

# IN THE SUPREME COURT FOR THE STATE OF NEVADA

Jeffrey Reed,  <p style="text-align: center;">Petitioner,</p> vs.  Alecia Reed nka Draper and Alicia Draper, as Conservator for Emily Reed,  <p style="text-align: center;">Respondent.</p>	Supreme Court #: 82575  District Court Case #: OSD338668  ELECTRONICALLY FILED Nov 19 2021 09:52 a.m. Elizabeth A. Brown Clerk of Supreme Court  <b>RESPONDENT’S OPPOSITION TO APPELLANT’S SECOND MOTION TO EXTEND TIME TO FILE OPENING BRIEF AND COUNTERMOTION FOR SANCTIONS</b>
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## RESPONDENT’S OPPOSITION TO APPELLANT’S SECOND MOTION TO EXTEND TIME TO FILE OPENING BRIEF AND COUNTERMOTION FOR SANCTIONS

Respondent, Alecia Draper, as Conservator for Emily Reed (“Emily”), respectfully opposes Appellant’s Motion to Extend Time to File Opening Brief (“Appellant’s Second Motion”), which was filed on November 17, 2021, and countermoves for sanctions against Appellant, including dismissal of this appeal and payment of Emily’s attorney’s fees.

The issue in Appellant’s Second Motion is that Appellant does not yet have the trial transcripts. In Appellant’s Second Motion, Appellant attempts to blame the Court Reporter for the need for an extension of time to file his opening brief. As shown herein, it is NOT the Court reporter to blame here; rather, blame falls SOLELY on Appellant due to Appellant’s failure to PAY for the transcripts when he requested them back on February 8, 2021 and July 1, 2021 and his failure to follow two Supreme Court Orders in this case and the Nevada Rules of Appellate Procedure.

First, Appellant’s Second Motion fails to comply with NRAP 31(b)(3)(A).

Second, the Court Reporter has not filed a request for an extension of time as required by NRAP 9(c)(4) when a court reporter believes it needs additional time to prepare a transcript. Pursuant to NRAP 9(c)(4), a request for extension of time to prepare transcripts must be “closely scrutinized” and must be supported by an affidavit of the court reporter stating the reason for the requested extension and the length of additional time needed. No such motion or affidavit has been filed in this case!

Third, the SOLE reason that the transcripts are not completed yet is because Appellant did not PAY the court reporter to transcribe them when he requested the trial transcript way back on February 8, 2021 and July 1, 2021! Instead, Appellant did not PAY the court reporter to start preparing the trial transcripts until October 1, 2021! If Appellant had paid for the transcripts when he requested them back on February 8, 2021 and July 1, 2021, which is required by the Nevada Rules of Appellate Procedure, then Appellant would have the transcripts by now.

The Court will recall that Appellant filed a Motion to Extend Time to File Request for Transcripts on September 30, 2021 (“Motion to Extend Transcript Deadline”). Pursuant to the Court’s July 1, 2021 Order Reinstating Briefing, Appellant was ordered to file the Request for Transcript Form as required by NRAP 9(a)(3) on or before July 15, 2021. **To date, Appellant still has NOT filed the required NRAP 9(a)(3) Request for Transcript Form.** Appellant waited until September 30, 2021, which is two and ½ months past the deadline, to file a motion requesting an extension of time to file the form. In Appellant’s Motion to Extend Transcript Deadline, Appellant stated the following on page 2, lines 16 – 21:

“A review of the Appeal file shows that Counsel inadvertently failed to file proof of the ‘Request for Transcripts.’ Specifically, the **transcripts were requested on February 8, 2021 and again on July 1, 2021** through the email sent to [videorequests@clarkcountycourts.us](mailto:videorequests@clarkcountycourts.us). Thus permission should be granted to file proof that the ‘Request for Transcripts’ was completed.” (Emphasis supplied.)

Based on the above representations from Appellant's counsel, undersigned counsel assumed that Appellant's Counsel had requested and paid for the transcripts back on February 8, 2020<sup>1</sup> and July 1, 2021 and simply forgot to file the forms required to be filed in both District Court and the Supreme Court pursuant to NRAP 9(a)(3). Perhaps this Court had the same understanding when it granted Appellant an extension of time until October 28, 2021 to file the proper Transcript Request Forms. See Supreme Court Order filed October 21, 2021. In said Order, this Court states that "Failure to file the transcript form may result in the imposition of sanctions. NRAP 9(a)(7)."

**A review of the District Court docket as well as the Supreme Court docket reveals that Appellant STILL has not filed the required Transcript Request Forms in violation of (1) Supreme Court Order filed July 1, 2021 reinstating briefing deadlines; (2) Supreme Court Order filed October 21, 2021 granting Appellant a 7 day extension to get the correct Transcript Request Forms filed; and (3) NRAP 9(a)(3) which sets forth the mandatory procedure for requesting, filing, serving, and paying for the trial transcripts.**

Fourth, the pleading entitled "Notice of Request for Transcripts" filed by Appellant in the Supreme Court on October 26, 2021 ("Appellant's October 26 Notice") is procedurally defective because it is NOT in compliance with NRAP 9(a)(3).<sup>1</sup> NRAP 9(a)(3) sets forth the following mandatory procedures:

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<sup>1</sup> It is respectfully submitted that Appellant's "Notice of Request for Transcripts" should have been REJECTED by the clerk of this court because it does not contain a Request for Transcript Form in the format required by NRAP 9(a)(3) or Form 3; does not have the required certificate signed by Appellant's counsel, including payment at time of the request; does not show it being served on Respondent's counsel; and does not bear the file-stamp of the district court clerk. The clerk of this court was likely misled due to the attachment by Appellant's counsel of a different document, namely a form signed and filed by the Court Reporter (not Appellant) that is file-stamped; however, that is NOT the form that is required to be filed by Appellant pursuant to NRAP 9(a)(3).

## **Transcript Request Form.**

(A) **Filing.** The appellant shall file an original transcript request form with the district court clerk and 1 file-stamped copy of the transcript request form with the clerk of the Supreme Court no later than 14 days from the date that the appeal is docketed under Rule 12.

(B) **Service and Deposit.** The appellant shall serve a copy of the transcript request form on the court reporter or recorder who recorded the proceedings and on all parties to the appeal within the time provided in subparagraph (A). The appellant must pay an appropriate deposit to the court reporter or recorder at the time of service, unless appellant is proceeding in forma pauperis or is otherwise exempt from payment of the fees. Where several parties appeal from the same judgment or any part thereof, or there is a cross-appeal, the deposit shall be borne equally by the parties appealing, or as the parties may agree.

(C) **Contents of Form.** The appellant shall examine the district court minutes to ascertain the name of each court reporter or recorder who recorded the proceedings for which transcripts are necessary. The appellant shall prepare a separate transcript request form addressed to each court reporter or recorder who recorded the necessary proceedings, specifying only those proceedings recorded by the court reporter or recorder named on the request form. The transcript request form must substantially comply with Form 3 in the Appendix of Forms and must contain the following information:

- (i) Name of the judge or officer who heard the proceedings;

- (ii) Date or dates of the trial or hearing to be transcribed; individual dates must be specified, a range of dates is not acceptable;
- (iii) Portions of the transcript requested; specify the type of proceedings (e.g., suppression hearing, trial, closing argument);
- (iv) Number of copies required; and
- (v) A **certification by appellant's counsel** that the attorney **has ordered** the required transcripts **and has paid** the required deposits. This certification shall specify from whom the transcript was ordered, the date the transcript was ordered, and the date the deposit was paid.  
(Emphasis supplied.)

Fifth, Appellant has failed to comply with NRAP 9(a)(3) in the following ways:

- a. Appellant has NEVER filed a Transcript Request Form in the District Court.
- b. Appellant has NEVER filed a file-stamped copy of the Transcript Request Form (that it was required to file in the District Court but failed to do so) in the Supreme Court;
- c. Appellant has NEVER served undersigned counsel for Respondent with a Transcript Request Form as required by the rule;
- d. Appellant did NOT pay the Court reporter for the transcript at the time that he requested the transcript, which was on February 8, 2021 and July 1, 2021.

Sixth, no good cause exists for extending the briefing deadline, particularly since Appellant's repeated delays are prejudicial and harmful to Respondent Emily

Contrary to the erroneous and unsupported statement in Appellant's Second Motion to Extend Time To File Opening Brief, Appellant has presented no proof that he is "struggling financially due to health related issues and the COVID-19 pandemic." In fact, this unsubstantiated self-serving statement by Appellant's counsel is nothing more than a red herring, which the District Court rejected in Appellant's most recent attempt to explain his refusal to comply with the District Court's order to support Emily! Furthermore, contrary to the statement in Appellant's Second Motion, there never was any chance of this appeal settling following the Supreme Court Settlement Conference. Sadly, all that has been made clear is that Appellant doesn't want to properly support his severely disabled daughter Emily and doesn't want to ensure that she gets the support that she desperately needs on a monthly basis to keep her as stable as possible!

It is clear that Appellant's plan is DELAY; however, this delay plan **is contrary to the health and well-being and best interest of Emily Reed ("Emily")**. **Emily desperately needs the court ordered support on a monthly basis to get her required medical treatment and to survive!**

**Emily is a 24-year-old disabled girl with expenses averaging almost \$6,000 per month!** Emily was repeatedly sexually molested for over 8 (eight) years as a minor after the parties divorced. Emily's current diagnosis is Dissociative Identity Disorder, Major Depressive Disorder, Recurrent, Severe without Psychosis; Chronic Post Traumatic Stress Disorder. Emily has attempted suicide a large number of times, including when she was a minor. Emily has been in and out of treatment facilities. **Emily has approximately 60 different personalities aka alters**, making her life very challenging to say the least.

No further delay can be tolerated!

Significantly, **Appellant is NOT paying the child support ordered in the judgment that is the subject of this appeal. Although Appellant has not filed a**

**bond to suspend enforcement of the judgment, the District Court will not force him to comply with the judgment until this appeal is concluded. As a result, Appellant's delays are preventing Emily from getting some of the treatment required to keep her as stable as possible because she does not have the money to pay for the medical treatment!** In addition, Respondent Emily does NOT have the money to pay undersigned counsel for these appeal motions because Appellant is not paying his child support!

Finally, the Nevada Rules of Appellate Procedure clearly provide that SANCTIONS may be imposed for an Appellant's refusal to comply with the rules, including dismissal of the appeal. NRAP 9(a)(7). This Court has repeatedly stated that it expects all appeals to be pursued in a manner meeting high standards of diligence, professionalism, and competence. *Cuzdey v. State*, 103 Nev. 575, 578, 747 P.2d 233, 235 (1987). Appellant's counsel is expected by this Court to comply with all applicable court rules and orders as part of counsel's professional obligations of competence and diligence to his or her client. RPC 1.1 and RPC 1.3. Appellant and his counsel are not at liberty to disobey the orders of this court or the Nevada Rules of Appellate Procedure. *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P. 3d 1080, 1084 (2011). Here, Appellant's refusal to comply with the rules of procedure and this court's orders has forced this court (and counsel for Respondent) to divert limited resources and time to ensure his compliance and has needlessly delayed the processing of this appeal. Appellant's repeated delays are detrimental to and are severely prejudicing the parties' disabled adult child Emily!<sup>2</sup>

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<sup>2</sup> **Appellant also delayed this appeal by an additional 3 months** when Appellant insisted that it could not attend a settlement conference until 3 months after this case was assigned to the settlement program. Then, at the time of the long awaited settlement conference, Appellant did not participate in good faith as required by the rules. Appellant left for work at the beginning of the settlement conference, making it almost impossible to have any meaningful settlement conference. In addition, Appellant's counsel attended hearings on other cases at the same time of the settlement conference, delaying and impacting the settlement conference.

In *Huckaby Props. Inc. v. NC Auto Parts, LLC*, 130 Nev. 196, 203-04, 322 P.3d 429, 433, 434 (2014), this Court stated the following:

“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 and the dismissal of an appeal based on violations of court rules and orders occasioned by the dilatory conduct of appellants counsel.”

Given the foregoing, it is respectfully submitted that Appellant’s motion should be denied and that Respondent’s countermotion to dismiss the appeal should be granted.

WHEREFORE, Respondent Emily hereby requests the following:

1. That Appellant’s Second Motion be DENIED;
2. That Appellant be SANCTIONED for his refusal to comply with two Court Orders and the Nevada Rules of Procedure by DISMISSING this Appeal and ordering Appellant to pay Respondent’s attorneys fees;
3. In the alternative, if this Court decides to grant Appellant’s Motion over Respondent’s objection, Respondent requests the following relief:
  - a. **That Appellant’s extension be CONDITIONED on Appellant paying all sums owed for child support pursuant to the judgment on appeal on a monthly basis as required by the judgment and catching up all monthly child support arrears payments within the next 30 days;**
  - b. That Appellant be SANCTIONED for his refusal to comply with two Court Orders and the Nevada Rules of Procedure by Appellant’s Motions by **ordering him to pay Respondent’s attorney’s fees for having to defend against all these unnecessary motions; and**



- c. Any further relief in favor of Respondent Emily that this Court deems proper under the circumstances.

BRENNAN LAW FIRM, LLC

/s/ Elizabeth Brennan

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*Attorney for Respondent, Emily Reed*

### **CERTIFICATE OF SERVICE**

I certify that I am an employee of Brennan Law Firm and that on this 19<sup>th</sup> day of November, 2021 service of the foregoing:

### **RESPONDENT'S OPPOSITION TO APPELLANT'S SECOND MOTION TO EXTEND TIME TO FILE OPENING BRIEF AND COUNTERMOTION FOR SANCTIONS**

mandatory electronic service through the court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

Amanda M. Roberts, Esq.

*Attorney for Jeffery Allen Reed*

/s/ Elizabeth Brennan

An Employee of BRENNAN LAW FIRM