

IN THE SUPREME COURT OF NEVADA

VETERANS IN POLITICS
INTERNATIONAL, INC.; AND STEVE
W. SANSON

Appellants,

VS.

MARSHAL S. WILLICK; AND
WILLICK LAW GROUP,

Respondents.

SUP. CT. CASE #: 72778

Electronic Case File
Oct 23 2017 10:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
A-17-750171-C (Dept. 18)

**APPELLANTS' OPPOSITION (IN PART) TO NON-PARTY'S MOTION
TO CONSOLIDATE APPEALS**

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OPPOSITION TO NON-PARTY'S MOTION TO CONSOLIDATE

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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4 Appellant Veterans in Politics International Inc.’s (“VIPI”) is a non-profit
5 media outlet, advocacy group and government watchdog. This case arises from the
6 district court’s denial of and it and its president Steve Sanson’s (“Sanson”) anti-
7 SLAPP special motion to dismiss under NRS 41.650. Respondents, family law
8 lawyer Marshal Willick and his law firm Willick Law Group (collectively,
9 “Willick”), sued VIPI and Sanson for defamation and related claims for five
10 statements that VIPI published on the internet from December 2016 to January
11 2017. Appellants filed their Opening Brief on August 21, 2017 (Docket no. 17-
12 27990), and pursuant to an extension of time, Respondents’ Answering Brief is due
13 on October 20, 2017 (Docket no. 17-31597).
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18 On September 29, 2017, non-party Brandon Saiter (“Saiter”), moved to
19 consolidate this appeal with two other pending appeals -- an appeal in his *personal*
20 *divorce case* against his wife (the “Saiter Appeal”)¹, and an appeal of his *divorce*
21 *lawyer’s (Jennifer Abrams) personal defamation case* against Sanson and VIPI
22 (the “Abrams Appeal”).² Abrams is Willick’s fiancé, and she is likewise suing
23 VIPI and Sanson for criticisms made of her professional and courtroom behavior.
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28 ¹ *Saiter adv. Saiter*, Supreme Court Case no. 72819

² *Abrams v. Schneider*, Supreme Court Case No. 73838

1 In her case, however, the district court granted Appellants’ anti-SLAPP motion to
2 dismiss and she and her firm are appealing.

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4 Appellants oppose consolidation of this appeal with the *Saiter Appeal*
5 because the Saiter Appeal should be dismissed, not consolidated. Appellants agree
6 in part to consolidation of this case with the *Abrams Appeal* for the limited purpose
7 of general background and for legal determination of a legal issue that is at the
8 heart of both appeals – whether lawyers can be publicly criticized for their
9 courtroom and professional behavior. Specifically, whether such criticism
10 constitutes an issue “of public concern” under Nevada’s anti-SLAPP statutes.

11 **II. ARGUMENT**

12 **A. Standard for Consolidation**

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14 Nevada Rule of Appellate Procedure (“NRAP”) 3(b)(2) permits this Court to
15 consolidate appeals on its own motion or upon motion of a party. This Court
16 typically consolidates appeals when the issues raised are identical (*Schmidt v.*
17 *Washoe County*, 123 Nev. 128, 130, 159 P.3d 1099, 1101 (2007)), or when the
18 arguments presented below and on appeal are similar and arise from a common set
19 of facts. *Levinson v. Second Judicial District Court*, 103 Nev. 404, 406, 742 P.2d
20 1024, 1025 (1987). The consolidation should also lead to judicial economy.
21 *Jackson v. State*, 115 Nev. 21, 22, 973 P.2d 241 (1999). Consolidation should not
22 be made, however, when it would result in the violation of a substantial right of
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1 one of the parties. See, e.g., *Kally v. Mount Sinai Hosp.*, 44 A.D.3d 1010, 1010,
2 844 N.Y.S.2d 415 (2007) (“Where common questions of law or fact exist, a motion
3 to consolidate should be granted absent a showing of prejudice to a substantial
4 right by the party opposing the motion.”); *See also*, *Cochrane v. Superior Court for*
5 *Los Angeles County*, 67 Cal.Rptr. 675, 261 Cal.App.2d 201 (Cal. App. 2 Dist.,
6 1968).

9 **B. The Saiter Appeal Should Be Dismissed, Not Consolidated.**

10 The Saiter Appeal is not a candidate for consolidation, but rather, should be
11 dismissed outright as an appellate “non-starter.”

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13 1. **The Supreme Court Lacks Jurisdiction Over the Saiter Appeal**

14 On October 3, 2017, the Supreme Court in the Saiter Appeal issued an OSC
15 Re: Dismissal for lack of jurisdiction. (Saiter Appeal, Docket # 17-33450.) Saiter
16 is appealing family court Judge Jennifer Elliott’s vacating of an order she had
17 previously issued. That order, which was entered on stipulation of the parties,
18 purported to prohibit the dissemination of case materials by everyone, including by
19 non-parties who had no advance notice or opportunity to be heard. (“Order
20 Prohibiting Dissemination”). When Sanson in his capacity as President of VIPI
21 disseminated a court video transcript he obtained *prior* to the issuance of the order,
22 which video showed Abrams being disrespectful to Judge Elliott in that case,
23 Abrams moved to have Sanson incarcerated and sanctioned for contempt.
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1 Appellants opposed Abrams' motion via special appearance, pursuant to which
2 Judge Elliott vacated the Order Prohibiting Dissemination as unlawful and
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4 unconstitutional. Judge Elliott also found that there was no actual harm caused by
5 the dissemination of the video which contained no confidential case information.
6
7 Abrams is now appealing that order.

8 Yet, neither the district court's refusal to find Sanson in contempt, nor the
9 vacating of the Order Prohibiting Dissemination are an "appealable determination"
10 under NRAP 3(A)(b). As such, the Supreme Court does not have jurisdiction to
11 hear such appeal. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d
12 850, 851(2013) (where no statute or court rule authorizes an appeal, no right to
13 appeal exists). As this Court pointed out at page 1 of its OSC "a contempt order
14 that is ancillary to another proceeding [such as this one which is ancillary to
15 Saiter's divorce] is not appealable." *Citing, Pengilly v. Rancho Santa Fe*
16 *Homeowner Ass'n*, 116 Nev. 646, 5 P.3d 569 (2000). Consequently, the Saiter
17 Appeal should be dismissed.

22 B. The Appeal Was Not Perfected So the Supreme Court Lacks
23 Jurisdiction Over It; Proceeding with the Appeal Would Also Violate Sanson and
24 VIPI's Due Process Rights.

25 NRAP 3(d) requires appellants to "serve the notice of appeal on all parties to
26 the action in the district court." **When service is not performed properly "the**
27 **appellate court acquired no jurisdiction."** *Johns-Manville, Inc., of California v.*
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1 *Lander County*, 48 Nev. 244, 229 P. 387, 234 P. 518 (1924). "[T]o perfect an
2 appeal, the party desiring to do so should first file his notice of appeal, next serve
3 it." *Spafford v. White River Val. Co.*, 51 P. 115 (Nev. 1897)
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5 In this case, neither VIPI nor Sanson were served with a Notice of Appeal or
6 any other documents in the appeal. Sanson had specially appeared in the Saiter
7 case to challenge the constitutionality of the Order Prohibiting Dissemination, and
8 is the **only litigant in the case who is incentivized to oppose the Appeal**,
9 particularly since such order was entered into on **stipulation of the parties**.
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12 Further, even a cursory review of the opening brief shows that this issue
13 would have a substantial effect on Sanson's most fundamental rights to liberty and
14 property. The sole reason for the Saiter appeal is so that Saiter can then *again* seek
15 to have Sanson *incarcerated* or sanctioned for purportedly violating the Order
16 Prohibiting Dissemination. Saiter's Opening Brief, at page 35, states: "the case
17 should be remanded to the trial court for a hearing on sanctions for the violation of
18 the Order Prohibiting Dissemination of Case Material, as it related to these hearing
19 videos and as requested in the Motion for Order to Show Cause." Saiter then
20 argues for four pages (page 48 to 52) for incarceration, sanctions and an injunction
21 against Sanson for purported contempt of the Order he is trying to reinstate.
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23 The Fifth Amendment to the United States Constitution, made applicable to
24 the states through the Fourteenth Amendment, provides that "no person may be
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1 deprived of life, liberty, or property, without due process of law.” Article I,
2 Section I of the Nevada constitution describes “life and liberty” as “inalienable
3 right(s).” As explained in *Piland v. Clark County Juvenile Court Services*, 85 Nev.
4 489, 491, 457 P.2d 523 (Nev., 1969): “Due process of law is the primary and
5 indispensable foundation of individual freedom. ... [T]he procedural rules... of due
6 process are our best instruments for the distillation and evaluation of essential facts
7 from the conflicting welter of data that life and our adversary methods present. ...
8 Procedure is to law what 'scientific method' is to science.”

12 Nevada's Due Process clause is co-extensive with the Due Process clause of
13 the United States Constitution. *Wyman v. State*, 125 Nev. 592, 600, 217 P.3d 572,
14 578 (2009). Key to procedural due process is the right to notice and an opportunity
15 to be heard for any person who might be negatively affected by the outcome of the
16 proceeding. *Lydia H. v. Washoe Cnty. Dep't of Soc. Servs. (In re Parental Rights*
17 *as to J.F.)* (Nev., 2015); *See also, Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d
18 878, 879 (2007) (“[P]rocedural due process requires notice and an opportunity to
19 be heard.”)

23 Indeed, the failure to give Sanson notice and an opportunity to be heard in
24 the Saiter case was one of the reasons Judge Elliott vacated her order in the first
25 instance:

28 Again, the Court FINDS as the Order Prohibiting the
Dissemination of Case material failed to give notices to any of

1 the “All persons or entities,” including Sanson, no one was
2 given any means to challenge the validity of the order. Thus,
3 any non-party, without prior notice, could have been dragged
4 into court unconstitutionally, despite lack of any reasonable
connection with the case.

5 (Saiter Appdx., III:523, at 18:11-23.) Accordingly, the Saiter Appeal should be
6 dismissed for failure to perfect and for violation of Sanson’s Due Process rights.
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8 C. There Would be No Judicial Economy in Consolidating the Saiter
9 Appeal with this Appeal.

10 The Court should not consolidate cases where common issues, if any, are not
11 central or material to both cases. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir.
12 1978).

14 The Saiter Appeal centers on whether the Order Prohibiting Dissemination
15 should have been vacated as unconstitutional and unlawful, and whether it can be
16 binding on non-parties such as Sanson. By Contrast, the issues in the present
17 appeal are whether online statements (that have nothing to do with the Saiter case)
18 made by Sanson (who is not a party to the Saiter case) about Willick (who is also
19 not a party to the Saiter case) are subject to dismissal under Nevada’s anti-SLAPP
20 statutes (NRS 41.650 et. seq.). Specifically, whether VIPI’s statements constitute
21 “a good faith communication in further of the right to free speech in direct
22 connection with an issue of public concern” (NRS 41.650), and if so, whether
23 Willick can establish with prima facie evidence a probability of prevailing on his
24 defamation and related claims as required by NRS 41.660(3)(b). Both prongs of
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1 this analysis are *completely unrelated to the law, facts and issues in the Saiter*
2 *Appeal*. As Judge Elliott held when vacating the Order to Disseminate, “Plaintiff’s
3 Motions appear to be more about bolstering Abrams’ civil action against Schneider
4 and Sanson, especially since neither party has alleged specific harm.” (Saiter
5 Appdx. III:523, at p.21 of Order.)
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8 **IV. THIS APPEAL MAY BE CONSOLIDATED FOR LIMITED** 9 **PURPOSES.**

10 Both Willick and his fiancé Abrams are suing VIPI and Sanson for
11 publishing statements about their respective professional and courtroom behaviors.
12 At the heart of both of these cases is whether these criticisms were made “in direct
13 connection with *an issue of public interest*” as required by NRS 41.637 for anti-
14 SLAPP protection. The appeals can be consolidated for the limited purposes of
15 general background and clarification of the relevant law in this area.
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18 The appeals should not, however, be consolidated for purposes of factual
19 analysis. Under NRS 41.637, VIPI/Sanson must also show that the statements
20 were made in “good faith,” i.e., were “truthful or were made without knowledge of
21 their falsity.” This factual analysis must be applied separately to each statement.
22 Indeed, the failure to consider each statement separately was one of the main errors
23 committed by the district court in this case.
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27 Also under Nevada’s anti-SLAPP statutes, once defendants make an initial
28 showing that their statements fall within the ambit of the anti-SLAPP statutes, then

1 the burden shifts to the plaintiff to show “with prima facie evidence a probability
2 of prevailing on the claim.” NRS 41.660(3)(b). This too is a factual determination
3 that must be made for each plaintiff separately.
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5 **V. JUDGE DUCKWORTH’S ORDER IN YET ANOTHER UNRELATED**
6 **DIVORCE CASE SHOULD BE DISREGARDED.**

7 Saiter’s Motion to Consolidate seeks judicial notice of an order issued by
8 Judge Bryce Duckworth in yet another unrelated divorce case, *Ansell v. Ansell*,
9 Eighth Judicial District Court, Family Division, Case no. D-15-521960-D in which
10 Marshal Willick represents the plaintiff (the “Duckworth Order”). Yet, the
11 Duckworth Order is not appropriate for judicial notice. NRS 47.130(2) requires
12 that facts subject to judicial notice be “(a) [g]enerally known within the territorial
13 jurisdiction of the trial court; or (b) [c]apable of accurate and ready determination
14 by resort to sources whose accuracy cannot reasonably be questioned, so that the
15 fact is not subject to reasonable dispute.
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20 Duckworth’s Order contains a myriad of findings regarding the nature of
21 VIPI and Sanson’s activities, which findings were made by Judge Duckworth (a)
22 knowing he was disqualified and intended to (and did) recuse himself from the
23 case, (b) without any adjudication of facts on which such findings were based, (c)
24 in violation of Sanson and VIPI’s Due Process and other rights, and (d) were
25 beyond the jurisdiction of the family court. Sanson and VIPI attempted
26 unsuccessfully to vacate the order in district court and will shortly seek this Court’s
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1 assistance to do so. Accordingly, the findings and conclusions therein about
2 Sanson and VIPI are not “generally known” nor “capable of accurate and ready
3 determination” so that such facts are “not subject to reasonable dispute” as
4 required by NRS 47.130(2). Appellate courts should not take judicial notice of
5 facts raised for the first time on appeal where, as here, it would be procedurally
6 unfair to do so. *In re Indian Palms Assoc.*, 61 F.3d 197, 205 (3d Cir. 1995);
7 *Colonial Leasing Co. of New England v. Logistics Control Group Int'l*, 762 F.2d
8 454, 461 (5th Cir. 1985).

12 VI. CONCLUSION

13 For the reasons stated above, Appellants respectfully request that the Court:

- 14 a) Deny the request to consolidate this appeal with the Saiter Appeal;
15 b) On its own motion, if it desires to do so, consolidate this Appeal with
16 the Abrams Appeal for limited purposes.
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18 Respectfully submitted on this 17th day of October, 2017.

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

Executed this 17th day of October, 2017, in Las Vegas, NV

//Anat Levy//