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Elizabeth A. Brown
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, Respondent.	**No.: 83454** District Court Case No.: D-16-540174-D

JOINT APPENDIX

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appealed. In such a case, certification of an order deciding some but not all of those claims as final is an abuse of the district court's discretion.[3]

The analysis depends on defining when claims for relief are "closely related." Concisely stated, where claims require proof of facts and elements not necessary to the proof of other claims, the claims for relief ***are not*** closely related;[4] claims for relief ***are*** closely related where it would necessarily decide the law of the case on any claims still pending in the district court. [5] In either case, consideration of an appeal would result in "piecmeal litigation" rendering certification of a judgment as final inappropriate.[6]

iii. Joe's claim that the parties' prenuptial agreement is valid is not closely related to other claims for relief in the parties' divorce action

Here, the parties made various claims for relief arising from a single transaction: their marriage. The claims for relief included claims related to custody of the minor child at issue, the division of assets and debts, and related relief typical of any divorce proceeding. Not typical of most divorces, one of Joe's claims for relief was that this court validate the parties' prenuptial agreement. The claim related to the prenuptial agreement is not closely related to claims for relief concerning custody, assets, and debts.

First, the elements of Joe's cause of action concerning the parties' prenuptial agreement are distinct from a determination of custody, which, at

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[3] *Hallicrafters Co. v. Moore*, 102 Nev. 526, 728 P.2d 441, 443 (Nev., 1986); citing *Mid-Century Ins. Co. v. Cherubini*, 95 Nev. 293, 593 P.2d 1068 (1979); *Las Vegas Hacienda v. G.L.M.M. Corp.*, 93 Nev. 177, 561 P.2d 1334 (1977).

[4] Id. at 442.

[5] Id.

[6] Id.

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its foundation, requires consideration of a child's best interests, and the division of assets and debts, which are considered community property absent compelling circumstances. Indeed, here, the elements of Joe's cause of action related to the prenuptial agreement depend on a consideration of Georgia law. Specifically, whether: 1) execution of the prenuptial agreement was not the result of fraud, duress, mistake, misrepresentation, or nondisclosure of material facts; 2) the agreement is not substantively unconscionable; and 3) considering the totality of the circumstances existing at the time of the execution of the prenuptial agreement, enforcement of that agreement would not be unfair. Thus, the claims for relief are distinct.

Second, the facts necessary to determine whether the elements of the cause of action concerning the validation of the prenuptial agreement are satisfied are markedly different from all other causes of action. The elements of the claim enunciated above require a consideration of facts and circumstances existing ***prior*** to the parties' marriage while the other claims for relief, including the division of assets and debts, and custody of the minor children, indeed all other claims for relief, depend on facts and circumstances existing or arising ***after*** the marriage. ***Thus, the claims for relief in this matter are not closely related.***

Furthermore, there are no pending claims for relief by other parties still pending in the district court. Therefore, there is no danger that consideration of Joe's appeal would trigger the law of the case doctrine, rendering other claims still pending in the district court uncertain. In other words, there is no way that certification of the challenged order as final would result in parallel litigation at the district court and the appellate court by multiple parties on closely related claims. As such, this court should certify the judgment as final.

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b. A stay pending appeal is appropriate in this matter

Under N.R.C.P. 62(d), proceedings to enforce a judgment may be stayed in this court by giving a supersedeas bond. The test applied in considering whether to grant a stay were set forth in *Fritz Hansen*, and is reiterated in NRAP 8(c):

- *Whether the object of the appeal/writ petition will be defeated if the stay is denied;*
- *Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;*
- *Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and*
- *Whether appellant/petitioner is likely to prevail on the merits.*

Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000); see also, e.g., *Wiese v. Granata*, 110 Nev. 1410, 887 P.2d 744 (1994); *State ex rel. Pub. Serv. Comm'n v. First Judicial Dist. Court ex rel. Carson City*, 94 Nev. 42, 574 P.2d 272 (1978). Additionally, when confronted with a motion to reduce the bond amount or for alternate security, the district court should apply the factors considered by the 7th Circuit Court of Appeals, as delineated in *Dillon v. City of Chicago*, and adopted in *Nelson v. Heer*.[7]

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay.[8] However, a supersedeas bond should not be the judgment debtor's sole remedy, particularly where other appropriate, reliable alternatives exist. ***Thus, the focus is properly on what security will***

[7] *Nelson v. Heer*, 121 Nev. 832 (2005).
[8] *Id.*

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maintain the status quo and protect the judgment creditor pending an appeal, to include waiving the bond entirely.

In reflecting on the purposes of security for a stay, the Seventh Circuit, in *Dillon v. City of Chicago*, set forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted:

- *the complexity of the collection process;*
- *the amount of time required to obtain a judgment after it is affirmed on appeal;*[9]
- *the degree of confidence that the district court has in the availability of funds to pay the judgment;*
- *whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and*
- *whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.*

i. Discussion concerning the *Fritz Hansen* test

1. The Object of the Appeal

This factor addresses whether an appeal would be rendered moot if an order appealed from was allowed to go into effect. The question is whether enforcing the judgment appealed from would destroy the subject matter of the appeal. A stark example in a divorce matter would be the division and sale of a separate property home as community property – obviously failing to stay a judgment compelling that result would destroy and defeat the purpose of the appeal: i.e., keeping the separate property home. Put another

[9] In considering the second factor, the district court should take into account the length of time that the case is likely to remain on appeal. See, *Nelson v. Heer*, 121 Nev. 832 (2005).

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way, the question is whether a stay is necessary to preserve the issue on appeal: specifically, whether the "object of the appeal" is imperiled by enforcement of the underlying order, or the appeal would be rendered moot by such enforcement.

Here, as stated above, the purpose of the claim was to validate a prenuptial agreement that preserved assets acquired after marriage as Joe's sole and separate property, pursuant to the terms of the prenuptial agreement. If the district court proceedings are not stayed and a judgment is entered dividing that property, or any proceedings from its sale or dissolution, then the object of the appeal would be destroyed.

2. "Irreparable Harm" – Appellant

In *Hansen*, the Court explicitly held that litigation expenses "are neither irreparable nor serious." The question, necessarily, is whether any harm befalling Appellants is so irreparable that reversal on appeal would not ameliorate it. Here, again, the harm is the loss of a business and/or the proceeds from its operation or sale and all the good will attached to it. That is irreparable harm.

3. "Irreparable Harm" – Respondent

Though, in a theoretical sense, the relative interests of the parties are equal when the issue is strictly monetary, money may not always be a zero-sum game. Where the parties' situations are vastly different, even money changing hands could have vastly different impacts on the parties' relative welfare during the pendency of an appeal – an inconvenience to one could be a matter of life and death to the other. In this case, Joe is supporting Plaintiff through periodic payments in temporary alimony. Therefore, staying the proceedings pending appeal will not unduly prejudice Plaintiff.

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4. Likelihood of Prevailing

The Nevada Supreme Court held in *Hansen* that when moving for a stay pending an appeal or writ proceeding, a movant must "present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." Here, there is a high likelihood of success on the merits. In previous hearings on Joe's motion to reconsider the challenged decision, this court noted that it may have ruled otherwise if it had the briefing undersigned counsel provided concerning the issue. The court noted that there are issues ripe for appeal. Given this court's misunderstanding of Georgia law, the likelihood that errors of law were made, as pointed out in great detail in Joe's motion to reconsider, is great. Thus, the likelihood of prevailing on appealable is equally great.

VIII. Conclusion

For the foregoing reasons, Joe requests this court grant him the relief requested in its entirety.

DATED this September 17th, 2018.

/s/ Alex Ghibaudo
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CERTIFICATE OF SERVICE

I HEREBY CERTIFIY that on this 17th day of September, 2018, I served a true and correct copy of the foregoing **MOTION**, via the Court designated electronic service, addressed to the following:

John Blackmon

jblackmon@blackmonlawgroup.com

/s/ Joslyne Simmons
An Employee of ALEX B. GHIBAUDO, P.C.

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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Patricia Egosi
Plaintiff/Petitioner

v.

Yoav Egosi
Defendant/Respondent

Case No. D-16-540174-D

Dept. Q

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☒ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒ **$0** ☐ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: Yoav Egosi Date 9/18/18

Signature of Party or Preparer _____

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EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

PATRICIA EGOSI, Plaintiff, vs. YOAV EGOSI, Defendant.	Case No.: D-16-540174-D Dept.: Q Hearing Date: October 18, 2018 Hearing Time: No Appearance Required Oral Argument Requested: No

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO CERTIFY THE ORDER FILED SEPTEMBER 7, 2018 AS FINAL UNDER NRCP 54(b) AND MOTION TO STAY THESE PROCEEDINGS PENDING APPEAL AND COUNTEMROTION FOR ATTORNEY'S FEES AND COSTS

COMES NOW Plaintiff, Patricia Egosi (hereinafter "Patricia"), by and through her attorney of record, John R. Blackmon of the Blackmon Law Group who hereby files her Opposition and Countermotion and respectfully requests this Honorable Court enter the following Orders:

1. An Order Denying Defendant's Motion in its entirety;

2. An award of attorney's fees and costs pursuant to *Brunzell* analysis attached within the Appendix of Exhibits to be filed hereafter, and NRCP 54(d)(2); and,

3. Any and all other relief this Court deems necessary and proper.

Dated this 5th day of October, 2018.

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MEMORADUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

At quite possibly the pinnacle of wasteful litigation (in a case rife with it) is the filing of the instant Motion. Defendant's citation to law ignores the drafter's notes, and applicable case law barring certification of this matter. Indeed, the Supreme Court has already expressed its skepticism.[1] Given that multiple claims remain open regarding the divorce, the Order regarding the prenuptial agreement is not final, and this Court is prohibited from certifying this issue for appeal. Further, given that the Order is not certifiable, this Court should not stay the divorce proceedings pending the appeal.

[1] Defendant claimed that he had cured the defects found by the Nevada Supreme Court. This is untrue. The applicable order from the Supreme Court states in full

> "Appellant (Defendant) informs this court that the notice of appeal currently on file is premature because the final written orders resolving the challenged district court decisions have not been entered. However, our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRCP 3(g) reveals an additional potential jurisdictional defect. Specifically, it appears that the judgment or order designated in the notice of appeal is not substantively appealable. *See* NRAP 3A(b). the notice of appeal states the appeal is from "the district court's May 29, 2018 order denying his [sic] motion to reconsider." This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Taylor Constr. Co. v. Hilton hotels,* 100 Nev. 207, 678 P.2d 1152 (1984). An order denying a motion for reconsideration is not independently appealable; the appeal must be taken from the final judgment. *See Arnold v. Kip*, 123 Nev 410, 417, 168 P.3d 1050, 1054 (2007)."

As such, it is clear that the defect the Supreme Court is attempting to discover is whether the instant order is final. That is the determination for this Court to make, and NRCP 54(b) does not allow this Court to authorize the decision on the prenuptial agreement as final.

II.

OPPOSITION

A. NRCP 54(b) IS CLEAR THAT A DECISION NOT RESOLVING THE CASE IN ITS ENTIRETY CANNOT BE CERTIFIED AS FINAL

1) The Drafter's Notes are Dispositive.

NRCP 54(b) states in full:

> "**Judgment Involving Multiple Parties.** When multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the rights and liabilities of all the parties."

The 2004 drafter's notes state further:

> "Subdivision (b) is amended to omit any mention of claims. Under the revised rule, **the court can no longer direct the entry of a final judgment as to one or more but fewer than all of the claims in a multiple-claim case. Thus, an order adjudicating one or more but fewer than all of the claims in a multiple-claim case is not a final judgment and is not appealable.** The revised rule retains language permitting the court to direct entry of a final judgment as to one or more but fewer than all of the parties involved in a case."

(emphasis added).

The statute itself is dispositive on this issue. The Court cannot certify the issue. Notably, all the case law cited by Defendant were prior to the 2004 Amendment. More recent case law notes "a final order is one that disposes of all of

the issues presented in the case." *Peccole v. City of Las Vegas*, 385 P.3d 594, 2016 WL 6662274 at *1 (Nev. 2016) (unpublished). Defendant's citations to case law indicating the Court can adjudicate its prior decision as final and thus "certify" the issue for appeal are thus inapplicable.

The analysis as to whether the claims are "closely related" are superseded by statute. The only way the Court can certify an issue for appeal is if all the claims related to at least one party have been resolved by the decision. Obviously, this is not the case here. Indeed, Defendant demands a stay of this court's proceedings because there are still pending claims before the Court to be adjudicated. Given the existence of multiple claims remaining in this matter, the September 7, 2018 Order cannot be certified. Literally, more than ten cases constituting mandatory authority could be cited in support of this here opposition and countermotion, but for the sake of brevity, a selective representation will be offered instead.[2]

[2] 1. A final judgment is "one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs". *Lee v. GNLV Corp., 116 Nev 424, 426, 996 P.2d 416, 417 (2000).*
2. "We also explained that to the extent the district court purported to certify its judgment as final under NRCP 54(b), such certification is improper where both appellant and respondent remain in the district court action. *See* NRCP 54(b); *Mallin v. Farmers Ins. Exch*., 106 Nev. 606, 610, 797, P.2d 978, 981 (1990). *Select Portfolio Servicing, Inc. v. Panda LLC*, 416 P.3d 203 (Nev. 2018).
3. The district court does not have the power, even when a motion for certification is unopposed, to transform an interlocutory order which does not come within the rule, into a final judgment. **An NRCP 54(b) certification is not available to provide interlocutory appellate review of an order which does not constitute a final adjudication of fewer than all claims or the rights and liabilities of fewer than all the parties in an action**.
Taylor Const. Co. v. Hilton Hotels Corp., 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (citations omitted).

III.

COUNTERMOTION

A. PATRICIA SHOULD BE AWARDED HER REASONABLE ATTORNEY'S FEES AND COSTS FOR HAVING TO DEFEND AGAINST THIS INSTANT MOTION

NRS 18.010 allows for an award of attorney's fees where:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (a) When the prevailing party has not recovered more than $20,000; or
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Additionally, EDCR 7.60 provides that:

> b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which

4.To be final, a judgment must resolve all claims as to all parties.
DeWolff v. State Employment Sec. Div., 390 P.3d 654 (Nev. 2017) (citations omitted).

> may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
> 1) Presents to the court a motion or an opposition to a motion, which is obviously frivolous, unnecessary or unwarranted.
> 2) Fails to prepare for a presentation.
> 3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
> 4) Fails or refuses to comply with these rules.

Defendant's Motion to Certify was a waste of this Court's time. It was not researched appropriately, and thus the relief sought was impossible to receive. Patricia incurred attorney's fees and is entitled to an award of attorney's fees under NRS 18.010, as she expects to prevail with regard to the instant Motion.

III.

CONCLUSION

Accordingly, Plaintiff, Patricia Egosi respectfully requests that this Honorable Court enter the following Orders:

1. An Order Denying Defendant's Motion in its entirety;
2. An award of attorney's fees and costs pursuant to *Brunzell* analysis attached within the Appendix of Exhibits to be filed hereafter, and NRCP 54(d)(2); and,

/ / /

/ / /

/ / /

3. Any and all other relief this Court deems necessary and proper.

Dated this 5th day of October, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2018, a true and correct copy of the above and foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO CERTIFY THE ORDER FILED SEPTEMBER 7, 2018 AS FINAL UNDER NRCP 54(b) AND MOTION TO STAY THESE PROCEEDINGS PENDING APPEAL AND COUNTEMROTION FOR ATTORNEY'S FEES AND COSTS** was served electronically via E-Service Master List of Odyssey, and addressed as follows:

Alex Ghibaudo, Esq.
alex@abgpc.com
Attorney for Defendant

/s/ Bailey Donnell
Employee of Blackmon Law Group