

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUKE HATCH,

Appellant,

vs.

KAYCE HATCH,

Respondent.

Electronically Filed
Oct 02 2023 10:04 PM
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 87169

**APPELLANT’S (FIRST) MOTION TO EXTEND TIME FOR THE FILING
DOCKETING STATEMENT**

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to NRAP 31(b)(3), Appellant, by and through his attorney of record, BRET O. WHIPPLE, ESQ., of the JUSTICE LAW CENTER, hereby moves for his first motion for extension of time for the filing of the Docketing Statement in the above referenced matter. The Docketing Statement was originally due on September 22, 2023, and Appellant filed his Docketing Statement on that date. However, when Appellant uploaded the .pdf form that was filled out, a blank form uploaded as opposed to the form completed by Appellant’s counsel. Counsel was advised of the same on Monday, September 25, 2023, at which Appellant was given five (5) days

to cure the deficiency. In addition, because the deadline to file the Docketing Statement had already passed, a request for extension of time to file the Docketing Statement is required. The requested extension of six (6) judicial days from the original due date creates a new due date of October 2, 2023, which is the date on which Appellant has resubmitted the corrected Docketing Statement. Accordingly, a new due date of **October 2, 2023** is hereby requested.

Pursuant to Nevada Rule of Appellate Procedure 31(b)(3):

(3) Motions for Extensions of Time. A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27.

(A) Contents of Motion. A motion for extension of time for filing a brief shall include the following:

- (i) The date when the brief is due;
- (ii) The number of extensions of time previously granted (including a 5-day telephonic extension), and if extensions were granted, the original date when the brief was due;
- (iii) Whether any previous requests for extensions of time have been denied or denied in part;
- (iv) The reasons or grounds why an extension is necessary; and
- (v) The length of the extension requested and the date on which the brief would become due.

(B) Motions in All Appeals Except Child Custody, Visitation, or Capital Cases. Applications for extensions of time beyond that to which the parties are permitted to stipulate under Rule 31(b)(2) are not favored. The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.

(C) Motions in Child Custody or Visitation Cases. The court will grant a motion for extension of time for filing a brief in child custody or visitation cases only in extraordinary cases that present unforeseeable circumstances justifying an extension of time

(D) Motions in Capital Cases. The Supreme Court may grant an initial motion for an extension of time of up to 60 days for filing a brief in a capital case upon a showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.””

Good cause justifies the requested six (6) judicial day extension. Specifically, Appellant complied with the original filing deadline but inadvertently uploaded a form which was blank rather than the completed Docketing Statement.

For these reasons, Appellant respectfully requests a six (6) judicial day extension in this case, from the original due date, which would create a new due date for the Docketing Statement of **October 2, 2023**.

AFFIRMATION

The undersigned does hereby affirm that the foregoing document does not contain any social security number of any person.

DATED on this 2nd day of October, 2023.

JUSTICE LAW CENTER

/s/ Bret O. Whipple
BRET O. WHIPPLE, ESQ.
Nevada Bar #6168
1550 S. Wells Ave. Suite #100
Reno, NV 89502
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the date set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada, as follows:

- _____ Personal Delivery
- _____ Facsimile (Fax)
- _____ Federal Express or other overnight delivery
- _____ Bootleg Courier Company or other courier
- _____ Certified Mail, Return Receipt Requested
- X Eflex Electronic Filing System

Addressed to: Byron Mills, Esq.
 Mills & Anderson

DATED on this 2nd day of October, 2023.

/s/ Jeanne Metzger
An Employee of JUSTICE LAW CENTER

1 **MOT**

2 **BYRON L. MILLS, ESQ.**

3 **Bar No. 6745**

4 **DANIEL W. ANDERSON, ESQ.**

5 **Nevada Bar No. 9955**

6 **MILLS & ANDERSON**

7 **703 S. 8th Street**

8 **Las Vegas NV 89101**

9 **Attorney for Plaintiff**

10 **(702) 386-0030**

11 **attorneys@millsnv.com**

12
13 **IN THE SEVENTH JUDICIAL DISTRICT COURT**
14 **LINCOLN COUNTY, NEVADA**

15 **KAYCE HATCH,**

16 **Plaintiff,**

17 **vs.**

18 **LUKE HATCH,**

19 **Defendant.**

20 **CV NO.: CVO200720**

21 **DEPT. NO.:**

22
23 **AMENDED PLAINTIFF'S MOTION PURSUANT TO HUNEYCUTT V.**
24 **HUNEYCUTT, TO SET ASIDE THE DECREE AND/OR FOR A NEW**
25 **TRIAL UNDER NRCP 59A OR 60B ON THE ISSUES OF ALIMONY AND**
26 **CHILD SUPPORT, OR ALTERNATIVELY FOR A MODIFICATION OF**
27 **ALIMONY AND CHLID SUPPORT.**

28
29 COMES NOW the Plaintiff, KAYCE HATCH, by and through her attorney,
30 BYRON L. MILLS, ESQ., of MILLS & ANDERSON, and pursuant to the Nevada
31 Revised Statutes cited hereinbelow, hereby respectfully moves this Honorable
32 Court for the following:


- 33 1. For an Order of the Court setting Luke's child support obligation to
34 \$3,028.70 per month;

2. For an order of the Court granting child support arrears to Kayce in the amount of \$9,589.30.
3. For an Order of the Court increasing Luke's alimony obligation by \$1,000.00 based on his GMI;
4. For attorney's fees and costs.
5. For such other and further relief as this Court deems just and proper in the premises.

This Motion is made and based upon the papers and pleadings on file herein, Points and Authorities cited below, the Affidavit of Plaintiff, KAYCE HATCH attached hereto and other supporting documentation set forth hereinbelow.

Dates this 14th day of March, 2023.

~~MILLS & ANDERSON~~


BYRON L. MILLS, ESQ.

Bar No. 6745

DANIEL W. ANDERSON, ESQ.

Nevada Bar No. 9955

703 S. 8th Street

Las Vegas, Nevada 89101

Attorney for Plaintiff

1 **IT IS FURTHER ORDERED** that Luke will pay spousal support to
2 Kayce for a period of ten years or until Kayce dies or remarries,
3 whichever occurs first. The payments are as follows:

4 ➤ \$3,000 per month beginning June 15, 2021 for 60 months.

5 ➤ \$2,500 per month beginning June 15, 2026 for 60 months.

6 **IT IS FURTHER ORDERED** that Kayce's will maintain her married
7 name, KAYCE HATCH.

8 **IT IS FURTHER ORDERED** that the parties are subject to the
9 following statutory provisions relating to custody and support.

10 **A. Luke's fraud at trial.**

11 Subsequent to the trial, Kayce discovered that Luke had not been truthful
12 regarding his income. Luke lied about his employment status with employers other
13 than K.W. Legacy and Stone Mountain, and he failed to disclose these additional
14 income sources. It is currently unknown what the full extent of his income is from
15 these sources. However, based on Luke's 2021 tax return, Luke's total gross income
16 was \$231,485. This means that Luke's gross monthly income ("GMI") for 2021
17 was \$19,290,³ which is \$1,889 more per month than the \$17,401 on which the Court
18 set his obligations of child support and alimony. The \$19,290 does not appear to
19 include Luke's income from Pay Pal and Cash App.⁴

20 Upon information and belief, during the months leading to the trial (April and
21 May of 2021), Luke earned substantially more than what he stated at trial and more
22 than what he reported in his 2021 tax return and his FDF. Kayce discovered that
23 Luke was working for *three additional companies*, not just K.W. Legacy and Stone
24 Mountain. In addition to his work with K.W. Legacy and Stone Mountain, Luke
25 also provides online therapy through a company known as C.A. Personal
26

27

³ Calculated as \$231,485 divided by 12.

28 ⁴ There income sources will be addressed below.

1 Development Management Inc. Luke is also listed as an instructor with the
2 American College of Addictionology and Compulsive Disorders. Finally, Luke was
3 listed as the "Clinical Director" for "The Change is Real Behavioral Health
4 Services. Luke also provides individual counseling sessions for which he is paid
5 through PayPal, Venmo, or some other similar apps. During the month of April
6 2021, Luke's earnings totaled \$22,880.37 and were as follows:

- 7 • \$3,847.92 - payroll deposit from K.W. Legacy Ranch - 4/1/2021
- 8 • \$2,153.00 - transfer from K.W. Legacy Ranch LLC - 4/1/2021
- 9 • \$4,000.00 - payroll deposit from Stone Mountain - 4/2/2021
- 10 • \$96.80 - Pay Pal - 4/5/2021
- 11 • \$145.35 - Pay Pal - 4/6/2021
- 12 • \$1,000.00 - transfer from H.W. Group LLC - 4/15/2021
- 13 • \$4,000.00 - payroll from Stone Mountain - 4/16/2021
- 14 • \$96.80 - Pay Pal - 4/17/2021
- 15 • \$145.35 - Pay Pal - 4/20/2021
- 16 • \$96.80 - Pay Pal - 4/23/2021
- 17 • \$1,000.00 - Cash App - 4/27/2021
- 18 • \$145.35 - Pay Pal - 4/27/2021
- 19 • \$1,000.00 - payroll from Stone Mountain - 4/30/2021
- 20 • \$3,000.00 - payroll from Stone Mountain - 4/30/ 2021
- 21 • \$2,153.00 - transfer from K.W. Legacy Ranch LLC - 4/30/2021

22 During the month of May 2021, Luke's earnings totaled \$25,682.70 and were
23 as follows:

- 24 • \$96.80 - Pay Pal - 5/2/2021
- 25 • \$145.35 - Pay Pal - 5/4/2021
- 26 • \$500.00 - Cash App - 5/4/2021
- 27 • \$96.80 - Pay Pal - 5/9/2021
- 28 • \$145.35 - Pay Pal - 5/11/2021

- \$500.00 - Cash App - 5/11/2021
- \$96.80 - Pay Pal - 5/15/2021
- \$96.80 - Pay Pal - 5/23/2021
- \$96.80 - Pay Pal - 5/29/2021
- \$1,000.00 - transfer from K.W. Legacy Ranch LLC - 5/6/2021
- \$13,908.00 - transfer from K.W. Legacy Ranch LLC - 5/13/2021
- \$4,000.00 - payroll deposit from Stone Mountain - 5/14/2021
- \$1,000.00 - transfer from H.W. Group LLC - 5/14/2021
- \$4,000.00 - payroll deposit from Stone Mountain - 5/28/2021

During the months of April 2021 and May 2021, Luke earned \$3,501.15 total via Pay Pal and Cash App alone (and all deposits were made prior to the trial date), but he did not disclose such earnings at trial. Luke also testified that his income from Stone Mountain was \$6,000 per month. However, Luke's salary from Stone Mountain increased to \$8,000 per month effective on January 21, 2021, about 5 months prior to trial.

Luke was earning substantially more income than what he disclosed in his testimony and to make matters worse, he was doing so in the months directly preceding trial. The difference between \$22,880.37 (as in April 2021) and \$25,682.70 (as in May 2021) are *net* earnings far and above the \$17,401.00 GMI on which the Court based Luke's obligations. In fact, the difference between the net monthly earnings at the time of trial (\$22,880.37 in April 2021 and \$25,682.70 in May 2021) and the GMI of \$17,401.00 is \$6,880.53.⁵ The difference in his gross monthly incomes was therefore substantially higher.

⁵ Calculated as $((\$22,880.37 + \$25,682.70) / 2) - \$17,401.00$.

1 As such, Luke committed fraud upon the Court and there is a basis to modify
2 the child support and spousal support retroactive to the date of entry of the Decree
3 of Divorce.

4 **B. Luke's current income.**

5 Upon information and belief, Luke's average *net* monthly income from April
6 April 1, 2021, to August 19, 2022, has been approximately \$21,940.42.⁶ While the
7 amount is admittedly lower than Luke's net earnings at the time of trial, it remains
8 higher than the GMI of \$17,401.00.

9 Luke's income is made up of payments from The Change is Real, KW
10 Legacy Ranch, HW Group, Stone Mountain, and payments directly from clients
11 through bank deposits, PayPal, Venmo, and Cash App.

12 The difference between Luke's net monthly earnings of \$21,940.42 and the
13 GMI on which the Court based his obligations at trial (\$17,401.00 per month) is
14 \$4,539.42.⁷ Based on this number of \$21,940.42 per month, Luke's GMI is likely
15 around \$25,812.25 (GMI of \$25,812.25 would net \$21,940.42 per month⁸).

16 Based on the GMI of \$25,812.25, Luke's monthly child support obligation
17 would have been set to \$3,028.70 (rather than the \$2,524.00 set in the Decree of
18 Divorce). That is a difference of \$504.70 per month. Child support was set at
19 \$2,524 beginning June 1, 2021. Therefore, Luke owes a total of \$9,589.30⁹ in child
20 support arrears for the 19 months during which Luke underpaid due to his
21 underreported GMI and fraudulent testimony.

22 **C. Luke's unnecessary ballooning of Court proceedings and attorney's**
23 **fees.**

24
25
26
27 ⁶ Exhibit 1: Excel Spreadsheets of Luke's income from April 1, 2021, to August 19, 2022.

28 ⁷ Calculated as \$21,940.42 - \$4,539.42.

⁸ Calculated as \$21,940.42 divided by .85. Assuming an income tax rate of 15%.

⁹ Calculated as \$504.70 multiplied by 19.

1 It should be noted that Luke has gone to great efforts to inexplicably lengthen
2 this matter. As stated above, the parties divorce by Decree of Divorce dated July
3 9, 2021. On August 2, 2021, Luke appealed the district court's orders.

4 On December 10, 2021, Kayce filed her Motion pursuant to *Huneycutt v.*
5 *Huneycutt*, to Set Aside the Decree and/or for a New Trial Under NRCP 59A or
6 60B on the Issues of Alimony and Child Support, or Alternatively for A
7 Modification of Alimony and Child Support. On December 31, 2021, Luke filed
8 his Opposition. Kayce filed her Reply on January 11, 2022. The matter came before
9 the district court for hearing on February 10, 2022. The order was filed on March
10 21, 2022. The Court found that Luke failed to disclose all of his income or potential
11 income sourced during the divorce proceedings and it found sufficient reasons to
12 open discovery. The Court entered the following orders in pertinent part:

13 **IT IS HEREBY ORDERED** that upon remand, the portions of the Decree
14 of Divorce related to child support, alimony and attorney's fees based on
15 Defendant's failure to disclose potential sources of income at the time of trial
16 will be set aside.

17 **IT IS FURTHER ORDERED** that pursuant to *Huneycutt v. Huneycutt*, 575
18 P.2d 585 (1978), this Court hereby certifies to the Supreme Court that it
19 intends to grant Plaintiff's motion to set aside the Decree and reopen
20 discovery as set forth above, and hereby requests an order remanding the case
21 to the district court for that purpose.

22 On May 4, 2022, the Supreme Court of Nevada entered an order Granting
23 Motion for Limited Remand in order to allow the district court to proceed as stated
24 in its order from March 21, 2022.

25 On May 11, 2022, Kayce served a copy of her Request for Production of
26 Documents to Luke. On June 17, 2022, Luke served his responses to Kayce's
27 Request for Production of Documents, but Luke's responses were incomplete. As a
28 result, on August 11, 2022, Kayce subpoenaed the records for Bank of America,

1 Wells Fargo, and Pahrnagat Valley Credit Union for the period of 2021 to June
2 2022.

3 On August 22, 2022, the Supreme Court of Nevada dismissed Luke's appeal
4 because he failed to inform the Court of the status of the district court proceedings
5 by the deadline of August 15, 2022. On August 25, 2022, Kayce's counsel, Byron
6 Mills, Esq. ("Attorney Mills") sent an NRCP 37 letter to Luke's counsel, Bret
7 Whipple, Esq. ("Attorney Whipple") in an attempt to resolve the issue of Luke's
8 incomplete responses. On October 5, 2022, Attorney Mills sent a follow up to
9 Attorney Whipple regarding additional information that had not been disclosed by
10 Luke. On October 11, 2022, Attorney Mills sent another follow up regarding further
11 documents that had not been produced. On November 14, 2022, Attorney Mills sent
12 an EDCR 5.501 letter to Attorney Whipple in an attempt to settle the case. Luke
13 responded (through Attorney Whipple) and he declined the settlement offer.

14 Luke maintains that he did not omit his income and that his income is actually
15 less than what was ordered in the Decree of Divorce. Nevertheless, it is clear that
16 he did lie about his income, and attempts to obtain all available documents
17 regarding the totality of his income have been unsuccessful. Moreover, upon
18 information and belief, Luke's GMI is substantially higher than what the Court
19 mentioned in the Decree of Divorce and on which the Court set his alimony and
20 child support obligations.

21 For these reasons, Luke's fraud on the Court is grounds for the Court to set
22 aside the portion of the decree related to Luke's alimony and child support
23 obligations to Kayce and recalculate both as of the time of trial. Alternatively,
24 Luke's additional employment income is grounds to modify both alimony and
25 child support pursuant to NRS 125.150(8) and NRS 125B.145. Finally, Kayce
26 should be awarded attorney's fees and costs under NRCP 16.2(h) due to Luke's
27 deliberate misrepresentation of his income on his Financial Disclosure Form.
28

1 Kayce should also be awarded attorney's fees based on Luke's unnecessary filings
2 opposing Kayce's reasonable requests.

3 II.

4 ARGUMENT

5 A. The Court Should Review Luke's Child Support and Alimony 6 Obligations based on his New Additional Income.

7 NRS 125B.145(4) states the following:

8 4. An order for the support of a child may be reviewed at any time
9 on the basis of changed circumstances. For the purposes of this
10 subsection, a change of 20 percent or more in the gross monthly income
11 of a person who is subject to an order for the support of a child shall be
12 deemed to constitute changed circumstances requiring a review for
modification of the order for the support of a child.

13 NRS 125.150(8) states the following:

14 8. If a decree of divorce, or an agreement between the parties which
15 was ratified, adopted or approved in a decree of divorce, provides for
16 specified periodic payments of alimony, the decree or agreement is not
17 subject to modification by the court as to accrued payments. Payments
18 pursuant to a decree entered on or after July 1, 1975, which have not
19 accrued at the time a motion for modification is filed may be modified
upon a showing of changed circumstances, whether or not the court has
expressly retained jurisdiction for the modification.

20 This Court has jurisdiction to modify Luke's child support and alimony
21 obligations pursuant to the foregoing statutes. A change of 20% or more in Luke's
22 gross income constitutes a change of circumstances warranting this Court's review.
23 As stated above, the Court set Luke's alimony and child support obligations based
24 on *gross* earnings of \$17,401.00 per month, which is a difference of \$4,539.42
25 from his actual *net* earnings of \$21,940.42 per month. That is a change of over
26 20%.
27
28

1 Based on this number of \$21,940.42 per month, Luke's GMI is likely around
2 \$25,812.25 as a GMI of \$25,812.25 would net \$21,940.42 per month.¹⁰ Based on
3 the GMI of \$25,812.25, Luke's monthly child support obligation would have been
4 set to \$3,028.70 (rather than the \$2,524.00 set in the Decree of Divorce). That is a
5 difference of \$504.70 per month. Child support was set at \$2,524 beginning June
6 1, 2021. Therefore, Luke owes a total of \$9,589.30¹¹ in child support arrears for
7 the 19 months during which Luke underpaid due to his underreported GMI and
8 fraudulent testimony.

9 For these reasons, the Court should set Luke's child support obligation to
10 \$3,028.70 per month and grant child support arrears to Kayce in the amount of
11 \$9,589.30. Moreover, the Court should increase Luke's alimony obligation by
12 \$1,000.00 per month based on his current GMI.

13 **B. This Court Should Award Kayce Attorney's Fees Pursuant to NRS**
14 **125.150 and NRCP 16.2(h).**

15 The Court should award Kayce attorney's fees and costs associated with this
16 motion and associated with trial. Much of the fees incurred were necessitated solely
17 on Luke's misrepresentations on his Financial Disclosure Form and his perjury at
18 the time of trial when he testified that he had no other income aside from K.W.
19 Legacy and Stone Mountain. Kayce has since discovered his testimony was false,
20 and that he was working with at least one of the three companies cited above as
21 early as March 2021, which was two months before the parties' trial date. The
22 Court should therefore award attorney's fees as sanctions pursuant to NRCP
23 16.2(h) for Luke's false testimony and misrepresentations on his financial
24 disclosure form, in addition to the fees associated with this motion and further
25 proceedings. In support of Kayce's request for attorney's fees, the following is an
26 analysis of the *Brunzell* factors for the Court's consideration:

27 ¹⁰ Calculated as \$21,940.42 divided by .85. Assuming an income tax rate of 15%.

28 ¹¹ Calculated as \$504.70 multiplied by 19.

1 (1) *the advocate's qualities, including ability, training, education,*
2 *experience, professional standing, and skill;*

3 All the attorneys at Mills & Anderson regularly practice in family law and
4 regularly participate in CLE to stay current with the most recent changes in the
5 law. Mills & Anderson collectively has over 50 years of family law practice
6 experience and all three attorneys at the firm will likely be utilized at various stages
7 in the case. No disciplinary action of any kind has been taken against any of the
8 firm's lawyers during that time.

9 (2) *the character of the work to be done; and (3) the work actually*
10 *performed by the lawyer;*

11 Kayce's attorneys have prepared all the substantive pleadings in this matter,
12 researched and cited all appropriate law, with correct analysis and application of the
13 law to the facts. They have met with Kayce in consultation and will be present at
14 all hearings in this matter. The firm's actions have been in accordance to the highest
15 ethical practices and consistent with the Nevada Rules of Professional Conduct.

16 (4) *the result, whether the attorney was successful and what benefits were*
17 *derived.*

18
19 Kayce anticipates a successful result at hearing as her requests are consistent
20 with and supported by Nevada law. Kayce therefore requests an award of fees in an
21 amount to be determined following the Court's decision on the merits of her request.

22 **III.**

23 **CONCLUSION**


24 Based upon the above and foregoing, Plaintiff respectfully requests that this
25 Court enter the following Orders:

- 26 1. For an Order of the Court setting Luke's child support obligation to
27 \$3,028.70 per month;
- 28 2. For an order of the Court granting child support arrears to Kayce in the
 amount of \$9,589.30;

- 1 3. For an Order of the Court increasing Luke's alimony obligation by
2 \$1,000.00 per month based on his GMI;
3 4. For attorney's fees and costs;
4 5. For such other and further relief as this Court deems just and proper in the
5 premises.

6 DATED this 14th day of March, 2023.

7 MILLS & ANDERSON

8 

9 BYRON L. MILLS, ESQ.

10 Nevada Bar No. 6745

11 DANIEL W. ANDERSON, ESQ.

12 Nevada Bar No. 9955

13 703 S. 8th Street

14 Las Vegas NV 89101

15 Attorney for Plaintiff

AFFIDAVIT OF KAYCE HATCH IN SUPPORT OF MOTION

STATE OF NEVADA)
) ss:
COUNTY OF LINCOLN)

KAYCE HATCH, being first duly sworn according to law, deposes and says:

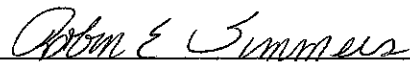
1. I have provided all of the information, dates and incidents for use in this Motion and state under oath that the information contained therein and which I have read, corrected and approved, is true and correct to the best of my knowledge.
2. Based on my knowledge, belief and information and as though repeated herein by my affidavit, I incorporate the facts and incidents of the motion as though fully reprinted in this affidavit.

WHEREFORE, I respectfully request that this Court grant the relief requested.

FURTHER AFFIANT SAYETH NAUGHT.


KAYCE HATCH

SUBSCRIBED and SWORN to before me this
 6 day of march, 2023.


NOTARY PUBLIC in and for Said
County of Lincoln, State of Nevada

