

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In re the Matter of the Estate of

Dennis John Carver

Deceased

No. 81447

Electronically Filed
Mar 10 2021 03:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

AMENDED

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.

1. Judicial District Eighth Department VIII
County Clark Judge Atkin
District Ct. Case No. P-18-095892-E

2. Attorney filing this docketing statement:

Attorney Leo P. Flangas Telephone 702-384-1990
Firm Flangas Civil Law Firm, LTD.
Address 600 S. Third St.
Las Vegas, NV 89101

Client(s) John Houlihan and Colonial Real Estate Partnership, LTD

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 David Blake Telephone 702-476-5900
Firm Clear Counsel Law Group
Address 1671 Horizon Ridge Parkway, Ste 200
Henderson, NV 89012

Client(s) Estate of Dennis John Carver and Rhonda Morgan

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Probate not reopen</u> |

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:

None.

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:

Case number MCP1700877 is the underlying probate matter in Riverside County, California Superior Court. That matter is still open.

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

This is an Action on a creditor's claim on an ancillary probate where a known creditor was not given notice. Appellant paid decedents company, a sole proprietorship, for services which were not performed as of his death. The ancillary probate covers several parcels of Nevada real property. In the main probate in California the original executor was removed for cause.

Appellant filed a Petition for an Order to Show Cause why Estate Should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets in the Eighth Judicial District Court for Clark County (the "Trial Court") on February 2, 2020. The Trial Court denied the petition.

The original Estate Administrator in California was removed for fraud and self dealing .

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

Whether Appellants were reasonably ascertained creditors to whom the Estate was required to give notice.

Whether the lack of notice deprived Appellants of their due process rights under the 4th Amendment to the U.S. Constitution and applied to the States through the 14th Amendment.

Whether the Second Administrator's failure to inform the Nevada Trial Court of the original Estate Administrator's fraud and the failure of the First Administrator in California to provide an accounting in the California Probate matter was a fraud upon the Nevada court when the Second Administrator petitioned for, and was granted a, waiver of accounting, payment of attorney's fees, and petition for distribution.

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

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: This matter implicates Appellants' right to procedural due process under the 4th Amendment to the U.S. Constitution and applied to the States by the 14th Amendment. Although Appellants were known creditors of the Estate, the Estate failed to send the required notice of the Probate action in either California or Nevada.

Further, the potential Fraud upon the Court is a matter of public policy.

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:

This case should be retained by the Supreme Court as it involves a Constitutional Question regarding the Appellants' procedural due process rights. (NRAP 17(a)(11).)

Further it contains a question of public policy in whether the Estate Administrator committed fraud upon the court. (NRAP 17(a)(12).)

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

Was it a bench or jury trial? No trial - it was a motion hearing.

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 06/23/2020

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 06/23/2020

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 07/02/2020

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

NRS 155.190(1)(n)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) | <u>NRS 155.190(1)(n)</u> |

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRS 155.190(1)(n) applies to this matter because this an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of entry of an order making any decision wherein the amount in controversy equals or exceeds, exclusive of costs, \$10,000. Appellants paid Decedent \$121,851.64 for plumbing and related services for real property located at 3775 E. Sahara Ave., Las Vegas, NV 89104. No work was ever performed, and no funds have been returned to Appellants.

The Trial Court denied Appellant's petition and effectively rendered a final judgment closing the Estate against any additional claims.

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

(a) Parties:

Rhonda L. Morgan - Petitioner and Estate Administrator

Dennis John Carver - Decedent

John Houlihan and Colonial Real Estate Partnership, LTD - Petitioners

(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.

N/A

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)):

This matter involves an ancillary probate matter that is independently appealable under NRAP 3A(b) because it was commenced in the Trial Court and the final judgment was rendered therein.

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.

John Houlihan & Colonial Real Estate
Name of appellant

Leo P. Flangas
Name of counsel of record

03/10/2021
Date

/s/ Leo P. Flangas
Signature of counsel of record

Clark County, NV
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 10th day of March _____ 2021 ____, 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.)

David Blake, Esq.
Clear Counsel Law
1671 Horizon Ridge Parkway, Ste 200
Henderson, NV 89012

Dated this 10th day of March 2021

/s/Natasha Smith
Signature