



IN THE SUPREME COURT OF THE STATE OF NEVADA

Tara Kellogg,

Appellant,

v.

Alex Ghibaudo,

Respondent.

Docket No.: 84778

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Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S MOTION
TO STRIKE APPELLANT'S
REPLY BRIEF AND
DISREGARD THE
ARGUMENTS THEREIN
AND FOR ATTORNEY'S
FEES, COSTS, AND
SANCTIONS IMPOSED ON
APPELLANT AND/OR HER
ATTORNEY**

COMES NOW, Alex Ghibaudo, respondent in proper person, and files his motion to strike appellant's reply brief and disregard the arguments therein, and for attorney's fees, costs, and sanctions against appellant and/or her attorney as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The appellant has filed her reply brief replete with immaterial, irrelevant, and burdensome arguments copied and pasted from her opening brief in violation of NRAP 28(j). Furthermore, the appellant has raised new arguments in regard to her contention that NRS 125.110 is unconstitutionally vague in her reply brief, in violation of NRAP 28(c). Finally, the appellant raises for the first time on appeal



and for the first time in her reply brief arguments concerning the propriety of the district court's grant of injunctive relief, arguments that were not made in her opening brief, thus denying respondent a meaningful opportunity to respond to those arguments. As such, the respondent requests that the appellant's reply brief be stricken and any arguments contained therein be disregarded for the reasons more fully set forth below. Further, the respondent requests attorney's fees and sanctions pursuant to NRAP 28(j) in an amount this Court deems fit and proper. The respondents summary of facts, argument, and conclusion follow:

II. SUMMARY OF FACTS

Appellant filed her opening brief on September 29, 2022. On October 6, 2022 this Court issued an order on respondent's motion to dismiss the appeal which stated, in pertinent part, that "[t]he parties may further discuss jurisdiction in their briefs." (Emphasis added). See page 3 of this Court's October 6, 2022 order. An answering brief was filed by the respondent on November 15, 2022. The answering brief did not address the issue of injunctive relief or jurisdiction under NRAP 3A(b)(3) at all; rather, the answering brief focused on issues raised and arguments made in the appellant's opening brief which did not address the issue of injunctive relief or jurisdiction. It should be noted that this Court's order allowing further briefing on the issue of jurisdiction was filed seven (7) days after the date the opening brief was filed.



The content of the respondent's reply brief is burdensome and irrelevant as a substantial majority of it was cut and pasted from the appellant's opening brief and did not address or rebut any matters contained in respondent's answering brief. Indeed, aside from the lines "[s]imply put, Respondent's answering brief and appendix does not offer much in the way of relevant, material and useful facts for the Court..." and "respondent completely perverts and misconstrues what the protective order covers and does not",¹ for the first 4 pages of the appellant's reply brief, which constitute her "Statement of the Case and Facts", the reply brief is an exact replica of the appellant's opening brief, including typos.² The reply brief finally departs from the first 4 pages of the "Statement of the Case and Facts" contained in the opening brief at page 7 of the reply brief, when appellant addresses the transcript of a deposition taken of the appellant which was used in the respondent's answering brief, which is not new matter that needed to be addressed. See appellant's reply brief at pages 7-8.

The "Summary of the Argument" in the appellant's reply brief is, again, a replica of the same in the appellant's opening brief, except that in the reply brief, the appellant raises for the first time the issue of what she calls "a de facto

¹ See page 3, lines 5-6 and lines 18-19.

² On page 3 line 7 of Appellant's reply brief, and page 13 of her opening brief, the Appellant writes "The instant action arises from a Complaint for **Divorced**..." which is an obvious typo, suggesting Appellant cut and pasted 4 pages worth of her opening brief to her reply brief.



injunction.” See page 8 of Reply Brief, lines 19-23. After that brief interlude, however, the appellant returns to replicating, to the letter, arguments made in her opening brief. Compare reply brief, page 9-10 to opening brief, page 18-19. Similarly, though written slightly differently, Section D of Appellant’s reply brief makes the same argument citing the same case law as Section D of appellant’s opening Brief. Compare opening brief, Section D at page 20-22 to the appellant’s reply brief, Section D at pages 11-12.

It is in Section E of the appellant’s reply brief that deviates substantially from her opening brief. See appellant’s reply brief, pages 12-13. There, the appellant for the first time raises the issue of injunctive relief. See the appellant’s reply brief at page 12. That argument was never raised in appellant’s opening brief or in respondent’s answering brief. As mentioned above, it is not lost on the respondent that this Court’s order issued seven (7) days from the date the opening brief was filed. That being said, the Court’s order allows the parties to address **jurisdiction** in their briefs if so warranted, not whether the challenged order constituted an injunction improperly ordered. If the appellant wanted to raise that issue and argue it, she should have done it in her opening brief and raised it as an issue in her docketing statement.

In Section F of the appellant’s reply brief, the issue of injunctive relief is again raised by the appellant. See appellant’s reply brief at pages 14-15. Again,



though this Court indicated in its October 6, 2022 order that “the parties may discuss jurisdiction in their briefs...”, as mentioned above, the appellant did no such thing in her opening brief nor did respondent in his answering brief. The issue was first raised by the appellant in her reply brief, but not in regards to the question of whether this Court has jurisdiction to hear this appeal under NRAP 3A(b)(3) but rather whether the district court “Effectively Ordered an Injunction without Proper Legal Basis.” See appellant’s reply brief at page 14, lines 1-4.

Furthermore, on page 24 of the appellant’s opening brief, lines 24-25, she addressed the argument that NRS 125.110 is unconstitutionally vague. The entire argument, however, in that respect, is that NRS 125.110 “does not expressly include language about whether videos from hearings are sealed...” Appellant continues in that vein for the next two sentences before moving on to a discussion of EDCR 5.210.

In his answering brief, starting at page 17, the respondent addresses whether NRS 125.110 is unconstitutionally vague at length, in response to the issue as it was raised in the respondent’s opening brief, citing settled case law issued by this Court that must be used in an analysis of the constitutionality of a statute on the grounds that the statute is vague. In her reply brief, the appellant undergoes that analysis, such as it is, despite having already raised the issue and argued it in her opening brief, where she failed to undergo the proper analysis.



In effect, there was nothing new to discuss in the appellant's reply brief with regard to this issue – she made her argument regarding whether NRS 125.110 was unconstitutionally vague and the respondent addressed that argument. There was nothing new raised by respondent in that respect. Despite that, the appellant raises the issue again in her reply brief, where she undergoes the analysis the respondent alerted her to in his answering brief. Again, no new matter was raised that required a reply.

Thus, Respondent has been denied a meaningful opportunity to respond thereto. Due process dictates giving the respondent an opportunity to address the appellant's arguments. That opportunity is now lost. This motion to strike the appellant's reply brief and/or disregard new matters raised in the reply brief follows:

III. ARGUMENT

- a. The appellant's argument regarding the constitutionality of NRS 125.110 based on it being vague should be stricken because no new matter regarding that argument was raised in the respondent's answering brief.

Under NRAP 28(c) “[a] reply brief...must be limited to answering any **new matter** set forth in the opposing brief.” (Emphasis added); See *Leonard v. State*, 114 Nev. 639, 662 (Nev. 1998) (NRAP 28(c)...requires reply briefs to be limited to new matters in the answering brief); See also *State v. Bennett*, 119 Nev. 589,



608 (Nev. 2003) (barring arguments made in a reply brief that were not raised in an answering brief), overruled on other grounds.

Here, the appellant makes new arguments concerning her contention that NRS 125.110 is constitutionally vague despite the fact that the issue was already argued in her opening brief and a response made concerning that argument in the respondent's answering brief. No new matter was raised in the answering brief. Rather, the answering brief addressed the issue raised by the appellant; i.e., whether NRS 125.110 is constitutionally vague. Any further argument in reply, therefore, should be precluded under NRAP 28(c) and the appellant's arguments in that respect should be stricken.

- b. The appellant's reply brief is largely copy and pasted from her opening brief. As such, the reply brief contains immaterial, burdensome, and irrelevant arguments already made. Thus, the reply brief should be stricken pursuant to NRAP 28(j).

NRAP 28(j) provides that:

All briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and **free from burdensome, irrelevant, immaterial or scandalous matters**. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions.

As discussed in detail above, the appellant's reply brief is largely copy and pasted from her opening brief. As such, the reply brief, to the extent it is copy and pasted from the opening brief, as detailed above, is immaterial,



burdensome, and largely irrelevant. Therefore, the reply brief should be stricken and those arguments already made in the opening brief and copied and pasted to the reply brief should be disregarded.

- c. The appellant's arguments concerning the district court's errors or abuse of discretion concerning injunctive relief should be stricken and disregarded as they are made for the first time in this appeal and are new matters that should have been raised in the appellant's opening brief.

On October 6, 2022 this Court ordered, in pertinent part, that “[t]he parties may further discuss **jurisdiction** in their briefs.” (Emphasis added). See page 3 of this Court’s October 6, 2022 order. This order was in response to the respondent’s motion to dismiss for lack of jurisdiction filed on July 9, 2022. In that motion, the respondent argued that this Court lacked jurisdiction to entertain this appeal because it was not a final judgment nor was it a special order after final judgment. This Court agreed with the respondent’s analysis but ruled that the order is appealable under NRAP 3A(b)(3). The motion addressed the jurisdiction of this Court to entertain the appeal and nothing more.

In its order, this Court made clear that the parties may further discuss the issue of **jurisdiction** if warranted. *Id.* In sections E³ and F⁴ of appellant’s reply brief, this Court’s jurisdiction to entertain this appeal is not discussed. Rather, for the first time, either at the district court or in this appeal, the appellant raises new

³ Pages 12-13 of appellant’s reply brief.

⁴ Pages 14-15 of appellant’s reply brief.



matters; i.e., whether the district court effectively granted an injunction, without arguing why that is the case (see appellant’s reply brief, section E, pages 12-13), and whether the district court ordered an injunction “without proper legal basis...” See section F of appellant’s reply brief, pages 14-15.

Section F details the district court’s conduct with respect to its grant of injunctive relief to respondent rather than whether this Court has jurisdiction to entertain this appeal, the latter of which is what the Court permitted the parties to do in its October 6, 2022 order. It should be noted that neither the opening brief nor the answering brief addressed the district court’s consideration or order granting injunctive relief. Indeed, the issue is not raised in the appellant’s docketing statement either.

This Court declines to hear arguments raised for the first time on appeal. See, *In re AMERCO Derivative Litigation*, 127 Nev. Adv. Op. 17 n.6, 252 P.3d 681, 697 n. 6 (2011); *Old Aztec Mine Inc. V. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1991). This issue was never addressed by the appellant in the district court. See respondent’s appendix, bates stamp 0605-0621 (appellant’s opposition to respondent’s motion at the district court). Furthermore, no new matters may be raised in a reply brief, as was done here in raising the district court’s grant of injunctive relief. See NRAP 28(c). Accordingly, the argument should be



disregarded and stricken. See for example *In re: Montoya*, 381 P.3d 624 (Table) (2012). NRAP 28(j).

IV. CONCLUSION

The appellant has filed her reply brief replete with immaterial, irrelevant, and burdensome arguments copied and pasted from her opening brief in violation of NRAP 28(j). Furthermore, the appellant has raised new arguments in regards to her contention that NRS 125.110 is unconstitutionally vague in her reply brief, in violation of NRAP 28(c). Finally, the appellant raises for the first time on appeal and for the first time in her reply brief arguments concerning the propriety of the district court's grant of injunctive relief, arguments that were not made in her opening brief, thus denying respondent a meaningful opportunity to respond to those arguments. As such, the respondent requests that the appellant's reply brief be stricken and any arguments contained therein be disregarded. The respondent (a practicing attorney with a solo law practice) also requests attorney's fees and sanctions for having to file this motion due to the appellant's disregard of the Nevada Rules of Appellate Procedure and established case law pursuant to NRAP 28(j).

DATED this 5th day of January, 2023.

/s/ Alex Ghibaud
ALEX GHIBAUDO
Respondent in Proper Person



Certificate of Service

Pursuant to NRAP 25, on January 5th, 2023 RESPONDENT’S MOTION TO STRIKE APPELLANT’S REPLY BRIEF AND DISREGARD THE ARGUMENTS THEREIN AND FOR ATTORNEY’S FEES, COSTS, AND SANCTIONS IMPOSED ON APPELLANT AND/OR HER ATTORNEY 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

Respondent in Proper Person