

**CASE NO. 84710**  
**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**ALEX PENLY,**

Appellant,

vs.

**MILTON J. WOODS AND CIRRUS AVIATION SERVICES, INC.,  
A WASHINGTON CORPORATION,**

Respondents.

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**ANSWER TO PETITION FOR REHEARING**

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On Appeal from the Eighth Judicial District Court  
Clark County, Nevada  
District Court Case No. 07-A-546250  
Department 27

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## **I. PROCEDURAL BACKGROUND**

On 18 September 2015, Respondents obtained a Judgment against Appellant, and by a 27 January 2016 Notice of Entry of Judgment, the district court (the “District Court”) granted Respondent Cirrus Aviation Services, Inc. (“Cirrus Aviation”), a Judgment against Appellant in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), with interest thereon, as well as a separate Judgment in the sum of Eighty Thousand Dollars (\$80,000.000), with interest thereon.

On 10 January 2022, Cirrus Aviation served copies of Affidavit(s) for Renewal of Judgment, by United States Certified Mail/Return Receipt Requested, as set forth below to Alex Penly, Director, and Alan Sklar, Registered Agent: Affidavit of Renewal of Judgment – Cirrus Aviation Inc. - \$80,000.00; Affidavit of Renewal of Judgment – Cirrus Aviation Inc. - \$1,500,000.00; and Affidavit of Renewal of Judgment – Milton Woods - \$80,000.00. Thereafter, the Certificate of Service was properly Electronically Filed on 11 January 2022 at 3:49 PM by the Clerk of the Court. Petitioner received service of the Affidavits in timely fashion.

On 21 January 2022, Appellant filed an Opposition to the Affidavit(s) for Renewal of Judgment (the “Opposition”) pursuant to which he sought to strike Respondents’ judgments as void, expired, and ineligible for renewal.

On 8 February 2022, Respondents filed a Reply in Support of Affidavit(s) for Renewal of Judgment (the “Reply”) pursuant to which they noted the numerous

factual and legal inconsistencies set forth in Appellant's Opposition to the Affidavit(s) for Renewal of Judgment.

On 14 February 2022, Appellant filed a Motion to Strike Plaintiff Affidavit(s) for Renewal of Judgment and Untimely Reply in Support of Affidavit (the "Motion to Strike") pursuant to which Appellant (1) reiterated his prior Opposition and (2) requested that the trial court strike the Reply, alleging that it was filed untimely.

On 28 February 2022, Respondents filed an Opposition to the Motion to Strike.

After oral arguments on 17 March 2022, the District Court denied Appellant's Motion to Strike.

On 11 April 2022, Respondents filed a Notice of Entry of Order pursuant to which they notified Appellant that the District Court entered an Order denying the Motion to Strike and attached such Order to the Notice of Entry of Order (the "District Court Order" denying the Motion to Strike).

On 9 May 2022, Appellant filed a Case Appeal Statement.

Also on 9 May 2022, Appellant filed a Defendant Notice of Appeal in the District Court pursuant to which Appellant gave notice of his appeal of the: (1) Notice of Entry of the District Court Order and (2) the Motion to Strike. Appellant filed the same Defendant Notice of Appeal with this Court on 16 May 2022.

On 10 June 2022, this Court issued an Order Dismissing Appeal on the grounds that the “[i]nitial review of the notice of appeal and the documents before this court reveal[d] a jurisdictional defect [and that n]o statute or court rule allows for an appeal from the district court’s order identified in Appellant’s notice of appeal.”

On 15 June 2022, Appellant filed an untimely Docketing Statement Civil Appeals.

On 27 June 2022, Appellant filed a Petition for Rehearing. In violation of Nevada Rules of Appellate Procedure (“NRAP”) 40(c)(1), the Petition for Rehearing laid out Appellant’s four arguments allegedly supporting its position that the District Court erred by entering the District Court Order. In violation of NRAP 40(c)(2), the Petition for Rehearing did not provide any discussion regarding whether this Court, when it issued the Order Dismissing Appeal, (a) overlooked or misapprehended a material fact or overlooked or (b) misapprehended a material fact or has overlooked or misapplied controlling law.

On 11 July 2022 , this Court issued an Order Directing Answer pursuant to which it ordered Respondents to file an Answer to the Petition for Rehearing, within fourteen (14) days.

## II. STANDARD OF REVIEW

Pursuant to NRAP(c)(2), this Court may consider rehearings under two circumstances: (1) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case or (2) when the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case. However, matters presented in briefs and oral arguments may not be reargued in a petition for rehearing, and no point may be raised for the first time on rehearing. *See* NRAP 40(c)(1).

This Court applies these rules strictly. *See City of N. Las Vegas v. 5th & Centennial*, 30 Nev. 619, 622, 331 P.3d 896, 898, 130 Nev. Adv. Op. 66 (2014) (citing to both NRAP 40(c)(1) and 40(c)(2)); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 608, 245 P.3d 1182, 1184 (2010) (“ ‘[u]nder our long established practice, rehearings are not granted to review matters that are of no practical consequence. Rather, a petition for rehearing will be entertained only when the court has overlooked or misapprehended some material matter, or when otherwise necessary to promote substantial justice.’” (quoting *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984))).

As a result, “[a] petition for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion. Nor may a

litigant raise new legal points for the first time on rehearing.” *In re Herrmann*, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984) (cleaned up). If a petition for rehearing is raised for these reasons, it “has not been filed for any of the legitimate purposes countenanced by [the Court’s] rules. Instead...said petition has been filed for purposes of delay...” *Id.* In such a case, where a petition for rehearing does not comply with the NRAP, sanctions on the party filing the petition for rehearing may be appropriate. *See* NRAP 40(g).

### **III. LEGAL ARGUMENTS**

The Petition for Rehearing fails to satisfy the requirements of the NRAP. Therefore, pursuant to the provisions of NRAP 40(c) and the cases decided thereunder, the Court should deny Appellant’s Petition for Rehearing of the Court’s Order Dismissing Appeal and award sanction to Respondents.

#### **A. The Court Did Not Overlook or Misapprehend a Material Fact in the Record or a Material Question of Law in the Case.**

The Court did not overlook a material question of law. The only question of law in the case related to the District Court Order. The Court clearly and explicitly identified this issue in its Order Dismissing Appeal. While Appellant may argue that the Court overlooked its second alleged issue, its appeal of the Motion to Strike, such a claim is meritless. As an initial matter, a motion itself is not appealable. *See* NRAP 3A(b). Moreover, since the Court addressed the District Court Order and the District Court Order explicitly related to the Motion to Strike, the Court did, in



fact, address the Motion to Strike. Thus, the Court reviewed the question(s) of law raised by Appellant in the Notice of Appeal and simply found it lacking.

The Court also did not overlook a material fact in the record. Appellant filed the Notice of Appeal in the District Court on 9 May 2022 and in this Court on 16 May 2022. Pursuant to NRAP 14(b), Appellant was required to file a Docketing Statement with the Court no later than 6 June 2022, twenty-one (21) days after the appeal was docketed. The purpose of the Docketing Statement “is to assist the Supreme Court in identifying jurisdictional defects...” NRAP 14(a)(3). Appellant failed and/or refused to timely file the Docketing Statement, As a result, the record contained no facts, much less any material facts and the Court was well within its rights to take “such action as [it] deem[ed] appropriate *including* sanctions and *dismissal of the appeal.*” See NRAP 14(c) (emphasis added). By dismissing Appellant’s appeal, the Court did not overlook a material fact – it merely acknowledged the lack of any facts in the record and acted as allowed pursuant to the NRAP by dismissing the appeal, noting the jurisdictional defects resulting from Appellant’s failure and/or refusal to file a Docketing Statement.

**B. The Court Did Not Overlook, Misapply or Fail to Consider a Statute, Procedural Rule, Regulation or Decision Directly Controlling a Dispositive Issue in the Case.**

The Court did not overlook, misapply, or fail to consider a statute, procedural rule, regulation, or decision directly controlling a dispositive issue in this case. In

fact, by dismissing the appeal, the Court followed, to the letter, the applicable statutes, procedural rules, regulations, and decisions.

This court has appellate jurisdiction to review decisions of a district courts. *See Nev. Const. Art. 6, § 4.* Its appellate jurisdiction is limited, however, *see Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994), and it may only consider appeals authorized by statute or court rule. *See Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984), *cited by Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013).

To that end, if an order constitutes, for instance, a final judgment, then it is substantively appealable under NRAP 3A(b)(1) (permitting an appeal from a final judgment in a civil action). However, no statute or court rule directly provides for an appeal from an order denying a motion to strike an affidavit or an order denying a motion to strike an untimely reply. *See NRAP 3A(b)* (designating the judgments and orders from which an appeal may be taken).

Thus, this District Court Order is not a final, appealable judgment – it does not order that the prior Judgments be renewed or that they not be renewed. It merely addresses one portion of the renewal process – the filing of the affidavit(s). Accordingly, when entering the Order Dismissing Appeal, this Court properly applied the applicable statutes, procedural rules, regulations, and decisions, did not overlook, misapply, or fail to consider a statute, procedural rule, regulation, or

decision, and pursuant to *MHC Stagecoach, LLC*, correctly determined that it lacked jurisdiction.

**C. The Petitioner's Petition for Rehearing Merely Reargues His Original Argument.**

Appellant provides no basis for this Court to grant his Petition for Rehearing.

NCAP 40(a)(2) explicitly sets forth the requirements for a Petition for Rehearing:

The petition shall state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present...Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

The Petition for Rehearing complies with none of these requirements. Instead, it merely regurgitates the arguments made by Appellant before the District Court in the Motion to Strike. While these arguments may, or may not, be appropriate for a brief on the merits before this Court, they fail to satisfy the requirements for filing a Petition for Rehearing set forth in NRAP 40(a)(2) and also NRAP 40(c)(2).

**D. Sanctions Against Petitioner are Appropriate.**

Pursuant to NRAP 40(g), petitions for rehearing which do not comply with NRAP 40 may result in the imposition of sanctions. As set forth above, Appellant

wholly failed to comply with NRAP 40(a)(2), which sets forth the requirements for the contents of a Petition for Rehearing, and NRAP 40(c)(1) and (c)(2), which address when this Court may consider a Petition for Rehearing. Moreover, Appellant failed to comply with NRAP 14 by failing and/or refusing to timely file a Docketing Statement as required by NRAP 14(b), a failure which, in and of itself, justifies the Court's Order Dismissing Appeal, and a failure which also led to the subsequent violations of NRAP by Appellant.

As a result of Appellant's multiple violations of the NRAP, Respondent's counsel has spent substantial time drafting an otherwise unnecessary Answer to the Petition for Rehearing. Respondent has accordingly incurred substantial legal fees with respect to an otherwise unnecessary Answer to the Petition for Rehearing.

Accordingly, Respondents respectfully request that this Court sanction Appellant in the amount of \$2,500.00 and amend the Order Dismissing Appeal to confirm that the dismissal is with prejudice.

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#### IV. CONCLUSION

For the foregoing reasons, the Court should deny Appellant's Petition for Rehearing.

DATED this 20th day of July, 2022.

**FOX ROTHSCHILD, LLP**

*/s/ Mark J. Connot*

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*Woods and Cirrus Aviation Services, Inc.*

### **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c)(1), on this the 20<sup>th</sup> day of July 2022, a true and complete copy of the foregoing document entitled **ANSWER TO PETITION FOR REHEARING** was served on the following interested parties by United States Postal Service, postage prepaid, to the address set forth below, and by electronic means, as a courtesy, to the email address set forth below:

Alex Penly  
8529 Fox Brook Street  
Las Vegas, Nevada, 89139  
Alexpenly@msn.com  
*Appellant*

/s/ Mark J. Connot

MARK J. CONNOT

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief 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):

1. This brief has been prepared in a proportionally spaced typeface using Microsoft 365, Word Version 2108 in 14 point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 10 pages.

3. Finally, I hereby certify that I have read the foregoing Answer to Petition for Rehearing, 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 brief 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 to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I further understand that I may be subject to sanctions in the event that the brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 20<sup>th</sup> day of July, 2022.

/s/ Mark J. Connot  
MARK J. CONNOT (10010)