

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

KERSTAN MICONE,  
N/K/A KERSTAN HUBBS,  
Appellant,

vs.

MICHAEL MICONE,  
Respondent.

No. 67934

Electronically Filed  
May 26 2015 03:41 p.m.

Tracie K. Lindeman  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department J  
County Clark Judge Rena G. Hughes  
District Ct. Case No. D-08-388344-D

**2. Attorney filing this docketing statement:**

Attorney John D. Jones Telephone 702-869-8801  
Firm Black & LoBello  
Address 10777 W. Twain Ave., #300  
Las Vegas, Nevada 89135

Client(s) Kerstan Micone n/k/a Kerstan Hubbs

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Donn W. Prokopius Telephone 702-474-0500  
Firm Prokopius & Beasley  
Address 931 South Third Street  
Las Vegas, Nevada 89101

Client(s) Michael A. Micone

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |                                                             |                                                                                    |
|-------------------------------------------------------------|------------------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                                |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                                      |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                  |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                                      |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                                    |
| <input type="checkbox"/> Grant/Denial of injunction         | <input checked="" type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input checked="" type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____                        |

**5. Does this appeal raise issues concerning any of the following?**

- ☒ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Eighth Judicial District Court, Clark County, Family Division, Case No. D-08-388344-D

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The action from which this appeal has been filed was initiated by Respondent's motion to change custody. Appellant filed an opposition and countermotion for relief incident to the parties' Divorce Decree. The resulting order granted a non-party the custody of the minor child at issue and improperly denied Appellant's countermotion on grounds of Res Judicata when the issue had never been litigated on the merits.

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

1. The order is void.
2. The District Court erred in granting custody to a non-party.
3. The District Court erred in changing custody without an evidentiary hearing.
4. The District Court erred in concluding that Appellant's countermotions were barred by Res Judicata.
5. The District Court erred in denying Appellant's request.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** March 31, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** March 31, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**18. Date notice of appeal filed** April 30, 2015

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

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### **SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |                                                                                |                                       |
|--------------------------------------------------------------------------------|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                         | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                         | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                         | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>3A(b)7 and 3A(b)(8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

3A(b)7 The order appealed changed custody of a minor child from primary to Appellant to primary custody to grandparents who neither filed a motion, intervened, nor were parties.

3A(b)(8) The order appealed denied relief to Appellant which was incident to the rights set forth in the parties' Decree of Divorce.

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Kerstan Micone n/k/a Kerstan Hubbs  
Michael Micone

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Respondent filed a motion to change custody of minor child. Appellant opposed said motion and sought various financial relief related to Respondent's obligation under the parties' Decree of Divorce. The Court, after the initial motion hearing, issued an order on March 31, 2015.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:



(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Order is independently appealable pursuant to NRAP 3A(b)(7) and 3A(b)(8).

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

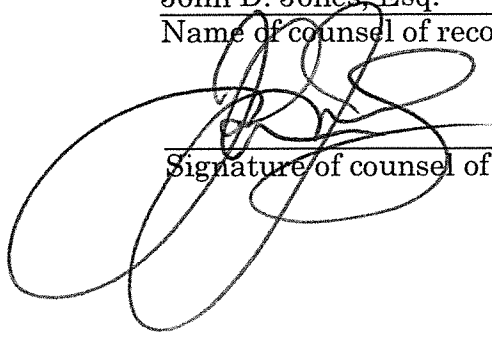
## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Kerstan Micone n/k/a Kerstan Hubbs  
Name of appellant

John D. Jones, Esq.  
Name of counsel of record

5/26/15  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

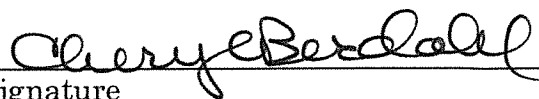
## CERTIFICATE OF SERVICE

I certify that on the 26th day of May, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Donn W. Prokopius, Esq.  
Prokopius & Beasley  
931 South Third Street  
Las Vegas, NV 89101

Dated this 26th day of May, 2015

  
Signature