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Tracie K. Lindeman

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.W. BENTLEY and MARYANN
BENTLEY, Trustees of the Bentley Family
1995 Trust,

Petitioners.

v.

THE NINTH JUDICIAL DISTRICT
COURT of the State of Nevada, In and For
the County of Douglas, and THE
HONORABLE DAVID R. GAMBLE,
District Court Judge,

Respondents,

AND

DONALD S. FORRESTER; KRISTINA
M. FORRESTER; HALL RANCHES,
LLC, a Nevada limited liability company;
THOMAS J. SCYPHERS; KATHLEEN M.
SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN
CENTER, LLC, a Nevada limited liability
company; RONALD R. MITCHELL; and
GINGER G. MITCHELL as Intervenor
In the Matter of the Determination of the
Relative Rights in and to the Waters of
Mott Creek, Taylor Creek, Cary Creek
(aka Carey Creek), Monument Creek, and
Bulls Canyon, Stutler Creek (aka Stattler
Creek), Sheridan Creek, Gansberg Spring,
Sharpe Spring, Wheeler Creek No. 1,

Supreme Court Case No. 56351

District Court Case No. 08-CV-0363-D

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1 Wheeler Creek No. 2, Miller Creek, Beers)
2 Spring, Luther Creek, and Various)
3 Unnamed Sources in Carson Valley,)
4 Douglas Valley, Nevada,)
5 Real Parties-in-Interest)
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7 **REPLY TO OPPOSITION TO REQUEST FOR LEAVE**
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Attorneys for Petitioners

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Attorney for Real Parties-in-Interest

COME NOW PETITIONERS J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust ("Bentley") by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby file the Reply to the Opposition to Request for Leave filed by Real Parties-in-Interest, HALL RANCHES, LLC, DONALD S. FORRESTER and KRISTINA M. FORRESTER, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, RONALD R. MITCHELL and GINGER G. MITCHELL ("Real Parties").

I. PROCEDURAL POSTURE

Bentley filed its Verified Petition for Writ of Prohibition and/or Mandamus on 6 July 2010. Real Parties were directed to file an Answer and did so on 13 September 2010. On 17 September 2010, Bentley filed a Request for Leave to file a reply to Real Parties' Answer in which Bentley pointed out a number of erroneous and misleading assertions and arguments made by Real Parties. Bentley also requested leave to supplement the record with a newly produced report on water useage. Real Parties filed their Opposition to Request for Leave on 27 September 2010.

II. ARGUMENT

Ironically, Real Parties did not dispute that they made a number of erroneous and misleading assertions of fact and legal arguments in their Answer. Likewise, Real Parties made no effort to defend the statements that are the subject of Bentley's Request for Leave. Rather, Real Parties argued only that the Nevada Rules of Appellate Procedure do

///

1 not allow Bentley to file a Reply and that Bentley's Petition is moot and this Court should
2 not issue advisory opinions.

3
4 **1. This Court Can Allow a Reply**

5 This Court can always allow additional briefing, reply briefs and supplements to the
6 record when appropriate, and the Nevada Rules of Appellate Procedure do not limit the
7 types of relief that can be requested upon motion. *See e.g. Phillips v. State*, 105 Nev. 631,
8 782 P.2d 381 (counsel could have moved the court to supplement the record); *Daniels v.*
9 *State*, 688 P.2d 315, n. 2, 100 Nev. 579, n. 2 (1984) (granting leave for appellant's counsel
10 to argue issues raised for first time in reply brief and to supplement record); *Vest v. State*,
11 98 P.3d 996 (2004) (granting leave for good cause shown to appellant to file reply brief to
12 opposition to motion to dismiss).¹

13
14 The argument raised by the Real Parties is not only wrong, but it suggests that they
15 took such great liberty with the statements in their Answer because they thought Bentley
16 would not have an opportunity to rebut those arguments.

17
18 **2. The Petition is Not Moot**

19 Real Parties quote their Answer to support their argument that Bentley's Petition
20 will likely be moot because a rotation schedule is allegedly set to expire on
21 15 October 2010. The Order which implemented the rotation schedule is on appeal in
22 Case No. 56551. In contrast, Bentley's Petition in this case challenges the refusal of the
23 lower court to dismiss the affirmative defenses that Real Parties filed in a water rights
24
25

26
27 ¹ To the extent *Vest v. State* suggests that the preferred practice is to submit a reply
28 brief for provisional filing along with the motion for leave, Bentley will proceed
accordingly forthwith.

1 adjudication which seek to quiet title to a Diversion Agreement that has been in their chain
2 of title for over twenty (20) years. Specifically, Bentley asserts in the Petition that the
3 affirmative defenses are not a pleading and that the lower court cannot hear Real Parties'
4 claims/affirmative defenses as part of a water rights adjudication.
5

6 As such, this writ proceeding and the appeal are two distinct proceedings, and the
7 resolution of one (or the dismissal thereof) will not render the other proceeding moot.
8

9 **3. This Court is Not Being Asked to Provide an Advisory Opinion**

10 Real Parties repeat their argument that Bentley's Petition will be moot on 15
11 October 2010, and concludes that this Court is therefore being called upon to provide an
12 "advisory opinion." For the reasons set forth above, Bentley's Petition will not be
13 rendered moot on 15 October 2010, and this Court is not being called upon to provide an
14 advisory opinion.
15

16 Wherefore, Bentley respectfully submits that its Requests for Leave to address Real
17 Parties' erroneous and misleading arguments should be granted.
18

19 DATED this 29th day of September 2010.

20 BROOKE · SHAW · ZUMPFT

21 By: 
22 MICHAEL L. MATUSKA
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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

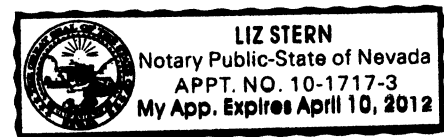
MICHAEL L. MATUSKA, being first duly sworn, deposes and says:

That he is the Attorney for Petitioners in the above-entitled action; that he has read the foregoing instrument and knows the contents thereof and that the same is true of his own knowledge except for those matters stated on information and belief, and as to those matters, he believes them to be true.


MICHAEL L. MATUSKA

SUBSCRIBED AND SWORN to before me,
this 29th day of September 2010,
by MICHAEL L. MATUSKA.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT and that on the 29th day of September 2010, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO REQUEST FOR LEAVE** addressed to:

STATE OF NEVADA
Department of Conservation and Natural Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

The Honorable David Gamble
NINTH JUDICIAL DISTRICT COURT
P.O. Box 218
Minden NV 89423

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada, in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw · Zumpft the above-identified document in the ordinary course of business to the individual and facsimile numbers indicated.


LIZ STERN, ALS