

In the Supreme Court of Nevada

REPUBLIC SILVER STATE DISPOSAL, INC.,

Appellant/Cross-
Respondent,

vs.

ANDREW M. CASH, M.D.; ANDREW M.
CASH, M.D., P.C., a/k/a ANDREW MILLER
CASH, M.D., P.C.; and DESERT INSTITUTE
OF SPINE CARE, LLC,

Respondents/Cross-
Appellants.

Electronically Filed
Jun 15 2020 10:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO DISMISS CROSS-APPEAL

Based on a review of the answering brief and the opening brief on cross-appeal, appellant Republic Silver State Disposal, Inc. believes that respondents are not aggrieved parties. This Court should dismiss the cross-appeal.¹

¹ Republic asks that the Court suspend the deadline for Republic's reply brief pending resolution of this jurisdictional question. Alternatively, Republic asks for an extension of at least 31 days, through July 20, 2020, to file its reply brief on the appeal and answering brief on cross-appeal. NRAP 31(b)(3). The requested extension is necessary because of the uncertainty of whether to address respondents' arguments in the context of a cross-appeal. In addition, Republic's appellate counsel is preparing for two oral arguments (in this Court and in the Ninth Circuit) two days apart, which has significantly impacted counsel's ability to complete the reply brief.

**A. A Party Who Prevails On Summary Judgment
Cannot Cross-Appeal from the Judgment**

1. Only an Aggrieved Party Can Appeal

Under NRAP 3A(a), only an “aggrieved” party may appeal. The judgment itself must “adversely and substantially affect[]” the appellant’s personal or property rights. *Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1065 n.2, 195 P.3d 339, 343 n.2 (2008) (citing *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994)). In other words, a party is aggrieved by a judgment only if it “will be directly benefitted by its reversal.” *Leonard v. Belanger*, 67 Nev. 577, 593, 222 P.2d 193, 200 (1950).

**2. A Prevailing Defendant Is Not Aggrieved
by Adverse Interim Rulings**

So bare disagreement with a district court’s interim legal conclusions does not create appellate standing. “A party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not aggrieved *by the judgment*.” *Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (1994).

This means that a defendant who secures a complete dismissal of the claims against it cannot cross-appeal from various adverse rulings before the dismissal. In *Calloway v. City of Reno*, for example, Reno

had lost its cross-claims for contribution and indemnity, but won summary judgment on the underlying claims of the city's negligence. 116 Nev. 250, 271, 993 P.2d 1259, 1272 (2000). When Reno cross-appealed, this Court dismissed: "Because the City prevailed in the district court, the City is not an aggrieved party." *Id.*; accord *Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1065 n.2, 195 P.3d 339, 343 n.2 (2008) (dismissing cross-appeal by insurer that "ultimately" prevailed on summary judgment "on the claims against it").

**B. Respondents Are Not Aggrieved by the
Judgment Dismissing Republic's Claims**

Here, respondents lack standing to cross-appeal: They disagree with the district court's application of NRS 41A and NRS 42.021, but they ultimately prevailed as defendants below, securing a complete dismissal of Republic's contribution action. How the district court would have applied NRS 41A and NRS 42.021 in a hypothetical trial became moot with that dismissal. As they are not aggrieved by the summary judgment in their favor, this Court should dismiss the cross-appeal.

**C. Their Answering Brief Adequately Addresses
an Issue that May Arise on Remand**

In dismissing the cross-appeal, this Court need not order respondents to file a new answering brief. It is customary for a respondent to “advance any argument in support of the judgment even if the district court rejected or did not consider the argument.” *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994). Here, respondents’ arguments on cross-appeal can properly be considered as alternative arguments in their answering brief.

Dated this 15th day of June, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

DAVID BARRON (SBN 142)
JOSEPH MESERVY (SBN 14088)
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031
(702) 870-3940

By: /s/Abraham G. Smith
JOEL D. HENRIOD (SBN 8492)
DANIEL F. POLSENBERG (SBN 2376)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, I submitted the foregoing
“Motion to Dismiss Cross-Appeal” for filing *via* the Court’s eFlex elec-
tronic filing system. Electronic notification will be sent to the following:

Robert C. McBride
Heather S. Hall
MCBRIDE HALL
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113

Attorneys for Respondents

/s/ Jessie M. Helm

An Employee of Lewis Roca Rothgerber Christie LLP