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IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY REED,)	Supreme Court Case No: 82575
)	District Court Case No.: 05D338668
Appellant,)	
v.)	
)	
ALECIA DRAPER (IND./CONSERV.),)	
)	
Respondent.)	
)	
)	
)	

APPELLANT'S OPENING BRIEF

**ROBERTS STOFFEL FAMILY LAW
GROUP**

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NRAP § 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following persons and entities as described in *NRAP* § 26.1(a) and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

The following persons/ entities are disclosed:

- Amanda M. Roberts, Esq.; and
- Roberts Law Group, P.C., dba Roberts Stoffel Family Law Group.

As to the Appellant there are no other parent corporations or publicly held companies at issue, and Respondent is not using a pseudonym.

Dated this 9th day of December, 2021.

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JURISDICTIONAL STATEMENT

This is an Appeal from a final judgment pursuant to *NRAP* § 3A(b)(1). The Order being appealed is the Findings of Fact, Conclusions of Law, and Order (“Decision”) on January 28, 2021, and the Appeal follows.¹ The Appeal from the Decision was timely filed on February 26, 2021.² The Appeal follows from a final, appealable Decision which resolved all issues.

ROUTING STATEMENT

Pursuant to *NRAP* § 17 (a)(12), Appellant believes this Appeal concerns a principal issue of statewide public importance and this matter should be retained by the Nevada Supreme Court. The issues of statewide public importance and first impression include: (1.) whether a request for post-majority child support based upon handicap must be brought before the child reaches the age of majority³; and (2.) due to the absence of controlling precedents, what consideration should be given to the timing of filing such a request for post-majority child support based upon handicap, and applicable statutes of limitation.

¹ Appendix at Volume XIII, ROA 002393 through ROA002413.

² Appendix at Volume XIII, ROA 002437 through ROA002439.

³ Appendix at Volume XIII, ROA 002420; and Appendix at Volume IV, ROA 000773, ROA000776 through ROA000778.

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STATEMENT OF ISSUES

1. Did the District Court err in not find good cause to extend discovery and continue the Trial?
2. Did the District Court err in refusing to allow Jeff the ability to call Emily as a witness during his case in chief?
3. Did the District Court err as a matter of law in allowing Emily to raise claims of post-majority support after she reached majority?
4. Did the Court err in relying upon a diagnosis of dissociated identity disorder diagnosed after Emily reached the age of majority and graduated from high school to determine Emily was handicapped?
5. Did the Court err in determining that Emily is not self-supporting?
6. Did the Court erred in granting constructive post-majority child support?

STATEMENT OF CASE

The case is a request by an adult child, who was joined as a Third Party/Emily Reed (“Emily”), for support post-majority pursuant to *NRS* § 125B.110 based upon an alleged handicap prior to the age of majority against

her Mother, Alecia Draper (“Alecia”) and Father, Jeffrey Reed (“Jeff”).¹ The original claim was brought by Alecia, but was denied.² Thereafter, Alecia moved to join Emily in the divorce proceeding which was granted.³ The Trial commenced on August 6, 2020; August 7, 2020; November 19, 2020; and January 12, 2021; and rendered its Decision on January 28, 2021, and the Appeal follows.⁴ The Court issued a finding that Emily was handicapped before the age of majority, Ordered that each parent pay \$500.00 in child support, and award post-constructive arrears.⁵

STATEMENT OF FACTS

The Parties were divorced pursuant to a Decree of Divorce filed August 5, 2005.⁶

In 2015, the District Court set an Evidentiary Hearing regarding claims that Emily was handicapped and should receive post-majority support.⁷ The District Court adopted the Parties stipulated agreement that on or before February 23, 2015, at 5:00 p.m., Alecia would provide “proof of the minor

¹ Appendix at Volume IV, ROA0484 through ROA0587.

² Appendix at Volume III, ROA0511.

³ Appendix at Volume III, ROA0517 through ROA0534; and Appendix at Volume IV, ROA0585 through ROA0587.

⁴ Appendix at Volume XIII, ROA3037 through ROA3059

⁵ Appendix at Volume XVII, ROA3037 through ROA3059.

⁶ Appendix at Volume I, ROA0007 through ROA0027.

⁷ Appendix at Volume I, ROA0051 through ROA0053.

child being disabled, meeting the standards required[.]”⁸ The Order also included language which stated, “The Therapist’s Report will be accepted, in lieu of the therapist appearing at the day of trial.”⁹ Thereafter, before the Evidentiary Hearing, on March 9, 2015, Alecia filed a “Notice of Withdrawal of Request to Continue Child Support for Emily After High School Graduation Due to Child’s Disability & Request to Vacate Evidentiary Hearing.”¹⁰ As a result of this document being filed, the Evidentiary Hearing was vacated.

In 2017, this matter came back before the District Court and Alecia again alleged Emily was handicapped and should receive post-majority support, because she was not self-supporting.¹¹ On May 22, 2018, the District Court issued a Decision and Order which denied Alecia’s claim and determined that Emily was the proper Party to bring the issue against her parent.¹² The Court indicated that Emily could file a separate action or be joined in this action.¹³

⁸ Appendix at Volume I, ROA0057.

⁹ Appendix at Volume I, ROA0059.

¹⁰ Appendix at Volume I, ROA0054 through ROA0055.

¹¹ Appendix at Volume II, ROA0096 through ROA0097.

¹² Appendix at Volume III, ROA0515.

¹³ Appendix at Volume III, ROA00515.

On January 22, 2019, Alecia filed a “Notice of Joinder” and a “Motion for Child Support for a Disabled Child Beyond the Age of Majority.”¹⁴ After hearing the matter, the District Court joined Emily in this matter.¹⁵

On December 4, 2019, Alecia provided an expert report from Dr. Love Farrell (“LOVE”).¹⁶ The report relied upon or included review of records that were not provided to Jeff, as of December 4, 2019.¹⁷

On January 10, 2020, the Court issued an Order Setting Evidentiary Hearing for April 16, 2020, and April 17, 2020.¹⁸ Pursuant to that Order, discovery closed on April 3, 2020.¹⁹

On March 25, 2020, Administrative Order 20-11 was issued, which provided that the stay on discovery previously issued in Administrative Order 20-09, applied to Family Court matters. As it related to Trial, the Administrative Order stated, “Attorneys may have difficulty obtaining witnesses or being prepared for evidentiary proceeds in the period immediately following the duration of the administrative orders related to

¹⁴ Appendix at Volume III, ROA0535, and Appendix at Volume IV, ROA0536 through ROA0549.

¹⁵ Appendix at Volume IV, ROA0585 through ROA0587.

¹⁶ Appendix at Volume IX, ROA1580 through ROA1598.

¹⁷ Appendix at Volume XV, ROA2776 through ROA2784.

¹⁸ Appendix at Volume IV, ROA0637 through ROA0638.

¹⁹ Appendix at Volume IV, ROA0638.

COVID-19. Judges are encouraged to liberally grant continues to allow time for preparation.”

On April 2, 2020, some one hundred and twenty (120) days after the LOVE report was provided, Jeff filed a Motion to address Alecia’s failure to disclose the medical records which LOVE referenced in her report but which had not yet been disclosed to Jeff.²⁰ After the Motion was filed, the supplemental medical records were served on Jeff’s Counsel.²¹ That Motion was set before the Discovery Commissioner on May 8, 2020.²² Prior to the Motion being heard, on April 24, 2020, the Discovery Commissioner issued a Minute Order which vacated the hearing and indicated the matter would be forwarded to Judge Ritchie “for a determination on how to proceed.”²³

On July 23, 2020, a Pre-Trial Conference was heard. At that time, the issue regarding the Discovery Commissioner was addressed, and the Judge indicated that he had seen the recommendation but would deal with it as the issue arises at Trial.²⁴ It is then pointed out that the Motion was filed and discovery cut off was April 3, 2020.²⁵ Despite the argument and a Motion

²⁰ Appendix at Volume XV, ROA2776 through ROA2784.

²¹ Appendix at Volume XV, ROA2776 through ROA2784.

²² Appendix at Volume IV, ROA0655 through ROA0672.

²³ Appendix at Volume IV, ROA0691 through ROA0692

²⁴ Appendix at Volume IV, ROA0650.

²⁵ Appendix at Volume IV, ROA0726

being filed, the Trial continued. The district court issued its Findings of Fact, Conclusions of Law, and Order on January 28, 2021.²⁶ The instant Appeal follows.

SUMMARY OF ARGUMENT

First, Jeff alleges the District Court erred when it denied a timely request for extension of time to conduct discovery and continue the Trial based upon the disclosure of evidence relied upon by an expert on the day before discovery closed. Alternatively, the expert's testimony should have been rendered inadmissible.

Second, Jeff alleges the Court's refusal to allow him to call Emily as a witness impacted his ability to properly present his case and reflected on the outcome of Trial.

Third, Jeff alleges that a request for post-majority support based upon a handicap must be brought prior to the child reaching the age of majority as a matter of public policy.

Fourth, the Court committed reversible error by relying on DID as the handicap as Emily was not diagnosed with DID, according to the medical records and expert testimony, until after the child reached majority.

²⁶ Appendix at Volume XVIII, ROA3016 through ROA3036.

Moreover, the findings regarding Emily's testimony are not supported by the record and are contradicted by the expert's testimony.

Fifth, the District Court improperly calculated expenses for Emily.

Sixth, the District Court improperly calculated the constructive post-majority child support commencing in July of 2017 when Emily's claim was not brought until January 22, 2019.

ARGUMENT

A. **The District Court erred in not find good cause to extend discovery and continue the Trial.**

On or about May 9, 2017, an initial report was provided by LOVE who was Alecia's proposed expert.²⁷ In that report, Dr. Love Farrell indicates that Emily needs to work "through her dissociation and conversation symptoms."²⁸ This is the first report ever provided to Jeff and was not provided until after the deadline provided by the Court of February 23, 2015.²⁹ LOVE's initial report is silent as to dissociative identity disorder ("DID") or alters. On December 4, 2019, LOVE provided a supplemental report and therein, she indicates that Emily was diagnosed with DID in

²⁷ Appendix at Volume IX, ROA1555 through ROA1561.

²⁸ Appendix at Volume IX, ROA1156.

²⁹ Appendix at Volume I, ROA0057.

August of 2019 which was well after she reached the age of majority and graduated from high school.³⁰ In that supplemental report, LOVE provided a list of documents she relied upon in formulating her opinion.³¹ Although LOVE had the records and relied upon those records, they were not provided to Jeff until April 2, 2020³² which was one (1) day before discovery closed on April 3, 2020, and only after Jeff filed a Motion.³³ Moreover, LOVE relied on medical records which were not provided to Jeff and stated in her report to the Court, “The notes in the entirety can be made available for review at the court’s discretion, however it would be essential these notes not be part of any public record for the sake of Emily’s privacy.”³⁴

On March 31, 2020, the Parties appeared for a telephone conference with the Court.³⁵ The telephone conference occurred because of the pending Administrative Orders regarding the COVID-19 pandemic. The telephone conference was not recorded on JAVS. One of the issues discussed during the telephone conference were the outstanding medical records relied upon by LOVE which had not been produced, and the District Court instructed Jeff’s

³⁰ Appendix at Volume IX, ROA1567.

³¹ Appendix at Volume IX, ROA1569 through ROA1571.

³² Appendix at Volume XV, ROA2782 through ROA2783.

³³ Appendix at Volume IV, ROA0637 through 0640.

³⁴ Appendix at Volume XVII, ROA3025 through ROA3026.

³⁵ Appendix at Volume IV, ROA0654.

Counsel to file a Motion which was thereafter filed in this matter on April 2, 2020, at 3:52 p.m.³⁶ After the filing of the Motion, Alecia's Counsel served the medical records that same day at 3:56 p.m.; however, the records had been available since at least December 4, 2019 which was one hundred and twenty (120) days.³⁷

The Motion was set before the Discovery Commissioner who issued a Minute Order that the "[m]atter will be forwarded to District Judge Arthur Ritchie, Jr. for a determination on how to proceed."³⁸ Thereafter, the District Court Judge took no action and the COVID-19 pandemic caused additional continuances and delays due to Administrative Orders being issued by the Eighth Judicial District Court; however, discovery was never reopened.³⁹

At the Pre-Trial conference on July 23, 2020, the issue regarding the Discovery Commissioner was addressed, and the Judge indicated that he had seen the recommendation, but would deal with it as the issue arises at Trial.⁴⁰ It is then pointed out that the Motion was filed and discovery cut off was April 3, 2020.⁴¹ The Judge erroneously indicates that discovery was extended

³⁶ Appendix at Volume IV, ROA0655 through ROA0672.

³⁷ Appendix at Volume XV, ROA2782 and ROA2783.

³⁸ Appendix at Volume IV, ROA0691 and ROA0670.

³⁹ Appendix at Volume IV, ROA0709 and ROA0710.

⁴⁰ Appendix at Volume IV, ROA0725.

⁴¹ Appendix at Volume IV, ROA0726.

which was not the case even though Trial was continued in this matter.⁴²

There was clearly confusion about the issue regarding the delay in providing the records needed for the rebuttal witness wherein, Alecia's Counsel had those records until the day before the discovery cut-off.

NRCP § 16.2 provides some guidance regarding witness disclosures and reports; however, *NRCP* § 16.2 is not as specific as *NRCP* § 16.1. Therefore, by analogy the Court should look to *NRCP* § 16.1 (a)(2)(B) which provides that the expert's report must contain, again this is mandatory and not discretionary,

- (i) a complete statement of all opinions the witness will express, and the basis and reasons for them;
- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous ten years;
- (v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

The failure of the records being timely provided, prejudiced Jeff as he was unable to obtain a rebuttal expert witness because any rebuttal expert

⁴² Appendix at Volume IV, ROA0726.

would have needed to review LOVE's report and the records relied on by LOVE in formulating her expert opinions. There was a delay of one hundred and twenty (120) days from when the supplemental report was provided, and the disclosure was finally made which is against public policy. This violated Jeff's due process rights because he was not able to provide expert testimony to contradict the LOVE's testimony, which was the Court's sole basis for determining Emily's handicap.⁴³

The purpose of discovery is to take the "surprise out of trials of cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial." *Washoe Cnty. Ed. of Sch. Trustees v. Pirhala*, 84 Nev. 1, 5, 435 P.2d 756, 758 (1968). Moreover, the Nevada Supreme Court has ruled that providing medical records is mandatory, not discretionary. *FCHI, LLC, v. Rodriguez*, 335 P.3d 183, 189 (2014). The Supreme Court has indicated that failure to provide the entire body of medical records when an expert had the ability to review them to formulate their opinion would render the experts opinion inadmissible. *Id.*

Therefore, the Court should have granted Jeff's request for an extension of discovery and continued the matter or, alternatively, rendered LOVE's

⁴³ Appendix at Volume XVII, ROA3048 and ROA3049.

testimony inadmissible. The Court abused its discretion when good cause existed to grant the requested relief pursuant to *EDCR* § 2.35.

B. The Court erred in refusing to allow Jeff the ability to call Emily as a witness during his case in chief.

At the pre-Trial conference on July 23, 2020, Emily's testimony was discussed at length.⁴⁴ Emily was properly listed as a witness by Jeff, and there were indications at prior hearings that Jeff intended to call Emily as a witness.⁴⁵ The Court indicated that Emily was to be made available for testimony.⁴⁶ The Court then specifically asked whether Jeff intended to call Emily on his case in chief and the response was "[y]es, Your Honor."⁴⁷ Alecia's Counsel then argues that the discovery cut-off for experts was February 3, 2020; however, the records related to the rebuttal expert were not even made available until April 2, 2020.⁴⁸ It stands to reason and as a matter of public policy, a rebuttal expert cannot be retained to review reports and records unless the report and corresponding records are timely produced.

At the time of Trial, Alecia's Counsel called Emily as a witness. Jeff's Counsel then requested to call Emily on his case in chief as was indicated at

⁴⁴ Appendix at Volume IV, ROA0727 through ROA0732.

⁴⁵ Appendix at Volume IV, ROA0728.

⁴⁶ Appendix at Volume IV, ROA0729.

⁴⁷ Appendix at Volume IV, ROA0732.

⁴⁸ Appendix at Volume IV, ROA0734.

the pre-Trial conference. The Court acknowledged that Jeff's Counsel had not asked Emily a lot of questions during cross examination.⁴⁹ Before allowing Jeff's Counsel to call Emily, the Judge asked for Jeff's Counsel to explain the reasoning for calling her as a witness.⁵⁰ The explanation was that LOVE testified about "the ability to switch back and forth between personalities and the ability to remember what alters had gone through and experiences."⁵¹ The Court then indicated that Emily is "qualified as disabled" before hearing all the evidence and testimony in the matter.⁵² The Court then questioned arguments by Counsel regarding Emily's medical treatment and Jeff's Counsel indicated that "Love's testimony is not consistent with Emily's testimony based upon specific quotes that I have pulled from the testimony."⁵³ The Court then questioned whether or not Jeff was alleging Emily did not suffer from multi-personality disorder.⁵⁴ When a response was provided by Jeff's Counsel, the Court denied Jeff the ability to call Emily because the

⁴⁹ Appendix at Volume XVI, ROA2980 and ROA2982

⁵⁰ Appendix at Volume XVI, ROA2980 through ROA2985

⁵¹ Appendix at Volume XVI, ROA2981.

⁵² Appendix at Volume XVI, ROA2981 and ROA2982.

⁵³ Appendix at Volume XVI, ROA2984.

⁵⁴ Appendix at Volume XVI, ROA2984.

Court “has discretion in the management of trial to determine whether or not witnesses would be called or recalled.”⁵⁵

Jeff would note that Emily is not merely a witness, she is a Party to the action. The secondary issue on the case to whether Emily can bring a post-majority claim is whether she is handicapped under *NRS* § 125B.100 before the age of majority. In this matter, Jeff noticed his intent to call Emily as a witness and the Judge indicated an intent to allow him to call Emily to further clarify the record regarding the inconsistent testimony and her presentation of DID.

NRS § 50.115 states, in relevant part:

1. The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence:
 - (a) To make the interrogation and presentation effective for the ascertainment of the truth;
 - (b) To avoid needless consumption of time; and
 - (c) To protect witnesses from undue harassment or embarrassment.
2. Cross-examination is limited to the subject matter of the direct examination and matters affecting the credibility of the witness, unless the judge in the exercise of discretion permits inquiry into additional matters as if on direct examination.
- ...
4. Except that the prosecution may not call the accused in a criminal case, a party is entitled to call:
 - (a) An adverse party; or
 - (b) A witness identified with an adverse party,

⁵⁵ Appendix at Volume XVI, ROA2985.

and interrogate by leading questions. The attorney for the adverse party may employ leading questions in cross-examining the party or witness so called only to the extent permissible if the attorney had called that person on direct examination.

Here, Jeff was entitled to call Emily as a witness as Emily is an adverse party in this matter. Further, as Jeff planned to call Emily during his case in chief and conduct a direct examination of her at that time, Jeff did not seek permission during his cross examination of Emily to question her on matters outside of the scope of Alecia's direct examination. Therefore, as the District Court refused to allow Jeff to recall Emily during his case in chief, Jeff was unable to fully question Emily regarding the inconsistencies between Emily's testimony and the testimony given by LOVE.

Jeff acknowledges that, pursuant to *NRS* § 50.115(1), "the judge shall exercise reasonable control over the mode and order of interrogating witnesses" to make the interrogation effective for the ascertainment of the truth, to avoid needless consumption of time, and/or to protect a witness from harassment or embarrassment. *NRS* § 50.115(1) does not grant a judge the ability to override *NRS* § 50.115 (4) which states that a Party is entitled to call the adverse party as a witness.

A district court's decision to admit or exclude evidence is reviewed for abuse of discretion. *McLellan v. State*, 124 Nev. 263, 267 (Nev. 2008). "An

abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Crawford v. State*, 121 Nev. 744, 748 (Nev. 2005). Here, the district court denied Jeff’s request to conduct a direct examination of the adverse party, as he was entitled to under *NRS* § 50.115(4), despite Jeff having provided proper notice of intent to call Emily as a witness. The district court also failed to provide a valid reason under *NRS* § 50.115(1) in denying Jeff’s request to call Emily as a witness. Therefore, the Court abused its discretion by arbitrarily and capriciously denying Jeff the ability to conduct a direct examination of the adverse party in a manner which exceeds the bounds of law and/or reason.

C. **The Court erred as a matter of law in allowing Emily to raise claims of post-majority support after she reached majority.**

There is limited authority in the State of Nevada regarding the applicability of *NRS* § 125B.110 related to post-majority support for a handicap child. In the limited case, claims were brought before the child reached the age of majority. *Edgington v. Edginton*, 119 Nev. 577, 80 P.3d 1282 (2003). It appears to be a case of first impression regarding whether a claim for support can be brought post-majority. By analogy, a request for child support cannot first be brought after a child reaches the age of majority unless a “a parent not having physical custody” mails to the non-custodial

parent a demand for payment which tolls the statute of limitation for bringing support. *NRS* § 125B.050 (1). Therefore, if a request for child support cannot be brought after the child reaches the age of majority, it reasons that a request for post-majority support must also be brought during the minority of the child. *Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 485 (2000). Moreover, the delay in bringing the request for post-majority support cause undue hardship upon Jeff. *Building & Constr. Trades v. Public Works*, 108 Nev. 605, 839 P.2d 633, 637 (1992).

As a matter of public policy, if someone post-majority can make a claim at any time after reaching majority of a handicap during minority resulting in an inability to engage in any substantial gainful activity as a result of the handicap, it means almost diagnosis occurring during childhood could be the basis of a future claim. A person with a diagnosis of scoliosis as a minor who, post-majority, experiences spinal related issue could potentially bring suit against a parent at forty (40) years old for post-majority support.

D. **The Court erred in relying upon a diagnosis of dissociated identity disorder diagnosed after Emily reached the age of majority and graduated from high school to determine Emily was handicapped.**

NRS § 125B.110 (1) requires that support post-majority must be based upon a handicap that occurred “before the age of majority[.]” LOVE was

Emily's expert and the Court relied solely upon her testimony when determining that Emily was handicapped before the age of majority.⁵⁶ Pursuant to her report, LOVE indicated that DID "is characterized by alternating between multiple identities."⁵⁷ LOVE testified Emily had multiple alters⁵⁸ and those alters testified at Court.⁵⁹ The Court noted that Alecia's Counsel spoke with Emily in advance of testimony to coordinate examination of Emily and the alters.⁶⁰ The Court concluded that Emily's testimony "was not contrived[.]"⁶¹ However, this finding contradicts the testimony of LOVE who indicated "when someone goes into various alter, they won't remember the experiences once they're in a different alter. So they only know who they are in the moment."⁶² LOVE testified alters "just pops up."⁶³ Therefore, when Emily and her alters testified, it reasons that they would not remember speaking with Alecia's Counsel the day before or the other testify wherein the following occurred: (1.) Emily started the testimony

⁵⁶ Appendix at Volume XVII, ROA3025 and ROA3026; and Appendix at Volume V, ROA0893 through ROA0894.

⁵⁷ Appendix at Volume IX, ROA001572.

⁵⁸ Appendix at Volume XVII, ROA3025.

⁵⁹ Appendix at Volume XVII, ROA3025.

⁶⁰ Appendix at Volume XVII, ROA3026.

⁶¹ Appendix at Volume XVII, ROA3026.

⁶² Appendix at Volume VI, ROA1031.

⁶³ Appendix at Volume XV, ROA2771.

and then Heidi appeared because “Emily is very nervous and she shake too much.”⁶⁴ (2.) Heidi indicated that she knew Emily and has known her since middle school.⁶⁵ (3.) Heidi knew the other alters and had the ability to call the alters to testify including Rose, Dorothy and Lilly.⁶⁶ (4.) Heidi knew Lilly was sixteen (16) years old and Heidi interacts with Lilly.⁶⁷ (5.) Heidi was able to call Holly to testify when requested by Alecia’s Counsel.⁶⁸ (6.) Dorothy was called who indicated she knew Emily and had known her since she was little.⁶⁹ (7.) Emily and Heidi were able to interact at the same time with Dorothy by “both listening” to the testimony.⁷⁰ (8.) One of Dorothy’s good friends is Heidi.⁷¹ (9.) A prayer was said during Trial thanking the Judge for meeting Emily and the alters, and getting “to meet us and know that we’re real[.]”⁷² (10.) When Emily talked to Alecia’s Counsel the day before Trial her alters were present including “Heidi, Lilly, Dorothy, and Holly[.]”⁷³ (11.) There was a plan in place with Alecia’s Counsel about which alter

⁶⁴ Appendix at Volume XV, ROA2750 through ROA2751.

⁶⁵ Appendix at Volume XV, ROA2753.

⁶⁶ Appendix at Volume XV, ROA2753 through ROA2770.

⁶⁷ Appendix at Volume XV, ROA2753 through ROA2754.

⁶⁸ Appendix at Volume XV, ROA2756 through ROA2757.

⁶⁹ Appendix at Volume XV, ROA2758 through ROA2759.

⁷⁰ Appendix at Volume XV, ROA2760.

⁷¹ Appendix at Volume XV, ROA2761.

⁷² Appendix at Volume XV, ROA2765.

⁷³ Appendix at Volume XV, ROA2766 through ROA2769.

would be called to testify.⁷⁴ This testimony is directly in conflict with LOVE who indicated the alters “they only know who they are in the moment[.]”⁷⁵

The fatal flaw in relying upon DID in this matter, is that DID was not diagnosed until well after Emily reached the age of majority and graduated from high school according to LOVE, in August of 2019.⁷⁶ That was the basis for LOVE’s claims of being handicapped under *NRS* § 125B.110 (1), and the majority of her testimony centered around those claims as the reason she is handicapped and cannot participate in gainful employment.⁷⁷ Therefore, the findings regarding DID are clearly erroneous and should be set aside. *Ogawa v. Ogawa*, 125 Nev. 660, 221 P.3d 699, 704 (2009).

E. **Whether the Court erred in determining that Emily is not self-supporting.**

In her Financial Disclosure Form (“FDF”), Emily stated that she received \$686.24 in Social Security Income (“SSI”) and \$194.00 in CalFresh (food assistance benefits).⁷⁸ Emily also stated that her monthly expenses consisted of \$48.00 for her cellular telephone, \$19.99 for clothing, \$228.56 for food, \$376.75 for health insurance, \$600.00 for rent, utilities, and

⁷⁴ Appendix at Volume XV, ROA2768 through ROA2769.

⁷⁵ Appendix at Volume VI, ROA1031.

⁷⁶ Appendix at Volume IX, ROA1586.

⁷⁷ Appendix at Volume VI, ROA1058.

⁷⁸ Appendix at Volume V, ROA0832.

transportation, \$111.18 for her service dog, \$34.99 for security, \$2,728.94 for unreimbursed medical expenses, and \$26.72 for personal hygiene.⁷⁹ The Court should note that Alecia, in her capacity as Emily's conservator, completed Emily's FDF.⁸⁰ The Court should also note that at Trial, Alecia, in contradiction to the amounts stated in Emily's FDF, stated that she received \$400.00 from Emily for rent and \$100.00 from Emily for as payment for Emily's cellular phone.⁸¹

The Court should note that Emily is insured through Medi-Cal as well as through independent insurance. Yet, despite having two (2) difference types of medical insurance, Emily continues to treat with providers that do not accept her insurance.

The Court should further note that, at the time of Trial, Alecia had three (3) adults living with her- Emily, Anthony and Adam.⁸² Of the three (3) adults living in the household, Emily is the only one that Alicia is charging rent; Anthony and Adam who are her adult children, are living with her and pay nothing toward rent.⁸³ Alecia testified Emily was paying her \$400.00 for

⁷⁹ Appendix at Volume V, ROA0834.

⁸⁰ Appendix at Volume V, ROA0837.

⁸¹ Appendix at Volume XVI, ROA2957 through ROA2958.

⁸² Appendix at Volume XVI, ROA2934 through ROA2935.

⁸³ Appendix at Volume XVI, ROA2934 through ROA2935.

rent⁸⁴; however, Emily's FDF and the Court's decision both indicate that Emily's rent is \$600.00 per month.⁸⁵ This finding was clearly erroneous.

NRS § 125B.110(2) states that "a child is self-supporting if the child receives public assistance beyond the age of majority and that assistance is sufficient to meet the child's needs." As stated above, Emily received a total of \$880.24. As the record shows, Alecia has unjustifiably inflated Emily's expenses as they pertain to rent, medical insurance, and unreimbursed medical expenses. Alecia does not charge her other adult children rent and has no reason to charge her allegedly disabled daughter rent that equates to over 68% of Emily's monthly income. The Court should note that Alecia's FDF states that Alecia does not personally pay rent, or a mortgage and that Alecia has not listed any expenses she pays on behalf of Emily.⁸⁶

Further, Emily receives state funded health insurance through Medi-Cal, thus the third-party insurance that costs Emily almost \$400.00 per month is unnecessary. It is also unnecessary for Emily to treat with multiple doctors that do not accept either of her insurance coverages. Emily's reasonable expenses, not including rent, third-party insurance, and unreimbursed medical

⁸⁴ Appendix at Volume XVI, ROA2957 through ROA2958.

⁸⁵ Appendix at Volume V, ROA0834 and Appendix at Volume XVII, ROA3025.

⁸⁶ Appendix Volume IV, ROA0554 through ROA0555.

expenses, are \$48.00 for her cellular telephone, \$19.99 for clothing, \$228.56 for food, \$111.18 for her service dog, \$34.99 for security, and \$26.72 for personal hygiene. These expenses total \$469.44 per month and are completely covered by Emily's SSI and CalFresh benefits. Therefore, the district court erred both in determining that the public assistance Emily receives is insufficient to meet Emily's needs and in determining that Emily is not self-supporting.

F. **Whether the Court erred in granting constructive post-majority child support.**

On May 18, 2018, the Court issued a Decision and Order which granted Emily the right to seek support from either or both parents and that, to seek said support, Emily must be joined as a party or as a party through her guardian or guardian ad litem.⁸⁷

On January 22, 2019, Alecia filed a Notice of Joinder stating that she would be proceeding in this matter as the Plaintiff individually and as the Conservator for Emily.⁸⁸ That same day, Alecia, as Conservator for Emily, filed a Motion for Child Support for a Disabled Child Beyond the Age of Majority.⁸⁹

⁸⁷ Appendix at Volume III ROA0515.

⁸⁸ Appendix at Volume III, ROA0535.

⁸⁹ Appendix at Volume IV, ROA0536-ROA0549.

This is the first time that a request for post-majority request for child support was made by Emily, through her conservator. The Court should note that Emily's Motion for post-majority support did not include a request for a judgement regarding arrears nor did Emily allege that Jeff owed arrears.

A hearing on the Motion for Child Support for a Disabled Child Beyond the Age of Majority was held on April 9, 2019. At that time, the District Court Ordered that Emily was joined as a party to the action through her Conservator, Alicia.⁹⁰ The District Court also opened discovery and set a Case Management Conference.⁹¹

After the Evidentiary Hearing, the District Court found that Jeff owed Emily \$21,500.00 in constructive arrears.⁹² The Court determined this amount by "multiplying an averaged net child support amount of \$500.00 by 43 months (July, 2017 - January, 2021)."⁹³ However, this calculation is erroneous as Emily failed to file a claim for support until January 22, 2019, there were no pre-existing Orders for post-majority support issued by the Court, Emily did not request arrears in her Motion, and Jeff was under no obligation to pay post-

⁹⁰ Appendix at Volume IV, ROA0586.

⁹¹ Appendix at Volume IV, ROA0586 through ROA0587.

⁹² Appendix at Volume XVII, ROA3031.

⁹³ Appendix at Volume XVII, ROA3031.

majority support prior to a formal request and/or Court Order mandating that he do so.

NRS § 125B.140(1)(a) states, “[i]f an order issued by a court provides for payment for the support of a child, that order is a judgment by operation of law on or after the date a payment is due. Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this State.”

Further, the Nevada Supreme Court has held that a court may modify a child support order effective as of the date the motion to modify is filed, the date the child support order is entered, or at a time in between, but that the child support may not be modified retroactively. *Ramacciotti v. Ramacciotti*, 106 Nev. 529, 532, 795 P.2d 988. 990 (Nev. 1990).

Here, the Court below abused its discretion by awarding Emily support arrears for a period of forty-three (43) months before Jeff was ordered to pay support, including a period of nineteen (19) months before Emily’s motion for support was even filed. Further, while *Ramacciotti* allows for child support modification orders to be effective as of the date a motion to modify is filed, case law is silent regarding retroactively applying initial support orders for post-majority support. For initial support orders for post majority support, the

Court should rely on *NRS* § 125B.140(1)(a) which clearly states that an order for support is effective on the date of the order.

CONCLUSION

Based upon the foregoing, Jeff requests the finding of handicap before majority be erroneous, the judgment against Jeff vacated regarding constructive post-majority support and the post-majority support request by Emily denied; alternatively, this matter be remanded for a new Trial and reassigned to a different District Court Judge.

Dated this 9th day of December, 2021.

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CERTIFICATE OF COMPLIANCE (NRAP § 28.2 and 32)

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

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3. I further certify that I have read this Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a page reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9th day of December, 2021.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. 25, I hereby certify that on the 10th day of Defendant, 2021, a copy of the foregoing Appellant's Opening Brief was served via the Court's E-Flex system on all registered users as follows:

Elizabeth Brennan, Esq.
Attorney for Appellant

By: /s/ Colleen O'Brien
Attorney or Employee of
Roberts Stoffel Family Law