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Elizabeth A. Brown
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Attorneys for Respondent/Cross-Appellant Tara Kellogg-Ghibaud

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX B. GHIBAUDO,

Appellant/Cross-Respondent, Case No. 82248

vs.

TARA KELLOGG-GHIBAUDO,

Respondent/Cross-Appellant.

RESPONDENT/CROSS-APPELLANT'S PETITION FOR REVIEW

On Appeal from the Eight Judicial District Court Clark County, Nevada

The Honorable T. Arthur Ritchie

Case No. D-15-522043-D

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Tara Kellogg-Ghibaud

1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certified that the following are persons
3 and entities as described in NRAP 26.1(a), and must be disclosed. These
4 representations are made so that the judges of this Court may evaluate for
5 possible disqualification or recusal.

6 1. Respondent Tara Kellogg-Ghibauda is an individual.

7 2. Identify all parent corporations and any publicly held company that
8 owns 10% or more of the parties' stock:

9 NONE

10 3. Names of all law firms whose partners or associates have appeared for
11 the party or amicus in the case (including proceedings in the district
12 court or before an administrative agency) or are expected to appear in
13 this court:

14 Evan D. Schwab – SCHWAB LAW FIRM PLLC

15 Jonathan K. Nelson – J.K. NELSON LAW

16 4. If any litigant is using a pseudonym, disclose the litigant's true name:

17 NONE

18 Dated this 22nd day of August 2022

19 SCHWAB LAW FIRM PLLC

20 /s/ Evan D. Schwab

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22 EVAN D. SCHWAB (NV BAR NO. 10984)

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New Orleans v. New Orleans Water Works Co., 142 U.S. 79. 91, 12
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1 involves a fundamental issues of statewide public importance. NRAP
2 40B(a)(2)-(3). As set forth below, the Court of Appeals decision appears to
3 be in conflict with established contract law Nevada cases such as *May v.*
4 *Anderson*. 121 Nev. 668, 672 (2005). Additionally, hundreds of family law
5 litigants attend settlement conferences and contract for what their
6 obligations will be to one another only to risk the Court modifying those
7 obligations at a later time and pulling the rug out from under the foundation
8 of the agreement that was made. Likewise, it is devastating to think that a
9 party could be prevented from obtaining the education they need by virtue
10 of the other party refusing to pay their alimony obligation. Sadly, this is not
11 an uncommon scenario. Clearly, these are issues of state-wide importance.

12 The Order of Affirmance [OA] rejected Respondent's argument that the
13 District Court abused its discretion by modifying the spousal support
14 provision because it was based upon a settlement agreement/contract. [OA,
15 p. 6]. The Court of Appeals in fact endorsed the modification of alimony by
16 the District Court. The Parties agreed that Appellant would pay a minimum
17 support award of \$2,500 per month for a term of 15 years or 50% of
18 Appellant's gross monthly income, whichever is higher. [Appellant's
19 Appendix ("AA") 86]. By affirming the District Court's slashing of
20 Respondent's alimony to \$2,500 per month, the Court of Appeals ignored the
21 fact that the agreement for this alimony structure was in consideration for
22 the fact that Appellant had engaged in approximately 1.6 million dollars of
23 marital waste. [AA 318, Respondent's Appendix ("RA") 010]. The Court of
24 Appeals ignored the fact that a Settlement Agreement is a contract
25 recognized by Nevada Law. *May v. Anderson*, 121 Nev. 668, 672 (2005)
26 [Respondent's Reply Brief and Opening Brief ("RB"), filed on 11-3-2021, p.
27 18]. A contract is enforceable as written where there is an offer, acceptance,
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1 meeting of minds and consideration. Id. [RB, p. 18]. The Court must take
2 the plain meaning of the contract and apply that as the Courts do not have
3 the power to make new contracts or impose new terms upon the Parties to
4 contracts without their consent. *Power Co. v. Henry*, 130 Nev. Adv. Op. 21,
5 321 P.3d 858, 861 (Nev. 2014) [RB, p. 19]. In fact, the powers of a Court are
6 exhausted in fixing the rights of parties to contracts already existing. *New*
7 *Orleans v. New Orleans Water Works Co.*, 142 U.S. 79, 91, 12 S. Ct. 142, 147
8 (1891) [RB, p. 19]. Like the District Court before it, the Court of Appeals
9 completely ignored the contract that was agreed upon and modified alimony.
10 [RB, p. 20]. There was a valid contract between the Parties and no
11 circumstances changed between the entry of the contract and the District
12 Court's ill-advised orders. [RB, p. 20]. Likewise, any reduction in alimony
13 was not supported by substantial evidence. [RB, p. 20].

14 The Court of Appeals should have repudiated the District Court's effort
15 for imputing income to Respondent. [OA, p. 6 through 7]. The District Court
16 made a bold statement that Respondent was underemployed but did not
17 provide a sufficient explanation for such finding. [AA 468]. The evidence at
18 trial did show that Respondent sought and received employment at a job,
19 but Appellant's continued presence at the job made continued employment
20 there untenable. [RB 21, AA 288-289]. Additionally, Respondent was
21 precluded from obtaining further education when Appellant cut off
22 Respondent-Cross Appellant's alimony. [RB 21, AA 287]. In order to work
23 on Respondent/Cross-Appellant's field, she requires a bachelor's degree and
24 is being prevented from obtaining the same. [Id.]. The District Court and
25 the Court of Appeals alike failed to consider evidence of Respondent's
26 disability that also prevents her from working. As would be required under
27 NAC 425.125(2). [RB, p. 22, AA 468]. Likewise, the Court of Appeals and
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1 District Court did not take into account that Respondent was a stay at home
2 mother during the marriage. [RB, p. 33, AA 468]. Respondent actual earning
3 capacity is by no means \$30,000 to \$40,000 per year and is more accurately
4 \$0 given that she has not yet obtained her Bachelor's Degree (a requirement
5 for the field) and relies upon spousal support and occasional assistance from
6 her parents. [RB, p. 23, AA 468, AA 312-313].

7 CONCLUSION

8 The Court of Appeals, like the District Court before it,
9 misapprehended/erred in allowing the settlement agreement ("contract")
10 that the Parties themselves negotiated to be modified in the monthly
11 amount to be paid. This was both an error/misapprehension of law and
12 error/misapprehension of fact. The Parties negotiated their agreement,
13 forewent certain claims such as marital waste and other property claims,
14 and the agreement entered should stand.

15 The District Court as well as the Court of Appeals certainly
16 misapprehended/erred in law as well as finding of fact as it pertained to
17 imputing income as to Respondent/Cross-Appellant. Not only was the
18 income of Respondent/Cross-Appellant wholly irrelevant as Appellant was
19 to be paying, but the District Court made insufficient findings as to willful
20 underemployment and the findings flew in the face of objective facts.

21 The decision of the District Court and endorsement of the Court of
22 Appeals sets a dangerous precedent that puts hundreds if not thousands of
23 homemakers at risk in Nevada in divorce proceedings. A spouse foregoes
24 certain property claim under the promise from their soon to be former
25 spouse that family support will be paid for a period of time and in a certain
26 amount. After extracting their benefit of the bargain from the contract, the
27 obligor spouse then pulls the rug out from under the other spouse and moves
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1 to modify the family support leaving the oblige spouse with little. Not only
2 does this fly in the face of established contract law, but it is critical issue of
3 state-wide importance.

4 For the reasons stated above, Respondent/Cross-Appellant respectfully
5 requests that the Nevada Supreme Court take review of this matter
6 previously decided by the Court of Appeals.

7 Dated this 22nd day of August 2022

8 SCHWAB LAW FIRM PLLC

9 /s/ Evan Schwab

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This Petition for Review has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 Business, in 14-point, double-spaced Century-School Book font.
2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) and NRAP 40B(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has typeface of 14 points, does not exceed ten pages and contains 4,657 words.
3. Finally, I hereby certify that I have read this Petition for Review, and to the best of my knowledge, information and belief, it is not frivolous or interposed for improper purpose. I further certify that this Petition for Review complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any of the transcript or appendix where the matter relied on is to be found.

[Remainder of Space Intentionally Left Blank]

1 4. I understand that I may be subject to sanctions in the event that the
2 accompanying Petition for Review is not in conformity with the
3 requirements of the Nevada Rules of Appellate Procedure.

4 Dated this 22nd day of August 2022

5 SCHWAB LAW FIRM PLLC

6 /s/ Evan Schwab

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____ (ELECTRONIC SERVICE) Pursuant to the Nevada Electronic Filing Rules 9(b) by electronic service to the following at their respective electronic mailing address on file with the Supreme Court of the State of Nevada.

Hon. T. Arthur Ritchie, Jr. District Judge, Family Court Division
Israel Kunin, Settlement Judge
Alex B. Ghibaud, P.C.
JK Nelson Law LLC
Schwab Law Firm PLLC

An Employee of Schwab Law Firm PLLC