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IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

SUSAN FALLINI

Appellant,

v.

ESTATE OF MICHAEL DAVID ADAMS, BY
AND THROUGH HIS MOTHER JUDITH
ADAMS, INDIVIDUALLY AND ON
BEHALF OF THE ESTATE,

Respondent.

Electronically Filed
Oct 17 2011 04:24 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Supreme Court No. 56840
District Court Case No.: CV00224539

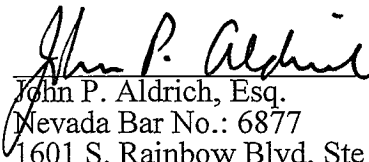
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**RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR ORDER ALLOWING
SUPPLEMENTATION OF APPENDIX AND FOR RE-OPENING OF BRIEFS**

Respondent ESTATE OF MICHAEL DAVID ADAMS, BY AND THROUGH HIS MOTHER
JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE (hereafter "Respondent
Adams" or "Ms. Adams"), by and through her counsel of record, Aldrich Law Firm, Ltd., hereby opposes
Appellant's Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs.
This Opposition is made and based upon the attached memorandum of points and authorities, the exhibits
attached hereto, the records and pleadings on file herein, and, if necessary, any argument the Court may
allow.

DATED this 17th day of October, 2011.

ALDRICH LAW FIRM, LTD.



John P. Aldrich, Esq.
Nevada Bar No.: 6877
1601 S. Rainbow Blvd, Ste 160
Las Vegas, Nevada 89146
Attorneys for Respondent

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POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

By bringing this Motion, Appellant continues the obvious pattern of delay and disregard for the rules in this appeal. This has been Appellant's/Defendant's course of conduct throughout this litigation before the district court, and it now continues on appeal. Appellant has disregarded her duties with regard to this litigation throughout, and has repeatedly failed to cite any valid authority for the relief she seeks. Appellant failed in her duties with regard to obtaining a transcript of the July 19, 2010 hearing and now uses that as an excuse to cause further delay in this action. This pattern of blatant disregard for court rules is unacceptable, and the Court should deny Appellant's Motion.

A. Procedural History at District Court Level

In the Answering Brief, Respondent Adams sets forth, over the course of nearly four pages, the lengthy procedural history of this case. In an effort to be brief in this Opposition, Respondent Adams will not repeat the entire history here. However, suffice to say that Appellant Fallini has repeatedly ignored court rules, refused to participate in the litigation process, and worked to delay this case. Further, when Appellant Fallini decided to participate by filing pleadings, she has repeatedly failed to cite any pertinent authority or provide any admissible evidence to support the requested relief.

In short, Appellant Fallini failed to respond to written discovery, including requests for admission. She then failed to respond to a Motion for Partial Summary Judgment, and partial summary judgment was entered way back in July 2008. Appellant Fallini failed to respond to routine discovery and repeated motions to compel and/or motions for order to show cause why Fallini and her counsel should not be held in contempt. Ultimately, Appellant Fallini and her counsel were held in contempt, Appellant's answer and counterclaim were stricken, and they racked up tens of thousands of dollars in sanctions for their refusal to comply with court rules or participate in the litigation process.

Following Appellant Fallini and her counsel's repeated thumbing of their noses at the district court's authority, on June 21, 2010, Judith Adams filed an Application for Default Judgment. (Jt. Appx.

1 II, 88-129.) On June 23, 2010, Appellant Fallini filed an Opposition to the Application for Default
2 Judgment, arguing Judgment should not be entered because Appellant Fallini had only recently been
3 apprised of the status of the case and it would be an injustice to her to allow Default Judgment. (Jt. Appx.
4 II, 130-132.)

5 On July 2, 2010, Appellant Fallini filed a Motion for Reconsideration, asking the Court to
6 reconsider the Order granting summary judgment and the Order striking the Answer and Counterclaim.
7 (Jt. Appx. II, 133-159.) Attached to that Motion was an affidavit signed by Mr. Ohlson, Appellant's
8 counsel (which added nothing to the admissibility of the other exhibits), a letter to Appellant's husband
9 purportedly from a Deputy Attorney General, but which was not authenticated in any fashion, and three
10 unsigned affidavits. (Jt. Appx. II, 149-159.)

11 On July 19, 2010, a hearing was held on Fallini's Motion for Reconsideration. Said motion was
12 denied and the Court proceeded with a prove up hearing. On August 18, 2010, an Order was entered on
13 this matter wherein the Court awarded Judith \$1,000,000.00 in damages for grief, sorrow and loss of
14 support, \$1,640,696 in damages for future lost earnings, \$50,000 in attorney's fees, \$35,000 in sanctions
15 levied against Defendant Fallini, and \$5,188.85 in funeral and other related expenses. (Jt. Appx. II,
16 229-232.)

17 **B. Procedural History on Appeal**

18 Appellant Fallini filed her Notice of Appeal on or about September 10, 2011. (Jt. Appx. II, 233-
19 235.) On November 9, 2010, the case was assigned to the settlement program. On February 15, 2011,
20 Settlement Judge Carolyn Worrell recommended that the case be removed from the settlement conference
21 program, explaining that a third-party insurance carrier was declining to participate, making the
22 settlement conference unworkable. (Settlement Program Status Report, attached hereto as Exhibit A.)
23 On March 2, 2011, the Nevada Supreme Court filed its Order Reinstating Briefing. (Order Reinstating
24 Briefing, attached hereto as Exhibit B.) That Order gave Appellant fifteen days to file the request for
25 transcript and ninety days to provide an Opening Brief and appendix. (Exhibit B.)

26 On or about March 10, 2011, Appellant Fallini filed a Certificate indicating that no transcript was
27 available, and as such, she would not be filing a request for transcript. (Certificate, attached hereto as
28

1 Exhibit C.) Significantly, Appellant Fallini did not request a transcript as required by NRAP 9.
2 Appellant Fallini filed her Opening Brief on May 31, 2011. Respondent Adams' Answering Brief was
3 filed on July 11, 2011. Appellant Fallini then filed her Reply Brief on July 28, 2011. Thus, all briefing
4 in this case was completed by **July 28, 2011**. Subsequently, on August 19, 2011, this Court advised the
5 parties that there would be no oral argument and the case would be decided on the briefs alone.

6 **C. Appellant's Latest Motion**

7 On October 5, 2011 – well over two months after briefing closed in this appeal, and six weeks
8 after this Court notified the parties there would be no oral argument – Appellant Fallini brought the
9 instant motion. Attached to Appellant's Motion is an affidavit of John Ohlson, Esq., counsel for
10 Appellant, and a copy of a transcript purportedly from the prove up hearing that occurred on July 19,
11 2010. In Mr. Ohlson's Affidavit in Support of the Motion, he asserts that “[p]rior to the hearing,
12 affiant approached the court reporter whom affiant had never before met. I introduced myself and gave
13 the court reporter a card, indicating that the transcript and a bill should be sent to me. I then took my
14 place in line for the motion calendar to await the calling of this case.” (Exhibit 1 to Appellant's Motion,
15 ¶4.)

16 Contrary to what Mr. Ohlson describes, counsel for Respondent, Mr. Aldrich, notes in his
17 Affidavit that his experience is different than what Mr. Ohlson explained. In each of his approximately
18 10 trips to Pahrump, Mr. Aldrich has learned that on the district court civil calendar, there is not a court
19 reporter unless one of the parties makes arrangements for a court reporter to be present. Mr. Aldrich does
20 not recall there being a court reporter present to whom Mr. Ohlson could have given his card. (Affidavit
21 of John P. Aldrich, attached hereto as Exhibit D. ¶6.)

22 In paragraph 6 of Mr. Ohlson's affidavit, he comments “my assistant was told that there was no
23 transcript of the proceedings, and that one could not be produced because I had not specifically (in those
24 words) asked the reporter to report the hearing.” (Exhibit 1 to Appellant's Motion, ¶6.) Mr. Ohlson
25 includes this statement in his Affidavit in an attempt to have it considered as “evidence” by this Court.
26 However, this statement is obvious hearsay, as Mr. Ohlson was not party to that conversation. Mr.
27 Ohlson then goes on to explain that his appeal was taken without the benefit of a transcript. (Exhibit 1
28

1 to Appellant's Motion, ¶6.)

2 In paragraph 7 of his Affidavit, Mr. Ohlson states that on September 29, 2011 – two months after
3 briefing closed in this case – he received the purported hearing transcript, which is attached to Appellant's
4 Motion as Exhibit 2, from his client, who had received it from a court reporter who was not present at
5 the hearing. Mr. Ohlson then claims that he followed up with the court reporter and asked her to prepare
6 a "final, original transcript." Significantly, the "final, original transcript" that purports to be the transcript
7 of the hearing, is dated August 27, 2011 – more than a month before Mr. Ohlson states he first received
8 a draft transcript.

9 In paragraph 8 of Mr. Ohlson's affidavit, he explains that he has never been given an explanation
10 as to why he was misinformed about the possibility of obtaining a transcript, that he has never been
11 informed why the "court reporter" told his office that the transcript of the default hearing could not be
12 prepared, and that he has not been informed "why the transcript appeared so suddenly now."
13 Conspicuously absent from Mr. Ohlson's affidavit is any indication that he ever asked these questions
14 in the first place, or whether he followed up and asked why he has never been informed or given any
15 explanation as to these items.

16 On October 13, 2011, Respondent's counsel, Mr. Aldrich, contacted Mr. Ohlson's office and
17 spoke with Rob May. Mr. May subsequently provided to Mr. Aldrich, by email, the email address and
18 telephone number of DanRa Boscovich, the court reporter who prepared the purported transcript that is
19 attached as Exhibit 2 to Appellant's Motion. (Affidavit of John P. Aldrich, attached hereto as Exhibit
20 D, ¶10.) Mr. Aldrich called Ms. Boscovich on the phone and Ms. Boscovich freely spoke with Mr.
21 Aldrich for several minutes. Mr. Aldrich asked Ms. Boscovich about the circumstances of the transcript's
22 preparation. (Exhibit D, ¶11.)

23 Ms. Boscovich explained that Joe Fallini, the husband of Appellant Susan Fallini, is a "good
24 friend" of hers. Mr. Fallini had obtained a disk that included a recording of the hearing from July 19,
25 2010. Ms. Boscovich said that the quality of the disk obtained by Mr. Fallini was "bad." (Exhibit D,
26 ¶12.) Ms. Boscovich then went personally to the Court and obtained a second copy of the hearing, which
27 she described as "better." (Exhibit D, ¶13.) Ms. Boscovich explained that Mr. Fallini was "desperate"

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1 to have the hearing transcribed, and she worked to quickly assist him. (Exhibit D, ¶14.)

2 Ms. Boscovich told Mr. Aldrich that from the time Mr. Fallini brought her the first disk to the
3 time that she completed the transcription was less than one (1) week. (Exhibit D, ¶15.) Therefore, given
4 the date of August 27, 2011 on page 39 of the transcript, it appears that Mr. Fallini approached Ms.
5 Boscovich on or after August 20, 2011.

6 Mr. Aldrich inquired of Ms. Boscovich if Mr. Fallini paid Ms. Boscovich for her services, to
7 which she responded “absolutely not.” She also explained that she felt very sorry for the Fallinis’
8 situation, and reiterated that the Fallinis are very long-time friends. (Exhibit D, ¶16.)

9 At best, the transcript is incomplete. Conspicuously absent from the transcript is the portion of
10 the hearing dealing with the motion for reconsideration. Further, the authenticity and accuracy of the
11 transcript is also in question, as it was prepared by a “good friend” of Appellant and her husband, as a
12 favor (i.e., no compensation was paid), by someone who felt sorry for Appellant’s situation. Of course,
13 Appellant Fallini proceeded to attach the transcript to the Motion even before the Court determined
14 whether to allow the transcript to become part of the record.

15 II.

16 LEGAL ARGUMENT

17 A. As with Her Other Motions and Briefing in this Case, Appellant Fallini Again Provided No 18 Legal Basis in Support of the Requested Relief, and the Motion Should Be Denied

19 Appellant’s paltry “Argument” section consists of one paragraph, a quotation of NRAP 10(a), and
20 a passing reference to NRAP 13. Neither reference to the Nevada Rules of Appellate Procedure is helpful
21 or relevant to the position taken by Appellant in her Motion, and is a blatant *red herring*. Appellant
22 simply ignores NRAP 9 and blames an unidentified court reporter for Appellant’s failure to obtain a copy
23 of the transcript, arguing that the court reporter has a duty, pursuant to NRAP 13, to complete a transcript.
24 (Appellant’s Motion, p. 3.) This is simply incorrect.

25 Appellant Fallini’s attempt to blame the unidentified court reporter is misplaced. NRAP 9
26 provides, in pertinent part:

1 **(a) Counsel's Duty to Request Transcript.**

2 **(1) Necessary Transcripts.**

3 (B) Except as provided in Rule 3C(j)(2), the **appellant** shall file a
4 transcript request form in accordance with Rule 9(a)(3) when a verbatim
5 record was made of the district court proceedings and the necessary
6 portions of the transcript were not prepared and filed in the district court
7 before the appeal was docketed under Rule 12.

8 (C) If no transcript is to be requested, the **appellant** shall file and
9 serve a certificate to that effect within the period set forth in Rule 9(a)(3)
10 for the filing of a transcript request form. Such a certificate shall
11 substantially comply with Form 14 in the Appendix of Forms.

12 **(3) Transcript Request Form.**

13 (A) **Filing.** The **appellant** shall file an original transcript request
14 form with the district court clerk and 1 file-stamped copy of the transcript
15 request form with the clerk of the Supreme Court no later than 15 days
16 from the date that the appeal is docketed under Rule 12.

17 (B) **Service and Deposit.** The **appellant** shall serve a copy of the
18 transcript request form on the court reporter or recorder who recorded the
19 proceedings and on all parties to the appeal within the time provided in
20 subparagraph (A). The **appellant** must pay an appropriate deposit to the
21 court reporter or recorder at the time of service, unless appellant is
22 proceeding in forma pauperis or is otherwise exempt from payment of the
23 fees. Where several parties appeal from the same judgment or any part
24 thereof, or there is a cross-appeal, the deposit shall be borne equally by the
25 parties appealing, or as the parties may agree.

26 (6) **Consequences of Failure to Comply.** A party's failure to comply
27 with the provisions of this Rule may result in the imposition of sanctions,
28 including dismissal of the appeal.

(b) Duty of the Court Reporter or Recorder.

(1) Preparation, Filing, and Delivery of Transcripts.

 (A) **Time to File and Deliver Transcripts.** Upon receiving a
transcript request form and the required deposit, the court reporter or
recorder shall promptly prepare or arrange for the preparation of the
transcript. Except as provided in Rule 9(b)(1)(B) and (b)(4), the court
reporter or recorder shall—within 30 days after the date that a request
form is served:

 (i) file the original transcript with the district court clerk; and

 (ii) deliver to the party ordering the transcript 1 certified copy and
an additional certified copy for the appendix.

1 **(B) Appellant's Failure to Pay Deposit.** The court reporter or
2 recorder is not obligated to prepare the transcript until receipt of the
3 deposit required by Rule 9(a)(3)(B). If appellant fails to timely pay the
4 deposit, the court reporter or recorder must—no later than 30 days from
5 the date that the transcript request form is served:

6 (i) file with the clerk of the Supreme Court a written notice that the
7 deposit has not been received, setting forth the full amount of the deposit
8 and the amount that remains unpaid; and

9 (ii) serve a copy of the notice on counsel for the party requesting
10 the transcript.

11 **(2) Notice to Supreme Court.** Within 10 days after the transcript is
12 filed with the district court and delivered to the requesting party, the court
13 reporter or recorder shall file with the clerk of the Supreme Court a notice
14 that the completed transcript has been filed and delivered. The notice shall
15 specify the transcripts that have been filed and delivered and the date that
16 those transcripts were filed and delivered. Form 15 in the Appendix of
17 Forms is a suggested form of certificate of delivery.

18 **(5) Sanctions for Failure to Comply.** A court reporter or recorder
19 who fails to file and deliver a timely transcript without sufficient cause as
20 provided in Rule 9(b)(4) may be subject to sanctions under Rule 13.

21 NRAP 9 (emphasis added).

22 Pursuant to this rule, the duty to request a transcript lies squarely on the shoulders of the
23 appellant's counsel. NRAP 9(a)(1)(B). If appellant's counsel determines not to request a transcript, he
24 must file a certificate that he will not be requesting a transcript—precisely what was done here. On or
25 about March 10, 2011, despite having first-hand knowledge that the July 19, 2010 hearing had been video
26 taped, Appellant Fallini filed a Certificate indicating that no transcript was available, and as such, she
27 would not be filing a request for transcript. (Exhibit C.) Significantly, Appellant Fallini did not request
28 a transcript as required by NRAP 9.

 In her Motion, Appellant Fallini asserts that "Rule 13 NRAP [sic] places the responsibility for the
production of the transcript squarely on the court reporters [sic] shoulders, and provides for sanctions
against a court reporter who fails in that responsibility. Here, the court reporter clearly failed in her
responsibility" (Motion, p. 3.) This suggestion is absurd and clearly contrary to the rule. Even a cursory
review of NRAP 9 demonstrates that the duty of the court reporter is conditioned upon the filing of a

1 request for transcript. NRAP 9(b)(1)(A) clearly sets forth that the court reporter's duty arises "upon
2 receiving a transcript request form and the required deposit...." Thus, an appellant has two
3 conditions she must meet before the court reporter has any duty to do anything: (1) the appellant must file
4 a transcript request form; and (2) the appellant must pay the required deposit. In this matter, Appellant
5 failed to accomplish either prerequisite. NRAP 9(b).

6 Moreover, if Appellant believed the record was somehow incomplete, she could have provided
7 her own summary of the evidence, subject to Respondent's objections. NRAP 9(c) provides:

8 **(c) Statement of the Evidence When the Proceedings Were Not**
9 **Recorded or When a Transcript Is Unavailable.** If a hearing or trial
10 was not recorded, or if a transcript is unavailable, the appellant may
11 prepare a statement of the evidence or proceedings from the best available
12 means, including the appellant's recollection. The statement shall be
13 served on the respondent, who may serve objections or proposed
14 amendments within 10 days after being served. The statement and any
objections or proposed amendments shall then be submitted to the district
court for settlement and approval. As settled and approved, the statement
shall be included by the district court clerk in the trial court record, and the
appellant shall include a file-stamped copy of the statement in an appendix
filed in the Supreme Court.

15 NRAP 9(c)(emphasis added). Appellant Fallini failed to provide any statement of the evidence either.
16 Instead, after conferring, the parties agreed to the entire contents of the record before this Court and filed
17 a Joint Appendix.

18 Appellant Fallini closed the record by submitting the Joint Appendix with the consent of
19 Respondent's counsel. The parties engaged in extensive briefing, which closed back on July 28, 2011
20 with the filing of Appellant's Reply Brief. Apparently, after reading the briefing from Respondent,
21 Appellant Fallini (or her husband) determined that she was about to lose her appeal, so she decided to
22 attempt to supplement the record somehow, went out and obtained a favor from a long-time friend, and
23 tried to cause further delay in the litigation process. This apparently occurred around August 20, 2011,
24 three weeks after briefing closed. (Exhibit D, ¶15.)

25 Significantly, Appellant has provided no pertinent legal authority to support the requested relief
26 in her Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs. Of
27 course, this has been Appellant's standard course of dealings in this case. Appellant has stalled the

1 process over and over by failing in her duties or not even responding, and then when she did respond, her
2 pleadings fail to cite relevant supportive authority for the relief sought.

3 In actuality, the Nevada Rules of Appellate Procedure are clear that the duty to order a transcript
4 lies squarely on the shoulders of the appellant's counsel. Counsel must both request and pay for the
5 transcript before the court reporter has any duty whatsoever. There is simply no basis for Appellant's
6 Motion, and it should be denied.

7 **B. As with Her Other Motions and Briefing in this Case, Appellant Fallini Again**
8 **Provided No Admissible Evidence in Support of the Requested Relief, and the**
9 **Motion Should Be Denied**

10 As for the "evidence" provided by Appellant, the Affidavit of Mr. Ohlson excludes substantial
11 important information. First of all, Mr. Ohlson claims he gave his card to a court reporter before court
12 started. He does not identify who this alleged court reporter was, nor does he provide a copy of the court
13 reporter's card. Given the fact that Mr. Ohlson's secretary allegedly contacted a court reporter about the
14 transcript, as explained in paragraph 6 of Mr. Ohlson's affidavit, one can only assume he knew the
15 identity of this person. Significantly, Mr. Aldrich's recollection and experience varies greatly from Mr.
16 Ohlson's recollection of events – Mr. Aldrich does not recall a court reporter being present before the July
17 19, 2010 hearing began, and his experience is that in district court civil matters in that department, the
18 party who wants a court reporter must provide one. (Exhibit D, ¶6.)

19 Further, conspicuously absent from Mr. Ohlson's affidavit is any reference to any attempt to
20 contact the department's court recorder. Mr. Ohlson acknowledged that he noticed a court reporter was
21 not taking down the proceedings. Indeed he did – more than three quarters of the way through the
22 hearing.¹ At page 31 of the purported transcript, Mr. Ohlson commented that he "just noticed" there was
23 no court reporter. (Exhibit 2 to Appellant's Motion, p. 31.) He made no comment that he had given his
24 card to a court reporter before the hearing. Instead, after being assured by the district court that the
25 hearing was being video taped, he continued willingly. (Exhibit 2 to Appellant's Motion, p. 31.) Thus,

26 ¹ If the Court takes into consideration that prior to the prove up hearing there was argument on
27 Ms. Fallini's Motion for Reconsideration, it was actually very near the end of a lengthy hearing that Mr.
28 Ohlson finally made the comment that the hearing was not being recorded.

1 Mr. Ohlson – as well as his client, who was also present in person at the hearing – was aware on July 19,
2 2010 that a transcript would be available through video if necessary.

3 Portions of Mr. Ohlson’s affidavit are inadmissible as well. Mr. Ohlson’s weak explanation that
4 his assistant contacted the court reporter and was informed that there was no transcript is inadmissible
5 hearsay. “Hearsay” is “a statement offered in evidence to prove the truth of the matter asserted.” NRS
6 51.035. Hearsay is inadmissible. NRS 51.065. Mr. Ohlson was not a party to those conversations, and
7 without an affidavit of the assistant who allegedly engaged in the conversation, this information is
8 inadmissible and should not be considered by the Court. This reference to inadmissible evidence is
9 consistent with Appellant’s attempt to have the district court consider inadmissible evidence at the district
10 court level (and consequently, again on appeal) by attaching purported affidavits that were unsigned and
11 letters that were not authenticated. (Jt. Appx. 149-159.) There is no basis for the relief requested in
12 Appellant’s Motion, and Respondent Adams respectfully requests that this Court deny the Motion.

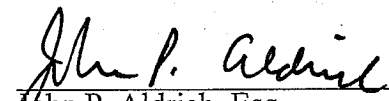
13 **III.**

14 **CONCLUSION**

15 Appellant Fallini has provided no law or facts to support her requested relief. She has not done
16 so because none exists. Respondent Adams respectfully requests that this Court deny Appellant Fallini’s
17 Motion in its entirety.

18 DATED this 17th day of October, 2011.

19
20 **ALDRICH LAW FIRM, LTD.**

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23 John P. Aldrich, Esq.
24 Nevada Bar No.: 6877
25 1601 S. Rainbow Blvd, Ste 160
26 Las Vegas, Nevada 89146
27 *Attorneys for Respondents*

CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on the 17th day of October, 2011, I mailed a copy of the
in a sealed envelope, to the following and that postage was fully paid thereon:

Jeffrey Kump, Esq.
Marvel & Kump
217 Idaho Street
Elko, Nevada 89801

John Ohlson, Esq.
275 Hill Street, Suite 230
Reno, NV 89501


Employee of Aldrich Law Firm, Ltd.

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,
Appellant,
vs.
ESTATE OF MICHAEL DAVID ADAMS, BY AND
THROUGH HIS MOTHER JUDITH ADAMS,
INDIVIDUALLY AND ON BEHALF OF THE ESTATE,
Respondent.

No. 56840

FILED

FEB 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY T. Alameda
DEPUTY CLERK

SETTLEMENT PROGRAM STATUS REPORT

A settlement conference was held in this matter on _____, 201__.

I file the following report of the proceedings:

- // The parties have agreed to a settlement of this matter.
- // The parties were unable to agree to a settlement of this matter.
- // The settlement conference is continued as follows:

Date: _____ Time: _____

Location: _____

*The settlement judge recommends that
Other: this case be removed from the settlement
program and returned to the appellate
process. Counsel were waiting to determine
if an insurance carrier that is not a party*

*Additional Comments: but indispensable for settlement
was willing to participate in settlement
negotiations. The carrier has declined to participate
making a settlement conference
unworkable.*

Carolyn A. Horrell
Settlement Judge

- The settlement judge shall file this report with the Supreme Court within 10 days from the date of any settlement conference. See NRAP 16(e)(3).
- A final status report is due within 180 days from assignment date. See NRAP 16(f)(1).
- For cases involving child custody, visitation, relocation or guardianship, a final status report is due within 120 days from the assignment date. See NRAP 16(f)(1).

RECEIVED
FEB 14 2011
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

AT THE TIME OF FILING, THE CLERK'S OFFICE WILL MAIL THIS REPORT AND ANY ATTACHMENTS TO ALL COUNSEL AND TO THE SETTLEMENT JUDGE.

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,
Appellant,
vs.
ESTATE OF MICHAEL DAVID ADAMS,
BY AND THROUGH HIS MOTHER
JUDITH ADAMS, INDIVIDUALLY AND
ON BEHALF OF THE ESTATE,
Respondent.

No. 56840

FILED

MAR 02 2011

TRACIE R. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie R. Lindeman*
DEPUTY CLERK

ORDER REINSTATING BRIEFING

Pursuant to NRAP 16, the settlement judge has filed a report with this court indicating that the parties were unable to agree to a settlement. Accordingly, we reinstate the deadlines for requesting transcripts and filing briefs. See NRAP 16.

Appellant shall have 15 days from the date of this order to file and serve a transcript request form. See NRAP 9(a).¹ Further, appellant shall have 90 days from the date of this order to file and serve the opening brief and appendix.² Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

D. Douglas, C.J.

cc: Carolyn Worrell, Settlement Judge
John Ohlson
Marvel & Kump, Ltd.
Aldrich Law Firm, Ltd.

¹ If no transcript is to be requested, appellant shall file and serve a certificate to that effect within the same time period. NRAP 9(a).

² In preparing and assembling the appendix, counsel shall strictly comply with the provisions of NRAP 30.

EXHIBIT C

EXHIBIT C

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Electronically Filed
Mar 10 2011 10:51 a.m.

IN THE SUPREME COURT OF THE STATE OF NEVADA
Frank A. Lindeman

OFFICE OF THE CLERK

* * * * *

SUSAN FALLINI,

Supreme Court No.: 56840

Appellant,

vs.

Estate of MICHAEL DAVID ADAMS,
By and through his mother JUDITH ADAMS,
Individually and on behalf of the Estate,

Respondent.

_____ /

CERTIFICATE

COMES NOW, appellant SUSAN FALLINI, by and through her counsel JOHN
OHLSON and JEFF KUMP, and hereby serves notice upon this Court and the attorneys of record
in this case that no transcript is available and as such, no transcript is being requested pursuant to

////
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////

1 NRAP 9.

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AFFIRMATION

Pursuant to NRS 239B.030

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The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

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Dated this 10th day of March, 2011.

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9

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By: /s/ John Ohlson
John Ohlson, Esq.
Bar Number 1672
275 Hill Street, Suite 230
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of JOHN OHLSON, and that on this date I personally served a true copy of the foregoing **CERTIFICATE**, by the method indicated and addressed to the following:

John P. Aldrich, Esq.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Ste. 160
Las Vegas, NV 89146

- Via U.S. Mail
- Via Overnight Mail
- Via Hand Delivery
- Via Facsimile
- Via ECF

DATED this 10th day of March, 2011.

/s/ Robert M. May
Robert M. May

EXHIBIT D

EXHIBIT D

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IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

SUSAN FALLINI
Appellant,
v.
ESTATE OF MICHAEL DAVID ADAMS, BY
AND THROUGH HIS MOTHER JUDITH
ADAMS, INDIVIDUALLY AND ON
BEHALF OF THE ESTATE,
Respondent.

Supreme Court No.: 56840
District Court Case No.: CV00224539

**AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF OPPOSITION TO MOTION FOR
ORDER ALLOWING SUPPLEMENTATION OF APPENDIX AND FOR RE-OPENING OF
BRIEFS**

State of Nevada)
County of Clark) ss:

Affiant, being first duly sworn, deposes and states the following:

1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and a partner in Aldrich Law Firm, Ltd..
2. My office address is 1601 S. Rainbow Blvd., Suite 160, Las Vegas, Nevada 89146.
3. I am counsel for Plaintiff/Respondent in this matter.
4. I have personal knowledge of the contents of this document, or where stated upon information and belief, I believe them to be true, and I am competent to testify to the facts set forth herein.
5. Appellant's Motion has an accompanying affidavit of John Ohlson, Esq., as well as a transcript which purports to be a transcript of the hearing at the district court level of this matter that occurred on July 19, 2010.

- 1 6. In Mr. Ohlson's Affidavit in Support of the Motion, he asserts that "[p]rior to the
2 hearing, affiant approached the court reporter whom affiant had never before met. I
3 introduced myself and gave the court reporter a card, indicating that the transcript and
4 a bill should be sent to me. I then took my place in line for the motion calendar to
5 await the calling of this case." I note that my experience is different than what Mr.
6 Ohlson explained. I have been to Pahrump approximately 10 times and have learned
7 that on the district court civil calendar, there is not a court reporter unless the parties
8 make arrangements for a court reporter to be present. I do not recall there being a
9 court reporter present to whom Mr. Ohlson could have given his card.
- 10 7. In paragraph 6 of Mr. Ohlson's affidavit, he comments "my assistant was told that
11 there was no transcript of the proceedings, and that one could not be produced because
12 I had not specifically (in those words) asked the reporter to report the hearing." I note
13 that this is obvious hearsay, as Mr. Ohlson was not party to that conversation. Mr.
14 Ohlson then goes on to explain that his appeal was taken without the benefit of a
15 transcript. I also am concerned that there is no identification of the person to whom
16 Mr. Ohlson's assistant spoke, nor any indication of when or where the conversation
17 took place.
- 18 8. Mr. Ohlson then explains in paragraph 7 that on September 29, 2011, he received the
19 purported hearing transcript from his client, who had received it from a court reporter
20 who was not present at the hearing. Mr. Ohlson then claims that he followed up with
21 the court reporter and asked her to prepare a "final, original transcript." I note that the
22 "final, original transcript" that Mr. Ohlson asserts is the transcript of the hearing, is
23 dated August 27, 2011.
- 24 9. In paragraph 8 of Mr. Ohlson's affidavit, he explains that he has never been given an
25 explanation as to why he was misinformed about the possibility of obtaining a
26 transcript, that he has never been informed why the "court reporter" told his office that
27 the transcript of the default hearing could not be prepared, and that he has not been
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1 informed "why the transcript appeared so suddenly now." Conspicuously absent from
2 Mr. Ohlson's affidavit is any indication that he ever asked those questions in the first
3 place or ever followed up and asked why he has never been informed or given any
4 explanation.

5 10. On October 13, 2011, I contacted Mr. Ohlson's office and spoke with Rob May. Mr.
6 May subsequently provided to me, by e-mail, the e-mail address and telephone number
7 of DanRa Boscovich, the court reporter who prepared the purported transcript.

8 11. I called Ms. Boscovich on the phone and she freely spoke with me for several minutes.
9 I asked Ms. Boscovich about the circumstances of the transcript's preparation.

10 12. Ms. Boscovich explained that Joe Fallini, the husband of Appellant Susan Fallini, is a
11 "good friend" of hers. Mr. Fallini had obtained a disk that included a recording of the
12 hearing from July 19, 2010. Ms. Boscovich said that the quality of the disk obtained
13 by Mr. Fallini was "bad."

14 13. Ms. Boscovich then went herself to the Court and obtained a second copy of the
15 hearing, which she described as "better."

16 14. Ms. Boscovich explained that Mr. Fallini was "desperate" to have the hearing
17 transcribed, and she worked to quickly assist him.

18 15. Ms. Boscovich told me that from the time Mr. Fallini brought her the first disk to the
19 time that she completed the transcription was less than one (1) week. Therefore, given
20 the date of August 27, 2001 on page 39 of the transcript, I concluded that Mr. Fallini
21 approached Ms. Boscovich on or after August 20, 2011.

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16. I inquired of Ms. Boscovich if Mr. Fallini paid her for her services, to which she responded "absolutely not." She also explained that she felt very sorry for the Fallinis' situation, and reiterated that the Fallinis are very good, long-time friends.

17. At best, the transcript is incomplete. Conspicuously absent from the transcript is the portion of the hearing dealing with the motion for reconsideration. Further, the authenticity and accuracy of the transcript is also in question, as it was prepared by a "good friend" of Appellant and her husband, as a favor (i.e., no compensation was paid), by someone who felt sorry for Appellant's situation.

18. I also note that the list of appearances only lists myself and Mr. Ohlson. Also present at the hearing were my client, Judith Adams, her husband Tony Adams, Appellant Susan Fallini, and Jeff Kump, Esq., another attorney for Ms. Fallini.

Dated this 17th day of October, 2011.

John P. Aldrich

JOHN P. ALDRICH

Subscribed & sworn to before me

this 17th day of October, 2011.

Eleanor Engbretson

NOTARY PUBLIC

