

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

ALEX PENLY,

Appellant,

vs.

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

Respondents.

Supreme Court Case No.: 84710

Electronically Filed  
Jan 26 2023 09:25 AM  
[District Court Case No.: 07-A-346250]  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENTS' ANSWERING BRIEF**

**FOX ROTHSCHILD LLP**

MARK J. CONNOT (SBN 10010)

1980 Festival Plaza Drive, Suite 700

Las Vegas, Nevada 89135

Telephone: (702) 262-6899

Facsimile: (702) 597-5503

Email: [mconnot@foxrothschild.com](mailto:mconnot@foxrothschild.com)

*Attorney for Respondents Milton J.*

*Woods and Cirrus Aviation Services, Inc.*

## **NRAP 26.1 DISCLOSURE**

Pursuant to NRAP 26.1, 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 judges of this Court may evaluate possible disqualification or recusal.

Respondent Cirrus Aviation Services, Inc. (“Cirrus”) certifies that it is a corporation incorporated pursuant to the laws of the State of Washington. It is not a publicly held company, has no parent company, and no publicly held company owns 10% or more of its shares.

Gus W. Flangas, Esquire, of Flangas Dalacas Law Group a/k/a Flangas McMillan Law Group initially represented Cirrus in the District Court. Mark J. Connot, Esquire, along with Kevin M. Sutehall, Esquire, of Fox Rothschild LLP have represented Cirrus since January 12, 2016, when Cirrus filed a substitution of counsel with the district court.

## TABLE OF CONTENTS

	<u>Page</u>
NRAP 26.1 DISCLOSURE .....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iv
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF THE ISSUE.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS .....	5
SUMMARY OF THE ARGUMENT .....	11
STANDARD OF REVIEW .....	11
ARGUMENT AND ANALYSIS .....	12
1.    The District Court Did Not Err When it Renewed Woods’ Judgment Against Penly Because Woods Signed the Original Affidavit of Renewal Filed With the Clerk of the Court. ....	13
2.    Woods Did Not Violate NRCP 11(a) Because he Filed a Properly Executed Affidavit of Renewal. ....	15
3.    The District Court Did Not Err by Allowing Cirrus and Woods to Renew the Judgments Because Cirrus and Woods Filed and Served the Affidavits of Renewal in Strict Compliance with Applicable Law. ....	15
A.    Cirrus and Woods Timely Filed the Affidavits of Renewal .....	16
B.    Cirrus and Woods Timely Served the Affidavits of Renewal .....	17

4.	The District Court Did Not Err by Allowing Each of Cirrus and Woods to Renew Judgments for \$80,000.00 Against Penly Because the District Court Originally Granted Each of Cirrus and Woods Judgments Against Penly in the Amount of \$80,000.00.....	20
5.	The District Court Did Not Allow Cirrus and Woods To Renew a Judgment Against The Wrong Debtor. ....	21
6.	The District Court Did Not Err by Denying Penly’s Motion to Strike.....	21
	CONCLUSION .....	24
	CERTIFICATE OF COMPLIANCE.....	25
	CERTIFICATE OF SERVICE .....	27

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Brown v. MHC Stagecoach, LLC</i> , 129 Nev. 343, 301 P.3d 850 (2013).....	1
<i>Leven v. Frey</i> , 123 Nev. 399, 168 P.3d 712 (2007).....	1, 13, 17, 18
<i>Old Aztec Mine, Inc. v. Brown</i> , 97 Nev. 49, 623 P.2d 981 (1981).....	16, 18, 23
<i>Wells Fargo Bank, N.A. v. Radecki</i> , 134 Nev. 619, 426 P.3d 593 (2018).....	11
<i>Zugel v. Miller</i> , 659 P. 2d 296 (1983).....	17
<b>Statutes</b>	
NRS 17.214 .....	<i>passim</i>
NRS 17.214(1)(a).....	12, 16
NRS 17.214(1)(a)(1)-(9) .....	16
NRS 17.214(1)(b).....	13, 17
NRS 17.214(3) .....	13, 17
NRS 17.214(2) .....	12
NRS 17.214(3) .....	12
NRS 47.250 .....	19
NRS 70.010 .....	12, 16
<b>Other Authorities</b>	
Rule 11 .....	15

Nev. R. Prac. Eighth Jud. Dist. Ct. 2.20 .....	22
Nev. R. Prac. Eighth Jud. Dist. Ct. 2.20(f) .....	22
Nev. R. Prac. Eighth Jud. Dist. Ct. 2.20(g).....	22

## JURISDICTIONAL STATEMENT

Jurisdiction is not proper in this Court. As set forth in this Court's 10 June 2022 Order Dismissing Appeal, this Court may only consider appeals authorized by statute or court rule. *See Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). This appeal is not authorized by statute or court rule.

Mr. Penly ("Penly") is appealing from the (1) Notice of Entry of Order filed with the District Court and (2) District Court's Order denying Appellant's Motion to Strike Plaintiff Affidavit(s) for Renewal of Judgment and Untimely Reply in Support of Affidavit (the "Motion to Strike"). No statute or court rule allows for an appeal from either the Notice of Entry of Order or the Order denying the Motion to Strike.

In this Court's 30 August 2022 Order, this Court determined it has jurisdiction pursuant to *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007). In *Leven*, the respondent obtained a judgment against appellant and eventually began renewal proceedings. *Leven*, 123 Nev. at 401. The appellant moved to declare the original judgment void and, when the district court denied the motion, appealed. *Id.*

The facts of *Leven* may appear similar – both *Levin* and this case involve the renewal of judgments – but they are not. In this case, while Penly did file an Opposition to the Affidavit(s) of Renewal of Judgment (the "Opposition"), he never scheduled a hearing on the Opposition. Instead, he filed and noticed for hearing the

separate Motion to Strike. When the district court issued an order denying the Motion to Strike, Penly appealed the District Court Order denying the Motion to Strike and the related Notice of Entry of Order.

*Levin* is inapplicable here. *Levin* would apply if Penly had set a hearing on its Opposition and the District Court denied the Opposition because such a denial would constitute a final order from which Penly could properly appeal. But that is not what Penly chose to do – Penly chose to proceed with a hearing on the Motion to Strike, which the District Court denied. No statute or court rule, however, allows for an appeal from either the Notice of Entry of Order or the Order denying the Motion to Strike, especially while the Opposition remains pending.

Accordingly, this Court lacks subject matter jurisdiction over Penly’s appeal and this Court should therefore dismiss the Appeal.

#### **STATEMENT OF THE ISSUE**

Assuming, *arguendo*, that the Court has subject matter jurisdiction, the issue before the Court is whether the District Court correctly concluded that Cirrus and Milton J. Woods (“Woods”), which both properly obtained valid judgments against Penly and thereafter timely and properly followed all applicable laws and rules relating to renewing the judgments, may enforce the renewed judgments.

## STATEMENT OF THE CASE

On 20 January 2016, the District Court granted Judgment in favor of (a) Woods against Eagle Jet Aviation, Inc.,<sup>1</sup> in the amount of \$111,750.00, with interest thereon, (b) Cirrus against Penly in the amount of \$1,500,000.00, with interest thereon, and (c) each of Woods and Cirrus against Penly in the amount of \$80,000.00, with interest thereon (all four judgments are collectively, the “Judgments”). Respondents’ Appendix<sup>2</sup>, R0045-R0077.

On 7 January 2022 counsel for Cirrus and Woods timely filed Affidavits of Renewal of Judgments (the “Affidavits of Renewal”) with the Clerk of the Court with respect to each of the Judgments. Respondents’ Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365.

On 10 January 2022, counsel for Cirrus and Woods mailed copies of the Affidavits of Renewal to Penly by United States Certified Mail, Return Receipt Requested, and on 11 January 2022, counsel for Cirrus and Woods electronically filed a Certificate of Service with the Clerk of the Court confirming service of the Affidavits of Renewal to Penly on 10 January 2022. Respondents’ Appendix, R0366-R0367.

---

<sup>1</sup> Eagle Jet Aviation, Inc., is not participating in this appeal.

<sup>2</sup> Respondents are submitting Respondents’ Appendix contemporaneously with this brief.

On 21 January 2022, Penly filed an Opposition to the Affidavits of Renewal (the “Opposition”). Respondents’ Appendix, R0368-R0425. On 8 February 2022, Cirrus and Woods filed and served a Reply in Support of Affidavit(s) for Renewal of Judgment (the “Reply to the Opposition”). Respondents’ Appendix, R0426-R0436.

On 14 February 2022, Penly filed a Motion to Strike Plaintiff Affidavit(s) for Renewal of Judgment and Untimely Reply in Support of Affidavit (the “Motion to Strike”). Respondents’ Appendix, R0437-R0444. On 15 February 2022, Penly filed a Notice of Hearing setting the Motion to Strike for Hearing on 17 March 2022. Respondents’ Appendix, R0445. On 28 February 2022, Cirrus and Woods filed an Opposition to the Motion to Strike. Respondents’ Appendix, R0446-R0454.

The District Court held oral arguments on the Motion to Strike on 17 March 2022 and denied the Motion to Strike. Respondents’ Appendix, R0455. On 11 April 2022, the District Court entered an Order denying the Motion to Strike and the same day Cirrus and Woods filed and served a Notice of Entry of Order. Respondents’ Appendix, R0456-R0464, R0465-R0471.

On 9 May 2022, Penly filed a Case Appeal Statement and a Notice of Appeal. Respondents’ Appendix, R0472-R0493, R0494-R0497. Penly filed a Notice of Appeal with this Court on 16 May 2022. Respondents’ Appendix, R0498-R0627.

On 10 June 2022, this Court issued an Order Dismissing Appeal. Respondents' Appendix, R0628-R0629.

On 27 June 2022, Penly filed a Petition for Rehearing. Respondents' Appendix, R0630-R0639. On 20 July 2022, Cirrus and Woods filed an Answer to Petition for Rehearing. Respondents' Appendix, R0640-R0654. On 30 August 2022, this Court issued an Order Granting Petition for Rehearing, Reinstating Appeal and Setting Briefing Schedule. Respondents' Appendix, R0655-R0656.

### **STATEMENT OF FACTS**

During these proceedings, Cirrus and Woods have consistently demonstrated a concerted effort to timely comply with all relevant statutes, filing deadlines, court orders, and matters in this case. Despite this fact, Penly has repeatedly chosen to consume this Court's valuable time by filing barely cogent motions and briefs riddled with spelling errors, improper citations, and numerous factual inconsistencies in order to make threadbare, and incorrect, allegations that Cirrus and Woods have failed to comply with numerous Nevada statutes in submitting their Affidavits for Renewal of the Judgments. These unfounded allegations of violations are easily disproved upon an examination of the record and a plain reading of the relevant statutes.

This matter originated with a binding arbitration between the parties. On 27 January 2015, Cirrus and Woods obtained a written Arbitration Award.

Respondents' Appendix, R0016-R0044. The District Court confirmed the Arbitration Award in a hearing held on 29 April 2015, and the District Court entered an Order Confirming Arbitration Award on 18 September 2015. Respondents' Appendix, R0016-R0044.

As a result of the foregoing, the District Court entered Judgment in favor of Cirrus and Woods and against Penly and Eagle Jet Aviation, Inc., on 20 January 2016. Respondents' Appendix, R0045-R0077. Specifically the Judgment ordered (a) Woods to have and recover against Eagle Jet Aviation, Inc., the amount of \$111,750.00, with interest thereon, (b) Cirrus to have and recover against Penly the amount of \$1,500,000.00, with interest thereon, and (c) each of Woods and Cirrus to have and recover against Appellant the amount of \$80,000.00, with interest thereon (the "Judgments"). Respondents' Appendix, R0045-R0077.

The Judgments remained outstanding, which led Cirrus and Woods to file Affidavits for Renewal of Judgment within six years of the entry of the Judgments. Respondents' Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365. On 7 January 2022 counsel for Cirrus and Woods filed an (a) Affidavit of Renewal of Judgment – Milton Woods - \$ 111,750.00, (b) Affidavit of Renewal of Judgment – Cirrus Aviation Inc. - \$ 1,500,000.00, (c) Affidavit of Renewal of Judgment – Cirrus Aviation Inc. - \$ 80,000.00, and (d) Affidavit of Renewal of Judgment – Milton Woods - \$ 80,000.00 (the "Affidavits of Renewal") with the

Clerk of the Court. Respondents' Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365.

On 10 January 2022, counsel for Cirrus and Woods mailed copies of the Affidavits of Renewal, by United States Certified Mail, Return Receipt Requested, to Penly. Respondents' Appendix, R0366-R0367.

On 11 January 2022, counsel for Cirrus and Woods electronically filed a Certificate of Service with the Clerk of the Court confirming service of the Affidavits of Renewal to Penly on 10 January 2022. Respondents' Appendix, R0366-R0367.

On 21 January 2022, Penly filed an Opposition to the Affidavits of Renewal (the "Opposition") by which he sought to strike the Judgments as void, expired, and ineligible for renewal. Respondents' Appendix, R0368-R0425. Penly based his Opposition on numerous factual and legal inconsistencies. Respondents' Appendix, R0368-R0425. Penly's Opposition requested a hearing. Respondents' Appendix, R0368-R0425.

On 8 February 2022 Cirrus and Woods filed and served a filed and served a Reply in Support of Affidavit(s) for Renewal of Judgment (the "Reply to the Opposition") on Penly, addressing each of Penly's arguments in turn, providing accurate and correct facts to the District Court, and rebutting the arguments set forth in the Opposition. Respondents' Appendix, R0426-R0436. The Reply to the Opposition was timely filed because a reply is due not later than 7 days before the

matter is set for hearing, by the clerk, if a hearing was requested or set by the court. *See Nev. R. Prac. Eighth Jud. Dist. Ct. 2.20 § (f-g)*. Since Penly did not set a hearing on the Opposition, Cirrus and Woods had no specific date by which the District Court required them to file a Reply to the Opposition. As a result, Cirrus and Woods timely filed the Reply to the Opposition dated 8 February 2022.

On 14 February 2022, Penly filed a Motion to Strike Plaintiff Affidavit(s) for Renewal of Judgment and Untimely Reply in Support of Affidavit (the “Motion to Strike”). Respondents’ Appendix, R0437-R0444. In the Motion to Strike, Penly repeated arguments previously raised in his Opposition, as well as other faulty factual allegations and legal arguments. Respondents’ Appendix, R0437-R0444.

On 15 February 2022, Penly filed a Notice of Hearing with respect to the Motion to Strike, setting the hearing for 17 March 2022. Respondents’ Appendix, R0445. Penly never filed a Notice of Hearing with respect to the previously filed Opposition.

On 28 February 2022, Cirrus and Woods filed an Opposition to the Motion to Strike. Respondents’ Appendix, R0446-R0454. In the Opposition to the Motion to Strike, Cirrus and Woods once again addressed each of Penly’s arguments, provided accurate and correct facts to the District Court, and rebutted the arguments set forth in the Motion to Strike. Respondents’ Appendix, R0446-R0454.

On 17 March 2022, the District Court held oral arguments on the Motion to Strike. Respondents' Appendix, R0455. After hearing the arguments of the parties, the District Court held that Cirrus and Woods filed, recorded, and served the Affidavits of Renewal within the three day time period mandated by statute, as evidenced by the Certificate of Service counsel for Cirrus and Woods filed with the Clerk of the Court. Respondents' Appendix, R0455. Accordingly, the District Court denied the Motion to Strike. Respondents' Appendix, R0455.

On 11 April 2022, the District Court entered an Order denying the Motion to Strike, and Cirrus and Woods filed and served a Notice of Entry of Order pursuant to which they notified Penly that the District Court entered the Order denying the Motion to Strike. Respondents' Appendix, R0456-R0464, R0465-R0471.

On 9 May 2022, Penly filed a Case Appeal Statement and a Notice of Appeal giving notice of his appeal of the: (1) Notice of Entry of Order and (2) the Order denying the Motion to Strike. Respondents' Appendix, R0472-R0493, R0494-R0497. Penly filed a Notice of Appeal with this Court on 16 May 2022. Respondents' Appendix, R0498-R0627. On 10 June 2022, this Court issued an Order Dismissing Appeal. Respondents' Appendix, R0628-R0629.

On 27 June 2022, Penly filed a Petition for Rehearing, raising substantially the same issues he had previously raised in his prior filings. Respondents' Appendix, R0630-R0639. Notably, Penly's Petition for Rehearing, filed in this

Court and not the District Court, addressed only the District Court's Order dated 11 April 2022 denying the Motion to Strike and not this Court's 10 June 2022 Order Dismissing Appeal. Respondents' Appendix, R0630-R0639.

On 20 July 2022, Cirrus and Woods filed an Answer to the Petition for Rehearing, arguing that Penly failed to provide any discussion regarding whether the District Court, when it issued its 11 April 2022 Order denying the Motion to Strike (a) overlooked or misapprehended a material fact or overlooked or (b) misapprehended a material fact or overlooked or misapplied controlling law. Respondents' Appendix, R0640-R0654. Since Penly did not raise any issue regarding this Court's 10 June 2022 Order Dismissing Appeal, Cirrus and Woods did not address any such argument in their Answer to the Petition for Rehearing. Respondents' Appendix, R0640-R0654.

On 30 August 2022, this Court issued an Order Granting Petition for Rehearing, Reinstating Appeal and Setting Briefing Schedule. Respondents' Appendix, R0655-R0656.

On 27 December 2022, Penly filed an Opening Brief, repeating arguments he had previously made which this Court and the District Court previously rejected. Respondents' Appendix, R0657-R0668.

## **SUMMARY OF THE ARGUMENT**

The parties agree that (a) Cirrus and Woods obtained an Arbitration Award against Penly on 29 April 2015, (b) the District Court confirmed the Arbitration Award on 29 April 2015, (c) the District Court entered an Order Confirming Arbitration Award on 18 September 2015, (d) the District Court entered the Judgments on 20 January 2016, (e) Cirrus and Woods filed Affidavits of Renewal on 7 January 2022, and (f) the Affidavits of Renewal included the information required by statute to be set forth therein. The only question is whether counsel for Cirrus and Woods timely served the Affidavits of Renewal on Penly. The District Court answered in the affirmative, denying Penly's Motion to Strike and allowing the renewal of the Judgments. This Court should affirm the District Court's order.

## **STANDARD OF REVIEW**

Assuming, *arguendo*, that the Court has subject matter jurisdiction over this appeal, this Court may not review the District Court's factual findings unless they are unsupported by substantial evidence or are clearly erroneous; this Court may engage in a *de novo* review of the District Court's legal conclusions based on such facts. *See, e.g., Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018).

## ARGUMENT AND ANALYSIS

Cirrus and Woods have complied with the requirements of NRS 17.214 and therefore, as the District Court correctly determined, properly renewed the Judgments.

A judgment creditor may enforce a Nevada judgment for six years. *See* NRS 70.010. Pursuant to NRS 17.214, a judgment creditor may renew a judgment which has not been paid by filing an affidavit with the clerk of the court where the judgment is entered within 90 days before the date the judgment expires, so long as the affidavit meets certain specific ‘form and content’ requirements. *See* NRS 17.214(1)(a). The filing of the affidavit renews the judgment to the extent of the amount shown due in the affidavit. *See* NRS 17.214(2). The judgment creditor must notify the judgment debtor of the renewal of the judgment by sending a copy of the affidavit of renewal by certified mail, return receipt requested, to the judgment debtor at the judgment debtor’s last known address within three days after filing the affidavit. *See* NRS 17.214(3).

For the reasons set forth below, this Court should affirm the decision of the District Court denying Penly’s Motion to Strike and allowing the renewal of the Judgments.

**1. The District Court Did Not Err When it Renewed Woods’ Judgment Against Penly Because Woods Signed the Original Affidavit of Renewal Filed With the Clerk of the Court.**

Penly argues that the District Court should not have renewed Woods’ judgment against him because the service copy of the Affidavit of Renewal he received lacked Woods’ signature.<sup>3</sup> (Appellant’s Br. at 6.) Because Woods signed the original Affidavit of Renewal filed with the Clerk of Court, however, Woods substantially complied with NRS 17.214. As a result, Penly’s argument fails.

NRS 17.214 requires only substantial compliance with respect to its ‘form and content’ requirements, even though it requires strict compliance with its ‘time and manner’ requirements. *See Leven*, 123 Nev. at 408. Penly argues that counsel for Woods served an ‘unsigned affidavit’ on Penly and, as a result, violated NRS 17.214. (Appellant’s Br. at 6.). But even if it is the case that Woods’ agent made an honest clerical error and served Penly with an unsigned Affidavit for Renewal, it is also the case that Woods’ agent also filed the properly signed original Affidavit of Renewal filed with the Clerk of Court. Properly filing the executed Affidavit of Renewal with

---

<sup>3</sup> Penly’s argument here relates only to the Affidavit of Renewal related to Woods’ \$80,000.00 judgment against him. Accordingly, even if the Court decides in Penly’s favor on this issue, the Court’s decision does not implicate or affect Woods’ Affidavit of Renewal as to his \$111,750.00 judgment against Eagle Jet Aviation, Inc.; Cirrus’ Affidavit of Renewal as to its \$1,500,000.00 judgment against Penly; or Cirrus’ Affidavit of Renewal as to its \$80,000.00 judgment against Penly. Respondents’ Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365.

the Clerk of Court amounts to substantial compliance, which is the standard under NRS 17.214 for this 'form and content' requirement.

Furthermore, this very human clerical error did not prejudice Penly in any way. The substance of the unsigned Affidavit of Renewal is true and correct, and sufficed to put Penly on notice of its pertinent facts. Moreover, Penly's receipt of the unsigned Affidavit of Renewal provided him with actual notice of a fully executed version filed with the Court.

The accidental omission of a signature on one of the Affidavits of Renewal served on Penly, when the original Affidavit of Renewal filed with the Clerk of Court is fully executed, does not violate of NRS 17.214. Woods substantially complied with NRS 17.214 by serving an Affidavit of Renewal on Penly in a timely fashion after timely filing an original signed Affidavit of Renewal with the Clerk of Court. There is no violation of NRS 17.214, and this Court should reject Penly's argument.

**2. Woods Did Not Violate NRCP 11(a) Because he Filed a Properly Executed Affidavit of Renewal.**

Penly argues that Woods violated NRCP 11(a) because Woods served an unsigned copy of the Affidavit of Renewal on him. Penly’s argument fails because Woods filed a fully executed copy of the Affidavit of Renewal with the Clerk of the Court.

NRCP 11 governs signatures on pleadings, motions, and other papers. In relevant part, Rule 11 states that “the court must strike an unsigned paper unless the omission is promptly corrected.” NRCP 11(a). There is no dispute here, however, that Woods executed the original Affidavit of Renewal actually filed with the Clerk of the Court. Respondents’ Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365. As a result, NRCP 11 is inapplicable – Woods did not file any unsigned paper and therefore Woods did not need to correct any omitted signature on any filed paper. *See* NRCP 11(a).

**3. The District Court Did Not Err by Allowing Cirrus and Woods to Renew the Judgments Because Cirrus and Woods Filed and Served the Affidavits of Renewal in Strict Compliance with Applicable Law.**

Penly argues that Cirrus and Woods violated NRS 17.214 by not acting in strict compliance with the statute. In fact, Cirrus and Woods strictly complied with the “time and manner” requirements of NRS 17.214. The District Court agreed that

Cirrus and Woods strictly complied with NRS 17.214 and the District Court did not err.

**A. Cirrus and Woods Timely Filed the Affidavits of Renewal**

A judgment creditor may enforce a Nevada judgment for six years. *See* NRS 70.010. Cirrus and Woods obtained their Judgments against Penly on 20 January 2016. Respondents' Appendix, R0045-R0077. Therefore, the Judgments were set to expire on 20 January 2022.

Pursuant to NRS 17.214(1)(a), a judgment creditor may renew a judgment which has not been paid by filing an affidavit with the clerk of the court where the judgment is entered within 90 days before the date the judgment expires, so long as the affidavit meets nine specific and itemized 'form and content' requirements. Cirrus and Woods filed the Affidavits of Renewal of Judgment on 7 January 2022. Respondents' Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365.

Cirrus and Woods filed the Affidavits of Renewal less than six years after entry of the Judgment and within 90 days before the date the Judgments expired. As a result, Cirrus and Woods timely and properly filed the Affidavits of Judgment.<sup>4</sup>

---

<sup>4</sup> Penly has not raised as an issue that the Affidavits of Renewal did not meet any of the 'form and content' requirements set forth at NRS 17.214(1)(a)(1)-(9) and has therefore waived this issue. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

## **B. Cirrus and Woods Timely Served the Affidavits of Renewal**

NRCP 5 governs service in general for pleadings and other papers. Since ‘pleadings and other papers’ includes affidavits, its provisions defining ‘service’ are applicable to the service of affidavit papers mandated by NRS 17.214. NRCP 5(b) states that, *inter alia*, “a paper is served under this rule by... mailing it to the person's last known address – in which event service is complete upon mailing.” NRCP 5(b)(2)(C). Whether a party properly mails notice under NRCP 5(b)(2) is a question of fact. *See Zugel v. Miller*, 659 P. 2d 296, 297 (1983).

NRS 17.214 “requires the timely filing of an affidavit, timely recording of the affidavit, [and] timely service of the affidavit to successfully renew a judgment...must be complied with strictly.” *Leven*, 123 Nev. at 400-401. In *Leven*, the court correctly concluded that the judgment creditor did not strictly comply with NRS 17.214 because he filed his affidavit of renewal of judgment on 18 October 2002, but failed to serve the affidavit of renewal of judgment until 30 October 2002. This twelve day delay between filing and serving the affidavit of renewal of judgment did not comply with the three-day requirement for recording and service: thus, since “[the judgment creditor] did not timely record and serve his affidavit of renewal, he did not comply with NRS 17.214(1)(b) and (3), and thus he failed to successfully renew the judgment.” *Id.* at 409, 410.

The facts before this court are distinguishable from *Leven*. *Leven* involved a twelve day delay by the judgment creditor between filing and serving the affidavit of renewal of judgment. Here, however, the facts show that Respondents filed and served the Affidavits of Renewal within the three-day time frame mandated by NRS 17.214. As a result, Cirrus and Woods have satisfied the mandate of *Levin* that they strictly comply with the time requirements of NRS 17.214.

On 7 January 2022, Cirrus and Woods filed the Affidavits of Renewal. Respondents' Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365. On 10 January 2022, counsel for Cirrus and Woods inserted a parcel of certified mail, return receipt requested, containing the Affidavits of Renewal into a postal office drop box, completing the 'mailing' and service of the copies of the Affidavits of Renewal on Penly.<sup>5</sup> Respondents' Appendix, R0366-R0367. On 11 January 2022, counsel for Cirrus and Woods electronically filed a Certificate of Service with the Clerk of Court relating to the 10 January 2022 service of the Affidavits of Renewal. Respondents' Appendix, R0366-R0367. The Certificate of

---

<sup>5</sup> Penly appears to have conceded that Cirrus and Woods mailed the Affidavits of Renewal by certified mail, return receipt requested. (Appellant's Br. at 8.) To the extent Penly has not conceded the issue, Penly has not raised it as an issue and he has therefore waived it. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Service specifically provided that Cirrus and Woods served copies of the Affidavits of Renewal on Penly on 10 January 2022. Respondents' Appendix, R0366-R0367.

During the hearing on 17 March 2022, the District Court found as fact that the Certificate of Service was the governing proof regarding when Cirrus and Woods served the Affidavits of Renewal. Respondents' Appendix, R0455. Accordingly, Cirrus and Woods mailing the Affidavits of Renewal to Penly on 10 January 2022 constituted service of the Affidavits of Renewal within the three-day period which began on 7 January 2022. Therefore, Cirrus and Woods strictly complied with the statutory directive of the three-day service rule under NRS 17.214.

It is irrelevant that the United States Postal Service (the "USPS") did not process the parcel of mail containing the Affidavits of Renewal until 11 January 2022 because service of the Affidavits of Renewal was 'complete upon mailing' on 10 January 2022. *See* NRCP 5(b)(2)(C). Further to this point, the act of mailing, as defined by NRCP 5(b)(2)(C), does not include any mandate that the USPS must 'process and ship' an item in order for service to be complete. Indeed, such a requirement would wholly limit the ability of any party to have any control over service of documents.

In addition, Nevada law establishes a presumption that "a letter duly directed and mailed was received in the regular course of the mail" unless the opposing party demonstrates otherwise. *See* NRS 47.250. Penly produced no evidence of any kind

to the District Court that he did not receive the Affidavits of Renewal in the regular course of the mail. As a result, under Nevada law, the parcel containing the Affidavits of Renewal placed into the mailbox by counsel for Cirrus and Woods on 10 January 2022 was ‘received in the regular course of mail’ and therefore ‘mailed’ on a date which fell within the three-day service requirement of NRS 17.214.

**4. The District Court Did Not Err by Allowing Each of Cirrus and Woods to Renew Judgments for \$80,000.00 Against Penly Because the District Court Originally Granted Each of Cirrus and Woods Judgments Against Penly in the Amount of \$80,000.00.**

The District Court did not err when it allowed each of Cirrus and Wood to renew a judgment against Penly for \$80,000.00 because Cirrus and Woods had each originally obtained judgments in the amount of \$80,000.00 against Penly.

On 20 January 2016, the District Court entered four Judgments, collectively, in favor of Cirrus and Woods. Respondents’ Appendix, R0045-R0077. In relevant part, both Woods and Cirrus each obtained judgments against Penly in the principal amount of \$80,000.00. Respondents’ Appendix, R0045-R0077.

The Judgments remained outstanding, which led to Cirrus and Woods filing Affidavits for Renewal of Judgment pursuant to NRS 17.214. Respondents’ Appendix, R0078-R0149, R0150-R0221, R0222-R0293, R0294-R0365. In relevant part, both Woods and Cirrus each filed an Affidavit of Renewal with respect to each of their judgments against Penly in the principal amount of \$80,000.00.

Penly has provided this Court with neither facts nor law supporting his argument that either Cirrus or Woods were not each entitled to renew their \$80,000.00 judgments against him. As a result, his argument fails.

**5. The District Court Did Not Allow Cirrus and Woods To Renew a Judgment Against The Wrong Debtor.**

Woods did not attempt to renew his \$111,750.00 judgment (obtained by him against Eagle Jet Aviation, Inc.) against Penly. The record contradicts Penly's argument that Woods made such an attempt, and therefore this argument must fail.

On 20 January 2016, the District Court entered a Judgment in favor of Woods and against Eagle Jet Aviation, Inc., in the principal amount of \$111,750.00. Respondents' Appendix, R0045-R0077. On 7 January 2022, Woods filed an Affidavit of Renewal for the purpose of renewing his \$111,750.00 Judgment against Eagle Jet Aviation, Inc. Respondents' Appendix, R0294-R0365. The Affidavit of Renewal explicitly notes that it relates to Woods renewing his judgment against Eagle Jet Aviation, Inc., and not Penly. Respondents' Appendix, R0294-R0365. There is no error here, and Penly's argument must fail.

**6. The District Court Did Not Err by Denying Penly's Motion to Strike.**

Penly argues that the District Court erred by denying the Motion to Strike because Cirrus and Woods did not timely file their 8 February 2022 Reply to the

Opposition. Penly, however, confuses different filings and misapplies the law. As a result, this argument is nonsensical and must fail.

Penly's argument misstates the facts, undermining his entire argument. On 8 February 2022, Cirrus and Woods filed a Reply to the Opposition filed by Penly on 21 January 2022 by which Penly sought to strike the Judgments as void, expired, and ineligible for renewal. Respondents' Appendix, R0426-R0436. The Reply to the Opposition filed on 8 February 2022 was completely unrelated to Penly's Motion to Strike, which Penly did not file until February 14, 2022. For that reason alone Penly's argument fails.

Even if the Court applies Penly's argument to the Opposition filed by Penly (and which is not part of this appeal), Penly's argument still fails because Cirrus and Woods did, in fact, timely file the Reply to the Opposition on 8 February 2022. Section 2.20 of Nevada's Rules of Practice for the Eighth Judicial District Court allows a party to file a reply memorandum not later than seven days before a matter is set for hearing. Nev. R. Prac. Eighth Jud. Dist. Ct. § 2.20(f-g). In the Opposition, Penly requested a hearing, but did not set a hearing date. Respondents' Appendix, R0368-425. Cirrus and Woods filed and served Penly with the Opposition on 8 February 2022. Respondents' Appendix, R0426-R0436. Since Penly never set a hearing with respect to the Opposition, pursuant to Section 2.20 of Nevada's Rules

of Practice for the Eighth Judicial District Court, Cirrus and Woods timely filed the to the Opposition.

In addition, even taking into account that Penly did file a Notice of Hearing, Cirrus and Woods still timely filed the Reply to the Opposition. Penly filed a Notice of Hearing on 15 February 2022. Respondents' Appendix, R0445. However, the Notice of Hearing (1) did not set a hearing until 17 March 2022 and (2) set the hearing on Penly's Motion to Strike, not his Opposition. Respondents' Appendix, R0445. As a result, when Cirrus and Woods timely filed the Reply to the Opposition on 8 February 2022, not only did it not relate to the hearing noticed by Penly in the Notice of Hearing (which Penly did not file until a week later), but if it had, Cirrus and Woods would have satisfied the seven-day rule under 2.20 of Nevada's Rules of Practice for the Eighth Judicial District Court.

Finally, to fully inform the Court, even though Penly did not raise the issue,<sup>6</sup> Cirrus and Woods also timely filed their Opposition to Penly's Motion to Strike. Penly filed the Motion to Strike on 14 February 2022. Respondents' Appendix, R0437-R0444. On 15 February 2022, Penly filed a Notice of Hearing with respect to the Motion to Strike, setting the hearing for 17 March 2022. Respondents' Appendix, R0445. Cirrus and Woods filed an Opposition to the Motion to Strike on

---

<sup>6</sup> Therefore waiving the issue. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

28 February 2022, more than seven days in advance of the hearing on Penly's Motion to Strike.

Cirrus and Woods timely filed their 8 February 2022 Reply to the Opposition filed by Penly on 21 January 2022. On 28 February 2022, Cirrus and Woods also timely filed an Opposition to the Motion to Strike Penly filed on 14 February 2022.

Cirrus and Woods timely filed the Reply to the Opposition, as well as the Opposition to the Motion to Strike. Penly's argument fails and the District Court properly rejected it.

### **CONCLUSION**

For the foregoing reasons, Respondents respectfully request that this Court affirm the decision of the District Court denying Appellant's Motion to Strike Plaintiff Affidavit(s) for Renewal of Judgment and Untimely Reply in Support of Affidavit.

Dated this 26th day of January 2023.

**FOX ROTHSCHILD LLP**

*/s/ Mark J. Connot*

MARK J. CONNOT (10010)

1980 Festival Plaza Drive, Suite

700 Las Vegas, Nevada 89135

Telephone: (702) 262-6899

Email: [mconnot@foxrothschild.com](mailto:mconnot@foxrothschild.com)

*Attorneys for Respondents Milton J.*

*Woods and Cirrus Aviation Services, Inc.*

## CERTIFICATE OF COMPLIANCE

1. 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) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, Times New Roman 14 pt. 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 is proportionately spaced, has a typeface of 14 points or more, and contains 5,063 words.

3. Finally, I hereby certify that I have read this Respondents' Answering Brief 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 understand that

I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26th day of January 2023.

**FOX ROTHSCHILD LLP**

*/s/ Mark J. Connot*

\_\_\_\_\_  
MARK J. CONNOT (10010)  
1980 Festival Plaza Drive, Suite  
700 Las Vegas, Nevada 89135  
Telephone: (702) 262-6899  
Email: mconnot@foxrothschild.com  
*Attorneys for Respondents Milton J.  
Woods and Cirrus Aviation Services, Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c)(1), on this the 26<sup>th</sup> day of January 2023, a true and complete copy of the foregoing document entitled **RESPONDENTS' ANSWERING BRIEF** 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*

DATED this 26th day of January 2023.

*/s/ Mark J. Connot*  
\_\_\_\_\_  
Mark J. Connot