

Marquis Aurbach

Nick D. Crosby, Esq.

Nevada Bar No. 8996

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

ncrosby@maclaw.com

Attorneys for Appellants Sheriff Joseph Lombardo and LVMPD

Electronically Filed
May 04 2022 09:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF JOSEPH LOMBARDO and
LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellants,

vs.

MATEO FACIO,

Respondent.

Case No.: 84622

Appeal from the Eighth Judicial District
Court, The Honorable Jacqueline M.
Bluth Presiding.

**APPELLANTS' OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION**

Comes now, Appellants, Sheriff Joseph Lombardo and Las Vegas Metropolitan Police Department ("LVMPD"), by and through their attorneys of record, hereby file their Opposition to Respondent's Motion to Dismiss for Lack of Jurisdiction in the above-referenced action. This Opposition is made and based on

the Memorandum of Points & Authorities attached hereto, the pleadings and papers on file herein, and any oral argument allowed at the time of hearing.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

The Court should deny the Motion to Dismiss and retain jurisdiction because to rule otherwise would deny Appellants due process of law. Specifically, not recognizing Appellants as an aggrieved party simply because Appellants are not the “defendant” or the “State” in the underlying criminal case, would result in Appellants being subject to district court orders where it is not the “defendant” or “State,” yet have absolutely no right to challenge such orders to a higher court.

II. LEGAL ARGUMENT

A. WITHOUT AN APPELLATE FORUM, AGGRIEVED PARTIES, SUCH AS THE APPELLANTS, ARE SUBJECT TO THE UNLAWFUL ORDERS BY THE DISTRICT COURT.

In the Motion, the Respondent argues that the appeal should be dismissed because “the Sheriff is not a defendant or the state” and notes the language contained in Nevada Rule of Appellate Procedure 4(b)(1). (Mot., p. 1). Stated differently, Respondent argues that, while Appellants are bound by the lower court’s order to house the Respondent, they are not permitted to challenge that

order because they are not parties. This logic defies the fundamental notions of due process.

For over a century, this Court has held due process of law “not only requires that a party shall be properly brought into court, but that he shall have the opportunity in court to establish any facts which, according to the usages of common law or provisions of the Constitution, will be a protection to himself or property.” Pershing v. Reno Stock Brokerage, Co., 30 Nev. 342, 96 P. 1054 (1908) (quoting Wright v. Cradlebaugh, 3 Nev. 341 (1867)). Further, this Court held:

The law does not impose upon any person absolutely entitled to a hearing the burden of voluntarily intervention in a suit to which he is a stranger.... Unless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights.

Bowler v. Leonard, 70 Nev. 370, 381, 269 P.2d 833, 838 (1954) (quoting Chase Nat’l. Bank v. City of Norwalk, 291 U.S. 431, 441 (1934). More recently, this Court reaffirmed this holding in Gladys Baker Olsen Fam. Trust v. Eighth Jud. Dist. Ct., 110 Nev. 548 (1994). In Gladys, this Court relied upon Martin v. Wilks, 490 U.S. 755 (1988) for support of its decision in Bowler wherein this Court held, “...it is well settled that joinder rather than knowledge of a lawsuit and opportunity to intervene is the method by which potential parties are subjected to the

jurisdiction of the court.” Gladys, 110 Nev. at 553 (citing Martin, 490 U.S. at 765; Bankers Trust Co. v. Old Republic Ins. Co., 959 F.2d 677, 684 (7th Cir. 1992) (nonparty not bound by decision even though it was aware of litigation which could affect its interests and even though the nonparty responded to discovery requests by the parties)).

While the Appellants recognize they are neither the “defendant” or “State,” this Court should retain jurisdiction and recognize Appellants as “aggrieved parties” under Nevada Revised Statute 177.015. The Defendant moved the lower court to order Appellants to house the Respondent, despite recognizing there was not statutory authority to do so, and certainly would have filed a motion for order to show cause had Appellants refused to comply with an order to which it was not a party. Because the Appellants are neither the State nor a defendant, Respondent argues that Appellants have no appeal rights. This certainly cannot be the case if the lower court’s transport order binds Appellants, as such a scenario would mean that Appellants are subject to an order in a case to which they are not parties (i.e., a “party” for purposes of the action requested by Respondent below), but not a “party” to appeal any such order. Appellants were never made parties to the lower court proceeding and, if Respondent’s position is that Appellants cannot appeal the transport order because they are not parties, then logic stands to reason that

Appellants are not subject to the transport order in the first instance (at least as it relates to housing State or Federal inmates).

III. CONCLUSION

Given the foregoing, Appellants respectfully request the Court retain jurisdiction. If the Court refuses to retain jurisdiction, the result would be that Appellants have no remedy at law to challenge future, unlawful transport orders.

Dated this 4th day of May, 2022.

MARQUIS AURBACH

By: s/Nick D. Crosby

Nick D. Crosby, Esq.
Nevada Bar No. 8996
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Appellants Sheriff
Joseph Lombardo and LVMPD

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANTS' OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**
was filed electronically with the Nevada Supreme Court on the 4th day of May,
2022. Electronic Service of the foregoing document shall be made in accordance
with the Master Service List as follows:

JoNell Thomas, Esq.
Special Public Defender
Attorneys for Respondent

I further certify that I served a copy of this document by mailing a true and
correct copy thereof, postage prepaid, addressed to: n/a

s/Sherri Mong
an employee of Marquis Aurbach