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Appellant,

ENCORE GROUP OF PROFESSIONALS

Respondents.

District Court Case No. A-175644C
 Electronically Filed
 July 12, 2022 01:11 p.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

Respondents ENCORE GROUP OF PROFESSIONALS LLC, JOHN D. JACKSON, THE JOHN D. AND TERRI L. JACKSON FAMILY TRUST, ENCORE GROUP OF CALIFORNIA LLLP, ENCORE GROUP OF NEVADA LLC, ENCORE GROUP OF HAWAII LLC, and ENCORE GROUP OF TEXAS LLC (collectively, the “Encore Group Parties”), hereby reply in support of their joint Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction and for an Award of Attorney Fees and Costs (the “Motion”).

The Appellant's Opposition to the Motion is bizarre. Confronted with clear precedent from this Court that it lacks jurisdiction, the Defendant appears to concede the bases for dismissal and then recites his disputes with the District Court's order. There is a time for doing so, and that is when an appeal has properly been taken from a final order. Daley's concessions about the wasteful nature of this poorly-taken

1 Appeal provide further support for an award of sanctions, fees, and costs related to
2 this Appeal.

3 **Argument**

4 **I. Daley Concedes that Dismissal Is Appropriate**

5 In the Motion, the Encore Group Parties cited several precedents from this
6 Court stating that an order enforcing a settlement agreement, when not coupled with
7 a final judgment, is not a final order subject to appeal. *See, e.g., Valley Bank of Nev.*
8 *v. Ginsburg*, 110 Nev. 440 (1994); *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343
9 (2013) (“Once the district court formally resolves the underlying case by entering a
10 judgment or order that finally and completely resolves [the parties’] claims based on
11 its prior order enforcing the settlement agreement, if aggrieved, [the parties] may
12 appeal from that disposition to this court.”).

13 Daley, in his Opposition, does not even attempt to distinguish this precedent.
14 That’s because he cannot—they are directly on point. Daley and his counsel would
15 have discovered that had they done any analysis whatsoever on the jurisdictional
16 bases for the Appeal. Instead, as noted in the Motion, he left that effort for the
17 Respondents and the Court to untangle. This might be pardonable for a *pro se*
18 litigant, but that is not the case here.

19 Moreover, though, Daley appears to concede the jurisdictional argument
20 altogether, stating, “the question of the finality of the determination of the Court is
21 questionable.” *Opp.* at 4. Daley also appears to concede that further judgment by
22 the District Court will be necessary, regardless of the outcome of the appeal. *See*
23 *Opp.* at 5. (“While the district court record has not dismissed the case, it does not
24 determine if there is any remaining resolution remaining [*sic*] from the district
25 court.”); *see also Opp.* at 6 (“In this case, the merits of the case are not the subject
26 of the settlement order.”).

27 Ultimately, this Court has already decided on multiple occasions that an order
28 enforcing a settlement agreement is appealable only when coupled with a judgment.

1 That will be forthcoming, certainly, which is why the District Court invited the
2 parties to seek further order if Daley proved himself unwilling to complete the final
3 settlement agreement. That is the next step, and Daley has conceded that this appeal
4 is nonjusticiable. The Court should dismiss the Appeal.

5 **II. Sanctions, Fees, and Costs Are Appropriate**

6 Oddly, Daley also appears to concede that this Appeal was dilatory. He
7 argues, straight-faced, that remanding the case back to the District Court will be a
8 waste of time and that a further appeal will be necessary. *See* Opp. at 5 ([R]emand
9 to the district court to supply the missing term to the agreement is a waste of
10 resources as that determination by the court would be subject to a duplicate appeal
11 and mandatory settlement process.”). Notably, this is Daley adopting the Encore
12 Group Parties’ arguments for dismissal and sanctions in the Motion, and it ignores
13 the fact that remand would not have been necessary if the Appellant had properly
14 analyzed jurisdiction before taking the appeal.

15 But Daley is absolutely correct in his assertion—this appeal has been an entire
16 waste of time *caused solely by the Appellant’s failure to analyze jurisdiction before*
17 *filing*. Daley could have waited for the District Court to satisfy the statutory
18 jurisdictional predicate by entry of a final order coupled with a judgment sanction.
19 He didn’t, either because he didn’t know to look or didn’t care. So here we are. This
20 Court should take Daley at his word that this Appeal has been merely a waste and
21 should order sanctions, fees, and costs to prevent further bad-faith action.

22 Moreover, the fact that Daley does not even address the Encore Group Parties’
23 arguments showcases that this Appeal exists only for the purposes of delay. Daley,
24 when confronted with the Motion, could have conceded and accepted dismissal.
25 That would have untangled the procedural knot Daley created and prevented the
26 Respondents and the Court from having to address the Motion. Instead, Daley has
27 done just the opposite. As noted in the Motion, this is emblematic of a course of
28 conduct in this case, and the Court needs to correct Daley’s behavior. Rule 38

1 permits imposition of sanctions, fees, and costs on the offending party, and this Court
2 should make such an award.

3 **Conclusion**

4 Precedent in this court is clear, and this appeal is not presently justiciable. The
5 Encore Group Parties are eager to take their victory, but an extended briefing
6 schedule followed by dismissal is not in anyone's interest where a further appeal is
7 likely once the District Court awards judgment and sanctions. Daley has conceded
8 these arguments in his Opposition, and even adopted a few of them. Accordingly,
9 the Court should dismiss the Appeal and should award to the Encore Group
10 sanctions, fees, and costs associated with the Appeal.

11 Dated: July 12, 2022

12
13 Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on this 12th day of July, 2022, I served the a copy of this Reply in Support of Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction and for an Award of Sanctions, Attorney Fees, and Costs upon all counsel of record, by causing the same to be filed and served on the Court's EFlex filing system, for delivery to the following persons:

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