IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE TIERRA JONES, DISTRICT JUDGE, DEPT. 10,

Respondents,

DANIEL S. SIMON; AND THE LAW OFFICE OF DANIEL S. SIMON, A PROFESSIONAL CORPORATION,

Real Parties in Interest.

Supreme Court Case No. 86467
(District Court A-16-738444-C)

ANSWER OF RESPONDENTS TO 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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NRAP 26.1 Disclosure

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

No parent or holding corporations are involved.

Peter S. Christiansen, Esq., Nevada Bar No. 5254, of Christiansen Trial Attorneys has also appeared for the Petitioner.

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I. Introduction/Statement of the Case

This case is about a dispute over a district court's adjudication of an attorney's charging lien.[1] Simon gave the Edgeworths exceptional representation which led to a phenomenal six-million-dollar recovery on the Edgeworths' half million-dollar property damage claim, from which they have already received *well over five million dollars*.

Simon worked for his former friends without a fee agreement and advanced costs on their behalf. Simon understood the economic difficulties with the property damage claim and sent only four incomplete bills to help demonstrate damages against Lange. Through the litigation and on appeal Simon has consistently taken the position that a fair and reasonable fee would be due at the end of the case, based on the result.

Simon was too effective for his own good. As Simon was moving Viking towards a six-million-dollar settlement and positioning Lange for an additional significant recovery for his clients, Simon provided a proposed fee agreement per Brian's request. Following, the Edgeworths ended communication with Simon, hired replacement counsel and then argued Simon was due nothing. Soon after - despite Simon's offer to reach a

collaborative resolution – the Edgeworths frivolously sued Simon for conversion to "punish" Simon, which led to this protracted lien dispute.

The Edgeworths statements under oath in the lien adjudication were so plainly engineered toward manifesting their claim, that the Edgeworths acknowledged in the first appeal that the district court did not find them to be credible. (Appellants' opening brief, filed August 8, 2019, at pp. 11, 12, 15, 18 & 28.) The Edgeworths are also alleged to have defamed Simon *per se* by making out-of-court statements to mutual friends and legal peers that Simon intended to steal the Viking settlement and/or that Simon was an extortionist.

The decision to file a frivolous lawsuit against Simon to punish Simon and the decision to defame Simon led to a separate suit. (The petition refers to the defamation case as a SLAPP suit even though the district court found otherwise.) The defamation case is not germane to the lien adjudication and will not be raised again.

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[1] Facts are presented in a summary and familiar form as this case is well known to the court. Simon's 1.15.2020 opening and answering briefs present facts in depth.

In the matter *sub judice*, the district court's attorney charging lien adjudication order is challenged by a petition for extraordinary relief, even though the Edgeworths filed an appeal on May 24, 2023 (86676). The petition disparages the district court and Simon, re-argues long settled facts, and seeks to hold Simon to an artificially low fee contrary to the undisputed facts and the record below. Simon respectfully submits that no relief is due of any kind. The Edgeworths did not carry the burden to establish the need for extraordinary relief, nor did the district court ignore this court. Simon requests that the petition be denied; or if this court chooses to entertain the petition, that the district court's adjudication order be affirmed, thus ending this lien dispute *in toto*.

II. Statement of the Issue

1. Did the district court act within its discretion and follow the instructions of this court on remand to explain the basis of the quantum meruit attorney fee award to Simon when the district court added and re-wrote significant portions of its lien adjudication order to further explain the foundation for the fee and when the basis for the fee is apparent from the record?

III. Standard of Review

After remand and appeal, the question of whether a district court adhered to a clearly expressed rule of law or principle is reviewed de novo. *State Engineer v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017). However, on remand the law of the case doctrine does not apply to "matters left open by the appellate court." *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003).

Findings of fact are reviewed for an abuse of discretion. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-661 (2004). A finding must be upheld if it is based on substantial evidence or is not clearly erroneous. *Gibellini v. Klindt*, 110 Nev. 201, 1204, 885 P.2d 540, 542 (1994). Substantial evidence is evidence such that "a reasonable mind might accept as adequate to support a conclusion." *State, Emp. Security Dep't v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

When sitting as a fact finder, it is the job of the district court to choose between conflicting evidence. *Savini Const., v. A&K Earthmovers*, 88 Nev. 5, 492 P2d 125 (1972). It is also the district court's job to assess credibility. *Beverly Enterprises v. Globe Land, Corp*., 90 Nev. 363, 526 P.2d 1179 (1974). An appellate court does not reassess conflicting evidence or

credibility. *Sierra Clark Ranch v. J.I. Case*, 97 Nev. 457, 634 P.2d 458 (1981).

Adjudication of an attorney lien is reviewed for an abuse of discretion. *Bero-Wachs v. Law Office of Logar & Pulver*, 123 Nev. 71, 80 n.21, 157 P.3d 704, 709 n.21 (2007). A district court decision must be upheld unless it is based on a clearly erroneous factual finding, *NOLM*, 120 Nev. at 739, 100 P.3d at 660-61, or ignores controlling law. *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

When there is no express contract, an attorney is due a reasonable fee under the Nevada attorney lien statute, NRS 18.015(2). A court has wide discretion on the method of calculation of the attorney's fee. *Albios v. Horizon Communities, Inc.,* 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006). Whatever the calculation, the amount of the attorney's fee must be reasonable under the *Brunzell* factors. *Ibid.*

An appellate court may imply findings that are supported by evidence in the absence of an explicit finding. *Trident Construction Corp., v. West Electric Inc*., 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989). An appellate court may affirm a decision on any ground found in the record. *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987). The ruling of a district court should be affirmed if the court reached the correct result even

if for the wrong reason. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.,* 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (it is proper to affirm the district court if it reaches the correct result, even if for the wrong reason).

IV. Factual Summary

Simon was close family friends with Brian and Angela Edgeworth. (V P00805.) In April of 2016, a speculation house being built by Edgeworth flooded, allegedly due to a defective Viking fire sprinkler that was installed by Lange Plumbing. (V P00805.) The flood caused about $500,000 in damage. (V P00805-06.)

In May of 2016 Brian and Angela turned to their friend Simon. Simon agreed to help. The friends did not discuss fees. (V P00805.)

On June 14, 2016, a complaint was filed against Viking and Lange. (V P00805-06.) Edgeworth claimed an express oral fee agreement was formed with Simon in June of 2016. (V P00809.) The district court found against the claim. (V P00814-15.)

The Viking case was complex, with many parties, claims and issues. Simon aggressively litigated the complex case for his friends. (I P00022-23.)

On August 9, 2017, Simon and Brian Edgeworth discussed a formal fee arrangement, but did not reach an agreement. (V P00814-16.) On

August 22, 2017, Brian admitted in an email to Simon that they did not have an express agreement and discussed options for a fee structure. (V P00814-16.) The district court found that an express oral fee agreement was never formed. (V P00814-16.)

On November 29, 2017, Edgeworth hired Robert Vannah and John Greene and constructively discharged Simon. (V P00816-19.)

On November 30, 2017, Vannah notified Simon of his hire and instructed Simon to settle the Lange claim for $25,000.00. (*E.g*., V P00808, 818 & 826.) Simon served a charging lien that day. (V P00808.)

On December 1, 2017, the Edgeworths signed Viking settlement documents. (V P00807.) Viking paid $6,000,000.00 to settle the case. (V P00827.)

On December 26, 2017, the Edgeworths accused Simon of intent to steal the Viking settlement money. (V P00818.)

On January 4, 2018, the Edgeworths filed a conversion suit against Simon. (V P00818.) (The case was dismissed by the district court and fees were assessed against the Edgeworths. The dismissal and sanction were upheld on appeal, although the case was remanded for further findings on the amount of the sanction. *Edgeworth Family Trust v. Simon*, 2020 WL 7828800, 477 P.3d 1129 (Nev. 2020)(unpublished).)

On January 9, 2018, Vannah sent Simon an email asserting that withdrawal from representation of the Edgeworths would not be in Simon's best interest, even though Simon had been sued by the Edgeworths. (V P00818.)

During the Viking/Lange litigation, Simon submitted only four hourly bills and advanced costs. (V P00820-21.) The Edgeworths paid the bills and repaid costs, at least until the lien dispute arose. (V P00820-21.) Simon indicated the bills were sent to demonstrate damages under the Lange contract. (V P00820-21.) The bills were sent both before and after Brian admitted there was no express fee agreement in the email of August 22, 2017. (V P00820-21.)

The district court found against the Edgeworths *post hoc* claim of an express oral contract. (V P00814-16.) However, the district court decided that the four bills were sufficient to find an implied contract existed with an hourly payment term. (V P00814-16.) The district court then found that the Edgeworths ended the implied contract by discharging Simon. (V P00816-19.)

Importantly, the district court found that Simon was "an exceptional advocate for the Edgeworths". (I P00025.) The district court found that Simon's lawyering "was extremely significant and the work yielded a

phenomenal result for the Edgeworths." (I P00025.) The district court found that Simon continued to assist the Edgeworths even after discharge (which was also after Simon was frivolously sued for conversion). (V P00826.)

V. The Petition did not demonstrate that extraordinary relief is warranted.

This court has original jurisdiction to grant extraordinary relief and issue writs of mandamus. *See*, Nev. Const. Art. 6, §4. A writ of mandamus can be used to compel the performance of an action duty bound by an office or to constrain manifest abuse or arbitrary and capricious action. *See* NRS 34.160; *Merits Incentives LLC v. Eighth Judicial Dist. Ct*., 127 Nev. 689, 694, 262 P.3d 720, 723 (2011). Extraordinary relief by way of a writ of mandamus is proper when there is no "plain, speedy, and adequate remedy in law". NRS 34.170; *State of Nevada v. Second Judicial Dist. Ct.* (*Ducharm*), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002). Generally, an available appeal precludes extraordinary relief. *Pan v. Eighth Judicial Dist. Ct*., 120 Nev. 222, 224, and fn1, 88 P.3d 840, 841, and fn1 (2004). A petitioner seeking extraordinary relief has the burden to demonstrate that

there is no plain, speedy, and adequate remedy, to warrant extraordinary relief.[2] (*Ibid.*)

The petition did not demonstrate that extraordinary relief is appropriate or warranted. Extraordinary relief is not needed or warranted because there is an available remedy at law, an appeal. *Pan*, 120 Nev. at 224 and fn1, 88 P.3d at 841 and fn1. An appeal has been filed, and a briefing schedule is in place. Similar relief is sought via the appeal and this petition. As such, the petition serves only to needlessly expand litigation and "overburden limited judicial resources" (NRS 7.085(2)), which is the exact opposite of the first issue presented in the petition. (Pet., at 2.) Rather than saving resources, the Edgeworths' decision to double track their bid for relief has needlessly *increased* the expenditure of time, money, and limited judicial resources.

The Edgeworths did not demonstrate grounds for extraordinary relief because this case does not present an opportunity to "promote sound judicial economy and administration". Quite the opposite, the petition

[2] Edgeworths do not assert that "an important issue of law needs clarification" to warrant this court's exercise of original jurisdiction. *See, Merits Incentives, LLC v. Eighth Judicial Dist. Ct.,* 127 Nev. 689, 694, 262 P.3d 720, 723 (2011*), quoting, Mineral County v. State Dep't of Conserv*., 117 Nev. 235, 243, 20 P.3d 800, 805 (2001).

increases the burden on this court and the parties. *Archon Corp., v. Eighth Judicial Dist. Ct*., 133 Nev. 816, 825, 407 P.3d 702, 710 (2017)(petition denied because "it would not promote sound judicial economy to grant extraordinary writ relief at this point in the proceeding".)

In addition, as shown below, extraordinary relief is not warranted because the district court followed the instructions of this court. The Edgeworths are not due relief of any kind, extraordinary or otherwise.

VI. The district court followed this court's instructions.

The district court followed the instructions of this court. The petition's portrayal of the fifth amended decision and order on motion to adjudicate lien by the district court filed March 28, 2023 (fifth order) is not accurate.

The petition's first issue presented presupposes that the fifth order did not follow this court's mandate.

> 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? (Pet., at 2) (Emphasis in original.)

As shown below, the presupposition is untrue. The district court drafted the fifth order to comply with this court's instructions.

The petition's second issue presented relies on a false premise.

> 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? (Pet., at 2) (Emphasis in original).

This court did not limit the quantum meruit analysis to 71 hours of post discharge work. The claim is not true.

The second issue is defeated by this court's September 16, 2022, order vacating judgment and remanding, which stated:

> Insofar as the Edgeworths argue that we should award Simon $34,000 in quantum meruit fees based on Simon's billing statement that purportedly shows that he completed 71 hours of post-discharge work, ***we decline to do so***. (III P00366-70 at 368.) (Emphasis added.)

This court recognized that the 71-hour limitation was questionable and ***did not*** direct the district court to "justify a quantum meruit award to Simon of $200,000.00 for 71.10 hours of post-discharge administrative services". (Pet., at 2; *compare*, III P00366-70 at 368.) Extraordinary relief is not warranted, and the district court did not err as claimed because the petition is grounded on a false premise.

This court held that the third amended decision and order on motion to adjudicate lien (third order) was not adequately clear regarding the work Simon performed on settlement agreements post discharge, and that the

third order lacked detail on post discharge work "that would otherwise support the quantum meruit award" of $200,000.00. (III P00366-70.) As demonstrated below, the district court sufficiently set forth the basis for the quantum meruit award of $200,000.00 and the fifth order may be affirmed.

Further, this court already affirmed the decision of the district court to grant post discharge fees under quantum meruit and did not limit the district court to an hourly fee on the first appeal in *Edgeworth Family Trust*, 2020 WL 7828800, at *2. Thus, the framing of the issues in the petition is without basis and no relief is due.

A. Simon's fee is not limited to 71 hours of post discharge work.

The keystone of the Edgeworth petition is that this court limited Simon's fee to 71 hours of post discharge work. (*E.g*., Pet., at 2.) The same claim was made to the district court:

> [Mr. Morris] And I think that's one of the -- one of the things the Supreme Court indicated when it sent this back, for you to say, within that 71.10 hours, what is it that Simon did that's consistent with Brunzell, that would produce a recovery of $200,000 in quantum meruit. (I AA178 at 18:14-18.)
> …
>
> MR. MORRIS: No, I think I've -- I -- I think I've said just -- I -- I just want to reemphasize, irrespective of Mr. Christensen's misdescription of what the Supreme Court was looking for, the Supreme Court was not looking for new information, it was looking for you to say, in your

> order, what it is that you considered, that Simon did in the 71.10 hours that are before you, and were taken from his Super Bill, 2 what it is, consistent with Brunzell, that supports, or would 3 support a $200,000 quantum meruit award. (I AA180-181 at 20:20-21:3.)

This court explicitly ***did not*** restrict Simon's post discharge recovery to 71 hours of work ending on January 8, 2018. Instead, the issue of Simon's fee was left open on remand.

> Insofar as the Edgeworths argue that we should award Simon $34,000 in quantum meruit fees based on Simon's billing statement that purportedly shows that he completed 71 hours of post-discharge work, ***we decline to do so***. (III P00366-70 at 368.)(Emphasis added.)

This court explained that it declined to limit Simon's recovery because the district court had found the billing may not be accurate *and* because this court declined to make factual findings on appeal. (III P00366-70, at 368.) The petition is based on a clearly false premise and therefore must fail.

There are other significant problems with the Edgeworths' position. The 71 hours of post discharge work is drawn from the "superbill". (*E.g.*, Pet., at 2.) The last entry on the superbill is dated January 8, 2018. (I AA030.)[3] A fatal flaw in the assertion that Simon is limited to the billing is that it is undisputed that Simon continued to work after the last date of the bill. (*E.g.*, I AA035-041, I AA081-AA091 and III P00425-427.)

The district court confronted the Edgeworths with the fact that Simon clearly worked after the last billing as demonstrated by later appearances by Simon before the court.

> THE COURT: -- Mr. Simon did make additional court appearances in front of this Court. That is part of the court record. There's transcripts that he was here, and that he was making appearances. And as a lawyer, you guys get paid to come in and make appearances for your client. So are you arguing that that wasn't additional work that he was doing?
>
> MR. MORRIS: I was -- that -- I just -- I just told you that's some work that he was doing. That is some work, that it was done and completed by November the 30 – by November 30th, which is evidenced in the e-mails you have.
>
> It didn't continue on into December. It didn't continue on --
>
> THE COURT: He made appearances --
>
> MR. MORRIS: -- into --
>
> THE COURT: -- after November 30th. He made appearances on this case --
>
> MR. MORRIS: Correct.

[3] The time sheets end in early January because they were attached as an exhibit to Simon's first motion to adjudicate the charging lien which was filed later in the month.

> THE COURT: -- *after November 30th. So he did not conclude his work on November 30th. This Court can take judicial notice of Mr. Simon standing in front of me, and there's transcripts, and there's Minutes that reflect that he was here on this case.*
>
> MR. MORRIS: *I'm not arguing with that.* (I AA176-177 at 16:24-17:22.) (Emphasis added.)

The Edgeworths seemingly agreed with the district court that Simon should be paid for the later court appearances (and impliedly the work associated with the appearances), but then inexplicably returned to the refrain that Simon should only be paid for the 71 hours of work accumulated before the later court appearances. (*E.g*., I AA178-179 at 18-19.)

The attempt to limit Simon's compensation to work performed by January 8 is deceptive and wrong. The work performed by Simon after January 8 is obviously compensable and supports the district court's quantum meruit fee award.

B. The fifth order sufficiently describes the quantum meruit fee award.

The petition seeks extraordinary relief by claiming that the district court failed to adequately describe the quantum meruit award. The petition uses exaggeration and hyperbole when it is asserted that the district court *refused five times* to follow this court's instructions. (*E.g*., Pet., at 27.) The petition contains only conclusory claims to support the narrative and does

not present a meaningful analysis of the district court's fifth order. (*E.g*., Pet., at 14.) There is no evidence that the district court refused to do its duty.

This case has been returned to the district court on two prior occasions, not five. The district court amended its adjudication order following each remand, although this court found the first amendment to be insufficient. The petition begs the question by claiming that the district court's second attempt is insufficient as well and does not meaningfully address the content of the fifth order. Instead, the fifth order is glossed over in conclusory fashion. (Pet., at 14.)

The fifth order sufficiently describes the quantum meruit award. The district court added forty-one (41) factual findings which address procedure and explain how the second and fourth adjudication orders were prematurely issued and should not be considered, and therefore should not be included in the "refusal" count. (V P00810-813.)

The district court clearly identified that the fifth order addressed only post discharge work.

> The court finds that the Law Office of Daniel Simon is owed attorney's fees under quantum meruit from November 29, 2017, after the constructive discharge, to the conclusion of the Law Office's work on this case. (V P00825:11-13.)

> However, in this case the Court notes that the majority of the work in this case was complete before the date of the constructive discharge, and the Court is applying the Brunzell factors for the period commencing after the constructive discharge. (V P00825:25-826:1.)

The fifth order clearly stated that it addressed post discharge work only, and that the court understood that the bulk of the work was done prior to discharge[4], contrary to the Edgeworths' accusation. (*E.g.*, Pet., at 10-11.)

The district court added factual findings regarding work done in relation to the Lange and Viking settlements to the body of the quantum meruit section of the fifth order.

> In considering the Brunzell factors, the Court looks at all of the evidence presented in the case, the testimony at the evidentiary hearing, and the litigation involved in the case. In this case, the evidence presented indicates that, after the constructive discharge, Simon received consent from the Edgeworths, through the Vannah Law Firm, to settle their claims against Lange Plumbing LLC for $25,000.00. Simon continued to work with the attorneys for Lange Plumbing LLC to settle the claims for more than $25,000, and ultimately ended up settling the claims for $100,000. The record indicates that on December 5, 2017, Simon attempted an email to contact Brian Edgeworth regarding settling of the Lange case, as he was continuing to have discussions with Lange's counsel, regarding settling of the claims. However, Simon was told to contact Vannah's office as the Edgeworths were refusing his attempts to communicate. He then, reached out to Vannah's office and continued to work with Vannah's office to settle the Viking and the Lange claims. On December 7, 2017, Sion sent a letter advising Mr. Vannah regarding the Lange claim. Simon had advised the Edgeworths on settling of the Lange claim, but they ignored his advice and followed the advice of the Vannah & Vannah. Upon settlement of all the claims, the

[4] The quoted language was carried over from the third order.

> Edgeworths made the unusual request to open a new trust account with Mr. Vannah as the signer to deposit the Viking settlement proceeds. Mr. Simon complied with the request. Further, there were continued representations from the Edgeworths and the Vannah Law Firm that Simon had not been terminated from representation of the Edgeworths, and no motion to withdraw was filed in this case. (V P00826:2-19, the language after "In this case" is new.)

Earlier this court found that the description of Simon's post discharge work regarding the Lange settlement was not sufficient. In response, the district court added the above facts regarding Simon's post discharge work on the Lange settlement. The petition did not address the added language.

The petition also did not address the substantial re-write of the "The Character of the Work to be Done" section of the fifth order. (*Compare*, I P00103:15-24 & V P000827:3-11.)

> *2. <u>The Character of the Work to be Done</u>*
>
> The character of the work done in this case is complex. This case was a very complex products liability case, from the beginning. After the constructive discharge of Simon, the complications in the case continued. The continued aggressive representation of Mr. Simon, in prosecuting the case was a substantial factor in achieving the exceptional results. Even after the constructive termination, Simon continued to work on the case. At one point, Simon said that he was not going to abandon the case, and he didn't abandon the case. The lack of communication with the Edgeworths made continuation of the case difficult, but Simon continued to work on the case and ended up reaching a resolution beneficial to the Edgeworths. (V P000827:3-11.)

The district court found that Simon still faced a complicated matter post discharge. The district court did not refuse to comply with the instruction on

remand. Quite the opposite, the district court amended its order and found that rather than administrative tasks, the case continued to be complicated.

Former Edgeworth attorney Vannah seemingly agreed that the case continued to be complicated after Simon's discharge. For example, while Vannah transmitted the ridiculous accusation that Simon intended to steal the Viking settlement, Vannah argued that Simon's withdrawal would require Vannah to significantly bill to be brought up to speed. (V P00818:19-27 & Day 1 31-32 "And I don't want to call it a veiled threat. I just said look, if you withdraw from the case, and I've got to spend 50, 60 hours bringing it up to speed …") Vannah expressed the same theme and ignorance of settlement status before the district court at the hearing on February 20, 2018. (*See, e.g*., I AA083 at 3:15-25 ("MR. VANNAH: *If you take out the form and content, I don't know anything about the case, and I want -- I don't know anything about the case -- I mean, we're not involved in a case. You understand that, Teddy?*") (emphasis added).) In fact, the Edgeworths valued Simon's work so highly that as late as 2019 the Edgeworths argued to this court that Simon was still their attorney. (Appellants' Opening Brief filed 8.8.2019 at 25-26.)

The district court kept the first sentence of "The Work Actually Performed" section but changed the remainder in the fifth order.

3. The Work Actually Performed

> Mr. Simon was aggressive in litigating this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the settlement of the Viking and Lange claims, for a substantial sum, in the instant case. The Lange claims were settled for four times the original offer, because Simon continued to work on the case. He continued to make efforts to communicate with the Edgeworths and even followed their requests to communicate with Vannah's office. He also agreed to their request of opening a trust account, though in an unusual fashion. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case, and a substantial result for the Edgeworths. (V P00827:13-21; *compare*, I P00103:25-104:6.)

Again, the district court specifically found that Simon's efforts increased the amount of the Lange settlement and added that the Edgeworths made Simon's work more complicated by adding Vannah to the mix.

In "The Result Obtained" section the district court repeats the improvement in the Lange settlement was due to Simon's work. (V P00827:25-828:03.) Any remaining vagueness in this section regarding when the work was performed by Simon is cured by the additions to the fifth order listed above. The "Result Obtained" section also re-affirmed that the district court only addressed post discharge work. (V P00829:22-24.)

At the end of "The Result Obtained" section, the district court added clarification that it was not holding Simon to the implied contract hourly fee

and added that the court also considered that Vannah and Greene were hired to do the same work as Simon at $925.00 an hour.

> The record is clear that the efforts exerted by the Law Office of Daniel Simon and Mr. Simon himself were continuing, even after the constructive discharge. Though the previous agreement between Simon and the Edgeworths was for $550 per hour, the Court must take into consideration that the Edgeworths' fee agreement with Vannah & Vannah was for $925 per hour.
>
> In considering the reasonable value of these services, under quantum meruit, the Court is considering the previous $550 per hour fee from the implied fee agreement, the fee for the Vannah & Vannah Law Firm, the Brunzell factors, and additional work performed after the constructive discharge. As such, the COURT FINDS that the Law Office of Daniel Simon is entitled to a reasonable fee in the amount of $200,000, from November 29, 2017 to the conclusion of this case. (V P00830:4-12.)

Vannah represented to the district court that continued work by Simon saved the Edgeworths from paying Vannah and Greene to get up to speed, and thus saved the Edgeworths from "50, 60" hours at $925 an hour – a significant $50,000+ benefit. *See*, *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 664 F.3d 282 (9th. Cir. 2011)(the court considered fee savings as a positive factor in reaching a quantum meruit award). Thus, the district court complied with this court's remand, and provided additional explanation for the quantum meruit award.

The petition repeatedly challenged the findings of the district court regarding Simon's work to increase the Lange settlement amount.

However, the petition does not address the basis of the district court's finding. (V P00827 (court found increase in Lange offer); *e.g.*, I AA124-125 (Vannah established Lange increase occurred November 30-after discharge), & I AA126-127 (22k offset applied to 25k offer as well).) Thus, the petition does not demonstrate that the district court abused its discretion in finding that Simon added to the Lange settlement post discharge. Further, Simon removed confidentiality and non-disparagement clauses (*e.g.*, III P00427), and the offset highlighted by the petition also benefited the Edgeworths by resolving the Lange claim for money due.

The petition established there was no abuse of discretion. Simon was discharged on November 29, 2017. (V P00816-819, & 819:13-14, "The Court finds that Danny Simon was constructively discharged by the Edgeworths on November 29, 2017".) The Edgeworths conceded that the Lange settlement was completed "at least by November 30, 2017, one day after Simon's discharge". (Pet., at 22.) (Citation and emphasis omitted.) The same concession was made during oral argument.

THE COURT: -- Mr. Morris? Let me --

MR. MORRIS: Yes?

THE COURT: -- ask you a question.

> When the Lange -- let's talk about the Lange settlement. So, for instance, they're -- Mr. Simon is saying the original -- originally the Langes were going to provide $25,000. And it is Mr. Simon's work that got the Langes to agree to $100,000. So do you disagree that he was continuing to work at that time?
>
> MR. MORRIS: I don't disagree that he was -- he --he was in conversations at that time.
>
> THE COURT: But --
>
> MR. MORRIS: But I don't -- but I don't agree, and I don't think that you should find the fact that in -- point of fact, that additional $75,000 comes out to be much less, because there's an offset involved here. But in any event, that doesn't -- *and that increase was negotiated by November 30th.*
>
> THE COURT: Right. (I AA174-175 at 14:20-15:13.) (Emphasis added.)

Thus, all agree that the district court did not err when the court concluded that Simon continued to negotiate with Lange and obtained a higher settlement amount post discharge. Accordingly, the petition should not attack the district court for including the increase in the Lange offer as a basis for the quantum meruit award.

VII. The record supports the quantum meruit award.

The district court's fifth order does not explicitly list every single act taken by Simon to assist his former friends following discharge. However, there is no authority which requires a district court to provide an exhaustive listing of every act taken by an attorney to support a quantum meruit award

of fees, as such a requirement would not promote judicial economy. That said, the record is replete with evidence of Simon's post discharge work, including work performed after January 8, 2018, the last billing date.

To the extent that the fifth order may be deficient because it did not sufficiently detail acts taken by Simon post discharge, this court may imply such findings that are supported by the evidence and the record. *Trident Construction Corp.,* 105 Nev. at 426, 776 P.2d at 1241; *Rosenstein*, 103 Nev. at 575, 747 P.2d at 233 (an appellate court may affirm a district court decision on any ground found in the record).

For example, the district court listed Simon's continuing work on the file as a basis for the quantum meruit award. (V P00827 ("Simon continued to work on the case").) One aspect of the continuing work was Simon's successful efforts to remove confidentiality and non-disparagement from the Viking settlement agreement. Granted there was some confusion during Simon's direct examination over the date of the removal, but the confusion was removed by Vannah's cross examination. The removal occurred on November 30, post discharge. (*E.g*., I AA109-123.) Removal of a confidentiality clause has value not just because a confidentiality clause can create future liability, but also because such clauses can have tax consequences. *See, e.g., Amos v. Commissioner of Internal Revenue*,

2003 WL 22839795 (U.S.T.C. 2003)(40% of a settlement paid by Dennis Rodman following a kicking incident during an NBA game pursuant to a settlement agreement which contained a confidentiality clause found to be taxable as a payment for confidentiality).

The record in this case contains ample evidence of Simon's post discharge work, including work after January 8, 2018. (I AA035-103 & III P00425-427.) For example, on January 9, 2018, Vannah stated that Simon was expected to continue working for Edgeworth and would save a substantial amount to avoid bringing Vannah up to speed. (*E.g*., V P00818 19-27 & I AA105-106.)

The February 6, 2018, hearing transcript demonstrates that Simon was still in the forefront of finalizing the settlements. The defense attorneys and the district court turned to Simon to help finish the case. (I AA040 at 6:9-18 & at 6:15 "[Pancoast] Mr. Simon's facilitating wrapping this up".) Vannah confirmed that Edgeworth expected Simon to continue to work for them. (I AA038 at 4:9-11 [Vannah] "we want Mr. Simon to finish it off and it's almost done".) In a consistent theme, the Edgeworths wanted Simon to continue to work for them after January 8 and now don't want to pay Simon for the work.

At a status check on February 20, 2018, the district court turned first to Simon for an update. (I AA082 at 2:4-25.) The record clearly establishes that Simon was performing work for the Edgeworths. (I AA081-091.) In fact, Vannah deferred to Simon reminded everyone that "we're not involved". (I AA083 at 3:22-25.)

After the second remand, Simon submitted a declaration regarding work done by his office on November 29 & 30 and after January 8, 2018, not including court appearances. (III P00425-427.) The Edgeworths attacked the propriety of discussion of anything beyond 71 hours, but they did not rebut the contents of the declaration. (IV P00430-446, in its entirety.) Nor could the Edgeworths challenge the declaration because the declaration related to the basis for the quantum meruit award of fees, which was left open by this court. (II P00366-70.) *Wheeler Springs Plaza,* 119 Nev. at 266, 71 P.3d at 1262 (the law of the case doctrine does not apply to "matters left open by the appellate court").

VIII. The Petition does not Track the Case.

The claims made in the petition do not track the findings of the district court and often lack an appropriate citation. The Edgeworths' promotion of alternate facts is improper. The district court found the facts and the first appeal was the time to challenge factual findings. The Edgeworths may

argue in reply that they have new evidence. Simon disagrees, but even if so, the proper course is first to file an appropriate motion before the district court. Promoting alternate facts in a petition to this court is not proper.

The petition at page 3-4 claims without citation that the Viking case settled on November 15, 2017. This is in direct contradiction to finding #13 of the district court. (V P00807 at #13 ("However, the [Viking] claims were not settled until on or about December 1, 2017").)

When citations are provided, liberties are taken. For example, on page 4 Simon is accused of lying, a fact not found by the district court. The petition claims Simon lied about having received a proposed Viking settlement agreement when Simon emailed the clients at 4:58 p.m. on November 27 and said that he had not seen the draft. A citation is made to P00611, which is a November 27 email from Viking with a draft release sent to the general email box of Simon's law office at 4:48 p.m. *However, also plainly displayed on P00611 is the fact that the Viking email and draft release was not forwarded to Simon by office staff until early the next morning. The citation establishes that Simon did not lie.*

In the same vein, Simon is accused of lying when he allegedly claimed that settlement negotiations were done only in person. (Pet., at 4 at fn 2.) However, the citation is to a question and answer that dealt with

Simon's in-person negotiation with Joel Henriod (which took place on November 30, 2017, the day after discharge). The alleged negotiation by Simon which took place on November 29 relates to placing Simon's name on the check, a common practice. Vannah clarified the timing of the Viking settlement with Simon at the evidentiary hearing. As elucidated by Vannah, the negotiation of terms with Viking – such as removal of the confidentiality provision – occurred in person on November 30, 2017. (I AA109-120.) Further, Vannah examined Simon on a draft Viking release which Simon had emailed to the clients, establishing the falsity of the Edgeworths' strawman argument. (I AA109-120.)

An attempt is made to again alter the narrative concerning why the Edgeworths pursued a frivolous lawsuit against Simon. (Pet., at 4-5.) It is claimed, without citation, that Simon refused to turn over settlement checks. The record reveals that Vannah informed the district court of the collaborative decision to deposit the settlement drafts into a joint trust account. (*E.g*., I AA132-135.) Further, Angela Edgeworth testified that Simon was sued to "punish" him. (I AA130-132.) Finally, these issues were resolved by the district court in the order dismissing the conversion case (I AA137-146.), which was upheld on appeal. *Edgeworth Family Trust,* 2020 WL 7828800.

The petition claims that Simon made false statements regarding the sums held in the trust account. (Pet., pg 6, fn 4.) This claim is an unusually long stretch. Unmentioned is the failure of the Edgeworths' motion practice and petition to force disbursal of funds from the account before final lien adjudication failed. (I AA147-154 and I AA155-160.)

In footnote 10 of the petition, Simon is again accused of lying. (Pet., 15-16.) This time, Edgeworth parlays Simon's statement that he did not possess the final ***fully executed*** Viking settlement agreement – because Vannah was then Edgeworths' attorney – as a basis to claim that Simon lied about draft agreements and to levy an unsupported accusation that Simon "destroyed the fully executed agreements". (Pet. At 16, fn 10, emphasis omitted.) This is a bizarre claim.[5] The fact that Simon helped resolve the case after he was fired does not mean that Simon kept copies of or destroyed fully executed releases after he was fired. Further, the subject draft Viking settlement agreement was entered into evidence in the 2018 evidentiary hearing and Vannah questioned Simon about the draft release. (*See, e.g.*, I AA109-123.)

[5] One might wonder why Viking tendered the settlement money if the fully executed releases were destroyed by Simon.

IX. Reassignment is not appropriate.

The Edgeworths request reassignment to a different department on remand. The request is based on hyperbole and exaggeration, at best. The Edgeworths rely on the claims that this court limited Simon's recovery to 71 hours of time and that the district court intentionally refused to follow this court's instructions. As demonstrated above, the claims are untrue.

Of equal importance, the Edgeworths did not provide cogent argument or authority in support of reassignment. The petition is conclusory and did not address the elements in *California v. Montrose Chem. Corp*., 104 F3d 1507, 1521 (9th Cir. 1997). Thus, this court need not address the request. *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 330 at fn 38, 130 P.3d 1280, 1288 at fn 38 (2006) (unsupported claims need not be considered). However, arguendo, the amount of review required of the new department, including reading the five-day evidentiary hearing transcript and examination of the voluminous exhibits, is itself an overwhelming and irresistible factor against reassignment, doubly so because the district court followed this court's direction.

X. Conclusion

The petition did not demonstrate that extraordinary relief is warranted. No relief is due. However, if this court chooses to act on the petition, Simon requests that the fifth order be affirmed, so this lien adjudication may finally end. *See*, *Hill v. Norfolk and Western Railway Co*., 814 F.2d 1192 (1987) (in *Hill* Judge Posner discusses when it is time for a litigant to stop).

Dated this 14th day of August 2023.

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VERIFICATION

I, James R. Christensen, am an attorney for the Real Parties in Interest herein. I hereby certify that I have read the foregoing Response to Writ Petition, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

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

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Response to Writ Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Arial font. I further

certify that this brief complies with the page or type volume limitation of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 7,000 words and contains approximately 6,875 words.

I hereby certify that I have read this Response to Writ Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answering Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 14th day of August, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of August, 2023, I served a copy of the foregoing RESPONSE TO WRIT PETITION electronically to all registered parties.

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN