

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA,

Appellant,

vs.

PRECISION ASSETS; ACRY
DEVELOPMENT LLC; AND WFG
NATIONAL TITLE INSURANCE
COMPANY,

Respondents.

No. 84762

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Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO APPELLANT’S MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD**

Appellant John Dattala filed a motion for leave to supplement the record on appeal with what he describes as new evidence. This Court should deny the motion for the reasons explained below.

ARGUMENT

Dattala requests permission to “supplement the record on appeal” with two newspaper articles, which he claims constitute “new evidence” proving the increasing frequency of real estate fraud. Mot. at 10. This Court should deny the motion. NRAP 10(b)(1) indicates that the record properly before the Court on appeal is the trial court record. NRAP 10(a) defines the trial court record as “the papers and exhibits filed in the

district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.” The “new evidence” Dattala provides was not filed in the district court, which means it is not appropriately part of record on appeal. *See Ardmore Leasing Corp. v. State Farm Mut. Auto. Ins. Co.*, 106 Nev. 513, 515 n.1, 796 P.2d 232, 233 n.1 (1990) (rejecting a party’s attempt to supplement the record with new evidence not presented to, or considered by, the district court); *Carson Ready Mix v. First Nat’l Bank*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (“We cannot consider matters not properly appearing in the record on appeal.”).

Dattala’s motion is notably bereft of any citation to any Nevada appellate rule or case which supports his request for permission to supplement the record at this stage of the proceeding. This Court should deny the motion on that basis alone. But even assuming it is appropriate for a party to provide this Court with documents that did not exist when the panel reviewed the lower court’s decision solely to demonstrate that an issue is worthy of the full court’s review, Dattala’s motion undoubtedly exceeds any such limitation.

The unmistakable purpose of Dattala’s motion is to provide this Court with “new evidence” which, according to Dattala, proves that the district court erred. Mot. at 10. Dattala reiterates the arguments from his opening brief at length, then asserts that the untested, out-of-court allegations in the articles bolster those arguments. Mot. at 7-10 (explaining that statements in the articles bolster his argument that the district court improperly ignored “red flags” involving potential fraud).

This is completely inappropriate. Again, Dattala does not cite any Nevada Rule of Appellate Procedure to support his motion, but the rules which permit a party to notify the Court of additional authorities make clear that the party cannot use the motion as a tool to make new arguments or bolster old arguments; a party is only permitted to identify the authority and reference the page of the brief that is being supplemented with that authority. NRAP 31(e) (“The notice shall further state concisely and without argument the legal proposition for which each supplemental authority is cited.”). That logic is equally applicable here: a party should not be permitted to reargue the merits of their case under the guise of illustrating the public importance of their position.

Dattala's motion, which is rife with argument, is improper and this Court should deny it.

CONCLUSION

Accordingly, this Court should deny Dattala's improper motion.

Dated this 24th day of July 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **OPPOSITION TO APPELLANT'S MOTION FOR LEAVE TO SUPPLEMENT THE RECORD** with the Supreme Court of Nevada on the 24th day of July. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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