

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIAMOND HALL,

Appellant,

v.

JUSTIN MARTIN,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 83979

**APPELLANT'S RESPONSE TO RESPONDENT'S EMERGENCY
MOTION UNDER NRAP 27(E) TO SEAL SUPREME COURT CASE;
STRIKE APPENDICES PURSUANT TO NRAP RULE 30(B) AND DIRECT
APPELLANT TO RESUBMIT PURSUANT TO NRAP RULE 30(B)(3)(D);
SANCTIONS ON APPELLANT**

COMES NOW, Appellant, Diamond Hall, by and through her attorney, Amy A. Porray, Esq. of McFarling Law Group, and hereby requests an Order denying Respondent, Justin Martin's request for sanctions related to the appendices. This Response is based upon the Memorandum of Points and Authorities, Declaration of Amy A. Porray, Esq., and all other papers and pleadings on file herein.

DATED this 8th day of June, 2022.

MCFARLING LAW GROUP

/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
*Attorney for Appellant,
Diamond Hall*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respondent, Justin Martin moved this Court for emergency relief requesting that this Court strike the appendices, seal the entire case, and sanction Appellant, Diamond Hall and her counsel for their submission of the appendices. This Court granted Martin's motion in part, denied in part, and directed Appellant, Diamond Hall to respond to Justin's request for sanctions. Justin's request for sanctions should be denied because counsel has not engaged in any behavior warranting sanctions.

II. ARGUMENT

This is an appeal from a child custody trial. Appellant, Diamond Hall's appellate counsel was not her trial counsel and is not her counsel for the post-decree district court proceedings. Instant counsel represents Diamond in appellate capacity only and is served with and receives only appellate litigation. Diamond's trial counsel, Erick Ferran, remains her counsel in lower-court proceedings.

Following trial, Ferran appealed. Ferran filed Diamond's Docketing Statement in January 2022, which included hundreds of pages of exhibits. Then, Respondent, Justin Martin was represented by his trial counsel, Brandon Leavitt, Esq. Leavitt did not object to the introduction of any exhibits with the Docketing Statement.

Diamond's fast track statement was due on March 16, 2022. On March 14, 2022, instant counsel substituted for Ferran as Diamond's appellate attorney. Diamond requested a three-week extension, with her brief being due on April 6, 2022.¹ Ferran then gave the undersigned Diamond's file. When the undersigned assumed appellate representation, she, Ferran, and his office discussed this case. Ferran did not tell the undersigned that any documents had been sealed or were of a sensitive nature. He did not tell the undersigned that the case itself was sealed. He also notified the undersigned that although he had spoken with Leavitt about the appeal, he had not communicated with Leavitt to jointly agree on an appendix.

Therefore, the undersigned and her staff reviewed Diamond's file and prepared the index for a draft joint appendix. The undersigned prepared correspondence to Leavitt, included a copy of the index of the draft table of contents, and gave them to her paralegal to serve. On that same date, Leavitt filed a motion to withdraw as Martin's appellate attorney. Leavitt did not respond to Diamond's correspondence regarding the joint appendix. This Court granted Leavitt's Motion to Withdraw as Counsel.

¹ Due to subsequently unforeseen circumstances, Diamond's brief's due date was briefly extended and filed on April 8, 2022.

Diamond's fast track statement was filed on April 8, 2022. Justin, in proper person, hand-delivered his fast track response to Diamond on April 29, 2022, and file it on May 2, 2022.² Diamond filed her fast track reply on May 12, 2022.

At the same time that Justin was filing his fast track response, he was also engaging in post-decree litigation. Diamond talked with Justin and told him that she was feeling overburdened by attorney's fees and child support. It was at that time - May 10, 2022 - that Justin sent the undersigned the first correspondence to Diamond's counsel demanding that she redact unknown records in the appendices which he did not identify. Alternatively, he demanded she prepare a stipulation and order to place the entire case file under seal. Justin did not give the reason for the redaction, stating only "It has come to my attention documents within the appendices you have filed with the Supreme Court are NOT properly redacted. . . . please remedy the infraction immediately".³

²Justin states that "Law clerk Crystal Beville refused to provide signed Receipt of Copy acknowledging receipt of brief." Ms. Beville is a paralegal with McFarling Law Group. When Justin arrived at the McFarling Law Group office with his brief, he demanded that we prepare a receipt of copy for him showing receipt of his brief. He did not have a receipt of copy prepared for us to sign. McFarling Law Group is under no obligation to prepare his legal documents. Ms. Beville let him know that, although we would not be drafting his legal documents, we will calculate all dates and deadlines from that date that he hand-delivered his brief to us. Counsel followed through with this and based all deadlines from the hand-delivery date.

³ Justin has also involved T. Michael Phillips in this action and had Mr. Phillips contact the undersigned in a harassing manner at the same time as Justin contacted her about the instant issue. When counsel politely declined to speak with Mr. Phillips about this case, he began on a tirade about how awful Diamond was and the

In responding to Justin, counsel quoted directly from this Court's orders to counsel in other cases where counsel has sought to seal the entire case, certain documents, or portions of the record. This is the language that Justin addresses in his Emergency Motion. Counsel also let Justin know that he had not given counsel any information about what documents needed to be sealed, why it should be sealed and/or the compelling reason for seeking the sealing of the appendix. Regarding redaction, counsel let Justin know that the records could not now be redacted on appeal because that would alter them from how they were submitted to the court below.

Counsel pointed out that Justin had waited five weeks to address this issue – (and four months from when the documents attached by Diamond's previous counsel were filed into the case) – which undercut his emergency demands. Counsel also let him know that if he believed that the records should be sealed, he should move this Court to do so. Counsel would not oppose a motion to seal the documents – only to strike the record. However, counsel would not agree to a joint motion to seal the entire case or a stipulation and order to seal the entire case because Justin never gave counsel the legal reasons for the sealing, pointed to the documents in question or

unfairness of gender in the law. This contact occurred at the same time Justin was contacting the undersigned about sealing the case. In reviewing the record below, Justin is engaging in litigation where he will call Mr. Phillips as a witness. Because Justin is calling Mr. Phillips as a witness, Justin is also seeking to "disqualify" Judge Harter from his case, because Mr. Phillips has sued Judge Harter in federal court.

provided counsel with the legal basis. Later, when this Court issued its Order granting Justin's motion in part, this Court agreed that there are not legal grounds to seal the entire case because Justin has not provided any legal basis for doing so. This Court refused to seal the entire case.

Upon response, Justin again demanded redaction of "all documents without proper redaction". Counsel had already let Justin know that it was impermissible to redact the trial record. And Justin still did not let counsel know the specifically identified document and legal reason for sealing. Justin then stated that Diamond should "invest in their child by meeting her support obligations" rather than counsel's services.

Following this dialogue, Justin filed an Emergency Motion, arguing that counsel knew the matter was sealed and is aware of ongoing litigation, yet publicly and purposely filed the appendices. This is not true. Counsel is only appellate counsel and is not involved with, not served with, and not a party to the district court litigation. Counsel was not trial counsel and did not oppose sealing of the matter below. The order sealing the matter was not a separate order, so counsel did not see the order when she reviewed all orders in the case before responding to Justin about the status of his case. Counsel also accessed the case as if a proper person (and not through an attorney account) to see if the case was sealed and was able to get access. That is when she responded to Justin that the case was not sealed – she had a good

faith belief that it was not. Justin never said otherwise, despite knowing that the case was sealed. Further, this Court has times before denied counsel's request to seal the appendices in a case sealed in the district court below just because the case is sealed below. This Court has always required counsel to provide the legal grounds in comport with the rule.

Further, Justin waited from January 2022 when the docketing statement was filed by Diamond's previous counsel until May 2022, *after* he filed his fast track response to seek sanctions against Diamond for inclusion of two documents with social security numbers on them. The record in this case is 1,440 pages. There are two pages with social security numbers on them. While counsel does not minimize this oversight, that is all that it was—an oversight. There was nothing nefarious or antagonistic about it. Justin himself did not notice the inclusion of the information until May 2022 after he had filed his own fast track response. Counsel let Justin know – twice – that she needed to know the document, the information that needed to be sealed, and why or it would not legally be sealed. Counsel would not have opposed his motion to seal, and had he have given her the information requested, counsel would have proactively taken the steps necessary to seal that information.

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III. CONCLUSION

Counsel did not “carelessly ‘shot-gun[]’ private/personal and unredacted documents” and commit “unethical legal abuse” in preparing the appendix. Accordingly, Justin’s motion for sanctions should be denied.

DATED this 8th day of June, 2022.

McFARLING LAW GROUP

/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
*Attorney for Appellant,
Diamond Hall*

DECLARATION AMY A. PORRAY, ESQ.

I, Amy A. Porray, Esq., declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct:

1. I represent the Appellant in the above-entitled case.
2. I have read the attached Response and know the contents thereof; the same is true of my own knowledge, except for those matters stated upon information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

DATED this 8th day of June, 2022.

McFARLING LAW GROUP

/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Appellant
Diamond Hall

VERIFICATION

The undersigned counsel of record certifies as follows: I hereby certify that this motion complies the requirements of NRAP 27, has been prepared in a proportionally spaced typeface using Microsoft Word–Office 365 Business in font type Times New Roman size 14, and is less than 10 pages long. I also certify that the information provided in this motion is true and complete to the best of my knowledge, information, and belief.

DATED this 8th day of June, 2022.

McFARLING LAW GROUP

/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
6230 W. Desert Inn Road
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(702) 565-4335
*Attorney for Appellant,
Diamond Hall*

NRAP 26.1 STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 (a) and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: N/A

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this Court:

McFarling Law Group, Amy A. Porray, Esq.

Hitzke & Ferran, LLP, Erick Ferran, Esq.

Leavitt & Flaxman, Brandon K. Leavitt, Esq., Michael C. Flaxman, Esq., and Elizabeth Ellison, Esq.

Leavitt Family Law Group, Brandon K. Leavitt, Esq. and Elizabeth Ellison, Esq.

Patricia A. Marr, Ltd., Patricia A. Marr, Esq.

Page Law, Fred Page, Esq.

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3. If litigant is using a pseudonym, the litigant's true name: None.

DATED this 8th day of June, 2022.

McFARLING LAW GROUP

/s/ Amy A. Porray

Amy A. Porray, Esq.
Nevada Bar Number 9596
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
*Attorney for Appellant,
Diamond Hall*

CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 8th day of June, 2022, I served a true and correct copy of Appellant's Response to Motion to Seal Supreme Court Case; Strike Appendices Pursuant to NRAP Rule 30(b) and Direct Appellant to Resubmit Pursuant to NRAP Rule 30(b)(3)(d); Sanctions on Appellant as follows:

☒ by United States mail in Las Vegas, Nevada, with First-Class postage prepaid and addressed as follows:

Justin Martin
3144 Manti Peak Avenue
North Las Vegas, NV 89081
Respondent in Proper Person

/s/ Crystal Beville

Crystal Beville