

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

NOAS (CIV)
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DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive

Defendants,

CASE NO:A-18-772220-C
DEPT. NO: 5

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, RANDALL TINDALL,
ESQ., and RESNICK & LOUIS, P.C.

And DOES I through V,
Third Party Defendants.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Third Party Plaintiff Gary Lewis, by and through his counsel of record, Thomas Christensen, hereby appeals to the Supreme Court of Nevada from the Order on Gary Lewis' Motion to Retax Costs s, signed by Judge Barisich on October 27, 2021,

1 and entered in the above-captioned action on October 27, 2021 and all other orders made final
2 and appealable.

3
4 Dated this 26th day of November, 2021.

5 CHRISTENSEN LAW OFFICES, LLC

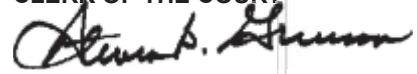
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7 
8 THOMAS F. CHRISTENSEN, ESQ.
9 Nevada Bar No. 2326
10 1000 S. Valley View Blvd.
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14
15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
17 OFFICES, LLC, and that on this 30th day of September, 2021 I served a copy of the foregoing
18 **Notice of Appeal** as follows:

19 XX Electronic Service—By electronically serving all parties registered for the case.

20
21 
22 An employee of CHRISTENSEN LAW OFFICES, LLC
23
24
25
26
27
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Plaintiff,

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GARY LEWIS and DOES I through V,
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CASE NO:A-18-772220-C
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UNITED AUTOMOBILE INSURANCE
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GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, RANDALL TINDALL,
ESQ., and RESNICK & LOUIS, P.C.

And DOES I through V,
Third Party Defendants.

CASE APPEAL STATEMENT

1. Name of Appellants filing this case appeal statement: Gary Lewis, Third Party Plaintiff.
2. Judge issuing Order appealed from: Veronica Barisich.
3. Appellant and Counsel for Appellants:

Appellants: Gary Lewis, Third Party Plaintiff

1 Counsel :

2 Thomas F. Christensen, Esq.
3 Nevada Bar No. 2326
4 1000 S. Valley View Blvd.
5 Las Vegas, Nevada 89107
6 Telephone: (702) 870-1000
7 courtnotices@injuryhelpnow.com

8 4. Respondents and Counsel for Respondents:

9 Respondents: United Automobile Insurance Company

10 Counsel:

11 Matthew Douglas, Esq.
12 Nevada Bar No. 11371
13 1117 S. Rancho Drive
14 Las Vegas, NV 89102

15 and

16 Daniel Polsenberg, Esq.
17 Nevada Bar No. 2376
18 Abraham Smith
19 Nevada Bar No. 14486
20 3993 Howard Hughes Parkway, Suite 600
21 Las Vegas, NV 89169

22 5. Are the identified counsel licensed to practice law in Nevada? Yes.

23 6. Was Appellant represented by retained or appointed counsel in District Court:

24 Appellant was and is represented by retained counsel.

25 7. Is Respondent represented by retained or appointed counsel on appeal:

26 Respondent was and is represented by retained counsel on appeal.

27 8. Was Appellant granted leave to proceed in forma pauperis, and date of order:

28 Appellant was not granted leave to proceed in forma pauperis.

9. The date the proceedings commenced in District Court: April 3, 2018.

10. Brief Description of the Nature of the Action and the Result:

1 This action arises from the suit of Nalder v. Lewis, commenced in 2018. The case was
2 initially improperly consolidated with another case, Nalder v. Lewis (commenced in 2007), that
3 had already resulted in a judgment. On Writ, the Nevada Supreme Court reversed the
4 consolidation. Lewis hired E. Breen Arntz to represent him against Nalder because his interests
5 conflicted with UAIC. UAIC hired Randall Tindall, who also filed pleadings on behalf of Lewis,
6 without ever communicating with Lewis. Despite Lewis' interests being presented by two
7 attorneys, UAIC was allowed to intervene in this action as Gary Lewis' insurer. Gary Lewis filed
8 a claim against UAIC for claims handling errors, including not communicating with him in
9 connection with his defense. Lewis filed a Motion for Summary Judgment on his claims, which
10 was heard by Judge William Kephart on October 8, 2020 and November 17, 2020. Judge
11 Kephart did not enter or sign a written decision or order in connection with the hearing. On
12 August 14, 2021, Judge Barisich signed an Order, proposed by UAIC, denying his Motion for
13 summary judgment granting judgment in UAIC's favor. This disposed of all claims and Lewis
14 filed a Notice of Appeal on August 16, 2021. Supreme Court Case No. 83392 was docketed. On
15 August 27, 2021, Judge Barisich entered another Order regarding Lewis' Motion for Leave to
16 Amend and Cross Motions for Summary Judgment. The Order was entered August 30, 2021 and,
17 even though Lewis believes the Court did not have jurisdiction to enter an Order at that time, an
18 amended notice of appeal was filed in an abundance of caution. On August 19, UAIC filed a
19 Memorandum of Costs. On August 24, 2021, Third Party Plaintiff Gary Lewis filed a Motion to
20 Retax. On October 27, 2021 the Court entered an Order vacating the hearing on the Motion and
21 entered the Order which is herein appealed.

22 11. Prior Appeals or Writ Proceedings

23 Writ 78085 (consolidated with 78243)

24 83392 (currently pending)

12. Child Custody and Visitation


This case does not involve issues of child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement.

This is a civil case. Appellant believes there is a possibility of settling this matter. As a result of the earlier Notices of Appeal filed by Lewis (both as Third party plaintiff and as Defendant) and by Nalder, this case was previously placed in the settlement program and settlement efforts were unsuccessful because UAIC refused to participate in the settlement program.

Dated this 26th day of November, 2021.

CHRISTENSEN LAW OFFICES, LLC


THOMAS F. CHRISTENSEN, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC and that on this 30th day of November, 2021, I served a copy of the foregoing **CASE APPEAL STATEMENT** as follows:

XX E-Served through the Court's e-service system to all registered users on the case.


An employee of CHRISTENSEN LAW OFFICES, LLC.

CASE SUMMARY**CASE NO. A-18-772220-C**

Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

§
§
§
§
§
§

Location: **Department 5**
 Judicial Officer: **Barisich, Veronica M.**
 Filed on: **04/03/2018**
 Case Number History:
 Cross-Reference Case Number: **A772220**
 Supreme Court No.: **83392**

CASE INFORMATIONCase Type: **Negligence - Auto**

Case
Status: **04/03/2018 Open**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-18-772220-C
 Court Department 5
 Date Assigned 05/20/2021
 Judicial Officer Barisich, Veronica M.

PARTY INFORMATION















Plaintiff	Nalder, Cheyenne	<i>Lead Attorneys</i>
		Stephens, David Allen <i>Retained</i> 702-656-2355(W)
Defendant	Lewis, Gary	Arntz, E. Breen <i>Retained</i> 702-384-8000(W)
Intervenor	United Automobile Insurance Company	Douglas, Matthew J <i>Retained</i> 702-243-7000(W)
Third Party Defendant	Resnick and Louis P C	
	Removed: 01/28/2019	
	Dismissed	
	Tindall, Randall, ESQ	
	Removed: 01/28/2019	
	Dismissed	
Third Party Plaintiff	United Automobile Insurance Company	Douglas, Matthew J
	Removed: 01/28/2019	<i>Retained</i>
	Dismissed	702-243-7000(W)
	Lewis, Gary	Arntz, E. Breen
	Removed: 10/25/2018	<i>Retained</i>
	Data Entry Error	702-384-8000(W)
	Lewis, Gary	
	Removed: 01/28/2019	
	Dismissed	
	Lewis, Gary	Arntz, E. Breen
		<i>Retained</i> 702-384-8000(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX**

CASE SUMMARY














CASE NO. A-18-772220-C

EVENTS

04/03/2018	 Initial Appearance Fee Disclosure Filed By: Plaintiff Nalder, Cheyenne <i>[1] Initial Appearance Fee Disclosure</i>
04/03/2018	 Complaint Filed By: Plaintiff Nalder, Cheyenne <i>[2] Complaint</i>
05/10/2018	 Summons Electronically Issued - Service Pending <i>[3] Summons</i>
07/18/2018	 Summons <i>[4] Summons</i>
07/18/2018	 Three Day Notice <i>[5] Three Day Notice to Plead</i>
08/16/2018	 Motion to Intervene <i>[6] UAIC Motion to Intervene</i>
09/13/2018	 Stipulation Filed by: Plaintiff Nalder, Cheyenne <i>[7] Stipulation to Enter Judgment</i>
09/17/2018	 Opposition Filed By: Plaintiff Nalder, Cheyenne <i>[8] Plaintiff's Opposition to Motion to Intervene</i>
09/18/2018	 Reply in Support Filed By: Intervenor United Automobile Insurance Company <i>[9] UAIC'S Reply in Support of its Motion to Intervene</i>
09/18/2018	 Reply in Support Filed By: Intervenor United Automobile Insurance Company <i>[10] UAIC's Reply to Lewis' Opposition in Support of its Motion to Intervene</i>
09/21/2018	 Opposition to Motion Filed By: Defendant Lewis, Gary <i>[11] Defendant's Opposition to Motion to Intervene and Joinder to Plaintiff's Opposition to Motion to Intervene</i>
09/26/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Lewis, Gary <i>[13] Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
10/05/2018	 Notice of Hearing <i>[15] Amended Notice of Hearing</i>
10/08/2018	 Opposition to Motion to Dismiss Filed By: Plaintiff Nalder, Cheyenne <i>[16] Plaintiff's Opposition to Defendant's Motion to Dismiss</i>

CASE SUMMARY

CASE NO. A-18-772220-C

10/11/2018	 Opposition Filed By: Plaintiff Nalder, Cheyenne <i>[17] Plaintiff's Opposition to Defendant's Motion to Set Aside Judgment</i>
10/17/2018	 Motion to Strike Filed By: Defendant Lewis, Gary <i>[18] (2/14/19 Withdrawn) Defendant's Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss</i>
10/19/2018	 Order Granting Filed By: Intervenor United Automobile Insurance Company <i>[19] Order Granting UAIC's Motion to Intervene</i>
10/19/2018	 Initial Appearance Fee Disclosure <i>[20] Initial Appearance Fee Disclosure</i>
10/19/2018	 Notice of Entry of Order Filed By: Intervenor United Automobile Insurance Company <i>[21] Notice of Entry of Order on Intervenor United Automobile Insurance Company's Motion to Intervene</i>
10/19/2018	 Motion Filed By: Intervenor United Automobile Insurance Company <i>[22] UAIC's Motion To Dismiss Plaintiff's Complaint & Motion For Court To Deny Stipulation to Enter Judgment Between Plaintiff and Lewis and/or, In The Alternative To Stay Same Pending Hearing On Motion To Dismiss</i>
10/24/2018	 Third Party Complaint TPP: Defendant Lewis, Gary <i>[23] Third Party Complaint</i>
10/24/2018	 Answer Filed By: Defendant Lewis, Gary <i>[24] Answer to Complaint</i>
10/29/2018	 Notice of Department Reassignment <i>[25] Notice of Department Reassignment</i>
10/29/2018	 Opposition to Motion to Dismiss Filed By: Defendant Lewis, Gary <i>[26] Cross-Claimant's Opposition to UAIC's Motion to Dismiss Plaintiff's Complaint & Opposition to Motion for Court to Deny Stipulation to Enter Judgment Between Plaintiff and Lewis And/Or in the Alternative to Stay Same Pending Hearing on Motion to Dismiss</i>
10/29/2018	 Opposition Filed By: Plaintiff Nalder, Cheyenne <i>[27] Plaintiff's Opposition to UAIC's Motion to Dismiss, to Deny Stipulation for Judgment and for a Stay of the Proceedings</i>
10/30/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Nalder, Cheyenne <i>[28] Summons</i>
10/30/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Nalder, Cheyenne

CASE SUMMARY

CASE NO. A-18-772220-C

[29] Summons

10/30/2018



Summons Electronically Issued - Service Pending

Party: Plaintiff Nalder, Cheyenne

[30] Summons

10/30/2018



Peremptory Challenge

Filed by: Intervenor United Automobile Insurance Company

[31] Intervenor United Automobile Insurance Company's Peremptory Challenge of Judge

10/31/2018



Notice of Department Reassignment

[32] Notice of Department Reassignment

11/01/2018



Opposition

Filed By: Defendant Lewis, Gary

[33] Opposition to Gary Lewis' Motion to Strike Motion to Set Aside Judgment

11/06/2018



Affidavit of Service

Filed By: Defendant Lewis, Gary

[34] Affidavit Of Service

11/06/2018



Affidavit of Service

Filed By: Defendant Lewis, Gary

[35] Affidavit Of Service

11/06/2018



Affidavit of Service

Filed By: Defendant Lewis, Gary

[36] Affidavit Of Service

11/08/2018



Motion for Sanctions

Filed By: Defendant Lewis, Gary

[37] NRCP 11 Motion for Sanctions

11/08/2018



Notice of Hearing

Filed By: Defendant Lewis, Gary

[38] Notice of Hearing

11/13/2018



Request for Exemption From Arbitration

Filed by: Plaintiff Nalder, Cheyenne

[39]

11/15/2018



Motion to Dismiss

Filed By: Intervenor United Automobile Insurance Company

[40] UAIC'S Motion to Dismiss Third Party Plaintiff Lewis's Third Party Complaint

11/26/2018



Motion to Consolidate

Filed By: Intervenor United Automobile Insurance Company

[41] Intervenor's Motion to Consolidate on Order Shortening Time

11/27/2018



Opposition
















Filed By: Defendant Lewis, Gary

[43] Opposition to UAIC's Motion to Dismiss and Countermotion for Summary Judgment

11/27/2018













CASE SUMMARY

CASE NO. A-18-772220-C

	 Opposition Filed By: Defendant Lewis, Gary <i>[45] Opposition to UAIC's Motion to Consolidate and Countermotion to Set aside Void Order and to Strike all Filings by Intervenor, or, in the Alternative, for Summary Judgment</i>
11/28/2018	 Initial Appearance Fee Disclosure <i>[42] Initial Appearance Fee Disclosure</i>
11/28/2018	 Motion for Summary Judgment Filed By: Plaintiff Nalder, Cheyenne <i>[44] Plaintiff's Motion for Summary Judgment</i>
12/03/2018	 Commissioners Decision on Request for Exemption - Granted <i>[46] COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION - GRANTED</i>
12/04/2018	 Notice of Early Case Conference Filed By: Plaintiff Nalder, Cheyenne <i>[47] Notice of Early Case Conference</i>
12/02/2019	 Supplement to Motion for Summary Judgment Filed by: Plaintiff Nalder, Cheyenne <i>[48] Supplemental Exhibit to Plaintiff's Motion for Summary Judgment</i>
04/01/2020	 Opposition Filed By: Plaintiff Nalder, Cheyenne <i>[49] Opposition to UAIC's Motion to Extend Time to File Supplemental Brief and Cross Motion for Summary Judgment</i>
05/12/2020	 Order <i>[50] Order</i>
05/15/2020	 Notice of Department Reassignment <i>[51] Notice of Department Reassignment</i>
06/15/2020	 Motion for Attorney Fees and Costs Filed By: Defendant Lewis, Gary <i>[52] Gary Lewis' Motion for Attorney's Fees and Costs</i>
06/16/2020	 Clerk's Notice of Hearing <i>[53] Notice of Hearing</i>
06/25/2020	 Motion for Summary Judgment Filed By: Defendant Lewis, Gary <i>[54] Gary Lewis' Renewed Motion for Summary Judgment</i>
06/25/2020	 Clerk's Notice of Hearing <i>[55] Notice of Hearing</i>
06/29/2020	 Opposition to Motion Filed By: Intervenor United Automobile Insurance Company <i>[56] Opposition to Gary Lewis's Motion for Attorney's Fees and Costs</i>
07/09/2020	 Reply Points and Authorities

CASE SUMMARY

CASE NO. A-18-772220-C

	<p>Filed by: Defendant Lewis, Gary <i>[57] Gary Lewis' Reply in Support of Motion for Attorney's Fees and Costs</i></p>
07/09/2020	<p> Opposition and Countermotion Filed By: Intervenor United Automobile Insurance Company <i>[58] Opposition to Gary Lewis's Renewed Motion for Summary Judgment and Countermotion for Summary Judgment on Third-Party Complaint</i></p>
07/14/2020	<p> Filing Fee Remittance <i>[59] Balance Due on Behalf United Auto Insurance - #55</i></p>
07/21/2020	<p> Reply in Support Filed By: Defendant Lewis, Gary <i>[60] Third Party Plaintiff's Reply in Support of His Motion for Partial Summary Judgment Against UAIC</i></p>
07/22/2020	<p> Reply in Support Filed By: Intervenor United Automobile Insurance Company <i>[61] Reply Brief on Countermotion for Summary Judgment on Third-Party Complaint</i></p>
07/22/2020	<p> Notice Filed By: Intervenor United Automobile Insurance Company <i>[62] Notice of Nevada Supreme Court and Ninth Circuit Orders</i></p>
07/25/2020	<p> Opposition Filed By: Defendant Lewis, Gary <i>[63] Opposition to Countermotion for Summary Judgment</i></p>
07/27/2020	<p> Supplemental Filed by: Intervenor United Automobile Insurance Company <i>[64] Supplemental Notice of Order Regarding Costs and Attorney's Fees</i></p>
07/31/2020	<p> Request Filed by: Plaintiff Nalder, Cheyenne <i>[65] Request to Set Sheyenne Nalder's Motion for Summary Judgment for Hearing</i></p>
08/04/2020	<p> Motion for Summary Judgment Filed By: Plaintiff Nalder, Cheyenne <i>[66] Request to Set Cheyenne Nalder's Motion for Summary Judgment for Hearing</i></p>
08/05/2020	<p> Clerk's Notice of Hearing <i>[67] Notice of Hearing</i></p>
09/15/2020	<p> Stipulation and Order Filed by: Defendant Lewis, Gary <i>[68] Stipulation to Continue Hearing Dates</i></p>
10/07/2020	<p> Notice Filed By: Intervenor United Automobile Insurance Company <i>[69] Notice of United States District Court and Nevada Supreme Court Orders</i></p>
11/09/2020	<p> Recorders Transcript of Hearing Party: Plaintiff Nalder, Cheyenne <i>[70] Recorders Transcript of Hearing Re: 10/8/20 - Plaintiff Cheyenne Nalder's Motion for</i></p>

CASE SUMMARY

CASE NO. A-18-772220-C

Summary Judgment and Relief from Order Pursuant to NRCP 60(b)

11/10/2020	 Supplemental Brief Filed By: Intervenor United Automobile Insurance Company <i>[71] Supplemental Reply Brief on Countermotion for Summary Judgment on Third-Party Complaint</i>
11/30/2020	 Recorders Transcript of Hearing <i>[72] Recorder's Transcript Re: Miscellaneous Motions 11-17-20</i>
01/04/2021	Case Reassigned to Department 1 <i>Judicial Reassignment to Judge Bitu Yeager</i>
05/07/2021	 Peremptory Challenge Filed by: Plaintiff Nalder, Cheyenne <i>[73] Peremptory Challenge of Judge</i>
05/10/2021	 Notice of Department Reassignment <i>[74] Notice of Department Reassignment</i>
05/13/2021	 Notice of Hearing <i>[75] Notice of Hearing</i>
05/14/2021	 Motion for Summary Judgment Filed By: Plaintiff Nalder, Cheyenne <i>[76] Plaintiff's Motion to Enter Judgment, or, in the Alternative for Summary Judgment</i>
05/17/2021	 Motion to Amend Complaint Filed By: Defendant Lewis, Gary <i>[77] Gary Lewis' Motion for Leave to Amend Third Party Complaint</i>
05/17/2021	 Motion to Consolidate Filed By: Defendant Lewis, Gary <i>[78] Gary Lewis' Motion to Consolidate</i>
05/18/2021	 Clerk's Notice of Hearing <i>[79] Notice of Hearing</i>
05/18/2021	 Clerk's Notice of Hearing <i>[80] Notice of Hearing</i>
05/20/2021	 Peremptory Challenge Filed by: Intervenor United Automobile Insurance Company <i>[81] United Automobile Insurance Company's Peremptory Challenge</i>
05/20/2021	 Notice of Department Reassignment <i>[82] Notice of Department Reassignment</i>
05/21/2021	 Objection Filed By: Defendant Lewis, Gary <i>[83] Gary Lewis' Objection to this Court's Consideration of UAIC's Proposed Order</i>
05/21/2021	 Joinder

CASE SUMMARY

CASE NO. A-18-772220-C

	<p>Filed By: Plaintiff Nalder, Cheyenne <i>[84] Joinder in Objection to Proposed Order Denying Plaintiff's Motion for Summary Judgment and Granting UAIC's Motion for Summary Judgment</i></p>
05/26/2021	<p> Clerk's Notice of Hearing <i>[85] Notice of Hearing</i></p>
05/28/2021	<p> Response Filed by: Defendant Lewis, Gary <i>[86] Defendant Gary Lewis's Response to Nalder's Motion to Enter Judgment, or, In the Alternative for Summary Judgment</i></p>
05/28/2021	<p> Response Filed by: Defendant Lewis, Gary <i>[87] Response by Third Party Plaintiff Gary Lewis</i></p>
05/28/2021	<p> Opposition and Countermotion Filed By: Intervenor United Automobile Insurance Company <i>[88] Opposition to Cheyenne Nalder's Motion to Enter Judgment or for Summary Judgment and Countermotion for Entry of Judgment or Summary Judgment</i></p>
06/01/2021	<p> Filing Fee Remittance Filed By: Intervenor United Automobile Insurance Company <i>[89] Filing Fee Remittance</i></p>
06/01/2021	<p> Response Filed by: Defendant Lewis, Gary <i>[90] Defendant Gary Lewis's Response to Third Party Plaintiff's Motion to Amend Complaint and Consolidate</i></p>
06/01/2021	<p> Countermotion For Summary Judgment Filed By: Intervenor United Automobile Insurance Company <i>[91] Combined Opposition to Gary Lewis's "Motion for Leave to Amend Third-Party Complaint" and "Motion to Consolidate" and Countermotion for Entry of Judgment or Summary Judgment</i></p>
06/04/2021	<p> Response Filed by: Intervenor United Automobile Insurance Company <i>[92] Response to Gary Lewis's "Objection to this Court's Consideration of UAIC's Proposed Order"</i></p>
06/11/2021	<p> Opposition to Motion Filed By: Defendant Lewis, Gary <i>[93] Defendant Gary Lewis s Opposition to UAIC s Countermotion For Entry of Judgment or Summary Judgment</i></p>
06/11/2021	<p> Opposition Filed By: Defendant Lewis, Gary <i>[94] Opposition to UAIC's Countermotion for Entry of Judgment or Summary Judgment in favor of Lewis and against Nalder in the Nalder v. Lewis case</i></p>
06/11/2021	<p> Reply Filed by: Plaintiff Nalder, Cheyenne <i>[95] Reply in Support of Cheyenne Nalder's Motion for Summary Judgment and Opposition to UAIC's Countermotion for Summary Judgment</i></p>

CASE SUMMARY


CASE NO. A-18-772220-C

06/11/2021	 Exhibits Filed By: Plaintiff Nalder, Cheyenne <i>[96] Exhibits on Reply in Support of Motion for Summary Judgment</i>
06/15/2021	 Opposition to Motion Filed By: Defendant Lewis, Gary <i>[97] Opposition to Countermotion for Entry of Judgment or Summary Judgment in Third Party Complaint of Gary Lewis</i>
06/18/2021	 Notice of Hearing <i>[98] Instructions for BlueJeans VideoConferencing</i>
06/29/2021	 Reply Filed by: Defendant Lewis, Gary <i>[99] Gary Lewis' Reply In Support of Motion to Amend</i>
06/29/2021	 Reply Filed by: Defendant Lewis, Gary <i>[100] Gary Lewis' Reply In Support of Motion to Consolidate</i>
06/29/2021	 Reply in Support <i>[101] Reply Brief on Countermotion for Entry of Judgment or Summary Judgment on Nalder's Complaint</i>
06/29/2021	 Reply in Support Filed By: Intervenor United Automobile Insurance Company <i>[102] Reply Brief on Countermotion for Entry of Judgment or Summary Judgment on Lewis's Third-Party Complaint</i>
07/01/2021	 Notice of Hearing <i>[103] Instructions for BlueJeans VideoConferencing</i>
07/07/2021	 Notice Filed By: Intervenor United Automobile Insurance Company <i>[104] Notice of United States District Court Order Denying Nalder's and Lewis's Motions</i>
08/13/2021	 Notice Filed By: Defendant Lewis, Gary <i>[105] Notice of Proposed Orders</i>
08/13/2021	 Notice Filed By: Plaintiff Nalder, Cheyenne <i>[106] Cheyenne Nalder's Notice of Proposed Order</i>
08/14/2021	 Order <i>[107] Judgment and Order Regarding Cross-Motions for Summary Judgment</i>
08/16/2021	 Notice of Entry Filed By: Defendant Lewis, Gary <i>[108] Notice of Entry of Order</i>
08/16/2021	 Notice of Entry of Judgment Filed By: Intervenor United Automobile Insurance Company <i>[109] Notice of Entry of Judgment and Order Regarding Cross-Motions for Summary</i>

CASE SUMMARY

CASE NO. A-18-772220-C

Judgment

08/16/2021	 Notice of Appeal Filed By: Defendant Lewis, Gary <i>[110] Notice of Appeal</i>
08/16/2021	 Case Appeal Statement Filed By: Defendant Lewis, Gary <i>[111] Case Appeal Statement</i>
08/19/2021	 Memorandum of Costs and Disbursements Filed By: Intervenor United Automobile Insurance Company <i>[112] United Automobile Insurance Company's Memorandum of Costs and Disbursements</i>
08/23/2021	 Motion to Retax Filed By: Plaintiff Nalder, Cheyenne <i>[113] Cheyenne Nalder's Motion to Retax Costs</i>
08/23/2021	 Clerk's Notice of Nonconforming Document <i>[114] Clerk's Notice of Nonconforming Document</i>
08/24/2021	 Clerk's Notice of Nonconforming Document and Curative Action <i>[115] Clerk's Notice of Curative Action</i>
08/24/2021	 Clerk's Notice of Hearing <i>[116] Notice of Hearing</i>
08/24/2021	 Motion to Retax Filed By: Defendant Lewis, Gary <i>[117] Third Party Plaintiff's Motion to Retax</i>
08/25/2021	 Clerk's Notice of Hearing <i>[118] Notice of Hearing</i>
08/26/2021	 Objection Filed By: Third Party Plaintiff Lewis, Gary <i>[119] Third Party Plaintiff's Objection to UAIC's Proposed Order</i>
08/26/2021	 Notice of Posting Bond Filed By: Defendant Lewis, Gary <i>[120] Notice of Posting of Security Bond</i>
08/27/2021	 Order Filed By: Intervenor United Automobile Insurance Company <i>[121] Order Regarding Motions</i>
08/30/2021	 Notice of Entry of Order Filed By: Intervenor United Automobile Insurance Company <i>[122] Notice of Entry of Order Regarding Motions</i>
08/30/2021	 Notice of Appeal Filed By: Plaintiff Nalder, Cheyenne <i>[123] Notice of Appeal</i>

CASE SUMMARY

CASE NO. A-18-772220-C

08/30/2021	 Case Appeal Statement Filed By: Plaintiff Nalder, Cheyenne <i>[124] Case Appeal Statement</i>
09/07/2021	 Opposition and Countermotion Filed By: Intervenor United Automobile Insurance Company <i>[125] Motion to Strike Gary Lewis's Motion to Retax Costs or, Alternatively, Opposition to Gary Lewis's Motion to Retax Costs</i>
09/07/2021	 Opposition to Motion Filed By: Intervenor United Automobile Insurance Company <i>[126] Opposition to Cheyenne Nalder's Motion to Retax Costs</i>
09/15/2021	 Notice of Appeal Filed By: Defendant Lewis, Gary <i>[127] Notice of Appeal</i>
09/15/2021	 Case Appeal Statement Filed By: Defendant Lewis, Gary <i>[128] Case Appeal Statement</i>
09/21/2021	 Reply in Support Filed By: Plaintiff Nalder, Cheyenne <i>[129] Reply in Support of Cheyenne Nalder's Motion to Retax Costs</i>
09/21/2021	 Opposition Filed By: Defendant Lewis, Gary <i>[130] Opposition to Motion to Strike</i>
09/23/2021	 Notice of Hearing <i>[131] Instructions for BlueJeans VideoConferencing</i>
09/29/2021	 Amended Notice of Appeal Party: Defendant Lewis, Gary <i>[132] Amended Notice of Appeal</i>
09/29/2021	 Amended Case Appeal Statement <i>[133] Amended Case Appeal Statement</i>
09/29/2021	 Amended Notice of Appeal Party: Plaintiff Nalder, Cheyenne <i>[134] Amended Notice of Appeal</i>
09/29/2021	 Amended Case Appeal Statement Party: Plaintiff Nalder, Cheyenne <i>[135] Amended Case Appeal Statement</i>
09/29/2021	 Amended Notice of Appeal Party: Defendant Lewis, Gary <i>[136] Amended Notice of Appeal</i>
09/29/2021	 Amended Case Appeal Statement

CASE SUMMARY

CASE NO. A-18-772220-C

[137] Amended Case Appeal Statement

10/27/2021



Order

Filed By: Intervenor United Automobile Insurance Company

[138] Order on Nalder's Motion to Retax, Third Party Plaintiff's Gary Lewis's Motion to Retax Costs and Third party Defendant United Automobile Insurance Company's Motion to Strike Third Party Plaintiff's Motion to Retax Costs or Alternatively Opposition to Motion to Retax Cost

10/27/2021



Notice of Entry of Order

Filed By: Intervenor United Automobile Insurance Company

[139] Notice of Entry of Order

11/30/2021



Notice of Appeal

Filed By: Defendant Lewis, Gary

[140] Notice of Appeal

11/30/2021



Case Appeal Statement

Filed By: Defendant Lewis, Gary

[141] Case Appeal Statement

DISPOSITIONS

09/13/2018

Judgment Plus Legal Interest (Judicial Officer: Jones, David M)

Debtors: Gary Lewis (Defendant)

Creditors: Cheyenne Nalder (Plaintiff)

Judgment: 09/13/2018, Docketed: 09/13/2018

Total Judgment: 5,696,820.41

02/14/2019

Order of Dismissal (Judicial Officer: Johnson, Eric)

Debtors: Cheyenne Nalder (Plaintiff), Gary Lewis (Defendant)

Creditors: United Automobile Insurance Company (Intervenor)

Judgment: 02/14/2019, Docketed: 02/15/2019

Comment: Certain Claims. Doc filed in 07A549111

02/14/2019

Amended Judgment Plus Legal Interest (Judicial Officer: Johnson, Eric)

Debtors: Gary Lewis (Defendant)

Creditors: Cheyenne Nalder (Plaintiff)

Judgment: 02/14/2019, Docketed: 01/29/2019

Total Judgment: 5,696,810.41

Comment: 2/14/19 Per Order, Judgment Withdrawn, Filed in A549111

08/14/2021

Summary Judgment (Judicial Officer: Barisich, Veronica M.)

Debtors: Cheyenne Nalder (Plaintiff)

Creditors: United Automobile Insurance Company (Intervenor)

Judgment: 08/14/2021, Docketed: 08/16/2021

Debtors: Gary Lewis (Third Party Plaintiff)

Creditors: United Automobile Insurance Company (Third Party Defendant)

Judgment: 08/14/2021, Docketed: 08/16/2021

08/27/2021

Summary Judgment (Judicial Officer: Barisich, Veronica M.)

Debtors: Gary Lewis (Defendant)

Creditors: United Automobile Insurance Company (Intervenor)

Judgment: 08/27/2021, Docketed: 08/30/2021

Comment: Certain Claims

HEARINGS

09/19/2018



Motion to Intervene (3:00 AM) (Judicial Officer: Jones, David M)

UAIC's Motion to Intervene

CASE SUMMARY


CASE NO. A-18-772220-C

Granted; UAIC's Motion to Intervene

Journal Entry Details:

Court noted this matter was previously handled and the Motion was granted. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/26/18;

10/24/2018


 **Hearing (9:00 AM)** (Judicial Officer: Jones, David M)

Recused;

Journal Entry Details:

E. Breen Arntz, Esq., and Thomas F. Christensen, Esq., for Gary Lewis for Cross Claimant and Third Party Pltf. The Court disclosed Mr. Tindall worked with the Court in the firm for Farmers Insurance and does not see any conflict. Mr. Winner stated he does not see a conflict. Mr. Christensen stated he and Mr. Lewis does see a conflict because Mr. Lewis submitted a complaint to the bar because Mr. Tindall's representation is not authorized by Mr. Lewis and contrary to his interest. Court inquired what that has to do with the conflict. Mr. Christensen stated he is a Third Party Deft. in the cross claim and third party complaint that was filed. Further, Mr. Christensen requested the Court recuse at this time. Colloquy. Mr. Christensen requested time to review issues and from the very beginning the intervenor filed motion to Intervene. On the face of those motions, the certificate of service was improper on both motions and in both cases. On one it did not have anything filled in as to who was served and on the other one it was checked electronic service but Mr. Stephens was not on the Court's electronic service platform at the time that they signed and also did not have any service for Mr. Lewis or any attorney representing Mr. Lewis and those motions are defective to begin with. When Mr. Stephens discovered these motions were filed, filed oppositions and delivered courtesy copies to the Court prior to the hearing date. The Intervenor also filed replies and those oppositions were not considered by the Court and the Court granted the motions that were not properly noticed and then had an order prepared that was not run by anyone in the case and did not sign stipulated judgment that was submitted to the Court prior to the hearing on the motion but did sign order allowing intervention which is improper. Post judgment intervention is clear Nevada law that you cannot intervene after trial and that is in the other case that is already to judgment. Additionally, still waiting for the stipulated judgment in this case and have no information why we have not received that. Gary Lewis submitted bar complaint against Mr. Tindall for his entering appearances on his behalf. Court stated he is not hearing this as it does not come before this Court. Mr. Winner objected to counsel advising of the bar complaint. Mr. Christensen further stated bar counsel immediately dismissed the bar complaint and said Mr. Tindall is involved in this ongoing case and they were not going to do anything. If a judge refers this to the bar, then they will investigate. Further, Mr. Christensen requested the Court refer Mr. Tindall to the bar. There has been letters sent to Mr. Tindall from Mr. Lewis advising his to stop representing him, stop putting forth frivolous defenses in case on Mr. Lewis' behalf and Mr. Tindall refuses to. Colloquy. Opposition by Mr. Winner as to the request for this Court to recuse and believes the new pleadings are frivolous and a clumsy effort forcing the Court to appoint another judge on the case. Colloquy. Further opposition by Mr. Winner. Due to this Court and Mr. Tindall having a previous working relationship, to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random.;

11/08/2018

 **Motion for Relief (3:00 AM)** (Judicial Officer: Kephart, William D.)

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60

Minute Order Dated 10-24-18

Matter Continued;

Consolidated Case


Journal Entry Details:

COURT ORDERED, Defendant s Motion for Relief From Judgment Pursuant to NRCP 60 is CONTINUED to 12/11/2018 at 9:00 AM. FURTHER ORDERED, Defendant s Motion to Strike both Defendant s Motion for Relief from Judgment and Defendant s Motion to Dismiss, currently scheduled for 12/13/2018 at 3:00 AM is also MOVED to 12/11/2018 at 9:00 AM. Counsel reminded to provide single sided, tabbed courtesy copies to Department 19 s Chambers as soon as possible. CLERK'S NOTE: The above minute order has been distributed to: David A. Stephens dstephens@sgblawfirm.com E. Breen Arntz breen@breen.com Lisa Bell lbell@rlattorneys.com Thomas Christensen thomasc@injuryhelpnow.com Matthew Douglas mdouglas@awslawyers.com AWS E-Services eservices@awslawyers.com Victoria Hall vhall@awslawyers.com Shayna Ortega-Rose sortega-rose@rlattorneys.com Randall Tindall rtindall@rlattorneys.com ;

EIGHTH JUDICIAL DISTRICT COURT




CASE SUMMARY

CASE NO. A-18-772220-C

11/28/2018	<p>CANCELED Motion to Consolidate (10:30 AM) (Judicial Officer: Johnson, Eric)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Intervenor's Motion to Consolidate on Order Shortening Time</i></p>
11/30/2018	<p> Minute Order (11:30 AM) (Judicial Officer: Johnson, Eric)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>Intervenor United Automobile Insurance Company filed a Motion to Consolidate on Order Shortening Time on November 26, 2018. Defendant/Third Party Plaintiff Gary Lewis filed its Opposition and Countermotion to Set Aside Void Order and to Strike All Filings by Intervenor, or, in the Alternative, for Summary Judgment on November 27, 2018. The matter was subsequently scheduled for hearing on November 28, 2018. After considering the pleadings and argument of counsel, the Court GRANTS United Automobile Insurance Company's Motion to Consolidate on Order Shortening Time and DEFERS Defendant/ Third Party Plaintiff Lewis Countermotion to Set Aside Void Order and to Strike All Filings by Intervenor, or, in the Alternative, for Summary Judgment. The Court finds that claims in both cases arise from the same car accident and the same issues of law and facts exist in both cases. The Court further finds that decisions made in both cases, as well as the matters currently on appeal, will affect the litigation in both cases and so it is beneficial for the cases to be consolidated. Further, the cases were both being litigated before Department XXIX prior to the cases being reassigned and being placed in separate departments. The Court further finds that the parties will not be prejudiced by the consolidation of the cases and that judicial economy favors their consolidation. The Court hereby consolidates Case No. A772220 into Case No. A594111. The Court finds that the issues brought up in the Countermotion are currently being litigated in the Nevada Supreme Court on appeal and so the Court does not have the jurisdiction to hear them. The Court will DEFER ruling on the Countermotion pending the decision from the Nevada Supreme Court. The Court hereby VACATES the November 28, 2018 hearing. Intervenor is directed to prepare a proposed order including detailed findings of fact and conclusions of law, and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature. ;</i></p>
12/11/2018	<p>CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Jones, David M)</p> <p><i>Vacated</i></p> <p><i>Defendant's Motion to Dismiss</i></p>
12/11/2018	<p>CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Vacated</i></p> <p><i>UAIC s Motion To Dismiss Plaintiff s Complaint & Motion For Court To Deny Stipulation to Enter Judgment Between Plaintiff and Lewis and/or, In The Alternative To Stay Same Pending Hearing On Motion To Dismiss</i></p>
12/13/2018	<p>CANCELED Motion to Strike (3:00 AM) (Judicial Officer: Jones, David M)</p> <p><i>Vacated</i></p> <p><i>Defendant's Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss</i></p>
12/13/2018	<p>CANCELED Motion for Sanctions (3:00 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Vacated</i></p> <p><i>NRCP 11 Motion for Sanctions</i></p>
01/15/2019	<p>CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Vacated</i></p> <p><i>UAIC'S Motion to Dismiss Third Party Plaintiff Lewis's Third Party Complaint</i></p>
01/15/2019	<p>CANCELED Opposition and Countermotion (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Vacated</i></p> <p><i>Opposition to UAIC's Motion to Dismiss and Countermotion for Summary Judgment</i></p>
01/15/2019	<p>CANCELED Motion for Summary Judgment (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Vacated</i></p> <p><i>Plaintiff's Motion for Summary Judgment and Relief From Order Pursuant to NRCP 60(b)</i></p>

CASE SUMMARY

CASE NO. A-18-772220-C

07/28/2020	<p>Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Kephart, William D.) 07/28/2020, 11/17/2020 <i>Gary Lewis' Motion for Attorney's Fees and Costs</i> Matter Continued; Off Calendar; Matter Continued; Off Calendar;</p>
07/28/2020	<p>Motion for Summary Judgment (9:00 AM) (Judicial Officer: Kephart, William D.) 07/28/2020, 11/17/2020 <i>Gary Lewis' Renewed Motion for Summary Judgment</i> Matter Continued; Denied; Matter Continued; Denied;</p>
07/28/2020	<p>Opposition and Countermotion (9:00 AM) (Judicial Officer: Kephart, William D.) 07/28/2020, 11/17/2020 <i>Opposition to Gary Lewis's Renewed Motion for Summary Judgment and Countermotion for Summary Judgment on Third-Party Complaint</i> Matter Continued; Granted; Matter Continued; Granted;</p>
07/28/2020	<p> All Pending Motions (9:00 AM) (Judicial Officer: Kephart, William D.) Matter Heard; Journal Entry Details: <i>GARY LEWIS' MOTION FOR ATTORNEY'S FEES AND COSTS: Following arguments by counsel, COURT ORDERED, matter CONTINUED in order for the Court to review the supplemental pleadings. GARY LEWIS' RENEWED MOTION FOR SUMMARY JUDGMENT ... OPPOSITION TO GARY LEWIS'S RENEWED MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT ON THIRD-PARTY COMPLAINT Following arguments by counsel, COURT ORDERED, matter CONTINUED in order for the Court to review the supplemental pleadings. CONTINUED TO: 8/04/2020 9:00 AM ;</i></p>
10/08/2020	<p> Motion for Summary Judgment (9:00 AM) (Judicial Officer: Kephart, William D.) <i>Request to Set Cheyenne Nalder's Motion for Summary Judgment for Hearing</i> Denied; Journal Entry Details: <i>Following arguments by counsel, COURT ORDERED, Plaintiff Cheyenne Nalder's plaintiff Motion for Summary Judgment and Relief from Order Pursuant to NRCP 60(b) shall be DENIED as the Court does not believe there is a tolling issue and believes the Guardian at Litem had a responsibility here and simply missed that . Further, the payment was not in furtherance of this particular judgment and agree with the decision of the 9th circuit. Additionally, Defendant Lewis did reside in California and was amenable to service. FURTHER ORDERED, Defendant United Automobile Insurance Company's Counter Motion for Summary GRANTED.;</i></p>
11/17/2020	<p> All Pending Motions (9:00 AM) (Judicial Officer: Kephart, William D.) Matter Heard; Journal Entry Details: <i>GARY LEWIS' MOTION FOR ATTORNEY'S FEES AND COSTS ... GARY LEWIS' RENEWED MOTION FOR SUMMARY JUDGMENT ... OPPOSITION TO GARY LEWIS'S RENEWED MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT ON THIRD-PARTY COMPLAINT Following arguments by counsel, Court stated he lacks jurisdiction regarding the motion for attorney's fees and Costs; therefore, COURT ORDERED, Motion for Attorney's Fees and Costs OFF CALENDAR at this time. COURT ORDERED, Re-Newed Motion for Summary Judgment shall be DENIED and the Counter</i></p>

CASE SUMMARY

CASE NO. A-18-772220-C

Motion for Summary Judgment on Third-Party Complaint GRANTED. ;

06/10/2021



Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Gary Lewis' Objection to this Court's Consideration of UAIC's Proposed Order

Minute Order - No Hearing Held;

Journal Entry Details:

The Court FINDS that Defendant Gary Lewis' Objection is set for a hearing on June 29, 2021. However the Court notes that multiple motions are set for a hearing on July 6, 2021. At the request of the Court, for judicial economy, all motions shall be CONSOLIDATED and RESCHEDULED to July 6, 2021 at 10:30 a.m. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 06/11/21 ;

07/06/2021

Status Check (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Status Check: Status of Case

per 6-10-21 minute order

Matter Continued;

07/06/2021

Motion for Summary Judgment (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Events: 05/14/2021 Motion for Summary Judgment

Plaintiff's Motion to Enter Judgment, or, in the Alternative for Summary Judgment

per 6-10-21 minute order

Motion Denied;

07/06/2021

Motion for Leave (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Events: 05/17/2021 Motion to Amend Complaint

Defendant/Third-Party Plaintiff Gary Lewis' Motion for Leave to Amend Third Party Complaint

per 6-10-21 minute order

Motion Denied;

07/06/2021

Motion to Consolidate (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Events: 05/17/2021 Motion to Consolidate

Defendant/Third-Party Plaintiff Gary Lewis' Motion to Consolidate [Case No. A-18-772220-C with Case No. A-20-825502]

per 6-10-21 minute order

Off Calendar;

07/06/2021

Joinder (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Joinder in Objection to Proposed Order Denying Plaintiff's Motion for Summary Judgment and Granting UAIC's Motion for Summary Judgment

per 6-10-21 minute order

Motion Denied;

07/06/2021

Objection (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Gary Lewis' Objection to this Court's Consideration of UAIC's Proposed Order

Consolidated and Rescheduled

per 6-10-21 minute order

Motion Denied;

07/06/2021

Opposition and Countermotion (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Events: 05/28/2021 Opposition and Countermotion

United Automobile Insurance Company's Opposition to Cheyenne Nalder's Motion to Enter Judgment or for Summary Judgment and Countermotion for Entry of Judgment or Summary Judgment

per 6-10-21 minute order

Motion Granted;

07/06/2021

Opposition and Countermotion (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Combined Opposition to Gary Lewis's "Motion for Leave to Amend Third-Party Complaint" and "Motion to Consolidate" and Countermotion for Entry of Judgment or Summary Judgment

CASE SUMMARY

CASE NO. A-18-772220-C

per 6-10-21 minute order
Motion Granted;

07/06/2021

All Pending Motions (10:30 AM) (Judicial Officer: Barisich, Veronica M.)

Matter Heard;

Journal Entry Details:

Thomas Christensen, Esq., Attorney for Gary Lewis, Third Party Plaintiff STATUS CHECK: STATUS OF CASE Upon Court's inquiry regarding the stay, Mr. Stephens made an oral Motion to Lift the Stay. Mr. Polsenberg advised lifting the Stay would be dependent on the conclusion of the hearing today as to whether it would be appropriate to lift the Stay. Mr. Christensen advised Judge Johnson orally ruled the Stay was lifted but no Order was issued. COURT ORDERED, upon stipulation of the parties oral Motion to stay GRANTED until the other matters are decided. DEFENDANT/THIRD-PARTY GARY LEWIS' MOTION TO CONSOLIDATE [CASE NO. A-18-772200-C WITH CASE NO. A-20-825502] Court provided an overview and stated its inclinations. Mr. Christensen advised he would prefer the Motion to Consolidate was continued rather than to refile. Mr. Polsenberg objected since the parties would have to rebrief the Motion. COURT ORDERED, Motion to Consolidate OFF CALENDAR; Mr. Christensen to notice the Motion at a later time. DEFENDANT/THIRD-PARTY PLAINTIFF GARY LEWIS' MOTION FOR LEAVE TO AMEND THIRD PARTY COMPLAINT . . . COMBINED OPPOSITION TO GARY LEWIS' "MOTION FOR LEAVE TO AMEND THIRD-PARTY COMPLAINT" AND "MOTION TO CONSOLIDATE" AND COUNTERMOTION FOR ENTRY OF JUDGMENT OR SUMMARY JUDGMENT Arguments by counsel on whether or not the Motion was timely filed. Further arguments by counsel regarding the applicability of the futility doctrine under Halcrow other statutes and caselaw and abuse of process claims. COURT stated matter taken UNDER ADVISEMENT; a Minute Order will issue. PLAINTIFF'S MOTION TO ENTER JUDGMENT, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT . . . JOINDER IN OBJECTION TO PROPOSED ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING UAIC'S MOTION FOR SUMMARY JUDGMENT . . . UNITED AUTOMOBILE INSURANCE COMPANY'S OPPOSITION TO CHEYENNE NALDER'S MOTION TO ENTER JUDGMENT OR FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR ENTRY OF JUDGMENT OR SUMMARY JUDGMENT . . . GARY LEWIS' OBJECTION TO THIS COURT'S CONSIDERATION OF UAIC'S PROPOSED ORDER Court stated most of the issues would be resolved from an entry of an order from Judge Kephart's orders from October and November 2020 and requested Plaintiff Nalder and Defendant Lewis submit competing Orders and if there are remaining outstanding issues the Court would set a hearing or the parties could file a Motion for reconsideration. Mr. Polsenberg and Mr. Smith concurred and Mr. Christensen and Mr. Stephens objected and counsel argued in support of their positions. Arguments by counsel on the merits of the Motions and the applicability of statutes and case law. COURT stated that it is the belief of the Court that although it does have the power to enter the October 2020 and November 2020 orders made by Judge Kephart based on the pleadings and transcripts, matter taken UNDER ADVISEMENT; a Minute Order will issue.;

08/04/2021

Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Minute Order - No Hearing Held;

Journal Entry Details:

The Court notes that (1) Defendant/Third Party Plaintiff Gary Lewis' (Lewis) Motion for Leave to Amend Third Party Complaint, (2) Intervenor United Automobile Insurance Company's (UAIC) Opposition to Motion for Leave to Amend Third Party Complaint and Counter-motion for Entry of Judgment or Summary Judgment, (3) Plaintiff Cheyenne Nalder's (Nalder) Motion for Entry of Judgment or, in the Alternative, Summary Judgment, (4) Lewis' Joinders to Motion for Entry of Judgment or, in the Alternative, Summary Judgment, and (5) Intervenor UAIC's Opposition to Motion for Entry of Judgment or, in the Alternative, Summary Judgment and Counter-motion for Entry of Judgment or Summary Judgment were heard. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted, COURT FINDS and ORDERS as follows. Relevant Law NRCP 15 governs a Motion to Amend Complaint. NRCP 15(a) states in pertinent part, "A party may amend its pleading once as a matter of course . . . in all other cases, a party may amend its pleadings only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Under Rule 15, the district court may and should liberally allow an amendment to the pleadings if prejudice does not result. Schwartz v. Schwartz, 95 Nev. 202, 205, 591 P.2d 1137, 1139 (1979). Motions for leave to amend pleadings should be granted unless a strong reason exists not to do so, such as prejudice to the opponent or lack of good faith by the moving party. Nutton v. Sunset Station, Inc., 131 Nev. 279, 284, 357 P.3d 966, 970 (Ct. App. 2015). "The liberality embodied in the rule requires

CASE SUMMARY

CASE NO. A-18-772220-C

courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had." *Id.* at 292, 975. Moreover, when a complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred remedy. *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 734, 119 Nev. 1, 22 (2003). Leave to amend should be freely given when justice requires. *Id.* Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). Leave to amend a pleading should not be granted if the proposed amendment would be futile. *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013). A proposed amendment may be deemed "futile," as grounds for denying leave to amend a complaint, if the plaintiff seeks to amend the complaint in order to plead an impermissible claim. *Id.* Motion for leave to amend is addressed to sound discretion of trial court, and its action in denying the motion should not be held to be error unless such discretion has been abused. *Stephens v. S. Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). NRCP 56(a) states, "the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Under NRCP 56(c)(1), the fact must be supported by "materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials." However, subsection (c)(2) further states that "[a] party may object that the material cited to support or dispute a fact cannot be presented in 'a form that would be admissible in evidence.' A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026 (2005). All pleadings and proof must be construed in a light most favorable to the non-moving party, however, the non-moving party must do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* (quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14 (2002)). Under NRCP 56(d), if the nonmoving party shows by affidavit or declaration that, for specific reasons, it is unable to present facts essential to justify its opposition, the court may defer the consideration of the motion or allow time to obtain evidence or to take discovery. Statute of limitations for "an action upon a judgment . . . of any court of the United State, or of any state . . . or the renewal thereof" is generally 6 years. NRS 11.190(1). However, the time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given; and whenever any payment on principal or interest has been or shall be made upon an existing contract . . . the limitation shall commence from the time the last payment was made. NRS 11.200. If, when the cause of action shall accrue against a person, the person is out of the State, the action may be commenced within the time herein limited after the person's return to the State. NRS 11.300. However, the Nevada Supreme Court ruled in *Simmons v. Trivelpiece*, 98 Nev. 167, 643 P.2d 1219 (1982) that tolling statute under NRS 11.300 is not applicable against the nonresident defendant if the defendant was amenable to service of process. See *Seely v. Illinois-California Exp., Inc.*, 541 F.Supp. 1307 (D.Nev. 1982). If the person entitled to bring action was less than 18 years old at the time the cause of action accrued, the time the person was under 18 years of age does not accrue for the purposes of calculating the statute of limitations. NRS 11.250. A judgment creditor may renew a judgment which has not been paid by filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation. NRS 17.214(1)(a). The affidavit must be titled as an Affidavit of Renewal of Judgment. However, renewal of a judgment is not a recognized claim in Nevada *Striegel v. Gross*, 2013 WL 5658074 (D.Nev. Oct. 16, 2013). In *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994), the Nevada Supreme Court recognized that if the judgment debtor was in bankruptcy and the time for creditor to seek to renew its judgment had expired, if the judgment creditor can show that the judgment debtor's bankruptcy petitioners offered no legitimate prospect or intention of discharge of his debts and were simply a subterfuge to avoid satisfying creditor's judgment. However, recently, in *Fausto v. Sanchez-Flores*, 137 Nev. Adv. Op. 11, 482 P.3d 677 (2021), the Nevada Supreme Court held that when determining whether a statute of limitation is subject to equitable tolling, the starting injury is the understanding that the legislature legislates against a background of common-law adjudicatory principles (e.g. equitable tolling). The relevant inquiry must be whether the claimant demonstrated diligence in pursuing the claim and that extraordinary circumstance beyond her control caused her claim to be filed outside the limitations period. "[F]or claim preclusion to apply the following factors must be met: (1) the same parties or their privies are involved in both cases, (2) a valid final judgment has been entered, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Five Star Capital Corp. v.*

CASE SUMMARY

CASE NO. A-18-772220-C

Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008); holding modified by Weddell v. Sharp, 131 Nev. 233, 350 P.3d 80 (2015). For issue preclusion or collateral estoppel to apply, the following factors must be met: "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008); holding modified by Weddell v. Sharp, 131 Nev. 233, 350 P.3d 80 (2015). Furthermore, unlike claim preclusion or *res judicata*, issue preclusion only applies to issues that were actually and necessarily litigated and on which there was a final decision on the merits. *Id.* The distinction is made because the issue preclusion applies to prevent relitigation of only a specific issue that was decided in a previous suit between the parties, even if the second suit is based on different causes of action and different circumstances." *Id.* at 1055, 714. Findings and Conclusions The Court FINDS and CONCLUDES that Nalder submitted a proposed judgment that is based on the September 13, 2018 stipulation to enter judgment for \$5,696,820.41. At the time the stipulation was filed, UAIC was not a party to the case and did not sign off in the stipulation. This judgment based on this stipulation cannot be signed for the reasons set forth below. The Court FINDS and CONCLUDES that Judge Kephart, who was previously assigned to this case, held hearings on various motion on October 8, 2020 and November 17, 2020. Judge Kephart denied Nalder's motion for summary judgment, denied Lewis' motion for summary judgment, granted UAIC's cross-motion for summary judgment on Nalder's complaint, and, granted UAIC's counter-motion to dismiss Lewis' third party complaint. Unfortunately, this already convoluted case was further complicated by the fact that the orders were not submitted to and/or signed by Judge Kephart before he left the bench. Thus, there are no enforceable orders from those hearings. The Court is in receipt of various orders from the parties. Lewis submitted proposed order from the said October 8, 2020 and November 17, 2020 hearings that appears not to comport with what Judge Kephart had ordered from the bench. Citing to *LaGrange Construction v. Del E. Webb Corp.*, 83 Nev. 524, 435 P.2d 515 (1967), Lewis argues that this Court lacks the authority to sign the orders from the prior hearings conduct by Judge Kephart. However, *LaGrange* is factually distinguishable. The issue in that case was that prior to leaving the bench, the judge who held a bench trial signed the written decision 2 days before the end of his term, but for whatever the reason, the filing of the decision was delayed, and was not filed until several days after his term had ended. However, this is not the case here. Parties do not dispute that they were given a notice and opportunity to be heard and at the conclusion of the hearings, Judge Kephart made an order, which unfortunately was not reduced to writing before to the expiration of his term. The Court has an inherent authority to approve the written orders from the prior hearings by Judge Kephart, so long as it is consistent what Judge Kephart had actually ordered based on the pleadings, minutes, and transcript from the said prior hearings (which have been reviewed). Thus, Lewis' proposed order cannot be signed. The Court FINDS and CONCLUDES that UAIC also submitted a proposed orders from the October 8, 2020 and November 17, 2020, which was not approved as to form and content by Nalder and Lewis. Nalder and Lewis both argue that additional hearing is necessary for the Court to consider what Judge Kephart had actually ordered. However, their objection is procedurally improper as they are, in actuality, seeking a premature reconsideration of the orders from those hearings. However, after the order is entered, Nalder and/or Lewis may seek reconsideration of the order or appeal the matter. Nonetheless, the Court is willing to extend additional time for Nalder and/or Lewis to submit a competing proposed order. If they wish to submit a proposed competing order, it shall be due within on August 13, 2021. Thus, Lewis' Objection to UAIC's Proposed Order and Nalder's Joinder to Objection to UAIC's Proposed Order cannot be sustained. The Court FINDS and CONCLUDES that, in the alternative, even if the Court reviews Nalder and Lewis' arguments made in their recent pleadings without giving weight to Judge Kephart's orders, Nalder's motion and Lewis' joinder cannot be granted. The main issue regarding Nalder's motion and Lewis' joinder vs. UAIC's counter-motion is whether Nalder's 2008 Default Judgment has expired and if so, whether the 2018 Amended Judgment has the effect of renewing the expired judgment. The Court FINDS and CONCLUDES that claim preclusion and issue preclusion both applies to the issue of whether the 2008 Default Judgment has expired. All *Five Star Capital* factors were met. As for claim preclusion, the same parties or their privies were involved both in the 9th Circuit case and in the instant case, 9th Circuit issued a valid final judgment, which was also accepted by the Nevada Supreme Court when the 9th Circuit certified the question on this matter, and the instant case is based on the same claims or any part of them that were or could have been brought in the first case. As for issue preclusion, the issue of whether the 2008 Default Judgment has expired was present in both the 9th Circuit case and in the instant case, the 9th Circuit's decision was on the merits and became final as the petition for en banc hearing and writ of certiorari were denied (and again, the Nevada Supreme Court accepted the 9th Circuit determination as well when it answered the certified question from the 9th Circuit), Lewis and UAIC were either a party and/or in privity with a

CASE SUMMARY

CASE NO. A-18-772220-C

party in the 9th Circuit case, and the issue was actually and necessarily litigated. It is noted that Nalder and Lewis attempted to raise the tolling arguments, but the 9th Circuit deemed such argument to have been forfeited and waived. It is further noted that Nalder and Lewis' interests were aligned in the 9th Circuit case, but this does not affect the privity requirement and Nalder and Lewis failed to provide sufficient case law otherwise. The Court FINDS and CONCLUDES that there is no dispute that the applicable statute of limitation is 6 years under NRS 11.190. Even if Nalder was a minor until 2016, NRS 11.250 cannot be used to extend the statute of limitation. Nalder, through her guardian ad litem, already brought a suit against Lewis and obtained a default judgment in 2008. By its plain language, NRS 11.250 only addresses bringing an action, not renewing a judgment from a case that was already filed. Thus, Plaintiff cannot file yet another case to obtain another judgment after turning 18 years old. It was incumbent on Nalder's guardian ad litem to timely renew the judgment under NRS 17.214 by filing an affidavit of renewal, but he failed to do so back in 2014. Thus, NRS 11.250 is not applicable. The Court FINDS and CONCLUDES that although Nalder points out that Lewis was a resident of California since 2010 and argues for the application of NRS 11.300, the Court cannot agree. Similar argument was raised in *Striegel v. Gross*, 2013 WL 5658074 (D.Nev. Oct. 16, 2013) and was rejected by the Nevada federal district court. This Court agrees with that analysis. Furthermore, Lewis' current counsel of record, Thomas Christensen, who had previously represented Nalder in the 2008 Default Judgment case, failed to set forth sufficient evidence that he was not amenable to service under *Simmons v. Trivelpiece*, 98 Nev. 167, 643 P.2d 1219 (1982). Moreover, the Nevada Supreme Court explained, defendant's absence from the state does not automatically tolls the statute of limitations. Such statute only applies when plaintiff is unable to bring a particular defendant into the court. *Seely v. Illinois-California Exp., Inc.*, 541 F.Supp. 1307 (D.Nev. 1982). Also damaging to Nalder and Lewis' argument is that Lewis' purported absence had no bearing on whether Nalder could renew her judgment under NRS 17.214. All she had to do to renew her judgment was to timely file an affidavit of renewal in 2014 via her guardian ad litem. However, for whatever the reason, Nalder failed to do so. Thus, since the 2008 Default Judgment has expired, there is no showing of prejudice to Lewis. The Court FINDS and CONCLUDES that although Nalder and Lewis also argue for the application of NRS 11.200 based on the fact that UAIC made a payment of \$15,000 policy limit to Plaintiff on or about 2015, the Court cannot accept such argument. UAIC was ordered by the Nevada federal district court, upon remand, to pay this amount for the claim of bad faith insurance with Lewis, not for Nalder's 2008 Default Judgment. The Court FINDS and CONCLUDES that although Nalder and Lewis cite to *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994) for the proposition that the Nevada has recognized equitable tolling, this case does not support such proposition. That case dealt with a judgment debtor who declared bankruptcy and due to the stay, the judgment creditor could not renew its judgment. Nevada Supreme Court made a narrow exception if the judgment creditor can show that the judgment debtor's bankruptcy petitioners offered no legitimate prospect or intention of discharge of his debts and were simply a subterfuge to avoid satisfying creditor's judgment, judgment creditor can argue equitable tolling. However, in a more recent decision in *Fausto v. Sanchez-Flores*, 137 Nev. Adv. Op. 11, 482 P.3d 677 (2021), the Nevada Supreme Court held that when determining whether a statute of limitation is subject to equitable tolling, the relevant inquiry must be whether the claimant demonstrated diligence in pursuing the claim and that extraordinary circumstance beyond her control caused her claim to be filed outside the limitations period. Here, Nalder failed to sufficiently show the diligence in pursuing her claim and that extraordinary circumstances beyond her control her claim to expire in 2014. Nalder, via her guardian ad litem, knew or should have known that her 2008 default judgment would have expired in 2014, but failed to set forth sufficient facts that evince diligence or extraordinary circumstances beyond her control. The Court FINDS and CONCLUDES that although Nalder and Lewis cites to NRS 11.190(1) to argue that "action upon a judgment" is a proper claim, the Court cannot accept such argument. Nevada Supreme Court already ruled that the filing of the federal action against UAIC cannot be deemed to be an action upon the 2008 default judgment. At best, Nalder and Lewis appears to rely on the dicta from that decision to argue that "action upon a judgment" is a distinct cause of action recognized in Nevada. However, it must be noted that the federal case was filed after 2014 thus, the 2008 default judgment had already expired when the federal case was filed. Neither Nalder nor Lewis can revive a judgment that was already expired. Furthermore, renewal of a judgment is a not a recognized claim in Nevada. See *Striegel v. Gross*, 2013 WL 5658074 (D.Nev. Oct. 16, 2013). The Court FINDS and CONCLUDES that since Nalder's rights under the 2008 default judgment against Lewis have expired due to her failure to renew, Lewis cannot make a claim against UAIC rooted in that 2008 default judgment and UAIC's efforts to relieve Lewis from that judgment. Thus, Nalder does not have a valid judgment against either Lewis or UAIC; Lewis has no claim against UAIC. The Court FINDS and CONCLUDES that back in 2018, Nalder filed an ex parte application for an amended judgment on the basis that she is no longer a minor and the 2008 default judgment should be amended because it was entered in the name of her guardian ad litem and her name should be in the amended judgment. Nalder did

CASE SUMMARY**CASE NO. A-18-772220-C**

not mention its impact on the statute of limitations or the tolling issue and Judge Jones (who was then assigned to the case) did not make any such findings. Thus, the effect of this 2018 amended judgment was purely ministerial and did not have the effect of reviving an expired judgment. Furthermore, the Nevada Supreme Court, in the *Nalder v. Eight Judicial Dist. Court*, 136 Nev. 200, 462 P.3d 677 (2020), recognized that 2018 amended judgment only served a ministerial function. Again, both the 9th Circuit and the Nevada Supreme Court already ruled that the 2008 default judgment had expired. Nalder and Lewis were unable to provide sufficient case law in support for the proposition that the expired judgment can be renewed and be enforceable. Thus, Nalder does not have a valid judgment against Lewis or UAIC and Lewis has no claim against UAIC. The Court FINDS and CONCLUDES that Lewis is unable to clearly show how he was prejudiced by UAIC's actions since UAIC was successful in defending against the 2008 default judgment entered against him. The Court FINDS and CONCLUDES that September 13, 2018 stipulation between Nalder and Lewis does not bind UAIC. The sole purpose of this stipulation appears to be to revive the expired 2008 default judgment and to ensure that Lewis has viable bad faith insurance claim against UAIC. However, UAIC successfully defended Nalder's claim against Lewis. Furthermore, UAIC has tendered the policy limit in the related federal court case as ordered and it is not obligated to honor the stipulation between the purported adverse parties, who actually appear to be working in concert against UAIC. Thus, the Court cannot issue an order based on their stipulation. The Court FINDS and CONCLUDES that as to Lewis' motion for leave to amend the third party complaint, the Court recognizes that the standard for leave to amend is very lenient and must be freely given when justice so requires. Basis for denial of such motion is undue delay, bad faith, dilatory motives, or futility. However, the motion cannot be granted because it appears to have been filed in bad faith and is futile. Under *Halcrow*, the relevant inquiry for the Court is to determine whether Lewis is seeking to plead "an impermissible claim." Lewis' proposed Amended Third Party Complaint appears to mirror the arguments made in the anti-SLAPP motion that he filed against UAIC in the Nevada federal district court, without success. Again, since the Nevada federal district court, the 9th Circuit and the Nevada Supreme Court all agreed with UAIC in that Lewis is not liable to Nalder because she failed to timely renew her 2008 default judgment, there is no cognizable claim against UAIC or its counsel. Thus, both claim and issue preclusion again apply and Lewis appears to be engaged in an impermissible forum shopping because he was dissatisfied with the results obtained in the Nevada federal district court case and thus, the instant motion was made in bad faith and is futile. Thus, the motion must be deemed to be made in bad faith and must be denied. **ORDERS** The COURT ORDERS that Nalder and Lewis have until August 13, 2021 to submit their proposed competing proposed order from the October 8, 2020 and November 17, 2020 hearings. The COURT ORDERS that (1) Defendant/Third Party Plaintiff Gary Lewis' (Lewis) Motion for Leave to Amend Third Party Complaint shall be DENIED, (2) Intervenor United Automobile Insurance Company's (UAIC) Opposition to Motion for Leave to Amend Third Party Complaint and Countermotion for Entry of Judgment or Summary Judgment shall be GRANTED, (3) Plaintiff Cheyenne Nalder's (Nalder) Motion for Entry of Judgment or, in the Alternative, Summary Judgment shall be DENIED, (4) Lewis' Joinders to Motion for Entry of Judgment or, in the Alternative, Summary Judgment shall be DENIED, and (5) Intervenor UAIC's Opposition to Motion for Entry of Judgment or, in the Alternative, Summary Judgment and Countermotion for Entry of Judgment or Summary Judgment shall be GRANTED. The Court ORDERS that Lewis' Objection to UAIC's Proposed Order and Nalder's Joinder to Objection to UAIC's Proposed Order shall be DENIED. Counsel for UAIC is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Nalder and Lewis' counsel are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with AO 21-04. **CLERK'S NOTE:** This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 08/04/21 ;

09/27/2021

**Minute Order (3:00 AM)** (Judicial Officer: Barisich, Veronica M.)

Cheyenne Nalder's Motion to Retax Costs ; Third Party Plaintiff's Motion to Retax ; United Automobile Insurance Company's Motion to Strike Gary Lewis's Motion to Retax Costs or, Alternatively, Opposition to Gary Lewis's Motion to Retax Costs

Minute Order - No Hearing Held;

Journal Entry Details:

The Court notes that (1) Plaintiff Cheyenne Nalder's ("Nalder") Motion to Retax Costs, (2) Third Party Plaintiff Gary Lewis's ("Lewis") Motion to Retax Costs, and (3) Third Party Defendant United Automobile Insurance Company's ("UAIC") Motion to Strike Third Party Plaintiff's Motion to Retax Costs or Alternatively, Opposition to Motion to Retax Costs are set for a hearing on September 28, 2021. After a review of the pleadings, and good cause

CASE SUMMARY**CASE NO. A-18-772220-C**

appearing, pursuant to EDCR 2.23 and the Administrative Order 21-04, the Court FINDS and ORDERS as follows: Relevant Law NRS 18.005 defines the term "costs" to include the following: 1. Clerks' fees. 2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition. 3. Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120. 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity. 5. Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee. 6. Reasonable fees of necessary interpreters. 7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary. 8. Compensation for the official reporter or reporter pro tempore. 9. Reasonable costs for any bond or undertaking required as part of the action. 10. Fees of a court bailiff or deputy marshal who was required to work overtime. 11. Reasonable costs for telecopies. 12. Reasonable costs for photocopies. 13. Reasonable costs for long distance telephone calls. 14. Reasonable costs for postage. 15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery. 16. Fees charged pursuant to NRS 19.0335. 17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research. NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). Relevant procedural background On August 14, 2021, Judgment and Order regarding Cross-Motions for Summary Judgment, which was heard on October 8, 2020 and November 17, 2020, was filed. Judgment and Order was in favor of UAIC. Notice of entry of the Judgment and Order was filed on August 16, 2021. On August 19, 2021, UAIC filed a memorandum of costs and disbursements, seeking costs of \$4,514.00, which included filing fees of \$1,387.00, copy costs of \$163.00, runner fees of \$15.00, and electronic research fees of \$2,949.00. Nalder filed a motion to retax on August 23, 2021. Lewis filed a motion to retax on August 24, 2021. Order regarding competing motions heard on July 6, 2021 was filed on August 27, 2021. Notice of entry of this Order was filed on August 30, 2021. Findings and Conclusions The Court FINDS and CONCLUDES that UAIC is a prevailing party against both Nalder and Lewis. UAIC prevailed in its summary judgment motion against both Nalder and Lewis and thus, he may recover costs against both Nalder and Lewis. The Court FINDS and CONCLUDES that although UAIC raises valid points on the timing of the Lewis' motion to retax under NRS 18.110(4), the Court prefers to consider the case on its merits. Thus, UAIC's motion to strike Lewis' motion cannot be granted. The Court FINDS and CONCLUDES that UAIC's memorandum of costs and disbursements contained sufficient evidence of its costs incurred under *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015). The Court FINDS and CONCLUDES that the peremptory challenges costs cannot be deemed to be recoverable costs. Under SCR 48.1, peremptory challenge is discretionary; that is, the parties have a choice to pay fees to seek a different judge, chosen at random, to hear the case. Peremptory challenges were not necessary for UAIC's participation in the case. Thus, it does not fall under NRS 18.005(1) as filing fees. Furthermore, it cannot be deemed to be "reasonable and necessary expenses" under NRS 18.005(17). Thus, the peremptory challenges fees that UAIC incurred, in the amount of \$920.50, cannot be awarded. The Court FINDS and CONCLUDES that all other objections to UAIC's memorandum of costs and disbursements, regarding copying costs, runner fees, and electronic research fees are without merit under NRS 18.005(12) and (17). The costs incurred in those areas must be deemed reasonable and necessary and awarded in full. ORDERS The Court ORDERS that Nalder's Motion shall be GRANTED in part, DENIED in part. Lewis' Motion shall be GRANTED in part, DENIED in part. UAIC's Motion to strike shall be DENIED. Out of the \$4,514.00 in costs sought, UAIC shall be awarded \$3,593.50 in costs, after deducting \$920.50 in costs associated with the UAIC's peremptory challenges. The hearing set for September 28, 2021 VACATED. Counsel for UAIC is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Nalder and Lewis' counsel are to review and countersign as to form and content. Counsel is directed to have the proposed

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-772220-C

	<p><i>Order submitted to chambers within 14 days consistent with AO 21-04 and EDCR 7.21.</i></p> <p><i>CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/27/21;</i></p>
09/28/2021	<p>CANCELED Motion to Retax (9:00 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p><i>Vacated - per Order</i></p> <p><i>Cheyenne Nalder's Motion to Retax Costs</i></p>
09/28/2021	<p>CANCELED Motion to Retax (9:00 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p><i>Vacated - per Order</i></p> <p><i>[117] Third Party Plaintiff's Motion to Retax</i></p>
09/28/2021	<p>CANCELED Opposition and Countermotion (9:00 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p><i>Vacated - per Order</i></p> <p><i>United Automobile Insurance Company's Motion to Strike Gary Lewis's Motion to Retax Costs or, Alternatively, Opposition to Gary Lewis's Motion to Retax Costs</i></p>

DATE	FINANCIAL INFORMATION
	<p>Defendant Lewis, Gary</p> <p>Total Charges 630.00</p> <p>Total Payments and Credits 630.00</p> <p>Balance Due as of 12/2/2021 0.00</p>
	<p>Intervenor United Automobile Insurance Company</p> <p>Total Charges 1,793.00</p> <p>Total Payments and Credits 1,793.00</p> <p>Balance Due as of 12/2/2021 0.00</p>
	<p>Plaintiff Nalder, Cheyenne</p> <p>Total Charges 1,144.00</p> <p>Total Payments and Credits 1,144.00</p> <p>Balance Due as of 12/2/2021 0.00</p>
	<p>Defendant Lewis, Gary</p> <p>Appeal Bond Balance as of 12/2/2021 500.00</p>

DISTRICT COURT CIVIL COVER SHEET

A-18-772220-C

County, Nevada

Case No.

Department 29

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

CHEYENNE NALDER

Defendant(s) (name/address/phone):

GARY LEWIS

Attorney (name/address/phone):

David A. Stephens, Esq.

3636 N. Rancho Drive

Las Vegas, Nevada 89130

(702) 656-2355

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

April 2, 2018

Date



Signature of initiating party or representative

See other side for family-related case filings.

Thomas E. Winner

CLERK OF THE COURT

ORDER

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Attorneys for United Automobile Insurance Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS; DOES I through V,
inclusive,
Defendants.

UNITED AUTOMOBILE INSURANCE
COMPANY,
Intervener.

GARY LEWIS,
Third-Party Plaintiff,
vs.
UNITED AUTOMOBILE INSURANCE
COMPANY,
Third-Party Defendant.

Case No. A-18-772220-C

Dep't No. 5

**ORDER ON NALDER'S MOTION TO
RETAX, THIRD PARTY PLAINTIFF'S
GARY LEWIS'S MOTION TO RETAX
COSTS AND THIRD PARTY DEFENDANT
UNITED AUTOMOBILE INSURANCE
COMPANY'S MOTION TO STRIKE THIRD
PARTY PLAINTIFF'S MOTION TO
RETAX COSTS OR ALTERNATIVELY,
OPPOSITION TO MOTION TO RETAX
COSTS**

1 This cause having come before the Court on (1) Cheyenne Nalder's
2 ("Nalder") Motion to Retax; (2) Third Party Plaintiff's Gary Lewis's ("Lewis")
3 Motion to Retax Costs; and (3) Third Party Defendant United Automobile
4 Insurance Company's ("UAIC") Motion to Strike Third Party Plaintiff's Motion to
5 Retax Costs or Alternatively, Opposition to Motion to Retax Costs; and the Court
6 being fully advised in the premises pursuant to the applicable Nevada Revised
7 Statutes, the Court hereby takes notice of following Findings and Conclusions
8 and the arguments submitted by the parties:

- 9 1. UAIC prevailed in its summary judgment motion against both Nalder and
10 Lewis, and thus, it may recover costs against both Nalder and Lewis;
- 11 2. While UAIC raises valid points on the timing of the Lewis' motion to retax
12 under NRS 18.110(4), the Court prefers to consider the case on its merits
13 and therefore, UAIC's motion to strike Lewis' motion cannot be granted;
- 14 3. UAIC's memorandum of costs and disbursements contained sufficient
15 evidence of its costs incurred under *Cadle Co. v. Woods & Erickson, LLP*,
16 131 Nev. 114, 345 P.3d 1049 (2015);
- 17 4. The peremptory challenge fees that UAIC incurred, in the amount of
18 \$920.50, cannot be awarded under SCR 48.1; a preemptory challenge is
19 discretionary. Peremptory challenges were not necessary for UAIC's
20 participation in the case and therefore do not fall under NRS 18.005(1) as
21 filing fees. Furthermore, a peremptory challenge cannot be deemed to be
22 "reasonable and necessary expenses" under NRS 18.005(17); and
- 23 5. All other objections to UAIC's memorandum of costs and disbursements,
24 regarding copying costs, runner fees, and electronic research fees are
25 without merit under NRS 18.005(12) and (17). Therefore, the costs incurred
26 in those areas must be deemed reasonable and necessary and awarded in
27 full. Based on the above findings, and the briefing submitted by the parties:

IT IS HEREBY ORDERED that Nalder's Motion shall be GRANTED in part, DENIED in part. Lewis' Motion shall be GRANTED in part, DENIED in part. UAIC's Motion to strike shall be DENIED. Out of the \$4,514.00 in costs sought, UAIC shall be awarded \$3,593.50 in costs, after deducting \$920.50 in costs associated with the UAIC's peremptory challenges from the \$4,514.00 originally sought by UAIC.

IT IS FURTHER ORDERED the hearing set for September 28, 2021, is
VACATED.

Dated this 27th day of October, 2021

V. Barisich

5AA 110 D4D8 CBED
Veronica M. Barisich
District Court Judge

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
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THOMAS E. WINNER (SBN 5168)
WINNER BOOZE & ZARCONE
1117 SOUTH RANCHO DRIVE
Las Vegas, Nevada 89102
(702) 243-7000

*Attorneys for United Automobile
Insurance Company*

1 Approved as to form and content by:

2 STEPHENS LAW OFFICES

CHRISTENSEN LAW OFFICES, LLC

3 By: /s/ David Stephens
4 DAVID A. STEPHENS (SBN 902)
3636 North Rancho Drive
5 Las Vegas, Nevada 89130
(702) 656-2355

6 *Attorney for Plaintiff*
7 *Cheyenne Nalder*

By: /s/ no response
THOMAS F. CHRISTENSEN (SBN 2326)
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000

Attorney for Third-Party Plaintiff
Gary Lewis

8 *[This order was provided to all*
9 *counsel on October 13, 2021, for*
10 *review, but we received no response*
11 *from plaintiff's counsel]*

Jaramillo, Annette

From: Kapolnai, Emily
Sent: Monday, October 18, 2021 11:49 AM
To: Jaramillo, Annette
Subject: FW: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

Emily Kapolnai
Legal Administrative Assistant

EKapolnai@lewisroca.com
D. 702.949.8250



From: David A. Stephens <dstephens@davidstephenslaw.com>
Sent: Thursday, October 14, 2021 8:22 AM
To: Helm, Jessica <JHelm@lewisroca.com>; dawnh@injuryhelpnow.com; ervnelson6@gmail.com; breen@breen.com; breenarntz@me.com; thomasc@injuryhelpnow.com
Cc: Polsenberg, Daniel F. <DPolsenberg@lewisroca.com>; Kapolnai, Emily <EKapolnai@lewisroca.com>; Kelley, Cynthia <CKelley@lewisroca.com>; mdouglas@winnerfirm.com; twinner@winnerfirm.com; Smith, Abraham <ASmith@lewisroca.com>; Jorgensen, J. Christopher <CJorgensen@lewisroca.com>
Subject: RE: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

[EXTERNAL]

Jessica,

I do not have any changes. You may use my e-signature on the proposed order.

Thanks,

David A. Stephens, Esq.

3636 N. Rancho Drive
Las Vegas, NV 89130

Phone: (702) 656-2355
Facsimile: (702) 656-2776

<mailto:dstephens@davidstephenslaw.com>

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received this electronic transmission (e-mail) in error, please immediately notify us by telephone and delete the e-mail from your computer. You may contact us at (702) 656-2355.

----- Original Message -----

From: Helm, Jessica [<mailto:JHelm@lewisroca.com>]

To: "Dawn Hooker" <dawnh@injuryhelpnow.com>, "ervnelson6@gmail.com" <ervnelson6@gmail.com>, "Breen Arntz" <breen@breen.com>, "breenarntz@me.com" <breenarntz@me.com>, "thomasc@injuryhelpnow.com" <thomasc@injuryhelpnow.com>, "dstephens@davidstephenslaw.com" <dstephens@davidstephenslaw.com>

Cc: DPolsenberg@lewisroca.com, EKapolnai@lewisroca.com, CKelley@lewisroca.com, mdouglas@winnerfirm.com, twinner@winnerfirm.com, ASmith@lewisroca.com, CJorgensen@lewisroca.com

Sent: Wed, 13 Oct 2021 22:32:58 +0000

Subject: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

Counsel,

Attached is a draft of the proposed order on the motions to retax. Please let us know if we may affix your electronic signature.

Thank you,
Jessie

Jessica Helm

Paralegal/ Litigation Support Project Manager

jhelm@lewisroca.com

D. 702.949.8335

LEWIS  ROCA

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LEWIS ROCA ROTHGERBER CHRISTIE LLP

Learn more about the new Lewis Roca brand at lewisroca.com. Please note my new email address jhelm@lewisroca.com.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Cheyenne Nalder, Plaintiff(s) CASE NO: A-18-772220-C
7 vs. DEPT. NO. Department 5
8 Gary Lewis, Defendant(s)
9

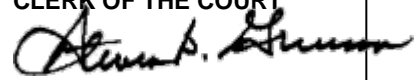
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/27/2021

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16 Joel Henriod	jhenriod@lewisroca.com
17 Abraham Smith	asmith@lewisroca.com
18 Randall Tindall	rtindall@rlattorneys.com
19 Lisa Bell	lbell@rlattorneys.com
20 Shayna Ortega-Rose	sortega-rose@rlattorneys.com
21 E. Arntz	breen@breen.com
22 Annette Jaramillo	ajaramillo@lewisroca.com
23 J Christopher Jorgensen	cjorgensen@lewisroca.com
24 Amanda Nalder	phoeny27@gmail.com
25 David Sampson	davidsampsonlaw@gmail.com
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2	AWS E-Services	eservices@winnerfirm.com
3	Victoria Hall	vhall@winnerfirm.com
4	Jessica Helm	jhelm@lewisroca.com
5	David Stephens	dstephens@davidstephenslaw.com
6	Cynthia Kelley	ckelley@lewisroca.com
7	Emily Kapolnai	ekapolnai@lewisroca.com
8	David Stephens	daveinlv1@embarqmail.com
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1 **NEOJ**
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4 1117 South Rancho Drive
5 Las Vegas, Nevada 89102
6 (702) 243-7000
7 TWinner@WinnerFirm.com

8 DANIEL F. POLSENBERG (SBN 2376)
9 ABRAHAM G. SMITH (SBN 13,250)
10 LEWIS ROCA ROTHGERBER CHRISTIE LLP
11 3993 Howard Hughes Parkway, Suite 600
12 Las Vegas, Nevada 89169-5996
13 (702) 949-8200
14 DPolsenberg@LewisRoca.com
15 JHenriod@LewisRoca.com
16 ASmith@LewisRoca.com

17 *Attorneys for United Automobile Insurance Company*

18 DISTRICT COURT
19 CLARK COUNTY, NEVADA

20 CHEYENNE NALDER,
21
22 Plaintiff,

23 vs.

24 GARY LEWIS; DOES I through V, in-
25 clusive,
26 Defendants.

27 UNITED AUTOMOBILE INSURANCE
28 COMPANY,
Intervener.

GARY LEWIS,
Third-Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY,
Third-Party Defendant.

Case No. A-18-772220-C

Dep't No. 5

**NOTICE OF ENTRY
OF ORDER**

1 Please take notice that an “Order on Nalder’s Motion to Retax, Third
2 Party Plaintiff’s Gary Lewis’s Motion to Retax Costs and Third Party Defendant
3 United Automobile Insurance Company’s Motion to Strike Third Party Plain-
4 tiff’s Motion to Retax Costs or Alternatively, Opposition to Motion to Retax
5 Costs” was entered on October 27, 2021. A true and correct copy is attached
6 hereto and made part hereof.

7 Dated this 27th day of October, 2021.

8
9 LEWIS ROCA ROTHGERBER CHRISTIE LLP

10 By: /s/ Abraham G. Smith
11 DANIEL F. POLSENBERG (SBN 2376)
12 J CHRISTOPHER JORGENSEN (SBN 5382)
13 JOEL D. HENRIOD (SBN 8492)
14 ABRAHAM G. SMITH (SBN 13,250)
15 3993 Howard Hughes Parkway,
16 Suite 600
17 Las Vegas, Nevada 89169
18
19 *Attorneys for United Automobile*
20 *Insurance Company*
21
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I certify that on October 27, 2021, I electronically filed and served the foregoing “*Notice of Entry of Order*” through the Court’s electronic filing system, electronic service of the foregoing documents shall be submitted upon all recipients listed on the master service list.

/s/ Emily D. Kapolnai
An Employee of Lewis Roca Rothgerber Christie LLP

Heather S. Smith
CLERK OF THE COURT

ORDR

THOMAS E. WINNER (SBN 5168)
WINNER BOOZE & ZARCONE
1117 South Rancho Drive
Las Vegas, Nevada 89102
TWinner@WinnerFirm.com
(702) 243-7000

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
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Las Vegas, Nevada 89169-5996
DPolsenberg@LewisRoca.com
JHenriod@LewisRoca.com
ASmith@LewisRoca.com
(702) 949-8200

Attorneys for United Automobile Insurance Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS; DOES I through V,
inclusive,
Defendants.

UNITED AUTOMOBILE INSURANCE
COMPANY,
Intervener.

GARY LEWIS,
Third-Party Plaintiff,
vs.
UNITED AUTOMOBILE INSURANCE
COMPANY,
Third-Party Defendant.

Case No. A-18-772220-C

Dep't No. 5

**ORDER ON NALDER'S MOTION TO
RETAX, THIRD PARTY PLAINTIFF'S
GARY LEWIS'S MOTION TO RETAX
COSTS AND THIRD PARTY DEFENDANT
UNITED AUTOMOBILE INSURANCE
COMPANY'S MOTION TO STRIKE THIRD
PARTY PLAINTIFF'S MOTION TO
RETAX COSTS OR ALTERNATIVELY,
OPPOSITION TO MOTION TO RETAX
COSTS**

1 This cause having come before the Court on (1) Cheyenne Nalder's
2 ("Nalder") Motion to Retax; (2) Third Party Plaintiff's Gary Lewis's ("Lewis")
3 Motion to Retax Costs; and (3) Third Party Defendant United Automobile
4 Insurance Company's ("UAIC") Motion to Strike Third Party Plaintiff's Motion to
5 Retax Costs or Alternatively, Opposition to Motion to Retax Costs; and the Court
6 being fully advised in the premises pursuant to the applicable Nevada Revised
7 Statutes, the Court hereby takes notice of following Findings and Conclusions
8 and the arguments submitted by the parties:

- 9 1. UAIC prevailed in its summary judgment motion against both Nalder and
10 Lewis, and thus, it may recover costs against both Nalder and Lewis;
- 11 2. While UAIC raises valid points on the timing of the Lewis' motion to retax
12 under NRS 18.110(4), the Court prefers to consider the case on its merits
13 and therefore, UAIC's motion to strike Lewis' motion cannot be granted;
- 14 3. UAIC's memorandum of costs and disbursements contained sufficient
15 evidence of its costs incurred under *Cadle Co. v. Woods & Erickson, LLP*,
16 131 Nev. 114, 345 P.3d 1049 (2015);
- 17 4. The peremptory challenge fees that UAIC incurred, in the amount of
18 \$920.50, cannot be awarded under SCR 48.1; a preemptory challenge is
19 discretionary. Peremptory challenges were not necessary for UAIC's
20 participation in the case and therefore do not fall under NRS 18.005(1) as
21 filing fees. Furthermore, a peremptory challenge cannot be deemed to be
22 "reasonable and necessary expenses" under NRS 18.005(17); and
- 23 5. All other objections to UAIC's memorandum of costs and disbursements,
24 regarding copying costs, runner fees, and electronic research fees are
25 without merit under NRS 18.005(12) and (17). Therefore, the costs incurred
26 in those areas must be deemed reasonable and necessary and awarded in
27 full. Based on the above findings, and the briefing submitted by the parties:

IT IS HEREBY ORDERED that Nalder's Motion shall be GRANTED in part, DENIED in part. Lewis' Motion shall be GRANTED in part, DENIED in part. UAIC's Motion to strike shall be DENIED. Out of the \$4,514.00 in costs sought, UAIC shall be awarded \$3,593.50 in costs, after deducting \$920.50 in costs associated with the UAIC's peremptory challenges from the \$4,514.00 originally sought by UAIC.

IT IS FURTHER ORDERED the hearing set for September 28, 2021, is
VACATED.

Dated this 27th day of October, 2021

V. Barisich

5AA 110 D4D8 CBED
Veronica M. Barisich
District Court Judge

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Joel D. Henriod
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
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(702) 243-7000

*Attorneys for United Automobile
Insurance Company*

1 Approved as to form and content by:

2 STEPHENS LAW OFFICES

CHRISTENSEN LAW OFFICES, LLC

3 By: /s/ David Stephens
4 DAVID A. STEPHENS (SBN 902)
3636 North Rancho Drive
5 Las Vegas, Nevada 89130
(702) 656-2355

6 *Attorney for Plaintiff*
7 *Cheyenne Nalder*

By: /s/ no response
THOMAS F. CHRISTENSEN (SBN 2326)
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000

Attorney for Third-Party Plaintiff
Gary Lewis

8 *[This order was provided to all*
9 *counsel on October 13, 2021, for*
10 *review, but we received no response*
11 *from plaintiff's counsel]*

Jaramillo, Annette

From: Kapolnai, Emily
Sent: Monday, October 18, 2021 11:49 AM
To: Jaramillo, Annette
Subject: FW: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

Emily Kapolnai
Legal Administrative Assistant

EKapolnai@lewisroca.com
D. 702.949.8250



From: David A. Stephens <dstephens@davidstephenslaw.com>
Sent: Thursday, October 14, 2021 8:22 AM
To: Helm, Jessica <JHelm@lewisroca.com>; dawnh@injuryhelpnow.com; ervnelson6@gmail.com; breen@breen.com; breenarntz@me.com; thomasc@injuryhelpnow.com
Cc: Polsenberg, Daniel F. <DPolsenberg@lewisroca.com>; Kapolnai, Emily <EKapolnai@lewisroca.com>; Kelley, Cynthia <CKelley@lewisroca.com>; mdouglas@winnerfirm.com; twinner@winnerfirm.com; Smith, Abraham <ASmith@lewisroca.com>; Jorgensen, J. Christopher <CJorgensen@lewisroca.com>
Subject: RE: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

[EXTERNAL]

Jessica,

I do not have any changes. You may use my e-signature on the proposed order.

Thanks,

David A. Stephens, Esq.

3636 N. Rancho Drive
Las Vegas, NV 89130

Phone: (702) 656-2355
Facsimile: (702) 656-2776

<mailto:dstephens@davidstephenslaw.com>

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received this electronic transmission (e-mail) in error, please immediately notify us by telephone and delete the e-mail from your computer. You may contact us at (702) 656-2355.

----- Original Message -----

From: Helm, Jessica [<mailto:JHelm@lewisroca.com>]

To: "Dawn Hooker" <dawnh@injuryhelpnow.com>, "ervnelson6@gmail.com" <ervnelson6@gmail.com>, "Breen Arntz" <breen@breen.com>, "breenarntz@me.com" <breenarntz@me.com>, "thomasc@injuryhelpnow.com" <thomasc@injuryhelpnow.com>, "dstephens@davidstephenslaw.com" <dstephens@davidstephenslaw.com>

Cc: DPolsenberg@lewisroca.com, EKapolnai@lewisroca.com, CKelley@lewisroca.com, mdouglas@winnerfirm.com, twinner@winnerfirm.com, ASmith@lewisroca.com, CJorgensen@lewisroca.com

Sent: Wed, 13 Oct 2021 22:32:58 +0000

Subject: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

Counsel,

Attached is a draft of the proposed order on the motions to retax. Please let us know if we may affix your electronic signature.

Thank you,
Jessie

Jessica Helm

Paralegal/ Litigation Support Project Manager

jhelm@lewisroca.com

D. 702.949.8335

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Las Vegas, Nevada 89169

lewisroca.com

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Cheyenne Nalder, Plaintiff(s) CASE NO: A-18-772220-C
7 vs. DEPT. NO. Department 5
8 Gary Lewis, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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17 Abraham Smith	asmith@lewisroca.com
18 Randall Tindall	rtindall@rlattorneys.com
19 Lisa Bell	lbelle@rlattorneys.com
20 Shayna Ortega-Rose	sortega-rose@rlattorneys.com
21 E. Arntz	breen@breen.com
22 Annette Jaramillo	ajaramillo@lewisroca.com
23 J Christopher Jorgensen	cjorgensen@lewisroca.com
24 Amanda Nalder	phoeny27@gmail.com
25 David Sampson	davidsampsonlaw@gmail.com
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1	Matthew Douglas	mdouglas@winnerfirm.com
2	AWS E-Services	eservices@winnerfirm.com
3	Victoria Hall	vhall@winnerfirm.com
4	Jessica Helm	jhelm@lewisroca.com
5	David Stephens	dstephens@davidstephenslaw.com
6	Cynthia Kelley	ckelley@lewisroca.com
7	Emily Kapolnai	ekapolnai@lewisroca.com
8	David Stephens	daveinlv1@embarqmail.com
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 19, 2018

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

September 19, 2018 3:00 AM Motion to Intervene UAIC's Motion to Intervene

HEARD BY: Jones, David M

COURTROOM: Chambers

COURT CLERK: Haly Pannullo

RECORDER: Melissa Delgado-Murphy

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court noted this matter was previously handled and the Motion was granted.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/26/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

October 24, 2018

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

October 24, 2018 9:00 AM Hearing

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: April Watkins

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT:	Douglas, Matthew J	Attorney
	Stephens, David Allen	Attorney
	Tindall, Randy W.	Attorney
	Winner, Thomas E.	Attorney

JOURNAL ENTRIES

- E. Breen Arntz, Esq., and Thomas F. Christensen, Esq., for Gary Lewis for Cross Claimant and Third Party Pltf.

The Court disclosed Mr. Tindall worked with the Court in the firm for Farmers Insurance and does not see any conflict. Mr. Winner stated he does not see a conflict. Mr. Christensen stated he and Mr. Lewis does see a conflict because Mr. Lewis submitted a complaint to the bar because Mr. Tindall's representation is not authorized by Mr. Lewis and contrary to his interest. Court inquired what that has to do with the conflict. Mr. Christensen stated he is a Third Party Deft. in the cross claim and third party complaint that was filed. Further, Mr. Christensen requested the Court recuse at this time. Colloquy. Mr. Christensen requested time to review issues and from the very beginning the intervenor filed motion to Intervene. On the face of those motions, the certificate of service was improper on both motions and in both cases. On one it did not have anything filled in as to who was served and on the other one it was checked electronic service but Mr. Stephens was not on the Court's electronic service platform at the time that they signed and also did not have any service for Mr. Lewis or any attorney representing Mr. Lewis and those motions are defective to begin with. When

Mr. Stephens discovered these motions were filed, filed oppositions and delivered courtesy copies to the Court prior to the hearing date. The Intervenor also filed replies and those oppositions were not considered by the Court and the Court granted the motions that were not properly noticed and then had an order prepared that was not run by anyone in the case and did not sign stipulated judgment that was submitted to the Court prior to the hearing on the motion but did sign order allowing intervention which is improper. Post judgment intervention is clear Nevada law that you cannot intervene after trial and that is in the other case that is already to judgment. Additionally, still waiting for the stipulated judgment in this case and have no information why we have not received that. Gary Lewis submitted bar complaint against Mr. Tindall for his entering appearances on his behalf. Court stated he is not hearing this as it does not come before this Court. Mr. Winner objected to counsel advising of the bar complaint. Mr. Christensen further stated bar counsel immediately dismissed the bar complaint and said Mr. Tindall is involved in this ongoing case and they were not going to do anything. If a judge refers this to the bar, then they will investigate. Further, Mr. Christensen requested the Court refer Mr. Tindall to the bar. There has been letters sent to Mr. Tindall from Mr. Lewis advising him to stop representing him, stop putting forth frivolous defenses in case on Mr. Lewis' behalf and Mr. Tindall refuses to. Colloquy. Opposition by Mr. Winner as to the request for this Court to recuse and believes the new pleadings are frivolous and a clumsy effort forcing the Court to appoint another judge on the case. Colloquy. Further opposition by Mr. Winner. Due to this Court and Mr. Tindall having a previous working relationship, to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS, this case be REASSIGNED at random.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

November 08, 2018

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

November 08, 2018 3:00 AM Motion for Relief

HEARD BY: Kephart, William D. **COURTROOM:** No Location

COURT CLERK: Tia Everett

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Defendant s Motion for Relief From Judgment Pursuant to NRCP 60 is CONTINUED to 12/11/2018 at 9:00 AM.

FURTHER ORDERED, Defendant s Motion to Strike both Defendant s Motion for Relief from Judgment and Defendant s Motion to Dismiss, currently scheduled for 12/13/2018 at 3:00 AM is also MOVED to 12/11/2018 at 9:00 AM. Counsel reminded to provide single sided, tabbed courtesy copies to Department 19 s Chambers as soon as possible.

CLERK'S NOTE: The above minute order has been distributed to:

David A. Stephens dstephens@sgblawfirm.com
E. Breen Arntz breen@breen.com
Lisa Bell lbell@rlattorneys.com
Thomas Christensen thomasc@injuryhelpnow.com

Matthew Douglas mdouglas@awslawyers.com
AWS E-Services eservices@awslawyers.com
Victoria Hall vhall@awslawyers.com
Shayna Ortega-Rose sortega-rose@rlattorneys.com
Randall Tindall rtindall@rlattorneys.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

November 30, 2018

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

November 30, 2018 11:30 AM Minute Order

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 12A

COURT CLERK: Linda Skinner

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Intervenor United Automobile Insurance Company filed a Motion to Consolidate on Order Shortening Time on November 26, 2018. Defendant/Third Party Plaintiff Gary Lewis filed its Opposition and Countermotion to Set Aside Void Order and to Strike All Filings by Intervenor, or, in the Alternative, for Summary Judgment on November 27, 2018. The matter was subsequently scheduled for hearing on November 28, 2018.

After considering the pleadings and argument of counsel, the Court GRANTS United Automobile Insurance Company's Motion to Consolidate on Order Shortening Time and DEFERS Defendant/Third Party Plaintiff Lewis Countermotion to Set Aside Void Order and to Strike All Filings by Intervenor, or, in the Alternative, for Summary Judgment.

The Court finds that claims in both cases arise from the same car accident and the same issues of law and facts exist in both cases. The Court further finds that decisions made in both cases, as well as the matters currently on appeal, will affect the litigation in both cases and so it is beneficial for the cases to be consolidated. Further, the cases were both being litigated before Department XXIX prior to the cases being reassigned and being placed in separate departments. The Court further finds that the parties will not be prejudiced by the consolidation of the cases and that judicial economy favors their consolidation. The Court hereby consolidates Case No. A772220 into Case No. A594111.

The Court finds that the issues brought up in the Countermotion are currently being litigated in the Nevada Supreme Court on appeal and so the Court does not have the jurisdiction to hear them. The Court will DEFER ruling on the Countermotion pending the decision from the Nevada Supreme Court.

The Court hereby VACATES the November 28, 2018 hearing. Intervenor is directed to prepare a proposed order including detailed findings of fact and conclusions of law, and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

July 28, 2020

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

July 28, 2020 9:00 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Christensen, Thomas F. Attorney
 Polsenberg, Daniel F. Attorney
 Smith, Abraham G. Attorney
 Stephens, David Allen Attorney

JOURNAL ENTRIES

- GARY LEWIS' MOTION FOR ATTORNEY'S FEES AND COSTS:

Following arguments by counsel, COURT ORDERED, matter CONTINUED in order for the Court to review the supplemental pleadings.

GARY LEWIS' RENEWED MOTION FOR SUMMARY JUDGMENT ... OPPOSITION TO GARY LEWIS'S RENEWED MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT ON THIRD-PARTY COMPLAINT

Following arguments by counsel, COURT ORDERED, matter CONTINUED in order for the Court to review the supplemental pleadings.

CONTINUED TO: 8/04/2020 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

October 08, 2020

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

**October 08, 2020 9:00 AM Motion for Summary
Judgment**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Arntz, E. Breen Attorney
Hooker, Dawn Allysia Attorney
Polsenberg, Daniel F. Attorney
Smith, Abraham G. Attorney
Stephens, David Allen Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, Plaintiff Cheyenne Nalder's plaintiff Motion for Summary Judgment and Relief from Order Pursuant to NRCP 60(b) shall be DENIED as the Court does not believe there is a tolling issue and believes the Guardian at Litem had a responsibility here and simply missed that . Further, the payment was not in furtherance of this particular judgment and agree with the decision of the 9th circuit. Additionally, Defendant Lewis did reside in California and was amenable to service. FURTHER ORDERED, Defendant United Automobile Insurance Company's Counter Motion for Summary GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

November 17, 2020

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

November 17, 2020 9:00 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Arntz, E. Breen	Attorney
	Christensen, Thomas F.	Attorney
	Douglas, Matthew J	Attorney
	Polsenberg, Daniel F.	Attorney
	Smith, Abraham G.	Attorney
	Stephens, David Allen	Attorney

JOURNAL ENTRIES

- GARY LEWIS' MOTION FOR ATTORNEY'S FEES AND COSTS ... GARY LEWIS' RENEWED MOTION FOR SUMMARY JUDGMENT ... OPPOSITION TO GARY LEWIS'S RENEWED MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT ON THIRD-PARTY COMPLAINT

Following arguments by counsel, Court stated he lacks jurisdiction regarding the motion for attorney's fees and Costs; therefore, COURT ORDERED, Motion for Attorney's Fees and Costs OFF CALENDAR at this time. COURT ORDERED, Re-Newed Motion for Summary Judgment shall be DENIED and the Counter Motion for Summary Judgment on Third-Party Complaint GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

June 10, 2021

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

June 10, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M.

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court FINDS that Defendant Gary Lewis' Objection is set for a hearing on June 29, 2021. However the Court notes that multiple motions are set for a hearing on July 6, 2021. At the request of the Court, for judicial economy, all motions shall be CONSOLIDATED and RESCHEDULED to July 6, 2021 at 10:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 06/11/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

July 06, 2021

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

July 06, 2021 10:30 AM All Pending Motions

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Carolyn Jackson

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Arntz, E. Breen Attorney
Christensen, Thomas F. Attorney
Hooker, Dawn Allysa Attorney
Polsenberg, Daniel F. Attorney
Smith, Abraham G. Attorney
Stephens, David Allen Attorney
Winner, Thomas E. Attorney

JOURNAL ENTRIES

- Thomas Christensen, Esq., Attorney for Gary Lewis, Third Party Plaintiff

STATUS CHECK: STATUS OF CASE

Upon Court's inquiry regarding the stay, Mr. Stephens made an oral Motion to Lift the Stay. Mr. Polsenberg advised lifting the Stay would be dependent on the conclusion of the hearing today as to whether it would be appropriate to lift the Stay. Mr. Christensen advised Judge Johnson orally ruled the Stay was lifted but no Order was issued.

COURT ORDERED, upon stipulation of the parties oral Motion to stay GRANTED until the other matters are decided.

DEFENDANT/THIRD-PARTY GARY LEWIS' MOTION TO CONSOLIDATE [CASE NO. A-18-772200-C WITH CASE NO. A-20-825502]

Court provided an overview and stated its inclinations. Mr. Christensen advised he would prefer the Motion to Consolidate was continued rather than to refile. Mr. Polsenberg objected since the parties would have to rebrief the Motion.

COURT ORDERED, Motion to Consolidate OFF CALENDAR; Mr. Christensen to notice the Motion at a later time.

DEFENDANT/THIRD-PARTY PLAINTIFF GARY LEWIS' MOTION FOR LEAVE TO AMEND THIRD PARTY COMPLAINT . . . COMBINED OPPOSITION TO GARY LEWIS' "MOTION FOR LEAVE TO AMEND THIRD-PARTY COMPLAINT" AND "MOTION TO CONSOLIDATE" AND COUNTERMOTION FOR ENTRY OF JUDGMENT OR SUMMARY JUDGMENT

Arguments by counsel on whether or not the Motion was timely filed. Further arguments by counsel regarding the applicability of the futility doctrine under Halcrow other statutes and caselaw and abuse of process claims.

COURT stated matter taken UNDER ADVISEMENT; a Minute Order will issue.

PLAINTIFF'S MOTION TO ENTER JUDGMENT, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT . . . JOINDER IN OBJECTION TO PROPOSED ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING UAIC'S MOTION FOR SUMMARY JUDGMENT . . . UNITED AUTOMOBILE INSURANCE COMPANY'S OPPOSITION TO CHEYENNE NALDER'S MOTION TO ENTER JUDGMENT OR FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR ENTRY OF JUDGMENT OR SUMMARY JUDGMENT . . . GARY LEWIS' OBJECTION TO THIS COURT'S CONSIDERATION OF UAIC'S PROPOSED ORDER

Court stated most of the issues would be resolved from an entry of an order from Judge Kephart's orders from October and November 2020 and requested Plaintiff Nalder and Defendant Lewis submit competing Orders and if there are remaining outstanding issues the Court would set a hearing or the parties could file a Motion for reconsideration. Mr. Polsenberg and Mr. Smith concurred and Mr. Christensen and Mr. Stephens objected and counsel argued in support of their positions. Arguments by counsel on the merits of the Motions and the applicability of statutes and case law.

COURT stated that it is the belief of the Court that although it does have the power to enter the October 2020 and November 2020 orders made by Judge Kephart based on the pleadings and transcripts, matter taken UNDER ADVISEMENT; a Minute Order will issue.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto**COURT MINUTES****August 04, 2021**

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
 vs.
 Gary Lewis, Defendant(s)

August 04, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M. **COURTROOM:** Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that (1) Defendant/Third Party Plaintiff Gary Lewis' (Lewis) Motion for Leave to Amend Third Party Complaint, (2) Intervenor United Automobile Insurance Company's (UAIC) Opposition to Motion for Leave to Amend Third Party Complaint and Countermotion for Entry of Judgment or Summary Judgment, (3) Plaintiff Cheyenne Nalder's (Nalder) Motion for Entry of Judgment or, in the Alternative, Summary Judgment, (4) Lewis' Joinders to Motion for Entry of Judgment or, in the Alternative, Summary Judgment, and (5) Intervenor UAIC's Opposition to Motion for Entry of Judgment or, in the Alternative, Summary Judgment and Countermotion for Entry of Judgment or Summary Judgment were heard. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted, COURT FINDS and ORDERS as follows.

Relevant Law

NRCP 15 governs a Motion to Amend Complaint. NRCP 15(a) states in pertinent part, "A party may amend its pleading once as a matter of course . . . in all other cases, a party may amend its pleadings only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Under Rule 15, the district court may and should liberally allow an amendment to the pleadings if prejudice does not result. *Schwartz v. Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1139 (1979). Motions for leave to amend pleadings should be granted unless a strong

reason exists not to do so, such as prejudice to the opponent or lack of good faith by the moving party. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Ct. App. 2015). "The liberality embodied in the rule requires courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had." *Id.* at 292, 975. Moreover, when a complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred remedy. *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 734, 119 Nev. 1, 22 (2003). Leave to amend should be freely given when justice requires. *Id.*

Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). Leave to amend a pleading should not be granted if the proposed amendment would be futile. *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013). A proposed amendment may be deemed "futile," as grounds for denying leave to amend a complaint, if the plaintiff seeks to amend the complaint in order to plead an impermissible claim. *Id.*

Motion for leave to amend is addressed to sound discretion of trial court, and its action in denying the motion should not be held to be error unless such discretion has been abused. *Stephens v. S. Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973).

NRCP 56(a) states, "the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Under NRCP 56(c)(1), the fact must be supported by "materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials." However, subsection (c)(2) further states that "[a] party may object that the material cited to support or dispute a fact cannot be presented in 'a form that would be admissible in evidence.'" A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026 (2005). All pleadings and proof must be construed in a light most favorable to the non-moving party, however, the non-moving party must do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* (quoting *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14 (2002)). Under NRCP 56(d), if the nonmoving party shows by affidavit or declaration that, for specific reasons, it is unable to present facts essential to justify its opposition, the court may defer the consideration of the motion or allow time to obtain evidence or to take discovery.

Statute of limitations for "an action upon a judgment . . . of any court of the United State, or of any state . . . or the renewal thereof" is generally 6 years. NRS 11.190(1). However, the time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given; and

whenever any payment on principal or interest has been or shall be made upon an existing contract . . . the limitation shall commence from the time the last payment was made. NRS 11.200. If, when the cause of action shall accrue against a person, the person is out of the State, the action may be commenced within the time herein limited after the person's return to the State. NRS 11.300. However, the Nevada Supreme Court ruled in *Simmons v. Trivelpiece*, 98 Nev. 167, 643 P.2d 1219 (1982) that tolling statute under NRS 11.300 is not applicable against the nonresident defendant if the defendant was amenable to service of process. See *Seely v. Illinois-California Exp., Inc.*, 541 F.Supp. 1307 (D.Nev. 1982). If the person entitled to bring action was less than 18 years old at the time the cause of action accrued, the time the person was under 18 years of age does not accrue for the purposes of calculating the statute of limitations. NRS 11.250. A judgment creditor may renew a judgment which has not been paid by filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation. NRS 17.214(1)(a). The affidavit must be titled as an Affidavit of Renewal of Judgment. However, renewal of a judgment is not a recognized claim in Nevada *Striegel v. Gross*, 2013 WL 5658074 (D.Nev. Oct. 16, 2013). In *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994), the Nevada Supreme Court recognized that if the judgment debtor was in bankruptcy and the time for creditor to seek to renew its judgment had expired, if the judgment creditor can show that the judgment debtor's bankruptcy petitioners offered no legitimate prospect or intention of discharge of his debts and were simply a subterfuge to avoid satisfying creditor's judgment. However, recently, in *Fausto v. Sanchez-Flores*, 137 Nev. Adv. Op. 11, 482 P.3d 677 (2021), the Nevada Supreme Court held that when determining whether a statute of limitation is subject to equitable tolling, the starting injury is the understanding that the legislature legislates against a background of common-law adjudicatory principles (e.g. equitable tolling). The relevant inquiry must be whether the claimant demonstrated diligence in pursuing the claim and that extraordinary circumstance beyond her control caused her claim to be filed outside the limitations period.

"[F]or claim preclusion to apply the following factors must be met: (1) the same parties or their privies are involved in both cases, (2) a valid final judgment has been entered, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008); holding modified by *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015).

For issue preclusion or collateral estoppel to apply, the following factors must be met: "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008); holding modified by *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). Furthermore, unlike claim preclusion or *res judicata*, issue preclusion only applies to issues that were actually and necessarily litigated and on which there was a final decision on the merits. *Id.* The distinction is made because the issue preclusion applies to prevent relitigation of only a specific issue that was decided in a previous suit between the parties, even if the second suit is based on different causes of action and different circumstances." *Id.* at 1055, 714.

Findings and Conclusions

The Court FINDS and CONCLUDES that Nalder submitted a proposed judgment that is based on the September 13, 2018 stipulation to enter judgment for \$5,696,820.41. At the time the stipulation was filed, UAIC was not a party to the case and did not sign off in the stipulation. This judgment based on this stipulation cannot be signed for the reasons set forth below.

The Court FINDS and CONCLUDES that Judge Kephart, who was previously assigned to this case, held hearings on various motion on October 8, 2020 and November 17, 2020. Judge Kephart denied Nalder's motion for summary judgment, denied Lewis' motion for summary judgment, granted UAIC's cross-motion for summary judgment on Nalder's complaint, and, granted UAIC's countermotion to dismiss Lewis' third party complaint. Unfortunately, this already convoluted case was further complicated by the fact that the orders were not submitted to and/or signed by Judge Kephart before he left the bench. Thus, there are no enforceable orders from those hearings. The Court is in receipt of various orders from the parties. Lewis submitted proposed order from the said October 8, 2020 and November 17, 2020 hearings that appears not to comport with what Judge Kephart had ordered from the bench. Citing to *LaGrange Construction v. Del E. Webb Corp.*, 83 Nev. 524, 435 P.2d 515 (1967), Lewis argues that this Court lacks the authority to sign the orders from the prior hearings conduct by Judge Kephart. However, *LaGrange* is factually distinguishable. The issue in that case was that prior to leaving the bench, the judge who held a bench trial signed the written decision 2 days before the end of his term, but for whatever the reason, the filing of the decision was delayed, and was not filed until several days after his term had ended. However, this is not the case here. Parties do not dispute that they were given a notice and opportunity to be heard and at the conclusion of the hearings, Judge Kephart made an order, which unfortunately was not reduced to writing before to the expiration of his term. The Court has an inherent authority to approve the written orders from the prior hearings by Judge Kephart, so long as it is consistent what Judge Kephart had actually ordered based on the pleadings, minutes, and transcript from the said prior hearings (which have been reviewed). Thus, Lewis' proposed order cannot be signed.

The Court FINDS and CONCLUDES that UAIC also submitted a proposed orders from the October 8, 2020 and November 17, 2020, which was not approved as to form and content by Nalder and Lewis. Nalder and Lewis both argue that additional hearing is necessary for the Court to consider what Judge Kephart had actually ordered. However, their objection is procedurally improper as they are, in actuality, seeking a premature reconsideration of the orders from those hearings. However, after the order is entered, Nalder and/or Lewis may seek reconsideration of the order or appeal the matter. Nonetheless, the Court is willing to extend additional time for Nalder and/or Lewis to submit a competing proposed order. If they wish to submit a proposed competing order, it shall be due within on August 13, 2021. Thus, Lewis' Objection to UAIC's Proposed Order and Nalder's Joinder to Objection to UAIC's Proposed Order cannot be sustained.

The Court FINDS and CONCLUDES that, in the alternative, even if the Court reviews Nalder and Lewis' arguments made in their recent pleadings without giving weight to Judge Kephart's orders, Nalder's motion and Lewis' joinder cannot be granted. The main issue regarding Nalder's motion

and Lewis' joinder vs. UAIC's countermotion is whether Nalder's 2008 Default Judgment has expired and if so, whether the 2018 Amended Judgment has the effect of renewing the expired judgment.

The Court FINDS and CONCLUDES that claim preclusion and issue preclusion both applies to the issue of whether the 2008 Default Judgment has expired. All Five Star Capital factors were met. As for claim preclusion, the same parties or their privies were involved both in the 9th Circuit case and in the instant case, 9th Circuit issued a valid final judgment, which was also accepted by the Nevada Supreme Court when the 9th Circuit certified the question on this matter, and the instant case is based on the same claims or any part of them that were or could have been brought in the first case. As for issue preclusion, the issue of whether the 2008 Default Judgment has expired was present in both the 9th Circuit case and in the instant case, the 9th Circuit's decision was on the merits and became final as the petition for en banc hearing and writ of certiorari were denied (and again, the Nevada Supreme Court accepted the 9th Circuit determination as well when it answered the certified question from the 9th Circuit), Lewis and UAIC were either a party and/or in privity with a party in the 9th Circuit case, and the issue was actually and necessarily litigated. It is noted that Nalder and Lewis attempted to raise the tolling arguments, but the 9th Circuit deemed such argument to have been forfeited and waived. It is further noted that Nalder and Lewis' interests were aligned in the 9th Circuit case, but this does not affect the privity requirement and Nalder and Lewis failed to provide sufficient case law otherwise.

The Court FINDS and CONCLUDES that there is no dispute that the applicable statute of limitation is 6 years under NRS 11.190. Even if Nalder was a minor until 2016, NRS 11.250 cannot be used to extend the statute of limitation. Nalder, through her guardian ad litem, already brought a suit against Lewis and obtained a default judgment in 2008. By its plain language, NRS 11.250 only addresses bringing an action, not renewing a judgment from a case that was already filed. Thus, Plaintiff cannot file yet another case to obtain another judgment after turning 18 years old. It was incumbent on Nalder's guardian ad litem to timely renew the judgment under NRS 17.214 by filing an affidavit of renewal, but he failed to do so back in 2014. Thus, NRS 11.250 is not applicable.

The Court FINDS and CONCLUDES that although Nalder points out that Lewis was a resident of California since 2010 and argues for the application of NRS 11.300, the Court cannot agree. Similar argument was raised in *Striegel v. Gross*, 2013 WL 5658074 (D.Nev. Oct. 16, 2013) and was rejected by the Nevada federal district court. This Court agrees with that analysis. Furthermore, Lewis' current counsel of record, Thomas Christensen, who had previously represented Nalder in the 2008 Default Judgment case, failed to set forth sufficient evidence that he was not amenable to service under *Simmons v. Trivelpiece*, 98 Nev. 167, 643 P.2d 1219 (1982). Moreover, the Nevada Supreme Court explained, defendant's absence from the state does not automatically tolls the statute of limitations. Such statute only applies when plaintiff is unable to bring a particular defendant into the court. *Seely v. Illinois-California Exp., Inc.*, 541 F.Supp. 1307 (D.Nev. 1982). Also damaging to Nalder and Lewis' argument is that Lewis' purported absence had no bearing on whether Nalder could renew her judgment under NRS 17.214. All she had to do to renew her judgment was to timely file an affidavit of renewal in 2014 via her guardian ad litem. However, for whatever the reason, Nalder failed to do so. Thus, since the 2008 Default Judgment has expired, there is no showing of prejudice to Lewis.

The Court FINDS and CONCLUDES that although Nalder and Lewis also argue for the application of NRS 11.200 based on the fact that UAIC made a payment of \$15,000 policy limit to Plaintiff on or about 2015, the Court cannot accept such argument. UAIC was ordered by the Nevada federal district court, upon remand, to pay this amount for the claim of bad faith insurance with Lewis, not for Nalder's 2008 Default Judgment.

The Court FINDS and CONCLUDES that although Nalder and Lewis cite to *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994) for the proposition that the Nevada has recognized equitable tolling, this case does not support such proposition. That case dealt with a judgment debtor who declared bankruptcy and due to the stay, the judgment creditor could not renew its judgment. Nevada Supreme Court made a narrow exception if the judgment creditor can show that the judgment debtor's bankruptcy petitioners offered no legitimate prospect or intention of discharge of his debts and were simply a subterfuge to avoid satisfying creditor's judgment, judgment creditor can argue equitable tolling. However, in a more recent decision in *Fausto v. Sanchez-Flores*, 137 Nev. Adv. Op. 11, 482 P.3d 677 (2021), the Nevada Supreme Court held that when determining whether a statute of limitation is subject to equitable tolling, the relevant inquiry must be whether the claimant demonstrated diligence in pursuing the claim and that extraordinary circumstance beyond her control caused her claim to be filed outside the limitations period. Here, Nalder failed to sufficiently show the diligence in pursuing her claim and that extraordinary circumstances beyond her control her claim to expire in 2014. Nalder, via her guardian ad litem, knew or should have known that her 2008 default judgment would have expired in 2014, but failed to set forth sufficient facts that evince diligence or extraordinary circumstances beyond her control.

The Court FINDS and CONCLUDES that although Nalder and Lewis cites to NRS 11.190(1) to argue that "action upon a judgment" is a proper claim, the Court cannot accept such argument. Nevada Supreme Court already ruled that the filing of the federal action against UAIC cannot be deemed to be an action upon the 2008 default judgment. At best, Nalder and Lewis appears to rely on the dicta from that decision to argue that "action upon a judgment" is a distinct cause of action recognized in Nevada. However, it must be noted that the federal case was filed after 2014 thus, the 2008 default judgment had already expired when the federal case was filed. Neither Nalder nor Lewis can revive a judgment that was already expired. Furthermore, renewal of a judgment is a not a recognized claim in Nevada. See *Striegel v. Gross*, 2013 WL 5658074 (D.Nev. Oct. 16, 2013).

The Court FINDS and CONCLUDES that since Nalder's rights under the 2008 default judgment against Lewis have expired due to her failure to renew, Lewis cannot make a claim against UAIC rooted in that 2008 default judgment and UAIC's efforts to relieve Lewis from that judgment. Thus, Nalder does not have a valid judgment against either Lewis or UAIC; Lewis has no claim against UAIC.

The Court FINDS and CONCLUDES that back in 2018, Nalder filed an ex parte application for an amended judgment on the basis that she is no longer a minor and the 2008 default judgment should be amended because it was entered in the name of her guardian ad litem and her name should be in

the amended judgment. Nalder did not mention its impact on the statute of limitations or the tolling issue and Judge Jones (who was then assigned to the case) did not make any such findings. Thus, the effect of this 2018 amended judgment was purely ministerial and did not have the effect of reviving an expired judgment. Furthermore, the Nevada Supreme Court, in the Nalder v. Eight Judicial Dist. Court, 136 Nev. 200, 462 P.3d 677 (2020), recognized that 2018 amended judgment only served a ministerial function. Again, both the 9th Circuit and the Nevada Supreme Court already ruled that the 2008 default judgment had expired. Nalder and Lewis were unable to provide sufficient case law in support for the proposition that the expired judgment can be renewed and be enforceable. Thus, Nalder does not have a valid judgment against Lewis or UAIC and Lewis has no claim against UAIC.

The Court FINDS and CONCLUDES that Lewis is unable to clearly show how he was prejudiced by UAIC's actions since UAIC was successful in defending against the 2008 default judgment entered against him.

The Court FINDS and CONCLUDES that September 13, 2018 stipulation between Nalder and Lewis does not bind UAIC. The sole purpose of this stipulation appears to be to revive the expired 2008 default judgment and to ensure that Lewis has viable bad faith insurance claim against UAIC. However, UAIC successfully defended Nalder's claim against Lewis. Furthermore, UAIC has tendered the policy limit in the related federal court case as ordered and it is not obligated to honor the stipulation between the purported adverse parties, who actually appear to be working in concert against UAIC. Thus, the Court cannot issue an order based on their stipulation.

The Court FINDS and CONCLUDES that as to Lewis' motion for leave to amend the third party complaint, the Court recognizes that the standard for leave to amend is very lenient and must be freely given when justice so requires. Basis for denial of such motion is undue delay, bad faith, dilatory motives, or futility. However, the motion cannot be granted because it appears to have been filed in bad faith and is futile. Under Halcrow, the relevant inquiry for the Court is to determine whether Lewis is seeking to plead "an impermissible claim." Lewis' proposed Amended Third Party Complaint appears to mirror the arguments made in the anti-SLAPP motion that he filed against UAIC in the Nevada federal district court, without success. Again, since the Nevada federal district court, the 9th Circuit and the Nevada Supreme Court all agreed with UAIC in that Lewis is not liable to Nalder because she failed to timely renew her 2008 default judgment, there is no cognizable claim against UAIC or its counsel. Thus, both claim and issue preclusion again apply and Lewis appears to be engaged in an impermissible forum shopping because he was dissatisfied with the results obtained in the Nevada federal district court case and thus, the instant motion was made in bad faith and is futile. Thus, the motion must be deemed to be made in bad faith and must be denied.

ORDERS

The COURT ORDERS that Nalder and Lewis have until August 13, 2021 to submit their proposed competing proposed order from the October 8, 2020 and November 17, 2020 hearings.

The COURT ORDERS that (1) Defendant/Third Party Plaintiff Gary Lewis' (Lewis) Motion for Leave to Amend Third Party Complaint shall be DENIED, (2) Intervenor United Automobile Insurance

Company's (UAIC) Opposition to Motion for Leave to Amend Third Party Complaint and Countermotion for Entry of Judgment or Summary Judgment shall be GRANTED, (3) Plaintiff Cheyenne Nalder's (Nalder) Motion for Entry of Judgment or, in the Alternative, Summary Judgment shall be DENIED, (4) Lewis' Joinders to Motion for Entry of Judgment or, in the Alternative, Summary Judgment shall be DENIED, and (5) Intervenor UAIC's Opposition to Motion for Entry of Judgment or, in the Alternative, Summary Judgment and Countermotion for Entry of Judgment or Summary Judgment shall be GRANTED.

The Court ORDERS that Lewis' Objection to UAIC's Proposed Order and Nalder's Joinder to Objection to UAIC's Proposed Order shall be DENIED.

Counsel for UAIC is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Nalder and Lewis' counsel are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with AO 21-04.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 08/04/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 27, 2021

A-18-772220-C	Cheyenne Nalder, Plaintiff(s)
	vs.
	Gary Lewis, Defendant(s)

September 27, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M.

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court notes that (1) Plaintiff Cheyenne Nalder's ("Nalder") Motion to Retax Costs, (2) Third Party Plaintiff Gary Lewis's ("Lewis") Motion to Retax Costs, and (3) Third Party Defendant United Automobile Insurance Company's ("UAIC") Motion to Strike Third Party Plaintiff's Motion to Retax Costs or Alternatively, Opposition to Motion to Retax Costs are set for a hearing on September 28, 2021. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 21-04, the Court FINDS and ORDERS as follows:

Relevant Law

NRS 18.005 defines the term "costs" to include the following:

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
3. Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120.
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity.
5. Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances

surrounding the expert's testimony were of such necessity as to require the larger fee.

6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994).

Relevant procedural background

On August 14, 2021, Judgment and Order regarding Cross-Motions for Summary Judgment, which was heard on October 8, 2020 and November 17, 2020, was filed. Judgment and Order was in favor of UAIC. Notice of entry of the Judgment and Order was filed on August 16, 2021. On August 19, 2021, UAIC filed a memorandum of costs and disbursements, seeking costs of \$4,514.00, which included filing fees of \$1,387.00, copy costs of \$163.00, runner fees of \$15.00, and electronic research fees of \$2,949.00. Nalder filed a motion to retax on August 23, 2021. Lewis filed a motion to retax on August 24, 2021. Order regarding competing motions heard on July 6, 2021 was filed on August 27, 2021. Notice of entry of this Order was filed on August 30, 2021.

Findings and Conclusions

The Court FINDS and CONCLUDES that UAIC is a prevailing party against both Nalder and Lewis. UAIC prevailed in its summary judgment motion against both Nalder and Lewis and thus, he may

recover costs against both Nalder and Lewis.

The Court FINDS and CONCLUDES that although UAIC raises valid points on the timing of the Lewis' motion to retax under NRS 18.110(4), the Court prefers to consider the case on its merits. Thus, UAIC's motion to strike Lewis' motion cannot be granted.

The Court FINDS and CONCLUDES that UAIC's memorandum of costs and disbursements contained sufficient evidence of its costs incurred under *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015).

The Court FINDS and CONCLUDES that the peremptory challenges costs cannot be deemed to be recoverable costs. Under SCR 48.1, peremptory challenge is discretionary; that is, the parties have a choice to pay fees to seek a different judge, chosen at random, to hear the case. Peremptory challenges were not necessary for UAIC's participation in the case. Thus, it does not fall under NRS 18.005(1) as filing fees. Furthermore, it cannot be deemed to be "reasonable and necessary expenses" under NRS 18.005(17). Thus, the peremptory challenges fees that UAIC incurred, in the amount of \$920.50, cannot be awarded.

The Court FINDS and CONCLUDES that all other objections to UAIC's memorandum of costs and disbursements, regarding copying costs, runner fees, and electronic research fees are without merit under NRS 18.005(12) and (17). The costs incurred in those areas must be deemed reasonable and necessary and awarded in full.

ORDERS

The Court ORDERS that Nalder's Motion shall be GRANTED in part, DENIED in part. Lewis' Motion shall be GRANTED in part, DENIED in part. UAIC's Motion to strike shall be DENIED. Out of the \$4,514.00 in costs sought, UAIC shall be awarded \$3,593.50 in costs, after deducting \$920.50 in costs associated with the UAIC's peremptory challenges. The hearing set for September 28, 2021 VACATED.

Counsel for UAIC is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Nalder and Lewis' counsel are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with AO 21-04 and EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 09/27/21



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

THOMAS F. CHRISTENSEN, ESQ.
1000 S. VALLEY VIEW BLVD.
LAS VEGAS, NV 89107

DATE: December 2, 2021
CASE: A-18-772220-C

RE CASE: CHEYENNE NALDER vs. GARY LEWIS

NOTICE OF APPEAL FILED: November 30, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER ON NALDER'S MOTION TO RETAX, THIRD PARTY PLAINTIFF'S GARY LEWIS'S MOTION TO RETAX COSTS AND THIRD PARTY DEFENDANT UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO STRIKE THIRD PARTY PLAINTIFF'S MOTION TO RETAX COSTS OR ALTERNATIVELY, OPPOSITION TO MOTION TO RETAX COSTS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

CHEYENNE NALDER,

Plaintiff(s),

vs.

GARY LEWIS,

Defendant(s),

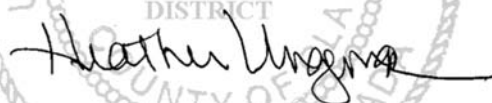
Case No: A-18-772220-C

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk