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Electronically Filed  
Aug 01 2022 11:49 p.m.  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TARA KELLOGG, A/K/A TARA  
KELLOGG-GHIBAUDO,

No. 84778

Appellant,

vs.

ALEX B. GHIBAUDO,

Respondent.

**Appellant's Opposition to  
Respondent's Motion to  
Dismiss This Appeal for Lack of  
Jurisdiction**

Appellant Tara Kellogg a/k/a Tara Kellogg-Ghibaudou files her Opposition to Respondent's Motion to Dismiss this Appeal for Lack of Jurisdiction. This Opposition is based upon the papers and pleadings on file herein as well as any oral argument permitted by the Parties and/or their Counsel at the time of hearing.

**Points and Authorities**

**Introduction and Statement of Facts**

The instant action arises from a Complaint for Divorce filed by Appellant in the Clark County District Court on October 1, 2015.<sup>1</sup> The Parties had one

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<sup>1</sup> Docketing Statement ("Docketing Statement"), filed on 7-7-2022, on file herein in Nevada Supreme Court Case No. 84778.

1 Minor Children at the time of filing for divorce, but there are no now Minor  
2 Children. The District Court entered the Decree of Divorce on February 1,  
3 2017.<sup>2</sup> The Decree of Divorce granted the Parties the legal status of divorce  
4 and set Husband's spousal support obligation. On November 10, 2020, the  
5 Court entered Findings of Fact, Conclusions of Law and Judgment ("11-10-  
6 2020 FFCL") adjudicating a number of post-decree of divorce issues. This  
7 matter was appealed by both Parties in Nevada Court of Appeals Case No.  
8 82248-COA and is pending a Petition for Review that will be filed on or  
9 before August 7, 2022 with the Nevada Supreme Court pursuant to  
10 (including but not limited to) Nevada Supreme Court Internal Operating  
11 Procedures Rule 13A.

12 Prior to 11-10-2020 FFCL, the Parties entered into a Stipulated  
13 Confidentiality Agreement and Protective Order ("Protective Order").<sup>3</sup> The  
14 Protective Order in no way shape or form contemplated hearing videos or  
15 matters outside of discovery and was entered into "to facilitate the  
16 disclosure of information..." as "this action involves or may involve the  
17 disclosure of documents, and information potentially entitled to protection  
18 under N.R.C.P. Rule 16.2 and Rule 26(c)".<sup>4</sup> The Protective Order was meant  
19 for the purpose of discovery and not to be used as a sword post-litigation to  
20 silence public access to the Courts or first amendment rights. Any  
21 information about prior alleged indiscretions as they pertain to prostitution,  
22 drugs, alcohol or otherwise are already part of the public record by a  
23 published interview initiated by Respondent, with statements directly from

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24 <sup>2</sup> Docketing Statement.

25 <sup>3</sup> Docketing Statement.

26 <sup>4</sup> NRCP 16.2 and NRCP 26© are discovery rules.

1 respondent, and voluntarily interviewed for a major media outlet in Clark  
2 County, Nevada.<sup>5</sup>

3 The Clark County District Court held an evidentiary hearing on  
4 contempt issues as they pertain to Respondent's failure to pay family  
5 support on February 15, 2022. In retaliation, Respondent caused a hearing  
6 to be held on Respondent's claims of hearing video disclosures on March 21,  
7 2022. On April 14, 2022, the District Court entered the Findings of Facts,  
8 Conclusions of Law, and Order ("4-14-2022 FFCL") dealing with hearing  
9 video posting issues. This 4-14-2022 FFCL marked a rapid departure from  
10 any rights and obligations ever contemplated by the Parties in the  
11 Protective Order.<sup>6</sup> Appellant filed a timely appeal of the 4-14-2022 FFCL on  
12 May 13, 2022.<sup>7</sup>

13 The 4-14-2022 FFCL is in fact a final determination as it is a "final  
14 judgment" "that disposes of all issues presented in the case and leaves  
15 nothing for future consideration of the court, except for post-judgment  
16 issues as attorney's fees and costs."<sup>8</sup> The 4-14-2022 FFCL does not require  
17 Respondent to take any further action, finds no contempt by Appellant and  
18 merely states some new obligations the District Court deems to apply to the  
19 Parties that were not included in the Protective Order and expressly  
20 subjects the Parties to statutory provisions such as EDCR 5.210, NRS

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22 <sup>5</sup> [https://www.reviewjournal.com/local/local-las-vegas/las-vegas-lawyer-](https://www.reviewjournal.com/local/local-las-vegas/las-vegas-lawyer-seeking-redemption-comes-clean-about-troubled-past/)  
23 [seeking-redemption-comes-clean-about-troubled-past/](https://www.reviewjournal.com/local/local-las-vegas/las-vegas-lawyer-seeking-redemption-comes-clean-about-troubled-past/)

24 <sup>6</sup> Docketing Statement.

25 <sup>7</sup> Docketing Statement.

26 <sup>8</sup> See e.g. *Lee v. GNLV Corporation*, 116 Nev. 424, 996 P.2d 416 (Nev.  
27 2000).

1 125.110 that they were not previously subject to by any stretch of the  
2 imagination under the Protective Order.

3 Alternatively, the 4-14-2022 FFCL constitutes an appealable order under  
4 NRAP 3A(8) as a special order entered after final judgment. Appellant is  
5 not attacking the Protective Order after the fact but asserts that the 4-14-  
6 2022 FFCL is an “order affecting the rights of some party to the action,  
7 growing out of a judgment previously entered.” Nobody disputes that the  
8 Protective Order was previously entered. Appellant’s claim is that the  
9 Protective Order afforded certain rights and responsibilities that did not  
10 include video posting and now the District Court has expanded those  
11 responsibilities beyond what was in the original order. While the Docketing  
12 Statement was carefully prepared and discusses the appellate issues with  
13 some sophistication and clarity, Appellant has filed a separate Motion for  
14 leave of the Court to file an Amended Docketing Statement to properly  
15 reflect NRAP 3A(b)(8) and keep a clean record.

### 16 **Legal Analysis**

#### 17 **A. The 4-14-2022 FFCL is Appealable as a Final Judgment Under** 18 **NRAP 3A(b)(1)**

19 The 4-14-2022 FFCL “disposes of all issues presented in the case and  
20 leaves nothing for future consideration of the court, except for post-  
21 judgment issues as attorney’s fees and costs.”<sup>9</sup> Whether Respondent wants  
22 to call something a bench trial or motion hearing is irrelevant as the *Lee v.*  
23 *GNLV Corporation* test is the relevant factor as to what is a final judgment.  
24 The 4-14-2022 FFCL does not require Respondent to take any further

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26 <sup>9</sup> See e.g. *Lee v. GNLV Corporation*, 116 Nev. 424, 996 P.2d 416 (Nev.  
27 2000).

1 action, finds no contempt by Appellant and merely states some new  
2 obligations the District Court deems to apply to the Parties that were not  
3 included in the Protective Order and expressly subjects the Parties to  
4 statutory provisions such as EDCR 5.210, NRS 125.110 that they were not  
5 previously subject to by any stretch of the imagination under the Protective  
6 Order. These new obligations do not require further action by the Court.  
7 The Court “determines the finality of an order or judgment by looking into  
8 what the order or judgment actually does, not what it is called.”<sup>10</sup> The 4-14-  
9 2022 FFCL only requires the Parties to refrain from further video posting,  
10 be subject to EDCR 5.210 and NRS 125.110 going forward and does not  
11 require the Parties to engage in further litigation. The 4-14-2022 FFCL does  
12 not find anybody in contempt. Claiming the 4-14-2022 FFCL is not a final  
13 judgment because it is possible one or both of the Parties could violate the  
14 Order in the future and action might be required in the future flies in the  
15 face of the idea that there might well be enforcement action on any final  
16 judgment after it is entered.<sup>11</sup> It does not make it less of a final judgment.

17 **B. The 4-14-2022 FFCL is an Appealable Determination Pursuant**  
18 **to NRAP 3A((b)(8) as a Special Order**

19 NRAP 3A(b)(8) provides for the appealability of a “special order entered  
20 after final judgment...”<sup>12</sup> Where a post-judgment Order substantially  
21 changes what was agreed to, ordered, or otherwise bargained for that post-  
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24 <sup>10</sup> See e.g. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 445, 874  
25 P.2d 729, 733 (1994).

26 <sup>11</sup> See e.g. *Id.*

27 <sup>12</sup> NRAP 3A(b)(8).  
28

1 judgment Order is most certainly appealable.<sup>13</sup> In the instant matter, the  
2 Parties bargained for a Protective Order that pertained to discovery and the  
3 Protective Order cited discovery rules e.g. NRCP 16.2 and NRCP 26. The  
4 Protective Order never contemplated nor indicates hearing videos. Now  
5 Respondent seeks to use the Protective Order as a shield outside of litigation  
6 for any future matters. The modification of the Protective Order made by  
7 the District Court in the 4-14-2022 FFCL is akin to modifying the terms of  
8 a Decree of Divorce property distribution after six months.<sup>14</sup> The concept of  
9 a Special Order is discussed somewhat in depth in the Docketing Statement,  
10 but Appellant has filed a separate Motion for Leave to Amend Docketing  
11 Statement to clarify the matter and assist the Court with judicial economy.

12 **C. Respondent's Claims that Appellant Has Waived her First**  
13 **Amendments Rights Are Not Properly Before the Court, But**  
14 **Are More Importantly Absurd**

15 Respondent claims that he wishes to pursue claims pertaining to  
16 representations made about him that upon information and belief would  
17 negatively affect him or cast him in a poor light. As set forth above,  
18 Respondent has already made a number of public statements about himself  
19 as it pertains to his behavior (e.g. prostitution, drugs, alcohol and the like)  
20 to a large media outlet in Clark County, Nevada suggesting that  
21 Respondent does not have a problem with negative statements being out  
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25 <sup>13</sup> *Gumni v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220 (Nev. 2002).

26 <sup>14</sup> See e.g. *Sorenson v. Radel-Sorenson*, 134 Nev. 1013 (Nev. App. 2018)  
27 (citing: *Kramer v. Kramer*, 96 Nev. 759, 762, 616 P.2d 395 (Nev. 1980)).  
28

1 there.<sup>15</sup> Where a Plaintiff puts statements out there about themselves and  
2 the statements are substantially true, there is no cause of action for the  
3 statements being made in the public or contained in hearing videos.<sup>16</sup>  
4 Respondent apparently has no issues with his privacy and property  
5 interests being violated when he is speaking to a media outlet, but doth  
6 protest when he is not in charge of the speaking or the leaking. Respondent  
7 assumes that Appellant entered into an agreement similar to a  
8 confidentiality agreement that would prevent the disclosure of litigation  
9 videos. This is not correct. In fact, the Protective Order in no way shape or  
10 form contemplates hearing videos and merely dealt with discovery matters  
11 as it cites expressly to NRCP 16.2 and NRCP 26. Simply put, there are no  
12 contractual obligations that would affect video posting or that were waived  
13 under a *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991) analysis. A plain  
14 meaning analysis of the Protective Order makes it rather unambiguous that  
15 hearing videos are not contemplated whatsoever.<sup>17</sup>

### 16 **Conclusion**

17 Appellant respectfully requests that the Court grant the following relief:

- 18 1. Enter an Order denying Respondent's Motion to Dismiss in the  
19 entirety.

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21 <sup>15</sup> [https://www.reviewjournal.com/local/local-las-vegas/las-vegas-lawyer-](https://www.reviewjournal.com/local/local-las-vegas/las-vegas-lawyer-seeking-redemption-comes-clean-about-troubled-past/)  
22 [seeking-redemption-comes-clean-about-troubled-past/](https://www.reviewjournal.com/local/local-las-vegas/las-vegas-lawyer-seeking-redemption-comes-clean-about-troubled-past/)

23 <sup>16</sup> See e.g. *Rosen v. Tarkanian*, 453 P.3d 1220 (Nev. 2019).

24 <sup>17</sup> See e.g. *America First Credit Union v. Soro*, 131, Nev. 737, 359 P.3d  
25 105 (Nev. 2015) (discussing the plain meaning doctrine and  
26 unambiguity as well as reasonable expectations in contract  
27 enforcement).

2. Grant leave to amend the docketing statement as separately requested in a separate motion.

3. For other such relief as the Court deems fair and equitable under the circumstances.

Dated this 1st day of August 2022

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Lansford W. Levitt, Settlement Judge  
Schwab Law Firm PLLC  
JK Nelson Law LLC  
Alex B. Ghibaud, P.C.

An Employee of Schwab Law Firm PLLC