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

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

11 Appellant,

12 vs.

13 ALEX B. GHIBAUDO,

14 Respondent.

No. 84778

**Appellant's Response to  
Respondent's Motion to Strike  
Appellant's Reply Brief and  
Disregard the Argument  
Therein and for Attorney's  
Fees, Costs, and Sanctions  
Imposed On Appellant and/or  
Her Attorney**

16 Appellant Tara Kellogg a/k/a Tara Kellogg-Ghibaudo files Appellant's  
17 Response to Respondent's Motion to Strike Appellant's Reply Brief and  
18 Disregard the Argument Therein and for Attorney's Fees, Costs, and  
19 Sanctions Imposed on Appellant and/or Her Attorney ("Opposition") as  
20 follows.

21 This Response is based upon the papers and pleadings on file herein as  
22 well as any oral argument permitted by the Parties and/or their Counsel at  
23 the time of any hearing in this matter.

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1 **Points and Authorities**

2 **Introduction and Statement of Facts**

3 **A. This Matter Has Been Fully Briefed and Respondent's Motion**  
4 **was Wholly Unnecessary**

5 Appellant Tara Kellogg a/k/a Tara Kellogg-Ghibauda filed her opening  
6 brief on September 29, 2022 along with the Appellant's Appendix.

7 On October 6, 2022, the Nevada Supreme Court entered an Order  
8 discussing appellate jurisdiction under NRAP 3A(b)(3) "allowing an appeal  
9 from an order granting injunction." The 10-6-2022 Order indicated that the  
10 parties may further discuss jurisdiction in their briefs, if deemed  
11 warranted." The 10-6-2022 Order was entered after Appellant filed her  
12 Opening Brief.

13 Respondent filed his Answering Brief on November 15, 2022 along with  
14 a 692 page Respondent's Appendix of which few if any of the materials  
15 attached were pertinent to the dispute at hand. The Answering Brief raised  
16 factual issues and legal argument.

17 Appellant filed her Reply Brief on December 29, 2022 and  
18 addressed/responded to arguments made in the Answering Brief as well as  
19 addressed jurisdictional questions/matters discussed in the October 6, 2022  
20 Order as invited by the Nevada Supreme Court. Any issues raised were not  
21 new issues as they were either appropriate responses to issues raised by the  
22 Answering Brief or responses permitted by the Court in the October 6, 2022  
23 Order.

24 While it is not at all surprising that Respondent does not like Appellant's  
25 Reply Brief, there is no basis for the Respondent's Motion to Strike and  
26 related relief requests. Not liking someone's Reply Brief or agreeing with  
27 what is said does not entitle one to attorney's fees and costs. Respondent  
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1 makes much ado about the writing and the like, but it is hardly shocking  
2 that a party opponent may not like a single thing about his opponent's work.

### 3 **B. Key Background Facts of the Appeal**

4 In order that the Court not lose sight as to what the actual appeal is about  
5 versus the circus that the Motion to Strike is, the key background facts are  
6 as follows.

7 The instant action arises from a Complaint for Divorce filed by Appellant  
8 in the Clark County District Court on October 1, 2015. Appellant's Appendix  
9 ("AA") 1-3. The Parties had one Minor Child at the time of filing for divorce,  
10 but there are no now Minor Children. AA 4-31. The District Court entered  
11 the Decree of Divorce on February 1, 2017. AA 4-31. The Decree of Divorce  
12 granted the Parties the legal status of divorce and set Husband's spousal  
13 support obligation. AA 4-31. On November 10, 2020, the Court entered  
14 Findings of Fact, Conclusions of Law and Judgment ("11-10-2020 FFCL")  
15 adjudicating a number of post-decree of divorce issues. AA 45-46.

16 Prior to 11-10-2020 FFCL, the Parties entered into a Stipulated  
17 Confidentiality Agreement and Protective Order ("Protective Order"). AA 3-  
18 26. The Protective Order in no way shape or form contemplated hearing  
19 videos or matters outside of discovery and was entered into "to facilitate the  
20 disclosure of information..." as "this action involves or may involve the  
21 disclosure of documents, and information potentially entitled to protection  
22 under N.R.C.P. Rule 16.2 and Rule 26(c)".<sup>1</sup> The Protective Order was meant  
23 for the purpose of discovery and not to be used as a sword post-litigation to  
24 silence public access to the Courts or first amendment rights.

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27 <sup>1</sup> NRCP 16.2 and NRCP 26© are discovery rules.

1 The Clark County District Court held an evidentiary hearing on  
2 contempt issues as they pertain to Respondent's failure to pay family  
3 support on February 15, 2022. AA 45-46. In retaliation, Respondent caused  
4 a hearing to be held on Respondent's claims of hearing video disclosures on  
5 March 21, 2022. AA-65-72. On April 14, 2022, the District Court entered the  
6 Findings of Facts, Conclusions of Law, and Order ("4-14-2022 FFCL")  
7 dealing with hearing video posting issues. AA 65-72. This 4-14-2022 FFCL  
8 marked a rapid departure from any rights and obligations ever  
9 contemplated by the Parties in the Protective Order.<sup>2</sup> The 4-14-2022 FFCL  
10 operated as an injunction.<sup>3</sup>

11 Appellant filed a timely appeal of the 4-14-2022 FFCL on May 13, 2022.<sup>4</sup>

### 12 Legal Analysis

13 NRAP 28(c) does permit Appellant to file a Reply Brief where Respondent  
14 files an Answering Brief. As set forth below, the Reply Brief does respond to  
15 the issues in the Answering Brief. Additionally, NRAP 28(c) permits further  
16 briefing as permitted by the Court. Any briefing as to the appealability of  
17 orders that are injunctive in nature or injunctive issues certainly was in  
18 response to the 10-6-2022 Order which specifically invited the same.<sup>5</sup> It  
19 should be noted that Respondent had the same opportunity to respond to  
20 the injunctive issues and was not so subtly invited to do so in the 10-6-2022

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

23 <sup>3</sup> 10-6-2022 Order.

24 <sup>4</sup> Docketing Statement.

25 <sup>5</sup> See e.g. *State of Nevada v. McKern*, 458 P.3d 353 (Table) (Nev. 2020)  
26 (discussing how additional briefing is appropriate where invited and  
27 requested by the Court).  
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1 Order. Appellant took up the Nevada Supreme Court's invitation to do so.<sup>6</sup>  
2 In fact, the 10-6-2022 Order rather clearly provided the Parties to this case  
3 some case law authority on injunctive matters to discuss. In such a  
4 situation, the Parties would be foolish not to discuss the issue the Court  
5 wants to hear about.

6 Additionally, the Reply Brief addresses and responds to the points  
7 contained in the Answering Brief. In example, the Answering Brief states  
8 that "the district court did not err in finding that Tara disseminated hearing  
9 videos before and after the entry of the protective order..." and goes through  
10 a lengthy discussion of that issue.<sup>7</sup> The Reply Brief responds to those claims  
11 with citation to the record.<sup>8</sup> The Answering Brief argues that Respondent  
12 timely objected to the dissemination of hearing videos.<sup>9</sup> The Reply Brief  
13 responds that Respondent did not in fact file a timely objection and sets  
14 forth some factual basis and law as it pertains to that issue.<sup>10</sup> The  
15 Answering Brief claims that dissemination of videos was a breach of the  
16 Protective Order.<sup>11</sup> The Reply Brief addresses facts and law in response as  
17 to why that is not the case.<sup>12</sup> The Reply Brief in fact states a response with

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18 <sup>6</sup> Reply Brief, pages 1-2, 12-15. NRAP 28© permits the Court to allow or  
19 invite additional briefing. See e.g. Lockett v. Warden, 91 Nev. 681, 682,  
20 541 P.2d 910, 911 (1975) (permitting additional briefing/discussion  
21 where the Court directs).

22 <sup>7</sup> Answering Brief, pages 2-8.

23 <sup>8</sup> Reply Brief, pages 9-10.

24 <sup>9</sup> Answering Brief, page 8-10.

25 <sup>10</sup> Reply Brief, page 10.

26 <sup>11</sup> Answering Brief, page 11-17.

27 <sup>12</sup> Reply Brief, pages 11-12.

1 a brief but thorough rendition of facts as it pertains to what the Protective  
2 Order would encompass and what it does not.<sup>13</sup> The Answering Brief asserts  
3 that NRS 125.110 is not unconstitutionally vague and the Reply Brief  
4 responds to that argument.<sup>14</sup>

5 Any request for sanctions, attorney's fees and costs or other relief is  
6 inappropriate under NRAP 28(j). Any and all matters discussed in the Reply  
7 Brief were concisely stated with sufficient detail to meaningfully inform the  
8 Court and consisted of relevant material. What is scandalous and absurd is  
9 interposing 692 pages of unnecessary appendix documents as Respondent  
10 did. In fact, NRAP 30(b) provides in the pertinent part as follows.

11 **RULE 30. APPENDIX TO THE BRIEFS**

12 ...

13 **(b) Contents of the Appendix.** Except as otherwise required by  
14 this Rule, all matters not essential to the decision of issues presented  
15 by the appeal shall be omitted. Brevity is required; the court may  
16 impose costs upon parties or attorneys who unnecessarily enlarge the  
17 appendix.

18 Should Respondent be sanctioned for interposing page after page of family  
19 law drama, including deposition pages of conflict and disagreement between  
20 two former spouses that is more tabloid than pertinent in nature on the  
21 record and in the Appendix? Courts across the Country have noted the rise  
22 of sanction seeking as a bullying tactic and expressed concern about this

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25 <sup>13</sup> Reply Brief, pages 3-7.

26 <sup>14</sup> Answering Brief, pages 17-25. Reply Brief, pages 12-15.  
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1 trend.<sup>15</sup> The Court is by now well aware that the Parties to this appeal are  
2 former spouses and one or both of them may not care for the other.  
3 Respondent has opted to represent himself in proper person on this matter  
4 and perhaps appears to be taking this matter somewhat more personally  
5 than an objective Counsel may.

6 The common sense and logical option at this point is to deny Respondent's  
7 Motion and let this matter be taken up with the Court on the briefs. If the  
8 Court wishes for oral argument, the Parties would certainly oblige and  
9 participate.

### 10 Conclusion

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

- 12 1. Enter an Order denying Respondent's Motion.
- 13 2. For other such relief as the Court deems fair and equitable under the  
14 circumstances.

15 Dated this 26th day of January 2023

16 Schwab Law Firm PLLC

17 /s/ Evan Schwab

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25 <sup>15</sup> See e.g. *Kim v. Westmoore Partners, Inc.*, 201 Cal. App.4<sup>th</sup> 267, 293  
26 (Cal. 2011)(discussing sanction seeking as a bullying tactic). *Lewis v.*  
27 *Second Judicial District Court*, 113 Nev. 106, 113, 930 P.2d 770, 775  
28 (Nev. 1997) (Internal Citations Omitted) (discussing how sanction  
seeking has only served to unreasonably chill enthusiasm or creativity  
in the practice of law and the pursuit of justice).

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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**