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IN THE SUPREME COURT OF THE STATE OF NEVADA

LANCE GILMAN,
Appellant/Cross-Respondent,

No. 81726

vs.
SAM TOLL,
Respondent/Cross-Appellant.

LANCE GILMAN,
Appellant/Cross-Respondent,

No. 81874

vs.
SAM TOLL,
Respondent/Cross-Appellant.

**RESPONDENT/CROSS-APPELLANT SAM TOLL'S REPLY TO THE
RESPONSE TO MOTION TO DISMISS APPELLANT/CROSS-
RESPONDENT'S APPEALS**

COMES NOW, Respondent/Cross-Appellant SAM TOLL, and hereby files
the following reply to the March 31, 2021 response to Toll's March 8, 2021 motion

to dismiss the appeals of LANCE GILMAN in Docket Nos. 81726 and 81874 due to repeated instances of non-compliance with the Nevada Rules of Appellate Procedure (“NRAP”) in the course of this case, and that Mr. Gilman’s appeal is based on a frivolous assertion of fact.

At the outset, Gilman’s response to Toll’s Motion to Dismiss is untimely. Gilman’s response to the motion was due on March 15, 2021. NRAP 27(a)(3)(A) provides a 7-day response time to motions. Gilman filed a Motion for Extension of Time to Respond to Toll’s Motion to Dismiss on March 17, 2021, but this motion was also untimely. Under both NRAP 26(b)(2) and NRAP 26(b)(1)(B), requests for extensions of time are only available on or before the due date sought to be extended.

I. GILMAN HAS NOT COMPLIED WITH THE REQUIREMENT FOR APPEAL BONDS

Gilman claims that he paid an appeal bond of \$500 on January 27, 2021. It appears that only one appeal bond was filed, despite the two appeals before the Court. Two appeal bonds were required to be paid under NRAP 7, one for each appeal lodged. To date no notice of the appeal bond has been provided to the undersigned counsel nor to this Court. On January 15, 2021, this Court issued its Order granting Toll’s Motion and ordered Gilman to comply with NRAP 7 and directed Gilman to provide the Court with written proof of compliance within 7

days. Gilman's counsel blames his having COVID, his staff, his former co-counsel, and the Storey County Court Clerk for his non-compliance. See *Oppo.* at 6. However, Gilman's counsel was on notice of his non-compliance when he was served with Toll's Motion on December 31, 2020, and then when the Court straightforwardly ordered compliance on January 15, 2021. Gilman's continuing non-compliance with NRAP 7, over three months later, is not reasonable.

II. GILMAN HAS NOT FILED AN APPENDIX THAT COMPLIES WITH NRAP 30

Gilman's Opposition admits that there were clearly mistakes made with the March 2, 2021 appendix that was rejected by the Clerk of the Court. Gilman then claims that the March 5, 2021 appendix is in compliance with the rules, but never addresses the issues with the appendix raised by Toll in the underlying Motion. That is, the March 5, 2021 appendix failed to contain documents requested to be included by Toll, there are no volume designations for the March 5, 2021 appendix, there is no chronological index filed with the March 5, 2021 appendix.

Gilman's appendix is clearly deficient and not adequate for purposes of readily accessing the information at issue. Gilman's March 2, 2021 appendix contains 12 volumes. Gilman's March 5, 2021 appendix contains 13 volumes. Gilman's March 2, 2021 Opening Brief was not updated to reflect this change, i.e. there are no references to Volume 13 in Gilman's Opening Brief because the

Opening Brief uses as reference the March 2, 2021 appendix that was rejected by the Clerk of the Court, which only contains 12 volumes. Because no volume designation was included with the March 5, 2021 appendix, it is not apparent in which volume a document referenced in the Opening Brief is located. In other words, correcting the appendix will also require Gilman to refile his brief with corrected volume designations, such that the parties and the Court can readily verify the citations.

Gilman also tacitly admits that it was a mistake to include Toll's counsel's names on the appendixes. See *Oppo* at 9. However, Gilman's counsel again, blames his staff. *Id.* at fn 16.

In *Huckabay Props. v. NC Auto Parts, Ltd. Liab. Co.*, 130 Nev. 196, 322 P.3d 429 (2014), cited by Gilman, this Court dismissed a petition for *en banc* reconsideration after an appeal was dismissed because a party repeatedly failed to comply with Court rules and orders:

...a party cannot rely on the preference for deciding cases on the merits to the exclusion of all other policy considerations, and when an appellant fails to adhere to Nevada's appellate procedure rules, which embody judicial administration and fairness concerns, or fails to comply with court directives or orders, that appellant does so at the risk of forfeiting appellate relief.

Id. at 203.

Yet, this is precisely what Gilman is attempting to accomplish here, i.e. claim that Gilman's appeal should be decided on the merits when he has repeatedly failed to comply with this Court's express orders and rules and continues to do so.

III. THE SUBSTANCE OF GILMAN'S APPEAL IS FRIVOLOUS

Gilman brings this defamation action against Toll's opining that Gilman did not reside at his claimed address in Storey County. Gilman argues that he has as a matter of fact lived at that Storey address since 2002. Gilman's March 11, 2019 Affidavit attached hereto as Exhibit 1, Gilman states in paragraph 7: "I have lived at the Mustang Resort since 2002." However, in 2008 Gilman represented to Washoe County that his primary residence was at a Washoe County address and in exchange received a substantially lower real property tax rate. Motion to Dismiss, at Exhibit 2 page 34. Gilman continued to rely on his claimed Washoe County residency to collect the lower tax rate at the time he filed this litigation claiming Toll defamed him for opining the same for thing: that Gilman's primary residence was not at the Storey County address Gilman claimed.¹ Toll moved to dismiss this appeal as frivolous because, as a matter of law, Gilman cannot be defamed by a

¹ Exhibit 2 to Toll's Motion, in May of 2018, during the pendency of this lawsuit, which was filed in December of 2017, Gilman was still claiming that his Washoe County property was his "primary residence" for tax purposes. See Page 28 of Exhibit 2 to the Motion. On page 31 of that same Exhibit, a subsequent information sheet from the Washoe County Assessor shows that Gilman transferred the Washoe County property out of his name and into a trust in August of 2018. *Id.*

statement that reflects his own representation, signed under oath, to a public agency. *Id.*

In his Opposition, Gilman argues that there is a question of fact about where he actually resided in 2017. Gilman argues that, “simply because a ‘tax cap assessment’ states that Mr. Gilman ‘will occupy a property as his primary residence in 2008’ does not establish where his actual residence or legal domicile was in 2012 when he ran for office.” *Oppo.* at 4:5. Gilman misses the point.

The issue is not the fact of Mr. Gilman’s “actual residence” or “legal domicile.” Rather, the question of law presented by this motion is whether Gilman can maintain a defamation action for Toll’s statement that Gilman did not reside in Storey County when Gilman at the same time maintain a representation that he was a resident of Washoe County in order to reap tax benefits associated with doing so.

Gilman’s appeal, the object of which is to obtain an order from this Court finding that Toll defamed Gilman, is frivolous, as it is “not serious” because it would require that this Court conclude that Gilman could be defamed for a statement he made about himself. No cause of action for defamation lies where the defendant’s statements mirror the plaintiff’s own representations. See *Van Buskirk v. Cable News Channel, Inc.*, 284 F.3d 977, 981 (9th Cir. 2002) (a plaintiff could not maintain defamation action based upon reports that were consistent with plaintiff’s own version of events); see also *Smith v. School Dist. of Philadelphia*,

112 F.Supp.2d 417, 429 (E.D.Pa. 2000) (a plaintiff cannot be defamed by the use of his own words).

When the frivolous nature of an appeal can readily be determined, dismissal is warranted. *Olsen v. Harbison* (2005) 134 Cal.App.4th 278, 283- 285. “[C]ourts have the inherent power to dismiss frivolous appeals.” *People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1318, citing *Ferguson v. Keays* (1971) 4 Cal.3d 649, 658. “Appellate courts have an inherent power to summarily dismiss any appeal which is designed for delay or which is based on sham or frivolous grounds.” *Zimmerman v. Drexel Burnham* (1988) 205 Cal.App.3d 153, 161.

WHEREFORE, the Respondent/Cross-Appellant SAM TOLL moves that this Court dismiss Gilman’s appeals because: (1) Gilman’s repeatedly failing to comply with the requirements of the NRAP; and (2) Gilman’s appeal is facially frivolous because Gilman’s defamation claim against Toll is based on a statement Gilman maintained about himself in a public agency filing in order to continue to receive favorable tax treatment.

In the alternative, Toll moves that the Court: (1) Strike the March 5, 2021 appendix and order Gilman to refile an appendix that strictly complies with NRAP 30; (2) Again order Gilman to pay and provide notice of payment of the appeal bonds required by NRAP 7; (3) Order Gilman’s counsel to request approval and/or consent from opposing counsel before placing opposing counsel’s name on court

filings; and (4) Give Toll 30 days from the date of filing of a new appendix to file his answering brief; and (5) any other relief the Court deems appropriate given the circumstances.

Dated this Friday, April 2, 2021:

By: 
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Exhibit List

1. Gilman's March 11, 2019 Affidavit

CERTIFICATE OF SERVICE

Pursuant to NRCP 25(c), I certify that on the date indicated below, I caused service to be completed by:

_____ personally delivering;

_____ delivery via Reno/Carson Messenger Service;


_____ sending via Federal Express (or other overnight delivery service);

_____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,

 x delivery via electronic means (fax, eflex, NEF, etc.)

a true and correct copy of the foregoing pleading addressed to:

GUS W. FLANGAS
Flangas Law Group
3275 South Jones Blvd. Suite 105
Las Vegas, NV 89146
702-307-9500

By: 
Luke Busby

Dated: 4/2/2021

Exhibit 1

Exhibit 1

AFFIDAVIT OF LANCE GILMAN

STATE OF NEVADA }
COUNTY OF STOREY } ss:

LANCE GILMAN, being first duly sworn, deposes and says:

1. I have personal knowledge of all matters set forth herein except for those stated upon information and belief and am competent to testify thereon.

2. I am the Plaintiff in the action entitled, LANCE GILMAN v. SAM TOLL, in Department II of the First Judicial District Court, Storey County, Nevada, Case Number: 18-TRT-00001-1e, and I make this Affidavit in support of the "Opposition to Motion to Dismiss and Terminate Proceedings.

3. I have read the contents of the Opposition and the facts contained therein are true as written to the best of my knowledge as though set forth in full in this Affidavit.

4. I have reviewed the Plaintiff's Motion and the Exhibits attached to Plaintiff's Motion as Exhibits "1" through "5".

5. Plaintiff's allegations that the Exhibits establish that I live at 199 Steptoe Ln. constitute a legal conclusion and in any event are completely untrue.

6. It is true that I own property at 199 Steptoe Ln., as a rental property, however, as I previously averred my permanent residence is and has been 5 Wildhorse Canyon Drive.

7. I have lived at the Mustang Resort since 2002.

8. I have four exotic birds that live at this address with me.

9. My Driver's license lists my address as 5 Wildhorse Canyon.

10. My Vehicle Registration lists my address as 5 WildHorse Canyon.

11. My bank statements, concealed weapons permit, credit card accounts, and other billing statements list my address as 5 Wildhorse Canyon.

12. I receive my personal mail at 5 WildHorse Canyon.

13. My tax returns list my residence as 5 WildHorse Canyon.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Lance Gilman
LANCE GILMAN

SUBSCRIBED AND SWORN to before me
on this 11 day of March, 2019.

Wm. C. Cramer

NOTARY PUBLIC in and for said
County and State

