

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MATTHEW MORONEY,

Appellant,

vs.

BRUCE ARTHUR YOUNG; POINT MINING
& MILLING CONSOLIDATED, INC.,

Respondents.

No. 82948

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Jun 15 2021 03:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Fifth Department I
County Esmeralda Judge Kimberly Wanker
District Ct. Case No. CV-19-5103

2. Attorney filing this docketing statement:

Attorney Kimball Jones Telephone 702-333-1111

Firm Bighorn Law

Address 2225 E. Flamingo Road.
Building 2, Suite 300
Las Vegas, Nevada 89119

Client(s) Matthew Moroney

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael M. DeLee Telephone (775) 372-1999

Firm DeLee LAW OFFICES, LLC

Address P.O. Box 96
18 South Powerline Road
Amargosa Valley, Nevada 89020

Client(s) BRUCE ARTHUR YOUNG

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

The underlying incident in this matter is an assault which occurred on July 3, 2017. Appellant was an invitee on Defendants' property, when Respondent BRUCE ARTHUR YOUNG negligently and carelessly attacked Appellant inflicting bodily harm upon him. Appellant was caused to be injured.

Appellant timely filed his claim in the District Court in this matter on March 19, 2019. Within the 120-time limit noted in Rule 4, Appellant filed his Ex-Parte Motion to Enlarge Time for Service of Defendants on July 12, 2019.

The District Court dismissed Appellant's Claim for not seeking to serve Respondents earlier in the 120-day period granted by Rule 4, and for not utilizing the Sheriff's Department. Appellant had good cause to request additional time, as Respondents were evading service. The Court used improper criteria in refusing to grant an extension of time to serve Respondents.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Is a party's evasion of service "good cause" to extend deadlines under N.R.C.P. 4?

Under the updated language within N.R.C.P. Rule 4, when there is good cause to extend a Rule 4 deadline, must a District Court extend that deadline?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should not be presumptively retained by the Supreme Court. It is properly assigned to the Court of Appeals under N.R.A.P. 17(b)(5).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 15, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served April 15, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 17, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

N.R.A.P. 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The Court dismissed Appellant's Case on April 15, 2021, therefore disposing of Appellant's claims. Appellant appeals from this final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

APPELLANT: MATTHEW MORONEY

Respondent: BRUCE ARTHUR YOUNG; POINT MINING & MILLING
CONSOLIDATED, INC.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

POINT MINING & MILLING CONSOLIDATED, INC. was never served in the District Court matter

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant Matthew Moroney: Negligence, Gross Negligence, Battery. Disposed of on April 15, 2021.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The Court's Order is independently appealable under N.R.A.P. 3A(b).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Matthew Moroney
Name of appellant

Kimball Jones, Esq.
Name of counsel of record

Jun 15, 2021
Date

/s/ Kimball Jones, Esq.
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Michael M. DeLee, Esq.
DeLEE LAW OFFICES, LLC
P.O. Box 96, 18 South Powerline Road
Amargosa Valley, Nevada 89020
Attorneys for Respondents

Carolyn Worrell
4236 Furgerson Ranch Road
Carson City, Nevada 89701
Settlement Judge

Dated this 15th day of June, 2021

/s/ Erickson Finch
Signature

1 **ACOM**
2 **JACQUELINE R. BRETELL, ESQ.**
3 Nevada Bar No.: 12335
4 **MATTHEW B. BECKSTEAD, ESQ.**
5 Nevada Bar No.: 14168
6 **BIGHORN LAW**
7 716 South Jones Boulevard
8 Las Vegas, Nevada 89107
9 Phone: (702) 333-1111
10 jacqueline@bighornlaw.com
11 matthew@bighornlaw.com
12 *Attorneys for Plaintiff*

FILED
APR 27 2020
M Garcia
ESMERALDA COUNTY CLERK

9 **FIFTH JUDICIAL DISTRICT COURT**
10 **ESMERALDA COUNTY, NEVADA**

11 MATTHEW MORONEY,
12
13 Plaintiff,
14
15 v.

CASE NO: CV-19-5103
DEPT. NO: 1

14 BRUCE ARTHUR YOUNG,
15
16 Defendant.

17 **AMENDED COMPLAINT**

18 ///

19 ///

20 ///

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27 ///

28 ///

1 COMES NOW Plaintiff Matthew Moroney ("Plaintiff"), by and through his attorneys,
2 Jacqueline R. Bretell, Esq. and Matthew B. Beckstead, Esq., of the law firm Bighorn Law, and hereby
3 brings the claims below, based upon the following allegations:

4 **I. PARTIES, JURISDICTION, AND VENUE**

- 5 1. Plaintiff is, and at all times relevant herein was, a resident of Esmeralda County, Nevada;
6 2. Defendant Bruce Arthur Young ("Defendant") is, and at all times relevant herein was, a
7 resident of Esmeralda County, Nevada;

8 **II. FACTUAL ALLEGATIONS**

- 9 3. On March 19, 2017, Defendant threatened to initiate a physical altercation with Plaintiff,
10 eventually punching Plaintiff twice and taking Plaintiff to the ground ("Subject Incident");
11 4. Defendant never obtained Plaintiff's consent to initiate or engage in physical contact with
12 Plaintiff;
13 5. At the time of the Subject Incident, Plaintiff was recovering from neck surgery;
14 6. At the time of the Subject Incident, Defendant knew that Plaintiff was recovering from neck
15 surgery;
16 7. Prior to the physical altercation, Defendant verbally threatened to hit or punch Plaintiff;
17 8. As a result of the Subject Incident, Plaintiff sustained physical injuries;

18 **III. FIRST CLAIM FOR RELIEF**

19 **(BATTERY)**

- 20 9. Plaintiff incorporates by reference each and every foregoing paragraph as if fully set forth
21 herein;
22 10. Defendant intentionally punched Plaintiff in the face, twice, and wrestled Plaintiff to the
23 ground;
24 11. Defendant knew that Plaintiff had neck surgery prior to the Subject Incident;
25 12. Plaintiff has suffered physical injury, incurred medical expenses, experienced pain and
26 suffering, and may incur future medical expenses and experience future pain and suffering as
27 a result of the Subject Incident;
28 13. Plaintiff is entitled to damages in excess of \$15,000.00;

1 14. Plaintiff is entitled to punitive damages under NRS 42.005.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment from this Honorable Court, as follows:

- 4 1. General damages for Plaintiff, in excess of \$15,000.00;
- 5 2. Special damages for Plaintiff's medical and other expenses, plus future medical and other
- 6 expenses incidental thereto, in an amount to be determined by the trier of fact, in excess of
- 7 \$15,000.00;
- 8 3. Punitive damages for Plaintiff under NRS 42.005, in excess of \$15,000.00;
- 9 4. Any and all additional relief in Plaintiff's favor as the Court deems just and proper on the
- 10 premises.

11

12 DATED this 21st day of April, 2020.

13 Respectfully submitted,

14 **BIGHORN LAW**

15

16 
JACQUELINE R. BRETELL, ESQ.

17 Nevada Bar No. 12335

18 **MATTHEW B. BECKSTEAD, ESQ.**

19 Nevada Bar No.: 14168

20 716 S. Jones Blvd.

21 Las Vegas, Nevada 89107

22 (702) 333-1111

23 *Attorneys for Plaintiff*

24

25

26

27

28

COPY

NEO

MICHAEL M. DELEE, ESQ.
Nevada Bar No. 011948
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E-Mail: michael@deleelaw.com
Attorney for Bruce Arthur Young

FILED

APR 15 2021

S. R. W.
ESMERALDA COUNTY CLERK

The undersigned does hereby affirm that this document does not contain the social security number of any person.

**FIFTH JUDICIAL DISTRICT COURT
ESMERALDA COUNTY, STATE OF NEVADA**

MATTHEW MORONEY,

Plaintiff,

v.

BRUCE ARTHUR YOUNG,

Defendant.

Case No. : CV-19-5103

Dept. No.: I

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an ORDER GRANTING MOTION TO DISMISS was entered on the 15 day of April, 2021, in the above entitled matter, a copy of which is attached hereto.

DATED this 15 day of April, 2021.

DELEE LAW OFFICES, LLC

By 

MICHAEL M. DELEE

Attorney for Bruce Arthur Young

1 OGM

2 MICHAEL M. DELEE, ESQ.

3 Nevada Bar No. 011948

4 DELEE LAW OFFICES, LLC

5 P.O. Box 96, 18 South Powerline Road

6 Amargosa Valley, Nevada 89020

7 Telephone: (775) 372-1999

8 Facsimile: (775) 372-1234

9 E-Mail: michael@deleelaw.com

10 Attorney for Bruce Arthur Young

11 The undersigned does hereby affirm that this
12 document does not contain the social security
13 number of any person.

14 FIFTH JUDICIAL DISTRICT COURT
15 ESMERALDA COUNTY, STATE OF NEVADA

16 MATTHEW MORONEY,

17 Plaintiff,

18 v.

19 BRUCE ARTHUR YOUNG,

20 Defendant.

Case No. : CV-19-5103

Dept. No.: I

21 ORDER GRANTING MOTION TO DISMISS

22 Defendant Bruce Arthur Young's Motion to Dismiss having been filed on September 1,
23 2020, having been properly noticed, having come before the Court on October 6, 2020 and upon
24 supplemental hearing on November 10, 2020, the Court, having reviewed the pertinent pleadings
25 and relevant papers, having heard the argument of counsel, and good cause appearing orders as
26 follows:
27
28

FILED IN ERROR

Brittani Smith

FILED

FILED IN ERROR

FILED IN ERROR

FILED

APR 15 2021

ESMERALDA COUNTY CLERK

BACKGROUND

Plaintiff Matthew Moroney ("Moroney") filed his Complaint on March 19, 2019, against Defendants Bruce Arthur Young, individually, and Point Mining & Milling, Consolidated, Inc; Does I through X, inclusive (the "Complaint"). The Complaint was never served, but the Amended Complaint was, with Defendant Bruce Arthur Young filing an answer, in proper person, on July 7, 2020. On July 17, exactly 120 days after the filing of the Complaint, Moroney timely filed an Ex-Parte Motion to Enlarge Time For Service of Defendants (the "Ex Parte Motion"). On August 21, 2019, this Court set the Ex-Parte Motion for a hearing on September 3, 2019.

At the hearing on the Ex Parte Motion on September 3, 2019, the Court found that Moroney did not use reasonable efforts to affect service of process by unreasonably delaying and failing to utilize the local Esmeralda County Sherriff to affect service. This Court denied Plaintiff's Ex Parte Motion because of a lack of diligent effort to serve the Defendants and entered a minute order to this effect, which this Court found was sufficient to terminate this case. This Court further finds that a formal, written order was not necessary as to the Ex Parte Motion and that the Court was justified in not entering such an order because the minute order was an administrative, docket management order and there was, at the time of the hearing on the Ex Parte Motion, no other party before the Court.

As mentioned above, Defendant Bruce Arthur Young filed his answer, in proper person, to Moroney's amended complaint on July 7, 2020. Afterwards, on September 1, 2020, exactly 56 days after filing his amended complaint, he filed a motion to dismiss Moroney's amended complaint by and through his attorney of record, Michael M. DeLee, Esq. This Court conducted two hearings, on Defendant Bruce Arthur Young's motion to dismiss on October 6, 2020, and November 10, 2020.

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 THE COURT HEREBY CONCLUDES that under NRCP 4(e)(2) the rules are
3 jurisdictional, explicit and mandatory that an action must be dismissed unless there is an
4 extension of the time to serve:

5 If service of the summons and complaint is not made upon a defendant before the
6 120-day service period — or any extension thereof — expires, the court must
7 dismiss the action, without prejudice, as to that defendant upon motion or upon
8 the court's own order to show cause.

9 NRCP (4)(e)(2) (emphasis added). Defendant Bruce Arthur Young brought his motion to
10 dismiss on September 1, 2020. The Court, acting upon its own previously entered minute order
11 and not relying upon the motion, confirms the dismissal of the action;

12 THE COURT FURTHER CONCLUDES that Nevada law allowed the minute order as an
13 administrative, docket management tool, denying Plaintiff's Ex Parte Motion without the need
14 for a formal, written order.

15 THE COURT FINDS that Moroney did not obtain an extension of time to effectuate
16 service of the original complaint filed on March 19, 2019;

17 THE COURT FURTHER FINDS that its minute order denying Plaintiff's Ex Parte
18 Motion was procedurally adequate to bar Moroney from filing and serving his amended
19 complaint;
20

21 THE COURT FURTHER FINDS that it is required to dismiss the action; THE COURT
22 FURTHER FINDS that Defendant Bruce Arthur Young was not procedurally barred from filing
23 his motion to dismiss Moroney's amended complaint;
24

25 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the
26 Plaintiff's claims set forth in his amended complaint are hereby **DISMISSED**.
27

28 DATED this 09th day of January, 2021.

1 **IT IS SO ORDERED.**

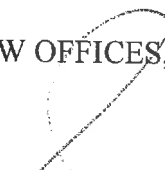
2 
3 _____
 Honorable Judge Kimberly Wanker


4 SUBMITTED BY

 Approved as to form and content:

5 DELEE LAW OFFICES, LLC

 BIG HORN LAW

6 
7 _____
8 Michael M. DeLee, Esq.
9 Nevada State Bar No. 011948
 P.O. Box 96, 18 South Powerline Road
 Amargosa Valley, Nevada 89020
 Attorney for Bruce Arthur Young



 Matthew B. Beckstead, Esq.
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 Attorney for Matthew Moroney