

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY ALLEN REED,

Appellant,

vs.

ALECIA ANN REED, N/K/A ALECIA
ANN DRAPER; AND ALECIA ANN
DRAPER, AS CONSERVATOR OF
EMILY REED,

Respondents.

CASE NO.: 82575

Electronically Filed
Feb 10 2022 03:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO SET ASIDE ORDER DISMISSING APPEAL

COMES NOW, the Appellant, JEFFREY ALLEN REED, by and through his Co-Counsel, DENISE A. GALLAGHER, ESQ., and requests the court set aside its order dismissing the Appellant's Appeal.

This motion is made and based upon the pleadings and papers on file herein, the attached Points and Authorities and the attached Affidavit of Amanda M. Roberts, Esq.

DATED this 10th day of February, 2022.

GALLAGHER ATTORNEY GROUP, LLC

By: Denise A. Gallagher, Esq.
Denise A. Gallagher, Esq.
Nevada Bar No. 005739
8475 S. Eastern Ave., Suite 202
Las Vegas, Nevada 89123
Attorney for Appellant

POINTS AND AUTHORITIES

NRAP 27 provides for the filing of a motion for relief by a party. The motion being filed herein is to set aside the Order Dismissing Appeal which was filed in this matter on January 28, 2022.

In the instant case, the despite some initial delays, the Appellant, through counsel, filed his opening brief and appendix and served withing the time provided by this Court.

The Respondent identified issues with the Appellant's appendix and filed a motion to extend time within which to file her brief and appendix on behalf of the minor child. Contemporaneously therewith, she filed a motion to dismiss the appeal or to strike the Appellant's brief and appendix. The Respondent argued that the deficiencies in the Appellant's appendix created difficulties in her inability to file a brief on behalf of the minor child.

Following the filing of the Respondent's motion, the Court did not issue a briefing order with respect to the Respondent's motions as is customary.

As a result, counsel for the Appellant did not file an opposition after reviewing Nevada Rule of Appellate Procedure 27 and confirming the that the filing of an opposition was permissive rather than mandatory. *See Affidavit of Amanda M. Roberts, Esq., attached hereto.*

The Appellant agrees that there were deficiencies and issues with the Appellant's Appendix. However, the issues and deficiencies were not a result of bad faith or lack of diligence on the part of Appellant's counsel but rather as a result of technical issues with the Appellant's attorneys' Adobe Acrobat DC computer program. *See affidavit of Amanda M. Roberts, attached hereto.* Appellant's attorney did not know that the Appendix being submitted had these technical issues.

In the case of Dagher vs. Dagher, Nev. Adv. Op. 6 (February 6, 1987), the Nevada Supreme Court set forth its ruling which required a “heightened” requirement that decisions involving domestic relations cases should be based upon the merits of case and not procedural errors. The Supreme Court specifically stated “... the judicial policy favoring decision of the merits is heightened in domestic relation cases.....”

In the instant case, but for the technical issues with the Appellant’s attorney’s Adobe Acrobat DC computer program, the Appellant met his filing deadline for his brief and appendix. The Appellant opines that it is a harsh remedy for his appeal to be denied based upon a technical issue.

Additionally, the Appellant, and his ability to have an appellate review of the issues, should not be impacted due to a technical error not caused by a lack of diligence of his counsel. The Appellant will correct all deficiencies with respect to his Appendix if this is Court is inclined to set aside its order dismissing his appeal.

WHEREFORE, the Appellant requests the following relief:

1. That the Court set aside its order dismissing appeal; and
2. For such other and further relief as the Court may deem necessary and proper in the premises.

DATED this 10th day of February, 2022.

GALLAGHER ATTORNEY GROUP, LLC

/s/ Denise A. Gallagher, Esq.

DENISE A. GALLAGHER, ESQ.

Nevada Bar No.: 005739

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(702) 448-1099

denise@gallagherattorneygroup.com

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of February, 2022, service of the **MOTION TO SET ASIDE ORDER DISMISSING APPEAL** was electronically served on the following:

ROBERTS STOFFEL FAMILY LAW GROUP

Amanda@lvfamilylaw.com

Attorney for Appellant

BRENNAN LAW FIRM

Elizabeth@brennanlawfirm.com

Attorney for the Child

LA LUZERNE LAW

ben@laluzernelaw.com

Attorney for the Respondent

/s/ Stacie N. Graham

Employee of Gallagher Attorney Group, LLC

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1 backlog of transcript requests created an impossibility in obtaining the transcripts
2 from the company required to provide transcripts pursuant to the Court. Moreover,
3 regular contact was had with the company to get the transcript, but they could not
4 provide the transcripts in the timeframe requires.
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6 7. After receipt of the Motion to Dismiss, Affiant reviewed the Nevada
7 Rules of Appellate Procedure ("NRAP") § 27 which provides that a response "may"
8 be filed but does not require a response. Moreover, in speaking with someone from
9 the office of the Clerk of the Supreme Court same was confirmed. Furthermore, in
10 other cases if a response was necessary, Affiant received direction from the Supreme
11 Court indicating same was necessary.
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14 8. Affiant and her staff use Adobe Acrobat DC for redacting and bate
15 stamping documents. Affiant was not aware that the program removed the bate
16 stamps created by Respondent's Counsel at the Trial level when the Appendix was
17 bate stamped.
18

19 9. Affiant contacted her information technology ("IT") company to try and
20 determine if keystrokes would show that the removal and replacement of bate stamp
21 numbers was not intentionally. Unfortunately, IT cannot pull keystrokes information
22 from the server. The only thing IT can see is when something was changed and
23 saved.
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1 10. However, as an officer of the Court, Affiant acknowledges the bate
2 stamping error and assures the Court that it was not done intentionally.

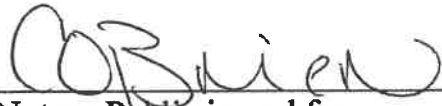
3 11. Presently, our computer system is missing Appendix Volumes XIV and
4 XV. We have asked IT to try and locate the files to determine how they were moved
5 and what happened to them.

6 12. It appears when we review the Appendix against the Opening Brief that
7 there are some errors in the reference to the Appendix Volumes and page numbers.
8 It is unclear how those numbers were erroneously labeled from the Appendix.

9 13. Around the time that Appendix was being completed, myself and staff
10 were having computer difficulties. I cannot explain the problems which occurred.
11 However, it was not intentional.

12 14. My errors regarding the Appendix were inadvertent and should not be
13 the basis for which Appellant is unable to have the issues raised on Appeal
14 considered by this Court.

15 Subscribed and Sworn to before me
16 on this 8 day of February, 2022.

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Notary Public in and for
said County and State


Amanda M. Roberts, Esq.

