

IN THE SUPREME COURT FOR THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP  
OF THE PERSON AND ESTATE OF  
KATHLEEN JUNE JONES, PROTECTED  
PERSON.

KATHLEEN JUNE JONES,

Appellant,

*vs.*

ROBYN FRIEDMAN; AND DONNA  
SIMMONS,

Respondents.

Supreme Court No. 83967

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**MOTION TO STRIKE PORTIONS OF RESPONDENTS' APPENDIX**

Kathleen June Jones (“June”), Appellant, by and through counsel, Scott Cardenas, Esq. and Elizabeth Mikesell, Esq., of Legal Aid Center Of Southern Nevada, Inc., hereby submits this Motion to Strike Portions of Respondents’ Appendix, and requests that this Court specifically strike the following portions of Respondent’s Appendix (“RA”): 13 RA 2243–20 RA 3370.

## MEMORANDUM OF POINTS AND AUTHORITIES

- I. A party's appendix should omit documents that were not before the district court when it entered the order being appealed.

NRAP 27(a)(1) states that “[a]n application for an order or other relief is made by motion unless these Rules prescribe another form.” No rule in the NRAP specifically provides an avenue to move the court to strike portions of an appendix. NRAP 27(a)(2) provides that any motion shall “state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.”

Here, June requests that this Court strike portions of Respondents' Appendix that go far beyond the issues presented in the appeal and all of which were filed in the district court well after the order from which June appeals. NRAP 30(b) provides that “all matters not essential to the decision of issues presented by the appeal shall be omitted.” It then goes on to emphasize that “[b]revity is required” when compiling an appendix. NRAP 30(b). In *State v. Haberstroh*, this Court admonished counsel for including thousands of pages of irrelevant documents in their appendix. 119 Nev. 173, 69 P.3d 676 (2003). In *Haberstroh*, counsel filed an appendix that was 52 volumes and 11,384 pages, but in their briefing, did not cite to a single page in 22 of the volumes, and only cited to a few

pages in each volume for the other volumes. *Id.* at 179, 69 P.3d at 680.

“This court can only consider the record as it was made and considered by the court below.” *Lindauer v. Allen*, 85 Nev. 430, 433, 456 P.2d 851, 853 (1969); *see also In re Fountainebleau Las Vegas Holdings*, 127 Nev. 941, 956, 267 P.3d 786, 795 (2011) (granting an appellant’s motion to strike portions of respondent’s appendix that included documents solely to contradict the certification order being considered). Similarly, this Court has stated that it cannot consider documents that were not a part of the record when the district court entered the order being appealed, and denied a motion to supplement the record on appeal with such documents. *Vacation Village, Inc. v. Hitachi America, Ltd.*, 111 Nev. 1218, 1220, 901 P.2d 706, 707 (1995) (citing *Carson Ready Mix v. First Nat’l Bank*, 97 Nev. 474, 635 P.2d 276 (1981)).

**II. This Court should strike Respondents’ Appendix from 13 RA 2243 through 20 RA 3370.**

While June made an effort to include only those documents that were considered by the district court when it entered its December 06, 2021 Order, Respondents have included almost 8 volumes in their

appendix that postdate the December 06, 2021 Order.<sup>1</sup> The following portions of Respondents' Appendix postdate the December 06, 2021 Order: 13 RA 2243–2330; the entirety of volumes 14, 15, 16, 17, 18, and 19; and 20 RA 3220–3370.<sup>2</sup>

These documents obviously could not have served as a basis for the district court's December 06, 2021 Order considering that they were not before the district court prior to it entering that order.<sup>3</sup> So, these documents are completely irrelevant to the issues presented on appeal.

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<sup>1</sup> Respondents also included some documents that predated the December 06, 2021 Order that were irrelevant to the district court's decision. The district court referenced filings regarding the communication and visitation litigation, the annual accountings, the report from the guardian ad litem, and testimony and evidence presented at the June 08, 2021 evidentiary hearing in its December 06, 2021 Order. Anything beyond that, was unnecessary. However, for the sake of brevity, June focuses this motion on the filings postdating the December 06, 2021 Order that are clearly improper.

<sup>2</sup> 20 RA 3371–93 is the register of actions, which was already transmitted to this Court. *See* Notice of Appeal documents filed on December 22, 2021, 12–56. Therefore, these are redundant, but not completely irrelevant to the appeal like the other documents addressed in this motion.

<sup>3</sup> Counsel for June has not yet received the documents referenced in Respondents' Motion for Leave to File Portions of Respondents' Appendix Under Seal filed on October 05, 2022. However, given the chronological nature of the appendix, it is presumed that 14 RA 2362–66, 17 RA 2938–81, 18 RA 2982–3149, and 19 RA 3150–90 all postdate the December 06, 2021 Order.

What matters is the information, or lack thereof, that was before the district court when it entered its all-encompassing December 06, 2021 Order without any warning. Instead, Respondents have used much of their appendix to include documents that postdate the December 06, 2021, and which attempt to fill in the clear gaps in the district court's decision and further their narrative of Kimberly being the supposed villain. They can continue to litigate those matters all they want before the district court, but it does not make them relevant in this appeal.

Respondents' Appendix conflicts with NRAP 30(b) clear requirements of brevity and omission of all matters not relevant to the appeal. Matters that postdate the December 06, 2021 Order should have been omitted because they were not considered by the district court prior to its December 06, 2021 Order, and thus, are irrelevant to the issues presented in this appeal.

Respondents' further demonstrate that these documents are irrelevant to this appeal by citing to pages in 13 RA 2243–20 RA 3370 only a handful of times. The following are the only references to those portions of Respondents' Appendix in their Answering Brief:

- RAB, at 12: cites to 20 RA 3257–58, 3364–70 to support the allegation that June is “cognitively unable to express her preferences.”<sup>4</sup>
- RAB, at 19: cites to 17 RA 2938–19 RA 3190 regarding investigator’s reports that were filed after the December 06, 2021 Order.
- RAB, at 21: cites to 13 RA 2304–08, which are emails from Kimberly’s counsel that postdate the December 06, 2021 Order stating counsel’s intent to withdraw.
- RAB, at 22: cites to 13 RA 2320–2330, 14 RA 2331–2358, and 19 RA 3191–3219; all of which are filings regarding a motion to stay the December 06, 2021 Order that was filed with the district court, but not this Court.
- RAB, at 23: cites to 20 RA 3371–3393 to support the irrelevant statement that Robyn has fulfilled her statutory duty as successor guardian. However, these pages in the Respondents’ Appendix are just the register of actions.
- RAB, at 27: cites to 20 RA 3257–58, 3364–70 to support Respondents’ statement that June does not have the cognitive ability to direct litigation.<sup>5</sup>
- RAB, at 28: cites to 20 RA 3220–3370 regarding their request before the district court to remove Legal Aid Center as counsel for June, which was filed almost seven months after this appeal.<sup>6</sup>

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<sup>4</sup> The district court has never made such a finding, and the documents cited do not support this assertion.

<sup>5</sup> Once again, the district court has never made such a finding, and the documents cited do not support this assertion.

<sup>6</sup> If Respondents’ believe that these filings are necessary for their novel argument that removal of counsel for an appellant somehow moots an

- RAB, at 36: cites to 16 RA 2680–2749, which are filings related to Respondents’ request before the district court to restrict communication and visitation with Kimberly. That request was made almost two months after this appeal was filed.
- RAB, at 46–47: cites again to 20 RA 3257–58, 20 RA 3364–70 to support the allegation that June is cognitively unable to express her preference.

These are all filings and documents that postdate the December 06, 2021 Order, and therefore, are irrelevant to the issues raised in this appeal. Such portions of Respondents’ Appendix distract from the actual issues before this Court and unnecessarily enlarge the appendix with irrelevant documents. Further, Respondents only cite to about 16 pages in Volume 13, about 28 pages in Volume 14, 0 pages in Volume 15, and about 44 pages in Volume 17. Much of Volumes 17, 18, and 19 are only referred to in one long string cite regarding investigator’s reports that were filed with the district court after the December 06, 2021 Order. *See* RAB, at 19. So, like in *Haberstroh*, Respondents’ Appendix contains many pages that are irrelevant to the appeal because they postdate the December 06, 2021 Order, and most are not even cited to in their

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appeal, there is nothing stopping them from including those filings and an eventual order in a motion to dismiss this appeal if the district court does in fact remove Legal Aid Center as counsel.

Answering Brief. Therefore, these portions of Respondents' Appendix violate NRAP 30(b)'s command that "all matters not essential to the decision of issues presented by the appeal shall be omitted."

## V. CONCLUSION

Accordingly, this Court should grant June's motion to strike 13 RA 2243 through 20 RA 3370 because those portions of Respondents' Appendix contain irrelevant documents that were filed after the December 06, 2021 Order from which June appeals.<sup>7</sup>

DATED this 31st day of October, 2022.

**LEGAL AID CENTER OF  
SOUTHERN NEVADA, INC.**

/s/ Scott Cardenas

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<sup>7</sup> Alternatively, if this Court is not inclined to grant this motion, it should disregard the portions of Respondents' Appendix that are irrelevant to the merits of this appeal. *See A-NLV-Cab Co. v, State, Taxicab Authority*, 108 Nev. 92, 96, 825 P.2d 585, 588 (1992) (stating that the court would disregard portions of the appendix in resolving the merits of the appeal).



### **CERTIFICATE OF SERVICE**

I certify that on October 31<sup>st</sup>, 2022, I submitted the foregoing **MOTION TO STRIKE PORTIONS OF RESPONDENTS' APPENDIX** for filing through the Court's electronic filing system. Electronic notification of service will be sent to the following:

Jennifer Richards, Reno, NV, as counsel for Amicus Curiae

Elizabeth Mikesell, Las Vegas, NV, as counsel for Appellant

Scott Cardenas, Las Vegas, NV, as counsel for Appellant

Maria Parra-Sandoval, Las Vegas, NV, as counsel for Appellant

Jeffrey Sylvester, Las Vegas, NV, as counsel for Respondent

David Snyder, Las Vegas, NV, as counsel for Respondent

John Michaelson, Henderson, NV, as counsel for Respondent

Micah Echols, Las Vegas, NV, as counsel for Respondent

/s/ Jennifer Bocek-Dobijanski  
An employee of Legal Aid Center  
of Southern Nevada