

IN THE SUPREME COURT OF NEVADA
CASE NO. 79487

UNITED AUTOMOBILE INSURANCE COMPANY,

Appellant,

vs.

CHEYENNE NALDER; and GARY LEWIS,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM DISTRICT COURT CASE 07A549111

**RESPONDENTS' OBJECTION TO UAIC'S THIRD EXTENSION OF
TIME TO FILE AN OPENING BRIEF**

I. Introduction

Originally, the Opening Brief in this Appeal was due February 11, 2020. At the request of UAIC, it was extended to March 12, 2020 by Stipulation of the parties and Order of the Court pursuant to NRAP 31(b)(2). The Court's Order dated February 12, 2020, states "No further extensions of time shall be permitted, except upon motion clearly demonstrating good cause. NRAP 31(b)(2); NRAP 31(b)(3)(B)."

On March 12, 2020, however, UAIC did not file its Opening Brief, but instead filed a last minute Motion to Extend Time. In Opposition, Real Party in

Interest, Gary Lewis, alerted this Court to the *modus operandi* of UAIC in seeking last minute extensions without good cause. UAIC's primary motive is to seek further, unnecessary delay in the trial court, where this Court has stated the factual issues regarding statute of limitations and tolling must be heard. UAIC's most recent filing makes that clear.

On April 3, 2020, the Court granted UAIC's Motion for Extension under NRAP 31(b)(3)(B), without specifically finding what good cause claimed by UAIC justified the extension.. The Chief Justice Ordered its Opening Brief and Appendix to be filed by April 13, 2020. Curiously, the Chief Justice's¹ Order extending did not contain the required statement: "The Court **shall not grant** additional extensions of time except upon a showing of **extraordinary circumstances and extreme need**"; or, even the softer "No further extensions of time shall be permitted, except upon motion clearly demonstrating good cause. NRAP 31(b)(2); NRAP 31(b)(3)(B)."

On April 13, 2020, at 5:08pm, UAIC again filed a last minute Motion to Extend Time to File Opening Brief and Appendix. This is its third request for an extension. In support of the request for more delay, UAIC only argues

¹ Lewis does agree with UAIC's statement that the Chief Justice should recuse herself, especially considering Counsel for UAIC contributed \$5,000 to her reelection campaign on February 18, 2020. Only one contributor contributed more.

“extenuating circumstances” instead of the required **extraordinary circumstances and extreme need**. UAIC cites no authority to relax the rule. Meanwhile, real parties in interest continue to wait for decisions on the two fully briefed and submitted writ petitions,² filed more than a year ago, that would remove Intervenor UAIC from both of these trial court actions between Nalder and Lewis.

II. UAIC’s appeal is frivolous yet simple.

At the urging of UAIC, upon reaching her majority, Nalder consulted David A. Stephens, Esq. regarding the judgment she held against Lewis. Stephens moved the trial court to amend the judgment, substituting in Nalder because she had reached her majority and because the statute of limitations had been tolled on the judgment. Judge Jones granted the motion based on the tolling of the statute of limitations. Months later, UAIC moved to intervene without serving its Motion on anyone. Even though intervention is improper (see docket 78085), intervention was granted. Then, more than six months after notice of entry of judgment, UAIC moved to set aside the judgment. This motion was correctly denied. This is the instant appeal before this Court.

² Docket numbers 78085 and 78243.

Instead of filing briefs regarding this very narrow issue on April 10, 2020, counsel for UAIC, Lewis Roca, served an unrelated Writ Petition, a 15-Volume Appendix, and two Motions that it had just filed to institute another Docket in this Court. (See Docket 80965). That Writ requests a stay. That Writ was filed on April 13, 2020, the very due date of the Opening Brief and Appendix in the instant Appeal.

UAIC has been stringing along opposing counsel and this Court, biding time for itself to complete and initiate another Writ and voluminous Appendix, wherein it seeks even further delay and inflicts upon the real parties in interest greater injury and damage through continual abuses of process.

NRAP 31(b)(3)(B) states :

Applications for extensions of time beyond that to which the parties are permitted to stipulate under Rule 31(b)(2) are not favored. The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause. The Court **shall not grant** additional extensions of time except upon a showing of extraordinary circumstances and extreme need. (Emphasis added.)

It is not up to this Court's discretion. UAIC has not shown extraordinary circumstances nor extreme need. It was apparent the last time UAIC moved for extension that it did not have "good cause" in requesting additional time. The

reasons given for that delay included the COVID-19 pandemic, more pressing work (including another emergency motion and request for stay) on other cases, and the fact that the District Court had ordered supplemental briefing on this case. UIAC's first Motion for Extension in this case said "The requested extension will allow appellants to streamline the issues for this Court's consideration." This statement, and UAIC's entire Motion, was disingenuous. UAIC never intended to file an Opening Brief in this case and has not made it a priority. Such a fast and loose approach in taking advantage of procedural rules cannot not now be rewarded with additional time.

III. The COVID-19 pandemic was the excuse on March 12, 2020, the second extension.

UAIC is in bad faith asking for additional time and has no good cause, much less any extraordinary circumstance or extreme need. The instant motion again claims the COVID-19 Pandemic has caused "significant disruptions." This is true around the globe and is not an honorable excuse warranting another extension in this appeal. The COVID-19 pandemic did not prevent UAIC from compiling and filing at least four new pleadings in this same litigation, which had no definitive due date, totalling 3,843 pages, plus two optional supplemental

pleadings containing another 339 pages. UAIC falsely claims that “developments” in the ongoing litigation should cause this appeal to be delayed.

IV. The developments claimed by UAIC in the underlying litigation occurred on March 3, 2020, before the request for extension filed March 12, 2020 and long before this April 13, 2020 extension request.

The “extraordinary development” in this case was the trial court finally heard (on March 3, 2020) the motion to lift stay filed by Nalder on September 25, 2019, and orally granted it. No written order has yet been signed or filed. The court agreed to lift the stay so it could consider the facts and apply the law regarding the separate action on a judgment filed by David A. Stephens, Esq. representing Nalder against Gary Lewis, represented by E. Breen Arntz, Esq. This is consistent with the Nevada Supreme Court’s Order stating that it would not address statute of limitations tolling arguments because they “require application of law to facts that are disputed.” (See docket 70504, September 20, 2019 Order Answering Certified Questions, pp 5).

Ironically, the major development in the state court litigation is that a stay was lifted on March 3, 2020, which would allow the case to move forward and UAIC has therefore filed a Petition for Writ with this Court and an Emergency Motion asking for an interim stay of the case while the Writ is processed. UAIC is using the filing of a new docket in this Court to delay this, the pending brief, that is due

in this docket. The judgment appealed from was entered in favor of Nalder because the statute of limitations was found by Judge Jones to have not expired.

V. UAIC misrepresents Nalder's action on a judgment under *Mandlebaum* as a renewal.

UAIC claims “the Ninth Circuit expressly determined ‘the statute of limitations has passed and that they have failed to renew the judgment.’ 878 F.3d 754, 757 (9th Cir. 2017)” (UAIC Motion for Extension, pp2-3) In its Writ Petition, UAIC makes the same claim that Nalder seeks to enforce “a default judgment against UAIC’s insured that had not been timely renewed. Real parties in interest Cheyenne Nalder and Gary Lewis, however, are **upset** (1) with the **Ninth Circuit** because it **determined** that ‘the statute of limitations has passed and that they have failed to renew the judgment,” Nalder v. UAIC, 878 F.3d 754, 757 (9th Cir. 2017)” (UAIC Petition for Writ of Mandamus, pp i). **This is UAIC stretching the truth and misleading the Court in an attempt to gain advantage.**

Nalder is not and has never tried to renew anything. Nalder brought a common law action on a judgment pursuant to *Mandlebaum v. Gregovich*, 24 Nev. 154, 162 (Nev. 1897). It is an alternate method that is available regardless of the claimed expiration of the ability to execute on the judgment. (“The respondents

held a judgment, which is the highest evidence of indebtedness, without any right to enforce the same, and that right could be obtained by an action prosecuted to final judgment.”) The Ninth Circuit has **not determined anything**, it has merely tried to describe the dispute. The partial quote was taken from the Ninth Circuit’s certification “Summary,” which is footnoted with the following: “This summary constitutes **no part of the opinion of the court**. It has been prepared by court staff for the convenience of the reader.” (Emphasis added). (Order Certifying Question to NV Supreme Court, January 11, 2019, pp 2.)

The complete quote from the Ninth Circuit Order certifying the second question is:

“Nalder and Lewis do not contest that the six-year period of the statute of limitations has passed and that they have failed to renew the judgment, but they argue that UAIC is wrong that the issue of consequential damages is mooted. First, they make a procedural argument that a lapse in the default judgment, if any, may affect the amount of damages but does not affect liability, so the issue is inappropriate to address on appeal before the district court has evaluated the effect on damages. Second, they argue that their suit against UAIC is itself “an action upon” the default judgment under the terms of Nev. Rev. Stat. Section 11.190 (1)(a) and that because it was filed within the six-year life of the judgment it is timely. In support of this argument, they point out that UAIC has already paid out more than \$90,000 in this case, which they say, acknowledges the validity of the underlying judgment and that this suit is an enforcement action upon it.” (Order Certifying Question to NV Supreme Court, January 11, 2019, pp 7-8.)

Nalder and Lewis further argue to the Ninth Circuit that “it is inappropriate to address on appeal the effect of the statute of limitations” *Nalder v. UAIC*, 878 F.3d 754, 757 (9th Cir. 2017).

UAIC also wrongly claims that the Ninth Circuit Court will be deciding issues that are pending in the underlying litigation. As this Court well knows and has ruled in answering the second certified question, the Trial Court is the tribunal tasked with deciding the factual issues; the Ninth Circuit is looking to this pending litigation to inform its decision. This is why UAIC seeks in bad faith to delay the trial court from deciding the issue that it alone can decide.

VI. Conclusion.

NRAP 31(b)(3)(B) mandates that this Motion be denied and this frivolous appeal dismissed as a sanction.

Dated this 15th day of April, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing via the Court's eFlex system on April 16, 2020 and thereby served this document upon all registered users in this case.

/s/ Thomas Christensen