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TRANS

FILED

OCT 08 2021

Elizabeth A. Brown
CLERK OF COURT

Electronically Filed
Jul 13 2022 05:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID ROSE,)
)
Plaintiff,)
)
vs.)
)
SARAH ROSE,)
)
Defendant.)

CASE NO. D-17-547250-D
DEPT. I

SEALED

BEFORE THE HONORABLE CYNTHIA STEEL, SENIOR JUDGE
THURSDAY, SEPTEMBER 23, 2021
PARTIAL TRANSCRIPT RE: NON-JURY TRIAL

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APPEARANCES:

The Plaintiff: DAVID ROSE
For the Plaintiff: SHELLEY LUBRITZ, ESQ.
375 East Warm Springs Road
Suite 104
Las Vegas, Nevada 89119

The Defendant: SARAH ROSE
For the Defendant: RACHEAL H. MASTEL, ESQ.
3303 Novat Street
Suite 200
Las Vegas, Nevada 89129

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I N D E X O F W I T N E S S E S

PLAINTIFF'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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SARAH JANEEN ROSE				
By Ms. Lubritz	5		46, 68	
By Ms. Mastel		27		63

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I N D E X O F E X H I B I T S

PLAINTIFF'S EXHIBITS

ADMITTED

1 Memorandum of Understanding 12

DEFENDANT'S EXHIBITS

A Memorandum of Understanding 12

1 LAS VEGAS, NEVADA

THURSDAY, SEPTEMBER 23, 2021

2

P R O C E E D I N G S

3

(THE PROCEEDING BEGAN AT 09:07:30.)

4

(THE REQUESTED EXCERPT BEGAN AT 09:14:51.)

5

THE COURT: You can be seated.

6

SARAH ROSE,

7

having been duly sworn, testified as follows:

8

DIRECT EXAMINATION

9

BY MS. LUBRITZ:

10

Q Good -- good morning, ma'am. Are you able to hear

11

me okay?

12

A Yes, ma'am.

13

Q All right. Would you please state your name for

14

the record?

15

A Sarah Rose.

16

Q You are the defendant in this matter, correct?

17

A Yes.

18

Q Do you have an understanding as to why you're here

19

today?

20

A Yes.

21

Q And what is that understanding?

22

A That there is a disagreement of me being entitled

23

to PERS.

24

Q Okay. Well, let me ask you this. Is it your

25

understanding that you are entitled to and were in fact

1 awarded your share of the community portion of Mr. Rose's
2 retirement account?

3 MS. MASTEL: Objection, calls for legal conclusion.

4 MS. LUBRITZ: She was awarded in the...

5 MS. MASTEL: She -- Ms. Lubritz...

6 MS. LUBRITZ: I'm sorry. If I may...

7 MS. MASTEL: ...asked if she was awarded the communi-
8 her portion of the community interest. It calls for legal
9 conclusion.

10 MS. LUBRITZ: That's specifically set forth in the
11 decree of divorce. And I believe she's read it.

12 THE COURT: I -- I don't think that's a -- drawing a
13 legal conclusion. I'll overrule you.

14 MS. LUBRITZ: Thank you.

15 Q BY MS. LUBRITZ: Just...

16 THE COURT: Were you awarded it in the decree?

17 THE WITNESS: Yes.

18 Q BY MS. LUBRITZ: You -- you were awarded your share
19 of the community interest in his retirement, correct?

20 A Yes.

21 Q In the exhibit book from your counsel, it's got the
22 blue cover...

23 A Sorry.

24 Q ...there's a decree of divorce. Do you see that?

25 A Yes, ma'am.

1 Q Okay. I'm gonna ask, it was electronically filed
2 on April 11, 2018; correct?

3 A Yes.

4 Q Would you please turn to page 39 of that document?
5 Let me know when you're there.

6 A I'm here.

7 Q And on page 39, do you see on line 7, your name,
8 Sarah Janeen Rose?

9 A Yes, ma'am.

10 Q And right above line 7, there's a signature. Do
11 you see that?

12 A Yes, ma'am.

13 Q And is that your signature?

14 A Yes, ma'am.

15 Q Turning to page 13 -- strike that. Attached as
16 Exhibit A to the decree of divorce is a stipulated parenting
17 agreement filed on October 30th, 2017. Do you see that?

18 A Yes, ma'am.

19 Q And turning to page 13 of that document, do you see
20 your name on line 16?

21 MS. MASTEL: Your Honor, for the sake of ease, we're not
22 challenging the decree of divorce or the parenting agreement.
23 We'll stipulate our client's signature are -- is on those
24 documents.

25 MS. LUBRITZ: Your Honor, if I -- if I may, I'm -- I'm

1 pretty much through with that. I would ask that I be allowed
2 to submit.

3 THE COURT: If you're just trying to verify her
4 signature on these documents, I'll...

5 MS. LUBRITZ: Thank you.

6 THE COURT: ...I'll -- no, I'm gonna sustain her
7 objection. We don't need to go through...

8 MS. LUBRITZ: Very well.

9 THE COURT: I have a feeling from the tension I'm
10 getting between the two of you over this issue, that this is
11 gonna be every other sentence is gonna be requested for an
12 objection of some kind. And that's okay because you're doing
13 your job. But let's don't do things we don't need to do.

14 Go ahead, Ms. Lubritz.

15 MS. LUBRITZ: Very well, Your Honor. And I don't
16 anticipate that being an issue from -- from my side.

17 THE COURT: Well, go ahead. I -- I...

18 Q BY MS. LUBRITZ: Turning to page...

19 THE COURT: ...hope it's true.

20 Q BY MS. LUBRITZ: ...four of the decree of the
21 divorce, would you please read a- follow along while I read
22 pages 15 and through 22? And then I'm gonna ask you if I
23 read that correctly. Do you understand?

24 THE COURT: Read pages 15...

25 THE WITNESS: All right.

1 THE COURT: ...through 22 or lines?
2 THE WITNESS: Or page 4?
3 Q BY MS. LUBRITZ: Lines 15...
4 THE COURT: Okay.
5 Q BY MS. LUBRITZ: ...through 22 on page 4 of the
6 decree.
7 THE COURT: Go ahead. Sorry.
8 MS. LUBRITZ: That would be a bit excessive.
9 THE COURT: I was gonna say.
10 Q BY MS. LUBRITZ: Now please follow along. The
11 Court finds that the parties have resolved their child
12 custody issues by its entry of the stipula- stipulated
13 parenting agreement filed 10/30 se- to -- 2017, a copy of
14 which is attached hereto as Exhibit A. The terms of the
15 stipulated parenting agreement are ratified, confirmed and
16 approved by the Court at this time. And the same is
17 incorporated into this decree of divorce as the -- the same
18 were set forth in this decree in full. Did I read that
19 provision accurately?
20 A Yes.
21 Q At the time you and Mr. Rose signed the decree of
22 divorce, you had not agreed to change the terms of the
23 parenting agreement; correct?
24 A I do not recall.
25 Q Prior to signing the decree of -- of divorce, you

1 don't recall whether or not you and Mr. Rose stipulated to
2 modifying or revising the -- this parenting agreement?

3 A No, because we had signed the parenting agreement
4 almost 14 months earlier.

5 Q Right. And to confirm, you don't recall whether or
6 not -- strike that. Are you aware of any other stipulated
7 parenting agreement that was filed in this case?

8 A Only as exhibits.

9 Q So is it your testimony, so I understand, that
10 there is a second stipulated parenting agreement?

11 A I do not believe so.

12 Q Okay. When you signed the stipulated parenting
13 agreement, you relied upon the fact that there would be no
14 modifications in the decree of divorce; correct?

15 A Correct.

16 Q And if there were modifications to the agreed upon
17 terms in the stipulated parenting agreement, you would've
18 expected those modifications to be pointed out to you before
19 signing the -- the decree; correct?

20 A I would have expected a copy of it for me to read
21 myself, yes.

22 MS. LUBRITZ: Okay. So I'm asking questions that call
23 for a yes or no response. I'd ask that the witness's answer
24 be stricken. And I'll ask the question again.

25 THE COURT: I'll strike her answer.

1 Ma'am, she is want- pretty much, unless she says
2 explain to me, she wants a yes or no...

3 THE WITNESS: Okay. That's fine.

4 THE COURT: ...or a true, false or something. Your
5 attorney is going to pick up on whether or not she needs to
6 follow through with a more expanded answer when it's her
7 turn.

8 THE WITNESS: Okay. That's fine.

9 THE COURT: All right. So just answer the questions,
10 yes or no. Your attorney will follow up. All right.

11 THE WITNESS: To answer your question, yes.

12 Q BY MS. LUBRITZ: Now going back to March 23rd, you
13 participated in a mediation with your counsel, Mr. Rose and
14 Ms. McConnell; correct?

15 A Yes.

16 Q And when I say your counsel, I'm referring to Ms.
17 Cooley; yes?

18 A Yes.

19 Q The purpose of which was to try and resolve the
20 outstanding issues in the divorce matter. Would you agree
21 with that statement?

22 A Yes.

23 Q You and Mr. Rose reached certain agreements during
24 the mediation. Didn't you?

25 A We did.

1 Q And as I understand it, the now Honorable Rhonda
2 Forsberg, presided over the mediation; correct?

3 A Yes.

4 Q And at the time she presided over the mediation,
5 she was not a judge; correct?

6 A Yes.

7 Q Ms. Forsberg memorialized the terms of your
8 agreement with Mr. Rose in the memorandum of understanding,
9 correct?

10 A Yes.

11 Q And do you understand, if I say, MOU, I'm referring
12 to the memorandum of understanding?

13 A Yes, ma'am.

14 Q Thank you. Please turn to page 1 of the MOU. And
15 that's -- in my book, it's Exhibit 1; but it also is attached
16 as an Exhibit B to the decree of divorce that's before you.

17 MS. MASTEL: It's also our Exhibit A. And we'll
18 stipulate to entry of the same.

19 THE COURT: Thank you. It's in. It's already in. But
20 it's in again.

21 (Whereupon Plaintiff's Exhibit 1 and
22 Defendant's Exhibit A was admitted.)

23 Q BY MS. LUBRITZ: And will you let me know when
24 you're there, please, on page 1?

25 A I'm here.

1 Q And would you please follow along with me while I
2 read from the MOU starting on the fifth line down?
3 A Okay.
4 Q It says the memorandum addresses the material terms
5 of the agreement and is intended to bind the parties to those
6 terms. Did I read that accurately?
7 A Yes, ma'am.
8 Q Would you consider irrevocable survivor benefits to
9 Mr. Rose's PERS to be a material term? Yes or no?
10 A Yes.
11 Q Now when I use the acronym PERS, do you understand
12 that it's the -- I'm referring to the Public Employee
13 Retirement System pension?
14 A Yes.
15 Q When you signed the MOU, you relied upon the fact
16 that the terms set forth in it would not be changed; correct?
17 A Correct.
18 Q And if there were modifications to the terms agreed
19 to at the mediation, you would've expected those
20 modifications to be pointed out to you before signing it;
21 correct?
22 A Correct.
23 Q At the time of the March 23rd, 2018, mediation, the
24 issue of survivor benefits to Mr. Rose's PERS was discussed;
25 correct? Yes or no?

1 A I do not recall.
2 Q I'm sorry?
3 A I do not recall.
4 Q Do you remember your prior testimony that in fact
5 the is- that you testified that the issue was discussed?
6 A Yes.
7 Q Okay. Would you like to revise your -- your
8 answer?
9 A Yes.
10 Q Okay. And how would you like to revise that,
11 please?
12 A I would like to revise the, we discussed it, to a
13 no.
14 Q I apologize. Say it again.
15 A I would like to revise it to a no.
16 Q So you are now testifying, as I understand it, that
17 the issue of survivor benefits was not discussed during the
18 March 23rd, 2018, mediation?
19 A Discussed, no.
20 Q I'm sorry?
21 A No.
22 Q Okay. It was addressed, correct?
23 A Yes.
24 Q Okay. I'm certain that you have read the MOU
25 several times already; but I would like for you to take a

1 moment and review it again, please. Specifically, please
2 direct the Court's attention to the provision in the MOU
3 naming you the irrevocable survivor beneficiary to Mr. Rose's
4 PERS retirement account.

5 A It does not say.

6 Q Again, I -- I would ask -- I -- I don't care,
7 well...

8 A Sorry. It does not say.

9 Q Great. Thank you. And at no point did you or your
10 lawyer say to Ms. For- Forsberg, wait a minute. You left out
11 a provision granting me the irrevocable survivor beneficiary
12 rights, correct?

13 A Correct.

14 Q And please turn back to page 4 of the decree of
15 divorce and let me know when you're there.

16 A I'm here.

17 Q So if you would please follow along while I read
18 line 26 through page 5, lines 1 through 4. The Court finds
19 that the parties have resolved all other issues, including
20 but not limited to child support, division of assets and
21 debts, marital waste claims, alimony and attorney's fees and
22 costs as is memorialized by the memorandum of understanding,
23 a copy of which is attached hereto as Exhibit B. Did I read
24 that correctly?

25 A Yes.

1 Q Now, other than the April 9th, 2021, hearing, Judge
2 Steel has not presided over any portion of this case;
3 correct?

4 A Correct.

5 Q So what I'd like to do right now is take you
6 through certain events of March 23rd, 2018, at this point.
7 The mediation began around 9 a.m. that morning?

8 A Yes.

9 Q And it concluded around noon?

10 A Yes.

11 Q Okay. By that time the MOU had been drafted and
12 signed by all parties and counsel, correct?

13 A Correct.

14 Q And as I understand it, your former counsel, Ms.
15 Cooley, began drafting the decree of divorce while at Ms.
16 Forbergs -- Ms. Forsberg's office. Is that correct?

17 A Correct.

18 Q After the MOU was drafted and signed, you and Mr.
19 Rose did not change or add terms to it; correct?

20 A Correct.

21 Q And at some point while Ms. Cooley was drafting the
22 decree, I believe the battery died on her laptop. Is that
23 right?

24 A Correct.

25 Q And after that happened with the MOU in hand, you,

1 Ms. Cooley, Mr. Rose and Ms. McConnell went to another
2 office; correct?

3 A Correct.

4 Q And did you and Mr. Rose drive to the other office
5 together?

6 A No.

7 Q During the transition to the new location, did you
8 and Mr. Rose speak on the phone to one another?

9 A No.

10 Q Did you text one another?

11 A No.

12 Q Upon arrival at the, I'll call it the new location,
13 you and Mr. Rose did not speak to one another; correct?

14 A We did.

15 Q Nothing beyond pleasantries, correct?

16 A It was only about the children, correct.

17 Q It was only about...

18 A The children, correct.

19 Q Thank you. And while you were at that new
20 location, did you and Mr. Rose text one another?

21 A No.

22 Q It's accurate to state that you and Mr. Rose did
23 not discuss the terms of the MOU from the time it was signed
24 until the time the decree was signed, correct?

25 A Correct.

1 Q And it's also an accurate statement that between
2 signing the MOU and signing the decree of divorce, you and
3 Mr. Rose did not discuss modifying the terms of the MOU;
4 correct?

5 A Correct.

6 Q Now between signing the MOU and signing the decree
7 of divorce, you and Mr. Rose made no agreement to name you as
8 the irrevocable survivor beneficiary to his PERS retirement
9 account; correct?

10 A Correct.

11 Q Please turn to page 23 of the decree and let me
12 know when you're there.

13 A I'm here.

14 Q Please follow along while I read, starting at line
15 4. It is stipulated and therefore ordered adjudged and
16 decreed that Sarah Rose is hereby awarded as her sole and
17 separate property, free of any claim of David John Rose, sole
18 ownership of the following. Please skip down to line 24.

19 A Okay.

20 Q And follow along while I read. It's subsection B,
21 of paragraph B. One half of the community portion as defined
22 within Nevada law as articulated in Gemma v. Gemma, 105
23 Nevada 458, in parentheses 1989; and Fondi v. Fondi, 106
24 Nevada 856, in parentheses, 1990. Have I read it so far --
25 correctly so far?

1 A Yes, ma'am.

2 Q In David John Rose's Las Vegas Metropolitan Police
3 Department Public Employee Retirement System of Nevada
4 pension benefits, correct?

5 A Correct.

6 Q And said bene- pension benefits to be divided
7 pursuant to a qualified domestic relations order, in
8 parentheses, QDRO, Q-D-R-O, based upon a selection of option
9 two being made at the time of retirement so as to name Sara
10 Janeen Rose as the irrevocable survivor beneficiary of David
11 John Rose's pension benefits upon death to di- to divide said
12 retirement account. Did I read that correctly?

13 A Correct.

14 Q One of the terms agreed to at the mediation was
15 that you would receive a lump sum alimony payment, correct?

16 A Correct.

17 Q And you and David owned a home during the marriage,
18 yes?

19 A Yes.

20 Q And during the divorce proceedings the residence
21 was sold?

22 A Yes.

23 Q At the time of the mediation, did you and David
24 reach an agreement as to how the proceeds of the sale would
25 be divided?

1 A Yes.

2 Q Please turn to page 1 of the MOU. And let me know
3 when you're there.

4 A I'm here.

5 Q Do you see where it says number 2?

6 A Yes.

7 Q Okay. Please follow along while I read that
8 section, and let me know if it's correct. David shall
9 receive \$5000 from the approximate \$54,868.45 in the proceeds
10 of the marital residence and Sarah shall receive the
11 remainder. Of the remainder of the sale proceeds, \$22,434.22
12 shall be as and for lump sum non-modifiable alimony. The
13 parties agree that the alimony amount shall be tax deductible
14 to David and taxed as income to Sarah. Did I read that
15 correctly?

16 A Yes.

17 Q Alimony was negotiated during the -- the mediation,
18 correct?

19 A Yes.

20 Q And you understood as set forth in the MOU that you
21 would be given a one-time alimony payment of \$22,434.22;
22 correct?

23 A Correct.

24 Q Because it was non-modifiable, you were not
25 entitled to any additional alimony; correct?

1 A Correct.

2 Q The funds were to be paid from the net proceeds
3 from the sale of the residence. Is that right?

4 A Yes.

5 Q And as a result of the negotiated settlement
6 agreement, Mr. Rose received just \$5000 from the net
7 proceeds; correct?

8 A Correct.

9 Q Please turn to page 27 of the decree, and let me
10 know when you're there.

11 A I'm here.

12 Q And I would ask that you follow along as I read
13 starting on one. Accordingly it is stipulated and therefore
14 ordered adjudged and decreed that David shall pay Sarah
15 Janeen Rose the sum of \$22,792.97, and then that's spelled
16 out, as and for a lump sum non-modifiable alimony to be paid
17 within five days of executing the decree of divorce. The
18 parties acknowledge that David John Rose shall be utilizing
19 his share of the proceeds from the marital res- from the sale
20 -- from the marital residence currently held in trust with
21 Regina M. McConnell to satisfy the alimony obligation,
22 correct?

23 A Correct.

24 Q And other than the actual number, which is higher
25 by about \$358.75, the alimony provision in the MOU and the

1 decree were consistent; correct? If you need to go ahead and
2 take a look at the MOU to confirm that, please do so.

3 A Yes, I believe your calculations are correct.

4 Q So please correct me if I'm wrong. The only change
5 of material terms between the MOU and the decree of divorce
6 was the naming of you as the irrevocable survivor beneficiary
7 to Mr. Rose's PERS, correct?

8 MS. MASTEL: Objection, Your Honor. She's highlighted
9 various pieces and now asking my client to confirm that the
10 entire document only matches that. And she hasn't given her
11 an opportunity to go through the entire document.

12 THE COURT: Counsel.

13 MS. LUBRITZ: I can re- I'll withdraw and -- and
14 rephrase.

15 THE COURT: Thank you.

16 Q BY MS. LUBRITZ: If you would please take a look at
17 the award to you of assets and debts in the decree of
18 divorce.

19 A Do you know what page that's on?

20 Q It starts on page 23, line 4. And please let me
21 know when you've reviewed that portion of the decree.

22 A There are other terms added in the decree.

23 Q Not to the decree, to the award of property to you.

24 A Yeah, there's other decrees -- or, yeah.

25 Q Okay. What are those additions?

1 A On page 25, line 10, (f) all personal property and
2 jewelry in her possession, all of her personalities.

3 Q Okay.

4 A Is not stated on the MOU.

5 Q Okay. Other than that one addition, the award of
6 property to you in the MOU and the decree of divorce were
7 consistent; correct?

8 A I'm taking one more moment. If that's okay.

9 Q I'm sorry?

10 A I'm taking one more moment to triple-check.

11 Q Oh absolutely. Please...

12 A Is that okay.

13 Q ...take the time you need. I don't want to rush
14 you.

15 A Other than that, it is correct.

16 Q Okay. Thank you. At the time you signed the
17 decree of divorce, you knew that the provision awarding you
18 irrevocable survivor benefits to Mr. Rose's PERS was included
19 in the decree; correct?

20 A I did.

21 Q Now it was agreed in the MOU that Mr. Rose would
22 pay you child support, correct?

23 A Correct.

24 Q And it was ordered in the decree of divorce?

25 A Yes.

1 Q Do you recall after the decree was signed, a few
2 days after if was signed that Mr. Rose delivered a check to
3 you for one half of his monthly child support obligation?

4 A I do.

5 Q And do you recall that he advised you the other one
6 half would be sent after his next paycheck?

7 A I do.

8 Q The first payment was made after the decree was
9 filed. Does that sound right?

10 A Yes.

11 Q And do you remember what you said to Mr. Rose when
12 he delivered the check?

13 A Yes.

14 Q And what was that?

15 A I said, if you want me to sign another de- a new
16 decree, it's gonna cost you.

17 Q Okay.

18 MS. LUBRITZ: What I -- what I'd like to do, Your
19 Honor, is play the audio recording right now. The witness's
20 testimony is inconsistent with the recording that was made.

21 MS. MASTEL: Your Honor, I objected to it last time.
22 And the Court allowed it in. It was produced certainly well
23 before this trial; however, it was produced outside of the
24 time frame for discovery, which has never been reopened. And
25 so I would, you know, record the same objection on the basis

1 that it was improperly and untimely produced. But I
2 understand the Court allowed it in last time. If the Court's
3 gonna allow it in this time, then...

4 THE COURT: Well, she's...

5 MS. LUBRITZ: If I -- if I may...

6 THE COURT: ...she's asking for it to come in for
7 impeachment purposes at this point in time, and so I'll
8 permit it to come in.

9 MS. MASTEL: Okay.

10 MS. LUBRITZ: Thank you, Your Honor. Would it be easier
11 for the court system to play it from your copy, or would you
12 like me to play it from my computer?

13 THE COURT: You have to play it from our copy because we
14 have to put it into JAVS.

15 MS. LUBRITZ: Okay.

16 THE COURT: Right?

17 THE CLERK: I can do it from here.

18 THE COURT: Yeah.

19 MS. LUBRITZ: Thank you.

20 THE CLERK: It should be loud enough.

21 MS. LUBRITZ: If you would please turn it up as loud as
22 you can. The beginning part is sort of intelligible. But
23 the provision that I need or the portion that I need for
24 impeachment purposes is loud and clear.

25 THE CLERK: Is that the Rose audio?

1 MS. LUBRITZ: Yes, ma'am.

2 BEGIN AUDIO TAPE BEING PLAYED INTO THE RECORD:

3 MR. ROSE: Here's the half, like I said, the other half

4 day after I get paid.

5 MS. ROSE: Just to let you know (indiscernible) my new

6 signature is gonna cost ya.

7 MR. ROSE: What?

8 MS. ROSE: I'm sorry that you didn't read the

9 declaration that you (indiscernible). You're always

10 (indiscernible)...

11 END AUDIO TAPE BEING PLAYED INTO THE RECORD.

12 MS. LUBRITZ: Thank you.

13 Q BY MS. LUBRITZ: Did you hear, just to let you

14 know, my new signature is gonna cost you -- cost ya? I'm

15 sorry that you didn't read the declaration that you signed?

16 A Yes.

17 Q And the declaration that you mentioned, that was

18 the decree of divorce; correct?

19 A Yes.

20 MS. LUBRITZ: I have nothing further of this witness.

21 THE COURT: Thank you.

22 Do you want to cross her now?

23 MS. MASTEL: Yes, Your Honor. I'll -- I'll -- I'll...

24 THE COURT: Proceed.

25 MS. MASTEL: ...do brief cross-examination.

CROSS-EXAMINATION

2 BY MS. MASTEL:

3 Q Sarah, I'm gonna ask you to open both exhibit books
4 so you can look at the MOU at the same time you look at the
5 decree of divorce. And we're gonna go through some cert-
6 certain things in both of those documents. Okay? Now if you
7 turn to, let's see, page 5 of your decree and lines 7 through
8 14, which Ms. Lubritz's already read into the record, it
9 talks about the parenting plan; correct?

10 A Correct.

11 Q And that you're stipulating to incorporate that
12 parenting plan into...

13 MS. LUBRITZ: Your Honor, I would...

14 Q BY MS. MASTEL: ...your decree.

15 MS. LUBRITZ: ...object at this time. Counsel, should
16 not be leading her witness.

17 MS. MASTEL: This is foundation question, Your Honor.

18 THE COURT: So this is foundation, I'll -- I'll overrule
19 the objection. But do come to your regular question...

20 MS. MASTEL: Okay.

21 THE COURT: ...soon.

22 MS. MASTEL: Yes, Your Honor.

23 Q BY MS. MASTEL: Was that agreement in the MOU?

24 A No.

25 Q And if you...

1 MS. LUBRITZ: And I'm sorry, counsel. What page and
2 line, please?

3 MS. MASTEL: Page 4, lines -- sorry, I looked past it
4 already, lines 7 through 14.

5 THE COURT: You said page 4 or 5?

6 MS. MASTEL: Four.

7 Q BY MS. MASTEL: And if you turn to page 10, lines
8 -- line 15, through page 11, line 12, can you summarize for
9 the Court what the provision states?

10 MS. LUBRITZ: Your Honor, I would ask -- strike that.
11 The decree itself is the best evidence. And I would object
12 to it being summarized.

13 MS. MASTEL: I'm -- I'm -- that's fine. I'm -- I'm
14 trying to avoid spending time reading three paragraphs into
15 the record. But I will if the Court would prefer it done
16 that way.

17 THE COURT: Go ahead and ask your question again.

18 MS. MASTEL: I asked if she could -- or if the Court
19 will allow indulge in leading questions just to say this is
20 what this document says so I don't have to read every piece
21 of language into the -- the decree.

22 MS. LUBRITZ: I would object, Your Honor, she's then
23 testifying.

24 MS. MASTEL: I'll read it all into the decree the way
25 Ms. Lubritz did.

1 THE COURT: I guess you'll need to do that.

2 MS. MASTEL: Okay.

3 Q BY MS. MASTEL: Now if you look at that, I'm gonna
4 read it into the record; and you tell me if I read it
5 correctly. Okay.

6 The Court finds that David John Rose's gross
7 monthly income is \$8671. Twenty-nine percent of David John
8 Rose's gross monthly income is \$2514.59. David John Rose's
9 gross monthly income falls into the fourth tier of the
10 presumptive maximum amounts of child support, NRS 125B.070,
11 effective July 1st, 2017, through July thir- June 30th, 2018.
12 And the presumptive maximum amount of David John Rose may be
13 required to pay per month, per child is \$905 or \$2715 for
14 three children.

15 The Court finds that Sarah Janeen Rose's imputed
16 gross monthly income is \$2166. Twenty-nine percent of Sarah
17 Janeen Rose's gross monthly income is \$628.14. Sarah Janeen
18 Rose's gross monthly income falls in the first tier of the
19 presumptive maximum amounts of child support, NRS 125B.070,
20 effective July 1st, 2017, through June 30th, 2018. And the
21 presumptive maximum amount of Sarah Janeen Rose or Sarah Jean
22 Rose may be required to pay per month per child is \$696 or
23 \$2088 for three children.

24 Twenty-nine percent of David John Rose's gross
25 monthly income \$2514 minus 29 percent of Sarah Janeen Rose's

1 gross monthly income 628 is \$1886. Is that correct? Did I
2 read that correctly?

3 A Correct.

4 Q Is that anywhere in the memorandum of
5 understanding?

6 A No, ma'am.

7 Q Okay. Do you consider that to be an important
8 provision for setting child support?

9 A Yes.

10 Q Now if you'll turn on page 11 to line 18, you'll
11 actually -- I'll read from 14 to 18. It says it is
12 stipulated and therefore ordered adjudged and decreed that
13 David John Rose shall pay child support to Sarah Janeen Rose
14 at the rate of \$1886 per month, commencing April 1st, 2017;
15 correct?

16 A Correct, that's what it says.

17 Q Okay. And on page 2 in the memorandum of
18 understanding, it says that David shall pay 1886 per month
19 for child support effective April 1st, 2018; correct?

20 A Correct.

21 Q Do you believe the difference in those two dates is
22 important?

23 A Very.

24 Q Okay. Now if you turn to page 12, line 11 through
25 21, it says it is stipulated and therefore ordered adjudged

1 and decreed that David John Rose shall continue to provide
2 medical support for the child if available as a benefit of
3 employment and is reasonable in cost and accessible.

4 Medical support includes, without limitation,
5 coverage for health and care under a plan of insurance that
6 is reasonable in cost and accessible, including without
7 limitation, the payment of any premium, copayment, deducti-
8 or deductible and the payment of medical expenses; correct?

9 A Correct.

10 Q Is that in your MOU?

11 A No, ma'am.

12 Q Is that an important provision?

13 A Yes.

14 Q Okay. If you'll turn to page 13, line 21 through
15 28, it is stipulated and therefore ordered adjudged and
16 decreed that pursuant to NRS 125B.080(7), the parties shall
17 equally bear all of the children's unreimbursed medical
18 expenses, including psychiatric, orthodontic, dental and
19 optical care, which are not covered by said insurance.
20 Parties will abide by the 30/30 rule for unreimbursed medical
21 expenses as follows. Did I read that right?

22 A Yes.

23 Q Is that in your MOU?

24 A No.

25 Q Do you think that's an important provision?

1 A Very.

2 Q Now if you turn to page 17, line 17 through 27. It
3 is further ordered adjudged and decreed the parties shall
4 alternate the dependent tax exemption, such that David John
5 Rose will claim the dependent tax exemption for the child
6 David James Rose on his income tax beginning with 2018 and
7 every year thereafter. And Sarah Janeen Rose will claim the
8 dependent child tax exemption for the child Carson David Rose
9 on her income taxes beginning with 2018 and every year
10 thereafter.

11 The parties shall alternate the dependent tax
12 deduction for the child, it continues to the next page, Lily
13 Paige Rose, such that David John Rose will claim Lily Paige
14 Rose in odd years and Sarah Janeen Rose will claim Lily Paige
15 Rose in even years. Is that correct?

16 A Correct.

17 Q Is that listed in your MOU?

18 A No.

19 Q Do you consider that an important provision?

20 A Yes.

21 Q Now if you turn to page 20 of your decree, on line
22 24, it says the sum of \$5000 from the approximate \$55,585.95
23 from the proceeds of the sale of the marital residence;
24 correct?

25 A Correct.

1 Q Does that number match the number in your MOU?

2 A It does not.

3 Q What is the number in the MOU?

4 A \$54,868.45.

5 Q Now if you turn to page 21, line 15, it says said
6 pension benefits to be divided pursuant to a qualified
7 domestic relations order; correct?

8 A Correct.

9 Q And then on line 22, the parties shall engage in
10 the services of Shann D. Winesett of Las Vegas QDRO and then
11 his location; correct?

12 A Correct.

13 Q Are either of those terms in your -- in your MOU?

14 A No.

15 Q Are they important?

16 A Yes.

17 Q Okay. Now if you turn to page 22, line 21, as such
18 David John Rose shall have six months to refinance the loan
19 -- said loan removing Sarah Janeen Rose's name from loan --
20 the said loan obligation. Is that in your MOU?

21 A No.

22 Q Is that important?

23 A Yes.

24 Q Okay. Page 25, line 26, any and all debts incurred
25 solely by David John Rose as of the parties' separation,

1 which occurred on February 21st, 2017. Is that correct?

2 A Correct.

3 Q Okay. Is that in your MOU?

4 A No.

5 Q Okay. Now there's a matching provision for you on

6 page 26, line 14; correct?

7 A Correct.

8 Q Is that in your MOU?

9 A No.

10 Q If you turn to page 27, we'll start with line 2.

11 David shall pay Sarah Janeen Rose the sum of \$22,792.97 as

12 and for a lump sum, non-modifiable alimony to be paid within

13 five days of executing the decree of divorce. Is that

14 correct?

15 A Correct.

16 Q Is the length of time David had to pay you in the

17 MOU?

18 A I'm reading it over.

19 Q Okay.

20 A No.

21 Q Do you think that's an important term?

22 A Yes.

23 Q Is the provision regarding the ability to change

24 your name in the MOU?

25 A No.

1 Q Is it in the decree?
2 A Yes.
3 Q If you go to page 30 of your decree, the title on
4 line 1 is Property Acquired in the Future to be Separate
5 Property; correct?
6 A Correct.
7 Q And the title on line 16 is Right to Dispose of
8 Property by Will, correct?
9 A Correct.
10 Q Are either of those terms in your MOU?
11 A No.
12 Q Are those important terms for your post-divorce
13 rights and obligations?
14 A Yes.
15 Q If you turn to page 31, the title on that page is
16 Waiver of Inheritance Rights; correct?
17 A Correct.
18 Q Is that term in your memorandum and understanding?
19 A No.
20 Q Do you consider that an important term to define
21 your rights and obligations?
22 A Absolutely.
23 Q Okay. If you turn to page 32, the title on line 1
24 is Mutual Release of Obligations and Liabilities; correct?
25 A Correct.

1 Q And the title on line 21 is Execution of Necessary
2 Documents.

3 A Correct.

4 Q Are either of those provisions in your MOU?

5 A No.

6 Q Do you consider those important provisions to
7 define your rights and obligations?

8 A Yes.

9 Q So is it fair to say that the decree includes
10 several material terms that are not listed in your MOU?

11 A Yes.

12 MS. LUBRITZ: Objection, Your Honor, that misstates the
13 testimony.

14 MS. MASTEL: There's...

15 MS. LUBRITZ: The questions previously asked by Ms.
16 Mastel was, are those important as opposed to material. And
17 I would ask that the Court take judicial notice of the
18 difference between those two words.

19 THE COURT: Do you want to rephrase your question?

20 MS. MASTEL: I don't think I need to. I'm allowed to
21 ask that as a follow-up question. I wasn't stating her
22 testimony. I asked if she felt those were material terms.

23 THE COURT: Fine. I will note for the record that
24 there's a difference in the wording. But she's -- she's
25 permitted to ask that question.

1 MS. LUBRITZ: Thank you.

2 THE WITNESS: Yes.

3 Q BY MS. MASTEL: Okay. Now if you turn to page 36
4 of your decree, there's a title on line 5 that talks about
5 omitted property; correct?

6 A Correct.

7 Q And that provision states, it is stipulated and
8 therefore ordered adjudged and decreed that in the event any
9 community property has been omitted from this decree of
10 divorce that would have been community property or otherwise
11 jointly held property under the law applicable as of the date
12 hereof, the concealing or possessor or party will transfer or
13 convey to the other party at the other parties election, A,
14 the full market value of the other party's interest on the
15 date of this decree of divorce plus statutory interest
16 through and including the date of transfer or conveyance; B,
17 the full market value of the other party's interest at the
18 time that the party discovers that he or she has an interest
19 in such property plus statutory interest through and
20 including the date of transfer or convey- conveyance; or, C,
21 an amount of the omitted property equal to the other party's
22 interest therein if it is reasonably susceptible to division;
23 correct?

24 A Correct.

25 Q Now is it your understanding of that language that

1 that presumes that there may have been property that wasn't
2 included?

3 A Yes.

4 Q Now if you will pull up the memorandum of
5 understanding again, Ms. Lubritz read you a sentence within
6 that -- the preamble, the preliminary statement of this
7 document; correct?

8 A Correct.

9 Q And she read it correctly, correct?

10 A Correct.

11 Q Okay. I'm gonna read you the next sentence in that
12 paragraph. Okay?

13 A Okay.

14 Q The parties agree however that counsel for Sarah
15 shall draft a final formal agreement incorporating the terms
16 herein. That agreement shall be ratified by the Court but
17 shall not merge and shall retain it's separate character as a
18 (indiscernible) contract, correct?

19 A Correct.

20 Q Is it your understanding then that the memorandum
21 of understanding is the final separate contract?

22 MS. LUBRITZ: Objection, Your Honor, my -- my...

23 MS. MASTEL: Asking her...

24 MS. LUBRITZ: I withdraw that. It's a fair question.

25 THE COURT: You may answer the question.

1 THE WITNESS: I don't understand.

2 Q BY MS. MASTEL: Is it -- based on that sentence, do
3 you believe the memorandum was intended to be the fin- final
4 contract between you and David?

5 A No.

6 Q Okay. Was a separate contract other than the
7 decree prepared or signed?

8 A No.

9 Q Now Ms. Lubritz asked you to testify about the
10 discussions during mediation about the survivor benefits,
11 correct?

12 A Correct.

13 Q And your testimony, let's see if you can word -- if
14 this refreshes your recollection, last time was that the
15 mediator brought up the concept of survivor benefits;
16 correct?

17 A Correct.

18 MS. LUBRITZ: May I please have a line and page number
19 to the transcript for that please?

20 MS. MASTEL: Absolutely. Let's see. Page 105, lines 2
21 through 4.

22 MS. LUBRITZ: Thank you.

23 MS. MASTEL: Mm-hm.

24 Q BY MS. MASTEL: And it was your testimony that
25 there was no final agreement on that term at all, correct?

1 A Correct.

2 MS. LUBRITZ: And again, Your Honor...

3 Q BY MS. MASTEL: Page 112,

4 MS. LUBRITZ: ...you've already -- you've already...

5 Excuse me.

6 You've already admonished counsel not to lead. And

7 I would ask that you would admonish her again, please.

8 THE COURT: Thank you.

9 Counsel, be careful.

10 MS. MASTEL: Okay.

11 THE COURT: Who, what, when, where, how...

12 MS. MASTEL: Yeah.

13 THE COURT: ...why, define...

14 MS. MASTEL: Yes.

15 THE COURT: ...describe.

16 MS. MASTEL: I'm -- I'm...

17 THE COURT: You know those words.

18 MS. MASTEL: I'm structuring the question in my head.

19 THE COURT: Okay.

20 Q BY MS. MASTEL: Can you explain the -- the events

21 surrounding the survivor benefits during the mediation?

22 MS. LUBRITZ: The -- the specifics of the mediation are

23 confidential in nature. And so I would ask that the answer

24 be limited to anything other than the specifics.

25 MS. MASTEL: Your Honor, the point at which they brought

1 the MOU is in a contract and the terms and whether or not the
2 survivor benefits were part of that, they waived any
3 confidentiality to that mediation because my client has to be
4 able to testify to what happened to be able to discuss
5 whether or not the survivor benefits were approp-
6 appropriately included in the decree. That is the theme of
7 their case.

8 MS. LUBRITZ: And I would note the last time that we
9 were before the Court, before Judge Moss, counsel made the
10 very objection that I just made. And...

11 MS. MASTEL: I made the objection...

12 MS. LUBRITZ: Excuse me.

13 MS. MASTEL: ...to hearsay.

14 MS. LUBRITZ: I'm sorry. Can I finish, please?

15 THE COURT: Mm-hm.

16 MS. LUBRITZ: Thank you. But counsel made the very same
17 objection and that the Court -- that I -- that I was required
18 to rephrase my question so that it did not include the
19 specifics of what was discussed.

20 MS. MASTEL: That's inaccurate, Your Honor. My
21 objection was to hearsay because my client said, the mediator
22 said to us. And I objected to her making the specific
23 statement. I made no objection based on the confidentiality.

24 MS. LUBRITZ: That is correct. And I would renew my --
25 I so I withdraw that portion of my statement. But I do

1 request that the specific terms of the confidential mediation
2 be excluded from testimony. The best evidence is the
3 memorandum of understanding.

4 MS. MASTEL: And, Your Honor, parol evidence is
5 appropriate. They've waived confidentiality because the
6 question is whether or not the term existed and was part of
7 the discussion. If -- I -- I agree that hearsay is
8 inappropriate. And I will -- I would happily have the Court
9 caution my client about hearsay again because it did come up
10 last time. However, they have brought this issue before the
11 Court; and therefore, this issue needs to be openly
12 addressed.

13 THE COURT: I'm gonna overrule your objection. She
14 needs...

15 MS. LUBRITZ: Very well.

16 THE COURT: ...to be able to make comment about what she
17 wit- witnessed and -- and the validity of her statements are
18 gonna be probably in opposition or in tandem with your
19 client's deposition on the same topic, so.

20 MS. LUBRITZ: Understood, Your Honor.

21 Q BY MS. MASTEL: So, Sarah, would you describe the
22 events surrounding the survivor benefits during the
23 mediation?

24 A During the first portion of the mediation where
25 both Mr. Rose, his counsel, myself, my counsel and the

1 mediator were at the conference table at the beginning, we
2 were discussing the portion of retirement and what I was
3 entitled to. And what I heard by the mediator was that...

4 MS. LUBRITZ: Objection, Your Honor, it's hearsay.

5 MS. MASTEL: She can testify to her understanding of
6 what she heard.

7 MS. LUBRITZ: It's not what she said.

8 THE COURT: She...

9 MS. MASTEL: She can't testify to what...

10 THE COURT: She didn't say...

11 MS. MASTEL: She said, I heard.

12 THE COURT: ...it's my understanding.

13 MS. MASTEL: Right.

14 THE WITNESS: I'm sorry.

15 THE COURT: You may not quote the mediator, but you may
16 say what you understood her to mean.

17 THE WITNESS: It was my understanding that I was
18 entitled to PERS because I was a first responder spouse. And
19 that was part of retirement.

20 Q BY MS. MASTEL: What was part of retirement?

21 A PERS.

22 Q Okay. PERS -- well, when you say PERS, are you
23 including the survivor benefits?

24 MS. LUBRITZ: Objection, Your Honor, again.

25 MS. MASTEL: It's not leading.

1 THE COURT: Well, it is if you're gonna give her an idea
2 of what it means.

3 MS. LUBRITZ: Correct.

4 MS. MASTEL: I'm asking her to explain for the Court
5 because the issue is the survivor benefits.

6 THE COURT: There you go.

7 Answer that question.

8 THE WITNESS: Yes.

9 Q BY MS. MASTEL: Okay. So what happened after Judge
10 Forsberg brought up that concept?

11 A There was no discussion on it. It was just a
12 statement that was made.

13 Q Okay.

14 A And -- and then we moved on.

15 Q Okay. Now Ms. Lubritz also asked you about
16 modifications to language in the decree and what your
17 expectations would have been in having those changes made.
18 Can you explain for the Court what you would have expected?

19 A I would have expected a copy of the draft prior to
20 signing so that I could read it myself, as well as being
21 pointed out if there was anything special, I guess, or
22 anything that I wouldn't understand normally, I would expect
23 to be pointed out by my counsel.

24 Q Now were you given an opportunity to read the
25 decree before you signed it?

1 A Twice.

2 Q Okay. And did your counsel discuss it with you?

3 A Yes.

4 Q Okay. Now let's talk about the events surrounding

5 the video or the audio that was played. Can you explain to

6 the Court the -- the situation that that audio is from?

7 A That day I was extremely frustrated with Mr. Rose

8 because after two attempts of trying to collect the alimony,

9 as well as my portion of the house sales from his former

10 attorney's and from that trust, she denied me access to that

11 money and refused to give it to me because David, what she

12 told me.

13 Q Your understanding.

14 A My understanding is David instructed her not to

15 release any funds to me until after we had a new decree

16 signed.

17 Q And what did he want out of that new decree?

18 A He wanted the survivor benefits option removed.

19 Q Okay. Was -- at the time that those funds were

20 being inhel- withheld, to try and force you to sign a new

21 decree, were they overdue?

22 A Yes.

23 MS. MASTEL: I'll pass the witness, Your Honor.

24 THE COURT: Redirect.

25 ////

REDIRECT EXAMINATION

1
2 BY MS. LUBRITZ:

3 Q Do you recall the items that mi- strike that. Did
4 any of the items that Ms. Mastel detailed that were different
5 in -- that were not included in -- in the MOU but included in
6 the decree of divorce deal with irrevocable rights to
7 survivor benefits?

8 A No.

9 Q Do you recall testifying and -- do -- do you recall
10 testifying earlier that -- I want to say earlier, I mean at
11 the prior proceeding, that when the issue of survivor
12 benefits was discussed at the mediation, you said that you
13 wanted those survivor benefits in order to support the
14 children; correct?

15 A I do not recall.

16 Q And do you recall testifying that Dave said he
17 would provide for the children another way in the event of
18 his death?

19 A I do not recall.

20 Q Just to be clear, based upon your new test- based
21 upon your testimony just now...

22 MS. LUBRITZ: Brief indulgence, Your Honor.

23 Q BY MS. LUBRITZ: On that recording, you...

24 (Whereupon the video was trailed at

25 10:07:30 and resumed at 10:07:30.)

1 Q BY MS. LUBRITZ: ...David, just to let you know, my
2 new signature is gonna cost ya. I'm sorry that you didn't
3 read the declaration that you signed, correct?
4 A Correct.
5 Q And the -- there was nothing discussed during that
6 conversation about, you're trying to bully me into signing a
7 new decree and withholding money; correct?
8 A No, not during that conversation.
9 Q Okay. And in fact, nothing after that conversation
10 was ever presented to Mr. Rose consistent with that
11 testimony; correct?
12 A Can you...
13 Q I'll -- yeah, I'll rephrase that.
14 THE COURT: Yeah, please.
15 MS. LUBRITZ: I'll withdraw the question.
16 THE WITNESS: I'm sorry.
17 MS. LUBRITZ: It was -- it was...
18 THE COURT: I couldn't follow that one.
19 MS. LUBRITZ: It was super inartful. My apologies.
20 THE COURT: That's all right.
21 Q BY MS. LUBRITZ: Did you ever discuss with David --
22 strike that. Did you ever ask David why are you withholding
23 -- or why did you tell your lawyer to withhold my lump sum,
24 sum certain alimony until such time as I sign a new decree?
25 A I...

1 Q Did you ever have that conversation with him?
2 A I believe so, but I cannot recall.
3 Q Okay. So the answer is you don't recall, correct?
4 A I don't recall.
5 Q Because if you believe so, then you would recall;
6 right?
7 A It was several years ago. So asking...
8 Q That wasn't my...
9 A ...me to...
10 Q ...question. Please answer my question.
11 A ...so. If I believe so, then, yes.
12 Q Okay. How do you know -- what is the -- strike
13 that. What is the support for your statement that Mr. Rose
14 told his lawyer to withhold the money she held in trust until
15 such time as a new decree was signed, removing the survivor
16 benefit portion?
17 A Regina told me herself.
18 Q And tell me the events surrounding that
19 conversation. And by Regina, you mean Ms. McConnell?
20 A Correct, sign.
21 Q Thank you.
22 A When after the appro- five days had passed of us
23 signing the decree, I called her to schedule a time I could
24 come to her office to pick up the check. And she told me
25 that I was not allowed to do so. So because...

1 Q When you say, I was not allowed to do so...

2 A Because David had told her not to release the funds
3 until after we had a new decree signed.

4 Q Okay. And do you believe that Ms. McConnell was
5 under a legal and ethical obligation to provide you or pay to
6 you that lump sum, sum certain alimony within five days after
7 the signing of the decree?

8 MS. MASTEL: Objection, Your Honor, I think that calls
9 for expert testimony when she's asking if she has a legal and
10 ethical obligation.

11 THE COURT: Sustained.

12 Q BY MS. LUBRITZ: If Ms. McConnell said that to you
13 and actually withheld the alimony payment from you, would
14 that be in violation of the decree of divorce?

15 A Yes.

16 Q So is it your testimony that Ms. McConnell violated
17 the decree of divorce as it relates to that provision?

18 A Yes.

19 Q Did you file an ethics complaint?

20 A No.

21 Q Did you tell your lawyer to reach out to Ms.
22 McConnell?

23 A I do not...

24 Q Yes or no?

25 A ...recall.

1 Q Sorry?

2 A I do not recall.

3 Q Well, certainly that was a -- a very important
4 issue to you; right?

5 A Yes.

6 Q You wanted that money, right?

7 A Yes.

8 Q And you wanted that money within five days of the
9 signing of the decree, correct?

10 A Yes.

11 Q And based upon your testimony, Ms. McConnell said
12 she wasn't gonna give it to you because Dave told -- Dave --
13 Mr. Rose told her not to until such time as you signed a
14 revised decree of divorce; correct?

15 A Correct.

16 Q And you didn't bring that to the attention of your
17 lawyer?

18 MS. MASTEL: Objection, Your Honor, it misstates her
19 testimony.

20 THE COURT: It does.

21 MS. MASTEL: She said she doesn't recall a conversation.

22 THE COURT: She doesn't recall it.

23 THE WITNESS: Well, I...

24 Q BY MS. LUBRITZ: Go ahead.

25 MS. LUBRITZ: She...

1 MS. MASTEL: (Indiscernible).
2 MS. LUBRITZ: She understands. She can answer.
3 MS. MASTEL: It -- it misstates her testimony. The
4 question...
5 THE COURT: It...
6 MS. MASTEL: ...isn't appropriate.
7 MS. LUBRITZ: Then she can clarify it.
8 THE COURT: It does misstate her testimony.
9 Do you have something to add?
10 THE WITNESS: I do. The question that I understood that
11 you asked was if I asked my attorney to reach out to Ms.
12 O'Connell [sic]. And that I do not recall. But I did have a
13 conversation with my attorney about it.
14 Q BY MS. LUBRITZ: Okay.
15 THE COURT: Fair enough. Go ahead.
16 Q BY MS. LUBRITZ: And what did you discuss with your
17 attorney...
18 MS. MASTEL: Objection, Your Honor...
19 Q BY MS. LUBRITZ: ...on that issue?
20 MS. MASTEL: ...attorney-client privilege.
21 MS. LUBRITZ: That privilege was waived based upon her
22 testimony.
23 MS. MASTEL: It was not waived. She can say she...
24 MS. LUBRITZ: (Indiscernible).
25 MS. MASTEL: ...discussed something with her...

1 MS. LUBRITZ: I'm sorry.

2 MS. MASTEL: ...attorney. She can't get into the
3 specifics.

4 MS. LUBRITZ: I think it's -- I think it's germane.
5 They opened the door.

6 THE COURT: Is her attorney gonna be testifying here
7 today?

8 MS. LUBRITZ: Yes, Your Honor.

9 MS. MASTEL: Possibly.

10 MS. LUBRITZ: Potentially. In the event that...

11 THE COURT: So if you need to re-...

12 MS. LUBRITZ: ...she's not...

13 THE COURT: If you need to recall her for whatever
14 reason on a -- a rebuttal case, then you can go into it at
15 that time after we see what the attorney's gonna disclose.

16 MS. LUBRITZ: Very well. And in the event the attorney
17 does not testify, will I be allowed to recall Ms. Rose and
18 inquire about that conversation because I did not list Ms.
19 Cooley as a witness, nor did I subpoena her?

20 THE COURT: We'll see.

21 MS. LUBRITZ: Very well.

22 Q BY MS. LUBRITZ: The issue was significant enough
23 that you would have directed your attorney to reach out to
24 Ms. McConnell, correct?

25 MS. MASTEL: Objection, Your Honor, calls for

1 speculation. And she already said she doesn't recall what
2 she did.

3 THE COURT: Sustained.

4 You're asking the same question a different way.

5 Q BY MS. LUBRITZ: Did your attorney reach out to Ms.
6 McConnell on the issue of withholding the alimony payment?

7 MS. MASTEL: Objection, Your Honor, calls for
8 speculation. She's not the right witness to answer that
9 question.

10 Q BY MS. LUBRITZ: Did you see or get a copy of a
11 letter from your lawyer, Ms. Cooley, to Ms. McConnell
12 addressing the purported withholding of alimony until such
13 time as a new decree was signed?

14 A I do not recall.

15 Q That was a significant issue to you, correct?

16 A Correct.

17 Q Do you have an understanding as to the difference
18 between PERS and irrevocable survivor beneficiary rights?

19 A Do I have an understanding?

20 Q Yes, Your Honor. I'm sorry. Yes. Yes, ma'am.

21 A To the details of it, no.

22 Q Do you have an understanding as to whether or not
23 you were entitled to be named as the irrevocable survivor
24 beneficiary to Mr. Rose's PERS?

25 MS. MASTEL: Objection, Your Honor, calls for expert

1 testimony.

2 MS. LUBRITZ: I'm asking if she has an understanding as
3 to it.

4 MS. MASTEL: She's asking for an understanding of
5 technical detail of...

6 THE COURT: She can say if she has an understanding.

7 MS. MASTEL: Okay.

8 THE COURT: Do you?

9 THE WITNESS: A basic understanding, yes.

10 Q BY MS. LUBRITZ: And what...

11 THE COURT: Basic.

12 Q BY MS. LUBRITZ: ...is that understanding?

13 A That I'm entitled to it as a first responder spouse
14 -- former spouse.

15 Q When you say you're entitled to it, you're enti-
16 entitled to what?

17 A To survivor benefits.

18 Q And what is the basis of that understanding?

19 A That after Mr. Rose retires that -- and after he
20 dies after retirement, that a portion of his retirement would
21 come to me.

22 Q Beyond the portion of the PERS that was awarded to
23 you?

24 A It was not my understanding that they were two in
25 the same.

1 Q That they were what?

2 A Two of the same. Like, survivor benefits was under
3 PERS; and so it was all lumped together, which was under
4 retirement.

5 Q Now each of the -- so the difference -- strike
6 that. Each of the dif- the financial -- some of the items
7 that Ms. Mastel pointed out to you included the specific sum
8 certain, lump sum alimony payment; correct?

9 MS. MASTEL: Objection, Your Honor, vague. She doesn't
10 say where. I understand it's technical objection. But sh-

11 THE COURT: You may ask your question again.

12 If you don't remember then she'll point it out to
13 you.

14 THE WITNESS: Thank you.

15 Q BY MS. LUBRITZ: You recall that Ms. Mastel asked
16 you to look at the MOU regarding the dollar amount you were
17 to receive as lump sum, sum certain alimony; correct?

18 A Correct.

19 Q And you recall that she pointed out a number of --
20 an amount that you were to receive under the decree of
21 divorce, correct?

22 A Correct.

23 Q And the amount in the decree of divorce gave you
24 more than what was in the alimo- I'm sorry, in the MOU;
25 correct?

1 MS. MASTEL: Objection, Your Honor, misstates the...

2 THE WITNESS: You pointed it out, too.

3 MS. MASTEL: ...documents. We were talking about the
4 val- the proceeds from the marital residence, not the amount
5 of the alimony.

6 MS. LUBRITZ: I don't recall that, Your Honor.

7 THE COURT: Yes.

8 MS. LUBRITZ: Okay.

9 Q BY MS. LUBRITZ: Would you please take a look at
10 the amount that was awarded to you in the decree of divorce
11 as and for a lump sum, sum certain alimony?

12 A Do you recall what page?

13 Q Yeah, that would be...

14 THE COURT: I don't know why -- I -- I guess I'm
15 confused on why we're getting hypertechnical on that because
16 it says, he shall receive 5000 from the approximate...

17 MS. LUBRITZ: Right.

18 THE COURT: ..amount. It doesn't say sum certain.

19 MS. LUBRITZ: Well, no. On -- and I -- and I understand
20 that, Your Honor.

21 Q BY MS. LUBRITZ: On page 27 of the decree of
22 divorce, starting at line 1, it says, accordingly it is
23 stipulated and therefore ordered adjudged and decreed that
24 David shall pay Sarah Janeen Rose the sum of \$22,792.27;
25 correct?

1 MS. MASTEL: Objection, Your Honor, not right. It's 97
2 cents.
3 MS. LUBRITZ: I said 97 cents.
4 MS. MASTEL: You said 27 cents.
5 THE COURT: Okay. Fine. Let's...
6 Q BY MS. LUBRITZ: Okay. Twenty-two thousand...
7 THE COURT: Come on, you guys.
8 Q BY MS. LUBRITZ: ...seven hundred ninety-two
9 dollars and ninety-seven cents, correct?
10 A Correct.
11 Q Okay. And in the MO -- MOU, it says that you're
12 gonna receive \$22,434.22; correct?
13 A As part of the remainder of the sales.
14 Q Excuse me. Please answer my...
15 MS. LUBRITZ: I ask that her answer be...
16 THE WITNESS: Yes.
17 MS. LUBRITZ: ...stricken. And that she be...
18 THE COURT: It's stricken.
19 MS. LUBRITZ: ...instructed to answer my question.
20 THE COURT: Her answer is, yes. Go ahead.
21 MS. LUBRITZ: Thank you.
22 Q BY MS. LUBRITZ: So the amount awarded to you in
23 the decree of divorce was higher than the amount awarded to
24 you in the MOU, correct?
25 A Correct.

1 Q Now the survivor benefit -- ben- benefit to the
2 PERS is not included in the MOU, correct?
3 A Correct.
4 Q But it is included in the decree of divorce,
5 correct?
6 A Correct.
7 Q So that's an economic advantage to you, as well;
8 correct?
9 A Correct.
10 Q Is it fair to state that each of the financial
11 awards to you in the decree of divorce gave you more than
12 what was in the memorandum of understanding? Yes or no?
13 A The spec- the se- specific amounts, the 22, that --
14 is that the number that you're asking? Sorry, just...
15 Q No, ma'am.
16 A ...the question...
17 Q What I'm saying is, you're going to have an
18 economic advantage, if the decree is upheld, you'll have an
19 economic advantage based upon what is in the decree of
20 divorce versus what is in the memorandum of understanding;
21 correct?
22 A Specifically to alimony?
23 Q No, ma'am.
24 A Yes.
25 Q I'm talking about the survivor benefit provision.

1 A Yes, sorry.

2 Q So you will derive an economic benefit if the
3 decree of divorce is upheld versus if the memorandum of
4 understanding is upheld, correct?

5 A Correct.

6 Q Now when Ms. Mastel was going through certain
7 provisions that differed or that were included in the decree
8 of divorce that -- what were not included in the MOU, isn't
9 it true that the decree of divorce says that the issues
10 resolved by the MOU was child support, division of assets and
11 debts, marital waste claims, alimony and attorney's fees and
12 costs; correct?

13 A Can you give me the page that you're reading from?

14 Q Yes, I'm looking at page 4 of 39.

15 A Thank you.

16 Q You're welcome.

17 A I'm there.

18 Q Okay. So the issues that were resolved by the MOU
19 were child support, division of assets and debts, marital
20 waste claims, alimony and attorney's fees and costs; correct?

21 MS. MASTEL: Objection, Your Honor, misstates the
22 decree. It says including, but not limited to.

23 MS. LUBRITZ: That's fine.

24 Q BY MS. LUBRITZ: Including, but not limited to,
25 child support, division of assets and debts, marital waste

1 claims, alimony and attorney's fees and costs; correct?

2 A I'm sorry. I thought you said page 4.

3 Q Yes.

4 THE COURT: It's at the bottom.

5 THE WITNESS: Oh.

6 THE COURT: The last two lines.

7 MS. MASTEL: Line 26.

8 THE WITNESS: Sorry. Correct.

9 Q BY MS. LUBRITZ: What other issues were addressed
10 in the MOU other than child support, division of assets and
11 debts, marital waste claims, alimony and attorney's fees and
12 costs?

13 A Our dog.

14 Q And the dog was deceased by the time you signed the
15 decree, correct?

16 A False.

17 Q Okay. The dog died thereafter?

18 A Several years after.

19 Q Okay. Anything else?

20 A I'm just gonna cross-reference.

21 Q Please take your time.

22 A In the -- the decree, the paragraph that you were
23 reading also does not include the parties shall follow and be
24 subject to the behavior order.

25 Q That the parties will what? I'm sorry?

1 A Shall follow and be subject to Department 1's
2 behavior order, number 6.

3 Q Okay. What else?

4 A And it does not -- that paragraph does not state
5 number 9.

6 Q What paragraph, please?

7 A The paragraph on page 4 on line 26...

8 Q Yes.

9 A ...that you're having me check.

10 Q Yes.

11 A Does not state number 9 of the MOU, each party
12 acknowledges that they have been represented by counsel in
13 the negotiation and preparation of this agreement and
14 voluntarily enters the agreement with full understanding of
15 its terms. This agreement may be executed in counterparts.

16 Q And anything else?

17 A (Indiscernible) division of assets. And that's all
18 that I am seeing.

19 Q And none of the issues that you just raised deal
20 with the option to irrevocable survivor beneficiary rights,
21 correct?

22 A Correct.

23 Q Okay. Do you have an opinion as to why Mr. Rose
24 signed the decree of divorce?

25 MS. MASTEL: Objection, calls for speculation.

1 MS. LUBRITZ: I asked if she has an opinion.
2 THE COURT: She has an -- she can say her own opinion.
3 THE WITNESS: My opinion is he wanted to be divorced.
4 Q BY MS. LUBRITZ: I'm sorry. Yes or no, do you
5 have...
6 A Yes.
7 Q ...that understanding?
8 A Sorry.
9 Q And what is your understanding?
10 A That he wanted to finalize the divorce.
11 Q And is it then your understanding that in order to
12 sign -- I'm sorry, in order to be divorced, he was willing to
13 give you the sur- the irrevocable survivor beneficiary
14 rights?
15 A I'm sorry. Can you restate the question?
16 Q Sure.
17 A Or say it again, sorry.
18 Q Sure. Is it your understand- strike that. Is it
19 your belief that Mr. Rose wanted the divorce decree to be
20 signed that day?
21 A Yes.
22 Q And that he was willing to give you the irrevocable
23 survivor beneficiary rights in order to have the decree
24 signed that day?
25 A No.

1 MS. LUBRITZ: I have nothing further.

2 THE COURT: Okay.

3 MS. MASTEL: Just very briefly, Your Honor.

4 THE COURT: It's so brief, I hardly even notice.

5 MS. MASTEL: Yes, absolutely. To start, I would ask the
6 Court, just for sake of ease, take judicial notice that the
7 decree of divorce was filed April 11th, 2018; and the motion
8 to set it aside was filed April 25th, 2018.

9 THE COURT: Okay.

10 MS. MASTEL: That same year.

11 RECROSS EXAMINATION

12 BY MS. MASTEL:

13 Q So, Sarah, you heard those two dates. Can you tell
14 me how many days after the decree was signed you were
15 supposed to get the lump sum payment?

16 A Five.

17 MS. LUBRITZ: Objection, Your Honor, that's been asked
18 and answered.

19 THE COURT: Right.

20 MS. MASTEL: It's foundation.

21 THE WITNESS: Five.

22 MS. LUBRITZ: It's been asked and answered.

23 MS. MASTEL: Okay.

24 Q BY MS. MASTEL: And so if the decree was -- was
25 filed on April 11th, what was the drop date for that -- those

1 funds?

2 A I don't remember.

3 Q Okay. You testified it was five days after the
4 decree was filed that you...

5 MS. LUBRITZ: I'm gonna ask that...

6 Q BY MS. MASTEL: ...were supposed...

7 MS. LUBRITZ: ...she...

8 Q BY MS. MASTEL: ...to get those funds.

9 MS. LUBRITZ: ...continue to stop leading her client.

10 THE COURT: I can do the math on that.

11 MS. MASTEL: Okay.

12 THE COURT: So five days plus April 11. Go ahead.

13 Q BY MS. MASTEL: So was there a substantial amount
14 of time between when you learned that you were not getting
15 those funds and the date that Mr. Rose filed his motion to
16 set aside the decree?

17 A Yes.

18 MS. LUBRITZ: Objection as to the word substantial.
19 That is...

20 MS. MASTEL: I...

21 MS. LUBRITZ: ...subjective.

22 MS. MASTEL: I'll rephrase.

23 THE COURT: Please do.

24 Q BY MS. MASTEL: Was it nine days after you were
25 supposed to receive those funds that Mr. Rose filed?

1 A He filed on the 25th, correct?

2 Q Mm-hm.

3 A That's more than nine days.

4 Q Well, it -- okay. So it was...

5 A Fourteen.

6 Q Fourteen days from the 11th, which means it was

7 nine days from when you were supposed...

8 MS. LUBRITZ: Objection, Your Honor...

9 Q BY MS. MASTEL: ...to receive the funds.

10 MS. LUBRITZ: ...counsel is leading and is now

11 testifying.

12 THE COURT: Sustained.

13 MS. MASTEL: Sorry.

14 MS. LUBRITZ: I would ask that again the Court admonish

15 Ms. Mastel because it -- this is a continuing issue.

16 THE COURT: As I stated at the beginning, and one

17 counsel told me it was not gonna happen on her part, there's

18 gonna be a lot of objections in this hearing. So please both

19 of you be mindful of the questions you ask and how you ask

20 them and what stage of the trial you're in. You are on cross

21 of your own witness.

22 MS. MASTEL: Yes.

23 THE COURT: So you don't get to ask leading questions.

24 MS. LUBRITZ: And -- and so it's understood, the

25 objections that I'm raising are continuing objections based

1 upon the form of the questions asked by Ms. Mastel.
2 THE COURT: I understand, counsel.
3 MS. LUBRITZ: Thank you.
4 THE COURT: I didn't say you didn't have a right to do
5 it. I just said it was gonna happen.
6 MS. LUBRITZ: Understood, Your Honor.
7 Q BY MS. MASTEL: If I represent to you that it was
8 nine days between of when you were supposed to receive the
9 funds and then...
10 MS. LUBRITZ: Objection, Your Honor, it's leading.
11 She's...
12 THE COURT: Sustained.
13 MS. MASTEL: It's...
14 MS. LUBRITZ: ...suggesting the answer.
15 MS. MASTEL: I'm not...
16 THE COURT: (Indiscernible)...
17 MS. MASTEL: ...suggesting the answer. I'm setting up
18 the form of a question. I wasn't even able to finish it.
19 MS. LUBRITZ: She didn't need to.
20 THE COURT: Counsel, it sounded like you were going to
21 suggest the answer in your question.
22 MS. MASTEL: I -- I...
23 THE COURT: I don't know what your question is. But it
24 sounds like it starts off that way.
25 Q BY MS. MASTEL: Based on the dates that have been

1 discussed, do you believe there was a substantial amount of
2 time for you to address the issue of the alimony payment
3 between counsel?

4 MS. LUBRITZ: Again, objection as to the word
5 substantial. It is subjective.

6 THE COURT: Sustained.

7 MS. MASTEL: How -- I asked if she believed it was
8 substantial. I can ask if she thi- considers -- I...

9 MS. LUBRITZ: The Court sustained it.

10 THE COURT: Let's -- I -- I'm sustaining that.

11 Q BY MS. MASTEL: Do you believe there was sufficient
12 time to address the issue between counsel before Mr. Rose
13 filed his motion to set aside?

14 A Yes.

15 Q Do you believe if Mr. Rose had waited longer to
16 file, it was possible to have had that issue resolved before
17 he filed?

18 A We filed.

19 Q No, his -- I'm sorry. Do you believe that if Mr.
20 Rose had waited longer to set aside the decree, that would
21 have given your counsel more time to address the alimony?

22 THE COURT: That -- that -- that just...

23 MS. MASTEL: Okay.

24 THE COURT: ...is a question that doesn't really -- I
25 mean, that's just...

1 MS. MASTEL: Okay.

2 MS. LUBRITZ: I was withholding my objection just...

3 THE COURT: I get it. I'm gonna make it for you.

4 MS. LUBRITZ: That's what I thought.

5 THE COURT: I mean, it's just -- it's just common sense.

6 If he waited longer, she would have more time.

7 MS. MASTEL: Okay.

8 THE COURT: Go ahead.

9 MS. MASTEL: I think I'm done, Your Honor.

10 MS. LUBRITZ: A couple questions, Your Honor.

11 **FURTHER REDIRECT EXAMINATION**

12 **BY MS. LUBRITZ:**

13 Q Would there have been any amount of time from the

14 time of the signing of the decree until -- strike that.

15 Would there have been any amount of time that -- that had

16 gone by that you would have agreed to remove the -- to revise

17 the decree of divorce to remove awarding you the survivor

18 benefits?

19 MS. MASTEL: Objection, calls for speculation.

20 MS. LUBRITZ: It's her opinion.

21 THE COURT: It's her opinion.

22 MS. MASTEL: Yeah, but she -- there's -- there could

23 have been negotiations. There could have been any number of

24 things that would have potentially...

25 MS. LUBRITZ: Counsel's now testifying, Your Honor.

1 MS. MASTEL: ...resulted in her...
2 MS. LUBRITZ: You sustained the objection.
3 MS. MASTEL: It's just...
4 MS. LUBRITZ: I -- I mean, you overruled the objection.
5 THE COURT: I did.
6 Q BY MS. LUBRITZ: Do you need me...
7 A Can you...
8 Q ...to ask you the...
9 A ...repeat the question?
10 Q ...question again?
11 A Yes, ma'am.
12 Q Is there any amount of time that would have passed
13 where you would've agreed to revise the decree and remove the
14 award to you of option to irrevocable survivor beneficiary
15 rights? Yes or no?
16 A Is that a two-part question?
17 Q No.
18 THE COURT: No. Between now and eternity or between the
19 time of the filing of the decree and eternity, was there a
20 time when you would have agreed to remove the -- the
21 irrevocable survivor benefit?
22 THE WITNESS: No.
23 THE COURT: Did I restate your question accurately?
24 MS. LUBRITZ: Yes, Your Honor.
25 THE COURT: Thank you.

1 THE WITNESS: No.

2 Q BY MS. LUBRITZ: Thank you. Are you...

3 THE COURT: Okay.

4 Q BY MS. LUBRITZ: ...aware as to whether or not Ms.

5 Cooley and Ms. McConnell had a discussion regarding the SBP

6 provision in the decree after it was signed?

7 A I do not know.

8 MS. MASTEL: Objection, calls for speculation.

9 MS. LUBRITZ: I'm just asking...

10 THE COURT: She said she doesn't...

11 MS. LUBRITZ: ...if she's aware.

12 THE WITNESS: I don't know.

13 THE COURT: And she said she didn't know.

14 I think we're done with this witness.

15 MS. LUBRITZ: Thank you, Your Honor.

16 THE COURT: Thank you. You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Do you need a -- a...

19 (THE REQUESTED EXCERPT ENDED AT 10:35:26.)

20 (THE PROCEEDING ENDED AT 04:55:08.)

21 ////

22 ////

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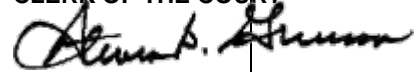
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ATTEST: I do hereby certify that I have truly and
correctly transcribed the video proceedings in the above-
entitled case to the best of my ability.

Sherry Justice
SHERRY JUSTICE,
Transcriber II



MCNT

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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:
Hearing Time:

Hearing Not Requested

"NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE."


**PLAINTIFF'S MOTION TO CONTINUE EVIDENTIARY HEARING
(First Request)**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., of Law Office of Shelley Lubritz, Esq., and moves this Honorable Court to Continue the Evidentiary Hearing currently scheduled for October 12, 2021, at 9:00 a.m.

1 This Motion is made and based upon the papers and pleadings on file herein, the
2 attached Declaration of David John Rose, the attached Declaration of Shelley Lubritz,
3 Esq., the attached Certificate of Shelley Lubritz, Esq. Pursuant to EDCR 7.30(c), and the
4 attached Memorandum of Points and Authorities. Plaintiff respectfully requests this
5 Motion be granted and this Court issue its Order continuing the evidentiary hearing.
6

7 Dated this 10th day of October, 2021.

8 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

9
10 By: 
11 Shelley Lubritz, Esq.
12 Nevada Bar No. 5410
13 375 E. Warm Springs Road Suite 104
14 Las Vegas, Nevada 89119
Attorney for Plaintiff
David John Rose

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 Plaintiff, David John Rose (hereinafter referred to as “Dave”), and Defendant Sarah
17 Janeen Rose (hereafter referred to as “Sarah”) were divorced by Decree entered on April
18 11, 2018. Since that time, the parties have engaged in significant motion practice
19 regarding the issue of survivorship benefits to Sarah.
20

21 On January 27, 2020, the Hon. Cheryl B. Moss took testimony on Day 1 of the
22 Evidentiary Hearing. After a series of continuances and delays, the second day was not
23 scheduled prior to Judge Moss’s retirement on December 31, 2020.

24 On April 9, 2021, this Court heard *Defendant’s Motion for Judgment Pursuant to*
25 *NRCP 52(C) or in the Alternative Motion for Summary Judgment and Countermotion for*
26 *Attorney’s Fees and Costs*. The Motion was denied. At the May 25, 2021, status check,
27
28

1 the Court advised counsel that it would proceed with a new trial. On September 23, 2021,
2 at 9:00 a.m., the first day of evidentiary hearing was held. Thereafter, the Court set Day
3 2 of the evidentiary hearing for October 12, 2021 at 9:00 a.m.

4
5 On October 7, 2021, at approximately 11:30 a.m., the undersigned was rear-ended
6 in an auto collision after having stopped for an emergency vehicle. The undersigned was
7 transported from the scene via ambulance and is currently being treated by her physician
8 for injuries sustained as a result thereof. The injuries have impaired the undersigned's
9 ability to properly prepare for the upcoming evidentiary hearing. Accordingly, Plaintiff's
10 Motion to Continue Trial (First Request) is filed.

11
12 On October 9, 2021, at 11:09 a.m., the undersigned emailed Defendant's counsel
13 requesting a Stipulation to Continue Trial to attach as an Exhibit to this Motion. A "read"
14 receipt¹ to the email was generated at 11:14:21 a.m. Notwithstanding the same, no
15 response has been received.

16
17 Motions to continue trial settings are governed by Rule 7.30 of the Eighth Judicial
18 District Court Rules ("EDCR"). EDCR 7.30 provides, in pertinent part, as follows:

19 (a) Any party may, for good cause, move the court for an
20 order continuing the day set for trial of any cause. ***A motion***
21 ***for continuance of a trial must be supported by affidavit***
22 except where it appears to the court that the moving party did
23 not have the time to prepare an affidavit, in which case
24 counsel for the moving party need only be sworn and orally
25 testify to the same factual matters as required for an affidavit.
26 Counter-affidavits may be used in opposition to the motion.

27 * * *

28 ¹ A copy of the October 9, 2021, "read" receipt is attached to the companion filing as **Exhibit**
"1" and is, hereby, fully incorporated herein by reference.

1 (c) Except in criminal matters, ***if a motion for***
2 ***continuance is filed within 30 days before the date of the***
3 ***trial, the motion must contain a certificate of counsel for***
4 ***the movant that counsel has provided counsel's client***
5 ***with a copy of the motion and supporting documents.*** The
6 court will not consider any motion filed in violation of this
7 paragraph and any false certification will result in appropriate
8 sanctions imposed pursuant to Rule 7.60.

9 (d) No continuance may be granted unless the contents of
10 the affidavit conform to this rule, except where the
11 continuance is applied for in a mining case upon the special
12 ground provided by NRS 16.020.

13 (e) No amendments or additions to affidavits for
14 continuance will be allowed at the hearing on the motion and
15 the court may grant or deny the motion without further
16 argument.

17 [Emphasis added]

18 The issue to be decided by this Court has been pending since April 25, 2018, when
19 Plaintiff filed his *Motion to Set Aside the Paragraph Regarding Survivor Benefits in the*
20 *Decree of Divorce Based Upon Mistake*. He has been proactive in endeavoring to move
21 this case forward and by seeking to have this matter heard. This Court has been diligent
22 in its efforts to do the same. This request to continue Day 2 of the evidentiary hearing
23 Motion is not made without contemplation. In the end, it is clear that Plaintiff may be
24 unduly and irreparably prejudiced if counsel were to proceed to trial on October 12, 2021,
25 as the undersigned has been unable to prepare since the October 7, 2021, auto collision.
26 Accordingly, Plaintiff respectfully requests that Day 2 be continued.

27 . . .

28 . . .


. . .

1 WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully
2 requests that:

- 3 1. The evidentiary hearing set for October 12, 2021 , at 9:00 a.m. be continued.
4

5 Dated this 10th day of October, 2021.

6 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

7
8 By: 
9 Shelley Lubritz, Esq.
10 Nevada Bar No. 5410
11 375 E. Warm Springs Road Suite 104
12 Las Vegas, Nevada 89119
13 Attorney for Plaintiff
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1. I am the Plaintiff in the above-entitled matter. I have read the foregoing *Plaintiff's Motion to Continue Evidentiary Hearing (First Request)*.

3. I have been divorced since April 11, 2018 and would like finality. However, my attorney stated she cannot properly prepare for the October 12, 2021 evidentiary hearing as a result of her injuries. Based upon the current circumstances, I may be irreparably harmed if the hearing proceeds as scheduled. Accordingly, I request that the date be continued.

Dated this 10th day of October 10, 2021.



David John Rose

1 **DECLARATION OF SHELLEY LUBRITZ, ESQ.**

2 SHELLEY LUBRITZ, ESQ., states under penalty of perjury pursuant to NRS
3 53.045:

4 1. I am an attorney duly licensed to practice law in the State of Nevada. I am
5 employed by the Law Office of Shelley Lubritz, PLLC, and am counsel of record for
6 Plaintiff, David John Rose, in Case No. D-17-547250-D. I have personal knowledge of
7 the facts contained herein and I am competent to testify thereto, except for those matters
8 stated upon information and belief, and as to those matters, I believe them to be true.
9

10 2. On October 7, 2021, at approximately 11:30 a.m., I was rear-ended in an
11 auto collision after having stopped for an emergency vehicle. I was transported from the
12 scene via ambulance and am currently being treated by my physician for injuries
13 sustained as a result thereof.
14

15 3. The injuries have impaired my ability to properly prepare for the upcoming
16 evidentiary hearing.
17

18 4. On October 9, 2021, at 11:09 a.m., I emailed Racheal Mastel, Esq.
19 requesting a Stipulation to Continue Trial to attach as an Exhibit to this Motion. Although
20 a “read” receipt to the email was generated that same date at 11:14:21 a.m. no response
21 has been received.
22

23 5. I respectfully request that the evidentiary hearing set for October 12, 2021,
24 be continued to another day.
25

26 . . .

27 . . .

28 . . .

1 Further your Declarant sayeth naught.

2 DATED this 10th day of October, 2021.

3 
4 _____
5 SHELLEY LUBRITZ, ESQ.
6
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10th day of October, 2021, I caused to be served
3 the *Plaintiff's Motion to Continue Evidentiary Hearing (First Request)* to all interested
4 parties as follows:
5

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

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

12 _____BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to
13 be transmitted, via facsimile, to the following number(s):
14

15 _____BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I
16 caused a true copy thereof to be served via electronic mail, via Wiznet, to the following
17 e-mail address(es):
18

19 Attorney for Defendant: service@kainenlawgroup.com
20 racheal@kainenlawgroup.com kolin@kainenlawgroup.com

21 Plaintiff: daverose08@gmail.com

22 Dated this 10th day of October, 2021.

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

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

DAVID JOHN ROSE

Plaintiff/Petitioner

v.

SARAH JANEEN ROSE

Defendant/Respondent

Case No. D-17-547250-D

Dept. 1

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

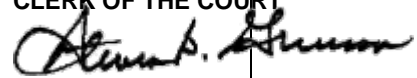
☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Plaintiff Date 10/10/21

Signature of Party or Preparer



APPX1258



1 **EXHS**

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

7 *Attorney for Plaintiff*
8 **DAVID JOHN ROSE**

9 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION
10
11 CLARK COUNTY, NEVADA
12

13 DAVID JOHN ROSE,
14 Plaintiff,

15 vs.

16 SARAH JANEEN ROSE,
17 Defendant

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

Hearing Date:
Hearing Time:

HEARING NOT REQUESTED

18
19 **EXHIBIT APPENDIX IN SUPPORT OF PLAINTIFF'S MOTION TO CONTINUE**
20 **EVIDENTIARY HEARING**
21 **(First Request)**

22 COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley
23 Lubritz, Esq., of the Law Office of Shelley Lubritz, PLLC and hereby submits his Exhibits
24 in support of *Plaintiff's Motion to Continue Evidentiary Hearing (First Request)*.

25 . . .

26 . . .

27 . . .

1. October 9, 2021, “read” receipt.

Dated this 10th day of October, 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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2021, I caused to be served the *Exhibit Appendix in Support of Plaintiff's Motion to Continue Evidentiary Hearing (First Request)* 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:

_____ 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 Defendant: Service@KainenLawGroup.com

Plaintiff: daverose08@gmail.com

Dated this 10th day of October, 2021.

LAW OFFICE OF SHELLEY LUBRITZ, PLLC


By:  _____
Shelley Lubritz, Esq.
Nevada Bar No. 5410
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Attorney for Plaintiff

Exhibit “1”

Read: Re: Rose v. Rose



From Racheal Mastel <Racheal@kainenlawgroup.com>
To shelley@lubritzlawoffice.com <shelley@lubritzlawoffice.com>
Date 2021-10-09 11:14 am

Your message

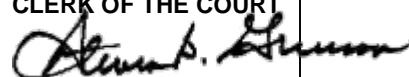
To: Racheal Mastel
Subject: Re: Rose v. Rose
Sent: Saturday, October 9, 2021 11:09:00 AM (UTC-08:00) Pacific Time (US & Canada)

was read on Saturday, October 9, 2021 11:14:21 AM (UTC-08:00) Pacific Time (US & Canada).

Final-recipient: RFC822; Racheal@kainenlawgroup.com
Disposition: automatic-action/MDN-sent-automatically; displayed
X-MSEch-Correlation-Key: Otga9peIE0Co3KrtmYq4rA==
Original-Message-ID: <55583bf8b95d751054ef36569dbf1896@lubritzlawoffice.com>
X-Display-Name: Racheal Mastel

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
10/11/2021 10:23 AM
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 Plaintiff's Motion to Continue Evidentiary Hearing (First Request in the above-entitled matter is set for hearing as follows:

Date: November 16, 2021

Time: 3:00 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/ Pamela Woolery
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Pamela Woolery
Deputy Clerk of the Court

APPX1264

**DISTRICT COURT
CLARK COUNTY, NEVADA**

David Rose, Plaintiff
vs.
Sarah Rose, Defendant.

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

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion to Continue Evidentiary Hearing (First Request in the above-entitled matter is set for hearing as follows:

Date: November 16, 2021

Time: 3:00 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/ Pamela Woolery
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Pamela Woolery
Deputy Clerk of the Court

ORDR

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: 10/12/21
Time of Hearing: 9:00 a.m.

ORDER CONTINUING OCTOBER 12, 2021 EVIDENTIARY HEARING

Upon the request and Declaration of Shelley Lubritz, Esq., and good cause
appearing therefor,

...

...

...

...

...

...

IT IS HEREBY ORDERED that the Evidentiary Hearing presently scheduled in this matter for October 12, 2021, at 9:00 a.m. shall be continued to the 15th day of November, 2021, at 9:00 a.m. in Courtroom 20.

Dated this 11th day of October, 2021

James Bailey

for Judge Steel

E7A AC9 FF74 F10D
Sunny Bailey
District Court Judge

Respectfully submitted by:

LAW OFFICE OF SHELLEY LUBRITZ,
PLLC

Shelley Lubritz
Shelley Lubritz, Esq.

Shelley Lubritz, Esq.
Nevada Bar No. 005410
375 E. Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119
(702) 833-1300
Attorney for Plaintiff
David John Rose

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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: 10/11/2021

15 Racheal Mastel

racheal@kainenlawgroup.com

16 Service KLG

service@kainenlawgroup.com

17 Kolin Niday

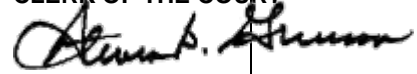
kolin@kainenlawgroup.com

18 David Rose

daverose08@gmail.com

19 Shelley Lubritz

shelley@lubritzlawoffice.com



1 **NEO**

2 Shelley Lubritz, Esq.
3 Nevada Bar No. 005410
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

7 *Attorney for Plaintiff*
8 *David John Rose*

9 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

10 CLARK COUNTY, NEVADA

12 DAVID JOHN ROSE,
13 Plaintiff,

14 vs.

15 SARAH JANEEN ROSE,
16 Defendant

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

Hearing Date: April 9, 2021
Hearing Time: 8:30 a.m.

17 **NOTICE OF ENTRY OF ORDER CONTINUING OCTOBER 12, 2021**
18 **EVIDENTIARY HEARING**

19 TO: SARAH JANEEN ROSE, Defendant and

20 TO: RACHEAL MASTEL, ESQ., her attorney:

21 . . .

22 . . .

23 . . .

24 . . .

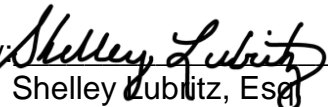
25 . . .

26 . . .

1 Please take notice that on October 11, 2021, an Order was filed in the above-
2 entitled matter, a copy of which is attached hereto.

3 Dated this 11th day of October, 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*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of October, 2021, I caused to be served the *Notice of Entry of Order Continuing October 12, 2021 Evidentiary Hearing* 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):

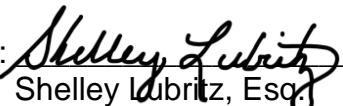
 X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Attorney for Defendant: service@kainenlawgroup.com
racheal@kainenlawgroup.com kolin@kainenlawgroup.com

Plaintiff: daverose08@gmail.com

Dated this 11th day of October, 2021.

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By:  _____
Shelley Lubritz, Esq.
Nevada Bar No. 5410
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Attorney for Plaintiff

ORDR

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: 10/12/21
Time of Hearing: 9:00 a.m.

ORDER CONTINUING OCTOBER 12, 2021 EVIDENTIARY HEARING

Upon the request and Declaration of Shelley Lubritz, Esq., and good cause
appearing therefor,

...

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...

IT IS HEREBY ORDERED that the Evidentiary Hearing presently scheduled in this matter for October 12, 2021, at 9:00 a.m. shall be continued to the 15th day of November, 2021, at 9:00 a.m. in Courtroom 20.

Dated this 11th day of October, 2021

James Bailey

for Judge Steel

E7A AC9 FF74 F10D
Sunny Bailey
District Court Judge

Respectfully submitted by:

LAW OFFICE OF SHELLEY LUBRITZ,
PLLC

Shelley Lubritz
Shelley Lubritz, Esq.

Shelley Lubritz, Esq.
Nevada Bar No. 005410
375 E. Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119
(702) 833-1300
Attorney for Plaintiff
David John Rose

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: 10/11/2021

15 Racheal Mastel

racheal@kainenlawgroup.com

16 Service KLG

service@kainenlawgroup.com

17 Kolin Niday

kolin@kainenlawgroup.com

18 David Rose

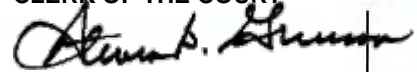
daverose08@gmail.com

19 Shelley Lubritz

shelley@lubritzlawoffice.com

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APPX1274



1 **NOTC**
Edward Kainen, Esq.
2 Nevada Bar No. 5029
Racheal H. Mastel, Esq.
3 Nevada Bar No. 11646
KAINEN LAW GROUP, PLLC
4 3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
5 PH: (702) 823-4900
FX: (702) 823-4488
6 Service@KainenLawGroup.com
Attorney for Defendant

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 DAVID JOHN ROSE,

12 Plaintiff,

13 vs.
14

15 SARAH JANEEN ROSE,

16 Defendant.
17

CASE NO. D-17-547250-D
DEPT NO. I

Date of Hearing: November 15, 2020
Time of Hearing: 9:00 a.m.

18 **NOTICE OF APPEARANCE BY AUDIOVISUAL**
19 **TRANSMISSION EQUIPMENT**

20 Pursuant to Rule 4 of the Nevada Supreme Court's *Rules Governing*
21 *Appearance by Audiovisual Transmission Equipment*, RACHEAL H. MASTEL, ESQ.,
22 of the KAINEN LAW GROUP, PLLC, counsel for the Defendant, SARAH JANEEN
23 ROSE, hereby submits her notice that the witness, Shelly Booth Cooley, Esq., shall
24 participate by remote court appearance via Blue Jeans video conference for the hearing
25 scheduled for November 15, 2021, at 9:00 a.m., in Department F.

26 ...

27 ...

28 ...

...

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

APPX1275

1 By executing the Audiovisual Transmission Equipment Appearance Consent
2 herein, Shelly Booth Cooley, Esq., agrees to be bound by the oath given by the Court
3 Clerk and to be subject to the jurisdiction of this Court for purposes related to this
4 hearing. Any objection to this request must be made in writing within two (2) judicial
5 days of service of this request.

6 Witness, Shelly Booth Cooley, Esq., agrees that by submitting this notice,
7 she has tested and verified the functionality of video conference connectivity with the
8 Court's IT department. Contact information for the test is:

9 Name of Witness: Shelly Booth Cooley, Esq.

10 Email Address: scooley@cooleylawlv.com

11 Phone Number: 702-265-4505

12 Dated this 9 day of November, 2021.

13 KAINEN LAW GROUP, PLLC

14 By: _____

15 RACHEAL H. MASTEL, ESQ.

16 Nevada Bar No. 11646

17 3303 Novat St., Suite 200

18 Las Vegas, Nevada 89129

19 Attorney for Defendant

AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE CONSENT

The undersigned agrees to be bound by the oath given by the Court Clerk over the Blue Jeans video conference connection and to be subject to the jurisdiction of this Court for purposes related to this hearing. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Dated this 9 day of November, 2021.

By: Shelly Booth Cooley
SHELLY BOOTH COOLEY, ESQ.
Nevada Bar No. 8992
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th 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:

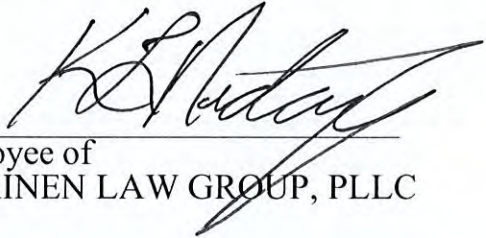
___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

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

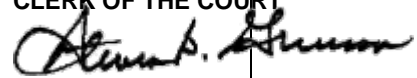
KAINEN LAW GROUP, PLLC

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

702.823.4900 • Fax 702.823.4488

www.KainenLawGroup.com



OBJ

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: 11/15/21
Hearing Time: 9:00 a.m.

**PLAINTIFF'S OBJECTION TO NOTICE OF APPEARANCE BY AUDIOVISUAL
TRANSMISSION FILED ON BEHALF OF SHELLEY BOOTH COOLEY, ESQ.**

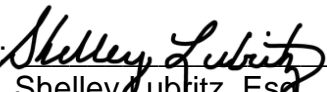
COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits *Plaintiff's Objection to Notice of Appearance by Audiovisual Transmission filed on Behalf of Shelly Booth Cooley, Esq.*

On November 9, 2021, Defendant's attorney filed a Notice that Ms. Cooley would appear by audiovisual transmission at the November 15, 2021 evidentiary hearing. Plaintiff objects to Ms. Cooley's appearance in any manner other than in person. The Court ordered that the trial in this matter would be conducted in person. Ms. Cooley is a

1 material witness and her presence in the Courtroom is necessary. It is important for the
2 Court and Mr. Rose to observe Ms. Cooley's demeanor and hear her testimony in person.
3 Ms. Cooley should have filed a Motion with the Court seeking relief. The *Notice of*
4 *Appearance by Audiovisual Transmission* is an improper vehicle for such a purpose.
5 Further, no basis has been offered as to why Ms. Cooley cannot appear in person at the
6 time of trial.
7

8 Dated this 11th day of November, 2021.

9 LAW OFFICE OF SHELLEY LUBRITZ, PLLC
10

11 By:  _____
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*
17 *David John Rose*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of November, 2021, I caused to be served
Plaintiff's Objection to Notice of Appearance by Audiovisual Transmission filed on Behalf
of Shelly Booth Cooley, Esq. 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:


_____ 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):

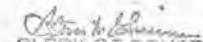
Attorney for Defendant: Service@KainenLawGroup.com
racheal@kainenlawgroup.com kolin@kainenlawgroup.com

Dated this 11th day of November, 2021.

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By: 
Shelley Lubritz, Esq.
Nevada Bar No. 5410
375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Attorney for Plaintiff
David John Rose

NOV 12 2021


 CLERK OF COURT

1 TRANS

2
3 ORIGINAL4
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,)

13 Defendant.)

14
15 BEFORE THE HONORABLE CHERYL B. MOSS
DISTRICT COURT JUDGE16 TRANSCRIPT RE: NON-JURY TRIAL (EXCERPT)

17 THURSDAY, SEPTEMBER 23, 2021

18 APPEARANCES:19 The Plaintiff:
20 For the Plaintiff:DAVID ROSE
SHELLEY LUBRITZ, ESQ.
324 E. Warm Springs Road,
Suite 104
Las Vegas, Nevada 8911922 The Defendant:
23 For the Defendant:SARAH ROSE
RACHEAL MASTEL, ESQ.
3303 E. Novat Street,
Suite 200
Las Vegas, Nevada 89129

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INDEX

PAGE

DIRECT

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REDIRECT

RECROSS

PLAINTIFF'S WITNESSES:

None

DEFENDANT'S WITNESSES:

Marshal Willick	3	64	--	--
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EXHIBITS

ADMITTED

PLAINTIFF'S EXHIBITS:

None

DEFENDANT'S EXHIBITS:

None

1 LAS VEGAS, NEVADA

THURSDAY, SEPTEMBER 23, 2021

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:00)

4 (THE FOLLOWING TRANSCRIPT CONTAINS EXCERPTS OF THE
5 PROCEEDINGS HELD ON THIS DAY IN THIS MATTER, PURSUANT TO
6 INSTRUCTION OF REQUESTING PARTY)

7 (EXCERPT BEGINS AT 3:20:11)

8
9 THE COURT: Okay. Let's swear him in.

10 THE CLERK: You do solemnly swear the testimony you
11 are about to give in this action shall be the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you.

15 MARSHAL WILLOCK

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

18 DIRECT EXAMINATION

19 BY MS. MASTEL:

20 Q Afternoon.

21 A Good afternoon.

22 Q Okay. Can you state your name for the record?

23 A First name Marshal, M-a-r-s-h-a-l, last name
24 Willock, W-i-l-l-i-c-k.

1 Q And your profession for the record?

2 A I'm an attorney in Las Vegas.

3 Q How long have you been practicing?

4 A Since 1982.

5 MS. LUBRITZ: I will stipulate that as to PERS
6 retirement accounts, military retirement accounts, that Mr.
7 Willick has been qualified in Family Court as an expert.

8 THE COURT: Okay.

9 MS. LUBRITZ: If that moves things along.

10 THE COURT: So we will deem him to be an expert.
11 Proceed.

12 BY MS. MASTEL:

13 Q When were you first associated with the parties in
14 this case?

15 A It's been four or five years, I couldn't give you an
16 exact date. I think it's somewhere back in the beginning of
17 2018. It could be sometime prior to that.

18 Q Okay.

19 A I honestly don't remember.

20 Q And do you recall what you were retained to do at
21 that time?

22 A I don't remember even who initially contacted me,
23 but eventually, I was named as expert for Plaintiff, I
24 believe.

1 Q Okay. And what were you evaluating?

2 A The -- the question that I was brought in on had to
3 do with PERS retirement and the existence of a survivorship
4 interest as a community property asset.

5 Q Okay. And what documents did you review?

6 A Everything that I was provided, which I believe were
7 the initial pleadings, some motion practice, at least two or
8 three or four court orders issued by Judge Moss, Judge
9 Hardcastle, Judge Moss again. I honestly don't remember if
10 anybody else was in the mix. I'm sorry.

11 Q That's fair. And who provided those documents to
12 your office?

13 A To my knowledge, you did.

14 Q Okay. If you would turn to Exhibit C in the
15 Defendant's exhibit book.

16 A Yes.

17 Q Do you recognize this?

18 A Yes. That appears to be the report I provided to
19 you around December 20th of 2018.

20 Q Okay. And you wrote it?

21 A Yes.

22 Q It's your signature on page 30? I'm sorry, 33.

23 A Both, actually.

24 Q Okay.

1 A But yes.

2 Q And it's -- is it a true and accurate copy of that
3 report?

4 A As far as I can tell, yes.

5 Q Okay.

6 MS. MASTEL: Your Honor, I'd move for the admission
7 of Exhibit C.

8 MS. LUBRITZ: Your Honor, I object. First of all,
9 the report contains Mr. Willick's legal opinion as to not the
10 status of the law that existed at the time. It included his
11 belief and his opinion about certain Nevada Supreme Court
12 cases and how they got it wrong.

13 He does the factual portion of the -- he even has in
14 the report that he was not provided informa -- factual
15 information -- brief indulgence. My computer's having a
16 little issue. I want to make sure I represent correctly from
17 his report. I actually have a copy of it. Let me grab my
18 notebook real quick.

19 (Pause)

20 MS. LUBRITZ: Yeah, he didn't even under -- he did
21 state that he was not given specific facts, so the -- the
22 legal conclusions that he made were not based upon the facts
23 of this case. In fact, he did not even know how long my
24 client had been a -- with Metro. It is replete with his

1 interpretation again of laws that has nothing to do with the
2 current status of the law at the time the report was done and
3 admittedly, from my interpretation in reading it, that there
4 was no law that stated that survivor benefits were assets to
5 be resolved at the time of trial.

6 In fact, in Peterson v. Peterson, he argued before
7 the Nevada Supreme Court in an effort to get the Court to make
8 a decision on survivor benefits, whether they're an asset to
9 be admitted or -- or distributed. And the Nevada Supreme
10 Court again took a pass on it.

11 So any testimony that he would give would not be on
12 the current state or at the time the state of the law, because
13 there wasn't any.

14 MS. MASTEL: Your Honor, this --

15 MS. LUBRITZ: And so he's just giving his opinion.

16 MS. MASTEL: Your Honor, this is cross-examination.
17 This goes to the weight of his report. This doesn't go to the
18 admissibility of his report.

19 THE COURT: Sure it does.

20 MS. MASTEL: If --

21 THE COURT: Why do I need to have his report? I've
22 got him sitting right here. Can't you just ask him some
23 questions for me?

24 MS. MASTEL: Thank you. I can do that as well, but

1 the report, I mean, honestly goes into a lot of that case law
2 and he's going to, I assume, probably use it to refresh his
3 recollection. So --

4 THE COURT: We'll see. I'm not going to bring it in
5 at this time.

6 MS. LUBRITZ: Thank you.

7 MS. MASTEL: Okay.

8 BY MS. MASTEL:

9 Q Now, to start, you heard Ms. Lubritz represent that
10 you didn't know her client's dates of service and service
11 credits and certain other facts related to that when you
12 drafted your report, correct?

13 A I heard what she said, yes.

14 Q Okay. Do you recall if you had those facts?

15 A As I recall, I never got what's called a PERS
16 benefit estimate report, which would have an exact total of
17 the service credits and such. I didn't have that document. I
18 don't -- and I -- I -- please excuse me, Your Honor, if I say
19 I don't think, because it's been four years since I wrote this
20 and my memory is not perfect as to every piece of paper that I
21 looked at four years ago.

22 But to the best of my knowledge, I didn't have a
23 service credit benefit estimate in my hand when I wrote the
24 report.

1 Q Does that change your ability to provide this Court
2 your statements as to the law regarding survivorship benefits?

3 A No.

4 MS. LUBRITZ: Objection, that's specifically what
5 he's not allowed to testify to in the order. He is not to
6 testify about the law. He's -- that's specifically in -- in
7 the Court's order as I --

8 MS. LUBRITZ: It's not in the order.

9 MS. MASTEL: Excuse me, Counsel. As I -- as I
10 understand it.

11 THE COURT: You're talking about the second one?

12 MS. LUBRITZ: Yes, the actual order for --

13 THE COURT: Hold on.

14 MS. LUBRITZ: The one of January 13th of 2020.

15 THE COURT: So this decision, this order came two
16 years after his report was written?

17 MS. LUBRITZ: Yes, Your Honor.

18 MS. MASTEL: Yes, Your Honor.

19 MS. LUBRITZ: Because I was the only one to raise
20 the issue.

21 THE COURT: It's ordered that Marshal Willick shall
22 be permitted to testify, but will limit his testimony to avoid
23 giving his opinion regarding the merits of the law. It
24 doesn't say he can't talk about the law or say what the law

1 is. It says he can't give his opinion on the merits of the
2 law.

3 MS. LUBRITZ: Very well, Your Honor.

4 THE COURT: And it will be the Court's
5 responsibility to distinguish legal fact from that
6 interpretation. So he can talk about the law.

7 MS. LUBRITZ: Very well.

8 THE COURT: Thank you. Go ahead.

9 THE WITNESS: I'm sorry, I don't recall the
10 question.

11 BY MS. MASTEL:

12 Q That's all right. Would -- would having that
13 statement impact your ability to provide the Court your
14 understanding of the law as it relates to survivor benefits?

15 A No. As I recall, I put in some assumed facts and
16 indicated that if the actual dates were different than my
17 assumptions, the math would change slightly for numerators and
18 denominators and multipliers, but it wouldn't affect the
19 conclusions in any way.

20 Q Okay. And can you explain to the Court a little bit
21 about the different kinds of pensions?

22 A Okay.

23 MS. LUBRITZ: Your Honor, we're only talking about
24 one type of pension and I would ask that his testimony be

1 limited to that.

2 MS. MASTEL: And the differences between the types
3 of pensions impact the way pension law works for everyone.

4 THE COURT: I really only need to know about police
5 pensions. I don't need to know about every kind of pension
6 there is, and specifically, survivor benefit because that's
7 the only thing in question today.

8 So if he could just focus on that.

9 THE WITNESS: Sure.

10 THE COURT: I don't need to be schooled on all the
11 other -- your doctors, lawyers and Indian chiefs, so.

12 THE WITNESS: Got it.

13 THE COURT: Okay.

14 THE WITNESS: What makes PERS different is what I
15 think the Court is focused on. And to -- to illustrate that I
16 have to give a comparison to what it's not, you know, the --
17 otherwise, the comparison doesn't make sense.

18 PERS like the military system, is a --

19 MS. LUBRITZ: Again, Your Honor, you asked
20 specifically as it relates to police, Metro PERS, which is
21 different, not military --

22 THE COURT: Okay. Before you tell me the
23 difference, will you tell me what the PERS is?

24 THE WITNESS: Sure.

1 THE COURT: And then --

2 MS. LUBRITZ: For police officers.

3 THE COURT: -- you can get into what it is not later
4 on if we need it.

5 MS. LUBRITZ: For Metro, correct?

6 THE COURT: PERS, police, yes.

7 MS. LUBRITZ: Yeah. Thank you.

8 THE WITNESS: Police Fire is the subdivision of the
9 PERS retirement system, as the judicial retirement system is a
10 division of the PERS retirement system. It has various
11 components. Police Fire has a couple of different attributes
12 than the other systems, but is largely pursuant to the same
13 regulations. It's all governed by Chapter 286 of Nevada
14 Revised Statutes and it is a defined benefit plan.

15 And to explain what those terms mean, a defined
16 benefit plan in which the benefit to be received is defined in
17 accordance with the terms of the plan and the facts of the
18 individual service, usually involving highest amounts earned,
19 length of service served, and a multiplier, which can vary
20 from one division to another, for the service credit
21 multiplier that gets put into the formula to divine the
22 ultimate number of dollars paid per month for the life of the
23 employee after retirement. There is no account.

24 There's no -- there's no account with Mr. Rose's

1 name on it somewhere out there with a certain amount of money
2 in it, that would be a defined contribution plan. A defined
3 benefit plan says that there is an accounting of his time and
4 service and income, which is used as a formula to divine how
5 much money he is eligible for upon retirement.

6 Did that answer your question?

7 BY MS. MASTEL:

8 Q I think so. Okay.

9 So how is the survivorship options addressed within
10 PERS police?

11 A There are six primary ways of dealing with
12 survivorship options, and that's one of the ways in which
13 Police Fire is different from all other PERS employees. As a
14 matter of negotiation, PERS Police Fire has an option one
15 benefit which is different than everybody else's option one
16 benefit.

17 An option one benefit is what's called the unreduced
18 benefit. It is the maximum amount they can be paid under PERS
19 retirement, without any reduction for a survivorship benefit
20 for any other person. What makes Police Fire different is
21 that if you choose option one as a Police Fire member and you
22 are married on the date --

23 THE COURT: Excuse me, I -- I can't hear both at the
24 same time,

1 THE WITNESS: Oh, I'm sorry. I didn't know I was
2 interrupting.

3 MS. LUBRITZ: My only objection, Your Honor, would
4 be is that we're talking about option two, not about option
5 one, because option two is what was awarded in the decree, so.

6 THE COURT: But -- I understand that, but your
7 client wants option one. At this time.

8 MS. MASTEL: And he testified about his
9 understanding of option one, so expert testimony about what it
10 is is appropriate.

11 THE COURT: Thank you.

12 MS. LUBRITZ: Understood.

13 THE COURT: I'll overrule your objection.

14 MS. LUBRITZ: Understood.

15 THE WITNESS: And excuse me, Your Honor, I did not
16 hear an objection. I apologize.

17 THE COURT: Oh, there was no objection. I was -- I
18 was hearing --

19 MS. LUBRITZ: I'm withdrawing it.

20 THE COURT: -- two things at the same time. There
21 was a phone call that came in and I -- I couldn't hear you
22 totally. So go ahead.

23 THE WITNESS: The masks make everything a little bit
24 harder, I'm sorry, Your Honor.

1 THE COURT: Survivorship, no --

2 THE WITNESS: Right. In a normal -- for everybody
3 except Police Fire, if you choose option one, nobody gets
4 anything if you die. For Police Fire, if you happen to be
5 married on the date that you retire, that person gets the
6 equivalent of an option three survivorship benefit without any
7 deduction in the total amount paid under option one. In other
8 words, you get a free survivorship interest. That makes
9 Police Fire different from all other PERS employees and it is
10 irrevocable.

11 If someone is married on the date that they retire
12 under an option one selection for PERS Police Fire, and they
13 divorce the next day, that spouse, irrespective of the wishes
14 of the parties, the order of the court or anything else, will
15 receive that survivorship benefit in the event that the
16 employee predeceases the former spouse, no matter what anybody
17 wanted and no matter what any court ordered. That's simply
18 how PERS will do it. And it's an irrevocable election --

19 THE COURT: Can I -- can I repeat that to you to
20 make sure I understand?

21 THE WITNESS: Sure.

22 THE COURT: That if you -- if you elect survivorship
23 option one and you don't do anything else until you retire,
24 and on the day you retire you are married, that spouse, that

1 particular spouse, will get option two without a reduction in
2 pay to --

3 THE WITNESS: Option three.

4 THE COURT: Well, it's option three -- option three
5 comes into play, but you don't have to -- there's no -- option
6 --

7 THE COURT: Okay. Option three is if you're married
8 -- if you don't do anything else, option three goes into
9 place.

10 THE WITNESS: No.

11 THE COURT: Okay.

12 THE WITNESS: I'm sorry. I'm sorry; I said it wrong
13 then.

14 MS. MASTEL: Your Honor?

15 THE COURT: No sur --

16 MS. MASTEL: If I may?

17 THE COURT: No, you may not.

18 MS. MASTEL: Okay.

19 THE COURT: I want to make sure I've got this right.
20 Option one, the biggest chunk of paycheck, no deductions until
21 dies, and then everybody's out. Okay.

22 Option three, if you're married on the day you
23 retire --

24 THE WITNESS: No.

1 THE COURT: Okay. Correct me.

2 THE WITNESS: Sorry, and again --

3 THE COURT: Or inform me better.

4 THE WITNESS: Okay. First, if you're not Police
5 Fire, then if you are Police Fire.

6 THE COURT: I just want Police Fire.

7 THE WITNESS: Okay. If you are Police Fire --

8 THE COURT: Uh-huh.

9 THE WITNESS: -- and you retire under option one,
10 you get the maximum possible benefit.

11 THE COURT: Uh-huh.

12 THE COURT: But if the employee dies first, the
13 person he was married to on the day that he retired will get a
14 survivorship benefit as if he had selected option three.

15 THE COURT: Okay. Okay. I got it. Got it. Got
16 it.

17 THE WITNESS: But it's free. There's no deduction
18 in the lifetime payments to the employee or to the spouse or
19 former spouse, for the survivorship benefit that that spouse
20 will receive.

21 THE COURT: Okay.

22 THE WITNESS: But they have to be married to that
23 person on the day of retirement.

24 THE COURT: And that's kind of what I said, but I

1 didn't say it exactly.

2 THE WITNESS: I'm sorry if I was --

3 THE COURT: That's okay. Go ahead.

4 THE WITNESS: Okay.

5 THE COURT: Two is different because you make a --

6 THE WITNESS: It is -- it is a larger survivorship
7 benefit. It is --

8 THE COURT: Three is larger?

9 THE WITNESS: Huh?

10 THE COURT: Three is larger because --

11 THE WITNESS: No, two is larger than three.

12 THE COURT: Okay.

13 THE WITNESS: And the reason -- it has a larger
14 premium to charge if -- again, in the non-Police Fire world
15 which is easier to understand, one is the maximum, two is a
16 big reduction because you -- the same amount that's paid
17 during life is paid after death, even if it's divided between
18 the two parties, under two. Under three, 50 percent of the
19 maximum lifetime benefit is what's paid to the survivor under
20 three.

21 The Police Fire option one pays 50 percent of the
22 lifetime benefit to the survivor in the event he dies, but
23 there's no premium.

24 THE COURT: Got it.

1 MS. MASTEL: Does the Court have any other
2 questions?

3 THE COURT: Go ahead.

4 MS. MASTEL: Okay.

5 THE COURT: I'm good.

6 BY MS. MASTEL:

7 Q So just to confirm for frankly, my understanding.
8 The option one has to be to the surviving married spouse the
9 day of retirement. So you can select option three for a
10 former spouse and get that same option three, but for it to be
11 option one and have no reduction in benefit, it has to be to
12 the person they're married the day they retire?

13 A Yes.

14 Q Okay. So, what controls how a survivorship works,
15 who's entitled and -- and what the options are?

16 A Well, if -- if nobody -- if no court anywhere has
17 done anything up to the date of retirement, married or not,
18 then the mili -- the -- military; excuse me -- the PERS --
19 sorry --

20 THE COURT: Gotta be married -- go ahead.

21 THE WITNESS: The PERS participant has the option of
22 selecting whatever option he wants.

23 THE COURT: On the day of retirement.

24 THE WITNESS: On the day of retirement. If some

1 court somewhere, meaning a district court of proper
2 jurisdiction or the Supreme Court according to the regs, if
3 either one of those courts has issued an order and it has to
4 be a Nevada court, has issued an order requiring an option
5 selection, PERS will honor the court order if they are
6 properly served with an appropriately phrased order and they
7 will enforce the option selection at the time of retirement,
8 no matter what the retiree wishes to select.

9 BY MS. MASTEL:

10 Q What law governs survivorship?

11 A Well, in this system it's NRS 286. And I'm sorry,
12 off the top of my head, I can't give you the subsection.

13 Q And can a court make orders that are in opposite to
14 the plan guidelines and --

15 A No.

16 Q -- state law?

17 A No. Chapter 286 is quite clear that no court order
18 which requires the payment of any additional or alternate
19 benefit not provided by the terms of the plan can or will be
20 honored by PERS.

21 Q Okay. So if the court makes an order that doesn't
22 comport with the plan's guidelines, PERS can just ignore it,
23 right?

24 A Can and will, yeah.

1 Q Okay. Now, in drafting these QDROs and addressing
2 these documents, is it based on your understanding malpractice
3 not to address survivorship?

4 A Definitely. About 50 to 75 percent of my total
5 expert witness testimony is in malpractice actions against
6 lawyers for failing to properly dispose of retirement,
7 especially survivorship issues in -- in divorce.

8 Q Okay.

9 MS. LUBRITZ: And I would ask that the testimony be
10 limited to -- specifically to the survivor benefits, not --

11 THE COURT: He was talking about survivor benefits.

12 MS. LUBRITZ: Well, he -- if I understood correctly,
13 and Mr. Willick will correct me if I'm wrong, he was speaking
14 that it's malpractice potentially to not resolve the issue of
15 a -- of the PERS retirement account, not specifically to right
16 of survivorship. Did I un -- did I misunderstand that, sir?

17 THE WITNESS: I -- I --

18 THE COURT: I thought he said specifically.

19 THE WITNESS: I'm sorry, Your Honor. I didn't mean
20 to interrupt you.

21 THE COURT: I thought you said specifically survivor
22 benefit.

23 THE WITNESS: Yes. In any retirement division you
24 must address survivorship issues or you presumably have

1 committed malpractice. You might luck out and people could
2 die in a very convenient order and the issue will never come
3 up. But if they die in an inconvenient order, the malpractice
4 for having failed to address it will materialize at that
5 moment.

6 BY MS. MASTEL:

7 Q And how does the type of pension impact its value
8 during the marriage?

9 A Well, what kind of pension you have tremendously
10 impacts what a court can and should do with it. If you had
11 something like a defined contribution plan, a 401K or an IRA,
12 it's real easy. You've got an account with a balance in it
13 and you can carve it into two pieces and everybody gets their
14 money and goes their separate ways.

15 Where you have a defined benefit plan, the valuation
16 is usually not simple, because for instance, nobody in this
17 room today could say with an amount of certainty what the
18 value of a defined benefit plan is for any PERS participant in
19 this room, and there are several. Because no one knows
20 exactly how long people are going to live, nobody knows
21 exactly how long they're going to serve, nobody knows what
22 their final salaries are going to be, you just can't know
23 those things. So any valuation is necessarily speculative for
24 a defined benefit plan, whereas, it would not be for a defined

1 contribution plan.

2 Q Okay. Has the Supreme Court identified what
3 elements of a pension constitute community property?

4 A The existing case law going back to 1978 in Ellett
5 just say all benefits. They -- they did not make a list.
6 They just said retirement benefits, whether vested or not,
7 whether matured or not, if they are accrued during the period
8 of the marriage, they are divisible benefits to be addressed
9 upon divorce.

10 THE COURT: If they are approved during the
11 marriage?

12 THE WITNESS: If they accrued. I'm sorry.

13 THE COURT: Oh, that -- I'm sorry.

14 THE WITNESS: Excuse me, I'm trying to get through
15 the mask.

16 THE COURT: Yeah, me, too.

17 BY MS. MASTEL:

18 Q Okay. So in the case of a PERS Police Fire plan,
19 where you have a former spouse, and the -- this is going to be
20 compound. I'm going to rephrase.

21 In the case of a PERS Fire Police, at the date of
22 divorce, if survivorship isn't addressed, what's divided?

23 A If survivorship isn't addressed?

24 Q Yes.

1 A Well, then a piece of the total retirement benefit
2 is being addressed.

3 Q Okay.

4 A If all you talk about is dividing the lifetime
5 payment stream, then you're dealing with some, but not all, of
6 the elements of the retirement.

7 Q Okay. If all that's divided is the lifetime payment
8 stream, what happens if the alternate payee spouse predeceases
9 the employee spouse?

10 A Without question, the -- and I'm just going to call
11 this person the spouse.

12 Q Uh-huh.

13 A For some -- if parties get divorced and they divide
14 the retirement, and the former spouse dies first, her share
15 automatically reverts to the retiree. In other words, in
16 simple words, if it's a thousand pension and she got 500 and
17 he got 500 and she drops dead, he gets a thousand from that
18 date forward.

19 Q What happens if the employee spouse dies first?

20 A That's dependent upon the court order. If the court
21 doesn't deal with the issue, then what will happen is she will
22 get nothing for the rest of her life. If the court does deal
23 with the issue, she will get something for the rest of her
24 life, but that's where the option selection; 2, 3, 4, 5, and

1 6, with different amounts and different payment requirements,
2 kick in for what she will receive and when she will receive
3 it.

4 Q Okay. Now, the -- you testified options two through
5 six have a percentage that is taken off the lifetime benefit
6 as a premium towards the post-death benefit?

7 A Yeah, it's not really quite as simple as a
8 percentage. There is an actuarial calculation done depending
9 on how old. Using these two people for example, how old he is
10 and how old she is, PERS has a life chart that they figure out
11 the approximate cost. That's why you need that benefit
12 retirement estimate to figure out what the numbers are, it's
13 bad to guess what those numbers are, because they have to use
14 their chart based on facts that are in the file to figure out
15 what premium they were charged for each one of the options,
16 and that's what's on the retirement benefit estimate form.

17 Q Who pays for that premium?

18 A It depends on the court order. I mean,
19 theoretically, both parties pay for it if apportioned to their
20 division of their retirement benefits because it comes off the
21 top. If it -- back to our \$1000 a month benefit, I'm being
22 overly simple.

23 Q Yep.

24 A If say, an option two benefit would pay \$800 a month

1 because of the premium, then -- and it was a 50/50 division,
2 then he would be paying half and she would be paying half. If
3 the percentages are different, then the math is different. So
4 it depend -- it comes off the top and it depends on how you're
5 dividing pension, who's actually bearing the premium.

6 Q But to the extent that a pension is divided pursuant
7 to Gemma and Fondi, the employee spouse does not bear that
8 entire cost --

9 A No, no.

10 Q -- unless the court orders that?

11 A Right. It is possible to indirectly make him bear
12 all of it or her bear all of it or to alter the percentages by
13 which they're bearing responsibility for it, but that requires
14 a little bit of math because you have to alter their lifetime
15 percentages to alter how much of the premium they're paying.

16 We have developed a calculator that does that
17 because I can't do that kind of math in my head and it's
18 posted on the website for the bar to use. It's on our
19 military retirement page, because military works the same way
20 as PERS for this. But we have a calculator for this purpose
21 to allow people to do that math.

22 Q But the default is still divide it based on their
23 lifetime percentages?

24 A Yes.

1 Q Okay. Now, is it -- is -- are survivor benefits
2 alimony?

3 A No, they're completely different concepts, and
4 Sertic says you cannot conflate the two. It would be
5 reversible error per se if you do so.

6 Q Okay. So, they are property of some kind, correct?

7 A It's property.

8 Q Okay. And can you discuss how Nevada law treats
9 dealing with retirement property?

10 A I'm not sure I understood the question. May I say
11 what I think you just asked?

12 Q Yes.

13 A I think you just asked --

14 MS. LUBRITZ: Objection. I would ask that it be
15 rephrased.

16 THE COURT: Rephrase your question.

17 MS. MASTEL: Okay.

18 BY MS. MASTEL:

19 Q What does Nevada law mandate be done with community
20 retirement property?

21 A That's the magic word. Assuming that it's community
22 property it gets divided like all other community property
23 under NRS 125.150, presumably equally unless the court makes
24 written findings of a compelling reason for an unequal

1 distribution of whatever asset we're talking about, in which
2 case, presumably, the court can make an unequal distribution
3 of the community property.

4 Q Okay. Now, if the court doesn't address
5 survivorship in a pension, even if the court were to say I'm
6 going to give Mr. Rose 50 percent of the pension and Ms. Rose
7 50 percent of the pension, is that actually an equal division?

8 A In the absence of explicitly elect -- making some
9 provision for the survivorship benefit, no, it would be
10 inherently an unequal division because the survivorship
11 benefits are some 25 to 45 or 50 percent of the total value of
12 the retirement benefits at issue.

13 Q If -- if a pension -- if the Court doesn't direct
14 how to deal with survivorship benefits in a decree, and an
15 employee spouse later elects an option for their current
16 spouse, who bears the cost of that premium?

17 A To some degree it depends on the exact phrasing of
18 the order. PERS will interpret orders that are unclear and
19 they're -- again, it depends on how the order is phrased.
20 Assuming that the -- the member has got a division order with
21 no survivorship option selection for a former spouse, and then
22 later selects an option, any option, other than an option one,
23 for a new spouse, then PERS will probably use the option one
24 amount to divide the lifetime payment stream between the

1 member and the spouse. But depending on how the order is
2 phrased, could take the reduced sum and divide that between
3 the member and the spouse.

4 Q So when you say the spouse, I know you've clarified
5 you're talking about former spouses?

6 A I'm sorry, the former spouse.

7 Q All right. So it's possible, depending on how the
8 order is drafted, that the former spouse will end up paying
9 the premium for --

10 A A piece of it.

11 Q -- the option of survivor benefit for the new
12 spouse?

13 A I'm sorry, I didn't mean to interrupt you.

14 Q A piece of it, yes.

15 A A portion of the premium.

16 Q Okay.

17 A BUT then it's divided between the two parties.

18 Q Okay.

19 THE COURT: Okay. I'm confused.

20 THE WITNESS: Sure,

21 THE COURT: It's important that I'm not --

22 MS. LUBRITZ: I'm glad you said it first.

23 THE COURT: -- that I not -- that I not be, I heard
24 spouse one and spouse two during that interchange. Is it

1 possible that there can be two beneficiaries --

2 THE WITNESS: No.

3 THE COURT: -- for a survivor beneficiary?

4 THE WITNESS: Not under PERS. In ERISA, yes. Under
5 PERS, no.

6 THE COURT: Okay.

7 THE WITNESS: There can only be one named survivor
8 beneficiary. The hypothetical that I was given was a division
9 of the lifetime payment stream between --

10 THE COURT: It's a lifetime payment stream, though?

11 THE WITNESS: -- between employee and spouse one.

12 THE COURT: Right.

13 THE WITNESS: So back with a thousand, \$1000, he
14 gets 500, she gets 500. He then remarries. And when he
15 retires, he names spouse two as a survivor beneficiary,
16 dropping that \$1000 to \$800. And I believe the question was
17 who pays that \$200 difference, and the answer is depends on
18 how the court order is phrased.

19 PERS could interpret it to use the hypothetical but
20 now not there \$1000, or, if the order is phrased slightly
21 differently, to just divide the 800 that's left. And if the
22 court -- if PERS does that, then spouse one will end up paying
23 a piece of the premium to provide a survivorship benefit for
24 spouse two.

1 THE COURT: And spouse one would get no --

2 THE WITNESS: Nothing at all for that reduction.

3 THE COURT: But pays the price?

4 THE WITNESS: Yes.

5 THE COURT: So if they -- let me ask a better
6 question. Without the actuarial chart being produced during a
7 settlement conference or any discovery, to make a decision
8 with regard to this, I don't see how there could possibly be a
9 meeting of the minds on what they've agreed to.

10 THE WITNESS: You don't need the numbers to elect
11 the distribution. Whenever anybody is in service at the
12 moment of divorce, you never know the numbers, because you
13 can't.

14 THE COURT: Right. Right, right, right.

15 THE WITNESS: You don't have any idea.

16 THE COURT: But you'd know on the date of divorce,
17 wouldn't you, if you sent it to a QDRO to figure it out?

18 THE WITNESS: The QDRO will -- if we do the QDRO
19 while somebody's in service, we don't know the numbers either,
20 because they haven't happened yet.

21 THE COURT: Uh-huh.

22 THE WITNESS: And if you've got a policeman who's
23 been in service 13 years --

24 THE COURT: Uh-huh.

1 THE WITNESS: -- of a 25 year career, I don't know
2 what his final salary is going to be, he doesn't --

3 THE COURT: I see.

4 THE WITNESS: -- know what his final salary is going
5 to be.

6 THE COURT: Fair.

7 THE WITNESS: Nobody knows if it's going to be 15
8 years or 20 years or 25 years. There's no -- it's not
9 knowable. But the order can provide for all of those
10 possibilities as a matter, I don't want to say numbers, but as
11 a matter of proportion or theory, you set up the formula and
12 the numbers take care of themselves when the facts shake out.

13 THE COURT: So option one is the epitomal (ph) pick?

14 THE WITNESS: It's the maximum value.

15 THE COURT: Outside of -- outside of being divorced
16 and all this other stuff that we're dealing with right now,
17 option one you get the most money --

18 THE WITNESS: Right.

19 THE COURT: -- while you're alive.

20 THE WITNESS: Yes.

21 THE COURT: Nothing for your -- people you leave
22 behind.

23 THE WITNESS: Right.

24 THE COURT: Okay. That's the full 75 percent or

1 whatever it is. I think it's --

2 THE WITNESS: It's no longer 75 percent for -- but
3 yes.

4 THE COURT: Okay. And then so, if you don't put
5 something in the decree about the survivor benefit, if you
6 pick option one, then that preserves it for you pretty much.
7 If you put option two, three, four, five, six, then that's
8 when the percentage click in as far as any deduction from the
9 amount you would receive if you had had option one?

10 THE WITNESS: Yes.

11 THE COURT: Okay. And so, I know that option two is
12 giving the portion for after death to the spouse who owns it
13 from the decree. What happens in three, four, five, six? I
14 mean, I alrea -- I know three, okay? Four, five, six, what
15 happens there?

16 THE WITNESS: Two is the maximum possible survivor
17 beneficiary, three is a survivor beneficiary equivalent to 50
18 percent of the maximum lifetime benefit under option one.

19 THE COURT: Because you didn't make an option.

20 THE WITNESS: Well, no, three is an option.

21 THE COURT: I mean -- oh, it is?

22 THE WITNESS: Three is an option, yeah.

23 THE COURT: Okay.

24 THE WITNESS: And you -- three pays 50 percent of

1 whatever the lifetime amount is. That lifetime amount,
2 remember, is reduced because you chose a survivorship option.

3 THE COURT: Okay.

4 THE WITNESS: So --

5 THE COURT: If you don't -- if you don't select one,
6 then one clicks in?

7 THE WITNESS: Right.

8 THE COURT: Okay. Go ahead.

9 THE WITNESS: Four is exactly the same as two, but
10 has an age restriction. It doesn't pay to the survivor
11 beneficiary until the survivor reaches the age, I think it's
12 60. Five is exactly like three, except it doesn't kick in
13 until age 60. Six is the one that has a blank in it and
14 allows the court to set the -- the -- the court, the parties,
15 whoever does it, to set a specific amount of a survivorship
16 interest that's payable on the event of the death of the
17 employee.

18 So if you decided for whatever reason, and I'm not -
19 - I'm not saying that you would, but if you decided for
20 whatever reason that the spouse should get a 10 percent
21 interest, you could set that number in option six, or 12
22 percent, or 45 percent, or any other number you want.

23 THE COURT: And why would you put a smaller
24 percentage? To get a higher benefit while you're alive?

1 THE WITNESS: Yes.

2 THE COURT: I see.

3 THE WITNESS: And they work exactly that way.

4 THE COURT: Okay.

5 THE WITNESS: The larger the -- except for option
6 one for Police Fire, which is again is a freebie, except for
7 that one, the bigger the survivorship benefit, the smaller the
8 lifetime payout.

9 THE COURT: Okay. If you didn't know that when you
10 were bargaining back and forth, both parties, if you didn't
11 know the formulation of it, could you make a -- a informed
12 decision?

13 THE WITNESS: In my personal opinion -- well,
14 opinion is apparently a bad word.

15 THE COURT: Your expert.

16 THE WITNESS: You asked me a question, may I answer
17 it?

18 THE COURT: Again, yes.

19 THE WITNESS: In my opinion, nobody can make an
20 informed decision without knowing what they're doing and the
21 ramifications of the choices that they're making.

22 THE COURT: Okay. Thank you.

23 Go ahead, Counsel. I'm sorry I took it over a
24 little bit.

1 MS. MASTEL: Oh, that's okay.

2 THE COURT: I really feel like I need to understand
3 it.

4 MS. MASTEL: That's why Mr. Willick is here.

5 THE COURT: Thank you.

6 MS. MASTEL: Okay. Let me --

7 BY MS. MASTEL:

8 Q Now, you already stated you reviewed Judge
9 Hardcastle's ruling, correct?

10 A You're talking about Judge Kathy Hardcastle's ruling
11 --

12 Q Yes.

13 A -- in this case?

14 Q Correct.

15 A In-between the two Judge Moss decisions?

16 THE COURT: Uh-huh.

17 BY MS. MASTEL:

18 Q Yes.

19 A I'm just making sure I'm referring to --

20 Q Right.

21 A -- the right ruling. In that case, yes.

22 Q Was that decision supported by existing case law?

23 A No.

24 MS. LUBRITZ: Your Honor, I have to object.

1 THE COURT: Which decision? Kathy's -- Hardcastle's

2 --

3 MS. MASTEL: Yeah.

4 THE COURT: -- decision?

5 MS. MASTEL: Correct.

6 MS. LUBRITZ: I would lodge an objection because
7 that issue has already been resolved by Judge Moss' orders.

8 And --

9 THE COURT: Judge Moss set the order aside.

10 MS. LUBRITZ: Right.

11 THE COURT: Uh-huh.

12 MS. LUBRITZ: So talking about it at this point and
13 having Mr. Willick's interpretation I don't think is of
14 assistance or appropriate.

15 MS. MASTEL: Well --

16 THE COURT: It's specific as it exists. And this is
17 the quagmire I'm in. Judge Moss made a decision, Judge
18 Hardcastle made one, and -- and Judge Moss then sat as the
19 appellate court on Judge Hardcastle's decision and set it
20 aside. And nobody did an appeal, so she set it aside and it
21 -- through motion practice, and then she heard some trial
22 dates, and then she became the settlement judge. So I'm sort
23 of in a weird spot here.

24 THE WITNESS: I -- I've read your -- oh, I should

1 probably -- I read your order, which recited that word,
2 appellate. I will suggest to the Court that the Court rules
3 -- I'm sorry, I was the court reporter -- I was the reporter
4 for the EDCR 5 committee.

5 THE COURT: Uh-huh.

6 THE WITNESS: And the court rules that are in EDCR 7
7 have been moved into EDCR 5, and the language has been refined
8 to make it clear that the sitting district court judge in a
9 department is not sitting as an appellate court when it alters
10 an order made by a temporary judge sitting in, whether that
11 judge is a senior or an appointment or a temporary or a
12 substitute.

13 THE COURT: An alteration is one thing, a setting
14 aside is a different thing, isn't it?

15 THE WITNESS: That the district court judge who's
16 assigned to the department has plenary power to reconsider any
17 orders made by a temporary judge sitting in their department.

18 THE COURT: That's been since January of 2019?

19 THE WITNESS: I'm sorry?

20 THE COURT: Has that been in since January of 2019
21 when I retired?

22 THE WITNESS: Well, it's part of the existing --

23 THE COURT: It wasn't before I retired. I don't
24 remember that rule.

1 THE WITNESS: It's part of the existing EDCR 7
2 rules. The problem is the interface between EDR -- EDCR 7 and
3 5, and to eliminate any possibility of conflation. The EDCR 5
4 committee, which was a combination of judges and lawyers in
5 the Eighth Judicial District --

6 THE COURT: I was sitting on one of those --

7 THE WITNESS: -- eliminated all reference to 7.

8 THE COURT: -- committees. Not the one I was on,
9 right?

10 THE WITNESS: What?

11 THE COURT: It wasn't the one I was on?

12 THE WITNESS: Not the 2016 version.

13 THE COURT: Okay.

14 THE WITNESS: It is the 2019 version.

15 THE COURT: Okay. So it was after my time, okay.

16 THE WITNESS: Sorry.

17 THE COURT: That's all right. It's fine. I just
18 want -- I didn't know it came into effect. Go ahead.

19 MS. MASTEL: Your Honor if I can make an --

20 MS. LUBRITZ: For clarification -- I'm sorry, for
21 clarification. Did I hear Mr. Willick say that he reviewed
22 your order from the April 9th hearing?

23 THE WITNESS: I don't know the date of it. There's
24 some order which I --

1 THE COURT: If it's in the order that I've done,
2 it's probably that one. I think I've only done one.

3 MS. LUBRITZ: So you read Judge Steel's order in
4 this case?

5 THE WITNESS: I have been supplied with an order; I
6 don't recall the date.

7 MS. LUBRITZ: The date's not the issue. It was
8 Judge Steel's order, correct?

9 THE WITNESS: Yes.

10 MS. LUBRITZ: And Your Honor, I would -- I would say
11 that's a -- that's absolutely inappropriate. The case is
12 sealed. Mr. Willick is only testifying about PERS
13 particularly and I -- and I -- it's a breach of the seal.

14 THE COURT: Having read it -- I think that as an
15 expert he's allowed to see any documents that have been
16 provided to him, so I'm not going to go there for you.

17 MS. LUBRITZ: Even though -- well, but provided to
18 him inappropriately.

19 THE COURT: He's not making comment on what I've
20 done.

21 MS. MASTEL: Your Honor, Your Honor addressed the
22 concept of omitted assets and the survivorship benefits --

23 THE COURT: I did.

24 MS. MASTEL: -- and all of those things in there, so

1 --

2 THE COURT: Well, because I address them doesn't
3 mean that you can't ask him about it.

4 MS. MASTEL: No, I know, but Mr. Willick is -- is
5 allowed to understand the Court's bracketing of what's going
6 on in this case for his expert testimony. The -- providing
7 the order to him was absolutely appropriate.

8 Furthermore, as an expert, he's allowed to receive
9 any documents that my office is entitled to receive, because
10 they're confidential within his expertise.

11 THE COURT: That's true.

12 MS. LUBRITZ: And I think it's inaccurate to state
13 what Counsel said initially. The -- nothing -- Counsel has
14 the right to ask questions that might be contained within your
15 order, but she does not have the right in a sealed case to
16 provide it to him. And I just make that objection for the
17 record.

18 THE COURT: Okay. You can have that noted for the
19 record.

20 MS. LUBRITZ: Thank you.

21 THE COURT: I believe that if he's the expert, she
22 can provide him with whatever she feels like she needs to have
23 him observe or know about the case in order to give his
24 testimony today. He's not -- certainly not going to tell me I

1 did anything wrong, so --

2 MS. LUBRITZ: No, but he's test -- he's supposed to
3 -- he's engaged to testify about PERS.

4 THE COURT: Right.

5 MS. LUBRITZ: Not about --

6 THE COURT: That's all he's done so far.

7 MS. LUBRITZ: -- your order.

8 THE COURT: So --

9 MS. LUBRITZ: Not about your order.

10 THE COURT: That's all he's done so far. Go ahead,
11 Counsel.

12 BY MS. MASTEL:

13 Q And to get back to the initial issue about Judge
14 Hardcastle's order. It was a foundational question to discuss
15 what the case law allows with regarding -- with regard to PERS
16 and survivorship benefit, because she -- although her order
17 was set aside and statements therein as to what could be done.

18 MS. LUBRITZ: The order was set aside, therefore, I
19 don't understand the value.

20 THE COURT: The order was set aside.

21 MS. MASTEL: Okay.

22 THE COURT: So it doesn't really play into anything
23 at this time.

24 MS. MASTEL: Okay.

1 BY MS. MASTEL:

2 Q Is it possible to direct the use or direct a
3 participant to select adoption at retirement within a pre-
4 retirement divorce decree?

5 A Yes.

6 Q Is it necessary?

7 A If you use that word in the sense of to dispose of
8 the benefits entirely; yes. If you use that word to issue a
9 divorce decree that is valid under Nevada law as a divorce
10 decree; no. Divorce decrees sloppy and incomplete are issued
11 all the time, so yes, you can have a divorce decree which
12 addresses a piece of the benefits. If you wish to address the
13 entirety, then you'd have to address the entirety.

14 Q Okay. Now, let's kind of go over some of the -- the
15 case law that's involved in how the Court views survivorship
16 benefits. Can you kind of highlight for the Court what the
17 holding in general was and how that relates to survivorship
18 benefits?

19 A Sure. Gemma and its counterpart Fondi, are often
20 used. Some people think that it's one case, it's not, it's
21 two different cases about a year or two apart, which stand for
22 the proposition that Nevada has adopted the California
23 reasoning of what's called the time rule. It's a proposition
24 by which a percentage of a benefit belonging to a spouse is

1 developed qualitatively rather than quantitatively, meaning,
2 you take the total number of months of service during marriage
3 as the numerator, the total number of months of service as
4 the denominator, you multiply it by the benefit that's
5 received, you multiply that by 50 percent, and that amount is
6 the amount under a community property analysis that belongs to
7 the spouse as sole and separate property on the date of
8 divorce.

9 Q Does Gemma also discuss how the -- how an aspect of
10 a -- of a retire -- no, I'm going to rephrase that.

11 Does Gemma also discuss the relation in Nevada law
12 to conditions that are solely in an employee's control?

13 A This is the -- that -- that language you just stated
14 is out of a California case called Luciano. And the Luciano
15 Gillmore line of authority was adopted by the Nevada court in
16 Gemma, Fondi, Sertic, and Wolff so that yes, the -- the
17 holding is that a employee spouse is not allowed by election
18 of any attribute within his sole control to alter the amount
19 of the spouse's entitlement to retirement benefits.

20 Q And because Gemma, Sertic, et cetera, have relied on
21 California authority and California's position on retirement
22 accounts, can you briefly for the Court explain how California
23 addresses survivorship options?

24 A California and Nevada are identical in terms of in

1 they're -- there are nine community property states and they
2 do things slightly differently. California and Nevada are
3 identical insofar as both of them are presumptive equal
4 division states as opposed to equitable division states.
5 Meaning, once community property is defined, the court is to
6 divide that property equally in the absence of a finding of a
7 compelling reason to make an unequal distribution of whatever
8 is found to be community property.

9 Q Has California gone further or codified survivorship
10 benefits specifically?

11 A Oh, yeah.

12 MS. LUBRITZ: Objection, Your Honor. We're talking
13 about Nevada, not California.

14 MS. MASTEL: And the foundation --

15 MS. LUBRITZ: I'd ask that --

16 MS. MASTEL: -- question --

17 MS. LUBRITZ: Excuse me, I'm not finished. And I'd
18 ask that the response be stricken.

19 THE COURT: Counsel?

20 MS. MASTEL: The foundation question was do -- does
21 -- since Nevada has relied on California authority, California
22 authority is persuasive to how Nevada addresses these issues.

23 THE COURT: And I will allow the question.

24 THE WITNESS: I didn't hear you.

1 THE COURT: Yes, you may answer the question.

2 THE WITNESS: I'm sorry. Thank you. Yes. In a
3 long series of case authority going back I think 25, maybe 30
4 years, and later adopted as part of the California Civil Code,
5 California has made it extremely clear that survivorship
6 benefit component of a retirement benefit is an item of value
7 to be divided like all other items of value in an equal
8 division of community assets in every case.

9 It is now statutorily required in their civil code
10 to be part and parcel of every retirement benefit division.

11 MS. MASTEL: Okay.

12 THE COURT: But that's not the case here in Nevada
13 yet.

14 THE WITNESS: We have no statute exactly the same as
15 California Code, I think it's 2601 or 2610, something very
16 similar to that. I could look it up, I just don't remember
17 the number. But they have a more detailed code, which
18 basically is the equivalent of 125.150, it's just much more
19 detailed. And a piece of that California Code says in
20 division of a retirement benefit you must explicitly divide
21 the survivorship benefits attributable to a retirement.

22 MS. LUBRITZ: To the --

23 THE COURT: Okay.

24 MS. LUBRITZ: -- extent that that California Code is

1 not in Nevada law, I would ask that the answer be stricken.

2 THE COURT: I'll deny your request. Overruled.

3 BY MS. MASTEL:

4 Q Now has Nevada allowed -- has the Nevada Supreme
5 Court and the Nevada Appellate Courts, allowed for
6 survivorship benefits to be divided in a decree?

7 A Oh, yeah. All the time.

8 Q Can you discuss the impact of Wolff on the case law?

9 A Wolff was a major case, which is a marvelous piece
10 of community property theory. It stands for the proposition
11 that community property is to be equally divided, which is
12 unarguable. And it was intended -- I mean, the Wolff opinion
13 goes on for pages and pages, it's got a lot of different
14 pieces to it, including some Social Security aspects which are
15 not presumably what we're asking about here.

16 As terms of retirement benefits, what it says is
17 equal is equal. Is -- if you had to boil it down, that's what
18 it says. Unfortunately, that's not quite what it did.

19 Q Can you explain for the Court --

20 A Sure,

21 Q -- the problem there?

22 A Wolff was a PERS case, like most of the Nevada
23 cases, and it involved -- I can't remember if it was Highway
24 Patrol or Police, but it was Police Fire person. And the

1 district court judge had realized that there was a
2 survivorship which belonged to the employee which did not
3 belong to the spouse. And the district court judge
4 compensated for that fact by ordering a private life insurance
5 benefit in favor of the spouse to be paid for by the employee.
6 And it went up on appeal, it was attacked by husband's
7 counsel. And the Supreme Court saying, Supreme Court made a
8 finding of -- a statement of fact, not a finding, a statement
9 of fact, that nobody has an automatic survivorship interest
10 and therefore, to give the wife a insurance policy and not
11 give the husband an insurance policy, would be an unequal
12 division of property and therefore, because we have to divide
13 things equally, this was error and they reversed.

14 They said in the event a division of the retirement
15 would be a permanent division of the retirement. So that if
16 he dies, his piece of the retirement dies, but she keeps
17 getting money. And if she dies, he keeps getting money.
18 Nobody has an automatic survivorship interest. Unfortunately,
19 they were simply wrong as a matter of fact, because that's not
20 how PERS works, as we've already discussed. If she dies, he
21 gets her money back. So, their fact was wrong.

22 The insurance policy balanced the interest between
23 the husband and the wife, so that if he died, she got
24 something and if she died, he got something. But the Supreme

1 Court didn't realize that. They recited a false fact that
2 nobody would get anything if the other party died, and on the
3 basis of that false fact, reversed the insurance policy to the
4 wife.

5 Q But ultimately, the -- the theory in Wolff is that
6 everybody should get 50/50 of the totality of a retirement?

7 A That's the contradiction in the Wolff holding,
8 because what they said what they were doing is not what they
9 actually did.

10 Q Okay. All right. Can you talk about how Henson
11 impacts that?

12 A Henson made it worse. Henson followed on the -- on
13 the heels of Doan vs. Wilkerson and I mention that only
14 because the timing is important. Doan led to a change in the
15 statutory law. We now have an omitted asset statute, NRS
16 125.150(3). It didn't exist at the time of the Doan holding.

17 There is a distinction between the post divorce
18 cases and the current divorce cases in terms of what courts
19 can do. At the time of a current divorce, courts have a
20 statutory mandate to equally divide property. In the question
21 of what they can do or should do or can do after divorce was a
22 different -- is a different -- it's a different question for
23 something that somebody argues is left out of the divorce
24 decree.

1 In a current divorce, the statutory mandate is
2 clear, you're supposed to equally divide the property.

3 MS. LUBRITZ: Again, I would object, I apologize, to
4 the reference to a current divorce. We're talking about an
5 order and a decree that dates back to 2018. The law may be
6 different from 2018 to what it is right now.

7 THE COURT: Uh-huh.

8 MS. LUBRITZ: So I would ask that he testify about
9 the law as of --

10 THE COURT: Well, I'm not going to make a decision
11 as to 2018.

12 MS. MASTEL: I think --

13 MS. LUBRITZ: That's when the decree was filed was --
14 --

15 THE COURT: I understand that.

16 MS. LUBRITZ: -- was April 11th, 2018.

17 THE COURT: I understand that.

18 MS. LUBRITZ: And so, the -- the law at the time
19 should prevail.

20 THE COURT: I understand what you're saying.

21 MS. LUBRITZ: Okay.

22 THE COURT: This is something I'm going to have to
23 sort out.

24 MS. LUBRITZ: Understood. I just wanted to make a

1 record and make --

2 THE COURT: That's fine.

3 MS. LUBRITZ: Thank you.

4 THE COURT: Go ahead.

5 THE WITNESS: Can you --

6 BY MS. MASTEL:

7 Q Mr. Willick, I don't mean to cut you off, but since
8 I think there was a confusion of terms there. When you say a
9 current divorce, can you clarify for the Court what you mean
10 in talking about that?

11 A Sure. I'm sorry if I've been imprecise. What I'm
12 talking about is -- is the status of a case when it lands in
13 front of a court. There's the difference between people
14 getting divorced now and people that were divorced --

15 THE COURT: Hasn't been signed -- has not been
16 signed yet?

17 THE WITNESS: What?

18 THE COURT: The divorce hasn't been signed yet; is
19 that what you're talking about? Current divorce?

20 THE WITNESS: Yeah, current divorce litigation.

21 THE COURT: A developing divorce that has not been
22 finalized.

23 THE WITNESS: Right.

24 THE COURT: Is that a current divorce?

1 THE WITNESS: And the def -- it's current divorce.

2 THE COURT: Okay.

3 THE WITNESS: And the definition of a current
4 divorce includes the divorce itself, the post divorce
5 litigation, and even the appeal according to the Nevada
6 Supreme Court.

7 THE COURT: Oh, okay.

8 THE WITNESS: That's all a current divorce.

9 THE COURT: All right.

10 MS. LUBRITZ: Thank you for the clarification. I
11 thought we were talking about 2021 and 2020.

12 THE COURT: Okay. Go ahead.

13 THE WITNESS: Sure.

14 MS. LUBRITZ: Thank you for the clarification.

15 THE WITNESS: As opposed to everybody was divorced
16 10 years ago and we're now arguing about something else. That
17 would be a post divorce --

18 THE COURT: Got it --

19 THE WITNESS: -- case. And I'm sorry, you asked me
20 --

21 BY MS. MASTEL:

22 Q You were -- sorry, you were --

23 A You asked me, your last question had to do with
24 Henson, but I don't know if you abandoned that question.

1 Q No. I just wanted to make sure that we didn't have
2 any confusion while you were answering that question as you
3 talked about Henson and Doan and that sort of thing. What you
4 were talking about when you said current divorce.

5 A All right. Henson repeated the false fact from
6 Wolff that nobody has a sur -- an automatic survivorship
7 benefit. That's a true statement for ERISA retirements. It's
8 a false statement for PERS and military retirements, because
9 in those systems there's an automatic reversionary interest of
10 the spousal interest to the husband if the spouse dies first.
11 That's not -- it's not debatable. It's -- it's a matter of
12 fact. It's -- it's simply how the systems work. Different
13 pensions work in different ways. They are governed by
14 different laws: ERISA is -- is a federal statute, military is
15 a different federal statute, the civil service is yet a
16 different federal statute, and PERS is governed by NRS Chapter
17 286. They have their own rule sets. And what happens is
18 different from retirement to retirement to retirement,
19 depending on which kind you're dealing with.

20 In the PERS system, it is simply not true that there
21 is no survivorship interest. The employee always has a
22 survivorship interest because if the non-employee spouse dies
23 first, he gets her money back. It -- that's not a law. I
24 mean, it's not a -- it's not a decision. It is simply a fact,

1 that's how the system works. It's not debatable.

2 Q Can you give the Court a little insight as to how
3 Peterson interacted --

4 A I'm sorry --

5 Q -- With all these things?

6 A I'm sorry. Hens -- okay. Henson --

7 Q Oh.

8 A Peterson dealt with Henson. Henson said that
9 because there is no automatic survivorship benefit. If nobody
10 provides for a survivorship benefit, there isn't one. And
11 remember, Henson predated the effective date of NRS
12 125.150(3). Legislatively, we have overruled the case law
13 from Doan vs. Wilkerson that says whoop, sorry, if you leave
14 it out, nothing you can do about it. Now, there's something
15 you can do about it.

16 If you find that an asset of value has been omitted
17 from a decree of divorce within the time -- within the
18 confines of the statute, then you bring a motion in the
19 district court and the district court shall, it's not
20 permissive, it's mandatory, shall divide that asset between
21 the parties in proportion to the decree to which it was
22 community property, unless the court makes a finding of a
23 compelling reason why the property should be unequally
24 divided.

1 And in the absence of that, the Court is to equally
2 divide the omitted asset as it would have divided it at the
3 time of a current divorce. Again, not 2021 current, but --

4 THE COURT: Understood.

5 THE WITNESS: Okay. Good. Current litigated
6 divorce.

7 BY MS. MASTEL:

8 Q And the Supreme Court's recent decision in Peterson,
9 how did --

10 A Oh, Peterson.

11 Q -- that impact any of that?

12 A Peterson was going to lead to a holding explicitly
13 stating that. During oral argument, Counsel for the party who
14 had retained the property, stipulated that that was all true,
15 agreed with appellant's counsel that that was an omitted asset
16 that should be divided.

17 The Supreme Court said that because everybody at
18 oral argument agreed that that was the law, there was no
19 justiciable controversy for them to rule upon and therefore,
20 elected to simply remand for the court to do what everybody
21 agreed they should do, to divide the omitted asset without
22 issuing a written opinion, saying that the law required people
23 to equally divide the community property.

24 It was extremely disappointing, but that was the

1 order because everybody agreed that's what the law was.

2 Q Based on your understanding of that case law, if the
3 Court were to set aside the provision in the decree addressing
4 survivorship options, does Nevada law require the Court to
5 consider how to -- to consider some division and make findings
6 and conclusions?

7 A You would presumably come right back to where we are
8 now. Because assuming that it got left out of the decree and
9 the final decree order, and I'm saying the decree, the post
10 decree litigation, the appeal, whatever is part of the process
11 of finalizing the decree, if it gets left out, then it's
12 omitted. And if it's omitted, then, under 125.150(3), you
13 file a motion, you say there's a valuable community property
14 asset that was omitted from the decree, you ask for a
15 partition, and the court shall divide it in accordance with
16 community property, unless the court makes written findings of
17 a compelling reason not to, for whatever reason the court
18 finds compelling.

19 THE COURT: So under the scenar -- my understanding
20 of what you're saying is, if the decree says wife number one
21 gets survivor benefit, and the husband retires and they start
22 getting the retirement pay, the first wife and husband along
23 the way, and then husband dies, that means second wife gets
24 zip?

1 THE WITNESS: Second wi -- assuming there is a
2 second wife, would get zip under the scenario you just
3 explained.

4 THE COURT: Nothing?

5 THE WITNESS: Right. But of course, that may or may
6 not be appropriate and that may or may not be the result
7 depending on some things you're --

8 THE COURT: Right, right, you can't predict. I
9 understand.

10 THE WITNESS: Well, your hypo isn't complete. We
11 don't know -- I'm so -- and I'm --

12 THE COURT: That's okay.

13 THE WITNESS: -- sorry, Your Honor.

14 THE COURT: That's okay.

15 THE WITNESS: I'm not arguing with you.

16 THE COURT: That's okay.

17 THE WITNESS: Well, I'm quibbling, but I'm not
18 arguing.

19 THE COURT: Okay.

20 THE WITNESS: Again, we have the service time.

21 THE COURT: Right.

22 THE WITNESS: The interest of the spouse one, spouse
23 two, in the retirement has to do with whether they were
24 married during the accrual of --

1 THE COURT: Correct.

2 THE WITNESS: -- the benefits. If he retired and
3 divorced the same day and then remarried --

4 THE COURT: Uh-huh.

5 THE WITNESS: -- even if he was married for another
6 25 years, spouse two has no interest in the retirement because
7 she wasn't married to the employee during the time that the
8 retirement accrued.

9 THE COURT: Right.

10 THE WITNESS: If wife one was married to the
11 employee for 19 years and then they got divorced and then he
12 remarried, and he was married to wife two for one year, and
13 then retired --

14 MS. LUBRITZ: Objection, it's an imperfect
15 hypothetical because these parties were not married for 19
16 years.

17 THE COURT: I'm asking him a question that I need an
18 answer to.

19 THE WITNESS: And -- okay.

20 THE COURT: Go ahead.

21 THE WITNESS: Then wife two has a very, very small
22 potential interest in the retirement benefit. Wife one has a
23 very big interest in the retirement. So wife one -- I can
24 give you the background --

1 THE COURT: Would it be on a timeline at that point
2 of his demise? Sorry -- his -- I'm saying his because we have
3 a his here.

4 THE WITNESS: Yeah. The -- what -- under that
5 scenario, it's very easy to provide adequate alternate
6 security for wife two, because the interest is very small. So
7 a tiny private life insurance policy is sufficient to cover
8 their interest.

9 THE COURT: But you couldn't get it divided by
10 timeline on the --

11 THE WITNESS: On the PERS survivorship interest, no.

12 THE COURT: Why not?

13 THE WITNESS: It is -- it's not my fault. It's a
14 non-divisible benefit. Under certain --

15 THE COURT: Where does it say that?

16 THE WITNESS: -- retirement systems.

17 THE COURT: Does it say non-divisible?

18 THE WITNESS: Yes.

19 THE COURT: Where?

20 THE WITNESS: Oh, that word?

21 THE COURT: You're the expert; yeah.

22 THE WITNESS: It just says there can only be one
23 survivorship -- I can't give you the subsection, but it's in
24 286. There can -- you can only have one named survivor

1 beneficiary.

2 THE COURT: Well, I've got a que -- I've got a
3 question for you then.

4 THE WITNESS: Yeah.

5 THE COURT: Okay. Hold on. I've got to pull it
6 back up. This is how I get myself in trouble, but I'm going
7 to go ahead.

8 Under NRS 286.6703, payment of allowance or benefit
9 to an alternate payee pursuant to domestic relations order.
10 It says here that for purposes of this subsection, alternate
11 payee means a spouse, a former spouse, child or other
12 dependent of a member or retired employee who, pursuant to a
13 judgment decree or order, relating to child support, alimony
14 or the disposition of community property, is entitled to
15 receive all or a portion of all of the allowance or benefit of
16 a member or retired member from the system.

17 THE WITNESS: Right.

18 THE COURT: Now what if you have five kids? Can you
19 put them all down or do you got to pick one?

20 THE WITNESS: No, kids are a little different.

21 THE COURT: All right. So I --

22 THE WITNESS: Kids are a little different, but
23 that's not a alternate payee under --

24 THE COURT: It says it is, alternate payee, kid.

1 THE WITNESS: Yeah. When it says all or in part,
2 they're talking about the lifetime benefit, meaning under the
3 PERS system, like ERISA, but unlike say, the military, you
4 could give the spouse all except for \$10 of the lifetime
5 benefit that's payable under the PERS system. It's an
6 allowable order.

7 It's a complex sentence, but they will only allow
8 one named survivor beneficiary and that survivor beneficiary
9 can be the children. I understand that's more than one body,
10 I got it, but it -- again, if you're talking spouses and
11 former spouses, you can only name one.

12 THE COURT: Doesn't seem fair --

13 THE WITNESS: You can't have a spouse --

14 THE COURT: -- on a timeline.

15 THE WITNESS: You can't have a spouse beneficiary.
16 They will reject any order that attempts to name multiple
17 beneficiaries under an option.

18 THE COURT: So you're married for one year, you
19 accrued this benefit, and it's got to be divided and that
20 means --

21 THE WITNESS: They won't do it. They will not do
22 it.

23 THE COURT: No, I mean, it's got to be divided in
24 the decree.

1 THE WITNESS: Oh.

2 THE COURT: It's got to be mentioned or whatever.

3 THE WITNESS: Right.

4 THE COURT: Addressed in the decree. So the one
5 year spouse will beat out the 20 year follow-up spouse?

6 THE WITNESS: No, no, because the divorce decree
7 from wife one obviously is prior in time --

8 THE COURT: Uh-huh.

9 THE WITNESS: -- to -- to wife two. Actually, your
10 questions is almost exactly the same that Justice Cadish asked
11 during the Peterson oral argument. She said, well, what
12 happens if spouse one has a very small benefit and wife two
13 has a very large benefit.

14 THE COURT: Uh-huh.

15 THE WITNESS: And my answer would -- then, as now,
16 is you simply provide alternate security to wife one. Let's
17 suppose these two had been married for a year and got
18 divorced.

19 THE COURT: Uh-huh.

20 THE WITNESS: She has a theoretical interest in the
21 retirement.

22 THE COURT: Oh, sure.

23 THE WITNESS: But it's very, very small.

24 THE COURT: Sure.

1 THE WITNESS: So you simply give her an extra set of
2 tires.

3 THE COURT: That's something the Court could do.

4 THE WITNESS: Right. You give her an extra thousand
5 bucks, you give her -- an interest in the car or something.

6 THE COURT: Right. I read that.

7 THE WITNESS: To -- to balance --

8 THE COURT: Uh-huh.

9 THE WITNESS: -- the small interest survivorship
10 interest in the retirement. It's when the interests are very
11 large that you run into it.

12 It doesn't matter what kind of security, the point
13 is, there is some security --

14 THE COURT: Got it.

15 THE WITNESS: -- for whatever the spousal interest
16 is.

17 THE COURT: Got it. I appreciate that.

18 THE WITNESS: When you're dealing with a 20 year
19 pension or something close to a 20 year pension, the interest
20 is so large there's usually nothing of equivalent value to
21 provide for that security interest.

22 THE COURT: Uh-huh.

23 THE WITNESS: There's nothing else of equivalent
24 value. If there happens to be, the Court has -- you don't

1 have to divide the cars and the widgets and the stock per
2 item, you just have to, on your balance sheet, equally divide
3 the property.

4 THE COURT: Right.

5 THE WITNESS: You can -- you can use different stuff
6 to accomplish that, but you need equivalent value stuff.

7 THE COURT: Okay. I get it. I -- I -- I
8 understand.

9 THE WITNESS: Okay.

10 THE COURT: Thank you so much.

11 MS. MASTEL: I'll pass the witness.

12 THE COURT: Your witness.

13 CROSS EXAMINATION

14 BY MS. LUBRITZ:

15 Q Hi there.

16 A Hi.

17 Q My head is spinning, give me a moment here. Did I
18 understand correctly that an employer spouse -- employee
19 spouse has an automatic survivorship interest, but the non-
20 employee spouse does not?

21 A Yes. We're talking PERS?

22 Q Yes, sir.

23 A Yeah.

24 Q Thank you. And so you know, anything that I ask

1 you, I'll be referencing PERS, in particular the Police and
2 Fire PERS.

3 Is there a default selection for which option?

4 A No, not in the PERS system.

5 Q Okay.

6 A In the PERS system, if nobody has ordered anything
7 else, then on the date of retirement -- well, just before the
8 date of retirement, PERS will provide a form to the employee,
9 say pick one, and the employee has to pick one.

10 Now, if the employee refuses to fill out the form,
11 there probably is a default built into the system. I guess it
12 would be my option one, but I -- everybody fills out the form,
13 so I honestly haven't run into a case where that's happened.

14 Q So were there a default, it would be option one?

15 A That's my guess, yes.

16 Q Okay.

17 A Based on the structure of the system, but I've never
18 actually had a case where that's happened.

19 Q Okay.

20 THE COURT: Yeah, I don't know that they would let
21 you not make a selection.

22 THE WITNESS: I --

23 THE COURT: I think you have to make one or they
24 don't process your -- your paperwork. Go ahead.

1 BY MS. LUBRITZ:

2 Q Can a police officer under PERS be compelled to name
3 a survivor beneficiary prior to retirement?

4 A Yes.

5 Q Explain that, please.

6 A A sitting district court judge or the Supreme Court
7 according to NRS 286. -- I forgot the subsection -- can issue
8 an order calling for division of the retirement, including the
9 survivorship options any way the court indicates. And
10 whatever the court indicates, PERS will honor.

11 Q And that would be an order, a specific order from
12 the court, not a decree of divorce, but a specific order from
13 the court?

14 A Oh no, it can be in the decree.

15 Q I'm sorry?

16 A It can be in the decree. We tend to write separate
17 orders because most people don't like their custody orders and
18 various other things floating around in the PERS system, so we
19 tend to ord -- we tend to write a -- it's called an order
20 incident to decree of divorce, a secondary order which is
21 signed at the same time, but it's not necessary. You could
22 put every provision that we're talking about in the decree as
23 a order in the decree.

24 Q Okay. Is there a benefit to the police officer to

1 make a -- an option two selection?

2 A I'm sorry, Counsel, I'm not arguing with you, but
3 I'm not sure I understood the question.

4 Q Sure. Sure. And I've been inartful before and I'll
5 be inartful again, so that's fair, and let me try to make it
6 more clear.

7 As I understand your testimony, the employee spouse
8 receives a smaller benefit as a result of selecting option two
9 --

10 A Right.

11 Q -- is that correct?

12 A Yes.

13 Q Okay.

14 THE COURT: Smaller lifetime benefit.

15 THE WITNESS: I'm sorry?

16 THE COURT: Lifetime benefit.

17 THE WITNESS: Yes, a lifetime benefit.

18 MS. LUBRITZ: Right.

19 BY MS. LUBRITZ:

20 Q So there would be no financial benefit to the
21 employee spouse for selecting option two.

22 A Not necessarily.

23 Q Tell me.

24 A Well, remember, divorce and retirement are two

1 different things.

2 Q Right.

3 A So you -- you have to choose an option, whether
4 you're planning on getting divorced or not. Lots of
5 employees, this is the O'Hara case, lots of PERS members will
6 choose an option other than option one, to provide for a
7 spouse in the event that they happen to drop dead. That way
8 they are assured that their spouse will continue to receive a
9 flow of benefits even if they die. That's the purpose of the
10 option selection.

11 Divorce is simply an overlay to that system which
12 says that a former spouse, as opposed to a current spouse,
13 might be the recipient of those dollars. So yeah, when you
14 say a benefit, let's suppose this fellow was married, happily
15 married on the day he retires. And he says, you know, I don't
16 know how long I'm going to live, the statistics say that men
17 die before women, you're probably going to outlive me by 10 or
18 15 or 20 years, I don't want you to eat cat food in your old
19 age, so I'm going to provide for an option two benefit, which
20 actuarially is the same amount, we get a little -- we, get a
21 little bit less during life, but if I drop dead, you will
22 continue getting money for the rest of your life.

23 Q But that's for a current spouse.

24 A Well --

1 Q Right?

2 A That's --

3 Q Not a -- not a former spouse. So there's a --
4 right?

5 A Yes, you asked would he get a benefit. The benefit
6 is to provide for somebody after you die.

7 Q Right. And -- and under your hypothetical or
8 actually what -- how you just testified, your scenario was for
9 a current spouse, not a former spouse.

10 A That's how the -- that's how the options are
11 written.

12 Q Right.

13 A Is for a spouse. A court order can make those
14 benefits payable to a former spouse.

15 Q Okay.

16 THE COURT: As I'm signing the document and the
17 decision has been made by the Court or the stipulation by the
18 parties, it is still a current spouse until I sign the decree,
19 then they become an ex-spouse. So the provisions are being
20 made for a current spouse at any time.

21 THE WITNESS: If it's a current divorce, yes.

22 THE COURT: Yeah.

23 THE WITNESS: Right. Yes. The person becomes a
24 former spouse after the decree --

1 THE COURT: After I sign it,

2 THE WITNESS: Right.

3 THE COURT: But the terms or the order or the
4 decision come before the signature --

5 THE WITNESS: If the --

6 THE COURT: -- in the filing.

7 THE WITNESS: If the divorce precedes the
8 retirement, yes.

9 THE COURT: Okay.

10 THE WITNESS: If the retirement precedes the
11 divorce, then the option selection decision precedes the date
12 of divorce.

13 BY MS. LUBRITZ:

14 Q So -- and -- and I'm not arguing, I don't know the
15 answers to these questions and this is the one time when I'm
16 going to ask questions where I don't already know the answer,
17 okay? If -- if a couple's married and the employee spouse is
18 a police officer has eight years into the system at the time
19 of divorce, and then works another 20, 25 years, would the
20 former spouse's entitlement be smaller or greater?

21 A Than what?

22 Q Who has the bigger interest, the current spouse or
23 the former spouse, under that scenario?

24 A It depends on -- I'm not trying to argue with you,

1 but --

2 Q No, please.

3 A -- it's a complete hypothetical. Can I assume what
4 facts you're asking about?

5 Q Please.

6 A You're assuming that someone gets married the day
7 they get divorced so that there's a spouse one and a spouse
8 two overlapping that same period of service, right?

9 Q No.

10 A Okay. Then I'm sorry.

11 Q Let me -- let me --

12 A I didn't understand your --

13 Q Okay. Let me just be very specific.

14 A Okay.

15 Q Mr. -- Mr. -- Mr. Rose had approximately eight,
16 eight and a half years in service at the time of the divorce.

17 A Okay.

18 Q Okay. He's a young guy. It's conceivable that he
19 could work another 20 or 30 years. Right? He's -- at the
20 time he was 32? At the time of the divorce he was 32. Would
21 the spouse who's been with him for 25 years after the -- you
22 know, while he's still in service, would that spouse have a
23 greater right or a bigger piece of the pie than the spouse who
24 was only married for about eight years of service?

1 MS. MASTEL: Objection, Your Honor. Calls for
2 speculation. I'm not sure if this is meant to be a
3 hypothetical spouse who lasts that long or if there's a
4 presumption of a spouse.

5 THE COURT: Oh my gosh, we have an expert here who
6 could take hypotheticals.

7 MS. MASTEL: I'm asking if it -- I'm saying I don't
8 understand, maybe it's the problem is the question is
9 inartful. I don't understand if she's making the new spouse a
10 hypothetical long-term spouse or if this is an assumption that
11 the next spouse will last that long.

12 THE COURT: Let's put it this way. He's already
13 remarried. True?

14 THE PLAINTIFF: Yes, ma'am.

15 THE COURT: He's already remarried, he has a new
16 wife.

17 THE WITNESS: Okay.

18 THE COURT: He has an ex-wife. They -- conceivably,
19 if he were to stay with this wife for another 20 to 25 years,
20 and then he -- he takes his retirement, he's still alive, it'd
21 still be split between wife one and himself, the retirement?

22 THE WITNESS: Yes.

23 THE COURT: But not wife two.

24 BY MS. LUBRITZ:

1 Q Which part of the retirement? The survivor benefit
2 or the actual --

3 THE COURT: The actual retirement. I'm talking
4 about right now --

5 MS. LUBRITZ: Right.

6 THE COURT: -- the actual retirement would be split
7 between timeline --

8 MS. LUBRITZ: Absolutely.

9 THE COURT: -- first wife and him, right?

10 MS. LUBRITZ: So regardless of the action --

11 THE COURT: Hold on. Well, let me finish -- I need
12 an answer to that.

13 MS. LUBRITZ: I'm sorry.

14 THE WITNESS: I'm --

15 THE COURT: He's still married --

16 THE WITNESS: Yes.

17 THE COURT: -- and divorced.

18 THE WITNESS: Okay.

19 THE COURT: Divorced wife eight years, married wife
20 30 years, he retires.

21 THE WITNESS: Yes.

22 THE COURT: Okay?

23 THE WITNESS: This is Justice Cadish's question.

24 THE COURT: So, if he had all the facts of what's

1 going on here, he could have made a provision for insurance
2 for wife one.

3 THE WITNESS: Exactly.

4 THE COURT: But not knowing that --

5 THE WITNESS: Exactly.

6 THE COURT: -- it --

7 THE WITNESS: And it's fixable, which is what
8 Justice Cadish didn't -- didn't know. We tried to get into it
9 during Peterson.

10 On those facts --

11 THE COURT: Yep.

12 THE WITNESS: -- and I'm sorry, Counsel, I -- again,
13 I wasn't arguing with you, because --

14 MS. LUBRITZ: No, I understand.

15 THE WITNESS: -- your -- your hypothetical didn't
16 include wife two. I couldn't tell where that marriage was.

17 THE COURT: Yeah.

18 THE WITNESS: Again, it's the same -- we were
19 discussing --

20 THE COURT: That's why she's the Judge.

21 THE WITNESS: -- if he got married -- if he got
22 married during service, it's different than if he got married
23 after service.

24 THE COURT: There -- he got married during service.

1 THE WITNESS: Okay. So if he got married during
2 service and by the way, this is not something I'm making up
3 for this case, the -- everything we're talking about here is
4 set out in detail in the article Divorcing the Military; How
5 to Attack, How to Defend, under the subsection how to choose
6 between wife one and wife two. Believe it or not, there's a
7 section of the article in there, And it goes over exactly
8 this hypothetical and what to do.

9 BY MS. LUBRITZ:

10 Q For military versus --

11 A Military and PERS work exactly the same way in this
12 instance. They are different than ERISA and certain other
13 retirement systems in that you --

14 Q Right,

15 A -- may have one survivor beneficiary.

16 Q If -- if I may just, does it -- is it the same -- is
17 military the same as a police officer because --

18 A Yes.

19 Q Okay.

20 A There's an --

21 Q Because you said --

22 A -- automatic reversion --

23 Q I thought you said that they had a special --

24 A They do.

1 Q Okay.

2 A As opposed to all other -- with no offense intended,
3 she doesn't have the same option that he has, and that he has.
4 They have an extra option one that is not part of the judicial
5 piece of PERS, but is a piece of the Police Fire version of
6 PERS.

7 Q Okay.

8 A It -- it only applies to those employees.
9 I'm not talking about the special option one thing.

10 Q Okay.

11 A I'm talking about the reversionary interest of the
12 spouse. That's identical between the military system and the
13 PERS system.

14 Q So tell me how that works, please.

15 A Everybody's alive, they get divorced, they divide
16 the pension.

17 Q Yes.

18 A Please pardon me, sir, but he dies. Whether --

19 THE COURT: A hero.

20 THE WITNESS: Whether he gets -- whether she gets
21 anything depends on the orders of the Court. She dies, right?
22 They get divorced, they divided the lifetime benefit, she
23 dies. There's no choice. Her benefits automatically swing
24 back to him and he gets her money for the rest of his life.

1 THE COURT: Uh-huh.

2 THE WITNESS: That's how the systems work.

3 BY MS. LUBRITZ:

4 Q Now is that as to survivor benefits or is that just
5 simply as to the -- the PERS retirement account itself?

6 THE COURT: The retirement benefit.

7 THE WITNESS: It's the retirement itself. It is a
8 survivorship interest and that's -- that's what a survivorship
9 interest is. Survivorship interest is if somebody else lives
10 or dies, does the money that you're getting change. That's
11 what a survivorship interest means. And the answer is yes.
12 Automatically without the court saying anything, without
13 anybody doing anything, if these parties get divorced and
14 divide the PERS payment stream and she dies, he gets her money
15 back. There's a special exception which says that he can't do
16 anything to accelerate the maturation of that survivorship
17 interest, but that's a different story entirely.

18 THE COURT: And a different section of the --

19 THE WITNESS: It's a different section of the code.

20 THE COURT: Yes. Okay.

21 MS. LUBRITZ: That's a dif -- that's a lifetime
22 special, right?

23 THE WITNESS: Sorry. I -- I'm always obliged to
24 throw that in when I lecture on the subject.

1 THE COURT: That's all right.

2 THE WITNESS: So to -- to get back to your
3 hypothetical.

4 BY MS. LUBRITZ;

5 Q Please.

6 A If you had life --

7 Q Who has the larger interest?

8 A Wife one -- right. That's how the CLE materials
9 suggest that the survivorship interest should be accorded.
10 Whoever's got the larger interest in the retirement benefit
11 itself should theoretically receive the survivorship benefit
12 because that's the person most in need of protection.

13 The problem is, that at the time of divorce one, you
14 don't know what's going to -- you don't know if somebody's
15 going to remarry. If you do remarry, you don't have any idea
16 how long that marriage is going to last, and you don't know
17 whether the spouse might die before the retirement occurs.
18 You -- there --

19 THE COURT: Wife one or wife two, right.

20 THE WITNESS: Right.

21 THE COURT: Okay.

22 THE WITNESS: There -- there's no way to know those

23 --

24 THE COURT: Right. Right.

1 THE WITNESS: -- those details. And the retirement
2 system has some of those answers built in. If the named
3 survivor beneficiary dies before the moment of retirement, the
4 employee is entitled to name a new survivor. The -- basically
5 it resets.

6 THE COURT: Uh-huh.

7 THE WITNESS: The system.

8 THE COURT: Uh-huh.

9 THE WITNESS: And you're allowed to name a new
10 survivor for the benefit.

11 THE COURT: If that doesn't happen, what the CLE
12 materials recommend is that the parties stipulate to give wife
13 one in this scenario an alternate security, because it's the
14 smaller interest and therefore, could be provided with a term
15 life insurance policy or something else to secure that smaller
16 interest.

17 THE COURT: When can that be ascertained? At the
18 time of the decree of divorce or at the time of retirement?

19 THE WITNESS: It would be just before retirement.

20 THE COURT: Right.

21 THE WITNESS: And the reason --

22 THE COURT: When you're filling out your paperwork.

23 THE WITNESS: Right. And because it -- it would be
24 at that moment that the retiree would know I have wife two

1 with this larger interest. You -- you -- he's not going to
2 know that --

3 THE COURT: Okay.

4 THE WITNESS: -- fact until he gets to that point,
5 so --

6 THE COURT: But you're in divorce one, you've
7 already split it and given option away to wife one.

8 THE WITNESS: Right.

9 THE COURT: And now you find out you've got wife two
10 with a -- and you can still fix it?

11 THE WITNESS: You can still fix it, PERS will
12 accept an amendment to the order at any time until actual
13 retirement, at which point it locks. You can't change option
14 selection post retirement. There's a couple of tiny little
15 exceptions that are not relevant here, I don't want to get
16 into minutia.

17 THE COURT: So if he wanted to change it because of
18 wife two, you know, having these needs, whatever they might be
19 at that time, would he have to go to court to do it or could
20 he do it through PERS?

21 THE WITNESS: If the parties wanted to stipulate
22 they could easily stipulate. We write those orders all the
23 time.

24 THE COURT: Okay.

1 THE WITNESS: But it would require a court order to
2 change a previous court order.

3 THE COURT: I see.

4 THE WITNESS: There's no -- there's no way -- he
5 can't do it unilaterally, she can't do it unilaterally. If on
6 the facts that we're talking about, if that happened.

7 THE COURT: Right.

8 THE WITNESS: They would have to either stipulate to
9 provide alternate security and have her release her
10 survivorship interest or, if they couldn't agree, he would
11 have to file a motion and whoever was sitting in this chair,
12 would have to issue -- and I'm not trying to lock you into
13 this case for 25 years --

14 THE COURT: There's no way.

15 MS. LUBRITZ: Yeah, she's not --

16 THE COURT: Go ahead.

17 THE WITNESS: Whoever was sitting in the chair could
18 make the decision to alter the court order. PERS will accept
19 an amended QDRO --

20 THE COURT: Uh-huh.

21 THE WITNESS: -- altering both the division of the
22 lifetime benefits and the survivorship option at any time up
23 to actual retirement. After that time, no matter what he
24 wants, she wants or with respect you want, you can't change

1 it.

2 THE COURT: Okay.

3 THE WITNESS: After that time.

4 BY MS. LUBRITZ:

5 Q And if I understand correctly, under the Court's
6 hypothetical or scenario, wife two has the greater benefit
7 interest?

8 A Right.

9 Q Okay,

10 A That's exactly what Justice Cadish was asking. If
11 that happened, and it can be built right into the court order
12 to be issued from this case, that if that materiality existed,
13 it would be considered a change of circumstance entitling the
14 party to file a motion to amend it. I mean, you can build all
15 of that stuff into a court order if you want to.

16 People get divorced at all times during their
17 service career; six months in, two years in, two weeks before
18 retirement. And where you are in that process alters the kind
19 of orders that are appropriate to enter in the case.

20 Q And under the scenario, an easy fix if you will, is
21 an insurance policy?

22 A That's the usual substitute security. It's not the
23 only substitute --

24 Q Sure.

1 A -- security, but it's the -- it's the usual one.

2 Q And that would be a term policy, not a whole life?

3 A Normally, because whole life --

4 Q Right.

5 A -- makes it much more complicated with accrued
6 values and cash in, so normally it's term life.

7 Q Okay. Would that be appropriate in the event of the
8 hypothetical scenario that the Court gave?

9 A Yes. But you wouldn't know that --

10 Q Okay.

11 A -- until 20 years after the divorce.

12 Q Absolutely. Absolutely.

13 A But yes.

14 Q Okay. Do I get credit, CLE credits for this?

15 A You -- actually, you probably could.

16 Q Oddly enough, in -- I realize this is a Department I
17 case. I think Judge Moss made exactly that order in a prior
18 case that she wanted everybody to --

19 MS. LUBRITZ: If the Court's so inclined, I would
20 love some credits for this.

21 MS. MASTEL: I don't think I need them, but if the
22 Court's so inclined.

23 MS. LUBRITZ: Yeah, I'm -- look, I'm -- I'm paid up
24 for the next year, but -- all right.

1 THE COURT: You have to pass muster with the
2 education committee, but yeah.

3 MS. MASTEL: We have a video transcript.

4 THE COURT: It's true. And we've been here for an
5 hour. We should get at least one CLE credit.

6 MS. MASTEL: I would note for the Court, given that
7 it is 4:50, I assume we're going to end very soon without
8 redirect.

9 THE COURT: Yeah.

10 MS. MASTEL: My client does -- we are working with
11 an expert, so if Ms. Lubritz needs to go a couple minutes
12 over, my client is taking the UNLV cooperative parenting
13 class, it starts at 5:30, so she's going to walk out the door
14 at 5:00, if that's okay with the Court.

15 THE COURT: I have no control over her. If she
16 wants to leave it in your hands without her to --

17 MS. MASTEL: Okay.

18 THE COURT: -- be here, that's on her.

19 MS. MASTEL: Okay.

20 (Pause)

21 MS. LUBRITZ: Thank you, and I have no further
22 questions.

23 THE COURT: Okay. She's done with her questioning.
24 Do you have time for your redirect? We wouldn't want Mr.

1 Willick have to come all the way over here.

2 MS. MASTEL: Right.

3 THE COURT: I mean, I don't know if his watch counts
4 his steps or not, but -- I'm sure it does.

5 MS. MASTEL: Actually, I don't believe I have any
6 further questions for Mr. Willick, Your Honor.

7 THE COURT: Wow, you got off easy. You sure did.
8 All right. I think they should change the survivor benefit to
9 be timelined. If you have 20 wives, they should each get
10 their --

11 THE WITNESS: For whatever it's worth, Your Honor --

12 THE COURT: -- portion.

13 THE WITNESS: -- I have made that recommendation,
14 both in the military system and in the PERS system, and that -
15 -

16 THE COURT: That's before they had calculators,
17 though. Now they can just put the facts in and get the
18 answer.

19 THE WITNESS: I've made that suggestion, but that's
20 all I -- I'm not in charge.

21 THE COURT: Well, your wheel needs to get squeakier.
22 All right. Thank you and you're excused.

23 THE WITNESS: Thank you, Your Honor.

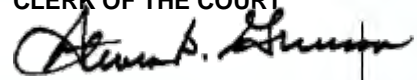
24 (EXCERPT CONCLUDED AT 4:51:52 P.M.)

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

/s/ Kimberly C. McCright

Kimberly C. McCright, CET

Jami S. Ondek



1 **RESP**
2 RACHEAL H. MASTEL, ESQ.
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5 3303 Novat Street, Suite 200
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7 (702) 823-4900
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9 Service@KainenLawGroup.com
10 Attorney for Defendant
11 *in conjunction with the Legal Aid Center of Southern Nevada*

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 DAVID ROSE,

15 Plaintiff,

16 vs.

17 SARAH ROSE,

18 Defendant.

CASE NO.
DEPT NO.

D-17-547250-D
I

19 **DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO NOTICE OF**
20 **APPEARANCE BY AUDIOVISUAL TRANSMISSION FILED ON BEHALF**
21 **OF SHELLEY BOOTH COOLEY, ESQ.**

22 COMES NOW, Defendant, SARAH ROSE, by and through her attorney of
23 record, RACHEAL H. MASTEL, ESQ., of the KAINEN LAW GROUP, PLLC, hereby
24 submits her response to *Plaintiff's Objection to Notice of Appearance by Audiovisual*
25 *Transmission Filed on Behalf of Shelly Booth Cooley, Esq.*

26 David's objection, filed on the eve of trial, is a specious tactic to prejudice
27 Sarah, by putting a material witness to her case in an unnecessarily difficult position.
28 Sarah initially informed this Court that Ms. Cooley desired to appear by audio/visual
equipment on September 28, 2021, at the time of trial. Unfortunately, because of the
timing of that request, the Court at that point was unable to accommodate the same.
However, as Ms. Cooley did not testify the first day, it was logical to assume that the
...

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1 request would be forthcoming and David has had more than one month's notice that was
2 Ms. Cooley's desire.

3 In addition, the November 15th date is a continuance of the originally set
4 second day of trial, which had been set for April 14, 2020. On October 8, 2021 (again
5 more than one month before trial), undersigned counsel filed the initial Notice of
6 Appearance By Audio/Visual Equipment for Ms. Cooley. David did not object. Two days
7 later, David sought to continue the trial date. The parties agreed to the same. At no time
8 while discussing that issue did David object to Ms. Cooley's appearance via Audio/Visual
9 equipment. Thereafter, solely because the Court needs time to set up the blue jeans
10 equipment for the trial, Sarah re-noticed Ms. Cooley's appearance by alternate means on
11 November 9, 2021. Suddenly, David filed an objection two days later.

12 Ms. Cooley has personal reasons, which she is not required to disclose, to
13 request to appear by alternate means. The Administrative Orders, specifically Order 21-
14 03, direct this Court to allow appearance by alternate means. No Motion is required to
15 make that request and no demand for a "reason" is appropriate. Further, unlike most
16 witnesses at a trial, Ms. Cooley, as an attorney, has a separate and higher duty, of candor
17 to the Court. It is unreasonable to insinuate that an attorney in good standing with the bar
18 is likely to engage in the kinds of deceptive practices that make personal appearance at
19 a trial critical. An attorney in good standing is far less impeachable witness than the
20 typical witness.

21 There is no basis for an objection to Ms. Cooley's appearance by alternate
22 means, and the Court should deny David's request for the same.

23 DATED this 12th day of November, 2021.

24 KAINEN LAW GROUP, PLLC

25 By: 

26 RACHEAL H. MASTEL, ESQ.

27 Nevada Bar No. 11646

28 3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorney for Defendant

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 12th day of November, 2021, I caused to
3 be served the *Defendant's Response to Plaintiff's Objection to Notice of Appearance*
4 *by Audiovisual Transmission Filed on Behalf of Shelly Booth Cooley, Esq.* to all
5 interested parties as follows:

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

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

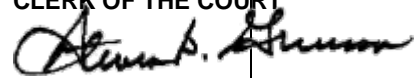
12 BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to
13 be transmitted, via facsimile, to the following number(s):

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

17 *Attorney for Plaintiff*

18 Shelley@lubritzlawoffice.com
19 Daverose08@gmail.com

20 
21 _____
22 An Employee of
23 KAINEN LAW GROUP, PLLC
24
25
26
27
28



RPLY

Shelley Lubritz, Esq.
Nevada Bar No. 5410
LAW OFFICE OF SHELLEY LUBRITZ, PLLC
375 E. Warm Springs Road Suite 104
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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: 11/15/21
Hearing Time: 9:00 a.m.

**REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S OBJECTION TO NOTICE
OF APPEARANCE BY AUDIOVISUAL TRANSMISSION FILED ON BEHALF OF
SHELLY BOOTH COOLEY, ESQ.**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his *Reply to Defendant's Response to Plaintiff's Objection to Notice of Appearance by Audiovisual Transmission filed on Behalf of Shelly Booth Cooley, Esq.*

Typically, when a counsel seeks an accommodation of the Court relative to an appearance, that request is based upon a calendar conflict or other such issue. This was

1 understood to be the case when on September 23, 2021¹, Ms. Mastel advised the Court
2 that Ms. Cooley requested to appear via BlueJeans at the evidentiary hearing. Given the
3 timing and the resources of the Court, that request was denied.

4
5 In Defendant's Response, Ms. Mastel's position that "as Ms. Cooley did not testify
6 the first day, it was logical to assume that the request would be forthcoming and David
7 has had more than one month's notice that was Ms. Cooley's desire" is ill-founded. The
8 undersigned has no knowledge as to Ms. Cooley's calendar. Further, a "desire" of counsel
9 to appear via BlueJeans versus in person is not an appropriate standard by which a
10 Court's Order can be ignored. Referring to this issue, Ms. Mastel acknowledged, "The
11 Order said in person." (VT September 23, 2021 at 1:31:37 – 1:37:44)
12

13 The undersigned respectfully asserts that nothing raised in Defendant's Response
14 supports her position that Ms. Cooley may appear via BlueJeans. Ms. Cooley is a material
15 witness and her presence in the Courtroom is necessary. It is important for the Court and
16 Mr. Rose to observe Ms. Cooley's demeanor and hear her testimony in person.
17

18 The issue of audiovisual versus "in person" testimony was raised previously. In
19 *Defendant's Opposition to Plaintiff's Motion for Relief Pursuant to Administrative Order*
20 *20-17 and for Related Relief and Countermotion for Attorney's Fees and Costs* filed on
21 September 25, 2020, Ms. Mastel wrote,
22

23 Both counsel on this case have acknowledged that this case
24 is very likely to be appealed, regardless of the outcome.
25 Therefore, multiple issues are of concern; for example,
26

27 ¹ In Defendant's Response to *Plaintiff's Objection to Notice of Appearance by Audiovisual*
28 *Transmission filed on Behalf of Shelly Booth Cooley, Esq.*, the date of trial is misidentified as September
28, 2021. The evidentiary hearing was held on September 23, 2021.

1 potential witness and credibility issues which would be more
2 easily addressed in person, but likely more difficult to identify
3 and address via video, are critical in this matter.

4 Page 3, lines 14 – 18.

5 Ms. Mastel went on to write in a footnote,

6 To date, counsel is aware of connectivity issues (having just
7 had a one hour hearing last three hours due to the same);
8 potential witness issues related to individuals off screen or
9 witnesses using notes, texting, etc; the fairly common lack of
10 clarity of the video which interferes with the Court's ability to
11 view body language; issues related to garbled speech, and
12 the JAVS systems ability capture all of the communication in
13 the court room. These are only the most common and
14 concerning possibilities which could have an impact on the
15 anticipated appeal.


16 Page 3, lines 25 – 28.

17 The undersigned reversed her opinion on this issue and concurs with Ms. Mastel.
18 For the reasons she set forth and others, it is imperative that Ms. Cooley appears,
19 personally, at the November 15, 2021 evidentiary hearing.

20 Ms. Cooley should have filed a Motion with the Court seeking relief. The *Notice of*
21 *Appearance by Audiovisual Transmission* is an improper vehicle for such a purpose. No
22 basis has been offered as to why Ms. Cooley cannot appear in person at the time of trial.

23 Dated this 11th day of November, 2021.

24 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

25 By: 
26 Shelley Lubritz, Esq.
27 Nevada Bar No. 5410
28 375 E. Warm Springs Road Suite 104
Las Vegas, Nevada 89119
Attorney for Plaintiff
David John Rose

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November, 2021, I caused to be served
Reply to Defendant's Opposition to Plaintiff's Objection to Notice of Appearance by
Audiovisual Transmission filed on Behalf of Shelly Booth Cooley, Esq. 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:

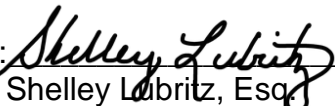
_____ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to
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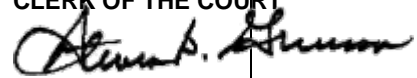
 X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I
caused a true copy thereof to be served via electronic mail, via Wiznet, to the following
e-mail address(es):

Attorney for Defendant: Service@KainenLawGroup.com
racheal@kainenlawgroup.com kolin@kainenlawgroup.com

Dated this 14th day of November, 2021.

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By:  _____
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MISC

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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 and 11/15/21
Hearing Time: 9:00 a.m.

PLAINTIFF'S CLOSING ARGUMENT

Mr. Rose thanks this Court for its indulgence and for undertaking the unenviable task of deciding the issues presently before it.

On March 23, 2018, the parties, David and Sarah Rose, participated in a mediation presided over by, then, attorney Rhonda M. Forsberg, Esq. Ms. Forsberg drafted a Memorandum of Understanding (hereinafter the "MOU") memorializing the terms of the parties' agreement. Both parties and their respective counsel signed the MOU while at Attorney Forsberg's office.

1 At the time of the mediation, David was employed by the Las Vegas Metropolitan
2 Police Department (hereinafter "LVMPD") and was a member of the LVMPD Public
3 Employee Retirement System (hereinafter "PERS"). The Nevada Supreme Court has
4 long held that a PERS pension is a community property asset to be divided upon divorce.
5 As set forth in the MOU, Sarah was awarded "Her interest in [David's] PERS pursuant to
6 *Gemma v. Gemma*."

8 An irrevocable right of survivor benefits (hereinafter "SBP" or "survivor benefits")
9 to a PERS pension, has been defined neither legislatively nor by case law as a community
10 property asset subject to division. While survivor benefits were addressed at the
11 mediation, David did not agree to name Sarah as his irrevocable survivor beneficiary. As
12 such, survivor benefits were intentionally omitted from the MOU.

14 The Decree of Divorce (hereinafter the "Decree") at issue was drafted directly after
15 the mediation on March 23, 2018. The parties and their respective counsel signed the
16 Decree that day with the understanding that Ms. McConnell, David's former counsel,
17 would maintain the original document for further review prior to its submission to the Court.

19 Ms. McConnell testified on September 23, 2021, and, again, on November 15,
20 2021, that sometime thereafter, she reviewed the Decree and discovered the inclusion of
21 the following provision,

23 One-half of the community portion, as defined within Nevada
24 law as articulated in *Gemma v. Fondi*, 105 Nev. 458 (1989),
25 and *Fondi v. Fondi*, 106 Nev. 856 (1990), in DAVID JOHN
26 ROSE's Las Vegas Metropolitan Police Department Public
27 Employees' Retirement System of Nevada Pension benefits,
28 said pension benefits to be divided pursuant to a Qualified
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.¹

It is well understood that marriages and divorces stem from contract law, and where family law cases are silent, contract cases control. In the case presently before this Court, the Memorandum of Understanding (hereinafter the "MOU") is a contract between the parties. Within the four (4) corners of the document, the MOU resolved "all" issues² and shall not be merged into the Decree.³ The MOU is an integrated agreement; thus, no term can be added or subtracted without destroying the contract itself. Nevada law is clear that the Court cannot step into the shoes of the parties and negotiate from the bench. Mr. Rose respectfully submits that if this Court denies his NRCP 60(b) motion and upholds the disputed provision in the Decree of Divorce or if the Court substitutes its own, then the Memorandum of Understanding is destroyed and the parties be compelled to negotiate the terms of their asset and debt distribution as well as alimony. As Mr. Rose testified, he would not have agreed to an award of alimony to Ms. Rose if he knew she would also receive the SBP.

In *May v. Anderson*⁴, the Nevada Supreme Court confirmed that once a "settlement contract is formed when the parties have agreed to its material terms, even though the exact language is finalized later, a party's refusal to later execute" the document after agreeing upon the essential terms does not render the settlement

¹ April 18, 2018, Decree of Divorce, page 21, lines 8 - 22; page 23, lines 23 - 28; and page 24, lines 1 - 10.

² Paragraph 1.

³ Paragraph 1.

⁴ *May v. Anderson*, 119 P. 3d 1254 (2005).

1 agreement invalid.⁵ Specifically, in *May*, the defendant's insurance offered to pay
2 \$300,000 to the injured parties in exchange for a release of all claims and a covenant not
3 to sue. The plaintiff signed a letter memorializing the terms of the parties' agreement and
4 acknowledged that he agreed to the terms. Upon receiving the document to be executed
5 which contained the settlement terms, the plaintiff refused to sign.
6

7 On appeal, the Court held, "because a settlement agreement is a contract, its
8 construction and enforcement are governed by principles of contract law. Basic contract
9 principles require, for an enforceable contract, an offer and acceptance, meeting of the
10 minds, and consideration. With respect to contract formation, preliminary negotiations
11 do not constitute a binding contract unless the parties have agreed to all material
12 terms. A valid contract cannot exist when material terms are lacking or are insufficiently
13 certain and definite. A contract can be formed, however, when the parties have agreed
14 to the material terms, even though the contract's exact language is not finalized until
15 later. In the case of a settlement agreement, a court cannot compel compliance when
16 material terms remain uncertain. The Court must be able to ascertain what is required
17 of the respective parties."⁶
18

19
20 The MOU in this case is clear that it was a final agreement on all material terms.
21 The testimony in this case revealed that irrevocable survivor benefits to Mr. Rose's
22 PERS were addressed at the mediation and intentionally omitted from the MOU as Mr.
23 Rose did not consent to naming Sarah Rose as his survivor beneficiary.
24

25
26
27 ⁵ *Id.* At 1256.

28 ⁶ *Id.* at 1256.

1 Mr. Willick's testimony should be ruled inadmissible and disregarded. At the
2 evidentiary hearing, Mr. Rose objected to the Court's ruling that Mr. Willick would be
3 allowed to testify as an expert in this matter. The objection was overruled and noted. Mr.
4 Rose respectfully submits that the Court's consideration and/or reliance upon his
5 testimony would be misguided and reversible error.
6

7 NRS 50.275 provides,

8 If scientific, technical or other specialized knowledge will
9 assist the trier of fact to understand the evidence or to
10 determine a fact in issue, a witness qualified as an expert by
11 special knowledge, skill, experience, training or education
12 may testify to matters within the scope of such knowledge.

13 [Emphasis added].

14 By definition, an expert witness's testimony, must be offered, only, to assist the
15 Court's understanding of the evidence, or, to assist the Court in determining a fact at
16 issue. Mr. Willick's testimony did neither.

17 NRS 125.070 provides,

18 The judge of the court shall determine all questions of law and
19 fact arising in any divorce proceeding under the provisions of
20 this chapter.

21 [Emphasis added].

22 Although it does not appear the Nevada Supreme Court has written an opinion on
23 the issue, it is well-settled that adjudicating issues of law is within the exclusive province
24 of the court. "The rule prohibiting experts from providing their legal opinions or
25 conclusions is so well established that it is often deemed a basic premise or assumption
26 of evidence law - a kind of axiomatic principle. [Internal citation omitted]. In fact, every
27 [federal] circuit has explicitly held that experts may not invade the court's province by
28

1 testifying on issues of law." *In re Initial Public Offering Securities Lit.*, 174 F.Supp.2d 61,
2 64 (S.D.N.Y. 2001). "[T]he calling of lawyers as 'expert witnesses' to give opinions as to
3 the application of the law to particular facts usurps the duty of the trial court to instruct the
4 jury on the law as applicable to the facts, and results in no more than a modern day 'trial
5 by oath' in which the side procuring the greater number of lawyers able to opine in their
6 favor wins." *Downer v. Bramet*, 199 Cal.Rptr. 830, 833, 152 Cal.App.3d 837, 842 (Cal.
7 App. 4th Dist. 1984).

8
9 As McCormick on Evidence teaches: Undoubtedly some
10 highly opinionated statements by the witness amount to
11 nothing more than an expression of his general belief as to
12 how the case should be decided or the amount of damages
13 which would be just. All courts exclude such extreme
14 conclusory expressions. There is no necessity for this kind of
15 evidence; its receipt would suggest that the judge and jury
16 may shift responsibility for the decision to the witness. In any
17 event, the opinion is worthless to the trier of fact.⁷

18 [Emphasis added].

19 It is respectfully submitted that the Court erred by allowing Mr. Willick, to testify as
20 an expert witness "to give opinions as to the application of the law to particular facts." In
21 direct contravention thereto, Mr. Willick's testimony consisted of his opinions and his
22 interpretation of Nevada law and the application of his interpretation to facts in this matter.
23 Mr. Willick's opinions were offered to advise the Court on Nevada law and the application
24 of Nevada law to the facts in this matter. As such, his testimony should be ruled
25 inadmissible and disregarded by this Court.

26
27 ⁷ McCormick on Evidence § 12, at 60 (6 ed. 1999).

1 Notwithstanding the same, because his testimony is a part of the record, Mr. Rose
2 must, now, address portions thereof in his closing argument. He respectfully submits that
3 this Court will recognize the distinctions in Mr. Willick's testimony. First, on the broad issue
4 of "omitted community property assets," David concurs that they must be divided pursuant
5 to NRS 125.150(3). Second, the portion of Mr. Willick's testimony that classified SBP as
6 community property assets was, quite simply, wrong. The Nevada Supreme has not
7 defined or classified them as such. It is this portion of Mr. Willick's testimony that muddled
8 what may be referred to an already murky record.
9

10
11 In reference to SBP, Mr. Willick testified,

12 Peterson was going to lead to a holding explicitly stating that.
13 During oral argument, Counsel for the party who had retained
14 the property, stipulated that that was all true, agreed with
15 appellant's counsel that that was an omitted asset that should
16 be divided.

17 The Supreme Court said that because everybody at oral
18 argument agreed that that was the law, there was no
19 justiciable controversy for them to rule upon and therefore,
20 elected to simply remand for the court to do what everybody
21 agreed they should do, to divide the omitted asset without
22 issuing a written opinion, saying that the law required people
23 to equally divide the community property.

24 [9/23/21 Transcript page 55, lines 12 – 23]

25 Mr. Willick misstated and inappropriately applied the Nevada Supreme Court's
26 decision in *Peterson v. Peterson*, 463 P.3d 467 (2020) to the facts of this case. He labeled
27 SBPs "omitted assets, the Nevada Supreme Court did not. The Court opined that,

28 To warrant adjudication under NRS 125.150(3), the SBP must
be (1) community property and (2) omitted by mistake or fraud.
[footnote omitted]

* * * *

1 Because James admitted both in the district court briefing and
2 at oral argument that the SBP was a community property
3 asset that was "inadvertently omitted" from the divorce decree,
4 we conclude that under these particular facts, his admission
is sufficient to establish that the SBP was omitted by mistake
under NRS 125.150(3). [footnote omitted]

5 * * * *

6 We therefore reverse the district court's order as it pertains to
7 the SBP and remand for the district court to adjudicate the
8 SBP under NRS 125.150(3). On remand, the district court
9 must comply with NRS 125.150(3)'s mandate to "equally
divide the omitted community property," unless it finds "a
compelling reason" not to, which it must set forth in writing.
10 However, the district court is not required to order James to
11 select an SBP and designate Louisa as the sole beneficiary.
12 It might instead exercise its broad discretion, to deny the
requested relief or provide an alternative form of equitable
13 relief.

14 [emphasis added]

15 In its footnote 3, the Nevada Supreme Court held,

16 Because of James's concession, we need not make a legal
17 determination on appeal of whether the SBP here is a
18 community property asset or a mere "right" to be exercised
under the military pension.

19 [emphasis added].

20 The Court's ruling as cited, above, must be broken down into parts. Specifically,

21 To warrant adjudication under NRS 125.150(3), the SBP must
22 be (1) community property and (2) omitted by mistake or fraud.
23 [footnote omitted]

24 Assuming, *arguendo*, that this honorable Court finds SBPs are community property,
25 they were not omitted by mistake or fraud. Rather, the provision awarding Ms. Rose the
26 irrevocable survivor benefit rights to Mr. Rose's PERS was inserted into the *Decree of*
27 *Divorce* by fraud. Ratifying that provision unjustly enriches Sarah who comes before this
28

1 Court with unclean hands. The issue of fraud will be addressed later in this Closing
2 Argument.

3 Turning to the next paragraph,

4
5 Because James admitted both in the district court briefing and
6 at oral argument that the SBP was a community property
7 asset that was "inadvertently omitted" from the divorce decree,
8 we conclude that under these particular facts, his admission
9 is sufficient to establish that the SBP was omitted by mistake
10 under NRS 125.150(3). [footnote omitted]

11 The facts in *Peterson* are fundamentally different than those of the instant matter.
12 Both parties in *Peterson* agreed an asset was inadvertently omitted from the Decree of
13 Divorce. Such is not the case in the matter presently before this Court.

14 Because the Nevada Supreme Court has not classified SBP as community
15 property, it is not an asset to be divided absent an agreement of the parties. Nor is it a
16 "right" as Mr. Willick testified.

17 Key portions of Mr. Willick's testimony were unsupported by legal authority which
18 is, yet another basis for Mr. Rose's position that his testimony must be disregarded.
19 During a critical part of his testimony, Mr. Willick was asked what law governs survivorship.
20 As set forth in the transcript, he could not provide the Court with anything other than NRS
21 286.

22 THE WITNESS: The PERS participant has the option of
23 selecting whatever option he wants.

24 THE COURT: On the day of retirement.

25 THE WITNESS: On the day of retirement. If some court
26 somewhere, meaning a district court of proper jurisdiction or
27 the Supreme Court according to the regs, if either one of those
28 courts has issued an order and it has to be a Nevada court,
has issued an order requiring an option selection, PERS will

1 honor the court order if they are properly served with an
2 appropriately phrased order and they will enforce the option
3 selection at the time of retirement, no matter what the retiree
wishes to select.

4 BY MS. MASTEL:

5 Q What law governs survivorship?

6 A Well, in this system it's NRS 286. And I'm sorry, off the
7 top of my head, I can't give you the subsection.

8 [11/12/21 Transcript page 19, lines 21 – 24 and page 20, lines
9 1 – 12]

10 Mr. Willick testified that the PERS SBP is non-divisible but was unable to provide
11 a citation for that statement even when pressed by the Court.

12 THE COURT: But you couldn't get it divided by timeline
13 on the –

14 THE WITNESS: On the PERS survivorship interest, no.

15 THE COURT: Why not?

16 THE WITNESS: It is it's not my fault. It's a non-divisible
17 benefit. Under certain –

18 THE COURT: Where does it say that?

19 THE WITNESS: -- retirement systems.

20 THE COURT: Does it say non-divisible?

21 THE WITNESS: Yes.

22 THE COURT: Where?

23 THE WITNESS: Of, the word?

24 THE COURT: You're the expert; yeah.

25 THE WITNESS: It just says there can only be one
26 survivorship – I can't give you the subsection, but it's in 286.

1 There can – you can only have one named survivor
2 beneficiary.

3 [emphasis added] [11/12/21 Transcript page 59, lines 9 – 24
4 and page 60, line 1]

5 If Mr. Willick is correct, and there can only be one (1) irrevocable survivor
6 beneficiary then Ms. Cooley and Ms. Rose wrongfully forced David to provide for his
7 former wife in direct contravention of his expressed wishes. If the NRCP 60(b) motion is
8 denied, then Sarah and her former counsel have, in reality, stolen David's right to choose
9 his irrevocable survivor beneficiary at the time of retirement and granting to her something
10 to which she would not otherwise be entitled.

11
12 If this Court determines Mr. Willick's testimony to be admissible, the following is
13 submitted for the Court's review. Whereas he endeavored to convince this Court that
14 there exists an automatic SBP in Nevada, his testimony bellies that fact.

15 Q Okay. Has the Supreme Court identified what elements
16 of a pension constitute community property?

17 A The existing case law going back to 1978 in Ellett just
18 say all benefits. They – they did not make a list. They just said
19 retirement benefits, whether vested or not, whether matured
20 or not, if they are accrued during the period of marriage, they
 are divisible benefits to be addressed upon divorce.

21 [emphasis added] [11/12/21 Transcript page 23, lines 2 – 9]

22 From *Wolff* to *Henson*, Mr. Willick testified that the Nevada Supreme Court is
23 wrong and it continues to operate on a "false fact." In addressing *Wolff*, he testified
24 "Nobody has an automatic survivorship interest. Unfortunately, they were simply wrong
25 as a matter of fact, because that's not how PERS works, as we've already discussed."
26 [11/12/21 Transcript page 48, lines 18 – 20] and "Henson made it worse." [11/12/21
27 Transcript page 49, lines 18 – 20]

1 Transcript page 49, line 12]

2 In furtherance of his position that SBPs are community assets which must be
3 divided at the time of divorce, Mr. Willick testified, by analogy, as to California laws on
4 this issue.
5

6 California has made it extremely clear that survivor benefit
7 component of a retirement benefit is an item of value to be
8 divided like all other items of value in an equal division of
community assets in every case.

9 [11/12/21 Transcript page 46, lines 5 - 8]

10 The Court interjected correctly stated "But that's not the case here in Nevada yet"
11 a fact to which Mr. Willick conceded.

12 Turning to the "how" the disputed provision was inserted into the Decree of Divorce,
13 Mr. Rose submits the following. The testimony as to whether the SBP was considered at
14 the March 27, 2019 mediation is clear. Sarah acknowledged that the issue was addressed
15 and that David did not consent to designating Sarah as the irrevocable survivor
16 beneficiary to his PERS. As such, SBP was not included in the Memorandum of
17 Understanding.
18

19 Mr. Rose submits that the testimony of Ms. Rose and Ms. Cooley evidenced their
20 fraudulent insertion of the disputed provision.
21

22 Q And would you please follow along with me while I read
23 from the MOU starting on the fifth line down?

24 A Okay.

25 Q It says the memorandum addresses the material terms
26 of the agreement and is intended to bind the parties to those
terms. Did I read that accurately?

27 A Yes, ma'am.
28

1 Q Would you consider irrevocable survivor benefits to Mr.
2 Rose's PERS to be a material term? Yes or no?

3 A Yes.

4 Q Now when I use the acronym PERS, do you
5 understand that it's the -- I'm referring to the Public Employee
6 Retirement System pension?

7 A Yes.

8 [10/8/21 Transcript, page 13, lines 1 – 10.]

9 Q When you signed the MOU, you relied on the fact that
10 the terms set forth in it would not be changed, correct?

11 A Correct.

12 Q And if there were modifications to the terms agreed to
13 at the mediation, you would have expected those
14 modifications to be pointed out to you before signing it,
15 correct?

16 A Correct.

17 [10/8/21 Transcript, Page 13, lines 15 – 22]

18 Q Specifically, please direct the Court's attention to the
19 provision in the MOU naming you the irrevocable survivor
20 beneficiary to Mr. Rose's PERS retirement account.

21 A It does not say.

22 * * *

23 Q At no point did you or your lawyer say to Ms. For –
24 Forsberg, wait a minute. You left out a provision granting me
25 the irrevocable survivor beneficiary rights, correct?

26 A Correct.

27 [10/8/21 Transcript, page 15, lines 1 – 5 and lines 9 - 12]

28 . . .

1 Q It's accurate to state that you and Mr. Rose did not
2 discuss the terms of the MOU from the time it was signed until
3 the time the decree was signed, correct?

4 A Correct.

5 Q And it's also an accurate statement that between the
6 signing of the MOU and the signing of the decree of divorce,
7 you and Mr. Rose did not discuss modifying the terms of the
8 MOU, correct?

9 A Correct.

10 Now between the signing of the MOU and signing the decree
11 of divorce, you and Mr. Rose made no agreement to name
12 you as the irrevocable survivor beneficiary to his PERS
13 retirement account, correct.

14 [10/8/21 Transcript, page 17, lines 22 – 25 and page 18, lines
15 1 – 10]

16 Q At the time you signed the decree of divorce, you knew
17 that the provision awarding you irrevocable survivor benefits
18 to Mr. Rose's PERS was included in the decree, correct?

19 A I did.

20 [10/8/21 Transcript, page 23, lines 16 – 19.]

21 Q Okay. Do you have an opinion as to why Mr. Rose
22 signed the Decree of Divorce?

23 * * * *

24 THE WITNESS: My opinion is he wanted to be divorced.

25 * * * *

26 Q ...Is it your opinion that Mr. Rose wanted the divorce
27 decree to be signed that day?

28 A Yes.

Q And he was willing to give you the irrevocable survivor
beneficiary rights in order to have the decree signed that day?

1 A No.

2 [10/8/21 Transcript, page 61, lines 23 – 24; page 62, line 3
3 and lines 18 – 25]

4 Ms. Rose, Mr. Rose, and Ms. McConnell all testified consistently. Specifically, that
5 no modifications were made to the MOU between the time it was signed and the time the
6 Decree of Divorce was signed. Ms. Cooley testified under penalty of perjury that after the
7 MOU was signed, the parties and counsel remained at Ms. Forsberg office and negotiated
8 the disputed term.
9

10 Mr. Rose submits that the recording played into the record of Ms. Rose, which may
11 be found on page 26, lines 2 – 11, is illustrative of her intent to defraud Mr. Rose. After
12 the recording was played, the following testimony was made,
13

14 Q BY MS. LUBRITZ: Did you hear, just to let you know,
15 my new signature is gonna cost you -- cost ya? I'm sorry that
you didn't. read the declaration that you signed?

16 A Yes.

17 Q And the declaration that you mentioned, that was the
18 decree of divorce, correct?

19 A Yes.

20 [10/8/21 Transcript, page 26, lines 13 – 19]

21 On April 25, 2018, fourteen (14) days after the Decree of Divorce was filed, Regina
22 McConnell, Esq., David's former attorney, filed a *Motion to Set Aside the Paragraph*
23 *Regarding Survivor Benefits in the Decree of Divorce Based upon Mistake* and
24 acknowledged she "missed" the inclusion of the above-stated term. Mr. Rose submits that
25 the disputed term awarding his former wife irrevocable survivor beneficiary rights be found
26 invalid and an Amended Decree of Divorce be ordered in its place.
27
28

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 Ms. Rose
5 survivorship benefits has the effect of reducing the amount of Mr. Rose's monthly pension
6 upon retirement.
7

8 Fees should be awarded to Mr. Rose for having to defend the underlying motion.
9 In 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 27 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.


14 ***The result:***

15 Mr. Rose believes he will prevail at the time of trial.

16 While there is a disparity in income between the parties, the same cannot be
17 ascertained with any specificity as Ms. Rose fails to record income from her photography
18 business.
19

20 Dated this 30th day of November, 2021.

21 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

22 By 
23 Shelley Lubritz, Esq.
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