

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ERICH M. MARTIN,

S.C. No.:

81810/82517

Appellant,

D.C. Case No.:

D-15-509045-D

Electronically Filed
May 12 2023 02:10 PM
Elizabeth A. Brown
Clerk of Supreme Court

vs.

RAINA MARTIN,

Respondent.

RESPONSE TO MOTION FOR STAY OF REMITTITUR PENDING

PETITION FOR WRIT OF CERTIORARI

I. INTRODUCTION

Respondent, Raina Martin, by and through her attorneys of the WILICK LAW GROUP, and pursuant to NRAP 27(a)(3), submits this *Response to Motion for Stay of Remittitur Pending Petition for Writ of Certiorari*. Essentially, we understand that the stay is likely to be granted, but wish the order relating to banking the sum in issue pending a final order to stay in place as a condition of the stay.

II. FACTS

The facts surrounding this case are well known and recited in multiple filings in this matter. As such, only the facts since the Order Granting Motion filed on January 27, 2023, will be recited.

Erich filed his Petition for Rehearing on February 2, 2023. This Court directed Raina to file an Answer, which was done on February 27. Raina also filed a Notice of Supplemental Authorities on March 30, which included decisions rendered in parallel cases in other States, agreeing with this Court's decision of the issues.

On April 17, this Court denied Erich's Petition for Rehearing.

On May 12, the day the Remittitur was due to be issued, Erich filed his Motion for Stay of Remittitur Pending Petition for Writ of Certiorari.

This Response Follows.

III. RESPONSE TO MOTION

Though it is our belief that Erich's foray to the United States Supreme Court in this matter is without justification and that a stay should be denied, we understand that this Court may be inclined to grant any such a request.

However, NRAP 41(b)(3)(C) also states: "The Court may require a bond or other security as a condition to granting or continuing a stay of the remittitur."

In this case, the district court had ordered that any payments due to Raina Martin were to be made monthly to Erich's attorney's trust account, with that attorney providing a monthly statement showing the deposits and the current balance.¹ Erich has already been sanctioned by the district court for failing to follow that order during the pendency of this appeal.

¹ Please see the attached *Order* entered by the Eighth Judicial District Court on December 31, 2020, page 7, lines 2 through 7.

At a minimum, Erich should be required to continue making the payments of Raina's share of the pension benefits into his attorney's trust account with a report from the attorney to Raina's counsel being made no later than the 5th day of each month showing the amount of the deposit and when it was made.²

IV. REQUEST FOR RELIEF

Raina requests that this Court issue an Order that requires continuation of the payments and monthly accounting in accordance with the attached Order from the district court during the pendency of Erich's Motion and until either certiorari is

² If the United States Supreme Court grants certiorari, any decision will not be rendered until after the new year. This will require Erich to increase the payments beginning in January 2024 to include any cost of living increase.

denied or there is resolution in the United States Supreme Court. The reporting should continue to be due no later than the 5th day of each month.

*Howell*³ held that parties should consider the contingency that the member may request a waiver of retired pay and should account for that in the divorce.⁴ These parties did so and Erich explicitly promised to make payments to Raina if he requested and obtained such a waiver. As Erich exhausts his last attempt to avoid paying Raina the monies he promised to pay, this Court should continue to require Erich to pay the funds into his attorney's trust account to protect Raina's interest.

The United States Supreme Court denial of certiorari in *Mansell II* indicates that it is adverse to infringing on State court determinations of *res judicata*.⁵ Since

³ *Howell v. Howell*, 137 S. Ct. 1400, 581 US ___, 197 L. Ed. 2d 781 (2017).

⁴ The parties here did just that by agreeing (contractually) to make up any difference in lost benefits to Raina should Erich apply for a disability Waiver.

⁵ *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023 (1989). See footnote 5.

Erich did not appeal the divorce decree, the issue remains subject to *res judicata* and we would expect the United States Supreme Court to so find again.

V. CONCLUSION

Based on the foregoing, Raina requests this Court to:

1. Issue an Order requiring Erich and his counsel to continue to abiding by the District Court's order requiring him to pay Raina's share into his attorney's trust and provide Raina's counsel with an accounting of the same no later than the 5th day of each month.

2. For any other relief this Court finds just and proper.

Dated this 12th day of May, 2023.

Respectfully submitted,
WILLICK LAW GROUP

// s // Marshal S. Willick
Marshal S. Willick, Esq.
Richard L. Crane, Esq.
Attorneys for Respondent

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WILICK LAW GROUP and that on this 12th day of May, 2023, a document entitled *Response to Motion for Stay of Remittitur Pending Petition for Writ of Certiorari* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

Chad F. Clement, Esq.
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Attorneys for Plaintiff

//s// Justin K. Johnson

An Employee of WILICK LAW GROUP

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Attorney for Defendant

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ERICH MARTIN,
Plaintiff,

vs.

RAINA MARTIN,
Defendant.

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

DATE OF HEARING: 11/3/2020
TIME OF HEARING: 9:00 am

ORDER FROM THE NOVEMBER 3, 2020, HEARING

This matter came on for a hearing at the above date and time before the Honorable Rebecca Burton, District Court Judge, Family Division. Defendant, Raina Martin, was present by video and was represented by and through her attorney, Richard L. Crane, Esq., of the WILICK LAW GROUP, and Plaintiff, Erich Martin, was present by video and represented by and through his attorney, Kathleen A. Wilde of MARQUIS AURBACH COFFING.

The Court, having reviewed the pleadings and papers and filed herein and entertaining argument from both sides, made the following findings and orders as follows:

THE COURT HEREBY FINDS:

1. The Court has subject matter jurisdiction over this case, personal jurisdiction over the parties and child custody subject matter jurisdiction.¹
2. If a Stay is to preserve the *Status Quo* then it would be not needed because Erich would still be making the monthly payments to Raina. That is the *Status Quo*, that is the Order of the Court.²
3. The *Decree of Divorce* is the *Status Quo* that Erich is trying to change. The Court enforced the *Decree of Divorce* and Erich has appealed the Court's enforcement.³
4. The Court has reviewed NRAP 8(c) and went through the factors and the object of the appeal. The Court finds that the object of the appeal ^{if a stay is not granted -(RLB)} for a few months might be defeated, but, the Court is not persuaded that the value of the appeal would be significantly reduced if Erich continued to make a few months of payments. In the big picture what we're looking at is the possibility of forty years or more of these payments.⁴
5. That real object of this appeal is that these payments will go on for many years.⁵
6. Neither party is going to suffer irreparable or serious injury if the stay is denied or the stay is granted.⁶

¹Time Stamp 9:03:06 - 9:03:17

²Time Stamp 9:03:23 - 9:03:39

³Time Stamp 9:03:40 - 9:03:49

⁴Time Stamp 9:03:59 - 9:04:37

⁵Time Stamp 9:04:54 - 9:05:10

⁶Time Stamp 9:05:12 - 9:05:31

- 1 7. \$20,000 is not an unreasonable estimate as to the benefits payable during the
2 pendency of the appeal.⁷ She will -(RLB)
- 3 8. The consequences to Raina are greater because her income is smaller. ~~They~~¹¹
4 have to pay out funds to maintain her position while paying attorney's fees.
5 She'll have to pay out funds to obtain her judgment.⁸
- 6 9. Erich can better afford to pay out funds to obtain his judgment after the fact,
7 if we're looking to collect monies after the fact.⁹
- 8 10. Covid has really made everybody's income uncertain. There is a lot less
9 predictability. Erich recently lost his job in March of 2020, I know Raina's
10 income has been reduced because of her ~~production~~ ^{reduction} -(RLB) of hours caused by Covid
11 so, there are some collection issues there, in that regard.¹⁰
- 12 11. Concerning whether Erich will likely prevail, the Court would like to think it's
13 reasoning is sound, of course, recognizing that the issue is unresolved. Again,
14 the Court did expect that this appeal would occur.¹¹
- 15 12. The Court didn't make the decision it did off the top of it's head. It spent a
16 considerable amount of time doing legal research and reviewing the law. The
17 last cases that the Court cited were from a couple of months ago or less.¹²
- 18 13. NRCP 62(d)(2) states a party is entitled to a stay by providing a bond.¹³
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22 ⁷Time Stamp 9:05:57 - 9:06:03

23 ⁸Time Stamp 9:06:03 - 9:06:14

24 ⁹Time Stamp 9:06:16 - 9:06:23

25 ¹⁰Time Stamp 9:06:37 - 9:07:07

26 ¹¹Time Stamp 9:07:09 - 9:07:24

27 ¹²Time Stamp 9:07:25 - 9:07:48

28 ¹³Time Stamp 9:08:00 - 9:08:06

- 1 14. The Court is inclined to grant the stay, but require Erich to pay however he
2 wishes to do that.¹⁴
- 3 15. The Court likes Raina's idea of Erich continuing to pay the monthly payments
4 into an attorney's trust account. That is a good reasonable approach.¹⁵
- 5 16. ~~I think that really is a good approach to it.~~ Because then we won't have any
6 over payments or under payments and we're not going to have collection issues
7 at the end of the day and the funds are there.¹⁶
- 8 17. The Court would like confirmation going from Ms. Wilde to Mr. Crane that
9 those monthly payments are being made.¹⁷
- 10 18. The Court did go through the factors about a bond and will put its thoughts
11 about the matter on the record.¹⁸
- 12 19. The Collection Process is not complex but it would be easier for Erich than it
13 would be for Raina, ~~but the Court does take note of that issue, as it was the~~
14 ~~Court involved when there was the spousal support issue.~~¹⁹
- 15 20. The time to obtain collection is going to depend on how cooperative everybody
16 is. If it would be enforced, then of course there will be a motion and there's
17 going to be a hearing and there's going to be a potential trial and arguments
18 about how much the money is going to be, although that's probably not likely
19 and there's not likely to be an appeal from that but that's always possible.²⁰
- 20

21 ¹⁴Time Stamp 9:16:51 - 9:16:58

22 ¹⁵Time Stamp 9:17:00 - 9:17:10

23 ¹⁶Time Stamp 9:17:20 - 9:17:33

24 ¹⁷Time Stamp 9:17:11 - 9:17:20

25 ¹⁸Time Stamp 9:17:33 - 9:17:45

26 ¹⁹Time Stamp 9:17:47 - 9:18:07

27 ²⁰Time Stamp 9:18:07 - 9:18:28

21. Again, collections might be difficult on both sides just because of Covid.²¹
22. We have two professionals here. A dental hygienist and a retired military member who is in a management position now. We have two professionals who make very nice incomes and neither party is destitute by any means. They are fortunate to have the jobs that they do and to make the incomes that they are in light of Covid right now when a lot of people are hurting.²²
23. The Court is going to require the monthly payment be made. That will avoid any additional costs. The monthly payment makes sense and will be sitting there, then there will be no collection issues at the end of the day.²³
24. Erich needs to go ahead and pay the arrearages already reduced to judgment.²⁴
25. The Court really wants Erich to begin making payments toward that judgment. Counsel is to talk about that and come up with a reasonable payment in addition to the regular monthly payment to start paying on that judgment. The Court would like it paid in no less than a year. You can use that as a kind of rule of thumb there but I want counsel to talk about it.²⁵
26. If he wants to pay for a bond he can but it will be the \$20,000 that's been requested because that is a reasonable amount.²⁶
27. In considering the *Motion* for attorney's fees, the Court takes into consideration both parties financial circumstances. Even though Nevada follows the American rule which means everyone pays their own legal fees, the Court recognizes that Erich's income currently is about three times as high as

²¹Time Stamp 9:18:28 - 9:18:37

²²Time Stamp 9:18:36 - 9:19:05

²³Time Stamp 9:19:05 - 9:19:28

²⁴Time Stamp 9:20:17 - 9:20:42

²⁵Time Stamp 9:22:26-9:22:56

²⁶Time Stamp 9:22:56 - :9:23:11

1 Raina's income but Raina's expenses are reduced by her domestic partner and
2 his very large income.²⁷

3 28. When you balance out the household incomes, they are fairly equivalent.
4 They are not wildly apart. The Court realizes that Raina's domestic partner is
5 not obligated to pay anything for these proceeding.²⁸

6 29. The Court is granting the stay and it would be appropriate because of the very
7 large disparity of incomes between the two parties who are part of this process
8 to have Erich contribute something toward Raina's attorney's fees because this
9 is all, at the end of the day, going to effect her greater financially, who makes
10 less money than Erich does. She has been effected by Covid more than Erich
11 who is still making his full time income. Raina has reduced income.²⁹

12 30. The Court is not inclined to grant all of the attorney fees.³⁰ The Court does not
13 want anybody being destitute by this, but Erich should pay something so he
14 will contribute \$5,000 to her attorney's fees.³¹

15 31. The Court does want him to pay the \$5,000. He has 30 days to get that done.³²

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23 ²⁷Time Stamp 9:25:31 - 9:26:00

24 ²⁸Time Stamp 9:26:19 - 9:26:32

25 ²⁹Time Stamp 9:26:39 - 9:27:29

26 ³⁰Time Stamp 28:16 - 9:28:22

27 ³¹Time Stamp 9:28:53 - 9:29:05

28 ³²Time Stamp 9:30:35 - 9:30:44

IT IS HEREBY ORDERED:

1. The Stay is granted as long as Erich either makes the ordered monthly payments of \$845.43, plus any applicable cost of living adjustment, during the pendency of the appellate proceedings to an Attorney's Trust Fund or if he purchases a supersedeas bond of \$20,000.
2. Erich's attorney is to provide the monthly account statement to Raina's attorney within five days of the payment where the monies were deposited.
3. If Erich decides to make the monthly payments as described above, the \$5,918.01 in arrears already reduced to judgment shall also be deposited into the same account as the monthly payments. This amount will continue to accumulate statutory interest until deposited.
4. If Erich purchases a supersedeas bond of \$20,000, the \$5,918.01 in arrears already reduced to judgment is still due and will continue to accumulate statutory interest.
5. Raina's request for attorney's fees is granted. Erich is to contribute \$5,000 to her attorney's fees.

6. The \$5,000 is due within 30 days from the date of the hearing.

DATED this _____ day of _____, 2020.

Dated this 31st day of December, 2020

Rebecca L. Burton

9FA 342 8532 734 **DISTRICT COURT JUDGE**

Rebecca L. Burton
District Court Judge

Dated this 21 day of December, 2020
Respectfully Submitted By:

Dated this _____ day of _____, 2020
Approved as to Form and Content
By:

WILLICK LAW GROUP

MARQUIS AURBACH COFFING

//s//Richard L. Crane, Esq.

****SIGNATURE REFUSED****

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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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:

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