

IN THE SUPREME COURT OF THE STATE OF NEVADA

EFREN AGUIRRE, JR.,

Appellant,

vs.

ELKO COUNTY SHERIFF'S OFFICE,

Respondent.

Supreme Court No. 82445

APPELLANT'S
MOTION TO STRIKE

Appeal from the Fourth Judicial
District Court, Department 1
Case No. CV-FR-17-687

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Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S RESPONSE TO MOTION TO STRIKE

COMES NOW, Appellant, EFREN AGUIRRE, JR., by and through undersigned counsel, TRAVIS W. GERBER, ESQ., and ZACHARY A. GERBER, ESQ., of GERBER LAW OFFICES, LLP, and files his Response to Respondent's Motion to Strike Appellant's Supplemental Appendix—Volume 1, based upon the attached memorandum of points and authorities.

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DATED this 24th day of February, 2022.

GERBER LAW OFFICES, LLP

By: 

TRAVIS W. GERBER, ESQ.

Nevada State Bar No. 8083

ZACHARY A. GERBER, ESQ.

Nevada State Bar No. 13128

491 4th Street

Elko, Nevada 89801

(775) 738-9258

twg@gerberlegal.com

zag@gerberlegal.com

Attorneys for Appellant EFREN
AGUIRRE, JR.

POINTS AND AUTHORITIES

Under the Nevada Constitution and NRS 115.010(1), a citizen of the State of Nevada has a right to record and assert a homestead prior to “final process of any court.” In this case, the Sheriff’s only contention was that Aguirre cannot record or maintain a homestead while incarcerated, however the Court should take judicial notice that Aguirre was released from incarceration on October 19, 2021, and returned to his homestead upon his release.

The record of the District Court shows that Aguirre was incarcerated and would be released on October 19, 2021, with the intent to return to his residence. Aguirre was in fact released from incarceration on October 19, 2021, and supplemented the

record by recording a Second Amended Declaration of Homestead on November 1, 2021, after returning to his residence, as intended, which is the subject of the instant Motion. The Second Amended Declaration of Homestead was recorded on November 1, 2021, and therefore could not be included in the Joint Appendix which was filed at an earlier date. The Second Amended Declaration of Homestead affirms (as was stated in the record of the District Court) that Aguirre's release date was October 19, 2021, and that upon his release, he would return to his homestead. During his incarceration (as was stated in the record of the District Court), his intention was to return to his residence upon his release and that his incarceration did not change his residency during his temporary absence from his homestead.

NRS 115.010(1) provides that a homestead is exempt from execution if recorded prior to "final process from any court" (Emphasis added). This statute is unique in the fact that its language is intentionally and extremely broad and encompasses all courts, including appellate courts, and all process of each of those courts, including appeals to the Nevada Supreme Court. Thus, during the pendency of this appeal and on October 19, 2021, Mr. Aguirre was released from incarceration and returned, as intended, and is now physically residing in his homestead. The Sheriff's argument that Mr. Aguirre was stripped of residency merely because he was incarcerated is rendered moot because Mr. Aguirre is no longer incarcerated and is now physically residing in his homestead with his family prior to "final process from

any court" and "under any process of law." NRS 115.010(1); Nevada Constitution Article IV, §30.

The homestead right is a constitutional right and does not abridge, enlarge or modify any substantive rights of the courts. See *State v. Connery*, 99 Nev. 342, 345, 661 P.2d 1298, 1300 (1983). Therefore, the constitutional right of Mr. Aguirre's homestead should be reviewed and enforced by this Court.

The Sheriff's Office's Motion is merely an attempt to deprive Mr. Aguirre of his constitutional homestead right. Mr. Aguirre, through counsel, has attempted to confer with counsel for the Sheriff's Office throughout this litigation regarding Mr. Aguirre's homestead right. However, as the district and appellate records plainly show, the Sheriff's Office refuses to accept Mr. Aguirre's constitutional right, merely because he was incarcerated. Now that Mr. Aguirre has been released and is living in his homestead, the Sheriff's Office is attempting to construe this Court's rules to deprive Mr. Aguirre of his homestead right, which is part of its continued litigation strategy to avoid the homestead right.

Therefore, it is appropriate that the Supreme Court take judicial notice of the recorded Second Amended Declaration of Homestead and deny the Respondent's Motion to Strike because the Appellant's Declaration of Homestead is allowed and protected by the Nevada Constitution and NRS 115.010(1) "prior to any final process of any court."

DATED this 24th day of February, 2022.

GERBER LAW OFFICES, LLP

By: 

TRAVIS W. GERBER, ESQ.

Nevada State Bar No. 8083

ZACHARY A. GERBER, ESQ.

Nevada State Bar No. 13128

491 4th Street

Elko, Nevada 89801

(775) 738-9258

twg@gerberlegal.com

zag@gerberlegal.com

Attorneys for Appellant EFREN

AGUIRRE, JR.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on this date, I caused the foregoing document to be served on all parties to the action by:

✓

E-filing pursuant to the Nevada Filing and Conversion Rules

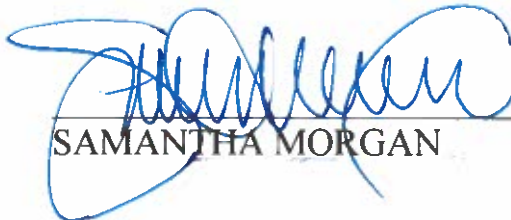
✓

Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Elko, Nevada.

fully addressed as follows:

Rand J. Greenburg
Deputy District Attorney
Elko County District Attorney's Office
540 Court Street, 2nd Floor
Elko, Nevada 89801

DATED this 24th day of February, 2022.



SAMANTHA MORGAN