

EXHIBIT “5”

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER; AND ERICKSON,
THORPE & SWAINSTON, LTD.,

Respondents.

No. 66858

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Our initial review of the documents before this court reveals a potential jurisdictional defect. Specifically, it is not clear whether the district court's November 19, 2014, order granting Pat Songer's special motion to dismiss is a final judgment because it contemplates the dismissal of the case at a later date. *See* NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that resolves all of the parties' claims and rights in the action, leaving nothing for the court's future consideration except post-judgment issues).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellants should submit documentation that established this court's jurisdiction including, but not limited to, a copy of any written district court order dismissing the case against Pat Songer. We caution appellants that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The requesting of transcripts and the briefing schedule in this appeal shall be suspended pending further order of this court.

Respondents may file any reply within 10 days from the date that appellants' response is served.

It is so ORDERED.

 Jardeth , C.J.

cc: Law Office of Daniel Marks
Lipson Neilson Cole Seltzer & Garin, P.C.
Lemons, Grundy & Eisenberg

EXHIBIT “4”

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9 TRANSCRIPT OF TAPE-RECORDED

10 HEARING IN THE MATTER OF

11 SONGER V. DELUCCHI, ET AL.

12 SEPTEMBER 1, 2015

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14 CASE NUMBER CV 35969

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21 Job Number: 264787

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1 THE COURT: Um, our next case is case number CV
2 35969, Ray- -- Raymond Delucchi and Tommy Hollis versus -
3 - let's see, Mr. Songer -- Patrick Songer and, uh -- et
4 al.

5 MS. GUTIERREZ: Good morning, Your Honor. Siria
6 Gutierrez for Pat Songer.

7 THE COURT: Good morning. Do we -- we have -- we
8 should have I think, uh -- we have, um, Daniel Marx's
9 office maybe by phone?

10 MR. LEVINE: I'm sorry; hello?

11 THE COURT: Hello.

12 MR. LEVINE: Hi.

13 THE COURT: Hi. Judge Walker here. I just called the
14 case. Um, do we have Adam Levine? Are you on?

15 MR. LEVINE: That is me, Adam Levine.

16 THE COURT: Okay. This is a crazy case and I've got
17 to find my notes here, um, but, uh -- the case that
18 hasn't ended.

19 MR. LEVINE: We all thought it did but we were
20 wrong.

21 THE COURT: Well, the Nevada Supreme Court said it
22 didn't.

23 MR. LEVINE: That's what I'm saying. That's correct.
24 The Nevada Supreme Court said it hasn't, notwithstanding
25 everyone's belief to the contrary.

1 THE COURT: Well -- and I've got my notes here --
2 this is what happened.

3 On September 17th of 2014 I issued an order. I
4 issued findings of fact, conclusions of law, and an order
5 granting the defendant Erickson, Thorpe, & Swainston's
6 special motion to dismiss.

7 But that order discussed the timeframe for filing a
8 motion for attorney's fees. You appealed that order. Your
9 notice of appeal was filed on October 28th of 2014.

10 Subsequent to that I issued an order on November
11 19th of 2014, an order granting the defendant, Pat
12 Songer, special motion. So there is Erickson -- uh,
13 Erickson's order and there was a Songer order.

14 They were different orders because there were
15 different parties. I granted their special motion to
16 dismiss pursuant -- pursuant to Nevada Revised Statute
17 41.660. I mentioned the case will be -- be dismissed with
18 prejudice when the attorney's fees and costs are awarded.

19 There was a notice of entry of order filed on that
20 case in both of those orders. This particular notice of
21 entry of order was December 4th of 2014.

22 On December 17th, 2014, Mr. Levine, you filed an
23 amended notice of appeal to encompass both of the orders,
24 the September 17th, 2014 order, which you had previously
25 appealed, and the December 4th, 2014 Songer dismissal.

1 Then on December 29th, uh, 2014, I issued a single
2 order awarding attorney's fees and costs. The notice of
3 entry of order, uh, awarding the fees and costs was
4 January 7th of 2015.

5 There was an appeal from that order; it just wasn't
6 by your office. On January 29th, 2015 defendant Pat
7 Songer filed a notice of appeal from my December 29th,
8 2015 [sic] order.

9 Um, then apparently, um, uh, on April 29th of 2015
10 Erickson, Thorpe, Swainston filed with the Nevada Supreme
11 Court an order dismissing their portion of the appeal.

12 And on May 28, 2015 the district court -- in other
13 words, I signed a stipulation and there -- pursuant to a
14 stipulation I dismissed or vacated Erickson's attorney's
15 fees and costs with prejudice.

16 So Erickson Erickson, Swainston, Thorpe [sic] is
17 completely out of this.

18 MS. GUTIERREZ: That's correct, Your Honor.

19 THE COURT: The appeal that is currently at the
20 Nevada Supreme Court is Pat Songer's notice of appeal on
21 the attorney's fees and costs I awarded in that case.

22 Um, Mr. Levine, you never appealed my December 29th,
23 2014 order. My understanding is now you want me to issue
24 a new order that says this is -- what happened in my
25 September order and my December order was I reserve the

1 attorney's fees, then I issued a final order; that issue
2 of December 29 of 2014 -- which was prepared by your
3 office, which I said this is the award of the attorney's
4 fees and costs in this case.

5 You prepared that order. You didn't appeal from that
6 order. Now you want me, in light of the Supreme Court
7 telling you, hey, that order you appealed from, um, on
8 September 17th of 2014 and the December 4th, 2014 order
9 were not final because the attorney's fees issue hadn't
10 been resolved.

11 So that's not a final order; we're dismissing your
12 appeal from the Nevada Supreme Court. The issue is you
13 didn't appeal the December 29th -- the final order
14 addressing attorney's fees and costs. Now you're asking
15 me to issue a new order so you can appeal it.

16 MR. LEVINE: Close.

17 THE COURT: Okay.

18 MR. LEVINE: I did not appeal the December 29 order
19 because we do not dispute the amount of attorney's fees
20 awarded.

21 What happened was, as set forth in Exhibit 3 to my
22 motion, the Nevada Supreme Court issued an April 14 -- on
23 April 14, 2015 an order to show cause --

24 THE COURT: Exactly.

25 MR. LEVINE: -- suggesting that the order granting

1 Songer's special motion to dismiss may not be a final
2 judgment [inaudible] --

3 THE COURT: Exactly.

4 MR. LEVINE: -- because a final judgment is one that
5 resolves all the parties' claims and rights, leaving
6 nothing of the court's future consideration except post-
7 judgment issues.

8 And because the language of that order from N- --
9 November 19 indicated that the court intended to award
10 attorney's fees in the future, the Supreme Court, in
11 [inaudible] to show cause, asked us to respond as to
12 whether or not that was a final judgment.

13 We responded with the argument it was intended to be
14 a final judgment; or alternatively, the order became
15 final once this court entered its subsequent award
16 awarding the attorney's fees.

17 And of course as you know, a premature notice of
18 appeal will deemed timely once the final order is
19 entered.

20 The Supreme Court expressly rejected that argument
21 and that's why I attached Exhibit 4. The Supreme Court
22 said -- and this is for the order dismissing appeal --
23 "Although the district court's November 19, 2014 order
24 granted special motion to dismiss, it also states the
25 case will be dismissed with prejudice once the court has

1 awarded fees and costs."

2 THE COURT: Okay.

3 MR. LEVINE: "The order thus contemplates dismissal
4 of the action at a later date; it does not constitute a
5 final judgment."

6 And it's the next language which is controlling,
7 Your Honor. "We disagree with appellant's contention that
8 a dismissal took effect upon the ent- -- subsequent entry
9 of an order awarding the fees and costs where appellants
10 represent that the order does not state that the action
11 is dismissed as of the filing of that order.

12 "We further decline to remand this matter to the
13 district court for entry of an order of dismissal.
14 Appellants may file a notice of appeal for any final
15 judgment entered in this matter."

16 In other words, I made the argument that the
17 December award of attorney's fees rendered the judgment
18 final. The court rejected that argument.

19 THE COURT: Well, you can't have it both ways. You
20 can't tell me it's a final order and then tell me, but I
21 didn't appeal from it, so now, Judge, I want you to issue
22 a new order so I can appeal it to the Supreme Court. That
23 doesn't make any sense, either

24 MR. LEVINE: It's not arguing both ways. I argued to
25 the Supreme Court that the judgment should have been

1 deemed final as of December, where you entered the order
2 awarding fees.

3 THE COURT: I agree.

4 MR. LEVINE: Therefore, the appeal is timely because
5 a premature notice is effective under the Supreme Court's
6 rules.

7 The Supreme Court rejected that argument. They
8 rejected the argument expressly in their order. That page
9 -- the bottom page [inaudible] page 2. They rejected the
10 argument that your December order was the final judgment.

11 THE COURT: Well, I have to --

12 MR. LEVINE: I made that argument to them. They said
13 no.

14 THE COURT: Well, I, uh -- maybe they didn't under-
15 --

16 MR. LEVINE: We're bound by that whether we like it
17 or not, whether we think it's correct or not.

18 THE COURT: Well, here's the thing. My guess is
19 their law clerk didn't understand it, is the long and the
20 short of it.

21 But the only think I have, your -- your -- I'm
22 looking at the order dismissing appeal that was filed,
23 um, o- -- it was filed by Tracy Lindeman [ph], the clerk
24 of the Supreme Court, on June 1st of 2015.

25 MR. LEVINE: Correct. And that's where -- that's the

1 language. If you take a look at the language, "We
2 disagree with appellant's contention that a dismissal
3 took effect upon the subsequent entry of the court
4 awarding fees and costs."

5 That's your December order.

6 THE COURT: Right.

7 MR. LEVINE: That was my -- the argument I made to
8 the court is the same argument you just posed to me, Your
9 Honor.

10 THE COURT: Right.

11 MR. LEVINE: And unfortunately the Supreme Court
12 rejected that argument.

13 THE COURT: And it seems like you and I agree on
14 that argument, and I -- I don't think --

15 MR. LEVINE: Obvious -- yes.

16 THE COURT: -- I don't think that --

17 MR. LEVINE: If your -- if your interpretation --
18 which I agree with -- was correct, deemed correct by the
19 Supreme Court, the appeal was timely filed and the appeal
20 would not have been dismissed because it would have been
21 to my notice of appeal -- which you just read it into the
22 record -- may have been premature.

23 But of course, under the Nevada rules of public
24 procedure, a premature notice of appeal does not divest
25 the court of jurisdiction.

1 But while you and I agree, Your Honor, the Supreme
2 Court disagreed with you and I, notwithstanding the fact
3 that I made the exact same argument to them that you just
4 made to me.

5 THE COURT: Okay. Okay.

6 MR. LEVINE: As I said, I can file a notice of
7 appeal from any -- [inaudible] judgment entered in the
8 matter. They don't consider your December order the final
9 judgment.

10 MS. GUTIERREZ: Your Honor, may I respond?

11 MR. LEVINE: [inaudible] ministerial new entry of
12 final order of dismissal. I think it's ridiculous.

13 I also think it's ridiculous they didn't just, uh,
14 remand it for an interim. I think they want me to pay a
15 \$400 filing -- \$400 filing fee twice and keep my money.

16 But notwithstanding that fact, we are bound by the
17 order of the Nevada Supreme Court dated June 1, 2015
18 whether we agree with it or not. I think it's silly; I'll
19 go on the record saying that.

20 But I made the argument that -- that Pat Songer was
21 a party to that appeal. Their order to show cause gave
22 Pat Songer the opportunity to be heard on the matter by
23 filing a reply. But -- off the top of my head I can't
24 remember if they did or not.

25 But the fact is that this issue has been decided by

1 the Nevada Supreme Court and they don't consider the
2 final judgment and dismissal having been entered in this
3 case.

4 If they had, if they did, my notices of appeal would
5 have been deemed effective but pre- -- premature but
6 effective. They were; they dismissed the appeal.

7 THE COURT: Okay. Let me hear from Ms. Gutierrez a
8 minute.

9 MS. GUTIERREZ: Thank you, Your Honor. Um, I do want
10 to point out that the order of dismissal from the Nevada
11 Supreme Court, there's a footnote, and that is an
12 important footnote; because Mr. Delucchi and Mr. Hollis,
13 they carried the burden of showing that the court had
14 jurisdiction.

15 And the footnote says, "Appellants have not provided
16 a copy of the order awarding the fees and costs." So
17 plaintiffs did not meet their burden. They did not
18 provide the Supreme Court with the appropriate
19 documentation that -- needed to be able to come to the
20 conclusion that I think we all agree, that the final
21 order in this matter was the order on the attorney's fees
22 and costs.

23 And so I don't think that it was the Supreme Court
24 saying, we don't know that that's the final order. It was
25 them saying you did not carry your burden because you

1 didn't provide us with the proper documentation showing
2 that we have jurisdiction at this time to make the
3 argument that Mr. Levine just made to you.

4 It's not a matter of, uh, the Supreme Court didn't
5 understand or that the Supreme Court had some sort of,
6 uh, mis- -- misunderstanding of the timeline and Your
7 Honor does understand the timeline of what happened here.
8 It's that they didn't meet their burden.

9 Um, and putting aside the order, the other item I
10 wanted to point out is there is no procedural rule that
11 allows for this court to go back and revisit the orders.

12 Uh, under Rule 60 there's -- it doesn't fall into
13 any of the categories under Rule 60, and Mr. Levine
14 didn't have any points of authorities whatsoever in his
15 motion to come here and argue for this court to order an
16 additional, uh, order on this matter.

17 Uh, didn't seek an amendment within 10 days of the
18 award of attorney's fees and costs being entered.

19 And more importantly, Mr. Levine just said that he
20 didn't read our response and we served it on everybody
21 and we pointed these things out.

22 And this is a recurring theme that happened in this
23 case where we would send things to Mr. Levine's office
24 and he would ignore everything that we sent. So he didn't
25 have an opportunity to look at the language in the order

1 -- fees and costs order because he decided that he didn't
2 need to read -- or plaintiffs decided they didn't need to
3 read the materials that we had sent over to the court.

4 And we made our efforts to make sure that they were
5 included in reading the attorney's fees and costs order.
6 They presumed that it was one order when Your Honor had
7 asked, uh, the parties on the motions to dismiss to
8 prepare separate orders because of the factual issues --

9 THE COURT: The facts were different.

10 MS. GUTIERREZ: Right. The facts were slightly
11 different. But plaintiffs' office did not respond to us.

12 So our position is the case is dismissed. Currently
13 our office, uh, has a order to show cause on this very
14 issue on whether or not there's a final order based on
15 our appeal.

16 And I asked for a continuance to -- because it would
17 have been due before this hearing because I need to be
18 able to report to the court to show them, uh, that, yes,
19 there -- the order that we appealed on, that Mr. Songer
20 appealed on, is the final judgment in this matter.

21 But my client also needs to be able to consider
22 whether or not to forgo going forward with this appeal if
23 the case is done. If there's no anti-slap appeal going
24 on, there's really no -- no purpose for our clients to
25 continue to go forward, uh, with their appeal, and they

1 would like to consider that -- that option.

2 But at this point, uh, I can't withdraw that appeal
3 -- or recommend it to my clients, I should say.

4 THE COURT: Here's the thing. I signed that order
5 awarding attorney's fees and costs. It was filed on
6 December 29th. I actually signed it on the 24th.

7 Um, I was working that day and so signed it that
8 day. But by the time it got to the clerk's office --
9 holidays are always kind of tricky around here at the
10 courts.

11 Um, um, and so by the time it made it over to the
12 clerk's office for filing it was on the 29th. Um, I look
13 at this.

14 The one thing -- I -- I kind of see the argument
15 both ways here, because one of the things that's in the
16 order -- the court -- because I did say at the time that
17 I heard the attorney's fees and costs, um, um, that I
18 wasn't going to require, uh, Mr. Levine's clients to post
19 a bond because they were still working with Pahrump
20 Valley Fire & Rescue.

21 And I pointed that -- that if their employment
22 changed then I would require a posting of a supersedeas
23 bond of \$50,000. So clearly it would seem like, uh, Mr.
24 Levine, you didn't appeal from that award and I'm not
25 sure why.

1 MR. LEVINE: Because if I -- that order awarding the
2 amount of fees, the amount you calculated --

3 THE COURT: Yes?

4 MR. LEVINE: -- and the, uh, fact that you were not
5 requiring a bond, we were not disputing. We had already
6 filed our notice of appeal from the order of dismissal.

7 I was treating -- this is the argument I made to the
8 Supreme Court -- I was treating the award of attorney's
9 fees as a special order after judgment, which could be
10 separately appealed if I choose to do so because I
11 dispute the amount or whatnot.

12 But I already filed the notice of appeal. And if
13 that order granting the fees became the final order in
14 the case, rendering, uh, the case over and subject to
15 appeal, then my previously filed notices of appeal, uh,
16 deemed premature would have become effective as of that
17 date. But the Supreme Court expressly rejected that
18 argument.

19 And may I be heard on the issue of carrying the
20 burden? Because I think the statement by Mr. Songer's
21 attorney is incorrect.

22 THE COURT: Okay.

23 MR. LEVINE: I would like to point out in the
24 court's order it says -- again, I will, uh, re-read the
25 language of the Supreme Court.

1 "We disagree with appellant's contention that a
2 dismissal took effect upon the subsequent entry of an
3 order awarding the fees and costs where appellants
4 represent that the order" -- quote -- "does not state
5 that the action is dismissed as of the filing of that
6 order," close quote.

7 And then they say in the footnote you didn't
8 actually give us a copy of that order.

9 But you can go back, Judge, and take a look at the
10 December 29th filed order. It contains no such language
11 of dismissal, as I represented to the Supreme Court and
12 which they expected as my representation.

13 The point is this. I don't need to file an appeal
14 from the December order when I have already filed appeals
15 from the orders of dismissal. But the Supreme Court, in
16 its wisdom, whether we agree or not --

17 THE COURT: Right.

18 MR. LEVINE: -- in its June order said that your
19 filing of the December order didn't render the case over
20 as a final judgment.

21 I think intellectually I have trouble with the
22 Nevada Supreme Court's decision. It should have, as I
23 argued to them, treated the award of fees as a special
24 order after judgment and deemed the orders of dismissal -
25 - which I filed an appeal and an amended appeal from --

1 to be the final judgment. But that's not how our court
2 sees it.

3 THE COURT: Right. And I agree that in -- in essence
4 -- and I think we're all in agreement -- I couldn't award
5 attorney's fees and costs off the first order -- the
6 first hearing that we had because all the documentation
7 had to be submitted and argued by the parties.

8 We had a complet- -- we had completely separate
9 filings and a completely separate hearing just on the
10 issue of attorney's fees and costs.

11 MR. LEVINE: Correct. But the Supreme Court --
12 contrary to my argument -- that once you enter that order
13 awarding fees and costs, my argument was that rendered
14 the case over and the Supreme Court [inaudible]
15 jurisdiction.

16 The Supreme Court rejected that. I don't -- I -- you
17 know, I can't tell you why they rejected that argument
18 but they clearly rejected it. You can read the language
19 for yourself.

20 And they gave me the rights to file a notice of
21 appeal from any final judgment entered in this matter,
22 close quote.

23 THE COURT: Well, in -- in --

24 MR. LEVINE: I'm just asking you to enter the
25 ministerial final judgment because the Supreme Court has

1 determined that the orders that you have entered prior to
2 [inaudible] time do not constitute a final judgment.

3 THE COURT: Well, I guess you -- here's what's going
4 to happen.

5 I issue a new order and now we're going to -- the --
6 well, it's out of my hands at that point. There'll be
7 appeals going up to the Supreme Court and I guess you
8 guys can fight over whether or not the two orders
9 together constituted a final order.

10 The problem, quite frankly, is I think what the
11 Supreme Court was looking for was this is a final -- now
12 that the attorney's -- I read the two orders together and
13 say it was a final order, because I say I'm going to
14 issue, uh, a determination on the fees and costs and that
15 will be -- and -- and that will be the final order.

16 But it doesn't say that, and -- and the Supreme
17 Court didn't link those two together. That's how I see
18 it.

19 MR. LEVINE: [inaudible]. That is correct. I think
20 that was your intent.

21 THE COURT: That was my intent.

22 MR. LEVINE: [inaudible] understood your intent. But
23 they said we disagree with appellant's contention that a
24 dismissal took effect upon the subsequent entry of an
25 order awarding fees and costs.

1 THE COURT: So it would seem to me that perhaps --
2 and -- and Counsel, with an order like this coming back
3 from the Supreme Court, don't you think that the cleanest
4 way is to issue an order that simply says, my order of
5 September whatever-date-it-was and November along with
6 this order constitute the final determination in this
7 case?

8 MR. LEVINE: That is exactly what my motion is
9 asking for. [inaudible].

10 THE COURT: End of story. We don't say anything
11 more. Then --

12 MR. LEVINE: [inaudible] that we may have right of
13 appellant jurisdiction, [inaudible] \$400.

14 THE COURT: This is what I'm thinking. I issue that
15 order. Then you both can argue your positions to the
16 Supreme Court.

17 Because I think by entering that order I'm not
18 issuing a new order; I'm simply saying it was the intent
19 of the court that that was the final order.

20 Then Mr. Levine, you may be able to get your -- your
21 position on then with the Supreme Court. Maybe then they
22 will understand what -- the purpose was of that final
23 order.

24 And Counsel, you may have an argument back that they
25 -- they didn't. I don't know. But that seems to me to be

1 the cleanest because that truly was the intent of the
2 court.

3 I thought once I issued the final order on the
4 attorney's fees and costs this case was over here, and --
5 and that you could fight.

6 MR. LEVINE: [inaudible] that -- wasn't that the
7 case, then my appeals were t- -- were timely filed,
8 premature but effective.

9 THE COURT: Your appeals were timely filed. Um, I --
10 so if nothing else maybe it's -- I issue an -- uh, just
11 like you said, an order -- order -- and this is to
12 clarify the -- the previous -- that it was the intent of
13 the court and the intent of the parties that these two
14 orders taken together were the final -- final, uh --
15 final judgment of the court.

16 Because -- because --

17 MR. LEVINE: I hear what you're saying, Judge --

18 THE COURT: -- I'm not going to say --

19 MR. LEVINE: -- but the Supreme Court has already
20 said even if that was your intent they were not effective
21 as such. And that's why the court gave me the right -- in
22 the last sentence of its June 1 order, appellants may
23 file a notice of appeal from any final judgment entered
24 in this matter.

25 THE COURT: Well, you may be --

1 MR. LEVINE: When is the final judgment entered in
2 this matter so I can file an appeal?

3 THE COURT: -- you may be untimely but you may be
4 able to get on a motion for reconsideration in light of
5 the new order that I'm putting out.

6 MR. LEVINE: It wouldn't be untimely because until
7 the appeal was dismissed the time wouldn't be running.

8 THE COURT: Okay.

9 MS. GUTIERREZ: I would just like to point out that
10 the time for rehearing with the Supreme Court, all of
11 those dates have lapsed.

12 Instead of going through the procedures with the
13 Supreme Court and clarifying everything that --

14 THE COURT: Right.

15 MS. GUTIERREZ: -- he was trying to clarify with
16 this court right now, he came running back here to ask
17 for this court to issue another order.

18 If Your Honor's inclined to, uh, issue an order
19 saying the combination of Order X and Order Y was my
20 final judgment and let us go argue it with the Supreme
21 Court, uh, we'll certainly do whatever Your Honor thinks
22 is best.

23 THE COURT: That's what I'm inclined to do, is just
24 say, uh, based -- based upon the decision from the Nevada
25 Supreme Court and -- and the pleadings by the parties,

1 the parties are in agree- -- I don't think anybody here
2 is disagreeing that once that final -- once I issued the
3 attorney's fees and costs we agreed; we thought we were
4 done --

5 MS. GUTIERREZ: Right.

6 THE COURT: -- here.

7 MR. LEVINE: We did. But the Supreme Court said that
8 was not effective to do it.

9 THE COURT: Well, I --

10 MR. LEVINE: Whether we thought so or not, whether
11 that was your intent or not. That's why they wrote, we
12 disagree with appellant's contention that a dismissal
13 took effect upon the subsequent entry of an order
14 awarding attorney's fees and costs where appellants
15 represent that the order, quote, does not state that the
16 action is dismissed as of the filing of that order.

17 THE COURT: No. I agree.

18 MR. LEVINE: The Supreme Court wrote that, because I
19 gave the argument that you just posited, Your Honor, that
20 your December order was intended to dispose of the entire
21 case and was effective to do so; and that therefore my
22 previously filed notices of appeal were premature but
23 effective. And they said no.

24 THE COURT: Well --

25 MR. LEVINE: So it doesn't matter what your intent

1 was.

2 THE COURT: Right.

3 MR. LEVINE: I -- I understood your intent, which is
4 -- and you understood your intent and the other side
5 understood your intent.

6 The Supreme Court has said, notwithstanding that
7 intent, the manner in which it was effectuated was not
8 effective to end the case.

9 THE COURT: Okay. Well, I'm going to issue an order;
10 okay? I will get it out in the next, uh -- I think -- and
11 you guys can fight over whether it's the final order, if
12 the other was the final order.

13 I'm sure if I did something wrong the Supreme Court
14 will be more than happy to tell me so. Um, I have no
15 doubt about that.

16 But, uh, maybe that -- I -- I think that in all
17 fairness in this, I think I'll just issue an order that -
18 - that says that. The court's final judgment was, you
19 know, this matter came on for hearing today on a motion
20 for order of final dismissal.

21 Um, the court entered these two orders read
22 together. You know, the court believes that they were --
23 that -- that -- that was the final decision.

24 Um, but if not -- but based upon the Supreme Court's
25 finding I am now of- -- you know, now saying that this is

1 over.

2 MR. LEVINE: That's fine. That would be perfect.

3 That would give me what I need to file an appeal.

4 THE COURT: And if the other side opposes that
5 appeal then you guys can fight over whether I should have
6 done that or hadn't done it.

7 But it -- it seems like that. Other- -- otherwise,
8 we're -- you know, we're just kind of spinning our wheels
9 here. And I don't know. Maybe the --

10 MR. LEVINE: I agree with you, Your Honor. As you
11 phrased that order, that it was the intent
12 notwithstanding -- it is dismissed effective now, good
13 enough.

14 THE COURT: And we'll -- we'll see where the court -
15 -

16 MS. GUTIERREZ: Well, it's not dismissed effective
17 now. It's an order saying the order from December and
18 from November constituted my final judgments and that's
19 it.

20 It's not saying we're dismissing the case now.

21 THE COURT: I've got these and -- this is what I'm
22 going to say. On -- on September 1st, 2015 or whatever
23 the dates you filed these things, this came -- it came up
24 for hearing on September 1st.

25 The court is also in receipt of the order dis- --

1 dismissing appeal, um, from the Nevada Supreme Court.

2 This, this, this court -- the case is dismissed here.

3 I'll put the order -- if you guys don't like it I'm
4 sure you guys are going to appeal it. But I'll get it
5 filed; okay? You guys may have to give me a little time
6 because I've got a jury trial -- criminal jury trial
7 starting this afternoon through Thursday.

8 I have court all day Friday. Next week is my
9 rotation up north. So as soon as I get back we'll get it
10 done; okay?

11 MS. GUTIERREZ: Great. Thank you, Your Honor.

12 MR. LEVINE: No problem. Thank you, Your Honor.

13 THE COURT: All right. Thank you. What a -- what a
14 disaster; you know.

15 MS. GUTIERREZ: Yes.

16 MR. LEVINE: Look --

17 THE COURT: All the way around.

18 MR. LEVINE: -- the Supreme Court got it wrong and
19 it should have just heard the previous appeals I filed
20 under the notices I filed, but they -- they make the
21 rules, not us.

22 THE COURT: Well, you know what? It's an easy way to
23 clear it off the docket, because that case got --

24 MR. LEVINE: Yeah. And it's an easy way to make me
25 pay filing fees more than once.

1 THE COURT: Okay. All right. Well, I'm sure you guys
2 will sort it out at the Supreme Court, and -- and maybe
3 in the future -- I got to tell you, lesson learned, um, I
4 think all the way around about what we need when we have
5 the bifurcated attorney's fees, that we need to be sure
6 this finally disposes of the case.

7 MR. LEVINE: I mean, there's case law out there that
8 says that attorney's fees award is a special order after
9 judgment, which is separately appealable, which is of
10 course what I cited to them in response to the order to
11 show cause.

12 THE COURT: Mr. Levine, I got an opinion the other
13 day, about a 20-page opinion from the court of appeals
14 that told me I had authority over real property in
15 California.

16 Now, you figure that one out. It took them 20 pages
17 to get there.

18 MR. LEVINE: [inaudible] but I'm not going there.

19 THE COURT: So, you know, I -- you know, sometimes
20 the -- it makes no sense to me. But we just do the best
21 job we can on what we have and we let them make the
22 rules.

23 MR. LEVINE: Uh, as I said, they make the rules.

24 THE COURT: So I'm good with it. But I'm sorry that
25 this ended up being such a disaster for everybody,

1

2 because the bottom line is it costs both counsel time and
3 both parties time and money.

4 And it -- that's too bad and, uh, so, uh, lesson
5 learned. I know what I'm going to do next time. So thank
6 you --

7 MR. LEVINE: Right. It's delaying the consideration
8 of a very interesting issue of first impression; does
9 anti-slap apply to contractual vendors?

10 THE COURT: Uh, it really isn't --

11 MR. LEVINE: [inaudible] underlying issue that you
12 recognized a long time ago and will be an interesting one
13 for the Supreme Court to take up. I'm just trying to get
14 it there.

15 THE COURT: I -- I think it is going to be a very
16 interesting issue all the way around.

17 So, um, anyway, I'll look forward to seeing it come
18 back -- come back around, I guess. But thank you both
19 very much. I appreciate your time. You guys both did a
20 great job in this case. So thank you.

21 MR. LEVINE: Thank you.

22 MS. GUTIERREZ: Thank you, Your Honor.

23 THE COURT: Thank you.

24

25

1 I, Chris Naaden, a transcriber, hereby declare under
2 penalty of perjury that to the best of my ability the
3 above 27 pages contain a full, true and correct
transcription of the tape-recording that I received
regarding the event listed on the caption on page 1.

4 I further declare that I have no interest in the
5 event of the action.

6 September 4, 2015

7 Chris Naaden



8 (Songer v. Delucchi, et al. hearing, 9-1-15)

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trouble 16:21	whatsoever	
true 28:2	12:14	
	wheels 24:8	
U	wisdom 16:16	
	withdraw 14:2	
under- 8:14	words 4:13	
underlying	7:16	
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vacated 4:14		
Valley 14:20		
vendors 27:9		
versus 2:2		
W		
Walker 2:13		

EXHIBIT “3”

RNOT
LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Attorneys for Plaintiffs

FILED

2015 JUN 26 A 11:38
Stephanie May
NYE COUNTY CLERK

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

Hearing Date: 9/11/2015
Hearing Time: 9:00 am

Defendants.

RE-NOTICE OF MOTION FOR ORDER OF FINAL DISMISSAL

TO: PAT SONGER, Defendant;

TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;

TO: ERICKSON, THORPE & SWAINSTON, Defendant;

TO: TODD ALEXANDER, ESQ., Attorney for Defendant Ericson, Thorpe & Swainston;

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel
will bring the PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL on for hearing before

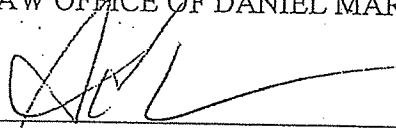
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1 this Court on the 1st day of September 2015, at the hour of 9:00 o'clock
2 A.M.

3 DATED this 23rd day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5 
6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 2003
8 ADAM LEVINE, ESQ.
9 Nevada State Bar No. 4673
10 610 South Ninth Street
11 Las Vegas, Nevada 89101
12 *Attorneys for Plaintiffs*

1 LAW OFFICE OF DANIEL MARKS
2 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
3 ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
4 610 South Ninth Street
Las Vegas, Nevada 89101
5 (702) 386-0536; FAX (702) 386-6812
Attorneys for Plaintiffs

FILED

2015 JUN 15 P 1:36
Stephanie May
NYE COUNTY CLERK
BY DEPUTY

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 Plaintiffs,

13 v.

14 PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

15 Defendants.

17 PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL VCS

18 COMES NOW Plaintiffs, Raymond Delucchi and Tommy Hollis, by and through their
19 undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks and hereby moves the
20 Court for an Order of Final Dismissal. .

21 ///

22 ///

23 ///

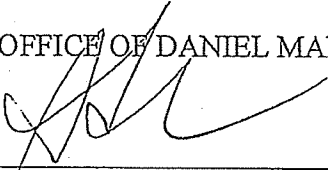
24 ///

25 ///

1 The grounds for Plaintiffs' Motion are set forth in the following Memorandum of Points and
2 Authorities

3 DATED this 11th day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5 
6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 2003
8 ADAM LEVINE, ESQ.
9 Nevada State Bar No. 4673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

10 NOTICE OF MOTION

11 TO: PAT SONGER, Defendant;

12 TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;

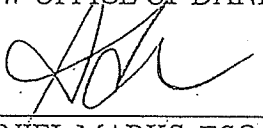
13 TO: ERICKSON, THORPE & SWAINSTON, Defendant;

14 TO: TODD ALEXANDER, ESQ., Attorney for Defendant Ericson, Thorpe & Swainston:

15 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel
16 will bring the above and foregoing PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL
17 on for hearing before this Court on the 21st day of July 18 2015, at the hour of
18 9:00 o'clock a.M.

19 DATED this 11th day of June, 2015.

20 LAW OFFICE OF DANIEL MARKS

21 
22 DANIEL MARKS, ESQ.
23 Nevada State Bar No. 2003
24 ADAM LEVINE, ESQ.
25 Nevada State Bar No. 4673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 On September 17, 2014 this Court's Findings of Fact, Conclusions of Law and Order Granting
3 Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss. Notice of Entry of the
4 Findings of Fact, Conclusions of Law and Order Granting Defendant Erickson, Thorpe & Swainston's
5 Special Motion to Dismiss was filed on or about October 7, 2014. (Attached hereto as Exhibit "1").

6 Based on the Notice of Entry of the Findings of Fact, Conclusions of Law and Order Granting
7 Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss Plaintiffs filed their Notice of
8 Appeal and Case Appeal Statement on October 27, 2015. The Appeal was filed and issued Case No.
9 66858.

10 Thereafter on November 19, 2015 Defendant Pat Songer filed his Order Granting Defendant
11 Pat Songer's Special Motion to Dismiss Pursuant to NRS 41.660. The Notice of Entry was filed on
12 December 4, 2014. (Attached hereto as Exhibit "2").

13 On April 14, 2015 the Supreme Court filed an Order to Show Cause why the appeal should not
14 be dismissed on jurisdictional grounds due to the fact that the November 19, 2015 Order was not a
15 final judgment for purposes of appellate jurisdiction as it contemplated dismissal at a future date.
16 (Attached hereto as Exhibit "3"). After briefing by the parties, the Supreme Court issued its Order
17 Dismissing Appeal in Docket No. 66858 noting "Appellant may file a notice of appeal from any final
18 judgment entered in this matter." (Attached hereto as Exhibit "4").

19 ///

20 ///

21 ///

22 ///

23 ///

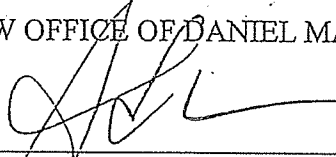
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25 ///

1 Plaintiffs desire to appeal the Court's ruling on the merits. Because the prior orders entered by
2 this Court have been deemed insufficient by the Supreme Court to constitute a final judgment for
3 purposes of appellate jurisdiction, Plaintiffs therefore request that an Order of Final Dismissal in the
4 above entitled case be issued for purposes of rendering the matter right for appellate review.

5 DATED this 11th day of June, 2015.

6 LAW OFFICE OF DANIEL MARKS

7 

8 DANIEL MARKS, ESQ.
9 Nevada State Bar No. 2003
10 ADAM LEVINE, ESQ.
11 Nevada State Bar No. 4673
12 610 South Ninth Street
13 Las Vegas, Nevada 89101
14 *Attorneys for Plaintiffs*
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT "1"

1 Todd R. Alexander, Esq., NSB #10846
2 Lemons, Grundy & Eisenberg
3 6005 Plumas Street, Suite 300
4 Reno, Nevada 89519
5 (775) 786-6868

6 Attorney for Defendant, Erickson, Thorpe & Swainston, Ltd.

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

9 RAYMOND DELUCCHI and TOMMY HOLLIS,

10 Plaintiffs,

Case No. CV35969

11 v.

Dept. No. 1

12 PAT SONGER and ERICKSON, THORPE &
13 SWAINSTON, LTD.,

14 Defendants.

15 NOTICE OF ENTRY OF ORDER

16 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Order Granting
17 Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss was entered on
18 September 17, 2014. A copy of said Findings is attached hereto as Exhibit 1.

19 I affirm this document does not contain the social security number of any person.

20 Dated: October 3, 2014.

21 By: Todd R. Alexander

22 Todd R. Alexander, Esq.
23 Attorney for Defendant,
24 Erickson, Thorpe & Swainston, Ltd.

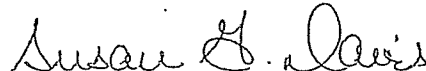
25 LEMONS, GRUNDY
& EISENBERG
26 6005 PLUMAS ST.
SUITE 300
27 RENO, NV 89519
775-786-6868
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 3, 2014, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within NOTICE OF ENTRY OF ORDER, addressed to the following:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

Siria L. Gutierrez, Esq.
Lipson | Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
Attorneys for Pat Songer


Susan G. Davis

LEMONS, GRUNDY
& EISENBERG
600S PLUMAS ST.
SUITE 300
RENO, NV 89519
(775) 96-6868

EXHIBIT 1

EXHIBIT 1

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

Case No. CV35969

Dept. No. 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCI and TOMMY
HOLLIS,

Plaintiff,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
GRANTING DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL
MOTION TO DISMISS

Defendant ERICKSON, THORPE & SWAINSTON, LTD. ("ETS"), has filed a Special Motion to Dismiss pursuant to Nevada's anti-SLAPP statute. Plaintiffs have opposed the motion, and ETS has replied in support thereof. Additionally, this Court ordered supplemental briefing on two issues: (1) which version of the statute applies (pre or post 2013 amendments); and (2) whether a deficient investigation can still result in a good faith communication entitled to protection under Nevada's anti-SLAPP statute. Both parties have provided supplemental briefing as ordered. Furthermore, this Court heard oral argument from all involved parties on August 27, 2014. Having carefully considered all parties' briefing and oral argument, this Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the

1 "Highway 160 incident"), in which the ambulance they were operating was flagged down by
2 passing motorists, James and Brittne Choyce.

3 2. At the time of the Highway 160 incident, Brittne Choyce had given birth to a stillborn
4 fetus, and she and her husband sought to have Brittne taken by Plaintiffs' PVFRS ambulance
5 to a hospital in Las Vegas, Nevada.

6 3. For reasons that remain in dispute between the parties, but are not pertinent to this
7 decision, Plaintiffs did not ultimately transport Brittne Choyce in the PVFRS ambulance.

8 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone
9 complaint from Brittne Choyce's mother regarding Plaintiffs' conduct during the Highway
10 160 incident.

11 5. The Town of Pahrump retained Rebecca Bruch, attorney and partner at ETS, to
12 coordinate an investigation into the Highway 160 incident. In turn, Ms. Bruch retained
13 Defendant Pat Songer as an independent investigator to conduct the investigation into the
14 Highway 160 incident.

15 6. During his investigation, Mr. Songer reviewed a synopsis of the complaint the Town
16 of Pahrump had received via telephone from Brittne Choyce's mother. The synopsis was
17 drafted by the Town employee who had taken the telephone call.

18 7. Mr. Songer also reviewed notes of an interview with James and Brittne Choyce by
19 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.
20 and Mrs. Choyce because Brittne had refused to speak with anyone about the Highway 160
21 incident, and James had committed suicide.

22 8. During the course of his investigation, Mr. Songer also interviewed Plaintiffs Delucchi
23 and Hollis.

24 9. After completing his investigation, Mr. Songer prepared a report to the Town of
25

1 concern," as that phrase is defined in NRS 41.637(2) and (3). Specifically, Mr. Songer's
2 investigative report was a communication of information to the Town of Pahrump regarding a
3 matter reasonably of concern to the Town. NRS 41.637(2). Additionally or alternatively, Mr.
4 Songer's report was a written statement made in direct connection with an issue under
5 consideration by the Town of Pahrump. NRS 41.637(3).
6

7 3. ETS has further shown that Mr. Songer's report was made without knowledge of its
8 falsehood. Although Plaintiffs have called into question the sufficiency of Mr. Songer's
9 investigation and the accuracy of the information contained in Mr. Songer's report, this Court
10 concludes that Plaintiffs have not presented evidence showing that said information was
11 knowingly false. Stated differently, this Court concludes that, even if it is established that Mr.
12 Songer's investigation was inadequate and the contents of his report were inaccurate, Mr.
13 Songer's report is still entitled to the protections of Nevada's anti-SLAPP statute, as long as
14 the report was not knowingly false. Thus, this Court concludes that Mr. Songer acted in good
15 faith in submitting his investigative report to the Town of Pahrump.
16

17 4. This preliminary showing having been made, the burden shifted to Plaintiffs to show,
18 by clear and convincing evidence, a probability of prevailing on their claims. NRS
19 41.660(3)(b).
20

21 5. Plaintiffs have not met their burden of showing, by clear and convincing evidence, a
22 probability of prevailing on their claims.

23 ORDER

24 NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant Erickson,
25 Thorpe & Swainston's Special Motion to Dismiss is GRANTED.
26

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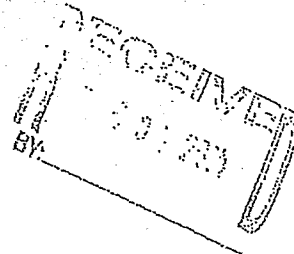
1 IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this
2 Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS
3 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file
4 an opposition to said motion. ETS shall then have 10 days in which to file a reply in support
5 of its motion.
6

7 Dated: September 17th, 2014.

8 By: KIMBERLY A. WANKER
9 DISTRICT COURT JUDGE
10
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EXHIBIT "2"

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512



NEOJ
JOSEPH P. GARIN, ESQ.
NEVADA BAR No. 6653
SIRIA L. GUTIERREZ, ESQ.
NEVADA BAR No. 11981
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
jgarin@lipsonneilson.com
sgutierrez@lipsonneilson.com

Attorneys for Defendant,
PAT SONGER

IN THE FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Defendants.

CASE NO: CV35969
DEPT NO: 1

NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT PAT
SONGER'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS § 41.660

Please take notice that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660, was entered on November 19, 2014. A copy of said Order is attached hereto and made part hereof.

DATED this 3rd day of December, 2014.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.
NEVADA BAR No. 6653
SIRIA L. GUTIERREZ, ESQ.
NEVADA BAR No. 11981
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500

Attorneys for Defendant,
PAT SONGER

CERTIFICATE OF SERVICE

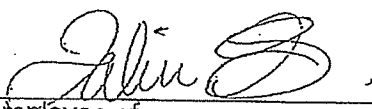
I hereby certify that on the 3rd day of December, 2014, service of the foregoing NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS § 41.660 was made by depositing a true and correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Offices of Daniel Marks
610 South Ninth Street
Las Vegas, NV 89101

Attorneys for Plaintiffs

Todd R. Alexander, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, 3rd Flr.
Reno, NV 89519

*Attorneys for Defendant,
Erickson, Thorpe & Swainston, Ltd.*


An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9900 Covington Cross Drive, Suite 120
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Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

1 **ORDR**
2 **JOSEPH P. GARIN, ESQ.**
3 **NEVADA BAR No. 6653**
4 **SIRIA L. GUTIERREZ, ESQ.**
5 **NEVADA BAR No. 11981**
6 **LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.**
7 **9900 Covington Cross Drive, Suite 120**
8 **Las Vegas, Nevada 89144**
9 **Phone: (702) 382-1500**
10 **Fax: (702) 382-1512**
11 **lgarin@lipsonneilson.com**
12 **sgutierrez@lipsonneilson.com**

13 *Attorneys for Defendant,*
14 **PAT SONGER**

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 **RAYMOND DELUCCHI and TOMMY**
18 **HOLLIS,**

19 **Plaintiffs,**

20 **v.**

21 **PAT SONGER and ERICKSON, THORPE**
22 **& SWAINSTON, LTD.,**

23 **Defendants.**

FILED
FIFTH JUDICIAL DISTRICT COURT

NOV 19 2014

NYE COUNTY DEPUTY CLERK
DEPUTY *Tanner Davis*

CASE NO: CV35969
DEPT NO: 1

**ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660**

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
25 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutierrez,
26 Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on
27 behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and
28 Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston,
LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings
and papers on file, the motion, opposition, and supplemental briefing having heard
argument thereon, and with good cause appearing therefore, find as follows:

CONCLUSIONS OF LAW

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittnie Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

under consideration by the Town authorized by law in the disciplinary actions against Messrs. Delucchi and Hollis.

19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of prevailing on their claims of defamation and intentional infliction of emotional distress.

21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice once the Court has awarded fees and costs. The Court will hold a hearing on Defendant Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

DATED this 18th day of November, 2014.


DISTRICT COURT JUDGE

Submitted by:

LIPSON, NEILSON, COLE, SELTZER
& GARIN, P.C.

By:


JOSEPH P. GARIN, ESQ.

NEVADA BAR No. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR No. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

Attorneys for Defendant,
PAT SONGER

EXHIBIT "3"

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER; AND ERICKSON,
THORPE & SWAINSTON, LTD.,

Respondents.

No. 66858

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Our initial review of the documents before this court reveals a potential jurisdictional defect. Specifically, it is not clear whether the district court's November 19, 2014, order granting Pat Songer's special motion to dismiss is a final judgment because it contemplates the dismissal of the case at a later date. *See* NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that resolves all of the parties' claims and rights in the action, leaving nothing for the court's future consideration except post-judgment issues).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellants should submit documentation that established this court's jurisdiction including, but not limited to, a copy of any written district court order dismissing the case against Pat Songer. We caution appellants that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The requesting of transcripts and the briefing schedule in this appeal shall be suspended pending further order of this court.

Respondents may file any reply within 10 days from the date that appellants' response is served.

It is so ORDERED.

J. J. ..., C.J.

cc: Law Office of Daniel Marks
Lipson Neilson Cole Seltzer & Garin, P.C.
Lemons, Grundy & Eisenberg

EXHIBIT "4"

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER,

Respondents.

No. 66858

FILED

JUN 01 2015

ORDER DISMISSING APPEAL

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK


This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.


When our initial review of the docketing statement and other documents before this court revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Having considered appellants' response and respondent's reply, we are not convinced that the district court has entered a final appealable judgment in this matter.

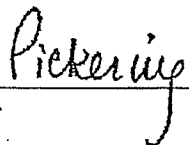
Although the district court's November 19, 2014, order grants a special motion to dismiss, it also states that "the case will be dismissed with prejudice once the Court has awarded fees and costs." The order thus contemplates dismissal of the action at a later date and does not constitute a final judgment. See NRAP.3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426; 996 P.2d 416, 417 (2000). We disagree with appellants' contention that a dismissal took effect upon the subsequent entry of an order awarding fees and costs where appellants represent that the order

"does not state that the action is dismissed as of the filing of that Order."¹
Further, we decline to remand this matter to the district court for entry of an order of dismissal. Appellants may file a notice of appeal from any final judgment entered in this matter. Accordingly, we

ORDER this appeal DISMISSED.


Saitta J.


Gibbons J.


Pickering J.

cc: Hon. Kimberly A. Wanker, District Judge
Carolyn Worrell, Settlement Judge
Law Office of Daniel Marks
Lipson Neilson Cole Seltzer & Garin, P.C.
Nye County Clerk

¹Appellants have not provided a copy of the order awarding fees and costs.

JOSEPH P. GARIN, ESQ.
NEVADA BAR NO. 6653
SIRIA L. GUTIERREZ, ESQ.
NEVADA BAR NO. 11981
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Attorneys for Defendant,
PAT SONGER

IN THE FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Defendants.

CASE NO: CV35969
DEPT NO: 1

**PAT SONGER'S OPPOSITION TO
MOTION FOR ORDER OF FINAL
DISMISSAL**

I. Introduction

Pat Songer opposes to Plaintiffs' request for a final judgment as this Court has already entered a final judgment. The present Motion is inappropriate and moot for three main reasons: 1) Plaintiffs provide no legal authority for their untimely request, 2) Plaintiffs ignored the opportunity to have input in Songer's Order granting the anti-SLAPP motion to dismiss, and 3) based on the Nevada Supreme Court's decision, the final judgment was the Order for Fees and Costs, which was noticed long ago and Plaintiffs did not file an appeal on that order. In other words, this case is over¹ and the Court should dismiss the pending motion.

//

¹ Songer has a pending appeal on the award of fees. Songer will further evaluate the necessity of the appeal based on the current motion practice.

1 II. There is legal mechanism for Plaintiffs' request to this Court

2 Plaintiffs are attempting to create their own rules so that they can proceed with the
3 dismissed appeal. NRCP 52 provides any party with 10 days after written notice of entry to
4 file a motion with the court to amend the order. Nev. R. Civ. P. 52. While NRCP 60 only
5 allows for relief from an order based on one of the following: "1) mistake, inadvertence,
6 surprise, or excusable neglect; 2) newly discovered evidence which by due diligence could
7 not have been discovered in time to move for a new trial under Rule 59(b); 3) fraud
8 (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other
9 misconduct of an adverse party; 4) the judgment is void; or, 5) the judgment has been
10 satisfied, released, or discharged, or a prior judgment upon which it is based has been
11 reversed or otherwise vacated, or it is no longer equitable that an injunction should have
12 prospective application." Nev. R. Civ. P. 60(b). Notably, basis one, two, and three have an
13 express six-month deadline from when the notice of entry of the order was served. *Id.*

14 Not once in their motion do Plaintiffs cite legal authority² for their request to the
15 Court. Nor do they attempt to argue for relief under Rule 52 or Rule 60. In fact, the time for
16 Plaintiffs to use Rule 60(b)(1), (2) or (3) has lapsed as their motion needed to be filed on or
17 before June 3, 2015.

18 Instead of providing a legal basis, Plaintiffs vaguely ask this Court to repeat itself
19 and re-issue the final judgment based on no legal authority. Yet, there is no authority for
20 what Plaintiffs are asking, as a result, their motion should be denied.

21 III. Background of Songer's Order on Motion to Dismiss

22 Plaintiffs filed their appeal based on Erickson, Thorpe and Swainston's order
23 granting the motion to dismiss dated October 3, 2014. Plaintiffs mistakenly believed ETS'
24 order encompassed both ETS' and Songer's Motions to Dismiss; however, this was
25 incorrect and Plaintiffs chose to ignore Songer's draft Order.

26 _____
27 ² Under the Nevada District Court Rules "a party filing a motion shall also serve and file with it a memorandum
28 of points and authorities in support of each ground thereof. The absence of such memorandum may be
construed as an admission that the motion is not meritorious and cause for its denial or as a waiver of all
grounds not so supported." DCR 13.

1 Songer provided Plaintiffs with a draft order as early as September 18, 2014,³ and
2 received no response or comments on the contents of the order. Then, when Songer
3 followed up and sent the proposed order to this Court, Plaintiffs argued that this Court could
4 not sign any additional order regarding the Motion to Dismiss because the ETS order had
5 been signed and appealed.

6 This Court granted ETS' and Songer's respective Motions to Dismiss under NRS §
7 41.660, and ordered *each* party to prepare their own order for their motion, which is exactly
8 what the parties did. Although ETS and Songer argued for the application of Nevada's anti-
9 SLAPP statute, the findings were indeed different, as there were additional factual findings in
10 Songer's Order.

11
12 IV. The Order on the award of attorney's fees and costs has already been
13 entered

14 Due to Plaintiffs ignoring Songer's proposed order on the attorney's fees and costs,
15 Plaintiffs insisted on preparing the order on the award of attorney's fees and costs, and the
16 granting of the stay on the execution of the award ("Fees and Costs Order"). Plaintiffs
17 drafted the Fees and Costs Order, with ETS and Songer providing additional comments,
18 submitted it to this Court, and Plaintiffs noticed it on December 30, 2014. Therefore, any
19 appeal from the Fees and Costs Order was due on or before January 29, 2015.⁴ The Fees
20 and Costs Order, which Plaintiffs did not file with the Nevada Supreme Court⁵, had already
21 contemplated that the Orders on the anti-SLAPP were the final judgments, stating "the
22 court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue
23
24
25

26 ³ Attached as Exhibit A is a true and correct copy of the email and proposed draft order sent to
27 Glenda Guo. Attached as Exhibit B is a true and correct copy of the letter and proposed order sent
28 to Judge Wanker, with a CC to Appellant's counsel.

⁴ Songer was the only party to file an appeal based on this order. Songer's Notice of Appeal
was filed on January 29, 2015.

1 will provide adequate security for the attorney's fees and costs award in the event the
2 judgment is affirmed on appeal." See, Notice of Entry of Order dated December 30, 2014,
3 attached as Exhibit C. Thus, the Fees and Costs Order shows the Court's intent that the
4 anti-SLAPP orders were indeed the final judgments against each respective defendant.

5 Based on the Nevada Supreme Court's Order Dismissing Appeal, the order on
6 attorney's fees and costs was the order that brought this case to its conclusion. As a result,
7 the Fees and Costs Order is the final judgment for purposes of this matter. Plaintiffs
8 ignored their opportunity to have input in Songer's Order, and failed to file an appeal based
9 on the Fees and Costs Order noticed on December 30, 2014. With their being no basis for
10 this motion, no appeal from Plaintiffs on the award of fees and costs, and a complete lack
11 of authority, this Court should dismiss this motion.
12

13
14 V. Conclusion

15 This Court granted Songer's anti-SLAPP motion to dismiss nearly 11 months ago.
16 Since that time, Songer has incurred substantial fees and costs for defending the appeal,
17 which the Nevada Supreme Court has now dismissed, and even more fees and costs for
18 the current motion practice. Plaintiffs had their opportunity to see this case through;
19 however, due to their refusal to acknowledge Songer's overtures to get their input on the
20 anti-SLAPP motion order, this case is now over. Plaintiffs also failed to file an appeal after
21 Songer served notice of the Order for Fees and Costs. There is no basis Plaintiffs' request
22

23 ///

24 ///

25 ///

26 ///

27 ⁵ The Supreme Court even noted "[Plaintiffs] have not provided a copy of the order awarding fees and costs."
28 Supreme Court Order, filed June 1, 2015, fn 1.

1 and this Court should deny the motion in its entirety.

2 DATED this 15th day of July, 2015.

3 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

4
5 By: 

6 JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

Attorneys for Defendant,
PAT SONGER

CERTIFICATE OF SERVICE

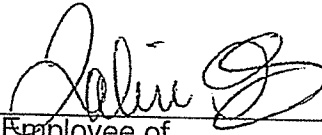
I hereby certify that on the 15th day of July 2015, service of the foregoing **NOTICE OF APPEAL** was made by depositing a true and correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Offices of Daniel Marks
610 South Ninth Street
Las Vegas, NV 89101

Attorneys for Plaintiffs

Todd R. Alexander, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, 3rd Flr.
Reno, NV 89519

*Attorneys for Defendant,
Erickson, Thorpe & Swainston, Ltd.*



An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

EXHIBIT "A"

EXHIBIT "A"

Talin Ebrahimian

From: Elsa Pena
Sent: Thursday, September 18, 2014 11:27 AM
To: gguo@danielmarks.net
Cc: Todd R. Alexander; Siria Gutierrez
Subject: Songer, et al. adv. Delucchi, et al.
Attachments: (Proposed) Order Granting Songer's Special MTD - 09-18-14.pdf

Dear Ms. Guo,

On behalf of Siria Gutiérrez, please have Mr. Levine review the attached (Proposed) Order and provide his changes or approval by 5 p.m. on Friday, September 19, 2014. Should Mr. Levine have any questions, please have him contact Ms. Gutiérrez directly.

Sincerely,

Lipson Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

*Elsa C. Peña, Legal Assistant to
Joseph P. Garin, Esq.
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OFFICES IN NEVADA & MICHIGAN

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1 **ORDR**

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13 *Attorneys for Defendant,*
14 PAT SONGER

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

21 PAT SONGER and ERICKSON, THORPE
22 & SWAINSTON, LTD.,

23 Defendants.

CASE NO: CV35969
DEPT NO: 1

**ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660**

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
25 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez,
26 Esq., appearing on behalf of Defendant Pat Songer, and Daniel Marks, Esq., appearing on
27 behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and
28 Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston,
LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings
and papers on file, the motion, opposition, and supplemental briefing having heard
argument thereon, and with good cause appearing therefore, find as follows:

CONCLUSIONS OF LAW

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

- 1 what the Legislature intended by the first statute." See *In re Estate of*
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,
3 (1975).
- 4 2. When a statute's doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must establish by clear and convincing evidence a probability of
18 prevailing on the claim.
- 19 7. If Plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittnie Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

under consideration by the Town authorized by law in the disciplinary actions against Messrs. Delucchi and Hollis.

19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of prevailing on their claims of defamation and intentional infliction of emotional distress.

21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice once the Court has awarded fees and costs. The briefing shall be as follows: Defendant Songer has until September 26, 2014, to file a Motion For Fees and Costs; Plaintiffs have until October 26, 2014 to file an opposition, and Defendant Pat Songer has until November 5, 2014, to file a reply. The Court will hold a hearing on Defendant Pat Songer's Motion for Fees and Costs on November 19, 2014, at 1:30 p.m.

DATED this _____ day of September, 2014.

DISTRICT COURT JUDGE

Submitted by:

LIPSON, NEILSON, COLE, SELTZER
& GARIN, P.C.

Approved as to Form and Content:
LAW OFFICE OF DANIEL MARKS

By:

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SIRIA L. GUTIERREZ, ESQ.
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Attorneys for Defendant,
PAT SONGER

By:

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Las Vegas, NV 89101
(702) 386-0536

Attorneys for Plaintiffs, RAYMOND
DELUCCI and TOMMY HOLLIS

Talin Ebrahimian

From: Siria Gutierrez
Sent: Monday, November 10, 2014 2:22 PM
To: 'Glenda Guo'; Joe Garin; Talin Ebrahimian
Subject: RE: Delucchi / Hollis v Songer / ETS

Dear Ms. Guo,

The Court only signed the order granting ETS' Motion. It had not signed the order regarding Mr. Songer's Motion due to your office's delay in approving our proposed order. We had no choice but to proceed with submitting our order.

There were separate motions filed, which require separate orders. I'll leave it up to the Court to decide if she will sign this separate order at this time considering your client's pending appeal.

Very Truly Yours,

Siria

Lipson Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

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California Bar No. 288362
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Offices in Nevada and Michigan

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From: Glenda Guo [mailto:gguo@danielmarks.net]
Sent: Monday, November 10, 2014 2:18 PM
To: Joe Garin; Siria Gutierrez; Talin Ebrahimian
Subject: Delucchi / Hollis v Songer / ETS
Importance: High

Good Afternoon:

I am in receipt of your e-mail of today's date regarding the submission of a second Order to the Court. Please be advised that the judge has already signed an Order Granting Summary Judgment and that Order is already the subject of an appeal. Therefore there should be no further Order signed or filed in this matter.

GLEND GUO
Paralegal
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Email: gguo@danielmarks.net

EXHIBIT "B"

EXHIBIT "B"

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JOSEPH P. GARIN^{1,2,3,5}
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SHANNON D. NORDSTROM^{1,6}
J. WILLIAM EBERT¹
KALEB D. ANDERSON¹
STEPHEN G. KEIM^{1,8}
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CRYSTAL J. HERRERA¹
JESSICA A. GREEN¹
H. SUNNY JEONG¹
SIRIA L. GUTIERREZ^{1,6}
CHRISTIANA O. OTUWA⁴

1 ADMITTED IN NEVADA
2 ADMITTED IN MICHIGAN
3 ADMITTED IN ILLINOIS
4 ADMITTED IN NEW YORK
5 ADMITTED IN COLORADO
6 ADMITTED IN CALIFORNIA
7 ADMITTED IN FLORIDA
8 ADMITTED IN PENNSYLVANIA
9 ADMITTED IN MASSACHUSETTS
10 ADMITTED IN MARYLAND

LAW OFFICES

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E-MAIL: sgutierrez@lipsonneilson.com

November 10, 2014

BARRY J. LIPSON
(1955-2003)

STEVEN R. COLE²
THOMAS G. COSTELLO²
DAVID B. DEUTSCH²
STEVEN H. MALACH²
KAREN A. SMYTH^{2,4}
C. THOMAS LUDDEN²
STUART D. LOGAN²
SANDRA D. GLAZIER² STARR
HEWITT KINCAID²
SHAWN Y. GRINNEN²
DOUGLAS E. KELIN^{2,3,7}
SAMANTHA K. HERAUD⁹
EMILY J. SCHOLLER²
CARLY R. KOLO^{2,10}

Judge Kimberly A. Wanker
Fifth Judicial District Court
1520 E. Basin Ave., Dept. 1
Pahrump, Nevada 89060

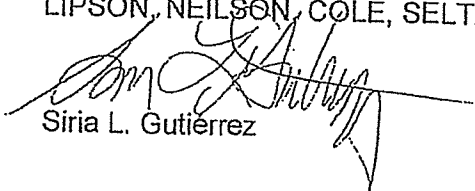
Re: Songer, et al. adv. DeLucchi, et al.
Case No.: CV35969

Dear Honorable Judge Wanker:

Please find enclosed for your review and signature a revised Order Granting Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS § 41.660 with the corrected name and we believe the remainder of the proposed order is accurate. We re-reviewed the audio from the hearing and believe the proposed order reflects the Court's ruling. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.


Siria L. Gutierrez

SLG/te/HI5703-007

Enclosures (As Stated)

cc: Joseph P. Garin (via email only)
Adam Levine (via email only)
Todd Alexander (via email only)

1 ORDR
2 JOSEPH P. GARIN, ESQ.
3 NEVADA BAR No. 6653
4 SIRIA L. GUTIERREZ, ESQ.
5 NEVADA BAR No. 11981
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10 Fax: (702) 382-1512
11 jgarin@lipsonneilson.com
12 sgutierrez@lipsonneilson.com

13 *Attorneys for Defendant,*
14 PAT SONGER

15 IN THE FIFTH JUDICIAL DISTRICT COURT
16 NYE COUNTY, NEVADA

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

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CASE NO: CV35969
DEPT NO: 1

ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
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7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).

8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.

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11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
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14 petition or the right to free speech in direct connection with an issue of public
15 concern.

16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.

19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.

21 8. A good faith communication in furtherance of the right to petition or the right
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23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

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14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

1 under consideration by the Town authorized by law in the disciplinary actions
2 against Messrs. Delucchi and Hollis.

3 19. Mr. Songer's overall investigation was in good faith and there is no evidence
4 of bad faith.

5 20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of
6 prevailing on their claims of defamation and intentional infliction of emotional
7 distress.

8 21. Plaintiffs failed to establish by clear and convincing evidence that there was
9 a genuine issue of material fact.

10 IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss
11 Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice
12 once the Court has awarded fees and costs. The Court will hold a hearing on Defendant
13 Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

14 DATED this _____ day of November, 2014.

15
16 _____
DISTRICT COURT JUDGE

17 Submitted by:

18 LIPSON, NEILSON, COLE, SELTZER
19 & GARIN, P.C.

20 By: 

21 JOSEPH P. GARIN, ESQ.
22 NEVADA BAR NO. 6653
23 SIRIAL L. GUTIERREZ, ESQ.
24 NEVADA BAR NO. 11981
25 9900 Covington Cross Drive, Suite 120
26 Las Vegas, Nevada 89144
27 (702) 382-1500

28 *Attorneys for Defendant,*
PAT SONGER

EXHIBIT "C"

EXHIBIT "C"

1 NEOJ
2 LAW OFFICE OF DANIEL MARKS
3 DANIEL MARKS, ESQ.
4 Nevada State Bar No. 002003
5 ADAM LEVINE, ESQ.
6 Nevada State Bar No. 004673
7 610 South Ninth Street
8 Las Vegas, Nevada 89101
9 (702) 386-0536; FAX (702) 386-6812
10 *Attorneys for Plaintiffs*

11
12 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR THE COUNTY OF NYE
15

16 RAYMOND DELUCCHI and
17 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

18 Plaintiffs,

19 v.

20 PAT SONGER and ERICKSON,
21 THORPE & SWAINSTON, LTD.,

22 Defendants.
23 _____ /
24

25 NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS

TO: PAT SONGER, Defendant;

TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;

TO: ERICKSON THORPE & SWAINSTON, LTD., Defendant, and

TO: TODD ALEXANDER, ESQ. Attorney for Defendant Erickson Thorpe & Swainston, Ltd.:

///

///

///

///

1 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Awarding Fees
2 and Costs was entered in the above entitled matter on the 29th day of December, 2014, a copy of which
3 is attached hereto.

4 DATED this 30 day of December, 2014.

5 LAW OFFICE OF DANIEL MARKS

6 
7 DANIEL MARKS, ESQ.

8 Nevada State Bar No. 002003

9 ADAM LEVINE, ESQ.

10 Nevada State Bar No. 004673

11 610 South Ninth Street

12 Las Vegas, Nevada 89101

13 (702) 386-0536; FAX (702) 386-6812

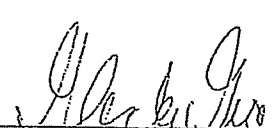
14 Attorneys for Plaintiffs

15 CERTIFICATE OF MAILING

16 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on
17 the 30th day of December, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada,
18 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the
19 foregoing NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS, to the addresses as
20 follows:
21

22 Todd Alexander, Esq.
23 LEMONS, GRUNDY & EISENBERG
24 6005 Plumas Street, Suite 300
25 Reno, Nevada 89519
Attorney for Defendant ETS

Siria L. Gutierrez, Esq.
LIPSON, NEILSON, COLE, SELTZER GARIN
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorney for Defendant Pat Songer


An employee of the
LAW OFFICE OF DANIEL MARKS

FILED
FIFTH JUDICIAL DISTRICT COURT

DEC 29 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

Veronica Aguilar

1 LAW OFFICE OF DANIEL MARKS
2 DANIEL MARKS, ESQ.
3 Nevada State Bar No. 002003
4 ADAM LEVINE, ESQ.
5 Nevada State Bar No. 004673
6 610 South Ninth Street
7 Las Vegas, Nevada 89101
8 (702) 386-0536; FAX (702) 386-6812
9 Attorneys for Plaintiffs

10 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF NYE

12 RAYMOND DELUCCHI and
13 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

14 Plaintiffs,

15 v.

16 PAT SONGER and ERICKSON,
17 THORPE & SWAINSTON, LTD.,

18 Defendants.

19 ORDER AWARDING FEES AND COSTS

20 This matter having come on for hearing on the 2nd day of December, 2014 on Defendant
21 Erickson Thorpe & Swainston's Motion for Costs Attorney's Fees, and Additional Compensation
22 Pursuant to Nevada's ANTI-Slapp Statute (NRS 41.670), Defendant Pat Songer's Motion for
23 Attorney's Fees and Costs, and Plaintiffs' Motion to Retax Costs, with Plaintiffs being represented by
24 Adam Levine, Esq. of the Law Office of Daniel Marks, and Defendant Pat Songer being represented
25 by Siria L. Gutierrez, Esq. of Lipson, Neilson, Cole, Seltzer, Garin, and Defendant Erickson, Thorpe &
Swainston, Ltd., being represented by Todd Alexander, Esq. of Lemons, Grundy & Eisenberg; and the
Court having reviewed the pleadings on file and having heard oral arguments of counsel;

Delucchi and Hollis v. Songer and Erickson, Thorpe & Swainston, Ltd.
Case No. CV35969

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that costs are re-taxed and awarded against the Plaintiffs jointly and severally as follows: \$702 in favor of Defendant Songer and \$709.38 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorney's fees are awarded against the Plaintiffs jointly and severally as follows: \$21,767.50 in favor of Defendant Songer and \$22,907.50 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court declines to award any additional monies pursuant to NRS 41.670(3)(a) as the Court does not believe such an additional award appropriate under the facts of the case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' request for a stay of execution on the award of fees and costs pending appeal is GRANTED. The court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue will provide adequate security for the attorney's fees and cost award in the event the judgment is affirmed on appeal. However,

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should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this 29th day of December, 2014.

KIMBERLY A. WANKER
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

LIPSON, NEILSON, COLE, SELTZER, GARIN

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs


SIRIA L. GUTIERREZ, ESQ.
Nevada State Bar No. 011981
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Defendant ETS

Delucchi and Hollis v. Songer and Erickson, Thorpe & Swainston, Ltd.
Case No. CV35969

should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this ____ day of December, 2014.

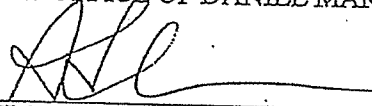
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

LIPSON, NEILSON, COLE, SELTZER, GARIN


DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs


SIRIA L. GUTIERREZ, ESQ.
Nevada State Bar No. 011981
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

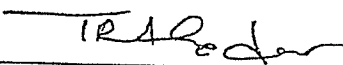

TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Defendant ETS

EXHIBIT “2”

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER,

Respondents.

No. 66858

FILED

JUN 01 2015

ORDER DISMISSING APPEAL

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

When our initial review of the docketing statement and other documents before this court revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Having considered appellants' response and respondent's reply, we are not convinced that the district court has entered a final appealable judgment in this matter.

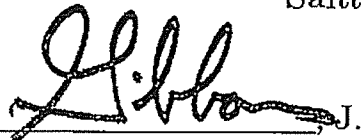
Although the district court's November 19, 2014, order grants a special motion to dismiss, it also states that "the case will be dismissed with prejudice once the Court has awarded fees and costs." The order thus contemplates dismissal of the action at a later date and does not constitute a final judgment. See NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426; 996 P.2d 416, 417 (2000). We disagree with appellants' contention that a dismissal took effect upon the subsequent entry of an order awarding fees and costs where appellants represent that that the order

"does not state that the action is dismissed as of the filing of that Order."¹
Further, we decline to remand this matter to the district court for entry of an order of dismissal. Appellants may file a notice of appeal from any final judgment entered in this matter. Accordingly, we


ORDER this appeal DISMISSED.

 J.

Saitta

 J.

Gibbons

 J.

Pickering

cc: Hon. Kimberly A. Wanker, District Judge
Carolyn Worrell, Settlement Judge
Law Office of Daniel Marks
Lipson Neilson Cole Seltzer & Garin, P.C.
Nye County Clerk

¹Appellants have not provided a copy of the order awarding fees and costs.

EXHIBIT “1”

1 NEOJ
LAW OFFICE OF DANIEL MARKS
2 DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
3 ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
4 610 South Ninth Street
Las Vegas, Nevada 89101
5 (702) 386-0536: FAX (702) 386-6812
Attorneys for Plaintiffs
6

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF NYE
9

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 Plaintiffs,

13 v.

14 PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

15 Defendants.
16 _____ /

17 NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS

18 TO: PAT SONGER, Defendant;

19 TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;

20 TO: ERICKSON THORPE & SWAINSTON, LTD., Defendant, and

21 TO: TODD ALEXANDER, ESQ. Attorney for Defendant Erickson Thorpe & Swainston, Ltd.:

22 ///

23 ///

24 ///

25 ///

1 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Awarding Fees
2 and Costs was entered in the above entitled matter on the 29th day of December, 2014, a copy of which
3 is attached hereto.

4 DATED this 30 day of December, 2014.

5 LAW OFFICE OF DANIEL MARKS

6 
DANIEL MARKS, ESQ.

7 Nevada State Bar No. 002003

8 ADAM LEVINE, ESQ.

9 Nevada State Bar No. 004673

10 610 South Ninth Street

Las Vegas, Nevada 89101

(702) 386-0536: FAX (702) 386-6812


Attorneys for Plaintiffs

11 **CERTIFICATE OF MAILING**

12 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on
13 the 30th day of December, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada,
14 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the
15 foregoing NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS, to the addresses as
16 follows:

17 Todd Alexander, Esq.
18 LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
19 *Attorney for Defendant ETS*

20 Siria L. Gutierrez, Esq.
LIPSON, NEILSON, COLE, SELTZER GARIN
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
21 *Attorney for Defendant Pat Songer*

22 
23 An employee of the
24 LAW OFFICE OF DANIEL MARKS

DEC 29 2014

NYE COUNTY DEPUTY CLERK
DEPUTY _____

Veronica Aguilar

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536: FAX (702) 386-6812
Attorneys for Plaintiffs

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

Defendants.

ORDER AWARDING FEES AND COSTS

This matter having come on for hearing on the 2nd day of December, 2014 on Defendant Erickson Thorpe & Swainston's Motion for Costs Attorney's Fees, and Additional Compensation Pursuant to Nevada's ANTI-Slapp Statute (NRS 41.670), Defendant Pat Songer's Motion for Attorney's Fees and Costs, and Plaintiffs' Motion to Retax Costs, with Plaintiffs being represented by Adam Levine, Esq. of the Law Office of Daniel Marks, and Defendant Pat Songer being represented by Siria L. Gutierrez, Esq. of Lipson, Neilson, Cole, Seltzer, Garin, and Defendant Erickson, Thorpe & Swainston, Ltd., being represented by Todd Alexander, Esq. of Lemons, Grundy & Eisenberg; and the Court having reviewed the pleadings on file and having heard oral arguments of counsel;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that costs are re-taxed and awarded against the Plaintiffs jointly and severally as follows: \$702 in favor of Defendant Songer and \$709.38 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorney's fees are awarded against the Plaintiffs jointly and severally as follows: \$21,767.50 in favor of Defendant Songer and \$22,907.50 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court declines to award any additional monies pursuant to NRS 41.670(3)(a) as the Court does not believe such an additional award appropriate under the facts of the case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' request for a stay of execution on the award of fees and costs pending appeal is GRANTED. The court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue will provide adequate security for the attorney's fees and cost award in the event the judgment is affirmed on appeal. However,

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should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this 29th day of December, 2014.

KIMBERLY A. WANKER
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

LIPSON, NEILSON, COLE, SELTZER, GARIN

DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs


SIRIA L. GUTIERREZ, ESQ.
Nevada State Bar No. 011981
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Defendant ETS

should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this ____ day of December, 2014.

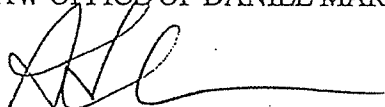
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

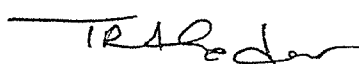
LIPSON, NEILSON, COLE, SELTZER, GARIN


DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs


SIRIA L. GUTIERREZ, ESQ.
Nevada State Bar No. 011981
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG


TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Defendant ETS

JOSEPH P. GARIN, ESQ.
NEVADA BAR NO. 6653
SIRIA L. GUTIERREZ, ESQ.
NEVADA BAR NO. 11981
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
jgarin@lipsonneilson.com
sgutierrez@lipsonneilson.com

Attorneys for Appellant,
PAT SONGER

Electronically Filed
Sep 08 2015 04:16 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAT SONGER,

Appellant,

v.

RAYMOND DELUCCHI and TOMMY
HOLLIS

Respondents

CASE No.: 67414

District Court Case No.: CV35969

**APPELLANT PAT SONGER'S
RESPONSE TO ORDER TO
SHOW CAUSE**

I. Introduction

Appellant Pat Songer ("Songer") properly and timely appealed from the district court's final judgment — the Order Awarding Fees and Costs. The district court was completely divested of jurisdiction when Appellant Songer filed his Notice of Appeal; there were no other issues for the district court to determine. As a result, Appellant Songer's appeal is proper and this Court has jurisdiction.

II. Case Background and procedural history

A. Appeals from Anti-SLAPP litigation

This case arises from the district court's denial of reasonable attorney's fees and costs at the prevailing market rate from a successful anti-SLAPP motion to dismiss. This appeal was subsequent to Respondents Delucchi and Hollis' (collectively

1 “Respondents”) appeal in case no. 66858 regarding the district court’s granting of
2 Appellant Songer’s motion to dismiss under NRS § 41.660. The attorney’s fees and cost
3 award arose from the granting of the anti-SLAPP motion to dismiss. See, Order
4 Awarding Fees and Costs, attached hereto as Exhibit 1.

5 **B. Dismissal of Respondents’ Appeal No. 66858**

6 This Court dismissed Respondents’ appeal on the grounds of a jurisdictional
7 defect on appeal from a final judgment. See, Order Dismissing Appeal, dated June 1,
8 2015, attached hereto as Exhibit 2. In the dismissal, this Court stated “We disagree with
9 appellants’ contention that a dismissal took effect upon the subsequent entry of an order
10 awarding fees and costs where appellants represent that the order “does not state that
11 the action is dismissed as of the filing of that Order.”” See, Order Dismissing Appeal,
12 Exhibit 2. Notably, Respondents failed to provide a copy of the order on attorney’s fees
13 and costs to the Court as pointed out in footnote 1 “Appellants have not provided a copy
14 of the order awarding fees and costs.” *Id.* Respondents failed to seek any further review
15 from this Court, and, as a result, the Court issued its remittitur on June 26, 2015.

16 **C. Respondents’ Motion for Order of Final Dismissal**

17 Instead of providing this Court with all necessary information for it to retain
18 jurisdiction, Respondents filed a “Motion for Order of Final Dismissal” on June 15,
19 2015, with the district court. See, Motion for Order of Final Dismissal, attached hereto
20 as Exhibit 3. The district court entertained the improper motion on September 1, 2015.
21 *Id.* During the hearing, the district court and all parties agreed that the final order of
22 dismissal was the order awarding fees and costs. See, Hearing Transcript, September 1,
23 2015, attached hereto as Exhibit 4. The district court repeatedly stated that the Order
24 Awarding Fees and Costs was the final order in the case:

- 25 • “I read the two orders together and say it was a final order....a
26 determination on the fees and costs and that will be...the final order.”
27 Hearing Transcript attached as Exhibit 4, 18:12-15;
28

- 1 • "...I'm not issuing a new order; I'm simply saying it was the intent of the
- 2 court that [the order awarding attorney's fees] was the final order." *Id.*
- 3 19:17-19;
- 4 • "I thought once I issued the final order on the attorney's fees and costs this
- 5 case was over here." *Id.* 20:3-5;
- 6 • "It was the intent of the court and the intent of the parties that these two
- 7 orders taken together were the final... judgment of the court." *Id.* 20:12-
- 8 15; and
- 9 • "I don't think anybody here is disagreeing that once that final—once I
- 10 issued the attorney's fees and costs we agreed; we thought we were done
- 11 here." *Id.* 22:1-6.

12 Respondents argued to the district court that this Court disagreed that the Order
13 Awarding Fees and Costs constituted a final judgment. *Id.* 6:13-16; 7:16-18, 7:24-8:2,
14 8:7-10, 8:12-13, and 10:1-4. However, this Court disagreed with Respondents
15 representation of what the Order Awarding Fees and Costs said because Respondents
16 failed to provide this Court with the Order to evaluate the language and substance of the
17 order. *See*, Order Dismissing Appeal, page 1 and footnote 1. Put simply, Respondents
18 "failed to submit documentation that established why [appeal no. 66858] should not be
19 dismissed for lack of jurisdiction." *See*, Order to Show Cause in Case No. 66858, dated
20 April 14, 2015, attached hereto as Exhibit 5. The Court did not determine that the Order
21 Awarding Fees and Costs was not a final judgment as Respondents represented to the
22 district court, rather the Court disagreed with Respondents' representations.

23 All parties agreed that the Order Awarding Fees and Costs was the final
24 judgment in this matter. *See*, Ex. 4, 17:3-15; 18:10-21. In the end, the district court
25 determined it would issue an order stating the November order granting the anti-SLAPP
26 motion and the Order Awarding Fees and Costs read together constitute the final
27 decision. Ex. 4, 23:21-23. As of the filing of this Response, the district court has not
28 served the Order.

III. This Court has jurisdiction over Appellant Songer's Appeal

As this Court has repeatedly stated, a final judgment is determined by what the order says, not what it is called. *Lee v. GNLV Corp.*, 116 Nev. 424, 427, 996 P.2d 416, 418 (2000). The Court has stated “[t]his court determines the finality of an order or judgment by looking to what the order or judgment actually *does*, not what it is called.” *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). The Court determines the finality of an order or judgment by what the order substantively accomplishes. *Id.* at 444–45, 874 P.2d at 733 (citing *State, Taxicab Authority v. Greenspun*, 109 Nev. 1022, 1025, 862 P.2d 423, 425 (1993); *see also Bally's Grand Hotel v. Reeves*, 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996) (“‘This court has consistently looked past labels in interpreting NRAP 3A(b)(1), and has instead taken a functional view of finality, which seeks to further the rule’s main objective: promoting judicial economy by avoiding the specter of piecemeal appellate review.’”) (quoting *Ginsburg*, 110 Nev. at 444, 874 P.2d at 733)).

Here, the Order Awarding Fees and Costs is directly related to the district court granting Appellant Songer’s motion to dismiss the anti-SLAPP litigation. Under NRS § 41.670(1), if the district court grants a special motion to dismiss under NRS § 41.660 (2013), then the district court is required to award fees and costs. NRS § 41.671(1)(2013). Thus, the Order Awarding Fees and Costs¹ was the last item that the district court needed to determine in the litigation. The district court did so after the parties served and filed the briefing with support for the sought award. In other words, the Order Awarding Fees and Costs represents the finality of the litigation. The objective with the Order Awarding Fees and Costs was to conclude the litigation. This is precisely what the district court confirmed on September 1,

¹ Respondents drafted this order.

2015. The district court confirmed—repeatedly—“a determination on the fees and costs [was] the final order.” Ex. 4, 18:12-15. The Order itself even references the appeal, as Respondents requested a stay pending the appeal. *See*, Exhibit 2. Therefore, the Order Awarding Fees and Costs is the final judgment in this matter.

Appellant Songer is the only party who appealed from the Order Awarding Fees and Costs. Appellant Songer properly and timely appealed from the Order Awarding Fees and Costs and this Court has jurisdiction over this appeal. As a result, this Court has jurisdiction and it should affirm that the Order Awarding Fees and Costs is the final judgment and that this Court has jurisdiction on Appellant Songer’s appeal regarding the award of the attorney’s fees and costs.

IV. Conclusion

Appellant Songer is the only party who properly and timely appealed from the final judgment in this matter—the Order Awarding Fees and Costs. Thus, this Court has jurisdiction over the matter and should continue to retain jurisdiction of Appellant Songer’s pending appeal.

Dated this 8th day of September.

LIPSON, NEILSON, COLE, SELTZER
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By: /s/ Siria L. Gutierrez

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2015, service of the foregoing
APPELLANT PAT SONGER'S RESPONSE TO ORDER TO SHOW CAUSE
was made by the Supreme Court's electronic filing system to the email address
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