IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD DOUGLAS EBY,

Appellant,

vs.

JOHNSTON LAW OFFICE, P.C.; BRAD M. JOHNSTON; AND LEANNE E. SCHUMANN,

Respondents.

Supreme Court No. 86220
District Court Case No: 20-cv-01031

RESPONDENTS' OPPOSITION TO MOTION TO STAY PROCEEDINGS AND ORDER FOR COMPETENCY EVALUATION

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Johnston Law Offices, P.C., Brad M. Johnston, and LeAnne E. Schumann (collectively, "Respondents"), by and through their undersigned counsel of record, hereby oppose Appellant's Motion to Stay Proceedings and Order For Competency Evaluation ("Motion").

1. All indications are that the Motion was improperly ghost-written by Theodore ("Ted") Stevens, who is the "jailhouse" lawyer previously discussed in the first appeal in this case. *See Eby v. Johnston Law Offices, P.C.*, 138 Nev. Adv. Rep. 63, 518 P.3d 517, 2022 WL 4113189, 2022 Nev. App. LEXIS 6 (Sept. 8, 2022) ("*Eby I*"). This Motion appears to be written in the same handwriting as the previously filed "Motion to Stay Appeal and For Order of Competency Hearing and/or Evaluation of Appellant," which was stricken by this Court on September 13, 2023 due to Ted Stevens' continued involvement in this matter.

2. As explained in *Eby I*, the district court struck Eby's second amended complaint and dismissed his case against Respondents because Eby, contrary to the district court's admonitions, sought to have a non-lawyer inmate at the Lovelock Correctional Center – Ted Stevens – prosecute this case on his behalf as attorney-in-fact. *See id.* 2022 Nev. App. LEXIS at *3-6.

The Nevada Court of Appeals in *Eby I* affirmed the district court's decision to strike Eby's second amended complaint, holding that "a nonlawyer agent under a power of attorney is not entitled to appear in pro se in the place of the principal or

engage in the practice of law on the principal's behalf." *Id.* at *20. The Court of Appeals consequently "affirm[ed] the district court's order insofar as it struck Eby's second amended complaint." *Id* at *20.

3. Once again, Ted Stevens appears to be unlawfully engaging in the practice of law on Eby's behalf. For this reason alone, the Motion should be denied.

4. Even if the Motion had been filed by a lawyer, the Motion should be denied for the additional independent reason that it is not supported with any sworn declaration and/or competent proof. Putting aside the absence of a sworn statement, neither Ted Stevens nor Don Eby are qualified to opine as to Eby's mental competency. At most, the author/filer of the Motion is providing an unsworn statement to the effect that Mr. Eby was upset and confused concerning Mr. Stevens improper legal advice for Eby to write down "Defendants motion for summary judgment." Motion at 1.

5. Any discussion regarding "summary judgment" is off point. The issue currently on appeal has nothing to do with opposing any summary judgment motion and/or Second Amende Complaint. Stevens, on Eby's behalf, has orchestrated a meritless case against attorneys who have fine reputations and are in good standing with the State Bar of Nevada.[1]

[1] The underlying case against Respondents is meritless. The Respondents represented Eby in a civil case filed by his ex-girlfriend after he was convicted,

6. Furthermore, nothing in the Motion supports the assertion that Eby was mentally incompetent five years ago in 2018 when Eby authorized Respondents to settle the civil case that had been filed against him ***after*** he was convicted of battery causing substantial bodily harm. There is no justification to stay this appeal or warrant a mental evaluation of a *pro se* civil litigant.

7. The issue on appeal now, following *Eby I,* is "the analysis required for imposing case-concluding sanctions under the seminal case of *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990), and its progeny." *Id.* at * 21. And any open issues in light of *Eby I* have been squarely and properly resolved by district court against Eby. In particular, the Nevada Court of Appeals in *Eby I* remanded this case to the district court for a determination of whether Eby's case should be dismissed with or without prejudice under the *Young* factors in light of the fact that Eby's second amended complaint against the Respondents was properly struck. *See id.* at *20-27.

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following a jury trial, of battering causing substantial bodily and sentenced to prison. Respondents negotiated – through private mediation Eby authorized – a favorable settlement for Eby's benefit by any standard. A power of attorney was necessary for the settlement to be able to be effectuated, and Eby later ratified the settlement by separately signing a settlement agreement. It is sheer conjecture for Eby and/or Stevens to think that he would have received a better result in his civil case – following his criminal conviction – had he not settled the civil case when he did and thereafter gone to trial. Eby previously thanked Respondents for their efforts. At some point, however, he began to have Stevens advocate on his behalf. As the saying goes, "no good deed goes unpunished."

On remand following *Eby I*, the district court first held a status conference with the parties on November 4, 2021. At that status conference, the district court directed the parties to submit briefs on whether Eby's case should be dismissed with prejudice under the factors set forth in *Young* and its progeny. Respondents briefed the *Young* factors, demonstrating the case should be dismissed with prejudice, but Eby did not.

Instead, Eby argued that the district court should afford him leave to file another amended complaint because the district court was "bound by the law stated in the COA opinion [*Eby I*] and its prior ruling to order again a more definite statement." Eby accordingly never briefed the *Young* factors on remand or even acknowledged that his second amended complaint was properly struck as the Nevada Court of Appeals concluded in *Eby I*. Consequently, the district court, after carefully addressing the *Young* factors in detail, dismissed this case with prejudice, noting that "[d]ue to Eby's willful misconduct, the record before this Court, and all factors to be considered under *Young*, the Court finds that this case should be dismissed with prejudice." Eby is now appealing from that district court decision, and he has failed to demonstrate the district court erred in any way.

8. The Motion, and Eby's approach to this appeal through his ghost-writer Stevens (whose handwriting matches previous filings in this case), is a misdirected discussion that ignores the issue on appeal and the district court's ruling (and the

ruling in *Eby I*). The issue in this appeal is not whether Eby should have been afforded an opportunity to file another amended complaint on remand because he and Mr. Stevens "were not intentionally violating the law, [sic] we thought we were allowed to do so by law." Appellant's Informal Brief at pp. 5-6. And tellingly the issue has nothing to do with writing down "Defendants' motion to summary judgment."

9. In sum, this Appeal should not be stayed. Rather, the appeal should proceed with the Court ultimately concluding that the district court did not abuse its discretion in dismissing this case with prejudice.

DATED this 2nd day of Octo ber, 2023.

WHITMIRE LAW, PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 2nd day of October, 2023, a true and correct copy of **RESPONDENTS' OPPOSITION TO MOTION TO STAY PROCEEDINGS AND ORDER FOR COMPETENCY HEARING**, was served by electronically filing with the Clerk of the Supreme Court using the EFlex system and served upon the persons/parties in the matter and identified on such system. A copy of this filing has also been mailed to:

Donald Eby
1262 Centerville Lane
Gardnerville, Nevada 89460

DATED this 2nd day of October, 2023.

/s/ James E. Whitmire
Whitmire Law, PLLC