

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Respondent.

No. 62357

FILED

AUG 25 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

*ORDER DENYING MOTION TO TAKE JUDICIAL NOTICE AND
STRIKING RESPONDENT'S APPENDIX*

This is an appeal from a district court order granting summary judgment in a forfeiture action. Respondent has filed a motion requesting that this court take judicial notice of five criminal trial transcripts and three of this court's orders of affirmances in the related criminal case.

While respondent asserts that the district court took judicial notice of the criminal file, respondent has failed to establish that the district court specifically took judicial notice of the five criminal trial transcripts and three orders of affirmance, as those documents are not properly part of the trial court record, and the district court does not reference those documents in its order granting summary judgment. NRAP 10(a) (explaining that the trial court record includes the papers and exhibits filed in the district court). As our review of this matter is limited to whether the district court properly resolved the forfeiture action based on the evidence and pleadings before it, and respondent fails to establish that the district court considered these documents, we cannot consider in the first instance evidence of which the district court could have taken

judicial notice but did not specifically do so. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476-77, 635 P.2d 276, 277 (1981) (noting that this court may only consider matters appearing in the record on appeal). Thus, we deny respondent's motion to take judicial notice of all the documents included in its appendix to the answering brief, and accordingly, we strike respondent's appendix. To the extent respondent cites to or relies on facts included in the stricken appendix in its answering brief, we will not consider any documents not properly before this court when resolving the merits of this appeal.

It is so ORDERED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Ryan W. Daniels
Marquis Aurbach Coffing
Clark County District Attorney