

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL
DISTRICT,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Electronically Filed
Feb 21 2018 03:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.: 73525

DISTRICT COURT CASE NO.:
A750151

**RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO
RESPONDENT'S MOTION TO STRIKE APPELLANT'S OPENING BRIEF**

Respondent Las Vegas Review-Journal (the "Review-Journal"), by and through its counsel, Margaret A. McLetchie and Alina M. Shell, hereby replies to Appellant Clark County School District's ("CCSD") Opposition to Respondent's Motion to Strike Appellant's Opening Brief.

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
MCLECHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Respondent, Las Vegas Review-Journal

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND FACTS

In its Response to Respondent Las Vegas Review-Journal's ("Review-Journal") Motion to Strike Appellant's Opening Brief, Appellant Clark County School District ("CCSD") argues that the Motion to Strike seeks a "draconian result." (Appellant's Opposition to Motion to Strike ("Opp."), p. 2:25-26.) On the contrary, sanctions under the Nevada Rules of Appellate Procedure are appropriate. Moreover, it is CCSD's failure to follow those Rules, not the Review-Journal's, that has caused a "waste of this Court's judicial resources." (*Id.*)

Although CCSD filed a motion to file an errata to their Opening Brief (the "Errata Motion") after it received notice the Motion to Strike was filed, it did so too late. As detailed in CCSD's Opposition, by the time CCSD filed its proposed errata, the Review-Journal had already submitted its Answering Brief. The rules are in place for a reason—to "secure the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts." NRAP 1(c). The citation standards embodied in NRAP 28 exist so that counsel (and this Court) can focus on responding to arguments and avoid wasting time having to guess at which facts underlie those arguments.

The Review-Journal's time was wasted, and it is not the job of counsel for the Review-Journal to figure out the "pattern" behind the errors or to assist CCSD with

correcting its brief. Moreover, CCSD cannot rely on its own, unsupported descriptions of documents that were presented *in camera*. For these reasons, the Review-Journal’s Motion to Strike should be granted.

II. ARGUMENT

A. The Citation Errors Are Not Minimal.

CCSD concedes that all but two of the citations in its original brief are incorrect. (Opp., p. 4:9-11.) Yet it contends that counsel for the Review-Journal should have figured out “the pattern” behind the error and found the record citations for CCSD, or contacted CCSD counsel to correct their errors. (Id., p.4:12-23.)

In fact, it is beyond dispute that CCSD failed to comply with numerous provisions of this Court’s Rules of Appellate Procedure. NRAP 28(a)(8) mandates that the statement of facts in an opening brief must include “appropriate references to the record.” Similarly, NRAP 28(a)(10)(A) requires that, in the argument portion of an opening brief, an appellant must include its legal contentions “and the reasons for them, with citations to the authorities and part of the record on which the appellant relies.” *See also M.C. Multi-Family Dev. v. Crestdale Assocs.*, 124 Nev. 901, 908 n. 2, 193 P.3d 536, 541 (2008) (arguments in briefs must present appellant’s contentions with citations to the parts of the record upon which appellant relied). NRAP 28(e)(1) mandates that “every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of

the appendix where the matter relied on is to be found.”

CCSD violated all these rules. It failed to cite to correct page numbers, and did not cite to volumes. Its factual assertions were not supported. A brief with only two correct citations is necessarily not “presented with accuracy.” Pursuant to NRAP 28(j), briefs that do not comply with NRAP 28, such as CCSD’s, may be disregarded or stricken, “and the court may assess attorney fees or other monetary sanctions.”

CCSD’s arguments to the contrary improperly presume that it was easy to find the portions of the record it meant to refer to. It was not, as detailed in the declaration of counsel attached to the Motion to Strike. CCSD’s failures to follow the rules not only wasted the Review-Journal’s time, it also diminished the Review-Journal’s ability to meaningfully respond to CCSD’s arguments in its Answering Brief.

Moreover, counsel for the Review-Journal should not have been in the position of having to root around in the record to find CCSD’s cites to it, or having to assist CCSD with the process of correcting its brief. In arguing to the contrary, CCSD reveals a misunderstanding of both the adversarial process and its own obligations to follow this Court’s rules.

B. CCSD Cannot Rely on Extra-Record Citations.

CCSD, without legal support, contends that it can include its own, unsupported descriptions of documents it submitted to the district court *in camera*. Those references necessarily run afoul of this Court’s rules that factual assertions

must be supported. There is no exception that pertains to *in camera* submissions. While CCSD contends that it was permitted to “describe the effect of the district court’s order had on exposing complainants and witnesses of the alleged discrimination by Trustee Child thereby opening these employees to retaliation” (Opp., p. 5:6-11) without factual support, it is not.

As detailed in the Review-Journal’s Opposition to the Motion for Leave to File an Errata, the errata does not sufficiently address the portion of the Opening Brief at pages 5-7 which includes unsupported descriptions of the withheld records at issue, and pages 46-48, which rely on the unsupported descriptions of the withheld documents to argue for broad redaction. The citations on pages 5-7 of CCSD’s proposed corrected brief are insufficient because the privilege log cited to in the Appendix still does not contain the facts asserted. Specifically, the privilege log in the Appendix does not contain how many people in each of these documents are identified by name or how many of these names would be redacted under the terms of the district court Order. However, CCSD’s brief does. (*see, generally*, Errata Motion, Exh. 1, pp. 5-6) (repeatedly noting the number of people identified by name and number of those names subject to redaction). Although CCSD also tags on citations to the Withheld Records, this does not suffice.¹ The citations on pages 46

¹ While these Withheld Records are available for *in camera* review by the Nevada Supreme Court (Errata Motion, p. 4, n. 3) it is prejudicial to force the Review-Journal to do such a review to verify CCSD’s factual assertions.

and 47 are insufficient for identical reasons. In short, CCSD's own unsupported description of the withheld records or the alleged impact on witnesses and complainants is not factual material that it can rely on to support its argument.

III. CONCLUSION

CCSD's brief should be stricken. At the very least, the unsupported descriptions of the withheld records should be stricken. In addition, the Review-Journal should be compensated for fees and costs and CCSD should be sanctioned. Indeed, while CCSD opposes striking the brief, it does not oppose the Review-Journal's request for fees and sanctions (included in the Motion to Strike).

DATED this 20th day of February, 2018.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931

Alina M. Shell, Nevada Bar No. 11711

MCLETCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

Counsel for Respondent, Las Vegas Review-Journal

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO RESPONDENT'S MOTION TO STRIKE APPELLANT'S OPENING BRIEF was filed electronically with the Nevada Supreme Court on the 20th day of February, 2018, Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Carlos McDade, General Counsel
Adam Honey, Asst. General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Appellant, Clark County School District

/s/ Pharan Burchfield
Employee of McLetchie Shell LLC