

In the Supreme Court of Nevada

JAMES NALDER, guardian at litem
on behalf of CHEYENNE NALDER;
and GARY LEWIS, individually,

Appellant,

vs.

UNITED AUTOMOBILE
INSURANCE COMPANY,

Respondent.

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NRAP 31(e) SUPPLEMENTAL AUTHORITIES

and

RESPONSE TO APPELLANT’S

NRAP 31(e) SUPPLEMENTAL AUTHORITIES

**A. Striegel v. Gross, No. 2:13-cv-01338-GMN-VCF,
2013 WL 5658074 (D. Nev. 2013)**

This authority corresponds to pages 11–13 of the supplemental opening brief and pages 11–16 of the supplemental answering brief.

In *Striegel v. Gross*, the court held that the proper procedure for renewing a judgment is to “fil[e] an affidavit with the clerk of the court” under NRS 17.214, *not* to file a separate action:

Nevada courts appear to agree that section 17.214 lacks language to support a separate cause of action for renewal of judgment. In *O’Lane v. Spinney*, the Nevada Supreme Court stated, “Judgment renewal is simple: the judgment creditor simply files an affidavit with the clerk of the court where the judgment is

entered within ninety days before the judgment expires.” 874 P.2d 754, 755 (Nev. 1994); *see also Leven v. Frey*, 168 P.3d 712 (Nev. 2007) (*en banc*) (clarifying proper procedure for judgment renewal under Nev. Rev. Stat. § 17.214). Furthermore, Plaintiff has failed to point to, and the court has not found, any legal authority describing renewal of judgment as a recognized cause of action in Nevada.

No. 2:13-cv-01338-GMN-VCF, 2013 WL 5658074, at *2 (D. Nev. 2013)

(holding that the absence of such a cause of action established that the defendant had been fraudulently joined to destroy diversity).¹

B. In re Smith, 101 P.3d 637 (Ariz. 2004) (*en banc*)

This authority corresponds to pages 14–15 of the supplemental opening brief and pages 11–16 and 18–19 of the supplemental answering brief.

In *In re Smith*, the Arizona Supreme Court held that while federal bankruptcy law may in some circumstances extend the time for filing a renewal-of-judgment affidavit, no such extension occurs solely as a matter of state law:

¹ In *O’Lane v. Spinney*, the Nevada Supreme Court held 3-2 that bankruptcy does not toll the time for filing the renewal affidavit, subject only to equitable tolling if the plaintiff establishes that the debtor’s bankruptcy filing was “simply a subterfuge.” 110 Nev. at 500–01, 874 P.2d at 756–57. The two dissenting justices would have rejected the possibility of equitable tolling as a matter of law. *Id.* at 502, 874 P.2d at 757 (Young, J., dissenting).

The Arizona statutory scheme discusses two separate events: enforcement of the judgment, and the ministerial filing of an affidavit to renew the judgment. The affidavit of renewal serves to notify interested parties of the existence and continued viability of the judgment.

* * *

As a matter of Arizona law . . . the filing of an affidavit of renewal is simply a ministerial action intended in part to alert interested parties to the existence of the judgment. Such a ministerial filing serves a notice function and does not seek to enforce a judgment. . . . It therefore is not prohibited under Arizona law by an automatic bankruptcy stay or any stay of the enforcement of the judgment, such as might be imposed by the filing of a supersedeas bond.

101 P.3d 637, 639, 640 (Ariz. 2004) (*en banc*) (noting, however, that the bankruptcy appellate panel had concluded that *federal* law extended the time for filing the renewal affidavit).

**RESPONSE TO APPELLANT’S
NRAP 31(e) SUPPLEMENTAL AUTHORITIES**

**C. *Cheyenne Construction, Inc. v. Hozz*,
102 Nev. 308, 720 P.2d 1224 (1986)**

Bizarrely, appellant advances the proposition that “damages are measured at the time of breach” by citing a case in which the damages were measured from “a date *different than* the time of breach.” *Cheyenne Const., Inc. v. Hozz*, 102 Nev. 308, 312, 720 P.2d 1224, 1227 (1986) (emphasis added). A later date for measuring damages is appropriate

when events after the breach increase or reduce the harm caused by the breach. *Cf. Hanneman v. Downer*, 110 Nev. 167, 173, 871 P.2d 279, 283 (1994) (plaintiffs deducted \$8,000 representing the amount “the damages were mitigated” after breach).

**D. *McLandon v. Eighth Judicial District Court*,
Case No. 69949, 2016 WL 7031827, 388 P.3d 961
(Nev. 2016) (unpublished table disposition)**

McLandon is not persuasive authority that a plaintiff may continue to seek consequential damages based on a default judgment that was not renewed before it expired. In an unpublished order, this Court declined to hear a writ petition from a defendant seeking to vacate the plaintiff’s belated renewal of judgment. 2016 WL 7031827, at *2. The sole basis for denying the writ petition was procedural: the order denying the motion to vacate was appealable, and while the Court had erroneously dismissed the defendant’s prior appeal based on the misconception that the order was not appealable, the defendant ought to have petitioned for rehearing to correct that error rather than abandon the appeal and file a separate writ petition. *Id.* In this unusual procedural circumstance, the Court elected not to publish the order as a precedential decision.

Although the district court had held that the time for renewing the judgment was tolled, this Court “express[ed] no opinion” on that issue. *Id.* at *1 n.1. Indeed, the Court raised, but did not resolve, *id.*, the possibility that the expired judgment could yet be declared void under *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007).

Dated this 21st day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 21st day of May, 2019. Electronic service of the foregoing “NRAP 31(e) Supplemental Authorities and Response to Appellant’s NRAP 31(e) Supplemental Authorities” shall be made in accordance with the Master Service List as follows:

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