IN THE

SUPREME COURT OF THE STATE OF NEVADA

Estate of MICHAEL DAVID ADAMS, By and through his mother JUDITH ADAMS, Individually and on behalf of the Estate, Appellants, vs. SUSAN FALLINI, Respondent.	Supreme Court No.: 68033 District Court Case No.: CV 24539 **RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE**

Respondent, Susan Fallini ("**Ms. Fallini**"), through counsel, and pursuant to the leave granted by the Nevada Supreme Court, hereby files this Reply ("**Reply**") to Appellant's Response to Order to Show Cause filed August 10, 2015 ("**Response**"). The order to show cause precipitated from Ms. Fallini's objection to Appellant's Docketing Statement. Ms. Fallini objected on the basis that Appellant was attempting to recast an untimely appeal. On June 25, 2015, this Court issued an Order to Show Case, which included one mandate: for Appellant to show cause why the issues in this underlying appeal should not be limited exclusively to challenging the final judgment entered April 17, 2015. Appellant failed to respond to this mandate. Indeed, Appellant has not provided the Court with any legal basis for challenging, yet again, the district court's August 6, 2014 Order setting aside the default judgment entered against Ms. Fallini based upon its finding that Appellant and counsel committed a fraud on the court (the "**60(b) Order**"). Appellant's attempt to get a second bite at the apple contravenes existing law and this Court's prior order dated January 15, 2015. The solution is simple: all findings of fact and conclusions of law associated with the 60(b) Order must, as a matter of law, be excluded from this appeal.

Respondent respectfully submits this reply.

Dated this 24th day of August, 2015.

FABIAN & CLENDENIN, P.C.

/s/ *David R. Hague*
David R. Hague, Esq.
Nevada Bar No.12389
215 South State Street, Ste. 1200
Salt Lake City, Utah 84111-2323
Telephone: (801) 531-8900

SUMMARY OF PROCEEDINGS

This appeal arises out of an entry of final judgment in favor of Ms. Fallini. (Order April 17, 2015). Appellant presumes incorrectly that this appeal somehow arises out of Ms. Fallini's Motion for Relief from Judgement Pursuant to NRCP 60(b) alleging that Appellant's counsel committed fraud upon the court.

Appellant filed a Petition for Extraordinary Relief (No. 66521), challenging the 60(b) Order (the "**Writ**"). This Court properly denied the Writ as it challenged a substantively appealable order, finding that while the 60(b) Order "was subject to challenge by appeal . . . petitioner did not file a notice of appeal within the 33-day appeal period." (Order Denying Petition for Extraordinary Relief Jan. 15, 2015). After the Appellant's failed, untimely attempt to appeal the 60(b) Order via the Writ, Ms. Fallini requested entry of final judgment in her favor pursuant to the merits of the case. In response, Appellant brought backdoor countermotions before the district court requesting reconsideration, rehearing or setting aside of the 60(b) Order, copying wholesale from the Writ the same arguments challenging the 60(b) Order. The District Court denied the countermotions and entered judgment in Ms. Fallini's favor. (Order April 17, 2015).

ARGUMENT

A cursory glance at Appellant's Docketing statement reveals the obvious: Appellant is unquestionably challenging the 60(b) Order. The Appellant may appeal the entry of final judgment and the denial of Appellant's countermotions. But Appellant may not do so by relying on, arguing for, effectively appealing, or otherwise attempting to revive the default judgment set aside by the 60(b) Order.

I. The Issues Raised in this Appeal are Thinly Veiled Attempts to Appeal and Challenge the 60(b) Order.

In this appeal, each of Appellant's issues begins by improperly attempting to revive the original default judgment: "[b]ecause the original default judgment and all related issues in this case had already been considered and decided . . . ."

Appellant is arguing that the original default judgment *that was set aside* by the 60(b) Order, and which this Court denied appeal therefrom, provides basis for its current appeal. To even make this argument, the default judgment and its progeny must have force or effect. They do not. To have the "original default judgment" as the basis for an appealable issue requires the revival of the default judgment—which is the same as a challenge of the 60(b) Order. Thus, the "issues" identified in the Docketing Statement presume an ability to attack, challenge or appeal the 60(b) Order. In other words, Appellant is attempting to utilize the entry of final judgment on the merits as an opportunity to attempt to cure an untimely appeal of the 60(b) Order and to circumvent this Court's January 15, 2015 Order.

The countermotions and the Docketing Statement contravene the established law-of-the-case. "The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case." *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. Adv. Op. 4, 223 P.3d 332, 334 (2010). Here, the January 15, 2015 Order of the Supreme Court establishes that (1) the 60(b) Order is appealable; (2) the Appellant failed to timely appeal; and (3) a writ or other alternate workaround to challenge the 60(b) Order will fail. Contrary to the law-of-the-case, the countermotions—exactly like the improper issues in the Docketing Statement—attempted to attack, challenge, undermine and effectively appeal the 60(b) Order, despite this Court's January 15, 2015 Order that held the 60(b) Order was appealable.

To the point, the issues on appeal are wholly and improperly centered on the original default judgment *that was set aside*. Appellant may raise as an issue on appeal whether the district court erred in denying Appellant's countermotions. The Appellant, however, may not appeal the setting aside of the original default judgment. In reviewing an appeal from a district court denying a Rule 60(b) motion, this Court put it simply: "The order is appealable." *Memory Gardens of*

Las Vegas, Inc. v. Bunker Bros. Mortuary, 91 Nev. 344, 345, 535 P.2d 1293, 1293 (1975); *see also Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 374 n.1, 90 P.3d 1283, 1284 n.1 (2004); *Foster v. Dingwall*, 126 Nev. Adv. Op. 5 n.3, 228 P.3d 453 n.3 (2010). Because Petitioner in this case had a plain, adequate remedy—the legal right to appeal the 60(b) Order—this Court should deny Appellant's thinly veiled attempt to circumvent the Supreme Court's January 15, 2015.

As a matter of law, there can only be one issue before this Court: whether the District Court erred in denying Appellant's countermotions and granting final judgment in favor of Ms. Fallini. The issues identified in Appellant's Docketing Statement speak solely and directly to the 60(b) Order. (Docketing Statement at ¶ 9, Supplemental Answers at Nos. 8, 9). Appellant again tries an improper avenue to "challenge an appealable order" after having missed the deadline. (Supreme Court Order January 15, 2015). This Court already refused to permit Appellant to recast her untimely appeal and have these very issues heard. It must so decline to consider them again.

II. The 60(b) Order Is a Final Appealable Order Entered after Entry of Final Judgment.

The 60(b) Order is not interlocutory: "an order setting aside a default judgment is appealable as a special order entered *after final judgment*" (Supreme Court Order January 15, 2015 at P. 2) (emphasis added). As the 60(b) Order, "was subject to challenge by appeal," the failure of Appellant to file a timely notice of appeal makes the 60(b) Order final and binding. *See Matter of Estate of Herrmann*, 100 Nev. 1, 25, 677 P.2d 594, 609 (1984) (holding that "[u]pon the expiration of that sixty-day period, no appeal having been taken, the order . . . became final as to all issues presented by the motion and such issues cannot be raised in the Supreme Court on a subsequent appeal from the judgment . . . .") (*quoting C. & M., Inc. v. Northern Founders Insurance Co. of N.D., 124 N.W.2d 471* (N.D.1963).

The countermotions were denied as part of the entry of final judgment. They are not based on a separate, interlocutory order. All of Appellant's cited case law regarding interlocutory orders is wholly inapplicable to the issue at hand. Appellant may argue that the District Court erred in denying the countermotions, but Appellant may not do so by reviving issues and arguments, either directly or indirectly, that challenge the 60(b) Order. In short, any attack on the 60(b) Order must fail as a matter of law.

Finally, Appellant's basis for attack of the default judgment are counter to well-established case law regarding finality. *Id.* Appellant hopes to utilize the "original default judgment" as her basis for appeal. But the original default judgment was set aside by an appealable and now final order. If the subsequent entry of judgment on the merits allowed a party to attack a previous order that set aside a default judgment, there would be two opportunities to appeal. The notice of entry of judgment, and appeal deadline mean nothing if, upon entry of final judgment on the merits, a party can directly or indirectly challenge or appeal the order that set aside the default judgment.

For example, a 60(b) order upheld on appeal, after entry of final judgment on the merits at the district court level, could be challenged on appeal a second time if on appeal of the entry of final judgment the Supreme Court allowed arguments similar to those proposed as proper by Appellant! In this instance, Appellant, having failed to appeal, clearly hopes to utilize the entry of final judgment to challenge the 60(b) Order and revive the default judgment. Accordingly, the Docketing Statement issues are wholly improper.

III. It Would Be an Inefficient Waste of Judicial Resources—and an Improper Burden on Respondent—to Allow Appellant the Ability to Indirectly Appeal the 60(b) Order through a Direct Appeal of the Entry of Final Judgment.

The limit on appealing multiple times and the principle of finality are established principles that further judicial economy. *See Hsu v. Cnty. of Clark*, 123

Nev. 625, 629-31, 173 P.3d 724, 728-29 (2007).

This Court has already denied Appellant's attempt to challenge the 60(b) Order. (Supreme Court Order, January 15, 2015). The Court denied Appellant's Writ. *Id.* This second attempt by Appellant to challenge the 60(b) Order, a "substantively appealable order," (Supreme Court Order January 15, 2015) through an appeal of the final judgment on the merits must likewise be denied.

Not only will Court resources be wasted by not properly limiting the issues on appeal, but Respondent will also suffer. She will be forced to combat, unnecessarily, attacks to the 60(b) Order.

The 60(b) Order is the final, binding law of the case. Full briefing of the arguments and issues set forth in Appellant's Docketing Statement will be a waste of time as each and every one attempts to revive the default judgment that was set aside by the final, binding 60(b) Order.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2015, I caused a true and correct copy of the foregoing **REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE** to be served via U.S. mail, postage prepaid as follows:

John P. Aldrich, Esq.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Ste. 160
Las Vegas, NV 89146

Cathy Murdock
An employee of Fabian & Clendenin