

1 IN THE
2 SUPREME COURT OF THE STATE OF NEVADA

3 ESTATE OF MICHAEL DAVID
4 ADAMS, BY AND THROUGH HIS
5 MOTHER JUDITH ADAMS,
6 INDIVIDUALLY AND ON BEHALF
7 OF THE ESTATE,

8 Appellants,

9 v.

10 SUSAN FALLINI,

11 Respondent,

Supreme Court No.: 68033 Electronically Filed
District Court Case No. CV24539 Aug 10, 2015 04:32 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

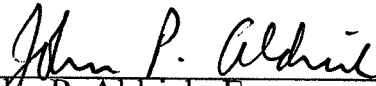
**RESPONSE TO ORDER TO SHOW
CAUSE**

12 Appellant, Estate of Michael David Adams, by and through his mother Judith
13 Adams (hereinafter "Appellant" or "Adams"), by and through its attorney of record,
14 John P. Aldrich, Esq., of the Aldrich Law Firm, Ltd., hereby files this response to the
15 Order to Show Cause issued on June 25, 2015, requiring Appellant "to show cause
16 why the issues in this appeal should not be limited to challenges to the final judgment
17 entered April 17, 2015." (Order to Show Cause, p. 1.)

18 Appellant respectfully submits this response.

19 Dated this 10th day of August, 2015.

20 **ALDRICH LAW FIRM, LTD.**

21 
22 _____
23 John P. Aldrich, Esq.
24 Nevada Bar No. 6877
25 1601 S. Rainbow Blvd., Suite 160
26 Las Vegas, Nevada 89146
27 (702) 853-5490
28 *Attorneys for Appellant*

1 **A. Nature of the Action and Summary of Proceedings Below**

2 As set forth in paragraph 8 of Appellant's Docketing Statement, this action is
3 a wrongful death case brought by Plaintiff Estate of Michael David Adams, by and
4 through his mother Judith Adams, individually and, on behalf of the Estate against
5 Defendant Susan Fallini, as a result of a July 7, 2005, automobile incident wherein
6 Michael Adams hit a cow owned by Defendant, killing Mr. Adams. The action
7 proceeded, and Defendant's Answer and Counterclaim were stricken as a result of
8 Defendant's refusal to respond to discovery or abide by the district court's orders.
9 The district court entered default judgment in favor of Plaintiff and against Defendant
10 in the amount of \$1,000,000.00 for grief and sorrow and loss of support,
11 \$1,640,696.00 for future lost earnings, \$50,000.00 in attorney's fees, sanctions in the
12 amount of \$35,000.00, and funeral expenses of \$5,188.85. Defendant appealed the
13 default judgment.

14 On March 29, 2013, the Nevada Supreme Court entered an Order Affirming in
15 Part, Reversing in Part, and Remanding, in which the Supreme Court upheld the
16 award of damages but reduced the amount. On April 9, 2013, Defendant Fallini
17 petitioned for rehearing. That petition was denied on June 3, 2013. Thereafter, on
18 June 5, 2013, Defendant Fallini filed a Petition for En Banc Reconsideration. That
19 petition was also denied on July 18, 2013. The Supreme Court issued Remittitur on
20 August 14, 2013. After recognizing that the Supreme Court did not give direction
21 regarding calculation of interest, Plaintiff moved the Supreme Court for direction. On
22 January 3, 2014, the Supreme Court issued an Order Granting Motion to Recall
23 Remittitur and to Modify March 29, 2013 Order for Allowance of Interest.

24 After additional wrangling over the final form of the judgment, Final Judgment
25 was entered on or about May 7, 2014. On May 20, 2014, Defendant filed a Motion
26 for Relief from Judgment Pursuant to NRCP 60(b). Plaintiff opposed the motion, but
27 in an Order dated August 6, 2014, the district court granted Defendant's Motion for
28 Relief from Judgment Pursuant to NRCP 60(b). Thereafter, Plaintiff filed a Petition

1 for Extraordinary Writ Relief. The Supreme Court issued an Order to Show Cause
2 why the petition should not be summarily denied. Plaintiff provided a response, but
3 the Supreme Court denied the writ petition on January 15, 2015. On or about January
4 28, 2015, Defendant Fallini filed a Motion for Entry of Final Judgment. Plaintiff
5 opposed and filed a Countermotion to Reconsider and/or for Rehearing of Order
6 Entered on August 6, 2014, or Alternatively, Countermotion to Set Aside Order
7 Entered on August 6, 2014, or Alternatively, for Entry of Final Judgment. On April
8 17, 2015, the district court entered an Order Granting Motion for Entry of Final
9 Judgment and Dismissing Case with Prejudice. This appeal is from the April 17,
10 2015 Order Granting Motion for Entry of Final Judgment and Dismissing Case with
11 Prejudice.

12 **B. The Issues Raised by this Direct Appeal**

13 Appellant identified three issues for appeal. Each of those issues deals directly
14 with the district court's granting of Respondent's Motion for Entry of Final Judgment
15 and the denial of Appellant's three Countermotions. The issues, as listed by
16 Appellant in the Docketing Statement, are as follows:

- 17 a. Because the original default judgment and all related issues in this case
18 had already been considered and decided by the Nevada Supreme Court
19 in the original appeal, did the district court err when it denied Plaintiff's
20 Countermotion to Reconsider and/or for Rehearing of Order Entered on
21 August 6, 2014?
- 22 b. Because the original default judgment and all related issues in this case
23 had already been considered and decided by the Nevada Supreme Court
24 in the original appeal, and because Defendant's counsel made
25 misrepresentations to the district court at the hearing on July 28, 2014,
26 did the district court err when it denied Plaintiff's Countermotion to Set
27 Aside Order Entered on August 6, 2014?
- 28 c. Because the original default judgment and all related issues in this case

1 had already been considered and decided by the Nevada Supreme Court
2 in the original appeal, and because the default judgment was based on
3 a sanction against Defendant for repeated refusal to follow court orders,
4 did the district court err when it granted Defendant's Motion for Entry
5 of Final Judgment?

6 **C. The Issues Raised by Appellant Are All Properly Before this Court**

7 The Order to Show Cause asks Plaintiff "to show cause why the issues in this
8 appeal should not be limited to challenges to the final judgment entered April 17,
9 2015." (Order to Show Cause, p. 1.) In reality, all of the issues raised in Plaintiff's
10 statements of the issues are direct challenges to the final judgment entered on April
11 17, 2015. Defendant Fallini's Motion for Entry of Final Judgment and Plaintiff's
12 various Countermotions are essentially cross-motions which sought directly opposite
13 relief related to Plaintiff's wrongful death/negligence claim. That is, on the one hand,
14 Defendant's Motion for Entry of Final Judgment sought entry of final judgment in
15 Defendant's favor and against Plaintiff. On the other hand, if granted, Plaintiff's
16 Countermotions would have resulted in final judgment being entered against
17 Defendant and in favor of Plaintiff.

18 The Order appealed from denied Plaintiff's Countermotions and granted
19 Defendant's Motion for Entry of Final Judgment and dismissed Plaintiff's case with
20 prejudice. (See Exhibit 6 to Appellant's Docketing Statement.) Consequently, the
21 denial of Plaintiff's Countermotions, and the granting of Defendant's Motion,
22 resulted in final judgment being entered against Plaintiff/Appellant. The denial of
23 Plaintiff's Countermotions is directly appealable pursuant to NRAP 3A because it
24 concerns the same subject matter as the district court considered and addressed in
25 granting Defendant's Motion for Entry of Final Judgment and denying Plaintiff's
26 Countermotions. Plaintiff did not raise any issues in the Docketing Statement that it
27 had not placed in consideration before the district court entered its Order Granting
28

1 Motion for Entry of Final Judgment and Dismissing Case with Prejudice.

2 In short, even if the Court considered only the order granting Defendant's
3 Motion for Entry of Final Judgment, while excluding Plaintiff's Countermotions, if
4 the Court were to agree with Plaintiff's position, it would be sustaining the position
5 set forth in Plaintiff's Countermotions. The issues raised that relate to the denial of
6 Plaintiff's Countermotions are the same issues raised by an appeal of the granting of
7 Defendant's Motion, and are appropriately before this Court.

8 **D. Alternatively, if the Court Considers the Denial of Plaintiff's**
9 **Countermotions to Be Interlocutory in Nature, the Denial of Plaintiff's**
10 **Countermotions Is Properly Before This Court**

11 Alternatively, to the extent that the denial of Plaintiff's Countermotions is
12 considered interlocutory in nature, the denial of those Countermotions is properly
13 before this Court. In *Consolidated Generator v. Cummins Engine*, 114 Nev. 1304,
14 1312, 971 P.2d 1251, 1256 (1998), the appellant challenged three interlocutory
15 orders. The Nevada Supreme Court specifically held that the three interlocutory
16 orders that had been entered prior to final judgment were appealable once the final
17 judgment had been entered. Indeed, this Court held that "[a]lthough these orders are
18 not independently appealable, since [appellant] is appealing from a final judgment the
19 interlocutory orders entered prior to the final judgment may properly be heard by this
20 court." *Id.* at 1312 (citing *Summerfield v. Coca Cola Bottling Co.*, 113 Nev. 1291,
21 1293-94, 948 P.2d 704, 705 (1997)). See also *Sicor, Inc. v. Sacks*, 127 Nev. Adv.
22 Rep. 81, 266 P.3d 618 (2011) (citing *Consolidated Generator* and noting "the general
23 rule that interlocutory orders may be challenged on appeal from the final judgment");
24 *Valdez v. Cox Communications Las Vegas, Inc.*, 130 Nev. Adv. Rep. 89, 336 P.3d
25 969, 971 (2014) (citing *Consolidated Generator* and holding that "all interlocutory
26 orders regarding the party whose claims are severed, entered before the severance
27 order, may then be challenged on appeal from the order finally resolving the severed
28 claims"); *Brown v. MHC Stagecoach, LLC*, 129 Nev. Adv. Rep. 37, 301 P.3d 850,
853 (2013) (citing *Consolidated Generator* and holding that "[appellant] will be able

1 to challenge in the context of that appeal the interlocutory orders entered in the
2 underlying matter. . . .”); *Summerfield, supra* (after noting that the respondent argued
3 appellant “lacked standing to pursue any appeal of the lower court’s denial of her
4 motion to continue,” the Court stated that appellant “argues on appeal that the court
5 erred in denying her motion to continue, her appeal is not *from* that denial; rather, she
6 has appealed from an order granting summary judgment, which clearly is a final
7 judgment under NRAP 3A (formerly NRCp 72(b)). Therefore, [appellant] has
8 appropriately raised this issue on appeal”); and *Balla v. Idaho State Bd. of*
9 *Corrections*, 869 F.2d 461, 466-67 (9th Cir. 1988) (holding that “judgment . . .
10 encompasses final judgments and appealable interlocutory orders” for purposes of
11 motions for reconsideration).

12 Federal courts agree with this position. “In reviewing a final judgment, we
13 have jurisdiction to review interlocutory rulings that may have affected the outcome
14 of the proceedings in the district court.” *MHC Fin., L.P. v. City of San Rafael*, 714
15 F.3d 1118 (2013), citing *U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff*, 768
16 F.2d 1099, 1103 (9th Cir. 1985), *superseded on other grounds by* Fed. R. Civ. P.
17 72(a); *see also Hall v. City of L.A.*, 697 F.3d 1059, 1070 (9th Cir. 2012).

18 It is worth noting that the underlying purpose of Defendant’s objection is that
19 it does not want this Court to consider what the district court did in its August 6, 2014
20 Order. However, it is proper for this Court to scrutinize the August 6, 2014 Order as
21 it considers the Countermotions brought by Plaintiff because the August 6, 2014
22 Order is an interlocutory order. Indeed, Black’s Law Dictionary defines
23 “interlocutory” as “Provisional; interim; temporary; not final. Something intervening
24 between the commencement and the end of a suit which decides some point or matter,
25 but is not a final decision of the whole controversy.” Black’s Law Dictionary, p. 815
26 (6th Edition, 1990). Black’s Law Dictionary defines an “interlocutory decision” as
27 “[a]ny decision prior to a final decision.” *Id.*

28 Again, the issues raised by Plaintiff in the Docketing Statement are properly

1 before this Court because they relate to proper interlocutory orders.

2 **E. It Will Be Easier and More Efficient for This Court to Entertain the**
3 **Jurisdictional Issues as Part of the Appeal Through Full Briefing**

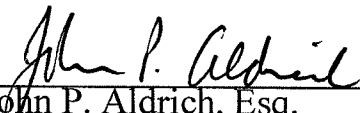
4 As demonstrated above, the issues raised by Plaintiff are properly before this
5 Court. Even so, Plaintiff asserts that the Court should allow full briefing of all issues
6 raised because it would be easier and more efficient for this Court to entertain the
7 jurisdictional issue as it considers the appeal on the merits. If it is not already clear
8 to the Court, once the matter is fully briefed, the facts and procedure will
9 demonstrate that this Court has jurisdiction to consider the issues raised by Plaintiff
10 in the Docketing Statement.

11 **Conclusion**

12 For the foregoing reasons, the Supreme Court should consider and grant this
13 Writ Petition.

14 DATED this 10th day of August, 2015.

15 **ALDRICH LAW FIRM, LTD.**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August, 2015, I mailed a copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE**, in a sealed envelope, to the following address and that postage was fully paid thereon:

David R. Hague, Esq.
FABIAN & CLENDENIN
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Salt Lake City, UT 84111
Attorney for Respondent

R. Engelbrecht
An employee of ALDRICH LAW FIRM, LTD.