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Tracie K. Lindeman
Clerk of Supreme Court

In the Supreme Court of the State of Nevada

MARK B. STEPPAN,

Appellant,

vs.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;
John Iliescu, Jr. and Sonnia Santee Iliescu, as
trustees of the JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST,

Respondents.

And Related Cross-Appeal.

Case No. 60036

Motion for Remand

Mark B. Steppan ("Steppan"), by and through his undersigned counsel, hereby moves for an order remanding this matter to Department Ten of the Second Judicial District Court, in and for the County of Washoe, for entry of order by the District Court consistent with its February 7, 2012 Order Certifying Intent to Grant Motion for Reconsideration. Exhibit 1. This motion is made pursuant to *Foster v. Dingwall*, 228 P.3d 453, 455-56 (2010).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

These consolidated cases involve a mechanics lien securing payment of an architect's fees and costs. After the architect recorded his lien, the landowner (Respondents John Iliescu, Jr., Sonnia Santee Iliescu John Iliescu, Jr. and Sonnia Santee Iliescu, as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust's, collectively, "Iliescu") filed an action to expunge the lien. Appellant then filed a separate action to foreclose the lien. The Second Judicial District Court consolidated the two cases, and assigned them to Department Six. After discovery, case management conferences, and cross-motions for summary judgment, the District Court ruled that the architect had perfected a mechanics lien securing his right to payment. The only remaining trial issue between the lien claimant and land owner is computation of the amount that is secured by the lien. Other claims exist between the landowner and his legal counsel and developers who indemnified the landowner against liens.

In the Spring of 2010, Department Six then conducted a settlement conference between the parties. By July of 2011, it was clear that the case would not settle. At that point, the judge in Department Six recused himself because he had formed opinions about the witnesses and claims that would make it improper for him to preside over a bench trial. After Department Six had managed discovery for four years, and after the case was transferred to a different department, the District Court dismissed the case without prejudice for failure to file an early case conference report. The District Court did not enter judgment or otherwise declare that one party is a "prevailing party", and the Court's order of dismissal did not contain NRCP 54(b) certification.

On November 8, 2011, Steppan filed his Motion for Leave to File Motion for Reconsideration.¹ That motion was fully briefed and submitted to Department Ten for decision. Before Department Ten issued its decision, however, it issued additional orders effectively resolving all remaining claims as between the remaining parties active in the case. As a result, Appellant Steppan was compelled to file his Notice of Appeal and Amended Notice of Appeal to protect his appellate rights.

On February 8, 2012, the judge in Department Ten filed its Order Certifying Intent to Grant Motion for Reconsideration.

II. ARGUMENT

A. LEGAL STANDARD

This Court recently clarified the remand procedure to be employed by a party where it has become clear that the District Court is inclined to grant relief requested. *Foster v. Dingwall*, 228 P.3d 453, 455-56 (Nev. 2010). Once the District Court has certified its intent to grant the requested relief, it is appropriate to move the Nevada Supreme Court for remand to allow the District Court to enter an order granting the requested relief. *Id.* It is within the Nevada Supreme Court's discretion to then remand the matter to the District Court for a determination consistent with its certification. *Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006). If the only issue on appeal is the issue for which certification occurred, the appeal may

¹ The extent to which Steppan's Motion for Leave to File a Motion for Reconsideration would be considered a tolling motion as explained by this Court in AA Primo Builders, LLC v. Washington, 245 P.3d 1190, 1194-95 (Nev. 2010) is unclear. In Primo, this Court addressed the effects of a post-judgment motion for reconsideration on the time to file an appeal. Here, the District Court's November 22, 2011 Order was not a final judgment and did not dispose of all claims as between all parties. It was the entry of subsequent orders disposing the claims as between the remaining parties which put Steppan in a position of having to file his notice of appeal to protect his appellate rights.

1 be dismissed. *Id.* Otherwise, where the appeal has raised additional issues, the Nevada Supreme
2 Court may order a limited remand solely to address the certified issue. *Id.*

3 **B. DISCUSSION**

4 Remand is appropriate in this case. The sole issue for which Steppan filed his Notice of
5 Appeal and Amended Notice of Appeal is the dismissal of his claims by way of the District
6 Court's November 22, 2011 Order. That Order dismissed claims by Steppan to foreclose a
7 mechanic's lien (which had already been adjudicated as valid by the Department Six judge who
8 presided over the case for four years) on the basis that a NRCP 16.1 Early Case Conference
9 Report had not been filed. In reaching that result, however, the judge in Department 10 was
10 without the benefit of knowledge as to what the judge in Department Six had intended when he
11 actively managed and directed the progression of the case, including discovery, for a period of
12 many years. Steppan's Motion for Leave to File Motion for Reconsideration provided the judge
13 in Department 10 that information, not the least of which was an Affidavit of Hon. Brent Adams
14 in Support of Motion for Reconsideration. Clearly the judge in Department 10 found that new
15 evidence compelling and entered the February 8, 2012 Order Certifying Intent to Grant Motion
16 for Reconsideration.
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19 **III. CONCLUSION**

20 Based on the foregoing, Steppan respectfully requests the Court remand his appeal for
21 entry of Order on Steppan's Motion for Leave to file Motion for Reconsideration.
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Privacy Certification

Undersigned hereby certifies that the foregoing document does not contain any social security numbers.

February 17, 2012.

Hoy & Hoy, PC

/s/ Michael S. Kimmel
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Certificate of Service

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hoy & Hoy, PC, and that on the 17th day of February 2012, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court by using the ECF system, which served the following parties electronically:

DAVID R. GRUNDY

ALICE CAMPOS MERCADO

GREGORY F. WILSON

Further, I hereby certify that, on the date below, I served a true and correct copy of the foregoing document by depositing a copy of the same for mailing enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following:

Gordon Cowan
10775 Double R. Blvd.
Reno, Nevada 89521

David Wasick
879 Mahogany Drive
Minden, Nevada 89423

DATED this 17th day of February, 2012.

/s/ Kelly Anderson
An employee of Hoy & Hoy