

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

2
3 HERMAN WILLIAMS,

4 Appellant,

5 vs.

6 NADINE WILLIAMS,

7 Respondent.

No.: 83263

APPELLANT'S APPENDIX
Volume 8

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Elizabeth A. Brown
Clerk of Supreme Court

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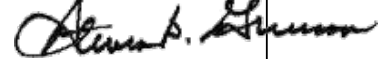
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20



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9 **DISTRICT COURT - FAMILY DIVISION**

10 **CLARK COUNTY, NEVADA**

11 **NADINE ALECIA WILLIAMS**

12 Plaintiff,

13 v.

14 **HERMAN GEORGE WILLIAMS**

15 Defendant.

Case No.: **D-19-586291-D**

Dept. No.: **I**

NOTICE OF ENTRY OF ORDER

16 TO: Plaintiff, NADINE ALECIA WILLIAMS

17
18 PLEASE TAKE NOTICE that a Decision and Order was entered on February
19 26, 2021. A copy of the Order is attached hereto.
20

21 Dated this 1st day of April 2021.

22 /s/ Kenneth M. Robbins, Esq.

23 **KENNETH M. ROBBINS, ESQ.**

24 Nevada Bar No. 13572

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document:

1. Notice of Entry of Order

was made this 1st day of April 2021, by:

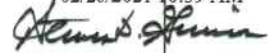
 X electronic filing on the date hereof and service through the Notice
of Electronic Filing automatically generated by the Court's facilities to
those parties listed on the Master Calendar Service List as follows:

David Barragan – david@fjtesq.com
Frank Toti – frank@fjtesq.com

 email correspondence on the date of electronic filing at the
following address:

 by depositing a copy of the same in the U.S. Mails at Las Vegas, Nevada,
postage prepaid, addressed to:

 /s/ Nicole Fasulo
An Employee of Robbins & Onello, LLP


CLERK OF THE COURT

1 **DAO**

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

4 *****

5 NADINE ALECIA WILLIAMS,

CASE NO.: D-19-586291-D

6 Plaintiff,

DEPT: I

7 vs.

DATE OF HEARING: 02/11/2021

8
9 HERMAN GEORGE
10 WILLIAMS,

TIME OF HEARING: 9:00 A.M.

11 Defendant.

12
13 **DECISION AND ORDER**

14 THIS MATTER came before the Court for Non-Jury Trial on February
15 11, 2021. Plaintiff, Nadine Alecia Williams ("Nadine"), appeared with her
16 attorney, Frank Toti, Esq., over the *Blue Jeans* video application and
17 Defendant, Herman George Williams ("Herman"), appeared with his
18 unbundled attorney, Kenneth Robbins, Esq., over the *Blue Jeans* video
19 application. The Court heard the testimony from the parties. The Court, after
20 a review of the pleadings and papers on file herein, considering and weighing
21 the credibility of the parties, and good cause appearing issues the following
22
23
24

25 *Findings of Fact, Conclusions of Law, and Orders:*

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SUMMARY OF TESTIMONY

1. Nadine lives at 284 Harper Ferry Avenue in Las Vegas, Nevada. She has been a resident of Nevada for more than six (6) weeks prior to filing this action. She intends to remain in Nevada. She is not pregnant.

2. The parties were married March 2, 2004 in New York. Nadine testified that their interests are no longer compatible and they are not likely to reconcile. She requests her former name be restored to Nadine Gayle. She relocated to Clark County in September of 2015 with the Elisha and her mother. Herman brought the three older children three weeks later. Herman was absent from Clark County at various times until November 2018.

3. The parties have four (4) children (collectively referenced as "minor children"):

Abigail Williams (16) born on October 27, 2004.

Herman Williams III (12) born on August 24, 2008.

Matthew Williams (11) born on May 13, 2010

Elisha Williams (7) born on April 26, 2013.

4. Herman also has an adult daughter from a different relationship.

///

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1 5. Abigail currently attends Nevada State High School. Nadine
2 enrolled Abigail for the current school year without consulting with Herman.
3
4 Nadine stated that Herman is listed as a parent and can obtain information from
5 the school.

6 6. Elisha and Matthew attend Gwendolyn Elementary School and
7
8 Herman II attends Cram. Nadine would like the boys to attend Doral Academy
9 for the 2021-2022 school year. There is a location approximately ten miles
10 from him and fifteen miles from her. Herman does not oppose the boys
11 attending Doral Academy.
12

13 7. Herman runs his own tow truck company. He can set his own
14 schedule. It is a Limited Liability Company (LLC) and he works as an
15 independent contractor. Nadine is not a member of the LLC, nor does she
16 have an objection to the award of the LLC to Herman. It is currently in default
17 status.
18
19

20 8. Nadine is a registered nurse with Advanced Health Care. Her
21 usual schedule is Monday through Friday.
22

23 9. Herman vacated the marital residence which was a rental.
24 Nadine came home March 8, 2019, to a U-Haul in the driveway and Herman
25 and his friends emptying the house. They removed approximately 90% of the
26 furniture. There was not a conversation about him leaving.
27

28 ///

1 10. Herman took the children with him because he showed her
2 paperwork from CPS that appeared he was to have the minor children. She
3
4 later learned the paperwork was false. He moved approximately twenty-five
5 minutes away from her.

6 11. Herman made multiple reports to CPS. One report alleged
7
8 Nadine hit Abigail in the head with a PVC pipe. Nadine claimed all reports
9 were unsubstantiated and that Abigail was coached by her father and
10 grandmother.

11
12 12. Nadine tried to reach out to the children through Herman but
13 he denied her access or contact. She only had contact with the children once
14 before the court hearing in July of 2019. Herman took the children to meet her
15 once for lunch before the court date.

16
17 13. After the July, 2019 hearing, the Court awarded Nadine
18 visitations every Saturday between 10:00 a.m. – 6:00 p.m. The Court
19 expanded her visitation to Friday to Monday visits after a review of the child
20 interviews. They exchange the boys on Mondays between 7:30 a.m. – 7:40
21 a.m. She prepares breakfast for them but they usually prefer to wait until
22
23 Herman picks them up because he will take them to McDonalds.

24
25 14. Abigail ended up moving in with Nadine in October of 2019.
26 This schedule has been in place for over a year.

27
28 ///

1 15. Herman was to engage in reunification therapy with Abigail
2 but he has not started it. Herman was to have visitation with Abigail on
3 weekends. Abigail did not have teen discretion but Herman has only exercised
4 visitation with her once since October of 2019. There was an issue where
5 Herman took away Abigail's vape pen during that visit. Nadine does not allow
6 Abigail to smoke marijuana in her home. She has grounded Abigail by turning
7 off her phone.
8

9
10 16. Abigail has tried to reach out to Herman but he has not
11 responded. She reached out to his family and they also have not responded.
12

13 17. Herman has not attempted to communicate with Abigail.
14 Nadine has not dropped off Abigail for visits with Herman.
15

16 18. Nadine has not spoken to Herman since June of 2019. First,
17 Herman blocked her number and then he changed his number. Despite a court
18 order to utilize a parenting app, he has yet to do so.
19

20 19. Although Nadine would not prevent a relationship with
21 children, Herman prevents her from having a relationship with the children.
22 He undermines her authority with the minor children and tells them that they
23 do not have listen to her and that they can call 911.
24

25 20. After July 2019, Herman still prevented contact. He would
26 communicate the children were not feeling well, or they just did not show up
27 for exchanges.
28

1 21. Nadine describes the level of conflict between herself and
2 Herman as very high. If Herman feels someone has wronged him, he will do
3 whatever he can to hurt you. He refuses to communicate with her at all.
4

5 22. Her (Nadine stated?) relationship with Abigail has approved
6 drastically since she moved in with her. She and the boys have a good time
7 during their visits, but it is difficult to co-parent with Herman.
8

9 23. An incident occurred on January 22, 2020. Nadine went to
10 Herman's apartment to pick up Elisha. Herman reported to her that Elisha was
11 sick and had been home all week. Herman refused to allow Elisha to leave
12 with Nadine. As a result, she blocked the exit to the complex and refused to
13 allow Herman to leave the complex. Abigail was present with Nadine during
14 this incident.
15
16

17 24. Nadine filed her Financial Disclosure Form (FDF). She earns
18 \$9,583.00 every month. Her previous FDF reported an annual income of
19 \$159,265.55 for 2019. However, her company restructured and her position
20 became salaried and not per diem.
21

22 25. When Nadine resided with Herman, he earned approximately
23 \$6,000.00 - \$10,000.00 a month. Herman filed an FDF that claimed \$5,666.00
24 a month but \$11,300.00 a month for the total. She believes the \$11,300.00.00
25 is the more accurate number. He also did not list any assets. She and Herman
26 do not share bank accounts and neither possesses a retirement fund or stocks.
27
28

1 26. The Court previously granted Herman the 2015 Silverado to
2 use in his tow business. Nadine had canceled registration of Silverado because
3 she felt he was lying to obtain the vehicle. She did not notify him because she
4 did not have a way to contact him. Herman has paid the 2021 registration on
5 the Silverado. He dropped off a check to her attorney's office.
6

7
8 27. She was to pay for the registration and Herman was to pay the
9 monthly payment on the loan and insurance, but he has not. Nadine made all
10 the payments and requests reimbursement. In addition to the 2015 Silverado,
11 she believes he is in possession of three more vehicles. Two other Silverado
12 vehicles are utilized in his tow business.
13

14 28. Nadine also reported a break in to the police. She had two
15 rings of a three piece ring set valued at \$3,500.00 stolen during the break in.
16 The police investigated and discovered that Herman had pawned the two rings.
17

18 29. In regards to debt, the community debt consists of a tax serve
19 debt from Bridgeport for the taxes on the vehicles and a consolidation loan.
20

21 30. Nadine testified that Herman also possesses tools (wrenches,
22 electric drills, saws, compressor, screwdrivers, etc.) that were purchased at a
23 cost of approximately \$15,000.00. The tools were purchased for a body shop
24 they owned.
25

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1 31. At one point, Herman requested items previously left in the
2 home. The items included a BBQ grill and a freezer. They communicated
3
4 through attorneys in regards to the time to pick up the items. Herman did not
5 retrieve the items.

6 32. In regards to the trampoline he requested, Nadine stated it was
7 broken. She refused to give him the scaffold because she claims she purchased
8 it.
9

10 33. Nadine purchased a printing machine. She obtained a loan of
11 \$35,000.00 (although she called it a lease). The machine is currently in a
12 business in Jamaica where it was intended to be a secondary source of income
13 for them. Nadine paid \$1,500.00.00 a month until December of 2019. She
14 does not own a business in Jamaica.
15
16

17 34. Herman Williams testified that he also requests the Court grant
18 the divorce.
19

20 35. He would like to have a relationship with Abigail. The Court
21 ordered that Nadine was responsible for payment of reunification therapy with
22 Abigail. However, once Abigail moved back in with her, she cancelled the
23 therapist.
24

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1 36. His last visitation with Abigail was in January of 2020. It
2 was a weekend and he was supposed to have her until Monday. She locked
3 herself in her room. Herman went to sleep and when he woke up, the patio
4 door was open and Abigail was gone. He called the police and Nadine who
5 told him that Abigail had not run away. However, Herman did not learn that
6 Abigail was with Nadine until the boys returned home on Monday.
7

8
9 37. Herman does not know Abigail's phone number. He had
10 purchased a phone for her but Nadine gave her a different phone so the phone
11 he purchased was turned off.
12

13 38. Nadine does not drop off Abigail at exchanges. Herman
14 chooses not to get out of his car at exchanges to avoid conflict and contact with
15 Nadine. The Court ordered a talking app for the parties to communicate. He
16 signed up on his one phone but Nadine did not accept him. His phone was
17 stolen (he believes Abigail took it) and he did not have a phone with the ability
18 to download an app until Christmas of 2020. Herman is now willing to install
19 the app to communicate.
20
21

22 39. He never personally witnessed Nadine being violent towards
23 the children but Abigail did call him about the incident in 2018. He personally
24 does not use physical discipline with the children. He yells and screams at
25 them.
26
27

28 ///

1 40. Herman prefers the current schedule. He describes his
2 relationship with the boys as great. However, he has issues with the Monday
3 exchanges. He requests a Sunday evening drop off due to the fact that Nadine
4 is often late and the boys are hungry and their faces are dirty at the exchanges.
5 They request McDonalds, although they only get McDonalds on Fridays.
6

7
8 41. There was an incident at his apartment complex on January 22,
9 2020 with Nadine. Her attorney contacted him that Nadine wanted visitation
10 with Elisha. He was at work at the time and Elisha was ill and was on
11 medication. She showed up with Abigail and knocked on the door. Herman
12 attempted to leave in his vehicle but she blocked the exit. He eventually had to
13 sneak out a side gate. As a result, he had to move out of the apartment
14 complex.
15

16
17 42. Herman drives a tow truck. He is an independent contractor.
18 He receives six calls a day via an app. He is paid by zone.
19

20 43. He mostly uses the 2015 Silverado to tow vehicles because it
21 has a universal tow system. The 2004 Silverado is used but it is an
22 undercarriage tow. If Nadine is awarded the 2015 Silverado, he will be unable
23 to work.
24

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1 44. He prepared his FDF a week before the trial. He left town to
2 visit his sick father. He forgot to add expenses and assets. Herman initially
3 testified that he did earn the \$11,300.00 a month but then corrected himself to
4 state the \$5,667.00 was more accurate.
5

6 45. Herman testified that he makes cash payments for the 2004
7 Silverado at \$250.00 a month but that he does not have receipts. He pays
8 approximately \$2,000.00 a month for fuel for his vehicles. He drives them
9 both for work and personal business.
10

11 46. He also pays \$349.00 for his cell phone and the cell phone for
12 the boys. Herman estimated he spends approximately \$300.00 a month for his
13 clothes.
14

15 47. Herman claims he does not own a single asset but when further
16 questioned, he stated he estimates the 2015 Silverado to be worth \$20,000.00
17 the 2004 Silverado to be worth \$3,500.00 (although he still owes \$1,000.00),
18 and the 2001 Silver Chevy but he did not state the value. Herman was
19 adamant that Nadine is not entitled to one half of the value of the vehicles.
20

21 48. Herman also has a hospital bill of over \$68,000.00 to Dignity
22 Health. However, he has not received a bill since April of 2019, and has not
23 made any payments towards it. He does not know if Dignity Health has
24 written it off or not.
25

26
27
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1 49. In regards to the debt consolidation, Nadine handled finances.
2 Herman would be willing to pay half the debt if she brings back the machine
3 that went to Jamaica. He was aware of the purchase at the time it was made
4 but stated Nadine did not consult him prior to the purchase. Herman testified
5 he gave her \$6,000.00 to buy machine but did not provide receipts. He is
6 unaware of the loan but believes it to be worth \$34,000.00.
7

8
9 50. In regards to the compressor, tools and frame machine
10 requested by Nadine, many items were thrown away before the move from
11 New York to Las Vegas. Herman has purchased approximately \$1,000.00 in
12 tools since the two separated.
13

14 51. Phyllis Gayle testified that she is the mother of Nadine. She
15 resided with Nadine and Herman in Connecticut and also moved to Las Vegas
16 with them.
17

18 52. Phyllis currently resides with Herman and pays him rent.
19

20 53. Phyllis and Nadine were involved in an argument in February
21 of 2019 when she told Nadine's boyfriend to get out of the house. Nadine
22 grabbed her by the throat. She also pulled her outside, but due to her
23 screaming, Nadine pulled her back into the house. The children were present
24 during the incident. As a result, Phyllis injured her arm. The police were
25 called and a report was taken but Phyllis stated she did not follow up. Nadine
26 kicked her out of the house after the incident.
27
28

1 54. Phyllis stated she witnessed Nadine become physical with the
2 children on more than one occasion. She was present when Nadine struck
3 Abigail with a piece of PVC pipe and cut her forehead.
4

5 55. Phyllis never called the police in regards to Nadine becoming
6 violent with the children.
7

8 56. The FMC interviewed the children twice. The first interview
9 occurred on August 19, 2019. The children noted that Nadine resorts to
10 physical discipline using extension cords, gauge wires, belts, rubber insulation
11 from the window and a pipe on one occasion. The result is that it sometimes
12 leaves marks, or in the case of the pipe, a scar.
13

14 57. During this initial interview, Matthew rated his relationship
15 with Nadine as a nine and with Herman, a ten. Abigail rated her relationship
16 with Nadine a one and a ten with Herman. Herman III rated his relationship
17 with Nadine a five and a nine with Herman. Elisha was too young to
18 comprehend the scale, but when asked to describe his mother, he stated she
19 beat him when he was asleep.
20
21

22 58. The second interview occurred on January 29, 2020. Matthew
23 refused to participate. During the secondary interview, Herman III rated his
24 relationship with Nadine as an eight and his relationship with Herman a ten.
25 Elisha rated his relationships with both Herman and Nadine a ten. Elisha
26 disclosed that Herman states that Nadine is very mean and calls her the 'F'
27 word.
28

59. Abigail rated her relationship with Nadine a nine and her relationship with Herman a one. Abigail stated she will not go back to Herman's house. She reported that Herman is very angry and vengeful and constantly trying to ruin Nadine.

60. The children reported that Herman lives with his "home girl" Kim. Nadine also has a significant other in her life, Stephen.

CONCLUSIONS

Nadine requests this Court grant her a divorce from Herman, joint legal custody and primary physical custody of the minor children. She does not request spousal support but that community debt is divided equally. Herman also requests this Court grant the divorce but requests sole legal and sole physical custody of Herman, Matthew and Elisha and joint legal custody of Abigail. He requests that the Court grant Nadine primary physical custody of Abigail. He also seeks child support and alimony in the amount of \$1,000.00 a month. Both Nadine and Herman requests the Court grant them attorney's fees.

Both parties filed Motions for Orders to Show Cause, which were granted. However, neither party filed the Orders to Show Cause, or served the Orders on the appropriate parties. Therefore, the Orders to Show Cause are denied.

111

1 **I. CUSTODY**

2 As to joint legal custody, NRS 125C.002 states:

3
4 1. When a court is making a determination regarding the legal
5 custody of a child, there is a presumption, affecting the burden of
6 proof, that joint legal custody would be in the best interest of a minor
7 child if:

8 (a) The parents have agreed to an award of joint legal custody or so
9 agree in open court at a hearing for the purpose of determining the
10 legal custody of the minor child; or

11 (b) A parent has demonstrated, or has attempted to demonstrate but
12 has had his or her efforts frustrated by the other parent, an intent to
13 establish a meaningful relationship with the minor child.

14 2. The court may award joint legal custody without awarding joint
15 physical custody.

16 The evidence established that both Nadine and Herman have frustrated
17 the efforts of the noncustodial parent to establish a meaningful relationship
18 with the minor children. As further discussed below, Herman refused to either
19 communicate at all or sign up for the parenting app. He blocked Nadine's
20 number and later changed his number without notice to her. He failed to
21 appear for exchanges. Additionally, communication between the parties had to
22 go through the attorneys for the parties.

23 Nadine frustrated Herman's attempts to maintain a meaningful
24 relationship with Abigail. When he communicated with Nadine, when Abigail
25 ran away, she never told him that Abigail was with her. Additionally, she did
26 not enroll Abigail in reunification therapy or encourage Abigail to maintain her
27 relationship with Herman.
28

1 Both parents attempted to frustrate the noncustodial parent's
2 relationship with the children.
3

4 **THEREFORE, IT IS ORDERED** that Nadine and Herman shall
5 share Joint Legal Custody of the minor children.
6

7 The Court must next consider presumptions against joint physical
8 custody pursuant to NRS 125C.003 which states in relevant part:
9

10 ***Best interests of child: Primary physical custody;
presumptions; child born out of wedlock.***

11 1. *A court may award primary physical custody to a parent if
12 the court determines that joint physical custody is not in the
13 best interest of a child. An award of joint physical custody is
presumed not to be in the best interest of the child if:*

14 *(a) The court determines by substantial evidence that a
15 parent is unable to adequately care for a minor child for at
least 146 days of the year;*

16 *(b) A child is born out of wedlock and the provisions of
17 subsection 2 are applicable; or*

18 *(c) Except as otherwise provided in subsection 6 of NRS
19 125C.0035 or NRS 125C.210, there has been a determination
20 by the court after an evidentiary hearing and finding by clear
21 and convincing evidence that a parent has engaged in one or
22 more acts of domestic violence against the child, a parent of
the child or any other person residing with the child. The
23 presumption created by this paragraph is a rebuttable
presumption.*

24 2. *A court may award primary physical custody of a child born
out of wedlock to:*

25 *(a) The mother of the child if:*

26 *(1) The mother has not married the father of the child;*

27 *(2) A judgment or order of a court, or a judgment or order
28 entered pursuant to an expedited process, determining the
paternity of the child has not been entered; and*

1 (3) *The father of the child:*

2 (I) *Is not subject to any presumption of paternity*
3 under NRS 126.051;

4 (II) *Has never acknowledged paternity pursuant to*
5 NRS 126.053; or

6 (III) *Has had actual knowledge of his paternity but*
7 has abandoned the child.

8 There was evidence that Herman has not cared for Abigail at least 146
9 days of the year. There was also evidence that Nadine has not cared for
10 Herman III, Matthew and Elisha for at least 146 days of the year. Therefore,
11 Nadine has established a presumption that primary physical custody for
12 Abigail is in her best interest. Herman has established a presumption that
13 primary physical custody for Herman III, Matthew and Elisha is in their best
14 interest. However, as further outlined below, primary physical custody by
15 either Nadine or Herman is not in the best interest of the minor children.
16

17 The Court now turns its attention to NRS 125C.0035(5) which states:

18 Except as otherwise provided in subsection 6 or [NRS 125C.210](#),
19 a determination by the court after an evidentiary hearing and
20 finding by clear and convincing evidence that either parent or any
21 other person seeking physical custody has engaged in one or
22 more acts of domestic violence against the child, a parent of the
23 child or any other person residing with the child creates a
24 rebuttable presumption that sole or joint physical custody of the
25 child by the perpetrator of the domestic violence is not in the best
26 interest of the child. Upon making such a determination, the court
27 shall set forth:
28

///

///

1 (a) Findings of fact that support the determination that one or
2 more acts of domestic violence occurred; and

3 The Court finds by clear and convincing evidence that Nadine
4 has committed two incidents of domestic violence. The first incident was
5 between herself and Abigail, and the second incident occurred between
6 herself and her mother.
7

8 (a) *All prior acts of domestic violence involving either party;*
9

10 The Court heard evidence of two incidents of domestic violence
11 that involved Nadine.

12 Phyllis stated she witnessed Nadine become physical with the children
13 on more than one occasion. She was present when Nadine struck Abigail with
14 a piece of PVC pipe and cut her forehead. Abigail also reported the incident
15 during the FMC interview.
16

17 The second incident Phyllis and Nadine were involved in an argument
18 in February of 2019 when she told Nadine's boyfriend to get out of the house.
19 Nadine grabbed her by the throat. She also pulled her outside, but due to her
20 screaming, Nadine pulled her back into the house. The children were present
21 during the incident. As a result, Phyllis injured her arm. The police were
22 called and a report was taken but Phyllis stated she did not follow up. Nadine
23 kicked her out of the house after the incident. The Court finds Phyllis
24 credible.
25
26
27
28

1 (b) *The relative severity of the injuries, if any, inflicted upon the*
2 *persons involved in those prior acts of domestic violence;*

3 The Court heard testimony that Abigail suffered a cut to her forehead
4 and as a result, still has a scar. Phyllis testified she suffered an injury to her
5 arm after the incident.
6

7 (c) *The likelihood of future injury;*

8 The Court did not receive credible evidence that there was a likelihood
9 of future injury. The Court previously ordered that neither parent was allowed
10 to use corporal punishment on the children. The evidence the Court received
11 after the order was in place expressed a change in Nadine's punishment of the
12 children. During the second interview with FMC, they expressed positive
13 relations with Nadine with no other incidents of physical discipline.
14
15

16 The evidence presented supports a finding that the incident with her
17 mother was a one-time occurrence. Phyllis reports that she no longer lives
18 with Nadine and that she and Nadine are not in communication with each other
19 at this time. Therefore, the likelihood of future injury is minimal.
20
21

22 (d) *Whether, during the prior acts, one of the parties acted in self-*
23 *defense; and*

24 The Court did not receive any evidence on this factor.
25

26 ///

27 ///

28 ///

1 (e) *Any other factors which the court deems relevant to the*
2 *determination.*

3 The Court finds substantial evidence to establish by clear and
4 convincing evidence that Nadine committed two acts of domestic violence.
5 However, the Court subsequently ordered that she not utilize corporal
6 punishment on the children. The evidence presented established through the
7 FMC interviews that Nadine no longer utilizes corporal punishment on the
8 children. She also no longer lives with her mother. Additionally, each child
9 rated an improved relationship with Nadine after the initial FMC interview.
10 Therefore, the Court finds that Nadine overcame the presumption that sole or
11 joint physical custody of the child by the perpetrator of the domestic violence
12 was not in the best interest of the minor children.
13

14 The Court must also consider the best interests of the parties' children
15 by considering the factors established under NRS 125C.0035(4):
16

17 4. *In determining the best interest of the child, the court shall*
18 *consider and set forth its specific findings concerning, among*
19 *other things:*
20

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1 (a) *The wishes of the child if the child is of sufficient age and*
2 *capacity to form an intelligent preference as to his or her*
3 *physical custody.*

4 At 16 years of age, Abigail is of sufficient age and capacity to form an
5 intelligent preference as to her physical custody. Abigail rated her
6 relationship with her dad as a one and her relationship with her mother as a
7 nine. This is the direct opposite of her initial interview with FMC. Abigail
8 described her relationship with her father as “horrible” and that they are not
9 even on speaking terms. She does not wish to have anything to do with him.
10

11 Elisha rated his relationship with his mother as a ten and his
12 relationship with his father as a ten. Elisha described the current scheduled as
13 “fine.” Herman rated his relationship with this mother as an eight, and his
14 father a ten. Herman rated the current schedule as a five.
15

16 However, all three children related that Herman speaks negatively
17 about Nadine. Herman tells the children that Nadine is “mean and calls her
18 the ‘F’ word” and that she abused the children. Abigail reported her mother
19 says Herman is vengeful. Elisha and Herman denied that Nadine speaks
20 negatively about Herman.
21

22 (b) *Any nomination of a guardian for the child by a parent.*
23

24 Nomination of guardianship is not relevant in these proceedings
25 between two parents and not involving a third party.
26

1 (c) Which parent is more likely to allow the child to have
2 frequent associations and a continuing relationship with the
3 noncustodial parent.

4 The Court does not find in favor of either parent. The evidence
5 established that both Nadine and Herman have frustrated the efforts of the
6 noncustodial parent to establish a meaningful relationship with the minor
7 children.
8

9 As further discussed below, Herman refused to either communicate at
10 all or sign up for the parenting app. The Court did not find him credible when
11 he testified that he did not have the ability to download the app because of his
12 phone, especially when he later testified he used an app for his tow business.
13 He also blocked Nadine's number and later changed his number without notice
14 to her. He failed to appear for exchanges. His refusal to communicate resulted
15 in the only communication between the parties available was through the
16 attorneys. The children all revealed during the FC interview that Herman
17 spoke in a disparaging manner about Nadine.
18
19
20
21

22 Nadine frustrated Herman's attempts to maintain a meaningful
23 relationship with Abigail. When he did communicate with her when Abigail
24 ran away, she never told him that Abigail was with her. Additionally, she did
25 not enroll Abigail in reunification therapy or encourage Abigail to maintain her
26 relationship with Herman.
27

28 ///

1 (d) *The level of conflict between the parents.*

2
3 The Court finds Nadine's favor. Both Nadine and Herman
4 acknowledge the high level of conflict between them. The Court notes that
5 Herman could not contain his anger at the notion that Nadine was entitled to
6 community assets. His reaction supported the reports of Nadine and the
7 children that he harbors extreme hostility towards Nadine. It further reflects
8 his complete lack of ability to co-parent.
9

10 Herman III reported that his parents do not like each other at all.
11
12 "They only talk if there's a problem and then it usually ends up in an
13 argument. They just don't like each other, well, my dad doesn't like my
14 mom." Abigail stated that Nadine "has tried, but my dad isn't having it. My
15 father does things to create conflict." Nadine reported that Herman has
16 blocked Nadine from calling him, changed his number and not told Nadine and
17 doesn't follow the Court order for time between Abigail and her siblings.
18
19

20 (f) *The mental and physical health of the parents.*

21
22 The Court did not receive testimonial evidence in regards to this
23 factor. However, Herman admitted his Dignity Health hospital records from
24 November 24, 2018, when he was detained on a Legal 2000 for suicidal
25 ideation. He was admitted.
26

27 ///

28 ///

1 (g) *The physical, developmental and emotional needs of the*
2 *child.*

3 The Court did not receive evidence in regards to this factor.]
4

5 (h) *The nature of the relationship of the child with each parent.*

6 The Court finds this factor to be neutral between Nadine and Herman.
7
8 Despite their efforts to damage the noncustodial parent's relationship with the
9 minor children, they appear to be balancing the high conflict custody situation
10 better than their parents. Matthew did not participate in the second interview
11 but both Elisha and Herman III rate their relationships with both Nadine and
12 Herman favorably.
13

14 Abigail has changed her ratings of her relationship with Nadine and
15 Herman from a one to a nine to a nine to a one. At the age of 16 years, the
16 Court is unclear as to whether she is manipulating one parent against the other
17 for her own gain. However, it is clear to this Court, that Herman must repair
18 his relationship with Abigail, which he has expressed a desire to do.
19
20

21 (i) *The ability of the child to maintain a relationship with any*
22 *sibling.*

23 The Court finds this factor neutral. The minor children are able to
24 maintain their relationships with each other. The boys are together at all times
25 and see Abigail at their mother's house.
26

27 ///
28

1 (j) Any history of parental abuse or neglect of the child or a sibling of
2 the child.

3 The Court addressed the issue of parental abuse in its analysis above.

4 (k) Whether either parent or any other person seeking physical
5 custody has engaged in an act of domestic violence against the
6 child, a parent of the child or any other person residing with the
7 child.

8 The Court addressed this issue in more detail above.

9 (l) Whether either parent or any other person seeking physical
10 custody has committed any act of abduction against the child or
11 any other child.

12 There was no credible evidence in regards to this factor.

13 **THE COURT CONCLUDES** that neither Nadine nor Herman met
14 their burden to establish that an award of primary physical custody is in the
15 minor children's best interest. The Court is extremely concerned about the
16 effect of the separation, divorce proceedings and the antics of the parties on
17 Abigail. The Court is disheartened that the counseling previously ordered did
18 not occur. The Court will not reward either parent in their attempts to gain
19 primary custody of the minor children through pathogenic parenting.
20 The Court is persuaded by the positive relationship described by the
21 children supports joint custody. Additionally, the Court finds that both parents
22 would benefit from the UNLV Cooperative Parenting Class, which the Court is
23 ordering at this time.

24 The Court is persuaded by the positive relationship described by the
25 children supports joint custody. Additionally, the Court finds that both parents
26 would benefit from the UNLV Cooperative Parenting Class, which the Court is
27 ordering at this time.
28

1 **THE COURT FINDS** that Joint Physical Custody is in the minor
2 children's best interest.

3
4 In regards to child support, NAC 425.115 states:

5 *Determination of child support obligation in accordance with*
6 *guidelines if no stipulation; adjustment of obligation based upon type*
7 *of custody held by parent.*

8 1. *If the parties do not stipulate to a child support obligation pursuant*
9 *to NAC 425.110, the court must determine the child support*
10 *obligation in accordance with the guidelines set forth in this chapter.*
11 2. *If a party has primary physical custody of a child, he or she is*
12 *deemed to be the obligee and the other party is deemed to be the*
13 *obligor, and the child support obligation of the obligor must be*
14 *determined.*

15 Both parties filed FDFs, however, Herman's did not include any
16 assets. Additionally, Herman only included three pay sheets that do not
17 adequately demonstrate his monthly income.

18 Herman is not paid hourly, he is paid as a tow truck driver per job.
19 However, his invoice does not reflect the correct numbers of days. The Court
20 is unsure if it is due to the holidays or other reasons undisclosed.

21 The Court does not find Herman credible in regards to his income.
22 He testified he works at least five days a week and utilizes an app for six
23 tows a day. Based upon his invoice, the tow rate varies from as low as
24 \$34.00 (which made up the majority) to up to \$56.00 (on only one occasion).
25 At six tows per day, Herman would earn \$204.00 minimum per day. This
26 calculation is not supported by the evidence provided to the Court.
27
28

1 The Court's analysis is further supported by a review of Herman's
2 bank statements. See HGW303 – 345. His lowest payment received was on
3 October 2, 2020, for \$870.00. His highest compensation was \$1,788.00
4 received on September 4, 2020. The Court did not receive bank statements
5 from January, April, May or June. His yearly compensation for the
6 remaining months was \$73,322.00 for thirty –two weeks of work. That
7 averages to \$2,291.31 per week. The yearly wage for Herman is actually
8 \$114,566.00 (factoring in two unpaid weeks for vacation, etc.), which
9 equates to \$9,547.00 a month, the amount the Court now imputes as income
10 to Herman. Additionally, Herman receives \$700.00 a month rent from his
11 mother-in-law, which increases his gross income to \$10,247.00 a month.
12

13 Nadine's gross income on her FDF is listed as \$9,583.00. However,
14 her pay stubs reflect a biweekly salary of \$4,791.67, which would equate to
15 gross income of \$145,583.00 per year, or \$10,382.00 per month.
16

17 Therefore, Herman's monthly obligation comes to \$9.45 a month.
18 The Court finds the disparity of income between the parties to be negligible
19 and therefore, pursuant to NAC 425.100, the Court will not order child
20 support. However, Nadine also provides health insurance for the children in
21 the amount of \$417.00 a month. Herman is responsible for one half of that
22 amount, or \$208.50. Therefore Herman's total obligation is therefore
23 \$208.50 due on the first of every month.
24
25
26
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28

1 **II. DIVISION OF PROPERTY AND DEBT**

2 ***A. Community Property***

3 NRS 125.150(1)(b) provides that:

4
5 In granting a divorce, the court . . . [s]hall, to the extent
6 practicable, make an equal disposition of the community
7 property of the parties, except that the court may make an
8 unequal disposition of the community property in such
9 proportions as it deems just if the court finds a compelling
10 reason to do so and sets forth in writing the reasons for making
11 the unequal disposition.

12 Under NRS 125.150(1), the Court is required to make an equal
13 division of community property (the exact portion of which is unknown)
14 absent a compelling reason to make an unequal distribution.

15 In regards to other community assets and debts, the Court finds the
16 following:

17 ***a) Bank Accounts***

18 The Court did not receive any credible evidence of the value of the
19 parties' bank accounts, leaving the only method of dividing the account to
20 equally divide the balances. In this regard, however, it makes sense for each
21 party to identify and keep any bank accounts in their individual names. If a
22 joint bank account exists, it is to be equally divided.
23
24
25

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1 ***b) Vehicles***

2 It is undisputed that the 2015 Silverado, 2001 Chevy and 2004
3 Silverado are community property. Additionally, Nadine's insurance
4 statements list a 2010 GMC Acadia and a 2019 Chevy Traverse, however,
5 other than the \$150.00 a month listed on Nadine's FDF for car loan/lease, the
6 Court did not receive any evidence related to these vehicles, or the value of
7 each. *See* Plaintiff's Exhibit 2. Herman testified that although he failed to list
8 it on his FDF, he pays per month \$250.00 cash for the 2004 Silverado.
9 Herman did not state the value of the 2001 Chevy.
10

11
12 Nadine requested the Court award her the 2015 Silverado. Nadine did
13 not give a basis for her request for the 2015 Silverado, other than she made
14 payments on it and she pays for insurance. The payments made for the
15 Silverado were made from community assets even if the funds came from her
16 separate account. It is undisputed that this vehicle and the 2004 Silverado are
17 utilized in Herman's tow business which causes the Court to find Nadine not
18 credible as to her request for the 2015 Silverado. It appears the request was
19 based on spite, which is further supported by the evidence the Court heard in
20 regards to the relationship between Herman and Nadine. As outlined in her
21 FDF and insurance paperwork, Nadine possesses one or two vehicles. The
22 Court does not find it credible that she needs the 2015 Silverado as her third
23 vehicle.
24
25
26
27
28

1 The Court does not have sufficient evidence to determine the value of
2 any vehicles in Nadine's possession. The Court awards each party the
3 vehicles in their possessions. Nadine is to receive one half the value of the
4 2015 Silverado, 2001 Chevy and the 2004 Silverado from Herman based upon
5 the Bluebook average value for a private sale of each vehicle. This will be
6 completed within thirty (30) days of the entry of this Order.
7

8
9 *c) Retirement*

10 Neither party testified as to retirement accounts. Therefore, the Court
11 did not consider retirement accounts in its analysis.
12

13 *d) Life Insurance*

14 The Court did not receive competent testimony that either party has a
15 life insurance policy, therefore, it was not considered in its analysis.
16

17 *e) Credit Cards*

18 Nadine listed extensive debt in her FDF. She included debt for
19 credit cards in the amount of \$16,634.00. It was not disputed that the debt
20 was accumulated during the marriage. Each party shall be responsible for one
21 half the debts for the credit cards.
22

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1 *f) Other debt*

2 Nadine listed additional debt to Freedom Financial for \$22,486.00,
3
4 Consolidation Plus loan of \$21,617.00, Equiant Financial Services for
5 \$7,641.00, Tax Serv for Bridgeport of \$8,270.78, Global Finance for
6 \$29,800.00, and student loans for \$76,195.00. The Court did not receive any
7
8 evidence that any property was the separate property of either Herman or
9 Nadine, therefore, the Court will treat the debts as community property.

10 Herman failed to properly prepare his FDF. The Court was able to
11
12 determine debts to Midland Credit Management statement in the amount of
13 \$729.00 (HGW 007), Wakefield and Associates in the amount of \$1,348.22
14 (HGW 011), and Americollect in the amount of \$1,872.00. It is undisputed
15
16 that the debts were community debt.

17 Herman submitted documents from the IRS that outlines an
18
19 outstanding balance and a payment agreement (HGM 279-302). The Court
20
21 did not receive any evidence, other than the exhibits, in order to determine the
22 extent of the debt, if any. The Court orders that the parties will equally divide
23 any tax debt, if any, incurred during the marriage.

24 Herman also provided medical bills from Dignity Health totaling
25 \$75,627.30 (HGM 001, 009), Emergency Physician Statement in the amount
26 of \$1,300.00 (HGM 002), Digestive Associates for \$677.00, and Bessler MD
27 for \$663.43. It is undisputed that the debts were community debt.
28

1 Each party shall be responsible for one half of the other debt with
2 Herman assuming the Dignity Health debt and Nadine assuming the student
3 loan debt as follows with Herman taking an additional amount of debt to
4 offset the \$5,126.59 owed for the 2015 Silverado reimbursement outlined in
5 subsection B below:
6

OTHER DEBT	Nadine	Herman
Freedom Financial	\$ 22,486.00	
Equiant Financial Services	\$ 7,641.00	
Consolidation Plus		\$ 21,617.00
TaxServe for Bridgeport		\$ 8,270.78
Midland Credit management		\$ 729.00
Global Finance	\$ 14,900.00	\$ 14,900.00
Wakefield and Associates		\$ 1,349.00
Americollect		\$ 1,872.00
Emergency Physician		\$ 1,300.00
Digestive Associates		\$ 677.00
Bessler MD		\$ 664.00
	\$ 45,027.00	\$ 51,378.78

18
19 *(f) anything else?*

20 Nadine had two rings stolen from the house. It was undisputed that the
21 rings were Nadine's separate property (wedding rings). Herman pawned the
22 rings for \$3,500.00. The Court orders that Herman will reimburse Nadine the
23 value of the two rings pawned.
24

25 ///

26 ///

27 ///

1 Nadine requested one half of the value of the tools in Herman's
2 possession. Herman stated most of the tools were sold prior to the move to Las
3 Vegas but tools in his possession were purchased for \$1,000.00. Herman
4 requested the return of numerous items, including scaffolding and other items.
5 The Court orders that each party will retain the personal tools and other
6 equipment currently in their possession which appear to be roughly equal in
7 value.
8

9
10 ***B. Business debts and assets***
11

12 Herman runs his own company, Exquisite Towing Roadside
13 Assistance. The Court only received information in regards to private
14 vehicles utilized for the company as the only assets of the company, along
15 with a bank account that appears to be utilized for Herman's private expenses
16 as well.
17

18 It is undisputed the company was started during the marriage.
19 However, Nadine expressly testified that the business be awarded to Herman.
20 As a business valuation was not completed, the Court did not receive
21 competent testimony in order to divide assets or debts, if any.
22

23 However, pursuant to the December 16, 2019 orders of Judge Steel,
24 Herman was to pay all expenses related to the 2015 Silverado, with the
25 exception of the registration. Therefore, Herman is ordered to reimburse
26
27

28 ///

1 Nadine for the insurance paid on the vehicle from December 16, 2019 to
2 present in the amount of \$3,265.00 (\$1,361.00 + \$1,104.00 + \$800.00). *Dec, Jan still no plates*

3
4 (Exhibit 2). Additionally, Herman is ordered to pay for the finance payments
5 to Chase Auto in the amount of \$1,861.59. (Exhibit 3). The Court has
6 compensated for the amount owed to Nadine by allocating additional debt to
7 Herman for the \$5,127.00.
8

9 The Court awards Exquisite Towing Roadside Assistance to Herman
10 along with any assets or debts in its name.
11

12 **ALIMONY**

13 Herman is seeking alimony in the amount of \$1,000.00 per month.
14 NRS 125.150(1)(a) provides that in granting a divorce, the Court "[m]ay
15 award such alimony to either spouse, in a specified principal sum or as
16 specified periodic payments, as appears just and equitable." Alimony may be
17 awarded to narrow the gap between the parties' respective financial
18 circumstances after divorce and to help maintain the marital standard of living
19 to the lower income spouse. Kogod v. Cioffi-Kogod, 439 P.2d 397 (April 25,
20 2019) citing Wright v. Osburn, 112 Nev, 1367, 970 P.2d 1071 (1998). His
21 request is unreasonable and not supported by any of the evidence presented,
22 especially in light of the fact his monthly income exceeds that of Nadine's
23 income.
24
25
26
27

28 ///

1 In making a "just and equitable" determination, the Court is required to
2 apply NRS 125.150(9) which provides as follows:

3
4 *(a) The financial condition of each spouse;*

5 The community has substantial debt of approximately \$248,229.00.
6
7 Nadine and Herman will split this substantial debt. That debt includes
8 vehicles, business debt, medical debt and personal debt. The assets are
9 limited. A total of possibly four vehicles, personal and business bank
10 accounts of an unknown accumulated value, and whatever furniture and
11 personal effects are currently in their possessions. The Court did not receive
12 competent evidence as to the furniture and personal effects in the possession
13 of each party, nor their value.
14
15

16 Herman claimed he cannot pay his monthly bills and that he is deeply
17 in debt. However, the Court calculated his monthly actual income of
18 approximately \$9,547.00, plus the \$700.00 a month rent paid by his mother in
19 law for a total of \$10,247.00. Herman's monthly expenses, pursuant to his
20 FDF and testimony, equal approximately \$8,106.00. This leaves Herman with
21 a balance of \$2,829.00. Nadine's balance after expenses is \$1,465.00.
22
23 Herman has the superior financial position on a monthly basis.
24

25 ///

26 ///

27 ///

1 ***(b) The nature and value of the respective property of each***
2 ***spouse;***

3 The Court did not receive evidence in regards to the value of furniture
4 or personal belongs of each party. Therefore, the analysis is based on the
5 evidence that was provided to the Court. In regards to physical property,
6 Herman has property, consisting of vehicles, valued substantially higher than
7 Nadine's property.
8
9

10 ***(c) The contribution of each spouse to any property held by the***
11 ***spouses pursuant to NRS 123.030;***

12 This factor is not relevant.
13

14 ***(d) The duration of the marriage;***

15 This is a marriage of almost seventeen (17) years.
16

17 ***(e) The income, earning capacity, age and health of each***
18 ***spouse***

19 Herman and Nadine are both healthy. There is no reason why either
20 party cannot continue to earn an income.
21

22 ***(f) The standard of living during the marriage;***

23 There was little information concerning the standard of living during
24 the marriage. However, the parties have amassed a significant debt of over
25 \$200,000.00 that will be divided equally between them.
26

27 ///

28 ///

1 ***(g) The career before the marriage of the spouse who would***
2 ***receive the alimony;***

3 There was no evidence provided to the Court in regards to this
4 factor.
5

6 ***(h) The existence of specialized education or training or the***
7 ***level of marketable skills attained by each spouse during the***
8 ***marriage;***

9 There was no evidence that either party obtain specialized education
10 or training during the marriage.
11

12 ***(i) The contribution of either spouse as homemaker;***

13 The Court did not receive any competent, reliable evidence that either
14 party sacrificed a career in order to stay at home.
15

16 ***(j) The award of property granted by the court in the divorce,***
17 ***other than child support and alimony, to the spouse who would***
18 ***receive the alimony; and***

19 Herman will receive significantly more property than Nadine, subject
20 to an equalization payment of the value of the three vehicles in his possession.
21

22 ***(k) The physical and mental condition of each party as it***
23 ***relates to the financial condition, health and ability to work of that***
24 ***spouse.***

25 There is no evidence that either party suffers physical or mental
26 impediments to maintaining their current careers.
27

28 The Court concludes that based upon the financial conditions of the
party an award of alimony to Herman would not be fair and equitable.

1 **THE COURT FINDS** that Nadine is now and has been an actual
2 bona fide resident of the State of Nevada and has been actually domiciled in
3 the State of Nevada for more than six weeks immediately prior to the
4 commencement of this action.
5

6 **THE COURT FURTHER FINDS** that Nadine and Herman were
7 married on March 2, 2004 and have since remained married. The parties have
8 become, and continue to be, incompatible in marriage, and no reconciliation is
9 possible.
10

11 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Nadine
12 shall assume, indemnify and hold Herman harmless from any debts and
13 obligations in her individual names.
14

15 **IT IS FURTHER ORDERED** that Herman shall assume, indemnify
16 and hold Nadine harmless from any debts and obligations in his individual
17 names.
18

19 **IT IS FURTHER ORDERED** that Nadine shall retain any bank
20 accounts or property in her individual name.
21

22 **IT IS FURTHER ORDERED** that Herman shall retain any bank
23 accounts or property in his individual name.
24

25 **IT IS FURTHER ORDERED** that neither party shall be awarded
26 alimony.
27

28 ///

1 **IT IS FURTHER ORDERED** that Herman will pay Nadine an asset
2 equalization of one half the Bluebook value (for a private sale) of the 2015
3 Silverado, 2001 Chevy and the 2004 Silverado. Said sum is reduced to
4 judgment with a stay of execution and interest contingent upon timely payment
5 in the amount of \$150.00 a month due before the 15th day of each month
6 commencing on April 15, 2021. If Herman fails to make a payment by the
7 assigned monthly date, the stay on said sum is lifted and becomes immediately
8 due and payable with any interest that has accrued.

9 **IT IS FURTHER ORDERED** that Herman will pay Nadine an asset
10 equalization of \$3,500.00 for the sale of the rings. Said sum is reduced to
11 judgment with a stay of execution and interest contingent upon timely payment
12 in the amount of \$50.00 a month due before the 15th day of each month
13 commencing on April 15, 2021. If Herman fails to make a payment by the
14 assigned monthly date, the stay on said sum is lifted and becomes immediately
15 due and payable with any interest that has accrued.

16 NOW, THEREFORE, based upon the foregoing *Findings of Fact and*
17 *Conclusions of Law* and good cause appearing therefore:
18

19 **IT IS HEREBY ORDERED** that the bonds of matrimony now
20 existing between the parties are hereby wholly dissolved, and an absolute
21 Decree of Divorce is hereby granted to the parties, and each of the parties are
22 hereby restored to the status of a single, unmarried person.
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CHILD CUSTODY AND CHILD SUPPORT ORDER

NOW, THEREFORE, IT IS FURTHER ORDERED that Herman and Nadine shall exercise Joint Legal Custody of the minor children and that the parties shall abide by the following joint legal custody provisions:

- A. The parties shall consult and cooperate with each other in substantial questions relating to religious upbringing, educational programs, significant changes in social environment, and health care of the child.
- B. The parties shall have access to medical and school records pertaining to the child and be permitted to independently consult with any and all professionals involved with the child.
- C. The parties shall participate in decisions regarding all schools attended, and all providers of child care of the parties' minor child.
- D. Each party shall be empowered to obtain emergency health care for the child without the consent of the other party. Each party is to notify the other party as soon as reasonably practicable of any illness requiring medical attention, or any emergency involving the child.
- E. Each party is to provide the other party, upon receipt, information concerning the well-being of the child, including, but not limited to, copies of report cards; school meeting notices; vacation

1 schedules; class programs; requests for conferences; results of
2 standardized or diagnostic tests; notices of activities involving the
3 child; samples of school work; order forms for school pictures; all
4 communications from health care providers; the names, addresses, and
5 telephone numbers of all schools, health care providers, regular day
6 care providers and counselors.
7

8
9 F. Each party is to advise the other party of the school, athletic,
10 and social events in which the child participates. Both parties may
11 participate in activities for the child, such as open house, attendance at
12 an athletic event, etc.
13

14 G. Each party is to provide the other party with the address and
15 telephone number at which the minor child resides, and to notify the
16 other party prior to any change of address and provide the telephone
17 number as soon as it is assigned.
18

19
20 H. Each party is to provide the other party with a travel itinerary
21 and, whenever reasonably possible, telephone numbers and addresses
22 at which the child can be reached whenever the child will be away
23 from the parties' home for a period of two (2) nights or more.
24

25 I. Each party shall be entitled to reasonable telephone
26 communication with the child. Each party is restrained from
27
28

1 unreasonably interfering with the child's right to privacy during such
2 telephone conversation. Telephone conversations shall be initiated
3 either by the child or parent and are to occur during reasonable
4 household hours.

5
6 **IT IS FURTHER ORDERED** that Nadine and Herman shall exercise
7 Joint Physical Custody of the minor children.
8

9 **IT IS FURTHER ORDERED** that due to the negligible disparity of
10 income between the parties, the Court, pursuant to NAC 425.100, does not
11 order child support.
12

13 **IT IS FURTHER ORDERED** that Herman is responsible for one half
14 of the amount for insurance provided by Nadine, or \$208.50, payable on the
15 first of every month.
16

17 **IT IS FURTHER ORDERED** that Nadine shall secure and pay for
18 reunification counseling for Herman and Abigail and transition Abigail into the
19 joint physical custody.
20

21 **IT IS FURTHER ORDERED** that reunification counseling will
22 begin no less than thirty (30) days from the entry of this order.
23

24 **IT IS FURTHER ORDERED** that Abigail's timeshare will follow
25 the recommendation of the reunification counselor until the time schedule
26 matches the schedule for the other minor children (week on/week off), or June
27 1, 2021, whichever occurs first.
28

1 **IT IS FURTHER ORDERED** that Herman III, Matthew and Elisha's
2 (and Abigail's after June 1, 2021) timeshare shall be as follows:
3

4 **Week 1 (Nadine): Sunday 6:00 p.m. to the following Sunday 6:00**
5 **p.m.**

6 **Week 2 (Herman): Sunday at 6:00 p.m. to the following Sunday**
7 **6:00 p.m.**

8
9 **IT IS FURTHER ORDERED** that the receiving parent shall provide
10 the transportation for the child custody exchange. All exchanges are to occur
11 in a mutually agreed upon public location. Should the parties not agree to a
12 public location, exchanges will occur at Donna's House located at 601 N.
13 Pecos, Las Vegas, NV. Upon request an order will be issued for the supervised
14 exchanges with the parties equally dividing the costs.
15

16
17 **IT IS FURTHER ORDERED** that neither party shall make any
18 negative comments about the other party.
19

20 **IT IS FURTHER ORDERED** that the non-custodial parent shall have
21 unsupervised daily communication with the minor children by phone or video
22 each evening between 7:00 p.m. and 7:30 p.m.
23

24 **IT IS FURTHER ORDERED** that the parties will follow the
25 Department I Holiday Schedule outlined in Exhibit 1.
26

27 ///

28 ///

1 **IT IS FURTHER ORDERED** that the parties shall utilize a parenting
2 app which, absent an emergency, shall be the exclusive means of
3 communication between the parties. The parties shall engage in polite,
4 respectful communications concerning the minor children.
5

6 **IT IS FURTHER ORDERED** that all significant others shall
7 remain in the background and shall not be allowed to interfere in
8 communications between the parties. They shall not be permitted to
9 participate in the kind of activities in which legal custody is required such as a
10 health care appointment, a parent/teacher conference, etc. They shall,
11 however, be permitted to attend public events such as a performance or school
12 event. Neither parent may allow anyone else to share the title "mom,"
13 "mother," "mommy," "dad," "father," "daddy," or anything else similar.
14

15 **IT IS FURTHER ORDERED** that Herman's monthly child support
16 obligation comes to \$9.45 a month. The Court finds the disparity of income
17 between the parties to be negligible and therefore, pursuant to NAC 425.100,
18 the Court will not order child support.
19

20 **IT IS FURTHER ORDERED** that any unreimbursed medical, dental,
21 optical, orthodontic or other health related expenses incurred for the minor
22 child shall be divided equally between the parties. Either party incurring an
23 out-of-pocket health care expense shall provide a copy of the paid invoice/
24 receipt to the other party within 30 days of incurring such expense. If the
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1 invoice/receipt is not tendered within the thirty day period, the Court may
2 consider it as a waiver of reimbursement. The other party will then have 30
3 days from receipt within which to dispute the expense in writing or reimburse
4 the incurring party for one-half of the expense. If not disputed or paid within
5 the 30 day period, the party may be subject to a finding of contempt and
6 appropriate sanctions.
7

9 **IT IS FURTHER ORDERED** that for the tax year 2020 forward,
10 Herman shall be entitled to claim as tax dependents Herman III and Elisha in
11 all years, and Nadine shall be entitled to claim as tax dependents Abigail and
12 Matthew. As each minor child emancipates, if one of the parties can claim
13 only one minor child while the other party claims two, then Herman shall be
14 entitled to claim Elisha as a tax dependent on even years and Nadine shall be
15 entitled to claim Elisha as a tax dependent on odd years. Once all the minor
16 children except Elisha emancipates, Herman shall be entitled to claim Elisha as
17 a tax dependent on even years and Nadine shall be entitled to claim Elisha as a
18 tax dependent on odd years.
19

*Should start
in 2021 year*

22 **IT IS FURTHER ORDERED** that the parties shall exchange their
23 tax returns, together with all schedules and forms, no later than April 30
24 annually for the purpose of determining whether there has been a change in
25 circumstance justifying revisiting the child support obligation.
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STATUTORY NOTICES

NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

NOTICE IS HEREBY GIVEN that pursuant to NRS 25C.0045(7)(8): The terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country as follows:

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

- (a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

1 (b) Upon motion of one of the parties, the court may order the
2 parent to post a bond if the court determines that the parent
3 poses an imminent risk of wrongfully removing or concealing
4 the child outside the country of habitual residence. The bond
5 must be in an amount determined by the court and may be used
6 only to pay for the cost of locating the child and returning the
7 child to his or her habitual residence if the child is wrongfully
8 removed from or concealed outside the country of habitual
9 residence. The fact that a parent has significant commitments
10 in a foreign country does not create a presumption that the
11 parent poses an imminent risk of wrongfully removing or
12 concealing the child.

13 **NOTICE IS HEREBY GIVEN** that, pursuant to NRS
14 125C.0065:

15 1. If JOINT PHYSICAL CUSTODY has been established
16 pursuant to an order, judgment or decree of a court and one
17 parent intends to relocate his or her residence to a place outside
18 of this State or to a place within this State that is at such a
19 distance that would substantially impair the ability of the other
20 parent to maintain a meaningful relationship with the child,
21 and the relocating parent desires to take the child with him or
22 her, the relocating parent shall, before relocating:

23 (a) Attempt to obtain the written consent of the non-relocating
24 parent to relocate with the child; and

25 (b) If the non-relocating parent refuses to give that consent,
26 petition the court for primary physical custody for the purpose
27 of relocating.

28 2. The court may award reasonable attorney's fees and costs to
the relocating parent if the court finds that the non-relocating
parent refused to consent to the relocating parent's relocation
with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section
before the court enters an order granting the parent primary
physical custody of the child and permission to relocate with
the child is subject to the provisions of NRS 200.359.

1 **NOTICE IS HEREBY GIVEN** that the non-custodial parent may
2 be subject to the withholding of wages and commissions for delinquent
3 payments of support pursuant to NRS 31A.010, *et. seq.* and NRS 125.007.
4

5 **NOTICE IS HEREBY GIVEN** that pursuant to NRS 125B.145, the
6 parties may request a review of child support every three years, or at any time
7 upon changed circumstances.
8

9 **NOTICE IS HEREBY GIVEN** that both parties shall submit the
10 information required by NRS125B.055, NRS 125.30 and NRS 125.230 on a
11 separate form to the Court and to the Welfare Division of the Department of
12 Human Resources within ten days from the date this Order is filed. Such
13 information shall be maintained by the Clerk in a confidential manner and not
14 part of the public record. The parties shall update the information filed with
15 the Court and the Welfare Division of the Department of Human Resources
16 within ten days should any of that information become inaccurate.
17
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19

20 **NOTICE IS HEREBY GIVEN** that if you want to adjust the
21 amount of child support established in this order, you **MUST** file a motion to
22 modify the order with or submit a stipulation to the court. If a motion to
23 modify the order is not filed or a stipulation is not submitted, the child support
24 obligation established in this order will continue until such time as all children
25 who are the subject of this order reach 18 years of age or, if the youngest child
26
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1 who is subject to this order is still in high school when he or she reaches 18
2 years of age, when the child graduates from high school or reaches 19 years of
3 age, whichever comes first. Unless the parties agree otherwise in a stipulation,
4 any modification made pursuant to a motion to modify the order will be
5 effective as of the date the motion was filed.
6

7
8 **IT IS FURTHER ORDERED** that each party shall assume their
9 own attorney fees and costs.

10 **IT IS FURTHER ORDERED** Attorney Frank Toti shall file the
11 Notice of Entry of Order of this Decision and Order.
12

13
14 Dated this 26th day of February, 2021

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18 9B8 DD8 3F27 05F8
19 Sunny Bailey
20 District Court Judge
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Sunny Bailey
DISTRICT JUDGE
Family Division, Dept. I
Las Vegas, NV 89101

EXHIBIT 1

***Eighth Judicial District Court
Department I – Family Division
Holiday and Vacation Plan***

This schedule shall remain in effect unless: (1) the parties agree in writing, signed by both parties, to an alternate schedule; or (2) by subsequent order of the Court.

Precedence:

The *holiday* schedule shall take precedence over *vacation* periods; and *vacation* periods shall take precedence over regular timeshare periods. Where there is an overlap of conflicting holidays, the following priority shall prevail:

	<u>Odd Year</u>	<u>Even Year</u>
Overlap Precedent	DAD	MOM

Weekend Holidays

The parents will share weekend holidays based on the following schedule. The holiday weekend begins upon the release of school for the holiday period and continues until the morning school resumes following the holiday, at the first morning bell, unless otherwise noted. In the event that school is not in session, the following holiday time will begin on Friday at 3:00 p.m., and continue until 9:00 a.m., on the first weekday following the holiday.

	<u>Odd Year</u>	<u>Even Year</u>
Martin Luther King Day Weekend	MOM	DAD
President's Day Weekend	DAD	MOM
Mother's Day Weekend	MOM	MOM
Memorial Day Weekend	MOM	DAD
Father's Day Weekend	DAD	DAD
Independence Day ¹	DAD	MOM
Labor Day Weekend	MOM	DAD
Nevada Admission Day Weekend	DAD	MOM
Halloween Day ²	DAD	MOM
Veterans' Day Weekend ³	MOM	DAD

¹ Independence Day will include the weekend if the holiday occurs on a Friday, Saturday, Sunday or Monday of any given year. In the event the holiday occurs on Tuesday, Wednesday or Thursday, it will be treated as a one day holiday and shall begin at 9:00 a.m. on July 3rd and continue until July 5th at 9:00 a.m.

² Halloween will be celebrated as a one day holiday, beginning upon the release of school, or 9:00 a.m., if school is not in session, and continuing until the next morning when school resumes or 9:00 a.m., if school is not in session.

Birthdays

The parents will share birthdays based on the schedule set forth below. The birthday schedule will begin after school on the birthday (or if school is not in session, at 9:00 a.m.) and continue until the morning following the birthday at 9:00 a.m., or when school begins, at the first morning bell, if school is in session, when the regular residential schedule will resume. The designated parent shall be entitled to have ALL of the parties' children in his/her care during the birthday period.

	<u>Odd Year</u>	<u>Even Year</u>
Children's Birthdays	MOM	DAD

Easter/Spring Break

The parents will share the Easter/Spring Break based on the following schedule, with the holiday period to begin upon the release of school for the holiday period and continue until school resumes following the Spring Break at the first morning bell.

	<u>Odd Year</u>	<u>Even Year</u>
Easter/Spring Break	DAD	MOM

Thanksgiving

The parents will share the Thanksgiving Break based on the following schedule, with the holiday period to begin upon the release of school before Thanksgiving and shall continue until school resumes following the holiday.

	<u>Odd Year</u>	<u>Even Year</u>
Thanksgiving Break	MOM	DAD

Winter Break

The Winter Break holiday period will be divided into two segments based on the school calendar. Specifically, the first segment will begin on the day the school calendar releases for the break and shall continue until December 26th at 12:00 p.m. (noon), when the other parent's timeshare shall begin, to continue until school resumes following the Winter Break.

	<u>Odd Year</u>	<u>Even Year</u>
First Segment/Christmas	DAD	MOM
Second Segment/New Year's	MOM	DAD

Religious Holidays

When parents do not share the same religious beliefs, each parent shall have the right to provide religious instruction of their choosing to the child(ren). When both parents are of the same faith, both parents shall have the opportunity to enjoy the right to celebrate a religious holiday with the child(ren) on an alternating year basis. The following sample religious holiday schedules are intended to provide examples of shared holiday schedules

³ Veterans' Day will include the weekend if it is attached to a weekend holiday period. In the event the holiday is celebrated as a one-day holiday by the school district, it shall begin at 9:00 a.m. on November 11th and continue until November 12th at 9:00 a.m. In the event the school district does not provide a release from school for Veterans' Day, neither party shall be entitled to a variance from the regular timeshare for this holiday period.

for religious holidays and apply *only if* one or both parents have traditionally celebrated such holidays with the parties' child(ren):

Sample Jewish Holiday

The following holidays begin upon the release of school before the holiday period, or if school is not in session at 3:00 p.m., and continue as designated until school resumes the day after the holiday period, or if school is not in session at 9:00 a.m.:

	<u>Odd Year</u>	<u>Even Year</u>
Passover [1 st two nights]	DAD	MOM
Rosh Hashanah [2 day holiday]	MOM	DAD
Yom Kippur [One day holiday]	DAD	MOM
Purim [One day holiday]	MOM	DAD
Sukkot [1 st two nights]	DAD	MOM
Hanukkah [1 st two nights]	MOM	DAD

Sample Baha'i Holy Days and Commemorative Days

The following holidays, when work is to be suspended, begin upon the release of school before the holiday period, or if school is not in session at 3:00 p.m., and continue as designated until school resumes the day after the holiday period, or if school is not in session at 9:00 a.m.:

	<u>Odd Year</u>	<u>Even Year</u>
Naw-Ruz March 21	DAD	MOM
Festival of Ridvan April 21	MOM	DAD
Declaration of the Bab May 23	DAD	MOM
Ascension of Baha'u'llah May 29	MOM	DAD
Martyrdom of Bab July 9	DAD	MOM
Birth of the Bab October 20	MOM	DAD
Birth of Baha'u'llah November 12	DAD	MOM

Summer/Track Vacation

Each parent shall have on fourteen (14) day uninterrupted summer timeshare with the child(ren) per year during the period of summer or track release for the Clark County School District. The fourteen (14) day period may not be added to regular timeshare dates

1 to extend a parent's summer vacation beyond fourteen (14) days without the written
2 consent of the other party.

3 The parent with selection priority shall provide notice of his/her summer vacation dates in
4 writing via email by March 1st with the other parent providing notice of her/his summer
5 vacation dates in writing via email by March 15th. Track vacation dates must be
6 designated at least thirty (30) days before the track break begins. Failure to provide notice
7 of summer/track vacation dates by deadline provided shall constitute a waiver of priority
8 and the other party shall have the right to provide written notice of his/her summer/track
9 vacations dates, which shall take precedence for that year only. If a party does not provide
10 written notice of his or her vacation dates by May 1st, that party shall have waived his/her
11 right to exercise a vacation period for that year only.

	<u>Odd Year</u>	<u>Even Year</u>
Vacation Selection Priority	DAD	MOM

10 ***Year-Round School***

11 In the event the parties' child(ren) attend year round school, the regular timeshare shall
12 continue during all track breaks unless: (1) either party has designated a vacation period, as
13 set forth above, or (2) otherwise agreed in a writing signed by both parties.

13 ***In-Service/Professional Development Days***

14 Undesignated school holidays shall follow the parties' regular timeshare schedule.
15 However, in the event an in-service day is attached to a weekend or other holiday period,
16 the undesignated holiday shall attach to the weekend or other holiday period and the parent
17 assigned the weekend or holiday period (including any undesignated period) until school
18 resumes following the weekend or other holiday period, at the first morning bell.

17 ***Transportation***

18 The receiving parent shall be responsible for providing transportation, unless otherwise
19 ordered by the Court.
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Nadine Alecia Williams, Plaintiff CASE NO: d-19-586291-d
7 vs. DEPT. NO. Department I
8 Herman George Williams,
9 Defendant.

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

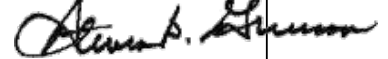
12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Decision and Order was served via the court's electronic eFile system
14 to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 2/26/2021

16 Frank Toti frank@fjtesq.com
17 Kenneth Robbins, Esq. FamilyFirst@HalfPriceLawyers.com
18 David Barragan david@fjtesq.com

19 If indicated below, a copy of the above mentioned filings were also served by mail
20 via United States Postal Service, postage prepaid, to the parties listed below at their last
21 known addresses on 3/1/2021

22 Kenneth Robbins 9205 W Russell RD STE 240
23 Las Vegas, NV, 89148
24
25
26
27
28



1 **MOT**

2 **KENNY ROBBINS, ESQ.**

3 Nevada Bar No. 13572

4 **JASON ONELLO, ESQ.**

5 Nevada Bar No. 14411

6 **ROBBINS & ONELLO**

7 9205 W. Russel Rd., Suite 240

8 Las Vegas, Nevada 89148

9 (702) 608-2331 (Phone)

10 (702) 442-9971 (Fax)

11 Email: staff@onellolaw.com

12 Attorney for *Defendant*

13 **DISTRICT COURT - FAMILY DIVISION**

14 **CLARK COUNTY, NEVADA**

15 **NADINE ALECIA WILLIAMS**

16 Plaintiff,

17 v

18 **HERMAN GEORGE WILLIAMS**

19 Defendant.

Case No.: **D-19-586291-D**

Dept. No.: **I**

Oral Argument Requested:

☒ Yes ☐ No

20 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
21 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
22 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS
23 OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN
24 RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF
25 YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED
26 RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO
27 THE SCHEDULED HEARING DATE.

28 **DEFENDANT'S EDCR 5.513 MOTION FOR RECONSIDERATION OF THE**
DECISION AND ORDER ENTERED FEBRUARY 9, 2021, OR IN THE
ALTERNATIVE FOR A NEW TRIAL PURSUANT TO NRCP 59, OR
[ADDITIONALLY] IN THE ALTERNATIVE RELIEF FROM A JUDGMENT,
AND FOR ATTORNEY FEES AND COSTS.

1 COMES NOW, HERMAN GEORGE WILLIAMS by and through his attorney,
2 KENNETH ROBBINS, ESQ., of ROBBINS & ONELLO, LLP and submits this Motion for
3 Reconsideration.

4 This Motion is based upon all of the papers and pleadings on file herein, the
5 following Memorandum of Points and Authorities, submitted herewith, and any
6 argument which may adduced at the time of hearing.
7

8
9 DATED this 15th day of April, 2021.

10
11 **ROBBINS & ONELLO**

12 /s/ Jason Onello, Esq.
13 **JASON ONELLO, ESQ.**
14 Nevada Bar No. 14411
15 9205 W. Russel Rd., Suite 240
16 Las Vegas, Nevada 89148
17 (702) 608-2331 (Phone)
18 (702) 442-9971 (Fax)
19 Email: staff@onellolaw.com
20 Attorney for *Defendant*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3
4 Plaintiff, Nadine Williams (“Nadine”), and Defendant, Herman Williams
5 (“Herman”) were married March 2, 2004 in New York. The parties relocated to Clark
6 County, NV in approximately 2015. The parties have four (4) minor children: Abigail
7 (16), Herman III (12), Matthew (11), and Elisha (7). The Court held an evidentiary
8 hearing on February 11, 2021 to resolve the following issues: (1) Custody (2) Assets
9 and Debts (3) Child Support (4) Alimony and (5) Attorney Fees. William brings this
10 motion requesting reconsideration of Orders that pertain to physical custody
11 (specifically - presumptions that William believes should have been applied),
12 reconsideration of marital property distribution (primarily “rings and student loans”),
13 and child support calculation if the Court determines that custody shall be reconsidered.
14
15

16
17 **1) Custody**

18 Herman requested primary custody of the boys (Herman, Matthew and Elisha) at
19 trial, based on a presumption derived from the domestic violence statute. As the Court
20 found, on one occasion, Nadine had grabbed Phyllis, the maternal grandmother, by the
21 throat in February 2019 during an argument;¹ Nadine did not deny the same. The
22 children were also present during the altercation. Phyllis also witnessed Nadine strike
23 Abigail with a piece of PVC pipe and cut her forehead, which is in the record. The CPS
24 records corroborated this testimony. Both Phyllis and William testified to the incident
25
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¹ See “Decision and Order” filed February 26, 2021; ¶ 53.

1 and CPS records and the court did not find that their testimony was not credible. The
2 Court also noted that the child interviews revealed further physical discipline using
3 extension cords, gauge wires, belts, rubber insulation and a pipe. This discipline leaves
4 marks or in the case of the pipe, a scar.²

5
6 The Court concluded that Phyllis (Nadine's mother) was credible in her
7 testimony.³ The Court found no "future likelihood" of injury on the basis that no
8 incidents of physical discipline occurred after its temporary custody order, but the PVC
9 incident goes beyond "discipline." The Court concluded that the evidence supports a
10 finding that the incident with Phyllis was a onetime occurrence and is not likely to
11 happen again, but did not consider other incidents that occurred with Nadine and the
12 severity of those incidents; specifically, Phyllis testified that Nadine had injured the
13 children more than once. The Court concluded that by substantial evidence, clear and
14 convincing evidence had demonstrated that Nadine committed two (2) acts of Domestic
15 Violence, but that the FMC interviews proved that Nadine no longer used corporal
16 punishment. William objects to this finding on the basis that the FMC interviews were
17 not admitted into evidence and not for consideration by the Court in reaching its
18 decision. Additionally, William believes that the several incidents of Domestic
19 Violence show that there is a higher likelihood of future injury. As a result, William
20 believes that the presumption against her, had not been rebutted by Nadine. William
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28 ² See "Decision and Order" filed February 26, 2021; ¶ 56.

³ See "Decision and Order" filed February 26, 2021; page 18; lines 27-28.

1 requests that this Court order that he be awarded primary physical custody of the parties'
2 three (3) sons on the schedule requested by Herman and that the party file updated
3 Financial Disclosure Forms to recalculate child support pursuant to the formulas found
4 in NAC 425.
5

6 **2) Assets / Debts – Rings, Student Debt & Herman’s Medical Bills.**

7 Regarding the wedding rings, the Court found that Nadine filed a police report
8 regarding two (2) rings being stolen from the house, which Nadine valued at \$3,500.00
9 each. The police investigated and discovered that Herman had pawned the two (2)
10 rings.⁴ As a result, the Court ordered that Herman pay Nadine \$7,000.00 for the value
11 of the rings. Nadine never laid any foundation as to how she calculated the value of the
12 rings, nor is she an expert for purposes of valuing the rings. For this reason, Herman
13 believes that the Court should allow Herman to provide evidence of what amounts
14 Herman actually received in return for the rings and reduce the offset by that amount.
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16

17 Additionally, the Court concluded that Nadine’s \$76,195.00 debt in student loans
18 was community property, rather than Nadine’s separate property, which prevailing case
19 law indicates should “go with the Degree,” so to speak. As a result, the Court ordered
20 Herman to take his medical bills through Dignity Health (approximately \$75,627.30) as
21 his separate debt to offset the student loan debt. Herman requests that this Court
22 specifically reconsider that order and divide his medical debt equally amongst the
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⁴ See “Decision and Order” filed February 26, 2021; ¶ 28.

1 parties, labeled as “community debt,” and that Nadine take her student loans as her
2 separate debt.

3 In conclusion, Herman asks that the Court (1) permit admission of additional
4 evidence of what he received for the two rings and reduce the award to Nadine
5 accordingly, (2) award Nadine’s student loans as her sole and separate debt, and (3)
6 reallocate the asset/debt division with one-half of the Dignity Health Medical bills to be
7 allocated to Nadine’s side of the equation.
8
9

10 **3) Incomes (For Child Support and Alimony Rulings)**

11 The Court found that there was not a substantial disparity of income based on the
12 testimony and FDF’s.⁵ As a result, child support was set at zero dollars and Herman
13 was ordered to pay \$208.50 per month for purposes of health insurance provided by
14 Nadine.
15

16 Nadine’s FDF showed her income as \$159265.55 for 2019 but Nadine filed an
17 updated FDF before trial that showed drastically reduced income, supported by some
18 pay stubs. Herman filed an FDF that showed he earned \$5,666.00, but also showed that
19 he earned \$11,300.00⁶ and the Court acknowledged that Herman had incorrectly
20 prepared his FDF.⁷ A review of the FDF shows that the Court was correct and that
21 Herman wrote “\$11,000.00” by combining “annual salary” and “hourly wage.”
22 Herman’s testimony, as found by the Court, showed that he is not paid hourly, but is
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27 ⁵ See “Decision and Order” filed February 26, 2021; Page 27; lines 20-28.

28 ⁶ See “Decision and Order” filed February 26, 2021; ¶ 24.

⁷ See “Decision and Order” filed February 26, 2021; Page 31; lines 11-16.

1 paid “per job,” so obviously Herman is not an “hourly employee” and this was just a
2 typo. Herman wishes the court to reconsider his income calculation and to use his salary
3 of \$5,666.66 for purposes of calculating child support and alimony. Herman also
4 believes that the Court should use Nadine’s 2019 income for purposes of calculating
5 support because Nadine’s testimony regarding her financials was not credible.
6

7 **II.**

8 **LEGAL ARGUMENT**

9 10 **A. THE COURT MAY RECONSIDER ITS DECISION AND ORDER, AS** 11 **THIS MOTION WAS TIMELY FILED**

12 EDCR 5.513(a) provides:

13
14 A party seeking reconsideration and/or rehearing of a ruling (other than an
15 order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60),
16 must file a motion for such relief not later than 14 days after service of notice of entry
17 of the order unless the time is shortened or enlarged by order. When the period is
18 stated in days or a longer unit of time:
19

20
21 (A) exclude the day of the event that triggers the period;

22
23 (B) count every day, including intermediate Saturdays, Sundays,
24 and legal holidays; and
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1 (C) include the last day of the period, but if the last day is a
2 Saturday, Sunday, or legal holiday, the period continues to run until the end of the next
3 day that is not a Saturday, Sunday, or legal holiday.
4

5 If a motion for reconsideration and/or rehearing is granted, the court may make
6 a final disposition without hearing, may set it for hearing or resubmission, or may
7 make such other orders as are deemed appropriate under the circumstances. EDCR
8
9 5.513(b)
10

11 A district court may reconsider a previously decided issue if substantially
12 different evidence is subsequently introduced or if the prior decision was clearly
13 erroneous. *Masonry & Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga &*
14 *Wirth, Ltd.*, 113 Nev. 737 (1976); *Moore v. City of Las Vegas*, 92 Nev. 402, 404 (1976).
15 Points or contentions not raised in the first instance cannot be maintained or considered
16 on rehearing. *Achrem v. Expressway Plaza, Ltd. P'ship*, 112 Nev. 737, 742 (1996).
17 Further, a motion for reconsideration will be granted if "the District Court is presented
18 with newly discovered evidence, committed clear error, or if there is an intervening
19 change in the controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*. 229 F.3d
20 877, 890 (9th Cir. 2000).
21
22
23

24 On a party's motion filed no later than 28 days after service of written notice of
25 entry of judgment, the court may amend its findings — or make additional findings —
26 and may amend the judgment accordingly. The time for filing the motion cannot be
27 extended under Rule 6(b). The motion may accompany a motion for a new trial under
28

1 Rule 59. A party may later question the sufficiency of the evidence supporting the
2 findings, whether or not the party requested findings, objected to them, moved to
3 amend them, or moved for partial findings. NRCP 52(a)(5)
4

5 This motion was timely filed, as the Decision was entered on April 1, 2021.
6 This Court has the ability to modify its orders, if in agreement with Herman's position,
7 or at least clarify its basis for making those orders in its Decision. Herman is
8 requesting that the Court reconsider the custody ruling based on the non-admission of
9 the child interviews on the date of trial and on the basis that the evidence was not clear
10 and convincing that the presumption was rebutted. Herman requests that the
11 assets/debts allocation be reallocated to assign Nadine the entirety of the student debt
12 and that the value of the rings be reduced to what he sold them for, rather than the
13 "estimated value" provided by Nadine. Additionally, Herman requests that the Court
14 reconsider the domestic support calculations based upon the Court's finding that
15 Herman incorrectly filled out his FDF and that his gross income is only \$5,666.67 per
16 month.
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21
22 i. **Student Debt is Separate Debt Unless Evidence Supports Otherwise;**
23 **Nadine Provided No Evidence as to "Why" the Student Loans Should**
24 **be Born Equally.**

25 An educational degree, such as a law degree, is not marital property subject to
26 division. Stevens v. Stevens (1986), 23 Ohio St.3d 115, syllabus." Webb v. Webb, No.
27 CA97-09-167, at *1 (Ohio Ct. App. Nov. 30, 1998) The degree and the future earning
28

1 capacity arising from the degree, however, may be considered only when determining
2 the amount and length of spousal support to be granted in a given case. Id. *Webb v.*
3 *Webb*, No. CA97-09-167, at *1 (Ohio Ct. App. Nov. 30, 1998) Historically, student-
4 loan debt incurred during the marriage was often treated differently from other marital
5 debt because of its unique nature [See Turner, *Division of Student Loans in Divorce*
6 *Cases*, 13 No. 3 Divorce Litig. 52 (2001)] In Van Bussum v. Van Bussum (1987), 728
7 S.W.2d 538, the Court of Appeals of Kentucky held that loans incurred in pursuit of an
8 educational debt are borne entirely by the spouse taking out the loans. The court
9 reasoned that the party taking out the loans would reap the benefits of the loans by
10 obtaining the degree. The court believed that the loans should be separate property
11 because the degree is separate property. Id. at 539. *Webb v. Webb*, No. CA97-09-167,
12 at *1 (Ohio Ct. App. Nov. 30, 1998)

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17 Here, Nadine will reap the benefits of the student loan going forward and no
18 alimony has been awarded to Herman; thus, Nadine should have to bear the entire cost
19 of her student loans. As a result, the Court should reallocate the amount his medical
20 bills equally and order that Nadine take her student loans as her sole and separate
21 property.
22

23
24 **ii. Nadine Did Not Rebut the Presumption Against Her for Committing**
25 **Domestic Violence on Multiple Occasions.**
26
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1 Pursuant to NRS 125C.230(1), except as otherwise provided in NRS
2 125C.210 and 125C.220, a determination by the court after an evidentiary hearing and
3 finding by clear and convincing evidence that either parent or any other person seeking
4 custody of a child has engaged in one or more acts of domestic violence against the
5 child, a parent of the child or any other person residing with the child creates a rebuttable
6 presumption that sole or joint custody of the child by the perpetrator of the domestic
7 violence is not in the best interest of the child. Upon making such a determination, the
8 court shall set forth:
9
10

- 11 (a) Findings of fact that support the determination that one or more acts of
12 domestic violence occurred; and
13 (b) Findings that the custody or visitation arrangement ordered by the court
14 adequately protects the child and the parent or other victim of domestic violence
15 who resided with the child.
16

17 Additionally, NRS 125C.230(2) provides:
18

19 If after an evidentiary hearing held pursuant to subsection 1 the court
20 determines that more than one party has engaged in acts of domestic violence, it shall,
21 if possible, determine which person was the primary physical aggressor. In
22 determining which party was the primary physical aggressor for the purposes of this
23 section, the court shall consider:
24
25

- 26 (a) All prior acts of domestic violence involving any of the parties;
27
28

1 (b) The relative severity of the injuries, if any, inflicted upon the persons
2 involved in those prior acts of domestic violence;

3 (c) The likelihood of future injury;

4 (d) Whether, during the prior acts, one of the parties acted in self-defense;
5 and

6 (e) Any other factors that the court deems relevant to the determination.

7 The Court conducted a NRS 125C.230(2) analysis which applies if there is a
8 question as to the “primary aggressor,” but none of these incidents involved Herman
9 and there was no question as to whether Nadine was the primary aggressor; the Court
10 found expressly that Nadine committed domestic violence. The Court found that the
11 child interviews provided the rebuttal to the presumption, but the child interviews were
12 never admitted into evidence. As such, Nadine could no have rebutted the
13 presumption and given the Court’s findings regarding domestic violence, the
14 presumption certainly applies.
15
16
17

18 **Rule 59. New Trials; Amendment of Judgments**

19 (a) **In General.**

20 (1) **Grounds for New Trial.** The court may, on motion, grant a new trial on
21 all or some of the issues — and to any party — for any of the following causes or grounds
22 materially affecting the substantial rights of the moving party:

23 (A) irregularity in the proceedings of the court, jury, master, or adverse
24 party or in any order of the court or master, or any abuse of discretion by which either
25 party was prevented from having a fair trial;

26 (B) misconduct of the jury or *prevailing party*;

27 (C) accident or surprise that ordinary prudence could not have guarded
28 against;

(D) newly discovered evidence material for the party making the motion
that the party could not, with reasonable diligence, have discovered and produced at the
trial;

...

1 (G) error in law occurring at the trial and objected to by the party making
2 the motion.

3 (2) **Further Action After a Nonjury Trial.** On a motion for a new trial in an
4 action tried without a jury, the court may open the judgment if one has been entered,
5 take additional testimony, amend findings of fact and conclusions of law or make new
6 findings and conclusions, and direct the entry of a new judgment.

7 (b) **Time to File a Motion for a New Trial.** A motion for a new trial must be
8 filed no later than 28 days after service of written notice of entry of judgment.

9 (c) **Time to Serve Affidavits.** When a motion for a new trial is based on
10 affidavits, they must be filed with the motion. The opposing party has 14 days after
11 being served to file opposing affidavits. The court may permit reply affidavits.

12 (d) **New Trial on the Court's Initiative or for Reasons Not in the Motion.** No
13 later than 28 days after service of written notice of entry of judgment, the court, on its
14 own, may issue an order to show cause why a new trial should not be granted for any
15 reason that would justify granting one on a party's motion. After giving the parties notice
16 and the opportunity to be heard, the court may grant a party's timely motion for a new
17 trial for a reason not stated in the motion. In either event, the court must specify the
18 reasons in its order.

19 (e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a
20 judgment must be filed no later than 28 days after service of written notice of entry of
21 judgment.

22 (f) **No Extensions of Time.** The 28-day time periods specified in this rule cannot
23 be extended under Rule 6(b).

24 [Amended; effective March 1, 2019.]

25 The Court indisputably can order a new trial to take additional evidence; the
26 Court can even take some testimony pursuant to NRCP 59(a)(2) and amend its
27 judgment. Herman requests that if the Court reconsiders its custodial orders, the Court
28 should take new FDF's from the parties for purposes of determining the parties'
current income and recalculate child support pursuant to NAC 425.

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III.
CONCLUSION

HERMAN WILLIAMS requests the following relief at the hearing on this matter:

1. The Court reconsider its custodial orders and award Herman primary physical custody of the three (3) sons because the child interviews were not admitted into evidence and not considerable for purposes of trial, thus the presumption against Nadine was not rebutted.
2. The Court reconsider its orders regarding asset / debt allocation and order that Nadine take her student loans as her separate debt, thereby reallocating one-half of Herman's medical debts to Nadine.
3. The Court reconsider its order regarding income of the parties and take new evidence (FDF's) to determine appropriate support orders.

DATED this 15th day of April 2021

ROBBINS & ONELLO

/s/ Jason Onello, Esq.
JASON ONELLO, ESQ.
Nevada Bar No. 14411
9205 W. Russel Rd., Suite 240
Las Vegas, Nevada 89148
(702) 608-2331 (Phone)
(702) 442-9971 (Fax)
Email: staff@onellolaw.com
Attorney for *Defendant*

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eSignature Details

Signer ID:	RHXwFJ6jKJ5iTqpR1LZog393
Signed by:	Herman Williams
Sent to email:	hermanwilliams052@gmail.com
IP Address:	172.58.75.6
Signed at:	Apr 15 2021, 4:33 pm PDT

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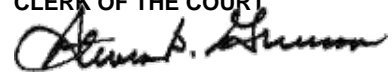
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MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

NADINE ALECIA WILLIAMS

Plaintiff/Petitioner

v.

HERMAN GEORGE WILLIAMS

Defendant/Respondent

Case No. D-19-586291-D

Dept. I

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

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

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

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

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

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

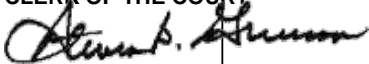
Step 3. Add the filing fees from Step 1 and Step 2.

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

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

Party filing Motion/Opposition: Attorney for Defendant Date 04/15/2021

Signature of Party or Preparer /s/ Nicole Fasulo



1 **OPPS**
2 FRANK J TOTI 005804
3 6900 Westcliff Drive #500
4 Las Vegas Nevada 89145
5 p 702.364.1604 f 702.364.1603
6 Attorney for N. Williams

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DISTRICT COURT
CLARK COUNTY NEVADA

NADINE WILLIAMS
Plaintiff,

v

HERMAN GEORGE WILLIAMS
Defendant

} Case D 19 586291 D
} Dept I
} Family Court

} **Date and Time of Hearing:**
} **June 10, 2021 @ 8.30 am**

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION AND COUNTERMOTION

Comes now, Plaintiff, Nadine Williams, by and through her
attorney of record, Frank J Toti Esquire, and hereby submits this
Opposition and Countermotion to Plaintiff's Motion heretofore filed with
the Court on April 15, 2021.

1 This Opposition and Countermotion is made and based upon these
2 Points and Authorities, the affidavits and exhibits attached hereto, the
3 pleadings and papers on file herein and such oral argument as may be
4 allowed at the time of the hearing.
5

6 DATED this the seventh day of May, 2021
7
8
9

10 /s/ Frank J Toti Esq
11 FRANK J TOTI 005804
12 6900 Westcliff Drive #500
13 Las Vegas Nevada 89145
14 Attorney for N. Williams

15 **POINTS AND AUTHORITIES**

16 **Statement of Facts**

17
18 This matter last came before the Court on February 11, 2021 as and
19 for a trial to determine the issues of the custody, visitation and support
20 of the minor children, the division of assets and debts and the requests
21 for alimony and attorneys' fees. After trial concluded on February 11,
22 2021, the Court took the matter under advisement and issued a written
23 Decision and Order on February 26, 2021. The Notice of Entry of Order
24 of the Decision and Order was filed on April 1, 2021 and Herman's motion
25 for reconsideration was filed on April 15, 2021.
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a. The Court should not reconsider its custody orders.

1. In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court that joint physical custody would be in the best interest of the child, the court may grant physical custody to the parties jointly.
2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
3. The court shall award physical custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
 - (a) To both parents jointly pursuant to NRS 125C.0025 or to either parent pursuant to NRS 125C.003. If the court does not enter an order awarding joint physical custody of a child after either parent has applied for joint physical custody, the court shall state in its decision the reason for its denial of the parent's application.
 - (b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.
 - (c) To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.
 - (d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.
4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:
 - (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.
 - (b) Any nomination of a guardian for the child by a parent.
 - (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
 - (d) The level of conflict between the parents.
 - (e) The ability of the parents to cooperate to meet the needs of the child.
 - (f) The mental and physical health of the parents.
 - (g) The physical, developmental and emotional needs of the child.
 - (h) The nature of the relationship of the child with each parent.
 - (i) The ability of the child to maintain a relationship with any sibling.
 - (j) Any history of parental abuse or neglect of the child or a sibling of the child.

1 *(k) Whether either parent or any other person seeking physical custody has engaged in*
2 *an act of domestic violence against the child, a parent of the child or any other person*
3 *residing with the child.*

4 *(l) Whether either parent or any other person seeking physical custody has committed*
5 *any act of abduction against the child or any other child.*

6 *5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by*
7 *the court after an evidentiary hearing and finding by clear and convincing evidence*
8 *that either parent or any other person seeking physical custody has engaged in one or*
9 *more acts of domestic violence against the child, a parent of the child or any other*
10 *person residing with the child creates a rebuttable presumption that sole or joint*
11 *physical custody of the child by the perpetrator of the domestic violence is not in the*
12 *best interest of the child. Upon making such a determination, the court shall set forth:*

13 *(a) Findings of fact that support the determination that one or more acts of domestic*
14 *violence occurred; and*

15 *(b) Findings that the custody or visitation arrangement ordered by the court*
16 *adequately protects the child and the parent or other victim of domestic violence who*
17 *resided with the child.*

18 *6. If after an evidentiary hearing held pursuant to subsection 5 the court determines*
19 *that each party has engaged in acts of domestic violence, it shall, if possible, then*
20 *determine which person was the primary physical aggressor. In determining which*
21 *party was the primary physical aggressor for the purposes of this section, the court*
22 *shall consider:*

23 *(a) All prior acts of domestic violence involving either party;*

24 *(b) The relative severity of the injuries, if any, inflicted upon the persons involved in*
25 *those prior acts of domestic violence;*

26 *(c) The likelihood of future injury;*

27 *(d) Whether, during the prior acts, one of the parties acted in self-defense; and*

28 *(e) Any other factors which the court deems relevant to the determination.*

In such a case, if it is not possible for the court to determine which party is the primary
physical aggressor, the presumption created pursuant to subsection 5 applies to both
parties. If it is possible for the court to determine which party is the primary physical
aggressor, the presumption created pursuant to subsection 5 applies only to the party
determined by the court to be the primary physical aggressor.

7. A determination by the court after an evidentiary hearing and finding by clear and
convincing evidence that either parent or any other person seeking physical custody
has committed any act of abduction against the child or any other child creates a
rebuttable presumption that sole or joint physical custody or unsupervised visitation
of the child by the perpetrator of the abduction is not in the best interest of the child.

If the parent or other person seeking physical custody does not rebut the presumption,
the court shall not enter an order for sole or joint physical custody or unsupervised
visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction
occurred; and

1 (b) Findings that the custody or visitation arrangement ordered by the court
2 adequately protects the child and the parent or other person from whom the child was
3 abducted.

4 8. For the purposes of subsection 7, any of the following acts constitute conclusive
5 evidence that an act of abduction occurred:

6 (a) A conviction of the defendant of any violation of NRS 200.310 to 200.340, inclusive,
7 or 200.359 or a law of any other jurisdiction that prohibits the same or similar
8 conduct;

9 (b) A plea of guilty or nolo contendere by the defendant to any violation of NRS 200.310
10 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the
11 same or similar conduct; or

12 (c) An admission by the defendant to the court of the facts contained in the charging
13 document alleging a violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a
14 law of any other jurisdiction that prohibits the same or similar conduct.

15 9. If, after a court enters a final order concerning physical custody of the child, a
16 magistrate determines there is probable cause to believe that an act of abduction has
17 been committed against the child or any other child and that a person who has been
18 awarded sole or joint physical custody or unsupervised visitation of the child has
19 committed the act, the court shall, upon a motion to modify the order concerning
20 physical custody, reconsider the previous order concerning physical custody pursuant
21 to subsections 7 and 8.

22 10. As used in this section:

23 (a) "Abduction" means the commission of an act described in NRS 200.310 to 200.340,
24 inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or
25 similar conduct.

26 (b) "Domestic violence" means the commission of any act described in NRS 33.018.

27 Herman argues that he should be awarded primary physical
28 custody of the parties' three male minor children and Herman's sole
argument for the same is that because the Court found that Nadine had
committed an act of domestic violence as defined in *NRS 125C.0035(5)*
Nadine needed to overcome the rebuttable presumption also set forth in
NRS 125C.0035(5) in effort for the Court to award her joint physical
custody of the parties' three male minor children and she failed to do so.
However, in determining that it was in the best interests of the parties'

1 three male minor children for the parties to be awarded joint physical
2 custody of the parties three male minor children, this Court found that
3
4 the act of domestic violence that occurred was a one-time occurrence, and
5 the likelihood of future injury was minimal (see Decision and Order, page
6
7 19, lines 16-21)¹. This Court also found that Nadine specifically
8 overcame said presumption (see Decision and Order, page 20, lines 12
9
10 through 16). In doing so, this Court found that Herman speaks
11 negatively about Nadine (see Decision and Order, page 21, lines 17
12
13 through 23), that Herman refuses to communicate with Nadine regarding
14 the minor children (see Decision and Order, page 22, lines 9 through 11)
15
16 and that Herman had a high level of anger towards Nadine and that the
17 same prevents his ability to co-parent with Nadine (see Decision and
18
19 Order, page 23, lines 2 through 10).

20 As a result of the above, Nadine clearly overcame the presumption
21
22 as set forth in *NRS 125C.0035(5)* and the Court was not incorrect in
23
24 awarding the parties joint physical custody of the parties' three male
25
26 children.

27 ¹ To be clear, Nadine denies committing any acts of domestic violence. Due to time constraints, Nadine was not able
28 to testify after Nadine's mother alleged that Nadine had committed an act of domestic violence against her. Nadine
would point out to the Court that she has never been arrested, let alone convicted, of committing an act of domestic
violence against anyone.

1 Nadine is confused however regarding the Court awarding Herman
2 joint physical custody of the parties' female minor child. It is undisputed
3 that the minor child has been solely in Nadine's care for over a year and
4 Herman himself requested that Nadine be granted primary physical
5 custody of the parties' female minor child (see Defendant's Pretrial
6 Memorandum, page 2, lines 9 through 11). The Court indicated that it
7 was penalizing Nadine for not arranging counseling between Herman
8 and the parties' female minor child, but the same was not Nadine's
9 responsibility (see Order file with the Court on February 21, 2020, page
10 3, lines 3 through 8).

15 Nadine, of course, wants the parties' female minor child to have a
16 relationship with Herman, but it is clear Herman has no desire to have
17 a relationship with the parties' female minor child. As a result, Nadine
18 asks that the burden of scheduling counseling sessions between Herman
19 and the parties' female minor child be placed upon Herman. Nadine will
20 ensure that parties' female minor child is present at any and all
21 counseling sessions Herman schedules, but it is a tremendous waste of
22 energy and effort for Nadine to attempt to schedule counseling sessions
23 between Herman and the parties' female minor child when Herman
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1 continues to refuse to cooperate and communicate with Nadine regarding
2 the minor children as Herman still refuses to communicate with Nadine
3 regarding any of the minor children. It is a fiction to award the parties
4 joint physical custody of the minor child because the parties' female
5 minor child has solely been in Nadine's care for over a year and there is
6 no indication that the parties' minor child will ever resume a relationship
7 with Herman. As a result, Nadine should be awarded primary physical
8 custody of the parties' female minor child.
9

10
11 As a result of Herman refusing to cooperate and communicate with
12 Nadine regarding the minor children, the minor children are no longer
13 able to be enrolled at the charter school Herman had agreed to at the
14 February 11, 2021 trial. As set forth throughout this matter, Herman
15 simply refuses to assist Nadine in any capacity regarding the minor child
16 – to the detriment of the minor children. Nadine is not optimistic that
17 Herman will ever attempt to cooperate and communicate with her in an
18 effort to co-parent the minor children. As a result, Nadine asks that she
19 be allowed to make decisions for the minor child without Herman's input
20 if Herman does not respond to Nadine's joint legal custody concerns
21 regarding the minor children within twenty-four hours.
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1 **b. The Court should not reconsider its decision regarding**
2 **Nadine's student loan but should reallocate how Nadine's**
3 **student loan should be repaid.**

4 Herman argues that there was no evidence presented as to why
5 Nadine's student loan debt should be treated as community debt.
6 However, as the Court determined, Nadine's student loan debt was
7 incurred during the marriage and as a result Nadine's student loan debt
8 is presumed to be community debt. It would be Herman's obligation to
9 prove to this Court that Nadine's student loan debt should be considered
10 her sole and separate debt, and the Court found that since there was no
11 evidence received by the Court from either party that any property was
12 the separate property of either party that the Court will treat all debts
13 as community property (see Decision and Order, page 31, lines 1 through
14 28).

15 Herman now for the first time argues that since he did not "benefit"
16 from the monies Nadine obtained as a result of her student loan that he
17 should not now be responsible to pay for one-half of Nadine's student loan
18 debt. Herman cites authority regarding the same, however there is not
19 a single authority that is so persuasive that it would give this Court
20 pause to even consider labeling Nadine's student loan debt her separate
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1 debt rather than community debt and further Herman provides this
2 Court no Nevada authority regarding the same.

3
4 Nadine would further point out that Herman did benefit from the
5 proceeds from the student loan. First, Herman benefited from the
6 proceeds from the student loan as the parties utilized some of the
7 proceeds from the student loan to defray living expenses while Nadine
8 attended school. Second, Herman benefited from the proceeds from the
9 student loan as a result of Nadine being able to earn sufficient income
10 after obtaining her nursing degree to solely support the community
11 financially while Herman attempted to open his own business.

12
13 As to the issue of Herman's medical debts, Nadine does not dispute
14 the same are community debt (although Nadine could argue that she did
15 not benefit from Herman's medical debts). However, Herman testified
16 at trial that he has not received any recent invoices regarding his medical
17 debts and that he has not paid any monies towards his medical debts.
18 When asked whether the medical debts had been "written off," Herman
19 indicated that he did not know. Nadine's student loan debt is an actual
20 debt of the community and Nadine is actively paying towards her student
21 loan debt. As a result, Nadine asks the Court to order that Herman pay
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1 one-half of the monthly obligation associated with her student loan debt
2 and that if in the future Herman is forced to pay any monies as and for
3 his medical debt, Nadine will pay one-half of any monies Herman
4 actually pays in effort to satisfy his medical debt.
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6
7 **c. The Court should not reconsider how it derived the incomes**
8 **of the parties.**

9 Herman incorrectly asserts that the Court relied on the Financial
10 Disclosure Form that he “incorrectly prepared” in effort to determine
11 Herman’s income. The same is simply incorrect. The Court extrapolated
12 Herman’s own testimony in determining Heman’s income (see Decision
13 and Order pages 26 and 27, lines 12 through 28 and lines 1 through 15).
14 Nadine would contend that if the Court is incorrect regarding Herman’s
15 income it is because the Court is underestimating Herman’s income due
16 to the fact that much of Herman’s income is cash which Herman either
17 underreports or doesn’t report at all.
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22 Herman next argues that Nadine’s income should be based upon
23 Nadine’s 2019 earnings however Herman does not cite any authority for
24 the same but rather simply states that Nadine’s testimony regarding her
25 financials was not credible. Nadine’s Financial Disclosure Form which
26 was properly prepared and did provide the Court with recent paystubs
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1 proving her current income was correctly accepted by the Court.
2 However, the Court did find that Nadine's gross monthly income was
3 slightly higher than Nadine set forth on her Financial Disclosure Form.
4 Specifically, Nadine indicated on her Financial Disclosure Form that her
5 gross monthly income was the sum of \$9'583.00 while the Court
6 concluded that Nadine's gross monthly income was the sum of \$10'382.00
7 (see Decision and Order, page 27, lines 16 through 19)². Nadine testified
8 as to why her 2020 income was different than her 2019 income and the
9 Court made no finding that Nadine's testimony regarding her 2020 and
10 2019 income was not credible.

11 **d. The Court should not reconsider its ruling regarding the**
12 **rings.**

13 The Court, after considering the testimony of the parties found that
14 Herman owes Nadine the sum of \$7'000.00 as and for Nadine's rings that
15 Herman pawned without her permission or consent. Herman asks the
16 Court to allow him to provide evidence as to the amount of monies he
17 received in exchange for pawning the rings. Nadine asks that the Court

27 ² Nadine would contend that she is a salaried employee and she earns the sum of \$115'000.00 per year – the sum of
28 \$9'583.00 per month. Nadine believes the Court may have misunderstood her testimony and her paystubs that she
attached to her Financial Disclosure Form because Nadine is only paid twice per month (twenty-four times per year),
rather than every two weeks (twenty-six times per year).

1 deny the same. First, the time for Herman to provide any evidence to
2 contradict Nadine's testimony regarding the rings has passed. Second,
3 whatever amount Herman received in in exchange for pawning the rings
4 is not an indication of the value of the rings rather it is simply the amount
5 Herman agreed to receive in exchange for the pawning of the rings. If
6 Herman had a recent appraisal of the rings, perhaps the same would be
7 persuasive to the Court, however again, the amount Herman received in
8 in exchange for pawning the rings is not simply an indication of the value
9 of the rings.
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14 **Countermotion**

15 **a. Herman should sign all papers necessary for the minor**
16 **children's passports to be renewed.**

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18 Shortly after trial, Nadine, via counsel, asked Herman to sign all
19 necessary papers in effort for the minor children's passports to be
20 renewed. Not surprisingly, Herman refused. Nadine has traveled with
21 the minor children outside the United States of America in the past and
22 desires to do so in the future as Nadine has friends in family in several
23 countries outside of the United States of America, most notably the
24 country of Australia. There is no basis for Herman to refuse to sign all
25 necessary papers in effort for the minor children's passports to be
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1 renewed, and the same is just another example of Herman's
2 unwillingness to cooperate with Nadine.

3
4 As a result, Nadine requests that the Court order Herman to sign
5 all papers necessary in effort for the minor children's passports to be
6 renewed.
7

8 **b. Nadine is entitled to attorney's fees.**

9
10 *NRS. 18.010*, states as follows:

- 11 *1. The compensation of an attorney and counselor for his services is*
12 *governed by agreement, express or implied, which is not restrained by law.*
13 *2. In addition to the cases where an allowance is authorized by specific*
14 *statue, the court may make an allowance of attorney's fees to a prevailing*
15 *party:*
16 *a. When he has not recovered more than \$20,000.00; or*
17 *b. Without regard to the recovery sought, when the court finds that the*
18 *claim, counterclaim, cross-claim, or third-party complaint or defense of*
19 *the opposing party was brought without reasonable ground or to harass*
20 *the prevailing party.*
21 *3. In awarding attorney's fees the court may pronounce its decision on the*
22 *fees at the conclusion of the trial or special proceedings without written*
23 *motion and with or without presentation of additional evidence*
24 *4. No oral application or written motion for attorney's fees alters the effect*
25 *of a final judgment rendered in the action or the time permitted for an*
26 *appeal there from.*
27 *5. Subsections 2,3, and 4 do not apply to any action arising out of a written*
28 *instrument or agreement which entitles a prevailing to an award of*
reasonable attorney's fees.

1 An award of attorney's fees where is warranted when the
2 nonmoving party's opposition is without reasonable ground, or to harass
3 the moving party. An award of attorney's fees is within the sound
4 discretion of the court. *County of Clark v. Richard Blanchard*
5 *Construction Company, 98 Nev. 48, 653 P.2d 1217 (1982).* Herman's
6 motion to reconsider was frivolously filed and Herman has no legitimate
7 basis for refusing to sign necessary papers in effort for the minor
8 children's passports to be renewed. As a result, Nadine should be
9 awarded attorney's fees and requests the sum of \$3'000.00.

14 Pursuant to *Brunzell v. Golden Gate Nat'l Bank, 85 Nv 345 (1969),*
15 the court should take into consideration the following factors when
16 determining an award of attorney's fees. (1) The qualities of the advocate:
17 Mr. Toti has been practicing law for more than twenty years and is a
18 Nevada Board Certified Family Law Specialist. Approximately 98% of
19 Mr. Toti's practice is dedicated to family law. (2) The character and
20 difficulty of the work performed: The intricacy, importance, time and skill
21 required to prepare for and argue this Motion is moderate. (3) The work
22 actually performed by the attorney: Approximately seven hours were
23 spent obtaining the facts, background, research and preparation of this
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1 Opposition and Countermotion and it is unknown how much further
2 work will be necessary to bring this matter to conclusion. This does not
3
4 account for any time spent in court. (4) The result obtained: is yet to be
5 determined.

6
7 **Conclusion**

8 Based on the above argument, Nadine asks for this Honorable Court to grant
9 the following relief:
10

- 11 1. That Herman's motion be denied in its entirety.
- 12 2. That Nadine be granted primary physical custody of the parties' female
13 minor child.
- 14 3. That the Court order Herman to pay one-half of the monthly obligation
15 associated with Nadine's student loan debt and that if in the future
16 Herman is forced to pay any monies as and for his medical debt, Nadine
17 pay one-half of any monies Herman actually pays in effort to satisfy his
18 medical debt.
- 19 4. That Herman be ordered to sign all necessary papers in effort for the
20 minor children's passports to be renewed
- 21 5. That Nadine be awarded attorney's fees.
- 22 6. For such other and further relief as the Court deems appropriate.

23 Dated this the seventh day of May, 2021
24

25
26 /s/ Frank J Toti Esq
27 FRANK J TOTI 005804
28 6900 Westcliff Drive #500
Las Vegas Nevada 89145
Attorney for N. Williams

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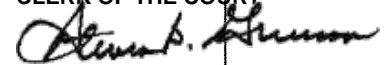
AFFIDAVIT OF NADINE WILLIAMS

STATE OF NEVADA)
) ss.
COUNTY OF NEVADA)

Nadine Williams, being first duly sworn, upon her oath, deposes
and says that:

1. I am the Plaintiff in the above-entitled action.
2. I have read the foregoing Opposition and Countermotion, know the contents thereof, and the same are true of my own knowledge, except as to matters therein stated upon information and belief and as to those matters, I believe them to be true. I specifically incorporate those statements, as if they were set forth in full herein.

 /s/ Nadine Williams
Nadine Williams



1 **PSER**
2 FRANK J TOTI 005804
3 6900 Westcliff Drive #500
4 Las Vegas Nevada 89145
5 p 702.364.1604 f 702.364.1603
6 frank@fjtesq.com
7 Attorney for Plaintiff

8 **DISTRICT COURT FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 NADINE WILLIAMS,
11 Plaintiff,

12 v

13 HERMAN GEORGE WILLIAMS,
14 Defendant.

15 } Case No. D-19-586291-D
16 } Dept No. I
17 }

18 **PROOF OF SERVICE**

19 I hereby certify that service of the foregoing **PLAINTIFF'S OPPOSITION**
20 **TO DEFENDANT'S MOTION AND COUNTERMOTION** was made on
21 the 12th day of MAY, 2021 pursuant to NRCP 5(b)(2)(D), and EDCR 8.05,
22 by electronic service via the Court's E-Filing System to the following:

23 KENNETH ROBBINS

24 eservice@robbinsandonellolaw.com

25 /s/Marina Valdez
26 MARINA VALDEZ
27 Legal Asst/Office Admin.
28



1 **OPPS**
2 FRANK J TOTI 005804
3 6900 Westcliff Drive #500
4 Las Vegas Nevada 89145
p 702.364.1604 f 702.364.1603
Attorney for N. Williams

5 DISTRICT COURT
6 CLARK COUNTY NEVADA

7 NADINE WILLIAMS
8 Plaintiff,

9 v

10
11 HERMAN GEORGE WILLIAMS
12 Defendant
13

} Case D 19 586291 D
} Dept I

} Family Court

} Date and Time of Hearing:
} June 10, 2021 @ 8.30 am
}

14
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16
17 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S**
18 **MOTION AND COUNTERMOTION**
19

20 Comes now, Plaintiff, Nadine Williams, by and through her
21 attorney of record, Frank J Toti Esquire, and hereby submits this
22 Opposition and Countermotion to Plaintiff's Motion heretofore filed with
23 the Court on April 15, 2021.
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1 This Opposition and Countermotion is made and based upon these
2 Points and Authorities, the affidavits and exhibits attached hereto, the
3 pleadings and papers on file herein and such oral argument as may be
4 allowed at the time of the hearing.
5

6
7 DATED this the seventh day of May, 2021
8
9

10 /s/ Frank J Toti Esq
11 FRANK J TOTI 005804
12 6900 Westcliff Drive #500
13 Las Vegas Nevada 89145
14 Attorney for N. Williams

15 **POINTS AND AUTHORITIES**

16 **Statement of Facts**

17
18 This matter last came before the Court on February 11, 2021 as and
19 for a trial to determine the issues of the custody, visitation and support
20 of the minor children, the division of assets and debts and the requests
21 for alimony and attorneys' fees. After trial concluded on February 11,
22 2021, the Court took the matter under advisement and issued a written
23 Decision and Order on February 26, 2021. The Notice of Entry of Order
24 of the Decision and Order was filed on April 1, 2021 and Herman's motion
25 for reconsideration was filed on April 15, 2021.
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Legal Argument

Opposition

a. The Court should not reconsider its custody orders.

NRS 125C.0035 states:

1. *In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court that joint physical custody would be in the best interest of the child, the court may grant physical custody to the parties jointly.*
2. *Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.*
3. *The court shall award physical custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:*
 - (a) *To both parents jointly pursuant to NRS 125C.0025 or to either parent pursuant to NRS 125C.003. If the court does not enter an order awarding joint physical custody of a child after either parent has applied for joint physical custody, the court shall state in its decision the reason for its denial of the parent's application.*
 - (b) *To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.*
 - (c) *To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.*
 - (d) *To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.*
4. *In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:*
 - (a) *The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.*
 - (b) *Any nomination of a guardian for the child by a parent.*
 - (c) *Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.*
 - (d) *The level of conflict between the parents.*
 - (e) *The ability of the parents to cooperate to meet the needs of the child.*
 - (f) *The mental and physical health of the parents.*
 - (g) *The physical, developmental and emotional needs of the child.*
 - (h) *The nature of the relationship of the child with each parent.*
 - (i) *The ability of the child to maintain a relationship with any sibling.*
 - (j) *Any history of parental abuse or neglect of the child or a sibling of the child.*

1 (k) Whether either parent or any other person seeking physical custody has engaged in
2 an act of domestic violence against the child, a parent of the child or any other person
3 residing with the child.

4 (l) Whether either parent or any other person seeking physical custody has committed
5 any act of abduction against the child or any other child.

6 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by
7 the court after an evidentiary hearing and finding by clear and convincing evidence
8 that either parent or any other person seeking physical custody has engaged in one or
9 more acts of domestic violence against the child, a parent of the child or any other
10 person residing with the child creates a rebuttable presumption that sole or joint
11 physical custody of the child by the perpetrator of the domestic violence is not in the
12 best interest of the child. Upon making such a determination, the court shall set forth:

13 (a) Findings of fact that support the determination that one or more acts of domestic
14 violence occurred; and

15 (b) Findings that the custody or visitation arrangement ordered by the court
16 adequately protects the child and the parent or other victim of domestic violence who
17 resided with the child.

18 6. If after an evidentiary hearing held pursuant to subsection 5 the court determines
19 that each party has engaged in acts of domestic violence, it shall, if possible, then
20 determine which person was the primary physical aggressor. In determining which
21 party was the primary physical aggressor for the purposes of this section, the court
22 shall consider:

23 (a) All prior acts of domestic violence involving either party;

24 (b) The relative severity of the injuries, if any, inflicted upon the persons involved in
25 those prior acts of domestic violence;

26 (c) The likelihood of future injury;

27 (d) Whether, during the prior acts, one of the parties acted in self-defense; and

28 (e) Any other factors which the court deems relevant to the determination.

In such a case, if it is not possible for the court to determine which party is the primary
physical aggressor, the presumption created pursuant to subsection 5 applies to both
parties. If it is possible for the court to determine which party is the primary physical
aggressor, the presumption created pursuant to subsection 5 applies only to the party
determined by the court to be the primary physical aggressor.

7. A determination by the court after an evidentiary hearing and finding by clear and
convincing evidence that either parent or any other person seeking physical custody
has committed any act of abduction against the child or any other child creates a
rebuttable presumption that sole or joint physical custody or unsupervised visitation
of the child by the perpetrator of the abduction is not in the best interest of the child.

If the parent or other person seeking physical custody does not rebut the presumption,
the court shall not enter an order for sole or joint physical custody or unsupervised
visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction
occurred; and

1 (b) Findings that the custody or visitation arrangement ordered by the court
2 adequately protects the child and the parent or other person from whom the child was
abducted.

3 8. For the purposes of subsection 7, any of the following acts constitute conclusive
evidence that an act of abduction occurred:

4 (a) A conviction of the defendant of any violation of NRS 200.310 to 200.340, inclusive,
5 or 200.359 or a law of any other jurisdiction that prohibits the same or similar
conduct;

6 (b) A plea of guilty or nolo contendere by the defendant to any violation of NRS 200.310
7 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the
same or similar conduct; or

8 (c) An admission by the defendant to the court of the facts contained in the charging
9 document alleging a violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a
law of any other jurisdiction that prohibits the same or similar conduct.

10 9. If, after a court enters a final order concerning physical custody of the child, a
11 magistrate determines there is probable cause to believe that an act of abduction has
12 been committed against the child or any other child and that a person who has been
13 awarded sole or joint physical custody or unsupervised visitation of the child has
committed the act, the court shall, upon a motion to modify the order concerning
physical custody, reconsider the previous order concerning physical custody pursuant
to subsections 7 and 8.

14 10. As used in this section:

15 (a) "Abduction" means the commission of an act described in NRS 200.310 to 200.340,
16 inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or
similar conduct.

17 (b) "Domestic violence" means the commission of any act described in NRS 33.018.

18 Herman argues that he should be awarded primary physical
19 custody of the parties' three male minor children and Herman's sole
20 argument for the same is that because the Court found that Nadine had
21 committed an act of domestic violence as defined in *NRS 125C.0035(5)*
22 Nadine needed to overcome the rebuttable presumption also set forth in
23 *NRS 125C.0035(5)* in effort for the Court to award her joint physical
24 custody of the parties' three male minor children and she failed to do so.
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28 However, in determining that it was in the best interests of the parties'

1 three male minor children for the parties to be awarded joint physical
2 custody of the parties three male minor children, this Court found that
3 the act of domestic violence that occurred was a one-time occurrence, and
4 the likelihood of future injury was minimal (see Decision and Order, page
5 19, lines 16-21)¹. This Court also found that Nadine specifically
6 overcame said presumption (see Decision and Order, page 20, lines 12
7 through 16). In doing so, this Court found that Herman speaks
8 negatively about Nadine (see Decision and Order, page 21, lines 17
9 through 23), that Herman refuses to communicate with Nadine regarding
10 the minor children (see Decision and Order, page 22, lines 9 through 11)
11 and that Herman had a high level of anger towards Nadine and that the
12 same prevents his ability to co-parent with Nadine (see Decision and
13 Order, page 23, lines 2 through 10).

14 As a result of the above, Nadine clearly overcame the presumption
15 as set forth in *NRS 125C.0035(5)* and the Court was not incorrect in
16 awarding the parties joint physical custody of the parties' three male
17 children.

18 ¹ To be clear, Nadine denies committing any acts of domestic violence. Due to time constraints, Nadine was not able
19 to testify after Nadine's mother alleged that Nadine had committed an act of domestic violence against her. Nadine
20 would point out to the Court that she has never been arrested, let alone convicted, of committing an act of domestic
21 violence against anyone.

1 Nadine is confused however regarding the Court awarding Herman
2 joint physical custody of the parties' female minor child. It is undisputed
3 that the minor child has been solely in Nadine's care for over a year and
4 Herman himself requested that Nadine be granted primary physical
5 custody of the parties' female minor child (see Defendant's Pretrial
6 Memorandum, page 2, lines 9 through 11). The Court indicated that it
7 was penalizing Nadine for not arranging counseling between Herman
8 and the parties' female minor child, but the same was not Nadine's
9 responsibility (see Order file with the Court on February 21, 2020, page
10 3, lines 3 through 8).

15 Nadine, of course, wants the parties' female minor child to have a
16 relationship with Herman, but it is clear Herman has no desire to have
17 a relationship with the parties' female minor child. As a result, Nadine
18 asks that the burden of scheduling counseling sessions between Herman
19 and the parties' female minor child be placed upon Herman. Nadine will
20 ensure that parties' female minor child is present at any and all
21 counseling sessions Herman schedules, but it is a tremendous waste of
22 energy and effort for Nadine to attempt to schedule counseling sessions
23 between Herman and the parties' female minor child when Herman
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1 continues to refuse to cooperate and communicate with Nadine regarding
2 the minor children as Herman still refuses to communicate with Nadine
3 regarding any of the minor children. It is a fiction to award the parties
4 joint physical custody of the minor child because the parties' female
5 minor child has solely been in Nadine's care for over a year and there is
6 no indication that the parties' minor child will ever resume a relationship
7 with Herman. As a result, Nadine should be awarded primary physical
8 custody of the parties' female minor child.
9

12 As a result of Herman refusing to cooperate and communicate with
13 Nadine regarding the minor children, the minor children are no longer
14 able to be enrolled at the charter school Herman had agreed to at the
15 February 11, 2021 trial. As set forth throughout this matter, Herman
16 simply refuses to assist Nadine in any capacity regarding the minor child
17 – to the detriment of the minor children. Nadine is not optimistic that
18 Herman will ever attempt to cooperate and communicate with her in an
19 effort to co-parent the minor children. As a result, Nadine asks that she
20 be allowed to make decisions for the minor child without Herman's input
21 if Herman does not respond to Nadine's joint legal custody concerns
22 regarding the minor children within twenty-four hours.
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1 **b. The Court should not reconsider its decision regarding**
2 **Nadine's student loan but should reallocate how Nadine's**
3 **student loan should be repaid.**

4 Herman argues that there was no evidence presented as to why
5 Nadine's student loan debt should be treated as community debt.
6
7 However, as the Court determined, Nadine's student loan debt was
8 incurred during the marriage and as a result Nadine's student loan debt
9 is presumed to be community debt. It would be Herman's obligation to
10 prove to this Court that Nadine's student loan debt should be considered
11 her sole and separate debt, and the Court found that since there was no
12 evidence received by the Court from either party that any property was
13 the separate property of either party that the Court will treat all debts
14 as community property (see Decision and Order, page 31, lines 1 through
15 28).
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20 Herman now for the first time argues that since he did not "benefit"
21 from the monies Nadine obtained as a result of her student loan that he
22 should not now be responsible to pay for one-half of Nadine's student loan
23 debt. Herman cites authority regarding the same, however there is not
24 a single authority that is so persuasive that it would give this Court
25 a pause to even consider labeling Nadine's student loan debt her separate
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1 debt rather than community debt and further Herman provides this
2 Court no Nevada authority regarding the same.

3
4 Nadine would further point out that Herman did benefit from the
5 proceeds from the student loan. First, Herman benefited from the
6 proceeds from the student loan as the parties utilized some of the
7 proceeds from the student loan to defray living expenses while Nadine
8 attended school. Second, Herman benefited from the proceeds from the
9 student loan as a result of Nadine being able to earn sufficient income
10 after obtaining her nursing degree to solely support the community
11 financially while Herman attempted to open his own business.

12
13 As to the issue of Herman's medical debts, Nadine does not dispute
14 the same are community debt (although Nadine could argue that she did
15 not benefit from Herman's medical debts). However, Herman testified
16 at trial that he has not received any recent invoices regarding his medical
17 debts and that he has not paid any monies towards his medical debts.
18
19 When asked whether the medical debts had been "written off," Herman
20 indicated that he did not know. Nadine's student loan debt is an actual
21 debt of the community and Nadine is actively paying towards her student
22 loan debt. As a result, Nadine asks the Court to order that Herman pay
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1 one-half of the monthly obligation associated with her student loan debt
2 and that if in the future Herman is forced to pay any monies as and for
3 his medical debt, Nadine will pay one-half of any monies Herman
4 actually pays in effort to satisfy his medical debt.
5

6
7 **c. The Court should not reconsider how it derived the incomes**
8 **of the parties.**

9 Herman incorrectly asserts that the Court relied on the Financial
10 Disclosure Form that he “incorrectly prepared” in effort to determine
11 Herman’s income. The same is simply incorrect. The Court extrapolated
12 Herman’s own testimony in determining Heman’s income (see Decision
13 and Order pages 26 and 27, lines 12 through 28 and lines 1 through 15).
14 Nadine would contend that if the Court is incorrect regarding Herman’s
15 income it is because the Court is underestimating Herman’s income due
16 to the fact that much of Herman’s income is cash which Herman either
17 underreports or doesn’t report at all.
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22 Herman next argues that Nadine’s income should be based upon
23 Nadine’s 2019 earnings however Herman does not cite any authority for
24 the same but rather simply states that Nadine’s testimony regarding her
25 financials was not credible. Nadine’s Financial Disclosure Form which
26 was properly prepared and did provide the Court with recent paystubs
27
28

1 proving her current income was correctly accepted by the Court.
2 However, the Court did find that Nadine's gross monthly income was
3 slightly higher than Nadine set forth on her Financial Disclosure Form.
4 Specifically, Nadine indicated on her Financial Disclosure Form that her
5 gross monthly income was the sum of \$9'583.00 while the Court
6 concluded that Nadine's gross monthly income was the sum of \$10'382.00
7 (see Decision and Order, page 27, lines 16 through 19)². Nadine testified
8 as to why her 2020 income was different than her 2019 income and the
9 Court made no finding that Nadine's testimony regarding her 2020 and
10 2019 income was not credible.

11 **d. The Court should not reconsider its ruling regarding the**
12 **rings.**

13 The Court, after considering the testimony of the parties found that
14 Herman owes Nadine the sum of \$7'000.00 as and for Nadine's rings that
15 Herman pawned without her permission or consent. Herman asks the
16 Court to allow him to provide evidence as to the amount of monies he
17 received in exchange for pawning the rings. Nadine asks that the Court

27 ² Nadine would contend that she is a salaried employee and she earns the sum of \$115'000.00 per year – the sum of
28 \$9'583.00 per month. Nadine believes the Court may have misunderstood her testimony and her paystubs that she
attached to her Financial Disclosure Form because Nadine is only paid twice per month (twenty-four times per year),
rather than every two weeks (twenty-six times per year).

1 deny the same. First, the time for Herman to provide any evidence to
2 contradict Nadine's testimony regarding the rings has passed. Second,
3
4 whatever amount Herman received in exchange for pawning the rings
5 is not an indication of the value of the rings rather it is simply the amount
6
7 Herman agreed to receive in exchange for the pawning of the rings. If
8 Herman had a recent appraisal of the rings, perhaps the same would be
9
10 persuasive to the Court, however again, the amount Herman received in
11 in exchange for pawning the rings is not simply an indication of the value
12
13 of the rings.

14 **Countermotion**

15
16 **a. Herman should sign all papers necessary for the minor**
17 **children's passports to be renewed.**

18 Shortly after trial, Nadine, via counsel, asked Herman to sign all
19 necessary papers in effort for the minor children's passports to be
20 renewed. Not surprisingly, Herman refused. Nadine has traveled with
21 the minor children outside the United States of America in the past and
22 desires to do so in the future as Nadine has friends in family in several
23 countries outside of the United States of America, most notably the
24 country of Australia. There is no basis for Herman to refuse to sign all
25 necessary papers in effort for the minor children's passports to be
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1 renewed, and the same is just another example of Herman's
2 unwillingness to cooperate with Nadine.

3
4 As a result, Nadine requests that the Court order Herman to sign
5 all papers necessary in effort for the minor children's passports to be
6 renewed.
7

8 **b. Nadine is entitled to attorney's fees.**

9
10 *NRS. 18.010*, states as follows:

11 *1. The compensation of an attorney and counselor for his services is*
12 *governed by agreement, express or implied, which is not restrained by law.*

13 *2. In addition to the cases where an allowance is authorized by specific*
14 *statue, the court may make an allowance of attorney's fees to a prevailing*
15 *party:*

16 *a. When he has not recovered more than \$20,000.00; or*

17 *b. Without regard to the recovery sought, when the court finds that the*
18 *claim, counterclaim, cross-claim, or third-party complaint or defense of*
19 *the opposing party was brought without reasonable ground or to harass*
20 *the prevailing party.*

21 *3. In awarding attorney's fees the court may pronounce its decision on the*
22 *fees at the conclusion of the trial or special proceedings without written*
23 *motion and with or without presentation of additional evidence*

24 *4. No oral application or written motion for attorney's fees alters the effect*
25 *of a final judgment rendered in the action or the time permitted for an*
26 *appeal there from.*

27 *5. Subsections 2,3, and 4 do not apply to any action arising out of a written*
28 *instrument or agreement which entitles a prevailing to an award of*
reasonable attorney's fees.

1 An award of attorney's fees where is warranted when the
2 nonmoving party's opposition is without reasonable ground, or to harass
3 the moving party. An award of attorney's fees is within the sound
4 discretion of the court. *County of Clark v. Richard Blanchard*
5 *Construction Company, 98 Nev. 48, 653 P.2d 1217 (1982).* Herman's
6 motion to reconsider was frivolously filed and Herman has no legitimate
7 basis for refusing to sign necessary papers in effort for the minor
8 children's passports to be renewed. As a result, Nadine should be
9 awarded attorney's fees and requests the sum of \$3'000.00.
10
11
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13

14 Pursuant to *Brunzell v. Golden Gate Nat'l Bank, 85 Nv 345 (1969),*
15 the court should take into consideration the following factors when
16 determining an award of attorney's fees. (1) The qualities of the advocate:
17 Mr. Toti has been practicing law for more than twenty years and is a
18 Nevada Board Certified Family Law Specialist. Approximately 98% of
19 Mr. Toti's practice is dedicated to family law. (2) The character and
20 difficulty of the work performed: The intricacy, importance, time and skill
21 required to prepare for and argue this Motion is moderate. (3) The work
22 actually performed by the attorney: Approximately seven hours were
23 spent obtaining the facts, background, research and preparation of this
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1 Opposition and Countermotion and it is unknown how much further
2 work will be necessary to bring this matter to conclusion. This does not
3
4 account for any time spent in court. (4) The result obtained: is yet to be
5 determined.

6 7 **Conclusion**

8 Based on the above argument, Nadine asks for this Honorable Court to grant
9
10 the following relief:

- 11 1. That Herman's motion be denied in its entirety.
- 12 2. That Nadine be granted primary physical custody of the parties' female
13 minor child.
- 14 3. That the Court order Herman to pay one-half of the monthly obligation
15 associated with Nadine's student loan debt and that if in the future
16 Herman is forced to pay any monies as and for his medical debt, Nadine
17 pay one-half of any monies Herman actually pays in effort to satisfy his
18 medical debt.
- 19 4. That Herman be ordered to sign all necessary papers in effort for the
20 minor children's passports to be renewed
- 21 5. That Nadine be awarded attorney's fees.
- 22 6. For such other and further relief as the Court deems appropriate.

23 Dated this the seventh day of May, 2021

24
25
26 /s/ Frank J Toti Esq
27 FRANK J TOTI 005804
28 6900 Westcliff Drive #500
Las Vegas Nevada 89145
Attorney for N. Williams

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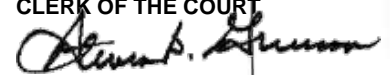
AFFIDAVIT OF NADINE WILLIAMS

STATE OF NEVADA)
) ss.
COUNTY OF NEVADA)

Nadine Williams, being first duly sworn, upon her oath, deposes
and says that:

- 1. I am the Plaintiff in the above-entitled action.
- 2. I have read the foregoing Opposition and Countermotion, know the contents thereof, and the same are true of my own knowledge, except as to matters therein stated upon information and belief and as to those matters, I believe them to be true. I specifically incorporate those statements, as if they were set forth in full herein.

 /s/ Nadine Williams
Nadine Williams



ROPP

KENNETH M. ROBBINS, ESQ.

Nevada Bar No. 13572

JASON ONELLO, ESQ.

Nevada Bar No. 14411

ROBBINS & ONELLO, LLP

9205 W. Russell Rd., Suite 240

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(702) 608-2331 (Phone)

(702) 442-9971 (Fax)

eservice@robbinsandonellolaw.com

Attorney for *Defendant*

DISTRICT COURT – FAMILY DIVISION

CLARK COUNTY, NEVADA

NADINE WILLIAMS,

Plaintiff,

vs.

HERMAN GEORGE WILLIAMS,

Defendant.

Case No.: **D-19-586291-D**

Dept. No.: **I**

HEARING REQUESTED:

YES: _____ NO: _____

DATE:

TIME:

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION

AND
OPPOSITION TO PLAINTIFF'S COUNTERMOTION

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

1 COMES NOW, Defendant, HERMAN GEORGE WILLIAMS, by and through his
2 attorney JASON ONELLO, Esq., of ROBBINS & ONELLO, LLP, and brings this Reply and
3 Opposition and moves this honorable Court for:

- 4 1. An Order denying Plaintiff's Motion in its entirety;
5 2. An order awarding Defendant Attorney's fees and costs;
6 3. For such other and further relief as the Court deems fair, just, and equitable in the
7 premises.
8

9 This reply and opposition is made and based upon the pleadings on file herein,
10 together with the attached Points and Authorities, as well as oral arguments of counsel to be
11 heard at the time of hearing.
12

13 DATED this 26th day of May, 2021.

14 **ROBBINS & ONELLO, LLP**

15 /s/ Jason Onello, Esq.
16 JASON ONELLO, ESQ.
17 Nevada Bar No. 14411
18 **ROBBINS & ONELLO, LLP**
19 9205 W. Russell Rd., Suite 240
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21 (702) 608-2331 (Phone)
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24 Attorney for *Defendant*
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I. STATEMENT OF FACTS

Plaintiff, Nadine Williams (hereinafter "Plaintiff"), and Defendant, Herman Williams (hereinafter "Herman") were married March 2, 2004 in New York. The parties relocated to Clark County, NV in approximately 2015. The parties have four (4) minor children: Abigail (age 16), Herman III (age 12), Matthew (age 11), and Elisha (age 7). The Court held an evidentiary hearing on February 11, 2021 to resolve the following issues: (1) Custody (2) Assets and Debts (3) Child Support (4) Alimony and (5) Attorney Fees. Herman filed a motion requesting reconsideration of Orders that pertain to physical custody (specifically - presumptions that William believes should have been applied), reconsideration of marital property distribution (primarily "rings and student loans"), and child support calculation if the Court determines that custody shall be reconsidered.

II. LEGAL ARGUMENT

A. Plaintiff Did Not Overcome the Presumption Set Forth in NRS 125C.230.

NRS 125C.0035(5) states if a parent seeking physical custody has engaged in one or more acts of domestic violence against the child or any other person residing with the child, a rebuttable presumption is created that awarding that parent custody would not be in the children's best interests. When this presumption is noted, the Court shall set forth:

- (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
- (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

NRS 125C.0035(5).

1 When both parents engaged in acts of domestic violence, the court shall then attempt to
2 determine which person was the primary physical aggressor and consider:

- 3 (a) All prior acts of domestic violence involving any of the parties;
- 4 (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
- 5 (c) The likelihood of future injury;
- 6 (d) Whether, during the prior acts, one of the parties acted in self-defense; and
- 7 (e) Any other factors that the court deems relevant to the determination.

8 NRS 125C.0035(6).

9 Plaintiff alleges she overcame the presumption and points to page 20, lines 12-16, of the
10 Order. However, Plaintiff is pointing *precisely* to the part of the Order where the Court
11 conducted the incorrect analysis. The Court conducted an NRS 125C.0035(6) analysis, which
12 is proper where both parents engaged in acts of domestic violence, when it should have
13 conducted a NRS 125C.0035(5) analysis, which is proper when *only one* parent has engaged in
14 acts of domestic violence. Moreover, this Court based its determination that the presumption
15 had been overcome on information obtained from the child interview. These child interviews
16 were not admitted into evidence, nor were they even sought to be admitted. Child interviews
17 are hearsay and should not have been used as evidence. Because an incorrect analysis was
18 conducted based on information not admitted into evidence, the presumption therefore remains
19 that awarding Plaintiff, a domestic abuser, is not in the children's best interests.

20
21
22 Plaintiff requests Herman bear the burden of scheduling counseling sessions, contrary to
23 this Court's orders. Plaintiff claims putting her daughter's wellbeing first, "is a tremendous
24 waste of energy and effort." The parties will not share joint physical custody of Abigail until
25 June 1, 2021. It is illogical for Herman to schedule the appointments when Abigail resides
26 primarily with Plaintiff. Accordingly, her request should be denied.
27
28

1 Additionally, Plaintiff alleges that she should be granted total decision making authority
2 regarding the children if Herman is unable to reply within twenty-four hours. This is an
3 unreasonable request and, in essence, she is requested sole legal custody of the children. This
4 request should be denied because this honorable Court awarded the parties joint legal custody.
5 Moreover, Plaintiff fails to conduct a best interest analysis which would justify such a change.
6 Although Herman does not dispute the award of physical custody was in error and he should be
7 awarded primary physical custody, the award of legal custody was acceptable and should not
8 be altered. Therefore, Plaintiff's request for sole legal custody should be denied.
9

10
11 **B. Plaintiff's Student Loan Debt Should Be Treated as Her Sole and Separate Debt.**
12

13 The Supreme Court of Nevada has indicated that debt allocation may be made in accordance
14 with each party's ability to pay it. *See Malmquist v. Malmquist*, 792 P.2d 372, 384 (Nev. 1990).
15 In *Malmquist*, the Court awarded the entire community debt to the party with the higher future
16 income. *Id.* The Supreme Court of Nevada noted the district courts of this state are granted
17 broad discretion to determine the equitable distribution of community property and debts; the
18 court need not make an exactly equal division of the community property. *Id.*, *See also Johnson*
19 *v. Steel, Inc.*, 581 P.2d 860, 862 (Nev. 1978).
20

21 Here, there is a substantial difference between the parties' future income. Plaintiff earns a
22 salaried amount of \$145,583.00 per year as a nurse. Herman is a tow truck driver and is paid
23 per job. Due to the nature of Herman's job, his gross income has the potential to fluctuate
24 immensely. On the contrary, Plaintiff possess a highly sought after degree that, more often than
25 not, offers a concrete, yearly salary. Plaintiff will continue to reap the benefits of her degree for
26 years to come. Therefore, this Court should exercise their discretion under *Malmquist* and
27
28

1 require Plaintiff to take her student loans as her sole and separate debt and distribute Herman's
2 medical debt equally among the parties as community debt. Plaintiff claims no authority
3 authorizes such a distribution, but it is hard to imagine a greater authority than The Supreme
4 Court of Nevada.

5
6
7 **C. This Court should Consider Credible Evidence Demonstrating the Value of the Rings.**

8 The Court found Plaintiff filed a police report regarding two (2) rings being stolen from the
9 house, which she valued at \$3,500.00 each. The police investigated and discovered that Herman
10 had pawned the two (2) rings. As a result, the Court ordered Herman pay Plaintiff \$7,000.00
11 for the value of the rings. However, Plaintiff never established how she calculated the value of
12 the rings nor provided a receipt or appraisal document. There was no testimony about the value
13 of these rings. Plaintiff could have easily fabricated an arbitrary number. Consequently, this
14 Court should allow Herman to provide evidence of what amounts he received in return for the
15 rings and reduce the offset by that amount.
16
17

18
19
20 **D. If this Court is Inclined to Alter the Custody Order, Support Considerations Should Be conducted using Plaintiff's 2019 Income.**

21 Plaintiff's own motion confirms the amounts she reported in her financial disclosure form
22 are different than what this court concluded was her gross monthly income. Notably, there is a
23 difference of almost a *thousand* dollars in gross income. Such a discrepancy is not a result of
24 accidental miscalculations but rather intentional fabrication. Hence, this Court should calculate
25 support obligations using Plaintiff's 2019 income.
26
27
28

1 **E. Herman Should Not Be Ordered to Sign the Children's Passport Documents**
2 **Because It Would Not Be in Their Best Interests.**

3 Plaintiff is requesting Herman sign documents so the minor children can obtain passports.
4 Plaintiff states the children need passports so they can travel out of the country. Plaintiff is
5 irresponsibly putting the children at risk by traveling in the midst of a pandemic. Although
6 Nevada has lifted its state restrictions, The Centers for Disease Control and Prevention have
7 declared international travel is by no means safe or recommended—especially because the
8 children are not vaccinated.¹ This Court should not order Herman to sign any necessary
9 documents for the children's passports.
10

11
12 **F. Plaintiff's Request for Attorney's Fees Should Be Denied.**

13 Plaintiff seeks an award of attorney's fees under NRS 18.010, but she is not entitled to
14 attorney's fees under NRS 18.010, either because she has not presented any evidence that any
15 of Herman's claims were frivolous *ab initio* or brought to harass. All Plaintiff makes is broad,
16 conclusory allegations. Based on the foregoing, Plaintiff should not be awarded attorney's fees.
17
18

19 **G. Plaintiff Should Be Awarded Attorney's Fees Should Be Awarded Pursuant to**
20 **NRS 125C.250.**

21 Except as otherwise provided in NRS 125C.250, in an action to determine legal custody,
22 physical custody or visitation with respect to a child, the court may order reasonable fees of
23 counsel and experts and other costs of the proceeding *to be paid in proportions and at times*
24 *determined by the court.* NRS 125C.250 (emphasis added). In *Miller v. Wilfong*, 119 P.3d 727
25
26

27
28 ¹ <https://www.cdc.gov/coronavirus/2019-ncov/travelers/international-travel-during-covid19.html#:~:text=Do%20not%20travel%20internationally%20until,get%20and%20spread%20COVID%2D19.>

1 (2005), the Nevada Supreme Court held that it is within the trial court's discretion to determine
2 the reasonable amount of attorney fees under a statute or rule and that in exercising its
3 discretion, the District Court must evaluate the factors set forth in *Brunzell v. Golden Gate*
4 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), including the qualities of the advocate, the
5 character and difficulty of the work performed, the work actually performed by the attorney,
6 and the result obtained.

7
8 Herman's counsel is an experienced attorney who has litigated numerous divorces, custody,
9 paternity and post-divorce actions. The legal representation in this case involved the collection
10 and analysis of the pertinent information, the preparation of legal documents and court
11 appearances. Herman has incurred attorney's fees in filing this motion. As such, he is requesting
12 he have an award of attorney's fees and costs. Upon the Court's order, his counsel shall prepare
13 and present a *Brunzell* affidavit along with a memorandum of fees and costs
14

15 16 **III. CONCLUSION**

17 WHEREFORE, for the reasons stated above, Defendant requests that he have the relief sought
18 in his motion.

19 DATED this 26th day of May, 2021.

20
21 Respectfully submitted,

22 **ROBBINS & ONELLO, LLP**

23 /s/ Jason Onello
24 JASON ONELLO, ESQ.
25 Nevada Bar No. 14411
26 **ROBBINS & ONELLO, LLP**
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Attorney for *Defendant*

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- 10 I declare under penalty of perjury, under the laws of the State of Nevada and the United
11 States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document:

**DEFENDANT’S REPLY TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S
MOTION
AND
OPPOSITION TO PLAINTIFF’S COUNTERMOTION**

was made this 27th day of May 2021, by:

___ depositing a copy of the same in the U.S. Mails at Las Vegas, Nevada,
postage prepaid, addressed to:

__X__ electronic service through the Notice of Electronic Filing
automatically generated by the Court’s facilities to those parties listed on
the Master Calendar Service List as follows:

David Barragan – david@fjtesq.com
Frank Toti – frank@fjtesq.com

_____/s/ Nicole Fasulo_____
An Employee of ROBBINS & ONELLO

1 TRANS

2 COPY

FILED

JAN 11 2022

Sharon A. Hoffman
CLERK OF COURT

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5

EIGHTH JUDICIAL DISTRICT COURT

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FAMILY DIVISION

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CLARK COUNTY, NEVADA

8

9 NADINE ALECIA WILLIAMS,)

10 Plaintiff,)

CASE NO. D-16-586291-D

11 vs.)

DEPT. I

12 HERMAN GEORGE WILLIAMS,)

APPEAL NO. 83263

13 Defendant.)

(SEALED)

14

BEFORE THE HONORABLE SUNNY BAILEY
DISTRICT COURT JUDGE

15

16

TRANSCRIPT RE: ALL PENDING MOTIONS

17

THURSDAY, JUNE 10, 2021

18 APPEARANCES:

19

The Plaintiff:
For the Plaintiff:

NOT PRESENT
FRANK J. TOTI, ESQ. (Tel.)
6900 Westcliff Drive, #500
Las Vegas, Nevada 89145
(702) 364-1604

20

21

22

The Defendant:
For the Defendant:

HERMAN GEORGE WILLIAMS (Tel.)
KENNETH M. ROBBINS, ESQ. (Tel.)
9205 W. Russel Rd., #240
Las Vegas, Nevada 89148
(702) 608-2331

23

24

1 LAS VEGAS, NEVADA

THURSDAY, JUNE 10, 2021

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

3 (THE PROCEEDINGS BEGAN AT 8:31:56)

4

5 THE COURT: We're on the record at this time,
6 Williams v. Williams, D-586291. At this time, Mr. Toti, can I
7 get your appearance for the record? Oh, Mr. Toti, are you
8 there?

9 MR. TOTI: Judge, Frank Toti, bar number 5804.

10 THE COURT: Thank you. Mr. Robbins, can I get your
11 appearance for the record?

12 MR. ROBBINS: Good morning, Kenneth Robbins, bar
13 number 13572, for Herman Williams. He's present on BlueJeans.

14 THE COURT: Thank you. I have reviewed all of the
15 pleadings at this time for this motion and countermotion. At
16 this point, is there any other things you want to add, Mr.
17 Robbins?

18 MR. ROBBINS: Yeah, I would like to -- to state that
19 in Mom's opposition she files a countermotion asking for other
20 items to be reconsidered. I would like to point out that the
21 time to file any motion to reconsider had passed at that
22 point.

23 THE COURT: I saw the issue --

24 MR. ROBBINS: And --

1 THE COURT: -- with the passport to be a whole
2 separate motion.

3 MR. ROBBINS: Yes. So there were other issue --
4 they -- they had made other requests for reconsideration
5 regarding their daughter Abigail. Any motion regarding
6 Abigail would have to come on a new motion based on evidence
7 or circumstances that occurred after the evidentiary hearing
8 because it was filed more than 14 days after the notice of
9 entry. We filed our motion to reconsider in a timely matter
10 -- a timely manner.

11 And we're requesting that the issue regarding
12 physical custody of the boys be reconsidered due to the fact
13 that the presumption being overcome was based upon the child
14 interviews which were never admitted into evidence. Those
15 child interviews would be hearsay and they were never
16 proffered by Mom even to be admitted and that was the main --
17 main basis that the Court used to determine that the
18 presumption had been overcome. So that's the basis for -- for
19 our motion to reconsider the custody issue.

20 We are also asking for a reconsideration of the
21 student loan debt based on --

22 THE COURT: Yeah, I've read your motion. Anything
23 to add in addition to what's already in your motion?

24 MR. ROBBINS: No, there is nothing -- nothing new to

1 add.

2 THE COURT: Thank you. Mr. Toti, anything new to
3 add to your motion?

4 MR. TOTI: Ju -- just -- just in response to the
5 arguments set forth by Mr. Robbins. Your Honor, as -- as Your
6 Honor is aware, the Court makes decisions regarding custody
7 and visitation and support of minor children when the parties
8 are not in agreement. But based upon the pleadings that were
9 set forth, the parties were in agreement with regard to
10 Abigail and that was the -- that both parties agreed that Mom
11 would have primary physical custody of Abigail. That's the
12 basis for the argument.

13 With regard to the passports, Judge, obviously, the
14 issue of whether or not the children are going to travel
15 during the summer this year, next year, or any time in the
16 future isn't before the Court. The comment, of course, is get
17 the passport signed. And if the parties have a dispute as to
18 travel this summer or in any time in the future, then
19 whichever party is desiring the travel can file the
20 appropriate motion before the court. But to say that the
21 passports simply shouldn't be signed, that's -- that would --
22 that would indicate that the -- you know, that the -- that
23 there is an order or something saying that the -- the children
24 are never allowed to travel outside the country, which I think

1 would be punitive obviously. But as far as if the parties
2 can't agree, then the travel should be based upon, you know,
3 the decision of the Court, but --

4 THE COURT: All right.

5 MS. ABRAMS: -- we -- we can't even get to that if
6 the passports aren't signed. So we ask that those be signed.

7 THE COURT: All right. Just so I can get this out
8 of the way, Mr. Robbins, is your client in -- not in agreement
9 for signing passports? Even if they don't travel, any reason
10 why they can't go get passports?

11 MR. ROBBINS: Yeah, Dad doesn't trust Mom, that if a
12 passport is signed and she's in possession that she wouldn't
13 travel without his consent or -- or talking to him about it
14 first. And her --

15 THE COURT: Couldn't she go and --

16 MR. ROBBINS: -- her behavior ended up --

17 THE COURT: Couldn't she go anywhere around the
18 country the same? We're not concerned about her --

19 MR. ROBBINS: Yes, but --

20 THE COURT: -- fleeing with the children --

21 MR. ROBBINS: Yes.

22 THE COURT: -- are we?

23 MR. ROBBINS: If -- if you recall, there -- there
24 was -- there was significant evidence regarding -- regarding

1 issues in -- in Jamaica; Dad feels that if -- if there were a
2 passport issue that Mom --

3 THE COURT: Okay.

4 MR. ROBBINS: -- could flee to Jamaica.

5 THE COURT: Well, that will need to be litigated.
6 So at this point -- all right. And -- and just so everyone's
7 clear, the issue of the passport was never addressed in the
8 underlying matter that I -- that is anywhere within my
9 decision or anything else. So, therefore, that needs to be a
10 separate motion and it does look like it's going to be
11 litigated. So that will be denied.

12 As far as anything else, a District Court may
13 reconsider a previously decided issue if substantially
14 different evidence is subsequently introduced or if the prior
15 decision was clearly erroneous. I'm -- I'm quoting Masonry
16 and Tile Contractors Association of Southern Nevada vs. Jolley
17 Urga, 113 Nevada 737, also Moore vs. City of Las Vegas, 92
18 Nevada 402. Points or contentions not raised in the first
19 incidence cannot be maintained or considered on rehearing.
20 That's Achrem vs. Expressway Plaza, 112 Nevada 737. Further,
21 a motion for reconsideration will be granted only if the
22 District Court is presented with newly discovered evidence,
23 committed error -- clear error or if there's an intervening
24 change in controlling law that's Kona Enterprises, Inc. Vs.

1 Estate B. Bishop, 229 F.3d 877 (9th Cir. 2000). Pursuant to
2 Masonry and Tile Contractors Association of Southern Nevada,
3 no substantially different evidence was subsequently
4 introduced in Defendant's motion for reconsideration nor was
5 it pointed out the Defendant's prior decision was clearly
6 erroneous.

7 Additionally, pursuant to Kona Enterprises, Inc.,
8 the Court; one, was not presented with newly discovered
9 evidence; two, did not commit clear error in its prior
10 decision and, three, there was no -- there was not an
11 intervening change in controlling law. As such, the motions
12 for reconsideration and the countermotions are hereby denied.
13 No attorney fees will be ordered.

14 However, Mr. Robbins, I will point out that when
15 someone does pawn something, the value received is completely
16 different than the estimated value. So I'm just going to
17 point that out. Other than that, Mr. Toti, can you get me an
18 order?

19 MR. TOTI: Of course, Judge.

20 THE COURT: What's our return date? Was that July
21 1st?

22 THE CLERK: Oh, correct. And the order is going to
23 be July 1st at 11:00 o'clock.

24 THE COURT: July 1st, 11:00 a.m for the order.

1 Please get the order and have Mr. Robbins sign off and then
2 July 1st at 11:00 a.m will be vacated if I receive it prior to
3 that date. And then discuss with Mr. Robbins about the
4 passport. You might be able to come up with a solution, Mr.
5 Toti, where you get the passport, but then Mr. Williams holds
6 onto it.

7 MR. TOTI: I would have no problem with that. And
8 if Ken wants to talk to his client about that, I would be --

9 THE COURT: Mr. Robbins --

10 MR. TOTI: -- I would be amenable.

11 THE COURT: -- did you want to approach that? That
12 way in the event that either one of them later on wants to get
13 permission you have the passports but then it -- that also
14 alleviates Mr. Williams' concern that she will leave the
15 country without his permission because he would actually have
16 those passports which he might want later on for
17 identification purposes or even if they want to do -- I don't
18 know, do some kind of fun extravagant trip now that COVID has
19 lifted things.

20 MR. ROBBINS: Sure, I'll discuss it with him.

21 THE COURT: Thank you very much. Thank you. That
22 concludes --

23 MR. TOTI: Thank you, Judge.

24 (PROCEEDINGS CONCLUDED AT 8:39:28)

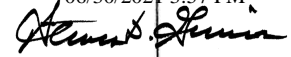
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ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano


CLERK OF THE COURT

ORDER

FRANK J TOTI 005804
6900 Westcliff Drive #500
Las Vegas Nevada 89145
p 702.364.1604 f 702.364.1603
Attorney for N. Williams

DISTRICT COURT
CLARK COUNTY NEVADA

NADINE WILLIAMS

Plaintiff,

v

HERMAN GEORGE WILLIAMS

Defendant

Case D 19 586291 D
Dept I
Family Court

ORDER

This matter, having come on before the Court on this the tenth day of June, 2021, Plaintiff, Nadine Williams, appearing and represented by Frank J Toti Esquire (Plaintiff and Mr. Toti appearing via video conferencing) and Defendant, Herman Williams, appearing and represented by Kenneth M. Robbins (Defendant and Mr. Robbins appearing via video conferencing); the Court having reviewed the pleadings and papers previously on file herein, having considered the arguments of counsel and good cause appearing therefore:

1 **IT IS HEREBY ORDERED** that Defendant's Motion for
2 Reconsideration of the Decision and Order is denied.

3 **IT IS FURTHER ORDERED** that Plaintiff's Countermotion for
4 Alternative Relief as to the Passports is also denied. Plaintiff will need
5 to file a separate motion if Defendant will not sign off on the documents
6 so the minor children can have their passports renewed.

7 **IT IS FURTHER ORDERED** that neither party shall be
8 awarded attorney's fees.

9 Status check date of July 1, 2021 is hereby vacated and the case closed.

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15 Dated this 30th day of June, 2021

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19 **74B FE2 D7BF 5AFA**
20 **Sunny Bailey**
21 **District Court Judge**

22 Submitted by:

23 
24

25 **FRANK J TOTI 005804**
26 **6900 Westcliff Drive #500**
27 **Las Vegas Nevada 89145**
28 **Attorney for N. Williams**

 Approved as to form and content by:


 ID: rzhZv1QbwCokCYnHvbWrx8Rr

KENNETH M. ROBBINS 013572
 732 South Sixth Street #100
 Las Vegas Nevada 89101
 Attorney for G. Williams

eSignature Details

Signer ID:	rxhZv1QbwCokCYnHvbWrx8Rr
Signed by:	Kenny Robbins
Sent to email:	kenny@robbinsandonellolaw.com
IP Address:	174.71.230.114
Signed at:	Jun 30 2021, 3:47 pm PDT

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA
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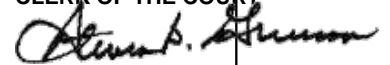
5
6 Nadine Alecia Williams, Plaintiff CASE NO: D-19-586291-D
7 vs. DEPT. NO. Department I
8 Herman George Williams,
9 Defendant.

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/30/2021

15 F Peter James peter@peterjameslaw.com
16 Frank Toti frank@fjtesq.com
17 Marina Valdez Marina@fjtesq.com
18 April Schultz April@PeterJamesLaw.com
19 Eservice Email Eservice@robbinsandonellolaw.com
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1 **NEO**
2 FRANK J TOTI 005804
3 6900 Westcliff Drive #500
4 Las Vegas Nevada 89145
5 p 702.364.1604 f 702.364.1603
6 frank@fftesq.com
7 Attorney for Plaintiff

8 **DISTRICT COURT FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 NADINE WILLIAMS, } Case No. D-19-586291-D
11 Plaintiff, } Dept No. I
12 v }
13 HERMAN GEORGE WILLIAMS, }
14 Defendant. }

15 **NOTICE OF ENTRY OF ORDER**

16 **PLEASE TAKE NOTICE** that an **ORDER** was entered in the above-
17 entitled action on the 30th day of JUNE, 2021 via the Court's E-Filing System and
18 that a true and correct copy of this NEO and the Order was sent as follows:

19 Kenneth Robbins
20 familyfirst@halfpricelawyers.com

21 Peter James
22 peter@peterjameslaw.com

23
24
25 /S/FRANK J TOTI
26 FRANK J. TOTI, ESQ. 005804
27 6900 Westcliff Drive #500
28 Las Vegas, Nevada 89145

1 **ORDR**
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4 Las Vegas Nevada 89145
5 p 702.364.1604 f 702.364.1603
6 Attorney for N. Williams

7 DISTRICT COURT
8 CLARK COUNTY NEVADA

9 NADINE WILLIAMS

10 Plaintiff,

11 v

12 HERMAN GEORGE WILLIAMS

13 Defendant

} Case D 19 586291 D
} Dept I

} Family Court

14 **ORDER**

15 This matter, having come on before the Court on this the tenth
16 day of June, 2021, Plaintiff, Nadine Williams, appearing and
17 represented by Frank J Toti Esquire (Plaintiff and Mr. Toti
18 appearing via video conferencing) and Defendant, Herman Williams,
19 appearing and represented by Kenneth M. Robbins (Defendant and
20 Mr. Robbins appearing via video conferencing); the Court having
21 reviewed the pleadings and papers previously on file herein, having
22 considered the arguments of counsel and good cause appearing
23 therefore:
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IT IS FURTHER ORDERED that Plaintiff's Countermotion for Alternative Relief as to the Passports is also denied. Plaintiff will need to file a separate motion if Defendant will not sign off on the documents so the minor children can have their passports renewed.

Status check date of July 1, 2021 is hereby vacated and the case closed.

James Bailey

Submitted by:

Approved as to form and content by:

Kenneth M. Robbins

KENNETH M. ROBBINS 013572
732 South Sixth Street #100
Las Vegas Nevada 89101
Attorney for G. Williams

eSignature Details

Signer ID:	rxhZv1QbwCokCYnHvbWrx8Rr
Signed by:	Kenny Robbins
Sent to email:	kenny@robbinsandonellolaw.com
IP Address:	174.71.230.114
Signed at:	Jun 30 2021, 3:47 pm PDT



1 **NOAS**
LAW OFFICES OF F. PETER JAMES, ESQ.
2 F. Peter James, Esq.
Nevada Bar No. 10091
3 3821 West Charleston Boulevard, Suite 250
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4 Service@PeterJamesLaw.com
702-256-0087
5 702-256-0145 (fax)
Counsel for Defendant

6
7 **DISTRICT COURT, FAMILY DIVISION**
CLARK COUNTY, NEVADA

8 NADINE WILLIAMS,
9 Plaintiff,

CASE NO. : D-19-586291-D
DEPT. NO. : I

10 vs.

NOTICE OF APPEAL

11 HERMAN WILLIAMS,
12 Defendant.

13
14 Notice is hereby given that Defendant, Herman Williams, hereby appeals
15 to the Supreme Court of Nevada from the Decision and Order entered on

16 ///

17 ///

18 ///

19 ///

20 ///

1 February 26, 2021, from the Order entered June 30, 2021, as well as any
2 temporary orders.

3 Dated this 15th day of July, 2021

4 /s/ *F. Peter James*

5 LAW OFFICES OF F. PETER JAMES
6 F. Peter James, Esq.
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10 702-256-0087
11 Counsel for Defendant
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CERTIFICATE OF SERVICE

I certify that on this 15th day of July, 2021, I caused the above and foregoing document entitled **NOTICE OF APPEAL** to be served as follows:

- ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCp 5(b)(2)(D) and Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

to the attorney(s) / party(ies) listed below at the address(es), email address(es), and/or facsimile number(s) indicated below:

Frank J. Toti, Esq.
6900 Westcliff Drive, Suite 500
Las Vegas, Nevada 89145
702-517-5687
frank@fjtesq.com
Counsel for Plaintiff

By: /s/ F. Peter James

An employee of the Law Offices of F. Peter James, Esq., PLLC