

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICH M. MARTIN,  
Appellant,  
vs.  
RAINA L. MARTIN,  
Respondent.

No. 81810

ERICH M. MARTIN,  
Appellant,  
vs.  
RAINA L. MARTIN,  
Respondent.

No. 82517

**FILED**

OCT 23 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
*Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER GRANTING MOTION*

This court issued an opinion in this matter on December 1, 2022. Appellant filed a petition for rehearing on February 2, 2023, which this court denied. Appellant then filed a motion for stay of remittitur pending the filing of a petition for writ of certiorari in the United States Supreme Court. After an opposition and reply, this court granted the motion, staying the remittitur until September 11, 2023. However, if the clerk of this court received written notice by September 11, 2023, from the clerk of the United States Supreme Court that appellant had filed a petition for a writ of certiorari, the stay would remain in effect until final disposition of the certiorari proceedings. If such notice was not received by September 11, 2023, the clerk of this court was to issue the remittitur.

This court did not receive notice from the clerk of the United States Supreme Court that appellant had filed a petition for a writ of certiorari within this time period, and on September 18, 2023, the remittitur issued in the normal course.

Appellant filed a motion to recall the remittitur and extend the stay on September 27, 2023, seeking relief by September 29, 2023.<sup>1</sup> See NRAP 27(e). Appellant argues that because he filed a motion to proceed as a veteran on the petition for certiorari in the United States Supreme Court, and attached a copy of his petition for certiorari, that he believed that the certiorari proceedings had been initiated and that the stay would be extended. He argues that this court should recall the remittitur on the basis that this Court “was under the misapprehension, mistake of fact, and incomplete knowledge that no certiorari proceedings had been initiated, when in fact they have been.” On October 4, 2023, appellant filed a supplement to the emergency motion to recall remittitur and extend stay, indicating that the U.S. Supreme court has denied his motion to proceed as a veteran, but has granted him 60 days to file the petition for a writ of certiorari.

The motion to recall the remittitur is granted to the following extent. See *Wood v. State*, 60 Nev. 139, 141, 104 P.2d 187, 188 (1940). The remittitur issued on September 18, 2023, is recalled and this appeal is reinstated. Issuance of the remittitur shall be stayed until December 18, 2023. See NRAP 41(b)(3)(B). If the clerk of this court receives written notice by December 18, 2023, from the clerk of the United States Supreme Court that appellant has filed a petition for a writ of certiorari, the stay shall

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<sup>1</sup>While appellant’s motion was entitled an “emergency motion,” appellant failed to explain why the purported emergency motion was not filed “at the earliest possible time,” as the remittitur was issued on September 18, 2023, and appellant’s counsel indicates that the remittitur was received via mail on September 22, 2023. See NRAP 27(e)(1). Further, the only reason given as basis for emergency relief by September 29, 2023, is that respondent may begin collection on the amounts due under the order challenged on appeal now that the remittitur has issued.

continue in effect until final disposition of the certiorari proceedings. *Id.* If such notice is not received by December 18, 2023, the remittitur shall issue. Appellant shall continue to comply with the December 31, 2020, district court order.

It is so ORDERED.

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*Stigler*, C.J.

cc: Hon. Rebecca Burton, District Judge, Family Division  
Marquis Aurbach Chtd.  
Willick Law Group  
McDonald Carano LLP/Reno  
Kainen Law Group  
Pecos Law Group  
Eighth District Court Clerk