

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH RAUL GARCIA RODRIGUEZ,

Appellant,

v.

ZOILA LEON-YANEZ,

Respondent.

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Supreme Court No. 85289

District Court No.: D-20-615905-D

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## APPEAL FROM NOTICE OF ENTRY OF ORDER AND ORDER FILED ON AUGUST 25, 2022 AND AMENDED DECREE OF DIVORCE FILED ON JUNE 21, 2022

Eighth Judicial District Court of the State of Nevada

In and for the County of Clark

THE HONORABLE CHARLES HOSKIN

DISTRICT COURT JUDGE

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### BRIEF

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## **1. NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 16.2 (a) and must be disclosed:

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During proceedings in the district court, Appellant was represented only by Gayle Nathan, Esq..

Respondent was represented by Romeo Perez, Esq., Nevada Bar #8223, and Jennifer Setters, Esq. of Gastelum Law in the district court.

This representation is made so that the judges of this court may evaluate possible disqualification or recusal.

Dated this 26th day of April, 2023

BONANZA LEGAL GROUP  
/S/ Gayle Nathan  
Gayle Nathan, Esq.  
Nevada Bar No. 4917  
Attorney for Respondent/Cross-Appellant

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#### **IV. JURISDICTIONAL STATEMENT**

Joseph concurs this Court has jurisdiction pursuant to NRAP the 3A(b)(1), which permits a party to appeal from “[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” The final orders appealed from are the order after June 21, 2022 hearing and the Amended Decree of Divorce. The notice of entry of order was filed on August 4, 2022. AA0659.1-0659.8. The Amended Decree of Divorce (there is no notice of entry) was filed on 8/18/2022. AA0660. Joseph timely filed a Notice of Appeal on 8/30/2022. AA0669-0670.

#### **V. ROUTING STATEMENT**

This case may be assigned to the Court of Appeals as stated in NRAP 17(b)(5) because it involves family law issues.

#### **VI. STATEMENT OF THE ISSUES**

- A. Did the Court err in refusing to modify child support?
- B. Did the Court err in awarding spousal support?
- C. Did the Court err in not expressly awarding the Division St. property to Joseph?
- D. Did the Court err in awarding attorney fees?

E. Did the Court err in awarding 420 Pine St. to Zoila when Joseph has claimed this as his property on all filings.

## **VII. STATEMENT OF THE CASE**

This appeal arises from a Notice of Entry on the Order on the Motion to Modify the Decree of Divorce which was filed on August 18, 2022 and an Amended Decree of Divorce which was filed on August 25, 2022 (without a Notice of Entry).

Joseph Raul Garcia Rodriquez (JOSEPH) is the Appellant. Zoila Leon-Yanez (ZOILA) is the Respondent. There is no cross-appeal.

After the Court reviewed the parties Briefs, ordered at the June 21, 2022 hearing on the Motion to Set Aside the Decree, the Court found that:

Defendant's Brief, filed July 15, 2022, indicates that there is a community asset not specifically distributed within the Decree, identified as 621 E. Division St. Under the terms of the Decree, since that residence is purportedly in Defendant's name, the same would be awarded to him. However, notwithstanding the purpose of the Brief (was the distribution equal?) no value for 621 E. Division St. was provided. AA0659.4.

This appeal is brought because the Court did not expressly award either property to Joseph. The Decree of Divorce states that each keeps the personal property in their respective name. The Court ruled that, “ Under the terms of the Decree, since that residence is purportedly in Defendant’s name, the same would be awarded to him.” AA0659.4. Zoila was specifically awarded two properties: 420 S. Pine St. and 104 W. Ashton<sup>1</sup> as her sole and separate property. This is an ambiguity; Zoila asked that both properties be awarded to her, but that would have meant 420 S. Pine St. and 621 E. Division St. but she testified to 103 (sic) West Ashton Avenue, but the Ashton property is the same property as 420 S. Pine. AA0168AA0171-0172.

Joseph, from the beginning of this divorce case, has stated that 420 S. Pine, is his property and the Division Street property is Zoila’s<sup>2</sup>. AA0075. His Financial Disclosure Form lists 420 S. Pine St. and 621 E. Division St. AA0075.

Zoila’s attorney then submitted an Amended Decree of divorce to the Court, which included the legal description of the Pine Street property. AA0663. Therein he notes that the Pine St. and Ashton St. properties are one

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<sup>1</sup> The Ashton property is the same property as 420 S. Pine; it sits on a corner, but 420 S. Pine is the official address. AA0063.AA0173.

2. Zoila’s Financial Disclosure Form lists 420 S. Pine and W. Ashton as two separate properties. She notes both properties are in husband’s name. AA0031



and the same. The Decree was amended and submitted pursuant to the Court's Order in the Decree of Divorce. Id.

In his Motion to Modify the Decree of Divorce, Joseph asked the Court to modify the spousal support and the child support awards, as they were not based upon his actual earnings. AA0199. He filed a Financial Disclosure Form on 6/13/2022 which was missing the page with his earnings. AA0241-0247. An Amended Financial Disclosure Form was then filed on 7/14/2022 with his income and supporting documentation. AA0250.

Although the Court's Order appealed from was filed on August 4, 2022, the Court's ruling did not take into account the Financial Declaration Form filed on 7/14/2022 instead relying on older filings. AA0463. AAAA0659.5.

The Court refused to modify the child support:

Regarding the support issues, the child support was based on the information in Defendant's April 20, 2021 Financial Disclosure Form (FDF). The child support amount existed, temporarily, since the June 2021 hearing. Such is the same amount in the permanent order of the Court. That FDF represented \$3,328.00 each month in gross monthly income (GMI), plus \$700.00 monthly in rental income (totaling \$4,028 x 28% = \$1,128.00). The attached form 1040 represents a GMI of

\$6,089.00. As Defendant's June 13, 2022 FDF omitted the income page, there is no current basis to modify that amount. AA0659.5.

The Court did, however, modify spousal support:

As no income page was included in Defendant's recent FDF, it is difficult to determine whether a modification is appropriate. The documents attached to that FDF appear to indicate that, at least in February 2022, Defendant earned \$3,676.00. It is assumed he is also still receiving the \$700.00 per month in rental income. Totaling those amounts appears to result in income consistent with his prior income. However, that income level does not support an ability to pay \$1,500.00 per month is spousal support. Defendant's request to modify the spousal support award is appropriate. AA0659.6. The Court then modified the spousal support to \$700 per month. AA0659.7

The Court signed its' order on August 4, 2022 AA0659.7 and it was filed on August 4, 2022. AA0659. As the Financial Disclosure Form was filed on 7/14/2022, AA0250 the Court made a mistake in not reviewing the most recent Financial Disclosure Form.<sup>3</sup> This mistake was so egregious as to

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<sup>3</sup> Joseph alerted the Court to the 7/14/2022 filing of his Financial Disclosure Form in his Brief. AA0263.

amount to an abuse of discretion as the Court made findings of spousal and child support based on old financial information.

Joseph submits that even the \$700 award is excessive given his stated income.

As to the Orders on the Motion to Set Aside the Decree, the Court had each party responsible for their own attorney fees. AA0659.7. As Joseph's Motion to Set Aside the Decree of Divorce was not granted, the attorney fees of \$5,000 in the Decree of Divorce stands. Id.

## **VIII. STATEMENT OF THE FACTS**

### **A. HISTORY**

This matter was commenced with the filing of a Complaint for Divorce on October 19, 2020. Therein, neither of the properties currently at issue in this appeal were mentioned, although there was an allegation of waste in respect to community property being gifted or converted. AA0001 and AA0003.

A Joint Preliminary Injunction was filed on 10/23/2020. This is a standard joint preliminary injunction issued by the Court. AA0008. Zoila then filed a MOTION FOR TEMPORARY ORDERS AND PRELIMINARY ATTORNEY FEES AND COSTS on 1/27/21. Therein she brought up a duplex that the parties own without providing an address or any other identifying information. AA0012 and AA0018.

Thereafter, Zoila took a default against Joseph on 2/15/21. On 2/17/21, Zoila filed her General Financial Disclosure Form. AA0026. Therein, under assets, she listed

104 West Ashton Avenue and 420 South Pine Street having a value of \$116,246 and listed that they are in husband's name. AA0031. Again, there is her confusion or misrepresentation as 420 Pine and 104 West Ashton are one and the same.

On 2/22/21, Joseph a MOTION TO SET ASIDE DEFAULT OF JOSEPH RAUL GARCIA RODRIGUEZ AA0035. The Court granted that motion and permitted Joseph to file an answer.

On 3/15/21, Joseph filed an answer to the complaint and counterclaim. Therein he alleged that there was property in Nebraska and that Zoila had actually engaged in "marital waste, abandonment and fraud" in relation to certain property in Nebraska. He then asked for a larger percentage of the community property located in Nevada. (That should probably read Nebraska) AA0045.

The Court filed and served an ORDER SETTING CASE MANAGEMENT CONFERENCE IN DIRECTING COMPLIANCE WITHIN NRCP 16.2 16.205 on 3/16/21. AA0048.

The Order Setting Aside the Default was filed with a Notice of Entry on 3/31/21 AA0054. The order states that counsel had no objection to setting aside the default. The Court also at that time entered an order for child support in the amount of \$2,298 per month as a temporary order. AA0057.

Joseph then filed a CASE MANAGEMENT CONFERENCE STATEMENT on 4/8/21. Therein, Joseph set forth his position on the Nebraska properties. Joseph alleged that,

There is an issue regarding property as Ziola took Joseph's mother to sign a warranty deed for a property held by her and Joseph's mother without Joseph's consent.

The property was purchased in Nebraska for Joseph's mother to live in. This property is likely to become at issue for a civil case in Nebraska as well. This property was purchased by Joseph and placed in his mother's name rather than his so his mother could reside in it. Joseph was okay placing it in his mother's name despite her decreased mental capacity because he is the power of attorney for his mother and nothing would be able to be done with the property without his consent. However, Zoila had his mother sign paperwork that she did not have the capacity to sign. This lack of capacity is showing in the signature itself that she was unable to properly sign her name. AA0063 and AA0064.

Joseph asked the lower Court to take jurisdiction over the Nebraska properties. Again, set forth within this CASE MANAGEMENT REPORT, the actual addresses of the properties are not mentioned.

Joseph filed a General Financial Disclosure Form on 4/20/21. Therein he alleged he had been unemployed since April 15, 2020. A0070. He set forth that his income was \$832 per week and that he had a net rental income of \$700. AA0071. On page six of eight of his Financial Disclosure Form, he set forth his assets. He listed 420 South Pine Street in his name and 621 East Division Street in Zoila's Name. The CASE IN NON-JURY TRIAL MANAGEMENT ORDER was filed on 4/28/21. AA0081.

Thereafter, Joseph filed a MOTION TO MODIFY CUSTODY AND CHILD SUPPORT on 5/6/2021. Therein he alleged that the child support previously set by the Court was too burdensome. He asked the Court to decrease the child support obligation in the temporary orders to \$1,056.16 until trial and permanent orders are entered. AA0088. Therein, he further disputed the amount of money that Zoila alleged he was making, stating she relied on documentation from 2014 not the present time. Id.

Zoila filed an OPPOSITION TO JOSEPH'S MOTION TO MODIFY CHILD CUSTODY AND CHILD SUPPORT AND ZOILA'S COUNTER MOTION FOR DISCOVERY, FOR COMPLIANCE WITH NRCP16.2 FOR ATTORNEY FEES AND COST AND RELATED RELIEF on 6/1/2021. AA0090. She again alleged that Joseph makes approximately \$130,000 every year and that he was misrepresenting the facts, however, the Financial Disclosure Form he filed has his

pay stubs attached to support his current income. AA0077 AA80078 AA0079. He also attached a page from his tax return showing his wages, salaries, tips, et cetera at \$73,068 with a taxable income of \$54,718 AA0080.

Zoila attached as Exhibit Two, a page from Zillow providing an estimate of the value of the property at 420 S. Pine at \$124,624 AA0103 and an estimate for the property at 621 East Division Street in the amount of \$136,423. AA0103 through AA0104.

Joseph then filed a Response to Zoila's Opposition to Joseph's MOTION TO MODIFY CHILD CUSTODY AND CHILD SUPPORT and Opposition to Zoila's COUNTER MOTION FOR DISCOVERY, FOR COMPLIANCE WITH NRCP16.2, FOR ATTORNEY FEES AND COST AND RELATED RELIEF AND JOSEPH'S MOTION FOR DISCOVERY AND FOR COMPLIANCE WITH NRCP16.2 ON 6/16/21. AA0105.

Therein he explained why his income had changed from 2014 to the present time. No mention of the properties were made within that response. He did however attach a statement of wages and potential benefit amounts showing his unemployment benefit dated June 7, 2021. His benefit between January 2020 to December 2020 total \$20,872.76 as further proof of his unemployment. He also provided a Schedule 1 of his tax return for 2020 which set forth unemployment compensation of \$23,470 for the year 2020. AA00113.

Thereafter, counsel for Zoila filed A MOTION TO WITHDRAW on 6/29/21. The Court set a hearing on the motion to withdraw and filed that notice of hearing on 7/6/21. There was no opposition to the motion. AA0123 through 0124. The Order filed on 7/20/21 is on the substantive motion, opposition, and response. The Court therein, based upon Joseph's April 2021, Financial Disclosure Form modified child support to \$1,128, due on or before the last day of each month commencing May 2021. AA0125.

On 8/2/21, Joseph filed an EX PARTE MOTION TO CONTINUE THE TRIAL AND DISCOVERY DEADLINES. Therein it was alleged that additional time was needed for discovery disclosures and follow up investigation. AA0129.

The Court issued a minute order on August 31, 2021 continuing the calendar call to December 14, 2021 at 11:00 AM and resetting the trial to January 11, 2022. Pre-trial memorandums were set as due December 7, 2021 and discovery deadlines were extended accordingly to April 28, 2021. AA0137.

On 11/18/2021 an order extending the pretrial memorandum deadline was filed and extended that deadline to December 20, 2021.

On April 4, 2022 Zoila filed her pretrial memorandum. AA0140. Therein again, she alleged that Joseph was earning \$130,000 despite his Financial Declaration Forms with paystubs. AA0142.



Zoila set forth the two residential properties in Nebraska as 420 South Pine Street and 104 West Ashton Avenue. Both properties were described as rental properties. Therein it was also alleged that her interest in Pine Street was sold without her knowledge or consent. AA0143. Continuing to allege that Joseph was making \$130,000 each year, Zoila asked for \$1,500 a month in alimony for ten years. AA0147. Zoila further alleged that Joseph had taken back the property (420 South Pine Street) from his friend and was currently receiving the rent from that property. She complained that he didn't disclose the rent he was receiving and that she should receive her interest in Pine Street and Ashton based on the current value of the property. Alternatively, the property should be sold and the proceeds divided accordingly. AA0154.

There's a transcript of proceedings of the calendar calls on April 5, 2022 filed on 2/7/2023. AA0162.

Under questioning, Zoila testified that she made significant improvements to the two houses and did a total "reform" and that Joseph did not help her with any of that remodeling. When asked, "Are you asking for both of those properties to be awarded in your name as your sole and separate property?" She answered, "Whatever the judge deems appropriate, yes." AA0168.

The Court made clear at that time that community funds were used for community purposes in regard to the remodel of both homes. The Court stated,

Unless you can trace them and indicate how, somehow, he wasted community assets and something other than a community purpose, then certainly that testimony would be beneficial, but otherwise, it's like earning an income. You don't have to trace every dollar of income you earn. You've got to trace the other side of it because the presumption is that it was used for community purposes." The Court then asked Zoila's counsel if we're giving him the Pure <sup>4</sup>, what are we giving him? And counsel responded, "We're letting him keep all the prior rents as his property. She's going to be able to keep the houses now going forward. AA0174.

The Court went on to order spousal support in the amount of \$1500 per month for a period of ten years AA0175 and attorney fees in the amount of \$5,500 AA0175. He also set an arrears amount for child support.

The Court stated, "I'm not going to require reimbursement of the remodel costs, mainly because I'm awarding those assets in their entirety along with the future rents to Zoila. So again, we've got a presumption the community went for community so I don't find a basis to reimburse those at this point in time." AA0176.

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<sup>4</sup> This should read Pine; there is no property on Pure St. in this case.

Nowhere in the transcript from the Calendar Call does it support a finding that the Court entered Zoila's exhibits as evidence. AA0162 *et seq.* And, in fact, throughout the transcript, Mr. Perez, Zoila's attorney, is providing the Court with information, that is, testifying, for his client. Mr. Perez states that "dad sold the property after mom had tried to, had remodeled it and then his – something happened with his friend so he took the property back." AA 0172. That is testimony by counsel. He went on to state that Joseph received rents "without any compensation to mom." Id.

Counsel then goes on to inform the court that "he will have kept thousands of dollars – I can have her testify as to the amount of rents." AA0172-0173. This is akin to a talking objection, letting a witness know what testimony is required.

Counsel states that "We're letting him keep all the prior rents as his – as his property." AA0174. However, there is not a shred of evidence as to whether any of the rents still existed at the time of the divorce. The Court is to divide community property. Here the Court had no evidence as to whether any rents were preserved as community property, yet made an Order set forth below.

The Decree of Divorce was filed with the Notice of Entry on 4/27/22. Therein child support stayed at \$1,128 as the Court had set it on June 17, 2021 AA0189.

The Court set spousal support at \$1,500 per month for a period of ten years. AA0190. The Court then awarded the property at 420 South Pine Street and 108 West Ashton<sup>5</sup> to Zoila. The Court also ordered that,

Each party shall keep whatever personal property they have in their possession including any and all loans and credit card debt associated with the property as their sole and separate property along with any encumbrances thereon and shall hold each other Harmless." AA0191.

There is nothing in the Decree that sets forth that the Division Street address is awarded to Joseph or Zoila . She was however, awarded the two properties in Nebraska. AA0190. It was clear that she asked for both properties. As she was awarded 420 Pine and 104 West Ashton St., she was awarded one property as Ashton and Pine St. are one and the same.

After receiving the Default Decree of Divorce, Joseph filed A MOTION TO SET ASIDE THE DECREE OF DIVORCE on May 5, 2022. Therein he alleged that he did not understand what a pretrial memo was or his duty to produce or file one after his attorney withdrew on or about 12/14/21. He also did not understand that he had to appear at the calendar call. AA0197 to AA0198. Within that motion he challenged Zoila's argument that he made \$130,000 annually. He stated that he drove for Uber and that his net over three months was \$1,932 per month. AA0198.

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<sup>5</sup> It is 104 W. Ashton, also known as 420 S. Pine.

In his argument, he stated that, "The decree of divorce does not reflect that any analysis was given to the Nebraska properties values. Defendant submits that each has a similar amount of equity to the other and he has to have them equally divided at time of trial or to have 420 South Pine awarded to him as his sole and separate property." <sup>6</sup> He also alleged that his child support obligation should be \$541, not \$1,128 given his income. AA0198.

An Opposition was filed to his Motion on 6/10/22. In this Opposition, Zoila confirms that, "After discussion, the Court awarded Zola the properties. She retained all credit card debt that resulted from the cost to renovate and maintain the properties. Joseph retained all funds solely collected in rent to date." AA022.

Within her opposition, Zoila asked for permission to amend the Decree of Divorce to accurately state the property address from 108 West Ashton to 104 West Ashton and to add a legal address as well. AA0226. On 6/16/22, Joseph filed a Declaration in Reply to the opposition providing financial information Zoila's income and detailing the two properties. AA0233.

He stated therein that he paid off South Pine Street in 2014 and that he paid off 621 East Division Street in 2015. AA235. He further claimed that Zoila took possession of 621 East Division Street by claiming herself as a single person without

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<sup>6</sup>For reasons that are unclear at this time, a second MOTION TO SET ASIDE THE DECREE OF DIVORCE was filed by Joseph on 5/10/22. There are no changes in the body of the motion.

his knowledge and forcing his mother to transfer the property to Zoila's mother. He also discussed that he did transfer the property at 420 South Pine to an individual named Rudolfo prior to when Zola started the divorce. He also alleged that she knew about the changes to the property ownership. AA0236.

Joseph filed a Revised General Financial Disclosure Form on 6/13/2022. AA0241. The document was missing page two which sets forth annual and monthly income. He listed the two properties under personal assets and debt chart as being at issue using 420 South Pine, Nebraska and 621 East Division Street, Nebraska as the identifying addresses. AA0243

The Court issued a Behavior Order on 6/21/22. AA0248-AA0249.

On 7/14/22 Joseph filed an Amended General Financial Disclosure Form which sets forth his monthly income at \$3,293.33. It is supported by pay stubs from Whirlwind Steel Buildings Inc. AA0258 through 529. Joseph asked, through counsel, for time to file an updated Financial Disclosure form. As the Court ordered Briefs to lay out the assets and debts, it is inferred that Joseph had permission to file this Amended General Financial Disclosure Form, as it reflected assets and debts. AA0464.

At the Court's direction, the parties filed a Brief re Financial Issues. Joseph's was filed on 7/15/22 AA0260. There again he asserted a description of the properties

and footnoted that the Decree mistakenly describes the properties. AA0261<sup>7</sup>. This is especially relevant because the Court awarded Zoila both the Pine Street property as well as the Ashton Street property. It is clear from the text that at the time both the Court and Mr. Perez, her counsel believed they were two separate properties.

Joseph provided documentation as to Zoila's earnings. He produced his 2020 tax return showing an income for himself of \$34,151. AA0339 - AA0341. He also asked the Court to revise his spousal support based upon his actual earnings. In the Brief he asks that the Court set aside the property division so that an equal division of property may be made. He also provided about 85 pages of exhibits providing the Court with bank statements showing monies that were used for fixing up the homes. The bank statements were held jointly during this period of time. 00269 et Seq. He also provided the Court with printouts from Zillow showing the 621 East Division Street had an estimated value of \$105,300 AA0314 and that 420 North Pine Street had an estimated value of \$171,500. AA0320. There were no appraisals or comps offered for these properties at any time in the litigation.

Joseph provided exhibits to the Court with additional financial information on the work that was done on the house as well as what he believed to be Zoila's income AA0342.

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<sup>7</sup> The footnote on AA0261 is incorrect as it describes Division St. being the same as Ashton. This is an error.

The second order from the 6/21/22 hearing on the motion to set aside was filed on 7/20/22 but the Notice of Entry was filed on 8/25/22. Zoila filed her Brief re Financial Issues on 7/22/22. Zoila states that, "The Court awarded Zoila the property located at 420 South Pine Street, Grand Island, Nebraska and 108 West Ashton, Grand Island, Nebraska, Nebraska. It is necessary to note that this is the same property." AA0467.

Although the Brief states that Zoila was left with \$101,900 in debt the Court specifically stated that "Zoila shall retain any credit card debt that resulted from the cost of the marital properties will remain in Zoila name as her sole and separate debt." AA0191.

Zoila's Exhibits to her Brief also include photographs of her and her family, presumably. 00473, AA0494. These photographs serve no legitimate purpose to this legal argument, and yet there are 11 photographs of family.

A Notice of Entry and Order from the June 21, 2022 hearing was filed on 8/5/2022. from the June 21, 2022 hearing (the order after the briefing). Therein the Court reiterated that Zoila was awarded community property consisting of 420 South Pine Street, Grand Island, Nebraska, and 104 West Ashton, Grand Island, Nebraska in addition to any and all debt associated with those properties. AA0659.4. The Court went on to state that 621 East Division Street was awarded to Defendant as it was in his name. However, there is nothing in any order that specifically awards 621 East



Division Street to Joseph. And, in fact, Zoila is expressly awarded 621 East Division Street when she was awarded 108 West Ashton award. (sic) <sup>8</sup> Id.

The Court went on to find that Zoila failed to provide any proof as to the value of the two community assets assigned to her and the Defendant likewise failed to provide sufficient information to indicate that the community division was not fair and equal.AA0659.5.

The fact is, there was information provided to the Court by Joseph. The Zillow references for the value of these two properties was provided in exhibits to the Briefs. AA0315 and AA0320.

The Court then went on to do an analysis of child support. The Court made a finding that because the income page was omitted from Joseph's June 13, 2022 FINANCIAL DISCLOSURE FORM, there is no current basis to modify that amount.AA0659.5. But clearly, as set forth *supra*, the Financial Disclosure Form as amended was filed on July 14, 2022. This was before the Court signed off on its Decision. The Court had that information and either overlooked it or ignored it. The Court therefore, having no additional findings for Joseph's income, left child support at \$1,128 per month. Id.

As to spousal support, the Court did an analysis under NRS 125.150(8). The Court again referenced that there was no income page in his "recent FINANCIAL

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<sup>8</sup> This should be 104 W. Ashton.

DISCLOSURE FORM". The Court went back to his February 2022 FINANCIAL DISCLOSURE FORM filing and found that he earned \$3,676 and received rent of \$700. The Court found that he did not support an ability to pay \$1,500 per month in spousal support and reduced it to \$700 per month, beginning June 2022, the month following his motion. AA0659.6-AA0659.7.

Zoila then filed an Amended Decree of Divorce on 8/18/2022. AA0660. The only section amended was the description of the properties she was awarded. The Court ordered that the properties located at 420 South Pine Street and 104 West Ashton Avenue shall be awarded to the Plaintiff, Zoila Leon-Yanez as her sole and separate property. AA0663. This paragraph, however, also states that 104 West Ashton Avenue <sup>9</sup>has the same legal description as 420 South Pine Street.

The Decree of Divorce filed on 4/27/22 awarded her “the marital properties located on 420 S. Pine St. Grand Island, Nebraska 68801 and 108 (sic) W. Ashton, Grand Island, Nebraska 68801 the fact that these two addresses were one and the same would lead one to conclude that she only received one property which was not the intent during the calendar call.

A Notice of Appeal was filed 8/30/2022. The appeal is from the Notice of Entry of Order filed on August 4, 2022 from the decision on the June 21, 2022 hearing (after briefing) and the Amended Decree of Divorce filed in this action on

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<sup>9</sup> The property in controversy is 108 W. Ashton, not 104. See AA0261.

August 18, 2022. Zoila was noticed through her attorney, Romeo R Perez, Esquire. The appeal is therefore timely.

## **IX. STANDARD OF REVIEW AND SUMMARY OF THE ARGUMENT**

The applicable standard is abuse of discretion, which applies to most decisions of family law issues. Generally, a court abuses its discretion when it makes a factual finding which is not supported by substantial evidence and is “clearly erroneous.”

An open and obvious error of law can also be an abuse of discretion, as can a court’s failure to exercise discretion when required to do so. Further, a court can err in the exercise of personal judgment and does so to a level meriting appellate intervention when no reasonable judge could reach the conclusion under the particular circumstances. A court does not abuse its discretion, however, when it reaches a result which could be found by a reasonable judge.

The Court abused its’ discretion on several issues: awarding 420 S. Pine St. and 104 W. Ashton St. to Zoila; when the intent was to award her S. Pine and Division St. as those are the two Nebraska properties at issue; making findings on financial issues based on old Financial Disclosure Forms when Joseph filed an Amended General Financial Disclosure Form on 7/14/2022; finding that no proof of the value of the properties was provided when there were Zillow estimates attached as exhibits to his Brief; failing to calculate child support based upon the 7/14/2022

Financial Disclosure Form; calculating spousal support based on Joseph's February 2022 Financial Disclosure Form instead of the last one filed on 7/14/2022; and, the Court accepted Zoila's testimony that she spent in excess of \$100,000 rehabilitating the houses with no documentation to support that.

## **X. ARGUMENT**

### **As to the Properties:**

Joseph submits that the Court, even after briefing, failed to make an equal disposition of community property.

NRS 125.150(1)(b) provides that while the district court must make an equal disposition of community property to the extent practicable, it may make an unequal distribution if it finds, and states in writing, compelling reasons for doing so. We have recognized that unauthorized gifts of community property may constitute a compelling reason for an unequal disposition. Putterman v. Putterman, 113 Nev. 606, 608, 939 P.2d 1047, 1048 (1997).

An equal division of property would have been to award each party one of the properties, not to award both properties, with a value of \$200,000 to one party.

The Zillow statements for both homes are attached to Joseph's Brief as Exhibit "C". AA0314 *et seq.* In its' Order after Briefing, the Court was apparently confused

by the three addresses, representing two residences, despite it being explained in Joseph's Brief. AA0659.4. The Court found, "Defendant's Brief, filed July 15, 2022, indicates that there is a community asset not specifically distributed within the Decree, identified as 621 E. Division St. Under the terms of the Decree, since that residence is purportedly in Defendant's name, the same would be awarded to him." The Court then goes on to complain no values were provided, when Exhibit "C" provides Zillow values in the absence of comps or appraisals. AA0659.4.

"An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason...." Jackson v. State, 117 Nev. 116, 17 P.3d 998 (Nev. 2001). The Court's decision on the properties, ruling that 621 E. Division St. was awarded to Joseph in the Decree, under personal property, as it has his name on it, is an arbitrary decision. Real property is not personal property. Gorden v. Gorden, 93 Nev. 494, 569 P. 2d 397 (Nev. 1977) distinguishes real property from personal property.

**NRS 125.150 Alimony and adjudication of property rights; award of attorney's fee; postjudgment motion; subsequent modification by court.**

1. In granting a divorce, the court:

(a) May award such alimony to either spouse, in a specified principal sum or as specified periodic payments, as appears just and equitable; and

(b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, including, without limitation, any community property transferred into an irrevocable trust pursuant to [NRS 123.125](#) over which the court acquires jurisdiction pursuant to [NRS 164.010](#), except that the court may make an unequal disposition

of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.

2. Except as otherwise provided in this subsection, in granting a divorce, the court shall dispose of any property held in joint tenancy in the manner set forth in subsection 1 for the disposition of community property. If a party has made a contribution of separate property to the acquisition or improvement of property held in joint tenancy, the court may provide for the reimbursement of that party for his or her contribution. The amount of reimbursement must not exceed the amount of the contribution of separate property that can be traced to the acquisition or improvement of property held in joint tenancy, without interest or any adjustment because of an increase in the value of the property held in joint tenancy. The amount of reimbursement must not exceed the value, at the time of the disposition, of the property held in joint tenancy for which the contribution of separate property was made. In determining whether to provide for the reimbursement, in whole or in part, of a party who has contributed separate property, the court shall consider:

- (a) The intention of the parties in placing the property in joint tenancy;
- (b) The length of the marriage; and
- (c) Any other factor which the court deems relevant in making a just and equitable disposition of that property.

This statute provides a contradictory standard for the division of community property. 1(b) sets out that the Court shall, to the extent practicable, make an equal disposition of the community property of the parties. However, 2(c) then provides that “any other factor which the court deems relevant in making a just and equitable disposition of that property.” This leads the Court to make an equitable division of community property when the statute starts out with an equal division. This is contradictory, in the

absence of a finding that there is compelling evidence to make an unequal division of property. As the Court below did not make a finding for compelling reasons to not equally divide the property, there should have been an equal division.

Findings of fact which are rendered by a trial court will [98 Nev. 507] not be disturbed where they are supported by substantial evidence. Joseph F. Sanson Inv. v. Cleland, 97 Nev. 141, 625 P.2d 566 (1981)."  
Hobson v. Bradley & Drendel, Ltd., 654 P.2d 1017, 98 Nev. 505 (Nev. 1982).

There is nothing in the record to suggest that the Court considered trial exhibits, let alone admitted them during the Calendar Call. AA0162. The Court took Zoila's testimony that she had incurred \$75,000 in credit card debt to remodel the two properties. AA0169. Joseph submits that Zoila's testimony alone was not substantial evidence, so the Court abused its' discretion in finding she incurred \$75,000 in credit card debt to remodel. This is significant as the Court found she was entitled to two properties based on how much was spent on the remodeling.

The Court did not have any evidence for a finding that Joseph had funds available, at the time of the Calendar Call, that represented rents he received from the houses. AA 0169 *et seq.*

*Blanco v. Blanco*, 129 Nev. 723, 731-32, 311 P.3d 1170, 1175 (2013)

(concluding that "[t]he equal disposition of community property may not be dispensed with through default"; further elaborating that "community property and debt must be divided in accordance with law" and the district court must "make findings on the division of property in accordance with [NRS 125.150]").

In the Court Order following the briefing, the Court still did not make an equal division of property. The Court recited the \$101,000 in total debts assigned to Zoila and again stated there was insufficient evidence on the value of the properties, when Zillow values were used. AA0659.5. If the Court rejected those values it should have been stated, that he did not find the Zillow values competent evidence. There is no such finding.

Joseph, in his Brief, laid out the transfers from his bank account to Zoila's, evidencing his participation in the repair and remodel of the houses and thus controverting her testimony at Calendar Call. AA0262. He also provided the bank statements to support his analysis that he paid \$45,822 in the remodeling of the two properties. AA0270 *et seq.* As the Court continued to complain that Defendant failed to provide sufficient information, Joseph submits that an evidentiary hearing should have been set by the Court to take evidence to enable it to make an equal division of the property.



## **Alimony:**

NRS 125.190 allows an award of permanent alimony. An award of alimony is reviewed for an abuse of discretion. Kogod, 135 Nev., Adv. Op. 9, at \*5, 439 P.3d at 400; see also Schwartz v. Schwartz, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010). We will not reverse a district court's decision if it is supported by substantial evidence. Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment, and on appeal we do not reweigh evidence. Id. Rouhani v. Rouhani (Nev. App. 2019).

The Court did not make even a token effort to set forth findings supporting the alimony award of \$1500 at the Calendar Call or \$700 after briefing. The Court instead asked Zoila, "And you believe that \$1,500 per month for 10 years is reasonable, based on an income of over \$10,000 per month for Joseph, is that correct?" AA0170. This is an abuse of discretion.

After the briefing, the Court did re-visit alimony. There, however, the Court looked at the paystubs attached to the June 13, 2022 which omitted page 2 reflecting income, then made a finding that his income was \$3676 and "assumed" he was still receiving rental income of \$700, as of February 2022. AA0659.5. Joseph submits the Court should have ordered an evidentiary hearing on the issue of spousal support.

**Child Support:**

In its' analysis on child support, the Court again took the position that the second page was missing from Joseph's June 13, 2022 FDF and used the income from April 2021, refusing to modify the child support. A0659.5.

If the Financial Disclosure Form filed on 7/14/2022 was used, the gross monthly income of \$3293 would have yielded a child support obligation of \$922.04 instead of the current obligation of \$1128. ( $3293 \times 28\% = 922.04$ ). AA0251, AA 0258-0259. The Court abused its' discretion when it did not utilize the most current filed Financial Disclosure Form for its' spousal and child support obligations.

"An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.3..." Jackson v. State, 117 Nev. 116, 17 P.3d 998 (Nev. 2001)

Joseph submits that the Court's failure to utilize the July 14, 2022 Financial Disclosure Form was an abuse of discretion, as the support awards would have been downwardly modified if it had been considered.

**Attorney Fees:**

Joseph appeals the order for attorney fees in the amount of \$5,000 as it is not supported by substantial evidence. His income as set forth in the 7/14/2022 Financial

Disclosure Form is \$3293. With an \$1128 child support order and a \$700 spousal support, there are clearly no funds with which to pay attorney fees .

Procedurally, the Court should have required a Brunzell Brief to determine if the \$5,000 in fees was reasonable. Miller v. Wilfong, 119 P. 3d 727, 121 Nev. 619 (Nev 2005). It did not do so, and that too was an abuse of discretion.

## **XI. CONCLUSION**

For all of the reasons set forth herein, the child support, spousal support and property awards in the Order after Briefing filed on August 4, 2022 and the Amended Decree should be reversed and remanded to the district court for an evidentiary hearing.

Dated this 26<sup>th</sup> day of April, 2023

Respectfully submitted by:  
BONANZA LEGAL GROUP

/s/ Gayle Nathan  
Gayle Nathan, Esq.  
Nevada Bar No. 4917  
Attorney for Appellant Joseph Raul Garcia Rodriquez.

## **XII. CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a

proportionally spaced typeface using Microsoft Word–Office 365 Business in font type Times New Roman size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains 7,124 words; or

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

☐ Does not exceed \_\_\_\_ pages.

3. Finally, I hereby certify that I have read this Brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure

Dated this 26<sup>TH</sup> day of April, 2023

**BONANZA LEGAL GROUP**

/s/Gayle Nathan

Gayle Nathan, Esq.

Nevada Bar No. 4917

Attorney for Appellant

**XIII CERTIFICATE OF SERVICE**

I, an employee of Bonanza Legal Group, hereby certify that on the 27th day of April 2023, I served a true and correct copy of Appellant's Brief as follows:

X First Class US Mail

**Zoila Leon-Yanez**

**3401 N. Walnut, Space 359**

**Las Vegas, NV 89115-004**

/s/ Lisa Silon

Lisa Silon

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