

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAWNETTE DAVIDSON

Appellant,

V.

CHRISTOPHER B. DAVIDSON

Respondent.

SUPREME COURT NO.: 67698

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**APPELLANT'S REPLY BRIEF**

Appeal From the Honorable Judge Vincent Ochoa's Order Denying Appellant's Motion Enforce Decree of Divorce Pursuant to NRS 11.190(1)(a)

Submitted by:

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**I.**

**RULE 26.1 DISCLOSURE STATEMENT**

The Appellant herein is an individual and no interest in any corporation is involved in this case. The attorneys who have appeared on behalf of the Appellant in this case are DANIEL W. ANDERSON, ESQ. and BYRON L. MILLS, ESQ.

**II.**

**ARGUMENT IN REPLY**

Respondent's Answering Brief correctly points out that Appellant's Opening Brief did not include a routing or jurisdictional statement. This was an inadvertent omission for which counsel apologizes. This case involves a family law matter and is therefore presumptively assigned to the Court of appeals pursuant to NRAP 17(b)(5) to which Appellant has no objection.

There is no dispute as to the timeliness of the appeal. The order appealed from was noticed by mailing on February 20, 2015. Appellant, DAWNETTE DAVIDSON (hereinafter "Dawnette ") filed her notice of appeal on March 19, 2015. This Court's jurisdiction over Dawnette 's appeal derives from NRAP 3A(b)(8) as further explained below.

**a. The February 20, 2015 Order is an Appealable Order under NRAP**

**3A(b)(8).**

NRAP 3A(b) states in pertinent part:

(b) Appealable Determinations. An appeal may be taken from the following judgments and orders of a district court in a civil action:

...

(8) A special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment.

...

Dawnette submits that the order is appealable under NRAP 3A(b)(8) as “a special order entered after final judgment.” NRAP 3A(b)(8). The case of *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (Nev., 2002) defines “special order” as follows: “to be appealable under NRAP 3A(b)[8], a special order made after final judgment must be an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment.” The district court’s February 20, 2015 order falls precisely within this definition.

The order entered on February 20, 2015 affects Dawnette’s rights under the original decree by precluding her from collecting the money she was owed for her interest in the home. The order barred her from seeking enforcement of the previous order, thereby effectively modifying the relative property distribution in the original decree. The district court’s order explicitly affected Dawnette’s rights arising out of the original decree and therefore falls squarely and plainly within the special order definition set out in the *Gumm* case above.

The *Gumm* case remains the law in Nevada today, and the decision was issued after every case cited in Respondent's answering brief with the exception of one, which has no relation to the facts of the case before this Court.<sup>1</sup> Furthermore, none of the cases cited in support of Respondent's position address the denial of a post-trial enforcement motion based on application of a statute of limitations by the lower court. This appears to be a matter of first impression in Nevada and the plain language of the *Gumm* case should make this Court's decision clear. An order denying a post-trial motion to enforce is a special order that is appealable under NRAP 3A(b)(8) because it affects the rights of some party to the action growing out of the judgment previously entered.

### III.

#### CONCLUSION

This Court has jurisdiction to determine whether or not the district court erred when it denied Dawnette's enforcement motion based on the application of NRS 11.190. Dawnette therefore respectfully requests that this Court address the merits of her appeal as set forth in her Opening Brief. The Court should further find that the district court erred as a matter of law when it barred Dawnette's enforcement action based on the application of NRS 11.190. Based on that error, this Court should remand this case to district court to consider the substance of Dawnette's

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<sup>1</sup> Brown v. MHC Stagecoach, 301 P.3d 850, 853 (2013).

enforcement motion.

Dated this \_\_\_\_\_ day of January, 2016.

Respectfully submitted by:

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### **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for

any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 12 day of January, 2016.

Respectfully submitted by

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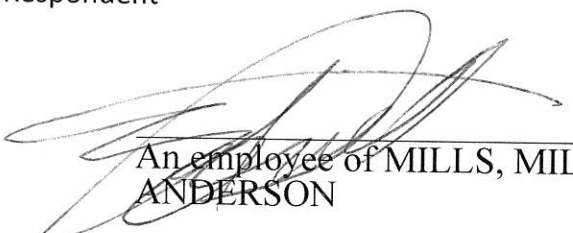
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**CERTIFICATE OF MAILING**

I hereby certify that on the 17<sup>th</sup> day of January, 2016 I deposited for mailing in Las Vegas, Nevada, a true and correct copy of the, **“APPELLANT’S REPLY BRIEF”** with first class postage fully prepaid, addressed to the following:

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