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IN THE SUPREME COURT OF NEVADA

HOWARD SHAPIRO and JENNA
SHAPIRO,

Appellant/Cross-Respondent

vs.

GLEN WELT, RHODA WELT, LYNN
WELT, and MICHELLE WELT,

Respondent/Cross-Appellants.

Supreme Ct. No. 67363
Dist. Ct. Case No. A-14-706566-C

**REPLY RE MOTION TO DISMISS
APPEAL 67363**

GLEN WELT, RHODA WELT, LYNN
WELT, and MICHELLE WELT,

Appellant

vs.

HOWARD SHAPIRO and JENNA
SHAPIRO,

Respondent

Supreme Ct. No. 67596
Dist. Ct. Case No. A-14-706566-C

Glenn Welt, Rhoda Welt, Lynn Welt and Michelle Welt (“the Welts”) reply concerning their motion to dismiss Howard and Jenna Shapiro’s appeal in docket 67363. On the merits, the response cites no authority supporting its interpretation of NRAP 16 or any similar rule. Mr. Shapiro’s personal appearance at the settlement conference was not excused and he did not appear. Applying the persuasive authority the Welts cite, relief is warranted. The Shapiros’ appeal should be dismissed or, alternatively, the Welts should

1 be reimbursed the fees and costs incurred preparing for and attending a meaningless
2 settlement conference, as well as the fees and costs associated with this motion.

3 DATED this 26th day of May, 2015.

4 THORNDAL, ARMSTRONG, DELK,
5 BALKENBUSH & EISINGER

6 /s/ *Michael P. Lowry*

7 Michael P. Lowry, Esq.
8 P.O. Drawer 2070
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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. Howard Shapiro did not personally attend the settlement conference.**

13 Factually, there is no dispute Mr. Shapiro did not appear personally in Nevada for
14 the settlement conference or that he then sought to attend telephonically. There is no
15 dispute the Shapiros' counsel personally attended the settlement conference, however this
16 fact is immaterial to the motion. Sending retained counsel does not, by itself, excuse the
17 client's attendance. In each of the cases cited in the Welts' motion, counsel for the
18 offending party attended personally. However the client's actions in failing to appear,
19 whether personally or via an appropriate representative, are what caused sanctions.

20 The response offers a variety of arguments to excuse Mr. Shapiro's failure to
21 attend personally. It asserts counsel "did not require anyone's authority to settle this
22 case."¹ NRAP 16(e)(1) does permit a settlement conference judge to excuse a client's
23 attendance "provided that counsel has written authorization to resolve the case fully...."
24 However, the response provides no documentation or indication that written authorization
25 was provided. Further, NRPC 1.2(a) gives the client sole authority to settle a matter, not
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¹ Response at 6:14-15.

1 the lawyer.² It stands to reason this is at least one of the reasons for NRAP 16's personal
2 attendance requirement.

3 The response notes 3 of the 4 Welts also did not personally attend. This is
4 immaterial as they advised the settlement conference judge and the Shapiros that Glenn
5 Welt would personally attend and have full settlement authority for all Welts.³ Jenna
6 Shapiro did not attend the conference either; however this too is immaterial because it
7 was anticipated Howard Shapiro would have full settlement authority. Whether explicitly
8 or implicitly, the parties recognize the primary actors in this litigation are Howard
9 Shapiro and Glenn Welt. If this case had any chance of resolution, they both needed to
10 personally attend the settlement conference.

11 The next argument asserts Mr. Shapiro "could not appear due to a business trip
12 imposed upon him by his employer."⁴ This assertion is not supported by an affidavit or
13 other evidence. Without factual support this argument is meaningless and does indicate
14 how this business trip satisfied the good cause requirement.

15 None of these arguments meet NRAP 16(e)(1)'s requirements.

16 **II. The settlement conference judge did not excuse personal attendance.**

17 The response secondarily asserts the settlement conference judge found good
18 cause to excuse personal attendance. It cites no document requesting personal attendance
19 be excused for good cause. It cites no document where that finding was expressly made.
20 Mr. Turner's correspondence with counsel states only that he chose to proceed with the
21 settlement conference on May 4. Mr. Turner did not state whether the personal
22 attendance requirement would be waived if Mr. Shapiro appeared via telephone or that
23 appearing via telephone would be due to "good cause."

27 ² "A lawyer shall abide by a client's decision whether to settle a matter."

28 ³ Email dated March 23, 2015 at 3:06 attached as Exhibit B to Motion.

⁴ Response at 2:26-27.

1 **III. The Welts motion is procedurally proper per NRAP 16.**

2 NRAP 16 authorizes sanctions for failure to attend the settlement conference. It
3 authorizes the settlement judge to recommend sanctions; however that authority is not
4 exclusive. Nothing in rule's language states only the settlement judge may seek sanctions
5 arising from a settlement conference. Conversely, nothing in the rule's language
6 prohibits a litigant from seeking sanctions. Given this, the Welts' motion is consistent
7 with the motion practice NRAP 27 authorizes.

8 The response also complains about the emails attached to the motion. NRAP
9 27(a)(2) permits "affidavits or other papers" that support a motion. These emails are
10 included with the motion solely to offer factual support on the points for which they were
11 cited.

12 On the merits, the response argues NRAP 16(e)(1) does not define "attendance."
13 It is true the rule does not contain an express definition. However the definition can be
14 determined by reading the rule as a whole. First, counsel "and their clients must attend
15 the conference."⁵ It then permits the settlement judge to excuse attendance for good
16 cause. If good cause is shown, counsel must have written authorization for full
17 settlement authority or "immediate telephone access to the client."⁶ If the definition of
18 "attendance" included telephonic appearance, there would be no need to condition
19 excusing "attendance" upon immediate telephone access.

20 NRAP 16(e)(1) requires personal attendance, unless it is excused for good cause.
21 Mr. Shapiro did not personally attend the settlement conference. His personal attendance
22 was not excused. NRAP 16(g) authorizes sanctions if a party does not attend the
23 settlement conference and this is exactly what the Welts seek.

24 **IV. Sanctions against the Welts are not indicated.**

25 The response concludes with a request for sanctions against the Welts and their
26 counsel. It cites NRAP 28.2(a)(2) as authority supporting this request. NRAP 28

27 _____
28 ⁵ NRAP 16(e)(1).

⁶ NRAP 16(e)(1).

1 governs the briefing parties submit about the merits of the issues on appeal. NRAP 28.2
2 requires an attorney's certificate accompany any brief that is filed. However the Welts
3 filed a motion per NRAP 27, not a brief per NRAP 28. NRAP 28.2(a)(b) authorizes
4 sanctions only arising from errors arising from the attorney's certificate. NRAP 27
5 does not require an attorney's certificate for a motion, nor was one provided. NRAP 28
6 has no application to this motion.

7 A court does have the inherent power to manage its docket and those appearing
8 before it but sanctions are still not merited. NRAP 16 requires personal attendance, but
9 no Nevada authority has been located interpreting how NRAP 16 applies to these or
10 similar facts. Persuasive authority from other courts concerning similar facts and rules
11 supports the Welts' arguments. Even if denied, the Welts' motion is procedurally proper,
12 brought for a proper purpose and is adequately supported by facts and law.

13 **V. Dismissal or alternative relief is merited.**

14 The chances of resolution may have been low, but the Welts complied with NRAP
15 16's requirements in hopes that the case might resolve. The underlying case in New
16 Jersey between the families resolved only after a personal meeting and there was hope a
17 personal attendance at this settlement conference might produce the same result. This
18 cost the Welts time and money that was wasted because Mr. Shapiro failed to personally
19 attend the settlement conference. Sanctions in the form of dismissal or alternative relief
20 are merited.

21 DATED this 26th day of May, 2015.

22 THORNDAL ARMSTRONG DELK
23 BALKENBUSH & EISINGER

24 */s/ Michael P. Lowry*

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, on May 26, 2015 the **REPLY RE MOTION TO DISMISS APPEAL 67363** was served upon each of the parties to appeal 67363 via electronic service through the Supreme Court of Nevada’s electronic filing.

/s/ Michael P. Lowry

An Employee of Thorndal, Armstrong, Delk,
Balkenbush & Eisinger