

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,
Appellant/Cross-Respondent,
vs.
BEAU R. ORTH,
Respondent/Cross-Appellant.

No. 69935

ALBERT H. CAPANNA, M.D.,
Appellant,
vs.
BEAU R. ORTH,
Respondent.

No. 70227

FILED

MAY 10 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER

Respondent/cross-appellant has filed a motion for leave to file a combined answering brief on appeal and opening brief on cross-appeal in excess of the type-volume limitation set forth in NRAP 32(a)(7)(A)(ii). See NRAP 32(a)(7)(D). According to the motion, the proposed brief contains 20,699 words. In support of the motion, respondent/cross-appellant argues that this medical malpractice appeal and cross-appeal concerns numerous legal issues and a particularly complex area of Nevada law, specifically the constitutionality of NRS 42.021.

This court “looks with disfavor on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted.” NRAP 32(a)(7)(D)(i); *see also Hernandez v. State*, 117 Nev. 463, 467, 24 P.3d 767, 770 (2001) (“Page limits . . . are ordinary practices employed by the courts to assist in the efficient management of the cases before them.” (*quoting Cunningham v. Becker*, 96 F. Supp. 2d 369, 374 (D. Del. 2000))). Rather, a motion ‘will be granted only upon a showing of diligence and good cause.’ NRAP 32(a)(7)(D)(i). We are not convinced that

a combined answering brief on appeal and opening brief on cross-appeal in excess of the usual type-volume limitation is warranted in this case. Accordingly, the motion is denied.

The clerk of this court shall return the proposed combined answering brief on appeal and opening brief on cross-appeal received via E-Flex on January 31, 2017, unfiled. Respondent/cross-appellant shall have 15 days from the date of this order to file and serve a brief that complies with the applicable rules of appellate procedure.¹ Thereafter briefing shall proceed pursuant to NRAP 28.1(c)(3). Failure to timely file answering brief on appeal and opening brief on cross-appeal may result in the imposition of sanctions. NRAP 28(k).

The stipulation of the parties extending the time for filing the response to appellant/cross-respondent's motion to strike portions of respondent/cross-appellant's appendix and the combined answering brief on appeal and opening brief on cross-appeal is approved. NRAP 31(b)(2). The clerk of this court shall file the opposition to motion to strike received on February 27, 2017.

Appellant/cross-respondent moves to strike documents in the appendix that were not filed in the district court and to strike any references to those documents in the proposed combined answering brief on appeal and opening brief on cross-appeal. Cause appearing, the motion

¹We note that the brief received on January 31, 2017, does not comply with the requirements of NRAP 32(a)(5)(A) (footnote 6 of the brief must be in the same size and typeface as the body of the brief) and NRAP 28(a) (12) (the brief is not accompanied by an attorney's certificate that complies with Rule 28.2).

to strike portions of respondent/cross-appellant's appendix is granted.² See *Carson Ready Mix v. First Nat'l Bank*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981); see also NRAP 10(a), (b) The clerk of this court shall strike the following documents from respondent/cross-appellant's appendix:

1. 1 R.App. 1-3 (Tab 1).
2. 2 R.App. 339 through 6 R.App. 1427 (Tab 5).
3. 6 R.App. 1431 through 9 R.App. 2199 (Tab 7).
4. 9 R.App. 2200 through 10 R.App. 2298 (Tab 8).
5. 10 R.App. 2299 (Tab 9).
6. 10 R.App. 2322 through 11 R.App. 2511 (Tab 11).
7. 11 R.App. 2556-2644 (Tab 14).
8. 11 R.App. 2670-2737 (Tab 17).
9. 11 R.App. 2738 through 12 R.App. 2820 (Tab 18).
10. 12 R.App. 2848-2906 (Tab 20).
11. 12 R.App. 2907-2922 (Tab 21).
12. 12 R.App. 2932-2999 (Tab 23).
13. 17 R.App. 4057-4059 (Tab 41).
14. 17 R.App. 4060-4064 (Tab 42).

It is so ORDERED.

Cherry, C.J.

²We deny as moot the motion to strike references in the combined answering brief on appeal and opening brief on cross-appeal. We trust respondent/cross-appellant will make appropriate references in the replacement brief.

cc: Lauria Tokunaga Gates & Linn, LLP/Las Vegas
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