

Case No. PI 13-0870

Dept. No. _____

FILED

2019 FEB 21 PM 12:20

ELEVENTH JUDICIAL
DISTRICT COURT OF NEVADA
Mar 04 2019 02:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

* * * * *

Faruk J. Vorkkeci,

Plaintiff,

-vs-

Carbunk, et al

Defendant.

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, Faruk J. Vorkkeci,
in pro se, hereby appeals to the Nevada Supreme Court the
ORDER Granting Defendant's Motion to Dismiss,
as filed/entered on the 11 day of February, 2019,
(complete if applicable) and the N/A
_____, as filed/entered on the _____ day of
_____, 20____, in the above-entitled Court.

Dated this 15 day of February, 2019.

Faruk Vorkkeci # 78524
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

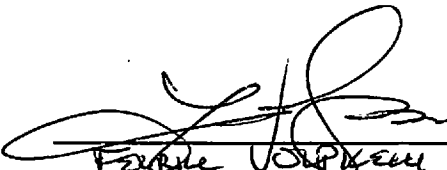
Plaintiff In Pro Se

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 15 day of FEBRUARY, 2019, by placing same in the U.S. Mail via prison law library staff:

NEVADA ATTORNEY GENERAL
100 N. CHASE ST
CHASION CITY NJ 08920

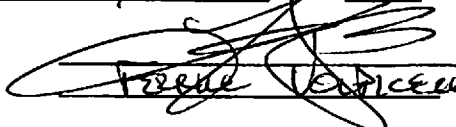

FREDERICK J. VANCE # 72241
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. RT 13-0820 does not contain the social security number of any person.

Dated this 15 day of FEBRUARY, 2019.


FREDERICK J. VANCE

Plaintiff In Pro Se

FILED

2019 FEB 27 PM 3: 35

ELEVENTH JUDICIAL
DISTRICT COURT CLERK

BY: 

Case No. PI 13-0870

Dept No. 1

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF PERSHING

Ferrill J. Volpicelli, }
 Plaintiff, }
 vs. }
 }
David Carpenter, et al., }
 Defendants. }

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Ferrill J. Volpicelli

2. Identify the judge issuing the decision, judgment or order appealed from:

Honorable Jim C. Shirley

3. Identify each appellant and the name and address of counsel for each appellant:

Ferrill J. Volpicelli
Inmate #79565
1200 Prison Road/LCC
Lovelock, NV. 89419
Pro Per for Appellant

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

David Carpenter, et al.

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Officer of the Attorney General
100 North Carson Street
Carson City, NV. 89701-4717

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

No: Pro Per

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

No: Pro Per

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

An Order to Proceed in Forma Pauperis was filed on 05/21/13.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

A Civil Rights Complaint Pursuant to 42 U.S.C. §1983 Jury Trial Demand was filed on 05/21/13.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

A Civil Rights Complaint Pursuant to 42 U.S.C. §1983 Jury Trial Demand was filed on 05/21/13. An Answer to Complaint was filed on 07/15/13. Plaintiff's Motion to Extend Process of Service on any Unserved Defendant(s) was filed on 08/13/13. Plaintiff's Initial 16.1 Documents Disclosure was filed on 08/15/13. Limited Non-Opposition to Motion for Extension of Time to Serve Defendants De Reed and Michael Dittenberg was filed on 08/22/13. A Joint Case Conference Report was filed on 08/28/13. Plaintiff's Reply to Defendants' Limited Non-Opposition to Motion for Extension of Time to Serve Defendants D.E. Reed

1 and Michael Dittenberg was filed on 09/16/13. A Request to Clerk for Entry of
2 Default as Against Named Defendant was filed on 10/14/13. Plaintiff's Motion for
3 an Order Directing the Entry of Default Against Defendant Deborah Reed was filed
4 on 11/13/13. A Notice of Appearance was filed on 11/27/13. An Opposition to
5 Motion for Default Judgment was filed on 11/27/13. A Motion to Dismiss was filed
6 on 12/06/13. Plaintiff's Opposition to Defendants(D.E. Reed and Michael
7 Dittenber) Motion to Dismiss Complaint was filed on 12/12/13. Reply in Support
8 of Defendants' Motion to Dismiss was filed on 12/18/13. Defendant's Motion for
9 Summary Judgment was filed on 01/24/14. Plaintiff's Opposition/Response to
10 Defendants' (Carpenter, Garrett, LeGrand) Motion for Summary Judgment
11 Pursuant to FRCP 56(b) was filed on 02/21/14. Motion to Strike Plaintiff's
12 Opposition to Defendants' Motion for Summary Judgment was filed on 03/03/14.
13 Motion Requesting Court to Order Plaintiff to Properly Serve His Opposition to
14 Defendants' Motion for Summary Judgment with Attached Exhibits [and] Motion
15 to Stay Briefing was filed on 03/03/14. Errata to Defendants' Motion to Strike
16 Plaintiff's Opposition to Defendants' Motion for Summary Judgment was filed on
17 03/05/14. Errata to Defendants' Motion Requesting Court to Order Plaintiff to
18 Properly Serve His Opposition to Defendants' Motion for Summary Judgment with
19 Attached Exhibits [and] Motion to Stay Briefing was filed on 03/05/14. Response
20 to Motion to Strike Plaintiff's Opposition to Defendants' Motion for Summary
21 Judgment was filed on 03/07/14. Response to Motion Requesting Court to Order
22 Plaintiff to Properly Serve His Opposition to Defendants' Motion for Summary
23 Judgment with Attached Exhibits [and] Motion to Stay Briefing was filed 03/07/14.
24 Reply in Support of Motion Requesting Court to Order Plaintiff to Properly Serve
25 His Opposition to Defendants' Motion for Summary Judgment with Attached
26 Exhibits [and] Motion to Stay Briefing was filed on 03/18/14. Response to
Defendants' Reply in Support of Motion Requesting Court to Order..... was filed
on 03/24/14. Motion to Strike Plaintiff's Response to Defendants' Reply in Support
of Their Motion for Court Order and Motion to Stay was filed on 04/09/14. Motion
for Production of Plaintiff's Opposition to Defendants' Motion for Summary
Judgment at no Expense was filed 04/15/14. A Motion for Stay of Briefing was
filed on 04/18/14. An Opposition to motion for Production of Plaintiff's Opposition
to Defendants' Motion for Summary Judgment at no Expense was filed on
04/28/14. A Motion to Strike Plaintiff's Motion to Stay Briefing was filed on
04/28/14. A Judicial Notice was filed on 05/01/14. An Opposition to Plaintiff's
Motion for Joinder of a Proper Party and Expand the Scope of Orders was filed on
05/14/14. A Motion to Strike Opposition to Plaintiff's Motion for Joinder of a
Proper Party,.... was filed on 05/20/14. Defendants' Notice of Withdrawal of
Opposition to Plaintiff's Motion for Joinder of a Proper Party and Expand the
Scope of Orders was filed on 05/30/14. An Order was filed on 06/13/14. An Order
was filed on 06/13/14. A Motion for Second Stay of Briefing was filed on
06/17/14. An Opposition to Plaintiff's Motion for Second Stay of Briefing was
filed on 06/23/14. A Reply to Opposition to Plaintiff's Motion for Second Stay of

1 Briefing was filed on 06/27/14. A Motion for Order to Reduce Duplication fees
2 and to Debit Plaintiff's Account was filed on 07/01/14. A Notice to the Court was
3 filed on 07/14/14. A Notice of Appeal was filed on 07/14/14. A Case Appeal
4 Statement was filed on 07/15/14. A Reply in Support of Defendants' Motion for
5 Summary Judgment was filed on 08/25/14. An Order Dismissing Appeal was filed
6 on 09/24/14. A Remittitur/Receipt for Remittitur was filed on 10/23/14. A Clerk's
7 Certificate/Judgment was filed on 10/23/14. A Notice of Hearing was filed on
8 08/11/16. A Motion for Waiver of Appearance was filed on 08/24/16. An Order on
9 Motion for Waiver of Appearance was filed on 08/25/16. An Order to Produce
10 Prisoner was filed on 09/08/16. Motion for Hearing was filed on 12/30/16. A
11 Notice of Hearing was filed on 07/17/18. An Order to Produce Prisoner was filed
12 on 07/17/18. A Motion for Change of Hearing Date was filed on 07/27/18. An
13 Order Granting Motion for Change of Hearing was filed on 08/08/18. An Order
14 Directing Clerk to Serve Defendants was filed on 08/08/18. Defendants' Motion to
15 Strike Plaintiff's Opposition or in the Alternative Defendants' Reply to Plaintiff's
16 Opposition to Defendants' Motion for Summary Judgment was filed on 08/16/18.
17 Defendants' Motion to Dismiss for Lack of Prosecution Pursuant to NRCPP Rule
18 41(e) was filed on 01/15/19. An Order Granting Defendants' Motion to Dismiss for
19 Lack of Prosecution was filed on 02/11/19. A Notice of Entry of Order was filed on
20 02/11/19. A Notice of Appeal was filed on 02/21/19.


21 11. Indicate whether the case has previously been the subject of an appeal to or
22 original writ proceeding in the Supreme Court and, if so, the caption and
23 Supreme Court docket number of the prior proceeding:

24 Yes, this case was appealed to the Supreme Court on 07/14/14, Supreme Court No.
25 66096, entitled Ferrill J. Volpicelli, Appellant, vs. David Carpenter; James G. Cox;
26 Michael Dittenberg; Timothy Garrett; Robert Legrand; D.E. Reed; and The State of
Nevada, Respondents.

12. Indicate whether this appeal involves child custody or visitation: No

13. If this is a civil case, indicate whether this appeal involves the possibility of
settlement: No, an Order Granting Defendants' Motion to Dismiss for Lack of
Prosecution was filed on 02/11/19.

Dated this 27th day of February, 2019.



Carol Elerick-Deputy Court Clerk
P.O. Box H
Lovelock, NV. 89419
(775) 273-2410

Case #: PI-13-0870
Judge: SHIRLEY, JIM C
Date Filed: 05/17/13 Department: 01
Case Type: CVRVIO CIVIL RIGHTS VIOLATION
Title/Caption: Ferrill J. Volpicelli
-vs-
David Carpenter, et al.

Defendant (s) CARPENTER, DAVID	Attorney (s) ATTORNEY GENERAL
Defendant (s) COX, JAMES G.	Attorney (s) ATTORNEY GENERAL
Defendant (s) DITTENBERG, MICHAEL	Attorney (s) ATTORNEY GENERAL
Defendant (s) GARRETT, TIMOTHY	Attorney (s) ATTORNEY GENERAL
Defendant (s) LEGRAND, ROBERT	Attorney (s) ATTORNEY GENERAL
Defendant (s) REED, D.E.	Attorney (s) ATTORNEY GENERAL
Defendant (s) THE STATE OF NEVADA	Attorney (s) ATTORNEY GENERAL
Plaintiff(s) VOLPICELLI, FERRILL J.	Attorney (s) PRO PER

Disp/Judgment: MTDS Date: 02/11/19

Hearings:

Date	Time	Hearing	Reference
9/12/16	11:15	MOTION FOR SUMMARY JUDGMENT-SET FOR 1 HOUR CC: CLERK-JUDGE-AG	FRANK 08/10/16

Filings:

Date	Pty	Filing	Fees
5/17/13	P	APPLICATION TO PROCEED IN FORMA PAUPERIS	FILED
5/17/13	P	CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT	FILED
5/21/13	C	ORDER TO PROCEED IN FORMA PAUPERIS	FILED
5/21/13	P	CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. §1983	
	P	JURY TRIAL DEMAND	FILED
5/21/13	P	MOTION FOR APPOINTMENT OF COUNSEL	FILED
5/21/13	P	SUMMONS 7/REED-LEGRAND-GARRETT-DOTTENBERG-COX-SON-CARPENTER	
	P		ISSUED
7/15/13	D	ANSWER TO COMPLAINT	FILED
8/13/13	P	SUMMONS 5/STATE-LEGRAND-GARRETT-COX-CARPENTER	FILED
8/13/13	P	PLAINTIFF'S MOTION TO EXTEND PROCESS OF SERVICE ON ANY UNSERVED DEFENDANTS	FILED

8/15/13	P	PLAINTIFF'S INITIAL 16.1 DOCUMENTS DISCLOSURE	FILED
8/22/13	D	LIMITED NON-OPPOSITION TO MOTION FOR EXTENSION OF	
	D	TIME TO SERVE DEFENDANTS DE REED AND MICHAEL	
	D	DITTENBERG	FILED
8/28/13	D	JOINT CASE CONFERENCE REPORT	FILED
9/16/13	P	PLAINTIFF'S REPLY TO DEFENDANTS' LIMITED NON-	
	P	OPPOSITION TO MOTION FOR EXTENSION OF TIME TO	
	P	SERVE DEFENDANTS D.E. REED AND MICHAEL DITTENBERG	FILED
9/16/13	P	REQUEST FOR SUBMISSION	FILED
10/14/13	P	SUMMONS 1/REED	FILED
10/14/13	P	REQUEST TO CLERK FOR ENTRY OF DEFAULT AS AGAINST	
	P	NAMED DEFENDANT	FILED
11/01/13	P	REQUEST FOR SUBMISSION OF MOTION	FILED
11/13/13	P	PLAINTIFF'S MOTION FOR AN ORDER DIRECTING THE ENTRY OF	
	P	DEFAULT AGAINST DEFENDANT DEBORAH REED	FILED
11/27/13	D	NOTICE OF APPEARANCE	FILED
11/27/13	D	OPPOSITION TO MOTION FOR DEFAULT JUDGMENT	FILED
12/06/13	D	MOTION TO DISMISS	FILED
12/12/13	P	PLAINTIFF'S OPPOSITION TO DEFENDANTS (D.E. REED AND	
	P	MICHAEL DITTENBER) MOTION TO DISMISS COMPLAINT	FILED
12/18/13	D	REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS	FILED
12/18/13	D	REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO	
	D	DISMISS	FILED
1/24/14	D	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	FILED
2/06/14	P	MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)	FILED
2/21/14	P	PLAINTIFF'S OPPOSITION/RESPONSE TO DEFENDANTS'	
	P	(CARPENTER, GARRETT, LEGRAND) MOTION FOR SUMMARY	
	P	JUDGMENT PURSUANT TO FRCP56(B)	FILED
2/21/14	D	NON-OPPOSITION TO PLAINTIFF'S MOTION FOR ENLARGEMENT	
	D	OF TIME	FILED
3/03/14	D	MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO DEFENDANTS'	
	D	MOTION FOR SUMMARY JUDGMENT	FILED
3/03/14	D	MOTION REQUESTING COURT TO ORDER PLAINTIFF TO	
	D	PROPERLY SERVE HIS OPPOSITION TO DEFENDANTS'	
	D	MOTION FOR SUMMARY JUDGMENT WITH ATTACHED EXHIBITS	
	D	AND MOTION TO STAY BRIEFING	FILED
3/05/14	D	ERRATA TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S	
	D	OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY	
	D	JUDGMENT	FILED
3/05/14	D	ERRATA TO DEFENDANTS' MOTION REQUESTING COURT TO	
	D	ORDER PLAINTIFF TO PROPERLY SERVE HIS OPPOSITION	
	D	TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH	
	D	ATTACHED EXHIBITS AND MOTION TO STAY BRIEFING	FILED
3/07/14	P	RESPONSE TO MOTION TO STRIKE PLAINTIFF'S OPPOSITION	
	D	TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	FILED
3/07/14	D	RESPONSE TO MOTION REQUESTING COURT TO ORDER PLAINTIFF	
	D	TO PROPERLY SERVE HIS OPPOSITION TO DEFENDANTS'	
	D	MOTION FOR SUMMARY JUDGMENT WITH ATTACHED EXHIBITS	
	D	{AND} MOTION TO STRIKE BRIEFING	FILED
3/18/14	D	REPLY IN SUPPORT OF MOTION REQUESTING COURT TO ORDER	
	D	PLAINTIFF TO PROPERLY SERVE HIS OPPOSITION TO	
	D	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH	
	D	ATTACHED EXHIBITS (AND) MOTION TO STAY BRIEFING	FILED
3/24/14	P	RESPONSE TO DEFENDANTS' REPLY IN SUPPORT OF MOTION	
	P	REQUESTING COURT TO ORDER.....	FILED
3/24/14	P	REQUEST FOR SUBMISSION OF MOTION	FILED
4/09/14	D	MOTION TO STRIKE PLAINTIFF'S RESPONSE TO DEFENDANTS'	

	D	REPLY IN SUPPORT OF THEIR MOTION FOR COURT ORDER	
	D	AND MOTION TO STAY	FILED
4/09/14	D	REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO	
	D	STRIKE	FILED
4/15/14	P	MOTION FOR PRODUCTION OF PLAINTIFF'S OPPOSITION TO	
	P	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AT NO	
	P	EXPENSE	FILED
4/18/14	P	MOTION FOR STAY OF BRIEFING	FILED
4/28/14	D	MOTION TO STRIKE PLAINTIFF'S MOTION TO STAY BRIEFING	FILED
4/28/14	D	OPPOSITION TO MOTION FOR PRODUCTION OF PLAINTIFF'S	
	D	OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY	
	D	JUDGMENT AT NO EXPENSE	FILED
5/01/14	P	JUDICIAL NOTICE	FILED
5/14/14	D	OPPOSITION TO PLAINTIFF'S MOTION FOR JOINDER OF A	
	D	PROPER PARTY AND EXPAND THE SCOPE OF ORDERS	FILED
5/20/14	P	MOTION TO STRIKE OPPOSITION TO PLAINTIFFS' MOTION FOR	
	P	JOINDER OF A PROPER PARTY	FILED
5/30/14	D	DEFENDANTS' NOTICE OF WITHDRAWAL OF OPPOSITION TO	
	D	PLAINTIFF'S MOTION FOR JOINDER OF A PROPER PARTY	
	D	AND EXPAND THE SCOPE OF ORDERS	FILED
6/13/14	C	ORDER	FILED
6/13/14	C	ORDER	FILED
6/13/14	C	ORDER	FILED
6/13/14	C	NOTICE OF ENTRY OF ORDER	FILED
6/13/14	C	NOTICE OF ENTRY OF ORDER	FILED
6/13/14	C	NOTICE OF ENTRY OF ORDER	FILED
6/17/14	P	MOTION FOR SECOND STAY OF BRIEFING	FILED
6/23/14	D	OPPOSITION TO PLAINTIFF'S MOTION FOR SECOND STAY OF	
	D	BRIEFING	FILED
6/27/14	P	REPLY TO OPPOSITION TO PLAINTIFF'S MOTION FOR SECOND	
	P	STAY OF BRIEFING	FILED
6/27/14	P	REQUEST FOR SUBMISSION OF MOTION	FILED
7/01/14	P	MOTION FOR ORDER TO REDUCE DUPLICATION FEES AND TO	
	P	DEBIT PLAINTIFF'S ACCOUNT	FILED
8/01/14	P	MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)	FILED
7/14/14	D	NOTICE TO THE COURT	FILED
7/14/14	P	NOTICE OF APPEAL	FILED
7/15/14	C	CASE APPEAL STATEMENT	FILED
7/16/14	P	REQUEST FOR SUBMISSION OF MOTION	FILED
7/16/14	P	REQUEST FOR SUBMISSION OF MOTION	FILED
7/18/14	C	RECEIPT FOR DOCUMENTS (SUPREME COURT)	FILED
8/25/14	D	REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY	
	D	JUDGMENT	FILED
8/25/14	D	REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR	
	D	SUMMARY JUDGMENT	FILED
9/24/14	C	COPY OF ORDER DISMISSING APPEAL (SUPREME COURT)	FILED
10/23/14	C	REMITTITUR (SUPREME COURT)	FILED
10/23/14	C	CLERK'S CERTIFICATE W/ATTACHED JUDGMENT	FILED
1/29/15	D	NOTICE OF APPEARANCE	FILED
3/28/16	D	NOTICE OF CHANGE OF ATTORNEY	FILED
8/11/16	C	NOTICE OF HEARING	FILED
8/24/16	P	MOTION FOR WAIVER OF APPEARANCE	FILED
8/25/16	C	ORDER ON MOTION FOR WAIVER OF APPEARANCE	FILED
9/08/16	C	ORDER TO PRODUCE PRISONER	FILED
11/21/16	D	DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO	
	D	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	FILED
12/30/16	P	MOTION FOR PRODUCTION OF DOCUMENTS	FILED

12/30/16	P	MOTION FOR HEARING	FILED
7/17/18	C	NOTICE OF HEARING	FILED
7/17/18	C	ORDER TO PRODUCE PRISONER	FILED
7/17/18	C	NOTICE OF ENTRY OF ORDER	FILED
7/19/18	C	AMENDED NOTICE OF HEARING	FILED
7/19/18	C	AMENDED NOTICE TO PRODUCE PRISONER	FILED
7/19/18	C	NOTICE OF ENTRY OF ORDER	FILED
7/27/18	P	MOTION FOR CHANGE OF HEARING DATE	FILED
8/08/18	C	ORDER GRANTING MOTION FOR CHANGE OF HEARING	FILED
8/08/18	C	ORDER DIRECTING CLERK TO SERVE DEFENDANTS	FILED
8/10/18	C	NOTICE OF ENTRY OF ORDER	FILED
8/10/18	C	NOTICE OF ENTRY OF ORDER	FILED
8/16/18	D	DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S OPPOSITION	
	D	OR IN THE ALTERNATIVE DEFENDANTS' REPLY TO	
	D	PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR	
	D	SUMMARY JUDGEMENT	FILED
8/23/18	P	MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)	FILED
8/23/18	P	REQUEST FOR SUBMISSION OF MOTION	FILED
9/05/18	D	PARTIAL OPPOSITION TO PLAINTIFF'S MOTION FOR	
	D	ENLARGEMENT OF TIME	FILED
10/08/18	P	REPLY TO DEFENDANT'S PARTIAL OPPOSITION TO PLAINTIFF'S	
	P	MOTION FOR ENLARGEMENT OF TIME; AND TO DEFENDANT'S	
	P	MOTION TO STRIKE PLAINTIFF'S OPPOSITION, OR IN THE	
	P	ALTERNATE, PLAINTIFF'S REPLY TO DEFENDANT'S MOTION FOR	
	P	SUMMARY JUDGMENT	FILED
1/15/19	D	DEFENDANTS' MOTION TO DISMISS FOR LACK OF PROSECUTION	
	D	PURSUANT TO NRCP RULE 41(E)	FILED
2/07/19	D	REQUEST FOR SUBMISSION: DEFENDANTS' MOTION TO DISMISS	
	D	FOR LACK OF PROSECUTION PURSUANT TO NRCP RULE 41(E)	FILED
2/11/19	C	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK	
	C	OF PROSECUTION	FILED
2/11/19	C	NOTICE OF ENTRY OF ORDER	FILED
2/21/19	P	NOTICE OF APPEAL	FILED
2/27/19	C	CASE APPEAL STATEMENT	FILED

1 CASE NO. PI 13-0870

2 Pursuant to NRS 239B.030, the
3 undersigned hereby affirms this document
4 does not contain the social security number
5 of any person.

6 **IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,**
7 **IN AND FOR THE COUNTY OF PERSHING**

8
9 FERRILL J. VOLPICELLI,

10 Plaintiff,

11 vs.

12 DAVID CARPENTER, et al.,

13 Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS FOR LACK OF
PROSECUTION**

14 THE ABOVE ENTITLED MATTER came before the Court on February 7, 2019,
15 Defendants' *Motion to Dismiss for Lack of Prosecution Pursuant to NRCP Rule 41(e)* ("Motion
16 to Dismiss"). Defendants' Motion to Dismiss was filed on January 15, 2019, and submitted for
17 decision on February 7, 2019, without opposition by Plaintiff. Defendants' Motion to Dismiss
18 requests that the Court dismiss this case as a matter of law under NRCP 41(e) for failure to
19 prosecute. Having reviewed Defendants' Motion to Dismiss and the applicable pleadings, the
20 Court makes the following findings of fact, conclusions of law and orders:

21 **I. PROCEDURAL HISTORY**

22 The instant case began in June of 2013. As shown by the Statement of Facts set forth in
23 Defendants' Motion to Dismiss, the case has languished without substantive action by Plaintiff
24 for some time. As such, Defendants' requested that this Court dismiss this action for want of
25 prosecution pursuant to NRCP 41(e).

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1 **II. LEGAL STANDARD**

2 Rule 41(e) provides for mandatory dismissal when an action is not brought to trial within
3 a specific time period. Specifically, Rule 41(e)(2)(b)¹ states, "The court must dismiss an action
4 for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action
5 was filed."

6 For mandatory dismissal under Rule 41(e) to be effective, it is essential to show that: (1)
7 the applicable time period has passed; (2) that the action has not been "brought" to trial; and (3)
8 that no written stipulation extending the time has been made. NRCP 41(e); Deal v. Baines, 110
9 Nev. 509, 513, 874 P.2d 775, 778 (1994); Baker v. Nobaek, 112 Nev. 1106, 1110, 922 P.2d
10 1201, 1203 (1996).

11 The purpose behind Rule 41(e) is to encourage diligence in the prosecution of action and
12 to prevent unreasonable delays in litigation. See Hassett v. St. Mary's Hospital Association, 86
13 Nev. 900, 904, 478 P.2d 154, 157 (1970) ("Every man is entitled to his day in court, but a law
14 suit is not a unilateral affair. The rights of all parties to the litigation are involved. One who is
15 charged with a complaint and against whom substantial damages are sought is entitled to a
16 determination of those issues within a reasonable time."); C.R. Fredrick, Inc. v. Nevada Tax
17 Commission, 98 Nev. 387, 649 P.2d 1372 (1982).

18 **III. ANALYSIS**

19 **A. The Action Should Be Dismissed**

20 The Court finds that five years have passed since this action was filed. Plaintiff's
21 Complaint was filed on June 4, 2013. It has been over five years since that date. However, the
22 Nevada Supreme Court has held that a period during which the parties to an action are prevented
23 from bringing the action to trial by reason of a stay order is not to be counted in determining
24 whether the applicable period has run. See Boren v. City of N. Las Vegas, 98 Nev. 5, 5, 638 P.2d
25 404, 404 (1982). Nevertheless, while a stay was entered in this case it was entered at the
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28 ¹ While NRCP 41(e) was amended on December 31, 2018, "[t]he reorganization of Rule 41(e) is stylistic and not
intended to change existing caselaw interpreting former NRCP 41(e)." Advisory Committee Note-2019
Amendment.

1 Plaintiff's request and only lasted for thirty days. Therefore, even when excluding the time
2 period that the case was stayed, as February 7, 2019, more than five years and eight months have
3 passed.²

4 The Court finds that this action has not been brought to trial. An action is considered to
5 have been "brought" to trial when "a litigant who obtains a trial date within the statutory period,
6 appears for trial in good faith, argues motions, and examines jurors." Smith v. Timm, 96 Nev.
7 197, 200, 606 P.2d 530, 531 (1980). Additionally, a motion for summary judgment which is: (a)
8 filed and submitted before expiration of the five year period of Rule 41(e); and (b) granted before
9 or after such expiration, is "bringing the action to trial" within the five year period. United
10 Association of Journeymen v. Manson, 105 Nev. 816, 820, 783 P.2d 955, 957 (1989). "Since the
11 denial of a motion for summary judgment merely involves a finding that there remain triable
12 issues of fact, it is not a trial," and thus does not satisfy the time period under Rule 41(e). Id. In
13 this case, neither condition has been satisfied by Plaintiff.

14 Finally, the Court finds that no written stipulation has been signed by the parties allowing
15 the case to continue beyond the five year period.

16 Therefore, the where Defendants have shown that the requirements set forth in Baker
17 have been met, the Court is required to dismiss the action. NRCP 41(e); Saticoy Bay LLC Series
18 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A., 133 Nev. Adv. Op. 3, 388 P.3d 226, 229
19 (2017). "Dismissal for want of prosecution under NRCP 41(e) is mandatory, and the court may
20 not examine the equities of a case to determine whether the time should be extended." The
21 Power Co. v. Henry, 130 Nev. Adv. Op. 21, 321 P.2d 858, 861 (Nev. 2014) (citing Monroe v.
22 Columbia Sunrise Hosp. Ctr., 123 Nev. 96, 99-100, 158 P.3d 1008, 1010 (2007)).

23 **B. The Action Should be Dismissed with Prejudice**

24 Where the Court has determined that the action should be dismissed, a further
25 determination must be made as to whether the action is dismissed with or without prejudice.
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27
28 ² While the Court finds no specific case law allowing the exclusion of time while jurisdiction was removed to the
Supreme Court, if that period of time (one hundred and eight days) was excluded, it has still been well over five
years since the action was commenced.

1 While a dismissal under NRCP 41(e) is presumed to be with prejudice, see Brent G. Theobald
2 Constr., Inc. v. Richardson Constr., Inc., 122 Nev. 1163, 1167, 147 P.3d 238, 241 (2006),
3 abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228 n. 6,
4 181 P.3d 670, 672 n. 6 (2008), a district court has discretion to dismiss the action with or without
5 prejudice. See Home Sav. Ass'n v. Aetna Cas. & Sur. Co., 109 Nev. 558, 563, 854 P.2d 851, 854
6 (1993).

7 "A district court has broad, but not unbridled, discretion in determining whether dismissal
8 under NRCP 41(e) should be with or without prejudice." Monroe v. Columbia Sunrise Hosp. &
9 Med. Ctr., 123 Nev. 96, 102-03, 158 P.3d 1008, 1013 (2007) (citing United Ass'n of Journeymen
10 v. Manson, 105 Nev. 816, 821 783 P.2d 955, 958 (1989)). The factors that should be considered
11 by district courts in making a determination whether an action should be dismissed with
12 prejudice include "the underlying conduct of the parties, whether the plaintiff offers adequate
13 excuse for the delay, whether the plaintiff's case lacks merit, and whether any subsequent action
14 following dismissal would not be barred by the applicable statute of limitations." Monroe, 123
15 Nev. at 103, 158 P.3d at 1012.

16 1. Underlying Conduct of the Parties and Whether the Plaintiff Offers Adequate Excuse
17 for the Delay

18 The Underlying Conduct of the Plaintiff since 2014 is sparse. Indeed, Plaintiff did not file
19 anything in 2015 or 2017, and only two motions in 2016. Thus, in a three year span, Plaintiff
20 filed two motions. While Plaintiff has begun to again pursue this action in 2018, he has not
21 helped the case move forward. Plaintiff has not responded to motions but instead simply files
22 motions for extensions of time. The Court set a hearing in August 2018 that was vacated at
23 Plaintiff's request. Additionally, Plaintiff failed to respond to Defendants' Motion to Dismiss or
24 offer any excuse for the delay. Thus, when taken as a whole, Plaintiff has not demonstrated an
25 intent to pursue this action. Under this factor the matter should be dismissed with prejudice.

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1 2. Whether Any Subsequent Action Following Dismissal Would Not Be Barred By The
2 Applicable Statute Of Limitations

3 Under the fourth Monroe factor, the Court must consider whether subsequent actions
4 alleged in the complaint would be barred by the applicable statute of limitations. In this case,
5 Plaintiff brought an action pursuant to 42 U.S.C. § 1983 for alleged violations of the Fourteenth
6 Amendment that occurred between May 4, 2012, and August 12, 2012. The United States
7 Supreme Court has held that statutes of limitations apply to causes of action brought pursuant to
8 42 U.S.C. § 1983. Wilson v. Garcia, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985).
9 Wilson was interpreted by the Ninth Circuit to mandate a two year statute of limitations for such
10 actions in Nevada. Perez v. Seevers, 869 F.2d 425, 426 (9th Cir.), cert. denied, 493 U.S. 860, 110
11 S.Ct. 172, 107 L.Ed.2d 128 (1989). Therefore, the statute of limitations on Plaintiff's claims
12 expired on August 12, 2014. Thus, under this factor the matter should be dismissed with
13 prejudice.

14 Where the Court has found that the matter should be dismissed with prejudice based upon
15 Plaintiff's conduct and the applicable statute of limitations, the Court need not analysis the
16 merits of the case.

17 THEREFORE, THE COURT HEREBY GRANTS Defendants' Motion to Dismiss. The
18 above-entitled case is dismissed with prejudice.

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**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: Ferrill J. Volpicelli -vs- David Carpenter, et al.
Case Number: PI13-0870
Type: Order - Dismissal with Prejudice

It is so Ordered.

Judge Shirley

FILED

1 CASE NO. PI 13-0870

2 DEPT. NO. 1

2019 FEB 11 PM 3:42

3 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
4 AND FOR THE COUNTY OF PERSHING
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ELEVENTH JUDICIAL
DISTRICT COURT CLERK
BY H. Wilkerson

FERRILL J. VOLPICELLI,

Plaintiff,

NOTICE OF ENTRY

vs.

OF ORDER

DAVID CARPENTER, et al.,

Defendants.

PLEASE TAKE NOTICE that on February 11, 2019 the Court entered an ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK OF PROSECUTION, in this matter, a true and correct copy of which is attached to this notice.

If this is a final order and you wish to appeal to the Nevada Supreme Court, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this notice is mailed to you. This notice was mailed, and served automatically through the courts E-File System on February 11, 2019.

DATED: February 11, 2019.

Franklin Wilkerson

11th Judicial District Court Clerk

By H. Wilkerson
Deputy Clerk

1
2
3 CERTIFICATE OF MAILING

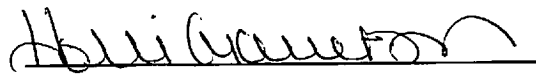
4 Pursuant to NRCP 5(b), I certify that I am an employee of the Pershing County
5 District Clerk's Office, and that on February 11, 2019, I caused to be served through
6 the United States Postal Service, a true copy of the within document, first class postage
7 prepaid, to the following:

8 Ferrill J. Volpicelli # 79565
9 1200 Prison Road/LCC
10 Lovelock, NV 89419

11 Attorney Generals' Office
12 100 N. Carson St.
13 Carson City, NV 89701

14 Served automatically through, the courts E-File System.
15
16

17 DATED: February 11, 2019.

18 
19 Deputy Clerk
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1 CASE NO. PI 13-0870

2 Pursuant to NRS 239B.030, the
3 undersigned hereby affirms this document
4 does not contain the social security number
5 of any person.

6 **IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,**
7 **IN AND FOR THE COUNTY OF PERSHING**

8
9 FERRILL J. VOLPICELLI,

10 Plaintiff,

11 vs.

12 DAVID CARPENTER, et al.,

13 Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS FOR LACK OF
PROSECUTION**

14 THE ABOVE ENTITLED MATTER came before the Court on February 7, 2019,
15 Defendants' *Motion to Dismiss for Lack of Prosecution Pursuant to NRCP Rule 41(e)* ("Motion
16 to Dismiss"). Defendants' Motion to Dismiss was filed on January 15, 2019, and submitted for
17 decision on February 7, 2019, without opposition by Plaintiff. Defendants' Motion to Dismiss
18 requests that the Court dismiss this case as a matter of law under NRCP 41(e) for failure to
19 prosecute. Having reviewed Defendants' Motion to Dismiss and the applicable pleadings, the
20 Court makes the following findings of fact, conclusions of law and orders:

21 **I. PROCEDURAL HISTORY**

22 The instant case began in June of 2013. As shown by the Statement of Facts set forth in
23 Defendants' Motion to Dismiss, the case has languished without substantive action by Plaintiff
24 for some time. As such, Defendants' requested that this Court dismiss this action for want of
25 prosecution pursuant to NRCP 41(e).

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1 **II. LEGAL STANDARD**

2 Rule 41(e) provides for mandatory dismissal when an action is not brought to trial within
3 a specific time period. Specifically, Rule 41(e)(2)(b)¹ states, “The court must dismiss an action
4 for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action
5 was filed.”

6 For mandatory dismissal under Rule 41(e) to be effective, it is essential to show that: (1)
7 the applicable time period has passed; (2) that the action has not been “brought” to trial; and (3)
8 that no written stipulation extending the time has been made. NRCP 41(e); Deal v. Baines, 110
9 Nev. 509, 513, 874 P.2d 775, 778 (1994); Baker v. Noback, 112 Nev. 1106, 1110, 922 P.2d
10 1201, 1203 (1996).

11 The purpose behind Rule 41(e) is to encourage diligence in the prosecution of action and
12 to prevent unreasonable delays in litigation. See Hassett v. St. Mary’s Hospital Association, 86
13 Nev. 900, 904, 478 P.2d 154, 157 (1970) (“Every man is entitled to his day in court, but a law
14 suit is not a unilateral affair. The rights of all parties to the litigation are involved. One who is
15 charged with a complaint and against whom substantial damages are sought is entitled to a
16 determination of those issues within a reasonable time.”); C.R. Fredrick, Inc. v. Nevada Tax
17 Commission, 98 Nev. 387, 649 P.2d 1372 (1982).

18 **III. ANALYSIS**

19 **A. The Action Should Be Dismissed**

20 The Court finds that five years have passed since this action was filed. Plaintiff’s
21 Complaint was filed on June 4, 2013. It has been over five years since that date. However, the
22 Nevada Supreme Court has held that a period during which the parties to an action are prevented
23 from bringing the action to trial by reason of a stay order is not to be counted in determining
24 whether the applicable period has run. See Boren v. City of N. Las Vegas, 98 Nev. 5, 5, 638 P.2d
25 404, 404 (1982). Nevertheless, while a stay was entered in this case it was entered at the
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27
28 ¹ While NRCP 41(e) was amended on December 31, 2018, “[t]he reorganization of Rule 41(e) is stylistic and not
intended to change existing caselaw interpreting former NRCP 41(e).” Advisory Committee Note-2019
Amendment.

1 Plaintiff's request and only lasted for thirty days. Therefore, even when excluding the time
2 period that the case was stayed, as February 7, 2019, more than five years and eight months have
3 passed.²

4 The Court finds that this action has not been brought to trial. An action is considered to
5 have been "brought" to trial when "a litigant who obtains a trial date within the statutory period,
6 appears for trial in good faith, argues motions, and examines jurors." Smith v. Timm, 96 Nev.
7 197, 200, 606 P.2d 530, 531 (1980). Additionally, a motion for summary judgment which is: (a)
8 filed and submitted before expiration of the five year period of Rule 41(e); and (b) granted before
9 or after such expiration, is "bringing the action to trial" within the five year period. United
10 Association of Journeymen v. Manson, 105 Nev. 816, 820, 783 P.2d 955, 957 (1989). "Since the
11 denial of a motion for summary judgment merely involves a finding that there remain triable
12 issues of fact, it is not a trial," and thus does not satisfy the time period under Rule 41(e). Id. In
13 this case, neither condition has been satisfied by Plaintiff.

14 Finally, the Court finds that no written stipulation has been signed by the parties allowing
15 the case to continue beyond the five year period.

16 Therefore, the where Defendants have shown that the requirements set forth in Baker
17 have been met, the Court is required to dismiss the action. NRCP 41(e); Saticoy Bay LLC Series
18 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A., 133 Nev. Adv. Op. 3, 388 P.3d 226, 229
19 (2017). "Dismissal for want of prosecution under NRCP 41(e) is mandatory, and the court may
20 not examine the equities of a case to determine whether the time should be extended." The
21 Power Co. v. Henry, 130 Nev. Adv. Op. 21, 321 P.2d 858, 861 (Nev. 2014) (citing Monroe v.
22 Columbia Sunrise Hosp. Ctr., 123 Nev. 96, 99–100, 158 P.3d 1008, 1010 (2007)).

23 **B. The Action Should be Dismissed with Prejudice**

24 Where the Court has determined that the action should be dismissed, a further
25 determination must be made as to whether the action is dismissed with or without prejudice.

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28 ² While the Court finds no specific case law allowing the exclusion of time while jurisdiction was removed to the
Supreme Court, if that period of time (one hundred and eight days) was excluded, it has still been well over five
years since the action was commenced.

1 While a dismissal under NRCP 41(e) is presumed to be with prejudice, see Brent G. Theobald
2 Constr., Inc. v. Richardson Constr., Inc., 122 Nev. 1163, 1167, 147 P.3d 238, 241 (2006),
3 abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228 n. 6,
4 181 P.3d 670, 672 n. 6 (2008), a district court has discretion to dismiss the action with or without
5 prejudice. See Home Sav. Ass'n v. Aetna Cas. & Sur. Co., 109 Nev. 558, 563, 854 P.2d 851, 854
6 (1993).

7 "A district court has broad, but not unbridled, discretion in determining whether dismissal
8 under NRCP 41(e) should be with or without prejudice." Monroe v. Columbia Sunrise Hosp. &
9 Med. Ctr., 123 Nev. 96, 102-03, 158 P.3d 1008, 1013 (2007) (citing United Ass'n of Journeymen
10 v. Manson, 105 Nev. 816, 821 783 P.2d 955, 958 (1989)). The factors that should be considered
11 by district courts in making a determination whether an action should be dismissed with
12 prejudice include "the underlying conduct of the parties, whether the plaintiff offers adequate
13 excuse for the delay, whether the plaintiff's case lacks merit, and whether any subsequent action
14 following dismissal would not be barred by the applicable statute of limitations." Monroe, 123
15 Nev. at 103, 158 P.3d at 1012.

16 1. Underlying Conduct of the Parties and Whether the Plaintiff Offers Adequate Excuse
17 for the Delay

18 The Underlying Conduct of the Plaintiff since 2014 is sparse. Indeed, Plaintiff did not file
19 anything in 2015 or 2017, and only two motions in 2016. Thus, in a three year span, Plaintiff
20 filed two motions. While Plaintiff has begun to again pursue this action in 2018, he has not
21 helped the case move forward. Plaintiff has not responded to motions but instead simply files
22 motions for extensions of time. The Court set a hearing in August 2018 that was vacated at
23 Plaintiff's request. Additionally, Plaintiff failed to respond to Defendants' Motion to Dismiss or
24 offer any excuse for the delay. Thus, when taken as a whole, Plaintiff has not demonstrated an
25 intent to pursue this action. Under this factor the matter should be dismissed with prejudice.

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1 2. Whether Any Subsequent Action Following Dismissal Would Not Be Barred By The
2 Applicable Statute Of Limitations

3 Under the fourth Monroe factor, the Court must consider whether subsequent actions
4 alleged in the complaint would be barred by the applicable statute of limitations. In this case,
5 Plaintiff brought an action pursuant to 42 U.S.C. § 1983 for alleged violations of the Fourteenth
6 Amendment that occurred between May 4, 2012, and August 12, 2012. The United States
7 Supreme Court has held that statutes of limitations apply to causes of action brought pursuant to
8 42 U.S.C. § 1983. Wilson v. Garcia, 471 U.S. 261, 105 S.Ct. 1381, 85 L.Ed.2d 254 (1985).
9 Wilson was interpreted by the Ninth Circuit to mandate a two year statute of limitations for such
10 actions in Nevada. Perez v. Seevers, 869 F.2d 425, 426 (9th Cir.), cert. denied, 493 U.S. 860, 110
11 S.Ct. 172, 107 L.Ed.2d 128 (1989). Therefore, the statute of limitations on Plaintiff's claims
12 expired on August 12, 2014. Thus, under this factor the matter should be dismissed with
13 prejudice.

14 Where the Court has found that the matter should be dismissed with prejudice based upon
15 Plaintiff's conduct and the applicable statute of limitations, the Court need not analysis the
16 merits of the case.

17 THEREFORE, THE COURT HEREBY GRANTS Defendants' Motion to Dismiss. The
18 above-entitled case is dismissed with prejudice.

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**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: Ferrill J. Volpicelli -vs- David Carpenter, et al.
Case Number: PI13-0870
Type: Order - Dismissal with Prejudice

It is so Ordered.

A handwritten signature in cursive script, appearing to read "J. Shirley", is written over a faint horizontal line.

Judge Shirley

COURT MINUTES. NOT AN OFFICIAL TRANSCRIPT OF ANY PROCEEDING.

* * * *

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

* * * *

FERRILL J. VOLPICELLI,)	
Plaintiff,)	Case No. PI 13-0870
Vs.)	Monday September 12, 2016
)	11:25 a.m.
DAVID CARPENTER, et al.)	
Defendants.)	
_____	/	

PRESENT: Honorable Jim C. Shirley, presiding District Judge
Zoie Williams, Official Court Reporter
Dawn Bequette, Deputy Court Clerk
Officer Pilon, Bailiff

MOTION HEARING: (Held at LCC)

Plaintiff, Ferrill J. Volpicelli, representing himself.

Heather Zana, representing the Defendants, present.

This is case number PI 13-0870. This is entitled Ferrill J. Volpicelli vs. David Carpenter, et al. Present in the Court are Ferrill J. Volpicelli and Heather Zana. We are here on a Motion for Summary Judgment. All parties are prepared to proceed.

ARGUMENT by Ms. Zana. She states that there was an Order on 6/13/14 that gave the plaintiff 30 days to file all exhibits to his objection. It has been 27 months and the Defendants have not received a full opposition and exhibits. They did not reply to the opposition. She asks to Strike the opposition and go forward as unopposed.

Mr. Volpicelli states that he had water damage in his cell and he did provide a full copy to the Court. He apprised the Attorney General of the situation. He states that the clerk wouldn't make him copies. The AG or the Clerk's wouldn't cooperate.

DISCUSSION regarding copies.

Ms. Zana states that the Plaintiff was given a time period and failed to do what was ordered. She basically has an unopposed Motion for Summary

Judgment. It is a very voluminous file and it is not the Defendants job to regulate copy money. The Plaintiff failed to comply.

Mr. Volpicelli states the he has limited resources. He did have copies but they were destroyed. He made every attempt at no avail. The Motion for Summary Judgment basis was a fail to state a claim, there is no relevance to the missing exhibits.

Ms. Zana objects to the entire procedure. If the exhibits were in his cell, he should have made copies at the same time he made the Court copies.

The Court asks Mr. Volpicelli if he sent out the opposition at the same time. He states he did the Court's copy first. The Court states that there is a certificate of mailing that states the he sent the opposition copy on 2/18/14. If you sign that certificate and put it in the mail, but don't send the copies, it is a problem. Mr. Volpicelli states he did put it in the mail, but only the pleading and not the exhibits.

Mr. Volpicelli states that he doesn't understand why the Clerk's office didn't make him copies.

The Court states that if it was a criminal case, they would have. It's the Plaintiff's burden to serve the parties. There was an Order issued by Judge Montero denying the issue of the Clerk's making the copies. The Court states that the problem is the Order denying copies was in 2014. What efforts has the Plaintiff made to get copies since 2014?

Mr. Volpicelli states that he had no funds available for that amount.

Ms. Zana states that the plaintiff failed to file a supplemental document with exhibits or anything else to oppose them in 26 months.

The Court states that essentially, the Defendants got an opposition without exhibits. Ms. Zana states that there are numerous ways to file something additional.

The Court asks Mr. Volpicelli if he has an opposition. He states that he was hoping the Court would order copies. The Court asks him why he has no opposition. He states that everything was destroyed and he didn't have the exhibits. He states that most clerks would have been accommodating.

The Court states that the material issue of fact had to be decided. The AG needs the exhibits.

Mr. Volpicelli states that the AG wasn't at a disadvantage. He asks for an order for the clerk's to make a copy to properly serve the defendants.

IT IS THE ORDER OF THE COURT that the Clerk's office will provide copies of the Exhibits to the AG's office. We will go forward as if this was a full blown Motion for summary judgment opposition. This matter will be set in November and the Court will hear it.

Court is in recess at 11:51 a.m.

1 Case No. PI 13-0870

2 Dept. No. 1

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4
5 IN THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF PERSHING

7 Ferrill J. Volpicelli,)
8 Plaintiff,)
9 vs.)
10 David Carpenter, et al.,)
11 Defendants.)

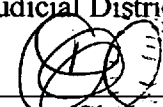
CERTIFICATE

12 State of Nevada)
13 : ss.
14 County of Pershing)

15 I, Carol Elerick, Deputy Court Clerk, do hereby certify that the following are true
16 and correct copies of the original documents in the above-entitled case, which was
17 appealed to the Supreme Court.

18 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal
19 of said Court, at Lovelock, Nevada, this 27th day of February, 2019.

20 Franklin Wilkerson
21 11th Judicial District Court Clerk

22 By 
23 Deputy Clerk
24
25
26

**ELEVENTH JUDICIAL
DISTRICT COURT**

Jim C. Shirley
District Judge



Judge's Chambers
P.O. Box H
Lovelock, NV 89419
Tel. (775) 273-2105
Fax: (775) 273-4921

February 27, 2019

Elizabeth Brown
Supreme Court Clerk
201 South Carson Street
Carson City, NV 89701-4702

Re: Eleventh Judicial District – Pershing County
Case No. PI 13-0870
Ferrill J. Volpicelli vs David Carpenter, et al.

Enclosed is the appeal for the above-mentioned case, it having been
appealed to the Supreme Court on February 21, 2019.

Sincerely,

Carol Elerick
Deputy Clerk

☐ **Pershing County**
P.O. Box H
Lovelock, NV 89419
Tel. (775) 273-2410
Fax: (775) 273-2434

☐ **Lander County**
50 State Route 305
Battle Mountain, NV 89820
Tel. (775) 635-1332
Fax: (775) 635-0394

☐ **Mineral County**
P.O. Box 1450
Hawthorne, NV 89415-0400
Tel. (775) 945-0738
Fax: (775) 945-0706