

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

2
3 HERMAN WILLIAMS,

4 Appellant,

5 vs.

6 NADINE WILLIAMS,

7 Respondent.

No.: 83263

Electronically Filed
Mar 02 2022 05:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

FAST TRACK STATEMENT

8 **1. Name of party filing this fast track statement:**

9 Herman Williams

10 **2. Name, law firm, address, and telephone number of attorney**
11 **submitting this fast track statement:**

12 F. Peter James, Esq.
13 Law Offices of F. Peter James, Esq.
14 3821 West Charleston Blvd., Suite 250
 Las Vegas, Nevada 89102
 702-256-0087

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

17 Eighth Judicial District Court
18 Clark County, Nevada
19 D-19-586291-D

1 **4. Name of judge issuing judgment or order appealed from:**

2 Hon. Sunny Bailey

3 **5. Length of trial or evidentiary hearing. If the order appealed from was**
4 **entered following a trial or evidentiary hearing, then how many days**
5 **did the trial or evidentiary hearing last?**

6 One day.

7 **6. Written order or judgment appealed from:**

8 Decision and Order filed February 26, 2021. (7 AA 1293)

9 **7. Date that written notice of the appealed written judgment or order's**
10 **entry was served:**

11 April 1, 2021. (8 AA 1348)

12 **8. If the time for filing the notice of appeal was tolled by the timely filing**
13 **of a motion listed in NRAP 4(a)(4),**

14 **(a) specify the type of motion, and the date and method of service**
15 **of the motion, and date of filing:**

16 **(b) date of entry of written order resolving tolling motion:**

17 A Rule 52/59 / Reconsideration Motion was filed and served by electronic
18 service on April 15, 2021. (8 AA 1405).

19 The order resolving the tolling motion was entered and noticed on June 30,
20 2021 (8 AA 1477, 1481).

1 **9. Date notice of appeal was filed:**

2 July 15, 2021 (8 AA 1485)

3 **10. Specify statute or rule governing the time limit for filing the notice of**
4 **appeal, e.g., NRAP 4(a), NRS 155.190, or other:**

5 NRAP 4(a)

6 **11. Specify the statute, rule or other authority, which grants this court**
7 **jurisdiction to review the judgment or order appealed from:**

8 NRAP 3A(b)(1), NRAP 3A(b)(2), NRAP 3A(b)(7), and NRS 2.090.

9 **12. Pending and prior proceedings in this court. List the case name and**
10 **docket number of all appeals or original proceedings presently or**
11 **previously pending before this court which involve the same or some**
12 **of the same parties to this appeal:**

13 N/A.

14 **13. Proceedings raising same issues. If you are aware of any other appeal**
15 **or original proceeding presently pending before this court, which raise**
16 **the same legal issue(s) you intend to raise in this appeal, list the case**
17 **name(s) and docket number(s) of those proceedings:**

18 *Prevost v. Gronvold*, # 82916 raises the credibility issue.

1 **14. Procedural history. Briefly describe the procedural history of the case**
2 **(provide citations for every assertion of fact to the appendix or record,**
3 **if any, or to the transcript or rough draft transcript):**

4 The Complaint was filed on March 19, 2019. (1 AA 1). The Answer was
5 filed on June 3, 2019. (1 AA 13). The matter went to trial on February 11, 2021.
6 (5 AA 676).

7 The Order appealed from was drafted and filed by the district court on
8 February 26, 2021. (7 AA 1293). Said Order was noticed by electronic filing
9 April 1, 2021. (8 AA 1348).

10 A motion for rehearing and pursuant to Rules 52/59 was filed on April 15,
11 2021. (8 AA 1405). The motion was opposed on May 10, 2021. (8 AA 1423).
12 The Reply Brief was filed May 27, 2021. (8 AA 1458). The matter was heard
13 on June 10, 2021. (8 AA 1468). The Order denying the motions was filed on
14 June 30, 2021. (8 AA 1477). Said Order was noticed on June 30, 2021. (8 AA
15 1481).

16 The Notice of Appeal was filed July 15, 2021. (8 AA 1485).

17 **15. Statement of facts. Briefly set forth the facts material to the issues on**
18 **appeal (provide citations for every assertion of fact to the appendix or**
19 **record, if any, or to the transcript or rough draft transcript):**

20 Appellant, Herman Williams (hereinafter “Dad”) and Respondent, Nadine

1 Williams (hereinafter “Mom”) were married on March 2, 2004 in Bronx, New
2 York. (1 AA 1). The parties have four children together, to wit: Abigail Williams
3 (born October 27, 2004), Herman Williams III (born August 24, 2008), Matthew
4 Williams (born May 13, 2010), and Elisha Williams (born April 26, 2013)
5 (hereinafter collectively “the children”). (1 AA 2).

6 This was nearly a seventeen (17) year marriage. (7 AA 1328). Dad
7 requested alimony in the amount of \$1,000.00 per month. (7 AA 1326). Mom
8 testified that she makes \$9,500.00 per month. (5 AA 705). She informed the
9 Court that she had been with her current employer for six years. (5 AA 758).
10 She stated that she had not been demoted in anyway. (*Id.*). Mom further
11 informed the Court that she had not had her hours cut in the past two years, and
12 that she had not taken a salary decrease. (5 AA 759). Mom then claimed that
13 her salary went from \$159,265.55, down to \$115,000.00 due to restructuring in
14 her company. (*Id.*).

15 She had previously informed the Court that she was the breadwinner
16 during the marriage. (2 AA 177). At trial, Mom confirmed that for most of the
17 marriage she has made more money than Dad. (5 AA 760). Mom further
18 confirmed that she was primarily responsible for the finances of the family. (*Id.*).
19 She also made comments to the Court about giving Dad money after she asked
20

1 for a divorce. (5 AA 729). Dad's request for alimony was ultimately denied due
2 to the Court calculating that Dad's income was higher than Mom's. (7 AA 1326).

3 Mom testified that Dad's income could vary anywhere from six to ten
4 thousand per month. (5 AA 706). Dad's financial disclosure form had two
5 different amounts written for his gross monthly income-- \$11,300.00 and
6 \$5,666.66. (5 AA 705-706). Mom told the Court that she believed Dad's income
7 to be the \$11,000.00. (6 AA 707).

8 Dad testified that he averages anywhere from \$1,200.00 to \$1,500.00 per
9 week. (5 AA 793). He further explained that he makes approximately \$5,666.66
10 each month. (5 AA 836). This was supported by attached invoices on his
11 financial disclosure form. (3 AA 570-574). On December 17, 2020, Dad
12 received an invoice showing that he was paid \$1,558.00 for tows conducted
13 between December 10, 2020, and December 17, 2020. (3 AA 570). Another
14 invoice from December 30, 2020 showed that Dad earned \$685.00. (3 AA 572).
15 Dad's invoice from January 7, 2021 showed that he earned \$799.00. (3 AA 573).

16 The District Court noted that Dad admitted to earning \$11,300.00 per
17 month, but then corrected himself to state that the \$5,667.00 was more accurate.
18 (7 AA 1303). However, Dad maintained throughout his testimony that the
19 \$11,300.00 notated on his financial disclosure form was an error. (5 AA 835).
20 The Court found that Dad's testimony as to his income was not credible. (7 AA

1 1318). The Court determined Dad’s yearly income to be \$114,556. (7 AA 1319).

2 The Court supported its analysis by reviewing Dad’s bank statements. (*Id.*).

3 As stated earlier, Dad denied making \$11,000.00 per month. (5 AA 835).

4 His statement was further confirmed by the introduction of exhibit JJ. (5 AA
5 836). In the month of February, Dad received deposits from Copart in the amount
6 of \$12.00, \$1,228.00, \$1,758.00. (5 AA 837).

7 In the month of March 2020, Dad received deposits from Copart for
8 \$271.00, \$1,083.00, \$1,446.00, \$1,626.00, and \$1,353.00, for a total of
9 \$5,778.00. (7 AA 1199-1202). Dad made transfers for \$1,281.00, \$400.00,
10 \$50.00, and \$100.00 from his savings account, into his checking account. (7 AA
11 1199,). When you add up Dad’s payments from Copart, his transfers from the
12 savings account, and a \$75.00 tax rebate that was in Dad’s statement, you get
13 \$7,685.00—the exact amount of the total deposits displayed for March 2020. (7
14 AA 1199-1202). By calculating Dad’s income solely based on the total deposits
15 listed at the end of his monthly statements, the Court calculated transfers from
16 his savings account into this checking account as income. (7 AA 1202).

17 The Court noted that the community had a substantial debt of
18 approximately \$248,229.00. (7 AA 1327). Mom was made responsible for
19 \$45,027.00 of the community debt. (7 AA 1324). Dad was made responsible for
20

1 \$51,378.78 of the community debt, with the additional \$5,126.59 delineated to
2 him to offset the debt on the 2015 Silverado. (*Id.*).

3 The Court made additional determinations with other debts of the parties.
4 (7 AA 1323). The court found that Mom's student loan in the amount of
5 \$76,195.00 was community debt as no evidence was presented to suggest
6 otherwise. (*Id.*). However, in Mom's financial disclosure forms, she stated that
7 the student loan debt was her debt. (3 AA 549, 593). Dad's medical debt in the
8 amount of \$75,627.30 was undisputed community debt. (7 AA 1323).

9 As for assets, the parties were directed to keep all bank accounts in their
10 names. (7 AA 1320). If there were any joint accounts, they were to be divided
11 equally. (*Id.*). There were five vehicles at issue. (7 AA 1321). The parties were
12 to keep the vehicles in their possession. (7 AA 1322). Presumably, Mom kept
13 the 2010 GMC Acadia and the 2019 Chevy Traverse. (7 AA 1321). Dad
14 presumably kept the 2001 Chevy, the 2004 Silverado, and the 2015 Silverado and
15 was ordered to provide Mom with one half the value from each vehicle. (7 AA
16 1322).

17 In determining child custody, the parties acknowledged that the Court
18 should consider CPS involvement. (1 AA 4, 16). Thus, at the Motion hearing
19 on July 22, 2019, the Court referenced substantiated claims of Mom physically
20 abusing Abigail. (2 AA 168). The CPS records stated that Mom was beating the

1 children with hard objects and dragging them across the room. (2 AA 206). The
2 reports further stated that Matthew was not afraid of anyone in the home, while
3 Elisha and Abigail were both fearful of Mom. (2 AA 210). CPS noted that they
4 spoke with Mom during their investigation, and that she presented as very
5 paranoid and emotionally unstable. (2 AA 210).

6 Child interviews were ordered during the July 22, 2019 hearing. (1 AA
7 204). The interviews provided that Mom physically disciplines the children. (2
8 AA 258). This directly contrasts statements Mom made at the initial hearing.
9 Under oath, Mom told the Court that she does not use corporal punishment on
10 the children. (2 AA 209). At the evidentiary hearing, Mom denied that there was
11 ever a substantiated CPS report against her. (5 AA 730, 735).

12 The Court had temporarily awarded Dad primary physical custody of the
13 children because of the substantiated CPS claims. (2 AA 202). Mom was
14 temporarily given visitation every Sunday from 12:30 p.m. until 2:30 p.m. (2
15 AA 241). This visitation was expanded to Saturday from 10:00 a.m. until 6:00
16 p.m. during the August 26, 2019, hearing. (2 AA 310).

17 On October 24, 2019, Dad filed a TPO against Mom. (6 AA 1014). Mom
18 went to Dad's residence and caused a disturbance during Dad's custodial time.
19 (6 AA 1017). Due to Mom provoking a physical altercation, police on scene
20 advised Dad to request a TPO. (*Id.*).

1 Mom's visitation shifted after Nevada Day in 2019. (5 AA 745). Abigail
2 stopped having visitation with Dad. (5 AA 746). This same weekend, CPS
3 became involved with the family again. (7 AA 1146).

4 On October 28, 2019, CPS received a referral. (7 AA 1146). Here,
5 impending danger was identified as Mom is violent and there was no protective
6 adult in her household. (*Id.*). The referral also delineates that the February 2019
7 case that was substantiated, and that CPS only closed that matter the
8 understanding that the children would be in Dad's care. (*Id.*). The investigator
9 was concerned with Mom violating the custody arrangement, keeping Abigail in
10 her home. (7 AA 1166).

11 During the investigation, CPS recounted that there is a history of domestic
12 violence between Mom and Dad. (7 AA 1147). Mom was cited as the aggressor
13 of domestic violence in the home. (*Id.*). They also recounted that Mom uses
14 physical discipline with the children. (*Id.*). CPS noted that they had also received
15 another report involving Mom's boyfriend, and a firearm discharging. (7 AA
16 1148).

17 During the hearing on January 22, 2020, Dad informed the Court that the
18 children were complaining about Mom's boyfriend being physically violent with
19 them. (3 AA 458). The Court put in an additional order that Mom's boyfriend
20 was not to physically deal with the children. (3 AA 461). The Court reiterated

1 prior orders that there was to be no physical discipline of the children. (3 AA
2 462, 468).

3 Following the hearing on January 22, 2020, Mom began exercising
4 visitation from Friday after school until Monday before school with the
5 remaining three children. (3 AA 525). A second FMC child interview was
6 ordered at this hearing. (3 AA 526). The interview reflected that Mom was no
7 longer using corporal punishment on the children. (7 AA 1312). It also provided
8 that her relationship with the children had improved. (*Id.*).

9 On or about January 22, 2020, there was an altercation between the parties.
10 (5 AA 791). Mom went to Dad's house to pick up Elisha when she was supposed
11 to be picking up Herman III and Matthew from school for her visitation. (5 AA
12 833). When Dad did not exchange Elisha, Mom admitted to using her vehicle to
13 prevent Dad from leaving. (5 AA 774). Abigail was present and witnessed this
14 incident. (7 AA 1298). Had Dad pressed charges, this incident would be criminal
15 coercion. This event caused Dad's apartment complex to terminate Dad's ability
16 to renew his lease. (5 AA 795).

17 There was an additional incident in January 2020. (7 AA 1301). Abigail
18 disappeared from Dad's residence during his visitation with her. (*Id.*). Dad
19 called the police and reported her missing. (*Id.*). Dad was not informed that the
20 child had went to Mom's house until he picked up the boys on that Monday. (*Id.*).

1 There were no hearings between the hearing on January 22, 2020, and the
2 Calendar Call on February 4, 2021. (*cf.* 3 AA 439; 3 AA 555). Trial took place
3 on February 11, 2021. (5 AA 676).

4 At trial, the parties stipulated to Abigail primarily residing with Mom. (5
5 AA 749). Dad established a presumption that having primary physical custody
6 of Herman III, Matthew, and Elisha was in their best interest. (7 AA 1309). The
7 Court found through clear and convincing evidence that Mom committed two
8 acts of domestic violence. (7 AA 1310). With regard to the first act, the Court
9 only recounted that Abigail was hit with a PVC pipe by Mom. (7 AA 1310).

10 However, in the February 2019 CPS report, it indicated that two children
11 were referred to a specialist due to injuries related to physical abuse from Mom.
12 (7 AA 1162). The report also indicated that there were bruises on the children.
13 (*Id.*). During testimony, Phyllis stated that she witnessed Mom become physical
14 with the children *on more than one occasion*. (*Id.*). Phyllis also described an
15 altercation in February 2019 where Mom grabbed her throat and injured her arm.
16 (*Id.*). The Court found Phyllis to be credible. (*Id.*).

17 The Court found that Mom overcame the presumption that sole or joint
18 physical custody of the child by the perpetrator of the domestic violence was not
19 in the best interest of the minor children through the FMC interviews. (7 AA
20 1312). The FMC interviews took place approximately one year earlier. (3 AA

1 526). The Court found that after the Court ordered no corporal punishment of
2 the children, there was a change in Nadine's punishment. (7 AA 1311). This
3 was initially ordered at the hearing on July 22, 2019. (2 AA 281).

4 In addressing this factor, the Court did not consider the TPO Dad filed on
5 October 24, 2019, where Dad noted that Mom was provoking a physical
6 altercation. (6 AA 1014). The Court did not consider the subsequent CPS referral
7 where case workers listed concern with Mom violating the Court order and
8 keeping custody of Abigail. (7 AA 1166). The Court also ignored where the
9 referral listed out that there was history of domestic violence between the parties,
10 and that there was another report involving Mom's boyfriend, and firearm being
11 discharged. (7 AA 1147, 1148, 1166). The Court did not consider the domestic
12 violence Mom conducted against Dad when she used her vehicle to prevent Dad
13 from leaving in January 2020. (5 AA 774). The Court did not consider the
14 January 2020 allegations of Mom's boyfriend being physical with the children,
15 and the Court having to reiterate that corporal punishment was not appropriate.
16 (3 AA 462, 468).

17 The Court acknowledged that both parties frustrated one another's
18 relationship with the children. (7 AA 1308). The Court further noted that it
19 would not reward either parent for pathogenic parenting. (7 AA 1317). The
20 Court concluded that neither party met their burden to establish that primary

1 physical custody was in the minor children's best interest. (*Id.*). Thus, the parties
2 were awarded joint physical custody of the children. (7 AA 1334).

3 Dad filed a Motion for Reconsideration. (8 AA 1405). Dad requested that
4 the award of physical custody, allocation of specific debts, and income of the
5 parties be reconsidered. (8 AA 1418). The Court denied this relief. (8 AA 1478).
6 Dad subsequently appealed. (8 AA 1485).

7 **16. Issues on appeal. State concisely the principal issue(s) in this appeal:**

8 Did the district court err in its custody determination, especially when it
9 ignored game-changing facts like Respondent's CPS issues?

10 Did the district court err in splitting Respondent's student loan debts
11 (though Appellant did not receive the benefit of the education) and while not
12 dividing the degree earned by Respondent?

13 Did the district court err in determining Appellant's income and then in
14 denying him alimony?

15 Whether credibility should be reviewed as district courts are couching
16 testimony as "credible" to avoid review.

17 **17. Legal argument, including authorities:**

18 **General Standards of Review**

19 "[A] district court's factual determinations will be disturbed only when
20 unsupported by substantial evidence." *Jensen v. Jenson*, 104 Nev. 95, 99-100,

1 753 P.2d 342, 345 (1988). “[T]hat is, the evidence must be such that a reasonable
2 person could deem it adequate to support the decision.” *Rivero v. Rivero*, 125
3 Nev. 410, 428, 216 P.3d 213, 226 (2009).

4 A trial court abuses its discretion when it makes a factual finding or order
5 which is not supported by substantial evidence. *See Real Estate Division v.*
6 *Jones*, 98 Nev. 260, 645 P.2d 1371 (1982). An abuse of discretion occurs when
7 a district court makes an obvious error of law. *See Franklin v. Bartsas Reality,*
8 *Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979). An abuse of discretion occurs if the
9 district court’s decision is arbitrary or capricious. *See Crawford v. State*, 121
10 Nev. 744, 748, 121 P.3d 582, 585 (2005). A district court also abuses its
11 discretion when it applies an incorrect legal standard. *See Matter of Halverson,*
12 123 Nev. 493, 510, 169 P.3d 1161, 1173 (2007). A district court abuses its
13 discretion when its decision is clearly erroneous. *See Bautista v. Picone*, 134
14 Nev. 334, 336, 419 P.3d 157, 159 (2018).

15 A trial court abuses its discretion when it makes a factual finding or order
16 which is not supported by substantial evidence. *See Real Estate Division v.*
17 *Jones*, 98 Nev. 260, 645 P.2d 1371 (1982). Conclusions of law based on a district
18 court’s interpretation of a statute are reviewed de novo. *See Day v. Washoe Cty.*
19 *Sch. Dist.*, 121 Nev. 387, 388, 116 P.3d 68, 69 (2005). Questions of law are
20 reviewed de novo. *See Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850,

1 855 (2008). A question of law is present when the issue surrounds a trial court’s
2 conclusions of law. *See Bopp v. Lino*, 110 Nev. 1246, 885 P.2d 559 (1994).

3 **Child Custody**

4 **A. STANDARD OF REVIEW**

5 Child custody is reviewed for an abuse of discretion. *See Bautista*, 134
6 Nev. at 336, 419 P.3d at 159.

7 “Specific findings and an adequate explanation of the reasons for custody
8 [or visitation] determination ‘are crucial to enforce or modify a custody order for
9 appellate review.’” *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143
10 (2015). Though custody orders are within the district court’s discretion and are
11 reviewed deferentially, no deference is owed to a legal error or to findings so
12 conclusory they may mask legal error. *Id.*, 131 Nev. at 451, 352 P.3d at 1142.

13 A custody decision must tie the child’s best interest, as informed by
14 specific, relevant findings on the best interest factors, to the custody
15 determination made. *Id.*, 131 Nev. at 452, 352 P.3d at 1143 (explaining that a
16 child’s best interest is not achieved simply by processing the case through the
17 factors that NRS 125.480(4) identifies as potentially relevant to a child’s best
18 interest and announcing a ruling).

19 ///

20 ///

1 **B. ARGUMENT**

2 The district court erred in awarding joint physical custody of the children
3 to the parties instead of awarding primary physical custody to Dad. Nevada
4 determines child custody as to what is in their best interest. *See e.g.* NRS
5 125C.0035(4). If a qualifying domestic violence incident occurs, then it is
6 presumed that the offending party cannot have even joint custody of children.
7 *See* NRS 125C.0035(5); *see also* NRS 125C.230.

8 Here, Mom attacked both Abigail (her daughter at issue), the other
9 children, and her own mother. (7 AA 1310).¹ CPS substantiated claims that
10 Mom abused the children. (7 AA 1163,). Mom tried to deny this at trial (which
11 should have affected her credibility). (5 AA 730, 735).

12 For reasons passing understanding, the district court opined that ordering
13 no corporal punishment would end Mom's domestic violence propensities.
14 (2 AA 281; 3 AA 462, 468). The district court completely disregarded two other
15 instances of Mom's domestic violence.

16 There was an incident where Mom showed up to Dad's residence during
17

18 ¹ The CPS records show that Mom abused all of the children. (7 AA 1147,
19 1162). However and for reasons passing understanding, the district court only
20 mentioned one child, Abigail. (7 AA 1310).

1 his custodial time. (6 AA 1017). Mom created a scene in front of Dad’s home,
2 demanding that the children go with her. (*Id.*). Police were forced to escort Mom
3 off the property, as she did not listen to Dad when he asked her to leave. (*Id.*).
4 The incident was so out of control that the responding police officer noted that
5 Mom was provoking a physical altercation and advised Dad to file a TPO. (*Id.*).
6 Mom was trespassing. *See* NRS 207.200. This incident was an act of domestic
7 violence. *See* NRS 33.018(1)(e).

8 The second incident of that was not considered was Mom using her vehicle
9 to prevent Dad from leaving his apartment complex in January 2020. (5 AA 774).
10 Had Dad pressed charges, Mom would have been facing criminal coercion—an
11 offense that falls under the umbrella of domestic violence. *See* NRS
12 33.018(1)(c). *See also* NRS 207.190.

13 The district court ordered that neither party engage in corporal punishment
14 on July 22, 2019. (2 AA 281). The Court also entered in a behavior order on July
15 22, 2019. (2 AA 251). The behavior order specifically forbids the parties from
16 threatening to commit or actually committing an act of violence upon the other
17 party or the children. (2 AA 254).

18 Mom committed acts of domestic violence *after* the Court set forth
19 provisions to prevent ongoing violence in the household during the July 22, 2019
20 hearing. Mom trespassed on October 23, 2019. (6 AA 1017). On or about

1 October 28, 2019, there were additional CPS allegations related to Mom
2 discharging a firearm and violating visitation orders. (7 AA 1148, 1166). Mom
3 then committed an act of coercion in January 2020. (5 AA 774). Clearly,
4 ordering Mom to abstain from corporal punishment and violence was ineffective.

5 The district court erred in finding that the domestic violence presumption
6 was overcome. Mom's propensity for domestic violence was not limited to two
7 incidents, but rather four. Two of the incidents took place *after* the Court forbid
8 the parties from engaging in violence against each other, or with the children.
9 Moreover, CPS substantiated claims against Mom, which goes well beyond a
10 domestic violence finding. People do not end their domestic violence
11 propensities because a court so directs. That is ridiculous reasoning, which
12 clearly did not work.

13 Mom has a history of domestic violence against the children, Dad, and her
14 own mother. Her ability to refrain from using corporal punishment while under
15 a microscope is insufficient evidence to support a finding that the presumption of
16 domestic violence was overcome. Mom continued to commit domestic violence
17 throughout litigation. This was ignored. It is absurd for the district court to
18 conclude that Mom overcame the presumption under these circumstances.

1 As such, the Court should find substantial evidence does not support the
2 finding that the presumption was overcome. With that, the Court should reverse
3 the finding and award Dad primary physical custody of the children.

4 **Student Loan / Degree Issue**

5 **A. STANDARD OF REVIEW**

6 Asset and debt division is reviewed for an abuse of discretion. *Clancy v.*
7 *Clancy*, 89 Nev. 84, 506 P.2d 417 (1973). Conclusions of law based on a district
8 court's interpretation of a statute are reviewed de novo. *See Day v. Washoe Cty.*
9 *Sch. Dist.*, 121 Nev. 387, 388, 116 P.3d 68, 69 (2005). Questions of law are
10 reviewed de novo. *See Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850,
11 855 (2008). A question of law is present when the issue surrounds a trial court's
12 conclusions of law. *See Bopp v. Lino*, 110 Nev. 1246, 885 P.2d 559 (1994).

13 **B. ARGUMENT**

14 The district court erred when it ordered Dad to pay half of Mom's student
15 loans while not awarding half of the degree value to Dad. If a party is awarded
16 half the debt for a car, that party must also receive half the value of the car (absent
17 other offsets).

18 The district court found that Mom's student loan in the amount of
19 \$76,195.00 was community property as no evidence was presented to suggest
20 otherwise. (7 AA 1323). However, in Mom's financial disclosure forms, she

1 stated that the student loan debt was her debt. (5 AA 549, 593). Dad’s medical
2 debt in the amount of \$75,627.30 was undisputed community debt. (7 AA 1323).
3 The district court offset Mom’s student loan debt against Dad’s medical debt
4 (along with other debts) to “equalize”. (7 AA 1323-24). The district court did
5 not divide the decree earned by Mom paid for by the student loans.

6 A degree earned during the marriage is a community property asset—as
7 far as the earning potential goes. *See e.g. Harmon v. Harmon*, 486 So.2d 277
8 (Louisiana App. 1986).² A degree is an intangible asset—much like goodwill,
9 which is divided in a community property divorce in Nevada. *See Ford v. Ford*,
10 105 Nev. 672, 678-80, 782 P.2d 1304, 1308-10 (1989).

11 California is another community property state. *See e.g. In re Marriage of*
12 *Holtemann*, 166 Cal.App.4th 1166, 83 Cal. Rptr.3d 385 (Ct. App. 2nd 2008).
13 California has such a strong community property rule on student loans not being
14 divided in a divorce that they codified the same—that the student loans taken out
15 during the marriage are the separate property of the party who received the
16 education. *See Cal Fam.Code §§ 2627, 2641*. This follows the statement that the
17 person keeping the asset keeps the loan on the same.

20 ² Louisiana is a community property state. *See e.g. La. C.C. art. 2335*.

1 It is solid public policy for a party to take the student loans and the decree
2 (assuming they were taken out and earned during the marriage) or to divide the
3 value of each equally or pro rata if there was a portion of the education for the
4 degree earned outside of marriage. A vocational rehabilitation specialist can
5 easily determine the value of a degree.

6 As such, the Court should reverse the district court's determination that
7 Mom's student loans were community property. The Court should either have
8 Mom keep the loan and her degree or divide them both. What the district court
9 did cannot stand. Dad asserts that the better policy is for the party taking the
10 education to take the student loans as separate property.

11 **Income Determination / Alimony**

12 **A. STANDARD OF REVIEW**

13 Modifications of spousal support are reviewed for an abuse of discretion.
14 *Gilman v. Gilman*, 114 Nev. 416, 422, 956 P.2d 761, 764 (1998).

15 **B. ARGUMENT**

16 The district court erred in calculating Dad's income. As the denial of
17 alimony was predicated on his income, the Court should reverse the decision on
18 alimony and remand the matter for a recalculation of income and for a re-
19 determination of alimony.

1 As stated, the district court found that Dad's gross yearly income was
2 \$114,556.00. (7 AA 1319). This is \$9,546.33 in gross monthly income. The
3 district court supported its analysis by reviewing Dad's bank statements. (7 AA
4 1319).

5 Dad denied making \$11,000.00 per month. (6 AA 835). This was further
6 confirmed by the introduction of exhibit JJ. (6 AA 836). In the month of
7 February, Dad received deposits from Copart in the amount of \$12.00, \$1,228.00,
8 \$1,758.00. (6 AA 837).

9 In the month of March 2020, Dad received deposits from Copart for
10 \$271.00, \$1,083.00, \$1,446.00, \$1,626.00, and \$1,353.00, for a total of
11 \$5,778.00. (7 AA 1199-1202). Dad made transfers for \$1,281.00, \$400.00,
12 \$50.00, and \$100.00 from his savings account, into his checking account. (7 AA
13 1199). When you add up Dad's payments from Copart, his transfers from the
14 savings account, and a \$75.00 tax rebate that was in Dad's statement, you get
15 \$7,685.00—the exact amount of the total deposits displayed for March 2020.
16 (7 AA 1199-1202). By calculating Dad's income solely based on the total
17 deposits listed at the end of his monthly statements, the Court calculated transfers
18 from his savings account into this checking account as income. (7 AA 1202).

19 So, the district court added up transfers from savings as "income" for Dad.
20 The math here destroys the district court's finding as to Dad's "income" as

1 savings transfers are not income. Substantial evidence does not support the
2 district court's findings as to Dad's income. As such, the district court's
3 determination as to Dad's income and the failure to award alimony should be
4 reversed and should be remanded for further proceedings not inconsistent with
5 the rulings here.

6 **Credibility Needs to be Reviewable**

7 Credibility needs to be reviewed as a matter of public policy. Nevada law
8 is unclear as to what review is given to a credibility determination.

9 Recent case law suggests credibility is reviewed for an abuse of discretion.
10 *See Sing v. Kaur*, 136 Nev. ___, 477 P.3d 358, 362 (2020) (assessment of
11 credibility is deferred to the district court in a bench trial), *citing Ybarra v. State*,
12 127 Nev. 47, 58-59, 247 P.3d 269, 276-77 (2011) (credibility is within the
13 discretion of the district court). Discretion can be abused—hence the abuse of
14 discretion standard. Yet, other case law says that credibility will not be reviewed.
15 *See e.g. Nellis Motors v. Dept. of Motor Vehicles*, 124 Nev. 1263, 1269-70, 197
16 P.3d 1061, 1066 (2008). The Court should determine that credibility should be
17 reviewed for an abuse of discretion. *See Truax v. Truax*, 110 Nev. 437, 439, 874
18 P.2d 10, 11 (1994).

19 Here, the district court found Dad “not credible” as to his testimony about
20 his income. (7 AA 1318). This finding was made despite documentary evidence

1 supporting his claims and refuting the district court’s findings.³ The district court
2 also found that no “credible” evidence was presented on the likelihood of Mom
3 further harming anyone. (7 AA 1311).

4 District courts know that credibility is not reviewed and they couch
5 findings as “credibility” to avoid review and reversal. If you give someone an
6 out, they will take it. The “out” for the district court bullet-proofing their
7 decisions is to couch it in credibility. This is bad public policy. California, for
8 example, reviews credibility for an abuse of discretion. *See e.g. Kanno v. Marwit*
9 *Capital Partners II, L.P.*, 18 Cal.App.5th 987, 1007, 227 Cal.Rptr.3d 334, 350
10 (Ct. App. 4th 2017).

11 The Court should review credibility for an abuse of discretion and find the
12 district court abused its discretion as to Dad’s income and as to Mom not likely
13 harming anyone in the future. With that, the Court should reverse the findings
14 the district court made which were based merely on “credibility”—which the
15 district courts do to avoid review and to avoid being overturned.

16 **18. Issues of first impression or of public interest. Does this appeal**
17 **present a substantial legal issue of first impression in this jurisdiction**
18

19 ³ This analysis is given herein in the Income / Alimony section and is not
20 repeated for judicial economy.

or one affecting an important public interest: YES No If

so, explain:

This case raises the issue of division of a college degree, which is an issue of first impression in Nevada. There is also the credibility argument.

Dated this 2nd day of March, 2022

/s/ *F. Peter James*

LAW OFFICES OF F. PETER JAMES

F. Peter James, Esq.

Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

Las Vegas, Nevada 89102

702-256-0087

Counsel for Appellant

ROUTING STATEMENT

Pursuant to NRAP 3E(d)(1)(H), Appellant submits the following routing statement:

- This appeal is not presumptively retained by the Supreme Court pursuant to NRAP 17(a);
- This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(5) as it is a family law matter not involving termination of parental rights or NRS Chapter 432B proceedings;

- 1 • Appellant asserts that the matters should be retained by the Supreme Court
2 as there is a substantial issue of first impression, to wit: the student loan /
3 college degree division issue.

4 Dated this 2nd day of March, 2022

5 /s/ *F. Peter James*

6 LAW OFFICES OF F. PETER JAMES

F. Peter James, Esq.

7 Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

8 Las Vegas, Nevada 89102

702-256-0087

9 Counsel for Appellant

10 **VERIFICATION**

11 1. I hereby certify that this fast track statement complies with the formatting
12 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
13 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

14 [x] This fast track statement has been prepared in a proportionally
15 spaced typeface using MS Word 365 Times New Roman 14 point;
16 or

17 [] This fast track statement has been prepared in a monospaced
18 typeface using [state name and version of word processing program]
19 with [state number of characters per inch and name of type style].
20

1 2. I further certify that this fast track statement complies with the page- or
2 type-volume limitations of NRAP 3E(e)(2) / NRAP 3E(d)(1) because it is
3 either:

4 [x] Proportionately spaced, has a typeface of 14 points or more, and
5 contains less than 7,267 words (5,898 total); or

6 [] Monospaced, has 10.5 or fewer characters per inch, and no more
7 than 693 lines of text: or

8 [] Does not exceed 16 pages.

9 3. Finally, I recognize that under NRAP 3E I am responsible for timely filing
10 a fast track statement and that the Supreme Court of Nevada may impose
11 sanctions for failing to timely file a fast track statement, or failing to raise
12 material issues or arguments in the fast track statement. I therefore certify
13 that the information provided in this fast track statement is true and
14 complete to the best of my knowledge, information, and belief.

15 Dated this 2nd day of March, 2022

16 /s/ *F. Peter James*

17

LAW OFFICES OF F. PETER JAMES

18 F. Peter James, Esq.

19 Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

19 Las Vegas, Nevada 89102

702-256-0087

20 Counsel for Appellant

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

Frank Toti, Esq.
Counsel for Respondent

29 of 29