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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

**IN THE MATTER OF THE ESTATE
OF JACK P. SLOVAK, A/K/A JOHN
PAUL SLOVAK, JR. AND JOHN
PAUL SLOVAK, DECEASED.**

Case No. 83085

TYLER SLOVAK,
Appellant,

v.

LYNN VALERIE SLOVAK,
Respondent.

RESPONDENT'S MOTION TO DISMISS THE APPEAL

Ms. Lynn Valerie Wheeler, formerly known as Lynn Valerie Slovak ("Ms. Slovak"), respectfully moves this Court for an order dismissing Tyler Slovak's appeal pursuant to NRAP 31(d)(1). This Motion is based upon the following Memorandum of Points & Authorities, the Exhibits

attached to this Motion, any oral argument this Court wishes to entertain on the Motion, and the papers and orders on file before the Court in this appeal.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Tyler Slovak appealed a summary judgment order dismissing his Will Contest Claim in the District Court on June 17, 2021. *See* Notice of Appeal attached as **Exhibit 1**. The District Court dismissed Tyler Slovak's Will Contest for want of prosecution and failure to follow court orders requiring Tyler Slovak to file a more definite statement in support of his claim. *See* May 18, 2021 District Court Order attached as **Exhibit 2**.

Similar to Tyler Slovak's systemic failure to prosecute his claim at the District Court and comply with the District Court's Orders (*See Exhibit 2*); here, Tyler Slovak failed to timely file his opening brief as required by this Court's August 5, 2021, Order. Therefore, Ms. Slovak moves to dismiss Tyler Slovak's Appeal pursuant to NRAP 31(d)(1) because of Tyler Slovak's repetitive failures to prosecute his claim at the District Court, and now before this Court.

II. RELEVANT CASE PROCEDURE

Tyler Slovak filed his appeal on June 17, 2021. *See Exhibit 1.* The Court ordered this matter into the Settlement Program. The case was removed from the Settlement Program because Tyler Slovak, by and through Counsel, was non-communicative with the Settlement Conference Judge.

Once the Court removed this case from the Settlement Program, the Court ordered Tyler Slovak to file his opening brief 90 days from August 5, 2021. *See* August 5, 2021 Order of the Court. 90 days from August 5, 2021 was November 3, 2021. Tyler Slovak did not file his opening brief on November 3, 2021 as ordered by the Court. Tyler Slovak did not request an extension of time to file his opening brief. *See* Docket. The Court has not granted Tyler Slovak additional time to file his opening brief. *Id.* Therefore, Tyler Slovak has not timely filed his opening brief with the Court in compliance with the Court's August 5, 2021 Order.

III. RELEVANT FACTS

Ms. Slovak filed a petition to probate the Will of Jack Slovak, the Decedent, on August 10, 2017. *See* the District Court's May 18, 2021

Order attached hereto as **Exhibit 2**. Ms. Slovak lodged Jack Slovak's Will with the Court on October 11, 2017. *Id.* The Court admitted the Will to probate via Court Order on October 12, 2017, thereby triggering the 3-month period of limitations codified in NRS 137.080 to contest the Will. *Id.*

Tyler Slovak did not timely contest the Will within 3 months of October 12, 2017, as required by NRS 137.080. *Id.* No other interested person in the Estate of Jack P. Slovak filed a contest to the Will within three months of October 12, 2017, as required by NRS 137.080. *Id.*

Subsequent to the NRS 137.080 period of limitations, Tyler Slovak filed a contest to the Will on February 12, 2019, alleging Ms. Slovak committed extrinsic fraud, thereby rendering the period of limitations in NRS 137.080 inapplicable to his Will Contest. *Id.* Ms. Slovak moved to dismiss Tyler Slovak's contest of the Will. *Id.* The District Court did not dismiss the Will Contest but, instead, required Tyler Slovak file a more definite statement substantiating his allegations of extrinsic fraud against Ms. Slovak in order to overcome NRS 137.080 time barring his claim. *Id.* The District Court permitted Tyler Slovak to file his more

definite statement within 30 days of the District Court's October 1, 2019 Pretrial Case Management Order. *Id.*

Tyler Slovak did not file the Court-ordered more definite statement within 30 days of the District Court's October 1, 2019 Order. *Id.* Rather, Tyler Slovak requested an extension of time to file his more definite statement. *Id.* The District Court granted Tyler Slovak's request for additional time to file his more definite statement, and permitted Tyler Slovak until December 30, 2019 to file the more definite statement. *Id.*

Once again, Tyler Slovak did not file the Court-ordered more definite statement by December 30, 2019, and requested additional time to file said statement a second time. *Id.* The District Court again granted Tyler Slovak's second request for additional time to file his more definite statement and established a filing deadline of March 31, 2020. *Id.* Tyler Slovak did not file the Court-ordered more definite statement by March 31, 2020. In fact, Tyler Slovak *never* filed a more definite statement regarding his allegations of extrinsic fraud against Lynn Slovak as ordered by the District Court, despite being granted multiple continuances to comply with the District Court's Order. *Id.*

In the midst of failing to file a more definite statement as ordered by the Court, Tyler Slovak did not perform any discovery in furtherance of his Will Contest during the two-year period since he initiated his Will contest on February 12, 2019. *Id.* Specifically, Tyler Slovak did not take any depositions, serve interrogatories, serve requests for admissions, serve requests for production, or produce any evidence to substantiate his allegations of extrinsic fraud against Lynn Slovak following the District Court's Order to provide a more definite statement detailing the basis of his claim. *Id.* Thus, Tyler Slovak engaged in no evidentiary activity in prosecution of his claim after filing his Will Contest, in addition to violating the District Court's Order to provide a more definite statement substantiating his vague allegations of extrinsic fraud. *Id.*

In light of the aforementioned facts, Ms. Slovak moved for summary judgment against Tyler Slovak's Will Contest. *Id.* The District Court granted summary judgment against Tyler Slovak's Will Contest pursuant to NRCP 41 because Tyler Slovak failed to bring his Will Contest to trial within 2 years of filing the action. *Id.* Additionally, and as a separate basis for summary judgment, the Court dismissed Tyler Slovak's Will Contest because he failed to plead his allegations of

extrinsic fraud with the requisite particularity, as well as failed to file a more definite statement substantiating his allegations as ordered by the District Court. *Id.* Additionally, Tyler Slovak failed to oppose the Motion for Summary Judgment. *Id.*

Consequently, Tyler Slovak's Will Contest was untimely and filed after the NRS 137.080 period of limitations. Despite being untimely, the District Court did not dismiss the Will Contest on the condition Tyler Slovak provided a more definite statement substantiating his allegations of fraud. Tyler Slovak never filed the Court-ordered more definite statement, nor did he prosecute his claim in any fashion for over two years since initiating the action. Like in the District Court where Tyler Slovak's Will Contest was dismissed for want of prosecution and failure to follow the District Court's Orders; here, Tyler Slovak has now failed to timely file his opening brief in compliance with the Court's August 5, 2021 Order. Thus, Tyler Slovak's appeal should be dismissed as part of a continuing pattern of violating court orders to file documents in furtherance of his claim.

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IV. LAW & ARGUMENT

NRAP 31(d)(1) states "[i]f an appellant fails to file an opening brief or appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion." In other words, dismissal of an appeal is an appropriate remedy for appellant's failure to comply with the rules of procedure regarding appellate briefs. *Huckabay Props. v. NC Auto Parts*, 130 Nev. 196, 205, 322 P.3d 429, 434 (2014) citing *Kushner v. Winterthur Swiss Ins. Co.*, 620 F.2d 404, 407 (3d Cir. 1980). In *Huckabay*, this Court cited the *Kushner* Opinion to say compliance with the briefing and appendix rules of appellate procedure are of significant import. *Id.* at 435. Indeed, the Court noted the rules of appellate procedure were enacted to enable the court to effectively process its increasing caseload. *Id.* The Court thus concluded it would not expend valuable judicial time in performing the work of those who fail comply with the briefing rules, and who, by failing to abide by appellate rules, hinder the court's efforts to provide speedy and just dispositions of appeals for every litigant. *Id.*, see also *Barber v. Am. Sec. Bank*, 841 F.2d 1159, 1162, (D.C.Cir.1988) (dismissing appeal based on "counsel's failure to file a brief on time, his

failure to file a motion for an extension ten days prior to the date his brief was due, his failure to seek leave to file his time enlargement motion late, and the clearly inadequate grounds he eventually offered for the late filings").

Here, Ms. Slovak respectfully requests the Court dismiss Tyler Slovak's appeal because he repeatedly failed to comply with filing deadlines and court orders in both the District Court and this Appellate Court. Specifically, Tyler Slovak did not file his Will Contest within the period of limitations codified in NRS 137.080. He requested the Court excuse his untimely Will Contest because he alleged extrinsic fraud against Ms. Slovak in his filing. As a condition to proceeding with his untimely Will Contest alleging extrinsic fraud, the District Court required Tyler Slovak to file a more definite statement detailing his allegations of extrinsic fraud. *See Exhibit 2*. After being granted two separate extensions of time to file his more definite statement, Tyler Slovak violated the District Court's Order by failing to file a more definite statement substantiating his fraud allegations. *Id.* Additionally, Tyler Slovak did nothing to bring his action to trial within two years, establishing a separate basis for dismissal of his claim under NRCP 41.

Id. Ms. Slovak then moved for summary judgment against Tyler Slovak's Will Contest based on his failure to prosecute the action for over two years, as well as his failure to file the more definite statement ordered by the District Court as a condition precedent to prosecuting his Will Contest filed long after the three month period of limitations codified in NRS 137.080. Tyler Slovak did not oppose the Motion for Summary Judgment, however, he did appeal the District Court Order granting summary judgment against him.

On appeal, this Court ordered Tyler Slovak to file his Opening Brief by November 3, 2021. *See* August 5, 2021 Order. Tyler Slovak failed to file his opening brief by November 3, 2021 as ordered by the Court. *See* Docket. Tyler Slovak did not file a motion to extend the time to file his opening brief. *Id.* Tyler Slovak did not telephonically request to extend the deadline to file his opening brief. *Id.* Thus, Tyler Slovak is in violation of the briefing deadline ordered by this Court, and has not obtained or requested any extension of time to file his opening brief.

Furthermore, if this were Tyler Slovak's first failure to comply with a court-ordered filing, perhaps leniency would be appropriate. Regrettably though, this is not Tyler Slovak's first failure to comply with

Court Orders requiring him to file documents in prosecution of his claim. Instead, the District Court dismissed his entire Will Contest for his repeated failure to ever file a more definite statement ordered by the District Court, as well as his failure to prosecute his claim on any level other than filing the action for over two years since its inception. Thus, Tyler Slovak's failure to file his opening brief and corresponding appendix is yet another violation of a court ordered filing deadline in a long line of such violations stemming back to the District Court. In light of these unique circumstances, the remedy of dismissal is appropriate pursuant to NRAP 31(d)(1).

V. CONCLUSION & REQUESTED RELIEF

The Estate respectfully requests the Court dismiss Tyler Slovak's appeal pursuant to NRAP 31(d)(1).

DATED this 16th day of November, 2021.

By: /s/ Patrick R. Millsap.

Patrick R. Millsap, Esq.

Nevada Bar No.: 12043

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Attorneys for the Personal Representative

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was deposited for mailing via the United States Postal Service with postage prepaid and mailing with the United States Postal Service in Reno, Nevada, addressed as follows:

Tyler P. Slovak
c/o Tory M. Pankopf, Esq.
Tory M. Pankopf LTD
748 S. Meadows Parkway, Suite 244
Reno, Nevada 89521

The foregoing document was also served upon Tyler P. Slovak through his counsel of record via the Nevada Supreme Court's e-filing system.

DATED this 16th day of November, 2021.

By: /s/ Caroline Carter.
Employee of Wallace & Millsap

LIST OF EXHIBITS

Exhibit 1 - Notice of Appeal

Exhibit 2 - May 18, 2021 District Court Order Granting Summary
Judgment

Exhibit 1

Exhibit 1

1 TORY M. PANKOPF (SBN 7477)
2 **TORY M PANKOPF, LTD**
3 748 S Meadows Parkway, Suite 244
4 Reno, Nevada 89521
5 Telephone: (775) 384-6956
6 tory@pankopfuslaw.com
7 Attorney for Tyler Slovak

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11
12 In the Matter of the Estate of:

13 JACK P SLOVAK, also known as JOHN
14 PAUL SLOVAK JR, and JOHN PAUL
15 SLOVAK,

16 Deceased.

CASE NO: PR17-00458
DEPT NO: PR

17 **NOTICE OF APPEAL**

18 PLEASE TAKE NOTICE that TYLER SLOVAK, by and through his attorney of record,
19 Tory M. Pankopf, of the Law Offices of Tory M. Pankopf, Ltd., appeal the May 18, 2021, order
20 granting summary judgment entered in the above-entitled Court and all other orders that are
21 separately appealable.

22 **AFFIRMATION PRUSUANT TO NRS 239B.030**

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

25 DATED on this 17th day of June 2021.

26 **TORY M. PANKOPF, LTD.**

27 s/ TORY M. PANKOPF
28 TORY M. PANKOPF

Exhibit 2

Exhibit 2

1 **CODE:**

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3
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

5 **IN AND FOR THE COUNTY OF WASHOE**

6
7 **IN THE MATTER OF THE ESTATE**

Case No.: PR17-00458

8 **OF**

Dept. No.: PR

9 **JACK P SLOVAK, also known as JOHN**
10 **PAUL SLOVAK JR, and JOHN PAUL**
11 **SLOVAK.**

12 **ORDER GRANTING SUMMARY JUDGMENT**

13 Ms. Lynn Slovak filed a Petition for Probate of the Will on August 10, 2017. Ms.
14 Slovak lodged a Will with the Court on October 11, 2017. The Court admitted the Will to
15 probate via Court Order on October 12, 2017, thereby triggering the 3-month period of
16 limitations codified in NRS 137.080 to contest the Will lodged with the Court.

17 Tyler Slovak did not contest the Will within 3 months of October 12, 2017 as
18 required by NRS 137.080. No other interested person in the Estate of Jack P. Slovak
19 filed a contest to the Will within three months of October 12, 2017 as required by NRS
20 137.080.

21 Subsequent to the NRS 137.080 period of limitations, Tyler Slovak filed a contest
22 to the Will on February 12, 2019 alleging fraud against Ms. Slovak. However, Tyler Slovak
23 admits he was a co-administrator of Jack Slovak's New Zealand Estate. See Tyler
24 Slovak's Objection filed February 12, 2019, p. 6, Ins. 17-19. Tyler Slovak further admits
25 he disclaimed his right to serve as Executor of this Probate Action on May 22, 2017. See
26 Tyler Slovak's Objection filed February 12, 2019, p. 7, Ins. 26-27. Despite participating
27 as a co-administrator of Jack Slovak's Estate in New Zealand, and expressly disclaiming
28 his right to serve as Co-Executor of this Estate Proceeding, Tyler Slovak alleged Ms.

1 Slovak committed extrinsic fraud, thereby rendering the period of limitations in NRS
2 137.080 inapplicable to his Will contest.

3 Ms. Slovak moved to dismiss Tyler Slovak's contest of the Will based on the
4 allegation of extrinsic fraud. The Court did not dismiss the Will contest but, instead,
5 required Tyler Slovak to file a more definite statement regarding his fraud allegations
6 against Ms. Slovak. The Court permitted Tyler Slovak to file his more definite statement
7 within 30 days of the Court's October 1, 2019 Pretrial Case Management Order.

8 Tyler Slovak did not file the Court-Ordered more definite statement within 30 days
9 of the Court's October 1, 219 Order. Rather, Tyler Slovak requested an extension of time
10 to file his more definite statement. The Court granted Tyler Slovak's request for additional
11 time to file his more definite statement, and permitted Tyler Slovak until December 30,
12 2019 to file his more definite statement.

13 Once again, Tyler Slovak did not file the Court-Ordered more definite statement by
14 December 30, 2019, and requested additional time to file the more definite statement.
15 The Court granted Tyler Slovak's second request for additional time to file his more
16 definite statement and set a filing deadline of March 31, 2020. Tyler Slovak never filed a
17 more definite statement regarding his allegations of extrinsic fraud against Lynn Slovak.

18 It has now been more than 2 years since Tyler Slovak initiated his Will contest
19 against Lynn Slovak on the date of February 12, 2019. Tyler Slovak has not performed
20 any discovery in furtherance of his Will contest claim during the two-year period since he
21 initiated his Will contest on February 12, 2019. Specifically, Tyler Slovak has taken no
22 depositions, served no interrogatories, served no requests for admissions, served no
23 requests for production, and produced no evidence to substantiate his allegations of
24 extrinsic fraud against Lynn Slovak. In other words, Tyler Slovak engaged in no
25 evidentiary activity in prosecution of his claim, in addition to violating the Court's order to
26 provide a more definite statement substantiating his allegations of fraud.

27 In light of these undisputed facts, Ms. Slovak moved for summary judgment against
28 Tyler Slovak and in her favor holding the Will lodged with the Court is valid and operable

1 because no interested person timely contested the Will's validity in accordance with the
2 applicable statute of limitations codified in NRS 137.080. Ms. Slovak's summary
3 judgment motion also sought dismissal of Tyler Slovak's Will contest based on the two-
4 year period of limitations for Tyler Slovak to bring his claim to trial codified in NRCP
5 41(e)(2)(A). The Motion was served upon Tyler Slovak at the address of 101 Tremaine
6 Ave., Lot 7 DP, Palmerston North 493664, New Zealand, the address Tyler Slovak
7 identified as his own in documents he filed with the Court in proper person. Tyler Slovak
8 did not oppose the Motion for Summary Judgment. No other interested person in the
9 Estate opposed the Motion for Summary Judgment.

10 There being no opposition to the Motion for Summary Judgment, and good cause
11 appearing to grant the Motion based on Tyler Slovak's failure to bring his Will contest to
12 trial within 2 years in accordance with NRCP 41(e)(2)(A), as well as, his failure to plead
13 allegations of extrinsic fraud with the particularity required by NRCP 9(b) in the absence
14 of the Court-ordered more definite statement, the Court orders as follows:

- 15 1. Lynn Slovak's Motion for Summary Judgment is **GRANTED**.
16 2. The Will lodged with the Court is operable and enforceable because no interested
17 person in the Estate has contested the Will in accordance with Nevada law.

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19 **IT IS SO ORDERED.**

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21 **DATED** this 17th day of May, 2021

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23 By: _____

24 The Honorable Lynne K. Simons
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F. MCCLURE WALLACE, ESQ.
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