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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


**PAT SONGER'S MOTION FOR
RECONSIDERATION BY THE
FULL COURT PER RULE 27(c)(2)**

Pat Songer, by and through his attorneys of record of Lipson, Neilson, Cole, Seltzer & Garin, P.C. and files this Motion for Reconsideration in accordance with NRAP 27(c)(2), NRAP 32, and NRAP 40(a)(1)-(2), and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 18th day of April, 2016.

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

By:


JOSEPH P. GARIN, ESQ.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Pat Songer requests the full Court review Chief Justice Parraguirre's Order entered on March 30, 2016.

Under this Court's rules, a single justice may act alone on non-appeal dispositive motions. NRAP 27(c)(2). Specifically,

a justice or judge of the Supreme Court or Court of Appeals may act alone on any motion but may not dismiss or otherwise determine an appeal or other proceeding. The Supreme Court or Court of Appeals may provide by order or rule that only the Supreme Court or Court of Appeals may act on any motion or class of motions. The court may review the action of a single justice or judge.

NRAP 27(c)(2)(2014).

On March 30, 2016, Chief Justice Parraguirre, alone, denied Pat Songer's Motion to Dismiss Untimely Appeal. *See*, attached Exhibit A, Order Denying Motion, March 30, 2016. As a result, Songer requests the entire Supreme Court review the denial. Because the denial arises from a Motion to Dismiss an Untimely Appeal, and due to the procedural irregularities that Appellants Delucchi and Hollis (collectively "Delucchi") created, it is important that the entire Court review the Order.

The denial of this particular Motion to Dismiss will encourage practitioners to seek superfluous judgments in order to seek another opportunity to appeal. And as this Court has noted, "[i]t is imperative that the parties follow the applicable procedural rules and that they comply in a timely fashion with our directives." *Weddell v. Stewart*, 127 Nev. Adv. Op. 58, 261 P3d 1080, 1084 (2011)(Appeal dismissed for failing to pay the filing fee); *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

1 file the opening brief and appendix). This Court discourages superfluous judgments
2 because, as it did here, “superfluous judgments are unnecessary and confuse appellate
3 jurisdiction[.]” *Campos-Garcia v. Johnson*, 130 Nev. Adv. Op. 64, 331 P.3d 890, 891
4 (2014). Thus, Songer submits that the ramifications of allowing a party, nay
5 encouraging a party, to seek superfluous judgments in order to seek a second untimely
6 appeal requires the full Court’s review.
7

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9 **II. Chief Justice Parraguirre’s Order Denying Motion and Reinstating Briefing
10 overlooked or misapprehended that District Court Judge Wanker issued a final
11 judgment on December 30, 2014, and thus Delucchi’s current appeal is an
12 untimely second appeal.**

13 Rule 27(c)(2) does not delineate the appropriate recourse for a party seeking full
14 court review or the standard for such review. NRAP 27(c)(2). Thus, Mr. Songer applies
15 the standard delineated in Rule 40(a)(1) and (c)(1). Rule 40 allows a party to file a
16 petition for reconsideration when the court has “overlooked or misapprehended a
17 material fact in the record or a material question of law in the case[.]” NRAP
18 40(c)(1)(2)(a).

19 Unfortunately, this matter has a convoluted procedural history, due to Mr.
20 Delucchi’s repeated efforts to circumvent the rules. Chief Justice Parraguirre is correct
21 that “this Court previously noted that the district court’s prior orders anticipated a final
22 judgment of dismissal.” *See*, Exhibit A, citing Order of Dismissal of Case No. 66858,
23 June 1, 2015. Indeed, a review of Judge Wanker’s Order Granting Defendant Pat
24 Songer’s Special Motion to Dismiss does include prospective language that the district
25 court intended to take additional action in the case, stating “the case will be dismissed
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1 with prejudice once the Court has awarded fees and costs[.]” *See*, attached Exhibit B,
2 Order Granting Defendant Pat Songer’s Special Motion to Dismiss Pursuant to NRS §
3 41.660, Entered November 19, 2014. As a result, this Court lacked jurisdiction over this
4 matter until Songer filed his Notice of Appeal on January 29, 2015.
5

6 After the district court granted Songer’s Motion to Dismiss, the court set a
7 briefing schedule on the mandatory award of attorney’s fees and costs and held oral
8 arguments on December 2, 2014. *See*, Exhibit C, Order Awarding Fees and Costs. Thus,
9 the district court did indeed retain jurisdiction over ruling on the issue of award and fees
10 as contemplated in the November 19th Order. The district court lost all jurisdiction upon
11 Songer filing his notice of appeal from the final judgment the court entered on
12 December 30, 2014. *See*, Docket Case No. 67414. Delucchi failed to file an Amended
13 Notice of Appeal or a cross-appeal after entry of the final judgment on December 30,
14 2014. *Id.*; Case No. 66858. Notably, this Court agreed that Songer’s appeal, No. 67414,
15 was a timely appeal from a final judgment—the Order Awarding Fees and Costs—and
16 reinstated briefing. *See*, Exhibit D, Order Reinstating Briefing, No. 67414, September
17 16, 2015.
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22 Chief Justice Parraguirre’s mistake of fact is in assuming the rogue, superfluous
23 judgment that Judge Wanker issued on September 15, 2015, was the final judgment
24 Judge Wanker referred to in her November 19th Order. At the hearing on Delucchi’s
25 “Motion for Final Dismissal” everyone, including Delucchi’s counsel, was under the
26 impression the final judgment was the order on the attorney’s fees and costs and the case
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1 had ended at the district court level. *See*, Exhibit E, Transcript of Hearing on September
2 1, 2015, 2:16-19. Then, two weeks later, this Court agreed that the final judgment for the
3 underlying lawsuit was the one entered on December 30, 2014. *See*, Exhibit D. Judge
4 Wanker confirms that her final action in this matter was issue of attorney's fees. To wit,
5 "it was the intention of the District Court, in entering its September 17, 2014 Order, its
6 November 19, 2014 Order, and its December 29, 2014 Order, read together, to dismiss
7 this case in its entirety." *See*, attached Exhibit F, Order of Dismissal, September 15,
8 2015. Thus, while the September 15, 2015, superfluous order might be last in time, the
9 order is not a true final judgment and the district court did not have jurisdiction to issue
10 that order. The September 15 order epitomizes the definition of a superfluous judgment
11 and fails to be a true final judgment from which an appeal may be taken.

12
13 The only reason the September 15, 2015, order even exists is because Delucchi
14 failed to show this Court how it had jurisdiction based on the order on attorney's fees
15 and costs. *See*, attached Exhibit G, Order of Dismissal, Case No. 66858. Delucchi failed
16 to exhaust the remedies at the appellate level and instead sought a "new order" from the
17 district court on the issue she decided a year prior. To be clear, the district court did not
18 have jurisdiction to entertain the "Motion for Final Judgment", nor to enter the "Order of
19 Dismissal." Jurisdiction was firmly rooted with this Court in appeal No. 67414 during
20 the motion practice with the district court. As a result, the appeal from the September
21 15th Order is an untimely second appeal that should be dismissed.

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1 **III. This Court's should reconsider and dismiss this untimely second appeal.**

2 If this Court refuses to dismiss this untimely second appeal, then the Court is
3 overruling its precedent in *Huckabay Props. V. NC Auto Parts*, encouraging
4 practitioners to overfill the Court's docket with untimely appeals, and the Court will
5 deprive Pat Songer of an expeditious resolution of this matter. 130 Nev. Adv. Op. 23,
6 322 P.3d 429. In *Huckabay*, this Court sent a clear message to practitioners that
7 adhering to the rules was imperative to the expeditious resolution of any matter. *Id.*

8
9
10 The Court firmly stated:

11 Although this court has a sound policy preference for deciding cases
12 on the merits, that policy is not absolute and must be balanced against
13 countervailing policy considerations, including the public's interest in
14 expeditious resolution of appeals, the parties' interests in bringing
15 litigation to a final and stable judgment, prejudice to the opposing
16 side, and judicial administration concerns, such as the court's need to
17 manage its sizeable and growing docket.

18 *Id.* at 430-31. (emphasis added).

19 Importantly, the Court noted that "a party cannot rely on the preference for
20 deciding cases on the merits to the exclusion of all other policy considerations, and
21 when an appellant fails to adhere to Nevada's appellate procedure rules, which
22 embody judicial administration and fairness concerns, or fails to comply with court
23 directives or orders, that appellant does so at the risk of forfeiting appellate relief." *Id.*
24 at 434. This reasoning naturally extends to the party's failure of abiding by the
25 Nevada Rules of Civil Procedure.

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A. Delucchi failed to exhaust appellate remedies and failed to meet their burden of proof of jurisdiction in appeal No. 66858.

The proper course for Delucchi was to exhaust appellate remedies, not to seek a rogue, superfluous order from the district court who no longer had jurisdiction. Delucchi should have heeded this Court's footnote in the dismissal, "Appellants have not provided a copy of the order awarding fees and costs" and filed a petition for reconsideration with the pertinent order. See, Exhibit G, fn. 1. Under this procedure, the Court could have evaluated the order on attorney's fees and determined that the order was a final judgment, as it correctly did in appeal No. 67414.

Better yet, Delucchi could have provided the order on attorney's fees to their response to the order to show cause. This Court's Order to Show Cause in appeal No. 66858 required that "In response to this order, [Delucchi] should submit documentation that establishes this court's jurisdiction including, but not limited to, a copy of any written district court order dismissing the case against Pat Songer." See, Exhibit H, Order to Show Cause, Case No. 66858, April 14, 2015. Delucchi failed to attach any of the district court orders, even though this Court practically directed them to do so, and chose instead to attach an order in support of a limited remand. See, Exhibit I, Response to Order To Show Cause, Case No. 66858, May 6, 2015. Instead, Delucchi ignored this Court's directive and, in turn, created a procedural mess.

In sum, had Delucchi carried their burden of establishing jurisdiction the first time around, this entire procedural nightmare could have, and should have, been

1 avoided. Instead, Delucchi repeatedly failed to comply with the rules and made up
2 their own rules causing several appellate and jurisdictional issues.

3
4 **B. Delucchi urged the district court to enter a rogue, superfluous order
despite its lack of jurisdiction.**

5 Instead of following the Nevada Rules of Appellate Procedure to clarify the
6 potential factual mistake and their omission of the key order that established
7 jurisdiction, Delucchi ran to the district court and asked for a “new” order. *See*,
8 Exhibit J, Re-Notice of Plaintiff’s Motion for Order of Final Dismissal, June 15, 2015.
9 Delucchi argued “because the prior orders entered by this Court have been deemed
10 insufficient by the Supreme Court to constitute a final judgment for purposes of
11 appellate jurisdiction, Plaintiffs therefore request that an Order of Final Dismissal in
12 the above entitled case be issued for purposes of rendering the matter right for
13 appellate review.” *Id.* This argument failed to recognize that Delucchi was the one
14 who failed to give this Court all the information it needed to determine jurisdiction.
15 The Court did not determine that the order on attorney’s fees was “insufficient;”
16 rather, Delucchi failed to provide the Court with the order, thus there could be no
17 determination that the order was “insufficient.”
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23 Delucchi’s motion invited the district court to issue a superfluous judgment to
24 get another chance at an appeal. Nothing in the district court’s rogue, superfluous
25 order changed the position or posture of the parties’ rights or obligations—everything
26 remained the same. *Morrell v. Edwards*, 98 Nev. 91, 92, 640 P.2d 1322, 1324
27 (1982)(A superfluous judgment is one which fails to revise or disturb the legal rights
28

1 and obligations in the prior final judgment.). Finally, Delucchi asked for the district
2 court to take action on a case where it lacked jurisdiction. Delucchi knew the case was
3 up on appeal in No. 67414, and Delucchi even argued that the Order on Attorney's
4 Fees and Costs was the final judgment on this matter in response to his Order to Show
5 Cause; Delucchi failed to provide the Court with the order for review. *See*, Exhibit I,
6 3:14-5:2.
7

8
9 This Court was correct in dismissing appeal No. 66858 because Delucchi failed
10 to follow the rules of this Court and as a result lost the right to appeal on the anti-
11 SLAPP issue. The current appeal is an untimely, second appeal on the same issue
12 raised in appeal No. 66858. Delucchi created this procedural mess by failing to
13 comply with the Court's rules. The Court cannot encourage parties to behave with
14 such reckless disregard for the rules without consequences.
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17 **C. The continuance of this second appeal offends traditional notions of fair**
18 **play and justice and prejudices Mr. Songer.**

19 Songer is entitled to relief and has been prejudiced by the merry-go round that
20 Delucchi created. Delucchi had the opportunity to appeal the anti-SLAPP issue and
21 failed to do so properly. Not wanting to accept their error, Delucchi demanded the
22 district court enter a "second chance" order to appeal and created a procedural mess.¹
23 All the while, Songer has followed the rules and had to live with this lawsuit tied up in
24 appeals for the last 14 months and counting. Although Songer has his own appeal
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28 ¹ Songer submits a demonstrative timeline of all pertinent events to demonstrate the procedural
chaos Delucchi created in this untimely second appeal. *See*, Exhibit K.

1 pending, No. 67414, that appeal has moved in proper course, is fully briefed, and the
2 Court hears oral arguments on May 10, 2016. Songer considered dismissing the
3 appeal upon the dismissal of appeal No. 66858 and collecting the attorney's fees
4 awarded as is, but decided against it because there appears to be no finality to the anti-
5 SLAPP issue. Without some firm resolution, Songer had no choice but to continue
6 with his current appeal.
7

8
9 If this appeal is allowed to continue, despite it being a second appeal on the
10 same issue it encourages parties to seek superfluous judgments to get a second bite at
11 the appellate apple. This is not a sound policy, it is unfair to Songer, and places a
12 heavy burden on this already burdened Court and the Court of Appeals.
13

14 **IV. Conclusion**

15 This Court's policies require dismissal of this untimely, second appeal. The
16 appeal does not arise from a true final judgment, but instead from a rogue, superfluous
17 judgment from a district court who lacked jurisdiction to even issue the order.
18 Allowing this appeal to go forward would only serve to reward Delucchi for their
19 failure to abide by this Court's rules in Case No. 66858 and for making up their own
20 rules instead. The Court should not tolerate such unruliness and should dismiss this
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1 appeal and provide Songer with some overdue finality.

2 Dated this 18th day of April, 2016.

3
4 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

5
6 By: 

7 JOSEPH P. GARIN, ESQ.

8 NEVADA BAR NO. 6653

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14 Attorneys for Respondent, PAT SONGER

CERTIFICATION PURSUANT TO RULE 28.2

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

6 2. I further certify that this motion complies with the page limitations of
7 NRAP 32(a)(7), excluding the parts of the brief exempted by NRAP 32(a)(7)(C).

8 3. Finally, I hereby certify that I have read this appellate brief, and to the
9 best of my knowledge, information, and belief, it is not frivolous or interposed for any
10 improper purpose. I further certify that this brief complies with all applicable Nevada
11 Rules of Appellate Procedure, in particular NRAP 28(3)(1), which requires every
12 assertion in the brief regarding matters in the record to be supported by a reference to
13 the page and volume number, if any, of the transcript or appendix where the matter
14 relief on is to be found.

15 4. I understand that I may be subject to sanctions in the event that the
16 accompanying brief is not in conformity with the requirements of the Nevada Rules of
17 Appellate Procedure.

18
19 Dated this 18th day of April, 2016.

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

21 By: 

22 JOSEPH P. GARIN, ESQ.

23 NEVADA BAR NO. 6653

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Attorneys for Respondent, PAT SONGER

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 2016, service of the foregoing **PAT SONGER'S MOTION FOR RECONSIDERATION BY THE FULL COURT PER RULE 27(c)(2)** was made by the Supreme Court's electronic filing system to the email address registered to:

Daniel Marks, Esq.
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Attorneys for Appellants

/s/ Joanna F. Alo-Sitagata

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

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

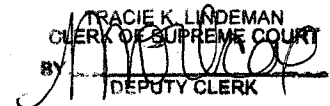
PAT SONGER,

Respondent.

No. 68994

FILED

MAR 30 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DENYING MOTION AND REINSTATING BRIEFING
SCHEDULE*

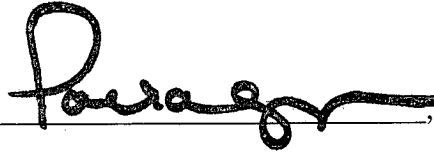
This is an appeal from a final judgment dismissing an action after granting a special motion to dismiss and awarding attorney fees and costs. Respondent has filed a motion to dismiss the appeal as untimely. The motion is opposed, and respondent has filed a reply. Having considered the motion, opposition, and reply, we deny the motion. This court previously noted that the district court's prior orders anticipated a final judgment of dismissal. *See Delucchi v. Songer*, Docket No. 66858 (Order Dismissing Appeal, June 1, 2015).

Having determined that this appeal may proceed, we reinstate the transcript preparation and briefing schedules as follows. Appellants shall have 11 days from the date of this order to serve and file, in this court, a transcript request form or certificate of no transcript request in compliance with NRAP 9(a). Appellants shall have 90 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). We caution the

16-09988

parties that failure to comply with this order may result in the imposition of sanctions. NRAP 31(d)

It is so ORDERED.

 C.J.

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

EXHIBIT E

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9 TRANSCRIPT OF TAPE-RECORDED

10 HEARING IN THE MATTER OF

11 SONGER V. DELUCCHI, ET AL.

12 SEPTEMBER 1, 2015

13

14 CASE NUMBER CV 35969

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21 Job Number: 264787

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1 THE COURT: Um, our next case is case number CV
2 35969, Ray- -- Raymond Delucchi and Tommy Hollis versus -
3 - let's see, Mr. Songer -- Patrick Songer and, uh -- et
4 al.

5 MS. GUTIERREZ: Good morning, Your Honor. Siria
6 Gutierrez for Pat Songer.

7 THE COURT: Good morning. Do we -- we have -- we
8 should have I think, uh -- we have, um, Daniel Marx's
9 office maybe by phone?

10 MR. LEVINE: I'm sorry; hello?

11 THE COURT: Hello.

12 MR. LEVINE: Hi.

13 THE COURT: Hi. Judge Walker here. I just called the
14 case. Um, do we have Adam Levine? Are you on?

15 MR. LEVINE: That is me, Adam Levine.

16 THE COURT: Okay. This is a crazy case and I've got
17 to find my notes here, um, but, uh -- the case that
18 hasn't ended.

19 MR. LEVINE: We all thought it did but we were
20 wrong.

21 THE COURT: Well, the Nevada Supreme Court said it
22 didn't.

23 MR. LEVINE: That's what I'm saying. That's correct.
24 The Nevada Supreme Court said it hasn't, notwithstanding
25 everyone's belief to the contrary.

1 THE COURT: Well -- and I've got my notes here --
2 this is what happened.

3 On September 17th of 2014 I issued an order. I
4 issued findings of fact, conclusions of law, and an order
5 granting the defendant Erickson, Thorpe, & Swainston's
6 special motion to dismiss.

7 But that order discussed the timeframe for filing a
8 motion for attorney's fees. You appealed that order. Your
9 notice of appeal was filed on October 28th of 2014.

10 Subsequent to that I issued an order on November
11 19th of 2014, an order granting the defendant, Pat
12 Songer, special motion. So there is Erickson -- uh,
13 Erickson's order and there was a Songer order.

14 They were different orders because there were
15 different parties. I granted their special motion to
16 dismiss pursuant to Nevada Revised Statute
17 41.660. I mentioned the case will be -- be dismissed with
18 prejudice when the attorney's fees and costs are awarded.

19 There was a notice of entry of order filed on that
20 case in both of those orders. This particular notice of
21 entry of order was December 4th of 2014.

22 On December 17th, 2014, Mr. Levine, you filed an
23 amended notice of appeal to encompass both of the orders,
24 the September 17th, 2014 order, which you had previously
25 appealed, and the December 4th, 2014 Songer dismissal.

1 Then on December 29th, uh, 2014, I issued a single
2 order awarding attorney's fees and costs. The notice of
3 entry of order, uh, awarding the fees and costs was
4 January 7th of 2015.

5 There was an appeal from that order; it just wasn't
6 by your office. On January 29th, 2015 defendant Pat
7 Songer filed a notice of appeal from my December 29th,
8 2015 [sic] order.

9 Um, then apparently, um, uh, on April 29th of 2015
10 Erickson, Thorpe, Swainston filed with the Nevada Supreme
11 Court an order dismissing their portion of the appeal.

12 And on May 28, 2015 the district court -- in other
13 words, I signed a stipulation and there -- pursuant to a
14 stipulation I dismissed or vacated Erickson's attorney's
15 fees and costs with prejudice.

16 So Erickson Erickson, Swainston, Thorpe [sic] is
17 completely out of this.

18 MS. GUTIERREZ: That's correct, Your Honor.

19 THE COURT: The appeal that is currently at the
20 Nevada Supreme Court is Pat Songer's notice of appeal on
21 the attorney's fees and costs I awarded in that case.

22 Um, Mr. Levine, you never appealed my December 29th,
23 2014 order. My understanding is now you want me to issue
24 a new order that says this is -- what happened in my
25 September order and my December order was I reserve the

1 attorney's fees, then I issued a final order; that issue
2 of December 29 of 2014 -- which was prepared by your
3 office, which I said this is the award of the attorney's
4 fees and costs in this case.

5 You prepared that order. You didn't appeal from that
6 order. Now you want me, in light of the Supreme Court
7 telling you, hey, that order you appealed from, um, on
8 September 17th of 2014 and the December 4th, 2014 order
9 were not final because the attorney's fees issue hadn't
10 been resolved.

11 So that's not a final order; we're dismissing your
12 appeal from the Nevada Supreme Court. The issue is you
13 didn't appeal the December 29th -- the final order
14 addressing attorney's fees and costs. Now you're asking
15 me to issue a new order so you can appeal it.

16 MR. LEVINE: Close.

17 THE COURT: Okay.

18 MR. LEVINE: I did not appeal the December 29 order
19 because we do not dispute the amount of attorney's fees
20 awarded.

21 What happened was, as set forth in Exhibit 3 to my
22 motion, the Nevada Supreme Court issued an April 14 -- on
23 April 14, 2015 an order to show cause --

24 THE COURT: Exactly.

25 MR. LEVINE: -- suggesting that the order granting

1 Songer's special motion to dismiss may not be a final
2 judgment [inaudible] --

3 THE COURT: Exactly.

4 MR. LEVINE: -- because a final judgment is one that
5 resolves all the parties' claims and rights, leaving
6 nothing of the court's future consideration except post-
7 judgment issues.

8 And because the language of that order from N- --
9 November 19 indicated that the court intended to award
10 attorney's fees in the future, the Supreme Court, in
11 [inaudible] to show cause, asked us to respond as to
12 whether or not that was a final judgment.

13 We responded with the argument it was intended to be
14 a final judgment; or alternatively, the order became
15 final once this court entered its subsequent award
16 awarding the attorney's fees.

17 And of course as you know, a premature notice of
18 appeal will be deemed timely once the final order is
19 entered.

20 The Supreme Court expressly rejected that argument
21 and that's why I attached Exhibit 4. The Supreme Court
22 said -- and this is for the order dismissing appeal --
23 "Although the district court's November 19, 2014 order
24 granted special motion to dismiss, it also states the
25 case will be dismissed with prejudice once the court has

1 awarded fees and costs."

2 THE COURT: Okay.

3 MR. LEVINE: "The order thus contemplates dismissal
4 of the action at a later date; it does not constitute a
5 final judgment."

6 And it's the next language which is controlling,
7 Your Honor. "We disagree with appellant's contention that
8 a dismissal took effect upon the ent- -- subsequent entry
9 of an order awarding the fees and costs where appellants
10 represent that the order does not state that the action
11 is dismissed as of the filing of that order.

12 "We further decline to remand this matter to the
13 district court for entry of an order of dismissal.
14 Appellants may file a notice of appeal for any final
15 judgment entered in this matter."

16 In other words, I made the argument that the
17 December award of attorney's fees rendered the judgment
18 final. The court rejected that argument.

19 THE COURT: Well, you can't have it both ways. You
20 can't tell me it's a final order and then tell me, but I
21 didn't appeal from it, so now, Judge, I want you to issue
22 a new order so I can appeal it to the Supreme Court. That
23 doesn't make any sense, either

24 MR. LEVINE: It's not arguing both ways. I argued to
25 the Supreme Court that the judgment should have been

1 deemed final as of December, where you entered the order
2 awarding fees.

3 THE COURT: I agree.

4 MR. LEVINE: Therefore, the appeal is timely because
5 a premature notice is effective under the Supreme Court's
6 rules.

7 The Supreme Court rejected that argument. They
8 rejected the argument expressly in their order. That page
9 -- the bottom page [inaudible] page 2. They rejected the
10 argument that your December order was the final judgment.

11 THE COURT: Well, I have to --

12 MR. LEVINE: I made that argument to them. They said
13 no.

14 THE COURT: Well, I, uh -- maybe they didn't under-
15 --

16 MR. LEVINE: We're bound by that whether we like it
17 or not, whether we think it's correct or not.

18 THE COURT: Well, here's the thing. My guess is
19 their law clerk didn't understand it, is the long and the
20 short of it.

21 But the only think I have, your -- your -- I'm
22 looking at the order dismissing appeal that was filed,
23 um, o- -- it was filed by Tracy Lindeman [ph], the clerk
24 of the Supreme Court, on June 1st of 2015.

25 MR. LEVINE: Correct. And that's where -- that's the

1 language. If you take a look at the language, "We
2 disagree with appellant's contention that a dismissal
3 took effect upon the subsequent entry of the court
4 awarding fees and costs."

5 That's your December order.

6 THE COURT: Right.

7 MR. LEVINE: That was my -- the argument I made to
8 the court is the same argument you just posed to me, Your
9 Honor.

10 THE COURT: Right.

11 MR. LEVINE: And unfortunately the Supreme Court
12 rejected that argument.

13 THE COURT: And it seems like you and I agree on
14 that argument, and I -- I don't think --

15 MR. LEVINE: Obvious -- yes.

16 THE COURT: -- I don't think that --

17 MR. LEVINE: If your -- if your interpretation --
18 which I agree with -- was correct, deemed correct by the
19 Supreme Court, the appeal was timely filed and the appeal
20 would not have been dismissed because it would have been
21 to my notice of appeal -- which you just read it into the
22 record -- may have been premature.

23 But of course, under the Nevada rules of public
24 procedure, a premature notice of appeal does not divest
25 the court of jurisdiction.

1 But while you and I agree, Your Honor, the Supreme
2 Court disagreed with you and I, notwithstanding the fact
3 that I made the exact same argument to them that you just
4 made to me.

5 THE COURT: Okay. Okay.

6 MR. LEVINE: As I said, I can file a notice of
7 appeal from any -- [inaudible] judgment entered in the
8 matter. They don't consider your December order the final
9 judgment.

10 MS. GUTIERREZ: Your Honor, may I respond?

11 MR. LEVINE: [inaudible] ministerial new entry of
12 final order of dismissal. I think it's ridiculous.

13 I also think it's ridiculous they didn't just, uh,
14 remand it for an interim. I think they want me to pay a
15 \$400 filing -- \$400 filing fee twice and keep my money.

16 But notwithstanding that fact, we are bound by the
17 order of the Nevada Supreme Court dated June 1, 2015
18 whether we agree with it or not. I think it's silly; I'll
19 go on the record saying that.

20 But I made the argument that -- that Pat Songer was
21 a party to that appeal. Their order to show cause gave
22 Pat Songer the opportunity to be heard on the matter by
23 filing a reply. But -- off the top of my head I can't
24 remember if they did or not.

25 But the fact is that this issue has been decided by

1 the Nevada Supreme Court and they don't consider the
2 final judgment and dismissal having been entered in this
3 case.

4 If they had, if they did, my notices of appeal would
5 have been deemed effective but pre- -- premature but
6 effective. They were; they dismissed the appeal.

7 THE COURT: Okay. Let me hear from Ms. Gutierrez a
8 minute.

9 MS. GUTIERREZ: Thank you, Your Honor. Um, I do want
10 to point out that the order of dismissal from the Nevada
11 Supreme Court, there's a footnote, and that is an
12 important footnote; because Mr. Delucchi and Mr. Hollis,
13 they carried the burden of showing that the court had
14 jurisdiction.

15 And the footnote says, "Appellants have not provided
16 a copy of the order awarding the fees and costs." So
17 plaintiffs did not meet their burden. They did not
18 provide the Supreme Court with the appropriate
19 documentation that -- needed to be able to come to the
20 conclusion that I think we all agree, that the final
21 order in this matter was the order on the attorney's fees
22 and costs.

23 And so I don't think that it was the Supreme Court
24 saying, we don't know that that's the final order. It was
25 them saying you did not carry your burden because you

1 didn't provide us with the proper documentation showing
2 that we have jurisdiction at this time to make the
3 argument that Mr. Levine just made to you.

4 It's not a matter of, uh, the Supreme Court didn't
5 understand or that the Supreme Court had some sort of,
6 uh, mis- -- misunderstanding of the timeline and Your
7 Honor does understand the timeline of what happened here.
8 It's that they didn't meet their burden.

9 Um, and putting aside the order, the other item I
10 wanted to point out is there is no procedural rule that
11 allows for this court to go back and revisit the orders.

12 Uh, under Rule 60 there's -- it doesn't fall into
13 any of the categories under Rule 60, and Mr. Levine
14 didn't have any points of authorities whatsoever in his
15 motion to come here and argue for this court to order an
16 additional, uh, order on this matter.

17 Uh, didn't seek an amendment within 10 days of the
18 award of attorney's fees and costs being entered.

19 And more importantly, Mr. Levine just said that he
20 didn't read our response and we served it on everybody
21 and we pointed these things out.

22 And this is a recurring theme that happened in this
23 case where we would send things to Mr. Levine's office
24 and he would ignore everything that we sent. So he didn't
25 have an opportunity to look at the language in the order

1 -- fees and costs order because he decided that he didn't
2 need to read -- or plaintiffs decided they didn't need to
3 read the materials that we had sent over to the court.

4 And we made our efforts to make sure that they were
5 included in reading the attorney's fees and costs order.
6 They presumed that it was one order when Your Honor had
7 asked, uh, the parties on the motions to dismiss to
8 prepare separate orders because of the factual issues --

9 THE COURT: The facts were different.

10 MS. GUTIERREZ: Right. The facts were slightly
11 different. But plaintiffs' office did not respond to us.

12 So our position is the case is dismissed. Currently
13 our office, uh, has a order to show cause on this very
14 issue on whether or not there's a final order based on
15 our appeal.

16 And I asked for a continuance to -- because it would
17 have been due before this hearing because I need to be
18 able to report to the court to show them, uh, that, yes,
19 there -- the order that we appealed on, that Mr. Songer
20 appealed on, is the final judgment in this matter.

21 But my client also needs to be able to consider
22 whether or not to forgo going forward with this appeal if
23 the case is done. If there's no anti-slap appeal going
24 on, there's really no -- no purpose for our clients to
25 continue to go forward, uh, with their appeal, and they

1 would like to consider that -- that option.

2 But at this point, uh, I can't withdraw that appeal
3 -- or recommend it to my clients, I should say.

4 THE COURT: Here's the thing. I signed that order
5 awarding attorney's fees and costs. It was filed on
6 December 29th. I actually signed it on the 24th.

7 Um, I was working that day and so signed it that
8 day. But by the time it got to the clerk's office --
9 holidays are always kind of tricky around here at the
10 courts.

11 Um, um, and so by the time it made it over to the
12 clerk's office for filing it was on the 29th. Um, I look
13 at this.

14 The one thing -- I -- I kind of see the argument
15 both ways here, because one of the things that's in the
16 order -- the court -- because I did say at the time that
17 I heard the attorney's fees and costs, um, um, that I
18 wasn't going to require, uh, Mr. Levine's clients to post
19 a bond because they were still working with Pahrump
20 Valley Fire & Rescue.

21 And I pointed that -- that if their employment
22 changed then I would require a posting of a supersedeas
23 bond of \$50,000. So clearly it would seem like, uh, Mr.
24 Levine, you didn't appeal from that award and I'm not
25 sure why.

1 MR. LEVINE: Because if I -- that order awarding the
2 amount of fees, the amount you calculated --

3 THE COURT: Yes?

4 MR. LEVINE: -- and the, uh, fact that you were not
5 requiring a bond, we were not disputing. We had already
6 filed our notice of appeal from the order of dismissal.

7 I was treating -- this is the argument I made to the
8 Supreme Court -- I was treating the award of attorney's
9 fees as a special order after judgment, which could be
10 separately appealed if I choose to do so because I
11 dispute the amount or whatnot.

12 But I already filed the notice of appeal. And if
13 that order granting the fees became the final order in
14 the case, rendering, uh, the case over and subject to
15 appeal, then my previously filed notices of appeal, uh,
16 deemed premature would have become effective as of that
17 date. But the Supreme Court expressly rejected that
18 argument.

19 And may I be heard on the issue of carrying the
20 burden? Because I think the statement by Mr. Songer's
21 attorney is incorrect.

22 THE COURT: Okay.

23 MR. LEVINE: I would like to point out in the
24 court's order it says -- again, I will, uh, re-read the
25 language of the Supreme Court.

1 "We disagree with appellant's contention that a
2 dismissal took effect upon the subsequent entry of an
3 order awarding the fees and costs where appellants
4 represent that the order" -- quote -- "does not state
5 that the action is dismissed as of the filing of that
6 order," close quote.

7 And then they say in the footnote you didn't
8 actually give us a copy of that order.

9 But you can go back, Judge, and take a look at the
10 December 29th filed order. It contains no such language
11 of dismissal, as I represented to the Supreme Court and
12 which they expected as my representation.

13 The point is this. I don't need to file an appeal
14 from the December order when I have already filed appeals
15 from the orders of dismissal. But the Supreme Court, in
16 its wisdom, whether we agree or not --

17 THE COURT: Right.

18 MR. LEVINE: -- in its June order said that your
19 filing of the December order didn't render the case over
20 as a final judgment.

21 I think intellectually I have trouble with the
22 Nevada Supreme Court's decision. It should have, as I
23 argued to them, treated the award of fees as a special
24 order after judgment and deemed the orders of dismissal -
25 - which I filed an appeal and an amended appeal from --

1 to be the final judgment. But that's not how our court
2 sees it.

3 THE COURT: Right. And I agree that in -- in essence
4 -- and I think we're all in agreement -- I couldn't award
5 attorney's fees and costs off the first order -- the
6 first hearing that we had because all the documentation
7 had to be submitted and argued by the parties.

8 We had a complet- -- we had completely separate
9 filings and a completely separate hearing just on the
10 issue of attorney's fees and costs.

11 MR. LEVINE: Correct. But the Supreme Court --
12 contrary to my argument -- that once you enter that order
13 awarding fees and costs, my argument was that rendered
14 the case over and the Supreme Court [inaudible]
15 jurisdiction.

16 The Supreme Court rejected that. I don't -- I -- you
17 know, I can't tell you why they rejected that argument
18 but they clearly rejected it. You can read the language
19 for yourself.

20 And they gave me the rights to file a notice of
21 appeal from any final judgment entered in this matter,
22 close quote.

23 THE COURT: Well, in -- in --

24 MR. LEVINE: I'm just asking you to enter the
25 ministerial final judgment because the Supreme Court has

1 determined that the orders that you have entered prior to
2 [inaudible] time do not constitute a final judgment.

3 THE COURT: Well, I guess you -- here's what's going
4 to happen.

5 I issue a new order and now we're going to -- the --
6 well, it's out of my hands at that point. There'll be
7 appeals going up to the Supreme Court and I guess you
8 guys can fight over whether or not the two orders
9 together constituted a final order.

10 The problem, quite frankly, is I think what the
11 Supreme Court was looking for was this is a final -- now
12 that the attorney's -- I read the two orders together and
13 say it was a final order, because I say I'm going to
14 issue, uh, a determination on the fees and costs and that
15 will be -- and -- and that will be the final order.

16 But it doesn't say that, and -- and the Supreme
17 Court didn't link those two together. That's how I see
18 it.

19 MR. LEVINE: [inaudible]. That is correct. I think
20 that was your intent.

21 THE COURT: That was my intent.

22 MR. LEVINE: [inaudible] understood your intent. But
23 they said we disagree with appellant's contention that a
24 dismissal took effect upon the subsequent entry of an
25 order awarding fees and costs.

1 THE COURT: So it would seem to me that perhaps --
2 and -- and Counsel, with an order like this coming back
3 from the Supreme Court, don't you think that the cleanest
4 way is to issue an order that simply says, my order of
5 September whatever-date-it-was and November along with
6 this order constitute the final determination in this
7 case?

8 MR. LEVINE: That is exactly what my motion is
9 asking for. [inaudible].

10 THE COURT: End of story. We don't say anything
11 more. Then --

12 MR. LEVINE: [inaudible] that we may have right of
13 appellant jurisdiction, [inaudible] \$400.

14 THE COURT: This is what I'm thinking. I issue that
15 order. Then you both can argue your positions to the
16 Supreme Court.

17 Because I think by entering that order I'm not
18 issuing a new order; I'm simply saying it was the intent
19 of the court that that was the final order.

20 Then Mr. Levine, you may be able to get your -- your
21 position on then with the Supreme Court. Maybe then they
22 will understand what -- the purpose was of that final
23 order.

24 And Counsel, you may have an argument back that they
25 -- they didn't. I don't know. But that seems to me to be

1 the cleanest because that truly was the intent of the
2 court.

3 I thought once I issued the final order on the
4 attorney's fees and costs this case was over here, and --
5 and that you could fight.

6 MR. LEVINE: [inaudible] that -- wasn't that the
7 case, then my appeals were t- -- were timely filed,
8 premature but effective.

9 THE COURT: Your appeals were timely filed. Um, I --
10 so if nothing else maybe it's -- I issue an -- uh, just
11 like you said, an order -- order -- and this is to
12 clarify the -- the previous -- that it was the intent of
13 the court and the intent of the parties that these two
14 orders taken together were the final -- final, uh --
15 final judgment of the court.

16 Because -- because --

17 MR. LEVINE: I hear what you're saying, Judge --

18 THE COURT: -- I'm not going to say --

19 MR. LEVINE: -- but the Supreme Court has already
20 said even if that was your intent they were not effective
21 as such. And that's why the court gave me the right -- in
22 the last sentence of its June 1 order, appellants may
23 file a notice of appeal from any final judgment entered
24 in this matter.

25 THE COURT: Well, you may be --

1 MR. LEVINE: When is the final judgment entered in
2 this matter so I can file an appeal?

3 THE COURT: -- you may be untimely but you may be
4 able to get on a motion for reconsideration in light of
5 the new order that I'm putting out.

6 MR. LEVINE: It wouldn't be untimely because until
7 the appeal was dismissed the time wouldn't be running.

8 THE COURT: Okay.

9 MS. GUTIERREZ: I would just like to point out that
10 the time for rehearing with the Supreme Court, all of
11 those dates have lapsed.

12 Instead of going through the procedures with the
13 Supreme Court and clarifying everything that --

14 THE COURT: Right.

15 MS. GUTIERREZ: -- he was trying to clarify with
16 this court right now, he came running back here to ask
17 for this court to issue another order.

18 If Your Honor's inclined to, uh, issue an order
19 saying the combination of Order X and Order Y was my
20 final judgment and let us go argue it with the Supreme
21 Court, uh, we'll certainly do whatever Your Honor thinks
22 is best.

23 THE COURT: That's what I'm inclined to do, is just
24 say, uh, based -- based upon the decision from the Nevada
25 Supreme Court and -- and the pleadings by the parties,

1 the parties are in agree- -- I don't think anybody here
2 is disagreeing that once that final -- once I issued the
3 attorney's fees and costs we agreed; we thought we were
4 done --

5 MS. GUTIERREZ: Right.

6 THE COURT: -- here.

7 MR. LEVINE: We did. But the Supreme Court said that
8 was not effective to do it.

9 THE COURT: Well, I --

10 MR. LEVINE: Whether we thought so or not, whether
11 that was your intent or not. That's why they wrote, we
12 disagree with appellant's contention that a dismissal
13 took effect upon the subsequent entry of an order
14 awarding attorney's fees and costs where appellants
15 represent that the order, quote, does not state that the
16 action is dismissed as of the filing of that order.

17 THE COURT: No. I agree.

18 MR. LEVINE: The Supreme Court wrote that, because I
19 gave the argument that you just posited, Your Honor, that
20 your December order was intended to dispose of the entire
21 case and was effective to do so; and that therefore my
22 previously filed notices of appeal were premature but
23 effective. And they said no.

24 THE COURT: Well --

25 MR. LEVINE: So it doesn't matter what your intent

1 was.

2 THE COURT: Right.

3 MR. LEVINE: I -- I understood your intent, which is
4 -- and you understood your intent and the other side
5 understood your intent.

6 The Supreme Court has said, notwithstanding that
7 intent, the manner in which it was effectuated was not
8 effective to end the case.

9 THE COURT: Okay. Well, I'm going to issue an order;
10 okay? I will get it out in the next, uh -- I think -- and
11 you guys can fight over whether it's the final order, if
12 the other was the final order.

13 I'm sure if I did something wrong the Supreme Court
14 will be more than happy to tell me so. Um, I have no
15 doubt about that.

16 But, uh, maybe that -- I -- I think that in all
17 fairness in this, I think I'll just issue an order that -
18 - that says that. The court's final judgment was, you
19 know, this matter came on for hearing today on a motion
20 for order of final dismissal.

21 Um, the court entered these two orders read
22 together. You know, the court believes that they were --
23 that -- that -- that was the final decision.

24 Um, but if not -- but based upon the Supreme Court's
25 finding I am now of- -- you know, now saying that this is

1 over.

2 MR. LEVINE: That's fine. That would be perfect.

3 That would give me what I need to file an appeal.

4 THE COURT: And if the other side opposes that
5 appeal then you guys can fight over whether I should have
6 done that or hadn't done it.

7 But it -- it seems like that. Other- -- otherwise,
8 we're -- you know, we're just kind of spinning our wheels
9 here. And I don't know. Maybe the --

10 MR. LEVINE: I agree with you, Your Honor. As you
11 phrased that order, that it was the intent
12 notwithstanding -- it is dismissed effective now, good
13 enough.

14 THE COURT: And we'll -- we'll see where the court -
15 -

16 MS. GUTIERREZ: Well, it's not dismissed effective
17 now. It's an order saying the order from December and
18 from November constituted my final judgments and that's
19 it.

20 It's not saying we're dismissing the case now.

21 THE COURT: I've got these and -- this is what I'm
22 going to say. On -- on September 1st, 2015 or whatever
23 the dates you filed these things, this came -- it came up
24 for hearing on September 1st.

25 The court is also in receipt of the order dis- --

1 dismissing appeal, um, from the Nevada Supreme Court.

2 This, this, this court -- the case is dismissed here.

3 I'll put the order -- if you guys don't like it I'm
4 sure you guys are going to appeal it. But I'll get it
5 filed; okay? You guys may have to give me a little time
6 because I've got a jury trial -- criminal jury trial
7 starting this afternoon through Thursday.

8 I have court all day Friday. Next week is my
9 rotation up north. So as soon as I get back we'll get it
10 done; okay?

11 MS. GUTIERREZ: Great. Thank you, Your Honor.

12 MR. LEVINE: No problem. Thank you, Your Honor.

13 THE COURT: All right. Thank you. What a -- what a
14 disaster; you know.

15 MS. GUTIERREZ: Yes.

16 MR. LEVINE: Look --

17 THE COURT: All the way around.

18 MR. LEVINE: -- the Supreme Court got it wrong and
19 it should have just heard the previous appeals I filed
20 under the notices I filed, but they -- they make the
21 rules, not us.

22 THE COURT: Well, you know what? It's an easy way to
23 clear it off the docket, because that case got --

24 MR. LEVINE: Yeah. And it's an easy way to make me
25 pay filing fees more than once.

1 THE COURT: Okay. All right. Well, I'm sure you guys
2 will sort it out at the Supreme Court, and -- and maybe
3 in the future -- I got to tell you, lesson learned, um, I
4 think all the way around about what we need when we have
5 the bifurcated attorney's fees, that we need to be sure
6 this finally disposes of the case.

7 MR. LEVINE: I mean, there's case law out there that
8 says that attorney's fees award is a special order after
9 judgment, which is separately appealable, which is of
10 course what I cited to them in response to the order to
11 show cause.

12 THE COURT: Mr. Levine, I got an opinion the other
13 day, about a 20-page opinion from the court of appeals
14 that told me I had authority over real property in
15 California.

16 Now, you figure that one out. It took them 20 pages
17 to get there.

18 MR. LEVINE: [inaudible] but I'm not going there.

19 THE COURT: So, you know, I -- you know, sometimes
20 the -- it makes no sense to me. But we just do the best
21 job we can on what we have and we let them make the
22 rules.

23 MR. LEVINE: Uh, as I said, they make the rules.

24 THE COURT: So I'm good with it. But I'm sorry that
25 this ended up being such a disaster for everybody,

1

2 because the bottom line is it costs both counsel time and
3 both parties time and money.

4 And it -- that's too bad and, uh, so, uh, lesson
5 learned. I know what I'm going to do next time. So thank
6 you --

7 MR. LEVINE: Right. It's delaying the consideration
8 of a very interesting issue of first impression; does
9 anti-slap apply to contractual vendors?

10 THE COURT: Uh, it really isn't --

11 MR. LEVINE: [inaudible] underlying issue that you
12 recognized a long time ago and will be an interesting one
13 for the Supreme Court to take up. I'm just trying to get
14 it there.

15 THE COURT: I -- I think it is going to be a very
16 interesting issue all the way around.

17 So, um, anyway, I'll look forward to seeing it come
18 back -- come back around, I guess. But thank you both
19 very much. I appreciate your time. You guys both did a
20 great job in this case. So thank you.

21 MR. LEVINE: Thank you.

22 MS. GUTIERREZ: Thank you, Your Honor.

23 THE COURT: Thank you.

24

25

1 I, Chris Naaden, a transcriber, hereby declare under
2 penalty of perjury that to the best of my ability the
3 above 27 pages contain a full, true and correct
transcription of the tape-recording that I received
regarding the event listed on the caption on page 1.

4 I further declare that I have no interest in the
5 event of the action.

6 September 4, 2015

7 Chris Naaden



8 (Songer v. Delucchi, et al. hearing, 9-1-15)

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EXHIBIT B

1 **NEOJ**

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3 **NEVADA BAR NO. 6653**

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

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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 3rd day of December, 2014.

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

By: 

JOSEPH P. GARIN, ESQ.

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FILED

2014 DEC -4 A 10:19

**NYE COUNTY CLERK
BY DEPUTY Sarah Westfall**

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd 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:

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FILED
 FIFTH JUDICIAL DISTRICT COURT

NOV 19 2014

NYE COUNTY DEPUTY CLERK
 DEPUTY *Annemarie*

IN THE FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

RAYMOND DELUCCHI and TOMMY HOLLIS,

Plaintiffs,

v.

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

Defendants.

CASE NO: CV35969
DEPT NO: 1

ORDER GRANTING
DEFENDANT PAT SONGER'S
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

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

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

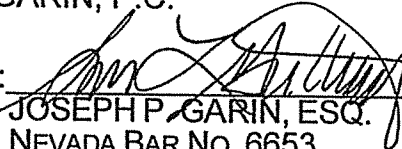
DATED this 18th day of November, 2014.


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 C

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

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

10 RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

11 Plaintiffs,

12 v.

13 PAT SONGER and ERICKSON,
14 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 ///

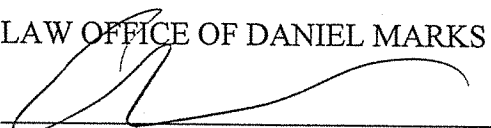
24 ///

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 29th 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

610 South Ninth Street

Las Vegas, Nevada 89101

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

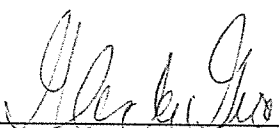
Attorneys for Plaintiffs

11 **CERTIFICATE OF MAILING**

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

17 Todd Alexander, Esq.
18 LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorney for Defendant ETS

19
20 Siria L. Gutierrez, Esq.
LIPSON, NEILSON, COLE, SELTZER GARIN
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorney for Defendant Pat Songer

22 
23 An employee of the
24 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 2nd 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,

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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 29th day of December, 2014.

KIMBERLY A. WANKER
DISTRICT COURT JUDGE


Respectfully submitted by:

THE 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
Attorneys for Plaintiffs

Approved as to Form and Content:

LIPSON, NEILSON, COLE, SELTZER, GARIN


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.

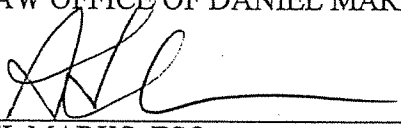
DISTRICT COURT JUDGE


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

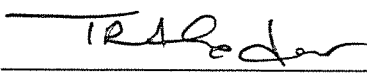

TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Defendant ETS

EXHIBIT D

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.¹ 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

¹As 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 I

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

Electronically Filed
May 06 2015 09:13 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

6 IN THE SUPREME COURT OF THE STATE OF NEVADA
7

8 RAYMOND DELUCCHI and
TOMMY HOLLIS,
9

Case No. 66858
District Court: CV35969

Appellants,
10

v.
11

PAT SONGER and ERICKSON
12 THORPE & SWAINSTON, LTD.

13 Respondents
_____/

14
15 **RESPONSE TO ORDER TO SHOW CAUSE**

16 COMES NOW Appellants Raymond Delucchi and Tommy Hollis by and
17 through undersigned counsel Adam Levine, Esq. of the Law Office of Daniel
18 Marks and here by submits their Response to the Order to Show Cause as
19 follows:

20 ///

1 **I. THE ORDER GRANTING SONGER'S MOTION TO DISMISS IS A**
2 **FINAL JUDGMENT.**

3 The district court's Order filed November 19, 2014 is a final judgment for
4 purposes of NRAP 3A(b)(1). The Order, following the Order granting Erickson,
5 Thorpe & Swainston's ("ETS") Motion to Dismiss dated September 17, 2014,
6 disposed of all remaining claims between the parties.¹

7 This court has raised jurisdictional concerns because of the language used
8 within the November 19, 2014 Order that "the case will be dismissed with
9 prejudice once the Court has awarded fees and costs". However in-artfully
10 drafted, the Order is still a final judgment.² The first clause of the sentence states
11 "IT IS HEREBY ORDERED that Defendant Songer's Special Motion to
12 Dismiss Pursuant to NRS §41.660 is GRANTED". This is sufficient in and of
13 itself to render the Order a final judgment notwithstanding the subsequent
14 language at issue.

15 The language regarding future intent was simply an attempt by the district
16 court to ensure that it kept jurisdiction to enter an award of fees and costs as
17 required by Nevada's anti-SLAPP statutes. What the District Court did not
18 properly recognize was the fact that a district court always retained such

19 _____
20 ¹ The notice of appeal of the Order granting ETS' Motion was premature.

² Counsel for Appellants did not draft or approve the language of the Order as to
form or content.

1 jurisdiction after a final judgment as such awards of fees and costs. This Court
2 has repeatedly held:

3 Although, when an appeal is perfected, the district court is divested
4 of jurisdiction to revisit issues that are pending before this court, the
5 district court retains jurisdiction to enter orders on matters that are
6 collateral and independent from the appealed order, *i.e.*, matters that
7 in no way affect the appeal's merits.

8 *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 530 (2006) citing
9 *Kantor v. Kantor*, 116 Nev. 86, 8 P.3d 825 (2000). In *Kantor* this Court
10 specifically held that an award of attorney's fees is a collateral matter for which a
11 trial court is not deprived of jurisdiction where an appeal is taken.

12 Notwithstanding the district court's intent to issue an order relating to a
13 collateral matter, the fact that the Order stated that the Special Motion to Dismiss
14 "is GRANTED" is in fact sufficient to render a final judgment because it disposed
15 of all remaining claims between the parties other than the collateral matter of
16 fees.

17 **II. EVEN IF THE DISMISSAL ONLY BECAME EFFECTIVE UPON**
18 **THE ENTRY OF THE FEE AWARDS, THERE IS STILL NO**
19 **JURISDICTIONAL DEFECT PURSUANT TO NRAP 4(a)(6).**

20 As set forth above the Order of the district court dated November 19, 2014
should be deemed the final judgment. However, if the court were to take the
alternative construction of the Order's language it would mean that the dismissal

1 was not intended to that take effect until the filing of the Order Awarding Fees in
2 Costs on December 29, 2014.

3 This court has long interpreted NRAP 4(a)(6) in a manner such that
4 “unless the premature appeal has already been dismissed, a premature notice of
5 appeal shall be considered filed on the date of and after entry of the order” at
6 issue. See e.g. *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, 245 P.3d
7 1190 (2010).

8 In *Winston Products Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006)
9 this court announced what it has referred to as “an overarching rule” that “[o]ur
10 interpretation of [modern] NRAP 4(a)(4) tolling motions should reflect our intent
11 to preserve a simple and efficient procedure for filing a notice of appeal” and
12 “not be used as a technical trap for the unwary draftsman.” *Id.* at 526, 134 P.3d
13 at 732.

14 Appellees, who were not involved in the drafting of the language of the
15 November 19, 2014 order should not be required to “guess” as to whether the
16 dismissal was effective as stated in the language “IT IS HEREBY ORDERED
17 that Defendant Songer’s Special Motion to Dismiss Pursuant to NRS §41.660 is
18 GRANTED” or whether it would become effective at a later date. Because the
19 appeal was not dismissed as premature prior to the effective date of the
20 December 29, 2014 Order Awarding Fees and Costs, even if this Court

1 determines that the dismissal was intended to become effective as that date this
2 court to deem the Amended Notice of Appeal filed as of that date.

3 **III. IF THIS COURT FINDS THAT A JURISDICTIONAL DEFECT**
4 **DOES EXIST, IT COULD BE REMEDIED THROUGH AN**
5 **“ORDER LIMITED REMAND” INSTEAD OF A DISMISSAL.**

6 The Order Awarding Fees and Costs filed December 29, 2014 does not
7 state that the action is dismissed as of the filing of that Order. Accordingly, if
8 this Court determines that the language of the November 19, 2014 Order at issue
9 should be construed as a statement of intent to take future action on the claims
10 between the parties, as opposed to an intent to enter a collateral order (i.e. an
11 award of fees), a new Order of dismissal will need to be entered before an appeal
12 can be perfected.

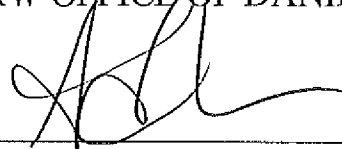
13 In other cases, this Court has handled such defects in the language of
14 District Court orders through an “Order of Limited Remand”. By way of
15 example, in *Judkins v. Las Vegas Metropolitan Police Department*, Docket No.
16 62695 this Court issued such an Order of Limited Remand on March 13, 2014
17 where the district court denied a petition to vacate an arbitrator’s award which
18 was clearly intended to dispose of the dispute, but did not, concurrently enter an
19 order confirming the arbitrator’s award as required by NRS 38.241(4). This
20 Court did not deem it necessary to dismiss the pending appeal; rather it resolved
jurisdictional issues by a limited remand for purpose of entering an order

1 confirming the award and requiring the district court to transmit the appropriate
2 order within 30 days to this Court. A copy of that Order of Limited Remand is
3 attached hereto as Exhibit "1".

4 Accordingly, if this Court does not deem the November 19, 2014 Order to
5 be a final judgment, and likewise does not deem the matter cured by
6 NRAP(4)(a)(6), and Order of Limited Remand should issue directing the district
7 court to enter a new Order of Dismissal and to transmit that new order to this
8 Court so that the previously filed appeal may proceed.

9 DATED this 5th day of May, 2015.

10 LAW OFFICE OF DANIEL MARKS

11 

12 DANIEL MARKS, ESQ.

Nevada State Bar No.: 002003

13 ADAM LEVINE, ESQ.

Nevada State Bar No.: 004673

14 610 South Ninth Street

Las Vegas, Nevada 89101

15 *Attorneys for Appellants*

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 5th day of May, 2015, I served a copy of this
3 completed Amended Docketing Statement upon all counsel of record:

4 ☐ By personally serving it upon him/her; or

5 ☐ By mailing it by first class mail with sufficient postage prepaid to the
6 following address(es):

7 ☒ By serving it upon him/her via electronic filing as mandated by the
8 Court to the email address as provided to the Court by opposing counsel.

9 Dated this 5th day of May, 2015.

10 
11 _____
Signature

EXHIBIT “1”

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC JUDKINS,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Respondent.

No. 62695

FILED

MAR 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF LIMITED REMAND

This is an appeal from a district court order denying a petition and motion to vacate an arbitration award.

When our preliminary review of the docketing statement and the NRAP 3(g) documents revealed a potential jurisdictional defect, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, we were concerned that an order refusing to vacate an arbitration award is not among the orders listed as appealable under NRS 38.247, and it was unclear whether the order could be considered the functional equivalent of an order confirming an arbitration award, which is appealable under NRS 38.247(1)(c).

Having considered the parties' timely responses to our show cause order, we conclude that the order is not appealable under NRS 38.247(1)(c) as the functional equivalent to an order confirming the arbitration award.¹ See *Karcher Firestopping v. Meadow Valley*

¹Although the order apparently also denied appellant's request for relief under NRS 289.120, that portion of the order is inseparable from the portion covering the arbitration award, and thus, cannot be independently appealed.

Contractors, Inc., 125 Nev. 111, 116-17, 204 P.3d 1262, 1265-66 (2009) (adhering to a strict, plain language reading of NRS 38.247 in concluding that orders vacating an arbitration decision and directing a rehearing are not appealable, even though the orders also deny confirmation of the award and would be otherwise appealable, and noting that such orders do not contain the degree of finality required of orders appealable under NRS 38.247); *W. Waterproofing Co. v. Lindenwood Colls.*, 662 S.W.2d 288, 289 (Mo. Ct. App. 1983) (holding that no appeal lies from an order denying a motion to vacate); *Dunlap by Hoffman v. State Farm Ins. Co.*, 546 A.2d 1209, 1210-11 (Pa. Super. Ct. 1988) (holding that an order denying a motion to vacate was not final because the trial court had failed to also enter an order confirming the arbitration award and remanding for entry of the confirmation order). NRS 38.241(4) provides that “[i]f the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.” Here, however, the court failed to expressly confirm the award, even though no motion to modify or correct was pending and the 90 days in which to file such a motion ostensibly had expired. NRS 38.242; see *Casey v. Wells Fargo Bank, N.A.*, 128 Nev. ___, 290 P.3d 265 (2012).

It is the court’s duty to confirm an award once it has denied a petition to vacate the award, see *Dunlap*, 546 A.2d at 1211, and the district court’s failure to do so here prevented the order from attaining the finality necessary to appeal. See *Karcher Firestopping*, 125 Nev. at 117, 204 P.3d at 1266. Accordingly, because the court was required to confirm the arbitration award, we remand this matter to the district court for the limited purpose of entering an order confirming the award. The district

court shall have 30 days from the date of this order to enter the confirmation order and transmit it to this court. The briefing schedule remains suspended pending further order of this court.

It is so ORDERED.

Hardesty, J.
Hardesty

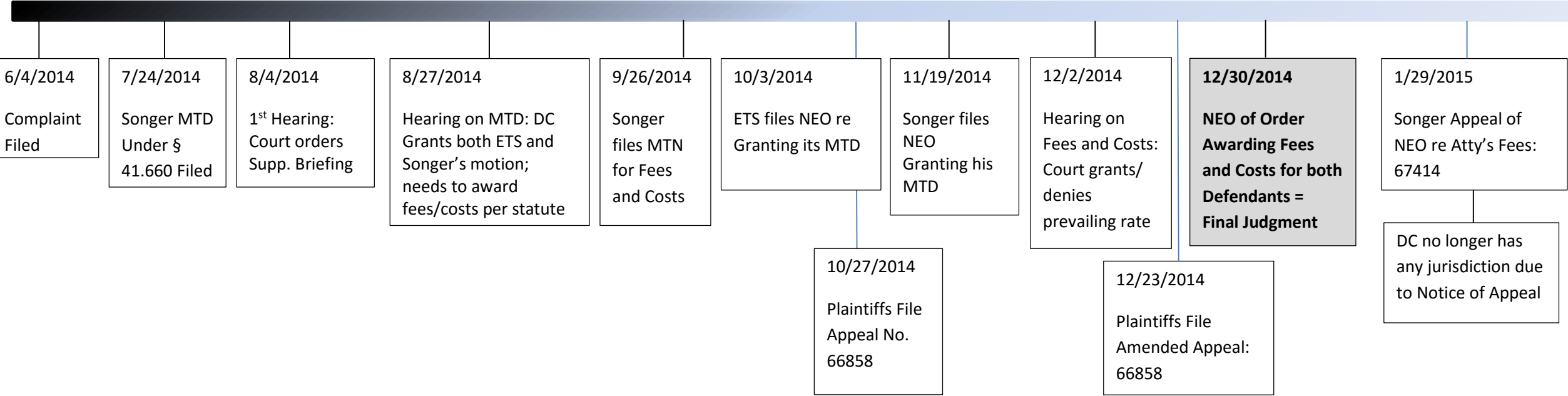
Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Kenneth C. Cory, District Judge
Law Office of Daniel Marks
Marquis Aurbach Coffing
Eighth District Court Clerk

EXHIBIT K

Songer Timeline



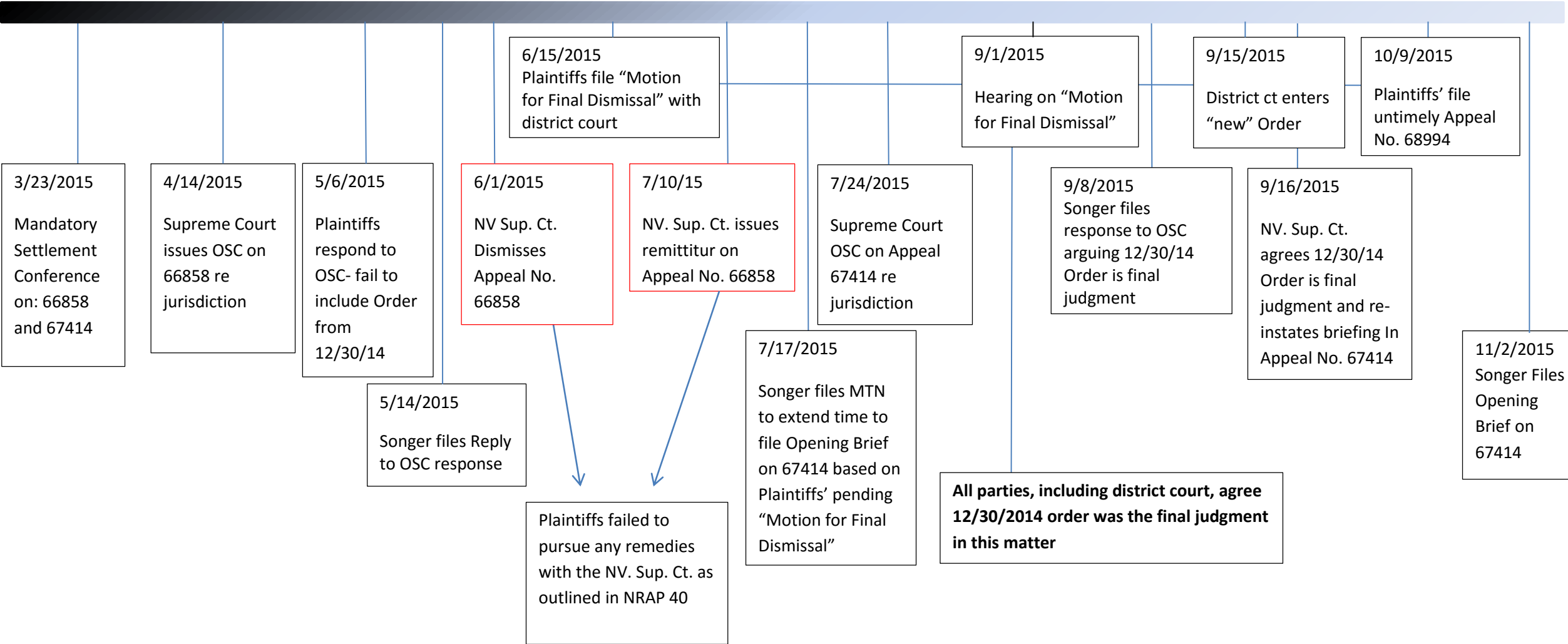


EXHIBIT G

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.

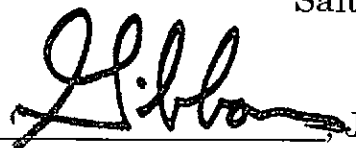
When our initial review of the docketing statement and other documents before this court revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Having considered appellants' response and respondent's reply, we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

"does not state that the action is dismissed as of the filing of that Order."¹
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

¹Appellants have not provided a copy of the order awarding fees and costs.

EXHIBIT F

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 15th day of September, 2015.

14
15 
16 _____
17 KIMBERLY A. WANKER,
18 DISTRICT COURT JUDGE
19
20
21
22
23
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28



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 15TH 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

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

CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE

EXHIBIT H

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER; AND ERICKSON,
THORPE & SWAINSTON, LTD.,

Respondents.

No. 66858

FILED

APR 14 2015

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

ORDER TO SHOW CAUSE

This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Our initial review of the documents before this court reveals a potential jurisdictional defect. Specifically, it is not clear whether the district court's November 19, 2014, order granting Pat Songer's special motion to dismiss is a final judgment because it contemplates the dismissal of the case at a later date. *See* NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that resolves all of the parties' claims and rights in the action, leaving nothing for the court's future consideration except post-judgment issues).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellants should submit documentation that established this court's jurisdiction including, but not limited to, a copy of any written district court order dismissing the case against Pat Songer. We caution appellants that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The requesting of transcripts and the briefing schedule in this appeal shall be suspended pending further order of this court.

Respondents may file any reply within 10 days from the date that appellants' response is served.

It is so ORDERED.

Jardeth, C.J.

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

EXHIBIT J

1 RNOT
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

FILED
2015 JUN 26 A 11:38
Stephanie May
NYE COUNTY CLERK
BY _____

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

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 Plaintiffs,

13 v.

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

Hearing Date: 9/1/2015
Hearing Time: 9:00 am

15 Defendants.
16 _____ /

17 RE-NOTICE OF MOTION FOR ORDER OF FINAL DISMISSAL

18 TO: PAT SONGER, Defendant;

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

20 TO: ERICKSON, THORPE & SWAINSTON, Defendant;

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

22 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel
23 will bring the PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL on for hearing before


24 ///

25 ///

1 this Court on the 1st day of September 2015, at the hour of 9.00 o'clock
2 A.M.

3 DATED this 23rd day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5 
6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 2003
8 ADAM LEVINE, ESQ.
9 Nevada State Bar No. 4673
10 610 South Ninth Street
11 Las Vegas, Nevada 89101
12 *Attorneys for Plaintiffs*

1 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

FILED

2015 JUN 15 P 1:36
Stephanie May
NYE COUNTY CLERK
BY DEPUTY

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 Plaintiffs,

13 v.

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

15 Defendants.

17 PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL ✓

18 COMES NOW Plaintiffs, Raymond Delucchi and Tommy Hollis, by and through their
19 undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks and hereby moves the
20 Court for an Order of Final Dismissal. .

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22 ///

23 ///

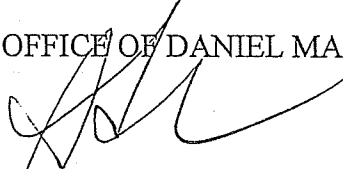
24 ///

25 ///

1 The grounds for Plaintiffs' Motion are set forth in the following Memorandum of Points and
2 Authorities

3 DATED this 7/15 day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5 
6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 2003
8 ADAM LEVINE, ESQ.
9 Nevada State Bar No. 4673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

10 NOTICE OF MOTION

11 TO: PAT SONGER, Defendant;

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


13 TO: ERICKSON, THORPE & SWAINSTON, Defendant;

14 TO: TODD ALEXANDER, ESQ., Attorney for Defendant Ericson, Thorpe & Swainston:

15 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel
16 will bring the above and foregoing PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL
17 on for hearing before this Court on the 21st day of July 15 2015, at the hour of
18 9:00 o'clock a.M.

19 DATED this 7/15 day of June, 2015.

20 LAW OFFICE OF DANIEL MARKS

21 
22 DANIEL MARKS, ESQ.
23 Nevada State Bar No. 2003
24 ADAM LEVINE, ESQ.
25 Nevada State Bar No. 4673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On September 17, 2014 this Court's Findings of Fact, Conclusions of Law and Order Granting
3 Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss. Notice of Entry of the
4 Findings of Fact, Conclusions of Law and Order Granting Defendant Erickson, Thorpe & Swainston's
5 Special Motion to Dismiss was filed on or about October 7, 2014. (Attached hereto as Exhibit "1").

6 Based on the Notice of Entry of the Findings of Fact, Conclusions of Law and Order Granting
7 Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss Plaintiffs filed their Notice of
8 Appeal and Case Appeal Statement on October 27, 2015. The Appeal was filed and issued Case No.
9 66858.

10 Thereafter on November 19, 2015 Defendant Pat Songer filed his Order Granting Defendant
11 Pat Songer's Special Motion to Dismiss Pursuant to NRS 41.660. The Notice of Entry was filed on
12 December 4, 2014. (Attached hereto as Exhibit "2").

13 On April 14, 2015 the Supreme Court filed an Order to Show Cause why the appeal should not
14 be dismissed on jurisdictional grounds due to the fact that the November 19, 2015 Order was not a
15 final judgment for purposes of appellate jurisdiction as it contemplated dismissal at a future date.
16 (Attached hereto as Exhibit "3"). After briefing by the parties, the Supreme Court issued its Order
17 Dismissing Appeal in Docket No. 66858 noting "Appellant may file a notice of appeal from any final
18 judgment entered in this matter." (Attached hereto as Exhibit "4").

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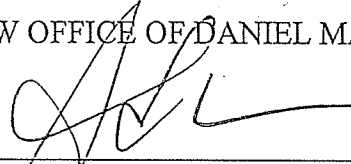
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25 ///

1 Plaintiffs desire to appeal the Court's ruling on the merits. Because the prior orders entered by
2 this Court have been deemed insufficient by the Supreme Court to constitute a final judgment for
3 purposes of appellate jurisdiction, Plaintiffs therefore request that an Order of Final Dismissal in the
4 above entitled case be issued for purposes of rendering the matter right for appellate review.

5 DATED this 11th day of June, 2015.-

6 LAW OFFICE OF DANIEL MARKS

7 

8 DANIEL MARKS, ESQ.
9 Nevada State Bar No. 2003
10 ADAM LEVINE, ESQ.
11 Nevada State Bar No. 4673
12 610 South Ninth Street
13 Las Vegas, Nevada 89101
14 *Attorneys for Plaintiffs*

EXHIBIT "1"

Todd R. Alexander, Esq., NSB #10846
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada 89519
(775) 786-6868

Attorney for Defendant, Erickson, Thorpe & Swainston, Ltd.

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

RAYMOND DELUCCHI and TOMMY HOLLIS,

Plaintiffs,

Case No. CV35969

v.

Dept. No. 1

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

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss was entered on September 17, 2014. A copy of said Findings is attached hereto as Exhibit 1.

I affirm this document does not contain the social security number of any person.

Dated: October 3, 2014.

By: 

Todd R. Alexander, Esq.
Attorney for Defendant,
Erickson, Thorpe & Swainston, Ltd.

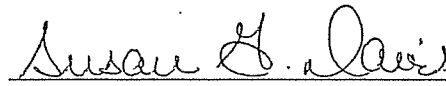
LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
SUITE 300
RENO, NV 89519
775 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 3, 2014, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within NOTICE OF ENTRY OF ORDER, addressed to the following:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

Siria L. Gutierrez, Esq.
Lipson | Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
Attorneys for Pat Songer



Susan G. Davis

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
SUITE 300
RENO, NV 89519
(775) 96-6868

EXHIBIT 1

EXHIBIT 1

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

Case No. CV35969

Dept. No. 1

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

RAYMOND DELUCCI and TOMMY
HOLLIS,

Plaintiff,

v.

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

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
GRANTING DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL
MOTION TO DISMISS

Defendant ERICKSON, THORPE & SWAINSTON, LTD. ("ETS"), has filed a Special Motion to Dismiss pursuant to Nevada's anti-SLAPP statute. Plaintiffs have opposed the motion, and ETS has replied in support thereof. Additionally, this Court ordered supplemental briefing on two issues: (1) which version of the statute applies (pre or post 2013 amendments); and (2) whether a deficient investigation can still result in a good faith communication entitled to protection under Nevada's anti-SLAPP statute. Both parties have provided supplemental briefing as ordered. Furthermore, this Court heard oral argument from all involved parties on August 27, 2014. Having carefully considered all parties' briefing and oral argument, this Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the

1 "Highway 160 incident"), in which the ambulance they were operating was flagged down by
2 passing motorists, James and Brittne Choyce.

3 2. At the time of the Highway 160 incident, Brittne Choyce had given birth to a stillborn
4 fetus, and she and her husband sought to have Brittne taken by Plaintiffs' PVFRS ambulance
5 to a hospital in Las Vegas, Nevada.

6
7 3. For reasons that remain in dispute between the parties, but are not pertinent to this
8 decision, Plaintiffs did not ultimately transport Brittne Choyce in the PVFRS ambulance.

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone
10 complaint from Brittne Choyce's mother regarding Plaintiffs' conduct during the Highway
11 160 incident.

12 5. The Town of Pahrump retained Rebecca Bruch, attorney and partner at ETS, to
13 coordinate an investigation into the Highway 160 incident. In turn, Ms. Bruch retained
14 Defendant Pat Songer as an independent investigator to conduct the investigation into the
15 Highway 160 incident.

16
17 6. During his investigation, Mr. Songer reviewed a synopsis of the complaint the Town
18 of Pahrump had received via telephone from Brittne Choyce's mother. The synopsis was
19 drafted by the Town employee who had taken the telephone call.

20
21 7. Mr. Songer also reviewed notes of an interview with James and Brittne Choyce by
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.
23 and Mrs. Choyce because Brittne had refused to speak with anyone about the Highway 160
24 incident, and James had committed suicide.

25 8. During the course of his investigation, Mr. Songer also interviewed Plaintiffs Delucchi
26 and Hollis.

27 9. After completing his investigation, Mr. Songer prepared a report to the Town of
28

1 concern," as that phrase is defined in NRS 41.637(2) and (3). Specifically, Mr. Songer's
2 investigative report was a communication of information to the Town of Pahrump regarding a
3 matter reasonably of concern to the Town. NRS 41.637(2). Additionally or alternatively, Mr.
4 Songer's report was a written statement made in direct connection with an issue under
5 consideration by the Town of Pahrump. NRS 41.637(3).
6

7 3. ETS has further shown that Mr. Songer's report was made without knowledge of its
8 falsehood. Although Plaintiffs have called into question the sufficiency of Mr. Songer's
9 investigation and the accuracy of the information contained in Mr. Songer's report, this Court
10 concludes that Plaintiffs have not presented evidence showing that said information was
11 knowingly false. Stated differently, this Court concludes that, even if it is established that Mr.
12 Songer's investigation was inadequate and the contents of his report were inaccurate, Mr.
13 Songer's report is still entitled to the protections of Nevada's anti-SLAPP statute, as long as
14 the report was not knowingly false. Thus, this Court concludes that Mr. Songer acted in good
15 faith in submitting his investigative report to the Town of Pahrump.
16

17 4. This preliminary showing having been made, the burden shifted to Plaintiffs to show,
18 by clear and convincing evidence, a probability of prevailing on their claims. NRS
19 41.660(3)(b).
20

21 5. Plaintiffs have not met their burden of showing, by clear and convincing evidence, a
22 probability of prevailing on their claims.

23 ORDER

24 NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant Erickson,
25 Thorpe & Swainston's Special Motion to Dismiss is GRANTED.
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IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file an opposition to said motion. ETS shall then have 10 days in which to file a reply in support of its motion.

Dated: September 17th, 2014.

By: KIMBERLY A. WANKER
DISTRICT COURT JUDGE

EXHIBIT “2”

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

RECEIVED
BY: [Signature]
12/23/2014

NEOJ
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
sgutierrez@lipsonneilson.com

Attorneys for Defendant,
PAT SONGER

IN THE FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

v.

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

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

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

DATED this 3rd day of December, 2014.

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

By: [Signature]

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

CERTIFICATE OF SERVICE

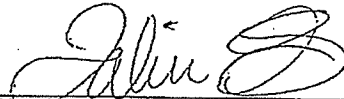
I hereby certify that on the 3rd day of December, 2014, service of the foregoing
NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL
MOTION TO DISMISS PURSUANT TO NRS § 41.660 was made by depositing a true and
correct copy of the same in the United States mail, with postage fully prepaid, 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, 3rd Flr.
Reno, NV 89519

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



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

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

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 **jgarin@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

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.

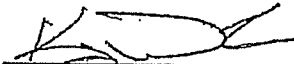
19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

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 18th 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 "3"

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER; AND ERICKSON,
THORPE & SWAINSTON, LTD.,
Respondents.

No. 66858

FILED

APR 14 2015

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

ORDER TO SHOW CAUSE

This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Our initial review of the documents before this court reveals a potential jurisdictional defect. Specifically, it is not clear whether the district court's November 19, 2014, order granting Pat Songer's special motion to dismiss is a final judgment because it contemplates the dismissal of the case at a later date. See NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that resolves all of the parties' claims and rights in the action, leaving nothing for the court's future consideration except post-judgment issues).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellants should submit documentation that established this court's jurisdiction including, but not limited to, a copy of any written district court order dismissing the case against Pat Songer. We caution appellants that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The requesting of transcripts and the briefing schedule in this appeal shall be suspended pending further order of this court.

Respondents may file any reply within 10 days from the date that appellants' response is served.

It is so ORDERED.

Sandberg, C.J.

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

EXHIBIT "4"

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

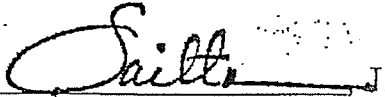
This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

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 that the order

"does not state that the action is dismissed as of the filing of that Order."¹
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

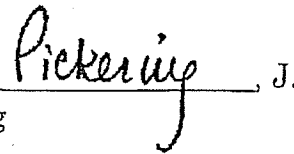
ORDER this appeal DISMISSED.

 J.

Saitta

 J.

Gibbons

 J.

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

¹Appellants have not provided a copy of the order awarding fees and costs.

EXHIBIT K

Songer Timeline

