

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENELYN BAUTISTA,

Appellant,

vs.

JAMES PICONE,

Respondent.

Electronically Filed
Oct 09 2019 12:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

S.C. DOCKET NO.: 79534
Dist. Ct. No. D-14-495928-P

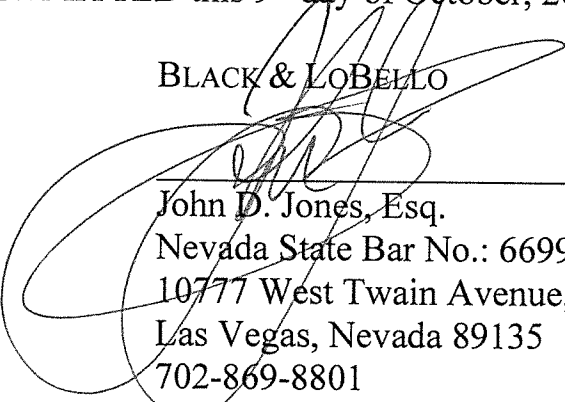
**APPELLANT'S OPPOSITION TO RESPONDENT'S SECOND
MOTION TO DISMISS APPEAL**

Appellant, RENELYN BAUTISTA, by and through her attorneys of record, John D. Jones, Esq., and the law firm of BLACK & LOBELLO, hereby submits Appellant's Opposition to Respondent's Second Motion to Dismiss.

This Opposition is made and based upon the accompanying Points and Authorities, the accompanying Exhibits, and the papers and pleadings on file herein.

RESPECTFULLY SUBMITTED this 9th day of October, 2019.

BLACK & LOBELLO



John D. Jones, Esq.
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702-869-8801
Attorneys for Appellant,
RENELYN BAUTISTA

I. POINTS AND AUTHORITIES

While difficult to understand the basis of Respondent's second motion to dismiss this Appeal, Appellant will endeavor to address the issues presented therein. The position taken by Respondent appears to be that post judgement awards of attorney fees are not appealable. Given the breadth of Nevada case law on the subject of attorney fees, this position is plainly not accurate.

It is well established that a post-judgment order awarding attorney's fees and/or costs may be appealed as a special order made after final judgment, pursuant to NRAP 3A(b)(2). *See Smith v. Crown Financial Services*, 111 Nev. 277, 280 n. 2, 890 P.2d 769, 771 n. 2 (1995).

II. ARGUMENT

Before granting an award of attorney fees, the district court must identify the legal basis for the award and determine the reasonable amount of attorney fees to award. *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005). This court reviews de novo the district court's legal basis for an award of attorney fees. *JED Prop. v. Coastline RE Holdings NV Corp.*, 131 Nev. —, —, 343 P.3d 1239, 1240 (2015). It is well settled that "attorney fees are not recoverable unless allowed by express or implied agreement or when authorized by statute or rule." *Miller*, 121 Nev. at 623, 119 P.3d at 730 (internal quotation marks omitted).

The second Motion to dismiss filed by the Respondent Ignores the fact that

Appellant's Docketing Statement specifically points to NRAP 3A(b)(8) in identifying the order for attorney fees as "A special order entered after final judgment."

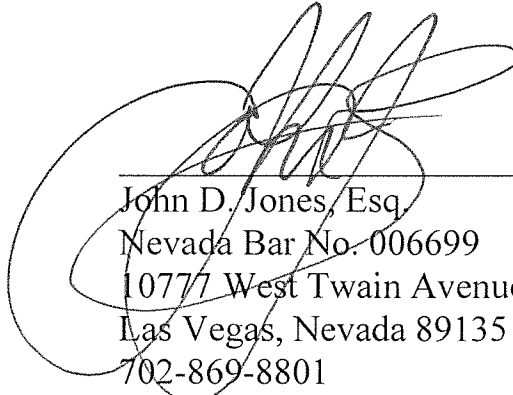
Because it is clear that at this point, Respondent is filing frivolous motions designed solely to harass Appellant.

III. CONCLUSION

Based upon the foregoing, this Court should deny Respondent's Motion to Dismiss.

RESPECTFULLY SUBMITTED this 9th day of October, 2019.

BLACK & LOBELLO

A large, stylized handwritten signature in black ink, appearing to read "J.D. Jones", is written over a horizontal line. The signature is highly cursive and loops around the text below it.

John D. Jones, Esq.
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Attorneys for Appellant,
RENELYN BAUTISTA

CERTIFICATE OF COMPLIANCE

I hereby certify that this Opposition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because this Opposition has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman font. I further certify that this Opposition complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Opposition exempted by NRAP 32(a)(7)(C), it does not exceed 10 pages.

I further certify that I have read this Opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opposition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP Rule 28(e)(1), which requires every assertion in the Opposition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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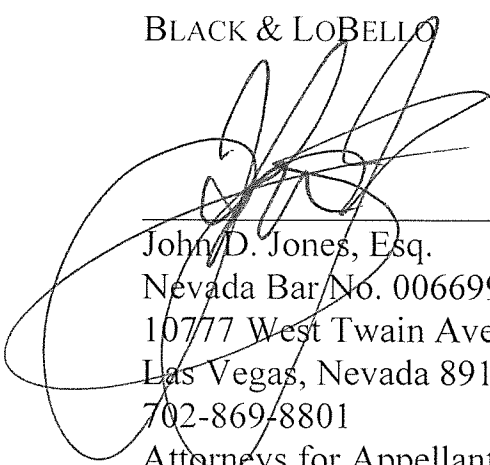
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I understand that I may be subject to sanctions in the event that the accompanying Opposition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED this 9th day of October, 2019.

BLACK & LOBELLO



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PROOF OF SERVICE

I, Cheryl Berdahl, declare: I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed at Black & LoBello, 10777 West Twain Avenue, Las Vegas, Nevada 89135. I am readily familiar with Black & LoBello's practice for collection and processing of documents for delivery by way of the service indicated below.

On October 9, 2019, I served the following document:

Appellant's Opposition to Respondent's Second Motion to Dismiss


On the interested party(ies) in this action as follows:

Benjamin B. Childs, Esq.
BENJAMIN B. CHILDS, LTD.
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Attorney For Respondent
JAMES PICONE

By Mail. By placing said document in an envelope or package for collection and mailing, addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing of mail. Under that practice, on the same date that mail is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on October 9, 2019, at Las Vegas, Nevada.


Cheryl Berdahl