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**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

CHRISTINA CALDERON STIPP, Appellant, v. MITCHELL DAVID STIPP, Respondent.	CASE NO.: 62299

MOTION TO DISMISS APPEAL AND FOR ATTORNEY'S FEES AND COSTS

I. INTRODUCTION

Mitchell David Stipp, respondent named above ("Mitchell"), hereby moves to dismiss the appeal of Christina Calderon Stipp ("Christina") and for attorney's fees and costs.[1]

The only matter before the Nevada Supreme Court (the "Court") is the issue of attorney's fees and costs that were denied to Christina by the district court pursuant to its order entered on November 9, 2012. *See* SCT Order (Docket No. 13-25218). The Court issued the SCT Order on or about August 26,

[1] Patricia Vaccarino represents Christina in this case. Ms. Vaccarino has not withdrawn and remains counsel of record. However, Christina has replaced Ms. Vaccarino with Marshal Willick in the district court case D-08-389203-Z. Christina is also an attorney employed by the Juvenile Division of the Clark County District Attorney's Office. Mitchell anticipates that Christina will argue that she has failed to pursue this appeal because of a lack of resources. This argument lacks merit. She has two attorneys, has a job, and is an attorney herself. Christina understands the merits of her appeal, the costs and expenses involved, and the procedure to dismiss this case if she really wanted to do so.

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2013 dismissing Christina's appeal in part and reinstating briefing. *Id.* The SCT Order made it clear that Christina's appeal could "proceed only as to the portion of the district court's November 9, 2012 [] order that denied [Christina's] request for attorney['s] fees and costs []" and that Christina "shall have 60 days from the date of this order to file and serve the opening brief and appendix." *Id.* at 3. Christina's brief and appendix were due on October 28, 2013. As of the time of the filing of this motion, Christina has not filed or served her opening brief and appendix. Moreover, Christina has processed her appeal in a frivolous manner for purposes of delay and for an improper purpose.

II. ARGUMENT

1. *Christina's appeal should be dismissed.*

N.R.A.P. 31(d) provides in part as follows:

> **(d) Consequences of Failure to File Briefs or Appendix.** If an appellant fails to file an opening brief or appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal.

Christina's opening brief and appendix were due on October 28, 2013. Christina has neither filed her brief and appendix nor a motion for an extension of time to do so. Christina's counsel has also not asked Mitchell for an extension of time to file her brief and appendix. Accordingly, Christina's appeal should be dismissed.

2. *The Court should sanction Christina because she has processed her appeal in a frivolous manner for purposes of delay and for an improper purpose and award Mitchell attorney's fees and costs as the prevailing party.*

N.R.A.P. 38 provides as follows:

> **(a) Frivolous Appeals; Costs.** If the Supreme Court determines that an appeal is frivolous, it may impose monetary sanctions.
>
> **(b) Frivolous Appeals; Attorney Fees as Costs.** When an appeal has frivolously been taken or been processed in a frivolous manner; when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the court below; or whenever the appellate processes of the court have otherwise been misused, the court may, on its own

> motion, require the offending party to pay, as costs on appeal, such attorney fees as it deems appropriate to discourage like conduct in the future.

The primary issue before the district court was the review of Mitchell's child support obligations. The district court denied all of Christina's requests for relief except her motion for alleged unpaid medical insurance premiums in the nominal amount of $970.00 (which was before the district court multiple times previously and denied). Mitchell did not contest that he owed Christina such amount; however, he argued in his filings that Christina owed Mitchell significantly more in unreimbursed medical costs, expenses and premiums for which the district court failed to give Mitchell credit and he intended to offset with the district court's approval. Under such circumstances, Christina knew she was not the prevailing party, yet she still filed an appeal. As to the other matters raised by Christina's appeal, the Court dismissed ***all of them*** because it lacked jurisdiction to consider them based on ***clear*** Nevada law.

Mitchell believes the district court erred by delegating the matter of the review of the parties' child support obligations to the Family Support Division of the Office of the District Attorney ("DAFS"). It is Mitchell's position that upon an application by a party, the district court ***is required*** to review child support under NRS 125B.145(b). However, this Court has taken the position that an appeal of the district court's decision on this issue was premature because "[t]he district court may review the district attorney's decision upon objection by either party." SCT Order at 2. Christina's motion before the district court was for the district court to review and determine the parties' child support obligations. Mitchell consented to such review and requested a reduction in his obligations. The fact that either party could file an action with DAFS should not cure the district court's error under NRS 125B.145(b).

On or about January 14, 2013, the Clark County District Attorney's Office notified Mitchell that Christina filed an action with DAFS (UPI-095435200A). As a result, Mitchell erroneously believed (like this Court) that the Clark County D.A. would initiate an IV-D case to establish the appropriate

level of child support of the parties; therefore, Mitchell made the decision voluntarily to dismiss his appeal. On or about August 29, 2013, Christina's request for modification of Mitchell's child support obligations ***was denied*** by DAFS and no other action was taken. Neither DAFS nor Christina informed Mitchell of the decision. Mitchell only discovered that the district attorney's office denied Christina's request after contacting the case manager via telephone on or about October 18, 2013 to inquire as to the status of the case.[2] As a result, Mitchell continues to pay child support of $2,000.00 per month for the parties' two (2) minor children through DAFS and must now either file a new case with DAFS (which will likely take 8-12 months) or another motion before the district court (which refused to consider it before). Based on the foregoing, Mitchell believes Christina failed to notify Mitchell of the decision by the district attorney and/or to dismiss her appeal immediately after DAFS denied her request for modification in order to prevent Mitchell from pursuing a reduction in his obligations of support. As far as this Court, the district court, and Mitchell were aware, the matter of child support was "still pending" and not subject to review. This also explains why Christina has not filed her opening brief and appendix.

Given the amount of the attorney's fees and costs at stake versus the costs and expenses of pursuing an appeal, Mitchell believes that Christina really filed her appeal to make public via the Court's website his affidavit of financial condition to assist the bankruptcy trustee in the William Walter Plise Chapter 7 Bankruptcy Case (Bankr. D. Nev.; 12-14724—LBR) and to publish what would otherwise be sealed filings under NRS 125.110 that contained false and defamatory accusations of criminal conduct in order to embarrass, harass and impugn Mitchell's character and professional reputation. *See* Attachments to Question 26 of Christina's Docketing Statement (Docket No. 13-02418). This is not a proper purpose of an appeal, and Christina should be punished for her conduct.

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[2] DAFS case manager communicated to Mitchell that it was determined that Christina was receiving the maximum amount of child support from Mitchell.

Section 4.7 of the parties' marital settlement agreement ("MSA") provides for an award of attorney's fees and costs to the prevailing party in any litigation arising out of the MSA (including in connection with any appeal). Section 4.7 of the MSA provides as follows:

> **4.7. ATTORNEYS' FEES.** If there is any legal action or proceeding, including any mediation or arbitration proceeding, to enforce or interpret any provision of this Agreement or to protect or establish any right or remedy of any Party hereto, the unsuccessful Party to such action or proceeding, whether such action or proceeding is settled or prosecuted to final judgment, shall pay to the prevailing Party as finally determined, all costs and expenses, including reasonable attorneys' fees and costs, incurred by such prevailing Party in such action or proceeding, in enforcing such judgment, and in connection with any appeal from such judgment. Husband and Wife agree to pay his or her respective attorneys' fees and costs incurred in the preparation of this Agreement and in the representation of each in the Action.

III. CONCLUSION

If the Court dismisses Christina's appeal as requested by this motion, Mitchell respectfully requests that Christina be sanctioned under N.R.A.P 38 and Mitchell be awarded his attorney's fees and costs as the prevailing party on appeal.

DATED this 29th of October, 2013.

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DECLARATION OF MITCHELL DAVID STIPP

I, MITCHELL DAVID STIPP, declare as follows:

1. I am counsel of record and the Respondent in the case of Christina Calderon Stipp v. Mitchell David Stipp, case number 62299 in the Nevada Supreme Court. I submit this declaration in support of my "Motion to Dismiss and for Attorney's Fees and Costs" (the "Motion").

2. I have prepared and read the Motion and know the contents thereof, that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief and, as to those matters, I believe them to be true.

3. I further submit that the Motion is filed in good faith, and not intended for the purpose of harassment or to cause an undue delay in this matter.

_____
MITCHELL DAVID STIPP

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document described as "MOTION TO DISMISS APPEAL AND FOR ATTORNEY'S FEES AND COSTS" by mail pursuant to NRAP 25 on this 29th day of October, 2013, to all interested parties as follows:

Patricia L. Vaccarino, Esq.
Vaccarino Law Office
8861 W. Sahara Avenue., Suite 210
Las Vegas, Nevada 89117

Mitchell D. Stipp