

1 **THORNDAL, ARMSTRONG, DELK,**
2 **BALKENBUSH & EISINGER**

3 Michael P. Lowry, Esq.
4 Nevada Bar No. 10666
5 P.O. Drawer 2070
6 Las Vegas, Nevada 89125-2070
7 Tel: (702) 366-0622
8 Fax: (702) 366-0327
9 Email: mlowry@thorndal.com
10 Attorneys for Glenn Welt, Rhoda Welt,
11 Lynn Welt and Michele Welt

Electronically Filed
Nov 23 2015 12:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 **IN THE SUPREME COURT OF NEVADA**

8 HOWARD SHAPIRO and JENNA
9 SHAPIRO,

10 Appellant/Cross-Respondent

11 vs.

12 GLEN WELT, RHODA WELT, LYNN
13 WELT, and MICHELLE WELT,

14 Respondent/Cross-Appellants.

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

**MOTION TO STRIKE NEW
ARGUMENT FROM APPELLANT'S
OPENING BRIEF IN 67363**

15 GLEN WELT, RHODA WELT, LYNN
16 WELT, and MICHELLE WELT,

17 Appellant

18 vs.

19 HOWARD SHAPIRO and JENNA
20 SHAPIRO,

Respondent

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

21 Glenn Welt, Rhoda Welt, Lynn Welt and Michelle Welt (“the Welts”) request the
22 Court strike new argument from Howard and Jenna Shapiro’s (“the Shapiros”) opening
23 brief concerning docket 67363. The Shapiros argue for the first time on appeal that NRS
24 41.637(4) is unconstitutional. New arguments are not permitted on appeal. This section
25 of the Shapiros’ brief must be struck.

26 ///

27 ///

1 DATED this 23rd day of November, 2015.

2 THORNDAL ARMSTRONG DELK
3 BALKENBUSH & EISINGER

4 /s/ *Michael P. Lowry*

5

Michael P. Lowry, Esq.
6 P.O. Drawer 2070
7 Las Vegas, NV 89125-2070
8 Attorneys for Glenn Welt, Rhoda Welt,
9 Lynn Welt and Michele Welt

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. The Shapiros did not argue constitutionality to the district court.**

10 The Shapiros filed a complaint against the Welts. The Welts then successfully
11 moved to dismiss per NRS 41.660 and the Shapiros appealed. On appeal, the Shapiros
12 argue NRS 41.637(4) is unconstitutional. The Welts move to dismiss this new argument.

13 First, the Shapiros' appendix does not demonstrate they opposed the Welts'
14 motion by arguing NRS 41.637(4) was unconstitutional. Second, the Shapiros' appellate
15 docketing statement specifically asked three questions about whether a constitutional
16 issue is asserted. Constitutionality was not listed in response to question nine asking for a
17 statute of issues on appeal.¹ Question eleven specifically asked if the Shapiros if their
18 appeal challenged the constitutionality of any statute. They answered no.² Instead they
19 responded the appeal concerned "an issue of statutory interpretation."³ Question twelve
20 also asked if the appeal concerned an "issue arising under the United States and/or
21 Nevada Constitutions." The Shapiros again responded no.⁴

22 Parties may not raise new arguments for the first time on appeal.⁵ The Welts
23 request pages 4:1-13:7 be struck from the Shapiros' opening brief. The final sentence to
24

25

¹ March 3, 2015 Docketing Statement at 4.

26 ² *Id.* at 5.

27 ³ *Id.*

28 ⁴ *Id.*

⁵ *Pub. Emples. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 150 n.32, 179 P.3d 542, 550 (2008); *Dermody v. City of Reno*, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997).

1 strike states, on page 13, “NRS 41.637(4) is in contravention of ancient common-law
2 claims for defamation and are thus unconstitutionally vague as they create confusion
3 concerning when a defamation case can be made and under what circumstances.”

4 DATED this 23rd day of November, 2015.

5 THORNDAL ARMSTRONG DELK
6 BALKENBUSH & EISINGER

7 /s/ *Michael P. Lowry*

8

Michael P. Lowry, Esq.
9 P.O. Drawer 2070
10 Las Vegas, NV 89125-2070
11 Attorneys for Glenn Welt, Rhoda Welt,
12 Lynn Welt and Michele Welt

13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRAP 25, on November 23, 2015 the **MOTION TO STRIKE NEW**
15 **ARGUMENT FROM APPELLANT’S OPENING BRIEF IN 67363** was served upon
16 each of the parties to appeal 67363 via electronic service through the Supreme Court of
17 Nevada’s electronic filing.

18 /s/ *Michael P. Lowry*

19

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