

No. _____

**IN THE SUPREME COURT OF
THE UNITED STATES**

BURHAN CULCULOGLU, Petitioner,

vs.

MICHELLE L. CULCULOGLU, Respondent.

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

Petition For Writ Of Certiorari

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Petitioner in Proper Person

QUESTIONS PRESENTED

The questions presented are:

- 1. Whether awarding of lawyer's fees to prevailing party as sanctions for an unlawful indirect contempt of court order violates the Due Process Clause?**
- 2. Whether denying a party to file a reply brief to a "response brief" when rules allow him to file, violates the substantial rights of Due Process Clause especially when "response brief" raises the issue, appellant could not raise in his "appeal brief"?**

LIST OF PARTIES

Petitioner is Burhan Culculoglu.

Respondent is Michelle L. Culculoglu.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Burhan Culculoglu respectfully petitions for a writ of certiorari to review the below judgments of The Nevada Supreme Court.

OPINIONS BELOW

The decision of The Nevada Supreme Court, affirming the attorney fees is unpublished and appears at Appendix A. The Nevada Supreme Court's order denying the petition for rehearing is unpublished and appears at Appendix C.

JURISDICTION

The Nevada Supreme Court's order of affirmance was issued on January 13, 2017, Appendix A and a timely petition for rehearing was denied on July 28, 2017, Appendix C and timely filed En Banc Reconsideration was denied on October 23, 2017, Appendix D. This Court has statutory jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

The Sixth Amendment to the United States Constitution provides, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to ... be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

This case involves an “unlawful” Indirect Contempt Order issued by the family court, finding petitioner Burhan in indirect contempt of court order for paying his first wife her portion of his retirement fund and using the remaining of the fund for his and his children’s basic necessities. The contempt order was unlawful due to the fact that criminal contempt was at issue, stemming from civil matters and petitioner’s constitutionally protected due process rights were not safeguarded by the family court, as his lawyer was allowed to withdraw from the case one week before the contempt hearing, and Burhan was not provided with a counsel during the contempt hearing.

Additionally, Burhan’s written and verbal request for continuation in order for him to prepare for the show cause hearing was denied by the family court.

Last, but not least, family court did not make its findings beyond reasonable doubt as criminal contempt was at issue. Moreover, findings of the court was not based on facts, but hearsay allegations of respondent and her attorneys.

Introduction

Respondent, Michelle L. Culculoglu filed a motion via her attorneys Shann D. Winesett and Bruce Shapiro with family court for an "Order to show cause for contempt of a court order for taking money from his own 401K to pay his first wife's portion of 401K and motion for modification of child support."

Petitioner Burhan filed a response stating that he gave his first wife’s portion

of the fund to her, as it was also recognized by the court and requested that hearing be vacated as it was frivolous. Judge Steel vacated the hearing, stating that the matter was on appeal on April 16, 2015.

Michelle's lawyer Shann D. Winesett after learning that Judge Steel was assigned to another court and parties' case was assigned to a new court; Judge Linda Marquis, filed the same motion along with an alleged Emergency Motion of Child Abduction, falsely alleging that petitioner would abduct his children to go out of the country without any proof, on August 13, 2015. Judge Marquis, issued an order to show cause when Judge Steel who issued the decree order, did not entertain same motion three months earlier.

Burhan filed counter contempt motion to show cause for visitation right violations by Michelle and motion to change custody of children due to their educational, physical and medical neglect on August 27, 2015 and filed an amended on September 2, 2015.

Judge Marquis entertained Michelle's falsely alleged Emergency Abduction Motion based on hearsay claims and denied all of Burhan's reasonable requests.

Family Court issued its orders relating to custody of the children on September 3, 2015 hearing and deferred lawyer's fees to future hearings.

Burhan hired a flat fee attorney to protect his rights for contempt hearing with borrowed money as his financial situation was not allowing him to hire an attorney.

After two short hearings, Burhan's attorney Peter James filed a motion to

withdraw without discussing it with Burhan, stating that Burhan could not pay him more and his retainer money was gone. The court allowed him to withdraw one week before the contempt hearing. Burhan filed a motion with the court to sanction his attorney, as he did not discuss his withdrawal with Burhan and was causing him irreparable harm. Burhan also asked for continuation, as his lawyer did not discuss with him his case and he did not even know what he filed with the court, but Judge Marquis denied every request of Burhan and went ahead with the contempt hearing on December 16, 2015.

Judge Marquis found Burhan in indirect contempt and ordered him 25 days jail sentence, maximum allowed sentence by the rule, in addition to maximum allowed fine of \$500 as sanction and as further sanctions and ordered Burhan to pay attorney fees to Michelle's attorneys each and every month, she stayed jail sentence for six months.

Contempt order was entered on February 3, 2016, Burhan filed a timely appeal for Custody and contempt order of the court.

A. The Nevada Supreme Court Issued An Order On May 11, 2015, Stating That Contempt Orders Are Not Appealable And Also Denied Custody Related Orders To Be On Appeal As It Was Considered Untimely, Appendix H.

Burhan filed his fast track child custody appeal on April 27, 2016. He could not elaborate on every issue he raised in his docketing statement filed on March 31, 2016 due to space constraint on the form provided by The Nevada Supreme Court and

he mainly focused on child custody issues, as it mattered most to him.

In the meantime, Michelle's counsels filed a motion to dismiss appeal stating that contempt appeals are not appealable and custody order were untimely on April 4, 2016.

Appellant submitted a response on April 11, 2016, explaining in detail that Judge Marquis was bias, partial and abused her discretion with her actions and orders, he also stated that custody orders were not final, as it deferred lawyer's fees to a future date. (*See Lee v. GNLV Corp.*, 996 P.2d 416, 417 (Nev. 2000)).

Burhan also stated that after Judge Marquis' entertaining Michelle's contempt motion that Judge Steel vacated three months earlier and giving Michelle everything she asked for, denying Burhan his due process rights and finding him in contempt against the rules and without any proof Burhan became suspicious about unusually bias and partial orders. After a brief Internet search Burhan became aware that Judge Marquis and Michelle's attorney Shann D. Winesett were friendly opponents in the 2014 family court judge election, in which Judge Marquis won. Judge Marquis and Michelle's attorney Shann D. Winesett even campaigned together, and he provided exhibits and websites showing the close relationship between Judge Linda Marquis and Michelle's attorney Shann D. Winesett.

The Nevada Supreme Court issued an order on May 11, 2016, dismissing contempt order itself on appeal and decided that contempt orders are not appealable, also dismissed custody related orders as untimely, despite the fact that attorney fees were deferred to evidentiary hearing and Burhan waited every issue on the motion

was disposed due in light of judicial economy.

While The Nevada Supreme Court decided that contempt orders are not appealable in this case; in *Lewis v. Lewis*, 132 Nev. Adv. Op. 46 (June 30, 2016) decided that contempt orders are appealable. “We normally review an order of contempt for abuse of discretion. In re Water Rights of the Humboldt River, 118 Nev. 901, 907, 59 P.3d 1226, 1230 (2002).” P:4

B. The Nevada Supreme Court Denied Petitioner To File A Reply To Respondent’s Response Brief, Erroneously Stating That “Fast Track Rules Do Not Provide For A Reply.” Appendix F.

Petitioner was unlawfully incarcerated at the contempt status hearing on June 7, 2016 until July 2, 2016, for not being able to make payments to Michelle’s attorneys. Michelle’s attorneys filed a response brief and errata subsequently on June 7 and 8. Burhan, after being released from unlawful incarceration, submitted a motion for leave to file a reply on July 28, 2016, as he could not file or receive notices on time while incarcerated. His legal right to file a reply and his request to file a reply were denied by The Nevada Supreme Court on August 16, 2016 with an erroneous explanation that “Fast Track Child Custody Rules Do Not Provide A Reply.”

When in fact, rules give the right to reply under NRAP RULE 3E. (e) (2) Type -Volume Limitation. In pertinent part, “... and a fast track reply or supplement is acceptable if it contains no more than 2,333 words or 216 lines of text.” As a result Burhan could not address Respondent and her attorneys’ misleading lawyer’s fees response and explain why attorney fees in its entirety should be dismissed as it was a

product of unlawful, partial, biased and a contempt order that was the product of abused discretion.

While Burhan appealed the attorney fees on his docketing statement, he could not raise the attorney fees on his appeal brief due to space constraint. However, Michelle's attorneys have only addressed attorney fees on their response brief, because they filed their response after The Nevada Supreme Court only allowed attorney fees on appeal May 11, 2016. Burhan could not file a reply to address a new matter that Michelle's attorneys raised on their response.

C. Respondent's Attorneys Filed Errata For Their Inflated Attorney Fees And The Nevada Supreme Court Ordered Limited Remand, Appendix G.

Burhan once again brought up fraudulent attorney fees for Michelle's attorneys submitting \$34,356.25 attorney fees for a total of 30 minute hearing in open court, on contempt follow up hearing June 7, 2016. Burhan also brought up Michelle's attorneys fraudulent attorney fees on appeal in writing on March 31, 2016 in his Docketing Statement and Appellant's Response to Respondent's Motion to Dismiss Appeal and Related Relief filed on April 14, 2016 on Page 2, Paragraph 2 by specifically stating that;

Appellant does not have any response on withdrawal request of Attorney, despite the fact that some of the issues on Appeal are Respondent's attorney's actions of continuation of order alterations that were not in the minutes and submitting yet again "Fraudulent Affidavit of Fees", which involves astronomic hours spent and include false and frivolous Emergency Abduction Motion Fees — even though he claims it does not include it in writing - which was not part of the fees order. However, he has

represented affidavit of his fees in a confusing way that they look legitimate and correct, a close look reveals that they are just fraudulent and over charged. Charges from motion that was vacated by Judge Steel, at page 3:7 - 4:8. Charges that do not correlate with hours spent at pages 4:10-24 and 5:7-7:1 and excessive charges that were claimed to spent on contempt issue when it was not."

Despite these in writing explanation of submitted and signed fraudulent attorney fees, Michelle's attorneys instead of correcting fraudulent fees, tried to dismiss everything on appeal. And after Burhan was incarcerated, only then did they file a limited remand motion untruly stating that they were just made aware of clerical mistakes on attorney fees. The Nevada Supreme Court granted the limited remand motion without any sanctions. Charges brought down from \$34,356.25 to \$18,851.89, which was still astronomical for a 30-minute contempt hearing.

Burhan filed an amended notice of appeal after limited remand order was issued, Appendix G. He was waiting for directions from The Nevada Supreme Court as pro se person to file amended appeal brief to challenge attorney fees because contempt order was unlawful and awarding an unlawful order was also unlawful, as no right comes from wrong.

However, The Nevada Supreme Court affirmed the attorney fees without directing Burhan to file amended appeal brief and without determining if the contempt order itself was unlawful or not.

D. The Nevada Supreme Court Affirmed The Attorney Fees Without Determining If The Order Was Unlawful Or Not, Appendix A.

On its affirmance order The Nevada Supreme Court stated that;

"In his fast track statement, Appellant failed to present any argument concerning the award of attorney fees. Moreover, the district court had authority to award respondent attorney fees under NRS 22.100(3) and the court considered the reasonableness of the attorney fees Appellant has failed to demonstrate that the district court abused its discretion in awarding attorney fees." Appendix A.

Without arguing or determining if the contempt order was lawful as Burhan's due process rights and right to an attorney was violated by district court or not.

While it is true that Burhan could not present any discussion in regards to attorney fees including the authorities in his Fast Track Child Custody Brief, submitted on April 25, 2016, there were several valid reasons why he could not present attorney fees in his Fast Track Statement. However, he has also mentioned why attorney fees should be reversed on his docketing statement and numerous motions filed with The Nevada Supreme Court namely, on March 31, 2016 and April 14, 2016, stating Judge Marquis's partiality and being bias as she had a close relationship with Michelle's attorney Shann D. Winesett. As mentioned above his request to file a reply was denied by The Nevada Supreme Court erroneously.

Nevada Rules Of Appellate Procedure, rule 28 (c) sets the rules for reply briefs and unambiguously explains that reply brief must be limited to new answering any new matter set forth in opposing brief.

NRAP 28(c) Reply Brief. The appellant may file a brief in reply to the respondent's answering brief that shall be entitled "Appellant's Reply Brief." A reply brief shall comply with Rule 28(a)(1)-(2) and (10) and must be limited to answering any new matter set forth in the opposing brief. Unless the court permits, no further briefs may be filed. A party may waive the right to file a reply brief. Providing the clerk with immediate notice of that waiver will expedite submission of the case to the court.

Since Michelle's attorneys raised the issue of attorney fees on their response, Burhan had a right to file a reply so that he could have successfully presented the argument to Michelle's attorney raising the new matter: attorney fees on their response. However, he was not allowed to file a reply and deprived from his due process rights.

E. The Nevada Supreme Court Directed Michelle's Answer To Petition For Rehearing, Appendix E.

Burhan submitted his third motion on January 13, 2017, asking for guidance after he became aware of The Nevada Supreme Court's decision of *Lewis v. Lewis* 132 Nev. Adv. Op. 46 (June 30 2016), the very same day The Nevada Supreme Court filed its decision to affirm district court's awarding attorney fees in instant case. Burhan amended his motion and submitted it on January 15, 2017. In his motion Burhan stated that;

Appellant submitted motion for leave a reply on October 18, 2016 (See Exhibit 1) and later and opposition motion submitted on October 31, 2016, (See Exhibit 2) on both motions, Appellant clearly asked for guidance from Supreme Court as to how he should proceed as he came across *Lewis v. Lewis* advance opinion decision in regards to contempt orders. This court on both occasions did not mention anything about its 2 orders issued on October 12, 2016 and December 1, 2016 (See Exhibit 3). Appellant's Third Request for an Answer for His Guidance Question that was Not Answered Despite His Numerous Requests and Request for Oral Argument.

Burhan also submitted a timely petition for rehearing on February 14, 2017. Stating below wrong apprehension and overlooked issues;

a) This court overlooked the issues of Judge Marquis is being biased, prejudiced, partial and abusing her discretion.

b) This court affirmed an unlawful contempt order that was written against the original order;

c) This court affirmed a civil contempt order that violated constitutional rights of Appellant's due process, 5th, 6th and 14th amendments including right to an attorney, as it was criminal in nature and as it did not have a purge clause as this court also ruled in *Lewis v. Lewis*, 132 Nev. Adv. Op. 46 (June 30, 2016), subsequently, this court erred in affirming lawyer's fees that was product of unlawful order.

d) This court overlooked the contemptuous acts of Respondent and her attorneys Bruce Shapiro and Shann D. Winesett for altering orders, committing fraud by filing inflated lawyer's fees that was not in the order, re-filing the "show cause motion" that was vacated by Judge Steel who ordered the decree order, as she knew the facts about the case and found Respondent and her attorneys' action frivolous.

e) This court made erroneous decisions for this appeal and issued erroneous orders that caused Appellant irreparable damage; from not allowing Appellant to appeal the appealable custody orders to not allowing him to file a reply to Respondent's misleading fast track response for lawyer's fees.

The Nevada Supreme Court issued an order directing Michelle's lawyer's to file an answer to Burhan's petition for rehearing and directed them to answer below issues.

"Having reviewed the petition, it appears that an answer will assist the court in resolving the issues presented. Specifically, respondent should address the impact *Lewis v. Lewis*, 132 Nev., Adv. Op. 46, 373 P.3d 878, 880-81 (2016), has on this matter. Appellant argues that the district court violated his constitutional right to counsel when he appeared pro se at a contempt hearing and the court held him in criminal contempt by sentencing him to 25 days in jail without an opportunity to purge the contempt. 1 Appellant also contends that because the attorney fees were a sanction for his contempt they are void because they were a product of an unlawful order. Thus, respondent should address (1) whether the attorney fees were imposed as a sanction for appellant's contempt; and (2) if they were imposed as a contempt sanction, should they be reversed because the contempt was unlawful under *Lewis*. Respondent shall have 15 days from the date of this order within which to file and serve an answer to the petition." Appendix E.

Michelle's attorneys instead of answering these two questions, withdrew

from the case, after what appears transferring Michelle's case to one of their former colleagues who used to work at their firm, Pecos Law Group.

Michelle's new attorneys filed response and gave misleading information and facts of the case;

- stating that order had a purge clause when it did not,

- claimed that Burhan never requested a lawyer for the hearing, when he did in writing on December 8, 2015 and in open court on December 9, 2015 to sanction his lawyer who withdrew without consulting with him, so that Burhan could hire another attorney with the money he paid to his withdrawn attorney.

- claimed that attorney fees were not imposed as sanctions when it did.

It was not even matter if the attorney fees were as sanctions or not since it was a product of unlawful order and poisonous fruit is also poisonous.

Burhan's request to file a reply due to misinformation of Michelle and her attorneys and his request was denied.

F. The Nevada Supreme Court Denied Rehearing, Appendix C.

The Nevada Supreme Court denied Burhan's rehearing on July 28, 2017. Without any explanation, just stating that "Rehearing Denied. NRAP 40(c)."

It should be noted that The Nevada Supreme Court on its affirmation order at Appendix A, stated that;

"The district court specifically concluded that the attorney fees award was a further sanction for appellant's contempt."

However, despite that conclusion of fact as it is also stated clearly on

family court's order at Appendix A, page 5, line 5-7, The Nevada Supreme Court asked Michelle's attorneys if the lawyer's fees were imposed as sanctions on its order for directing Michelle to file a response.

“(1) Whether the attorney fees were imposed as a sanction for appellant's contempt;”

As mentioned above Michelle's attorneys falsely stated that attorney fees were not imposed as sanctions, when it did and as it was confirmed in The Nevada Supreme Court's affirmation order at Appendix A.

G. The Nevada Supreme Court Denied En Banc Reconsideration, Appendix D.

Burhan filed a timely En Banc Reconsideration based on the following prior published decisions of The Nevada Supreme Court and US Supreme Court, which involves below substantial and constitutional issues and public policy beyond litigants involved:

“a) Affirming lawyer's fees that were awarded for an unlawful and ambiguous contempt order as sanctions contrary to *Lewis v. Lewis 2016*, *Hicks v. Feiock 1988* and *Bohannon v. Eight Judicial District Court 2017* rulings;

b) Dismissing Appellant's contempt order as unappealable, contrary to *Water Rights of the Humboldt River 2002*, *Jackson v. State 2012* and *Lewis v. Lewis 2016* The Nevada Supreme Court's rulings.

c) Dismissing Appellant's child custody issues from appeal as untimely when lawyer's fees were not finalized contrary to *Lee v. GNLV ruling*.

d) Affirming lawyer's fees, without deciding if the order was lawful or not, Additionally contempt findings did not meet the standard since findings were not made beyond a reasonable doubt contrary to *Bohannon v. EJDC 2017* rulings.”

Burhan in detail explained that The Nevada Supreme Court's panel decision of affirming of attorney fees were against its own and U.S. Supreme Courts decisions as contempt order was criminal in nature and Burhan's constitutional rights of Due Process Clause were violated including The Nevada Supreme Court's denying Burhan to file a reply brief when Michelle and her lawyer's raised new matters in their response brief.

The Nevada Supreme Court denied Burhan's petition on October 23, 2017.

H. The Nevada Supreme Court Ignored Family Court's Order Being Unlawful, As It Did Not Protect Burhan's Constitutionally Protect Due Process Clause Since Criminal Contempt Was At Issue; It was Criminal In Nature Since It Did Not Have Purge Clause And It Findings Were Not Based On Facts, In Addition To Not Being Beyond Reasonable Doubt, Appendix B.

The Nevada Supreme Court ignored Burhan's numerous motions regarding family court's order being unlawful;

- As it was criminal in nature and it did not have purge clause as unambiguously explained in *Lewis v. Lewis*, 132 Nev. Adv. Op. 46 (June 30, 2016).

- Burhan was not provided an attorney due to criminal nature of contempt order and his Sixth Amendment right was violated as explained in *Lewis v. Lewis*, 132 Nev. Adv. Op. 46 (June 30, 2016).

- Family court failed to make findings beyond reasonable doubt since it was criminal in nature, in light of *Bohannon v. The Eighth Judicial District Court Of The State Of Nevada*, No. 69719 (Nev. Mar. 21, 2017).

- Contempt order did not comply with the required rule, Decree order was decided on July 29, 2014, but it was not entered until December 3, 2014, by Michelle's attorneys as they wanted to add verbiage that Burhan's first wife's claim must be enforceable against retirement fund administrator, when they knew that a written contract was between the parties, administrator was not involved. When the order came out in December 3, 2014. Funds were already given to Burhan's first wife as acknowledged by Judge Steel and remaining funds were used for Burhan's and his children's basic needs. When Burhan took the retirement fund there was no order, order came out months later.

- Judge Marquis's close relationship to Michelle's attorney Shann D. Winesett and her orders being partial and biased due to this relationship.

Nevada Court in *Lewis v. Lewis*, decided and identified criminal contempt on page:4-6;

REASONS FOR GRANTING THE PETITION

1- The Nevada Supreme Court Failed To Address The Question Of Whether Awarding Of Lawyer's Fees To Prevailing Party As Sanctions For An Unlawful Indirect Contempt Of Court Order Violates The Due Process Clause?

There is a well-settled rule of "fruit of poisonous tree" doctrine in our laws. Basically no right can come out of wrong. This Court has also recently ruled that it is unlawful for a state to keep the funds of criminally charged but acquitted person's money as it violates due process clause in *Nelson v. Colorado*, 581 U.S. ____ (2017).

Likewise if an order is unlawful it needs to be reversed and all collateral

orders relating to that order needs to be reversed as well. If an order exceeds jurisdiction of the court or is a product of abuse of discretion it is a void order and void orders are reversible anytime as they have no legal ground to stand. *McDonald v. Mabee*, 243 US 90 – Supreme Court 1917.

Here The Nevada Supreme Court asked two questions to Michelle regarding attorney fees;

- (1) Whether the attorney fees were imposed as a sanction for appellant's contempt;
- (2) If they were imposed as a contempt sanction, should they be reversed because the contempt was unlawful under *Lewis*.

The Nevada Supreme Court did not answer these questions, it just denied Burhan's rehearing without any explanation or opinion.

In *Nelson v. Colorado*, 581 U.S. ____ (2017) this Court stated that once convictions are reversed or vacated presumptions of innocence was restored.

"But once those convictions were erased, the presumption of their innocence was restored. See, e.g., *Johnson v. Mississippi*, 486 U. S. 578, 585 (1988) (After a "conviction has been reversed, unless and until [the defendant] should be retried, he must be presumed innocent of that charge."). "[A]xiomatic and elementary," the presumption of innocence "lies at the foundation of our criminal law." *Coffin v. United States*, 156 U. S. 432, 453 (1895).⁹ Colorado may not retain funds taken from Nelson and Madden solely because of their now-invalidated convictions, see *supra*, at 2–3, and n. 3, for Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty enough for monetary exactions."

This case while is similar to *Nelson v. Colorado*, which offers an opportunity to this Court to address the issue. As The Nevada Supreme Court did not address the issue of contempt order, whether it was unlawful or not, as it ruled that contempt orders are not appealable, Appendix H. However, six weeks later than this case, in

Lewis v. Lewis case it ruled that;

"We normally review an order of contempt for abuse of discretion. *In re Water Rights of the Humboldt River* 118 Nev. 901, 907, 59 P.3d 1226, 1230 (2002). However we review constitutional issues de novo. *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012)."

And if it is unlawful, can a court impose attorney fees to the prevailing party as award or as sanctions?

2. While Family Court's Order Has Not Been Reviewed From The Perspective Of Abuse Of Discretion Erroneously By The Nevada Supreme Court, It Is Still An Unlawful Order And Therefore It Is Void.

Family court's order is an unlawful order as it was criminal in nature, it did not have purge clause, it did not protect Burhan's constitutional rights of Due Process Fourteenth Amendment, it did not provide him an attorney which violated his Sixth Amendment Rights.

The Nevada Supreme Court, in *Lewis v. Lewis*, 132 Nev. Adv. Op. 46 (June 30, 2016). Clarified the difference between civil and contempt orders and further explained the purge clause.

"We normally review an order of contempt for abuse of discretion. *In re Water Rights of the Humboldt River*, 118 Nev. 901, 907, 59 P.3d 1226, 1230 (2002). However, we review constitutional issues de novo. *Jackson v. State*, 128 Nev. 598, 603, 291 P.3d 1274, 1277 (2012). The district court's contempt order was criminal in nature [T]he Sixth Amendment guarantee of the right to counsel applies only in criminal prosecutions. Whether a contempt proceeding is classified as criminal or civil in nature depends on whether it is directed to punish the contemnor or, instead, coerce his compliance with a court directive. Criminal sanctions are punitive in that they serve the purpose of preserving the dignity and authority of the court by punishing a party for offensive behavior.

...

Moreover, a civil contempt order is indeterminate or conditional; the contemnor's compliance is all that is sought and with that compliance comes the termination of any sanctions imposed. Criminal sanctions, on the other hand, are unconditional or determinate, intended as punishment for a party's past disobedience, with the contemnor's future compliance having no effect on the duration of the sentence imposed.

...
However, the United States Supreme Court has identified an additional factor in determining whether a contempt order is civil or criminal—that is, in order for a contempt order imposing a determinate sentence to be civil in nature, it must contain a purge clause. *Hicks v. Feiock*, 485 U.S. 624, 640 (1988). A purge clause gives the defendant the opportunity to purge himself of the contempt sentence by complying with the terms of the contempt order. *Id.*”

Furthermore, the Court identified purge clause as, "in case of any missed future compliances, order must state how person would purge his sentence to avoid or get out of jail.”

"However, the order failed to contain a purge clause that would allow Wesley to purge himself of the contempt sentence. Thus, if the stay was lifted due to a missed payment by Wesley, he would have no way to purge his sentence to avoid or get out of jail."

"While it is possible that the district court intended for Wesley to be able to purge himself of his sentence and get out of jail in such a situation by paying any missed payment, the order does not so state. Therefore, we hold that because the district court's contempt order did not contain a purge clause, it was criminal in nature and Wesley's Sixth Amendment right to counsel was violated when the contempt order was entered after proceedings in which he was not represented by counsel."

In this case contrary to The Nevada Supreme Court's above opinion family court's order specifically said that Burhan would go to jail immediately if he misses any payments in six months, so there was clearly "no purge" clause for Burhan;

"...if, in 6 months, Burhan has not made a good faith payment to Plaintiffs counsel's office every month relative to the above referenced attorneys fees obligation, Defendant Burhan Culculoglu shall be remanded immediately to the Clark County Detention Center for 25 days." Appendix B, page 4, line 14-18.

Additionally, family court not only it did not provide Burhan with an attorney to protect his constitutionally protected Due Process rights after it allowed his flat fee attorney withdraw one week before the hearing, it denied Burhan continuation he requested in writing and verbally in open court, so that he could prepare for the show cause hearing.

Last, but not least, family court order was ambiguous, as it did not have any specific payment amount to Michelle's attorneys, most importantly it failed to make its findings beyond a reasonable doubt since it was a criminal contempt order. Court's findings are not the facts, but Michelle and her attorneys' false allegations, Appendix B.

As explained in great detail, due to several violations of Burhan's constitutional rights of Due Process of Fourteenth Amendment and Sixth Amendment Rights family court's order is unlawful, therefore it is void. Supreme Court Of Michigan in its opinion stated that;

"A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not *res judicata*, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wound and once more probe its depths. And it is then as though trial and adjudication had never been. *Fritts v. Krugh*, *Supreme Court of Michigan*, 92 N.W.2d 604, 354 Mich. 97 (10/13/58)."

Again, this Court in its below opinion ruled that;

"State Courts are bound to uphold Federal law by application of Article VI of the United States Constitution" *See Stone v Powell*, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976) also stating "State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."

This Court in *Potenz Corp. v. Petrozzini*, 170 3d 617, 525 N.E. 2d 173, 175

(1988) stated that :

"A void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void."

Again countless cases of this Court and state Court's ruled that;

Void judgment is one which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected *City of Lufkin v. McVicker*, 510 S.X.2d 141 (Twx.Civ.App.-Beaumont 1973) at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree *Id.* Judgment is a "void judgment" if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. See *Klugh v. U.S.*, D.C.S.C., 610 F.Supp. 892, 901; *Wahl v. Round Valley Bank*, 38 Ariz. 411, 300 P.955 (1931); *Tube City Mining & Milling Co. v. Otterson*, 16 Ariz. 305, 146 P. 203 (1914); *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940). Violation of due process, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v. Goldblatt Bros.*, 363 Ill.25 (1936) and can be attacked at any time, in any court, either directly or collaterally See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1990) Fed Rules Civ. Proc., Rule 60 (b)(4), 28 U.S.C.A.; U.S.C.A. Const Amend. 5; *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

Since the order is void, any award or sanction orders as a result of void order shall also be void.

3. Certiorari Review Is Warranted Due To The Nevada Supreme Court's Egregious Mistake To Deny Burhan To File A Reply Thus Violated His Constitutionally Protected Due Process Clause.

Second question Burhan asks this Court is whether denying a party to file a reply brief to a “response brief” when rules allow him to file, violates the substantial rights of Due Process Clause especially when “response brief” raises the issue, appellant could not raise in his “appeal brief”?

The Nevada Supreme Court in its affirmation order stated that “Appellant failed to present any argument concerning the award of attorney fees.” As Burhan mentioned above, he could not raise the issue due to space constraint, however, Michelle’s attorneys specifically and mainly raised the attorney fees on their response brief that Burhan could not raise.

“In his fast track statement, appellant failed to present any argument concerning the award of attorney fees. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are not cogently argued or supported by relevant authority). Moreover, the district court had authority to award respondent attorney fees under NRS 22.100(3) and the court considered the reasonableness of the attorney fees pursuant to the *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), factors. Appellant has failed to demonstrate that the district court abused its discretion in awarding attorney fees. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (explaining that this court reviews an award of attorney fees for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.”

As explained above Nevada NRAP 28(c) and NRAP 3E(e)(2) gives right to file a reply to response, however, The Nevada Supreme Court denied Burhan a reply in its August 16, 2016 order, and this was a clear violation of Due Process Clause. Burhan would definitely present a successful argument as to why attorney fees should be vacated as explained in detail above.

However, Burhan’s Due Process rights were denied by The Nevada

Supreme Court that caused him irreparable harm when it did erroneously order that Fast Track rules do not allow response. Thus, denying him within its jurisdiction the equal protection of the laws and due process.

This Court in its opinion ruled that "The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. See *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972) *Minor v. Happersett* 88 U.S. 162 (1875); through *Nguyen v. INS 99-2071* (2001). In addition to denying reply brief, The Nevada Supreme Court also denied Burhan's oral argument request.

Since The Nevada Supreme Court violated the fundamental due process right of Burhan, its order of affirmation shall be void and vacated.

As mentioned above as well, the below cases offers a persuasion value to vacate The Nevada Supreme Court's affirmation order, as it did violate Burhan's Due Process rights.

Judgment is a "void judgment" if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. See *Klugh v. U.S., D.C.S.C.*, 610 F.Supp. 892, 901 *Wahl v. Round Valley Bank*, 38 Ariz. 411, 300 P.955 (1931); *Tube City Mining & Milling Co. v. Otterson*, 16 Ariz. 305, 146 P. 203 (1914); *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940). Violation of due process, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v. Goldblatt Bros.*, 363 Ill.25 (1936) and can be attacked at any time, in any court, either directly or collaterally See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1990) Fed Rules Civ. Proc., Rule 60 (b)(4), 28 U.S.C.A.; U.S.C.A. Const Amend. 5; *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

Burhan respectfully requests that this Court grant his petition, reverse and vacate the decision of The Nevada Supreme Court.

CONCLUSION

For the foregoing reasons, Burhan respectfully requests that this Court grant his petition for writ of certiorari and reverse the judgment of The Nevada Supreme Court.

DATED this 22nd day of January 2018.

Respectfully submitted,



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