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Case No. 83053

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POINTS AND AUTHORITIES

Respondent filed a Motion to Dismiss on September 23, 2021, asserting that the underlying 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.
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19 In an abundance of caution and in reaction to the Motion to Dismiss,
20 counsel filed a Request for Rough Draft Transcript with the District Court on
21 October 5, 2021, for the JAVS that was already requested and transcribed. See
22 Exhibit "1" attached hereto. When counsel filed Notice of the same with this
23 Court on October 11, 2021, the Court issued a Notice of Rejection, stating that
24 due to the untimely filing of the Notice, a request for extension of time would
25 be required.
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1 Counsel asserts that this technical error has been corrected. This
2 technical oversight should not prejudice consideration of the merits of the case.
3 The judicial policy favoring decision on the merits is heightened in domestic
4 relations cases. *Dagher v. Dagher*, 103 Nev. 26, 731 P.2d 1329 (1987).
5

6 **WHEREFORE**, Appellant, JANEAL CALKINS, by and through her
7 Attorney of Record, ELIZABETH M. BITTNER, ESQ., hereby respectfully
8 requests that the Court grant leave for Appellant to file the Rough Draft
9 Transcript Request Form late, and for any other order that this court deems
10 appropriate under the circumstances.
11
12

13 DATED this 15th day of October, 2021.
14 BITTNER LEGAL, LLC
15 /s/ Elizabeth M. Bittner
16 ELIZABETH M. BITTNER, ESQ. (NSB 9329)
17 1225 Westfield Ave., Suite #7, Reno, NV 89509
18 TEL: (775) 357-8733, FAX: (775) 357-8926
19 elizabeth@bittnerlegal.com
20 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 15th 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 prepaid, addressed as follows:

WAYLON HUBER
4151 Two Rock Drive
Winnemucca, NV 89445

/s/ Elizabeth M. Bittner
ELIZABETH M. BITTNER

EXHIBIT “1”

EXHIBIT “1”

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

FILED

2021 OCT -5 PM 1:02

TAMARA B. BAKER
DIST. COURT CLERK

2 JANEAL CALKINS,

3 Appellant,

4 vs.

5 WAYLON HUBER,

6 Respondent,

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) Supreme Court No. 83053

) District Court Case No. CV 0020464
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8
9 **REQUEST FOR ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS**

10 TO: SUNSHINE LITIGATION SERVICES

11 COMES NOW, Appellant, JANEAL CALKINS, by and through his attorney
12 of record, ELIZABETH M. BITTNER, ESQ., and hereby requests preparation of a
13 rough draft transcript of proceedings before the district court, as follows:

14 **Judge of officer hearing the proceeding:** Hon. Michael Montero

15 **Dates of proceedings for which rough draft transcripts are being**
16 **requested:** the July 15, 2020 hearing.

17 **Specific portions of the transcript being requested:** the entirety of the
18 July 15, 2020 hearing.


19 **Number of copies required:** One

20 I hereby certify that on the 4th day of August, 2021, I ordered the transcripts

1 listed above from the court reporter named above, and no deposit was required.

2 Appellant obtained a OneDrive link of the zoom video of the trial directly
3 from the Humboldt County Court Clerk and provided the same to Sunshine
4 Litigation Services for a rough draft transcription. That transcription was
5 completed by Sunshine and provided to counsel for Appellant on approximately
6 August 12, 2021.

7 DATED this 2 day of October, 2021.
8 BITTNER LEGAL, LLC

9 
10 ELIZABETH M. BITTNER, ESQ. (NSB #9329)
11 1225 Westfield Ave., Suite 7
12 Reno, NV 89509
13 Tel (775) 357-8733
14 Attorney for Appellant
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19
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1 **CERTIFICATE OF SERVICE**

2 On the 4 day of October, 2021, I caused to be delivered a true and
3 correct copy of the within document addressed as follows:

4 X Via Hand Delivery (Reno Carson Messenger Service) to

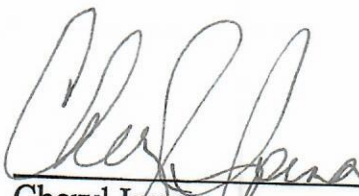
5 SUNSHINE LITIGATION
6 151 COUNTRY ESTATES CIRCLE
7 RENO, NV 89511

Via Reno Carson Messenger Service

8 X Via U.S. First Class Mail, deposited for mailing with sufficient postage
pre-paid to

9 WAYLON HUBER
10 4151 TWO ROCK DRIVE
WINNEMUCCA, NV 89445

Via U.S. Mail

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14 Cheryl Ipema
15 Paralegal to Elizabeth M. Bittner
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