IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

TONY MATKULAK, Appellant, vs. KOURTNEY L. DAVIS, Respondent.	S.C. NO. 83173 D.C. NO: FV20-00559

APPELLANT'S REPLY BRIEF

Attorney for Appellant:
Marshal S. Willick, Esq.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email: email@willicklawgroup.com

Attorneys for Respondent:
Kevin Ryan, Esq.
Nevada Bar No. 4371
BADER & RYAN, LTD
232 Court Street
Reno, Nevada 89501
(775) 322-5000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

STATEMENT OF CASE

Kourtney does not challenge or meaningfully supplement anything set out in the Statement of the Case in the *Opening Brief*. We therefore ask the Court to refer to that Statement.

STATEMENT OF FACTS

As near as we can tell, Kourtney's "Statement of Facts" is just a second recitation of the lower court order, in bullet form.

The question before this Court is whether a disparity in the parties' incomes, alone, justifies an enormous increase in the level of support above that presumed to meet the needs of the child. However, rather than citing this Court to evidence in the record that might support a finding that Bennett's needs would not be met by a guideline schedule support award under the regulations, Kourtney simply quotes the

trial court's summary conclusions that similarly do not address any evidence of Bennett's specific needs.

As Kourtney does not challenge or meaningfully supplement anything set out in the Statement of Facts in the *Opening Brief*, we ask the Court to refer to that Statement.

STANDARD OF REVIEW AND SUMMARY OF THE ARGUMENT

Kourtney does not challenge our standard of review. Her summary of the argument confirms what we identified as her position in the *Opening Brief* – that somehow a difference in income between two parents by itself constitutes a "specific need" of the child for increased support. No explanation of that torture of language is offered anywhere in the *Answering Brief*.

Kourtney's summary basically asserts (at 16) that this Court has no business reviewing the district court's order that places all expenses on Tony and therefore does not require Kourtney to support her child at all, because those "allocations are not restricted by the requirements of NAC 425.150."

Finally, Kourtney misrepresents (at 16) the history of the litigation in defense of the attorney's fee award, as detailed below.

ARGUMENT

The most remarkable thing about the Answering Brief is that it contains very little beyond repeatedly reprinting the district court order on appeal, as if that order was somehow self-proving. This *Reply* will therefore be fairly summary.

I. THE TRIAL COURT'S AWARD OF SUPPORT WAS ERROR

The *Opening Brief* identified two layers to this analysis, first addressing the district court's legal errors in interpreting the regulations, and then turning to its abuse of discretion in applying them. In response, Kourtney (at 17-24) mixes her discussion of both issues, despite the different standards of review for each.

Kourtney, at 19, ignores the change in law from the earlier statutes, which did not count the entirety of an obligor's income, to the new regulations, which do so, and simply pretends that the cases interpreting the older statutes are still applicable.

As detailed in the *Opening Brief* (at 27-34, 40-41), *Barbagallo*[1] and its progeny interpreted statutes that capped the income to be addressed and did not contemplate joint custody at all. The current regulations corrected both deficiencies, expressly addressing in the guideline schedule calculation itself the entirety of the income of

[1] *Barbagallo v. Barbagallo*, 105 Nev. 546, 779 P.2d 532 (1989).

every obligor, and explicitly addressing what calculation is proper for joint custody. The regulations *deleted* the "relative income of the parents" deviation factor.

Kourtney's failure to address the argument that the prior caselaw has been legislatively overruled should be taken as a confession of error.[2]

The bulk of Kourtney's argument consists of her assertion that the district court's order awarding several times the child support set out in the guideline

---

[2] *A Minor v. Mineral County Juvenile Dep't*, 95 Nev. 248, 592 P.2d 172 (1979) (failure to cogently address an assignment of error treated as a confession of error); *see also Orme v. District Court*, 105 Nev. 712, 782 P.2d 1325 (1989) (failure to respond can be treated as confession of error); *Brion v. Union Plaza Corp.*, 104 Nev. 553, 763 P.2d 64 (1988) (same); *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating the failure to respond to the opposing party's arguments as a confession of error).

schedule is somehow justified by the alleged "different standards of living of the child in the two households." The main problem with that argument is that it is factually false, and the legal tap-dance presented regarding it is inapplicable.

Specifically, ***all*** of the testimony and evidence by both parties was that the child has exactly the *same* standard of living in both households. The child has exactly the same access to food, clothing, shelter, transportation, schooling, extracurricular activities and day care in both households, and experiences no difference whatsoever when with his mother or father. The parents spend about the same amount on the child each month.[3]

As detailed in the *Opening Brief*, the evidence was that the child has exactly the same "lifestyle" in both households – except that the child sees his father in only one home, while Kourtney has the home she owns, another that she rents, and access

[3] V AA 598; IV AA 362; VII AA 1061, 1099; III AA 281.

to both a vacation home at Lake Almanor and the Hidden Valley Country Club. The record is silent as to the three-year-old's opinion of his parents' real estate equities or bank balances.

In fact, Kourtney never identified *any* way in which *Bennett's* standard of living was in any way different between his life in his mother and his father's homes. Ditto for the parents' available time for the child: despite Kourtney's unrelenting complaint that she "works two jobs," she works fewer hours than Tony,[4] and deleting the few hours of softball coaching would make essentially no difference to the child support calculations.

The adjustment factors to guideline support[5] all relate to the *child* at issue, except for factors that are completely irrelevant here. "Public assistance" is not at

[4] VII AA VII AA 1033-1034, 1061.

[5] NAC 425.150.

issue. As detailed in the *Opening Brief*, "Relative income of both households" refers to new spouses, which neither party has. And "ability to pay" is a federal term for relieving a subsistence-level obligor of child support to the degree necessary for self-support; the provision is irrelevant here. Kourtney ignores the actual words of the regulations and their meanings, simply reiterating (at 17-22) that Tony earns more than she does.

It is submitted that ***if*** this Court finds that the regulations allow a district court to look at "lifestyle" variations at all in adjusting the amount of child support, the lifestyle in question should be that of ***the child***, which in this case is identical in both households. Any such consideration would *not* include a parent's complaint that she would like to quit work, hire a maid, expand her retirement savings, buy bigger homes, and get more cars.

Taking out of context a quotation from one of the law review articles[6] cited in the *Opening Brief*, Kourtney claims (at 20-21) that it supports her argument that above-guideline support was justified here. But the article was addressing the law of states in which child support guidelines ***don't*** explicitly consider all income of an obligor. As detailed above and in the *Opening Brief*, that was a major point in development of Nevada's current regulations – *all* income is explicitly considered *in the guideline schedule itself*, eliminating the discretion to add to the sum produced by that schedule based on a parent's income alone.

After re-defining "standard of living" as meaning Kourtney's desire to work less, increase her bank account balance, and buy a bigger home, she defies the actual

---

[6] Laura Raatjes, *High Income Child Support Guidelines: Harmonizing the Need for Limits With the Best Interest of the Child*, 86 Chi.-Kent L. Rev. 317 (2011).

language of the regulations (at 23) by saying that the parties' "disparity in standards of living" is somehow a "specific need of the child."

This Court's expressed rules for statutory construction simply do not allow such torture of the regulatory language. This Court has held that when the language of a statute is plain and unambiguous, the court shall "give [the] language its ordinary meaning and not go beyond it."[7] In interpreting provisions, the words used should be given their plain meaning without trying to read anything further into them,[8] because that is the best indicator of their intent.[9] When that language is clear and

---

[7] *Nelson v. Nelson*, 136 Nev. ___, 466 P.3d 1249 (Adv. Opn. No. 36, July 9, 2020); *City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

[8] *Matter of Petition of Phillip A.C.*, 122 Nev. 1284, 149 P.3d 51 (2006); *Trustees v. Developers Surety*, 120 Nev. 56, 61, 84 P.3d 59, 62 (2004).

[9] *Pub. Employees' Benefits Program v. LVMPD*, 124 Nev. 138, 147, 179 P.3d

unambiguous, there is no room for construction and the apparent intent must be given effect.[10] Any interpretation of a statute or rule should avoid meaningless or unreasonable results.[11]

Applying those rules here, "specific need of the child" means exactly that, and has nothing to do with Kourtney's bank balance, desire to quit work, or her housing desires. It would be unreasonable to find otherwise.

At 23-24, Kourtney entirely dismisses the legislative history in which the Commission members who created the regulations confirmed what the words used were intended to mean, labeling those comments "unofficial statements." But this Court has repeatedly stated that "The leading rule of statutory construction is to

---

542, 548 (2008).

[10] *Edgington v. Edgington*, 119 Nev. 577, 582-83, 80 P.3d 1282, 1286 (2003).

[11] *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003).

ascertain the intent of the legislature in enacting the statute" and that a proper means of doing so is to review the comments made by those who enacted the provision.[12]

The unanimous consensus of the Commission members as to the meaning of the terms they used in the provisions permitting adjustments to child support should not be ignored – and as detailed in the *Opening Brief*, they reveal that the district court misused the adjustment factors.

Kourtney misrepresents the scale of the district court's increases to guideline support in a couple of different ways. First, she simply defies the math, claiming (at 17) that somehow $1,592.56 + $2,000 (which the district court mis-added to $3,500

[12] *See*, *e.g.*, *Dezzani v. Kern & Assoc., LTD*, 134 Nev. 61, 412 P.3d 56 (2018), quoting *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986), reviewing comments by legislators during the relevant hearing.

per month),[13] plus another $1,286, does not "really" equal $4,786 per month, but "only" $3,500 (which itself would be more than double the guideline schedule child support amount).

Her "logic" is explained much later, at pages 24-26, where – without any citation to authority whatsoever – she asserts that the district court's discretion is "not constrained" by law and the district court has unbridled discretion to impose 100% of the expenses for a child on one party, even if it violates the Legislature's express direction that ***both*** parents have an obligation to support their child.[14]

Here, because the sum of "child support" ordered to be paid by Tony is greater than Kourtney's declared ***total*** monthly expenses, *including* her savings for

---

[13] As noted in the *Opening Brief* at fn. 65, the district court's math was not precise. V AA 760-761.

[14] *See* NRS 125B.020; NAC 425.015, 425.037.

retirement, by nearly $1,500 per month,[15] Kourtney is paying ***zero*** for support of the child despite the parents having joint physical and legal custody.

The expenses in question are not unknown, or invisible; they are monthly sums that have been laid entirely on one parent (Tony), meaning that he is not only paying ***all*** living expenses for Bennett, ***and*** Kourtney, but also handing over thousands more each month for Kourtney to save, invest, or otherwise spend. Left uncorrected, the existing order will leave Kourtney paying zero for support of the parties' child, Tony paying 100% of the cost of raising Bennett to adulthood, and gratuitously taking a million dollars of Tony's life savings and transferring it to Kourtney.[16]

That is not a result that "child support" was ever intended to cause, and it is disingenuous for Kourtney to pretend the numbers are any less than they actually are.

---

[15] V AA 612.

[16] $4,800 x 12 (months/year) x 18 = $1,036,800.

This is "hidden alimony" between parties who were never married, to an extent even greater than anything criticized by Mr. Logar's warning article many years ago.[17]

II. THE ATTORNEY'S FEE AWARD WAS AN ABUSE OF DISCRETION

Kourtney's defense of the attorney's fee award (at 26-30) follows the same pattern as her defense of the appeal – ignore the law cited in the *Opening Brief* and simply repeat the district court's order as if it was self-proving.

It is worth noting that her primary factual assertion – that the fees incurred during the district court litigation were caused by Tony daring to correctly state the law about the regulations permitting both upward and downward adjustments – is belied by her own admission at trial:

> Q [by Mr. Meador]: Does it refresh your recollection about whether you agree that these fees are caused by your demand for an upward adjustment?

---

[17] Ron Logar, *Wealth, A Substitute For Need*, 57 *Inter Alia*, April, 1992, ("Logar") at 8.

A: Um, I am looking for an upward deviation. Yes.

. . . . [After reading at length from Kourtney's deposition testimony]

Q: And, so, was it unreasonable for my client to suggest that there was an argument that Bennett's needs could be met for less than the amount calculated under the formula?

A: Um, I never really thought about it [that] way.

. . . .

Q: And separate and apart from his Settlement Conference Statement, can you show me any settlement offer my client made at any time where he asked you to accept less than the amount calculated under the statute?

A: I don't have that with me.

Q: Well, it doesn't exist, does it?

A: I don't know.

Q: And can you show me any offer you ever made at any time where you agreed to accept the amount calculated under the formula?

A: Um, no. Sorry.

A: And that's because all of your settlement demands were – demanded upward adjustments?

Q: They were.

Q: Okay. This litigation is about your desire for more, not Tony's demand for less, correct?

A: Um, I'm looking for an upward deviation that I think is fair for my kid trying to follow the law, yes.

. . . .

Q: So this litigation and the fees about which you complain, are about more, not less; correct?

A: They are.[18]

The fact that the district court disregarded that admission is simply an additional basis for reversing the fee award. The primary points, as indicated in the *Opening Brief* (at 55-58), are that the underlying decision as to child support was erroneous, and that Kourtney's refusal to state how much she wanted or any basis for it made additional procedures necessary, including taking her deposition.[19]

---

[18] VII AA 989-995, 1015-1016.

[19] VII AA 1017.

This was known to everyone involved below, and set out in detail in filings well before trial. In January, 2021, Tony detailed how and why it was solely Kourtney's desire – without explanation – to get "more" that was "driving up the fees and costs."[20] The district court specifically asked Tony and his counsel if they were demanding a downward adjustment, and they made it clear that they were not doing so.[21]

Kourtney's citation (at 29) to this Court's recent holding in *Romano*[22] does not support her position. The point in *Romano* was that a parent filed a motion to alter a custodial arrangement only eight months after entry of the last order – exactly the

---

[20] IV AA 360-366.

[21] *See*, *e.g.*, IV AA 556, lines 11-16.

[22] *Romano v. Romano*, 138 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 1, Jan. 13, 2022).

kind of "serial, repetitive motion" criticized by this Court for years.[23] This case was an original custody determination, in which legal and physical custody were stipulated, and in which the litigation was admittedly dragged out by Kourtney's desire to seek "more money" without specifying any need of the child supporting it.

CONCLUSION

Even more now that detailed regulations taking account all income and contemplating joint custody are in place, "Where no special circumstances exist, courts must focus exclusively upon the noncustodial parent's duty to pay a fixed percentage of income."[24] And there are no relevant adjustments under the regulations in this case.

---

[23] *See*, *e.g.*, *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009).

[24] *Lewis v. Hicks*, 108 Nev. 1107, 843 P.2d 828 (1992).

The district court committed legal error in mis-construing the child support regulations. The award of thousands of extra dollars per month labeled "child support" for the purpose of letting Kourtney buy a bigger house, increase her retirement savings, take extra time off of work, and hire a maid simply was actually an award of alimony between never-married parties, and is not permitted under Nevada's child support regulations. The fee award based on the erroneous child support award should likewise be reversed.

The decision of the district court should be reversed and remanded for entry of a child support order within the bounds of Nevada's current child support guidelines;

the Court should specify in its decision which prior holdings do and do not still direct district court orders.

Dated this 18th day of March, 2022.

Respectfully submitted,
WILLICK LAW GROUP

/s/ Marshal S. Willick
Marshal S. Willick, Esq.
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

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:

[**X**] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office X7, Standard Edition in font size 14, and the type style of Times New Roman; or

[ ] This brief 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 brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains 2,954 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 hereby certify that I have read this appellate 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 NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, 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 18th day of March, 2022.

WILLICK LAW GROUP

/s/Marshal S. Willick, Esq.

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
email@willicklawgroup.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 18th day of March, 2022, documents entitled *Opening Brief* were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

Kevin Ryan, Esq.
BADER & RYAN, LTD.
232 Court Street
Reno, Nevada 89501
(775) 322-5000
Attorneys for Respondent

//s//Justin K. Johnson
An Employee of the WILLICK LAW GROUP

P:\wp19\MATKULAK,T\SCDRAFTS\00549548.WPD/jj