

JOSEPH P. GARIN, ESQ.  
NEVADA BAR NO. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR NO. 11981  
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500  
Fax: (702) 382-1512  
[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)  
[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

Electronically Filed  
Nov 19 2015 11:47 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

*Attorneys for Respondent,*  
PAT SONGER

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

RAYMOND DELUCCHI and TOMMY  
HOLLIS,

Appellants,

v.

PAT SONGER,

Respondents

Case No.: 68994  
District Court Case No.: CV35969

**MOTION TO DISMISS  
UNTIMELY APPEAL**

**I. Introduction**

This Court has found that the final judgment from which an appeal could be taken in this lawsuit was noticed and filed on December 30, 2014. Appellants' filed this appeal on October 9, 2015. In other words, 288 days—over nine months—after the district court issued its final judgment. This appeal is therefore untimely and this Court should dismiss this untimely appeal for lack of jurisdiction.

**II. Case background and procedural history**

The current appeal is a duplicative appeal from Appeal No. 66858 regarding the district court's granting of Respondent Songer's motion to dismiss under NRS § 41.660, Nevada's anti-SLAPP statute. See, Appeal No. 66858. The district court granted Respondent Songer's motion on August 27, 2014; the order was noticed on November 19, 2014. See, Notice of Entry of Order Granting Songer's Motion to Dismiss, attached as Exhibit A. Based on the success of the anti-SLAPP motion, the

district court was required to award attorney's fees and costs. See, NRS § 41.670 (2013). Consequently, the district court ordered briefing and held a hearing on to determine the amount of fees and costs to award. *See*, Order Awarding Fees and Costs, attached hereto as Exhibit B.

Appellants filed their initial notice of appeal on October 28, 2014; then an amended appeal on December 23, 2014. See, Appeal 66858. On January 29, 2015, Respondent Songer filed a notice of appeal on the order awarding attorney's fees and costs. See, Appeal No. 67414.

The appeals, No. 66858 and No. 67414, paralleled one another until April 14, 2015. The parties all understood there were two related and consecutive appeals pending: one on the substantive issue of the anti-SLAPP application, and one on the substantive issue of setting the attorney's fees rate at the prevailing market rate. See, Appeals Nos. 66858 and 67414. When this Court issued its Order to Show Cause regarding jurisdiction in Appeal No. 66858, all parties knew and understood there were no remaining issues for the district court to decide. During the Order to Show Cause briefing, however, Appellants failed to carry their burden regarding jurisdiction and this Court dismissed Appeal No. 66858 on June 1, 2015. Appellants never filed any post-appellate relief with this Court and this Court issued remittitur on July 10, 2015.

Instead of filing for relief with this Court, Appellants filed a "Motion for Final Dismissal" with the district court on June 15, 2015. This appeal arises from that motion practice whose sole purpose of was to obtain a "final order" so Appellants could once again appeal the substantive anti-SLAPP issue.

This Court also issued a similar Order to Show Cause in Appeal No. 67414. The key difference between the two appeals is Respondent Songer carried his burden of showing that this Court had proper jurisdiction over Appeal No. 67414; Appellants' did not carry their burden. This Court re-instated briefing on Appeal No.

67414, agreeing that the Order Awarding Attorney's Fees and Costs, noticed on December 30, 2014, was the final judgment in this lawsuit from which an appeal could be taken. *See*, Order Re-Instating Briefing, filed September 16, 2015, attached as Exhibit C.

**III. The Court should dismiss Appellants' current appeal as untimely.**

Nevada Rule of Appellate Procedure 3A(b)(1) allows for an appeal from a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." NRAP 3A. NRAP only provides limited exceptions for failing to comply with the 30-day rule and those are exclusive to criminal matters. NRAP 4(c). There are no parallel exceptions in the civil matters.

Thus, appealing from a final judgment, and following this Court's appellate rules are critical and imperative to any appeal. In *Weddell v. Stewart*, this Court emphasized disregarding directives are "unfortunately all too common," and the Court took the opportunity to "emphasize that failure to...comply with this court's directives in a timely fashion is not without consequence." 127 Nev. Adv. Op. 58, 261 P3d 1080 (2011)(Appeal dismissed for failing to pay the filing fee)(emphasis added). *Id.* These consequences include "loss of the right to appeal." *Id.*

The Court noted "[i]t is imperative that the parties follow the applicable procedural rules and that they comply in a timely fashion with our directives." *Id.* at 1084. Likewise, "parties are not at liberty to disobey notices, orders, or any other directives issued by this court." *Id.* at 1085. *See also*, *Huckabay v. NC Auto Parts LLC*, 130 Nev. Adv. Op. 23, 322 P.3d 429 (2014)(Court dismissed an appeal for the failure to timely file the opening brief and appendix).

Thus, the parties' obligation reasonably extends to eliminating confusion and following the rules of civil and appellate procedures. This includes purposefully creating superfluous judgments and appeals because of the confusion

it can create at the appellate level. *Campos-Garcia v. Johnson*, 130 Nev. Adv. Op. 64, 331 P.3d 890, 891 (2014). “When district courts, after entering an appealable order, go on to enter a judgment on the same issue, the judgment is superfluous....Because superfluous judgments are unnecessary and confuse appellate jurisdiction[.]” *Id.* (internal cites omitted). A superfluous judgment is one which fails to revise or disturb the legal rights and obligations in the prior final judgment. *See, Morrell v. Edwards*, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982).

Here, this Court re-instated briefing on Appeal No. 67414 based on the fact the Order Awarding Attorney’s Fees and Costs was the final appealable judgment in this lawsuit. *See*, Exhibit C. Appellants had their opportunity to make the same argument to this Court that Mr. Songer did—the final judgment in this matter was order awarding attorney’s fees noticed on December 30, 2014—and failed to carry their burden during their respective order to show cause. *See*, Order Dismissing Appeal No. 66858, filed June 1, 2015, attached as Exhibit D.

Instead of following the Nevada Rules of Appellate Procedure, which establishes a process for an aggrieved party to dispute a ruling, Appellants decided to try something different. Appellants determined filing a “Motion for Final Dismissal” in the district court was their only option. *Campos-Garcia*, 331 P.3d at. 891. Appellants’ motion urged the district court to issue a superfluous judgment so they could bring this untimely appeal on the substantive issue in Appeal No. 66858, the anti-SLAPP ruling.

This current appeal is the same exact appeal as the one this Court dismissed in Appeal No. 66858, based on the same final judgment. Nothing in District Court Judge Wanker’s “Order of Dismissal” even comes close to revising or disturbing either parties’ legal rights or obligations. *See*, Order of Dismissal, filed September 15, 2015, attached as Exhibit E. The district court recited the procedural history of the case and laid out its intent in issuing a final judgment. *Id.* The district court’s

intent, however, was already evident in the court's prior orders, including the final judgment awarding fees and costs. *Id.*

Thus, an appeal from the district court's "Order of Dismissal" is untimely and cannot be allowed to go forward. The final judgment which controls this entire lawsuit is the Order Awarding Fees and Costs. See, Exhibit B. Nothing in the "Order of Dismissal" changes any of the substantive issues in the case. Simply, filing a new order to allow Appellants a second bite at the substantive appeal on the anti-SLAPP issue is improper under this Court's vast and longstanding jurisprudence. As a result, this Court should dismiss this untimely appeal in its entirety.

#### IV. Conclusion

Appellants had their opportunity to appeal the substantive issue on the anti-SLAPP issue; however, they failed to carry their burden with this Court to establish jurisdiction. This failure is not grounds for seeking a purportedly new final judgment to attempt to appeal the same issue again. Appellants had their opportunity, and it is now over. This appeal is not from a final judgment, but from a superfluous order which failed to revise or disturb the legal rights and obligations of the parties in the final judgment of this lawsuit. As a result, Respondent Songer asks this Court to dismiss this appeal as untimely and for a lack of jurisdiction.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

*for PC*

By: \_\_\_\_\_

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

*Attorneys for Respondent, PAT SONGER*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of November, 2015, service of the foregoing **MOTION TO DISMISS UNTIMELY APPEAL** was made by the Supreme Court's electronic filing system to the email address registered to:

Daniel Marks, Esq.  
Adam Levine, Esq.  
LAW OFFICES OF DANIEL MARKS  
610 South Ninth Street  
Las Vegas, NV 89101

*Attorneys for Appellants*

*/s/ Joanna F. Alo-Sitagata*

---

An Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

**EXHIBIT “A”**

**EXHIBIT “A”**

1 NEOJ

2 JOSEPH P. GARIN, ESQ.

3 NEVADA BAR NO. 6653

4 SIRIA L. GUTIERREZ, ESQ.

5 NEVADA BAR NO. 11981

6 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

7 9900 Covington Cross Drive, Suite 120

8 Las Vegas, Nevada 89144

9 Phone: (702) 382-1500

10 Fax: (702) 382-1512

11 [jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

12 [sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

13 *Attorneys for Defendant,*

14 PAT SONGER

15 IN THE FIFTH JUDICIAL DISTRICT COURT

16 NYE COUNTY, NEVADA

17 RAYMOND DELUCCHI and TOMMY  
18 HOLLIS,

19 Plaintiffs,

20 v.

21 PAT SONGER and ERICKSON, THORPE  
22 & SWAINSTON, LTD.,

23 Defendants.

CASE NO: CV35969

DEPT NO: 1

NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT PAT  
SONGER'S SPECIAL MOTION TO  
DISMISS PURSUANT TO NRS § 41.660

24 Please take notice that Defendant Pat Songer's Special Motion to Dismiss Pursuant  
25 to NRS §41.660, was entered on November 19, 2014. A copy of said Order is attached  
26 hereto and made part hereof.

27 DATED this 3<sup>rd</sup> day of December, 2014.

28 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

*Attorneys for Defendant,*

PAT SONGER

FILED

2014 DEC -4 A 10:19

NYE COUNTY CLERK  
BY DEPUTY Sarah Westfall

CERTIFICATE OF SERVICE

I hereby certify that on the 3<sup>rd</sup> day of December, 2014, service of the foregoing  
NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL  
MOTION TO DISMISS PURSUANT TO NRS § 41.660 was made by depositing a true and  
correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

Daniel Marks, Esq.  
Adam Levine, Esq.  
Law Offices of Daniel Marks  
610 South Ninth Street  
Las Vegas, NV 89101

*Attorneys for Plaintiffs*

Todd R. Alexander, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, 3<sup>rd</sup> Flr.  
Reno, NV 89519

*Attorneys for Defendant,  
Erickson, Thorpe & Swainston, Ltd.*



An Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

1 **ORDR**

2 **JOSEPH P. GARIN, ESQ.**

3 **NEVADA BAR NO. 6653**

4 **SIRIA L. GUTIERREZ, ESQ.**

5 **NEVADA BAR NO. 11981**

6 **LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.**

7 **9900 Covington Cross Drive, Suite 120**

8 **Las Vegas, Nevada 89144**

9 **Phone: (702) 382-1500**

10 **Fax: (702) 382-1512**

11 **lgarin@lipsonneilson.com**

12 **sgutierrez@lipsonneilson.com**

13 *Attorneys for Defendant,*

14 **PAT SONGER**

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**

16 **NYE COUNTY, NEVADA**

17 **RAYMOND DELUCCHI and TOMMY**

18 **HOLLIS,**

19 **Plaintiffs,**

20 **v.**

21 **PAT SONGER and ERICKSON, THORPE**

22 **& SWAINSTON, LTD.,**

23 **Defendants.**

24 **CASE NO: CV35969**

25 **DEPT NO: 1**

26 **ORDER GRANTING**

27 **DEFENDANT PAT SONGER'S**

28 **SPECIAL MOTION TO DISMISS**

**PURSUANT TO NRS § 41.660**

Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez, Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston, LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings and papers on file, the motion, opposition, and supplemental briefing having heard argument thereon, and with good cause appearing therefore, find as follows:

**CONCLUSIONS OF LAW**

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

1 what the Legislature intended by the first statute." See *In re Estate of*  
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,  
3 (1975).

- 4 2. When a statute's doubtful interpretation is made clear through subsequent  
5 legislation, we may consider the subsequent legislation persuasive evidence of  
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*  
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute  
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the  
12 moving party must establish by a preponderance of the evidence, that the  
13 claim is based upon a good faith communication in furtherance of the right to  
14 petition or the right to free speech in direct connection with an issue of public  
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the  
17 plaintiff must established by clear and convincing evidence a probability of  
18 prevailing on the claim.
- 19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the  
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right  
22 to free speech in direct connection with an issue of public concern means  
23 any: (2) communication of information or a complaint to a Legislator, officer  
24 or employee of the Federal Government, this state or a political subdivision  
25 of this state, regarding a matter reasonably of concern to the respective  
26 governmental entity; (3) Written or oral statement made in direct connection  
27 with an issue under consideration by a legislative, executive or judicial body,  
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

### FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittnie Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

under consideration by the Town authorized by law in the disciplinary actions against Messrs. Delucchi and Hollis.

19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of prevailing on their claims of defamation and intentional infliction of emotional distress.

21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice once the Court has awarded fees and costs. The Court will hold a hearing on Defendant Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.


DATED this 18<sup>th</sup> day of November, 2014.

  
DISTRICT COURT JUDGE

Submitted by:

LIPSON, NEILSON, COLE, SELTZER  
& GARIN, P.C.

By:

  
JOSEPH P. GARIN, ESQ.  
NEVADA BAR NO. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR NO. 11981  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500

*Attorneys for Defendant,*  
PAT SONGER

**EXHIBIT “B”**

**EXHIBIT “B”**

1 NEOJ  
LAW OFFICE OF DANIEL MARKS  
2 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
3 ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
4 610 South Ninth Street  
Las Vegas, Nevada 89101  
5 (702) 386-0536: FAX (702) 386-6812  
*Attorneys for Plaintiffs*  
6

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF NYE  
9

10 RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV35969  
Dept. No. I

11 Plaintiffs,  
12

13 v.

14 PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

15 Defendants.  
16

17 NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS

18 TO: PAT SONGER, Defendant;

19 TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;

20 TO: ERICKSON THORPE & SWAINSTON, LTD., Defendant, and

21 TO: TODD ALEXANDER, ESQ. Attorney for Defendant Erickson Thorpe & Swainston, Ltd.:

22 ///

23 ///

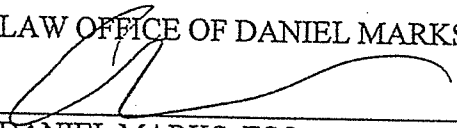
24 ///

25 ///

1 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Awarding Fees  
2 and Costs was entered in the above entitled matter on the 29<sup>th</sup> day of December, 2014, a copy of which  
3 is attached hereto.

4 DATED this 30 day of December, 2014.

5 LAW OFFICE OF DANIEL MARKS

6   
7 DANIEL MARKS, ESQ.

8 Nevada State Bar No. 002003

9 ADAM LEVINE, ESQ.

10 Nevada State Bar No. 004673

11 610 South Ninth Street

12 Las Vegas, Nevada 89101

13 (702) 386-0536: FAX (702) 386-6812

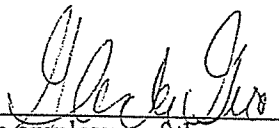
14 Attorneys for Plaintiffs

15 CERTIFICATE OF MAILING

16 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on  
17 the 30<sup>th</sup> day of December, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada,  
18 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the  
19 foregoing NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS, to the addresses as  
20 follows:  
21

22 Todd Alexander, Esq.  
23 LEMONS, GRUNDY & EISENBERG  
24 6005 Plumas Street, Suite 300  
25 Reno, Nevada 89519  
Attorney for Defendant ETS

Siria L. Gutierrez, Esq.  
LIPSON, NEILSON, COLE, SELTZER GARIN  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Attorney for Defendant Pat Songer

  
An employee of the  
LAW OFFICE OF DANIEL MARKS

DEC 29 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY

Veronica Aguilar

LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536: FAX (702) 386-6812  
*Attorneys for Plaintiffs*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV35969  
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

ORDER AWARDING FEES AND COSTS

This matter having come on for hearing on the 2<sup>nd</sup> day of December, 2014 on Defendant Erickson Thorpe & Swainston's Motion for Costs Attorney's Fees, and Additional Compensation Pursuant to Nevada's ANTI-Slapp Statute (NRS 41.670), Defendant Pat Songer's Motion for Attorney's Fees and Costs, and Plaintiffs' Motion to Retax Costs, with Plaintiffs being represented by Adam Levine, Esq. of the Law Office of Daniel Marks, and Defendant Pat Songer being represented by Siria L. Gutierrez, Esq. of Lipson, Neilson, Cole, Seltzer, Garin, and Defendant Erickson, Thorpe & Swainston, Ltd., being represented by Todd Alexander, Esq. of Lemons, Grundy & Eisenberg; and the Court having reviewed the pleadings on file and having heard oral arguments of counsel;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that costs are re-taxed and awarded against the Plaintiffs jointly and severally as follows: \$702 in favor of Defendant Songer and \$709.38 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorney's fees are awarded against the Plaintiffs jointly and severally as follows: \$21,767.50 in favor of Defendant Songer and \$22,907.50 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court declines to award any additional monies pursuant to NRS 41.670(3)(a) as the Court does not believe such an additional award appropriate under the facts of the case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' request for a stay of execution on the award of fees and costs pending appeal is GRANTED. The court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue will provide adequate security for the attorney's fees and cost award in the event the judgment is affirmed on appeal. However,

///

///

///

///

///

///

///

///

///

///

should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this 29<sup>th</sup> day of December, 2014.

**KIMBERLY A. WANKER**  
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

LIPSON, NEILSON, COLE, SELTZER, GARIN

DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

  
SIRIA L. GUTIERREZ, ESQ.  
Nevada State Bar No. 011981  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Defendant Pat Songer*

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

TODD ALEXANDER, ESQ.  
Nevada State Bar No. 010846  
6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
*Attorneys for Defendant ETS*

should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this \_\_\_\_ day of December, 2014.


DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

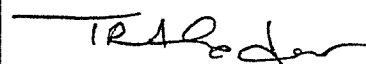
LIPSON, NEILSON, COLE, SELTZER, GARIN

  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

  
SIRIA L. GUTIERREZ, ESQ.  
Nevada State Bar No. 011981  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Defendant Pat Songer*

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

  
TODD ALEXANDER, ESQ.  
Nevada State Bar No. 010846  
6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
*Attorneys for Defendant ETS*

**EXHIBIT “C”**

**EXHIBIT “C”**

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAT SONGER,

Appellant,

vs.

RAYMOND DELUCCHI; AND TOMMY  
HOLLIS,

Respondents.

No. 67414

**FILED**

SEP 16 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER REINSTATING BRIEFING*

In the response to this court's order to show cause, appellant has demonstrated that the order awarding attorney fees and costs appealed from constitutes a final appealable judgment. Accordingly, this appeal may proceed, and we reinstate the briefing schedule as follows. Appellant shall have 30 days from the date of this order to file and serve the opening brief and appendix.<sup>1</sup> Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

*[Signature]*, C.J.

cc: Lipson Neilson Cole Seltzer & Garin, P.C.  
Law Office of Daniel Marks

<sup>1</sup>As it appears that all requested transcripts have been delivered and certificates of delivery have been filed with this court, the deadlines for doing so will not be reinstated.

**EXHIBIT “D”**

**EXHIBIT “D”**

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY  
HOLLIS,

Appellants,

vs.

PAT SONGER,

Respondents.

No. 66858

**FILED**

JUN 01 2015

*ORDER DISMISSING APPEAL*

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

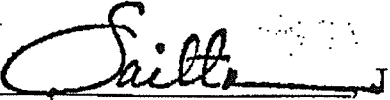
This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

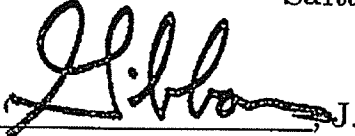
When our initial review of the docketing statement and other documents before this court revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Having considered appellants' response and respondent's reply, we are not convinced that the district court has entered a final appealable judgment in this matter.


Although the district court's November 19, 2014, order grants a special motion to dismiss, it also states that "the case will be dismissed with prejudice once the Court has awarded fees and costs." The order thus contemplates dismissal of the action at a later date and does not constitute a final judgment. See NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426; 996 P.2d 416, 417 (2000). We disagree with appellants' contention that a dismissal took effect upon the subsequent entry of an order awarding fees and costs where appellants represent that the order

"does not state that the action is dismissed as of the filing of that Order."<sup>1</sup>  
Further, we decline to remand this matter to the district court for entry of an order of dismissal. Appellants may file a notice of appeal from any final judgment entered in this matter. Accordingly, we

ORDER this appeal DISMISSED.

  
Saitta

  
Gibbons

  
Pickering

cc: Hon. Kimberly A. Wanker, District Judge  
Carolyn Worrell, Settlement Judge  
Law Office of Daniel Marks  
Lipson Neilson Cole Seltzer & Garin, P.C.  
Nye County Clerk

---

<sup>1</sup>Appellants have not provided a copy of the order awarding fees and costs.

**EXHIBIT “E”**

**EXHIBIT “E”**



Case No. CV35969  
Dept. 1

FILED

2015 SEP 15 PM 4:24  
Sarah Westfall  
NYE COUNTY CLERK  
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and TOMMY  
HOLLIS,

Plaintiffs,

**ORDER OF DISMISSAL**

vs.

PAT SONGER and EROCKSON, THORPE  
& SWAINSTON, LTD,

Defendants.

On September 17, 2014, the Court entered Findings of Fact, Conclusions of Law and an Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss. The Court did not award attorneys' fees and costs as part of said Order, instead ordering said parties to file a motion, opposition and reply concerning said attorneys' fees and costs. A Notice of Entry of Order was filed on October 7, 2014. Plaintiffs filed a Notice of Appeal on October 28, 2014.

On November 19, 2014, the Court entered a written Order on Pat Songer's Special Motion to Dismiss Pursuant to NRS 41.660. The Court advised the parties the case would be dismissed with prejudice once the Court awarded attorneys' fees and costs. The Court set a hearing on Songer's Motion for Attorneys Fees and Costs for December 2, 2014. A Notice of Entry of Order was entered on the Songer Order on December 4, 2014.



1 The Plaintiffs filed an Amended Notice of Appeal on December 17, 2014, to  
2 encompass both the District Court's September 17, 2014 Order, and its November 19, 2014  
3 Order. The Court on December 29, 2014 issued an Order Awarding Attorneys' Fees and  
4 Costs. The December 29, 2014 Order failed to specifically state that the District Court was  
5 dismissing the case with prejudice.

6 On June 1, 2015, the Nevada Supreme Court issued an Order Dismissing Appeal,  
7 finding that the District Court had not issued a final order of dismissal in this case.

8 It was the intention of the District Court, in entering its September 17, 2014 Order,  
9 its November 19, 2014 Order, and its December 29, 2014 Order, read together, to dismiss  
10 this case in its entirety. In light of the Nevada Supreme Court's June 1, 2015 Order, and  
11 based upon the District Court's previous three orders, this case is now dismissed in its  
12 entirety, with prejudice.

13 Dated this 15<sup>th</sup> day of September, 2015.

A handwritten signature in black ink, appearing to read "K. Wanker", is written over a horizontal line.

16 KIMBERLY A. WANKER,  
17 DISTRICT COURT JUDGE

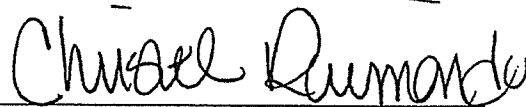


CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 15<sup>th</sup> day of September 2015, she mailed via U.S. mail a copy of the foregoing ORDER to the following:

Siria L. Gutierrez, Esq.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144

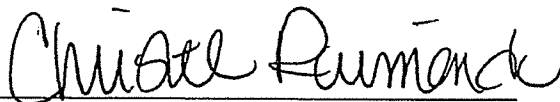
Adam Levine, Esq.  
610 South Ninth Street  
Las Vegas, NV 89101



CHRISTEL RAIMONDO, Clerk to  
DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social security number of any person.



CHRISTEL RAIMONDO, Clerk to  
DISTRICT JUDGE