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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JOSEPH NASO,

Appellant,

vs.

COUNTY OF MARIN, CALIFORNIA,

Respondent.

No. 83594

**RESPONDENT'S ANSWERING BRIEF**

Appeal from the Second Judicial District  
Of the State of Nevada  
In and for the County of Washoe  
Department 4  
The Honorable Connie Steinheimer  
(the "District Court")

Michael A. Rosenauer, Esq.  
Nevada Bar No. 2782  
Michael A. Rosenauer, Ltd.  
775-324-3303  
510 W. Plumb Lane, Ste. A  
Reno, NV 89509  
Counsel for Appellant Marin County

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Respondent County of Marin, California hereby submits their Answering Brief. In compliance with NRAP 28, and to administratively assist the Court because Mr. Naso is appearing in *pro per*, the following is provided:

**NRAP 28(a)(1) Disclosure**

Pursuant to NRAP 26.1, Respondent Marin County is a governmental party. NRAP 26(a) makes Marin County exempt from the requirement to file a Disclosure Statement. The exemption notwithstanding, Michael A. Rosenauer, Esq. of Michael A. Rosenauer, Ltd. is the only attorney who has appeared in Nevada on behalf of Marin County at both the trial and appellate levels.

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### **NRAP (a)(4) Jurisdictional Statement**

This Court has jurisdiction over this matter because the Order from which the Appellant has appealed was entered by The Honorable Connie Steinheimer of the Second Judicial District Court in and for the County of Washoe.

It is unclear whether this case is properly heard by the Supreme Court or the Court of Appeals. While the Order from which the appeal was taken focuses upon Judge Steinheimer's denial of a Motion was presumably brought under NRCP 60(b), the underlying judgment is a money judgment; its genesis a capital criminal proceeding.<sup>1</sup> As such, the assignment could remain with the Supreme Court under NRAP 17(a)(1) or may be assigned to the Court of Appeals pursuant to NRAP 17(b)(7). The former arguably applies because Mr. Naso was convicted by the California Superior Court of special circumstances murder. He was subsequently sentenced to death. The latter may apply because the judgment underlying the Sister State Judgment is a money judgment equal to the cost of defending the criminal complaint.<sup>2</sup>

With respect to timeliness, Mr. Naso's Notice of Appeal was delivered to a

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<sup>1</sup> Marin County provides this by way of background. The statement should not be read as any type of a concession that the underlying Nevada judgment was defective in any way.

<sup>2</sup> Mr. Naso had claimed that he was indigent when the criminal case was commenced. After conviction and sentencing, it was discovered that he held more than \$200,000.00 in real and personal property in Nevada. Marin County was retrospectively permitted to charge the costs of defense to Mr. Naso.

San Quentin prison official on September 17, 2021. In cases involving incarcerated individuals, the date the document is delivered to a prison official becomes the filing date. NRAP 4(d). The Notice of Entry of Order was filed with the Second Judicial District Court on August 17, 2021. Less than thirty (30) days had passed. The appeal was therefore timely.

The Order from which Mr. Naso appealed is a final order because while it is a post-judgment Order, it is the last permitted Order in this matter. All issues are completely decided. As such, it is a final order which is an appealable Order. *See, eg. Koester v. Administrator of the Estate of Koester*, 101 Nev.68, 693 P.2d 569 (Nev. 1985).

#### **NRAP28(a)(5) Routing Statement**

As discussed above, it is unclear whether this set of facts routes this appeal to the Court of Appeals or has it remain before the Supreme Court. If one takes a narrow view, then one should have it relate back to the original proceeding which was a capital murder/criminal case. NRAP 17(a)(1) applies, and the matter remains with the Supreme Court. On the other hand, Judge Chou entered a money judgment which is civil in nature. Moreover, Judge Steinheimer's Order, the one from which Mr. Naso appealed, is seven years post-judgment and NRAP 17(b)(7) would seem to apply.

**NRAP 28(a)(6) Statement of Issue on Appeal**

Whether Judge Steinheimer abused her discretion in denying Mr. Naso's "Motion to Strike and Dismiss A Foul Judgment" when seven years had passed between the entry of the Judgment and his Motion to set the judgment aside.

**NRAP 28(a)(7) Brief Statement of the nature of the case, the course of the proceedings and disposition below**

The matter now on appeal stems from the domestication of a Foreign Judgment. The Judgment underlying what became the foreign judgment was entered by the California Superior Court on December 20, 2013. Thereafter, on March 26, 2014, the Judgment was domesticated in Nevada by Order of the Honorable Connie Steinheimer. Some seven years later, Mr. Naso, on June 8, 2021, filed a Motion which could only be understood to be brought under NRCP 60(b). Marin County opposed Mr. Naso's Motion on June 7, 2021. Mr. Naso thereafter, on June 22, 2021, filed what is considered to be his Reply. The matter was submitted for decision and Judge Steinheimer entered her Order denying Mr. Naso's Motion on August 17, 2021. After briefing, Judge Steinheimer decided that the Motion was not only untimely, but also lacking a legal basis. Notice of Entry of Order was filed the following day.

This matter had no live evidence and was decided at the trial court level on the submitted papers. WDCR 12(5).



**NRAP 28(a)(8) Statement of the relevant Facts**

The Court must focus on the fact that this appeal is from Mr. Naso's Motion that the Court strike the domestication of a money Judgment which was entered seven years before his request. Mr. Naso's appeal does not attack the underlying Judgment. The appeal questions Judge Steinheimer's basis for denying his Motion.

In background, after a jury trial in Marin County, California, Mr. Naso stands convicted of multiple counts of special circumstances murder. 1 RA 040. Mr. Naso is incarcerated in San Quentin Prison in Marin County, California, awaiting his execution for four capital murders. I RA 006. Thereafter, the Honorable James T. Chou held a hearing, the purpose of which was to ascertain if Mr. Naso was indeed indigent as he had represented or if he had assets which would offset the cost of the defense provided by Marin County. At that December 13, 2013, hearing, Judge Chou found that Mr. Naso had assets worth between \$560,000.00 and \$944,000.00. 1 RA 040. Judge Chou received evidence and found that Mr. Naso had transferred at least \$295,465.37 of liquid assets to his son after his arrest.<sup>3</sup> 1 RA 043. Judge Chou further found that Marin County had spent \$170,949.69 on Mr. Naso's defense. 1 RA 043. Judge Chou entered a judgment in

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<sup>3</sup> Mr. Naso has subsequently admitted that he made the transfers. Appellant's Opening Brief P.4.

favor of Marin County and against Mr. Naso in the amount of \$170,949.69. 1 RA 044.

Using the constitutional principle of full faith and credit, found within the United States Constitution, Article IV and I, the California Judgment was brought to Nevada where it was domesticated using the Uniform Enforcement of Foreign Judgments Act. NRS 14.010. 1 RA 001 – 022. Domestication in Nevada was completed on March 26, 2014. Notice of Entry of Judgment was provided to Mr. Naso immediately thereafter on March 27, 2014. 1 RA 015 – 022.

Seven years then pass. On June 7, 2021, Mr. Naso filed his “Motion to Strike and Dismiss Foul Judgment”. 1 RA 054.<sup>4</sup> Marin County filed its opposition on June 16, 2021, and Mr. Naso filed his Reply on June 22, 2021. Judge Steinheimer filed her Order denying “Motion to Strike and Dismiss Foul Judgment” on August 17, 2021. 1 RA 071 – 075.

The sole purpose of this recitation of the underlying facts is to provide the Court an understanding of the background of this matter. To decide this matter, the only facts necessary for the Court to render a decision are few if not singular. Mr. Naso waited seven years to commence his effort to set aside the Nevada

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<sup>4</sup> The Order of Pages within Mr. Naso’s Motion were mixed. Marin County has kept the Record as it was found and not corrected the error.

Judgment. I RA 054. The facts underlying the actual Judgment and the procedure used to domesticate it in Nevada are irrelevant to the Court's decision.

**NRAP 28(a)(9) Summary of Marin County's Argument**

NRCP 60(b) permits a party to request the Court set aside a judgment. While it is unclear under which sub-section of the Rule Mr. Naso was moving, he is under all circumstances too late to request relief. Seven years is neither a reasonable time to bring a Motion nor within the 6 months provided by the Rule if he is proceeding under NRCP 60(b)(1), (2) or (3). Judge Steinheimer appropriately applied her discretion in denying Mr. Naso's "Motion to Strike or Dismiss Foul Judgment".

**NRAP 28(a)(10) Argument**

The only issue before this Court is whether Judge Steinheimer abused her discretion when she denied Mr. Naso's "Motion to Strike and Dismiss Foul Judgment." Relief from a Judgment is governed by NRCP 60(b). While Mr. Naso gives no indication as to which subsection he believes applies to his situation, the application of the Rule and law makes his position untenable.

NRCP 60(c) sets forth the time period in which a NRCP 60(b) Motion must be brought. NRCP 60(c)(1) states in relevant part:

A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1),

(2), and (3), no more than 6 months after the date of the proceeding or the date of the service of written notice of entry of the judgment or order, whichever is later.

Here, the Nevada judgment was entered on March 26, 2014, and Notice of Entry of Judgment was provided Mr. Naso the following day. 1 RA 15 – 022. Mr. Naso then waited seven years before making his NRCP 60(b) Motion. 1 RA 054.

This Court has previously held that two years is an unreasonable amount of time to file a motion under NRCP 60. *Deal v. Baines*, 110 Nev. 509, 874 P.2d 775 (Nev. 1994). *Deal* involved the sale of all stock in a business to respondent Richard Baines. *Deal*, 110 Nev. at 510, 874 P.2d at 776. Pursuant to the transactional documents, Deal covenanted that he had repaid an existing loan to Valley Bank and if there was any inquiry, would indemnify Baines for any associated costs. *Id.* Valley Bank commenced an action against both Deal and Baines. *Id.* Valley Bank was granted Summary Judgment against Baines. *Id.* This initial Judgment was silent as to Deal. *Id.*

In September 1987, Deal subsequently went to trial on his cross-claim. *Id.* Baines failed to appear, and judgment was entered against Baines. *Id.* Thereafter, in January 1991, Deal coordinated a judgment debtor's exam seeking information on Baines' assets. *Id.*, 874 P.2d at 777. On September 28, 1992, Baines filed a

“Motion to Set Aside Judgment and to Dismiss Action” arguing that the judgment should be set aside pursuant to NRCP 41(e) because more than 5 years had passed since the inception of the action and the trial. *Id.* Baines alternatively argued that relief was proper under NRCP 60(b)(1) that his absence from trial was due to excusable neglect. *Id.* Baines also sought relief under NRCP 60(b)(3) arguing that the 5 year rule made the corresponding judgment void. *Id.* The district court agreed and vacated its prior judgment. *Id.* Deal appealed.

In reversing the district court, this Court first observed “Motions under NRCP 60(b) are within the sound discretion of the district court, and this court will not disturb the district court’s decision absent an abuse of discretion.” 110 Nev. at 512, 874 P.2d at 777 *citing Carlson v. Carlson*, 108 Nev. 358, 361, 832 P.2d 380, 382 (Nev. 1992) The Court restated the fact that any NRCP 60(b) motion must be made within a reasonable period of time after the allegedly offending judgment was entered and written notice provided. *Id.* The Court reasoned that the 5 years between Baines’ September 1987 trial and his September 1992 Motion was excessive. *Id.* The Court further pointed out that even if Baines’ reason that he did not request relief because he had no knowledge of the Judgment, the two-year interval between the Judgment Debtor’s exam and his Motion still was an unreasonable period of time. *Id.*

Deal was later discussed by this Court when it considered *Teriano v. Nevada State Bank (In re Harrison Living Trust)*, 121 Nev 217, 112 P.3d 1058 (Nev. 2005). *Harrison* focused upon a series of Notices of Hearing in a probate matter which were sent to the Beneficiary's wrong address. *Harrison*, 121 Nev. at 219, 112 P.2d at 1058. The first hearing focused upon whether certain artwork was to be considered "personal property" or "home furnishings".<sup>5</sup> The second hearing was to be a reconsideration of the first hearing but once again, the Notice was sent to an erroneous address. *Id.* Having nobody appear at the second hearing, the trial court denied the Motion for Reconsideration. *Id.* Consistently with the art's initial classification, the Trustee divided and distributed the assets to each Beneficiary. *Id.* The Appellant received her \$800,000.00 distribution of cash, equities and jewelry. *Id.* Eighteen months after distribution, the appealing Beneficiary filed a Motion to set aside the Order of Distribution. *Id.* The District Court found it unreasonable to not only accept the \$800,000.00 distribution, but to also wait 18 months to file a Motion to set the distribution aside. *Id.* The trial court's decision regarding distribution remained unchanged. *Id.*

While *Harrison* principally addresses whether a time limit can be applied to

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<sup>5</sup> One Beneficiary was to receive "home furnishings" while the other was to receive "personal property". The decedent died vested in valuable art which was displayed within his residence at the time of his death.

a request for reconsideration of a void judgment, the decision is instructive to the matter at bar because it confirms that Courts retain the discretion to apply lack of diligence principles to NRCP 60(b)(4) Motions alleging void judgments. *Harrison*, 121 Nev. at 222, 112 P.2d at 1060. Moreover, *Harrison* makes no changes to the principles set forth in *Deal*, *supra*.

In the case now before the Court, Judge Steinheimer did not abuse her discretion in refusing to vacate the March 26, 2014, Nevada Judgment. Mr. Naso waited seven years to bring his NRCP 60(b) Motion. 1 RA 054. At no time has Mr. Naso alleged that he had no notice of the Nevada Judgment. Mr. Naso has also not argued that the Nevada judgment is void, thereby fitting within the *Harrison* language that the time to reconsider a void judgment does not expire.

Even if timing were not an issue, *Harrison* explicitly overrules *Garcia v. Ideal Supply Company*, 110 Nev. 493, 495, 874 P.2d 752, 753 (Nev. 1994) and its thought that time does not run on a void Judgment. Judge Steinheimer specifically pointed out that Mr. Naso waited seven years to bring his NRCP 60(b) Motion. 1 RA 073; Order denying Motion to Strike and Dismiss Foul Judgment P. 3, l. 12 through P.4, l. 7. Judge Steinheimer concluded “Therefore, based upon the foregoing, this Court finds that Mr. Naso’s “Motion to Strike and Dismiss Foul Judgment” is untimely and not supported by applicable law. Mr. Naso’s “Motion

to Strike and Dismiss Foul Judgment is hereby DENIED”. 1 RA 075. Order P. 5, 1.3-6. In following the legal principles set out by this Court, if two years is too long to bring a NRCP 60(b) Motion, seven is more than three times too long.

Judge Steinheimer correctly decided Mr. Naso’s “Motion to Strike and Dismiss Foul Judgment”. The Order denying “Motion to Strike and Dismiss Foul Judgment” is properly affirmed.

#### **NRAP 28(a)(12) Certification**

I hereby certify that 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman 14 pt. font.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

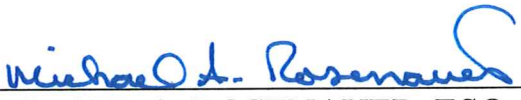
Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires



every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

**AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

Dated this 2<sup>nd</sup> day of February 2022.

  
MICHAEL A. ROSENAUER, ESQ.  
Counsel for Appellant Marin County  
NV State Bar No. 2782  
MICHAEL A. ROSENAUER, LTD.  
510 W. Plumb Lane, Ste. A  
Reno, NV 89509  
775-324-3303

## **CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

### **RESPONDENT'S ANSWERING BRIEF**

on the party(s) set forth below by:

XXX Electronic Mailing via Nevada Supreme Court CM/ECF System to all those persons listed on the ECF Confirmation Sheet.

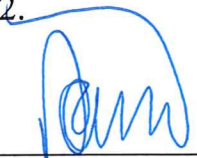
XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

addressed as follows:

Joseph Naso, #AR-9737  
CSP-SQ 1-EB-80  
San Quentin State Prison  
San Quentin, CA 94964

Rob Bonta, Attorney General  
1300 "I" Street  
Suite 126  
Sacramento, CA 95814

DATED this 2<sup>nd</sup> day of February 2022.

  
\_\_\_\_\_  
REBECCA SQUIRE