

IN THE SUPREME COURT FOR THE STATE OF NEVADA

Jeffrey Reed, Petitioner, vs. Alecia Reed nka Draper and Alicia Draper, as Conservator for Emily Reed, Respondent.	<div>Electronically Filed Feb 15 2022 01:28 p.m. Elizabeth A. Brown Clerk of Supreme Court</div> Supreme Court #: 82575 (Appeal) District Court Case #: 05D338668
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**RESPONDENT’S OPPOSITION TO APPELLANT’S MOTION TO SET
ASIDE ORDER DISMISSING APPEAL & REQUEST FOR SANCTIONS**

Respondent, Alecia Draper, as Conservator for Emily Reed (“Emily”), respectfully opposes the Motion to Set Aside Order Dismissing Appeal (“Jeff’s Motion” or “Jeff’s Motion to Set Aside Order Dismissing Appeal”) filed by Appellant, Jeffrey Reed (“Jeff”) and requests an award of sanctions for the following reasons.

I. JEFF’S MOTION VIOLATES NRAP 40

First, Emily requests that Jeff’s Motion be denied and/or stricken from the record because there is no statute, rule, or practice authorizing such a “motion” after this Court has rendered its order dismissing the appeal. *NRAP 27* does not authorize the filing of a motion after this Court has dismissed the appeal. Instead, *NRAP 40* provides the pertinent procedural mechanism, namely the filing of a Petition for

Rehearing, and NRAP 40 sets forth the valid scope of any such request for rehearing. As shown herein, Jeff has violated *NRAP 40* in all respects!

Secondly, the arguments made in Jeff's Motion are made for the FIRST TIME in Jeff's Motion to Set Aside Order Dismissing Appeal. This is not allowed! Jeff has WAIVED the arguments raised for the first time in his current motion by not filing an opposition to Emily's Motion To Dismiss Appeal, which was filed and served on Jeff's counsel on December 20, 2021. The deadline for Jeff to file an opposition to Emily's Motion to Dismiss Appeal was December 27, 2021. *NRAP 27(3)(A)*. Jeff never filed an opposition to Emily's Motion!

A motion to set aside or modify a decision of the Nevada Supreme Court is equivalent to a petition for rehearing. *Brandon v. West*, 29 Nev. 135, 142, 85 P.449 (1906). **Points or contentions not raised, or waived by silence, on the original hearing, cannot be maintained or considered on petition for rehearing.** *Id.* 29 Nev. at 141. See also *Chowdhry v. NLVH*, 111 Nev. 560, 562, 893 P.2d 385, 387 (1995); and *Belanger v. Leonard*, 68, Nev. 258, 262, 229 P.2d 153, 155 (1951). "It has long been a rule of this court that we shall not consider points raised for the first time in a petition for rehearing." *In re Lorrington*, 75 Nev. 330, 340 P.2d 589 (1960)(Emphasis supplied). See also *Stanfill v. State*, 99 Nev. 499, 500, 665 P.2d 1146, 1147 (1983). A petition for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion. *NRAP 40(c)(1)*

and *Whitehead v. Nevada Comm’n on Judicial Discipline*, 110 Nev. 380, 873 P.2d 946, 953 (1994). Nor may a litigant raise new legal points for the first time on rehearing. *Id.*

Finally, Jeff’s Motion is nothing more than an attempt to “bolster his position” by making arguments now that are completely outside the record.¹ “Reference to matters outside the record is improper.” *Nevada Employment Sec. Dep’t v. Weber*, 100 Nev. 121, 122, 676 P.2d 1318, 1319 (Nev 1984).

II. SANCTIONS ARE WARRANTED

When a party violates NRAP 40, this Court may impose sanctions against the moving party. NRAP 40(g) and *NRAP* 38. “This court may award damages and attorney’s fees to a party aggrieved by an appeal which, like the instant one, is

¹Jeff’s Motion and the attached Affidavit of Amanda Roberts, Esq. (the “Affidavit”) amount to nothing more than new, self-serving arguments that are NOT contained in the record of this case and should be disregarded in their entirety by this Court. Furthermore, contrary to the Affidavit, there is evidence in the record that reveals that the statements in the Affidavit are FALSE. For example, Appellant’s Appendix contains many pages that show the original trial bates numbers were MOVED to a different location on the page, which is something that Adobe does not do by itself! Instead, this reveals clear knowledge by Jeff’s counsel of their removal of the original trial bates numbers and their attempt to correct the issue, which they abandoned before completing the corrections, resulting in their intentional filing of an Appendix that did not contain accurate copies of the trial court record! Thereafter, despite their clear knowledge of the issue, Jeff’s counsel took no steps to notify the Court or opposing counsel until its current frivolous motion and took no steps to correct the issue. **Contrary to Jeff’s Motion and Affidavit, the bates numbering issue was clearly known by Jeff’s counsel, and whether intentional or caused by a lack of diligence or incompetence, Emily had to incur over \$1,000 in attorney’s fees and costs to create, mail, and file a proper Appendix!**

prosecuted in a frivolous manner.” *In re Hermann*, 100 Nev. 149, 151, 679 P.2d 246, 247 – 248 (1984). In awarding the aggrieved party their attorney’s fees for having to respond to an unsubstantiated petition for rehearing, the Nevada Supreme Court in *Hermann* emphasized that it is “appropriate for us to impose sanctions to deter like dilatory tactics in the future.” *Id.*

In denying the petition for rehearing in *Gordon v. Eighth Judicial Dist. Court*, 114 Nev. 744, 961 P.2d 142 (1998), this Court stated the following:

“[W]e take this opportunity to caution counsel for petitioners, as well as all members of the State Bar of Nevada, of the proper purpose for petitions for rehearing....We advise petitioners’ counsel to review *Hermann* and the authority cited within carefully prior to filing other petitions for rehearing in future cases.”

Nevada Rule of Appellate Procedure 40(g) and NRAP 38 provide the authority for this Court to award sanctions when a party fails to comply with NRAP 40 when filing a petition for rehearing. Sanctions against Jeff and/or his counsel are clearly warranted as Jeff’s Motion completely violates all aspects of NRAP 40.

First, Jeff filed his motion to set aside the order dismissing the appeal under NRAP 27 which is not the appropriate procedural mechanism as shown by the rules and cases cited herein and is clearly an **unauthorized attempt by Jeff to get around the requirements of NRAP 40**. However, this Court has repeatedly held that such a motion will be treated as a petition for rehearing. *Brandon v. West*, 29 Nev. 135, 142, 85 P.449 (1906).

Secondly, Jeff's Motion violates NRAP 40 in almost every respect:

1. Jeff has failed to state ANY "point of law or fact" that he believes this Court "overlooked or misapprehended" as required by NRAP 40(a).
2. Jeff has failed to file a Certificate of Compliance as required by NRAP 40(b)(4).
3. Jeff has failed to pay the \$150 filing fee required by NRAP 40(b)(5).
4. Jeff has violated NRAP 40(c)(1) which prohibits the raising of points for the first time on rehearing. ALL arguments raised in Jeff's Motion violate this rule and should be stricken.

5. Jeff has violated NRAP 40(C)(2) which sets forth the proper scope of what this Court may consider on rehearing, namely when the Court has overlooked or misapprehended a material fact in the record or a material question of law in the case OR when the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case. Nothing contained in Jeff's Motion is within the scope required for rehearing under this section of the rule.

Simply put, Jeff's Motion is completely FRIVILIOUS and violates the clear and longstanding applicable Nevada rules of appellate procedure and caselaw!

Jeff's Motion is nothing more than another DELAY TACTIC to attempt to delay enforcement of the underlying support judgment against him in the district court, which judgment he remains in contempt of court for violating! Prior to the filing of this opposition, undersigned counsel for Emily requested that Jeff's counsel withdraw Jeff's Motion by a date certain, failing which Jeff's counsel was forewarned that Emily would have no choice but to seek sanctions! Jeff's counsel failed to withdraw the motion.

Emily is disabled. Emily does not have sufficient money to support herself and she has been forced to spend money to defend against Jeff's frivolous motion. For all the reasons set forth herein, it is appropriate for this Court to grant Emily's attorney's fees in researching and formulating a response to Jeff's unsubstantiated petition for rehearing in the sum of \$2,500.

WHEREFORE, Emily requests:

- 1) That Jeff's Motion be stricken from the record and/or DENIED; and
- 2) That this Court enter a Sanctions Order against Jeff and/or his counsel, awarding Emily \$2,500 in attorney's fees for having to respond to Jeff's frivolous motion.

/s/ Elizabeth Brennan

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Attorney for Respondent, Emily Reed

CERTIFICATE OF SERVICE

The foregoing motion/pleading was electronically served on Amanda Roberts and Denise Gallagher, Co-Counsel for Appellant, on this 15th day of February, 2022.

/s/ Elizabeth Brennan

an employee of Brennan Law Firm