

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CHRISTOPHER KHORSANDI, M.D.;  
CHRISTOPHER KHORSANDI, M.D.,  
PLLC; and CATHERINE LE  
KHORSANDI

Appellants,

vs.

SMITH PLASTIC SURGERY, INC.,  
and LANE F. SMITH, M.D.,

Respondents.

Case No.: 80957

District Court

Case No. A-19-804810-C

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**OPPOSITION TO APPELLANTS'  
MOTION TO STRIKE**

**I. INTRODUCTION**

Respondents, Smith Plastic Surgery, Inc. and Lane F. Smith, M.D. (hereinafter “the Smith Parties”) by and through counsel of record hereby oppose Appellants’ (hereinafter “the Khorsandi Parties”) Motion to Strike, wherein the Khorsandi Parties seek to strike the Smith Parties’ Appendix pages 14-106 attached to the Answering Brief, pages 8-11 of the Smith Parties’ Answering Brief, and the entirety of Section I(C) of the the Smith Parties’ Answering Brief.

NRAP 30(a), imposes a duty on counsel to confer and attempt to reach an agreement concerning a possible joint appendix, which the Khorsandi Parties failed to do. Now, the Khorsandi Parties have resorted to frivolous motion practice based upon their own failure to abide by the Nevada Rules of Appellate Procedure.

Furthermore, pursuant to NRAP 30(b) the appendices should include all matters essential to the decision of issues presented by the appeal. *See* NRAP 30(b). “Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.” NRS 177.045.

Due to the Khorsandi Parties’ unwillingness to even attempt to reach an agreement concerning a joint appendix, it was the Smith Parties’ right to include the documents necessary to rebut the the Khorsandi Parties’ position on appeal and essential for consideration by this Court which were not included in the Appellant’s appendix. NRAP 30(b)(4). For this reason, this Court should deny the Appellants’ Motion to Strike.

## **II. ARGUMENT**

The Nevada Supreme Court requires parties to meet and confer in an attempt to reach an agreement regarding a joint appendix for the purpose of avoiding motions such as the one at hand. Instead, the Khorsandi Parties deliberately ignored this obligation and filed their appendix without attempting to meet and confer. Now, the Khorsandi Parties seek to strike relevant documents which would prevent this Court from reviewing a complete and accurate trial court record.

Pursuant to NRAP 10(a) the trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk. The purpose

of the record on appeal is to provide the Court with all documents that are essential to the determination of the issues raised on appeal. NRAP 30(a)(3). This includes intermediate orders and proceedings if such documents are necessary to the Court's review of the issues. *See* NRS 177.045.

Following the Khorsandi Parties' Notice of Appeal, the Smith Parties filed motions in the district court which sought to address the accuracy and truthfulness of the Khorsandi Parties' affidavits which were filed in support of their Special Motion to Dismiss, which is the pleading that forms the basis for this appeal. The district court properly heard these motions given that the interlocutory appeal did not divest the lower court of jurisdiction and no stay was in place. "Appeals from interlocutory orders do not divest the district court of jurisdiction over the case or to resolve matters that do not affect the appeal's merits." *Peccole v. Eighth Judicial Dist. Court*, 132 Nev. 1016, 386 P.3d 994 (2016) (citing *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006)). The Khorsandi Parties now seek to strike these relevant documents in an attempt to prevent this Court from receiving evidence of their defamatory statements, despite the fact that the documents are a part of the trial court record, necessary to rebut the Khorsandi Parties' assertions and essential to provide the Court with a complete understanding of the issues on appeal.

This Court has previously ruled that the appellant "bears the responsibility of ensuring an accurate and complete record on appeal and that missing portions of the

record are presumed to support the district court's decision.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 600, 172 P.3d 131, 135 (2007). Provided that a joint appendix is not prepared, the respondent’s appendix “may contain any transcripts or documents which should have been but were not included in the appellant’s appendix, and shall otherwise be limited to those documents *necessary to rebut appellant’s position on appeal* which are not already included in appellant’s appendix.” NRAP 30(b)(4) (emphasis added). Furthermore, NRS 177.045 allows the Court to review, upon appeal, “any decision of the court in an intermediate order or proceeding” that forms part of the record. *See also State v. Babayan*, 106 Nev. 155, 174 n.6, 787 P.2d 805, 818 (1990).

The Khorsandi Parties allege that the Smith Parties included documents in their appendix which are “outside of the record.” However, the Smith Parties are not asking this Court to look outside the record or examine new issues that were not present in the case at the time of appeal. Instead, the Smith Parties have included documents which are a part of the trial court record and address the same issue which has remained consistent throughout the entirety of the proceedings, that is, the Khorsandi Parties’ responsibility for the libelous statements against them.

The Smith Parties presented evidence of this during oral argument on the Special Motion to Dismiss, which was later referenced in the subsequent Court Order. (Trans. Of Hearing, p. 21-22 (Feb. 19, 2020); APP 159-60; Order Special

Mot. to Dismiss, 5-6; APP 172-73). These exact same issues were brought up in several intermediate orders and proceedings prior to the filing of the Khorsandi Parties' Opening Brief. This included the Smith Parties' Motion for Case Terminating Sanctions, the subsequent Opposition and Countermotion, and respective replies. (RA 015-RA 105). The district court ruled on all pending motions on March 31, 2021. (RA 106).

Within their appendix, the Smith Parties included additional documents which were presented to and considered by the district court. These motions address the truthfulness of the Khorsandi Parties' affidavits, which were presented as evidence in district court and attached by the Appellants for this Court's review and consideration in coming to a decision in this matter. Since these motions contain information necessary to rebut the Khorsandi Parties' position on appeal, it was necessary for the Smith Parties to include these documents in their appendix. Of course, because the original denial of the Special Motion to Dismiss and this appeal center on the assertion that no evidence of the Smith Parties' claim exists, it is beneficial for the Khorsandi Parties to attempt to shape the record to reflect as such. However, the assertion that the Smith Parties are attempting to circumvent the Nevada Rules of Appellate Procedure by including these documents is simply incorrect. Instead, the Smith Parties are adhering to the rules in order to provide the Court with a complete record to assist in addressing the issues presented on appeal.

The Khorsandi Parties cite to various cases each of which is distinguishable from the matter at hand. For example, in *Alderson*, the Court affirmed the judgment of the lower court because the appellant neglected to include findings and conclusions of the lower court in his statement of the case. The deficiency of the record wholly prevented the Court from reconsidering the decision of the lower court and, therefore, the lower court's decision stood. *Alderson v. Gilmore*, 13 Nev. 84, 85 (1878). *Marvin v. Fitch*, 232 P.3d 425, 428 (Nev. 2010), stands for the proposition that when an appellant fails to include necessary documentation in the record, it is presumed that the missing portion supports the district court's decision. Finally, in the unpublished opinion *Mauriello v. Eighth Judicial Dist. Court of Nev.*, No. 59664, 2012 Nev. Unpub. LEXIS 1085 (July 27, 2012), the Court declined to accept two new affidavits supporting the assertion that process was timely served because the affidavits were not originally submitted to or considered by the lower court.

Each of these cases contains distinguishable facts which are not applicable to this case. Specifically, the Smith Parties have not included documents that were not presented to the district court. Further, each of the documents contain information that relates to the issue on appeal and necessary for consideration by this Court. As such, the Khorsandi Parties' argument fails, and the request to strike the documents must be denied.

### III. CONCLUSION

Based on the foregoing, the Smith Parties respectfully request this Court to deny the Khorsandi Parties' Motion to Strike.

DATED this 12th day of November, 2021

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of SGRO & ROGER, and that on this 12th day of November, 2021, I caused to be e-filed/e-served through the Court's website true and correct copies of the above and foregoing **OPPOSITION TO APPELLANTS' MOTION TO STRIKE** to the following:

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