

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. ECHEVARRIA

Appellant,

vs.

ROBERT L. ANSARA

Respondent.

Supreme Court No. 76253

District Court No. G027262

FILED

DEC 11 2018

APPELLANT'S INFORMAL BRIEF

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY J. Hedges
DEPUTY CLERK

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas Courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017

18-908084

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
May 29, 2018	Order Settling Amended Seventh and Final Accounting, Order
	Authorizing Payment of Fees and Costs, Order Directing Distribution
	of the Balance of Funds and Order Terminating Guardianship Proceed..

Notice of Appeal. Give the date you filed your notice of appeal in the district court: June 22, 2018

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
A05040	Michael A Echevarria vs. The Mill At...	Chancery Ct., Wilson Co., TN
65598	Michael A Echevarria vs. Robert L Ansara	Supreme Court of Nevada

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☐ Yes ☒ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

The district court proceedings for the case at bar began in December 2004, and relate to the guardianship of the person and estate of Jean R. Echevarria ("Ward"), who passed away in May 2014. The Appellant, Michael A. Echevarria ("Michael"), received a judgment against the person and estate of the Ward on January 2, 2007, in Case No. A05040, in the Chancery Court of Wilson County, TN. This judgment was properly domesticated into the underlying guardianship proceeding, and Michael placed a lien against real property owned by the Ward in both California and Nevada. The Appellee is Robert L. Ansara ("Robert"), guardian of the estate of the ward and successor trustee of the trust of the ward, represented by Elyse Tyrell ("Tyrell"). On July 31, 2012, Robert petitioned the district court for an order giving instructions, which requested the approval of the lower court of his proposed method of distributing excess rental income of the Ward on a pro-rata basis to the parties. This petition was granted and resulted in the entry of an Order Giving Instructions, dated August 15, 2012, which states, in pertinent part, as follows:

...Robert L. Ansara is authorized and directed to utilize up to \$3000.00 of the ward's monthly income to satisfy, on a pro-rated basis, the following expenses, until the same are paid in full, or until there is no income with which to satisfy the same, to wit:

- a. Michael Echevarria, in the original amount of \$625,814.00, plus 10% interest per year, for a judgment which was secured by him.
- b. Elizabeth Brickfield in the amount of \$103,032.10, for attorney's fees and costs.
- c. Trent, Tyrell & Associates in the the amount of \$13,203.25 as and for attorney's fees and costs.
- d. Robert L. Ansara in the amount of \$20,771.75 as and for the Guardian's fees and costs, as well as Successor Trustee's fees and costs....

Elizabeth Brickfield ("Brickfield"), with the law firm of Lionel Sawyer & Collins, LTD., filed a Notice of Bankruptcy on July 7, 2015, in Case No. 65598 of this Court. Brickfield had been representing Angel Echevarria ("Angel") who was formerly the personal guardian of the ward. On December 18, 2013, the district court held a hearing regarding the sale of real property owned by the Ward in the State of California, and subsequently granted the guardian permission to sell this asset. The sale was completed on or about February 7, 2014. On February 14, 2014, Angel petitioned the district court for an order for distribution of funds held in an "operating account" and held outside of escrow in the sale of the California property. On April 8, 2014 the district court approved a stipulation entered into by Robert, Tyrell and Brickfield. On May 1, 2014, Michael filed a notice of appeal from the stipulation and order, which became docketed in this Court as Case No. 65598. On June 30, 2016, this Court filed its' authored opinion which vacated the stipulation and order of the district court, and remanded the matter for further proceedings, stating, in pertinent part, as follows:

...Upon remand, the district court will determine the source of funds in the operating account. If the source of the funds was the sale of the California property, then NRS 159.1365 applies. If the source of the funds was not the sale of the California property, the August 15, 2012, order applies, to the extent that the source of the funds was the rental income from the real property. Finally, if the funds from the operating account are determined to be from a source other than the sale of real property or Jean's excess monthly income, NRS 159.103, NRS 159.105, and NRS 159.183 apply.

On February 15, 2017, the district court made the express finding that the source of the funds in the operating account was from rental income. Furthermore, all parties agreed to the source of the funds being from rental income, and no appeal was taken from the district court's finding that the source of the funds was rental income. At the conclusion of this February 15, 2017 hearing, the district court opened discovery to determine the amount of the funds held in the operating account and received by Robert, and set the matter for a future status check and calendar call. On March 14, 2017, Robert filed his seventh and final accounting in the district court and on March 15, 2017, filed a notice of hearing on his seventh and final accounting. Robert and his counsel failed to appear at the May 15, 2017 hearing on their seventh and final accounting, and the matter was set for future proceedings to allow more time for Chase Bank to expand on their answer to a subpoena filed by Michael's attorney. On November 29, 2017, a status check was held, and the matter was again continued. On March 6, 2018 and March 16, 2018, Michael's attorney filed additional subpoenas. On April 12, 2018, Robert filed his amended seventh and final accounting, and on April 16, 2018, Michael filed another subpoena. On May 15, 2018, a hearing on the amended seventh and final accounting was held, and all proceedings were abruptly halted and the guardianship was terminated. An Order Settling Amended Seventh and Final Account and Report of Guardian, Order Authorizing Payment of Fees and Costs, Order Directing Distribution of the Balance of Funds and Order Terminating Guardianship Proceeding was granted by the district court, and entered on May 29, 2018. On June 22, 2018, Michael filed his notice of appeal.

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be from a notebook or a standard sheet of stationery. There is no handwriting or other markings on the page.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)

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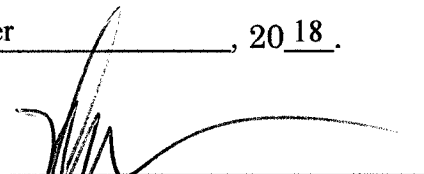
The district court erred and abused its' discretion when it entered an Order Settling Amended Seventh and Final Account and Report of Guardian, Order Authorizing Payment of Fees and Costs, Order Directing Distribution of the Balance of Funds and Order Terminating Guardianship Proceeding. This matter had been remanded to the district court, pursuant to a review and reversal by this Court, in Case No. 65598, with instructions to the lower court to pursue the specific finding and determination of the source of the funds in an operating account held outside of escrow in the sale of real property of the ward. On February 15, 2017, the district court held a hearing upon remand, where it reviewed this Court's ruling and made the express finding that the source of the "funds of the operating account" was "rental income", see page 13, lines 4-10 of the February 15, 2017 Transcript. Both parties agreed to the finding of the court as being rental income, see page 13, lines 11 and 12 of the February 15, 2017 Transcript. No appeal was taken from this ruling by either party. After further discussion on the amount of the funds in question, Robert's attorney stated, "so yes, I can find out exactly how much was received from the operating account", see page 19, lines 21-23 of the February 15, 2017 Transcript. Later in this hearing, the district court opens discovery, see page 31, lines 6-7 of the February 15, 2017 Transcript, and sets the matter for a future status check and calendar call, see page 33, lines 7-9 of the February 15, 2017 Transcript. Finally, Robert's attorney was asked by the court "who managed the LLC? Did your client?", see page 33, line 12 of the February 15, 2017 Transcript, and she replies, "No", "--I don't know who-- --who the LLC-- -- manager was", see pages 33, lines 13, 19 and 23, and page 34, line 1 of the February 15, 2017 Transcript. However, her client, Robert L. Ansara has submitted a billing entitled "Time Sheet for Echevarria Guardianship and Trust 2013", included as an exhibit in his seventh and final accounting and amended seventh and final accounting, which includes a multitude of line entries directly attributable to the management of the building in California, its' affairs and assets. This time sheet reflects that the managerial and oversight duties of Robert are broad and wide-ranging in the handling of the California building's affairs and operations, but they also further identify and specify his duties through his personal entries which provide a detailed account of the basis of each entry in the billing. Robert's managerial duties of the California property's affairs account for the majority of his billing in this section of his seventh and final accounting, which equals roughly \$15,775 of the \$19,400 billed to the guardianship in that time frame. The line entries and descriptions in Robert's billings on these time sheets, belie any claim that he had no knowledge of, or influence in or over the management and oversight of the income and expenditures related to this property. Robert interviewed at least two candidates to assist him in the management of this property and chose the property management company Cassidy Turley, LLC ("LLC"). It was this LLC who allegedly controlled the operating account. Robert's line entries also belie any claim that Robert has no knowledge of, or influence in or over the property's funds and assets, and/or that he had no actual knowledge or proof of fact of the exact amount of funds in, and received from, the operating account. Robert's billing evidences the fact that he was a principal decision maker when it came to the oversight of the management, operations and decisions of the LLC at the California property, a principal decision maker in

tenant improvements and tenant lease negotiations of the California property, a principal decision maker in the negotiations with Chase Bank who held the operating account in question, a principal decision maker in regards to deals, cash flows and other aspects of this property, the LLC, and ultimately in sale of the this property, see page 31, entry dated 01/17/13, page 35, entries dated 06/19/13 and 06/20/13, page 38, entries dated 09/17/13 and 09/22/13, and page 39, entry dated 09/30/13, of the Amended Seventh and Final Account and Report of Guardian, Petition for Payment of Fees and Costs, Petition Regarding Distribution of Balance of Funds and Petition for Termination of Guardianship Proceeding. Robert's billings further prove that Robert has knowledge or should have knowledge of the exact dollar amount of the funds in, and received from, the operating account, and Robert can be compelled to produce the same. At the hearing on May 31, 2017, scheduled as a result of the filing and notice of hearing on Robert's seventh and final accounting, at which Robert and his attorney were no-shows, Michael's attorney advised the lower court that he had issued a subpoena to Chase Bank, and that Chase Bank had provided a final account balance statement for the account in question, in the amount of approximately \$157,000.00. Michael's attorney also advised the court that Chase needed more time to provide additional records relating to the final account balance statement provided to Michael and his attorney. The matter was continued, and a return date was scheduled for November 29, 2017. The closing account balance statement provided by Chase is included as an exhibit in the subpoena filed on March 6, 2018, sent and addressed to Cushman & Wakefield, and it represents a final phone funds transfer withdrawal in the amount \$157,850.46. (As a foot note, Cassidy Turley LLC was acquired by the Chicago based DTZ consortium in 2015, and later merged with Cushman & Wakefield, also in 2015). Regardless of whether or not Chase Bank could/has/would/might locate additional records in relation to this final account balance statement, Robert remains the party who is answerable and obligated to provide for a competent accounting and should be held to account for and provide evidence necessary in the discovery and proof of the exact dollar amount of the funds received from this operating account. It is indisputable that Robert is the party who received the funds in the operating account and he is legally responsible to account for the same. Robert's attorney had advised the lower court that she can find out exactly how much was received from the operating account, but she has since refused/failed to provide any information that can be relied upon, as she first promised should would. In statements to the district court, Robert's attorney claims that a portion of these funds have now directly funded her trust account but she fails to provide any competent or intelligible evidence of the origin and actual amount of these funds. And despite the fact that a final accounting should have included an unambiguous accounting of the receipt of the funds from this operating account, the district court erred and abused its' discretion in approving a final accounting without requiring a clear, definite and competent accounting of these funds received, particularly in light of this Court's directions on remand and the continuing controversy directly related to these funds. Robert filed his seventh and final accounting on March 14, 2017, and subsequently filed his amended seventh and final accounting, more than one year later, on April 12, 2018, to include a tax liability that had suddenly surfaced more than 4 years after the death of

the ward. Robert's accountings, and the accounting of Robert's attorney, are devoid of any previous consideration or notation of the existence of this claim by the California Tax Board. The record on appeal does not contain any valid claim filed by or on behalf of the California Tax Board. In place of the existence of a valid or existing claim filed by the California Tax Board, Robert's attorney has filed, as part of her own accounting of the funds held and deposited in her trust account, a personally hand-typed receipt of funds received from the County of San Mateo, CA on October 17, 2014, in the amount of \$16,866.07 as well as a second entry from the County of San Mateo, CA on January 7, 2016, in the amount of \$10,573.41. The payment and receipt of these funds from the County of San Mateo, CA completely contradicts the existence of a valid existing claim by the California Tax Board. The assertions by Robert's counsel to the existence and validity of a claim by the California Tax Board are baseless and unfounded, NRS 147.070, and in any event, the claim should and must be rejected pursuant to statute, as being time barred and forever lost, NRS 147.040. In addition, the unreasonable delay in asserting a valid existing claim by any creditor not already in the record would result in severe prejudice to Michael; whether it be by the California Tax Board, by counsel for Robert, or by any other party who might emerge and raise like claims; and the same should and must be denied in accordance with the doctrine of laches. Finally, the findings of the district court of the source of the funds being rental income combined with its' order authorizing payment of fees and costs, and order directing distribution of funds, pursuant to NRS 159.183 and NRS 147.195, clearly contravenes the opinion and directions of this Court upon remand, and the decision and order of the district court must therefore be vacated.

WHEREFORE, all the above reasons, Michael prays this Honorable Court to Vacate the district court's Order Settling Amended Seventh and Final Account and Report of Guardian, Order Authorizing Payment of Fees and Costs, Order Directing Distribution of the Balance of Funds and Order Terminating Guardianship Proceeding, and for such other and further relief as this Honorable Court deems just and proper.

DATED this 6th day of December, 2018.



Signature of Appellant

Michael A. Echevarria
Print Name of Appellant

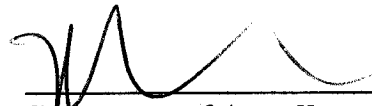
CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

Elyse M. Tyrell, Esq.
Tyrell Law, PLLC
40 Stephanie Street
Suite 200
Henderson, NV 89012
(Attorney for Guardian of the Estate, Robert L. Ansara)

DATED this 6th day of December, 2018.



Signature of Appellant

Michael A. Echevarria

Print Name of Appellant

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Address

Mission Hills, CA 91345

City/State/Zip

615-579-0671

Telephone