

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
ADMINISTRATION OF THE SSJ'S
ISSUE TRUST,

No. 81470

IN THE MATTER OF THE
ADMINISTRATION OF THE SAMUEL
S. JAKSICK, JR. FAMILY TRUST.

FILED

AUG 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

TODD B. JAKSICK, INDIVIDUALLY
AND AS CO-TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY
TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S.
KIMMEL, INDIVIDUALLY AND AS CO-
TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST; KEVIN
RILEY, INDIVIDUALLY AND AS
FORMER TRUSTEE OF THE SAMUEL
S. JAKSICK, JR. FAMILY TRUST, AND
AS TRUSTEE OF THE WENDY A.
JAKSICK 2012 BHC FAMILY TRUST;
AND STANLEY JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE
OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST,

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

*ORDER GRANTING MOTION TO STRIKE AND GRANTING REQUEST
TO REFILE BRIEF*

Appellants/cross-respondents filed a motion to strike
respondent/cross-appellant Wendy Jaksick's combined answering brief on

appeal and opening brief on cross-appeal for failure to conform to the typeface and type-volume limitation under NRAP 28.1(e) and NRAP 32(a)(5)(A). Respondent/cross-appellant filed an opposition to the motion, and appellants/cross-respondents filed a reply.

Respondent/cross-appellant's brief included the required certification under NRAP 32(a)(9) stating that the brief contains 18,267 words. However, as noted by appellants/cross-respondents and uncontested by respondent/cross-appellant, the brief contains several images of copied sections of documents included in respondent/cross-appellant's appendix, which contain words not included in the word count¹. Including the words from these images, the brief contains a total of 20,545 words and the words in the copied sections do not comply with the 14-point font requirement of NRAP 32(a)(5)(A).

Respondent/cross-appellant argues that her brief complies with the type-volume limitation under NRAP 28.1. She argues that the images were not an attempt to avoid compliance with the rule, but rather to make the information cited to in the brief more easily accessible for the court's reference.

Respondent/cross-appellant requests that if this court considers the images as part of the text, that she be allowed to exceed the type-volume limitation under NRAP 28.1(e). *See* NRAP 32(a)(7)(D). Including the images as part of the text, the proposed brief contains 2,045 words in excess of the type-volume limitation. In support of her request, she argues that this appeal and cross-appeal concern numerous legal issues, a particularly convoluted underlying case, multiple parties, and a substantial record.

¹The parties do no contest that the brief was 93 pages and is in excess of the page limit allowed under NRAP 28.1(e)(1).

Further, she argues that the appellants/cross-respondents have been allowed to file 3 separate opening briefs, totaling 105 pages, that these briefs have raised 7 issues, and that her brief raised 5 additional issues on cross-appeal. And, as an alternate request, respondent/cross-appellant asks that if this court denies her request to exceed the type-volume limitation under NRAP 28.1(e) that she be allowed to revise and refile her brief.

While respondent/cross-appellant argues that her brief only includes the images for ease of reference, they are quotations from the district court proceedings, and thus are included in the type-volume limitations of NRAP 28.1(e). NRAP 32(a)(7)(C) (“[t]he page- or type-volume limitation applies to . . . quotations.”) Therefore, the brief exceeds the type-volume limitation. Further, this court “looks with disfavor on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted.” NRAP 32(a)(7)(D)(i); *see also Hernandez v. State*, 117 Nev. 463, 467, 24 P.3d 767, 770 (2001) (“Page limits . . . are ordinary practices employed by the courts to assist in the efficient management of the cases before them.” (*quoting Cunningham v. Becker*, 96 F. Supp. 2d 369, 374 (D. Del. 2000))). Rather, a motion ‘will be granted only upon a showing of diligence and good cause.’ NRAP 32(a)(7)(D)(i). Appellants/cross-respondents argue, and this court agrees, that respondent/cross-appellant has not shown diligence warranting a brief exceeding the type-volume limitation. This court previously affirmed a stipulation between the parties allowing an additional two months for respondent/cross-appellant to file her brief. Further, a request to file a brief in excess of the page- or type-volume limitations “shall be filed on or before the brief’s due date.” NRAP 32(a)(7)(D). Respondent/cross-appellant did not make her request before

the brief was filed, and instead, certified that it was compliant with NRAP 28.1(e). This court is not convinced that a combined answering brief on appeal and opening brief on cross-appeal in excess of the usual type-volume limitation is warranted in this case. Accordingly, the request for leave to exceed the type-volume limitation is denied.

Appellants/cross-respondents' motion to strike respondent/cross-appellant's combined brief is granted. Respondent/cross-appellant's alternate request to revise and refile her brief is also granted. Respondent/cross-appellant shall have 14 days from the date of this order to file and serve a brief that complies with the applicable rules of appellate procedure. Thereafter briefing shall proceed pursuant to NRAP 28.1(c)(3). Failure to timely file answering brief on appeal and opening brief on cross-appeal may result in the imposition of sanctions. NRAP 28(k). Appellants/cross-respondent's request for attorney fees for the costs incurred in bringing and defending the motion to strike is denied.

It is so ORDERED.

1. J. S. Sanderth, C.J.

cc: Maupin, Cox & LeGoy
McDonald Carano LLP/Reno
Robison, Sharp, Sullivan & Brust
Kreitlein Law Group
Marquis Aurbach Coffing
Spencer & Johnson PLLC