

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

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4   HERMAN GEORGE WILLIAMS    }

5                   Appellant        }

6                   v                 }

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8   NADINE ALECIA WILLIAMS        }

9                   Respondent       }

Electronically Filed  
Apr 18 2022 04:49 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No 83263

**FAST TRACK RESPONSE**

10  
11 **1. Party filing response:**

12                   Nadine Williams.

13  
14 **2. Attorney submitting response:**

15                   Frank J Toti Esquire, The Law Offices of Frank J Toti Esquire PC, 6900

16                   Westcliff Drive #500, Las Vegas Nevada 89145, 702.364.1604.

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19 **3. Proceedings raising same issues:**

20                   None.

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22 **4. Procedural history:**

23                   Nadine initiated this action by filing a Complaint for Divorce on  
24                   March 19, 2019 (1 AA 1). Herman filed his Answer and Counterclaim  
25                   for Divorce on June 3, 2019 (1 AA 13). Trial in this matter commenced  
26                   on February 11, 2021 and ended the same day (5 AA 676). Judge Bailey  
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1 took the matter under advisement and issued a Decision and Order on  
2 February 26, 2021 (7 AA 1293). The Notice of Entry of Order of the  
3 Decision and Order was filed on April 1, 2021 (8 AA 1348).  
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5 Herman filed his Motion for Reconsideration of the Decision and  
6 Order on April 15, 2021 (8 AA 1405) and Nadine filed her Opposition and  
7 Countermotion on May 10, 2021 (8 AA 1423). The hearing regarding  
8 Herman's motion and Nadine's opposition and countermotion  
9 commenced on June 10, 2021 (8 AA 1468) and at said time Judge Bailey  
10 denied Herman's motion as well as Nadine's countermotion for  
11 alternative relief (8 AA 1477). The Order memorializing the June 10,  
12 2021 hearing was filed on June 30, 2021 (8 AA 1477) and the Notice of  
13 Entry of Order of the June 20, 2021 Order was filed on July 12, 2021 (8  
14 AA 1481).  
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20 Herman filed his Notice of Appeal on July 15, 2021 and said Notice  
21 of Appeal indicates that Herman is appealing both the Decision and  
22 Order entered on February 26, 2021 and the Order entered on June 30,  
23 2021 (8 AA 1485).  
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1 **5. Statement of facts:**

2 Herman and Nadine were married on December 27, 1982 in the  
3 state of New York (1 AA 1). There are four minor children the product  
4 of the parties' marriage, to wit: Abigail Williams, born October 27, 2004;  
5 Herman Williams IV, born August 24, 2008; Matthew Williams, born  
6 May 13, 2010 and Elisha Williams, born April 26, 2013 (1 AA 2).  
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9 At the time of trial, Nadine requested that the parties be granted  
10 joint legal custody of the parties' children and that she be granted  
11 primary physical custody of the parties' children. Nadine also requested  
12 that she be awarded child support, that the parties' assets and debts be  
13 distributed, that no alimony be awarded to either party and that she be  
14 awarded attorney's fees (4 AA 608-639). Herman requested that he be  
15 granted sole legal custody and primary physical custody of the parties'  
16 three youngest children, that the parties be granted joint legal custody of  
17 the parties' oldest child and that Nadine be granted primary physical  
18 custody of the parties' oldest child (3 AA 576). Herman also requested  
19 that he be awarded child support, that the parties' assets and debts be  
20 distributed, that he be awarded alimony and that he be awarded  
21 attorney's fees (3 AA 576).  
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1 Judge Bailey awarded the parties joint legal custody of all the  
2 minor children (7 AA 1332-1334). Despite Herman conceding that  
3 Nadine should be awarded primary physical custody of the parties' oldest  
4 child, Judge Bailey awarded the parties joint physical custody of all the  
5 minor children (7 AA 1334). Judge Bailey did not award either party  
6 child support due to her conclusion that the disparity in the parties'  
7 respective gross monthly incomes was negligible (7 AA 1334). Judge  
8 Bailey ordered Nadine to provide the minor children with a policy of  
9 health insurance and for Herman to reimburse Nadine one-half of the  
10 monthly cost associated therewith (7 A 1334). Judge Bailey ordered that  
11 each party retain the bank accounts in their own names, that each party  
12 retain the vehicles in their possession, that the parties each be one-half  
13 responsible for the credit-card debt accumulated during the marriage,  
14 the parties each be one-half responsible for Herman's medical debt and  
15 Nadine's student loan (with Herman assuming his medical debt and  
16 Nadine assuming her student loan), that Herman be awarded the towing  
17 business that was created during the marriage and that neither party be  
18 awarded alimony (7 AA 1320-1329). Finally, Judge Bailey ordered that  
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1 each party would be responsible for their own attorney's fees. (7 AA  
2 1341).

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4 **6. Issues:**

5 A. Whether Judge Bailey erred in awarded the parties joint  
6 physical custody of all the minor children.  
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8 B. Whether Judge Bailey erred in the distribution of the parties'  
9 assets and debts.  
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11 C. Whether Judge Bailey erred in not awarding Herman  
12 alimony.  
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14 D. Whether the issue of credibility should be reviewable by this  
15 Court.  
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17 **7. Argument:**

18 A. Judge Bailey's award of joint physical custody of all the minor  
19 children to the parties was not improper.  
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21 The district court has "broad discretionary powers to determine  
22 child custody matters," and this court will not disturb such  
23 determinations absent a clear abuse of discretion. *Ellis v Carucci*, 123  
24 *Nv 145, 149, 161 P3d 239, 241 (2007)*. Abuse of discretion occurs when  
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1 the decision is “arbitrary or capricious or if it exceeds the bounds of law  
2 or reason.” *Jackson v State*, 117 Nv 116, 120, 17 P3d 998, 1000 (2001).

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4 This Court will not set aside the district court’s factual findings so  
5 long as they are supported by substantial evidence. *Id at 149, 242.*  
6 Substantial evidence is found where there is evidence that a reasonable  
7 mind might accept as adequate to support a conclusion. *Whitemaine v*  
8 *Aniskovich*, 124 Nv 302, 308, 183 P.3d 137, 141 (2008). In making  
9 custody determinations, the sole consideration is the best interests of the  
10 child, or children, at issue. *Sims v Sims*, 109 Nv 1146, 1148, 865 P2d  
11 328, 330 (1993).  
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15 Herman is asserting that it was an abuse of discretion when Judge  
16 Bailey awarded the parties joint physical custody of all the minor  
17 children.  
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20 Judge Baily found that Nadine had committed two acts of domestic  
21 violence that created a rebuttable presumption that awarding Nadine  
22 either sole or joint physical custody of the minor children would not be in  
23 the minor children’s best interests pursuant to *NRS 125C.0035(5)* (7 AA  
24 1310-1312). Specifically Judge Bailey heard testimony from Nadine’s  
25 mother wherein she stated that on one occasion she witnessed Nadine  
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1 strike Abigail with a pipe and on another occasion, Nadine grabbed her  
2 by the throat (7 AA 1310). However, Judge Bailey concluded that there  
3 was not a likelihood of future injury due to the previous district court  
4 judge presiding over this matter ordering that neither parent could  
5 engage in corporal punishment of the minor children in the future (and  
6 the second child interview concluded that no new corporal punishment  
7 had occurred since the order forbidding the same) and because Nadine  
8 and Nadine's mother no longer reside together (7 AA 1311). Judge Bailey  
9 also noted that all the minor children reported an improved relationship  
10 with Nadine in the second child interview (7 AA 1312). Judge Bailey  
11 particularly noted that Abigail was living solely with Nadine at the time  
12 of the second interview and desired to have no contact with Herman (7  
13 AA 1313).

14 Judge Bailey considered the other factors set forth in *NRS*  
15 *125C.003* as well (7 AA 1308-1318). Judge Bailey found that Abigail  
16 desired to reside solely with Nadine and to have no contact with Herman,  
17 while the younger children that were interviewed indicated that their  
18 relationship with both parties was positive and the current visitation  
19 schedule was adequate (7 AA 1313). However, Judge Bailey did note

1 that all the minor children indicated that Herman speaks negatively  
2 about Nadine in their presence (7 AA 1313).

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4 Judge Bailey found that both parties had frustrated the other  
5 party's efforts to have a meaningful relationship with the minor children  
6 (7 AA 1314). Judge Bailey found that there is a high level of conflict  
7 between the parties and the same favored Nadine (7 AA 1315). Judge  
8 Bailey found that Herman was detained on a Legal 2000 for suicidal  
9 ideation (7 AA 1315). Judge Bailey found that both parties had good  
10 relationships with the three younger children while Abigail resided solely  
11 with Nadine and had no relationship with Hermon (7 AA 1316). Judge  
12 Bailey also heard Herman testify that he had no objection to the current  
13 schedule except that he preferred the weekly exchange of the minor  
14 children to occur on Sundays rather than Mondays (7 AA 1302).

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16 As a result of Judge Bailey's findings, it was not an abuse of Judge  
17 Bailey's discretion to award Nadine joint physical custody of the minor  
18 children. Again, Judge Bailey determined it was unlikely that Nadine  
19 would commit an act of domestic violence in the future and Judger Bailey  
20 found that all the other factors as set forth in *NRS 125C.003*, were either  
21 neutral or favoring Nadine.  
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1 If anything, Judge Bailey, in awarding Herman joint physical  
2 custody of Abigail, may have abused her discretion. Judge Bailey  
3 awarded Herman joint physical custody of Abigail despite the following:  
4 Judge Bailey found that Herman had not had Abigail in his care for the  
5 requisite one-hundred and forty-six days necessary for joint physical  
6 custody as Abigail had been residing solely with Nadine since October  
7 2019 (7 AA 1309, 7 AA 1296), Judge Bailey heard testimony that Herman  
8 had yet to engage in reunification counseling with Abigail (7 AA 1297),  
9 Judge Bailey heard testimony that Abigail had reached out to Herman  
10 but he refused to communicate with her (7 AA 1297), Judge Bailey found  
11 that Abigail was of sufficient age and capacity to form an intelligent  
12 preference as to her physical custody and that she desired to have no  
13 contact with Herman (7 AA 1313) and Herman conceded that Nadine  
14 should have primary physical custody of Abigail (3 AA 576).

21 B. Judge Bailey did not err in her distribution of the parties'  
22 assets and debts.

24 The district court's findings of fact will not be set aside unless those  
25 findings are clearly erroneous. *See, Hermann Trust v Varco-Pruden*  
26 *Buildings*, 106 Nv 564, 566, 796 P2d 590, 591–92 (1990). Accordingly, if  
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1 the district court's findings are supported by substantial evidence, they  
2 will be upheld. *See, Pandelis Constr. Co. v Jones-Viking Assoc., 103 Nv*  
3 *129, 130, 734 P2d 1236, 1237 (1987).* Substantial evidence is that  
4 evidence which a reasonable mind might accept as adequate to support a  
5 conclusion. *See, State Emp. Security v. Hilton Hotels, 102 Nv 606, 608,*  
6 *729 P2d 497, 498 (1986).* The district court's conclusions of law, however,  
7 are reviewed de novo. *City of Reno v. Van Ermen, 79 Nv 369, 381, 385*  
8 *P2d 345, 351 (1963).*

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13 Herman's argument that Judge Bailey improperly ordered the  
14 parties to each be responsible for one-half of Nadine's student loan is  
15 misplaced. Herman wrongfully implies that the monies Nadine received  
16 as and for her student loan went to pay for her educational costs. They  
17 did not. Nadine testified that all the loans accumulated during the  
18 marriage went to support Herman and his businesses (5 AA 766-767).  
19 Not only was Nadine's testimony not refuted by Herman, but also  
20 Herman testified that he was willing to pay half the debts (5 AA 817).  
21 Thereafter, Judge Bailey correctly concluded that all the debt incurred  
22 by the parties during the marriage was community debt and should be  
23 divided equally between the parties (7 AA 1320-1326).  
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1 Herman also asserts that Judge Bailey erred in not awarding him  
2 his community property share of Nadine's nursing degree. However,  
3 Herman, at the time of trial, never argued or asserted that Nadine's  
4 nursing degree was a community asset subject to division (5 AA 676-859).  
5 Further, Herman's Financial Disclosure Form filed on February 4, 2021,  
6 states the parties have no assets (3 AA 567). Nevada has no authority  
7 on whether an education degree is subject to division. However, most  
8 states that have considered the issue have found that an educational  
9 degree is simply too difficult to value.  
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14 The Court of Appeals in the state of Wisconsin articulated the same  
15 in *DeWitt v DeWitt*, 98 Wis 2d 44, 296 NW 2d 761 (180). The *DeWitt*  
16 Court stated as follows:  
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18 *The test on appeal of a property division is whether the trial court abused*  
19 *its discretion in making the award. Dean v. Dean, 87 Wis 2d 854, 275*  
20 *NW2d 902 (1979); Leighton v Leighton, 81 Wis 2d 620, 261 NW2d*  
21 *457 (1978). Such an abuse occurs when the trial court fails to consider*  
22 *proper factors, makes a mistake or error with respect to the facts upon*  
23 *which the division is made, or when the division is, under the*  
24 *circumstances, either excessive or inadequate. Perrenoud v. Perrenoud, 82*  
25 *Wis 2d 36, 46, 260 NW2d 658 (1978). We conclude that the trial court*  
26 *abused its discretion in valuing the plaintiff's law degree as an asset in*  
27 *the marital estate and in awarding the defendant property exceeding the*  
28 *net value of the properly included assets.*

*The courts in those few jurisdictions which have considered the issue*  
*presented on this appeal have taken a variety of approaches in dealing*  
*with it. The majority of those jurisdictions have held that a professional*

1 degree is not "property" subject to division after the dissolution of a  
2 marriage. *In re Marriage of McManama*, 399 NE2d 371 (Ind. 1980); *In re*  
3 *Marriage of Aufmuth*, 89 Cal App 3d 446, 152 Cal Rptr 668 (1979); *In re*  
4 *Marriage of Graham*, 194 Col 429, 574 P2d 75 (1978); *Moss v. Moss*, 80  
5 *Mich App* 693, 264 NW2d 97 (1978); *Stern v. Stern*, 66 NJ 340, 331 A2d  
6 257 (1975); *Todd v. Todd*, 272 Cal App. 2d 786, 78 Cal Rptr 131 (1969).  
7 The rationale of these cases is perhaps best expressed by the majority  
8 opinion in *In re Marriage of Graham*, *supra*:  
9 An educational degree . . . is simply not encompassed even by the broad  
10 views of the concept of "property." It does not have an exchange value or  
11 any objective transferable value on an open market. It is personal to the  
12 holder. It terminates on death of the holder and is not inheritable. It  
13 cannot be assigned, sold, transferred, conveyed, or pledged. An advanced  
14 degree is a cumulative product of many years of previous education,  
15 combined with diligence and hard work. It may not be acquired by the  
16 mere expenditure of money. It is simply an intellectual achievement that  
17 may potentially assist in the future acquisition of property. In our view, it  
18 has none of the attributes of property in the usual sense of that term. 574  
19 P.2d at 77.

20 See *DeWitt* at 53-54.

21 As discussed herein below, the benefit Herman realizes from  
22 Nadine earning her nursing degree is in the consideration of alimony in  
23 this matter. Had Nadine not earned her nursing degree it is presumed  
24 that her income would be less than the amount Judge Bailey determined  
25 Nadine's income to be at the time of trial – the sum of \$10'382.00 per  
26 month (7 AA 1319).

27 As a result, Judge bailey did not err in not awarding Herman his  
28 community property share of Nadine's nursing degree.

1           C. Judge Bailey did not err in not awarding Herman alimony.

2           A district court's right to grant alimony is defined in *NRS 125.150*.  
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4           *NRS 125.150(1)* states that in granting a divorce, the court "[m]ay award  
5 such alimony to the wife or to the husband, in a specified principal sum  
6 or as specified periodic payments, as appears just and equitable." When  
7 a district court makes an award of alimony, the award must be "just and  
8 equitable, having regard to the conditions in which the parties will be left  
9 by the divorce." *Sprenger v. Sprenger*, 110 Nev. 855, 859, 878 P.2d 284  
10 (1994). The Nevada Supreme Court will not interfere with the district  
11 court's disposition of an alimony award unless it appears that the  
12 discretion of the district court has been abused. *Wolff v. Wolff*, 112 Nev.  
13 1355, 1359, 929 P.2d 916, 918-919 (1996). The Nevada Supreme Court's  
14 rationale for not substituting its own judgment for that of the district  
15 court, absent an abuse of discretion, is that the district court has a better  
16 opportunity to observe parties and evaluate the situation. *Id.* An award  
17 of alimony by the district court based upon substantial evidence will not  
18 be disturbed by the Nevada Supreme Court on appeal. *Shydler v.*  
19 *Shydler*, 114 Nev. 192, 954 P.2d 37, 39 (1998).  
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1 Herman's Financial Disclosure Form filed on February 4, 2021,  
2 states that Herman's gross monthly income is the sum of \$11'300.00 (3  
3 AA 563). Herman testified at trial that he misstated his income on his  
4 Financial Disclosure Form and that his actual gross monthly income was  
5 actually the sum of \$5'666.66 (5 AA 835-836). Nadine testified that as a  
6 result of her knowledge of Herman's business and earnings she believed  
7 Herman's gross monthly income was an amount between \$6'000.00 and  
8 \$10'000.00 (5 AA 705-707, 727). Nadine's Financial Disclosure Form  
9 filed on February 9, 2021, states that Nadine's gross monthly income is  
10 the sum of \$9'583.33 (3 AA 563).

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15 Judge Bailey did not accept either party's calculation of their gross  
16 monthly income as set forth on their respective Financial Disclosure  
17 Forms. Judge Bailey considered Herman's testimony regarding the  
18 number of days he works, the number of tows he has per day, the varying  
19 amounts Herman receives per tow and Herman's bank statements and  
20 determined that Herman's gross monthly earnings from his business was  
21 the sum of \$9'547.00. Judge Bailey then added the sum of \$700.00 to  
22 Herman's gross monthly income to account for the monthly amount  
23 Herman receives as and for rent from Nadine's mother and concluded  
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1 that Herman's gross monthly income was the sum of \$10'247.00 (7 AA  
2 1318-1319). Judge Bailey further found that Nadine's paystubs attached  
3 to her Financial Disclosure Form contradicted the amount Nadine  
4 provided in her Financial Disclosure Form as and for her gross monthly  
5 income. Judge Bailey specifically found that Nadine's paystubs reflect a  
6 biweekly salary of \$4'791.67, which would equate to a gross monthly  
7 income of \$10'382.00 (7 AA 1319).  
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11 Judge Bailey then considered the alimony factors as set forth in  
12 *NRS 125.105(9)* and found that Herman was in a superior financial  
13 position than Nadine on a monthly basis (7 AA 1327), that Herman was  
14 retaining property of a substantial higher value than the property  
15 Nadine was retaining (7 AA 1328), that both parties were healthy and  
16 capable of continuing to earn income (7 AA 1328), that the parties were  
17 equally dividing the debts accumulated during the marriage and that  
18 neither party suffers any physical or mental impediments which would  
19 prevent them from maintaining their current careers (7 AA 1329).  
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24 As a result of Judge Bailey's analysis, Judge Bailey concluded that  
25 Herman's request for alimony was unwarranted, due in large part to the  
26 fact that Herman's gross monthly income exceeded Nadine's gross  
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1 monthly income (7 AA 1326, 1329). Judge Bailey did not abuse her  
2 discretion in determining the same.

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4 D. Credibility should not be reviewable by this Court.

5 The Nevada Supreme Court has long held that it will not substitute  
6 its own judgement for that of the district court. The Nevada Supreme  
7 Court will review a district court's factual findings for an abuse of  
8 discretion and will not set aside those findings unless they are clearly  
9 erroneous or not supported by substantial evidence. *Ogawa v Ogawa*, 125  
10 *Nv 660, 668, 221 P3d 699. 704 (2009)*. Substantial evidence is evidence  
11 that a reasonable person may accept as adequate to sustain a  
12 judgment. *Ellis v Carucci*, 123 *Nv 145, 149, 161 P3d 239, 242 (2007)*.  
13 When determining whether the district court abused its discretion, we  
14 will not reweigh conflicting evidence or reassess  
15 witness credibility. *Id. at 152, 161 P3d at 244*. Moreover, we will not  
16 disturb a district court's disposition of property on appeal without a  
17 showing of an abuse of discretion. *Wolff v Wolff*, 112 *Nv 1355, 1359, 929*  
18 *P2d 916, 918-19 (1996)*. "This court's rationale for not substituting its  
19 own judgment for that of the district court, absent an abuse of discretion,  
20 is that the district court has a better opportunity to observe parties and  
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1 evaluate the situation.” *Id at 1359, 929 P2d at 919* (citing *Winn v Winn*,  
2 *86 Nv 18, 20, 467 P2d 601, 602 (1970)*)).

3  
4 Herman presents nothing that should give this Court pause to  
5 reconsider its longstanding position regarding the review of credibility of  
6  
7 a witness.


8 **8. Conclusion:**

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10 Based on the above, Nadine respectfully requests that the judgment  
11 of the district court be affirmed on all issues.

12  
13 **9. Routing statement:**

14 Nadine believes this matter, which is presumptively assigned to the  
15  
16 Court of Appeals should be heard by the Court of Appeals.

17  
18 Dated this 18 day of April, 2022

19  
20  
21   
22 FRANK J TOTI  
23 Nevada Bar Number 005804  
24 The Law Offices of  
25 Frank J Toti Esquire PC  
26 6900 Westcliff Drive #500  
27 Las Vegas Nevada 89145  
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Attorney for Respondent


**CERTIFICATE OF COMPLIANCE**

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5       1.     I hereby certify that this fast track response complies with the  
6  
7 formatting requirements of NRAP 32(a)(4), the typeface requirements of  
8 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because  
9  
10 this fast track response has been prepared in a proportionally spaced  
11 typeface using Microsoft Word for Office 365 MSO (16.0.11601.20174)32  
12 bit in 14-point Century Schoolbook;  
13  
14

15       2.     I further certify that this fast track response complies with  
16  
17 the page- or type-volume limitations of NRAP 3E(e)(2) because, excluding  
18  
19 the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately  
20 spaced, has a type face of 14 points or more and contains 3'672 words;  
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3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

Dated this 18 day of April, 2022

  
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