

IN THE SUPREME COURT OF THE STATE OF NEVADA

Erich M. Martin

Appellant(s),

vs.

Raina L. Martin

Respondent(s).

No. 81810

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Oct 13 2020 04:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court – Family Court Division, the
Honorable Rebecca L. Burton Presiding

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department C
County Clark Judge Rebecca L. Burton
District Ct. Case No. D-15-509045-D

2. **Attorney filing this docketing statement:**

Attorney Chad F. Clement, Esq. and Kathleen A Wilde, Esq.
Telephone 702-382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, NV 89145
Client Erich M. Martin

If this is a joint statement by multiple appellants, add the names and address of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney Marshal S. Willick, Esq.
Telephone 702-438-4100
Firm Willick Law Group
Address 3591 E. Bonanza Road, Suite 200, Las Vegas, NV 89110
Client(s) Raina L. Martin

4. **Nature of disposition below (check all that apply):**

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input checked="" type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input checked="" type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify) |

5. **Does this appeal raise issues concerning any of the following:** N/A

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: N/A

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: N/A.
8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Erich and Raina Martin divorced in November 2015. The Decree of Divorce (the “Decree”) provided, in relevant part, that Raina is entitled to “one-half (1/2) of the marital interest in the [sic] Erich’s military retirement.” *See Exhibit C*, attached hereto. “Should Erich select to accept military disability payments,” the Decree provides that “Erich shall reimburse Raina for any amount of that her share of the pension is reduced due to the disability status.” *Id.*; *see also* Order Incident to Decree of Divorce dated November 14, 2016, attached hereto as **Exhibit D**.

After retiring from the military in 2019, Erich waived his retirement pay and opted for full disability under Combat Related Special Compensation. Raina then filed a Motion to Enforce in which she argued for “permanent alimony in the amount she would be receiving as her share of the military retirement plus any future cost of living adjustments.”

In its August 11, 2020 Order Regarding Enforcement of Military Retirement Benefits, the Court acknowledged the *Howell v. Howell*, 581 U.S. ___, 137 S. Ct. 1400 (2017) decision which confirmed that state courts do not have jurisdiction to order the division of a veteran’s disability benefits. *See Exhibit E*. But, because the parties’ Decree of Divorce is purportedly a “contractual agreement” that includes indemnification provisions, the District Court determined that Erich must personally pay Raina \$845.43 every month – for all time – as well as arrears to compensate her for the loss of retirement pay. *Id.*

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):
 - (1) Does federal law, including the Uniformed Services Former Spouse Protection Act (USFSPA), 10 U.S.C. 1408 and *Howell v. Howell*, 581 U.S. ___, 137 S. Ct. 1400 (2017), pre-empt state courts from ordering

indemnification that is effectively a division of a veteran's disability benefits?

- (2) Whether the Decree of Divorce and related QDRO were voluntary contractual agreements, where the District Court ordered Erich's signature and Erich did not have a meaningful opportunity to negotiate material terms.
- (3) Whether parties may contract around federal pre-emption and public policy that seeks to protect disabled veterans?
- (4) Whether Raina is entitled to a lifetime of monthly payments where Raina is in a registered domestic partnership and does not need support?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised: N/A

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The important purpose of disability benefits is to help disabled veterans live productive lives after service-related injuries. In the same way that a personal injury judgment is the separate property of the injured spouse,

federal law recognizes that a veteran's disability benefits should not be divided as community assets. In *Howell v. Howell*, 581 U.S. ___, 137 S. Ct. 1400 (2017), the Supreme Court of the United States confirmed that attempts to circumvent pre-emption are improper. In this case, Erich seeks confirmation that Nevada state courts may not order "indemnification" or "support" that is effectively a division of disability benefits in disguise.

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Supreme Court of Nevada should retain this appeal because it involves an issue of first impression that implicates pre-emption, the supremacy of federal law, and the jurisdiction of Nevada's family courts. See NRAP 17(a)(11). The Supreme Court of Nevada should also retain this appeal because the division of disabled veterans' benefits is an issue of statewide importance with significant public policy underpinnings. See NRAP 17(a)(12).

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A.
Was it a bench or jury trial? N/A.
15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? N/A.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from** The Order Regarding Enforcement of Military Retirement Benefits was filed on August 11, 2020.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A.

17. **Date written notice of entry of judgment or order was served** The Notice of Entry of Order was filed on August 11, 2020.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing. N/A.

☐ NRCP 50(b) Date of filing

☐ NRCP 52(b) Date of filing

☐ NRCP 59 Date of filing

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion. N/A.

(c) Date written notice of entry of order resolving tolling motion was served. N/A.

Was service by:

☐ Delivery

☐ Mail

19. **Date notice of appeal filed** September 9, 2020.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) NRAP 3A(b)(8) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

In *Burton v. Burton*, the Supreme Court of Nevada clarified that post-decree decisions may be appealable as a special order after final judgment if the matter is based upon “changed factual or legal circumstances.” See 99 Nev. 698, 700, 669 P.2d 703, 705 (1983). Here, the 2017 *Howard* decision is an important change in legal circumstances which impacts the parties’ substantive rights. Erich’s physical condition, including the worsening disabilities which necessitated Combat Related Special Compensation is a change in factual circumstances that occurred after entry of the initial Decree.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant:

Erich M. Martin

Respondent:

Raina L. Martin

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: N/A.

23. Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

Erich initiated the divorce proceedings and Raina filed a counterclaim. The divorce was finalized in the November 5, 2015, Decree of Divorce.

The current controversy centers on the Motion to Enforce in which Raina moved for monthly indemnification comparable to half of Erich's disability benefits. Over Erich's objection, the Court entered an order in Raina's favor on August 11, 2020.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? N/A.

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? N/A.

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)

- Orders of NRC 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Exhibit	Document Description
A	Complaint for Divorce filed on February 2, 2015
B	Answer to Complaint for Divorce and Counterclaim filed February 25, 2015
C	Decree of Divorce filed on November 5, 2015
D	Order Incident to Divorce dated November 14, 2016
E	Order Regarding Enforcement of Military Retirement filed on August 11, 2020
F	Notice of Entry of Order Regarding Enforcement of Military Retirement filed on August 11, 2020

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Erich M. Martin

Name of appellant

Chad F. Clement, Esq.; and
Kathleen A. Wilde, Esq.

Name of counsel of record

October 13, 2020

Date

/s/ Kathleen A. Wilde

Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 13th day of October, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☒ Via this Court's electronic filing system in accordance with the Master Service List; or

Marshal S. Willick

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

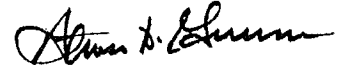
Ara H. Shirinian
10651 Capesthorne Way
Las Vegas, NV 89135
arashirinian@cox.net
Settlement Judge

Dated this 13th day of October, 2020.

/s/ *Javie-Anne Bauer*

Signature

Exhibit A



CLERK OF THE COURT

COMP

Jason Naimi, Esq.
Nevada State Bar No. 009441
Standish Naimi Law Group
A Professional Limited Liability Company
1635 Village Center Circle, Suite 180
Las Vegas, NV 89134
Tel: (702) 998-9344
Fax: (702) 998-7460
Email: jason@standishnaimi.com
Attorney for Plaintiff

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERICH M. MARTIN,

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D- 15- 509045- D

DEPT. NO.: C

COMPLAINT FOR DIVORCE

COMES NOW Plaintiff Erich M. Martin, by and through his counsel of record, Jason Naimi, Esq., of the Standish Naimi Law Group, as and for a Complaint for Divorce against Defendant, and alleges as follows:

1. That Defendant, for a period of more than six (6) weeks immediately preceding the commencement of this action, has been and now is an actual, bona fide resident and domiciliary of the State of Nevada, County of Clark, has been actually physically and corporeally present and domiciled in Nevada for more than six (6) weeks immediately prior to the commencement of this action, and has had and still has the intent to make the State of Nevada her home, residence and domicile for an indefinite period of time.

2. That Plaintiff and Defendant were duly and legally married on or about the 1st day of April, 2002 in the County of Cumberland, State of North Carolina and have been and still are husband and wife.

3. That there is one (1) minor child who is the issue of this marriage, to wit: Nathan L. Martin, born August 24th, 2010. To the best of Plaintiff's knowledge, Defendant is not pregnant at this time. No children were adopted during this marriage by Plaintiff and/or Defendant.

4. That the State of Nevada is the home state of the subject minor child.

5. That Plaintiff and Defendant are fit and proper persons to be awarded joint legal custody of the minor child.

6. That Defendant is a fit and proper person to be designated as primary physical custodian of the minor child: Nathan L. Martin, born August 24th, 2010, subject to Plaintiff's reasonable right to visitation. This schedule is in the best interest of the child.

7. That the parties should be referred to FMC to formulate a visitation plan, including holidays.

8. That Plaintiff is able bodied and capable of paying child support for the minor child born as issue of this marriage, in an amount commensurate with NRS 125B.070 and NRS 125B.080, which sets forth that support for one minor child shall equal eighteen percent (18%) of Defendant's gross monthly income, which is a reasonable amount of support and maintenance of said minor child.

9. That Plaintiff shall maintain medical, optical and dental insurance for the minor child until said child reaches the age of majority, marries, or becomes otherwise emancipated, with any premium being paid equally by both parties.

...

...

1 10. The parties shall share equally all uninsured medical expenses of the minor child.
2 Medical expenses shall include, but are not limited to, counseling, eye exams, eye glasses and medical
3 and/or dental treatment. Reimbursement shall be made pursuant to the 30/30 rule for expenses. The
4 parent who paid for the expenses shall provide the other parent a copy of the receipt of payment
5 within thirty (30) days of payment. The other parent shall reimburse one-half of the expenses with
6 thirty (30) days of receiving notice.
7

8 11. That there are community assets of the parties, the exact amounts and descriptions of
9 which are unknown to Plaintiff at this time, and Plaintiff prays leave of Court to amend this Complaint
10 to insert the same when they have become know to him or at the time of trial in this matter; that this
11 Court should make a fair and equitable division of all community assets of the parties.
12

13 12. That there are community debts of the parties, the exact amounts and descriptions of
14 which are unknown to Plaintiff at this time, and Plaintiff prays leave of Court to amend this Complaint
15 to insert the same when they have become know to him or at the time of trial in this matter; that this
16 Court should make a fair and equitable division of all community debts of the parties.
17

18 13. That in the event the Defendant has taken sole control of the community assets,
19 community bank accounts, community business and other community funds in order to conceal or
20 hide these funds to avoid an equitable distribution of the community assets, the Defendant should
21 provide a full and complete accounting of all community assets, investments and funds along with
22 bank account statements to compensate Plaintiff for any loss of these community funds.
23

24 14. That in the event the Defendant has or will engage in acts individually or together with
25 others that may constitute material waste of community assets, the Defendant should provide a full
26 and complete accounting of all community assets, investments and funds along with bank account
27 statements to compensate Plaintiff for any loss of these community funds.
28

1 15. That, should any claim, action and/or proceeding be brought seeking to hold the other
2 party liable on account of any debt, obligation, liability, act, or omission assumed by that party, he or
3 she will, at his or her sole expense, defend the other against any such claim or demand and that he or
4 she will indemnify, defend, and hold harmless the other party.

5 16. That Defendant be admonished and enjoined from breaching the Joint Preliminary
6 Injunction on file in this matter and be prevented from depleting the community assets.
7

8 17. That neither party should be awarded spousal support.

9 18. That Defendant should maintain her current name of Raina L. Martin or return to her
10 former name as her full legal name upon entering a Decree of Divorce.

11 19. That Plaintiff has been required to retain the services of the Standish Naimi Law Group
12 to prosecute this action and should be awarded his reasonable costs, expenses and attorney's fees
13 incurred herein.
14

15 20. That during the course of said marriage, the tastes, mental disposition, views, likes
16 and dislikes of Plaintiff and Defendant have become so widely divergent that the parties have become
17 incompatible in marriage to such an extent that it is impossible for them to live together as husband
18 and wife and the incompatibility between Plaintiff and Defendant is so great that there is no possibility
19 of reconciliation between them.

20 WHEREFORE, Plaintiff prays for a Judgment as follows:
21

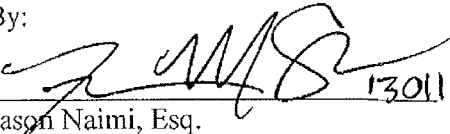
22 1. That the marriage existing between Plaintiff and Defendant be dissolved and that
23 Plaintiff be granted an absolute Decree of Divorce and that each of the parties be restored to the status
24 of a single, unmarried person;

25 2. That the Court grant the relief requested in this Complaint; and
26
27 ...
28 ...

3. For such other relief as the Court finds to be just and proper.

DATED this 2 day of February, 2015.

By:

 13011 for

Jason Naimi, Esq.
Nevada State Bar No. 009441
Standish Naimi Law Group
A Professional Limited Liability Company
1635 Village Center Circle, Suite 180
Las Vegas, NV 89134
Tel: (702) 998-9344
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Email: jason@standishnaimi.com
Attorney for Plaintiff

STANDISH NAJMI LAW GROUP
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134
Telephone: (702) 998-9344 Fax: (702) 998-7460

VERIFICATION

STATE OF WYOMING)
COUNTY OF ALBANY) ss:


Erich M. Martin, under penalties of perjury, being first duly sworn, deposes and says:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, he believes them to be true.

DATED this 03rd day of February, 2015.


Erich M. Martin

SUBSCRIBED and SWORN to before
me this 2nd day of February, 2015.


NOTARY PUBLIC in and for said
County and State

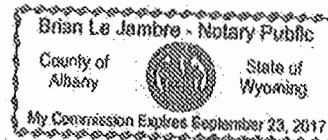


Exhibit B

AACC
Gregg A. Hubley, Esq.
Nevada Bar No. 7386
ghubley@brookshubley.com
Ramir M. Hernandez, Esq.
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rhernandez@brookshubley.com
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Attorneys for Defendant, Raina L. Martin

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CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERICH M. MARTIN,

Plaintiff/Counterdefendant,

vs.

RAINA L. MARTIN,

Defendant/Counterclaimant.

Case No.: D-15-509045-D
Dept No.: C

ANSWER TO COMPLAINT FOR DIVORCE AND COUNTERCLAIM

Defendant, RAINA L. MARTIN, by and through her attorneys, Gregg A. Hubley, Esq., and Ramir M. Hernandez, Esq., of Brooks Hubley, LLP, for her answer to the Complaint on file herein, admits, denies, and alleges as follows:

I.

Answering Paragraphs 1, 2, 3, 4, 5, 6, 7, 10, 18, and 20 of Plaintiff's Complaint on file herein, Defendant admits each and every allegation contained therein.

II.

Answering Paragraphs 13, 14, and 16 of Plaintiff's Complaint on file herein, Defendant admits to the extent that Plaintiff be subject to the same provisions, otherwise Defendant denies each and every allegation contained therein.

III.

Answering Paragraphs 8, 9, 15, 17, and 19 of Plaintiff's Complaint on file herein, Defendant denies each and every allegation contained therein.

IV.

Answering Paragraphs 11, and 12 of Plaintiff's Complaint on file herein, Defendant is without knowledge and therefore denies each and every allegation contained therein.

WHEREFORE, Defendant prays that Plaintiff take nothing by way of his Complaint on file herein.

COUNTERCLAIM FOR DIVORCE

The Defendant/Counterclaimant, RAINA L. MARTIN, for a cause of action against Plaintiff/Counterdefendant, ERICH M. MARTIN, alleges as follows:

I.

That Defendant/Counterclaimant is now and for a period of more than six (6) weeks prior to the commencement of this action, has been an actual bona fide resident and domiciliary of the County of Clark, State of Nevada, actually, physically, corporally domiciled herein during all said periods of time, and also has the intent to indefinitely reside therein, and is a domiciliary thereof.

II.

That Plaintiff/Counterdefendant and Defendant/Counterclaimant were duly and lawfully married on 1st day of April 2002 in the County of Cumberland, State of North Carolina, and ever since said date, have been and now are husband and wife.

III.

The tastes, mental dispositions, views and likes and dislikes of Defendant/Counterclaimant and Plaintiff/Counterdefendant have become so widely separated and divergent that the parties are incompatible to such an extent that it is impossible for them to live together as husband and wife. The incompatibility between Defendant/Counterclaimant and Plaintiff/Counterdefendant is so great that there is no possibility of reconciliation between them.

IV.

There is one (1) minor child born the issue of this marriage, to wit: Nathan L. Martin, born August 24, 2010. There are no adopted children and Defendant/Counterclaimant is not pregnant.

V.

That Defendant/Counterclaimant be confirmed as primary physical custodian of the minor child, Nathan L. Martin, subject to Plaintiff/Counterdefendant's reasonable right to visitation.

VI.

That Plaintiff/Counterdefendant is able-bodied and capable of paying child support for the minor child born as issue of this marriage, in an amount commensurate with the parties' separation agreement or NRS 125B.070 and NRS 125B.080, which sets forth that support for one minor child shall equal 18% of Plaintiff/Counterdefendant's gross monthly income, which is a reasonable amount of support and maintenance of the minor child. Defendant/Counterclaimant also is requesting child support arrears in an amount to be determined by the Court. Good cause exists not to issue a wage withholding order at this time.

///

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///

///

VII.

That Plaintiff/Counterdefendant shall maintain medical, optical, and dental insurance for the minor child until said child reaches the age of majority, marries, or becomes otherwise emancipated, with any premiums being paid 100% solely by Plaintiff/Counterdefendant.

VIII.

That Plaintiff/Counterdefendant is able-bodied and capable of paying a reasonable sum as and for the support and maintenance of the Defendant/Counterclaimant for an amount and period of time that the Court deems to be just and equitable;

IX.

There are community debts and obligations of the parties to be adjudicated by this Honorable Court, the exact extent of which is unknown to Defendant/Counterclaimant at this time, and Defendant/Counterclaimant prays leave to amend her Counterclaim to insert the same when they have become known to her or at the time of trial in this matter.

X.

There is community and jointly owned property of the parties to be adjudicated by this Honorable Court. The full extent of the parties' property is unknown to the Defendant/Counterclaimant at this time, and Defendant/Counterclaimant prays leave to amend her Counterclaim to insert the same once it has become known to her or at the time of trial in this matter.

XI.

That it has been necessary for the Defendant/Counterclaimant to engage the services of an attorney to prosecute this action. The Defendant/Counterclaimant is without sufficient funds to pay the cost, expenses and attorney's fees to enable her to defend this action, while the Plaintiff/Counterdefendant has resources which render him well able to pay attorney's fees and costs.

1
2 WHEREFORE, Defendant/Counterclaimant prays for judgment against the
3 Plaintiff/Counterdefendant as follows:

4 1. The marriage existing between Defendant/Counterclaimant and
5 Plaintiff/Counterdefendant be dissolved and the Defendant/Counterclaimant be granted an
6 absolute Decree of Divorce with each of the parties being restored to the status of a single,
7 unmarried person;

8 2. That Defendant/Counterclaimant be confirmed as primary physical custodian of
9 the minor child, Nathan L. Martin, subject to Plaintiff/Counterdefendant's reasonable right to
10 visitation;

11 3. That this Court set Plaintiff/Counterdefendant's child support for the minor child
12 born at issue of this marriage, in an amount commensurate with the parties' separation agreement
13 or NRS 125B.070 and NRS 125B.080, which sets forth that support for one minor child shall
14 equal 18% of Plaintiff/Counterdefendant's gross monthly income, which is a reasonable amount
15 of support and maintenance of the minor child; and the Court award child support arrears to
16 Defendant/Counterclaimant;

17 4. That this Court order Plaintiff/Counterdefendant to maintain medical, optical, and
18 dental insurance for the minor child until said child reaches the age of majority, marries, or
19 becomes otherwise emancipated, with any premiums being paid 100% solely by
20 Plaintiff/Counterdefendant;

21 5. That the Court award Defendant/Counterclaimant spousal support for a period and
22 amount deemed to be just and equitable;

23 6. That the Court divide the community property in a fair and equitable manner;

24 7. That the Court divide the community divide debts and obligations in a fair and
25 equitable manner;
26
27
28

1 8. That the Plaintiff/Counterdefendant be ordered to pay attorney's fees and costs to
2 Defendant/Counterclaimant;

3 9. For such other and further relief as the Court may deem just and proper in the
4 premises.

5 DATED this 25th day of February, 2015.

6 BROOKS HUBLEY, LLP

7
8 By: Ramir M. Hernandez
9 Gregg A. Hubley, Esq.
10 Nevada Bar No. 7386
11 Ramir M. Hernandez, Esq.
12 Nevada Bar No. 13146
13 1645 Village Center Circle, Suite 200
14 Las Vegas, NV 89134
15 Attorneys for Defendant
16
17
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VERIFICATION

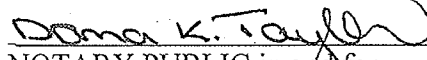
STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

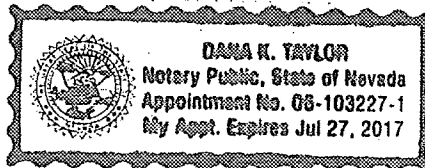
RAINA L. MARTIN, first being duly sworn, deposes and says:

That she is the Defendant/Counterclaimant in the above-entitled action; that she has read the above and foregoing **ANSWER TO COMPLAINT FOR DIVORCE AND COUNTERCLAIM** and knows the contents thereof and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters, she believes them to be true.


RAINA L. MARTIN

SUBSCRIBED and SWORN to before me
this 26th day of February 2015.


NOTARY PUBLIC in and for
said County and State



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Brooks Hubley, LLP, 1645 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

I HEREBY CERTIFY that on this day, pursuant to Eighth Judicial District Court Administrative Order 14-2 and EDCR 8.05(i), I electronically served, via the Eighth Judicial District Court electronic filing system and in place of service by mail, the *Answer to Complaint for Divorce and Counterclaim* on the following parties and those parties listed on the Court's Master List in said action:

Jason Naimi, Esq.
Standish Naimi Law Group
jason@standishnaimi.com

Attorney for Plaintiff

I certify under penalty of perjury that the foregoing is true and correct and that this Certificate of Service was executed by me on the 25th day of February, 2015 at Las Vegas, Nevada.



An Employee of BROOKS HUBLEY, LLP

Exhibit C

ORIGINAL

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Allen D. Levine

CLERK OF THE COURT

1 **DECR**

2 Jason Naimi, Esq.
3 Nevada State Bar No. 9441
4 Francesca M. Resch, Esq.
5 Nevada State Bar No. 13011
6 Standish Naimi Law Group
7 A Professional Limited Liability Company
8 1635 Village Center Circle, Suite 180
9 Las Vegas, NV 89134
10 Tel: (702) 998-9344
11 Fax: (702) 998-7460
12 Email: jason@standishnaimi.com
13 Attorneys for Plaintiff

14 **DISTRICT COURT**
15 **FAMILY DIVISION**
16 **CLARK COUNTY, NEVADA**

17 **ERICH M. MARTIN,**

18 Plaintiff,

19 v.

20 **RAINA L. MARTIN,**

21 Defendant.

CASE NO.: D-15-509045

DEPT. NO.: C

22 **DECREE OF DIVORCE**

23 NOW INTO COURT comes Plaintiff, ERICH M. MARTIN, by and through his attorney of
24 record, JASON NAIMI, ESQ., of STANDISH NAIMI LAW GROUP, and Defendant, RAINA L.
25 MARTIN, by and through her attorney of record, RAMIR HERNANDEZ, ESQ., of BROOKS
26 HUBLEY, LLP, and submit this matter to the Court for Summary Disposition of Divorce, with both
27 parties having consented to this Court's jurisdiction.

28 The Court was fully advised as to the law and the facts of the case, and finds that: That
Defendant, for a period of more than six (6) weeks immediately preceding the commencement of this
action, has been and now is an actual, bona fide and actual resident and domiciliary of the State of
Nevada, County of Clark, and has been actually physically and corporeally present and domiciled in
Nevada for more than six (6) weeks immediately prior to the commencement of this action, and has
had and still has the intent to make the State of Nevada her home, residence and domicile for an
indefinite period of time; that the parties were married the 1st day of April, 2002 in Cumberland
County, North Carolina; that there is one (1) minor child of the marriage, to wit: Nathan L. Martin,

Non-Trial Dispositions:

- ☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
- ☒ Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR

Trial Dispositions:

- ☐ Disposed After Trial Start
☐ Judgment Reached by Trial

1 born August 24, 2010; that the State of Nevada is the home state of the subject minor child; that to the
2 best of Defendant's knowledge, she is not pregnant at this time, no children were adopted during this
3 marriage by Plaintiff and/or Defendant; that during the course of the parties' marriage, the tastes,
4 mental disposition, views, likes and dislikes of Plaintiff and Defendant have become so widely
5 divergent that the parties have become incompatible in marriage to such an extent that it is impossible
6 for them to live together as husband and wife and the incompatibility between Plaintiff and Defendant
7 is so great that there is no possibility of reconciliation between them; that this Court has complete
8 jurisdiction in the premises, both as to the subject matter, as well as the parties; all of the jurisdictional
9 allegations contained in Defendant's Answer and Counterclaim for Divorce are true as therein alleged
10 and Plaintiff is entitled to a Decree of Divorce from the Defendant on the grounds as set forth in
11 Plaintiff's Complaint for Divorce; and Defendant having answered, has waived Findings of Fact,
12 Conclusions of Law, and written Notice of Entry of Judgment in said cause.

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the bonds of matrimony
14 existing between Plaintiff, ERICH M. MARTIN (hereinafter referred to as "Erich"), and Defendant,
15 RAINA L. MARTIN (hereinafter referred to as "Raina"), be, and the same are wholly dissolved, and
16 an absolute Decree of Divorce is hereby granted to Erich and Raina, and each of the parties is restored
17 to the status of a single, unmarried person.

18 **CHILD CUSTODY**

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Erich and Raina shall
20 share joint legal custody of their one (1) minor child, to wit: Nathan L. Martin, born August 24, 2010
21 (hereinafter referred to as "Nathan"), which entails the following:

22 The parties shall consult and cooperate with each other in substantial questions relating to
23 religious upbringing, educational programs, significant changes in social environment, and
health care of the child.

24 The parties shall have access to medical and school records pertaining to their child and be
25 permitted to independently consult with any and all professionals involved with the child.

26 All schools, health care providers, day care providers, and counselors shall be selected by the
27 parties jointly. In the event the parties cannot agree to the selection of a school, the child shall
be maintained in their current schools until further order of the court.

28 Each party shall be empowered to obtain emergency health care for the child without the
consent of the other party. Each party is to notify the other party as soon as reasonably possible
of any illness requiring medical attention, or any emergency involving the child.

Each party is to provide the other party, upon receipt, information concerning the well-being of the child, including, but not limited to, copies of report cards; school meeting notices; vacation schedules; class programs; requests for conferences; results of standardized or diagnostic tests; notices of activities involving the child; samples of school work; order forms for school pictures; all communications from health care providers, the names, addresses, and telephone numbers of all schools, health care providers, regular day care providers, and counselors.

Each party is to advise the other party of school, athletic, and social events in which the child participates. Each party shall notify the other within a reasonable time after first learning of the future occurrence of any such event so as to allow the other parent to make arrangements to attend the event if he or she chooses to do so. Both parties may participate in all such activities for the child, including, by not limited to, open house, attendance at all school and religious activities and events, athletic events, school plays, graduation ceremonies, school carnivals, and any other events involving the child.

Each party shall provide the other party with a travel itinerary and, whenever reasonably possible, telephone numbers at which the child can be reached whenever the child will be away from that parent's home for a period of one (1) night or more.

The parties shall encourage liberal communication between the child and the other parent. Each party shall be entitled to telephone communication with the child. Each party is restrained from interfering with the child's right to privacy during such telephone conversations.

Neither party shall interfere with the right of the child to transport his/her clothing and personal belongings freely between the parties' homes.

The parties shall communicate directly with each other regarding the needs and well-being of the child, and neither party shall use the child to communicate with the other party regarding parental issues. The parties shall use self-control and shall not verbally or physically abuse each other in the presence of the minor child.

Neither party shall disparage the other in the presence of the child nor make any comment of any kind that would demean the other party in the eyes of the child. Additionally, each party shall instruct their respective family and friends that no disparaging remarks are to be made regarding the other party in the presence of the child. The parties shall take all action necessary to prevent such disparaging remarks being made in the presence of the child, and shall report to each other in the event such disparaging remarks are made.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Raina is awarded primary physical custody of Nathan, subject to Erich's reasonable right of visitation as outlined herein.

1. SUMMER VISITATION:

- a. **2015:** Erich shall have ten (10) twenty-four (24) hour long consecutive days with Nathan for the remainder of the 2015 summer.
- b. **2016:** Erich shall have a two (2) week block and a three (3) week block of visitation with Nathan. Erich shall exercise the two (2) week block of visitation first.
- c. **2017:** Erich shall have two (2) separate three (3) week visitations with Nathan.

d. **2018 and every Summer Visitation thereafter:** Erich shall have eight (8) consecutive weeks of visitation with Nathan, beginning the Monday after school lets out for summer break.

2. **REGULAR VISITATION:**

a. Erich shall be provided visitation with Nathan every month while school is in session. Said visitation shall alternate monthly between Las Vegas, Nevada, and wherever Erich chooses to exercise his visitation (i.e. Wyoming, California, etc.). Erich shall provide one (1) week notice whenever he exercises visitation time in Las Vegas, Nevada.

b. If Erich has any holiday visitation pursuant to the HOLIDAY AND VACATION PLAN addressed herein during any given month, that visitation shall be considered his "regular visitation" for that month.

c. Erich has the option to maximize his monthly visitation by taking any and all three (3) day weekends, staff development days, and any other similar non-school days during the school year as his visitation time.

3. **TRAVEL ITINERARY:** Erich shall provide the dates he intends to exercise his visitation to Raina thirty (30) days prior to the exercising his visitation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following HOLIDAY AND VACATION PLAN takes precedence over vacation time and residential time.

1. **THANKSGIVING:** This holiday is defined as beginning the Wednesday school lets out through the Sunday before school resumes. Erich shall have Nathan for the holiday every odd-numbered year, beginning in 2015, and Raina shall have Nathan for the holiday every even-numbered year, beginning in 2016.

2. **WINTER BREAK:** This holiday is defined in two parts; the first part beginning the Saturday after school lets out until the Sunday eight (8) days later, and the second part beginning the second Sunday of the holiday until the following Sunday. Erich shall have Nathan for the first part of Winter Break each even-numbered year, beginning in 2016, and the second part every odd-numbered

1 years, beginning in 2015. Raina shall have Nathan for the first part of Winter Break each odd-
2 numbered year, beginning in 2015, and the second part every even-numbered year, beginning in 2016.

3 3. **SPRING BREAK:** This holiday shall be defined as beginning the Saturday after
4 school lets out through the day before school resumes. Erich shall have Nathan every year for Spring
5 Break.

6 4. **ADDITIONAL TIME:** Erich shall be entitled to additional visitation in Las Vegas,
7 Nevada upon one (1) week notice. Any additional time outside of Las Vegas, Nevada shall be by
8 mutual agreement of both parties in writing or via email.

9 5. **TRANSPORTATION:** The parties agree to share the costs and responsibility for
10 Nathan's travels as outlined below under CHILD SUPPORT.

11 6. **TRAVEL ITINERARY:** The parents shall share itinerary information when traveling
12 out-of-state, including dates of travel, destination, and an emergency contact number. If traveling
13 outside of the country, each parent must have a notarized letter of consent from the other parent.

14 7. **TRAVEL EXCHANGES:** The parents shall use their best efforts to obtain a pass from
15 airport security to pick up the minor child from his gate when he arrives for his custodial time with
16 that parent. If Raina is unable to obtain a pass, she shall wait at the bottom of the escalator descending
17 to baggage claim, and Erich shall watch Nathan descend to meet Raina during their exchanges in Las
18 Vegas, Nevada.

19 8. **TELEPHONE CONTACT:** The parents shall have telephonic communication with
20 Nathan every day at 8:00 p.m. pacific standard time during their noncustodial time. Said telephonic
21 communication shall not last for more than ten (10) minutes, and both parties shall be flexible with
22 rescheduling the telephonic communication should the custodial parent be unable to comply. Failure
23 for the noncustodial parent to utilize this contact shall not be held against him or her.

24 9. **MODIFICATIONS:** Erich shall notify Raina at least fifteen (15) days prior to a
25 visitation of any modifications, or inability to exercise the visitation.

26 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties will exert
27 every reasonable effort to foster feelings of affection between themselves and the children, recognizing
28

1 that frequent and continuing association and communication between both parents, with the children,
2 is in furtherance of the best interest and welfare of the children.

3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that in the event any
4 scheduled time cannot be kept due to illness, an emergency involving the children and/or the parent,
5 or other unavailability of the parent, the parent unable to comply with the schedule shall notify the
6 other parent and children as soon as possible.

7 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that should a delay in the
8 children's pick-up and/or return become necessary, the other parent shall be notified immediately.

9 **NOTICE IS HEREBY GIVEN** that the parties are subject to the following:

10 1. The parties are subject to the provisions of NRS 125C.200 and NRS 200.359, which
11 provide: "If custody has been established and the custodial parent intends to move his residence to a
12 place outside of this state and to take the child with him, he must, as soon as possible and before the
13 planned move, attempt to obtain the written consent of the noncustodial parent to move the child from
14 this state. If the noncustodial parent refuses to give that consent, the custodial parent shall, before he
15 leaves this state with the child, petition the court for permission to move the child. The failure of a
16 parent to comply with the provisions of this section may be considered as a factor if a change of
17 custody is requested by the noncustodial parent." *SEE ADDENDUM - (PUB)*

18 2. The parties are subject to the provisions of NRS 125.510(6), which provides:

19 **PENALTY FOR VIOLATION OF ORDER: THAN ABDUCTION,**
20 **CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS**
PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130.

21 3. The parties are subject to the provisions of NRS 200.359 which provides that every
22 person having a limited right of custody to a child or any parent having no right of custody to the child
23 who willfully detains, conceals or removes the child from a parent, guardian or other person having
24 lawful custody or a right of visitation of the child in violation of any order of this court, or removes
25 the child from the jurisdiction of the court without consent of either the court or all persons who have
26 the right to custody or visitation is subject to being punished for a category D felony as provided in
27 NRS 193.130.

28

4. Pursuant to NRS 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private Internal Law, apply if a parent abducts or wrongfully retains a child in a foreign country. For the purposes of applying the terms of the Hague Convention, the State of Nevada, United States of America, is the habitual residence of the minor child.

5. Under the terms of the Parental Kidnapping Prevention Act, 28 U.S.C. Sec. 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, NRS 125A.005 et seq., the courts of Nevada have exclusive modification jurisdiction of the custody, visitation and child support terms relating to the child at issue in this case so long as either of the parties, or the child, continue to reside in this jurisdiction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to the formula set forth in NRS 125B.070, child support shall be set in the amount of \$806.00 per month from Erich to Raina beginning June, 2015. Child Support shall be payable on the first (1st) of every month. This child support order is in compliance with NRS 125B.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Raina shall provide any and all fees associated with Nathan's full-day kindergarten with Clark County School District to Erich, if any fees exist. Erich shall pay one-half (1/2) of these fees with his monthly child support obligation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parents shall share the costs of Nathan's travels for his visitations with Erich. Raina shall pay for the costs of Nathan to travel to Erich, and Erich shall pay for the costs of Nathan to return to Raina. Until Nathan is able to fly unaccompanied, Erich shall be responsible for one-hundred percent (100%) of any and all chaperone costs associated with Nathan's travels, unless Raina is the chaperone, wherein she will cover her own costs of travel.

NOTICE IS HEREBY GIVEN that the parties are subject to the following:

1. Pursuant to NRS 125B.145, an award of child support shall be reviewed by the court at least every three (3) years to determine whether the award should be modified. The review will be conducted upon the filing of a request by (1) a parent or legal guardian of the child; or (2) the Nevada

1 State Welfare Division or the District Attorney's Office, if the Division of the District Attorney has
2 jurisdiction over the case.

3 2. Pursuant to NRS 125.450(2), the wages and commissions of the parent responsible for
4 paying support shall be subject to assignment or withholding for the purpose of payment of the
5 foregoing obligation of support as provided in NRS 31A.020 through 31A.240, inclusive.

6 3. Pursuant to NRS 125.130 the social security numbers of the parties shall be provided
7 on a separate form to the Court of the Welfare Division of the Department of Human Resources within
8 ten days from the date this Decree is filed. Such information shall be maintained by the clerk in a
9 confidential manner and not be a part of the public record.

10 MEDICAL HEALTH INSURANCE

11 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Erich shall maintain
12 medical, dental, and optical insurance for Nathan, so long as it is available to him through his
13 employer. The parties shall each pay one-half (1/2) of any and all medical, dental and optical expenses
14 not covered by said insurance until such time as the children reach the age eighteen (18) years or
15 nineteen (19) years, if still in high school, or becomes otherwise emancipated. Documentation of the
16 incurrence of such unreimbursed expense shall be provided to the other party within thirty (30) days,
17 and the remittance of the one-half (1/2) share of the expense is to be completed within thirty (30) days
18 after receipt of documentation for such expense.

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that a parent who incurs an
20 out-of-pocket expense for the children is required to document that expense and proof of payment of
21 that expense. A receipt is sufficient to prove the expense so long as it has the name of the child on it
22 and shows an actual payment by the parent.

23 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that a parent who has paid
24 an expense for a child of the parties must provide a copy of the proof of payment to the other parent
25 and the insurance company within thirty (30) days of the payment being made and in no event later
26 than when the expense could have been submitted to insurance for reimbursement. The failure of a
27 parent to comply with this provision in a timely manner, which causes the claim for insurance
28 reimbursement to be denied by the insurance company as untimely, may result in that parent being

1 required to pay the entire amount which would have been paid by the insurance company as well as
2 one-half of the expense which would not have been paid by the insurance if the claim had been timely
3 filed.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that parents have a duty to
5 mitigate medical expenses for the children. Absent compelling circumstances, a parent should take the
6 children to a health care provider covered by the insurance in effect and use preferred providers if
7 available in order to minimize the cost of health care as much as possible. The burden is on the parent
8 using a non-covered health care provider to demonstrate that the choice not to use a covered provider
9 or the lowest cost option was reasonably necessary in the particular circumstances of that case. If the
10 court finds the choice of a non-covered or more expensive covered provider was not reasonably
11 necessary then the court may impose a greater portion of the financial responsibility for the cost of
12 that health care to the parent who incurred that expense up to the full amount, which would have been
13 provided by the lowest cost insurance choice.

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parent providing
15 insurance coverage for the children of the parties has a continuing obligation to provide insurance
16 information including, but not limited to, copies of policies and changes thereto as they are received,
17 claim forms, preferred provider lists initially and as they change from time to time, identification cards,
18 explanation of benefits and any documents that would trigger or are related to an appeal from the
19 denial of coverage. The failure of the insuring parent to timely supply any of the above items to the
20 other parent, which results in the claim for treatment being denied by the insurance company in whole
21 or in part may result in the amount which would have been paid by the insurance policy being paid by
22 the insuring parent.

23 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that a parent receiving the
24 request for contribution related to a medical expenses incurred on behalf of the children must raise
25 any questions about the correctness of the request for the contribution within the thirty (30) day period
26 after the request for contribution is received. Any objection to the request for contribution must be
27 made in writing with a copy made for later reference by the court. If the parent receiving a request for
28 contribution does not respond to the request within the thirty (30) day period that parent may be

1 assessed attorney's fees if a contempt proceeding or court action is required as a result of the parent
2 doing nothing. If the parent who owes contribution for health care expense of a child of the parties
3 does not pay the amount due within the thirty (30) day period and fails to respond, then that parent is
4 responsible for one hundred percent (100%) of the unreimbursed medical expense rather than the
5 normal fifty percent (50%).

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if either parent receives
7 a payment from an insurance company or medical provider which reimburses payments made out-of-
8 pocket previously by both parents, or the other parent only, the party receiving the payment must give
9 the other parent's portion of the payment to the other parent within seven (7) days of receipt of the
10 payment.

11 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if either party submits
12 a claim for payment to the insurance company directly, that parent must do so in a timely manner.
13 Failure of a party to comply with this requirement may result in that party being required to pay the
14 entire amount of the claim which would have been paid by insurance if timely submitted and one-half
15 of that amount which would have been paid by insurance.

16 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if a party is required to
17 provide health insurance for the children of the parties and that party fails to obtain or maintain such
18 coverage or if that party loses the ability to continue coverage for the children, the court may require
19 that party to pay all of the medical expense which would have been covered by insurance if it had been
20 in effect.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties will submit
22 the information required in NRS 125B.055, NRS 125.130, and NRS 125.230, on a separate form, to
23 the court and the Welfare Division of the Department of Human Resources, within ten (10) days from
24 the date this Order is filed. The parties will update the information filed with the court and the Welfare
25 Division of the Department of Human Resources within ten (10) days should any information become
26 inaccurate.

ASSETS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Raina shall be awarded the following as her sole and separate property:

1. The marital residence located at 11181 Mezzana Street, Las Vegas, Nevada, 89141 (hereinafter "marital residence"). Raina shall have fifteen (15) months from June 1, 2015 to refinance or otherwise remove Erich's name from the loan on the marital residence. If Raina is unable to refinance or otherwise remove Erich's name from the loan on the marital residence within those fifteen (15) months, Erich shall then have the right to force the sale of the marital residence to remove his name from the loan. Additionally, if Raina is so much as one (1) day late on the payment while Erich's name is on the loan, she shall immediately notify Erich, wherein Erich shall have the right to force the sale of the marital residence to remove his name from the loan. Any sale of the residence shall be commercially reasonable.
2. Any bank accounts or other financial institution accounts titled in Raina's name alone or held jointly with anyone other than Erich.
3. The 2012 Mercedes GLK 350, subject to any and all encumbrances.
4. One-half (1/2) of the marital interest in the Erich's military retirement, pursuant to the time rule established in Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990). The parties shall use Marshal S. Willick, Esq. to prepare a Qualified Domestic Relations Order (hereinafter "QDRO"), or similar instrument to divide the pension. The parties shall equally divide the costs of preparing such an instrument. Should Erich select to accept military disability payments, Erich shall reimburse Raina for any amount that her share of the pension is reduced due to the disability status.
5. All personal property in Raina's possession or control, including but not limited to household furniture, furnishings, appliances, electronics, jewelry, clothing, and memorabilia.

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Erich shall be awarded
2 the following as his sole and separate property:

- 3 1. Any bank accounts, retirement accounts and other financial institution accounts titled in
4 Erich's name alone or held jointly with anyone other than Raina.
- 5 2. The Thrift Savings Plan in Erich's name alone, account ending in 54177.
- 6 3. The IRA in Erich's name alone.
- 7 4. 2014 Ford F-150, subject to any and all encumbrances.
- 8 5. One-half (1/2) of the marital interest in the Erich's military retirement, pursuant to the time
9 rule established in Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458, 778
10 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990). The parties
11 shall use Marshal S. Willick, Esq. to prepare a QDRO, or similar instrument to divide the
12 pension. The parties shall equally divide the costs of preparing such an instrument. Should
13 Erich select to accept military disability payments, Erich shall reimburse Raina for any
14 amount that her share of the pension is reduced due to the disability status.
- 15 6. All personal property in Erich's possession or control, including but not limited to
16 household furniture, furnishings, appliances, electronics, jewelry, clothing, and
17 memorabilia.

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Raina shall be
19 permitted to maintain a life insurance policy on Erich, and may choose the amount, term, and
20 beneficiary. Raina shall pay for the cost of the policy, and any associated fees and/or costs. Erich
21 shall cooperate in the execution of such a policy by signing any documents, providing any records,
22 and performing any medical examinations needed for the issuance of the policy.

23 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each party represents
24 that each and every asset valued at \$500.00 or more has been disclosed and distributed herein.

25 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that in the event any
26 property has been omitted from this Decree that would have been community property or otherwise
27 jointly-held property under the law applicable as of the date hereof, the concealing or possessory party
28 will transfer or convey to the other party, at the other party's election: (a) the full market value of the

1 other party's interest on the date of this Decree, plus statutory interest through and including the date
2 of transfer or conveyance; (b) the full market value of the other party's interest in such property, plus
3 statutory interest through and including the date of transfer or conveyance; or (c) an amount of the
4 omitted property equal to the other party's interest therein, if it is reasonably susceptible to division.

5 DEBTS

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the following
7 community debts shall be awarded to Raina as her sole and separate obligation, and Raina agrees to
8 indemnify and hold Erich harmless therefrom:

- 9 1. Any and all debts, including credit cards, held solely in her name alone.
- 10 2. Any encumbrances on the 2012 Mercedes GLK 350.
- 11 3. Any and all student loans in Raina's name alone.
- 12 4. Any and all obligations relating to the property awarded to her in this Decree of Divorce.

13 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the following
14 community debts shall be awarded to Erich as his sole and separate obligation, and Erich agrees to
15 indemnify and hold Raina harmless therefrom:

- 16 1. Any and all debts, including credit cards, held solely in his name alone.
- 17 2. Any encumbrances on the 2014 Ford F-150.
- 18 3. Any and all obligations relating to the property awarded to him in this Decree of Divorce.

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each party to whom the
20 community debt sets forth in the preceding paragraphs are to be assigned will endeavor within thirty
21 (30) days of the entry of the parties' Decree of Divorce, to remove the other party's name as a
22 responsible party for those various community debts, vis a vis the respective creditors, unless
23 otherwise specified herein. The parties understand that this Court is without jurisdiction to order any
24 such creditor to so act, and in the case of a breach of this Agreement by either party, said creditors
25 may have, as one of their available remedies the option of pursuing payment for any of the
26 aforementioned community debts, from the party designated as the non-responsible party under this
27 Agreement, should the removal of the party's name from the debt have been impossible prior to that
28 time. The party being so held, in turn, has as his or her remedy the ability to seek redress of this Court

1 to hold the other in contempt of this Agreement. Understanding the foregoing, the parties agree that,
2 should immediate removal of the other party's name from these respective community debts be
3 impossible, via a vis the respective creditors, the responsible party shall attempt at least once per year,
4 to accomplish said removal, and provide documentary proof of such attempt, successful or not, to the
5 other, paying any and all fees associated therewith. Each party shall pay any and all other debts
6 separately acquired by that party, holding the non-acquiring party harmless therefrom.

7 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each party agrees that
8 if any claim, action or proceeding is brought seeking to hold the other party liable on account of any
9 debt, obligation, liability, act or omission assumed by the other party, such party will, at his or her sole
10 expense, defend the other against any such claim or demand and that he or she will indemnify, defend
11 and hold harmless the other party.

12 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if any joint debt,
13 obligation, liability, act or omission creating such liability has been omitted from this Decree and is
14 subsequently discovered, either party may petition the Court for an allocation of that debt, obligation,
15 liability, or liability arising from such act or omission.

16 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties each have
17 verified to the other that they have made a full disclosure of all debts known to them.

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that except as specifically
19 set forth herein, each party hereto is released and absolved from any and all obligations and liabilities
20 for future acts and duties of the other, and except as specified herein, each of the parties hereby releases
21 the other from any and all liabilities, debts, or obligations of every kind or character incurred up to
22 this date.

23 **ALIMONY**

24 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that alimony as set forth
25 herein is modifiable within the meaning of Nevada law as articulated in *Ballin v. Ballin*, 78 Nev. 224,
26 371 P.2d 32 (1962), *Rush v. Rush*, 82 Nev. 59, 410 P.2d 757 (1966) and *Renshaw v. Renshaw*, 96 Nev.
27 541, 611 P.2d 1070 (1980).
28

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Erich shall pay Raina
2 the amount of \$1,000.00 per month for twenty-four (24) months beginning June, 2015. Alimony
3 payments shall be due on the last day of every month.

4 **TAXES**

5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties shall file
6 separate tax returns starting with the 2015 tax year and each year thereafter. Raina shall claim Nathan
7 for tax purposes each and every year, beginning with the 2015 tax year.

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the amounts received
9 by either party pursuant to the section titled "Assets" are considered property division pursuant to a
10 divorce and are not a taxable event.

11 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties are place on
12 notice of the following:

13 **Circular 230 Disclosure:** To ensure compliance with recently-enacted U.S. Treasury
14 Department Regulations, the parties are advised that, unless otherwise expressly indicated, any
15 federal tax advice that may be in this Decree of Divorce, or which otherwise may pertain to
16 this Decree and/or any issue that may be incident to the parties' divorce or their marriage to
each other, including any documents attached to this Decree, is not intended or written to be
used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may
be imposed by the federal government for promoting, marketing or recommending to another
party any tax-related matters that may be addressed in this Decree or otherwise.

17 **MISCELLANEOUS**

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each party shall execute
19 any and all legal documents, certificates of title, bills of sale, quitclaim deeds or other evidence of
20 transfer necessary to effectuate this Decree within thirty (30) days of the entry of this Decree, unless
21 specified otherwise above. Should either party fail to execute any of said documents to transfer interest
22 to the other, then it is agreed that this Decree shall constitute a full transfer of the interest of one to the
23 other, as herein provided, and it is further agreed that pursuant to NRCP 70, the Clerk of the Court,
24 STEVEN D. GRIERSON, shall be deemed to have hereby been appointed and empowered to sign, on
25 behalf of the non-signing party, any of the said documents of transfer which have not been executed
26 by the party otherwise responsible for such.

27 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each of the parties
28 hereby waives and renounces any and all rights to inherit the estate of the other at the other's death,

1 or to receive any property of the other under a Will, Codicil or any other testamentary instrument,
2 including any trust or life insurance, signed before the date of this Decree, or to claim any family
3 allowance or other interest or to act as executor or personal representative under the other party's Will
4 signed before the date of this Decree, or to otherwise act as administrator of the other's estate except
5 as to the nominee of another person who is legally entitled to make nominations for the administrator.

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the provisions in this
7 Decree are fair and reasonable and the parties agree to be bound by all its terms. The parties further
8 acknowledge that they have made an independent investigation into the existence and value of the
9 assets and the liabilities divided hereunder, and the tax consequences, if any, and that upon the parties'
10 direction, that Ramir Hernandez, Esq., and Jason Naimi, Esq. and/or the law firm of Standish Naimi
11 Law Group, did not conduct an investigation or analysis of said assets and liabilities. Both parties
12 hereby waive any and all claims against said attorneys or their respective law firms related to the value
13 and/or existence of any asset or debt divided hereunder of the tax consequences resulting therefrom.
14 The parties further acknowledge that they did not receive tax advice from Ramir Hernandez, Esq., and
15 Jason Naimi, Esq. and/or the law firm of Standish Naimi Law Group, and the parties have been advised
16 to seek the advice of a tax expert for any tax related questions they may have.

17 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each party
18 acknowledges that they have read this Decree of Divorce and fully understand the contents and accept
19 the same as equitable and just, that the parties agree this Decree of Divorce has been reached via
20 negotiation and in the spirit of compromise, and that there has been no promise, agreement or
21 understanding of either of the parties to the other except as set forth herein, which have been relied
22 upon by either as a matter of inducement to enter into this agreement, and each party hereto has had
23 the opportunity and actually has been independently advised by an attorney. The parties further
24 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that each
25 provision herein is made in consideration of all the terms in the Decree of Divorce as a whole. The
26 parties further acknowledge that they have entered into this stipulated Decree of Divorce without
27 undue influence or coercion, or misrepresentation, or for any other cause except as stated herein.
28

STANDISH NAIMI LAW GROUP
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134
Telephone: (702) 998-9344 Fax: (702) 998-7460

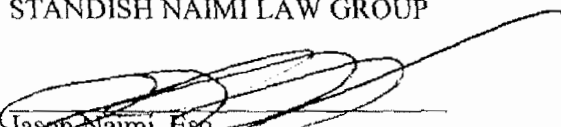
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each party shall each
2 bear one hundred percent (100%) of their own attorney's fees and costs.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Raina shall return to
4 her maiden name as her full and legal name if she so chooses.

5 Dated this 5th day of NOV., 2015.

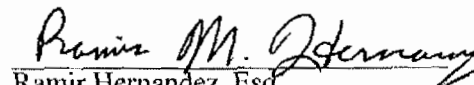
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7 
8 DISTRICT COURT JUDGE


9 Respectfully submitted by:
10 STANDISH NAIMI LAW GROUP

11 
12 Jason Naimi, Esq.
13 Nevada State Bar No. 9441
14 Francesca M. Resch, Esq.
15 Nevada State Bar No. 13011
16 1635 Village Center Circle, Ste. 180
17 Las Vegas, NV 89134
18 Tel: (702) 998-9344
19 Fax: (702) 998-7460
20 Email: jason@standishnaimi.com
21 Attorneys for Plaintiff

22
23
24
25
26
27
28
Erich Martin, Plaintiff

Approved as to form and content by:
BROOKS HUBLEY, LLP

29 
30 Ramir Hernandez, Esq.
31 Nevada State Bar No. 13146
32 1645 Village Center Circle, Suite 200
33 Las Vegas, Nevada 89134
34 Tel: (702) 851-1191
35 Fax: (702) 851-1198
36 Email: rhernandez@brookshubley.com
37 Attorney for Defendant

38 
39 Raina Martin, Defendant

STANDISH NAIMI LAW GROUP
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134
Telephone: (702) 998-9344 Fax: (702) 998-7460

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each party shall each
2 bear one hundred percent (100%) of their own attorney's fees and costs.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Raina shall return to
4 her maiden name as her full and legal name if she so chooses.

5 Dated this _____ day of _____, 2015.

6
7
8 **DISTRICT COURT JUDGE**

9 Respectfully submitted by:
STANDISH NAIMI LAW GROUP

Approved as to form and content by:
BROOKS HUBLEY, LLP

10
11 Jason Naimi, Esq.
Nevada State Bar No. 9441
12 Francesca M. Resch, Esq.
Nevada State Bar No. 13011
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Attorneys for Plaintiff

Ramir M. Hernandez
Ramir Hernandez, Esq.
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1645 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Tel: (702) 851-1191
Fax: (702) 851-1198
Email: rhernandez@brookshubley.com
Attorney for Defendant

16
17
18 *Erich Martin*
Erich Martin, Plaintiff

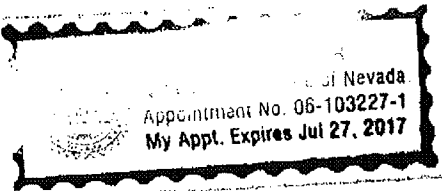
Raina Martin
Raina Martin, Defendant

STANDISH NAIMI LAW GROUP
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134
Telephone: (702) 998-9344 Fax: (702) 998-7460

ACKNOWLEDGEMENT

STATE OF NEVADA)
COUNTY OF CLARK) ss.

On this 4th day of September, 2015, before me the undersigned, a Notary Public in and for said County and State, personally appeared **Raina Martin**, known to me or proved to me to be the person described in and who executed the foregoing instrument, who acknowledged to me she executed the same freely and voluntarily and for the purpose therein mentioned.



Dana K. Taylor
Notary Public

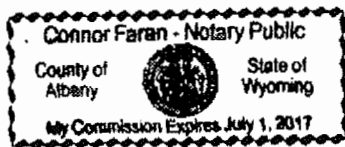


STANDISH NAIMI LAW GROUP
1635 Village Center Circle, Suite 190 Las Vegas, NV 89134
Telephone: (702) 998-9344 Fax: (702) 998-7460

ACKNOWLEDGEMENT

STATE OF WYOMING)
COUNTY OF Albany) ss.

On this 20th day of October, 2015, before me the undersigned, a Notary Public in and for said County and State, personally appeared Erich Martin, known to me or proved to me to be the person described in and who executed the foregoing instrument, who acknowledged to me he executed the same freely and voluntarily and for the purpose therein mentioned.



[Signature]
Notary Public

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No. 263, Section 16:

1. If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

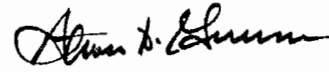
(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359

Exhibit D

1 **ORDR**
2 RAINA MARTIN
3 2812 Josephine Dr.
4 Henderson, Nevada 89044
5 Defendant in *Proper Person*


CLERK OF THE COURT

6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 ERICH M. MARTIN,
10 Plaintiff,

CASE NO: D-15-509045-D
DEPT. NO: C

11 vs.

12 RAINA L. MARTIN,
13 Defendant.

DATE OF HEARING: N/A
TIME OF HEARING: N/A

14 **ORDER INCIDENT TO DECREE OF DIVORCE**

15 This *Order* is intended to set out terms dividing the military retirement
16 benefits, in sufficient detail to allow the Defense Finance and Accounting
17 Service (DFAS) and the parties to correctly allocate Raina's percentage in
18 accordance with the parties' *Decree of Divorce*. This Court has continuing
19 jurisdiction in accordance with the rules and regulations of the State of
20 Nevada, and the State of Nevada has both personal and subject matter
21 jurisdiction over the parties, and enters this *Order Incident to Decree of*
22 *Divorce* for the purpose of completing and clarifying the division of benefits
23 contemplated by the *Decree of Divorce*.

24 **THE COURT FINDS AS FOLLOWS:**

- 25 1. It has continuing jurisdiction over the parties and the subject matter of
26 this action.
27 2. All applicable portions of the Servicemember's Civil Relief Act
28 (SCRA), 50 U.S.C. 3901 et seq. (Dec. 1, 2015), have been complied
with by waiver or otherwise.

1 3. This Court has determined that Raina is entitled to her time-rule
2 percentage of Erich's military retirement benefits.

3 4. The *Decree of Divorce* entered on November 5, 2015, does not make an
4 adequate distribution of Raina's interest in Erich's military retirement
5 benefits or Cost of Living Adjustments. This *Order* is intended to
6 clarify this Court's intention.

7 5. This *Order* is intended to be, and shall constitute an *Order Incident to*
8 *Decree of Divorce* in accordance with 10 U.S.C. § 1408(a)(2), and is
9 intended to clarify the *Decree of Divorce*.

10 6. The parties were married on April 1, 2002, and divorced as of November
11 5, 2015.

12 7. Erich entered military service on July 13, 1999, and remains on active
13 duty.

14 8. The share that each party is entitled should be determined pursuant to
15 the "time-rule" formula which designates the number of months of
16 marriage overlapping military service and dividing it by the total number
17 of months of active military service. This fraction and equivalent
18 percentage establishes the community share of the total benefit. The
19 resulting community share is then divided equally between the parties,
20 and multiplied by the benefit payable.

21

22 Number of Months of Marriage Overlapping
23 Creditable Military Service (163.154) = _____ % The Marital
24 Number of Total Months of Active Service (unknown at this time) Percentage

25 Marital Percentage divided by 2 = _____ % The Spousal Percentage
26 of Benefit

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1 9. Raina is entitled to receive any cost of living adjustments (COLAs) that
2 are awarded from time to time for military retired pay, based upon the
3 same percentage outlined above.

4 10. Raina has the right to obtain information relating to Erich's date of first
5 eligibility to retire, date of first eligibility to receive retirement benefits,
6 date of retirement, final rank, grade, and pay, present or past retired pay,
7 or other such information as may be required to enforce the award made
8 herein, or required to revise this order so as to make it enforceable, per
9 65 Fed. Reg. 43298 (July 13, 2000).

10
11 **THE COURT HEREBY ORDERS:**

12 1. This Court has complete jurisdiction in the premises, both as to subject
13 matter and the parties, under NRS 125 and 10 U.S.C. § 1408 et. seq.,
14 and the Court has jurisdiction over Erich by reason of his residence at
15 the time of the filing of the Petition for Divorce and by way of consent
16 to the jurisdiction of the Court, and all applicable portions of the Service
17 Members Civil Relief Act of 2003 have been complied with by waiver
18 or otherwise.

19 2. Raina is awarded her time-rule interest in the military retirement for
20 which Erich is eligible, plus a like percentage of all cost of living
21 adjustment increases that accrue to said military retirement hereafter,
22 computed from the gross sum thereof, as her sole and separate property
23 share thereof, and the obligation shall not be dischargeable in
24 bankruptcy or otherwise.

1 3. For the purpose of interpreting this Court's intention in making the
2 division set out in this Order, "military retirement" includes retired pay
3 paid or to which Erich would be entitled for longevity of active duty
4 and/or reserve component military service and all payments paid or
5 payable under the provisions of Title 38 or Chapter 61 of Title 10 of the
6 United States Code, before any statutory, regulatory, or elective
7 deductions are applied. It also includes all amounts of retired pay Erich
8 actually or constructively waives or forfeits in any manner and for any
9 reason or purpose, including but not limited to any post-divorce waiver
10 made in order to qualify for Veterans Administration benefits, or
11 reduction in pay or benefits because of other federal employment, and
12 any waiver arising from Erich electing not to retire despite being
13 qualified to retire. It also includes any sum taken by Erich in addition
14 to or in lieu of retirement benefits, including, but not limited to, REDUX
15 lump sum payments, exit bonuses, voluntary separation incentive pay,
16 special separation benefit, or any other form of compensation
17 attributable to separation from military service instead of or in addition
18 to payment of the military retirement benefits normally payable to a
19 retired member. All sums payable to Raina as a portion of military
20 retirement shall be payable from Erich's disposable retired or retainer pay
21 to the extent that it is so restricted by law.

22 4. The appropriate military pay center shall pay the sums called for above
23 directly to Raina, to the extent permitted by law, at the same times as
24 Erich receives his retired or retainer pay, and that this *Order* is intended
25 to qualify under the *Uniformed Services Former Spouses Protection Act*,
26 10 U.S.C. § 1408 et seq., with all provisions to be interpreted to make
27
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- 1 the *Order* qualify.
- 2 5. The amount called for herein shall not be modifiable by the direct or
3 indirect action of either party hereto, either by way of increase or
4 decrease, except as expressly set forth herein. It is contemplated that
5 future cost of living adjustments will be granted by the United States
6 government, by means of which the gross military retirement benefits
7 specified above will increase, thus raising the amount being paid to
8 Raina.
- 9 6. If Erich takes any steps to merge his military retirement benefits with
10 another retirement program of any kind, that retirement system,
11 program, or plan is directed to honor this court Order to the extent of
12 Raina's interest as set out above, to the extent that the military
13 retirement is used as a basis of payments or benefits under such other
14 retirement system, program, or plan.
- 15 7. If Erich takes any action that prevents, decreases, or limits the collection
16 by Raina of the sums to be paid hereunder (by application for or award
17 of disability compensation, combination of benefits with any other
18 retired pay, waiver for any reason, including as a result of other federal
19 service, or in any other way), he shall make payments to Raina directly
20 in an amount sufficient to neutralize, as to Raina, the effects of the
21 action taken by Erich. Any sums paid to Erich that this court *Order*
22 provides are to be paid to Raina shall be held by Erich in constructive
23 trust until actual payment to Raina.
- 24 8. If the amount paid by the military pay center to Raina is less than the
25 amount specified above, Erich shall initiate an allotment to Raina in the
26 amount of any such difference, to be paid from any federal entitlement
27

1 due Erich, with said allotment to be initiated by Erich immediately upon
2 notice of such difference, and making up any arrearages in installments
3 not less in amount or longer in term than the arrearages accrued.

4 9. The appropriate military pay center shall pay the sums called for herein
5 directly to Raina, by voluntary allotment, involuntary allotment, wage
6 withholding, or garnishment of Erich's military retired pay.

7 10. The Court shall retain jurisdiction to enter such further orders as are
8 necessary to enforce the award to Raina of the military retirement
9 benefits awarded herein, including the recharacterization thereof as a
10 division of Civil Service or other retirement benefits, or to make an
11 award of alimony (in the sum of benefits payable plus future cost of
12 living adjustments) in the event that Erich fails to comply with the
13 provisions contained above requiring said payments to Raina, or if
14 military or government regulations or other restrictions interfere with
15 payments to Raina as set forth herein.

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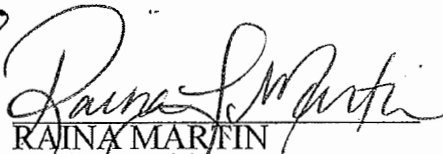
1 11. Raina has the right to obtain information relating to Erich's date of first
2 eligibility to retire, date of first eligibility to receive retirement benefits,
3 date of retirement, final rank, grade, and pay, present or past retired pay,
4 or other such information as may be required to enforce the award made
5 herein, or required to revise this order so as to make it enforceable, per
6 65 Fed. Reg. 43298 (July 13, 2000).

7 DATED this 9 day of Nov, 2016.

8 
9 **DISTRICT COURT JUDGE**

10 Approved as to Form and Content: Respectfully Submitted by:

11 
12
13 **ERICH MARTIN**
14 1012 E. Lyons St.
15 Larami, WY 82072
Plaintiff in *Proper Person*

16 
17
18 **RAINA MARTIN**
19 2812 Josephine Dr.
20 Henderson, Nevada 89044
21 Defendant in *Proper Person*

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On this 23 day of September, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared ERICH MARTIN, known to me to be the person described herein and who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein mentioned.

Wm Allen Dwyer - Jr
NOTARY PUBLIC in and for said
 County and State
LARIMER & CO



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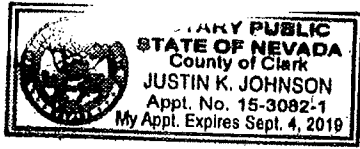
ACKNOWLEDGMENT

STATE OF NEVADA }
COUNTY OF CLARK }

On this 3 day of November, 2016, before me, the undersigned
Notary Public in and for said County and State, personally appeared RAINA
MARTIN, known to me to be the person described herein and who executed
the foregoing instrument, and who acknowledged to me that she did so freely
and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.


NOTARY PUBLIC in and for said
County and State



\\wlgserver\company\wp16\MARTIN,R\PLEADINGS\00122850.WPD\jj

Exhibit E

1 ORDR

2 DISTRICT COURT, FAMILY DIVISION

3 CLARK COUNTY, NEVADA

4 ERICH M. MARTIN,

5 Plaintiff,

6 vs.

7 RAINA L. MARTIN,

8 Defendant.

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CASE NO. D-15-509045-D
DEPT NO. C

Under Submission

9 ORDER REGARDING ENFORCEMENT OF
10 MILITARY RETIREMENT BENEFITS

11 THIS MATTER having come before the Court on Defendant, Raina L.
12 Martin ("Raina")'s *Motion to Enforce* filed and served electronically on
13 May 1, 2020, and on Plaintiff, Erich M. Martin ("Erich")'s *Defendant's*
14 *Opposition* filed and served by e-mail and mail on June 5, 2020; Erich is
15 represented by Attorney John T. Kelleher of Kelleher and Kelleher, LLC,
16 and Raina is represented by Attorneys Marshal S. Willick and Richard L.
17 Crane of Willick Law Group, the Court having reviewed the pleadings and
18 papers on file herein, and good cause appearing therefor

19 ////

20 ////

21 Page 1 of 24

1 Facts

2 On November 5, 2015, a *Decree of Divorce* reached by agreement
3 between the parties was entered by the Court containing the following
4 provision:

5 IT IS FURTHER ORDERED, ADJUDGED, AND
6 DECREED that Raina shall be awarded the following as her sole
and separate property:

7 4. One-half (1/2) of the marital interest in the Erich's
8 military retirement, pursuant to the time rule established in
9 Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458,
10 778 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d
11 1264 (1990). The parties shall use Marshal S. Willick, Esq. to
12 prepare a Qualified Domestic Relations Order (hereinafter
"QDRO"), or similar instrument to divide the pension. The
parties shall equally divide the costs of preparing such an
instrument. ***Should Erich select to accept military
disability payments, Erich shall reimburse Raina for
any amount that her share of the pension is reduced
due to the disability status.***

13 [Emphasis added.]

14 On November 10, 2015, *Notice of Entry of Decree of Divorce* was filed
15 and served.

16 On November 14, 2016, an *Order Incident to Decree of Divorce* was
17 entered and submitted to the military to effectuate the parties' *Decree of*
18 *Divorce*. The *Order Incident to Decree of Divorce* provides in particular
19 that Raina's share of Erich's military retired pay "also includes all amount
20 of retired pay Erich actually or constructively waives or forfeits in any

1 manner and for any reason or purpose, including but not limited to any
2 post-divorce waiver made in order to qualify for Veterans Administration
3 benefits;" that it is "intended to qualify under the Uniformed Services
4 Former Spouses Protection Act, 10 U.S.C. Sec. 1408 et seq.;" that if Erich
5 obtained a disability waiver, "he shall make payments to Raina directly in
6 an amount sufficient to neutralize, as to Raina, the effects of the action
7 taken by Erich;" and that the Court shall retain jurisdiction to enforce the
8 award to Raina of military retirement benefits by making an award of
9 alimony.

10 Erich argues that he did not sign the *Order Incident to Decree of*
11 *Divorce* voluntarily but was forced to do so by the Court. The Court
12 reviewed a hearing held September 22, 2016 during which Raina orally
13 raised the issue that Erich had not yet signed and returned the prepared
14 document. When the Court asked Erich for status, he did not protest the
15 language, but had not signed due to other unrelated unresolved matters
16 between the parties. Accordingly, the Court ordered Erich to return the
17 signed document and he did. The *Order Incident to Decree of Divorce* was
18 entered by the Court, but there is no *Notice of Entry of Order*.

19 Nevertheless, Raina received payments from DFAS in November and
20 December 2019 (\$844.08 per month) and January 2020 (\$845.43). In late

1 January 2020, DFAS notified Raina that they would no longer be sending
2 payments to Raina. Upon further inquiry in February 2020, Raina learned
3 that Erich opted for full disability as Combat Related Special Compensation
4 (“CRSC”) and would be receiving a tax free payment from the Veterans
5 Administration. Raina would no longer receive any payments from DFAS.

6 Raina asked Erich to continue to pay her directly as they agreed in
7 their *Decree of Divorce*. Citing the U.S. Supreme Court’s recent decision in
8 *Howell v. Howell*, 137 S.Ct. 1400, 1402, 197 L.Ed.2d 781 (2017), Erich
9 refused to do so. Accordingly, Raina brought this action to enforce the
10 provisions of the *Decree of Divorce* and the *Order Incident to Decree* for
11 reimbursement and spousal support (“indemnification provisions”). It is
12 Erich’s position that the indemnification provisions are unenforceable
13 under *Howell*.

14 History

15 To best understand the issue, it is important to provide a short history
16 of federal law.

17 In 1981, the U.S. Supreme Court decided *McCarty v. McCarty*, 453
18 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981) which held that the federal
19 statutes governing military retired pay preempted the state courts from
20 treating military retired pay as community property on the basis that

1 Congress intended to protect veterans' benefits to ensure that they reach
2 veterans, with the goal of incentivizing participation in the military and
3 maintaining a strong national defense. Acknowledging the hardship the
4 decision may cause to military spouses, the U.S. Supreme Court pointed out
5 that Congress was free to change the statutory law.

6 In 1982, in direct response to *McCarty*, Congress enacted the
7 Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C.
8 § 1408(c)(1), which allowed state courts to treat military retired pay as
9 community property, but expressly excluded military retired pay waived in
10 order to receive military disability benefits.

11 In 1989, USFSPA was interpreted by the U.S. Supreme Court in
12 *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989).
13 In their opinion, the U.S. Supreme Court explained federal law provides
14 that veterans who became disabled as a result of military service are eligible
15 for disability benefits. Those benefits are calculated according to the
16 seriousness of the disability and the degree to which the veteran's ability to
17 earn a living has been impaired. In order to prevent double dipping, a
18 military retiree may receive veteran's disability benefits in exchange for
19 waiving a corresponding amount of his military retirement pay. Because
20 disability benefits are exempt from taxation, the disabled veteran's income

1 is increased. *Id.* 490 U.S. 583-84, 109 S.Ct. 2026, 104 L.Ed.2d. The result
2 to the former spouse, however, is a loss of benefits which have been
3 converted from military retired pay, which may be considered by the state
4 as marital property, to veteran's disability benefits, which may not be
5 considered by the state as marital property.

6 The *Mansell* divorce occurred prior to *McCarty* and prior to
7 enactment of USFSPA. At that time, the veteran had already waived a
8 portion of his military retired pay for veteran's disability benefits and was
9 receiving both military retired pay and veteran's disability benefits. To
10 settle the divorce, the veteran agreed to pay to his former spouse 50% of
11 both his military retired pay and his veteran's disability benefits. Years
12 later, after enactment of USFSPA, the veteran asked a California court to
13 remove from the decree of divorce the provision requiring him to pay 50%
14 of his veteran's disability benefits to his former spouse. The veteran's
15 request was denied, and he appealed without success. Eventually, the
16 matter was heard by the U.S. Supreme Court which reversed the California
17 court by holding that USFSPA grants state courts the authority to divide
18 military retired pay as community property, but it did not grant state courts
19 the authority to divide the military retired pay waived in order to receive
20 veterans' disability benefits. The Court recognized that USFSPA was "one

1 of those rare instances where Congress has directly and specifically
2 legislated in the area of domestic relations.” *Id.* 490 U.S. at 587, 109 S.Ct. at
3 2028.

4 But, the *Mansell* story did not end at the U.S. Supreme Court. On
5 remand, the California court still refused to change the result based, not on
6 the principles of community property law and the federal preemption of
7 state law characterization of veteran’s disability benefits as decided by the
8 U.S. Supreme Court, but on the principles of *res judicata*. In a footnote,
9 the U.S. Supreme Court expressly acknowledged that the issue of *res*
10 *judicata* is a matter of state law “over which we have no jurisdiction.” 490
11 U.S. at 586 n.5. The California court reasoned that because the veteran
12 consented to the otherwise incorrect result when he signed the property
13 settlement agreement, “he is therefore barred from complaining.” *In re*
14 *Marriage of Mansell*, 217 Cal.App.3d 219, 230, 265 Cal.Rptr. 227, 233 (Ct.
15 App. 1989) on remand from 490 U.S. 581, 109 S.Ct. 2023 (1989). The U.S.
16 Supreme Court denied certiorari allowing the California court’s order to
17 stand. *Mansell v. Mansell*, 498 U.S. 806, 111 S.Ct. 237, 112 L.Ed.2d 197
18 (1990). Moreover, although *Mansell* concerned an agreement, the
19 agreement did not contain a contractual indemnification provision, leaving
20 enforceability of such a provision unresolved.

1 In 2016, after *McCarty*, USFSPA, and *Mansell*, Erich and Raina
2 contemplated the probability that Erich would eventually waive his military
3 retired pay for veteran's disability benefits. Therefore, through their
4 *Decree of Divorce*, Erich and Raina chose indemnification as a resolution
5 which had become a common and prudent means of addressing the issue
6 whereby Erich agreed to reimburse Raina if he chose to waive his military
7 retired pay in favor of veteran's disability benefits. Through their *Order*
8 *Incident to Decree*, the parties further agreed that the reimbursement
9 would be in the form of spousal support.

10 In 2017, 28 years after *Mansell*, the U.S. Supreme Court addressed
11 indemnification by state courts in the case of *Howell v. Howell*, 137 S.Ct.
12 1400, 197 L.Ed.2d 781 (2017). In *Howell*, an Arizona court awarded the
13 former spouse 50% of the military member's retired pay. About 13 years
14 later, the veteran waived a portion of his military retired pay in exchange
15 for veteran's disability benefits resulting in substantial reduction of the
16 former spouse's share. The Arizona court restored the full 50% to the
17 spouse, but was reversed by the U.S. Supreme Court which held that a state
18 court does not have jurisdiction to order the division of veteran's disability
19 benefits on the basis that "federal law ... [has] completely pre-empted the

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1 application of state community property law to military retirement pay.”
2 *Id.* 137 S.Ct. at 1403, 197 L.Ed.2d at 786. Finding that the purpose of a
3 reimbursement or indemnification order was to restore a community
4 property right in the original military retirement, the U.S. Supreme Court
5 reasoned that all such state orders are preempted. Moreover, it does not
6 matter whether the disability election was taken before the decree was
7 entered (*Mansell*) or after the decree was entered (*Howell*), because
8 “[s]tate courts cannot “vest” that which (under governing federal law) they
9 lack the authority to give.” *Id.* 1405. Recognizing that their interpretation
10 may impose hardship to the former spouse, the U.S. Supreme Court
11 offered:

12 [A] family court, when it first determines the value of a
13 family’s assets, remains free to take account of the contingency
14 that some military retirement pay might be waived, or, as the
15 petitioner himself recognizes, take account of reductions in
16 value when it calculates or recalculates the need for spousal
17 support.

18 *Id.* at 1406.

19 Notably, *Howell* did not concern an indemnification agreement
20 between the parties, but a court created indemnification remedy after the
21 waiver was taken. Although *Howell* was silent regarding the enforceability
of a contractual indemnification provision, such an agreement by the

1 parties is not inconsistent with the U.S. Supreme Court's suggestion to take
2 precautions.

3 Post-Howell Decisions

4 Citing their new decision in *Howell*, the U.S. Supreme Court quickly
5 vacated two state court orders forcing veterans to reimburse former
6 spouses in divorce proceedings if they had waived retirement pay in order
7 to receive veteran's disability benefits. *Merrill v. Merrill*, 137 S.Ct. 2156,
8 198 L.Ed.2d 228 (2017) (post-decree indemnification order reversed); and
9 *Cassinelli v. Cassinelli*, 138 S.Ct. 69, 199 L.Ed.2d 2 (2017), (compensation
10 in the form of a dollar-for-dollar alimony award reversed). Notably, both of
11 these cases concerned court remedies and neither involved contractual
12 indemnification.

13 Some state courts have broadly treated military retirement pay waived
14 in favor of veteran's disability benefits to be off limits and will not allow a
15 remedy in any form if the purpose of that remedy is to replace in full the
16 lost military retired pay. In *Hurt v. Jones-Hurt*, 233 Md. App. 610, 168
17 A.3d 992 (Court of Special Appeals of Maryland), Maryland reversed the
18 amendment of a property award as a remedy to a waiver. In *Mattson v.*
19 *Mattson*, 903 N.W.2d 233 (Court of Appeals of Minnesota), Minnesota
20 recognized that prior to *Howell*, "principles of contract and *res judicata*

1 could render a stipulated decree indemnifying an ex-spouse as enforceable,
2 even if it ran afoul of *Mansell*, because ‘parties are free to bind themselves
3 to obligations that a court could not impose,’” *Id.* at 240 then held after
4 *Howell* that contractual principals could not rescue the former spouse’s
5 ability to receive the military retired pay waived for veteran’s disability
6 benefits. In *Vlach v. Vlach*, 556 S.2.3d 219 (Court of Appeals of Tennessee
7 2017), Tennessee held that an agreement for partial indemnification of
8 veteran’s disability benefits was unenforceable. In *Tozer v. Tozer*, 410 P.3d
9 835 (Colorado Court of Appeals, Division IV 2017), Colorado held that
10 retention of jurisdiction in the event of a future waiver is preempted. In
11 *Brown v. Brown*, 260 So.3d 851 (Court of Civil Appeals of Alabama 2018),
12 Alabama held that a contractual indemnification provision was completely
13 preempted. These cases have been criticized by legal scholars.¹

14 More states, however, have taken the suggestion of the U.S. Supreme
15 Court by becoming creative in their remedies after *Howell* or finding
16 alternative theories to avoid an unfair result. In *Lesh v. Lesh*, 257 N.C.App.

17 Page 11 of 24

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19 ¹The Minnesota decision has been criticized as an unnecessarily overbroad reading of
20 *Howell*. *A Change in Military Pension Division: The End of Court-Adjudicated*
21 *Indemnification -- Howell v. Howell*, 44 Mitchell Hamline Law Review (2018); *Military*
Pension Division Cases Post-Howell: Missing the Mark, or Hitting the Target?, Journal
of the American Academy of Matrimonial Lawyers, Vol. 31, March 13, 2019, page 513
which also criticizes as going too far the decisions in *Hurt v. Jones-Hurt*, *Vlach v. Vlach*,
and *Brown, v. Brown*.

1 471, 809 S.E.2d 890 (Court of Appeals of North Carolina 2018), North
2 Carolina found that *Howell* reaffirms and clarifies *Mansell*, but it has no
3 effect on the *Rose*² line of cases therefore the court's order taking into
4 consideration veteran's disability benefits as income for the purposes of
5 making a property settlement payment was not preempted. *In re Marriage*
6 *of Cassinelli*, 20 Cal.App.5th 1267, 229 Cal.Rptr.3d 801 (2018), California,
7 after remand from the U.S. Supreme Court, reversed the spousal support
8 award finding it to be a dollar for dollar replacement for the lost military
9 retired pay. But the case did not end upon that ruling as inferred by Erich,
10 because California remanded the matter for a new trial on the former
11 spouse's request for modification of spousal support indicating that
12 modification of spousal support was not prohibited. In *Gross v. Wilson*,
13 424 P.3d 390 (Supreme Court of Alaska 2018), Alaska held that a
14 settlement agreement dividing veteran's disability benefits is enforceable
15 based on principles of *res judicata* and contract because "nothing in the
16 USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay
17 a former spouse a sum of money that may originate from disability
18 payments" *Id.* at 394. In the *Matter of Marriage of Babin*, 56 Kan.App.2d,
19 709, 437 P.3d 985 (Court of Appeals of Kansas 2019), Kansas held that the

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² *Rose v. Rose*, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

1 parties' agreement did not allow escape from federal preemption which
2 divested the court of jurisdiction to enforce division of the veteran's
3 disability benefits, but as again ignored by Erich, this case was also
4 remanded to allow spousal support to be reconsidered. In *Fattore v.*
5 *Fattore*, 458 N.J. Super. 75, 203 A.3d 151 (2019) New Jersey recognized
6 that other courts were employing res judicata, upholding contractual
7 indemnification provisions, vacating and reallocating assets, and awarding
8 alimony as remedies. In *Edwards v. Edwards*, 132 N.E.3d 391 (2019),
9 Indiana held that although a court's order requiring a veteran to reimburse
10 a former spouse for loss of military retired pay after waiver for CRSC would
11 be incorrect under *Howell*, the court had subject matter jurisdiction to
12 make the order which was enforceable retroactively (but not prospectively
13 under equitable principles) on the basis of *res judicata* because the veteran
14 did not appeal it. In *In re Marriage of Jensen*, Court of Appeals of Iowa,
15 939 N.W.2d 112 (2019), Iowa held that *Howell* did not prevent the Iowa
16 court from awarding to the former spouse all of her retirement accounts
17 because the military spouse was receiving veteran's disability benefits. In
18 *Russ v. Russ*, 456 P.3d 1100 (Court of Appeal of New Mexico 2019), New
19 Mexico held that *Howell*, decided in the middle of the appeal, does not

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1 apply retroactively to invalidate the parties' agreement to divide military
2 retired pay even after waiver for veteran's benefits).

3 Just three months ago on April 29, 2020, Michigan's highest court
4 decided *Foster v. Foster*, ____ Mich. ____, ____ N.W.2d ____ (Supreme
5 Court of Michigan 2020) which shared facts similar with the Martin case
6 concerning enforcement of a consent decree containing an indemnification
7 provision requiring the veteran to pay to his former spouse a sum
8 equivalent to 50% of his military retired pay even though he later elected
9 CRSC benefits. The case was in the process of appeals that originally were
10 favorable to the former spouse. Once the *Howell* case was decided,
11 Michigan reversed itself and, citing the Supremacy Clause of the United
12 States Constitution, ruled that federal preemption prohibited enforcement
13 of the parties' indemnification agreement. The Supremacy Clause of the
14 United States Constitution provides:

15 This Constitution, and the Laws of the United States which
16 shall be made in Pursuance thereof ... shall be the supreme Law
17 of the Land; and the Judges in every State shall be bound
thereby, any Thing in the Constitution or Laws of any State to
the Contrary notwithstanding.

18 Footnote 14, U.S. Constitution, Article VI, Clause 2. Notably, Raina admits
19 that "[s]ometimes, however, Congress wishes to 'occupy the field' in a
20 particular question of law, and generally, it has the power to do so, even

1 when it results in unintended consequences of unjust enrichment and
2 inequity.” Raina’s *Reply* filed June 10, 2020 on page 8. Yet, the *Foster*
3 saga is still not over, because Michigan remanded the case for the court to
4 consider whether the veteran’s action is an impermissible collateral attack
5 against a decree that is *res judicata* even if the decree contained a provision
6 based on a subsequently overruled legal principle. The concurring opinion
7 of this case includes an enlightening discussion of the difference between
8 lack of subject matter jurisdiction (the inability to rule at all resulting in a
9 void order) and the incorrect exercise of subject matter jurisdiction (the
10 ability to make a ruling that, even if incorrect, is subject to *res judicata* if
11 not timely challenged).

12 Finally, just one month ago, Louisiana decided *Boutte v. Boutte*, Court
13 of Appeal of Louisiana, Third Circuit, ____ So.3d ____ (July 8, 2020) WL
14 3818141 and upheld the parties’ indemnification agreement based on
15 principles of *res judicata*.

16 Contract

17 The *Decree of Divorce* reached by agreement between Erich and
18 Raina is a contract, *Grisham v. Grisham*, 128 Nev. 679, 289 P.2d 230
19 (2012); *Anderson v. Sanchez*, 132 Nev. 357, 373 P.3d 860 (2016), the terms
20 of which are not ambiguous. *Mizrachi v. Mizrachi*, 132 Nev. 666, 385 P.3d

1 982 (2016). “Parties are free to contract, and the courts will enforce their
2 contracts if they are not unconscionable, illegal, or in violation of public
3 policy.” *Harrison v. Harrison*, 132 Nev. 564, 567 (2016), 376 P.3d 173, 175
4 (2016) citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226
5 (2009). After *McCarty*, *USFSPA*, and *Mansell*, Erich and Raina themselves
6 took precautions before *Howell* and created an indemnification provision
7 for the anticipated waiver by Erich.

8 Because *Howell* does not concern adjudication of contractual
9 indemnification created by the parties, this Court is not persuaded that
10 *Howell* intended to divest the parties of their right to contract. Indeed,
11 *Howell* is silent on the issue but urges courts to consider and address the
12 possibility of waiver which is exactly what Erich and Raina did prior to
13 *Howell*. Erich’s argument that the written settlement agreement between
14 the parties did not contain a term requiring indemnification is not correct,
15 because the *Decree of Divorce* expressly provides that “[s]hould Erich
16 select to accept military disability payments, Erich shall reimburse Raina
17 for any amount that her share of the pension is reduced due to the
18 disability status.” For all practical purposes, “reimbursement” is the same
19 as “indemnification,” and no case the Court reviewed drew a distinction.

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1 Erich argues that his indemnification agreement is unenforceable. In
2 support of his argument, Erich cites *Boulter v. Boulter*, 113 Nev. 74, 930
3 P.2d 112 (1997) which held that the parties' voluntary agreement to equally
4 divide with each other their federal Social Security benefits was
5 unenforceable, and the district court "was without jurisdiction to enforce
6 an award" regardless of the fact that the agreement was the product of the
7 voluntary negotiations of the parties, because the agreement it was
8 prohibited by the federal statute. *Id.* 80, 115. Erich concludes that the
9 parties' contract is likewise not valid under federal law. This Court agrees
10 that federal social security benefits are not community property divisible by
11 this Court. *See also Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).
12 *Boulter* and *Wolff*, however, both dealt with a different federal law than at
13 issue before this Court. *Boulter* and *Wolff* concerned social security
14 payments which are not community property - not military retired pay
15 (community property) that was waived for veteran's disability benefits (not
16 community property).

17 The case of *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (2003)
18 is controlling, because it expressly embraced the contract theory in military
19 disability indemnification cases. The parties in *Shelton* agreed through the
20 summary joint petition process that the military member would pay to his

1 former spouse a specific sum representing one-half of both the military
2 retired pay and the veteran's disability benefit he was already receiving.
3 Several years later, the military member was reevaluated and elected to
4 waive 100% of his military retired pay for veteran's disability benefits and
5 then stopped paying his former spouse who brought the matter to court.
6 Citing *Mansell I*, the district court denied relief to the former spouse, but
7 was reversed by the Nevada Supreme Court which held that the military
8 member was contractually obligated by the divorce agreement to pay his
9 former spouse an agreed sum. The opinion stated:

10 We conclude that although courts are prohibited by federal
11 law from determining veterans' disability pay to be community
12 property, state law of contracts is not preempted by federal law.
13 Thus, respondent must satisfy his contractual obligations to his
14 former spouse, and the district court erred in denying former
15 spouse's motion solely on the basis that federal law does not
16 permit disability pay to be divided as community property. *Id.*
17 at 493, 508.

18 *See also Hisgen v. Hisgen*, 554 N.W.2d 494, 498 (S.D. 1996) (parties'
19 property settlement agreement dividing military retirement benefits
20 enforced); and *Resare v. Resare*, 908 A.2d 1006 (R.I. 2006) (parties'
21 property settlement agreement dividing military retirement benefits
enforced).

22 ////

1 Res Judicata

2 *Shelton* raises the additional issue of *res judicata*. *Res judicata* was
3 the very same reason the California court in *Mansell II* refused to change
4 the result after remand from the U.S. Supreme Court and for which the U.S.
5 Supreme Court denied certiorari. In its decision, the Nevada Supreme
6 Court stated that “[a]lthough states cannot divide disability payments as
7 community property, states are not preempted from enforcing orders that
8 are *res judicata* or from enforcing contracts or from reconsidering divorce
9 decrees, even when disability pay is involved.” *Id.* at 509. As in *Mansell II*,
10 the U.S. Supreme Court denied certiorari, *Shelton v. Shelton*, 541 U.S. 960,
11 124 S.Ct. 1716, 158 L.Ed.2d 401 (2004).

12 “Generally, the doctrine of *res judicata* precludes parties or those in
13 privity with them from relitigating a cause of action or an issue which has
14 been finally determined by a court of competent jurisdiction.” *Kuptz-*
15 *Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40 (July 9, 2020) citing
16 *University of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191
17 (1994). *Res judicata* or issue preclusion applies when “(1) the issue decided
18 in the prior litigation must be identical to the issue presented in the current
19 action; (2) the initial ruling must have been on the merits and have become
20 final; (3) the party against whom the judgment is asserted must have been

1 a party ... in the prior litigation; and (4) the issue was actually necessarily
2 litigated.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194, P.3d
3 709, 713.

4 In the Martin matter: (1) the issue decided in the prior litigation,
5 resolution of Erich’s military retired pay including waiver for veteran’s
6 disability benefits, is the same in the divorce matter as in the current
7 motion; (2) the initial ruling represented by the *Decree of Divorce* was on
8 the merits and final without appeal; (3) the party against whom the
9 judgment is asserted, Erich, must have been a party ... in the prior
10 litigation, and he was; and (4) the issue was actually necessarily litigated.

11 “Furthermore, a judgment entered by the court on consent of the parties
12 after settlement or by stipulation of the parties is as valid and binding a
13 judgment between the parties as if the matter had been fully tried.”

14 *Willerton v. Bassham*, 111 Nev. at 16, 889 P.2d at 826, cited by *Bradley S.*
15 *v. Sherry N.*, 121 Nev. 1348, Unpublished Disposition (2015).

16 Finally, the U.S. Supreme Court in *Mansell* expressly acknowledged
17 that the issue of *res judicata* is a matter of state law “over which we have no
18 jurisdiction.” 490 U.S. at 586 n.5. Accordingly, even if Raina’s contract
19 theory for enforcement of the reimbursement provision of the *Decree of*
20 *Divorce* is ultimately not correct under *Howell*, it is nevertheless binding

1 on Erich pursuant to the doctrine of *res judicata*. It is a “well settled rule
2 that a judgment, not set aside on appeal or otherwise, is equally effective as
3 an estoppel upon the points decided, whether the decision be right or
4 wrong.” *Reed v. Allen*, 286 U.S. 191, 201, 52 S.Ct. 532, 76 L.Ed. 1054 (1932)
5 *Id.*

6 Conclusion

7 The Court is aware of the feeling of great unfairness on both sides. On
8 the one hand, veteran’s disability benefits, especially combat related
9 benefits, undoubtedly are a form of compensation to our injured veterans.
10 It is undisputed that Erich suffers from injuries in combat over the years,
11 including traumatic brain injuries from concussions, ACL replacements,
12 foot injuries, tendon injuries, back injuries, tinnitus, migraines, and other
13 health related issues for which he is justly entitled to his veteran’s disability
14 benefits.³ On the other hand, it is unfair to Raina to take away the
15 precaution she negotiated and leave her without the ability to negotiate a
16 substitute when it much too late to do so.

17 *Howell* makes very clear that this Court is without jurisdiction to
18 order indemnification. But, it was not this Court which ordered the
19 indemnification provision. The reimbursement or indemnification

21 ³ Despite his injuries, Erich (age 39) is gainfully employed earning \$11,504 per month --
not including his CRSC.

1 provision was created voluntarily by Erich and Raina. This Court is not
2 persuaded that *Howell* takes away the parties' right to freely contract,
3 including for indemnification. Indeed, *Howell* is silent as to enforcement
4 of such a contractual agreement and it cautions that parties should be
5 aware that a waiver of disability payments may occur and it is their
6 responsibility to "take account of the contingency." The parties negotiated
7 the contingency. Erich knowingly entered into the agreement ending his
8 marriage to Raina through which he expressly agreed to give up a portion
9 of his military retired pay waived for veteran's disability benefits to settle
10 the divorce case. Accordingly, it is fair and appropriate to enforce the
11 agreement the parties' entered with their eyes wide open.

12 Spousal Support

13 **Rule 58(e) Notice of Entry of Judgment.**

14 (1) Within 14 days after entry of a judgment or an order, a
15 party designated by the court under Rule 58(b)(2) must serve
16 written notice of such entry, together with a copy of the
17 judgment or order, upon each party who is not in default for
18 failure to appear and must file the notice of entry with the clerk
19 of the court. Any other party, or the court in family law cases,
20 may also serve and file a written notice of such entry. Service
21 must be made as provided in Rule 5(b).

(2) Failure to serve written notice of entry does not affect
the validity of the judgment, but the judgment may not be
executed upon until notice of its entry is served.

[Amended; effective March 1, 2019.]

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1 Erich has not been served with *Notice of Entry of the Order Incident*
2 *to Decree*. The *Decree of Divorce* contains the reimbursement provisions
3 upon which the Court may immediately enforce. Raina's request to obtain
4 spousal support, however, may not be acted upon due to the lack of *Notice*
5 *of Entry of the Order Incident to Decree*.

6 Attorney Fees

7 In light of the continuing development of case law around the United
8 States as well as the acknowledgment that, notwithstanding the assistance
9 of *Shelton*, this issue has not been resolved by the Nevada Supreme Court,
10 this Court cannot find that the position of either party is frivolous or
11 unreasonable.

12 NOW, THEREFORE, IT IS HEREBY ORDERED that Raina's *Motion*
13 *to Enforce* the reimbursement provision of the *Decree of Divorce* is
14 granted.

15 IT IS FURTHER ORDERED that the sum of \$5,918.01 representing
16 \$845.43 x seven months for the period from February through August
17 2020 shall be reduced to judgment in favor of Raina against Erich to be
18 satisfied by any and all legal means. Erich shall commence timely direct
19 payments to Raina in the amount of \$845.43 commencing September 1,
20 2020 to include any cost of living adjustments.

1 IT IS FURTHER ORDERED that Raina's request for spousal support
2 is denied without prejudice.

3 IT IS FURTHER ORDERED that each party shall assume their own
4 attorney fees and costs.

5
6 Dated this 11th day of August, 2020

7 Rebecca L. Burton

8 B9A 592 344A 6E1B
9 Rebecca L. Burton
10 District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Erich M Martin, Plaintiff

CASE NO: D-15-509045-D

7 vs.

DEPT. NO. Department C

8 Raina L Martin, Defendant.

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/11/2020

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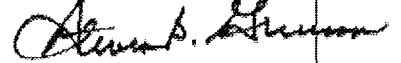
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Exhibit F



NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Erich M Martin, Plaintiff
vs.
Raina L Martin, Defendant.

Case No: D-15-509045-D
Department C

NOTICE OF ENTRY OF ORDER

Please take notice that an ORDER REGARDING ENFORCEMENT
OF MILITARY RETIREMENT BENEFITS was entered in the
foregoing action and the following is a true and correct copy thereof.

Dated: August 11, 2020

/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C

NEO

CERTIFICATE OF SERVICE

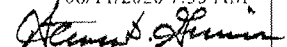
I hereby certify that on the above file stamp date:

☒ I provided the foregoing NOTICE OF ENTRY OF ORDER to:

John T. Kelleher , Esq.
kelleherjt@aol.com

Marshal Shawn Willick, Esq.
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/s/ Lourdes Child
Lourdes Child
Judicial Executive Assistant
Department C


CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT, FAMILY DIVISION

3 CLARK COUNTY, NEVADA

4 ERICH M. MARTIN,)

5 Plaintiff,)

6 vs.)

7 RAINA L. MARTIN,)

8 Defendant.)

CASE NO. D-15-509045-D

DEPT NO. C

Under Submission

9
10 ORDER REGARDING ENFORCEMENT OF
MILITARY RETIREMENT BENEFITS

11 THIS MATTER having come before the Court on Defendant, Raina L.
12 Martin ("Raina")'s *Motion to Enforce* filed and served electronically on
13 May 1, 2020, and on Plaintiff, Erich M. Martin ("Erich")'s *Defendant's*
14 *Opposition* filed and served by e-mail and mail on June 5, 2020; Erich is
15 represented by Attorney John T. Kelleher of Kelleher and Kelleher, LLC,
16 and Raina is represented by Attorneys Marshal S. Willick and Richard L.
17 Crane of Willick Law Group, the Court having reviewed the pleadings and
18 papers on file herein, and good cause appearing therefor

19 ////

20 ////

21 Page 1 of 24

1 Facts

2 On November 5, 2015, a *Decree of Divorce* reached by agreement
3 between the parties was entered by the Court containing the following
4 provision:

5 IT IS FURTHER ORDERED, ADJUDGED, AND
6 DECREED that Raina shall be awarded the following as her sole
and separate property:

7 4. One-half (1/2) of the marital interest in the Erich's
8 military retirement, pursuant to the time rule established in
9 Nevada Supreme Court cases *Gemma v. Gemma*, 105 Nev. 458,
10 778 P.2d 429 (1989) and *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d
11 1264 (1990). The parties shall use Marshal S. Willick, Esq. to
12 prepare a Qualified Domestic Relations Order (hereinafter
"QDRO"), or similar instrument to divide the pension. The
parties shall equally divide the costs of preparing such an
instrument. ***Should Erich select to accept military
disability payments, Erich shall reimburse Raina for
any amount that her share of the pension is reduced
due to the disability status.***

13 [Emphasis added.]

14 On November 10, 2015, *Notice of Entry of Decree of Divorce* was filed
15 and served.

16 On November 14, 2016, an *Order Incident to Decree of Divorce* was
17 entered and submitted to the military to effectuate the parties' *Decree of*
18 *Divorce*. The *Order Incident to Decree of Divorce* provides in particular
19 that Raina's share of Erich's military retired pay "also includes all amount
20 of retired pay Erich actually or constructively waives or forfeits in any

1 manner and for any reason or purpose, including but not limited to any
2 post-divorce waiver made in order to qualify for Veterans Administration
3 benefits;" that it is "intended to qualify under the Uniformed Services
4 Former Spouses Protection Act, 10 U.S.C. Sec. 1408 et seq.;" that if Erich
5 obtained a disability waiver, "he shall make payments to Raina directly in
6 an amount sufficient to neutralize, as to Raina, the effects of the action
7 taken by Erich;" and that the Court shall retain jurisdiction to enforce the
8 award to Raina of military retirement benefits by making an award of
9 alimony.

10 Erich argues that he did not sign the *Order Incident to Decree of*
11 *Divorce* voluntarily but was forced to do so by the Court. The Court
12 reviewed a hearing held September 22, 2016 during which Raina orally
13 raised the issue that Erich had not yet signed and returned the prepared
14 document. When the Court asked Erich for status, he did not protest the
15 language, but had not signed due to other unrelated unresolved matters
16 between the parties. Accordingly, the Court ordered Erich to return the
17 signed document and he did. The *Order Incident to Decree of Divorce* was
18 entered by the Court, but there is no *Notice of Entry of Order*.

19 Nevertheless, Raina received payments from DFAS in November and
20 December 2019 (\$844.08 per month) and January 2020 (\$845.43). In late

1 January 2020, DFAS notified Raina that they would no longer be sending
2 payments to Raina. Upon further inquiry in February 2020, Raina learned
3 that Erich opted for full disability as Combat Related Special Compensation
4 ("CRSC") and would be receiving a tax free payment from the Veterans
5 Administration. Raina would no longer receive any payments from DFAS.

6 Raina asked Erich to continue to pay her directly as they agreed in
7 their *Decree of Divorce*. Citing the U.S. Supreme Court's recent decision in
8 *Howell v. Howell*, 137 S.Ct. 1400, 1402, 197 L.Ed.2d 781 (2017), Erich
9 refused to do so. Accordingly, Raina brought this action to enforce the
10 provisions of the *Decree of Divorce* and the *Order Incident to Decree* for
11 reimbursement and spousal support ("indemnification provisions"). It is
12 Erich's position that the indemnification provisions are unenforceable
13 under *Howell*.

14 History

15 To best understand the issue, it is important to provide a short history
16 of federal law.

17 In 1981, the U.S. Supreme Court decided *McCarty v. McCarty*, 453
18 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981) which held that the federal
19 statutes governing military retired pay preempted the state courts from
20 treating military retired pay as community property on the basis that

1 Congress intended to protect veterans' benefits to ensure that they reach
2 veterans, with the goal of incentivizing participation in the military and
3 maintaining a strong national defense. Acknowledging the hardship the
4 decision may cause to military spouses, the U.S. Supreme Court pointed out
5 that Congress was free to change the statutory law.

6 In 1982, in direct response to *McCarty*, Congress enacted the
7 Uniformed Services Former Spouses' Protection Act ("USFSPA"), 10 U.S.C.
8 § 1408(c)(1), which allowed state courts to treat military retired pay as
9 community property, but expressly excluded military retired pay waived in
10 order to receive military disability benefits.

11 In 1989, USFSPA was interpreted by the U.S. Supreme Court in
12 *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989).
13 In their opinion, the U.S. Supreme Court explained federal law provides
14 that veterans who became disabled as a result of military service are eligible
15 for disability benefits. Those benefits are calculated according to the
16 seriousness of the disability and the degree to which the veteran's ability to
17 earn a living has been impaired. In order to prevent double dipping, a
18 military retiree may receive veteran's disability benefits in exchange for
19 waiving a corresponding amount of his military retirement pay. Because
20 disability benefits are exempt from taxation, the disabled veteran's income

1 is increased. *Id.* 490 U.S. 583-84, 109 S.Ct. 2026, 104 L.Ed.2d. The result
2 to the former spouse, however, is a loss of benefits which have been
3 converted from military retired pay, which may be considered by the state
4 as marital property, to veteran's disability benefits, which may not be
5 considered by the state as marital property.

6 The *Mansell* divorce occurred prior to *McCarty* and prior to
7 enactment of USFSPA. At that time, the veteran had already waived a
8 portion of his military retired pay for veteran's disability benefits and was
9 receiving both military retired pay and veteran's disability benefits. To
10 settle the divorce, the veteran agreed to pay to his former spouse 50% of
11 both his military retired pay and his veteran's disability benefits. Years
12 later, after enactment of USFSPA, the veteran asked a California court to
13 remove from the decree of divorce the provision requiring him to pay 50%
14 of his veteran's disability benefits to his former spouse. The veteran's
15 request was denied, and he appealed without success. Eventually, the
16 matter was heard by the U.S. Supreme Court which reversed the California
17 court by holding that USFSPA grants state courts the authority to divide
18 military retired pay as community property, but it did not grant state courts
19 the authority to divide the military retired pay waived in order to receive
20 veterans' disability benefits. The Court recognized that USFSPA was "one

1 of those rare instances where Congress has directly and specifically
2 legislated in the area of domestic relations.” *Id.* 490 U.S. at 587, 109 S.Ct. at
3 2028.

4 But, the *Mansell* story did not end at the U.S. Supreme Court. On
5 remand, the California court still refused to change the result based, not on
6 the principles of community property law and the federal preemption of
7 state law characterization of veteran’s disability benefits as decided by the
8 U.S. Supreme Court, but on the principles of *res judicata*. In a footnote,
9 the U.S. Supreme Court expressly acknowledged that the issue of *res*
10 *judicata* is a matter of state law “over which we have no jurisdiction.” 490
11 U.S. at 586 n.5. The California court reasoned that because the veteran
12 consented to the otherwise incorrect result when he signed the property
13 settlement agreement, “he is therefore barred from complaining.” *In re*
14 *Marriage of Mansell*, 217 Cal.App.3d 219, 230, 265 Cal.Rptr. 227, 233 (Ct.
15 App. 1989) on remand from 490 U.S. 581, 109 S.Ct. 2023 (1989). The U.S.
16 Supreme Court denied certiorari allowing the California court’s order to
17 stand. *Mansell v. Mansell*, 498 U.S. 806, 111 S.Ct. 237, 112 L.Ed.2d 197
18 (1990). Moreover, although *Mansell* concerned an agreement, the
19 agreement did not contain a contractual indemnification provision, leaving
20 enforceability of such a provision unresolved.

1 In 2016, after *McCarty*, USFSPA, and *Mansell*, Erich and Raina
2 contemplated the probability that Erich would eventually waive his military
3 retired pay for veteran's disability benefits. Therefore, through their
4 *Decree of Divorce*, Erich and Raina chose indemnification as a resolution
5 which had become a common and prudent means of addressing the issue
6 whereby Erich agreed to reimburse Raina if he chose to waive his military
7 retired pay in favor of veteran's disability benefits. Through their *Order*
8 *Incident to Decree*, the parties further agreed that the reimbursement
9 would be in the form of spousal support.

10 In 2017, 28 years after *Mansell*, the U.S. Supreme Court addressed
11 indemnification by state courts in the case of *Howell v. Howell*, 137 S.Ct.
12 1400, 197 L.Ed.2d 781 (2017). In *Howell*, an Arizona court awarded the
13 former spouse 50% of the military member's retired pay. About 13 years
14 later, the veteran waived a portion of his military retired pay in exchange
15 for veteran's disability benefits resulting in substantial reduction of the
16 former spouse's share. The Arizona court restored the full 50% to the
17 spouse, but was reversed by the U.S. Supreme Court which held that a state
18 court does not have jurisdiction to order the division of veteran's disability
19 benefits on the basis that "federal law ... [has] completely pre-empted the

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1 application of state community property law to military retirement pay.”
2 *Id.* 137 S.Ct. at 1403, 197 L.Ed.2d at 786. Finding that the purpose of a
3 reimbursement or indemnification order was to restore a community
4 property right in the original military retirement, the U.S. Supreme Court
5 reasoned that all such state orders are preempted. Moreover, it does not
6 matter whether the disability election was taken before the decree was
7 entered (*Mansell*) or after the decree was entered (*Howell*), because
8 “[s]tate courts cannot “vest” that which (under governing federal law) they
9 lack the authority to give.” *Id.* 1405. Recognizing that their interpretation
10 may impose hardship to the former spouse, the U.S. Supreme Court
11 offered:

12 [A] family court, when it first determines the value of a
13 family’s assets, remains free to take account of the contingency
14 that some military retirement pay might be waived, or, as the
15 petitioner himself recognizes, take account of reductions in
16 value when it calculates or recalculates the need for spousal
17 support.

18 *Id.* at 1406.

19 Notably, *Howell* did not concern an indemnification agreement
20 between the parties, but a court created indemnification remedy after the
21 waiver was taken. Although *Howell* was silent regarding the enforceability
of a contractual indemnification provision, such an agreement by the

1 parties is not inconsistent with the U.S. Supreme Court's suggestion to take
2 precautions.

3 Post-Howell Decisions

4 Citing their new decision in *Howell*, the U.S. Supreme Court quickly
5 vacated two state court orders forcing veterans to reimburse former
6 spouses in divorce proceedings if they had waived retirement pay in order
7 to receive veteran's disability benefits. *Merrill v. Merrill*, 137 S.Ct. 2156,
8 198 L.Ed.2d 228 (2017) (post-decree indemnification order reversed); and
9 *Cassinelli v. Cassinelli*, 138 S.Ct. 69, 199 L.Ed.2d 2 (2017), (compensation
10 in the form of a dollar-for-dollar alimony award reversed). Notably, both of
11 these cases concerned court remedies and neither involved contractual
12 indemnification.

13 Some state courts have broadly treated military retirement pay waived
14 in favor of veteran's disability benefits to be off limits and will not allow a
15 remedy in any form if the purpose of that remedy is to replace in full the
16 lost military retired pay. In *Hurt v. Jones-Hurt*, 233 Md. App. 610, 168
17 A.3d 992 (Court of Special Appeals of Maryland), Maryland reversed the
18 amendment of a property award as a remedy to a waiver. In *Mattson v.*
19 *Mattson*, 903 N.W.2d 233 (Court of Appeals of Minnesota), Minnesota
20 recognized that prior to *Howell*, "principles of contract and *res judicata*

1 could render a stipulated decree indemnifying an ex-spouse as enforceable,
2 even if it ran afoul of *Mansell*, because ‘parties are free to bind themselves
3 to obligations that a court could not impose,’” *Id.* at 240 then held after
4 *Howell* that contractual principals could not rescue the former spouse’s
5 ability to receive the military retired pay waived for veteran’s disability
6 benefits. In *Vlach v. Vlach*, 556 S.2.3d 219 (Court of Appeals of Tennessee
7 2017), Tennessee held that an agreement for partial indemnification of
8 veteran’s disability benefits was unenforceable. In *Tozer v. Tozer*, 410 P.3d
9 835 (Colorado Court of Appeals, Division IV 2017), Colorado held that
10 retention of jurisdiction in the event of a future waiver is preempted. In
11 *Brown v. Brown*, 260 So.3d 851 (Court of Civil Appeals of Alabama 2018),
12 Alabama held that a contractual indemnification provision was completely
13 preempted. These cases have been criticized by legal scholars.¹

14 More states, however, have taken the suggestion of the U.S. Supreme
15 Court by becoming creative in their remedies after *Howell* or finding
16 alternative theories to avoid an unfair result. In *Lesh v. Lesh*, 257 N.C.App.

17 Page 11 of 24

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19 ¹ The Minnesota decision has been criticized as an unnecessarily overbroad reading of
20 *Howell*. *A Change in Military Pension Division: The End of Court-Adjudicated*
21 *Indemnification -- Howell v. Howell*, 44 Mitchell Hamline Law Review (2018); *Military*
Pension Division Cases Post-Howell: Missing the Mark, or Hitting the Target?, Journal
of the American Academy of Matrimonial Lawyers, Vol. 31, March 13, 2019, page 513
which also criticizes as going too far the decisions in *Hurt v. Jones-Hurt*, *Vlach v. Vlach*,
and *Brown v. Brown*.

1 471, 809 S.E.2d 890 (Court of Appeals of North Carolina 2018), North
2 Carolina found that *Howell* reaffirms and clarifies *Mansell*, but it has no
3 effect on the *Rose*² line of cases therefore the court's order taking into
4 consideration veteran's disability benefits as income for the purposes of
5 making a property settlement payment was not preempted. *In re Marriage*
6 *of Cassinelli*, 20 Cal.App.5th 1267, 229 Cal.Rptr.3d 801 (2018), California,
7 after remand from the U.S. Supreme Court, reversed the spousal support
8 award finding it to be a dollar for dollar replacement for the lost military
9 retired pay. But the case did not end upon that ruling as inferred by Erich,
10 because California remanded the matter for a new trial on the former
11 spouse's request for modification of spousal support indicating that
12 modification of spousal support was not prohibited. In *Gross v. Wilson*,
13 424 P.3d 390 (Supreme Court of Alaska 2018), Alaska held that a
14 settlement agreement dividing veteran's disability benefits is enforceable
15 based on principles of *res judicata* and contract because "nothing in the
16 USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay
17 a former spouse a sum of money that may originate from disability
18 payments" *Id.* at 394. In the *Matter of Marriage of Babin*, 56 Kan.App.2d,
19 709, 437 P.3d 985 (Court of Appeals of Kansas 2019), Kansas held that the

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² *Rose v. Rose*, 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

1 parties' agreement did not allow escape from federal preemption which
2 divested the court of jurisdiction to enforce division of the veteran's
3 disability benefits, but as again ignored by Erich, this case was also
4 remanded to allow spousal support to be reconsidered. In *Fattore v.*
5 *Fattore*, 458 N.J. Super. 75, 203 A.3d 151 (2019) New Jersey recognized
6 that other courts were employing res judicata, upholding contractual
7 indemnification provisions, vacating and reallocating assets, and awarding
8 alimony as remedies. In *Edwards v. Edwards*, 132 N.E.3d 391 (2019),
9 Indiana held that although a court's order requiring a veteran to reimburse
10 a former spouse for loss of military retired pay after waiver for CRSC would
11 be incorrect under *Howell*, the court had subject matter jurisdiction to
12 make the order which was enforceable retroactively (but not prospectively
13 under equitable principles) on the basis of *res judicata* because the veteran
14 did not appeal it. In *In re Marriage of Jensen*, Court of Appeals of Iowa,
15 939 N.W.2d 112 (2019), Iowa held that *Howell* did not prevent the Iowa
16 court from awarding to the former spouse all of her retirement accounts
17 because the military spouse was receiving veteran's disability benefits. In
18 *Russ v. Russ*, 456 P.3d 1100 (Court of Appeal of New Mexico 2019), New
19 Mexico held that *Howell*, decided in the middle of the appeal, does not
20 ///

1 apply retroactively to invalidate the parties' agreement to divide military
2 retired pay even after waiver for veteran's benefits).

3 Just three months ago on April 29, 2020, Michigan's highest court
4 decided *Foster v. Foster*, ____ Mich. ____, ____ N.W.2d ____ (Supreme
5 Court of Michigan 2020) which shared facts similar with the Martin case
6 concerning enforcement of a consent decree containing an indemnification
7 provision requiring the veteran to pay to his former spouse a sum
8 equivalent to 50% of his military retired pay even though he later elected
9 CRSC benefits. The case was in the process of appeals that originally were
10 favorable to the former spouse. Once the *Howell* case was decided,
11 Michigan reversed itself and, citing the Supremacy Clause of the United
12 States Constitution, ruled that federal preemption prohibited enforcement
13 of the parties' indemnification agreement. The Supremacy Clause of the
14 United States Constitution provides:

15 This Constitution, and the Laws of the United States which
16 shall be made in Pursuance thereof ... shall be the supreme Law
17 of the Land; and the Judges in every State shall be bound
thereby, any Thing in the Constitution or Laws of any State to
the Contrary notwithstanding.

18 Footnote 14, U.S. Constitution, Article VI, Clause 2. Notably, Raina admits
19 that "[s]ometimes, however, Congress wishes to 'occupy the field' in a
20 particular question of law, and generally, it has the power to do so, even

1 when it results in unintended consequences of unjust enrichment and
2 inequity.” Raina’s *Reply* filed June 10, 2020 on page 8. Yet, the *Foster*
3 saga is still not over, because Michigan remanded the case for the court to
4 consider whether the veteran’s action is an impermissible collateral attack
5 against a decree that is *res judicata* even if the decree contained a provision
6 based on a subsequently overruled legal principle. The concurring opinion
7 of this case includes an enlightening discussion of the difference between
8 lack of subject matter jurisdiction (the inability to rule at all resulting in a
9 void order) and the incorrect exercise of subject matter jurisdiction (the
10 ability to make a ruling that, even if incorrect, is subject to *res judicata* if
11 not timely challenged).

12 Finally, just one month ago, Louisiana decided *Boutte v. Boutte*, Court
13 of Appeal of Louisiana, Third Circuit, ____ So.3d ____ (July 8, 2020) WL
14 3818141 and upheld the parties’ indemnification agreement based on
15 principles of *res judicata*.

16 Contract

17 The *Decree of Divorce* reached by agreement between Erich and
18 Raina is a contract, *Grisham v. Grisham*, 128 Nev. 679, 289 P.2d 230
19 (2012); *Anderson v. Sanchez*, 132 Nev. 357, 373 P.3d 860 (2016), the terms
20 of which are not ambiguous. *Mizrachi v. Mizrahi*, 132 Nev. 666, 385 P.3d

1 982 (2016). “Parties are free to contract, and the courts will enforce their
2 contracts if they are not unconscionable, illegal, or in violation of public
3 policy.” *Harrison v. Harrison*, 132 Nev. 564, 567 (2016), 376 P.3d 173, 175
4 (2016) citing *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226
5 (2009). After *McCarty*, *USFSPA*, and *Mansell*, Erich and Raina themselves
6 took precautions before *Howell* and created an indemnification provision
7 for the anticipated waiver by Erich.

8 Because *Howell* does not concern adjudication of contractual
9 indemnification created by the parties, this Court is not persuaded that
10 *Howell* intended to divest the parties of their right to contract. Indeed,
11 *Howell* is silent on the issue but urges courts to consider and address the
12 possibility of waiver which is exactly what Erich and Raina did prior to
13 *Howell*. Erich’s argument that the written settlement agreement between
14 the parties did not contain a term requiring indemnification is not correct,
15 because the *Decree of Divorce* expressly provides that “[s]hould Erich
16 select to accept military disability payments, Erich shall reimburse Raina
17 for any amount that her share of the pension is reduced due to the
18 disability status.” For all practical purposes, “reimbursement” is the same
19 as “indemnification,” and no case the Court reviewed drew a distinction.

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1 Erich argues that his indemnification agreement is unenforceable. In
2 support of his argument, Erich cites *Boulter v. Boulter*, 113 Nev. 74, 930
3 P.2d 112 (1997) which held that the parties' voluntary agreement to equally
4 divide with each other their federal Social Security benefits was
5 unenforceable, and the district court "was without jurisdiction to enforce
6 an award" regardless of the fact that the agreement was the product of the
7 voluntary negotiations of the parties, because the agreement it was
8 prohibited by the federal statute. *Id.* 80, 115. Erich concludes that the
9 parties' contract is likewise not valid under federal law. This Court agrees
10 that federal social security benefits are not community property divisible by
11 this Court. *See also Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).
12 *Boulter* and *Wolff*, however, both dealt with a different federal law than at
13 issue before this Court. *Boulter* and *Wolff* concerned social security
14 payments which are not community property - not military retired pay
15 (community property) that was waived for veteran's disability benefits (not
16 community property).

17 The case of *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (2003)
18 is controlling, because it expressly embraced the contract theory in military
19 disability indemnification cases. The parties in *Shelton* agreed through the
20 summary joint petition process that the military member would pay to his

1 former spouse a specific sum representing one-half of both the military
2 retired pay and the veteran's disability benefit he was already receiving.
3 Several years later, the military member was reevaluated and elected to
4 waive 100% of his military retired pay for veteran's disability benefits and
5 then stopped paying his former spouse who brought the matter to court.
6 Citing *Mansell I*, the district court denied relief to the former spouse, but
7 was reversed by the Nevada Supreme Court which held that the military
8 member was contractually obligated by the divorce agreement to pay his
9 former spouse an agreed sum. The opinion stated:

10 We conclude that although courts are prohibited by federal
11 law from determining veterans' disability pay to be community
12 property, state law of contracts is not preempted by federal law.
13 Thus, respondent must satisfy his contractual obligations to his
14 former spouse, and the district court erred in denying former
15 spouse's motion solely on the basis that federal law does not
16 permit disability pay to be divided as community property. *Id.*
17 at 493, 508.

18 *See also Hisgen v. Hisgen*, 554 N.W.2d 494, 498 (S.D. 1996) (parties'
19 property settlement agreement dividing military retirement benefits
20 enforced); and *Resare v. Resare*, 908 A.2d 1006 (R.I. 2006) (parties'
21 property settlement agreement dividing military retirement benefits
enforced).

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1 Res Judicata

2 *Shelton* raises the additional issue of *res judicata*. *Res judicata* was
3 the very same reason the California court in *Mansell II* refused to change
4 the result after remand from the U.S. Supreme Court and for which the U.S.
5 Supreme Court denied certiorari. In its decision, the Nevada Supreme
6 Court stated that “[a]lthough states cannot divide disability payments as
7 community property, states are not preempted from enforcing orders that
8 are *res judicata* or from enforcing contracts or from reconsidering divorce
9 decrees, even when disability pay is involved.” *Id.* at 509. As in *Mansell II*,
10 the U.S. Supreme Court denied certiorari, *Shelton v. Shelton*, 541 U.S. 960,
11 124 S.Ct. 1716, 158 L.Ed.2d 401 (2004).

12 “Generally, the doctrine of *res judicata* precludes parties or those in
13 privity with them from relitigating a cause of action or an issue which has
14 been finally determined by a court of competent jurisdiction.” *Kuptz-*
15 *Blinkinsop v. Blinkinsop*, 136 Nev. Adv. Op. 40 (July 9, 2020) citing
16 *University of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191
17 (1994). *Res judicata* or issue preclusion applies when “(1) the issue decided
18 in the prior litigation must be identical to the issue presented in the current
19 action; (2) the initial ruling must have been on the merits and have become
20 final; (3) the party against whom the judgment is asserted must have been

1 a party ... in the prior litigation; and (4) the issue was actually necessarily
2 litigated.” *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194, P.3d
3 709, 713.

4 In the Martin matter: (1) the issue decided in the prior litigation,
5 resolution of Erich’s military retired pay including waiver for veteran’s
6 disability benefits, is the same in the divorce matter as in the current
7 motion; (2) the initial ruling represented by the *Decree of Divorce* was on
8 the merits and final without appeal; (3) the party against whom the
9 judgment is asserted, Erich, must have been a party ... in the prior
10 litigation, and he was; and (4) the issue was actually necessarily litigated.
11 “Furthermore, a judgment entered by the court on consent of the parties
12 after settlement or by stipulation of the parties is as valid and binding a
13 judgment between the parties as if the matter had been fully tried.”
14 *Willerton v. Bassham*, 111 Nev. at 16, 889 P.2d at 826, cited by *Bradley S.*
15 *v. Sherry N.*, 121 Nev. 1348, Unpublished Disposition (2015).

16 Finally, the U.S. Supreme Court in *Mansell* expressly acknowledged
17 that the issue of *res judicata* is a matter of state law “over which we have no
18 jurisdiction.” 490 U.S. at 586 n.5. Accordingly, even if Raina’s contract
19 theory for enforcement of the reimbursement provision of the *Decree of*
20 *Divorce* is ultimately not correct under *Howell*, it is nevertheless binding

1 on Erich pursuant to the doctrine of *res judicata*. It is a "well settled rule
2 that a judgment, not set aside on appeal or otherwise, is equally effective as
3 an estoppel upon the points decided, whether the decision be right or
4 wrong." *Reed v. Allen*, 286 U.S. 191, 201, 52 S.Ct. 532, 76 L.Ed. 1054 (1932)
5 *Id.*

6 Conclusion

7 The Court is aware of the feeling of great unfairness on both sides. On
8 the one hand, veteran's disability benefits, especially combat related
9 benefits, undoubtedly are a form of compensation to our injured veterans.
10 It is undisputed that Erich suffers from injuries in combat over the years,
11 including traumatic brain injuries from concussions, ACL replacements,
12 foot injuries, tendon injuries, back injuries, tinnitus, migraines, and other
13 health related issues for which he is justly entitled to his veteran's disability
14 benefits.³ On the other hand, it is unfair to Raina to take away the
15 precaution she negotiated and leave her without the ability to negotiate a
16 substitute when it much too late to do so.

17 *Howell* makes very clear that this Court is without jurisdiction to
18 order indemnification. But, it was not this Court which ordered the
19 indemnification provision. The reimbursement or indemnification

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21 ³ Despite his injuries, Erich (age 39) is gainfully employed earning \$11,504 per month --
not including his CRSC.

1 provision was created voluntarily by Erich and Raina. This Court is not
2 persuaded that *Howell* takes away the parties' right to freely contract,
3 including for indemnification. Indeed, *Howell* is silent as to enforcement
4 of such a contractual agreement and it cautions that parties should be
5 aware that a waiver of disability payments may occur and it is their
6 responsibility to "take account of the contingency." The parties negotiated
7 the contingency. Erich knowingly entered into the agreement ending his
8 marriage to Raina through which he expressly agreed to give up a portion
9 of his military retired pay waived for veteran's disability benefits to settle
10 the divorce case. Accordingly, it is fair and appropriate to enforce the
11 agreement the parties' entered with their eyes wide open.

12 Spousal Support

13 **Rule 58(e) Notice of Entry of Judgment.**

14 (1) Within 14 days after entry of a judgment or an order, a
15 party designated by the court under Rule 58(b)(2) must serve
16 written notice of such entry, together with a copy of the
17 judgment or order, upon each party who is not in default for
18 failure to appear and must file the notice of entry with the clerk
19 of the court. Any other party, or the court in family law cases,
20 may also serve and file a written notice of such entry. Service
21 must be made as provided in Rule 5(b).

(2) Failure to serve written notice of entry does not affect
the validity of the judgment, but the judgment may not be
executed upon until notice of its entry is served.

[Amended; effective March 1, 2019.]

20 ////

1 Erich has not been served with *Notice of Entry of the Order Incident*
2 *to Decree*. The *Decree of Divorce* contains the reimbursement provisions
3 upon which the Court may immediately enforce. Raina's request to obtain
4 spousal support, however, may not be acted upon due to the lack of *Notice*
5 *of Entry of the Order Incident to Decree*.

6 Attorney Fees

7 In light of the continuing development of case law around the United
8 States as well as the acknowledgment that, notwithstanding the assistance
9 of *Shelton*, this issue has not been resolved by the Nevada Supreme Court,
10 this Court cannot find that the position of either party is frivolous or
11 unreasonable.

12 NOW, THEREFORE, IT IS HEREBY ORDERED that Raina's *Motion*
13 *to Enforce* the reimbursement provision of the *Decree of Divorce* is
14 granted.

15 IT IS FURTHER ORDERED that the sum of \$5,918.01 representing
16 \$845.43 x seven months for the period from February through August
17 2020 shall be reduced to judgment in favor of Raina against Erich to be
18 satisfied by any and all legal means. Erich shall commence timely direct
19 payments to Raina in the amount of \$845.43 commencing September 1,
20 2020 to include any cost of living adjustments.

1 IT IS FURTHER ORDERED that Raina's request for spousal support
2 is denied without prejudice.

3 IT IS FURTHER ORDERED that each party shall assume their own
4 attorney fees and costs.

5
6 Dated this 11th day of August, 2020

7 Rebecca L. Burton

8 B9A 592 344A 6E1B
9 Rebecca L. Burton
10 District Court Judge
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