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IN THE SUPREME COURT OF NEVADA

Electronically Filed
Feb 23 2015 08:40 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

J.W. BENTLEY and MARYANN
BENTLEY, TRUSTEES OF THE
BENTLEY FAMILY 1995 TRUST,

Case No. 66932

Appellants,

v.

**MOTION FOR CLARIFICATION
OF ORDER**

HALL RANCHES, LLC, a Nevada
limited liability company; THOMAS J.
SCYPHERS; KATHLEEN M.
SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN
CENTER, LLC, a Nevada limited liability
company; DONALD S. FORRESTER;
KRISTINA M. FORRESTER; RONALD
R. MITCHELL; and GINGER G.
MITCHELL,

Respondents.

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family 1995 Trust, by and through their counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, and hereby move for leave to file two (2) opening briefs in this consolidated case.

The Court is aware of the history of this case. The District Court entered its Findings of Fact, Conclusions of Law, Order and Judgment in Case No. 08-CV-0363-D on April 5, 2012. That Order improperly certified the judgment as a final judgment. Nevertheless, the Order directed the Nevada State Engineer to implement a rotation schedule for the water rights at issue in this case. The State Engineer did

1 so. Bentley petitioned for judicial review of the rotation schedule, as did Joy Smith
2 and Dan and Elaine Barden. The District Court denied the petitions for judicial
3 review. Bentley, Smith, and Barden appealed as Case No. 64773. After Bentley
4 filed its Opening Brief, this Court directed the parties to brief the issue of
5 jurisdiction. Bentley did so by way of a supplemental brief. That case is fully
6 briefed. Bentley subsequently appealed an award of costs as Case No. 66303.
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9 The District Court entered its final Findings of Fact, Conclusions of Law,
10 Judgment and Decree in Case No. 08-CV-0363 on September 29, 2014. The Decree
11 repeats the Order directing the Nevada State Engineer to implement a rotation
12 schedule. Bentley appealed the Decree as Case No. 66932. Smith and Barden did
13 not join that appeal. In addition to Bentley's objections regarding the rotation
14 schedule, the Decree also annuls a private Water Use and Diversion Agreement.
15 The Decree did not incorporate a prior attorney's fees award; however, in an
16 abundance of caution, Bentley included that prior order as one of the issues on
17 appeal.
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21 Bentley moved to consolidate Case Nos. 64773 and 66932 in order to avoid
22 duplicative briefing on the issue of the rotation schedule. On January 27, 2015, this
23 Court entered its Order consolidating all three (3) appeals. The Order also
24 dispensed of the jurisdictional issue and ordered new briefs that omit the
25 jurisdictional issue. The Order did not, however, specify whether the issue of the
26 rotation schedule should be briefed with the issue of the Water Use and Diversion
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1 Agreement. Although the Order of consolidation is advantageous and preferable to
2 the extent it resolved the lingering jurisdictional issue, the Order is not advantageous
3 if it requires that all issues be included in a single opening brief. Bentley's request
4 and preference is to brief the rotation schedule issue separately from the other issues
5 for the following reasons:
6

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8 1. Despite the interrelated histories and record, the legal issues are
9 distinct. Case No. 64773 concerns only a petition for judicial review over the
10 rotation schedule. Case No. 66932 concerns the Water Diversion and Use
11 Agreement and issue of attorney's fees.

12
13 2. Although the record and appendices overlap, they are not the same.
14 Case No. 64773 concerns a petition for judicial review that proceeds on a
15 limited record that consists of the administrative record and specific exhibits
16 for which the District Court took judicial notice. Bentley submits that the
17 adequacy of the administrative record is an important issue for the petition for
18 judicial review. The State Engineer should not be allowed to rely on the
19 larger record from the Decree case in Case No. 66932 to make up for the lack
20 of an administrative record in Case No. 64773.
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24 3. The opening brief would be too long. Bentley requested and obtained
25 an extension to the page limit requirement for the opening brief in Case No.
26 64773 regarding the rotation schedule. Bentley's opening brief did not
27 address the jurisdictional issue; rather that was addressed in a later
28

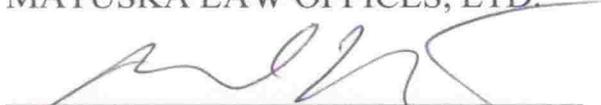
1 supplement. Including issues of the Diversion Agreement and attorney's fees
2 in the same opening brief would make it extremely long.

3
4 4. Smith and Barden are not parties to the appeal from the Decree in Case
5 No. 66932.

6 For these reasons, Bentley respectfully requests clarification of the previous
7 Order and leave to file a separate brief on the issue of the rotation schedule in excess
8 of thirty (30) pages. Bentley further respectfully requests that the Opening Brief(s)
9 be filed within sixty (60) days of any additional orders.
10

11 Dated this 20th day of February 2015.

12
13 MATUSKA LAW OFFICES, LTD.

14
15 By: 

16 MICHAEL L. MATUSKA, SBN 5711
17 2310 South Carson Street, Suite 6
18 Carson City NV 89701
19 Attorneys for APELLANTS,
20 J.W. BENTLEY and MARYANN
21 BENTLEY
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CERTIFICATE OF SERVICE

1
2 I certify that on the 20th day of February 2015, I served a copy of this
3
4 completed docketing statement upon all counsel of record:

5 By personally serving it upon him/her; or

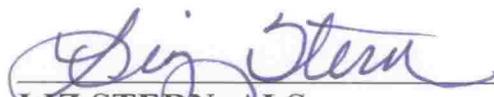
6 **X** By mailing it by first class mail with sufficient postage prepaid to the
7 following address(es): (NOTE: If all names and addresses cannot fit below,
8 please list names below and attach a separate sheet with the addresses.)

9 Thomas J. Hall, Esq.
10 305 South Arlington Avenue
11 P.O. Box 3948
12 Reno NV 89505-3948

13 Jessica Prunty, Esq.
14 Dyer Lawrence Penrose Flaherty Donaldson Prunty
15 2805 Mountain Street
16 Carson City NV 89703

17 Bryan L. Stockton, Esq.
18 Senior Deputy Attorney General
19 State of Nevada/Attorney General's Office
20 100 North Carson Street
21 Carson City NV 89701

22 Dated this 20th day of February 2015.

23 
24 LIZ STERN, ALS