

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MUELLER,	)	No. 83412	Electronically Filed
Appellant,	)		Sep 15 2021 07:52 p.m.
Vs.	)		Elizabeth A. Brown
	)	Related Dist. Court Case,	Clerk of Supreme Court
	)	8th Jud. Dist. Ct.	
CHRISTINA HINDS.	)	Case No. D-18-571065-D	
	)	Dept. C	
Respondent,)		
	)	MOTION TO EXTEND	
	)	DEADLINE TO FILE	
	)	REQUEST FOR	
	)	TRANSCRIPTS	

COMES NOW, Appellant, by and through his attorney of record, Michael J. McAvoy-Amaya, Esq., of McAvoy Amaya & Revero Attorneys, herby submits this Motion to Extend the Deadline to File Request for Transcripts. *See* NRAP 9, 26.

Dated this 15th day of September 2021.

/s/ Michael J. Mcavaoyamaya

MICHAEL J. MCAVOYAMAYA, ESQ.
Nevada Bar No.: 014082
1100 E. Bridger Ave.
Las Vegas NV, 89101
Telephone: (702) 299-5083
Mike@mrlawlv.com

Rule 9 of the Nevada Rules of Appellate Procedure (NRAP) provides that an extension to provide a transcript of proceedings requires a Motion to the Court and a showing of good cause. Similarly, Rule 26(b) provides that the “[f]or good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires.” *See* NRAP 26(b).

The deadline to file a request for transcripts under Rule 9 is set by the Court, and in this matter, was set and due on September 13, 2021. In this matter, good cause exists to permit extension of the deadline to file the Request for Transcripts, if necessary, because Appellant’s counsel’s failure to file the Request for Transcripts was caused by an ambiguity in the rule, and at this time Appellant’s counsel is still unsure if a Request for Transcripts is even required, does not have the necessary information to file a conforming Request for Transcripts, and seeks the Court’s guidance on the issue.

Rule 9(a) of the NRAP provides that:

- (A) Counsel have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the court’s review on appeal.
- (B) *Unless otherwise provided in these Rules*, the appellant shall file a transcript request form in accordance with Rule 9(a)(3) *when a verbatim record was made of the district court*

proceedings and the necessary portions of the transcript were not prepared and filed in the district court before the appeal was docketed under Rule 12.

(C) *If no transcript is to be requested*, the appellant shall file and serve a certificate to that effect within the period set forth in Rule 9(a)(3) for the filing of a transcript request form. Such a certificate shall substantially comply with Form 14 in the Appendix of Forms.

See NRAP 9(a) (emphasis added).

Appellant's counsel understands the rule as only requiring the transcript request form "when a verbatim record was made of the district court proceedings and the necessary portions of the transcript were not prepared and filed in the district court before the appeal was docketed under Rule 12." *Id.* This interpretation appears to be supported by this Court's very recent precedent. *White v. Conaghan*, 445 P.3d 856 (Nev. 2019). In *White*, this Court noted that "it appears that the request form was unnecessary because the requested transcripts were already prepared and on file in the district court prior to the date of the transcript request form." *Id. citing* NRAP 9(a)(1)(B).

In this case, Appellant's counsel believed that a transcript request form was not required for two reasons. First, a verbatim record of the district court proceedings in this matter was not made at all. The Family Court division of the Eighth Judicial District Court does not

have court reporters, and as such, no verbatim record of the district court proceedings is actually made in family court cases. *See* Declaration of Counsel, at 1. Instead, the proceedings are recorded by video, as was the case in this matter. *Id.* As such, there was no transcript request to be made to the District Court department itself for the production of the transcript, and no court reporter to actually transcribe it. *Id.*

Second, counsel for Appellant and Appellee requested the production of the verbatim video recordings of the proceedings to be produced, and the copies of the videos of the proceedings were actually prepared and filed in the district court before the appeal was docketed under Rule 12. *Id.* Thus, based on the rule, because no verbatim transcript of the proceedings was actually made, and the videos were already filed in the record, Appellant's counsel was under the impression that no request for transcripts under Rule 9 was necessary. *See* Declaration of Counsel, at 1-2.

Further, Appellant's counsel read NRAP 9(a)(1)(C) as requiring the certificate only if no transcript of the proceedings was requested. Because the parties requested the video recordings of the proceedings to

be prepared and filed on the record already, Appellant's counsel did not believe the certificate was necessary, especially considering there were no transcripts actually transcribed. However, getting nervous about the issue Appellant's counsel conducted research into the matter and now understands that even when a request for transcripts is not necessary for the transcripts already being in the record, "Counsel should have filed a certificate that the preparation of transcripts is not requested" anyway. *See* NRAP 9(a)(1)(C).

The ambiguity of the rule in this regard is good cause to permit the limited extension of the deadline to file the request for transcripts or the certificate in this matter if the Court decides they are, indeed, necessary. If the request for transcripts is deemed unnecessary because the videos of the proceedings is already on record, Appellant requests an extension for good cause to file the certificate that no transcripts are to be requested. Granting such a request causes no delay in these proceedings because the certificate simply certifies that no transcripts need be produced. Appellant's counsel seeks guidance from the Court on the issue given that the videos of the proceedings are already in the record.

Appellant's counsel has contacted the Family Court for guidance on the issue, and the Court directed Appellant's counsel to the District Court's Transcript Video Services office. *See* Declaration of Counsel, at 1-2. Out of an abundance of caution, Appellant requested the Transcript Video Services division produce verbatim transcripts of the proceedings generated from the videos over the phone on September 13, 2021. *See* Declaration of Counsel, at 1. An employee in the District Court's Transcript Video Services office then emailed Appellant Counsel the request form, which was then filled out and returned. *Id.* As such, if the request for transcripts is necessary, it was actually requested on September 13, 2021, on the deadline, and will be produced in a timely manner that will not delay these proceedings.

However, the issue still remains whether the request for transcripts is necessary in this case given the proceedings were recorded via video and filed in the docket. Further, at this time, it is unclear who the court reporter to transcribe the transcripts will actually be as Appellant counsel's understanding is that the District Court's Transcript Video Services division has multiple court reports that transcribe the videos based on requests from counsel. For that

reason, while the request to produce the transcript was timely made to the Transcript Video Services Division on September 13, 2019, Appellant's counsel could not file a qualifying Request for Transcripts at that time because Appellant's counsel does not know what court reporter will be assigned the project.

Appellant's counsel's growing concern over the issue cause him to file a Notice of Request for Transcripts on September 15, 2021 in this matter. However, predictably, the filing was rejected by the Clerk of this Court in violation of Rule 9 because "No court reporter listed." *See* Notice of Deficient Transc. Req., at 1. Appellant's inability to identify the court reporter at this time is good cause for the failure to file the request for transcripts pursuant to Rule 9, as the Clerk of this Court will not accept a request that does not identify the reporter.

Appellant requests that this Court provide guidance on the need to file the request for transcripts, or the certificate of no transcript request because of the videos being filed in the docket before the notice of appeal. Appellant respectfully requests that this Court grant a short two week extension of the deadline to file either the request for transcripts or the certification of no transcripts. If the Court determines

the request for transcripts is necessary, good cause exists for the two week extension to permit Appellant's counsel time to find out from the Transcript Video Services office what the name of the court reporter is that will be transcribing the videos so that the transcript request will not again be rejected by the Clerk.

For good cause shown, this Court should grant Appellant's request to extend the deadline to file the request for transcripts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of September 2021, the undersigned served the foregoing **MOTION TO EXTEND** on all counsel in the E-Service Master List for the above-referenced matter in the Nevada Supreme Court eFiling System in accordance with the Nevada Electronic Filing and Conversion Rules.

WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
email@willicklawgroup.com
Attorneys for Plaintiff

Dated this 27th day of September, 2021.

/s/ Michael J. Mcavoyamaya

MICHAEL MCAVOYAMAYA, ESQ.
Nevada Bar No.: 014082
1100 E. Bridger
Las Vegas, NV, 89101
Telephone: (702) 299-5083
mike@mrlawlv.com
Attorney for Appellant

MCAVOY AMAYA & REVERO ATTORNEYS

MICHAEL J. MCAVOYAMAYA, ESQ.

Nevada Bar No. 14082

1100 E. Bridger Ave.

Las Vegas, NV 89101

Attorneys for Appellant

SUPREME COURT OF NEVADA

CRAIG MUELLER,

Appellant,

vs.

CHRISTINA HINDS,

Appellee.

CASE NO.: 83412

**DECLARATION OF MICHAEL J.
MCAVOY-AMAYA, ESQ.**

MICHAEL J. MCAVOY-AMAYA, ESQ., being first duly sworn, deposes and says:

1. I have personal knowledge of the facts set forth herein.

2. The Family Court Division of the Eighth Judicial District Court does not have court reporters, and does not conduct verbatim transcription of court proceedings.

3. Instead, the Family Court Division video records all proceedings that occur in family court.

4. I was under the impression, based on my reasonable reading and understanding of Rule 9 of the Nevada Rules of Appellate Procedure, that a request for transcripts in this matter was not necessary given no transcript was actually produced, and the parties had requested the videos of the proceedings be filed in the record before the Notice of Appeal pursuant to Rule 12 was filed.

5. I also believed that the certificate of no transcripts was also not necessary because the videos had been previously requested and were already in the record.

6. As the deadline to file the request for transcripts of September 13, 2021 neared, I began to get nervous about the issue, and contacted the Clerk of this Court for guidance.

7. The clerk instructed that use of the videos may need a motion request.

8. As such, from there I contacted the Family Court to try and figure out how to have the videos transcribed just in case.

9. On September 13, 2021, I contacted the Eighth Judicial District Court's Transcript Video Services division and spoke to Sherry Justice.

10. I requested that the videos of the proceedings in this matter be transcribed.

11. Sherry then emailed me the transcript request form, which I filled out and returned.

12. However, Sherry's email signature was simply Sherry Justice, Transcript Video Services, and did not indicate that she was a court reporter.

13. The form sent by Sherry was also not the normal transcript request form that has the court reporter at the top.

14. Rather, the form was a generic request form to the Transcript Video Services department.

15. As such, at the time of the request and now I do not know who the court reporter will be that is going to transcribe the videos of the proceedings.

16. For that reason, I was unable, and am still unable to file a qualifying Rule 9 request for transcripts.

17. On September 15, 2021, concerned over the expiration of the deadline, I filed a notice of request for transcripts anyway.

18. However, that notice was rejected because the court reporter was not identified.

19. Good cause exists to extend the deadline to file either the certificate of no transcripts, or the request for transcripts so that I can find out what court reporter will ultimately be transcribing the videos so I can file a conforming document.

20. Because the request for transcription of the videos was made within the deadline, regardless of what the Court decides is needed, request or certificate, no delay in these proceedings will occur.

Dated this 15th day of September, 2021.

Michael J. McAvoy-Amaya, Esq.
MICHAEL J. MCAVOY-AMAYA, ESQ.