IN THE SUPREME COURT OF THE STATE OF NEVADA

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CAROLYN JEAN THAMES WILLIAMS,	)	
	)	
Appellant,	)	**S.C. CASE 28354**
	)	D.C. CASE D175182 consolidated
vs.	)	with D175895
	)	
LESLIE WEGENER WILLIAMS,	)	
	)	
Respondent.	)	

RESPONDENT'S ANSWERING BRIEF

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STATEMENT OF THE CASE

Appeal from property and debt distribution, and alimony terms of a final decree of divorce; Hon. Steven E. Jones, Eighth Judicial District Court, Clark County, Nevada. Appellant, Carolyn Jean Williams ("Carolyn"), filed a Complaint for divorce on April 15, 1994, in Case No. D 175182. 1 ROA 1. There was a lengthy delay in serving Respondent, Leslie Wegener Williams ("Les"). Not knowing of Carolyn's Complaint, he also filed a Complaint for divorce, on May 6, 1994, in Case No. D 175895. 11 ROA 1675. Eventually, the actions were consolidated by stipulation and order. 1 ROA 25.

There was a considerable amount of motion practice from the very beginning of the case. Eventually, after more than a year of activity, the case was set for trial, which was held August 3, 4, and 11, 1995. At the close of trial, the District Court granted the divorce, but indicated that it would issue a detailed minute entry after reviewing certain exhibits. 13 ROA 716.[1]

The detailed minute entry was issued September 25, 1995, and was made into Findings of Fact, Conclusions of Law, and a Decree of Divorce, which was filed on October 20, 1995. 8 ROA 1549-65. Notice of Entry was served by mail on November 16, 1995. Carolyn filed her notice of appeal the next day. 8 ROA 1587.[2]

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[1] The transcript volumes are not sequentially paginated in the Clerk's index. Accordingly, page references are those found within those volumes.

[2] Counsel notes that Appellant's rendition of the actions and dates involved in this case vary considerably from those set out in this Brief (*e.g.*, Carolyn recites that her Notice of Appeal was filed in June, 1996). Unfortunately, Carolyn made no citations to the Record On Appeal for many of these references, and it is not known to what she was referring. Obviously, if her notice of appeal had not been filed for seven months, it would have been untimely. The Court is asked to use the references provided in this Brief.

STATEMENT OF FACTS

It is respectfully submitted that Appellant's recitation of the facts is completely insufficient to allow this Court a meaningful review of what happened in this case below, or why. The Court is asked to use this recital of the facts of the case pursuant to NRAP 28(b).

Prior to his marriage to Carolyn, Les Williams was a successful veterinary physician who owned and operated his own veterinary clinic after leaving public employment as a city veterinarian. 12 ROA 475-76. All of Les's educational experience and professional development occurred long prior to his marriage to Carolyn; he had been working in veterinary medicine for years, and by the time of trial was at the end of his career. 8 ROA 1554; 13 ROA 546-47; 11 ROA 256. His lucrative medical practice and a lifetime of work prior to his marriage to Carolyn had allowed Les to acquire sizeable pre-marital assets of about a million and a half dollars. 12 ROA 413-44; 13 ROA 509-516; 10 ROA 90.

Carolyn, also, obtained much of her educational and academic training prior to her relationship with and marriage to Les. She testified at trial that she owned a house and two cars and had a "very nice lifestyle then," although she stated that her premarital health was poor because of three back surgeries. 10 ROA 80-83, 94-95.

Before they married, the parties had cohabited; Les moved into the Carolyn's home. 12 ROA 466; 11 ROA 242. She was at the time gainfully employed as a registered nurse, with an income at the time of marriage of approximately $39,000.00 per year. 10 ROA 136.

After moving into Carolyn's home on Rochelle, Les spent over eleven thousand dollars of his separate property making improvements to the property. 8 ROA 1550; 12 ROA 466; 11 ROA 242-243, 257-258. When he invested the funds, the parties had already made plans to marry. 11 ROA 257. Carolyn later sold the Rochelle property, but she individually retained the proceeds. 8 ROA 1550. While Carolyn contended that the proceeds were used to establish a savings account,

the evidence showed, and the court below found, that virtually all the money went to third persons, leaving Carolyn the recipient of a monthly payment of $457.00 for a note she took upon sale of the property to new owners. 8 ROA 1550; 12 ROA 469; 10 ROA 44-50; 11 ROA 258-269; 13 ROA 524-525.

Les and Carolyn Williams were married on May 24, 1986; they separated permanently less than eight years later, by April, 1994. 8 ROA 1550, 1557. At divorce, Carolyn was 52 and Les was 65 years old. The parties had no children. 10 ROA 79, 140; 12 ROA 413.

During the marriage, Carolyn returned to school at UNLV and obtained a degree in sociology and a certificate in gerontology. 10 ROA 126-131. Although Carolyn claimed the GI bill paid for her schooling, Les claimed that he had picked up the expense of Carolyn's later return to college. 10 ROA 131; 12 ROA 478.

Les estimated that at the time of his 1986 marriage to Carolyn, his veterinary practice was worth about $80,000.00. 12 ROA 476-77. This was probably too optimistic on his part. Just one year earlier, the business had been evaluated as worth $10,000.00, during Les's divorce from an earlier spouse. 13 ROA 664. In 1994, shortly before the divorce in this case, Les had tried to sell the practice as a going concern for between ten and twenty thousand dollars, but was unsuccessful. 13 ROA 527. By the time of this divorce, his increasing age, increased competition in the local market, and other factors, reduced the value of the practice to somewhere between zero and $10,000.00. 12 ROA 476-77; 13 ROA 662-66.

The only expert testimony was that the clinic had probably not changed much in value during the marriage, although it did better in the early years than in the later years. 13 ROA 665. The expert noted that without the personal efforts of Les, because of his age, infirmity, or any other reason, the clinic had essentially no value. 13 ROA 669. While it appears that Les over-estimated

the value the practice had ever had, it was clear that there was no increase in value during this marriage. The court below so found. 8 ROA 1554.

Carolyn conceded that the clinic probably had no value at the time of trial, but while noting Les's age and his failing health, insisted that he "made it just go away and it was nothing." 10 ROA 99-100.

The parties built a residence in Henderson, Nevada, which became their marital home (the "Noritake house"). 8 ROA 1550. Both names went on the title to the new residence. However, Les testified, and Carolyn's testimony confirmed, that the parties did not have a cashflow sufficient to subsidize the purchase and that the money needed was derived from Les's liquidation of his pre-marital property assets. 8 ROA 1550; 13 ROA 520-523, 564; 11 ROA 243-245; 12 ROA 415-440.

Les testified that the Noritake house was titled in both names based on Carolyn's explicit promise to contribute half of the down payment costs; she denied it. 12 ROA 461-62, 467; 11 ROA 243.

Les originally stated that he thought he had put $66,000.00 of his separate property into the down payment on Noritake; Carolyn's attorney was willing to stipulate to that amount. 11 ROA 263. He later went back over the numbers and testified that his total investment was about $114,000.00, including upgrades, during the year and a half it took to finish construction of the Noritake house. 13 ROA 521-22.

Carolyn originally testified that she contributed much of the money that went into the Noritake house, but on cross-examination was unable to even specify any contribution of funds beyond $2,000.00 that had gone into a joint account at some point during the Noritake construction. 11 ROA 263-69. Les did not believe that even that sum ever went into the Noritake construction, although he noted that Carolyn so testified. 13 ROA 524; 12 ROA 453, 471.

Carolyn had claimed that some of the Noritake construction funds came from "accidents," implying that she had invested her funds. 11 ROA 262. Les testified at trial that some money from auto accident settlements might have found its way into the Noritake funding, but that all of the insurance money that could have gone into Noritake must have been attributable solely to him, because the only accident for which Carolyn ever received funds was in 1989, and the construction financing was completed in 1988. 13 ROA 520.

The parties were in substantial disagreement at trial as to what happened economically during their marriage, although they agreed that until about 1994, Carolyn controlled the banking. 12 ROA 473; 10 ROA 148. Les testified that by January, 1994, he realized that he was "hemorrhaging badly," to the point that his premarital net worth of about a million and a half dollars was declining by about $100,000.00 per year; during the marriage, his net worth was reduced by some $700,000.00 to $800,000.00, without even considering the debts Carolyn ran up during the marriage that were still outstanding. 12 ROA 473-74, 415-441; 13 ROA 578; 6 ROA 1306; 3 ROA 498-99.

During the years Carolyn handled the banking, she diverted money from Les's sole and separate accounts to joint accounts, or to accounts in her own sole name. 12 ROA 443-44. Les stated that when he figured out what was going on, he first tried talking to Carolyn, and then went with her to counseling, but ultimately "started taking over the records myself and . . . tried to get her to stop spending." 12 ROA 474.

Carolyn admitted that she redirected money from Les's separate property accounts to joint accounts or accounts in her name. 10 ROA 148. She admitted keeping at least $5,000.00 in Les's separate property personal injury funds. 10 ROA 152-54. She admitted to diverting money from Les's separate property accounts, and ultimately purchasing certificates of deposit in her own name with the money from those accounts, and later transferring it into an account in her name at GNA

Securities. 10 ROA 169, 164, 168. She admitted that whatever money she obtained from her own efforts, she put into a safe deposit box in her sole name. 10 ROA 138. Other money went into the box as well, but when pressed by the court below for the source of the funds, she replied only: "its hard to say." 10 ROA 138.

Carolyn claimed that when she diverted all that money into her own name, it was with Les's knowledge and consent, and that the checks made out to him that she intercepted had been mysteriously re-issued by insurance companies when the checks "should have been" made out to her. 10 ROA 151, 158-160. Carolyn claimed that accounts showing only her name were "really" joint accounts, but claimed to have no recollection of where she had obtained many thousands of dollars used to open various accounts in her own name. 10 ROA 144, 160-62, 166-69, 170; 11 ROA 250-53.

As to the Noritake house, Carolyn originally claimed that she invested "approximately twenty thousand dollars" of her separate property. 10 ROA 86. She claimed that she helped finance its purchase by application of the $457.00 per month that she received every month from the sale of her prior house on Rochelle. 11 ROA 260. She refused to admit that in the year or so between the sale of Rochelle and the completion of Noritake, it was impossible to come up with $18,000.00 in monthly payments of $457.00, which could at most have totaled some $5,000.00. 11 ROA 259-261. Carolyn also claimed that the same $457.00 per month, during the same time, "went into" the animal eye clinic to support it, and had her mother so testify as well. 10 ROA 46, 260. She **also** claimed that the $457.00 per month was used to finance her post-marital education, denying that Les paid for that education. 10 ROA 131. She **also** claimed that the $457.00 per month was the source of the $30,000.00 GNA account and other savings accounts she later liquidated on the eve of trial, and that ***all*** of the $457.00 per month payments went into that account (alleging that the account was,

therefore, separate property). 10 ROA 140-43, 171. Carolyn never provided any documentation of any of her mutually exclusive claims for where the $457.00 per month had actually gone.

Despite all of the above, Carolyn characterized the financial aspects of the marriage as: "I just kept giving and giving . . . and never received a thing." 10 ROA 98.

In any event, once Les tried to reassert control over his premarital assets, the marriage quickly went into a downhill spiral. The counseling and attempts to have Carolyn control her spending failed. By December, 1993, Carolyn had a steady outside boyfriend with whom she traveled and for whom she made purchases, all charged to Les. 12 ROA 361-62; Trial Exhibits G, H.[3] During the course of the divorce case, Les ultimately found that Carolyn had been using six different aliases, and six different Social Security numbers, but Les was never able to unravel all the transfers to figure out just how many accounts she had, how much of the money was really his, or Carolyn's, or belonged to Carolyn's mother, or was ultimately used to pay sums for investments by Carolyn's boyfriend. 13 ROA 571-76.

By April, 1994, things had deteriorated entirely. Les had sought and obtained a Temporary Protective Order (TPO) after being assaulted by Carolyn and being threatened. Trial Exhibit R. There is little trial testimony on the subject; when cross-examination of Carolyn began, her attorney offered a permanent injunction that "she'll never touch him again." 11 ROA 269-270. The stipulation was accepted and the questioning was terminated.

Near the time the parties separated in April, 1994, Carolyn cashed a check in the amount of $7,500.00 from an insurer made out to Les for personal injuries he suffered in an unrelated accident. 8 ROA 1551. After extensive pre-trial argument and documentation presented below, the Court ordered Carolyn to reimburse Les $5,000.00 of this amount within 30 days. 2 ROA 242; 8 ROA

[3] All of Les' trial exhibits were admitted by stipulation. 10 ROA 163.

1551. She was later granted authority to spend $2,500.00 of that sum to retain a valuation expert, but she never did so, or returned the $2,500.00 left in her hands for that purpose. 5 ROA 921; 12 ROA 395. To date, no part of any of the separate property personal injury compensations payable to Les, but intercepted and kept by Carolyn, have ever been repaid to Les.

Carolyn was served with a Temporary Protective Order specifically ordering her not to enter the animal eye clinic in April, 1994. 11 ROA 291-93. Carolyn ignored the TPO. On May 2, she raided and removed from both the home and the animal eye clinic a massive quantity of documentary records; those records proved to be a significant factor in many financial and other pieces of the case. To get them, Carolyn physically forced her way into the animal eye clinic, assaulted one of the doctors and other staff, and made off with some 27 boxes of documents and papers. 11 ROA 271; Trial Exhibit R.

At trial, Carolyn conceded that she ultimately turned over only 14 boxes of documents. 11 ROA 271-73. Despite the multiple orders (detailed below) to turn over the documents, many had not been recovered by the time of trial, yet Carolyn attempted to introduce into evidence various documents that she had claimed during discovery could not be located or did not exist. *See*, *e.g.*, 11 ROA 276; 10 ROA 116-120.

Ultimately, the trial court judge directly took over trying to extract from Carolyn a coherent story as to where the long-sought documents had been during the past year and a half. 11 ROA 273. Despite careful and patient questioning, the best answer the court below could get Carolyn to come up with was that she had handled the originals and made copies to such an extent that she had lost track of who had what originals or copies. 11 ROA 271-292. Even as late as the end of trial, Carolyn was still finding documents belonging to Les from long before the marriage, although at other times she denied holding any documents at all, and frequently claimed to have already produced "everything." 12 ROA 409-410; 13 ROA 679; 13 ROA 504.

These documents, in addition to containing much of the paper trail that would have simplified the trial record and made it more complete, were necessary for tax purposes. Charles Sorrells, CPA, who did the taxes for both parties and for the animal eye clinic, was stipulated to as an expert. 13 ROA 594. He testified at great length as to what documents were missing, and how the absence of the back-up documentation (which was always painstakingly assembled by Les) was bringing about the inevitable effect of having the IRS disallow business deductions; this in turn was creating a tax liability of about $40,000.00. 13 ROA 594-638. In other words, Carolyn's non-return of the documents was creating a $40,000.00 tax liability.

Mr. Sorrels testified that Carolyn's failure to return business records substantiating tax deductions of the Animal Clinic was the basis for a tax audit liability of tens of thousands of dollars. 8 ROA 1553. It was undisputed at trial that these were the same documents taken by Carolyn which the Court had repeatedly ordered her to return to Les. 8 ROA 1553. Mr. Sorrells thought that many of the tax liabilities could have been avoided, or at least greatly reduced, if the long-sought documents had been produced. *Id.* Les also testified at some length as to what documentation was in the missing files -- what he kept, and why, and what the effect on him would be in the impending audit if the records were unavailable. 13 ROA 671-77.

On cross-examination as to why she refused to produce the documents, Carolyn admitted writing to and calling the IRS seeking to have tax penalties assessed against Les while freeing herself from that liability. 12 ROA 325-335. She refused to admit, however that such was the reason she was not producing the documents.

At one point, Carolyn accused one or more of her former attorneys of stealing the sought-after documents, but the attorneys were contacted and denied holding any records at all. 11 ROA 279-282; 13 ROA 508.

Carolyn suggested that she had liquidated a great deal of valuable pre-marital property, which had subsequently gone into the acquisition of community property assets. 11 ROA 203-210, 240-42.

Les, however, testified that the total contribution from liquidation of the Rochelle assets was "a minor amount" of about $800.00. 12 ROA 452. He also testified that Carolyn should have no further claim for any reimbursement for whatever contributions she did make because of what she did when she left. At about the time Les was granted exclusive possession, Carolyn "raided" the Noritake house, backing up a large truck with switched license plates, and taking most of the valuable equipment and furnishings. 12 ROA 452-457; 13 ROA 676-77. Carolyn admitted visiting the house in a truck with false plates, but denied that she took all the furniture, furnishings, and equipment that Les said was removed. 11 ROA 203-210; 10 ROA 110-111. Les testified that after he got the TPO and re-entered the house, the office equipment was gone, along with the maple dinette set, wrought iron furniture, and the dining room set. 12 ROA 455-56.

At one point, Carolyn's son burgled the home and stole several items of equipment, Les's gold watch (inherited from his father), and other jewelry, etc. 12 ROA 459-460; 13 ROA 535-39; Trial Exhibit T. He was later convicted of the theft. 12 ROA 459. Although Carolyn somehow ended up in possession of various items of Les's personal property, she denied having the diamonds that had been removed from the rings, or the watch and other property that was still missing. 12 ROA 395-96.

After the separation but prior to the sale of the Noritake house, Carolyn refused to pick up various items of personal property. Les had placed everything remaining in the house into two storage units, by court order, and Carolyn was informed that she could claim whichever of them she wished. 12 ROA 460-62; 8 ROA 1552. These items were packed and stored by a commercial moving company at a cost of over $6,000.00. All items were grouped into an "A" group in one unit, and a "B" group in another. There was also a third, separate unit containing Carolyn's property that

she had never picked up. 8 ROA 1552; 6 ROA 1307-1310. At trial, Carolyn testified that none of her six lawyers had ever given her the repeated demands in writing that she pick up that personal property and pick from the two lists, which would have avoided the cost of its moving and storage. 12 ROA 316. She admitted never sending a truck to pick up her things as she had agreed to do. 12 ROA 346.

Les testified that from the time of separation forward, he serviced all of the parties' debt, including the debt incurred by Carolyn in the spending spree that led to their separation. 13 ROA 680-83; Trial Exhibit J.

Carolyn claimed that she was "paying all the community debts from the beginning of this divorce to now." 12 ROA 351. On exhaustive cross-examination, however, she was unable to show a single pre-separation debt against which she had made any payment. 12 ROA 351-386. At one point, she tried to imply that charges on her cards were made by some person who had stolen her credit cards out of her closet. 12 ROA 358.

During the pre-trial proceedings, Carolyn repeatedly requested that the Court allow her to retain the Mercedes automobile. She was allowed to do so as long as she maintained all payments on the vehicle. 2 ROA 242; 8 ROA 1551. Carolyn stopped making payments on the contract, causing the vehicle to be repossessed and creating a liability for Les, without any notice to him that she was doing so. 11 ROA 254-256. By the time of trial, Carolyn denied ever requesting to keep the Mercedes, or being ordered to make the payments. 11 ROA 254-56.

When Les seized control of his pre-marital bank accounts in 1994, he made several unsettling discoveries. Particularly troubling to Les was his discovery that Carolyn had obtained a very considerable amount of insurance on his life without his knowledge. 12 ROA 457-59; 12 ROA 449.

The court below summarized Carolyn's request for alimony as being made on the grounds that she was unable to work due to various medical problems involving her back and urinary tract,

and that after considering her unemployment and zero income, versus Les's significantly greater salary during the marriage, she was entitled to alimony. 8 ROA 1554-1555.

On cross-examination, however, Carolyn conceded that she quit her last job as a registered nurse, and that she had credentials allowing her to seek work in the medical field, but that she had not even applied for work for such positions. 8 ROA 1554-1555; 11 ROA 223-225, 235-36, 306; Trial Exhibits B, C. Further, Carolyn had confessed to the parties' counselor that she quit her job to get more money out of the court system. 11 ROA 223-233. She admitted obtaining and highlighting sections of books detailing how a spouse could try to convince a trial court to award larger sums for alimony by quitting work. 11 ROA 225-27.

Carolyn had undergone surgical procedures prior to trial. However, her counselor noted that she had a "histrionic personality disorder." 11 ROA 218; Trial Exhibit Z. Worse, her attending physicians reported that she repeatedly commented about trying to sue her husband, and that it appeared she was deliberately sabotaging her medical equipment in order to manufacture injuries to herself for the purpose of litigation, to the point that "combined with the inconsistencies in the reports that I obtained from Carolyn make me very suspicious of all of these circumstances relative to medical legal concerns. . . . It is my impression that she is very astute at playing one physician against another." 11 ROA 293-300; Trial Exhibit L, Reports of January 28-29, 1995, at 1-2. At trial, Carolyn attempted to dismiss all of these observations, variously blaming "the divorce," and her own doctor's "covering his ass." 11 ROA 294-99.

Les, by contrast, testified without contradiction at trial that in addition to the cumulative effect of his age and automobile injuries, he suffered from "advanced stage Type II diabetes" requiring him to take 35 units of insulin twice daily, gallbladder problems, and a probable tumor for which evaluation was pending. 13 ROA 531-32; Trial Exhibit A. He had worked constantly since 1954, and explained that he was simply unable to do so any longer. 13 ROA 533.

There were a succession of pre-trial orders entered in this case that had a direct effect on the evidence that was made available for trial, and on the lower court's final rulings. On August 26, 1994, the Court ordered the sale of the former marital residence on Noritake. 2 ROA 242; 8 ROA 1551. Carolyn refused to sign the necessary papers, claiming that the order to sell the house was "unconstitutional." 8 ROA 1551. The house eventually sold, and the net sale proceeds of $28,500.00 (this was $6,000.00 less then the amount realized from sale, because of sums that were paid to move and store the furniture) was before the court for disposition at trial. 12 ROA 471; 8 ROA 1556.

The August order also specifically directed Carolyn to file and serve the supplemental financial information she spoke of in open court that was not indicated on her Affidavit of Financial Condition, including an itemization of all funds received within the past 120 days. 2 ROA 243. She never did so, and admitted at trial that she had ignored the order. 12 ROA 347.

On September 19, 1994, the Court ordered Mr. Willick to place the Noritake proceeds in an interest-bearing account under the dual signatures of Mr. Willick (Les's counsel) and Carol Menniger, Esq. (Carolyn's then-counsel). 8 ROA 1552. This was done.

On October 13, 1994, the District Court held Carolyn in contempt of court for failure to comply with orders related to her refusal to return the financial documents she had taken from Les's Animal Eye Clinic that were necessary for the IRS audit, along with other documents. 5 ROA 919; 8 ROA 1551. She also failed to produce (as ordered) records showing her earnings as a registered nurse and what she had done with her pay checks. Further, Carolyn had refused to release (as ordered) a life insurance policy (on Les's life) that was in her possession. 5 ROA 920; 8 ROA 1551. As a sanction and in partial payment for attorney's fees resulting from her actions, the District Court ordered Carolyn to pay $1,500.00 to Les's attorney. 5 ROA 919; 8 ROA 1551. To date, Carolyn

has not paid this award. Despite Carolyn's open defiance of the lower court's orders, the order of October 13 specifically spared Carolyn any jail time for her contempt "at this time." 5 ROA 919.

It was this October, 1994, order that allowed Carolyn to retain $2,500.00 of the $5,000.00 she had intercepted in Les's separate property personal injury compensation. 5 ROA 921. The parties' enormously varying positions, and the reason for the Court's order, were set out in the order itself:

> Plaintiff shall be entitled to appraise the business. Plaintiff has chosen Cliff Beadle, who Plaintiff states will appraise the Clinic for Five Thousand ($5,000.00) Dollars. Defendant's expert is John Lowther, Esq. Defendant shall pay all of Mr. Lowther's fee and one-half of Mr. Beadle's fee, subject to an adjustment at trial. Specifically, Plaintiff claims that the business is worth hundreds of thousands of dollars and that Defendant has some ten (10) million dollars. Defendant claims the business is worth about $20,000.00 and is primarily a separate property asset. Defendant's one-half of the fee for Mr. Beadle in the amount of Two Thousand Five Hundred ($2,500.00), shall be deducted by Plaintiff from the $5,000.00 she owes to Defendant and paid to Mr. Beadle forthwith. Once the necessary documents are returned to Defendant by Plaintiff, he shall provide Mr. Beadle with any and all information required. The remainder of the $5,000.00 shall be provided by Plaintiff to Defendant by 5:00 p.m. on Friday, October 14, 1994.

5 ROA 921. Carolyn never retained Mr. Beadle or anyone else, and never repaid any part of the $5,000.00 to Les. She never presented any evidence whatsoever regarding the clinic being worth hundreds of thousands of dollars, or regarding Les having millions, or regarding Carolyn having any legitimate community property or other interest in the animal eye clinic.

At trial, Carolyn admitted her refusal to comply with the lower court's order to repay Les his $5,000.00, or to pay the temporary attorney's fees of $1,500.00, and further confessed that during the same period that she refused to pay sums ordered by the court below, she had some $30,000.00 in a safety deposit box, and another $30,000.00 that she later gave to her mother. 12 ROA 335-343; 10 ROA 36, 85, 136.

By November 28, 1994, Carolyn had still not obeyed the Court's order of October 13, 1994, requiring the records be turned over for the then-imminent IRS audit. She was again held in contempt of court for refusing to hand over various documents and to release the life insurance

policy she held against the order of the court. 6 ROA 1069; 8 ROA 1552. She was given until 5:00 p.m. that day to comply with the prior orders, but she refused to do so. A bench warrant was issued and Carolyn was ordered incarcerated for 15 days. 8 ROA 1552. Financial issues were deferred until updated Affidavits of Financial Condition could be filed.

Among the discovery requests with which Carolyn refused to comply was a release of information regarding an account she held in an out-of-state financial institution. That institution would not honor subpoenas from Les's attorney, demanding a release from Carolyn. 8 ROA 1552. She was picked up and jailed very briefly.

On December 14, 1994, the lower court issued an order permitting Les's attorneys to inspect a safety deposit box held in Carolyn's name at PriMerit Federal Savings Bank. 6 ROA 1198; 8 ROA 1552. Carolyn, however, had already emptied the box; she refused to disclose what contents she had removed from the box before the order was served. 8 ROA 1552. At trial, Carolyn confessed that the box contained $30,000.00 (which she claimed was from her salary), and other "miscellaneous funds." She claimed that the money had been withdrawn by her, in part, to pay the six attorneys that she had hired during the course of the litigation. 8 ROA 1552; 10 ROA 136. The Affidavit of Financial Condition Carolyn submitted to the court indicated that she still had a debt of over $10,000.00 in attorneys fees. 13 ROA 703.

A supplemental Order was issued on December 16, 1994, permitting Les's counsel to place the proceeds from sale of the Noritake property in an interest-bearing account. 8 ROA 1552. A lien for attorney's fees was issued by one of Carolyn's several sequential attorneys, Carol Menniger, Esq. The lien's original form attached to "assets of the marital community . . . owned by the parties, or either of them." It was amended on December 30, 1994, to comply with the intent of the District Court's oral direction (given when the court granted the lien) that it attach only to such funds as were "the assets of the marital community awarded in this matter to [Carolyn]." 8 ROA 1552-1553.

In an order filed January 11, 1995, Carolyn's 15 day jail sentence was stayed pending her completion of 120 hours of community service. 6 ROA 1230; 8 ROA 1552. Carolyn admitted at trial that she never performed the ordered community service, and she expressed no plans to do so. 8 ROA 1552; 12 ROA 395. The order also noted the financial posture of the parties:

> since the Court recognizes the fact that (1) Defendant is expending a considerable amount of his income to preserve the parties' credit and attempting to satisfy a portion of the community debt, (2) the significant concerns that have surfaced regarding financial transactions, and (3) Plaintiff has been able to successfully manage to borrow or obtain the necessary funds to continue legal representation and maintenance of her lifestyle of choice, the Court hereby denies Plaintiff's requests for preliminary attorney's fees or temporary spousal support at this time, and the final issue as to spousal support and/or attorney's fees shall be adjudicated at the time of trial.

Trial took three days, August 3 and 4, 1995, and August 11, 1995. The lower court reviewed the entire voluminous trial and pretrial record prior to rendering its written decision on September 25, 1995, directing respondent's counsel to prepare the Divorce Decree. 8 ROA 1553.

The court below issued findings making it quite clear that he thought Carolyn lacked any credibility whatsoever, and accepting Les's testimony on those points on which the two conflicted. 8 ROA 1549-1565.

Carolyn claimed to have tens of thousands of dollars in debt in her own name, but the court below found that she had incurred it after the separation of the parties, and taken no responsibility for the debts she ran up prior to separation. 8 ROA 1554. The court below also noted that Carolyn admitted to placing over $30,000.00 in an out of state financial institution, and then withdrawing those funds on the eve of trial and giving the money to her mother. 8 ROA 1554-1555. She additionally conceded that she had stopped making payments on the Mercedes automobile without the approval of the Court and caused it to be repossessed knowing that the liability would fall to Les. 8 ROA 1554.

The lower court found that Carolyn was not able to establish that the funds in either the safety deposit box, which she emptied, or the out-of-state financial institution, which she gave to her mother, were derived from any source other than Les's premarital property or community property. 8 ROA 1554-1555.

The lower court characterized Carolyn's behavior, throughout the marriage, and during the divorce, to be terrible. Summarizing its ruling as to alimony, the district court found no basis for an award and concluded:

> (22) Under certain circumstances, alimony is certainly appropriate. However, this is not one of those cases. In order for the Court to seriously consider an award of alimony in this case, the Court would have to completely disregard not only Carolyn's conduct during these proceedings, but also her conduct during the marriage itself. This would not be fair, nor yield itself to an equitable distribution of property and debts.
>
> (23) Carolyn has continuously violated the orders of the Court and prolonged the litigation in this matter, in an apparent attempt to gain leverage upon dissolution of this relationship. Among the areas of contempt is Carolyn's refusal to return, or timely return, all financial documents as previously directed by this Court; her failure to return to Les his personal injury funds where [they] were not utilized as previously directed by the Court in the amount of $5000.00; Carolyn's conduct surrounding the Mercedes automobile; Carolyn's disclosure, or lack thereof, of financial information as directed by this Court; Carolyn's failure to pay previously ordered attorney's fees; and Carolyn's violation of the Joint Preliminary Injunction that has been in effect in this matter.
>
> (24) In sum, this Court finds Carolyn to be extremely uncredible, contemptuous, vindictive and entirely self-serving, which has, at the very least, been a detriment to Les. Based upon the above, the Court does not find a basis or justification for an award of alimony and hereby denies same.

8 ROA 1555.

The Divorce Decree made provisions for the division of the parties' personal and community property. The lower court gave Carolyn seven (7) days from the entry of the Decree to provide written election to Les or his counsel of the stored items. If Carolyn failed to elect, Les was authorized to choose. Each was to be solely responsible for any corresponding storage of items awarded to him or her. 8 ROA 1556.

The District Court awarded the remaining equity from the sale of the Noritake house, in the amount of $28,507.96, to Les. 8 ROA 1556. The Court indicated that, under the circumstances in this case, it was justified in awarding the entirety of the amount of the sale for the marital residence to Les. Alluding to the $60,000.00 that Carolyn had stashed and then disposed of, the lower court found that Carolyn had retained all her paychecks during the marriage and withdrawn these funds from the couple's community account without Les's consent, and that she ultimately spent or gave away all of this money to her mother and other third parties in violation of the Joint Preliminary Injunction. 8 ROA 1556.

Further, the lower court made each party responsible for debts listed in their respective Affidavit of Financial Condition (essentially, this dropped on Les all marital and pre-separation debt, and anything he had charged since separation, and had Carolyn pay only that which she had charged since separation). 8 ROA 1556-1558.

Each party retained the personal belongings that they currently had in their possession and the right, title and interest to all pre-marital property, pension, retirement and similar funds derived from employment. 8 ROA 1559.

Carolyn was again ordered to repay Les $5,000.00 from the personal injury check she had intercepted and cashed. The order reduced the sum to judgment and made it collectible by all legal means. 8 ROA 1559. Les was awarded all proceeds from any pending insurance claims through USAA Insurance Company including compensation from a burglary of the former marital residence. 8 ROA 1559. The parties were held jointly responsible for any amount owed to the Internal Revenue Service. 8 ROA 1558.

Finally, the District Court ordered Carolyn to pay $30,000.00 in attorney's fees to Les's counsel. The Court found evidence from testimony at trial and from the considerable pre-trial record that Carolyn's stalling tactics and continual disobedience of Court orders drastically prolonged the

proceedings (and thus increased their cost) past the point of reason. 8 ROA 1560. Carolyn was again ordered to comply with the earlier order to pay Les's counsel the $1,500.00 sanction intended to reimburse Les for unnecessary attorney's fees he had to expend to force her to produce documents she had taken and refused to return. 8 ROA 1559-60.

Carolyn elected to appeal.

ARGUMENT

I. THE DISTRICT COURT WAS WITHIN THE BOUNDS OF ITS DISCRETION IN FAILING TO AWARD THE APPELLANT ALIMONY.

With a clear understanding of the facts set out above, the legal analysis of the three issues raised by Carolyn is actually rather straightforward.

Frankly, Les is unable to make sense out of the standard of review set out on page 6 of Appellant's Opening Brief (AOB). In granting a divorce, the district court has the discretion to award alimony to a husband or wife in a specified sum or in periodic payments as appears just and equitable under the circumstances. NRS 125.150(1)(a).

The standard of review in an alimony case is "abuse of discretion". This Court has repeatedly held that "In determining whether to grant alimony, as well as the amount thereof, the district courts enjoy wide discretion." *Kerley v. Kerley*, 111 Nev. ___, 893 P.2d 358 (1995); *Alba v. Alba*, 111 Nev.___, 892 P.2d 574 (1995); *Fick v. Fick*, 109 Nev. 458, 464, 851 P.2d 445, 450 (1993); *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990); *Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994); *Gardner v. Gardner*, 110 Nev.1053, 881 P.2d 645 (1994); *Rutar v. Rutar*, 108 Nev. 203, 827 P.2d 829 (1992); *Heim v. Heim*, 104 Nev. 605, 763 P.2d 606 (1988).

This Court has also repeatedly stated that it "will not disturb the district court's grant or denial of permanent or lump sum alimony absent an abuse of discretion." *Kerley*, *supra*; *Daniel v. Baker*, 106 Nev. 412, 414, 794 P.2d 345, 346 (1990).

The question presented, then, is whether, on a review of the entire factual history of the case, the district court abused its discretion, having entered an order beyond the range of possible results that could be reached after evaluating the credibility of the parties and in light of the facts as found to be true below.

The detailed events that occurred in this unnecessarily lengthy and protracted case are set out above to demonstrate the calculating moves of Carolyn throughout the marriage and extending throughout the divorce proceedings. They show a clear intent on her part to abscond with Les's separate property estate, and to injure him directly and indirectly, through her own means and by trying to use the IRS as a weapon. The facts show a pattern of outright theft by Carolyn, who looted Les's life savings to the tune of $100,000.00 per year during their marriage; in some eight years, she managed to deplete half of what had taken him a lifetime to build.

The decision of the court below in deciding that Carolyn had "not demonstrated statutory, legal, or equitable grounds, or need for an award of alimony under the laws of this state, nor the capacity of Les to pay therefor" was made after a careful review of the lengthy pretrial record, and three day trial record, and is supported by Nevada state statutory and case law.

Carolyn's attack on the judgment below is fairly simple. She argues that Les leaves the marriage with more assets than she does, and that alimony "would have been appropriate" under those facts, but that the court below erred critically by finding that Carolyn had behaved contemptuously during the divorce proceedings. AOB at 8. She then reasons that the current form of NRS 125.150 has been amended "to remove any reference to the respective merits of the parties as it relates to an award of alimony," which she implies may not be considered by the trial courts. AOB at 8-9.

Carolyn is wrong. While Carolyn neither made a case for alimony under statutory law below, nor argued the appropriate factors of such an analysis on appeal, they will be briefly recounted to demonstrate that the district court operated within the scope of its discretion.

We start with the ruling below. The Court found that Carolyn "has not demonstrated statutory, legal, or equitable grounds or need for an award of alimony under the laws of this state,

nor the capacity of Les to pay therefor, and it is fair and equitable for no alimony award to issue in this case." 8 ROA 1560.

In *Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994), this Court articulated seven factors in determining whether the appropriate non-rehabilitative alimony award in a divorce case is "fair and just" under the law. They are:

(1) the wife's career prior to marriage;
(2) the length of the marriage;
(3) the husband's education during the marriage;
(4) the wife's marketability;
(5) the wife's ability to support herself;
(6) whether the wife stayed home with the children; and
(7) the wife's award, besides child support and alimony.

Applying the factors listed in *Sprenger* to the facts of this case shows that an award of alimony to Carolyn would be neither just nor equitable.

(1) The wife's career prior to marriage

The record shows that prior to her marriage to Les, Carolyn worked as a professional registered nurse; most recently, she was gainfully employed in that field in a government position. 10 ROA 136-137. She had several professional degrees upon marriage and claimed that she received an adequate income at the time of the marriage to support herself. 10 ROA 126-130; 136. At Les's expense, her professional training was enhanced during the marriage with at least two years of further advanced coursework and credentials. 10 ROA 126-131; 12 ROA 478.

(2) The length of the marriage, and **(3) the husband's education during the marriage**

This marriage was comparatively short, and was childless. Les obtained no education, or training, during the marriage, but rather was well educated prior to his marriage to Carolyn and had developed his veterinary practice prior to the union. Les established through expert testimony at trial that his practice and personal wealth had declined substantially during this marriage. By the time

of divorce, Les also suffered from several serious illnesses and injuries, and was about sixty-five years old, claiming he could no longer keep up the pace of working as he had for the past four decades. His government contract (as a meat inspector) was to expire less than ninety days after the trial and much of his pre-marital separate property wealth had been exhausted during the marriage supporting Carolyn's extravagant lifestyle. 13 ROA 545-550.

(4) The wife's marketability and (5) the wife's ability to support herself

The record establishes Carolyn's "marketability." Carolyn admitted at trial that she has the necessary credentials to become employed in the medical field at a competent pay rate, but conceded that she had applied for no such positions; she did not deny that her decision to quit work came as a result of reading books advising her to do so as the basis for seeking alimony.

During a majority of the marriage, Carolyn was employed and she used her paychecks as she wished. 10 ROA 136-134-139. She controlled the finances and bank accounts during the marriage and admitted at trial that she often transferred money from the couple's community bank account to her own personal account. 10 ROA 139-150.

Carolyn did claim that her medical conditions prevented her from holding steady employment. However, Carolyn did not offer any proof to the Court that her difficulties rose to the level of incompetency which would render her unemployable; she submitted no expert testimony as to her relative employability at all. 11 ROA 210-213. Carolyn admitted that she did not even **attempt** to find employment after the separation to utilize her nursing, sociology, or psychology degrees. 11 ROA 234-239.

The evidence admitted at trial established that Carolyn's unemployment during the pendency of the divorce was a deliberate, calculated move designed for litigation tactics. 11 ROA 223-224 (discussion with advisors), 226-227 (how-to books on divorce tactics found in her closet), 229-232 (voluntary resignation after separation but prior to divorce).

There was no competent evidence to support an argument that Carolyn did *not* have the ability to support herself at the time of trial, or into the future.

(6) Whether the wife stayed home with the children; and (7) the wife's award, besides child support and alimony

Of course, there were no children involved in this case, except Carolyn's adult child who burgled the home and stole much of Les's property.

The "wife's award, besides child support and alimony" is addressed in more detail in the next section. For now, it need only be said that the available evidence indicated that Carolyn seized and kept more than everything that was left for Les. It should be remembered that the only reason better numbers were not available is that Carolyn absolutely refused to comply with discovery during the trial proceedings, so it is not possible to know just how much she actually diverted, converted, or out-and-out stole from Les. The court below noted how Carolyn's contemptuous disregard for discovery orders had made a full and accurate tracing impossible. 13 ROA 551-52.

Since Carolyn's own wrongful, and contemptuous, acts are responsible for the lack of proof in the record, she should not be permitted to argue that there is insufficient proof of just how much more than Les she was able to get out of the marriage. All that is known is that, somehow, while she handled Les's premarital assets, he lost about $100,000.00 per year. At the same time, while Carolyn described her premarital life as: "I wasn't making a lot of money, I didn't have a lot," once she married Les she somehow managed to accumulate money in savings, CDS, and elsewhere. 8 ROA 1554-55; 10 ROA 80.

Especially after a long-term marriage involving the raising of children, this Court has expressed willingness to modify a divorce decree that leaves one party at a drastically lower economic level than the other. *See Heim*, *supra*, 104 Nev. at 605; *cf. Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990).

It is submitted, however, that this Court's permanent alimony cases -- *Heim*, *Rutar*, *Gardner*, and *Sprenger* -- simply do not apply to the facts of this case. In *Sprenger*, the wife stopped work to raise children and devoted so much time to the marriage relationship that her remaining skills left her unable to sustain herself after the divorce. Here, Carolyn was well educated prior to her marriage to Les, was employed, has enhanced her earning power during the marriage, and can go back to work in the same field. While she has experienced medical difficulties, she did not demonstrate to the court below that her difficulties prevent her from supporting herself. There was even significant evidence that her "disabilities" were self-inflicted, again for tactical purposes in this divorce. 11 ROA 293-300; Trial Exhibit L, Reports of January 28-29, 1995, at 1-2.

In *Heim*, the court took into account the "condition in which the parties are to be left after the divorce, and their relative financial worth and earning capacities" to overturn the lower court's alimony award, holding that it would be "unjust and inequitable" for a woman who had been a housewife for thirty-five years and who had produced six children to be left with limited marital assets after the divorce, without a substantial increase in her alimony award. *Id*. at 609-610.

Such facts, however, are a world away from those presented in this case. In *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990), this Court affirmed the lower court's denial of permanent alimony, finding no abuse of discretion where, after 17 years of marriage, each party left the marriage with the same marketable skills brought to the union. This Court explained its reasoning this way:

> in any examination into the "equity and justice" of the lower court's ruling requires more than a mechanical comparison with the facts of the *Heim* case itself. *Heim* mandates that this court examine the totality of the circumstances in order to determine whether the court below abused its discretion in rendering its alimony decision.

Fondi, *supra*, at 864.

Since that time, this Court has reviewed two short-marriage cases, and affirmed the lower courts' application of discretion both times. In *Alba*, *supra*, the lower court reviewed a seven year

marriage, and awarded $1,000.00 per month alimony for three years to the blackjack-dealer wife who wanted to obtain an education in graphic arts. Many of the *Sprenger* factors were not discussed, but it appears that the award was intended to be rehabilitative, based on the earning potential difference between the spouses, since NRS 125.150(8) permits "any other factors the court considers relevant" to be considered.

In *Kerley*, *supra*, the court below had granted $250.00 per month alimony for two years to a wife who had been found to need alimony, from a husband who had been found able to pay it, where the wife, at the husband's request, "was not gainfully employed during most of the marriage." *Id*., advance opinion at 4. This Court found that the lower court had applied, not abused, its discretion, and that no showing had been made that the judgment was other than "equitable and just" as required by law.

Here, Carolyn was unable to prove to the court below by any convincing evidence that she will be left at any financial disadvantage after the divorce. Indeed, the facts show quite the opposite. If Carolyn is presently in financial difficulty, it is through her own actions. Facts presented at trial prove that the marriage developed more community debt than assets, and that Les was left with those debts. Les testified that the couple's credit card balances were zero before he and Carolyn separated. Those same balances were extraordinarily high at the time of the divorce decree. Carolyn admitted that she was responsible for these debts.

Carolyn also admitted to retaining her paychecks throughout the marriage as if they were separate property and evidence at trial supports the conclusion that she concealed various other community funds (or possibly Les's separate property funds) -- at least $60,000.00 from the sums uncovered by counsel despite her lack of cooperation in discovery. Carolyn is the only party with any viable future work possibilities, and thus any prospect of significant future income.

Les, for his part, will try to live out his days on what Carolyn did not make off with or spend during their brief marriage. He leaves the marriage with a drastically smaller amount of pre-marital property than he had prior to the marriage, with only retirement pension or a smaller limited income on which to live, while facing increased health difficulties complicated by age. Carolyn failed to demonstrate a need for alimony. On appeal, she has not demonstrated how the lower court abused its discretion in considering the parties' present and future circumstances. In short, Carolyn has not shown any basis for reversal of the order denying her alimony.

As discussed above, our statutory law include two types of alimony -- that which the court may award in order to satisfy the demands of equity and justice, and "rehabilitative" alimony as provided in NRS 125.150(8). Spouses may be provided either or both types of alimony where the need is demonstrated or where equity and justice would be served. *See Gardner v. Gardner*, *supra*.

Carolyn argues that she is too medically disabled to resume employment and needs an award of alimony to financially sustain herself. AOB at 8. It is unclear from her argument which type of alimony award she requests. However, it is submitted that the district court was within the bounds of its discretion in finding that Carolyn did not demonstrate grounds for either type of alimony. She has complete education and training, received more during the marriage, and she is capable of self-support if she would seek employment in the field in which she is trained.

Finally, some attention should be given to Carolyn's assertion that the Nevada Legislature has expressed its intent that the "respective merits of the parties" shall no longer be considered in awarding alimony. AOB at 9. Although resolving that issue does not appear necessary to completion of this case, it is submitted that Carolyn is wrong. Nothing in this Court's recent cases indicates such a perception of legislative intent, and Carolyn does not point to any evidence of any. The statutory change to presumptive equal division of assets was intended to do just that, in reaction to this Court's holding in *McNabney v. McNabney*, 105 Nev. 652, 782 P.2d 1291 (1989). It is hard

to see how a statute requiring the trial court to make such award as is "fair and equitable" could be interpreted to ***remove*** consideration of "the respective merits of the parties." Absent either logic or evidence of legislative intent, it is submitted that no such conclusion is warranted.

It does not appear that any alimony case decided by this Court in the past 10 years involved a wife who presented so little evidence of a need for alimony, or whose case showed that she was so undeserving of it. In any event, no abuse of the lower court's discretion has been, or could be, made out on this record, and the judgment below should be affirmed.

II. THE DISTRICT COURT MADE A FAIR AND EQUITABLE DIVISION OF COMMUNITY PROPERTY AND DEBT.

Carolyn correctly states that NRS 125.150(1)(b) requires that community property should be equally divided unless a compelling reason is found to do otherwise. AOB at 9. She then "suggests" that an unequal disposition was made, in Les's favor, claiming that such disposition was "suspect." AOB at 10. Finally, she complains that reduction to judgment of the $5,000.00 that Carolyn stole from Les's personal injury compensation was "clearly erroneous." AOB at 10.

The argument here has two main parts. First, Carolyn is wrong on her facts -- those that are known indicate that she already obtained in excess of 50% of the net community estate. Second, on the facts of this case, the lower court would have been amply justified in awarding her nothing whatsoever. Finally, there was no error as to the personal injury award.

Before proceeding, Les is constrained to point out that Carolyn has set out no authority whatsoever to support this section of her brief. It is likewise bereft of any citations to the Record on Appeal. This makes the job of Respondent's counsel more difficult, and is part of the request for fees on appeal, made below. More immediately, the omissions are grounds for entirely disregarding Carolyn's argument and ruling against her summarily. EDCR 2.21(a); *State, Emp. Sec. Dep't v.*

Weber, 100 Nev. 121, 123-24, 676 P.2d 1318 (1984) (advising counsel of sanctions for failure to refer to relevant authority).

A. Carolyn Received More than Half of the Community Property

Carolyn complains that Les received the approximate $28,000.00 that remained from sale of the Noritake property. AOB at 10. This sum had been $6,000.00 higher, but the fund was depleted by paying for moving and storage fees caused by Carolyn's disregard of court orders to pick up her property and to pick half of the household furniture. 8 ROA 1552; 12 ROA 316, 346.

Carolyn "protests too much" that the lower court did not "clearly set forth the value of the community." AOB at 10. As noted above, it was her own stone-walling of discovery that caused the gaps in the documentation. 13 ROA 551-52; 8 ROA 1552.

From what **could** be determined, it is known that Carolyn had $60,000.00 in cash that the court below found as a matter of fact to be either Les's separate property, or community property. 8 ROA 1552, 1554; 10 ROA 148, 152-54, 169, 164, 168, 138, 144, 160-62, 166-170; 11 ROA 250-53. As set forth in detail above, Carolyn raided the house and took most of the more valuable assets, and still got her choice of half of what was left behind. The total of the leftover Noritake proceeds, the cash value of the insurance policies, and the outstanding insurance reimbursement checks was smaller than the sums Carolyn admitted to having squirreled away and then transferred to others.

Additionally, the question of community debt cannot be separated from the disposition of community property. This state does not have a clear statute requiring debts, like property, to be divided equally absent a showing of compelling circumstances. *See* M. Willick, *Debt and Community Property in Nevada*, in "Where Will the Money Go?; Proceedings of the 1997 Symposium of the Council of Community Property States (Arizona State Bar Association).

Les was saddled with **all** the parties' pre-separation debt, and the community debt exceeded the community property. 8 ROA 1553, 1556-58. The parties were ordered to split the IRS liability,

although it was solely Carolyn's contemptuous refusal to return the documentation she stole in violation of the TPO that caused the liability to exist.[4] 8 ROA 1553, 1563-64. The lower court found as a matter of fact that Carolyn had contemptuously created another liability by having the Mercedes repossessed (and thus sold at auction with a resulting deficiency) in violation of the court's orders. 8 ROA 1554.

While Carolyn did everything in her power to prevent anyone from knowing exactly how much she stole during the marriage, there is no doubt whatsoever from this record that Carolyn received virtually all of the community property (and, apparently, much of Les's pre-marital separate property), while saddling Les with virtually all the debt.

It should be noted in passing that the lower court was specifically asked to trace the Noritake proceeds back to Les's separate property, as permitted by NRS 125.150(2). 6 ROA 1296-97; 13 ROA 708-710. The court below did so; essentially all of the money invested came from Les, and the court found to be credible Les's testimony that the house was jointly titled because Carolyn had promised to put in half, but failed to do so. 8 ROA 1550, 1555.

Accordingly, Carolyn is simply wrong. She got much, much more than "half" -- by allowing Carolyn to retain what she stole, and not requiring her to pay more than half of most of the large debts and liabilities she created, the lower court actually provided Carolyn with a massive windfall.

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[4] In *Ford v. Ford*, 105 Nev. 672, 782 P.2d 1304 (1989), this Court authorized trial courts to take into account the effects of taxes on value on marital assets when distributing community property if those taxes are "immediate and specific." It is submitted that in this case, the testimony of Mr. Sorrells as to the ongoing audit and imminent assessment of $40,000.00 or so in additional liability was sufficient under this standard. 8 ROA 1553; 13 ROA 595-654. The cost of just trying to reconstruct the stolen documentation was estimated at five to ten thousand dollars. 13 ROA 651.

B. The Lower Court Would Have Been Justified in Awarding Carolyn Less than Half the Property, If It Had Done So

Recently, this Court found that a husband's financial misconduct gave adequate "compelling reasons" for an un-equal distribution of community property. *Lofgren v. Lofgren*, 112 Nev. ___, 926 P.2d 296 (1996). The Court found that the husband's transfer of funds to his father and use of community funds for his own purposes, in violation of the joint preliminary injunction (JPI), warranted the result reached, and set out the rule that:

> If community property is lost, expended or destroyed through the intentional misconduct of one spouse, the court may consider such misconduct as a compelling reason for making an unequal disposition of community property and may appropriately augment the other spouse's share of the remaining community property.

Here, as detailed above, Carolyn admitted transferring $30,000.00 that was either community property or Les's separate property to her mother on the eve of trial, and claimed to have spent another $30,000.00 that was either community property or Les's separate property on attorneys and "other" expenses during the pendency of the divorce case. *See*, *e.g.*, 10 ROA 143-158; 10 ROA 148-149; 152-176. It is not necessary to determine which (if any) of her multiple, inconsistent stories as to where the money had come from, or where it had gone, was true. The point is that Carolyn could not show that she had opened these accounts with money other than from the parties' community property, or Les's separate property. 8 ROA 1573-74.

It is likewise not necessary to recite again the extensive debts Carolyn ran up or the liabilities she created. The point is that the unnecessary creation of such debt had the inevitable effect of "losing, expending, or destroying" community property, and the same considerations that this Court found compelling in *Lofgren* would logically apply.

Carolyn has suggested no authority requiring that the lower courts, when making an equal distribution of community property, are required to set forth a detailed finding of the value of the

community property. This Court has generally upheld rulings regarding property settlements in divorce cases which are "supported by substantial evidence and are free of a clear abuse of discretion." *Kerley v. Kerley*, 111 Nev.___, 893 P.2d 358 (1995); *see also Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992).

Lofgren is certainly not the first case in which this Court has reviewed and approved financial orders based in part on the pre-trial misdeeds of one of the parties. In *Sprenger*, *supra,* this Court held that the remaining portion of a coin collection valued at $75,000.00 was community property, and was appropriately awarded in its entirety to the husband, because the wife failed to place the collection in a safety deposit box as ordered by the court. The lower court found that Mrs. Sprenger had sold some of the coins and pocketed the money for her own use, reasoning that, in essence, she had sold off her portion of the collection, meriting the award of the remainder to the husband. *Sprenger* at 858-859.

The evidence of Carolyn's misdeeds permeates the record; the highlights are mentioned above, and Carolyn even acknowledges them, although she argues that the trial court should somehow have been restricted from taking them into account when deciding what to do with the assets that she had not yet managed to purloin.

The trial court was faced with a record made uncertain by the wrongful acts of the wife, and the only certain information was that the value of the money she took exceeded the value of all remaining funds and assets. Under these circumstances, the court below was too lenient on Carolyn; it certainly could not be said that the court abused its discretion in any ruling against her. It would have been unjust for the Court not to address the financial "drain" Carolyn placed on the community property prior to the separation and during the divorce proceedings.

Last, we turn to Carolyn's complaint that the judge reduced to judgment the $5,000.00 that Carolyn converted from Les's separate property personal injury payment. *See* AOB at 10. This

money was the subject of numerous court orders for Carolyn to return the funds to Les, starting more than a year before trial; Carolyn refused to do so. 8 ROA 1551.

Two observations seem appropriate. First, this matter does not appear in the correct place in Carolyn's brief (the section arguing about distribution of community property). The order requiring Carolyn to return the money to Les had no impact on distribution of community property: as detailed above, the sum was payable solely to Les, was clearly his separate property,[5] and was intercepted by Carolyn (who forged his name) and who then absconded with the money. *See* NRS 123.130(2). Second, Carolyn has suggested no legally cognizable rationale (and counsel is unaware of any) by which the court system of this state should allow her to steal Les's personal injury proceeds.

In summary, Carolyn has suggested nothing indicating that the lower court's findings were "clearly erroneous." *See* AOB at 10. For the trial court to have given her anything more than it did would have been an inequitable and wholly unwarranted gift to a proven liar, thief, and cheat.

III. THE DISTRICT COURT WAS IN THE BOUNDS OF ITS DISCRETION IN AWARDING RESPONDENT $30,000 IN ATTORNEY FEES.

Under NRS 125.150(3), the award of attorney's fees to either party is within the sound discretion of the trial court. The award will not be overturned absent an abuse of discretion. *Carrell v. Carrell*, 108 Nev. 670, 836 P.2d 1243 (1992); *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2d 1268 (1991) (attorney's fees upheld where the wife was responsible for in part for creating the attorney's fees by making false accusations of child abuse and failing to comply with child support orders).

[5] The kindest thing that could be said for Carolyn's lame explanation that the insurance company had put the wrong name on the checks is that it is unsupported by any credible evidence in the record. *Cf.* 10 ROA 151, 158-160.

Without rehashing Carolyn's multiple and repeated contemptuous acts, it should suffice to note that the court below gave Carolyn every opportunity to behave decently and minimize expenses. After having directly viewed the work made necessary by Carolyn's contempt, the trial court received counsel's estimate of the sum wasted just because of her wrongful acts -- $30,000.00. 13 ROA 701. That is the sum that was awarded. 8 ROA 12. The total of fees incurred was significantly higher. 6 ROA 1302-1303.

The trial court characterized Carolyn's conduct, during the marriage and throughout the divorce proceedings, as "entirely unwarranted, vindictive, and having a clear result of causing Les to incur an incredible amount of unnecessary and needless attorney's fees." 8 ROA 1560. The court stated that, given Carolyn's needless prolonging of the divorce proceedings and increase of the cost of litigation, "it is fair and equitable under the facts of this case for Carolyn to pay Les's attorney's fees to the extent of Thirty Thousand Dollars ($30,000.00)." 8 ROA 1584.

If a district court awards attorney's fees but makes no findings regarding the award, the Supreme Court may rely on an examination of the record to determine if the district court has abused its discretion. *Schouweiler v. Yancy Co.*, 101 Nev. 827, 712 P.2d 786 (1985). It is submitted that the lower court's findings are sufficient under the prior cases, but if this Court concludes otherwise, the Court is asked to review the entire record to verify that the partial compensation to Les for the waste that Carolyn caused is well justified. *Cf. Mack v. Ashlock*, 112 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 134, Aug. 16, 1996) (attorney's fee award reversed where district court failed to mention the basis for awarding fees).

In Opening Statement, Les's counsel informed the trial court that:

> Given the assets in question, given the claims in question, this was a five thousand dollar case. Fees on his side have exceeded that amount by ten times. By the time we get done with this trial today or tomorrow, he will have spent fifty thousand dollars in attorney's fees. Completely unwarranted, unconscionable, unthinkable --

10 ROA 21. Counsel further briefly recounted the financial waste of having to deal with the seven attorneys[6] Carolyn went through by the time of trial, and the massive expenditure of trying to overcome Carolyn's stonewalling of discovery. 10 ROA 21-33. Counsel offered the cumulative 47-page detailed billing statement to the trial court during the opening and closing statements, but it was waved off as unnecessary, apparently on the basis of the lower court's personal familiarity with the procedures that had been followed. 10 ROA 21; 13 ROA 700, 716.

Again without any citations to the record whatsoever, Carolyn attacks the lower courts assessment of fees, claiming that she was being "punished twice" because the record contains an earlier assessment of fees against her for contemptuous misbehavior (which she completely ignored and has never paid). AOB at 11-12; 8 ROA 1551. She also argues that the sum ordered exceeds the amount of a "fine"that can be assessed under NRS 22.100. AOB at 12.

It is respectfully suggested that the inclusion of the earlier (unpaid) attorney's fee assessment in the divorce decree indicates that the lower court was fully aware of the sum assessed earlier, and took it into consideration in making the final fee award. 8 ROA 1551. It is further suggested that there is a pretty obvious difference between a "fine" under NRS 22.100 and attorney's fees allowable under NRS 125.150(3). This difference is so apparent on the face of the statutes themselves that no further argument on the point should be required, except to note that this Court has approved attorney's fees much in excess of the "fine" maximum in a case within the past few years. *See Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994).

In short, the fee award in this case was amply justified by the record in the case. *See Burr v. Burr*, 96 Nev. 480, 611 P.2d 623 (1980) (cases going to necessary specificity for grant or denial of attorney's fees address NRS 18.010, not NRS 125.150). Carolyn took every opportunity presented

[6] It was later revealed that one of them was not even a licensed attorney.

to maximize the cost to Les of the divorce and the damage that she could inflict on him, and it is a matter of substantial justice that she should pay at least some part of the costs that were caused by her own misbehavior. *Cf. Cathcart v. Robison, Lyle, Etc.*, 106 Nev. 477, 795 P.2d 986 (1990) ($90,000.00 jury award for fees award overturned where trial only 1 and a half days long, preparation took less than a week, and original fee sought was about one-third of that sum).

That brings us to this appeal. The Court is asked to review the Opening Brief. It is respectfully submitted that it is so defective, in content, citations, and meritorious argument, that Les has -- again -- been forced to pay more in attorney's fees than should have been true to respond. The "Statement of Facts" is a thumbnail overview, one page long, and missing almost every important reference to everything that actually happened in this case. The arguments in the brief have virtually no supporting factual citations, and the legal references are incomplete, increasing the work necessary by Respondent's counsel, and by this court. The "merits" of the appeal are so deficient that they constitute a frivolous appeal.

Since Les has again been financially injured by an action (or inaction) by Carolyn, this Court is respectfully asked to find the intention and execution of this appeal to be frivolous, and to award to Les "as costs on appeal, such attorney fees as it deems appropriate to discourage like conduct in the future." NRAP 38; *see Works v. Kuhn*, 103 Nev. 65, 732 P.2d 1373 (1987). The total actual cost to Les for assembly of the thirteen-volume record, preparation of a statement of facts because Carolyn essentially did not do so, and completion the remainder of this brief, exceeded $10,000.00.

Accordingly, Les requests that this Court award that sum to him.

CONCLUSION

In many cases, this Court must resolve issues involving charges of abuse of discretion by the trial court in a divorce action, where the record is vague or incomplete. This is not one of those

difficult situations. The record is clear that Carolyn Williams literally "sacked" Les's premarital assets, and the community property, in her rage to leave Les Williams in financial distress after the divorce proceedings had concluded. She tested the patience of the court and her own six different attorneys, as well as Respondent and undersigned counsel. She was sanctioned and jailed for her stubbornness and commitment to her goal of vast financial destruction of Les, but apparently too briefly to alter her behavior. This marriage and divorce took an emotional toll on Les and has left him with a drastically reduced estate and high post-divorce debt.

On the total record, and given where the divorce left the parties, any award of alimony to or attorney's fees for Carolyn would have been both unjust and unfair under the prior holdings of this Court. The trial court, faced with Carolyn's conversion to her own use of both community property and Les's separate property, made a fair division of what little was left by awarding the remaining proceeds from the sale of the Noritake property to Les.

Carolyn has made no showing, in law, in equity, or on the record, where the court below erred in any whatsoever, nevertheless "abused its discretion."

It is respectfully submitted that the decree of divorce should be affirmed in its entirety, with costs assessed against Appellant as set forth above.

DATED this _____ day of _____, 1997.

Respectfully submitted:
LAW OFFICE OF MARSHAL S. WILLICK

_____
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ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this _____ day of _____, 1997.

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_____

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing **APPELLANT/CROSS-RESPONDENT'S REPLY BRIEF** was forwarded to:

CLARENCE E. GAMBLE, ESQ.
520 South Fourth Street, ste. 350
Las Vegas, NV 89101
Attorney for Appellant

by placing same in ordinary United States mail, postage prepaid, on the ___day of _____, 1997.

_____
Employee of Marshal S. Willick, Esq.

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