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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT FOR THE STATE OF NEVADA

ADAM SOLINGER, Appellant, vs. CHALESE SOLINGER, Respondent.	Docket Number: 84832-COA **FAST TRACK CHILD CUSTODY RESPONSE**

COMES NOW Respondent, Chalese Solinger, through her attorney, Alex Ghibaudo, Esq. of the law firm of Alex B. Ghibaudo, PC and files the following Fast Track Child Custody Response:

1. Name of party filing this fast track response:

   CHALESE SOLINGER, Defendant in the district court matter.

2. Name, law firm, address, and telephone number of attorney or proper person respondent submitting this fast track response:

   Alex B. Ghibaudo, Esq.
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Attorney for Respondent

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

   Not aware of any such cases

4. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

The procedural history of the case is contained in its entirety in chronological order in the Appellant's Chronological Index of every volume of the appellant's appendix. That appendix contains the entire procedural history of the case, with the names and dates of motions filed. The respondent adopts the appellant's Chronological Index as her procedural history of the case.

5. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

The district court's findings of fact contain the appellant's version. See 17 AA 0003814-39.

6. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

A. Judge Perry erred in granting joint physical custody of the minor children.

a. Judge Perry made her decision upon substantial evidence and well within her discretion.

B. Judge Perry erred in calculating child support.

a. Judge Perry in fact made the correct calculation for child support.

C. Judge Perry erred in ordering Adam be 65% responsible and Chalese 35% responsible for the children's medical, educational, and extracurricular costs.

a. Judge Perry's findings were sufficient to justify the apportionment of costs associated with the minor children because there was a discrepancy in income that is obvious on its face.

D. Judge Perry erred in awarding Chalese a survivorship interest in Adam's PERS.

a. The appellant provides no authority to justify its position. It must, therefore, be disregarded.

E. Judge Perry erred in awarding Chalese all of her attorney's fees and costs of suit and applying Adam's separate property towards same.

a. Judge Perry is authorized to award attorney's fees and costs without a motion under NRS 18.010(3).

F. Judge Perry erred in ordering The Abrams & Mayo Law Firm to distribute funds in their client trust account to Mr. Schneider instead of Chalese

a. Chalese has no position as to this argument.

7. Legal argument, including authorities:

8.

A. **Judge Perry did not Err in granting Joint Physical Custody of the minor children**.

Regarding child custody, the sum of Adam's argument is that Judge Perry was hopelessly biased against him and that bias led to an erroneous ruling regarding custody (the district court Judges' names will be used in lieu of "district court" because both Judge Mary Perry and Judge Cheryl Moss were involved in this extensive and overly litigated matter spanning years of litigation and two (2) separate judges). Appellant's Child Custody Fast Track Statement ("FTS") at 34.

For example, Adam states that Judge Perry "enmeshed" herself in the matter and adopted an "unreasonable and unsubstantiated narrative that Adam was essentially a vexatious litigator who unrelentingly tried to control, bully, and harass Chalese" during the litigation. Id. at 34-35. Based on that conclusory statement, Adam alleges that Judge Perry's judgment was clouded so much so that she repeatedly erred in her rulings and made findings without evidence. Id.

i. Judge Perry's claims were supported by the record, were not legally erroneous, and fell within her the limits of her discretion.

Adam's first assignment of error is that "Judge Perry made sweeping claims that were not supported by the record." FTS at 35. According to Adam, Judge Perry's bias "starts with her belief that Judge Moss treated Chalese in an "abhorrent manner"" when Judge Moss presided over the case. Id. at 35. Adam then claims, as support for this contention, that Judge Perry ignored the evidence that it was Chalese's violation of Judge Moss' numerous orders—orders Judge

Moss held were for the temporary protection of the minor children—that resulted in a change of custody. Id. at 35 citing 3 AA 525-31.

Though he does not realize it, Adam proves Judge Perry's point, a point Judge Perry made in supporting her opinion of Judge Moss' orders. Judge Perry found that Judge Moss repeatedly changed custody at Adam's request as punishment for, according to Adam, violating Judge Moss' orders. 17 AA 3831. Judge Perry first states, in italics, that "*[i]t was argued at the time, that the prior Court, more than once*, reduced Chalese's custodial timeshare and/or actual time as a punishment, and this Court agrees." Id.

As a result, Judge Perry found that "[t]his Court considers the prior Court's using custody as a punishment are (sic) improper, even to "get Chalese's attention." Id. citing *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993), *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 746 (1994) (quoting *Dagher v. Dagher*, 103 Nev. 26, 28 n.3, 731 P.2d 1329, 1330 n.3 (1987) (A court may not use changes of custody as a sword to punish parental misconduct)). In that respect, Judge Perry was simply reiterating this Court's observation in *Blanco v. Blanco* that "a court may not use a change of custody as a sword to punish parental misconduct, such as refusal to obey lawful court orders, because the child's best interest is paramount in such custody decisions" 311 P.3d 1170, 1175 (Nev. 2013).

Judge Perry further backs up her conclusion by outlining the legion of motions filed by Adam, which Judge Perry characterizes as follows: "While both parties filed numerous motions in this matter, almost all of Adam's motions were

filed requesting to take more and more time away from Chalese." 17 AA 003816-3819. For example, on June 17, 2019, Adam filed a motion based on an unsubstantiated "CPS" report and minimal marijuana use (17 AA 003816), which Judge Perry later found was unfounded because marijuana is legal. In that same motion, Adam raises the issue of legally prescribed drugs Chalese was taking for a legitimate diagnosis, insisting on drug testing for that, following Chalese through a private investigator "24/7", using a "GPS" monitor, among other claims made that, apparently, Judge Perry found frivolous and vexatious, and so forth. Id. at 003816-3819.

Adam also argues that Judge Perry's reasoning was lacking or illogical because, on the one hand, she states that Judge Moss' conduct was "abhorrent" but in another instance, Judge Perry states she did not know her "true reasoning." Adam takes those statements out of context to argue that Judge Perry was irrational with regard to Adam. This not so – the two (2) statements are independent of one another. As to the "true reasoning" statement, it was in the context of a discussion between Judge Perry and both counsel regarding the blanket bar on marijuana use while the statement concerning "abhorrent behavior" referred to using alleged parental misconduct as a "sword" to change custody. Compare 21 AA 00436-00437; and 17 AA 003831.

Regarding the former, Judge Perry was wrestling with a prior order regarding marijuana while in the latter, she was making a finding that orders changing custody based on violations of other orders were "abhorrent", and they

are – a parent should not lose custody because orders were violated. The law is clear and settled by this Court in that regard. See *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993); *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 746 (1994) (quoting *Dagher v. Dagher*, 103 Nev. 26, 28 n.3, 731 P.2d 1329, 1330 n.3 (1987) (A court may not use changes of custody as a sword to punish parental misconduct)); *Blanco v. Blanco* that 311 P.3d 1170, 1175 (Nev. 2013) (a court may not use a change of custody as a sword to punish parental misconduct, such as refusal to obey lawful court orders, because the child's best interest is paramount in such custody decisions).

Adam then claims that Judge Perry made findings based on her "characterization of Adam's behavior that were illogical and supported by law or evidence." FTS at 37. Adam uses the following examples contained in FTS 37-38 to support his assertion:

Demeaning and unjustifiable behavior – Judge Perry did cite examples that she considered demeaning. In 17 AA 00385.With regard to the statement that Adam sought to "demean" Chalese, Judge Perry cites as an example the fact that Adam would involve his girlfriend, Jessica, in activities that Chalese should have, and could have, taken part in. 17 AA 003825. Judge Perry took exception to Jessica's behavior. Id. In She concluded, based on that behavior, that had Adam been conducted himself differently, incidents that were found to have occurred between Jessica and Chalese or Chalese's significant other, would not have occurred, such as the "driveway incident." Id. Based on Jessica's testimony, Judge

Perry found that "Ms. Sellers' (and the Plaintiff) attitude, testimony and/or opinion of their intent to undercut Chalese with Jessica in this regard is completely reprehensible. Id. In Adam's FTS, Adam did note that "Adam and Jessica did testify that the children would be better off spending more time with them over Chalese…" FTS at 36. This statement acknowledges the facts found by Judge Perry. Her conclusion as to that fact is well within her discretion.

Domestic Violence – Concerning the "Highland View Incident", Adam complains that Judge Perry found that such acts constitute domestic violence. FTS at 37. This is not the case. Judge Perry found that Adam stalked Chalese through the use of private investigators, had Jessica sit in her vehicle across from Chalese's home, and invading Chalese's home (the Highland View incident) could be deemed domestic violence, not that it was. 17 AA 003838. It was not legal error to so claim and it is within the Judge Perry's discretion to render such an opinion on the testimony that led to that opinion. Under NRS 33.018(1)(e)(1), stalking is considered an act of domestic violence. As is trespassing (Chalese had exclusive possession of the marital residence when Adam entered the home). See NRS 33.018(1)(e)(3). But, it should be noted, Judge Perry did not find that Adam committed an act of domestic violence, only that his conduct, and that of Jessica, borders on domestic violence. See 17 AA 003838.

Financial support – Adam next claims that it was error to find that Adam refused to provide Chalese any financial support without a court order, citing the fact that Adam continued to pay for the mortgage on the home and all utilities. FTS

at 37. It was not err to so find. Adam, however, was in fact obliged to pay for the mortgage and utilities prior to any complaint being filed lest community assets be wasted. See *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019) (identifying dissipation and waste as possible compelling reasons for distributing community property unequally and explaining that alimony may be awarded to compensate for economic need or economic loss resulting from the marriage and subsequent divorce). Thus, Adam was only preserving community assets, not supporting Chalese by paying for utilities and the mortgage, and making sure he did not expose himself to liability for martial waste, or at least Judge Perry could have concluded that.

Reciprocal limitations concerning alcohol and drug use – Adam also claims that Judge Perry found that the limitations on the consumption of alcohol and drinking only applied to Chalese but not Adam. FTS at 38. Adam cites first a mutual behavior order (1 AA 000220-000224) as proof of his contention. FTS at 38. But, upon review of that order, it contains no language that addresses alcohol use or other drugs. Adam also cites an order from August 21, 2019 as proof of his contention. 3 AA 525-31). However, that order proofs Judge Perry's findings. The order requires Chalese to submit to a drug test that day and random drug testing once per month thereafter. 3 AA 000528. That order imposes no such obligations on Adam. Though Judge Perry does indicate, at 19 AA 4146, that the orders cited by the respondent were reciprocal, they actually are not as they are written.

Adam then argues that Judge Perry erred in finding that Adam was micro-managing or attempting to micro-manage Chalese's life without providing findings as to the same. However, in the Decree of Divorce, Judge Perry makes numerous findings that she saw as micro-managing: a) that Adam entered into Chalese's residence and took pictures of the condition of Chalese's home, implying that she was unkempt and should keep a cleaner house, b) sitting outside Chalese's home, presumably to monitor who comes in and out of the home, in an effort to imply she lives an unclean or unwholesome lifestyle, c) placing a tracking device on Chalese's vehicle, presumably to monitor where she spends her days to determine if her lifestyle, again, fits Adam's view of how Chalese should live her life, and so on. See 17 AA 003827. Indeed, Adam even complained that Chalese had chickens in her house. See 17 AA 003828. Judge Perry could easily have drawn the conclusion from these facts that Adam was indeed in judgment of Chalese and attempting to force her to modify her lifestyle or face losing joint custody of her child.

ii. It is within Judge Perry's discretion how she interprets and expert report and what conclusions she draws from those reports. Judge Perry is not required to accept any expert's report as conclusive and dispositive.

Adam next argues that Judge Perry erroneously found that Dr. Paglini's report was "incomplete". FTS at 40. Judge Perry opined that the report was incomplete because, according to her, "the Court specifically wanted explored and so stated at the hearing when the evaluation was ordered, which was not explored by Dr. Paglini was that of "gate keeping." 17 AA 003821. Adam argues that the

subject was addressed because Dr. Paglini addressed: 1) Adam's motivation in questioning Chalese's parenting, 2) reckless driving, 3) Josh's propensity toward domestic violence, 4) Chalese's alleged medical neglect, 5) hygiene issues related to Chalese's care of the child, and 6) Chalese's violation of Court orders. FTS at 41.

Parental gatekeeping refers to parents' attitudes and actions that serve to affect the quality of the other parent's relationship and involvement with the child.[1] According to the author cited by Adam regarding "gatekeeping", posted on the author's website,[2] the following are examples of:

- Making telephone or Skype contact difficult;
- Refusing to communicate with the other parent about the child;
- Derogating the other parent in front of the child;
- Negative nonverbal communication directed at the other parent in front of the child;
- Not being flexible on needed adjustments to the parenting time schedule;
- Withholding information about the child such about school, events, activities;
- Scheduling activities for the child on the other parent's time without communicating;
- Being intrusive and disrupting the other parent's time with the children; and
- Trying to micromanage the child's life during the other parent's time.

https://www.child-custody-services.com/gatekeeping.php. Thus, the idea of "gatekeeping" implicates a parents ability to foster a close and continuing relationship between the child and the other parent and interference with the other

[1] Austin, W. G., et al., Parental Gatkeeping and Child Custody/Child Access Evaluation: Part I, Vol. 51 No. 3, July 2013 485–501.

[2] https://www.child-custody-services.com/gatekeeping.php

parent's custodial rights, which is considered under NRS 125C.0035(4)(c) which the district court is required to consider in any best interests analysis.

Adam's motivation in questioning Chalese's parenting has no bearing that factor. The question of reckless driving simply has no relation to that factor. Similarly, what Josh, a third party, does or does not do has no relation to Adam's that factor. With respect to alleged medical neglect or lack of care for the child's hygiene, those topics do not are not pertinent to a discussion of whether one parent is fostering a close and continuing relationship between the child and the other parent. Finally, violating Court orders regarding use of prohibited substances (legal substances prohibited by the Court) does not implicate that factor. Thus, Judge Perry was well within her discretion and in fact was correct in concluding that Dr. Paglini did not address the specific issue she was concerned with – Gatekeeping.

iii. Judge Perry was correct in ignoring Joshua's personal life and shortcomings but she did address and consider the alleged domestic violence incident that took place after the case concluded and all evidence was introduced and considered.

Adam further complains that Judge Perry failed to consider Joshua's (Chalese's boyfriends) lifestyle when considering the child's best interests. The matter, actually, was addressed in detail, as noted by Adam. FTS at 44. The parties were separated by then due to an act of domestic violence that allegedly took place after the trial closed but before Judge Perry rendered her decision. During that hearing, in response to Judge Perry's direct question "My big question Mom, are you intending on taking him back or is it over?". 22 AA 004775. Apparently, Chalese's answer satisfied Judge Perry, who apparently took the matter into

consideration because she only addressed, in her findings of fact, that there was no reason why Josh could not babysit the child. Id. at 4775-76.

Indeed, when testimony closed, it was Chalese that brought to the Court's attention, by way of a motion, the incident of domestic violence that took place after both parties finished putting on their cases. 16 AA 3606-3615. Adam had an opportunity to respond to that motion in a hearing where the incident was discussed at length. 22 AA 4774-4791. Given that their was a no-contact order in place, a temporary protective order, and that Chalese indicated that she had no intention of taking Joshua back unless he changed, all Judge Perry had to consider was whether he could babysit the children, which she decided he could. See 22 AA 004774-76.

Procedurally, since all testimony was taken in both parties' case in chief, it would have been improper for Judge Perry to reopen the matter to take further testimony. The proper course of action would have been for Adam to seek a change of custody by way of motion, either written or oral, but he did not. 22 AA 4774-4791. See NRS 125C.0045(1)(a) (During the pendency of the action, at the final hearing or at any time thereafter during the minority of the child, make such an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest. Thus, Judge Perry did not err or abuse her discretion with regard to her treatment of Joshua and his involvement in the case below.

B. **Judge Perry did not err in calculating child support**.

In his testimony, Judge Perry asks Adam: "So how much do you make a year?" Adam responds: "I want to say it's $94,000.00 and change approximately." 22 AA 4569. A review of Adam's paystubs, filed March 4, 2022 (22 AA 3601), it shows Adam is paid $3,618.40 gross twice a month. Divide that by 2 and multiply by 52 (which are the number of weeks in a year), Adam earns $94,078.40 per year, as he estimated under oath. See AA 4569. The math is as follows: ($3,618.40/2=$1,809.20 x 52=$94,078.40).

Under NAC 425.140(2) et seq., for two (2) children the calculation is for the first $6,000.00 it is 22% of obligor's gross monthly income and 11% of the remainder up to $10,000.00. That formula results in the finding made by Judge Perry and that is exactly the formula that Judge Perry utilized. See 17 AA 003854. Indeed, though Adam inexplicably states that Judge Perry utilized the wrong rules, the calculation and rule she cited were correct, as Judge Perry's order indicates. Id. Therefore, Judge Perry did not err legally or abuse her discretion in finding that Adam's gross monthly income was, at the time, $94,078.40.

C. **Judge Perry made findings sufficient to support her order that Adam pay 65% of costs related to the child's medical, educational, and extracurricular needs and activities**.

The Decree of Divorce shows the relative income of the parties: Adam earns $94,078.40 per year while Chalese earns $2,377.00. 17 AA 003854. It is evident, then, that Adam earns substantially more income than Chalese. Indeed, more than three (3) times the amount she makes. It is so evident that no more need be said to

determine the fact. Judge Perry's decision was based on NRS 150(1)(f). In rendering her decision, Judge Perry stated the obvious – that the amount ordered be apportioned as it was "due to the disparity in income…" 17 AA 003855.

Judge Perry need say no more or could say anymore other than that the disparity is X times the amount of Y, which need not be the case without seeing the obvious. For that reason, Judge Perry did not abuse her discretion in the manner in which she apportioned costs related to the children.

D. **Adam presents no case law or statute supporting his position that his separate property can be used to pay an award of attorney's fees and costs**.

Adam correctly states that the sales proceeds from the Highland View residence was a gift from his father, thereby constituting Adam's sole and separate property, citing NRS 123.130. Judge Perry recognized that and awarded him $85,000.00 as Adam's sole and separate property.

Adam goes on to argue, however, that attorney's fees are "community in nature and payable from community income or property…" without citing any statute or case law supporting that contention. FTS at 47. Adam does cite case law from other jurisdictions that, according to Adam, stand for the proposition that "Nevada law treats debts and other obligations incurred during the term of the marriage similarly to the way it treats property…" citing various cases from other jurisdictions.

Chalese is hard pressed to understand how this argument, in totality, or even in it's separate parts, justifies Adam's contention that attorney's fees and costs

cannot be awarded from a party's separate property asset or income. In fact, there is no such authority in Nevada and, as such, this Court need not address Adam's contention in this regard. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not address issues raised on appeal that are not supported by relevant authority and cogent argument); *Carson v. Sheriff*, 87 Nev. 357, 360-61, 487 P.2d 334, 336 (1971) (declining to address a matter not adequately briefed). *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (because the appellant failed to cogently argue or present relevant authority in support of its argument, the Court need not consider it).

E. **Judge Perry had the discretion to award a survivorship interest in Adam's PERS and the appellant cites no relevant authority otherwise**.

Here again, Adam makes an argument without citing any legal authority to support that argument. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not address issues raised on appeal that are not supported by relevant authority and cogent argument); *Carson v. Sheriff*, 87 Nev. 357, 360-61, 487 P.2d 334, 336 (1971) (declining to address a matter not adequately briefed). As such, this Court should disregard Adam's argument that the Judge Perry committed legal error or abused her discretion.

That being said, under NRS 123.220, all property, other than that stated in NRS 123.130, acquired after marriage by either spouse or both spouses, is community property unless otherwise provided by: 1. An agreement in writing between the spouses; 2. A decree of separate maintenance issued by a court of

competent jurisdiction; 3. NRS 123.190; 4. A decree issued or agreement in writing entered pursuant to NRS 123.259. Adam began accumulating his PERS during the marriage. See FTS at 48. Thus, under NRS 123.220, barring the existence of sections 1, 2, 3, or 4, Adam's PERS is community property to be divided by law, which is precisely what Judge Perry did. Thus, no legal error or abuse of discretion exists in this respect.

F. **Judge Perry had authority to award attorney's fees and costs absent a motion under NRCP 54**.

Adam argues that "[a]t no time during trial did Judge Perry exempt the parties from having to make any request for fees and costs pursuant to NRCP 54. NRCP 54 does not require it's express exemption or a motion for attorney's fees and costs must be awarded in accordance with that rule. Adam fails to provide any case law supporting that position. NRS 18.010(3) does not require a written motion be filed in order for the district court to award attorney's fees and costs. Under NRS 18.010(3), "In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding **without written motion and with or without presentation of additional evidence**." Therefore, Judge Perry did not err in adjudicating attorney's fees under NRS 18.010, which she did and cited as authority to do the same. 17 AA 003860. In reviewing the amount awarded, the standard this Court must utilize is an abuse of discretion. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (reviewing an attorney fee award for an abuse of discretion).

Judge Perry awarded fees based, in part, on the disparity of the parties' income, which is substantial. 17 AA 003854; 17 AA 003861. See *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (explaining that "family law trial courts must . . . consider the disparity in income of the parties when awarding fees (citing to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998))).

Judge Perry noted that the discrepancy in income was exacerbated by the fact that, as an attorney, Adam was able to draft his own pleadings, significantly defraying the costs of litigation to him. 17 AA 003861. Indeed, from September 16, 2021 Adam was essentially representing himself, having co-counsel with experience with domestic relations matters. 17 AA 003318-20.

Judge Perry further based her award on her findings that Adam prosecuted the case with an intent to "harass" filing "frivolous" motions and pleadings "unnecessarily extending litigation, causing unnecessary delay, and to increase the cost of litigation." 17 AA 003861. Judge Perry continued, stating that "when added to the previously found…level at which Adam prosecuted this matter in a scorched earth litigation tactic…requires fees to be awarded due to Adam's unwarranted behavior and his bad faith tactics." Id. The "previously found…level at which Adam prosecuted this matter" is a reference to Judge Perry's finding that "while both parties filed numerous motions in this matter, almost all of Adam's motions were filed requesting to take more and more time away from Chalese" and then listing said motions under sections (a) thru (g) of paragraph 15. 17 AA 003816-18.

Though Adam complains that "***every position taken by Adam and every motion filed by him*** in the divorce action was frivolous", his representation of Judge Perry's ruling is not correct. As indicated above, Judge Perry made it clear that both parties filed many motions but that it was Adam whose motions were designed to deprive Chalese of time. 17 AA 003861. Further, the list of offending motions was a fraction of the total motions and pleadings filed in this case and contained in paragraph 15(a) thru (g), as indicated above. 17 AA 003816-18.

Furthermore, the district court's order must demonstrate that it considered all of the relevant factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and *Wright*, 114 Nev. at 1370, 970 P.3d at 1073, and was supported by substantial evidence, see *Logan*, 131 Nev. at 266-67, 350 P.3d at 1143 (explaining that when the "district court demonstrate[s] that it considered the [relevant] factors, its award of attorney fees will be upheld if it is supported by substantial evidence); see also *Miller*, 121 Nev. at 623-24, 119 P.3d at 730 (holding that attorney fee awards in family law cases must be supported by evidence that satisfies both the Brunzell and Wright factors).

Judge Perry noted that the Pecos Law Group and Alex B. Ghibaudo, P.C. both submitted a memorandum of fees and costs which included the "Brunzell factors." 17 AA 003862; 17 AA 3634-3752; and 17 AA 3747-3752. Judge Perry indicated it had reviewed the "Brunzell factors" contained in the Pecos Law Group memorandum of fees and costs and in Alex B. Ghibaudo, P.C.'s memorandum of fees and costs and found them appropriate and acceptable.

Regarding *Logan v. Abe*, a case raised by the appellant as a matter of first impression. In Logan, this Court did not limit that case to the circumstances raised by the appellant. In its ruling, this Court broadly stated:

> While we have not directly addressed the issue of whether a party incurs an expense that is ultimately satisfied by another party, other jurisdictions have persuasively held that an expense can be incurred even if it is ultimately satisfied by someone other than the party.

Logan v. Abe, 350 P.3d 1139, 1142 (Nev. 2015).

This broad statement is not in any way qualified. It does not suggest that this Court never considered this issue in the insurance context or in the context of an offer of judgment extended that was not defeated. Indeed, this Court cites *Manor Healthcare Corp. v. Lomelo*, 929 F. 2d 633, 639 (11th Cir. 1991) which held that a "prevailing party may recover litigation costs without regard to whether a third party advanced the funds for the costs" in justifying its decision that "[w]e therefore extend *Schlang* and hold that a party can incur an expense that was paid on its behalf if the party would have been liable for the expense regardless of the third party's payment." *Logan v. Abe*, 350 P.3d 1139, 1142 (Nev. 2015).

Therefore, Logan applies broadly and should apply to this case and any cases in the family division where many times it is family that pays for fees and costs, leaving a litigant with family with little funds at the mercy of litigants that come from a family with wealth and substantial resources. As such, Adam should be responsible for fees and costs despite Chalese's mother's contribution to the money she paid on Chalese's behalf. Furthermore, as the discussion above

demonstrates, Judge Mary Perry did not abuse her discretion in awarding the fees she awarded.

G. CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

Respectfully submitted this 16th day of January, 2023.

ALEX B. GHIBAUDO, PC

//s// Alex Ghibaudo

Alex Ghibaudo, Esq., Nevada Bar No. 10592

VERIFICATION

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

This fast track response has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, 14-point font

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is proportionately spaced, has a typeface of 14 points or more, and contains 5567 words, or less than 2/3 of the words used by the appellant in accordance with this Court's order allowing appellant extra space. NRAP 3E(e)(2)

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

Dated this 16th Day of January, 2023.

ALEX B. GHIBAUDO, PC

//s// Alex Ghibaudo

Alex Ghibaudo, Esq., Nevada Bar No. 10592

CERTIFICATE OF MAILING

Pursuant to NRAP 25(c)(1) and NEFCR 9, I certify that on the 16th day of January, 2023, that I caused to be served the foregoing RESPONSE TO FAST TRACK STATEMENT through the Nevada Supreme Court's electronic filing system to the following:

Vincent Mayo, Esq.
Nevada State Bar Number: 8564
The Abrams & Mayo Law Firm
6252 South Rainbow Blvd., Suite 100
Las Vegas, Nevada 89118
Tel: (702) 222-4021

Dated this 16th Day of January, 2023.

/s/ Alex Ghibaudo, Esq.

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Alex B. Ghibaudo, PC