

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 82112

Electronically Filed
Nov 29 2021 12:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TY ALBISU, JOHN ALBISU, ROSIE ALBISU, and
ANCHOR S-RANCH AND RENTALS, LLC.

—

Appellants,

v.

KIMBLE WILKINSON,

Respondent.

Appeal from a Bench Trial Findings of Fact and Conclusions of Law and Judgment
The Sixth Judicial District Court of Nevada
The Honorable Michael Montero, District Judge
District Court Case No. CV-0021509

MOTION TO REMOVE PARTIES AS APPELLANTS

Carolyn E. Tanner (#5520)
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Attorney for Appellants

Pursuant to the Court's Order of October 13, 2021, Appellant moves the Court to remove Rosie Albisu, John Albisu, and Anchor S-Ranch and Rentals, LLC from the appeal.

John Albisu, husband of Rosie Albisu, died intestate during the litigation at the district court. At the district court, Appellant's trial counsel brought a motion to dismiss the underlying action against John Albisu, which the record indicates was unopposed by Respondent. See Motion for Dismissal of Action Against John Albisu, attached as Exhibit A. However, the district court never ruled on the motion.

Anchor S-Ranch and Rentals, LLC is a revoked Nevada limited liability company, included in the underlying lawsuit by Respondent. See Exhibit B. No motion was made in the district court below to remove Anchor S-Ranch and Rentals, LLC as a party to the action.

Rosie Albisu, as the wife of John Albisu at the time of his death, was the heir to the property servient to the prescriptive easement imposed by the district court. Prior to the district court's final judgment, Rosie Albisu transferred all right, title, and interest in the subject property to Ty Albisu and Linda Albisu, as joint tenants. Rosie Albisu died after the filing of the Notice of Appeal in this case. Ty Albisu and his brother Joseph Albisu serve as joint executors of the estate of Rosie Albisu.

As the property at issue, servient estate to the prescriptive easement found by the district court, is now solely owned by Ty and Linda Albisu, Appellants ask that

John and Rosie Albisu, and Anchor S-Ranch and Rentals, LLC. be removed as parties to this appeal. There are no other issues before this Court beyond the finding of the prescriptive easement, and the district court's failure to join indispensable parties, Linda Albisu and additional Wilkinson parties.

DATED this 29th day of November, 2021.

/s/ Carolyn E. Tanner

CAROLYN E. TANNER

Bar No. 5520

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of July, 2021. Electronic service of the foregoing document was made in accordance with the Master Service List as follows:

Tammy Cowden, Esq.
Jacob Bundick, Esq.
Greenberg Traurig

DATED this 29th day of November, 2021.

/s/ Carolyn E. Tanner

CAROLYN E. TANNER

EXHIBIT A

James F. Sloan, Esq. • Attorney at Law
James F. Sloan, Ltd. • A Professional Corporation
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(775) 423-3006 • Facsimile (775) 423-1066

FILED

2020 JAN 22 PM 2: 26

TAMI RAE SPERO
DIST. COURT CLERK
AC

1 CASE NO. CV 21 509

2 DEPT. NO. II

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6 **IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF HUMBOLDT**
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9

10
11 **KIMBLE WILKINSON,**
12 **Plaintiff,**

13 **vs**

MOTION FOR DISMISSAL OF ACTION
AGAINST JOHN ALBISU (Deceased)

14 **TY ALBISU, JOHN ALBISU,**
15 **ROSIE ALBISU, and ANCHOR**
S-RANCH AND RENTALS, LLC,

16 **Defendants.**
17 _____/

18 Defendants, by and through their Attorney, **JAMES F. SLOAN, ESQ.**, hereby moves
19 for an Order dismissing the action against JOHN ALBISU, Deceased, with prejudice.

20 This Motion is made upon the following grounds.

21 Defendant, JOHN ALBISU, passed away on August 27, 2018. A Notice of Death was
22 served upon Plaintiff, through his Attorney of Record, on July 12, 2019, and filed with the Court
23 on July 15, 2019.

24 NRCP Rule 25(a)(1) provides for mandatory dismissal against a deceased party in the
25 event a motion for substitution is not brought within one hundred eighty (180) days of service
26 of a notice or suggestion of death.

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1 "...If the motion is not made within 180 days after service of a
2 statement noting the death, the claims by or against the decedent
3 must be dismissed."

4 No Motion seeking the substitution of the Estate of JOHN ALBISU has been brought and
5 the time allowance for such motion expired January 8, 2020. A dismissal of the action, as it
6 pertains to JOHN ALBISU, is required by law.

7 This Motion is supported by the Notice of Death, filed herein on July 15, 2019, and the
8 authorities of law, herein above.

9 **RELIEF REQUESTED**

10 The claims of Plaintiff, KIMBLE WILKINSON, against Defendant, JOHN ALBISU,
11 Deceased, be dismissed with prejudice.

12 **AFFIRMATION PURSUANT TO N.R.S. 239B.090**

13 The undersigned does hereby affirm the preceding document does not contain the social
14 security number of any person.

15 DATED this 22 day of January, 2020.

16
17 
18 JAMES F. SLOAN, ESQ.
19 Nevada State Bar No. 000410
20 977 West Williams Avenue
21 Fallon, Nevada 89406
22 Tel. No. (775) 423-3006
23 jamesloan@cccomm.net

24 Attorney for Defendants
25
26

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of The Law Office of JAMES F. SLOAN, ESQ., and that I served a copy of the foregoing document described as **MOTION FOR DISMISSAL OF ACTION AGAINST JOHN ALBISU (Deceased)** by:

_____ Placing a true and correct copy thereof in a sealed envelope and depositing the same in the United States Mail at Fallon, Nevada, postage fully prepaid, following ordinary business practices.

_____ Certified, Return Receipt Requested.

☒ Personal Service.

_____ Facsimile (FAX).

_____ Electronic Mail (e-mail).

_____ Messenger Service.

Addressed to:

Rendal B. Miller, Esq.
Attorney at Law
115 West 5th Street, Box 7
Winnemucca, Nevada 89445
"Michelle Miller" <michellemiller@millerlawinc.us>

DATED at Fallon, Nevada, this 22nd day of January, 2020.

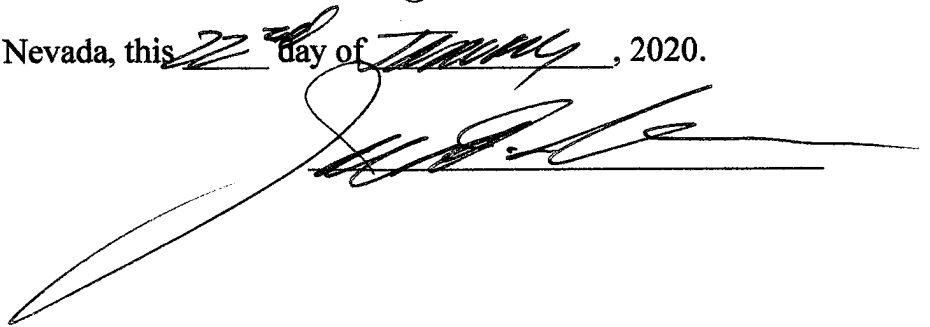


EXHIBIT B

FILING HISTORY

ENTITY INFORMATION

Entity Name:

ANCHOR S-RANCH AND RENTALS LLC

Entity Number:

E0061132018-2

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Revoked

Formation Date:

01/31/2018

NV Business ID:

NV20181089390

Termination Date:

Perpetual

Annual Report Due Date:

1/31/2020




Series LLC:

☐

Restricted LLC:

☐

FILING HISTORY DETAILS

File Date	Effective Date	Filing Number	Document Type	Amendment Type	Source	View
01/23/2019	01/23/2019	20190030282-47	Annual List		External	
01/31/2018	01/31/2018	20180051986-70	Articles of Organization		Internal	
01/31/2018	01/31/2018	20180051987-81	Initial List		Internal	
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