

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Electronically Filed
Case No.: 74604 Sep 14 2018 09:13 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, the Honorable
Jim Crockett Presiding

MOTION TO STRIKE RESPONDENT'S APPENDIX

AND

MOTION TO STAY BRIEFING

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I. INTRODUCTION

Appellant, Clark County Office of the Coroner/Medical Examiner (“the Coroner”), moves this Court to strike Respondent, Las Vegas Review-Journal’s (“LVRJ”), answering appendix and disregard the citations to this answering appendix and related arguments within LVRJ’s answering brief. Although the parties agreed upon a joint appendix, which was filed in this Court on May 21, 2018 with the Coroner’s opening brief, LVRJ has filed its own answering appendix with several documents that were not filed in the District Court. According to NRAP 10(a); NRAP 30(c)(1); and *Carson Ready Mix, Inc. v. First Nat’l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981), LVRJ is not authorized to include documents outside the District Court record in an appendix filed in this Court. Therefore, the Court should strike the entire answering appendix and disregard LVRJ’s references to the answering appendix within the answering brief.

Since the Coroner does not yet know whether LVRJ’s answering appendix will be stricken, the time for the Coroner to file its reply brief should be stayed and extended 30 days following this Court’s order resolving this motion.

II. LEGAL ARGUMENT

According to NRAP 10(a), “The trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.”

(emphasis added). NRAP 30(c)(1) mandates, “All documents included in the appendix shall be placed in chronological order by the dates of filing beginning with the first document filed, and shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below.” (emphasis added). With respect to the presentation of documents not filed in the district court, this Court has articulated, “We cannot consider matters not properly appearing in the record on appeal.” *Carson Ready Mix, Inc. v. First Nat’l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981); *see also State ex rel. Sisson v. Georgetta*, 78 Nev. 176, 178, 370 P.2d 672, 673 (1962) (striking documents in a writ petition proceeding that were not part of the underlying court’s record).

In the instant case, LVRJ includes in its answering appendix four sets of legislative history from 1993 and 2007—none which contain the file-stamp of the District Court. LVRJ also includes in its answering appendix an order from a different District Court case, A-12-670077-W. The answering appendix does not contain any other documents. Thus, the entire answering appendix should be stricken according to NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix*.

In its answering brief, LVRJ refers to its answering appendix on pages 18, 19, and 52. As such, the Court should disregard these arguments. The Court could, alternatively, require LVRJ to file a revised answering brief omitting the legal arguments based upon the unfiled documents in its answering appendix.

The Coroner's reply brief is currently due on October 8, 2018. However, the Coroner does not yet know whether LVRJ's answering appendix will be stricken. Accordingly, the Court should stay briefing in this matter and extend the filing deadline for the Coroner's reply brief until 30 days following this Court's order resolving this motion.

III. CONCLUSION

In summary, the Court should strike LVRJ's answering appendix according to NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix*. Additionally, the Court should stay briefing and extend the filing deadline for the Coroner's reply brief until 30 days following the Court's order resolving this motion.

Dated this 14th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO STRIKE RESPONDENT'S APPENDIX AND MOTION TO STAY BRIEFING** was filed electronically with the Nevada Supreme Court on the 14th day of September, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
Kristen Gallagher, Esq.

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing