

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No. 81510 consolidated with Case No. 81710

CHEYENNE NALDER,
Appellant,
vs.

GARY LEWIS and
UNITED AUTOMOBILE
INSURANCE COMPANY
Respondents,

GARY LEWIS, and
CHEYENNE NALDER
Appellants,
vs.

UNITED AUTOMOBILE
INSURANCE COMPANY

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Elizabeth A. Brown
Clerk of Supreme Court

)Appeal from the Eighth Judicial District Court,
)Clark County, Nevada
)The Honorable Eric Johnson, District Judge
)District Court Case No. 07A549111

GARY LEWIS' MOTION TO STRIKE

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MOTION TO STRIKE

Respondent Gary Lewis, by and through his counsel E. Breen Arntz, and Appellant Gary Lewis, by and through his counsel counsel, Thomas Christensen, hereby file the instant Motion to Strike Respondent United Automobile Insurance Company's Supplemental Appendices filed on July 19, 2021 in connection with its Answering Brief. This Motion is based on Nev. R. App. Pro. 27 and 30, and the attached memorandum of points and authorities.

Dated this 15th day of October, 2021.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In its Answering Brief, UAIC presents facts and argues legal theories that cite to 397 pages of documents submitted in the “Respondent UAIC’s Supplement Appendix Volumes I and II.” However, the documents included within the Respondent’s Appendix are wholly irrelevant to the issue on appeal, most were not part of the district court record and were never submitted to the district court (by motion or otherwise) for inclusion in the record prior to the wrongful intervention of UAIC into the underlying case.

Specifically, UAIC has presented the following documents in two appendix Volumes:

1- April 8, 2020 Supplemental Brief composed by UAIC, plus exhibits thereto, totalling 64 pages. This was filed while the 2007 case was wrongly consolidated with case A-18-772220-C. The Exhibits attached to this filing all relate to prior litigation and have nothing to do with attorney fees for wrongful intervention. This Court previously concluded that the district court improperly consolidated the 2007 and 2018 cases and filed an Order on April 30, 2020 so finding. That Order also stated “... and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order granting UAIC leave to intervene in case No. 07A549111 **and to strike any related subsequent**

pleadings and orders.” (See *Nalder v. Eighth Judicial District Court*, 136 Nev. Advance Opinion 24, at page 16, emphasis added.)

2- June 29, 2020 Opposition to Gary Lewis’s Motion for fees and costs, filed in case A-18-772220-C, plus exhibits thereto, totalling to 297 pages. This pleading is not contained within the record below in this case because it was filed after this Court reversed the consolidation of the cases by Writ of Mandamus on April 30, 2020. It is therefore improperly contained in any parties record of appeal herein.

3- July 29, 2020 Gary Lewis’ Reply in Support of Motion for Fees and Costs, plus exhibits, amounting to 35 pages. This document was filed in the underlying case, from which UAIC was excluded by way of Writ of Mandamus, in April, 2020. This filing, though interesting, has no bearing on the issue the Court is asked to decide in this appeal.

II. ARGUMENT

Per Nev. R. App. Pro. 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.” Nev. R. App. Pro. 30(g)(1), provides that Pro. 30(g)(1), provides that “[f]iling an appendix constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the district court file. Willful

or grossly negligent filing of an appendix containing nonconforming copies is an unlawful interference with the proceedings of the Supreme Court or Court of Appeals, and subjects counsel, and the party represented, to monetary and any other appropriate sanctions.”

The identified materials submitted by UAIC were not part of the submissions on the Motion for costs and fees currently on appeal and are submitted herein in an overly broad and Supplemental Appendix, by design, to mislead the Court. It is inappropriate to submit documents as if they are on the record when they have been stricken by this very Court.¹ UAIC has made no Motion to Supplement the Record with documents contained in its Supplemental Appendix.

As a result, this Court should strike the Supplemental Appendices submitted by UAIC and disregard any reference to the documents contained within its Answering Brief. The submitted documents should not be considered

¹ UAIC’s broadening of the documentation and attempt to widen the issues and arguments within this appeal has also made it difficult for Lewis’ attorneys to respond. If Lewis’ attorneys disregard the irrelevant arguments and documents, they risk it being argued by UAIC that they have waived positions and may not later respond. If they, alternatively, dive deep into the convoluted history of the disputes and expand this appeal to encompass the entire history of litigation between the parties, UAIC will continue to misrepresent the legal ramifications of each Court’s determinations, continue to delay determinations, continue to take whatever action it can against Gary Lewis (despite its ongoing duty to him), all in the hope that Gary Lewis will eventually be unable to finance his fight against UAIC and give up fighting for his rights under the insurance contract.

in connection with the narrow issue on appeal in this case.

III. CONCLUSION

For the foregoing reasons, Gary Lewis respectfully requests that this Court strike UAIC's Supplemental Appendix in its entirety. If this Court is inclined to entertain the irrelevant and superfluous arguments alleged to be supported by the Supplemental Appendices, Gary Lewis respectfully requests the attached documents be allowed and additional time to request to supplement the record with further responsive documents as well.

DATED this 15th day of October, 2021.

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CERTIFICATE OF SERVICE

I certify that on the 15th day of October 2021, I submitted the foregoing Motion for filing via the Court's eFlex electronic filing system, thereby notifying counsel of record of the filing.

_____/s/Thomas Christensen_____
An employee of CHRISTENSEN LAW OFFICES, LLC