

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NALDER, GUARDIAN AD
LITEM ON BEHALF OF
CHEYANNE NALDER; AND GARY
LEWIS, INDIVIDUALLY,

Appellants,

vs.

UNITED AUTOMOBILE
INSURANCE COMPANY,

Respondent.

Case No. 70504

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**APPELLANTS' REPLY IN SUPPORT OF MOTION TO STRIKE PORTIONS OF
RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF TO SECOND
CERTIFIED QUESTION AND APPENDIX**

Appellants JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF CHEYANNE NALDER and GARY LEWIS, INDIVIDUALLY ("Appellants"), by and through their attorneys of record, Dennis M. Prince, Esq. and Kevin T. Strong, Esq. of EGLET PRINCE, and Thomas F. Christensen, Esq. and Richard V. Christensen, Esq. of CHRISTENSEN LAW OFFICES, hereby file their Reply in Support of Motion to Strike Portions of Respondent's Supplemental Answering Brief to Second Certified Question and Appendix.

I.

ARGUMENT

Respondent United Automobile Insurance Company (“UAIC”) argues that Appellants include facts in their Opening Brief Regarding Second Certified Question of Law that exceed the scope of the certification order. This argument is not accurate. UAIC’s payments on June 23, 2014; June 25, 2014; and February 5, 2015 were all made prior to the issuance of the certification order. They are also part of the record because Appellants specifically referenced the payments in their Response to UAIC’s Motion to Dismiss for Lack of Standing that was filed before the Ninth Circuit giving rise to this second certified question. As to Mr. Lewis’s current residence and the incursion of expenses to renew the judgment in Nevada and California, Appellants do not specifically rely on these facts to support their legal arguments that address the second certified question. *See* Appellants’ Opening Brief, at p. 15 (“In spite of [incurring the expenses to renew the judgment in both Nevada and California], Appellants contend that they timely instituted an action on the default judgment or, alternatively, that the six-year limitations period has not expired”). Thus, there is no need for UAIC to provide any context in relation to the subsequent renewal of the judgment in this action and, in particular, Cheyanne Nalder’s action against Mr. Lewis arising from any amended judgment.

It is clear from UAIC's Answering Brief that the sole purpose to inform this Court about *subsequent* judicial proceedings is to somehow undermine Appellants' legal arguments under the guise of responding to Appellants' Opening Brief. This is not a legitimate basis to refer to facts that are wholly irrelevant to the narrow legal inquiry before this Court. The question before this Court addresses whether a plaintiff can seek consequential damages arising from a default judgment against the insured even though the judgment was not renewed during the pendency of an action against the insurer. This question relates to the original action Appellants filed against UAIC, not any subsequent legal proceedings Appellants filed to amend the default judgment or to renew the default judgment. Thus, UAIC's reference to Appellants' subsequent judicial actions have no bearing on the outcome of the legal question before this Court.

UAIC cannot use this Court to essentially challenge the validity of Appellants' subsequent judicial actions or to somehow paint Appellants in an unflattering light. Specifically, UAIC implies that Appellants have acted with ulterior motives with regard to any subsequent judicial proceedings without any evidentiary basis. This allegation is only made to distract this Court from the legal question before it. To the extent UAIC questions the validity of Appellants' subsequent judicial proceedings, then UAIC should address these concerns with

the lower courts where those actions are filed. This is not the appropriate forum to litigate the validity of subsequent judicial proceedings, particularly because this Court's role is "limited to answering the questions of law posed to it . . .," not to determine the facts and to apply the law to those facts. *Brady, Vorwerck, Ryder & Caspino v. New Albertson's, Inc.*, 130 Nev. ___, 333 P.3d 229, 232 (2014).

II.

CONCLUSION

Based on the foregoing, Appellants respectfully request this Court to **GRANT** their Motion to Strike and to order UAIC to file an amended brief and appendix.

DATED this 24th day of December, 2018.

EGLT PRINCE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 24th day of December, 2018. Electronic service of the foregoing **APPELLANTS' REPLY IN SUPPORT OF MOTION TO STRIKE PORTIONS OF RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF TO SECOND CERTIFIED QUESTION AND APPENDIX** shall be made in accordance with the Master Service List as follows:

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