

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

2  
3                   **DAVID PATRICK STUCKE,**

4                   Appellant,

5                   vs.

6                   **CHRISTIE LEEANN STUCKE,**

7                   Respondent.  
8

Electronically Filed  
Oct 25 2021 04:41 p.m.  
No. 82723  
Elizabeth A. Brown  
Clerk of Supreme Court

9                   **APPELLANT'S FAST TRACK STATEMENT**

10  
11                   **1. Name of Party filing this fast track statement:**

12                   DAVID PATRICK STUCKE, Plaintiff/Appellant

13  
14                   **2. Name, law firm, address, and telephone number of attorney**  
15                   **submitting this fast track statement:**

16                   Molly Rosenblum, Esq.  
17                   Sheila Tajbakhsh, Esq.  
18                   376 East Warm Springs Road  
19                   Ste. 140  
20                   Las Vegas, Nevada 89119  
21                   (702) 433-2889

22                   **3. Judicial district, county, and district court docket number of lower**  
23                   **court proceedings:**

24                   Eighth Judicial District Court  
25                   Clark County, Nevada  
26                   D-18-580621-D

27                   **4. Name of judge issuing judgment or order appealed from:**

28                   Hon. Denise Gentile, District Court Judge, Department F

1 **5. Length of trial or evidentiary hearing. If the order appealed from was**  
2 **entered following a trial or evidentiary hearing, then how many days**  
3 **did the trial or evidentiary hearing last?**  
4

5 Five (5) days.

6 **6. Written order or judgment appealed from:**  
7

8 The Findings of Fact, Conclusions of Law and Decree of Divorce.

9 **7. Date that written notice of the appealed written judgment or order's**  
10 **entry was served:**  
11

12 Notice of Entry of The Findings of Fact, Conclusions of Law and Decree  
13 of Divorce entered on February 25, 2021.  
14

15 **8. If the time for filing the notice of appeal was tolled by the timely filing**  
16 **of a motion listed in NRAP 4(a)(4),**  
17

18 **a. Specify the type of motion, and the date and method of service,**  
19 **and the date of filing:**  
20

21 N/A.

22 **b. Date of entry of written order resolving tolling motion:**  
23

24 N/A.

25 **9. Date notice of appeal was filed:**  
26

27 March 4, 2021.  
28

1 **10. Specify statute or rule governing the time limit for filing the notice of**  
2 **appeal, e.g. NRAP 4(a), NRS 155.190 or other:**

3 NRAP 4(a).  
4

5 **11. Specify statute, rule or other authority which grants this Court**  
6 **jurisdiction to review the judgment or order appealed from:**

7 NRAP 3(E).  
8

9 **11a. Routing Statement:**

10 This matter involves an appeal from the Findings of Fact, Conclusions of  
11 Law and Decree of Divorce, and should be assigned to the Court of Appeals  
12 under NRAP 17(b)(10), cases involving family law matters other than  
13 termination of parenting rights or NRS Chapter 432b proceedings.  
14  
15

16 **12. Pending and prior proceedings in this Court. List the case name and**  
17 **docket number of all appeals or original proceedings presently or**  
18 **previously pending before this Court which involve the same or some**  
19 **of the same parties to this appeal:**  
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21

22 Defendant/Respondent's Cross Appeal in the underlying matter.  
23

24 **13. Proceedings raising same issues. If you are aware of any other appeal**  
25 **or original proceeding presently pending before this Court, which**  
26 **raise the same legal issue(s) you intend to raise in this appeal, list the**  
27 **case name(s) and docket number(s) of those proceedings:**  
28

1 None.

2 **14. Procedural history. Briefly describe the procedural history of the**  
3 **case:**  
4

5 This case has a tortured, complex history, complete with numerous  
6 hearings, motions, minute orders, violations of court orders and orders simply not  
7 being drafted. The parties have been in continuous litigation since the inception  
8 of this case in November 2018, which is supported by the voluminous  
9 Appendices provided herewith. Please see the Register of Actions for a complete  
10 procedural history (AA v. 6 at STUCKE-1083-1095.)  
11

12  
13 Appellant/Plaintiff David Stucke (“Appellant”/“David”) filed a Complaint  
14 for Divorce and Custody on November 28, 2018, after only 2.5 years of marriage.  
15 (AA v. 1 at STUCKE-0001.) Respondent/Defendant, Christie Leann Stucke  
16 (“Respondent”/“Christie”), filed her Answer and Counterclaim on December 13,  
17 2018. (AA v. 1 at STUCKE-0009.)  
18

19  
20 The relevant pleadings before this Court are as follows: on February 19,  
21 2019, David was forced to file a Motion to Modify Custody, Child Support *et al.*  
22 due to Christie’s absurd and nonsensical actions, requesting primary physical  
23 custody, child support, exclusive possession of the marital residence, among  
24 other issues. (AA v. 1 at STUCKE-0020-0048.) The parties attended court on  
25 March 27, 2019, wherein Christie was ordered to provide a copy of her bank  
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1 statements prior to the next hearing, and a copy of her business accounting from  
2 January 1, 2019 through March 31, 2019. (AA v. 3 at STUCKE-0456-0462.) All  
3 remaining issues and the case management conference were continued to April  
4 2019. There were no changes to custody at that time. (*Id.*)

5  
6 On April 17, 2019, the parties came back before the court for a case  
7 management conference, where finances, a psychological evaluation of Christie,  
8 along with pending issues were discussed. (AA v. 3 at STUCKE-0463-0468.) An  
9 order was issued requiring parties to communicate via Our Family Wizard only,  
10 and Christie was prohibited from conducting any “outside activities” and parties  
11 at the marital residence. (*Id.*)

12  
13 On May 6, 2019, the Court issued a minute order as to all outstanding  
14 issues. (AA v. 3 at STUCKE-0469-0475.) Of utmost importance, the court denied  
15 Christie’s frivolous request for a Temporary Protection Order (TPO) against  
16 David, and further found that David had raised several valid concerns regarding  
17 Christie’s purported income. (AA v. 3 at STUCKE-0470-0472.) Notably, the  
18 court made an initial finding that Christie earns at least \$6,221.00 per month. (*Id.*  
19 at STUCKE-0470.)

20  
21 On June 5, 2019, David filed a Partial Opposition to Defendant’s  
22 Counsel’s Motion to Withdraw *et al.*; and Countermotion for Reconsideration of  
23 the May 6, 2019 Minute Order; *et al.*, specifically requesting the court to issue an  
24

1 order to show cause against Christie for continued violation of court orders. (*See*  
2 *generally* AA v. 3 at STUCKE-0505-0532.) Making good on her previous threats  
3 to “destroy” everything the parties built, Christie quickly proved she would make  
4 this matter as litigious as possible.  
5

6 On July 29, 2019, a minute order was issued, disposing of all outstanding  
7 matters. (AA v. 3 at STUCKE-0656-0568.) Namely, the court issued an order to  
8 show cause against Christie for blatantly lying to the court regarding her sex  
9 parties and continuing to host the same at the marital residence. (*Id.* at STUCKE-  
10 0657.) Further, due to the extensive issues with Christie’s gambling, the court  
11 prohibited Christie from closing and/or acting in a manner that would devalue  
12 any of the businesses that she owned and operated during the marriage. (*Id.* at  
13 STUCKE-0658.) Christie continued to defy the court’s orders, held sex parties at  
14 the marital residence, wasted thousands of dollars gambling, and intentionally  
15 sabotaged the businesses. (AA v. 4 at STUCKE-0659-0670.)  
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20 On August 19, 2019, David was forced to file a Motion to Change  
21 Custody, *et al.*, based on Christie propagating egregious allegations, including  
22 repeatedly calling him a pedophile, stating that David raped her and molested  
23 their then three (3) year old daughter, to the point that CPS and other authorities  
24 became involved. (AA v. 4 at STUCKE-0659-0670.)  
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1 The rumors were so outrageous that David's concerns regarding Christie's  
2 mental health and fitness as a parent grew, mostly because Christie would make  
3 these allegations one day, and then the next day she would be begging David to  
4 reconcile, stating he is a good father. (AA v. 5 at STUCKE-0920-0923, 1031.) Of  
5 course, the rape/abuse allegations were never substantiated by authorities. (AA v.  
6 5 at STUCKE-1032.)  
7

8  
9 On August 20, 2019, the parties came before the court for a pretrial  
10 conference, wherein the court ordered the parties to submit a full drug screening,  
11 and for a full child custody evaluation to be completed by Dr. Paglini due to the  
12 extensive allegations raised on both sides. (AA v. 4 at STUCKE-0698-0703.) All  
13 pending hearings and issues were continued and eventually consolidated to be  
14 heard on October 7, 2019. (AA v. 5 at STUCKE-0827-0839.)  
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16

17 On October 7, the parties appeared before the court and stated they reached  
18 a temporary stipulation on multiple issues. (AA v. 5 at STUCKE-0827-0839.)  
19 The parties stipulated to temporary joint physical custody (despite Christie  
20 continuing to claim that David is a rapist and pedophile), therapy for Sarah with  
21 Donna Wilburn, LMFT, continuing with the custody evaluation, Christie  
22 refraining from discussing any claims of sexual misconduct with any third  
23 parties, sale of the West Maule residence, etc. (*Id.*)  
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1 On January 7, 2020 the parties appeared before the court on all pending  
2 motions, wherein the court issued an order to show cause, an ultimately set a  
3 hearing due to Christie's continual violations of the October 7, 2019, April 17,  
4 2019, and the March 27, 2019 orders. (AA v. 5 at STUCKE-0840-0847.) The  
5 court also permitted David to buyout Christie's interest in the West Maule if he  
6 chose to do so, but did not make any determination as to the extent of Christie's  
7 community interest and David's separate property interest in the West Maule  
8 residence. (AA v. 5 at STUCKE-0845.)  
9

10  
11  
12 On January 30, 2020, the parties appeared for a show cause hearing against  
13 Christie. (AA v. 5 at STUCKE-0848-0858.) The Court issued a plethora of  
14 orders, including requiring Christie's cooperation in obtaining an appraisal and  
15 ultimate refinance of the West Maule residence. (*Id.* at 0857-0858.)  
16

17  
18 Christie refused to comply with the orders. On February 21, 2020, David  
19 was forced to file an Emergency Motion to Allow Plaintiff to Complete the  
20 Refinance and for Defendant to Vacate the Residence, *et al.* (AA v. 5 at  
21 STUCKE-0859.) The parties appeared on March 10, 2020, at which time Christie  
22 was ordered to sign a quitclaim deed to the West Maule residence, and if she  
23 refused, the Clerk of the Court would be permitted to sign on her behalf; and,  
24 Christie was ordered to move out of the West Maule residence within four (4)  
25 weeks of the hearing. (AA v. 5 at STUCKE-0904-0905.) Notably, Christie was  
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1 required to sign a quitclaim deed at this time on West Maule because the parties  
2 were married, even though Christie's name did not appear anywhere on the title  
3 or mortgage.  
4

5 Christie, treating court orders as mere suggestions, refused to sign the deed  
6 or make the mortgage payments on West Maule, delaying David's ability to  
7 refinance. (AA v. 6 at STUCKE-1069-1070.) Likewise, Christie blatantly refused  
8 to vacate the residence for the next calendar year, making baseless excuses such  
9 as she could "not afford" to move and that allegedly movers were not available  
10 during the pandemic. (AA v. 6 at STUCKE-1069-1070; AA v. 7 at STUCKE-  
11 1121-1222.) Notably, Christie was withdrawing and expending thousands of  
12 dollars gambling at bars and casinos during this time (AA v. 6 at STUCKE-  
13 1069.) Christie's actions were all successful attempts at destroying community  
14 property, along with leading David into financial ruin.  
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19 On June 23, 2020, the parties appeared for a hearing on Christie's Motion  
20 to Set Aside, *et al.* and David's Opposition and Countermotion, which resulted in  
21 a non-jury trial being set for September 14 and 17<sup>th</sup> 2020. (AA v. 5 at STUCKE-  
22 0908.)  
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25 Day one (1) of trial moved forward on September 14; however, day (2)  
26 would be reset by the court. (*See generally* AA v. 6 at STUCKE-1083-1095.) In  
27 the interim, additional relevant evidence was discovered in the form of videos,  
28

1 leading David to file a Motion on October 7, 2020, requesting the court's  
2 permission to allow Dr. Paglini to review the newly discovered evidence prior to  
3 giving testimony at trial. (AA v. 5 at STUCKE-0983-0985.)  
4

5 On November 6, the court issued a minute order in response to the pending  
6 Motion and Opposition, stating it was not inclined to re-open discovery to allow  
7 new evidence to be submitted. (AA v. 5 at STUCKE-1025-1026.) The court  
8 denied David's motion and refused to allow Dr. Paglini's review of the new  
9 evidence, reasoning that even though family cases are "fluid" and "ever  
10 changing," deadlines and rules must be followed. (*Id.*) Further, the court ruled it  
11 would permit a line of question related to the "new" evidence, and if it was  
12 determined by Dr. Paglini that the incident/exhibit in question may sway his  
13 findings and reports, then the court would allow the evidence to be reviewed.  
14 (*Id.*) The evidence, which supported the fact that Christie made allegations of  
15 David's sexual misconduct out of spite, was ultimately not considered at the time  
16 of trial.  
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22 The parties attended four (4) more days of trial in December 2020. (*See*  
23 *generally* AA v. 6 at STUCKE-1083-1095.) The court took the matter under  
24 advisement, and issued written Findings of Fact, Conclusions of Law and Decree  
25 of Divorce which was entered on February 25, 2021. (AA v. 6 at STUCKE-  
26 1054-1082.)  
27  
28

1 This appeal followed.

2 **15. Statement of facts. Briefly set forth the facts material to the issues on**  
3 **appeal:**

4 a. West Maule Residence

5 On March 20, 2015, prior to Christie moving to Las Vegas, David signed  
6 the purchase sale agreement for 3485 West Maule Ave., Las Vegas, Nevada  
7 (“West Maule”). (AA v. 7 at STUCKE-1188-1189.) The home was a short sale,  
8 which are often under contract for months before the sale closes. David paid the  
9 earnest money deposit of \$5,000.00 in March 2015 at the time the contract was  
10 signed. David then paid the remaining \$23,400.00 down payment from his  
11 separate funds (World Series of Poker winnings and other savings), along with  
12 \$6,000.00 toward repairs and improvements to make the home move-in ready in  
13 July 2015, when the sale finally closed. (AA v. 7 at STUCKE-1189, 1211.)

14 The parties entered into a domestic partnership in May 2015, for the sole  
15 purpose of providing health insurance coverage for Christie through David’s  
16 insurance. (AA v. 7 at STUCKE-1193-1194.) At this time, neither party intended  
17 to marry one another, as both had previously been married. (AA v. 7 at  
18 STUCKE-1124, 1193-1194.) At the time of the domestic partnership, the parties  
19 intended on the West Maule property remaining David’s separate property (*Id.* at  
20 1134-1135, 1206-1207.)

Christie became pregnant during the parties' relationship, and, as a result, the parties decided to marry on May 28, 2016. (AA v. 1 at STUCKE-0022-0023.) There are (2) minor children born the issue of their marriage: Sarah Stucke, born July 22, 2016, and David Orion Stucke born December 14, 2018. (AA v. 1 at STUCKE-002.) David contends that the property should have been divided pursuant to the *Malmquist* formula.

**b. Custody**

Since the inception of this matter, Christie's psychological problems, poor judgment and vindictive attitude led to a plethora of unfavorable findings against Christie, which are to the detriment of the children's best interest. (*See generally* AA v. 1-12.) The allegations between the parties ultimately led to an 88-page custody evaluation prepared by Dr. Paglini. For a comprehensive understanding of the extent of the custodial issues present in this matter, please refer to the Appellant's Appendix and Dr. Paglini's report. (*See generally* AA v. 5 at STUCKE-0912-0961; AA v. 6 at STUCKE 1054-1082; AA. v. 8 at STUCKE-1352-135; AA. v. 9 at STUCKE-1550-1672.)

Christie suffers from significant emotional dysregulation, and even admitted to suffering from significant psychological issues, including borderline personality disorder. (AA v.6 at STUCKE-1062.) Christie made multiple attempts to destroy David's livelihood with inaccurate and inconsistent claims of sexual misconduct

1 against her and their daughter, all of which were unsubstantiated. (*Id.* at STUCKE-  
2 1060-1062.) David is found to be psychologically stable and fit to care for the  
3 children. (AA v. 5 at STUCKE-0915; AA v.6 at STUCKE-1062-1063.) It became  
4 abundantly clear Christie would create fictional allegations regarding David in an  
5 attempt to gain leverage in the underlying litigation. Christie herself admitted that  
6 David is very loving and caring father toward both children. (*Id.* at STUCKE-  
7 1060.)

### 11 **c. Schedule**

12 The court ordered custodial schedule is deemed a “60/40” split in favor of  
13 David, as follows: David has the children each week from Monday at 8:00 a.m.  
14 until Friday at 8:00 a.m.; while Christie only has the children from Friday at 8:00  
15 a.m. until Monday at 8:00 a.m. David also has the third and the fifth weekend of  
16 each month, from Friday at 8:00 a.m. until Monday at 8:00 a.m., while Christie  
17 has the children from Monday at 8:00 a.m. to Wednesday at 8:00 a.m. following  
18 David’s weekends. (AA v.6 at STUCKE-1064-1065.) The parties are to share  
19 custody on a week on/week off basis during the summer months beginning  
20 Friday after school releases, until the weekend before school resumes. (*Id.*)

25 Clearly, David is the primary parent that bears the heavy responsibility of  
26 parenting during the week while the children have school, daycare and/or other  
27 activities, while Christie enjoys being a weekend parent. (*Id.*)

### C. Gambling

Christie has a severe gambling problem. At the time David commenced the divorce action, Christie threatened that she would destroy everything the parties had created. (AA v. 5 at STUCKE-920.) During trial, Christie claimed she was earning only \$49,200.00 per year (\$4,100 per month); however, she totaled thousands of dollars of cash withdrawals from her accounts every month, some at gaming establishments. (AA v. 6 at STUCKE-1066). Christie also failed to report her gambling income on her financial disclosures. (AA v. 6 at STUCKE-1275.) In fact, Christie operated multiple businesses throughout the marriage, yet used the business accounts as her personal savings accounts, constantly withdrawing monies to pay personal monthly bills, and she expended thousands on entertainment and gambling, while falsely referring to them as “business expenses.” (*Id.* at STUCKE-1066-1067.)

In a span of eighteen (18) months, Christie wasted over \$134,821.02, and notably, did not dispute this fact at trial. (AA v. 10 at STUCKE-1838; AA. v. 5 at STUCKE-0944-0946.) In February 2019, Christie claimed her income, which historically exceeded \$13,000.00 per month, had suddenly and mysteriously been reduced to \$4,100.00 per month, without providing any evidentiary support for the same. (AA. v. 5 at STUCKE-0945.) Christie’s wanton disregard for financial

1 responsibility, and thirst for gambling destroyed the parties' estate, especially  
2 during the divorce.

3 Interestingly, Christie provided contradictory testimony at trial, and  
4 testified as to earning \$87,464.17 personal income for 2019 (AA. v. 10 at  
5 STUCKE-1834.) Christie failed to provide adequate financial records, and  
6 instead forced David and the lower court to rely on personal and business bank  
7 statements from all of Christie's accounts.  
8

9 In 2019, during litigation, Christie made over \$100,000.00 in withdraws  
10 from bank accounts and incurred over \$8,919.07 in overdraft fees as well.  
11 Christie made \$31,946.00 in withdrawals at Bank/ATM; \$18,590.00 in ATM  
12 withdrawals at Gaming Bars; and \$59,020 in ATM withdrawals at casinos, for a  
13 grand total of \$118,475.07 in 2019. (AA v. 5 at STUCKE-0944; AA v. 9 at  
14 STUCKE 1588-1589.)  
15

16 In 2020, from her personal bank accounts, Christie made \$4,030.00 in cash  
17 withdrawals at the Bank/ATM; \$1,880.00 in ATM withdrawals at Gaming Bars;  
18 and \$10,435.95 in ATM/cash withdrawals at casinos, for a total of \$16,345.95.  
19 (AA v. 5 at STUCKE-0945.) During trial, Christie herself admitted that she  
20 earns more than David does gambling. (AA v. 8 at STUCKE-1482.)  
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1 **16. Issues on appeal:**

2 1. Whether the district court erred in issuing an order dividing the marital  
3 residence equally, despite making a finding that it was the separate  
4 property of the Appellant.  
5

6 2. Whether the district court abused its discretion in denying Appellant's  
7 request for the recovery of community funds wasted by Respondent.  
8

9 3. Whether the district court erred in awarding joint physical custody to the  
10 parties despite the existence of the adverse findings made by the district  
11 court;  
12

13 4. Whether the district court erred in designating the parties as joint  
14 physical custodians while Appellant has a majority of the time with the  
15 children, including school time.  
16

17 5. Whether the district court abused its discretion in failing to levy a child  
18 support obligation based upon the court's inability to ascertain the  
19 Respondent's actual income.  
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21

22 **17. Legal argument, including authorities:**

23 **a. Procedural Issues**

24 **Standards of Review**

25  
26 It is an abuse of discretion for a court to apply an incorrect legal standard.  
27  
28 *See Matter of Halverson*, 123 Nev. 493, 510, 169 P.3d 1161, 1173 (2007). In the

1 absence of express findings, findings may be implied if the record is clear and  
2 will support the judgment. *See Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109,  
3 100 (1970). In the absence of a clear record to imply findings, reversible error  
4 exists, and reversal is proper. *See Hardy v. First Nat. Bank of Nev.*, 86 Nev. 921,  
5 923, 478 P.2d 581, 582-83 (1970), citing *Pease*, 86 Nev. at 195, 467 P.2d at 109.  
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7

8 This Court has repeatedly stated that generally, in reviewing matters  
9 related to divorce or annulment, it “reviews district court decisions . . . for an  
10 abuse of discretion” which it will not find if it concludes that the rulings are  
11 “supported by substantial evidence.” *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d  
12 239 (2007); *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998).  
13  
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15 A court does not abuse its discretion when it reaches a result which could  
16 be found by a reasonable judge. *Goodman v. Goodman*, 68 Nev. 484, 236 P.2d  
17 305 (1951). Also, a court can err in the exercise of personal judgment and does so  
18 to a level meriting appellate intervention when no reasonable judge could reach  
19 the conclusion reached under the particular circumstances. *Franklin v. Bartsas*  
20 *Realty, Inc., supra.*; *Delno v. Market Street Railway*, 124 F.2d 965, 967 (9th Cir.  
21 1942).  
22  
23  
24

25 Generally, a court abuses its discretion when it makes a factual finding  
26 which is not supported by substantial evidence and is “clearly erroneous.” *Real*  
27 *Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982). An open and  
28

1 obvious error of law can also be an abuse of discretion, as can a court's failure to  
2 exercise discretion when required to do so. *Franklin v. Bartsas Realty, Inc.*, 95  
3 Nev. 559, 598 P.2d 1147 (1979); *see also Massey v. Sunrise Hospital*, 102 Nev.  
4 367, 724 P.2d 208 (1986).

6 Here, the district court erred on several issues regarding the division of  
7 assets and debts, the issue of community waste, custody, and child support.  
8 Namely, there are multiple contradictions and discrepancies between the court's  
9 findings and subsequent orders. The lower court's factual findings are not  
10 supported by substantial evidence. Thus, the court committed reversible error in  
11 issuing said orders, as there is no support for the same. Accordingly, this Court  
12 should reverse the district courts orders and remand the matter for further  
13 proceedings.  
14

### 15 **Substantive Issues**

#### 16 **Standards of Review**

17 Trial courts have discretionary powers in determining child custody,  
18 which will not be disturbed absent an abuse of discretion. *See Primm v. Lopes*,  
19 109 Nev. 502, 504, 853 P.2d 103, 104 (1993). "[A] district court's factual  
20 determinations will be disturbed only when unsupported by substantial  
21 evidence." *Jensen v. Jenson*, 104 Nev. 95, 99-100, 753 P.2d 342, 345 (1988).  
22 This court reviews a district court's decisions regarding custody, including  
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1 visitation schedules, for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 210,  
2 428, 216 P.3d 214, 226 (2009); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922  
3 P.2d49 541, 543 (1996).  
4

5 As previously stated, “[A] district court’s factual determinations will be  
6 disturbed only when unsupported by substantial evidence.” *Jensen v. Jensen*,  
7 104 Nev. 95, 99-100, 753 P.2d 342, 345 (1988). As such, this Court should  
8 “disturb” these factual determinations as unsupported by substantial evidence.  
9

10 Here, the lower court relied on many of these unsupported facts in its  
11 custody determination, which is of importance.  
12

### 13 **b. Discussion**

14

#### 15 **A. The Court Abused Its Discretion when Ignoring the *Malmquist*** 16 **Formula in Distribution of the West Maule Property** 17

18 The West Maule property was bought via short sale when David signed  
19 the purchase agreement in March 2015, prior to the parties’ domestic partnership  
20 (AA v. 7 at STUCKE-1188-1189.) The home was a short sale which will often  
21 take months to close, although the purchase contract would be signed, a payment  
22 is made, and binding.  
23

24 David contributed his separate funds towards the purchase, repairs, and  
25 improvements of West Maule prior to moving into the residence. David  
26 purchased the home for \$284,000.00, and subsequently paid the earnest monies  
27  
28

1 of \$5,000.00 from his Chase Bank Account that contained separate funds. (AA  
2 v. 7 at STUCKE-1189, 1211.) David tendered the remaining \$23,400.00 deposit  
3 in July 2015 upon the contract closing, all paid from separate funds earned prior  
4 to the domestic partnership, mainly from his poker winnings. (*Id.*) David was  
5 already under contract to purchase the home prior to the domestic partnership  
6 commencing, the intent was for the home to remain his sole and separate  
7 property, and a portion of the money had already “exchanged hands.”  
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10 As stated herein, the parties entered into a domestic partnership in May  
11 2015, without any intent to marry. (AA v. 7 at STUCKE-1124, 1193-1194.) To  
12 that end, title for West Maule was acquired in David’s name alone, which is  
13 furthermore supported by David’s refinance of the property in December 2015.  
14 In fact, Christie was not required to sign a quitclaim deed during the refinance  
15 process due to the parties’ status. (*Id.* at 1134-1135, 1206-1207.)  
16  
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18

19 The court erred in dividing West Maule equally. While David agrees  
20 Christie has some community interest in the property, the West Maule residence  
21 should be unequally divided pursuant to *Malmquist*.  
22

23 The court made findings that because there was no legal writing indicating  
24 the property was “anything other than a community asset”, that it was  
25 community property to be divided equally. (AA v. 6 at STUCKE-1069-1070.)  
26 The court failed to consider the fact the parties were domestic partners, and not  
27  
28

1 actually married, there was no requirement by escrow or the loan company for  
2 quitclaim deed to be signed upon closing. Further, Christie was not required to  
3 sign a quitclaim deed when David refinanced the property in December 2015.  
4

5 In Nevada, married persons may own property either separately, or as a  
6 community. Community property is defined in NRS 123.220 "All property,  
7 other than stated in NRS 123.130, acquired after marriage by either husband or  
8 wife, or both, is community property unless otherwise provided by an agreement  
9 in writing between spouses. NRS 123.220 and NRS 123.130 together establish  
10 the presumption that property acquired during marriage is community property,  
11 and that property owned prior to the marriage is separate property. *Peters v.*  
12 *Peters*, 92 Nev. 687, 557 P.2d 713 (1976); *Todkill v. Todkill*, 88 Nev. 231, 495  
13 P.2d 629 (1972); *Carlson v. McCall*, 70 Nev. 437, 271P.2d 1002 (J 954); *Lake*  
14 *v. Bender*, 18 Nev. 361, 7 P. 74 (1885).  
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19 When a spouse uses separate funds or separate credit to purchase property  
20 during the marriage, that property generally remains his or her separate property.  
21 *Todkill v. Todkill*, 88 Nev. 231, 495 P.2d 629 (1972). Under *Malmquist v.*  
22 *Malmquist*, 106 Nev. 231, 792 P.2d 37 (1990), separate property contributions to  
23 real property are subject to reimbursement on a dollar-for-dollar basis. The  
24 *Malmquist* Court specifically relied on what is now California Civil Code 2640,  
25 which holds separate property contributions towards property *shall* be  
26  
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1 reimbursed to the contributing party. NRS 123.130; *Kelly v Kelly*, 86 Nev. 301,  
2 468 P.2d 359 (1970).

3  
4 As for David's separate down payment, he put down 10% on  
5 \$284,000.00, which comes out to \$28,400. David also expended \$6,000.00 of  
6 separate funds to repair and improve the home to make it move-in ready. These  
7 monies came from premarital poker winnings from David's 2007 WSOP  
8 bracelet won. (AA v. 7 at STUCKE-1189, 1211.) As such, the Court erred in  
9 dividing the marital estate equally and in failing to order reimbursement of these  
10 funds. While domestic partnerships create a community interest in property, the  
11 district court erred in failing to consider the David's intent purchasing the  
12 property and his separate property interest in the property.

13  
14 Applying the *Malmquist* formula, David's separate interest in West Maule  
15 totaled \$69,575.55 and the community interest totaled \$196,345.32. Hence,  
16 David's total interest in the equity was \$167,752.71, while Christie's total  
17 interest was \$98,172.66 at the time of trial. (AA v. 5 at STUCKE-0961.) This  
18 information was provided to the court in David's pretrial memorandum, and  
19 David testified during trial as to tracing the separate funds used for the down  
20 payment, and initial repairs for the home. (AA v. 7 at STUCKE-1189, 1211.)  
21 The court committed reversible error by ignoring the *Malmquist* formula.  
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1                   **B. The Court Abused Its Discretion by Failing to Enter a Finding of**  
2                   **Community Waste Against Christie**

3           Throughout trial, Christie was a hostile witness, refused to adequately  
4 answer questions, and instead would question the judge and the attorneys. (*See*  
5 *generally* AA v. 7-12.) The Court abused its discretion by entering findings  
6 regarding Christie's wasteful spending. (AA v. 6 at STUCKE-1074-1075.) David  
7 spent countless hours analyzing and reviewing Christie's personal and business  
8 bank statements and casino gambling records and created numerous spreadsheets  
9 to assist the court in understanding the extent of Christie's spending. (*Id.*) The  
10 lower court made findings that Christie's testimony lacked credibility both at trial  
11 and during interim hearings, that there is likely wasteful spending and potential  
12 concealment of monies by Christie, and that she functions in "such a manner"  
13 which caused the court to "question all of her financial dealings". (*Id.*)

14           The court further contradicted itself when it stated it was convinced that  
15 Christie had access to funds in excess of what she presented to the court, and that  
16 she continued to withdraw cash from her businesses in gaming establishments.  
17 (AA v. 6 at STUCKE-1074-1075.) Further, the court rejected any and all  
18 allegations by Christie that she made withdraws for "business" transactions. (*Id.*)  
19 Notwithstanding the extensive findings, Court failed to make a finding of  
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1 community waste against Christie, and did not issue an order compensating the  
2 community. (*Id.*)

3 This Court has historically stated that it will find “substantial evidence” to  
4 exist whenever it concludes that the evidence before the trial court was that  
5 which a “sensible person” or “reasonable person” may “accept as adequate to  
6 sustain a judgment.” *Schmanski v. Schmanski*, 115 Nev. 247, 251, 984 P.2d 752,  
7 755 (1999); *Williams v. Williams*, 120 Nev. 559, 9762 P.3d 1124 (2004); *Ellis v.*  
8 *Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

9 Here, the court erred in failing to make a finding of waste against Christie  
10 simply based on the lack of excerpt accounting. (AA v. 6 at STUCKE-1074-  
11 1075.) There was undoubtedly wasteful spending on Christie’s part. the court’s  
12 failure to use its discretion to acknowledge and accept Christie’s ability to  
13 withdraw thousands of dollars in cash every month while still making claims that  
14 she could not afford her bills, is clear error.

15 Dissipation, or waste, can provide a compelling reason for the unequal  
16 disposition of community property. NRS 125.150(1)(b). This Court has  
17 historically found that one party’s misconduct is also grounds for an unequal  
18 division of assets when a litigant lied about assets they had, as well as their  
19 income. *Puttertman v. Putterman*, 113 Nev. 606, 939 P.2d 1047 (1997).

1 In *Logfren v. Logfren*, 112 Nev. 1282, 1283, 926 P. 2d 296, 297 (1996),  
2 this Court held, in pertinent part: "[I]f community property is lost, expended or  
3 destroyed through the intentional misconduct of one spouse, the court may  
4 consider such misconduct as a compelling reason for making an unequal  
5 disposition of community property... Generally, the dissipation which a court  
6 may consider refers to one spouse's use of marital property for a selfish purpose  
7 unrelated to the marriage in *contemplation of divorce* or at a time when the  
8 marriage is in serious jeopardy or is undergoing an irretrievable breakdown." 24  
9 Am. Jur. 2d Divorce and Separation § 524 (2018); *see also* dissipation, Black's  
10 Law Dictionary (10th ed. 2014) (defining "dissipation" as "use of an asset...such  
11 as a spouse's use of community property for personal benefit when divorce is  
12 imminent"). *Kogod v. Cioffi-Kogod*, 135 Nev. Adv. Rep. 439 P.3d 397 (2019).

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18 The Court made a finding that Christie's overall lacked credibility, yet,  
19 provided undue weight to her testimony, while disregarding David's efforts to  
20 provide insight in Christie's finances. (AA v. 6 at STUCKE-1074-1075.)  
21  
22 Christie not only devalued the businesses and sandbagged her income for the  
23 purpose of litigation, but she clearly wasted thousands of dollars in community  
24 funds immediately preceding, and during, litigation. (*See generally* AA v.1-12.)  
25

26 **C. The Court Erred in Awarded Joint Physical Custody, Despite the**  
27 **Court's Adverse Findings Against Christie**  
28

1 The district court based its award of joint physical custody solely on Dr.  
2 Paglini's report, and failed to consider its own findings, and the previous  
3 evidence which proved Christie made false allegations that David is a pedophile  
4 who is molesting Sarah in an effort to gain leverage in the divorce action,  
5 ultimately engaging in parental alienation. (AA v. 6 at STUCKE-1060-1064.)  
6 Essentially, the district court made conflicting findings regarding the best  
7 interest of the children, which were contradictory to the ultimate orders issued.  
8  
9

10 The relevant best interest factors detailed in NRS 125C.0035 are as  
11 follows:  
12

- 13 (c) Which parent is more likely to allow the child to have  
14 frequent associations and a continuing relationship with  
15 the noncustodial parent.
- 16 (d) The level of conflict between the parents.
- 17 (f) The mental and physical health of the parents.
- 18 (j) Any history of parental abuse or neglect of the child or a  
19 sibling of the child.
- 20 (k) Whether either parent or any other person seeking  
21 custody has engaged in an act of domestic violence  
22 against the child, a parent of the child or any other person  
23 residing with the child.
- 24

25 The lower court made extensive findings relating to multiple best interest  
26 factors that were unfavorable to Christie. For a comprehensive understanding of  
27  
28

1 the court's findings, please refer to the Findings of Fact, Conclusions of Law, and  
2 Decree of Divorce. (AA v. 6 at STUCKE-1054-1082.)

3       As it relates to factor (c), the court made findings that Christie has a history  
4 of intentionally lying about rape allegations and sexual misconduct by David in  
5 an attempt to gain leverage during litigation. (AA v. 6 at STUCKE-1060-1061.)  
6  
7 The court found that when Christie felt like she would lose footing during the  
8 divorce litigation, or when her financial dealings were being questioned,  
9 Christie's allegation of sexual misconduct would become more fantastic and  
10 bizarre, thus detracting focus from analysis into the parties' financial issues. (*Id.*  
11 at STUCKE-1060.) The court also found that Christie has a history of making  
12 similar allegations in her prior divorce with the father of her older children,  
13 calling into question Christie's credibility (*Id.* at STUCKE-1061.)

14  
15       More importantly as it relates to factor (c) the court further found that if  
16 Christie created sex abuse claims or rape allegations for secondary gains, that it  
17 would be the "ultimate act of parental alienation" (AA v. 6 at STUCKE-1061.)  
18  
19 Notably, the court failed to properly apply its findings to its orders.

20  
21       In addition, as it relates to factor (f), the court made concerning findings as it  
22 relates to Christie's mental health, pointing to Dr. Paglini's diagnosis that Christie  
23 suffers from emotional dysregulation, concerns of Christie's assaults on David,  
24 Christie's continued disparagement of David in the presence of the children, and  
25  
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1 Christie's complete disregard for the lasting affects her behavior will have on the  
2 children. (AA v. 6 at STUCKE-1062.) Further, there were concerns regarding  
3 Christie's admission that she suffers from borderline personality disorder, and that  
4 Christie is more focused on blaming David for incidents between the parties, than  
5 the lasting impact her behavior has on the children. (*Id.*)  
6

7  
8 As it relates to factor (k), the court's findings indicated its concerns with  
9 Christie's prior assaults upon David, and there was an abundance of evidence  
10 presented of Christie's volatile and violent behavior. (AA v. 6 at STUCKE-1064.)  
11 It is concerning and clear error that the court adopted Dr. Paglini's assessment, and  
12 despite the findings, awarded the parties joint physical custody.  
13

14  
15 Interestingly, Dr. Paglini's reports stated Christie puts her own needs  
16 before the needs of the children, that she often plays victim in situations, that she  
17 is violent, that she coaches the children (AA v. 8 at STUCKE-1370-1372.) Dr.  
18 Paglini also reported David focuses on the children's emotional and educational  
19 needs, helping them interactively with reading and math. Unlike Christie, David  
20 is careful not to involve the children in the underlying litigation (AA v. 6 at  
21 STUCKE-1062.) Further, Dr. Paglini reported that Christie made false and  
22 unsubstantiated reports to DFS, alleging that David physically abused the  
23 children. (AA v. 8 at STUCKE-1368-1368.)  
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1 Despite the extensive findings that support David having primary physical  
2 custody of the children, the court awarded the parties joint physical custody. The  
3 court erred, as it is clear from the extensive findings that Christie is in fact  
4 engaging in the “ultimate act of parental alienation”. (AA v. 6 at STUCKE-1059-  
5 1065.)  
6

7  
8 The courts orders regarding custody are clearly erroneous. The findings  
9 presented are directly contrary to the court’s orders. As stated herein, “[A] district  
10 court’s factual determinations will be disturbed only when unsupported by  
11 substantial evidence.” *Jensen v. Jenson*, 104 Nev. 95, 99-100, 753 P.2d 342, 345  
12 (1988). Here, the court makes orders that are directly contradictory to its findings  
13 as they relate to NRS 125C.0035. Instead of using discretion, the court erred in  
14 simply adopting Dr. Paglini’s recommendations, despite the contradictions in its  
15 own analysis.  
16  
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19 **D. The District Court Abused Its Discretion by Delineating the**  
20 **Schedule Issued as a “Joint Physical Custody” Schedule**  
21

22 This court reviews a district court’s decisions regarding custody, including  
23 visitation schedules, for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 210,  
24 428, 216 P.3d 214, 226 (2009). In determining physical custody, this court  
25 determined that “Physical custody involves the time that a child physically  
26 spends in the care of a parent. During this time, the child resides with the parent  
27  
28

1 and that parent provides supervision for the child and makes the day-to-day  
2 decisions regarding the child.” *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213  
3 (2009). The focus should be on the number of days that a parent is responsible for  
4 making day-to-day decisions for the child and/or supervising the child, along  
5 with the days the child resided with the party. The focus should not be on  
6 counting hours in a day, whether the child was asleep or awake or in the care of a  
7 third-party care provider. *Id.* at 425-426, 216 P.3d at 224.  
8  
9

10 In *Bluestein v. Bluestein*, 131 Nev. Adv. Op. 14 (2015), this Court clarified  
11 that the guidelines regarding the 40% timeshare as discussed in *Rivero* were  
12 merely guidelines and that seminal factor for the Court to consider was the best  
13 interest of the child. *Id.* at 8. Likewise, *Rivero*’s guideline that joint custody is  
14 defined once a party as 40% of the time or 146 days per year, should not be “so  
15 rigidly applied” that it would abolish the focus on the best interest of the children.  
16  
17  
18  
19 *Id.*

20 Here, David is the primary parent responsible for the day-to-day decision  
21 making regarding the children, and he is responsible for over a vast majority of  
22 the children’s schooling. (AA v.6 at STUCKE-1065.) The lower court deemed  
23 the parties’ joint physical custodians, despite the fact David has the school week,  
24 while Christie gets to be a “weekend mom.” (*Id.*)  
25  
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1 Based on the prescribed schedule, it is unjust and an abuse of discretion for  
2 the court to deem the parties joint custodians. Based on the extensive findings by  
3 the district court of Christie's instability, alienation, violent tendencies, and false  
4 allegations of rape and sexual abuse, the custodial order is a disservice to the  
5 children and a detriment to their best interest.  
6

7  
8 **E. The Court Abused Its Discretion by Failing to Levy a Child**  
9 **Support Obligation or Impute Income to Respondent**  
10

11 The court made findings that Christie failed to accurately report her  
12 income on financial disclosures, and that the cash withdraws from various bank  
13 accounts do not support her figures provided on her disclosures. (AA v. 6 at  
14 STUCKE-1066-1067.) Likewise, based on the vast number of cash withdrawals,  
15 it can be inferred that Christie's income far surpasses that of David.  
16

17 However, the court erroneously failed to impute an income to Christie  
18 based on her historical earnings and ability to earn a substantial income, and  
19 instead erroneously and as a result, failed to levy a child support obligation  
20 because it "could not discern" her exact income. The Court further found that  
21 Christie is a "master of moving money between accounts, utilizing cash on hand,  
22 categorizing personal expenses through various entities" thereby making  
23 financial accounting difficult. (AA v. 6 at STUCKE-1067.)  
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1 Notably, the court's reversible error sets a precedent which allows future  
2 parties the ability to manipulate finances and transfer funds deliberately to  
3 confuse courts in an attempt to avoid a child support obligation.  
4

5 The Nevada Administrative Code ("NAC") 425.125 allows the Court to  
6 impute income to a parent in the parent is unemployed or is underemployed  
7 without good cause. Likewise, a court may properly impute income to a party  
8 upon showing that she has the ability to earn more by use of her best efforts to  
9 gain employment equal to her capabilities. *Haas v. Haas*, 227 Cal. App. 2d 615,  
10 38 Cal. Rptr. 811 (1964).  
11

12 Here, it was determined by the court that Christie was expending funds far  
13 beyond what she represented, that she had access to funds, and that her  
14 testimony regarding her finances was not credible. (AA v. 6 at STUCKE-1066-  
15 1067.) Christie deliberately devalued her businesses and drained her bank  
16 accounts during the pending litigation, despite the JPI in place. (*See generally*  
17 AA v. 1-12.)  
18

19 Here, the court had enough information to impute income to Christie  
20 simply based on the amount of cash Christie withdrew from accounts, her skills,  
21 along with the historical earnings of her businesses. The court failed to do so.  
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1 Given the procedural issues and substantive matters addressed herein, the  
2 Court should reverse the lower court's decision. At a minimum, the Court should  
3 remand the matter for a new trial and further findings.  
4

5 **18. Issues of first impression or of public interest. Does this appeal**  
6 **present a substantial legal issue of first impression in this jurisdiction**  
7 **or one affecting an important public interest?**  
8

9 This case presents an issue of first impression as it relates to domestic  
10 partnerships and purchase agreements signed on short sales. In this matter, a  
11 purchase agreement was signed by Appellant in March 2015, months prior to  
12 entering into a domestic partnership for a home that was as short sale. At the  
13 time, the parties did not intend to marry, nor was the home bought in  
14 contemplation of marriage. Notably, Appellant had no control on when the house  
15 would close. Thinking that the rights of domestic partners differed from that of  
16 married parties, the parties entered into a domestic partnership in May 2015. The  
17 home finally closed in July 2015, although the entire balance of the deposit,  
18 along with thousands of dollars of repairs were made with Appellant's separate  
19 funds. The district court erroneously deemed the home to be community property  
20 to be equally divided, disregarding Appellant's separate interest, due to the  
21 domestic partnership commencing in May 2015.  
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## VERIFICATION

1  
2 1. I hereby certify that this fast track statement complies with the formatting  
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP  
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

5  
6 ☒ This fast track statement has been prepared in a proportionally  
7 spaced typeface using 14 point Times New Roman in MS Word 365;  
8  
9 or

10  
11 ☐ This fast track statement has been prepared in a monospaced  
12 typeface using [state name and version of word processing  
13 program] with [state number of characters per inch and name of type  
14 style].  
15

16 2. I further certify that this fast track statement complies with the  
17 page- or type-volume limitations of NRAP 3C(h)(2) because  
18  
19 it is either:

20  
21 ☒ Proportionately spaced, has a typeface of 14 points or more, and  
22 contains 7,008 words; or

23  
24 ☐ Monospaced, has 10.5 or fewer characters per inch, and contains \_\_\_\_  
25 words or \_\_\_\_ lines of text; or

26 ☐ Does not exceed \_\_\_\_ pages.  
27  
28

1 3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing  
2 a timely fast track statement and that the Supreme Court of Nevada may  
3 sanction an attorney for failing to file a timely fast track statement, or  
4 failing to raise material issues or arguments in the fast track statement, or failing  
5 to cooperate fully with appellate counsel during the course of an appeal. I  
6 therefore certify that the information provided in this fast-track statement is true  
7 and complete to the best of my knowledge, information and belief.  
8  
9

10  
11 DATED this 25 day of October 2021  
12  
13

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