IN THE SUPREME COURT OF THE STATE OF NEVADA

BARTHOLOMEW MAHONEY
Appellant,

vs.

BONNIE MAHONEY
Respondent.

Supreme Court No. 82412/82413
District Court No. DEL-17-783

APPELLANT'S REPLY BRIEF

Appeal from an Order Granting Respondent's Motion to Reduce Arrearages, Interest, and Penalties to Judgment; to Modify Alimony; to Review Child Support, for Sanctions and Attorney's Fees and Costs, Eighth Judicial District Court, Honorable Vincent Ochoa

Aaron D. Grigsby, Esq.
GRIGSBY LAW GROUP
A Professional Corporation
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, Nevada 89102
(702) 202-5235
aaron@grigsbylawgroup.com
Counsel for Appellant

Kimberly Stutzman, Esq.
RADFORD J. SMITH,
Nevada Bar No. 14085
2470 St. Rose Parkway # 206
Henderson, Nevada 89104
Phone: (702) 990-6448
kstutzman@radfordsmith.com
Counsel for Respondent

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARTHOLOMEW MAHONEY Appellant, vs. BONNIE MAHONEY Respondent.	Supreme Court No. 82412/82413 District Court No. D-13-477883-D

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

1. Bartholomew Mahoney is an individual
2. Aaron D. Grigsby of the Grigsby Law Group represented appellant in the district court and have appeared in this Court.
3. No publicly traded company has any interest in this appeal.

These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

RESPECTFULLY SUBMITTED
THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION
/s/Aaron Grigsby
Aaron Grigsby, Esq.
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, NV 89102

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

APPELLANT'S REPLY BRIEF

This Brief addresses some of the major points of Respondent's Answering Brief. Although this Brief does not address all of the arguments in the Answering Brief, Appellant does not waive any argument previously raised.

RESONPONDENT'S STATEMENT OF FACTS

Respondent has made some misrepresentations in her statement of facts. Her presentation of facts is better construed as arguments. As such, Mr. Mahoney will address the misrepresentations in the arguments below in order to avoid repetition.

I. THE DISTRICT COURT VIOLATED BARTHOLOMEW MAHONEY'S RIGHT TO DUE PROCESS BY FAILING TO NOTICE HIM OF THE EVIDENTIARY HEARING

Respondent does not dispute that on September 17, 2020, the district court rescheduled the evidentiary for December 3, 2020, at 9:15 am[1] and that the district court failed to serve the Notice of Rescheduling of Hearing on Bartholomew Mahoney[2]. Bonnie claims that she served the Notice of Rescheduling of Hearing on Mr. Mahoney. However, the document that she cites, shows that she served

[1] AA000298-299
[2] AA000298-299

him by mail but there is no address listed after "as follows[3]." There is an address listed after Certified Mail but the box next to it is not marked[4]. Bonnie also claims that Mr. Mahoney was emailed on November 23, 24, and 25th and December 4, 2020 regarding the trial. She supports this argument by citing to a letter[5], where she has claimed that she sent these emails. She has not provided the emails that were allegedly sent to Mr. Mahoney. Bonnie tries to deflect from the issues by arguing that Mr. Mahoney has not raised the issue of appearance at the October 29, 2020 hearing. There was no hearing held that day, therefore it is a non-issue.

An Order Setting Evidentiary Hearing was filed on October 4, 2020[6]. The Certificate of Service attached to the Order Setting Evidentiary Hearing lists Bartholomew Mahoney but is silent as to how and if it was actually served[7]. Bonnie argues that it is plain on its face that Bonnie's counsel was electronically served and Mr. Mahoney was mailed a copy. The Certificate of Service lists Bonnie's counsel's name and Bart's name and mailing address[8]. It does not state if or how they were served. It defies logic for Bonnie to argue that listing her counsel's name clearly shows that she was served by electronic service.

---

[3] AA000302-303
[4] Id.
[5] RA063
[6] AA000304-308
[7] AA000308
[8] Id.

The district court's ruling that Mr. Mahoney was fully noticed about the December 3, 2020, evidentiary hearing is clearly erroneous. Fundamental fairness requires the district court to provide to a proper person litigant all information regarding modification of any court dates. The Nevada Supreme Court has long held that a district court is without jurisdiction to try a case on the merits when proper notice of the trial is not given[9]. The record is devoid of any evidence demonstrating that the district court noticed Bart of the December 3, 2020, evidentiary hearing. Based on the record, the district court appears to rely on the representations of Bonnie and her counsel regarding notice to Mr. Mahoney[10].

What is clear from reviewing the record is that the Notice of Rescheduling Hearing was not served on Bartholomew Mahoney[11]. The Order Setting Evidentiary Hearing does list Mr. Mahoney on the certificate of service but does not actually provide whether or how it was served upon Mr. Mahoney[12]. Counsel for Bonnie also claims to have served Bartholomew with the Notice of Rescheduling. The Nevada Supreme Court has long held, "something as

[9] Roberts Mining & Milling Co. v. Third Judicial Dist. County, 56 Nev. 299, 50 P.2d 512 (1935)
[10] AA000501
[11] AA000298-299
[12] AA000308

fundamental and decisive as service is best taken away from the parties or their counsel or counsel's employees[13]."

For obvious reasons, the veracity of Bonnie and her counsel regarding service of the Notice of Rescheduling of Hearing is subject to scrutiny. The district court had the sole responsibility to notice Mr. Mahoney of the new date for the evidentiary hearing. The district court failed to notice Bartholomew Mahoney of the rescheduled evidentiary hearing. As such, it denied him a meaningful opportunity to present evidence which resulted in a flawed and erroneous order.

Bonnie argues that the evidentiary hearing was on the merits because she subpoenaed Mr. Mahoney's records. Also, that he failed to disclose any evidence and failed to disclose any trial exhibits. Bonnie, however, fails to advise the Court that she herself did not disclose any records that she subpoenaed to Mr. Mahoney. She has not cited to any evidence showing that she disclosed anything in discovery. In fact, the Order Setting Evidentiary Hearing specifically provides that any documents that a party intends to present shall be disclosed twenty days prior to discovery closing[14]. Mr. Mahoney did not receive any documents from Bonnie nor has Bonnie ever alleged that she disclosed any documents to him.

[13] Sawyer v. Sugarless Shops, 106 Nev. 265, 792 P.2d 14 (1990)
[14] AA000305

The December 3, 2020, hearing was not a hearing on the merits. It was a one-sided presentation of facts that resulted in a manifestly unjust and erroneous order. Further, due to the world-wide pandemic, access to the Family Court was restricted. Mr. Mahoney would submit that the district court's duty to ensure that a proper person litigant was informed of all court dates was heightened while access to the court house was limited because of the pandemic. Bartholomew Mahoney was denied due process of law and December 28, 2020, and January 11, 20201, Orders should be reversed and remanded for a hearing on the merits.

II. WHETHER THE DECEMBER 28, 2020, ORDER WAS SUPPORTED BY SUBSTANTIAL EVIDENCE

Bonnie makes conclusory arguments that the district court's orders were supported by substantial evidence. Bonnie does not deny that district court calculated penalties for both alimony and child support. She failed to respond to Mr. Mahoney's argument that assessing penalties for alimony was not authorized by Nevada Law. No provision under Nevada law permits the calculation of penalties for alimony arrears. When there is a question of law or the application or statement of the law at issue on appeal the Nevada Supreme Court "is obligated to make its own independent determination on this issue, and should not defer to the

district court's determination[15]." The district court modified child support retroactively to June 1, 2019, but applied the child support calculation that went into effect on February 1, 2020, for the time period from June 1, 2019, to February 1, 2020.[16] Bonnie does not deny that the district court applied the new formula to a time-period that predates the existence of that statute.

Bartholomew Mahoney was denied an opportunity to present evidence that one of the parties' minor children was residing with him full-time during the pendency of the case. Bonnie argues that Mr. Mahoney did not file a motion to modify custody, which is true. However, he believed that it would be addressed at the time set for the evidentiary hearing. He did not believe that Bonnie would seek child support for a child who was not residing with her.

Additionally, the December 28, 2020, Order awarded Bonnie child support for a child that had already reached the age of majority. This resulted in Bonnie receiving an extra 3 months of child support for a 19-year old subsequent to her graduation from high school. A district court lacks authority to make a child support award regarding a child beyond the age of majority[17]. The resolution of the child support issue by default is impermissible and is a denial of due process.

---

[15] Sheehan & Sheehan v. Nelson Malley and Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005)
[16] AA000401-402, 408-409, 412
[17] Ellett v. Ellett, 94 Nev. 34, 573 P.2d 1179 (1978)

Due to the absence of Mr. Mahoney, Bonnie was able to make a one-sided presentation of the facts resulted in tens of thousands of dollars in erroneous findings by the district court. Pursuant to the Stipulated Decree of Divorce, Bartholomew Mahoney was required to pay Bonnie twenty-five (25%) of his annual bonuses for a four (4) year period commencing September 1, 2015[18]. The district court awarded Bonnie bonuses that Mr. Mahoney received prior to the September 1, 2015, commencement date outlined in the Decree and one bonus that he received after the four-year period[19].

Additionally, the language of the Decree limited the division of bonuses to the annual bonus received by Mr. Mahoney. Bonuses received by Mr. Mahoney outside of the annual bonus were included in the award granted to Bonnie in the December 28, 2020, Order.[20] Bonnie did not respond to Mr. Mahone's argument that she was improperly awarded bonuses that were outside the time-period in the Decree of Divorce. Thereby, conceding that the district court improperly awarded her portion of the bonuses that she was not entitled to.

The February 8, 2016, Stipulated Decree of Divorce has no provision as to when the payment for bonus is due. The only remedy outlined in the Stipulated Decree of Divorce was that Bonnie would receive a larger percentage of the

[18] AA000007
[19] AA000398-99
[20] Id.

bonuses if Mr. Mahoney failed to make timely disclosure of his bonuses. Where a document is clear on its face, it will be construed from the written language and enforced as written[21]. The written language of Decree of Divorce clearly outlines all of the terms of the settlement agreement. As there is no due date, interest cannot be calculated. The District Court awarded Bonnie interest on the bonuses.[22] Bonnie only argues that the interest was proper but does not indicate when the payment to her came due. The District Court abused its discretion by awarding bonuses that were outside the time-period in the Decree of Divorce and in awarding interest.

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN AWARDING ATTORNEY'S FEES AND COSTS

Bonnie argues that the District Court did not abuse its discretion in awarding attorney's fees award and costs. Although an award of attorney's fees is within the discretion of the district court, the award must still be just and equitable. When making an award of attorney's fees, the attorney's fees must be reasonable, and the district court should make written findings as to the reasonableness of the fees[23]. "The decision to award attorney's fees is within the sound discretion of the district

[21] Ellison v. California State Auto Ass'n, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)
[22] AA000400
[23] Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969)

court, but an award made in disregard of applicable legal principles may constitute an abuse of discretion[24]."

Here, the District Court abused its discretion in awarding attorney's fees and costs. Bonnie's Memorandum of Fees, Costs, and Disbursements and Brunzell Declaration shows that she submitted fees and costs beginning in 2017, which predates the filing of the Motion by approximately two years[25]. It appears that the District Court did not review the itemized bill that Bonnie submitted. Mr. Mahoney is confident that if the District Court had reviewed it, it would not have granted her fees and costs that predate the filing of the Motion by years. The District Court awarded hundred percent of the costs that Bonnie requested and reduced the attorney's fees by a couple of thousand. However, the reduced amount still encompasses fees that predate the filing of the Motion.

The District Court clearly abused its discretion in making its award of fees and costs. The fees predating the filing of the Motion by years is only one of the reasons that the award should be set aside. A closer look at the bill shows that all fees incurred were not reasonable. Therefore, the District Court's Order should be set aside as it was a manifest abuse of discretion.

---

[24] Barozzi v. Benna, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)
[25] AA000455-482

CONCLUSION

The Nevada Supreme Court has directed that cases should be heard on the merits. Given the weight of the law favoring a determination of cases on the merits and the due process requirements at issue, the district court erred by not providing Bartholomew Mahoney notice of the rescheduled evidentiary hearing. Additionally, the district court clearly made manifest errors due to the one-sided presentation of facts and evidence. Based on the foregoing, Bartholomew Mahoney, respectfully requests that this Court reverse District Court's Order and remand the matter for an evidentiary hearing on the merits.

DATED this 21st day of March, 2022

RESPECTFULLY SUBMITTED
THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION

/s/Aaron Grigsby
Aaron Grigsby, Esq.
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, NV 89102

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(0(5) and the type style requirements of NRAP 32(0(6) because this brief has been prepared in a proportionally spaced typeface using 14 point font of the Times New Roman style.
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points containing 2429 words.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of March, 2022

RESPECTFULLY SUBMITTED
THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION

/s/Aaron Grigsby
Aaron Grigsby, Esq.
Nevada Bar No. 9043
2880 West Sahara Ave.
Las Vegas, NV 89102

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st day of March, 2022, I submitted the forgoing Appellant's Reply Brief for filing via the Court's electronic filing system. A copy was served as follows:

BY ELECTRONIC FILING TO

Kimberly Stutzman, Esq
Radford J. Smith, Chartered
2470 St. Rose Parkway Suite 206
Henderson, Nevada 89014
kstutzman@radfordsmith.com

/s/ Aaron Grigsby_____
An employee of the Grigsby Law Group