

THE COURT OF APPEALS OF THE STATE OF NEVADA

In re Search Warrants Regarding
Seizure of Documents

Case No. 84931-COA

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**Reply in Support of Las Vegas Review-Journal, Inc.'s Motion for Relief
from Time Requirements of NRAP 36(f)(1)**

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I. INTRODUCTION

Metro’s opposition to the Motion of the Las Vegas-Review-Journal, Inc. (the “Review-Journal”) for Relief from Time Requirements of NRAP 36(f)(1) is devoid of any authority or reasoning that would counsel against, much less prohibit, this Court granting the motion. The Rules of Appellate Procedure clearly authorize this Court to extend the time requirements of Rule 36(f)(1), and the Review-Journal has established good cause for such an extension. The motion should be granted.

II. ARGUMENT

In the three arguments it makes in its opposition brief, Metro mischaracterizes the authority the Review-Journal relies on for its request for relief, cites to inapposite cases discussing the inability of a court to extend the time for filing a *notice of appeal*, and too narrowly describes the scope of what may be considered in finding good cause.

A. The Review-Journal moves under Rules 2 and 26(b), not Rule 36(f)(1).

Metro’s first argument is that an extension of time sought under the extension provision of Rule 36(f)(1) must be filed before the expiration of that 14-day timeline. Opp’n at 3. This is true, but the Review-Journal did not move under Rule 36(f)(1) for its requested relief. Indeed, the title of its motion is “Motion for Relief *from* Time Requirement of NRAP 36(f)(1).” The Review-Journal moved, instead, under Rules 2 and 26(b), both of which permit this Court to extend the time prescribed by

Rule 36(f)(1) for filing a motion for publication. Rule 26(b) expressly allows the Court to permit an act to be done after the time expires for the act, with the only exception being the filing of a notice of appeal.

B. The Review-Journal is not requesting extension of time to file a notice of appeal.

Metro next argues that the Supreme Court has “previously rejected untimely filings in relation to similar appellate rules denoting time and manner requirements.” Opp’n at 4. Metro, however, does not cite to multiple supposedly similar appellate rules, but cites to only one—the entirely dissimilar appellate rule, Rule 3(a)(1). That rule, of course, governs the time for filing a notice of appeal. Metro also cites several cases, but each case it cites likewise addresses the time for filing an appeal. Rule 3(a)(1) is not a “similar appellate rule.” As Metro notes, *see* Opp’n at 4, and as the cases it cites establish, the filing of an appeal is jurisdictional, which is why the time for filing a notice of appeal is *the only* deadline an appellate court may not extend under NRAP 26(b)(1)(A). Rule 26(b)(1)(A) clearly provides that “the court may extend the time prescribed by these Rules”—*i.e.*, by *any other* appellate rule (including Rule 36(f)(1))—except for the time to file a notice of appeal (which may only be extended as provided in Rule 4(c)).

C. Nonparty Review-Journal has demonstrated good cause for granting it the modest procedural relief it is requesting.

Metro’s final argument is that the Review-Journal has not shown good cause for the relief it is requesting. It has.

The Review-Journal was not a party to these proceedings and did not become aware of this Court’s April 7, 2023, order until about a month after it was issued—well past the 14-day deadline to move for its publication under Rule 36(f)(1). Metro does not contest that the Review-Journal has shown good cause for its inability to file its Motion for Publication within the time prescribed by Rule 36(f)(1). Instead, Metro argues that the Review-Journal has not shown good cause for relief from the time requirements because the Review-Journal did not *immediately* file a Motion for Publication upon first discovering this Court’s order.

Metro’s definition of what constitutes “good cause” in this context is not consistent with Nevada law. The Supreme Court has made clear that good cause “is a relative and highly abstract term such that its meaning must be determined not only by the verbal context of the statute in which the term is employed, but also by the context of the action and procedures involved and the type of case presented.” *Nunnery v. State*, 127 Nev. 749, 764 (2011) (cleaned up). Here, the context is merely a request to have an unpublished opinion published, which does not affect the rights of any litigant to the proceeding – therefore, the bar should not be high. If the

nonparty can give a rational basis for its need for the extension, the extension should be granted.

The Review-Journal has done so. Metro does not contest that the Review-Journal was not a party to this case, and was not aware of its existence, and thus did not discover this Court's order until a month after it was issued. The Review-Journal discovered the case in the course of doing legal research in connection with its own return of property action against Metro. The Review-Journal would have needed relief from the time requirement from this Court *even if it had moved for publication the day it discovered the order*. The short passage of time before it did so, due to the extensive demands of the litigation in its own return of property proceeding against Metro and the related criminal action, certainly did not erase the good cause that exists for its need for relief.

Metro cites *Mississippi v. Turner*, 498 U.S. 1306 (1991), for the proposition that the burdens of litigation cannot constitute good cause. But in that case, the State of Mississippi requested an extension of a critical deadline (for filing a petition for writ of certiorari) in its own case that would have impacted the rights of the parties thereto. Here, in contrast, the Review-Journal is not asking the court to extend a deadline in a case it is litigating, or one that would affect the rights of the parties to the case. Rather, it is simply asking, *as a third party*, for an extension of a deadline to seek publication of an unpublished opinion, which would not affect any rights of

the parties to the action. In that context, the need to pursue relief based on good cause should not be viewed with the same level of urgency, and thus the burdens of litigation in the third party's *own case* should be taken into account.

Finally, and importantly, Metro has not articulated, nor can it, how it would be prejudiced by this Court's granting the Review-Journal's motion. *See Nunnery*, 127 Nev. at 765 (considering the danger of prejudice to the opposing party in determining good cause). Given that the motion is purely procedural and does not afford the Review-Journal the substance relief it seeks (publication of the opinion), there is no prejudice.

III. CONCLUSION

The relief the Review-Journal seeks by its motion to be relieved of the 14-day time requirement of NRAP 36(f)(1) is modest, reasonable, procedural relief requested by a nonparty. Neither Metro nor any other party will be prejudiced by allowing the Review-Journal to make its substantive argument for publication, and Metro has offered no basis for denying the relief sought. Accordingly, this Court should grant the Review-Journal's Motion for Relief from Time Requirements of NRAP 36(f)(1) and enter an order declaring the Review-Journal's Motion for Publication to be timely filed.

Dated: August 11, 2023

By: /s/ Joel E. Tasca

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