

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Michael Foley

v.

Clark County District Attorney

No. 82569

DOCKETING STATEMENT
CIVIL APPEALS

FILED

MAY 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

GENERAL INFORMATION

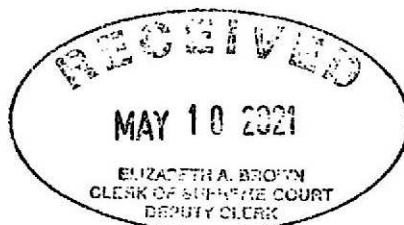
Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



Revised December 2015

21-14363

1. Judicial District Eighth Department "Child Support"

County Clark Judge N/A. Heard by hearing master

District Ct. Case No. R-11-162425

2. Attorney filing this docketing statement:

Attorney Pro Se Telephone 702-771-9725

Firm Pro Se

Address

Client(s) Michael Foley

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Clark County District Attorney Telephone (702) 671-9200

Firm 1900 E. Flamingo Rd. #100 Las Vegas, Nevada 89119

Address

Client(s) State of Nevada, Patricia Foley

Attorney N/A Telephone

Firm

Address

Client(s) N/A

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>master recommendation/order</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue NO
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Foley v. Foley, D-08-403071-D; Foley v. Foley, R-11162425; Foley v. Foley, Supreme Court Case No. 69997

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an ongoing action stemming from the child support order in the divorce action, case number D-08-043071. The District Court actually "ordered" that the matter be heard by a hearing master after the Supreme Court remanded the matter back to the District Court after its December 21, 2018 dispositional ruling, and November 1, 2019 remittitur. Prior to this latest round, no party has EVER moved or requested that the matter be referred to a master pursuant to NRCP 53. Notwithstanding, the Clark County District Attorney appeared and maneuvered to have this appellant sentenced to 25 days in jail for supposed "willful" failure to pay child support. The District Court failed to find that the appellant has the means to pay child support, and therefore the 25 day jail sentence was NOT designed to compel the plaintiff to pay, but rather to PUNISH him. The ^{appellant} contends that this is a violation of the 14th Amendment, and such an order is inconsistent with this Court's December 21, 2018 order, wherein the Court ruled that it was a violation of the right to due process to impose a jail sentence without making specific findings of present ability to pay.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The District Court failed to find that the appellant had the means to pay child support, and therefore the 25 day jail sentence was NOT designed to compel payment, but rather designed to PUNISH the appellant. This is evident by the lack of a purge amount in the recommendation, as well as the court's lack of inquiry into the appellant's current monetary resources. The U.S. Supreme Court, in its decision within *Turner v. Rogers*, 564 U.S. 431 (2011), ruled that at a minimum, the subjects of civil contempt proceedings are entitled to the following "safeguards:"

- (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding;
- (2) the use of a form (or the equivalent) to elicit relevant financial information;
- (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by [his] responses on the form);
- (4) an express finding by the court that the defendant has the ability to pay.

The appellant contends that he was NOT afforded all of these safeguards by the hearing master or District Attorney.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

This appeal will rely on the Court's upholding of the 14th Amendment, as interpreted by the U.S. Supreme Court in *Turner v. Rogers*, 564 U.S. 431 (2011). In *Turner*, the Supreme Court ruled that the subjects of civil contempt proceedings are entitled to certain procedural safeguards, to ensure that a civil litigant is not wrongfully subjected to the deprivation of liberty. Also, the Court suggested that when a person subject to civil contempt proceedings has to face a skilled attorney hired by the State, like Clark County's District Attorney, such litigants are NOT automatically disqualified from having court-appointed counsel to defend against the State's efforts to deprive him or her of liberty. "[C]ivil contempt proceedings where the underlying child support payment is owed to the State, for example, for reimbursement of welfare funds paid to the parent with custody...[t]hose proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative." This Court should FINALLY recognize that the subjects of civil contempt have very little chance of successfully defending against oppressive jail sentences against skilled government attorneys, like the Clark County DA, who very easily persuade unelected hearing masters to impose jail sentences upon unrepresented civil contempt respondents like this appellant. This Court should ORDER that the District Attorney and unelected hearing masters CEASE AND DESIST from punishing those accused of failing to pay child support, especially when there is no proof that the person has the resources or ability to pay.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The appellant believes that the Supreme Court should retain this case because the Supreme Court has already ruled on the very same issues that now come before the Court. The case would be resolved most efficiently if the Supreme Court retains and rules on the case.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No. N/A.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from January 26, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served February 3, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed February 25, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 425.3844(9)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The master's recommendation AUTOMATICALLY became a judgment 10 days after it was filed, therefore this court has jurisdiction pursuant to NRAP 3A(b)(1);

Moreover, NRS 425.3844(9) states that the aforementioned order "has the force, effect and attributes of an order or decree of the district court, including, but not limited to, enforcement by supplementary proceedings, contempt of court proceedings, writs of execution, liens and writs of garnishment."

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Patricia Foley, petitioner

The appellant is confused as to whether the District Attorney can be considered a "party" in this action, as the the Supreme Court ruled, on July 24, 2017, in Case No. 69997, that the District Attorney COULD NOT file an answering brief on Mrs. Foley's behalf, and that such person was NOT a "party" to THAT appeal.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Petitioner Michael Foley: The right to due process January 26, 2021

Respondent Patricia Foley: The interest in collecting money January 26, 2021

Clark County District Attorney: The interest in collecting Federal Child Support Enforcement Incentives
January 26, 2021

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

The lower court DID NOT address the respondent/appellant's right to due process under the 14th Amendment, and therefore the due process claim is a "remaining pending" claim.

(b) Specify the parties remaining below:

There is a question as to whether Patricia Foley is "party" to this appeal, as her name does not appear in caption styled by the Supreme Court's initial filings in this instant matter.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The appellant does not recall or see that the District Court (or hearing master) certified the "judgment" as "final" and there was no discussion regarding "just reason for delay" or "express direction for the entry of judgment."

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

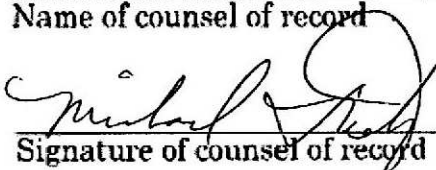
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Michael Foley
Name of appellant

N/A
Name of counsel of record

May 5, 2021
Date


Signature of counsel of record

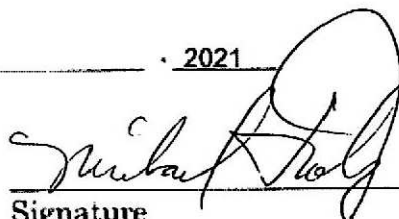
Clark County Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 5th day of May, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 5th day of May, 2021


Signature

ORIGINAL

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FILED

Nov 19 2 32 PM '08

Chaf
CLERK OF THE COURT

1 **COMD**
2 JOHN T. KELLEHER, ESQ.
3 Nevada Bar No. 6012
4 NIKKI L. DUPREE, ESQ.
5 Nevada Bar No. 11111
6 KELLEHER & KELLEHER, LLC
7 807 South Seventh Street
8 Las Vegas, Nevada 89101
9 (702) 384-7494

10 Attorney for Plaintiff

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 * * * * *

14 PATRICIA FOLEY,
15 Plaintiff,

16 v.

17 MICHAEL A. FOLEY,
18 Defendant.

CASE NO. **D-08-403571-D**
DEPT. NO. **D**

19 **COMPLAINT FOR DIVORCE**

20 COMES NOW Plaintiff, Patricia Foley, by and through her attorney of record, John T.
21 Kelleher, Esq., of the law firm of Kelleher and Kelleher, LLC, and complains of the Defendant as
22 follows:

23 **I.**

24 That Plaintiff, for a period of more than six weeks immediately preceding commencement
25 of this action, has been and now is an actual, bona fide resident of the County of Clark State of
26 Nevada; and that during all said periods of time, Plaintiff has resided in and been physically
27 present and domiciled in said Clark County, Nevada.

28 **II.**

Plaintiff and Defendant were married on January 27, 1997 in Las Vegas, Nevada and have
been and now are husband and wife.

///

LAW OFFICES
KELLEHER & KELLEHER LLC
807 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
(702) 384-7494
Facsimile (702) 384-7545

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III.

That during the course of said marriage, the tastes, mental disposition, views, likes and dislikes of Plaintiff and Defendant have become so widely divergent that the parties have become incompatible in marriage to such an extent that it is impossible for them to live together as husband and wife, that the incompatibility between Plaintiff and Defendant is so great that there is no possibility of reconciliation between them.

IV.

There are (3) minor child born the issue of this marriage, namely, Therese M. Foley born November 23, 1997, Michael A. Foley, Jr. born October 10, 2000 and Elizabeth A. Foley born October 11, 2004. Plaintiff is not currently pregnant and there are no adopted minor children.

V.

Plaintiff should be awarded sole physical custody of said minor children.

VI.

Plaintiff should be awarded sole legal custody of said minor children.

VII.

Plaintiff should be awarded child support pursuant to NRS 125B.070.

VIII.

Plaintiff should be awarded spousal support and spousal support *pendente lite*.

IX.

Plaintiff should be permitted to claim the minor children as her taxable dependents, and claim all applicable exemptions and child care expenses for such tax purposes.

X.

There is community or jointly owned property of the parties to be adjudicated by the Court. The full extent of the parties property is unknown to the Plaintiff at this time, and Plaintiff prays leave of the Court to amend her Complaint to insert the same when they have become known to her or at the time of trial in this matter. Plaintiff requests that this Court make a fair and equitable distribution of all assets.

///

XI.

There are community debts and obligations of the parties to be adjudicated by the Court, the exact extent of which is unknown to the Plaintiff at this time, and Plaintiff prays leave of the Court to amend her Complaint to insert the same when they have become known to her or at the time of trial in this matter.

XII.

There is separately owned property of the Plaintiff. The full extent of the Plaintiff's property is unknown to the Plaintiff at this time, and Plaintiff prays leave of the Court to amend her Complaint to insert the same when they have become known to her or at the time of trial in this matter. Plaintiff requests that this Court confirm all of her separate property assets upon her.

XIII.

That it has been necessary for Plaintiff to engage in the services of an attorney to prosecute this action, which should be paid by Defendant.

WHEREFORE, Plaintiff prays judgment as follows:

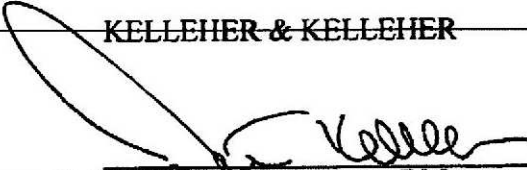
1. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved, set aside, and held for naught, and that the parties hereto, and each of them, be restored to their single status.
2. That the Court award Plaintiff sole legal and sole physical custody of the minor children;
3. That the Court award Plaintiff child support *pendente lite* and pursuant to NRS 125B.070;
4. That the Court award Plaintiff spousal support and spousal support *pendente lite*;
5. That the Court make an equitable distribution of the parties' community assets and debts.
6. That Plaintiff's separate property be confirmed as hers;
7. That the Court award Plaintiff a reasonable sum as and for attorney's fees and costs; and

////

8. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 1~~5~~ November, 2008.

KELLEHER & KELLEHER


JOHN P. KELLEHER, ESQ.
Nevada State Bar No. 006012
NIKKI L. DURREE, ESQ.
Nevada State Bar No. 11111
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VERIFICATION

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STATE OF NEVADA)
) ss.

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COUNTY OF CLARK)

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Patricia Foley, being first duly sworn on oath, deposes and says:

5

That she is the Plaintiff in the above-entitled matter; that she has read the above and

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foregoing Complaint for Divorce and knows the contents thereof; that the same are true of her

7

knowledge except for those matters stated upon information and belief, and as to those matters,

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she believes them to be true.

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10


PATRICIA FOLEY

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SUBSCRIBED AND SWORN to before me
this 29 day of October, 2008.

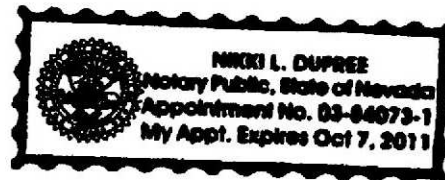
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NOTARY PUBLIC in and for
said County and State.

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