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Representative for the Estate of Thomas J.
Harris, and as Successor Trustee of the
Thomas J. Harris Trust*

Electronically Filed
Jul 11 2023 02:11 PM
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE
OF THOMAS JOSEPH HARRIS,
DECEASED,

Supreme Court Case No.
86096

District Court Case No.
2022-PB-00119

TODD ROBBEN,

Appellant,

vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS, AND THOMAS J. HARRIS
TRUST,

Respondents.

_____/

SECOND MOTION FOR EXTENSION TO FILE

ANSWERING BRIEF

The Estate of Thomas J. Harris, by and through its Personal Representative, the Honorable Tara M. Flanagan (the "Estate"), and the Thomas J. Harris Trust, by and through its Successor Trustee, Ms. Flanagan, (the "Trust") jointly move this Court for a second extension of time in which to file their Answering Brief pursuant to NRAP 26(b)(1)(A) and NRAP 31(3)(b)(3).¹

This Motion is based upon the following Memorandum of Points & Authorities, any exhibits attached to this Motion, any oral argument this Court wishes to entertain on the Motion, and the papers and orders on file before the Court in this Appeal.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION & RELEVANT PROCEDURAL HISTORY

On March 22, 2023 Respondents filed their Motion to Dismiss Mr. Robben's Appeal. *See* Docket. Mr. Robben filed his Objection to the Respondents' Motion to Dismiss on April 27, 2023. Thereafter, on May 3, 2023 the Respondents filed their Reply in support of their Motion to Dismiss. On May 26, 2023, Mr. Robben filed what is purported to be his Opening Brief. *See* Docket. Recently, on June 30, 2023, the Court

¹ The Trust and Estate may be collectively referred to herein as the "Respondents."

entered its Order denying the Respondents' Motion to Dismiss. The Court's June 30, 2023 Order also allowed the Respondent's 30 days to file their answering brief, or until July 30, 2023.

The Motion to Dismiss argued Mr. Robben did not have standing to bring his Appeal. After briefing of the Motion to Dismiss, the Court's June 30, 2023 Order found Mr. Robben could possibly have standing to bring this Appeal because the Respondents had initiated the underlying District Court action by filing the Petition which serves as the basis of Mr. Robben's Appeal. However, it was Mr. Robben, the appellant, and NOT the Respondents who filed the Petition which instituted the District Court action underlying this Appeal. Thus, the Court's June 30, 2023 ruling is based on a mistaken premise. Therefore, on July 7, 2023, the Respondent's filed a Motion for Reconsideration of the Court's June 30, 2023 Order.

II. COMPLIANCE WITH NRAP 31(b)(3)(A)

In presenting this motion, the Respondents provide the following information in compliance with NRAP 31(b)(3)(A):

- i. The Respondents Answering Brief is due on July 30, 2023. *See* NRAP 31(a)(1)(B).

- ii. One prior extension of time has been granted regarding Respondents filing of their Answering Brief. The Respondents Answering Brief was originally due on June 26, 2023.
- iii. This is the Respondents' second request for an extension of time to file their Answering Brief, no prior requests for extension of time have been denied.
- iv. The grounds for the Respondents request for an extension of time are presented in detail below.
- v. The Respondents request their Answering Brief be due thirty (30) days after the Court rules on the Motion for Reconsideration, if the Motion to Dismiss is denied.

III. GOOD CAUSE EXISTS TO GRANT AN EXTENSION

NRAP 26(b)(1)(A) allows the Court, for good cause, to extend the time prescribed by the Rules. Prior to Mr. Robben filing his Opening Brief, the Respondents filed their Motion to Dismiss Mr. Robben's Appeal arguing Mr. Robben has no standing to bring this Appeal.

The Respondents' Motion to Dismiss was denied by Order of the Court on June 30, 2023, wherein the Court stated "this court is not convinced that appellant lacks standing where respondent filed the

underlying district court petition." *See Exhibit 1*, pg. 1. However, this statement is incorrect, as it was the Appellant, not the Respondents who filed the underlying District Court petition. Given this error in fact serving as a basis for the Court's ruling in its June 30, 2023 Order, the Respondents have filed a Motion for Reconsideration which is currently subject to briefing and decision. Because there is currently a Motion for Reconsideration of the Court's June 30, 2023 Order before the Court, Respondents respectfully submit good cause exists to continue the time for Respondents to file their Answering Brief until 30 days after their Motion for Reconsideration is decided.

If this Court grants the Respondents' Motion for Reconsideration, there will be no need for Respondents to file an Answering Brief in this Appeal. Thus, to require the Respondents to prepare and file an Answering Brief prior to this Court ruling on the pending Motion to Reconsideration could result in severe prejudice to the Respondents, as they would be forced to incur significant attorney's fees which may well prove unnecessary. The Respondents have already been forced to expend considerable expense in attorney's fees and costs addressing Mr. Robben's numerous filings in the District Court, as well as in this Court. Moreover, if the Court were to require Respondents to file their

Answering Brief before their Motion to Reconsideration is decided, Respondents likely have no avenue in which to re-coup their attorney's fees and costs from Mr. Robben, as Mr. Robben has presented to this Court he is without resources. *See* Application to Proceed in Forma Pauperis attached hereto as **Exhibit 2**. Finally, the Respondents submit with humility and respect their Motion for Reconsideration is meritorious of the Court's consideration, because the Court's June 30, 2023 Order only found Mr. Robben could possibly have standing based upon an error in fact related to the procedural history of this matter. Therefore, it would be highly prejudicial to the Respondents to require them to expend thousands of dollars in attorney's fees preparing an Answering Brief when the dismissal of this Appeal is currently subject to reconsideration.

IV. CONCLUSION

Based on the above, Respondents submit there is good cause for the extension of time requested by this Motion. Therefore, Respondents ask the Court extend the time in which they may file their Answering Brief until 30 days after the Court rules upon the Respondents' pending Motion for Reconsideration.

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DATED this 11th day of July 2023.

/s/ F. McClure Wallace

By: _____
F. McClure Wallace, Esq.
Patrick R. Millsap, Esq.
Attorneys for Tara M. Flanagan

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of *WALLACE & MILLSAP* that I am over the age of eighteen (18) years, and that I am not a party to, nor interested in this action. On this date, I caused to be served a true and correct copy of the foregoing document on all parties to this action by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary course of business practices as follows:

Todd Robben
P.O. Box 4251
Sonora, California 95370

The foregoing document was also served upon Todd Robben through the Nevada Supreme Court's e-filing system.

DATED this 11th day of July 2023.

By: /s/ Caroline Carter.

Employee of Wallace & Millsap

LIST OF EXHIBITS

Exhibit 1 – Order Regarding Motions

Exhibit 2 - Application to Proceed in Forma Pauperis

Exhibit 1

Exhibit 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
THOMAS JOSEPH HARRIS,
DECEASED.


TODD ROBBEN,
Appellant,
vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; AND THOMAS J. HARRIS
TRUST,
Respondents.

No. 86096

FILED

JUN 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER REGARDING MOTIONS

Respondents have filed a motion to dismiss this appeal, contending that it is untimely and appellant lacks standing. Appellant opposes the motion, respondents have replied, and appellant has filed a sur-reply.¹ Appellant's notice of appeal was prematurely filed in the district court on February 3, 2023, prior to entry of a written order on February 8, 2023. Because the written order was entered before dismissal of the appeal, the notice of appeal is "considered filed on the date of and after entry of the order" NRAP 4(a)(6). Therefore, the notice of appeal is considered filed on February 8, 2023, after entry of the written order and is timely. Further, this court is not convinced that appellant lacks standing where respondent filed the underlying district court petition. Therefore, the motion to dismiss

¹Appellant's motion for leave to file a sur-reply is granted. The clerk shall detach the sur-reply from the motion filed on May 26, 2023, and file it separately. Any other relief requested in the motion is denied.

is denied at this time. However, the parties may further address the standing issue in their briefs, if deemed warranted.

Respondents' motion for an extension of time to file the answering brief is granted. NRAP 31(b). Respondents shall have 30 days from the date of this order to file and serve their answering brief. Failure to timely file and serve the answering brief may result in the imposition of sanctions. NRAP 31(d)(2).

It is so ORDERED.

 Stiglm , C.J.

cc: Todd Robben
Wallace & Millsap LLC

Exhibit 2

Exhibit 2

Your Name: Todd Robben
Address: PO Box 4251
City, State, Zip Sonora, CA 95370
Telephone: 209-540-7713
Email Address: robben.tv@gmail.com
Self-Represented

RECEIVED

JUL 22 2022

Douglas County
District Court Clerk

FILED

2022 JUL 22 PM 2:42

BOBIE R. WILLIAMS
CLERK

[Signature] DEPUTY

DISTRICT COURT
DOUGLAS COUNTY, NEVADA

TODD ROBBER

Plaintiff,

vs.

THOMAS J. HARRIS TRUST et al

Defendant.

CASE NO.: 2022-PB-00119

DEPT: II

Application to Proceed in Forma Pauperis

Pursuant to NRS 12.015, and based upon the information contained in this Application and Affidavit, I request permission from this Court to proceed without paying filing fees, or other costs and fees as provided in NRS 12.015 because I lack sufficient financial ability.

I understand that if approved, the order allowing me to proceed in forma pauperis will be valid for one year. I will be required to file a new Application to Proceed in Forma Pauperis if I need further filing fees and court costs and fees waived after one year.

EMPLOYMENT: (☒ *check one*)

☒ I am unemployed.

☐ I am employed. My employer is _____ and my job title is _____.

☐ I am self-employed. The name of my business is _____.

Personal Income (write "0" for any income you do not have)		
A	Monthly Wages from Employment (before taxes)	\$ 0
B	Monthly Tip Income	\$ 0
C	Monthly Unemployment Benefits	\$ 0
D	Public Benefits/Assistance received each month <input type="checkbox"/> TANF <input type="checkbox"/> SSD <input type="checkbox"/> SSI <input type="checkbox"/> food stamps <input type="checkbox"/> other: _____	\$ 0
E	Social Security	\$ 0
F	Retirement / Pension	\$ 0
G	Monthly Child Support received	\$ 0
H	Other: _____	\$ 0
TOTAL INCOME (add lines A-H)		\$ 0

Household Information		
A	How many adults (18 and up) live in the home (include yourself)?	0
B	How many children (under 18) live with you?	0
TOTAL HOUSEHOLD SIZE (add A+B)		0

Household Income		
List the names of the adults you live with and their estimated monthly earnings:		
Name:	Relationship:	\$
Name:	Relationship:	\$
Name:	Relationship:	\$

Monthly Expenses (write "0" for any expense you do not have)		
A	Rent / Mortgage	\$ 600.00
B	Utilities (electricity, gas, phone, other utilities)	\$ 0
C	Food	\$ 400.00
D	Child Care	\$
E	Medical Expenses (including health insurance)	\$
F	Transportation (insurance, gas, bus fare, etc.)	\$
G	Other: _____	\$
TOTAL EXPENSES (add lines A-G)		\$ 1000

Assets (write "n/a" and "0" for any assets you do not have)		
Asset	What It's Worth	What you Owe
Checking Account	\$ -700.00	n/a
Savings Account	\$ 0	n/a
Car (year/make/model): _____	\$ 1,000.00	\$ 0
House / Real Estate You Own (address: _____)	\$ 0	\$ 0
Other:	\$ 0	\$ 0

Declaration in Support of Request to Proceed In Forma Pauperis

Briefly explain your current financial situation and why you are unable to pay the filing fee. For example, if you are unemployed explain why, for how long, and what efforts you are making to obtain employment. If you are temporarily living with a friend or relative explain for how long and how they help you financially.

I lost my job on 07/08/2022 and have applied for unemployment and EBT (food stamps). I currently receive State of California Medical.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

07/22/2022
Date

Todd Robben
Printed Name

T.R.
Signature