

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GREG ELLIOT PELKOLA,
Appellant,

vs.

HEIDI MARIE PELKOLA,
Respondent.

No. 80763

Electronically Filed
Jul 13 2020 02:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Judicial District Department L
County Clark Judge Hon. David Gibson
District Ct. Case No. D488682

2. Attorney filing this docketing statement:

Attorney Melvin R. Grimes Telephone 702-347-4357
Firm The Grimes Law Office
Address 8540 South Eastern Ave., Suite 100
Las Vegas NV 89123

Client(s) Greg Pelkola

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Kimberly Stutzman Telephone 702-990-6448
Firm Radford J. Smith Chartered
Address 2470 St. Rose Parkway, suite 206
Henderson, NV 89074

Client(s) Heidi Pelkola

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| ☐ Judgment after bench trial | ☐ Dismissal: |
| ☐ Judgment after jury verdict | ☐ Lack of jurisdiction |
| ☐ Summary judgment | ☐ Failure to state a claim |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☐ Grant/Denial of NRCP 60(b) relief | ☐ Other (specify): _____ |
| ☐ Grant/Denial of injunction | ☒ Divorce Decree: |
| ☐ Grant/Denial of declaratory relief | ☐ Original ☒ Modification |
| ☐ Review of agency determination | ☐ Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☒ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Heidi Marie Pelkola v. Greg Elliot Pelkola, D-13-488682-D in the Eighth Judicial District, Department L.; Complaint for Divorce filed 11/19/2013; Divorce Granted 5/6/2014; Motion for the Return of the Children to the State of Nevada filed 1/2/2014; denied as Moot 2/25/14. Motion for an Order for Permission for Primary Physical Custody to Relocate With A Minor Child filed 6/18/2014; granted without trial 6/26/2014. Plaintiff's Motion for Orders to Modify Child Custody, visitation, and or Child Support filed 12/30/2014; matter heard and parties sent to Family Mediation. Plaintiff's Motion to clarify the Order and other financial relief filed 5/21/2015; this hearing was vacated as moot. Plaintiff's motion for an Order to Show Cause filed 05/12/2017 and Plaintiff's Motion to increase Child Support filed the same date; the court granted the Motion on child support 06/13/2017 and referred to an outsource

Evaluation on the Motion to Enforce. Defendant's motion to conform the Orders of the court to Howell v. Howell, 581 U.S. ____ (2017) filed 10/10/2017; the court set this matter and the remaining Orders to Show Cause for an evidentiary hearing December 19, 2017. Following the evidentiary hearing there was a finding Heidi was likely engaging in Parental Alienation, the court ruled on the enforcement issues and awarding compensatory time to Greg. Greg was also awarded attorney's fees and cost. Heidi filed a Motion to have the case reassigned to another Department July 17, 2018, Plaintiff also sought an Order to set aside the prior order; these were heard without a hearing July 26, 2018 and were denied and vacated with the remaining issued to be heard July 27, 2018. The court denied the remainder of the Show Cause issues, make up time was again awarded. Greg filed a motion to Modify Custody November 8, 2018. The matter was set for an Evidentiary Hearing on financial issues and custody issues bifurcated. Following the first day of trial, the court made rulings that led Greg to believe the modification of custody was not in the best interest of the child. Plaintiff filed her Motion to Relocate October 1, 2019 prior to the second day of the ongoing evidentiary hearing. The matter was heard November 20, 2019 with the orders subject to appeal issuing.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Respondent was granted relocation without meeting the requirements of NRS 125C.007. The court determined that because she had previously relocated out of state the court could not deny the motion even if bad-faith was shown.

Respondent was awarded excessive attorney's fees despite not being the prevailing party on all issues. Respondent should have been awarded only those fees for the final hearing and not for the totality of the litigation.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1) Whether NRS 125C.006 and NRS 125C.007 applies to a parents request for relocation when relocation was granted previously but the new move sought would greatly change the ability to maintain the parent/child relationship with the non-custodial parent and when the request is not brought in good-faith.

2) Whether attorney's fees were properly awarded for the entire cost of litigation when the parties are financially equal in position and each side was prevailing on certain issues yet Respondent was awarded 100% of her fees and costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

none we are aware of.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The Nevada Legislature enacted AB 263 in 2015; now codified as NRS 125C. NRS 125C.006 - 007 cover the issue of relocation of minor children. The statute does not address the issue of a parent relocating after an initial relocation; but does include the language, " the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child." Here the respondent lived in Phoenix which permitted regular and frequent visitation by the appellant.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

NRAP 17(a)(12) provides, "Matters raising as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts."

The Supreme Court should retain this matter and not assign it to the Court of Appeals

14. Trial. If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 02/04/2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 02/04/2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 03/04/2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| ☒ NRAP 3A(b)(1) | ☐ NRS 38.205 |
| ☐ NRAP 3A(b)(2) | ☐ NRS 233B.150 |
| ☐ NRAP 3A(b)(3) | ☐ NRS 703.376 |
| ☐ Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The court entered a final order granting the relocation of the children and an award of attorney's fees. The order granting relocation was granted without an evidentiary hearing as the court determined it could not deny the motion.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Greg Pelkola , Appellant, and Heidi Pelkola, Respondent.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondent sought a divorce and custody of the children and an inequitable distribution of the community property (she received more by default). Greg filed a motion for the return of the children from Arizona, Heidi returned before the hearing. Heidi then sought to relocate to Florida, granted without a hearing, but within a month had relocated to Arizona. Heidi now seeks to relocate to Ohio, which has been granted without an evidentiary hearing; the court asserted relocation has already been granted and the court lacks authority to deny the request.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Greg Elliot Pelkoloa
Name of appellant

7/10/2020
Date

Nevada, Clark County
State and county where signed

Melvin R. Grimes, ESQ
Name of counsel of record


Signature of counsel of record

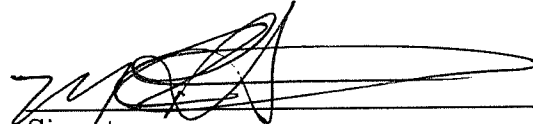
CERTIFICATE OF SERVICE

I certify that on the 13th day of July, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Kimberly Stutzman, ESQ.
Radford J. Smith Chartered
2470 St. Rose Parkway, suite 206
Henderson, NV 89074

Dated this 13th day of July, 2020


Signature