

PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
VACCARINO LAW OFFICE
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
(702) 258-8007
Attorney for Appellant/Cross-Respondent

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Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINA CALDERON STIPP,
Appellant/Cross-Respondent,
vs.
MITCHELL DAVID STIPP,
Respondent/Cross-Appellant.

SUPREME COURT CASE NO. 57327
DISTRICT COURT CASE NO. D-08-389203

**RESPONSE TO MOTION TO STRIKE RESPONSE TO MOTION FOR EXTENSION OF TIME
TO FILE AMICUS CURIAE BRIEF AND AFFIDAVIT OF APPELLANT/CROSS-
RESPONDENT AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Appellant/Cross-Respondent, CHRISTINA STIPP, ("CHRISTINA"), by and through her counsel, PATRICIA L. VACCARINO, ESQ., of the VACCARINO LAW OFFICE and hereby submits her Response and Countermotion to Motion to Strike Response to Motion for Extension of Time to file Amicus Curiae Brief and Affidavit of Appellant/Cross-Respondent.

I.

**MITCH'S MOTION TO STRIKE IS FURTHER EVIDENCE OF HIS ABUSE OF PROCESS,
AND MUST BE DENIED**

Defendant, MITCHELL STIPP, ("MITCH"), and his co-counsel, Radford J. Smith, Esq., have made false and fraudulent assertions in their frivolous Motion to strike including, to wit: "These new "issues" which CHRISTINA now attempts to raise on appeal are not legal issues." See page three, lines 11 and 12 of MITCH's Motion filed August 16, 2012. MITCH and Mr. Smith have unprofessionally revealed their disdain for CHRISTINA and her counsel inside and outside of the Courtroom. Now, they have also falsely asserted, under oath, that undersigned counsel "appear[s] to be attacking the Family Court judiciary." Such unnecessary and false assertions, certified by an Affidavit of Counsel are grounds for sanctions pursuant to NRCP 11 and NRS

1 18.010, and must not be tolerated by this Court. In fact, MITCH's Motion must be forthwith
2 denied, without allowing his filing of a Reply. The Family Law Section, ("FLS"), should proceed
3 with filing a brief, and this appeal must not be further delayed by MITCH. While finalizing this
4 Response and Countermotion, CHRISTINA's counsel received a Request for Submission filed
5 by the FLS on August 23, 2012. FLS and CHRISTINA agree that the FLS' Motion must now be
6 decided by this Court, regardless of MITCH's frivolous Motion on file.

7 First and foremost, CHRISTINA's proper Response to the FLS' Motion simply requests
8 additional input from the FLS, if this Court so agrees, on issues which were addressed in
9 CHRISTINA's Appeal, in her Docketing Statement and her Fast Track Statements on file in this
10 action. Indeed, CHRISTINA already raised in this action the errors of law pertaining to Judge
11 Sullivan failing to allow her due process. CHRISTINA also cited the District Court's failure to rule
12 in her favor, in its entirety, MITCH's Motion and to grant her all of her attorney's fees and costs
13 pursuant to well-settled, Nevada law and the parties' clearly written Marital Settlement Agreement,
14 contractually guaranteeing CHRISTINA such award.

15 While MITCH and his co-counsel falsely assert "three (3) additional issues" are now being
16 raised by CHRISTINA in her Response, the record is clear that no new issues have been raised
17 in CHRISTINA's Response. Certainly, this Court must understand that no new "issues on appeal"
18 have been raised. The focus of CHRISTINA's proper Response filed on August 15, 2012 was to
19 reveal how crucial she believes it would be beneficial for more input to be received upon another
20 one of her issues on appeal, to wit: when litigants such as MITCH do not properly have frivolous
21 Motions denied and also be assessed with fees and costs, the abuse of process continues by
22 MITCH.

23 CHRISTINA's Affidavit filed in District Court in support of the Supreme Court Response and
24 her Motion recently filed in District Court served to illustrate how a costly and lengthy District Court
25 and appellate process just continues to "fuel" MITCH's "fire" to continue to violate Orders. Such
26 cycle of abuse by MITCH continues because he fears zero consequence for his conduct.
27 CHRISTINA has already cited law, including NRAP 3E, "Fast Track" Custody Appeals, in her
28 briefing on file. CHRISTINA's sincere request and preserved issue on appeal is to have her family

1 truly be on a "Fast Track" headed in a direction other than any Court. CHRISTINA properly
2 responded to the FLS Motion. CHRISTINA properly informed this Court that the four years of
3 delays with post-divorce litigation and this appeal caused by MITCH's abuse of Court process and
4 the District Court's failure to properly apply Federal and Nevada law is taking an unnecessary and
5 costly toll on her family. CHRISTINA and her counsel believe that such extensive abuse of
6 process, delays and emotional and financial turmoil that CHRISTINA has experienced is also
7 experienced by other litigants and their counsel. Thus, the proper request was made for research
8 and/or studies as to how more forceful rules for Judges to follow concerning violations of Court
9 Orders and assessment of fees would undoubtedly assist and benefit similarly situated children
10 and parents.

11 MITCH and his co-counsel have also blatantly ignored the law and facts. They have also
12 violated NRCP 11 and the duty of candor to the Court codified in Court Rules by claiming "outright
13 misrepresentations" have been made by CHRISTINA and her counsel in the Response and
14 Affidavit filed on August 15, 2012. Yet, MITCH did not cite even one minor, error of fact in
15 CHRISTINA's filings. MITCH astonishingly advised the Court in his Motion it was not "**practical**"
16 to address CHRISTINA's "factual errors and erroneous conclusions". Yet, if a party wants a
17 portion of a pleading or paper stricken, CHRISTINA and her counsel submit it is "practical" and
18 "**NECESSARY**" to factually and legally support such request and any request made in any Motion.
19 It is clear that zero errors exist in CHRISTINA's filings, nor is the striking of any pleadings and
20 papers in order. CHRISTINA's Response and Affidavit are proper and supported by the District
21 Court and Appellate record. CHRISTINA's counsel purposely did not file the lengthy Exhibits
22 supporting her Affidavit with this Court because some of the documents are already in the
23 APPENDIX on file and the other, current offers of proof are not relevant to this Court's current
24 considerations. Indeed, those Exhibits have been filed and served upon MITCH in the District
25 Court action. If MITCH somehow believes those Exhibits would assist this Court, CHRISTINA
26 would suggest MITCH could have filed a Motion pursuant to NRAP 10 to modify this Court's
27 record to include the Exhibits if he so desired. Hopefully, MITCH will not file any further papers
28 in a further attempt to distort the record.

1 Also, CHRISTINA's Response was further necessary and appropriate because it is
2 important to note, in this case, that Judge Sullivan apparently understood how to calculate the
3 timeshare pursuant to Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213 (2009), ("Rivero II"). Judge
4 Sullivan's Decision filed in November 2010 states that he properly found MITCH did not have joint
5 custody pursuant to the law of Rivero II. However, CHRISTINA's Briefs on file reveal that Judge
6 Sullivan made defiant statements in the record that he was not intending upon upholding the
7 Rivero II ruling, and offered to the parties that he could be appealed. Thus, as CHRISTINA's
8 Response properly offered to this Court, this specific case has less to do with properly counting
9 up to a 40% timeshare, but more to do with correcting serious, due process and other legal
10 violations which CHRISTINA experienced in the District Court proceedings. Thus, with
11 CHRISTINA's permission and blessing, undersigned counsel offered commentary, including a
12 published article from Marshal S. Willick, Esq., revealing that other counsel and litigants are
13 experiencing different results in different Courtrooms when Rivero II is being cited and "enforced"
14 by the lower Court. In no manner, whatsoever, was such or any part of CHRISTINA's Appeal and
15 Response intended to "appear", as MITCH has wrongly suggested, as an attack upon any
16 particular Judge or the entire Family Court Judiciary.

17 Indeed, the appellate process is necessary and proper for good reason; to wit: to have
18 checks and balances in the judiciary branch of our government. When someone appeals an
19 Order or files a Response to a Motion, it cannot be wrongfully termed as an attack, but must be
20 viewed as a guaranteed, legal right. CHRISTINA's Appeal OBVIOUSLY has merit, or this Court
21 would not have asked to receive Amicus Curiae participation.

22 II.

23 **MITCH'S MOTION FAILS TO CITE ANY LEGAL AUTHORITY OR FACTS ALSO** 24 **WARRANTING A DENIAL**

25 As noted above, MITCH failed to file his Affidavit to address what he claims are "errors" that
26 might require striking. Thus, the Court must conclude all factual and legal assertions contained
27 in CHRISTINA's papers are valid. Further, MITCH and his co-counsel do not set forth a proper
28 legal basis to strike CHRISTINA's Response. MITCH and his counsel only rely upon NRAP 27

1 in filing the frivolous Motion.

2 NRAP 27 states as follows:

3 **MOTIONS**

4 (a) In General.

5 (1) Application for Relief. An application for an order or
6 other relief is made by motion unless these Rules prescribe
7 another form. A motion must be in writing and be
8 accompanied by proof of service.

9 (2) Contents of a Motion. A motion must state with
10 particularity the grounds for the motion, the relief sought, and
11 the legal argument necessary to support it. The motion shall
12 contain or be accompanied by any matter required by a
13 specific provision of these Rules governing such a motion. If
14 a motion is supported by affidavits or other papers, they shall
15 be served and filed with the motion.

16 (3) Response.

17 **(A) Time to File. Any party may file a response to**
18 **a motion; Rule 27(a)(2) governs its contents. The**
19 **response must be filed within 7 days after service of the**
20 **motion unless the court shortens or extends the time. A**
21 **motion authorized by Rules 8 or 41 may be acted upon**
22 **after reasonable notice to the parties that the court**
23 **intends to act sooner.**

24 (B) Request for Affirmative Relief. A response may
25 include a motion for affirmative relief. The time to respond to
26 the new motion is governed by Rule 27(a)(3)(A). The title of
27 the response must alert the court to the request for relief.

28 (4) Reply to Response. Any reply to a response shall be
filed within 5 days after service of the response. A reply shall
not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The
court may act on a motion for a procedural order—including
a motion under Rule 26(b)—at any time without awaiting a
response. Under Rule 27(c), the clerk may act on motions for
specified types of procedural orders. A party adversely
affected by the court's, or the clerk's, action may file a motion
to reconsider, vacate or modify that action. Timely opposition
filed after the motion is granted in whole or in part does not
constitute a request to reconsider, vacate, or modify the
disposition; a motion requesting that relief must be filed.

(c) Power of a Single Justice to Entertain Motions;
Delegation of Authority to Entertain Motions.

(1) Single Justice's Orders. In addition to the authority
expressly conferred by these Rules or by law, a justice of the
Supreme Court may act alone on any motion but may not
dismiss or otherwise determine an appeal or other
proceeding. The Supreme Court may provide by order or rule
that only the court may act on any motion or class of motions.
The court may review the action of a single justice.

(2) Clerk's Orders.

(A) Procedural Motions. The chief justice may

1 delegate to the clerk authority to decide motions that are
2 subject to disposition by a single justice. An order issued by
3 the clerk under this Rule shall be subject to reconsideration by
4 a single justice pursuant to motion filed within 10 days after
5 entry of the clerk's order.

6 (B) Orders of Dismissal. The Supreme Court may
7 delegate to the clerk authority to enter orders of dismissal in
8 civil cases where the appellant has filed a motion or parties to
9 an appeal or other proceeding have signed and filed a
10 stipulation that the proceeding be dismissed, specifying terms
11 as to the payment of costs.

12 (d) Form of Papers; Number of Copies.

13 (1) Format.

14 (A) Reproduction. All papers relating to motions may
15 be reproduced by any process that yields a clear black image
16 of letter quality. The paper must be opaque and unglazed.
17 Only one side of the paper may be used.

18 (B) Cover. A cover is not required, but there must be
19 a caption that includes the name of the court and the docket
20 number, the title of the case, and a brief descriptive title
21 indicating the purpose of the motion and identifying the party
22 or parties for whom it is filed. If a cover is used, it shall be
23 white.

24 (C) Binding. The document must be bound in any
25 manner that is secure, does not obscure the text, and permits
26 the document to lie reasonably flat when open.

27 (D) Paper Size, Line Spacing, and Margins. The
28 document must be on 8 1/2 by 11-inch paper. The text must
be double-spaced, but quotations more than 2 lines long may
be indented and single-spaced. Headings and footnotes may
be single-spaced. Margins must be at least 1 inch on all 4
sides. The pages shall be consecutively numbered at the
bottom.

(E) Typeface and Type Style. The document must
comply with the typeface requirements of Rule 32(a)(5) and
the type-style requirements of Rule 32(a)(6).

(2) Page Limits. A motion or a response to a motion shall
not exceed 10 pages, unless the court permits or directs
otherwise. A reply to a response shall not exceed 5 pages.

(3) Number of Copies. An original and 1 copy must be
filed unless the court requires a different number by order.

(e) Emergency Motions. If a movant certifies that to avoid
irreparable harm relief is needed in less than 14 days, the
motion shall be governed by the following requirements:

(1) Before filing the motion, the movant shall make every
practicable effort to notify the clerk of the Supreme Court and
opposing counsel and to serve the motion at the earliest
possible time. If an emergency motion is not filed at the
earliest possible time, the Supreme Court may summarily
deny the motion.

(2) A motion filed under this subdivision shall include the
title "Emergency Motion Under NRAP 27(e)" immediately
below the caption of the case and a statement immediately
below the title of the motion that states the date or event by
which action is necessary.

1 (3) A motion filed under this subdivision shall be
2 accompanied by a certificate of counsel for the movant,
entitled "NRAP 27(e) Certificate," that contains the following
information:

3 (A) The telephone numbers and office addresses of
the attorneys for the parties;

4 (B) Facts showing the existence and nature of the
claimed emergency; and

5 (C) When and how counsel for the other parties were
6 notified and whether they have been served with the motion;
or, if not notified and served, why that was not done.

7 (4) If the relief sought in the motion was available in the
district court, the motion shall state whether all grounds
8 advanced in support of the motion in the Supreme Court were
submitted to the district court, and, if not, why the motion
should not be denied.

9 (5) The motion shall otherwise comply with the provisions
of this Rule.

10 [Emphasis added]

11 NRAP 27 clearly permitted CHRISTINA to file an Affidavit and a Response to the FLS'
12 Motion. NRAP 27 allowed MITCH the opportunity to also file a Response, but MITCH declined that
13 option. MITCH's Motion to strike must be denied due to his failing to fulfill the mandates of NRAP
14 27(a)(2). MITCH's Motion fails to state the particular grounds for the Motion and the "legal
15 argument necessary to support it" as required by the Rule.

16 NRCP 12 addresses requests for the striking of pleadings as follows:

17 **DEFENSES AND OBJECTIONS—WHEN AND HOW**
18 **PRESENTED—BY PLEADING OR MOTION—MOTION FOR**
JUDGMENT ON PLEADINGS

19 (a) When Presented.. .

20 (4) The service of a motion permitted under this rule
alters these periods of time as follows, unless a different time
is fixed by order of the court:

21 (A) if the court denies the motion or postpones its
22 disposition until the trial on the merits, a responsive pleading
shall be served within 10 days after notice of the court's action;

23 (B) if the court grants a motion for a more definite
24 statement, a responsive pleading shall be served within 10 days
after service of the more definite statement.

25 **(f) Motion to Strike.** Upon motion made by a party before
26 responding to a pleading or, if no responsive pleading is
permitted by these rules, upon motion made by a party within
27 20 days after the service of the pleading upon the party or upon
the court's own initiative at any time, the court may order
28 stricken from any pleading any insufficient defense or any
redundant, immaterial, impertinent, or scandalous matter.

1 This Rule must also relate to the request to strike papers on file. Moreover, Motions to
2 strike under Fed.R.Civ.P. 12(f) are viewed with disfavor and are infrequently granted. See
3 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1380 (West 2007).
4 Striking a pleading is “a drastic remedy to be resorted to only when required for the purposes of
5 justice.” Brown & Williamson Tobacco Corp. v. U.S., 201 F.2d 819, 822 (6th Cir.1953).

6 The legal standard addressing the striking of papers is that a court may grant a motion to strike
7 pursuant to Federal Rule of Civil Procedure 12(f) if the contested language constitutes an
8 “insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ.
9 Pro. 12(f). Federal courts generally disfavor motions to strike. Colaprico v. Sun Microsystems,
10 Inc., 758 F.Supp. 1335, 1339 (N.D.Cal.1991) (“[M]otions to strike should not be granted unless
11 it is clear that the matter to be stricken could have no possible bearing on the subject matter of the
12 litigation.”) United States v. 729.773 Acres of Land, More or Less, Situate in City and County of
13 Honolulu, 531 F.Supp. 967, 971 (D.Haw.1982) (“A motion to strike is a severe measure and it is
14 generally viewed with disfavor.”) Bureerong v. Uvawas, 922 F.Supp. 1450, 1478 (C.D.Cal.1996)
15 (“[M]otions are generally disfavored because they are often used as delaying tactics, and because
16 of the limited importance of pleadings in federal practice.”) A Court must view the pleading under
17 attack in the light most favorable to the pleader. State of California v. United States, 512 F.Supp.
18 36, 39 (D.C.Cal.1981). MITCH clearly cannot meet such high standard, even if he had truly and
19 properly attempted to do so.

20 Pursuant to the above-referenced authority, MITCH’s Motion is baseless, and it lacks factual
21 and legal merit. MITCH’s Motion is yet another “knee-jerk” reaction to CHRISTINA’s proper filings,
22 MITCH’s conduct is purely and simply more, improper legal maneuvering by MITCH in an attempt
23 to somehow wrongfully punish CHRISTINA and her counsel for daring to file this Appeal and to
24 attempt to delay the finalization of the Appeal. MITCH has made many attempts, pending appeal,
25 to continue to bully CHRISTINA into submission as CHRISTINA’s Response and Affidavit recently
26 filed in this action clearly reveal.

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III.

CHRISTINA SHOULD BE AWARDED ALL OF HER FEES AND COSTS INCURRED

Pursuant to Nevada law and the parties' Marital Settlement Agreement, already documented in CHRISTINA's APPENDIX on file, this Court has the authority to grant CHRISTINA all of her attorney's fees and costs in opposing MITCH's frivolous Motion to Strike Response. CHRISTINA's APPENDIX, page 254, Paragraph 4.7, recites the precise terms of the Marital Settlement Agreement relevant to attorney's fees to be awarded, even on appeal, to CHRISTINA.

When this Court hopefully issues its Order reversing all of Judge Sullivan's Decision, a specific remand Order should also issue that CHRISTINA is entitled to all of her fees and costs incurred from the filing of MITCH's frivolous Motion in 2009 in the District Court through and including when a final Decision is issued in this case. MITCH, of course, did not oppose or even respond to the delay which would be necessitated by the FLS Motion which was filed for good cause. This silence by MITCH screams volumes, as MITCH wants to avoid a proper reversal of the Order at issue, and savor his false sense of "victory" in the District Court action for as long as possible.

IV.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that MITCH's Motion to Strike Response be denied. CHRISTINA is entitled to all of her fees and costs incurred.

DATED this 23rd day of August 2012.

Respectfully submitted by:

VACCARINO LAW OFFICE



PATRICIA L. VACCARINO, ESQ.
Nevada Bar No. 005157
8861 W. Sahara Ave., Suite 210
Las Vegas, Nevada 89117
Attorney for Appellant/Cross-Respondent,
CHRISTINA CALDERON STIPP


STATE OF NEVADA)
COUNTY OF CLARK) ss:

1. I am an attorney with the VACCARINO LAW OFFICE, duly licensed to practice law in the State of Nevada. I am the attorney of record for the Appellant/Cross-Respondent, CHRISTINA CALDERON STIPP, in this matter.

3. This Response and Countermotion is filed in good faith and not for purposes of delay.

FURTHER AFFIANT SAYETH NAUGHT.

SUBSCRIBED and SWORN to before
me this 23rd day of August, 2012.



MATTHEW J. LAYTON
 Notary Public State of Nevada
 No. 09-9449-1
 My appt. exp. Feb. 6, 2013

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 15th day of August, 2012, I hereby certify that I am an employee of the
3 Vaccarino Law Office, over the age of 18, and that on the date set forth below, I served a true
4 copy of **RESPONSE TO MOTION TO STRIKE RESPONSE TO MOTION FOR EXTENSION OF**
5 **TIME TO FILE AMICUS CURIAE BRIEF AND AFFIDAVIT OF APPELLANT/CROSS-**
6 **RESPONDENT AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS** on the
7 party(ies) below by:

8 [XX] Placing an original or true copy thereof in a sealed envelope, postage prepaid for
9 collection and mailing in the United States Mail at Las Vegas, Nevada.
10 addressed to:

11 State Bar of Nevada, Family Law Section
12 Sarah Hardy-Cooper, Esq.
13 Routsis Hardy-Cooper
14 571 California Ave.
15 Reno, NV 89509
16 (Via United States Mail)

17 Robert Cerceo, Esq.
18 Chair, Family Law Section, State Bar of Nevada
19 Abrams Law Firm
20 6252 S. Rainbow Blvd., #100
21 Las Vegas, NV 89118
22 (Via United States Mail)

23 [XX] Electronic Service via ECF System.

24 Radford J. Smith, Esq.
25 Mitchell David Stipp, Esq.
26 64 N. Pecos Rd., #700
27 Henderson, NV 89074
28 (Via Electronic Service)

Dated this 23rd day of August, 2012.

24 
25 _____
26 Matthew Layton
27
28