

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

FLOYD H. GRANT III,

Petitioner Appellee,

Court of Appeals Number: 25304

vs.

District Court Number: DR 95-2675

LESLIE D. CUMIFORD  
(f/k/a Leslie D. Interrante),

Respondent Appellant.

**APPELLANT'S DOCKETING STATEMENT**

**I. NATURE OF THE PROCEEDING**

Leslie D. Cumiford, Respondent Appellant Pro Se, appeals from the final Order Upon Rule 11-706 Expert Witness' Notice of Non-Compliance; Adjudication of Respondent's Contempt of Court and Order to Pay of the District Court.

**II. JURISDICTION, DATE AND ORDER OF FILING NOTICE OF APPEAL**

The Order Upon Rule 11-706 Expert Witness' Notice of Non-Compliance; Adjudication of Respondent's Contempt of Court and Order to Pay was filed in the Second Judicial District Court, County of Bernalillo, on September 9, 2004. This order can be appealed because it contains decretal language, a judgment for a sum certain, a judgment for contempt of court, and it is not intertwined with other post-decree matters (*Khalsa v. Levinson*, 125 N.M. 680, 1998 NMCA 110; 964 P.2d 844). The notice of appeal was filed on October 12, 2004 after the October 11 Columbus Day holiday. The deadline for filing of Respondent Appellant's docketing statement was November 12, 2004 after the Veteran's Day holiday, but Respondent Appellant has motioned the Court for a brief extension of time.

### III. STATEMENT OF THE CASE

- A. The district court case involves custody, timesharing, and child support. This appeal is from a post-decree order involving Respondent's payment of the 11-706 expert. The decree from trial is currently on appeal (Ct. App. Case 24445); therefore the district court only has jurisdiction over enforcement of the decree and matters since October 9, 2003.
- B. The 11-706 expert's evaluation, ordered by the Court in November 2002, was completed and a final report and parenting plan was presented in March 2003. Respondent filed a motion to adopt the plan. The motion was heard on April 29, 2003. The judge asked, "If everybody is agreeing to Dr. Zieman's recommendation, why do we need a trial?" Petitioner's counsel argued that a trial was need anyway.
- C. The Guardian ad Litem argued for an update to the recently-completed 11-706 evaluation during the hearing. The Court declined to approve this request during the April 29, 2004 hearing; nor was there an order for further 11-706 evaluation at that time. The Court adopted the 11-706 recommendations pending trial and the case was set for trial. Each party paid the 11-706 expert in full for the party's respective share of the evaluation fees as presented by the 11-706 expert in his statement and fee schedule in 2002.
- D. Despite the lack of an order from the judge, the Guardian ad Litem asked the 11-706 expert to do an "evaluation update" on the same day as the hearing, April 29, 2003. The 11-706 expert issued a letter to both parties on April 29, 2003 with estimated fees for the update, stating that his (first) evaluation had been completed. Respondent Appellant objected in a May 3, 2003 written letter to the Guardian and the 11-706 expert, requesting that the Guardian make his recommendation to the Court for written approval (as per NMRA 11-706(B)). The Guardian failed to do so.

- E . The 11-706 expert proceeded with an evaluation “update” using input from Petitioner alone. His second report completely reversed his recommendations from the first one. In his testimony at an emergency hearing on May 16, 2003, he made a number of allegations that were later refuted at trial. A second custody expert testified at trial that the 11-706 did not follow proper procedure in completing his second evaluation with no input from Respondent.
- F . In June 2003 the Court ordered a third evaluation to clarify the discrepancies between the first two evaluations prior to trial.
- G . The 11-706 expert demanded fees for the second evaluation (not ordered by the Court) and his testimony concerning the second evaluation before proceeding with the third, court-ordered evaluation. He turned Respondent and her attorney away from his office at a scheduled meeting on June 16, 2003, stating that he was angry that Respondent disputed his fees for the second evaluation (not ordered by the Court) and associated testimony, and that his anger would likely influence his third evaluation report.
- H . On June 20, 2003, Respondent filed a Motion for Emergency Evidentiary Hearing to Remove Court Appointed Expert Witness. The judge declined to hear the matter and deferred it until the trial on the merits.
- I . Eventually, in fulfillment of the Court’s pretrial Order, the 11-706 expert met with Respondent and her attorney and completed his third evaluation (or second update) report, concluding for the second time that Respondent was toxic, narcissistic, and pathological.
- J . The main focus of the three-day trial on the merits was the allegations in the 11-706 expert’s three recommendation reports against Respondent. Much of his testimony and reports were impeached with the testimony of those he interviewed, a second custody evaluator, and an expert forensic psychologist who reviewed Respondent’s psychological test scores released

by Dr. Zieman. The Guardian ad Litem requested to withdraw from the case in his written closing statement of August 25, 2003. Respondent's written closing argument called for the removal of the Guardian ad Litem and the court's 11-706 witness from the case.

- K. The October 9, 2003 decree from the trial excused the 11-706 witness from the case and stating that there was not a material change in circumstances warranting a change in legal and physical custody from Respondent to Petitioner. The Court did not adopt any of the 11-706 recommendations; creating and adopting the Court's own timesharing schedule that was drastically different from that of the 11-706 expert.
- L. The 11-706 expert provided his final bill for \$1807.09 to Respondent on October 7, 2003. This bill included the disputed fees for the second evaluation not ordered by the Court and disputed travel expenses for a second trip in a seven-month period to Petitioner's home in Oklahoma. At no time did the 11-706 expert submit any affidavit or statement of his fees to the Court. Respondent replied with a letter disputing the charges.
- M. Paragraph Q of the Court's October 9, 2003 Order states, "Any outstanding fees for the Rule 11-706 Expert and the Guardian ad Litem shall be split between the parties with Hank Grant paying 60% and Leslie Cumiford paying 40%."
- N. The 11-706 expert submitted a Rule 706 Expert Notice of Non-Compliance to the Court and the parties, signed on July 6, 2004 and subsequently filed it, about nine months from the October 9, 2003 trial decree and over a year after he was excused from the case. It states, "Respondent failed to comply with Court Order as follows: Has paid \$0 toward outstanding 706 fees from March – August 2003 which Judge Walker's Custody & Timeshare Order (paragraph Q on pg. 6) orders to be paid." At this time, a different judge presided over the

case than the trial judge because of the recusal of the trial judge from the case shortly after issuing her October 9, 2003 decree.

- O. Despite the fact that the Notice of Non-Compliance was the first notice to the court containing a specific dollar amount in fees from the (former) 11-706 expert, the judge issued an Order to Show Cause against Respondent for nonpayment. At the hearing, conducted on August 10, 2004, only two witnesses were heard because of time constraints: the (former) 11-706 expert and Respondent's expert witness, the same forensic psychologist who had testified at trial. Respondent's expert's testimony and the evidence was unopposed, finding among other things that Dr. Zieman was highly addicted to a Valium-type substance affecting his abilities during his stint as an expert in this case, that he had suppressed very important evidence concerning Petitioner's psychological state, and that he had falsely represented Respondent's psychological condition when it was perfectly normal. Evidence provided at the hearing included an official transcript of the meeting where Dr. Zieman declared that he was angry and that it might affect his third report to the Court.
- P. The court requested written closing arguments. Respondent filed her Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004, excerpts of which are provided below. They were unopposed; opposing counsel submitted nothing.
- Q. The court found in its September 9, 2004 order that Respondent was in contempt for not paying \$1807.09, an amount for which there was no previous judgment, and that her findings were "completely unsupported and frivolous". See excerpts below.

#### IV. ISSUES REPRESENTED

- A. Did the Court err in demanding payment for fees for an 11-706 evaluation that was not judicially ordered?**

The issue was preserved in paragraph 5 of Respondent's Response to Dr. Zieman's Rule 706 Expert Notice of Non-Compliance filed on August 2, 2004, in paragraph 9 of the Argument section of Respondent's Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004, and in argument at the hearing on August 10, 2004. The standard of review for this issue is substantial evidence.

The following findings of fact are from Respondent's Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004:

1. Respondent paid in full for custody evaluation services as ordered on November 20, 2002 that resulted in a final report on March 14, 2003, provided as evidence in this case on August 10, 2003. Respondent's billing statements and receipts were admitted at the hearing.
2. There was a hearing in this case on April 29, 2003, but the Court's order resulting from the hearing did not include a custody evaluation update. Instead, the order resulting from this hearing adopted Dr. Zieman's recommendations and parenting plan issued on March 14, 2003.
3. Dr. Zieman proceeded with two additional evaluations, or evaluation updates; each evaluation/update proceeded in time right after the previous one, as evidenced by the evaluation reports dated May 20, 2003 and August 11, 2003.
4. Such a pattern of custody evaluation and updates is highly unusual. Dr. Zieman never before performed two back-to-back custody evaluations and/or updates in the same case in his many years as an 11-706 expert, much less three, as per Dr. Zieman's testimony at the hearing.
5. Respondent objected to the (first) update in writing, stating that the court had not ordered it and asking that the Guardian ad Litem seek an Order from the Court before proceeding. This letter was copied to Dr. Zieman. It was admitted as Respondent's evidence at the hearing.
12. Dr. Zieman's second report to the court dated May 20, 2003 did not follow appropriate procedure because it was incomplete, according to custody evaluation expert Dr. Charlene McIver at trial. This information is provided in Dr. McIver's report, admitted as evidence at trial on August 22, 2003 and provided for review on August 10, 2004.

### **Supporting Authorities**

**NMRA 11-706(A)** "The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed . . . A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. . ."

**B. Did the Court err in issuing an order to show cause and making a finding of contempt for nonpayment of some of the fees claimed by an 11-706 expert based on a previous general order for splitting fees between the parties, without first making a specific determination and judgment as to amounts owed?**

Should the court be required to make a finding of fact regarding the amount of fees due and issue an order accordingly before issuing an order of contempt for nonpayment? Should Respondent/Appellant be found in contempt for nonpayment without notice or an opportunity to be heard regarding the amount of fees to be paid?

The issue was preserved in paragraphs 3 and 5 of Respondent's Response to the Court's July 16, 2004 Order to Show Cause filed on August 2, 2004 and in paragraphs 1 and 3 of the Argument section of Respondent's Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004. The standard of review for this issue is substantial evidence.

The Court found in its September 9, 2004 Order that "Respondent had knowledge of the Court's Modified Order of Custody, Timeshare, and Child Support, the ability to comply and her failure to do so was willful and constitutes contempt of court. . ."

The following points are from Respondent's Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004:

1. Dr. Gayle Zieman, the court's 11-706 custody evaluation expert from November 20, 2002 until August 25, 2003, filed a Notice of Noncompliance on July 20, 2004 stating therein: "[Respondent] has paid \$0 toward outstanding 706 fees from March-August 2003 which Judge Walker's Custody and Timeshare Order (paragraph Q on pg. 6) orders to be paid. Order is dated 10-9-03".
4. Paragraph Q of the October 9, 2003 Order to which Dr. Zieman refers in his Notice of Noncompliance states: "Any outstanding fees for the Rule 11-706 Expert and the Guardian ad Litem shall be split between the parties with Hank Grant paying 60% and Leslie Cumiford paying 40%."

There is no evidence that Dr. Zieman provided any information to the Court regarding the amount of his fees prior to the October 9, 2003 decree. No judgment for a specific amount of fees existed prior to the August 10, 2004 hearing.

### **Supporting Authorities**

**Thomas v. Thomas, 128 N.M. 177; 1999 NMCA 135; 991 P.2d 7.** “Due process requires notice and a meaningful opportunity to be heard. See *In re Termination of Parental Rights of Laurie R.*, 107 N.M. 529, 534, 760 P.2d 1295, 1300 (Ct. App. 1988)”

**Dial v. Dial, 103 N.M. 133; 703 P.2d 910 (1985).** “The elements necessary for a finding of civil contempt are: (1) knowledge of the court's order; (2) an ability to comply, *Niemyjski v. Niemyjski*, 98 N.M. 176, 646 P.2d 1240 (1982); *In re Hooker*, 94 N.M. 798, 617 P.2d 1313 (1980); coupled with (3) willful noncompliance of the order.”

**Horcasitas v. House, 75 N.M. 317; 404 P.2d 140.** “Contempt cannot be predicated upon the breach of a promise to an individual. See *In re Fullen*, 17 N.M. 394, 128 P.64. It follows, therefore, that such adjudication of contempt was erroneous and must be vacated.”

**Murphy v. Murphy, 96 N.M. 401; 631 P.2d 307.** “Punishment for civil contempt is remedial and for the benefit of one of the parties. There can be no doubt that the court could hold respondent in civil contempt of court for violating a [\*\*\*18] court order that previously directed him to take certain action or that prohibited certain conduct. Nor is there any doubt that the judge could enforce such orders by fine or by a coercive or remedial jail sentence or both. Since neither the respondent nor the attorney were ordered to file the court order, neither could be held in civil contempt for failure to file the stipulated order.”

**C. Given that the October 9, 2003 Order is currently on appeal, did the Court step outside of its jurisdiction in extending, not merely enforcing, paragraph Q of the October 9, 2003 Order regarding the allocation of expert fees to a judgment for a specific amount of fees?**

The issue was preserved in paragraph 4 of Respondent's Response to the Court's July 16, 2004 Order to Show Cause filed on August 2, 2004. The standard of review for this issue is substantial evidence.

In addition to the findings of fact provided in Issue B above, the Court's decree of October 9, 2003 containing paragraph Q regarding the allocation of fees has been in the jurisdiction of the Court of Appeals for almost a year in case #24445 filed in December 2003. The 11-706 expert filed his Notice of Non-Compliance in July 2004, and prior to that time the 11-706 expert never filed any pleading, notice, or letter to the Court regarding his fees.

#### **Supporting Authorities**

**NMRA 1-062.** "Except as provided in these rules, execution may issue upon a judgment and proceedings may be taken for its enforcement upon the entry thereof unless otherwise ordered by the court. . ."

**D. Did the Court err in its interpretation of Rule 11-706(B) in its position that its consideration was limited to that of the expert's hourly rate, not adequacy of services performed, to enforce payment?**

The issue was preserved in paragraph 13 of the Argument section of Respondent's Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004. The standard of review for this issue is substantial evidence.

The Court stated on the record during the August 10, 2004 hearing:

“Now Ms. Cumiford, I’m going to allow you a cross examination within the scope of my direct, but I’m going to tell you right now that if you want to make a claim for malpractice you do it in a civil court by filing a lawsuit and proving the allegations. But to the extent that I’ve asked questions on direct, you may proceed with your cross.”

The following interchange during the hearing shows the Court’s intention to separate the reasonableness of the hourly rate charged by Dr. Zieman from the reasonableness of the work performed in exchange for the fees:

- Ju: And I would appreciate it if you would confine your questions to the reasonableness of the fees, which is the focus of the Court, and your dispute as to the reasonableness of the fees. .
- Res: Your Honor, is it the Court’s position that the reasonableness of the fees should be separated from the work that was done? Whether it was done accurately?
- Ju: You’ve disputed the fee, and I’m going to give you an opportunity to show that the fee was unreasonable. That’s what I’m going to allow you to do. I know you’re here claiming fraud, you’re claiming this, you’re making many claims about Dr. Zieman. And those claims are best brought in civil court, not in a divorce court. Because there is an order for you to pay these fees. Pay reasonable fees. It’s undisputed you haven’t paid, so I’m going to give you an opportunity to show that the fees that Dr. Zieman’s charged are unreasonable. But I’m not going to go into all this other stuff because it doesn’t relate to that. . .
- Res: What I’m attempting to do here is show that the work that was done was not reasonable and contributed to the ongoing, over and over evaluations that went on.
- Ju: I don’t understand that. . .

### **Supporting Authorities**

**NMRA 11-706(B) 2003.** “Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow.”

**E. Given Respondent’s stated intention to bring an action against the 11-706 expert for malpractice, did the Court err in denying Respondent her right to a jury trial with adequate preparation and presentation of her malpractice case by hearing argument**

**regarding lawfully disputed fees and making a ruling regarding Respondent's allegations, thereby precluding later malpractice action due to *res judicata*?**

The issue was preserved in paragraph 10 of Respondent's Response to Dr. Zieman's Rule 706 Expert Notice of Non-Compliance filed on August 2, 2004, and in paragraph 17 of Respondent's Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004. The standard of review for this issue is substantial evidence.

The excerpts from the hearing shown in Issue D are incorporated herein. After the Court repeatedly stated that he was going to rule based on the reasonableness of the 11-706 expert's hourly rate, the Court included the following findings in his September 9, 2004 Order from the August 10, 2004 hearing:

6. Respondent claims justification for not complying with the Order to pay her allocated portion of Dr. Zieman's fees on claims that: (a) Dr. Zieman committed perjury in the testimony given in this case; (b) Dr. Zieman is a drug addict; (c) Dr. Zieman rendered services without the Court's authorization and (d) Dr. Zieman's professional fee is unreasonable. The Court finds respondent's allegations of perjury, drug addiction and lack of authorization are completely unsupported by the evidence.
- (2) Respondent's claims of justification for not complying with the Court's Modified Order of Custody, Timeshare and Child Support are completely unsupported by the evidence and frivolous.

Respondent's letter to the 11-706 expert disputing his fees, dated October 21, 2003 and provided as evidence at the August 10, 2004 hearing, states, "I received your letter and invoice dated October 7, 2003 for \$1807.09. Respectfully, I dispute your bill on the grounds that your bias and misrepresentation of the facts was the cause of the additional expense. I will be filing a malpractice suit against you."

**Supporting Authorities**

**N.M. Const. art. II, § 12 (2004).** The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate. In all cases triable in courts inferior to the district court the

jury may consist of six. The legislature may provide that verdicts in civil cases may be rendered by less than a unanimous vote of the jury.

**USCS Const. Amend. 7 (2004).** Trial by jury in civil cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**Chara v. Lander, 132 N.M. 175; 2002 NMCA 53; 45 P.3d 895.** “[\*\*10] "Claim preclusion, or res judicata, bars subsequent actions involving the same claim, demand or cause of action. . . The purpose of res judicata is to ‘relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.’ . . . We apply res judicata when all of the following elements are established: '(1) identity of parties or privies, (2) identity of capacity or character of persons for or against whom the claim is made, (3) . . . same cause of action, and (4) . . . same subject matter.'”

**F. Did the Court err in ignoring substantial, uncontested evidence in its findings regarding Respondent’s allegations?**

The issue was preserved via Respondent’s filing of her Notice of Appeal on November 1, 2004. The standard of review for this issue is substantial evidence.

See the Court’s findings in its Order from the August 10, 2004 hearing, listed in Issue E.

The following are just a few of the many findings provided in Respondent’s Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004:

8. Dr. Zieman took a large daily dose (30 mg) of a prescription narcotic drug in the same class of medications as Valium, Temazepam, during the entire time that he was the custody evaluator on this case. This drug is highly addictive, and a 30 mg dose for a long period of time is contraindicated by the pharmaceutical manufacturer. Side effects from such usage

include loss of short-term memory, bizarre emotional behavior, hallucinations, and withdrawal symptoms when decreasing or discontinuing use. Expert testimony indicated that it would not be desirable to have a court-appointed expert under the influence of this drug regimen. This information was provided in Dr. Zieman's testimony from the June 29, 2004 hearing, his testimony at the August 10, 2004 hearing, the package insert from Restoril (Temazepam) admitted as Respondent's evidence on June 29, 2004, and Dr. Anne Rose's expert testimony.

9. Dr. Zieman suppressed from all three of his custody evaluation/update reports in this case important psychological test result information regarding Petitioner, who had a T-score of 93 in the hysteria scale on the Minnesota Multiphasic Inventory (MMPI). This score is extremely high (out of normal range) and indicates a need for psychological treatment. This result is important information that should have been reported to the Court by Dr. Zieman in his reports. This condition could have even more serious implications if this score is in combination with a high score on another scale of the MMPI. This information was provided by review of Dr. Zieman's three reports provided as evidence on August 20, 2003, Dr. Rose's expert testimony, and Dr. Zieman's testimony from June 29, 2004 and August 10, 2004.
12. Dr. Zieman's second report to the court dated May 20, 2003 did not follow appropriate procedure because it was incomplete, according to custody evaluation expert Dr. Charlene McIver at trial. This information is provided in Dr. McIver's report, admitted as evidence at trial on August 22, 2003 and provided for review on August 10, 2004.
13. Dr. Zieman's first report to the court dated March 14, 2003 included a number of statements attributed to Respondent's daughter, Gloria Interrante. Gloria testified to the court at trial on August 21, 2003 that she never made the statements. In fact, she stated to the Court during her testimony that Dr. Zieman "lied" and that it "wasn't right" for him to lie about her statements.

Respondent's expert witness, Anne Rose, Ph.D., was not cross examined by opposing counsel. Her testimony was unopposed, nor was any evidence presented to the Court to contradict any of her statements.

### **Supporting Argument**

**Martinez v. Martinez, 124 N.M. 313; 1997 NMCA 125; 950 P.2d 286. [\*\*13]** On rehearing, Wife sought to bolster her own testimony concerning her mental condition with the affidavit of Ms. Layne, her treating psychologist, together with textual material from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association. Husband, although challenging Wife's credibility, did not offer expert testimony

contradicting the opinion of Ms. Layne concerning the extent or degree of Wife's alleged mental disability.

**In re Sanders, 108 N.M. 434; 773 P.2d 124, (1989).** After the petitioner has presented a prima facie case, the state has the burden to come forward with sufficient evidence to rebut petitioner's prima facie showing by clear and convincing evidence. See R. 11-301. The latter rule provides in applicable part that "a presumption imposes on the party against whom [\*\*\*14] it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion \* \* \*"

**G. Did the Court err in failing to adopt or address Respondent's uncontested findings of fact, conclusions of law, and written closing arguments?**

The issue was preserved via Respondent's filing of her Notice of Appeal on November 1, 2004. The standard of review for this issue is substantial evidence.

During the August 10, 2004 hearing, the Court requested written closing arguments from Respondent and from Petitioner's Counsel. Respondent filed her Written Closing Arguments and Requested Findings of Fact and Conclusions of Law on August 20, 2004. Opposing counsel did not file any closing arguments and did not file requested findings of fact and conclusions of law. Respondent's Findings, Conclusions, and Arguments were uncontested. The Court made the findings presented in Issue E in its Order resulting from the August 10, 2004 stating that Respondent's allegations were "completely unsupported by the evidence and frivolous". Other than that statement, the Court did not address Respondent's uncontested Written Closing Arguments and Requested Findings of Fact and Conclusions of Law filed on August 20, 2004.

## Supporting Argument

**Horcasitas v. House, 75 N.M. 317; 404 P.2d 140.** “The refusal to adopt appellant's requested conclusions, contrary to those made by the court, is not error where, [\*\*\*4] as here, the conclusions adopted are supported by ultimate facts based upon substantial evidence. As was said in Consolidated Placers v. Grant, 48 N.M. 340, 151 P.2d 48, and Isaac v. [\*320] Seguritan, 66 N.M. 410, 349 P.2d 126, “[c]onclusions of law must be predicated upon, and supported by, findings of fact.””

### V. RECORD OF PROCEEDINGS

The entire proceedings of this case were tape recorded. The Court of Appeals retains the record proper in this case up to [date] because of case #24445 Ct. App..

### VI. RELATED OR PRIOR APPEALS

Ct. App. Case 24445, appealing from the October 9, 2003 decree from trial.

### VII. DOCKETING FEE

A docketing fee of \$125.00 was paid to the New Mexico Court of Appeals and this case was docketed with the filing of Respondent Appellant’s Motion for Extension of Time and the Case Information Sheet on November 1, 2003.

Respectfully submitted,

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