

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

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SARAH JANEEN ROSE,

Appellant,

vs.

DAVID JOHN ROSE,

Respondent.

CASE NO. 84295

District Court Case No:  
D547250

Electronically Filed  
Jul 13 2022 05:36 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**JOINT APPENDIX**

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Volume II - (Bates Stamps APPX0251 - APPX0471)  
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RACHEAL H. MASTEL, ESQ.

Nevada Bar No. 11646

Kainen Law Group, PLLC

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Tel: (702) 823-4900

Fax: (702) 823-4488

Email: [service@kainenlawgroup.com](mailto:service@kainenlawgroup.com)

SHELLEY LUBRITZ, ESQ.

Nevada Bar No. 5410

Law Office Of Shelly Lubritz, PLLC

375 E. Warm Springs Road, #104

Las Vegas, Nevada 89119

Tel: (702)833-1300

Fax: (702) 442-9400

Email: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

**LIST OF APPENDIX DOCUMENTS**

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Las Vegas, Nevada 89129  
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3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

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Las Vegas, Nevada 89129  
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3303 Novat Street, Suite 200  
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702.823.4900 • Fax 702.823.4488  
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AFFIRMATION

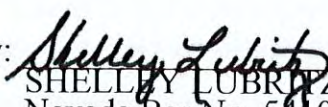
(Pursuant to NRS 239B.030)


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

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,  
PLLC

Kainen Law Group, PLLC

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

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

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



**CERTIFICATE OF SERVICE**

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

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


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

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

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

shelley@lubritzlawoffice.com

daverose08@gmail.com

  
An Employee of  
KAINEN LAW GROUP, PLLC

**FILED**

**APR 07 2022**

**CLERK OF COURT**

**COPY**

**EIGHTH JUDICIAL DISTRICT COURT**

**FAMILY DIVISION**

**CLARK COUNTY, NEVADA**

**E-SERVED**

**APR 07 2022**

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

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

**APPEAL NO. 84295**

**SEALED**

BEFORE THE HONORABLE CYNTHIA DIANNE STEEL, SENIOR JUDGE

MONDAY, NOVEMBER 15, 2021

TRANSCRIPT RE: NON-JURY TRIAL



1 APPEARANCES:

2 The Plaintiff: DAVID ROSE  
3 For the Plaintiff: SHELLEY LUBRITZ, ESQ.  
4 375 East Warm Springs Road  
5 Suite 104  
6 Las Vegas, Nevada 89119

7 The Defendant: SARAH ROSE  
8 For the Defendant: RACHEAL H. MASTEL, ESQ.  
9 3303 Novat Street  
10 Suite 200  
11 Las Vegas, Nevada 89129  
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**PLAINTIFF'S WITNESSES**

**DIRECT**

**CROSS**

**REDIRECT**

**RECROSS**

**REBUTTAL WITNESS**

REGINA MCCONNELL

By Ms. Lubritz

45

51

58

By Ms. Mastel

**DEFENDANT'S WITNESSES**

SHELLY COOLEY

By Ms. Mastel

27

32

38

By Ms. Lubritz



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

(None offered.)

1 LAS VEGAS, NEVADA

MONDAY, NOVEMBER 15, 2021

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 08:58:16.)

4 THE COURT: Case number 547250. Can I have appearances  
5 for the record, please?

6 MS. LUBRITZ: Good morning, Your Honor. Shelley Lubritz,  
7 5410, on behalf of David Rose, who's present.

8 THE COURT: Thank you.

9 MS. MASTEL: Good morning, Your Honor. Rachael Mastel,  
10 bar number 11646, on behalf of Sarah Rose, who's also  
11 present.

12 THE COURT: Thank you.

13 All right. Have a seat everybody. And if we need  
14 to, we re-swear anybody who is gonna testify today.

15 MS. MASTEL: The only person we have left in our case,  
16 Your Honor, is Ms. Cooley.

17 THE COURT: Oh, is Ms. -- is she here?

18 MS. MASTEL: No, we had filed for her to participate by  
19 audiovisual; and then I believe the middle of last week, Ms.  
20 Lubritz filed her objection.

21 THE COURT: And so does she have a BlueJeans thing yet or  
22 anything?

23 MS. MASTEL: I believe she does. But I can...

24 THE COURT: Why can't she come in -- why does she have to  
25 be here in person?



1 MS. LUBRITZ: Well, a couple of reasons, Your Honor. And  
2 I don't know if you had a chance to look at...

3 THE COURT: No, I just saw 'em just now.

4 MS. LUBRITZ: So what happened is on the 9th, Ms. Mastel  
5 filed this notice. On the 11th, I filed my objection. She  
6 filed an opposition on the 12th, and then I filed a response.  
7 The issue is as Ms. Mastel indicated to the Court prior to  
8 the first trial that there's all kinds of issues when it  
9 comes to body language, testimony, showing appearing  
10 connectivity, et cetera, that there's an issue with it when  
11 we are in trial.

12 My big thing is that she's a material witness.  
13 She's one of the main witnesses. I need to be able to  
14 interact with her. I need to be able to show her documents.  
15 And I also need the Court, candidly, to look at her body  
16 language and her nonverbal cues which is...

17 THE COURT: So when you filed your motion of objection on  
18 11/11, did you not find a cause to do some order shortening  
19 time?

20 MS. LUBRITZ: No, Your Honor, not for something like  
21 this. She's the one who drafted the decree of divorce,  
22 respectfully.

23 THE COURT: All right.

24 MS. LUBRITZ: She hasn't given a reason or she doesn't  
25 have -- we don't know if she has a conflict. She's not given

1 a reason as to why she can't be here. And I think that my  
2 client will be prejudiced by the Court not being able to see  
3 her and interact with her and see her testimony. This is  
4 gonna be about credibility because we have polar opposite --  
5 we have polar opposite lawyer -- you know, opinions and about  
6 what happened. And I think that the Court respectfully needs  
7 to be able to observe Ms. Cooley.

8 I also think, Judge, that filing a notice six days  
9 before trial without asking for permission, you ordered us to  
10 be here in person. Ms. Mastel last time when I put the  
11 citation in my response to her -- my reply to her response  
12 said, Judge, it was ordered that we be here in person.

13 And I just, I think that it is unduly prejudicial  
14 to my client. She's -- she's the one who drafted the  
15 decree...

16 THE COURT: Mm-hm.

17 MS. LUBRITZ: ...where the provision wound up.

18 THE COURT: Okay.

19 MS. LUBRITZ: And I think she needs to be here in person.  
20 We're here.

21 THE COURT: Ms. Mastel.

22 MS. MASTEL: Your Honor, I think there cannot be a less  
23 impeachable witness than an attorney. I would've been  
24 equally...

25 THE COURT: Well...



1 MS. MASTEL: I would've been...

2 THE COURT: Okay.

3 MS. MASTEL: ...equally accepting of Ms. McConnell  
4 appearing via video if she had wanted to. There are extra  
5 ethical rules that apply to attorney's testimony and their  
6 candor to the Court.

7 Furthermore, Your Honor, the notice filed on the  
8 6th was not the no- first notice in this case. There was  
9 also a notice filed October 8th prior to original trial date  
10 -- or original second day of trial. We also notified the  
11 Court on the 23rd that Ms. Cooley would prefer to appear by  
12 audiovisual. And both of those were done without objection.

13 The Court's reason for not allowing it on the 23rd  
14 was because there wasn't time to set it up. Then there was  
15 two notices that were filed of (indiscernible) over a months  
16 notice that this objection would could have been filed in.  
17 Ms. Cooley is not required to disclose her reasons to this  
18 Court for her need or desire to appear by audio visual  
19 equipment.

20 Again the -- I think, you know, it's -- it's  
21 specious to file an objection, you know, this close to trial  
22 claiming that, well, we couldn't do it beforehand because we  
23 didn't get the notice until November 9th, when there was a  
24 notice filed October twel- 8th, as well. That could have  
25 been objected to and was not.

1 As a matter of fact, Ms. Cooley and I had discussed  
2 continuing this trial. And ultimately she filed a motion,  
3 and we did stipulate to continue it. And at no time during  
4 that time did she object to Ms. Cooley appearing by audio  
5 visual equipment. Ms. Cooley has her reasons.

6 If the Court wants to, off the record, have a  
7 discussion with her and she's willing to disclose them, I  
8 will get her on the phone. But I don't think it's necessary  
9 for a -- an attorney, in particular, to appear in person.

10 MS. LUBRITZ: Your Honor, if I may, October...

11 THE COURT: I'm trying to find out where there was the  
12 order to appear in person.

13 MS. LUBRITZ: Very well, Your Honor.

14 THE COURT: Because I don't know that I -- I issued it.  
15 It could be that Judge Bailey did when she set it...

16 MS. MASTEL: I think...

17 THE COURT: ...for trial.

18 MS. MASTEL: ...the trial itself was set to be an in-  
19 person trial.

20 THE COURT: Okay. So Judge...

21 MS. MASTEL: And we are here.

22 THE COURT: Okay.

23 MS. MASTEL: But there was no order that all witnesses  
24 must appear in person.

25 MS. LUBRITZ: Well...



1 THE COURT: Okay.

2 MS. LUBRITZ: ...I can only tell you that - and I gave  
3 the citation in my reply - Ms. Mastel said, it's ordered.  
4 And that was when she last minute got a notification from Mr.  
5 Willick and Ms. Cooley that they wanted to appear via  
6 BlueJeans.

7 THE COURT: Right. That was like a...

8 MS. LUBRITZ: Right.

9 THE COURT: I remember. I had to deny it...

10 MS. LUBRITZ: And she...

11 THE COURT: ...because I didn't have...

12 MS. MASTEL: Right.

13 THE COURT: ...time.

14 MS. LUBRITZ: And she said it's ordered. Regarding the  
15 October 8th, I was in a high-impact rear end collision  
16 October 7th. I did not see -- I was out of the office for  
17 quite a period of time.

18 And in the transcript of -- of one of -- part of  
19 the proceedings, there was no way of knowing if she was going  
20 to be testifying or not because Ms. Mastel said possibly. So  
21 for Ms. Mastel to argue that I should have known that there  
22 was a conflict with counsel's calendar or other reasons why  
23 she chooses not to be here, I have no way of knowing that.

24 But respectfully, Your Honor, as counsel, as  
25 officers of the court, we have a greater obligation to comply

1 with the court's mandates, directives and orders. And the  
2 order was and the directive was, you must appear here.

3 THE COURT: Okay.

4 MS. LUBRITZ: You can't -- I can't just simply file a  
5 notice of appearance of audiovisual.

6 THE COURT: Have you deposed this witness?

7 MS. LUBRITZ: I'm sorry.

8 THE COURT: Have you deposed this witness? Did you...

9 MS. MASTEL: No.

10 THE COURT: ...depose this witness?

11 MS. LUBRITZ: No, Your Honor.

12 THE COURT: Okay. All right.

13 MS. LUBRITZ: This is -- this is gonna be the first  
14 time...

15 THE COURT: Okay.

16 MS. LUBRITZ: ...she's before the Court.

17 THE COURT: Okay.

18 MS. LUBRITZ: She has a lot to lose, Judge.

19 THE COURT: Okay. I understand that. I'm gonna permit  
20 her to be here by BlueJeans today, though, because we've set  
21 this for this hearing. There was no alternative motion to  
22 continue this hearing. And for us to show up at 9:00 and I'm  
23 just now getting this information that she wants to appear by  
24 phone and you object and an op- response and a reply, all  
25 this stuff should have been immediately transmitted to me so



1 I could make a determination so that the witness would be  
2 here absent an order that she appear in person.

3 So I'm gonna permit it.

4 MS. LUBRITZ: Okay. We're...

5 THE COURT: I -- I -- I note your objection.

6 MS. LUBRITZ: And respectfully, Your Honor, that was not  
7 my job to do that. That may have been counsel's...

8 THE COURT: Fine.

9 MS. LUBRITZ: ...job to...

10 THE COURT: I...

11 MS. LUBRITZ: ...let you know.

12 THE COURT: I note your objection. And I don't care  
13 whose job it was to do what. But we are here. This is the  
14 last day of trial. This case has been going on for five  
15 years. How long has it been going on? A long time.

16 MS. LUBRITZ: Four years, Your Honor.

17 MS. MASTEL: Four years.

18 THE COURT: So.

19 MS. LUBRITZ: I can't even see -- I can't even see her.

20 THE COURT: Well, then I'll let you reposition yourself  
21 from over here if you like.

22 MS. LUBRITZ: Can we move my table? I mean...

23 THE COURT: You can't move your table.

24 MS. LUBRITZ: ...I have a lot. I...

25 THE COURT: We'll do the best we can.

1 MS. LUBRITZ: I will renew my objection. I know what  
2 Your Honor's decision is gonna be.

3 THE COURT: Thank you.

4 MS. MASTEL: Your Honor, I've just contacted Ms. Cooley.  
5 She said she did not receive the link. So if the clerk can  
6 give me the -- do you have the...

7 THE CLERK: Do you have the e-mail, I can send it to her?

8 MS. MASTEL: Yes, I can -- hold that (indiscernible).

9 THE CLERK: Or I can give you the -- the -- whatever's  
10 easier.

11 MS. MASTEL: If you just want to give it to me then I can  
12 just text it to her.

13 THE CLERK: The meeting ID is 560...

14 MS. MASTEL: 560.

15 THE CLERK: ...123...

16 MS. MASTEL: 123.

17 THE CLERK: ...063.

18 MS. MASTEL: 063.

19 THE CLERK: And the participant pass code is 0227

20 MS. MASTEL: 0227. All right.

21 THE COURT: Just as a practice tip, if you've got a  
22 senior judge, not just me, sitting on an important issue, you  
23 should call the JEA and make sure that that judge is  
24 immediately notified of what's going on. I'm -- I'm just  
25 saying.



1 MS. LUBRITZ: Yeah.

2 THE COURT: Just a practice tip.

3 MS. LUBRITZ: I just never imagined that an attorney  
4 could just say, I don't want to show up. So I'm gonna file a  
5 notice of appearance.

6 THE COURT: Yeah.

7 MS. LUBRITZ: Which is why I didn't bring it be- before  
8 the Court.

9 THE COURT: Okay.

10 MS. LUBRITZ: Mr. Marshal, would you be able to turn it a  
11 little bit more for me?

12 THE COURT: If I find that I'm struggling, I will revisit  
13 this Ms. Mastel. If I find I'm struggling to...

14 MS. MASTEL: I understand, Your Honor.

15 THE COURT: ...observe her demeanor and one thing and  
16 another. If I feel uncomfortable or that I need more...

17 MS. MASTEL: I understand, Your Honor.

18 THE COURT: All right.

19 MS. LUBRITZ: And -- and we don't know when we put  
20 exhibits in front of her, we don't know what she's looking  
21 at. We don't know if there's notations, Judge.

22 THE COURT: Okay.

23 MS. LUBRITZ: There's a lot of concerns.

24 THE COURT: All right.

25 MS. MASTEL: She should be logging -- logging in

1 momentarily now.

2 MS. LUBRITZ: And clearly the provisions were not made or  
3 she would've had it when it was sent to her.

4 MS. MASTEL: Your Honor, the notice is with the -- with  
5 the...

6 THE COURT: She's got a link over here.

7 MS. LUBRITZ: What?

8 THE COURT: So it doesn't...

9 MS. LUBRITZ: I never got a copy of the link. And  
10 normally they go out to everybody.

11 THE COURT: Okay.

12 MS. LUBRITZ: So.

13 MS. MASTEL: The notice is...

14 THE COURT: I am - I'm...

15 MS. MASTEL: ...the appropriate way...

16 THE COURT: I'm without...

17 MS. MASTEL: ...under the...

18 THE COURT: ...power on any of...

19 MS. MASTEL: ...administrative orders.

20 THE COURT: ...these particular issues today except for  
21 continuing this out yet again. And we're coming to the end  
22 of this year. I'd like to get it done.

23 MS. LUBRITZ: Absolutely.

24 MS. MASTEL: This is our last witness, Your Honor, so.

25 THE COURT: Okay.



1 MS. MASTEL: There she is.

2 THE COURT: All right. Ms. Cooley, can you hear us okay?

3 MS. COOLEY: Yes, Your Honor.

4 THE COURT: Okay. And is there any possibility that you  
5 could make it down here to court instead of appearing by  
6 phone or by JAV- BlueJeans?

7 MS. COOLEY: If necessary, I would.

8 THE COURT: There's some concern they're gonna be showing  
9 documents and evidence that have been admitted or not, as the  
10 case may be. And they have no way of knowing what you're  
11 observing because there's no one there to make sure that  
12 you're looking at what we're looking at.

13 MS. COOLEY: Okay.

14 THE COURT: How -- how soon do you think you could get  
15 here?

16 MS. COOLEY: Probably 30 minutes.

17 THE COURT: Okay. And -- and I'm not -- I mean, do you  
18 -- are you free to do that for -- to come in?

19 MS. COOLEY: Yes, I could if necessary.

20 THE COURT: Yeah, I think it's gonna be more clean if you  
21 do because there's gonna be a lot of objections. I don't  
22 want this case to go on further than it needs to go on. I  
23 already said you could appear by phone, but why -- why risk  
24 those appealable issues? So I'd rather have you here if  
25 that's all right.

1 MS. COOLEY: I understand.  
2 THE COURT: Because I'm hearing -- I'm hearing appeal all  
3 over this place, so. It's gonna appeal anyway. But I don't  
4 want it to appeal on this.  
5 MS. COOLEY: Okay.  
6 THE COURT: Okay? All right.  
7 MS. COOLEY: All right.  
8 THE COURT: We'll see you here in 30 minutes. We'll take  
9 a recess.  
10 MS. MASTEL: Okay.  
11 MS. LUBRITZ: Thank you, Your Honor. We do have a...  
12 MS. COOLEY: Okay. I will head over.  
13 THE COURT: Okay. Thank you.  
14 MS. LUBRITZ: We do have a housekeeping question...  
15 MS. COOLEY: Thank you.  
16 MS. LUBRITZ: ...Your Honor.  
17 THE COURT: Yeah.  
18 MS. LUBRITZ: I -- I would ask that we be allowed to file  
19 a -- a written or submit a written closing. The reason that  
20 I'm doing that...  
21 THE COURT: Well, we're already gonna do that. So don't  
22 even waste your breath.  
23 MS. LUBRITZ: Thank you.  
24 THE COURT: These are legal issues, for the most part.  
25 MS. LUBRITZ: Yes, Your Honor.



1 THE COURT: There are some tan- intangibles that have to  
2 do with testimony and -- and demeanor and one thing or the  
3 other as to what happened that fatal day. But there are two  
4 things that I'm gonna specifically ask you guys to address.

5 One of you is going to address why contract works.  
6 And the other one is gonna say why contract doesn't apply in  
7 this case, rules of, you know, contract law. And then one of  
8 you is gonna say, you know, I don't know, meeting of the  
9 minds or whatever on the contract stuff. But on the request  
10 to have this be his property even though it was in the decree  
11 and then it's not community property, I guess that's gonna be  
12 on you, counsel.

13 MS. LUBRITZ: Yes, Your Honor.

14 THE COURT: And the other side to prove that it is  
15 community property.

16 MS. MASTEL: Yes, Your Honor.

17 THE COURT: And I don't care what Marshal Willick said.  
18 I think that there's gotta be some way for PERS to -- to  
19 resolve this issue so that...

20 MS. MASTEL: Your Honor, if...

21 THE COURT: ...the portion of the time...

22 MS. MASTEL: ...if that's the...

23 THE COURT: ...when they were married.

24 MS. LUBRITZ: I'm sorry. I can't hear, Your Honor, over  
25 Ms. Mastel. And we do want a clean record.

1 THE COURT: Okay. I -- I just think that there needs to  
2 be some sort of impetus to get the PERS on board with they  
3 have a computer. They can do the math easy now. So why are  
4 we tying up somebody's rest of their life for this segment of  
5 their life where there's not going to be a joint community  
6 beyond today. So some -- just some little things that you  
7 guys need to...

8 MS. LUBRITZ: Sure.

9 MS. MASTEL: If -- if that's the case...

10 THE COURT: I just want you guys to address it.

11 MS. MASTEL: I -- I understand. But to the extent you  
12 want proof -- information about how PERS does the system,  
13 excluding Marshal Willick's...

14 THE COURT: I'm not excluding it. I'm just saying...

15 MS. MASTEL: Oh.

16 THE COURT: ...I don't care what he said.

17 MS. MASTEL: Right.

18 THE COURT: I think there should be a different way to do  
19 it.

20 MS. MASTEL: Well...

21 THE COURT: He said the law. I'm not...

22 MS. MASTEL: Okay.

23 THE COURT: ...disputing that.

24 MS. LUBRITZ: Right.

25 MS. MASTEL: I'm just -- I'm just saying does -- does



1 Your Honor want something from PERS stating that they will or  
2 they won't?

3 MS. LUBRITZ: Your Honor, it's...

4 MS. MASTEL: As...

5 MS. LUBRITZ: ...too late for that.

6 MS. MASTEL: Well...

7 THE COURT: Well, it's kind of too late for that.

8 MS. MASTEL: ...under NRCP...

9 THE COURT: The law is the law according to PERS.

10 MS. MASTEL: Under -- under NRCP...

11 THE COURT: Here's how laws change.

12 MS. MASTEL: ...59 AND 60.

13 THE COURT: Here's how laws change. Judges do stupid  
14 things. It goes up on appeal. And the supreme court says,  
15 oh, what a great idea; or how terrible is that judge?

16 MS. MASTEL: Well, this is...

17 THE COURT: That's how laws change.

18 MS. MASTEL: This is a legislative issue, Your Honor.

19 THE COURT: Yes, it is.

20 MS. MASTEL: And so I'm just asking under NRCP 59...

21 THE COURT: Every issue in front of me is a legislative  
22 issue because they've passed every statute that I have to  
23 deal with.

24 MS. MASTEL: Under -- under NRCP 59 and NRCP 60, Your  
25 Honor is allowed to de- to receive evidence at the close

1 trial or after the close of trial before submitting a  
2 decision if the Court finds that information necessary and  
3 not produced in discovery.

4 THE COURT: Very good.

5 MS. MASTEL: So I'm asking if the Court would like some  
6 statement from PERS or if Mr. Willick's testimony is  
7 sufficient for the Court to make it's ruling.

8 THE COURT: I -- I would like that information from  
9 PERS...

10 MS. MASTEL: Okay.

11 THE COURT: ...if you can get it. I don't think you can.

12 MS. LUBRITZ: Well, respectfully, Your Honor...

13 THE COURT: Share it with Ms. Cooley.

14 MS. LUBRITZ: ...then I need to be able to hire an expert  
15 to come in and say something. I mean, this is -- they've  
16 known that this is has been an...

17 THE COURT: You guys are already eating up enough  
18 attorney fees.

19 Maybe not you because you're pro bono.

20 MS. MASTEL: Well, it's time.

21 THE COURT: To -- to swallow every bit of money that's  
22 coming from this benefit.

23 MS. LUBRITZ: Hones- respectfully, Your Honor, he hasn't  
24 gotten a bill from me in two years.

25 THE COURT: Well, okay.



1 MS. LUBRITZ: Okay. Because he can't afford this  
2 litigation that she's getting for free, which has been part  
3 of the argument. So with all due respect...

4 THE COURT: I'm just saying.

5 MS. LUBRITZ: I'm not trying to suck up a dollar.

6 THE COURT: I just want -- I'm not -- I'm not s- I'm not  
7 accusing anybody of that.

8 MS. LUBRITZ: Okay.

9 THE COURT: I just want this thing to be resolved.

10 MS. LUBRITZ: I get it, Your Honor. But here's the  
11 issue.

12 THE COURT: And I need to be able to make a clear  
13 decision.

14 MS. MASTEL: Mm-hm.

15 THE COURT: And the decision is going to be contract law  
16 or not and it's going to be PERS provisions, community  
17 property, omitted asset. But it wasn't omitted. I mean,  
18 there's a lot of stuff you guys have got to put in your  
19 closing arguments.

20 MS. LUBRITZ: And there's a distinction in this case  
21 between PERS and whether SBP is actually community property.  
22 And that's never been decided by the Nevada Supreme Court.

23 THE COURT: Correct. So that's gonna be on you. Isn't  
24 it?

25 MS. LUBRITZ: Okay. Absolutely.

1 THE COURT: Okay.

2 MS. LUBRITZ: But here's my other concern, Your Honor, is  
3 -- I -- I think that it is not proper. They've known about  
4 this case for three years. They've been on this case longer  
5 than I have, by a year; and to come in and say, now all of  
6 the sudden we're gonna get something from PERS to present to  
7 Your Honor when I haven't had a chance to cross-examine it,  
8 to me is -- is a problem.

9 THE COURT: Counsel, save your breath and get ready to  
10 file a motion once you receive the document if you need to  
11 reopen your case.

12 MS. LUBRITZ: Thank you. And that would allow me, if I  
13 need to reopen it, to have someone else come in and testify  
14 about it.

15 THE COURT: I don't know what it's gonna allow you to do  
16 until I see a motion.

17 MS. LUBRITZ: Understood. Thank you.

18 THE COURT: You guys get your attorneys in -- under  
19 control. I'm serious. We could go on -- we could go on  
20 forever. And I -- I can suck up tax dollars, so.

21 MS. LUBRITZ: Understood.

22 MS. MASTEL: Your -- and -- and just to be clear, Your  
23 Honor, if the Court doesn't believe that information is  
24 necessary and useful, I won't get it. I agree discovery is  
25 closed.



1 THE COURT: Mm-hm.

2 MS. MASTEL: I'm asking because of the Court's statement  
3 as to what, you know, that PERS should be able to do this, if  
4 it would be beneficial to the Court to have that statement  
5 from PERS. I had Mr. Willick testify. Ms. Lubritz had an  
6 opportunity to (indiscernible)...

7 THE COURT: He was very clear. I understand...

8 MS. MASTEL: Okay.

9 THE COURT: ...the law. I appreciate the clarity he  
10 brought to the Court on that issue.

11 MS. MASTEL: Okay.

12 THE COURT: I don't like it. That's all.

13 MS. MASTEL: I don't like it either. But okay. So I  
14 then I won't seek PERS information if the Court doesn't feel  
15 that...

16 THE COURT: Yeah, I...

17 MS. MASTEL: Okay.

18 THE COURT: ...don't do that.

19 MS. MASTEL: That's fine.

20 THE COURT: I want to get these people...

21 MS. MASTEL: I agree.

22 THE COURT: ...totally out of court.

23 MS. LUBRITZ: Absolutely, Judge.

24 THE COURT: Totally out of court. And as I said earlier,  
25 this is going to go up.

1 MS. MASTEL: Mm-hm.

2 THE COURT: One side or the other is going to lose and  
3 the other side is going to go up. And you know why? Because  
4 Nevada needs these laws.

5 I went to a seminar in California - I'll just take  
6 a moment - about three years ago. And they had the family  
7 law section outbreak of new law or new case law for family  
8 court in California. And they started the hearing off with,  
9 now we're not gonna go into all 300 cases that have been  
10 decided by our supreme court on family law.

11 We have 300 cases from the dawn of time. They have  
12 300 cases from the previous year.

13 MS. LUBRITZ: Right.

14 THE COURT: We don't have a lot of case law...

15 MS. LUBRITZ: Correct.

16 THE COURT: ...that defines a lot of the little fine-  
17 tuning stuff, basically because people can't afford to go to  
18 the appellate court. So they have to do a -- they have to  
19 live with a bad decision if I make a bad one.

20 MS. LUBRITZ: Right.

21 THE COURT: And a lot of people think that I did. You  
22 have to live with a bad decision because you can't go to the  
23 appellate court because you can't afford it. So our families  
24 are just like, nowhere.

25 MS. MASTEL: Honestly, I think the timing issue part of



1 the appellate court was the intermediate court was also a  
2 large portion of it because I'm seeing in my practice I'm  
3 taking...

4 THE COURT: Yeah.

5 MS. MASTEL: ...more appeals on a regular basis because  
6 that's hopefully some day going to be the bulk of my  
7 practice.

8 THE COURT: I understand.

9 MS. MASTEL: So...

10 THE COURT: But...

11 MS. MASTEL: And I just got back from...

12 THE COURT: But we needed more case law.

13 MS. MASTEL: I agree.

14 THE COURT: You know. We could go off the record for now  
15 because we're not doing anything else until she...

16 (Whereupon the matter was trailed at  
17 09:18:20 and recalled at 09:49:04.)

18 THE CLERK: On the record, Your Honor.

19 THE COURT: Sorry. Back on the record. We are resuming  
20 our hearing from previously where we took a recess. Everyone  
21 is still here that was here previously. And we have our  
22 witness now. So you guys can have a seat.

23 If you'll remain standing and take the oath.

24 THE CLERK: You do solemnly swear the testimony you're  
25 about to give in this action shall be the truth, the whole

1 truth and nothing but the truth, so help you God?

2 MS. COOLEY: Yes.

3 THE CLERK: Thank you.

4 THE COURT: You can have a seat.

5 MS. COOLEY: Thank you.

6 THE COURT: Counsel, proceed.

7 MS. MASTEL: Okay.

8 **SHELLY COOLEY,**

9 having been duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 **BY MS. MASTEL:**

12 Q Could you state your name for the record, Shelly?

13 A Shelly Cooley, C-O-O-L-E-Y.

14 Q Thank you. And can you tell me, kind of walk me  
15 through the day of the mediation in this case that occurred,  
16 I believe, it was March 17th, 2018.

17 MS. LUBRITZ: Twenty (indiscernible).

18 Q BY MS. MASTEL: 2017?

19 A I thought it was March 23rd.

20 MS. LUBRITZ: (Indiscernible).

21 Q MS. MASTEL: Okay.

22 A 2018.

23 Q Yes. Can you walk me through the events of that  
24 day?

25 A Yes, as best as I recall.



1 Q Okay.

2 A We arrived for the mediation. I believe it started  
3 around 9:00 because that's when most of them start in the  
4 morning. So we went to the mediation. And we were  
5 discussing issues with Rhonda Forsberg. She was our  
6 settlement judge. And we were working on issues, mostly  
7 separately. And while we were working on issues, I was  
8 working on a draft decree.

9 And Ms. Forsberg would come in and out addressing  
10 issues. And I would revise the -- the document as we were  
11 going. At one point, she put us all in a room together. And  
12 we discussed additional issues. And Ms. Forsberg said that  
13 she had to catch a flight. So she would have to stop the  
14 mediation at a certain time.

15 MS. LUBRITZ: Your Honor, I would object that we had this  
16 hearsay objection previously. Anything that Ms. Forsberg  
17 said was not admissible. So I object as to hearsay and ask  
18 that it be stricken.

19 THE COURT: True.

20 So you can't repeat what Ms. Forsberg told you.

21 THE WITNESS: Okay.

22 It was my understanding that we had to stop working  
23 with the settlement judge at a certain time because she was  
24 no longer available. But we had most of the issues resolved  
25 so we could stay there and keep negotiating because there was

1 staff present. So when Ms. Forberg -- Forsberg left, we  
2 continued negotiating issues. And I continued working on the  
3 decree.

4 And at some point probably, it was in the -- in the  
5 late afternoon, my computer died. And I forgot to bring my  
6 charger with me. So we went to another office so that I  
7 could finish drafting the decree because we had all issues  
8 resolved.

9 Q BY MS. MASTEL: Whose office did you go to?

10 A Pecos Law Group.

11 Q Okay. And then what happened after you got to  
12 Pecos Law Group?

13 A We finalized the decree. While we were finalizing  
14 the decree -- well, after we had finalized the decree, Regina  
15 McConnell and I went through the -- the decree a few time  
16 from start to finish to make sure it was what we had agreed  
17 upon in the settlement conference.

18 Once she and I both agreed that it was final, we  
19 printed it out. I reviewed it with my client and signed it.  
20 I gave the original to Regina. And she provided the original  
21 back to me with her -- her and her client's signature on it.

22 Q Okay. Now when you -- let's see. When did you  
23 sign the memorandum of understanding?

24 A Prior to Ms. Forsberg leaving.

25 Q Okay. So just to -- to be clear for the Court, you



1 signed the MOU. But you continued...

2 MS. LUBRITZ: Objection, Your Honor, it's leading. You  
3 can tell already.

4 THE COURT: She's -- she's restating something for the  
5 Court.

6 MS. MASTEL: Correct.

7 Q BY MS. MASTEL: So you signed the MOU before Ms.  
8 Forsberg left. But your testimony was that you continued  
9 your negotiating at Ms. Forsberg's office afterwards,  
10 correct?

11 A That is correct.

12 Q Do you recall going through the pension division  
13 with Ms. McConnell that day?

14 A Yes.

15 Q Okay. Now did you and Ms. McConnell have any  
16 discussions after signing of the decree of any other date  
17 regarding a pension division?

18 A Yes, we did.

19 Q Can you detail that communication for the Court?

20 A Yes, the settlement conference was on a Friday. So  
21 I believe it was on the following Monday which would have  
22 been the -- the 26th. I receive a phone call from Regina.  
23 And she said, my client changed his mind. We are unwilling  
24 to agree to the -- the option selection. And I said, well,  
25 we have a signed decree. This is what we agreed to in the

1 settlement conference. I -- I'm going to submit the decree.  
2 And she asked if I could give her a few days to get her  
3 client back on board.

4 Q Okay.

5 A And I said, of course.

6 Q Okay. What do you -- was there any communication  
7 after that time?

8 A I believe that I sent her an e-mail asking what the  
9 status of her communications with her client was. She said  
10 that she was still working on it. I gave her a deadline and  
11 told her that if I did not hear from her one way or the  
12 other, I would be submitting the decree on a certain date.  
13 It was -- it was a Friday.

14 Q Okay. Did she respond to that e-mail?

15 A She did not.

16 Q And what happened with the decree?

17 A I submitted it to the Court. The Court adopted it.  
18 And I served notice of entry after it had been file stamped.

19 Q Do you recall how long after you submitted the  
20 decree it was signed?

21 A I do not.

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

23 THE COURT: Thank you.

24 MS. LUBRITZ: I need the Court's indulgence.

25 THE COURT: Sure.



1 MS. LUBRITZ: I'm -- I'm a bit taken back.

2 **CROSS-EXAMINATION**

3 **BY MS. LUBRITZ:**

4 Q So it's your testimony as I understand it that  
5 after signing the memorandum of understanding, Ms. Forsberg  
6 left her office; and you, Ms. McConnell and the parties  
7 stayed at her office and negotiated further?

8 A That is correct.

9 Q Okay. And it's further my understanding from your  
10 testimony -- strike that. And it is also your testimony that  
11 this subsequent negotiation resulted in your client being  
12 granted survivor benefits option 2 to Mr. Rose's PERS. Is  
13 that your testimony?

14 MS. MASTEL: Objection, vague.

15 MS. LUBRITZ: I'm sorry. She can tell me if it's -- if  
16 it's...

17 MS. MASTEL: It -- it's a...

18 MS. LUBRITZ: She can tell me, Judge.

19 THE COURT: I understand. If -- if she needs...

20 MS. MASTEL: Okay.

21 THE COURT: ...further -- if she doesn't understand it,  
22 she can...

23 Q BY MS. LUBRITZ: Do you understand...

24 THE COURT: ...express that for herself.

25 Q BY MS. LUBRITZ: ...what I'm asking? I-- I'll

1 rephrase. I'll strike. I -- I'll withdraw and rephrase.

2 THE COURT: I guess you've got three or four things...

3 THE WITNESS: Yeah, I'm...

4 THE COURT: ...in the same sentence. So it's...

5 THE WITNESS: Yeah, I'm not sure...

6 THE COURT: ...a little convoluted.

7 MS. LUBRITZ: I can't -- I'm sorry. I couldn't hear,

8 Your Honor.

9 THE COURT: A little convoluted.

10 MS. LUBRITZ: Yeah, absolutely.

11 THE COURT: So take baby steps.

12 MS. LUBRITZ: Yeah, I'll break it up.

13 Q BY MS. LUBRITZ: So it's your testimony the  
14 negotiations that you testified -- that's (indiscernible)  
15 already. You testified that the negotiations subsequent to  
16 the signing of the MOU resulted in Ms. Rose being awarded  
17 irrevocable survivor benefits option 2 to my client's PERS.  
18 Is that your testimony?

19 A Yes.

20 Q And it is also your testimony, as I understood it,  
21 that you drafted or began drafting the decree of divorce  
22 during the mediation period.

23 A That is correct.

24 Q Did you use your laptop -- strike that. You didn't  
25 use your laptop to finish the decree of divorce, correct?



1 A That is correct.

2 Q You utilized another computer, correct?

3 A Correct.

4 Q And that was to complete the decree that you  
5 started on your laptop, correct.

6 A Correct.

7 Q And your laptop just died without any -- it just  
8 died on you, right? Yes or no?

9 A No. It -- it...

10 Q Yes or no?

11 A The battery -- no.

12 Q And it is your testimony that Ms. McConnell  
13 returned the original decree of divorce to you and that you  
14 filed the original and not a copy. Is that correct?

15 A That is my recollection.

16 Q Okay. That's not how you testified a moment ago.  
17 You testified in the affirmative. Now you're saying that's  
18 your recollection. So you're not certain that you filed the  
19 original, correct? Yes or no?

20 A Yes.

21 Q You're not certain, correct.

22 A That is correct. Now that you raised that issue,  
23 yes.

24 Q Okay. So it -- if it refreshes your recollection,  
25 Ms. McConnell retained the original decree of divorce;

1 correct?

2 MS. MASTEL: Objection.

3 Q BY MS. LUBRITZ: Yes or no?

4 MS. MASTEL: That's not refreshing recollection.

5 MS. LUBRITZ: I'll withdraw the question and I'll ask --  
6 well, you don't know...

7 THE COURT: Ask it in a different way.

8 MS. LUBRITZ: ...that because she hasn't testified as  
9 such.

10 MS. MASTEL: Counsel can't provide a -- a statement as a  
11 means of refresh-

12 MS. LUBRITZ: Okay.

13 MS. MASTEL: ...refreshing recollection.

14 MS. LUBRITZ: I'll withdraw.

15 THE COURT: Okay.

16 Q BY MS. LUBRITZ: Ms. McConnell retained the original  
17 decree correct? Yes or no?

18 A I don't know. I -- I don't recall whether -- I --  
19 I was under the impression that I kept the original and  
20 submitted that to the court. But when you questioned me  
21 about it further, I -- I -- I'm not 100-percent certain that  
22 I retained the original and that that's what I submitted to  
23 the court.

24 Q So it is -- it is Ms. McConnell advised you that  
25 she missed the inclusion of the survivor benefit provision in



1 the decree

2 MS. MASTEL: Objection.

3 Q BY MS. LUBRITZ: ...when she...

4 MS. MASTEL: Misstates testimony.

5 THE COURT: You can ask her a yes or no question. Some  
6 of the questions that you're asking are trying to put  
7 testimony in her mouth.

8 MS. LUBRITZ: Okay.

9 Q BY MS. LUBRITZ: Yes or no, Ms. McConnell contacted  
10 you prior to you submitting the decree of divorce and  
11 indicated that there was an issue that needed to be resolved;  
12 correct? Yes or no?

13 MS. MASTEL: Objection, vague.

14 THE COURT: I don't think it's vague.

15 You may answer the question.

16 THE WITNESS: No.

17 Q BY MS. LUBRITZ: You testified moments ago that Ms.  
18 McConnell -- okay. Strike that. So your testimony is -- you  
19 filed -- submitted the decree of divorce for filing over the  
20 objection of Ms. McConnell, correct?

21 MS. MASTEL: Objection.

22 THE WITNESS: No.

23 MS. MASTEL: Misstates testimony.

24 THE COURT: Sustained. She's already writ- answered the  
25 question (indiscernible).

1 MS. LUBRITZ: Court's indulgence.

2 Q BY MS. LUBRITZ: What brought about this subsequent  
3 renegot- or negotiation?

4 MS. MASTEL: Objection, vague.

5 Q BY MS. LUBRITZ: After the decree of div- I'm sorry.  
6 After the MOU was prepared and signed by all parties, what  
7 prompted further negotiations?

8 A We hadn't resolved all issues. But we had resolved  
9 most issues.

10 Q It doesn't say that in the -- in the MOU, does it?

11 A I don't recall.

12 Q Okay. I'm gonna...

13 MS. LUBRITZ: If I may approach, Your Honor.

14 THE COURT: Certainly.

15 MS. MASTEL: Your Honor, both witness books are up on the  
16 stand.

17 Q BY MS. LUBRITZ: If you would please turn to in the  
18 smaller notebook.

19 A Okay.

20 Q If you would please turn to Exhibit A. Please take  
21 a moment. Take a look at that document, and tell me if you  
22 know what it is.

23 A Yes, it is the mem- memorandum of understanding.

24 Q Would you please take a look at it and advise me as  
25 to whether this is the only memorandum of understanding that



1 was signed resulting from the March 23rd, 2018, mediation?

2 A Yes, this was the only memorandum of understanding  
3 that we signed.

4 Q If you would look please, starting on the fifth  
5 line and the first paragraph and follow along.

6 A Okay.

7 Q The memorandum addresses the material terms of the  
8 agreement and is intended to bind the parties to those terms.  
9 Did I read that correctly?

10 A Yes.

11 Q Would you consider survivor benefits to be a  
12 material term?

13 A I would.

14 Q And it's not included in the MOU, correct?

15 A Correct.

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

17 MS. MASTEL: Just a few questions.

18 **REDIRECT EXAMINATION**

19 **BY MS. MASTEL:**

20 Q Ms. Cooley...

21 A Would you like me to close the...

22 THE COURT: Yes.

23 Q BY MS. MASTEL: It doesn't matter.

24 A Okay.

25 Q You can leave it open. When the MOU says it binds

1 the parties to the material terms, is it your understanding  
2 that that means every material term?

3 A No, it's the terms that are specifically listed in  
4 the MOU.

5 Q Were there things other than the survivor benefits  
6 that needed to be negotiated afterwards?

7 A Yes.

8 MS. LUBRITZ: Objection, Your Honor, that exceeds the  
9 scope of my cross.

10 MS. MASTEL: She referenced whether or not these were the  
11 material terms. I think it's appropriate for me to ask a  
12 single question asking if there were other material terms  
13 they negotiated. We've discussed the fact that there were  
14 further negotiations.

15 MS. LUBRITZ: That -- that was not my -- that was not my  
16 question. My question was very specifically. Is -- it says  
17 what it says. I read it. And she agreed that it says that  
18 it addresses the material terms of the agreement. And then I  
19 asked if SBPs were considered a material term. She said,  
20 yes. I then stopped my questioning at that point. I did not  
21 ask about any terms that were negotiated or needed to be.  
22 Counsel could have done that on her direct examination. It  
23 exceeds the scope.

24 THE COURT: (Indiscernible).

25 MS. MASTEL: Okay.



1 THE COURT: You're exceeding the scope.  
2 MS. MASTEL: No further questions, Your Honor.  
3 MS. LUBRITZ: None, Your Honor.  
4 THE COURT: Thank you for your trip down here. It saved  
5 a little bit of hassle as far as whether or not you were  
6 being prompted some other way. So I appreciate you coming  
7 down.  
8 THE WITNESS: Okay.  
9 THE COURT: Thank you so much.  
10 THE WITNESS: So I may leave?  
11 THE COURT: You may leave.  
12 THE WITNESS: Okay. Thank you, Your Honor.  
13 MS. LUBRITZ: Thank you, Ms. Cooley.  
14 THE COURT: You're welcome. Thank you for coming.  
15 MS. MASTEL: I have nothing further, Your Honor.  
16 MS. LUBRITZ: Your Honor, at this time I have to make a  
17 request. And -- and I apologize in advance. There was no  
18 way of knowing that Ms. Cooley would testify in the manner  
19 that she did based upon...  
20 THE COURT: There was a way if you had done a deposition  
21 prior to her appearance here today.  
22 MS. LUBRITZ: Discovery had closed by the time I came  
23 into this case.  
24 THE COURT: That's a...  
25 MS. LUBRITZ: I would like to recall...

1 THE COURT: ...issue for another day.

2 MS. LUBRITZ: I would like to recall Regina McConnell as  
3 a rebuttal witness. But I would have to contact her and have  
4 her come down.

5 THE COURT: She has a right to have a rebuttal case.

6 MS. MASTEL: I mean, I think that Your Honor is correct.  
7 There were many discovery things that were discussed with Ms.  
8 Lubritz after she came into this case. She could've notified  
9 me that she would like to take depositions. She did not.  
10 She didn't ask to stipulate to that.

11 THE COURT: But she has a right to open a rebuttal  
12 case...

13 MS. MASTEL: Okay.

14 THE COURT: ...if she wishes.

15 MS. LUBRITZ: And candidly, Your Honor, I think what  
16 you've seen as far as the relationship goes, that -- that  
17 request would not have been granted. I had to beg, borrow  
18 and steal to be able to do limited interrogatories and  
19 requests for production of documents that had to be granted  
20 by Judge Steel because Ms. -- Ms. Mastel would not agree to  
21 that...

22 MS. MASTEL: That's...

23 MS. LUBRITZ: ...because no discovery had been done prior  
24 to my entry into the case.

25 MS. MASTEL: That's an inaccurate reflection of -- of the



1 case history, Your Honor; but she does have a right to a  
2 rebuttal case.

3 THE COURT: She has a right to a rebuttal case.

4 MS. MASTEL: And if Your Honor is intending...

5 THE COURT: And your witness isn't here at this time.

6 MS. LUBRITZ: Correct, Your Honor. Candidly, Your Honor,  
7 I had -- I -- I was caught off guard. If Your Honor thinks  
8 it would benefit the Court based upon all of the other  
9 testimony, but I do think that I'm entitled to have Ms.  
10 McConnell come down and respond to the statements made by Ms.  
11 Cooley under oath just now.

12 MS. MASTEL: I -- I -- I'm not gonna say she doesn't.  
13 I'm not...

14 THE COURT: Yeah, you have a right.

15 MS. MASTEL: ...gonna object to that.

16 THE COURT: Can you contact Ms. McConnell and we'll go in  
17 a recess and see how soon she can do this?

18 MS. LUBRITZ: Yes, Your Honor. I don't have her cell  
19 number. So I'll have to contact her office. Generally, the  
20 courts have cell numbers. I don't know if that's...

21 THE MARSHAL: I don't.

22 MS. MASTEL: I don't think that's true anymore. That's  
23 -- that's real old.

24 MS. LUBRITZ: Oh, is it? Okay.

25 MS. MASTEL: Because I know the Court -- the Court don't

1 have my number.

2 THE COURT: Someone...

3 MS. LUBRITZ: I'm old school, I guess.

4 THE COURT: If you have a judicial marshal that's been  
5 with the same judge forever, you might have a list.

6 MS. LUBRITZ: Okay.

7 THE COURT: Otherwise he usually works in dependency.

8 MS. LUBRITZ: Understood.

9 THE COURT: Which he wouldn't even...

10 MS. LUBRITZ: Do you have it?

11 THE COURT: ...have the right cell numbers...

12 MS. MASTEL: No.

13 THE COURT: ...anyway.

14 MS. LUBRITZ: Okay.

15 THE COURT: So.

16 MS. LUBRITZ: I will do my best to reach out to her right  
17 now.

18 THE COURT: Go ahead and give her office a call and see  
19 how soon -- because see I want this done.

20 MS. LUBRITZ: Absolutely. We didn't -- believe me. It's  
21 three years that this has been going on.

22 THE COURT: I know.

23 MS. LUBRITZ: They got divorced in '18.

24 THE COURT: I -- I know. I'm...

25 MS. LUBRITZ: Thank you, Your Honor. I appreciate it.



1 THE COURT: I'm real aware.

2 MS. LUBRITZ: Thank you.

3 (Whereupon the matter was trailed at  
4 10:11:17 and recalled at 12:59:51.)

5 THE CLERK: On the record.

6 THE COURT: Thank you. We're coming back to order after  
7 recess for the appearance of a witness. This is the Rose  
8 matter 547250. All the same parties are here as before  
9 previously. So we don't have to do all those announcements  
10 and we can go straight to the witness. So everybody have a  
11 seat and...

12 MS. LUBRITZ: Thank you, Your Honor.

13 THE COURT: It's your rebuttal case.

14 MS. LUBRITZ: Regina McConnell, please.

15 THE COURT: Thank you for coming into court.

16 MS. MCCONNELL: I'm sorry I'm not in a suit. I  
17 apologize.

18 THE COURT: That's okay.

19 MS. MCCONNELL: I felt so bad.

20 THE COURT: All right. You'll need to be sworn again.

21 THE CLERK: Your Honor, would you like me to swear her  
22 in?

23 THE COURT: Yes.

24 THE CLERK: Will you please stand, ma'am, and raise your  
25 right? You do solemnly swear the testimony you're about to

1 give in this action shall be the truth, the whole truth and  
2 nothing but the truth, so help you God?

3 MS. MCCONNELL: Yes.

4 THE CLERK: Thank you.

5 MS. MCCONNELL: Thank you.

6 **REGINA MCCONNELL,**

7 having been called as a rebuttal witness  
8 and having been duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MS. LUBRITZ:**

11 Q Would you just state your name for the record?

12 A Regina McConnell.

13 Q Ms. McConnell, first of all, thank you very much.

14 You had absolutely no notice. And I appreciate you coming in  
15 and accommodating everybody. Did I discuss with you -- I  
16 called you and -- well, actually I called your attorney, Mr.  
17 Darren.

18 A Uh-huh.

19 Q Mr. Darren notified you.

20 A Yes.

21 Q I sent you a text message asking one question. We  
22 didn't discuss prior testimony of any other witness, correct?

23 A Correct.

24 Q And we actually never even spoke on the phone?

25 A Correct.



1 Q Did you bring anything with you?  
2 A The original decree that was signed.  
3 MS. LUBRITZ: May I...  
4 THE COURT: You may.  
5 MS. LUBRITZ: ...take a look at it? Thank you.  
6 The Marshal mind if I look at it?  
7 THE MARSHAL: Yeah.  
8 MS. LUBRITZ: Thank you.  
9 Q BY MS. LUBRITZ: And so this is the original decree  
10 that was signed by all the parties?  
11 A Correct.  
12 MS. LUBRITZ: And may I ask that the Court just take  
13 notice of the original signatures and wet stamps of the  
14 notary? May I ask...  
15 THE COURT: You stipulate that it's the original?  
16 MS. MASTEL: I haven't seen it.  
17 THE COURT: Haven't? Well, then hand it to her.  
18 MS. MASTEL: It was much easier when you used to able to  
19 like...  
20 MS. LUBRITZ: If you want to wet your finger...  
21 MS. MASTEL: You know, COVID probably suggests not a  
22 great idea.  
23 MS. LUBRITZ: If you want to wet it with some water, I  
24 have no objection.  
25 MS. MASTEL: It appears to be the original.

1 THE COURT: Thank you.

2 MS. MASTEL: I can't obviously fully authenticate it.

3 But it does appear.

4 THE COURT: Thank you.

5 MS. LUBRITZ: May I ask -- may I direct the Court's  
6 attention and ask that your marshal direct you to page 39,  
7 but also just for the Court to take a look so you can make  
8 your own determination? There are also notary stamps for the  
9 Court.

10 THE COURT: Everything seems to be exactly as the one  
11 that's here, only this is in ink. So I would assume this is  
12 the original.

13 MS. LUBRITZ: Thank you.

14 THE COURT: I'm not a handwriting expert or anything.

15 MS. LUBRITZ: Absolutely.

16 THE COURT: But it appears to be the original document.

17 MS. LUBRITZ: I would -- I would move for it's admission.

18 MS. MASTEL: I would object. I got it ten...

19 THE COURT: I'm sorry?

20 MS. MASTEL: ...minutes ago. I said I have an objection  
21 to admitting it. I got it ten minutes ago, got a chance to  
22 do a cursory review. I -- I can't...

23 THE COURT: I'm gonna make a...

24 MS. MASTEL: ...fully authenticate it.

25 THE COURT: ...finding that the original appears to be in



1 the possession of the witness. I'm not taking it from the  
2 witness.

3 MS. LUBRITZ: Thank you.

4 Q BY MS. LUBRITZ: Ms. McConnell, after the memorandum  
5 of understanding was signed by all parties, did the four of  
6 you, meaning both counsel and the parties, stay at Ms.  
7 Forsberg's office to continue negotiations?

8 A No.

9 Q Did you call Ms. Cooley after the decree had been  
10 signed but before you submitted it for -- for her to file?  
11 Poorly worded. I'll withdraw that.

12 THE COURT: Careful on leading.

13 MS. LUBRITZ: Yes.

14 Q BY MS. LUBRITZ: Did you have a conversation with  
15 Ms. Cooley after the decree had been signed but before it was  
16 submitted that your client had changed -- Mr. Rose had  
17 changed his mind about the option...

18 MS. MASTEL: Objection, leading.

19 THE COURT: It is a leading statement.

20 MS. LUBRITZ: I'm not suggesting an answer.

21 THE COURT: Did you have a conversation, leave it there.

22 MS. LUBRITZ: Okay.

23 THE COURT: But her telling you what the conversation was  
24 about.

25 MS. LUBRITZ: If -- okay. If the conversation never took

1 place, I don't know how she can tell me about it.

2 THE COURT: Then she won't be able to.

3 MS. LUBRITZ: Okay.

4 THE COURT: If she says there's no conversation.

5 Q BY MS. LUBRITZ: Did you have a conversation --  
6 okay. What conversation did you have with Ms. Cooley prior  
7 to the decree of divorce being submitted to the court for  
8 signature?

9 A I called her and informed her that there was a  
10 mistake in the document, that my client had never agreed to  
11 survivor benefits.

12 Q Did you have any other conversation with Ms. Cooley  
13 regarding the decree of divorce after it was signed by prior  
14 to submission to the court?

15 A I don't know exactly when she submitted it, so.

16 Q Okay. Fair enough. Did you have any other  
17 conversation with Ms. Cooley about the decree after the  
18 mediation and after the parties signed this decree of  
19 divorce?

20 MS. MASTEL: Objection, compound.

21 THE COURT: Sustained.

22 Q BY MS. LUBRITZ: Other than the conversation you  
23 just testified about, did you have any other conversations  
24 with Ms. Cooley regarding the decree after it was signed?

25 A Right. I -- I -- I know we had a conversation. We



1 had that first conversation. And then we had another  
2 conversation about the benefits and in trying to resolve it  
3 prior to me filing a motion, I guess.

4 Q Can you -- I'm sorry. Can you...

5 A (Indiscernible).

6 Q ...tell the Court about that conversation, please?

7 A She kept telling me there has to be survivor  
8 benefits addressed in there. And I told her that my client  
9 did not agree to that, and it was never addressed in the  
10 memorandum of understanding. So my client was not in  
11 agreement with it, and we weren't gonna ha- he did not want  
12 the survivor benefits. That's when she said she was gonna  
13 submit it anyway, the decree. And -- and then we were  
14 talking about different options. And I told her nothing's  
15 gonna work because my client doesn't want the survivor  
16 benefit. He had not agreed to that. So thus the filing of  
17 the motion.

18 Q Okay. And when you -- just for clarity, when you  
19 say that he discussed other options where you dis- can you --  
20 were you discussion -- discussing other SBP options or were  
21 you discussing options being other resolution?

22 A No, she was just explaining. She was telling me  
23 different SBP options. And of course I have to supply that  
24 to my client. I said, I'll talk to him. But -- and -- and I  
25 talked to him and there was no agreement.

1 Q Okay. At any point, subsequent to the signing of  
2 the decree and prior to it being filed, did Mr. Rose advise  
3 you that he changed his mind regarding his position on SBP?

4 A No, he did not.

5 Q After you objected to the submission of the decree  
6 because there was a mistake, were you given any sort of  
7 deadline as to when you would have to make a decision before  
8 Ms. Cooley would submit it to the court?

9 A Oh, no.

10 Q At any point, did you authorize the submission of a  
11 copy of the decree of divorce to be submitted to the court  
12 for filing?

13 A No.

14 Q Did you and Ms. Cooley -- strike that. At the time  
15 that -- at any time prior to the signing of the decree of  
16 divorce, did you and Ms. Cooley discuss survivor benefits  
17 being awarded to Sarah Rose?

18 A No.

19 MS. LUBRITZ: Thank you for your time.

20 I have nothing further of this witness.

21 THE WITNESS: Thank you.

22 **CROSS-EXAMINATION**

23 **BY MS. MASTEL:**

24 Q Now, Ms. McConnell, why did you bring the original  
25 decree -- decree today?



1 A I was asked.  
2 Q By whom?  
3 A By Ms. Lubritz.  
4 Q Okay. What was the context of that discussion?  
5 A It was a text. Do you have the original decree?  
6 Q Okay. Did she explain why she wanted you to bring  
7 it?  
8 A No.  
9 Q Now you're presently being sued by Mr. Rose for  
10 malpractice, correct.  
11 MS. LUBRITZ: Objection, it exceeds the scope.  
12 MS. MASTEL: It does not. It's...  
13 MS. LUBRITZ: It was -- excuse me.  
14 MS. MASTEL: ...impeachment.  
15 MS. LUBRITZ: It exceeds the scope.  
16 THE COURT: It exceeds the scope.  
17 MS. LUBRITZ: Thank you.  
18 MS. MASTEL: It's impeachment of the witness's  
19 credibility. If she's being sued by Mr. Rose in a  
20 malpractice action, that colors her testimony.  
21 MS. LUBRITZ: It's a -- no.  
22 THE COURT: No. I'm not gonna permit the question.  
23 Q BY MS. MASTEL: Now you acknowledge that after  
24 Rhonda, Judge Forsberg, left her office, the four of you  
25 stayed at the office...

1 MS. LUBRITZ: Objection, that misstates...

2 Q BY MS. MASTEL: ...for...

3 MS. LUBRITZ: ...her testimony.

4 MS. MASTEL: I'm not quoting her testimony. I asked if  
5 she acknowledged that they stayed there.

6 MS. LUBRITZ: Vague.

7 THE COURT: Ask your question differently. It's a little  
8 bit...

9 Q BY MS. MASTEL: You -- well, okay. You acknowledge  
10 that after Ms. Fors- Judge Forsberg left on the day of your  
11 mediation, you and Shelly and the parties remained at her  
12 office for a period of time; correct?

13 A I believe we signed that memo at her office. But I  
14 don't know if she had left.

15 Q After the memorandum had been signed, you were  
16 there continuing to -- to work on the decree; correct?

17 A No.

18 Q What time did Judge Forsberg leave?

19 MS. LUBRITZ: Objection, speculation. If she wasn't  
20 there, how would she know what time the judge left?

21 THE COURT: She can answer the question if she knows the  
22 answer.

23 THE WITNESS: The question is when did we leave or when  
24 did Ms. Forsberg leave?

25 Q BY MS. MASTEL: When did Judge...



1 A I'm sorry. Judge Forsberg.

2 Q ...Forsberg leave?

3 A I'm not 100-percent sure.

4 Q Was there a point when she told you she was done  
5 and she had to leave?

6 A She told us in the beginning this was a free  
7 mediation, and we had until the three to four hours.

8 Q Okay. And at the end of that three to four hours,  
9 she indicated to you that she was getting on a plane and she  
10 was leaving.

11 A No.

12 Q Did she ever indicate to you that she was getting  
13 on a plane?

14 A No.

15 Q Do you know why she limited you to four hours?

16 A Number one, it was a free mediation; and she had  
17 indicated that at the beginning because we were using a -- a  
18 court-mediation program and, number two, she was going out of  
19 town.

20 Q Okay. Did she at some point tell you that she was  
21 done and she was leaving?

22 MS. LUBRITZ: Objection, vague.

23 THE WITNESS: I don't recall.

24 Q BY MS. MASTEL: Okay.

25 THE COURT: I think she can answer that. She knows

1 whether or not the judge told her I'm -- I'm outta here.

2 Good luck.

3 Nothing? Right?

4 THE WITNESS: I don't recall her saying anything like  
5 that.

6 THE COURT: Thank you.

7 Q BY MS. MASTEL: When's the last time you reviewed  
8 your file in this case?

9 A I believe I reviewed some of my notes before my  
10 last testimony.

11 Q When is the last time you reviewed the  
12 correspondence in this case?

13 MS. LUBRITZ: Objection, Judge, this far exceeds the  
14 scope.

15 MS. MASTEL: It does not.

16 MS. LUBRITZ: Excuse me. I'm sorry. I didn't get...

17 You're wearing the robe. It exceeds the scope of  
18 my -- of my direct.

19 MS. MASTEL: She indicated she had not heard from Ms.  
20 Cooley prior to Ms. Cooley submitting the decree. It is  
21 valid for me to know the last time she looked at that  
22 correspondence to know whether or not her recollection is...

23 THE COURT: I'll permit the question.

24 THE WITNESS: I honestly, I'm not sure.

25 Q BY MS. MASTEL: So is it possible that you had



1 forgotten the e-mail or letter was sent to you with -- from  
2 Ms. Cooley stating that if she didn't hear from you by a  
3 certain time that she would be submitting the decree?

4 MS. LUBRITZ: I would object. That is -- it's an  
5 improper -- it's an improper form.

6 THE COURT: I -- no, it's fine.

7 MS. LUBRITZ: Okay.

8 THE WITNESS: I'm sorry. Can you repeat the question.

9 Q BY MS. MASTEL: Sure.

10 THE COURT: Hearing from takes more than one type of  
11 thing. You can get a text message. You can get an e-mail.  
12 You can get a...

13 THE WITNESS: Right.

14 THE COURT: ...letter in the mail. They can talk to you  
15 personally. They can see you...

16 THE WITNESS: Right.

17 THE COURT: ...in a -- the mall and say, hi. The last  
18 time you heard from could also be correspondence.

19 THE WITNESS: Correct.

20 THE COURT: Ask your question again.

21 Q BY MS. MASTEL: Is it possible that you have  
22 forgotten receiving a correspondence from Ms. Cooley  
23 indicating that she would submit a -- the decree if she  
24 hadn't heard from you by a certain day?

25 A I do not recall receiving a correspondence.

1 Q Is it possible that you don't recall?

2 MS. LUBRITZ: Objection, she's answered.

3 THE COURT: She just said she doesn't recall.

4 Q BY MS. MASTEL: So is it possible that it was sent,  
5 and you simply don't remember?

6 MS. LUBRITZ: Objection, calls for speculation.

7 THE COURT: She can speculate about herself.

8 THE WITNESS: When I spoke to Ms. Cooley, there was  
9 nothing -- I don't recall any mail or anything from Ms.  
10 Cooley about submitting a decree, just her conversation.

11 Q BY MS. MASTEL: But is it possible you simply don't  
12 remember and it does exist?

13 MS. LUBRITZ: Objection, it's been asked and answered.

14 THE COURT: It has...

15 MS. MASTEL: It hasn't been answered.

16 THE COURT: ...been asked and answered.

17 MS. MASTEL: Okay.

18 Q BY MS. MASTEL: During your initial conversation  
19 with Ms. Cooley when you indicated that your client wanted  
20 the survivorship benefit removed from the decree, it's your  
21 testimony that you told her it was a mistake to add it?

22 A I told her we had not agreed to that and it was --  
23 shouldn't been in there.

24 Q You acknowledge that you and Mr. Rose signed the  
25 decree, correct?



1 MS. LUBRITZ: Objection, Your Honor. This -- we went  
2 into this last time. It exceeds...

3 THE COURT: Yes, we did.

4 MS. LUBRITZ: ...the sc-...

5 Q BY MS. MASTEL: Can you recall what you told Ms.  
6 Cooley in that conversation?

7 MS. LUBRITZ: Objection, fra- vague as to time.

8 THE COURT: Yeah.

9 MS. LUBRITZ: What conversation?

10 THE COURT: What conversation.

11 Q BY MS. MASTEL: Okay. All right. Can you recall  
12 what you told Ms. Cooley in your initial conversation when  
13 you indicated the survivor benefits were improper,  
14 specifically?

15 A I -- I cannot recall specifically, other than I  
16 told her that was not the agreement and we had -- we had not  
17 agreed to that.

18 Q Did you in that conversation agree to discuss with  
19 Mr. Rose about survivorship benefits?

20 A No.

21 MS. MASTEL: Pass the witness, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MS. LUBRITZ:**

24 Q Did you authorize the submission of the decree of  
25 divorce...

1 MS. MASTEL: Objection, asked and answered.

2 Q BY MS. LUBRITZ: ...to the court?

3 THE COURT: Sustained.

4 MS. LUBRITZ: I have nothing further. Well, brief  
5 indulgence. I have nothing further of this witness.

6 Thank you.

7 THE COURT: Anything?

8 MS. MASTEL: Nothing, Your Honor.

9 THE COURT: Thank you again for the short notice and for  
10 helping us out finish up this trial.

11 THE WITNESS: Thank you, Your Honor.

12 MS. LUBRITZ: Just for the record, I'm returning the  
13 original decree to counsel.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you.

16 MS. LUBRITZ: Thank you.

17 I have nothing further, Your Honor.

18 THE COURT: All right. So let's get a little time frame  
19 for everything. How long do you think it will take for you  
20 to prepare your closing argument?

21 MS. LUBRITZ: What's reasonable to the Court? When would  
22 you like me to have it?

23 THE COURT: Tomorrow.

24 MS. LUBRITZ: Okay. What's reasonable? When would you  
25 like me to have realistically, Judge.



1 THE COURT: Let me look at my calendar. I'm gonna say  
2 the 30th of November, only because we've got a four-day  
3 weekend kind of thing for Thanksgiving coming up. I don't  
4 expect cou- either counsel to have to be working on this  
5 issue. They may have other responsibilities. And they still  
6 may choose to work on this issue. But I'm not gonna make  
7 them do it.

8 MS. LUBRITZ: And thank you for that.

9 THE COURT: You will have a -- well, let's see. So the  
10 30th, let me move my calendar forward. Counsel, I'd like you  
11 to have your reply -- or not reply but re- your -- your  
12 closing arguments on the 10th.

13 MS. MASTEL: Your Honor, I have a supreme court brief due  
14 that same week. Can I have until the 14th so we get the same  
15 amount of time?

16 THE COURT: Well, you don't really need the same amount  
17 of time because you're gonna start writing yours right away,  
18 as far as your argument's concerned. You can have that  
19 mostly done, and all you'll have to do is address her stuff.  
20 So...

21 MS. MASTEL: I -- I mean, I will get it done if that's  
22 the Court's order. I just also have a trial to prepare for  
23 and the supreme court brief I do think due on the 6th.  
24 But...

25 MS. LUBRITZ: And she's got roughly...

1 THE COURT: I'll give you till the...  
2 MS. LUBRITZ: ...40...  
3 THE COURT: ...13th.  
4 MS. MASTEL: Okay.  
5 THE COURT: That'll give you some, a little, extra time.  
6 MS. LUBRITZ: What time, Your Honor?  
7 THE COURT: 13th.  
8 MS. LUBRITZ: Okay.  
9 THE COURT: And then, counsel, you'll have your reply, if  
10 any, by the 17th.  
11 MS. LUBRITZ: What day of the week is that, Your Honor?  
12 THE COURT: Friday.  
13 MS. LUBRITZ: May I have until that Monday?  
14 THE COURT: No, because that's the week of Christmas.  
15 MS. LUBRITZ: Because I have trial that day.  
16 THE COURT: Get it done early. I mean, all you have to  
17 do is reply to her little stuff.  
18 MS. LUBRITZ: Yeah, but I -- I imagine it's gonna be very  
19 detailed.  
20 THE COURT: I know.  
21 MS. LUBRITZ: So okay. I appreciate the Court's  
22 indulgence.  
23 THE COURT: I'm gonna get these guys done before the end  
24 of the year...  
25 MS. LUBRITZ: I know.



1 THE COURT: ...is my goal here.

2 MS. LUBRITZ: And if I ask one more time, I know it's

3 been asked and answered, may I just have till that Monday and

4 the weekend because I have trial that week?

5 THE COURT: Fine.

6 MS. LUBRITZ: Thank you. So that would be the...

7 MS. MASTEL: 20th.

8 MS. LUBRITZ: ...20th, Your Honor.

9 THE COURT: And because you're getting to the 20th,

10 counsel, if you have any additional specific thing that she

11 raises in her -- because I would give you both the

12 opportunity to reply back and forth, you may do so by the

13 27th.

14 MS. MASTEL: Okay.

15 MS. LUBRITZ: And then I have until how long because you

16 said we could go...

17 MS. MASTEL: Your Honor...

18 MS. LUBRITZ: ...back and forth.

19 MS. MASTEL: ...I would...

20 THE COURT: No, no, no.

21 MS. LUBRITZ: I'm plaintiff.

22 THE COURT: No.

23 MS. LUBRITZ: I get the last word.

24 THE COURT: Huh?

25 MS. LUBRITZ: I'm plaintiff. I get the...

1 THE COURT: I know, but this is...

2 MS. LUBRITZ: ...last word.

3 THE COURT: ...family court. And I'm...

4 MS. LUBRITZ: I understand.

5 THE COURT: ...deciding that they both need to have the  
6 same amount of words, so.

7 MS. LUBRITZ: And so if they bring something up in their  
8 closing...

9 THE COURT: They can't bring up anything. She's going to  
10 do her closing argument. If you bring up something new in  
11 your reply to her closing argument, I always in court let the  
12 other side address something new that wasn't raised.

13 MS. LUBRITZ: So just for clarification, just because I  
14 respond to something that is in -- in Ms. Mastel's closing  
15 argument, doesn't mean she gets a one off and automatically  
16 gets to respond. It's if I bring up something that's not...

17 THE COURT: That needs more clarification or so-  
18 something, yes.

19 MS. LUBRITZ: Okay.

20 THE COURT: She may do that.

21 MS. LUBRITZ: And if there's a -- a disagreement between  
22 the two of us as to whether or not that's appropriate...

23 THE COURT: I'll make that decision.

24 MS. LUBRITZ: Okay.

25 THE COURT: I'll say...



1 MS. LUBRITZ: And then you'll strike -- if you find  
2 it's...

3 THE COURT: ...that wasn't appropriate.

4 MS. LUBRITZ: ...not, you'll strike...

5 THE COURT: And I won't even consider it.

6 MS. LUBRITZ: And you'll strike it if that's the case.

7 Now are these filed or just submitted to the Court?

8 THE COURT: These are filed.

9 MS. MASTEL: I'd like them filed.

10 MS. LUBRITZ: Okay. And so...

11 THE COURT: These aren't settlement briefs. These are  
12 closing arguments.

13 MS. LUBRITZ: Right. So in the event that you find it's  
14 not appropriate, then you...

15 THE COURT: I will...

16 MS. LUBRITZ: ...would strike it?

17 THE COURT: ...say so in my decision. I'll say she  
18 replied or responded or whatever, but it didn't address  
19 anything pertinent to my decision.

20 MS. LUBRITZ: Okay. And then we'll strike it just  
21 because if it goes up to the supreme...

22 THE COURT: I'll do what I feel like doing.

23 MS. LUBRITZ: Understood. I was asking, not directing.  
24 I was asking.

25 THE COURT: Okay. You said, we will strike. And I don't

1 think you're in on it.

2 MS. LUBRITZ: Oh, I didn't -- I don't think I said that.

3 No, I would -- respectfully, it might be the mask. I -- I...

4 THE COURT: Okay.

5 MS. LUBRITZ: I'm presumptuous but not that presumptuous,  
6 Your Honor.

7 THE COURT: All right.

8 MS. LUBRITZ: Thank you. I appreciate your indulgence.

9 THE COURT: All right.

10 MS. LUBRITZ: And thank you to your staff.

11 THE COURT: I'm just sorry this happened to you guys.

12 This is a kind of a tricky situation. It's like we're two,  
13 what do they call, a perfect storm. You guys have some  
14 contract law and some family law and some unsettled or --  
15 maybe not unsettled but never before...

16 MS. MASTEL: Issues of first...

17 THE COURT: ...determined family law.

18 MS. MASTEL: ...of fresh impression.

19 THE COURT: You know, yeah, kind of a first impression;  
20 but maybe not. We'll see. Remember I -- I do my thing, and  
21 they do their thing. We'll see what happens there. So  
22 there's a lot of levels of different things I have to take  
23 into consideration. Which is more important, the contract  
24 law or the family law? Which one takes precedent. There's a  
25 lot of things that I'm gonna be making some decisions on,



1 including the veracity of the people who testified here and  
2 things like that.

3 MS. LUBRITZ: I -- I do have one question of the Court  
4 procedurally.

5 THE COURT: It could have happened to multi-millionaires  
6 instead of you guys is what I'm trying to say. Yeah.

7 MS. LUBRITZ: Of course. And -- and I've done this  
8 previously but not before you. I would ask, I have the  
9 transcript of Mr. Willick's testimony.

10 THE COURT: Has it been filed?

11 MS. MASTEL: It's been filed, Your Honor.

12 MS. LUBRITZ: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. LUBRITZ: I would like to have the opportunity to go  
15 through and ask that certain parts of the transcript be  
16 stricken because I believe that a lot of the testimony, if  
17 you go back and read it, was not relevant to the proceedings.  
18 And for a very clean record, I -- I believe it needs to be  
19 paired down as far as what another court...

20 THE COURT: I'm gonna deny that request.

21 MS. LUBRITZ: Okay.

22 THE COURT: It's way too much independent thought on your  
23 part. And she would have an opportunity to come in and say  
24 why you shouldn't be able to. If it doesn't matter, it  
25 doesn't matter. I won't use it anyway. So I -- I'm -- I'm

1 -- I'm okay with it.

2 MS. LUBRITZ: Okay. And -- and again the only reason I  
3 ask is that if another court reviews it, I would like it to  
4 be as clean as possible.

5 THE COURT: And hopefully they'll be smarter than me and  
6 they'll either take into consideration the things I didn't or  
7 vice versa.

8 MS. LUBRITZ: Very well. Thank you, Your Honor.

9 THE COURT: It will be their option.

10 MS. LUBRITZ: I appreciate it. And -- and when would you  
11 anticipate -- (indiscernible) thing, when would you  
12 anticipate having your decision?

13 THE COURT: Well, I would anticipate that once you guys  
14 get all of your complete stuff done by the 27th, if I read  
15 them and I need further information or further argument, I'll  
16 set it for a hearing. If I don't, I will inform the clerk to  
17 put it under advisement. And then I have 30 days...

18 MS. LUBRITZ: Okay.

19 THE COURT: ...by our rules to get it to you, so.

20 MS. LUBRITZ: Thank you.

21 THE COURT: It's not gonna be by the first of the year.

22 MS. LUBRITZ: Understood.

23 THE COURT: Sorry, guys. I tried my best. And these  
24 guys (indiscernible) me out of a couple of weekends. All  
25 right. I -- I don't like to overtax what you guys do because



1 it's important. This is really an important one. So lots of  
2 things to consider. Lots of things for me to make  
3 determinations on. I'll do my very best and then let you  
4 guys take it from there.

5           When I was early -- talking earlier about I don't  
6 like the result with Mr. Willick, I was involved in a case  
7 called Blaich. You may have heard of it. Blaich versus --  
8 B-L-A-I-C-H. I don't know how you pronounce it. I always  
9 say Blaich. Where I was overturned by the supreme court.  
10 And the next session of the legislature changed it back to be  
11 the way I said it should be in the court decision.

12           So it can change things, even though the law's  
13 written one way. The courts can say, this doesn't look right  
14 and the legislature could go back and do something. So we'll  
15 see how it works out. That's what I was referring to that --  
16 that sometimes making a decision that's not full bore on  
17 point. And I don't know if we have a point here.

18           So let's do the best we can everybody. I wished  
19 you guys could have resolved it on your own. That would've  
20 been the best.

21           The other thing I have is that once I've read your  
22 decisions and if I decide to take it under advisement,  
23 there's case law that says that the court can determine the  
24 nature of the agreement for the option 2 thing. The court  
25 can determine somebody pays for it. One party pays for it,



1 whatever. So there's a lot of things that I have on my plate  
2 that I can make a determination on, just to let you know.

3 I'm looking at two very serious things. One is the  
4 lack of a meeting of the minds between the parties. The  
5 other one is if I take the -- either -- I'm giving you guys  
6 some road maps here for your closing argument. If I take it  
7 out of the decree and say that it shouldn't have been there  
8 because of the lack of the meeting of the minds, now am I  
9 affecting spousal support because if she was relying on that  
10 as part of her spousal support, that elements gone. Now she  
11 doesn't have her meeting of the minds. So I've got to look  
12 at that, which we didn't get any testimony on at all.

13 There was one other thing. If I take it out, then  
14 it is an omitted asset. And then we're starting from  
15 scratch. So I can't just take it out because it will be an  
16 omitted asset, I believe. It has to be addressed. I think  
17 that counsel was correct in saying it had to be addressed.

18 So right now it's not admitted because it was  
19 addressed; however, maybe addressed in error or addressed  
20 without total understanding on both parts.

21 Anyway, I'm just giving you guys some insight. I'm  
22 not making a ruling. Please don't put this in as the law of  
23 the record because I would like to read your briefs and do a  
24 little bit of a background research from your briefs to see  
25 what I can come up with that's best for you guys, unless you



1 guys come up with something better before I do, which I  
2 clearly, you know, would let you do.

3 MS. LUBRITZ: We've made our best effort, Your Honor.

4 THE COURT: Okay. Well, maybe not because whenever I  
5 decide to do something, when it's now gonna be my decision  
6 and not your decisions...

7 MS. LUBRITZ: Mm-hm.

8 THE COURT: You're gonna be taking the medicine I make  
9 off the medicine you make and it may not be the outcome you  
10 want; although you're both sitting here after four years.  
11 You want to be the one who wins because you've waited this  
12 long. One of you won't win. That's just the -- the -- the  
13 pure of it, so. Sometimes it is better if you can try to  
14 resolve it on your own outside of court.

15 You still have that duty to do so. If somebody  
16 makes an offer, you have to relay it to your client, back and  
17 forth. You know the drill. But the briefing schedules or --  
18 or the closing argument schedule is in. And I'll do my very  
19 best to take everything into consideration that I have to, to  
20 make this a -- a decision that's appropriate. Okay?

21 MS. LUBRITZ: Thank you, Your Honor.

22 MS. MASTEL: Thank you, Your Honor.

23 THE COURT: Thank you, all.

24 (THE PROCEEDING ENDED AT 01:34:07.)

25 ////

★ ★ ★ ★ ★

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

SHERRY JUSTICE,  
Transcriber II

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FILED

APR 07 2022

*Sherry Justice*  
CLERK OF COURT

1 COST

2 ORIGINAL

3 EIGHTH JUDICIAL DISTRICT COURT

4 FAMILY DIVISION

5 CLARK COUNTY, NEVADA

6  
7 DAVID ROSE, ) CASE NO. D-17-547250-D  
8 ) DEPT. I  
9 Plaintiff, )  
10 )  
11 vs. )  
12 )  
13 SARAH ROSE, )  
14 ) SEaled  
15 )  
16 Defendant. )

17 FINAL BILLING OF TRANSCRIPTS

18 The office of Transcript Video Services filed transcripts  
19 for Rachel H. Mastel, Esq., on April 7th, 2022, for the  
20 following proceedings in the above-captioned case:

21 APRIL 09, 2021; SEPTEMBER 23, 2021; NOVEMBER 15, 2021

22 (Partial transcripts of September 23, 2021, have been  
23 previously transcribed - available through Records Department.)

24 Original transcripts and one copy of each were requested.


The reduced cost of the transcripts is \$660.00. FEES ARE  
WAIVED by order of the Court pursuant to NRS 12.015(3). Final  
billing provided for purposes of NRS 12.015(4).

DATED this 7th day of April, 2022.

*Sherry Justice*  
SHERRY JUSTICE  
Transcript Video Services

Received by *[Signature]* this 13 day of April, 2022.

ITEMS LEFT BEYOND NINETY DAYS ARE SUBJECT TO DISPOSAL WITHOUT REFUND.  
COUNTY RETENTION POLICY APPROVED BY INTERNAL AUDIT.

  
CLERK OF THE COURT

**ORDR**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*

DAVID ROSE,  
Plaintiff.

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

vs.

HEARING DATE: 4/21/2022  
HEARING TIME: 8:30 A.M.

SARAH ROSE,  
Defendant.

**ORDER**

Nevada Rule of Civil Procedure 1 and Eighth Judicial District Rule 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Pursuant to Eighth Judicial District Rule 2.23(c), this Court can consider a motion and issue a decision on the papers at any time without a hearing.

**THE COURT FINDS** Defendant filed a Motion to Stay on February 25, 2022. Defendant requests the Court stay the order awarding Plaintiff attorney's fees from the Findings of Fact, Conclusions of Law and Order signed by Judge Steel on January 31, 2022. Plaintiff filed an Opposition and Countermotion on March 17, 2022 requesting the Court deny the Motion and Defendant attorney's fees.



**THE COURT FINDS** Plaintiff filed a Memorandum of Fees and Costs on February 7, 2022. Defendant filed a Notice of Appeal on February 15, 2022. The Court has not issued an order for the amount of attorney's fees.

**THE COURT FINDS** “[t]he court may decide a postjudgment motion for attorney’s fees despite the existence of a pending appeal from the underlying judgment.” NRCp 54(d)(2)(A).

**THE COURT FINDS** may is construed as a permissive grant of authority, not mandatory. *See* Butler v. State, 120 Nev. 879, 102 P.3d 71 (2004); Nev. Pub. Emps. Ret. Bd. v. Smith, 129 Nev. 618, 310 P.3d 560 (2013).

**THE COURT FINDS** it may delay determining the amount of attorney's fees until the appeal is completed.

**THE COURT ORDERS** Defendant's Motion for Stay is denied as the Court declines to award attorney's fees pending the appeal. Plaintiff's Countermotion for Attorney's fees is denied without prejudice.

**THE COURT ORDERS** the hearing scheduled for April 21, 2022 is vacated. Plaintiff may re-notice the Memorandum of Fees and Costs after the conclusion of the appeal. The case shall close until the re-notice of the hearing.

**Dated this 19th day of April, 2022**

James Bailey

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: 4/19/2022

15 Racheal Mastel

racheal@kainenlawgroup.com

16 Service KLG

service@kainenlawgroup.com

17 Kolin Niday

kolin@kainenlawgroup.com

18 David Rose

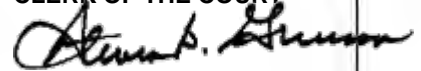
daverose08@gmail.com

19 Shelley Lubritz

shelley@lubritzlawoffice.com

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APPX1917





1 NEO

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 \*\*\*\*

6 David Rose, Plaintiff

CASE NO.: D-17-547250-D

7 vs.

DEPT.: I

8 Sarah Rose, Defendant.

9  
10 **NOTICE OF ENTRY OF ORDER**

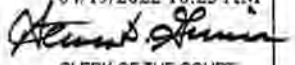
11 Please take note that an Order was filed in this matter on April 19,  
12 2022. A copy of the Order is attached hereto. I hereby certify that on the  
13 above filed stamped date:

14  
15 I E-Served pursuant to NEFCR 9, and/or, mailed, via first-class mail,  
16 postage fully prepaid, the foregoing Notice of Entry of Order to:

17 Racheal H. Mastel  
18 [racheal@kainenlawgroup.com](mailto:racheal@kainenlawgroup.com)

19 Shelley Lubritz  
20 [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

21  
22  
23 Ruthie Denning  
24 Ruthie Denning  
25 Judicial Executive Assistant  
26 Department I  
27  
28

  
CLERK OF THE COURT

1 **ORDR**

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

5 \*\*\*\*

6 DAVID ROSE,  
7 Plaintiff.

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

8 vs.

HEARING DATE: 4/21/2022  
HEARING TIME: 8:30 A.M.

9 SARAH ROSE,  
10 Defendant.

11 **ORDER**

12 Nevada Rule of Civil Procedure 1 and Eighth Judicial District Rule 1.10 state  
13 that the procedure in district courts shall be administered to secure efficient, speedy,  
14 and inexpensive determinations in every action. Pursuant to Eighth Judicial District  
15 Rule 2.23(c), this Court can consider a motion and issue a decision on the papers at  
any time without a hearing.

16 **THE COURT FINDS** Defendant filed a Motion to Stay on February 25, 2022.  
17 Defendant requests the Court stay the order awarding Plaintiff attorney's fees from  
18 the Findings of Fact, Conclusions of Law and Order signed by Judge Steel on January  
19 31, 2022. Plaintiff filed an Opposition and Countermotion on March 17, 2022  
20 requesting the Court deny the Motion and Defendant attorney's fees.



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**THE COURT FINDS** “[t]he court may decide a postjudgment motion for attorney’s fees despite the existence of a pending appeal from the underlying judgment.” NRCp 54(d)(2)(A).

**THE COURT FINDS** may is construed as a permissive grant of authority, not mandatory. See Butler v. State, 120 Nev. 879, 102 P.3d 71 (2004); Nev. Pub. Emps. Ret. Bd. v. Smith, 129 Nev. 618, 310 P.3d 560 (2013).

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Dated this 19th day of April, 2022

Frank Bailey

FE9 FEC FC88 AF11  
Sunny Bailey  
District Court Judge

APPX1920

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 David Rose, Plaintiff

CASE NO: D-17-547250-D

7 vs.

DEPT. NO. Department I

8 Sarah Rose, Defendant.  
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