

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
3

4 RONALD ALAN BARBER

5 Appellant,

6 vs.

7 BRIANNA TEAL BARBER

8 Respondent.
9
10

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Elizabeth A. Brown
Clerk of Supreme Court
CASE NO. 83201

11 **RESPONDENT'S FAST TRACK RESPONSE**
12

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26		

1 **1. Party filing Response:** Brianna Barber

2 **2. Attorney submitting response:** Racheal H. Mastel, Esq., Kainen Law
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6

7 **3. Proceedings raising same issues:** None.

8 **4. Statement of facts and procedural history**
9

10 The parties were married March 8, 2013. **JA000002.** They have two
11 children. **JA000002.** Brianna filed her Complaint on September 15, 2020.

12 **JA000001.** There was a Temporary Protective Order ("TPO") against Ronald.

13 **JA000002.** The Complaint requested sole legal and physical custody, averred
14
15 that the parties' daughter had been sexually assaulted by Ronald, that criminal
16 charges were pending, and provided a proposed division of the parties' property.
17

18 **JA000001-000009.** The summons issued the same day set forth the consequence
19 of failing to respond within 20 days, including Plaintiff receiving the relief
20 requested in the Complaint.¹ **JA000010-000011.** As detailed by Brianna's counsel
21 at the hearing on December 20, 2020, attempts were made to obtain a valid
22

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25
26 ¹ NRCP 12 was amended in 2019 and expanded the time to file an Answer to 21 days, however the default in this matter was not entered prior to the 21 day period expiring.

1 address at which to serve Ronald. **JA000025-000026**. Ultimately, Ronald's
2 criminal attorney, Ryan Helmick, Esq., accepted service on October 7, 2020, but
3 refused to provide Ronald's address for service. **JA000012; 000025-000026**.
4

5 No Answer was filed, and a Three Day Notice of Intent to Take Default
6 was filed and receipted on Mr. Helmick on October 28, 2020.² **JA000013**. The
7 Default was issued on November 4, 2020. **JA000015**. Brianna provided sworn
8 testimony at the hearing on December 20, 2020. **JA000021-000034**. The Decree
9 was filed on January 21, 2021. **JA000039**.
10
11

12 Thereafter, Brianna filed a Motion to have the Clerk of the Court sign a
13 Quitclaim Deed on Ronald's behalf, so that she could refinance the house
14 awarded to her in the Decree. **JA000068-000075**. Ronald opposed the Motion,
15 and countermotioned for the Decree to be set aside. At the hearing on May 25,
16 2021, the court granted Brianna's Motion and denied Ronald's countermotion.
17
18
19
20 **JA000128-000131**. This appeal followed.
21

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25 _____
26 ²

Although the Notice was served on the 20th day, because the default was not taken until after the 21 days expired, there was no prejudice to Ronald for that defect.

1 **5. Issues**

- 2 A. Whether the Court Correctly Found That Service of the Complaint
3 and Summons Was Proper;
4
5 B. Whether the Court Made Sufficient Findings Related to Child
6 Custody;
7
8 C. Whether the Court Made Sufficient Findings Related to Child
9 Support; and
10
11 D. Whether the Court Correctly Divided the Parties' Community
12 Property.
13

14 **6. Argument**

15
16 **I.**

17 **SERVICE**

18
19 **Standard of Review**

20 "This court reviews a district court's decision granting or denying a motion
21 to set aside a default judgment for an abuse of discretion." *Main Gate Auto*
22 *Wrecking, LLC v. First Nat'l Bank of Nev.*, 381 P.3d 636 (Nev. 2012) (Table).
23 *See Cook v. Cook*, 112 Nev. 179, 181, 912 P.2d 264, 265 (1996). "[The]
24
25 discretion [to grant or deny a motion to set aside] is a legal discretion and cannot
26

1 be sustained where there is no competent evidence to justify the court's action."

2 *Cook*, 912 P.2d at 265. Due diligence determinations are reviewed for an abuse
3 of discretion. *Abreu v. Gilmer*, 115 Nev. 308, 985 P.2d 746, 749 (1999).

4
5 **The Court Correctly Found That Service of Process Was Proper.**
6

7 Nevada Rules of Civil Procedure ("NRCP") 4-4.4 govern service.
8 Specifically, NRCP 4.2 governs personal service and allows for service upon an
9 agent designated by appointment or law to receive service.
10

11
12 Generally, an attorney is considered an agent of their client. *See Dezzani*
13 *v. Kern & Assocs., Ltd.*, 412 P.3d 56 (Nev. 2018), *Estate of Adams v. Fallini*, 386
14 P.3d 621 (Nev. 2016), *NC-DSH, Inc., v. Garner*, 125 Nev. 647, 2018 P.3d 853
15 (2009). An agent may bind a principal, so long as he has "actual authority...or
16 apparent authority." *Simmons SelfStorage Partners, LLC., v. Rib Roof Inc.*, 331
17 P.3d 850, 856 (Nev. 2014).
18
19
20

21 An agent acts with actual authority when, at the time
22 of taking action that has legal consequences for the
23 principal, the agent reasonably believes, in accordance
24 with the principal's manifestations to the agent, that
25 the principal wishes the agent to so act...we focus on
26 the agent's reasonable belief. *Id.*

1 In contrast, apparent authority exists where "a principal holds his agent out
2 as possessing or permits him to exercise or to represent himself as possession,
3 under such circumstances as to estop the principal from denying its existence."

4
5 *Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987).
6

7 Mr. Helmick did not testify regarding his authority, consent to accept
8 service, or his signature on the Acceptance of Service.³ In absence of his
9 testimony, the court must rely on other indicia of his beliefs. Mr. Helmick, or
10 someone in his office, *signed* the Acceptance of Service. **JA000012**. It is clear
11 from that act that Mr. Helmick believed he was authorized to do so. He was in
12 contact with Ronald; but he was not authorized to disclose Ronald's address. Mr.
13 Helmick is an attorney in good standing, is employed by a reputable law firm,
14 and is bound by the ethical canons governing Nevada attorneys. It takes more
15 than an allegation to find that he was not authorized, especially in absence of any
16 affidavit from Mr. Helmick himself.
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22 ...

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25
26 ³ Ronald claimed in his Countermotion to Set Aside, that Mr. Helmick did not sign the Acceptance of Service and the actions were taken by his office, rather than by him personally.

1 "A lawyer is a client's agent and the acts and omissions of an agent
2 ordinarily return to the principal who hired the faithless agent, not those who
3 dealt with the agent in his representative capacity." *Estate of Adams*, 386 P.3d at
4 625. An exception exists when "an attorney departs from [the duty of loyalty
5 owed to the court] standard in the conduct of a case" as the same constitutes a
6 "fraud on the court." *Id.* In *Estate of Adams*, the set aside resulted not from the
7 "faithless agent" the attorney who abandoned his client (Fallini), but rather the
8 false record created by the Estate's attorney - which constituted the fraud on the
9 court.

14 Brianna relied upon the signed Acceptance of Service. Therefore, *if* Mr.
15 Helmick was not actually authorized to accept service, the issue is not one of
16 improper service, but rather a "faithless agent." Further, Brianna's counsel
17 ensured that a proper record of her conversations with Mr. Helmick was
18 disclosed to the court. There was no fraud perpetrated on the court.

22 Ronald has not proven that Brianna's counsel misrepresented her
23 conversations, in light of the filed Acceptance of Service. Nor has Ronald
24 provided any offers of proof that Mr. Helmick did not have a reasonable belief
25 that he was authorized to accept service.

1 Although defective service renders "personal jurisdiction invalid and the
2 judgment [] void," service in this case was not defective. *Gassett v. Snappy Car*
3 *Rental*, 111 Nev. 1416, 906 P.2d 258, 261 (1995). Further, "for a judgment to be
4 void, there must be a defect in the court's authority to enter judgment through
5 either lack of personal jurisdiction or jurisdiction over subject matter in the suit."
6
7 *Id.* After deciding *Gassett*, this court reviewed the standard by which a Decree
8 may be declared void versus voidable in *Vaile v. Eighth Judicial Dist. Ct.*, 118
9 Nev. 262, 44 P.3d 506 (2002), providing:

13 That if there be a total defect of evidence, to prove the
14 essential fact, and the court finds it without proof, the
15 action of the court is *void*; but when proof exhibited
16 has a legal tendency to show a case of jurisdiction,
17 then although the proof may be slight and
18 inconclusive, the action of the court will be valid until
19 it is set aside by a direct proceeding for that purpose.
20 Nor is the distinction unsubstantial, as in the once case
21 the court acts without authority, and the action of the
22 court is *void*; but in the other the court only errs in
23 judgment upon a question properly before the court for
24 adjudication, and of course the order or decree of the
25 court is only voidable.
26

1 *Id.* at 512-513, quoting *Lamp Chimney Co. v. Brass & Copper Co.*, 91 U.S. 656,
2 659-660 (1875).

3
4 In *Vaile* "[t]he District Court was not required to reach the issue of judicial
5 estoppel raised by Scotlund since the court had already determined that it had
6 jurisdiction over both the parties and the subject matter." *Id.*, at 514.

7
8 More than a "colorable case for jurisdiction" was made in this case. An
9 officer of the court *accepted* service on behalf of Ronald. In light of the fact that
10 Mr. Helmick had contact information for Ronald, *and* was actively engaged in
11 representing him in another case, an agency relationship existed. Therefore,
12 service was not defective.

13
14 Ronald requests this court rely on *Zabeti v. Great Am. Ins. Co.*, No. 70461
15 (Order of Reversal and Remand, Nev. App. September 14, 2017). *Zabeti* is an
16 unpublished decision from the Nevada Court of Appeals, and as such cannot be
17 cited. NRAP 36(c)(3). However, as Ronald has done so, Brianna requests leave
18 to address the case as well, as it is *clearly* distinguishable, as is *Foster v. Lewis*,
19 372 P.2d 679 (Nev. 1962), on which *Zabeti* relies. In both cases, service was
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1 effected on a purported agent and the evidence provided was uncontroverted.⁴

2 Both the agent *and* the Defendant testified that the agent was unauthorized.

3
4 Notably, in this case the court specifically asked *why* there was no affidavit from

5 Mr. Helmick detailing what happened. **JA000119**. Given the filed, *signed*

6
7 acceptance of service, Ronald's testimony was *not* uncontroverted, and the court

8 was free to determine proper service.

9
10 It is clear that the court conducted a proper factual analysis during both

11 hearings (December 20, 2020 and May 25, 2021) to determine that there was

12 more than a colorable case for jurisdiction. The court's finding that service was

13 proper and its denial of the Motion to Set Aside should be affirmed.

14
15
16 **II.**

17 **CUSTODY**

18
19 **Standard of Review**

20 The district court has “broad discretionary powers to determine child

21 custody matters,” and this court will not disturb such determinations absent a

22 clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241

23
24
25
26 ⁴ In *Zabeti*, it was effected on counsel for a different Defendant, Zabeti's corporate entity. In *Foster*, it effected (allegedly) on Defendants' collection. 372 P.2d at 679-680.

1 (2007). That discretion extends to visitation schedules. *Rivero v. Rivero*, 125
2 Nev. 410, 216 P.3d 213, 226 (2009), citing *Wallace v. Wallace*, 112 Nev. 1015,
3 1019, 922 P.2d 541, 543 (1996). Abuse of discretion occurs when the decision
4 is "arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson*
5 *v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). However, "deference is
6 not owed to legal error, or to findings so conclusory they may mask legal error."
7 *Davis v. Ewalefo*, 352 P.3d 1139, 1142 (Nev. 2015)(internal quotations omitted).
8
9

10 This court will not set aside the district court's factual findings so long as
11 they are supported by substantial evidence. *Ellis*, 161 P.3d at 242. Substantial
12 evidence is found where there is evidence that a reasonable mind might accept
13 as adequate to support a conclusion. *Whitemaine v. Aniskovich*, 124 Nev. 302,
14 308, 183 P.3d 137, 141 (2008). In making custody determinations, the sole
15 consideration is the best interests of the child, or children, at issue. *Sims v. Sims*,
16 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).
17
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22 **The Court Made Sufficient Findings for the Award of Child Custody**

23

24 The paramount consideration in deciding child custody is the best interests
25 of the child, however doing so does not simply mean "processing the case
26

1 through the factors that NRS 125.480(4) identifies as potentially relevant to a
2 child's best interests and announcing a ruling." *Davis*, 352 P.3d at 1143.⁵ A
3
4 factual basis for the court's Orders is necessary, to show why the Order was
5 justified. *Id* at 1143-1144, quoting *Smith v. Smith*, 726 P.2d 423, 426 (Utah
6
7 1986). The findings need to have sufficient specificity to enable the appellate
8
9 court to understand its decision, but those findings of fact may be on the record.
10 *Id*, quoting *Keita v. Keita*, 823 N.W.2d 726, 730 (N.D. 2012) and *Ivy v. Ivy*, 863
11 So.2d 1010, 1013 (Miss.Ct.App. 2004).

12
13 Ronald cites to another unpublished Court of Appeals case, *Doucettperry*
14 *v. Doucettperry*, Docket No. 80114 (Order Affirming in Part, Reversing in Part
15 and Remanding. Nev. App., November 2, 2020), to support his claim that the
16 court was required to address each and every factor in the original Decree, *and*
17 during the hearing on the Motion to Set Aside. However, *Doucettperry* and all
18 of the other cases cited by Ronald, including *Lewis v. Lewis*, 132 Nev. 453, 373
19 P.3d 878 (2016), and *Davis v. Ewalefo*, are distinguishable. Notably, all three
20 cases were the result of *contested* hearings.

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26 ⁵ Subsequent to the decision in *Davis*, NRS 125.480(4) was repealed and replaced by NRS 125C.0035(4), which is identical.

1 Although dealing with a default as a discovery sanction, *Blanco v. Blanco*,
2 311 P.3d 1170 (Nev. 2013), is more on point. In *Blanco*, this court noted that
3 "resolution of [custody and child support] on a default basis *without* addressing
4 the child's best interest and other relevant considerations is improper." *Id.* at 1175
5 (emphasis added). *However*, this court also cited with approval two out-of-state
6 cases where consideration of evidence in the record was an option in lieu of an
7 evidentiary hearing. *Id.* This court also noted the propriety of utilizing a prove-up
8 hearing. *Id.* at 1174.
9

10 A similar issue arose in *Lesley v. Lesley*, 113 Nev. 727, 941 P.2d 451
11 (1997), overruled on other grounds by *Epstein v. Epstein*, 113 Nev. 1401, 1405,
12 950 P.2d 771, 773 (1997). There, custody and support were provided for in a
13 default decree (for non-appearance) granted to the father. The mother moved to
14 have the Decree set aside. This court concluded that, while custody was properly
15 resolved "on an uncontested basis in the event of a default, [the issues] become
16 pertinent on a motion to set aside a default judgment." *Id.* at 455. This court
17 reversed and remanded, finding that the Motion to Set Aside should have been
18 granted, which opened the door for reconsideration of custody. *Id.* at 455-456.
19 There, as in *Blanco*, the concern was the best interests of the children, as well as
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1 the fear, based on the court's findings of fact, that custody was being used as a
2 "sword to punish...disobedience of court orders..." *Lesley*, 941 P.2d at 455-456.
3

4 Here, a prove up hearing was held. Evidence was taken via Brianna's
5 testimony as to the best interests of the children. Brianna testified that the parties'
6 oldest daughter disclosed that she had been sexually abused by Ronald, that CPS
7 and Metro had been involved, and that there was an active criminal case against
8 Ronald. **JA0000027-0000028**. She testified that she believed it was in the
9 children's best interests that she be awarded sole legal and physical custody.
10
11
12

13 **JA0000028**.

14 Admittedly, the court did not do an extensive review or analysis of the
15 factors under NRS 125C.0035(4). However, this court "will imply findings of
16 fact and conclusions of law so long as the record is clear and will support the
17 judgment." *Luciano v. Diercks*, 97 Nev. 637, 637 P.3d 1219, 1220 (1981).
18
19

20 The uncontroverted testimony was that Ronald had sexually assaulted the
21 parties' daughter, that TPO had been granted, and there was a pending criminal
22 case. This clearly supports findings that there was an unchallenged nomination
23 by a parent (subfactor b), that Ronald's mental health did not support custody
24 (subfactor f), that it was not supportive of the children's needs to award Ronald
25
26

1 custody (subfactor g), that the children no longer had a good relationship with
2 Ronald (subfactor h), and a history of parental abuse (subfactor j). Those factors
3
4 were expanded upon in the Reply filed by Brianna on May 20, 2021. **JA000093-**
5 **000099**. The factual averments made therein went unchallenged at the time of the
6
7 hearing.

8
9 The district court is not required to weigh any particular factor more than
10 any other, or even grant custody to the person that the majority of the factors
11 support. *See e.g., Ellis*, 161 P.3d 239, *Davis*, 352 P.3d 1139. The court took
12
13 evidence as to the best interests of the children. The record shows the factual
14
15 averments on which the Court relied.

16 Because the court properly denied the Motion to Set Aside, there was no
17
18 need to reassess custody at the May 25, 2021 hearing. Ronald did not file a
19 Motion to Modify Custody; he move for the court to reassess custody as part of
20 the set aside. Although a party is not bound by the label he uses on a pleading
21
22 (*Nc-Dsh*, 218 P.3d at 857), the burden to modify custody is substantially different
23
24 than the burden for initial custody. *C.f.*, NRS 125C.0015, *Ellis*, 161 P.3d 239.

25 Ronald's Motion *does not* address with any specificity, the best interest
26 factors. **JA000076-000092**. Ronald's Countermotion merely lists the factors.

1 **JA000085-000086.** Only Brianna's Reply gives any facts regarding custody.

2 **JA000095-000096.** Ronald did not address Brianna's factual averments.

3
4 Therefore, even if this court were to consider Ronald's Motion a Motion to
5 Modify, the same would have failed.
6

7 In order to justify a hearing on a motion to modify custody, a party must
8 demonstrate that there is adequate cause for the motion. *Rooney v. Rooney*, 109
9 Nev. 540, 853 P.3d 123, 124-125 (1993). Adequate cause requires that the "facts
10 alleged in the affidavits are relevant to the grounds of modification; and [] the
11 evidence is not merely cumulative or impeaching." *Id* at 125. "A district court
12 has discretion to deny a motion to modify custody *without* holding a hearing
13 unless the moving party demonstrates 'adequate cause' for holding a hearing." *Id.*
14 at 124 (emphasis added). Ronald alleged *no* facts, and relies solely on procedural
15 error to justify his request to modify custody. As there was no procedural error,
16 and without specific facts, Ronald has not met his *prima facie* burden to modify
17 custody.
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23 Even assuming *arguendo*, that the court's failure to specify detailed
24 findings in the Decree is error, that error is harmless in this case. Because
25 custody is always modifiable, Ronald has continued opportunities to return to the
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1 district court and specify facts which justify a change in custody. In fact, in light
2 of the Default Decree, *Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042, would be
3 on point.
4

5 In *Castle*, the Decree, including custody, was done by settlement
6 agreement without a contested hearing. After, the father learned that *prior* to the
7 entry of the Decree, the mother had engaged in acts of domestic violence against
8 the minor children. The father moved to modify custody based on those facts.
9 This court held that "the doctrine of *res judicata*...should not be used to preclude
10 parties from introducing evidence of domestic violence that was unknown to a
11 party or to the court when the prior custody determination was made." *Id* at 1047.
12 Logically, that includes evidence that domestic violence did not occur, where it
13 was relied upon in deciding custody. But Father did not provide any evidence
14 that he has not sexually assaulted the parties' daughter, nor did he allege *why* the
15 presumption in NRS 125C.0035(5) should be overcome. It is insufficient to rely
16 on bald conclusions to justify an evidentiary hearing to modify custody.
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23 Further, if Ronald is found "not guilty" at trial, that would certainly
24 constitute a change in circumstances that more than met the burden under *Ellis*,
25 and allow him to both potentially overcome the domestic violence presumption,
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1 and provide additional evidence under the other factors set forth in NRS
2 125C.0035(4).
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4 There is no basis for redetermining custody under the facts of this case.
5 The court's decision in this matter should be affirmed.
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7 III.

8 CHILD SUPPORT

9 Standard of Review

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11 "This Court reviews the district court's decisions regarding child support
12 for an abuse of discretion." *Rivero*, 216 P.3d at 232, citing *Wallace*, 922 P.2d at
13 543. Abuse of discretion exists where the district court's Order is not supported
14 by substantial evidence, but this court presumes that the court properly exercised
15 discretion as to the best interests of a child. *Declamecy v. Hawkins*, 462 P.3d
16 1236 (Nev. App. 2020)(Table)(internal quotations omitted).
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20 The Court Made Sufficient Findings for the Calculation of Child Support

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22 "Child support awards are guided by certain formulas as applied to the
23 parties' income." *Blanco*, 311 P.3d at 1175. "[G]iven the statutory and
24 constitutional directives that govern child custody and support determinations,
25 resolution of these matters on a default basis without addressing the child's best
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1 interest and other relevant considerations is improper." *Id.* As already addressed
2 herein, an evidentiary hearing is not necessary under *Blanco*. With regard to child
3 support, this court presumes that the district court properly exercised its
4 discretion in determining the best interests of the child. *Flynn v. Flynn*, 120 Nev.
5 436, 440, 92 P.3d 1224, 1226-1227 (2004).
6

7
8 Sworn testimony at the hearing on December 20, 2020, established
9 Ronald's income. **JA000029**. The court made findings as to what it considered
10 Ronald's income to be, based on that testimony. **JA000031-000033**. The Decree
11 met the necessary standard of NAC 425, by identifying the obligor's monthly
12 income under NAC 425.100 and calculating support pursuant to NAC
13 425.115(2). *Deviations* from the guideline support need findings. NAC
14 425.100(3). The court is not required to seek financial information or records
15 from the parties, rather the court must consider all financial or other relevant
16 information to the earning capacity of an obligor. NAC 425.120. Sworn
17 testimony is an acceptable means of determining the earning capacity of an
18 obligor. Where an obligor is unemployed, the court may impute income, unless
19 there is good cause for the unemployment. NAC 425.125. The court met the
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1 obligations of NAC 425.125(2)(a), in considering those facts it had as to Ronald's
2 specific circumstances.
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4 Although this court has not yet opined on the differences in NAC
5 425.125's "good cause" language versus NRS 125B.080(8)'s "for the purpose of
6 avoiding an obligation for support of a child," the latter created a rebuttable
7 presumption: "where evidence of willful underemployment preponderates, a
8 presumption will arise that such underemployment is for the purpose of avoiding
9 support. Once this presumption arises, the burden of proving willful
10 underemployment for reasons other than the avoidance of a support obligation
11 will shift to the supporting parent." *Minnear v. Minnear*, 107 Nev. 495, 814 P.2d
12 85, 86-87 (1991).
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17 Under the new guidelines, the same presumption applies, and it is up to the
18 obligor to show "good cause." Ronald has not done so, first by his *choice* not to
19 respond to Complaint, and second, by his failure to provide any factual
20 justification, or even arguments regarding "good cause" in his Opposition.
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23 **JA000086-000087.**
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25 NAC 425.155 creates an exception to finding of voluntary
26 underemployment, specifically for persons who are *presently* incarcerated. NAC

1 425.155(2)(Incarceration...must not be treated as voluntary unemployment...[for]
2 an obligor who is incarcerated (emphasis added)). Further, NAC 425.155 applies
3 to Orders where an obligor is incarcerated for more than 180 consecutive days,
4 or upon release after that amount of time. NAC 415.155(1). Even then the same
5 is only considered a "substantial change in circumstances" for the purpose of
6 review. *Id.* The decision to modify support is discretionary. NRS 125B.145(4),
7 *Rivero*, 216 P.3d at 228.

11 Findings of Fact are required *to change* a child support Order, and to
12 deviate from the guidelines on the original Order. They are not required where
13 the Order is not changed. It is not necessary to include every finding in the
14 Decree itself, where the record supports the findings. *See In re Parental Rights*
15 *as to CCA*, 273 P.3d 852 (Nev. 2012), stating "it is incumbent upon the district
16 court in termination proceedings to provide a decision, whether in writing or
17 orally on the record, that includes all the necessary factual findings..." (emphasis
18 added).

23 The court made findings on the record as to what Ronald's income was,
24 and how child support was to be calculated. **JA000031-000032**. The Decree
25 states the monthly income and notes that the child support was set according to
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1 the NAC. **JA000040-000041**. It was up to Ronald to provide details, not just that
2 his income was *presently* different from the income imputed to him in the
3 Decree, to either show that the original Order was not based on his *earning*
4 *capacity*, or that "good cause" existed for the reduction in his income. Ronald did
5 neither. Again, Ronald simply relied on his false belief that there was a
6 procedural error. Ronald has provided no basis for re-setting child support. The
7 court's Order as to child support should be affirmed.

11 IV.

13 PROPERTY DIVISION

14 Standard of Review

15 "This Court reviews a district court's decisions made in a divorce case for
16 an abuse of discretion. Those decisions supported by substantial evidence will be
17 affirmed. Substantial evidence is that which a sensible person may accept as
18 adequate to sustain a judgment." *Devries v. Gallio*, 290 P.3d 260 (Nev. 2012).

22 The Court Correctly Divided the Parties Community Property.

23 Community property and debt must be divided in
24 accordance with the law. NRS 125.150(1)(b) requires
25 the court to make an equal division of the property
26 upon divorce, unless the court finds a compelling

1 reason for an unequal disposition and sets forth that
2 reason in writing.

3 *Blanco*, 311 P.3d at 1175.

4 "Before making the factual determinations to support the disposition of
5 property, it *may* be necessary for the court to hold an evidentiary hearing." *Id* at
6 1176 (emphasis added). An evidentiary hearing is *not required* for a division of
7 property, and presumably even less so for an equal division of property. Ronald's
8 appeal is based on his opinion that the division of property is *ipso facto* unequal,
9 solely because Wife received her retirement and the marital residence. That
10 allegation is insufficient. Property divisions are generally not completed by
11 literally dividing each and every asset in half, but rather by ensuring that each
12 party receives one-half of the value of the marital estate.
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18 There is an extensive division of assets and debts in Decree of Divorce.
19 **JA000041-000045**. Although there is no specific value listed for many of the
20 assets, it is clear that there were a substantial number of assets of varying value.
21 Further Wife took the bulk of the debt, including the mortgage on the home from
22 which she received the net equity. Just because Wife received two specific assets,
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1 does not mean that the value of the division was unequal. Ronald provided no
2 evidence to support his claim that the division was unequal.
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4 The court found that the details of the property division were provided in
5 the Complaint for Divorce. **JA000029-000030; 000033.** "A complaint need only
6 set forth sufficient details to demonstrate the necessary elements of a claim for
7 relief so that the defending party has adequate notice of the nature of the claim
8 and the relief sought." *Western States Const., Inc., v. Michoff*, 108 Nev. 931, 840
9 P.2d 1220 (1992). Such a detailed property division more than provides adequate
10 notice. Ronald was aware of the proposed division of property, and had adequate
11 time to object. His silence should estop him from challenging the property
12 division. *Goldstein v. Hanna*, 97 Nev. 559, 635 P.2d 290, 292 (1981) ("[w]here
13 there is a duty to speak, silence can raise an estoppel quite as effectively as can
14 words...Thus 'a person remaining silent when he ought, in the exercise of good
15 faith, to have spoken, will not be allowed to speak when he ought, in the exercise
16 of good faith, remain silent.'"(internal quotations omitted)).
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23 A default for failure to answer is not the same as a default as a discovery
24 sanction, as set forth in *Blanco*. Where a discovery sanction issues, a party has
25 appeared in a case. They have not been "silent," but engaging in "disobedience"
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1 of court orders, or court rules. Where service was proper, and a party *chose* not
2 to appear, that party is choosing "silence." By virtue of that silence, they have
3 consented. Ronald is estopped from challenging the property division.
4

5 The court's Order dividing property should be affirmed.
6

7 **8. Conclusion**

8 Brianna respectfully requests that the judgment of the district court
9 be affirmed on all issues.
10

11 **9. Routing Statement**

12 Brianna agrees that this matter should be heard by the Court of
13 Appeals.
14

15
16
17 By: 

18 RACHEAL H. MASTEL, ESQ.,
19 Nevada Bar No. 11646
20 Attorney for Respondent
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CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this fast track response complies with the
3 formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track
5 response has been prepared in a proportionally spaced typeface using Word
6 Perfect X9 in 14-point Times New Roman style;
7

8 2. I further certify that this fast track response complies with the page- or
9 type-volume limitations of NRAP 3E(e)(2) because, excluding the parts of the
10 brief exempted by NRAP 32(a)(7)(C), because it is proportionately spaced, has
11 a typeface of 14 points or more, and contains 4806 words;
12

13 3. Finally, I hereby certify that I have read this appellate brief, and to the
14 best of my knowledge, information, and belief, it is not frivolous or interposed
15 for any improper purpose. I further certify that this brief complies with all
16 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
17 which requires every assertion in the brief regarding matters in the record to be
18 supported by a reference to the page and volume number, if any, of the transcript
19 or appendix where the matter relied on is to be found. I understand that I may be
20

21
22 ...

23 ...

24 ...

25 ...
26 ...

1 subject to sanctions in the event that the accompanying brief is not in conformity
2 with the requirements of the Nevada Rules of Appellate Procedure.

3 Dated this 11th day of October, 2021.
4

5
6 By: 

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CERTIFICATE OF SERVICE

I the undersigned hereby certify that I am an employee of the KAINEN LAW GROUP, PLLC, located at 3303 Novat Street, Suite 200, Las Vegas, Nevada 89129, and on the 11th day of October, 2021, I served a true and correct copy of the *Respondent's Fast Track Response* on all interested parties to this action as follows:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, via 1st class, postage prepaid, at Las Vegas, Nevada, following ordinary business practices:

_____ Personal Delivery:

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_____ Overnight delivery via Federal Express or other postal carrier:

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Carrie Primas

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An Employee at the Kainen Law Group, PLLC