

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of The Estate of Milton I. Schwartz, Deceased.

The Dr. Miriam And Sheldon G. Adelson Educational Institute,

Appellant,

vs.

A. Jonathan Schwartz, Executor of The Estate of Milton I. Schwartz,

Respondent.

Case No. 78341

and

Case No. 79464

District Court Case No. P061300

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Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' MOTION TO CONSOLIDATE APPEALS AND EXTEND BRIEFING SCHEDULE FOR CASE NO. 78341

Comes Now Appellant The Dr. Miriam And Sheldon G. Adelson Educational Institute ("Appellant"), by and through its counsel, KEMP, JONES & COULTHARD, LLP moves this Honorable Court to consolidate the two pending appeals, Case Nos. 78341 and 79464, arising out of the same action.

Pursuant to NRAP 3(b)(2), and for the reasons set forth below, Appellant respectfully requests that the Court consolidate proceedings in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Appellant moves this Court to consolidate two appeals arising from the same underlying district court case, concerning the same facts and circumstances giving rise

to four judgments and the district court's recent Decision and Order concerning the prevailing party and the parties' competing requests for costs as a prevailing party. It is anticipated that the outcome of the appeal in Case No. 78341 may affect the outcome of the appeal in Case No. 79464. Therefore, both appeals should be consolidated.

II. RELEVANT FACTUAL BACKGROUND

This is a will contest turned breach of contract dispute regarding the naming rights to a private elementary school. A nine-day jury trial commenced on August 23, 2018. The jury found against The Estate of Milton I. Schwartz (the "Estate") on its contract claims and made certain factual findings regarding decedent Milton Schwartz's subjective intent. The parties then conducted post-trial briefing on the remaining equitable issues. Ultimately, the district court determined that decedent Milton Schwartz intended that a bequest in his will go only to a school that bore his name in perpetuity and that decedent Milton Schwartz was mistaken regarding the existence of an enforceable naming rights agreement. The district court denied the Appellant's Petition to Compel Distribution of the Bequest and granted the Respondent's competing claims for construction of will and bequest void for mistake. The district court denied the Estate's remaining claims. Ultimately, four judgments were entered on the parties' claims. Respondent appealed and the Appellant cross-appealed the judgments in Case No. 78341, which is pending before this Court.

Subsequent to the Respondent's Notice of Appeal, the Honorable Gloria Sturman issued a Decision and Order on July 19, 2019, finding the Respondent to be

the prevailing party and awarding a large majority of Respondent's costs and expenses in the matter as result. A notice entry of the order was served on July 25, 2019. On August 19, 2019, Appellant timely filed a Notice of Appeal of the district court's July 19, 2019 Decision and Order and Case No. 79464 was opened by this Court.

III. ARGUMENT

A. Legal Standard

NRAP 3(b)(2) provides that when the parties have filed separate timely notices of appeal, "the appeals may be joined or consolidated by the Supreme Court upon its own motion or upon motion of a party." Consolidation does not mean that the parties must "proceed as a single [appellee]." *United States v. Tippet*, 975 F.2d 713, 718 (10th Cir. 1992). Consolidation is favored when cases raise the same or similar issues, and will result in judicial economy. *Prieur v. D.C.I. Plasma Center of Nevada, Inc.*, 102 Nev. 472, 472, 726 P.2d 1372, 1372 (1986) ("Because these appeals present identical issues and similar facts, we hereby consolidate them for disposition See NRAP 3(b).").

B. Judicial Economy is Best Served by Consolidation

The appeals in Case Numbers 78341 and 79464 arise out of the same underlying action. The appeal in Case No. 79464 is based on a finding that Respondent was the prevailing party in the underlying action and award of costs subsequent to and regarding the same orders and judgments from which the appeal in Case No. 78341 was taken. By consolidating both appeals, the Court can address all of the parties' appellate issues at one time, in a single decision. Because both appeals

involve the same set of facts and procedural history, it will be more efficient for this Court to decide all the appeals at once. As such, Appellant requests that Case Nos. 78341 and 79464 be consolidated.

C. Upon Consolidation, the Opening Brief on Case No. 79464 Should be Included as Part of Appellant's Answering Brief and Opening Brief on Cross-Appeal, and the time to file the Combined Brief Expanded by an Additional 30 Days.

Currently, there is no date set for the opening brief in Case No. 79464. Appellant requests that the opening brief in Case No. 79464 be combined included as part of Appellant's answering brief and opening brief on cross-appeal in Case No. 78341. Additionally, Appellant requests that this Court expand the time, by an additional 30 days, to file its combined answering brief, opening brief on cross-appeal to Respondent's appeal in Case No. 78341 and the opening brief for the issues raised in Case No. 79464.

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IV. CONCLUSION

Because the appeals arose from the same district court case, involve overlapping issues of law and fact, and will promote judicial economy, Appellant requests this Court grant this Motion to Consolidate Appeals. The Appellant also requests that upon consolidation, the opening brief on Case No. 79644 be included as part of Appellant's answering brief and opening brief on cross-appeal, and the time to file the combined brief be extended an additional 30 days.

Respectfully submitted this 4th day of October, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2019, I caused to be served the foregoing Appellant's Request for Transcript of Proceedings with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered Eflex users will be served by the Eflex system as follows:

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