

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
May 24 2022 09:03 a.m.

Elizabeth A. Brown
Clerk of Supreme Court

**EX PARTE MOTION TO FILE
UNTIMELY BRIEF**

8 Appellant, by and through his counsel, F. Peter James, Esq. hereby moves
9 this Honorable Court for leave to file the Fast Track Statement one day after the
10 deadline.

11 **DECLARATION OF F. PETER JAMES, ESQ.**

12 I, F. Peter James, Esq., hereby declare and state under penalty of perjury
13 as follows:

- 14 1. I am a member in good standing of the State Bar of Nevada.
- 15 2. I am counsel for Appellant in the above-entitled matter.
- 16 3. I have personal knowledge of the facts contained in this declaration, save
17 those stated upon information and belief, and, as to those matters, I believe
18 them to be true.
- 19 4. I am competent and willing to testify in a court of law as to the facts
20 contained herein.

1 5. The current extended deadline for the Fast Track Reply was yesterday,
2 May 23, 2022 before midnight.

3 6. Between approximately 7:30pm and 8pm last night, I attempted to e-file
4 the Fast Track Reply. I was unable to do so as eFlex was having issues. It
5 took many tries just to be able to load the eFlex website. One time I was
6 able to load it and begin the e-filing process; however, the system timed
7 out on me and would not load the page again for me.

8 7. So, I e-mailed the Fast Track Reply to opposing counsel. I also emailed
9 the Clerk to inform of this issue.

10 8. I am requesting leave to file the brief today.

11 9. I made no changes whatsoever to the Fast Track Reply since I emailed it
12 to opposing counsel (which was the same brief I attempted to e-file).

13 /s/ *F. Peter James*

February 28, 2022

14 F. PETER JAMES, ESQ.

DATE

15 **POINTS AND AUTHORITIES**

16 Requests for relief must be made by motion absent another way prescribed
17 by rule. *See* NRAP 27(a)(1). Generally, a request for extension of time to file a
18 document must be made before the deadline has passed. *See* NRAP 31(b)(3).
19 For good cause shown, however, the Court may extend the time for filing a brief
20

1 as prescribed by the NRAP even after the deadline has expired. *See* NRAP
2 26(b)(1)(A).

3 For the reasons stated in the above Declaration, I am requesting leave to
4 file the Fast Track Reply today—one day past the deadline. Good cause exists
5 as the e-filing system was having issues and as the Fast Track Reply was ready
6 to be filed timely.

7 Dated this 24th day of May, 2022

8 /s/ *F. Peter James*

9

LAW OFFICES OF F. PETER JAMES

F. Peter James, Esq.

10 Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

11 Las Vegas, Nevada 89102

702-256-0087

12 Counsel for Appellant

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Frank Toti, Esq.
Counsel for Respondent

4 of 4

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

2
3 HERMAN WILLIAMS,

No.: 83263

4 Appellant,

FAST TRACK REPLY

5 vs.

6 NADINE WILLIAMS,

7 Respondent.

8 **POINTS AND AUTHORITIES**

9 The Court should reverse the lower court on all issues presented in the Fast
10 Track Statement, to wit: child custody, student loan debts, Dad's income
11 determination, the lack of an alimony award, and credibility determinations.

12 Mom's Fast Track Response is unpersuasive and is mostly a generic
13 response.

14 **Child Custody**

15 Dad did concede primary physical custody of Abigail to Mom. (5 AA 748-
16 49). Dad inartfully drafted and inadvertently did not distinguish this in his Fast
17 Track Statement.

18 That being said district court did err as to child custody of the three sons.
19 Dad stands on his arguments in the Fast Track Statement.

1 **Student Loan Debt**

2 Mom inaccurately states that Dad agreed to take half the debts. (Fast Track
3 Response at 10:23). At the given citation (5 AA 817), Dad conditionally agreed
4 to pay half of a debt, but not the student loan debt. Still, how assets and debts are
5 divided is pursuant to Nevada law, not how a party might think debts are to be
6 divided. *See Blanco v. Blanco*, 129 Nev. 723, 731-32, 311 P.3d 1170, 1175-76
7 (2013).

8 Mom's assertion that degrees are too difficult to value and thus cannot be
9 divided in a divorce is nonsense. Many states divide degrees in divorces. *See*
10 *e.g. Esposito-Shea v. Shea*, 94 A.D.3d 1215, 1215-16, 941 N.Y.S.2d 793, 795-96
11 (New York App. 2012) (valuation of a degree is divisible in a divorce);
12 *Woodworth v. Woodworth*, 337 N.W.2d 332, 337 (Mich. App. 1983) (matter
13 remanded to determine the value of a party's degree so that it may be divided in
14 the divorce).

15 The district court should have either awarded the student loan debt as
16 Mom's sole and separate debt and also awarded her the degree; or, the district
17 court should have split both the loan and the degree. To do otherwise is akin to
18 awarding one party the house as sole and separate property, but equally dividing
19 the mortgage.

1 What the district court did cannot stand. Dad asserts that the better policy
2 is for the party taking the education to take the student loans as separate property.

3 **Income Determination / Alimony**

4 The Court should reverse the district court's determination as to Dad's
5 income and remand the matter for both correction of dad's income and
6 calculating alimony for Dad.

7 Dad laid out his arguments in the Fast Track Statement. Mom's arguments
8 do not delve into the issues Dad raised in his Fast Track Statement; thus, Mom's
9 arguments are tenuous at best.

10 **Credibility**

11 Dad laid out his arguments in the Fast Track Statement. Mom again did
12 not meaningfully counter them. Dad raised the public policy issue of courts
13 couching findings in credibility to avoid being overturned. Dad raised the issue
14 of what other states are doing with credibility. Mom failed to address either
15 argument.

16 The Court should review credibility for an abuse of discretion and find the
17 district court abused its discretion as to Dad's income and as to Mom not likely
18 harming anyone in the future. With that, the Court should reverse the findings
19 the district court made which were based merely on "credibility"—which the
20 district courts do to avoid review and to avoid being overturned.

1 **CONCLUSION**

2 Based on the foregoing and the Fast Track Statement, the Court should
3 reverse the district court as to child custody, student loan debt / college degree
4 division, and as to determination on Dad's income / alimony determination. The
5 Court should also review credibility. With that, the Court should remand the
6 matter to the district court consistent with its rulings.

7 Dated this 23rd day of May, 2022

8 /s/ *F. Peter James*

9 LAW OFFICES OF F. PETER JAMES

10 F. Peter James, Esq.

11 Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

12 Las Vegas, Nevada 89102

702-256-0087

Counsel for Appellant

13 **ROUTING STATEMENT**

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

- 16 • This appeal is not presumptively retained by the Supreme Court pursuant
17 to NRAP 17(a);
- 18 • This appeal is presumptively assigned to the Court of Appeals pursuant to
19 NRAP 17(b)(10) as it is a family law matter not involving termination of
20 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. There is also the issue of overturning /
4 clarifying Nevada law on credibility.

5 Dated this 23rd day of April, 2021

6 /s/ *F. Peter James*

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F. Peter James, Esq.

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3821 W. Charleston Blvd., Suite 250

9 Las Vegas, Nevada 89102

702-256-0087

10 Counsel for Appellant

11 **VERIFICATION**

- 12 1. I hereby certify that this Fast Track Reply complies with the formatting
13 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
14 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

15 [] This Fast Track Reply has been prepared in a proportionally spaced
16 typeface using [state name and version of word processing program]
17 in [state font size and name of type style]; or

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

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

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 1,103 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains [216] lines of text: or

☐ Does not exceed 5 pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a Fast Track Reply and that the Supreme Court of Nevada may impose sanctions for failing to timely file a Fast Track Reply, or failing to raise material issues or arguments in the Fast Track Reply. I therefore certify that the information provided in this Fast Track Reply is true and complete to the best of my knowledge, information, and belief.

Dated this 23rd day of May, 2021

/s/ *F. Peter James*

LAW OFFICES OF F. PETER JAMES

F. Peter James, Esq.

Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

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Counsel for Appellant

1 **CERTIFICATE OF SERVICE**

2 The following are listed on the Master Service List and are served via the
3 Court's electronic filing and service system (eFlex):

4 Frank Toti, Esq.
Counsel for Respondent

5
6 Ishi Kunin, Esq.
Settlement Judge