IN THE SUPREME COURT OF THE STATE OF NEVADA

CHEYENNE NALDER, an individual, and GARY LEWIS Petitioners and Real Parties in Interest vs. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK THE HONORABLE DAVID JONES AND ERIC JOHNSON, DISTRICT COURT JUDGES, Respondents, And UNITED AUTOMOBILE INSURANCE COMPANY, Respondent.	Supreme Court No. _____ Electronically Filed Feb 07 2019 03:47 p.m. Elizabeth A. Brown Clerk of Supreme Court District Court Case No. 07A549111 Consolidated with 18-A-772220 DEPT. NO: XX

PETITION FOR WRIT OF MANDAMUS

DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E.
Las Vegas, NV 89120
Telephone: (702) 384-8000
breen@breen.com
Attorney for defendant Gary Lewis

INTRODUCTION

Petitioners, CHEYENNE NALDER and GARY LEWIS ("Petitioners") by and through their attorneys of record, DAVID A. STEPHENS, ESQ., E. BREEN ARNTZ, ESQ., respectively, hereby petition for a Writ of Mandamus, pursuant to NRS §34.160 – 34.310 and NRAP 21, directing the Eighth Judicial District Court of the State of Nevada ("District Court") or Respondent court to:

Vacate its October 19, 2018 orders; wherein, the District Court granted leave to intervene after Judgment had already been entered in these actions. This Petition is supported by the attached Memorandum of Points and Authorities, the accompanying Appendix, all papers filed with the District Court in this matter, and argument by counsel that the Court may entertain.

DATED this 7th day of February, 2019.

S/David A Stephens
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS & BYWATER, P.C
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

S/ E Breen Arntz
E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E.
Las Vegas, NV 89120
Telephone: (702) 384-8000
breen@breen.com
Attorney for defendant Gary Lewis

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

AFFIDAVIT OF DAVID A. STEPHENS, ESQ. IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID A. STEPHENS, ESQ., being first duly sworn, deposes and says:

1. That I am an attorney at law duly licensed to practice in the State of Nevada, with my office being located at 3636 North Rancho Drive, Las Vegas, Nevada 89130 and I represent the Petitioner, Cheyenne Nalder.
2. That the following narrative of facts and procedural history are based on my own personal knowledge, or are based on my belief and understanding as counsel. Petitioners personally are not personally giving this Affidavit because the salient issues involved in this Petition are issues of law and procedure.
3. Pursuant to NRS § 34.160, Petitioners request relief in the form of a Writ of Mandamus directing the Respondent Court to: Vacate its October 19, 2018 Order, wherein the District Court Granted leave to UAIC to intervene after Judgment had already been entered. (See Ex. 6). Further, all pleadings filed by UAIC in the Nalder v. Lewis litigation should be stricken and Orders entered at UAIC's request be voided.

4. Pursuant to NRS § 34.160, Petitioners further request relief in the form of a Writ of Mandamus directing the Respondent Court to: Vacate its October 19, 2018 Order wherein the District Court Granted leave to UAIC to intervene after settlement had already been filed. (See Ex. 7). Further, all pleadings filed by UAIC should be stricken and Orders entered at UAIC's request be voided.
5. That a Writ review is necessary because as Petitioner contends and believes there are no disputed factual issues existing regarding the fact that intervention was not granted until after judgment was entered, and there are no legal issues as intervention is **never** permitted after judgment is entered in any action. Petitioners do not have a plain, speedy and adequate remedy in the ordinary course of law.
6. That Judgment was entered on August 26, 2008 in favor of James Nalder as guardian ad litem of Cheyanne Nalder and against Gary Lewis. (See Ex. 1.)
7. That an Amended Judgment was entered on March 28, 2018 in favor of Cheyenne Nalder and against Gary Lewis. (See Ex. 2.)
8. That a complaint was filed in Case No 18-A-772220 and the main claim was an action on the August 26, 2008 judgment pursuant to *Mandelbaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897).

9. That the parties resolved the dispute and signed and filed a stipulation settling the case of 18-A-772220 on September 13, 2018. (See Ex. 4).

10. That United Automobile Insurance Company, who was not a party at the time, or at any time prior to judgment being entered, filed defectively noticed motions to intervene in both actions. (See Ex. 3.)

11. That service of both motions was defective on the face of the certificates of service. (See Ex. 3).

12. That I was not served with either of UAIC's Motions to Intervene, as detailed in my Opposition and subsequent Motion to Set Aside. (See Ex. 5.)

13. That on October 19, 2019, subsequent to the entry of the final judgment and settlement in these respective matters, the lower court granted UAIC's motions. (See Ex. 6 & 7.)

14. This Petition is made and based upon the Memorandum of Points and Authorities attached below and the exhibits contained in the concurrently filed appendix.

15. Attached as **Exhibit 1** to Petitioner's Appendix is a true and correct copy of the Notice of Entry of Judgment in favor of James Nalder (August 26, 2008).

16. Attached as **Exhibit 2** to Petitioner's Appendix is a true and correct copy of the Amended Judgment in favor of Cheyenne Nalder (March 28, 2018).

17. Attached as **Exhibit 3** to Petitioner's Appendix is a true and correct copy of UAIC's Motions to Intervene (August 16, 2018 & August 17, 2018).

18. Attached as **Exhibit 4** to Petitioner's Appendix is a true and correct copy of the signed and filed Stipulation settling the case of 18-A-772220 (September 13, 2018).

19. Attached as **Exhibit 5** to Petitioner's Appendix is a true and correct copy of my Opposition (October 8, 2019) and subsequent Motion to Set Aside (December 13, 2018).

20. Attached as **Exhibit 6** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case 07A549111 (October 19, 2019).

21. Attached as **Exhibit 7** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case A-18-772220-C (October 19, 2019).

///

///

22. Attached as **Exhibit 8** to Petitioner's Appendix is a true and correct copy of UAIC's motion to consolidate on Order Shortening Time (sans exhibits) (November 26, 2018)

FURTHER AFFIANT SAYETH NAUGHT.

DAVID A. STEPHENS, ESQ.

Subscribed and sworn to before me
this 7th day of January, 2019.

NOTARY PUBLIC, in and for said County and State

NOTARY PUBLIC
M. L. GOLDSTEIN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. APRIL 13, 2022
No: 01-70903-1

AFFIDAVIT OF E. BREEN ARNTZ, ESQ. IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

E. BREEN ARNTZ, ESQ., being first duly sworn, deposes and says:

1. That I am an attorney at law duly licensed to practice in the State of Nevada, with my office being located at and I represent the Petitioner, Gary Lewis, who resides in California.
2. That the following narrative of facts and procedural history are based on my own personal knowledge, or are based on my belief and understanding as counsel. Petitioners personally are not personally giving this Affidavit because the salient issues involved in this Petition are issues of law and procedure.
3. Pursuant to NRS § 34.160, Petitioners request relief in the form of a Writ of Mandamus directing the Respondent Court to:Vacate its October 19, 2018 Order, wherein the District Court Granted leave to UAIC to intervene after Judgment had already been entered in this action. (See Ex. 6). Further, all pleadings filed by UAIC in the Nalder v. Lewis

litigation should be stricken and Orders entered at UAIC's request be voided.

4. Pursuant to NRS § 34.160, Petitioners further request relief in the form of a Writ of Mandamus directing the Respondent Court to: Vacate its October 19, 2018 Order wherein the District Court Granted leave to UAIC to intervene after settlement had already been filed in this action. (See Ex. 7). Further, all pleadings filed by UAIC should be stricken and Orders entered at UAIC's request be voided.
5. That a Writ review is necessary because as Petitioner contends and believes there are no disputed factual issues existing regarding the fact that intervention was not granted until after judgment was entered, and there are no legal issues as intervention is **never** permitted after judgment is entered in any action. Petitioners do not have a plain, speedy and adequate remedy in the ordinary course of law.
6. That Judgment was entered on August 26, 2008 in favor of James Nalder as guardian ad litem of Cheyanne Nalder and against Gary Lewis. See Ex. 1.
7. That, an Amended Judgment was entered on March 28, 2018 in favor of Cheyenne Nalder and against Gary Lewis. See Ex. 2.

8. That a complaint was filed in Case No 18-A-772220 and the main claim was an action on the August 26, 2008 judgment pursuant to *Mandelbaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897) .

9. That the parties resolved the dispute and signed and filed a stipulation settling the case of 18-A-772220 on September 13, 2018. See Ex. 4.

10. That United Automobile Insurance Company, who was not a party at the time, or at any time prior to judgment being entered, filed defectively noticed motions to intervene in both actions. *See* Ex 3.

11. That neither I nor my client nor any other attorney on his behalf was served with either of UAIC's Motions to Intervene.

12. That on October 19, 2019, even though subsequent to the entry of the final judgment and filing of the settlement in these respective matters, the lower court granted UAIC's motions. See Ex. 6 & Ex. 7.

13. This Petition is made and based upon the Memorandum of Points and Authorities attached below and the exhibits contained in the concurrently filed appendix.

14. Attached as **Exhibit 1** to Petitioner's Appendix is a true and correct copy of the Notice of Entry of Judgment in favor of James Nalder (August 26, 2008).

15. Attached as **Exhibit 2** to Petitioner's Appendix is a true and correct copy of the Amended Judgment in favor of Cheyenne Nalder (March 28, 2018).

16. Attached as **Exhibit 3** to Petitioner's Appendix is a true and correct copy of UAIC's Motions to Intervene (August 16, 2018 & August 17, 2018).

17. Attached as **Exhibit 4** to Petitioner's Appendix is a true and correct copy of the signed and filed Stipulation settling the case of 18-A-772220 (September 13, 2018).

18. Attached as **Exhibit 5** to Petitioner's Appendix is a true and correct copy of my Opposition (October 8, 2019) and subsequent Motion to Set Aside (December 13, 2018).

19. Attached as **Exhibit 6** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case 07A549111 (October 19, 2019).

20. Attached as **Exhibit 7** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case A-18-772220-C (October 19, 2019).

///

///

21. Attached as **Exhibit 8** to Petitioner's Appendix is a true and correct copy of UAIC's motion to consolidate on Order Shortening Time (sans exhibits) (November 26, 2018)

FURTHER AFFIANT SAYETH NAUGHT.

E. Breen Arntz, Esq.

STEPHANIE MARTINEZ
Notary Public-State of Nevada
APPT. NO. 18-1983-1
My Appt. Expires 01-10-2022

Subscribed and sworn to before me
this 6 day of February, 2019.

NOTARY PUBLIC, in and for said
County and State

II. STATEMENT OF RELIEF SOUGHT

Petitioners request that this Honorable Court: Issue a Writ of Mandamus requiring the District Court to vacate its prior order allowing UAIC to intervene subsequent to judgment being entered in this action, and enter an order denying the said motion as NRS 12.130 does not permit intervention subsequent to trial or settlement or the entry of a judgment in any action.

Petitioners further request that this Honorable Court: Issue a Writ of Mandamus directing the District Court to strike any and all Pleadings filed in the Nalder v. Lewis actions by UAIC after the granting of its Intervention.

III. STATEMENT OF RELEVANT FACTS

A. Relevant Procedural Facts

On June 3, 2008, the lower court signed the final judgment in this action in favor of Petitioner, CHEYENNE NALDER, (a minor) through her guardian ad litem James Nalder and against the sole Defendant in that action, GARY LEWIS. (Ex. 1.) Notice of Entry of that Judgment was filed on August 26, 2008. (Ex 1.) This final judgment resolved this dispute as to the parties involved. On March 22, 2018, Petitioner Cheyenne Nalder filed her Ex Parte

Motion to Amend the Judgment to reflect her own name because she was no longer a minor. The Amended Judgment was thereafter filed on March 28, 2018. See, Ex. 2.

More than 10 years after the original, final judgment in this case was filed, United Automobile Insurance Company, filed a Motion to Intervene. See, Ex. 3. The Motions, based on the certificates of "service," were not served on any of the parties, but was ultimately opposed by Cheyenne Nalder's counsel. The Opposition and Motion to Aside later filed detailed not only the procedural defects of UAIC's Motion, but also included the very clear and well settled case law that does not allow for intervention after a final judgment or settlement. See Ex. 5. Even though the Nevada Supreme Court has clearly and consistently held that "in all cases" intervention must be before judgment is entered and that intervention is **never** permitted after judgment is entered or settlement reached, the lower Court, without hearing oral argument, allowed UAIC to Intervene. The Order was filed and entered on October 19, 2018. See, Ex. 6 & 7. Since its intervention, UAIC has made several strategic filings which complicate this previously resolved matter, including a Motion to Consolidate this action with another action. See Ex. 8. This action was, many

years ago, resolved, yet now is consolidated with a new action that involves different facts and issues of law. This Writ is therefore necessary.

IV. STATEMENT OF THE LAW

A. Writ of Mandamus Authority

NRAP 21 sets forth the procedural rules required to qualify for a Writ of Mandamus. Rule 21(b) sets forth the general requirements of a Writ Petition. Writ Petitions require a statement of: (a) the relief sought; (b) the issues presented; (c) the facts necessary to understand the issues presented by the petition; and (d) the reasons why the writ should issue, including points and legal authorities.

Mandamus is an extraordinary remedy, and the decisions as to whether a petition will be entertained lies within the discretion of the Supreme Court. *Poulos v. Eighth Judicial Dist. Court of State of Nev. In and For Clark County*, 98 Nev. 272, 652 P.2d 1177 (1974). Mandamus should not be used unless the usual and ordinary remedies fail to provide a plain, speedy, and adequate remedy, and without it there would be a failure of justice. *See*, *Stromberg v. Second Jud. Dist. Ct. ex rel. County of Washoe*, 125 Nev. 1, 200 P.3d 509, 511 (2009). This Court "will exercise [its] discretion to consider writ petitions despite the existence of an otherwise adequate legal remedy when an important issue of law needs

clarification, and this court's review would serve considerations of public policy, sound judicial economy, and administration." *City of N. Las Vegas v. Eighth Judicial Dist. Court ex. Rel. County of Clark*, 122 Nev. 1197, 1204, 147 P.3d 1109, 1114 (2006).

V. ARGUMENT

a. Intervention was Improper.

Intervention was unknown at common law and is creature of statute. *Geis v. Geis*, 125 Neb. 394, 250 N.W. 252 (1933). In Nevada, NRS 12.130 permits a party to intervene under certain circumstances. The statute, in its entirety, reads as follows:

> **NRS 12.130 Intervention: Right to intervention; procedure, determination and costs; exception.**
>
> 1. Except as otherwise provided in subsection 2:
>
> (a) **Before the trial,** any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.
>
> (b) An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

(c) Intervention is made as provided by the Nevada Rules of Civil Procedure.

(d) The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, the party intervening shall pay all costs incurred by the intervention.

2. The provisions of this section do not apply to intervention in an action or proceeding by the Legislature pursuant to NRS 218F.720. (Emphasis added.)

As the Court can see, NRS 12.130 specifically states "before the trial any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." The Nevada Supreme Court has previously held "***The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment***." *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added).

In *Lopez*, Plaintiffs, Eric and Erwin Lopez, sued Defendant Leone for injuries stemming from a motor vehicle crash. Eric and Erwin agreed to accept Leone's policy limits in exchange for a covenant not to execute. Eric and Erwin then brought suit against Leone for purposes of having a judgment entered to collect applicable UM/UIM coverage from Merit Insurance. Eric and Erwin notified Merit about the action. The district court allowed Eric and Erwin to "prove up"

their damages in a hearing, and subsequently entered default judgments in favor of Eric and Erwin in excess of $100,000.00 each. "No appeal was taken from these judgments, and they became final." *Id.* at 1267. Subsequent to the entry of judgment in *Lopez*, Merit Insurance sought to have the judgments set aside. As the Court noted:

> Facing potential liability arising out of these judgments on its uninsured/underinsured motorist policy with Eric and Erwin's mother, Merit, on October 28, 1991, filed a "Motion To Set Aside Default Judgments And To Intervene." The district court granted both motions, finding that Eric and Erwin "did not give proper notice of the action and its trial to MERIT INSURANCE COMPANY. *Id*.

The Supreme Court reversed the lower court, holding that intervention cannot be had **under any circumstances** after judgment has been entered in an action. The Court explained its position as follows:

> NRS 12.130(1) provides that "***before the trial***, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." NRS 12.130(2) further provides that an intervenor may join the plaintiff "in claiming what is sought," or may join the defendant "in resisting the claims of the plaintiff." ***The plain language of NRS 12.130 clearly indicates that intervention is appropriate only during ongoing litigation***, where the intervenor has an opportunity to protect or pursue an interest which will otherwise be infringed. ***The plain language of NRS***

> ***12.130 does not permit intervention subsequent to the entry of a final judgment.***
>
> *Id.* at 1267-1268 (emphasis added).

The decision in *Lopez* reiterated the long standing prohibition against intervention post judgment. Dating all the way back to 1938, the Nevada Supreme Court has held that ***intervention cannot be had after a final judgment is entered***. *See*, *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938). In *Ryan* the Court adopted the holding from a California decision a decade before which held that "***in all cases [intervention] must be made before trial***." *Id.* (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928). The Nevada Supreme Court has subsequently confirmed "In refusing to allow intervention subsequent to the entry of a final judgment, ***this court has not distinguished between judgments entered following trial and judgments entered by default or by agreement of the parties."*** *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added).

In *Dangberg Holdings. v. Douglas Co.*, 115 Nev. 129, 139 (Nev. 1999) the Supreme Court further clarified that intervention after judgment, **which includes settlement**, is not possible.

> **The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.** Lopez v. Merit Ins. Co., 109 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993). Additionally, in Ryan v. Landis, 58 Nev. 253, 260, 75 P.2d 734, 735 (1938)

> (quoting *Henry Lee Co. v. Elevator Co.*, 42 Iowa 33 (1918)), we reiterated that: "intervention must be made before the trial commences. After the verdict all would admit it would be too late to intervene. But **a voluntary agreement of the parties stands in the place of a verdict, and, as between the parties to the record as fully and finally determines the controversy as a verdict could do."** *Dangberg Holdings. v. Douglas Co.*, 115 Nev. 129, 139 (Nev. 1999). Emphasis added.

The Court has subsequently reiterated that NRS 12.130 does not permit intervention subsequent to the entry of a final judgment and that "***[i]n all cases***" intervention can only be granted before judgment is entered. *Id*.

Indeed, the Nevada Supreme Court has detailed its reasoning as to why NRS 12.130 does not permit intervention subsequent to the entry of final judgment and why intervention must "in all cases" be made before judgment is entered. The Court has explained, "It is not the intention of the statute that one not a party to the record shall be allowed to interpose and open up and renew a controversy which has been settled between the parties to the record, either by verdict or voluntary agreement. *Ryan v. Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735. (1938) (quoting *Henry Lee & Co. v. Cass County Mill & Elevator Co.*, 42 Iowa 33 (1875).

In 1956, in the case of *Eckerson v. Rudy*, the Court not only recognized the long standing line of authority from the Nevada Supreme Court mandating that intervention cannot be had after judgment has been entered, but also noted that such a holding is supported by public policy. In that action, the appellant claimed that a default judgment was improperly entered, and that the appellant should have been allowed to intervene to set the default judgment aside. The Court held, "This they may not do by intervention where the controversy is ended and settled to the satisfaction of the parties litigant." *Eckerson v. Rudy*, 72 Nev. 97, 295 P.2d 399, 400 (1956).

In 1968, in the case of *McLaney v. Fortune Operating Co.*, the Nevada Supreme Court reversed the lower court's decision to allow intervention after judgment had been entered. The opinion states "The lower court allowed [appellants] to intervene . . . after judgment. ***The motion to intervene came too late and should have been denied***." *McLaney v. Fortune Operating Co.*, 84 Nev. 491, 499, 444 P.2d 505, 510 (1968).

In 1993, in *Lopez v. Merit Insurance Co.*, 853 P.2d 1266 (1993), the Nevada Supreme Court again confirmed its long held position that "in all cases" intervention cannot be granted after the entry of judgment. The Court detailed the long and consistent line of authority upholding NRS 12.130, which does not allow

intervention after judgment has been entered. The Court discussed case after case where appellants, over the course of several decades, had asked district courts to allow them to intervene for myriad reasons. Without exception, every time a district court judge found that intervention could not be had after judgment had been entered the district court judge's decision was upheld. Without exception, every time a district court judge allowed intervention after judgment was entered the district court judge's decision was reversed. ***In the instant Writ, Petitioners seek nothing other than to be treated the same way every other litigant who has presented this issue to the Court has been treated since 1938.***

In the instant action, a final judgment was entered on August 26, 2008. That judgment had remained on the docket that way for the better part of ten years. In 2018, the judgment creditor, (who had recently reached the age of majority), petitioned the Court to Amend the judgment to reflect her own name. ***Subsequent*** to final judgment being entered, and ***subsequent*** to the Amended final judgment being entered, UAIC was allowed to intervene in this matter. There is no dispute that the motion to intervene was granted subsequent to final judgment being entered. There is no dispute that Nevada authority holds that NRS 12.130 ***does not permit*** intervention subsequent to the entry of a final judgment, or that "in all

cases" intervention is not allowed after judgment. Intervention can never be (and has never been) permitted after a final judgment has been entered, and should not have been permitted by the lower court in this action.

It is not disputed that in case number 18-A-772220 the parties to the litigation entered into a written settlement agreement filed in the action (Ex. 4) and the Court below still allowed intervention contrary to the long line of cases.

The lower court's orders allowing UAIC to intervene subsequent to final judgment or settlement being entered flies in the face of almost a century of clear and consistent holdings from the Nevada Supreme Court which have, in the most broad terms possible ("in all cases") unequivocally held that intervention cannot be allowed for any reason after judgment has been entered. UAIC's concerns, just like the concerns raised by Merit Insurance about not being properly notified in *Lopez*, do not change the fact that intervention can never be (and never has been) allowed after judgment has been entered. UAIC cannot identify, and the lower court did not identify, a single case in all of Nevada's jurisprudence where intervention has ever been allowed subsequent to judgment being entered. The lower court's order should be vacated as it violated the core principles of *stare*

decisis which required that UAIC's motions for intervention subsequent to the entry of final judgment or settlement be denied.

b. Procedural Due Process was Denied to Petitioners.

The United States Constitution as well as the Constitution of the State of Nevada guarantee that a person must receive due process before the government may deprive him of his property. See, U.S Const. amend. XIV, § 1 ("nor shall any State deprive any person of life, liberty, or property, without due process of law"); Nev. Const. art. 1, § 8(5) ("No person shall be deprived of life, liberty, or property, without due process of law."). This Court has recognized that procedural due process "requires notice and an opportunity to be heard." *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004); see also *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998).

The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. *Board of Regents v. Roth*, 408 U.S. 564, 569–71 (1972). UAIC's failure on the face of both pleadings to properly serve them renders them void as a violation of due process requiring the voiding of the orders allowing intervention.

VI. CONCLUSION AND RELIEF SOUGHT

As a result of the foregoing, Petitioners pray for this Honorable Court to grant relief via a Writ of Mandamus directing the District Court to vacate its order allowing UAIC to intervene subsequent to final judgment, and enter an order denying said motion in case no 07A549111. Further, Petitioners seek direction to the lower Court that any filings proffered by UAIC in case 07A549111 be stricken from the record and any Orders issued at UAIC's request be stricken as void in Case 07A549111.

Further, Petitioners seek a Writ of Mandamus directing the District Court to vacate its order allowing UAIC to intervene subsequent to settlement, and enter an order denying said motion in case no 18-A-772220. Petitioners likewise seek direction to the lower Court that any filings proffered by UAIC in case 18-A-772220, not related to the third-party complaint, be stricken from the record and any Orders issued at UAIC's request, not related to the third-party complaint be stricken as void in case 18-A-772220.

Dated: 2/6/19

_S/ David A Stephens_____
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

_S/ E Breen Arntz_____
E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E.
Las Vegas, NV 89120
Attorney for defendant Gary Lewis

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are the persons and entities as described in NRAP 26.1(a) (1), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal:

E. Breen Arntz, Esq., Attorney for Defendant Gary Lewsi

David A. Stephens, Esq., Stephens & Bywater, P.C., Attorneys for Cheynne Nalder

Thomas F. Christensen, Esq., Christensen Law Offices, Attorneys for Third Party Plaintiff Gary Lewis

DATED this 6th day of February, 2019.

_S/ David A Stephens_____
David A. Stephens, Esq.
Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

_S/ E Breen Arntz_____
E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E.
Las Vegas, NV 89120
Attorney for Defendant Gary Lewis

ROUTING STATEMENT

This matter is not retained by the Supreme Court under NRAP 17(a) nor is it presumptively assigned to the Court of Appeals pursuant to NRAP 17(b). Petitioners believe the Supreme Court should retain this writ because it relates to a matter that is currently pending before the Supreme Court pursuant to NRAP 17(a)(6). The Supreme Court has accepted two certified questions from the Ninth Circuit Court of Appeals in Supreme Court Case No. 70504. Intervenor misrepresented the issues the Supreme Court is deciding in Case No. 70504 in order to influence the trial court regarding the simple issues of a common law action on a judgment pursuant to *Mandelbaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897). In addition, the judgment amount is over $3,000,000.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the above and foregoing brief and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of appellate procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the records. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of appellate Procedure.

DATED this 6th day of February, 2019.

_S/ David A Stephens_____
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

_S. E Breen Arntz_____
E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E.
Las Vegas, NV 89120
Telephone: (702) 384-8000
breen@breen.com
Attorney for defendant Gary Lewis

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1) and NRAP 25(c)(1), I hereby certify that I am an employee of Stephens and Bywater and that on the 7th day of February, 2019, I caused the foregoing **PETITION FOR WRIT OF MANDAMUS** to be served as follows:

[X] personal, including deliver of the copy to a clerk or other responsible person at the office of counsel; and/or

[ ] by mail; and/or

The Honorable David Jones
Eighth judicial District Court
Department XXIX
Regional Justice Center, Courtroom 3B
200 Lewis Ave
Las Vegas, Nevada 89155
Respondent Judge

The Honorable Eric Johnson
Eighth Judicial District Court
Department XX
Regional Justice Center, Courtroom 12A
200 Lewis Ave
Las Vegas, Nevada 89155
Respondent Judge

Matthew Douglas, Esq.
Atkin Winner & Sherrod
1117 South Rancho Drive
Las Vegas, NV 89102
mdouglas@awslawyers.com
vhall@awslawyers.com
eservices@awslawyers.com
Attorney for UAIC, Respondent

THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
CHRISTENSEN LAW OFFICES
1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com
Attorney for Third party plaintiff Gary Lewis (in case # A-18-772220)

_S/ MaryLee Goldstein_____
Employee of Stephens and Bywater, P.C.