IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MUELLER, Appellant, Vs. CHRISTINA HINDS. Respondent,	))))))))))	No. 83412 Related Dist. Court Case: 8th Jud. Dist. Ct. Case No. D-18-571065-D Dept. C

PETITION FOR REHEARING

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INTRODUCTION

On September 15, 2022, a panel of this Court issued an ORDER AFFIRMING IN PART AND REVERSING IN PART AND REMANDING the decision of the District Court in this consolidated appeal.[1] Appellant Craig Mueller and Respondent Christina Hinds entered into a MSA on June 20, 2019, at Respondent's deposition. All material terms concerning the division of the parties' community property were placed on the record pursuant to EDCR 7.50. After the parties' reached the settlement agreement, Christina took $36,871.00 of community property funds that the parties had agreed was to be awarded to Craig in breach of the MSA. Craig, upon realizing that Christina had breached the MSA and taken $36,871.00 awarded to him, then refused to pay the equalization payment due under the MSA. Christina subsequently moved to hold Craig in contempt due to his failure to make the property equalization payment in the MSA and denied that she took Craig's property. Craig opposed and filed a counter-motion to set aside or modify the MSA by seeking an offset of the money taken by Christina.

In its opinion, the panel of the Court overlooks or misapprehends

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[1] The Court's September 15, 2022 opinion is attached as **Exhibit 1.**

certain facts and law to reach its conclusion that Craig was not entitled to withhold specific performance and to sue pursuant to the material terms of the Marriage Settlement Agreement ("MSA"), and that Respondent was the prevailing party. In reaching its conclusions the Court's opinion overlooks and misapprehends facts and law that (1) the District Court concluded that Christina breached the MSA first; (2) that Craig's primary argument on appeal in this matter was that Christina's breach was a material breach that entitled him to withhold specific performance and sue for damages or to rescind the contract; and (3) that the District Court actually awarded the offset modification of the MSA that Craig requested in his Motion to Modify or Set Aside. Upon these grounds, Craig respectfully requests that this Court grant them rehearing pursuant to NRAP 40.[2]

LEGAL ARGUMENT

A. STANDARD OF REVIEW FOR REHEARING.

NRAP 40(c)(2) provides that the Court may consider rehearing in the following circumstances: (A) When the court has overlooked or

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[2] If the Court orders First Transit to file an answer to this petition for rehearing, the Chernikoffs request the opportunity to file a reply. *See* NRAP 40(d).

misapprehended a material fact in the record or a material question of law in the case, or (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case. *See, e.g., Am. Cas. Co. of Reading, Pa. v. Hotel and Rest. Employees and Bartenders Intern. Union Welfare Fund*, 113 Nev. 764, 766, 942 P.2d 172, 174 (1997). When the Court overlooks an important issue raised on appeal, rehearing is warranted pursuant to NRAP 40. *Id.* In the instant case, rehearing is necessary to allow the Court to consider several factual and legal points the Court has overlooked or misapprehended.

B. THE COURT'S OPINION OVERLOOKS OR MISAPPREHENDS THE FACTS AND LAW CONCERNING CHRISTINA'S MATERIAL BREACH OF THE MSA AND CRAIG'S SUCCESS ON HIS CLAIM FOR AN OFFSET.

In its opinion, the Court overlooks or misapprehends the facts and law regarding Christina's material breach of the MSA.[3] The Court's opinion addresses each of Craig's arguments on appeal except the primary argument that Christina's breach of the MSA was a material breach that permitted Craig to withhold his own performance and bring

[3] Because these issues are intertwined, they will be addressed together in one section.

legal action to rescind and for damages. Indeed, the Court addressed and rejected Craig's arguments that: (1) "the MSA was not a valid, binding contract due to lack of material terms or mutual assent" (*see* Order, 9/15/2022, at 2); (2) "that Cristina fraudulently induced him to enter into the MSA" (*id.* at 3); (3) "that the district court failed to adjudicate his pretrial motion pursuant to NRS 125.150(3)" (*id.* at 4); and (4) that Christina's initial breach made Craig's performance impossible. *Id.* Conspicuously absent from the Court's opinion, however, is any consideration of Craig's primary argument on appeal that his performance was excused because Christina materially breached the MSA first. *Id.* at 1-6; *see also* Op. Brief, at 28-43.

While Craig included the materiality argument as his second argument in his opening brief, he did so only because if the Court found no contract existed the remaining arguments would be moot not necessary to address. Craig, however, devoted fifteen (15) pages of his argument section of the Opening Brief to the issue of material breach, the most of any argument raised in this appeal. *See* Op. Brief, at 28-43. Craig also devoted twelve (12) pages of his reply brief, over a third of the reply to the issue of material breach. *See* Reply, at 12-24. The issue of material

breach was Craig's primary argument on direct appeal in this matter.

Importantly, the issue of material breach in this matter was a material issue before the district court and on appeal. *Id. see also* AA-V1-020:3-22:12; *see also* NRAP 40(a)(2). To justify its conclusion that Craig's performance was not excused or discharged in this matter, the District Court devoted three pages of its order to the issue of explaining why Christina's breach of the MSA was not a material breach. *Id.* In so holding, the District Court highlighted Restatement (Second) of Contracts, which this Court has adopted frequently in setting Nevada contract law, noting that:

> "When parties exchange promises to perform, one party's material breach of its promise discharges the non-breaching party's duty to perform." Restatement (Second) of Contracts § 237 (Am. Law Inst. 1981). Additionally, a material breach of contract also "gives rise to a claim for damages." *Id.* at § 243(1). Thus, the injured party is both excused from its contractual obligation *and* entitled to seek damages for the other party's breach. *See id.* § 243 cmt. a, illus. 1." *Cain v. Price*, 134 Nev. 193, 196–97, 415 P.3d 25, 29 (2018).

See AA-V1-020:4-11.

The District Court then found that Christina "promised to equally divide the parties' savings accounts with Craig as part of the global resolution of their divorce case." *Id.* at 020:12-19. The District Court

found that Christina then took all of the money in Joint Meadows Bank Account including Craig's half constituting breach of the MSA. *Id.* The District Court's only reasoning for why Christina taking Craig's $36,871.00 was not a material breach was because "the property equalization obligation" was "the much larger amount of $427,500." *Id.* at 21:4-20.

This Court overlooked or misapprehended the facts, law and Craig's primary argument regarding material breach when issuing its decision on September 15, 2022. *See* Order, 9/15/2022, at 1-6. The Court's opinion fails to discuss breach, materiality, or excused performance at all. *Id.* Instead, the Court's opinion appears to gloss over or downplay Christina's initial breach of the MSA without even characterizing it as a breach, as the District Court ruled. This Court's opinion finds that "On June 20, 2019, during Cristina's deposition, the parties reached a marital settlement agreement (MSA) concerning the division of community property and placed the terms of that agreement on the record pursuant to EDCR 7.50." *Id.* at 1. The Court then finds that "[a]t some point, Cristina conceded that, after the parties reached a settlement but before they signed the written MSA, she had taken $36,871 from a joint account

that the MSA awarded to Craig" and agreed that Craig was entitled to an offset. *Id.* at 2.

The Court next addresses Christina's breach of the MSA when addressing Craig's fraud claim only, finding that "because the MSA was already a binding agreement before Cristina withdrew the money from their joint account, we agree with the district court that Craig failed to prove that Cristina fraudulently induced him to enter into the MSA." *Id.* at 3. The Court's conclusion addresses Christina's taking of Craig's property after the settlement was binding, but overlooks that taking the money was a breach of the MSA as the District Court clearly concluded. *Id. see also* AA-V1-020-22.

The Court then proceeds to address Craig's performance impossibility argument, but still entirely overlooks the issue of material breach and excused performance. *Id.* at 4. It must be noted that an impossibility defense is separate and distinct from the defense of prior material breach. *Id.* That is, a prior material breach of contract by a party need not render the other party's ability to perform impossible before that party can withhold performance and sue. *Cain*, 134 Nev. at 196–97.

This Court fails entirely to address the primary case cited by the

District Court in its decision, and Craig in his opening brief on appeal for the issue of material breach, *Cain v. Price*, 134 Nev. 193, 196–97 (2018). *See* AA-V1-020:4-11. In *Cain*, like in this case, there was a "Settlement Agreement," which "was an exchange of one promise to perform for another promise to perform." *Id.* The defendant promised to pay the plaintiff "$20,000,000 in exchange for the Cains' promise to release C4's officers from liability for C4's conduct." *Id.* The plaintiffs were bound by that promise until the defendant "materially breached the contract 90 days after February 25, 2010, the date on which C4's $20,000,000 was due. At that point, the Cains were released from their promise not to sue C4's officers." *Id.* It should be noted that the Cain's were not unable to perform when they sued for breach of the settlement agreement. *Id.*

This Court's order fails to address *Cain* or any of Nevada's precedent addressing the issue of materiality or contractual conditions precedent to future performance, both which were argued by Craig in this appeal. *Id. see also* Reply Brief, at 12-24; *see also Myers v. Miller*, 495 P.3d 120 n.3 (Nev. 2021) ("Although Myers did not submit two complete sets of plans to the ARC as the CC&Rs required, we are not persuaded that this constituted a material breach or that the ARC exceeded its

authority when it accepted the submission as complete."); *Desert Valley Contracting v. In-Lo Props.*, 481 P.3d 236 (Nev. 2021) (citing *Cain* holding that "the court did not determine who breached first or if the breaches were mutual, thereby precluding relief."); *Hascheff v. Hascheff*, 2022 Nev. App. Unpub. LEXIS 300, *8, 511 P.3d 1042, 2022 WL 2354990; *cf. Gonzalez v. Gonzalez*, No. 82011-COA, 2022 WL 213845 (Nev. Ct. App. Jan. 4, 2022) (Order of Affirmance) (concluding that the plain language of the decree did not place a condition precedent that the wife must satisfy before receiving real property); *Young Elec. Sign Co. v. Fohrman*, 86 Nev. 185, 187 (1970); *Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301, 304 (2017); *Jones v. Jones*, 132 Nev. 994 (2016); *Doucettperry v. Doucettperry*, 2020 Nev. App. Unpub. LEXIS 849, *8, 475 P.3d 63, 2020 WL 6445845.

This issue is especially important given that this Court's opinion reads as if Craig never challenged District Court's material breach ruling at all. *See* Order, 9/15/2022, at 1-6. Another party or attorney reading this Court's opinion in this case would presume that Craig argued only that there were no contract, that the contract was induced by fraud, waiver of the NRS 125.150(3) motion, and impossibility of performance, despite material breach being the primary argument Craig raised on appeal. *Id.*

Importantly, it was the District Court's material breach ruling that subjected Craig to liability in this matter, given the District Court clearly noted that had the breach been material, Craig's performance under the MSA would have been excused. *See* AA-V1-020.

This significant material issue is important for this Court to adequately address so that attorneys do not mistakenly advise clients to withhold performance under contract upon breach of another party in circumstances like the one in this case pursuant to this Court's existing precedent on material breach. Undersigned counsel notes that in this case he was not retained by Craig until after Christina filed her motion for contempt and to enforce the decree, and Craig filed his opposition and counter-motion to modify or set aside the decree pro se. As such, undersigned counsel was not able to advise Craig in advance of litigation regarding the appropriate course of action under the circumstances. However, undersigned could would have advised Craig not to pay the equalization payment under the MSA until he received an order from the District Court authorizing, at the very least, the offset because he would have presumed that Christina taking the $36,871.00 dollars of community property was a material breach that excused performance

and permitted Craig to sue for damages, to offset, or to rescind.

If this Court has decided to adopt the District Court's novel value balancing approach to determining materiality, Craig, undersigned counsel, and the entirety of the Nevada legal profession needs to know that because it is a serious departure from existing precedent. *See* Op. Brief, at 37-43; AA-V1-020-22. This is because, to give proper legal advice to clients like Craig in similar situations, attorneys must be able to research and discover how district courts are likely to apply this Court's contract law precedent. As it stands now, this Court's September 15, 2022 Opinion would not even show up in a search for cases addressing material breach because the Court overlooked the argument entirely.

For example, if a merchant and producer of goods enter into a contract for $400,000.00 in goods to be paid in ten (10) installment payments thirty (30) days after receipt of each shipment of goods, and the producer ships the first shipment and the merchant refuses to pay the producer the $40,000.00 thirty (30) days later, an attorney consulted on the matter needs to know how the district court will treat the breach. Under the District Court's approach applied in this case, the merchant's failure to pay the $40,000.00 would not be considered material because

the merchant's failure to pay the $40,000.00 sum would not excuse the producer's performance on the remaining $360,000.00 obligation because the future performance is "the much larger amount." *See* AA-V1-021:4-16. The merchant may have breached, but under the District Court's novel value of performance balancing analysis, it would not be a material breach excusing the producer's future performance because the value of the future performance is far greater than the prior breach. *Id.* Attorneys need to know where the line is for determining what breach is material if this Court is adopting this novel balancing approach to materiality.

Current Nevada precedent on the issue of materiality anchors the material breach analysis on the contract itself. "Although defined in various ways, material breach has been expressed as 'a failure to do something that is so fundamental to a contract that the failure to perform that obligation defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract.'" *Raiter v. Khosh*, 2021 Nev. App. Unpub. LEXIS 425, *3, 491 P.3d 29, 2021 WL 3089279. This Court has consistently held that where one party breaches a clear written term of a contract, that breach is material and excuses the other party's performance. *See* Reply Brief, at 14-15 *citing Myers v.*

Miller, 495 P.3d 120 n.3 (Nev. 2021); *Young Elec. Sign Co. v. Fohrman*, 86 Nev. 185, 187 (1970); *Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301, 304 (2017); *Jones v. Jones*, 132 Nev. 994 (2016). Here, the District Court found that Christina breached the material terms of the MSA, but found the breach was not material because Christina was owed far more money pursuant to the equalization payment provision and there was not evidence that Craig's performance was impossible. *See* AA-V1-020-22. Neither consideration has ever been held to be relevant to the material breach analysis.

The Court's current opinion also recites some of the facts relevant to material breach in a way that would lead a person familiar with this Court's existing precedent on material breach to conclude that Craig's performance should be excused. This Court found the MSA was entered into and binding on June 20, 2019. *See* Order, 9/15/2022, at 2. This Court found that after that binding agreement "Cristina withdrew [Craig's] money from their joint account," which the District Court concluded was a breach of the MSA. *Id.* at 2-3. This Court then fails to explain why that breach was not material and did not excuse Craig's performance.

This issue is critical to this Court's analysis because if Christina's

breach was material performance was excused and Craig had the right to sue for damages and/or to rescind the contract free from penalty. *See* AA-V1-020:4-19; *Cain*, 134 Nev. at 196–97. If this Court concludes that the breach is material, but finds that Christina's concession a year after litigation commenced somehow affects the rights and remedies available to Craig, it should also explain that issue as well. Specifically, why Christina's concession would limit Craig's available remedies after litigation has already commenced.

Finally, the materiality issue also affects who the prevailing party is in this matter and the sanctions. This is because, as the District Court clearly held, if Christina's breach was material Craig's performance under the MSA was excused and Craig had the right to sue for all available contract remedies without penalty. *Id.* Christina then had no right to sue under the MSA as the breaching party, and because the District Court ordered the offset, Craig is the prevailing party. The Court's present opinion overlooks the fact that Craig obtained the offset of the $36,871.00, one of his claims brought in the Motion to Modify or Set Aside the Decree. *See* AA-V3-516-520.

As this Court notes, for a party "be considered the prevailing party

for attorney's fee purposes if it succeeds on any significant issue in litigation which achieves some of the benefit sought in bringing the suit." *See* Order, 9/15/2022, at 5. This Court has overlooked entirely the fact that Craig succeeded on obtaining the offset to the equalization payment due to Christina's breach of the MSA. *See* AA-V1-035:1-7. Craig's position in this matter was to either offset the equalization payment *or* to set aside the MSA altogether. *See* AA-V3-516-520. Craig succeeded on the offset claim. *See* AA-V1-035:1-7. It should be noted that this Court has previously held that District Courts should determine the timing of multiple breaches and whether mutual breach precludes either party from relief. *Desert Valley Contracting*, 481 P.3d at 236. This Court overlooked its recent holding in *Desert Valley Contracting*, when issuing its opinion in this case. Here, both parties were found to have breached the MSA, and Christina breached first. *See* AA-V1-020. This Court failed to consider whether this mutual breach precludes the imposition of sanctions against either party pursuant to this Court's recent decision in *Desert Valley Contracting*, 481 P.3d at 236.

CONCLUSION

In summary, this Court should grant rehearing of the majority

opinion because it overlooks or misapprehends that (1) the District Court concluded that Christina breached the MSA first; (2) that Craig's primary argument on appeal in this matter was that Christina's breach of the MSA was a material breach that entitled him to withhold specific performance and sue for damages or to rescind the contract; and (3) that the District Court actually awarded the offset modification of the MSA that Craig requested in his Motion to Modify or Set Aside.

Respectfully submitted,

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CERTIFICATE PURSUANT TO NRAP 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

> [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook; or
>
> [ ] This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 or 40A because, including the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

> [X] Proportionately spaced, has a typeface of 14 points or more, and contains 3,530 words, less than the 4,667 word limit; or
>
> [ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or
>
> [ ] Does not exceed 30 pages.

Finally, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or

interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada.

Dated this **3rd** day of **October 2022**.

/s/ Michael J. McAvoyAmaya
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 3rd day of September, 2022. Electronic service of the foregoing document was made in accordance with the Master Service List as follows:

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Dated this 3rd day of October 2022.

Respectfully submitted,

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Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG A. MUELLER, Appellant, vs. CRISTINA A. HINDS, Respondent.	No. 83412
CRISTINA A. HINDS, Appellant, vs. CRAIG A. MUELLER, Respondent.	No. 84077

FILED

SEP 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

These are consolidated appeals from district court orders denying a motion to set aside or modify a divorce decree and marital settlement agreement and denying a request for attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.[1]

Respondent/appellant Cristina Hinds filed for divorce from appellant/respondent Craig Mueller in 2018. On June 20, 2019, during Cristina's deposition, the parties reached a marital settlement agreement (MSA) concerning the division of community property and placed the terms of that agreement on the record pursuant to EDCR 7.50 (requiring agreements to be in writing or "entered in the minutes in the form of an order" to be effective). On July 28 and 29, 2019, the parties signed the

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this matter.

written MSA, and, on July 29, 2019, the district court entered a stipulated decree of divorce, incorporating the MSA.

A few months later, Cristina moved to hold Craig in contempt of court, largely due to his failure to make the property equalization payment provided in the MSA. Craig opposed and filed a countermotion seeking to set aside or modify the MSA. Throughout the litigation, both parties made multiple requests for an award of attorney fees and costs as sanctions and pursuant to the MSA's provision entitling the prevailing party to reasonable attorney fees and costs for any action to enforce or interpret the MSA. At some point, Cristina conceded that, after the parties reached a settlement but before they signed the written MSA, she had taken $36,871 from a joint account that the MSA awarded to Craig. She then agreed that Craig should be entitled to an offset from the property equalization payment in that amount. After an evidentiary hearing, the district court granted Cristina's request to enforce the MSA's property equalization payment requirement subject to the offset, denied each of Craig's requests, and ordered that Cristina should be awarded her attorney fees and costs from the date she agreed to the offset. The district court set a 15-day deadline for Cristina to submit a memorandum of fees and costs; Cristina filed her memorandum one day late and the district court entered an order declining to award any fees or costs. Both parties now appeal.

In Docket No. 83412, Craig appeals from the district court's order denying his request to modify or set aside the MSA. We first reject Craig's argument that the MSA was not a valid, binding contract due to lack of material terms or mutual assent. *See Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234-35 (2012) (providing that "a stipulated settlement agreement requires mutual assent" and must include material terms which

are "[ ]sufficiently certain and definite for a court to ascertain what is required of the respective parties" (internal citation and quotation marks omitted)). The record contains substantial evidence that the parties agreed to all material terms at the time of Cristina's deposition, including a division of assets and the amount of the community property equalization award.[2] *See May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005) (explaining that, when determining whether a contract exists, this court will "defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence"). Moreover, both parties affirmed under oath at that deposition that all material terms had been addressed and that they intended the agreement to be enforceable pursuant to EDCR 7.50. And, because the MSA was already a binding agreement before Cristina withdrew the money from their joint account, we agree with the district court that Craig failed to prove that Cristina fraudulently induced him to enter into the MSA. *See J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 227, 290-91, 89 P.3d 1009, 1018 (2004) (listing elements to prove fraudulent inducement and holding that a party must prove by clear and convincing evidence that they justifiably relied upon a misrepresentation by the other party which was intended to induce them to enter into a contract); *Havas v. Alger*, 85 Nev. 627, 631, 461 P.2d 857, 860 (1969) ("Fraud is never presumed; it must be clearly and satisfactorily proved.").

[2]To the extent that Craig argues on appeal that the MSA was not binding until they signed it in July 2019, he acknowledged in his pretrial brief that the MSA was a binding settlement when they agreed to its terms on June 20, 2019.

We also reject Craig's argument that the district court failed to adjudicate his pretrial motion pursuant to NRS 125.150(3) (concerning postjudgment motions to adjudicate community property omitted from the divorce decree by fraud or mistake).[3] Substantial evidence supports the court's findings that there was a full and fair disclosure of all accounts when the parties reached their settlement, and that Craig failed to identify any community assets that were missing or omitted from the MSA. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (providing that this court will give deference to and uphold a district court's factual findings if they are supported by substantial evidence).

Substantial evidence also supports the district court's finding that Craig failed to provide credible evidence to support his claim that Cristina's act of withdrawing the money from their joint account made it impossible for him to perform under the MSA. *See id.* Craig argues that he needed that money to serve as collateral for a loan to make the property equalization payment, but he fails to point to anything in the record to show that he formally applied for a loan, or that he was denied a loan for want of those funds, and we will not reweigh the district court's credibility determination on appeal.[4] *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d

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[3]The record belies Craig's contention that the district court found he waived the right to bring a motion pursuant to NRS 125.150(3). Rather, the district court pointed out that, pursuant to the terms of the MSA, Craig waived the right to any further discovery and agreed to settle all claims in the divorce case. *Cf. Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012) (explaining that "clear and unambiguous [language in a] contract will be enforced as written").

[4]While the parties agree they contemplated that Craig would have to obtain a loan to make the property equalization payment, they also agree

239, 244 (2007) (refusing to reweigh the district court's credibility determinations). Finally, we are not persuaded by Craig's arguments that he, not Cristina, was the prevailing party, as the district court granted Cristina's request to enforce the MSA and it denied each of Craig's requests.[5] *See Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485-86, 851 P.2d 459, 464 (1993) ("A plaintiff may be considered the prevailing party for attorney's fee purposes if it succeeds on any significant issue in litigation which achieves some of the benefit . . . sought in bringing the suit."). Accordingly, we affirm the district court's judgment in Docket No. 83412.

In Docket No. 84077, Cristina appeals from the district court's order denying her motion for attorney fees and costs. Reviewing de novo, we conclude that the district court erred when it relied on NRCP 54(d)(2)(C) in denying Cristina's motion. *See Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 176, 444 P.3d 423, 425-26 (2019) (explaining that this court reviews attorney fees decisions de novo when the matter implicates questions of law). While the district court is correct that NRCP 54(d)(2)(C) prohibits it from extending the time for a party to file a motion for attorney fees after the time to do so has expired, Cristina timely filed her motion for fees before trial. Because Cristina's motion for attorney fees and costs was timely filed, NRCP 54(d)(2)(C) did not constrain the district court's ability to extend the deadline for Cristina to file her supporting memorandum and

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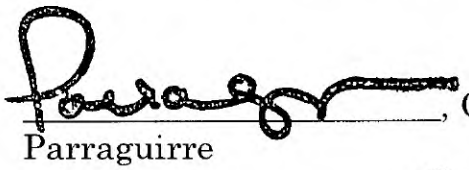
that Craig obtaining the loan was not a condition precedent to him paying Cristina by the deadline set in the MSA.

[5]We decline Cristina's request to impose sanctions on Craig for providing an inadequate appendix.

related documents.[6] *See* NRCP 54(d)(2)(C) ("The court may not extend the time for filing the *motion* after the time has expired." (emphasis added)). Accordingly, we reverse the district court's order denying Cristina her attorney fees and costs and remand for the court to consider whether to extend the deadline for Cristina to file her memorandum. Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[7]



_____, C.J.
Parraguirre

_____, J.
Cadish

_____, Sr.J.
Gibbons

cc: Hon. Rebecca Burton, District Judge, Family Court Division
Willick Law Group
McAvoy Amaya & Revero, Attorneys
Eighth District Court Clerk

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[6]Given our conclusion, we need not reach Cristina's remaining arguments.

[7]The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.