IN THE SUPREME COURT OF THE STATE OF NEVADA

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THOMAS A. PICKENS, individually, and as trustee of the LV Blue Trust, Appellant, vs. DANKA K. MICHAELS, individually, and as trustee of the Mich-Mich Trust, Respondent.	)	Docket No: 83491 D.C. Case No: D-17-560737-D

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Statement identifying all parent corporations and any publicly-held company that owns 10% or more of the party's stock.

None.

The names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or an administrative agency) or are expected to appear in this court:

Jennifer V. Abrams, Esq., Principal The Abrams & Mayo Law Firm Attorney for Respondent	Shawn Goldstein, Esq., Principal Goldstein & Flaxman, PLLC Attorney for Respondent

DATED Monday, April 11, 2022.

Respectfully Submitted,

THE ABRAMS & MAYO LAW FIRM

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ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals per NRAP 17(b)(5), as the issue concerns a family law matter. This matter should be decided by the Court of Appeals.

STATEMENT OF THE ISSUES

1. Whether the district court's 31-page Findings of Fact, Conclusions of Law and Judgment was supported by substantial evidence.

STATEMENT OF FACTS[1]

Appellant, Mr. Tom Pickens and Respondent, Dr. Danka Michaels met in or around 2000 when Pickens and his wife, Terrie, became patients of Dr. Michaels.[2] Michaels became their primary care physician. Pickens was seeing specialists for his critical cardiac issues.

Pickens divorced his wife and began pursuing Dr. Michaels romantically. The parties began dating in 2001 and Pickens moved into Dr. Michaels' home in September 2001.[3] Michaels advised Pickens that she would no longer be his primary care physician once an intimate relationship had developed but Pickens refused to acquire another treating physician.[4] Michaels testified that she was between a rock and a hard place in her duty to "do no harm."[5]

Pickens came to the relationship with heavy debt. Michaels paid off his debt, put a $30,000 down payment for a vehicle for Pickens, paid most of the living

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[1] NRAP 28(b) provides that Respondent may provide a Statement of Facts if "dissatisfied" with that of the Appellant. Appellant's factual rendition is inaccurate and incomplete, and includes conclusions not based in the record and argument. We request the Court refer to this Statement of Facts instead.

[2] XXXIII AA 7938-7939

[3] XXXIII AA 7939

[4] XXXIII AA 7944-7945

[5] *Id.*

expenses (as Pickens was unemployed for extensive periods of time during the relationship), and also financed their entertainment and vacations.[6]

In April 2002 Michaels and Pickens traveled to Bratislava, Slovakia to celebrate Michaels' brother's birthday and to introduce Pickens to her family and friends.[7] Dr. Michaels' parents expressed concern that she was living outside of marriage with Pickens. Pickens complained that at his age, he did not want to be referred to as a "boyfriend."[8]

Michaels informed Pickens that due to her divorce experience in her prior marriage, she did not ever want to remarry. Michaels testified that Pickens understood her position completely. Thus, the parties agreed not to legally marry but to hold a commitment ceremony instead so they could refer to each other as husband and wife in social settings.[9]

The ceremony was held in a Catholic Church. Neither party signed any document memorializing the event and the Church document was never registered with the government of Slovakia as would have been required for a legal marriage.[10]

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6 XXXIII AA 7940-7941
7 XXXIII AA 7939-7940
8 XXXIII AA 7939
9 XXXIII AA 7941
10 XXXIII AA 7939-7940

By 2004, Pickens' critical cardiac issues had resolved. His chronic medical issues (gout, high blood pressure, etc.) were being handled by his various specialists. Dr. Michaels was mostly providing refills of his medications and occasionally treating a cold or flu.

The parties' actual "relationship" was very short. By early 2004, all intimacy between the parties had ended.[11] For the next 12 years, their interactions were financial in nature.

In 2004, Dr. Michaels purchased the Queen Charlotte home with $200,000 of sales proceeds from her Capparo home. Pickens contributed nothing to the down payment. Both parties testified that Michaels was working long hours and had little time to deal with paperwork relating to the purchase of property.[12] Thus, Pickens handled the paperwork and provided vesting instructions to the title company. On the date of signing, Pickens picked Michaels up from work, drove her to the escrow company to quickly sign paperwork during her lunch break, then drove her back to work so she could continue to see patients. Title was taken in both names.[13]

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[11] XXXIII AA 7945
[12] XXXVI AA 8552, 8708
[13] X AA 2067-2070

For the majority of the relationship, Dr. Michaels paid a "salary" to, and funded a 401K for, Pickens through her medical practice, even though Pickens wasn't working in her office.[14]

Michaels gave Pickens $30,000 to start Bluepoint Development & Construction, Inc. Michaels and Pickens were 50/50 owners of the company. Pickens was the resident agent. Pickens failed to file the annual report with the Nevada Secretary of State when it came due on July 31, 2005, the entity fell into default status, and ultimately the entity was permanently revoked. Without Michaels' knowledge, Pickens formed a new entity, Bluepoint Development, Inc. in his name alone. He transferred all of the assets from the jointly owned entity into the entity solely in his name, without any payment to Dr. Michaels.[15]

For the entire duration of the relationship, the parties each filed their taxes as single, unmarried individuals.[16] Pickens' tax returns show he had no earnings other than the money paid to him from Michaels' medical practice in 2006, 2009, 2010, 2011, and 2012.[17]

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[14] XXXIII AA 7952

[15] XXXIII AA 7950-7951

[16] X AA 2191 through XII 2671

[17] X AA 2191 through XI 2329. Pickens' tax returns for 2001-2004 were not available but his Social Security Statement indicated a period of unemployment for part of 2002 and almost all of 2003.

Roberto Carillo, A.P.R.N., F.N.P., became Pickens' primary care provider in 2008, when Carillo was hired by Dr. Michaels. Mr. Carillo was responsible for Pickens' care and prescriptions beginning in 2008. Mr. Carillo is able to independently see and treat patients, and prescribe for them, under his own license.[18]

In 2011, Michaels individually put an offer on the purchase of the Lowe rental property and she alone paid the down payment. Pickens again handled the paperwork and provided vesting instructions due to Michaels' busy work schedule. Title was taken in both names. In 2012, Michaels paid the down payment on the "buffalo" building.[19] Again, Pickens contributed nothing to the down payment, but he handled the paperwork and provided vesting instructions. Title was taken under the name of Patience One, LLC, an entity formed to hold title to the building in which the parties were both members.[20]

Other than the three pieces of real property mentioned above and a joint account for the payment of bills, the parties substantially kept their finances separate. Even as to the three properties, it was always known between them that the properties belonged to Michaels. For example, Pickens' estate planning documents all indicated he was a single, unmarried man.[21] All assets titled in his name (*i.e.*, the three

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[18] XXXIII AA 7911
[19] XXXIII AA 7951
[20] XXXIII AA 7951-7952
[21] XXXIII AA 7943

properties funded by Michaels) were left to Michaels, then to Michaels' son and grandson, even though Pickens had other family members and other people in his life that he could have named as beneficiaries of his estate.

By 2014, Pickens' business was booming. That year, he earned a $1 Million bonus and had projects in Las Vegas, Florida, and St. Thomas. In 2014, Blue Point Development earned over $2.7 Million in revenue[22] and Pickens reported Adjusted Gross Income on his personal return of $493,448.[23] In 2015, Pickens was traveling even more and by 2016, Pickens' had only been in Nevada twice, to Michaels' knowledge.[24]

By January 2016, Pickens' and Michaels' relationship had deteriorated significantly.[25] They discussed Pickens' transfer of the three properties to Michaels and going their separate ways. A few weeks later, on Valentine's Day, Pickens showed up unexpectedly at the Queen Charlotte home in Las Vegas to give Michaels a gift of diamond earrings.[26] This effort to keep any form of personal relationship intact was short lived; by summer of 2016, the parties closed their joint account at Bank of America and had very little contact with one another.[27]

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[22] XIV AA 3181-3196
[23] XI AA 2285-2301
[24] XXXIII AA 7765
[25] *Id.*
[26] *Id.*
[27] XXXIII AA 7872

On September 8, 2016, Michaels received a message from Stacey Mittelstadt, indicating that she was pregnant with Pickens' child.[28] Mittelstadt informed Michaels that she and Pickens had been living together in Florida for two years, which is why Pickens hadn't been coming to Las Vegas much for the years between 2014 and 2016.

Middelstadt revealed that she knew of a great personal tragedy suffered by Michaels as a child.[29] Later that same day, Pickens volunteered to sign the three properties over to Michaels.[30]

On September 9, 2016, Attorney Shannon Evans, Esq., in a note to her staff stated "they do not need a divorce, and he will agree assets being Danka's since she pays for the properties and he is guilty."[31]

Pickens booked his own flight from Florida to Las Vegas and booked his own lodging at the Red Rock Hotel and Casino. He took a cab from the airport to his hotel.[32] On September 13, 2016, Pickens and Michaels met at Attorney Shannon Evans' office and, after signing a waiver of conflict and choosing not to retain independent counsel despite being advised to do so by Attorney Evans, Pickens

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[28] XXXIII AA 7908
[29] XXXIII AA 7908-7909
[30] XXXIII AA 7909
[31] *Id.*
[32] *Id.*

signed over deeds to the Queen Charlotte and Lowe properties and assigned his interest in Patience One, LLC. Pickens then paid Shannon Evans, Esq., for the preparation and recording of the transfer documents.[33]

Pickens vacated the Queen Charlotte property and transferred the leases and control of Patience One, LLC and the building to Michaels.[34]

Pickens left the relationship with several vehicles, a multi-million-dollar business, a 401K funded by Michaels worth over $200,000, various accounts with hundreds of thousands of dollars, personal property and furniture, furnishings, and jewelry; vastly more than what he brought to the relationship.

For the next approximately 13 months, Pickens paid rent to Michaels each month for the space he occupied in the Patience One, LLC building. Michaels took over the responsibility of collecting rents, finding tenants, and maintaining the building. Pickens was relieved from all obligations and mortgages associated with the properties.[35]

Between January and December 2016, there was only one 30-day prescription prescribed by Michaels to Pickens, in May. Undisputedly, there was no treatment by Michaels of Pickens in the four months leading up to the signing of the transfer

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[33] XXXIII AA 7909-7911
[34] XXXIII AA 7912
[35] XXXIII AA 7751

documents.[36] The last prescription refill Pickens obtained from Michaels was in January 2017 (four months after the signing of the transfer documents). The three-month supply would have been exhausted by April 2017.

In May 2017, Pickens used money in his 401K for a down payment on the Blue Mesa home in his name alone as "a single individual."[37] He executed multiple documents wherein he made the representation that he was a single man, including, vesting instructions, the loan application he executed in accordance with 18 U.S.C. Section 1001 (the general federal false statements statute),[38] and the deed.

On October 16, 2017, Pickens filed his individual Federal Income Tax Return as a single, unmarried person.[39] Eight days later, on October 24, 2017, Pickens filed a *Complaint for Divorce and for Set Aside of Deeds of Real Property and Assignment of LLC Interest*. His claims for relief were (1) Divorce; (2) Set Aside of Deeds of Real Property and Assignment of LLC Interest.[40]

On March 22, 2018, Pickens filed a *First Amended Complaint for Divorce, for Set Aside of Deeds of Real Property and Assignment of LLC Interest, and for*

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[36] XXXIII AA 7946

[37] IX AA 1771-1780

[38] Directly above Pickens' signature the loan application states, "I/we fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq."

[39] XVI AA 3544-3639

[40] I AA 1-15

Alternative Equitable Relief Under the Putative Spouse Doctrine. His claims for relief were (1) Divorce; (2) Set Aside of Deeds of Real Property and Assignment of LLC Interest; (3) Equitable Relief Under the Putative Spouse Doctrine.[41]

On October 15, 2018, Pickens filed a *Second Amended Complaint for Equitable Relief Under (1) The Putative Spouse Doctrine and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married under Michoff; and to Set Aside Deeds of Real Property and Assignment of LLC Interest.* Pickens' claims for relief were (1) Equitable Relief Under the Putative Spouse Doctrine; (2) Equitable Relief Under Express and/or Implied Contract to Acquire and Hold Property as if Married; (3) Set Aside of Deeds of Real Property and Assignment of LLC Interest.[42]

In each of his three Complaints, Pickens consistently alleged that he executed the deeds and transfer documents "with the sole intention of ameliorating Michaels' rage and restoring marital peace."

STANDARD OF REVIEW

The district court's factual findings are reviewed for an abuse of discretion and will not be set aside unless they are clearly erroneous or not supported by substantial

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[41] *Id.*

[42] II AA 288-305

evidence.[43] Substantial evidence is evidence that a reasonable person may accept as adequate to sustain a judgment.[44]

When determining whether the district court abused its discretion, this court will not reweigh conflicting evidence or reassess witness credibility.[45] "It is not our province to determine the credibility of witnesses. It is the exclusive province of the trial court, sitting without a jury, to determine the facts on conflicting evidence and its finding will not be disturbed unless it is clear that a wrong conclusion was reached."[46]

SUMMARY OF THE ARGUMENT

It is a fundamental part of Nevada law that parties are free to contract and the Court is required to enforce contracts so long as the terms are not unconscionable, illegal, or against public policy.[47] Unmarried parties and business partners are equally entitled to contract.[48] Nevada law treats such agreements as equally enforceable

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[43] *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

[44] *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007); *Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004)

[45] *Ellis* at 152, 161 P.3d at 244.

[46] *Ormachea v. Ormachea*, 67 Nev. 273, 217 P.2d 355 (1950)

[47] *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009)

[48] *Western States Constr. v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992)

whether they are in writing or not—even verbal agreements of the parties, especially when acted upon, are generally held to be binding.[49]

Pickens knowingly and voluntarily signed the deeds and transfer documents because it was the "fair" and "right" thing to do. Attorney Shannon Evans and Respondent Michaels both testified that Pickens was coherent and lucid at the time of signing. Pickens admitted that he was advised to seek the advice of independent counsel and he chose not do to so; he signed a Waiver of Conflict. Pickens admitted he wasn't coerced, threatened, confined, or forced to sign documents.[50] Further, Pickens followed through with and ratified the agreement for 13 months after signing.[51]

In sum, this is a classic case of "buyer's remorse" which is being presented by Pickens in his Opening Brief (at p. 3) as seeking "a different, more equitable result." Pickens knew exactly what he was doing when he signed the deeds and transfer documents to Michaels, he signed them because it was the "fair" and "right" thing to do, and the parties had a deal that they both carried out and ratified over the following 13 months. Pickens just decided, more than a year after the deal, that he wanted more. Thus, he lied about the existence of a "marriage," then he lied about believing he was

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[49] *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012); *Phung v. Doan*, 420 P.3d 1029 (2018) (unpublished)

[50] XXXVI AA 8731

[51] XXXVI AA 8820-8821

married, then he lied about having been under duress and having lacked capacity to sign the deeds and transfer documents. The district court repeatedly found that Pickens lacked credibility.

ARGUMENT

The district court judge admitted 138 exhibits and heard testimony of the parties and four percipient witnesses over five (5) days of evidentiary proceedings. After reviewing the extensive filings, receiving, and considering the testimony of the parties and witnesses, having weighed the credibility of the witnesses, having reviewed the substantial documents and information received into evidence, and having heard the argument of counsel, the district court judge issued its 31-page Findings of Fact, Conclusions of Law, and Judgment. The court found the testimony of Dr. Michaels to be credible. Pickens' testimony was repeatedly found to be not credible.

The magnitude of Pickens' dishonesty is significant. He testified at trial that he believed he and Dr. Michaels were legally married in the Bratislava Catholic Church ceremony on April 7, 2002. As found by the district court, the overwhelming evidence points to a ceremony to merely appear married and Pickens' testimony was not credible:

1. The parties' CPA, Robert Semonian, testified that Pickens told Mr. Semonian that Pickens and Michaels were not legally married. Mr.

Semonian further testified that the issue of marital status was discussed with Pickens ***every year*** during tax season for 14 years. Mr. Semonian attested to the fact that the parties had filed their Federal Income Tax Returns as "single, unmarried" individuals every year for more than a decade:

SEMONIAN: The first year that I began working with them, I had discussions with Mr. Pickens in which he -- over their tax structure. I actually had started to prepare the first tax return as married filing joint, but after discussions with Mr. Pickens I learned that they were -- they had a marriage ceremony in a church, but they did not have a marriage license and that they were not legally married. And as such, we agreed that it would be best to file each individual as single as opposed to being married.
ABRAMS: And you heard that from Mr. Pickens himself directly, correct?
SEMONIAN: Yes, ma'am.
ABRAMS: Was that the only conversation you ever had with Mr. Pickens about his marital status?
SEMONIAN: No. We -- we had this discussion almost annually.
ABRAMS: Almost annually for how many years?
SEMONIAN: For as long as I was doing his tax returns.[52]

2. Each and every year from 2002 through 2016, Pickens executed Form 8879 authorizing his sworn signature on his Federal Income Tax Returns as a single, unmarried person;

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[52] XXXII AA 7591

3. Attorney Evans confirmed that Pickens made it clear to her when she prepared his estate planning documents that he and Michaels were not legally married and did not plan on being legally married.

ABRAMS: Okay. And you have some notes with regards to – at the very bottom you wrote some handwritten notes. Can you tell us what you wrote and what it meant?

EVANS: I wrote, Note: Thomas Pickens is not -- they're not married. They own the home together. He is not good with money.[53]

4. Just as was seen in Michaels' estate planning documents,[54] Pickens' Last Will and Testament of 2012 stated, "I am not married…"[55] This was repeated in his "LV Blue Trust," which states in reference to Pickens "The settlor is not married."[56]

5. When Attorney Shannon Evans prepared the deeds and transfer documents, included in those documents were deeds to *correct* the title of the Lowe and Queen Charlotte properties from "husband and wife" to single, unmarried persons. Pickens executed these deeds because he knew that he and Michaels were not married. (Exhibit B, Bates Stamp Numbers 000653-000658 and 000665-000671).

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[53] XXXII AA 7556

[54] Please see bates stamp 000546, 000561 and 000585 of Exhibit B admitted into evidence.

[55] Please see bates stamp 001069 of Exhibit B admitted into evidence.

[56] Please see bates stamp 001094 of Exhibit B admitted into evidence.

6. A few months after the parties separated their finances and went their separate ways, Pickens purchased a home as a single, unmarried man. He also obtained a mortgage for this home as a single, unmarried man. An email from Jeffrey Zachow, the Wells Fargo Mortgage Officer, to Pickens on March 24, 2017, (admitted into evidence as Exhibit P) states: "I understand that you weren't officially married to Danka, so obviously there isn't a Divorce Decree." Pickens testified that he would have provided that information to Mr. Zachow. Pickens told the mortgage officer 8 months before he filed the Complaint for Divorce that he and Michaels were never actually married.
7. Pickens alleged (for the first time at his deposition) that he believed he would owe gift taxes as a result of the deeds and transfer documents. Given that transfers between spouses are not taxable events, Pickens could only have formed such a belief as to transfers between unmarried persons (i.e., he knew that he and Michaels were not married).
8. Of the thousands of Complaints for Divorce that are filed in this Court every year, it is extremely uncommon for a "Marriage Certificate" to be attached. If he truly believed that he and Michaels were legally married, why would he solicit Michaels' friend to contact the church in Slovakia for a copy of the "Marriage Certificate"? And Pickens lied even about that—Pickens

testified that he didn't have a copy of the marriage certificate until 2017 or 2018, ***after*** he filed.[57] His attorneys alleged in their Closing Brief that the Marriage Certificate was used to convince title companies of a marriage when title was taken to the Lowe and Queen Charlotte properties many years earlier, which directly contradicts Pickens' testimony that he didn't ever have a copy of the Marriage Certificate until ***after*** he filed.

9. Pickens' later-concocted "explanation" of why the parties were "married" in Slovakia makes no sense either:

> LOBELLO: Prior to the marriage, did you and Danka discuss asset protection?
> PICKENS: Yes.
> LOBELLO: And what was the specific concern there?
> PICKENS: Well, the concern was because of the - - the pending lawsuits that if we got married there could be a possibility of - - of everything we had together would be attacked, I mean let's just say. So then - -
> LOBELLO: So how did - - how did have the wedding in Slovakia help with that concern?
> PICKENS: The conversation was that if we got married in Slovakia that it would take creditors much more time to figure out that we were married. And therefore, we just never brought it to the United States.[58]

The recording of deeds to the Lowe and Queen Charlotte properties "as husband and wife" completely undermines this illogical "explanation." Had there

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[57] XXXI AA 7369-7370
[58] XXXI AA 7365-7366

actually been a valid marriage and an intention to conceal that "marriage" to protect against creditors, Pickens would not have checked the box on escrow documents to title readily searchable recorded deeds as "husband and wife." Further, Pickens had no assets to protect.[59]

Tom Pickens lied. Repeatedly. Although a bit of truth did seep out in his testimony of February 14, 2020 at page 113, lines 13-14 when he stated: "I believed for the fifteen years we were together, we were ***basically*** married." [Emphasis added].

And that was not a small or "white lie." Pickens shamelessly lied throughout the proceedings about his marital status in an effort to defraud the Court and take even more from Dr. Michaels, Tens of thousands of dollars in attorney fees were expended for subpoenas, depositions, discovery, and testimony relating to these blatant lies by Pickens. The district court judge found that Pickens' testimony was not credible and questioned his candor with the court.[60]

The findings in this case are based on substantial evidence from exhibits and credible witnesses. The district court did not abuse its discretion.

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[59] XXXVI AA 8629
[60] XXXIII AA 7941, 7943-7944

I. Substantial evidence supports that district court's finding that community property by analogy did not apply.

There are crucial differences between the facts of this case versus *Western States Construction, Inc. v. Michoff*,[61] mainly the *intent and contractual agreements* of the parties. *Michoff* stands for the proposition that "adults who voluntarily live together may agree to pool their earnings and to hold all property acquired during the relationship in accord with the law governing community property."[62] Unlike in *Michoff,* the evidence in this case clearly shows that Pickens and Michaels had no such intent, as verified by the act that they never "held all their property" as community property.

In *Michoff*, the intent to pool earnings and hold all property as community was evidenced by the conduct of the parties. Lois and Max formed Western States Construction, Inc. together and each made significant contributions to the success of the business.[63] Lois legally changed her name to Lois Michoff and the parties held themselves out as a married couple for all purposes.[64] For example, when Max entered into a partnership agreement, Lois signed a consent of spouse.[65] For seven years, Max and Lois filed *joint* Federal Income Tax Returns as husband and wife.

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[61] 108 Nev. 931, 840 P.2d 1220 (1992)
[62] *Id.* at 938.
[63] *Id*. at 933-934.
[64] *Id*. at 933.
[65] *Id*. at 935.

Max and Lois both signed a sub-chapter S election for the business that designated the holdings of the corporation as community property.[66] The testimony and documentary evidence in *Michoff* supported a finding that the parties intended to and did act as a married couple and pool all of their assets as a community.

Here, Pickens and Michaels held themselves out as a married couple for social purposes only.[67] The court found that the reason for the parties referring to one another as "husband and wife" was because Michaels' family was concerned about her living out of wedlock and Pickens not wanting to be called "boyfriend." The Court did not find that they referred to one another as "husband" and "wife" as part of an agreement to pool their assets or hold community property by analogy. The court found that "the testimony of witness Robert Semonian further corroborates that Mr. Pickens and Dr. Michaels held themselves out as husband and wife for social purposes." (emphasis added).

When it came to finances, the court properly found that "the parties did behave as partners with regard to *some properties and investments*" and that they "intended to pool their assets, financial support and management skill *when they saw fit to do so* (Living expenses, residential needs, business with regard to Patience One, LLC

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[66] *Id*. at 935.
[67] XXXIII AA 7941-7942

and for a limited time Blue Point Development and Consulting, Corp.)"[68] [Emphasis added]. The evidence showed and it was undisputed between the parties that otherwise, they kept their finances quite separate.

Pickens' testimony alone proved this. Pickens testified that he and Michaels each owned and operated their own separate businesses and maintained their own separate accounts—Michaels ran her medical practice and Pickens ran his construction management business.[69] In response to the question "Did you have any control over Danka's accounts - - bank accounts?" Pickens testified "No."[70] When Pickens needed money for his business, he testified that he *borrowed* money from Michaels,[71] further evidencing the separateness of their finances—had they pooled their assets, they would not have made and repaid loans to one another. In fact, the distinctions between what constituted Pickens' assets versus Michaels' assets was so profound in their relationship that Pickens was appalled when asked if he paid anything to Michaels for the equity in his business: "Blue Point was my company, 100%. Why would I pay her anything?"[72]

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[68] XXXIII AA 7948
[69] XXXIII AA 7868
[70] XXXVII AA 8837
[71] XXXVII AA 8897
[72] XXXVI AA 8695

Neither Pickens nor Michaels changed their name to match the last name of the other. Not once during their 15-year relationship did Pickens and Michaels ever file a joint Federal Income Tax Return—each and every year they filed as single, unmarried individuals. There isn't a single legal document in the record with Dr. Michaels' signature representing that she and Pickens are married or treating their property as community. When Pickens earned a $1 Million bonus in 2014, he solely controlled what he did with the money, and he decided that 20% of it—$200,000—went into the joint account.[73]

It is noteworthy that the "joint account" wasn't even truly treated as a "joint" account between the parties. Pickens testified that even though the Wells Fargo account ending in 3436 was titled in both parties' names, it was really "[his] checking account."[74]

As for the "jointly titled" property at issue, *both* parties acknowledged that Dr. Michaels paid the money to acquire the properties.[75] For years during the relationship, Pickens acknowledged to Dr. Michaels that the properties actually belonged to her, even though his name was on title. Even Attorney Evans' notes and

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[73] XXXIII AA 7948-7949
[74] XXXI AA 7442-7443
[75] XXXIII AA 7950-7951

testimony stated that Pickens agreed to transfer the properties to Dr. Michaels because "she paid for them . . . ."

Sack v. Tomlin[76] and *Langevin v. Langevin*[77] stand for the proposition that when unmarried cohabiting couples purchase property titled in both parties' names, with or without the right of survivorship, they own the property in proportion to the amounts they each contributed to the purchase price. In this case, that was Dr. Michaels 100%.

Pickens did make some contributions to "remodeling" which consisted of maintenance and repairs of "wear and tear" but that did not add value or equity to her sole and separate assets.[78]

In sum, the substantial evidence did not support the false allegation in Pickens' Second Amended Complaint for Divorce at paragraph 16 that "an express and/or implied contract to hold their assets as though they were married was created, and Pickens is entitled to enforcement of those express and/or implied agreements." The substantial evidence did not support any such finding.

There was simply no evidence in this case to support a finding that Pickens and Michaels had any intent or agreement to pool all of their earnings or to hold all of the

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[76] 110 Nev. 204, 871 P.2d 298 (1994)
[77] 111 Nev. 1481, 907 P.2d 981 (1995)
[78] XXXI AA 7429-7430

property acquired during the relationship as community property. They did not. The district court did not abuse its discretion in finding that community property by analogy did not apply here.

II. The district court did not find "guilt as consideration."

Consideration may be any benefit conferred or any detriment suffered.[79] The transfer document signed by Pickens and admitted into evidence as Exhibit B expressly states on its face that "Assignor desires to assign for good and valuable consideration, all of its right, title, duties, obligations and interest in and to the 50% interest in the LLC to Assignee."[80]

The assertion by Pickens that "[t]he district court held that the release of guilt was thus the consideration bargained for by the Appellant in the contract between he and Respondent on September 13, 2016"[81] is belied by the language in the Findings of Fact, Conclusions of Law, and Decision which states:

> **THE COURT FURTHER FINDS** that Mr. Pickens received valuable consideration when he was indemnified from a great deal of debt as to the transfer of his interest in Patience One, LLC to Dr. Michaels. By executing the Assignment, divesting himself completely from Patience Once, LLC, which resulted in a refinance of the loan on the "buffalo" building to which neither Tom nor his Trust were now parties, there is no more legal basis under which Mr. Pickens could be held personally liable for the responsibility for the Patience One, LLC debts.

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[79] *Nyberg v. Kirby*, 65 Nev. 42, 51, 188 P.2d 1006, 1010 (1948)
[80] XXXVIII AA 9103-9106
[81] *Appellant's Opening Brief* at page 15

As found by Judge Steele, "Mr. Pickens testimony that he wanted to be able [to] start fresh in his new life was important to him . . ."[82] Cutting ties with Michaels and relieving himself of the significant obligations associated with managing and financing the properties was part of the consideration he received. After the signing of the deeds and transfer documents, Pickens no longer had a role in managing the leases, marketing or finding new tenants for the building, or management of the building;[83] he had no further duties to arrange for the payment of bills on the properties;[84] he was relieved of the substantial debt, and he no longer maintained a policy of health insurance for Michaels.[85]

It has long been recognized that when the consideration is embraced in the terms of the document, it cannot be disputed or denied that the promise as made was based upon the consideration thus expressed.[86] The Assignment of Interest specifically states that Pickens transferred all of his "obligations" with the Assignment of Interest.

Furthermore, Pickens *volunteered* to sign the properties over to Dr. Michaels to buy himself peace and avoid legal claims by Michaels against him. The Ninth Circuit

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[82] XXXIII AA 7960
[83] XXXVII AA 8817-8818
[84] XXXVII AA 8812-8813
[85] XXXVII AA 8834
[86] *Charleston Hill Nat'l Mines v. Clough*, 79 Nev. 182, 380 P.2d 452 (1963)

recognized that surrender of even a possibly meritless claim which is disputed in good faith is valid consideration to enter into an agreement.[87] Pickens' "infidelity" played no part of the analysis regarding consideration. After all, Pickens and Michaels had not been intimate for twelve years at the time the deeds and transfer documents were signed—his sexual relationship with Stacey could hardly be said to have made any difference to Michaels at that point.

Given Pickens' strong desire to transfer the property to Michaels (he even paid Attorney Evans' fee to prepare and record the deeds and transfer documents[88]), the Court concluded that the transfers "could be considered as gifts."[89] A gift requires no consideration,[90] and requires only an intent to voluntarily make a transfer to a donee with actual or constructive delivery, and the donee's acceptance of the gift.[91] Thus, even without consideration, the Assignment as well as the transfer of Pickens' interest in the residential properties had sufficient legal basis.

During the 13 months following his transfers of property to Michaels, the parties performed their agreements; "Mr. Pickens vacated the Queen Charlotte

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[87] *Rutgard v. Haynes*, 11 Fed. Appx. 818, 818 (9th Cir. 2001)

[88] XXXIII AA 7909-7911

[89] Findings of Fact, Conclusions of Law, and Decision at page 27, lines 2-7

[90] *In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 885 (2014), ("a valid inter vivos gift or donative transfer requires a donor's intent to voluntarily make a present transfer of property to a donee without consideration.")

[91] *Id.*

property, he transferred the leases and control of rent collection for Patience Once, LLC to Dr. Michaels," and "Mr. Pickens paid rent each month for the space his company, Blue Point Development, occupied in the "buffalo" building."[92] In sum, the transfers of ownership were legally sufficient whether based on a contractual agreement supported by the alleviation of significant obligations and debt or as gifts.

Pickens' argument (at p. 15) that fault or guilt is inadequate consideration as a violation of public policy is inapplicable to these facts. The issue before the court in *Diosdado v. Disdado*[93] was whether an agreement between a husband and wife for liquidated damages as a result of infidelity was enforceable. The court held it was not enforceable because it was contrary to the public policy underlying California's no-fault divorce laws. Here, the parties were never married and there was never an agreement between them for liquidated damages resulting from infidelity; this case is about an agreement between unmarried people to divide jointly held assets equitably, based on the contributions of each in acquiring those assets.

Parker v. Green[94] is even less relevant to this case. In *Parker*, domestic partners entered into an agreement for a financial penalty for infidelity. The question in that case was whether those monthly payments constitute modifiable alimony. In

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92 XXXIII AA 7954; XXXVII AA 8820-8821

93 97 Cal. App. 4th 470, 118 Cal. Rptr. 2d 494 (2002)

94 134 Nev. 993 (2018) (unpublished) No. 73176, June 25, 2018.

this case, there was no marriage, no domestic partnership, no financial penalty, and no alimony; his "no-fault" argument has to do with divorce—which has nothing to do with people who were never married. And (at page 22), Pickens refers to himself and Michaels as a "cohabitating couple" but they were not a "couple" or "cohabitating" for the great bulk of the time they ever knew one another, and certainly not in the final few years.

III. The district court did not err in finding there was not a fiduciary or confidential relationship between Pickens and Michaels.

Pickens argues there was a fiduciary and/or confidential relationship between the parties based on (a) a doctor-patient relationship, (b) a personal intimate relationship, and (c) a business relationship.

Under Nevada law, "[a] fiduciary relationship is deemed to exist when one party is bound to act for the benefit of the other party, a fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.[95] Thus, a breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the fiduciary relationship.[96] To prevail on a breach of fiduciary duty claim, the plaintiff must establish: "(1) the

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[95] *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009)
[96] *Id.*

existence of a fiduciary duty; (2) breach of that duty; and (3) the breach proximately caused the damages."[97] Additionally, there are affirmative defenses to claims of breach of fiduciary duty, including the existence of a prior breach of fiduciary on the part of the claimant.[98]

Assuming for the sake of argument that an allegation of breach of fiduciary duty in some way could impact claims for contractual rescission or a division of assets, Pickens established no grounds to assert a breach of fiduciary duty against Dr. Michaels. First, there must be a relationship between the parties which can support a fiduciary duty between them.[99] Nevada law establishes fiduciary duties for employees,[100] spouses,[101] fiancés,[102] attorneys,[103] personal confidants,[104] and doctors,[105] among other relationships. Once the relationship between the parties has ended, the fiduciary duties between the parties largely ceases, and the parties may behave going forward as if there are no duties between them.[106]

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[97] *Klein v. Freedom Strategic Partners, LLC,* 595 F.Supp.2d 1152, 1162 (D.Nev.2009)

[98] *See, e.g., United States v. S. Sound Nat. Bank*, 869 F.2d 1499 (9th Cir. 1989)

[99] *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 881 (9th Cir. 2007)

[100] *W. Med. Consultants, Inc. v. Johnson*, 80 F.3d 1331, 1337 (9th Cir. 1996)

[101] *Cook v. Cook*, 112 Nev. 179, 183, 912 P.2d 264, 266 (1996)

[102] *Fick v. Fick*, 109 Nev. 458, 464, 851 P.2d 445, 449-50 (1993)

[103] *Cook* 112 Nev. at 183, 912 P.2d at 266

[104] *Giles* at 881

[105] *Hoopes v. Hammargren*, 102 Nev. 425, 431, 725 P.2d 238, 242 (1986)

[106] *W. Med. Consultants, Inc.* at 1337(Once the relationship between plaintiff and defendant ended, defendant was free to compete against plaintiff.)

It is undisputed that every characterization of Pickens' and Dr. Michaels' relationships completely ceased prior to the time when the Assignment and other property transfers were completed; Pickens' had already established a years-long relationship with Stacey Mittlestadt. The revelation of Pickens' years-long relationship with Mittelstadt simply confirmed that Michaels was not Pickens' physician, wife, fiancée, friend, business partner or any other label which might impute a fiduciary relationship between the two. If the parties had any kind of fiduciary duty toward one another in the years prior to the transfers, it was Pickens who breached them by using Michaels' money to fund and live a life with his girlfriend without telling Michaels that she was paying for it from the rental income and security deposits for the Patience One building.

Case law across the country is clear that Pickens had to prove the existence of a physician-patient relationship before a fiduciary duty could be established.[107] The medical records, prescription records, and testimony of the parties and of Roberto Carillo established that there was no doctor-patient relationship between Pickens and

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[107] *See Jennings v. Badgett*, 2010 OK 7, 230 P.3d 861, 865-66 (Okla. 2010); *Mead v. Legacy Health System*, 352 Ore. 267, 283 P.3d 904, 909-10 (Ore. 2010); *Seeber v. Ebeling*, 36 Kan. App. 2d 501, 141 P.3d 1180 (Kan. Ct. App. 2006); *St. John v. Pope*, 901 S.W.2d 420, 423 (Tex. 2005)(establishing a physician-patient relationship is pre-requisite for a malpractice claim); *Gross v. Burt*, 149 S.W.3d 213 (Tex. Ct. App. 2004); *Millard v. Corrado*, 14 S.W.3d 42 (Mo. Ct. App. 1999); *Roberts v. Hunter*, 310 S.C. 364, 426 S.E.2d 797 (S.C. 1993)

Dr. Michaels in 2016. As of 2008, "Mr. Pickens transferred the responsibility of his medical coverage to the nurse practitioner working in Dr. Michaels' medical practice as his medical provider. Other than Dr. Michaels prescribing Mr. Pickens the occasional prescription and seeing him for cross-coverage when the nurse was unavoidably unavailable, Roberto Carrillo, A.P.R.N., F.N.P., became Mr. Pickens primary care provider who was responsible for his care and prescriptions beginning in 2008. Mr. Carillo is able to independently see and treat patients, and prescribe for them, under his own license."[108] "In 2016, the year of the separation, save and except for a single refill in May 2016 by Dr. Michaels, (which was filled after speaking with Mr. Carillo), all prescriptions and visits by Mr. Pickens were handled by Mr. Carillo."[109] As to the single referral to see a new specialist, Pickens didn't see Dr. Michaels or even recall the transaction. There was no doctor-patient relationship between them in 2016.

Even if there had been any kind of doctor-patient relationship between Pickens and Dr. Michaels, there was no evidence of any breach of fiduciary duty by Dr. Michaels.

To make such a showing, Pickens would have had to show that the doctor held a superior authoritative position in the professional relationship and that, *as a result*

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[108] XXXIII AA 7945-7946
[109] XXXIII AA 7946

of patient's illness, the patient was vulnerable. Additionally, Pickens would have had to show that doctor *exploited* that vulnerability. In *Hoopes v. Hammargren*,[110] this Court explained the standard applicable to all physicians' fiduciary relationships with their patients:

> A patient generally seeks the assistance of a physician in order to resolve a medical problem. The patient expects that the physician can achieve such resolution. Occasionally (due to illness), the patient is emotionally unstable and often vulnerable. There is hope that the physician possesses unlimited powers. *It is at this point in the professional relationship that there is the potential and opportunity for the physician to take advantage of the patient's vulnerabilities.* [Emphasis added].

In *Richelle L. v. Roman Catholic Archbishop*,[111] this Court emphasized that "vulnerability" is an "absolutely essential" and "necessary predicate" of a claimed violation of a confidential relationship. Such vulnerability "usually arises from advanced age, youth, lack of education, weakness of mind, grief, sickness, or some other incapacity.

Thus, Pickens would have had to prove that Dr. Michaels held a superior authoritative position in a professional relationship and that, as a result of his illness, he was vulnerable *at the time of signing* the deeds and assignment of interest in 2016. Additionally, he would have to prove that Dr. Michaels exploited the vulnerability, and that the exploitation was the proximate cause of any claimed harm.

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[110] 102 Nev. at 431, 725 P.2d at 242

[111] 106 Cal. App. 4th 257, 270-72, 130 Cal. Rptr. 2d 601 (Cal. Ct. App. 2003)

Mr. Pickens never even *alleged* that he was emotionally unstable due to an illness for which he was being treated by Dr. Michaels.[112] There was no professional expert witness presented to show that Mr. Pickens suffered from any illness, treated by Dr. Michaels, that rendered him unable to tend to his own business without the aid or assistance of Dr. Michaels.[113] *Hoopes v. Hammargren* makes it clear that any claimed "vulnerability" or "emotional distress" must be directly related to such an illness, which simply did not occur in this case

Pickens testified that he never filed a malpractice case against Michaels, never filed a grievance against her, and never made any ethical complaints against her for anything.[114]

Pickens testified that the personal intimate relationship between him and Dr Michaels was over in 2004, *twelve years* before he signed the deeds and transfer documents.[115] At the time of the signing of the transfers, Pickens had already been living with his girlfriend in Florida for about a year and his girlfriend was pregnant with his child.

Pickens officially severed all relationships of any kind with Michaels in January 2016 (8 months prior to the signing of the deeds and transfer documents). At

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[112] XXXIII AA 7947
[113] *Id.*
[114] XXXVII AA 8789-8790
[115] XXXVII AA 8832-8833

that time, the parties discussed the transfer of the Lowe, Queen Charlotte, and Patience One properties to Michaels. Instead, Pickens showed up without notice at Michaels' home two weeks later with earrings for Valentine's Day. On the same day, Pickens purchased jewelry for his sweetheart, Stacey Mittelstadt.[116]

The gift did nothing for any kind of relationship between Pickens and Michaels. The parties began closing their joint accounts in April 2016. Under these facts, there was no "fiduciary relationship" between the parties by September 2016—Michaels was not treating Pickens for anything, they did not have an intimate relationship, they were not living together, and they were winding up any joint assets and had already begun separating their joint accounts.

Applebaum v. Applebaum[117] stands for the proposition that once parties are on notice that their interests are adverse, there is no fiduciary duty between them.[118] In the instant case, Pickens knew that his interests were adverse to those of Michaels many months before Michaels became aware of that fact.

Pickens cites to *Leavitt v. Leisure Sports Incorporation*,[119] for the proposition that "the relationship between joint venturers is fiduciary in character and imposes

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[116] XXXIII AA 7765
[117] 95 Nev. 382, 566 P.2d 85 (1977)
[118] *Id*. at 384
[119] 103 Nev. 81, 734 P.2d 1221 (1987)

on the venturers the obligation of loyalty to the enterprise and a duty of good faith, fairness, and honesty in their dealings with each other with respect to property belonging to the venture." *Leavitt*, however, says no such thing as to joint venturers. It actually says that "[a] corporate officer or director stands as a fiduciary *to the corporation*." [Emphasis added.] The only evidence presented of any breach of fiduciary duty to Patience One, LLC was presented by Michaels regarding Pickens' dissipation of the tenants' security deposits. *Leavitt* further stands for the proposition that "joint venturers owe to one another the duty of loyalty for the duration of their venture." As held in that case, the duty of loyalty owed between the joint venturers ended when they decided to end their joint venture, as occurred here.

Michaels did not ask Pickens to transfer the properties to her—Pickens volunteered to do so, he booked a flight to Las Vegas, booked a hotel where he stayed, met Michaels at Shannon Evans' office to sign the deeds and transfer documents, declined the advice to hire counsel, signed a Waiver of Conflict, and paid Ms. Evans her fee for completing and recording the deeds and transfer documents. Every step was done by Pickens of his own free will and accord without the influence or involvement of Michaels.

Pickens failed to advance any legal principle demonstrating that even the most severe breach of fiduciary duty in any way impacts whether or not a contract may be rescinded. Rescission can be based on a contractual breach, or on fraud in the

inducement of a contract.[120] There is no Nevada authority allowing for contractual recission based on an alleged "breach of fiduciary duty."

IV. Pickens was not under "undue influence" when he transferred the properties.

Pickens cites to *In re Estate of Bethurem*,[121] for the proposition that there is a presumption of undue influence when a fiduciary relationship exists and the fiduciary benefits from the questioned transaction. In that case, Husband disinherited his step-daughters and left assets to his sister-in-law after the death of Wife because Wife's daughters (i.e., his step-daughters) did not help or care for Wife when she fell ill but Wife's sister (i.e., his sister-in-law) traveled from Texas to help care for Wife before her death. Step-daughters challenged the will, alleging that sister-in-law unduly influenced Husband. The Nevada Supreme Court held that:

> In order to establish undue influence under Nevada law, 'it must appear, either directly or by justifiable inference from the facts proved, that the influence . . . destroyed the free agency of the testator.' The influence that may arise from a family relationship is only unlawful if it overbears the will of the testator. Moreover, the fact a beneficiary merely possesses or is motivated to exercise influence is insufficient to establish undue influence. [Internal citations omitted].

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[120] *Blanchard v. Blanchard,* 108 Nev. 908, 839 P.2d 1320 (1992) (Intentional misrepresentation requires the plaintiff to prove that defendant made false representation, with knowledge or belief of falseness, and intended to induce the plaintiff to act or refrain, and that plaintiff justifiably relied, and was damaged. Justifiable reliance requires that the false representation must have played a material and substantial part in leading the plaintiff to adopt a particular course. Questions of whether elements satisfied is generally one of fact.)

[121] 129 Nev. 869, 313 P.3d 237 (2013)

The High Court went on to explain that while the sister-in-law "may have influenced [Husband] through frequent telephone conversations, influence resulting merely from [their] family relationship is not by itself unlawful, and there is no indication in the record that any influence [Sister-in-law] may have exercised prevented [Husband] from making his own decisions regarding his will. Moreover, the fact that [Sister-in-law] may have possessed influence does not amount to undue influence unless her influence destroyed [Husband's] free agency."

The evidence presented by Pickens did not support a conclusion that Dr. Michaels' influence "destroyed Pickens' free agency"—he admitted that he was not threatened, harmed, or misled. He admitted that he understood the consequences of his actions and he admitted that he was advised to, but chose not to, seek the advice of independent counsel.

Pickens testified that he was distraught over the death of his elderly and ailing parents in 2015 and 2016, the death of his dog, and what "really threw him for a loop" was his secret lover's decision to abort her pregnancy.

Pickens admitted that ***none*** of those allegations amount to "undue influence" ***by Dr. Michaels***. In other words, Pickens did not allege that Dr. Michaels had anything to do with the death of his parents, the death of his dog, his impregnation of the woman he was living with in Florida, or that woman's decision to have an abortion.

Pickens repeatedly alleged in his *Complaints* that he signed the deeds and transfer documents because it was ***his*** intention to "ameliorate Michaels' rage and restore marital peace."[122] That entire construct is false as there was no "marriage" to "restore peace" to, but even if it that statement of intention was true, it has been longstanding law in Nevada that "[a] party's undisclosed, subjective intent is immaterial when determining the existence of a contract."[123] Verbal agreements of parties, especially when acted upon, are generally held to be binding.[124]

Even if the unsupported leap could be made to assume that Pickens was under "undue influence" at the time he signed, it is well established in Nevada law that a contract entered during incapacity, insanity, or even as a result of fraud is ratified by subsequent conduct. For example, Nevada's annulment statutes have several such provisions. NRS 125.320 provides that when a minor marries without the consent of a parent or guardian (*i.e.*, the minor lacks capacity) the marriage is voidable "unless such person after reaching the age of 18 years freely cohabits for any time with the other party to the marriage as a married couple." In the event of insanity, NRS 125.330 provides that the marriage of any insane person shall not be adjudged void

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[122] The parties were never married.

[123] *James Hardie Gypsum (Nevada) Inc. v. Inquipco*, 112 Nev. 1397, 1402, 929 P.2d 903, 906 (1996), overruled on other grounds by *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 955 n.6, 35 P.3d 964, 968-69 n.6 (2001)

[124] *See Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012); *Phung v. Doan*, 420 P.3d 1029 (2018) (unpublished)

if after his or her restoration to reason, the parties freely cohabited together as a married couple. Again, ratification after the removal of the impediment validates the act. Ratification even applies to fraud under NRS 125.340 which states: "No marriage may be annulled for fraud if the parties to the marriage voluntarily cohabit as a married couple having received knowledge of such fraud."

The doctrine of ratification also applies as to contractual agreements. For example, in *Shelton v. Shelton*,[125] the Nevada Supreme Court held "Moreover, the parties' subsequent conduct reinforces this conclusion, in that Roland ratified the terms of the agreement by performing his obligations under the decree for a period of two years." In *Whiston v. McDonald*,[126] the Nevada Supreme Court held: "Furthermore, by her conduct, Nan ratified the agreement of May 15th which was executed by Al Anders. For more than a year, without protest, she performed under that agreement, she allowed her equipment to be used and she accepted checks from one or more of Art Wood's corporations in the exact amount provided for in the May 15th agreement."

Other jurisdictions have also acknowledged the doctrine of ratification. For example, in *Hoskins v. Skojec*,[127] the court held:

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[125] 119 Nev. 492, 78 P.3d 507 (2003)
[126] 85 Nev. 508, 510, 458 P.2d 107, 108 (1969)
[127] 265 A.D.2d 706, 707, 696 N.Y.S.2d 303, 304 (App. Div. 1999)

> Here, the record reveals that the parties freely entered into the separation agreement, each with the benefit of counsel, and its terms were complied with by both parties for more than four years. Furthermore, by accepting the benefits of the agreement and performing his obligations for years, defendant is deemed to have ratified the terms of the agreement (*see, Beutel v Beutel,* 55 NY2d 957, 958; *Lavelle v Lavelle,* 187 AD2d 912, 913; *Bonem v Garriott,* 159 AD2d 206,207).

In this case, Pickens relinquished control of the operating account for the building to Michaels and for the next ***thirteen (13) months*** paid her rent for his occupancy in her building. He cashed out the retirement account that she funded and purchased a home in his sole name as an unmarried man. He took possession and control of the assets awarded to him pursuant their agreement and he left for Dr. Michaels the assets and obligations awarded to her pursuant to their agreement.

Pickens did not have access to ***any*** prescriptions from Dr. Michaels or her staff after January 2017. Yet he continued to pay rent to her and acknowledge her as the owner of the building through November 2017. There can be no doubt that even with the removal of any alleged "impediment," Pickens ratified his agreement to transfer title to the Queen Charlotte, Lowe and Patience One properties to Dr. Michaels.

V. Pickens testified that by his signature, he intended to transfer ownership of Patience One to Michaels; the district court properly ordered the correction of a clerical error.

Pickens averred in his Complaint, First Amended Complaint and Second Amended Complaint that he transferred his membership interest in Patience One, LLC to Michaels. He testified that he executed the Assignment of Interest for

Patience One, LLC with the intention of transferring his 50% ownership interest therein to Michaels. If there was a clerical error that led to a mutual mistake indicating that Pickens was signing in his capacity as Trustee of the LV Blue Trust as opposed to signing in his individual capacity, the district court did not abuse its discretion in ordering reformation of the Assignment.

In *NOLM, LLC v. County of Clark*,[128] the Court held that if a party's manifestation of assent is induced by the other party's fraudulent misrepresentation as to the contents or effect of a writing evidencing or embodying in whole or in part an agreement, the court at the request of the recipient may reform the writing to express the terms of the agreement as asserted if the recipient was justified in relying on the misrepresentation. In this case, the district court found that "the document misstated the actual owner, a fact which could not have been evident to Dr. Michaels at the time of the transfer. Mr. Pickens did not correct the oversight and led Dr. Michaels to believe he had placed his 50% ownership into his personal trust sometime prior to transferring it to her Mich-Mich Trust. Dr. Michaels then re-financed the building under her authority as the100% Member of the LLC." Accordingly, the district court did not abuse its discretion in ordering reformation of the Assignment.

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[128] 120 Nev. 736, 100 P.3d 658 (2004)

VI. The deal was "fair" as admitted by Pickens during his deposition—the district court did not abuse its discretion in finding no unjust enrichment.

Pickens came to the relationship with heavy debt and no assets. He did not earn income for many years during the relationship but lived a nice lifestyle at Dr. Michaels' expense. She paid off his debt and paid his living expenses, entertainment and travel. Her funding created his construction company.

Pickens' contributions during the relationship paled in comparison to those of Dr. Michaels. Nevertheless, he left the relationship on his terms. He took with him several expensive vehicles, a multi-million-dollar business, a 401K funded by Michaels worth over $200,000, various accounts containing hundreds of thousands of dollars, accounts receivable, personal property and furniture, furnishings, and jewelry, vastly more than what he brought to the relationship. He testified that transfer of the three properties to Dr. Michaels was the "fair" and "right" thing to do.

Pickens presented no expert testimony or proof of "unjust enrichment" whatsoever. All of the evidence, including Pickens' own testimony, supported the conclusion that the deal was fair. There was no abuse of discretion in finding no unjust enrichment.

CONCLUSION

Michaels respectfully requests that this Court affirm the district court's decision.

DATED Monday, April 11, 2022.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. 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] It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in font-size 14 of Times New Roman; or

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2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding 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 9,626 words; or

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[ ] Does not exceed 30 pages.

3. Further, I hereby certify that I have read this appellate brief, and to the best of my knowledge, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion

in the Brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED Monday, April 11, 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Respondent's Answering Brief* was filed electronically with the Nevada Supreme Court in the above-entitled matter on Monday, April 11, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

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An employee of The Abrams & Mayo Law Firm