

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,
Appellant/Cross-Respondent,

vs.

BEAU R. ORTH,
Respondent/Cross-Appellant.

ALBERT H. CAPANNA, M.D.,
Appellant,

vs.

BEAU R. ORTH,
Respondent.

No. 69935

No. 70227

FILED

JUL 07 2017

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

ORDER

Appellant/cross-respondent has filed motions to strike respondent/cross-appellant's appendices filed on May 26, 2017, on the ground that the new appendices contain documents that were ordered stricken from respondent's original appendices filed on February 1, 2017, and new documents not previously included; and because respondent/cross-appellant failed to request permission from this court to file new appendices. Respondent/cross-appellant opposes the motions, arguing that because he revised his combined opening and answering briefs to comply with the type-volume limitations of NRAP 32(a)(7)(A)(ii) and has filed new briefs, he prepared new appendices; and he asserts that the documents included were considered by the district court at trial. Appellant/cross-respondent has filed replies and requests \$5,000 in sanctions pursuant to NRAP 38(b).

It is unclear whether respondent/cross-appellant intends this court to rely on both appendices filed February 1, 2017, and May 26, 2017, or only on the appendices filed May 26, 2017, in conjunction with the

revised combined opening and answering briefs. And we concur with appellant/cross-respondent that the appendices are not organized chronologically as required by NRAP 30(c)(1). Accordingly, we strike both the appendices filed February 1, 2017, and the appendices filed May 26, 2017, in their entirety. Respondent/cross-appellant shall have 30 days from the date of this order to file and serve new, complete appendices including all documents intended for this court's review to serve as one, single appendix in each docket. The revised appendices shall conform to the organizational requirements of NRAP 30(c)(1). In preparing new appendices, we remind counsel for respondent/cross-appellant not to include the deposition of appellant/cross-respondent at 1 R.App. 1-192 (Tab 1); the deposition of respondent/cross-appellant at 1 R.App. 193 - 2 R.App. 281 (Tab 2); or appellant's designation of expert witnesses at 3 R.App. 692 - 4 R.App. 790 (Tab 8); as each was stricken by our order of May 10, 2017, they do not bear a district court file-stamp, and were not admitted into evidence at trial. We further remind counsel not to include any documents stricken from the original appendices pursuant to our order of May 10, 2017. Appellant/cross-respondent shall have 30 days from the date of service of the new appendices to file and serve the combined reply brief on appeal/answering brief on cross-appeal. Failure to timely comply with this order may result in the imposition of sanctions.¹

We decline to strike the citation to an unpublished case in the combined opening and answering briefs, and we decline to impose sanctions on respondent/cross-appellant's counsel at this point; however,

¹We deny as moot appellant/cross-respondent's motions for an extension of time to file the reply brief/answering brief.

we caution respondent/cross-appellant's counsel that further failure to comply with this court's orders could result in the imposition of sanctions.

It is so ORDERED.

Cherry, C.J.

cc: Lauria Tokunaga Gates & Linn, LLP/Las Vegas
Lemons, Grundy & Eisenberg
Eglet Prince