

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 HERMAN WILLIAMS,

4 Appellant,

5 vs.

6 NADINE WILLIAMS,

7 Respondent.

No.: 83263

APPELLANT'S APPENDIX
Volume 4

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20

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7 **DISTRICT COURT**
8 **CLARK COUNTY NEVADA**

9 **NADINE WILLIAMS**
10 **Plaintiff,**

11 **v**

12 **HERMAN GEORGE WILLIAMS**
13 **Defendant**

Case D 19 586291 D
Dept I
Family Court

14 **PLAINTIFF'S PRETRIAL MEMORANDUM**

15 Comes now, Plaintiff, Nadine Williams, by and through her
16 attorney of record, Frank J Toti Esquire, and hereby submits the
17 foregoing Pretrial Memorandum in advance of the Evidentiary Hearing
18 currently set to commence on February 11, 2021.

19 Dated this 8 day of February, 2021

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6900 Westcliff Drive #500
Las Vegas Nevada 89145
Attorney for N. Williams

Relevant Facts

a. Parties:

Nadine Williams,	Plaintiff.
Herman Williams,	Defendant.

b. Minor Children:

Abigail Williams,	born October 27, 2004.
Herman Williams IV,	born August 24, 2008.
Matthew Williams,	born May 13, 2010.
Elisha Williams,	born April 26, 2013.

c. Resolved Issues:

1. None.

d. Unresolved Issues:

1. Custody, Visitation and Support of the Minor Children
2. Where the minor children will attend school for the 2021-22 school year.
3. Division of Property and Debt.
4. Alimony and Attorney's Fees.
5. Contempt.

Statement of Facts

The parties to this action were married on December 27, 1982. There are four minor children the product of their marriage, to wit: Abigail Williams, born October 27, 2004; Herman Williams IV, born August 24, 2008; Matthew Williams, born May 13, 2010 and Elisha Williams, born April 26, 2013. Nadine filed for divorce on March 19, 2019.

Since this matter commenced there has been much turmoil and little cooperation in this matter, all due to Herman's inability to cooperate and communicate with Nadine. When Nadine vacated the marital residence due to her inability to remain in the same household as Herman, Herman refused to allow Nadine access to the minor children and Herman refused to allow Nadine to take any of her belongings. Herman poisoned the minor children's minds against Nadine and initially the minor children even fabricated a story wherein Nadine was allegedly physically abusive towards the minor children. Child Protective Services was involved in this matter and ultimately the allegations against Nadine were unsubstantiated. Several child interviews have been conducted in this matter and there is no

1 indication that there are any safety concerns with the minor children
2 being in Nadine's care. The evidence will show that there is no basis
3 for Herman to be awarded primary physical custody of the minor
4 children.
5

6
7 At the commencement of this action, Nadine's visitation with the
8 minor children was limited due to the false physical abuse allegations.
9 Since said time, Nadine's visitation with the three youngest minor
10 children has increased to every weekend and Nadine currently has the
11 parties' oldest child solely in her care (it is believed that Herman will
12 concede that Nadine should have the parties' oldest child in her care
13 and that Herman's visitation with the parties' oldest minor child should
14 be "teen discretion"). Throughout this matter Herman has refused to
15 communicate with Nadine and despite being ordered to enroll in various
16 parenting apps, to date, Herman has yet to enroll in a single parenting
17 app. The evidence will show that Nadine should either have primary
18 physical custody of all the minor children or that Nadine should have
19 primary physical custody of the parties' oldest minor child and the
20 parties should have joint physical custody of the parties' three youngest
21 minor children.
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1 If Nadine is granted primary physical custody of the parties' three
2 youngest minor children, Nadine would ask that the Court award
3 Herman visitation three weekends a month commencing Friday after
4 school until Sunday evening. If the parties are granted joint physical
5 custody of the parties' three youngest minor children, Nadine would ask
6 that the parties adhere to an alternating week visitation schedule with
7 the exchange of the minor children to occur either Friday after school or
8 Monday after school.
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11
12 The parties reside a considerable distance from one another with
13 Nadine residing in the Southwest (near Rhodes' Ranch) and Herman
14 residing in the Northeast (near Ann Road and Craig Road). Nadine
15 has the ability to place the minor children in Doral Academy. Doral is
16 a magnet school and is a far superior school than the school the minor
17 children are currently attending. The school is also very close to
18 Herman's residence.
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1 As to the issue of child support, the calculation of the same will be
2 dependent on whether Nadine is granted primary physical custody of all
3 the minor children or just primary physical custody of the parties'
4 oldest minor child and the parties should have joint physical custody of
5 the parties' three youngest minor children. However, though Herman's
6 Financial Disclosure Form is cryptic, Herman seems to indicate that his
7 gross monthly income is the sum of \$5'666.66 per month. Nadine
8 disputes the same as Herman works for himself and Nadine will testify
9 that Herman has always earned more income than Herman is alleging.
10 The evidence will should that the Court should consider Herman
11 intentionally underemployed for the purposes of avoiding paying child
12 support.
13

14 There are not may assets to divide in this matter. There is the
15 towing company – *Exquisite Towing Roadside Assistance LLC*, which
16 Nadine believes Herman will want to retain. There are several
17 vehicles and Nadine requests that she be awarded the 2015 Chevrolet
18 Silverado truck and Herman be awarded all the other vehicles. Nadine
19 has no objection to each party retaining all financial accounts solely in
20 their own name. Nadine would want to be reimbursed for her jewelry
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1 that Herman pawned as well as monies for the tools Herman is
2 retaining – Nadine believes the parties currently own approximately
3 \$15'000.00 worth of tools that are all currently in Herman's possession.
4 Also, Herman owes Nadine the sum of \$4'665.00 as and for monies
5 Nadine has paid towards the 2015 Chevrolet Silverado truck after the
6 Court ordered Herman to be solely responsible for the same.
7
8

9 As to debts, the parties accumulated a considerable amount of
10 debt during their marriage. Nadine consolidated all the parties' debts
11 in 2017 (the sum of \$34'560.75). Said consolidation loan has a current
12 balance of the sum of \$21'617.21. Nadine has been solely meeting this
13 debt each month since the parties separated. Nadine asks that
14 Herman pay one-half of the amount. Further, the parties still owe the
15 state of Connecticut the approximate sum of \$2'000.00 as and for
16 unpaid taxes. Said amount was previously in excess of \$7'000.00 but
17 just as with the consolidation loan, Nadine has been solely paying the
18 tax debt since the parties separated. Nadine asks that Herman pay the
19 remainder of the amount owed to Connecticut as and for unpaid taxes.
20 The parties have no other joint debts. All other debts that the parties
21 have in their own names should be that party's responsibility.
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1 Despite the length of marriage, both parties earn a considerable
2 income, and the parties' incomes are similar (especially if Herman is
3 working to his fullest ability and not attempting to persuade the Court
4 that he earns less than his actual earning ability). As a result, the
5 evidence will show that this is not a case where either party should be
6 awarded alimony.
7

8
9 The Court, via minute order, on March 19, 2020 approved
10 Nadine's motion for an Order to Show Cause in this matter and
11 indicated the same would be heard at the time of trial. The evidence
12 will show that Herman should be held in contempt of Court for willfully
13 violating the orders of this Court.
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17 Finally, due to Herman's inability to follow the orders of this
18 Court, the evidence will show that Nadine should be awarded attorney's
19 fees.
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1 **a. Custody/Visitation.**

2 The trial Court has broad discretion to determine custody of the
3 minor children. *Sims v. Sims*, 109 Nv 1149, 1148, 865 P2d 328, 330
4 (1993); *Culbertson v. Culbertson*, 91 Nv 230, 233, 533 P2d 768, 770
5 (1975). In accordance with NRS 125.480, the Nevada Supreme Court
6 has held that “in custody matters, the polestar for judicial decisions is
7 the best interest of the children” *Schwartz v. Schwartz*, 107 Nv 378,
8 382, 812 P2d 1268, 1270-71 (1991).
9

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11
12 NRS 125C.0035 states:
13

14 1. In any action for determining physical custody of a minor child, the
15 sole consideration of the court is the best interest of the child. If it
16 appears to the court that joint physical custody would be in the best
17 interest of the child, the court may grant physical custody to the parties
18 jointly.

19 2. Preference must not be given to either parent for the sole reason that
20 the parent is the mother or the father of the child.

21 3. The court shall award physical custody in the following order of
22 preference unless in a particular case the best interest of the child
23 requires otherwise:

24 (a) To both parents jointly pursuant to NRS 125C.0025 or to either
25 parent pursuant to NRS 125C.003. If the court does not enter an order
26 awarding joint physical custody of a child after either parent has
27 applied for joint physical custody, the court shall state in its decision the
28 reason for its denial of the parent's application.

(b) To a person or persons in whose home the child has been living and
where the child has had a wholesome and stable environment.

(c) To any person related within the fifth degree of consanguinity to the
child whom the court finds suitable and able to provide proper care and

1 guidance for the child, regardless of whether the relative resides within
2 this State.

3 (d) To any other person or persons whom the court finds suitable and
4 able to provide proper care and guidance for the child.

5 4. In determining the best interest of the child, the court shall consider
6 and set forth its specific findings concerning, among other things:

7 (a) The wishes of the child if the child is of sufficient age and capacity to
8 form an intelligent preference as to his or her physical custody.

9 (b) Any nomination of a guardian for the child by a parent.

10 (c) Which parent is more likely to allow the child to have frequent
11 associations and a continuing relationship with the noncustodial parent.

12 (d) The level of conflict between the parents.

13 (e) The ability of the parents to cooperate to meet the needs of the child.

14 (f) The mental and physical health of the parents.

15 (g) The physical, developmental and emotional needs of the child.

16 (h) The nature of the relationship of the child with each parent.

17 (i) The ability of the child to maintain a relationship with any sibling.

18 (j) Any history of parental abuse or neglect of the child or a sibling of the
19 child.

20 (k) Whether either parent or any other person seeking physical custody
21 has engaged in an act of domestic violence against the child, a parent of
22 the child or any other person residing with the child.

23 (l) Whether either parent or any other person seeking physical custody
24 has committed any act of abduction against the child or any other child.

25 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a
26 determination by the court after an evidentiary hearing and finding by
27 clear and convincing evidence that either parent or any other person
28 seeking physical custody has engaged in one or more acts of domestic
violence against the child, a parent of the child or any other person
residing with the child creates a rebuttable presumption that sole or
joint physical custody of the child by the perpetrator of the domestic
violence is not in the best interest of the child. Upon making such a
determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts
of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the
court adequately protects the child and the parent or other victim of
domestic violence who resided with the child.

1 6. If after an evidentiary hearing held pursuant to subsection 5 the court
2 determines that each party has engaged in acts of domestic violence, it
3 shall, if possible, then determine which person was the primary physical
4 aggressor. In determining which party was the primary physical

5 (a) All prior acts of domestic violence involving either party;

6 (b) The relative severity of the injuries, if any, inflicted upon the persons
involved in those prior acts of domestic violence;

7 (c) The likelihood of future injury;

8 (d) Whether, during the prior acts, one of the parties acted in self-
defense; and

9 (e) Any other factors which the court deems relevant to the
determination.

10 In such a case, if it is not possible for the court to determine which party
11 is the primary physical aggressor, the presumption created pursuant to
12 subsection 5 applies to both parties. If it is possible for the court to
13 determine which party is the primary physical aggressor, the
14 presumption created pursuant to subsection 5 applies only to the party
determined by the court to be the primary physical aggressor.

15 7. A determination by the court after an evidentiary hearing and finding
16 by clear and convincing evidence that either parent or any other person
17 seeking physical custody has committed any act of abduction against the
18 child or any other child creates a rebuttable presumption that sole or
19 joint physical custody or unsupervised visitation of the child by the
20 perpetrator of the abduction is not in the best interest of the child. If the
21 parent or other person seeking physical custody does not rebut the
presumption, the court shall not enter an order for sole or joint physical
custody or unsupervised visitation of the child by the perpetrator and the
court shall set forth:

22 (a) Findings of fact that support the determination that one or more acts
23 of abduction occurred; and

24 (b) Findings that the custody or visitation arrangement ordered by the
25 court adequately protects the child and the parent or other person from
whom the child was abducted.

26 8. For the purposes of subsection 7, any of the following acts constitute
27 conclusive evidence that an act of abduction occurred:

1 (a) A conviction of the defendant of any violation of NRS 200.310 to
2 200.340, inclusive, or 200.359 or a law of any other jurisdiction that
3 prohibits the same or similar conduct;

4 (b) A plea of guilty or nolo contendere by the defendant to any violation
5 of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other
6 jurisdiction that prohibits the same or similar conduct; or

7 (c) An admission by the defendant to the court of the facts contained in
8 the charging document alleging a violation of NRS 200.310 to 200.340,
9 inclusive, or 200.359 or a law of any other jurisdiction that prohibits the
10 same or similar conduct.

11 9. If, after a court enters a final order concerning physical custody of the
12 child, a magistrate determines there is probable cause to believe that an
13 act of abduction has been committed against the child or any other child
14 and that a person who has been awarded sole or joint physical custody
15 or unsupervised visitation of the child has committed the act, the court
16 shall, upon a motion to modify the order concerning physical custody,
17 reconsider the previous order concerning physical custody pursuant to
18 subsections 7 and 8.

19 10. As used in this section:

20 (a) "Abduction" means the commission of an act described in NRS
21 200.310 to 200.340, inclusive, or 200.359 or a law of any other
22 jurisdiction that prohibits the same or similar conduct.

23 (b) "Domestic violence" means the commission of any act described in
24 NRS 33.018.

25 As set forth above, Nadine currently has the parties' oldest minor
26 child solely in her care and the parties' oldest minor child has been
27 solely in Nadine's care for well over a year. Despite the fact that the
28 Court has ordered that Herman has the ability to have visitation with
the parties' oldest minor child and despite the fact that that the Court
has ordered that Herman can attend counseling with the parties' oldest

1 minor child, Herman refuses to have contact with the parties' oldest
2 minor child. As a result, Nadine should be granted primary physical
3 custody of the parties' oldest minor child and Herman's visitation with
4 the parties' oldest minor child should be "teen discretion." As to the
5 parties' three youngest minor children, Nadine believes that Herman's
6 inability to coparent and communicate with her gives the Court the
7 authority to grant her primary physical custody of the parties' three
8 youngest minor children. Additionally, the District Court is required to
9 take into consideration the following interest factors when determining
10 custody:
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15 The wishes of the child if the child is of sufficient age and capacity to
16 form an intelligent preference as to his or her physical custody.
17

18 The minor children have been interviewed on multiple occasions in
19 this matter. The parties' oldest minor child wants no contact with
20 Herman and the parties' three youngest minor children want to spend
21 equal time with both parties.
22

23 Any nomination of a guardian for the child by a parent.
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25 Not Applicable in this matter.
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1 Which parent is more likely to allow the child to have frequent
2 associations and a continuing relationship with the noncustodial
3 parent.

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5 There is an Order to Show Cause Pending against Herman for his
6 failure to provide Nadine the entirety of her visitation with the minor
7 children. Herman has attempted to thwart Nadine's relationship with
8 the minor children throughout these proceedings.
9

10
11 The level of conflict between the parents.

12
13 The level of conflict between the parties is extremely high due to
14 Herman's unwillingness to cooperate and communicate with Nadine.
15

16 The ability of the parents to cooperate to meet the needs of the child.

17 Nadine is more than willing to cooperate and co-parent with
18 Herman. However, Herman apparently believes that he does not have
19 to cooperate or co-parent with Nadine.
20

21 The mental and physical health of the parents.

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23 There are no known mental or physical health issues of either
24 party.
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1 The physical, developmental and emotional needs of the child.

2 The minor children have no unique or special needs. However,
3
4 the minor children need to be parented and it is obvious Herman is
5 attempting to prevent Nadine from being a parent to the minor
6 children.
7

8 The nature of the relationship of the child with each parent.

9
10 Despite Herman's efforts, Nadine has a strong relationship with
11 all of the minor children. Herman has no relationship with the parties'
12 oldest minor child.
13

14 The ability of the child to maintain a relationship with any sibling.

15 Not applicable.
16

17 Any history of parental abuse or neglect of the child or a sibling of the
18 child.

19
20 Not applicable. As stated, the allegations against Nadine were
21 unsubstantiated by Child Protective Services.
22

23 Whether either parent or any other person seeking custody has engaged
24 in an act of domestic violence against the child, a parent of the child or
25 any other person residing with the child.

26
27 Not applicable.
28

1 Whether either parent or any other person seeking custody has
2 committed any act of abduction against the child or any other child.

3
4 Not applicable.

5
6 If Nadine is granted primary physical custody of the parties' three
7 youngest minor children, Nadine would ask that the Court award
8 Herman visitation with the parties' three youngest three weekends a
9 month commencing Friday after school until Sunday evening. If the
10 parties are granted joint physical custody of the parties' three youngest
11 minor children, Nadine would ask that the parties adhere to an
12 alternating week visitation schedule with the exchange of the minor
13 children to occur either Friday after school or Monday after school.
14 Further, the Court should order that all of the minor children attend
15 Doral Academy.
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21 **c. Child support should be calculated by the Court.**
22

23 *NAC 425.025 states as follows:*
24

25 1. *"Gross income" includes, without limitation:*

26 (a) *Salary and wages, including, without limitation, money earned from*
27 *overtime pay if such overtime pay is substantial, consistent and can be*
28 *accurately determined.*

(b) *Interest and investment income, not including the principal.*

1 (c) Social security disability benefits and old-age insurance benefits
under federal law.

2 (d) Any periodic payment from a pension, retirement plan or annuity
3 which is considered remuneration for employment.

4 (e) Net proceeds resulting from workers' compensation or other personal
injury awards intended to replace income.

5 (f) Unemployment insurance.

6 (g) Income continuation benefits.

7 (h) Voluntary contributions to a deferred compensation plan, employee
contributions to an employee benefit or profit-sharing plan, and
8 voluntary employee contributions to any pension or retirement account,
9 regardless of whether the account provides for tax deferral or avoidance.

10 (i) Military allowances and veterans' benefits.

(j) Compensation for lost wages.

11 (k) Undistributed income of a business entity in which a party has an
12 ownership interest sufficient to individually exercise control over or
13 access the earnings of the business, unless the income is included as an
asset for the purposes of imputing income pursuant to NAC 425.125. As
14 used in this paragraph:

15 (1) "Reasonable allowance for economic depreciation" means the amount
of depreciation on assets computed using the straight-line method and
16 useful lives as determined under federal income tax laws and
17 regulations.

18 (2) "Undistributed income" means federal taxable income of a business
entity plus depreciation claimed on the federal income tax return of the
19 business less a reasonable allowance for economic depreciation.

20 (l) Child care subsidy payments if a party is a child care provider.

21 (m) Alimony.

22 (n) Except as otherwise provided in subsection 2, all other income of a
party, regardless of whether such income is taxable.

23 2. The term does not include:

24 (a) Child support received.

25 (b) Foster care or kinship care payments.

26 (c) Benefits received under the federal Supplemental Nutrition
Assistance Program.

27 (d) Cash benefits paid by a county.

28 (e) Supplemental security income benefits and state supplemental
payments.

1 (f) Except as otherwise provided in paragraph (l) of subsection 1,
2 payments made for social services or any other public assistance benefits.

3 (g) Compensation for losses, including, without limitation, both general
4 and special damages, from personal injury awards not intended to
5 replace income.

6 3. This section must not be construed to limit income withholding or
7 the assignment of workers' compensation benefits for the collection of
8 child support.

9 NAC 425.140 states as follows:

10 Except as otherwise provided in NAC 425.145, the base child support
11 obligation of an obligor must be determined according to the following
12 schedule:

13 1. For one child, the sum of:

14 (a) For the first \$6,000 of an obligor's monthly gross income, 16
15 percent of such income;

16 (b) For any portion of an obligor's monthly gross income that is
17 greater than \$6,000 and equal to or less than \$10,000, 8 percent of such
18 a portion; and

19 (c) For any portion of an obligor's monthly gross income that is
20 greater than \$10,000, 4 percent of such a portion.

21 2. For two children, the sum of:

22 (a) For the first \$6,000 of an obligor's monthly gross income, 22
23 percent of such income;

24 (b) For any portion of an obligor's monthly gross income that is
25 greater than \$6,000 and equal to or less than \$10,000, 11 percent of such
26 a portion; and

27 (c) For any portion of an obligor's monthly gross income that is
28 greater than \$10,000, 6 percent of such a portion.

3. For three children, the sum of:

(a) For the first \$6,000 of an obligor's monthly gross income, 26
percent of such income;

(b) For any portion of an obligor's monthly gross income that is
greater than \$6,000 and equal to or less than \$10,000, 13 percent of such
a portion; and

(c) For any portion of an obligor's monthly gross income that is
greater than \$10,000, 6 percent of such a portion.

1 4. For four children, the sum of:

2 (a) For the first \$6,000 of an obligor's monthly gross income, 28
3 percent of such income;

4 (b) For any portion of an obligor's monthly gross income that is
5 greater than \$6,000 and equal to or less than \$10,000, 14 percent of such
6 a portion; and

7 (c) For any portion of an obligor's monthly gross income that is
8 greater than \$10,000, 7 percent of such a portion.

9 5. For each additional child, the sum of:

10 (a) For the first \$6,000 of an obligor's monthly gross income, an
11 additional 2 percent of such income;

12 (b) For any portion of an obligor's monthly gross income that is
13 greater than \$6,000 and equal to or less than \$10,000, an additional 1
14 percent of such a portion; and

15 (c) For any portion of an obligor's monthly gross income that is
16 greater than \$10,000, an additional 0.5 percent of such a portion.

17 NAC 425.145 states as follows:

18 1. If the court determines that the total economic circumstances of
19 an obligor limit his or her ability to pay a child support obligation in the
20 amount determined pursuant to NAC 425.140, the child support
21 obligation must be established by using a low-income schedule which is
22 based on the current federal poverty guidelines, as determined by the
23 Secretary of Health and Human Services, and which is published
24 annually in the Federal Register.

25 2. If the monthly gross income of an obligor is below the lowest level
26 set forth in the low-income schedule, the court may establish an
27 appropriate child support obligation based on the total economic
28 circumstances of the obligor, balancing his or her need for self-support
with the obligation to support his or her child.

3 3. The low-income schedule must be published by the
Administrative Office of the Courts on or before March 31 of each year.

4 NAC 425.150 states as follows:

5 1. Any child support obligation may be adjusted by the court in
6 accordance with the specific needs of the child and the economic

1 *circumstances of the parties based upon the following factors and*
2 *specific findings of fact:*

- 3 *(a) Any special educational needs of the child;*
- 4 *(b) The legal responsibility of the parties for the support of others;*
- 5 *(c) The value of services contributed by either party;*
- 6 *(d) Any public assistance paid to support the child;*
- 7 *(e) The cost of transportation of the child to and from visitation;*
- 8 *(f) The relative income of both households, so long as the adjustment*
9 *does not exceed the total obligation of the other party;*
- 10 *(g) Any other necessary expenses for the benefit of the child; and*
- 11 *(h) The obligor's ability to pay.*

12 *2. The court may include benefits received by a child pursuant to 42*
13 *U.S.C. § 402(d) based on a parent's entitlement to federal disability or*
14 *old-age insurance benefits pursuant to 42 U.S.C. §§ 401 to 433,*
15 *inclusive, in the parent's gross income and adjust an obligor's child*
16 *support obligation by subtracting the amount of the child's benefit. In no*
17 *case may this adjustment require an obligee to reimburse an obligor for*
18 *any portion of the child's benefit.*

19 *NAC 425.125 states as follows:*

20 *1. If after taking evidence, the court determines that an obligor is*
21 *underemployed or unemployed without good cause, the court may impute*
22 *income to the obligor.*

23 *2. If the court imputes income, the court must take into consideration,*
24 *to the extent known, the specific circumstances of the obligor, including,*
25 *without limitation:*

26 *(a) The obligor's:*

- 27 *(1) Assets;*
- 28 *(2) Residence;*
- 29 *(3) Employment and earnings history;*
- 30 *(4) Job skills;*
- 31 *(5) Educational attainment;*
- 32 *(6) Literacy;*
- 33 *(7) Age;*
- 34 *(8) Health;*
- 35 *(9) Criminal record and other employment barriers; and*
- 36 *(10) Record of seeking work;*
- 37 *(b) The local job market;*

- 1 (c) *The availability of employers willing to hire the obligor;*
2 (d) *The prevailing earnings level in the local community; and*
3 (e) *Any other relevant background factors in the case.*

4 As to the issue of child support, the calculation of the same will be
5 dependent on whether Nadine is granted primary physical custody of all
6 the minor children or just primary physical custody of the parties'
7 oldest minor child and the parties should have joint physical custody of
8 the parties' three youngest minor children. However, Nadine believes
9 that Herman (who works for himself) is underreporting his gross
10 monthly income on his Financial Disclosure Form. Herman has always
11 earned in excess of what his Financial Disclosure Form indicates. As a
12 result, Nadine believes the Court should find that Herman is willfully
13 underemployed pursuant to *Minnear v. Minnear*, 107 Nv 495, 814 P2d
14 85 (1991), and, as a result, the Court should impugn an income upon
15 Herman pursuant to NAC 425.125 and *Rosenbaum v Rosenbaum*, 86 Nv
16 550, 471 P2d 254.
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23 **c. Division of Assets/Debts.**

24 Nadine asks that the parties' assets and debts be divided as set
25 forth above.
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27
28

1 **d. Alimony.**

2
3 *NRS 125.150 states as follows:*

4 *Except as otherwise provided in NRS 125.155 and 125.165, and unless*
5 *the action is contrary to a premarital agreement between the parties*
6 *which is enforceable pursuant to chapter 123A of NRS:*

7 *1. In granting a divorce, the court:*

8 *(a) May award such alimony to either spouse, in a specified principal*
9 *sum or as specified periodic payments, as appears just and equitable;*
10 *and*

11 *(b) Shall, to the extent practicable, make an equal disposition of the*
12 *community property of the parties, including, without limitation, any*
13 *community property transferred into an irrevocable trust pursuant*
14 *to NRS 123.125 over which the court acquires jurisdiction pursuant*
15 *to NRS 164.010, except that the court may make an unequal disposition*
16 *of the community property in such proportions as it deems just if the*
17 *court finds a compelling reason to do so and sets forth in writing the*
18 *reasons for making the unequal disposition.*

19 *2. Except as otherwise provided in this subsection, in granting a divorce,*
20 *the court shall dispose of any property held in joint tenancy in the*
21 *manner set forth in subsection 1 for the disposition of community*
22 *property. If a party has made a contribution of separate property to the*
23 *acquisition or improvement of property held in joint tenancy, the court*
24 *may provide for the reimbursement of that party for his or her*
25 *contribution. The amount of reimbursement must not exceed the amount*
26 *of the contribution of separate property that can be traced to the*
27 *acquisition or improvement of property held in joint tenancy, without*
28 *interest or any adjustment because of an increase in the value of the*
property held in joint tenancy. The amount of reimbursement must not
exceed the value, at the time of the disposition, of the property held in
joint tenancy for which the contribution of separate property was made.
In determining whether to provide for the reimbursement, in whole or in
part, of a party who has contributed separate property, the court shall
consider:

(a) The intention of the parties in placing the property in joint tenancy;

(b) The length of the marriage; and

1 (c) Any other factor which the court deems relevant in making a just and
2 equitable disposition of that property.

3 As used in this subsection, "contribution" includes, without limitation, a
4 down payment, a payment for the acquisition or improvement of
5 property, and a payment reducing the principal of a loan used to finance
6 the purchase or improvement of property. The term does not include a
7 payment of interest on a loan used to finance the purchase or
8 improvement of property, or a payment made for maintenance, insurance
9 or taxes on property.

10 3. A party may file a postjudgment motion in any action for divorce,
11 annulment or separate maintenance to obtain adjudication of any
12 community property or liability omitted from the decree or judgment as
13 the result of fraud or mistake. A motion pursuant to this subsection must
14 be filed within 3 years after the discovery by the aggrieved party of the
15 facts constituting the fraud or mistake. The court has continuing
16 jurisdiction to hear such a motion and shall equally divide the omitted
17 community property or liability between the parties unless the court
18 finds that:

19 (a) The community property or liability was included in a prior equal
20 disposition of the community property of the parties or in an unequal
21 disposition of the community property of the parties which was made
22 pursuant to written findings of a compelling reason for making that
23 unequal disposition; or

24 (b) The court determines a compelling reason in the interests of justice to
25 make an unequal disposition of the community property or liability and
26 sets forth in writing the reasons for making the unequal disposition.

27 If a motion pursuant to this subsection results in a judgment dividing a
28 defined benefit pension plan, the judgment may not be enforced against
an installment payment made by the plan more than 6 years after the
installment payment.

4. Except as otherwise provided in NRS 125.141, whether or not
application for suit money has been made under the provisions of NRS
125.040, the court may award a reasonable attorney's fee to either party
to an action for divorce.

5. In granting a divorce, the court may also set apart such portion of the
separate property of either spouse for the other spouse's support or the
separate property of either spouse for the support of their children as is
deemed just and equitable.

1 6. In the event of the death of either party or the subsequent remarriage
2 of the spouse to whom specified periodic payments were to be made, all
3 the payments required by the decree must cease, unless it was otherwise
ordered by the court.

4 7. If the court adjudicates the property rights of the parties, or an
5 agreement by the parties settling their property rights has been approved
6 by the court, whether or not the court has retained jurisdiction to modify
7 them, the adjudication of property rights, and the agreements settling
8 property rights, may nevertheless at any time thereafter be modified by
the court upon written stipulation signed and acknowledged by the
parties to the action, and in accordance with the terms thereof.

9 8. If a decree of divorce, or an agreement between the parties which was
10 ratified, adopted or approved in a decree of divorce, provides for
11 specified periodic payments of alimony, the decree or agreement is not
12 subject to modification by the court as to accrued payments. Payments
13 pursuant to a decree entered on or after July 1, 1975, which have not
14 accrued at the time a motion for modification is filed may be modified
15 upon a showing of changed circumstances, whether or not the court has
16 expressly retained jurisdiction for the modification. In addition to any
17 other factors the court considers relevant in determining whether to
18 modify the order, the court shall consider whether the income of the
spouse who is ordered to pay alimony, as indicated on the spouse's
federal income tax return for the preceding calendar year, has been
reduced to such a level that the spouse is financially unable to pay the
amount of alimony the spouse has been ordered to pay.

19 9. In addition to any other factors the court considers relevant in
20 determining whether to award alimony and the amount of such an
21 award, the court shall consider:

- 22 (a) The financial condition of each spouse;
- 23 (b) The nature and value of the respective property of each spouse;
- 24 (c) The contribution of each spouse to any property held by the spouses
pursuant to NRS 123.030;
- 25 (d) The duration of the marriage;
- 26 (e) The income, earning capacity, age and health of each spouse;
- 27 (f) The standard of living during the marriage;
- 28 (g) The career before the marriage of the spouse who would receive the
alimony;

1 (h) The existence of specialized education or training or the level of
2 marketable skills attained by each spouse during the marriage;
3 (i) The contribution of either spouse as homemaker;
4 (j) The award of property granted by the court in the divorce, other than
5 child support and alimony, to the spouse who would receive the alimony;
6 and
7 (k) The physical and mental condition of each party as it relates to the
8 financial condition, health and ability to work of that spouse.
9 10. In granting a divorce, the court shall consider the need to grant
10 alimony to a spouse for the purpose of obtaining training or education
11 relating to a job, career or profession. In addition to any other factors the
12 court considers relevant in determining whether such alimony should be
13 granted, the court shall consider:
14 (a) Whether the spouse who would pay such alimony has obtained
15 greater job skills or education during the marriage; and
16 (b) Whether the spouse who would receive such alimony provided
17 financial support while the other spouse obtained job skills or education.
18 11. If the court determines that alimony should be awarded pursuant to
19 the provisions of subsection 10:
20 (a) The court, in its order, shall provide for the time within which the
21 spouse who is the recipient of the alimony must commence the training
22 or education relating to a job, career or profession.
23 (b) The spouse who is ordered to pay the alimony may, upon changed
24 circumstances, file a motion to modify the order.
25 (c) The spouse who is the recipient of the alimony may be granted, in
26 addition to any other alimony granted by the court, money to provide for:
27 (1) Testing of the recipient's skills relating to a job, career or profession;
28 (2) Evaluation of the recipient's abilities and goals relating to a job,
career or profession;
(3) Guidance for the recipient in establishing a specific plan for training
or education relating to a job, career or profession;
(4) Subsidization of an employer's costs incurred in training the
recipient;
(5) Assisting the recipient to search for a job; or
(6) Payment of the costs of tuition, books and fees for:
(I) The equivalent of a high school diploma;
(II) College courses which are directly applicable to the recipient's goals
for his or her career; or

1 *(III) Courses of training in skills desirable for employment.*

2 *12. For the purposes of this section, a change of 20 percent or more in the*
3 *gross monthly income of a spouse who is ordered to pay alimony shall be*
4 *deemed to constitute changed circumstances requiring a review for*
5 *modification of the payments of alimony. As used in this subsection,*
6 *“gross monthly income” has the meaning ascribed to it in NRS 125B.070.*

7 Recently the Nevada Supreme Court provided further
8 instruction as to how alimony should be awarded. Specifically, the
9 Nevada Supreme Court stated:

10 *A large gap in income, alone, does not decide alimony. The award must*
11 *meet the receiving spouse’s economic needs or compensate for economic*
12 *losses resulting from the marriage and subsequent divorce. See Family*
13 *Dissolution § 5.03 cmt. b (“Disparity in the post-divorce incomes of the*
14 *spouses does not itself provide the basis of a claim [to share the other*
15 *spouse’s income.]”); Nousari v. Nousari, 94 So.3d 704, 706 (Fla. 4th DCA*
16 *2012) (“The purpose of permanent alimony is not to divide future income*
17 *to establish financial equality between the parties, so disparity in income*
18 *alone does not justify an award of permanent alimony.”) (internal*
19 *quotation marks and citation omitted). As Shydler recognized, “our case*
20 *law does not require the district court to award alimony so as to*
21 *effectively equalize salaries.” 114 Nev. at 199, 954 P.2d at 41; see*
22 *also Gardner, 110 Nev. at 1058, 881 P.2d at 648 (increasing alimony but*
23 *recognizing that it would “still fail to achieve income parity between the*
24 *[spouses]”). Justice and equity only require alimony to achieve more*
25 *parity in post-divorce income levels when there is economic need, the*
26 *marriage and subsequent divorce contributed to the disparate income*
27 *levels, or one spouse cannot maintain the marital standard of living*
28 *while the other spouse maintains or exceeds the marital standard of*
living.

See, Kogard v Cioff-Kogard, 135 Nv 64, 439 P3d 397 (2019).

1 In this matter the parties' incomes are similar and again,
2 Nadine believes that Herman is underreporting his income on his
3 Financial Disclosure Form. Further, Herman's Financial
4 Disclosure Form (even with the intentionally deflated income)
5 reveals that Herman's income more than meets his monthly
6 expenses each month. As a result, Herman cannot show that he
7 has a need for alimony.
8

9
10
11 **e. Contempt.**

12 *NRS 22.010 states in pertinent part:*
13

14 *The following acts or omissions shall be deemed contempts:*

15 *3. Disobedience or resistance to any lawful writ, order, rule or process*
16 *issued by the court or judge at chambers.*

17 *NRS 22.030 states in pertinent part:*
18

19 *2. if a contempt is not committed in the immediate view and presence of*
20 *the court or judge at chambers, an affidavit must be presented to the*
21 *court or judge of the facts constituting the contempt, or a statement of the*
22 *facts by the masters or arbitrators.*

23 *NRS 22.100 states:*
24

25 *Upon the answer and evidence taken, the court or judge or jury, as the*
26 *case may be, shall determine whether the person proceeded against is*
27 *guilty of the contempt charged; and if it be found that he is guilty of the*
28 *contempt, a fine may be imposed on him not exceeding \$500, or he may*
be imprisoned not exceeding 25 days, or both, but no imprisonment shall
exceed 25 days except as provided in 22.110.

1 At the August 26, 2019 hearing the Court ordered that Nadine
2 would have visitation with the minor children every Saturday
3 commencing at 10.00 am and concluding at 6.00 pm. The order
4 memorializing the August 26, 2019 hearing was filed on October 30,
5 2019, and the provision regarding Nadine's visitation with the minor
6 children states specifically as follows:
7

8
9 ***IT IS FURTHER ORDERED*** that Plaintiff shall have day visits with
10 the minor children every Saturday commencing at 10.00 am until 6.00
11 pm.
12

13 *See Page 2, Lines 4 through 7 of the Order filed on October 30, 2019.*
14

15 Herman has not abided by the terms of the October 30, 2019
16 Order in that Herman did not deliver the minor children to Nadine for
17 her November 16, 2019 visitation with the minor children, Herman did
18 not deliver the minor children to Nadine for her January 4, 2020
19 visitation and Herman did not deliver the minor children to Nadine for
20 her January 11, 2020 visitation with the minor children. Further,
21 while Herman delivered the minor children to Nadine on December 28,
22 2019 for her visitation with the minor children, Herman retrieved the
23 minor children at approximately 6.50 pm and Nadine was to have the
24 minor children in her care until January 6, 2020 as and for her Winter
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1 Break visitation with the minor children. Further, Herman did not
2 notify Nadine that he would not be delivering the minor children to her
3
4 for the three visitations in question nor did Herman provide a basis as
5 to why he would not be delivering the minor children for the three
6
7 visitations in question. Finally, Herman did not tell Nadine he would
8 be retrieving the minor children early during her Winter Break
9
10 visitation with the minor children.

11 As to the issue of contempt, this matter is very straightforward.
12
13 Herman ignored the orders of the Court regarding Nadine's visitation
14 with the minor children. Nadine asks that Herman be sanctioned
15 monetarily for his non-compliance with the orders of this Court.
16
17 Nadine also asks that the Court issue a stay jail sentence upon Herman
18 such that if Herman is in contempt of the Court's orders in the future,
19
20 Herman will serve at least ten days in the Clark County Detention
21 Center.
22
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1 **f. Attorney's Fees.**

2 *NRS. 18.010*, states as follows:

3
4 *1. The compensation of an attorney and counselor for his services is*
5 *governed by agreement, express or implied, which is not restrained by*
6 *law.*

7 *2. In addition to the cases where an allowance is authorized by specific*
8 *statue, the court may make an allowance of attorney's fees to a prevailing*
9 *party:*

10 *a. When he has not recovered more than \$20,000.00; or*

11 *b. Without regard to the recovery sought, when the court finds that the*
12 *claim, counterclaim, cross-claim, or third-party complaint or defense of*
13 *the opposing party was brought without reasonable ground or to harass*
14 *the prevailing party.*

15 *3. In awarding attorney's fees the court may pronounce its decision on*
16 *the fees at the conclusion of the trial or special proceedings without*
17 *written motion and with or without presentation of additional evidence*

18 *4. No oral application or written motion for attorney's fees alters the*
19 *effect of a final judgment rendered in the action or the time permitted for*
20 *an appeal there from.*

21 *5. Subsections 2,3, and 4 do not apply to any action arising out of a*
22 *written instrument or agreement which entitles a prevailing to an award*
23 *of reasonable attorney's fees.*

24
25 An award of attorney's fees where is warranted when the
26 nonmoving party's opposition is without reasonable ground, or to harass
27 the moving party. An award of attorney's fees is within the sound
28 discretion of the court. *County of Clark v. Richard Blanchard*
Construction Company, 98 Nev. 48, 653 P.2d 1217 (1982). This matter
has been prolonged due to Herman's inability to cooperate and

1 communicate with Nadine and due to Herman's inability to adhere to
2 the orders of this Court. As a result, Nadine should be awarded
3 attorney's fees and requests the sum of \$7'500.00.
4

5 Pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nv 345 (1969),
6 the court should take into consideration the following factors when
7 determining an award of attorney's fees. (1) The qualities of the
8 advocate: Mr. Toti has been practicing law for approximately twenty
9 years and is a Nevada Board Certified Family Law Specialist.
10 Approximately 98% of Mr. Toti's practice is dedicated to family law. (2)
11 The character and difficulty of the work performed: The intricacy,
12 importance, time and skill required to prepare for and argue this
13 Motion is moderate. (3) The work actually performed by the attorney:
14 To date this office has expended approximately sixty hours getting this
15 matter to this stage. This does not account for any time spent in court.
16
17 (4) The result obtained: is yet to be determined.
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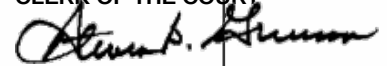
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1 **PSER**
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7 Attorney for Plaintiff

8
9
10 **DISTRICT COURT, FAMILY DIVISION**
11 **CLARK COUNTY NEVADA**

12 NADINE WILLIAMS,
13
14 Plaintiff,

12 Case No. D-19-586291-D
13
14 Dept No. I

15 v

16 HERMAN GEORGE WILLIAMS,
17
18 Defendant.

19
20
21 **PROOF OF SERVICE**

22 I hereby certify that service of the foregoing **PLAINTIFF'S PRETRIAL**
23 **MEMORANDUM** was made on the 9th day of February 2021, pursuant to
24 NRCP 5(b)(2)(D), and EDCR 8.05, by electronic service via the Court's E-
25 Filing System, proof of which is attached hereto, as follows:

26 Kenneth Robbins, Esq.
27 FamilyFirst@halfPriceLawyers.com
28 Attorney for Defendant

21 /s/ Frank J. Toti

22 FRANK J TOTI, ESQ. 005804
23 6900 Westcliff Drive #500
24 Las Vegas, Nevada 89145

David Barragan

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Notification of Service

Case Number: D-19-586291-D
Case Style: Nadine Alecia Williams,
Plaintiffvs.Herman George Williams, Defendant.
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Case Number	D-19-586291-D
Case Style	Nadine Alecia Williams, Plaintiffvs.Herman George Williams, Defendant.
Date/Time Submitted	2/9/2021 1:09 PM PST
Filing Type	Pre-trial Memorandum - PMEM (FAM)
Filing Description	Plaintiff's Pretrial Memorandum
Filed By	David Barragan
Service Contacts	Nadine Alecia Williams: Frank Toti (frank@fjtesq.com) David Barragan (david@fjtesq.com) Herman George Williams: Kenneth Robbins, Esq. (FamilyFirst@HalfPriceLawyers.com)

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6 **Attorney for N. Williams**

7 **DISTRICT COURT**
8 **CLARK COUNTY NEVADA**

9 **NADINE WILLIAMS**
10 **Plaintiff,**

11 **v**

12 **HERMAN GEORGE WILLIAMS**
13 **Defendant**

Case D 19 586291 D
Dept I
Family Court

14 **PLAINTIFF'S PRETRIAL MEMORANDUM**

15 Comes now, Plaintiff, Nadine Williams, by and through her
16 attorney of record, Frank J Toti Esquire, and hereby submits the
17 foregoing Pretrial Memorandum in advance of the Evidentiary Hearing
18 currently set to commence on February 11, 2021.

19 Dated this 8 day of February, 2021

20
21
22
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24
25
26 *Frank J Toti*
27 **FRANK J TOTI 005804**
28 **6900 Westcliff Drive #500**
Las Vegas Nevada 89145
Attorney for N. Williams

Relevant Facts

a. Parties:

Nadine Williams,	Plaintiff.
Herman Williams,	Defendant.

b. Minor Children:

Abigail Williams,	born October 27, 2004.
Herman Williams IV,	born August 24, 2008.
Matthew Williams,	born May 13, 2010.
Elisha Williams,	born April 26, 2013.

c. Resolved Issues:

1. None.

d. Unresolved Issues:

1. Custody, Visitation and Support of the Minor Children
2. Where the minor children will attend school for the 2021-22 school year.
3. Division of Property and Debt.
4. Alimony and Attorney's Fees.
5. Contempt.

Statement of Facts

The parties to this action were married on December 27, 1982. There are four minor children the product of their marriage, to wit: Abigail Williams, born October 27, 2004; Herman Williams IV, born August 24, 2008; Matthew Williams, born May 13, 2010 and Elisha Williams, born April 26, 2013. Nadine filed for divorce on March 19, 2019.

Since this matter commenced there has been much turmoil and little cooperation in this matter, all due to Herman's inability to cooperate and communicate with Nadine. When Nadine vacated the marital residence due to her inability to remain in the same household as Herman, Herman refused to allow Nadine access to the minor children and Herman refused to allow Nadine to take any of her belongings. Herman poisoned the minor children's minds against Nadine and initially the minor children even fabricated a story wherein Nadine was allegedly physically abusive towards the minor children. Child Protective Services was involved in this matter and ultimately the allegations against Nadine were unsubstantiated. Several child interviews have been conducted in this matter and there is no

1 indication that there are any safety concerns with the minor children
2 being in Nadine's care. The evidence will show that there is no basis
3 for Herman to be awarded primary physical custody of the minor
4 children.
5

6 At the commencement of this action, Nadine's visitation with the
7 minor children was limited due to the false physical abuse allegations.
8 Since said time, Nadine's visitation with the three youngest minor
9 children has increased to every weekend and Nadine currently has the
10 parties' oldest child solely in her care (it is believed that Herman will
11 concede that Nadine should have the parties' oldest child in her care
12 and that Herman's visitation with the parties' oldest minor child should
13 be "teen discretion"). Throughout this matter Herman has refused to
14 communicate with Nadine and despite being ordered to enroll in various
15 parenting apps, to date, Herman has yet to enroll in a single parenting
16 app. The evidence will show that Nadine should either have primary
17 physical custody of all the minor children or that Nadine should have
18 primary physical custody of the parties' oldest minor child and the
19 parties should have joint physical custody of the parties' three youngest
20 minor children.
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1 If Nadine is granted primary physical custody of the parties' three
2 youngest minor children, Nadine would ask that the Court award
3 Herman visitation three weekends a month commencing Friday after
4 school until Sunday evening. If the parties are granted joint physical
5 custody of the parties' three youngest minor children, Nadine would ask
6 that the parties adhere to an alternating week visitation schedule with
7 the exchange of the minor children to occur either Friday after school or
8 Monday after school.
9

10
11 The parties reside a considerable distance from one another with
12 Nadine residing in the Southwest (near Rhodes' Ranch) and Herman
13 residing in the Northeast (near Ann Road and Craig Road). Nadine
14 has the ability to place the minor children in Doral Academy. Doral is
15 a magnet school and is a far superior school than the school the minor
16 children are currently attending. The school is also very close to
17 Herman's residence.
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1 As to the issue of child support, the calculation of the same will be
2 dependent on whether Nadine is granted primary physical custody of all
3 the minor children or just primary physical custody of the parties'
4 oldest minor child and the parties should have joint physical custody of
5 the parties' three youngest minor children. However, though Herman's
6 Financial Disclosure Form is cryptic, Herman seems to indicate that his
7 gross monthly income is the sum of \$5'666.66 per month. Nadine
8 disputes the same as Herman works for himself and Nadine will testify
9 that Herman has always earned more income than Herman is alleging.
10 The evidence will should that the Court should consider Herman
11 intentionally underemployed for the purposes of avoiding paying child
12 support.
13

14 There are not may assets to divide in this matter. There is the
15 towing company – *Exquisite Towing Roadside Assistance LLC*, which
16 Nadine believes Herman will want to retain. There are several
17 vehicles and Nadine requests that she be awarded the 2015 Chevrolet
18 Silverado truck and Herman be awarded all the other vehicles. Nadine
19 has no objection to each party retaining all financial accounts solely in
20 their own name. Nadine would want to be reimbursed for her jewelry
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1 that Herman pawned as well as monies for the tools Herman is
2 retaining – Nadine believes the parties currently own approximately
3 \$15'000.00 worth of tools that are all currently in Herman's possession.
4 Also, Herman owes Nadine the sum of \$4'665.00 as and for monies
5 Nadine has paid towards the 2015 Chevrolet Silverado truck after the
6 Court ordered Herman to be solely responsible for the same.
7
8

9 As to debts, the parties accumulated a considerable amount of
10 debt during their marriage. Nadine consolidated all the parties' debts
11 in 2017 (the sum of \$34'560.75). Said consolidation loan has a current
12 balance of the sum of \$21'617.21. Nadine has been solely meeting this
13 debt each month since the parties separated. Nadine asks that
14 Herman pay one-half of the amount. Further, the parties still owe the
15 state of Connecticut the approximate sum of \$2'000.00 as and for
16 unpaid taxes. Said amount was previously in excess of \$7'000.00 but
17 just as with the consolidation loan, Nadine has been solely paying the
18 tax debt since the parties separated. Nadine asks that Herman pay the
19 remainder of the amount owed to Connecticut as and for unpaid taxes.
20 The parties have no other joint debts. All other debts that the parties
21 have in their own names should be that party's responsibility.
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1 Despite the length of marriage, both parties earn a considerable
2 income, and the parties' incomes are similar (especially if Herman is
3 working to his fullest ability and not attempting to persuade the Court
4 that he earns less than his actual earning ability). As a result, the
5 evidence will show that this is not a case where either party should be
6 awarded alimony.
7

8
9 The Court, via minute order, on March 19, 2020 approved
10 Nadine's motion for an Order to Show Cause in this matter and
11 indicated the same would be heard at the time of trial. The evidence
12 will show that Herman should be held in contempt of Court for willfully
13 violating the orders of this Court.
14

15 Finally, due to Herman's inability to follow the orders of this
16 Court, the evidence will show that Nadine should be awarded attorney's
17 fees.
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1 **a. Custody/Visitation.**

2 The trial Court has broad discretion to determine custody of the
3 minor children. *Sims v. Sims*, 109 Nv 1149, 1148, 865 P2d 328, 330
4 (1993); *Culbertson v. Culbertson*, 91 Nv 230, 233, 533 P2d 768, 770
5 (1975). In accordance with NRS 125.480, the Nevada Supreme Court
6 has held that “in custody matters, the polestar for judicial decisions is
7 the best interest of the children” *Schwartz v. Schwartz*, 107 Nv 378,
8 382, 812 P2d 1268, 1270-71 (1991).
9

10
11
12 NRS 125C.0035 states:
13

14 1. In any action for determining physical custody of a minor child, the
15 sole consideration of the court is the best interest of the child. If it
16 appears to the court that joint physical custody would be in the best
17 interest of the child, the court may grant physical custody to the parties
jointly.

18 2. Preference must not be given to either parent for the sole reason that
19 the parent is the mother or the father of the child.

20 3. The court shall award physical custody in the following order of
21 preference unless in a particular case the best interest of the child
requires otherwise:

22 (a) To both parents jointly pursuant to NRS 125C.0025 or to either
23 parent pursuant to NRS 125C.003. If the court does not enter an order
24 awarding joint physical custody of a child after either parent has
applied for joint physical custody, the court shall state in its decision the
reason for its denial of the parent's application.

25 (b) To a person or persons in whose home the child has been living and
26 where the child has had a wholesome and stable environment.

27 (c) To any person related within the fifth degree of consanguinity to the
28 child whom the court finds suitable and able to provide proper care and

1 guidance for the child, regardless of whether the relative resides within
2 this State.

3 (d) To any other person or persons whom the court finds suitable and
4 able to provide proper care and guidance for the child.

5 4. In determining the best interest of the child, the court shall consider
6 and set forth its specific findings concerning, among other things:

7 (a) The wishes of the child if the child is of sufficient age and capacity to
8 form an intelligent preference as to his or her physical custody.

9 (b) Any nomination of a guardian for the child by a parent.

10 (c) Which parent is more likely to allow the child to have frequent
11 associations and a continuing relationship with the noncustodial parent.

12 (d) The level of conflict between the parents.

13 (e) The ability of the parents to cooperate to meet the needs of the child.

14 (f) The mental and physical health of the parents.

15 (g) The physical, developmental and emotional needs of the child.

16 (h) The nature of the relationship of the child with each parent.

17 (i) The ability of the child to maintain a relationship with any sibling.

18 (j) Any history of parental abuse or neglect of the child or a sibling of the
19 child.

20 (k) Whether either parent or any other person seeking physical custody
21 has engaged in an act of domestic violence against the child, a parent of
22 the child or any other person residing with the child.

23 (l) Whether either parent or any other person seeking physical custody
24 has committed any act of abduction against the child or any other child.

25 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a
26 determination by the court after an evidentiary hearing and finding by
27 clear and convincing evidence that either parent or any other person
28 seeking physical custody has engaged in one or more acts of domestic
violence against the child, a parent of the child or any other person
residing with the child creates a rebuttable presumption that sole or
joint physical custody of the child by the perpetrator of the domestic
violence is not in the best interest of the child. Upon making such a
determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts
of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the
court adequately protects the child and the parent or other victim of
domestic violence who resided with the child.

1 6. If after an evidentiary hearing held pursuant to subsection 5 the court
2 determines that each party has engaged in acts of domestic violence, it
3 shall, if possible, then determine which person was the primary physical
4 aggressor. In determining which party was the primary physical
aggressor for the purposes of this section, the court shall consider:

- 5 (a) All prior acts of domestic violence involving either party;
6 (b) The relative severity of the injuries, if any, inflicted upon the persons
involved in those prior acts of domestic violence;
7 (c) The likelihood of future injury;
8 (d) Whether, during the prior acts, one of the parties acted in self-
defense; and
9 (e) Any other factors which the court deems relevant to the
determination.

10 In such a case, if it is not possible for the court to determine which party
11 is the primary physical aggressor, the presumption created pursuant to
12 subsection 5 applies to both parties. If it is possible for the court to
13 determine which party is the primary physical aggressor, the
14 presumption created pursuant to subsection 5 applies only to the party
determined by the court to be the primary physical aggressor.

15 7. A determination by the court after an evidentiary hearing and finding
16 by clear and convincing evidence that either parent or any other person
17 seeking physical custody has committed any act of abduction against the
18 child or any other child creates a rebuttable presumption that sole or
19 joint physical custody or unsupervised visitation of the child by the
20 perpetrator of the abduction is not in the best interest of the child. If the
21 parent or other person seeking physical custody does not rebut the
presumption, the court shall not enter an order for sole or joint physical
custody or unsupervised visitation of the child by the perpetrator and the
court shall set forth:

- 22 (a) Findings of fact that support the determination that one or more acts
23 of abduction occurred; and
24 (b) Findings that the custody or visitation arrangement ordered by the
25 court adequately protects the child and the parent or other person from
whom the child was abducted.

26 8. For the purposes of subsection 7, any of the following acts constitute
27 conclusive evidence that an act of abduction occurred:
28

1 (a) A conviction of the defendant of any violation of NRS 200.310 to
2 200.340, inclusive, or 200.359 or a law of any other jurisdiction that
prohibits the same or similar conduct;

3 (b) A plea of guilty or nolo contendere by the defendant to any violation
4 of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other
jurisdiction that prohibits the same or similar conduct; or

5 (c) An admission by the defendant to the court of the facts contained in
6 the charging document alleging a violation of NRS 200.310 to 200.340,
7 inclusive, or 200.359 or a law of any other jurisdiction that prohibits the
same or similar conduct.

8 9. If, after a court enters a final order concerning physical custody of the
9 child, a magistrate determines there is probable cause to believe that an
10 act of abduction has been committed against the child or any other child
and that a person who has been awarded sole or joint physical custody
11 or unsupervised visitation of the child has committed the act, the court
12 shall, upon a motion to modify the order concerning physical custody,
13 reconsider the previous order concerning physical custody pursuant to
subsections 7 and 8.

14 10. As used in this section:

15 (a) "Abduction" means the commission of an act described in NRS
16 200.310 to 200.340, inclusive, or 200.359 or a law of any other
jurisdiction that prohibits the same or similar conduct.

17 (b) "Domestic violence" means the commission of any act described in
18 NRS 33.018.

19
20 As set forth above, Nadine currently has the parties' oldest minor
21 child solely in her care and the parties' oldest minor child has been
22 solely in Nadine's care for well over a year. Despite the fact that the
23 Court has ordered that Herman has the ability to have visitation with
24 the parties' oldest minor child and despite the fact that that the Court
25 has ordered that Herman can attend counseling with the parties' oldest
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1 minor child, Herman refuses to have contact with the parties' oldest
2 minor child. As a result, Nadine should be granted primary physical
3 custody of the parties' oldest minor child and Herman's visitation with
4 the parties' oldest minor child should be "teen discretion." As to the
5 parties' three youngest minor children, Nadine believes that Herman's
6 inability to coparent and communicate with her gives the Court the
7 authority to grant her primary physical custody of the parties' three
8 youngest minor children. Additionally, the District Court is required to
9 take into consideration the following interest factors when determining
10 custody:
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15 The wishes of the child if the child is of sufficient age and capacity to
16 form an intelligent preference as to his or her physical custody.
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18 The minor children have been interviewed on multiple occasions in
19 this matter. The parties' oldest minor child wants no contact with
20 Herman and the parties' three youngest minor children want to spend
21 equal time with both parties.
22

23 Any nomination of a guardian for the child by a parent.
24

25 Not Applicable in this matter.
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1 Which parent is more likely to allow the child to have frequent
2 associations and a continuing relationship with the noncustodial
3
4 parent.

5 There is an Order to Show Cause Pending against Herman for his
6 failure to provide Nadine the entirety of her visitation with the minor
7 children. Herman has attempted to thwart Nadine's relationship with
8 the minor children throughout these proceedings.

11 The level of conflict between the parents.

12 The level of conflict between the parties is extremely high due to
13 Herman's unwillingness to cooperate and communicate with Nadine.

15 The ability of the parents to cooperate to meet the needs of the child.

17 Nadine is more than willing to cooperate and co-parent with
18 Herman. However, Herman apparently believes that he does not have
19 to cooperate or co-parent with Nadine.

21 The mental and physical health of the parents.

22 There are no known mental or physical health issues of either
23 party.
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1 The physical, developmental and emotional needs of the child.

2 The minor children have no unique or special needs. However,
3
4 the minor children need to be parented and it is obvious Herman is
5 attempting to prevent Nadine from being a parent to the minor
6 children.
7

8 The nature of the relationship of the child with each parent.

9
10 Despite Herman's efforts, Nadine has a strong relationship with
11 all of the minor children. Herman has no relationship with the parties'
12 oldest minor child.
13

14 The ability of the child to maintain a relationship with any sibling.

15 Not applicable.
16

17 Any history of parental abuse or neglect of the child or a sibling of the
18 child.

19
20 Not applicable. As stated, the allegations against Nadine were
21 unsubstantiated by Child Protective Services.
22

23 Whether either parent or any other person seeking custody has engaged
24 in an act of domestic violence against the child, a parent of the child or
25 any other person residing with the child.

26
27 Not applicable.
28

1 Whether either parent or any other person seeking custody has
2 committed any act of abduction against the child or any other child.

3
4 Not applicable.

5
6 If Nadine is granted primary physical custody of the parties' three
7 youngest minor children, Nadine would ask that the Court award
8 Herman visitation with the parties' three youngest three weekends a
9 month commencing Friday after school until Sunday evening. If the
10 parties are granted joint physical custody of the parties' three youngest
11 minor children, Nadine would ask that the parties adhere to an
12 alternating week visitation schedule with the exchange of the minor
13 children to occur either Friday after school or Monday after school.
14 Further, the Court should order that all of the minor children attend
15 Doral Academy.
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21 **c. Child support should be calculated by the Court.**
22

23 *NAC 425.025 states as follows:*
24

25 1. *"Gross income" includes, without limitation:*

26 (a) *Salary and wages, including, without limitation, money earned from*
27 *overtime pay if such overtime pay is substantial, consistent and can be*
28 *accurately determined.*

(b) *Interest and investment income, not including the principal.*

1 (c) Social security disability benefits and old-age insurance benefits
under federal law.

2 (d) Any periodic payment from a pension, retirement plan or annuity
3 which is considered remuneration for employment.

4 (e) Net proceeds resulting from workers' compensation or other personal
injury awards intended to replace income.

5 (f) Unemployment insurance.

6 (g) Income continuation benefits.

7 (h) Voluntary contributions to a deferred compensation plan, employee
contributions to an employee benefit or profit-sharing plan, and
8 voluntary employee contributions to any pension or retirement account,
9 regardless of whether the account provides for tax deferral or avoidance.

10 (i) Military allowances and veterans' benefits.

(j) Compensation for lost wages.

11 (k) Undistributed income of a business entity in which a party has an
12 ownership interest sufficient to individually exercise control over or
13 access the earnings of the business, unless the income is included as an
asset for the purposes of imputing income pursuant to NAC 425.125. As
14 used in this paragraph:

15 (1) "Reasonable allowance for economic depreciation" means the amount
of depreciation on assets computed using the straight-line method and
16 useful lives as determined under federal income tax laws and
17 regulations.

18 (2) "Undistributed income" means federal taxable income of a business
entity plus depreciation claimed on the federal income tax return of the
19 business less a reasonable allowance for economic depreciation.

20 (l) Child care subsidy payments if a party is a child care provider.

21 (m) Alimony.

22 (n) Except as otherwise provided in subsection 2, all other income of a
party, regardless of whether such income is taxable.

23 2. The term does not include:

24 (a) Child support received.

(b) Foster care or kinship care payments.

25 (c) Benefits received under the federal Supplemental Nutrition
26 Assistance Program.

27 (d) Cash benefits paid by a county.

28 (e) Supplemental security income benefits and state supplemental
payments.

1 (f) Except as otherwise provided in paragraph (l) of subsection 1,
2 payments made for social services or any other public assistance benefits.

3 (g) Compensation for losses, including, without limitation, both general
4 and special damages, from personal injury awards not intended to
5 replace income.

6 3. This section must not be construed to limit income withholding or
7 the assignment of workers' compensation benefits for the collection of
8 child support.

9 NAC 425.140 states as follows:

10 Except as otherwise provided in NAC 425.145, the base child support
11 obligation of an obligor must be determined according to the following
12 schedule:

13 1. For one child, the sum of:

14 (a) For the first \$6,000 of an obligor's monthly gross income, 16
15 percent of such income;

16 (b) For any portion of an obligor's monthly gross income that is
17 greater than \$6,000 and equal to or less than \$10,000, 8 percent of such
18 a portion; and

19 (c) For any portion of an obligor's monthly gross income that is
20 greater than \$10,000, 4 percent of such a portion.

21 2. For two children, the sum of:

22 (a) For the first \$6,000 of an obligor's monthly gross income, 22
23 percent of such income;

24 (b) For any portion of an obligor's monthly gross income that is
25 greater than \$6,000 and equal to or less than \$10,000, 11 percent of such
26 a portion; and

27 (c) For any portion of an obligor's monthly gross income that is
28 greater than \$10,000, 6 percent of such a portion.

3. For three children, the sum of:

(a) For the first \$6,000 of an obligor's monthly gross income, 26
percent of such income;

(b) For any portion of an obligor's monthly gross income that is
greater than \$6,000 and equal to or less than \$10,000, 13 percent of such
a portion; and

(c) For any portion of an obligor's monthly gross income that is
greater than \$10,000, 6 percent of such a portion.

1 4. For four children, the sum of:

2 (a) For the first \$6,000 of an obligor's monthly gross income, 28
3 percent of such income;

4 (b) For any portion of an obligor's monthly gross income that is
5 greater than \$6,000 and equal to or less than \$10,000, 14 percent of such
6 a portion; and

7 (c) For any portion of an obligor's monthly gross income that is
8 greater than \$10,000, 7 percent of such a portion.

9 5. For each additional child, the sum of:

10 (a) For the first \$6,000 of an obligor's monthly gross income, an
11 additional 2 percent of such income;

12 (b) For any portion of an obligor's monthly gross income that is
13 greater than \$6,000 and equal to or less than \$10,000, an additional 1
14 percent of such a portion; and

15 (c) For any portion of an obligor's monthly gross income that is
16 greater than \$10,000, an additional 0.5 percent of such a portion.

17 NAC 425.145 states as follows:

18 1. If the court determines that the total economic circumstances of
19 an obligor limit his or her ability to pay a child support obligation in the
20 amount determined pursuant to NAC 425.140, the child support
21 obligation must be established by using a low-income schedule which is
22 based on the current federal poverty guidelines, as determined by the
23 Secretary of Health and Human Services, and which is published
24 annually in the Federal Register.

25 2. If the monthly gross income of an obligor is below the lowest level
26 set forth in the low-income schedule, the court may establish an
27 appropriate child support obligation based on the total economic
28 circumstances of the obligor, balancing his or her need for self-support
with the obligation to support his or her child.

3 3. The low-income schedule must be published by the
Administrative Office of the Courts on or before March 31 of each year.

4 NAC 425.150 states as follows:

5 1. Any child support obligation may be adjusted by the court in
6 accordance with the specific needs of the child and the economic

1 circumstances of the parties based upon the following factors and
2 specific findings of fact:

- 3 (a) Any special educational needs of the child;
- 4 (b) The legal responsibility of the parties for the support of others;
- 5 (c) The value of services contributed by either party;
- 6 (d) Any public assistance paid to support the child;
- 7 (e) The cost of transportation of the child to and from visitation;
- 8 (f) The relative income of both households, so long as the adjustment
9 does not exceed the total obligation of the other party;
- 10 (g) Any other necessary expenses for the benefit of the child; and
- 11 (h) The obligor's ability to pay.

12 2. The court may include benefits received by a child pursuant to 42
13 U.S.C. § 402(d) based on a parent's entitlement to federal disability or
14 old-age insurance benefits pursuant to 42 U.S.C. §§ 401 to 433,
15 inclusive, in the parent's gross income and adjust an obligor's child
16 support obligation by subtracting the amount of the child's benefit. In no
17 case may this adjustment require an obligee to reimburse an obligor for
18 any portion of the child's benefit.

19 NAC 425.125 states as follows:

20 1. If after taking evidence, the court determines that an obligor is
21 underemployed or unemployed without good cause, the court may impute
22 income to the obligor.

23 2. If the court imputes income, the court must take into consideration,
24 to the extent known, the specific circumstances of the obligor, including,
25 without limitation:

26 (a) The obligor's:

- 27 (1) Assets;
 - 28 (2) Residence;
 - (3) Employment and earnings history;
 - (4) Job skills;
 - (5) Educational attainment;
 - (6) Literacy;
 - (7) Age;
 - (8) Health;
 - (9) Criminal record and other employment barriers; and
 - (10) Record of seeking work;
- (b) The local job market;

- 1 (c) *The availability of employers willing to hire the obligor;*
2 (d) *The prevailing earnings level in the local community; and*
3 (e) *Any other relevant background factors in the case.*

4 As to the issue of child support, the calculation of the same will be
5 dependent on whether Nadine is granted primary physical custody of all
6 the minor children or just primary physical custody of the parties'
7 oldest minor child and the parties should have joint physical custody of
8 the parties' three youngest minor children. However, Nadine believes
9 that Herman (who works for himself) is underreporting his gross
10 monthly income on his Financial Disclosure Form. Herman has always
11 earned in excess of what his Financial Disclosure Form indicates. As a
12 result, Nadine believes the Court should find that Herman is willfully
13 underemployed pursuant to *Minnear v. Minnear*, 107 Nv 495, 814 P2d
14 85 (1991), and, as a result, the Court should impugn an income upon
15 Herman pursuant to NAC 425.125 and *Rosenbaum v Rosenbaum*, 86 Nv
16 550, 471 P2d 254.

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24 **c. Division of Assets/Debts.**

25 Nadine asks that the parties' assets and debts be divided as set
26 forth above.
27
28

1 **d. Alimony.**

2
3 *NRS 125.150 states as follows:*

4 *Except as otherwise provided in NRS 125.155 and 125.165, and unless*
5 *the action is contrary to a premarital agreement between the parties*
6 *which is enforceable pursuant to chapter 123A of NRS:*

7 *1. In granting a divorce, the court:*

8 *(a) May award such alimony to either spouse, in a specified principal*
9 *sum or as specified periodic payments, as appears just and equitable;*
10 *and*

11 *(b) Shall, to the extent practicable, make an equal disposition of the*
12 *community property of the parties, including, without limitation, any*
13 *community property transferred into an irrevocable trust pursuant*
14 *to NRS 123.125 over which the court acquires jurisdiction pursuant*
15 *to NRS 164.010, except that the court may make an unequal disposition*
16 *of the community property in such proportions as it deems just if the*
17 *court finds a compelling reason to do so and sets forth in writing the*
18 *reasons for making the unequal disposition.*

19 *2. Except as otherwise provided in this subsection, in granting a divorce,*
20 *the court shall dispose of any property held in joint tenancy in the*
21 *manner set forth in subsection 1 for the disposition of community*
22 *property. If a party has made a contribution of separate property to the*
23 *acquisition or improvement of property held in joint tenancy, the court*
24 *may provide for the reimbursement of that party for his or her*
25 *contribution. The amount of reimbursement must not exceed the amount*
26 *of the contribution of separate property that can be traced to the*
27 *acquisition or improvement of property held in joint tenancy, without*
28 *interest or any adjustment because of an increase in the value of the*
property held in joint tenancy. The amount of reimbursement must not
exceed the value, at the time of the disposition, of the property held in
joint tenancy for which the contribution of separate property was made.
In determining whether to provide for the reimbursement, in whole or in
part, of a party who has contributed separate property, the court shall
consider:

(a) The intention of the parties in placing the property in joint tenancy;

(b) The length of the marriage; and

1 (c) Any other factor which the court deems relevant in making a just and
2 equitable disposition of that property.

3 As used in this subsection, "contribution" includes, without limitation, a
4 down payment, a payment for the acquisition or improvement of
5 property, and a payment reducing the principal of a loan used to finance
6 the purchase or improvement of property. The term does not include a
7 payment of interest on a loan used to finance the purchase or
8 improvement of property, or a payment made for maintenance, insurance
9 or taxes on property.

10 3. A party may file a postjudgment motion in any action for divorce,
11 annulment or separate maintenance to obtain adjudication of any
12 community property or liability omitted from the decree or judgment as
13 the result of fraud or mistake. A motion pursuant to this subsection must
14 be filed within 3 years after the discovery by the aggrieved party of the
15 facts constituting the fraud or mistake. The court has continuing
16 jurisdiction to hear such a motion and shall equally divide the omitted
17 community property or liability between the parties unless the court
18 finds that:

19 (a) The community property or liability was included in a prior equal
20 disposition of the community property of the parties or in an unequal
21 disposition of the community property of the parties which was made
22 pursuant to written findings of a compelling reason for making that
23 unequal disposition; or

24 (b) The court determines a compelling reason in the interests of justice to
25 make an unequal disposition of the community property or liability and
26 sets forth in writing the reasons for making the unequal disposition.

27 If a motion pursuant to this subsection results in a judgment dividing a
28 defined benefit pension plan, the judgment may not be enforced against
an installment payment made by the plan more than 6 years after the
installment payment.

4. Except as otherwise provided in NRS 125.141, whether or not
application for suit money has been made under the provisions of NRS
125.040, the court may award a reasonable attorney's fee to either party
to an action for divorce.

5. In granting a divorce, the court may also set apart such portion of the
separate property of either spouse for the other spouse's support or the
separate property of either spouse for the support of their children as is
deemed just and equitable.

1 6. In the event of the death of either party or the subsequent remarriage
2 of the spouse to whom specified periodic payments were to be made, all
3 the payments required by the decree must cease, unless it was otherwise
ordered by the court.

4 7. If the court adjudicates the property rights of the parties, or an
5 agreement by the parties settling their property rights has been approved
6 by the court, whether or not the court has retained jurisdiction to modify
7 them, the adjudication of property rights, and the agreements settling
8 property rights, may nevertheless at any time thereafter be modified by
the court upon written stipulation signed and acknowledged by the
parties to the action, and in accordance with the terms thereof.

9 8. If a decree of divorce, or an agreement between the parties which was
10 ratified, adopted or approved in a decree of divorce, provides for
11 specified periodic payments of alimony, the decree or agreement is not
12 subject to modification by the court as to accrued payments. Payments
13 pursuant to a decree entered on or after July 1, 1975, which have not
14 accrued at the time a motion for modification is filed may be modified
15 upon a showing of changed circumstances, whether or not the court has
16 expressly retained jurisdiction for the modification. In addition to any
17 other factors the court considers relevant in determining whether to
18 modify the order, the court shall consider whether the income of the
spouse who is ordered to pay alimony, as indicated on the spouse's
federal income tax return for the preceding calendar year, has been
reduced to such a level that the spouse is financially unable to pay the
amount of alimony the spouse has been ordered to pay.

19 9. In addition to any other factors the court considers relevant in
20 determining whether to award alimony and the amount of such an
21 award, the court shall consider:

- 22 (a) The financial condition of each spouse;
- 23 (b) The nature and value of the respective property of each spouse;
- 24 (c) The contribution of each spouse to any property held by the spouses
pursuant to NRS 123.030;
- 25 (d) The duration of the marriage;
- 26 (e) The income, earning capacity, age and health of each spouse;
- 27 (f) The standard of living during the marriage;
- 28 (g) The career before the marriage of the spouse who would receive the
alimony;

1 (h) The existence of specialized education or training or the level of
2 marketable skills attained by each spouse during the marriage;
3 (i) The contribution of either spouse as homemaker;
4 (j) The award of property granted by the court in the divorce, other than
5 child support and alimony, to the spouse who would receive the alimony;
6 and
7 (k) The physical and mental condition of each party as it relates to the
8 financial condition, health and ability to work of that spouse.
9 10. In granting a divorce, the court shall consider the need to grant
10 alimony to a spouse for the purpose of obtaining training or education
11 relating to a job, career or profession. In addition to any other factors the
12 court considers relevant in determining whether such alimony should be
13 granted, the court shall consider:
14 (a) Whether the spouse who would pay such alimony has obtained
15 greater job skills or education during the marriage; and
16 (b) Whether the spouse who would receive such alimony provided
17 financial support while the other spouse obtained job skills or education.
18 11. If the court determines that alimony should be awarded pursuant to
19 the provisions of subsection 10:
20 (a) The court, in its order, shall provide for the time within which the
21 spouse who is the recipient of the alimony must commence the training
22 or education relating to a job, career or profession.
23 (b) The spouse who is ordered to pay the alimony may, upon changed
24 circumstances, file a motion to modify the order.
25 (c) The spouse who is the recipient of the alimony may be granted, in
26 addition to any other alimony granted by the court, money to provide for:
27 (1) Testing of the recipient's skills relating to a job, career or profession;
28 (2) Evaluation of the recipient's abilities and goals relating to a job,
career or profession;
(3) Guidance for the recipient in establishing a specific plan for training
or education relating to a job, career or profession;
(4) Subsidization of an employer's costs incurred in training the
recipient;
(5) Assisting the recipient to search for a job; or
(6) Payment of the costs of tuition, books and fees for:
(I) The equivalent of a high school diploma;
(II) College courses which are directly applicable to the recipient's goals
for his or her career; or

1 *(III) Courses of training in skills desirable for employment.*

2 *12. For the purposes of this section, a change of 20 percent or more in the*
3 *gross monthly income of a spouse who is ordered to pay alimony shall be*
4 *deemed to constitute changed circumstances requiring a review for*
5 *modification of the payments of alimony. As used in this subsection,*
6 *“gross monthly income” has the meaning ascribed to it in NRS 125B.070.*

7 Recently the Nevada Supreme Court provided further
8 instruction as to how alimony should be awarded. Specifically, the
9 Nevada Supreme Court stated:

10 *A large gap in income, alone, does not decide alimony. The award must*
11 *meet the receiving spouse’s economic needs or compensate for economic*
12 *losses resulting from the marriage and subsequent divorce. See Family*
13 *Dissolution § 5.03 cmt. b (“Disparity in the post-divorce incomes of the*
14 *spouses does not itself provide the basis of a claim [to share the other*
15 *spouse’s income.]”); Nousari v. Nousari, 94 So.3d 704, 706 (Fla. 4th DCA*
16 *2012) (“The purpose of permanent alimony is not to divide future income*
17 *to establish financial equality between the parties, so disparity in income*
18 *alone does not justify an award of permanent alimony.”) (internal*
19 *quotation marks and citation omitted). As Shydler recognized, “our case*
20 *law does not require the district court to award alimony so as to*
21 *effectively equalize salaries.” 114 Nev. at 199, 954 P.2d at 41; see*
22 *also Gardner, 110 Nev. at 1058, 881 P.2d at 648 (increasing alimony but*
23 *recognizing that it would “still fail to achieve income parity between the*
24 *[spouses]”). Justice and equity only require alimony to achieve more*
25 *parity in post-divorce income levels when there is economic need, the*
26 *marriage and subsequent divorce contributed to the disparate income*
27 *levels, or one spouse cannot maintain the marital standard of living*
28 *while the other spouse maintains or exceeds the marital standard of*
living.

See, Kogard v Cioff-Kogard, 135 Nv 64, 439 P3d 397 (2019).

1 In this matter the parties' incomes are similar and again,
2 Nadine believes that Herman is underreporting his income on his
3 Financial Disclosure Form. Further, Herman's Financial
4 Disclosure Form (even with the intentionally deflated income)
5 reveals that Herman's income more than meets his monthly
6 expenses each month. As a result, Herman cannot show that he
7 has a need for alimony.
8

9
10
11 **e. Contempt.**

12 *NRS 22.010 states in pertinent part:*
13

14 *The following acts or omissions shall be deemed contempts:*

15 *3. Disobedience or resistance to any lawful writ, order, rule or process*
16 *issued by the court or judge at chambers.*

17 *NRS 22.030 states in pertinent part:*
18

19 *2. if a contempt is not committed in the immediate view and presence of*
20 *the court or judge at chambers, an affidavit must be presented to the*
21 *court or judge of the facts constituting the contempt, or a statement of the*
22 *facts by the masters or arbitrators.*

23 *NRS 22.100 states:*

24 *Upon the answer and evidence taken, the court or judge or jury, as the*
25 *case may be, shall determine whether the person proceeded against is*
26 *guilty of the contempt charged; and if it be found that he is guilty of the*
27 *contempt, a fine may be imposed on him not exceeding \$500, or he may*
28 *be imprisoned not exceeding 25 days, or both, but no imprisonment shall*
exceed 25 days except as provided in 22.110.

1 At the August 26, 2019 hearing the Court ordered that Nadine
2 would have visitation with the minor children every Saturday
3 commencing at 10.00 am and concluding at 6.00 pm. The order
4 memorializing the August 26, 2019 hearing was filed on October 30,
5 2019, and the provision regarding Nadine's visitation with the minor
6 children states specifically as follows:
7

8
9 ***IT IS FURTHER ORDERED*** that Plaintiff shall have day visits with
10 the minor children every Saturday commencing at 10.00 am until 6.00
11 pm.
12

13 *See Page 2, Lines 4 through 7 of the Order filed on October 30, 2019.*
14

15 Herman has not abided by the terms of the October 30, 2019
16 Order in that Herman did not deliver the minor children to Nadine for
17 her November 16, 2019 visitation with the minor children, Herman did
18 not deliver the minor children to Nadine for her January 4, 2020
19 visitation and Herman did not deliver the minor children to Nadine for
20 her January 11, 2020 visitation with the minor children. Further,
21 while Herman delivered the minor children to Nadine on December 28,
22 2019 for her visitation with the minor children, Herman retrieved the
23 minor children at approximately 6.50 pm and Nadine was to have the
24 minor children in her care until January 6, 2020 as and for her Winter
25
26
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28

1 Break visitation with the minor children. Further, Herman did not
2 notify Nadine that he would not be delivering the minor children to her
3
4 for the three visitations in question nor did Herman provide a basis as
5 to why he would not be delivering the minor children for the three
6
7 visitations in question. Finally, Herman did not tell Nadine he would
8
9 be retrieving the minor children early during her Winter Break
10 visitation with the minor children.

11 As to the issue of contempt, this matter is very straightforward.
12
13 Herman ignored the orders of the Court regarding Nadine's visitation
14 with the minor children. Nadine asks that Herman be sanctioned
15 monetarily for his non-compliance with the orders of this Court.
16
17 Nadine also asks that the Court issue a stay jail sentence upon Herman
18
19 such that if Herman is in contempt of the Court's orders in the future,
20
21 Herman will serve at least ten days in the Clark County Detention
22
23 Center.
24
25
26
27
28

1 **f. Attorney's Fees.**

2 *NRS. 18.010*, states as follows:

3
4 *1. The compensation of an attorney and counselor for his services is*
5 *governed by agreement, express or implied, which is not restrained by*
6 *law.*

7 *2. In addition to the cases where an allowance is authorized by specific*
8 *statue, the court may make an allowance of attorney's fees to a prevailing*
9 *party:*

10 *a. When he has not recovered more than \$20,000.00; or*

11 *b. Without regard to the recovery sought, when the court finds that the*
12 *claim, counterclaim, cross-claim, or third-party complaint or defense of*
13 *the opposing party was brought without reasonable ground or to harass*
14 *the prevailing party.*

15 *3. In awarding attorney's fees the court may pronounce its decision on*
16 *the fees at the conclusion of the trial or special proceedings without*
17 *written motion and with or without presentation of additional evidence*

18 *4. No oral application or written motion for attorney's fees alters the*
19 *effect of a final judgment rendered in the action or the time permitted for*
20 *an appeal there from.*

21 *5. Subsections 2,3, and 4 do not apply to any action arising out of a*
22 *written instrument or agreement which entitles a prevailing to an award*
23 *of reasonable attorney's fees.*

24
25 An award of attorney's fees where is warranted when the
26 nonmoving party's opposition is without reasonable ground, or to harass
27 the moving party. An award of attorney's fees is within the sound
28 discretion of the court. *County of Clark v. Richard Blanchard*
Construction Company, 98 Nev. 48, 653 P.2d 1217 (1982). This matter
has been prolonged due to Herman's inability to cooperate and

1 communicate with Nadine and due to Herman's inability to adhere to
2 the orders of this Court. As a result, Nadine should be awarded
3 attorney's fees and requests the sum of \$7'500.00.
4

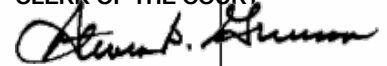
5 Pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nv 345 (1969),
6 the court should take into consideration the following factors when
7 determining an award of attorney's fees. (1) The qualities of the
8 advocate: Mr. Toti has been practicing law for approximately twenty
9 years and is a Nevada Board Certified Family Law Specialist.
10 Approximately 98% of Mr. Toti's practice is dedicated to family law. (2)
11 The character and difficulty of the work performed: The intricacy,
12 importance, time and skill required to prepare for and argue this
13 Motion is moderate. (3) The work actually performed by the attorney:
14 To date this office has expended approximately sixty hours getting this
15 matter to this stage. This does not account for any time spent in court.
16
17 (4) The result obtained: is yet to be determined.
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1 **PSER**
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8 **DISTRICT COURT FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 NADINE WILLIAMS,
11 Plaintiff,

12 v

13 HERMAN GEORGE WILLIAMS,
14 Defendant.

} Case No. D-19-586291-D
} Dept No. I
}

15 **PROOF OF SERVICE**

16 I hereby certify that service of the foregoing **PLAINTIFF'S TRIAL**
17 **EXHIBITS DEFENDANT'S COPY** was made on the 10th day of February
18 2021 pursuant to NRCP 5(b)(2)(D), and EDCR 8.05, by electronic service
19 via the Court's E-Filing System, proof of which is attached hereto, as
20 follows:

21 Kenneth Robbins, Esq.
22 familyfirst@halfpricelawyers.com
23 Attorney for Defendant

24 /s/ Frank J. Toti

25 FRANK J TOTI, ESQ. 005804
26 6900 Westcliff Drive #500
27 Las Vegas Nevada 89145
28 Attorney for Plaintiff

David Barragan

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