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Electronically Filed
 Jan 30 2018 02:08 p.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

Attorneys for Appellant
Darrell T. Coker

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL T. COKER,

Appellant,

vs.

MARCO SASSONE;

Respondent.

SUPREME COURT NO.: 73863

**APPEAL FROM THE DISTRICT
 COURT FOR CLARK COUNTY,
 NEVADA, CASE NO.:
 A-16-742853-C**

**(1) REPLY IN SUPPORT OF REQUEST TO FILE REQUEST FOR
 TRANSCRIPT OF PROCEEDINGS AFTER EXPIRATION OF TIME; AND**
(2) OPPOSITION TO MOTION TO DISMISS THE APPEAL

1 Defendant Darrell T. Coker hereby files his Reply in support of his Request
2 to File Request for Transcript of Proceedings after Expiration of Time (the
3 “Request”). Because Appellee Marco Sassone’s Opposition to the Request is
4 coupled with a Motion to Dismiss the Appeal (the “Motion to Dismiss”),
5 Mr. Coker also hereby files his Opposition to the Motion to Dismiss.

6 **1.0 INTRODUCTION**

7 Appellee’s Opposition to the Request and Motion to Dismiss are couched in
8 terms of attempting to prevent delay caused by Anti-SLAPP motions. His filings
9 are based on an unsupported argument that this appeal is frivolous, and has the
10 effect of actually delaying the appeal and multiplying proceedings in the appeal.
11 Mr. Coker apologizes for the error of not timely filing a transcript request with
12 this Court, but took steps to ensure that it would not delay any proceedings.
13 Appellee’s Opposition and Motion to Dismiss are thus based on faulty reasoning
14 and constitute an improper attempt to get a head-start on appellate briefing. The
15 transcript of proceedings below has already been prepared; the Court should thus
16 grant Mr. Coker’s Request and deny Appellee’s Motion to Dismiss.

17 **2.0 ARGUMENT**

18 As explained in the Request, after mediation between the parties failed, the
19 Court reactivated this appeal on December 6, 2017 and ordered that Mr. Coker file
20 a transcript request form by December 21, 2017. Due to the holiday schedules of

Mr. Coker’s counsel, he was unable to do so until January 11, 2018. Mr. Coker’s counsel apologizes for this failure to comply with the Court’s order, and to prevent any delay caused by the late request ordered the transcript on an expedited basis such that it would be prepared within 4 days.

The clerk of the District Court contacted Mr. Coker’s counsel on January 22, 2018 notifying them that the transcript of the hearing on Mr. Coker’s Special Motion to Dismiss, the subject of this appeal, was completed. (See email notification of transcript completion, attached as **Exhibit 1.**) This is the date by which the clerk would have to have completed the transcript if Mr. Coker had requested it by December 21, 2017. See NRAP 9(c)(1)(A). The transcript was filed with the District Court on January 25, 2018. Thus, if there was any potential for delay caused by the late transcript request, it has been prevented.

Appellee’s Opposition does not identify any actual or potential delay in these proceedings resulting from the late transcript request. Rather, it simply refers to California cases that bemoan the effect of the interlocutory nature of frivolous or meritless Anti-SLAPP appeals delaying cases. See *Grewal v. Jammu*, 191 Cal. App. 4th 977, 996 n.10, 1001-02 (1st Dist. 2011). These are the same arguments Appellee made in opposing a motion to stay the case that Mr. Coker filed in the District Court after initiating this appeal, a motion which the District Court granted in part. Appellee does not make any argument as to how

Mr. Coker’s appeal is of the “meritless” or “frivolous” variety about which *Grewal* warns. In fact, the Ninth Circuit Court of Appeals somewhat recently affirmed Coker’s position in a closely analogous case. *See Maloney v. T3Media, Inc.*, 853 F.3d 1004 (9th Cir. 2017). Accordingly, the notion that it is “frivolous” seems to be based on little more than Mr. Sassone would prefer that Coker not raise valid arguments.

Appellee asks for the extreme sanction of dismissing Mr. Coker’s appeal altogether, without providing any explanation for why the Court should do so. While NRAP 9(a)(7) does allow for the imposition of this sanction for failure to timely request a transcript, there is no reason to do so here when the transcript has already been requested and prepared. For example, in *Cohen v. Goldin*, 2017 Nev. Unpub. LEXIS 1003, *4 (2017), the Court found that a *conditional* sanction of \$250 was appropriate for an appellant’s failure to file a transcript request more than **six months** after the Court ordered him to do so. The order would lift this sanction if the appellant subsequently filed the transcript request form, and the Court admonished the appellant that failure to comply with the subsequent order would result in dismissal of the appeal. *See id.* at *4-5.

Mr. Coker has already requested the relevant transcript, and the transcript has already been prepared within the timeframe normally contemplated by the Rules. It was filed with the District Court on January 25, 2018. Unlike the

appellant in *Goldin*, Mr. Coker ordered the transcript and made the instant request less than a month after the deadline expired. No one has been prejudiced by Mr. Coker's late request (aside from Mr. Coker paying for an expedited transcript), and the late request did not delay these proceedings in any way. There is no reason for the Court to impose any sanctions here, much less appeal-terminating sanctions.

3.0 Conclusion

Based on the foregoing, Appellant Darrell T. Coker respectfully requests that the Court allow him to file a transcript request form despite his failure to comply with the Court's December 6, 2017 order. Mr. Coker also respectfully requests that the Court deny Appellee Marco Sassone's Motion to Dismiss the Appeal. Further, given the frivolous nature of the motion to dismiss the appeal, Mr. Coker requests the fees incurred in drafting this opposition be awarded to him.

Dated January 29, 2018.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

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Attorneys for Appellant Darrell T. Coker

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this foregoing document was electronically filed on this 29th day of January 2018, and served via US Mail to:

Dominic P. Gentile
Clyde DeWitt
Lauren E. Paglini
GENTILE CRISTALLI MILLER
ARMENI SAVARESE
410 S. Rampart Blvd., Suite 420
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Respectfully Submitted,



Employee,
Randazza Legal Group, PLLC

EXHIBIT 1



Trey Rothell <tar@randazza.com>

A-16-742853-C | Sassone v. Coker | Transcript Request

Hansen, Carrie <HansenC@clarkcountycourts.us>
To: Trey Rothell <tar@randazza.com>
Cc: "ecf@randazza.com" <ecf@randazza.com>

Mon, Jan 22, 2018 at 10:46 AM

Dear Trey,

*The transcript from the 6/20/17, Marco Sassone vs. Darrell Coker hearing has been completed. Your total for the transcript is **\$255.51**, payable to: **KRISTEN LUNKWITZ**, the outside transcription service used. An **additional \$80.00** recording fee is due as well. The recording fee can be paid on the 3rd floor of the RJC at the cashier's window near Jury Services. If paying the recording fee by check, please make payable to: **CLARK COUNTY TREASURER** and include the Case Number on your check. We now accept MasterCard and Visa for the recording fee as well. I have attached a copy of the bills to this e-mail.*

*****Payment must be received before the transcript will be filed or released.** Please bring a check for the transcript and a copy of your receipt of payment for the recording fee to my office on the 3rd floor of the RJC and leave it in the box for Department 32 or you may hand deliver it at the door there. Once payment has been made I will file the transcript. You will then receive an email notification from Odyssey containing a link that will enable you to print the transcript. Your runner will not be picking up a hard copy from my office.

I apologize for the slight delay as I was out sick with the bad flu last week. Thank you for your understanding!

Thank you,

Carrie Hansen,

Court Recorder, Dept. 32

From: Trey Rothell [mailto:tar@randazza.com]
Sent: Thursday, January 11, 2018 5:55 PM
To: Hansen, Carrie
Subject: A-16-742853-C | Sassone v. Coker | Transcript Request

[Quoted text hidden]

2 attachments



A742853 -- SASSONE VS COKER -- 6-20-17 -- SHEPARD BILL.doc
39K



A742853 -- SASSONE VS COKER -- 6-20-17 -- SHEPARD BILL (KRISTEN).doc
38K