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IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH JANEEN ROSE,
Appellant,
vs.
DAVID JOHN ROSE,
Respondent.

Electronically Filed
Jul 13 2022 05:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
CASE NO. 84295
District Court Case No:
D547250

JOINT APPENDIX

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AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,
PLLC

Kainen Law Group, PLLC

By: Shelley Lubritz
SHELLEY LUBRITZ, ESQ.
Nevada Bar No. 5410
Attorney for Respondent

By: Racheal H. Mastel
RACHEAL H. MASTEL, ESQ.
Nevada Bar No. 11646
Attorney for Appellant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2022, I caused to be served the *Joint Appendix* to all interested parties as follows:

___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

shelley@lubritzlawoffice.com

daverose08@gmail.com


An Employee of
KAINEN LAW GROUP, PLLC

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AUG 18 2020

CLERK OF COURT

1 TRANS

2 COPY

3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8

9 DAVID ROSE,)
10 Plaintiff,) CASE NO. D-17-547250-D
11 vs.) DEPT. I
12 SARAH ROSE,) (VOL. II)
13 Defendant.)
14

15 BEFORE THE HONORABLE CHERYL B. MOSS
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: ALL PENDING MOTIONS

18 MONDAY, JANUARY 27, 2020

19 APPEARANCES:

20 The Plaintiff: DAVID ROSE
21 For the Plaintiff: SHELLEY LUBRITZ
324 E. Warm Springs Road,
Suite 104
Las Vegas, Nevada 89119

22 The Defendant: SARAH ROSE
23 For the Defendant: RACHEAL MASTEL
3303 E. Novat Street,
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24 Las Vegas, Nevada 89129

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1 LAS VEGAS, NEVADA

MONDAY, JANUARY 27, 2020

2

P R O C E E D I N G S

3

(THE PROCEEDINGS RESUMED AT 4:01:28)

4

5

THE COURT: Back from the break. All right.

6

THE BAILIFF: All rise.

7

THE COURT: Back on the record. Thank you. You may
8 be seated. Call your next witness.

9

MS. LUBRITZ: May I recall the Defendant?

10

THE COURT: We'll finish up with Dad's testimony,
11 yes.

12

MS. LUBRITZ: Yeah, I'm sorry. Oh, but --

13

THE COURT: Plaintiff.

14

MS. LUBRITZ: -- go back on the stand, because she
15 may have cross.

16

THE COURT: We are still on Dad's direct.

17

MS. LUBRITZ: Yes. I'm finished with Dad.

18

THE COURT: Okay. So, I'm going to put --

19

MS. LUBRITZ: I have no further questions --

20

THE COURT: -- here resume --

21

MS. LUBRITZ: -- at this time.

22

THE COURT: -- the direct of Dad at 4:01 p.m.

23

Dad, you understand you're still under oath?

24

MR. ROSE: Yes, Judge.

1 THE COURT: Okay.

2 MS. LUBRITZ: Your Honor, how much more time did I

3 just use?

4 THE COURT: I haven't added it up but --

5 MS. LUBRITZ: Excluding the break or when --

6 THE COURT: -- I -- we've been keeping track.

7 MS. LUBRITZ: -- did I start and then stop? Does

8 Your Honor have that?

9 THE COURT: You started at -- wait, page one, you

10 started at 3:01 p.m.

11 MS. LUBRITZ: Okay.

12 THE COURT: But we had a couple breaks in between.

13 MS. LUBRITZ: Oh, right. No, I'm -- okay.

14 THE COURT: Resumed direct of --

15 MS. LUBRITZ: Thank you.

16 THE COURT: -- okay. So, you are at 4:02 p.m.

17 MS. LUBRITZ: Thank you.

18 THE COURT: And the last thing I wrote just in case

19 he said no to the SBP.

20 MS. LUBRITZ: Thank you. I have no further

21 questions.

22 THE COURT: All right. So, nothing further. And

23 we'll go to cross exam.

24 //

1 THE COURT: She's not --
2 MS. LUBRITZ: -- waiving as to the --
3 THE COURT: -- she's --
4 MS. LUBRITZ: -- as to --
5 THE COURT: Yeah, she's not --
6 MS. LUBRITZ: -- this part.
7 THE COURT: -- objecting. So, ask --
8 MS. MASTEL: Okay.
9 THE COURT: -- the question again.
10 MS. LUBRITZ: Yeah.
11 THE COURT: He doesn't recall that Mom -- well, I
12 think he was trying to answer the question. I think you got a
13 no out of him that Mom had -- or maybe -- and then you guys --
14 MS. LUBRITZ: He said they were apart --
15 THE COURT: Start all over.
16 MS. LUBRITZ: -- though.
17 THE COURT: I want to make sure --
18 MS. MASTEL: Do you re --
19 THE COURT: -- I hear this clearly.
20 BY MS. MASTEL:
21 Q Do you recall anyone informing you that Ms. Rose had
22 waived her interest in survivorship?
23 THE COURT: That's a different question.
24 THE WITNESS: Oh, it was brought and up and then it

1 -- once I said, no, it was never addressed again. So, I was
2 under the impression that it was done.

3 BY MS. MASTEL:

4 Q But nobody told you that she had agreed with you?

5 A No.

6 Q And after the mediation, you arrived at
7 Mr. Winesett's office during the time the decree was being
8 drafted, correct?

9 A I'm not sure whose office it was; but after the
10 fact, I did arrive at another office.

11 Q And that was during the time that Ms. Cooley was
12 drafting the decree, correct?

13 A Correct.

14 Q And where were you during the time the decree was
15 being drafted?

16 A Back by the door or in the hallway.

17 Q Okay. Did you have a clear view of the room?

18 A In what way?

19 Q Did you have a clear view of the room? Could you
20 see it?

21 A I could see where the room was, yes. But I didn't
22 -- when I was in the hallway, I didn't see every corner of the
23 room or see what was going on.

24 Q So, you don't know what was going on in that room --

1 MS. LUBRITZ: Objection --
2 MS. MASTEL: -- is that correct?
3 MS. LUBRITZ: -- that -- no, that's -- that was not
4 what he said.
5 MS. MASTEL: I am --
6 THE COURT: What's your --
7 MS. MASTEL: -- asking.
8 THE COURT: -- basis for the objection? Do you need
9 me to rule on that? I was writing here that --
10 MS. LUBRITZ: I'll withdraw it, Judge.
11 THE COURT: -- at -- at Shapiro's office, he was
12 kind of in the hallway kind of in the doorway of that office.
13 Is that accurate, sir?
14 THE WITNESS: Yes.
15 THE COURT: You're a police officer --
16 THE WITNESS: Yes, Judge.
17 THE COURT: -- you have to remember a lot of
18 details.
19 THE WITNESS: Yes, Judge.
20 THE COURT: And I think the question was -- just for
21 the Court's edification, how far are you from the attorney --
22 and could you hear anything within earshot?
23 THE WITNESS: I didn't hear what they were saying.
24 THE COURT: You didn't hear a thing?

1 THE WITNESS: I -- if -- if anything, it was very
2 low talking --
3 THE COURT: Yeah.
4 THE WITNESS: -- but nothing that I could pick up
5 on.
6 THE COURT: Nothing -- okay.
7 THE WITNESS: And I wasn't close enough to see the
8 computer screen.
9 THE COURT: So, you were just hanging around on your
10 phone?
11 THE WITNESS: Yes.
12 THE COURT: And they're just doing their thing?
13 THE WITNESS: Yes, Judge.
14 THE COURT: Okay.
15 BY MS. MASTEL:
16 Q Did you see where Regina was in reference to the
17 computer?
18 A During part of it, she was by Shelly and then --
19 MS. LUBRITZ: I'm sorry, just for clarification,
20 because there's --
21 THE WITNESS: Yeah.
22 MS. LUBRITZ: -- two Shellys.
23 THE WITNESS: Sorry. So, Shelly Cooley.
24 THE COURT: Yes, that is right.

1 THE WITNESS: And then she would -- she came back to
2 me for a little bit and then she went back to the computer.
3 BY MS. MASTEL:
4 Q What happened when she came back to you?
5 A Nothing. We -- small talk for a few minutes and
6 then she would go back to the computer.
7 THE COURT: Okay. So, nothing substantive?
8 THE WITNESS: No, Judge.
9 THE COURT: Shelly Cooley came up to you and asked
10 you something --
11 THE WITNESS: No. Regina --
12 THE COURT: I'm sorry.
13 THE WITNESS: -- McConnell.
14 THE COURT: Came up to you --
15 THE WITNESS: Came up and we had --
16 THE COURT: Small talk.
17 THE WITNESS: -- small talk.
18 THE COURT: Okay. There wasn't -- okay, we didn't
19 have any substantive talk about the decree terms -- terms of
20 the decree. Right?
21 THE WITNESS: Correct.
22 THE COURT: Okay.
23 MS. MASTEL: Okay.
24 BY MS. MASTEL:

1 Q And you testified that after that, she went back to
2 the computer, correct?

3 A Correct.

4 Q Do you know what Ms. McConnell and Ms. Cooley
5 discussed at the time she was at the computer?

6 A No.

7 Q Were you provided a copy of the decree once it was
8 drafted?

9 A At the very end we were given a copy. My counsel
10 said to sign the last page. She would review it and file it,
11 and if there were any corrections or anything that she caught
12 that was wrong, then I would have to come down and resign.

13 Q So, it's your testimony that Ms. McConnell told you
14 to sign it without reviewing it?

15 A Yes, because I had a copy that I could review on my
16 own if anything came up.

17 Q And so it was to be signed without knowing if it was
18 correct or accurate, that's your testimony today?

19 A Because my attorney was going to review it before
20 submitting it to the Court.

21 Q Do you know if that would be the typical way of --
22 of resolving a case or reviewing a decree?

23 A Well, this is my first divorce so I -- it's all new
24 to me.

1 Q Did that seem abnormal to you?
2 MS. LUBRITZ: Objection.
3 THE COURT: Basis --
4 MS. LUBRITZ: He just --
5 THE COURT: -- for the objection?
6 MS. LUBRITZ: He just answered that it's his first
7 divorce he would know how --
8 THE COURT: Sustained, lack of knowledge.
9 MS. LUBRITZ: Thank you.
10 MS. MASTEL: And I just asked if it seemed abnormal
11 if that --
12 THE COURT: How can --
13 MS. MASTEL: -- struck him as --
14 THE COURT: -- he know what normal and abnormal
15 is --
16 MS. LUBRITZ: Yeah.
17 THE COURT: -- if he's not an attorney -- practicing
18 attorney like you guys are?
19 MS. MASTEL: I can ask him if that set off any red
20 flags for him.
21 THE COURT: How about this, I sustained it, you can
22 rephrase or ask another question --
23 MS. MASTEL: Okay.
24 THE COURT: -- a different way. I'll accept this,

1 yeah, his lawyer told him to sign the last page, he can take a
2 copy home, if there were any changes that she could, you know,
3 prevent it from going to the judge for signature, if there was
4 any changes that need to be done and she can always do this
5 before sending it to the Court. That was his understanding.
6 That's what he was told.

7 BY MS. MASTEL:

8 Q Do you have experience in signing contracts of any
9 kind?

10 A No.

11 Q Did you sign an employment contract?

12 A I'm sorry, a what?

13 Q An -- an employment contract?

14 A No.

15 Q You have no contract for your employment with Metro?

16 A Our union has the contract, we don't sign the
17 contract. The union negotiates all of that with the
18 department and we as members of the union either vote for or
19 against the contract.

20 Q But there's something written that says you're
21 employed by Metro, is there not?

22 MS. LUBRITZ: Objection, that's a different
23 question.

24 THE COURT: That's not a valid --

1 MS. LUBRITZ: She asked if --
2 MS. MASTEL: I asked a --
3 MS. LUBRITZ: -- he signed it.
4 THE COURT: -- objection.
5 MS. LUBRITZ: Okay. I'll --
6 THE COURT: She's asking --
7 MS. LUBRITZ: -- follow up.
8 THE COURT: -- a different question.
9 MS. LUBRITZ: Objection, lacks foundation. So,
10 misstates testimony.
11 MS. MASTEL: There's no testimony, I'm asking --
12 MS. LUBRITZ: I'm sorry -- Judge, I'm asking --
13 THE COURT: I need a ruling. Okay. So --
14 MS. LUBRITZ: Thank you.
15 THE COURT: Yeah, I'm going to sustain it. I kind
16 of know there is relevance there. I kind of know where you're
17 heading on that. We're getting -- he's just about as
18 technical as you guys are being technical with me so -- yeah,
19 there's a union contract.
20 BY MS. MASTEL:
21 Q There is something in place that is an agreement
22 that shows you specifically work for Metro, is there not?
23 A Yes.
24 Q What is that agre -- what is that?

1 A I --
2 MS. LUBRITZ: Objection as to relevance.
3 THE COURT: Offer of proof.
4 MS. MASTEL: Offer of proof that he has experience
5 in signing contracts. I'm going to go down a couple of them
6 and that he would know that you review them before you sign
7 them, because you don't make changes after you sign them.
8 MS. LUBRITZ: The union negotiates their contract so
9 Metro does not sign a contract. So, it -- it kind of --
10 THE COURT: I'm not a --
11 MS. LUBRITZ: -- stops there.
12 THE COURT: -- union expert.
13 MS. MASTEL: There's an --
14 MS. LUBRITZ: No, Judge, but --
15 MS. MASTEL: -- agreement of some kind.
16 MS. LUBRITZ: Excuse me.
17 THE COURT: Okay.
18 MS. LUBRITZ: How -- do you know that? What's your
19 offer of proof? Does -- I'm sorry -- does she know that?
20 What's the offer of proof --
21 THE COURT: Well, but she has --
22 MS. LUBRITZ: -- that there's something --
23 THE COURT: -- a right to --
24 MS. LUBRITZ: -- that he signed?

1 THE COURT: Maybe he knows. So, she has a right to
2 ask him about that. And maybe it does have some relevance
3 about, you know, people handling their --

4 MS. LUBRITZ: Then I guess it was as to the form of
5 the question. I understand what the --

6 THE COURT: I'll sustain it --

7 MS. LUBRITZ: -- what Your Honor's saying.

8 THE COURT: -- go ahead. I'll sustain it. Go ahead
9 and start again.

10 BY MS. MASTEL:

11 Q Is there something that you have signed personally
12 that reflects that you personally work for Las Vegas
13 Metropolitan Police Department?

14 A Honestly, I don't remember what was signed. When
15 you go through the academy, you're hit with so much
16 information all at once and you have to sign things that you
17 understand, that you receive a copy of policies, stuff like
18 that. So, there's a lot of paperwork associated with it. But
19 I'm not 100 percent certain what the paperwork's called.

20 THE COURT: Uh-huh (affirmative).

21 BY MS. MASTEL:

22 Q So, you had -- you just said you had to sign a lot
23 of paperwork indicating that you understand different
24 policies, procedures, how you're employment works, correct?

1 A No, that we had received the policies --
2 Q Okay.
3 A -- and procedures.
4 Q You also said that you have to sign that you
5 understand them, correct?
6 A No. I stated that I signed that I received them.
7 Q Have you ever been involved with any of the union
8 work?
9 A No.
10 Q It's your understanding though and you testified
11 that the union negotiates the contract and that the membership
12 then votes on that -- those terms, correct?
13 A Correct.
14 Q Does the union sign the contract before that vote?
15 A I'm not sure. I don't work in the union, I don't
16 have anything to do with the union except for they offer me
17 representation when needed.
18 Q You get notification though when the contract is --
19 is reviewed and signed, correct?
20 A Well, currently we get updates on the contract,
21 because we're still currently not under contract so as it
22 comes through, and then if it passes and if not -- again, I'm
23 not sure of the intricacies of it.
24 Q So -- but you're not under contract right now,

1 because there's no agreement, correct?

2 A Correct.

3 Q Okay. And there's no agreement until the union
4 votes on it, correct?

5 A Or until the union comes to terms with the
6 department and the department agrees to it as well.

7 Q So, that would mean there can't be a valid signed
8 contract until there's an agreement, correct?

9 A Correct.

10 Q So, signing that would be an indication of
11 agreement, correct?

12 MS. LUBRITZ: Objection, signing what?

13 MS. MASTEL: Sign -- I apologize, I'll rephrase.

14 THE COURT: Okay.

15 BY MS. MASTEL:

16 Q Signing the contract -- if the union signed the
17 contract, that would be an indication of agreement, correct?

18 MS. LUBRITZ: Objection as to relevance. She -- the
19 question is -- she -- what's she asking --

20 THE COURT: Um --

21 MS. LUBRITZ: -- is --

22 THE COURT: -- you know --

23 MS. LUBRITZ: -- has he signed contracts before.

24 Now we're talking about union --

1 THE COURT: You might want to try --
2 MS. LUBRITZ: -- signing contracts.
3 THE COURT: -- a different example.
4 MS. MASTEL: Okay.
5 THE COURT: As it's --
6 BY MS. MASTEL:
7 Q Have you ever --
8 THE COURT: -- everybody technical here.
9 MS. MASTEL: -- bought a car?
10 THE WITNESS: Yes.
11 THE COURT: Okay. So --
12 BY MS. MASTEL:
13 Q Did you sign a contract for that car?
14 THE COURT: I was kind of thinking that, too.
15 BY MS. MASTEL:
16 Q You signed a contract when you purchased your car,
17 correct?
18 A Yes.
19 Q And when you signed the contract, it was after the
20 terms had been negotiated, correct?
21 A Correct.
22 Q Were you allowed to make changes to that contract
23 after you signed it?
24 A No.

1 Q So, I'll ask again given your understanding of
2 contracts like that, would it seem odd to you to sign an
3 agreement that you hadn't reviewed?

4 A Well, that was the first time I had signed a
5 contract with an attorney. And so I trusted my counsel's
6 judgment to sign it and then review it; and then if there were
7 any changes to be made, we would be able to address them at
8 that time.

9 Q But you acknowledge that you signed it that day?

10 A Yes.

11 Q And you agree that that contract that you signed
12 that day contains a division of survivorship?

13 MS. LUBRITZ: Objection as to foundation or to
14 contracts of -- signed that day. I don't know which --

15 THE COURT: Sus --

16 MS. LUBRITZ: -- one's she talking about.

17 THE COURT: A little vague, sustained.

18 BY MS. MASTEL:

19 Q Do you agree that the decree of divorce that you
20 signed that day contains a division of survivorship, correct?

21 A I found out afterward, but yes.

22 Q Did you read the Memorandum of Understanding before
23 you signed it?

24 A Yes.

1 Q Why did you read that before you signed it?

2 A Because that was the entire day's negotiation, and I

3 was also told that that would be the terms of the divorce.

4 Q Were you --

5 MS. MASTEL: No, strike that. I'll pass the

6 witness.

7 THE COURT: Okay. Redirect?

8 MS. LUBRITZ: None, Your Honor.

9 THE COURT: None. All right. Thank you, Dad, you

10 may step down. Sit with your attorney again. You got another

11 witness?

12 MS. LUBRITZ: I would ask to recall the -- the

13 Defendant.

14 THE COURT: Okay. Let me see. All right, Mom, you

15 understand you're still under oath?

16 MS. ROSE: Yes, ma'am.

17 THE COURT: Very good. So, we'll -- you can recall

18 her on the stand. Okay.

19 SARAH ROSE

20 previously sworn, called as a witness on behalf of the

21 Plaintiff, having been first duly sworn, did testify upon her

22 oath as follows on:

23 REDIRECT EXAMINATION CONTINUED

24 BY MS. LUBRITZ:

1 Q And do you remember the -- when was --
2 MS. LUBRITZ: Strike that.
3 BY MS. LUBRITZ:
4 Q When was Dave's first child support payment due
5 after the Memorandum of Understanding was signed?
6 MS. MASTEL: Objection, relevance.
7 THE COURT: Offer of proof.
8 MS. LUBRITZ: Um --
9 THE COURT: Where are you heading with this?
10 MS. LUBRITZ: I'm -- I -- I would ask the Court's
11 indulgence on just a couple of questions.
12 THE COURT: If you can do it in a couple of
13 questions --
14 MS. LUBRITZ: I can.
15 THE COURT: -- okay.
16 MS. LUBRITZ: Thank you.
17 THE COURT: Overruled.
18 BY MS. LUBRITZ:
19 Q When was it due?
20 A Immediately.
21 Q Well, what -- what day? And I'm -- and I'm not
22 saying a specific date, like how long after the MOU and the
23 decree were signed -- actually how long after the decree was
24 signed was -- was his child support obligation?

1 A Immediately.

2 Q Okay. And did he make an immediate payment?

3 A No.

4 Q Do you remember approximately when he made his first
5 payment?

6 A It was about -- from my understanding and it's just
7 an approximate -- approximatization (sic) probably about a
8 week or so.

9 Q So, still within the month of April?

10 THE COURT: He paid you in April?

11 THE WITNESS: I cannot recall.

12 BY MS. LUBRITZ:

13 Q Okay. Well, the -- okay. Because we know when the
14 decree was signed and so -- did -- did Dave make a full
15 payment of child support for the whole month when he made that
16 first payment to you?

17 A No.

18 Q Was it a partial payment?

19 A Yes.

20 Q And do you remember saying something to Dave about
21 your signature going to cost him?

22 MS. MASTEL: Objection, foundation. Also
23 relevance --

24 MS. LUBRITZ: I'm asking --

1 MS. MASTEL: -- this is still --
2 MS. LUBRITZ: I'm asking a question. I haven't even
3 finished it. She -- I -- she's going to --
4 THE COURT: Foundation --
5 MS. MASTEL: -- have her as a witness.
6 THE COURT: -- though time frames. I would sustain
7 it --
8 MS. LUBRITZ: Yeah.
9 THE COURT: -- that's proper.
10 MS. LUBRITZ: Okay.
11 BY MS. LUBRITZ:
12 Q So, the -- the night that Dave made his first child
13 support payment to you following the signing of the decree of
14 the divorce, do you remember making a statement -- and I'm
15 paraphrasing -- that second signature's going to cost you?
16 A Yes.
17 Q And what were you referring to?
18 A I was referring to my signature on a new decree.
19 Q And what did you mean by it's going to cost you if
20 you were just signing your name to a decree?
21 A He would have to bring me back to court.
22 Q Now, isn't it true that the first signature that you
23 had was on the MOU, correct?
24 A Yes.

1 Q And the second signature was on the decree of
2 divorce, correct?

3 A Yes.

4 Q So, then you were referring to the decree of divorce
5 that had just been signed, correct?

6 A Yes.

7 Q So, what would cost him so much -- what would cost
8 him between the signing of the MOU and then a few hours later
9 even -- if that -- a couple of hours later -- you're shaking
10 your head.

11 MS. MASTEL: Objection --

12 MS. LUBRITZ: Are you -- are you responding --

13 THE COURT: One moment.

14 MS. LUBRITZ: -- to your lawyer's objection?

15 MS. MASTEL: -- she's giving testimony.

16 THE COURT: Let her finish the quest --

17 THE WITNESS: No, I don't understand where you're --

18 THE COURT: Wait --

19 THE WITNESS: -- going.

20 THE COURT: -- slow it down. And if your attorney
21 objects, you shouldn't --

22 THE WITNESS: Sorry.

23 THE COURT: -- talk until I rule. Finish the
24 question.

1 MS. LUBRITZ: Thank you.
2 THE COURT: Sustained. Finish the question. Start
3 again.
4 MS. LUBRITZ: If I can remember it. Hold on.
5 THE COURT: From the time the first signature --
6 MS. LUBRITZ: Right.
7 THE COURT: -- was signed on the MOU --
8 MS. LUBRITZ: Okay.
9 THE COURT: -- and after -- I guess there was a
10 second --
11 MS. LUBRITZ: Okay. So --
12 THE COURT: -- signature on the decree.
13 BY MS. LUBRITZ:
14 Q And then within a couple of hours, the decree was
15 signed after the MOU, correct?
16 THE COURT: Signed by the --
17 THE WITNESS: Yeah.
18 THE COURT: -- parties --
19 MS. LUBRITZ: Yes. Signed --
20 THE COURT: -- not the judge.
21 MS. LUBRITZ: -- by the parties.
22 THE COURT: Right.
23 MS. LUBRITZ: Signed by Mom -- I -- I'm
24 specifically --

1 THE COURT: I wasn't there.
2 MS. LUBRITZ: -- asking signed by Mom.
3 THE COURT: Signed by Mom.
4 MS. LUBRITZ: So, just so we can make a clear
5 record --
6 THE COURT: Okay.
7 MS. LUBRITZ: -- I just want to go back over this,
8 if that's okay --
9 THE COURT: Sure.
10 MS. LUBRITZ: -- with the Court?
11 THE COURT: Sure.
12 MS. LUBRITZ: Thank you.
13 BY MS. LUBRITZ:
14 Q From the time that you signed the MOU and the time
15 that you signed the decree of divorce, you and Dave didn't
16 talk, correct?
17 A We did small talk.
18 Q But you didn't talk about anything substantive,
19 correct?
20 A No.
21 THE COURT: Okay.
22 BY MS. LUBRITZ:
23 Q And in fact you didn't discuss the S -- the
24 survivorship benefit -- survivorship benefits, correct?

1 A Correct.

2 Q So, then what about you signing the decree which was
3 your second signature that you just testified to was going to
4 cost him?

5 MS. MASTEL: Objection, Your Honor, the question is
6 not only --

7 MS. LUBRITZ: No, before she --

8 MS. MASTEL: -- compound but misstates --

9 THE COURT: I'll allow.

10 MS. MASTEL: -- the -- the time frame that she's
11 talking about. She asked her if --

12 MS. LUBRITZ: This is -- this is --

13 MS. MASTEL: -- signing the --

14 MS. LUBRITZ: -- going --

15 MS. MASTEL: -- decree --

16 MS. LUBRITZ: -- beyond, it's a speaking --

17 MS. MASTEL: -- she had --

18 MS. LUBRITZ: -- objection and she's --

19 MS. MASTEL: -- said something --

20 MS. LUBRITZ: -- coaching her client.

21 THE COURT: Can't talk over --

22 MS. LUBRITZ: And I'm going to --

23 THE COURT: -- you can't talk --

24 MS. LUBRITZ: -- ask that it stop.

1 THE COURT: -- over her. We need to make a record.
2 MS. LUBRITZ: She's coaching her client.
3 MS. MASTEL: I am not coaching my --
4 MS. LUBRITZ: And I'm trying to --
5 MS. MASTEL: -- my client.
6 MS. LUBRITZ: -- stop it before she continues to
7 coach her client.
8 MS. MASTEL: I am not --
9 MS. LUBRITZ: It's a very long question.
10 THE COURT: I understand the objection. Yes, it is
11 Court's discretion on limited speaking objections. But this
12 is very important issues for both parties. So, second of all,
13 if you think I can't read into coaching and stuff then --
14 MS. LUBRITZ: My apologies to the Court.
15 THE COURT: Yeah -- no. No, fair enough. Fair
16 enough. I -- I saw that coming. But as soon as I was going
17 to object, my -- I was leaning towards overruling --
18 MS. MASTEL: The first --
19 THE COURT: -- anyway. But we need --
20 MS. MASTEL: -- question --
21 THE COURT: -- to make a record. And --
22 MS. MASTEL: The first quest --
23 THE COURT: -- keep it brief.
24 MS. MASTEL: Okay. The first question --

1 THE COURT: So, you're not coaching --
2 MS. MASTEL: I'm -- I'm not trying --
3 THE COURT: And I'm not --
4 MS. MASTEL: -- trying to.
5 THE COURT: -- saying you were. I'm not saying you
6 were. Okay.
7 MS. MASTEL: The first question is that some time
8 about a week later she made a statement and then she's saying
9 what happened in the few hours a week prior that made this
10 statement make sense. She's convoluted the time frame. This
11 is --
12 THE COURT: Um --
13 MS. MASTEL: -- not what my client testified to.
14 THE COURT: That wasn't Ms. Lubritz's question.
15 MS. LUBRITZ: No, it wasn't.
16 MS. MASTEL: Yes --
17 THE COURT: She was referring back to the -- Mom
18 said she admits that when he made that child support
19 payment --
20 MS. MASTEL: Which she testified was --
21 MS. LUBRITZ: Excuse me, Counsel --
22 MS. MASTEL: -- a week --
23 THE COURT: She said --
24 MS. LUBRITZ: -- Mom --

1 THE COURT: -- Mom admits she made a statement that
2 second signature is going to cost you.

3 MS. MASTEL: Correct.

4 THE COURT: Okay. Then the second signature was --
5 we were referring to was the decree of divorce, the first one
6 was the MOU. So, we're all done with that. And then she had
7 also admitted that between the MOU and the decree signing, her
8 and Dad didn't talk much, small talk, nothing major, nothing
9 -- not the SBP. Now, we're referring back to when that child
10 support payment was made and she made that statement because
11 -- I guess Ms. Lubritz was trying to make context here.

12 MS. LUBRITZ: Yes.

13 THE COURT: So, the question -- I think it was a
14 fair question. Explain what you meant by that second
15 signature was going to cost you.

16 BY MS. LUBRITZ:

17 Q Would it help you to hear the recording?

18 A No, I know what I --

19 THE COURT: She said it --

20 THE WITNESS: -- said.

21 MS. LUBRITZ: Okay. Thank you.

22 THE COURT: It is an open-ended question so --

23 MS. LUBRITZ: Yeah.

24 THE COURT: -- you can --

1 MS. LUBRITZ: Note for (indiscernible).
2 THE COURT: -- take all your time and explain it to
3 the --
4 MS. LUBRITZ: So, I'll ask --
5 THE COURT: -- Court.
6 MS. LUBRITZ: -- my question again.
7 THE COURT: Yeah.
8 BY MS. LUBRITZ:
9 Q My question to you is what did that -- that -- the
10 second signature's going to cost you -- you're smiling --
11 MS. MASTEL: Uh --
12 MS. LUBRITZ: -- I don't think it's a funny matter
13 at all.
14 BY MS. LUBRITZ:
15 Q So, what did you --
16 THE COURT: One question.
17 MS. LUBRITZ: -- mean by it's going to cost you?
18 THE COURT: That's the question. Just explain what
19 you -- what you meant by that, Mom.
20 BY MS. LUBRITZ:
21 Q What'd you mean?
22 A I meant that if he wanted -- the reason why I stated
23 that was because he was withholding money from me from the
24 Morandum (sic) for my alimony and he said that I would not be

1 allowed to have that money until I gave him a new signature on
2 a new decree without the PERS on it.

3 Q Okay. But -- but that would be a third signature,
4 not a second. And you just said the second signature referred
5 directly to the decree of divorce. So, my question is what
6 did you mean when you said it's going to cost you?

7 MS. MASTEL: Objection, asked --

8 MS. LUBRITZ: I asked --

9 MS. MASTEL: -- and answered.

10 MS. LUBRITZ: Excuse me, she's --

11 THE COURT: She didn't answer. Overruled.

12 MS. LUBRITZ: Thank you.

13 THE COURT: Okay. We --

14 MS. LUBRITZ: So, what does it mean?

15 THE COURT: -- know the question.

16 THE WITNESS: I meant that if he wanted a new
17 signature on a new decree without the PERS in it, that he
18 would have to bring me back to court.

19 BY MS. LUBRITZ:

20 Q Okay. So --

21 A So, that would cost him.

22 Q Great.

23 THE COURT: Because he didn't you pay the alimony?

24 MS. LUBRITZ: No.

1 THE WITNESS: Yes.

2 MS. LUBRITZ: Alimony was lump sum, and it was taken
3 out of I think the proceeds --

4 THE COURT: Okay.

5 MS. LUBRITZ: -- and the sale of the house.

6 THE COURT: I don't have a perfect memory but was --

7 MS. LUBRITZ: So --

8 THE COURT: -- it a lot of money?

9 THE WITNESS: It was over \$50,000 and it was being
10 held.

11 MS. LUBRITZ: So, Your Honor --

12 THE COURT: And it was being held.

13 MS. LUBRITZ: -- it came directly from the sale of
14 the -- the residence.

15 THE COURT: You asked her to put in context --

16 MS. LUBRITZ: So --

17 THE COURT: -- you asked her an open-ended question
18 so --

19 MS. LUBRITZ: No, that's fine.

20 THE COURT: -- the Court --

21 MS. LUBRITZ: So --

22 THE COURT: -- so 50K -- over 50K?

23 MS. MASTEL: There's no --

24 THE WITNESS: It was over 50K.

1 MS. MASTEL: -- question pending --
2 THE COURT: How did you know --
3 MS. MASTEL: -- before you --
4 THE COURT: -- how'd you know he had the 50K?
5 MS. LUBRITZ: The judge asked her --
6 THE WITNESS: Because it --
7 MS. LUBRITZ: -- a question.
8 THE COURT: I'm asking now.
9 MS. LUBRITZ: Don't talk to me.
10 THE COURT: You can object to me.
11 MS. LUBRITZ: It's inappropriate.
12 THE COURT: You can --
13 MS. LUBRITZ: No, she's talking --
14 THE COURT: -- object to me.
15 MS. LUBRITZ: -- behind me -- at me and I can't
16 hear.
17 THE COURT: Okay.
18 MS. LUBRITZ: It's not appropriate --
19 THE COURT: No, it --
20 MS. LUBRITZ: -- for one, but I can't hear you.
21 THE COURT: I -- I sometimes like to ask because
22 who's -- you know, I'm making --
23 MS. LUBRITZ: Absolutely.
24 THE COURT: -- the difficult decision here so -- but

1 you're free to object to my question.

2 MS. LUBRITZ: I'm all for that.

3 THE COURT: Trust me --

4 MS. LUBRITZ: I like the marshal's --

5 THE COURT: -- attorneys have -- I don't get

6 offended.

7 MS. LUBRITZ: -- handcuffs on his belt.

8 THE COURT: He had 50K?

9 THE WITNESS: From the sale of the house and --

10 THE COURT: Did he make -- oh, there was a house?

11 So, if he had --

12 THE WITNESS: We did sell the --

13 THE COURT: -- money then it's bank accounts?

14 THE WITNESS: It was with the attorney, because he

15 sold it, and my attorney while we were in the divorce

16 process --

17 THE WITNESS: Do you know for sure he had money in

18 his bank account, house sale monies?

19 THE WITNESS: It was house sale monies, yeah.

20 THE COURT: You sure? Could it -- could it have

21 been in escrow?

22 THE WITNESS: Nope, it was --

23 THE COURT: Could an attorney --

24 THE WITNESS: -- sold.

1 THE COURT: -- be holding it?
2 THE WITNESS: Regina had it.
3 THE COURT: Oh. Attorney trust account deal.
4 MS. LUBRITZ: Correct.
5 THE WITNESS: Because my --
6 THE COURT: Okay.
7 THE WITNESS: -- attorney required it.
8 THE COURT: And you and Dad were fighting at the
9 time?
10 THE WITNESS: We were --
11 THE COURT: Things were not pleasant at that time?
12 THE WITNESS: We had already filed for divorce when
13 he -- or the --
14 THE COURT: Okay.
15 THE WITNESS: -- filing had gone down. So, in
16 mediation, it was rewarded to me that I would get the \$50,000
17 as a lump sum of alimony --
18 THE COURT: Okay.
19 THE WITNESS: -- plus \$5,000.
20 THE COURT: How long had you been waiting? How many
21 -- had it been days, weeks?
22 THE WITNESS: So, in the Memorandum --
23 MS. LUBRITZ: May I ask a -- Judge, may I ask a
24 clarifying --

1 THE COURT: The decree --
2 MS. LUBRITZ: -- question?
3 THE COURT: -- was filed April 11.
4 MS. LUBRITZ: No, Judge, here's the thing --
5 MS. MASTEL: Objection, there --
6 MS. LUBRITZ: -- Mom stated --
7 THE COURT: Overruled.
8 MS. MASTEL: -- isn't any question --
9 MS. LUBRITZ: You said that -- I -- you said I --
10 THE COURT: It's her line of questioning. I'm not
11 taking --
12 MS. LUBRITZ: Thank you.
13 THE COURT: -- over her case.
14 MS. LUBRITZ: Thank you.
15 THE COURT: So, she's free to interject.
16 MS. LUBRITZ: Thank you.
17 THE COURT: Okay. Go ahead.
18 BY MS. LUBRITZ:
19 Q Now, you just testified that the money from the
20 proceeds from the sale of the house was in -- was being held
21 by Ms. McConnell, not by Mr. Rose, correct?
22 A Correct.
23 Q So -- so it wasn't that Dave was holding up any
24 payment, he didn't have access to the money, did he? It was

1 in his lawyer's trust account, correct?

2 A His attorney --

3 Q Yes or --

4 MS. MASTEL: Objection --

5 THE WITNESS: -- told me David had --

6 MS. LUBRITZ: Yes or no?

7 MS. MASTEL: -- compound question.

8 THE COURT: You know what --

9 MS. LUBRITZ: That's fine.

10 THE WITNESS: No, it was not in his account.

11 THE COURT: You know --

12 MS. LUBRITZ: Thank you. She just said it was not

13 in his account.

14 BY MS. LUBRITZ:

15 Q And he had no control over the money that was in the

16 lawyer's trust account, correct?

17 A He did have control, yes.

18 Q He did? Tell me how he had control over that?

19 A Regina told me David said that I was --

20 Q Well, no, no, hold on --

21 A -- not allowed to have it.

22 Q -- hold on. Regina told you something?

23 A Yes, I talked to --

24 THE COURT: Okay. Well, that's --

1 THE WITNESS: -- her.
2 MS. LUBRITZ: She's not here.
3 THE COURT: Well, you --
4 MS. LUBRITZ: That's hearsay.
5 THE COURT: -- are you objecting to hearsay?
6 MS. LUBRITZ: Well, of course, it's a hearsay
7 objection.
8 THE COURT: So, you can't tell me what Regina said,
9 because she came and went already so it didn't come up.
10 MS. LUBRITZ: So, I'd ask that that portion of her
11 answer --
12 THE COURT: Right.
13 MS. LUBRITZ: -- be stricken.
14 THE COURT: The reason why we're asking is it's
15 relevant to each of your motives. Now, I get that Moms and
16 Dads fight, but we kind of know what's been going -- what was
17 going on in your --
18 MS. LUBRITZ: Well, if I may --
19 THE COURT: -- head at the time.
20 MS. LUBRITZ: -- if I may pick it up?
21 THE COURT: Yes.
22 MS. LUBRITZ: I appreciate it.
23 THE COURT: Yes.
24 MS. LUBRITZ: Thank you.

1 BY MS. LUBRITZ:
2 Q So, we've already agreed the first signature was the
3 MOU, the second signature was the decree of divorce, correct?
4 A Yes.
5 Q And if he wanted, quote, another decree, that would
6 be a third signature, right?
7 A Correct.
8 Q But your statement to him that night when he made
9 that first child -- half child support payment to you is the
10 second one's going to cost you. The second signature's going
11 to cost you?
12 A The third signature is --
13 Q You --
14 A -- going to cost him.
15 Q That is your testimony?
16 A You just stated a new decree would --
17 Q Ma'am --
18 A -- require --
19 Q -- no, no, no, no --
20 A -- a third --
21 Q -- no, no.
22 A -- signature.
23 Q Ma'am, I'm going to go through it very quietly and
24 one more time.

1 MS. MASTEL: Your Honor, one, this --
2 MS. LUBRITZ: First --
3 MS. MASTEL: -- question has become badgering. She
4 has asked this same question --
5 MS. LUBRITZ: But she's --
6 MS. MASTEL: -- multiple times --
7 MS. LUBRITZ: -- going on and on and on --
8 MS. MASTEL: -- my client has --
9 MS. LUBRITZ: -- it's nonresponsive.
10 MS. MASTEL: -- answered it.
11 THE COURT: There's an objection, so --
12 MS. LUBRITZ: It's nonresponsive.
13 THE COURT: -- I'm going to overrule the objection.
14 MS. LUBRITZ: Thank you.
15 THE COURT: I think --
16 BY MS. LUBRITZ:
17 Q Let's be clear --
18 THE COURT: -- Mom's holding fine with her --
19 MS. LUBRITZ: -- signature one --
20 THE COURT: -- you know?
21 MS. LUBRITZ: -- MOU, yes?
22 THE WITNESS: Yes.
23 BY MS. LUBRITZ:
24 Q Signature two, degree of divorce signed the same day

1 as the MOU, correct?

2 A Yes.

3 Q Signature three would have been on a new decree,
4 correct?

5 A Yes.

6 Q But you said the second signature's going to cost
7 you, right?

8 A No.

9 MS. LUBRITZ: Your Honor, I have a recording, I'd
10 like to play.

11 MS. MASTEL: Your Honor, I've already objected to
12 this recording --

13 THE COURT: Overruled.

14 MS. MASTEL: -- it is outside --

15 THE COURT: It goes to --

16 MS. MASTEL: -- of the time of --

17 THE COURT: -- recollection.

18 MS. LUBRITZ: Thank you. And it was served --

19 THE COURT: And it goes to credibility.

20 MS. LUBRITZ: -- upon Counsel, and she never filed
21 an objection to it.

22 MS. MASTEL: Yeah, we --

23 MS. LUBRITZ: Can we go get the --

24 THE COURT: Okay. Wait, wait, you have an

1 objection. Was it --
2 MS. MASTEL: I objected to it. It was served
3 outside the --
4 MS. LUBRITZ: She never filed --
5 MS. MASTEL: -- time of discovery. I sent --
6 THE COURT: Okay. This is --
7 MS. MASTEL: -- a letter and said --
8 THE COURT: -- now to impeach. We have to -- let's
9 not talk over each other. We're recording this. For --
10 MS. LUBRITZ: Well --
11 THE COURT: -- any appellate record.
12 MS. LUBRITZ: -- additionally under --
13 THE COURT: Okay.
14 MS. LUBRITZ: -- 16.2(i) if you want to object to
15 the authenticity of any --
16 THE COURT: Okay.
17 MS. MASTEL: I'm objecting to --
18 MS. LUBRITZ: -- (indiscernible - simultaneous
19 speech).
20 MS. MASTEL: -- the authenticity.
21 MS. LUBRITZ: Okay.
22 THE COURT: Okay.
23 MS. LUBRITZ: And, yes, it is for impeachment.
24 THE COURT: On number one, how --

1 MS. LUBRITZ: Counsel, would you --
2 THE COURT: -- they wouldn't be able to waive any
3 authenticity if they didn't know you were going to introduce
4 it. Rules of discovery says 16.2, you're supposed to disclose
5 even rebuttal --
6 MS. LUBRITZ: It was.
7 THE COURT: -- evidence.
8 MS. MASTEL: After the close --
9 MS. LUBRITZ: I did it in my --
10 MS. MASTEL: -- of discovery.
11 MS. LUBRITZ: -- in my PTM.
12 MS. MASTEL: After the close --
13 MS. LUBRITZ: Discovery --
14 MS. MASTEL: -- of discovery.
15 MS. LUBRITZ: -- closed and --
16 THE COURT: And it's the Court's --
17 MS. LUBRITZ: -- (indiscernible - simultaneous
18 speech).
19 THE COURT: -- discretion to --
20 MS. MASTEL: No, it didn't. We did an extension.
21 MS. LUBRITZ: You're right. No, you're --
22 THE COURT: Right. And I'll --
23 MS. LUBRITZ: -- absolutely correct.
24 THE COURT: -- tell you what, neither of you filed

1 -- or one side didn't file a motion in limine. And so as far
2 as a notice issue, one, they disclosed it; yes, if it was
3 after discovery, it was still a month before trial. Your
4 PTM's were due like a month before trial.

5 MS. LUBRITZ: And it was disclosed --

6 THE COURT: Or well --

7 MS. LUBRITZ: -- in the --

8 THE COURT: -- before that.

9 MS. LUBRITZ: -- PTM and it was also hand-delivered.
10 I have the ROC --

11 THE COURT: Well, which --

12 MS. LUBRITZ: -- and it's a (indiscernible -
13 simultaneous speech).

14 THE COURT: -- which version of the PTM? Because
15 we've had trial continued four times. When was --

16 MS. LUBRITZ: Um --

17 THE COURT: -- that PTM?

18 MS. LUBRITZ: I only filed one, because I wasn't
19 involved --

20 THE COURT: Was it a month ago?

21 MS. LUBRITZ: No.

22 MS. MASTEL: Your Honor, it was several --

23 MS. LUBRITZ: It was done in --

24 MS. MASTEL: -- months ago but it --

1 MS. LUBRITZ: -- November I believe.
2 THE COURT: Well, then --
3 MS. MASTEL: But we already --
4 THE COURT: -- you've been --
5 MS. MASTEL: -- noticed our objection.
6 THE COURT: -- on notice of a new --
7 MS. LUBRITZ: Correct.
8 THE COURT: -- day.
9 MS. MASTEL: Well, then I would like the --
10 THE COURT: And if you --
11 MS. MASTEL: -- copy that was provided to my office
12 to be the one that's used. Not a copy off of a phone --
13 MS. LUBRITZ: Okay. So you --
14 MS. MASTEL: -- that I haven't had a --
15 MS. LUBRITZ: -- have it.
16 MS. MASTEL: -- chance --
17 MS. LUBRITZ: Where is it?
18 THE COURT: Careful, Counsel. We're recording this.
19 So --
20 MS. LUBRITZ: Thank you.
21 THE COURT: -- one at a time. You know, the person
22 who is trying to transcribe this --
23 MS. LUBRITZ: I know.
24 THE COURT: -- is going to go crazy.

1 MS. LUBRITZ: And --
2 THE COURT: Okay. So, look --
3 MS. LUBRITZ: May we play the --
4 THE COURT: -- you had opportunities to file motions
5 in limine, motion for protective order. Too late to you waive
6 any --
7 MS. LUBRITZ: Yeah.
8 THE COURT: -- authenticity. And if it is rebuttal
9 in nature, it would be Court's discretion to say, well, Mom,
10 kind of wouldn't know about it. And you -- it was listed in
11 her pretrial memo. Did you give it to them in a flash drive
12 or --
13 MS. LUBRITZ: Yes, I did --
14 THE COURT: -- a CD?
15 MS. LUBRITZ: -- Your Honor. And I have an --
16 THE COURT: All right. Because you'll --
17 MS. LUBRITZ: -- ROC for that.
18 THE COURT: -- need that. There was -- there was
19 opportunity to object or file a motion. I would've
20 entertained an oral motion in limine, but we started this
21 trial and it's relevant -- highly relevant. It would go to
22 credibility. I give it whatever weight I want to give it. So
23 -- and recollection. Overruled. And it's like 30 seconds?
24 MS. LUBRITZ: Oh, not -- barely, yes. And then for

1 the record --

2 THE COURT: Take that mic --

3 MS. LUBRITZ: -- they receive a copy --

4 MS. MASTEL: We acknowledge --

5 THE COURT: -- that's a short wire but it --

6 MS. MASTEL: -- that it was received.

7 THE COURT: -- you've got a --

8 MS. LUBRITZ: They received a copy, Judge --

9 THE COURT: -- speaker?

10 MS. LUBRITZ: -- was the 24th of June.

11 THE COURT: Is it an MP3 file?

12 MS. LUBRITZ: It's -- it's on a phone.

13 THE COURT: Just put the speaker phone on the --

14 MS. LUBRITZ: Perfect. And then again just so that

15 I'm clear, the receipt of copy for it was June 24th, 2019.

16 THE COURT: Mark it for identification? Has it been

17 marked for --

18 MS. LUBRITZ: I actually provided --

19 THE COURT: -- identification?

20 MS. LUBRITZ: -- a copy to the clerk when I

21 presented my documents.

22 THE COURT: Your objection is noted on the record.

23 I'm going to overrule the objection --

24 MS. MASTEL: Fine.

1 THE COURT: -- or the admiss -- admissibility of
2 this evidence.

3 MS. MASTEL: Your Honor, can we play the recording
4 that was provided to the Court?

5 THE COURT: Wait, before you start, I need a letter
6 -- a -- a number. Plaintiff's Exhibit Number?

7 MS. LUBRITZ: I act -- I attached -- I think it's --
8 I think it's 2. I think I only had --

9 THE COURT: Let me have my court clerk --

10 MS. LUBRITZ: Brief indulgence.

11 THE COURT: -- verify so we don't --

12 MS. LUBRITZ: It's -- it's B. Ooh it should be A
13 and 1 and 2, I'm sorry, I did A and B. No, wait.

14 THE CLERK: Exhibit 2.

15 MS. LUBRITZ: Exhibit 2.

16 THE COURT: So, long as my clerk tells me it's 2,
17 it's going to be Exhibit 2. Admitted.

18 (Plaintiff's Exhibit 2 admitted)

19 MS. LUBRITZ: If you want to play that, I -- I --
20 I've -- I have an Apple here.

21 THE COURT: Save me time. Go ahead and put it in
22 front of the microphone.

23 MS. LUBRITZ: Thank you. Do you want to make --

24 THE COURT: Right there, there's a --

1 MS. LUBRITZ: -- it closer --
2 THE COURT: -- microphone right --
3 MS. LUBRITZ: Can we put it at hers so she can hear
4 it?
5 THE BAILIFF: She can hear it.
6 THE COURT: It's the --
7 THE BAILIFF: This mic.
8 THE COURT: -- same microphone, it goes --
9 MS. LUBRITZ: Oh.
10 THE COURT: -- through the speakers in the ceiling,
11 Counsel.
12 MS. LUBRITZ: See how technical I am. Thank you.
13 THE COURT: Hold it right up to those -- like this.
14 4:31:20
15 (Plaintiff's Exhibit 2 played in open court)
16 THE COURT: Is it child exchange?
17 MS. LUBRITZ: No, child support.
18 THE COURT: Oh, child --
19 4:32:02
20 THE COURT: Well, that --
21 MS. LUBRITZ: What I would ask --
22 THE COURT: -- wasn't clear.
23 MS. LUBRITZ: -- the Court is --
24 THE COURT: I heard something signature cost you.

1 MS. MASTEL: New --
2 MS. LUBRITZ: Well, may I --
3 MS. MASTEL: -- signature.
4 MS. LUBRITZ: -- may I ask the Court to hear it
5 close up? Because you can hear it better.
6 THE COURT: Sure. Genaro will bring it up.
7 MS. LUBRITZ: Thank you.
8 THE COURT: Whose phone, is that Dad's phone?
9 MS. LUBRITZ: No, it's his wife's phone, she's the
10 one that had the phone while they were recording it.
11 THE COURT: That's fine. Hit that play button and
12 hold it to the microphone there.
13 4:32:23
14 (Plaintiff's Exhibit 2 played in open court)
15 THE COURT: It's actually a video?
16 MS. LUBRITZ: No, it's audio.
17 THE COURT: No, there's a video.
18 MS. LUBRITZ: Yeah.
19 THE COURT: There you. Put it right on top. Like
20 this. That's too close. Yeah, right there. My new signature
21 is going to cost you. But before that he said something like
22 here's -- here's the half and I got to wait until I get paid
23 next time.
24 MS. LUBRITZ: She says the second signature's going

1 to cost you.

2 MS. MASTEL: Objection, Your Honor.

3 THE COURT: I heard new signature.

4 4:33:08

5 THE COURT: You want me to rewind it?

6 MS. LUBRITZ: You know, the -- the new signature,

7 that's fine.

8 MS. MASTEL: No, I would move --

9 MS. LUBRITZ: It's the same thing.

10 MS. MASTEL: -- to strike all of the question,

11 badgering my client about second versus third. She said new.

12 I heard it, you heard it. She has --

13 MS. LUBRITZ: I'm sorry, what --

14 MS. MASTEL: -- testified what she meant by it.

15 MS. LUBRITZ: -- can I ask that Counsel --

16 THE COURT: Motion to strike -- I'm going to move

17 this trial along. Motion to strike denied. The Court heard

18 that new signature is going to cost you. Prior to that he

19 said here's kind of like half and I got to wait until I get --

20 MS. LUBRITZ: Right.

21 THE COURT: -- you'll get the other half when I get

22 paid.

23 BY MS. LUBRITZ:

24 Q And the new signature would've been the -- the

1 second decree, correct? The next decree? Because you already
2 said -- you said it was second, right? So, we had the one
3 which was the MOU, number two was the decree.

4 MS. MASTEL: Objection --

5 MS. LUBRITZ: And the new --

6 MS. MASTEL: -- misstates my client's --

7 MS. LUBRITZ: -- decree would be --

8 MS. MASTEL: -- testimony.

9 MS. LUBRITZ: -- three, correct?

10 MS. MASTEL: She said you said it was second.
11 Second --

12 MS. LUBRITZ: I'm sorry --

13 MS. MASTEL: -- what? She -- we all agreed it was
14 new.

15 MS. LUBRITZ: Judge, I'm really going to ask --

16 THE COURT: Um --

17 MS. LUBRITZ: -- that counsel make appropriate
18 objections and not speak over me.

19 THE COURT: Okay. And we don't want to, yeah,
20 misstate testimony. You just referred to it as second
21 signature but you weren't --

22 MS. LUBRITZ: Well --

23 THE COURT: -- referring to Mom saying that, you
24 were saying it to -- for the purpose of the Court's record.

1 MS. LUBRITZ: Right. However, when I -- when I
2 questioned Mom, Mom said that it was --
3 THE COURT: I need to rule.
4 MS. LUBRITZ: -- she said second.
5 THE COURT: How about this -- this is --
6 MS. LUBRITZ: Mom said second.
7 THE COURT: -- we're getting technical again.
8 MS. LUBRITZ: I'll withdraw it.
9 THE COURT: Withdraw before I rule?
10 MS. LUBRITZ: I'll withdraw it.
11 THE COURT: Withdrawn.
12 MS. LUBRITZ: I'll go with Mom's testimony.
13 THE COURT: Is there a question? Exhibit 2 is --
14 MS. LUBRITZ: Brief indulgence.
15 THE COURT: -- is the audio, Mom says --
16 MS. LUBRITZ: No, I --
17 THE COURT: -- new signature.
18 MS. LUBRITZ: -- I have nothing further. Thank you.
19 THE COURT: The new signature.
20 MS. MASTEL: So --
21 THE COURT: Follow-up, Ms. Mastel?
22 MS. MASTEL: Yeah.
23 MS. LUBRITZ: So, everything regarding the --
24 MS. MASTEL: Yes.

1 MS. LUBRITZ: -- tape I strike and withdrawn subject
2 to the Court's approval.
3 THE COURT: You want to withdraw the exhibit?
4 MS. LUBRITZ: Um --
5 THE COURT: Oh, no. Everything up to the time the
6 tape was played?
7 MS. LUBRITZ: I'll withdraw the exhibit.
8 THE COURT: You withdraw the exhibit?
9 MS. LUBRITZ: I'll take Mom's testimony.
10 THE COURT: Hang on, let me hit the delete button.
11 Okay.
12 (Plaintiff's Exhibit 2 withdrawn)
13 THE COURT: All right. Any follow-up on that? She
14 just withdrew everything.
15 MS. MASTEL: I'm just going to -- maybe two
16 questions because I have no idea what's --
17 MS. LUBRITZ: So, long as it doesn't --
18 MS. MASTEL: -- going --
19 MS. LUBRITZ: -- fall outside the scope.
20 THE COURT: That's fair.
21 MS. LUBRITZ: Because she can ask her client on
22 direct.
23 THE COURT: You have a right to ask so this is what
24 I wrote. That night when Dad made -- it was actually -- was

1 it a child support payment?

2 MS. LUBRITZ: Yes, Judge.

3 THE COURT: Yeah, she admits that she said that --
4 she admitted in earlier testimony that the second signature is
5 going to cost you, and Dad would have to bring her back to
6 court. So, she wanted me to erase the new signature part
7 and --

8 MS. MASTEL: I -- I don't --

9 THE COURT: -- I'm not going to give that any --

10 MS. MASTEL: -- that's what I'm going --

11 THE COURT: -- consideration.

12 MS. MASTEL: -- to ask one small clarifying question
13 I think to sum up --

14 THE COURT: You're free to follow up.

15 MS. MASTEL: -- that whole line of --

16 MS. LUBRITZ: As long as it's --

17 MS. MASTEL: -- I don't know exactly --

18 MS. LUBRITZ: -- open-ended.

19 THE COURT: She said Dad was holding up her 50K from
20 her share of the house sale proceeds. That signature was for
21 the decree of divorce, the first signature was the MOU.

22 MS. LUBRITZ: Right.

23 THE COURT: She admits that between the signing of
24 the MOU and the decree signing by the parties and counsel, I

1 guess she and Dad never talked about the SBP. Okay. Follow-
2 up?

3 RECROSS EXAMINATION

4 BY MS. MASTEL:

5 Q So, Sarah --

6 MS. LUBRITZ: Judge, but you also have the -- even
7 just the next signature it's after the -- the two -- the MOU
8 and the decree were signed that she was talking about a
9 signature after that time?

10 THE COURT: Correct.

11 MS. MASTEL: Okay.

12 MS. LUBRITZ: Okay. Thank you.

13 BY MS. MASTEL:

14 Q Just to --

15 THE COURT: Based on her --

16 MS. MASTEL: -- summarize --

17 THE COURT: -- what I heard.

18 MS. LUBRITZ: Yes.

19 MS. MASTEL: -- my understanding of your
20 testimony --

21 MS. LUBRITZ: Your Honor --

22 MS. MASTEL: -- because it got --

23 MS. LUBRITZ: -- no, no, objection. Counsel's
24 understanding of testimony is absolutely not admitted -- is

1 not --

2 MS. MASTEL: I can --

3 MS. LUBRITZ: -- admissible.

4 MS. MASTEL: -- ask her questions --

5 THE COURT: Form --

6 MS. MASTEL: -- so I make sure I understand.

7 MS. LUBRITZ: No, she can't.

8 THE COURT: You have to rephrase it another --

9 MS. LUBRITZ: And it has to be --

10 THE COURT: -- form of the quest --

11 MS. LUBRITZ: -- an open --

12 THE COURT: -- form of the question. Sustained.

13 MS. LUBRITZ: Thank you.

14 THE COURT: Okay.

15 BY MS. MASTEL:

16 Q What was going on the night of the conversation that

17 you and Dave had that we're going all over the place on?

18 MS. LUBRITZ: Obje -- objection --

19 THE COURT: So --

20 MS. LUBRITZ: -- first of all, objection as to the

21 -- the commentary --

22 THE COURT: Foundation, vague, because she just --

23 MS. LUBRITZ: Thank you.

24 THE COURT: -- struck out that whole audio and that

1 -- yeah.
2 BY MS. MASTEL:
3 Q Ms. Lubritz asked you about a conversation you and
4 Mr. Rose has.
5 MS. LUBRITZ: She's leading her witness. And it's
6 a --
7 THE COURT: That's --
8 MS. LUBRITZ: -- very critical issue.
9 THE COURT: -- overruled.
10 MS. MASTEL: I have to set up foundation --
11 THE COURT: Overruled.
12 MS. MASTEL: -- because she --
13 MS. LUBRITZ: No, she --
14 MS. MASTEL: Thank you.
15 THE COURT: If I'm overruling, you don't want to
16 argue with me.
17 MS. MASTEL: Sorry, Your Honor.
18 THE COURT: Okay. Go ahead. We're just trying to
19 speed it up.
20 MS. MASTEL: I know we're in -- we're into
21 Mr. Willick's --
22 THE COURT: I will sustain it --
23 MS. MASTEL: -- testimony at this point.
24 THE COURT: -- if it's really critical, really

1 substantive. I don't want to prejudice anyone. If I overrule
2 it, then it's just background purposes, prefatory stuff or
3 repeating stuff.

4 BY MS. MASTEL:

5 Q What was going on during that time? That exact
6 event, what was the -- what was the event in question?

7 A In that event we were exchanging children as well as
8 getting a -- he handed me a check for half of the child
9 support. It was the very first child support check.

10 Q And Ms. Lubritz says you made a statement -- she
11 says the second decree or that second signature --

12 MS. LUBRITZ: I've withdrawn --

13 MS. MASTEL: -- or --

14 MS. LUBRITZ: -- all of it, and it's stricken,
15 Judge.

16 MS. MASTEL: -- the new signature --

17 THE COURT: Sustained.

18 MS. LUBRITZ: Thank you.

19 THE COURT: She withdrew --

20 MS. LUBRITZ: It's stricken.

21 THE COURT: -- the audio, she withdrew the -- yeah.

22 BY MS. MASTEL:

23 Q Did you and Dave -- Mr. Rose have an argument at
24 that point?

1 MS. LUBRITZ: Objection, it goes outside the scope
2 of the -- my --
3 THE COURT: Overruled. They talked about that event
4 -- that event about her --
5 MS. LUBRITZ: Their what?
6 THE COURT: -- him giving her half a child support
7 check.
8 BY MS. MASTEL:
9 Q Did you have an argument at that point?
10 A Yes.
11 Q What was the argument about?
12 A The argument was because I -- in mediation in the
13 morandum (sic) it said that I would be given my alimony
14 payment three days after the morendum (sic), not the decree
15 but the morendum (sic) had been signed.
16 MS. LUBRITZ: The what --
17 THE WITNESS: At this point --
18 MS. LUBRITZ: -- had been signed?
19 THE WITNESS: -- it had been --
20 MS. LUBRITZ: I'm sorry, I didn't understand the
21 word.
22 THE COURT: Mom would get her alimony check three
23 days after the MOU was signed.
24 MS. LUBRITZ: MOU, Memorandum.

1 THE WITNESS: Sorry.
2 MS. LUBRITZ: I'm sorry --
3 THE WITNESS: The MOU.
4 MS. LUBRITZ: -- no, no, no, I just --
5 THE COURT: Okay.
6 MS. LUBRITZ: -- couldn't hear it.
7 THE WITNESS: Sorry.
8 THE COURT: Uh-huh (affirmative).
9 THE WITNESS: It had been several days after that
10 three days, and I had contacted his attorney multiple times at
11 that point and I was not given it. I was also -- in the
12 argument David said that his attorney --
13 MS. LUBRITZ: Object -- that's fine. No.
14 THE COURT: Continue, Mom.
15 THE WITNESS: David's attorney would not file the --
16 the formal signature that we all signed, the formal decree
17 that was printed that we all signed, the original. She would
18 sign it -- or she would not file it until I had agreed to a
19 new decree without the PERS in it, and I would not get my
20 money until after a new signature was made.
21 MS. MASTEL: Thank you.
22 THE COURT: Okay. So, Dad's attorney would not file
23 the formal decree until Mom gives a new signature without the
24 SBP.

1 MS. LUBRITZ: Without the SBP.
2 THE COURT: Without the S -- yeah, without the SBP.
3 Okay. And you weren't getting your money, the house money,
4 the alimony money, right?
5 THE WITNESS: Yeah, the -- over the 50 grand.
6 THE COURT: Okay. Any follow-up, Ms. Mastel?
7 MS. MASTEL: I'll pass.
8 THE COURT: 4:39 --
9 MS. LUBRITZ: No further questions.
10 THE COURT: -- p.m.
11 MS. LUBRITZ: No further questions. And I rest.
12 THE COURT: Plaintiff rests. We're going to move
13 into your case in chief.
14 MS. MASTEL: I would like to make my opening
15 argument, but Mr. Willick is here.
16 THE COURT: I see him.
17 MS. LUBRITZ: I have no problem --
18 MS. MASTEL: And he would like to come in so --
19 THE COURT: Mom, you can step down, and sit with
20 your -- your attorney. Thank you.
21 MS. MASTEL: Can I do my opening out of order --
22 MS. LUBRITZ: I have no --
23 MS. MASTEL: -- I guess?
24 MS. LUBRITZ: -- objection, Your Honor.

1 THE COURT: Absolutely you can.
2 MS. MASTEL: Thank you.
3 THE COURT: Mr. Willick's out there, Genaro.
4 THE BAILIFF: Yes, Your Honor.
5 THE COURT: Oh, formalities, let the marshal go get
6 the --
7 MS. MASTEL: Okay.
8 THE COURT: -- expert witness. Okay. Plaintiff
9 rests. She rests at 4:40.
10 MS. LUBRITZ: When did I start back up?
11 THE COURT: Oh, about 4:01.
12 MS. LUBRITZ: Okay. But --
13 THE COURT: 4:02.
14 MS. LUBRITZ: But there was cross and everything
15 else. Okay. I'm just trying to figure out --
16 THE COURT: Okay.
17 MS. LUBRITZ: -- my time.
18 THE COURT: Good afternoon, Mr. Willick.
19 MR. WILLICK: Good afternoon, Your Honor.
20 THE COURT: Not your first rodeo. So, please come
21 on up. The Defendant's Counsel has called you as an expert
22 witness. And we'll have formality and have you sworn in.
23 MR. WILLICK: Okay.
24 THE COURT: Defendant's case in chief.

1 THE CLERK: Do you solemnly swear the testimony
2 you're about to give in this action shall be the truth, the
3 whole truth, and nothing but the truth so help you God?

4 MR. WILLICK: I do.

5 THE COURT: Okay. And Counsel has graciously
6 delayed Defendant's opening statement in lieu of getting your
7 testimony in before we cut out a little after 5:00 o'clock.
8 Because the County won't let us stay past 5:00 o'clock here so
9 we'll -- we'll do --

10 MS. LUBRITZ: I --

11 THE COURT: -- do you have a point of procedure?
12 Ms. Mastel's going to go straight into her direct.

13 MS. LUBRITZ: Right. My -- my question request of
14 the Court --

15 THE COURT: Uh-huh (affirmative).

16 MS. LUBRITZ: -- is if you would remind or tell
17 Mr. Willick what the scope of his testimony can be. Meaning
18 he's -- you ruled him in the motion in limine that he is not
19 allowed to testify as to -- as to law. That he only -- he
20 can't tell you about the law.

21 THE COURT: Okay. I can't remember --

22 MS. MASTEL: Your Honor, how about we --

23 THE COURT: -- what I ruled on.

24 MS. MASTEL: -- read him the language from the

1 order?

2 MS. LUBRITZ: No, the order -- by the way, Judge,

3 the order is --

4 THE COURT: And Mr. Willick's probably --

5 MS. LUBRITZ: -- incorrect.

6 THE COURT: -- thinking like --

7 MS. MASTEL: The order is signed.

8 THE COURT: -- what is going on with Judge Moss.

9 MS. LUBRITZ: The order is incorrect. I've already

10 drafted something to send to the Court or to file for

11 redress --

12 THE COURT: How about this: Can we start this for

13 starters? What do you believe your scope of testimony is?

14 MR. WILLICK: I believe that I am here to testify as

15 to how retirement benefits work in PERS.

16 THE COURT: As an informational but not giving any

17 legal opinion or argument on it?

18 MR. WILLICK: Well, it's very hard to talk about law

19 without talking about law. I mean I -- it would be physically

20 impossible to tell you about how PERS worked without referring

21 to NRS Chapter 286. I --

22 THE COURT: Yeah, so you're right.

23 MR. WILLICK: -- it's -- that's where --

24 THE COURT: And it's not the first time he's

1 testified on PERS.

2 MS. LUBRITZ: However he's --

3 MR. WILLICK: Many times --

4 MS. LUBRITZ: -- he's --

5 MR. WILLICK: -- Your Honor.

6 THE COURT: But --

7 MS. LUBRITZ: Judge, your --

8 THE COURT: Okay. Now, that --

9 MS. LUBRITZ: -- ruling was clear.

10 THE COURT: -- Mr. Willick mentioned it, I do

11 remember what I said. And I was -- we had a lengthy argument

12 in the beginning of this trial for about an hour on the

13 Peterson case and -- which is your -- your case. Are you

14 appellant or respondent?

15 MR. WILLICK: Technically we're appellant.

16 THE COURT: Okay.

17 MR. WILLICK: Oral argument is scheduled for

18 February 10th at 2:00 o'clock.

19 THE COURT: Do you mind if I pick his brain on

20 scheduling? When do you expect a decision to come down?

21 MR. WILLICK: That's a --

22 MS. LUBRITZ: Just so we know, Judge, this is being

23 part of the record.

24 THE COURT: It is.

1 MS. LUBRITZ: And it may be going up and so --
2 THE COURT: It is.
3 MS. LUBRITZ: -- obviously it's your courtroom.
4 THE COURT: And right now I have a placeholder -- no,
5 it's not, it's a guaranteed date of April 14th for day two of
6 this trial. They picked my -- well, they sort of picked my
7 brain but I said, hey, Peterson, comes down and we're still in
8 the middle of the trial, my inclination is to apply Peterson
9 in whatever the decision. If I make my decision before
10 Peterson becomes either new law, it is what it is. And then
11 take it up on appeal --
12 MS. LUBRITZ: You also --
13 THE COURT: -- or ask for retroactivity and we had a
14 lengthy discussion about can you apply it retroactively after
15 Judge Moss just --
16 MR. WILLICK: Sure.
17 THE COURT: -- did a fresh, new -- a fresh decision
18 in this case under the old law and if Peterson completely
19 overhauls and changes that. And they wanted to continue the
20 trial today and I said, no, it isn't --
21 MR. WILLICK: To --
22 THE COURT: -- you lawyers have to --
23 MR. WILLICK: To answer your question --
24 THE COURT: Yes.

1 MS. LUBRITZ: No, object -- Your Honor, I object to
2 him responding to anything about what you just said.
3 THE COURT: Back to your scope --
4 MS. LUBRITZ: Because it's almost like --
5 THE COURT: -- of your testimony.
6 MS. LUBRITZ: -- you're asking him -- because you
7 said that you -- that we would brief the retroactivity or
8 anything else. So, I just --
9 MR. WILICK: I wasn't going to talk about --
10 MS. LUBRITZ: Excuse --
11 MR. WILICK: -- retroactivity.
12 MS. LUBRITZ: Excuse me.
13 THE COURT: Okay. We're going --
14 MS. LUBRITZ: Excuse me.
15 THE COURT: -- to shy away -- Ms. Lubritz --
16 MS. LUBRITZ: Thank you.
17 THE COURT: -- one moment, please. It's been a long
18 day.
19 MS. LUBRITZ: Uh-huh (affirmative).
20 THE COURT: But we're going to --
21 MS. LUBRITZ: Yeah.
22 THE COURT: -- shy away from retroactivity.
23 MR. WILICK: Usually when a judge --
24 THE COURT: My --

1 MR. WILLICK: -- asks me a question, I try to give
2 an answer.
3 THE COURT: How about this: My question is when do
4 you expect your decision --
5 MR. WILLICK: That was what --
6 THE COURT: -- to be --
7 MR. WILLICK: -- I was going to answer --
8 THE COURT: Okay.
9 MR. WILLICK: -- but I've been interrupted twice.
10 THE COURT: Okay.
11 MR. WILLICK: It would be foolish for me predict
12 what the Supreme Court will do. But depending on how the
13 first meeting comes out. I used to work there.
14 MS. LUBRITZ: Objection, Your Honor. You asked him
15 when he --
16 MR. WILLICK: Uh --
17 MS. LUBRITZ: -- expected it to come down.
18 THE COURT: He -- I'll allow him to -- yeah, would
19 you --
20 MS. LUBRITZ: He's giving you more than that, Judge.
21 And he's the expert witness in this case --
22 THE COURT: Ms. Lubritz --
23 MS. LUBRITZ: -- and it's a critical --
24 MR. WILLICK: I'd love to answer your --

1 THE COURT: Ms. Lubritz --
2 MR. WILLICK: -- question, Your Honor.
3 MS. LUBRITZ: Excuse me, I'm going to ask that --
4 THE COURT: If you think it's --
5 MS. LUBRITZ: -- his statements be stricken.
6 THE COURT: -- prejudicing your client one way or
7 another, I don't believe so. If I do, I will cut him off and
8 just --
9 MS. LUBRITZ: And I would ask --
10 THE COURT: -- say give me the direct --
11 MS. LUBRITZ: -- his comments --
12 THE COURT: -- answer.
13 MS. LUBRITZ: -- be stricken about I'm trying to do
14 so --
15 THE COURT: I'm familiar --
16 MS. LUBRITZ: -- and all of the --
17 THE COURT: -- of your prior --
18 MS. LUBRITZ: -- theatrics that --
19 THE COURT: -- work history --
20 MS. LUBRITZ: -- go along with him.
21 THE COURT: -- with the Supreme Court as well. So,
22 you can just --
23 MR. WILLICK: Very good, Your Honor.
24 THE COURT: -- skip to the --

1 MR. WILLICK: If at the time --
2 THE COURT: Thank you.
3 MR. WILLICK: -- of the case conference the Court is
4 in agreement as to how the decision should come out, I would
5 expect it to come out fairly quickly, maybe a month or two.
6 THE COURT: Okay.
7 MR. WILLICK: If they have to write a full --
8 THE COURT: After oral --
9 MR. WILLICK: -- opinion.
10 THE COURT: -- argument on February 10th?
11 MR. WILLICK: Yeah. So --
12 THE COURT: Okay.
13 MR. WILLICK: -- possibly by late spring, early
14 June.
15 THE COURT: Okay.
16 MR. WILLICK: If there is a significant split and
17 this is an en banc argument, so that possibility exists.
18 THE COURT: Okay.
19 MR. WILLICK: If there's a significant split on the
20 court, you remember Vaile took nearly two years. So, it --
21 it's very difficult to predict, it really depends on things I
22 can't predict until they --
23 THE COURT: Okay.
24 MR. WILLICK: -- actually occur.

1 THE COURT: I appreciate your input. Thank you very
2 much. Just informational. Now, back to his scope of his
3 testimony.

4 MR. WILLICK: Yes, Your Honor.

5 THE COURT: He is very familiar with PERS and there
6 was lengthy argument, a motion argument about limiting the
7 scope of your testimony. And until you got here obviously I'd
8 like to take it for informational purposes. But just like in
9 other cases you've testified before, but you are as -- you are
10 the called expert from the Defense side; is that correct?

11 MS. MASTEL: Yes, Your Honor.

12 THE COURT: Okay. And Ms. Lubritz filed a motion to
13 exclude your testimony and I denied it partially. Because it
14 is so technical, it's like writing a QDRO. I don't do Q --
15 you know, I don't -- some attorneys don't do QDRO's.

16 MS. MASTEL: We don't.

17 THE COURT: And it's so technical that I only want
18 his testimony to help the Court on the workings of --

19 MS. LUBRITZ: Judge, we --

20 THE COURT: -- PERS.

21 MS. LUBRITZ: -- respectfully, we had our motion in
22 limine, your words almost verbatim is that he was allowed to
23 testify as to fact only, you went into to talking about if he
24 tries to say this, if he talks about Kilgore, if he does this,

1 that's where I'm drawing the line.

2 THE COURT: Uh-huh (affirmative).

3 MS. LUBRITZ: We have -- I can direct you to exactly

4 the time stamp on it. You said he can -- he may not testify

5 regarding the law, because and he -- and I explained to you

6 and -- and told you that he had been excluded in this very

7 same question --

8 THE COURT: Uh-huh (affirmative).

9 MS. LUBRITZ: -- he had been excluded on the very

10 basis that I sought, he'd been excluded from testifying.

11 THE COURT: Okay. Well, preserve your objections,

12 duly noted for the record --

13 MS. MASTEL: Your Honor, could I get --

14 THE COURT: -- you have any questions about the --

15 MS. MASTEL: -- a citation for that case?

16 THE COURT: -- scope of your testimony, Mr. Willick?

17 We're going to ask --

18 MR. WILLICK: I -- I know of no --

19 THE COURT: -- you about the NRS --

20 MR. WILLICK: -- such case but okay.

21 THE COURT: -- the PERS --

22 MS. LUBRITZ: I can have someone --

23 THE COURT: -- this is a very --

24 MS. LUBRITZ: -- come in and testify --

1 THE COURT: -- you can tell this is a very --

2 MS. LUBRITZ: -- about it then.

3 THE COURT: -- contested case, and we have a lot of
4 objections and it's been going on. But they're running the
5 trial pretty efficiently. So, we don't want to keep you here
6 any longer, and we can't stay here any longer than we can --
7 than we have to.

8 MR. WILLICK: Not a problem --

9 THE COURT: So --

10 MR. WILLICK: -- Your Honor.

11 THE COURT: -- let's just dive right into the
12 direct. And are you stipulating to ex -- you're not
13 stipulating to anything expert opinion. You're going to have
14 work through voir dire on that one, Ms. Mastel.

15 MS. MASTEL: I assumed so.

16 THE COURT: Okay.

17 MS. MASTEL: I'll ask Ms. Lubritz in the interest
18 of --

19 THE COURT: Just some back --

20 MS. MASTEL: -- time if we might stipulate --

21 THE COURT: -- background --

22 MS. MASTEL: -- to either the --

23 THE COURT: -- information --

24 MS. MASTEL: -- report?

1 MS. LUBRITZ: No, the report was never noted --
2 listed as an exhibit.

3 THE COURT: The author is --

4 MS. LUBRITZ: The --

5 THE COURT: -- the report?

6 MS. LUBRITZ: The report was never listed as an
7 exhibit. I have her two witness lists and the second witness
8 list went in and said, well, we will amend and tell you what
9 our exhibits are going to be once Ms. Lubritz does whatever
10 she's going to do.

11 THE COURT: He was --

12 MS. LUBRITZ: It was never --

13 THE COURT: -- a disclosed expert so --

14 MS. LUBRITZ: Judge, the --

15 THE COURT: -- you're supposed to --

16 MS. LUBRITZ: -- report was --

17 THE COURT: -- give the report --

18 MS. LUBRITZ: -- stricken. They -- they
19 inappropriately filed it in the court. You struck it. And in
20 fact Counsel agreed that it should be struck based upon my --

21 THE COURT: If I strike it in the --

22 MS. LUBRITZ: -- motion to do so.

23 THE COURT: -- midst of the proceedings, but if they
24 are a disclosed expert --

1 MS. MASTEL: Your Honor, he's a disclosed expert --
2 THE COURT: -- they have to disclosed --
3 MS. LUBRITZ: He was disclosed in --
4 MS. MASTEL: -- and it was --
5 THE COURT: -- it to you.
6 MS. LUBRITZ: I'm, sorry, I'm --
7 MS. MASTEL: -- a disclosed report.
8 THE COURT: What's your issue, Ms. Lubritz?
9 MS. LUBRITZ: My issue is that the report that
10 Mr. Willick prepared --
11 THE COURT: Yes.
12 MS. LUBRITZ: -- has never been listed as an exhibit
13 on any of --
14 THE COURT: Duly noted.
15 MS. LUBRITZ: -- witness, exhibit list, or their
16 PTM. Never.
17 MS. MASTEL: It was disclosed in open court when we
18 discussed this which is why our -- both our pretrial
19 memorandum said we are waiting to see if Ms. Lubritz is going
20 to get the rebuttal report she asked for to determine what
21 other exhibits we might need.
22 THE COURT: But why --
23 MS. LUBRITZ: And --
24 THE COURT: -- wait and --

1 MS. LUBRITZ: -- and Ms. Mastel --
2 THE COURT: -- list it?
3 MS. LUBRITZ: -- hasn't listed it.
4 MS. MASTEL: Because at the time our pretrial
5 memorandum was due, she had an extension to get a rebuttal
6 expert until long after --
7 THE COURT: Well, why wait?
8 MS. MASTEL: -- our pretrial was due.
9 THE COURT: It's your expert. List it --
10 MS. MASTEL: We did.
11 THE COURT: -- just in case.
12 MS. MASTEL: We listed it --
13 THE COURT: You did list it in your pretrial memo?
14 MS. MASTEL: We noted that we --
15 MS. LUBRITZ: No.
16 MS. MASTEL: -- would be prob -- using that and it
17 was --
18 MS. LUBRITZ: No.
19 MS. MASTEL: -- disclosed in open court that that
20 was going to be our exhibit.
21 MS. LUBRITZ: I have --
22 MS. MASTEL: At the time --
23 MS. LUBRITZ: -- it here.
24 MS. MASTEL: Your Honor, at the hearing in which you

1 gave Ms. Lubritz until two weeks before trial --
2 MS. LUBRITZ: Uh-huh (affirmative).
3 MS. MASTEL: -- to do a rebuttal report, we told you
4 that was going to be our exhibit.
5 THE COURT: Are you talking about the pretrial that
6 you filed on June 28, 2010?
7 MS. MASTEL: Yes. But before that we had a hearing
8 in which you gave them an op -- an extension of discovery to
9 ask additional questions of my client and to hire a rebuttal
10 expert on Mr. Willick's report, and you gave them until two
11 weeks before the trial. We disclosed at that hearing that we
12 would be utilizing this report --
13 MS. LUBRITZ: No.
14 MS. MASTEL: -- we had disclosed the expert, it had
15 been provided in discovery --
16 THE COURT: Okay.
17 MS. LUBRITZ: No, Judge. First the witness list
18 that they filed on 11-21 --
19 THE COURT: First of all, is the word Willick even
20 on page -- on these nine pages of your PTM here?
21 MS. LUBRITZ: I don't --
22 MS. MASTEL: Yes.
23 MS. LUBRITZ: It's -- only as a witness.
24 THE COURT: As a disclosed witness.

1 MS. LUBRITZ: Only as a witness.

2 THE COURT: Typically when you disclose them as an
3 -- a proposed expert witness or --

4 MS. MASTEL: 16.2 requires --

5 THE COURT: -- he's item number --

6 MS. LUBRITZ: I can't hear Your Honor.

7 THE COURT: -- page seven of nine of their June 28,
8 2019, pretrial memo does disclose Marshal Willick, so he was
9 not a mystery or surprise expert witness to anyone. Second of
10 all, the Court hereby finds we had a lengthy motion argument
11 about your motion for -- in limine or -- yeah, to exclude
12 Mr. Willick which was partially denied, and the Court would
13 accept this testimony for information on the workings of PERS.
14 Third of all if they are exclosed (sic) -- disclosed -- and
15 you know you list him as just -- he was disclosed as a regular
16 witness. But everybody knew he was going to be an expert
17 witness. All expert --

18 MS. LUBRITZ: But that doesn't --

19 THE COURT: -- witnesses' reports --

20 MS. LUBRITZ: Sorry.

21 THE COURT: -- have to be disclosed. Mr. Willick
22 did his report dated on --

23 MR. WILLICK: About a year plus ago.

24 THE COURT: -- and Attorney Lubritz doesn't deny

1 that they received it during the discovery period --
2 MS. LUBRITZ: I do deny that. I didn't receive it
3 during discovery. Here's what they did --
4 THE COURT: When did you --
5 MS. LUBRITZ: -- they filed --
6 THE COURT: -- receive it?
7 MS. LUBRITZ: -- it -- I've never received it. They
8 filed it -- he's shaking his head and doesn't know what --
9 what -- what happened here.
10 MR. WILLICK: I'm -- I'm just --
11 MS. LUBRITZ: Okay. Here's --
12 THE COURT: Okay.
13 MR. WILLICK: -- waiting.
14 MS. LUBRITZ: -- what happened, Judge, very, very --
15 THE COURT: Yeah.
16 MS. LUBRITZ: -- specifically here's what happened.
17 They filed it as a supplemental filing. They --
18 THE COURT: Right.
19 MS. LUBRITZ: -- filed it in the record before it
20 had been -- as though it were evidence.
21 THE COURT: Do you know the file date, Counsel?
22 MS. LUBRITZ: It was struck.
23 MS. MASTEL: Your Honor, on December 27th, 2018, the
24 initial 16.2 production that went over to Ms. McConnell was

1 that report. It is not my fault if Ms. Lubritz did not
2 receive it from Ms. McConnell.

3 MS. LUBRITZ: There's a difference between what I'm
4 using at --

5 MS. MASTEL: It was --

6 MS. LUBRITZ: -- trial and discovery. Lots of
7 things were discovered. There was lots of discovery that went
8 on in this --

9 MS. MASTEL: And there was --

10 MS. LUBRITZ: -- court --

11 MS. MASTEL: -- a discussion --

12 MS. LUBRITZ: Please, Your Honor.

13 THE COURT: One moment, one moment, Ms. Lubritz has
14 the floor. I -- I see it, 1-22-19, a year ago.

15 MS. LUBRITZ: And it was struck.

16 THE COURT: And that -- that letter from Mr. Willick
17 and his report was dated December 20th, 2018.

18 MS. LUBRITZ: And the entire re --

19 THE COURT: Okay. I'm going to have --

20 MS. LUBRITZ: -- the entire filing was struck.

21 THE COURT: Did you print me the minutes out?

22 MS. LUBRITZ: In the pretrial memorandum, they never
23 disclosed that they were going to use any --

24 THE COURT: All right.

1 MS. LUBRITZ: -- exhibits.

2 THE COURT: For reference, can you give me the date
3 of the hearing where it was struck? I have no reason not to
4 believe you, I just want to confirm that for the record.

5 MS. MASTEL: Sure, Your Honor, it was June 18 -- the
6 June 18th, 2019. And I will read from the order that was
7 signed --

8 MS. LUBRITZ: May I come close to you --

9 MS. MASTEL: -- by this court.

10 MS. LUBRITZ: -- because I don't have --

11 MS. MASTEL: Absolutely.

12 MS. LUBRITZ: Can I see the front page, first?

13 MS. MASTEL: Absolutely.

14 THE COURT: There was no hearing on June -- oh, June
15 18, 2019?

16 MS. MASTEL: It is further ordered that Plaintiff's
17 expert shall review Marshal Willick's report and provide a
18 counter-report on their legal analysis. Plaintiff shall
19 disclose his --

20 MS. LUBRITZ: No --

21 MS. MASTEL: -- expert, provide their CV, and
22 provide their rebuttal expert report to Defendant no later
23 than July 17th. The parties stipulate that the 1-22-19 filing
24 which contained Mr. Willick's report shall be struck from the

1 record.

2 MS. LUBRITZ: Exactly.

3 MS. MASTEL: They were well aware our pretrial
4 memorandum says that we're waiting on their rebuttal expert
5 report. They knew this report was here.

6 MS. LUBRITZ: No, Judge. First of all, we didn't
7 have the money or the time because you gave me two weeks and I
8 appreciated the two weeks, you gave me 14 days --

9 MS. MASTEL: She gave you a month.

10 MS. LUBRITZ: -- and -- Your Honor --

11 THE COURT: Either way, go ahead.

12 MS. LUBRITZ: Thank you.

13 THE COURT: This was served on Ms. McConnell by
14 e-service.

15 MS. LUBRITZ: It was -- it was struck. Okay?

16 THE COURT: Okay.

17 MS. LUBRITZ: Not a single --

18 THE COURT: It was struck but we know it was served
19 on Ms. McConnell by e-service.

20 MS. LUBRITZ: No, but Your Honor, it couldn't -- no,
21 that -- that thing went away. It might have been --

22 THE COURT: Yes, it was.

23 MS. LUBRITZ: -- sent to her via -- via e-service --

24 THE COURT: Yes.

1 MS. LUBRITZ: -- here's his report so that --

2 THE COURT: Uh-huh (affirmative).

3 MS. LUBRITZ: -- you can get an expert if you want.

4 THE COURT: Okay.

5 MS. LUBRITZ: But they never in a single pleading,
6 Judge, said they were using it as an exhibit.

7 THE COURT: Duly noted. Okay. Number one, I --

8 MS. LUBRITZ: They --

9 THE COURT: -- believe let's keep it simple for
10 purposes of trial, your objection is duly noted for the record
11 and preserved for the record if there's any appellate
12 proceeding --

13 MS. LUBRITZ: Thank you.

14 THE COURT: -- after this. Okay. Second of all, in
15 terms of notice, I don't find any prejudice to the opposing
16 side, because he was named as far back as like -- well over a
17 year ago.

18 (COUNSEL AND CLIENT CONFER BRIEFLY)

19 THE COURT: Okay. Second of all, we had an actual
20 lengthy motions, so Mr. Willick is not a mystery guest for
21 today, he is well-known, and he had -- and the Court was well
22 aware he did a report. I only struck it because it wasn't
23 proper to file it and make it part of the record until you try
24 to introduce it at trial.

1 Third of all, I think there's enough notice for
2 Plaintiff, and I think it's a violation of due process to know
3 that their -- that that report is going to go -- come in hand
4 with the author who is appearing here in person --
5 MS. LUBRITZ: No.
6 THE COURT: -- in terms of being able to -- and they
7 knew that he was going to testifying today on informational
8 purposes. There might be a little bit of cross-over but I
9 work with what I have. But look, I'm the trier of fact, I
10 know I need to separate myself from that, but I think that his
11 testimony could potentially be helpful to the Court for
12 informational purposes --
13 MS. LUBRITZ: How --
14 THE COURT: -- on how this PERS thing works.
15 MS. LUBRITZ: However --
16 THE COURT: Okay.
17 MS. LUBRITZ: -- respectfully --
18 THE COURT: Right.
19 MS. LUBRITZ: -- he can testify without --
20 THE COURT: I don't find it --
21 MS. LUBRITZ: -- a report.
22 THE COURT: -- I don't find it's a violation of due
23 process. But objection noted for the record. I don't find
24 it's unduly --

1 MS. MASTEL: Your Honor, he --

2 THE COURT: -- prejudicial. And third of all, that
3 report was made available to Opposing Counsel before it was
4 struck. So, once it got e-served, it goes in Ms. McConnell's
5 file and then it should have been transferred to you.

6 MS. LUBRITZ: And -- and my objection again just so
7 that it's noted for the record --

8 THE COURT: Yeah.

9 MS. LUBRITZ: -- is that he was never disclosed as
10 an exhibit in their pretrial memorandum, in their two witness
11 lists --

12 THE COURT: Correct.

13 MS. LUBRITZ: -- it is --

14 THE COURT: It -- right. And I said --

15 MS. LUBRITZ: I'm just trying to make my --

16 THE COURT: -- to Ms. Mastel --

17 MS. LUBRITZ: -- record, Judge.

18 THE COURT: -- why didn't you list it, why didn't
19 you attach it when you serve it three days before trial or a
20 month before trial to Opposing. I get that.

21 (COUNSEL AND CLIENT CONFER BRIEFLY)

22 THE COURT: So, there's a little procedural defect.
23 Fair enough. They said, well, we'll put the two reports
24 together because we're waiting on your rebuttal. Well, what

1 about the possibility that they weren't going to call a
2 rebuttal --
3 MS. LUBRITZ: Thank you.
4 THE COURT: -- expert and have everybody sit in the
5 courtroom so --
6 MS. MASTEL: Your Honor, we had an --
7 THE COURT: -- never take --
8 MS. LUBRITZ: I'm sorry --
9 THE COURT: -- chances. When in doubt, disclose.
10 But I will allow the report to come in because the author is
11 here to be vigorously cross examined I'm sure, and he can
12 handle that. Marshal can handle that.
13 MS. LUBRITZ: It has nothing to --
14 THE COURT: And --
15 MS. LUBRITZ: -- do with that respectfully.
16 THE COURT: -- we will --
17 MS. LUBRITZ: It was never noted as an exhibit. But
18 that's it.
19 THE COURT: We -- and you have marked it?
20 MS. MASTEL: Yes.
21 THE COURT: You may add another letter.
22 MS. MASTEL: It was -- it was in there.
23 THE COURT: Okay.
24 MS. MASTEL: It was in our exhibit book.

1 THE COURT: Which one?
2 MS. MASTEL: It's Exhibit C.
3 THE COURT: It is. But it wasn't -- okay.
4 MS. MASTEL: And it was --
5 THE COURT: Okay. Any procedural defects, the Court
6 would use in its own discretion say that it's not unduly
7 prejudicial, and it would be helpful to the trier of fact and
8 inherent ability to confront -- confront the author -- not
9 physically -- cross examine him as to his knowledge of PERS
10 and I'm drawing a line about expert advocating for one side
11 and we like to try to keep it neutral information.
12 But you are -- you -- I understand, he's your called
13 expert. And I'm familiar. So -- and it's not his, like I
14 said, his first rodeo. He's testifying on PERS, ERISA,
15 military benefits. So, you can begin your questioning.
16 MS. MASTEL: One procedural correction --
17 THE COURT: Right.
18 MS. MASTEL: -- to the record.
19 THE COURT: And then -- yes.
20 MS. MASTEL: Pursuant to NRCP 16.2 --
21 THE COURT: Yes.
22 MS. MASTEL: -- Mr. Willick could not appear as a
23 witness without an attendant report.
24 MS. LUBRITZ: And that was going to be one of my

1 objections, Judge.

2 MS. MASTEL: So --

3 MS. LUBRITZ: Here's the problem --

4 MS. MASTEL: -- he's here, he was noticed, they have
5 the report --

6 THE COURT: I don't want to -- I don't want to blow
7 it up again.

8 MS. LUBRITZ: Okay. But Counsel --

9 THE COURT: But make your record.

10 MS. LUBRITZ: Counsel just brought something up that
11 he could not testify --

12 THE COURT: Exhibit C.

13 MS. LUBRITZ: -- without his report. That's what
14 Counsel just stated --

15 THE COURT: Uh-huh (affirmative).

16 MS. LUBRITZ: -- when she said it's in 16.2.

17 THE COURT: Uh-huh (affirmative).

18 MS. LUBRITZ: I understand that.

19 THE COURT: Uh-huh (affirmative).

20 MS. LUBRITZ: But when his report was never listed
21 as an exhibit --

22 THE COURT: Uh-huh (affirmative).

23 MS. LUBRITZ: -- so now --

24 THE COURT: That messed --

1 MS. LUBRITZ: -- we're --
2 THE COURT: -- up your trial strategy --
3 MS. LUBRITZ: No.
4 THE COURT: -- didn't it?
5 MS. LUBRITZ: It's not my trial strategy, it's the
6 rules.
7 THE COURT: Yeah.
8 MS. LUBRITZ: And the rules say that you have to
9 list not -- any exhibit --
10 THE COURT: All your witnesses --
11 MS. LUBRITZ: -- an exhibit you might use --
12 THE COURT: -- and all your exhibits.
13 MS. LUBRITZ: Okay?
14 THE COURT: Uh-huh (affirmative).
15 MS. LUBRITZ: And not once --
16 THE COURT: This --
17 MS. LUBRITZ: -- including the PTM --
18 THE COURT: You have --
19 MS. LUBRITZ: -- they want to take a little shot,
20 fine, take all the shots you want.
21 THE COURT: Okay.
22 MS. LUBRITZ: I'm bulletproof on that. I don't
23 care. Shoot --
24 THE COURT: Okay.

1 MS. LUBRITZ: -- me up, don't care. That's what she
2 tried to do in the PTM.
3 THE COURT: Okay.
4 MS. LUBRITZ: The issue that I have, Your Honor, is
5 that even after Shelley-Shelley-Shelley-Shelley she should
6 have said we're going to use --
7 THE COURT: Referring to yourself or Shelly Cooley?
8 MS. LUBRITZ: Me.
9 THE COURT: Okay.
10 MS. LUBRITZ: Okay? So, look, here's -- here's what
11 it --
12 THE COURT: I get that.
13 MS. LUBRITZ: -- comes down to -- I'll be as
14 succinct as possible. They had an obligation and a duty under
15 NRCP 16.2 --
16 THE COURT: Right.
17 MS. LUBRITZ: -- to -- to state that in one of their
18 productions -- I'm sorry in either the witness list or
19 pretrial memo or an exhibit list, they had an affirmative
20 obligation to list everything that they were --
21 THE COURT: Uh-huh (affirmative).
22 MS. LUBRITZ: -- going to use --
23 THE COURT: You know, I --
24 MS. LUBRITZ: -- at the time of trial.

1 THE COURT: -- you want to get technical? He was
2 one of six under general witnesses. Not designated as an
3 exp -- did they an do NRCP --

4 MS. LUBRITZ: Then they --

5 THE COURT: -- 26 designation?

6 MS. MASTEL: We did.

7 MS. LUBRITZ: They listed him as --

8 THE COURT: Oh, okay.

9 MS. LUBRITZ: -- an expert witness.

10 THE COURT: But in pretrial memos, you -- you didn't
11 make the distinction. Or you put a little --

12 MS. MASTEL: We did that in --

13 THE COURT: -- asterisk next to --

14 MS. MASTEL: -- separate witness --

15 THE COURT: -- his name.

16 MS. MASTEL: -- list.

17 MS. LUBRITZ: I -- Judge, I -- I have no --

18 THE COURT: Okay. You may --

19 MS. LUBRITZ: -- objection to that. They did list
20 him as an expert.

21 THE COURT: Okay.

22 MS. LUBRITZ: What they did not do is produce
23 anything at any time that says that we are going to use as an
24 exhibit at the time --

1 THE COURT: His report.
2 MS. LUBRITZ: -- of trial his report.
3 THE COURT: Duly noted.
4 MS. LUBRITZ: Never did.
5 MS. MASTEL: It was disclosed --
6 MS. LUBRITZ: And he can't --
7 MS. MASTEL: -- at motion hearing.
8 MS. LUBRITZ: -- testify -- I'm sorry, if Counsel
9 really --
10 THE COURT: Okay.
11 MS. LUBRITZ: -- needs to -- to take a step --
12 THE COURT: I'll tell you what --
13 MS. LUBRITZ: -- back.
14 THE COURT: -- they -- it's marked for
15 identification, they haven't produced it, either you'll have
16 further objections when they --
17 MS. LUBRITZ: So, it's only been marked for --
18 THE COURT: -- introduce it.
19 MS. LUBRITZ: -- my understanding is --
20 THE COURT: Marked for identification.
21 MS. LUBRITZ: -- you admitted it.
22 THE COURT: When we get there --
23 MS. LUBRITZ: Thank you.
24 THE COURT: -- then you can object, we'll kind of

1 limit the speaking objections -- this trial's been like this
2 since 1:30, extremely technical. But we will proceed, and I
3 try to move it along.

4 MS. MASTEL: Does Your Honor want to --

5 THE COURT: Okay. Yeah, you guys are doing fine.

6 MS. MASTEL: -- start Mr. Willick's testimony at
7 5:00?

8 THE COURT: We've got to do this.

9 MS. MASTEL: Okay.

10 THE COURT: Because --

11 MS. LUBRITZ: Yep.

12 THE COURT: -- he's got a busy schedule and we've --

13 MS. MASTEL: I --

14 THE COURT: -- got to --

15 THE CLERK: And, Judge, Exhibit C's not admitted?

16 THE COURT: Okay. I've got to check with my staff.

17 Can you get this done in 30 minutes or less? I've -- I've got
18 to get out of here by 5:30.

19 MS. MASTEL: I understand, I don't want to --

20 THE COURT: Our chief judge will be --

21 MS. MASTEL: We were anticipating an hour and we
22 didn't finish up with my client --

23 MR. WILLICK: Your Honor, my time is your time if
24 you need me to return --

1 THE COURT: Thank you, Mr. --
2 MR. WILLICK: -- I will.
3 THE COURT: -- Willick. Because you always work
4 'til -- every long hours. But I'm under Chief Judge
5 directions not work past 5:00, but she gives me a little
6 leeway, but we don't like to pay -- the County don't like to
7 pay a lot of overtime. So --
8 MS. LUBRITZ: But we have at least 30 minutes that
9 we can go.
10 THE COURT: I might have to say because you guys had
11 eaten up most of the time both arguing.
12 MS. MASTEL: We -- we didn't --
13 THE COURT: Then I can't blame either one of you.
14 But now he was here, what 4:40? He checked in at 4:40. And
15 we had you on the --
16 MS. MASTEL: He was here at 4:30 --
17 THE COURT: -- stand at 4:40.
18 MS. MASTEL: -- which is what the Court directed I
19 believe.
20 MR. WILLICK: I was here at about 4:20 actually but
21 I was --
22 THE COURT: Yeah.
23 MR. WILLICK: -- waiting outside.
24 MS. MASTEL: And we didn't finish --

1 THE COURT: And I saw you --
2 MS. MASTEL: -- Ms. Lubritz's couldn't rest her case
3 in chief until after 4:40 so --
4 THE COURT: You're down to 30 minutes now. I've got
5 to get out of here by -- and calling him on another date maybe
6 on your second day of case in chief. You'll have to come --
7 MR. WILLICK: Whatever --
8 THE COURT: -- April 14th --
9 MR. WILLICK: -- you wish, Your Honor.
10 THE COURT: -- at 1:30. April 14th at 1:30 unless
11 I --
12 MR. WILLICK: I have a --
13 THE COURT: -- move them up.
14 MR. WILLICK: May I check?
15 THE COURT: Please do. April 14th at 1:30 unless I
16 move them up. But that's --
17 MS. LUBRITZ: Your Honor, if I may --
18 THE COURT: -- a firm date --
19 MS. LUBRITZ: -- could Mr. Willick just --
20 THE COURT: -- stack-one.
21 MS. LUBRITZ: -- report to your clerk if he can't
22 have that day -- or that date and time, because we're eating
23 up --
24 THE COURT: Right.

1 MS. LUBRITZ: -- time when he could be testifying.
2 MR. WILLICK: If you --
3 THE COURT: Well, Ms. Mastel --
4 MR. WILLICK: -- can at 1:30 --
5 THE COURT: -- thought -- like she would have him
6 there for an hour which is normal --
7 MS. MASTEL: Was what the Court --
8 THE COURT: -- expected time --
9 MR. WILLICK: I'm free.
10 THE COURT: -- of a witness --
11 MS. LUBRITZ: Except generally --
12 (COURT RECESSED AT 5:01:27 AND RESUMED AT 5:01:28)
13 MR. WILLICK: In the afternoon of April 14th, I'm
14 free.
15 THE COURT: And we can get you straight at 1:30,
16 have you out by 2:00.
17 MR. WILLICK: As you wish.
18 THE COURT: And you will have 30 minutes and you
19 have to allow Ms. Lubritz 30 minutes to do any kind of cross
20 exam. So, use your time wisely. Proceed. Oh, did we have
21 Mr. Willick sworn in? Yes, we did, I believe, right? Did we
22 swear him in?
23 THE CLERK: Yes, Judge.
24 THE COURT: Okay. Thank you. Proceed.

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MARSHAL WILLOCK

called as a witness on behalf of the Defendant, having been
first duly sworn, did testify upon his oath as follows on:

DIRECT EXAMINATION

BY MS. MASTEL:

Q Please state your name for the record.

A Marshal S. Willock.

Q And your profession?

A I'm an attorney licensed in Nevada and California
inactive.

Q Okay. And --

THE COURT: And where?

MS. MASTEL: -- how long have you been practicing?

THE WITNESS: California.

THE COURT: Oh, okay. California and Nevada. Okay.

BY MS. MASTEL:

Q How long have you been practicing?

A A little short of 40 years.

MS. MASTEL: And, Your Honor, I'm going to try and
do this as quickly as possible.

THE COURT: Sure.

BY MS. MASTEL:

Q You were retained for the purpose of giving an
expert report in this case, correct?

1 A Yes.

2 Q And you attached your curriculum vitae to the back
3 of that report, correct?

4 MS. LUBRITZ: I'll stipulate as to the curriculum
5 vitae. And --

6 THE COURT: Thank you.

7 MS. LUBRITZ: And that he has been deemed an expert
8 in the Eighth Judicial District Court --

9 THE COURT: Oh, thank you. That will --

10 MS. LUBRITZ: -- Family Court.

11 THE COURT: -- save a lot of time. Thank you,
12 Ms. Lubritz. So, he's admitted as an expert.

13 MS. MASTEL: Okay.

14 THE COURT: On retirements -- PERS retirements?

15 MS. LUBRITZ: I said -- no, I just said he's -- he's
16 admitted as an -- he's been admitted as an expert.

17 THE COURT: In family law?

18 MS. LUBRITZ: In family law.

19 THE COURT: Thank you.

20 MS. LUBRITZ: In the Eighth Judicial District Court.

21 BY MS. MASTEL:

22 Q Can you provide the Court a list of your
23 achievements that make you an expert in pension law?

24 A I've been writing books and articles and teaching

1 courses for multiple --
2 MS. LUBRITZ: I will also --
3 THE WITNESS: -- decades.
4 MS. LUBRITZ: -- stipulate.
5 THE COURT: That he's been teaching a lot of courses
6 from --
7 MS. LUBRITZ: I'll stipulate --
8 THE COURT: -- multiple decades.
9 MS. LUBRITZ: -- that he's -- that he's been
10 admitted as an expert in PERS in the Eighth Judicial --
11 THE COURT: Oh.
12 MS. LUBRITZ: -- District --
13 THE COURT: Thank you. That'll --
14 MS. LUBRITZ: -- Family Court.
15 THE COURT: -- streamline things. He's admitted as
16 an expert on Nevada PERS and the formal term is Public
17 Employees Retirement --
18 THE WITNESS: System.
19 THE COURT: -- System? Okay. Then you can just
20 dive right into it.
21 MS. MASTEL: Okay.
22 BY MS. MASTEL:
23 Q And what was the scope of your evaluation in this
24 case?

1 A On a set of facts which were derived from a couple
2 of the filings in the case to evaluate the back-and-forth and
3 orders that were entered first by this Court, then by Judge
4 Hardcastle, and then again by this Court leading to an
5 eventual trial setting.

6 Q And you listed in your report the documents that you
7 reviewed, correct?

8 A Yes, at the end.

9 Q Okay. And those documents were provided by whom?

10 A I think your office.

11 Q And if you'll turn to Exhibit C?

12 A Yes.

13 Q What do you recognize this to be?

14 A That's my opinion letter --

15 MS. LUBRITZ: I'll stipulate that Exhibit C is a
16 report written by Mr. Willick on the date that it is dated.

17 THE COURT: Okay. We don't -- we haven't gotten to
18 contents yet, but go ahead.

19 MS. LUBRITZ: Right.

20 THE COURT: Okay.

21 MS. LUBRITZ: I will -- I will stipulate that again
22 this report was prepared by Mr. Willick. I would understand
23 he signed it, he represented that it is prepared by him and --

24 THE COURT: Are you talking about --

1 MS. LUBRITZ: -- I would stipulate to that.
2 THE COURT: -- authenticity, or are you -- you're
3 stipulating to the admission of the report -- I mean Exhibit
4 C?
5 MS. LUBRITZ: No, I'm just stipulating to the
6 authenticity and --
7 THE COURT: Okay. Author, date, I know.
8 MS. MASTEL: I'm going to move for the admission of
9 the report so I can ask --
10 THE COURT: You're --
11 MS. MASTEL: -- questions about the report.
12 THE COURT: Are you now at that point, do you have
13 any objection?
14 MS. LUBRITZ: I certainly have objections, Your
15 Honor.
16 THE COURT: Okay. State your basis for the
17 objection.
18 MS. LUBRITZ: So, on the 11-21-2018 witness list
19 that was filed by the Defendant, there are no --
20 THE COURT: She doesn't list it, right.
21 MS. LUBRITZ: -- no exhibits listed although
22 Mr. Willick is listed as their expert witness and that's why I
23 didn't object --
24 THE COURT: Okay.

1 MS. LUBRITZ: -- to that statement. And the Court
2 has all of those documents before it. If I may approach, I'm
3 going to give it back to the Court, but I gave -- as I stated
4 at the beginning of the trial, I gave a copy to Counsel --

5 THE COURT: Of their --

6 MS. LUBRITZ: -- and the -- and all it is are case
7 -- is cases --

8 THE COURT: Oh, the case law book.

9 MS. LUBRITZ: -- that have been cited.

10 THE COURT: Give me another --

11 MS. LUBRITZ: And the only other thing that it is --

12 THE COURT: Okay. Your basic objection is it wasn't
13 listed, right?

14 MS. LUBRITZ: Well, I'm going to just go through so
15 that I'm setting a complete record. It was not listed in the
16 wit -- the list that I just provided to -- state to the Court.

17 THE COURT: 11 -- the first document in your book?

18 MS. LUBRITZ: Yes, Your Honor.

19 THE COURT: Okay.

20 MS. LUBRITZ: Brief indulgence, I had time to tab
21 yours but not mine. Okay. Here we go. On there --

22 THE COURT: Okay.

23 MS. LUBRITZ: -- I just had it.

24 THE COURT: I review it and I will take notice that

1 he is listed, but he's not -- his report wasn't --
2 MS. LUBRITZ: Right.
3 THE COURT: -- listed in it.
4 MS. LUBRITZ: And then a brief indulgence while I
5 pull up the other two times they should've listed him or could
6 have listed him and failed to. So, now I also am looking
7 at --
8 THE COURT: A pretrial mem --
9 MS. LUBRITZ: -- the pretrial memorandum.
10 THE COURT: June 28, 2019?
11 MS. LUBRITZ: Yes, Your Honor.
12 THE COURT: Okay. And I will --
13 MS. LUBRITZ: And I would direct the Court's
14 attention to page --
15 THE COURT: It's nine pages.
16 MS. LUBRITZ: -- to page eight of nine.
17 THE COURT: Eight of nine.
18 MS. LUBRITZ: Lines one through eight. List of
19 exhibits.
20 THE COURT: Exhibits.
21 MS. LUBRITZ: Due to David's failure to respond to
22 discovery and the fact that he has not yet requested the
23 discovery he sought permission to request from Sarah --
24 THE COURT: Uh-huh (affirmative).

1 MS. LUBRITZ: -- as well as the fact that it will
2 not be known until approximately June 17 -- July --
3 THE COURT: July 17th.
4 MS. LUBRITZ: -- 17th --
5 THE COURT: Yeah.
6 MS. LUBRITZ: -- if David will hire an expert and
7 produce a rebuttal report to Mr. Willick it is not yet
8 possible to identify the exhibit.
9 THE COURT: Sarah will supplement --
10 MS. LUBRITZ: Sarah will supplement this memorandum
11 with her list of exhibits as soon as possible. They stated
12 that they had not yet identified what exhibits they would use.
13 MS. MASTEL: Other than the exhibits --
14 MS. LUBRITZ: Excuse me, I --
15 MS. MASTEL: -- we already --
16 MS. LUBRITZ: -- my --
17 MS. MASTEL: -- put on the record.
18 MS. LUBRITZ: -- Your Honor, if I may please?
19 THE COURT: One moment. She's making a record,
20 Counsel.
21 MS. LUBRITZ: Okay?
22 THE COURT: Ms. Mastel, you can --
23 MS. LUBRITZ: It states --
24 THE COURT: -- respond to her.

1 MS. LUBRITZ: -- we have -- it has not -- it is --
2 it is not yet possible to identify the exhibits. That says
3 that as of the date of this --
4 THE COURT: End of June.
5 MS. LUBRITZ: -- that -- June that they have not
6 made a decision as to whether or not they were going to use
7 the report.
8 THE COURT: Yes.
9 MS. LUBRITZ: There's nothing that they filed --
10 THE COURT: But they filed it --
11 MS. LUBRITZ: -- afterwards.
12 THE COURT: -- in November which was stricken --
13 MS. LUBRITZ: Correct.
14 THE COURT: -- by the Court but stricken only for
15 purposes of it didn't belong in the record. It'd be -- it
16 would belong in your exhibit book.
17 MS. LUBRITZ: Exactly. And they didn't --
18 THE COURT: Okay.
19 MS. LUBRITZ: -- put it in their exhibit book.
20 THE COURT: Duly noted.
21 MS. LUBRITZ: And more than that, Judge, they said
22 we haven't decided yet. It's not like they just said, oh,
23 Shelley --
24 THE COURT: But they --

1 MS. LUBRITZ: -- didn't --
2 THE COURT: -- affirmatively decided when they filed
3 it, but then we had that lengthy motion hearing --
4 MS. LUBRITZ: No --
5 THE COURT: -- and then I struck it.
6 MS. LUBRITZ: But, Judge --
7 THE COURT: But it -- yes?
8 MS. LUBRITZ: -- again, I'm asking you to look at
9 what is actually said and what is actually written on June
10 28th, 2019, and that no supplementation to a -- an exhibit
11 list has been done since that time.
12 THE COURT: Technically, they --
13 MS. LUBRITZ: One would --
14 THE COURT: -- technically, they did and I struck it
15 for purposes of --
16 MS. LUBRITZ: No.
17 THE COURT: -- as a temporary -- as a -- I'm sorry,
18 for --
19 MS. LUBRITZ: It was filed --
20 THE COURT: -- a pending filing.
21 MS. LUBRITZ: It was under a miscellaneous filing is
22 how it was put it in the record.
23 THE COURT: No, they called it supplement -- I have
24 it --

1 MS. LUBRITZ: Supplemental.
2 THE COURT: -- it right here.
3 MS. LUBRITZ: I --
4 THE COURT: 1-22-19, Kainen Law Group supp --
5 Defendant's supplemental filing.
6 MS. LUBRITZ: Okay. And that was --
7 THE COURT: And the expert --
8 MS. LUBRITZ: -- stricken --
9 THE COURT: -- reported -- report.
10 MS. LUBRITZ: -- because -- it was stricken because
11 it hadn't yet been admitted.
12 THE COURT: It was stricken because it belonged in
13 probably an exhibit book, yes.
14 MS. LUBRITZ: Correct.
15 THE COURT: Duly noted. And I'm --
16 MS. LUBRITZ: I --
17 THE COURT: -- I'm aware of that, that they didn't
18 list it as their final list of exhibits --
19 MS. LUBRITZ: They didn't --
20 THE COURT: -- when they served you the notebook.
21 MS. LUBRITZ: -- list it in any exhibit list, Judge.
22 That's the problem. There's not a single exhibit --
23 THE COURT: They didn't list it --
24 MS. LUBRITZ: -- list --

1 THE COURT: -- but you put it in an exhibit book and
2 served it on Ms. Lubritz?
3 MS. MASTEL: Yes.
4 MS. LUBRITZ: No.
5 MS. MASTEL: And, Your Honor --
6 MS. LUBRITZ: Just today.
7 MS. MASTEL: -- Your Honor -- well --
8 THE COURT: Just today, okay.
9 MS. MASTEL: -- well, that's when I was --
10 MS. LUBRITZ: And -- and if --
11 MS. MASTEL: -- told that they --
12 MS. LUBRITZ: -- I may because --
13 MS. MASTEL: -- were due.
14 MS. LUBRITZ: -- I'm the one --
15 THE COURT: Okay.
16 MS. LUBRITZ: -- that needs to make --
17 THE COURT: So --
18 MS. LUBRITZ: -- the record on this.
19 THE COURT: -- what's the prejudice to your client?
20 You were aware --
21 MS. LUBRITZ: The prejudice to my client is
22 significant.
23 THE COURT: Okay. Make a record.
24 MS. LUBRITZ: The -- the prejudice to my client is

1 you're going to have someone -- and by the way, Mr. Willick
2 said -- if I can answer the Court's question -- Mr. Willick
3 said that he was not aware of a case where he was precluded
4 from testifying on the same basis that I put before you.

5 THE COURT: Uh-huh (affirmative).

6 MS. LUBRITZ: Which was the -- the scope of an
7 expert witness, it was Sachs v. Sachs (ph), Mr. Dickerson's
8 partner was attorney of record.

9 THE COURT: My case? It wasn't my case.

10 MS. LUBRITZ: I don't know.

11 MS. MASTEL: Which partner?

12 MS. LUBRITZ: What I know is that he was
13 precluded --

14 THE COURT: Could be.

15 MS. LUBRITZ: -- from testifying as an expert in the
16 same capacity that he's trying -- that counsel wants him to do
17 now.

18 THE COURT: Right.

19 MS. LUBRITZ: And he was precluded from doing that
20 Justice Nancy Becker was the judge who struck him and excluded
21 him in Sachs v. Sachs.

22 THE COURT: Okay.

23 THE WITNESS: I don't think that was PERS.

24 MS. LUBRITZ: Okay. So, number one, he has been

1 stricken Justice --
2 THE COURT: Well, I --
3 MS. LUBRITZ: -- Becker found it.
4 THE COURT: -- I'm -- what was the basis in that
5 case?
6 MS. LUBRITZ: The same basis because candidly --
7 THE COURT: They didn't --
8 MS. LUBRITZ: -- the law that I got --
9 THE COURT: -- list him as a witness?
10 MS. LUBRITZ: -- came from -- from the brief.
11 THE COURT: I'm sorry, so the other side didn't list
12 him as a witness or list his report?
13 MS. LUBRITZ: No, no, no, Judge, they tried to get
14 him in --
15 MS. MASTEL: Your Honor, is Ms. Lubritz --
16 MS. LUBRITZ: Excuse me --
17 MS. MASTEL: -- going to testify in this case now?
18 THE COURT: Crucial point --
19 MS. LUBRITZ: You asked me.
20 THE COURT: -- of contention so no testimony but
21 making a record is important. Okay. Continue.
22 MS. LUBRITZ: Okay. So, I filed my motion in
23 limine. I wasn't quite sure -- I got some help from another
24 prominent family law attorney.

1 MS. MASTEL: By the --
2 MS. LUBRITZ: And it's --
3 MS. MASTEL: -- name of?
4 THE COURT: Duly. She doesn't have to disclose --
5 MS. LUBRITZ: She is --
6 THE COURT: -- and we're not going to reargue that
7 motion in limine.
8 MS. LUBRITZ: I know that. What I'm saying is --
9 THE COURT: You have to make your record --
10 MS. LUBRITZ: I --
11 THE COURT: -- so that I can rule and find out if
12 his report comes in.
13 MS. LUBRITZ: I got assistance from a prominent
14 attorney who guided me and provided guidance to me on an issue
15 that I was not on my own competent to deal --
16 THE COURT: Okay.
17 MS. LUBRITZ: -- to -- to handle.
18 THE COURT: Okay.
19 MS. LUBRITZ: So, I went to somebody who is smarter
20 than me in that -- in that matter --
21 THE COURT: Okay.
22 MS. LUBRITZ: -- on that issue. And I said help me
23 understand this. Okay?
24 THE COURT: Uh-huh (affirmative).

1 MS. LUBRITZ: I was -- graciously, that prominent
2 attorney guided me. And in Sachs v. Sachs as I understand
3 it --
4 THE COURT: Uh-huh (affirmative).
5 MS. LUBRITZ: -- in a report similar to the one that
6 we have here --
7 THE COURT: Okay.
8 MS. LUBRITZ: -- meaning Mr. Willick is testifying
9 -- he has a dearth of knowledge. I went on his website many,
10 many, many times to look up all kinds of stuff.
11 THE COURT: Uh-huh (affirmative).
12 MS. LUBRITZ: Thank you. It is a brilliant resource
13 that you provide to the community, legal and otherwise. I use
14 it all the time.
15 THE COURT: Sure.
16 MS. LUBRITZ: Okay? It's fantastic.
17 THE COURT: But what's this Sachs v. --
18 MS. LUBRITZ: But --
19 THE COURT: -- Sachs?
20 MS. LUBRITZ: But Sachs v. Sachs --
21 THE COURT: And you kind of --
22 MS. LUBRITZ: -- was a Nevada case --
23 THE COURT: -- well, you're kind of ambushing --
24 MS. LUBRITZ: -- Just -- Justice --

1 THE COURT: -- me with this case. I -- maybe I
2 should --
3 MS. LUBRITZ: -- Justice Becker --
4 THE COURT: -- be familiar with it.
5 MS. LUBRITZ: -- Justice Becker presided.
6 THE COURT: She struck the expert on the basis of
7 what? Failure to disclose --
8 MS. LUBRITZ: No.
9 THE COURT: -- him as the witness?
10 MS. LUBRITZ: No.
11 THE COURT: Ah.
12 MS. LUBRITZ: The scope of what an expert is allowed
13 to testify to.
14 THE COURT: Okay.
15 MS. LUBRITZ: And you recall in the motion in limine
16 we cited -- and I don't have it at my fingertips right now the
17 scope of what an expert's to be --
18 THE COURT: Right.
19 MS. LUBRITZ: -- used for. The expert is not
20 allowed to invade the province of the Court and testify --
21 THE COURT: You are --
22 MS. LUBRITZ: -- about the law.
23 THE COURT: -- you're arguing your motion in limine
24 prior.

1 MS. LUBRITZ: I'm not; I'm trying to --
2 THE COURT: Yes, you did.
3 MS. LUBRITZ: -- tell you --
4 THE COURT: You cited -- I clearly remember it, it's
5 clear as day.
6 MS. LUBRITZ: Okay.
7 THE COURT: But, yes, so -- you know what, I'll
8 spare you the argument on that.
9 MS. LUBRITZ: So, in another --
10 THE COURT: We'll refer to your argument in your
11 briefing -- in your motion in limine.
12 MS. LUBRITZ: Yes.
13 THE COURT: So, if that is your concern, that -- I
14 -- that's why I made a modified ruling to get information that
15 I am the trier of fact, there's no jury sitting here. So, I
16 can limit at the Court's discretion, limit the scope of
17 testimony only be enough for the Court -- helpful to the Court
18 to make a reasoned decision.
19 MS. LUBRITZ: But not as to the law. You're not
20 allowed to do that. He's not your expert --
21 THE COURT: We've argued that.
22 MS. LUBRITZ: -- he's their expert.
23 THE COURT: I've made the distinction. If we cross
24 that line, I -- I am as a trier of fact can have the

1 discretion to hear what I need to hear in terms of the
2 workings of PERS. So, that's the best way I can describe it.
3 That's all I need to know --

4 MS. LUBRITZ: Okay.

5 THE COURT: -- how does the PERS thing work.

6 MS. LUBRITZ: And -- and I would just simply --

7 THE COURT: Right.

8 MS. LUBRITZ: -- for the record note that --

9 THE COURT: And, you know --

10 MS. LUBRITZ: -- that's not an appropriate use --

11 THE COURT: And, you know, even --

12 MS. LUBRITZ: -- of an expert witness.

13 THE COURT: -- after -- after I hear from

14 Mr. Willick -- we are on the 60(b) which is completely -- he
15 knows that I still have to make a decision on the 60(b) and
16 the transactions that went on just prior to the -- after the
17 signing of the MOU and by the time leading up to the signing
18 of the decree. So, it's a very fact-specific case and
19 relevance to Peterson, you know, and Kilgore, my recent
20 decision and Cogaud (ph) -- not Cogaud -- Henson, that whole
21 line of cases.

22 MS. LUBRITZ: Okay.

23 THE COURT: So, in terms of it's nothing new, we
24 have to stay -- the judges have to stay on top of the law.

1 MS. LUBRITZ: Right.

2 THE COURT: So, as Mr. Willick, you know, got a
3 smoking gun and he's going to educate the judiciary, you know,
4 we're just about -- we try to be as just about on top of
5 recent decisions. We get the new decisions that come up, they
6 get emailed to us with a summary from Joe Tommasino. He gives
7 us little summaries of what -- the whole decision, he
8 highlights them for us. We're on top of the law.

9 So, I'm going -- that's why I'm going to limit the
10 scope of the trial, get it done more efficiently and --

11 MS. MASTEL: To get back to the actual --

12 MS. LUBRITZ: Thank you, Your Honor.

13 MS. MASTEL: -- Your Honor --

14 THE COURT: And I -- my apologies ahead of time to
15 Mr. Willick, because I know that it may come into that PERS
16 thing and that's when you were going to get the objections but
17 we can't let this --

18 MS. LUBRITZ: Thank you.

19 THE COURT: -- trial drag out. As far as
20 separating, you know, what I need to hear from Mr. Willick and
21 is he -- you know, is he advocating for the Defendant, I --

22 MS. LUBRITZ: But --

23 THE COURT: -- can sort that out.

24 MS. LUBRITZ: -- respectfully --

1 THE COURT: But --
2 MS. LUBRITZ: -- you may not be the only one --
3 THE COURT: -- will he --
4 MS. LUBRITZ: -- reviewing this record, Judge.
5 THE COURT: -- will his testimony invade the
6 judiciary's authority to make the full and final decision?
7 No. I will make sure that will not happen. We're independent
8 here.
9 We make a -- we make findings of fact, that's how we
10 do our job. Findings of fact and application of the facts to
11 the law to support a legal decision --
12 MS. LUBRITZ: Right.
13 THE COURT: -- which then certified, you disagree,
14 then --
15 MS. LUBRITZ: I've made my --
16 THE COURT: -- okay, take it up.
17 MS. LUBRITZ: -- objection. Thank you.
18 MS. MASTEL: To get back to the actual objection,
19 Your Honor --
20 THE COURT: Well --
21 MS. MASTEL: -- since we're going back and forth on
22 what pleadings say now, the --
23 MS. LUBRITZ: Objection, Your Honor --
24 MS. MASTEL: -- original --

1 MS. LUBRITZ: -- there's no reason --
2 MS. MASTEL: -- motion --
3 MS. LUBRITZ: -- for the nastiness --
4 THE COURT: So, I need to --
5 MS. LUBRITZ: -- and I'd --
6 THE COURT: -- I need to overrule the objection.
7 They made their record.
8 MS. MASTEL: Okay.
9 THE COURT: Which means --
10 MS. LUBRITZ: But I --
11 THE COURT: -- if I overrule it, you start the
12 testimony.
13 MS. LUBRITZ: I -- I would just ask that they --
14 MS. MASTEL: They had notice, there's notice
15 reflected in their pleadings. I would just --
16 THE COURT: I think I stated enough findings --
17 MS. MASTEL: Okay.
18 THE COURT: -- that he was not a mystery guest.
19 He's been known, that -- the thing that was stricken was
20 actually sent to the Opposing Counsel --
21 MS. MASTEL: They actually --
22 THE COURT: Right. Now --
23 MS. MASTEL: -- they changed the title of their
24 motion in limine to reflect precluding the report.

1 THE COURT: Okay. So --
2 MS. MASTEL: So --
3 THE COURT: -- it's not an actual absolute statement
4 that you ignored your filing of plain -- listing your
5 witnesses. You did file it, it did get stricken only because
6 it should be in an exhibit book --
7 MS. MASTEL: Uh-huh (affirmative).
8 THE COURT: -- which you put it in an exhibit book.
9 So --
10 MS. LUBRITZ: And as of their PTM, Judge --
11 THE COURT: -- in terms of undue prejudice, I don't
12 find any.
13 MS. LUBRITZ: Judge, as to their --
14 THE COURT: And we have the --
15 MS. LUBRITZ: -- PTM --
16 THE COURT: -- offer here.
17 MS. LUBRITZ: As to the PTM, they said that they
18 would supplement any exhibits that they're going to --
19 THE COURT: Guess what --
20 MS. LUBRITZ: -- use.
21 THE COURT: -- and they filed it and they filed it
22 and I struck it --
23 MS. LUBRITZ: No, Judge, after that. Please with
24 the time --

1 THE COURT: After what?
2 MS. LUBRITZ: -- frame. After you struck it. When
3 did you strike it?
4 THE COURT: They filed the supplement on 1-22-19 --
5 MS. MASTEL: No, Your Honor, let me --
6 MS. LUBRITZ: I'm sorry, Judge --
7 MS. MASTEL: -- make this clear --
8 MS. LUBRITZ: -- you -- you had asked me a question.
9 You -- you and I were --
10 MS. MASTEL: You -- you --
11 MS. LUBRITZ: -- talking, I'm the one who needs to
12 make a record. So, my question to you is when did -- when did
13 -- when was it struck?
14 THE COURT: At the hearing. At the hearing on --
15 let me see.
16 MS. MASTEL: Your Honor, January it was --
17 MS. LUBRITZ: Ms. -- there's not --
18 MS. MASTEL: -- struck. In June we filed our
19 pretrial memorandum --
20 THE COURT: On --
21 MS. MASTEL: -- notating --
22 THE COURT: -- it's 6-18-19 hearing.
23 MS. MASTEL: Oh, right.
24 MS. LUBRITZ: I couldn't -- I couldn't hear you

1 over --

2 THE COURT: Right.

3 MS. LUBRITZ: -- what is the date?

4 THE COURT: 6-18-19.

5 MS. LUBRITZ: Okay. And on 6 --

6 THE COURT: And they filed on 1-22 --

7 MS. MASTEL: No.

8 MS. LUBRITZ: They filed 6 -- on 6-24 after you

9 struck the document --

10 THE COURT: Uh-huh (affirmative).

11 MS. LUBRITZ: -- they said we don't know --

12 THE COURT: (Indiscernible - simultaneous speech)

13 MS. LUBRITZ: -- what exhibits we're going to --

14 MS. MASTEL: Correct.

15 MS. LUBRITZ: -- use yet; but as soon as we do,

16 we're going to supplement. And they never supplemented.

17 MS. MASTEL: And then in Oct --

18 MS. LUBRITZ: This was after --

19 THE COURT: Right.

20 MS. LUBRITZ: -- after it was struck.

21 THE COURT: So, if they know that they can't file it

22 again after I've stricken --

23 MS. LUBRITZ: Of course not. But they --

24 THE COURT: -- they --

1 MS. LUBRITZ: -- can list it in their --
2 THE COURT: -- it didn't preclude them from putting
3 in their exhibit book.
4 MS. MASTEL: And in October --
5 MS. LUBRITZ: And they didn't.
6 MS. MASTEL: -- of 2019, Ms. Lubritz filed a motion
7 and a reply and the reply specifically acknowledges the desire
8 to keep the report out. There was --
9 MS. LUBRITZ: Of course.
10 MS. MASTEL: -- notice --
11 THE COURT: Keep it out --
12 MS. MASTEL: -- there was opportunity --
13 THE COURT: -- of the --
14 MS. MASTEL: -- to be heard --
15 THE COURT: -- pending filing records. But --
16 MS. MASTEL: Yes.
17 THE COURT: -- you want to make it a trial exhibit.
18 MS. LUBRITZ: And then you didn't make a ruling --
19 THE COURT: Okay.
20 MS. LUBRITZ: -- on the -- on the --
21 MS. MASTEL: Yes.
22 MS. LUBRITZ: -- report.
23 THE COURT: All right --
24 MS. MASTEL: She did.

1 THE COURT: -- Counsel -- this has been like this
2 since 1:30. Very, very technical, but I think I've made
3 enough findings --

4 MS. LUBRITZ: It's fine, Judge.

5 THE COURT: -- to support that. Objection
6 overruled. We have the author here and he can be certainly
7 confronted in cross examination and cross examined as to the
8 report.

9 MS. LUBRITZ: As long as he's --

10 THE COURT: So, you have now --

11 MS. LUBRITZ: -- held --

12 THE COURT: -- formally submitted it for its --

13 MS. MASTEL: Admission.

14 THE COURT: -- admission?

15 MS. MASTEL: Yes, Judge.

16 THE COURT: Objection overruled on condition that
17 I'm separating myself in terms of the law but I just want to
18 know about the workings of PERS. And really will it have
19 anything to do with the 60(b)? I don't know. But that's why
20 we take the testimony, and I give it whatever weight I want to
21 give it.

22 MS. LUBRITZ: Again, I -- I don't know -- I'm fine.
23 Thank you --

24 THE COURT: Okay.

1 MS. LUBRITZ: -- Judge.
2 THE COURT: Thank you. C is admitted on --
3 MS. MASTEL: Yes.
4 THE COURT: -- for informational purposes.
5 (Defendant's Exhibit C admitted)
6 THE COURT: Okay.
7 MS. LUBRITZ: But how can you admit it for
8 informational purposes when it contains Mr. Willick's
9 presentation about the law?
10 THE COURT: Then, you know what, you won't see it in
11 my decision if I say it's law.
12 MS. LUBRITZ: But here's the problem, Judge, you may
13 not be the only one to review it. And then --
14 THE COURT: Uh-huh (affirmative).
15 MS. LUBRITZ: -- we're going to have a doc -- how
16 about this --
17 THE COURT: Hmm?
18 MS. LUBRITZ: -- you will -- you will -- you will
19 admit it, but strike all of the opinions regarding the law?
20 MS. MASTEL: Your Honor --
21 MS. LUBRITZ: Because -- I'm not -- Judge --
22 THE COURT: One moment.
23 MS. LUBRITZ: Thank you. You'll strike everything
24 about Mr. Willick's opinion about the law.

1 THE COURT: Bate stamped Defendant's 005, one, two,
2 three, four, five, six, is fine, seven, eight, nine -- oops --

3 MS. MASTEL: Your Honor, if we're going to go
4 through and interlineate this entire report, I want an
5 opportunity to provide an interlineation that strikes exactly
6 what Ms. Lubritz is telling the Court she wants to strike and
7 nothing else, and then we can submit competing interlineated
8 reports and the Court can desire (sic) -- decide which one's
9 appropriate.

10 THE COURT: I think --

11 MS. MASTEL: Otherwise we're going line by line
12 through this report.

13 MS. LUBRITZ: Well, we don't have to do --

14 THE COURT: Everything up to page --

15 MS. LUBRITZ: -- line by line.

16 THE COURT: -- 14, Roman Numeral V, do you have a
17 copy of your report with you, Mr. Willick, in front of you?

18 THE WITNESS: I do.

19 MS. LUBRITZ: Yeah, everything put page 14 is what?

20 THE COURT: Up until page 14 is a recitation of law.
21 And doesn't mean -- it's a recitation of law, he probably
22 these in his newsletters and in his -- on his website but it's
23 just a recitation of law. I give it whatever weight I want to
24 give it. Can he test -- can he testify to the recitation of

1 law?

2 Now, the nuances because this has been a very
3 capital T, technical trial, the nuance is Mr. Willick has an
4 opinion about the uncertainty of a certain state of law.

5 MS. LUBRITZ: Yes.

6 THE COURT: Yes.

7 MS. LUBRITZ: But his opinion is not relevant,
8 number one, to this case.

9 THE COURT: I was not interested in that. I was
10 interested on his recitation of the current case law and the
11 workings of PERS.

12 MS. LUBRITZ: And none of that --

13 THE COURT: But making new law, arguing new law --

14 MS. LUBRITZ: No, Judge --

15 THE COURT: -- or the Peterson --

16 MS. LUBRITZ: -- that's not what you test --

17 THE COURT: -- et cetera.

18 MS. LUBRITZ: -- that is not -- and here's what I'd
19 like to do.

20 THE COURT: So, page 14 --

21 MS. LUBRITZ: May we at least --

22 THE COURT: -- everything up to page 14 is good.

23 MS. MASTEL: If Your Honor read --

24 THE COURT: I don't think you can --

1 MS. MASTEL: -- reads the last paragraph of page 15,
2 Mr. Willick is not saying the Supreme Court is wrong or what
3 it should be doing. He's saying as I have already offered as
4 proof that the way PERS works versus the way the Supreme Court
5 wants PERS to work are not the same thing.

6 MS. LUBRITZ: Judge, that's -- that's not -- here's
7 the problem --

8 MS. MASTEL: That's quite literally --

9 MS. LUBRITZ: -- here's the problem --

10 MS. MASTEL: -- what his expertise is.

11 THE COURT: One moment.

12 MS. LUBRITZ: Excuse me, please -- could -- could
13 Counsel please have an admonition by the Court to take a deep
14 breath, to not talk over me --

15 THE COURT: I'll tell you what --

16 MS. LUBRITZ: -- and not make unsolicited --

17 THE COURT: -- you know what --

18 MS. LUBRITZ: -- statements?

19 THE COURT: -- it's 5:21. Let me use these last
20 nine minutes to have a bench bar conference please -- bench
21 bar -- no, not bench bar conference -- a --

22 MS. MASTEL: Conference in the hallway?

23 THE COURT: Bar thing.

24 MS. MASTEL: A bench conference?

1 THE COURT: So, exclude everybody. I just want the
2 lawyers and Mr. Willick here.

3 MS. LUBRITZ: I don't want Mr. Willick here. He has
4 no right to hear what's going on. He's not here as an
5 attorney. He's a witness.

6 THE BAILIFF: Go ahead and step out.

7 MS. LUBRITZ: There's an exclusionary rule. He
8 cannot be here.

9 THE COURT: Okay.

10 MS. MASTEL: It depends on what the Court wants to
11 talk to us about.

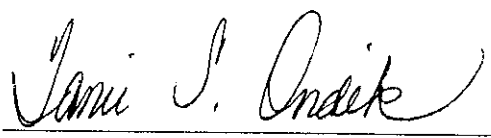
12 THE COURT: Give me five minutes with the attorneys.
13 Are you still --

14 (PROCEEDINGS CONCLUDED AT 5:22:01)

15 * * * * *

16 ATTEST: I do hereby certify that I have truly and
17 correctly transcribed the digital proceedings in the above-
18 entitled case to the best of my ability.

19

20 

21

22 Tami S. Ondik, CET

23

24

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
2/17/2021 1:26 PM
Steven D. Grierson
CLERK OF THE COURT



David Rose, Plaintiff
vs.
Sarah Rose, Defendant.

Case No.: D-17-547250-D
Department I

NOTICE OF HEARING

Please be advised that the Defendant's Motion for Judgment Pursuant to NRCP 52(C) or in the Alternative for Summary Judgment in the above-entitled matter is set for hearing as follows:

Date: April 09, 2021
Time: 8:30 AM
Location: Courtroom 06
Family Courts and Services Center
601 N. Pecos Road
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Carmelo Coscolluela
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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By: /s/ Carmelo Coscolluela
Deputy Clerk of the Court

APPX1073



OPPC

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CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,
Plaintiff,

vs.

SARAH JANEEN ROSE,
Defendant

Case No.: D-17-547250-D
Dept. No.: I

Hearing Date: April 9, 2021
Hearing Time: 9:00 a.m.

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT
PURSUANT TO NRCP 52(C) OR IN THE ALTERNATIVE FOR SUMMARY
JUDGMENT AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his *Opposition to Defendant's Motion for Judgment Pursuant to NRCP 52(C) or in the Alternative Motion for Summary Judgment and Countermotion for Attorney's Fees and Costs*. This Opposition and Countermotion is made and based upon the papers and pleadings on file herein, the attached Declaration of David John Rose, and the attached Memorandum of Points and Authorities.

Plaintiff respectfully requests this honorable Court issue its order and findings as follows:

1. That the Court deny Sarah Rose's underlying motion;
2. That the parties engaged in marathon mediation on March 23, 2018;
3. That the Rhonda K. Forsberg presided over the mediation;
4. That the March 23, 2018 Memorandum of Understanding was drafted by Rhonda K. Forsberg;
5. That the March 23, 2018, Memorandum of Understanding is an enforceable contract;
6. That Shelly Booth Cooley drafted a Decree of Divorce;
7. That during mediation, the parties discussed David Rose granting Sarah Rose the right of survivor benefits to his PERS account;
8. That David Rose did not grant Sarah Rose any right of survivor benefits to his PERS account;
9. That the parties did not agree to modify the terms of the March 23, 2018 Memorandum of Understanding on the issue of survivor benefits between the signing of the Memorandum of Understanding and the signing of the April 11, 2018 Decree of Divorce;
10. That Shelly Booth Cooley, Esq. and Regina M. McConnell did not discuss modifying terms of the March 23, 2018 Memorandum of Understanding on the issue of survivor benefits between the signing of the Memorandum of Understanding and the signing of the April 11, 2018 Decree of Divorce;
11. That in drafting the April 11, 2018, Decree of Divorce, Shelly Booth Cooley went outside of the four corners of the March 23, 2018, Memorandum of Understanding on the issue of survivor benefits;

1 12. That Shelly Booth Cooley did not have the authority to go outside of the four
2 corners of the March 23, 2018, Memorandum of Understanding on the issue of
3 survivor benefits when drafting the Decree of Divorce;
4

5 13. That lines 4 – 10 on Page 24 of the Decree of Divorce are stricken, “based
6 upon a selection of Option 2 being made at the time of retirement so as to name
7 SARAH JANEEN ROSE as the irrevocable survivor beneficiary of DAVID
8 JOHN ROSE’ pension benefits upon death, to divide said retirement account;”
9

10 14. That lines 17 – 22 on Page 21 of the Decree of Divorce are stricken, “based
11 upon a selection of Option 2 being made at the time of retirement so as to name
12 SARAH JANEEN ROSE as the irrevocable survivor beneficiary of DAVID
13 JOHN ROSE’ pension benefits upon death, to divide said retirement account;”
14

15 15. That the March 23, 2018, Memorandum of Understanding did not merge with
16 the April 11, 2018 Decree of Divorce;
17

18 16. That the March 23, 2018, Memorandum of Understanding was not incorporated
19 in the April 11, 2018 Decree of Divorce;
20

21 17. That the March 23, 2018, Memorandum of Understanding retains its separate
22 nature as a contract;
23

24 18. That Plaintiff is entitled to an award of his reasonable attorney’s fees and costs;
25 and
26
27
28

...

...

...

...

1 19. Any other orders this honorable Court deems proper in the premises.

2 Dated this 2nd day of March, 2021.

3 LAW OFFICE OF SHELLEY LUBRITZ,
4 PLLC

5 By: Shelley Lubritz
6 Shelley Lubritz, Esq.
7 Nevada Bar No. 5410
8 375 E. Warm Springs Road Suite 104
9 Las Vegas, Nevada 89119
10 Attorney for Plaintiff

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. Introduction**

13 In the underlying Motion, Sarah seeks unknown relief. While the title of the Motion
14 references NRCP 52(c), Sarah did not cite this Rule within the body of the Motion. Thus,
15 her request fails on its face. So, too, does her alternative request for summary judgment
16 as genuine disputes as to material issues of fact exist.

17 In lieu thereof, Sarah argues that in seeking to set aside the language awarding
18 her a right of survivor benefits to David's account through the Public Employee Retirement
19 System (hereinafter "PERS") that,

20 "buyer's remorse" is not a basis for setting aside a Decree.
21 Nothing in David's case in chief credibly sets forth a mistake,
22 inadvertence, surprise or excusable neglect.

23 Motion, page 5, lines 20 – 22.

24 The overarching argument made by Sarah is that David did not read the Decree;
25 therefore, he signed it at his own risk. This argument, as applied to mistake, inadvertence,
26 surprise, or excusable neglect, is simply insufficient to grant the underlying motion. This
27

1 is especially true given the acknowledgment by Sarah that she was aware that the
2 offending language had been included in the Decree of Divorce.

3 **I. Factual Statement**

4 On March 23, 2018, Plaintiff, David John Rose (hereinafter "David"), and
5 Defendant, Sarah Janeen Rose (hereinafter "Sarah"), participated in a mediation presided
6 over by Rhonda M. Forsberg, Esq.¹ The mediation included, only, non-custodial issues.
7 Attorney Forsberg drafted a *Memorandum of Understanding* (hereinafter "MOU")
8 memorializing the terms of the parties' agreement. Both parties and their respective
9 counsel signed the MOU while at Attorney Forsberg's office.
10

11
12 At the time of the mediation, David was employed by the Las Vegas Metropolitan
13 Police Department (hereinafter "LVMPD") and was a member of the LVMPD Public
14 Employee Retirement System (hereinafter "PERS"). The Nevada Supreme Court has
15 long held that a PERS pension is a community property asset to be divided upon divorce.
16 As set forth in the MOU, Sarah was entitled to receive, "Her interest in [David's] PERS
17 pursuant to *Gemma v. Gemma*." [emphasis in original]
18

19 Pursuant to Nevada law, at the time of the mediation² a right of survivor benefits
20 to a PERS pension, was not community property. An employee member could not be
21 forced to name a survivor beneficiary until retirement if he or she chose to name one at
22 all. While the issue of survivor benefits was addressed at the mediation, David did not
23

24
25
26 ¹ At the time of the mediation, the Hon. Rhonda M. Forsberg had not taken the bench. To
27 avoid any confusion as to the capacity in which she served, she will be referred to as "Attorney Forsberg."

28 ² In its most recent decision on the issue, the Nevada Supreme Court did not rule that
survivor benefits are an asset of the community. *Peterson v. Peterson*, S.C. No.: 77478.

1 agree to grant them to Sarah. Accordingly survivor benefits were not included in the MOU
2 and should not have been written into the Decree of Divorce (hereinafter "Decree").

3 The Decree was drafted after the mediation on March 23, 2018. The parties and
4 their respective counsel signed the Decree that day. It was filed with the Clerk of the
5 Court and entered on April 11, 2018. A term, not contained in the MOU, and never agreed
6 upon by David, was added to the Decree awarding Sarah,
7

8 One-half of the community portion, as defined within Nevada
9 law as articulated in Gemma v. Fondi, 105 Nev. 458 (1989),
10 and Fondi v. Fondi, 106 Nev. 856 (1990), in DAVID JOHN
11 ROSE's Las Vegas Metropolitan Police Department Public
12 Employees' Retirement System of Nevada Pension benefits,
13 said pension benefits to be divided pursuant to a Qualified
14 Domestic Relations Order ("QDRO"), ***based upon a
selection of Option 2 being made at the time of retirement
so as to name SARAH JANEEN ROSE as the irrevocable
survivor beneficiary of DAVID JOHN ROSE' pension
benefits upon death, to divide said retirement account.***
15 [emphasis added].

16 On April 25, 2018, fourteen (14) days later, Regina McConnell, Esq., David's
17 former attorney, filed a *Motion to Set Aside the Paragraph Regarding Survivor Benefits in*
18 *the Decree of Divorce Based upon Mistake* and acknowledged she "missed" the inclusion
19 of the above-stated term. The net issue to be determined by this Court at the conclusion
20 of the evidentiary hearing is whether the paragraph in the Decree, awarding Sarah
21 survivor benefits to David's PERS shall be confirmed or whether the provision shall be
22 set aside. One factor in the Court's decision may, necessarily, require a determination
23 as to why the disputed term was included in the Decree.
24

25 This question is highlighted especially given Sarah's statement set forth in the underlying
26 Motion on page 6 of 14, at lines 18 – 20,
27

1 ***Sarah was aware that the parties had negotiated after***
2 ***mediation to include the survivor benefits, and Sarah was***
3 ***aware of the inclusion in the Decree.***

4 The above statement is a material misrepresentation. It is wholly unsupported by the
5 testimony of Sarah Rose, David Rose, and Regina McConnell, Esq. and sanctionable. The Court
6 should note that the underlying Motion is supported, only, by the sworn Affidavit of Racheal Mastel
7 Esq.,

8 The testimony at the time of trial, in its totality, supports the finding that the parties ***did not***
9 negotiate after the mediation and that David did not grant to Sarah the right of survivor benefits.
10 The fact that Sarah acknowledges she “was aware of the inclusion in the Decree” of the language
11 awarding her these rights, to-wit: ***“upon a selection of Option 2 being made at the time of***
12 ***retirement so as to name SARAH JANEEN ROSE as the irrevocable survivor***
13 ***beneficiary of DAVID JOHN ROSE' pension benefits upon death, to divide said***
14 ***retirement account***” supports David’s assertion that Sarah knowingly perpetrated a fraud
15 upon him and upon this Court. This issue will be addressed at a later time.
16

17
18 What follows are excerpts from Volumes I and II of the *Transcript Re: All Pending Motions*
19 which defeat any claim by Sarah that David granted her the right of survivor benefits.

20 **Sarah Rose**

21 Q. ***So, you and Dave did not agree on survivor benefits that***
22 ***day, correct?***

23 A. ***Yes.***

24 Page 109, lines 10 – 12

25 BY MS. LUBRITZ:

26 Q. ***From the time that you signed the MOU and the time***
27 ***that you signed the decree of divorce, you and David***
28 ***didn’t talk, correct?***

1 A. We did small talk.

2 Q. But you didn't talk about anything substantive, correct?

3 A. No.

4 THE COURT: Okay.

5 BY MS. LUBRITZ:

6 Q. ***And in fact you didn't discuss the S - - the survivorship
benefit - - survivorship benefits, correct?***

7 A. ***Correct.***

8 Page 201, lines 13 - 24

9 **David Rose**

10 Q. Thank you. Did - - did you and your exwife [sic] reach an
11 agreement as to survivorship benefits?

12 A. It was - -

13 Q. During the mediation, yes or no?

14 A. It was - - yes.

15 Q. You did - - you did reach an agreement as to survivor
16 benefits?

17 A. Yes.

18 Q. ***In the mediation? What was that agreement?***

19 A. ***That she didn't get them.***

20 Q. Okay. Can you explain a little bit more, please?

21 A. Yes. The now-Judge Forsberg asked about survivor
22 benefits, and I told her no based on the time that I had on,
23 and that was the end of it. That no - nothing else was
24 brought up about survivor benefits.

25 Page 133, lines 17 - 24 and Page 134, lines 1 - 7

26 **Regina McConnell, Esq.**

27 Q: And at one point in time the issue of survivorship benefits
28 came up, correct?

29 A. Yes.

30 Q. Okay. And what is your recollection as to how that issue was
31 resolved if at all?

32 A. David had stated at the beginning he was not going to give
33 any survivorship benefits and it was not - -

34 Hearsay objection made and addressed by the Court. Page 139, lines 13 - 19

1 THE WITNESS: When - - I was just going to finish it. When we
2 left, there was [sic] agreement to split the SBP.

3 Page 140, line 13

4 BY MS. LUBRITZ:

5 Q. When you say when you left there was no agreement, does
6 that mean when - - when the mediation was concluded, it
7 had - - there was no agreement as to survivorship benefits?

8 A. **Correct. The - - we'd settled and there was no agreement**
9 **of survivorship benefits.**

10 Q. Okay. And - - and that was at the end of the mediation period,
11 correct?

12 A. Yes, ma'am.

13 THE COURT: That would be the Forsberg office?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Got it.

16 Page 140, lines 22 – 24 and Page 141 lines 1 - 8

17 BY MS. LUBRITZ:

18 Q. The - - the decree of divorce was prepared the same day,
19 yes?

20 A. Correct.

21 Q. And it was immediately following the mediation?

22 A. Correct.

23 Q. **During any time between the conclusion of the**
24 **mediation and the signing of the decree of divorce, did**
25 **David express a desire to change his position on**
26 **survivor benefits?**

27 A. **No.**

28 Q. **Did you and Ms. Cooley discuss making a change to the**
survivorship benefit - -

A. **No.**

Q. - - provision?

A. No.

Page 141, lines 13 – 24 and Page 142, lines 1 – 2

...

...

1 BY MS. LUBRITZ:

2 Q. From the time that the ***MOU was signed until the decree***
3 ***was –just before the decree was signed,*** did Mom and
4 Dad speak to one another?

5 A. ***No.***

6 Page 170, lines 16 – 19

7 Q. Did - - did you and Ms. Cooley prior to - - ***from the time that***
8 ***the MOU was signed until just before the decree was***
9 ***signed,*** did you and Ms. Cooley discuss changing from no
10 survivorship benefits to survivorship benefits?

11 A. ***No.***

12 Objections made by Ms. Mastel. Court overruled.

13 Page 171, lines 21 – 24 and Page 172, lines 1 – 2

14 THE COURT: And basically that was a very specific
15 question about did you guys discuss SBP
16 from - - I guess at the - - while they were in
17 Shapiro's office or any time you left
18 Forsberg's office or on the way there until the
19 decree was signed?

20 THE WITNESS: No, I didn't.

21 THE COURT: ***That in between period. You and Shelly***
22 ***talk about SBP?***

23 THE WITNESS: ***We did not talk about SBP.***

24 Page 172, lines 20 – 24 and Page 173, lines 1 - 4

25 Time after time, Sarah and Ms. McConnell testified that neither the parties nor the attorneys
26 (McConnell and Cooley) discussed survivor benefits during the period of time between the signing
27 of the MOU and the signing of the Decree of Divorce. At a minimum, David met any burden of
28 proof by the time his case-in-chief closed to defeat the underlying motion.

29 II. Legal Argument

30 A settlement agreement, such as the MOU, is a contract and enforcement of the
31 MOU is governed by normal principles of contract law. *May v. Anderson*, 121 Nev.

668,672 n.l, 119 P.3d 1254, 1257 (2005), citing *Reichelt v. Urban Inv. & Dev. Co.*, 611 F. Supp. 952, 954 (N.D. Ill., 1985).

In *May v. Anderson*, ***court held that the parties' settlement agreement was a valid contract, even with a party's refusal to sign the agreement, because essential terms of a release, which was material to the agreement, was agreed upon in advance.*** *May v. Anderson*, 119 P.3d at 1259. ***The court decided that agreeing to the terms of release, which was material to the agreement, was enough to prove that there was a valid contract with the "meeting of the minds," with or without the party's signature of agreement.*** *Id.*

[Emphasis added].

In *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012), the Nevada Supreme Court held as follows:

[District Court Rule 16](#) defines the conditions under which a court may, on motion, enforce an agreement to settle pending litigation. Its language is somewhat oblique: No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, ***or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by his attorney.***

See also EDCR 7.50 (replicating DCR 16 with minor revisions). Despite its awkward wording, DCR 16's application is straightforward: ***An agreement to settle pending litigation can be enforced by motion in the case being settled if the agreement is "either ... reduced to a signed writing*** or ... entered in the court minutes following a stipulation." *Resnick v. Valente*, 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981) (applying DCR 24, later renumbered DCR 16).

DCR 16 applies to divorce and dissolution disputes equally with any other kind of civil litigation. See *Grenz v. Grenz*, 78 Nev. 394, 399, 374 P.2d 891, 894 (1962) (interpreting DCR

16's predecessor). **The rule gives “the court ... an efficient method for determining genuine settlements and enforcing them.”** Resnick, 97 Nev. at 616, 637 P.2d at 1206. **It “does not thwart the policy in favor of settling disputes; instead, it enhances the reliability of actual settlements.”** Id. at 616–17, 637 P.2d at 1206.

Grisham v. Grisham at 683.

When parties to pending litigation enter into a settlement, they enter into a contract. Mack v. Estate of Mack, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). Such a contract is subject to general principles of contract law. Id.3

Grisham v. Grisham at 685.

It is long established in Nevada law, that an agreement to settle pending litigation is an enforceable contract. As previously found by this Court, the terms of the March 23, 2018, Memorandum are binding upon the parties.

In the Decree drafted by Ms. Cooley, it is written

The Court FINDS that the parties' have resolved their child custody issues by its entry of the Stipulated Parenting Agreement filed 10/30/2017, **a copy of which is attached hereto as Exhibit "A" the terms of the Stipulated Parenting Agreement are ratified, confirmed, and approved by the Court at this time, and the same is incorporated into this Decree of Divorce as though the same were set forth in this Decree in full.**

The Court FINDS that there is community property and community debt to be adjudicated by this Court.

The Court FINDS that **the parties' [sic] have resolved all other issues**, including, but not limited to, child support, division of assets and debts, marital waste claims, alimony and attorneys's [sic] fees and costs **as is memorialized by the Memorandum of Understanding, a copy of which is attached hereto as Exhibit "B."**

1 The MOU was neither incorporated nor merged into the Decree of Divorce
2 reinforcing David's position that the issue MOU is an independent contract. Based upon
3 the testimony at trial, David did not negotiate after the mediation to grant Sarah survivor
4 benefits to his PERS account. She is entitled to her share of the community's interest in
5 the PERS account and nothing more.
6

7 In its 1980 decision, *Renshaw v. Renshaw*, 96 Nev. 541, 542 (1980), the Court
8 stated, in pertinent part, as follows:

9 The property settlement agreement **was neither**
10 **incorporated in nor merged in the judgment and decree**
11 **of the trial court. Therefore, this is clearly a breach of**
12 **contract action.** See *Paine v. Paine*, 71 Nev. 262, 287 P.2d
716 (1955). [Emphasis added].

13 **It is clear from the document**—the property settlement
14 **agreement—that the parties intended it to be a complete**
15 **and integrated agreement** and, thus, **it is the court's**
16 **responsibility to honor that intention.** See *Cord v. Neuhoﬀ*,
94 Nev. 21, 573 P.2d 1170 (1978). When the document is
17 **clear and unambiguous on its face**, the **court must**
18 **construe it from the language therein.** See *Mohr Park*
19 *Manor, Inc. v. Mohr*, 83 Nev. 107, 424 P.2d 101 (1967); *Club*
20 *v. Investment Co.*, 64 Nev. 312, 182 P.2d 1011 (1947); *Rankin*
21 *v. New England M. Co.*, 4 Nev. 78 (1868).

22 Dave believes his Opposition and Countermotion is factually and legally sound.
23 He attended mediation, in good faith, with the intention of resolving several outstanding
24 issues – not the least of which was a division of assets and debts. Rhonda K. Forsberg
25 presided over the mediation. She drafted the MOU which, accurately and completely,
26 memorialized the parties' agreement. Dave exercised his right to decline selection of any
27 option which would grant Sarah survivorship benefits to his PERS. Had it been agreed
28 upon then Attorney Forsberg would have included that term in the MOU.

1 Parties enter into settlement negotiations with the understanding that, once
2 reduced to writing, the agreement will be enforced and unaltered. Denying enforcement
3 of this agreement will have a chilling effect on many parties who may enter settlement
4 negotiations. The knowing and willful insertion of the provision granting Sarah
5 survivorship benefits has the effect of reducing the amount of Dave's monthly pension
6 upon retirement.
7

8 Fees should be awarded to David for having to defend the underlying motion. In
9 an Order of Affirmance in *Arcuri v. Ceraso* (Nev. App., June 9, 2016), the Court of
10 Appeals noted that in *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 731 (2005), a
11 court must consider the *Brunzell* factors and a disparity in income under *Wright v. Osburn*,
12 114 Nev. 1367 1370, 970 P.2d 1071, 1073 (1998), when deciding whether to award
13 attorney fees in family law cases).
14

15 The Nevada Supreme Court has adopted four factors which, in addition to hourly
16 time schedules kept by an attorney, are to be considered in determining the reasonable
17 value of an attorney's services. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349,
18 455 P.2d 31, 33 (1969). The factors the Court must consider are "(1) the qualities of the
19 advocate: his ability, his training, education, experience, professional standing and skill;
20 (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and
21 skill required, the responsibility imposed and the prominence and character of the parties
22 where they affect the importance of the litigation; (3) the work actually performed by the
23 lawyer: the skill, time, and attention given to the work; and (4) the result: whether the
24 work performed by the lawyer was successful and what benefits were derived."
25
26
27

28 . . .

1 ***The qualities of the advocate:***

2 The undersigned is well-experienced in domestic relations law having spent the
3 majority of her 20+ years, as a licensed Nevada attorney, in this field and is in good
4 standing with the State Bar of Nevada. The undersigned also served as a Nevada Deputy
5 Attorney General and a Special Assistant United States Attorney for the District of
6 Columbia.
7

8 ***The character of the work to be done:***

9 The work in this matter work requires something more than a passing knowledge
10 of domestic relations law.
11

12 ***The work actually performed by the lawyer:***

13 All work conducted in this case has been performed by the undersigned at a
14 significantly reduced hourly rate. The undersigned reduced her usual rate to \$300.00 per
15 hour.
16

17 ***The result:***

18 Defendant believes he will prevail.

19 **C. Conclusion**

20 WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that:

- 21 1. Defendant's Motion be denied in its entirety;
22 2. His Countermotion be granted in its entirety; and
23

24 . . .

25 . . .

26 . . .

27 . . .
28

1 3. For such other and further relief this Court deems just and proper in the
2 premises.

3 Dated this 2nd day of March, 2021.

4 LAW OFFICE OF SHELLEY LUBRITZ,
5 PLLC

6
7 By: Shelley Lubritz
8 Shelley Lubritz, Esq.
9 Nevada Bar No. 5410
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11 Las Vegas, Nevada 89119
12 Attorney for Defendant
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1 **RPLY**
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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA
10

11 DAVID ROSE,
12

13 Plaintiff,

14 vs.

15 SARAH ROSE,
16

17 Defendant.
18

CASE NO. D-17-547250-D
DEPT NO. I/Senior Judge C. Diane Steele

Date of Hearing: 4/9/21
Time of Hearing: 9:00 a.m.

19 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO**
20 **FOR JUDGMENT PURSUANT TO NRCP 52(c) OR IN THE ALTERNATIVE**
21 **FOR SUMMARY JUDGMENT**
22 **AND**
23 **OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND**
24 **COSTS**

25 COMES NOW, the Defendant, SARAH ROSE, by and through her
26 attorneys, RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW GROUP,
27 PLLC, submits the following points and authorities in Reply to *Plaintiff's Opposition to*
28 *Defendant's Motion to for Judgment Pursuant to NRCP 52(c) or in the Alternative For*

...

...

...



1 *Summary Judgment And Opposition to Countermotion for Attorney's Fees and Costs*

2 DATED this 9 day of March, 2021.

3 KAINEN LAW GROUP, PLLC

4
5 By: 

6 RACHEAL H. MASTEL, ESQ.
7 Nevada Bar No. 11646
8 3303 Novat Street, Suite 200
9 Las Vegas, Nevada 89129
10 Attorneys for Defendant

11 **POINTS AND AUTHORITIES AND ARGUMENT**

12 Husband's Opposition relies heavily on multiple misapprehensions of the
13 law. First, Husband would like to claim that Sarah's "failure" to cite to Nevada Rule of
14 Civil Procedure (NRCP) 52 (c), within the body of her Motion causes the same to "fail[]
15 on its face." That is incorrect. Wife cited the rule in her request for relief at the beginning
16 of the Motion and affirmed that her request to have Husband's Motion denied under
17 NRCP 52(c) within the conclusion of her Motion.

18 Generally, the Family Division of the Eighth Judicial District Court has
19 requested that full citations to a statute or a rule not be included as they take up
20 unnecessary space and are well known. The reference to the rule itself is sufficient¹;
21 although a party may choose to use portions of the statute or rule to assist in the
22 organization of the Motion (e.g., use of the specific factors in NRS 125C.0035(4) as topic
23 headings).

24 NRCP 52(c) does not need to be used in such a fashion. The rule states that,
25 once a party has been heard on an issue, the Court may find against a party and issue
26 judgment on any claim or defense that cannot be maintained under the law, without a

27 ¹ E.g., inclusion of the text of EDCR 5.507 where a party has failed to file an FDF, or NRCP 11, or EDCR
28 5.501, in requesting sanctions. The inclusion of the text is unnecessary for analysis of the issues, and
needlessly creates longer papers without providing useful information to the Court. As the Court has
pointed out, it is familiar with Nevada statutes and rules, and it is unnecessary to provide more than a
reference to the same for purpose of analysis.

1 favorable finding. Wife's Motion provides all the specific evidence provided by Husband
2 during his case in chief, and analyses the same under the applicable law. In doing so,
3 Wife's Motion shows that Husband's case in chief failed to provide the evidence to allow
4 him to maintain his claim or defense under the law. Wife's Motion clearly addressed the
5 rule and properly analyzed the case thereunder.

6 With regard to that analysis, first, Husband fails to appreciate the complexity
7 of the law surrounding survivorship options. There are three cases which directly address
8 the concept of "survivorship" in a pension (and theoretically whether or not the same is
9 community property). It is not the rule in Nevada that survivor options/benefits are
10 excluded from being "an asset of the community."²

11 The first case which this court needs to consider is *Wolff v. Wolff*, 112 Nev.
12 1355, 929 P.2d 916 (1996). Therein, the Supreme Court found that "[u]pon divorce, the
13 community interest...in [] retirement became the separate property of each former
14 spouse." *Id* at 1362. In *Wolff*, the Court ruled that the husband would need to continue to
15 pay the wife's portion of her retirement to her estate if she predeceased him, because her
16 interest was her separate property.

17 Then in 2014, the Supreme Court decided the case of *Henson v. Henson*, 130
18 Nev. Ad. Op. 79, 334 P.3d 933 (2014). The Court in *Henson* did not find that survivor
19 options were *not* community property. Rather, the Court determined that the QDRO could
20 not direct that a survivor option where the decree did not provide that option. *Id* at 937.
21 The Court solely declined to determine that survivor options were included in the term
22 "pension" within the Decree. *Id*. The Court makes it clear, that if the option is included
23 in the Decree it is appropriate.³

24
25 ²
26 As the analysis of the case law set forth herein will show, the Supreme Court has not specifically stated
27 that survivor benefits are, or are not, community property. However, when reviewed in its totality, the
implication is clear that survivor benefits can be community property.

28 ³
The Court in *Henson*, also noted that if an employee spouse were to name a different beneficiary for
survivorship, only the employee spouse's monthly allotment would be reduced. This legally matches

1 Finally, this past year the Supreme Court decided *Peterson v. Peterson*,
2 Docket No. 77478 (Order of Reversal and Remand May 22, 2020). In *Peterson*, the court
3 implied that the Survivor Benefit Plan (SBP) was community property, because “benefits
4 earned during marriage are community property even when the member spouse receives
5 the benefit only after the marriage.” *Id* (citing *Kilgore v. Kilgore*, 135 Nev. 357, 366, 449
6 P.3d 843, 850 (2019). Ultimately, however, the Court did not specifically determine the
7 status of the SBP as either community or separate property, because the husband in that
8 matter *admitted* that it was community property. *Id*.

9 As the case law on this issue shows, it is likely that survivor benefits,
10 although a separate consideration from the pension itself, are community property. More
11 importantly, however, the *Henson* case directly addresses the precise issue before this
12 Court. As Wife previously stated, the issue in the *Henson* case dealt with the fact that the
13 Decree did not divide the survivor benefits.⁴ In addressing the same, the Supreme Court
14 specifically noted that the issue was that the survivor options were not awarded to the
15 wife in the Decree, thereby making it very clear that survivor benefit options can be
16 awarded in a Decree.⁵ Husband’s position, upon which his case is based, that survivor
17 benefits are not community property under Nevada Law, is wrong.

18 Wife’s position in her Motion, that there was post mediation negotiation
19 regarding survivor benefits, is not a misrepresentation. As discussed in the Motion, a
20 settlement agreement is a contract, making both the Memorandum of Understanding
21 (MOU) and the Decree valid and enforceable contracts. Pursuant to the Restatement
22 (Second) of Contracts, section 59:

23 . . .

24 _____
25 the Court’s position in *Wolff*, that a pension divided in a divorce becomes two pieces of separate
26 property, however it is factually inaccurate.

27 ⁴ It should be noted that *Henson* dealt with a PERS Pension, just as this case does.

28 ⁵
The *Henson* case was decided several years before the parties’ mediation, and the *Wolff* case was
decided even earlier than that.

1 A reply to an offer which purports to accept it but is
2 conditional on the offeror's assent to terms additional to or
3 different from those offered is not an acceptance but is a
4 counter-offer.

5 As a result, and as is often the case in these matters, the proposed Decree
6 was part of the negotiation itself. The factual dispute, as to Husband's claim that his prior
7 counsel (Ms. McConnell) instructed him not to read the Decree (and her testimony that
8 she would not have done so) set forth in Husband's Motion, is legally irrelevant to this
9 matter.⁶ By presenting the Decree, containing the survivor benefit language, Wife was
10 legally making a counter-offer. By signing, Husband accepted the same.

11 It should be noted that any argument Husband may make, that he didn't
12 realize the Decree was a "counter-offer" must fail. There are numerous provisions which
13 are necessary for the Decree which were not in the MOU, as a quick comparison of the
14 two documents clearly shows. There was obviously going to be additional language
15 which was not included in the MOU.⁷ Husband cannot claim he was unaware that the 39
16 page Decree included substantially more information than the two (2) page MOU.⁸ There
17 cannot be a fraud where a Decree (a new contract) is drafted which includes additional
18 language not included in the MOU in many places (and which would obviously need to
19 include substantial additional language) and where Husband chooses not to read the
20 contract. Therefore, it is patently obvious that negotiation occurred - even if the parties
21 did not speak. Wife provided a Decree, which constituted a counter-offer on a number of
22 issues, and Husband chose to accept the same by signing it. With respect to Husband's
23 claims about the advise from his attorney, those claims are a factual dispute between

24 ⁶ At best, Husband has a legal claim for damages against his counsel - but not against Wife, as he
25 personally chose to sign the Decree.

26 ⁷ Wife would remind this Court that the admitted evidence shows that the survivor benefits were *not*
27 *mentioned* in the MOU at all. This was not a "conflicting term" but a new term.

28 ⁸ The MOU is technically three pages, however the last page merely contains on the acknowledgment of
Wife's signature.

1 himself and Ms. McConnell; even if true, they are legally irrelevant to this Motion, and
2 Husband's recourse is against his counsel, not against Wife.

3 Wife is uncertain what Husband means when he contends that the Motion
4 is solely supported by Ms. Mastel's affidavit. The Motion is supported by the transcript
5 of the trial itself, which contains all of the testimony and evidence. Ms. Mastel's affidavit
6 is necessary only to affirm that the information included from the transcript and the law
7 is true and accurate.

8 Finally, Husband's continued insistence that the MOU is the "proper
9 contract," is a tiresome and misleading argument that willfully disregards all of the case
10 law Wife provided addressing Merger, Novation, etc. Husband's failure to even attempt
11 to address the very clear case law and legal analysis provided by Wife is tantamount to
12 admitting it is accurate. That said, Wife will address the additional case law provided by
13 Husband.

14 *May v. Anderson*, 121 Nev 668, 119 P.3d 1254 (2005), addressed a case
15 where the parties had negotiated the essential terms of a settlement, but when the time
16 came for the parties to sign, one party refused to do so due to a disagreement on the scope
17 of the release. The case was appealed after the District Court found that the agreement
18 was legally enforceable and entered a judgment in accordance with the terms. *Id* at 1256-
19 1257. The Supreme Court found that the underlying settlement agreement included the
20 same release terms as the release agreement itself, which the Mays refused to sign. The
21 case did not address whether a later drafted formal agreement *signed* by both parties
22 could add additional terms, or replace the prior agreement. It merely asserted that a Court
23 could enforce a settlement agreement, where all of the essential terms were agreed upon,
24 over the objection of a party, even when one party has refused to sign. *Id* at 1259. *May*
25 is not the controlling case law for whether a settlement agreement supercedes a later
26 stipulated judgment that modifies the underlying terms. The case law addressing that
27 matter is set forth in Wife's Motion. Simply put, *May* is inapplicable to this case because
28 it addresses the enforceability of a single existing settlement agreement one party

1 thereafter refused to sign, *not* the enforceability of a second superceding settlement
2 agreement (the Decree).

3 *Grisham v. Grisham*, 128 Nev. Ad. Op. 60, 289 P.3d 230 (2012), also does
4 not address the underlying issue in this matter, as to whether the Decree supercedes (via
5 merger, incorporation or novation) the MOU. *Grisham* provides that a settlement
6 agreement, either written and signed or placed on the record and affirmed under oath at
7 a hearing, is a valid contract. As in *May*, the issue in *Grisham* was not that there were
8 “competing contracts,” but rather that one party refused to sign the written contract, after
9 agreeing to the essential terms, and the Court was being asked to enforce those terms over
10 the objection of the party revoking their agreement. In neither case was there an
11 allegation of a later contract - which was assented to in writing by both parties - and
12 which contained additional terms. The case before this Court is clearly distinguishable
13 from both *May* and *Grisham*.

14 To the extent contract law applies to the MOU, that means *all* contract law
15 applies, including the law regarding Novation, Incorporation and Superceding Contracts.

16 It is also worth addressing Husband’s misreliance on *Renshaw v. Renshaw*,
17 96 Nev. 541, 611 P.2d 1070 (1980). In *Renshaw*, there is no explanation as to the manner
18 in which the property settlement was done, merely a statement that it was not
19 incorporated or merged. It provides no details as to how it was excluded. The relevant
20 case law remains *Day v. Day*, 80 Nev. 386, 395 P.2d 321 (1964), which discusses *how*
21 to determine if a settlement agreement has been merged into a Decree. The fact that the
22 Court in *Renshaw* found (without explanation), that the Property Settlement Agreement
23 (PSA) was an unmerged agreement, and that the same was intended to be “a complete and
24 integrated agreement” does not change that there is a legal standard for Merger and
25 nothing in *Renshaw* revises that standard. 96 Nev. at 542. Rather the implication is that
26 the PSA in *Renshaw* must have met the standard set forth in *Day*.

27 . . .

28 . . .

1 Husband's strategy appears to be to "keep shouting" his *opinion* while
2 ignoring all contrary law, in an effort to convince this Court to grant his Motion. But the
3 simple fact is that Husband has failed to apprehend the law, has left all of the critical legal
4 analysis in Wife's Motion unchallenged, and has not provided any evidence which
5 supports the burdens he must meet under Nevada Law (as detailed in Wife's Motion) to
6 succeed.

7 As Husband has provided no evidence or relevant legal authority to support
8 the claims he has made within this litigation, he should not be awarded attorney's fees.
9 Rather, as set forth in Wife's Motion, attorney's fees to her are appropriate.

10 II.

11 CONCLUSION

12 Husband's Opposition is without legal merit. He has implicitly
13 acknowledged the legal burdens set forth in Wife's Motion and instead of addressing the
14 same, attempts to rely on two entirely irrelevant arguments. First, that there was no
15 negotiation as to inclusion of survivor benefits (which is a failure to recognize the Decree
16 as a new contract and/or counter-offer); and second, that the MOU is a contract. Neither
17 of these arguments address the critical issues of Merger, Incorporation, or Novation.
18 Neither of these arguments addresses Husband's duty to actually read documents before
19 he signs them under the law, or his assumption of risk for his failure to do so. The fact
20 that the MOU is a contract does not end the analysis as to the relevance of the subsequent
21 contract (the Decree), and Husband has chosen not to address any of the points made in
22 Wife's Motion, which constitute an agreement to the merits of the same. *See e.g.*, EDCR
23 5.503.

24 Wife's Motion has sufficiently set forth the legal analysis to show that
25 Husband has not met his burden of proof for any of his claims. Therefore, Wife requests
26 this Court enter findings that:

27 ...

28 ...

- 1) there was no adequate mistake, inadvertance, surprise or excusable neglect;
- 2) there was no fraud committed;

and therefore enter a judgment, pursuant to NRCp 52(c), denying Husband's Motions to Set Aside the Decree and Enforce the MOU, affirming the Decree of Divorce, and awarding Wife her attorney's fees.

DATED this 9 day of March, 2021.

KAINEN LAW GROUP, PLLC

By:

RACHEAL H. MASTEL, ESQ., #11646
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorneys for Defendant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of March, 2021, I caused to be served the *Reply to Plaintiff's Opposition to Defendant's Motion to for Judgment Pursuant to Nrcp 52(c) or in the Alternative For Summary Judgment And Opposition to Countermotion for Attorney's Fees and Costs* to all interested parties as follows:


___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Shelley@lubritzlawoffice.com
Daverose08@gmail.com


An Employee of
KAINEN LAW GROUP, PLLC



1 **EXPM**
2 RACHEAL H. MASTEL, ESQ.
3 Nevada Bar No. 11646
4 KAINEN LAW GROUP, PLLC
5 3303 Novat Street, Suite 200
6 Las Vegas, Nevada 89129
7 (702) 823-4900
8 (702) 823-4488 (Fax)
9 Service@KainenLawGroup.com
10 Attorneys for Defendant
11 *in conjunction with the Legal Aid Center of Southern Nevada*

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA
15

16 DAVID ROSE,

17 Plaintiff,

18 vs.

19 SARAH ROSE,

20 Defendant.

CASE NO.
DEPT NO.

D-17-547250-D
I/Senior Judge C. Diane
Steele

21 **EX PARTE MOTION FOR CERTIFICATION PURSUANT TO NRCP 54(b)**

22 COMES NOW, Defendant, SARAH ROSE, by and through her attorney,
23 RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW GROUP, PLLC, and
24 submits her Ex Parte Request for Certification of Appeal Pursuant to NRCP 54(b).

25 DATED this 23 day of April, 2021

26 KAINEN LAW GROUP, PLLC

27 By: 

28 RACHEAL H. MASTEL, ESQ.
Nevada Bar No. 11646
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorney for Defendant

KAINEN LAW GROUP, PLLC

3303 Novat Street, Suite 200

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APPX1100

I.

STATEMENT OF FACTS AND ARGUMENT

On April 9, 2021, this Court issued a decision which addressed the legal merits of parties' respective claims in this matter. However, the Court also found that making a decision on the legal merits, as well as the transcript of the first day of trial, was tantamount to acting in an appellate role. Further, the Court determined that as a function of the prior decision issued in this matter by the Honorable Cheryl Moss (now retired), it was necessary to repeat the first day of the trial, and thereafter conclude the same before issuing a "final decision" in the case.

Pursuant to NRCP 54(b), where the Court makes findings and/or a judgment which is a final determination as to "one or more, but fewer than all" of the claims at issue, the Court may certify that judgment as a final determination on those issues, allowing for the appeal of the same.¹

As the Court has indicated that its decision as to the legal merits of the case is final, save and except for its determination that the trial must be held, Sarah respectfully requests that the Court certify the Order pronounced during the hearing on April 9, 2021, be certified as a final determination as to the legal merits of the case so as to allow the same to be appealed to the Supreme Court.

DATED this 23 day of April, 2021.

KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ.
Nevada Bar No. 11646
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Counsel for Defendant

¹ Where the Court chooses not to certify the Judgment as final, the Court may *revise* the same at any time before entry of the final judgment.

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of September, 2020, I caused to
3 be served the *Ex Parte Motion for Certification Pursuant to Nrcp 54(b)* to all interested
4 parties as follows:

5 BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed
6 in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed
7 as follows:

8 BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the
9 U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage
10 fully paid thereon, addressed as follows:

11 BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to
12 be transmitted, via facsimile, to the following number(s):

13 X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I
14 caused a true copy thereof to be served via electronic mail, via Wiznet, to the following
15 e-mail address(es):

16 **shelley@lubritzlawoffice.com**

17 

18 _____
19 An Employee of
20 KAINEN LAW GROUP, PLLC

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

May 07, 2021

D-17-547250-D David Rose, Plaintiff
vs.
Sarah Rose, Defendant.

May 07, 2021 11:30 AM Minute Order

HEARD BY: Bailey, Sunny**COURTROOM:** Chambers**COURT CLERK:** Magdalena Castillo-Ramos**PARTIES:**

Carson Rose, Subject Minor, not present
David Rose, Plaintiff, Counter Defendant, not present Shelley Lubritz, Attorney, not present
David Rose, Subject Minor, not present
Lily Rose, Subject Minor, not present
Sarah Rose, Defendant, Counter Claimant, not present Racheal Mastel, Attorney, not present

JOURNAL ENTRIES

MINUTE ORDER-NO HEARING HELD

A partial Order was issued by the Court on April 9, 2021 hearing. Attorney Lubritz was Ordered to prepare the Order, obtain approval from opposing Counsel and submit it to the Court. Order from hearing has not been submitted to the Court, and is necessary prior to certification.

COURT ORDERED:

STATUS CHECK RE: Submission of 4-9-2021 Order SET for 5-25-2021 at 3:00 AM.

Courtroom Clerk shall provide a copy of this Minute Order to all parties.

PRINT DATE:	05/07/2021	Page 1 of 2	Minutes Date:	May 07, 2021
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

APPX1103

Clerk's Note: a copy was emailed/mailed to the parties/counsel (MC 05.07.21).

INTERIM CONDITIONS:

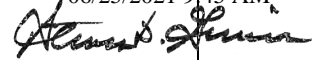
FUTURE HEARINGS:

May 25, 2021 3:00 AM Status Check
Bailey, Sunny
Courtroom 06

PRINT DATE:	05/07/2021	Page 2 of 2	Minutes Date:	May 07, 2021
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

APPX1104


CLERK OF THE COURT

1 **ORDR**

2
3 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
4 CLARK COUNTY, NEVADA

5
6 DAVID JOHN ROSE,

7 Plaintiff,

8 vs.
9

10 SARAH JANEEN ROSE,

11 Defendant

Case No.: D-17-547250-D

Dept. No.: I

Date of Hearing: April 9, 2021

Time of Hearing: 8:30 a.m.

12 **ORDER AFTER HEARING**
13 **(APRIL 9, 2021)**

14 THIS MATTER having come on for hearing this 9th day of April, 2021,
15 before the Honorable Sr. Judge Cynthia Dianne Steel, *Defendant's Motion for*
16 *Judgment Pursuant to NRCP 52(C) or in the Alternative Motion for Summary*
17 *Judgment and Countermotion for Attorney's Fees and Costs*; Plaintiff, David John
18 Rose, present and represented by and through his attorney, Shelley Lubritz, Esq.,
19 of the Law Office of Shelley Lubritz, PLLC; Defendant, Sarah Janeen Rose,
20 present and represented by and through her attorney, Racheal H. Mastel, Esq. of
21 the Kainen Law Group, PLLC, and the Court having heard oral argument, having
22 read the pleadings and papers on file herein, being fully advised in the premises
23 and good cause appearing, makes the following Findings and Orders:
24
25
26
27
28

RELEVANT PROCEDURAL HISTORY

02/22/17 Plaintiff files Complaint for Divorce

09/26/17 Defendant files Answer and Counterclaim

12/15/17 Plaintiff files Reply to Counterclaim

03/23/18 The parties met with their counsel and mediated a MEMORANDUM OF UNDERSTANDING granting each their “interest in his Nevada PERS pursuant to *Gemma v. Gemma*”; drafted and signed a Decree of Divorce; and submitted the proposed Decree of Divorce to the Court.

03/23/18 Plaintiff files Affidavit in Support of and Request for Summary Disposition of Decree of Divorce, wherein he states: “14. That the parties have entered into and executed an equitable agreement settling all issues regarding spousal support.”

04/11/18 Stipulated Decree of Divorce and the Notice of Entry Decree filed. Page 21, lines 8-22 award Defendant ½ of Plaintiff’s pension with LVMPD based on a selection of Option 2 reserving to Defendant the position of irrevocable survivor beneficiary of Plaintiff’s pension benefits upon death. The MOU was attached as Exhibit to the Decree of Divorce.

04/25/18 Plaintiff files Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree of Divorce Based upon Mistake. Plaintiff claims:

1. His indication that “he wanted his children taken care of in the future” does not translate into giving Defendant any survivor benefits.
2. His attorney did not see that the option for survivor benefits was listed and awarded to Defendant during her review prior to signing the Decree.
3. David had reason to believe the Decree would Mirror the MOU.
4. Indicates it is Nevada law that parties must specifically agree to award survivor benefits, or it is not considered a part of the pension. (no citation given)

05/10/18 Defendant files Opposition to Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree Based on Mistake....
Defendant Argues:

1. The Agreement complies with Rule 7.50 as it was signed by all parties and their respective counsel at the close of the mediated settlement.
2. The Decree provides that the Decree will supersede any prior agreement made between the parties. [Including the MOU].
3. The parties amply addressed the contingencies for an omitted asset from this Decree.
4. The Decree is a valid binding Contract enforceable by Court.
5. Plaintiff’s counsel was actively participating in the drafting of the Decree, suggesting terms and wording.
6. Both counsel reviewed the drafted Decree prior to printing.

1 7. Plaintiff's counsel reviewed the Decree with Plaintiff prior
2 to all parties and counsel signing the final draft of the
3 Proposed Decree of Divorce.

4 08/28/18 Senior Judge Kathy Hardcastle, sitting for Judge Moss, entertained all
5 pending motions and ordered the parties to REMOVE the Survivor
6 Benefits language from the Decree of Divorce and submit the QDRO
7 to PERS.
8

9 09/25/18 Judge Hardcastle's Order to remove the survivor benefit language
10 filed. Court found:
11

- 12 1. The Decree granted the Benefits of the Pension be divided
13 pursuant to Option 2
- 14 2. That the Survivor benefits are usually not provided when
15 dividing a pension pursuant to QDRO
- 16 3. That PERS will tell parties what benefits Defendant is
17 entitled to receive based on the time rule
- 18 4. The survivor benefits must be removed from the Decree
- 19 5. The parties should submit the QDRO to PERS for their
20 determination of the benefits Defendant is entitled to.
- 21 6. The survivor benefits option is not selected until the person
22 entitled to the PERS benefit retires.
- 23 7. There has never been a case that the Court is aware of where
24 the court has forced a person to agree that years down the
25 road that person is going to select the option dictated in the
26 divorce decree filed years earlier.
- 27 8. That Defendant is entitled to a certain portion of Plaintiff's
28 benefit under the time rule.

10/09/18 Motion to Alter and Amend the Findings and Judgement regarding the
9/25/18 Order filed by Defendant or for the Court to set a trial on the

1 matter of survivor benefits awarded in the Decree of Divorce.

2 Defendant argues:

- 3
- 4 1. Plaintiff admitted he and his attorney did not actually
 - 5 review the Decree
 - 6 2. That Judge Hardcastle, in her 9/25/18 Order, did not address
 - 7 the claim of Mistake claimed by Plaintiff.
 - 8 3. The survivor benefits are a community asset.
 - 9 4. The Court erred under the law by setting aside the Order that
 - 10 Husband select Option 2 upon divorce and grant wife the
 - 11 survivor benefits.
 - 12 5. Defendant is entitled to a new trial unless parties can agree
 - 13 to an award of survivor benefits. If Court determines that
 - 14 there was no mutual agreement or intent to include the
 - 15 survivor benefits in the Decree, then the Survivor benefits
 - 16 becomes an omitted asset.
 - 17 6. Plaintiff's Motion to Set Aside the Stipulated Decree of
 - 18 Divorce should have been denied by Judge Hardcastle. The
 - 19 Plaintiff cannot claim mistake where he failed to engage in
 - 20 his duty to read the Decree in full before signing the Decree.

21 10/24/18 Plaintiff's Opposition to Defendant's Motion to Alter or Amend

22 Judgment or in the Alternative for New Trial Pursuant to 59(a)(7),

23 argues:

- 24 1. The MOU did not specify that Defendant would receive any
- 25 survivor benefits from Plaintiff's pension "because the
- 26 parties did not agree to any such term."
- 27 2. That the Order of Amendment does not comport with the
- 28 evidence.
3. NRS 125.155(3) permits but does not require the court to
- order division of the retirement benefit.
4. Defendant has not set forth valid reason to grant a new trial
- where there was no initial trial before the court. Failure to

1 include an item in the decree that was not agreed to by both
2 parties is not an omitted asset; it is an item that remains in
3 the control of the Plaintiff.

4 10/30/18 Defendant's Reply argues that:

- 5 1. Plaintiff had a duty to read the Decree before filing.
- 6 2. Plaintiff has not asked to set aside the order that he alone be
7 responsible for health insurance which was also absent from
8 the MOU.
- 9 3. Plaintiff is experiencing buyer's remorse.
- 10 4. Judge Hardcastle made no findings or orders regarding
11 Plaintiff's claim of mistake or whether or not the set aside is
12 appropriate under any portion of NRCP 60(b).

13 11/6/18 Hearing regarding pending motions to amend Judge Hardcastle's
14 Order removing the language regarding survivor benefits from the
15 decree of divorce.

16 06/16/19 Order filed from 11/6/18 hearing where Judge Moss:

- 17 1. Found that Judge Hardcastle's Order is insufficient and
18 ordered that it be set aside;
- 19 2. Found that an Evidentiary Hearing is necessary and ordered
20 that the request be granted;
- 21 3. Orders that the scope of the Evidentiary Hearing shall be:
 - 22 a. the intent of the parties,
 - 23 b. why the survivorship provision was included, and
 - 24 c. whether it would be void as a matter of law;
- 25 4. Plaintiff's original motion will be reheard and is pending as
26 are the post-decree pleadings file by Defendant; and
- 27 5. That Defendant shall retain Marshal Willick, Esq. as her
28 expert on the PERS matter, permitting Defendant to retain
his own expert for rebuttal.

01/22/19 Defendant files Expert report in essence stating that the survivor benefit is a community asset. [Said Report stricken from the record, but not removed from the register of action by the clerk's office.]

05/08/19 Plaintiff's Motion to enforce the MOU filed. Since it was not merged it is not modifiable by the court and is binding on the parties. The Decree should be amended to reflect the agreement of the parties

05/22/19 Defendant's Opposition to Plaintiff's Motion to Enforce MOU filed. Defendant notes that Plaintiff's motion argues that only the terms in the MOU should have been included in the Decree. Were that so, several required items for a decree would have been absent from the Decree and the Decree would not have been approved and signed by the court.

06/02/19 Plaintiff's Reply to Opposition filed. Plaintiff notes that Defendant's Opposition contained no citation to case law or other legal authority therefore, the Court should rule in Plaintiff's favor. Plaintiff made repeat arguments found in other pleadings as well.

10/23/19 Evidentiary Hearing (Moss) Day One.

01/27/20 Evidentiary Hearing (Moss) Day Two.

03/10/20 Settlement Conference (Moss) Day One.

03/27/20 Settlement Conference (Moss) Day Two.

08/13/20 Evidentiary Hearing (Moss) Day Three. [Vacated.]

Questions pending:

1. Whether the procedural peculiarities should be overlooked by the undersigned Senior Judge, where a previous Senior Judge made a decision which was reversed by the assigned District Court Judge, followed by the initiation of a trial hearing. The trial was not completed by the assigned District Judge prior to her retirement from the bench due in part to covid19 restrictions. This case has languished in the system far too long. As a discretionary call, the undersigned will proceed to questions still pending in order to bring finality to the parties.

2. Whether there was an agreement between the parties regarding the survivor benefits. Judge Moss granted a trial to make this determination. It has not yet been tried for a preponderance of the evidence to bring the answer to light

3. Whether Nevada PERS irrevocable survivor benefits are the property right of both spouses. Neither party has brought forth definitive statute or case law on this specific right. The analysis tends toward something of value, gained

1 during the marriage which makes it community property. There has been no
2 affidavit from the agency to determine the PERS position on the claim.
3

4 **4. Whether these matters can be determined on a summary judgement**
5 **motion once the trial is initiated, or in the alternative grant a new trial.** The
6 current procedure pursuant to orders of the court is that a trial would be necessary
7 to determine the intent of the parties. The trial commenced, there were
8 continuances and covid19 interruptions. To invoke summary judgement prior to
9 the court's decision on the merits of the parties' intent would not comply with the
10 law of the case.
11
12

13
14 **5. Whether the Court would enter a directed verdict on the information**
15 **produced in the trial transcript.** The court expressed concern to make a decision
16 on a transcript of a prior judge's unfinished trial. The undersigned did review the
17 transcript provided on the record and determined it was not comfortable rendering
18 a decision based solely on that transcript.
19
20

21 **6. Whether the MOU is a contract that survives the Decree of Divorce as**
22 **it was not merged into the Decree of Divorce.** Under most circumstances the
23 MOU will control where the Decree is silent on an issue. In this case, the Decree
24 restated the terms in the MOU along with additional terms not addressed in the
25 MOU. One term in the Decree stated that the Decree supersedes any other
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27
28

1 agreement of the parties. The MOU was an agreement that was signed prior to the
2 stipulated Divorce Decree.
3

4 **7. Whether the 3/23/18, MOU memorialize the parties' agreement as to**
5 **a division of all community property assets and debts?** There appears to be at
6 least two issues that were not mentioned in the MOU that were included in the
7 Decree. One was the party responsible to pay the children's health insurance and
8 the property designation of the irrevocable survivor benefit rights. The MOU did
9 not list the survivor benefit asset as Plaintiff's separate property.
10
11

12 **8. Whether the MOU binds the parties to its terms.** Under strict
13 compliance regarding the formation, agreement, and signing of the MOU it is a
14 binding contract. Attaching it to the Decree must also avoid any conflicting
15 terminology in the subsequently signed agreement.
16
17

18 **9. Whether Nevada Law allows (or requires) this Court to make a**
19 **ruling on a dispute concerning the election of survivor benefits under the**
20 **PERS retirement system: What is the proper ruling in this case.** The family
21 bench must address all matters in dispute between divorcing spouses dealing with
22 community property, and separate property. As the Plaintiff is asserting his
23 separate property right to the survivor benefit, there is a property of value, earned
24 during the marriage which has not been adjudicated, unless the court finds after
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26
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28

1 trial that the parties intended for the Plaintiff to maintain the survivor benefit as a
2 trade-off for the lump sum, sum certain alimony. The court is allowed and even
3 required to resolve the dispute. The proper ruling would naturally be determined at
4 the close of the trial.
5

6
7 **10. If the provision related to survivor benefits contained in the 4/11/18**
8 **Decree in this case is set aside, is Doan v. Wilkerson, 130 Nev. 449 (2014)**
9 **applicable?** In the Doan case, the court found that all parties were aware of the
10 Survivor Benefit pursuant to the evidence and pleadings on file at the time the
11 parties entered into the decree and therefore denied the request to divide the asset
12 several years later as an omitted asset. In the case at bar, the asset is addressed in
13 the Decree, and the Plaintiff is requesting that the asset be removed from the
14 Decree, having found the entry and motioned for its removal within the 6 months
15 to request a review of the property and asset division.
16
17

18
19 **THE COURT HEREBY NOTES** that the Defendant was awarded her
20 community property interest in the Plaintiff's PERS pursuant to the timeline rule
21 by the Stipulated Decree of Divorce as defined within Gemma v. Gemma, 105 Nev.
22 458 (1989) and Fondi v. Fondi, 106 Nev. 856 (1990).
23
24

25 **THE COURT FURTHER NOTES** that the Defendant was also awarded a
26 sum certain, lump-sum alimony award in the Stipulated Decree of Divorce.
27
28

1 **THE COURT FURTHER NOTES** that the Stipulated Decree of Divorce
2 also included the “Option 2” language, which granted the defendant the irrevocable
3 survivor benefit of the Plaintiff’s Nevada PERS.
4

5 **THE COURT FURTHER NOTES** that all litigants have (6) six months to
6 seek relief pursuant to NRCP 16(b) from a Decree of Divorce regarding property
7 rights.
8

9 **THE COURT FURTHER NOTES** that the Stipulated Decree of Divorce
10 was filed on April 11, 2018 and was challenged by the Plaintiff (14) fourteen days
11 later, on or about April 25, 2018, declaring grounds of mistake because he had not
12 read the Stipulated Decree thoroughly.
13
14

15 **THE COURT FURTHER NOTES** that on or about 08/28/18, Senior Judge
16 Kathy Hardcastle, covering the cases for Department I, made a ruling that the
17 irrevocable Survivor Benefits, found within the terms of the Stipulated Decree of
18 Divorce for the parties herein, to a Nevada PERS pension are not community
19 property. Her decision granting Plaintiff’s motion to set aside was filed on or
20 about 09/25/18, making findings that were not presented or briefed on the nature of
21 Survival Benefits as community or separate property. Her order did not address
22 the grounds for the Plaintiff’s request to set aside the Order, (Plaintiff’s failure to
23
24
25
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27
28

1 thoroughly read the Stipulated Decree prior to signing same rising to the level of a
2 mistake).

3
4 **THE COURT FURTHER NOTES** that the decision was not remanded to
5 Sr. Judge Hardcastle for reconsideration or clarification, but rather the Defendant's
6 Motion to Alter or Amend, or in the Alternative New Trial pursuant to NRCP 59
7 (a)(7) and for Attorney Fees and Costs (Motion to Amend) filed on or about
8 October 9, 2018, was heard by the assigned District Court Judge, Judge Cheryl
9 Moss. This placed Judge Moss in the untenable position of sitting as an appellate
10 court to affirm or reverse the decision made by Sr. Judge Hardcastle.
11
12

13
14 **THE COURT FURTHER NOTES** that at the hearing on November 16,
15 2018, Judge Moss set the matter for evidentiary Non-Jury Trial. Pursuant to
16 several delays and stipulations to continue the trial, the trial motions in limine
17 began on or about October 23, 2019, regarding the intention of the parties
18 regarding the Survivor Benefit, why Option 2 was included in the Stipulated
19 Decree and whether the matter would be void as a matter of law. Judge Moss also
20 set aside Judge Hardcastle's judgment.
21
22

23
24 **THE COURT HEREBY FINDS** that in the March 23, 2018 Memorandum
25 of Understanding, [hereinafter "MOU"] was declared to be its own independent
26
27
28

1 document, the parties settled on lump sum, sum certain alimony. There was no
2 mention of or provision for additional alimony in the MOU.
3

4 **THE COURT HEREBY FINDS** that there was no mention in the MOU of
5 any discussion or controversy regarding the irrevocable survivor benefit.
6

7 **THE COURT FURTHER FINDS** that Plaintiff has alleged factors for
8 NRCp 60b to satisfy the requirements for the court to consider his request for relief,
9 including:
10

- 11 1. Prompt application to remove the judgment;
- 12 2. Lack of intent to delay the proceedings; and
- 13 3. A meritorious defense to the claim of relief.

14 **THE COURT FURTHER FINDS** that no documentation was submitted to
15 the Court that the parties, or their counsel, renegotiated the terms of the MOU
16 giving Defendant lump sum alimony and the irrevocable survivor benefits to
17 Plaintiff's Nevada PERS [*aka* "Option 2"] between signing the MOU and signing
18 the Decree of Divorce.
19

20 **THE UNDERSIGNED COURT NOTES** that it was not provided with the
21 benefit of a transcript or any video record evidencing that the parties made
22 additional agreements other than those set forth in the MOU. The Court had no
23 records or notes that show:
24
25

- 26 1. The discussion for inclusion or exclusion of Option 2 rights for
27 irrevocable survivor benefit rights,

2. The agreement for the inclusion or exclusion of Option 2 rights for irrevocable survivor benefits, or
3. Any agreement that the lump sum, sum certain alimony would be supplemented by the PERS irrevocable survivor benefits in the future.

THE COURT FURTHER FINDS that in a Settlement Conference procedure, parties have an expectation that only agreed upon terms will be set forth in the final Decree of Divorce, along with statutorily required language such as residency, cause for the divorce, declaration of divorce, etc..

THE COURT FURTHER FINDS that these parties have a fiduciary duty to point out the inclusion or exclusion of material changes to the MOU in a stipulated decree of divorce.

THE COURT FURTHER FINDS that, according to the pleadings, the Stipulated Decree of Divorce could have been negotiated, prepared, signed and submitted to the Court all on the same day. It possible that the Option 2 language was mistakenly included in the Decree prepared by Defendant's counsel ["boiler plate" comes to mind] and/or overlooked by Plaintiff and Plaintiff's counsel, or both.

THE COURT FURTHER FINDS that according to the MOU, "David shall receive \$5,000 from the approximate \$54,868.45 in proceeds of the marital home and Sahara shall receive remainder. Of the remainder of the sale proceeds

1 \$22,434.22 shall be as and for lump-sum non-modifiable alimony. The parties
2 agree that the alimony amount shall be tax deductible to David and taxed as
3 income to Sarah.”
4

5 **THE COURT FURTHER FINDS** that in this particular case, to grant the
6 defendant the irrevocable survivor benefit from the Plaintiff’s PERS could award
7 additional spousal support as to the half of the reduction to the Defendant by way
8 of decreasing future pension payments to the plaintiff during his lifetime on top of
9 the lump sum, sum certain alimony bargained for in the MOU and, thereafter,
10 included in the Stipulated Decree of Divorce.
11
12

13 **THE COURT FURTHER FINDS** that the rights for irrevocable survivor
14 benefits to a Nevada PERS pension is an issue that needs to be decided as a matter
15 of statute and case law.
16
17

18 **THE COURT FURTHER FINDS** that 100% of the Plaintiff’s pension and
19 benefits were obtained during the marriage of nearly 12 years.
20

21 **THE COURT FURTHER FINDS** that the issue is muddled by the lack of
22 evidence that the parties knew and intended that the rights be awarded to the
23 Defendant in addition to the lump sum, sum certain alimony negotiated by the
24 parties or, in the alternative, that the lump sum alimony included her community
25 property right to the benefit.
26
27

THE COURT FURTHER FINDS that if the Court's findings are amended to grant the Set Aside of survivor benefits from the decree, the district court must then address the benefit as an omitted asset. Either the parties negotiated a determination on the survivor benefit, or the Court must make one.

THE COURT FURTHER FINDS that, procedurally, the district court ordered a trial to determine the intent of the parties, the summary judgement motion is not available to the Defendant as there is a question of fact which needs to be determined, and that the Court is under a duty to follow the order of the previous Court to proceed to trial.

THE COURT FURTHER FINDS that the Court is not denying the Defendants' right to proceed to trial when it permits certification of this order.

THE COURT FURTHER FINDS merit in Defendant's argument that the Survivor Benefit is community property, having been acquired during the marriage.

THE COURT FURTHER FINDS that the failure to address the survivor benefit, now that it has been ordered removed from the Decree of Divorce by Judge Hardcastle, said order being set aside by Judge Moss, the asset must be considered an omitted asset, unless Plaintiff can show the Parties addressed the asset and intended the asset to be exchanged for lump sum, sum certain alimony through mutual agreement.

THE COURT FURTHER FINDS that should this case proceed to trial, the prior testimony and evidence provided in previous trial days would be stricken and the trial would be heard *de novo*.

THE COURT FURTHER FINDS that the court is bound to comply with NRS 125.150(3) mandating equal division of Community Property, unless it finds a compelling reason to dispense with the property by other means. The compelling reason must be set forth in writing.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that Defendant's Motion for Judgment pursuant to NRCP 52(C) or in the Alternative, Motion for Summary Judgment is hereby denied as there is a question of fact to be addressed.

IT IS FURTHER ORDERED that Option 2 Survivor Benefits should not have been entertained in the Decree absent the affirmative consent of both parties;

IT IS FURTHER ORDERED that once the April 9, 2021 order has been filed; the Court will certify this Order as a final Order if requested by either party,

IT IS FURTHER ORDERED that if this Order is Certified to the Supreme Court, the Court will stay any further proceedings or decisions regarding the issue of the irrevocable survivor benefits until further request by the parties and Order of the Court, or direction by the Supreme Court.


1 **IT IS FURTHER ORDERED** that failure to file and action with the
2 Supreme Court within 21 days of the filing of this order will constitute grounds for
3
4 a hearing to re-set the trial date. The matter will be set on Chambers calendar for
5 review 21 days after the filing of a request to certify this order and the Order
6 granting certification.
7

8 **IT IS FURTHER ORDERED** that at trial, if warranted, the court will
9 determine:
10

- 11 1. Whether or not the Survivor Benefit has been determined in the
12 Memorandum of Understanding to be the separate property of the
13 plaintiff;
- 14 2. Whether the Survivor Benefit should be divided as community
15 property as an omitted asset; and
- 16 3. If the Survivor Benefit is determined to be community property,
17 whether the court will divide it by awarding the asset to the
18 Defendant as the sole beneficiary, by denying the defendant an
19 interest in the survivor benefit, or to order some alternative form of
20 equitable relief.

21 **IT IS FURTHER ORDERED** that attorney's fees will be deferred.
22
23 DATED this ____ day of June, 2021.

Dated this 25th day of June, 2021

24 
25 DISTRICT COURT JUDGE
26 FOR SENIOR JUDGE DIANNE STEEL

27 A38 A75 BE6A B05F
28 Sunny Bailey
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 David Rose, Plaintiff

CASE NO: D-17-547250-D

7 vs.

DEPT. NO. Department I

8 Sarah Rose, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/25/2021

15 Racheal Mastel

racheal@kainenlawgroup.com

16 Service KLG

service@kainenlawgroup.com

17 Kolin Niday

kolin@kainenlawgroup.com

18 David Rose

daverose08@gmail.com

19 Shelley Lubritz

shelley@lubritzlawoffice.com
20
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APPX1124



NEOJ

Shelley Lubritz, Esq.
Nevada Bar No. 005410
LAW OFFICE OF SHELLEY LUBRITZ, PLLC
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 833-1300
Facsimile: (702) 442-9400
E-mail: shelley@lubritzlawoffice.com

Attorney for Plaintiff
David John Rose

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,
Plaintiff,

vs.

SARAH JANEEN ROSE,
Defendant

Case No.: D-17-547250-D
Dept. No.: I

Hearing Date: April 9, 2021
Hearing Time: 8:30 a.m.

NOTICE OF ENTRY OF
ORDER AFTER HEARING (APRIL 9, 2021)

TO: SARAH JANEEN ROSE, Defendant and

TO: RACHEAL MASTEL, ESQ., her attorney:

...

...

...

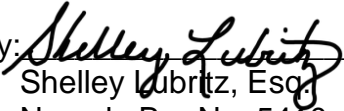
...

...

1 Please take notice that on June 25, 2021, an Order was filed in the above-entitled
2 matter, a copy of which is attached hereto.

3 Dated this June 30, 2021.

4
5 LAW OFFICE OF SHELLEY LUBRITZ,
6 PLLC

7 By:  _____
8 Shelley Lubritz, Esq.
9 Nevada Bar No. 5410
10 375 E. Warm Springs Road Suite 104
11 Las Vegas, Nevada 89119
12 *Attorney for Plaintiff*
13 *David John Rose*
14
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of June, 2021, I caused to be served the
Notice of Entry of Order after Hearing (April 9, 2021) to all interested parties as follows:

_____BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed
in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed
as follows:

_____BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S.
Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully
paid thereon, addressed as follows: his last known address

_____BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to
be transmitted, via facsimile, to the following number(s):

 X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I
caused a true copy thereof to be served via electronic mail, via Wiznet, to the following
e-mail address(es):

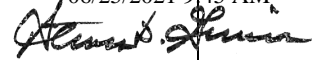
Attorney for Plaintiff

Service@KainenLawGroup.com

Dated this 30th day of June, 2021.

LAW OFFICE OF SHELLEY LUBRITZ,
PLLC

By: *Shelley Lubritz*
Shelley Lubritz, Esq.
Nevada Bar No. 5410
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Attorney for Plaintiff
David John Rose


CLERK OF THE COURT

ORDR

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,

Plaintiff,

vs.

SARAH JANEEN ROSE,

Defendant

Case No.: D-17-547250-D

Dept. No.: I

Date of Hearing: April 9, 2021

Time of Hearing: 8:30 a.m.

ORDER AFTER HEARING
(APRIL 9, 2021)

THIS MATTER having come on for hearing this 9th day of April, 2021, before the Honorable Sr. Judge Cynthia Dianne Steel, *Defendant's Motion for Judgment Pursuant to NRCP 52(C) or in the Alternative Motion for Summary Judgment and Countermotion for Attorney's Fees and Costs*; Plaintiff, David John Rose, present and represented by and through his attorney, Shelley Lubritz, Esq., of the Law Office of Shelley Lubritz, PLLC; Defendant, Sarah Janeen Rose, present and represented by and through her attorney, Racheal H. Mastel, Esq. of the Kainen Law Group, PLLC, and the Court having heard oral argument, having read the pleadings and papers on file herein, being fully advised in the premises and good cause appearing, makes the following Findings and Orders:

RELEVANT PROCEDURAL HISTORY

02/22/17 Plaintiff files Complaint for Divorce

09/26/17 Defendant files Answer and Counterclaim

12/15/17 Plaintiff files Reply to Counterclaim

03/23/18 The parties met with their counsel and mediated a MEMORANDUM OF UNDERSTANDING granting each their “interest in his Nevada PERS pursuant to *Gemma v. Gemma*”; drafted and signed a Decree of Divorce; and submitted the proposed Decree of Divorce to the Court.

03/23/18 Plaintiff files Affidavit in Support of and Request for Summary Disposition of Decree of Divorce, wherein he states: “14. That the parties have entered into and executed an equitable agreement settling all issues regarding spousal support.”

04/11/18 Stipulated Decree of Divorce and the Notice of Entry Decree filed. Page 21, lines 8-22 award Defendant ½ of Plaintiff’s pension with LVMPD based on a selection of Option 2 reserving to Defendant the position of irrevocable survivor beneficiary of Plaintiff’s pension benefits upon death. The MOU was attached as Exhibit to the Decree of Divorce.

04/25/18 Plaintiff files Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree of Divorce Based upon Mistake. Plaintiff claims:

1. His indication that “he wanted his children taken care of in the future” does not translate into giving Defendant any survivor benefits.
2. His attorney did not see that the option for survivor benefits was listed and awarded to Defendant during her review prior to signing the Decree.
3. David had reason to believe the Decree would Mirror the MOU.
4. Indicates it is Nevada law that parties must specifically agree to award survivor benefits, or it is not considered a part of the pension. (no citation given)

05/10/18 Defendant files Opposition to Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree Based on Mistake....
Defendant Argues:

1. The Agreement complies with Rule 7.50 as it was signed by all parties and their respective counsel at the close of the mediated settlement.
2. The Decree provides that the Decree will supersede any prior agreement made between the parties. [Including the MOU].
3. The parties amply addressed the contingencies for an omitted asset from this Decree.
4. The Decree is a valid binding Contract enforceable by Court.
5. Plaintiff’s counsel was actively participating in the drafting of the Decree, suggesting terms and wording.
6. Both counsel reviewed the drafted Decree prior to printing.

1 7. Plaintiff's counsel reviewed the Decree with Plaintiff prior
2 to all parties and counsel signing the final draft of the
3 Proposed Decree of Divorce.

4 08/28/18 Senior Judge Kathy Hardcastle, sitting for Judge Moss, entertained all
5 pending motions and ordered the parties to REMOVE the Survivor
6 Benefits language from the Decree of Divorce and submit the QDRO
7 to PERS.
8

9 09/25/18 Judge Hardcastle's Order to remove the survivor benefit language
10 filed. Court found:
11

- 12 1. The Decree granted the Benefits of the Pension be divided
13 pursuant to Option 2
- 14 2. That the Survivor benefits are usually not provided when
15 dividing a pension pursuant to QDRO
- 16 3. That PERS will tell parties what benefits Defendant is
17 entitled to receive based on the time rule
- 18 4. The survivor benefits must be removed from the Decree
- 19 5. The parties should submit the QDRO to PERS for their
20 determination of the benefits Defendant is entitled to.
- 21 6. The survivor benefits option is not selected until the person
22 entitled to the PERS benefit retires.
- 23 7. There has never been a case that the Court is aware of where
24 the court has forced a person to agree that years down the
25 road that person is going to select the option dictated in the
26 divorce decree filed years earlier.
- 27 8. That Defendant is entitled to a certain portion of Plaintiff's
28 benefit under the time rule.

10/09/18 Motion to Alter and Amend the Findings and Judgement regarding the
9/25/18 Order filed by Defendant or for the Court to set a trial on the

1 matter of survivor benefits awarded in the Decree of Divorce.

2 Defendant argues:

- 3
- 4 1. Plaintiff admitted he and his attorney did not actually
 - 5 review the Decree
 - 6 2. That Judge Hardcastle, in her 9/25/18 Order, did not address
 - 7 the claim of Mistake claimed by Plaintiff.
 - 8 3. The survivor benefits are a community asset.
 - 9 4. The Court erred under the law by setting aside the Order that
 - 10 Husband select Option 2 upon divorce and grant wife the
 - 11 survivor benefits.
 - 12 5. Defendant is entitled to a new trial unless parties can agree
 - 13 to an award of survivor benefits. If Court determines that
 - 14 there was no mutual agreement or intent to include the
 - 15 survivor benefits in the Decree, then the Survivor benefits
 - 16 becomes an omitted asset.
 - 17 6. Plaintiff's Motion to Set Aside the Stipulated Decree of
 - 18 Divorce should have been denied by Judge Hardcastle. The
 - 19 Plaintiff cannot claim mistake where he failed to engage in
 - 20 his duty to read the Decree in full before signing the Decree.

21 10/24/18 Plaintiff's Opposition to Defendant's Motion to Alter or Amend

22 Judgment or in the Alternative for New Trial Pursuant to 59(a)(7),

23 argues:

- 24 1. The MOU did not specify that Defendant would receive any
- 25 survivor benefits from Plaintiff's pension "because the
- 26 parties did not agree to any such term."
- 27 2. That the Order of Amendment does not comport with the
- 28 evidence.
3. NRS 125.155(3) permits but does not require the court to
- order division of the retirement benefit.
4. Defendant has not set forth valid reason to grant a new trial
- where there was no initial trial before the court. Failure to

1 include an item in the decree that was not agreed to by both
2 parties is not an omitted asset; it is an item that remains in
3 the control of the Plaintiff.

4 10/30/18 Defendant's Reply argues that:

- 5 1. Plaintiff had a duty to read the Decree before filing.
- 6 2. Plaintiff has not asked to set aside the order that he alone be
7 responsible for health insurance which was also absent from
8 the MOU.
- 9 3. Plaintiff is experiencing buyer's remorse.
- 10 4. Judge Hardcastle made no findings or orders regarding
11 Plaintiff's claim of mistake or whether or not the set aside is
12 appropriate under any portion of NRCP 60(b).

13 11/6/18 Hearing regarding pending motions to amend Judge Hardcastle's
14 Order removing the language regarding survivor benefits from the
15 decree of divorce.

16 06/16/19 Order filed from 11/6/18 hearing where Judge Moss:

- 17 1. Found that Judge Hardcastle's Order is insufficient and
18 ordered that it be set aside;
- 19 2. Found that an Evidentiary Hearing is necessary and ordered
20 that the request be granted;
- 21 3. Orders that the scope of the Evidentiary Hearing shall be:
 - 22 a. the intent of the parties,
 - 23 b. why the survivorship provision was included, and
 - 24 c. whether it would be void as a matter of law;
- 25 4. Plaintiff's original motion will be reheard and is pending as
26 are the post-decree pleadings file by Defendant; and
- 27 5. That Defendant shall retain Marshal Willick, Esq. as her
28 expert on the PERS matter, permitting Defendant to retain
his own expert for rebuttal.

1 01/22/19 Defendant files Expert report in essence stating that the survivor
2 benefit is a community asset. [Said Report stricken from the record,
3 but not removed from the register of action by the clerk's office.]
4
5 05/08/19 Plaintiff's Motion to enforce the MOU filed. Since it was not merged
6 it is not modifiable by the court and is binding on the parties. The
7 Decree should be amended to reflect the agreement of the parties
8
9 05/22/19 Defendant's Opposition to Plaintiff's Motion to Enforce MOU filed.
10 Defendant notes that Plaintiff's motion argues that only the terms in
11 the MOU should have been included in the Decree. Were that so,
12 several required items for a decree would have been absent from the
13 Decree and the Decree would not have been approved and signed by
14 the court.
15
16 06/02/19 Plaintiff's Reply to Opposition filed. Plaintiff notes that Defendant's
17 Opposition contained no citation to case law or other legal authority
18 therefore, the Court should rule in Plaintiff's favor. Plaintiff made
19 repeat arguments found in other pleadings as well.
20
21 10/23/19 Evidentiary Hearing (Moss) Day One.
22
23 01/27/20 Evidentiary Hearing (Moss) Day Two.
24
25 03/10/20 Settlement Conference (Moss) Day One.
26
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28

03/27/20 Settlement Conference (Moss) Day Two.

08/13/20 Evidentiary Hearing (Moss) Day Three. [Vacated.]

Questions pending:

1. Whether the procedural peculiarities should be overlooked by the undersigned Senior Judge, where a previous Senior Judge made a decision which was reversed by the assigned District Court Judge, followed by the initiation of a trial hearing. The trial was not completed by the assigned District Judge prior to her retirement from the bench due in part to covid19 restrictions. This case has languished in the system far too long. As a discretionary call, the undersigned will proceed to questions still pending in order to bring finality to the parties.

2. Whether there was an agreement between the parties regarding the survivor benefits. Judge Moss granted a trial to make this determination. It has not yet been tried for a preponderance of the evidence to bring the answer to light

3. Whether Nevada PERS irrevocable survivor benefits are the property right of both spouses. Neither party has brought forth definitive statute or case law on this specific right. The analysis tends toward something of value, gained

1 during the marriage which makes it community property. There has been no
2 affidavit from the agency to determine the PERS position on the claim.
3

4 **4. Whether these matters can be determined on a summary judgement**
5 **motion once the trial is initiated, or in the alternative grant a new trial.** The
6 current procedure pursuant to orders of the court is that a trial would be necessary
7 to determine the intent of the parties. The trial commenced, there were
8 continuances and covid19 interruptions. To invoke summary judgement prior to
9 the court's decision on the merits of the parties' intent would not comply with the
10 law of the case.
11
12

13
14 **5. Whether the Court would enter a directed verdict on the information**
15 **produced in the trial transcript.** The court expressed concern to make a decision
16 on a transcript of a prior judge's unfinished trial. The undersigned did review the
17 transcript provided on the record and determined it was not comfortable rendering
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25 MOU. One term in the Decree stated that the Decree supersedes any other
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28

1 agreement of the parties. The MOU was an agreement that was signed prior to the
2 stipulated Divorce Decree.
3

4 **7. Whether the 3/23/18, MOU memorialize the parties' agreement as to**
5 **a division of all community property assets and debts?** There appears to be at
6 least two issues that were not mentioned in the MOU that were included in the
7 Decree. One was the party responsible to pay the children's health insurance and
8 the property designation of the irrevocable survivor benefit rights. The MOU did
9 not list the survivor benefit asset as Plaintiff's separate property.
10
11

12 **8. Whether the MOU binds the parties to its terms.** Under strict
13 compliance regarding the formation, agreement, and signing of the MOU it is a
14 binding contract. Attaching it to the Decree must also avoid any conflicting
15 terminology in the subsequently signed agreement.
16
17

18 **9. Whether Nevada Law allows (or requires) this Court to make a**
19 **ruling on a dispute concerning the election of survivor benefits under the**
20 **PERS retirement system: What is the proper ruling in this case.** The family
21 bench must address all matters in dispute between divorcing spouses dealing with
22 community property, and separate property. As the Plaintiff is asserting his
23 separate property right to the survivor benefit, there is a property of value, earned
24 during the marriage which has not been adjudicated, unless the court finds after
25
26
27
28

1 trial that the parties intended for the Plaintiff to maintain the survivor benefit as a
2 trade-off for the lump sum, sum certain alimony. The court is allowed and even
3 required to resolve the dispute. The proper ruling would naturally be determined at
4 the close of the trial.
5

6
7 **10. If the provision related to survivor benefits contained in the 4/11/18**
8 **Decree in this case is set aside, is Doan v. Wilkerson, 130 Nev. 449 (2014)**
9 **applicable?** In the Doan case, the court found that all parties were aware of the
10 Survivor Benefit pursuant to the evidence and pleadings on file at the time the
11 parties entered into the decree and therefore denied the request to divide the asset
12 several years later as an omitted asset. In the case at bar, the asset is addressed in
13 the Decree, and the Plaintiff is requesting that the asset be removed from the
14 Decree, having found the entry and motioned for its removal within the 6 months
15 to request a review of the property and asset division.
16
17

18
19 **THE COURT HEREBY NOTES** that the Defendant was awarded her
20 community property interest in the Plaintiff's PERS pursuant to the timeline rule
21 by the Stipulated Decree of Divorce as defined within Gemma v. Gemma, 105 Nev.
22 458 (1989) and Fondi v. Fondi, 106 Nev. 856 (1990).
23
24

25 **THE COURT FURTHER NOTES** that the Defendant was also awarded a
26 sum certain, lump-sum alimony award in the Stipulated Decree of Divorce.
27
28

1 **THE COURT FURTHER NOTES** that the Stipulated Decree of Divorce
2 also included the “Option 2” language, which granted the defendant the irrevocable
3 survivor benefit of the Plaintiff’s Nevada PERS.
4

5 **THE COURT FURTHER NOTES** that all litigants have (6) six months to
6 seek relief pursuant to NRCP 16(b) from a Decree of Divorce regarding property
7 rights.
8

9 **THE COURT FURTHER NOTES** that the Stipulated Decree of Divorce
10 was filed on April 11, 2018 and was challenged by the Plaintiff (14) fourteen days
11 later, on or about April 25, 2018, declaring grounds of mistake because he had not
12 read the Stipulated Decree thoroughly.
13
14

15 **THE COURT FURTHER NOTES** that on or about 08/28/18, Senior Judge
16 Kathy Hardcastle, covering the cases for Department I, made a ruling that the
17 irrevocable Survivor Benefits, found within the terms of the Stipulated Decree of
18 Divorce for the parties herein, to a Nevada PERS pension are not community
19 property. Her decision granting Plaintiff’s motion to set aside was filed on or
20 about 09/25/18, making findings that were not presented or briefed on the nature of
21 Survival Benefits as community or separate property. Her order did not address
22 the grounds for the Plaintiff’s request to set aside the Order, (Plaintiff’s failure to
23
24
25
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27
28

1 thoroughly read the Stipulated Decree prior to signing same rising to the level of a
2 mistake).

3
4 **THE COURT FURTHER NOTES** that the decision was not remanded to
5 Sr. Judge Hardcastle for reconsideration or clarification, but rather the Defendant's
6 Motion to Alter or Amend, or in the Alternative New Trial pursuant to NRCP 59
7 (a)(7) and for Attorney Fees and Costs (Motion to Amend) filed on or about
8 October 9, 2018, was heard by the assigned District Court Judge, Judge Cheryl
9 Moss. This placed Judge Moss in the untenable position of sitting as an appellate
10 court to affirm or reverse the decision made by Sr. Judge Hardcastle.
11
12

13
14 **THE COURT FURTHER NOTES** that at the hearing on November 16,
15 2018, Judge Moss set the matter for evidentiary Non-Jury Trial. Pursuant to
16 several delays and stipulations to continue the trial, the trial motions in limine
17 began on or about October 23, 2019, regarding the intention of the parties
18 regarding the Survivor Benefit, why Option 2 was included in the Stipulated
19 Decree and whether the matter would be void as a matter of law. Judge Moss also
20 set aside Judge Hardcastle's judgment.
21
22

23
24 **THE COURT HEREBY FINDS** that in the March 23, 2018 Memorandum
25 of Understanding, [hereinafter "MOU"] was declared to be its own independent
26
27
28

1 document, the parties settled on lump sum, sum certain alimony. There was no
2 mention of or provision for additional alimony in the MOU.
3

4 **THE COURT HEREBY FINDS** that there was no mention in the MOU of
5 any discussion or controversy regarding the irrevocable survivor benefit.
6

7 **THE COURT FURTHER FINDS** that Plaintiff has alleged factors for
8 NRCp 60b to satisfy the requirements for the court to consider his request for relief,
9 including:
10

- 11 1. Prompt application to remove the judgment;
- 12 2. Lack of intent to delay the proceedings; and
- 13 3. A meritorious defense to the claim of relief.

14 **THE COURT FURTHER FINDS** that no documentation was submitted to
15 the Court that the parties, or their counsel, renegotiated the terms of the MOU
16 giving Defendant lump sum alimony and the irrevocable survivor benefits to
17 Plaintiff's Nevada PERS [*aka* "Option 2"] between signing the MOU and signing
18 the Decree of Divorce.
19

20 **THE UNDERSIGNED COURT NOTES** that it was not provided with the
21 benefit of a transcript or any video record evidencing that the parties made
22 additional agreements other than those set forth in the MOU. The Court had no
23 records or notes that show:
24
25

- 26 1. The discussion for inclusion or exclusion of Option 2 rights for
27 irrevocable survivor benefit rights,

2. The agreement for the inclusion or exclusion of Option 2 rights for irrevocable survivor benefits, or
3. Any agreement that the lump sum, sum certain alimony would be supplemented by the PERS irrevocable survivor benefits in the future.

THE COURT FURTHER FINDS that in a Settlement Conference procedure, parties have an expectation that only agreed upon terms will be set forth in the final Decree of Divorce, along with statutorily required language such as residency, cause for the divorce, declaration of divorce, etc..

THE COURT FURTHER FINDS that these parties have a fiduciary duty to point out the inclusion or exclusion of material changes to the MOU in a stipulated decree of divorce.

THE COURT FURTHER FINDS that, according to the pleadings, the Stipulated Decree of Divorce could have been negotiated, prepared, signed and submitted to the Court all on the same day. It possible that the Option 2 language was mistakenly included in the Decree prepared by Defendant's counsel ["boiler plate" comes to mind] and/or overlooked by Plaintiff and Plaintiff's counsel, or both.

THE COURT FURTHER FINDS that according to the MOU, "David shall receive \$5,000 from the approximate \$54,868.45 in proceeds of the marital home and Sahara shall receive remainder. Of the remainder of the sale proceeds

1 \$22,434.22 shall be as and for lump-sum non-modifiable alimony. The parties
2 agree that the alimony amount shall be tax deductible to David and taxed as
3 income to Sarah.”
4

5 **THE COURT FURTHER FINDS** that in this particular case, to grant the
6 defendant the irrevocable survivor benefit from the Plaintiff’s PERS could award
7 additional spousal support as to the half of the reduction to the Defendant by way
8 of decreasing future pension payments to the plaintiff during his lifetime on top of
9 the lump sum, sum certain alimony bargained for in the MOU and, thereafter,
10 included in the Stipulated Decree of Divorce.
11
12

13 **THE COURT FURTHER FINDS** that the rights for irrevocable survivor
14 benefits to a Nevada PERS pension is an issue that needs to be decided as a matter
15 of statute and case law.
16
17

18 **THE COURT FURTHER FINDS** that 100% of the Plaintiff’s pension and
19 benefits were obtained during the marriage of nearly 12 years.
20

21 **THE COURT FURTHER FINDS** that the issue is muddled by the lack of
22 evidence that the parties knew and intended that the rights be awarded to the
23 Defendant in addition to the lump sum, sum certain alimony negotiated by the
24 parties or, in the alternative, that the lump sum alimony included her community
25 property right to the benefit.
26
27

THE COURT FURTHER FINDS that if the Court's findings are amended to grant the Set Aside of survivor benefits from the decree, the district court must then address the benefit as an omitted asset. Either the parties negotiated a determination on the survivor benefit, or the Court must make one.

THE COURT FURTHER FINDS that, procedurally, the district court ordered a trial to determine the intent of the parties, the summary judgement motion is not available to the Defendant as there is a question of fact which needs to be determined, and that the Court is under a duty to follow the order of the previous Court to proceed to trial.

THE COURT FURTHER FINDS that the Court is not denying the Defendants' right to proceed to trial when it permits certification of this order.

THE COURT FURTHER FINDS merit in Defendant's argument that the Survivor Benefit is community property, having been acquired during the marriage.

THE COURT FURTHER FINDS that the failure to address the survivor benefit, now that it has been ordered removed from the Decree of Divorce by Judge Hardcastle, said order being set aside by Judge Moss, the asset must be considered an omitted asset, unless Plaintiff can show the Parties addressed the asset and intended the asset to be exchanged for lump sum, sum certain alimony through mutual agreement.

THE COURT FURTHER FINDS that should this case proceed to trial, the prior testimony and evidence provided in previous trial days would be stricken and the trial would be heard *de novo*.

THE COURT FURTHER FINDS that the court is bound to comply with NRS 125.150(3) mandating equal division of Community Property, unless it finds a compelling reason to dispense with the property by other means. The compelling reason must be set forth in writing.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that Defendant's Motion for Judgment pursuant to NRCP 52(C) or in the Alternative, Motion for Summary Judgment is hereby denied as there is a question of fact to be addressed.

IT IS FURTHER ORDERED that Option 2 Survivor Benefits should not have been entertained in the Decree absent the affirmative consent of both parties;

IT IS FURTHER ORDERED that once the April 9, 2021 order has been filed; the Court will certify this Order as a final Order if requested by either party,

IT IS FURTHER ORDERED that if this Order is Certified to the Supreme Court, the Court will stay any further proceedings or decisions regarding the issue of the irrevocable survivor benefits until further request by the parties and Order of the Court, or direction by the Supreme Court.


1 **IT IS FURTHER ORDERED** that failure to file and action with the
2 Supreme Court within 21 days of the filing of this order will constitute grounds for
3
4 a hearing to re-set the trial date. The matter will be set on Chambers calendar for
5 review 21 days after the filing of a request to certify this order and the Order
6 granting certification.
7

8 **IT IS FURTHER ORDERED** that at trial, if warranted, the court will
9 determine:
10

- 11 1. Whether or not the Survivor Benefit has been determined in the
12 Memorandum of Understanding to be the separate property of the
13 plaintiff;
- 14 2. Whether the Survivor Benefit should be divided as community
15 property as an omitted asset; and
- 16 3. If the Survivor Benefit is determined to be community property,
17 whether the court will divide it by awarding the asset to the
18 Defendant as the sole beneficiary, by denying the defendant an
19 interest in the survivor benefit, or to order some alternative form of
20 equitable relief.

21 **IT IS FURTHER ORDERED** that attorney's fees will be deferred.
22
23 DATED this ____ day of June, 2021.

Dated this 25th day of June, 2021

24 
25 DISTRICT COURT JUDGE
26 FOR SENIOR JUDGE DIANNE STEEL

27 A38 A75 BE6A B05F
28 Sunny Bailey
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 David Rose, Plaintiff

CASE NO: D-17-547250-D

7 vs.

DEPT. NO. Department I

8 Sarah Rose, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/25/2021

15 Racheal Mastel

racheal@kainenlawgroup.com

16 Service KLG

service@kainenlawgroup.com

17 Kolin Niday

kolin@kainenlawgroup.com

18 David Rose

daverose08@gmail.com

19 Shelley Lubritz

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MEM

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Attorney for Plaintiff
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,
Plaintiff,

vs.

SARAH JANEEN ROSE,
Defendant

Case No.: D-17-547250-D
Dept. No.: I

Hearing Date: 9/23/21
Hearing Time: 9:00 a.m.

PLAINTIFF'S CIVIL TRIAL MEMORANDA

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and pursuant to EDCR 7.27 submits Plaintiff's Civil Trial Memoranda as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of Fact

On March 23, 2018, Plaintiff, David John Rose (hereinafter "David"), and Defendant, Sarah Janeen Rose (hereinafter "Sarah"), participated in a mediation presided

1 over by Rhonda M. Forsberg, Esq. The mediation included, only, non-custodial issues.
2 Attorney Forsberg drafted a *Memorandum of Understanding* (hereinafter "MOU")
3 memorializing the terms of the parties' agreement. Both parties and their respective
4 counsel signed the MOU while at Attorney Forsberg's office.
5

6 At the time of the mediation, David was employed by the Las Vegas Metropolitan
7 Police Department (hereinafter "LVMPD") and was a member of the LVMPD Public
8 Employee Retirement System (hereinafter "PERS"). The Nevada Supreme Court has
9 long held that a PERS pension is a community property asset to be divided upon divorce.
10 As set forth in the MOU, Sarah was entitled to receive, "Her interest in [David's] PERS
11 pursuant to *Gemma v. Gemma*." [emphasis in original]
12

13 In accordance with Nevada law, at the time of the mediation and currently, survivor
14 benefits to a PERS pension, is not community property and an employee-member cannot
15 be forced to name a survivor beneficiary until retirement, if he or she chooses to name
16 one at all. The issue of survivor benefits was addressed at the mediation. As survivor
17 benefits were not included in the MOU, they should not have been written into the Decree
18 of Divorce (hereinafter "Decree").
19

20 The Decree was drafted after the mediation on March 23, 2018. The parties and
21 their respective counsel signed the Decree that day. It was filed with the Clerk of the Court
22 and entered on April 11, 2018. A term, not contained in the MOU, and never agreed upon
23 by David, was added to the Decree awarding Sarah,
24

25 One-half of the community portion, as defined within Nevada
26 law as articulated in Gemma v. Fondi, 105 Nev. 458 (1989),
27 and Fondi v. Fondi, 106 Nev. 856 (1990), in DAVID JOHN
28 ROSE's Las Vegas Metropolitan Police Department Public
Employees' Retirement System of Nevada Pension benefits,

1 said pension benefits to be divided pursuant to a Qualified
2 Domestic Relations Order ("QDRO"), based upon a selection
3 of Option 2 being made at the time of retirement so as to name
4 SARAH JANEEN ROSE as the irrevocable survivor
beneficiary of DAVID JOHN ROSE' pension benefits upon
death, to divide said retirement account. [emphasis in original].

5 On April 25, 2018, fourteen (14) days later, Regina McConnell, Esq., David's
6 former attorney, filed a *Motion to Set Aside the Paragraph Regarding Survivor Benefits in*
7 *the Decree of Divorce Based upon Mistake* and acknowledged she "missed" the inclusion
8 of the above-stated term. The Motion was filed in a reasonable time.
9

10 The net issue to be determined by the Court at the September 23, 2021,
11 evidentiary hearing is whether the paragraph in the Decree, awarding Sarah irrevocable
12 survivor benefits to David's PERS shall be confirmed or whether the provision shall be
13 set aside. One factor in the Court's decision will, necessarily, require a determination as
14 to why the disputed term was included in the Decree.
15

16 David asserts that the March 23, 2018, Memorandum of Understanding is an
17 independent contract as it was not merged into the Decree. As such, the MOU is subject
18 to contract law and non-modifiable.
19

20 For the answers, we need not look farther than the MOU itself, starting on line 3 of
21 Page 1:

22 By this memorandum, the parties desire to memorialize their
23 agreement resolving all issues in the above referenced case.
24 The memorandum addresses the material terms of the
25 agreement, and it is intended to **bind the parties** to those
26 terms. The parties agree, however, that counsel for Sarah
27 shall draft a final formal agreement incorporating the terms
28 therein. ***That agreement shall be ratified by the Court but
shall not merge and shall retain its separate nature as a
contract.*** [Emphasis added].

1 In the March 23, 2018 *Memorandum of Understanding*, which was declared to be
2 its own independent document, the parties settled on lump sum, sum certain alimony.
3 There was no provision for additional alimony in the *Memorandum of Understanding*.
4 Pursuant to the timeline rule, Sarah was awarded her community property interest in
5 Plaintiff's PERS pension in the Decree.
6

7 If Sarah were to receive Option 2 rights to irrevocable survivor benefits through the
8 Decree of Divorce she would, in substance, be receiving additional alimony. Plaintiff
9 would be deprived of funds he had a right to without the benefit of a bargain.
10

11 The parties had a fiduciary duty to one another to point out material changes from
12 the *Memorandum of Understanding* in the *Decree of Divorce*. It is anticipated that the
13 testimony will reveal that neither Sarah nor Ms. Cooley advised David or Ms. McConnell
14 of the additional language that was surreptitiously inserted in the Decree. Their conduct
15 was willful, intentional, and fraudulent.
16

17 Relevant Procedural History

18 2/27/17: Complaint for Divorce filed;

19 9/26/17: Answer and Counterclaim filed;

20 10/30/17: Stipulated Parenting Plan filed;

21 **3/23/18: Memorandum of Understanding signed by parties and their respective**
22 **counsel;**

23 **4/11/18: Stipulated Decree of Divorce and Notice of Entry of Decree filed;**

24 **4/25/18: Motion to Set Aside the Paragraph Regarding Survivor Benefits in the**
25 **Decree of Divorce Based upon Mistake filed;**

26 5/10/18: Defendant's Opposition to Motion to Set Aside the Paragraph Regarding
27 Survivor Benefits in the Decree of Divorce Based upon Mistake filed;
28

1 8/28/18: **Motion granted by the Hon. Kathy A. Hardcastle;**
2 9/25/18: Order after Hearing filed;
3 10/1/18: Notice of Entry of Order and Withdrawal of Counsel filed by Defendant's
4 counsel;
5 **10/9/18: Defendant's Motion to Alter or Amend Judgment, or in the Alternative**
6 **for New Trial Pursuant to NRCP 59(a)(7) and for Attorney's Fees and**
7 **Costs filed by Kainen Law Group;**
8 10/24/18: Opposition to Defendant's Motion to Alter or Amend Judgment, or in the
9 Alternative for a New Trial Pursuant to NRCP 59(a)(7) and for Attorney's
10 Fees and Costs; Plaintiff's Countermotion for Attorney's Fees and Costs
11 filed;
12 10/30/18: Reply to Plaintiff's Opposition to Defendant's Motion to Alter or Amend
13 Judgment, or in the Alternative for a New Trial Pursuant to NRCP 59(a)(7)
14 and for Attorney's Fees and Costs and Opposition to Plaintiff's
15 Countermotion for Attorney's Fees and Costs filed;
16 **11/6/18: Motion granted by the Hon. Cheryl B. Moss;**
17 1/16/19: Order from Hearing on November 6, 2018, filed;
18 1/17/19: Notice of Entry of Order filed;
19 **5/8/19: Plaintiff's Motion to Enforce Memorandum of Understanding and for**
20 **Attorney's Fees filed;**
21 5/22/19: Defendant's Opposition to Plaintiff's Motion to Enforce Memorandum of
22 Understanding and for Attorney's Fees and Countermotion for Attorney's
23 Fees and Costs filed;
24 6/2/19: Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion to Enforce
25 Memorandum of Understanding and for Attorney's Fees and Opposition to
26 Countermotion for Attorney's Fees and Costs filed;
27 **6/18/19: Motion denied by the Hon. Cheryl B. Moss and Evidentiary date**
28 **confirmed;**
9/5/19: Plaintiff's Motion in Limine to Preclude Testimony of Marshal S. Willick,
Esq. and to Preclude Admission of his December 20, 2018 Report filed;

1 9/9/19: Order from Hearing on June 18, 2019 and Notice of Entry of Order of
2 Order from Hearing on June 18, 2019 filed;
3 9/19/19: Defendant's Opposition to Plaintiff's Motion in Limine to Preclude
4 Testimony of Marshal S. Willick, Esq. and to Preclude Admission of his
5 December 20, 2018 Report and Countermotion for Attorney's Fees and
6 Costs filed;
7 10/7/19: Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion in Limine to
8 Preclude Testimony of Marshal S. Willick, Esq. and to Preclude Admission
9 of his December 20, 2018 Report and Opposition to Countermotion for
10 Attorney's Fees and Costs filed;
11 **10/23/19: Motion granted, in part, and denied, in part, by the Hon. Cheryl B. Moss;**
12 **1/13/20: Order from Hearing on October 23, 2019 and Notice of Entry of Order**
13 **from Hearing on October 23, 2019, filed;**
14 **1/27/20: Day 1 of the evidentiary hearing;**
15 **3/10/20: Settlement conference presided over by the Hon. Cheryl B. Moss;**
16 4/10/20: Order Setting Evidentiary Hearing filed;
17 4/14/20: Minutes - Settlement Conference filed;
18 7/10/20 Order from Hearing on February 27, 2020 filed;
19 7/13/20: Notice of Entry of Order from February 27, 2020 filed;
20 **2/12/21: Defendant's Motion for Judgment Pursuant to NRCP 52(c) or in the 4**
21 **Alternative for Summary Judgment;**
22 3/3/21: Plaintiff's Opposition to Defendant's Motion for Judgment Pursuant to
23 NRCP 52(C) or in the Alternative Motion for Summary Judgment and
24 Countermotion for Attorney's Fees and Costs;
25 3/9/21: Reply to Plaintiff's Opposition to Defendant's Motion to for Judgment
26 Pursuant to NRCP 52(c) or in the Alternative For Summary Judgment And
27 Opposition to Countermotion for Attorney's Fees and Costs; and
28 4/9/21: Motion denied.
...

II. Legal Argument

The first issue the Court must decide is whether should be set aside. NRCP 60 states, in pertinent part, as follows:

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

1 (2) upon motion filed within 6 months after written notice of
2 entry of a default judgment is served, set aside the default
3 judgment against a defendant who was not personally served
4 with a summons and complaint and who has not appeared in
the action, admitted service, signed a waiver of service, or
otherwise waived service; or

5 (3) set aside a judgment for fraud upon the court.

6 The NRCP 60(b) motion was filed within a reasonable time.

7
8 Absent merger into the Decree of Divorce, a Memorandum of Understanding
9 remains a separate contract. In *May v. Anderson*¹ the Court confirmed that since a
10 “settlement contract is formed when the parties have agreed to its material terms, even
11 though the exact language is finalized later, a party’s refusal to later execute” the
12 document after agreeing upon the essential terms does not render the settlement
13 agreement invalid².

14
15 Specifically, in *May v. Anderson*, the defendant’s insurance offered to pay
16 \$300,000 to the injured parties in exchange for a release of all claims and a covenant not
17 to sue. Upon sending a letter of the parties’ agreement, Plaintiff signed stating that he
18 agreed to the terms. However, upon receiving the document the settlement terms to
19 execute, Plaintiff refused to sign.

20
21 The Court stated, “because a settlement agreement is a contract, its construction
22 and enforcement are governed by principles of contract law. Basic contract principles
23 require, for an enforceable contract, an offer and acceptance, meeting of the minds, and
24

25
26
27 ¹ *May v. Anderson*, 119 P. 3d 1254 (2005).

28 ² *Id.* At 1256.

1 consideration. With respect to contract formation, preliminary negotiations do not
2 constitute a binding contract unless the parties have agreed to all material terms. A valid
3 contract cannot exist when material terms are lacking or are insufficiently certain and
4 definite. A contract can be formed, however, when the parties have agreed to the material
5 terms, even though the contract's exact language is not finalized until later. In the case
6 of a settlement agreement, a court cannot compel compliance when material terms
7 remain uncertain. The Court must be able to ascertain what is required of the respective
8 parties.”

10 In the current case, MOU is clear that this was a final agreement on all terms. That
11 means the survivorship was considered and specifically omitted. By their own sworn
12 statements, the parties agreed it was considered.

14 In *Golden Rd. Motor Inn, Inc. v. Islam*, the Court the Supreme Court of Nevada
15 state that they have “long refrained from reforming or ‘blue penciling’ private parties’
16 contracts.” Essentially, the Supreme Court refused to create new contracts for the parties
17 which, under well settled rules of construction, the Court has no power to do. The Court
18 is not free to modify or vary the terms of an unambiguous agreement. As such, this Court
19 does not have the power to modify certain sections of the MOU and keep other sections³.

21 The MOU was negotiated, reviewed by both parties prior to execution, was
22 corrected, and is not facially invalid. As there was a clear meeting of the minds, the parties’
23

26
27
28 ³ *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016).
PAGE 9 OF 14

1 MOU is valid and enforceable. As negotiated, and agreed to, the MOU and the terms,
2 thereof, specifically did not merge into the Decree of Divorce.

3 In *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012), the Nevada Supreme
4 Court held as follows:

5
6 District Court Rule 16 defines the conditions under which a
7 court may, on motion, enforce an agreement to settle pending
8 litigation. Its language is somewhat oblique: No agreement or
9 stipulation between the parties in a cause or their attorneys,
10 in respect to proceedings therein, will be regarded unless the
11 same shall, by consent, be entered in the minutes in the form
of an order, or unless the same shall be in writing subscribed
by the party against whom the same shall be alleged, or by
his attorney.

12 See also EDCR 7.50 (replicating DCR 16 with minor revisions).
13 Despite its awkward wording, DCR 16's application is
14 straightforward: An agreement to settle pending litigation can
15 be enforced by motion in the case being settled if the
16 agreement is "either ... reduced to a signed writing or ...
entered in the court minutes following a stipulation." *Resnick*
v. Valente, 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981)
(applying DCR 24, later renumbered DCR 16).

17 DCR 16 applies to divorce and dissolution disputes equally
18 with any other kind of civil litigation. See *Grenz v. Grenz*, 78
19 Nev. 394, 399, 374 P.2d 891, 894 (1962) (interpreting DCR
20 16's predecessor). The rule gives "the court ... an efficient
21 method for determining genuine settlements and enforcing
22 them." *Resnick*, 97 Nev. at 616, 637 P.2d at 1206. It "does not
thwart the policy in favor of settling disputes; instead, it
enhances the reliability of actual settlements." *Id.* at 616–17,
637 P.2d at 1206.

23 *Grisham v. Grisham* at 683.

24 When parties to pending litigation enter into a settlement, they
25 enter into a contract. *Mack v. Estate of Mack*, 125 Nev. 80, 95,
26 206 P.3d 98, 108 (2009). Such a contract is subject to general
27 principles of contract law. *Id.*
28 *Grisham v. Grisham* at 685.

1 It is long established in Nevada law, that an agreement to settle pending litigation
2 is an enforceable contract. As previously found by this Court, the terms of the March 23,
3 2018, Memorandum are binding upon the parties. The Court also found that the MOU
4 was an enforceable contract that did not merge into the Decree.
5

6 Parties enter into settlement negotiations with the understanding that, once
7 reduced to writing, the agreement will be enforced and unaltered. Denying enforcement
8 of this agreement will have a chilling effect on many parties who may enter settlement
9 negotiations. The knowing and willful insertion of the provision granting Sarah
10 survivorship benefits has the effect of reducing the amount of Dave's monthly pension
11 upon retirement. He did not grant to Sarah, more than which she was entitled.
12

13 In *Mizrachi v. Mizrachi*, 385 P.3d 982, 988 (2016), the Nevada Supreme Court held
14 as follows:

15 In considering agreement-based decrees, the Nevada Supreme
16 Court has indicated in some cases that, once an agreement is
17 merged into a decree, a court's application of contract principles,
18 such as rescission, reformation, and partial performance, is
19 improper to resolve a dispute arising out of the decree. See
20 [Vaile, 128 Nev. at 33 n.7, 268 P.3d at 1276 n.7](#)

21 Likewise, when an agreement has not been merged into a Decree of Divorce, it
22 retains its nature of a separate and independent contract.

23 In its 1980 decision, *Renshaw v. Renshaw*, 96 Nev. 541, 542 (1980), the Court
24 stated, in pertinent part, as follows:

25 The property settlement agreement was neither incorporated
26 in ***nor merged in the judgment and decree*** of the trial court.
27 Therefore, this is clearly a breach of ***contract action***. See
28 *Paine v. Paine*, 71 Nev. 262, 287 P.2d 716 (1955). [Emphasis
added].

1 The Nevada Supreme Court cited *Renshaw* in its holding in *Friedman v. Friedman*,
2 128 Nev. 897, 898 (2012),

3 A clear and direct expression of merger in the decree of divorce
4 destroys the independent contractual nature of the marital
5 settlement agreement, and parties may no longer seek to
6 enforce the agreement under contract principles. See *Day v. Day*,
7 80 Nev. 386, 389–90, 395 P.2d 321, 322–23 (1964); *Renshaw v.*
8 *Renshaw*, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).

9 In the instant matter, the David and Sarah entered into a written agreement
10 resolving non-custodial issues in their divorce. The agreement was signed by both
11 parties. Their signatures were acknowledged. Pursuant to DCR 16, that agreement is a
12 contract. Non-merger of the agreement into the Decree of Divorce, means the
13 Memorandum of Understanding retains its nature as a contract. The Decree of Divorce
14 cannot modify or change the MOU.

15 **Attorney's Fees**

16 There exists significant legal authority to support Dave's request for sanctions and
17 attorney's fees.

18 Nevada Revised Statute 7.085 states, in pertinent part, as follows:

19 1. If a court finds that an attorney has:

20 (a) Filed, maintained or defended a civil action or
21 proceeding in any court in this State and such action or
22 defense is not well-grounded in fact or is not warranted by
23 existing law or by an argument for changing the existing law
24 that is made in good faith; or

25 (b) Unreasonably and vexatiously extended a civil action
26 or proceeding before any court in this State, the court shall
27 require the attorney personally to pay the additional costs,
28 expenses and attorney's fees reasonably incurred because of
such conduct.

1 2. The court shall liberally construe the provisions of this
2 section in favor of awarding costs, expenses and attorney's
3 fees in all appropriate situations. It is the intent of the
4 Legislature that the court award costs, expenses and
5 attorney's fees pursuant to this section and impose sanctions
6 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in
7 all appropriate situations to punish for and deter frivolous or
8 vexatious claims and defenses because such claims and
9 defenses overburden limited judicial resources, hinder the
10 timely resolution of meritorious claims and increase the costs
11 of engaging in business and providing professional services
12 to the public.

13 Rule 7.60 of the Eighth Judicial Court Rules states, in pertinent part, as follows:

14 (b) The court may, after notice and an opportunity to be heard,
15 impose upon an attorney or a party any and all sanctions
16 which may, under the facts of the case, be reasonable,
17 including the imposition of fines, costs or attorney's fees when
18 an attorney or a party without just cause:

19 (1) Presents to the court a motion or an opposition to a motion
20 which is obviously frivolous, unnecessary or unwarranted.

21 (2) Fails to prepare for a presentation.

22 (3) So multiplies the proceedings in a case as to increase
23 costs unreasonably and vexatiously.

24 (4) Fails or refuses to comply with these rules.

25 (5) Fails or refuses to comply with any order of a judge of
26 the court.

27 The Nevada Supreme Court adopted four factors which, in addition to hourly time
28 schedules kept by an attorney, are to be considered in determining the reasonable value
of an attorney's services. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455
P.2d 31, 33 (1969). The factors the Court must consider are "(1) the qualities of the
advocate: his ability, his training, education, experience, professional standing and skill;
(2) the character of the work to be done: its difficulty, its intricacy, its importance, time and

1 skill required, the responsibility imposed and the prominence and character of the parties
2 where they affect the importance of the litigation; (3) the work actually performed by the
3 lawyer: the skill, time, and attention given to the work; and (4) the result: whether the
4 work performed by the lawyer was successful and what benefits were derived.”

5
6 ***The qualities of the advocate:***

7 The undersigned is well-experienced in domestic relations law having spent the
8 majority of her 25+ years, as a licensed Nevada attorney, in this field and is in good
9 standing with the State Bar of Nevada. The undersigned also served as a Nevada Deputy
10 Attorney General and a Special Assistant United States Attorney for the District of
11 Columbia.
12

13 ***The character of the work to be done:***

14 The work in this matter work requires something more than a passing knowledge
15 of domestic relations law.
16

17 ***The work actually performed by the lawyer:***

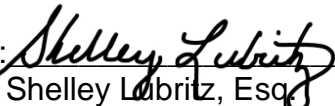
18 All work conducted in this case has been performed by the undersigned.

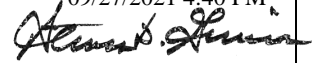
19 ***The result:***

20 Plaintiff believes he will prevail at the time of trial.

21 Dated this 23rd day of September, 2021.
22

23 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

24 By: 
25 Shelley Lubritz, Esq.
26 Nevada Bar No. 5410
27 375 E. Warm Springs Road Suite 104
28 Las Vegas, Nevada 89119
Attorney for Plaintiff


CLERK OF THE COURT

1 **NOH**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 *****

6 David Rose,

PLAINTIFF.

CASE NO.: D-17-547250-D

DEPT.: I / COURTROOM 20

7 vs.

8 Sarah Rose,

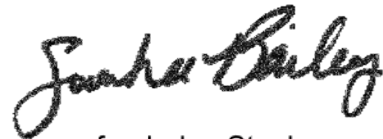
DEFENDANT.

9
10 **NOTICE OF HEARING**

11 Please be advised that the above entitled matter has been scheduled for a
12 continued ***Non-Jury Trial***, matter to be heard by the **Honorable Dianne Steel** at
the Family Courts and Services Center, 601 N. Pecos Rd., Las Vegas, Nevada, on
the **12th day of October, 2021, at the hour of 9:00 a.m.**, in Courtroom 20.

13 **YOUR PRESENCE IS NECESSARY.** This hearing will be conducted
14 **IN PERSON.**

Dated this 27th day of September, 2021

15 

for Judge Steel

16 A4A 945 49D7 D622
17 Sunny Bailey
18 District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 David Rose, Plaintiff

CASE NO: D-17-547250-D

7 vs.

DEPT. NO. Department I

8 Sarah Rose, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/27/2021

15 Racheal Mastel

racheal@kainenlawgroup.com

16 Service KLG

service@kainenlawgroup.com

17 Kolin Niday

kolin@kainenlawgroup.com

18 David Rose

daverose08@gmail.com

19 Shelley Lubritz

shelley@lubritzlawoffice.com



SUB

Shelley Lubritz, Esq.
Nevada Bar No. 5410
LAW OFFICE OF SHELLEY LUBRITZ, PLLC
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 833-1300
Facsimile: (702) 442-9400
E-mail: shelley@lubritzlawoffice.com

Attorney for Plaintiff
David John Rose

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,
Plaintiff,

vs.

SARAH JANEEN ROSE,
Defendant

Case No.: D-17-547250-D
Dept. No.: I

Hearing Date: 10/12/21
Hearing Time: 9:00 a.m.

TRIAL SUBPOENA

 X **REGULAR** **DUCES TECUM**

THE STATE OF NEVADA SENDS GREETINGS TO:

Shelly Booth Cooley, Esq.
10161 Park Run Dr., Suite 150
Las Vegas, Nevada 89145

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses
set aside, to appear and attend on the 12th day of October, 2021, at the hour of 9:00 a.m.,
an evidentiary hearing in the above matter. The address where you are required to appear

1 is: 601 North Pecos Road, Las Vegas, Nevada 89101, Courtroom 20. You are required
2 to bring with you at the time of your appearance any items set forth on the in Exhibit "A."
3 If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay losses
4 and damages caused by your failure to appear and in addition forfeit One Hundred Dollars
5 (\$100.00).
6

7 Dated this 5th day of October, 2021.

8 ISSUING OFFICER'S NAME, ADDRESS AND
9 PHONE NUMBER

10 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

11 By: Shelley Lubritz
12 Shelley Lubritz, Esq.
13 Nevada Bar No. 5410
14 375 E. Warm Springs Road Suite 104
15 Las Vegas, Nevada 89119
16 Attorney for Plaintiff
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1 **MANDATORY NOTICES OF DUTIES AND RIGHTS OF PERSON**
2 **RESPONDING TO SUBPOENA:**

3 **Duties in Responding to Subpoena.**

4 Pursuant to NRCP 45(d): A person responding to a subpoena to produce
5 documents shall produce them as they are kept in the usual course of business or shall
6 organize and label them to correspond with the categories in the demand.

7
8 When information subject to subpoena is withheld on claim that it is privileged or
9 subject to protection as trial preparation materials, the claim shall be made expressly and
10 shall be supported by a description of the nature of documents, communications, or things
11 not produced that is sufficient to enable the demanding party to contest the claim.

12 **Protection of Persons Subject to Subpoena.**

13
14 Pursuant to NRCP 45(c):

15 (1) A party or an attorney responsible for the issuance and service of a subpoena
16 shall take reasonable steps to avoid imposing undue burden or expense on a person
17 subject to that subpoena. The court on behalf of which the subpoena was issued shall
18 enforce this duty and impose upon the party or attorney in breach of this duty an
19 appropriate sanction, which may include, but is not limited to, lost earnings and a
20 reasonable attorney's fee.

21
22 (2) (A) A person commanded to produce and permit inspection and copying of
23 designated books, papers, documents or tangible things, or inspection of premises need
24 not appear in person at the place of production or inspection unless commanded to
25 appear for deposition, hearing or trial.

1 (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and
2 permit inspection and copying may, within 14 days after service of the subpoena or before
3 the time specified for compliance if such time is less than 14 days after service, serve
4 upon the party or attorney designated in the subpoena written objection to inspection or
5 copying of any or all of the designated materials or of the premises. If objection is made,
6 the party serving the subpoena shall not be entitled to inspect and copy the materials or
7 inspect the premises except pursuant to an order of the court by which the subpoena was
8 issued. If objection has been made, the party serving the subpoena may, upon notice to
9 the person commanded to produce, move at any time for an order to compel the
10 production. Such an order to compel production shall protect any person who is not a
11 party or an officer of a party from significant expense resulting from the inspection and
12 copying commanded.

15 (3) (A) On timely motion, the court by which a subpoena was issued shall quash
16 or modify the subpoena if it

18 (i) fails to allow reasonable time for compliance;
19 (ii) requires a person who is not a party or an officer of a party to travel to a
20 place more than 100 miles from the place where that person resides, is employed or
21 regularly transacts business in person, except that such a person may in order to attend
22 trial be commanded to travel from any such place within the state in which the trial is
23 held, or
24

25 (iii) requires disclosure of privileged or other protected matter and no exception or
26 waiver applies, or

27 (iv) subjects a person to undue burden.

1 (B) If a subpoena

2 (i) requires disclosure of a trade secret or other confidential research,
3 development, or commercial information, or
4

5 (ii) requires disclosure of an unretained expert's opinion or information not
6 describing specific events or occurrences in dispute and resulting from the expert's study
7 made not at the request of any party, the court may, to protect a person subject to or
8 affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf
9 the subpoena is issued shows a substantial need for the testimony or material that cannot
10 be otherwise met without undue hardship and assures that the person to whom the
11 subpoena is addressed will be reasonably compensated, the court may order appearance
12 or production only upon specified conditions.
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EXHIBIT "A"

ITEMS TO BE PRODUCED

None.



1 AOS
2 Shelley Lubritz, Esq.
3 Nevada Bar No. 5410
4 LAW OFFICE OF SHELLEY LUBRITZ, PLLC
5 375 E. Warm Springs Road Suite 104
6 Las Vegas, Nevada 89119
7 Telephone: (702) 833-1300
8 Facsimile: (702) 442-9400
9 E-mail: shelley@lubritzlawoffice.com

10 Attorney for Plaintiff
11 David John Rose

12 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
13 CLARK COUNTY, NEVADA

14 DAVID JOHN ROSE,
15 Plaintiff,

16 vs.

17 SARAH JANEEN ROSE,
18 Defendant

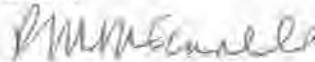
Case No.: D-17-547250-D
Dept. No.: I

Hearing Date: 9/23/21
Hearing Time: 9:00 a.m.

19 Regina McConnell, Esq. hereby accepts service of the following documents:

- 20 1. Trial Subpoena

21 DATED this 14th day of September, 2021.



22 Regina McConnell, Esq.
23 9017 S Pecos Rd., Suite 4445
24 Henderson, Nevada 89074



SUB

Shelley Lubritz, Esq.
Nevada Bar No. 5410
LAW OFFICE OF SHELLEY LUBRITZ, PLLC
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 833-1300
Facsimile: (702) 442-9400
E-mail: shelley@lubritzlawoffice.com

Attorney for Plaintiff
David John Rose

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,
Plaintiff,

vs.

SARAH JANEEN ROSE,
Defendant

Case No.: D-17-547250-D
Dept. No.: I

Date of Hearing: September 23, 2021
Time of Hearing: 9:00 a.m.

TRIAL SUBPOENA

 X REGULAR DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

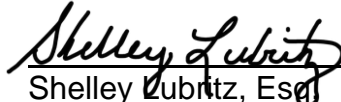
Regina McConnell, Esq.
9017 S Pecos Rd., Suite 4445
Henderson, Nevada 89074

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set aside, you appear and attend on Thursday, the 23rd day of September, 2021, at the hour of 9:00 a.m., a trial in the above-styled matter at the Eighth Judicial District Court, Family Court. The address where you are required to appear is 601 North Pecos Road,

1 Las Vegas, Nevada 89101, Courtroom 20. If you fail to attend, you will be deemed guilty
2 of contempt of Court and liable to pay losses and damages caused by your failure to
3 appear and in addition forfeit One Hundred Dollars (\$100.00).
4

5 Issuing Officer's Name, Address, and Phone Number:

6 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

7 
8 Shelley Lubritz, Esq.

9 Nevada Bar No. 005410

10 375 E. Warm Springs Rd., Suite 104

11 Las Vegas, Nevada 89119

12 (702) 833-1300

13 Attorney for Plaintiff
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1 **NOA**
2 **RACHEAL H MASTEL, ESQ.**
3 **Nevada Bar No. 11646**
4 **KAINEN LAW GROUP, PLLC**
5 **3303 Novat Street, Suite 200**
6 **Las Vegas, Nevada 89129**
7 **PH: (702) 823-4900**
8 **FX: (702) 823-4488**
9 **Service@KainenLawGroup.com**
10 **Attorney for Defendant**

11 **EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION**
12 **COUNTY OF CLARK, STATE OF NEVADA**

13 **DAVID JOHN ROSE,**
14 **Plaintiff,**

15 **CASE NO. D-17-547250-D**
16 **DEPT. I**

17 **vs.**

18 **SARAH JANEEN ROSE,**
19 **Defendant.**

20 **NOTICE OF APPEARANCE BY AUDIOVISUAL**
21 **TRANSMISSION EQUIPMENT**

22 Pursuant to Rule 4 of the Nevada Supreme Court's *Rules Governing*
23 *Appearance by Audiovisual Transmission Equipment*, RACHEAL H. MASTEL,
24 ESQ., of the KAINEN LAW GROUP, PLLC, counsel for the Defendant, SARAH
25 JANEEN ROSE, hereby submits her notice that the witness, Shelly Booth Cooley,
26 Esq., shall participate by remote court appearance via Blue Jeans video conference
27 for the hearing scheduled for October 12, 2021, at 9:00 a.m., in Department I.
28

...

...

-I-

Notice of Appearance by Audiovisual Transmission Equipment

APPX1173

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
T: 702.823.4900 F: 702.823.4488
www.KainenLawGroup.com





1 By executing the Audiovisual Transmission Equipment Appearance
2 Consent herein, Shelly Booth Cooley, Esq., agrees to be bound by the oath given by
3 the Court Clerk and to be subject to the jurisdiction of this Court for purposes related
4 to this hearing. Any objection to this request must be made in writing within two
5 (2) judicial days of service of this request.
6

7
8 Witness, Shelly Booth Cooley, Esq., who is also licensed to practice
9 law in the State of Nevada, agrees that by submitting this notice, she has tested and
10 verified the functionality of video conference connectivity with the Court's IT
11 department. Contact information for the test is:
12

13 Witness: Shelly Booth-Cooley, Esq.

14 Email Address: scooley@cooleylawlv.com

15 Phone Number: 702-265-4505
16

17 Dated this 8 day of October, 2021.

18 KAINEN LAW GROUP, PLLC

19 By: _____

20 RACHEAL H. MASTEL, ESQ.

21 Nevada Bar No. 11646

22 3303 Novat St., Suite 200

23 Las Vegas, Nevada 89129

24 Attorney for Defendant
25
26
27
28

1
2 **AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE**
3 **CONSENT**

4 The undersigned agrees to be bound by the oath given by the Court
5 Clerk over the Blue Jeans video conference connection and to be subject to the
6 jurisdiction of this Court for purposes related to this hearing. I declare under penalty
7 of perjury under the law of the State of Nevada that the foregoing is true and correct.

8 Dated this 8 day of October, 2021.

9
10 By: Shelly Booth Cooley
11 **SHELLY B. COOLEY, ESQ.**
12 Nevada Bar No. 8992
13 10161 Park Run Ave, Suite 150
14 Las Vegas, Nevada 89145
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KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
T: 702.823.4900 F: 702.823.4488
www.KainenLawGroup.com





CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of October, 2021, I caused to be served the *Notice of Appearance by Audiovisual Transmission Equipment* to all interested parties as follows:

___ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Counsel for Plaintiff:

shelley@lubritzlawoffice.com

daverose@gmail.com


An Employee of
KAINEN LAW GROUP, PLLC