

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD DOUGLAS EBY,

Appellant,

vs.

JOHNSTON LAW OFFICE, P.C.;
BRAD M. JOHNSTON; AND
LEANNE E. SCHUMANN,

Respondents.

Supreme Court No. 83299¹

District Court Case No: 20-cv-01031

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RESPONDENTS' ANSWERING BRIEF

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¹ Related Supreme Court Case 82914 was previously dismissed.

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Donald Douglas Eby, Appellant
Johnston Law Office, P.C., Respondent
Brad Johnston, Respondent
Leanne Schulman, Respondent

There is no parent corporation or public entity that owns 10% or more of the parties set forth above.

/s/ James E. Whitmire
Attorney for Respondents

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I. INTRODUCTION

Although Respondents are not required to respond to Appellant's Informal Brief under NRAP 46A(c), Respondents briefly summarize important historical events and relevant matters in the Record on Appeal that may assist the Court's initial review of this matter.² The purpose for highlighting these points is to facilitate the speeding resolution of this appeal and conserve judicial resources for the Court, the parties, and the public as a whole. Indeed, the following points and authorities demonstrate that the District Court committed no error below and its decision to dismiss this case with prejudice should be affirmed.

II. STATEMENT OF THE ISSUES AND STATEMENT OF FACTS

Appellant's statement of facts and issues are virtually unintelligible. This case involves Appellant's failure, and his "jailhouse" lawyer's failure to comply with the law, rules of court and clear directives of the District Court. The District Court did not abuse its discretion or otherwise commit reversible error in connection with the dismissal of this case.

² Respondents request leave to file supplemental briefing if the Court deems additional briefing necessary in connection with this case

III. SUMMARY OF ARGUMENT/ARGUMENT

The District Court committed no error below and its decision to dismiss this case with prejudice should be affirmed.

First, Appellant has repeatedly violated rules and/or admonishments from both the District Court and/or this Court. These violations include, but are not limited to, the following:

- Failing to prevent and/or aiding and abetting the unauthorized practice of law by “jailhouse lawyer” Theodore Stevens, who is serving a life sentence in the Lovelock Correctional Facility;³
- Failure to meet court-imposed deadlines such as filing a Transcript Request Form and/or Docketing Statement in accordance with NRAP 9 and 14 and/or the Court’s Instructions/Notice Regarding Deadlines dated August 5, 2021;⁴

³ On February 18, 2021, the District Court (Hon. John P. Schleigelmilch presiding) entered an “Order Denying Motion and Request to have an unlicensed ‘jailhouse lawyer,’ Theodore Stevens, serving a life sentence in Lovelock Correction Center” to appear on behalf of Appellant in the District Court proceedings. The Court correctly noted, “[a]ny representation would be the unauthorized practice of law.”

⁴ To the best of Respondents’ knowledge, no “in forma pauperis status” has been granted by the Court.

- Failing to adhere to the court rules to file typewritten papers both in the District Court and/or in this Court;⁵
- Failing to represent himself as a pro se party by filing his own documents, and instead continuing to have documents prepared and/or filed in Court on behalf of Appellant by a non-lawyer convicted felon engaging in the unauthorized practice of law.⁶
- And, most importantly, failing to file an amended complaint that substantively and procedurally complied with the District Court's order granting Appellant leave to file an amended complaint.

Second, putting aside the pattern of procedural irregularities, Appellant's legal position is substantively incorrect. The District Court committed no error in dismissing this case:

- Both now and in the District Court proceedings, Appellant and Stevens, continue to explicitly and/or implicitly argue that Mr. Stevens can be a plaintiff or the named plaintiff in this case and/or counsel for Eby when

⁵ This District Court, for example, admonished Appellant to file typewritten documents that complied with the Local Rules when granting Appellant leave to amend his complaint in the Order on Motion to Dismiss filed in the District Court on March 12, 2021. Appellant has yet to follow the Court's directive(s).

⁶ The Informal Brief on filed in this matter appears to have the same handwriting as compared to documents previously filed in the District Court (which were authored by Mr. Stevens).

he plainly cannot. As a matter of law, a legal malpractice action may not be assigned to another person. Theodore Stevens cannot, as a matter of law, be a plaintiff. Nor may he engage in the unauthorized practice of law, which is a crime. Mr. Eby has aided and abetted in the unauthorized practice of law, and is continuing to do so as evidenced by the “Informal Brief” that is handwritten in writing that looks to the same as the fugitive filings that were submitted to the District Court for which both Mr. Stephens and Eby were referred to the Nevada State Bar.

- In addition, Appellant never complied with the Court’s March 12, 2021 Order granting him leave to amend his complaint to plead his negligence/malpractice claim with more specificity. In the March 12, Order, the District Court generously permitted Mr. Eby leave to amend his complaint with specific instructions in connection therewith. Mr. Eby completely failed to heed the Court’s direction and/or comply with the Order. Specifically, he did not file an amended complaint that stated his malpractice theory (based on a breach of a power of attorney) with specificity. Instead, Mr. Eby (through Mr. Stevens) once again filed fugitive documents that replead dismissed claims and were non-complaint and unresponsive to the District Court’s directives. In fact,

Appellant's filings (e.g. Notice of Appearance by Mr. Stevens dated on or about March 24, 2021 and Motion for Enlargement of Time dated on or about April 1, 2021) were disrespectful and defiant to the Court's instructions.⁷ Under no circumstances did the Court thereafter abuse its discretion and/or otherwise commit reversible error in dismissing this case by way of the Court's Order Striking Fugitive Documents and Dismissing Action with Prejudice on April 13, 2021.

- Appellant's claims were otherwise properly dismissed by the Court for the reasons articulated by the Court in its March 12, 2021 Order, any transcript of proceedings associated therewith, and the briefing submitted in the District Court by Respondents.⁸

In summary, Eby initiated this lawsuit by filing a legally deficient complaint that included claims that failed as a matter of law to state any claim upon which relief could be granted. The District Court properly dismissed those claims pursuant to NRCP 12(b)(5). In doing so, however, the Court granted Eby leave to file an amended complaint by a specific deadline and admonished Eby that if he did so,

⁷ Respondents are unsure the date that these documents were actually filed with the District Court.

⁸ Respondents' Motion to Dismiss First Amended Complaint was filed in the District Court on January 12, 2021 and their Reply in Support of Motion to Dismiss was filed on February 1, 2021.

Stevens could not serve as his attorney or be the named plaintiff. Thus, the District Court gave Eby, who previously defied the District Court, a final chance to plead his case properly. Eby thereafter never plead his case properly and, instead, defied the District Court by continuing to pursue with Stevens claims the District Court had already dismissed. In response, the District Court properly struck Eby and Steven's amended complaint and dismissed the case, just as the District Court said it would do.

IV. CONCLUSION

The District Court dismissal of the case should be affirmed because it committed no error in light of Appellant's defiant and illegal conduct.

DATED this 29th day of December, 2021.

SANTORO WHITMIRE

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RULE 28.2 CERTIFICATE OF COMPLIANCE

This certification is intended to comply with NRAP 28.2.

1. I certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose.

2. I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.⁹

3. This brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word in 14 point Times New Roman font.

4. This brief conforms with the type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points and contains no more than 1,761 words (which is less than 14,000 words permitted by NRAP 32(a)(7)).

⁹ The underlying record from the District Court was not available on-line. Matters in the record in the District Court were referenced by date of filing of a particular Order, motion, pleading or other paper on file with the Court.

5. I understand that I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 29th day of December, 2021.

SANTORO WHITMIRE

/s/ James E. Whitmire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 29th day of December, 2021, a true and correct copy of **RESPONDENTS' ANSWERING BRIEF**, was served by electronically filing with the Clerk of the Supreme Court using the EFlex system and served upon the persons/parties in the matter and identified on such system. A copy of this filing has also been mailed to:

Donald Eby
1262 Centerville Lane
Gardnerville, Nevada 89460

DATED this 29th day of December, 2021.

/s/ James E. Whitmire
An employee of Santoro Whitmire