

SUPREME COURT NO. 69065

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

Tracie K. Lindeman
Clerk of Supreme Court

DAVID JOHN KAPLAN,
Appellant

-v-

CHAPTER 7 TRUSTEE, ALLEN DUTRA
Respondent.

Bankruptcy Case No.: BK-N-10-54568-GWZ

APPELLANT'S REPLY BRIEF
from the United States Bankruptcy Court District of Nevada

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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
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5 **DAVID JOHN KAPLAN**

6 **Appellant.**

7 **vs.**

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9 **CHAPTER 7 TRUSTEE,
ALLEN DUTRA**

10 **Respondent.**
11

)
) **Supreme Court No. 69065**
)

)
) **BK-N-10-54568-GWZ**
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13 **APPELLANT’S REPLY BRIEF**

14 Appellant, David John Kaplan, by and through his counsel of
15
16 record, Christopher P. Burke, Esq., hereby submits his Reply Brief in
17
18 accordance with the provisions of NRAP 28.
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22 Dated this 19th day of May 2016.
23

24 /s/ Christopher P. Burke, Esq.

25 Christopher P. Burke, Esq.

26 Attorney for Appellant
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I

SUMMARY OF ARGUMENT

1. The Bankruptcy Court did not decide this case.

To begin with, the Trustee’s brief surprisingly, and erroneously states in bold: “THE BANKRUPTCY COURT PROPERLY SUSTAINED THE TRUSTEE’S OBJECTION TO THE DEBTORS’ AMENDED EXEMPTION.” (Resp. Br. p.3, ln. 24-26). However, the Bankruptcy Court never ruled on this issue. Instead, it certified it to the Nevada Supreme Court under N.R.A.P. 5. (Ex. of Rec ‘6’ p.41, ln. 8-12).

2. The Trustee’s brief uses circular reasoning.

Second, Trustee’s brief employs the informal logical fallacy known as, “begging the question” or “circular reasoning.” In essence, the Trustee sneaks the conclusion it seeks into the premise of its argument. How? By starting out making the assumption that NRS 21.090(1)(u) is not ambiguous. (Resp. Ans. Br. p.2, ln.26) Thus, the Trustee concludes that this court need not look to the drafters intent, because the statutory language is clear. But the problem is, that the Trustee never proves the statutes’ language is clear. It just starts out

1 with that assumption.

2 In fact, if the statutory language was clear, the Bankruptcy Judge
3 would have already decided this issue. How do we know this? Because
4 the Bankruptcy Court stated:
5

6 “I know how I would resolve it, but I don’t know if the
7 Nevada Supreme Court would do that, and I don’t hesitate
8 to resolve it, if I think it’s fairly clear.” (Ex. of Rec. ‘6’ p. 34,
9 ln. 4-6).
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12 In other words, the Bankruptcy Court specifically acknowledged
13 it would have resolved this issue, if the statutory language were “fairly
14 clear.” But it is not, so the Court did not! That is why, it added “. . . it
15 might be better to sent it to the Nevada Supreme Court, have it
16 decide.” (Ex. of Rec. ‘6’ p. 36, ln. 22-24) Thus, the Trustee’s main
17 argument, that the statute is clear, fails.
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22 **3. The language in NRS 21.090(1)(u) is not clear.**

23 Third, the reason the Bankruptcy Court held that the statutory
24 language in NRS 21.090(1)(u) was ambiguous, is readily apparent
25 when it is compared with the language found in other exemptions in
26
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1 NRS 21.090(1) For instance, NRS 21.090(1)(f) specifically states “*one*
2 vehicle” if the “equity does not exceed \$15,000.” (emphasis added). In
3 that situation, the statutory language is clear. It provides the number
4 of exemptions and amount for each. Here, the statute does not state
5 “one” personal injury. In fact, it does not even state “*a* personal
6 injury.” Instead, it only states “for personal injury.” This is confusing,
7 at best.
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11 Why? Because, the statute could easily mean, that for each and
12 every personal injury, a debtor can exempt up to \$16,150. In fact, the
13 Bankruptcy Court agreed with Mr. Kaplan that a debtor should be able
14 to exempt more than one personal injury claim (Ex. ‘6’ p.35, ln. 2-3). If
15 so, the only question is how much for each claim? This can be
16 answered easily enough. Because the legislature did not limit the
17 number of personal injury exemptions, even though it knew how to, it
18 seems clear it only sought to limit the amount protected for *each*
19 personal injury.
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25 Such a decision, would be in line with the majority of cases on
26 this issue, and also be the correct construction of NRS 21.090(1)(u).
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1 Because, although a person only needs one vehicle to get around,
2 personal injuries can be devastating to people, and the need for that
3 compensation, if it happens more than once, is much greater.

4
5 In fact, in looking at the entire statute, it allows a \$16,150
6 exemption for “a person upon whom the judgment debtor is dependent
7 upon at the time payment is received.” NRS 21.090(1)(u). Thus, if this
8 court were to limit Mr. Kaplan to a \$16,150 total exemption, no matter
9 the number of personal injuries, it would also deprive a judgment
10 debtor who had a personal injury, an exemption for an injured person
11 he was dependent upon. Such a holding goes too far, it does too much!
12 That’s why, since exemption statutes should be liberally construed, Mr.
13 Kaplan’s position logically makes the most sense.

14
15
16 **4. The term “payments” does not decide the issue.**

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18 Finally, the Trustee’s focus on the word “payments” is a red
19 hearing. To begin with, the term “payments” is used throughout NRS
20 21.090(1). But in no situation, is the term “payments” used to
21 determine the number of exemptions allowed. Or more importantly,
22 “payments” is not used to limit the total number of exemptions. So
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1 instead, the focus needs to be on the statutes wording as to both the
2 number of personal injury exemptions that are allowed, and the
3 exempt amount for each, not how they are paid. Here, because the
4 exemption is not limited to one, both personal injury exemption should
5 be allowed for the *full* amount under the statute.
6

7 II

10 CONCLUSION

11 Because the language of the statute is unclear, the
12 Bankruptcy Court did not rule on this issue. However, since Nevada's
13 statute does not limit the number of personal injury exemptions, it
14 should be liberally construed to allow Mr. Kaplan to exempt his two
15 personal injury cases, each for \$16,150.
16

17 Dated this 19th day of May 2016.
18

19 /S/CHRISTOPHER P. BURKE, ESQ.

20 CHRISTOPHER P. BURKE, ESQ.

21 Attorney for Appellant
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NRAP 28.2 CERTIFICATE

1
2
3 1. I hereby certify that this Appellant's Reply Brief ("Brief")
4 complies with the formatting requirements of NRAP 32(a)(4), the
5 typeface requirements of NRAP 32(a)(5) and the type style
6 requirements of NRAP (a)(6) because:
7

8 This brief has been prepared in a proportionately spaced typeface
9
10 using Word Perfect 12 in 15 point font, Georgia. It contains 1,442
11 words and it does not exceed 30 pages.
12

13 2. I further certify that this brief complies with the page or type
14 volume limitations of NRAP 32(a)(7).
15

16 3. Finally, I hereby certify that I have read this Brief, and to the best
17 of my knowledge, information and belief, it is not frivolous or
18 interposed for any improper purpose. I further certify that this brief
19 complies with all applicable Nevada Rules of Appellate Procedure, in
20 particular NRAP 28(e)(1), which requires every assertion in the brief
21 regarding matters in the record to be supported by a reference to the
22 page and volume number, if any, of the transcript or appendix where
23 the matter relied on is to be found. I understand that I may be subject
24
25
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27
28

1 to sanctions in the event that the accompanying brief is not in
2 conformity with the Nevada Rules of Appellate Procedure.
3

4 Dated: this 19th day of May 2016.
5

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1 **CERTIFICATE OF MAILING APPELLANT’S REPLY BRIEF**

2 I hereby certify that on the 19th day of May 2016, I caused the
3
4 above and foregoing **APPELLANT’S REPLY BRIEF** to be sent by
5 electronic notice and depositing same in the United States Mail, first
6
7 class, postage prepaid, in a securely sealed envelope and addressed to
8 the last known address of the following:
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