

Original

Bryan Ferguson ID NO. 96803
HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89070

FILED

APR 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY /  /
DEPUTY CLERK

Appellant In Proper Person

In The Supreme Court of the
State of Nevada

Bryan Ferguson

CASE NO.: 72640

Appellant

DEPT NO.: N/A

vs.

Las Vegas Metro. Police Dept.

DATE OF HEARING: N/A

TIME OF HEARING: N/A

Respondent

Opposition to motion to Dismiss
and other Relief

COMES NOW, Appellant, Bryan Ferguson, In Proper Person and
hereby files his Opposition to motion to Dismiss and other Relief.

THIS Opposition, is made and based upon the attached Memorandum of Points
and Authorities, all of the pleadings and other documents on file in this case, as well as
any argument alluded at the hearing of this matter, if any.

DATED This 12 day of April, 2017.

Respectfully submitted,


Bryan Ferguson ID NO. 96803
Appellant In Proper Person

APR 17 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Memorandum of Points and Authorities

I. Introduction

Appellant Bryan Ferguson (hereafter referred to as "Ferguson") opposes the Motion to Dismiss for the reasons set forth below, and/or in the alternative seeks (a) a stay of the appeal to allow the motion for reconsideration to be heard; (b) that the April 12, 2017 notice of Appeal be accepted and recognized by the Court if the Dismissal is granted and the appeal stayed and remanded to district court to hear the Motion for Reconsideration.

II. Relevant Facts, Law and Argument.

On March 7, 2017, the district court turned what was supposed to be a status check into a hearing on Plaintiff's pending Motion for Summary Judgment. Ferguson asks this Honorable Court to take judicial notice of the minutes of the February 2017 hearing (not available to Ferguson) and Plaintiff's Exhibit "1".

Ferguson prepared and mailed in for filing a motion for Reconsideration and other Relief (Plaintiff's Exhibit "2") and asked that the motion be heard within the thirty days of entry of order and/or it be stayed. Ex. 2, page 7, lines 13-21. The motion was filed on March 16, 2017 (7 days after mailing). See, Plaintiff's Exhibit "3".

Unknown to Ferguson, due to a copy and staple error, his unsigned, undated notice of appeal, prepared in anticipation of the entry of order was attached to the Motion for Reconsideration. It appears the clerk's office separated the unsigned, undated, notice of appeal and

1 filed it under the mandates of NRAP 4 (requiring the clerk
2 to file deficient notices of appeal - those unsigned, undated).

3 On March 17, 2017, the March 15, 2017 signed order
4 was filed by the clerk. See, Exhibit "1", page 9, and page 1.

5 By the time Ferguson figured out his mistake and due
6 to the delay in his receiving correspondence from the clerk,
7 the notice of appeal was in fact due and, the March

8 16, 2017 motion for reconsideration was calculated for
9 April 17, 2017, which is outside the 30 day deadline
10 under the NRAP. See, Ex "2", page 1.

11 Ferguson then filed a motion in this Honorable Court seeking
12 to waive any filing fees and costs associated with the appeal
13 of the granting of the motion for Summary Judgment.

14 A. The motion to dismiss should be denied.

15 The Notice of Appeal was filed March 16, 2017 and the
16 Notice of Entry of order on March 17, 2017. The March 17th
17 order is an appealable order, Ferguson could have cured
18 the deficiency in his March 16, 2017 notice of appeal
19 by attaching the March 17, 2017 order (now that he has
20 a copy) and this Court could order nunc pro tunc that
21 the March 16th NOA be considered March 17th in the interest
22 of judicial economy and the inherent powers of the Court,
23 as well as allow Ferguson a chance to correct it under the
24 NRAP.

25 Furthermore, the rather litigious and prolific Plaintiff's
26 counsel could have informally resolved this with Ferguson
27

1 and avoided, again, pushing paper when a letter and phone call
2 could have resolved the mistake, confusion and not wasted
3 resources, energy, time and their client's money.

4
5 B. A stay should issue of the appeal proceedings to allow
6 the motion for Reconsideration to be heard.

7 If the motion to Dismiss is denied, Ferguson seeks leave
8 of Court to amend his notice of Appeal, and then stay the
9 appeal and remand to the district court to allow the
10 motion for Reconsideration to be heard.

11
12 C. In the alternative Ferguson seeks leave to file a "new"
13 Notice of Appeal and stay of the proceedings.

14 In the alternative, if the motion is granted, then
15 Ferguson, out of an abundance of caution has prepared and
16 mailed for filing a Notice of Appeal dated and signed
17 April 12, 2017 (see Exhibit "A") for which he seeks
18 the same waiver of filing fees, and costs and judicial
19 notice of it being filed within the 30 day deadline.

20 Ferguson also seeks a stay of the proceedings in
21 order to give the district court jurisdiction to hear
22 the motion for reconsideration of the granting of the
23 motion for Summary Judgment.

24 If the motion is denied, Ferguson will file a dismissal
25 of the April 12, 2017 NOA and assigned case number.

26 III

27 III

III Conclusion and Prayer for Relief

Based upon the foregoing, and all pleadings on file in Case 07A537416, and by Plaintiff's / Respondents, Ferguson respectfully requests this Court order:

1. Respondent's Motion to Dismiss be Denied;

2. Ferguson be granted leave to Amend his NOA to cure any deficiencies;

3. The Amended JOC be ordered nunc pro tunc to March 17, 2017;

4. The appeal be stayed and the matter remanded to allow the Motion for Reconsideration be heard;

5. In the alternative, if the motion is granted;

a). Exhibit "A" be accepted as perfecting the appeal and conferring this Court jurisdiction;

b). Find Ferguson indigent and waive any filing fees and costs associated with prosecuting the appeal;

c). Stay the "new" proceedings and remand back to district court to hear the motion for Reconsideration; and

6. Whatever additional relief deemed necessary and appropriate.

Dated this 12 day of April 2017



Bryan Ferguson # 96803

Appellant in Pro Per

CERTIFICATE OF SERVICE BY MAILING

I, Bryan Ferguson, hereby certify, pursuant to NRCP 5(b), that on this 12
day of April, 20 17, I mailed a true and correct copy of the foregoing, "Opposition to Motion to Dismiss and other Relief"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Adele Karoun, Esq.
10001 Park Row Drive
Las Vegas, NV 89145
Counsel for Respondents

CC:FILE

DATED: this 12 day of April, 20 17.



BRYAN FERGUSON # 96803
Appellant / In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

EXHIBIT "A"

Notice of Appeal

Case no. 07A5374/6

Dated April 12, 2017

EXHIBIT "A"

1 BRYAN FERGASON # 96803
2 Claimant In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

5 8th DISTRICT COURT
6 CLARK COUNTY NEVADA

7
8 Bryan FERGASON,
9 Appellant,
10 -v-
11 Las Vegas Metropolitan Police Dept.,
12 Respondent,
13 _____

Case No. 07A537416
Dept.No. VIII
Docket N/A

14 NOTICE OF APPEAL

15 Notice is hereby given that the Claimant, Bryan
16 Ferguson, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court of March 7, 2017 (filed March 17, 2017) Granting Plaintiff Las
19 Vegas Metropolitan Police Department's motion for Summary Judgment.
20 _____

21 Dated this date, April 12, 2017.
22
23

24 Respectfully Submitted,

25 
26 Bryan Ferguson # 96803
27 In Proper Person
28

CERTIFICATE OF SERVICE BY MAILING

I, Bryan Ferguson, hereby certify, pursuant to NRCP 5(b), that on this 12
day of April, 2017 I mailed a true and correct copy of the foregoing, "

Notice of Appeal

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Adek Karam Esq.

10001 Park Run Drive

Las Vegas, NV 89145

Counsel for Respondent

DATED: this 12 day of April, 2017.



Bryan Ferguson #96803
CLAIMANT /In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal
(Title of Document)

filed in District Court Case number 07A537416

☒ Does not contain the social security number of any person.

-OR-

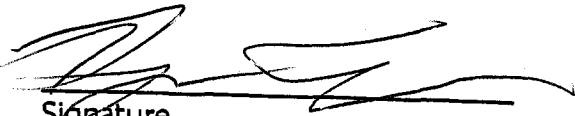
☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

April 12, 2017
Date

Bryan Ferguson # 96803
Print Name

Appellant in Pro Per
Title