

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

TESSIE E. WILKINSON, AKA TESSIE
ELMA ALMARIO,
Appellant,

vs.

RODNEY WILKINSON, THROUGH SHERYL
ATTERBERG, GUARDIAN,
Respondents,

No. 85580

Electronically Filed
Nov 16 2022 05:06 PM
Elizabeth N. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department U
County Clark Judge Hon. Dawn R. Throne
District Ct. Case No. D-19-596071-D

2. Attorney filing this docketing statement:

Attorney Bradley J. Hofland, Esq. Telephone 702-895-6760
Firm Hofland & Tomsheck
Address 228 S. 4th Street, First Floor
Las Vegas, Nevada 89101

Client(s) TESSIE E. WILKINSON, AKA TESSIE ELMA ALMARIO

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney James W. Kwon, Esq. Telephone 702-515-1200
Firm James Kwon, LLC
Address
6280 Spring Mountain Road, Suite 100
Las Vegas, Nevada 89146

Client(s) RODNEY WILKINSON, THROUGH SHERYL ATTERBERG, GUARDIAN

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

TESSIE ELMA ALMARIO,
Petitioner,

vs.

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

Respondents,

And

SHERYL ATTERBERG, ON BEHALF RODNEY WILKINSON, Real Parties in Interest

CASE NO.: 83688

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

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

SHERYL ATTERBERG, ON BEHALF OF HER WARD
RODNEY WILKINSON;

Plaintiff,

vs.

TESSIE ELMA ALMARIO,
Defendant,

CASE NO.: A-20-825785-C
DEPT NO.: XIV

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an appeal of the lower court's Findings of Fact, Conclusions of Law, and Order and Judgment entered on September 26, 2022.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the Court erred in failing to make additional findings as provided for in NRCP 52.
2. Whether the Court erred in granting 60(b) relief to Defendant.
3. Whether the Court erred in relitigating a final issue decided by another court.
4. Whether the Court erred in finding that Defendant is an incapacitated person pursuant to NRS 132.175.
5. Where the Court erred in granting Defendant an award of Attorney's fees and costs.
6. Where the Court erred in asserting Jurisdiction over the subject matter and division of separate property.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: N/A

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter does not fall into a category enumerated in NRAP 17(a)(1)-(12) for the Supreme Court to retain jurisdiction. This matter is an appeal from a final judgment assigned to the Court of Appeals pursuant to NRAP 17(b)(10).

14. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from September 26, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served September 26, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed October 25, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The order/judgment appealed from is the Findings of Fact, Conclusions of Law, and Order and Judgment which constitutes a final judgment in the dissolution proceeding.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Defendant (Appellant): Tessie E. Wilkinson, AKA Tessie Elma Almario

Plaintiff (Respondent): Rodney Wilkinson, through Sheryl Atterberg, Guardian

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondent moved to set aside the Decree of Divorce pursuant to NRCP 60(b) ;
Appellant opposed the request and argued the doctrines of estoppel, res judicata and jurisdiction.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:
The same parties.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Order is independently appealable under NRAP 3A(b).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Tessie Wilkinson AKA Tessie Almario
Name of appellant

Bradley J. Hofland
Name of counsel of record

11/16/2022
Date

/s/ Bradley J. Hofland
Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 16th day of November, 2022, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

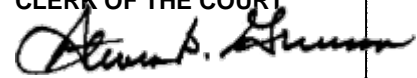
JAMES W. KWON, ESQ.
6280 Spring Mountain Road, Suite 100
Las Vegas, NV 89146
jkwon@jwklawfirm.com

LARRY COHEN, SETTLEMENT JUDGE

Dated this 16th day of November, 2022

/s/ Nikki Warren
Signature

ATTACHMENT “27”



COMD
STEINBERG & DAWSON LAW GROUP
DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Telephone: (702) 384-9664
Facsimile: (702) 384-9668
Email: danielle@steinberglawgroup.com
Attorney for Plaintiff

CASE NO: D-19-596071-D
Department: To be determined

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

TESSIE E. WILKINSON,)	
)	
Plaintiff,)	CASE NO:
vs.)	DEPT NO:
)	
RODNEY WILKINSON,)	
)	
Defendant.)	

COMPLAINT FOR DIVORCE

COMES NOW the Plaintiff, **TESSIE E. WILKINSON**, by and through her legal counsel **DANIELLE DAWSON, ESQ.**, of the **STEINBERG & DAWSON LAW GROUP** and files her complaint against the Defendant, **RODNEY WILKINSON**, and alleges as follows:

I.

That Plaintiff has been physically present and domiciled in, and an actual, bona fide resident of the State of Nevada, County of Clark for more than six (6) weeks immediately preceding the commencement of this action.

II.

That Plaintiff and Defendant were duly and legally married on March 22, 2008 in Burlington, Colorado and have been since that time, and are at the present time, husband and wife.

1 **III.**

2 That there are no minor children born to the issue of this marriage. To the Plaintiff's
3 knowledge, she is not pregnant at this time and the parties have not adopted any minor children.
4

5 **IV.**

6 That there are sole and separate properties of each of the parties to be confirmed as the
7 sole and separate properties of each of the parties by the Court.

8 **VIII.**

9 That there is community property of the parties to be equitably divided and adjudicated
10 by the Court.
11

12 **IX.**

13 That there are community debts of the parties to be equitably divided and adjudicated by
14 the Court.

15 **X.**

16 That the Plaintiff be awarded spousal support/alimony from the Defendant.
17

18 **XIII.**

19 That Plaintiff has been compelled to obtain the services of an attorney to prosecute this
20 action, and is therefore entitled to reasonable attorney's fees and costs.

21 **XIV.**


22 That Plaintiff and the Defendant are incompatible in their tastes, natures, views, likes and
23 dislikes, which have become widely separate and divergent so that the parties hereto have been,
24 and now are, incompatible to such an extent that it now appears that there is no possibility of
25 reconciliation between Plaintiff and Defendant, and that a happy marital status can no longer
26 exist.
27
28

1 **WHEREFORE, PLAINTIFF** prays for judgment of this Court which:

- 2 1. Wholly dissolves the bonds of matrimony now and heretofore existing between
3 the parties and that the parties, and each of them, be restored to the status of single
4 unmarried person;
5
6 2. Confirms the sole and separate properties of each of the parties;
7 3. Equitably divides the community property of the parties;
8 4. Equitably divides the community debts of the parties;
9 5. Orders the Defendant to pay the Plaintiff spousal support/alimony;
10 6. Orders the Defendant to pay the Plaintiff's reasonable attorney's fees and her
11 costs of Court; and
12
13 7. For such other and further relief as the Court may deem just and proper in the
14 premises.

15 **DATED** this 6 day of September, 2019.

16 **STEINBERG & DAWSON LAW GROUP**

17
18 

19 **DANIELLE DAWSON, ESQ.**

20 Nevada Bar No. 11792

21 4270 S. Decatur Blvd., Suite B10

22 Las Vegas, Nevada 89103

23 Attorney for Plaintiff
24
25
26
27
28

VERIFICATION

TESSIE E. WILKINSON, being first duly sworn upon her oath, deposes and states:

1. That I am over the age of 18 years and I am competent to testify as to the matters contained in this Affidavit.

2. That I am the Plaintiff in the above-entitled action; that I have read the above and foregoing Complaint for Divorce and know the contents thereof; the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. That I have lived in Nevada for at least six (6) weeks prior to the filing of the Complaint for Divorce.

4. That I have read the Complaint for Divorce and can testify that all of the allegations contained therein are true.

5. That the Défendant and I are incompatible in marriage.


6. That there is no possibility that the Defendant and I will reconcile.

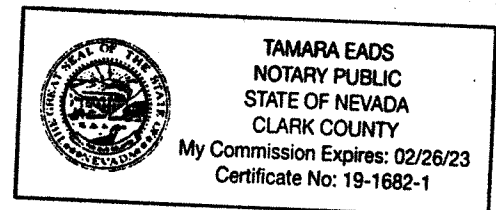
DATED this 6th day of September, 2019.


TESSIE E. WILKINSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 6th day of September, 2019.


NOTARY PUBLIC in the State of Nevada, County of Clark



Almond S. Lewis
CLERK OF THE COURT

ADAS

Your Name: Rodney Wilkinson

Address: 613 Eagle Dr Apt 36

City, State, Zip: Newtown, ND 58763

Phone: 785-821-4700

Email: _____

Self-Represented Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Tessie E Wilkinson

Plaintiff,

vs.

Rodney Wilkinson

Defendant.

CASE NO.: 0-19-596071-0

DEPT NO.: 6

ANSWER TO COMPLAINT FOR DIVORCE

Defendant (your name) Rodney E. Wilkinson, respectfully states:

1. Defendant admits the following allegations: (write the paragraph numbers from the Complaint you agree with) I, II, III, IV, VIII, IX, X, XIII,
XIV, 1, 2, 3, 4, 5, 6, 7
2. Defendant denies the following allegations: (write the paragraph numbers from the Complaint you disagree with) _____
3. Defendant is without sufficient knowledge to admit or deny the following allegations: (write the paragraph numbers you are unsure about) _____

Defendant requests:

1. That the marriage existing between Plaintiff and Defendant be dissolved and that Defendant be granted an absolute Decree of Divorce and that each of the parties be restored to the status of a single, unmarried person; and
2. For such other relief as the Court finds to be just and proper.

DATED this (day) 16th day of (month) January, 2020.

Submitted By: (your signature) ▶ Rodney E. Wilkinson
(print your name) Rodney E. Wilkinson

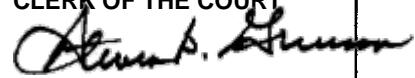
VERIFICATION

Under penalty of perjury, I declare that I am the Defendant in the above-entitled action; that I have read the foregoing Answer and know the contents thereof; that the pleading is true of my own knowledge, except for those matters therein contained stated upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this (day) 16th day of (month) January, 2020.

Submitted By: (your signature) ▶ Rodney E. Wilkinson
(print your name) Rodney E. Wilkinson



DECD
STEINBERG & DAWSON LAW GROUP
DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Telephone: (702) 384-9664
Facsimile: (702) 384-9668
Email: danielle@steinberglawgroup.com
Attorney for Plaintiff

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

TESSIE WILKINSON,

Plaintiff,

vs.

RODNEY WILKINSON,

Defendant.

CASE NO: D-19-596071-D
DEPT NO: G

DECREE OF DIVORCE

This cause coming before the Court on Request for Summary Disposition, the Plaintiff,
TESSIE WILKINSON, by and through her attorney, **DANIELLE DAWSON, ESQ.**, of
STEINBERG & DAWSON LAW GROUP; and the Defendant, **RODNEY WILKINSON**,
appearing in proper person.

WHEREAS the parties have reached a full resolution to the outstanding issues in this
matter.

WHEREAS throughout the last several years of marriage, Rodney Wilkinson has
divested the community of assets constituting substantial community waste as follows:

1. Transferred community funds including five years of earnings to Jill Strnad and or
Tanika Stevenson;

RECEIVED

FEB 04 2020

Department G

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial/ Settlement
☐ Judgment Reached by Trial

Non-Trial Dispositions:
☐ Settled/Withdrawn
☒ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
☐ By ADR

2. Divested the community of gold coins valued at over \$100,000 by gifting them to Jill Strnad;
3. Divested the community of a 2004 Corvette by gifting it to Tanika Stevenson;
4. Transferred ownership of a \$1,000,000 life insurance policy on himself to Jill Strnad;

Therefore,

IT IS FURTHER STIPULATED that the following community property shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate property:

1. The Chevrolet Suburban VIN ending in 9469;
2. All personal property owned prior to the marriage;
3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in his name only not otherwise herein named;
4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
5. Any and all bank accounts in his name only not otherwise herein named; and
6. Any personal items currently in his possession.

IT IS FURTHER STIPULATED that the following community property shall be set over and hereby awarded to the Tessie Wilkinson as her sole and separate property:

1. US Bank account ending in the numbers 8904 with a current approximate value of \$373;
2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada 89178;
3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
4. The 2012 Chevrolet Corvette VIN ending in 0723;

- 1 5. The Service Truck VIN 2GCFK29K951206963;
- 2 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
- 3 7. The following heavy equipment:
- 4 a. P & H 140 Ton crane , Model 9125-TC;
- 5 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 6 c. Lima 90 ton crane, Model 990TC;
- 7 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 8 e. P & H 50 ton crane;
- 9 f. P & H 25 ton crane;
- 10 g. P & H 70 ton crane;
- 11 h. 2 bulldozers;
- 12 i. 1977 Kenworth VIN 055097SGL;
- 13 j. 1972 Peterbilt ID 41337P, FHP364802;
- 14 k. 1955 Mack VIN B705T1209;
- 15 l. 1955 Kenworth VIN 64338;
- 16 m. 1959 Mack VIN B73S1370;
- 17 n. 1962 Mack winch truck;
- 18 o. 6000 Cherry Picker;
- 19 p. 100 ton press;
- 20 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 21 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCCHIPK931154;
- 22 s. 750 Holmes Wrecker Tow Truck;
- 23 t. Autocar Winch Truck;

1 u. Maritime Hydraulic Drilling Rig;

2 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.

3
4 8. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
5 Fontenot of Synergy Oil Field Services, LLC.

6 9. All personal property owned prior to the marriage;

7 10. Any and all current and future retirement accounts, savings plans, IRA, pension
8 plans or otherwise in her name only;

9 11. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;

10 12. Any and all bank accounts in her name only; and

11 13. Any personal items currently in her possession.

12
13 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
14 and hereby awarded to Rodney Wilkinson as his sole and separate debts:

15 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;

16 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
17 \$20,000;

18 3. Any and all tax debts in his name only;

19 4. Any and all student loan debts in his name only;

20 5. Any and all credit card debt in his name only;

21 6. Any and all credit instruments in his name only.

22
23
24 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
25 and hereby awarded to Tessie Wilkinson as her sole and separate debts:

26 1. The Chase credit account ending in the numbers 9416 with an approximate
27 current balance of \$3,860;

2. The US Bank credit account ending in the numbers 9270 with an approximate current balance of \$4,300;
3. Any and all student loan debts in her name only;
4. Any and all credit card debt in her name only;
5. Any and all credit instruments in her name only.

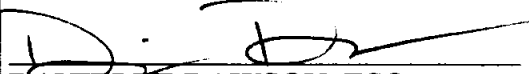
IT IS FURTHER STIPULATED that each party shall bear their own attorney's fees and costs in this matter.

IT IS FURTHER STIPULATED that Tessie Wilkinson shall return to her maiden name to wit: Tessie Elma Almario.

IT IS SO STIPULATED.

DATED this 21 day of January 2020.

DATED this 17th day of January, 2020.


DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
Attorney for Plaintiff


RODNEY WILKINSON
Defendant in Proper Person

ORDER

UPON THE FOREGOING STIPULATION of the parties, and this appearing to be a proper case therefor:

THAT the Court has complete jurisdiction in the premises, both as to the subject matter thereof as well as the parties thereto;

THAT the Plaintiff now is, and has been, an actual bona fide resident of the County of Clark, State of Nevada, and has been actually domiciled therein for more than six (6) weeks immediately preceding the verification of the Complaint for Divorce in this action;

1 **THAT** the parties were duly and legally married on March 22, 2008 in Burlington,
2 Colorado and have been since that time, and are at the present time, husband and wife.

3 **THAT** the Plaintiff believes that all of the allegations contained in her Complaint for
4 Divorce are true and that the Plaintiff is entitled to the relief sought subject to the terms as set
5 forth in this Decree of Divorce;
6

7 **THAT** the parties have waived Findings of Fact, Conclusions of Law, written Notice of
8 Entry of Judgment, and to move for a new Trial in said cause;

9 **THAT** there are no minor children born the issue of this marriage. No minor children
10 were adopted and Plaintiff is not now pregnant.

11 **NOW, THEREFORE**, by reason of the law in such cases made and provided, and the
12 Court deeming this a proper case therefore,
13

14 **IT IS HEREBY ORDERED** that the bonds of matrimony heretofore and now existing
15 between Plaintiff and Defendant be, and the same are hereby wholly dissolved, and an absolute
16 Decree of Divorce is hereby granted to the Plaintiff and each of the parties hereto is hereby
17 restored to the status of a single, unmarried person.
18

19 **IT IS FURTHER ORDERED** that the following community property shall be set over
20 and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 21 1. The Chevrolet Suburban VIN ending in 9469;
- 22 2. All personal property owned prior to the marriage;
- 23 3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or
24 otherwise in his name only not otherwise herein named;
- 25 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 26 5. Any and all bank accounts in his name only not otherwise herein named; and
27
28

1 6. Any personal items currently in his possession.

2 **IT IS FURTHER ORDERED** that the following community property shall be set over
3 and hereby awarded to the Tessie Wilkinson as her sole and separate property:

- 4 1. US Bank account ending in the numbers 8904 with a current approximate value of
5 \$373;
6 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
7 89178;
8 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
9 4. The 2012 Chevrolet Corvette VIN ending in 0723;
10 5. The Service Truck VIN 2GCFK29K951206963;
11 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
12 7. The following heavy equipment:
13 a. P & H 140 Ton crane , Model 9125-TC;
14 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
15 c. Lima 90 ton crane, Model 990TC;
16 d. P & H 90 ton crane, Model 8115TC, SN 35419;
17 e. P & H 50 ton crane;
18 f. P & H 25 ton crane;
19 g. P & H 70 ton crane;
20 h. 2 bulldozers;
21 i. 1977 Kenworth VIN 055097SGL;
22 j. 1972 Peterbilt ID 41337P, FHP364802;
23 k. 1955 Mack VIN B705T1209;

- l. 1955 Kenworth VIN 64338;
 - m. 1959 Mack VIN B73S1370;
 - n. 1962 Mack winch truck;
 - o. 6000 Cherry Picker;
 - p. 100 ton press;
 - q. Lo Boy 35 ton Cozad Trailer # CC80062;
 - r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
 - s. 750 Holmes Wrecker Tow Truck;
 - t. Autocar Winch Truck;
 - u. Maritime Hydraulic Drilling Rig;
 - v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.
14. Any and all rights assigned to Rodney Wilkinson through the contract with Dan Fontenot of Synergy Oil Field Services, LLC.
 8. All personal property owned prior to the marriage;
 9. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in her name only;
 10. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
 11. Any and all bank accounts in her name only; and
 12. Any personal items currently in her possession.

IT IS FURTHER ORDERED that in the event that any property has been omitted from this Decree that would have been community property or otherwise jointly-held property under applicable law as of the date hereof, the concealing or possessory Party will transfer or convey to the other Party, at the other Party's election:

1 (1) The full market value of the other Party's interest on the date of this Decree, plus
2 statutory interest through and including the date of transfer or conveyance; or

3 (2) The full market value of the other Party's interest at the time that Party discovers that
4 he has an interest in such property, plus statutory interest through and including the date
5 of transfer or conveyance; or
6

7 (3) An amount of the omitted property equal to the other Party's interest herein, if it is
8 reasonably susceptible to division.

9 **IT IS FURTHER ORDERED** that, except as otherwise specified herein, any and all
10 property acquired or income received by either party from and after the date of entry of this
11 Decree shall be the sole and separate property of that party, and each party respectively grants to
12 the other all such further acquisitions of property as the sole and separate property of the one so
13 acquiring the same. Each party shall have an immediate right to dispose of, or bequeath by Will,
14 his respective interest in and to any and all property belonging to him from and after the date
15 hereof, and such rights shall extend to all of the future acquisitions of property as well as to all
16 property set over to either of the parties hereto by this Decree.
17

18 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
19 hereby awarded to Rodney Wilkinson as his sole and separate debts:
20

- 21 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
- 22 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
23 \$20,000;
- 24 3. Any and all tax debts in his name only;
- 25 4. Any and all student loan debts in his name only;
- 26 5. Any and all credit card debt in his name only;
- 27
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1 6. Any and all credit instruments in his name only.

2 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
3 hereby awarded to Tessie Wilkinson as her sole and separate debts:

4 1. The Chase credit account ending in the numbers 9416 with an approximate
5 current balance of \$3,860;

6 2. The US Bank credit account ending in the numbers 9270 with an approximate
7 current balance of \$4,300;

8 3. Any and all student loan debts in her name only;

9 4. Any and all credit card debt in her name only;

10 5. Any and all credit instruments in her name only.

11 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
12 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
13 by the other Party, such party will, at his or her sole expense, defend the other against any such
14 claim or demand and that he or she will indemnify, defend, and hold harmless the other Party.

15 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall receive the sum of \$3,000 per
16 month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This
17 amount shall be due on or before the 10th day of each month.

18 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
19 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
20 by the other Party, such party will, at his sole expense, defend the other against any such claim or
21 demand and that he will indemnify, defend, and hold harmless the other Party.

22 **IT IS FURTHER ORDERED** that each Party shall execute any and all legal documents,
23 certificates of title, bills of sale, deeds or other evidence transfer necessary to effectuate this
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1 Decree and the division of community assets within thirty (30) days of the entry of this Decree,
2 except as otherwise provided herein. Should either party fail to execute any of said documents to
3 transfer interest to the other, then this Decree shall constitute a full transfer of the interest of one
4 to the other, as herein provided. It is further agreed that pursuant to NRCP 70, the Clerk of the
5 Court shall be deemed to have hereby been appointed and empowered to sign, on behalf of the
6 non-signing party, any of the said documents of transfer which have not been executed by the
7 party otherwise responsible for such.
8

9 **IT IS FURTHER ORDERED** that it is hereby mutually understood and agreed by and
10 between the parties hereto that this Decree of Divorce is deemed to be a final, conclusive and
11 integrated agreement between the parties, and that except as herein specified, each party hereto is
12 hereby released and absolved from any and all liabilities and obligations for the future and past
13 acts and duties of the other, and that each of the said parties hereby releases the other from any
14 and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of
15 any kind or character incurred by the other except as provided herein provided, it being
16 understood that his instrument is intended to settle finally and conclusively the rights of the
17 parties hereto in all respects arising out of their marital relationship except as provided herein.
18

19 **IT IS FURTHER ORDERED** that the provisions in this Decree are fair and reasonable
20 and the parties agree to be bound by all its terms. The parties further acknowledge that they have
21 made an independent investigation into the existence and value of the assets and liabilities
22 divided hereunder, and the tax consequences, if any. The parties hereby waive any and all claims
23 against Danielle Dawson, Esq. of Steinberg Law Group related to the value and/or existence of
24 any asset divided hereunder or the tax consequences resulting therefrom. The parties further
25 acknowledge that they did not receive tax advice from Danielle Dawson, Esq. and have been
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27
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1 advised to seek the advice of a tax expert for any tax related questions they may have. The
2 parties have further been advised to seek the advice of independent counsel regarding these
3 terms.

4
5 **IT IS FURTHER ORDERED** that each party acknowledges that they have read this
6 Decree of Divorce and fully understand the contents and accept the same as equitable and just,
7 that the parties agree this Decree of Divorce has been reached via negotiation and in the spirit of
8 compromise, and that there has been no promise, agreement or understanding of either of the
9 parties to the other except as set forth herein, which have been relied upon by either as a matter
10 of inducement to enter into this agreement, and each party hereto has had the time and
11 opportunity to be advised by an attorney and has been encouraged to do so. The parties further
12 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that
13 each provision herein is made in consideration of all the terms in the Decree of Divorce as a
14 whole. The parties further acknowledge that they have entered into this stipulated Decree of
15 Divorce without undue influence or coercion, or misrepresentation, or for any other cause except
16 as stated herein.
17
18

19 **IT IS FURTHER ORDERED** that should it be necessary for either Party to enforce the
20 terms of this Decree, the prevailing party shall be entitled to recover their attorneys' fees and
21 costs.

22 **IT IS FURTHER ORDERED** that the parties shall submit the information required in
23 NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare
24 Division of the Department of Human Resources within ten days from the date this Decree is
25 filed. Such information shall be maintained by the Clerk in a confidential manner and not part of
26 the public record. The parties shall update the information filed with the Court and the Welfare
27
28

1 Division of the Department of Human Resources within ten days should any of that information
2 become inaccurate.

3 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall return to her maiden name to
4
5 wit: Tessie Elma Almario.

6 **DATED** this 11th day of February, 2020.

7
8 
DISTRICT COURT JUDGE

9 Rhonda K. Forsberg

10 **STEINBERG & DAWSON LAW GROUP**

11
12 
13 **DANIELLE DAWSON, ESQ.**

14 Nevada Bar No. 11792
15 4270 S. Decatur Blvd., Suite B10
16 Las Vegas, Nevada 89103
17 Attorney for Defendant

18 
RODNEY WILKINSON

19 613 Eagle Drive Apt 36
20 Newtown, ND 58763
21 Defendant in Proper Person

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TESSIE WILKINSON

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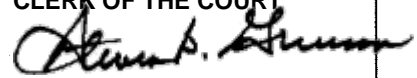
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2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

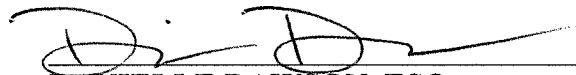
9 TESSIE E. WILKINSON,)	
)	
10 Plaintiff,)	CASE NO: D-19-596071-D
)	DEPT NO: G
11 vs.)	
)	
12 RODNEY WILKINSON,)	
)	
13 Defendant.)	

NOTICE OF ENTRY OF DECREE OF DIVORCE

15 **PLEASE TAKE NOTICE** that a Decree of Divorce was entered in the above-captioned
16 matter on February 12, 2020, a true and correct copy of which is attached hereto.

17 **DATED** this 13 day of February, 2020.

18 **STEINBERG & DAWSON LAW GROUP**



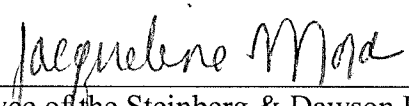
21 **DANIELLE DAWSON, ESQ.**
22 Nevada Bar No. 11792
23 4270 S. Decatur Blvd., Suite B10
24 Las Vegas, Nevada 89103
25 Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Steinberg & Dawson Law Group and that on February 13, 2020, pursuant to N.R.C.P. 5(b)(2)(D), and EDCR 8.05, a true and correct copy of the Notice of Entry of Decree of Divorce was served on Defendant by U.S. Mail, First Class, postage prepaid to the person(s) identified below:

Rodney Wilkinson
613 Eagle Drive Apt 36
Newtown, ND 58763
Defendant in Proper Person



An Employee of the Steinberg & Dawson Law Group

Steven D. Grierson

1 **DECD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE WILKINSON,**

12 Plaintiff,

13 vs.

14 **RODNEY WILKINSON,**

15 Defendant.

CASE NO: D-19-596071-D

DEPT NO: G

DECREE OF DIVORCE

16 This cause coming before the Court on Request for Summary Disposition, the Plaintiff,
17 **TESSIE WILKINSON**, by and through her attorney, **DANIELLE DAWSON, ESQ.**, of
18 **STEINBERG & DAWSON LAW GROUP**; and the Defendant, **RODNEY WILKINSON**,
19 appearing in proper person.

20 WHEREAS the parties have reached a full resolution to the outstanding issues in this
21 matter.

22 WHEREAS throughout the last several years of marriage, Rodney Wilkinson has
23 divested the community of assets constituting substantial community waste as follows:

- 24 1. Transferred community funds including five years of earnings to Jill Strnad and or
25 Tanika Stevenson;

RECEIVED

FEB 04 2020

Department G

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Judgment Reached by Trial
☒ Settled/Withdrawn:
☒ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
☐ By ADR

2. Divested the community of gold coins valued at over \$100,000 by gifting them to Jill Strnad;
3. Divested the community of a 2004 Corvette by gifting it to Tanika Stevenson;
4. Transferred ownership of a \$1,000,000 life insurance policy on himself to Jill Strnad;

Therefore,

IT IS FURTHER STIPULATED that the following community property shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate property:

1. The Chevrolet Suburban VIN ending in 9469;
2. All personal property owned prior to the marriage;
3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in his name only not otherwise herein named;
4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
5. Any and all bank accounts in his name only not otherwise herein named; and
6. Any personal items currently in his possession.

IT IS FURTHER STIPULATED that the following community property shall be set over and hereby awarded to the Tessie Wilkinson as her sole and separate property:

1. US Bank account ending in the numbers 8904 with a current approximate value of \$373;
2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada 89178;
3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
4. The 2012 Chevrolet Corvette VIN ending in 0723;

- 1 5. The Service Truck VIN 2GCFK29K951206963;
- 2 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
- 3 7. The following heavy equipment:
- 4 a. P & H 140 Ton crane , Model 9125-TC;
- 5 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 6 c. Lima 90 ton crane, Model 990TC;
- 7 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 8 e. P & H 50 ton crane;
- 9 f. P & H 25 ton crane;
- 10 g. P & H 70 ton crane;
- 11 h. 2 bulldozers;
- 12 i. 1977 Kenworth VIN 055097SGL;
- 13 j. 1972 Peterbilt ID 41337P, FHP364802;
- 14 k. 1955 Mack VIN B705T1209;
- 15 l. 1955 Kenworth VIN 64338;
- 16 m. 1959 Mack VIN B73S1370;
- 17 n. 1962 Mack winch truck;
- 18 o. 6000 Cherry Picker;
- 19 p. 100 ton press;
- 20 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 21 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCCHIPK931154;
- 22 s. 750 Holmes Wrecker Tow Truck;
- 23 t. Autocar Winch Truck;
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1 u. Maritime Hydraulic Drilling Rig;

2 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.

3 8. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
4 Fontenot of Synergy Oil Field Services, LLC.

5 9. All personal property owned prior to the marriage;

6 10. Any and all current and future retirement accounts, savings plans, IRA, pension
7 plans or otherwise in her name only;

8 11. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;

9 12. Any and all bank accounts in her name only; and

10 13. Any personal items currently in her possession.

11 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
12 and hereby awarded to Rodney Wilkinson as his sole and separate debts:

13 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;

14 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
15 \$20,000;

16 3. Any and all tax debts in his name only;

17 4. Any and all student loan debts in his name only;

18 5. Any and all credit card debt in his name only;

19 6. Any and all credit instruments in his name only.

20 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
21 and hereby awarded to Tessie Wilkinson as her sole and separate debts:

22 1. The Chase credit account ending in the numbers 9416 with an approximate
23 current balance of \$3,860;

1 2. The US Bank credit account ending in the numbers 9270 with an approximate
2 current balance of \$4,300;

3 3. Any and all student loan debts in her name only;

4 4. Any and all credit card debt in her name only;

5 5. Any and all credit instruments in her name only.


6
7 **IT IS FURTHER STIPULATED** that each party shall bear their own attorney's fees
8 and costs in this matter.


9 **IT IS FURTHER STIPULATED** that Tessie Wilkinson shall return to her maiden name
10 to wit: Tessie Elma Almario.

11 **IT IS SO STIPULATED.**

12
13 **DATED** this 21 day of January 2020.

14 **DATED** this 17th day of January, 2020.

15
16 
17 **DANIELLE DAWSON, ESQ.**
18 Nevada Bar No. 11792
19 Attorney for Plaintiff

20 
21 **RODNEY WILKINSON**
22 Defendant in Proper Person

23 **ORDER**

24 **UPON THE FOREGOING STIPULATION** of the parties, and this appearing to be a
25 proper case therefor:

26 **THAT** the Court has complete jurisdiction in the premises, both as to the subject matter
27 thereof as well as the parties thereto;

28 **THAT** the Plaintiff now is, and has been, an actual bona fide resident of the County of
Clark, State of Nevada, and has been actually domiciled therein for more than six (6) weeks
immediately preceding the verification of the Complaint for Divorce in this action;

1 **THAT** the parties were duly and legally married on March 22, 2008 in Burlington,
2 Colorado and have been since that time, and are at the present time, husband and wife.

3 **THAT** the Plaintiff believes that all of the allegations contained in her Complaint for
4 Divorce are true and that the Plaintiff is entitled to the relief sought subject to the terms as set
5 forth in this Decree of Divorce;
6

7 **THAT** the parties have waived Findings of Fact, Conclusions of Law, written Notice of
8 Entry of Judgment, and to move for a new Trial in said cause;

9 **THAT** there are no minor children born the issue of this marriage. No minor children
10 were adopted and Plaintiff is not now pregnant.
11

12 **NOW, THEREFORE**, by reason of the law in such cases made and provided, and the
13 Court deeming this a proper case therefore,

14 **IT IS HEREBY ORDERED** that the bonds of matrimony heretofore and now existing
15 between Plaintiff and Defendant be, and the same are hereby wholly dissolved, and an absolute
16 Decree of Divorce is hereby granted to the Plaintiff and each of the parties hereto is hereby
17 restored to the status of a single, unmarried person.
18

19 **IT IS FURTHER ORDERED** that the following community property shall be set over
20 and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 21 1. The Chevrolet Suburban VIN ending in 9469;
- 22 2. All personal property owned prior to the marriage;
- 23 3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or
24 otherwise in his name only not otherwise herein named;
- 25 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 26 5. Any and all bank accounts in his name only not otherwise herein named; and
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16 d. P & H 90 ton crane, Model 8115TC, SN 35419;
17 e. P & H 50 ton crane;
18 f. P & H 25 ton crane;
19 g. P & H 70 ton crane;
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23 k. 1955 Mack VIN B705T1209;
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- l. 1955 Kenworth VIN 64338;
 - m. 1959 Mack VIN B73S1370;
 - n. 1962 Mack winch truck;
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 - p. 100 ton press;
 - q. Lo Boy 35 ton Cozad Trailer # CC80062;
 - r. 1993 Western Star Boom Truck Serial No. 2WKPDCCCHIPK931154;
 - s. 750 Holmes Wrecker Tow Truck;
 - t. Autocar Winch Truck;
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 10. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
 11. Any and all bank accounts in her name only; and
 12. Any personal items currently in her possession.

IT IS FURTHER ORDERED that in the event that any property has been omitted from this Decree that would have been community property or otherwise jointly-held property under applicable law as of the date hereof, the concealing or possessory Party will transfer or convey to the other Party, at the other Party's election:

1 (1) The full market value of the other Party's interest on the date of this Decree, plus
2 statutory interest through and including the date of transfer or conveyance; or

3 (2) The full market value of the other Party's interest at the time that Party discovers that
4 he has an interest in such property, plus statutory interest through and including the date
5 of transfer or conveyance; or
6

7 (3) An amount of the omitted property equal to the other Party's interest herein, if it is
8 reasonably susceptible to division.

9 **IT IS FURTHER ORDERED** that, except as otherwise specified herein, any and all
10 property acquired or income received by either party from and after the date of entry of this
11 Decree shall be the sole and separate property of that party, and each party respectively grants to
12 the other all such further acquisitions of property as the sole and separate property of the one so
13 acquiring the same. Each party shall have an immediate right to dispose of, or bequeath by Will,
14 his respective interest in and to any and all property belonging to him from and after the date
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16 property set over to either of the parties hereto by this Decree.
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20 hereby awarded to Rodney Wilkinson as his sole and separate debts:

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23 \$20,000;
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5 current balance of \$3,860;

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7 current balance of \$4,300;

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11 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
12 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
13 by the other Party, such party will, at his or her sole expense, defend the other against any such
14 claim or demand and that he or she will indemnify, defend, and hold harmless the other Party.

15 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall receive the sum of \$3,000 per
16 month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This
17 amount shall be due on or before the 10th day of each month.

18 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
19 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
20 by the other Party, such party will, at his sole expense, defend the other against any such claim or
21 demand and that he will indemnify, defend, and hold harmless the other Party.

22 **IT IS FURTHER ORDERED** that each Party shall execute any and all legal documents,
23 certificates of title, bills of sale, deeds or other evidence transfer necessary to effectuate this
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1 Decree and the division of community assets within thirty (30) days of the entry of this Decree,
2 except as otherwise provided herein. Should either party fail to execute any of said documents to
3 transfer interest to the other, then this Decree shall constitute a full transfer of the interest of one
4 to the other, as herein provided. It is further agreed that pursuant to NRCP 70, the Clerk of the
5 Court shall be deemed to have hereby been appointed and empowered to sign, on behalf of the
6 non-signing party, any of the said documents of transfer which have not been executed by the
7 party otherwise responsible for such.
8

9 **IT IS FURTHER ORDERED** that it is hereby mutually understood and agreed by and
10 between the parties hereto that this Decree of Divorce is deemed to be a final, conclusive and
11 integrated agreement between the parties, and that except as herein specified, each party hereto is
12 hereby released and absolved from any and all liabilities and obligations for the future and past
13 acts and duties of the other, and that each of the said parties hereby releases the other from any
14 and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of
15 any kind or character incurred by the other except as provided herein provided, it being
16 understood that his instrument is intended to settle finally and conclusively the rights of the
17 parties hereto in all respects arising out of their marital relationship except as provided herein.
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20 **IT IS FURTHER ORDERED** that the provisions in this Decree are fair and reasonable
21 and the parties agree to be bound by all its terms. The parties further acknowledge that they have
22 made an independent investigation into the existence and value of the assets and liabilities
23 divided hereunder, and the tax consequences, if any. The parties hereby waive any and all claims
24 against Danielle Dawson, Esq. of Steinberg Law Group related to the value and/or existence of
25 any asset divided hereunder or the tax consequences resulting therefrom. The parties further
26 acknowledge that they did not receive tax advice from Danielle Dawson, Esq. and have been
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1 advised to seek the advice of a tax expert for any tax related questions they may have. The
2 parties have further been advised to seek the advice of independent counsel regarding these
3 terms.

4
5 **IT IS FURTHER ORDERED** that each party acknowledges that they have read this
6 Decree of Divorce and fully understand the contents and accept the same as equitable and just,
7 that the parties agree this Decree of Divorce has been reached via negotiation and in the spirit of
8 compromise, and that there has been no promise, agreement or understanding of either of the
9 parties to the other except as set forth herein, which have been relied upon by either as a matter
10 of inducement to enter into this agreement, and each party hereto has had the time and
11 opportunity to be advised by an attorney and has been encouraged to do so. The parties further
12 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that
13 each provision herein is made in consideration of all the terms in the Decree of Divorce as a
14 whole. The parties further acknowledge that they have entered into this stipulated Decree of
15 Divorce without undue influence or coercion, or misrepresentation, or for any other cause except
16 as stated herein.
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18

19 **IT IS FURTHER ORDERED** that should it be necessary for either Party to enforce the
20 terms of this Decree, the prevailing party shall be entitled to recover their attorneys' fees and
21 costs.

22
23 **IT IS FURTHER ORDERED** that the parties shall submit the information required in
24 NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare
25 Division of the Department of Human Resources within ten days from the date this Decree is
26 filed. Such information shall be maintained by the Clerk in a confidential manner and not part of
27 the public record. The parties shall update the information filed with the Court and the Welfare
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1 Division of the Department of Human Resources within ten days should any of that information
2 become inaccurate.

3 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall return to her maiden name to
4 wit: Tessie Elma Almario.

5 **DATED** this 11th day of February, 2020.

6
7
8 
DISTRICT COURT JUDGE

9 Rhonda K. Forsberg

10 **STEINBERG & DAWSON LAW GROUP**

11
12 
13 **DANIELLE DAWSON, ESQ.**

14 Nevada Bar No. 11792
15 4270 S. Decatur Blvd., Suite B10
16 Las Vegas, Nevada 89103
17 Attorney for Defendant

18 
19 **RODNEY WILKINSON**

20 613 Eagle Drive Apt 36
21 Newtown, ND 58763
22 Defendant in Proper Person
23
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17 
18 **TESSIE WILKINSON**

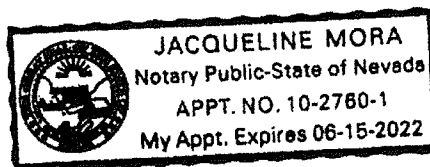
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I am the Plaintiff herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 21 day of January, 2020.

Marqueline Mord
Notary Public



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I am the Defendant herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

I have been informed of my right to retain my own counsel.

STATE OF North Dakota)
COUNTY OF Mountrail) ss.

Bohannan
Notary Public



1 **FFCL**

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

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.

24 . . .

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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.
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.”
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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.

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.
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.

20 . . .

- 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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MS. DESOUSA CABRAL: Objection. Compound.

Argumentative.

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

A. Yes and no.

Q. What part of it is yes?

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

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

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

- That it was all Rodney's idea to get a divorce. This is inconsistent with her testimony that he wanted to reconcile with her and with all of his actions in 2019 and 2020, including opening a new joint bank account with her and repeatedly asking for her help.
- That she was unaware of Rodney's neurocognitive impairment in 2019. Her actions and other statements, such as the letter she sent to Dan about Rodney not having any authority to make the business

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.
17
- 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
23 24 25 26 27 28

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.

7
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 23 24 25 26 27 28

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
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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37. If any of these findings of fact are more appropriately designated
Conclusions of law, they shall be so deemed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the request of Rodney's guardians to set aside the Decree of Divorce pursuant to NRCP 60(b).
2. The Motion to Set Aside Decree of Divorce Pursuant to NRCP 60(b) was timely filed by Rodney's guardians. First of all, service of the Notice of Entry of the Decree of Divorce on February 13, 2020 was to an address Tessie knew Rodney was no longer living at. Therefore, Rodney was never properly served with the Notice of Entry. Second, at the time the Decree of Divorce was entered, Rodney was an incapacitated person pursuant to NRS 132.175 and no one had the legal authority to file the Motion to Set Aside Pursuant to NRCP 60(b) until at least Sheryl was granted an emergency guardianship over him on September 24, 2020 and possibly not until Sheryl and Steven were appointed as his permanent guardians on November 23, 2020. The 6 month limitation period was tolled by Rodney's legal disability until someone was appointed by a court with jurisdiction to act on his behalf. The Motion to Set Aside was filed within 6 months of them

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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11

- 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).

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.
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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.
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- 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.
- 19
- 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.
- 26
- 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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- 1 l. 1977 Kenworth VIN 055097SGL, subject to any liens and
2 encumbrances.
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4 m. 1972 Peterbilt ID 41337P, FHP364802, subject to any liens and
5 encumbrances.
6
7 n. 1955 Mack VIN B705T1209, subject to any liens and
8 encumbrances.
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10 o. 1955 Kenworth VIN 64338, subject to any liens and
11 encumbrances.
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13 p. 1959 Mack VIN B73S1370, subject to any liens and
14 encumbrances.
15
16 q. 1962 Mack Winch Truck, subject to any liens and encumbrances.
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18 r. 6000 Cherry Picker, subject to any liens and encumbrances.
19
20 s. 100 Ton Press, subject to any liens and encumbrances.
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22 t. Lo Boy 35 Ton Cozad Trailer # CC80062, subject to any liens
23 and encumbrance and subject to the judgment entered in the
24 District Court for the Fort Berthold Indian Reservation in favor of
25 Darrell Fontenot/Synergy.
26
27 u. 1993 Western Star Boom Truck Serial No.
28 2WKPDCCHIPK931154, 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.
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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.
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13 y. Any and all tools and other equipment located at 5730 Road 10,
14 Goodland, Kansas 67735.
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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.
21
22 bb. All furniture, furnishings and personal property in his possession
23 or located at 5730 Road 10, Goodland, Kansas 67735.
24
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.
4

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:
23

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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

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.
17
18

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the
20 request of Rodney's guardians to be awarded their reasonable attorney's fees and
21 costs from Tessie is granted pursuant to NRS 18.010 and EDCR 5.219. They
22 shall file and serve a *Brunzell* affidavit and a Memorandum of Fees and Costs
23 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 

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

2
3 DISTRICT COURT
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

bhasistant@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

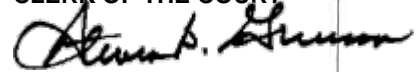
James Kwon, LLC

Attn: James Kwon, Esq

6280 W. Spring Mountain Rd., #100

Las Vegas, NV, 89146
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1 NEO

2
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:

Bradley J. Hofland, Esq.

bradh@hoflandlaw.com

Joshua L. Tomsheck, Esq.

josht@hoflandlaw.com

Meredith Simmons, Esq.

msimmons@hoflandlaw.com

Jason F. Carr, Esq.

jasonfcarr@aol.com

Attorneys for Plaintiff

James W. Kwon, Esq.

jkwon@jwklawfirm.com

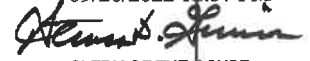
Attorney for Sheryl Atterberg on Behalf of

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 . . .

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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.
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.
4

- 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.
4

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
11
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.
19
20

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.
24

25 ...

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.
8
9

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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21

22
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
- 8 • Q. But what other reason are you aware of that Rodney wanted
9 to get a divorce from you quickly? A. So I can own and get the
10 equipment back. So I can own the drilling right and have the right
11 to get it back. *See transcript at page 69, lines 5-9.*
12
- 13 • At page 69, lines 11-16:
14
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.
20
- 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.
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.

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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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1 signature notarized on the Decree of Divorce. It is much easier to
2 email, fax or mail a document to someone who is competent, have
3 them sign the documents and then mail the originals back. Tessie
4 knew that Rodney was not capable of taking those steps on his own
5 in January 2020.
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7 24. The Decree of Divorce awarded Tessie the 5 pieces of equipment
8 Rodney had already agreed to sell to Dan's company in August and
9 September 2019.
10

11 25. On February 24, 2020, Rodney signed a series of new agreements
12 with Dan's company in which it was agreed that the contracts to sell
13 Synergy the boom truck (1993 Western Star WS), auto truck (1983
14 Auto Truck 315) and oil drill rig (Peerless Drill CH-48-12S) were
15 rescinded, the wrecker (1979 Ford Truck 920) and lowboy trailer
16 (1980 Cozad Jeep Trailer) were deemed paid in full by Synergy for
17 what had already been paid on all 5 contracts and Rodney had the
18 right to keep the boom truck, auto truck and drill on Synergy's
19 property until he moved them or was given 30 days' notice to
20 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.
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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9

- 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.

8
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.
15

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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11

- 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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21 *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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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.
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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.
- 13
- 14 e. Manitowoc 100 Ton Crane, Model 3900A, SN 39670, subject to
- 15 any liens and encumbrances.
- 16
- 17 f. Lima 90 Ton Crane, Model 990TC, subject to any liens and
- 18 encumbrances.
- 19
- 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.
- 24
- 25 i. P & H 25 Ton Crane, subject to any liens and encumbrances.
- 26
- 27 j. P & H 70 Ton Crane, subject to any liens and encumbrances.
- 28
- k. 2 Bulldozers, 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.
5

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.
11

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.
17

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.
22

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.
25

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28

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.
4

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:
23

24 . . .

25 . . .
26
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28

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.
24
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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.

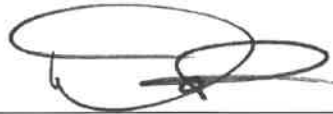
7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
8
9 neither party shall charge or cause or permit to be charged, to or against the other,
10 any purchase which either of them may hereafter make, and shall not hereafter
11 create any engagement or obligations in the name of or against the other, 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
22
23
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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

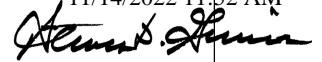
lhonest@jwklawfirm.com
21
22

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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CLERK OF THE COURT

ORDR

JAMES W. KWON, ESQ.

Nevada Bar No. 8146

JAMES KWON, LLC

6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

P: (702) 515-1200

F: (702) 515-1201

jkwon@jwklawfirm.com

Attorney for Defendant

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

TESSIE E. WILKINSON a/k/a
TESSIE ELMA ALMARIO,
Plaintiff,

vs.

SHERYL ATTERBERG, ON
BEHALF OF HER ADULT WARD,
RODNEY WILKINSON,
Defendant.

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

DEPT. NO.: U

***ORDER AWARDING
DEFENDANT ATTORNEYS'
FEES AND COSTS***

This matter having come for a decision in chambers on November 9, 2022, on Defendant's Memorandum of Fees and Costs and Plaintiff's Opposition to said Memorandum, and good cause appearing, finds and orders:

THE COURT FINDS that 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 FURTHER FINDS that this matter came on for an Evidentiary Hearing on September 8, 2022, and September 9, 2022, on Defendant's Motion to Set Aside the Decree of Divorce under NRCP 60(b).

///

1 **THE COURT FURTHER FINDS** that the Findings of Fact, Conclusions
2 of Law and Order, and Judgment were entered on September 26, 2022.

3 **THE COURT FURTHER FINDS** that when awarding attorney's fees in
4 a family law case, the Court must first determine that an applicable rule or statute
5 authorizes the award of attorney's fees and costs.

6 **THE COURT FURTHER FINDS** that the award of attorney's fees and
7 costs to Defendant is warranted under NRS 18.010(2)(b) and EDCR 5.219.

8 **THE COURT FURTHER FINDS** that because of Plaintiff's
9 unreasonable actions, Defendant (and his guardians) incurred attorney's fees and
10 costs he should not have, and Plaintiff should be responsible for the reasonable
11 attorney's fees and costs Defendant and his guardians incurred to have the asset
12 and debt division and alimony provisions in the Decree of Divorce set aside.

13 **THE COURT FURTHER FINDS** that Plaintiff took advantage of
14 Defendant's neurocognitive impairment to be awarded all of his separate
15 property, but to leave him responsible for the debts associated with his separate
16 property she was awarded, and to obtain a lifetime alimony award that Defendant
17 had no means to pay.

18 **THE COURT FURTHER FINDS** that even in the face of all of the
19 evidence, Plaintiff forced Defendant and his guardians to incur the cost of an
20 Evidentiary Hearing to get back his sole and separate property and to eliminate
21 the lifetime alimony obligation he had no ability to pay.

22 **THE COURT FURTHER FINDS** that when awarding fees, the Court
23 must consider the *Brunzell* factors and must consider the disparity in the party's
24 income under *Wright v. Osburn*, 114 Nev. 1367, 970 P.3d 1071 (1998). See also,
25 *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005).

26 **THE COURT FURTHER FINDS** that for the first *Brunzell* factor, the
27 Qualities of the Advocate: Mr. Kwon has been licensed to practice law in Nevada
28 since 2003. He has practiced extensively in the areas of business litigation and

1 family law. His hourly rate of \$450 is consistent with attorneys with similar
2 experience in Clark County, Nevada.

3 **THE COURT FURTHER FINDS** that for the second *Brunzell* factor,
4 the Character of the Work to Be Done: In this case, the work to be done involved
5 complex legal issues regarding whether the Court should set aside the terms of
6 the Decree of Divorce, including issues regarding the competency of Defendant
7 when he signed the Decree of Divorce.

8 **THE COURT FURTHER FINDS** that for the third *Brunzell* factor, the
9 Work Actually Performed by the Attorney: The work completed by counsel
10 included legal and factual research regarding the complex issues, the preparation
11 of a detailed Motion to Set Aside the Decree of Divorce under NRCP 60(b),
12 opposing a Motion for Summary Judgment and a Petition for Writ of Mandamus
13 or Prohibition, attending hearings, conducting extensive discovery, preparing for
14 and conducting a multi-day evidentiary hearing, including testimony from two
15 expert witnesses, preparing Proposed Findings of Fact, Conclusions of Law and
16 Order, preparing a written Closing Brief and preparing the Memorandum of Fees
17 and Costs and Brunzell Affidavit.

18 **THE COURT FURTHER FINDS** that for the fourth *Brunzell* factor, the
19 Result obtained: Counsel was able to successfully assist Defendant and his
20 guardians in setting aside the terms of the Decree of Divorce

21 **THE COURT FURTHER FINDS** that for the disparity in the income of
22 the parties and how it impacts the award of attorney's fees and costs to
23 Defendant, and his guardians, Defendant's sole source of income is his social
24 security retirement benefits that pay for him to live in an assisted living facility.
25 While Plaintiff claims she only has a little monthly rental income, there is no
26 evidence she cannot work. She also has valuable assets she owns free and clear
27 because of the large gift of his sole and separate property Defendant made to her
28 in 2012.

1 **THE COURT FURTHER FINDS** that Plaintiff has the ability to pay the
2 reasonable attorney's fees and costs that Defendant and his guardians incurred in
3 this case.

4 **THE COURT FURTHER FINDS** that the Court has carefully
5 considered the arguments Plaintiff has made regarding the reasonableness of the
6 fees charged to Defendant and that some fees charged relate to the separate civil
7 case Defendant and his guardians filed against Plaintiff.

8 **THE COURT FURTHER FINDS** that there is merit to these arguments
9 and has reduced the attorney's fees being awarded to Defendant and his
10 guardians pursuant to what the Court believes is reasonable in this case only.
11 Defendant is also entitled to an award of the costs he incurred in this case,
12 totaling \$14,631.88, the bulk of which comes from the expert witness fees paid.

13 **WHEREFORE IT IS HEREBY ORDERED** that Plaintiff, Tessie
14 Wilkinson, a/k/a Tessie Elma Almario, is ordered to pay Defendant Rodney
15 Wilkinson and his guardian, Sheryl Atterberg, the amount of \$89,871.88 for
16 attorney's fees and costs. Said award is reduced to judgment against Plaintiff and
17 shall accrue interest at the legal interest rate from November 9, 2022, until paid
18 in full. Said judgment shall be collectible by all lawful means.

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1 **IT IS FURTHER ORDERED** that the hearing set on the Chamber's
2 Calendar for November 9, 2022, shall be vacated. A copy of this minute order
3 shall be provided to both parties. Counsel for Defendant is ordered to prepare an
4 Order and Judgment with the findings consistent with this minute order.

5 **IT IS SO ORDERED.**

Dated this 14th day of November, 2022



JVH

B6B 855 EA25 EF4B
Dawn R. Throne
District Court Judge

11 Respectfully submitted by:

12 /s/ James W. Kwon

13 JAMES W. KWON, ESQ.

14 **JAMES KWON, LLC**

6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

P: (702) 515-1200

F: (702) 515-1201

jkwon@jwklawfirm.com

Attorney for Defendant

1 **CSERV**

2
3 DISTRICT COURT
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 Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/14/2022

15 Bradley Hofland

Bradh@hoflandlaw.com

16 Dina DeSousa Cabral

DinaD@hoflandlaw.com

17 James Kwon, Esq.

jkwon@jwklawfirm.com

18 Nikki Woulfe

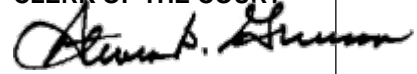
clerk@hoflandlaw.com

19 Anna Stein

bhassistant@hoflandlaw.com

20 Liz Honest

lhonest@jwklawfirm.com
21
22
23
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26
27
28



1 **NEOJ**
2 JAMES W. KWON, ESQ.
3 Nevada Bar No. 8146
4 JAMES KWON, LLC
5 6280 Spring Mountain Rd., Suite 100
6 Las Vegas, Nevada 89146
7 P: (702) 515-1200
8 F: (702) 515-1201
9 jkwon@jwklawfirm.com
10 *Attorney for Defendant*

11 **EGHTH JUDICIAL DISTRICT COURT**
12 ***FAMILY DIVISION***
13 **COUNTY OF CLARK, STATE OF NEVADA**

14 TESSIE E. WILKINSON a/k/a TESSIE
15 ELMA ALMARIO,

16 Plaintiff,

17 vs.

18 SHERYL ATTERBERG, ON BEHALF
19 OF HER ADULT WARD RODNEY
20 WILKINSON,

21 Defendant.

Case No.: D-19-596071-D

Dept.: U

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that an *Order Awarding Defendant Attorneys' Fees*
23 *and Costs* was entered by this Court on November 14, 2022. A copy of said Order is
24 attached hereto as Exhibit 1.

Dated this 14th day of November 2022.

JAMES KWON, LLC

/s/ James W. Kwon

JAMES W. KWON, ESQ.

Nevada Bar No. 8146

6280 Spring Mountain Road, Suite 100

Las Vegas, Nevada 89146

Attorney for Defendant

Exhibit 1

Exhibit 1

ORDR

JAMES W. KWON, ESQ.

Nevada Bar No. 8146

JAMES KWON, LLC

6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

P: (702) 515-1200

F: (702) 515-1201

jkwon@jwklawfirm.com

Attorney for Defendant

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

TESSIE E. WILKINSON a/k/a
TESSIE ELMA ALMARIO,
Plaintiff,

vs.

SHERYL ATTERBERG, ON
BEHALF OF HER ADULT WARD,
RODNEY WILKINSON,
Defendant.

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

DEPT. NO.: U

***ORDER AWARDING
DEFENDANT ATTORNEYS'
FEES AND COSTS***

This matter having come for a decision in chambers on November 9, 2022, on Defendant's Memorandum of Fees and Costs and Plaintiff's Opposition to said Memorandum, and good cause appearing, finds and orders:

THE COURT FINDS that 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 FURTHER FINDS that this matter came on for an Evidentiary Hearing on September 8, 2022, and September 9, 2022, on Defendant's Motion to Set Aside the Decree of Divorce under NRCP 60(b).

///

1 **THE COURT FURTHER FINDS** that the Findings of Fact, Conclusions
2 of Law and Order, and Judgment were entered on September 26, 2022.

3 **THE COURT FURTHER FINDS** that when awarding attorney's fees in
4 a family law case, the Court must first determine that an applicable rule or statute
5 authorizes the award of attorney's fees and costs.

6 **THE COURT FURTHER FINDS** that the award of attorney's fees and
7 costs to Defendant is warranted under NRS 18.010(2)(b) and EDCR 5.219.

8 **THE COURT FURTHER FINDS** that because of Plaintiff's
9 unreasonable actions, Defendant (and his guardians) incurred attorney's fees and
10 costs he should not have, and Plaintiff should be responsible for the reasonable
11 attorney's fees and costs Defendant and his guardians incurred to have the asset
12 and debt division and alimony provisions in the Decree of Divorce set aside.

13 **THE COURT FURTHER FINDS** that Plaintiff took advantage of
14 Defendant's neurocognitive impairment to be awarded all of his separate
15 property, but to leave him responsible for the debts associated with his separate
16 property she was awarded, and to obtain a lifetime alimony award that Defendant
17 had no means to pay.

18 **THE COURT FURTHER FINDS** that even in the face of all of the
19 evidence, Plaintiff forced Defendant and his guardians to incur the cost of an
20 Evidentiary Hearing to get back his sole and separate property and to eliminate
21 the lifetime alimony obligation he had no ability to pay.

22 **THE COURT FURTHER FINDS** that when awarding fees, the Court
23 must consider the *Brunzell* factors and must consider the disparity in the party's
24 income under *Wright v. Osburn*, 114 Nev. 1367, 970 P.3d 1071 (1998). See also,
25 *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005).

26 **THE COURT FURTHER FINDS** that for the first *Brunzell* factor, the
27 Qualities of the Advocate: Mr. Kwon has been licensed to practice law in Nevada
28 since 2003. He has practiced extensively in the areas of business litigation and

1 family law. His hourly rate of \$450 is consistent with attorneys with similar
2 experience in Clark County, Nevada.

3 **THE COURT FURTHER FINDS** that for the second *Brunzell* factor,
4 the Character of the Work to Be Done: In this case, the work to be done involved
5 complex legal issues regarding whether the Court should set aside the terms of
6 the Decree of Divorce, including issues regarding the competency of Defendant
7 when he signed the Decree of Divorce.

8 **THE COURT FURTHER FINDS** that for the third *Brunzell* factor, the
9 Work Actually Performed by the Attorney: The work completed by counsel
10 included legal and factual research regarding the complex issues, the preparation
11 of a detailed Motion to Set Aside the Decree of Divorce under NRCP 60(b),
12 opposing a Motion for Summary Judgment and a Petition for Writ of Mandamus
13 or Prohibition, attending hearings, conducting extensive discovery, preparing for
14 and conducting a multi-day evidentiary hearing, including testimony from two
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16 Order, preparing a written Closing Brief and preparing the Memorandum of Fees
17 and Costs and Brunzell Affidavit.

18 **THE COURT FURTHER FINDS** that for the fourth *Brunzell* factor, the
19 Result obtained: Counsel was able to successfully assist Defendant and his
20 guardians in setting aside the terms of the Decree of Divorce

21 **THE COURT FURTHER FINDS** that for the disparity in the income of
22 the parties and how it impacts the award of attorney's fees and costs to
23 Defendant, and his guardians, Defendant's sole source of income is his social
24 security retirement benefits that pay for him to live in an assisted living facility.
25 While Plaintiff claims she only has a little monthly rental income, there is no
26 evidence she cannot work. She also has valuable assets she owns free and clear
27 because of the large gift of his sole and separate property Defendant made to her
28 in 2012.

1 **THE COURT FURTHER FINDS** that Plaintiff has the ability to pay the
2 reasonable attorney's fees and costs that Defendant and his guardians incurred in
3 this case.

4 **THE COURT FURTHER FINDS** that the Court has carefully
5 considered the arguments Plaintiff has made regarding the reasonableness of the
6 fees charged to Defendant and that some fees charged relate to the separate civil
7 case Defendant and his guardians filed against Plaintiff.

8 **THE COURT FURTHER FINDS** that there is merit to these arguments
9 and has reduced the attorney's fees being awarded to Defendant and his
10 guardians pursuant to what the Court believes is reasonable in this case only.
11 Defendant is also entitled to an award of the costs he incurred in this case,
12 totaling \$14,631.88, the bulk of which comes from the expert witness fees paid.

13 **WHEREFORE IT IS HEREBY ORDERED** that Plaintiff, Tessie
14 Wilkinson, a/k/a Tessie Elma Almario, is ordered to pay Defendant Rodney
15 Wilkinson and his guardian, Sheryl Atterberg, the amount of \$89,871.88 for
16 attorney's fees and costs. Said award is reduced to judgment against Plaintiff and
17 shall accrue interest at the legal interest rate from November 9, 2022, until paid
18 in full. Said judgment shall be collectible by all lawful means.

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1 **IT IS FURTHER ORDERED** that the hearing set on the Chamber's
2 Calendar for November 9, 2022, shall be vacated. A copy of this minute order
3 shall be provided to both parties. Counsel for Defendant is ordered to prepare an
4 Order and Judgment with the findings consistent with this minute order.

5 **IT IS SO ORDERED.**

Dated this 14th day of November, 2022



JVH

B6B 855 EA25 EF4B
Dawn R. Throne
District Court Judge

11 Respectfully submitted by:

12 /s/ James W. Kwon

13 JAMES W. KWON, ESQ.

14 **JAMES KWON, LLC**

6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

P: (702) 515-1200

F: (702) 515-1201

jkwon@jwklawfirm.com

Attorney for Defendant

1 **CSERV**

2
3 DISTRICT COURT
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.
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