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3 IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

4
5 EFREN AGUIRRE JR.,

6 Appellant,

7 CASE NO. 82445

8 vs.

9 ELKO COUNTY SHERIFF'S

10 OFFICE,

11 Respondent.

12
13 **REPLY TO APPELLANT'S RESPONSE TO MOTION TO STRIKE**

14 COMES NOW, Respondent, State of Nevada, by and through its attorneys,
15 TYLER J. INGRAM, District Attorney for the County of Elko, and RAND J.
16 GREENBURG, Chief Civil Deputy District Attorney, and submits this MOTION

17 TYLER J. INGRAM
Elko County District Attorney's Office
18 RAND J. GREENBURG
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-- ATTORNEYS FOR RESPONDENT

POINTS AND AUTHORITIES

FINAL PROCESS IS COMPLETE

Respondent argues he has a right to record and assert a homestead in this appeal because NRS 115.010(1) indicates the homestead is protected from the “final process from any court.” Under NRS 115.010(1) “The homestead is not subject to forced sale on execution or any final process from any court . . .” NRS Chapter 115 does not define “final process” and no definition in Nevada case law could be found. However, NRS 179.1156 to NRS 179.121, provides the process to forfeit property. Under NRS 179.1173, “If the court determines the property is subject to forfeiture, the court shall so decree.”¹ After the court forfeits the property, the plaintiff may sell or retain the property.² Also, under NRS 179.1169, “All right, title and interest in property subject to forfeiture vests in the plaintiff: In the case of property used or intended for use to facilitate the commission or attempted commission of any felony, when the property is so used or intended for such use.”

The process under NRS Chapter NRS 179.1156 to NRS 179.121 was completed. Respondent filed a complaint for forfeiture. After hearing and

¹ NRS 179.1173(8).

² NRS 179.1175(3)

1 proceedings before the District Court, the District Court issued its Judgment, or
2 decree, of Forfeiture on behalf of Respondent. There is no other process provided
3 in statute that is required to forfeit the property. Because the District Court filed a
4 Judgment of Forfeiture, and because the statutes require no further process for a
5 property to be forfeited, the process of forfeiture is complete.

6 Appellant seems to be arguing that an appeal is part of the final process.
7 However, there is nothing in the law that indicates that the Appellate Court must
8 review a forfeiture or be involved in the process of forfeiture proceedings. Also,
9 rules NRCP and NRAP show that appellate proceedings are not part of the “final
10 process.” NRCP Rule 54 defines “judgment” as . . . a decree and any order from
11 which an appeal lies.” NRAP 3A(b)(1) indicates an appeal may be taken from “the
12 following judgments and orders of a district court in a civil action: A final judgment
13 entered in an action or proceeding commenced in the court in which the judgment
14 is rendered.” “Final judgment” is defined as “One which finally disposes of rights
15 of parties”³

16 The appeal before the Court is a final judgment which has already disposed
17 or determined the rights of the parties. The purpose of this Court is to review those
18 proceedings, or the completed process, by the District Court to assure there were
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³ Black’s Law Dictionary, Fifth Addition, Final judgment, Page 567.

1 no errors of law or discretion.⁴ There is nothing in statute or law that provides that
2 the Supreme Court finish the process in a forfeiture proceeding. Article 6, Section
3 4 of the Nevada constitution indicates, “the Supreme Court and court of appeals
4 have appellate jurisdiction in all civil cases arising in district courts . . .” Nevada
5 Rules of Appellate Procedure in an appeal require that the record be reviewed, not
6 continue the proceedings of the lower court to a new level.⁵ Because the appeal
7 before the Court is from a final judgment, because the purpose of the Supreme
8 Court is to review the finalized proceedings, and because the Supreme Court only
9 reviews the record from the lower court, an appeal is not part of the final process.

10 Thus, because the process was finalized as determined by NRS 179.1156 to
11 NRS 179.121, and because the Court only reviews the finalized process under the
12 law and rules of the Court, Appellant’s Supplemental Appendix Volume-1 should
13 be stricken from the record before the Court.

14 ***PLAINTIFF FAILED TO FOLLOW NRAP RULES WHEN FILING***
15 ***APPELLANT’S SUPPLEMENTAL APPENDIX***

16 Appellant’s Response to Motion to Strike did not include any argument or
17 explanation as to Appellant’s failure to follow NRAP rules. NRAP Rule 30(a)
18 requires counsel to confer and attempt to reach an agreement on a possible
appendix. Again, Appellant did nothing to confer with Respondent regarding the

19 ⁴ *Hernandez v. State*, 124 Nev. 639, 646-47, 188 P.3d 1126 (2008).

⁵ See NRAP Rule 10(a) and NRAP 30(g)(1); See also *A Minor v. State*, 85 Nev. 323, 325 (1969); *Wilson v. Wilson*, 55 Nev. 57, 24 P.2d 317 (1933); *Meinhold v. Clark County Sch. Dist.*, 89 Nev. 56, 59-60, 506 P.2d 420 (1973).

1 Supplemental Appendix. Because Appellant provides no argument or explanation,
2 Appellant admits Appellant violated NRAP rules by failing to confer with
3 Respondent regarding the Supplemental Appendix. Because the Appellant failed
4 to confer with Respondent, the Supplemental Appendix should be stricken from
5 the record before this Court.


6 Also, Appellant provides no legal basis to disregard NRAP 10(a), 30(b)(3)
7 and (5), or 30(g)(1). Appellant only argues that because forfeiture may be filed or
8 asserted before the final process of any court the Supplemental Appendix should
9 be allowed. However, there is nothing in the rules, statute, or case law that indicates
10 that the Supreme Court can consider a declaration of homestead not in the record
11 of the lower court. Also, Appellant cites to no legal authority or rule that a party
12 may file a supplemental appendix without leave after an opening brief and reply
13 have already been filed. Because Appellant provides no legal authority or rule that
14 would allow him to disregard NRAP rules, the Court should strike Appellant's
15 Supplemental Appendix from the record before this Court.

16 ***CONCLUSION***

17 Because final process is complete, and because Appellant failed to follow
18 NRAP rules, the Court should strike Appellant's Supplemental Appendix from the
19 record before this Court.

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2 RESPECTFULLY SUBMITTED this 25th day of February, 2022.


3 TYLER J. INGRAM
4 Elko County District Attorney

5 By: 
6 RAND J. GREENBURG
7 Chief Civil Deputy District Attorney
8 State Bar Number: 13881
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2 CERTIFICATE OF SERVICE

3 I certify that this document was filed electronically with the Nevada
4 Supreme Court on the 25th day of February 2022, Electronic Service of the REPLY
5 TO APPELLANT'S RESPONSE TO MOTION TO STRIKE shall be made in
6 accordance with the Master Service List as follows:

7 GERBER LAW OFFICE
8 Travis Gerber
9 Zack Gerber

10 

11 Shauna L. Plunkett
12 CASEWORKER
13
14

15 DA#: AP-18-03371
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