

No. 23-605

In The
Supreme Court of the United States

ERICH M. MARTIN,

Petitioner,

v.

RAINA L. MARTIN,

Respondent.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Nevada**

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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COUNTERSTATEMENT OF QUESTION PRESENTED

1. This Court held in *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023 (1989), that the doctrine of *res judicata* “is a matter of state law over which we have no jurisdiction.” There, as here, state domestic relations law did not permit a collateral attack on a final, unappealed divorce decree. The question presented is whether 38 U.S.C. § 5301 extends to the point of reversing this Court’s previous holding.
2. The second question presented to this Court is not properly before this Court because it is based on false “facts” and a misstatement of the law of the State of Nevada. The Nevada Supreme Court held in *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507 (2003), *cert. denied*, 541 U.S. 960, 124 S. Ct. 1716, 158 L. Ed. 2d 401 (2004), citing to *Hisgen v. Hisgen*, 554 N.W.2d 494, 498 (S.D.1996) (quoting *Holmes v. Holmes*, 7 Va.App. 472, 375 S.E.2d 387, 395 (1988), “[T]he source of the payments need not come from his exempt disability pay; the husband is free to satisfy his obligations to his former wife by using other available assets.” As explained below, Mr. Martin has a massive income other than his disability payments, which he misrepresents in his filings here. His income actually exceeds \$150,000 per year and he is capable of paying the funds he contracted to pay from funds other than his disability award. As such, this case does not implicate the question presented by the petitioner.

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INTRODUCTION

Petitioner's characterization of the questions presented does not accurately address the issue posed, argued, and decided in the proceedings below but instead, based on a false rendition of facts, asks this Court to overturn its precedent in place since at least 1989.

Additionally, by misrepresenting the facts of the case, the Petitioner attempts to have a question posed to this Court that was never part of the case below, is therefore not part of the record, does not apply to the present case, and is not addressed at all in the decision of the Nevada Supreme Court.

Specifically, the issues in the proceedings below cannot be framed in high generality and without consideration of the actual circumstances. Mr. Martin's motion was a collateral attack on a long-final divorce decree and order incident to that decree that went unappealed for years. And the record actually shows that Mr. Martin has ample income and ability to pay the contracted, promised sums to his ex-spouse without involving his disability funds in any way. His argument is actually that he can parlay his post-divorce receipt of disability funds into an excuse to selectively, retroactively disavow his contractual obligations.

STATEMENT OF THE CASE

Respondent disagrees with how Petitioner has chosen to describe the factual background of the matter. Taking all reasonable inferences of fact (and not legal conclusions) in a light most favorable to Petitioner (*see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), the following comments and clarifications are presented.

The Petitioner's citation to "military powers" and 38 U.S.C. § 5301 are correct in that no state court can use "any legal or equitable process whatever" to dispossess a veteran of these benefits. We also agree that *Howell v. Howell*, 137 S. Ct. at 1404, identified that Congress has given a grant for the states to divide only disposable retired pay, while they can recognize receipt of disability benefits, as they can *all* separate property income streams, in calculating spousal support and child support.

However, the referenced statute is not implicated because Petitioner misrepresents the fact that he is 100% permanently and totally disabled, and repeatedly makes the knowingly false assertion (at page 3, 27) that his "only means of sustenance" is his federal veteran's disability compensation.

In fact, Mr. Martin's Financial Disclosure Form filed in the lower case on June 9, 2020, reflects his income from employment as \$11,504.13 per month, over and above the \$5,163 per month he was receiving for disability compensation. (*See Exhibit A*). And the Nevada family court has twice held contested hearings and ruled that Mr. Martin should pay Ms. Martin

attorney's fees relating to his appeals based on his vastly superior earned income. (See Exhibit B).

Petitioner claims that veterans' disability benefits are appropriated by Congress for the purpose of maintenance and support of disabled veterans under its Article I enumerated powers, without any grant to the states to "consider" these monies as an available asset in any state court proceedings. However that is an overstatement amounting to a falsehood of both fact and law.

Congress does appropriate the disability funds, but does so for the support of the veteran *and his family*. See *Rose v. Rose*, 481 U.S. 619, 630, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987). It is for this reason that Congress has authorized the partition of disability funds for the purpose of paying child or spousal support, and why *all* income from all sources is considered by state courts when making awards of child and spousal support. See *In re Marriage of Stanton*, 190 Cal. App. 4th 547, 118 Cal. Rptr. 3d 249 (Ct. App. 2010) (applying *Rose*).

Petitioner goes on at length concerning the supremacy clause and cases stating that federal law trumps state law in various contexts. There is no argument in this realm, but there is also no such issue presented in this case. The state court has not and will not divide benefits that are not divisible and it did not and will not divert funds based on any community property theory. It simply enforced a contract that one party would pay another a specified sum from whatever

assets he chose, as contracted for in a stipulated, unappealed order.

Petitioner argues (at page 8) that allowing a state court to divide disability benefits would be a disincentive to service or affect the services' ability to promote the service or retain personnel. That concept was at the core of both *McCarty v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728 (1981) and *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023 (1989), but the issue is not implicated here.

The state court did not divide any disability benefits of Mr. Martin or order him to invade those benefits to pay Ms. Martin any sums. Mr. Martin entered into a contract during a settlement conference in which he agreed to pay Ms. Martin a sum certain equal to her percentage share of his military retirement benefits, whether he took a disability or not. This was a stipulated agreement included in a stipulated decree of divorce. Thereafter, he signed a further stipulated order incident to that decree which again included the contractual indemnification terms. None of these three stipulated contracts were objected to and none were appealed.

What the Martins did is exactly what this Court instructed divorcing parties to do. Specifically in *Howell v. Howell*, 581 U.S. ___, 137 S. Ct. 1400, 197 L. Ed. 2d 781 (2017), this Court held:

We recognize, as we recognized in *Mansell*, the hardship that congressional pre-emption can sometimes work on divorcing spouses. *See* 490

U.S., at 594, 109 S. Ct. 2023. But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support. *See Rose v. Rose*, 481 U.S. 619, 630-634, and n. 6, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987); 10 U.S.C. § 1408(e)(6).

The Martins entered into their agreement before the *Howell* decision, but they did exactly what this Court suggested in *Howell* by "taking into account" the contingency that the retired pay would be reduced by the waiver for disability pay, and agreeing that if that occurred, Mr. Martin would pay an agreed sum to Ms. Martin anyway.

If Mr. Martin had bought a car, and took out a loan to pay for it, and then taken disability, he would not be heard to say that his conversion of retired pay into disability pay allows him to retroactively void his agreement to pay for the car. And if he asserted that of all the people in the world who he might have contracted to make future payments, the only contractual promises voided by his actions are the ones he made to his ex-wife, he asserts a facial violation of equal protection of the law.

Specifically, this Court has held that "The Equal Protection Clause of [the] amendment [14th] does, however, deny to States the power to legislate that

different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification “must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.” *See Eisenstadt v. Baird*, 405 U.S. 438 (1972) citing to *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). *Eisenstadt* found that courts may not treat single persons differently than married persons. This is exactly what the Petition is asking this Court to do; he asserts that since Ms. Martin was once married to Mr. Martin, his agreement to pay her under contract should not be held to be a valid contract whereas a contract to make payments to any other person *not* once married to him would be enforceable.

It is telling to note that nowhere does the *Petition* address this Court’s holding in *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023 (1989), that the issue of *res judicata* is strictly a state law issue that is outside the jurisdiction of this Court. As in *Howell*, that footnote in *Mansell* “determines the outcome here.” *See Howell v. Howell*, 581 U.S. ___, 137 S. Ct. 1400, 197 L. Ed. 2d 781 (2017).

McCarty and *Mansell* state a rule of substantive federal law, and not a rule of subject matter jurisdiction. *See* 2 Turner, *Equitable Distribution of Property* (4th ed. 2023), § 6:6, pp. 54-55; Turner, *State Court Treatment of Military and Veteran’s Disability Benefits: A 2004 Update*, 16 *Divorce Litig.* 76, 80 (2004).

Footnote 5 of the *Mansell* decision, holding that the issue of *res judicata* is outside the jurisdiction of the federal courts, is a holding that there is no federal question on the issue, and a finding of a lack of a substantial federal question is an adjudication on the merits carrying the same precedential value as a full opinion. *See Sheldon v. Sheldon*, 456 U.S. 941 (1982); Turner, § 6:6, p. 49, citing *Hicks v. Miranda*, 422 U.S. 332, 344, 95 S. Ct. 2281, 45 L. Ed. 2d 223 (1975) (emphasis omitted).

It is because the doctrine of *McCarty* and *Mansell* is a rule of federal substantive law only that “[a] strong majority of state court cases . . . hold that military benefits of all sorts can be divided under the law of *res judicata*.” Turner, *supra*, at § 6:9, p. 72. The issue of *res judicata* was not presented in *Howell*, which therefore does not provide any guidance on this issue. That is presumably why this Court very recently denied cert to the opinion containing exactly those holdings. *See Foster v. Foster*, 983 N.W.2d 373 (Mich. 2022), *cert. denied*, ___ S. Ct. ___ (No. 22-1089, Oct. 2, 2023).

Since the Nevada Supreme Court in this case relied on this Court’s holding in *Mansell* and found that *Howell* did not apply to the facts of this case, the petition fails to satisfy the criteria for cert.

The Petitioner is aware that there is no federal question here, which is why he attempts (at page 10) to misstate the Nevada Supreme Court decision as holding that “state doctrines of judicial convenience like *res judicata*” could act to “circumvent the Supremacy

Clause.” No such conclusion was reached or stated by the Nevada Supreme Court, which actually held:

We conclude, however, that state courts do not improperly divide disability pay when they enforce the terms of a negotiated property settlement as *res judicata*, even if the parties agreed on a reimbursement provision that the state court would lack authority to otherwise mandate.

In other words, there is a difference between a judicial imposition of a remedy of indemnification and enforcement of a final, unappealed, contract, as essentially all experts in the field have recognized.¹

The Nevada Supreme Court analyzed this Court’s holdings in both *Howell* and *Mansell*, noted that the state judicial doctrine of *res judicata* was held by this Court to be outside the jurisdiction of the federal courts, and that *Howell* completely adopted and affirmed the holdings in *Mansell* (including footnote 5), thus reaffirming that the issue of *res judicata* is a state issue as to which this Court does not have jurisdiction.



¹ See, e.g., 2 Mark E. Sullivan, THE MILITARY DIVORCE HANDBOOK: A PRACTICAL GUIDE TO REPRESENTING MILITARY PERSONNEL AND THEIR FAMILIES 691 (3d ed. 2019) (“[i]t’s one thing to argue about a judge’s power to require . . . a duty to indemnify, but another matter entirely to require a litigant to perform what he has promised in a contract.”).

REASONS FOR DENYING CERTIORARI

I. THIS CASE DOES NOT PRESENT THE ISSUES RAISED BY PETITIONER

Petitioner argues that current federal law and the cases that have been decided concerning those laws hold that the Nevada Supreme Court illegitimately divided disability benefits. He goes on at length purporting to give this Court a history lesson on the decisions in *Rose*, *McCarty*, and *Mansell* but does not address footnote 5 in *Mansell* at all. That footnote decides this case.

Specifically, it says:

Whether the doctrine of *res judicata*, as applied in California, should have barred the re-opening of pre-McCarty settlements is a matter of state law over which we have no jurisdiction.

The procedural law in Nevada is the same as that in California; an unappealed decision becomes the law of the case and is enforceable as a matter of *res judicata*, or “claim preclusion.”

Under the doctrine of claim preclusion, a final judgment forecloses “successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.” *See Taylor v. Sturgell*, 553 U.S. 880 (2008) citing to *New Hampshire v. Maine*, 532 U.S. 742, 748, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001).

The Nevada Supreme Court applied a three-part test to determine whether *res judicata* applies: “(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case.” *See Martin v. Martin*, 138 Nev. ___, ___ (Adv. Opn. No. 78, Dec. 1, 2022), attached to Petitioner’s Petition. The Nevada Supreme Court answered all three in the affirmative, finding that Mr. Martin had the opportunity to litigate these terms, but instead, agreed by stipulation that the terms were acceptable. The Court then held that “a judgment entered by the court on consent of the parties” “is as valid and binding a judgment between the parties as if the matter had been fully tried, and bars a later action on the same claim or cause of action as the initial suit.” *See Id.*

At no point in the petition does Mr. Martin argue that any part of the *Mansell* decision, including footnote 5, should be revisited or overturned by this Court. In fact, he cites to the case to supposedly support his position. Actually, *Mansell* determines the results here. Since the Petition does not even address the holding in *Mansell* as to *res judicata*, the question as presented should not be subject to certiorari.

II. NO COURT HAS COMPELLED MR. MARTIN TO USE HIS DISABILITY BENEFITS TO SATISFY HIS AGREEMENT

Though we do not think it makes a difference where Mr. Martin gets the money he agreed to pay Ms. Martin, this is not a question that was ever posed before the state court – for good reason. Contrary to the false facts stated in the Petition (at pages 3 and 27), the disability benefits are not Mr. Martin’s “only means of sustenance.” Far from it. He is fully employed and is currently making in excess of \$11,000 per month – some \$135,000 per year – in wages separate from his disability benefits. (See Exhibit A).

It is clear that funds to make payments pursuant to Mr. Martin’s contractual agreement can come from funds other than those he receives for disability. The Nevada Supreme Court relied on an earlier Nevada decision in which cert was denied finding:

the husband may satisfy his contractual obligations with whatever monies he wished, even if that involved using disability pay. *See Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507 (2003), cert. denied, 541 U.S. 960, 124 S. Ct. 1716, 158 L. Ed. 2d 401 (2004).

38 U.S.C. § 5301 is not implicated; nothing prevents the disability funds “from actually reaching” Mr. Martin; the question is whether their receipt means he can selectively disregard his contracts to make payments to others because he might possibly use some of those dollars to do so.

Both *Shelton* and *Mansell II (In re Marriage of Mansell)*, 217 Cal. App. 3d 219, 265 Cal. Rptr. 227 (Ct. App. 1989), *cert. denied*, 498 U.S. 806, 111 S. Ct. 237, 112 L. Ed. 2d 197 (1990)), establish that the holding in *Mansell I* that *res judicata* of unappealed divorce decrees remains good law. Applied here, it means that Mr. Martin is free to satisfy his agreed upon obligations with any funds he has available.

The question Mr. Martin tries to present in his petition (whether a veteran can be compelled to use disability funds to satisfy an agreement) was never raised in the Nevada courts, at the trial level or on appeal. That is because everyone participating in the litigation was aware that Mr. Martin's income was and is far greater than just his disability income.

To misrepresent this fact in this Court to attempt to shoehorn a question into the Petition is troublesome at best, both substantively and ethically. Since this question simply does not apply to the case at bar, however, the Court should deny certiorari as to that question.

III. THIS PETITION IS PREMATURE AS TO THIS ISSUE

Even if the issue of collateral attacks on final, unappealed divorce decrees being barred under state law *res judicata* was not certain (as it is), and even if there was some legitimacy to Mr. Martin's claim of being forced to use disability funds to satisfy his contractual

obligations (and there isn't), this case would not be appropriate for cert.

To date there are four state supreme court cases relating to this subject, all of which have held that a stipulated contract to make payments to a former spouse are enforceable. *See Martin v. Martin*, 138 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 78, Dec. 1, 2022); *Foster v. Foster*, 983 N.W.2d 373 (Mich. 2022); *Yourko v. Yourko*, 884 S.E.2d 799 (Va. 2023); and *Jones v. Jones*, 505 P.3d 224, 230 (Alaska 2022).

That leaves 46 states to reach the issue. It is possible that some state might reach a different conclusion, setting up conflicting opinions as to which this Court might wish to weigh in and resolve. For the moment, however, there is a very thin body of decisions to reference in deciding what issues to reach and how they should be approached.

If this Court elects to revisit the issues presented by these cases, it should do so only after there is enough of a body of state court decisions on the matter that the applicable issues will have been fully fleshed out in the various factual backgrounds in which they might arise.

CONCLUSION

For all the aforementioned reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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EXHIBIT “A”

FDF
Name: Erich Martin
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_____ Judicial District Court
_____, Nevada

<u>Erich Martin</u> Plaintiff, vs. <u>Raina Martin</u> Defendant.	Case No. <u>D-15-509045-D</u> Dept. <u>C</u>
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GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (*first, middle, last*)
Erich Matthew Martin
2. How old are you? 39
3. What is your date of birth? 12/30/1980
4. What is your highest level of education?
Bachelor's of Science

B. Employment Information:

1. Are you currently employed/ self-employed?
(*check one*)
 No

App. 2

Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
March 2020		Manager	M-F	8am-4pm

2. Are you disabled? (check one)

No

Yes If yes, what is your level of disability?

100%

What agency certified you disabled?

US Army

What is the nature of your disability?

Combat Related Disability

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: US Army Date of Hire: 7/13/1999 Date of Termination: 7/31/2019

Reason for Leaving: Retired from 20 years active duty service.

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending 30MAY20 my gross year to date pay is 29205.00.

App. 3

B. Determine your Gross Monthly Income.

Hourly Wage

\$66.37	x	40.00	=	\$2,654.80	x	52
Hourly Wage		Number of hours worked per week		Weekly Income		Weeks

=	\$138,049.60	+	12	=	\$11,504.13
	Annual Income		Months		Gross Monthly Income

Annual Salary

Annual Income	+	12	=	\$0.00
		Months		Gross Monthly Income

C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			

App. 4

Spousal Support			
Child Support			
Workman's Compensation			
Other: <u>Disability</u>	Monthly	\$5,163.00	\$61,956.00
Total Average Other Income Received			\$61,956.00
Total Average Gross Monthly Income (add totals from B and C above)			\$73,460.13

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	808.00
2.	Federal Health Savings Plan	
3.	Federal Income Tax	575.52
4.	Health Insurance Amount for you: _____ For Opposing Party: _____ For your Child(ren): <u>\$220.00</u>	220.00
5.	Life, Disability, or Other Insurance Premiums	400.00
6.	Medicare	154.88
7.	Retirement, Pension, IRA, or 401(k)	450.00
8.	Savings	
9.	Social Security	662.22
10.	Union Dues	
11.	Other: (Type of Deduction) <u>CO State Tax</u>	446.00
Total Monthly Deductions (Lines 1-11)		3,716.62

App. 5

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses? \$ 0.00

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other: _____			
Total Average Business Expenses			0.00

App. 6

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money you spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me	Other Party	For Both
Alimony/Spousal Support				
Auto Insurance	500.00			
Car Loan/ Lease Payment	700.00			
Cell Phone	400.00			
Child Support (not deducted from pay)				
Clothing, Shoes, Etc...	1,000.00			
Credit Card Payments (minimum due)	3,000.00			
Dry Cleaning	75.00			
Electric	100.00			
Food (groceries & restaurants)	1,800.00			
Fuel	500.00			
Gas (for home)	120.00			
Health Insurance (not deducted from pay)				
HOA	75.00			

App. 7

Home Insurance (if not included in mortgage)	200.00			
Home Phone				
Internet/Cable	290.00			
Lawn Care				
Membership Fees	35.00			
Mortgage/Rent/ Lease	1,200.00			
Pest Control				
Pets				
Pool Service				
Property Taxes (if not included in mortgage)	383.00			
Security				
Sewer				
Student Loans				
Unreimbursed Medical Expense	300.00			
Water	150.00			
Other: _____				
Total Monthly Expenses	10,828.00			

Household Information

A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attach a separate sheet if needed.

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	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/ disabled?
1st	N.M.		Raina	Yes	No
2nd	K.C.		Me	No	No
3rd	M.C.		Me	No	No
4th	D.C.		Me	No	No

B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1st Child	2nd Child	3rd Child	4th Child
Cellular Phone				
Child Care				
Clothing	100.00	250.00	250.00	250.00
Education	75.00	125.00	125.00	125.00
Entertainment	150.00	150.00	150.00	150.00
Extracurricular & Sports	50.00	835.00	210.00	85.00
Health Insurance (if not deducted from pay)				
Summer Camp/ Programs	100.00			

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Transportation Costs for Visitation	200.00	100.00	100.00	100.00
Unreimbursed Medical Expenses		80.00		
Vehicle		135.00		
Other:				
Total Monthly Expenses	675.00	1,675.00	835.00	710.00

C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attach a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution
Julie Martin	46	Wife	\$ 2,800.00

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

App. 10

App. 11

\$	=	\$0.00		
\$	=	\$0.00		
\$	=	\$0.00		
Total Value of Assets (add lines 1-15)	\$0.00	-	\$0.00	=

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
Total Unsecured Debt (add lines 1-6)		\$ 0.00	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (*have/have not*) have not retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ on my behalf.

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3. I have a credit with my attorney in the amount of \$ _____.
4. I currently owe my attorney a total of \$ _____.
5. I owe my prior attorney a total of \$ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

EMM I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

EMM **I have attached a copy of my 3 most recent pay stubs to this form.**

N/A **I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.**

N/A **I have not attached a copy of my pay stubs to this form because I am currently unemployed.**

/s/ Erich Matthew Martin _____ June 9th, 2020 _____
Signature Date

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on *(date)* June 9th, 2020, service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

Via 1st Class U.S. Mail, postage fully prepaid addressed as follows:

Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to:

Eighth Judicial District Court.

Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file herein to:

Executed on the 9th day of June, 2020.

/s/ Erich Matthew Martin
Signature

EXHIBIT “B”

ORDR

WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for Defendant

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

ERICH MARTIN, Plaintiff, vs. RAINAH MARTIN, Defendant.	CASE NO: D-15-509045-D DEPT. NO: C DATE OF HEARING: 11/3/2020 TIME OF HEARING: 9:00 am
--	---

**ORDER FROM THE
NOVEMBER 3, 2020, HEARING**

This matter came on for a hearing at the above date and time before the Honorable Rebecca Burton, District Court Judge, Family Division. Defendant, Raina Martin, was present by video and was represented by and through her attorney, Richard L. Crane, Esq., of the WILLICK LAW GROUP, and Plaintiff, Erich Martin, was present by video and represented by and through his attorney, Kathleen A. Wilde of MARQUIS AURBACH COPPING.

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The Court, having reviewed the pleadings and papers and filed herein and entertaining argument from both sides, made the following findings and orders as follows:

THE COURT HEREBY FINDS:

1. The Court has subject matter jurisdiction over this case, personal jurisdiction over the parties and child custody subject matter jurisdiction.¹
2. If a Stay is to preserve the *Status Quo* then it would be not needed because Erich would still be making the monthly payments to Raina. That is the *Status Quo*, that is the Order of the Court.²
3. The *Decree of Divorce* is the *Status Quo* that Erich is trying to change. The Court enforced the *Decree of Divorce* and Erich has appealed the Court's enforcement.³
4. The Court has reviewed NRAP 8(c) and went through the factors and the object of the appeal. [if a stay is not granted -(RLB)] The Court finds that the object of the appeal for a few months might be defeated, but, the Court is not persuaded that the value of the appeal would be significantly reduced if Erich continued to make a few months of payments. In the big picture what we're looking at is the possibility of forty years or more of these payments.⁴

¹ Time Stamp 9:03:06 - 9:03:17

² Time Stamp 9:03:23 - 9:03:39

³ Time Stamp 9:03:40 - 9:03:49

⁴ Time Stamp 9:03:59 - 9:04:37

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5. That real object of this appeal is that these payments will go on for many years.⁵
6. Neither party is going to suffer irreparable or serious injury if the stay is denied or the stay is granted.⁶
7. \$20,000 is not an unreasonable estimate as to the benefits payable during the pendency of the appeal.⁷
8. The consequences to Raina are greater because her income is smaller. They'll [She will -(RLB)] have to pay out funds to maintain her position while paying attorney's fees. She'll have to pay out funds to obtain her judgment.⁸
9. Erich can better afford to pay out funds to obtain his judgment after the fact, if we're looking to collect monies after the fact.⁹
10. Covid has really made everybody's income uncertain. There is a lot less predictability. Erich recently lost his job in March of 2020, I know Raina's income has been reduced because of her production [reduction -(RLB)] of hours caused by Covid so, there are some collection issues there, in that regard.¹⁰

⁵ Time Stamp 9:04:54 - 9:05:10

⁶ Time Stamp 9:05:12 - 9:05:31

⁷ Time Stamp 9:05:57 - 9:06:03

⁸ Time Stamp 9:06:03 - 9:06:14

⁹ Time Stamp 9:06:16 - 9:06:23

¹⁰ Time Stamp 9:06:37 - 9:07:07

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11. Concerning whether Erich will likely prevail, the Court would like to think it's reasoning is sound, of course, recognizing that the issue is unresolved. Again, the Court did expect that this appeal would occur.¹¹
12. The Court didn't make the decision it did off the top of its head. It spent a considerable amount of time doing legal research and reviewing the law. The last cases that the Court cited were from a couple of months ago or less.¹²
13. NRCP 62(d)(2) states a party is entitled to a stay by providing a bond.¹³
14. The Court is inclined to grant the stay, but require Erich to pay however he wishes to do that.¹⁴
15. The Court likes Raina's idea of Erich continuing to pay the monthly payments into an attorney's trust account. That is a good reasonable approach.¹⁵
16. ~~I think that really is a good approach to it.~~ Because then we won't have any over payments or under payments and we're not going to have collection issues at the end of the day and the funds are there.¹⁶

¹¹ Time Stamp 9:07:09 - 9:07:24

¹² Time Stamp 9:07:25 - 9:07:48

¹³ Time Stamp 9:08:00 - 9:08:06

¹⁴ Time Stamp 9:16:51 - 9:16:58

¹⁵ Time Stamp 9:17:00 - 9:17:10

¹⁶ Time Stamp 9:17:20 - 9:17:33

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17. The Court would like confirmation going from Ms. Wilde to Mr. Crane that those monthly payments are being made.¹⁷
18. The Court did go through the factors about a bond and will put its thoughts about the matter on the record.¹⁸
19. The Collection Process is not complex but it would be easier for Erich than it would be for Raina, ~~but the Court does take note of that issue, as it was the Court involved when there was the spousal support issue.~~¹⁹
20. The time to obtain collection is going to depend on how cooperative everybody is. If it would be enforced, then of course there will be a motion and there's going to be a hearing and there's going to be a potential trial and arguments about how much the money is going to be, although that's probably not likely and there's not likely to be an appeal from that but that's always possible.²⁰
21. Again, collections might be difficult on both sides just because of Covid.²¹
22. We have two professionals here. A dental hygienist and a retired military member who is in a management position now. We have two professionals who make very nice incomes and neither party is destitute by any means. They are fortunate to

¹⁷ Time Stamp 9:17:11 - 9:17:20

¹⁸ Time Stamp 9:17:33 - 9:17:45

¹⁹ Time Stamp 9:17:47 - 9:18:07

²⁰ Time Stamp 9:18:07 - 9:18:28

²¹ Time Stamp 9:18:28 - 9:18:37

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have the jobs that they do and to make the incomes that they are in light of Covid right now when a lot of people are hurting.²²

23. The Court is going to require the monthly payment be made. That will avoid any additional costs. The monthly payment makes sense and will be sitting there, then there will be no collection issues at the end of the day.²³
24. Erich needs to go ahead and pay the arrearages already reduced to judgment.²⁴
25. The Court really wants Erich to begin making payments toward that judgment. Counsel is to talk about that and come up with a reasonable payment in addition to the regular monthly payment to start paying on that judgment. The Court would like it paid in no less than a year. You can use that as a kind of rule of thumb there but I want counsel to talk about it.²⁵
26. If he wants to pay for a bond he can but it will be the \$20,000 that's been requested because that is a reasonable amount.²⁶
27. In considering the *Motion* for attorney's fees, the Court takes into consideration both parties financial circumstances. Even though Nevada follows the American rule which means everyone pays their own legal fees, the Court recognizes that

²² Time Stamp 9:18:36 - 9:19:05

²³ Time Stamp 9:19:05 - 9:19:28

²⁴ Time Stamp 9:20:17 - 9:20:42

²⁵ Time Stamp 9:22:26 - 9:22:56

²⁶ Time Stamp 9:22:56 - 9:23:11

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Erich's income currently is about three times as high as Raina's income but Raina's expenses are reduced by her domestic partner and his very large income.²⁷

28. When you balance out the household incomes, they are fairly equivalent. They are not wildly apart. The Court realizes that Raina's domestic partner is not obligated to pay anything for these proceeding.²⁸
29. The Court is granting the stay and it would be appropriate because of the very large disparity of incomes between the two parties who are part of this process to have Erich contribute something toward Raina's attorney's fees because this is all, at the end of the day, going to effect her greater financially, who makes less money then Erich does. She has been effected by Covid more than Erich who is still making his full time income. Raina has reduced income.²⁹
30. The Court is not inclined to grant all of the attorney fees.³⁰ The Court does not want anybody being destitute by this, but Erich should pay something so he will contribute \$5,000 to her attorney's fees.³¹

²⁷ Time Stamp 9:25:31 - 9:26:00

²⁸ Time Stamp 9:26:19 - 9:26:32

²⁹ Time Stamp 9:26:39 - 9:27:29

³⁰ Time Stamp 28:16 - 9:28:22

³¹ Time Stamp 9:28:53 - 9:29:05

31. The Court does want him to pay the \$5,000. He has 30 days to get that done.³²

IT IS HEREBY ORDERED:

1. The Stay is granted as long as Erich either makes the ordered monthly payments of \$845.43, plus any applicable cost of living adjustment, during the pendency of the appellate proceedings to an Attorney's Trust Fund or if he purchases a supersedeas bond of \$20,000.
2. Erich's attorney is to provide the monthly account statement to Raina's attorney within five days of the payment where the monies were deposited.
3. If Erich decides to make the monthly payments as described above, the \$5,918.01 in arrears already reduced to judgment shall also be deposited into the same account as the monthly payments. This amount will continue to accumulate statutory interest until deposited.
4. If Erich purchases a supersedeas bond of \$20,000, the \$5,918.01 in arrears already reduced to

³² Time Stamp 9:30:35 - 9:30:44

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judgment is still due and will continue to accumulate statutory interest.

5. Raina's request for attorney's fees is granted. Erich is to contribute \$5,000 to her attorney's fees.

6. The \$5,000 is due within 30 days from the date of the hearing.

DATED this ____ day of _____, 2020.

Dated this 31st day of December, 2020

/s/ Rebecca Burton

9FA 342 8532 7346 _____
Rebecca L. Burton **DISTRICT COURT JUDGE**
District Judge

Dated this 21 day of
December, 2020

Respectfully Submitted By:

WILLICK LAW GROUP

//s//Richard L. Crane, Esq.
MARSHALL S. WILLICK,
ESQ.
Nevada Bar No. 2515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 9536
3591 E. Bonanza Rd.,
Suite 200
Las Vegas, Nevada 89110
(702) 438-4100;
Fax (702) 438-511
Attorneys for Defendant

Dated this ____ day of
_____, 2020

Approved as to Form
and Content By:

MARQUIS AURBACH COFFING

**SIGNATURE

REFUSED**

CHAD F. CLEMENT, ESQ.
Nevada Bar No. 12192
KATHLEEN A. WILDE, ESQ.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711;
Fax (702) 382-5816
Attorneys for Plaintiff

CSERV

DISTRICT COURT CLARK COUNTY, NEVADA

Erich M Martin, Plaintiff
vs.
Raina. L Martin, Defendant.

CASE NO: D-15-509045-D
DEPT. NO. Department C

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated
by the Eighth Judicial District Court. The foregoing

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

Service Date: 12/31/2020

“Samira C. Knight, Esq.”. Samira@tklawgroupnv.com
Chad Clement cclement@maclaw.com
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Justin Johnson Justin@willicklawgroup.com
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Lennie Fraga lfraga@maclaw.com
Christopher Phillips, Esq. cphillips@fordfriedmanlaw.com
Rachel Tygret rtygret@maclaw.com
Cally Hatfield chatfield@maclaw.com

**Electronically Filed
1/22/2024 9:19 AM
Steven D. Grierson
CLERK OF
THE COURT
/s/ Steven D. Grierson**

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

ERICH MARTIN,
Plaintiff,
v.
RAINAH MARTIN,
Defendant.

Case No: D-15-509045-D
Dept. No.: Q

NOTICE OF ENTRY OF ORDER

TO:

Marshal Willick, Esq.
By E-Service

Chad Clement, Esq.
By E-Service

PLEASE TAKE NOTICE that an ORDER RE: PENDENTE LITE was duly entered in the above-referenced case on the 22nd day of January, 2024.

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DATED this 22nd day of January, 2024.

/s/ Lori Parr

Lori Parr
Judicial Executive Assistant
Dept. Q

ORDR

**Electronically Filed
01/22/2024 8:57 AM
/s/ Steven D. Grierson
CLERK OF
THE COURT**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Statistically closed: USJR-FAM-Set/Withdrawn
with Judicial Conf/Hearing (UWJCA)**

ERICH MARTIN,)
Plaintiff,)
v.) CASE NO. D-15-509045-D
RAIN MARTIN,) DEPT. NO. Q
Defendant.)

)

ORDER RE: FEES PENDENTE LITE

Defendant filed a Motion for Attorney's Fees and Costs *Pendente Lite* and Related Relief (Jan. 4, 2024) (hereinafter referred to as Defendant's "Motion"). Defendant's Motion is set on this Court's January 19, 2024 Chamber Calendar.¹ Plaintiff filed an Opposition to Motion for Attorney's Fees and Costs *Pendente Lite* and Related Relief on Order Shortening Time (Second Motion) (Jan. 18, 2024) (hereinafter referred to as

¹ Pursuant to the Order Shortening Time (Jan. 9, 2024), the Chamber Calendar hearing was shortened to January 19, 2024.

Plaintiff’s “Opposition”). This Court has reviewed and considered the papers on file and finds as follows:

...

The district court previously entered the Order Regarding Enforcement of Military Retirement Benefits (Aug. 11, 2020). Thereafter, Plaintiff filed a Notice of Appeal (Sep. 9, 2020). The Supreme Court of the State of Nevada subsequently (on December 1, 2022) affirmed the “district court orders enforcing a divorce decree and awarding *pendente lite* attorney fees.”² Plaintiff thereafter sought relief by petition for *writ of certiorari* in the United States Supreme Court.

Pursuant to the Order From the November 3, 2020, Hearing (Dec. 31, 2020), the Court previously found and ordered, in relevant part, as follows:

8. The consequences [of a stay] to Raina are greater because her income is smaller. She will have to pay out funds to maintain her position while paying attorney’s fees. She’ll have to pay out funds to obtain her judgment.
9. Erich can better afford to pay out funds to obtain his judgment after the fact, if we’re looking to collect monies after the fact.

² The Court of Appeals of the State of Nevada initially issued an Order Affirming in Part, Reversing in Part, and Remanding (Nov. 17, 2021). Following Defendant’s Petition for Review (Dec. 3, 2021), the Supreme Court of Nevada affirmed the district court’s order.

* * * *

27. In considering the Motion for attorney's fees, the Court takes into consideration both parties' financial circumstances. Even though Nevada follows the American rule which means everyone pays their own legal fees, the Court recognizes that Erich's income currently is about three times as high as Raina's income but Raina's expenses are reduced by her domestic partner and his very large income.
28. When you balance out the household incomes, they are fairly equivalent. They are not wildly apart. The Court realizes that Raina's domestic partner is not obligated to pay anything for these proceedings.
29. The Court is granting the stay and it would be appropriate because of the very large disparity of incomes between the two parties who are part of this process to have Erich contribute something toward Raina's attorney's fees because this is all, at the end of the day, going to effect her greater financially, who makes less money than [sic] Erich does. She has been effected by Covid more than Erich who is still making his full time income. Raina has reduced income.
30. The Court is not inclined to grant all of the attorney fees. The Court does not want anybody being destitute by this, but

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Erich should pay something so he will contribute \$5,000 to her attorney's fees.

* * * *

IT IS HEREBY ORDERED . . . Raina's request for attorney's fees is granted. Erich is to contribute \$5,000 to her attorney's fees.

Order From the November 3, 2020, Hearing (Dec. 31, 2020), 3, 5-7.³

Pursuant to the Order From the November 3, 2020, Hearing (Dec. 31, 2020), the district court also granted Plaintiff's request for a stay "as long as Erich either makes the ordered monthly payments of \$845.43, plus any applicable cost of living adjustment during the pendency of the appellate proceedings to an Attorney's Trust Fund or if he purchases a supersedeas bond of \$20,000." Order From the November 3, 2020, Hearing (Dec. 31, 2020)7. Since that time, Plaintiff's monthly deposits have accumulated and are held in an Attorney's Trust Fund Account. (The accumulated amount would have been released to Defendant but for Plaintiff's pursuit of *certiorari* relief from the United States Supreme Court and the associated recall of the remittitur.)

...

It does not appear to be disputed that Defendant has been directed by the United States Supreme Court

³ This matter previously was assigned to The Honorable Judge Rebecca Burton who issued the Order From the November 3, 2020, Hearing (Dec. 31, 2020).

to respond to *Plaintiff's Petition for Writ of Certiorari* (with a due date of January 25, 2024). This prolongation of appellate proceedings has increased fees and costs beyond what Defendant could have reasonably expected. Although she appears to have waived her right to respond to *Plaintiff's Petition for Writ of Certiorari*, she has been directed to submit a response.

According to Defendant's Financial Disclosure Form (Jan. 4, 2024), her average gross monthly income is \$11,317.333 (which includes child support of \$1,317 and "Husband's Mortgage Cont." of \$1,750 per month). In contrast, Plaintiff's Financial Disclosure Form (Jan. 18, 2024) represents average gross monthly income of \$19,52.67 (which includes monthly disability income of \$4,335.16). The district court previously awarded *pendente lite* fees, in part, due to the disparity in the parties' incomes. Consistent with prior findings, Defendant has demonstrated a sufficient need for an award of fees to prepare and submit a response that she sought to avoid. However, Defendant's Motion lacks the detail necessary to award the total amount of \$35,000 requested. Accordingly, the Court finds that an award of fees *pendente lite* in the amount of \$20,000 (the amount the district court originally established as the amount of a supersedeas bond) is appropriate. This amount may be satisfied preliminarily by way of the monies held in the Attorney Trust Fund Account previously established.

...

...

Based on the foregoing, and good cause appearing therefor,

It is hereby ORDERED that Defendant's Motion is GRANTED in part. In this regard, it is further ORDERED Defendant is awarded the sum of \$20,000 in attorney's fees to be paid by Plaintiff. It is further ORDERED that said fees shall be paid within seven days of this Order. It is further ORDERED that said amount may be satisfied preliminarily from the fees held in Plaintiff's attorney's trust account pending the outcome of the appellate proceedings.

**Dated this 22nd day of
January, 2024**

/s/ Bryce Duckworth

**A5D E22 D6F3 9245
Bryce C. Duckworth
District Court Judge**

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Erich M. Martin, Plaintiff, vs. Raina L. Martin, Defendant.	CASE NO: D-15-509045-D DEPT. NO. Department Q
---	--

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/22/2024

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App. 34

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