

Electronically Filed
Jul 22 2020 03:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

) Supreme Court No.: 81198

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COMES NOW, the Appellant, GRADY EDWARD BYRD, by and through

DATED this 22nd day of July, 2020.

DL 995

Page 1 of 5

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2 **POINTS AND AUTHORITIES**

3 **I**

4 **STATEMENT OF RELEVANT FACTS**

5 This appeal stems from a post-trial enforcement order issued by the Court in
6 January 2020. The substantive order resolving the case was entered in January
7 2020 and was appealed under case # 80548. However, the attorney's fees awards
8 that are the subject of this appeal were not entered by the Court until March 17 and
9 March 27, 2020 immediately following the eruption of the pandemic and the
10 executive orders issued by Governor Sisolak essentially closing down business.
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13 The Appellant's notices of appeal were due to be filed in the district court by
14 April 17 and April 27, 2020. However, as a consequence of the shutdown, the
15 notice of appeal was not filed until May 14, 2020. Appellant filed a docketing
16 statement stating that his notice of appeal is timely pursuant to governor Sisolak's
17 Declaration of Emergency Directive 009 (Revised). Section 2 of the directive states
18 that "[any specific time limit set by state statute or regulation for the
19 commencement of any legal action is hereby tolled from [April 1, 2020] until 30
20 days from the date of the state of emergency declared on March 12, 2020 is
21 terminated."
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26 On June 29, 2020, this Court ordered Appellant to show cause why the appeal
27 should not be dismissed due to the untimely filing of the notice of appeal. In the
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1 OSC, the Court stated that Sisolak's Declaration of Emergency Directive 009
2 (Revised) does not appear to apply to the time to file a notice of appeal. The Court
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4 reasoned that the time limitation is not established by state statute or regulation,
5 but by court rule.
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7 II

8 ARGUMENT

9 This appeal should not be dismissed as untimely. While nothing in
10 Declaration of Emergency Directive 009 (Revised) specifically states that court
11 rules are not encompassed by the directive, the courts at the district court level all
12 adopted and applied the directive to the existing court rules. For example, the
13 Eighth Judicial District Court's Administrative Order 20-17 issued on June 1, 2020
14 states that "Properly documented service issues related to the COVID-19 pandemic
15 will be considered good cause for a timely motion to extend service of process."¹
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17 The Administrative Order also states, "For service issues between March 13, 2020
18 and June 30, 2020, good cause exists regardless of whether the motion is made
19 before or after the 120-day service period."
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23 In this case, the post-trial attorney's fees awards were entered and noticed by
24 the district court immediately following the declaration of emergency. Because of
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28 ¹ Page 15, line 22 through Page 16 line 1.

1 the emergency order and the initial lack of clarity as to who could continue to
2 operate during the shutdown, counsel did not immediately receive notice of entry
3 of the orders and, consequently, failed to correctly calendar a response date. When
4 the error was discovered, counsel immediately filed notice of appeal with the
5 district court. Given the sweeping restrictions of the Governor's orders and the
6 effect it had on the ongoing practice of law, this Court should adopt the suspension
7 of timing rules that was uniformly adopted in the district court.
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11 The primary purpose of Governor Sisolak's declared state of emergency and
12 the subsequent administrative orders issued by the Eighth Judicial District Court is
13 to take steps necessary for the protection of the community. A suspension of
14 timelines was implemented uniformly across the entire Eighth Judicial District.
15 Therefore, good cause exists for this Court to allow the untimely notice of appeal
16 and exercise its appellate jurisdiction.
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19 III

20 CONCLUSION

21 Based on the above and foregoing, the Appellant, GRADY EDWARD
22 BYRD, respectfully submits that this Court has jurisdiction to consider his appeal
23 on its merits pursuant to NRAP 4a and Declaration of Emergency Directive 009
24 (Revised).
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1 Dated this 22nd day of July, 2020

2 MILLS & ANDERSON

3 
4 BYRON L. MILLS, ESQ.

5 Nevada Bar No. 6745

6 DANIEL W. ANDERSON, ESQ.

7 Nevada Bar No. 9955

8 703 S. 8th Street

9 Las Vegas NV 89101

10 Attorney for Appellant

11 **CERTIFICATE OF SERVICE**

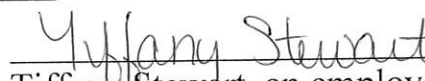
12 I HEREBY CERTIFY that on the 22nd day of July, 2020, I caused to be
13 served the instant **APPELLANT'S RESONSE TO ORDER TO SHOW CAUSE**
14 to all interested parties as follows:

15 **BY MAIL:** Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in
16 the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, address
17 as follows:

18 Anita A. Webster, Esq.
19 Jeanne F. Lambertsen, Esq.
20 WEBSTER & ASSOCIATES
21 6882 Edna Avenue
22 Las Vegas, Nevada 89146
23 Attorneys for Plaintiff

24 **XX BY ELECTRONIC MAIL:** Pursuant to EDCR 7.26 and NEFCR Rule 9, I
25 caused a true copy thereof to be served via electronic mail, via Odyssey, to the
26 following e-mail address:

27 **XX** anitawebster@embarqmail.com

28 
Tiffany Stewart, an employee of
MILLS & ANDERSON