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Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI Appellant, vs. PATRICIA EGOSI, N/K/A PATRICIA LEE WOODS, Defendant.	**No.: 83454** District Court Case No.: D-16-540174-D

CHILD CUSTODY FAST TRACK STATEMENT

1. Party filing this fast track statement: Yoav Egosi.

2. Attorney submitting this fast track statement: Aniela K. Szymanski, Esq., of the Law Office of Aniela K. Szymanski, Ltd., 3901 West Charleston Boulevard, Las Vegas, Nevada 89120, (725) 204-1699.

3. Judicial District, County, and District Court Docket Number of lower court proceedings: Eighth Judicial District Court, Clark County, Family Division, Case No. D-16-540174-D.

4. Judge issuing judgment or order appealed from: Department Q, Judge Bryce Duckworth.

5. Length of Trial or Evidentiary Hearing: Two day hearing, followed by four day trial.

6. Written order or judgment appealed from: Findings of Fact, Conclusions of Law and Decree of Divorce of July 26, 2021; Order of September 4, 2018 incorporated into the July 26, 2021 Decree of Divorce.

7. Date written notice of appealed written judgment or order's entry was served: July 26, 2021.

8. If the time for filing the notice of appeal was tolled by timely filing a motion listed in NRAP 4(a)(4), specify the type of motion: N/a.

9. Date notice of appeal was filed: August 24, 2021.

10. Statute or rule governing the time limit for filing the notice of appeal: NRAP 4(a).

11. Statute, rule or authority, which grants this court jurisdiction to review the judgment or order appealed from: NRAP 3A(b)(1).

12. Pending and prior proceedings in this court: Egosi v. Egosi, Docket No. 76144.

13. Pending proceedings in this court raising the same or similar issues: None.

14. **PROCEDURAL HISTORY:** On September 26, 2016, Respondent (Plaintiff in the underlying action) filed a Complaint for Divorce. Appellant (Defendant in the underlying action) filed an Answer and Counterclaim for Divorce on October 19,

2016, with Respondent's Reply to Counterclaim filed on October 28, 2016. A hearing was held on June 13-14, 2017, regarding a prenuptial agreement. On September 8, 2017, Appellant was awarded sole legal and physical custody of the couple's son. On September 10, 2018, Appellant filed a Notice of Appeal to the Nevada Supreme Court on the issue of the district court's orders relative to the prenuptial agreement, as well as regarding a request to relocate with the child, which was affirmed on April 24, 2020, and reconsideration denied on July 1, 2020. A trial regarding modification of child custody was held on April 13-14, 2021, and another regarding financial issues on May 20, 2021. Decree of Divorce was entered on July 26, 2021.

15. **STATEMENT OF FACTS:** The parties were married in Georgia, where they entered into a prenuptial agreement that stated all property owned by a party after the execution of the agreement would be treated as separate property "[u]nless a particular piece of property is explicitly documented as being owned by both parties" and that the agreement would be governed by Georgia law. Joint Appendix (JA) 16, 19. The parties moved to Las Vegas and had a child. Respondent filed for divorce and attempted to invalidate the prenuptial agreement. The district court held a hearing regarding the prenuptial agreement on June 13-14, 2017, and modified the prenuptial agreement. The parties disputed custody of their child and the court ordered a physical custody evaluation by an expert who the parties agreed to, Dr. John Paglini, in 2017. The court awarded Respondent sole legal and physical custody on September 8, 2017. A trial was held on April 13-14, 2021, and May 20, 2021, with a final decree of July 26, 2021. In the final decree, the district court changed custody to joint legal and joint physical custody, determined that Appellant's business was community property despite the prenuptial agreement stating otherwise, sanctioned Appellant for delays in paying for a forensic expert, refused to admit evidence of a financial expert, and retained jurisdiction of the issue of valuing Appellant's business.

16. **ISSUES ON APPEAL:**

Did the district court commit legal error when it refused to allow Appellant the opportunity to present evidence and call witnesses, disproportionately allowing Respondent to present an extensive and lengthy case?

Did the district court commit legal error and abuse its discretion by sanctioning Appellant for delays that included time the proceedings were stayed pending appeal to this Court?

Regarding custody orders made in the final Decree of Divorce:

Did the district court abuse its discretion or commit legal error when it applied the change of circumstances standard to the circumstances of the parent instead of the circumstances of the child?

Was the court arbitrary and capricious when it used the same evidence to come to vastly different determinations when applying the best interest factors?

Did the district court abuse its discretion when it considered evidence the predated the last custody order to make a new custody determination?

Regarding the prenuptial agreement:

Did the district court abuse its discretion or commit legal error in its understanding an application of Georgia law concerning prenuptial agreements and in its exercise of equity jurisdiction?

Did the district court err or abuse its discretion by modifying the prenuptial agreement instead of accepting it in whole or invalidating it entirely?

Did the district court err or abuse its discretion when it sua sponte clarified its prior decision regarding the prenuptial agreement's validity?

Regarding the final division of property:

Did the district court commit legal error or abuse its discretion when it shifted the burden to Appellant to prove his business was separate property where it previously placed the burden on Respondent to prove it was community property?

Did the district court commit legal error and abuse its discretion when it excluded Appellant's financial forensic expert's report because the judge believed he had a conflict of interest?

17. **LEGAL ARGUMENT**:

Did the district court commit legal error when it refused to allow Appellant the opportunity to present evidence and call witnesses, disproportionately allowing Respondent to present an extensive and lengthy case?

The Due Process Clause of the 14th Amendment of the U.S. Constitution and Article I, Section 8 of the Nevada Constitution, prevents deprivation of life, liberty,

or property without due process of law. Due Process guarantees the right to a fair trial before a fair tribunal. *Caperton v. AT Massey Coal Co*. 556 U.S. 868, 876 (2009). Due process requires that a person receive an opportunity to be heard before an impartial tribunal. *Schrader v. Third Judicial Dist. Ct.*, 58 Nev. 188, 199 (1937). The trial court commits legal error where a party is prevented from presenting relevant evidence. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc*., 808 P. 2d 919, 925 (1991). Litigants in custody disputes are entitled to a full and fair hearing regarding child custody. *Moser v. Moser*, 108 Nev. 572, 576-77 (1992) (citing *Mathews v. District Court*, 91 Nev. 96, 97 (1975)). "[T]he party threatened with the loss of parental rights must be given the opportunity to disprove the evidence presented." *Id*. at 577. Constitutional challenges to a custody order are reviewed de novo. *Rico v. Rodriguez*, 121 Nev. 695, 702 (2005).

Here, the district court held a trial on modification of child custody in April 13 & 14 2021, however it concluded the custody proceedings after Appellant had less than one hour to present his case while allowing Respondent disproportionately more time. Respondent's case spanned 215 pages of the trial transcript and consumed approximately five hours with three witnesses. When Appellant was permitted to begin his case, his counsel at the time noted to the judge "we have an hour to go, and we haven't even put our case on yet." JA 954. Appellant's case was

limited to less than one hour spanning only 43 pages of the hearing transcript. (JA 954-95). Appellant was not able to call any witnesses besides himself due to the time constraints.

The U.S. Supreme Court has held that the right to be heard must be in a "meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Here, the district court did not provide Appellant a meaningful opportunity to present his case given that he had less than one hour to do so.

It was impossible for Appellant to be able to present relevant evidence in less than one hour. Indeed, he was limited to merely testifying on his own behalf and was unable to present any witnesses at all. Given the dramatic differences in time the judge allowed Appellant compared to Respondent, five hours versus less than one hour, the judge did not conduct the proceedings impartially, nor in a manner that provided Appellant a meaningful opportunity to be heard. Indeed, the judge knew that roughly equal time was required for a meaningful and impartial hearing because in the May 2021 hearing on financial matters, he reversed course and declared, "Each party is allo – is entitled to half the time." JA 1018. Unfortunately, he did not uphold the same standard in the custody hearing.

Appellant was denied due process because the judge prevented him from having a meaningful opportunity to be heard and to present his case before an

impartial tribunal. The only appropriate remedy for such a Constitutional violation is reversal of the judge's decision.

Did the district court commit legal error and abuse its discretion by sanctioning Appellant for delays that included time the proceedings were stayed pending appeal to this Court?

The district court sanctioned Appellant for delays in paying for a forensic expert to value his business. JA 629, et seq. A large portion of that time, however, was due to a pending appeal to this court. EDCR 7.60 states that a court may sanction a party when "a party without just cause…multiplies the proceedings in a case as to increase costs unreasonably and vexatiously, [or] [f]ails or refuses to comply with any order of a judge of the court." The key term here is "without just cause." The court generally reviews a contempt order for abuse of discretion, but Constitutional issues are reviewed de novo. *Lewis v. Lewis*, 373 P. 3d 878, 879 (Nev. 2016). A court abuses its discretion when its findings are not supported by substantial evidence. *Ellis v. Carucci*, 123 Nev. 145, 149 (2007).

On June 20, 2018, Appellant filed an appeal with this court from the district court's orders pertaining to his prenuptial agreement which included the issue of

whether the district court had properly determined the characterization of Appellant's business as community or separate property. *See Egosi v. Egosi*, Case No. 76144, 533-36. This court did not file remitter in that case until July 27, 2020, over two years later. In the interim, on September 28, 2018, Appellant requested a stay pending the appeal, along with certification of the order following the prenuptial trial. JA 520-34. The court determined that it lacked jurisdiction for certification of the order because Appellant had mooted the issue by filing an appeal, but did not specifically mention whether a stay would be granted. JA 547-48.

In its final decree, the district court ordered that Appellant should be sanctioned for a 1,050 day delay in paying for a forensic expert to value his business (JA 626), which was at issue in the appeal and accounted for 768 of those days.

First, it is important to note that Nevada is a right of appeal state. *See* NRAP 3(a) setting forth that all that is needed for an appeal to be made is the filing of a Notice of Appeal. Therefore, there would have been no grounds upon which the district court could deny Appellant the right to appeal the order he disagreed with. Further, the issue on appeal was whether the judge had properly construed the prenuptial agreement. If Appellant had prevailed, and this court had determined the prenuptial agreement was fully valid, then Appellant would not have had to pay for the financial expert, the very issue he was sanctioned for.

Second, an appeal of the court's 2018 order is "just cause" for not complying with it. Contrary to how the district court characterized his behavior, Appellant did not spend 768 days flouting the court's order; instead, he was exercising his legal remedies by appealing. Instead of acknowledging this in its order, the district court wholly ignored the reason for the delay.

Third, Appellant moved for a stay pending his appeal, but the district court merely dismissed his motion because the issue had been "mooted" by his appeal to this court. The district court did not make a clear ruling on Appellant's motion to stay, however.

The district court's sanctions amount to punishing Appellant for appealing the district court's order, which he had the right to do per NRAP 3(a), and the sanction should be reversed.

Did the district court abuse its discretion or commit legal error when it applied the change of circumstances standard to the circumstances of the parent instead of the circumstances of the child?

In *Ellis*, this court made clear that modifying primary physical custody is appropriate only when there is a substantial change in the circumstances "affecting the child." This court specifically disavowed the 1968 factor of "circumstances of the parents have been materially altered" in favor of "substantial change in circumstances affecting the welfare of the child" because it more appropriately

prioritized the child's best interests. The *Ellis* court explained that the prior *Murphy* standard "improperly focuses on the circumstances of the parents and not the child" and cautioned that "courts should not take the 'changed circumstances' prong lightly." The purpose of this change was "guaranteeing stability unless circumstances have changed." *See also Rennets v. Rennets*, 257 P.3d 396, 398 (2011) ("a showing of a substantial change in circumstances that affects [the] child's welfare" is needed to modify a custody order). The district court's determinations regarding change in circumstance must be based on findings of fact supported by substantial evidence. *See Ellis, supra*.

Here, the district court only referenced changes that were pertinent to Respondent's life, but did not explain how those affected the child. Specifically, the district court found that Respondent had "improved mental stability," had "dealt with [her] addiction," and had opened a business. *See* JA 609. "Specific factual findings are crucial to enforce or modify a custody order and for appellate review." *Rivero v. Rivero*, 125 Nev. 410 (2009). Moreover, the district court made no factual findings regarding how this changed the child's circumstance at all. As this court said in *Ellis*, it is the child's circumstance that must be changed, not the parent's.

The district court admitted that the child was "flourishing academically" and that his "developmental needs [were] met" and that he had even learned a second

language while the primary custody order was in place. *See* JA 617. Thus, the district court's findings actually support a determination that the child's circumstance had changed for the better with Appellant and custody should have remained with him. The court's finding otherwise was an abuse of discretion.

Additionally, in *Castle v. Simmons*, 120 Nev. 98, 103-06 (2004) the court held that a trial court could consider information that predates the final custody order where the information was previously unknown. Here, Dr. Paglini's report was very well known to the court because it was the key piece of evidence in the previous custody order. First, the court's reliance on a five year old report to justify its conclusions is unreasonable because as the judge himself noted, much had changed during that time. JA 614-620. Further, the speculative conclusions he drew regarding the cause of Respondent's drug use during marriage lack any foundation and he does not cite to any facts to support it and disregards the vast majority of Dr. Paglini's report that tends to prove Respondent's drug use began at the age of 15 and included smoking crack long before meeting Appellant. JA at 43. A court abuses its discretion when its findings are not supported by substantial evidence. *Ellis*, 123 Nev. At 149.

Blanco v. Blanco, 311 P.3d 1170, 1175, "a court may not use a change of custody as a sword to punish parental misconduct, such as a refusal to obey lawful

court orders, because the child's best interest is paramount in such custody decisions." See also *Wiese v. Granata*, 110 Nev. 1410, 1412 (1994). In footnote 50 and the accompanying text of the final decree (JA 616), the court made findings that Appellant was using supervised visitation to collect "dirt" on Respondent. In reality, however, the record reflects a concerned father ensuring that his young child was in a safe environment, something that the supervisor was responsible for ensuring. Because the supervisor's job was to make sure that the child was safe while with the mother, it would not be unusual for a parent to ask the supervisor about potentially unsafe conditions. The district court relied on this mischaracterization of evidence to find that the Respondent was more likely to foster a continuing relationship with the noncustodial parent when the facts cited have nothing to do with a continuing relationship. The court faulted Appellant for not ending supervised visitations sooner, when in fact the power to end supervised visitation rested with the court. Based on the entirety of the courts discussion regarding this custody factor, it is clear that the court was irritated with Appellant for asking about the welfare of his son and not ending supervised visitation sooner and used the custody determination as a sword to punish him for doing so, pulling a five year old outdated report of Dr. Paglini from the evidence archive to justify his decision.

Was the court arbitrary and capricious when it used the same evidence to come to vastly different determinations when applying the best interest factors?

Dr. John Paglini was a jointly selected outsourced evaluator for physical custody. JA 605. The district court received his report in the record prior to the August 22, 2017, custody determination. *Id*. Both parties stipulated to its admission at that time. *Id*. As stated previously, the district court's determinations regarding change in circumstance must be based on findings of fact supported by substantial evidence or else they may be arbitrary and capricious. *See Ellis, supra*.

Dr. Paglini recommended that the child be cared for by Appellant. JA 714-15. The district court granted Appellant sole legal and sole physical custody on September 8th, 2017, based on the record, including Dr. Paglini's report. *Id*. Dr. Paglini did not conduct any other evaluations or submit any other reports in this case. Nonetheless, five years later, in the 2021 divorce decree, the district court cited Dr. Paglini's report again. The district court judge then drew a speculative conclusion out of thin air: "this Court finds that the toxicity of the parties' relationship contributed to [Respondent's] emotional and mental state, which in turn contributed to her drug abuse during the marriage" despite the fact that Dr. Paglini clearly stated Respondent's drug use predated her marriage to Appellant. JA 656.

The court's speculative conclusion is arbitrary and capricious because it is based only on the district court judge's own opinion and not on any facts in the record.

Did the district court abuse its discretion when it considered evidence the predated the last custody order to make a new custody determination?

In *Castle*, 120 Nev. at 103-06, this court held that when the issue of custody is raised, parties may introduce evidence the predates the prior custody order where it was *previously unknown* to the parties. Previously litigated acts may be subject to review *if* additional acts occur. *Id*. at 106. Under *McMonigle v. McMonigle*, facts previously raised in court cannot be considered in subsequent hearings and decisions. 110 Nev. 1407, 1409 (1994).

Here, the district court relied on Dr. Paglini's report in issuing its final decree even though it was previously known and was quite dated, over five years old. Dr. Paglini did not update the report, nor was it discussed at trial, save for a passing mention by a witness. There was other relevant evidence in the record that the judge could have and should have relied upon, including primarily the testimony of the parties. Here, the judge's reliance on the report of Dr. Paglini in modifying the child custody order was an abuse of discretion because it was outdated, no new recommendations had been made by Dr. Paglini, in five years and it was clearly used to selectively draw out individual facts that supported the judge's conclusions, evidence for which could not be found elsewhere in the record because it was not current.

Did the district court abuse its discretion or commit legal error in its understanding and application of Georgia law concerning prenuptial agreements and in its exercise of equity jurisdiction?

A court abuses its discretion when its findings are not supported by substantial evidence. *Ellis*, 123 Nev. at 149. "Parties are free to contract in any lawful matter." *NAD, Inc. v. District Court*, 115 Nev. 71, 77 (1999).

Despite the district court's reliance on *Allen v. Allen*, 260 Ga. 777, 778 (1991) to permit it to narrowly tailor an agreement, what the court did was not narrowly tailor the prenuptial agreement, but instead add a word to the agreement. This exceeded the bounds of equity jurisdiction.

Further, the district court stated that it was relying on equity jurisdiction in interpreting the agreement. In its decision, however, the court did not provide any findings or legal analysis for how it applied the equitable jurisdiction to reach the conclusion that it did (that the parties' prenuptial agreement could be modified). The district court merely announced its equitable jurisdiction powers, then came to the conclusion that without actually applying the principles of equity in its decision. JA 582-84.

The most rationale provided was in footnote 15 wherein the district court stated that as a matter of equity it was "not persuaded that Defendant's limited and late disclosure should be completely disregarded." JA 584. In making this equitable

finding, however, the court failed to explain why the equities did not weigh against Respondent considering that she worked in Appellant's business including the billing department where she was one of four people who had access to Appellant's business financial records. Essentially, Appellant's late disclosure of financial matters was harmless error because Respondent already knew the inside workings of his businesses.

Additionally, the district court found that the Respondent "had been in the business enough, was familiar with what was being derived from the business because she was living the lifestyle that the business was able to generate and that she had access and the ability to obtain that information. It ultimately was disclosed on the date the prenuptial agreement was signed and it was listed as a specific asset." Moreover, the district court made a finding that the "agreement was not the result of . . . non-disclosure of material facts" during the June 2017 hearing about the validity of the prenuptial agreement.

As noted above, this court in *Ellis* held that where the court's findings are not supported by substantial evidence, the court has abused its discretion.

Did the district court err or abuse its discretion by modifying the prenuptial agreement instead of accepting it in whole or invalidating it entirely?

As stated above, parties are free to contract in any lawful matter, including marriage. *NAD, Inc*., at 77. The courts will enforce their contracts if they are not

unconscionable, illegal, or in violation of public policy. *DR Horton, Inc. v. Green*, 120 Nev. 549, 558 (2004). Under Georgia law, an appellate court must review legal holdings de novo. *Lawrence v. Lawrence*, 286 Ga. 309, 310 (2009).

The district court found that it possessed the discretion to disapprove portions of the prenuptial agreement by virtue of its ability to take into consideration "changes beyond the parties' contemplation." JA 584.

While it is true that a Georgia trial court may use its powers of equity to "approve the agreement in whole or in part, or refuse to approve it as a whole," the court cited no legal precedent for changing the verbiage in the actual agreement. *See Allen v. Allen*, 260 Ga. 777, 778 (1991). Further, this case is more analogous to *Mallen v. Mallen* because in *Mallen* where an asset was not disclosed at the time of the prenuptial agreement execution, the wife had lived with the husband for years and was aware of the standard of living that they enjoyed and that he received income from various sources. As such, the court found not fraud or misrepresentation occurred when an asset was not disclosed in the prenuptial agreement. The *Mallen* court stated "[s]o long as the spouse seeking to set aside such an agreement has a general idea of the character and extent of the financial assets and income of the other . . . Indeed, absent fraud or misrepresentation, there appears to be a duty to make some inquiry to ascertain the full nature and extent of the financial resources

of the other." 280 Ga. at 46 (citing *DeLorean v. DeLorean*, 211 N.J.Super. 432, 511 (1986) internal quotes omitted). As noted above, respondent here was aware of Appellant's financial resources because they had lived together and she had even worked in his business, including having access to financial records.

The district court found no fraud or misrepresentation and Respondent was well aware of the resources and lifestyle of Appellant. Therefore, per *Mallen*, the lack of financial disclosure is not fatal to the enforceability of the agreement as a whole.

Instead of enforcing it, however, the court read in an additional word to the prenuptial agreement, namely "not" when it re-wrote the portion of the prenuptial agreement that states:

> *Unless a particular property is explicitly documented as being owned by both parties, the following types of property will not be deemed as shared property:*
>
> *...any property owned by a party after the date of execution of this Agreement.*

JA 16. In its final decree, the district court's holding requires the court to read this term as:

> *Unless a particular property is explicitly documented as being owned by both parties, the following types of property will not be deemed as shared property:*

> *...not any property owned by a party after the date of execution of this Agreement.*

Such a reading is required to obtain the result the district court reached because it found Appellant's business interest to be community property.

Using equity to alter a written contract is permitted only where, through mutual mistake, or mistake of one of the parties, induced or accompanied by the fraud of the other, it does not as written truly express the agreement of the parties. *Bryce v. Insurance Co.*, 55 N.Y. 240, 243 (1873). Georgia law follows that, "A mutual mistake in an action for reformation means one in which both parties agree to the terms of the contract, but by mistake of the scrivener the true terms of the agreement are not set forth." *Cox v. U.S. Markets, Inc*., 278 Ga. App. 287, 289 (2006) (quoting *Charania v. Regions Bank*, 264 Ga. 587, 589 (2003) (internal quotes omitted).

Re-writing the terms of the prenuptial agreement using equity jurisdiction is not something envisioned by the Georgia courts given Appellant's circumstance because there was no finding of a scrivener's error or mutual mistake. As stated above in *Allen,* the agreement is either approved or denied in whole, or in part. No provision is made in Georgia common law for *adding* language or terms to the agreement. The court abused its equity jurisdiction in the respect, and this court should reverse.

Did the district court err or abuse its discretion when it sua sponte clarified its prior decision regarding the prenuptial agreement's validity?

The prenuptial evidentiary hearing was held on January 13-14, 2017. The district court issued a clarifying order on November 3, 2017. In the January 2017 hearing transcript, the district court clearly stated that a valuation of the business entities was not needed. JA 426. However, several months later, with no notice to Appellant, the district court issue the November 2017 order stating that Appellant's business interest *would* have to be valued. JA 431-32.

Fundamental due process considerations require a notice and opportunity to be heard prior to such a dramatic change in a court's holding. Here, the court did not provide any warning to the parties that he was changing his order from what was announced in the hearing and what was later reduced to writing.

"[W]hile review for abuse of discretion is ordinarily deferential, deference is not owed to legal error." *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190 (2010) (citing *United States v. Silva*, 140 F.3d 1098, 1101 n.4 (7th Cir. 1998). Here, the district court legally erred in its issuance of a clarifying order because of the lack of notice and opportunity to respond. This court should reverse accordingly.

Did the district court commit legal error or abuse its discretion when it shifted the burden to Appellant to prove his business was separate property where it previously placed the burden on Respondent to prove it was community property?

At the outset of the divorce proceedings, the district court placed the burden on Respondent to prove that Appellant's business was community property, which was consistent with the terms of the prenuptial agreement that stated property is presumed to be separate unless it can be proven otherwise. JA 16. At some point during the proceedings, however, the district court began requiring that Appellant prove that the business was his separate property, shifting the burden during the proceedings. The district court attempted to dispose of this matter in footnote 56 of the Divorce Decree by stating it was referring to marital waste and not to the business valuation. It is clear, however, that the court placed the burden on Appellant to prove his business was separate property despite the fact that the prenuptial agreement said the opposite – that the burden was on the Respondent to prove that she had acquired some interest in it, which she did not prove.

Instead of enforcing the terms of the contract, as previously discussed, *see DR Horton, Inc., supra*, again the court rewrote the terms of the agreement shifting the burden to the Appellant as opposed to the Respondent, as the contract required. The court appeared to adopt the NRS statute instead of applying Georgia law, as well. JA 625 (stating "Joi Biz is presumed to be a marital asset based on the timing of its creation.").

This amounts to legal error because there was no substantial basis provided by the court for making such findings.

Did the district court commit legal error and abuse its discretion when it excluded Appellant's financial forensic expert's report because the judge believed he had a conflict of interest?

NRS 1.230 sets forth grounds for a judge to be disqualified from hearing a case. Section 3 of that rule states that "A judge, upon his own motion, may disqualify himself from acting in any matter upon the grounds of actual or implied bias." "[P]rocedural due process generally is violated when the adjudicator…has a conflict of interest." *Mainor v. Nault*, 101 P.3d 308 (2004)

Here, the district court judge clearly felt that he had an "actual or implied bias" when he stated that he knew the father of Appellant's financial expert, Brett Slade. This bias was not made known until Mr. Slade was called to the stand and sworn in by the judge despite the fact that Mr. Slade's report was served on the plaintiff through the court's efile system on January 22, 2021 (efile *Envelope Number: 7277005)* and served to the court directly in the April 23, 2021 Motion for Protective Order. Mr. Slade was also listed as a witness on Appellant's witness list prior to trial. JA 556. Despite Respondent's counsel's statements that she had not yet reviewed Mr. Slade's report, the court stated Mr. Slade was going to be allowed to testify

regardless. Thus, but for the district court's conflict of interest, Mr. Slade would have been permitted to testify and his report would have been admitted to evidence.

NRS 1.230 makes clear that in such a circumstance, the burden is upon the judge to disqualify himself. Instead of doing so, here the district court judge excluded the evidence. There is no rule of evidence that permits the exclusion of evidence merely on the basis that the judge knows a family member of a witness. The proper remedy in such a case is for the judge to disqualify himself, not exclusion of the evidence.

As a result of excluding his legal expert, and refusing to admit his expert's report into evidence, despite it being noticed properly to the court and opposing counsel in advance, the district court determined there was no evidence upon which to make a determination regarding the value and nature of Appellant's business interest, which clearly biased Appellant. Reversal is required to ensure Appellant is able to present his case to a fair and unbiased fact finder.

CONCLUSION

The district court committed numerous legal errors and abused its discretion throughout the proceedings. Appellant requests that this court reverse the July 26, 2021 Findings of Fact, Conclusions of Law and Decree of Divorce, as well as court's order of September 2, 2018.

If this court remands the case back to the district court, it should direct that the case be reassigned to a different district judge to prevent these violations from reoccurring. Most notably, if this case remains before Judge Duckworth, Appellant will perpetually be prohibited from admitting evidence of the valuation of his business because of the conflict of interest the judge announced with Appellant's expert witness.

18. **ISSUE OF FIRST IMPRESSION IN THIS JURISDICTION OR ONE AFFECTING AN IMPORTANT PUBLIC INTEREST:** The principal issue on appeal is a question of first impression involving the common law. There is much confusion in the district court, particularly in the Eighth Judicial District Court's Family Division concerning the application of the district court's equity jurisdiction and the extent of its equitable powers in disposing of family law matters.

VERIFICATION

1. I hereby certify that this fast track statement 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(a)(6) because:

    - This fast track statement has been prepared in proportionally spaced typeface using Microsoft Word 365 in Times New Roman size 14.

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is:

    - Proportionately spaced, has a typeface of 14 points or more, and contains 6,017 words.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

Dated this 25th day of January, 2022.

/s/ Aniela K. Szymanski

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January 2022, I served a true and correct copy of the foregoing ***Fast Track Statement***, via eFiling to:

Patricia Egosi, n/k/a Patricia Lee Woods c/o EMILY McFARLING, ESQ. and AMY PORRAY McFARLING LAW GROUP 6230 W. Desert Inn Road Las Vegas, NV 89146	Patricia Egosi, n/k/a Patricia Lee Woods c/o JENNIFER ISSO, ESQ. THE ISSO & HUGHES LAW FIRM 2470 Saint Rose Parkway, #306F Henderson, NV 89074

DATED this the 25th day of January 2022.

Submitted By: /S/Aniela K. Szymanski
ANIELA K. SZYMANSKI