

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS VINCENT STANTON,

Appellant/Cross-Respondent,

vs.

TWYLA MARIE STANTON,

Respondent/Cross-Appellant.

Nevada Supreme Court Case No: **80910**

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Elizabeth A. Brown
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DENNIS VINCENT STANTON'S PETITION FOR REHEARING

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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.

Holley Driggs.

James S. Kent, LTD.

DATED this 4th day of April 2022.

HOLLEY DRIGGS

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MEMORANDUM OF POINTS AND AUTHORITIES

A. Mr. Stanton Requests a Rehearing as to the Affirmance of the District Court's Order Setting Aside the Divorce Decree

On March 3, 2022, the Court issued its Order Affirming in Part and Reversing in Part (Dkt. No. 22-06873) ("Appellate Order"), which affirmed the District Court's order setting aside the divorce decree ("Set Aside Order") between Appellant/Cross-Respondent Dennis Vincent Stanton ("Mr. Stanton") Respondent/Cross-Appellant Twyla Marie Stanton ("Mrs. Stanton") and together with Mr. Stanton, the "Stantons"). The Appellate Order also reversed the District Court's order issuing sanctions against Mr. Stanton ("Sanction Order").

Mr. Stanton respectfully requests a rehearing as to the Court's affirmance of the Set Aside Order. Petitions for a rehearing are governed by NRAP 40. As set forth in more detail below, this Petition complies with NRAP 40.¹

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¹ Mr. Stanton's deadline to file his petition for rehearing was extended to April 4, 2022 pursuant to the Court's Order Granting Telephonic Extension filed on March 17, 2022 (Dkt. No. 22-08543).

B. Regarding the Issue of Waiver, the Court Overlooked or Misapprehended Mr. Stanton's Opposition and Countermotion to Strike the Motion to Set Aside and/or Mr. Stanton's Motion for Reconsideration.

In support of its finding that Mr. Stanton agreed to set aside the divorce decree and therefore waived any challenge he may now have to the Set Aside Order, the Court cited to *Old Aztec Mine Inc. v. Brown*, 97 Nev. 49, 52, 623 P. 2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”). *See* Appellate Order at p. 2. In *Old Aztec Mine, Inc.*, the waiver at issue was the appellant's failure to raise to the trial court's attention the appellant's assertion that the trial court omitted a decision on the appellant's counterclaim in the trial court's judgment. *Old Aztec Mine, Inc.*, 97 Nev. at 52–53, 623 P.2d at 984. The Court explained that the appellant there could have preserved its appellate rights by moving the trial court for an amended judgment, which would have included an explicit ruling on the appellant's counterclaim. *Id.* at 52, 623 P.2d at 984.

Here, the Court misapplied the holding in *Old Aztec Mine, Inc.* because Mr. Stanton preserved his appellate rights as to the Set Aside Order by filing his Opposition to First Joint Petitioner/Plaintiff's Motion Pursuant to Rule 60(b) to Set Aside Divorce as Fraudulently Obtained, to Dismiss the Joint Petition for Divorce with Prejudice, and to Sanction Defendant for Forum Shopping and Perpetrating a Fraud Upon the Court in the Full Amount of Plaintiff's Fees and Costs (“Set Aside

Opposition”) and Countermotion to Strike Movant’s Motion as Being Filed without Authority and in a Direct Conflict of Interest and for Attorney’s Fees (“Countermotion”),² as well as his Notice of Motion for Reconsideration (“Motion for Reconsideration”).³

Mr. Stanton respectfully submits that expanding the holding in *Old Aztec Mine, Inc.* to the facts in the present appeal is not fair or just where Mr. Stanton merely conceded to alternative relief to avoid sanctions that were being sought by improper third parties who lacked standing to attack his constitutional right to a divorce.

C. Regarding the Issue of Fraud Upon the Court, the Court Overlooked or Misapprehended the Burden to Prove Fraud and the Evidentiary Defenses Raised Below.

In support of its finding that evidence in the record supports a finding of clear and convincing evidence of fraud upon the court, the Court cited to NRCP 60(d)(3) (permitting a district court to “set aside a judgment for fraud upon the court”); *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 658, 218 P.3d 853, 861 (2009) (explaining that such motions are “addressed to the sound discretion of the trial court”). *See* Appellate Order at p. 2-3. The Court also noted that Mr. Stanton did not seek an

² *See* Opening Brief, filed herein on March 12, 2021 (Dkt. No. 21-07319) (“Brief”), at 6:11-22 (citing JA000180-209, Vol 1).

³ *See* Br. at 10:7-14 (citing JA000283-315, Vol. 2).

evidentiary hearing or make any request to call witnesses or present evidence outside of what was provided to the court in the pleadings. *Id.* at p.3.

In *NC-DSH, Inc.*, the Court explained that the “party seeking to vacate a final judgment based on fraud upon the court bears a heavy burden.” *NC-DSH, Inc.*, 125 at 657, 218 P.3d at 860. It noted that “[t]he problem lies in defining what constitutes ‘fraud upon the court.’” *Id.* at 654, 218 P.3d at 858. Adopting the most “widely accepted definition,” and the Court held that the concept:

embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases ... and relief should be denied in the absence of such conduct.

Id. (citations omitted).

The fraud upon the court in *NC-DSH, Inc.* consisted of plaintiff’s counsel settling a wrongful death lawsuit without the knowledge or approval of his clients, forging the necessary settlement papers, submitting a stipulated judgment to the court to conclude the wrongful death claim, and disappearing with the settlement money. *Id.* at 647-649, 218 P.3d at 855-859. The substantial evidence that supported the district court’s finding of a fraud upon the court included testimony the district court heard from the plaintiffs. *Id.* at 657, 218 P.3d at 860.

Here, the Court overlooked or misapplied the burden to prove fraud upon a court and the evidentiary defenses that Mr. Stanton raised below. It remains unclear

what evidence supported a finding that Mr. Stanton committed a fraud upon the District Court as the District Court never held an evidentiary hearing to consider evidence despite twice stating it would need an evidentiary hearing to determine whether there was wrongdoing.⁴ To the extent the moving parties did submit any admissible evidence, such evidence would be improper to consider given the moving parties' lack of standing.⁵

The Appellate Order notes as well that Mr. Stanton did not make any request to call witnesses or present evidence outside of what was provided to the District Court in the pleadings. *See* Appellate Order at p. 2-3. However, *NC-DSH, Inc.* makes clear that the “party seeking to vacate a final judgment based on fraud upon the court” bears the burden of proof and it is a “a heavy burden.” *NC-DSH, Inc.*, 125 at 657, 218 P.3d at 860. Additionally, Mr. Stanton’s counsel below did raise the need for an evidentiary hearing before any adverse finding of facts could be made, which the District Court commended by raising the evidentiary issues as a defense.⁶

Mr. Stanton respectfully submits that expanding the holding in *NC-DSH, Inc.*

⁴ *See* Br. at 8:15-20 (citing JA000237-251, Vol. 2), 9:11 – 10:1 (citing JA000267-273, Vol. 2), 18:18: - 19:23 (citing JA000022-38, Vol. 1; JA000267-273, Vol. 2; JA000281 at ¶ 10, Vol. 2), 23:1-22 (citing JA000232-251, Vol. 2).

⁵ *See* Br. at 14:8 – 15:20, 17:14 – 18:15 (citing, *inter alia*, JA000174-77, Vol. 1).

⁶ *See* Br. at 7:21 – 8:1 (erroneously citing JA000242:8-9, Vol. 2, which should have cited to JA000244:22 – JA000245:6).

to the facts in the present appeal is not fair or just where the moving party failed to present admissible evidence sufficient to establish fraud and where Mr. Stanton raised evidentiary issues as a defense below.

DATED this 4th day of April 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief 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 brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point font Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40(b)(3) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 1,234 words; or

☒ Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this petition, 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 NRAP 40(a)(2), which provides the following: “Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed

to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.” I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of April, 2022

HOLLEY DRIGGS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm of Holley Driggs, and that on this 4th day of April, 2022, I served the above and foregoing **APPELLANT/CROSS-RESPONDENT DENNIS VINCENT STANTON'S PETITION FOR REHEARING** in accordance with NRAP 25 and NRAP 40(b)(1) via Electronic Service and US Mail as follows:

<u>Electronic Service:</u> Christopher P. Burke, Esq. Law Office of Christopher P. Burke 218 S. Maryland Pkwy Las Vegas, Nevada 89101 <i>Attorney for Respondent/Cross-Appellant Twyla Marie Stanton</i>	<u>US Mail:</u> Professor Anne Traum, Chair of Pro Bono Committee Appellate Section of State Bar of Nevada UNLV William S. Boyd School of Law 4505 S. Maryland Parkway, Box 451003 Las Vegas, Nevada 89154-1003 Kelly H. Dove, Esq., Co-chair of Pro Bono Committee Snell & Wilmer, LLP 3883 Howard Hughes Parkway, Ste. 1100 Las Vegas, Nevada 89169
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/s/ Sandy Sell
an employee of Holley Driggs