

1 2. Mr. Falconi alleges Ms. [REDACTED] "has refused to pay child support, has not
2 made a payment on her child support arrearages in almost a year, has failed to return
3 clothing at every exchange thus far, and communicates to [Mr. Falconi] through the child."
4 Mr. Falconi alleges Ms. [REDACTED] was ordered to pay child support in the amount of \$471.57
5 per month, and currently has "new outstanding child support arrears in the amount of
6 \$1239.68" [sic]. Mr. Falconi requests Ms. [REDACTED] be imprisoned for seven consecutive days.
7 In the alternative, Mr. Falconi requests an order "continuously requiring Parties to
8 reciprocally keep each other updated as to their status of employment," and relieving Ms.
9 [REDACTED] of her duty to provide the minor child with medical, vision, and dental benefits.
10 Moreover, Mr. Falconi alleges Ms. [REDACTED] owes child support arrearages and outstanding
11 medical obligations in the amount of \$2,998.43. Mr. Falconi alleges "it has been ten (10)
12 months since [Ms. [REDACTED] has made a payment on the arrearages judgment and her
13 outstanding balance owed is \$3077.16" [sic]. Mr. Falconi requests Ms. [REDACTED] be
14 imprisoned for seven consecutive days. In the alternative, Mr. Falconi requests "the Court
15 to vacate the portion of its order allowing [Ms. [REDACTED] to make voluntary payment on the
16 judgment for arrearages." Mr. Falconi requests the District Attorney's Child Support
17 Enforcement Division enforce the judgment. Additionally, Mr. Falconi alleges Ms. [REDACTED]
18 refuses to return the minor child's school uniforms, and does not respond to Mr. Falconi's
19 correspondence regarding the same. Mr. Falconi requests Ms. [REDACTED] be imprisoned for
20 twenty-one consecutive days. In the alternative, Mr. Falconi requests "the Court grant
21 [Ms. [REDACTED] a monthly, \$25 child support deviation in her favor to cover the costs of
22 clothing." Further, Mr. Falconi alleges Ms. [REDACTED] is communicating to Mr. Falconi
23 through the minor child. Mr. Falconi requests Ms. [REDACTED] be imprisoned for seven
24 consecutive days.

25 3. Ms. [REDACTED] counsel responds and objects, stating "counsel has been unable
26 to communicate with [Ms. [REDACTED] despite repeated attempts to do so." Ms. [REDACTED]
27 counsel opposes Mr. Falconi's Motion to avoid the presumption that Ms. [REDACTED] admits
28 Mr. Falconi's Motion is meritorious. Ms. [REDACTED] counsel states counsel will be filing a

1 motion to withdraw. Ms. [REDACTED] counsel requests Ms. [REDACTED] "ability to argue her case
2 be preserved for any hearing held in this matter."

3 4. Mr. Falconi replies, alleging Ms. [REDACTED] "appears unable or unwilling to
4 communicate with her own counsel," as well as Mr. Falconi. Mr. Falconi alleges the
5 Opposition filed by Ms. [REDACTED] counsel fails to "directly controvert the asserted facts and
6 authority set forth in [Mr. Falconi's] motion." Accordingly, Mr. Falconi alleges Ms.
7 [REDACTED] Opposition "does not necessarily preclude the Court from exercising DCR 13(3) in
8 the instant case." Mr. Falconi requests Ms. [REDACTED] appear before the Court for a Show
9 Cause Hearing. Mr. Falconi further states the Court "is well within its discretion" to deem
10 Ms. [REDACTED] Opposition as an admission that Mr. Falconi's motion is meritorious, and
11 grant the instant Motion.

12 Conclusions of Law

13 1. District Court Rule 13 allows the court to construe the lack of an opposition
14 to a motion as an admission on the part of the opposing party and that the motion is
15 meritorious and should be granted. In the present case, Ms. [REDACTED] counsel filed an
16 Opposition to Mr. Falconi's Motion merely in an effort to avoid admission of the
17 allegations and requested relief outlined in Mr. Falconi's Motion. The Court notes Ms.
18 [REDACTED] Opposition failed to provide any legal authority regarding the issues presented or
19 address the allegations made by Mr. Falconi. However, there is a strong judicial policy
20 favoring decisions based upon the merits of a case. Dagher v. Dagher, 103 Nev. 26, 28, 731
21 P.2d 1329 (1987). This policy is heightened in domestic relations cases. Id. Based on that
22 policy, this Court will not consider Ms. [REDACTED] Opposition an admission on the part of
23 Ms. [REDACTED] that Mr. Falconi's motion is meritorious and should be granted.

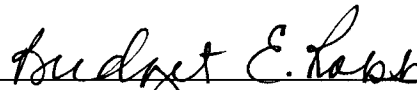
24 2. NRS 22.010 defines contempt as "[d]isobedience or resistance to any lawful
25 writ, order, rule or process issued by the court or judge at chambers." The party moving
26 for an order to show cause must make a prima facie showing that the non-moving party
27 had the ability to comply with the order and that his or her violation was willful. See
28 Rodriguez v. District Court, 120 Nev. 798, 102 P.3d 41 (2004). Any order intended to be the

1 subject of contempt, "must be clear and unambiguous, and must spell out the details of
2 compliance in clear, specific, and unambiguous terms so that the person will readily know
3 exactly what duties or obligations are imposed on him." See Cunningham v. District
4 Court, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986) (citing Southwest Gas Corp. v.
5 Flintkote Co., 99 Nev. 127, 659 P.2d 861 (1983)). Courts have "inherent power to enforce
6 their decrees through civil contempt proceedings. . ." In re Determination of Relative
7 Rights of Claimants & Appropriators of Waters of Humboldt River Stream Sys. &
8 Tributaries, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002).

9 3. "If a contempt is not committed in the immediate view and presence of the
10 court or judge at chambers, an affidavit must be presented to the court or judge of the facts
11 constituting contempt. . ." NRS 22.030(2). Mr. Falconi failed to provide a fact specific
12 affidavit attesting to the grounds for contempt. The Court is unable to find Mr. Falconi set
13 forth a prima facie showing that Ms. [REDACTED] willfully violated the Court's orders. Mr.
14 Falconi's Motion for an Order to Show Cause is denied without prejudice to renew with an
15 appropriate affidavit.

16 **IT IS SO ORDERED.**

17 Dated: January 20, 2016.

18 
19 District Judge

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21 Case No. FV08-03200
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CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the 20 day of Jan., 2016, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

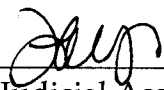
JAMES J. BARNES, ESQ.

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify I am an employee of the Second Judicial District Court, and on the 20 day of January, 2016, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

Alexander M. Falconi

Ann


Judicial Assistant