Case No. 82694

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAD L. KNOWLTON, an individual,

Appellant,

vs.

WILLIAM L. LINDNER, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, an individual; and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust,

Respondents.

District Court Case No. A-20-809612-B
Eighth Judicial District Court, Clark County, Nevada

APPELLANT'S REPLY BRIEF

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November 24, 2021

SUPREME COURT OF
THE STATE OF NEVADA

BRAD L. KNOWLTON, an individual, Appellant, vs. WILLIAM L. LINDNER, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, an individual; and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust, Respondents.	Case No. 82694

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Brad L. Knowlton, Appellant in this case, is an individual, and there is no parent corporation to disclose, nor any publicly held company that owns 10% or more of Appellant's stock.
2. Brad L. Knowlton is represented in the Eighth Judicial District Court and this Court by Erickson & Whitaker PC.

DATED this 24th day of November, 2021.

ERICKSON & WHITAKER PC

By: /s/ Brian C. Whitaker
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Restatements

Rules

Statutes

I. INTRODUCTION

Respondents, William L. Lindner, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1998; Juel A. Parker, as Trustee of the Juel A. Parker Family Trust; Lisa Parker, as Trustee of the Juel A. Parker Family Trust; Lisa Parker, an Individual; and S. Bruce Parker, as Trustee of the Steven Bruce Parker Family Trust (referred to together as "Respondents"), have conceded the principal issue in this case in their Answering Brief: *the June 5, 2020, Utah Judgment and Decree of Divorce* ("Divorce Decree") *was not final at the time the Nevada Eighth Judicial District Court* ("District Court") *granted Respondents' Motion for Summary Judgment on November 2, 2020.* Though Respondents attempt to minimize this fact through various arguments (addressed below), they are ultimately forced to concede that a "motion to amend" the Divorce Decree was still "pending" when the District Court made its ruling. *See* Answering Brief at 11.

In Nevada, summary judgment is inappropriate when the "presence of a genuine dispute" still exists. NRCP 56(c)(1)(B). Because the Divorce Decree was not final on November 2, 2020, when the District Court granted summary judgment, a genuine dispute still existed between the parties as to the validity of the Assignment of Membership Interest in Valley Ascent, LLC A Nevada Limited Liability Company ("Assignment"). This dispute had been raised by Appellant, Brad L. Knowlton ("Knowlton"), in his Opposition to Defendants' Motion for Summary Judgment ("Opposition"), where he informed the District Court of his appeal of the Divorce Decree. There, Knowlton informed the District Court that, "If successful, the outcome of that appeal could unwind and/or reverse the effect of the Assignment, and re-vest Knowlton with his Membership Interest in" Valley Ascent, LLC ("Valley Ascent"). *See* Joint Appendix Volume III at 368.

With the District Court on notice of Knowlton's appeal of the Divorce Decree and the dispute between the parties regarding the validity of the

Assignment, the District Court's granting of Respondents' request for summary judgment was premature. As a result, this Court should find the District Court's Orders granting summary judgment and dismissal to be in error and should remand the case to the District Court to be heard on its merits.

II. ARGUMENT ANSWERING NEW MATTERS SET FORTH IN RESPONDENTS' ANSWERING BRIEF

A. THE DIVORCE DECREE WAS NOT FINAL WHEN THE DISTRICT COURT GRANTED SUMMARY JUDGMENT TO RESPONDENTS, AND SUMMARY JUDGMENT WAS INAPPROPRIATE.

In Nevada, and in Utah, a District Court Order is not final if subject to an appeal or a request to alter or to amend the Order. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1194-1195 (2010). *See Anderson v. Schwendiman*, 764 P.2d 999, 1000, 1988 Utah App. LEXIS 179, at *3 (November 18, 1988).

Here, Knowlton filed his Motion to Alter or Amend the Trial Ruling and for Limited New Trial Pursuant to Rules 52, 54, and 59 of the Utah Rules of Civil Procedure ("Motion to Alter or Amend") on May 13, 2020, and a Notice of Appeal on June 15, 2020. The Utah District Court issued its Ruling and Order on Knowlton's Motion to Alter or Amend on November 12, 2020. Accordingly, when the District Court in Nevada heard arguments on November 2, 2020, on Respondents' Motion for Summary Judgment, ten (10) days prior to the Utah District Court's ruling, the Divorce Decree was ***not*** a final order. A Court cannot grant summary judgment in a case where all issues are not final, and the District Court's granting of summary judgment was in error. *See Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 433 (1989).

1. A Court Order is Not Final If Subject to an Appeal or a Request to Alter or to Amend.

In Nevada, a judgment is final only if it is "procedurally definite." *Kirsch v. Traber*, 134 Nev. 163, 167, 414 P.3d 818, 821 (Nevada 2018). (Internal citations

omitted.) " 'Finality will be lacking if an issue of law or fact essential to the adjudication of the claim has been reserved for future determination. . . .' " *Id.* (citing Restatement (Second) of Judgments § 13 (Am Law Inst. 1982) at cmt. b). Furthermore, according to the Court in *Kirsch*, "Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal." *Id.* at 134 Nev. 167, 414 P.3d 822. (Internal citations omitted.)

More recently, the Court has clarified that " 'a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court.' " *Nalder v. Eighth Judicial Dist. Court of Nev.*, 462 P.3d 677, 684 (2020) (quoting *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). According to the Court in *Nalder*, "when a final judgment is reached, there necessarily is no 'pending' issue left." *Id.* (citing *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. 86, 91 n. 2, 247 P.3d 1107, 1110 n. 2 (2011) and citing *Black's Law Dictionary* (10th ed. 2014)).

The very fact that the outcome of the Divorce Decree, including the assignment, was the subject of a pending Motion to Alter or Amend, and further, that Knowlton's appeal of the Divorce Decree was still subject to a future ruling by a Utah Court at the time the District Court in Nevada granted summary judgment, indicates that the Divorce Decree was not a final order. *See Nalder*, 462 P.3d at 684. In Utah, the filing of a post-judgment motion "suspends the finality of the judgment." *Anderson*, 764 P.2d at1000, 1988 Utah App. LEXIS 179, at *3. *See also Regan v. Blount*, 978 P.2d 1051, 1053, 1999 Utah App. LEXIX 83, at *2-*3 (May 6, 1999) (overruled on other grounds by *Gillett v. Price*, 135 P.3d 861, 2006 Utah App. LEXIS 59 (April 28, 2006). The law is the same in Nevada. Pursuant to NRAP 4(a)(4)(C) and (D), a motion under NRCP 59 for a new trial or to amend a judgment tolls the time requirement to file a notice of appeal on an underlying

order until the Court rules on the NRCP 59 motion and the underlying order becomes final, justifying an appeal. *See AA Primo Builders*, 126 Nev. at 585, 245 P.3d at1194-1195.

2. Summary Judgment is Appropriate Only In Cases Where There Are No Remaining Issues of Material Fact.

Summary judgment is appropriate only when, after a review of the record viewed in the light most favorable to the non-moving party, there are no remaining issues of material fact, and the moving party is entitled to judgment as a matter of law. *Wiltsie*, 105 Nev. at 293, 774 P.2d at 433 (1989). *See also Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985). *See also* NRCP 56(c)(1)(B).

As a result of Knowlton's Motion to Alter or Amend, and therefore, appeal of the Divorce Decree, issues regarding the Assignment remained pending in the Utah District Court, and as a result, the Divorce Decree was not final when the District Court in Nevada granted summary judgment. Though the District Court ultimately concluded that "no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law,' " the Court's conclusion was in error. *See* Joint Appendix Volume III at 458 (citing *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997).

The Divorce Decree's status procedurally was not definite, as required by *Kirsch,* and a complete adjudication of Knowlton's appeal was still in the future. *See* Restatement (Second) of Judgments § 13 (Am Law Inst. 1982) at cmt. b. Accordingly, then, the Nevada District Court's granting of summary judgment was in error.

3. Respondents Failed to Comply With Their Duty to Disclose to the Court the Non-Final Status of the Divorce Decree.

Respondents argue that because Knowlton did not "make any request to the District Court to stay this matter, or to delay ruling on the Motion for Summary

Judgment," the District Court did not err in granting summary judgment. *See* Answering Brief at 11-12. Appellant respectfully disagrees. Respondents admit Knowlton *did* "reference" the non-final nature of the Utah Decree. *Id.* at 12. The issue was raised to the District Court. The Court was notified of the interlocutory nature of the Divorce Decree. Knowlton placed the Court on notice. Yet, Respondents now disingenuously claim the District Court was not on notice, despite the underlying filings and arguments, which they acknowledge.

Moreover, Respondents *knew* the Divorce Decree was not final, that a motion was pending contesting the validity of the preliminary order, and that Knowlton was appealing the Utah District Court's decision. If Respondents felt the District Court was not on notice, or aware of the pending Utah decision, Respondents had a duty to the Court to disclose the interlocutory nature of the divorce decree, including the assignment that Respondents' Motion for Summary Judgment was based upon, and the appeal of the Divorce Decree. Pursuant to NRCP 11(b)(2) and (3), "By presenting to the court a pleading, written motion, or other paper . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief . . . the claims, defenses, and other legal contentions are warranted," and that "the factual contentions have evidentiary support."

Respondents had a duty to inform the Court of the non-final nature of the Divorce Decree, which clearly encompassed the assignment that was the sole basis for their Motion for Summary Judgment. In spite of knowing of the status of the Divorce Decree and the appeal, and believing, as they now claim, that the Court was not placed on notice, Respondents have admittedly failed to comply with their duty to inform the Court that the Divorce Decree was not final and was also being challenged on appeal. Instead of advising the court of the infirm nature of the assignment and Divorce Decree, Respondents presented that assignment as though it was a final document, not the subject of a pending court challenge or a later

appeal. Respondent's failure to comply with that duty should not now preclude Knowlton from having the case heard on its merits.

4. Knowlton's Motion to Alter or Amend is a Public Record and Was Superior to Any Evidence of a Non-Final Order That Could Have Been Presented to the District Court by Knowlton.

Respondents further argue that because Knowlton did not "provide any evidence that an appeal was, in fact, actually pending," or "provide a copy of any Notice of Appeal that he filed," evidence of Knowlton's appeal of the Divorce Decree "would [not] be admissible at trial." *See* Answering Brief at 12-13. As a result, according to Respondents, "the District Court could not have denied summary judgment on that basis, as summary judgment can only be granted or denied based upon evidence that would be admissible at trial." *Id.* at 13. This assertion is incorrect on its face.

The May 13, 2020, Motion to Alter or Amend and the June 15, 2020, Notice of Appeal, both filed in Utah District Court, are matters of public record. Pursuant to NRS 47.150, the Court can take judicial notice of the public record. Pursuant to this Court, "The theory of taking judicial notice of a fact . . . is that it is a judicial short cut, a doing away, in the case of evidence, with the formal necessity for evidence because there is no real necessity for it." *Lemel v. Smith*, 64 Nev. 545, 565-566, 187 P.2d 169, 179 (1947). The Court continues as follows:

> What is known need not be proved. ***Judicial notice takes the place of proof, and is of equal force.*** As a means of establishing facts, ***it is therefore superior to evidence***. In its appropriate field, it displaces evidence, since, as it stands for proof, it fulfills the object which evidence is designed to fulfill, and makes evidence unnecessary.

Id. (Citations omitted.) (Emphasis added.)

The pending motion for new trial and the notice of appeal filed by Knowlton are, and were, a matter of public record, of which the District Court may take judicial notice, eliminating the need for evidence of the appeal. As this Court

stated: "In its appropriate field, [judicial notice] displaces evidence, since, as it stands for proof, it fulfills the object which evidence is designed to fulfill, and makes evidence unnecessary." *Id.* As such, this Court should hold the District Court's grant of summary judgment to be in error and remand the case to be heard on its merits.

B. THE VALIDITY OF THE ASSIGNMENT AND THE FINALITY OF THE DIVORCE DECREE ARE ONE AND THE SAME.

The Assignment in this case is a direct consequence of the Divorce Decree and the language of both documents cannot be parsed and separated from each other. The Assignment does not exist independently of the Divorce Decree, its very language incorporating it into the Divorce Decree. *See Day v. Day*, 80 Nev. 386, 389, 395 P.2d 321, 322 (1964). *See also* Joint Appendix Volume II at 337.

1. The Assignment is a Direct Function of the Divorce Decree and Does Not Survive Outside the Confines of the Divorce Decree.

Respondents make much of the fact that the Assignment at issue is separate from the Divorce Decree. *See* Answering Brief at 7 ("Knowlton's challenge to the finality of the Decree is misdirected, as it was the Assignment, not the Decree, which actually transferred his interests").[1] What Respondents fail to understand, however, is that the Assignment is a direct function of the Utah Divorce Decree. Without a Divorce Decree requiring him to do so, Knowlton would not have made any assignment, and Respondents offer no argument as to how the language of the Assignment, incorporated into and ordered by the Divorce Decree, can be parsed

[1] Respondents go on to state: "Knowlton's arguments that the Decree was not a final judgment that could be relied upon are without merit. In this matter, it is the validity of the Assignment that is at issue," and, "While Knowlton challenged the effect of the Assignment, he never challenged its validity." Answering Brief at 10. Respondents state further, "Knowlton essentially challenges the validity of the Assignment, through a challenge to the finality of the Decree." *Id.* at 11.

out from the Utah District Court Order. The validity of the Assignment depends on the finality of the Divorce Decree, and at the time the District Court granted summary judgment to Respondents, the Divorce Decree was not final, it was the subject of a pending court challenge via a motion. Thus, the ultimate disposition of the Assignment was not clear.

As an example, in Nevada, an agreement between spouses "adopt[ed] . . . by the trial court effectuates a merger of the agreement into the decree entered. A merger destroys the independent existence of the agreement, and the rights of the parties thereafter rest solely upon the decree." *Day*, 80 Nev. at 389, 395 P.2d, at 322. Through an agreement merged into a Decree of Divorce it is "presume[d] that the court rejected the contract provision for survival" outside the confines of a valid Decree of Divorce. *Id.*, 80 Nev. at 390, 395 P.2d at 323.

2. The Very Language of the Assignment Incorporates it Into the Divorce Decree.

Here, as part of its Divorce Decree, a public record, the Court in Utah ordered Knowlton to execute the Assignment. By its very nature as a part of the Utah Court's Order, the Assignment was incorporated into the Decree. The Assignment states in this regard: "Effective June 19, 2020 ***and pursuant to the Judgment and Decree of Divorce entered on June 5, 2020 by the Court in Utah Civil Case No. 174701016*** . . . ." *See* Joint Appendix Volume II at 337. (Emphasis added.) By challenging the Decree, Knowlton challenged the Assignment.

Though Respondents argue the Assignment is at issue, and not the Divorce Decree, and that Knowlton's appeal of the Divorce Decree does not affect the validity of the Assignment, according to the Court in *Day*, the Assignment does not survive if the Decree of Divorce is held to be invalid. The Assignment does not exist separate and apart from the Divorce Decree. It is part and parcel of the Divorce Decree.

C. THE LANGUAGE OF THE ASSIGNMENT IS PLAIN AND SHOULD BE ENFORCED AS WRITTEN.

The plain meaning of the words of the Assignment should be used in its interpretation. *See Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). Contrary to this well-accepted principal of contract law, Respondents attempt to muddy the waters in this case, so to speak, by focusing on verb tenses within the Assignment rather than considering the logically prospective nature of the Assignment.

1. The Plain Language of a Document Should Be Used to Construe Its Meaning.

The parties agree that "[w]hen construing the language of a document, the plain meaning of the words used should be applied." *See* Answering Brief at 16. *See also Canfora*, 121 Nev. at 776, 121 P.3d at603 ("[W]hen a contract is clear on its face, it will be construed from the written language and enforced as written") (internal citations omitted). *See also Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012) ("Therefore, the initial focus is on whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written"). *Id.*

The clear language of the Assignment here states as follows:

> Effective June 19, 2020 and pursuant to the Judgment and Decree of Divorce entered on June 5, 2020 by the Court in Utah Civil Case No. 174701016:
>
> (1) Bradley L. Knowlton hereby transfers and assigns his interest in Valley Ascent, LLC, a Nevada limited liability company, to Shondell Swenson; and
>
> (2) Bradley L. Knowlton hereby permanently relinquishes, waives, and/or releases any and all rights, interests, and/or claims related to his ownership interest in Valley Ascent, LLC, all of which have been transferred to Shondell Swenson by virtue of this Assignment of Interest.

See Joint Appendix Volume II at 337.

Based on the language of the Assignment, any interpretation of its meaning should construe an assignment by Knowlton from its effective date (June 19, 2020) to the present.

2. The Assignment is Prospective in Nature, and Logically Cannot Include Retrospective Action.

The Assignment is *prospective* in its application, and by its very nature cannot be retrospective, as Respondents argue. The Assignment is specifically effective as of June 19, 2020, and is an assignment of all "rights, interests, and/or claims related to [Knowlton's] ownership interest in Valley Ascent . . . ." *See* Joint Appendix Volume II at 337.

Prior to making the assignment, Knowlton received payments from Valley Ascent. Any argument by Respondents now that the Assignment is retrospective in nature requires an argument that any interest earned on those payments, in addition to other property rights or other distributions formerly received by Knowlton, are subject to the Assignment. This was *not* the order of the Utah Court, nor has it ever been a position argued by Respondents. If Respondents intend to argue the Assignment is retrospective in nature, then this ambiguity *must* be resolved by the District Court at a trial on the merits. Either the Assignment is *prospective* in nature and is an assignment of Knowlton's "rights, interests, and/or claims related to his ownership interest in Valley Ascent" from June 19, 2020, forward, or the Assignment is *retrospective* in nature and is an assignment of *all* of Knowlton's "rights, interests, and/or claims related to his ownership interest in Valley Ascent. *Id.* An interpretation that the Assignment is retrospective conflicts with the very nature of the Divorce Decree, which defines the rights of Knowlton and his ex-wife post-divorce, without any reference to their retrospective actions. Any retrospective interpretation of the Assignment suggests it is clearly ambiguous

and not consistent with the intentions of the Utah District Court or the parties to the divorce, and therefore, such a claim must be heard by the District Court.

3. Respondents Are Not Parties to the Assignment, and the Assignment Cannot Vest Rights in Them.

According to Respondents, the language, "all of which have been transferred," refers to "not just the single item of Knowlton's 'ownership interest' in Valley Ascent, but also Knowlton's rights, interests, and claims related to that interest," including Knowlton's claims from the Nevada District Court case. *See* Answering Brief at 16-17. Language in the Assignment assigning the claims from the District Court case was specifically not included, however, because neither Knowlton nor his ex-wife intended for Knowlton's claims to be transferred. In fact, it cannot vest any rights in Respondents because Respondents are not parties to the Assignment.

Instead, the Assignment transfers Knowlton's ownership interests in Valley Ascent to his ex-wife and waives and releases claims against her rather than making a specific assignment of claims to her. The Assignment applies *only* to the resolution of the Utah divorce proceedings and does not vest any rights in Respondents.

Ignoring the fact the Assignment cannot vest any rights in them, Respondents focus on the "plural present perfect verb form in the assignment language" as another attempt at misdirection. *See* Answering Brief at 16-17. Respondents' argument is unclear, however. Seemingly, Respondents indicate that the words "have been transferred" refer to Knowlton's " 'ownership interest' in Valley Ascent," as well as his "rights, interests, and claims related to" that ownership interest. *Id.* Yet, Respondents ignore the specific relationship between Knowlton's ownership interest to the "rights, interests, and/or claims" allegedly assigned. The Assignment as drafted intended to "relinquish[ ], waive[ ], and/or

release[ ] any and all rights, interests, and/or claims related to his ownership in Valley Ascent," and did not include the transfer of claims in the Nevada District Court action. *See* Joint Appendix Volume II at 337.

4. The Issue of Knowlton's Contractual Rights Under the Operating Agreement for Valley Ascent Should Be Heard on the Merits.

Moreover, Respondents dismiss out-of-hand Knowlton's rights as a manager of Valley Ascent. Respondents do not contest NRS 86.291, which states as follows:

> If provision is made in the articles of organization, management of the company may be vested in a manager or mangers, who may but need not be members. The manager or managers shall hold the offices, have the responsibilities and otherwise manage the company as set forth in the operating agreement of the company or, if the company has not adopted an operating agreement, then as prescribed by the members.

An LLC "can be member-managed or manager-managed . . . . An LLC can have a non-member manage its operations . . . . The non-member manager has no ownership interest in the LLC and need not have any involvement in the formation of the LLC." *In re Leeds*, 589 B.R. 186, 197 (B.R. D. Nev. August 1, 2018).

Although Respondents cite to the Amended Operating Agreement of Valley Ascent, LLC ("Operating Agreement") to indicate that Knowlton allegedly "had no contractual right to enforce the provisions relating to the termination or appointment of any provisions," Respondents ignore the provisions of the Operating that *do* grant Knowlton rights (i.e., granting Knowlton the "sole and exclusive right to manage the business of the Company" and granting Knowlton the right to compensation for his services as Manager). *See* Joint Appendix Volume I at 030. Knowlton's claim for breach of contract, violation of the implied covenant of good faith and fair dealing, and breach of fiduciary duty are based entirely in Respondents' wrongful removal of Knowlton as Manager of Valley

Ascent, a fact Respondents ignore. Moreover, the issue of Knowlton's contractual right to enforce the provisions of the Operating Agreement is an issue not raised in any Motions pending and an issue that should be tried. The District Court should try this issue to resolve this case on its merits, as the issue has not yet been heard.

The Assignment is limited to a transfer of ownership interest and not of Knowlton's claims as Manager of Valley Ascent. Knowlton did not transfer any claims resulting from his position as Manager of the Company and the District Court erred in granting Summary Judgment to Defendants.

III. CONCLUSION

Based on the facts and arguments above, this Court should find the District Court's Orders granting summary judgment and dismissal to be in error and remand the case to the District Court to be heard on its merits.

DATED this 24th day of November, 2021.

ERICKSON & WHITAKER PC

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point font, Times New Roman style.

2. I further certify that this Reply Brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

Proportionally spaced, has a typeface of 14 points or more, and contains 5,451words.

3. Finally, I hereby certify that I have read this Reply Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 24th day of November, 2021.

ERICKSON & WHITAKER PC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Erickson & Whitaker PC and that on the 24th day of November, 2021, a copy of the foregoing **APPELLANT'S REPLY BRIEF** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system ("E-Flex"). Participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail as follows:

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