

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH RAUL GARCIA RODRIGUEZ,

Appellant,

v.

ZOILA LEON-YANEZ,

Respondent.

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Clerk of Supreme Court

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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## APPELLANT'S REPLY BRIEF

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Gayle Nathan, Esq.  
Nevada Bar Number 4917  
Bonanza Legal Group 3591 E. Bonanza Rd.  
Las Vegas, NV 89110  
Phone: 702 405-1576 Facsimile: 702 538-5311  
Attorney@BonanzaLegal.com

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### **III. STATEMENT OF THE FACTS**

**1. The Parties were married during the renovation of the Pine St. and Division St. Properties, so all funds used were community property and not entitled to off sets.**

Joseph is seeking to have the two properties at issue during the divorce equally divided. There is no Order awarding him Division St. He submits that the suggestion it was awarded to him by omission is an error. Real property is not personal property, so the Court's direction that he gets to keep anything in his name is error.

**2. Joseph did submit a complete Financial Disclosure Form on July 14, 2022, prior to the Court authoring its' Decision**

Zoila argues that Joseph did not submit a Financial Disclosure Form when asking to have the Decree set aside. That is not true. He filed the required form on June 13, 2022. At the hearing on the motion to set aside the Decree of Divorce, the Court pointed out that page two, which sets forth income, was missing from the Financial Disclosure Form. AA0241-0247. The Court ordered briefing and Joseph filed a complete Financial Disclosure Form on July 14, 2022. AA0248-0249. Zoila's argument that he did not file a Financial Disclosure Form is not true.

**3. Joseph asked that the spousal support award be set aside in his Motion to Set Aside the Decree of Divorce**

As set forth in his Brief, there was no analysis as to the factors under NRS 125.150 . Zoila testified that she thought \$1500 a month in spousal support for ten years was a fair award and the Court awarded that to her. AA 0170 -0176.

On the hearing after financial issues were briefed, the Court reduced the spousal award to \$700, relying on pages attached to the deficient Financial Disclosure Form to make a finding that Joseph was earning \$3676 monthly, and the Court then assumed he was still receiving rent of \$700 per month, with no evidence. AA0659.1-0659.6. His Amended Financial Disclosure Form set his income at \$3293, AA0251, 0258-0260, which are his paystubs to support his income. There is no rental income listed. AA0254.

The Court therefore based its' spousal support award on \$4376, which was \$1,083 more than Joseph was making. Joseph contends this was an abuse of discretion as the Court made its' findings based on old information that was no longer applicable.

#### **4. Joseph provided his 2018 tax return and 2020 tax return as exhibits**

The Court based its' orders on Zoila's testimony that Joseph made \$10,000 per month, despite the fact that tax returns for 2020 (AA0114-0116) and 2018 (AA0479) were provided to the Court.

#### **5. Joseph identified the Division St. property early in the litigation**

Zoila attempts to argue that 621 E. Division St. was only first mentioned in the briefing regarding financial issues. That is simply not true. As set forth in Joseph's Opening Brief, he listed 621 E. Division St. in his first Financial Disclosure Form along with 420 S. Pine St. and 621 E. Division St. AA0075. He also listed that it was paid in full, hence there is no loan mortgage paperwork.

Zoila provided Zillow estimates on the Pine St. property and the Division St. property as exhibits to her motion filed on June 1, 2021. AA0103, AA0104. The value of Pine Street was \$124,624 and Division St. was \$136,423. She clearly understood that two properties were at issue in her initial pleading not the argument that she now makes that Pine St. also faces Ashton and is therefore two properties.

#### **IV. ARGUMENT**

**1. There are two properties, not three in this litigation, and the Court awarded both to Zoila, that is Pine St. and Division St. without a financial analysis as to why she was entitled to \$261,047 worth of real property.**

In reviewing a case in which there was an award of real property, the lower court was found to have abused its' discretion in not making findings to support a compelling reason for an unequal distribution:

“Because the Haiti property was acquired during the marriage, it is presumed to be community property, NRS 123.220, and the district court can only make an

unequal distribution of community property if the court sets forth in writing its conclusion that there is a compelling reason for an unequal distribution, NRS 125.150(1)(b); see Putterman v. Putterman, 113 Nev. 606, 607, 939 P.2d 1047, 1047 (1997). Here, the court referenced appellant's failure to list the Haiti property in his bankruptcy prior to awarding the property to respondent. While the court has discretion to conclude that appellant's failure to list the Haiti property in his bankruptcy is a compelling reason for an unequal distribution of community property, because the court failed to make proper, written findings regarding a compelling reason for an unequal distribution, we must reverse the award of the Haiti property to respondent and remand for additional findings as to this issue. NRS 125.150(1)(b). Nevertheless, because appellant agreed to the distribution of the parties' vehicles and personal property, we affirm the district court's distribution of the remaining community property. “ Wolff, 112 Nev. at 1359, 929 P.2d at 918-19. Jean-Charles v. Jean-Charles (Nev. 2016)

The Court ordered “both” properties be awarded to Zoila, who now argues that Pine St. is two properties because it is facing two different streets. It is one building, on a corner. Joseph submits that “both” properties the Court awarded to her are the Pine St. and East Division St. properties, over \$200,000 worth of properties.

**2. On the financial issues, the Court failed to set forth the factors outlined in NRS 125.150 and did not accurately calculate Joseph's income from his July 14, 2022 Financial Disclosure Form.**

The Court must articulate the factors under NRS 125.150 in making a spousal award.

“[W]e conclude the district court abused its discretion in awarding respondent spousal support because the court failed to consider the factors outlined in NRS 125.150(8) (2013) prior to making the award. See Wolff, 112 Nev. at 1359, 929 P.2d at 918-19 (providing that this court reviews an award of spousal support for an abuse of discretion); see also Devries v. Gallio, 128 Nev., Adv. Op. 63, 290 P.3d 260, 265 (2012) (explaining that this court cannot adequately review a spousal support issue when the district court does not explain its reasons for awarding or denying spousal support). Thus, we reverse the award of spousal support to respondent and remand this matter for further proceedings consistent with this order.” Jean-Charles v. Jean-Charles (Nev. 2016). Also see Davis v. Ewalefo, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) and Sutton v. Sutton, 495 P.3d 528(Table) (Nev. App. 2021)

Although the Court ultimately reduced the spousal support to \$700, that with the \$1128 in child support, leaves Joseph with \$1,465 to live on. This analysis is not supported by substantial evidence as the Court did not review Joseph's Financial



Disclosure Form filed on July 14, 2022, therefore the case should be remanded to the district court for an evidentiary hearing.

## **V. Conclusion**

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

Dated this 2<sup>nd</sup> day of July, 2023

Bonanza Legal Group

/s/ Gayle Nathan

Gayle Nathan, Esq.

Nevada Bar No. 4917

3591 E. Bonanza Rd.

Las Vegas, NV 89110

(702) 405-1576

Attorney for Appellant Joseph Garcia

## **VI. 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 1,581 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 Reply 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 2nd day of July, 2023

**BONANZA LEGAL GROUP**

/s/Gayle Nathan

Gayle Nathan, Esq.

Nevada Bar No. 4917

Attorney for Respondent/Cross Appellant

**VII. CERTIFICATE OF SERVICE**

I, an employee of Bonanza Legal Group, hereby certify that on the 2<sup>nd</sup> day of July, 2023, I served a true and correct copy of Reply via the Supreme Court's electronic filing and service system (eFlex):

Emily McFarling, Esq.

[eservice@mcfarlinglaw.com](mailto:eservice@mcfarlinglaw.com)

/s/ Gayle Nathan

An employee of Bonanza Legal Group