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Tracie K. Lindeman
Clerk of Supreme Court

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

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

OPPOSITION TO APPELLANT'S MOTION FOR ATTORNEY'S FEES AND COSTS AND REPLY TO APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS AND FOR ATTORNEY'S FEES AND COSTS

Mitchell David Stipp, respondent named above ("Mitchell"), hereby files his opposition to the motion of Christina Calderon Stipp ("Christina") for attorney's fees and costs and reply to Christina's response to his motion ("Christina's Filing"). Patricia Vaccarino, Esq. represents Christina in this matter. Christina's Filing contains no affidavit or declaration of Ms. Vaccarino or her client; however, it is signed by Ms. Vaccarino as Christina's counsel of record.

By the filing of her motion voluntarily to dismiss her appeal, Christina concedes to the relief sought by Mitchell's motion and her appeal should be dismissed by the Nevada Supreme Court (the "Court"). Accordingly, Mitchell should be awarded attorney's fees and costs as the prevailing party on

Docket 62299 Document 2013-33561

appeal. 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.

If the Court dismisses Christina's appeal under NRAP 31(d) as requested by Mitchell in his motion, Mitchell is by definition the prevailing party (i.e., the appeal was resolved in his favor—it was dismissed). If the Court permits Christina voluntarily to withdraw her appeal without awarding Mitchell his attorney's fees and costs, it rewards Christina for failing to adhere to the Court's order entered on or about August 26, 2013 (Order, Docket No. 13-25218, "SCT Order"). Under these circumstances, the Court should award Mitchell his attorney's fees and costs on appeal. Moreover, for the reasons set forth below, Christina also should be sanctioned under NRAP 38.

The support for Mitchell's request for sanctions can be found in a single sentence buried in Christina's Filing: "**CHRISTINA *never* intended upon filing her Opening Brief[.]**" Christina's Filing at 6 (lines 24-25) (emphasis added). If Christina never intended to file a brief, why did she file the appeal in the first place? The fact that Christina's counsel makes this admission clearly supports Mitchell's belief that her appeal was frivolous. If an appellant does not intend to file a brief, then the purpose of the appeal is improper.

Despite Christina's defamatory accusations, Mitchell has not been dishonest with this Court, abused any court process, or violated any rules. Christina's Filing has offered no evidence to support her position. This appeal is separate and distinct from the other matters previously on appeal, which have been addressed by the Court without sanctions imposed on Mitchell or any award of attorney's fees and costs to Christina, and the matter pending before the district court.[1]

Christina wants this Court to believe that she needed 60 full days to perform a "reasonable-minded cost/benefit analysis" of pursuing the matter of the failure of the district court to award her attorney's fees and costs (when she arguably was not the prevailing party).[2] Moreover, Christina only requested $7,500 in attorney's fees and costs from the district court in her motion. Christina's Docketing Statement, Attachment 26(a) at 2. The cost and expense of briefing an appeal before the Court even on the single issue of attorney's fees and costs likely would be more than $7,500. The decision is a "no-brainer" unless Christina of course had ulterior motives (which Mitchell believes to be the case)

Christina discloses in violation of applicable settlement privileges in her filing that on October 22, 2013, her counsel asked that Mitchell sign a stipulation, which she attaches as Exhibit 1 (the "Stipulation"). In that correspondence, Christina's counsel provided Mitchell ***less than 24 hours*** to chose between two alternatives: either sign it or advise if he was unwilling to do so. Despite the unreasonable time demands of Christina's counsel, Mitchell responded, which response Christina attaches as Exhibit 2 (also in violation of applicable settlement privileges). However, Christina falsely

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[1] *See infra* note 3.

[2] The Court dismissed all of Christina's matters on appeal except for the issue of attorney's fees and costs. Remarkably, though, Christina now asserts in her filing that "she may still pursue the District Court's failure to issue and enforce an Order to Show Cause against MITCHELL for numerous violations of Court Orders by way of Writ." Christina's Filing at 2 (lines 8-10). However, the SCT Order was very clear (and Christina's counsel confirms the same but fails to understand the concept) that Christina's motion to treat her appeal as a writ was denied. SCT Order at 2 (fn. 1).

claims that Mitchell acted in bad faith and refused to cooperate even though he responded the same day with valid objections. In the Stipulation, Christina's counsel asked Mitchell to agree to the following statement: "CHRISTINA cannot afford further costs and fees related to this appeal, and shall attempt to negotiate continuing and pending attorney's fees and costs requests in the District Court action." Such language is not required by NRAP 42 as claimed by Christina's counsel (Christina's Filing at 3, lines 2-4), such statement is false as it relates to Christina's financial resources particularly now that she is employed full time (Christina's Docketing Statement, Attachment 26(f)), and it contains matters related to NV S.Ct. Case No. 57327 (which is no longer on appeal and unrelated to this case).[3] Not only was Mitchell not required to disclose to the Court the existence of the Stipulation under NRCP 3.3 and the correspondence exchanged as part of the negotiations, he was prohibited from doing so because of applicable settlement privileges. He did not "lie to the Court" or make "material misrepresentations" when he stated that Christina did not file her brief or request an extension of time. Both statements are true and do not misrepresent in any way the state of facts on the date he filed his motion.

Christina's brief and appendix were due on October 28, 2013. After Mitchell notified Christina's counsel that he did not agree to the language of the Stipulation on October 23, 2013, Christina could have filed a motion to dismiss before the deadline or responded to Mitchell's email (which she elected not to do). In fact, Christina points out in her filing that Mitchell actually suggested that she file a motion (if they could not reach an agreement on the dismissal). Christina's Filing at 3 (lines 8-9). However, Christina did not file a motion. Therefore, Mitchell filed his motion on October 29, 2013, which is clearly authorized by NRAP 31(d). Given this authority, Mitchell has not violated NRCP 3.1. However, Christina blames Mitchell for her failure to meet the deadline imposed by this Court and

[3] The matter before the district court as remanded in Case No. 57327 is its failure to set forth any findings for its determination of the parties' custodial arrangement. Christina has not prevailed in that case, and Mitchell does not expect the district court to do anything other than provide these findings. *See* Order (Docket No. 13-15375). Why would the district court now award attorney's fees and costs to Christina when it granted Mitchell additional time and did not award attorney's fees and costs to Mitchell? Christina's position makes no sense.

provides excuses for her conduct when she had the ability to resolve Mitchell's objections to the Stipulation or timely file a motion to dismiss.

Even after Mitchell filed his motion, Mitchell attempted to resolve the matter through settlement. Although protected by applicable settlement privileges, Christina's counsel provides that "MITCHELL later wrote another ridiculous E-mail dated October 30, 2013 to CHRISTINA's counsel trying to extort money from CHRISTINA and her counsel and he would then stipulate to dismiss." While Christina's counsel refers to this email in violation of settlement privileges, she did not attach it so she could misrepresent its contents to this Court. Attached as Exhibit "A" is a true and accurate copy of the email sent to Christina's counsel. Rather than pay $1,500.00 as requested by Mitchell to resolve the matter, Christina paid her counsel to prepare and file 24 pages of garbage in response to Mitchell's motion. Under these circumstances, Christina's goal of performing a "reasonable-minded cost/benefit analysis" appears to ring false.

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. In Christina's Filing, Christina does not address Mitchell's allegation that Christina failed timely to dismiss her appeal in order to mislead Mitchell, the district court and this Court regarding the status of the review by DAFS of Mitchell's child support obligations. Given the denial by DAFS which occurred three days after entry of the SCT Order, it would seem to Mitchell that Christina should have moved to dismiss her appeal at that time and notified this Court of the decision by DAFS. Instead, Christina elected to do and say nothing.

The public record in the William Walter Plise Chapter 7 Bankruptcy Case (Bankr. D. Nev.; 12-14724—LBR) does not reveal "that the Federal Bankruptcy Court and Federal Investigators are claiming Mitchell has stolen funds from banks." Christina's Filing at 11 (lines 11-12). Essentially, Christina has now falsely alleged that Mitchell is a "bank robber" without any evidence or support or even an explanation how this allegation relates to the matters before this Court. These types of statements in public filings before this Court are defamatory and violate NRCP 3.3. They embarrass, harass and impugn Mitchell's character and professional reputation. This is not a proper purpose of a filing (or an appeal), and Christina should be punished for her conduct.

Christina claims that she was required to disclose Mitchell's affidavit of financial condition as part of her Docketing Statement. Christina's Filing at 11 (lines 27-28) – 12 (line 1). NRAP does not require such disclosure as part of Christina's Docketing Statement (particularly since she did not raise the issue of child support on appeal).

For the reasons set forth above, the Court should dismiss Christina's appeal under NRAP 31(d) as requested by Mitchell's motion, award Mitchell his attorney's fees and costs as the prevailing party on appeal, and sanction Christina for her conduct in accordance with NRAP 38.

DATED this 7th of November, 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 opposition and reply to which this Declaration is attached (the "Filing").

2. I have prepared and read the Filing 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 Filing is made in good faith, and not intended for the purpose of harassment or to cause an undue delay in this matter.

_____

MITCHELL DAVID STIPP

EXHIBIT A

Subject:	Appeal 62299
From:	Mitchell Stipp (mitchell.stipp@yahoo.com)
To:	plvlaw@aol.com;
Date:	Wednesday, October 30, 2013 3:55 PM

Patricia,

I spoke with your client today about the motion to dismiss your client's appeal and for attorney's fees and costs. While it is unclear to me why you failed to respond to my previous email, I am reaching out to you again with the hope of resolving the matter.

I'm willing to execute a stipulation to dismiss that motion and your client's appeal; however, I would like to discuss with you payment of my attorney's fees and costs. I'm willing to accept $1,500 (which is not my actual costs and expenses and is being offered only for purposes of settlement). I am certain that the cost of filing an opposition to my motion will be more than that and the risk is high that your client will be sanctioned, and I will be awarded my full attorney's fees and costs.

Please advise me if this offer is acceptable. Of course, this offer and the contents of my email are protected by any and all applicable settlement privileges.

If your client is not willing to pay this amount, maybe you will consider doing so on her behalf.

Best,

Mitchell Stipp
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Facsimile: 702-549-3110

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This email and any attachments are confidential and may be privileged.

They should be read or retained only by the intended recipient. If you have received this email in error, please notify me immediately and delete this email and any attachments from your system.

In addition, in order to comply with IRS Treasury Circular 230, I am required to inform you that unless I have specifically stated to the contrary in writing, any advice I provide in this

email or any attachment concerning federal tax issues or submissions is not intended or written to be used, and cannot be used, to avoid federal tax penalties.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document described as "**OPPOSITION TO APPELLANT'S MOTION FOR ATTORNEY'S FEES AND COSTS AND REPLY TO APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS AND FOR ATTORNEY'S FEES AND COSTS** " by mail pursuant to NRAP 25 on this 7th day of November, 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