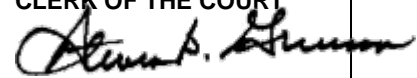


HOFLAND & TOMSHECK

Bradley J. Hofland, Esq.
Nevada Bar No. 6343
BradH@hoflandlaw.com
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Ph.: (702) 895-6760
Fax: (702) 731-6910

Attorneys for Plaintiff Tessie Elma Almario

Electronically Filed
10/25/2022 5:18 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Nov 01 2022 02:41 PM
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

TESSIE ELMA ALMARIO,

Plaintiff,

-VS-

SHERYL ATTERBERG, ON
BEHALF OF HER WARD
RODNEY WILKINSON,

Defendant.

) Case No.: D-19-596071-D

) Dept No.: U

) **NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Plaintiff, Tessie Elma Almario hereby
appeals to the Supreme Court of the State of Nevada the Court's Findings of Fact,
Conclusions of Law, and Order and Judgment entered on September 26, 2022.

Dated this 25th day of October, 2022.

HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland

Bradley J. Hofland, Esq.
State Bar of Nevada No. 6343
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
(702) 895-6760

Attorney for Plaintiff, Tessie Elma Almario

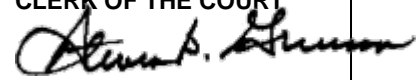
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hofland & Tomsheck, that Pursuant to NRCP 5(b) and EDCR 7.26, that on the 25th day of October, 2022, I served the foregoing **NOTICE OF APPEAL** on the following parties by E-Service through Odyssey addressed as follows:

JAMES W. KWON, ESQ.
jkwon@jwklawfirm.com
Attorney for Defendant

By: /s/ Nikki Warren
An Employee of Hofland & Tomsheck



HOFLAND & TOMSHECK

Bradley J. Hofland, Esq.

Nevada Bar No. 6343

BradH@hoflandlaw.com

228 South 4th Street, 1st Floor

Las Vegas, Nevada 89101

Ph.: (702) 895-6760

Fax: (702) 731-6910

Attorneys for Plaintiff Tessie Elma Almario

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

TESSIE ELMA ALMARIO,

Plaintiff,

-VS-

SHERYL ATTERBERG, ON

BEHALF OF HER WARD

RODNEY WILKINSON,

Defendant.

) Case No.: D-19-596071-D

) Dept No.: U

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Plaintiff, Tessie Elma Almario

2. Judge issuing the decision, judgment, or order appealed from:

The Honorable Dawn Throne; Eighth Judicial District Court, Clark County.

3. Counsel for Appellant:

Party: Plaintiff/Appellant, Tessie Elma Almario

Counsel: Bradley J. Hofland, Esq.
HOFLAND & TOMSHECK
228 South 4th Street, 1st Fl.
Las Vegas, NV 89101

Telephone (702) 895-6760
Facsimile (702) 731-6910
Email bradh@hoflandlaw.com

1 **4. Identify each respondent and the name and address of appellate**
2 **counsel, if known, for each respondent (if the name of a respondent's appellate**
3 **counsel is unknown, indicate as much and provide the name and address of**
4 **that respondent's trial counsel):**

5 **Party:** **Defendant/Respondent, SHERYL ATTERBERG, ON**
6 **BEHALF OF HER WARD**
7 **RODNEY WILKINSON**

8 **Counsel:** James W. Kwon, Esq. Telephone (702) 515-1200
9 6280 Spring Mountain Road, Facsimile (702) 515-1201
10 Suite 100 Email [jkwon@jwklawfirm.c](mailto:jkwon@jwklawfirm.com)
 Las Vegas, Nevada 89146 [om](mailto:jkwon@jwklawfirm.com)

11 Mr. Kwon is the trial counsel; undersigned counsel does not know if
12 respondent will retain additional or separate appellate counsel.

13 **5. Indicate whether any attorney identified above in response to**
14 **question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the**
15 **district court granted that attorney permission to appear under SCR 42**
16 **(attach a copy of any district court order granting such permission):**

17 All counsel is licensed to practice law in Nevada.

18 **6. Indicate whether appellant was represented by appointed or retained**
19 **counsel in the district court:**

20 All parties were represented by counsel.

21 **7. Indicate whether appellant is represented by appointed or retained**
22 **counsel on appeal:**

23 Retained.

24 **8. Indicate whether appellant was granted leave to proceed in forma**
25 **pauperis, and the date of entry of the district court order granting such leave:**

26 Not applicable.

27 //

28 //

1 **9. Indicate the date the proceedings commenced in the district court**
2 **(e.g., date complaint, indictment, information, or petition was filed):**

3 September 9, 2019, Complaint for Divorce.

4 **10. Provide a brief description of the nature of the action and result in**
5 **the district court, including the type of judgment or order being appealed and**
6 **the relief granted by the district court:**

7 This is an appeal from a final judgment of the district court and subsequent
8 attorney fee award therefrom,

9 The issues on appeal include:

- 10 1. Whether the Court erred in failing to make additional findings as
11 provided for in NRCP 52.
- 12 2. Whether the Court erred in granting 60(b) relief to Defendant.
- 13 3. Whether the Court erred in relitigating a final issue decided by
14 another court.
- 15 4. Whether the Court erred in finding that Defendant is an
16 incapacitated person pursuant to NRS 132.175.
- 17 5. Where the Court erred in granting Defendant an award of
18 Attorney's fees and costs.
- 19 6. Where the Court erred in asserting Jurisdiction over the subject
20 matter and division of separate property.
- 21 7. Along with any other issues that may come to light after an examination
22 of the record and transcripts.

23 //

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25 //

1 **11. Indicate whether the case has previously been the subject of an**
2 **appeal to or original writ proceeding in the Supreme Court and, if so, the**
3 **caption and Supreme Court docket number of the prior proceeding:**

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

5 * * * *

6 TESSIE ELMA ALMARIO,

7 Petitioner,

8 vs.

CASE NO.: 83688

9 EIGHTH JUDICIAL DISTRICT COURT
10 OF THE STATE OF NEVADA, CLARK
11 COUNTY, AND THE HONORABLE
12 DAWN R. THRONE,

13 Respondents,

District Court Case No.
D-19-596071-D

14 And

15 SHERYL ATTERBERG, ON BEHALF
16 OF HER ADULT WARD RODNEY
17 WILKINSON,

18 Real Party in Interest,

19 **12. Indicate whether this appeal involves child custody or visitation:**

20 Not Applicable.

21 **13. If this is a civil case, indicate whether this appeal involves the**
22 **possibility of settlement:**

23 There is a potential for this matter to be resolved at a settlement conference.

24 Dated this 25th day of October, 2022.

25 **HOFLAND & TOMSHECK**

26 By: /s/ Bradley J. Hofland

27 Bradley J. Hofland, Esq.
28 State Bar of Nevada No. 6343
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
(702) 895-6760

Attorney for Plaintiff, Tessie Elma Almario

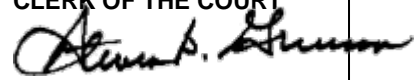
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hofland & Tomsheck, that Pursuant to NRCP 5(b) and EDCR 7.26, that on the 25th day of October, 2022, I served the foregoing **CASE APPEAL STATEMENT** on the following parties by E-Service through Odyssey addressed as follows:

JAMES W. KWON, ESQ.
jkwon@jwklawfirm.com
Attorney for Defendant

By: /s/ Nikki Warren
An Employee of Hofland & Tomsheck



HOFLAND & TOMSHECK

Bradley J. Hofland, Esq.

Nevada Bar No. 6343

BradH@hoflandlaw.com

228 South 4th Street, 1st Floor

Las Vegas, Nevada 89101

Ph.: (702) 895-6760

Fax: (702) 731-6910

Attorneys for Plaintiff Tessie Elma Almario

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

TESSIE ELMA ALMARIO,

Plaintiff,

-vs-

SHERYL ATTERBERG, ON

BEHALF OF HER WARD

RODNEY WILKINSON,

Defendant.

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Case No.: D-19-596071-D

Dept No.: U

NOTICE OF POSTING APPEAL

BOND FOR PLAINTIFF TESSIE

ELMA ALMARIO

PLEASE TAKE NOTICE that an Appeal Bond for Plaintiff, Tessie Elma Almario in the amount of FIVE HUNDRED DOLLARS and 00/100 (\$500.00) was filed with the Court.

Dated this 26th day of October, 2022.

HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland

Bradley J. Hofland, Esq.

State Bar of Nevada No. 6343

228 South 4th Street, 1st Floor

Las Vegas, Nevada 89101

(702) 895-6760

Attorney for Plaintiff, Tessie Elma Almario

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Hofland & Tomsheck, that Pursuant
3 to NRCP 5(b) and EDCR 7.26, that on the 26th day of October, 2022, I served the
4 foregoing **NOTICE OF POSTING APPEAL BOND FOR PLAINTIFF TESSIE**
5 **ELMA ALMARIO** on the following parties by E-Service through Odyssey
6 addressed as follows:

7 JAMES W. KWON, ESQ.
8 jkwon@jwklawfirm.com
9 *Attorney for Defendant*

10
11 By: /s/ Nikki Warren

12 An Employee of Hofland & Tomsheck
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CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING



Law Offices of
Bradley J. Holland, P.C.
Iola Client Trust Account
228 S. 4th Street, Suite 100
Las Vegas, Nevada 89101

BANK OF AMERICA, NA
04-72/1224

5123

Date

PAY TO THE
ORDER OF

Supreme Court of Nevada
Two Hundred Fifty and 00/100 *****

10/26/2022
\$250.00

DOLLARS

Details on Back

PROTECTED AGAINST FRAUD

Supreme Court of Nevada
201 S. Carson Street
Suite 201
Carson City, CA 89701



Bradley J. Holland

Cost Bond Wilkinson 004961975283 5123

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Law Offices of
Bradley J. Holland, P.C.
Iola Client Trust Account
228 S. 4th Street, Suite 100
Las Vegas, Nevada 89101

BANK OF AMERICA, NA
04-72/1224

5122

Date

PAY TO THE
ORDER OF

Clerk Of Court
Five Hundred and 00/100 *****

10/26/2022
\$500.00

DOLLARS

Details on Back

PROTECTED AGAINST FRAUD



Bradley J. Holland

Cost Bond Wilkinson 004961975283 5122

Intuit® CheckLock™ Secure Check

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. D-19-596071-D**

Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

§
 §
 §
 §

Location: **Department U**
 Judicial Officer: **Throne, Dawn R.**
 Filed on: **09/09/2019**
 Case Number History:

CASE INFORMATION**Statistical Closures**

02/12/2020 Settled/Withdrawn Without Judicial Conference or Hearing

Case Type: **Divorce - Complaint**
 Subtype: **Complaint No Minor(s)**

Case Status: **01/26/2021 Reopened**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number D-19-596071-D
 Court Department U
 Date Assigned 01/04/2021
 Judicial Officer Throne, Dawn R.

PARTY INFORMATION**Plaintiff****Wilkinson, Tessie E****Hofland, Bradley J.***Retained*

702-895-6760(W)

Defendant**Wilkinson, Rodney****Kwon, James W.***Retained*

702-515-1200(W)

DATE**EVENTS & ORDERS OF THE COURT****EVENTS**

10/26/2022



Notice of Posting of Cost Bond

Filed By: Plaintiff Wilkinson, Tessie E

[127] Notice of Posting Appeal Bond for Plaintiff Tessie Elma Almario

10/26/2022



Request Transcript of Proceedings

Party: Plaintiff Wilkinson, Tessie E

[126] Request for Transcript of Proceedings

10/25/2022



Case Appeal Statement

Filed By: Plaintiff Wilkinson, Tessie E

[125] Case Appeal Statement

10/25/2022



Notice of Appeal

Filed By: Plaintiff Wilkinson, Tessie E

[124] Notice of Appeal

10/14/2022



Opposition

Filed By: Plaintiff Wilkinson, Tessie E

[123] PLAINTIFFS OBJECTION AND OPPOSITION TO DEFENDANT'S REQUEST FOR FEES AND COSTS

10/05/2022



Memorandum











Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of

Subject Minor Wilkinson, Rodney

[122] Defendant's Memorandum of Attorney's Fees and Costs
















CASE SUMMARY

CASE NO. D-19-596071-D

09/26/2022	 Notice of Entry <i>[121] Notice of Entry of Findings of Fact, Conclusions of Law and Order and Judgment</i>
09/26/2022	 Findings of Fact, Conclusions of Law and Judgment <i>[120] Findings of Fact, Conclusions of Law, and Order and Judgment</i>
09/21/2022	 Brief Filed By: Plaintiff Wilkinson, Tessie E <i>[119] Plaintiff's Closing Argument Brief</i>
09/21/2022	 Brief Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[118] Defendant's Closing Arguments Brief</i>
08/31/2022	 Notice of Entry of Order Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[117] Notice of Entry of Order</i>
08/31/2022	 Ex Parte Order <i>[116] Ex Parte Order Granting Defendant's Audio Visual Transmission Equipment Appearance Requests</i>
08/31/2022	 Witness List Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[115] Defendant's Witness List</i>
08/30/2022	 Ex Parte Application for Order Party: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[114] Defendants Ex Parte Application for Order Granting Audiovisual Transmission Equipment Appearance Requests</i>
08/30/2022	 Exhibits Filed By: Plaintiff Wilkinson, Tessie E <i>[113] Plaintiff's Amended Exhibit list for Trial</i>
08/29/2022	 Pre-trial Memorandum Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[112] Defendant Rodney Wilkinson's Pre-Trial Memorandum</i>
08/26/2022	 Pre-trial Memorandum Filed By: Plaintiff Wilkinson, Tessie E <i>[111] Plaintiff's Pre-Trial Memorandum</i>
08/26/2022	 Exhibits Filed By: Plaintiff Wilkinson, Tessie E <i>[110] Plaintiff's Exhibit List for Trial</i>
08/23/2022	 Objection Filed By: Plaintiff Wilkinson, Tessie E <i>[109] Objection to Defendant's Sixth Supplemental NRCP 16.2 Disclosures</i>
08/22/2022	 Objection Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[108] Defendants Objections to Plaintiffs Fourth Supplemental List of Witnesses and Disclosure of Documents</i>
08/01/2022	 Objection Filed By: Plaintiff Wilkinson, Tessie E <i>[107] Objection To Defendants Fifth Supplemental NRCP 16.2 Disclosure</i>
07/07/2022	















CASE SUMMARY

CASE NO. D-19-596071-D

	 Audiovisual Transmission Equipment Appearance Request Party: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[106] Audiovisual Transmission Equipment Appearance Request - Rodney Wilkinson</i>
07/07/2022	 Audiovisual Transmission Equipment Appearance Request Party: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[105] Audiovisual Transmission Equipment Appearance Request - Sheryl Atterberg</i>
07/07/2022	 Audiovisual Transmission Equipment Appearance Request Party: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[104] Audiovisual Transmission Equipment Appearance Request - Steven Atterberg</i>
04/05/2022	 Order Setting Civil Non-Jury Trial <i>[103] Amended Case and Evidentiary Hearing/Non-Jury Trial Management Order</i>
10/14/2021	 Transcript of Proceedings <i>[102] JULY 07, 2021</i>
10/14/2021	 Final Billing of Transcript <i>[101] JULY 07, 2021</i>
10/14/2021	 Estimate of Transcript <i>[100] July 07, 2021</i>
09/09/2021	 Notice of Entry of Order Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[98] Notice of Entry of Order</i>
09/09/2021	 Order <i>[97] Order from July 7, 2021 Motion Hearing</i>
08/24/2021	 Order <i>[96] Order on Discovery Commissioner's Report and Recommendations</i>
08/24/2021	 Order <i>[95] Order on Discovery Commissioner's Report and Recommendations</i>
08/09/2021	 Discovery Commissioners Report and Recommendations <i>[94] Discovery Commissioners Report and Recommendations For Attorney's Fees</i>
08/09/2021	 Discovery Commissioners Report and Recommendations <i>[93] Discovery Commissioners Report and Recommendations Motion to Compel</i>
08/05/2021	 Final Billing of Transcript <i>[99] JULY 07, 2021</i>
08/05/2021	 Transcript of Proceedings <i>[92] July 07, 2021</i>
07/29/2021	 Estimate of Transcript <i>[91] JULY 07, 2021</i>
07/28/2021	 Notice of Rescheduling of Hearing <i>[90] Notice of Rescheduling of Hearing</i>
07/21/2021	 Reply Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[89] Reply in Support of Defendant s Motion for Protective Order Precluding Plaintiff from Taking the Video Deposition of Defendant Rodney Wilkinson Pursuant to NRCP 26, For Attorney s Fees and Costs, and For All Other Related Relief</i>
















CASE SUMMARY

CASE NO. D-19-596071-D

07/14/2021	 Memorandum Filed By: Plaintiff Wilkinson, Tessie E <i>[88] Memorandum of Fees and Costs with Supporting Affidavit and Exhibit</i>
07/06/2021	 Reply Filed By: Plaintiff Wilkinson, Tessie E <i>[87] Plaintiff's Reply To Defendant's Opposition To Plaintiff's Notice Of Motion And Motion For Summary Judgment And Related Relief And Opposition To Countermotion For Attorney's Fees And Costs And All Other Related Relief.</i>
07/06/2021	 Reply to Opposition Filed by: Plaintiff Wilkinson, Tessie E <i>[86] Plaintiff's Reply To Defendant's Opposition To Plaintiff's Notice Of Motion And Motion To Compel Discovery And For Attorney's Fees And Opposition To Countermotion For Attorney's Fees And Costs And All Other Related Relief.</i>
07/06/2021	 Objection Filed By: Plaintiff Wilkinson, Tessie E <i>[85] Objection to Defendant's Third Supplemental NRCP 16.2 Disclosure</i>
07/02/2021	 Pre-trial Memorandum Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[84] Defendant Rodney Wilkinson's Pre-Trial Memorandum</i>
07/02/2021	 Pre-trial Memorandum Filed By: Plaintiff Wilkinson, Tessie E <i>[83] Plaintiff's Pre-Trial Memorandum</i>
07/01/2021	 Order Shortening Time <i>[82] Order Shortening Time on Motion to Compel Discovery</i>
07/01/2021	 Notice of Entry Filed By: Plaintiff Wilkinson, Tessie E <i>[81] NOTICE OF ENTRY OF ORDER SHORTENING TIME ON PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY'S FEES</i>
06/30/2021	 Opposition and Countermotion Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[80] Defendant's Opposition to Plaintiff's Motion to Compel Discovery and For Attorney's Fees and Countermotion for Attorney's Fees and Costs and All Other Related Relief</i>
06/30/2021	 Opposition and Countermotion Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[79] Defendant's Opposition to Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief and Countermotion for Attorney's Fees and Costs and All Other Related Relief</i>
06/30/2021	 Notice of Entry Filed By: Plaintiff Wilkinson, Tessie E <i>[78] Notice of Entry of Order Shortening Time on Plaintiff's Notice of Motion and Motion for Summary Judgment</i>
06/30/2021	 Order Shortening Time <i>[77] Order Shortening Time</i>
06/29/2021	 Ex Parte Application Filed by: Plaintiff Wilkinson, Tessie E <i>[76] Ex Parte Application For An Order Shortening Time On Plaintiff's Notice of Motion and Motion to Compel Discovery and for Attorney's Fees</i>
06/29/2021	 Ex Parte Application Filed by: Plaintiff Wilkinson, Tessie E







CASE SUMMARY

CASE NO. D-19-596071-D

	<i>[75] Ex Parte Application For An Order Shortening Time On Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief</i>
06/24/2021	 Objection Filed By: Plaintiff Wilkinson, Tessie E <i>[74] OBJECTION TO DEFENDANT S SECOND SUPPLEMENTAL NRCP 16.2 DISCLOSURE</i>
06/24/2021	 Objection Filed By: Plaintiff Wilkinson, Tessie E <i>[73] Objection To Defendant s First Supplemental Nrcp 16.2 Disclosure</i>
06/23/2021	 Notice of Hearing <i>[72] Notice of Hearing</i>
06/16/2021	 Motion for Summary Judgment Filed by: Plaintiff Wilkinson, Tessie E <i>[71] Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief</i>
06/16/2021	 Notice of Hearing <i>[70] Notice Of Hearing</i>
06/15/2021	 Motion to Compel Filed by: Plaintiff Wilkinson, Tessie E <i>[69] Plaintiff's Notice of Motion and Motion to Compel Discovery and for Attorney's Fees</i>
06/11/2021	 Affidavit of Service Filed By: Plaintiff Wilkinson, Tessie E <i>[68] Affidavit of Service</i>
06/01/2021	 Opposition and Countermotion Filed By: Plaintiff Wilkinson, Tessie E <i>[67] Plaintiff s Opposition To Defendant s Motion For Protective Order Precluding Plaintiff From Taking The Video Deposition Of Defendant Rodney Wilkinson Pursuant To NRCP 26, For Attorney s Fees And Costs, And For All Other Related Relief And Countermotion For Attorney s Fees And Costs And Related Relief.</i>
05/27/2021	 List of Witnesses Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[66] Defendant's Amended List of Witnesses</i>
05/27/2021	 Notice of Hearing <i>[65] Notice of Hearing</i>
05/26/2021	 Witness List Filed by: Plaintiff Wilkinson, Tessie E <i>[64] Plaintiff's Witness List</i>
05/26/2021	 List of Witnesses Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[63] Defendant's List of Witnesses</i>
05/24/2021	 Supplemental List of Witnesses and Production of Documents Filed by: Plaintiff Wilkinson, Tessie E <i>[62] Plaintiff's First Supplemental List of Witnesses and Disclosure of Documents</i>
05/20/2021	 Stipulation and Order <i>[61] Stipulation and Order for Expert Examination</i>
05/18/2021	 Exhibits Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[60] Defendant's Exhibits Submitted Under Seal in Support of Defendant s Motion for Protective Order Precluding Plaintiff from Taking the Video Deposition of Defendant Rodney Wilkinson Pursuant to NRCP 26, For Attorney s Fees and Costs, and For All Other Related Relief</i>

CASE SUMMARY

CASE NO. D-19-596071-D

05/18/2021	 Motion for Protective Order Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[59] Defendant s Motion for Protective Order Precluding Plaintiff from Taking the Video Deposition of Defendant Rodney Wilkinson Pursuant to NRCP 26, For Attorney s Fees and Costs, and For All Other Related Relief</i>
05/13/2021	 Objection Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[58] Notice of Defendant's Objection to Plaintiff Taking Video Deposition of Defendant Rodney Wilkinson</i>
05/06/2021	 Notice to Take Deposition Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[57] Notice of Taking Deposition of Tessie Elma Almario</i>
04/29/2021	 Notice Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[56] Notice of Intent to Serve Subpoena Duces Tecum</i>
04/21/2021	 Objection Filed By: Plaintiff Wilkinson, Tessie E <i>[55] Objection to Defendant's Initial NRCP 16.2 Disclosure</i>
04/21/2021	 Re-Notice Filed by: Attorney Hofland, Bradley J.; Plaintiff Wilkinson, Tessie E <i>[54] Plaintiff s Request To Reset Hearing On Plaintiff s Notice Of Motion For Protective Order To Defendant s Issuance Of Subpoena Duces Tecums To Cornerstone Bank; Eastern Colorado Bank; Norman R. Taylor, Cpa, Pc; U.S. Bank; And Chase Bank</i>
04/21/2021	 Declaration Filed By: Plaintiff Wilkinson, Tessie E <i>[53] Supplemental Declaration Of Dina Desousa-Cabral, Esq. In Support Of Defendant s Notice Of Motion For Protective Order To Plaintiff s Issuance Of Subpoena Duces Tecums To Cornerstone Bank; Eastern Colorado Bank; Norman R. Taylor, Cpa, Pc; U.S. Bank; And Chase Bank</i>
04/16/2021	 Order Shortening Time <i>[52] Order Shortening Time on Plaintiff's Notice of Motion and Motion for Expert Examination/Evaluation</i>
04/16/2021	 Ex Parte Application for Order Party: Plaintiff Wilkinson, Tessie E <i>[51] Ex Parte Application For An Order Shortening Time On Plaintiff s Notice Of Motion And Motion For Expert Examination/Evaluation</i>
04/14/2021	 Notice of Hearing <i>[50] Notice of hearing</i>
04/09/2021	 Motion Filed By: Plaintiff Wilkinson, Tessie E <i>[49] Plaintiff's Notice of Motion and Motion for Expert Examination/Evaluation</i>
04/01/2021	 List of Witnesses Filed By: Plaintiff Wilkinson, Tessie E <i>[48] Plaintiff's Initial List of Witnesses and Disclosure of Documents</i>
03/30/2021	 Reply Filed By: Plaintiff Wilkinson, Tessie E <i>[47] Plaintiff s Reply To Defendant s Opposition To Plaintiff s Motion For Protective Order To Plaintiff s Issuance Of Subpoena Duces Tecums To Cornerstone Bank; Eastern Colorado Bank; Norman R. Taylor, Cpa, Pc; U.S. Bank; And Chase Bank</i>
03/30/2021	 Expert Witness List Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of

CASE SUMMARY

CASE NO. D-19-596071-D

Subject Minor Wilkinson, Rodney
[46] Defendant's List of Expert Witnesses

03/26/2021



Designation of Witness

Filed by: Plaintiff Wilkinson, Tessie E
[45] Plaintiff's Designation of Expert Witnesses

03/23/2021



Family Court Motion Opposition Fee Information Sheet

Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney
[44] Family Court Motion Opposition Fee Information Sheet

03/23/2021



Opposition

Filed By: Attorney Kwon, James W.; Guardian of Person and Estate Atterberg, Sheryl
[43] Defendant's Opposition to [Plaintiff's] Notice of Motion for Protective Order to [Defendant's] Issuance of Subpoena Duces Tecums

03/12/2021



Notice of Hearing

[42] Notice of Hearing

03/10/2021



Objection

Filed By: Plaintiff Wilkinson, Tessie E
[41] Notice Of Defendant s Objections To Subpoena Duces Tecum To Cornerstone Bank

03/10/2021



Objection

Filed By: Plaintiff Wilkinson, Tessie E
[40] Notice Of Defendant s Objections To Subpoena Duces Tecum To Eastern Colorado Bank

03/10/2021



Objection

Filed By: Plaintiff Wilkinson, Tessie E
[39] Notice Of Defendant s Objections To Subpoena Duces Tecum To Chase Bank

03/10/2021



Objection

Filed By: Plaintiff Wilkinson, Tessie E
[38] Notice Of Defendant s Objections To Subpoena Duces Tecum To Norman R. Taylor, Cpa, Pc

03/10/2021



Objection

Filed By: Plaintiff Wilkinson, Tessie E
[37] Notice Of Defendant s Objections To Subpoena Duces Tecum To U.S. Bank

03/10/2021



Motion for Protective Order

Filed by: Plaintiff Wilkinson, Tessie E
[36] Defendant s Notice Of Motion For Protective Order To Plaintiff s Issuance Of Subpoena Duces Tecums To Cornerstone Bank; Eastern Colorado Bank; Norman R. Taylor, Cpa, Pc; U.S. Bank; And Chase Bank

03/09/2021



Notice of Entry of Order

Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney
[35] Notice of Entry of Order

03/09/2021



Order

[34] Order from February 4, 2021 Motion Hearing

03/05/2021



Financial Disclosure Form

Filed by: Plaintiff Wilkinson, Tessie E
[33] General Financial Disclosure Form

03/03/2021



Notice

Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney
[32] Notice of Intent to Serve Subpoena Duces Tecum

03/03/2021



Notice

Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

CASE SUMMARY

CASE NO. D-19-596071-D

[31] Notice of Intent to Serve Subpoenas Duces Tecum

02/25/2021



Financial Disclosure Form

Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

[30] Defendant Rodney Wilkinson's General Financial Disclosure Form

02/10/2021



Order Setting Civil Non-Jury Trial

[29] Case and Evidentiary Hearing/Non-Jury Trial Management Order

02/09/2021



Joint Preliminary Injunction

Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

[28] Joint Preliminary Injunction

02/04/2021



Request for Issuance of Joint Preliminary Injunction

Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

[27] Request for Issuance of Joint Preliminary Injunction

02/03/2021



Reply

Filed By: Defendant Wilkinson, Rodney

[26] Reply in Support of Defendant's Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) and Opposition to Plaintiff's Countermotion for Attorney's Fees and Related Relief

02/02/2021



Exhibits

Filed By: Plaintiff Wilkinson, Tessie E

[25] Appendix of Exhibits in Support of Plaintiff's Opposition To Defendant's Motion To Set Aside The Divorce Decree Pursuant To Nrcp 60(B) And Countermotion For Attorney's Fees And Related Relief

02/02/2021



Opposition and Countermotion

Filed By: Plaintiff Wilkinson, Tessie E

[24] Plaintiff's Opposition To Defendant's Motion To Set Aside The Divorce Decree Pursuant To Nrcp 60(B) And Countermotion For Attorney's Fees And Related Relief

02/01/2021



Notice of Entry of Order

Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

[23] Notice of Entry of Order Shortening Time

01/29/2021



Substitution of Attorney

Filed By: Plaintiff Wilkinson, Tessie E

[22] Substitution of Attorney

01/29/2021



Order Shortening Time

[21] Order Shortening Time

01/28/2021



Ex Parte Application

Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

[20] Ex Parte Application for Order Shortening Time on Defendant's Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b)

01/26/2021



Notice of Hearing

Filed By: Defendant Wilkinson, Rodney

[19] Notice of Hearing

01/25/2021



Exhibits

Filed By: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

[18] Exhibits 1-2 in Support of Defendant's Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b)

01/25/2021



















Motion to Set Aside

Filed by: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney

CASE SUMMARY






CASE NO. D-19-596071-D

	<i>[17] Defendant's Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b)</i>
01/20/2021	 Notice of Appearance Party: Defendant Wilkinson, Rodney; Guardian of Person and Estate Atterberg, Sheryl; On Behalf of Subject Minor Wilkinson, Rodney <i>[16] Notice of Appearance</i>
01/04/2021	Administrative Reassignment to Department U <i>Case Reassignment - Judicial Officer Dawn R. Throne</i>
02/13/2020	 Notice of Entry of Decree Party: Plaintiff Wilkinson, Tessie E <i>[15] Notice of Entry of Decree of Divorce</i>
02/12/2020	 Decree of Divorce Filed by: Plaintiff Wilkinson, Tessie E <i>[14] Decree of Divorce</i>
02/03/2020	 Request for Summary Disposition <i>[13] Request for Summary Disposition</i>
01/31/2020	 Request for Summary Disposition <i>[12] Request for Summary Disposition</i>
01/31/2020	 Affidavit of Resident Witness <i>[11] Affidavit Resident Witness</i>
01/29/2020	 Notice of Entry of Stipulation and Order <i>[10] Notice Entry of Stipulation & Order to Set Aside Default</i>
01/28/2020	 Answer to Complaint Filed By: Defendant Wilkinson, Rodney <i>[9] Answer to Complaint for Divorce</i>
01/28/2020	 Stipulation and Order Filed By: Plaintiff Wilkinson, Tessie E <i>[8] Stipulation and Order to Set Aside Default</i>
12/20/2019	 Default Filed By: Plaintiff Wilkinson, Tessie E <i>[7] ***SET ASIDE PER ORDER 1/28/20*** Default</i>
12/02/2019	 Acceptance of Service Filed by: Plaintiff Wilkinson, Tessie E <i>[6] Acceptance of Service</i>
09/11/2019	 Summons Filed By: Plaintiff Wilkinson, Tessie E <i>[5] Summons</i>
09/11/2019	 Joint Preliminary Injunction Filed by: Plaintiff Wilkinson, Tessie E <i>[4] Joint Preliminary Injunction</i>
09/09/2019	 Summons Electronically Issued - Service Pending Filed by: Plaintiff Wilkinson, Tessie E <i>[3] Summons</i>
09/09/2019	 Request for Issuance of Joint Preliminary Injunction Filed By: Plaintiff Wilkinson, Tessie E <i>[2] Request for Issuance of Joint Preliminary Injunction</i>
09/09/2019	 Complaint for Divorce Filed by: Plaintiff Wilkinson, Tessie E <i>[1] Complaint for Divorce</i>

CASE SUMMARY

CASE NO. D-19-596071-D

HEARINGS

10/26/2022	Decision (2:00 AM) (Judicial Officer: Throne, Dawn R.) <i>Re: Attorney's Fees</i>
09/27/2022	CANCELED Decision (3:00 PM) (Judicial Officer: Throne, Dawn R.) <i>Vacated</i> <i>(BlueJeans/video hearing)</i>
09/09/2022	 Non-Jury Trial (9:00 AM) (Judicial Officer: Throne, Dawn R.) <i>(Day #2, Stack #1)</i> Matter Continued; Journal Entry Details: <i>NON-JURY TRIAL: (DAY #2, STACK #1) In-person appearances. Meredith Simmons, Esq., Nevada Bar No.: 15817, present on behalf of Plaintiff. Jason Carr, Esq., Nevada Bar No.: 6587, present on behalf of Plaintiff. Matthew Corzine, present and along with Defendant's counsel. The Court noted the papers and pleadings on file. Testimony presented and deposition published per worksheets. The Court noted that Defendant/Counsel Kwon has submitted (via e-mail with cc to opposing counsel) proposed Findings of Fact and Conclusions of Law and Order. Following testimony and discussion, COURT ORDERED, as follows: Counsels shall submit written CLOSING BRIEFS for the Court's review and signature by Wednesday, 9-21-22 by 5:00 p.m. Decision SET 9-27-22 at 3:00 p.m. (BlueJeans/video hearing).;</i>
09/08/2022	 Non-Jury Trial (1:30 PM) (Judicial Officer: Throne, Dawn R.) <i>(Day #1, Stack #1)</i> Matter Heard; Journal Entry Details: <i>Defendant and Sheryl Atterberg were present via VIDEO CONFERENCE through the BlueJeans application. Plaintiff, Attorney Bradley Hofland, Attorney Jason Carr, Attorney Joshua Tomcheck and Attorney James Kwon were present IN PERSON. Counsel STIPULATED to admit all Plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44. Counsel STIPULATED to admit Defendant's exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG and HHH. Opening statements made by Counsel. Sworn testimony taken. Matter concluded for the day to reconvene on Friday, September 9, 2022.;</i>
09/01/2022	 Calendar Call (9:00 AM) (Judicial Officer: Throne, Dawn R.) Matter Heard; Journal Entry Details: <i>CALENDAR CALL BlueJeans/video hearing. The Court noted the papers and pleadings on file. Discussion regarding trial related matters. The Court noted that Counsel Kwon's clients shall appear via BlueJeans/video hearing. Counsel Kwon noted that expert witness Dr. P. H. Janda, Esq., FAAN shall be appearing in-person (on Thursday). Following discussion, COURT ORDERED, as follows: Counsels shall confer as to exhibits to be stipulated to. Non-Jury Trial SET 9-8-22 at 1:30 p.m. and 9-9-22 at 9:00 a.m. STANDS.;</i>
11/12/2021	CANCELED Non-Jury Trial (9:00 AM) (Judicial Officer: Throne, Dawn R.) <i>Vacated</i> <i>Stack 1</i>
11/05/2021	 Minute Order (11:21 AM) (Judicial Officer: Throne, Dawn R.) Minute Order - No Hearing Held; Journal Entry Details: <i>MINUTE ORDER--NO HEARING HELD. NRCP 1 and EDCR 1.10 state that the procedures in district court shall be administered to secure efficient, just, and inexpensive determinations in every action and proceeding. THE COURT FINDS that the parties in this case have a Non-Jury Trial scheduled for November 12, 2021 at 9:00 a.m. THE COURT FURTHER FINDS that Plaintiff has filed a Petition for Writ of Mandamus or Prohibition in the Court of Appeals of the State of Nevada that requests in part that the scheduled Non-Jury Trial be stayed pending a ruling on Plaintiff's Writ. THE COURT FURTHER FINDS that it is concerned about the parties incurring fees and costs that might be unnecessary and it is in the best interest of all parties and their counsel not to proceed with the Non-Jury Trial until a ruling has been made by the Nevada Supreme Court on the Petition. BASED ON THE ABOVE FINDINGS, IT IS HEREBY ORDERED that the Non-Jury Trial set on November 12, 2021 at 9:00 a.m. is VACATED. The Non-Jury Trial will be reset if necessary after the ruling on Plaintiff's pending Writ. IT IS FURTHER ORDERED that this case shall not be stayed and that discovery shall remain open if the parties have any further discovery they need to complete to be prepared for a Non-Jury Trial. SO ORDERED. ;</i>
08/04/2021	 Status Check (1:30 PM) (Judicial Officer: Young, Jay)

CASE SUMMARY

CASE NO. D-19-596071-D

Matter Heard;

Journal Entry Details:

STATUS CHECK: COURT CLERKS: Ruby Castillo (rc), Diane Ford In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application. Attorney Hofland represented that at the last hearing they discussed a meet and confer with counsel. Attorney Hofland further represented they had a meet and confer scheduled for Monday, 8-2-2021 but they didn't receive a call from Attorney Kwon's office. Attorney Hofland stated a copy of the Order they prepared was also provided to Attorney Kwon's office and they also did not receive a response. Further discussion. COMMISSIONER made its FINDINGS and RECOMMENDED the following: 1. Attorney Hofland shall submit a Report and Recommendation (R&R) along with the correspondence that was given to Attorney Kwon for review.;

08/04/2021



All Pending Motions (1:00 PM) (Judicial Officer: Young, Jay)

Matter Heard;

Journal Entry Details:

DEFENDANT'S MOTION FOR PROTECTIVE ORDER PRECLUDING PLAINTIFF FROM TAKING THE VIDEO DEPOSITION OF DEFENDANT RODNEY WILKINSON PURSUANT TO NRCP 26, FOR ATTY FEES AND COSTS AND FOR ALL OTHER RELATED RELIEF AND COUNTERMOTION FOR ATTYS FEES AND COSTS AND RELATED RELIEF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER PRECLUDING PLAINTIFF FROM TAKING THE VIDEO DEPOSITION OF DEFENDANT RODNEY WILKINSON PURSUANT TO NRCP 26, FOR ATTY FEES AND COSTS AND FOR ALL OTHER RELATED RELIEF AND COUNTERMOTION FOR ATTYS FEES AND COSTS AND RELATED RELIEF: COURT CLERKS: Ruby Castillo (rc), Diane Ford In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application. COURT NOTED it is now 1:15 pm and Attorney Kwon requested to set this matter for a hearing today. COURT FURTHER NOTED Attorney Kwon possibly got confused with the times because there is also a Status Check at 1:30 pm. The Court will now trail the matter for Attorney Kwon's appearance. The Court recalled the matter. Attorney Hofland stated he contacted Attorney Kwon's office and they said he was aware of the hearing at 1:30 pm but he was involved with another matter. Attorney Hofland further stated the request they made for the protective orders was made when they scheduled a deposition, Attorney Kwon's office stated they were not going to make the deponent available so they canceled the deposition. Attorney Hofland represented after they canceled their deposition they filed their Motion and that is why they are now here. Further discussion. COMMISSIONER made its FINDINGS and RECOMMENDED the following: 1. Defendant's MOTION shall be MOOT. 2. The Motion for ATTORNEY'S FEES shall be DENIED. 3. Attorney Hofland shall prepare a Report and Recommendation (R&R) re: Motion for the protective order within the next fourteen (14) days.;

08/04/2021

Motion (1:00 PM) (Judicial Officer: Young, Jay)

Def't's Motion For Protective Order Precluding Pltf From Taking The Video Deposition Of Def't RodneyWilkinson Pursuant To NRCP 26, For Atty Fees And Costs And For All Other Related Relief And Countermotion For Attys Fees And Costs And Related Relief

Moot;

08/04/2021

CANCELED Motion (1:00 PM) (Judicial Officer: Young, Jay)

Vacated

08/04/2021

Opposition & Countermotion (1:00 PM) (Judicial Officer: Young, Jay)

Pltf's Opposition To Def't's Motion For Protective Order Precluding Pltf From Taking The Video Deposition Of Def't RodneyWilkinson Pursuant To NRCP 26, For Atty Fees And Costs And For All Other Related Relief And Countermotion For Attys Fees And Costs And Related Relief

Matter Heard on 07-07-21

Matter Heard;

07/28/2021



Status Check (1:30 PM) (Judicial Officer: Young, Jay)

re: Submission of Report and Recommendation

On for Status Check;

Journal Entry Details:

STATUS CHECK: RE: SUBMISSION OF REPORT AND RECOMMENDATION In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application. COURT NOTED two (2) Report and Recommendations were due. Upon the Court's inquiry, Attorney Hofland represented on 7/13/2021 they prepared and sent over DCCRs for both, they received a response from opposing counsel that additional time was needed, then four (4) or five (5) days later opposing counsel sent over there listing and own proposed DCCRs, and in response, they provided a letter outlining the request for their changes, outlining they did not believe Defendant's requests could be changed in the DCCRs and requested to meet and confer but received no response. Attorney Kwon represented he was in court all day and had a deposition and then this morning he flew out of Las Vegas which is why he was unable to respond to Attorney Hofland. In addition, Attorney Kwon stated they did not have and substantive changes to be made in the proposal, they just wanted to make it simple, clean and direct as was ruled on by the Court and submitted their competing proposal as well. Court stated it's preference is for counsel to work together to come up with language they can live with rather than having competing orders and requested they have a meaningful meet and confer and try to

CASE SUMMARY

CASE NO. D-19-596071-D

work out language both sides can live with, and if can't, they shall submit proposed order in word form, red lined so the Court can see what the differences are. Attorney Hofland requested that Attorney Kwon red line the document being sent over. Attorney Kwon agreed. In addition, Attorney Hofland addressed the costs for obtaining the records from Colorado and Kansas. COMMISSIONER RECOMMENDED a STATUS CHECK re: Submission of R&R shall be SET for 8/4/2021 at 1:30 p.m.;


07/28/2021 **CANCELED Opposition & Countermotion** (1:00 PM) (Judicial Officer: Young, Jay)

Vacated

Defendant's Opposition to Plaintiff's Motion to Compel Discovery and for Attorney's Fees and Countermotion for Attorney's Fees and Costs and all Other Related Relief

07/28/2021 **Status Check** (2:00 AM)

re: Attorney's Fees along with the submission of the 2nd Report and Recommendation

07/07/2021  **Motion to Compel** (1:30 PM) (Judicial Officer: Young, Jay)


Pltf's Motion And Notice Of Motion To Compel Discovery And For Attys Fees

Per OST Filed 07-01-21

Granted;

Journal Entry Details:

MOTION TO COMPEL: PLAINTIFF'S MOTION AND NOTICE OF MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY'S FEES: COURT CLERKS: Diane Ford, Ruby Castillo (rc) In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application. COURT NOTED it has read the pleadings and it appears there are two (2) Request for Productions that need to be addressed and they are #7 and #8, and further noted they are seeking pleadings from cases in Kansas and Colorado. Court further noted Attorney Hofland attempted to retrieve the documents on his own through public records and was not able to do that. Attorney Hofland represented that what is in the pleadings is correct and that Sheryl Atterberg has those records in her care custody and control. Attorney Hofland further represented they attempted to get the records but was unable to get them as they appeared to be sealed. Further discussion. Attorney Kwon represented he would like to provide a little background information because this is not the typical case in the sense that Defendant had been deemed incompetent and his sister Sheryl Atterberg had initially applied for guardianship in the state of Kansas. Attorney Kwon stated upon the Defendant being moved to the facility in Colorado they abandoned the Kansas case and opened a case in Colorado. Further discussion. Attorney Kwon stated after getting the discovery requests they made a Good Faith effort to produce everything they had in their possession and there is nothing more. Further discussion regarding if the parties were represented in Kansas or Colorado and if there was a cost to getting the documents requested by Attorney Hofland. Upon the Court's inquiry, Attorney Kwon stated he did not let Attorney Hofland know there was a cost to get the documents from the Kansas case. COMMISSIONER stated its FINDINGS and RECOMMENDED the following: 1. Plaintiff's Motion to Compel is GRANTED. 2. Attorney Kwon and his clients shall get the documentation Attorney Hofland had requested from the cases in Kansas and Colorado, and Attorney Hofland shall bear the cost. 3. Plaintiff's Motion for Attorney's Fees and Costs is GRANTED. 4. Attorney Hofland shall have seven (7) days to provide a Supplemental Declaration regarding the requirements in the Brunzell Factors and also as it pertains to Wright vs Osburn and Cadle vs Woods and Erickson attorney's fees being requested. 5. Attorney Hofland shall prepare the Report & Recommendation from today's hearing and Attorney Kwon shall sign as to form and content within fourteen (14) days to avoid a sanction. 6. Attorney Hofland shall also submit a Second Report and Recommendation regarding attorney fees. 7. Status Check re: Attorney's Fees SET for 7-28-2021 at 2:00 a.m. on the Court's In- Chambers calendar. 8. Status Check re: Submission of the R&R SET for 7-28-2021 at 1:30 p.m.;

07/07/2021  **All Pending Motions** (11:00 AM) (Judicial Officer: Throne, Dawn R.)

MINUTES




Matter Heard;

Journal Entry Details:

CALENDAR CALL... MOTION: PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF. BlueJeans/video hearing. Discussion regarding discovery issues, Tribal Court proceedings, guardianship, assets, and financial related matters. Mr. Hofland's oral request for CASE STAYED for a WRIT to be entered. Upon Court's inquiry, Mr. Kwon represented that his client's desired a full accounting however, those attempts were blocked. Therefore, nothing was touched, sold, or transferred. Furthermore, there was a realtor involved in mid-early February in Kansas property (farm) when an inventory was attempted. Upon Court's inquiry (regarding the tribal Court), Mr. Hofland represented that Plaintiff did not take possession of the drill and/or equipment. COURT STATED ITS FINDINGS. The Court stated that Mr. Kwon shall go first at trial and therefore, COURT ORDERED, as follows: MOTION for SUMMARY JUDGMENT (MSJ) is DENIED. Request for CASE STAYED is DENIED. JOINT PRELIMINARY INJUNCTION (JPI) ISSUED. Plaintiff shall not sell the property in Kansas (farm) and/or the property here. LIS PENDENS ENTERED. Defendant may file LIS PENDENS and RECORD it here and in Kansas. Non-Jury Trial SET 7-16-21 VACATED and RESET 11-12-21 at 9:00 a.m. Mr. Kwon shall prepare the Order from today's hearing and Mr. Hofland shall countersign.;

CASE SUMMARY


CASE NO. D-19-596071-D

07/07/2021	<p>Motion (11:00 AM) (Judicial Officer: Throne, Dawn R.) <i>Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief</i> Matter Heard;</p>
07/07/2021	<p>Calendar Call (11:00 AM) (Judicial Officer: Throne, Dawn R.) Matter Heard;</p>
07/07/2021	<p>CANCELED Motion (10:30 AM) (Judicial Officer: Throne, Dawn R.) <i>Vacated</i> <i>Defendant's Motion for Protective Order Precluding Plaintiff from Taking the Video Deposition of Defendant Rodney Wilkinson Pursuant to NRCP 26, for Attorney's Fees and Costs, And for All Other Related Relief</i></p>
04/28/2021	<p> Motion (10:00 AM) (Judicial Officer: Throne, Dawn R.) <i>Plaintiff's Notice of Motion and Motion for Expert Examination/Evaluation</i> Matter Heard; Journal Entry Details: MOTION: PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR EXPERT EXAMINATION/EVALUATION. <i>BlueJeans/video hearing. Dina De Sousa, Esq., Nevada Bar No.: 15032, present on behalf of Plaintiff. The Court noted the papers and pleadings on file. Discussion/argument regarding Independent Medical Examiner (IME)/psychiatry (Plaintiff), neurologist (Defendant), and discovery related matters. The Court noted Nevada Rules of Civil Procedure (NRCP) 35, as there are logistical issues (as Defendant is in another state). The Court further noted that the Colorado Courts have deemed Defendant incompetent. The Court clarified what is relevant in this post divorce action and therefore, COURT ORDERED, as follows: The parties FINANCIAL STATUS at the time leading up to the DIVORCE and entry of DECREE OF DIVORCE is relevant. Request for PSYCHIATRIST to become involved in this matter is GRANTED. Both experts shall have access to the MEDICAL RECORDS in this case. PER STIPULATION, Independent Medical Examination (IME) to be completed. Counsel shall discuss logistical issues and to be included in their Stipulation and Order. Health Insurance Portability and Accountability Act (HIPAA) to be signed as deemed necessary. Ms. De Sousa shall prepare the Order from today's hearing and Mr. Kwon shall countersign.;</i></p>
04/21/2021	<p>CANCELED Hearing (1:00 PM) (Judicial Officer: Young, Jay) <i>Vacated</i> <i>Plaintiff's Reply To Defendant's Opposition To Plaintiff's Motion For Protective Order To Plaintiff's Issuance Of Subpoena Duces Tecums To Cornerstone Bank; Eastern Colorado Bank; Norman R. Taylor, Cpa, Pc; U.S. Bank; And Chase Bank</i></p>
04/21/2021	<p>CANCELED Opposition (1:00 PM) (Judicial Officer: Young, Jay) <i>Vacated</i> <i>Defendant's Opposition to [Plaintiff's] Notice of Motion for Protective Order to [Defendant's] Issuance of Subpoena Duces Tecums</i></p>
04/21/2021	<p>CANCELED Motion (1:00 PM) (Judicial Officer: Young, Jay) <i>Vacated</i> <i>Tessie Elma Almario's Notice of Motion for Protective Order to Plaintiff's Issuance of Subpoena Duces Tecums to Cornerstone Bank; Eastern Colorado Bank; Norman R. Taylor, CPA, PC; U.S. Bank; and Chase Bank</i></p>
04/20/2021	<p> Minute Order (2:30 PM) (Judicial Officer: Throne, Dawn R.) Minute Order - No Hearing Held; Journal Entry Details: MINUTE ORDER - NO HEARING HELD - NO APPEARANCES <i>Plaintiff's motion is denied without prejudice. The Motion is bereft of a certification under EDCR 5.602(d) showing that counsel attempted to engage in a good faith, meaningful meet and confer. The Declaration of Dina DeSousa-Cabral contains conclusory statements that do nothing to inform the court whether Plaintiff engaged in attempts to resolve the matter. EDCR 5.602(d) requires counsel's affidavit to explain in detail what attempts to resolve the dispute were made, what was resolved and what was not resolved, and why. No effort was made here to explain these attempts. Clerk's Note: The above Minute Order has been amended to indicate that judicial officer, ADR/Discovery Commissioner, Jay Young, issued the minute order and not Judge Dawn Throne. 04/21/2021 (qm). Clerk's Note: The above Minute Order has been distributed to the parties and counsel at their email addresses listed with the Court. 04/21/2021 (qm).;</i></p>
02/04/2021	<p> All Pending Motions (1:30 PM) (Judicial Officer: Throne, Dawn R.) MINUTES Matter Heard; Journal Entry Details: DEFENDANT'S MOTION TO SET ASIDE THE DIVORCE DECREE PURSUANT TO NRCP 60 (b)...PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE DECREE OF DIVORCE PURSUANT TO NRCP 60(b) AND COUNTERMOTION FOR ATTORNEY'S FEES AND RELATED RELIEF</p>

CASE SUMMARY

CASE NO. D-19-596071-D

Attorney Hofland appeared by video for Plaintiff. Plaintiff appeared by video. Attorney Kwon appeared by video for Defendant. Defendant appeared telephonically. Argument by counsel. The COURT FINDS that the Court has jurisdiction to consider Defendant's motion under 60(b). It is this Court's Decree of Divorce. The COURT FINDS that Defendant's motion is timely based on the guardians ability to act on Defendant's behalf if he was not competent during 2020. The Court noted that the civil case has nothing to do with this case. The guardians, on behalf of the ward, can file a civil suit for civil damages if there was fraud separate and apart from what this Court's authority would be. COURT ORDERED: Defendant's motion is GRANTED under 60(b)3 and 60(b)6. A prima facie case has been made and an evidentiary hearing is GRANTED. The time shall be divided between both counsel. Defendant shall issue a new JOINT PRELIMINARY INJUNCTION and serve it. Neither party shall dispose of any assets. Plaintiff shall file a General FINANCIAL DISCLOSURE FORM (FDF) by February 26, 2021 and serve that. Defendant's guardians can fill out a General FDF of what Defendant's living expenses are and any income and counsel shall file that and serve that by February 26, 2021. Discovery is open. The Court's staff shall issue a Trial Management Order. If the evidence shows that Defendant was competent at the time of signing in 2020, the Plaintiff's request for ATTORNEY FEES shall be considered. Calendar Call SET for 7/7/21 @ 11:00 A.M. Non-Jury Trial SET for 7/16/21 @ 9:00 A.M. (Stack 1 - Full Day) (Defendant's competency at the time of signing and how much Plaintiff knew about it.) Attorney Kwon shall prepare the Order from today's hearing and counsel shall review and sign off.;

02/04/2021	 Opposition & Countermotion (1:30 PM) (Judicial Officer: Throne, Dawn R.) Plaintiff's Opposition to Deft's Motion to Set Aside the Decree of Divorce Pursuant to NRCP 60(b) and Countermotion for Attorney's Fees and Related Relief Evidentiary Hearing;
02/04/2021	Motion (1:30 PM) (Judicial Officer: Throne, Dawn R.) Defendant's Motion to Set Aside the Divorcde Decree Pursuant to NRCP 60(b) Evidentiary Hearing;
09/09/2019	Summons Wilkinson, Rodney Served: 11/25/2019

DATE

FINANCIAL INFORMATION

Defendant Wilkinson, Rodney	
Total Charges	217.00
Total Payments and Credits	217.00
Balance Due as of 10/27/2022	0.00
 Plaintiff Wilkinson, Tessie E	
Total Charges	634.66
Total Payments and Credits	634.66
Balance Due as of 10/27/2022	0.00

Heather S. Smith

CLERK OF THE COURT

1 **FFCL**

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5 **EGHTH JUDICIAL DISTRICT COURT**
6 **COUNTY OF CLARK, STATE OF NEVADA**
7

8 TESSIE E. WILKINSON a/k/a TESSIE ELMA
9 ALMARIO,

10 Plaintiff,

11 vs.

12 RODNEY WILKINSON, through SHERYL
13 ATTERBERG,
14 GUARDIAN,

15 Defendant.

Case No.: D-19-596071-D

Dept.: U

16 **FINDINGS OF FACT, CONCLUSIONS OF LAW,**
17 **AND ORDER AND JUDGMENT**

18 This matter having come for an Evidentiary Hearing on September 8th and
19 9th, 2022 on Defendant Rodney Wilkinson's ("Rodney") Motion to Set Aside
20 Decree of Divorce Pursuant to NRCP 60(b); Defendant, Tessie Elma Almario's
21 ("Tessie") Opposition to Defendant's Motion to Set Aside the Divorce Decree
22 Pursuant to NRCP 60(b) and Countermotion for Attorney's Fees and Related
23 Relief; and Rodney's subsequent Reply. Attorney James Kwon, Esq., of James
24 Kwon, LLC appeared and present, with Rodney's Guardians appearing remotely
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1 via blue jeans. Attorneys Bradley J. Hofland, Esq., Jason Carr, Esq. and Joshua
2 Tomsheck, Esq. of Hofland and Tomsheck appearing with Tessie. Tessie being
3 sworn and testified. The Court having reviewed and considered the testimony
4 before it, the evidence presented and submitted, including the expert witness
5 reports and testimonies of Dr. Paul Janda, Esq., FAAN (Board Certified
6 Neurologist and Attorney) and Gregory P. Brown, MD (Board Certified in
7 Psychiatry and Forensic Psychiatry), and good cause appearing, **FINDS,**
8 **CONCLUDES** and **ORDERS** as follows:

11 **FINDINGS OF FACT**

- 12 1. Rodney and Tessie were married on March 22, 2009, in Burlington,
13 Colorado. The parties have no minor children together.
- 14 2. Prior to the parties' marriage, Rodney inherited from his mother a
15 farm house and approximately 1,500 acres of farm land in
16 Goodland, Kansas that was owned by her free and clear. *See*
17 Plaintiff's Exhibit 26, a May 22, 2007 Order from the District Court
18 of Sherman County, Kansas. Rodney never added Tessie to the title
19 to the farm house and land during their marriage and this property
20 remained his sole and separate property.

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1 3. On August 14, 2007, prior to the parties' marriage, Rodney created
2 the Rodney E. Wilkinson Trust ("Trust"). Rodney was the sole
3 beneficiary of the Trust during his lifetime, but upon his death,
4 Tessie was named beneficiary if she survived him. Rodney also
5 named alternate beneficiaries if Tessie did not survive him that
6 included his sister Sheryl as the final alternate beneficiary in
7 Rodney's handwriting, even though the Trust states on pages 1-2
8 that Rodney's brother and sister were not supposed to receive
9 anything from his Trust. Tessie alleges that the Trust supports her
10 assertion that Rodney told her in 2019 that he wanted her to have all
11 of his property. However, the unambiguous terms of the Trust state
12 that Rodney is the sole beneficiary of the Trust during his lifetime
13 and, if there is anything left in his Trust after his death, that Tessie is
14 his preferred beneficiary. Nothing in the Trust indicates that
15 Rodney wanted Tessie to take any of his property during his
16 lifetime. Notably, Rodney did not name Tessie as one of the
17 successor trustees should he become incapacitated or die.

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- 1 4. In approximately December 2012, Rodney sold the farm land and he
2 received a net of about \$2,500,000 from that sale. Tessie testified
3 that Rodney made a gift to her of \$1,000,000 of his separate
4 property proceeds. Then, according to Tessie, he wanted her to
5 leave so he could live his own life.
6
- 7 5. Therefore, Tessie left Rodney in approximately January 2013,
8 moving from Kansas to Las Vegas. Rodney and Tessie essentially
9 ended their marriage as of January 2013. With the \$1,000,000 from
10 Rodney, Tessie paid cash for a home in Las Vegas, Nevada, where
11 she has lived since February 2013, purchased at least two vehicles
12 and furniture and provided some financial assistance to family
13 members. She also left the marriage with a brand new 2012
14 Corvette that Rodney purchased for her for her birthday in the fall of
15 2012 that she owned free and clear.
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- 17 6. Tessie resided in Nevada and did so at least 6 weeks prior to filing
18 her complaint for divorce. There is no evidence that Rodney ever
19 lived in Nevada. Since the last place the parties resided together as
20 husband and wife (Kansas) is not a community property state, the
21 law regarding community property, including the concept of
22 community waste, does not apply to these parties. This Court would
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1 have been required to apply Kansas' equitable division law to the
2 division of these parties' assets and debts if this divorce had been
3 tried.
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- 5 7. However, at the evidentiary hearing, it became very clear based
6 upon the testimony of Tessie and the documents she introduced into
7 evidence that by 2019 there was no marital property to divide
8 between these parties. The most valuable asset Rodney ever owned
9 during the marriage was the farm land he inherited from his mother
10 in 2007, which was owned free and clear of any mortgage. The bulk
11 of that separate property was sold by Rodney in or about December
12 2012, leaving him with just the farm house, equipment and vehicles
13 and \$2.5 million in net proceeds. Rodney then made a gift of about
14 \$1 million of his separate property to Tessie, leaving him with about
15 \$1.5 million in cash that was his separate property. According to the
16 evidence adduced in the North Dakota action that will be discussed
17 in more detail below, he purchased significant items of equipment
18 after the sale of his farm land, which would also be his separate
19 property. Since Rodney made a gift to Tessie of about \$1 million at
20 the end of 2012/beginning of 2013, that money became her separate
21 property and the assets she bought with those funds are her separate
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1 property, including the residence at 8382 Hollywood Hills Ave, Las
2 Vegas, Nevada. Sheryl has tried to argue that Rodney was not
3 competent in 2013 to make this gift to Tessie or that she took
4 advantage of him, there simply is no evidence to support that
5 argument.
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7 8. Tessie testified at her deposition in May 2021, that when she and
8 Rodney were together, she handled the financial affairs for both of
9 them. *See* transcript at page 53.
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11 9. According to Tessie, she and Rodney had little to no contact with
12 each other from 2013 until sometime in 2019, when he called her
13 out of the blue. At that time, he was working in North Dakota.
14 However, she also testified at her deposition on May 27, 2021 that,
15 after Rodney stopped communicating with her after their separation,
16 she “kept calling to make sure that no one, you know, finding him
17 dead somewhere. That was my fear.” She also testified that she
18 called the sheriff once in a while to check up on him. At some
19 point, she even called the courthouse in Goodland to inquire about
20 the status of the property taxes being paid and she was told that the
21 taxes were three years delinquent. *See* transcript at page 58.
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1 10. In 2019, Rodney wanted to reconcile with Tessie and he wanted her
2 to come to North Dakota to work with him on a business
3 opportunity he found with a man named Darrell Fontenot and
4 businesses he owned. In 2019, Tessie traveled to North Dakota to
5 see Rodney in person approximately four times.
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7 11. During discussions with Rodney in 2019, Tessie learned that he was
8 struggling financially. Apparently, all of the money he had from the
9 sale of the farm land was gone and he was not even able to stay
10 current on the property taxes for the farmhouse or purchase
11 insurance for the equipment he owned and wanted to put to work.
12 She learned that Rodney had been taken advantage of financially by
13 two different women during the six years that they had not been in
14 communication – a Jill Strnad and a Tanika Stevenson, including,
15 but not limited to, giving them cash, giving them other assets such
16 as a vehicle and gold coins, and transferring ownership of life
17 insurance policies on his life to Jill Strnad with death benefits
18 totaling about \$1,000,000 (*see* Plaintiff's Exhibit 17). Rodney did
19 not just change the beneficiary on his life insurance policies from
20 Tessie to Jill; he actually signed something that gave Jill ownership
21 of the policy. So, when Tessie helped Rodney communicate with
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1 Banner Life Insurance Company in order to change the beneficiary
2 back to Tessie, they learned that he could not change the beneficiary
3 because he was no long the owner of the policies.
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- 5 12. Mr. Fontenot (“Dan”) is an enrolled member of the Three Affiliated
6 Tribes residing on the Fort Berthold reservation. Rodney went to
7 work for one of Dan’s companies, Synergy Oil Services
8 (“Synergy”), in June 2019 as a mechanic working on diesel engines
9 and large equipment making \$45 per hour. Dan and his other
10 employees noticed that Rodney’s work performance was lacking
11 within the first two weeks. He was very slow and not able to
12 complete the work he was hired to do. Within a month, Dan wanted
13 to fire him, but instead they came to an agreement that Rodney
14 would accept \$25 per hour and he would work at his other business
15 because the other employees at Synergy did not want to work with
16 him due to his temper and outbursts of cursing.
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- 20 13. During Rodney’s employment with Dan, he disclosed that he had a
21 wrecker that was being held in Killdeer by Rodney’s last job that he
22 had been fired from and Rodney needed to get \$2,000 to get his
23 wrecker back from his former employer, but Rodney did not have
24 the money to get the wrecker back. Dan helped him by giving him
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1 the money to get the wrecker back from his former employer.

- 2 14. While working for Synergy, Rodney disclosed that he had heavy
3 equipment sitting in Kansas that he would like to put to work for a
4 profit. Dan was interested in putting the equipment to work, but he
5 represented to Rodney that due to regulations of the Tribal
6 Employment Rights Ordinance Office (“TERO”), he would have to
7 have an ownership interest in the equipment in order to put it to
8 work in the oilfields. It was at that point that Dan and Rodney
9 discussed creating a business together. Rodney asked Tessie to help
10 him with this business and that they would be partners in the
11 business if she would help him. Tessie traveled to North Dakota to
12 meet with Rodney and Dan and Tessie and Rodney believed that
13 there was an agreement reached to use attorneys to set up a proper
14 LLC. Tessie was clear in her communications with Rodney and
15 Dan that no more of the equipment should be moved to North
16 Dakota until written agreements were in place. Tessie even sent a
17 letter to that effect to Dan. *See* Plaintiff’s Exhibit 14. This letter is
18 not dated, but from the context of it and the timeline of when the oil
19 rig was moved to North Dakota by Rodney and Dan, it appears that
20 this letter was sent to Dan by Tessie in or about August 2019. In the
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1 letter, she tries to make it clear to Dan that Rodney is not capable of
2 making good decisions, that she would be making all of the
3 decisions and Rodney would “simply be a worker to maintain and
4 help operate the equipment.”
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6 15. Despite Tessie’s attempts to protect Rodney from himself and his
7 poor decisions, including asking the police in Goodland, Kansas to
8 “keep an eye out for anything moving from the farm,” Rodney
9 signed agreements with Dan on August 21, 2019 and in September
10 2019 to sell 5 items to Dan’s company: the wrecker (1979 Ford
11 Truck 920), a lowboy trailer (1980 Cozad Jeep Trailer), a boom
12 truck (1993 Western Star WS), an auto truck (1983 Auto Truck 315)
13 and an oil drill rig (Peerless Drill CH-48-12S). *See also*, Plaintiff’s
14 Exhibits 12 and 13, which are letters signed by Rodney and Tessie
15 respectively. Tessie admitted that she wrote both of these letters
16 that are not dated, but had to have been after April 2020 based upon
17 the context in Tessie’s letter (Exhibit 13).
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21 16. On September 9, 2019, after being separated from Rodney for over
22 six (6) years, Tessie filed for divorce in Nevada. Tessie was
23 represented by counsel at the time of the divorce, Rodney was not.
24 Tessie never alleged anything in her Complaint about Rodney
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1 wasting community property. She alleged that there was separate
2 property of each of them that should be confirmed to them and that
3 there were community assets and debts to divide. Despite Tessie's
4 claim that the divorce was all Rodney's idea and that he was in a
5 hurry to get the divorce completed, Rodney was not served with the
6 Summons, Complaint and JPI until November 25, 2019. Tessie
7 traveled to North Dakota again in November 2019. While there, she
8 had Rodney sign an Acceptance of Service that was then filed with
9 this Court on December 2, 2019.

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12 17. While in North Dakota in November 2019, Tessie and Rodney also
13 went the TERO office to file a formal written complaint against
14 Synergy and Dan's other company, ABBA Oil Field Services. *See*
15 Plaintiff's Exhibit 15, the first page of which is dated November 26,
16 2019 and is completed in Tessie's handwriting and lists Rodney as
17 the complainant but lists her address in Las Vegas and her email
18 address.
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21 18. Again, although Tessie testified repeatedly that the divorce was all
22 Rodney's idea and he was in a hurry to get the divorce done, she
23 caused a Default to be entered against him on December 20, 2019.
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1 19. Pursuant to Plaintiff's Exhibit 11, Rodney had 5 different
2 employers¹ and had total gross earnings that year of \$33,517.08.
3 Rodney having 5 different employers in North Dakota in 2019 is
4 consistent with Sheryl's testimony about the difficulty Rodney was
5 having keeping a job and with Dan's testimony in the North Dakota
6 case regarding Rodney's problems with his prior employer in
7 Killdeer, North Dakota.
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10 20. In January 2020, Tessie again traveled to North Dakota to meet with
11 Rodney. This time she had him sign a Stipulation and Order to Set
12 Aside Default and a Family Law Self-Help Center Answer to
13 Complaint for Divorce form that is dated January 16, 2020. Tessie
14 even had to fill in for him all of the paragraphs of the Complaint that
15 he was admitting to on this form. On January 17, 2020, Tessie and
16 Rodney went to their bank² and he signed the Decree of Divorce in
17 front of a notary public. She then brought all of these original
18 documents back to Nevada. She signed the Decree of Divorce in
19 front of a Nevada notary public on January 21, 2020. The
20 Stipulation and Order to Set Aside Default and the Answer to
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24 ¹ ABBA Energy LLC, a business owned by Dan, actually paid Rodney as an independent contractor and provided
25 him with a Form 1099-MISC.

26 ² During one of Tessie's visits to see Rodney in North Dakota in 2019, they opened a joint bank account together
27 after about 6 years of no contact.
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1 Complaint for Divorce were filed on January 28, 2020. The Decree
2 of Divorce was entered by the Court on February 12, 2020. A
3 Notice of Entry of the Decree of Divorce was filed on February 13,
4 2020, with a certificate indicating that it was served on Rodney by
5 mail to an address Tessie knew he was no longer living at because
6 Dan had evicted him from that apartment by that date.
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9 21. Tessie testified that the reason the Decree of Divorce gives her all of
10 Rodney's separate property (the farmhouse and all of the vehicles
11 and equipment) and lifetime alimony of \$3,000 per month is
12 because that is the way he wanted it. On the one hand, she admitted
13 that Rodney wanted to get back together with her when he contacted
14 her in 2019, but then on the other hand, he is the one who wanted
15 the divorce and wanted to give her everything he owned and lifetime
16 alimony that the evidence Tessie provided shows he has no way to
17 pay. He earned less than \$34,000 in 2019, so he had no means to
18 pay her \$36,000 per year in alimony. He had even lost his last job
19 before he signed the Decree of Divorce on January 17, 2020.
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23 22. At the same time as Tessie testified that Rodney wanted to divorce
24 her and give her all of his separate property, she testified that
25 Rodney needed and wanted her help and trusted her to take care of
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1 him and his property. Specific examples of this testimony from her
2 deposition are as follows:

- 3
- 4 • Q. And what was your understanding as to why Rodney wanted
5 to hurry up and get a divorce from you? A. He wants to get his
6 drilling rig out of the property he left it. He wanted me to go get it
7 for him. *See* transcript at page 66, lines 17-21.

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- 9 • Q. But what other reason are you aware of that Rodney wanted
10 to get a divorce from you quickly? A. So I can own and get the
11 equipment back. So I can own the drilling right and have the right
12 to get it back. *See* transcript at page 69, lines 5-9.

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- 14 • At page 69, lines 11-16:

15 A. He wants to give it to me. He doesn't want to be part of
16 anything anymore. He said I'm tired. You deal with it. He said
17 take everything. Get the divorce done. Put everything in your
18 name. You deal with it and just keep me working. That's his
19 opinion. That's his desire.

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- 21 • Q. What was Rodney going to do? A. The work. That's why he
22 wanted me to take care of it because she trusted me that we'll keep
23 working together. Transcript at page 74, lines 6-9.

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- At page 100, lines 8-19:

Q. Okay. Did Rodney explain to you the terms of the divorce decree? Yes or no.

A. Yes.

Q. What did he explain to you?

A. That, okay, now you have the house. You can do whatever you want. Now you have all this truck, and make sure you know where they're at. Okay. Now let's get to work. That's exactly his words.

Q. Let's get to work meaning?

A. He wants me to work with him in North Dakota, and that's where we have the work rig is where we have supposedly to start working.

- Q. And as far as you understood it, that could only happen once he gave everything to you; is that correct? A. No. Q. What's your understanding? A. My understanding is he wanted me to help him work. Transcript at page 100, lines 20-25.

- A. He wanted to get a divorce. We decided. Him and I decided. He want me to have all this because he feel it's safer with me and he trusted me. That's why he made me do this with him. I didn't make

1 him. This is not what I wanted. This is all his idea. Q. Only his
2 idea? A. He came up with it; talked me into it. Transcript at page
3 114 at lines 17-23.
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- 5 • At page 114, lines 24-25:

6 Q. You said he trusted you and he felt that it was safer with you;
7 is that correct?
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- 9 • At page 115, lines 1-11:

10 A. Yes.

11 Q. Safe from whom?

12 A. Example. The people that he was working with in North
13 Dakota. From Dan. That's why he wanted me to do this so I can
14 stop and just work with him and protect our stuff.
15

16 Q. From Dan?

17 A. From Dan.

18 Q. What was he afraid of that Dan was going to do?

19 A. Keep all his equipment he was just holding there.
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- 21 • At page 129, lines 4-15:

22 Q. (By Mr. Kwon) Do you feel that Rodney made a good
23 financial decision giving all his assets to you pursuant to the divorce
24 decree? Yes or no.
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1 MS. DESOUSA CABRAL: Objection. Compound.

2 Argumentative.

3 Q. (by Mr. Kwon) Please answer the question.

4 A. Yes and no.

5 Q. What part of it is yes?

6 A. He gave it to me to help him. So yes, I know, but then he
7 admitted to me that he made a bad decision. And no, I don't agree.
8 But yes, he made some poor decision.

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- 10 • A. He wanted me to take everything and be responsible for it.
11 I'm just doing what he want. He asked me for help and that's all I
12 did. Transcript at page 130, lines 8-11.

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15 23. The Court does not find Tessie's testimony credible as to the
16 following claims:

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- 18 • That it was all Rodney's idea to get a divorce. This is inconsistent
19 with her testimony that he wanted to reconcile with her and with all
20 of his actions in 2019 and 2020, including opening a new joint bank
21 account with her and repeatedly asking for her help.
 - 22 • That she was unaware of Rodney's neurocognitive impairment in
23 2019. Her actions and other statements, such as the letter she sent to
24 Dan about Rodney not having any authority to make the business
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1 decisions on their behalf, prove otherwise. The overwhelming
2 evidence proves that she was very well aware of Rodney's
3 neurocognitive impairment in 2019. She learned from Rodney that
4 he had just given away hundreds of thousands of dollars and
5 property to women that he trusted. She had to help him try to figure
6 out what he did with the life insurance policies he owned at one time
7 and, only with her help was it learned that he actually gave away
8 ownership of the policies to Jill instead of just making Jill the
9 beneficiary. She did not trust him to not be talked into just moving
10 equipment to North Dakota without proper written agreements in
11 place by Dan when she was not there watching him, even though
12 she told him not to do that many times and he apparently agreed
13 with her instructions. She knew that Rodney was very susceptible to
14 undue influence and that he was not capable of protecting himself
15 from someone wanting to take advantage of him. She did not trust
16 him to make a complaint to NERO about Dan on his own. She did
17 not trust him to sign the divorce papers correctly on his own. If she
18 did, she would not have made the trip to North Dakota in January
19 2020 when the weather is freezing, so she could personally make
20 sure he signed the divorce papers correctly, including having his
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signature notarized on the Decree of Divorce. It is much easier to email, fax or mail a document to someone who is competent, have them sign the documents and then mail the originals back. Tessie knew that Rodney was not capable of taking those steps on his own in January 2020.

24. The Decree of Divorce awarded Tessie the 5 pieces of equipment Rodney had already agreed to sell to Dan's company in August and September 2019.

25. On February 24, 2020, Rodney signed a series of new agreements with Dan's company in which it was agreed that the contracts to sell Synergy the boom truck (1993 Western Star WS), auto truck (1983 Auto Truck 315) and oil drill rig (Peerless Drill CH-48-12S) were rescinded, the wrecker (1979 Ford Truck 920) and lowboy trailer (1980 Cozad Jeep Trailer) were deemed paid in full by Synergy for what had already been paid on all 5 contracts and Rodney had the right to keep the boom truck, auto truck and drill on Synergy's property until he moved them or was given 30 days' notice to remove them.

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- 1 26. By the end of February 2020, Rodney had finally been evicted from
2 the apartment he lived in while working for Synergy, he had no job
3 and he had no place to live in North Dakota. By the beginning of
4 March 2020, he was back in Kansas and living in his farmhouse that
5 had been awarded to Tessie pursuant to the Decree of Divorce.
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- 7 27. In April 2020, Tessie traveled to Kansas. She had to help Rodney
8 by cleaning the house, buying him groceries and cooking for him.
9 During that trip, she also caused a certified copy of the Decree of
10 Divorce to be recorded with the Sherman County recorder's office
11 on April 21, 2020. She also had Rodney go with her and sign over
12 titles to vehicles and trailers to her. After that trip to Kansas, Tessie
13 had her adult son travel from his home in Colorado to look in on
14 Rodney at the farmhouse and to get him food. A neighbor of
15 Rodney's also brought food to him. He was not able to work and
16 was not able to properly care for himself.
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- 18 28. After returning to Kansas in March 2020, Rodney's physical and
19 mental health rapidly declined to the point where in June 2020, he
20 had to be hospitalized for "dementia with behavioral disturbance"
21 and "psychosis." See Dr. Janda's Report at page 7. On April 15,
22 2020, he had a CT scan of his head that showed "age-appropriate
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1 volume loss with no evidence of large areas of infarction,” but he
2 had “multifocal areas of encephalomalacia from prior infarcts.” *See*
3 Dr. Brown’s report at page 6 of 14. Encephalomalacia is the
4 softening or loss of brain tissue after cerebral infarction, cerebral
5 ischemia, infection, craniocerebral trauma or other injury. It is a
6 type of chronic condition secondary to injury of the brain. What this
7 means is that Rodney had had some form of trauma to his brain
8 prior to April 15, 2020 that led to his brain showing multiple areas
9 of damage – most likely either from prior traumatic brain injuries
10 and/or strokes.
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14 29. On May 4, 2020, Rodney was again seen at Goodland Regional
15 Medical Center. During this visit Tessie communicated with the
16 providers and told them that he was dizzy and had bad falls. She
17 noted a loss of short-term memory that was getting worse over the
18 past month. The providers noted that his short-term memory was
19 impaired and he was unable to draw a clock. *See* Dr. Brown’s
20 report at page 8 of 14. During this visit, he was formally diagnosed
21 with dementia. Between May 4, 2020 and June 20, 2020, Rodney
22 had multiple interactions with medical providers, including another
23 MRI scan of his brain on June 4, 2020, which noted moderate brain
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1 volume loss and nonspecific white matter signal changes.
2 Ultimately, on June 20, 2020, Rodney had to be hospitalized in an
3 inpatient psychiatric unit due to his having increased agitation and
4 homicidal ideation, with thoughts of harming others. The providers
5 noted on June 20, 2020 that they “suspect vascular dementia due to
6 history of strokes and stepwise decline in past 2 years.” *See* Dr.
7 Janda’s report at page 7.
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- 10 30. On or about June 1, 2020, Tessie filed another complaint with
11 TERO against Dan and his company ABBA energy about him
12 keeping the drill rig that was awarded to her in the Decree of
13 Divorce. *See* Plaintiff’s Exhibit 15. She stated in that
14 communication to TERO that Dan had written to Rodney on April
15 28, 2020 an “eviction letter” demanding that the remaining drill rig
16 be removed from his property and demanding to be provided with
17 the other titles for the lowboy trailer. She stated in her
18 communication with TERO that she had arranged for someone to
19 remove the drilling rig but that Dan would not let her remove it.
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1 31. On July 1, 2020, Rodney's sister Sheryl petitioned the court in
2 Kansas for appointment of her as his guardian. Proceedings
3 occurred in that guardianship case until October 1, 2020, when
4 Sheryl asked for that case to be dismissed because Rodney was
5 doing better and she was going to move him to an assisted living
6 facility in Colorado, where she and her husband live.
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8 32. By July 2020, Rodney's sister Sheryl knew that there were legal
9 issues to pursue on Rodney's behalf related to his drilling rig and
10 lowboy trailer in the possession of Dan in North Dakota and
11 regarding the Decree of Divorce in Nevada. *See* Plaintiff's Exhibits
12 24 and 28. That month, Sheryl was able to help Rodney prepare a
13 complaint that was filed against Dan in the District Court for Fort
14 Berthold Indian Reservation. Dan counterclaimed against Rodney
15 for storage, lost income and for other two titles to the lowboy trailer
16 that he believes exists. Unfortunately, Sheryl did not hire an
17 attorney to represent Rodney's interests in that lawsuit and she and
18 her husband, Steven Atterberg, who is also Rodney's co-guardian,
19 tried to represent Rodney's interest in that litigation themselves.
20 They also lacked the expert witness opinion that they have now in
21 this litigation that Rodney was incapacitated at the time he entered
22 this litigation.
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1 into the contracts with Dan in 2019 and February 2020.

2 33. Between the filing of the complaint for Rodney in the District Court
3 for Fort Berthold Indian Reservation and the trial in that matter on
4 December 17, 2020, Sheryl and her husband Steven petitioned the
5 Court in Lincoln County, Colorado for guardianship of Rodney in
6 September 2020. On September 24, 2020, Sheryl was appointed as
7 Rodney's emergency guardian. On November 23, 2020, a Colorado
8 Court appointed Sheryl and Steven Atterberg, Rodney's sister and
9 brother-in-law, as his permanent guardians.
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12 34. After hearing testimony on December 17, 2020 and reviewing all of
13 the documents provided by both parties, the District Court for the
14 Fort Berthold Indian Reservation entered Findings of Fact and
15 Conclusions of Law and Order for Judgment on December 29, 2020.
16 That Court found that there had been no evidence presented to show
17 that Rodney was incompetent or not able to enter into a binding
18 contract at the time he signed the last contracts with Dan on
19 February 24, 2020. That Court also concluded, despite having no
20 evidence presented, that Rodney was competent to contract with
21 Dan and his companies and he had not been found incompetent by a
22 court of law when the contracts were signed. That Court also
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1 concluded:

2 Although it appears he did suffer from some cognitive issues
3 he still maintained a CDL in two states, was able to work as a
4 mechanic, and never advised [Dan] or his agents of any
5 cognitive limitations. Even if he were operating under some
6 limitations on his cognitive functioning nothing in the record
7 before this Court reveals that [Dan] or his agents knew or
8 should have known of this.

9 *See* Plaintiff's Exhibit 28 at TW000600.

10 35. As such, the District Court for Fort Berthold Indian Reservation
11 enforced the contracts Rodney had entered into with Dan except the
12 "unconscionable" provisions regarding the forfeiture of a \$200,000
13 drill and other property of substantial value to Rodney just because
14 he was not able to remove the property by the deadline Dan gave
15 him.

16 36. Since entry of the Findings of Fact and Conclusions of Law and
17 Order for Judgment ("Judgment"), Dan has tried to enforce the
18 terms of the Judgment against Rodney's guardians, including a
19 request to hold them in contempt. Sheryl finally hired an attorney
20 for Rodney in that case though and the Judge has entered orders
21 staying the enforcement of the Judgment pending the outcome of
22 this case.
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1 37. If any of these findings of fact are more appropriately designated
2 Conclusions of law, they shall be so deemed.
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4 **CONCLUSIONS OF LAW**

5 1. This Court has jurisdiction over the request of Rodney's guardians to
6 set aside the Decree of Divorce pursuant to NRCP 60(b).

7 2. The Motion to Set Aside Decree of Divorce Pursuant to NRCP
8 60(b) was timely filed by Rodney's guardians. First of all, service
9 of the Notice of Entry of the Decree of Divorce on February 13,
10 2020 was to an address Tessie knew Rodney was no longer living at.
11 Therefore, Rodney was never properly served with the Notice of
12 Entry. Second, at the time the Decree of Divorce was entered,
13 Rodney was an incapacitated person pursuant to NRS 132.175 and
14 no one had the legal authority to file the Motion to Set Aside
15 Pursuant to NRCP 60(b) until at least Sheryl was granted an
16 emergency guardianship over him on September 24, 2020 and
17 possibly not until Sheryl and Steven were appointed as his
18 permanent guardians on November 23, 2020. The 6 month
19 limitation period was tolled by Rodney's legal disability until
20 someone was appointed by a court with jurisdiction to act on his
21 behalf. The Motion to Set Aside was filed within 6 months of them
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1 having the legal authority to act on behalf of Rodney. Additionally,
2 in 2020, the world was in the middle of a pandemic that caused
3 most courts to close for business and, here in Nevada,
4 Administrative Orders were entered that had the effect of staying the
5 time limit for certain legal actions to be taken. Lastly, Rodney's
6 guardians also allege that Tessie committed a fraud upon the Court,
7 which is not subject to the six month limitation. *See, Murphy v.*
8 *Murphy*, 103 Nev. 185, 734 P.2d 738 (1987). For all of these
9 reasons, the Court concludes that the Motion to Set Aside is timely.
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- 12 3. The award of Rodney's sole and separate assets to Tessie and the
13 award of lifetime alimony to Tessie must be set aside. First of all,
14 there was a fraud upon the Court. NRCP 60(b)(3). The
15 representation in the Decree of Divorce that there was community
16 property at all was a misrepresentation. Then, the representation
17 that Rodney engaged in "substantial community waste" as a
18 justification for the division of assets and debts that, on the face of
19 the Decree of Divorce, solely favors Tessie. The terms of the
20 Decree of Divorce are so unconscionable toward Rodney that they
21 are shocking. The shock is amplified when the Court learned the
22 reality that there was no community property for the Court to divide.
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1 Tessie did not want the Judge to review the Decree of Divorce and
2 reject it because it awarded her all of the alleged community assets,
3 required Rodney to continue to pay debts associated with the assets
4 she was awarded and required him to pay her lifetime alimony when
5 their marriage only lasted a total of almost 11 years, with the parties
6 living separate and apart for the last 6 years of the marriage without
7 Rodney providing Tessie with any financial support. Therefore, she
8 had to make up a false story that would seem to justify the
9 unconscionable terms of the Decree of Divorce. That is not just a
10 fraud upon Rodney, but also a fraud upon the Court by intentionally
11 concealing material facts that would have allowed the Court to
12 assess the merits of the case and the competency of Rodney when he
13 signed the Decree on January 17, 2020. “When a judgment is
14 shown to have been procured” by fraud upon the court, “no
15 worthwhile interest is served in protecting the judgment.”
16 Restatement (Second) of Judgments Section 70, comment B (1982).
17 *See also, Murphy v. Murphy*, 65 Nev. 264, 193 P.2d 850 (1948).

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1 4. The Decree of Divorce is unconscionable because it left Rodney
2 with nothing but debts and alimony to pay that he had no means to
3 pay. Rodney was not able to work after being fired by Dan and he
4 was left with insufficient assets and income to provide for his own
5 needs, let alone pay the debts Tessie assigned to him or the alimony
6 that was more than he made the entire year in 2019. The Nevada
7 Supreme Court found that district courts abused their discretion
8 when refusing to set aside grossly unfair divisions of community
9 property and debts under NRCP 60(b) when the disadvantaged
10 spouse lacked the knowledge of how grossly unfair the division of
11 community property was at the time they signed the decrees of
12 divorce, although the spouses were not legally incompetent to
13 contract. *See Peterson v. Peterson*, 105 Nev. 133, 771 P.2d 159
14 (1989); *Carlson v Carlson*, 108 Nev. 358, 832 P.2d 380 (1992);
15 *Cook v Cook*, 112 Nev. 179, 912 P.2d 264 (1996).

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20 5. The award of Rodney's sole and separate assets to Tessie and the
21 award of lifetime alimony to Tessie must also be set aside because
22 Rodney was incapacitated pursuant to NRS 132.175 at the time he
23 signed the Decree of Divorce on January 17, 2020 and could not
24 legally enter into this unconscionable agreement with Tessie. NRCP
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60(b)(4) and/or (6). Both parties provided expert witness reports and detailed testimony from two very well-qualified medical experts, one of who testified to a reasonable degree of medical probability that Rodney was legally incapacitated at the time he signed the Decree of Divorce on January 17, 2020 and the other who testified to a reasonable degree of medical and psychiatric probability that Rodney was not incapacitated at that same date. Both of them acknowledged that the task of determining the legal capacity of a person at a date in the past is not an easy task. Both doctors agree that Rodney was legally incapacitated several months after January 17, 2020 (May/June 2020) and there are substantial medical records during that time period that demonstrate that. Unfortunately, no one has the benefit of medical records for Rodney from January 2020, if they even exist because the evidence does show that he was not taking good care of himself or his medical needs, even though he was seeking help and medication in emergency rooms for the chronic pain in his right shoulder and arm. Dr. Brown opined for Tessie that Rodney had a sharp decline in his mental capacity in the spring of 2020 while in Kansas, likely as a result of strokes that happened at that time. Dr. Janda testified that, while Rodney did

1 have strokes in the spring of 2020 that resulted in a sharp decline in
2 his mental capacity, he also had had been suffering from dementia,
3 or neurocognitive disorder as the DSM-5 now calls it, for a couple
4 years before January 2020. He based this not only on the medical
5 records that were available, but his knowledge from treating many
6 patients with dementia over the years and the studies he has
7 participated in regarding dementia. Dr. Janda's opinion is supported
8 by the testimony of both Tessie and Sheryl regarding Rodney's
9 functioning in 2019 and the years of him being financially exploited
10 by people he cared about and trusted. It is even supported by Dan's
11 testimony in the North Dakota case regarding the trouble Rodney
12 had doing the job he was hired for in the second ½ of 2019, the
13 problems he observed Rodney having with taking care of basic
14 business such as being able to get his truck fixed after an accident so
15 he had a vehicle to drive and allowing a strange woman to move in
16 with him in the apartment he was provided as part of his
17 employment benefits. Given all of the evidence presented, the Court
18 concludes that Dr. Janda's expert opinion is more persuasive.
19 Dementia can be both a slow-progressing disease and there can be a
20 significant trauma event such as a stroke or series of strokes that
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1 results in a sharp sudden decline in neurocognitive functioning.
2 Rodney suffered a slow decline in his cognitive abilities in the years
3 leading up to his strokes in the spring of 2020 that rendered him
4 incapacitated to sign the Decree of Divorce given to him by Tessie,
5 a woman his loved, trusted and wanted to reconcile with. Given the
6 nature of the confidential relationship between Rodney and Tessie
7 and the cognitive decline he had suffered up to January 2020, he
8 was not able to understand the legal consequences of the Decree of
9 Divorce and protect himself from Tessie's overreaching. Rodney
10 was susceptible to undo influence in 2019 and 2020. Both Sheryl
11 and Tessie believed that Rodney was taken advantage of by Dan in
12 2019 and 2020. Given the nature of the relationship between Tessie
13 and Rodney, he was especially susceptible to undo influence by her
14 in 2019 and 2020.

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19 6. Moreover, there is substantial evidence that Tessie knew that
20 Rodney lacked the capacity to protect himself. She testified in her
21 deposition that she took care of the financials for both of them when
22 they were together. She testified that after their separation, she
23 worried that he would be found dead and that she knew he had not
24 paid the property taxes for three years because she called to check
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1 on that. She testified repeatedly about knowing that he had been
2 taken advantage of financially by two women after their separation
3 in 2013 to the extent that he had no liquid assets left in 2019, even
4 though he had at least \$1.5 million in cash when the parties
5 separated and Rodney had worked through the end of 2019. He did
6 not have the cash to pay the back taxes he owed on his farmhouse
7 and he did not have the cash to pay his former employer to give him
8 back his wrecker. She testified that he had made many bad
9 decisions that resulted in the loss of a significant amount of money
10 before they reconnected in 2019. She even saw the cancelled checks
11 showing the thousands of dollars he gave to Jill and Tanika before
12 2019 and learned in 2019 that he gave away very valuable gold
13 coins to Tanika. She knew in 2019 that Rodney needed her help
14 with the business he was trying to do with Dan in North Dakota.
15 She wrote a letter to Dan before all of the equipment was moved
16 from his farm in Kansas to North Dakota trying to make sure that
17 Rodney was protected by having proper contracts in place with Dan,
18 that had been reviewed by an attorney she picked, before the
19 equipment was moved AND she made it clear to Dan that Rodney
20 was not allowed to make these business decisions without her. *See*
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1 Plaintiff's Exhibit 13, in which she tells Dan that Rodney "will
2 simply be a worker to maintain and help operate the equipment" but
3 that she will be in charge of all decisions because Rodney has a
4 tendency to make his own decisions and "get us in trouble." She
5 was right that Rodney made bad arrangements and agreements with
6 Dan that got him in trouble. She had to go in person to North
7 Dakota and help Rodney make complaints with TERO in an effort
8 to get equipment back that he should never have taken to North
9 Dakota without better contracts in writing first. In 2019, she knew
10 he was not able to make good decisions or protect himself from
11 others who would take advantage of him. After reconnecting with
12 her in 2019, Tessie and Rodney went to a bank in North Dakota and
13 they opened a joint bank account together. His income from Dan's
14 companies were deposited into that account and Tessie could see
15 from that account that he did not do well with managing his income
16 and that he did not make enough to pay her \$3,000 per month in
17 alimony.
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1 7. On some level, Rodney was aware of the fact that he was not able to
2 manage his business affairs and he needed help. He asked Tessie to
3 help him and she agreed. As she testified, he wanted her to take
4 care of everything for him and just allow him to work. He did not
5 have the intention or the capacity to agree to give her all of his
6 separate property that he inherited from his mother and to agree to
7 give her lifetime alimony that he did not have the ability to pay. He
8 just wanted her to take care of his financial affairs and to keep him
9 working. He did not have the mental capacity to understand that he
10 already had the legal vehicle for her to do that for him – all he had to
11 do was amend his Trust and make her the trustee. Then, she would
12 have had the ability to manage his affairs, but she also would have
13 continued to have a fiduciary duty to him that could have been
14 enforced by a court. He trusted her and believed that she would
15 protect him, but, in the end, she took everything he had left from
16 what he inherited from his mother and she refuses to give it back so
17 that he has the means to pay for his needs that are beyond the \$1,100
18 per month or so he receives in Social Security benefits.
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1 8. Tessie relies on the finding of the District Court for the Fort
2 Berthold Indian Reservation that Rodney was competent to enter
3 into the contracts with Dan between August 2019 and February
4 2020 as binding on this Court. However, as Tessie points out in her
5 closing arguments in quoting from the Restatement (Second) of
6 Contracts Section 12 (1981), “capacity to contract may be partial
7 and its existence in respect of a particular transaction may depend
8 upon the nature of the transaction or upon other circumstances.”
9 First of all, the court in North Dakota did not have the benefit of the
10 expert witnesses or other evidence regarding Rodney’s cognitive
11 functioning during the period of August 2019 through February
12 2020. Second, the relationship between Rodney and Dan is much
13 different than the relationship between Rodney and Tessie. Dan was
14 a stranger to Rodney while Tessie was in a long-term confidential
15 relationship with Rodney. Dan and his agents did not have historic
16 knowledge about Rodney that they could compare his functioning in
17 2019 to. All they knew is that Rodney could not do the work he
18 claimed to be able to do when he was hired and that he had a bad
19 temper and lacked impulse control³. Third, the nature of the
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26 ³ The agitation and the loss of skills that a person once had can be due to dementia.
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1 transactions Rodney did with Dan was much different than the
2 nature of the terms of the Decree of Divorce. With Dan, Rodney
3 was just selling pieces of equipment that he knew well and had
4 owned for years. With Tessie, he ended up giving away everything
5 he had left from what he inherited from his mother and agreeing to
6 pay her lifetime alimony in an amount that was more than he even
7 grossed in 2019, because he trusted that she was going to take care
8 of him. Rodney lacked capacity and a sufficient understanding of
9 the Decree of Divorce when he signed it. He did not have the ability
10 to understand the legal consequences of the Decree of Divorce he
11 signed. Tessie testified that Rodney trusted her to take care of his
12 financial affairs and “just keep him working,” and that is not what
13 the Decree of Divorce gave him. This could also be concluded to be
14 a mistake, inadvertence, surprise or excusable neglect on Rodney’s
15 part and that would also warrant setting aside the property and debt
16 allocation and the alimony award in the Decree of Divorce pursuant
17 to NRCP 60(b)(1).
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1 9. Both parties cite to NRS 125.150(5) and the *Stojanovich* case⁴ in
2 support of their requested relief. Tessie argues that because all of
3 the property referenced in the Decree is separate property, the Court
4 lacks jurisdiction to set aside the property allocation contained in the
5 Decree of Divorce. While Rodney's guardians argue that, because
6 everything in the Decree of Divorce is separate property, the Court
7 did not originally have jurisdiction to divest a party of their separate
8 property and the property division in the Decree of Divorce must be
9 set aside. In a way, they are both wrong. It is true that the Court
10 cannot award the separate property of one party to the other party,
11 unless for the support of a child or the spouse. That does not mean a
12 legally competent spouse cannot agree to give his or her separate
13 property to the other spouse. On the other hand, just because the
14 property in the Decree of Divorce is separate property, it does not
15 mean this Court cannot set aside the division of property if the
16 spouse was not legally competent to give away his or her separate
17 property.
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26 ⁴ *Stojanovich v Stojanovich*, 86 Nev. 789, 476 P.2d 950 (1970).
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1 10. Based upon the evidence presented, the Court does not need to have
2 any further evidentiary proceedings as to the distribution of assets
3 and debts or the award of alimony. The Court shall enter new orders
4 herein to replace the orders from the Decree of Divorce that are
5 being set aside.
6

7 11. Rodney's guardians are the prevailing parties and are entitled to an
8 award of reasonable attorney's fees and costs pursuant to NRS
9 18.010 and EDCR 5.219 and subject to proper proof.
10

11 12. If any of these Conclusions of Law are more appropriately
12 designated as Findings of Fact, they shall be so designated.
13

14 **ORDERS**

15 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
16 **CONCLUSIONS,**

17 **IT IS HEREBY ORDERED** that the motion of Rodney's guardians to set
18 aside the Decree of Divorce is granted in part pursuant to NRCP 60(b)(1),(3),(4)
19 and (6). Specifically, the Court sets aside the distribution of Rodney's separate
20 assets and debts and the award of alimony to Tessie. The parties' status as
21 single, unmarried persons as of February 12, 2020 shall remain intact and the
22 award of Tessie's sole and separate property and sole and separate debts to her
23 shall be confirmed. The restoration of Tessie's prior name will also stand.
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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, for
2 clarity, the following assets are confirmed as the sole and separate property of
3 Tessie:
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5 a. The real property located at 8382 Hollywood Hills Ave., Las
6 Vegas, NV 89178, subject to any liens and encumbrances.

7 b. The 2012 Chevrolet Corvette VIN ending in 0723, subject to
8 any liens and encumbrances, and/or any vehicle she has
9 purchased to replace this vehicle in Las Vegas.

10 c. All furniture, furnishings and personal property in her
11 possession or control in Las Vegas, Nevada.

12 d. All personal property owned by her prior to the marriage or
13 acquired after the date of the Decree of Divorce, February 12,
14 2020.

15 e. Any and all bank accounts in her name only or with anyone
16 other than Defendant.
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20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
21 following assets are confirmed as the sole and separate property of Rodney, with
22 Sheryl and Steven Attenberg taking possession and control of these assets, to the
23 extent they still exist, as part Rodney's guardianship estate to be managed and
24 used for his benefit in compliance with the law and orders of the Court governing
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1 their guardianship over Rodney from the court in Colorado:

- 2 a. The real property located at 5730 Road 10, Goodland, Kansas
- 3 67735, subject to any encumbrances.
- 4
- 5 b. The Service Truck VIN 2GCFK29K951206963, subject to any
- 6 liens and encumbrances.
- 7
- 8 c. The 1977 Kenworth Winch Truck VIN 155197SG2, subject to
- 9 any liens and encumbrances.
- 10
- 11 d. P & H 140 Ton Crane, Model 9125-TC, subject to any liens and
- 12 encumbrances.
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- 14 e. Manitowoc 100 Ton Crane, Model 3900A, SN 39670, subject to
- 15 any liens and encumbrances.
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- 17 f. Lima 90 Ton Crane, Model 990TC, subject to any liens and
- 18 encumbrances.
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- 20 g. P & H 90 Ton Crane, Model 8115TC, SN 35419, subject to any
- 21 liens and encumbrances.
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- 23 h. P & H 50 Ton Crane, subject to any liens and encumbrances.
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- 25 i. P & H 25 Ton Crane, subject to any liens and encumbrances.
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- 27 j. P & H 70 Ton Crane, subject to any liens and encumbrances.
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- k. 2 Bulldozers, subject to any liens and encumbrances.

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- 1 v. 750 Holmes Wrecker Tow Truck, subject to any liens and
2 encumbrances and subject to the judgment entered in the District
3 Court for the Fort Berthold Indian Reservation in favor of Darrell
4 Fontenot/Synergy.
5
6 w. Autocar Winch Truck, subject to any liens and encumbrances.
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8 x. Maritime Hydraulic Drilling Rig subject to any liens and
9 encumbrances and subject to the judgment entered in the District
10 Court for the Fort Berthold Indian Reservation in favor of Darrell
11 Fontenot/Synergy.
12
13 y. Any and all tools and other equipment located at 5730 Road 10,
14 Goodland, Kansas 67735.
15
16 z. Chevrolet Suburban VIN ending in 9469, subject to any liens and
17 encumbrances.
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19 aa. Any and all rights, as well as the obligations, under the contracts
20 with Darrell Fontenot/Synergy, if any remain.
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22 bb. All furniture, furnishings and personal property in his possession
23 or located at 5730 Road 10, Goodland, Kansas 67735.
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25 cc. All bank accounts in his name or in his name with anyone other
26 than Plaintiff, including bank accounts that are for his benefit.
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1 dd. All personal property owned by him prior to the marriage or
2 acquired after the date of the Decree of Divorce, February 12,
3 2020.
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5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
6 Tessie is assigned the following items as her sole and separate obligation and she
7 shall indemnify and hold Rodney and his guardianship estate harmless and defend
8 him:
9

- 10 a. Tessie shall assume and place in her name solely, the debt
11 associated with any vehicle in Tessie's possession or control.
12
13 b. The balance of any and all credit card accounts, loans, or other
14 debts held in Tessie's name alone.
15
16 c. Any and all obligations, debts, or other liabilities
17 associated with any property awarded to Tessie by virtue of
18 this Order.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
20 Rodney is assigned the following items as his sole and separate obligation and he
21 or his guardianship estate shall indemnify and hold Tessie harmless and defend
22 her:
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1 a. Rodney shall assume and place in his name solely, the debt
2 associated with any Rodney vehicle in Rodney's possession or
3 control.
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5 b. The balance of any and all credit card accounts, loans, or other
6 debts held in Rodney's name alone.

7 c. Any and all obligations, debts, or other liabilities
8 associated with any property awarded to Rodney by virtue of
9 this Decree of Divorce.
10

11 d. Any and all obligations to Darrell Fontenot or Synergy
12 pursuant to the Judgment entered by the District Court for the
13 Fort Berthold Indian Reservation.
14

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that to
16 the extent Tessie has sold any of the vehicles, equipment or tools herein
17 confirmed to Rodney, she shall provide Rodney's guardians with all
18 documentation regarding the sales and the amount she received for the sales by
19 October 10, 2022. A judgment shall be entered against Tessie for all of the sums
20 she received from the sale of any of Rodney's sole and separate property
21 confirmed to him herein. The Court reserves jurisdiction to resolve any disputes
22 regarding the amount Tessie owes to Rodney for the property she sold and to
23 enter a judgment against her for that amount.
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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that
2 neither party shall be awarded spousal support.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that each
4 party shall indemnify and defend the other and hold the other free and harmless
5 from any and all liability or responsibility for payment of the debts assigned to
6 such party by virtue of this Order.
7

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
9 neither party shall charge or cause or permit to be charged, to or against the other,
10 any purchase which either of them may hereafter make, and shall not hereafter
11 create any engagement or obligations in the name of or against the other, and
12 neither party shall ever hereafter secure or attempt to secure any credit upon or in
13 connection with the other. In the event either party utilizes the name of the other,
14 said party shall be responsible for any and all debt incurred and any and all legal
15 fees and costs associated with litigating to resolve the unauthorized use of a
16 party's name.
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20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
21 request of Rodney's guardians to be awarded their reasonable attorney's fees and
22 costs from Tessie is granted pursuant to NRS 18.010 and EDCR 5.219. They
23 shall file and serve a *Brunzell* affidavit and a Memorandum of Fees and Costs
24 with all billing statements attached by no later than October 5, 2022. Tessie shall
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1 then have until October 14, 2022 to file any opposition she has to the requested
2 fees and costs. This matter shall be set on the Court's Chambers Calendar for a
3 decision regarding attorney's fees and costs on October 19, 2022 at 2:00AM.
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5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
6 hearing on September 27, 2022 at 3:00 p.m. is hereby vacated as moot by the
7 entry of these Findings of Fact, Conclusions of Law and Order and Judgment.
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10 Dated this 26th day of September, 2022

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14 Dawn R. Throne
15 District Court Judge
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Tessie E Wilkinson, Plaintiff

CASE NO: D-19-596071-D

7 vs.

DEPT. NO. Department U

8 Rodney Wilkinson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/26/2022

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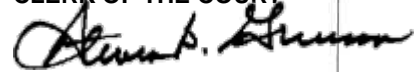
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21
22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 9/27/2022

25 James Kwon

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1 NEO

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 * * *

7 TESSIE E. WILKINSON a/k/a TESSIE ELMA
8 ALMARIO,

Case No.: D-19-596071-D
Dept.: U

9 Plaintiff,

10 vs.

11 RODNEY WILKINSON, through SHERYL
12 ATTERBERG,
13 GUARDIAN,

14 Defendant.

15
16 NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF

17 LAW AND ORDER AND JUDGMENT

18 TO ALL INTERESTED PARTIES:

19
20 PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law
21 and Order and Judgment was entered in the above-entitled matter on the
22 September 26, 2022 a true and correct copy of which is attached hereto.
23

24 Dated: September 26, 2022.

25
26 /s/ Suzanna Zavala

27 Suzanna Zavala,
28 Judicial Executive Assistant to the
HONORABLE Dawn R. Throne

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CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☒ I placed a copy of the foregoing NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER AND JUDGMENT

to the appropriate parties to:

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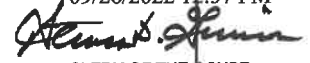
Attorney for Sheryl Atterberg on Behalf of

Her Adult Ward, Defendant, Rodney Wilkinson

/s/ Suzanna Zavala

Suzanna Zavala,

Judicial Executive Assistant to the
HONORABLE Dawn R. Throne


CLERK OF THE COURT

1 **FFCL**

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5 **EGHTH JUDICIAL DISTRICT COURT**
6 **COUNTY OF CLARK, STATE OF NEVADA**
7

8 TESSIE E. WILKINSON a/k/a TESSIE ELMA
9 ALMARIO,

Case No.: D-19-596071-D

Dept.: U

10 Plaintiff,

11 vs.

12 RODNEY WILKINSON, through SHERYL
13 ATTERBERG,
14 GUARDIAN,

15 Defendant.

16 **FINDINGS OF FACT, CONCLUSIONS OF LAW,**
17 **AND ORDER AND JUDGMENT**

18 This matter having come for an Evidentiary Hearing on September 8th and
19 9th, 2022 on Defendant Rodney Wilkinson's ("Rodney") Motion to Set Aside
20 Decree of Divorce Pursuant to NRCP 60(b); Defendant, Tessie Elma Almario's
21 ("Tessie") Opposition to Defendant's Motion to Set Aside the Divorce Decree
22 Pursuant to NRCP 60(b) and Countermotion for Attorney's Fees and Related
23 Relief; and Rodney's subsequent Reply. Attorney James Kwon, Esq., of James
24 Kwon, LLC appeared and present, with Rodney's Guardians appearing remotely
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1 via blue jeans. Attorneys Bradley J. Hofland, Esq., Jason Carr, Esq. and Joshua
2 Tomsheck, Esq. of Hofland and Tomsheck appearing with Tessie. Tessie being
3 sworn and testified. The Court having reviewed and considered the testimony
4 before it, the evidence presented and submitted, including the expert witness
5 reports and testimonies of Dr. Paul Janda, Esq., FAAN (Board Certified
6 Neurologist and Attorney) and Gregory P. Brown, MD (Board Certified in
7 Psychiatry and Forensic Psychiatry), and good cause appearing, **FINDS,**
8 **CONCLUDES** and **ORDERS** as follows:

11 **FINDINGS OF FACT**

- 12 1. Rodney and Tessie were married on March 22, 2009, in Burlington,
13 Colorado. The parties have no minor children together.
- 14 2. Prior to the parties' marriage, Rodney inherited from his mother a
15 farm house and approximately 1,500 acres of farm land in
16 Goodland, Kansas that was owned by her free and clear. *See*
17 Plaintiff's Exhibit 26, a May 22, 2007 Order from the District Court
18 of Sherman County, Kansas. Rodney never added Tessie to the title
19 to the farm house and land during their marriage and this property
20 remained his sole and separate property.

24 . . .

25 . . .

1 3. On August 14, 2007, prior to the parties' marriage, Rodney created
2 the Rodney E. Wilkinson Trust ("Trust"). Rodney was the sole
3 beneficiary of the Trust during his lifetime, but upon his death,
4 Tessie was named beneficiary if she survived him. Rodney also
5 named alternate beneficiaries if Tessie did not survive him that
6 included his sister Sheryl as the final alternate beneficiary in
7 Rodney's handwriting, even though the Trust states on pages 1-2
8 that Rodney's brother and sister were not supposed to receive
9 anything from his Trust. Tessie alleges that the Trust supports her
10 assertion that Rodney told her in 2019 that he wanted her to have all
11 of his property. However, the unambiguous terms of the Trust state
12 that Rodney is the sole beneficiary of the Trust during his lifetime
13 and, if there is anything left in his Trust after his death, that Tessie is
14 his preferred beneficiary. Nothing in the Trust indicates that
15 Rodney wanted Tessie to take any of his property during his
16 lifetime. Notably, Rodney did not name Tessie as one of the
17 successor trustees should he become incapacitated or die.

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- 1 4. In approximately December 2012, Rodney sold the farm land and he
2 received a net of about \$2,500,000 from that sale. Tessie testified
3 that Rodney made a gift to her of \$1,000,000 of his separate
4 property proceeds. Then, according to Tessie, he wanted her to
5 leave so he could live his own life.
6
- 7 5. Therefore, Tessie left Rodney in approximately January 2013,
8 moving from Kansas to Las Vegas. Rodney and Tessie essentially
9 ended their marriage as of January 2013. With the \$1,000,000 from
10 Rodney, Tessie paid cash for a home in Las Vegas, Nevada, where
11 she has lived since February 2013, purchased at least two vehicles
12 and furniture and provided some financial assistance to family
13 members. She also left the marriage with a brand new 2012
14 Corvette that Rodney purchased for her for her birthday in the fall of
15 2012 that she owned free and clear.
16
- 17 6. Tessie resided in Nevada and did so at least 6 weeks prior to filing
18 her complaint for divorce. There is no evidence that Rodney ever
19 lived in Nevada. Since the last place the parties resided together as
20 husband and wife (Kansas) is not a community property state, the
21 law regarding community property, including the concept of
22 community waste, does not apply to these parties. This Court would
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1 have been required to apply Kansas' equitable division law to the
2 division of these parties' assets and debts if this divorce had been
3 tried.
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- 5 7. However, at the evidentiary hearing, it became very clear based
6 upon the testimony of Tessie and the documents she introduced into
7 evidence that by 2019 there was no marital property to divide
8 between these parties. The most valuable asset Rodney ever owned
9 during the marriage was the farm land he inherited from his mother
10 in 2007, which was owned free and clear of any mortgage. The bulk
11 of that separate property was sold by Rodney in or about December
12 2012, leaving him with just the farm house, equipment and vehicles
13 and \$2.5 million in net proceeds. Rodney then made a gift of about
14 \$1 million of his separate property to Tessie, leaving him with about
15 \$1.5 million in cash that was his separate property. According to the
16 evidence adduced in the North Dakota action that will be discussed
17 in more detail below, he purchased significant items of equipment
18 after the sale of his farm land, which would also be his separate
19 property. Since Rodney made a gift to Tessie of about \$1 million at
20 the end of 2012/beginning of 2013, that money became her separate
21 property and the assets she bought with those funds are her separate
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1 property, including the residence at 8382 Hollywood Hills Ave, Las
2 Vegas, Nevada. Sheryl has tried to argue that Rodney was not
3 competent in 2013 to make this gift to Tessie or that she took
4 advantage of him, there simply is no evidence to support that
5 argument.
6

7 8. Tessie testified at her deposition in May 2021, that when she and
8 Rodney were together, she handled the financial affairs for both of
9 them. *See* transcript at page 53.
10

11 9. According to Tessie, she and Rodney had little to no contact with
12 each other from 2013 until sometime in 2019, when he called her
13 out of the blue. At that time, he was working in North Dakota.
14 However, she also testified at her deposition on May 27, 2021 that,
15 after Rodney stopped communicating with her after their separation,
16 she “kept calling to make sure that no one, you know, finding him
17 dead somewhere. That was my fear.” She also testified that she
18 called the sheriff once in a while to check up on him. At some
19 point, she even called the courthouse in Goodland to inquire about
20 the status of the property taxes being paid and she was told that the
21 taxes were three years delinquent. *See* transcript at page 58.
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1 10. In 2019, Rodney wanted to reconcile with Tessie and he wanted her
2 to come to North Dakota to work with him on a business
3 opportunity he found with a man named Darrell Fontenot and
4 businesses he owned. In 2019, Tessie traveled to North Dakota to
5 see Rodney in person approximately four times.
6

7 11. During discussions with Rodney in 2019, Tessie learned that he was
8 struggling financially. Apparently, all of the money he had from the
9 sale of the farm land was gone and he was not even able to stay
10 current on the property taxes for the farmhouse or purchase
11 insurance for the equipment he owned and wanted to put to work.
12 She learned that Rodney had been taken advantage of financially by
13 two different women during the six years that they had not been in
14 communication – a Jill Strnad and a Tanika Stevenson, including,
15 but not limited to, giving them cash, giving them other assets such
16 as a vehicle and gold coins, and transferring ownership of life
17 insurance policies on his life to Jill Strnad with death benefits
18 totaling about \$1,000,000 (*see* Plaintiff's Exhibit 17). Rodney did
19 not just change the beneficiary on his life insurance policies from
20 Tessie to Jill; he actually signed something that gave Jill ownership
21 of the policy. So, when Tessie helped Rodney communicate with
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1 Banner Life Insurance Company in order to change the beneficiary
2 back to Tessie, they learned that he could not change the beneficiary
3 because he was no long the owner of the policies.
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5 12. Mr. Fontenot ("Dan") is an enrolled member of the Three Affiliated
6 Tribes residing on the Fort Berthold reservation. Rodney went to
7 work for one of Dan's companies, Synergy Oil Services
8 ("Synergy"), in June 2019 as a mechanic working on diesel engines
9 and large equipment making \$45 per hour. Dan and his other
10 employees noticed that Rodney's work performance was lacking
11 within the first two weeks. He was very slow and not able to
12 complete the work he was hired to do. Within a month, Dan wanted
13 to fire him, but instead they came to an agreement that Rodney
14 would accept \$25 per hour and he would work at his other business
15 because the other employees at Synergy did not want to work with
16 him due to his temper and outbursts of cursing.
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20 13. During Rodney's employment with Dan, he disclosed that he had a
21 wrecker that was being held in Killdeer by Rodney's last job that he
22 had been fired from and Rodney needed to get \$2,000 to get his
23 wrecker back from his former employer, but Rodney did not have
24 the money to get the wrecker back. Dan helped him by giving him
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1 the money to get the wrecker back from his former employer.

- 2 14. While working for Synergy, Rodney disclosed that he had heavy
3 equipment sitting in Kansas that he would like to put to work for a
4 profit. Dan was interested in putting the equipment to work, but he
5 represented to Rodney that due to regulations of the Tribal
6 Employment Rights Ordinance Office (“TERO”), he would have to
7 have an ownership interest in the equipment in order to put it to
8 work in the oilfields. It was at that point that Dan and Rodney
9 discussed creating a business together. Rodney asked Tessie to help
10 him with this business and that they would be partners in the
11 business if she would help him. Tessie traveled to North Dakota to
12 meet with Rodney and Dan and Tessie and Rodney believed that
13 there was an agreement reached to use attorneys to set up a proper
14 LLC. Tessie was clear in her communications with Rodney and
15 Dan that no more of the equipment should be moved to North
16 Dakota until written agreements were in place. Tessie even sent a
17 letter to that effect to Dan. *See* Plaintiff’s Exhibit 14. This letter is
18 not dated, but from the context of it and the timeline of when the oil
19 rig was moved to North Dakota by Rodney and Dan, it appears that
20 this letter was sent to Dan by Tessie in or about August 2019. In the
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1 letter, she tries to make it clear to Dan that Rodney is not capable of
2 making good decisions, that she would be making all of the
3 decisions and Rodney would “simply be a worker to maintain and
4 help operate the equipment.”
5

6 15. Despite Tessie’s attempts to protect Rodney from himself and his
7 poor decisions, including asking the police in Goodland, Kansas to
8 “keep an eye out for anything moving from the farm,” Rodney
9 signed agreements with Dan on August 21, 2019 and in September
10 2019 to sell 5 items to Dan’s company: the wrecker (1979 Ford
11 Truck 920), a lowboy trailer (1980 Cozad Jeep Trailer), a boom
12 truck (1993 Western Star WS), an auto truck (1983 Auto Truck 315)
13 and an oil drill rig (Peerless Drill CH-48-12S). *See also*, Plaintiff’s
14 Exhibits 12 and 13, which are letters signed by Rodney and Tessie
15 respectively. Tessie admitted that she wrote both of these letters
16 that are not dated, but had to have been after April 2020 based upon
17 the context in Tessie’s letter (Exhibit 13).
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21 16. On September 9, 2019, after being separated from Rodney for over
22 six (6) years, Tessie filed for divorce in Nevada. Tessie was
23 represented by counsel at the time of the divorce, Rodney was not.
24 Tessie never alleged anything in her Complaint about Rodney
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1 wasting community property. She alleged that there was separate
2 property of each of them that should be confirmed to them and that
3 there were community assets and debts to divide. Despite Tessie's
4 claim that the divorce was all Rodney's idea and that he was in a
5 hurry to get the divorce completed, Rodney was not served with the
6 Summons, Complaint and JPI until November 25, 2019. Tessie
7 traveled to North Dakota again in November 2019. While there, she
8 had Rodney sign an Acceptance of Service that was then filed with
9 this Court on December 2, 2019.
10

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12 17. While in North Dakota in November 2019, Tessie and Rodney also
13 went the TERO office to file a formal written complaint against
14 Synergy and Dan's other company, ABBA Oil Field Services. *See*
15 Plaintiff's Exhibit 15, the first page of which is dated November 26,
16 2019 and is completed in Tessie's handwriting and lists Rodney as
17 the complainant but lists her address in Las Vegas and her email
18 address.
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21 18. Again, although Tessie testified repeatedly that the divorce was all
22 Rodney's idea and he was in a hurry to get the divorce done, she
23 caused a Default to be entered against him on December 20, 2019.
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1 19. Pursuant to Plaintiff's Exhibit 11, Rodney had 5 different
2 employers¹ and had total gross earnings that year of \$33,517.08.
3 Rodney having 5 different employers in North Dakota in 2019 is
4 consistent with Sheryl's testimony about the difficulty Rodney was
5 having keeping a job and with Dan's testimony in the North Dakota
6 case regarding Rodney's problems with his prior employer in
7 Killdeer, North Dakota.
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10 20. In January 2020, Tessie again traveled to North Dakota to meet with
11 Rodney. This time she had him sign a Stipulation and Order to Set
12 Aside Default and a Family Law Self-Help Center Answer to
13 Complaint for Divorce form that is dated January 16, 2020. Tessie
14 even had to fill in for him all of the paragraphs of the Complaint that
15 he was admitting to on this form. On January 17, 2020, Tessie and
16 Rodney went to their bank² and he signed the Decree of Divorce in
17 front of a notary public. She then brought all of these original
18 documents back to Nevada. She signed the Decree of Divorce in
19 front of a Nevada notary public on January 21, 2020. The
20 Stipulation and Order to Set Aside Default and the Answer to
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24 ¹ ABBA Energy LLC, a business owned by Dan, actually paid Rodney as an independent contractor and provided
25 him with a Form 1099-MISC.

26 ² During one of Tessie's visits to see Rodney in North Dakota in 2019, they opened a joint bank account together
27 after about 6 years of no contact.
28

1 Complaint for Divorce were filed on January 28, 2020. The Decree
2 of Divorce was entered by the Court on February 12, 2020. A
3 Notice of Entry of the Decree of Divorce was filed on February 13,
4 2020, with a certificate indicating that it was served on Rodney by
5 mail to an address Tessie knew he was no longer living at because
6 Dan had evicted him from that apartment by that date.
7

8
9 21. Tessie testified that the reason the Decree of Divorce gives her all of
10 Rodney's separate property (the farmhouse and all of the vehicles
11 and equipment) and lifetime alimony of \$3,000 per month is
12 because that is the way he wanted it. On the one hand, she admitted
13 that Rodney wanted to get back together with her when he contacted
14 her in 2019, but then on the other hand, he is the one who wanted
15 the divorce and wanted to give her everything he owned and lifetime
16 alimony that the evidence Tessie provided shows he has no way to
17 pay. He earned less than \$34,000 in 2019, so he had no means to
18 pay her \$36,000 per year in alimony. He had even lost his last job
19 before he signed the Decree of Divorce on January 17, 2020.
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23 22. At the same time as Tessie testified that Rodney wanted to divorce
24 her and give her all of his separate property, she testified that
25 Rodney needed and wanted her help and trusted her to take care of
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1 him and his property. Specific examples of this testimony from her
2 deposition are as follows:

- 3 • Q. And what was your understanding as to why Rodney wanted
4 to hurry up and get a divorce from you? A. He wants to get his
5 drilling rig out of the property he left it. He wanted me to go get it
6 for him. *See transcript at page 66, lines 17-21.*
- 7 • Q. But what other reason are you aware of that Rodney wanted
8 to get a divorce from you quickly? A. So I can own and get the
9 equipment back. So I can own the drilling right and have the right
10 to get it back. *See transcript at page 69, lines 5-9.*
- 11 • At page 69, lines 11-16:
12 A. He wants to give it to me. He doesn't want to be part of
13 anything anymore. He said I'm tired. You deal with it. He said
14 take everything. Get the divorce done. Put everything in your
15 name. You deal with it and just keep me working. That's his
16 opinion. That's his desire.
- 17 • Q. What was Rodney going to do? A. The work. That's why he
18 wanted me to take care of it because she trusted me that we'll keep
19 working together. *Transcript at page 74, lines 6-9.*

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- At page 100, lines 8-19:

Q. Okay. Did Rodney explain to you the terms of the divorce decree? Yes or no.

A. Yes.

Q. What did he explain to you?

A. That, okay, now you have the house. You can do whatever you want. Now you have all this truck, and make sure you know where they're at. Okay. Now let's get to work. That's exactly his words.

Q. Let's get to work meaning?

A. He wants me to work with him in North Dakota, and that's where we have the work rig is where we have supposedly to start working.

- Q. And as far as you understood it, that could only happen once he gave everything to you; is that correct? A. No. Q. What's your understanding? A. My understanding is he wanted me to help him work. Transcript at page 100, lines 20-25.

- A. He wanted to get a divorce. We decided. Him and I decided. He want me to have all this because he feel it's safer with me and he trusted me. That's why he made me do this with him. I didn't make

1 him. This is not what I wanted. This is all his idea. Q. Only his
2 idea? A. He came up with it; talked me into it. Transcript at page
3 114 at lines 17-23.
4

- 5 • At page 114, lines 24-25:

6 Q. You said he trusted you and he felt that it was safer with you;
7 is that correct?
8

- 9 • At page 115, lines 1-11:

10 A. Yes.

11 Q. Safe from whom?

12 A. Example. The people that he was working with in North
13 Dakota. From Dan. That's why he wanted me to do this so I can
14 stop and just work with him and protect our stuff.
15

16 Q. From Dan?

17 A. From Dan.

18 Q. What was he afraid of that Dan was going to do?

19 A. Keep all his equipment he was just holding there.
20

- 21 • At page 129, lines 4-15:

22 Q. (By Mr. Kwon) Do you feel that Rodney made a good
23 financial decision giving all his assets to you pursuant to the divorce
24 decree? Yes or no.
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1 MS. DESOUSA CABRAL: Objection. Compound.

2 Argumentative.

3 Q. (by Mr. Kwon) Please answer the question.

4 A. Yes and no.

5 Q. What part of it is yes?

6 A. He gave it to me to help him. So yes, I know, but then he
7 admitted to me that he made a bad decision. And no, I don't agree.
8 But yes, he made some poor decision.

- 9
- 10 • A. He wanted me to take everything and be responsible for it.
11 I'm just doing what he want. He asked me for help and that's all I
12 did. Transcript at page 130, lines 8-11.

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15 23. The Court does not find Tessie's testimony credible as to the
16 following claims:

- 17
- 18 • That it was all Rodney's idea to get a divorce. This is inconsistent
19 with her testimony that he wanted to reconcile with her and with all
20 of his actions in 2019 and 2020, including opening a new joint bank
21 account with her and repeatedly asking for her help.
 - 22 • That she was unaware of Rodney's neurocognitive impairment in
23 2019. Her actions and other statements, such as the letter she sent to
24 Dan about Rodney not having any authority to make the business
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1 decisions on their behalf, prove otherwise. The overwhelming
2 evidence proves that she was very well aware of Rodney's
3 neurocognitive impairment in 2019. She learned from Rodney that
4 he had just given away hundreds of thousands of dollars and
5 property to women that he trusted. She had to help him try to figure
6 out what he did with the life insurance policies he owned at one time
7 and, only with her help was it learned that he actually gave away
8 ownership of the policies to Jill instead of just making Jill the
9 beneficiary. She did not trust him to not be talked into just moving
10 equipment to North Dakota without proper written agreements in
11 place by Dan when she was not there watching him, even though
12 she told him not to do that many times and he apparently agreed
13 with her instructions. She knew that Rodney was very susceptible to
14 undue influence and that he was not capable of protecting himself
15 from someone wanting to take advantage of him. She did not trust
16 him to make a complaint to NERO about Dan on his own. She did
17 not trust him to sign the divorce papers correctly on his own. If she
18 did, she would not have made the trip to North Dakota in January
19 2020 when the weather is freezing, so she could personally make
20 sure he signed the divorce papers correctly, including having his
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signature notarized on the Decree of Divorce. It is much easier to email, fax or mail a document to someone who is competent, have them sign the documents and then mail the originals back. Tessie knew that Rodney was not capable of taking those steps on his own in January 2020.

24. The Decree of Divorce awarded Tessie the 5 pieces of equipment Rodney had already agreed to sell to Dan's company in August and September 2019.

25. On February 24, 2020, Rodney signed a series of new agreements with Dan's company in which it was agreed that the contracts to sell Synergy the boom truck (1993 Western Star WS), auto truck (1983 Auto Truck 315) and oil drill rig (Peerless Drill CH-48-12S) were rescinded, the wrecker (1979 Ford Truck 920) and lowboy trailer (1980 Cozad Jeep Trailer) were deemed paid in full by Synergy for what had already been paid on all 5 contracts and Rodney had the right to keep the boom truck, auto truck and drill on Synergy's property until he moved them or was given 30 days' notice to remove them.

...

...

1 26. By the end of February 2020, Rodney had finally been evicted from
2 the apartment he lived in while working for Synergy, he had no job
3 and he had no place to live in North Dakota. By the beginning of
4 March 2020, he was back in Kansas and living in his farmhouse that
5 had been awarded to Tessie pursuant to the Decree of Divorce.
6

7 27. In April 2020, Tessie traveled to Kansas. She had to help Rodney
8 by cleaning the house, buying him groceries and cooking for him.
9 During that trip, she also caused a certified copy of the Decree of
10 Divorce to be recorded with the Sherman County recorder's office
11 on April 21, 2020. She also had Rodney go with her and sign over
12 titles to vehicles and trailers to her. After that trip to Kansas, Tessie
13 had her adult son travel from his home in Colorado to look in on
14 Rodney at the farmhouse and to get him food. A neighbor of
15 Rodney's also brought food to him. He was not able to work and
16 was not able to properly care for himself.
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20 28. After returning to Kansas in March 2020, Rodney's physical and
21 mental health rapidly declined to the point where in June 2020, he
22 had to be hospitalized for "dementia with behavioral disturbance"
23 and "psychosis." See Dr. Janda's Report at page 7. On April 15,
24 2020, he had a CT scan of his head that showed "age-appropriate
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1 volume loss with no evidence of large areas of infarction,” but he
2 had “multifocal areas of encephalomalacia from prior infarcts.” *See*
3 Dr. Brown’s report at page 6 of 14. Encephalomalacia is the
4 softening or loss of brain tissue after cerebral infarction, cerebral
5 ischemia, infection, craniocerebral trauma or other injury. It is a
6 type of chronic condition secondary to injury of the brain. What this
7 means is that Rodney had had some form of trauma to his brain
8 prior to April 15, 2020 that led to his brain showing multiple areas
9 of damage – most likely either from prior traumatic brain injuries
10 and/or strokes.
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- 14 29. On May 4, 2020, Rodney was again seen at Goodland Regional
15 Medical Center. During this visit Tessie communicated with the
16 providers and told them that he was dizzy and had bad falls. She
17 noted a loss of short-term memory that was getting worse over the
18 past month. The providers noted that his short-term memory was
19 impaired and he was unable to draw a clock. *See* Dr. Brown’s
20 report at page 8 of 14. During this visit, he was formally diagnosed
21 with dementia. Between May 4, 2020 and June 20, 2020, Rodney
22 had multiple interactions with medical providers, including another
23 MRI scan of his brain on June 4, 2020, which noted moderate brain
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1 volume loss and nonspecific white matter signal changes.
2 Ultimately, on June 20, 2020, Rodney had to be hospitalized in an
3 inpatient psychiatric unit due to his having increased agitation and
4 homicidal ideation, with thoughts of harming others. The providers
5 noted on June 20, 2020 that they “suspect vascular dementia due to
6 history of strokes and stepwise decline in past 2 years.” *See* Dr.
7 Janda’s report at page 7.
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- 10 30. On or about June 1, 2020, Tessie filed another complaint with
11 TERO against Dan and his company ABBA energy about him
12 keeping the drill rig that was awarded to her in the Decree of
13 Divorce. *See* Plaintiff’s Exhibit 15. She stated in that
14 communication to TERO that Dan had written to Rodney on April
15 28, 2020 an “eviction letter” demanding that the remaining drill rig
16 be removed from his property and demanding to be provided with
17 the other titles for the lowboy trailer. She stated in her
18 communication with TERO that she had arranged for someone to
19 remove the drilling rig but that Dan would not let her remove it.
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1 31. On July 1, 2020, Rodney's sister Sheryl petitioned the court in
2 Kansas for appointment of her as his guardian. Proceedings
3 occurred in that guardianship case until October 1, 2020, when
4 Sheryl asked for that case to be dismissed because Rodney was
5 doing better and she was going to move him to an assisted living
6 facility in Colorado, where she and her husband live.

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9 32. By July 2020, Rodney's sister Sheryl knew that there were legal
10 issues to pursue on Rodney's behalf related to his drilling rig and
11 lowboy trailer in the possession of Dan in North Dakota and
12 regarding the Decree of Divorce in Nevada. *See* Plaintiff's Exhibits
13 24 and 28. That month, Sheryl was able to help Rodney prepare a
14 complaint that was filed against Dan in the District Court for Fort
15 Berthold Indian Reservation. Dan counterclaimed against Rodney
16 for storage, lost income and for other two titles to the lowboy trailer
17 that he believes exists. Unfortunately, Sheryl did not hire an
18 attorney to represent Rodney's interests in that lawsuit and she and
19 her husband, Steven Atterberg, who is also Rodney's co-guardian,
20 tried to represent Rodney's interest in that litigation themselves.
21 They also lacked the expert witness opinion that they have now in
22 this litigation that Rodney was incapacitated at the time he entered
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1 into the contracts with Dan in 2019 and February 2020.

2 33. Between the filing of the complaint for Rodney in the District Court
3 for Fort Berthold Indian Reservation and the trial in that matter on
4 December 17, 2020, Sheryl and her husband Steven petitioned the
5 Court in Lincoln County, Colorado for guardianship of Rodney in
6 September 2020. On September 24, 2020, Sheryl was appointed as
7 Rodney's emergency guardian. On November 23, 2020, a Colorado
8 Court appointed Sheryl and Steven Atterberg, Rodney's sister and
9 brother-in-law, as his permanent guardians.
10

11 34. After hearing testimony on December 17, 2020 and reviewing all of
12 the documents provided by both parties, the District Court for the
13 Fort Berthold Indian Reservation entered Findings of Fact and
14 Conclusions of Law and Order for Judgment on December 29, 2020.
15 That Court found that there had been no evidence presented to show
16 that Rodney was incompetent or not able to enter into a binding
17 contract at the time he signed the last contracts with Dan on
18 February 24, 2020. That Court also concluded, despite having no
19 evidence presented, that Rodney was competent to contract with
20 Dan and his companies and he had not been found incompetent by a
21 court of law when the contracts were signed. That Court also
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1 concluded:

2 Although it appears he did suffer from some cognitive issues
3 he still maintained a CDL in two states, was able to work as a
4 mechanic, and never advised [Dan] or his agents of any
5 cognitive limitations. Even if he were operating under some
6 limitations on his cognitive functioning nothing in the record
before this Court reveals that [Dan] or his agents knew or
should have known of this.

7 See Plaintiff's Exhibit 28 at TW000600.

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9 35. As such, the District Court for Fort Berthold Indian Reservation
10 enforced the contracts Rodney had entered into with Dan except the
11 "unconscionable" provisions regarding the forfeiture of a \$200,000
12 drill and other property of substantial value to Rodney just because
13 he was not able to remove the property by the deadline Dan gave
14 him.
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16 36. Since entry of the Findings of Fact and Conclusions of Law and
17 Order for Judgment ("Judgment"), Dan has tried to enforce the
18 terms of the Judgment against Rodney's guardians, including a
19 request to hold them in contempt. Sheryl finally hired an attorney
20 for Rodney in that case though and the Judge has entered orders
21 staying the enforcement of the Judgment pending the outcome of
22 this case.
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1 37. If any of these findings of fact are more appropriately designated
2 Conclusions of law, they shall be so deemed.
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4 **CONCLUSIONS OF LAW**

5 1. This Court has jurisdiction over the request of Rodney's guardians to
6 set aside the Decree of Divorce pursuant to NRCP 60(b).

7 2. The Motion to Set Aside Decree of Divorce Pursuant to NRCP
8 60(b) was timely filed by Rodney's guardians. First of all, service
9 of the Notice of Entry of the Decree of Divorce on February 13,
10 2020 was to an address Tessie knew Rodney was no longer living at.
11 Therefore, Rodney was never properly served with the Notice of
12 Entry. Second, at the time the Decree of Divorce was entered,
13 Rodney was an incapacitated person pursuant to NRS 132.175 and
14 no one had the legal authority to file the Motion to Set Aside
15 Pursuant to NRCP 60(b) until at least Sheryl was granted an
16 emergency guardianship over him on September 24, 2020 and
17 possibly not until Sheryl and Steven were appointed as his
18 permanent guardians on November 23, 2020. The 6 month
19 limitation period was tolled by Rodney's legal disability until
20 someone was appointed by a court with jurisdiction to act on his
21 behalf. The Motion to Set Aside was filed within 6 months of them
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1 having the legal authority to act on behalf of Rodney. Additionally,
2 in 2020, the world was in the middle of a pandemic that caused
3 most courts to close for business and, here in Nevada,
4 Administrative Orders were entered that had the effect of staying the
5 time limit for certain legal actions to be taken. Lastly, Rodney's
6 guardians also allege that Tessie committed a fraud upon the Court,
7 which is not subject to the six month limitation. *See, Murphy v.*
8 *Murphy*, 103 Nev. 185, 734 P.2d 738 (1987). For all of these
9 reasons, the Court concludes that the Motion to Set Aside is timely.
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- 12 3. The award of Rodney's sole and separate assets to Tessie and the
13 award of lifetime alimony to Tessie must be set aside. First of all,
14 there was a fraud upon the Court. NRCP 60(b)(3). The
15 representation in the Decree of Divorce that there was community
16 property at all was a misrepresentation. Then, the representation
17 that Rodney engaged in "substantial community waste" as a
18 justification for the division of assets and debts that, on the face of
19 the Decree of Divorce, solely favors Tessie. The terms of the
20 Decree of Divorce are so unconscionable toward Rodney that they
21 are shocking. The shock is amplified when the Court learned the
22 reality that there was no community property for the Court to divide.
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1 Tessie did not want the Judge to review the Decree of Divorce and
2 reject it because it awarded her all of the alleged community assets,
3 required Rodney to continue to pay debts associated with the assets
4 she was awarded and required him to pay her lifetime alimony when
5 their marriage only lasted a total of almost 11 years, with the parties
6 living separate and apart for the last 6 years of the marriage without
7 Rodney providing Tessie with any financial support. Therefore, she
8 had to make up a false story that would seem to justify the
9 unconscionable terms of the Decree of Divorce. That is not just a
10 fraud upon Rodney, but also a fraud upon the Court by intentionally
11 concealing material facts that would have allowed the Court to
12 assess the merits of the case and the competency of Rodney when he
13 signed the Decree on January 17, 2020. "When a judgment is
14 shown to have been procured" by fraud upon the court, "no
15 worthwhile interest is served in protecting the judgment."
16 Restatement (Second) of Judgments Section 70, comment B (1982).
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1 4. The Decree of Divorce is unconscionable because it left Rodney
2 with nothing but debts and alimony to pay that he had no means to
3 pay. Rodney was not able to work after being fired by Dan and he
4 was left with insufficient assets and income to provide for his own
5 needs, let alone pay the debts Tessie assigned to him or the alimony
6 that was more than he made the entire year in 2019. The Nevada
7 Supreme Court found that district courts abused their discretion
8 when refusing to set aside grossly unfair divisions of community
9 property and debts under NRCP 60(b) when the disadvantaged
10 spouse lacked the knowledge of how grossly unfair the division of
11 community property was at the time they signed the decrees of
12 divorce, although the spouses were not legally incompetent to
13 contract. *See Peterson v. Peterson*, 105 Nev. 133, 771 P.2d 159
14 (1989); *Carlson v Carlson*, 108 Nev. 358, 832 P.2d 380 (1992);
15 *Cook v Cook*, 112 Nev. 179, 912 P.2d 264 (1996).

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20 5. The award of Rodney's sole and separate assets to Tessie and the
21 award of lifetime alimony to Tessie must also be set aside because
22 Rodney was incapacitated pursuant to NRS 132.175 at the time he
23 signed the Decree of Divorce on January 17, 2020 and could not
24 legally enter into this unconscionable agreement with Tessie. NRCP
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1 60(b)(4) and/or (6). Both parties provided expert witness reports and
2 detailed testimony from two very well-qualified medical experts,
3 one of who testified to a reasonable degree of medical probability
4 that Rodney was legally incapacitated at the time he signed the
5 Decree of Divorce on January 17, 2020 and the other who testified
6 to a reasonable degree of medical and psychiatric probably that
7 Rodney was not incapacitated at that same date. Both of them
8 acknowledged that the task of determining the legal capacity of a
9 person at a date in the past is not an easy task. Both doctors agree
10 that Rodney was legally incapacitated several months after January
11 17, 2020 (May/June 2020) and there are substantial medical records
12 during that time period that demonstrate that. Unfortunately, no one
13 has the benefit of medical records for Rodney from January 2020, if
14 they even exist because the evidence does show that he was not
15 taking good care of himself or his medical needs, even though he
16 was seeking help and medication in emergency rooms for the
17 chronic pain in his right shoulder and arm. Dr. Brown opined for
18 Tessie that Rodney had a sharp decline in his mental capacity in the
19 spring of 2020 while in Kansas, likely as a result of strokes that
20 happened at that time. Dr. Janda testified that, while Rodney did
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1 have strokes in the spring of 2020 that resulted in a sharp decline in
2 his mental capacity, he also had had been suffering from dementia,
3 or neurocognitive disorder as the DSM-5 now calls it, for a couple
4 years before January 2020. He based this not only on the medical
5 records that were available, but his knowledge from treating many
6 patients with dementia over the years and the studies he has
7 participated in regarding dementia. Dr. Janda's opinion is supported
8 by the testimony of both Tessie and Sheryl regarding Rodney's
9 functioning in 2019 and the years of him being financially exploited
10 by people he cared about and trusted. It is even supported by Dan's
11 testimony in the North Dakota case regarding the trouble Rodney
12 had doing the job he was hired for in the second ½ of 2019, the
13 problems he observed Rodney having with taking care of basic
14 business such as being able to get his truck fixed after an accident so
15 he had a vehicle to drive and allowing a strange woman to move in
16 with him in the apartment he was provided as part of his
17 employment benefits. Given all of the evidence presented, the Court
18 concludes that Dr. Janda's expert opinion is more persuasive.
19 Dementia can be both a slow-progressing disease and there can be a
20 significant trauma event such as a stroke or series of strokes that
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1 results in a sharp sudden decline in neurocognitive functioning.
2 Rodney suffered a slow decline in his cognitive abilities in the years
3 leading up to his strokes in the spring of 2020 that rendered him
4 incapacitated to sign the Decree of Divorce given to him by Tessie,
5 a woman his loved, trusted and wanted to reconcile with. Given the
6 nature of the confidential relationship between Rodney and Tessie
7 and the cognitive decline he had suffered up to January 2020, he
8 was not able to understand the legal consequences of the Decree of
9 Divorce and protect himself from Tessie's overreaching. Rodney
10 was susceptible to undo influence in 2019 and 2020. Both Sheryl
11 and Tessie believed that Rodney was taken advantage of by Dan in
12 2019 and 2020. Given the nature of the relationship between Tessie
13 and Rodney, he was especially susceptible to undo influence by her
14 in 2019 and 2020.

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19 6. Moreover, there is substantial evidence that Tessie knew that
20 Rodney lacked the capacity to protect himself. She testified in her
21 deposition that she took care of the financials for both of them when
22 they were together. She testified that after their separation, she
23 worried that he would be found dead and that she knew he had not
24 paid the property taxes for three years because she called to check
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1 on that. She testified repeatedly about knowing that he had been
2 taken advantage of financially by two women after their separation
3 in 2013 to the extent that he had no liquid assets left in 2019, even
4 though he had at least \$1.5 million in cash when the parties
5 separated and Rodney had worked through the end of 2019. He did
6 not have the cash to pay the back taxes he owed on his farmhouse
7 and he did not have the cash to pay his former employer to give him
8 back his wrecker. She testified that he had made many bad
9 decisions that resulted in the loss of a significant amount of money
10 before they reconnected in 2019. She even saw the cancelled checks
11 showing the thousands of dollars he gave to Jill and Tanika before
12 2019 and learned in 2019 that he gave away very valuable gold
13 coins to Tanika. She knew in 2019 that Rodney needed her help
14 with the business he was trying to do with Dan in North Dakota.
15 She wrote a letter to Dan before all of the equipment was moved
16 from his farm in Kansas to North Dakota trying to make sure that
17 Rodney was protected by having proper contracts in place with Dan,
18 that had been reviewed by an attorney she picked, before the
19 equipment was moved AND she made it clear to Dan that Rodney
20 was not allowed to make these business decisions without her. *See*

1 Plaintiff's Exhibit 13, in which she tells Dan that Rodney "will
2 simply be a worker to maintain and help operate the equipment" but
3 that she will be in charge of all decisions because Rodney has a
4 tendency to make his own decisions and "get us in trouble." She
5 was right that Rodney made bad arrangements and agreements with
6 Dan that got him in trouble. She had to go in person to North
7 Dakota and help Rodney make complaints with TERO in an effort
8 to get equipment back that he should never have taken to North
9 Dakota without better contracts in writing first. In 2019, she knew
10 he was not able to make good decisions or protect himself from
11 others who would take advantage of him. After reconnecting with
12 her in 2019, Tessie and Rodney went to a bank in North Dakota and
13 they opened a joint bank account together. His income from Dan's
14 companies were deposited into that account and Tessie could see
15 from that account that he did not do well with managing his income
16 and that he did not make enough to pay her \$3,000 per month in
17 alimony.
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1 7. On some level, Rodney was aware of the fact that he was not able to
2 manage his business affairs and he needed help. He asked Tessie to
3 help him and she agreed. As she testified, he wanted her to take
4 care of everything for him and just allow him to work. He did not
5 have the intention or the capacity to agree to give her all of his
6 separate property that he inherited from his mother and to agree to
7 give her lifetime alimony that he did not have the ability to pay. He
8 just wanted her to take care of his financial affairs and to keep him
9 working. He did not have the mental capacity to understand that he
10 already had the legal vehicle for her to do that for him – all he had to
11 do was amend his Trust and make her the trustee. Then, she would
12 have had the ability to manage his affairs, but she also would have
13 continued to have a fiduciary duty to him that could have been
14 enforced by a court. He trusted her and believed that she would
15 protect him, but, in the end, she took everything he had left from
16 what he inherited from his mother and she refuses to give it back so
17 that he has the means to pay for his needs that are beyond the \$1,100
18 per month or so he receives in Social Security benefits.
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1 8. Tessie relies on the finding of the District Court for the Fort
2 Berthold Indian Reservation that Rodney was competent to enter
3 into the contracts with Dan between August 2019 and February
4 2020 as binding on this Court. However, as Tessie points out in her
5 closing arguments in quoting from the Restatement (Second) of
6 Contracts Section 12 (1981), “capacity to contract may be partial
7 and its existence in respect of a particular transaction may depend
8 upon the nature of the transaction or upon other circumstances.”
9 First of all, the court in North Dakota did not have the benefit of the
10 expert witnesses or other evidence regarding Rodney’s cognitive
11 functioning during the period of August 2019 through February
12 2020. Second, the relationship between Rodney and Dan is much
13 different than the relationship between Rodney and Tessie. Dan was
14 a stranger to Rodney while Tessie was in a long-term confidential
15 relationship with Rodney. Dan and his agents did not have historic
16 knowledge about Rodney that they could compare his functioning in
17 2019 to. All they knew is that Rodney could not do the work he
18 claimed to be able to do when he was hired and that he had a bad
19 temper and lacked impulse control³. Third, the nature of the
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26 ³ The agitation and the loss of skills that a person once had can be due to dementia.
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1 transactions Rodney did with Dan was much different than the
2 nature of the terms of the Decree of Divorce. With Dan, Rodney
3 was just selling pieces of equipment that he knew well and had
4 owned for years. With Tessie, he ended up giving away everything
5 he had left from what he inherited from his mother and agreeing to
6 pay her lifetime alimony in an amount that was more than he even
7 grossed in 2019, because he trusted that she was going to take care
8 of him. Rodney lacked capacity and a sufficient understanding of
9 the Decree of Divorce when he signed it. He did not have the ability
10 to understand the legal consequences of the Decree of Divorce he
11 signed. Tessie testified that Rodney trusted her to take care of his
12 financial affairs and “just keep him working,” and that is not what
13 the Decree of Divorce gave him. This could also be concluded to be
14 a mistake, inadvertence, surprise or excusable neglect on Rodney’s
15 part and that would also warrant setting aside the property and debt
16 allocation and the alimony award in the Decree of Divorce pursuant
17 to NRCP 60(b)(1).
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1 9. Both parties cite to NRS 125.150(5) and the *Stojanovich* case⁴ in
2 support of their requested relief. Tessie argues that because all of
3 the property referenced in the Decree is separate property, the Court
4 lacks jurisdiction to set aside the property allocation contained in the
5 Decree of Divorce. While Rodney's guardians argue that, because
6 everything in the Decree of Divorce is separate property, the Court
7 did not originally have jurisdiction to divest a party of their separate
8 property and the property division in the Decree of Divorce must be
9 set aside. In a way, they are both wrong. It is true that the Court
10 cannot award the separate property of one party to the other party,
11 unless for the support of a child or the spouse. That does not mean a
12 legally competent spouse cannot agree to give his or her separate
13 property to the other spouse. On the other hand, just because the
14 property in the Decree of Divorce is separate property, it does not
15 mean this Court cannot set aside the division of property if the
16 spouse was not legally competent to give away his or her separate
17 property.
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26 ⁴ *Stojanovich v Stojanovich*, 86 Nev. 789, 476 P.2d 950 (1970).
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1 10. Based upon the evidence presented, the Court does not need to have
2 any further evidentiary proceedings as to the distribution of assets
3 and debts or the award of alimony. The Court shall enter new orders
4 herein to replace the orders from the Decree of Divorce that are
5 being set aside.
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7 11. Rodney's guardians are the prevailing parties and are entitled to an
8 award of reasonable attorney's fees and costs pursuant to NRS
9 18.010 and EDCR 5.219 and subject to proper proof.
10

11 12. If any of these Conclusions of Law are more appropriately
12 designated as Findings of Fact, they shall be so designated.
13

14 **ORDERS**

15 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
16 **CONCLUSIONS,**

17 **IT IS HEREBY ORDERED** that the motion of Rodney's guardians to set
18 aside the Decree of Divorce is granted in part pursuant to NRCP 60(b)(1),(3),(4)
19 and (6). Specifically, the Court sets aside the distribution of Rodney's separate
20 assets and debts and the award of alimony to Tessie. The parties' status as
21 single, unmarried persons as of February 12, 2020 shall remain intact and the
22 award of Tessie's sole and separate property and sole and separate debts to her
23 shall be confirmed. The restoration of Tessie's prior name will also stand.
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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, for
2 clarity, the following assets are confirmed as the sole and separate property of
3 Tessie:
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- 5 a. The real property located at 8382 Hollywood Hills Ave., Las
6 Vegas, NV 89178, subject to any liens and encumbrances.
- 7 b. The 2012 Chevrolet Corvette VIN ending in 0723, subject to
8 any liens and encumbrances, and/or any vehicle she has
9 purchased to replace this vehicle in Las Vegas.
- 10 c. All furniture, furnishings and personal property in her
11 possession or control in Las Vegas, Nevada.
- 12 d. All personal property owned by her prior to the marriage or
13 acquired after the date of the Decree of Divorce, February 12,
14 2020.
- 15 e. Any and all bank accounts in her name only or with anyone
16 other than Defendant.
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20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
21 following assets are confirmed as the sole and separate property of Rodney, with
22 Sheryl and Steven Attenberg taking possession and control of these assets, to the
23 extent they still exist, as part Rodney's guardianship estate to be managed and
24 used for his benefit in compliance with the law and orders of the Court governing
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1 their guardianship over Rodney from the court in Colorado:

- 2 a. The real property located at 5730 Road 10, Goodland, Kansas
- 3 67735, subject to any encumbrances.
- 4
- 5 b. The Service Truck VIN 2GCFK29K951206963, subject to any
- 6 liens and encumbrances.
- 7
- 8 c. The 1977 Kenworth Winch Truck VIN 155197SG2, subject to
- 9 any liens and encumbrances.
- 10
- 11 d. P & H 140 Ton Crane, Model 9125-TC, subject to any liens and
- 12 encumbrances.
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- 14 e. Manitowoc 100 Ton Crane, Model 3900A, SN 39670, subject to
- 15 any liens and encumbrances.
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- 17 f. Lima 90 Ton Crane, Model 990TC, subject to any liens and
- 18 encumbrances.
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- 20 g. P & H 90 Ton Crane, Model 8115TC, SN 35419, subject to any
- 21 liens and encumbrances.
- 22
- 23 h. P & H 50 Ton Crane, subject to any liens and encumbrances.
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- 25 i. P & H 25 Ton Crane, subject to any liens and encumbrances.
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- 27 j. P & H 70 Ton Crane, subject to any liens and encumbrances.
- 28
- k. 2 Bulldozers, subject to any liens and encumbrances.

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- l. 1977 Kenworth VIN 055097SGL, subject to any liens and encumbrances.
- m. 1972 Peterbilt ID 41337P, FHP364802, subject to any liens and encumbrances.
- n. 1955 Mack VIN B705T1209, subject to any liens and encumbrances.
- o. 1955 Kenworth VIN 64338, subject to any liens and encumbrances.
- p. 1959 Mack VIN B73S1370, subject to any liens and encumbrances.
- q. 1962 Mack Winch Truck, subject to any liens and encumbrances.
- r. 6000 Cherry Picker, subject to any liens and encumbrances.
- s. 100 Ton Press, subject to any liens and encumbrances.
- t. Lo Boy 35 Ton Cozad Trailer # CC80062, subject to any liens and encumbrance and subject to the judgment entered in the District Court for the Fort Berthold Indian Reservation in favor of Darrell Fontenot/Synergy.
- u. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154, subject to any liens and encumbrances.

1 v. 750 Holmes Wrecker Tow Truck, subject to any liens and
2 encumbrances and subject to the judgment entered in the District
3 Court for the Fort Berthold Indian Reservation in favor of Darrell
4 Fontenot/Synergy.
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6 w. Autocar Winch Truck, subject to any liens and encumbrances.

7 x. Maritime Hydraulic Drilling Rig subject to any liens and
8 encumbrances and subject to the judgment entered in the District
9 Court for the Fort Berthold Indian Reservation in favor of Darrell
10 Fontenot/Synergy.
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12 y. Any and all tools and other equipment located at 5730 Road 10,
13 Goodland, Kansas 67735.
14

15 z. Chevrolet Suburban VIN ending in 9469, subject to any liens and
16 encumbrances.
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18 aa. Any and all rights, as well as the obligations, under the contracts
19 with Darrell Fontenot/Synergy, if any remain.

20 bb. All furniture, furnishings and personal property in his possession
21 or located at 5730 Road 10, Goodland, Kansas 67735.
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23 cc. All bank accounts in his name or in his name with anyone other
24 than Plaintiff, including bank accounts that are for his benefit.
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1 dd. All personal property owned by him prior to the marriage or
2 acquired after the date of the Decree of Divorce, February 12,
3 2020.
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5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
6 Tessie is assigned the following items as her sole and separate obligation and she
7 shall indemnify and hold Rodney and his guardianship estate harmless and defend
8 him:
9

10 a. Tessie shall assume and place in her name solely, the debt
11 associated with any vehicle in Tessie's possession or control.
12

13 b. The balance of any and all credit card accounts, loans, or other
14 debts held in Tessie's name alone.
15

16 c. Any and all obligations, debts, or other liabilities
17 associated with any property awarded to Tessie by virtue of
18 this Order.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
20 Rodney is assigned the following items as his sole and separate obligation and he
21 or his guardianship estate shall indemnify and hold Tessie harmless and defend
22 her:
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1 a. Rodney shall assume and place in his name solely, the debt
2 associated with any Rodney vehicle in Rodney's possession or
3 control.
4

5 b. The balance of any and all credit card accounts, loans, or other
6 debts held in Rodney's name alone.

7 c. Any and all obligations, debts, or other liabilities
8 associated with any property awarded to Rodney by virtue of
9 this Decree of Divorce.
10

11 d. Any and all obligations to Darrell Fontenot or Synergy
12 pursuant to the Judgment entered by the District Court for the
13 Fort Berthold Indian Reservation.
14

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that to
16 the extent Tessie has sold any of the vehicles, equipment or tools herein
17 confirmed to Rodney, she shall provide Rodney's guardians with all
18 documentation regarding the sales and the amount she received for the sales by
19 October 10, 2022. A judgment shall be entered against Tessie for all of the sums
20 she received from the sale of any of Rodney's sole and separate property
21 confirmed to him herein. The Court reserves jurisdiction to resolve any disputes
22 regarding the amount Tessie owes to Rodney for the property she sold and to
23 enter a judgment against her for that amount.
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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that
2 neither party shall be awarded spousal support.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that each
4 party shall indemnify and defend the other and hold the other free and harmless
5 from any and all liability or responsibility for payment of the debts assigned to
6 such party by virtue of this Order.

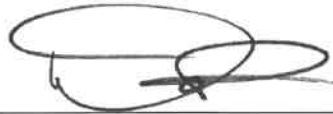
7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
8
9 neither party shall charge or cause or permit to be charged, to or against the other,
10 any purchase which either of them may hereafter make, and shall not hereafter
11 create any engagement or obligations in the name of or against the other, and
12 neither party shall ever hereafter secure or attempt to secure any credit upon or in
13 connection with the other. In the event either party utilizes the name of the other,
14 said party shall be responsible for any and all debt incurred and any and all legal
15 fees and costs associated with litigating to resolve the unauthorized use of a
16 party's name.

17 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
18 request of Rodney's guardians to be awarded their reasonable attorney's fees and
19 costs from Tessie is granted pursuant to NRS 18.010 and EDCR 5.219. They
20 shall file and serve a *Brunzell* affidavit and a Memorandum of Fees and Costs
21 with all billing statements attached by no later than October 5, 2022. Tessie shall
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1 then have until October 14, 2022 to file any opposition she has to the requested
2 fees and costs. This matter shall be set on the Court's Chambers Calendar for a
3 decision regarding attorney's fees and costs on October 19, 2022 at 2:00AM.
4

5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
6 hearing on September 27, 2022 at 3:00 p.m. is hereby vacated as moot by the
7 entry of these Findings of Fact, Conclusions of Law and Order and Judgment.
8

9
10 Dated this 26th day of September, 2022

11 

12
13 639 248 5569 9949
14 Dawn R. Throne
15 District Court Judge
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Tessie E Wilkinson, Plaintiff

CASE NO: D-19-596071-D

7 vs.

DEPT. NO. Department U

8 Rodney Wilkinson, Defendant.

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/26/2022

15 Bradley Hofland

Bradh@hoflandlaw.com

16 Dina DeSousa Cabral

DinaD@hoflandlaw.com

17 James Kwon, Esq.

jkwon@jwklawfirm.com

18 Nikki Woulfe

clerk@hoflandlaw.com

19 Anna Stein

bhassistant@hoflandlaw.com

20 Liz Honest

lhonest@jwklawfirm.com

21
22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 9/27/2022

25 James Kwon

James Kwon, LLC

Attn: James Kwon, Esq

6280 W. Spring Mountain Rd., #100

Las Vegas, NV, 89146

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

February 04, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

February 04, 2021 1:30 PM All Pending Motions

HEARD BY: Throne, Dawn R.**COURTROOM:** RJC Courtroom 14A**COURT CLERK:** Helen Green**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, not present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, not present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, not present
Estate, not present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, not present

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO SET ASIDE THE DIVORCE DECREE PURSUANT TO NRCP 60(b)...PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE DECREE OF DIVORCE PURSUANT TO NRCP 60(b) AND COUNTERMOTION FOR ATTORNEY'S FEES AND RELATED RELIEF

Attorney Hofland appeared by video for Plaintiff.
Plaintiff appeared by video.
Attorney Kwon appeared by video for Defendant.
Defendant appeared telephonically.

Argument by counsel.

The COURT FINDS that the Court has jurisdiction to consider Defendant's motion under 60(b). It is this Court's Decree of Divorce. The COURT FINDS that Defendant's motion is timely based on the guardians ability to act on Defendant's behalf if he was not competent during 2020.

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The Court noted that the civil case has nothing to do with this case. The guardians, on behalf of the ward, can file a civil suit for civil damages if there was fraud separate and apart from what this Court's authority would be.

COURT ORDERED:

Defendant's motion is GRANTED under 60(b)3 and 60(b)6.

A prima facie case has been made and an evidentiary hearing is GRANTED. The time shall be divided between both counsel.

Defendant shall issue a new JOINT PRELIMINARY INJUNCTION and serve it. Neither party shall dispose of any assets.

Plaintiff shall file a General FINANCIAL DISCLOSURE FORM (FDF) by February 26, 2021 and serve that.

Defendant's guardians can fill out a General FDF of what Defendant's living expenses are and any income and counsel shall file that and serve that by February 26, 2021.

Discovery is open.

The Court's staff shall issue a Trial Management Order.

If the evidence shows that Defendant was competent at the time of signing in 2020, the Plaintiff's request for ATTORNEY FEES shall be considered.

Calendar Call SET for 7/7/21 @ 11:00 A.M.

Non-Jury Trial SET for 7/16/21 @ 9:00 A.M. (Stack 1 - Full Day) (Defendant's competency at the time of signing and how much Plaintiff knew about it.)

Attorney Kwon shall prepare the Order from today's hearing and counsel shall review and sign off.

INTERIM CONDITIONS:

FUTURE HEARINGS: Jul 07, 2021 11:00AM Calendar Call
RJC Courtroom 14C Throne, Dawn R.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

April 20, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

April 20, 2021 2:30 PM Minute Order

HEARD BY: Throne, Dawn R.**COURTROOM:** Chambers**COURT CLERK:** Quentin Mansfield**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, not present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, not present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, not present
Estate, not present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, not present

JOURNAL ENTRIES

- MINUTE ORDER - NO HEARING HELD - NO APPEARANCES

Plaintiff's motion is denied without prejudice. The Motion is bereft of a certification under EDCR 5.602(d) showing that counsel attempted to engage in a good faith, meaningful meet and confer. The Declaration of Dina DeSousa-Cabral contains conclusory statements that do nothing to inform the court whether Plaintiff engaged in attempts to resolve the matter. EDCR 5.602(d) requires counsel's affidavit to explain in detail what attempts to resolve the dispute were made, what was resolved and what was not resolved, and why. No effort was made here to explain these attempts.

Clerk's Note: The above Minute Order has been amended to indicate that judicial officer, ADR/Discovery Commissioner, Jay Young, issued the minute order and not Judge Dawn Throne. 04/21/2021 (qm).

Clerk's Note: The above Minute Order has been distributed to the parties and counsel at their email addresses listed with the Court. 04/21/2021 (qm).

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INTERIM CONDITIONS:

FUTURE HEARINGS: Jul 07, 2021 11:00AM Calendar Call
RJC Courtroom 14C Throne, Dawn R.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint

COURT MINUTES

April 28, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

April 28, 2021 10:00 AM Motion

HEARD BY: Throne, Dawn R.

COURTROOM: RJC Courtroom 14C

COURT CLERK: Silvia Avena

PARTIES:

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, not present

JOURNAL ENTRIES

- MOTION: PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR EXPERT EXAMINATION/EVALUATION.

BlueJeans/video hearing.

Dina De Sousa, Esq., Nevada Bar No.: 15032, present on behalf of Plaintiff.

The Court noted the papers and pleadings on file.

Discussion/argument regarding Independent Medical Examiner (IME)/psychiatry (Plaintiff), neurologist (Defendant), and discovery related matters.

The Court noted Nevada Rules of Civil Procedure (NRCP) 35, as there are logistical issues (as Defendant is in another state).

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The Court further noted that the Colorado Courts have deemed Defendant incompetent.

The Court clarified what is relevant in this post divorce action and therefore, COURT ORDERED, as follows:

The parties FINANCIAL STATUS at the time leading up to the DIVORCE and entry of DECREE OF DIVORCE is relevant.

Request for PSYCHIATRIST to become involved in this matter is GRANTED.

Both experts shall have access to the MEDICAL RECORDS in this case.

PER STIPULATION, Independent Medical Examination (IME) to be completed. Counsel shall discuss logistical issues and to be included in their Stipulation and Order.

Health Insurance Portability and Accountability Act (HIPAA) to be signed as deemed necessary.

Ms. De Sousa shall prepare the Order from today's hearing and Mr. Kwon shall countersign.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

July 07, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

July 07, 2021 11:00 AM All Pending Motions

HEARD BY: Throne, Dawn R.**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Silvia Avena**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, present	
Tessie Wilkinson, Plaintiff, present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- CALENDAR CALL... MOTION: PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF.

BlueJeans/video hearing.

Discussion regarding discovery issues, Tribal Court proceedings, guardianship, assets, and financial related matters.

Mr. Hofland's oral request for CASE STAYED for a WRIT to be entered.

Upon Court's inquiry, Mr. Kwon represented that his client's desired a full accounting however, those attempts were blocked. Therefore, nothing was touched, sold, or transferred. Furthermore, there was a realtor involved in mid-early February in Kansas property (farm) when an inventory was attempted.

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Upon Court's inquiry (regarding the tribal Court), Mr. Hofland represented that Plaintiff did not take possession of the drill and/or equipment.

COURT STATED ITS FINDINGS.

The Court stated that Mr. Kwon shall go first at trial and therefore, COURT ORDERED, as follows:

MOTION for SUMMARY JUDGEMENT (MSJ) is DENIED.

Request for CASE STAYED is DENIED.

JOINT PRELIMINARY INJUNCTION (JPI) ISSUED.

Plaintiff shall not sell the property in Kansas (farm) and/or the property here. LIS PENDENS ENTERED.

Defendant may file LIS PENDENS and RECORD it here and in Kansas.

Non-Jury Trial SET 7-16-21 VACATED and RESET 11-12-21 at 9:00 a.m.

Mr. Kwon shall prepare the Order from today's hearing and Mr. Hofland shall countersign.

INTERIM CONDITIONS:

FUTURE HEARINGS: Jul 28, 2021 1:30PM Status Check
re: Submission of Report and Recommendation
Courtroom 20 Young, Jay

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

July 07, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

July 07, 2021 1:30 PM Motion to Compel

HEARD BY: Young, Jay**COURTROOM:** Courtroom 20**COURT CLERK:** Diane Ford; Ruby Castillo**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- MOTION TO COMPEL: PLAINTIFF'S MOTION AND NOTICE OF MOTION TO COMPEL
DISCOVERY AND FOR ATTORNEY'S FEES:

COURT CLERKS: Diane Ford, Ruby Castillo (rc)

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO
CONFERENCE through the BlueJeans application.

COURT NOTED it has read the pleadings and it appears there are two (2) Request for Productions
that need to be addressed and they are #7 and #8, and further noted they are seeking pleadings from
cases in Kansas and Colorado. Court further noted Attorney Hofland attempted to retrieve the
documents on his own through public records and was not able to do that.

Attorney Hofland represented that what is in the pleadings is correct and that Sheryl Atterberg has
those records in her care custody and control. Attorney Hofland further represented they attempted

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to get the records but was unable to get them as they appeared to be sealed. Further discussion.

Attorney Kwon represented he would like to provide a little background information because this is not the typical case in the sense that Defendant had been deemed incompetent and his sister Sheryl Atterberg had initially applied for guardianship in the state of Kansas. Attorney Kwon stated upon the Defendant being moved to the facility in Colorado they abandoned the Kansas case and opened a case in Colorado. Further discussion.

Attorney Kwon stated after getting the discovery requests they made a Good Faith effort to produce everything they had in their possession and there is nothing more. Further discussion regarding if the parties were represented in Kansas or Colorado and if there was a cost to getting the documents requested by Attorney Hofland.

Upon the Court's inquiry, Attorney Kwon stated he did not let Attorney Hofland know there was a cost to get the documents from the Kansas case.

COMMISSIONER stated its FINDINGS and RECOMMENDED the following:

1. Plaintiff's Motion to Compel is GRANTED.
2. Attorney Kwon and his clients shall get the documentation Attorney Hofland had requested from the cases in Kansas and Colorado, and Attorney Hofland shall bear the cost.
3. Plaintiff's Motion for Attorney's Fees and Costs is GRANTED.
4. Attorney Hofland shall have seven (7) days to provide a Supplemental Declaration regarding the requirements in the Brunzell Factors and also as it pertains to Wright vs Osburn and Cadle vs Woods and Erickson attorney's fees being requested.
5. Attorney Hofland shall prepare the Report & Recommendation from today's hearing and Attorney Kwon shall sign as to form and content within fourteen (14) days to avoid a sanction.
6. Attorney Hofland shall also submit a Second Report and Recommendation regarding attorney fees.
7. Status Check re: Attorney's Fees SET for 7-28-2021 at 2:00 a.m. on the Court's In- Chambers calendar.
8. Status Check re: Submission of the R&R SET for 7-28-2021 at 1:30 p.m.

INTERIM CONDITIONS:

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FUTURE HEARINGS: Jul 28, 2021 1:30PM Status Check
re: Submission of Report and Recommendation
Courtroom 20 Young, Jay

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES****July 28, 2021**

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

July 28, 2021 1:30 PM Status Check

HEARD BY: Young, Jay**COURTROOM:** Courtroom 20**COURT CLERK:** Michelle Cunningham**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, not present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- STATUS CHECK: RE: SUBMISSION OF REPORT AND RECOMMENDATION

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application.

COURT NOTED two (2) Report and Recommendations were due. Upon the Court's inquiry, Attorney Hofland represented on 7/13/2021 they prepared and sent over DCCRs for both, they received a response from opposing counsel that additional time was needed, then four (4) or five (5) days later opposing counsel sent over there listing and own proposed DCCRs, and in response, they provided a letter outlining the request for their changes, outlining they did not believe Defendant's requests could be changed in the DCCRs and requested to meet and confer but received no response. Attorney Kwon represented he was in court all day and had a deposition and then this morning he flew out of Las Vegas which is why he was unable to respond to Attorney Hofland. In addition, Attorney Kwon stated they did not have and substantive changes to be made in the proposal, they just wanted to make it simple, clean and direct as was ruled on by the Court and submitted their

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competing proposal as well. Court stated it's preference is for counsel to work together to come up with language they can live with rather than having competing orders and requested they have a meaningful meet and confer and try to work out language both sides can live with, and if can't, they shall submit proposed order in word form, red lined so the Court can see what the differences are. Attorney Hofland requested that Attorney Kwon red line the document being sent over. Attorney Kwon agreed. In addition, Attorney Hofland addressed the costs for obtaining the records from Colorado and Kansas.

COMMISSIONER RECOMMENDED a STATUS CHECK re: Submission of R&R shall be SET for 8/4/2021 at 1:30 p.m.

INTERIM CONDITIONS:

FUTURE HEARINGS: Jul 28, 2021 1:30PM Status Check
re: Submission of Report and Recommendation
Courtroom 20 Young, Jay

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

August 04, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

August 04, 2021 1:00 PM All Pending Motions

HEARD BY: Young, Jay**COURTROOM:** Courtroom 20**COURT CLERK:** Ruby Castillo; Diane Ford**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, not present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, not present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, not present
Estate, not present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR PROTECTIVE ORDER PRECLUDING PLAINTIFF FROM TAKING THE VIDEO DEPOSITION OF DEFENDANT RODNEY WILKINSON PURSUANT TO NRCP 26, FOR ATTY FEES AND COSTS AND FOR ALL OTHER RELATED RELIEF AND COUNTERMOTION FOR ATTYS FEES AND COSTS AND RELATED RELIEF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER PRECLUDING PLAINTIFF FROM TAKING THE VIDEO DEPOSITION OF DEFENDANT RODNEY WILKINSON PURSUANT TO NRCP 26, FOR ATTY FEES AND COSTS AND FOR ALL OTHER RELATED RELIEF AND COUNTERMOTION FOR ATTYS FEES AND COSTS AND RELATED RELIEF:

COURT CLERKS: Ruby Castillo (rc), Diane Ford

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application.

COURT NOTED it is now 1:15 pm and Attorney Kwon requested to set this matter for a hearing

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today. COURT FURTHER NOTED Attorney Kwon possibly got confused with the times because there is also a Status Check at 1:30 pm. The Court will now trail the matter for Attorney Kwon's appearance.

The Court recalled the matter.

Attorney Hofland stated he contacted Attorney Kwon's office and they said he was aware of the hearing at 1:30 pm but he was involved with another matter. Attorney Hofland further stated the request they made for the protective orders was made when they scheduled a deposition, Attorney Kwon's office stated they were not going to make the deponent available so they canceled the deposition. Attorney Hofland represented after they canceled their deposition they filed their Motion and that is why they are now here. Further discussion.

COMMISSIONER made its FINDINGS and RECOMMENDED the following:

1. Defendant's MOTION shall be MOOT.
2. The Motion for ATTORNEY'S FEES shall be DENIED.
3. Attorney Hofland shall prepare a Report and Recommendation (R&R) re: Motion for the protective order within the next fourteen (14) days.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES****August 04, 2021**

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

August 04, 2021 1:30 PM Status Check

HEARD BY: Young, Jay**COURTROOM:** Courtroom 20**COURT CLERK:** Ruby Castillo; Diane Ford**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, not present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, not present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, not present
Estate, not present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- STATUS CHECK:**COURT CLERKS:** Ruby Castillo (rc), Diane Ford

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application.

Attorney Hofland represented that at the last hearing they discussed a meet and confer with counsel. Attorney Hofland further represented they had a meet and confer scheduled for Monday, 8-2-2021 but they didn't receive a call from Attorney Kwon's office. Attorney Hofland stated a copy of the Order they prepared was also provided to Attorney Kwon's office and they also did not receive a response. Further discussion.

COMMISSIONER made its FINDINGS and RECOMMENDED the following:

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1. Attorney Hofland shall submit a Report and Recommendation (R&R) along with the correspondence that was given to Attorney Kwon for review.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

November 05, 2021

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

**November 05, 11:21 AM Minute Order
2021**

HEARD BY: Throne, Dawn R.**COURTROOM:** Chambers**COURT CLERK:** Gina Bradshaw-Taylor**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, not present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, not present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, not present
Estate, not present	
Tessie Wilkinson, Plaintiff, not present	Bradley Hofland, Attorney, not present

JOURNAL ENTRIES

- MINUTE ORDER--NO HEARING HELD.

NRCP 1 and EDCR 1.10 state that the procedures in district court shall be administered to secure efficient, just, and inexpensive determinations in every action and proceeding.

THE COURT FINDS that the parties in this case have a Non-Jury Trial scheduled for November 12, 2021 at 9:00 a.m.

THE COURT FURTHER FINDS that Plaintiff has filed a Petition for Writ of Mandamus or Prohibition in the Court of Appeals of the State of Nevada that requests in part that the scheduled Non-Jury Trial be stayed pending a ruling on Plaintiff s Writ.

THE COURT FURTHER FINDS that it is concerned about the parties incurring fees and costs that might be unnecessary and it is in the best interest of all parties and their counsel not to proceed with

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the Non-Jury Trial until a ruling has been made by the Nevada Supreme Court on the Petition.

BASED ON THE ABOVE FINDINGS,

IT IS HEREBY ORDERED that the Non-Jury Trial set on November 12, 2021 at 9:00 a.m. is VACATED. The Non-Jury Trial will be reset if necessary after the ruling on Plaintiff s pending Writ.

IT IS FURTHER ORDERED that this case shall not be stayed and that discovery shall remain open if the parties have any further discovery they need to complete to be prepared for a Non-Jury Trial.

SO ORDERED.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

September 01, 2022

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

September 01, 2022 9:00 AM Calendar Call

HEARD BY: Throne, Dawn R.**COURTROOM:** RJC Courtroom 03H**COURT CLERK:** ; Silvia Avena**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, not present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, present	
Tessie Wilkinson, Plaintiff, present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- CALENDAR CALL

BlueJeans/video hearing.

The Court noted the papers and pleadings on file.

Discussion regarding trial related matters.

The Court noted that Counsel Kwon's clients shall appear via BlueJeans/video hearing.

Counsel Kwon noted that expert witness Dr. P. H. Janda, Esq., FAAN shall be appearing in-person (on Thursday).

Following discussion, COURT ORDERED, as follows:

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Counsels shall confer as to exhibits to be stipulated to.

Non-Jury Trial SET 9-8-22 at 1:30 p.m. and 9-9-22 at 9:00 a.m. STANDS.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES****September 08, 2022**

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

September 08, 1:30 PM Non-Jury Trial
2022

HEARD BY: Throne, Dawn R.**COURTROOM:** RJC Courtroom 03H**COURT CLERK:** ; Nicole Hutcherson**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, present	
Tessie Wilkinson, Plaintiff, present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- Defendant and Sheryl Atterberg were present via VIDEO CONFERENCE through the BlueJeans application. Plaintiff, Attorney Bradley Hofland, Attorney Jason Carr, Attorney Joshua Tomcheck and Attorney James Kwon were present IN PERSON.

Counsel STIPULATED to admit all Plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44.

Counsel STIPULATED to admit Defendant's exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG and HHH.

Opening statements made by Counsel.

Sworn testimony taken.

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Matter concluded for the day to reconvene on Friday, September 9, 2022.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

September 09, 2022

D-19-596071-D Tessie E Wilkinson, Plaintiff
vs.
Rodney Wilkinson, Defendant.

September 09, 2022 9:00 AM Non-Jury Trial

HEARD BY: Throne, Dawn R.**COURTROOM:** RJC Courtroom 03H**COURT CLERK:** ; Silvia Avena**PARTIES:**

Rodney Wilkinson, Defendant, not present	James Kwon, Attorney, present
Rodney Wilkinson, On Behalf of Subject	James Kwon, Attorney, present
Minor, present	
Sheryl Atterberg, Guardian of Person and	James Kwon, Attorney, present
Estate, present	
Tessie Wilkinson, Plaintiff, present	Bradley Hofland, Attorney, present

JOURNAL ENTRIES

- NON-JURY TRIAL: (DAY #2, STACK #1)

In-person appearances.

Meredith Simmons, Esq., Nevada Bar No.: 15817, present on behalf of Plaintiff.

Jason Carr, Esq., Nevada Bar No.: 6587, present on behalf of Plaintiff.

Matthew Corzine, present and along with Defendant's counsel.

The Court noted the papers and pleadings on file.

Testimony presented and deposition published per worksheets.

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The Court noted that Defendant/Counsel Kwon has submitted (via e-mail with cc to opposing counsel) proposed Findings of Fact and Conclusions of Law and Order.

Following testimony and discussion, COURT ORDERED, as follows:

Counsels shall submit written CLOSING BRIEFS for the Court's review and signature by Wednesday, 9-21-22 by 5:00 p.m.

Decision SET 9-27-22 at 3:00 p.m. (BlueJeans/video hearing).

INTERIM CONDITIONS:

FUTURE HEARINGS:

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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Steven D. Grierson

HOFLAND & TOMSHECK

Bradley J. Hofland, Esq.
Nevada Bar No. 6343
BradH@hoflandlaw.com
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Ph.: (702) 895-6760
Fax: (702) 731-6910
Attorneys for Plaintiff Tessie Elma Almario

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

TESSIE ELMA ALMARIO,

Plaintiff,

-vs-

SHERYL ATTERBERG, ON
BEHALF OF HER WARD
RODNEY WILKINSON,

Defendant.

)
) Case No.: D-19-596071-D
) Dept No.: U

**PLAINTIFF'S AMENDED
EXHIBIT LIST FOR TRIAL**

EX	BATES NO.	DOCUMENT	Offered	Objected	Admitted UNDER SEAL	Denied
1.	TW000001- TW000005	Gregory P. Brown, M.D. Curriculum Vitae			<i>stipulated</i> 09.09.2022	
2.	TW000006- TW000010	Gregory P. Brown, M.D. Court Testimony and Deposition History: Expert Witness History			<i>[Signature]</i>	

15.	TW000061- TW000064	Tribal Employment Rights Ordinance Office Complaint of Charging Party dated November 26, 2019			stipulated 09-09-2022	
16.	TW000065- TW000091	Receipts for Tessie Wilkinson				
17.	TW000092- TW000098	Banner Life Insurance Company for Rodney Wilkinson				
18.	TW000099- TW000102	E-mail from Tessie to Sheryl regarding Rodney Wilkinson				
19.	TW000103- TW000204	The Eastern Colorado Bank Statements for Account ending in 0288 from 2013 to 2016 for Rodney Wilkinson (and Jill Strand)				
20.	TW000205- TW000256	Bank of the West Statements for Account ending in 7690 for Tessie Wilkinson from 2012 to 2014				
21.	TW000257- TW000286	The Eastern Colorado Bank Statements for Account ending in 0299 from 2013 to 2015 for Tessie Wilkinson				
22.	TW000287- TW000306	Cornerstone Bank Statements for Account Ending in 1655 for Rodney Wilkinson and Tessie Wilkinson from August 2019 to November 2019				
23.	TW000307- TW000320	Forensic Psychiatric Report from Dr. Gregory P. Brown				

24.	TW000321- TW000348	Filed documents in Sherman County, Kansas for Case No. 2020-PR-000012 in the Guardianship and Conservatorship of Rodney Wilkinson			stipulated 09/08/2022	
25.	TW000349- TW000409	Filed documents in the Three Affiliate Tribes Fort Berthold Indian Reservation in the District Court Civil Division for Case No. CV-2020-0303 for Rodney Wilkinson v. Darrell Fontenot				
26.	TW000410- TW000413	Order admitting Authenticated Copy of the Foreign Will to Probate and Record without Administration for Lela Wilkinson				
27.	TW000418- TW000431	Photos of remaining items left at the farm				
28.	TW000432- TW000780	Certified Filed documents in the Three Affiliate Tribes Fort Berthold Indian Reservation in the District Court Civil Division for Case No. CV-2020-0303 for Rodney Wilkinson v. Darrell Fontenot				

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29.	TW000781- TW000801	Order on Discovery Commissioner's Report and Recommendations (awarding Attorney Fees)			stipulated 09-05-2022	
30.	TW000802- TW000817	Defendant Rodney Wilkinson's Responses to Plaintiff Tessie Elma Almario's First Set of Request for Production of Documents				
31.	TW000818- TW000833	Defendant Rodney Wilkinson's Supplemental Responses to Plaintiff Tessie Elma Almario's First Set of Request for Production of Documents				
32.	TW000834- TW000864	Defendant Rodney Wilkinson's Responses to Plaintiff Tessie Elma Almario's Second Set of Request for Production of Documents				
33.	TW000865- TW000890	Defendant Rodney Wilkinson's Responses to Plaintiff Tessie Elma Almario's First Set of Interrogatories				
34.	WILK002326 - WILK002425	Court Documents from Kansas Guardianship Matter				
35.	WILK002426 - WILK002727	Court Documents from Colorado Guardianship Matter				
36.		Audio Recording 1 of Tessie Wilkinson and Rodney Wilkinson				

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1 Plaintiff reserves the right to supplement his exhibits with any and all other
2 relevant documents and records which come into his possession or any other party's
3 possession during the course of discovery in this matter.

4 DATED this 30th day of August, 2022.

5 **HOFLAND & TOMSHECK**

6 By: /s/ Bradley J. Hofland
7 Bradley J. Hofland, Esq.
8 Nevada Bar No. 6343
9 228 South 4th Street, 1st Floor
10 Las Vegas, Nevada 89101
11 Telephone: (702) 895-6760
12 *Attorneys for Plaintiff*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Hofland & Tomsheck, that Pursuant
3 to NRCP 5(b) and EDCR 7.26, that on the 30th day of August, 2022, I served the
4 foregoing **PLAINTIFF'S EXHIBIT LIST FOR TRIAL** (*Exhibits served via*
5 *dropbox* <https://app.box.com/s/uo3pfz369i0fo005dcfpjcpmwph71cse>) on the
6 following parties by E-Service through Odyssey addressed as follows:

7 JAMES W. KWON, ESQ.
8 jkwon@jwklawfirm.com
9 *Attorney for Defendant*

10
11 By: /s/ Nikki Warren

12 An Employee of Hofland & Tomsheck
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DEFENDANT RODNEY WILKINSON'S EXHIBIT LIST FOR TRIAL

TESSIE ELMA ALMARIO f/k/a TESSIE WILKINSON, Plaintiff

v.

RODNEY WILKINSON, Defendant

CASE NO: D-19-596071-D

DEPT NO: U

<u>Exhibit Letter</u>	<u>Description of Exhibit</u>	<u>Bate Stamp No.</u>	<u>Offered</u>	<u>Objection</u>	<u>Admitted</u>
A	Medical Records from Goodland Regional Medical Center	WILK000001 – WILK000104			UNDER SEAL stipulated 09.08.2022
B	Medical Records from Cheyenne County Hospital	WILK000105 – WILK000107			
C	Medical Records from Medical Center of Aurora	WILK000108 – WILK000143			
D	Long Term Care Professional Medical Information by Dr. Heather Licke	WILK000144 – WILK000145			
E	Letter from Aspen Leaf Assisted Living Residence	WILK000146			
F	Medical Records from Lincoln Community Hospital and Care Center	WILK000147 – WILK000225			
G	MRI Reports from June 2020	WILK000226 – WILK000237			
H	Medical Records from Swedish Medical Center	WILK000238 – WILK000278			

15 16 17 18 19 20 21 22

I	CHI Hospital Records from March 2, 2020	WILK000279 – WILK000308				stipulated 09-09-2022
J	Newspaper Article regarding Auto Accident involving Rodney Wilkinson (age 19 at time of accident)	WILK000309 – WILK000310				
K	Curriculum Vitae of Dr. Paul H. Janda, Esq., FAAN	WILK000311 – WILK000319				
L	Fee Schedule of Dr. Paul H. Janda, Esq., FAAN	WILK000320				
M	Order Appointing Guardian for Adult dated November 23, 2020	WILK000321 – WILK000323				
N	Letters of Permanent Co-Guardianship for an Adult dated November 23, 2020	WILK000324				
O	Proposed Order Appointing Permanent Conservator for Adult dated November 23, 2020	WILK000325 – WILK000327				
P	Amended Letter of Permanent Co-Conservatorship for an Adult dated December 1, 2020	WILK000328				
Q	Letter from Tessie Almarino evicting Rodney Wilkinson dated September 29, 2020 and mailing envelope	WILK000329 – WILK000330				
R	Statement by Co-Guardians regarding Social History of Defendant, Rodney Wilkinson	WILK000331				
S	Expert Report by Dr. Paul H. Janda, Esq., FAAN	WILK000332 – WILK000347				

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T	Letter from John E. Fox, M.D. dated May 13, 2021	WILK000348			stipulated 09.08.2022
U	Montreal Cognitive Assessment (MoCA) Test for Dementia by Andrew Rosenzweig, M.D. dated September 23, 2020	WILK000349 – WILK000361			
V	Invoices from Ritchie Bros Auctioneers (America) Inc.	WILK000362 – WILK000376			
W	Defendant Rodney Wilkinson's 2010 Federal Income Tax Return	WILK000377 – WILK000395			
X	Subpoenaed Records produced by Cornerstone Bank, N.A.	WILK000396 – WILK000414			
Y	Conservator's Financial Plan with Inventory – Initial Report Inventory Values as of Date of Appointment as of November 23, 2020	WILK000415 – WILK000425			
Z	Cornerstone Bank Statement Ending January 15, 2021 for Account Ending 950	WILK000426 – WILK000430			
AA	Judgment and Order for Judgment Against Rodney Wilkinson in the District Court for the Fort Berthold Indian Reservation Case No. CV-2020-0303 dated December 29, 2020	WILK000431 – WILK000446			
BB	Medical Records for Rodney Wilkinson from Cheyenne County Clinic and Hospital	WILK000447 – WILK000816			
CC	Subpoenaed Records produced by U.S. Bank	WILK000817 – WILK001526			

DD	Elite Investigation's Confidential Report dated January 6, 2021	WILK001527 – WILK001530				stipulated 09/08/2022
EE	Samples of Rodney Wilkinson's drawing abilities prior to 2017	WILK001531				
FF	Master Care Plan by Aspen Leaf Assisted Living Residence - Limon dated May 24, 2021	WILK001532 – WILK001538				
GG	Kansas Guardianship Order for Dismissal, filed October 1, 2020	WILK001539 – WILK001540				
HH	Medical Records for Rodney Wilkinson from Larnard Mental Hospital	WILK001541 – WILK001842				
II	Records from Silver Spring Pharmacy for Rodney Wilkinson	WILK001843 – WILK001847				
JJ	Deposition Transcript of Tessie Elma Wilkinson taken May 27, 2021	WILK001848 – WILK002136				
KK	Plaintiff Tessie Elma Almario's Response to Defendant Rodney Wilkinson's First Set of Requests for Admissions to Plaintiff Tessie Almario served April 1, 2021	WILK002137 – WILK002143				
LL	Plaintiff Tessie Elma Almario's Response to Defendant Rodney Wilkinson's First Set of Interrogatories to Plaintiff Tessie Almario served April 1, 2021	WILK002144 – WILK002160				

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MM	Plaintiff Tessie Elma Almario's Response to Defendant Rodney Wilkinson's First Set of Requests for Production of Documents to Plaintiff Tessie Almario served April 1, 2021	WILK002161 – WILK002171				stipulated 09 03 2022
NN	Plaintiff Tessie Elma Almario's [Supplemental] Response to Defendant Rodney Wilkinson's First Set of Requests for Admissions to Plaintiff Tessie Almario served May 24, 2021	WILK002172 – WILK002177				
OO	Plaintiff Tessie Elma Almario's Supplemental Response to Defendant Rodney Wilkinson's First Set of Interrogatories to Plaintiff Tessie Almario served May 24, 2021	WILK002178 – WILK002195				
PP	Plaintiff Tessie Elma Almario's Supplemental Response to Defendant Rodney Wilkinson's First Set of Requests for Production of Documents to Plaintiff Tessie Almario served May 24, 2021	WILK002196 – WILK002207				
QQ	Eight Authorizations for the Release of Protected Health Information notarized by Sheryl Atterberg, in her capacity as Defendant, Rodney Wilkinson's Co-Guardian, on May 25, 2019	WILK002208 – WILK002223				
RR	Complaint for Divorce filed September 9, 2019	WILK002224 – WILK002227				
SS	Answer to Complaint for Divorce filed January 28, 2020	WILK002228 – WILK002229				

TT	Decree of Divorce filed February 12, 2020	WILK002230 - WILK002244				stipulated 09.09.2022
UU	Plaintiff's Eight (8) Notices of Intent to Serve Subpoena Duces Tecum served on Defendant on May 18, 2021	WILK002245 - WILK002325				
VV	Purchase Agreement dated February 21, 2020	TW000023 - TW000029				
WW	Plaintiff's 2017 IRS Federal Tax Return	TW000037 - TW000042				
XX	Plaintiff's 2018 IRS Federal Tax Return	TW000043 - TW000046				
YY	Defendant's IRS Federal Tax Documents	TW000047 - TW000053				
ZZ	Settlement Statement for Farm in Kansas	TW000054				
AAA	Check No. 1031 and 1032	TW000055				
BBB	Purchase Agreement from Synergy dated February 21, 2020	TW000056 - TW000057				
CCC	Tribal Employment Rights Ordinance Office Complaint of Charging Party dated November 26, 2019	TW000061 - TW000064				
DDD	Plaintiff's Receipts	TW000065 - TW000091				
EEE	Emails from Plaintiff to Sheryl Atterberg	TW000099 - TW000102				

FFF	Bank of the West Statements for Account Ending in 7690 from 2012 to 2014	TW000205 - TW000256				stipulated 09/08/2022
GGG	Eastern Colorado Bank Statements for Account Ending in 0299 from 2013 to 2015	TW000257 - TW000286				
HHH	Cornerstone Bank Statements for Account Ending in 1655 from August 2019 to November 2019	TW000287 - TW000306				
III	List of Tessie Almario's Assets from Divorce Decree w-Current Market Values	WILK002728 - WILK002729				
JJJ	Current Market Value of the real property located at 8382 Hollywood Hills Ave., Las Vegas, NV 89178	WILK002730				
KKK	Current Market Value of the real property located at 5730 Road 10, Goodland, Kansas 67735	WILK002731				
LLL	Current Market Value of the 2012 Chevrolet Corvette VIN ending in 0723, or similar asset	WILK002732				
MMM	Current Market Value of the Service Truck VIN 2GCFK29K951206963, or similar asset	WILK002733 - WILK002735				
NNN	Current Market Value of the 1977 Kenworth Winch Truck VIN 155197SG2, or similar asset	WILK002736 - WILK002737				
OOO	Current Market Value of P & H 140 Ton Crane, Model 9125-TC, or similar asset	WILK002738 - WILK002740				
PPP	Current Market Value of Manitowoc 100 Ton Crane, Model 3900A, SN 39670, or similar asset	WILK002741 - WILK002743				

QQQ	Current Market Value of Lima 90 Ton Crane, Model 990TC, or similar asset	WILK002744 – WILK002746			
RRR	Current Market Value of P & H 90 Ton Crane, Model 8115TC, SN 35419, or similar asset	WILK002747 – WILK002749			
SSS	Current Market Value of P & H 50 Ton Crane, or similar asset	WILK002750 – WILK002752			
TTT	Current Market Value of P & H 25 Ton Crane, or similar asset	WILK002753			
UUU	Current Market Value of P & H 75 Ton Crane, or similar asset	WILK002754 – WILK002755			
VVV	Current Market Value of Bulldozers, or similar asset	WILK002756 – WILK002757			
WWW	Current Market Value of 1977 Kenworth VIN 055097SGL, or similar asset	WILK002758 – WILK002759			
XXX	Current Market Value of 1972 Peterbilt ID 41337P, FHP364802, or similar asset	WILK002760			
YYV	Current Market Value of 1955 Mack VIN B705T1209, or similar asset	WILK002761 – WILK002762			
ZZZ	Current Market Value of 1955 Kenworth VIN 64338, or similar asset	WILK002763 – WILK002764			
AAAA	Current Market Value of 1959 Mack VIN B7351370, or similar asset	WILK002765 – WILK002766			
BBBB	Current Market Value of 1962 Mack Winch Truck, or similar asset	WILK002767 – WILK002770			

CCCC	Current Market Value of 6000 Cherry Picker, or similar asset	WILK002771			
DDDD	Current Market Value of 100 Ton Press, or similar asset	WILK002772 – WILK002773			
EEEE	Current Market Value of Lo Boy 35 Ton Cozad Trailer # CC80062, or similar asset	WILK002774 – WILK002775			
FFFF	Current Market Value of 1993 Western Star Boom Truck Serial No. 2WKPDCCCHPK931154 or similar asset	WILK002776 – WILK002777			
GGGG	Current Market Value of 750 Holmes Wrecker Tow Truck, or similar asset	WILK002778 – WILK002779			
HHHH	Current Market Value of Autocar Winch Truck, or similar asset	WILK002780 – WILK002781			
IIII	Current Market Value of Maritime Hydraulic Drilling Rig, or similar asset	WILK002782			
JJJJ	Asset-Debt Chart	WILK002783 – WILK002785			



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

BRADLEY J. HOFLAND, ESQ.
228 S. 4TH ST., 1ST FLOOR
LAS VEGAS, NV 89101

DATE: October 27, 2022
CASE: D-19-596071-D

RE CASE: TESSIE E. WILKINSON nka TESSIE ELMA ALMARIO vs. RODNEY WILKINSON

NOTICE OF APPEAL FILED: October 25, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING APPEAL BOND FOR PLAINTIFF TESSIE ELMA ALMARIO; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

TESSIE E. WILKINSON nka TESSIE ELMA
ALMARIO,

Plaintiff(s),

vs.

RODNEY WILKINSON,

Defendant(s),

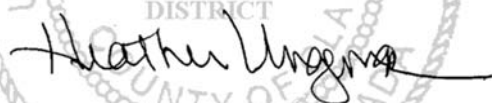
Case No: D-19-596071-D

Dept No: U

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 27 day of October 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk