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6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
7 **Office of the Supreme Court**

8 MATTHEW TRAVIS HOUSTON,
Appellant,

9 vs.

10 BRIAN P. CLARK,
11 Respondent.

No. 85747
Case No.: A-22-856372-C
Dept. No.: XX

12 **RESPONDENT'S ANSWERING BRIEF**

13 **I. RULE 26.1 DISCLOSURE.**

14 Defendant/Respondent is appearing pro se. Pursuant to NRAP 26.1 no
15 disclosure statement is required.

16 **II. TABLE OF CONTENTS.**

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1 B. The District Court did not commit
2 error in granting Defendant's Motion
3 To Dismiss for Plaintiff's failure to
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5 to the actions of the district court and
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9 **III. TABLE OF AUTHORITIES.**

10 1. *Dermody v. City of Reno*, 113 Nev. 207, 210,
11 931 P.2d 1354, 1357 (1997). Page 8 fn 5

12 2. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49,
13 52, 623 P.2d 981, 983 (1981). Page 8

14 3. *Powers v. Powers*, 105 Nev. 514, 516, 779
15 P.2d 91, 92 (1989). Page 8 fn 5

16 4. *Schuck v. Signature Flight Support of*
17 *Nevada, Inc.*, 126 Nev. 434, 437,
18 245 P.3d 542, 544 (2010). Page 8, 8 fn 5

19 5. NRAP 26. Page 1

20 6. NRC 8(a). Pages 3, 5, 7, 9

21 7. EDCR 2.20(e). Pages 3, 7, 8

22 8. EDCR 2.24(b). Page 3

23 **IV. JURISDICTIONAL STATEMENT.**

24 Pursuant to NRAP 28(b), no jurisdictional statement is required in
25 Respondent's Answering Brief.

26 **V. ROUTING STATEMENT.**

27 Pursuant to NRAP 28(b) no routing statement is required in Respondent's
28 Answering Brief.

1 **VI. ISSUES PRESENTED FOR REVIEW.**

- 2 1. Did the district court commit error in granting Defendant’s motion to
3 dismiss based on Plaintiff’s failure to file a written opposition?
4 2. Did the district court commit error in granting Defendant’s motion to
5 dismiss for Plaintiff’s failure to state a claim and to comply with NRC
6 8(a)?

7 **VII. STATEMENT OF THE CASE.**

8 Plaintiff’s August 3, 2022 Complaint was dismissed for failure to state a claim
9 and for the failure to comply with NRC 8(a). The minutes of the district court state:

10 Specifically, the Court finds that Plaintiff’s Complaint does not properly
11 identify any cause of action, nor does the Complaint satisfy the pleading
12 requirements of NRC 8(a). Instead, a review of Plaintiff’s Complaint
13 shows that it is a compilation of various court documents and filings,
14 which include, among other things, a Petition for Writ of Habeas Corpus
(Post-conviction), a direct appeal to the Nevada Supreme Court for Case
No. C-21-357927-1, and a Motion for the Production of Records from
Las Vegas Fire and Rescue.

15 (Respondent’s Appendix at p. 1.)

16 Plaintiff did not “serve and file written . . . opposition [to Defendant’s Motion
17 To Dismiss], together with a memorandum of points and authorities and supporting
18 affidavits” as required by local rule EDCR 2.20(e). Plaintiff did not seek
19 reconsideration of the court’s October 31, 2022, order pursuant to local rule EDCR
20 2.24(b). (ROA, Vol. 1, at p. 179.)

21 Plaintiff filed three notices of appeal identifying Case No. A-22-856372-C on
22 September 8, 2022. (See Supreme Court Case No. 85354.)

- 23 1. Emergency Notice Of Appeal To Hearing From August 9th, 2022,
24 August 15th, 2022, August 16th, 2022, August 23rd, 2022, August 25th,
25 2022, August 30th, 2022, August 31st, 2022, September 6th, 2022 And
26 Minute Order(s) From August 23rd, 2022 And August 24th, 2022 And
27 Request For An Order To Reset Time. (ROA, Vol. 1, at pp. 29-31.)
28

1 The Case Appeal Statement was filed September 16, 2022. (ROA, Vol.
2 1, at pp. 34-35.)

3 2. Emergency Notice of Appeal To Minute Order From June 16th, 2022.
4 (ROA, Vol. 1, at p. 32.) The Case Appeal Statement was filed
5 September 16, 2022. (ROA, Vol. 1, at pp. 36-37.)

6 3. Emergency Notice of Appeal To Hearings From July 13th, 2022 And
7 July 14th, 2022 And Request For An Order To Reset Time. (ROA, Vol.
8 1, at pp. 33.) The Case Appeal Statement was filed September 16, 2022.
9 (ROA, Vol. 1, at pp. 38-39.)

10 The hearings and minute orders identified in each of these appeals had no
11 relation to Case No. A-22-856372-C or to Defendant Brian P. Clark as each appeal
12 was filed prior to service of the Complaint¹ and prior to any hearing conducted or
13 order issued by the district court in the underlying case. (See District Court’s
14 Register of Actions Case No. A-22-856372-C. (Respondent’s Appendix at pp. 2-4.))
15 The Supreme Court dismissed these appeals by order dated September 29, 2022.
16 (ROA, Vol. 1, at pp. 92-94.)

17 Plaintiff filed his fourth notice of appeal on November 23, 2022. (ROA, Vol.
18 1, at pp. 121-127.) A review of the “Emergency Notice of Appeal In A-22-856372-
19 C” will reveal that Plaintiff’s appeal makes no mention of the district court’s October
20 31, 2022 Order Granting Defendant’s Motion To Dismiss. (ROA, Vol. 1, at pp. 96-
21 98.) The notice of appeal merely mentions Defendant Brian P. Clark only once, after
22 Plaintiff recites alleged abuses by his mother, Lucreca Lavonna Schoenherr, and his
23 father, Dennis Wayne Houston; “without a doubt Brian P. Clark, et al has paid them
24 bribes causing further damages to me . . .”. (ROA, Vol. 1, at p. 125.)

25 Rather than present any information or argument to allege or infer that the
26 district court’s Order Granting Defendant’s Motion To Dismiss involved a

27

28 ¹ Plaintiff has never served the Complaint on Defendant.

1 misapplication of the law or facts, or that the Complaint satisfied the pleading
2 requirements of NRCP 8(a) or set forth facts sufficient to identify a claim for relief,
3 the November 23, 2022 Emergency Notice Of Appeal references district court judges
4 Elli Roohani and Crystal Eller in an unrelated case, A-22-758861-C², (ROA, Vol. 1,
5 at p. 122). The Emergency Notice Of Appeal claims that Mr. Houston “is wrongfully
6 convicted”, and has been repeatedly assaulted while in the custody of the Nevada
7 Department of Corrections (ROA, Vol. 1, at pp. 122-123); that the notice of appeal is
8 directed to “any and all pending NDOC ‘write-ups’” (ROA, Vol. 1, at p. 123);
9 addresses Case No. C-21-357927-1, (a criminal case where Mr. Houston plead guilty
10 to aggravated stalking), and 38 years of abuse by his parents (ROA, Vol. 1, at p.
11 125). Nothing is related to the Motion To Dismiss.

12 On January 31, 2023, Plaintiff filed Appellant’s Opening Brief. This brief,
13 just as the notice of appeal, is equally void of any reference to the district court’s
14 October 31, 2022 Order Granting Defendant’s Motion To Dismiss. That portion of
15 the opening brief, at pp. 3-9, titled “Appellant’s Informal Brief”, does not mention
16 Case No. A-22-856372-C or Supreme Court Case No. 85747, and does not mention
17 the motion to dismiss or the district court’s order dismissing Plaintiffs action. In
18 fact, Appellant’s Opening Brief was prepared before the Plaintiff filed suit in Case
19 No. A-22-856372-C on August 3, 2022. (See Appellant’s Opening Brief at p. 3
20 (“Returned Unfiled” stamp with date April 27, 2022), p. 4 (“Today is April 5th,
21 2022”), p. 5 (“This informal brief is to be filed no later than 120 days from March
22 22nd, 2022 which would be before July 20th, 2022”), p. 6 (“Update as of April 15th,
23 2022”), p. 8 (April 18th, 2022”), and p. 9 (“DATED this 15th day of April, 2022”).

24 **VIII. STATEMENT OF FACTS.**

25 On or about September 1, 2022, Defendant received a mailing from Plaintiff
26 containing 6 pages. (Respondent’s Appendix at pp. 5-11.) The mailing shows page

27
28 ² Matthew Houston v. Brian P. Clark, Case No. A-22-856372-C was assigned to the Honorable Eric Johnson in Dept. 22 of the Eighth Judicial District Court.

1 1 of a document titled “Complaint(s) In Re Joinder(s) of Appeal” with a filing date of
2 August 3, 2022, Case No. A-22-856372, Matthew Houston, Plaintiff vs. Brian Clark,
3 Defendant(s). Defendant had not been served with the Complaint³ and obtained a
4 copy of the 85 page Complaint from the court file. (ROA, Vol. 2, pp. 180-261.)
5 Absent service, Defendant took no action relative to Plaintiff’s filing.

6 On or about September 16, 2022, Defendant retrieved from the court file
7 Plaintiff’s September 6, 2022 filing that included a document title “Notice of Intention
8 To Enter Default” in the Matthew Houston vs. Brian Clark case with a filed stamp of
9 July 5, 2022. (ROA, Vol. 1, pp. 11-28, specifically p. 15.)⁴ Although Defendant had
10 not been served with the Complaint in Case No. A-22-856372-C Defendant filed a
11 Motion To Dismiss the action to avoid a default. (ROA, Vol. 1, pp. 40-54.)
12 Defendant’s Motion To Dismiss was served via US mail on September 21, 2022 to
13 Plaintiff at the High Desert State Prison at Indian Springs, NV. The Notice Of Hearing
14 was served on Plaintiff, at the same address, on September 26, 2022. (ROA, Vol. 1, pp.
15 56-57.) The hearing on Defendant’s Motion To Dismiss was scheduled for October 26,
16 2022.

17 Plaintiff did not file an opposition or respond to Defendant’s Motion To Dismiss.
18 On October 25, 2022, the court issued a Minute Order granting Defendant’s motion.
19 (Respondent’s Appendix at p. 1.) The Order Granting Defendant’s Motion To Dismiss
20 was entered October 31, 2022 (ROA, Vol. 1, at pp. 96-98) and Notice Of Entry was filed
21 November 1, 2022 (ROA, Vol. 1, at pp. 99-103). Plaintiff subsequently filed an
22 “Emergency Notice Of Appeal” on November 23, 2022 (ROA, Vol. 1, pp. 121-127)
23 which does not appear to address the order dismissing Plaintiff’s action. (See Section
24 VII above, at p. 5.)

25
26 ³ Plaintiff has never served Defendant with the Complaint.

27 ⁴ This document is an alteration of a document filed in a different case as the filed stamp
28 mark pre-dates the filing of Plaintiff’s Complaint.

1 Plaintiff's action, and appeal, are frivolous, filed with the sole intent to harass
2 Defendant. Individual Defendant, Brian Clark, served as defense counsel in
3 Plaintiff's action Matthew Houston v. Mandalay Bay Corp., Case No. A-17-758861-
4 C. Plaintiff's Mandalay Bay Corp. action ended in a settlement which Plaintiff later
5 attempted to cancel and renegotiate. Plaintiff terminated his legal counsel and
6 refused to sign the Stipulation For Dismissal. Defendant Mandalay Bay Corp. was
7 required to file a Motion To Compel Settlement and dismiss the action. This motion
8 was granted, and the case dismissed, on January 30, 2020. Subsequently, Plaintiff
9 filed 7 appeals to the Nevada Supreme Court, all of which have been dismissed.
10 (Supreme Court case numbers 80562, 84417, 84418, 84477, 84887, 85352, and
11 86080.)

12 **IX. SUMMARY OF ARGUMENT.**

13 Plaintiff did not file a written opposition to Defendant's Motion To Dismiss as
14 required by court rules, resulting in an admission that the Motion To Dismiss was
15 meritorious and a consent to the court's granting of the motion. (EDCR 2.20(e).)
16 Plaintiff's Compliant failed to comply with the "short and plain statement"
17 requirements of NRCP 8(a). Plaintiffs 85 page Complaint did not set forth a viable
18 cause of action against Defendant upon which relief could be granted. Plaintiff's
19 Opening Brief is not related to the district court's October 31, 2022 order.

20 **X. ARGUMENT.**

21 **A. The District Court did not commit error in granting Defendant's**
22 **Motion To Dismiss based on Plaintiff's failure to file a written**
23 **opposition.**

24 The rules of the Eighth Judicial District Court are clear and unambiguous
25 regarding a party's obligation to file a written opposition to a motion.

26 (e) Within 14 days after the service of the motion, and 5 days after
27 service of any joinder to the motion, the opposing party must serve and
28 file written notice of nonopposition or opposition thereto, together with
a memorandum of points and authorities and supporting affidavits, if
any, stating facts showing why the motion and/or joinder should be
denied. Failure of the opposing party to serve and file written opposition

1 may be construed as an admission that the motion and/or joinder is
2 meritorious and a consent to granting the same.

3 EDCR 2.20(e).

4 Defendant filed and served his motion to dismiss on September 21, 2022.
5 Plaintiff was required to “serve and file written notice of nonopposition or opposition
6 thereto” within 14 days of service, or, on or before October 5, 2022. Plaintiff did not
7 file or serve a written opposition. Absent a written opposition, the court was justified
8 in construing Plaintiff’s failure to oppose the motion as Mr. Houston’s admission that
9 the motion was “meritorious and a consent to granting the same.”

10 The court’s acceptance of Mr. Houston’s admission was not only based on Mr.
11 Houston’s failure to file a written opposition within 14 days of service, but also on Mr.
12 Houston’s failure to file an opposition at anytime prior to October 25, 2022. In fact, Mr.
13 Houston has never filed an opposition to Defendant’s motion to dismiss.

14 The Nevada Supreme Court has stated: “A point not urged in the trial court,
15 unless it goes to the jurisdiction of that court, is deemed to have been waived and
16 will not be considered on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623
17 P.2d 981, 983 (1981). See also, *Schuck v. Signature Flight Support of Nevada, Inc.*,
18 126 Nev. 434, 437, 245 P.3d 542, 544 (2010), “the requirement that parties may raise
19 on appeal only issues which have been presented to the district court maintains the
20 efficiency, fairness, and integrity of the judicial system for all parties.”⁵

21 Plaintiff presented no written opposition, and the matter was decided without
22 oral argument. Therefore, Plaintiff did not preserve any issue for appeal.
23 Appellant’s Opening Brief does not address any legal issue or court procedure

24
25 ⁵ But “[p]arties ‘may not raise a new theory for the first time on appeal, which is
26 inconsistent with or different from the one raised below.’ ” *Dermody v. City of Reno*, 113 Nev. 207,
27 210, 931 P.2d 1354, 1357 (1997) (quoting *Powers v. Powers*, 105 Nev. 514, 516, 779 P.2d 91, 92
28 (1989)). This rule is not meant to be harsh, overly formalistic, or to punish careless litigators. Rather,
 the requirement that parties may raise on appeal only issues which have been presented to the district
 court maintains the efficiency, fairness, and integrity of the judicial system for all parties. *Schuck*, *supra*
 at 437, 544.

1 related to Defendant's Motion To Dismiss (see Section VII above, at p. 5), and
2 therefore does not present any issue on appeal.

3 **B. The District Court did not commit error in granting Defendant's**
4 **Motion To Dismiss for Plaintiff's failure to state a claim and failure**
5 **to comply with NRCP 8(a).**

6 The Nevada Rules of Civil Procedure are clear and unambiguous regarding the
7 requirements for a complaint. Plaintiff's complaint failed to comply with NRCP 8(a)
8 requirement for "a short and plain statement of the claim showing that the pleader is
9 entitled to relief." Plaintiff's 85 page Complaint cannot be considered short.
10 Relative to the requirement for a "plain statement of the claim showing that the
11 pleader is entitled to relief" the District Court, in reviewing Plaintiff's Complaint
12 found "that it is a compilation of various court documents and filings, which include,
13 among other things, a Petition for Writ of Habeas Corpus (Post-conviction), a direct
14 appeal to the Nevada Supreme Court for Case No. C-21-357927-1, and a Motion for
15 the Production of Records from Las Vegas Fire and Rescue." Plaintiff's pleading
16 failure prevented the district court from identifying any relationship between the
17 documents that made up the Complaint and Defendant.

18 **C. Appellant's Opening Brief is unrelated to the actions of the district**
19 **court and the court's October 31, 2022 Order Granting Motion To**
20 **Dismiss.**

21 Appellant's Opening Brief does not address anything related to the Motion To
22 Dismiss. It is entirely deficient in presenting facts or arguments presented in the
23 motion.

24 **XI. CONCLUSION.**


25 Plaintiff's November 23, 2022, "Emergency Notice of Appeal In A-22-
26 856372-C" does not appear to be related to Defendant's Motion To Dismiss. It is
27 more likely than not, based on Plaintiff's misuse of the term "Notice of Appeal" in
28 the three separate filings from September 8, 2022, (ROA, Vol. 1, at pp. 29-39), that
the November 23, 2022, filing was not directed to the district court's October 31,
2022, Order Granting Motion To Dismiss or intended to be an appeal of that order.

1 This mistaken designation is supported by Plaintiff's complete failure to mention the
2 order dismissing the case in Appellant's Opening Brief. Additional support is also
3 found in the fact that Appellant's Opening Brief pre-dates the filing of the
4 Complaint.

5 Even if Plaintiff intended to appeal the district court's decision to dismiss the
6 Complaint, Plaintiff did not submit any facts, law, or legal analysis in opposition at
7 the trial court level. Not only is this a consent to granting the motion, but it prevents
8 Plaintiff from presenting any argument not raised in the lower court at the appellate
9 level.

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11 DATED this 2nd day of March, 2023.

12 Respectfully submitted.

13 
14 _____
15 Brian P. Clark
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17 Las Vegas, NV 89128
18 Defendant/Respondent in proper person
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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss.

I, Brian P. Clark, hereby affirms, testifies and declares under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and I am appearing as Defendant/Respondent in proper person.

2. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using WordPerfect in Times New Roman 14 point font.

3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains 3296 words.

4. Finally, I certify that I have read Respondent’s Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where

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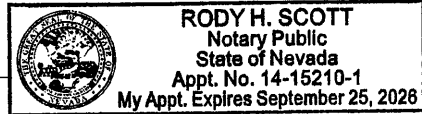
1 the matter relied on is to be found. I understand that I may be subject to sanctions in
2 the event that the accompanying brief is not in conformity with the requirements of
3 the Nevada Rules of Appellate Procedure.

4 Further affiant sayeth naught.

5
6
7 
8 BRIAN P. CLARK

9 SUBSCRIBED AND SWORN to before
10 me, Rody H. Scott on this 2nd day of
11 March, 2023.

12 
13 NOTARY PUBLIC in and for said
14 County and State.

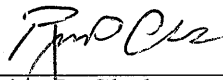


15 **CERTIFICATE OF SERVICE**

16 I certify that on the 2nd day of March, 2023, I served a true and correct copy of

17 **RESPONDENT'S ANSWERING BRIEF** on the following parties/individuals via U.S. Mail, first
18 class postage prepaid.

19 Matthew Travis Houston
20 Inmate No. 1210652
21 22010 Cold Creek Road
22 PO Box 650
23 Indian Spring, NV89070

24 
25 Brian P. Clark