IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Apr 27 2023 11:33 AM
Elizabeth A. Brown
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EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC, PETITIONERS VS. CLARK COUNTY DISTRICT COURT, THE HONORABLE TIERRA XX JONES, DISTRICT JUDGE, DEPT. 10, Respondents, DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, Real Parties in Interest. _____	)	Case Number: Dist. Ct. Case No. A-16-738444-C Consolidated with A-18-767242-C **PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioners Edgeworth Family Trust is a trust formed under the laws of the State of Nevada. American Grating, LLC, is a Limited Liability Company formed under the laws of the State of the Nevada. American Grating, LLC is wholly owned by Brian Edgeworth and Angela Edgeworth, who are also the Trustees of the Edgeworth Family Trust. These Petitioners were represented below by Vannah & Vannah, Messner Reeves and Morris Law Group. Petitioners are now represented by Morris Law Group.

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ROUTING STATEMENT

The Nevada Supreme Court has jurisdiction over this writ petition pursuant to Nev. R. App. P. 17(a)(12). The appeal arises out of the district court's failure, on remand, to adhere to this Court's mandates in Case Nos. 77678 and 78176. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (Table) (Nev. 2020), and Case Nos. 83258/83260, Edgeworth Family Trust v. Simon, 516 P.3d 676 (Table) (Nev. 2022).

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I. INTRODUCTION

This case is brought to the Court by this petition for a writ of mandamus for the ***third*** time because in each of the two appeals that precede it, in which the Edgeworth Petitioners prevailed, the Court reversed the district court and remanded the case with specific instructions, which the district court refuses to acknowledge or follow. This failure to obey the Court's identical mandates on remand has left the Edgeworth Family Trust and American Grating, LLC (collectively the "Edgeworths") with no reasonable prospect for justice without this Court's extraordinary intervention by writ. In light of the district court's two successive failures to adhere to the Court's clearly articulated specific instructions on remand, a third appeal would not be an adequate and speedy remedy at law for the Edgeworths, but it would, as the succeeding portions of this brief suggest, provide the district court a third opportunity to flaunt the mandate of the Court.

At issue here is the district court's award of $200,000 in quantum meruit to an attorney for 71.10 hours of routine work by him and members of his firm following his discharge by the Edgeworths on November 29, 2017. In awarding him this startling amount of money, the trial court failed to explain how $200,000 for this meager amount of work

can be justified under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Accordingly, this Court twice reversed and twice directed the district court to "make specific and express findings as to what work Simon completed after he was constructively discharged and limit its quantum meruit fee to those findings," *Edgeworth Family Trust v. Simon*, Case Nos. 83258/83260, at 4, 516 P.3d 676 (Nev. 2022) (Table) (referred to as *"EFT II"),* which the district court has not done, as will be shown and fully explained in the brief that follows.

II. ISSUES PRESENTED BY THIS WRIT PETITION

This writ petition raises two important questions of first impression and statewide importance that the Court has not previously addressed:

(1) Does a district court's ***repeated failure*** to follow this Court's mandate issued in two previous direct appeals require the Edgeworths to bear the expense and time required to prosecute a third appeal which would not be an adequate and speedy remedy at law?

(2) Did the district court again err by ignoring this Court's express mandate in two previous appeals to set out an evidentiary basis under *Brunzell* that would justify a quantum meruit award to Simon of $200,000 for 71.10 hours of ***post-discharge*** administrative services?

III. STATEMENT OF RELEVANT FACTS

The Court has had the facts of this case before it in two separate appeals (Case Nos. 77678/78176 and 83258/83260), ***and*** in the Edgeworths' partially successful writ petition to obtain their complete case file from Real Parties in Interest Daniel Simon and his firm (collectively "Simon") (Case No. 84159). The relevant facts for this writ petition are therefore only very briefly set forth below.

A. The Underlying Litigation.

The Edgeworths retained Simon to represent them in a property damage/product defect case against Viking and Lange Plumbing on ***his*** terms. P00071; P00112-13. Simon billed the Edgeworths $368,588.70 for his time and $114,864.39 in costs.[1] P00113. Simon failed to memorialize the terms of his representation in writing, P00071, but he consistently billed the Edgeworths for his services at the hourly rates ***he selected*** for himself ($550) and his associates ($275), and the Edgeworths promptly paid each of his invoices in full. *Id.* After a multi-million settlement was reached in the Viking

[1] With the district court's $284,982.50 award for the 71 unbilled days of pre-discharge services, and the additional $68,844.93 in costs (P00791:22), the Edgeworths **have already paid** Simon a total of **$837,280.52.**

case on November 15, 2017, and while he said settlement was being memorialized, Simon demanded a change in the terms of his compensation.

By November 27, 2017, Simon had not provided any draft memorializing the Viking settlement, so the Edgeworths asked him to provide them with all documentation he had regarding the settlement. P00131-34; P00249. In response, Simon falsely told them he had not heard anything about their Viking settlement, when he was in fact discussing settlement with Viking's lawyers that very morning and had received at least one draft of the agreement. *Compare* P00666 (Simon's 4:58 p.m. email suggesting the settlement draft was not started before November 27th "due to the holidays") *with* P00611 (showing that Simon had been sent at least one draft of the settlement agreement by 4:48 p.m. on the 27th).[2] That same day and by Simon's own admission ***after*** he finished negotiating the final Viking settlement terms, Simon sent the Edgeworths his demand for more money,

[2] In prior proceedings, including before this Court, Simon denied the existence of other settlement drafts, claiming all negotiations were in-person. P00568:18-24; P00606; *but see* P00438 n. 5 and P00609-35. Only because this Court ordered him to produce his complete file in 2022 do the Edgeworths now have some documentary evidence that Simon was not truthful on the subject.

which confirmed his earlier threat that unless they accepted his new fee demand, the settlement would be jeopardized. P00179-186. He told the Edgeworths that if they did not accept his post-settlement demand, "I cannot continue to lose money to help you." P00183. The Edgeworths then retained Vannah & Vannah on November 29, 2017 to protect their interests. P00145.

On November 30, 2017, before learning that the Edgeworths had retained Vannah, Simon for the first time sent the Edgeworths a draft of the Viking settlement, which ***included terms*** that he testified before Judge Tierra Jones he had ***negotiated out*** of the agreement on or ***before*** November 27, 2017. P00147-54. Within hours of learning of Vannah's involvement, Simon sent a final Viking settlement agreement with revised terms he claimed he had negotiated ***that*** day, November 30 – contrary to his testimony that he had negotiated all terms by November 27 – and filed a lien. P00155-63; *compare* date he says he negotiated the agreement at P00156 *with* his testimony at P00176. The Edgeworths signed the Viking settlement on December 1, 2017. P0008:22-24; and P0014:2-4. When Simon would not turn over the settlement checks he had received from Viking or provide a final

invoice for services to the Edgeworths, as they had been requesting, they initiated litigation against him, and he moved to foreclose on his lien.

Several months later in 2018, the district court adjudicated Simon's charging lien for a ***total*** of $484,982.50 (P00026), which ***includes*** the $200,000 at issue here, not the $2.4+ million claimed by Simon in his lien.[3] Notwithstanding this fact, ***for over five years*** Simon refused to release the $1.5M+ excess between the amount the district court adjudicated as the total lien amount and the millions of dollars Simon claimed in his lien.[4] *Compare* P00001-02 *with* P00026. Of the $484,982.50 award, $284,982.50 was for *unbilled* pre-discharge work between September 19 and November

[3] The net lien amount claimed was $1,977,843.80 million after deducting the $367,606.25 in fees already paid. P00001-02. The Edgeworths had also paid $118,846.84 in costs, P00008:16, increasing the total claimed by Simon to $2,464,296.89 (over 40% of the Viking settlement).

[4] Although he could not point to an order confirming his allegations – because there was no such order – Simon repeatedly and ***falsely*** reported in subsequent pleadings that the district court had ordered him ***not*** to release the funds. P00281 (reporting to a different court that "[t]he disputed funds remain held in trust not because Simon unilaterally refused to release the money, but because the Court [Judge Tierra Jones] ordered that the money should not be distributed pending appeal"); P00282 (falsely reporting to another district court that "Judge Jones ordered the funds remain in the account after Edgeworths appealed to the Supreme Court."); P00285 (again falsely reporting in other proceedings he initiated that "Only the disputed funds remain in the special trust account. Simon is following the District Court order to keep the disputed funds safe pending appeal"). On February 27, 2023, Simon finally relented and "agreed" to release the over $1.5M that he had withheld from the Edgeworths since 2017.

29, 2017, which Simon described in his "superbill" and the district court fully accepted without reservation.[5] The remaining $200,000 which is the subject of this writ petition, as it was in the two prior appeals, was for 71.10 hours of administrative post-discharge work that the district court has yet to demonstrate is reasonable and supported by *Brunzell*.

B. The Edgeworths' First Appeal.

The Edgeworths appealed the reasonableness of the quantum meruit award. In its 2020 decision vacating Judge Jones' quantum meruit award, the Court said that "[w]hile the district court stated that it was applying the *Brunzell* factors for work performed only after the constructive discharge, much of its analysis focused on Simon's work throughout the litigation." *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 at *2 (Nev. 2020) (Table) (emphasis added). The Court provided post-mandate guidance to the district court, pointing out that "[a]lthough there is evidence in the record that Simon . . . performed work after the

[5] In his "superbill," Simon tried to revise the amount for periods that he had previously invoiced and the Edgeworths had paid (05/28/16 – 9/18/17). The district court rejected this effort, as it found Simon's methodology *for the after-the-fact revisions to his prior invoices was not reliable*. P00019. However, for the then-more-recent period (09/19/17 to 11/29/17), ***the district court's implied contract award accepted the accuracy of Simon's superbill and credited him for every minute of the 696.25 hours he billed*** (340.05 for Simon; 337.15 for Ferrel; and 19.05 for Miller). P00020:15-23.

constructive discharge, the district court did not explain how it used that evidence to calculate its award." *Id.*

Following the Court's 2020 decision, before jurisdiction was returned to the court by remittitur, the district court entered a Second Amended Order addressing the quantum meruit award with essentially the same analysis this Court had rejected.[6] A second appeal and reversal (vacated judgment) with instructions to the district court followed.

C. The Edgeworths' Second Appeal.

Following the decision and mandate in the first appeal, the Edgeworths' urged the district court to reconsider its premature Second Amended Order and its Third Order to implement the Court's mandate by explaining the basis for the quantum meruit award and its reasonableness without leaning on the pre-discharge work, as this Court ordered. The Edgeworths pointed out to the district court that even if ***all*** of the post-discharge work detailed by Simon on his timesheets (*i.e.* superbill (P00408)) was credited at his implied contract rate, the reasonable value of those

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[6] The Second Amended Order was *void ab initio* because the district court entered it before the remittitur issued; after the remittitur, the court issued the nearly identical Third Amended Order, which was the subject of the Edgeworths' ***second*** direct appeal.

71.10 hours of mostly administrative work did not exceed $34,000. The district court ignored that fact. *See* P00201 - 05; P00206 - 09; P00211-15.

The record before the district court established ***without contradiction*** that Simon's 2018 superbill claimed he had expended a total of 71.10 hours (51.85 for Simon himself and 19.25 for his associate) for post-discharge work. P00215; *see also* P00201-05; P00206-09. These hours, if reasonable and if not discounted for his misrepresentations, times Simon's rates in the implied contract would justify $33,811.25 in fees. P00215. The $200,000 quantum meruit award summarily repeated by the district court in five post-appeal orders is ***more than six times that amount,*** and values the 71.10 hours at more than ***$2,800 per hour***,[7] which the court did not explain or even comment on.

Much of Simon's post-discharge work was administrative in nature, which did not require special skills to perform. P00201-05; P00206 - 09; P00211-15. His post-discharge work can be fairly summarized as follows:

[7] $200,000 / 71.10 = $2,812.94.

SUMMARY OF SIMON LAW'S POST-DISCHARGE WORK	
Administrative tasks re Lange Settlement (co-defendant in Viking action)	21.55
Administrative tasks re Viking Settlement, including one hearing	26.65
Preparation of Attorney Lien	4.85
Opening Bank Account & Depositing Settlement Checks	7.25
Undetermined - insufficient description	10.80

See P00215.

Over seven hours to open a single two-signature bank account at a local bank is not reasonable (P00213 green entries); nor is charging a client nearly five hours for preparing a short perfunctory attorney's lien. P00211-15 (pink entries). And although Simon claims to have worked on the Viking settlement for over 26 hours and the Lange settlement for over 21 hours post-discharge, he previously acknowledged this work was completed ***pre-discharge*** or within the first week after discharge. P00156; P00176 (testimony that he was done "hammering out" terms by 11/27). The district court's findings confirm the dates. P00013-14.

Despite the guidance provided by the Court in its first remand, the district court's Second and Third Amended Orders did not even acknowledge the Court's mandate to correct the defect in its 2018 order. The

Edgeworths again appealed and this Court again vacated for the same flaw: the district court failed to specify the ***post-discharge*** work it considered was reasonably worth $200,000. Instead, the court continued to support its *Brunzell* analysis by referencing Simon's ***pre-discharge*** work. After the second reversal and remand in 2022, and ***again*** before regaining jurisdiction through remittitur, the district court entered a "Fourth Amended Decision and Order on Motion to Adjudicate Lien," which suffers from the same defect as its previous three orders.

In its 2022 decision on the Edgeworths' second appeal, vacating judgment and remanding, this Court mistakenly suggests the district court found Simon's entire superbill unreliable; it did not so find. As the record shows and is discussed at note 5, *supra,* the district court ***accepted*** the accuracy of Simon's superbill for the work between September 19 and November 29, 2017 that he detailed in his superbill ***but had not yet invoiced,*** and awarded him the ***full amount*** of fees claimed for that work. The district court merely found the superbill unreliable to ***amend*** earlier periods that Simon ***had already invoiced*** and the Edgeworths had paid.

D. The Second Post-Mandate Proceedings that Occasion this Petition Show Same Defects that Caused the Court to Reverse and Remand in the Prior Two Appeals.

The district court's premature Fourth Amended Order also largely ignored the instructions provided in the Court's two prior decisions and mandates.[8] In fact, the district court's Fourth Amended Order even repeated the identical error made in its prior orders by adding costs ***paid*** by the Edgeworths in 2018 into the judgment.

Once remittitur issued, Simon moved to "adjudicate" the quantum meruit award. He listed the identical 71.10 hours of post-discharge work that he detailed in his superbill and that the Edgeworths asked the district court and this Court to consider in the second appeal in 2021. P00409-16. Simon's motion also incorrectly included work performed on November 29, 2017, for which he had been compensated under the implied contract. P00408-09 (including hours for 11/29/17); P00020 (implied period covered 11/29/17). He again attempted to belatedly enlarge his timesheets for work he claims he performed but forgot to list, which in part he supports by pointing to documents ***he had, but withheld*** from the Edgeworths notwithstanding this Court's ***and*** the district court's order that he produce

[8] This Fourth Amended Order was also *void ab initio* because it issued without jurisdiction. *See* n.6.

his complete client file to the Edgeworths. *Id.* Not only did he attempt to enlarge his timesheets five years after-the-fact, but he also did not list the amount of time spent on the added administrative work he described and says he performed but failed to add to his superbill in 2018. Among the efforts touted by Simon is negotiating the removal of a confidentiality clause in a settlement agreement that the Edgeworths had no problem with. P00420. Simon's testimony that he negotiated the removal of the confidentiality clause at their request was false. P00559-60 (testimony); P00672 (evidence the Edgeworths told Simon they had no problem with a confidentiality provision); P000156 (admitting he unilaterally removed provision).

The evidence before the district court in the superbill this Court alluded to in its 2020 Order (first appeal) was specifically outlined for the district court in 2021. P00123-24; P00211-15. That evidence confirms that Simon's post-discharge work was largely ministerial work about which he continued to be untruthful with his clients on the subject of his fees and the settlement.[9] The district court's latest order does not address how that

[9] Simon refused to provide the Edgeworths with a final bill as requested and claimed the time spent at this contract hourly rate would exceed the amount he demanded. P00008-9, ¶14; P00670. The costs he claimed fluctuated without support: in his 11/30/17 lien, he claimed he was owed $80,326.86 in costs (P00234); seven days later, he claimed costs owed were approximately $200,000 (P00670); three weeks later, his amended lien claimed costs of $76,535.93 (P00002). The costs he ultimately collected were

ministerial work was considered. The court merely says Simon was an exceptional advocate and his ***pre-discharge*** work was complex. P00793-97.

Like its prior orders, the district court's latest order states that it is applying the *Brunzell* factors for work performed only after the constructive discharge, but its *Brunzell* analysis continues its focus largely on Simon's work ***pre-discharge***. P00793-97; *see also EFT II*, 516 P.3d 676 at *1 and *Edgeworth Family Trust*, 477 P.3d 1129 at *2 (recognizing same defect in the 2018 order). The Fifth Amended Order "does not make specific findings that clearly reflect that the quantum meruit award is limited to only services Simon provided post-discharge," as this Court directed. *EFT II*, 516 P.3d 676 at *1. The district court's infirm *Brunzell* analysis in 2023 is largely identical to the analysis in its 2018 Order, which also focused on Simon's pre-discharge work. P00793-97. Its analysis of the "Quality of the Advocate" prong is identical, and the "Work Actually Performed" and "Results Obtained" prongs were only slightly but not substantially reworked. *Id.* With respect to the increase in the Lange settlement, the amounts set out by the district court are – perhaps unintentionally – misleading. The settlement

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$68,844.93, P00791:22, although it was later discovered his backup included costs for a different client; it took him eight months to refund the overpayment.

from $25K to $100K added a $22K setoff, thus increasing the settlement value by $53K not $75K. P00637. Moreover, the Lange settlement discussions largely took place ***pre-discharge*** for which Simon has been paid, as the Court's 2022 Order recognizes. *EFT II*, 516 P.3d 676 at *1.

The post-discharge hearings that Simon belatedly attempted to add to his somewhat contemporaneously prepared superbill were to support a good-faith determination of the Lange settlement to resolve claims between Lange and Viking. P00419. This was not a "complex" matter. *See* P00211-15. The section of the district court's order, "Character of the Work Done", continues to tout how complex the case was from the beginning but does not say how that complexity continued following Simon's discharge. P00794. In truth, the case was substantively over at that point.

In performing its latest "analysis," the district court failed to consider the actual work Simon outlined in his timesheets. The court also failed to consider Simon's misrepresentations to his former clients, the district court, and even this Court.[10] Providing false or misleading

[10] *E.g.,* Simon falsely testified he negotiated the confidentiality clause at Mr. Edgeworth's request. *See* P00559-60 (testimony); *see* P00672 (proof the Edgeworths accepted the confidentiality clause). Simon mocked the Edgeworths for seeking settlement drafts and falsely suggested to the district court and this Court that no drafts of settlement agreements existed because he conducted all negotiations in person; but the documents he withheld until December 6, 2022 confirm these drafts ***in fact existed***. *See*

information to a client and the court are highly relevant to the *Brunzell* factors, especially quality of the advocate, character of the work performed, and results obtained. The district court should have also considered that it was ***Simon*** who failed to memorialize the terms of his engagement and then used his status as a lawyer to strong-arm his lay clients who depended on him to protect their interests. These misrepresentations and strong-arm tactics should not go unnoticed and unremarked on in evaluating the quality and value of Simon's post-discharge work.

After two reversals and two identical mandates, the district court still has not cited evidence to explain how the work performed by Simon ***after*** he was constructively discharged was used to calculate the same $200,000 award that the district court previously entered and this Court found to be unsupported. *Compare* P00793-96 (latest *Brunzell* analysis) *with* P00103-06 (*Brunzell* analysis in Third Amended Order vacated in 2022).

P00568:18-24; P00606; *see also* P00438 n. 5 and P00609-35; *compare* P00593 (in briefing before this Court mocking the suggestion that he had executed agreements); *with* P00639 (email Simon produced on 12/6/2022 confirming the executed drafts were routed through Simon as he had demanded on November 30, 2017 (P00636-37); P00768 (***Simon's recent admission that he destroyed the fully executed agreements***).

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

"This court has original jurisdiction to issue writs of prohibition and mandamus" and "also all writs necessary or proper to the complete exercise of its appellate jurisdiction." Nev. Const. Art. 6, § 4. A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

Mandamus is the appropriate, and indeed the only, appellate avenue now reasonably available to the Edgeworths to challenge the district court's continuing refusal to issue an order that specifies the post-discharge work that may be reasonably valued at $200,000 under *Brunzell. See City of Sparks v. Second Jud. Dist.*, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996) (a writ of mandamus will lie to control a discretionary act where the district court's "discretion is abused or is exercised arbitrarily or capriciously") (overturning order imposing monetary sanction).

Extraordinary relief is warranted where, as here, there is no plain, ***speedy***, and ***adequate*** legal remedy available to the Edgeworths to compel the district court to follow this Court's ***two*** mandates, which the

court has ignored following the two appeals by the Edgeworths that produced two identical mandates. NRS 34.170; NRS 34.330; *see Ashokan v. State Dept. of Ins.,* 109 Nev. 662, 667, 856 P.2d 244, 247 (1993) (Court has constitutional prerogative "to entertain the writ" [Nev. Const. art. 6] "where circumstances reveal urgency or strong necessity." *Jeep Corp. v. District Court*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982)).

Unless the Court intervenes and accepts this writ petition, the Edgeworths will bear the burden of an expensive third direct appeal without any reason to believe the district court will treat another mandate any differently than the preceding two.

V. ARGUMENT

A. The Court Should Vacate the District Court's Latest Order Instructions to Enter Judgment Based on the Record Evidence.

This case has been before the Court in two separate appeals by the Edgeworths, Nos. 77678/78176 and 83258/83260. At issue in both was the reasonable value of unremarkable work Simon did during a short period of time in 2017 following his constructive discharge on November 29. In the first appeal, Nos. 77678/78176, this Court said

> [W]e ***agree with the Edgeworths*** that the district court abused its discretion by awarding $200,000 in quantum meruit ***without***

> ***making findings regarding the work Simon performed after the constructive discharge.***

Edgeworth Family Trust, 477 P.3d 1129 at *2 (emphasis added). The Court went on to point out that the "proper measure of damages under a quantum meruit theory of recovery is the reasonable value of [the] services." *Id.* (citing *Flamingo Realty, Inc. v. Midwest Dev., Inc.,* 110 Nev. 984, 987, 879 P.2d 69, 71 (1994)). The Court said the "district court must consider the *Brunzell* factors when determining a reasonable amount of attorney fees" and concluded that "it is unclear whether $200,000 is a reasonable amount to award for the work done after the constructive discharge. *Id.* Accordingly, we vacate the district court's grant of $200,000 in quantum meruit and remand for the district court to make findings regarding the basis of its award." *Id.*

Following remand, the district court ignored the Court's mandate with regard to the $200,000 awarded Simon for post-discharge work. In her Third Amended Order, (P00085-109), District Judge Tierra Jones awarded the same $200,000 in quantum meruit without providing **any** explanation of its basis or its reasonableness under *Brunzell*, as the Court expressly directed the district court to do. P00079. The order is identical to the one that the Court rejected in the first appeal. P00022-25;

P00079. The Third Amended Order was based on the same "work performed before [Simon's] constructive discharge, for which Simon had already been compensated under the terms of the implied contract, [which] ***cannot*** form the basis of a quantum meruit award." *Edgeworth Family Trust*, 477 P.3d 112, at *2 (emphasis added). The Edgeworths appealed this second faulty quantum meruit decision a second time. P00366-70 (Case Nos. 83258/83260).

The Court in 2022 again addressed the sufficiency of the district court's quantum meruit award to Simon:

> The Edgeworths argue that the district court erred by failing to comply with our previous order on remand. They contend that the district court failed to make specific findings reflecting that its award was limited to the work Simon completed after he was constructively discharged by the Edgeworths. ***We agree***.

EFT II, 516 P.3d 676 at *1 (emphasis added) (citing and quoting from *State Eng'r v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017)). The Court went on to say "[w]hen this court remands a case, 'the district court must proceed with the mandate and the law of the case as established on appeal.' . . . Further, a disposition from this court serves as mandatory authority in subsequent stages of the case. *See* NRAP 36(c)(2)." *Id.*

Turning to the district court's Third Amended Order, the Court specifically emphasized:

> we conclude that the district court's order suffers from the same flaw as its previous order -- the order does not make specific findings that clearly reflect that the quantum meruit award is limited to only services Simon provided post-discharge. Specifically, the district court's quantum meruit award is premised on the work Simon performed relating to the Edgeworths' settlement agreements . . . ***before*** he was discharged. Thus, while Simon's work on the settlement agreements may consist of work he did both pre- and post-discharge, the district court's order does not make clear, nor include any specific findings of fact, that demonstrate that the quantum meruit fee is limited only to Simon's post-discharge services relating to the settlements. Further, the district court ***does not make any other findings of fact regarding work Simon completed post-discharge that would otherwise support the quantum meruit fee***.

Id. (emphasis added). In vacating the district court's Third Amended Order and remanding "this matter to the district court for proceedings consistent with this order," the Court made clear as a bell what it expected the district court to do: "We ***further instruct*** the district court to make ***specific and express findings*** as to what work Simon completed ***after*** he was constructively discharged and ***limit*** its quantum meruit fee to those findings." *Id.* at *2 (emphasis added).

Before jurisdiction was returned by remittitur, the district court entered its Fourth Amended Order. P00371-96. In doing so, the district court again disregarded this Court's instruction "to make specific and express findings" as to the work Simon did post-discharge and to "limit its

quantum meruit fee to those findings." Instead, the district court slightly reworded and reorganized small portions of its previous Third Amended Order that was rejected by this Court, and added an altogether irrelevant and misleading reference to the fee of Vannah and Vannah who succeeded Simon as counsel for the Edgeworths. *Compare* P00388-93 *with* P00102-06.

For the most part, there is no substantive difference between these two treatments of quantum meruit for Simon; neither has "specific and express findings" as to what Simon did post-discharge that would entitle him to $200,000 for the 71.10 hours he and an associate billed for that period of time. That work was largely administrative work because, as Simon testified, settlement negotiations were completed before he was discharged on November 29. P00176 (settlement terms were "hammered out . . . ***before*** he was fired"); P00174-75 (placing the date of the negotiations at November 27, 2017). The Lange settlement was also fully negotiated ***at least*** by November 30, 2017 (P00156),[11] one day after Simon's discharge and signed shortly thereafter. P00010 ¶23.

[11] The record of negotiations of the Lange settlement still does not appear complete from the portions of the Edgeworth file produced thus far by Simon. P00441:18-21.

Both the Third and Fourth Amended Orders of the district court focus on the *Brunzell* factors as cheerleading points for Simon to conclude that he is entitled to $200,000 for services rendered by him and his associate for 71.10 hours. Neither, however, complies with the Court's mandate to make specific and express findings as to what Simon did to entitle him to be compensated at $2,800 per hour for doing very little and virtually nothing of substance. Nor do these Decisions and Orders meet the requirements to invoke *Brunzell* to provide a windfall to Simon. *See Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical Examiner*, 138 Nev. Adv. Op. 80, at 7, 521 P.3d 1169, 1174 (2022) ("the district court should show its work and provide 'a concise but clear explanation' of the reasoning behind its award amount." citations omitted)).

Following the latest remittitur, the district court abandoned its Fourth Amended Order to consider Simon's briefing to "adjudicate" the quantum meruit issue in accord with the mandate. Simon's briefing set out the same 71.10 hours of post-discharge work listed in his 2018 superbill that the Edgeworths described in prior briefing before the district court and this Court. He incorrectly attempted to add hours for one of the days in the pre-discharge period and sought to enlarge his billing record ***more than***

five years later, for work he says he performed and forgot to include in his 2018 superbill.[12] His efforts ignored the fact he presented testimony in 2018 that the superbill was meticulously prepared after review of the entire file, including email. P00431 and P00477:16-17.

Notably, some of the "add-ons" that Simon sponsored are email exchanges ***he withheld*** and that were not part of the file he previously turned-over.[13] The add-ons ***directly contradict*** his suggestions to the

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[12] In the second appeal, Simon argued that although he chose to end his "superbill" on January 8, 2018, the limited work he did in 2018 after that date – while the parties were already in litigation – ***could*** have been considered by the district court in in determining the amount of his award. The Edgeworths urged this Court to ignore that argument, as it was new on appeal and had not been presented to the district court. Case Nos. 43258/43260 Edgeworths' Reply at 7. Simon's effort to capitalize on the second remand to argue to the district court ***for the first time*** that his superbill should be enlarged – more than five years after he prepared it – should be rejected. The quantum meruit determination should be made only on the evidence he chose to present in his 2018 superbill.

[13] The portion of the Edgeworths' client file that Simon produced in 2020 included over 5,000 pages of email, and had gaps for periods surrounding settlement negotiations and the post-discharge period. Simon previously claimed he had produced all email. P00277; *see also* P00438:11-P00439:9. At no point in prior motion practice or in the writ proceeding before this Court to obtain the Edgeworths' complete file did Simon take the position that email was not part of his file. *See* Case No. 84159. Only ***after*** it was confirmed the email Simon produced was stripped of attachments, as the Edgeworths had said, and that unexplainable gaps existed and the Edgeworths sought to enforce the order requiring the complete file, did Simon begin claiming that email was not a part of his file. P00438. Only ***after*** the district court denied the order to show cause why Simon should not be held in contempt for not producing the complete file did he "voluntarily" produce over 280 more pages of email that he wanted in the record to support the add-ons to his quantum meruit award. P00656-57.

Edgeworths, the district court, and this Court that drafts of the settlement agreements did not exist because the agreement was entirely negotiated in person. P00568:18-24; P00606; *but see* P00438 n. 5 and P00609-35; *compare also* P00593 (in briefing before this Court mocking suggestion that he had executed agreements) *with* P00639 (email Simon produced on 12/6/2022 confirming the executed drafts were routed through Simon as he had demanded on November 30, 2017 (P00636-37); P00768 (recently admitting he destroyed the fully executed agreements). Other add-ons are for administrative work he chose to omit largely related to obtaining a good faith determination of the Lange settlement to resolve claims between Lange and Viking (not between the Edgeworths and these parties). *See e.g.*, P00419:2-17.

The district court's current Fifth Amended Decision and Order on [Simon's] Motion to Adjudicate Lien (P00771-801) largely tracks the district court's prior four orders (the second and fourth of which were entered without jurisdiction). But the Fifth Amended Order, like its predecessors, does not honor this Court's two express mandates "to make ***specific and express findings*** as to what work Simon completed after he

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This untimely-produced email confirmed his misrepresentation regarding settlement drafts. *Supra* at 4; *infra* at 24-25.

was constructively discharged and limit its quantum meruit fee to those findings." *EFT II*, 516 P.3d 676 at *1 (emphasis added). Rather than specifically setting out Simon's post-discharge work that it considered, as the Court instructed, the district court repeated much of the same analysis previously rejected by this Court. P00793-96. In part at Simon's urging (P00420; P00443:1-7), the district court's *Brunzell* analysis continued to focus on what she deemed to be an extraordinary result in obtaining the $6M Viking settlement, and accolades from other lawyers regarding Simon's ***pre-discharge*** efforts. *Id.* The district court even copied the same error made in prior orders of adding costs that the Edgeworths paid in 2018 to the 2023 judgment. P00798; *see also* P00791 (confirming no costs are owed); *see* P00064, P00107, P00394 (same error in Second, Third, and Fourth Amended Orders); P00125 (the Edgeworths' 2021 effort to correct this error).

The district court failed to consider or comment on the ministerial nature of Simon's post-discharge work. *See* P00452-56. The nature of that work was described by Simon in his 2018 superbill (P00458-72), as outlined in both the Edgeworths and Simon's briefing. P00452-56; P00409-16. That work simply did not require specialized or extraordinary skill. Moreover, the district court completely disregarded the fact that

Simon had withheld information for five years and affirmatively lied about it to the Edgeworths during that time, as well as later to Judge Jones and this Court. In assessing the fair-value of Simon's post-discharge services, the district court also failed to consider that Simon is the appropriate person to bear the risk of indeterminacy since he failed to memorialize the terms of his engagement. *See* Restatement (Third) of the Law Governing Lawyers § 39 cmt. b (2000) ("Where there has been no prior contract as to fee, ***the lawyer*** presumably did not adequately explain the cost of pursuing the claim and is thus ***the proper party to bear the risk of indeterminacy***. Hence, the fair-value standard assesses additional considerations and starts with an assumption that the lawyer is entitled to recovery only at the lower range of what otherwise would be a reasonable negotiated fee." (emphasis added)).

Given the history of this case and the district court's ***five*** previous refusals to provide a comprehensible legal basis under *Brunzell* for its $200,000 post-discharge quantum meruit award to Simon, there is no reason to believe the district court will do differently if this matter is successfully appealed a third time and remanded "for proceedings consistent" with the Court's instructions. That will not provide the Edgeworths an adequate and speedy remedy at law.

B. The District Court's Refusal to Follow the Mandate Warrants Extraordinary Relief.

Although this Court has not addressed a writ of mandamus as an appropriate response to a district court's repeated failure to carry out the Court's mandate in an attorney fee dispute case, other appellate courts have issued the writ to direct a lower court to do so. For example, the Court of Appeals *In re Continental Illinois Securities Litigation,* 985 F.2d 867, 869 (7th Cir. 1993), considered a district court's failure to set attorneys' fees as the Court of Appeals had directed it to do in a prior appeal and said: "[o]ne of the less controversial functions of mandamus is to assure that a lower court complies with the spirit as well as the letter of the mandate issued to that court by a higher court." (Internal citations omitted). The Seventh Circuit Court concluded, as this Court has, "[j]udicial mandates must be obeyed, and litigation must have an end. In order to assure compliance with our mandate and a speedy end to this satellite litigation over attorneys' fees we vacate the judge's order . . . and direct him to issue" an order resolving the fee dispute as he has been directed to do in the prior appeal but did not. *Id.* at 869.

Several years later the Seventh Circuit had another fee dispute before it after having remanded the case in a prior appeal to calculate

attorney's fees at an "appropriate rate from within [a] range" which the Circuit Court specified, and that the district court failed to do. The Court held that "such flouting of our instructions leads us to vacate the district court's judgment and set the fees ourselves, from a range of fees that the appellate court had specified in previously remanding the case." *Barrow v. Falck,* 11 F.3d 729, 730 (7th Cir. 1994). *In re Continental Securities Litigation, supra,* was cited for the proposition that "failure to carry out appellate instructions concerning the calculation of attorneys' fees leads us to a writ petition." *Id.*

This Court should do likewise in this case: the district court has twice declined to obey the Court's specific mandate regarding calculation and explanation of Simon's quantum meruit fee. The rate at which he billed – which Simon himself set and was paid – prior to his discharge is ***known*** and was the basis for the district court's adjudication of the value of his lien for attorney fees pre-discharge. Simon had a full opportunity in 2018 to submit a "superbill" specifying the work he claimed post-discharge which the district court accepted for all other ***unbilled*** time.[14] P00670 (stating his

[14] Simon submitted his "superbill" in January 2018, somewhat close in time to the work performed post-discharge. His recent effort to expand that billing over five years later should be rejected for the same reason the

office was reviewing the file . . . to provide a comprehensive hourly bill). The trial court's failure to follow this Court's mandates justifies the Court applying the fee Simon set to the hours he claims to have worked post-discharge. A writ of mandamus should be issued to the district court to bring this fee dispute and this lien litigation to a close after nearly five years by entry of an order that Simon is entitled to no more than $33,811.25 in quantum meruit for his (and his associate's) post-discharge services.

C. Alternatively, the Case Should be Remanded for Decision by a New Judge.

If the Court elects not to direct the entry of a reasonable quantum meruit award based on the record facts, the case should be remanded for a decision by a different district court judge. *Wickliffe v. Sunrise*, 104 Nev. 777, 783, 766 P.2d 1322, 1327 (1988) (remanding case to different district court judge after the district court had twice failed to follow the mandate). It is fundamentally unfair to require a litigant to continue invoking this Court's authority because a district court on remand is unable or unwilling to follow this Court's unambiguous instructions and has turned a blind eye to Simon's misrepresentations to his client and the courts.

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district court in 2018 rejected amending his pre-discharge bills that had already been invoiced and paid. *See* P00019:3-19.

Simon had the opportunity to memorialize his work, admittedly after an extensive review of his complete file. Although the district court has had multiple opportunities to specify what work it considered in valuing Simon's post-discharge services at $200,000 and how that amount is reasonable under *Brunzell, it* has not done so.

The 71.10 hours Simon listed as his post-discharge work can be reviewed by this Court (there is no question of fact to resolve or facts to find), or another district court judge, to conclude that Simon's post-discharge work is not reasonably worth more than $33,811.25 under *Brunzell*. Remanding would, however, occasion unnecessary expense and impose an additional undue burden on a new judge to review the record to value Simon's post-discharge work.

VI. CONCLUSION

Petitioners respectfully ask the Court to grant this Petition and issue a writ of mandamus directing the district court to vacate its Fifth Amended Order and directing entry of an order awarding Simon not more than $33,811.25 in fees for his and his associate's post-discharge work, which is the most the 2018 timekeeping records Simon provided support. Alternatively, we reluctantly say, the Court should vacate the Fifth Amended Order and remand with instruction to reassign this case to

another district court judge for consideration of an appropriate quantum meruit value on the record Simon submitted in 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this **PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Palatino 14 point font and contains 6,971 words.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

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VERIFICATION

1. I, Steve Morris, declare:

2. I am one of the attorneys, one of the Petitioners herein;

3. I verify that I have read the foregoing **PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**; that the same is true my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of Nevada, that the foregoing is true and correct.

/s/ STEVE MORRIS
Steve Morris

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT** to be served via the Court's e-flex system and by U.S. Mail:

Judge Tierra Jones
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

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DATED this 27th day of April, 2023.

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