacillation about the recommendation’s enforceability as a court order is not the kind of notice that due process demands. Neither Michael nor any other child-support debtor should be incarcerated on the basis of recommendations that are not even clear about their own enforceability.

II.

CHILD-SUPPORT DEBTORS ARE BEING UNCONSTITUTIONALLY SENTENCED TO CRIMINAL CONTEMPT WITHOUT COUNSEL

A. Michael Is Just Asking this Court to Follow Turner v. Rogers and Lewis v. Lewis

This Court misunderstood Michael to be seeking a “categorical right to counsel in every civil contempt proceeding where the contemnor is indigent” (Order 6 n.2), a position that Michael acknowledged was rejected in *Turner v. Rogers*, 564 U.S. 431, 445 (2011).

Rather, Michael argued that while *Turner* envisioned “substitute procedural safeguards” for courts that did not want to appoint counsel

to child-support debtors, 564 U.S. at 447, the proceedings here lacked those crucial due process protections. (AOB 54–62, RAB 15–24.) This Court overlooked Michael’s argument under *Lewis v. Lewis*, 132 Nev., Adv. Op. 46, 373 P.3d 878 (2016), that the practice of entering unconditional contempt sentences at every hearing, then staying their imposition, still amounts to a criminal sentence that triggers the right to counsel. (AOB 61–62, ARB 19–22.)

Michael is not asking for a categorical right to counsel. But if the district court does not want to appoint counsel, it must stop violating *Turner* and *Lewis*.

B. The Requirements of *Turner* and *Lewis*

While “the Due Process Clause does not *automatically* require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order,” *Turner*, 564 U.S. at 448 (quoted in Order 6 n.2), the U.S. Supreme Court “attach[ed] an important caveat” to that flexibility, *id.* at 435. Because the child-support debtor’s ability to pay “marks a dividing line between civil and criminal contempt,” due process requires additional safeguards, if not a lawyer,

to ensure that the court is not criminally imprisoning impecunious debtors. *Turner*, 564 U.S. at 445 (citing *Hicks v. Feiock*, 485 U.S. 624, 635 n.7 (1988)).

1. *Express Finding of Ability to Pay*

At a minimum, the court must make an express finding that the debtor has the ability to pay the purge amount. *Id.* at 448. This is consistent with Nevada’s statutory requirement that civil contempt to coerce someone to do something must identify the “act which is yet in the power of the person to perform.” NRS 22.110(1).

2. *No Collection Efforts by State Attorneys*

And if the government does not want to appoint counsel for the debtor, it must not throw its legal weight against the debtor: “the person opposing the defendant at the hearing” should not be “the government represented by counsel but the custodial parent unrepresented by counsel.” *Turner*, 563 U.S. at 446.

3. *Purge Clause*

Finally, this Court requires every civil-contempt order to contain a purge clause. Because even “a suspended sentence that may ‘end up in the actual deprivation of a person’s liberty’” is a criminal sentence that

requires “the guiding hand of counsel,” *Alabama v. Shelton*, 535 U.S. 654, 658, 662 (2002) (quoting *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972)), a stayed order of contempt against a child-support debtor, if entered without a purge clause, amounts to criminal contempt requiring counsel. 132 Nev., Adv. Op. 46, 373 P.3d at 881 (noting that “if the stay was lifted due to a missed payment . . . , he would have no way to purge his sentence to avoid or get out of jail”).

**C. The Master’s Recommendations Make
No Finding about Ability to Pay**

As this Court recognized, the district court imprisoned Michael without making “specific findings regarding Michael’s present ability to pay the purge amount.” (Order 5; *see also, e.g.*, 1 ROA 210:14–17.) That made the contempt unconstitutional. (Order 5.) *See also Turner*, 564 U.S. at 448. Because that finding is a substitute safeguard to appointing counsel, its absence calls for appointed counsel on remand.

D. State-Driven Litigation Tilts the Tables

And rather than letting the custodial and noncustodial parent argue unimpeded, “the person opposing [Michael] at the hearing is . . . the

government represented by counsel,” creating asymmetries of representation that “more closely resemble debt-collection proceedings.” *See Turner*, 564 U.S. at 446, 449. State attorneys lead every hearing and question Michael, and even on appeal, when respondent Patricia Foley elected not to defend, the state appeared *amicus* to defend its debt-collection practices. As the ACLUNV explained, the majority of courts in this circumstance recognize a right to counsel to correct the asymmetry. (See ACLUNV Br. 15–22.)

**E. “Stayed” Sentences without a
Purge Clause Are Criminal**

Michael was repeatedly sentenced to weeks or months of criminal contempt with no way to purge the contempt. This happened most often when no hearing should have occurred. Conceding the practice, the state argued that neither a purge clause nor appointed counsel is necessary until the sentence is carried out. (DAFS Br. 25.) But as even a stayed sentence can result in imprisonment if the stay is lifted, these contempt orders without a purge clause amounted to criminal sentences requiring appointed counsel. *Lewis*, 132 Nev., Adv. Op. 46, 373 P.3d at 881. The hearing master cannot repeatedly have that criminal punishment “hanging over your head” (1 App. 9:4–7), then later impose a

purge clause at the time of incarceration to eliminate a right to counsel.

Once Michael's constitutional rights were violated by the imposition of a criminal sentence, he was entitled to appointed counsel.

* * *

These proceedings do exactly what *Turner* and *Lewis* forbid, threatening to imprison indigent debtors without counsel in cases that may amount to criminal contempt. It is time to give Michael counsel.

III.

THIS COURT SHOULD SET ORAL ARGUMENT ON THE PETITION

This Court does not ordinarily allow oral argument on a petition for rehearing. NRAP 40(a)(2).

Michael requests argument here, though, not merely because this case is in the *pro bono* program, but also because this case could benefit from a frank discussion with the Justices. Michael understands that this Court can try to reach a correct result, even when the respondent forgoes an answering brief—just as a district court has a right to review and correct the recommendations of a hearing master, even when the debtor does not or cannot object. If this Court is inclined to rule on an issue that no one raised, this Court should address those concerns to

Michael in oral argument.

CONCLUSION

Although this Court invalidated the latest order under which Michael was jailed, Michael still faces threats to his liberty in proceedings that are systemically and constitutionally defective. To set the constitutional ground rules for remand, this Court should grant the petition.

Dated this 27th day of March, 2019.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 4638 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

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IN THE SUPREME COURT OF
THE STATE OF NEVADA

MICHAEL FOLEY

Appellant,

vs.

PATRICIA FOLEY,

Respondent.

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Supreme Court No.: 69997

District Court No.:
R-11-162425-R

FILED

AUG 09 2017

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**STATEMENT OF IDENTITY, INTEREST,
AND AUTHORITY OF THE AMICUS CURIAE**

Amicus Curiae, American Civil Liberties Union of Nevada is a non-profit, non-partisan organization, working to defend and advance the civil liberties and civil rights of all Nevadans. It is the only organization in Nevada dedicated solely to protecting the Constitutional rights and liberties of every individual in the state. Grounded in the principles of liberty, justice, democracy and equality, the ACLU of Nevada works in three areas: public education, advocacy, and litigation, including the submission of amicus briefs relevant to our work.

The ACLUNV is an affiliate of the American Civil Liberties Union, a nationwide organization that advocates for civil liberties and civil rights of all people across the United States. Since 2009, the ACLU and ACLU affiliates across the country have been exposing and challenging practices that lead to modern-day debtors' prisons, such as the failure of courts to meaningfully assess an individual's ability to pay prior to ordering incarceration for an outstanding fine, fee, court cost, or other debt. The ACLU and ACLU affiliates have uncovered how debtors' prisons across the country threaten civil rights and civil liberties. The ACLU and ACLU affiliates are also working in state legislatures and courts, and with judicial officials to end these practices. The ACLU of Nevada recently testified to the

Nevada Advisory Committee to the U.S. Commission on Civil Rights¹ on the civil rights implications of debtors' prison practices in Nevada, highlighting in their public testimony the need to conduct ability to pay hearings and the constitutional right to counsel when an individual faces incarceration for an inability to pay a fine, fee, court cost or other debt.

The ACLUNV has submitted a motion seeking leave of the court to file this brief per NRAP 29 (a).

¹ Press Release, *ACLU of Nevada Legal Director To Testify At United States Commission On Civil Rights Panel* (March, 14, 2017), available at <https://www.aclunv.org/en/news/aclu-nevada-legal-director-testify-united-states-commission-civil-rights-panel>.

DISCLOSURE STATEMENT PURSUANT TO NRAP 26.1

The undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Amicus Curiae has no parent corporations and no publicly held company owns 10% or more of its stock.

The following law firms have appeared and/or are expected to appear in this court:

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I. STATEMENT OF FACTS AND PROCEDURE

Although Mr. Foley has laid out the facts of this case in great detail in his opening brief, Amicus recounts here several relevant details relating to Mr. Foley's appeal. These facts highlight Mr. Foley's repeated pleas of indigency, and the lower courts' summary disregard of Mr. Foley's inability to pay.

Mr. Foley was arrested on November 12, 2015 on an outstanding bench warrant based on contempt for failure to pay. (1 App. 221, 1 App. 218). This bench warrant was set at \$2,000. (1 App. 218). Mr. Foley appeared for an in-custody hearing on November 16, 2015. (1 App. 219-229). Mr. Foley's testimony at this hearing demonstrated that he did not have the means to pay the current court-ordered level of child-support, and that it was impossible for him to pay the outstanding \$2,000 bench warrant to secure his release from incarceration.

Mr. Foley informed the court at this hearing that he made \$275 per week, that he had no other sources of income, and that his current visitation schedule (weekdays from 12:00 -7:00 pm) made it difficult to secure regular employment. (1 App. 222, 224). Mr. Foley also testified that his efforts to secure employment were further frustrated by his inclusion in the child abuser database.² (1 App. 224). Mr. Foley affirmed that he had previously attempted to modify the child support orders

² Mr. Foley was engaged in a federal court action at the time in an attempt to remove his name from this database. (1 App. 224-225).

to reflect his indigency, but was unsuccessful (1 App. 225). The day of the hearing, Mr. Foley had \$119 to his name. (1 App. 226).

Mrs. Foley was not present at this November 16th hearing. (1 App 220). The Chief Deputy D.A. Edward W. Ewert, however, engaged in significant questioning of Mr. Foley. (1 App 219-29).

The following two exchanges at this November 16th hearing between the District Attorney and Mr. Foley, underscore that Mr. Foley's failure to comply with the previous court orders to pay large sums of money was based on indigency, and not on willfulness:

District Attorney Ewert: Well you're under an order to pay through the D.A's office, why aren't you obeying that?

Mr. Foley: I cannot afford. My budget, my income does not allow for it

(1 App. 223)

...

District Attorney Ewert: You're not obeying this order because you think the mother's going to squander the money on gambling?

Mr. Foley: No, that's not what I said. **It's strictly inability to pay**

(1 App. 225) (emphasis added)

Despite this testimony, the court made no further inquiry into Mr. Foley's ability to comply with the court order, and failed to make a finding on the record of

**PLEADING
CONTINUES
IN NEXT
VOLUME**