IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ERICH M. MARTIN,

Appellant,

vs.

RAINA MARTIN,

Respondent.

S.C. No.: 82517

D.C. Case No.: D-15-509045-D

REPLY TO RESPONSE TO MOTION TO DISMISS APPEAL

I. INTRODUCTION

Respondent, Raina Martin, through her attorney, Richard L. Crane, Esq., of the Willick Law Group, and pursuant to NRAP 27(a)(4), submits this *Reply to Response to Motion to Dismiss Appeal*.

II. FACTS

The facts recited in Raina's Motion to Dismiss Appeal, filed with this Court on March 4, 2021, are incorporated herein.

Erich timely filed his *Response to Motion to Dismiss Appeal* on March 25, 2021, after the Court granted his telephonic request for an extension to file.

This *Reply* follows.

III. Reply to Response

A. The Notice of Appeal Was Not "Incomplete"

Erich and his counsel attempt to deflect by mis-direction their failure to appeal from the order they now claim they ***intended*** to appeal from, ignoring the requirement to actually appeal from a specific order, as required by the rules of this Court for over 100 years.

The order they ***did*** appeal from has nothing to do with the *Pendente Lite* fee award. Judge Duckworth never even mentioned the issue of *Pendente Lite Fees* as that issue was already decided by Judge Burton.

Claiming that both orders "concerned" the fee award is both false on its face and an attempt to get around this Court's inability to exercise jurisdiction over the order that actually awarded the fees, which is final and unappealed.

B. The Appeal Was Late

In *Las Vegas Metro v. Moyes*,[1] this Court held:

> In *Forman v. Eagle Thrifty Drugs & Market*, 89 Nev. 533, 536, 516 P.2d 1234, 1236 (1973), this court noted that a defective notice of appeal should not warrant dismissal where the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice and where the defect has not materially misled the respondent.

Here, the text of the *Notice of Appeal* does not "reasonably infer" any judgment other than the one that was actually appealed from. In fact, it clearly states on its face which *order* is on appeal. That *order* had ***nothing*** to do with the *Pendente Lite* fees and only dealt with child support. Even if the later

[1] 106 Nev. 226, 790 P.2d 999 (1990).

order entered by Judge Duckworth "incorporated" the issue of *Pendente Lite* fees, it is not clear on the face of the judgment or the *Notice of Appeal.*

Furthermore, *Moyes* held:

> Assuming arguendo that Moyes' notice was defective, Moyes' intention to appeal is evident from the text of his amended notice of appeal.

In *Moyes*, the Amended Notice of Appeal was apparently filed before the deadline to file such Notice. Here, the Amended Notice of Appeal was not filed until ***after*** the time for filing an appeal had run. NRAP 4(a)(5) states:

> Appeal From Certain Amended Judgments and Post-Judgment Orders. An appeal from a judgment substantively altered or amended upon the granting of a motion listed in Rule 4(a)(4), or from an order granting or denying a new trial, is taken by filing a notice of appeal, or amended notice of appeal, in compliance with Rule 3. The notice of appeal or amended notice of appeal must be filed after entry of a written order disposing of the last such remaining timely motion ***and no later than 30 days from the date of service of written notice of entry of that order.*** [Emphasis Added.]

The Notice of Entry of Order was filed on January 28, 2021. Any amended notice was due no later than March 1, 2021. The Amended Notice was not filed until March 8, 2021, and only after our filed *Motion to Dismiss*.

C. Erich's "Reasons Why the Appeal Should Not Be Dismissed" Do Not Change the Result

Erich argues that there are six reasons why the appeal should not be dismissed. We have already addressed the timeliness of the appeal and their argument fails.

As to this Court dealing with the merits of a case, we agree, but only if the issues in controversy actually are timely appealed and the possibility of prevailing on those merits is apparent on its face. Here, it is clear that the district court found that Erich not only had the means to pay the fees, but that Raina should receive fees to support her defense of the initial appeal.

As this Court is aware, there is only one way to obtain fees on appeal and that is through the process of requesting *Pendente Lite* fees. Erich can't prevail on the merits and since the appeal is untimely, it should be dismissed.

Additionally, this Court held in *Huckabay v. NC Auto Parts* that failure to file briefs on time is grounds for dismissal of the appeal with prejudice. It does not matter if Appellants are personally at fault, or the fault is due to negligence by their attorney.

The Court went on saying that a motion for rehearing and reconsideration under new counsel was also denied stating,

> "En banc reconsideration is disfavored, and this court will only order reconsideration when necessary to preserve precedential uniformity or when the case implicates important precedential, public policy, or constitutional issues."

The Court also stated,

> "While Nevada's jurisprudence expresses a policy preference for merits-based resolution of appeals, and our appellate procedure rules

> embody this policy, among others, litigants should not read the rules or any of this court's decisions as endorsing noncompliance with court rules and directives, as to do so risks forfeiting appellate relief."

Next, to claim that family law matters "do not have final orders" flies in the face of this Court's jurisdictional rules. ***All*** family law orders that are appealed are "final orders" (or special orders after final judgment). The order for *Pendente Lite* fees was final. There is nothing "ever-changing" in an order that qualifies for an appeal. This is a non-argument.

Next, Erich downplays this Court's workload as a reason that it should ignore the jurisdictional rules and hear the case. It goes without saying that any action brought before the Court should be non-frivolous and have a significant impact on the rights of the parties.

Here, Erich cannot succeed on the merits and the request to set aside the minimal attorney fee award made that was supported by the findings of the

District Court is frivolous on its face. The fact that Erich wants to consolidate the two appeals does not lessen the workload for undersigned counsel and certainly complicates this Court's docket. Dismissal is the only way to relieve the added stress on scarce judicial resources, and Erich's efforts to increase financial pressure on Raina should be seen for what it is.

The prejudice to Raina is likewise minimized. Here, she is now required to respond to even more (frivolous) issues on appeal. The point of the awarded fees was to *lighten* that burden. She now has had to expend even more fees responding to motions relating to an appeal based on the fees she was awarded legitimately by the district court.

Lastly, Erich's counsel admits fault in their appealing of the wrong order, but claim that *Erich* should not be held to the failings of his lawyers.

They are wrong. For over 80 years, this Court has upheld that a client is bound by the acts of his attorney.[2]

Erich may have a remedy against his counsel for failure to timely appeal the correct order, but this is not and should not be made Raina's problem.[3]

---

[2] *Wehrheim v. State*, 84 Nev. 477, 480, 443 P.2d 607, 608 (1968), *citing* *Gottwals v. Rencher*, 60 Nev. 35, 92 P.2d 1000 (1939) (the full quote from the earlier opinion is "a litigant party shall not be permitted to deny the authority of his attorney of record, whilst he stands as such on the docket. He may revoke his attorney's authority, and give notice of it to the court and to the adverse party; but whilst he so stands, the party must be bound by the acts of the attorney.") *See also Huckabay v. NC Auto Parts, LLC* cited *Supra*.

[3] *Nelson v. Boeing Co.*, 446 F.3d 1118, 1119 (10th Cir.2006) (providing that "[i]f a client's chosen counsel performs below professionally acceptable

IV. CONCLUSION

Based on the foregoing, Raina requests this Court to:

1. Dismiss Erich's appeal number 82517 and grant any other relief this court may deem appropriate.

Dated this 31st day of March, 2021.

Respectfully submitted,
WILLICK LAW GROUP

// s // Richard L. Crane, Esq.

Richard L. Crane, Esq.
Attorney for Respondent

---

standards, with adverse effects on the client's case, the client's remedy is not reversal, but rather a legal malpractice lawsuit against the deficient attorney"). Cited in *Huckabay*.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WILLICK LAW GROUP and that on this 1st day of April, 2021, a document entitled *Motion to Dismiss Appeal* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

Chad F. Clement, Esq.
Kathleen A. Wilde, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada89145
Attorneys for Plaintiff

//s//Justin K. Johnson

An Employee of WILLICK LAW GROUP

P:\wp19\MARTIN,R\SCDRAFTS\00490331.WPD/jj