

IN THE SUPREME COURT
OF THE STATE OF NEVADA

HILLSBORO ENTERPRISES INC., a Nevada Corporation; and, MOBILE BILLBOARDS, LLC, a Nevada Limited Liability Company; EBVB HOLDINGS, LLC, a Nevada Limited Liability Company; VINCE BARTELLO, an individual; ERICA BARTELLO, an individual,

Defendants-Appellants,

vs.

SEAN FITZGERALD,

Plaintiff-Respondent.

Supreme Court Case: 79698
Electronically Filed
Apr 29 2020 03:17 p.m.
District Court Case No.: A-15-716570
Elizabeth A. Brown
Clerk of Supreme Court
**PLAINTIFF'S-RESPONDENT'S
OPPOSITION TO COURT RECORDER'S
MOTION FOR EXTENSION OF TIME TO
FILE TRANSCRIPT**

COMES NOW PLAINTIFF-RESPONDENT, SEAN FITZGERALD, (herein "Plaintiff-Respondent") by and through his Attorney of Record, KEMP & KEMP, ATTORNEYS AT LAW, and hereby files his Opposition to Court Recorder's Motion For Extension of Time to File Transcript. This Opposition is based upon and supported by the following Memorandum of Points and Authorities, the pleadings and papers on file, any affidavits and exhibits attached hereto, and any argument the Honorable Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts

Defendants'-Appellants' appeal is taken from a Judgment following the July 2019 jury trial in the Eighth Judicial Court in the underlying action, *Fitzgerald v. Hillsboro Enterprises, Inc., et al*, A-15-716570-C. Defendants'-Appellants' Notice of Appeal was filed on **September 27, 2019**.

On **December 12, 2019**, this Court ordered that briefing be reinstated because the parties were unable to agree to a settlement of this appeal. Pursuant to that order, Defendants-Appellants were to provide their transcript request within 14 days, or **December 26, 2019**, with the opening brief and appendix due to be filed by **March 11, 2020**.

1 After Defendants-Appellants failed for two months to meet the deadline to request the
2 transcript, this Court issued a Notice to Request Transcript in 10 days on **February 26, 2020**.
3 Defendants-Appellants filed their transcript request on **March 7, 2019**.

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5 Defendants'-Appellants' deadline was **March 11, 2020** to file their opening brief and
6 appendix came and went *without* Defendants-Appellants requesting an extension of time. On
7 **March 31, 2020**, this Court ordered Defendants-Appellants to file their opening brief and appendix
8 within 14 days – **April 15, 2020**.

9
10 On **April 9, 2020**, Defendants-Appellants filed a Motion to Extend Time To File Opening
11 Brief for 60-days citing grave concerns about Covid-19. The same day Plaintiff-Respondent opposed
12 that motion pointing out Defendants'-Appellants' pattern of what appeared to be dilatory tactics and
13 that their actions were prejudicial and harmful to Plaintiff. On **April 23, 2020**, this Court granted in
14 part and denied in part Defendants'-Appellants' motion allowing an additional 30-day extension of
15 time from the date of the Order in which to file their opening brief and appendix. Defendants'-
16 Appellants' opening is brief must now be filed by **May 23, 2020**.

17
18 On **April 20, 2020**, the Court Recorder sent counsel for Defendants-Appellants a copy of her
19 NOTICE OF APPELLANT'S FAILURE TO PAY DEPOSIT which was filed with this Court on
20 **April 23, 2020**. The Court Recorder represented that after "numerous e-mails and one personnel
21 conversation" with Defendants'-Appellants' Counsel Jonathon R. Patterson, Esq., "counsel has not
22 reached out to me to either pay a deposit or pay for the transcript."

23
24 Counsel for Defendants-Appellants made an ***affirmative misrepresentation*** to this Court in
25 his March 7, 2020, Request for Transcript of Proceedings whereby he certified that "...[o]n the 7th
26 Day of March 2020, I ordered the transcripts listed above from the court reporter named above and
27 *paid the required deposit on the 7th Day of March 2020.*" (emphasis/underline added) Counsel did
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nothing to correct the misrepresentation although having the opportunity to do so in his April 9, 2020, Motion to Extend Time To File Opening Brief. Instead, in that motion Counsel opted to use the Covid-19 pandemic to cover up the misrepresentation and to continue Defendants'-Appellants' dilatory tactics.

On **April 27, 2020**, the Court Reported filed the instant Motion seeking until **June 5, 2020** in which to file the transcripts stating that on **April 23, 2020** she received a deposit from Defendants-Appellants. The instant Motion should be denied.

II. Argument

The instant Motion should be denied because the filing of the transcript at the late date of June 5, 2020, would serve no purpose as Defendants'-Appellants' final deadline for filing their opening brief is May 23, 2020. Therefore, the filing of transcript anytime after that date, and arguably even weeks before that date, would be futile as it is well pass the final deadline of May 23, 2020, set for the filing of Defendants'-Appellants' opening brief.

Defendants-Appellants continue to game the judicial system and this Court by all means necessary including making affirmative misrepresentations. Defendants-Appellants are well aware that failing to pay for the transcripts to be prepared and filed would cause delay so they could ask this Court for another extension to file their opening brief this time claiming that the transcripts were not timely prepared. The transcripts will not be timely prepared through no fault of anyone other than Defendants-Appellants. This is yet another dilatory tactic by Defendants-Appellants that causes further prejudice and harm Plaintiff and one which this Court should not condone.

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III. Conclusion

For the reasons stated herein, Plaintiff-Respondent respectfully requests this Court deny the Court Recorder's Motion For Extension of Time to File Transcript.

Dated this 29th day of April 2020.

/s/ Victoria L. Neal

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of KEMP & KEMP ATTORNEYS AT LAW and on the date indicated below the above and foregoing document, PLAINTIFF'S-RESPONDENT'S OPPOSITION TO COURT RECORDER'S MOTION FOR EXTENSION OF TIME TO FILE TRANSCRIPT, was submitted for service through the Court's electronic filing system to be served on the following:

Carrie Hurtik, Esq.
Jonathan R. Patterson, Esq.
HURTIK LAW & ASSOCIATES
7806 W. Sahara Ave.
Las Vegas, NV 89117

Regional Justice Center, Eighth Judicial District Court
Department IX - ATTN: Gina Villani, Court Recorder
200 Lewis Ave
Las Vegas, NV 89101

Attorneys for All Defendant-Appellants

The undersigned further certifies that on the date indicated below a copy of the foregoing PLAINTIFF'S-RESPONDENT'S OPPOSITION TO COURT RECORDER'S MOTION FOR EXTENSION OF TIME TO FILE TRANSCRIPT, was placed in the United States Mail at Las Vegas, Nevada, with postage fully prepaid thereon, and in email addressed to the following persons or parties:

Regional Justice Center, Eighth Judicial District Court
Department IX - ATTN: Gina Villani, Court Recorder
200 Lewis Ave
Las Vegas, NV 89101

villanig@clarkcountycourts.us
Court Recorder

Dated this 29th day of April 2020.

/s/ Victoria L. Neal
An employee of KEMP & KEMP