

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL J. VOLPICELLI,

Appellant,

vs.

LORI INMAN,

Respondent.

Supreme Court No. 45999

District Court No. CV0303582

Due Date: 11/07/05

FILED

OCT 21 2005

BY JANEY M. J. J. J.  
CLERK OF SUPREME COURT  
DEPUTY CLERK

CIVIL PROPER PERSON APPEAL STATEMENT

FERRILL JOSEPH VOLPICELLI  
#79565  
P O Box 359  
Lovelock, NV 89419  
Appellant, in proper person

*Appellant:*  
Ferrill Joseph Volpicelli

LORI INMAN  
P.O. Box 6772  
Reno, NV 89513  
Respondent, in proper person

*Respondent:*  
Lori Inman

RECEIVED  
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By \_\_\_\_\_  
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**INSTRUCTIONS:** If you are an appellant, you may complete and file this Appeal Statement within 40 days from the date that your appeal is filed in the Nevada Supreme Court. If you do not file this Appeal Statement by that date, the Nevada Supreme Court will dismiss your appeal.

Write only in the space allowed on the form. **Additional pages and attachments are not allowed.** The Nevada Supreme Court prefers short and direct statements. You do not need to refer to legal authority or the district court record.

This completed form must be filed with the Clerk of the Nevada Supreme Court at the following address:

Clerk of the Court  
Supreme Court of Nevada  
201 South Carson Street  
Carson City, Nevada 89701  
Telephone: (775) 684-1600 or (702) 486-9300

You may file this completed form in person or by mail. You must file the original form and 1 copy with the Clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your form, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Forms cannot be faxed or e-mailed to the Supreme Court Clerk's Office.

Copies of this completed form must also be mailed or delivered to all other parties to this appeal or to the parties' attorneys, if they have attorneys.

**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
8/25/05	<del>Order Granting Defendant's Motion To Dismiss Without Prejudice (Conversion-Summary Judgment)</del>

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: September 22, 2005

**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
NONE		

**Settlement Conference.** Would you be interested in participating in a settlement discussion, in which you and the other party or parties discuss settling your dispute with the assistance of a trained mediator?

Yes       No

**NOTE:** If the court determines that your case may be suitable for a settlement conference, you will be contacted.

**Transcripts.** Does this court need transcripts of your trial or hearing held in the district court?

Yes       No      (None known to appellant. However, pleadings and documents filed in the lower court are needed to be transcribed as a record on appeal.

If you answered **YES** to this question, complete the **Civil Proper Person Transcript Request Form** that was sent to you. You must pay in advance for any transcripts. For more information, read the instructions on the Transcript Request Form.

which are critical in supporting the argument of this appeal).

**Issues on Appeal.** Does your appeal concern any of the following issues?  
Check all that apply:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> divorce   | <input type="checkbox"/> child custody/visitation       | <input type="checkbox"/> child support        |
| <input type="checkbox"/> relocation  | <input type="checkbox"/> termination of parental rights | <input type="checkbox"/> attorney fees        |
| <input type="checkbox"/> paternity   | <input type="checkbox"/> marital settlement agreement   | <input type="checkbox"/> division of property |
| <input type="checkbox"/> adoption  | <input type="checkbox"/> prenuptial agreement           | <input type="checkbox"/> spousal support      |
| <input checked="" type="checkbox"/> other—briefly explain: <u>PROPERTY</u> |   |   |

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

Appellant filed a civil action against Respondents named herein,  
for the lost, theft and/or destruction of Appellant's property  
with a value of \$9,000.00. Following numerous pleadings, hearings  
and uncompleted discovery, Respondents filed a second Motion To  
Dismiss, which was granted on August 25, 2005. Subsequent thereto,  
Appellant filed a Motion For Reconsideration on September 12, 2005,  
which was denied on October 3, 2005.

The District Court dismissed the action without prejudice directing  
Appellant to file same in the lower court Justice Court Small Claims.  
Reason being, that the disputed watch with a value of \$3,000.00  
value, deducted from the aggregate amount of \$9,000.00, left \$6,000.00,  
an amount which changes the jurisdiction of the matter by NRS.  
Based upon continued genuine issue of material fact, the Partys'  
natural child, Travis Volpicelli (Lori Inman Respondent, fka  
"Volpicelli") executed an Affidavit as to the disposition of the  
\$3,000.00 watch. The Affidavit was prepared by the Respondents  
and was annexed to the Motion To Dismiss. Appellant filed an  
Opposition To The Motion To Dismiss.

Based upon an Amendment to NRS 4.370(1)(e), increasing Justice  
Small Claims from \$7,500 to \$10,000, as of January of 2005. The  
statute does not indicate that pending cases are "retroactive to

January 2005". The instant case has been pending before the District Court since the filing date of June 4, 2003. To refile the instant pleading before the Court in another jurisdiction poses a threat to (1) Statute of limitations, and (2) Resjudicata. Either point would violate Appellant's Due Process and Equal Protection Rights. In addition, this case has volumes of records on file therein relating to this civil action.

The District Court reducing the claim to \$6,000.00 as to the Summary Judgment Conversion, maintains jurisdiction as to the parties and subject matter. Appellant continues to dispute the claim of the \$3,000.00 watch, and the remaining claim of \$6,000.00 personal property. Discovery is continuing, and upon completion, Appellant make a prima facia legal argument discrediting the Respondents' child's Affidavit entitling Appellant to \$9,000.00 claim. This Court should take judicial notice that Subpoena Duces Tecum (NRCP 45(b) have been issued upon persons having knowledge as to both Appellant's watch at \$3,000.00 as well as the \$6,000.00 property. These Subpoenas have been issued shortly prior to the entry of the District Court's Order, and the filing of Respondents' Motion To Dismiss. Finally, as required by NRCP, and NRCP 12(b), the lower Court was required to inform Appellant that because Respondents have submitted materials outside the record, the Court was treating the Motion as one for Summary Judgment; allowing Appellant an opportunity to file an appropriate opposition.

**Statement of District Court Error.** Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

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1) Whether the District Court abused its discretion in issuing an Order For Summary Judgment (Conversion from Motion To Dismiss) without first notifying Appellant.

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2) Whether there remains a genuine issue of material fact, as for a trier of fact, as to disputed claims upon Appellant's \$3,000 watch.

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3) Whether the prepared Affidavit of the Partys' child was sufficient to warrant the entry of Summary Judgment.

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4) Whether the District Court exercised great caution in Granting Summary Judgment in the view of doubt as to the operative facts.

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5) Whether the District Court abused its discretion in change of jurisdiction, based upon an Amendment subsequent to the filing of Appellant's civil action, of NRS 4.370(1)(e), of January 2005, and whether this case is retroactive to said amendment.

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6) Whether Appellant's Due Process and Equal Protection Rights would be violated as to the jurisdiction to Justice Court under the Doctrine of Resjudicata and /or the Statute of Limitations.

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