

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

EDGEWORTH FAMILY TRUST; AMERIC
AN GRATING, LLC,
Appellants,
vs.
DANIEL S. SIMON; THE LAW OFFICE
OF DANIEL S. SIMON, A PROFESSIO
NAL CORPORATION;
Respon

Electronically Filed
No. 78176 (ERRATA) Jun 06 2019 04:31 p.m.
Elizabeth A. Brown
DOCKETING STATEMENT
CIVIL APPEALS
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Department 10
County Clark Judge Tierra Jones
District Ct. Case No. A-18-767242-C, consolidated with A-16-738444-C

2. Attorney filing this docketing statement:

Attorney John B. Greene, Esq. Telephone (702) 853-4338
Firm VANNAH & VANNAH
Address 400 S. 7th Street, 4th Floor
Las Vegas, NV 89101

Client(s) EDGEWORTH FAMILY TRUST and AMERICAN GRATING, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney James R. Christensen, Esq. Telephone (702) 272-0406
Firm James R. Christensen, P.C.
Address 601 S. Third Street
Las Vegas, NV 89101

Client(s) Daniel S. Simon; The Law Office of Daniel S. Simon, A Professional Corporation

Attorney Peter S. Christiansen, Esq. Telephone (702) 240-7979
Firm CHRISTIANSEN LAW OFFICES
Address 810 S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101

Client(s) Daniel S. Simon; The Law Office of Daniel S. Simon, A Professional Corporation

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>M for Fees and Costs</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

In Case No. A-16-738444-C, Plaintiffs/Appellants (Edgeworth) retained Defendants/Respondents (Simon) to represent them and agreed to pay Simon \$550 per hour (\$275 for associates). From May of 2016 through September of 2017, Simon billed \$550 per hour for his time and charged Edgeworth \$367,606.25 in attorneys fees via four invoices. Edgeworth paid these fees in full. Upon settlement, Simon demanded more in fees than the parties agreed to pay and receive; Edgeworth refused and Simon perfected a lien for \$1,977,843.80. After the hearing on Simon's Motion to Adjudicate Lien, Judge Jones awarded Simon an additional \$484,982.50 in fees. Simon won't release \$1,492,861.30 to Edgeworth.

In Case No. A-18-767242-C, Edgeworth sued Simon for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing. Judge Jones dismissed the Amended Complaint without discovery. Thereafter, Judge Jones awarded attorneys fees in the amount of \$50,000 and costs in the amount of \$5,000, finding that there wasn't a good faith basis to make or maintain a claim for conversion. ■

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether it was inappropriate for the a finding that the claim for conversion in the Amended Complaint wasn't either brought or maintained in good faith?
2. Whether it was an abuse of discretion for the Court to award Simon \$50,000 in fees and \$5,000 in costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Case #77678; same parties; the issue of the dismissal of the Amended Complaint without discovery is similar and/or related to the Order Granting in Part and Denying in Part Simon's Motion for Fees and Costs allegedly incurred seeking the dismissal of the Amended Complaint, primarily the claim for conversion.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is arguably presumptively retained by the Supreme Court under NRAP 17(a) (11), being a matter of statewide public importance, as it involves an attorney who agreed to represent a client for an hourly fee of \$550, but failed to reduce the fee agreement to writing; then billed \$550 per hour for 18 months, collecting nearly \$400,000 in fees; then demanded more in fees; when the client refused to pay more than the agreed to fee of \$550 per hour, attorney liened the file for nearly 40% of proceeds; then used his failure to reduce the fee agreement to writing as a basis to get more money in a "charging lien"; when the lien was adjudicated, attorney refused to release proceeds in excess of his adjudicated lien, retaining \$1,492,861.30 of client funds.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? A hearing on a Motion for Fees and Costs

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 2/8/19

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 2/8/19

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed February 15, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Judge Jones entered a final Decision and Order Granting in Part and Denying in Part Simon's Motion for Fees and Costs.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC; LANGE PLUMBING, LLC; THE VIKING CORPORATION; SUPPLY NETWORK, INC., dba VIKING SUPPLYNET; DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

LANGE PLUMBING, LLC; THE VIKING CORPORATION; and, SUPPLY NETWORK, INC., dba VIKING SUPPLYNET were all formally dismissed following the settlement reached with Edgeworth.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Motion for Fees and Costs: adjudicated by Judge Jones on February 6, 2019 and entered on February 8, 2019

Amended Complaint for Breach of Contract, Declaratory Relief, Conversion, and Breach of the Implied Covenant of Good Faith and Fair Dealing: Dismissed by Judge Jones on November 19, 2018

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

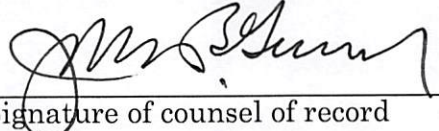
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Edgeworth Family Trust, et.al.
Name of appellant

June 6, 2019
Date

Nevada, Clark
State and county where signed

John B. Greene, Esq.
Name of counsel of record

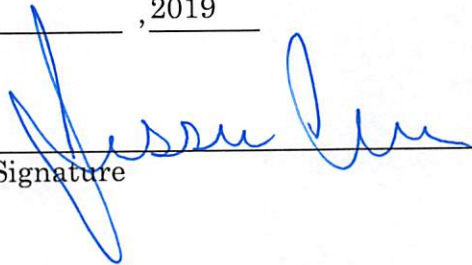

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 6th day of June, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 6th day of June, 2019


Signature