

IN THE SUPREME COURT OF THE STATE OF NEVADA

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PILAR ENRIQUE ARBALLO-OLIVAS, individually,

Appellant,

vs.

AMY MARIE AINSWORTH,

Respondent.

Electronically Filed  
Jul 28 2022 05:39 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 83814

**MOTION TO DISMISS APPEAL**

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*Attorneys for Respondent Amy Marie Ainsworth*

Respondent, Amy Marie Ainsworth, respectfully moves this Court, pursuant to Nevada Rule of Appellate Procedure (NRAP) 31(d), to dismiss the appeal of Appellant, Pilar Enrique Arballo-Olivas.

NRAP 31(d)(1) sets forth the consequences for an appellant who failed to file briefs or appendix.

NRAP 31(d)(1) states, in pertinent part:

If an appellant fails to file an opening brief or appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion.

Dismissal of an appeal after a party fails to comply with court rules and orders is not inconsistent with Nevada's policy preference to decide cases on their merits when balanced with other policy concerns, such as the Court's ability to effectively process its caseload and expense of judicial time and resources. *See Huckabay Props. V. NC Autoparts*, 130 Nev. 196, 204, 322 P.3d 429, 434 (2014). This Court has found on several occasions that an appeal may be appropriately dismissed for violations of rules and orders governing briefing practice and deadlines. *Id.*, 130 Nev. at 207, 322 P.3d at 436 (noting that dismissal should come as no surprise to an appellant warned by an order that dismissal may be forthcoming if their brief was not filed by the deadline imposed by said order).

Further, an attorney's failure to comply with court rules, even where counsel's neglect is inexcusable, is considered to be the act of their client, in accordance with general agency principles. *Id.*, 130 Nev. at 204, 322 P.3d at 434. This is especially applicable in a civil matter where a private litigant does not have a constitutional right

to effective assistance of counsel and is afforded the remedy of a malpractice action. *Id.*, 130 Nev. at 205, 322 P.3d at 435.

On February 8, 2022, this Court issued an Order Reinstating Briefing (22-04229) after the parties were unable to resolve this matter at the continued settlement conference on January 28, 2022. The Order Reinstating Briefing gave Appellant a 14-day deadline to file and serve a transcript request form and, if no transcript was requested, to file and serve and certificate to that effect within that 14-day period. Additionally, the Order Reinstating Briefing gave Appellant 90 days from the date of the Order to file and serve the opening brief and appendix.

Appellant did not file and serve a transcript request form within 14 days of the Order Reinstating Briefing.

On May 9, 2022, 90 days from the date of the Order Reinstating Briefing, Appellant had not filed and served their opening brief and appendix. Further, Appellant did not file a Motion for Extension of Time for the filing of their opening brief, pursuant to NRAP 31, at any point during this 90-day period.

On July 6, 2022, this Court issued an Order to File Documents (22-21233) noting that, as of that date, Appellant failed the documents in accordance with the Order Reinstating Briefing. The Order to File Documents granted Appellant an additional 7 days from the date of the Order to file and serve either a transcript request form or certificate that no transcript will be requested and the opening brief and appendix. Further, the Order to File Documents set forth that Appellant's failure to

comply timely with the Order may result in the imposition of sanctions, including dismissal of the appeal.

Appellant failed to file and serve either a transcript request form or certificate that no transcript will be requested and the opening brief and appendix on or before July 13, 2022.

To date, Appellant has not filed a transcript request form or certificate that no transcript will be requested, an opening brief, or an appendix, nor requested any extension of time to file briefing, as permitted by NRAP 31.

Appellant did not offer any adequate basis for their failure to adhere to the original briefing deadline or the extension of the briefing deadline set forth by this Court in the July 6, 2022 Order to File Documents. Any justification offered by Appellant for his counsel's inexcusable neglect is binding to Appellant and dismissal of the subject appeal would be an appropriate action for Appellant's violation of the briefing deadlines.

DATED: July 28, 2022.

THE702FIRM

**By:** /s/ BRANDON A. BORN

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE702FIRM, and on July 28, 2022, a true and correct copy of the foregoing **MOTION TO DISMISS APPEAL** was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system as listed below:

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*/s/ Gloria L. Pacheco*

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