

IN THE SUPREME COURT OF THE STATE OF NEVADA

BETSY L. WHIPPLE, AN INDIVIDUAL AND
AS MAJORITY SHAREHOLDER OF
WHIPPLE CATTLE COMPANY, INC., A
NEVADA CORPORATION,

Plaintiff/Respondent,

vs.

BRET O. WHIPPLE, INDIVIDUALLY AND
AS PRESIDENT AND DIRECTOR OF
WHIPPLE CATTLE COMPANY, INC., A
NEVADA CORPORATION; CODY K.
WHIPPLE, INDIVIDUALLY AND AS
TREASURER OF WHIPPLE CATTLE
COMPANY, INC., A NEVADA
CORPORATION; KIRT R. WHIPPLE,
INDIVIDUALLY AND AS SECRETARY OF
WHIPPLE CATTLE COMPANY, INC., A
NEVADA CORPORATION; JANE E.
WHIPPLE, INDIVIDUALLY AND AS
DIRECTOR OF WHIPPLE CATTLE
COMPANY, INC., A NEVADA
CORPORATION; JANE WHIPPLE, TRUSTEE
OF JANE WHIPPLE FAMILY TRUST AND AS
MANAGING MEMBER OF KENT WHIPPLE
RANCH LLC; JANE WHIPPLE FAMILY
TRUST; KENT WHIPPLE RANCH LLC.;
KATHRYN WETZEL, INDIVIDUALLY,
WHIPPLE CATTLE COMPANY, INC., A
NEVADA CORPORATION,

Defendants/Appellants.

CASE NO. 82964

Related to 82994

DISTRICT COURT NO. A-19-790929-B

Electronically Filed
Feb 21 2022 09:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF
RESPONDENT'S MOTION TO
DISMISS APPEAL FOR LACK OF
JURISDICTION**

HOWARD AND HOWARD ATTORNEYS PLLC

Cami M. Perkins, Esq.
Nevada Bar No. 9149
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Tel: (702) 257-1483
Fax: (702) 567-1568

Plaintiff/Respondent Betsy Whipple (“Respondent”) submits this Reply in Support of her Motion to dismiss appeal for lack of jurisdiction. In support thereof, Respondent states as follows.

In her Motion, Respondent raised two issues. First, this appeal is untimely because Appellants sought to appeal from an order denying reconsideration of an order granting reconsideration. Second, Respondent argued that this Court lacks jurisdiction at this time over an appeal of an order assigning this case to the business court. Appellants ignore this second issue, thus tacitly agreeing that they have no basis to challenge that Order at this time. Accordingly, any attempt by Appellants now to challenge the business court assignment must be rejected for lack of jurisdiction.

As to the Appellants’ attempt to appeal pursuant to NRAP 3A(b)(6) purporting to challenge an order refusing to change the place of trial, the appeal is untimely. The district court entered an initial order granting a change of venue. Under NRAP 3A(b)(6), that order was immediately appealable, provided a notice of appeal was filed within 30 days. Rather than appeal, Respondent filed a timely motion for reconsideration, identifying clear errors made by the district court. Under relevant precedent, that timely motion for reconsideration was itself directed at an *appealable* order and tolled the time to appeal. Eventually, the district court granted reconsideration, reversing its prior order granting a change of venue. At that point, the appellate clock again commenced ticking, permitting an appeal under NRAP 3A(b)(6) within 30 days.

Rather than appeal, however, Appellants moved for reconsideration of an order granting reconsideration. In other words, Appellants sought reconsideration of a *non-appealable* order. Upon denial of their motion for reconsideration of the non-appealable reconsideration order, Appellants then filed multiple notices of appeal. The notices were untimely. Under applicable precedent, this Court lacks jurisdiction to hear this appeal, and the appeal must be dismissed.

Appellants characterize the above as “absurd.” (Response, p. 6). The Rules governing appellate jurisdiction are not “absurd,” they are fundamental to an appellate court’s ability to hear a dispute. *Nelson v. Nelson*, 136 Nev. Adv. Op. 36, 466 P.3d 1249, 1251 (2020) (quoting *State v. State Bank & Tr. Co.*, 36 Nev. 526, 538, 137 P. 400, 403 (1913)) (“No order of the lower court, no sanction, or permit, can authorize this court to take cognizance of a matter on appeal unless the right of appeal clearly appears as a matter of law”).

Without any supporting case law (because there is none), Appellants insist that when a trial court first grants a motion but later changes its mind on reconsideration, another motion for reconsideration can be filed and then an appeal taken from an order denying reconsideration of an order granting reconsideration. If anything is “absurd” it is that argument. Even stepping outside the context of venue, there is no case law, statute, or Court Rule that even permits moving for reconsideration of an order on reconsideration, otherwise the cycle would never end. A party can simply keep moving for reconsideration of reconsideration, endlessly tolling the time to appeal. Nothing supports such an argument.

In reality, the Rules are crystal clear (not just on venue). A party files a motion; the trial court rules; if that order is appealable, the 30-day appeal clock commences; any party may timely move for reconsideration; regardless of whether reconsideration is granted or denied, upon entry of an order on reconsideration, the 30-day clock commences for appeal of the *appealable underlying order* (not the reconsideration order itself). Here, an order was entered granting a change of venue; a timely motion for reconsideration was filed; the Court granted reconsideration; at that point, Appellants had 30 days to appeal; they failed to do so, and this Court lacks jurisdiction under NRAP 3A(b)(6).

WHEREFORE, for reasons set forth herein and more fully in Respondent's Motion, this case as well as the related case number 82994 should be dismissed for lack of jurisdiction.

DATED: February 21, 2022.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Cami M. Perkins

Cami M Perkins, Esq.

Nevada Bar No. 9149

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of **RESPONDENT’S REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION** was served by electronic filing via the Supreme Court’s eFlex electronic filing system.

DATED: February 21, 2022.

/s/ Joshua Daor
An employee of **Howard & Howard Attorneys, PLLC**