



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

Tara Kellogg,

Appellant,

v.

Alex Ghibaud,

Respondent.

Docket No.: 84778

**RESPONDENT'S REPLY TO  
APPELLANT'S RESPONSE  
TO MOTION TO DISMISS**

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Elizabeth A. Brown  
Clerk of Supreme Court

**COMES NOW**, Alex Ghibaud, Respondent in proper person, and files his reply to appellant's response to his motion to dismiss as follows:

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Appellant now raises new arguments justifying the appeal now pending before this Court. Alex will respond to appellant's arguments regarding the finality of the order now being challenged and will address the new arguments raised by appellant concerning NRAP 3A(b)(8), which appellant incorrectly cites as NRAP 3A(8), a rule which does not exist.

**II. SUMMARY OF FACTS**

Relevant to this matter are two pleadings: 1) the motion Alex filed seeking contempt, sanctions, and clarification of a previous, final, judgment (the November 10, 2021 FFCL), and; 2) the order issued after the hearing on March 21, 2022,



entered and noticed on April 14, 2022 seeking enforcement of that judgment. In addition, the notice of entry of the protective order that was filed on March 22, 2022, for which appellant failed to appeal, is relevant to this matter.

### III. LEGAL ANALYSIS

- a. The order appellant challenges is not a final order because it leaves matters open for future consideration: namely, contempt and sanctions based on the conduct complained of in Alex's post-judgment motion.

As appellant correctly states, "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." (Emphasis added). *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

Here, the district court's order is clear. It states, without ambiguity, that: "Plaintiff shall be given an opportunity to comply...before this Court takes any further legal action against Plaintiff in favor of Defendant." (Emphasis added). Respondent's Exhibits (RE) 035, lines 25-27.

Additionally, that same order states that: [the district court] is reticent to proceed with *show cause hearings because the matter is currently on appeal*. RE 033, lines 26-28. The appeal the district court was referring to is docket no. 82248. On July 21, 2022 the Court of Appeals denied appellant's petition for rehearing. As such, Alex is prepared to re-notice his motion for contempt and sanctions for the



same reasons set forth in his initial motion. The district court therefore indicates it is prepared to take further action on Alex’s motion after the appeal referenced above is concluded. The district court also gave appellant time to appeal the challenged order *if any appeal is appropriate under the Nevada Rules of Appellate Procedure.* RE 037, lines 5-7. The challenged order is not appealable.

In short, there are matters contained in the challenged order that are ripe for further consideration. Indeed, the order did nothing but clarify prior orders and defer enforcement of those orders pending the appeal referenced above.

Furthermore, the “protective order” appellant refers to was filed prior to the final judgment issued on November 10, 2022. RE 076-088; and RE 062-074. The order sealing the case to extent permissible under NRS 125.110 was also entered prior to the November 10, 2022 FFCL. RE 060-061. If appellant had an issue with those orders she could have appealed them in the appellate matter referenced above. She did not. Nor did she appeal protective order again noticed on March 22, 2022.<sup>1</sup> See RE 055, entry dated 03/22/2022.

Therefore, appellant is barred from challenging the order sealing the file pursuant to NRS 125.110, until it is actually enforced, and the protective order, again, until enforcement of that order actually takes place. See NRAP 4(a)(1)

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<sup>1</sup> Paragraph 23 of that protective order provides that: “The confidentiality of material produced in this action and designated as confidential hereunder is to be preserved *both during and after the final disposition of this action.*” See RE 086.



(providing that a party must file a notice of appeal within 30 days of service of the notice of entry of order); see also *Dakota Payphone, LLC v. Alcaraz*, 121 Cal.Rptr.3d 435, 447 (Ct. App. 2011) (noting that "[a] party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order" (internal quotation marks omitted)).

- b. The challenged order is not a special order pursuant to NRAP 3A(1)(8) because it does not arise out of the final judgment in this matter and because it is an order regarding enforcement of the prior order.

Appellant assert that the district court's order is appealable as a special order entered after final judgment, after the fact (the fact that appellant realized the challenged order is not final). NRAP 3A(b)(8) allows an appeal from "[a] special order entered after final judgment." To qualify as an appealable special order entered after final judgment, the order "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered." *Murray v. A Cab Taxi Serv.*, No. 81641, at \*2 (Nev. Nov. 9, 2020); citing *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). As the Court of Appeals (COA) stated in its order: "Crucially, however, 'no statute or court rule appears to allow for an appeal from an order that relates to the mere enforcement of a prior



judgment.”<sup>2</sup> *id.*; citing *Superpumper, Inc. v. Leonard Tr. for Morabito*, Docket Nos. 79355 & 80214 (Order Dismissing Appeal and Regarding Motions, March 6, 2020). The COA went on to say: “In a number of similar contexts, this court has consistently reiterated that postjudgment orders that do not affect the rights incorporated in the judgment are not appealable as special orders after final judgment.” *id.* (Internal quotations omitted).

The final order in this case, the FFCL entered on November 10, 2021, concerned Alex’s motion to modify spousal support and appellant’s countermotion for arrears. The order now challenged does not stem from the FFCL previously entered. The orders challenged in this appeal were entered on November 1, 2019 (order sealing file) and March 26, 2020 (*Stipulated* Confidentiality Agreement and Protective Order) which was again entered and noticed on March 22, 2022. Those orders were never timely challenged. See NRAP 4(a)(1).

#### IV. CONCLUSION

All that remains is the enforcement of the challenged order. The district court deferred that issue. Therefore, this appeal should be dismissed.

DATED this 3<sup>rd</sup> day of August, 2022.

/s/ Alex Ghibaud  
ALEX GHIBAUDO  
*Respondent in Proper Person*

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<sup>2</sup> This is yet more support for Alex’s assertion that the challenged order is not a final order as it is merely an order concerning enforcement of prior orders.



### **Certificate of Service**

Pursuant to NRAP 25, on August 3<sup>rd</sup>, 2022 RESPONDENT’S REPLY was served upon each of the parties to appeal 84778 via electronic service through the Supreme Court of Nevada’s electronic filing system.

*/s/ Alex Ghibaud*

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Respondent in Proper Person