IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE TIERRA JONES, DISTRICT JUDGE, DEPT. 10,

Respondents,

DANIEL S. SIMON; AND THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION,

Real Parties in Interest.

Supreme Court Case No. 84159
(District Court A-18-767242-C
Consolidated with
A-16-738444-C)

ANSWER OF RESPONDENTS TO WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE CLIENT FILE

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NRAP 26.1 Disclosure

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

No parent or holding corporations are involved.

Peter S. Christiansen, Esq., Nevada Bar No. 5254, of Christiansen Trial Attorneys has also appeared for the Petitioner.

/s/ James R. Christensen

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I. Introduction

Simon provided the Edgeworths with exceptional representation which led to a phenomenal six-million-dollar recovery on the Edgeworths' half million-dollar property damage claim, of which the Edgeworths have already received almost four million dollars.

Simon worked for his friends without a fee agreement and advanced costs on their behalf. Simon understood the economic difficulties presented by the Edgeworths' claim. Simon sent four incomplete hourly bills during the 19-month case and the Edgeworths were happy to receive lower bills. Simon consistently took the position that a fair and reasonable fee would be due at the end of the case, based on the result.

Simon was too successful for his own good. As Simon was moving Viking towards a six-million-dollar settlement and Simon was discussing a formal fee structure with the Edgeworths per the Edgeworths own request, the Edgeworths ended communication with Simon, hired replacement counsel and then argued Simon was due nothing. Soon after - despite Simon's offer to reach a collaborative resolution - the Edgeworths frivolously sued Simon for conversion to "punish" Simon. During the following legal dispute, the Edgeworths statements under oath were so plainly engineered toward manifesting their claim, and so divorced from the

facts adduced at the evidentiary hearing, that the Edgeworths acknowledged in their first appeal that the district court did not find them to be credible. The Edgeworths are also alleged to have defamed Simon *per se* by making out of court statements to mutual friends and legal peers to the effect that Simon intended to steal the settlement and/or that Simon was an extortionist.

The Edgeworths' choice to file a frivolous lawsuit against Simon to punish Simon, and the Edgeworths' decision to defame Simon led to a separate suit which is currently before this Court (82058). (The Edgeworths refer to the defamation per se and abuse of process case in their petition as a SLAPP suit even though the district court found otherwise.)

The Edgeworths' petition does not raise any issues which merit extraordinary relief. Regarding the case file, Simon turned over the physical evidence and file, ranging from a cabinet door to failed sprinkler parts to job files. Simon twice gave the Edgeworths copies of the email and Simon gave the Edgeworths a copy of the case file on an external drive, which contained tens of thousands of documents (over 18 gigabytes worth). When the Edgeworths complained about case file production, years after the Edgeworths fired and then frivolously sued Simon, Simon

offered to work collaboratively and asked for specifics to better address the alleged issues. Simon's collaborative offer was rebuffed, the Edgeworths ignored the fact that NRS 7.055 does not apply, and the file production issue was used as a pretext to expand the overall dispute by requesting extraordinary relief from this Court.

Simon did not turn over confidential information covered by a stipulated protective order ("SPO") because the explicit terms of the court order survive resolution and prevents disclosure to the Edgeworths. The Edgeworths do not address the plain terms of the SPO in the petition. Instead, the Edgeworths assert unsupported conclusions and ignore the clear language of the court order. The Edgeworths did not demonstrate that the decision of the district court to uphold its own protective order was arbitrary, capricious, or contrary to law.

The claim that this petition is the only avenue left for the Edgeworths to obtain a "complete" copy of the file is not true. The Edgeworths could follow the plain terms of the SPO which require signature of Exhibit A to the SPO and a demonstration that confidential information is needed in the case against Viking and then seek the confidential information in motion practice before the district court in this case and/or the defamation suit.

As for the disputed funds safekept in trust, the disagreement over the amount of the fee due Simon continues, therefore, the disputed funds should remain in trust. The legal argument that Simon waived rights by not filing an appeal is not warranted under existing law, *because it is well settled that Simon does not have a right of appeal to waive*. Instead, Simon must pursue a remedy by a petition for a writ, which has been submitted by Simon. Accordingly, it is proper that the disputed funds remain safekept in trust until a final decision is reached.

The claim that the Edgeworths are left with "no other avenue" other than extraordinary relief is not true. In the normal course there will be a final decision on the fee dispute, at which point the funds held in trust will be disbursed per the final decision. There is no reason to short cut the process. The Edgeworths apparently agree that there is no basis for a short cut, at least in part, because the Edgeworths have not paid Simon fees which are no longer in dispute, or the sanction, and even sought a stay to prevent collection of the undisputed sums owed to Simon before a final decision is reached.

Lastly, the Edgeworths cannot claim undue prejudice. The original funds agreement with Vannah promoted the interests of the Edgeworths by holding disputed funds in an interest-bearing account such that the

Edgeworths enjoyed the benefit of compounding interest on the entire amount in the account, including earning compound interest on funds found to be owed to Simon. Oddly, the Edgeworths recently demanded the money be moved to an IOLTA account, for which the Edgeworths do not enjoy compounding interest. In so doing the Edgeworths deprived themselves of interest thereby waiving a claim of undue prejudice.

The Edgeworths did not demonstrate they are due extraordinary relief, even if they truly had no other options, which they in fact do.

II. Standard of Review

The Edgeworths bear the burden to establish that issuance of an extraordinary writ is warranted. *Pan v. Dist. Ct*. 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Usually, an extraordinary writ will only issue when there is no "plain, speedy and adequate remedy at law". *Ibid; quoting*, NRS 34.170 and NRS 34.330.

Review of discovery decisions by the district court, such as issuance or enforcement of a stipulated protective order, are subject to an abuse of discretion review. *See, Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Ct*., 128 Nev. 224, 228, 276 P.3d 246, 249 (2012)("[d]iscovery matters are within the district court's sound discretion.").

Factual findings by the district court are given deference and will be upheld if "not clearly erroneous, and if supported by substantial evidence". *Ogawa v. Ogawa*, 24 Nev. 660, 668, 221 P.3d 699, 704 (2009). Substantial evidence is evidence such that "a reasonable mind might accept as adequate to support a conclusion." *State, Emp. Security Dep't v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

III. Background Summary

Simon was close family friends with the Edgeworths. (III-AA00671.) In April of 2016, a speculation house being built by businesses controlled by the Edgeworths flooded, allegedly due to a defective Viking sprinkler that was installed by Lange Plumbing. (III-AA00671-672.) The flood caused about $500,000 in damage. (III-AA00671-672.)

In May of 2016 the Edgeworths turned to their friend Simon. (III-AA00671.) Simon agreed to help. (III-AA00671.) The friends did not discuss fees. (III-AA00671.)

On June 14, 2016, a complaint was filed against Viking and Lange. (III-AA00671-672.) The Edgeworths claimed an express oral fee agreement was formed with Simon in June of 2016. (III-AA00677.) The district court found against the Edgeworths' claim. (III-AA00677.)

The Viking case was complex, with many parties, claims and issues. (III-AA00688.) Simon aggressively litigated the complex case for his friends. (III-AA00688.)

On August 9, 2017, Simon and Brian Edgeworth discussed a formal fee arrangement, but did not reach an agreement. (III-AA00672.) On August 22, 2017, Brian Edgeworth acknowledged in an email to Simon that they did not have an express agreement and discussed options for a fee structure. (III-AA00672.) Contrary to the claims made by the Edgeworths, the district court found that an express oral fee agreement was never formed. (III-AA00677.)

On November 17, 2017, Simon and the Edgeworths met at the Simon office to discuss the litigation. (III-AA00674.)

On November 27, 2017, Simon sent a proposed flat fee agreement to the Edgeworths. (III-AA00674.)

On November 29, 2017, the Edgeworths hired Vannah and constructively discharged Simon. (III-AA00674 & AA00678-681.)

On November 30, 2017, Vannah notified Simon he had been hired and instructed Simon to settle the Lange claim for $25,000.00. (III-AA00674.) Simon served a charging lien the same day. (III-AA00674.)

On December 1, 2017, the Edgeworths signed Viking settlement documents. (III-AA00679.) The settlement documents contained Vannah's name. (III-AA00679.) Simon's name does not appear on the settlement documents. (III-AA00679.) Viking paid $6,000,000.00 to settle the case. (III-AA00689.)

On December 26, 2017, the Edgeworths asserted that Simon intended to steal the Viking settlement money. (III-AA00680.)

On January 4, 2018, the Edgeworths filed a lawsuit against Simon. (III-AA00675 & III-AA00680.) (This suit was later dismissed by the district court and fees were assessed against the Edgeworths. The sanction was upheld on appeal although the case was remanded for further findings on the amount of the sanction. *Edgeworth Family Trust v. Simon*, 2020 WL 7828800, 477 P.3d 1129 (Nev. 2020)(unpublished).)

On January 9, 2018, Vannah sent an email asserting that withdrawal from representation of the Edgeworths would not be in Simon's best interest, even though Simon had been sued by the Edgeworths. (III-AA00680-681.)

During the almost two-year litigation, Simon submitted four hourly bills to the Edgeworths and advanced costs. (III-AA00672-673 & III-AA00686-687.) The Edgeworths paid the bills. (III-AA00672-673.) Simon

indicated the bills were sent to demonstrate damages under the Lange contract. (III-AA00683.) The bills were sent both before and after Brian Edgeworth admitted there was no express fee agreement in the email of August 22, 2017. (III-AA00677.)

While the district court expressly found against the Edgeworths *post hoc* claims of an express oral contract, the district court found that the four bills was sufficient evidence to find the existence of an implied contract with an hourly payment term. (III-AA00677 & III-AA00682-683.) The district court then found that the Edgeworths terminated the implied contract when they discharged Simon. (III-AA00678-681 & III-AA00687.)

Importantly, the district court found that Simon was "an exceptional advocate for the Edgeworths". (III-AA00690.) The district court found that Simon's lawyering "was extremely significant and the work yielded a phenomenal result for the Edgeworths." The district court found that Simon continued to assist the Edgeworths even after discharge (which was also after being accused of an intent to steal settlement money and after being frivolously sued for conversion). (III-AA00691.)

IV. Simon Provided the Edgeworths with the Case File Except for Confidential Information.

The Edgeworths may not rely upon NRS 7.055 because Simon has not been paid the fee due, per the plain language of the statute.[1] The terms of the SPO are also plain and apply to the Edgeworths. The SPO does not allow for dissemination of confidential information after litigation

[1] **NRS 7.055 Duty of discharged attorney to deliver certain materials to client; enforcement; adjudication of claims to materials.**

1. An attorney who has been discharged by his or her client shall, ***upon demand and payment of the fee due from the client***, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

2. A client who, after demand therefor and ***payment of the fee due from the client***, does not receive from his or her discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his or her papers, documents, pleadings and other property. If the court finds that an attorney has, without just cause, refused or neglected to obey its order given under this section, the court may, after notice and hearing, adjudge the attorney guilty of contempt and may fine or imprison him or her until the contempt is purged. If the court finds that the attorney has, without just cause, withheld the client's papers, documents, pleadings or other property, the attorney is liable for costs and attorney's fees.

3. An attorney who is in doubt as to the ownership of papers, documents, pleadings or other property may deposit the materials with the clerk of the court. The clerk shall immediately seal the materials to protect the privacy and privilege of the clients and interested persons and notify each interested person of the deposit. Upon a petition filed by a client or other interested person, any court shall, after giving at least 5 days' notice to all other interested persons, adjudicate the rights of persons claiming an

without execution of Exhibit A to the SPO *and* a demonstration of need for the confidential information in the Viking case.

Simon provided the case file to the Edgeworths, excepting confidential information per the SPO. Simon's requests for specificity went unanswered when the Edgeworths' latest counsel made general unsubstantiated claims that the file produced one year earlier was incomplete or was otherwise indecipherable.

The current complaints appear to be nothing more than a pretext to extend litigation. Further, to the extent that the Edgeworths can make a legitimate demonstration that confidential Viking sales and technical information is needed to defend the defamation case or to dispute Simon's fee in this case, the Edgeworths can sign Exhibit A to the SPO and can seek disclosure per the SPO in district court in the fee dispute or in the defamation case. Although Simon grants that because the plain terms of the SPO restrict dissemination based on need for use of the confidential information in the Viking case, an Edgeworth attempt to demonstrate need based on the fee dispute and/or the defamation case is not likely to succeed.

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interest in the materials and make necessary orders under the circumstances of the case. (Emphasis added.)

A. Simon produced the case file.

Prior to the evidentiary hearing which began on August 27, 2018, Simon provided 89 exhibits to the district court and the Edgeworths. (I-AA00077-82) Exhibit 80 consisted of a copy of over five thousand (5,000+) pages of emails, which was submitted on a CD. (I-AA00077-82)

On August 27, 2018, all exhibits were admitted into evidence, including the emails. (I-AA00077-82)

On September 10, 2018, per the request of Vannah, Simon voluntarily produced cell phone records. (I-AA00229-230)

On June 10, 2019, per the request of Vannah, Simon turned over a host of physical evidence and documents including Viking sprinkler pieces, blueprints, job files, "Mark's sprinkler emails", etc. (II-P000283-284.)

In May of 2020, the Edgeworths informally sought a copy of the case file in the defamation case. (II-P000286-292, II-P000322, II-P000356-371) The Edgeworths' sought the case file based upon NRS 7.055. (II-P000286.) In May of 2020, the parties debated the applicability of the SPO. (II-P000356-371.) (The SPO is found at II-P000337-354.)

On May 26, 2020, Simon copied the case file to an external drive. (II-P000299 & III-P000487-489.) Documents believed to be subject to the SPO were redacted. (III-P000487-489.) The folders, sub folders and files

of the copied electronic case file were “clearly identified”. (III-P000488.) As seen at II-P000299, the main folders on the drive were titled with common identifier’s such as “PLEADINGS”, “Research”, and “Depositions”.

On May 28, 2020, Simon delivered the external hard drive to the Edgeworths by Federal Express. (III-P000489.)

On May 3, 2021, almost one year after delivery of the file, Morris Law Group entered the case on behalf of the Edgeworths. (III-AA00526-528.)

On May 3, 2021, new counsel for the Edgeworths sent a letter *directly to Simon* demanding the release of disputed funds by May 5, 2021. (II-P000276.) (Later, the Edgeworths acknowledged the obligation to communicate via counsel, but then argued that the direct communication with a represented party was made “in the interest of efficiency”.[2] (II-P000261-62.)

On May 4, 2021, Simon again offered to engage in a “collaborative dialogue to end the fee dispute.” (II-P000278.)

On May 4, 2021, during a phone call, the Edgeworths requested a second production of the file due to issues in the first production. The Edgeworths were asked for specifics. (II-P000224-35.)

[2] As observed by Pope John Paul II, “an excuse is worse and more terrible than a lie, for an excuse is a lie guarded.”

On May 4, the Edgeworths sent a letter claiming that among the missing portions of the file "are all attachments to emails included in the production." (II-P000294; *contra*, III-P000494-495 at which the Edgeworths concede that at least some email attachments were provided but argue the provided attachments were out of place, etc.) The May 4 letter also claimed that research was missing. (II-P000294.) *The Edgeworths did not disclose if they opened the provided folder entitled* "Research". (*Compare*, II-P000294 and II-P000299.)

On May 7, 2021, Simon replied and requested clarification. (II-P000296-297.) Simon asked if the Edgeworths were seeking copies of every attachment to every email every time the email appeared in an email string. Simon also asked for clarification because earlier claims of missing items had been groundless. Simon raised the issue of the SPO. Lastly, Simon reminded counsel that a pre-condition of NRS 7.055 had not been met because Simon had not been fully paid. (II-P000296-297.)

On May 11, 2021, the Edgeworths sent an email with little additional information regarding their email attachment request. Rather, the Edgeworths again relied upon conclusions and generalities. The specific concerns raised by Simon regarding the pre-condition to NRS 7.055 of payment and the SPO were not addressed. (II-P000319-320.)

On May 13, 2021, the Edgeworths filed a motion seeking production of the "complete" client file pursuant to NRS 7.055. (II-P000248-322.) The attached declaration of Edgeworths' counsel claimed:

> 5. I am *informed and believe* that the Edgeworths have still not received their complete client file from Simon, though portions were produced in 2018 and in 2020.
>
> 6. I am *informed and believe* that the portions of the file received were disorganized and often indecipherable, which made review very difficult and time consuming.

(Emphasis added.)(II-P000261.)

On May 20, 2021, Simon opposed the May 13 motion. (II-P000323-371.) Simon argued that NRS 7.055 did not apply, however, Simon was willing work with the Edgeworths on case file production if the Edgeworths showed they were not creating make work projects by providing specifics and addressing the problem of the SPO.

On May 21, the Edgeworths filed their reply in support of the request for the "complete" file. (II-P000372-391.) Notably, the Edgeworths pointed to how emails were attached *as an exhibit to the Simon May 20 opposition* as "a good example of how the files were disorganized and often indecipherable…" (II-P000378-79.) How Simon's counsel handles an exhibit to an opposition is wholly different from the issue of emails in the case file production. The Edgeworths' argument was a *non sequitur*.

On May 27, 2021, the district court heard argument. Simon discussed the practical problem with the Edgeworths file request:

> We also have to deal with the practical question of – you know, these folks raise the issue, and they say all this stuff is indecipherable, it's vague, but they don't tell us why. So how do we address that problem? Is it a particular file? Is it a folder? Is it the pleading? Is it correspondence? What is it? What do we have to reproduce? They won't tell us. They allege there's a problem, but they won't tell us what it is, and then they tell us to fix it.

(II-P000418.) At the hearing, the Edgeworths admitted receiving a hard drive with "tens of thousands of documents on it" and then repeated the conclusory claim that the produced case file was incomprehensible and disorganized, but the Edgeworths still did not provide detail or foundation. (II-P000420-421.) The Edgeworths also complained of having no common guideposts for the case file (II-P000420) but did not explain how the common identifiers used as seen at II-P000299 were inadequate.

On June 17, 2021, the district court issued an order denying the motion to release funds and denying the motion to produce the complete file. (III-P000425-432.)

On July 1, 2021, the Edgeworths filed a motion seeking reconsideration of the district court's order (III-P000433-446.) In the paragraph which addressed the case file, the Edgeworths again invoked NRS 7.055 without addressing the pre-condition of payment and then

repeated prior general arguments about the applicability of the SPO. Nothing new was offered to the district court. (III-P000438.)

On July 15, 2021, Simon opposed the motion. (III-P000447-489.) Simon observed that the Edgeworths had not introduced anything new that warranted reconsideration by the district court. To clear up any uncertainty that may have been raised by the vague claims of the Edgeworths, Simon provided the district court with the declaration of Ashley Ferrel Esq., who personally copied and produced the case file to the Edgeworths over a year prior. (III-P000487-489.)

On July 17, 2021, the Edgeworths replied with new information regarding their email "stripping" allegations. (III-P000494-495.) The Edgeworths did not explain how the stripping allegation qualified as new evidence or otherwise allowed the district court to reconsider its decision. The Edgeworths did not explain why they waited until their reply in support of reconsideration to attempt to provide some basis for their claims of an inadequate case file production. Further, the stripping allegations made supported the conclusion that the Edgeworths desired a copy of every attachment to every email in a particular string every time the email appeared in the string.

On September 9, 2021, the district court denied the motion for reconsideration. (IV-P000706-714.) In sum, the district court found that the Edgeworths had failed to make a showing that reconsideration was warranted. (*Ibid*.)

On December 13, 2021, this Court dismissed the Edgeworths' attempt to appeal the district court's case file order. (IV-P000715-719.)

On February 1, 2022, the Edgeworths filed a petition for writ of mandamus challenging the district court's case file order. In the petition the Edgeworths tried a new argument for re-production of the case file by claiming without citation or foundation that Simon did not turn over:

> [O]r even the fully executed settlement agreements that resulted in the settlement funds on which Simon based his charging lien.

(Petition at 13-14.) If this is their smoking gun, it is not pointed at Simon. The fully executed settlement agreements were signed *after Simon was fired by the Edgeworths* and Vannah had been hired. (I-P000048-49.) On February 20, 2018, at the status check hearing for settlement documents and stipulation and order for good faith settlement, at which both Simon and Vannah appeared, Vannah did not raise a missing fully executed settlement agreement as an issue, which might imply Vannah has a copy. (I-AA00002-11.) Lastly, the Edgeworths have obtained attorney client

communications from the defense. (II-AA00263.) If the Edgeworths can obtain privileged communications from the defense, it stands to reason they could obtain a document they signed as well.

Upon deeper examination, the Edgeworths' unsupported claim that Simon did not turn over a fully executed copy of the settlement agreement is revealed to be nothing more than a pretext for continued litigation.

B. The Edgeworths did not demonstrate the case file provided by Simon was indecipherable or incomplete.

The district court was provided with the declaration of Ashley Ferrel, Esq., made upon personal knowledge concerning the Simon production of the case file to the Edgeworths. (II-P000487-89.) The declaration was attached to the opposition to the motion to reconsider. Ms. Ferrel explained that she personally copied the Simon file and loaded it onto an external drive and sent the external drive to the Edgeworths.

In contrast, the Edgeworths provided a declaration of counsel that claimed that the case file was incomplete and indecipherable based upon "information and belief". (II-P000261.) The language in the declaration was wholly conclusory.

The declaration of Ashley Ferrel was based upon personal knowledge and constituted substantial evidence. The decision of the

district court to accept that the case file had been provided must be given deference. The district court did not abuse its discretion by siding with a declaration made under personal knowledge against a declaration made under information and belief and in wholly conclusory language.

The Edgeworths did not provide the district court with much specificity or detail in addition to counsel's declaration. What little was provided was questionable. For example, the Edgeworths claimed no research was provided, but did not mention the "Research" folder on the drive. (II-P000299.) Likewise, the Edgeworths complained of an indecipherable production lacking any comprehensible guideposts when the Simon production used common folder names like "Depositions" and "Pleadings". (II-P000299.) Lastly, the only detail on the alleged attachment stripping claim was provided in the reply to a motion for reconsideration, to which Simon could not respond. (The district court did not hold a hearing on the motion for reconsideration.)

The district court did not have a choice other than to rule against the Edgeworths based on the scanty foundation they provided. The decision of the district court must be given deference.

C. NRS 7.055 does not apply.

There are two reasons why NRS 7.055 does not apply to the current dispute. *First, Simon already produced the case file*. Second, NRS 7.055 contains a pre-condition to file turnover. Per the statute, the fee due must be paid before the file is turned over. NRS 7.055(1)&(2).

If the language of a statute is plain and unambiguous, then the plain language should be applied. *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007). NRS 7.055 clearly states that "payment of the fee due from the client" must occur before the attorney is obligated to turn over a client file. NRS 7.055 (1)&(2). There are no other rational interpretations of the clear language of NRS 7.055, and the Edgeworths do not offer one. Instead, the Edgeworths deflect to common law retaining lien case law regarding the giving of proper security to obtain a case file.

Of course, the Edgeworths could have made an argument that there is apparent tension between the plain language of NRS 7.055 and the case law regarding a retaining lien and the giving of security to obtain a case file which might be sufficient to merit resolution; *except for the fact that Simon already produced the case file.* Debate over the authority by which a client can request a case file is moot when the client has the case file.

D. The clear terms of the SPO prevent turnover of confidential information.

The parties in the Viking case stipulated to the terms of the SPO, and the order was signed by the district court on June 28, 2017. (II-P000337-354.)

The terms of the SPO are plain and must be applied as they are written. *See*, *Leven*, 123 Nev. at 403, 168 P.3d at 715. The clear terms of the SPO are very restrictive. The SPO applies to the current day:

> "Even after final disposition of this litigation…until a Designating Party agrees otherwise in writing or a court order otherwise directs".

(II-P000342 at 4. Duration, and II-P000349-350 at 13. Final Disposition.)[3]

The scope of the SPO is broad, the SPO covers expert reports, summaries, etc. (II-P000341.)

Under the clear language of the SPO, a party is not authorized to blanket receipt of confidential information. At term 7.2, the SPO specifically limits the categories of persons to whom confidential information may be

[3] The Edgeworths did not provide written permission to obtain confidential information from any Designating Party.

disclosed and places restrictions on dissemination to individuals within the accepted categories:

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Designating Party or Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

(h) any mediator assigned or selected by the parties and their staff.

(II-P000346.)

Thus, under the SPO there are three barriers to dissemination of confidential information: (1) The recipient must be in an approved category; (2) The recipient must sign Exhibit A; and (3) The disclosure to the recipient "must be reasonably necessary for this litigation." (II-P000346.)

Exhibit A limits the dissemination of confidential information, and it has teeth. Exhibit A reaffirms that no confidential information will be disclosed "except in strict compliance" with the SPO and allows for sanctions and contempt if the SPO is violated. (II-P000354.)

The Edgeworths argue that parties are entitled to receive information because their attorney Simon signed the SPO, *but do not cite to a supporting term in the SPO or legal authority*. (Petition at pg., 28.) The Edgeworths are wrong. Term 7.2 of the SPO is clearly fashioned to address the fact that Plaintiffs in the Viking case were two business entities owned and controlled by the Edgeworths. (II-P000346.) Term 7.2(a) addressed the status of Simon as an outside attorney hired by the

businesses. Term 7.2(b) addressed the owners, controllers, and employees of the Plaintiffs-the Edgeworths.[4] Term 7.2(b) plainly requires signature of Exhibit A and limits disclosure to those for whom receipt of the confidential information is "reasonably necessary for this litigation". (II-P000346.)

Under SPO term 7.2(b) the Edgeworths do not pass go on their bid to acquire confidential information, because the Edgeworths refused to sign Exhibit A. (II-P000286-292, II-P000322, & II-P000356-371.) There can be no legitimate dispute that the discovery court order requires signature of Exhibit A as a pre-condition to release of confidential information. The Edgeworths did not sign, so they do not get confidential information.

Further, even if the Edgeworths signed Exhibit A, they would have had difficulty demonstrating that dissemination of confidential Viking sales and technical information was "reasonably necessary" for "this litigation" because the Viking litigation is over (excepting the fee dispute), and the Edgeworths have already received almost four million dollars.

Under the plain terms of the SPO had Simon turned over confidential information to the Edgeworths, Simon would have violated a court order

[4] 7.2(b) coincides with the definition of Party at term 2.10 of the SPO. (II-P000341.)

and would have assumed the risk of a disclosure by the Edgeworths, inadvertent or otherwise. There is no law which compels Simon to violate a court order or assume the risk of disclosure by the Edgeworths.

The Edgeworths have never forthrightly addressed the plain language of the SPO. The Edgeworths do not address their refusal to sign Exhibit A. The Edgeworths do not attempt to demonstrate need but rather couch their request in terms of an "interest". (Petition, pg. 13 at fn. 3.) Further the expressed basis for the interest is questionable at best. (Petition, pg. 13 at fn. 3.) For example, the date of retention of an expert is not contained in confidential Viking information regarding sprinkler sales or in an expert summary or report which incorporated confidential technical information regarding fire sprinkler design, testing or failure, which was necessarily authored after retention.

Even at this late date, the Edgeworths made the decision to avoid cogent legal argument about the applicability of the SPO and instead resort to fallacious rhetoric to make their argument.[5]

[5] For example, at page 24 of the petition the Edgeworths argue that Simon is holding the file "hostage" to avoid disclosing information detrimental to the "SLAPP" lawsuit. As if confidential Viking sales and technical information could alter the fact the Edgeworths admitted (in a courtroom no less) that they frivolously sued Simon with the ulterior purpose to "punish"

The decision of the district court to deny the motion to produce the complete file based on the terms of the SPO was correct. The analysis must end at the Edgeworths refusal to sign Exhibit A. The Edgeworths have utterly failed to demonstrate an abuse of discretion or a legal error by the district court or the need for extraordinary relief.

V. The Disputed Funds are Safekept in a Trust.

The dispute over the amount of the fee due Simon continues. The Edgeworths filed an appeal seeking to drive the fee amount down. Simon filed a petition for a writ seeking to increase the fee. Accordingly, the district court order finding that the fee dispute was continuing and that disputed funds should be held in trust was appropriate, and the decision was not arbitrary, capricious, or contrary to law.

The Edgeworths' petition seeking an early disbursement of disputed funds is not meritorious. It is not a secret that Simon has sought and continues to seek a greater fee based upon sound legal arguments and evidence. As such, pursuant to the law and the Vannah agreement, continuing to hold disputed funds in trust is a reasonable and prudent act. Further, the Edgeworth petition is based on the false argument that Simon

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Simon or could alter the nature of the Edgeworths' defamatory per se out of court statements.

waived rights by not pursuing an appeal. It is well settled that Simon does not have a right of appeal. Instead, Simon must pursue his remedy via a petition for a writ.

Lastly, the Edgeworths did not and cannot establish that they have no other remedy other than issuance of extraordinary relief from this Court. There will be a final decision in the fee dispute in the normal course, at which point the disputed funds will be disbursed. There is no basis to short cut the normal process.

A. Summary of facts

On December 27, 2017, Simon responded to accusations and statements without substance by the Edgeworths by requesting a collaborative approach. (III-P000474-477.)

On December 28, 2017, Vannah responded with a collaborative suggestion to deposit disputed funds into an interest-bearing account. Vannah's proposal was a good one, and Simon agreed the same day. (III-P000468-473.) The terms of the Vannah agreement were simple; the disputed money was deposited into an interest-bearing account at Bank of Nevada which required both Simon and Vannah to agree to a disbursal, and all agreed that any interest earned would go to the benefit of the Edgeworths. (*See, e.g.*, III-P000468-473, III-P000479 & II-P000415-416.)

The funds would remain in the account until the fee dispute was resolved. (*See, e.g*., III-P000468-473, III-P000479 & II-P000415-416. "The parties and their counsel have agreed that the subject proceeds shall be deposited in the Account pending the resolution of this matter." III-P000479.) The agreement was known to the district court. (*See, e.g*., II-P000415-416 & III-P000481-485.)

On May 3, 2021, new counsel for the Edgeworths sent a letter directly to Simon demanding release of disputed funds by May 5, 2021. (II-P000276.)

On May 4, 2021, Simon responded with an offer to enter a "collaborative dialogue to end the fee dispute." (II-P000278-79.)

On May 4, 2021, the parties held a phone conference at which the competing stances on the fees were discussed. Simon reaffirmed the claim to a fee based upon the unrebutted opinion of expert Will Kemp. (II-P000334-35.)

On May 13, 2021, Simon summarized the competing positions in a letter to the Edgeworths. Regarding the Edgeworth request for transfer of funds from an interest-bearing account to an IOLTA account, Simon took the position that the transfer choice was the Edgeworths, but that Simon

would not be responsible for any resulting damages or lost interest. (II-P000382-383.)

On May 13, 2021, the Edgeworths sent a letter admitting actual notice of the Simon position regarding greater fees due. (II-P000385.)

On May 13, 2021, the Edgeworths filed a motion seeking release of funds the Edgeworths claimed were not in dispute. (II-P000248-322.)

On May 13, 2021, Simon filed an opposition to the Edgeworths second motion to reconsider and filed a counter motion to adjudicate Simon's lien on remand. (III-AA00529-633.) In the counter motion Simon argued for a larger fee based on quantum meruit principles and the market approach. Simon supported his argument for a larger fee with case law and a second (also unrebutted) declaration from expert Will Kemp.

On May 20, 2021, Simon opposed the May 13 motion. (II-P000323-371.)

On May 21, 2021, the Edgeworths filed a reply. (II-P000372-391.)

On May 27, 2021, the district court heard argument. (II-P000394-422.)

On June 17, 2021, the district court issued an order denying the motion to turn over funds. The court essentially found that the motion to release funds was premature and that there was no basis to alter the

Vannah agreement regarding the holding of funds in trust. (III-P000425-432.)

On June 17, 2021, the district court denied Simon's countermotion to adjudicate the lien. (III-AA00721-728.)

On July 1, 2021, the Edgeworths filed another motion seeking reconsideration of the district court's disputed funds order. (III-P000433-446.)

On July 15, 2021, Simon opposed the motion. (III-P000447-489.) Simon observed that the Edgeworths had not introduced anything new which warranted reconsideration by the district court and that in response to an appeal, "Simon may reply with a writ challenging the amount as too low." (III-P000452.)

On July 17, 2021, the Edgeworths replied in support of their motion for reconsideration of the order regarding release of disputed funds held in trust. (III/IV-P000490-705.)

On September 9, 2021, the district court denied the motion for reconsideration. (IV-P000706-714.) In sum, the district court found that the Edgeworths had failed to make a showing that reconsideration was warranted. (*Ibid*.)

On December 13, 2021, this Court dismissed the Edgeworths' attempt to appeal the district court's disputed funds order. (IV-P000715-719.)

On February 1, 2022, the Edgeworths filed a petition for writ of mandamus challenging the district court's disputed funds order.

On March 11, 2022, Simon filed a petition for a writ seeking a greater fee based on the application of the market rate under quantum meruit principles and the unrebutted declarations of Will Kemp.

B. The fee dispute continues, therefore, the disputed fees should remain in trust.

Simon has always sought a collaborative resolution to the fee dispute but that is apparently not to be. Accordingly, Simon seeks a reasonable fee under the market approach according to the principles of quantum meruit. Simon has provided the district court with the unrebutted opinion of Will Kemp concerning the reasonable fee due.

Simon's position is not a secret. Simon has repeatedly informed the Edgeworths of the position on reasonable fees via phone calls, letters, motion practice and in submissions to this Court.

In response, the Edgeworths claim that because Simon did not file an appeal, that Simon waived rights and certain money held in trust is no

longer in dispute. The Edgeworths' argument is flat wrong. It is well settled that Simon does not have a right of appeal to waive. An attorney seeking appellate review of an attorney lien adjudication is usually not a party and likely does not have a right of direct appeal. *Albert D. Massi LTD., v. Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995). Thus, an attorney seeking review of an adjudication must do so by a petition for extraordinary writ. *Ibid*; and, *A.W. Albany v. Arcata Associates, Inc*., 106 Nev. 688, n. 1, 799 P.2d 566 n. 1 (1990). Simon is an attorney seeking review of an adjudication who is not a party, therefore Simon does not have a right of appeal. Accordingly, Simon must seek relief via a petition for extraordinary relief.

The Edgeworths request for extraordinary relief is based upon a false pretext. Simon never had a right of appeal, but Simon did file a petition as permitted. The fee dispute continues. No relief is warranted.

In addition, the false pretext used by the Edgeworths is self-defeating for the extraordinary relief sought. The Edgeworths' petition challenges the district court order by arguing that the facts changed *after the order of the district court* when Simon waived his (nonexistent) rights to appeal. Importantly, the Edgeworths did not first bring the alleged changed circumstances to the attention of the district court.

The Edgeworths bear the burden to establish that issuance of an extraordinary writ is warranted. *Pan,* 120 Nev. at 228, 88 P.3d at 844. Usually, an extraordinary writ will only issue when there is no "plain, speedy and adequate remedy at law". (*Ibid.*)

The Edgeworths cannot pass the extraordinary relief threshold. The claim Simon waived appellate rights is false. Extraordinary relief cannot issue on a false pretext. Further, even if true, the Edgeworths did not first seek relief from the district court. Thus, the Edgeworths' false pretext is self-defeating because the alleged waiver was not first brought to the attention of the district court and the Edgeworths cannot carry the burden on demonstrating they have no other avenue or recourse other than their petition.

VI. Conclusion

The Edgeworths' petition did not present anything extraordinary. Instead, the Edgeworths' petition unnecessarily expands the already heated conflict with their former friend and attorney who provided exceptional legal services, because of which the Edgeworths have already received about four million dollars.

The SPO uses plain language, and the court order must be honored. The Edgeworths did not sign Exhibit A, so the bid to obtain confidential

information fails. The Edgeworths did not establish that the district court acted in an arbitrary and capricious manner or committed an error in law by denying the vague and foundationless motion for turnover of an already provided case file. Instead of reliance on information and belief, the Edgeworths should look at what was provided and then engage in a dialogue if there are issues.

The dispute over the funds continues; therefore, the disputed funds should remain in trust. The Edgeworths request for relief is based on a false pretext, which even if true, would be self-defeating.

The Edgeworths have not demonstrated that extraordinary relief is warranted. No relief should issue.

Dated this 11th day of March 2022.

/s/ James R. Christensen

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VERIFICATION

I, James R. Christensen, declare as follows:

I am an attorney for Petitioner herein. I hereby certify that I have read the foregoing Answer of Respondents to Writ of Mandamus, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

I declare under the penalty of perjury of the laws of Nevada that the foregoing is true and correct.

/s/ James R. Christensen

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer of Respondents to Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Arial font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 7,000 words and contains approximately 6,672 words.

I hereby certify that I have read this Answer of Respondents to Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answer of Respondents to Writ of Mandamus complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 11th day of March, 2022.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March 2022, I served a copy of the foregoing ANSWER TO WRIT OF MANDAMUS electronically to all registered parties.

/s/ Dawn Christensen
an employee of JAMES R. CHRISTENSEN