

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

v.

DANIEL S. SIMON, AND THE
LAW OFFICE OF DANIEL S.
SIMON, A PROFESSIONAL
CORPORATION,

Respondents.

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Sep 19 2021 04:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case Nos. 83258

District Court Case Nos.
A-16-738444-C and
A-18-767242-C

**APPELLANTS' RESPONSE TO
ORDER TO SHOW CAUSE**

In response to the Court's August 20, 2021 Order to Show Cause why the portion of the above-referenced appeal challenging a district court order denying a motion for an order to release the client funds in excess of the judgment and require the production of the complete file (the "file/fund order"), Appellants offer the following response. The file/fund order is a post-judgment order that is part and parcel of the district court's final order on remand refusing to adhere to the mandate and final judgment entered by this Court, defiance of which leads to this second

appeal. This special order affects the rights of a party to the first appeal, and is therefore appealable as a special order under NRAP 3A(b)(8).¹

NRAP 41(a)(2) provides that "A certified copy of the judgment and opinion of the court, if any, and any direction as to costs shall be included with the remittitur." This Court's April 13, 2021 remittitur and mandate affirming, limitedly vacating, and remanding solely on vacated issues constituted the judgment of the Supreme Court. When the district court refused to do as the Court directed as to the limited vacatur/remand and refused to release the money not tied up by the otherwise final judgment, that order may be reviewed on appeal. *See In re Sanford Fork & Tool Co.*, 160U.S. 247, 255-56 (1895) (a mandate may be enforced through a second appeal or mandamus);

As the Court is aware, this second appeal challenges the district court's refusal to follow the mandate the Court issued in the first appeal. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (Table) (Nev. 2020) (Case Nos. 77678/78176) (unpublished disposition). The first appeal challenged

¹ Appellants' counsel apologizes for the error in not also properly identifying NRAP 3A(b)(8) in the docketing statement. An amended docketing statement has been filed correcting pages 8-9 to refer to NRAP 3A(b)(8).

the district court's dismissal of the substantive claims asserted by the Edgeworths and the adjudication of Simon's excessive attorney's lien that claimed nearly \$2M was due to in attorney fees, but which the district court determined was valid for less than \$500,000.00. This Court affirmed the dismissal of the substantive claims and the award of costs related to one of the substantive claims, but with respect to a fee award and the adjudication of the excessive lien, it vacated in part, and remanded with instruction that the district court articulate the basis for the attorney fee award and the amount awarded on the lien based on quantum meruit and explain the reasonableness of the awards. Rather than follow this instruction with respect to the quantum meruit award, the district court simply reiterated the same rationale it previously offered to justify the award, which this Court had already reviewed and rejected.

Consistent with the statutory attorney lien provision and intent that attorney liens be promptly adjudicated, appellants expected that the funds withheld from their settlement in excess of the district court's judgment would be released as soon as lien was adjudicated by the district court. NRS 18.015(6) ("after 5 days notice to all interested parties, [the court shall] adjudicate the rights of the attorney, client . . . and enforce the lien."). This

did not happen in 2018 when the initial lien adjudication took place, as Respondent maintained it could hold hostage the full amount of his lien claim, despite the district court's adjudication of the lien for a significantly lesser amount, nor did it happen after this Court entered its mandate affirming the award but returning the matter to the district court for an explanation of basis and reasonableness of the amount awarded. Other than giving effect to the mandate and releasing the file and funds in excess of the judgment, nothing more remains for the district court to do. The district court order refusing to give effect to the mandate and the related post-judgment order refusing to release the client file and funds in excess of that judgment affect the rights of the parties to the first appeal to funds in excess of the judgment entered. The order refusing the release of funds in excess of the amounts determined to be due by the court arises out of the final judgment, and can therefore be reviewed by this Court as a special order after final judgment under NRAP 3A(b)(8); *see Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

Because these two orders are intertwined and the file/fund order is a special post-judgment order after the district court's final order on remand, Appellants believed they were properly raised together in this second

appeal to enforce the Court's prior mandate. See *In re Sanford Fork & Tool Co.*, 160 U.S. at 255-56 (a mandate may be enforced through an appeal of the judgment issued on remand or mandamus, but matters not considered in the first appeal must be raised by appeal); see *Gumm v. Mainor*, 118 at 920, 59 P.3d at 1225.

Appellants will file a petition for extraordinary writ raising these important issues within 10 days if the Court declines to proceed with this appeal under the Special Order provision in NRAP 3A(b)(8). The issues involved in the special order denying the release of the excess funds and file are of public importance and novel, warranting review by this Court.

	<p>MORRIS LAW GROUP</p> <p>By: <u>/s/ STEVE MORRIS</u> Steve Morris, Bar No. 1543 Rosa Solis-Rainey, No. 7921 801 S. Rancho Drive, Ste B4 Las Vegas, Nevada 89106</p> <p><i>Attorneys for Appellants Edgeworth Family Trust; American Grating, LLC</i></p>
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25 and NEFR 9(f), I certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

TO:

James R. Christensen, Bar No. 3861
601 S. 6th Street
Las Vegas, NV 89101

Peter S. Christiansen, Bar No. 5254
Kendelea L. Works, Bar No. 9611
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Ste 104
Las Vegas, NV 89101

Attorneys for Respondent Law Office of Daniel S. Simon, A Professional Corporation; and Daniel S. Simon

Dated this 19th day of September, 2021.

/s/ GABRIELA MERCADO