SUPREME COURT No. 80910

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS VINCENT STANTON

Appellant /Cross-Respondent

— vs. —

TWYLA MARIE STANTON

Respondent/Cross-Appellant

District Court Case No.: CV-0039304

RESPONDENT'S/CROSS-APPELLANT ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Law Office of Christopher P. Burke, Esq.

DATED this 10th day of May 2021.

/s/ Christopher P. Burke, Esq.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **pg.**

Statutes

I

Summary of Argument

This is an unusual appeal in that both parties seek the *same* result. That fact, combined with the excellent brief by Appellant/Cross-Appellee, Dennis Stanton's counsel John Savage, Esq., leaves little for Respondent/Cross-Appellant to add. Accordingly, Respondent will limit this brief to a minor rewording of the issues and adding an issue by Cross-Appellant.

II

Statement Regarding NRAP 28(b)

The Respondent accepts the Appellant's Statement of Issues, with some rewording and an additional issue that is laid out below. In addition, Respondent accepts Appellant's Statement of the Case and the Statement of Facts.

III

Statement of Issues

1. Under Nevada law, a non-party foreign guardian may not collaterally attack a Nevada divorce decree without both registering the foreign order and properly intervening in a case. Here, the Crawfords did neither, and in the process, were allowed to unseal the Stantons' private

divorce records and were permitted to set aside their divorce decree. Since the Crawfords did not register the foreign order or properly intervene in the Stantons' divorce case shouldn't the lower Court's decision be reversed?

2. It is a constitutional violation to permit nonparty foreign residents to interfere with the right of Nevada residents to divorce. Here, the lower court allowed nonparty residents of Arkansas to interfere with the Stantons' right to divorce in Nevada by setting aside their decree of divorce. In doing so, didn't the lower court err in allowing parties without standing to file, appear and be granted their request?

3. To receive an award of sanctions under NRCP 11, a party needs to comply with the rule's safe harbor provisions. In addition, a court must hold an evidentiary hearing prior to deciding and ordering sanctions. Here, a non-parties were awarded sanctions despite not sending a safe harbor letter and despite the Court failing to hold an evidentiary hearing. Thus, didn't the lower court err in awarding Rule 11 sanctions?

4. It is a violation of the Nevada Rules of Professional Conduct ("NRPC") for an attorney to represent adverse parties in substantially related matters. Here, Mrs. Stanton's former divorce attorneys later represented her mom and stepdad, the Crawfords, who set aside her divorce without Mrs.

Stanton's written consent. Thus, didn't those attorneys violate the NRPC?

IV

Argument

A. Because the Crawfords never registered their temporary foreign judgment, they had no standing to appear

A district court cannot allow a non-registered foreign guardianship to intervene in a Nevada proceeding. See NRS §159.2027. Here, there is *no* dispute that the Crawfords failed to register their foreign guardianship in Nevada. Thus, the Crawfords lacked standing to intervene in the Stantons' divorce. "Standing is the legal right to set judicial machinery in motion. *Heller v. Legislature of State of Nevada*, 120 Nev. 451, 460 (2004).

Despite their lack of standing, the District Court allowed the Crawfords to participate in setting aside the Stantons' valid divorce decree.[1] Without such standing, the District Court erred in giving the Crawfords any say in the Stantons' divorce NRS §125.185. This Court may address a standing issue *sua sponte*, whether or not that issue was raised below. Thus, the decision of the District Court should be reversed and remanded because the Crawfords had no standing to set aside the Stantons' divorce.

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1. The Stantons' were remarried on December 14, 2018 (JA22-38, Vol. 1, JA677-681, Vol.4).

B. The Crawfords improperly intervened in the Stantons' divorce

Generally, non-parties must to file a motion to intervene in a case before they can participate. *Pelletier v. Pelletier*, 103 Nev. 408, 409 (1987). Here, the Crawfords *never* filed a motion to intervene. NRCP 24(c). Thus, although the Crawfords *may* have had a right to intervene or the court could have granted them permissive intervention, their failure *ever* to file a motion to intervene should have barred their participation. So again, the court should have never considered the Crawfords' motion to set aside the Stantons' divorce decree (JA 71-73, Vol.1). As such, the District Court decision must be reversed and the Stantons' divorce reinstated.

C. The Stantons' divorce decree should not have been unsealed and set aside

Even if the Crawfords could intervene without moving to do so, and if they could have somehow met the standing requirement, there was still *no* legal basis upon which to unseal and set aside the Stantons' divorce.

Why? Because, when seeking their divorce, the Stantons complied with the law by using the District Court's own *approved* forms and their divorce decree was properly entered. Thus, the Stantons had a valid divorce decree. And notably, "Nevada has a strong interest in protecting its valid divorce

decrees." *Vaile v. Eigth Jud. Dist. Ct. ex rel. County of Clark*, 118 Nev. 262, 272 (2002). Besides, no valid divorce may be contested by third parties. NRS §125.185.

That the District Court might have been concerned with Mrs. Stanton's mental capacity, and was apparently perturbed by the Stantons' failure to disclose their prior divorce attempts, neither of these circumstances should have been relevant to its decision. First of all, there was no evidentiary basis upon which the District Court could have relied to set aside the parties divorce. The minute order by Judge Hughes was "ineffective for any purpose." *Rust v. Clark Cty. Sch. Dist.*, 103 Nev.686, 689. So, the District Court "just assumed" that "based on [Mrs. Stanton's] limited mental capacity, it would be easy for [Mr. Stanton] to manipulate [Mrs. Stanton]" (JA 232;4-7, Vol.2). In addition, because information about a party's prior divorce attempts is not required on the District Court's approved forms, the failure to include such information should have had no bearing on the District Court decision (JA22-38, Vol.1).

And although it is admirable that the Court was concerned about Mrs. Stanton's mental capacity, it failed to hold an evidentiary hearing so she could be questioned under oath. Ironically, the Court also could have easily reviewed

the Stantons' prior divorce attempts, where it would have found that the only evidence of diminished capacity was a single minute order mentioning that capacity. Instead, the Court should have considered the evidence in Mr. Stanton's Motion for Reconsideration that included Mrs. Stanton's retainer agreement with her Arkansas attorney, her Objection to Guardianship, and her celebratory social media postings regarding their divorce (JA359-367, 406-407, Vol.2).

Here, there is no question the Crawfords are not parties to the Stantons' divorce decree. Thus, they are third-parties. But in Nevada, third-parties cannot collaterally attack a valid divorce decree. NRS §125.185. Yet the District Court still allowed them to collaterally attack the Stantons' valid divorce decree.

D. The District Court abused its discretion in denying Mr. Stanton's motion to reconsider

To compound the problem further, the District Court never held an evidentiary hearing prior to denying Mr. Stanton's motion to reconsider under NRCP 59. This is surprising, because *twice* the Court stated it *needed* to have an evidentiary hearing (JA244:5-8 and 250:11-13, Vol.2). The Court exacerbated its error by allowing the Crawfords to oppose that motion, especially when the Crawfords were not even guardians of Mrs. Stanton at that

point (JA 362-364, at ¶4, Vol.2). Mr. Stanton's motion should have proceeded unabated with his new evidence considered (JA 551-553, 583-629 and 644-676, Vol. 4). Yet the Court did not consider Mr. Stanton's new and dispositive evidence. Since this was not a harmless error, a reversal and remand is warranted.

E. Mr. Stanton should not have been sanctioned

Finally, if a Court wants to sanction a party, there must first be a written motion, a written notice and a hearing NRCP 11(c)(1) and (2). Here, that was not done. Obviously, a 24 minute recess is not sufficient notice. (JA 245:14-17, Vol. 2). Besides with no 21-day safe harbor letter having been sent, the Crawfords were not proper parties to receive the award of sanctions. Additionally, they were not proper parties to the action in the first place. *Young v. Nevada Title Co.*, 103 Nev. 436, 442 (1987). Thus, if this Court reverses the District Court's decision to allow the Crawfords to intervene, it should also reverse the sanctions. And even if the Crawfords somehow could have intervened, the sanctions request was not properly before the court and therefor not correctly determined.

F. The Crawfords' attorneys had a conflict of interest because of their previous representation of Twyla Stanton.

Mrs. Stanton's *previous* divorce attorneys were Christopher Owen ("Owen") and Charles Lobello ("Lobello") of the Owens Law Firm. They represented Twyla Stanton in her earlier divorce attempts (D-16-541006-D consolidated). Later, they represented the Crawfords in setting aside Mrs. Stanton's divorce decree (JA69-70 and 74-86). Their representation violated the Nevada Rules of Professional Conduct ("NRCP"). The Rules prohibit an attorney from representing a party whose interest is materially adverse to another party in substantially related matters unless there is written informed consent given by the former client. See NRCP 1.9. Here, the later clients were the Crawfords, Mrs. Stanton's mom and stepdad. They were on opposing sides of each other in the Arkansas guardianship case (JA203).

In addition, the divorce actions between Mrs. Stanton and Crawfords were substantially related, as evidenced by the District Court's use of a sentence from a minute order from one of the parties prior divorce attempts as the basis of its ruling that Mrs. Stanton was incompetent. (JA281 at ¶10, Vol. 2). Although this Minute Order was a matter of public record, Owen and Lobello were privy to this obscure entry by virtue of their previous

representation of Mrs. Stanton and used it against her. Thus, they both violated NRCP 1.9.

V

Conclusion

The District Court erred in allowing a non-party, foreign guardian with an unregistered temporary order, without standing, to intervene in a Nevada divorce and to set aside a decree of divorce. The Court also erred in awarding sanctions under Rule 11 without a safe harbor letter being sent, and by not holding an evidentiary hearing. Thus, the entire District Court decision should be reversed and remanded such that the Stantons' divorce may be reinstated and the $3,000 sanction reversed.

DATED this 10th day of May, 2021.

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Certificate of Compliance

1. I certify that this Brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of N.R.A.P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, using WordPerfect X4 in Georgia 14 point font.

2. I further certify that this brief complies with the page- or type-volume limitations of N.R.A.P. 28.1(e)(1)–(2) because, excluding the parts of the brief exempted by N.R.A.P. 32(a)(7)(C), it contains 1675 words and does not exceed 30 pages.

3. Finally, I hereby certify that I have read this Respondent's Answering Brief, 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 brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief 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. I understand that I may be subject to sanctions in the event that the accompanying Brief is not in conformity with the requirements of the

Nevada Rules of Appellate Procedure.

Dated this 10th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2021, a true and correct copy of the Respondents' Answering Brief was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

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