

1 NOAS
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Electronically Filed
Oct 07 2021 03:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **Ammie Ann Wallace,**
11
12 Plaintiff,
13
14 vs.
15 **William Shawn Wallace,**
16
17 Defendant.

Case No. **D-20-613567-Z**
Dept No. **S**

18 **NOTICE OF APPEAL**

19 Notice is hereby given that **William Shawn Wallace**, Defendant above
20 named, hereby appeals to the Supreme Court of the State of Nevada from the

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1 “Findings of Fact, Conclusions of Law, and Order” entered in this action on the 9th
2 day of September 2021.

3 DATED this 1st day of October 2021

4
5 PECOS LAW GROUP
6 

7 **Shann D. Winesett, Esq.**
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that on this 1st day of October
3 2021, the Notice of Appeal, in the above-captioned case was served as follows:

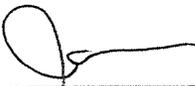
- 4 pursuant to NEFCR 9, by mandatory electronic service through the
5 Eighth Judicial District Court’s electronic filing system;
- 6 pursuant to NRCP 5, by placing the same to be deposited for mailing
7 in the United States Mail, in a sealed envelope upon which first class
8 postage was prepaid in Henderson, Nevada;
- 9 pursuant to EDCR 7.26 to be sent via facsimile and/or email, by duly
10 executed consent for service by electronic means;
- 11 by hand-delivery with signed Receipt of Copy.

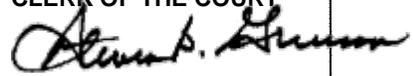
To individual(s) listed below at the address:

12
13 **Shelly Booth Cooley, Esq.**
14 scolley@cooleylawlv.com
Attorney for Plaintiff

15 **John Kelleher, Esq.**
16 hjuilfs@kelleherandkelleher.com
Attorney for Defendant

17 DATED this 1st day of October 2021.

18 
19 _____
20 Janine Shapiro
21 An employee of PECOS LAW GROUP
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23
24
25
26



1 ASTA
2 **Shann D. Winesett, Esq.**
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9 Email: Shann@pecoslawgroup.com
10 Attorney for Defendant

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **Ammie Ann Wallace,**

14 Plaintiff,

15 vs.

16 **William Shawn Wallace,**

17 Defendant.

18 Case No. **D-20-613567-Z**

19 Dept No. **S**

20 **CASE APPEAL STATEMENT**

21 COMES NOW Defendant **William Shawn Wallace**, by and through his
22 attorney, **Shann D. Winesett, Esq.**, of the law firm of PECOS LAW GROUP, and
23 pursuant to NRAP 3(a)(1), respectfully presents his Case Appeal Statement.

24 1. William Shawn Wallace, Defendant above-named, is the Appellant
25 filing this case appeal statement.
26

1 2. The Honorable Vincent Ochoa, Eighth Judicial District Court, Family
2 Division, is the district court judge who issued the decision wherefrom this appeal
3 arises.

4 3. The parties who were involved in the district court proceedings
5 wherefrom this appeal arises are as follows:

- 6 a. Ammie Ann Wallace (“Ammie”), Plaintiff; and
- 7 b. William Shawn Wallace (“William”), Defendant.

8 4. The parties involved in this appeal are:

- 9 a. William Shawn Wallace, Appellant; and
- 10 b. Ammie Ann Wallace, Respondent.

11 5. The counsel involved in this appeal, so far as they are known at this
12 time, are:

- 13 a. **Shann D. Winesett, Esq.**
14 Nevada Bar No. 005551
15 PECOS LAW GROUP
16 8925 th Pecos Road, Suite 14A
17 8926 Henderson, Nevada 89074
- 18 b. **John T. Kelleher, Esq.**
19 Nevada Bar No. 006012
20 KELLEHER & KELLEHER, LLC
21 40 South Stephanie Street, Suite 201
22 Henderson, Nevada 89012
- 23 c. **Shelly Booth Cooley, Esq.**
24 Nevada Bar No. 008992
25 THE COOLEY LAW FIRM
26 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145

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6. Appellant was represented by retained counsel in the district court proceedings.

7. Appellant is being represented by retained counsel in this appeal.

8. Appellant was not granted leave to proceed *in forma pauperis*.

9. The above-entitled district court proceedings initially commenced with the filing of a *Joint Petition for Summary Decree of Divorce* on September 4, 2020. The district court entered its *Decree of Divorce*, filed on September 10, 2020. The order appealed from is the district court's Findings of Fact, Conclusions of Law, and Order entered on September 9, 2021.

10. The nature of the action appealed from is a post-divorce proceeding in which the district court refused to modify child custody.

11. This case has not been the subject of an appeal to or original writ proceeding in the Supreme Court.

12. This appeal **does** involve child custody or visitation.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on this 1st day of October 2021, the Case Appeal Statement, in the above-captioned case was served as follows:

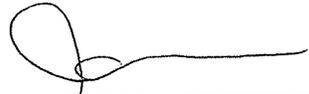
- pursuant to NEFCR 9, by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system;
- pursuant to NRCP 5, by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada;
- pursuant to EDCR 7.26 to be sent via facsimile and/or email, by duly executed consent for service by electronic means;
- by hand-delivery with signed Receipt of Copy.

To individual(s) listed below at the address:

Shelly Booth Cooley, Esq.
scolley@cooleylawlv.com
Attorney for Plaintiff

John Kelleher, Esq.
hjuilfs@kelleherandkelleher.com
Attorney for Defendant

DATED this 1st day of October 2021.



Janine Shapiro
An employee of PECOS LAW GROUP

CASE SUMMARY

CASE NO. D-20-613567-Z

**In the Matter of the Joint Petition for Divorce of:
Ammie Ann Wallace and William Shawn Wallace**

§
§
§
§

Location: **Department S**
Judicial Officer: **Ochoa, Vincent**
Filed on: **09/04/2020**

CASE INFORMATION

Statistical Closures

09/09/2021 Settled/Withdrawn With Judicial Conference or Hearing
09/10/2020 Settled/Withdrawn Without Judicial Conference or Hearing

Case Type: **Divorce - Joint Petition**
Subtype: **Joint Petition Subject Minor(s)**

Case Status: **09/09/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	D-20-613567-Z
Court	Department S
Date Assigned	09/04/2020
Judicial Officer	Ochoa, Vincent

PARTY INFORMATION

Petitioner	Wallace, Ammie Ann	Cooley, Shelly B. <i>Retained</i> 7022654505(W)
	Wallace, William Shawn	Kelleher, John T. <i>Retained</i> 702-384-7494(W)
Subject Minor	Wallace, Miller Clyde	
	Wallace, Quinn Rose	
	Wallace, William Shawn, Jr.	

DATE

EVENTS & ORDERS OF THE COURT

EVENTS

10/02/2021	 Notice of Withdrawal Filed by: Petitioner Wallace, William Shawn <i>[23] Notice of Withdrawal of Attorney of Record</i>
10/01/2021	 Case Appeal Statement Filed By: Petitioner Wallace, William Shawn <i>[22] Case Appeal Statement</i>
10/01/2021	 Notice of Appeal Filed By: Petitioner Wallace, William Shawn <i>[21] Notice of Appeal</i>
09/16/2021	 Notice of Entry of Order Filed By: Petitioner Wallace, Ammie Ann <i>[20] Notice of Entry of Order</i>
09/14/2021	 Objection Filed By: Petitioner Wallace, William Shawn <i>[19] Defendant's Objection to Plaintiff's Memorandum of Fees and Costs</i>

CASE SUMMARY

CASE NO. D-20-613567-Z

- 09/09/2021  Order
[18] Order
- 09/08/2021  Memorandum
Filed By: Petitioner Wallace, Ammie Ann
[17] Memorandum of Fees and Costs
- 08/09/2021  Exhibits
Filed By: Petitioner Wallace, Ammie Ann
[16] Plaintiff's Exhibits to Opposition to Defendant's Motion to Modify Decree of Divorce and Counter-motion for Attorneys Fees and Costs
- 07/27/2021  Exhibits
Filed By: Petitioner Wallace, William Shawn
[15] Exhibits to Reply to Plaintiff's Opposition to Motion to Modify Decree of Divorce and Opposition to Counter-motion for Attorney's Fees and Costs
- 07/27/2021  Reply to Opposition
Filed by: Petitioner Wallace, William Shawn
[14] Reply to Plaintiff's Opposition to Motion to Modify Decree of Divorce and Opposition to Counter-motion for Attorney's Fees and Costs
- 07/09/2021  Financial Disclosure Form
Filed by: Petitioner Wallace, Ammie Ann
[13] Plaintiff's General Financial Disclosure Form
- 07/09/2021  Opposition and Counter-motion
Filed By: Petitioner Wallace, Ammie Ann
[12] Plaintiff's Opposition to Defendant's Motion to Modify Decree of Divorce and Counter-motion for Attorneys Fees and Costs
- 06/29/2021  Financial Disclosure Form
[11] General Financial Disclosure
- 06/28/2021  Ex Parte Application for Order
Party: Petitioner Wallace, William Shawn
[10] Ex Parte Application For An Order Shortening Time
- 06/25/2021  Certificate of Service
Filed by: Petitioner Wallace, William Shawn
[9] Certificate of Service
- 06/24/2021  Notice of Hearing
[8] Notice of Hearing
- 06/18/2021  Motion
Filed By: Petitioner Wallace, William Shawn
[7] Defendant's Motion to Modify Decree of Divorce
- 06/18/2021  Notice of Appearance
Party: Petitioner Wallace, William Shawn
[6] Notice of Appearance of Counsel
- 09/11/2020  Notice of Entry of Decree
Party: Petitioner Wallace, Ammie Ann
[5] Notice of Entry of Decree
- 09/10/2020  Decree of Divorce
[4] Decree of Divorce
- 09/04/2020  Affidavit of Resident Witness
Filed by: Petitioner Wallace, Ammie Ann
[3] Affidavit of Resident Witness
- 09/04/2020

CASE SUMMARY

CASE NO. D-20-613567-Z

09/04/2020	 Consent Filed By: Petitioner Wallace, Ammie Ann <i>[2] Consent to Self-Representation</i>
09/04/2020	 Joint Petition for Summary Decree of Divorce Filed by: Petitioner Wallace, Ammie Ann <i>[1] Joint Petition for Divorce and UCCJEA Declaration</i>
<u>HEARINGS</u>	
08/12/2021	 Minute Order (11:00 AM) (Judicial Officer: Ochoa, Vincent) Decision Made; Journal Entry Details: <i>MINUTE ORDER FROM CHAMBERS NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Co-Petitioner, William Wallace, filed Defendant s Motion to Modify Decree of Divorce on June 18, 2021. Petitioner, Ammie Wallace, filed Plaintiff s Opposition and Countermotion on July 9, 2021. The matter came before the Court on August 18, 2021, and the matter was taken under advisement at the hearing. The Court Orders the following: 1. Mr. Wallace s (Co-Petitioner/Defendant) Motion to Modify Decree of Divorce is denied. 2. Ms. Wallace s (Petitioner/Plaintiff) Countermotion for attorney s fees shall be granted. Ms. Wallace s attorney, Shelly Booth Cooley, Esq., shall file a Brunzell Affidavit and relevant billing statements. 3. Ms. Wallace's attorney, Shelly Booth Cooley, Esq., shall prepare the order. The Order shall contain detailed findings including the facts of the case and an analysis of the relevant law. The portion of the order awarding attorney s fees shall include a discussion of the applicable statute, which party is the prevailing party, and why the actions may be considered vexatious or without merit. The specific amount of attorney s fees shall be left blank. The proposed order shall be submitted in PDF and Word format. A copy of the Minute Order shall be provided to both parties. ;</i>
08/12/2021	 All Pending Motions (9:15 AM) (Judicial Officer: Ochoa, Vincent) Matter Heard; Journal Entry Details: <i>DEFENDANT'S MOTION O MODIFY DECREE OF DIVORCE...PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY DECREE OF DIVORCE AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS Attorney Shelly Cooley appeared by audiovisual with Plaintiff (Mom). Attorney John Kelleher appeared by audiovisual with Defendant (Dad). Arguments regarding Custody. COURT ORDERED, as follows: Matter UNDER ADVISEMENT. Decision will be issued in one week. This Court may call upon one of the attorneys to prepare the proposed findings of facts.;</i>
08/12/2021	Hearing (9:15 AM) (Judicial Officer: Ochoa, Vincent) <i>Reply to Opposition</i> Decision Made;
08/12/2021	Opposition & Countermotion (9:15 AM) (Judicial Officer: Ochoa, Vincent) <i>Plaintiff's Opposition to Defendant's Motion to Modify Decree of Divorce and Countermotion for Attorney's Fees and Costs</i> Decision Made;
08/12/2021	Motion (9:15 AM) (Judicial Officer: Ochoa, Vincent) <i>Defendant's Motion to Modify Decree of Divorce</i> Decision Made;

DATE

FINANCIAL INFORMATION

Petitioner Wallace, Ammie Ann	381.00
Total Charges	381.00
Total Payments and Credits	0.00
Balance Due as of 10/5/2021	
Petitioner Wallace, William Shawn	178.00
Total Charges	178.00
Total Payments and Credits	0.00
Balance Due as of 10/5/2021	

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

AMMIE ANN WALLACE,

Plaintiff,

vs.

WILLIAM SHAWN WALLACE,

Defendant.

Case No.:
D-20-613567-Z
Dept. No.:
S

Date of Hearing: 08/12/2021
Time of Hearing: 9:15 a.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER**

This matter having come on for hearing on the 12th day of August, 2021; Plaintiff, Ammie Ann Wallace (Ammie) being present and represented by Shelly Booth Cooley of The Cooley Law Firm via video; Defendant, William Shawn Wallace (William) being present and represented by John T. Kelleher of Kelleher & Kelleher via video. The Court having considered the papers and pleadings on file herein, as well as the argument of counsel and the parties, and after taking the matter under advisement, FINDS and ORDERS as follows.

1 **Findings of Fact**

2 That the parties were divorced on 09/10/2020. That the Decree of
3 Divorce (Decree) is the controlling order in this case. That Decree
4 consists of the Decree of Divorce and Joint Petition for Divorce and
5 UCCJEA Declaration (Petition).
6

7 This Court has continuing personal and subject matter
8 jurisdiction in this case. This Court has continuing exclusive custody
9 jurisdiction over post-judgment custody matters pursuant to the
10 UCCJEA as adopted in Nevada Revised Statutes. Ammie and William
11 are residents of Nevada, and Nevada is the home state of the parties'
12 minor children.
13

14 That in the Decree, Ammie and William requested that the
15 “agreement settling all issues regarding child custody, visitation, child
16 support, medical insurance and expenses, and the tax deduction,”
17 outlined in the Petition, “being fair, in the children’s best interest, and
18 meets the children’s financial needs, be ratified, confirmed, and
19 incorporated into the Decree as though fully set forth.” Decree at 3:23-
20 4:4.
21
22

23 That in the Decree, Ammie and William asserted, “that the
24 amount of child support ordered herein is in compliance with the
25

1 guidelines established by the Administrator of the Division of Welfare
2 and Supportive Services or has been stipulated to by the parties with
3 the required certifications and disclosures required by the guidelines.”
4

5 Decree at 4:14-20.

6 That pursuant to the Petition, the parties share joint legal custody
7 of the children, to wit: William Shawn Wallace, Jr., date of birth:
8 06/24/2010, age 11; Miller Clyde Wallace, date of birth: 05/15/2012, age
9 9; and, Quinn Rose Wallace, date of birth: 01/18/2015, age 6. Petition at
10 4:17-19.
11

12 That pursuant to the Petition:

13 9. **Physical Custody.** The Petitioners agree that
14 primary physical custody of the children should be granted
15 to AMMIE ANN WALLACE. The Petitioners agree that
16 WILLIAM SHAWN WALLACE should have custody of the
17 children Monday through Friday, from 3:30 p.m. (or after
18 school if school is in session), through 6:30 p.m. The
19 Petitioners agree that weekends, defined as Friday at 6:30
20 p.m. to Sunday at 6:30 p.m., should be alternated: Mother’s
21 weekend is 09/11/2020. Father’s weekend is 09/04/2020.

22 Petition at 6:13-23. The parties agreed to a comprehensive Holiday
23 Visitation Schedule outlined in the Petition. Petition at 6:24-8:24.
24

25 That pursuant to the Petition:

...

...

1 **11. Parties' Incomes.**

2 AMMIE ANN WALLACE's gross monthly income is
3 \$8,583.

4 WILLIAM SHAWN WALLACE's gross monthly income
5 is \$10,000.00.

6 **12. Child Support.** The child support calculation
7 would require WILLIAM SHAWN WALLACE to pay \$2,080
8 per month in child support. The Petitioners agree to set child
9 support at a different amount. Accordingly, WILLIAM
10 SHAWN WALLACE shall pay child support to AMMIE ANN
11 WALLACE in the amount of \$1,000.00 per month (\$333.33
12 per child) pursuant to NAC 425.140(2) and NAC 425.150.
13 The parties certify that the basic needs of the children are
14 met or exceeded by the stipulated child support obligation.
15 The child support obligation for each particular child is
16 terminated beginning on the first day of the month following
17 the date on which the child reaches 18 years of age or, if the
18 child is still in high school, the first day of the month
19 following the date on which the child graduates from high
20 school or reaches 19 years of age, whichever comes first.

21 Petition at 9:4-27.

22 That a Consent to Self-Representation was filed in this matter on
23 09/04/2020, wherein William acknowledged that Shelly Booth Cooley
24 and The Cooley Law Firm represent Ammie, do not and will not
25 represent him, will at all times look out for Ammie's interests, not
William's, have not given him legal advice, have urged him to obtain his
own counsel to give him advice, and notwithstanding the suggestion to

1 obtain his own counsel to give him advice, William decided to represent
2 himself.

3 That on 06/18/2021, William filed his Motion to Modify Decree of
4 Divorce. That Motion requested that the Court modify custody, deny
5 any claim for “back child support,” and recalculate child support.
6

7 That Ammie filed her Opposition and Countermotion for
8 Attorneys’ Fees and Costs on 07/09/2021.

9 That William filed his Reply and Exhibits on 07/27/2021. That
10 Ammie filed her Exhibits to Opposition on 08/09/2021.
11

12 At the 08/12/2021 hearing, the matter came before the Court and
13 the matter was taken under advisement.

14 That on September 8, 2021, Ammie filed her Memorandum of Fees
15 and Costs seeking an award in the sum of \$10,300.00 pursuant to NRS
16 18.010 and EDCR 7.60(b). Included in the Memorandum was the
17 required Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 455 P.2d 31
18 (1969) analyses. Additionally, attorney-client invoices were submitted
19 in support of Ammie’s Memorandum. In support of her request, Ammie
20 contends that she prevailed in the post-judgment proceedings.
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1 Conclusions of Law

2 **Custody**

3 Before the Court can change custody, a hearing must be held in
4 order to assure all parties' rights are protected. Weise v. Granata, 110
5 Nev. 1410 (1994); Moser v. Moser, 108 Nev. 572 (1992). However, a
6 hearing is not required if the moving party fails to demonstrate
7 "adequate cause" in the affidavits and points and authorities for a
8 change in custody. Rooney v. Rooney, 109 Nev. 540, 853 P.2d 123
9 (1993). Specifically, the Rooney Court stated:
10
11

12 Nevada statutes and case law provide district courts
13 with broad discretion concerning child custody matters. Given
14 such discretion in this area, we hereby adopt an "adequate cause"
15 standard. That is, we hold that a district court has the discretion
16 to deny a motion to modify custody without holding a hearing
17 unless the moving party demonstrates "adequate cause" for
18 holding a hearing. "Adequate cause" requires something more
19 than allegations which, if proven, might permit inferences
20 sufficient to establish grounds for a custody change. "Adequate
21 cause" arises where the moving party presents a prima facie case
22 for modification. To constitute a prima facie case it must be shown
23 that: (1) the facts alleged in the affidavits are relevant to the
24 grounds for modification; and (2) the evidence is not merely
25 cumulative or impeaching.

(Internal Citations omitted.) Id. at 124-125. The Court FINDS William
fails to establish in his affidavit and points and authorities "adequate
cause" to require a hearing.

1 This Court may make an order at any time during the minority of
2 the child for the custody, care, education, maintenance, and support of
3 the minor children as appears in their best interests. NRS
4 125C.0045(1)(a). In custody matters, the polestar for judicial decisions
5 is the best interest of the children. NRS 125C.0035 and Schwartz v.
6 Schwartz, 107 Nev. 378, 812 P.2d 1268, 1272 (1991). Nevada statutes
7 and case law provide that the district court has broad discretion
8 concerning child custody matters. Rooney v. Rooney, 109 Nev. 540, 853
9 P.2d 123 (1993). The foundation of all custody determinations lies in the
10 particular facts and circumstances of each case. Arnold v. Arnold, 95
11 Nev. 951, 604 P.2d (1979).

12
13
14 In his Motion to Modify Decree of Divorce, William is seeking to
15 modify the award of primary physical custody to Ammie, to an award of
16 joint physical custody to the parties pursuant to Truax v. Truax, 874
17 P.2d 10, 110 Nev. 437 (1994). William maintains that he is entitled to a
18 change of custody because the parties never followed the Decree and
19 followed a joint timeshare from August 2020 through March 2021.

20
21 Ammie maintains that she has had primary physical custody of the
22 children since the parties' separation in October 2017 (and since the
23 divorce) and that the test for modifications of primary physical custody
24

1 is Ellis v. Carucci, 123 Nev. 145, 161 P.3d 239 (2007). Ammie
2 acknowledges that the parties followed a “flexible timeshare” as both
3 parties were working from home and the children were participating in
4 distance learning from August 2020 to March 2021, until the children
5 returned to in-person learning, and the parties resumed following the
6 timeshare outlined in the Decree, the timeshare the parties had been
7 following since their separation in August, 2017.
8

9 Pursuant to Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213 (2009):
10

11 When considering whether to modify a physical custody
12 arrangement, the district court must first determine what type of
13 physical custody arrangement exists because different tests apply
14 depending on the district court’s determination. A modification to
15 a joint physical custody arrangement is appropriate if it is in the
16 child's best interest. NRS 125.510(2). In contrast, a modification to
17 a primary physical custody arrangement is appropriate when
18 there is a substantial change in the circumstances affecting the
19 child and the modification serves the child's best interest. Ellis,
20 123 Nev. at 150, 161 P.3d at 242.
21

22 “If a parent has physical custody less than 40 percent of the time, then
23 that parent has visitation rights and the other parent has primary
24 physical custody.” Id. at 226. The parties stipulated in the Decree of
25 Divorce that Ammie would have primary physical custody of their
children and William would have custody of the children Monday
through Friday, from 3:30 p.m. (or after school if school is in session),

1 through 6:30 p.m. The parties alternated the weekends. According to
2 the parties' custody agreement in the Decree, Ammie had primary
3 physical custody and William had visitation, the Decree of Divorce
4 described an approximately 80/20 (alternating weekends) timeshare,
5 and the Decree labeled the arrangement as primary physical
6 custody/visitation rights.
7

8 Reviewing the facts in the light most favorable to William, the
9 parties shared joint physical custody from August 2020, through March
10 2021, and they have been following the timeshare in the Decree since
11 April 2021, when the children returned to in-person schooling. Pursuant
12 to Rivero, the district court should calculate the time during which a
13 party has physical custody of a child over one calendar year. Id. at 225.
14 “Calculating the timeshare over a one-year period allows the court to
15 consider weekly arrangements.” Id. Calculating the time during which
16 each party had physical custody of the children between August 2020,
17 and August 2021, William had custody of the children approximately
18 30% of the parenting time and Ammie had custody of the children
19 approximately 70% of the parenting time. Reviewing the evidence in the
20 light most favorable to William, the Court FINDS the parties' custody
21 arrangement was one of primary physical custody.
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1 When a parent is seeking to modify an award of primary physical
2 custody, as William is seeking, the correct standard is Ellis v. Carucci,
3 123 Nev. 145 (2007), where the Nevada Supreme Court concluded that
4 a modification of primary physical custody is warranted only when (1)
5 there has been a substantial change in circumstances affecting the
6 welfare of the child, and (2) the modification serves the best interest of
7 the child.

8
9 In his affidavit and points and authorities, William does not allege
10 that there has been a substantial change in circumstances affecting the
11 welfare of the children. Rather, William asserts that he is entitled to a
12 “change of custody...because the parties never followed the Decree of
13 Divorce.” Reply at 6:19-21. However, in his Reply, William admits that
14 the parties began following the timeshare in the Decree in “spring of
15 2021.” Reply at 6:18. Reviewing the facts in the light most favorable to
16 William as William addressed the best interest factors outlined in NRS
17 125C.0035(4) in his moving papers, the modification of custody would
18 serve the child's best interest. However, William did not satisfy both
19 elements of Ellis v. Carucci.

20
21 Pursuant to Rooney, “to constitute a prima facie case it must be
22 shown that: (1) the facts alleged in the affidavits are relevant to the
23
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1 grounds for modification; and (2) the evidence is not merely cumulative
2 or impeaching.” In this matter, the facts alleged in William’s affidavits
3 are not relevant to the grounds for modification as they do not satisfy
4 both elements of Ellis v. Carucci, and the evidence is merely cumulative
5 or impeaching.
6

7 Pursuant to Rooney v. Rooney, the Court FINDS there is no
8 adequate cause to hold an evidentiary hearing or trial regarding
9 William’s Motion to Modify Decree of Divorce and William’s motion is
10 denied.
11

12 **Child Support**

13 William cites to no law (statutory or caselaw) to support his
14 request that the Court deny Ammie’s claim for “back child support”
15 (which she is pursuing through the Family Support Division) or that the
16 Court recalculate child support.
17

18 Pursuant to EDCR 2.20(c),

19 A party filing a motion must also serve and file with it a
20 memorandum of points and authorities in support of each ground
21 thereof. The absence of such memorandum may be construed as
22 an admission that the motion is not meritorious, as cause for its
denial or as a waiver of all grounds not so supported.

23 William failed to file a memorandum of points and authorities in
24 support of his request the Court deny Ammie’s claim for “back child
25

1 support” or that the Court recalculate child support. The Court will
2 construe the absence of such memorandum as an admission that
3 William’s request is not meritorious and as cause for its denial.
4

5 **Attorneys’ Fees**

6 The Court is required to review elements mandated by Brunzell v.
7 Golden Gate Nat’l Bank, 85 Nev. 345, 455 P.2d 31 (1969) related to
8 Ammie’s attorney, Shelly Booth Cooley. First, as to qualities of the
9 advocate, the Court FINDS attorney Cooley has been licensed to
10 practice law for over seventeen years. The Court FINDS that attorney
11 Cooley is a licensed attorney specializing in the practice of domestic
12 relations. Next, as to character of work completed, the Court FINDS
13 this matter related to William’s underlying post-judgment motion.
14 With respect to work actually performed, as noted herein, this case
15 involved review of the underlying proceedings and understanding
16 applicable law. With respect to the result, the Court FINDS Ammie
17 was the prevailing party pursuant to NRS 18.010.
18
19

20 The Court FINDS that Ammie is entitled to an award of attorneys’
21 fees and costs pursuant to EDCR 7.60(b), as William’s Motion is
22 frivolous, unnecessary, and unwarranted, multiples the proceedings in
23 a case as to increase costs unreasonably and vexatiously and failed to
24
25

1 comply with court rules. Pursuant to EDCR 5.501, William did not
2 attempt to resolve the issues in dispute with Ammie prior to filing his
3 Motion and his Motion was filed in violation of EDCR 5.501. Pursuant
4 to Rooney v. Rooney, there is no adequate cause to hold an evidentiary
5 hearing or trial regarding William's Motion to Modify Decree of Divorce.
6 Pursuant to EDCR 2.20(c), William failed to file a memorandum of
7 points and authorities in support of his child support requests, which
8 may be construed as an admission that the motion is not meritorious
9 and as cause for its denial.
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12 The Court is required to consider the parties' respective income as
13 set forth in Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005). The
14 Court FINDS, on 07/09/2021, Ammie filed a Financial Disclosure Form
15 (FDF) listing total average gross monthly income (GMI) of \$14,183.34,
16 which comports with the attached payroll statements. The Court
17 FINDS, on 06/29/2021, William filed a FDF listing his GMI as
18 \$10,000.00. However, William provided a 06/15/2021 Earnings
19 Statement listing a year to date (YTD) income of \$60,902.91. The Court
20 FINDS that 06/15/2021 was 25 weeks into 2021. Therefore, the Court
21 FINDS that William's actual GMI was \$10,556.52 (\$60,902.91 YTD
22 income for 2021/25 weeks into the year = \$2,436.12 per week income X
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1 52 weeks in a year = \$126,678.24 annual income/12 months in a year =
2 \$10,556.52 actual GMI). Accordingly, the Court FINDS an income
3 disparity exists between the parties in Ammie's favor. Specifically,
4 Ammie earns approximately \$3,626.82, or 26%, per month more than
5 William (\$14,183.34 Ammie's GMI - \$10,556.52 William's GMI =
6 \$3,626.82 difference).

8 The Court FINDS Ammie's request for an award of attorneys' fees
9 and costs in the total sum of \$ 7,500.00 is reasonable based on the
10 underlying procedural stance of the case, based on the pleadings before
11 this Court and the Court's final orders. However, this Court is required
12 to take into consideration the parties' respective financial positions
13 when granting any award.
14

15
16 **Decision**

17 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
18 William's Motion to Modify Decree of Divorce is denied.

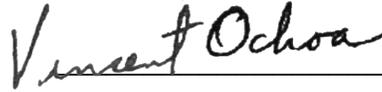
19 IT IS FURTHER ORDRED, ADJDUGED AND DECREED that
20 Ammie's Countermotion for attorneys' fees and costs shall be granted in
21 the sum of \$ 7,500.00, plus interest at the legal rate, said
22 amount ordered reduced to judgment. That said judgment is hereby
23
24
25

1 entered in favor of Ammie and against William. That said judgment is
2 collectible using any legal means.

3
4
5 **Order**

6 **IT IS SO ORDERED.**

7
8 Dated this 9th day of September, 2021


9

10 **9C8 0B0 8AC9 0E06**
11 **Vincent Ochoa**
12 **District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 In the Matter of the Joint Petition | CASE NO: D-20-613567-Z
for Divorce of: |
7 | DEPT. NO. Department S
8 Ammie Ann Wallace and
William Shawn Wallace
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

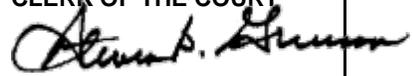
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/9/2021

15 John Kelleher hjuilfs@kelleherandkelleher.com

16 Shelly Cooley scooley@cooleylawlv.com

17
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27
28



1 **NEO**
2 **THE COOLEY LAW FIRM**
3 Shelly Booth Cooley
4 Nevada State Bar No. 8992
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone Number: (702) 265-4505
8 Facsimile Number: (702) 645-9924
9 E-mail: scooley@cooleylawlv.com
10 Attorney for Plaintiff,
11 **AMMIE ANN WALLACE**

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

9 **AMMIE ANN WALLACE,**
10
11 Plaintiff,

11 vs.

12 **WILLIAM SHAWN WALLACE,**
13
14 Defendant

Case No. D-20-613567-Z
Dept No. S

Date of Hearing: 08/12/2021
Time of Hearing: 9:15 a.m.

15
16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law,
18 and Order were entered in the above-entitled matter on 09/09/2021. A
19 copy of said Order is attached hereto.

20 DATED this 16 day of September, 2021.

21 **THE COOLEY LAW FIRM**

22 By /s/ Shelly Booth Cooley
23 Shelly Booth Cooley
24 Nevada Bar No. 8992
25 10161 Park Run Drive, Suite 150
26 Las Vegas, Nevada 89145
27 Attorney for Plaintiff,
28 **AMMIE ANN WALLACE**

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies pursuant to NRCP 5(b) that on
3 the 16 day of September, 2021, a true and correct copy of the foregoing
4 NOTICE OF ORDER was served upon each of the parties:

- 5
- 6 **BY ELECTRONIC SERVICE:** Pursuant to EDCR 8.05(a), EDCR
7 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned
8 "In the Administrative Matter of Mandatory Electronic Service in
9 the Eighth Judicial District Court," by mandatory electronic service
10 through the Eighth Judicial District Court's electronic filing
11 system.
- 12 **BY MAIL:** Pursuant to EDCR 7.26(a)(1), by depositing a copy of
13 the same in a sealed envelope in the United States Mail, Postage
14 Pre-Paid to the last known address of each of the parties, at Las
15 Vegas, Nevada.
- 16 **BY FACSIMILE TRANSMISSION:** Pursuant to EDCR 7.26(a)(3),
17 via facsimile transmission. Attached is a copy of the Facsimile
18 Transmittal Form, along with the Fax Call Report, confirming the
19 facsimile transmission.
- 20 **BY HAND DELIVERY:** By hand delivery with signed Receipt of
21 Copy.

22 To the address, email address, and/or facsimile number indicated below:

23
24
25
26
27
28
John T. Kelleher, Esq.
Kelleher & Kelleher, LLC
40 S. Stephanie St., Suite 201
Henderson, NV 89012
Attorneys for Defendant

/s/ Shelly Booth Cooley
An Employee of The Cooley Law Firm

1 | ORDR

2

3

4

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

5

6

AMMIE ANN WALLACE,

7

Plaintiff,

8

vs.

9

WILLIAM SHAWN WALLACE,

10

11

Defendant.

12

Case No.:

D-20-613567-Z

Dept. No.:

S

Date of Hearing: 08/12/2021

Time of Hearing: 9:15 a.m.

13

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER**

14

15

This matter having come on for hearing on the 12th day of August,

16

2021; Plaintiff, Ammie Ann Wallace (Ammie) being present and

17

represented by Shelly Booth Cooley of The Cooley Law Firm via video;

18

19

Defendant, William Shawn Wallace (William) being present and

20

represented by John T. Kelleher of Kelleher & Kelleher via video. The

21

Court having considered the papers and pleadings on file herein, as well

22

as the argument of counsel and the parties, and after taking the matter

23

under advisement, FINDS and ORDERS as follows.

24

25

1 **Findings of Fact**

2 That the parties were divorced on 09/10/2020. That the Decree of
3 Divorce (Decree) is the controlling order in this case. That Decree
4 consists of the Decree of Divorce and Joint Petition for Divorce and
5 UCCJEA Declaration (Petition).
6

7 This Court has continuing personal and subject matter
8 jurisdiction in this case. This Court has continuing exclusive custody
9 jurisdiction over post-judgment custody matters pursuant to the
10 UCCJEA as adopted in Nevada Revised Statutes. Ammie and William
11 are residents of Nevada, and Nevada is the home state of the parties'
12 minor children.
13

14 That in the Decree, Ammie and William requested that the
15 “agreement settling all issues regarding child custody, visitation, child
16 support, medical insurance and expenses, and the tax deduction,”
17 outlined in the Petition, “being fair, in the children’s best interest, and
18 meets the children’s financial needs, be ratified, confirmed, and
19 incorporated into the Decree as though fully set forth.” Decree at 3:23-
20 4:4.
21
22

23 That in the Decree, Ammie and William asserted, “that the
24 amount of child support ordered herein is in compliance with the
25

1 guidelines established by the Administrator of the Division of Welfare
2 and Supportive Services or has been stipulated to by the parties with
3 the required certifications and disclosures required by the guidelines.”
4

5 Decree at 4:14-20.

6 That pursuant to the Petition, the parties share joint legal custody
7 of the children, to wit: William Shawn Wallace, Jr., date of birth:
8 06/24/2010, age 11; Miller Clyde Wallace, date of birth: 05/15/2012, age
9 9; and, Quinn Rose Wallace, date of birth: 01/18/2015, age 6. Petition at
10 4:17-19.
11

12 That pursuant to the Petition:

13 9. **Physical Custody.** The Petitioners agree that
14 primary physical custody of the children should be granted
15 to AMMIE ANN WALLACE. The Petitioners agree that
16 WILLIAM SHAWN WALLACE should have custody of the
17 children Monday through Friday, from 3:30 p.m. (or after
18 school if school is in session), through 6:30 p.m. The
19 Petitioners agree that weekends, defined as Friday at 6:30
20 p.m. to Sunday at 6:30 p.m., should be alternated: Mother’s
21 weekend is 09/11/2020. Father’s weekend is 09/04/2020.

22 Petition at 6:13-23. The parties agreed to a comprehensive Holiday
23 Visitation Schedule outlined in the Petition. Petition at 6:24-8:24.
24

25 That pursuant to the Petition:

...

...

1 **11. Parties' Incomes.**

2 AMMIE ANN WALLACE's gross monthly income is
3 \$8,583.

4 WILLIAM SHAWN WALLACE's gross monthly income
5 is \$10,000.00.

6 **12. Child Support.** The child support calculation
7 would require WILLIAM SHAWN WALLACE to pay \$2,080
8 per month in child support. The Petitioners agree to set child
9 support at a different amount. Accordingly, WILLIAM
10 SHAWN WALLACE shall pay child support to AMMIE ANN
11 WALLACE in the amount of \$1,000.00 per month (\$333.33
12 per child) pursuant to NAC 425.140(2) and NAC 425.150.
13 The parties certify that the basic needs of the children are
14 met or exceeded by the stipulated child support obligation.
15 The child support obligation for each particular child is
16 terminated beginning on the first day of the month following
17 the date on which the child reaches 18 years of age or, if the
18 child is still in high school, the first day of the month
19 following the date on which the child graduates from high
20 school or reaches 19 years of age, whichever comes first.

21 Petition at 9:4-27.

22 That a Consent to Self-Representation was filed in this matter on
23 09/04/2020, wherein William acknowledged that Shelly Booth Cooley
24 and The Cooley Law Firm represent Ammie, do not and will not
25 represent him, will at all times look out for Ammie's interests, not
William's, have not given him legal advice, have urged him to obtain his
own counsel to give him advice, and notwithstanding the suggestion to

1 obtain his own counsel to give him advice, William decided to represent
2 himself.

3 That on 06/18/2021, William filed his Motion to Modify Decree of
4 Divorce. That Motion requested that the Court modify custody, deny
5 any claim for “back child support,” and recalculate child support.
6

7 That Ammie filed her Opposition and Countermotion for
8 Attorneys’ Fees and Costs on 07/09/2021.

9 That William filed his Reply and Exhibits on 07/27/2021. That
10 Ammie filed her Exhibits to Opposition on 08/09/2021.
11

12 At the 08/12/2021 hearing, the matter came before the Court and
13 the matter was taken under advisement.

14 That on September 8, 2021, Ammie filed her Memorandum of Fees
15 and Costs seeking an award in the sum of \$10,300.00 pursuant to NRS
16 18.010 and EDCR 7.60(b). Included in the Memorandum was the
17 required Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 455 P.2d 31
18 (1969) analyses. Additionally, attorney-client invoices were submitted
19 in support of Ammie’s Memorandum. In support of her request, Ammie
20 contends that she prevailed in the post-judgment proceedings.
21
22

23 . . .

24 . . .

1 Conclusions of Law

2 **Custody**

3 Before the Court can change custody, a hearing must be held in
4 order to assure all parties' rights are protected. Weise v. Granata, 110
5 Nev. 1410 (1994); Moser v. Moser, 108 Nev. 572 (1992). However, a
6 hearing is not required if the moving party fails to demonstrate
7 "adequate cause" in the affidavits and points and authorities for a
8 change in custody. Rooney v. Rooney, 109 Nev. 540, 853 P.2d 123
9 (1993). Specifically, the Rooney Court stated:
10
11

12 Nevada statutes and case law provide district courts
13 with broad discretion concerning child custody matters. Given
14 such discretion in this area, we hereby adopt an "adequate cause"
15 standard. That is, we hold that a district court has the discretion
16 to deny a motion to modify custody without holding a hearing
17 unless the moving party demonstrates "adequate cause" for
18 holding a hearing. "Adequate cause" requires something more
19 than allegations which, if proven, might permit inferences
20 sufficient to establish grounds for a custody change. "Adequate
21 cause" arises where the moving party presents a prima facie case
22 for modification. To constitute a prima facie case it must be shown
23 that: (1) the facts alleged in the affidavits are relevant to the
24 grounds for modification; and (2) the evidence is not merely
25 cumulative or impeaching.

(Internal Citations omitted.) Id. at 124-125. The Court FINDS William
fails to establish in his affidavit and points and authorities "adequate
cause" to require a hearing.

1 This Court may make an order at any time during the minority of
2 the child for the custody, care, education, maintenance, and support of
3 the minor children as appears in their best interests. NRS
4 125C.0045(1)(a). In custody matters, the polestar for judicial decisions
5 is the best interest of the children. NRS 125C.0035 and Schwartz v.
6 Schwartz, 107 Nev. 378, 812 P.2d 1268, 1272 (1991). Nevada statutes
7 and case law provide that the district court has broad discretion
8 concerning child custody matters. Rooney v. Rooney, 109 Nev. 540, 853
9 P.2d 123 (1993). The foundation of all custody determinations lies in the
10 particular facts and circumstances of each case. Arnold v. Arnold, 95
11 Nev. 951, 604 P.2d (1979).

12
13
14 In his Motion to Modify Decree of Divorce, William is seeking to
15 modify the award of primary physical custody to Ammie, to an award of
16 joint physical custody to the parties pursuant to Truax v. Truax, 874
17 P.2d 10, 110 Nev. 437 (1994). William maintains that he is entitled to a
18 change of custody because the parties never followed the Decree and
19 followed a joint timeshare from August 2020 through March 2021.

20
21 Ammie maintains that she has had primary physical custody of the
22 children since the parties' separation in October 2017 (and since the
23 divorce) and that the test for modifications of primary physical custody
24

1 is Ellis v. Carucci, 123 Nev. 145, 161 P.3d 239 (2007). Ammie
2 acknowledges that the parties followed a “flexible timeshare” as both
3 parties were working from home and the children were participating in
4 distance learning from August 2020 to March 2021, until the children
5 returned to in-person learning, and the parties resumed following the
6 timeshare outlined in the Decree, the timeshare the parties had been
7 following since their separation in August, 2017.
8

9 Pursuant to Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213 (2009):
10

11 When considering whether to modify a physical custody
12 arrangement, the district court must first determine what type of
13 physical custody arrangement exists because different tests apply
14 depending on the district court’s determination. A modification to
15 a joint physical custody arrangement is appropriate if it is in the
16 child's best interest. NRS 125.510(2). In contrast, a modification to
17 a primary physical custody arrangement is appropriate when
18 there is a substantial change in the circumstances affecting the
19 child and the modification serves the child's best interest. Ellis,
20 123 Nev. at 150, 161 P.3d at 242.

21 “If a parent has physical custody less than 40 percent of the time, then
22 that parent has visitation rights and the other parent has primary
23 physical custody.” Id. at 226. The parties stipulated in the Decree of
24 Divorce that Ammie would have primary physical custody of their
25 children and William would have custody of the children Monday
through Friday, from 3:30 p.m. (or after school if school is in session),

1 through 6:30 p.m. The parties alternated the weekends. According to
2 the parties' custody agreement in the Decree, Ammie had primary
3 physical custody and William had visitation, the Decree of Divorce
4 described an approximately 80/20 (alternating weekends) timeshare,
5 and the Decree labeled the arrangement as primary physical
6 custody/visitation rights.
7

8 Reviewing the facts in the light most favorable to William, the
9 parties shared joint physical custody from August 2020, through March
10 2021, and they have been following the timeshare in the Decree since
11 April 2021, when the children returned to in-person schooling. Pursuant
12 to Rivero, the district court should calculate the time during which a
13 party has physical custody of a child over one calendar year. Id. at 225.
14 “Calculating the timeshare over a one-year period allows the court to
15 consider weekly arrangements.” Id. Calculating the time during which
16 each party had physical custody of the children between August 2020,
17 and August 2021, William had custody of the children approximately
18 30% of the parenting time and Ammie had custody of the children
19 approximately 70% of the parenting time. Reviewing the evidence in the
20 light most favorable to William, the Court FINDS the parties' custody
21 arrangement was one of primary physical custody.
22
23
24
25

1 When a parent is seeking to modify an award of primary physical
2 custody, as William is seeking, the correct standard is Ellis v. Carucci,
3 123 Nev. 145 (2007), where the Nevada Supreme Court concluded that
4 a modification of primary physical custody is warranted only when (1)
5 there has been a substantial change in circumstances affecting the
6 welfare of the child, and (2) the modification serves the best interest of
7 the child.

8
9 In his affidavit and points and authorities, William does not allege
10 that there has been a substantial change in circumstances affecting the
11 welfare of the children. Rather, William asserts that he is entitled to a
12 “change of custody...because the parties never followed the Decree of
13 Divorce.” Reply at 6:19-21. However, in his Reply, William admits that
14 the parties began following the timeshare in the Decree in “spring of
15 2021.” Reply at 6:18. Reviewing the facts in the light most favorable to
16 William as William addressed the best interest factors outlined in NRS
17 125C.0035(4) in his moving papers, the modification of custody would
18 serve the child's best interest. However, William did not satisfy both
19 elements of Ellis v. Carucci.

20
21 Pursuant to Rooney, “to constitute a prima facie case it must be
22 shown that: (1) the facts alleged in the affidavits are relevant to the
23
24
25

1 grounds for modification; and (2) the evidence is not merely cumulative
2 or impeaching.” In this matter, the facts alleged in William’s affidavits
3 are not relevant to the grounds for modification as they do not satisfy
4 both elements of Ellis v. Carucci, and the evidence is merely cumulative
5 or impeaching.
6

7 Pursuant to Rooney v. Rooney, the Court FINDS there is no
8 adequate cause to hold an evidentiary hearing or trial regarding
9 William’s Motion to Modify Decree of Divorce and William’s motion is
10 denied.
11

12 **Child Support**

13 William cites to no law (statutory or caselaw) to support his
14 request that the Court deny Ammie’s claim for “back child support”
15 (which she is pursuing through the Family Support Division) or that the
16 Court recalculate child support.
17

18 Pursuant to EDCR 2.20(c),

19 A party filing a motion must also serve and file with it a
20 memorandum of points and authorities in support of each ground
21 thereof. The absence of such memorandum may be construed as
22 an admission that the motion is not meritorious, as cause for its
denial or as a waiver of all grounds not so supported.

23 William failed to file a memorandum of points and authorities in
24 support of his request the Court deny Ammie’s claim for “back child
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2 construe the absence of such memorandum as an admission that
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5 **Attorneys’ Fees**

6 The Court is required to review elements mandated by Brunzell v.
7 Golden Gate Nat’l Bank, 85 Nev. 345, 455 P.2d 31 (1969) related to
8 Ammie’s attorney, Shelly Booth Cooley. First, as to qualities of the
9 advocate, the Court FINDS attorney Cooley has been licensed to
10 practice law for over seventeen years. The Court FINDS that attorney
11 Cooley is a licensed attorney specializing in the practice of domestic
12 relations. Next, as to character of work completed, the Court FINDS
13 this matter related to William’s underlying post-judgment motion.
14 With respect to work actually performed, as noted herein, this case
15 involved review of the underlying proceedings and understanding
16 applicable law. With respect to the result, the Court FINDS Ammie
17 was the prevailing party pursuant to NRS 18.010.
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20 The Court FINDS that Ammie is entitled to an award of attorneys’
21 fees and costs pursuant to EDCR 7.60(b), as William’s Motion is
22 frivolous, unnecessary, and unwarranted, multiples the proceedings in
23 a case as to increase costs unreasonably and vexatiously and failed to
24
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1 comply with court rules. Pursuant to EDCR 5.501, William did not
2 attempt to resolve the issues in dispute with Ammie prior to filing his
3 Motion and his Motion was filed in violation of EDCR 5.501. Pursuant
4 to Rooney v. Rooney, there is no adequate cause to hold an evidentiary
5 hearing or trial regarding William's Motion to Modify Decree of Divorce.
6 Pursuant to EDCR 2.20(c), William failed to file a memorandum of
7 points and authorities in support of his child support requests, which
8 may be construed as an admission that the motion is not meritorious
9 and as cause for its denial.
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12 The Court is required to consider the parties' respective income as
13 set forth in Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005). The
14 Court FINDS, on 07/09/2021, Ammie filed a Financial Disclosure Form
15 (FDF) listing total average gross monthly income (GMI) of \$14,183.34,
16 which comports with the attached payroll statements. The Court
17 FINDS, on 06/29/2021, William filed a FDF listing his GMI as
18 \$10,000.00. However, William provided a 06/15/2021 Earnings
19 Statement listing a year to date (YTD) income of \$60,902.91. The Court
20 FINDS that 06/15/2021 was 25 weeks into 2021. Therefore, the Court
21 FINDS that William's actual GMI was \$10,556.52 (\$60,902.91 YTD
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1 52 weeks in a year = \$126,678.24 annual income/12 months in a year =
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3 disparity exists between the parties in Ammie's favor. Specifically,
4 Ammie earns approximately \$3,626.82, or 26%, per month more than
5 William (\$14,183.34 Ammie's GMI - \$10,556.52 William's GMI =
6 \$3,626.82 difference).

8 The Court FINDS Ammie's request for an award of attorneys' fees
9 and costs in the total sum of \$ 7,500.00 is reasonable based on the
10 underlying procedural stance of the case, based on the pleadings before
11 this Court and the Court's final orders. However, this Court is required
12 to take into consideration the parties' respective financial positions
13 when granting any award.
14

15
16 **Decision**

17 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
18 William's Motion to Modify Decree of Divorce is denied.

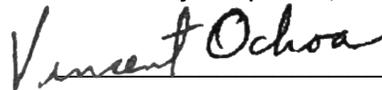
19 IT IS FURTHER ORDRED, ADJDUGED AND DECREED that
20 Ammie's Countermotion for attorneys' fees and costs shall be granted in
21 the sum of \$ 7,500.00, plus interest at the legal rate, said
22 amount ordered reduced to judgment. That said judgment is hereby
23
24
25

1 entered in favor of Ammie and against William. That said judgment is
2 collectible using any legal means.

3
4
5 **Order**

6 **IT IS SO ORDERED.**

7
8 Dated this 9th day of September, 2021

9 

10 **9C8 0B0 8AC9 0E06**
11 **Vincent Ochoa**
12 **District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In the Matter of the Joint Petition | CASE NO: D-20-613567-Z
7 for Divorce of: |
8 Ammie Ann Wallace and | DEPT. NO. Department S
9 William Shawn Wallace |

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: 9/9/2021

15 John Kelleher hjuilfs@kelleherandkelleher.com

16 Shelly Cooley scooley@cooleylawlv.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Joint Petition

COURT MINUTES

August 12, 2021

D-20-613567-Z

In the Matter of the Joint Petition for Divorce of:
Ammie Ann Wallace and William Shawn Wallace

August 12, 2021

9:15 AM

All Pending Motions

HEARD BY: Ochoa, Vincent

COURTROOM: Courtroom 07

COURT CLERK: Yvette Clayton

PARTIES:

Ammie Wallace, Petitioner, not present	Shelly Cooley, Attorney, not present
Miller Wallace, Subject Minor, not present	
Quinn Wallace, Subject Minor, not present	
William Wallace, Petitioner, not present	John Kelleher, Attorney, not present
William Wallace, Subject Minor, not present	

JOURNAL ENTRIES

- DEFENDANT'S MOTION O MODIFY DECREE OF DIVORCE...PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY DECREE OF DIVORCE AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS

Attorney Shelly Cooley appeared by audiovisual with Plaintiff (Mom).
Attorney John Kelleher appeared by audiovisual with Defendant (Dad).

Arguments regarding Custody.

COURT ORDERED, as follows:

Matter UNDER ADVISEMENT. Decision will be issued in one week. This Court may call upon one of the attorneys to prepare the proposed findings of facts.

INTERIM CONDITIONS:

PRINT DATE:	10/05/2021	Page 1 of 4	Minutes Date:	August 12, 2021
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

FUTURE HEARINGS:

PRINT DATE:	10/05/2021	Page 2 of 4	Minutes Date:	August 12, 2021
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Joint Petition

COURT MINUTES

August 12, 2021

D-20-613567-Z

In the Matter of the Joint Petition for Divorce of:
Ammie Ann Wallace and William Shawn Wallace

August 12, 2021

11:00 AM

Minute Order

HEARD BY: Ochoa, Vincent

COURTROOM: Chambers

COURT CLERK: ; Yvette Clayton;

PARTIES:

Ammie Wallace, Petitioner, not present	Shelly Cooley, Attorney, not present
Miller Wallace, Subject Minor, not present	
Quinn Wallace, Subject Minor, not present	
William Wallace, Petitioner, not present	John Kelleher, Attorney, not present
William Wallace, Subject Minor, not present	

JOURNAL ENTRIES

- MINUTE ORDER FROM CHAMBERS

NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action.

Co-Petitioner, William Wallace, filed Defendant s Motion to Modify Decree of Divorce on June 18, 2021. Petitioner, Ammie Wallace, filed Plaintiff s Opposition and Countermotion on July 9, 2021. The matter came before the Court on August 18, 2021, and the matter was taken under advisement at the hearing.

The Court Orders the following:

1. Mr. Wallace s (Co-Petitioner/Defendant) Motion to Modify Decree of Divorce is denied.
2. Ms. Wallace s (Petitioner/Plaintiff) Countermotion for attorney s fees shall be granted. Ms. Wallace s attorney, Shelly Booth Cooley, Esq., shall file a Brunzell Affidavit and relevant billing statements.
3. Ms. Wallace's attorney, Shelly Booth Cooley, Esq., shall prepare the order. The Order shall contain detailed findings including the facts of the case and an analysis of the relevant law. The portion of the

PRINT DATE:	10/05/2021	Page 3 of 4	Minutes Date:	August 12, 2021
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order awarding attorney s fees shall include a discussion of the applicable statute, which party is the prevailing party, and why the actions may be considered vexatious or without merit. The specific amount of attorney s fees shall be left blank. The proposed order shall be submitted in PDF and Word format.

A copy of the Minute Order shall be provided to both parties.

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	10/05/2021	Page 4 of 4	Minutes Date:	August 12, 2021
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EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

SHANN D. WINESETT, ESQ.
8925 S. PECOS RD., SUITE 14A
HENDERSON, NV 89074

DATE: October 5, 2021
CASE: D-20-613567-Z

RE CASE: In the Matter of the Joint Petition for Divorce of: AMMIE ANN WALLACE nka AMMIE ANN OLSEN
and WILLIAM SHAWN WALLACE, Petitioner(s)

NOTICE OF APPEAL FILED: October 1, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

In the Matter of the Joint Petition for Divorce of:

AMMIE ANN WALLACE nka AMMIE ANN OLSEN and WILLIAM SHAWN WALLACE,

Petitioner(s),

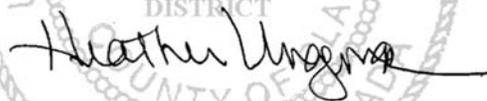
Case No: D-20-613567-Z

Dept No: S

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 5 day of October 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

