IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID PATRICK STUCKE Appellant/Cross-Respondent vs. **CHRISTIE LEEANN STUCKE,** Respondent/Cross-Appellant.	Supreme Court Case No.: 82723 **REPLY TO FAST TRACK RESPONSE; and FAST TRACK RESPONSE TO CROSS-APPELLANT'S FAST TRACK STATEMENT**

1. Name of Party filing this reply to fast track response:

Appellant, DAVID PATRICK STUCKE

2. Name, law firm, address, and telephone number of attorney submitting this fast track response:

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Sheila Tajbakhsh, Esq.
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702-433-2889

3. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court
Clark County, Nevada
D-18-580621-D

4. Statement of facts:

The facts as set forth in the Response are largely irrelevant to this appeal, and some of them are disputed points that are not supported by authority. The relevant facts are set out in the Fast Track Statement filed by Appellant.

Furthermore, in the Fast Track Statement, Appellant ("David") argued the following points:

a. That the district court erred in issuing an order dividing the marital residence equally, despite making a finding that it was the separate property of the Appellant;
b. That the district court abused its discretion in denying Appellant's request for the recovery of community funds wasted by Respondent;
c. That the district court erred in awarding joint physical custody to the parties despite the existence of the adverse findings made by the court;
d. That the district court erred in designating the parties as joint physical custodians while Appellant has a majority of the time with the children, including school time; and
e. That the district court abused its discretion in failing to levy a child support obligation based upon the court's inability to ascertain the Respondent's actual income.

In the fast-track response, Respondent ("Christie") has simply copied and pasted large portions of the district court's findings and orders, and heavily relied on the same and circular arguments for analysis as opposed to providing supporting authority for Respondent's positions. Further, Christie has failed to provide adequate analysis to support her cross-appeal. Appellant now submits her Reply to

the Fast Track Response, and Response to the Cross-Appellant's Fast Track Statement.

5. Reply to Fast Track Response

The Fast Track Response ("Response") is primarily an exercise in evasion, deflection, and attempted confusion by providing only the facts and allegations that favor Respondent. Christie's entire framing of the issues resonates around her perception of David's alleged failure to meet his burden of proof but fails to actually provide adequate analysis for her position in response to David's claims. Simply, Christie's entire submission is meritless.

A. The Court Abused Its Discretion when Ignoring the *Malmquist* Formula in Distribution of the West Maule Property

Simply, David used separate property for the down payment on the West Maule residence and for the initial improvements on the home and is entitled to a *Malmquist* division. Despite Christie's claims to the contrary, David provides citations for all claims in his Fast Track statement.

The facts are simple- the down payment monies on the West Maule residence, along with the initial funds used to improve West Maule was David's separate property. The down payment came from a separate Chase account, opened long before David met Christie, and contained monies from his poker winnings. (AA v. 7 at STUCKE-1189, 1195, 1211.)

David was already under contract to purchase the home prior to the domestic partnership commencing. In fact, the title for West Maule was acquired in David's name alone, which is further supported by David's refinance of the property in December 2015, wherein Christie was not required to sign a quitclaim deed during the refinance process due to the parties' status. (*Id*. at 1134-1135, 1206-1207.) As such, the district court abused its discretion in dividing the property equally.

B. The Court Abused Its Discretion by Failing to Enter a Finding of Community Waste Against Christie

Christie again, recites the District Court's findings and orders, conveniently ignoring the extensive findings made regarding Christie's lack of credibility, the wasteful spending on Christie's part, and the fact that she functions in a manner that causes questions as to all of her financial dealings. (AA v. 6 at STUCKE-1074-1075.) Simply, despite the extensive findings by the district court which pointed to clear community waste by Christie, the court failed to compensate the community for the same. David is not required to provide expert testimony for a finding of community waste; the court provided undue weight to Christie's unpersuasive testimony, while disregarding David's extensive efforts and analysis regarding Christie's finances presented to the Court. (AA v. 6 at STUCKE-1074-1075.)

C. The Court Erred in Awarding Joint Physical Custody, Despite the Court's Adverse Findings Against Christie

David is precluded from providing a copy of Dr. Paglini's report to this Court. Christie fails to set all of Dr. Paglini's recommendations, which stated that joint physical custody would be in the children's best interest, so long as Christie obtains therapy for her emotional issues and the parties attempt extensive coparenting classes. (AA v.5 at STUCKE-0915-0928.) Further Dr. Paglini made a finding that if Christie does not complete requirements of the Court and/or continues in her behavior, the Court should consider David having primary physical custody. *(Id.)*

Instead of using discretion and issuing an order based on its findings, the court erred in adopting Dr. Paglini's recommendations, despite the contradictions in its own analysis. In addition, the court stated in it's orders that therapy for Christie would be discussed in orders below, but it was completely omitted from the Decision altogether (AA v.6 at STUCKE-1034-1037.) As such, the Court erred in awarding the parties joint physical custody.

D. The District Court Abused Its Discretion by Delineating the Schedule Issued as a "Joint Physical Custody" Schedule

Based on the schedule prescribed by the Court, David is the primary parent responsible for the day-to-day decision making regarding the children, and he is responsible for over a vast majority of the children's schooling and spends the most

quality time with the children. while Christie gets to be a "weekend mom." (AA v.6 at STUCKE-1065.)

This Court has determined that "Physical custody involves the time that a child physically spends in the care of a parent. During this time, the child resides with the parent and that parent provides supervision for the child and makes the day-to-day decisions regarding the child." *Rivero v. Rivero,* 125. Nev. 410, 216 P.3d 213 (2009). The focus should be on the number of days that a parent is responsible for making day-to-day decisions for the child and/or supervising the child, along with the days the child resided with the party. The focus should not be on counting hours in a day, whether the child was asleep or awake or in the care of a third-party care provider. *Id.* at 425-426, 216 P.3d at 224. As such, the court abused its discretion deeming the parties' joint physical custodians based on the timeshare arrangement of the parties.

E. The Court Abused Its Discretion by Failing to Levy a Child Support Obligation or Impute Income to Respondent

David renews his argument from his Fast Track Statement regarding the court's failure to levy a child support obligation, as Christie has not provided any argument contradicting David's arguments. David has provided Financial Disclosure Forms filed with the district court. (*See generally* AA v.32.)

For these reasons, and those set out in the Fast Track Statement, the District Court's order should be reversed and remanded, and a new trial should be ordered.

RESPONSE TO CROSS APPELLANT'S FAST TRACK STATEMENT

1. Procedural history:

The procedural history set forth in David's Fast Track Statement is both accurate and applies to the procedural history as it relates to Christie's Fast Track Statement. Notably, Christie's recitation of the facts conveniently fails to address the negative orders that the court issued against Christie, and instead are presented in way that would make it appear as though the proceedings went differently.

2. Statement of facts:

The statement of facts material to the issues on Christie's cross-appeal are set forth in David's Fast Track Statement. In addition to David's Statement of Facts in his Fast Track Statement, David adds to the facts as follows:

a. 7211 Birkland Court, Las Vegas ("Birkland")

Prior to purchasing the property on Birkland, David spoke to Christie about owning an investment property with his friend, Jonathan Morrell ("JM") as their sole and separate investment. (AA v. at STUCKE-0936.) Christie agreed, and the parties proceeded accordingly with purchasing the property on April 13, 2018. Christie acknowledged to First American Title Insurance that all interest was to be vested solely in David's name as his "sole and separate property" and thereby signed the proper deeds. (*See generally* AA v.30, and AA. v.31 at STUCKE-6495-6666.) The property purchased with JM contributing $589,889.13 and David

contributed $25,000, which came from his premarital retirement accounts. (AA v.5 at STUCKE-937; 1041; AA. v.30 *generally*.) Accordingly, JM was 96% owner of the property, while David was 4% owner. *(Id.)* The property was transferred to JD Investments, LLC, a business owned by David and JM in equal 50% shares. (*Id.* at STUCKE-0937.)

b. 3740 Grandview Place, Las Vegas ("Grandview")

The Grandview property was purchased in October 2017 for David's own investment. (AA v.5 at STUCKE-0938.) Accordingly, the title was held by David as a "married man as his sole and separate property" and, Christie executed a Grant Bargain Sale Deed at the time the property was purchased, after the down payment was made, creating a presumption of separate property that was not overcome by Christie. (*Id.* at STUCKE-0938-0939.)

The down payment of $82,764.47 was paid solely by David, consisting of David's funds from a separate TIAA-CREF retirement account which predated the parties' relationship. (AA v.9 at STUCKE-1594-1595.) The property was sold during the divorce, with total sale proceeds totaling $63,077.55. (AA v.6 at STUCKE-1043.) The total proceeds were far less than David's separate property investment in Grandview, and therefore, he is entitled to the entirety of the proceeds from the sale of Grandview.

3. Issues on appeal. State concisely the principal issue(s) in this cross-appeal:

Respondent/Cross-Appellant's Fast Track Statement boils down to two (2) issues on appeal:

a. Did the District Court err in concluding that Birkland property is David's separate property?

b. Did the District Court err in concluding awarding David the entirety of the sales proceeds from the Grandview property?

4. Legal Argument

a. **The District Court did not err in awarding 7211 Birkland to David as his sole and separate property**

In the matter at hand, the District Court did not err in awarding Birkland to David as his sole and separate property. Christie executed the documents necessary for the home to be vested as David's sole and separate property. (*See generally* AA v.30; AA v.9 at STUCKE-1041.) Simply, Christie transmuted any interest in Birkland to David by executing the necessary deeds to ensure David it as his sole and separate property. Christie waived any and all interest in the home by her conduct. *Colman v. Collier* 136. Nev. Adv. Rep. 13, 460 P.3d 452 (2020); *Mullikin v. Jones*, 71 Nev. 14 (1955); *Schmanski v. Schmanski*, 115. Nev. 247, 984 P.2d 752 (1999). Likewise, the transmutation of separate property into community property must be shown by clear and convincing evidence. *Sprenger v. Sprenger* 110 Nev.

855, 858, 878 (1994). Here, Christie has failed to show by clear and convincing evidence that Grandview was transmuted from separate property to community property. As such, the District Court's decision on Birkland should be affirmed.

b. **The District Court did not err in awarding the entirety of the proceeds from 3740 Grandview Place to David**

As stated above, title to Grandview was held by David as a "married man as his sole and separate property". Christie executed a Grant Bargain Sale Deed at the time the property was purchased, after the down payment of $82,764.47 was paid with David's separate TIAA-CREF funds, creating a presumption of separate property that was not overcome by Christie. (AA v.9 at STUCKE-1594-1595.) As such, Christie waived any and all interest in the property. *Todkill v. Todkill,* 88 Nev. 231, 495 P.2d 629 (1972); *Kerley v. Kerley,* 112 Nev. 36, 910 P.2d 279 (1996).

Further, there was no evidence presented that additional community monies were used to satisfy debts associated with the Grandview residence. (AA v.5 at STUCKE-1043.) The total sale proceeds received from the Grandview residence were $63,077.55, almost $20,000.00 less than the separate funds used by David for down payment on the residence. *(Id.)* Under *Malmquist v. Malmquist,* 106 Nev. 231, 792 P.2d 37 (1990), separate property contributions to real property are subject to reimbursement on a dollar-for-dollar basis.

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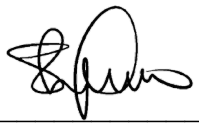
As such, the District Court did not err in awarding the entirety of the proceeds from Grandview residence to David and its decision should be affirmed, as David's separate property contributions far exceeded the proceeds from the sale of the residence.

Respectfully Submitted



Molly Rosenblum, Esq.
Sheila Tajbakhsh, Esq.
Counsel for Appellant

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VERIFICATION

1. I hereby certify that this Reply to Fast Track Response; and Fast Track Response to Cross-Appellant's Fast Track Statement 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:

[X] This Reply to Fast Track Response; and Fast Track Response to Cross-Appellant's Fast Track Statement has been prepared in a proportionally spaced typeface using 14-point Times New Roman in MS Word 365; or

[ ] This fast track statement has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this Fast Track Statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

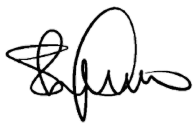
[X] Proportionately spaced, has a typeface of 14 points or more, and contains 2,119 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains __ words or ___ lines of text; or

[ ] Does not exceed ___ pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely Fast Track Response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely Fast Track Statement or failing to raise material issues or arguments in the Fast Track Statement or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this Reply to Fast Track Response; and Fast Track Response to Cross-Appellant's Fast Track Statement is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of January 2022.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **13th** day of **January 2022**, I served: REPLY TO FAST TRACK RESPONSE; AND FAST TRACK RESPONSE TO CROSS-APPELLANT'S FAST TRACK STATEMENT in the above-entitled matter electronically with the Clerk of the Nevada Supreme Court, and electronic service was made in accordance with the master service list maintained by the Clerk of the Supreme Court, to the Attorney listed below:

Fred Page, Esq.
Page Law Firm
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Attorney for Respondent/Cross-Appellant

An Employee of ROSENBLUM ALLEN LAW FIRM