

1  
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3  
4 RAYMOND BROOKS; AND  
5 BRADY LINEN SERVICES, LLC,

6 Appellants,

7 v.

8 JERREL TURNER; AND KESHA  
9 FRYER,

10 Respondents.  
11

Electronically Filed  
Sep 17 2021 02:53 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
No.: 82881

12 **RESPONSE TO ORDER TO SHOW CAUSE WHY**  
13 **SANCTIONS SHOULD NOT BE IMPOSED**

14 Pursuant to NRAP 16(g) the Nevada Supreme Court has the right to issue  
15 sanctions against a party for failure to participate in good faith in the Nevada  
16 Supreme Court mediated settlement process. However, in this case both counsel  
17 for the plaintiffs and the plaintiffs Jerrell Turner and Kesha Fryer participated in  
18 good faith throughout the Supreme Court settlement process. For this reason,  
19  
20  
21 sanctions should not issue.

22 At the beginning of the settlement process counsel for plaintiff Jared  
23 Anderson, Esq. participated in a lengthy telephone conference with settlement  
24 judge Thomas Tanksley during which he discussed his clients' position and  
25 answered questions from the settlement judge. During this conference counsel for  
26 the plaintiff thoroughly discussed the procedural posture of the case along with the  
27  
28

1 legal and factual questions at issue in the subject appeal. Counsel for plaintiff  
2 believes that he provided the settlement judge with his briefing which was done at  
3 the district court level and also the district court order denying the defendant's  
4 motion to set aside the default which is the subject of the appeal. The settlement  
5 judge indicated that he understood the factual and legal issues in dispute. Initially  
6 the settlement judge indicated that the parties need not submit settlement briefs  
7 pursuant to NRAP 16d because he was not certain whether or not it would be  
8 beneficial to hold a settlement conference.

9  
10 Subsequently, on June 15, 2021 the settlement judge sent an email to  
11 counsel for plaintiff, stating in pertinent part:

12  
13 As appointed Settlement Judge, I have given further thought to this matter.  
14 Although it still appears that the case will be extremely difficult to settle (in  
15 part for reasons we discussed), I think it would be a worthwhile effort  
16 especially given the procedural history of this case. Although it appears  
17 that a question(s) of law is at the heart of the appeal, the parties have never  
18 had much of an opportunity to interact with each other in a Nevada forum.  
19 Thus, even if it doesn't settle in the mediation, at least each side will have a  
20 better picture of the other for potential future use toward a later settlement.

21 Also, as you indicated, one cannot always predict how either side will react  
22 to whatever offer might happen to be floated in a settlement conference.  
23 Therefore, my thought is to give this a try on Zoom (first at least), likely for  
24 a morning or afternoon as long as it appears to be productive to some  
25 degree. I will ask for your NRAP 16 d statement ahead of time. I do have  
26 some availability in mid July if that works, but I don't know the other side's  
27 availability yet.

28 As is set forth in the June 15, 2021 e-mail, the settlement judge did not set a  
date for any briefing pursuant to NRAP 16d to be done at that time.

1 Subsequently the settlement judge sent out proposed dates for the settlement  
2 conference and asked the parties to let him know which dates would work best for  
3 the parties. On June 23, 2021 counsel for plaintiff sent the following email to the  
4 settlement judge:  
5

6 Dear Judge Tanksley,  
7

8 I am reaching out to my clients to confirm their availability for the dates  
9 that remain. I will provide you with the dates that work as soon as I hear  
10 back from them.

11 Jared Anderson, Esq.

12 Later that same day plaintiff's counsel's legal assistant e-mailed the settlement  
13 judge with the following message:  
14

15 Good afternoon. August 5th works best for the clients. Thank you.

16 Lili  
17

18 For unknown reasons, the settlement conference was then moved from  
19 August 5, 2021 to August 12, 2021.

20 On June 24, 2021 the settlement judge sent the following email to counsel  
21 for plaintiffs:  
22

23 Please see attached. As far as the confidential Settlement brief, I am  
24 familiar with the legal positions, so please focus on the other aspects of  
25 NRAP 16d. Thank you.

26 Although several months have passed and he cannot remember his exact  
27 thoughts upon reading this email, to the best of his recollection, counsel for  
28

1 plaintiff believes that he likely misread this e-mail from the settlement judge as  
2 indicating that a written settlement brief would not be necessary. Further, no  
3 specific date was provided in this email for a written settlement brief to be  
4 provided to the settlement judge.  
5

6 In order to be prepared for the settlement conference, counsel for the  
7 plaintiff reminded his clients of the date of the settlement conference and provided  
8 them with the zoom link for the conference. Counsel for plaintiff also held a  
9 telephone conference with his clients Jerrell Turner and Kesha Fryer prior to the  
10 settlement conference, discussed the process with them, discussed their position  
11 on settlement and prepared them for the discussions that would occur during the  
12 settlement conference.  
13  
14  
15

16 On August 12, 2021 counsel for plaintiffs timely appeared at the settlement  
17 conference along with his clients Jerrell Turner and Kesha Fryer. The plaintiffs  
18 participated in good faith during the conference, exchanging settlement offers and  
19 holding settlement discussions with the defendants and their counsel. The parties  
20 also discussed the legal and factual issues involved in the case and went over the  
21 details of several pertinent Nevada Supreme Court cases and how they might  
22 apply to the facts of the subject case. The settlement conference lasted for several  
23 hours and the plaintiffs and their counsel remained in the conference and  
24 participated until the settlement judge indicated that the case was not going to  
25  
26  
27  
28

1 settle and there was no point in continuing to negotiate any further.

2       During this settlement conference counsel for the plaintiffs thoroughly  
3 discussed the positions of the plaintiffs regarding the amounts that they would be  
4 willing to accept in exchange for settling the case. At the end of the settlement  
5 conference the settlement judge expressed his satisfaction with the participation of  
6 plaintiffs Jerrell Turner and Kesha Fryer and their counsel Jared Anderson, Esq.  
7  
8 At no time did the settlement judge indicate that he was dissatisfied with the  
9 participation of the plaintiffs or that the settlement negotiations were hindered in  
10 any way due to the lack of a settlement brief from the plaintiffs.  
11  
12

13       In July of 2021 counsel for plaintiff Jared Anderson, Esq. began  
14 transitioning his practice from the law firm Tanner Churchill Anderson to the law  
15 firm Injury Lawyers of Nevada. As part of this process Jared Anderson, Esq.  
16 switched back to an old e-mail address and stopped using the e-mail address  
17 associated with Tanner Churchill Anderson. Although Jared Anderson, Esq. took  
18 steps to forward his emails from the Tanner Churchill Anderson e-mail address to  
19 his current e-mail address, he has learned that a number of emails were not  
20 forwarded to his current email address. Therefore it is possible that there are  
21 emails that the settlement judge sent to him that were never delivered or received.  
22  
23 This may explain difficulties experienced by the settlement judge in  
24 communicating with counsel for plaintiff. However, any failure to respond to  
25  
26  
27  
28

1 emails sent by the settlement judge was unintentional.

2       As is set forth above, the plaintiffs meaningfully participated in the  
3  
4 Supreme Court settlement process. This participation included holding a  
5 telephone conference with the settlement judge, responding to emails regarding  
6 the decision to hold a settlement conference, providing and scheduling dates for  
7 the settlement conference, holding discussions between plaintiffs and their counsel  
8 prior to the settlement conference in order to be prepared for the conference,  
9 attending the settlement conference and engaging in meaningful negotiations  
10 during the settlement conference. Counsel for plaintiff is confident that counsel  
11 for the defendants would also agree that the plaintiffs and counsel for plaintiff  
12 participated in good faith throughout the Nevada Supreme Court mediated  
13 settlement process. If there were emails from the settlement judge that plaintiff's  
14 counsel did not respond to then it was likely due to the change of email address  
15 and the difficulties encountered in forwarding emails directed to his old email  
16 address to his new email address. For all of these reasons, sanctions should not be  
17 assessed against counsel for the plaintiff relating to his participation in the  
18  
19  
20  
21  
22

23 ///

24 ///

25 ///

1 settlement process.

2 DATED this 17<sup>th</sup> day of September, 2021.

3  
4 TANNER CHURCHILL ANDERSON

5 */s/ Jared B. Anderson*

6  
7 JARED B. ANDERSON (SBN: 9747)  
8 4001 Meadows Lane  
9 Las Vegas, Nevada 89107  
10 Attorneys for Plaintiff  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28