

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARET RAWSON,

Petitioner,

vs.

THE NINTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF DOUGLAS; and THE
HONORABLE MICHAEL P. GIBBONS,
DISTRICT JUDGE,

Respondent

PEGGY CAIN, JEFFREY CAIN and HELI
OPS INTERNATINOAL, LLC,

Real Parties in Interest

Supreme Court Case No. 71948

District Court Case No.: 11-CV-0296

Dept. No. II

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Clerk of Supreme Court

PETITIONER'S BRIEF RE: ORDER TO SHOW CAUSE

(NOT Presumptively Assigned to the Court of Appeals pursuant to NRAP 17(b))

From the Ninth Judicial District Court, Douglas County, Nevada

The Honorable Michael P. Gibbons, Department II

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APPENDIX

(The following documents are attached pursuant to N.R.A.P. 21(a)(4))

Tab #	Document Description	Date
8	Order Denying Rawson's Claim of Exemption and Denying Motion to Quash Summons	February 10, 2014
9	Notices of Appeal for <u>Cain v. Price</u> Supreme Court Cases Nos. 69333, 69889 and 71548	December 9, 2015

The challenged Order was not substantively appealable. This Court has jurisdiction over Margaret's Writ Petition and extraordinary relief is warranted.

I. Summary of Brief

The lack of due process of the challenged District Court Order and the misapplication of an apparently misunderstood statutory scheme (N.R.S. §§17.030-080) cries out for this Court's intervention. The challenged Order was the denial of the non-named party's Motion to Quash, concurrently with granting a \$29,000,000.00 Judgment, without the filing of an Answer (See attached **Exhibit "8"** Order Denying Rawson's Claim of Exemption and Denying Motion to Quash Summons). Further, the interlocutory Judgment was entered in the middle of ongoing litigation. The Judgment was purportedly under N.R.S. §§17.030-080, which has no appeal provision.¹ The Brief demonstrates that that the Court has Jurisdiction to hear this Writ due to Margaret's lack of standing to appeal, and the public policy importance of addressing N.R.S. 17.030-080.

As will be set forth herein, Petitioner Margaret was not a party to the underlying litigation. Margaret was neither a proper "joint debtor" party nor properly brought into the

¹ *C.f.* N.R.S. §31.460 (appeals from garnishee judgments).

1 District Court case under any statute. Therefore, Margaret, who was never named in the
2 Amended Complaint, was not a party and had no standing to appeal.

3 Further, the case authority cited by this Court in its Order to Show Cause supports
4 Margaret's Writ. The cited case authority shows that the challenged interlocutory Order
5 was not appealable due to the "tortured" history of this District Court case, which is now
6 the basis of three other appeals filed by the Real Parties in Interest. (Notices of Appeal for
7 Cain v. Price Supreme Court Cases Nos. 69333, 69889 and 71548 are attached as **Exhibit**
8 **"9"**) Unlike this Court's cited cases which had the imprimatur of finality, the
9 \$29,000,000.00 Judgment against Margaret in favor of the Cains was interlocutory;
10 compounding that, the Cains ended up losing the case in the end.

11 Finally, Margaret's case is appropriately before this Court on a Writ because there
12 are no opinions from this Court explaining the correct application of N.R.S. §17.030-080.
13 Even the Ninth Circuit has alluded to the fact there is no case law interpreting this statute.²
14 In this case, due to a misunderstanding the statutory scheme, the District Court granted a
15 \$29,000,000.00 Judgment against Margaret on a Motion to Quash when she was not even
16 named in the pleadings. Margaret was not given the opportunity to file an answer as the
17 statute requires. There is a strong need for this Court, on an issue of first impression, to
18 instruct trial courts on the Joint Debtor Judgment procedure. Therefore, in addition to
19 Margaret's lack of standing to appeal, there is also a strong public policy need for this
20 Court's intervention.
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² Meritage Homes of Nev., Inc. v. Fed. Deposit Ins. Corp., 753 F.3d 819, 826 (9th Cir.
2014)

1 II. Margaret Rawson was Never a Party to the District Court Action so had no
2 Standing to Appeal.

3 Petitioner Margaret Rawson had no standing to appeal because she was not a party
4 to the District Court action, even as a joint-debtor party. In a proper N.R.S. §17.030 action,
5 a joint debtor must be named in the action before they can be ordered to show cause why
6 they should not be liable on the underlying Judgment. Margaret was neither named nor
7 joined as a party in the pleadings, as required for N.R.S. §17.030 to apply in the first place.
8 As this Court stated in Mona v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. No. 72
9 (September 29, 2016), a non-party has no standing to appeal. Further, this Court held that
10 an aggrieved corporation “nevertheless did not have standing to appeal because it was never
11 named as a party to the lawsuit.” Valley Bank of Nevada v. Ginsburg, 110 Nev. 440 (1994)
12 quoting Garaventa Co. v. Dist. Court, 61 Nev. 350, 354 (1942) (emphasis added).
13 Therefore, in order to be a party and have standing to appeal, the person must have been
14 named. Margaret was not. The fact that Margaret was not named as a party to the District
15 Court action is just one of the fatal errors in the District Court \$29,000,000.00 Judgment.
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17 As set forth in the Petitioner’s Writ, in a proper N.R.S. §17.030 action the joint
18 debtor must have been named before that party can be ordered to show cause why they
19 should not be bounded by the judgment of its co-defendant. Interpreting the California
20 statute upon which the Nevada statute is based³, the California Court held that “An alleged
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25 ³ As set forth in the Writ Petition, the Nevada Legislative History of N.R.S. §17.030 states
that it was based on California Code of Civil Procedure §989.

1 joint debtor who was not made a party to the action, and against whom no joint liability
 2 cause of action was stated, is entitled to an order quashing the joint debtor summons.”⁴

3 This matter, as it pertains to Petitioner Margaret, deviates from a proper Joint
 4 Debtor proceeding from which an appeal may rise because Petitioner Margaret Rawson was
 5 never named or joined as a party to the District Court Second Amended Complaint before a
 6 \$29,000,000.00 Judgment was entered against her, purportedly pursuant to N.R.S. §17.030.

7 Further, the pleadings confirm that Margaret was never a party. She has never
 8 appeared in the caption, even in the \$29,000,000.00 Judgment’s caption. (See attached
 9 **Exhibit “8”** Order Denying Rawson’s Claim of Exemption and Denying Motion to Quash
 10 Summons) N.R.C.P. 10(a) states in pertinent part, “(Caption; Names of Parties.) In the
 11 complaint the title of the action shall include the names of all the parties.” (emphasis
 12 added). The District Court in this matter proceeded with its Order granting a
 13 \$29,000,000.00 Judgment against Margaret even though she was never named in the
 14 District Court action in any capacity.

15 Later in the District Court action, DR Rawson’s co-Defendants were awarded
 16 summary judgment *against* the Real Parties in Interest, the Cains. In fact, even after the
 17 Court awarded the \$29,000,000.00 Judgment, Margaret was never added to the list of
 18 parties for whom to serve notices. (See e.g. Notices of Appeal for Cain v. Price Supreme
 19 Court Cases Nos. 69333, 69889 and 71548 are attached as **Exhibit “9”**) If Margaret were a
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 22 ⁴ Meller & Snyder v. R & T Props., Inc., 73 Cal.Rptr. 2nd 740 (Cal. Ct. App. 1998)
 23 (emphasis added) *citing* McRae v. Viscose Ambulatorium, 16 Cal.Rptr. 565, 567 (1961)
 24 (Post-Judgment Motion to Quash affirmed in favor of the “joint debtor” under CCP §989
 25 where the alleged “joint debtor” was not made a party to the original action).

1 party, she would be entitled to notice in the proceedings pursuant to N.R.C.P. 5(a)⁵ and
 2 Ninth Judicial District Court Rule 11⁶. The District Court never recognized Margaret as a
 3 party to the case, as is apparent from her lack of inclusion in the notices.

4 The cases cited by this Court in the Order to Show Cause also demonstrate that the
 5 \$29,000,000.00 Judgment against Margaret was not substantively appealable. In Meller &
 6 Snyder v. R & T Properties, Inc.⁷, the California appellate court held that under California
 7 Code of Civil Procedure §989, which is the basis for N.R.S. 17.030 et.seq., if a party was
 8 not originally named in the underlying case they are entitled to a motion to quash the new
 9 Joint Debtor summons.⁸ However, Meller & Snyder is much different procedurally from
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 12 ⁵ N.R.C.P. 5(a) states in pertinent part, “[E]very order . . . every pleading subsequent . . .
 13 every written motion . . . and every written notice, appearance, demand, offer of judgment,
 14 designation of record on appeal, and similar paper shall be served upon each of the parties.”
 15 (emphasis added)

16 ⁶ NJDCR 11 states in pertinent part:

17 [E]ach party shall furnish to counsel of record for each party who has
 18 appeared . . . copies of all papers served upon any party. After any new or
 19 additional party makes its first appearance of record in the proceeding, all
 20 parties shall provide to counsel for the newly appearing party copies of all
 pleadings and papers previously filed by them in the action.

21 ⁷ 73 Cal.Rptr.2d 740 (Cal.App. 1998).

22 ⁸ “Section 989 et seq. applies only when the alleged joint debtor was named or joined as a
 23 party and a joint liability cause of action was stated against it, but it was not served with
 24 summons. (citations omitted); An alleged joint debtor who was not made a party to the
 25 action, and against whom no joint liability cause of action was stated, is entitled to an order
 quashing the joint debtor summons. (citations omitted) Id.

1 the case *sub judice*. Appealability under California rules did not appear as an issue for the
2 California Court. Further, it appears that in California any post-judgment order is
3 appealable.⁹ In Meller & Snyder, the underlying case went to trial. After judgment from
4 that trial, the judgment creditor attempted to bring in a new party under California's version
5 of N.R.S §§17.030-080. The alleged joint debtor, R & T Properties, Inc, filed its answer
6 and the matter actually proceeded to a joint debtor trial. The Superior Court then held a
7 trial against the new party, from which R&T appealed.

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9 Meller & Snyder stands for the undisputed proposition that a non-named party may
10 not be subject to the joint-debtor proceedings. R&T's judgment came from a trial in the
11 underlying case, followed by a joint debtor summons, R&T's answer and then a joint
12 debtor trial. After R&T lost the joint debtor trial, the case was closed and final in every way
13 and they had the right to appeal under California law. Procedurally, Margaret's case is
14 different because the denial of her Motion to Quash was an interlocutory. She filed a
15 Motion to Quash, not an Answer. Margaret was not allowed by the District Court to
16 answer; Rather, in the same Order which denied Margaret's Motion to Quash, the District
17 Court granted the \$29,000,000.00 Judgment. The case against Margaret was decided
18 before she could file an Answer¹⁰, and while the case by the Cains was still pending. The
19 Cains ultimately lost the underlying litigation, yet Margaret is still subject to the improper
20 \$29,000,000.00 Judgment.
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24 ⁹ CODE OF CIVIL PROCEDURE 904.1(a)states in pertinent part, "An appeal . . . may be
25 taken . . .(2) From an order made after a judgment . . ."

¹⁰ N.R.S. §17.060.

Likewise, the California Court held in Vincent v. Grayson¹¹, that to enter a judgment against a joint debtor under CCP §989 who was not named “would be to permit a new lawsuit against a defendant without affording him the protection of the normal rules of procedure available in a plenary action.”¹² In that case, however, there was finality before the Graysons’ appeal. The Superior Court entered a default judgment, which was followed by a joint debtor summons. The Graysons were able to file an Answer and were granted a trial.¹³ The Grayson appeal followed the Answer and the trial. Again, appealability under California law did not appear to be an issue; The alleged judgment debtors were permitted to file an Answer and participate in litigation before the final judgment.

Even following Settelmeyer & Sons v. Smith & Harmer, 124 Nev. 1206 (2008), cited in the Order to Show Cause, there still would be no party-standing for Margaret to appeal. In Settelmeyer, the garnishee was properly, formally and statutorily “named” in the action under the post-judgment garnishment statute (N.R.S. Chapter 31). Margaret was never named in any pleading. Therefore, she could never be a joint debtor under N.R.S. §31.030, and she was not properly brought into the case by any statutory authority such that granted by N.R.S. Chapter 31. In other words, the District Court’s judgment proceedings against Margaret were “fugitive” proceedings; they were not guided by any statutory authority. Finally, as stated by the Settelmeyer Court, the garnishment proceedings are

¹¹ 106 Cal.Rptr. 733, 742 (Ct.App. 1973) (Utilizing §989 against a Grayson, who was not named in the original pleading “would render the statutory scheme for joint debtor proceedings incomprehensible . . .”)

¹² Id.

¹³ Id. at 737.

1 statutorily appealable under N.R.S. §31.460.¹⁴ The “Joint Debtor” statute does not contain
2 a similar appeal provision.

3 In Callie v. Bowling, 123 Nev. 181 (2007), this Court correctly held that
4 “whenever a judgment creditor seeks to collect on a judgment from a nonparty, the
5 judgment creditor must file an independent action.¹⁵ However, Bowling’s appealability
6 rested on the judgment creditor’s post-judgment motion to amend in order to name a party
7 as “alter ego”. It appeared that the judgment creditors had a case of alter ego, and moved to
8 amend to properly name that party. This is distinctly different from Margaret’s case, as
9 there was no basis for statutory liability applied to her by the District Court. Margaret is
10 simply not a party against whom there was a statutory basis for attempting to bring into the
11 action. Before the District Court matter proceeded to final judgment, the Cains improperly
12 invoked the Joint Debtor statute. As stated above, the Joint Debtor statute did not apply to
13 Margaret as she was never named in the action.
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15 Margaret was never a party to the District Court case and had no standing to appeal.
16 Margaret was never a party to the case before the \$29,000,000.00 Judgment was entered
17 against her; Therefore, the \$29,000,000.00 Judgment was improper and that is precisely
18 why Margaret lacked standing to appeal. Margaret’s Writ should be granted.
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23 ¹⁴ N.R.S. §31.460 states in pertinent part, “appeals may be taken and prosecuted from any
24 final judgment or order in such proceedings as in other civil cases.”

25 ¹⁵ 123 Nev. 181 n. 10 (2007)

1 III. This Case Presents an Important Issue of Law that Needs Clarification on an
 2 Issue of First Impression Regarding the Joint-Debtor Proceedings of N.R.S.
 §17.030-080.

3 Margaret's \$29,000,000.00 Judgment, purportedly under N.R.S. §17.030, presents
 4 important statutory issues that need clarification from this Court. The Ninth Circuit
 5 commented as recently as 2014 that there is no case law interpreting N.R.S. §17.030.²⁵ The
 6 Ninth Circuit stated:

7 As pointed out above, Meritage asserted before the district
 8 court that there has been "no case law interpreting" this
 9 section of the Nevada Revised Statutes. Likewise, we are not
 aware of any such law.²⁶

10 The Ninth Circuit ultimately decided that "in the absence of any cases interpreting this
 11 statute, we hold that the statute leaves it to the discretion of the trial court whether to issue
 12 such a summons."²⁷ This Court stated in Diaz v. Dist. Ct., 116 Nev. 88 (2000), "[w]here an
 13 important issue of law needs clarification and public policy is served by this court's
 14 invocation of its original jurisdiction, ... consideration of a petition for extraordinary relief
 15 may be justified." In Diaz, this Court heard a matter of first impression, even though an
 16 appeal may have been available because it involved an important issue. Likewise,
 17 Margaret's case involves an issue of first impression on the proper procedures and
 18 applicability of Nevada's Joint Debtor statute.

22 ²⁵ Meritage Homes of Nev., Inc. v. Fed. Deposit Ins. Corp., 753 F.3d 819, 826 (9th Cir.
 23 2014)

24 ²⁶ Id. at 825-6.

25 ²⁷ Id. at 826.

1 The District Court in this matter allowed the issuance of a Summons against
2 Margaret even though she had not been named in the case. The District Court requires
3 clarification of the language in N.R.S. §17.030 discussing “those who were not originally
4 served with the summons . . .” to mean that it only refers to named parties, not any person
5 or entity who was not named. The District Court is also unclear on the procedure of the
6 statutory scheme, which prescribes for the filing of an answer²⁸ and trial.²⁹ In this case,
7 Margaret filed a Motion to Quash, which was denied. The Court then entered its
8 \$29,000,000.00 Judgment in the same Order. (**Exhibit “8”**) The right of due process is
9 protected by both the United State Constitution³⁰ and the Nevada Constitution.³¹ Margaret
10 was denied her due process rights due to the District Court’s misinterpretation and
11 misapplication of Nevada Joint Debtor statutory scheme. As a result of the lack of case law
12 explaining N.R.S. 17.030-080, Margaret is now on the wrong end of a \$29,000,000
13 Judgment in a case wherein she was never even named or liable. This Court’s intervention
14 is warranted in this case, and in all future cases for the benefit of Nevada judges and
15 litigants.
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20 ²⁸ N.R.S. §17.060.

21 ²⁹ N.R.S. 17.080.

22 ³⁰ U.S Const. amend. XIV, § 1 ("nor shall any State deprive any person of life, liberty, or
23 property, without due process of law").

24 ³¹ Nev. Const. art. 1, § 8(5) ("No person shall be deprived of life, liberty, or property,
25 without due process of law.").

CONCLUSION

Based on the foregoing, this Court has jurisdiction of Margaret's Writ Petition by virtue of the fact that she lacked standing to appeal and due to the importance of this Court's making guiding pronouncements on the proper interpretation and application of N.R.S. §17.030-080.

Dated: December 13, 1996

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VERIFICATION PURSUANT TO N.R.A.P. 21(A)(5)

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Peter Dubowsky, being duly sworn, deposes and says:

That he is the counsel of record for the Petitioner, Margaret Rawson, in the above-entitled matter, has read the forgoing PETITIONER'S BRIEF RE: ORDER TO SHOW CAUSE and knows the content thereof; that the same is true of his own knowledge except for those matters therein stated upon information and belief, and as to those matters he believes the same to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13 day of December, 2016

By 

CERTIFICATE OF SERVICE

The undersigned, an employee of Dubowsky Law Office, Chtd., hereby certifies that on the 13th day of December, 2016, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing Petitioner's Brief Re: Order To Show Cause, addressed as follows:

The Honorable Michael P. Gibbons
Ninth Judicial District Court Judge
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