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ELOISA BESADA FURER

Copy

IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANDREW E. FURER,

Plaintiff,

Case No. DV04-01626
Dept. No. 11

vs.

ELOISA BESADA FURER,

Defendant.

DEFENDANT'S MEMORANDUM FOR EVIDENTIARY HEARING

COMES NOW, Defendant, ELOISA BESADA FURER (hereinafter referred to as "Ellie"), by and through her attorney of record, Jarien L. Cho, Esq., for unbundled services pursuant to Rule 1.2(c) of Nevada Rules of Professional Conduct, does hereby submits her Memorandum for Evidentiary Hearing.

I.

INTRODUCTION

During the telephonic status check conference held on April 3, 2007, this Court granted Defendant's Motion to Continue Trial for 90 days, and limited the issues for the evidentiary hearing to the following:

1. To show cause why Defendant should not be held in contempt re: the automobile insurance; and
2. Whether or not the divorce proceeding and the proceeding for property division, should be bifurcated.

1 This Court specifically stated that the discovery disputes would not be heard
2 during this evidentiary hearing. However, at Plaintiff's insistence, the Court advised
3 Defendant's counsel to provide the Court with the available information regarding
4 Defendant's medical and mental state, prior to the evidentiary hearing.

5 The Court's decision was to give Defendant a fair opportunity to present her case
6 at trial, as well as to minimize prejudice, if any, to Plaintiff's interest in remarrying his
7 fiancée, by avoiding any unnecessary delay in granting a divorce for the parties.

8 **III.**

9 **STATEMENT OF ISSUES**

10 **A. Defendant's Automobile Insurance**

11 Mrs. Furer has obtained an automobile insurance policy from AARP Auto &
12 Homeowners Insurance Program (Policy Number: #55PHK174647) and the effective
13 date for the insurance coverage was December 14, 2006.

14 As Plaintiff insisted that Mrs. Furer obtain a policy that was the same as, or as
15 similar to, the policy held by the parties jointly during this marriage, Mrs. Furer has
16 requested her insurance company to extend the personal umbrella policy to
17 \$10,000,000.00. However, AAPR has refused Mrs. Furer's request, stating that the
18 highest limit available is \$5 Million and that AAPR is unable to verify the liability
19 coverage on the boat and any property that is owned by the parties.

20 Mrs. Furer has consulted her insurance broker, Ms. Terri David, as to the ability
21 of any insurance company and their willingness to provide the \$10 Million personal
22 umbrella for her. According to Ms. Terri David, one insurance company, CHUBB
23 Insurance, would consider such a policy, only if (1) Plaintiff, the legal husband, was
24 listed as the secondary driver for Mrs. Furer's vehicles; (2) the parties' separate and
25 community properties were to be listed; and (3) the parties paid the annual premium of
26 \$3,512.86. Even if Plaintiff, as the secondary driver of Mrs. Furer's automobiles,
27 provides the list of his separate and community assets for the insurance company, once
28 the parties' divorce is finalized, this policy should be cancelled.

1 If Plaintiff has maintained the same umbrella policy as the one the parties had
2 maintained during the marriage, as ordered by this Court, Defendant believes that
3 Plaintiff has listed her as the secondary driver under his umbrella. If this is the case,
4 Ms. David further warned Mrs. Furer of potential problems of obtaining an equivalent
5 umbrella policy. In Ms. David's opinion, if Plaintiff, who is the legal husband and
6 secondary driver to Mrs. Furer's automobiles already has a \$10 million dollar umbrella
7 for himself, which Mrs. Furer is listed under, this would pose a potential problem for the
8 insurance carriers involved. If both Mr. Furer and Mrs. Furer have \$10 Million umbrellas
9 covering one another, then in the event of an accident, neither insurance company
10 would know which policy would kick in first. Ms. David said that this problem would stall
11 the standard accident procedures because potentially the insurance companies would
12 be fighting one another.

13 Ms. David will forward a memo/letter regarding the personal umbrella for Mrs.
14 Furer by close of the business on Friday after approval by CHUBB insurance.

15 **B. Defendant's Medical and Mental Condition**

16 As the Court, as well as Plaintiff, is aware, Mrs. Furer has long suffered from
17 frequent fainting and seizures. In or about February, 2007 Mrs. Furer's physician, Dr.
18 Camilo Tabora, referred her to a neurologist, Dr. Santos Yu, to verify the cause(s) of
19 her frequent fainting. Dr. Yu arranged MRI and EEG tests for Mrs. Furer to see
20 whether she suffered from a seizure disorder experiencing strokes.

21 On March 5, 2007, Mrs. Furer saw Dr. Tabora because she felt numb on the left
22 side of her body. Then, Dr. Tabora called paramedics to carry Mrs. Furer to the
23 emergency room at Valley Hospital, where Mrs. Furer was diagnosed as having
24 suffered from a stroke. Valley Hospital further ordered Mrs. Furer to stay in the
25 emergency room for MRI and CT tests scheduled for the following day. Because Dr.
26 Yu had already scheduled Mrs. Furer for an MRI on March 12, 2007, Mrs. Furer did not
27 comply with the ER doctor's orders and returned home.

28 On or about March 7, 2007, Mrs. Furer saw Dr. Tabora for the follow-up. She

1 still felt numbness on the left side of her body and felt pain in her chest. She was
2 extremely concerned about her deposition scheduled for March 8, 2007 in Reno,
3 Nevada. Dr. Tabora wrote a letter requesting Plaintiff's counsel to excuse Mrs. Furer
4 from the deposition due to her current condition. Further, Dr. Tabora referred Mrs.
5 Furer, who was visibly upset and unstable, to a psychiatrist named Dr. Ngo. In her first
6 visit to Dr. Ngo's office, Dr. Ngo preliminarily diagnosed Mrs. Furer with clinical
7 depression and prescribed Paxil and Zannax for her. Dr. Ngo, then, told Mrs. Furer to
8 schedule a follow-up with him.

9 On March 12, 2007, Mrs. Furer's residence was flooded with 6-inch deep water
10 and the ceilings of her kitchen and family room collapsed. According to the contractor
11 hired by the home insurance company, the structural damages caused by the water
12 was extensive and the interior walls and ceilings would have to be torn down and
13 subsequently rebuilt. The entire house would need to be rewired. The contractor
14 estimated that the rebuilding/repair work would take approximately five (5) to six (6)
15 months.

16 This unfortunate accident to her house devastated Mrs. Furer. She continually
17 feels as though she is in exile since the time she was forced out of the Incline residence
18 leaving her personal items behind. She could not believe that she was again going
19 through another traumatic event. Most of all, Mrs. Furer had no one to help her out.
20 The contractor wanted Mrs. Furer to move out of the house as soon as possible, but
21 Mrs. Furer did not know what to do or where to go. The undersigned helped Mrs. Furer
22 pack several personal items and moved her to a hotel room on the night of March 12,
23 2007.

24 The following day, Mrs. Furer realized that she had missed the appointment with
25 Dr. Yu for a MRI test. Dr. Yu rescheduled the test for March 20, 2007. On the same
26 day, Mrs. Furer was served with Plaintiff's Motion for Sanctions for failure to file a trial
27 brief and with Plaintiff's Opposition to her Motion to Continue the Trial. She tore up the
28 briefs. Mrs. Furer felt like Plaintiff and his attorneys, who knew about her physical

1 condition, would torture her until she finally dies. Perhaps because of the water in the
2 house, she seemed to be catching a cold or flu. She felt like she would soon die. The
3 undersigned agreed to prepare responses to Plaintiff's briefs on her behalf, and advised
4 Mrs. Furer to seek psychiatric therapy in addition to all medical treatments available to
5 her. Mrs. Furer is currently receiving psychiatric therapy from Ms. Judith Yeager, MFT.

6 Presently, Mrs. Furer has no caretaker to timely administer all of the medications
7 prescribed by doctors for her.

8 **C. Lack of Cooperation from Mrs. Furer's Medical Care Providers.**

9 Since the undersigned first made an appearance in this case for limited,
10 unbundled services, in the third week of March, 2007, the undersigned has repeatedly
11 attempted to contact Mrs. Furer's medical doctors to obtain the information about her
12 condition. Dr. Tabora returned the undersigned's call only after he was served with a
13 subpoena and a notice of taking deposition by Plaintiff's attorney. Dr. Tabora
14 expressed his discomfort/ displeasure with the deposition regarding Mrs. Furer's
15 medical condition. He further informed the undersigned that Mrs. Furer was in Dr. Yu's
16 care and that Dr. Yu still needed to study Mrs. Furer's EEG test results regarding Mrs.
17 Furer's possible seizure disorder.

18 The undersigned called Dr. Yu's office but Dr. Yu never returned the call. On
19 April 3, the undersigned faxed Mrs. Furer's Authorization for Release of Medical and
20 Psychological Information to Dr. Yu's office, attached with the undersigned's letter
21 requesting the release by April 5, 2007.

22 The undersigned repeatedly attempted to contact Dr. Ngo. On or about March
23 29, 2007, Dr. Ngo finally returned the undersigned's call only to express his desire to
24 not get involved in Mrs. Furer's divorce litigation. When the undersigned asked Dr.
25 Ngo if he would follow up with Mrs. Furer, he did not answer the question but said that
26 he did not want either party to take his deposition and that he did not have much
27 information about Mrs. Furer because he had seen her only once. The undersigned
28 was shocked by Dr. Ngo's response. Apparently, this litigation was interfering with Mrs.

1 Furer's treatment process.

2 In the meantime, Mrs. Furer's therapist, Ms. Judith Yeager, insisted Mrs. Furer
3 on following up with a psychiatrist because Mrs. Furer's condition seems to be more
4 than mere depression. As Dr. Ngo was reluctant to see Mrs. Furer, Ms. Yeager
5 referred her to Dr. Karen Cruesy. Dr. Cruesy scheduled the initial evaluation for Mrs.
6 Furer on April 5, 2007.

7 Plaintiff's counsel, in one of his recent briefs questioned why, if Mrs. Furer
8 indeed had a health issue, her former attorneys had not brought that issue to the
9 Court's attention. Although this question can only and must be answered by Mrs.
10 Furer's former attorneys, Mrs. Furer's emotional state indeed concerned this Court
11 during a February hearing. Only this Court noticed Mrs. Furer's suffering and was
12 concerned about her emotional welfare, while all other parties were endlessly bickering
13 over sanctions against each other for countless reasons.

14 Mrs. Furer's medical and psychiatric condition is still being evaluated, and her
15 treatment plans will soon be prepared by Dr. Yu and hopefully Dr. Karen Cruesy.
16 Defendant will provide to the Court any and all information produced by Dr. Tabora and
17 Dr. Yu by or before April 6, 2007.

18 **C. This Court Has No Jurisdiction to Bifurcate the Hearing on Divorce
and the Trial for Property Division in This Case.**

19 (1) The Gojack Case is Still Good Law.

20 The issue of bifurcation is governed by Gojack v. District Court, 95 Nev. 443
21 (1979), which is still good law in Nevada and this Court correctly based its previous
22 ruling on Plaintiff's same request to bifurcate the proceedings. In the Gojack case, the
23 Supreme Court found that the lower court had no legal authority to enter divisible
24 judgments and held that the district court is without jurisdiction to enter a final decree of
25 divorce without contemporaneously disposing of the community property of the parties.
26 Id. at 445.

27 The policy reason in the Gojack decision is found in the statutory schemes of
28

1 NRS §§ 125.150(1) 125.130(1) and 125.130(2). NRS 125.150(1) states that "(i)n
2 granting a divorce, the court may award such alimony . . . and **shall make (a)**
3 **disposition of the community property of the parties . . .**" (emphasis added). NRS
4 125.130(1) further states that **the judgment of divorce shall be a final decree**
5 (emphasis added). NRS 125.130(2) states that **the decree shall fully and completely**
6 **dissolve the marriage contract as to both parties** (emphasis added).

7 The Gojack court also cited numerous problems that could result from an interim
8 divorce decree, including, without limitation, the following:

- 9 a. The effect of the decree upon the character of the property of the parties
10 and whether following the entry of the decree, the property will be held as
11 tenants in common;
- 12 b. Questions relating to the allocation of rents, profits and taxes, as well as
13 the effect of the subsequent death or remarriage of one or both of the
14 parties prior to the distribution hearing
- 15 c. The adverse effect on property settlement possibilities.

16 Gojack, 95 Nev. 443, 445-446.

17 In addition to the problems listed in Gojack, this case would pose more serious
18 problems if the two proceedings were bifurcated. Plaintiff repeatedly requested this
19 Court to allow him to remarry by granting him a divorce. Throughout this divorce
20 litigation, the parties' community assets, including Defendant's personal items, have
21 been under and in the control of Plaintiff. ***If Plaintiff remarries before the final***
22 ***judgment on property division is entered, how will his property be characterized?***

23 There is no doubt that premature entry of divorce will compound the already
24 complicated problems of property division.

25 (2) Kantor v. Kantor and Smith v. Smith are inapplicable to the present case.

26 Plaintiff erroneously claimed that his case is similar to Kantor v. Kantor, 116 Nev.
27 886, 8 P.3d 825(2000), wherein the wife's amended pleading admitted the
28 enforceability of the premarital agreement and, therefore, the district court enforced the

1 terms of the premarital agreement without first determining its validity and substantive
2 fairness. Plaintiff is trying to argue that, since the court found the MSA to be valid, the
3 terms of the MSA, specifically the provisions stating, "the parties will cooperate with one
4 another to obtain a decree of divorce by way of a joint petition..." and that the parties
5 "further agree that this Marital Settlement Agreement ... shall be incorporated, but not
6 merged in the Decree of Divorce," should be upheld. However, the history of this
7 litigation only proves the contrast between Kantor v. Kantor and the present case.

8 First of all, in the Kantor case, the enforceability of a premarital agreement was
9 examined by the Court under the standard set forth by the Uniform Premarital
10 Agreement Act as codified in NRS 123A.080. NRS 123A.080(1) states, "A premarital
11 agreement is not enforceable if the party against whom enforcement is sought proves
12 that ..." Needless to say, NRS 123A.080 does not apply to this case.

13 Secondly, as this Court is aware, neither Mr. Furer's complaint nor Mrs. Furer's
14 answer have ever admitted the enforceability of the MSA. As a matter of fact, both of
15 them repudiated the contract soon after the joint petition for uncontested divorce was
16 withdrawn.

17 The Court tested whether the PNA and the MSA had been fraudulently
18 executed, and found the PNA as a void contract but the MSA to be valid. The
19 enforceability of the validly formed MSA has never been tested. Plaintiff's claim for
20 similarity between the Kantor and the present case is stretching the Court's order too
21 far.

22 (3) The Fact Pattern of Smith v. Smith is Gravely Different from the Present
23 Case, and the Court Indeed Upheld the Gojack Holding.

24 In Smith v. Smith, 100 Nev. 610 (1984), both parties advised the court at trial
25 that the negotiations regarding the property settlement was almost completed. The
26 parties then requested a 6-day recess to hammer out the details of the property
27 agreement. Right before recess, one of the parties then requested that the divorce be
28 granted immediately (i.e. before recess began and before the property agreement was

1 completed). The court reluctantly granted the divorce. Neither party objected.

2 As a matter of fact, the Smith court reiterated the holding in Gojack that a trial
3 court is "without jurisdiction to enter a final decree of divorce without
4 contemporaneously disposing of the community property of the parties." Id. at 613.
5 However, the Court upheld the bifurcation in Smith because the party now opposing the
6 "jurisdiction" of the court to bifurcate the divorce and property settlement was the same
7 party who initially *requested* the bifurcation. In addition, the party now opposing the
8 bifurcation also failed to make any timely objections to the bifurcation.

9 In contrast to the Smith case, Mrs. Furer has never requested and is not going to
10 request bifurcation. Mr. Furer orally requested bifurcation during the status conference
11 on April 3, 2007, and such request was instantly objected to by Defendant's counsel.

12 Defendant respectfully directs this Court to a footnote contained in the Smith
13 case, where the Supreme Court states, "*[d]espite our acceptance of the separate trials*
14 *in this particular case, we wish to emphasize that bifurcated divorce proceedings and*
15 *the problems they are likely to engender are disfavored and should generally be*
16 *avoided.*" Id. at 613 (FN1.)

17 IV.

18 EXHIBITS

- 19 1. All of correspondences from AARP and CHUBB concerning Defendant's
20 Insurance Policy;
- 21 2. Pictures of Mrs. Furer's residence taken on March 13, 2007;
- 22 3. Any and all information provided by Dr. Santos Yu, Dr. Camilo Tabora, Dr.
23 Karen Cruvey, and/or any other physicians and therapists currently treating
24 Mrs. Furer, available prior to the evidentiary hearing.

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DATED this 5th, day of April, 2007.

ODGERS & CHO, LLC

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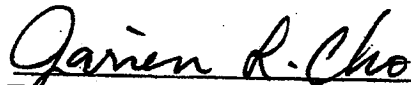
1 **CERTIFICATE OF MAILING AND FACSIMILE**

2 I, hereby certify that on the 5 day of ~~March~~^{April}, 2007, I served pursuant to NRCP
3 5(b) by depositing in the United States Post Office, at Reno, Nevada, in a sealed envelope,
4 postage fully pre-paid thereon, and faxing a true and correct copy of the foregoing
5 **DEFENDANT'S MEMORANDUM FOR EVIDENTIARY HEARING**, addressed to:

6
7 Shawn B. Meador, Esq.
8 WOODBURN AND WEDGE
9 6100 Neil Road, Suite 500
10 Post Office Box 2311
11 Reno, Nevada 89505
12 Fax: 775.688.3088

13 Kent R. Robison, Esq.
14 ROBISON, BELAUSTEGUI, SHARP & LOW
15 71 Washington Street
16 Reno, Nevada 89503
17 Fax: 775.329.7169

18 Fax only to:
19 Honorable Judge Charles E. Weller
20 Second Judicial District Court
21 Department No. 11
22 One S. Sierra Street
23 Reno, NV 89501
24 (775)325-6603

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Employee of Odgers & Cho, LLC

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MEMORANDUM FOR EVIDENTIARY HEARING, filed in Case No. DV04-01626:

Does not contain the social security number of any person

-OR-

Does contain the social security number of a person as required by:
 A specific state or federal law, to wit:

-or-

For the administration of a public program.

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Dated: 4/5/2007

Jarlen L. Cho
Jarlen L. Cho, Esq.