

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANEA CALKINS,

Appellant,

vs.

WAYLON HUBER,

Respondent.

FILED

OCT 15 2021

ELIZABETH M. BITTNER
CLERK
BY *[Signature]* H.A. BROWN
DEPUTY CLERK
SUPREME COURT

Case No. 83053

OPPOSITION TO MOTION TO DISMISS

COMES NOW, Appellant, JANEA CALKINS, by and through her Attorney of Record, ELIZABETH M. BITTNER, ESQ., and hereby respectfully submits this Opposition to Motion to Dismiss. This Opposition is made and based upon all the pleadings, papers and documents filed heretobefore, and upon the Points and Authorities, all of which are attached hereupon and by this reference incorporated herein.

DATED this 2nd day of October, 2021.
BITTNER LEGAL, LLC
/s/ Elizabeth M. Bittner
ELIZABETH M. BITTNER, ESQ. (NSB 9329)
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Attorney for JANEA CALKINS

POINTS AND AUTHORITIES

Respondent filed a Motion to Dismiss, asserting that the appeal should be dismissed because counsel for Appellant did not file a Request for Rough Draft Transcript with the District Court as directed by the August 3, 2021 *Order* which set forth that Appellant had 14 days to file a transcript request. Respondent does not state how he is actually prejudiced by this technical oversight.

NRAP 3E(c)(2)(A) requires filing and serving a rough draft transcript request form with the district court “When a transcript is necessary for an appeal...” (emphasis added). The rule later states, “If no transcript is to be requested, appellant shall file with the clerk of the Supreme Court ... to that effect...” Respondent is correct that this was not done. This was an oversight by counsel, as there was no hearing from which the Order was appealed. Counsel did order a JAVS recording of a previous hearing in the District Court matter to include in the record for the Court’s reference, but it was not the hearing from which the Order was appealed. The JAVS recording was sent to a court reporting service for an official transcript. Until the Court reviews this matter, counsel cannot conclude whether that transcript is necessary, merely helpful, or just part of the record prior to the order being considered and therefore not directly useful. Unfortunately, this is often the case, and the scope

1 and context of the District Court record for an appeal is subject to the Court's
2 final opinion of relevance.

3 As the Court may see from the docket and Appendix filed herein, there
4 is a procedurally confusing court record from the District Court. The amount of
5 time dedicated by Appellant's counsel to obtaining file-stamped copies of
6 pleadings filed with the District Court to create the Appendix required much
7 interaction with District Court staff, multiple requests, mailings, payments,
8 etc., and diverted attention from the technical requirement to file the transcript
9 request. This was entirely counsel's deficiency. Counsel actually did prepare a
10 Request for Rough Draft Transcript, but then did not file it as the rule seemed
11 to be postured conditionally upon "when a transcript is necessary." While
12 pondering if it was necessary and the complexity of the record, the issue was
13 lost in the cascade of records being obtained from the District Court. In an
14 abundance of caution, counsel will file a Request for Rough Draft Transcript
15 with the District Court for the JAVS that was already requested and
16 transcribed.
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18 Counsel asserts that this technical error can easily be corrected. This
19 technical oversight should not prejudice consideration of the merits of the case.
20 The judicial policy favoring decision on the merits is heightened in domestic
21 relations cases. *Dagher v. Dagher*, 103 Nev. 26, 731 P.2d 1329 (1987). As
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1 Respondent has not asserted any way in which this actually prejudiced him,
2 Appellant requests that his Motion to Dismiss be denied.

3 **WHEREFORE**, Appellant, JANEAL CALKINS, by and through her
4 Attorney of Record, ELIZABETH M. BITTNER, ESQ., hereby respectfully
5 requests that the Motion to Dismiss be denied, and for any other order that this
6 court deems appropriate under the circumstances.
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8

9 DATED this 2nd day of October, 2021.
10 BITTNER LEGAL, LLC
11 /s/ Elizabeth M. Bittner
12 ELIZABETH M. BITTNER, ESQ. (NSB 9329)
13 1225 Westfield Ave., Suite #7, Reno, NV 89509
14 TEL: (775) 357-8733, FAX: (775) 357-8926
15 elizabeth@bittnerlegal.com
16 Attorney for JANEAL CALKINS
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AFFIRMATION

Pursuant to NRS 239B.030 the undersigned affirms that the preceding document does not contain the personal information of any person as defined by NRS 603A.040.

CERTIFICATE OF SERVICE

I certify that I am an employee working for BITTNER LEGAL, LLC, and am a citizen of the United States, over twenty-one years of age, not a party to the within action. My business address is 1225 Westfield Ave., Suite #7, Reno, NV 89509.

On the 4th day of October, 2021, I caused to be delivered a true and correct copy of the within document via

X U.S. First Class Mail, deposited for mailing with sufficient postage pre-paid, addressed as follows:

WAYLON HUBER
4151 Two Rock Drive
Winnemucca, NV 89445

/s/ Elizabeth M. Bittner
ELIZABETH M. BITTNER